

personal hygiene and sees current public service as a form of work where he comes into contact with many people. He believes it is his attention to hygiene, such as regularly washing his hands, which has kept him from getting ill over the past year.

In the past year he has fallen three times due to spasticity and lack of motor control. Mr. O is active in the community, serving on many state and local boards and commissions while taking classes toward a master's degree in public administration. He strives for independence.

III. Discussion

A. *The PCA Program*

The purpose of the PCA program

is to provide a recipient physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient[. ²]

The division uses the CAT (Consumer Assessment Tool) to help it assess the level of assistance needed to complete certain activities. ³ The different levels of assistance with ADLs are defined by regulation and in the CAT. ⁴ Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week. ⁵ Limited Assistance (scored as a two) is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight-bearing support no more than two times a week. ⁶ Extensive Assistance (scored as a three) is defined as requiring direct physical help with weight-bearing support at least three times a week, or full assistance without any involvement from the recipient at least three times a week, but not all of the time. ⁷ Total dependence (scored as a four) means the recipient has to rely entirely on the caretaker to perform the activity. ⁸

² 7 AAC 125.010(a).

³ 7 AAC 125.020(b).

⁴ The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

⁵ Exhibit E at 6.

⁶ 7 AAC 125.020(a)(1); Exhibit E at 6.

⁷ 7 AAC 125.020(a)(2); Exhibit E at 6.

⁸ 7 AAC 125.020(a)(3); Exhibit E at 6. Bathing and the IADLs have their own assistance level definitions.

The line between extensive assistance and total dependence is, at times, blurred. Whether the recipient requires extensive assistance or total dependence is a fact specific determination to be made on a case by case basis. Consideration should be given to whether the recipient takes an active part in the physical completion of the ADL or whether the recipient is merely cooperating with the caretaker. If the recipient is merely cooperating, then the level of assistance is closer to Total Dependence.

The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.⁹ The Service Level Computation chart shows the amount of time allotted for each ADL or IADL, depending on the level of assistance needed for each task (score). The amount of time is multiplied by the frequency or number of times per week the ADL or IADL is performed. The Service Level Computation chart places a presumptive cap on the frequency or amount of time that can be authorized for an activity.¹⁰ The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access apartment or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.¹¹ The IADLs measured by the CAT are light meal preparation, main meal preparation, housework, grocery shopping, and laundry.¹²

This is a reassessment. The division has the burden of showing that it incorrectly assessed the level of assistance required and/or the frequency of assistance required.¹³

Prior to the start of the hearing the parties resolved all areas of dispute except for two: Body Mobility and Personal Hygiene.

B. *Bed Mobility*

The ADL of body mobility includes the activity of positioning or turning in a bed or chair.¹⁴ The CAT refers to this as bed mobility, which is described as how a person moves to or from a lying position, or turns side to side, or positions his or her body while lying in

⁹ 7 AAC 125.024(1).

¹⁰ Bed mobility (presumptive cap of 12 times per day) and bathing (a person requiring total assistance is authorized to receive 30 minutes per day) are examples.

¹¹ Exhibit E at 6 – 11.

¹² Exhibit E at 26.

¹³ 7 AAC 49.135.

¹⁴ 7 AAC 125.030(b)(1).

bed.¹⁵ Mr. O is nonambulatory and although he can move himself, he requires extensive assistance due to severe muscle spasticity and lack of motor control.¹⁶ Mr. O does not challenge the performance score of a one person extensive assist (score of 3/2), but rather the number of times per day (frequency) he requires physical assistance with bed mobility.

The division has the burden of establishing that Mr. O is no longer eligible for a frequency of 28 times per day for this ADL. In support it relies upon the Service Level Computation Chart which directs the division that for frequency “[b]ody mobility is less than or equal to every two hours as a standard (12 x daily) reduced by any frequencies for other ADL tasks (transfer, toileting, bathing, locomotion, etc. where body mobility is a functional part of the overall task.”¹⁷ Mr. O’s doctor, J K, wrote that Mr. O is at risk for decubitus ulcers if not repositioned every 30 minutes.¹⁸ He also wrote that the other activities do not occur at frequent enough intervals to provide repositioning every 30 minutes.¹⁹ Mr. O would like bed mobility 48 times a day in addition to the frequencies for other ADL tasks where body mobility is a part of the overall task.

The division correctly accounted for Mr. O’s Body mobility. First, between transfers (22 per day), dressing (4 per day), toileting (8 per day), and bathing (1 per day), Mr. O is repositioned 35 times a day or every 41 **minutes** as a result of an ADL other than body motility. Dr. K’s concern was the risk of decubitus ulcers unless Mr. O is repositioned every 30 minutes. However, Mr. O does not reposition every 30 minutes. Mr. O testified that he gets up three times a night, which is a frequency of less than twice an hour. The division’s determination on the ADL of body mobility should be affirmed.

C. *Personal Hygiene*

Personal hygiene is how a person combs his hair, brushes his teeth, shaves, washes and dries his face, but does not include bathing.²⁰ The division concluded that Mr. O continues to require extensive assistance with this ADL, but that applying the Service Level Computation Chart resulted in reduction in frequency from 14 times a week to 7 times a

¹⁵ Exhibit E 6
¹⁶ Exhibit E 6.
¹⁷ Exhibit B 34.
¹⁸ July 7, 2014 Letter From J L. K, M.D. to Division.
¹⁹ *Id.*
²⁰ Exhibit E 10.

week. Mr. O challenges the division's scoring. He believes he should receive a self-performance score that reflects his total dependence upon care givers to complete his personal hygiene. The unchallenged testimony establishes that Mr. O can raise his hand to his face and brush his teeth. While he may be physically able to perform part or some of the activity, he is not physically able to perform the entire activity without physical assistance. For example, Mr. O can brush his teeth but he does not do so in a hygienic manner. He can wash his face but not in a hygienic manner.

Mr. O's involvement in the performance of this ADL goes further than cooperating with his care giver. He testified that some days he can perform part of the activity, while other days there may be full caregiver performance at times. However, Mr. O does not require full caregiver performance to complete this ADL everyday all day. The level of assistance required is closer to extensive assistance rather than total assistance to perform this ADL.

The Personal Care Assistance Service Level Computation Chart allocates PCA time for personal hygiene on a per day basis. It does not take into account that a person brushes his or her teeth at least twice a day or washes his or her face at least twice a day. The division's determination on the ADL of personal hygiene should be affirmed.

IV. Conclusion

Mr. O has severe functional impairments that limit his ability to perform Activities of Daily Living and Instrumental Activities of Daily Living without physical assistance. The division correctly counted and scored Mr. O for the ADLs of body mobility and personal hygiene.

DATED this 28th day of July, 2014.

Signed _____
Rebecca L. Pauli
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 25th day of August, 2014.

By: Signed _____
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

[This document has been modified to conform to the technical standards for publication.]