

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

In the Matter of )

U B )  
\_\_\_\_\_ )

OAH No. 14-1569-MDS  
Agency No.

**DECISION**

**I. Introduction**

U B was a recipient of Medicaid personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) reassessed Mr. B to determine his continuing eligibility for PCA services, and determined that those services should be reduced from 49.25 hours per week to 5.0 hours per week. Mr. B requested a hearing.

Mr. B's hearing was held on December 26, 2014. Mr. B was represented by G and W G, who are his relatives and legal guardians. Victoria Cobo represented the Division.

In 2010 Mr. B was assessed as requiring extensive assistance (score of 3/2) with his activities of daily living. The testimony presented by his primary caregiver demonstrates that Mr. B requires limited assistance (score of 2/2) because he is highly involved in the activity, but requires hands on assistance. Consequently, the Division's reduction of Mr. B's PCA services is upheld, but the services should be recomputed in accordance with the discussion below.

**II. Overview of 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", to score eligibility for the PCA program. The PCA program is designed to provide a recipient with the physical assistance necessary to complete activities and independent activities of daily living that he or she cannot

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<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."

reasonably perform without assistance. The CAT helps assess whether a person is eligible for the program by scoring a person's ability to self-perform an activity with or without physical assistance, the amount of assistance needed, and the frequency of the assistance provided.<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.

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>). 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>

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<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> Exhibit E 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 Exhibit E 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.”

<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 and 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> Exhibit E 18.

<sup>10</sup> Exhibit E 18.

The performance levels for IADLs are slightly different than for ADLs and are discussed in part B below.

### III. Facts

U B is a 39-year-old male who lives with his cousins. He has an intellectual disability, congestive heart failure, is obese and suffers from urinary incontinence.<sup>11</sup> His prior assessment visit occurred in September 2010 and found Mr. B eligible for 49.25 PCA hours. The current assessment is the result of an April 2014 assessment visit that found Mr. B eligible for five PCA hours per week.<sup>12</sup> His diagnoses remain the same.<sup>13</sup>

Mr. B is able to follow some direction and mimic others' behaviors, such as folding laundry.<sup>14</sup> He is not able to follow directions for washing himself. He can participate in many of the activities of daily living, but is unable to complete them, even with prompting and cueing. Other activities, such as moving between rooms or getting up and out of a chair, require he be led or otherwise maneuvered. He is often incontinent and cannot clean himself. His eating must be monitored because he is unable to stop on his own. Mr. B does not resist care.

### IV. Discussion

For reasons that are not apparent in the record, Mr. B does not participate in the Medicaid programs for individuals with intellectual disabilities.

When the Division is seeking to reduce or eliminate a benefit a recipient is already receiving, the Division has the overall burden to prove, by a preponderance of the evidence,<sup>15</sup> facts that show level of eligibility has changed.<sup>16</sup> The division may change the number of hours of allotted PCA services if there has been a *material change* in the recipient's condition.<sup>17</sup> A *material change* means that the recipient's medical condition has changed, or his living conditions have changed.<sup>18</sup> When the division wishes to reduce the amount of allotted time, the division has the burden of proving a change of condition justifying that reduction.<sup>19</sup>

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<sup>11</sup> Exhibit E 3.

<sup>12</sup> Exhibit D; Exhibit E.

<sup>13</sup> Exhibit E 3; Exhibit F 3.

<sup>14</sup> The facts contained in this paragraph are taken from the sworn testimony of the Gs.

<sup>15</sup> Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

<sup>16</sup> 7 AAC 49.135.

<sup>17</sup> 7 AAC 125.026(a).

<sup>18</sup> 7 AAC 125.026(d). A material change also exists if the services were based on a prescription that has since expired, there was a time-limited amendment to the plan of care, or the services are no longer authorized by regulation. 7 AAC 125.026(d)(3).

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

Mr. B's prior assessment occurred in 2010. At that time he was authorized for 49.25 hours of PCA services per week and scored as requiring extensive assistance (score of 3/2). In his most recent assessment Mr. B's scores resulted in a reduction to five hours of PCA services per week and he received mostly scores indicating he required supervision and cueing (score of 1/1). Although, other than a 2012 regulatory change, the division has not identified a change in Mr. B's medical condition or living condition that would explain the difference in hours between the 2010 and 2014 assessments. The evidence presented at hearing cannot be ignored, and reveals that an accurate assessment of Mr. B's needs requires limited assistance (score of 2/2) to complete most of the ADLS.

A. *The ADLs*

1. Bed Mobility

The ADL of body mobility includes the activity of positioning or turning in a bed or chair. The CAT refers to this as bed mobility, which is described as how a person moves to or from a lying position, or turns side to side, or positions his or her body while lying in bed.<sup>20</sup> Mr. B can reposition himself. To receive PCA services for the ADL of body mobility, the recipient must be nonambulatory.<sup>21</sup> However, it is undisputed that Mr. B can walk, albeit with some assistance. Because he is ambulatory, he is not eligible for assistance with bed mobility. Additionally, it is undisputed that he can reposition himself in bed without assistance. Therefore, the Division's decision to remove time associated with bed mobility is correct.

2. Transfers

Transferring is the act of moving between surfaces, such as getting out of or into a bed, or getting up from a chair to a standing position.<sup>22</sup> Mr. B's prior assessment found that he required weight-bearing assistance (extensive assistance, score of 3/2), 56 times a week. In the 2014 assessment, his transfer assistance was reduced to supervision and set-up assistance (score 1/1). The testimony established by a preponderance of the evidence that some of the time Mr. B can transfer with supervision and set-up assistance (score of 1/1) and at others he requires physical hands on assistance (limited assistance, score of 2/2). For

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<sup>20</sup> 7 AAC 125.030(b)(1); Exhibit E 6.

<sup>21</sup> 7 AAC 125.030(b)(1)(A).

<sup>22</sup> 7 AAC 125.030(b)(2); Exhibit E 6.

example, he may require someone to grab his hand and pull him up or guide him up. From the testimony presented, it is reasonable to conclude that Mr. B requires limited assistance 28 times a week.

### 3. Locomotion

The ADL of locomotion refers to the manner in which a person moves within his or her own room or other areas on the same floor.<sup>23</sup> If a person is in the process of locomoting from one room to another and stops to toilet on the way, that is scored as one locomotion.<sup>24</sup>

As with transfers, Mr. B's prior assessment found that he required weight-bearing assistance (extensive assistance, score of 3/2), 56 times a week. As a result of the 2014 assessment, it was reduced to supervision and set-up assistance (score of 1/1). The testimony established by a preponderance of the evidence is that some of the time Mr. B requires he be led or directed to where he is going. If he does locomote, he does so for a short distance before sitting down or falling to the ground. He has a walker which he treats as a toy or a chair. His prior assessment described how he would take a few steps then sit back down.<sup>25</sup> To keep him up and moving, Ms. G described how the family would lead Mr. B out the door. What was described was physical hands on assistance (limited assistance, score of 2/2). From the testimony presented, it is reasonable to conclude that Mr. B requires limited assistance 28 times a week.

### 4. Dressing

Dressing is how a person puts on, fastens, and takes off all items of clothing.<sup>26</sup> Mr. B was previously assessed as requiring extensive assistance (score of 3/2).<sup>27</sup> The 2014 assessment found that he only required supervision and set-up assistance (score of 1/1). The testimony described an individual who was highly involved in this ADL. The description

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<sup>23</sup> 7 AAC 125.030(b)(3); Exhibit E 7.

<sup>24</sup> See *In re F.V.*, OAH No. 13-1306-MDS at 5 (2013 Commissioner of Health and Social Services): Transfers in which one of the surfaces is a toilet or commode are incidental to the ADL of toileting and are exclusively covered within the ADL of toileting. Additionally, when a recipient locomotes between locations in his or her home, and one of those locations is the toilet, commode, bedpan, or urinal, then that locomotion is exclusively covered with the ADL of toileting as 'move[ment] to and from the toilet, commode, bedpan, or urinal.'

Available on line at: <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS131306.pdf>.

<sup>25</sup> Exhibit F 7.

<sup>26</sup> 7 AAC 125.030(b)(4).

<sup>27</sup> Exhibit F 8.

was of an individual who required limited assistance (score of 2/2) but could almost perform this ADL with only supervision and set-up assistance.

5. Eating

The ADL of Eating refers to how a person eats and drinks regardless of skill.<sup>28</sup> This includes supervising the eating and drinking of a recipient who can feed themselves but has swallowing, chewing, or aspiration difficulties.<sup>29</sup> Mr. B did choke once on ice, but the family does not allow ice in his drink so this problem has been resolved. Mr. B's need for supervision while eating to ensure he stops is not, under these facts, a PCA service. The Division appropriately reduced his assistance from extensive (score of 3/2) to supervision and oversight (score of 1/0).

6. Toilet Use

Toilet use includes transfers on and off the toilet, cleaning oneself, and adjusting clothing and routine incontinence care.<sup>30</sup> Mr. B has a diagnosis of incontinence.<sup>31</sup> The testimony established that he toilets six times a day and requires physical assistance to clean himself after each bowel movement. The Division reduced his score from extensive assistance (score of 3/2) 63 times a week to limited assistance (score of 2/2) 7 times a week. The seven times a week would appear to be the Division's recognition that Mr. B requires some PCA assistance after a bowel movement. It fails to recognize the diagnosis of incontinence.

The testimony of Ms. G established that Mr. B has difficulty following direction when it comes to his hygiene. Therefore, it is reasonable to conclude that Mr. B would require hands on assistance with cleaning himself after toileting. The testimony also established that Mr. B could, more likely than not, support himself while he was being cleaned. The record establishes that Mr. B requires limited assistance (score of 2/2), 42 times a week.

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<sup>28</sup> 7 AAC 125.030(b)(5); Exhibit E 9.

<sup>29</sup> 7 AAC 125.030(b)(5)(C).

<sup>30</sup> 7 AAC 125.030(b)(6); Exhibit E 9.

<sup>31</sup> Exhibit E 3.

## 7. Personal Hygiene

Personal hygiene includes the combing of hair, brushing teeth, shaving, applying makeup, and washing and drying of a person's hands and face.<sup>32</sup> In 2010, Mr. B received a score of extensive assistance (score of 3/2). This was reduced to supervision and set-up help only (score of 1/1). The testimony establishes that Mr. B is unable to follow direction and complete this task with prompting. The type of assistance described by the witnesses is that of limited assistance (score of 2/2). Mr. B is highly involved and could complete the task if he received help maneuvering his limbs. Any other scores dependent upon this score, such as medication, should be updated.

## 8. Bathing

Bathing captures how a person takes a full-body bath/shower, sponge bath, and transfers in/out of the tub/shower.<sup>33</sup> The self-performance scoring is different from the other ADLs. Here, a score of 2 is physical help limited to transfers only; a score of 3 is physical help in the part of bathing activity; a score of 4 is total dependence; and a score of 5 is cueing. As with the ADL of personal hygiene above, the evidence presented establishes by a preponderance of the evidence that Mr. B requires physical assistance if he is to complete the task of bathing. Therefore, his score should be increased to physical help in part of the activity (score of 3/2).

The Division assigned a frequency of 3 times a week based upon what it recorded the Gs' reporting during the assessment.<sup>34</sup> Ms. G testified that Mr. B is bathed three times a day because of incontinence. This seems extreme. A frequency of seven times a week seems appropriate and adequate to take care of bowel movements.

### B. *IADLs of Light Meal Preparation, Main Meal Preparation, Shopping, Light Housework, and Laundry*

The performance levels for IADLs are slightly differently than for ADLs. Independence (scored as a 0) is defined as independent either with or without assistive devices - no help provided.<sup>35</sup> Independence with difficulty (scored as a 1) is characterized by the person performing the task with difficulty or taking a great amount of time to do it.<sup>36</sup>

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<sup>32</sup> 7 AAC 125.030(b)(7); Exhibit E 10.

<sup>33</sup> Exhibit E 11.

<sup>34</sup> Exhibit E 11.

<sup>35</sup> Exhibit E 26.

<sup>36</sup> *Id.*

Assistance/done with help (scored as a 2) is when the person is somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided.<sup>37</sup> Dependent/done by others (scored as a 3) means the person is not involved at all with the activity and the activity is fully performed by another person.<sup>38</sup> If the activity did not occur it is scored as an 8.<sup>39</sup>

In 2010, Mr. B was scored as being fully dependent on others for each of these tasks (score of 3/4). In 2014, he was assessed as independent for light meal preparation (score of 0/0). There was no change in the IADLs of main meal preparation or shopping. Light housework, however, was effectively removed because, not only was the self-performance score reduced to dependent with set up help only (score of 3/2), but the frequency was reduced to zero. Finally, the score for laundry in-home continued to recognize he required some physical assistance, but with a reduced frequency from twice a week to once a week.<sup>40</sup>

When asked why light meal preparation was removed, the Division responded that it believed Mr. B could make a sandwich if prompted and cued. However, the Division offers no explanation for the improvement in Mr. B's abilities that would support the removal of this service. The same is true for all of the IADLs. The Division has not established by a preponderance of the evidence that there had been a material change that would explain or support its scoring. Therefore, Mr. B's scores and frequencies should be restored to their prior levels.

## V. Conclusion

Mr. B cannot reasonably perform most ADLs or his IADLs without some level of assistance. Accordingly, Mr. B's PCA service level should be recomputed in accordance with the discussion above.

Dated April 23, 2015.

*Signed*  
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Rebecca Pauli  
Administrative Law Judge

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<sup>37</sup>

*Id.*

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*Id.*

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*Id.*

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Exhibit D 11; Exhibit E 27.



## 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 11<sup>th</sup> day of May, 2015.

By: Signed \_\_\_\_\_  
Name: Rebecca L. Pauli  
Title: Administrative Law Judge

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