

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

In the Matter of: )  
 )  
 W F ) OAH No. 14-1519-MDS  
 ) Agency Case No.  
\_\_\_\_\_)

**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 W F is currently eligible. The Division decreased Ms. F's PCA services from 27.25 hours per week to 6.5 hours per week effective August 21, 2014.<sup>1</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. F is eligible for personal hygiene, main meal preparation, and shopping. This decision concludes that the Division correctly evaluated Ms. F's need for assistance with personal hygiene tasks, but that Ms. F requires a greater level of assistance with main meal preparation and shopping 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. F's Medical Condition<sup>2</sup>**

Ms. F is 79 years old.<sup>3</sup> She lives in a two-story private residence with four adult relatives and four children.<sup>4</sup> Ms. F's diagnoses include asthma, anemia, anxiety, arthropathy, bronchitis, chronic airway obstruction, chronic obstructive pulmonary disorder (COPD), chronic respiratory failure, diverticulosis, hypertension, ideopathic sleep-related non-obstructive alveolar hypoventilation, and obesity.<sup>5</sup> She takes a number of prescription medications including Advair, an

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<sup>1</sup> Ex. D1. The Division's letter of August 11, 2014 identifies Ms. F's current PCA service level as 6.75 hours in the right quadrant of the first page, but identifies Ms. F's current PCA service level as 6.5 hours in the first full paragraph of the letter.

<sup>2</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>3</sup> Ex. E1.

<sup>4</sup> Ex. E1.

<sup>5</sup> Exs. E3.

albuterol inhaler, Ambien, Avalide, Combigan, gabapentin, Lasix, Lorazepam, Metoprolol, Nexium, oxygen, potassium, Travoprost, and Ventolin MDI.<sup>6</sup> She also uses a CPAP machine.<sup>7</sup>

***B. The Division's Findings from its Assessments***

Ms. F has received PCA services since 2008 or before.<sup>8</sup> The Division previously assessed Ms. F as to her eligibility for PCA services on October 23, 2009.<sup>9</sup> At that time Ms. F was assessed as being independent, but requiring set-up help, with personal hygiene (CAT score 0/1); as being totally dependent with regard to main meal preparation (CAT score 3/4); and as being totally dependent with regard to grocery shopping (CAT score 3/4).<sup>10</sup>

The assessment at issue in this case was conducted on March 24, 2014 by O T, R.N.<sup>11</sup> Ms. T reported that Ms. F is on oxygen at all times.<sup>12</sup> Ms. T conducted a functional assessment and reported that Ms. F was able to touch her hands over her head, touch her hands behind her back, but that she was unable to place her hands across her chest and stand up, or touch her feet while in a sitting position.<sup>13</sup> Ms. T further reported that Ms. F had strong grip strength in both her hands, and good upper-body range of motion, but that she becomes short of breath with activity.<sup>14</sup>

With regard to personal hygiene, Ms. T reported that she was told by Ms. F that her granddaughter sometimes sets up her hygiene products, and stands by in case Ms. F needs assistance, but that she (Ms. F) is generally able to perform her personal hygiene tasks independently.<sup>15</sup> Ms. T also reported that Ms. F had a strong grip with each hand, and that she was able to bring her hands up to her face multiple times during the assessment.<sup>16</sup>

With regard to main meal preparation, Ms. T found that Ms. F was independent with difficulty, and required physical assistance to perform the task.<sup>17</sup> With regard to shopping, Ms. T likewise found that Ms. F was independent with difficulty, and required physical assistance to perform the task.<sup>18</sup>

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<sup>6</sup> Ex. E20.  
<sup>7</sup> Ex. E20.  
<sup>8</sup> Ex. F.  
<sup>9</sup> Ex. F.  
<sup>10</sup> Exs. F10, F12, F18, and F26.  
<sup>11</sup> Ex. E.  
<sup>12</sup> Ex. E3.  
<sup>13</sup> Ex. E4.  
<sup>14</sup> Ex. E4.  
<sup>15</sup> Ex. E10.  
<sup>16</sup> Ex. E10.  
<sup>17</sup> Ex. E26.  
<sup>18</sup> Ex. E26.

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

Ms. F has received PCA services since 2008 or before.<sup>19</sup> The Division performed the assessment at issue on March 24, 2014.<sup>20</sup> On August 11, 2014 the Division notified Ms. F that her PCA service level was being reduced from 27.25 hours per week to 6.75 hours per week effective August 21, 2014.<sup>21</sup> Ms. F requested a hearing to contest the Division's reduction of her PCA services on August 20, 2014.<sup>22</sup>

Ms. F's hearing was held on October 13, 2014. Ms. F was represented by S D, who participated by phone. Ms. F and D C, her granddaughter and PCA, testified by phone on Ms. F's behalf. Victoria Cobo participated by phone and represented the Division. O T, R.N., and L J participated by phone and testified on behalf of the Division. 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>23</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>24</sup>

### **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>25</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

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<sup>19</sup> Ex. F1.

<sup>20</sup> Ex. E.

<sup>21</sup> Ex. D1.

<sup>22</sup> Ex. C.

<sup>23</sup> 7 AAC 125.010(a).

<sup>24</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>25</sup> 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. See 7 AAC 160.900(d)(6).

(ADLs) and instrumental activities of daily living (IADLs).<sup>26</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>27</sup> The ADLs coded or scored by the CAT are body 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>28</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>29</sup>); **3** (the person requires extensive assistance<sup>30</sup>); **4** (the person is totally dependent<sup>31</sup>). There are also scores 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).

The CAT also scores certain activities known as "instrumental activities of daily living" (IADLs).<sup>32</sup> These are light meal preparation, main meal preparation, light housekeeping, laundry, and grocery shopping. The CAT scores IADLs slightly differently than ADLs.<sup>33</sup> The *self-performance scores 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

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

<sup>27</sup> Ex. E.

<sup>28</sup> Exs. E6 - E12.

<sup>29</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>30</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>31</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."

<sup>32</sup> Ex. E26.

<sup>33</sup> *Id.*

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 treated as a numerical score for purposes of calculating a service level: **8** (the activity did not occur).

The *support scores* for IADLs are also slightly different than the support codes for ADLs.<sup>34</sup> The support scores 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 does not add to the service level: 8 (the activity did not occur).

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

The Division is seeking to reduce Ms. F's existing PCA services (services which Ms. F is already receiving). Accordingly, the Division has the burden of proving, by a preponderance of the evidence, that Ms. F's need for PCA services has decreased.<sup>35</sup>

**D. *How Much Assistance Does Ms. F Require With her ADLs and IADLs?***

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. F is eligible for personal hygiene, main meal preparation, and shopping. These three activities will be addressed below in the order stated.

**1. *PCA Assistance with Personal Hygiene***

For the ADL of personal hygiene, PCA time is allowed for washing and drying the face and hands, nail care, skin care, mouth and teeth care, brushing and combing the hair, shaving when done separately from bathing, and shampooing the hair when done separately from bathing.<sup>36</sup> The Division found that Ms. F was independent with her personal hygiene, requiring only set-up assistance (CAT score 0/1).<sup>37</sup> Ms. F requests a score of 2/2 (limited physical assistance required from one person).<sup>38</sup>

The Division arrived at its personal hygiene score based on Ms. T's functional assessment, and on Ms. F's alleged statement that her granddaughter sometimes sets up her hygiene products,

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<sup>34</sup> *Id.*

<sup>35</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>36</sup> 7 AAC 125.030(b)(7).

<sup>37</sup> Ex. E10.

<sup>38</sup> Ex. 1 p. 3.

and stands by in case Ms. F needs assistance, but that she (Ms. F) is generally able to perform her personal hygiene tasks independently.<sup>39</sup> Ms. F asserted at hearing, however, that she requires assistance from her PCA with styling her hair, and with applying lotions to her legs and feet.<sup>40</sup>

Ms. F may require PCA assistance with styling her hair and applying lotions to her legs and feet. However, even assuming that she does so, these tasks constitute less than one-third of the tasks which comprise the ADL of personal hygiene.<sup>41</sup> In other words, Ms. F *does not* require PCA assistance with about *two thirds* of the tasks which comprise the ADL of personal hygiene. The Division was therefore correct to find that Ms. F is primarily independent with her personal hygiene, and to assign Ms. F a CAT score of 0/1 for personal hygiene.<sup>42</sup>

### 2. PCA Assistance With Main Meals

The PCA regulations define the IADL of main meal preparation as the preparation, serving, and cleanup in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient.<sup>43</sup> The Division found Ms. F to be independent with difficulty as to main meal preparation (CAT score 1/3).<sup>44</sup> Ms. F asserts, on the other hand, that she is dependent on others for set-up help with this IADL (CAT score 3/2).<sup>45</sup>

Ms. F credibly testified at hearing that she has knee problems which were not reflected on the assessment. She testified that one of her knees has been replaced, and that the other knee is bad and needs to be replaced. She stated that this has been the situation for more than one year (*i.e.* since well prior to the date of the assessment). Accordingly, it is unlikely that Ms. F would be able to stand in front of the stove, sink, and counter long enough to prepare a main meal. In addition, Ms. F is on oxygen, (which is flammable), and thus she cannot safely work at a stove due to the fire hazard. Accordingly, the preponderance of the evidence indicates that Ms. F is, at minimum, dependent on others for set-up help with main meal preparation (CAT score 3/2). Ms. F's CAT score for main meal preparation must therefore be increased.

### 3. PCA Assistance With Grocery Shopping

The PCA regulations define the IADL of grocery shopping as shopping in the vicinity of a recipient's residence for groceries and other household items required for the health and

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<sup>39</sup> Ex. E10.

<sup>40</sup> Ex. 1 p. 3, W F hearing testimony.

<sup>41</sup> See 7 AAC 125.030(b)(7) and Ex. E10.

<sup>42</sup> Ex. E10.

<sup>43</sup> 7 AAC 125.030(c)(2).

<sup>44</sup> Ex. E26.

<sup>45</sup> Ex. 1 p. 3.

maintenance of the recipient, and prescribed drugs and medical supplies required by the recipient.<sup>46</sup> The Division found Ms. F to be independent with difficulty as to grocery shopping (CAT score 1/3).<sup>47</sup> Ms. F asserts, on the other hand, that she is dependent on others for set-up help with this IADL (CAT score 3/2).<sup>48</sup>

The testimony at hearing indicated that Ms. F does not have the endurance to actually go to the store herself, but that she can put the groceries away once someone else brings the groceries back to her home. The Division appeared to assert at hearing that its score of 1/3 was justified based on the fact that Ms. F is able to put her groceries away at home. However, as indicated in the preceding paragraph, "shopping" is not defined by the regulations or the CAT as including putting-away the groceries at home. Accordingly, the mere ability to put food away in a kitchen cabinet or pantry does not equate to the ability to shop independently.

In summary, the preponderance of the evidence indicates that Ms. F is, at minimum, dependent on others for set-up help with grocery shopping (CAT score 3/2). Ms. F's CAT score for grocery shopping must therefore be increased.

#### **IV. Conclusion**

The Division correctly evaluated Ms. F's need for assistance with personal hygiene tasks. However, Ms. F requires a greater level of assistance with main meal preparation and shopping 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 18th day of December, 2014. *Signed* \_\_\_\_\_  
Jay Durych  
Administrative Law Judge

#### **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 2<sup>nd</sup> day of January, 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.]

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<sup>46</sup> 7 AAC 125.030(c)(5).

<sup>47</sup> Ex. E26.

<sup>48</sup> Ex. 1 p. 3.