

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
 W B)
_____)

OAH No. 14-1091-MDS
Agency No.

DECISION

I. Introduction

The Division of Senior and Disabilities Services terminated W B’s personal care assistance benefits after determining that Ms. B could perform household tasks without help. The evidence showed, however, that because of her vertigo and shortness of breath, Ms. B does need assistance with the tasks of housework, laundry, shopping, and main meal preparation.

II. Facts

W B is a 53-year-old woman who lives in No Name, Alaska. She suffers from several medical conditions, including an aortic valve disorder, obesity, asthma, arthropathy, and chronic obstructive pulmonary disease (COPD).¹ In early January 2014, Ms. B became very ill. Because of her acute respiratory distress and gastro-intestinal bleeding, she was medevaced from No Name to the No Name Hospital (NNH) in Anchorage on January 11, 2014.² She was not discharged from NNH until February 11, 2014.

Due to her medical conditions, including balance and pain issues, Ms. B has difficulty with many activities. Yet, she is able to complete most of her activities of daily living without receiving hands-on assistance from others.³ For example, although she has difficulty with walking, she has found ways to move herself around without assistance. She will hold on to the wall to balance, use her walker, borrow a neighbor’s wheelchair, or ride the motorized scooter at the grocery store.⁴

Since December 2011, Ms. B has been eligible for personal care assistance to help her with her housework. The division assesses how much assistance an applicant needs to care for herself using a standardized assessment format, called the Consumer Assessment Tool (CAT).

¹ Division Exhibit E at 3.

² B Exhibit (rec’d 7/14/2014); B testimony. Her final discharge diagnosis read as follows: Acute respiratory failure; influenza A; Sepsis syndrome; left ventricular outflow obstruction; anemia; COPD with exacerbation. *Id.*

³ B testimony; Z testimony; Hanley testimony.

⁴ B testimony; M testimony.

Under the CAT, the assessor will assign a numerical score for each of several activities of daily living (ADLs)—tasks like walking, eating, and so on—and for several “instrumental activities of daily living” (IADLs)—tasks like cooking, housework, and so on. Scores are divided into two categories, a “self-performance” score, and a “support” score. As a general matter, personal care assistance minutes are assigned for scores that show that the recipient needs actual hands-on assistance to accomplish the ADL or IADL. Scores that show independence or need for only supervision, set-up help, or cueing will not qualify for assistance.⁵ Because Ms. B was generally able to complete most activities with little or no help, the only task on which she had previously been approved for PCA benefits was housework.

On February 18, 2014, registered nurse Angela Hanley reevaluated Ms. B to determine whether Ms. B was still eligible for PCA benefits.⁶ Ms. Hanley determined that Ms. B had good range of motion and arm strength. Ms. B could reach over her head and touch her hands behind her back. She could push herself up from a sitting position using her arms. She could not, however, stand up while her arms were crossed, which Ms. Hanley explained is a balance issue.⁷ After observing Ms. B, and asking her questions about her ability to complete activities and

⁵ The CAT numerical coding system has two components for scoring a person’s need for assistance with IADLs. The first component is the self-performance code. These codes rate how capable a person is of performing a particular activity. The relevant possible codes for IADLs are:

1. IADL SELF-PERFORMANCE CODES:
 0. INDEPENDENT: (with/without assistive devices) – No help provided.
 1. INDEPENDENT WITH DIFFICULTY: Person performed task, but did so with difficulty or took a great amount of time to do it.
 2. ASSISTANCE/DONE WITH HELP: Person involved in activity but help (including supervision, reminders, and /or physical “hands-on” help) was provided.
 3. DEPENDENT/DONE BY OTHERS: Full performance of the activity was done by others. The person was not involved at all each time the activity was performed.
 8. Activity did not occur.
2. IADL SUPPORT CODES:
 0. No support provided.
 1. Supervision/cueing provided.
 2. Set-up help only.
 3. Physical assistance was provided.
 4. Total dependence – the person was not involved at all when the activity was performed.
 8. Activity did not occur.

ADLs have a slightly different scoring scheme. For a full explanation of how the CAT is scored, and what the numerical scores mean for ADLs and IADLs, see, for example, *In re LB*, OAH No. 12-406-MDS at 7-8 (Comm’r Health and Soc. Serv. 2012) available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS120406.pdf>.

⁶ Hanley testimony. Although the CAT indicates that the assessment visit occurred on January 18, Ms. Hanley testified that this was a typo, and the visit actually occurred on February 18.

⁷ Hanley testimony.

household tasks, Ms. Hanley scored Ms. B as being independent or needing only minimal set-up/cueing assistance to compete all activities of daily living and household tasks.

After reviewing the CAT scores prepared by Ms. Hanley, the division concluded that Ms. B was not eligible for any PCA benefits. On June 9, 2014, the division informed Ms. B in writing that her PCA benefits would be terminated. Ms. B requested a fair hearing to contest the termination. A hearing was held on August 7, 2014. Victoria Cobo represented the division. Ms. B represented herself, with assistance from D Z, her care coordinator.

At the hearing, Ms. Z confirmed that Ms. B has ongoing difficulties with balance. Ms. B is currently attending physical therapy twice per week to address her vertigo.⁸ Ms. Z's firm currently provides assistance to Ms. B in housekeeping, laundry, and some cooking. Some of the issues that Ms. Z testified to, such as Ms. B's vertigo and COPD, were not disclosed to Ms. Hanley at the time of the assessment visit.

III. Discussion

The Medicaid program authorizes PCA services for the purpose of providing “physical assistance with activities of daily living (ADLs), physical assistance with instrumental activities of daily living (IADLs), and other services based on the physical condition of the recipient.”⁹ Under the regulations governing the Medicaid program, “[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL.”¹⁰

Although Ms. B has balance and pain issues, she has a strong and independent personality. She is able to complete all of her activities of daily living on her own, and did not request assistance on those activities.¹¹ The dispute at the hearing concerned whether Ms. B

⁸ B testimony.

⁹ 7 AAC 125.010(a).

¹⁰ 7 AAC 125.020(e). “Cueing” means “daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity.” *Id.* “Setup” means “arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL.” *Id.* “Supervision” means “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” *Id.*

¹¹ With regard to Ms. B's ability to perform ADLs, Ms. B's neighbor, Mr. M, testified that Ms. B had more difficulty in walking than she admitted to. He testified that because she is stubborn and independent, she tries to do more than she is capable of and has fallen several times. On this record, however, it appears that Ms. B remains capable of being independent in walking, although Mr. M's testimony indicates that she may need to use her walker more frequently (he wanted her to get a wheelchair). If the situation with Ms. B's ability to perform her ADLs worsens, she may submit a change of information request.

qualified for assistance on the household chores of housework, laundry, meal preparation, shopping, and escort. Those issues are discussed below.

1. *Housework*

Ms. Hanley concluded that Ms. B could do her own housework without assistance. She observed that Ms. B had good range of motion in her upper body, and good grip strength. Ms. Hanley acknowledged that Ms. B had balance problems, but Ms. B was able to function in that she could stand and she could maneuver around the home. Ms. Hanley concluded that Ms. B could accomplish the tasks of housework by doing them in small bursts. For example, in her view, Ms. B could do several short sessions of vacuuming or washing dishes, until the tasks were complete.

Neither Ms. B nor Ms. Z shared Ms. Hanley's view, however. They explained that given Ms. B's shortness of breath and vertigo, Ms. B simply was unable to do tasks that required her to be in a standing position. For Ms. B, merely being in a standing position was so demanding that doing other tasks was not possible. For example, Ms. B explained that she did love to cook, and would participate in cooking by cutting and preparing while sitting down. Someone else, however, would have to stand at the stove and cook the food.

Because Ms. B was already receiving assistance on housework, the division has the burden of proving that she no longer is eligible. Ms. Hanley's conclusions, based on her observations, were reasonable, but Ms. Hanley was not aware of Ms. B's COPD or vertigo. Ms. B is able to participate in doing housework chores, but on this record, the division has not met its burden of proving that Ms. B is independent or requires only set-up assistance. Therefore, Ms. B's previous score of "2/3" for the IADL of housework will remain in place.

2. *Laundry*

Because Ms. B was previously scored as independent on the task of laundry, she has the burden of proving that she is eligible for PCA benefits on this task. Here, she has met that burden. The evidence showed that she is not capable of carrying laundry baskets to and from the laundry room. Ms. Z testified that she assists in the laundry even though at this time she is not being compensated for that assistance.¹² A neighbor, N M, testified that although he cannot help her because he is in a wheelchair, other residents in the building will help Ms. B. Because Ms. B

¹² Z testimony.

can participate in laundry, but could not do the task without assistance, she should be scored “2/3” on the IADL of laundry.

3. *Main meal/light meals*

Ms. Z testified that she has never seen Ms. B actually stand at the stove and cook food. Ms. B testified that she can do food preparation while sitting. Ms. Cobo argued that nothing prevents Ms. B from preparing light meals like breakfast and lunch—she ought to be able to pour cereal, warm up soup, or make a sandwich. As for the main meal, Ms. B receives five main meals each week from No Name Community (NNC).¹³ On this record, she is not eligible for assistance on light meal preparation because she agreed she can prepare her own light meals when she has food in the house. She can participate in cooking the two main meals that she needs in addition to the provided meals, but she needs assistance to complete the task. She should be scored “1/3” (independent with difficulty) on the IADL of main meal preparation with a frequency of two times per week.

4. *Shopping*

Ms. B explained that when she needed to shop, she and a friend would receive transportation to the store from NNC. She would walk with her walker to the store and then ride on the motorized scooter/cart while in the store. Her friend would take items off the shelf for her. She explained that because of her vertigo and asthma she could not reach items off the top shelf even if she wanted to. Based on the evidence that Ms. B had good range of motion and can reach up with her hands over her head, however, the division disputed this conclusion. In the division’s view, Ms. B could shop without help.

Here, the balance of the evidence indicates that for Ms. B to complete the task of shopping without an assistant would be extremely difficult and cumbersome. For a person with shortness of breath and vertigo to be climbing on and off the motorized cart, and then bending over or reaching up, even if theoretically possible, is not practicable. On this record, Ms. B should be scored a “1/3” for the IADL of shopping, which will allow her some PCA benefit for this task.

5. *Escort*

Although Ms. B requested assistance for escort, as health program manager David Chadwick explained, under the regulations, escort assistance is available only for applicants who

¹³ B testimony.

need hands-on assistance to attend, or are unable to understand, their medical appointments.¹⁴ Here, Ms. B is able to attend her medical appointments. She has no problems in communicating and understanding. Therefore, she is not eligible for escort assistance.

IV. Conclusion

Ms. B is eligible for services on the IADLs of housework, laundry, main meal preparation, and shopping. Her scores should be adjusted on these IADLs as follows:

1. Housework: 2/3.
2. Laundry: 2/3.
3. Main meal preparation: 1/3, with a frequency of two times per week.
4. Shopping: 1/3.

All other findings of the division are affirmed.

DATED this 28th of August, 2014.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services, I adopt this Decision as the final administrative determination in this matter, under the authority of AS 44.64.060(e)(1).

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 15th day of September, 2014.

By: Signed
Name: Stephen C. Slotnick
Title: Administrative Law Judge/DOA

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

¹⁴ 7 AC 125.030(c)(5)(9).