

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

In the Matter of:)
)
 T Q) OAH No. 14-1337-MDS
) Agency No.

DECISION

I. Introduction

T Q applied for personal care assistant (PCA) services through the Division of Senior and Disability Services under 7 AAC 125.010-199.¹ The Division assessed Ms. Waggoner’s functional abilities and determined that she was ineligible PCA services. Ms. Q filed an appeal.

The assigned administrative law judge conducted a telephonic hearing on September 8, 2014. Ms. Q testified and was represented by S U of Access Alaska. Angela Ybarra represented the Division. Denise Kichura, R.N., who conducted the assessment, testified on behalf of the Division.

The preponderance of the evidence is that Ms. Q is able to perform the activities and instrumental activities of daily living without physical assistance.

II. Facts

A. Background Information

T Q is 55 year old.² She lives by herself in a log cabin in No Name.³ The shower in the cabin is equipped with a hand held shower.⁴ Ms. Q’s primary diagnoses are bipolar disorder and epilepsy, and she has secondary diagnoses of post-traumatic stress disorder, unspecified personality disorder and arthropathy,⁵ as well as diagnoses of depression, osteoporosis, and asthma.⁶ Ms. Q had spinal surgery in 2012.⁷ She applied for personal care assistant services and after being assessed in March, 2014 she was found ineligible. On March 27 she fractured an ankle, and she ankle surgery on April 4. Following the surgery her ankle was placed in a cast.

¹ See AS 47.07.045.

² Ex. E, p. 1.

³ Ex. E, p. 1.

⁴ Ex. E, p. 11 (“Shower wand, no grab bars.”). In the absence of grab bars, the assessor noted, she “use[s] the grip handle at the soap ledge.” *Id.* The assessor elsewhere recorded that the bathroom included grab bars. Ex. E, p. 27. Perhaps this was a reference to the grip handle at the soap ledge, which is not a grab bar.

⁵ Ex. E, p. 3. Arthropathy is defined as “any joint disease.” Dorland’s Illustrated Medical Dictionary at 149 (27th ed. 1988).

⁶ Ex. E, p. 21.

⁷ Ex. E, p. 3.

In May, the cast was removed and she was provided a lace ankle brace and a knee scooter to assist with locomotion. She has made slow and steady progress in recovering since then.⁸

Ms. Q reapplied for personal care assistant services and she was reassessed by Denise Kichura, R.N., on July 3, 2014.⁹ R.N. Kichura used the Consumer Assessment Tool (CAT) to record the results of her assessment. She assessed Ms. Q as independent in all activities of daily living (ADLs) and as independent or independent with difficulty for all instrumental activities of daily living (IADLs). Because the assessment did not indicate a need for physical assistance with any of those activities, on July 21 the division denied her application.¹⁰

B. Daily Routine

Ms. Q is able to walk independently for short distances, and can go up and down a few stairs without assistance. She moves around inside her cabin by holding on to walls or furniture to maintain her stability. Outside the cabin she uses her knee scooter to ease locomotion. Ms. Q can maintain her balance in a standing position but cannot stand unassisted or absent a handhold for more than a few minutes at a time.¹¹ She has adequate upper limb range of motion, fine motor control and hand strength.¹² Her seizures are largely controlled with medication, although she nonetheless experiences seizures a couple of times a year.¹³ Because of her susceptibility to seizures, she is unable to obtain a driver's license and is dependent on others for transportation.

III. Discussion

The Department of Health and Social Services is authorized to provide eligible persons with personal care services.¹⁴ The Division provides compensation for personal care services in the form of physical assistance, based on an assessment of the recipient's ability to perform specified activities of daily living (ADL),¹⁵ instrumental activities of daily living (IADL),¹⁶ and certain other functions.¹⁷ The assessment is conducted using the Consumer Assessment Tool

⁸ T. Q Testimony.

⁹ Ex. E.

¹⁰ Ex. D, p. 1.

¹¹ T. Q Testimony. *See* Ex. E, p. 7 (observed to stand independently for five minutes).

¹² *See* Ex. E, p. 8 (observed to don/doff sweatshirt), p. 10 (observed to "demonstrate fine motor skills").

¹³ *See* Ex. E, pp. 3, 21 ("reports had one seizure all yr"). Ms. Q testified she has had three seizures since the assessment.

¹⁴ AS 40.07.030(b).

¹⁵ 7 AAC 125.030(b)(1)-(8).

¹⁶ 7 AAC 125.030(c)(1)-(5).

¹⁷ 7 AAC 125.030(d)(1)-(9), (e).

(CAT),¹⁸ a form created by the Department of Health and Social Services to evaluate an individual's ability to care for herself.¹⁹

At the hearing, Ms. Q requested assistance with the activities of dressing and personal hygiene, and with the instrumental activities of daily living. Because she is not presently receiving services, Ms. Q had the burden of proof.

A. Activities of Daily Living

1. *Dressing*

7 AAC 125.030(b)(4) states that the activity of dressing includes “donning, fastening, unfastening, and removal of the recipient’s street clothing, support hose, or prosthesis.” R. N. Kichura reported that she observed Ms. Q don and doff a pull a sweatshirt “without difficulty”²⁰ and that she was able to cross her legs and while seated touch her toes.²¹ Ms. Q testified that this task was difficult for her, but Ms. U testified that Ms. Q did not have significant upper body range of motion limitations. There was no testimony indicating that she has any difficulty with fine motor skills, such as are needed to fasten and unfasten buttons, and no medical records were submitted to establish any limitations on her range of motion. On balance, Ms. Q did not prove that she requires physical assistance with this activity.

2. *Personal Hygiene*

7 AAC 125.030(b)(7)(A)-(G) provides that the activity of personal hygiene includes washing and drying face and hands, nail care (if not diabetic), skin care, mouth and teeth care, brushing and combing hair, shaving (if separate from bathing), and shampooing (if separate from bathing).²²

Ms. Q's and Ms. U's testimony did not establish a need for physical assistance with this activity.

B. Instrumental Activities of Daily Living

Ms. U argued that for all of these activities, Ms. Q needs assistance because she cannot stand unassisted for any significant period of time. The testimony in that regard was in conflict. R. N. Kichura reported that she observed Ms. Q stand unassisted on the porch for about five minutes, while Ms. U asserted that Ms. Q stood for no more than 30 seconds or so. But

¹⁸ 7 AAC 125.020(b); 7 AAC 160.900(d)(6).

¹⁹ See generally, <http://dhss.alaska.gov/dsds/Documents/docs/cat-pcatOnlineFlyer.pdf> (accessed June 19, 2013).

²⁰ Ex. E, p. 8.

²¹ Ex. E, p. 9.

²² 7 AAC 125.030.

regardless of which of these assertions is correct, the fact remains that Ms. Q lives alone and has been able to prepare her own foods, do her own laundry, and attend to shopping (if provided transportation). That she cannot stand unassisted for a more than a few minutes certainly means that it would be a difficult and time consuming task to prepare a meal, perform light housework, or otherwise complete the instrumental activities of daily living. Moreover, substantial portions of these activities may be accomplished while seated, and when standing an assistive device such as a crutch or walker can prevent falls. On balance, the preponderance of the evidence is that, given sufficient time, Ms. Q can attend to these kinds of household chores. She did not prove by a preponderance of the evidence that she requires physical assistance to complete the instrumental activities of daily living.

IV. Conclusion

Based on the evidence at the hearing, Ms. Q did not prove by a preponderance of the evidence that she requires physical assistance to complete the activities of daily living or instrumental activities of daily living. She is therefore ineligible for personal care assistant services, and the division's determination to that effect is sustained.

DATED September 23, 2014.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts the attached decision dated September 23, 2014 as final 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 AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date this decision is distributed to you.

DATED October 9, 2014.

Signed _____
Andrew M. Hemenway
Administrative Law Judge

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