

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

In the Matter of )  
 )  
 F T )  
\_\_\_\_\_ )

OAH No. 14-1510-MDS  
Agency No.

**DECISION**

**I. Introduction**

F T was receiving 52.75 hours per week of personal care assistance (PCA) services when he was reassessed to determine his continued eligibility for those services in 2014. Based primarily on a reassessment visit on February 25, 2014, the Division of Senior and Disabilities Services (Division) issued a decision on July 23, 2014 notifying Mr. T that his PCA services would be reduced to 20.75 hours per week. The reduction resulted from what the Division perceived as improvements in Mr. T's condition and from some regulatory changes. Mr. T requested a hearing.

Mr. T's hearing was held on October 27, 2014. Mr. T was represented by Q T, his wife. Both Q T and M T testified on his behalf. Victoria Cobo represented the Division. Suzanne Mittlestadt testified for the Division.

At hearing, the parties resolved a good portion of the case, agreeing to the degree and frequency of the assistance that Mr. T receives for locomotion, dressing, personal hygiene, and medication. This left the amount of assistance provided for transfers, eating, toileting, and instrumental activities of daily living (light meal preparation, main meal preparation, light housekeeping, shopping, and laundry), medical escort, and prescribed tasks (medical documentation, exercises, and foot care) in dispute.

Based upon the evidence presented at hearing, the Division's assessment of and provision for Mr. T's PCA service needs, as modified at hearing, does not accurately reflect Mr. T's need for assistance with transfers. However, the Division's assessment accurately records Mr. T's needs with regard to the other disputed items. The Division's allocation of PCA service time is therefore affirmed in part and reversed in part as discussed below.

**II. The PCA Service Determination Process**

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 . . . .”<sup>1</sup> 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>2</sup>

The Division uses the Consumer Assessment Tool, or “CAT”, as a methodology to score eligibility for the PCA program, and the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.<sup>3</sup> In general, if certain levels of assistance are required, the regulations prescribe a fixed number of PCA minutes to be assigned per instance of that activity.

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If a person requires some degree of hands-on physical assistance with any one of these ADLs or IADLs, then the person is eligible for PCA services. Once eligibility is established, time for additional ADLs and IADLs, as well as certain other covered services, can be added to the PCA authorization. In Mr. T’s case, there is no dispute that he needs hands-on help with some of the gateway ADLs and IADLs.

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.<sup>4</sup> The CAT numerical coding system for ADLs has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular ADL. The possible codes are **0** (the person is independent<sup>5</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>6</sup>); **3** (the person requires extensive assistance<sup>7</sup>); **4** (the person is totally dependent<sup>8</sup>).

---

<sup>1</sup> 7 AAC 125.010(a).

<sup>2</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 “supervision” as “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” *Id.*

<sup>3</sup> See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

<sup>4</sup> Ex. E, pp. 6 – 11.

<sup>5</sup> A self-performance code of 0 is classified as “[I]ndependent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days.” See Ex. E, p. 6.

<sup>6</sup> According 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.”

There are also codes which are not used in calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).<sup>9</sup>

The second component of the CAT scoring system is the *support code*. These codes rate the degree of assistance that a person requires for a particular ADL. The possible codes are **0** (no setup or physical help required); **1** (only setup help required); **2** (one-person physical assist required); **3** (two or more person physical assist required). Again, there are additional codes which are not used to arrive at a service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).<sup>10</sup>

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping.<sup>11</sup>

The CAT codes IADLs slightly differently than it does ADLs. The *self-performance codes for IADLs* are **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person). There is also a code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>12</sup>

The *support codes* for IADLs are also slightly different than the support codes for ADLs. The support codes for IADLs are **0** (no support provided); **1** (supervision / cueing provided); **2** (set-up help); **3** (physical assistance provided); and **4** (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>13</sup>

---

<sup>7</sup> According 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>8</sup> According to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, “means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity.”

<sup>9</sup> Ex. E, p. 18.

<sup>10</sup> Ex. E, p. 18.

<sup>11</sup> Ex. E, p. 26.

<sup>12</sup> Ex. E, p. 26.

<sup>13</sup> Ex. E, p. 26.

The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each occurrence of a particular activity. For instance, if a person were coded as requiring extensive assistance (self-performance code of 3) with bathing, he would receive 22.5 minutes of PCA service time each time he was bathed.<sup>14</sup> The regulations do not provide the Division with the discretion to change the amounts specified by the formula.

For covered services beyond assistance with ADLs and IADLs, specific rules apply that will be discussed below.

### **III. Background Facts**

Mr. T is 65 years old. He lives with his wife and children. His medical conditions include cerebral atherosclerosis, arterial atherosclerosis, and cardiovascular disease. He has a left sided colostomy, with a G tube in place, a suprapubic catheter, and had the toes on his right foot amputated in early 2013.<sup>15</sup>

Mr. T was receiving 52.75 hours of weekly PCA services in 2014 based on a 2009 assessment. R C, a Division nurse, made a visit to reassess Mr. T's PCA service needs on April 25, 2014. She recorded the assessment visit in the CAT. Her findings resulted in a reduction of Mr. T's PCA services to 20.75 hours per week.<sup>16</sup> In general, the assessment shows that Ms. C found that Mr. T's physical functionality had increased, which resulted in a decrease in both the degree of assistance required and the number of times weekly that assistance was required. In addition, all PCA time provided for his instrumental activities of daily living was eliminated because he lives with his wife.<sup>17</sup>

At hearing, the parties resolved their disputes with regard to locomotion, dressing, personal hygiene, and medication. This left the amount of assistance provided for transfers, eating, toileting, instrumental activities of daily living (light meal preparation, main meal preparation, light housekeeping, shopping, and laundry), medical escort, and prescribed tasks (medical documentation, exercises, and foot care) in dispute. Those portions of the assessment and the associated PCA time awards not in dispute will not be discussed.

It must be noted that Ms. R C, the nurse assessor who conducted the February 25, 2014 assessment visit and completed the CAT, did not testify at hearing.

---

<sup>14</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 34 - 36.

<sup>15</sup> Ex. E, pp. 1, 3.

<sup>16</sup> Ex. D, p. 10.

<sup>17</sup> Ex. D, p. 4.

#### IV. Discussion

When the Division is seeking to reduce or eliminate a benefit a citizen is already receiving, the Division has the overall burden to prove, by a preponderance of the evidence,<sup>18</sup> facts that show the citizen's level of eligibility has changed.<sup>19</sup> In the context of PCA services, the showing required of the Division is that the recipient has had a "material change of condition."<sup>20</sup> The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,<sup>21</sup> including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.<sup>22</sup>

In particular areas where Mr. T seeks to increase services or add services that were not previously provided, Mr. T has the burden of proof.<sup>23</sup>

##### A. Transfers

The 2014 assessment provided for extensive assistance (self-performance code of 3) for transfers 28 times weekly. It was previously assessed at extensive assistance 56 times per week.<sup>24</sup> The Division agreed, at hearing, that Mr. T should receive extensive assistance with transfers 42 times per week. The nurse-assessor did not testify and the CAT does not contain sufficient information from which the reason for the reduction can be determined.

Q T, Mr. T's wife, and M T, his daughter and PCA, both testified that Mr. T should continue to receive transfer assistance eight times daily (56 times weekly), based upon his needing assistance with transfers from six to eight times daily. Because the nurse-assessor did not testify, and given the Ts' testimony, the Division has not met its burden of proof and shown that it is more likely true than not true that Mr. T's PCA assistance with transfers should be reduced. It therefore remains unchanged at extensive assistance (self-performance code of 3) 56 times per week.

---

<sup>18</sup> Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

<sup>19</sup> 7 AAC 49.135.

<sup>20</sup> 7 AAC 125.026(a). This is a term of art that encompasses not only changes in the patient's situation, but also changes in regulations affecting the authorized level of services. See 7 AAC 125.026(d).

<sup>21</sup> 2 AAC 64.290(a)(1).

<sup>22</sup> See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

<sup>23</sup> 7 AAC 49.135.

<sup>24</sup> Ex. D, pp. 2, 10.

### ***B. Eating***

The 2014 assessment provided for limited assistance (self-performance code of 2) for eating seven times weekly. It was previously assessed at limited assistance (self-performance code of 2) 42 times weekly. At hearing, the Division agreed that the number of times Mr. T should receive eating assistance should be raised to 21 times per week.

Mr. T is currently on a feeding tube. Per Q T's and M T's testimony, Mr. T was eating small meals five times per day and receiving food through a feeding tube once daily up through July. Mr. T, however, was not able to eat properly and it was determined in July that he should be fed full time through his feeding tube, and his bag for the feeding tube is replaced every eight hours.<sup>25</sup> The area around the feeding tube is cleaned three times a day, when the bag is changed.<sup>26</sup> Therefore, roughly around the time that the Division made its decision in this case, the end of July 2014, Mr. T was only being fed three times per day – through his feeding tube. It is therefore more likely true than not true that Mr. T should receive limited assistance (self-performance code of 2) with eating 21 times per week (three times per day).

### ***C. Toileting***

Mr. T was previously provided extensive assistance (self-performance code of 3) with toileting 42 times per week (six times daily). The 2014 assessment did not change that level of assistance.<sup>27</sup> Q T initially agreed that six times daily was appropriate. However, her testimony and that of M T revealed that there was a disagreement. Q T testified that Mr. T has his colostomy bag changed and the area cleansed approximately twice daily. M T said it was approximately four to five times daily. In addition, he has to have the bag for his catheter changed out.

Colostomy and catheter change is included within the category of toileting. There is no additional time provided for toileting for these functions.<sup>28</sup> The evidence continues to show that Mr. T requires toileting assistance approximately six times daily, which comes to 42 times per week. The Division's determination with regard to toileting is upheld.

---

<sup>25</sup> Q and M T's testimony.

<sup>26</sup> M T's testimony.

<sup>27</sup> Ex. D, p. 10.

<sup>28</sup> Ex. B, p. 34; Ex. E, p. 9.

***D. Instrumental Activities of Daily Living***

Mr. T was previously provided the maximum assistance available with his IADLs of light meal preparation and main meal preparation based upon a finding that he was completely dependent in those tasks.<sup>29</sup> His 2014 assessment found that he was dependent with all of his ADLs (light meal preparation, main meal preparation, shopping, light housework, and laundry), but did not provide him with any assistance in those tasks. The Division’s reasoning for denying Mr. T assistance was that he lived with his wife.<sup>30</sup> Ms. T testified that she has a full-time job.

The PCA regulations do not allow assistance with IADLs if “provided by a spouse of the recipient.”<sup>31</sup> Ms. T resides with her husband. While she has a full-time job outside the home, there is nothing in the record that demonstrates that she is physically or mentally incapable of performing the IADLs for her husband. As a result, it is more likely true than not true that Mr. T is ineligible for PCA assistance with his IADLs. The Division’s determination that he should not receive any PCA assistance with them is upheld.

***E. Medical Escort***

Mr. T was previously provided 60 minutes weekly for PCA medical escort assistance. The Division reduced this amount to 15.58 minutes weekly based upon its finding that he had 27 scheduled doctor appointments, each of which required 30 minutes in escort time.<sup>32</sup>

Mr. T did not dispute either the number of scheduled appointments or the amount of time provided for each appointment. However, Mr. T occasionally requires emergency room care due to problems with his catheter, G tube, or ostomy.<sup>33</sup> The Medicaid regulations, however only provide medical escort services for “routine” medical appointments, not emergency room visits.<sup>34</sup> Because the evidence shows that Mr. T only has 27 “routine” medical appointments yearly, the Division has met its burden of proof and shown that it is more likely true than not true that his medical escort PCA services should be reduced to 15.58 minutes per week.

***F. Prescribed Tasks (Medical Documentation, Exercises, and Foot Care).***

Mr. T was previously provided PCA assistance weekly for medical documentation, prescribed range of motion exercises, walking exercise, and foot care. The Division eliminated

---

<sup>29</sup> Although Mr. T was also found to be dependent in the other IADLs (shopping, light housework, and laundry), he was not previously provided assistance with those tasks. *See* Ex. D, p. 10.

<sup>30</sup> Ex. D, pp. 4, 10.

<sup>31</sup> 7 AAC 125.040(a)(13).

<sup>32</sup> Ex. D, p. 4; Ex. E, p. 5.

<sup>33</sup> Q T’s testimony.

<sup>34</sup> 7 AAC 125.030(d)(9).

that assistance based upon its finding that he no longer had prescriptions for those tasks.<sup>35</sup> The record does not contain any such prescriptions. Q and M T were asked about whether Mr. T had any such recent prescriptions. Their testimony was that neither was sure; M T testified she had not seen any such prescriptions for a while.

In order for a person to receive PCA assistance with medical documentation, exercises, or foot care, there must be prescription for those tasks.<sup>36</sup> Because there is no evidence in the record showing that Mr. T has the required prescriptions, the Division has met its burden of proof and demonstrated it is more likely true than not true that assistance for these tasks should be eliminated.

## **V. Conclusion**

Mr. T's PCA assistance for transfers should remain as previously set: extensive assistance 56 times per week. The Division's determination regarding his PCA assistance, as modified by the Division at hearing, is otherwise upheld.

DATED this 26th day of November, 2014.

*Signed* \_\_\_\_\_

Lawrence A. Pederson  
Administrative Law Judge

## **Adoption**

The undersigned 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 16th day of December, 2014.

By: *Signed* \_\_\_\_\_

Name: Christopher Kennedy  
Title: Administrative Law Judge

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

---

<sup>35</sup> Ex. D, pp. 5, 10.

<sup>36</sup> 7 AAC 125.030(d)(3), (d)(5), and (e).