

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

In the Matter of: )  
 )  
 E P ) OAH No. 14-1277-MDS  
 ) Agency Case No.

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**DECISION**

**I. Introduction**

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (Division) correctly assessed the amount of Medicaid Personal Care Assistant (PCA) services for which E P is currently eligible. The Division decreased Ms. P's PCA services from 27 hours per week to 9.25 hours per week effective July 26, 2014.<sup>1</sup> The Division further decreased Ms. P's PCA service level to 6.5 hours per week, effective September 16, 2014, based on an amendment request / change of information (COI) that she submitted.<sup>2</sup>

The parties engaged in negotiations prior to hearing and were able to resolve all issues except for three. The only items still in dispute are the amounts of PCA time for which Ms. P is eligible for transfers, locomotion, and dressing. This decision concludes that the Division correctly evaluated Ms. P's need for assistance with dressing, but that Ms. P requires a greater level or frequency of assistance with transfers and locomotion than was found by the Division. Accordingly, the Division's determination as to those services is affirmed in part and reversed in part.

**II. Facts**

**A. Ms. P's Medical Condition<sup>3</sup>**

Ms. P is 60 years old.<sup>4</sup> She lives alone on the first floor of an apartment building. She is wheelchair-bound.<sup>5</sup> There are two steps from the outside level to the main floor of the apartment building, and there is no wheelchair ramp.<sup>6</sup>

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<sup>1</sup> Ex. D1.

<sup>2</sup> Ex. H1.

<sup>3</sup> Because the parties settled most of the issues originally in dispute, only those facts relevant to the three remaining issues are stated here.

<sup>4</sup> All factual findings in this paragraph are based on Ex. E1 unless otherwise stated.

<sup>5</sup> Ex. E7.

<sup>6</sup> Ex. E1.

Ms. P has a number of medical diagnoses including chronic pain syndrome, mononeuritis of the legs, paraplegia, peripheral vascular disease (PAD), and pyogenic granuloma of the skin and subcutaneous tissue.<sup>7</sup>

A PCA "change of information" form (COI), signed by Ms. P and dated May 27, 2014, states in relevant part as follows:<sup>8</sup>

[Ms. P] is able to ambulate in her own apartment using a cane. She will schedule an appointment with Dr. Q to determine if this will aggravate her shoulder injuries (rotator cuff / tendon tear - right side; arthritis - left side). [Ms. P] receives injections in her shoulders up to [three times] per year. [Ms. P] also stated she no longer needed assistance with toilet use.

Ms. P saw her doctor, Dr. Q, M.D., on October 3, 2014.<sup>9</sup> Dr. Q's notes from this appointment state in relevant part as follows:

[Ms. P] is home bound and wheelchair bound because of multiple medical problems specifically relating to vascular and neuromuscular issues. She has multiple medical problems including a rotator cuff injury, pyoderma gangrenosum,<sup>10</sup> peripheral vascular disease (PAD) with a history of thrombosis of the internal iliacs, polyneuropathy, irritable bowel syndrome, hypertension, hyperlipidemia, hepatitis C (carrier state), depression, and Crohn's disease. As a result of these . . . she is unable to stand unassisted. She is able to assist her caregiver with transfers but is unable to currently transfer herself from wheelchair to bed or wheelchair to toilet . . . . [S]he has a PCA who comes [to] her home around 9:00 a.m. This person helps her transition out of bed, and into her wheelchair. She assists [Ms. P] with getting dressed. [Ms. P] is able to put on a coat but is unable to put on a pullover shirt by herself, and she is completely unable to put on underwear, socks, or pants without assistance, due to her balance and lower extremity strength issue / inability to stand and lift herself up.

The PCA then helps her with her daily routine . . . until about 3:00 p.m. At that point, the PCA transfers her to bed and puts a diaper on her. From that point forward she is in bed until the next day at 9:00 a.m. She is unable to get up out of the bed, and so [she] lies in bed sleeping intermittently watching TV and . . . her computer. . . .

3. Inability to transfer. We'll place a referral to physical therapy to help her with working with a transfer board or similar device to be able to transfer from her wheelchair to either the couch or a bed that is set at the same height as her chair so

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<sup>7</sup> Ex. E3.

<sup>8</sup> Ex. G1.

<sup>9</sup> All factual findings in this paragraph are based on Ex. K and Ex. 2 unless otherwise stated.

<sup>10</sup> Pyoderma gangrenosum is a rare condition that causes large, painful sores (ulcers), most often on the legs. *See* Mayo Clinic website at <http://www.mayoclinic.org/diseases-conditions/pyoderma-gangrenosum/basics/definition/con-20031017>, accessed on April 30, 2015. It is not yet certain what causes pyoderma gangrenosum, but it appears to be an immune system disorder. *Id.*

that she will be able to lie down and put her feet up in the middle of the day without assistance. This will help her with the pain that she experiences [when she remains] seated for too long . . . .

4. When she is able to transfer herself I believe [it] would be very reasonable to consider having either a split shift . . . [having] . . . one [PCA] in the morning to help get her up and about, and another [PCA] in the evening to help get her into bed. I believe that her inability to dress herself and get out of bed is likely to be somewhat intractable, but that getting around within the house, after she is up and about, is something that can be done . . . .

5. Pressure sore prevention. I believe that transfers and mobility within the bed to prevent pressure sores [would] be greatly increased if she had a trapeze or similar device so that she'll be able to lift herself. Additionally, she is going to [try] to obtain a bed [that] could be raised and lowered to accommodate transfers and increase her independence.

On November 21, 2014, Ms. P submitted a COI and a Prescribed Task Form (PTF) to the Division.<sup>11</sup> The PTF prescribed physical assistance with passive range of motion exercises, for 15 minutes per day, seven days per week, for a period of one year, because "E has limited mobility and has been prescribed ROM to build her strength and balance to be able to transfer."

***B. The Division's Findings From its 2009 and 2014 Assessments***

Ms. P has received PCA services since 2008 or before.<sup>12</sup> The Division assessed Ms. P as to her continuing eligibility for PCA services on October 2, 2009<sup>13</sup> Based on the 2009 assessment, the Division found that Ms. P required the following levels of assistance with her activities of daily living (ADLs) at that time:<sup>14</sup> body mobility - independent (CAT score 0/0); transfers - required extensive one-person physical assistance 42 times per week (CAT score 3/2, frequency 6/7); locomotion - required extensive one-person physical assistance 42 times per week (CAT score 3/2, frequency 6/7); dressing - required extensive one-person physical assistance 14 times per week (CAT score 3/2, frequency 2/7); eating - was independent, requiring only set-up assistance (CAT score 0/1); toilet use - required extensive one-person physical assistance 42 times per week (CAT score 3/2, frequency 6/7); personal hygiene - required limited one-person physical assistance fourteen times per week (CAT score 2/2, frequency 2/7); and bathing - required extensive one-person physical assistance seven times per week (CAT score 3/2, frequency 1/7).

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<sup>11</sup> All factual findings in this paragraph are based on Ex. I and J unless otherwise stated.

<sup>12</sup> Ex. F1.

<sup>13</sup> Ex. F.

<sup>14</sup> All factual findings in this paragraph are based on Exs. F6 - F12 unless otherwise stated.

Ms. P was most recently assessed concerning her eligibility for PCA services on February 18, 2014 by Division nurse-assessor Denise Kichura, R.N.<sup>15</sup> In her assessment, Ms. Kichura made the following findings and drew the following conclusions concerning the ADLs still at issue in this case:

Functional assessment:<sup>16</sup> Ms. Kichura reported that Ms. P has strong grip strength in both hands, that she can touch her hands together over her head and behind her back, and that she can touch her feet while in a sitting position, but that she cannot stand up with her hands crossed on her chest. Ms. Kichura further reported that she saw Ms. P brush her hair, put on socks and take them back off, adjust her bed pillows, and reach items on her night stand about one foot away.

Transfers:<sup>17</sup> Ms. Kichura reported that Ms. P told her that (1) her PCA transfers her into her manual wheelchair when she arrives at 9:00 a.m.; (2) her PCA subsequently helps her transfer between her wheelchair and her sofa / recliner; (3) her PCA must provide hands-on assistance with transfers; and (4) she is able to help her PCA by using her cane for support. Ms. Kichura reported that she observed Ms. P's PCA (1) transfer her without using a gait belt; and (2) wrap her arms around Ms. P to balance her. Ms. Kichura reported that Ms. P's transfers into bed are weight-bearing transfers, but that Ms. P's transfers out of bed are not weight-bearing transfers, because her bed is higher than the seat of her wheelchair (scored 3/2, frequency 4/7).

Locomotion (walking):<sup>18</sup> Ms. Kichura reported that Ms. P told her that she can self-propel her manual wheelchair within her apartment, and that she uses an electric wheelchair when going to the store. Ms. Kichura reported that she observed Ms. P propel her manual wheelchair from room to room without assistance, maneuvering around walls and area rugs without difficulty (scored 1/1, frequency 0/0).

Dressing:<sup>19</sup> Ms. Kichura reported that Ms. P told her that she is able to take her socks on and off, but is unable to thread her arms into her shirt sleeves, and requires assistance dressing and undressing her lower body. Ms. Kichura reported that she observed Ms. P remove her socks, and Ms. Kichura concluded that Ms. P has acceptable fine motor skills and a range of motion sufficient to put on a sweater (scored 2/2, frequency 2/7).

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<sup>15</sup> Exs. F1 - F31.

<sup>16</sup> All references in this paragraph are based on Ex. E4 unless otherwise stated.

<sup>17</sup> All references in this paragraph are based on Ex. E6 unless otherwise stated.

<sup>18</sup> All references in this paragraph are based on Ex. E7 unless otherwise stated.

<sup>19</sup> All references in this paragraph are based on Ex. E8 unless otherwise stated.

### **C. Relevant Procedural History**

Ms. P has received PCA services since 2008 or before.<sup>20</sup> The Division performed the assessment at issue on February 18, 2014.<sup>21</sup> On July 16, 2014 the Division notified Ms. P that her PCA service level was being reduced from 27 hours per week to 9.25 hours per week effective July 26, 2014.<sup>22</sup> On September 16, 2014, the Division notified Ms. P that, based on a change of information (COI) form submitted on May 27, 2014, it was reducing her PCA service level to 6.5 hours per week.<sup>23</sup> On November 24, Ms. P submitted another COI form (for range of motion exercises and foot care), and on November 25, 2014 the Division notified her that it was increasing her PCA service level to 8.25 hours per week, effective that same date.<sup>24</sup>

Ms. P requested a hearing to contest the Division's reduction of her PCA services on July 18, 2014.<sup>25</sup> Ms. P's hearing was held on December 8, 2014. Ms. P participated in the hearing by phone, represented herself, and testified on her own behalf. Ms. J, Ms. P's PCA agency representative, testified by phone on Ms. P's behalf. Tammy Smith participated by phone and represented the Division. Denise Kichura, R.N. and Angelika Fey-Merritt participated by phone and testified on behalf of the Division. Darlene Day of the Division also participated but did not testify. The record closed at the end of the hearing.

## **III. Discussion**

### **A. The PCA Program - Overview**

The Medicaid program provides Personal Care Assistant (PCA) services to eligible persons; "[t]he purpose of personal care services is to provide to 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 . . . ." <sup>26</sup> [emphasis added]. Accordingly, "[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."<sup>27</sup>

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<sup>20</sup> Ex. F1.

<sup>21</sup> Ex. E.

<sup>22</sup> Ex. D1.

<sup>23</sup> Ex. H.

<sup>24</sup> Ex. L.

<sup>25</sup> Ex. C.

<sup>26</sup> 7 AAC 125.010(a).

<sup>27</sup> 7 AAC 125.020(e). This regulation defines "cueing" as "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;" "setup" as "arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;" and

## ***B. Alaska's PCA Program - Use of the Consumer Assessment Tool (CAT)***

The Division conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT."<sup>28</sup> The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs).<sup>29</sup> The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.<sup>30</sup> The ADLs scored by the CAT are body mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access living quarters), dressing, eating, toilet use, personal hygiene, and bathing.<sup>31</sup>

The CAT numerical scoring system has two components. The first component is the *self-performance score*. These scores rate how capable a person is of performing a particular activity of daily living (ADL). The possible CAT scores for ADLs are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>32</sup>); **3** (the person requires extensive assistance<sup>33</sup>); **4** (the person is totally dependent<sup>34</sup>). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).

The second component of the CAT scoring system is the *support score*. These scores rate the degree of assistance that a person requires for a particular activity of daily living (ADL). The possible scores are **0** (no setup or physical help required); **1** (only setup help required); **2** (one person physical assist required); and **3** (two or more person physical assist required). Again, there are additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).

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"supervision" as "observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL." *Id.*

<sup>28</sup> 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

<sup>29</sup> *See* 7 AAC 125.010(a).

<sup>30</sup> Ex. E.

<sup>31</sup> Exs. E6 - E12.

<sup>32</sup> Pursuant to 7 AAC 125.020(a)(1), limited assistance with an ADL "means a recipient, who is highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed."

<sup>33</sup> Pursuant to 7 AAC 125.020(a)(2), extensive assistance with an ADL "means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity."

<sup>34</sup> Pursuant to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to and IADL, "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity."

The CAT also scores certain activities known as "instrumental activities of daily living" (IADLs).<sup>35</sup> However, there are no IADL scores at issue in this case.

**C. *Applicable Burden of Proof***

The Division is seeking to reduce Ms. P's existing PCA services (services which Ms. P is already receiving). Accordingly, the Division has the burden of proving, by a preponderance of the evidence, that Ms. P's need for PCA services has decreased.<sup>36</sup>

**D. *How Much Assistance Does Ms. P Require With her ADLs?***

As previously noted, the parties engaged in negotiations prior to hearing and were able to resolve all issues except for three. The only items still in dispute are the amounts of PCA time for which Ms. P is eligible for transfers, locomotion, and dressing. These three activities will be addressed below in the order stated.

**1. Transfers**

For the ADL of transferring, PCA time is allowed when a person requires physical assistance to move between one surface and another (including to or from a bed, chair, or wheelchair), and/or when a person requires physical assistance to move from a lying or sitting position to a standing position.<sup>37</sup>

In 2009, the Division found that Ms. P required extensive one-person physical assistance with transfers 42 times per week (CAT score 3/2, frequency 6/7). In 2014, Ms. Kichura found that Ms. P requires extensive assistance with transfers four times per day (scored 3/2, frequency 4/7). In her written statement of issues, Ms. P asserted that her level and frequency of need for assistance with transfers has not changed since her prior assessment.<sup>38</sup> At hearing, Ms. P testified that her physical condition has not gotten significantly worse since her 2009 assessment, but that it has not gotten better either. This is consistent with Dr. Q's exam notes dated October 3, 2014. The Division was unable to point to any evidence of improvement in Ms. P's condition that would justify decreasing her frequency of assistance with transfers. Accordingly, the preponderance of the evidence indicates that Ms. P requires the same level and frequency of assistance with transfers she had in 2009 (CAT score 3/2, frequency 6/7).

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<sup>35</sup> Ex. E26.

<sup>36</sup> See 42 CFR 435.930, 2 AAC 64.290(e), 7 AAC 49.135, and *Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

<sup>37</sup> 7 AAC 125.030(b)(2).

<sup>38</sup> Ex. 1 p. 1.

2. Locomotion / Walking

For the ADL of locomotion, PCA time is allowed when a person requires assistance with walking (whether with the support of a walker, cane, gait belt, braces, crutches, or manual wheelchair), either between different locations in the recipient's home, outside the home to keep a medical or dental appointment, and/or when walking and simple exercises have been prescribed by a physician.<sup>39</sup> In 2009, the Division found that Ms. P required extensive one-person physical assistance with locomotion 42 times per week (CAT score 3/2, frequency 6/7). In 2014, Ms. Kichura reported that Ms. P can operate her manual wheelchair within her apartment without assistance (CAT score 1/1, frequency 0/0).

In her written statement of issues, Ms. P asserted that her need for assistance with locomotion has remained "relatively stable" since her prior assessment, and that she needs assistance with operating and propelling her manual wheelchair due to the arthritis in her shoulders, a torn rotator cuff and tendon in her right shoulder, and her COPD.<sup>40</sup> At hearing, Ms. P testified that she uses her cane to help her transfer, but that she actually uses her manual wheelchair for all in-home locomotion. She testified that about half the time she is able to propel the wheelchair herself using her arms, and the other half of the time she needs someone to push her because of shoulder pain. Ms. P's testimony on this point was credible, and is consistent with the discussion of shoulder problems contained in her medical records. Accordingly, the preponderance of the evidence indicates that Ms. P requires extensive one-person physical assistance with locomotion (score 3/2), but that she only requires that level of assistance half the time. In 2009 the Division found that Ms. P required assisted locomotion 42 times per week. Since Ms. P testified that she now needs assistance with locomotion half the time, a locomotion frequency of 21 times per week is appropriate (CAT score 3/2, frequency 3/7).

3. Dressing and Undressing

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.<sup>41</sup>

In 2009 the Division found that Ms. P required extensive one-person physical assistance with dressing 14 times per week (CAT score 3/2, frequency 2/7). Ms. P currently requires limited physical assistance from one person for dressing (CAT score 2/2, frequency 2/7). In 2014 Ms. Kichura reported that Ms. P told her that she is able to take her socks on and off, but is unable to

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<sup>39</sup> 7 AAC 125.030(b)(3).

<sup>40</sup> Ex. 1 p. 1.

<sup>41</sup> 7 AAC 125.030(b)(4).



thread her arms into her shirt sleeves, and requires assistance dressing and undressing her lower body. Ms. Kichura reported that she observed Ms. P remove her socks, and Ms. Kichura concluded that Ms. P has acceptable fine motor skills and a range of motion sufficient to put on a sweater, so Ms. Kichura scored Ms. P as requiring only limited assistance with dressing (scored 2/2, frequency 2/7).

In her written statement of issues, Ms. P asserted that she needs assistance dressing her upper body because she cannot lift her arms over her head due to shoulder problems, and that she needs assistance dressing her lower body because she cannot bend over due to herniated intervertebral discs and balance problems.<sup>42</sup> At hearing, Ms. P testified that she can perform most dressing activities herself, but that she needs help with the buttons on her shirts and pants, and needs help with her socks and shoes, every day.

In order to support a self-performance score of three (extensive assistance) with dressing, there must be evidence that the PCA provides either weight-bearing support, or full performance of the activity, three or more times per week. In this case, Ms. P's own testimony indicates that she is always able to perform some aspects of dressing, and there is no evidence that she requires weight-bearing assistance with dressing. Accordingly, the preponderance of the evidence indicates that Ms. P requires limited assistance with dressing twice daily, seven days per week (CAT score 2/2, frequency 2/7).

#### **IV. Conclusion**

The Division correctly evaluated Ms. P's need for assistance with dressing. However, Ms. P requires a greater level or frequency of assistance with transfers and locomotion than was found by the Division. Accordingly, the Division's determination as to those services is affirmed in part and reversed in part.

DATED this 6th day of May, 2015.

*Signed* \_\_\_\_\_  
Jay D. Durych  
Administrative Law Judge, DOA/OAH

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<sup>42</sup> Ex. 1 p. 1.

## Adoption

The undersigned, by delegation from of 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 15<sup>th</sup> day of May, 2015.

By: Signed \_\_\_\_\_  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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