

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

In the Matter of:)	
)	OAH No. 14-1802-MDS
M O)	Agency No.
_____)	

DECISION

I. Introduction

M O was receiving 29 hours per week of personal care assistance (PCA) services when she was reassessed to determine her continued eligibility for those services in 2014. Based primarily on a reassessment visit on April 28, 2014, the Division of Senior and Disabilities Services (Division) issued a decision on August 29, 2014 notifying Ms. O that her PCA services would be reduced to 5.5 hours per week. Some of the reduction resulted from regulatory changes since her prior assessment, or were related to what the Division perceived as functional improvements in Ms. O’s condition. Ms. O requested a hearing.

Ms. O’s hearing was held on November 28 and December 11, 2014. Ms. O appeared telephonically and represented herself. S N-D testified on her behalf. Terri Gagne represented the Division. Sam Cornell, R. N., testified for the Division. The nurse-assessor who conducted the April 28, 2014 assessment did not testify.

The evidence demonstrates that the Division’s assessment of Ms. O’s needs was partially correct when it conducted its assessment visit. However, Ms. O’s condition degenerated due to a stroke in mid-August, 2014, which occurred after the assessment visit but before the Division made its reduction decision on August 29, 2014. As a result, the Division’s reduction of Ms. O’s PCA benefits is reversed in part. The Division is directed to provide Ms. O with PCA services as specified in this decision.

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”¹ Accordingly, “[t]he department will not authorize personal care services for a

¹ 7 AAC 125.010(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.”²

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.³ 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.

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.⁴ 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 independent⁵ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁶); **3** (the person requires extensive assistance⁷); **4** (the person is totally dependent⁸).

² 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.*

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

⁴ Ex. E, pp. 6 – 11.

⁵ 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.

⁶ 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.”

⁷ 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.”

⁸ 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.”

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).⁹

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).¹⁰

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.¹¹

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).¹²

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).¹³

In order to qualify for PCA services, a person must be coded as requiring limited or a greater degree of physical assistance (self-performance code of 2, 3, or 4, and a support code of 2, 3, or 4) in any one of the ADLs of transfers, locomotion, eating, toilet use, dressing or bathing.

⁹ Ex. E, p. 18.

¹⁰ Ex. E, p. 18.

¹¹ Ex. E, p. 26.

¹² Ex. E, p. 26.

¹³ Ex. E, p. 26.

Similarly, if a person is coded as requiring some degree of hands-on assistance¹⁴ (self-performance code of 1, 2, or 3, and a support code of 3 or 4) with any one of the IADLs of light or main meal preparation, light housework, routine housework, grocery shopping or laundry, then he or she is eligible for PCA services.¹⁵ It is undisputed that Ms. O remains eligible for PCA services.

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 is coded as requiring extensive assistance (code of 3) with bathing, he or she would receive 22.5 minutes of PCA service time every day he or she was bathed.¹⁶

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

III. Background Facts

Ms. O is 70 years old. Her diagnoses are diabetes with neurological manifestations, asthma, chronic airway obstruction, osteoarthritis – shoulders, hypertension, obstructive pulmonary diseases, kidney disease, dizziness, mild CVA (stroke), and gout. She lives in a single story apartment.¹⁷

Ms. O was assessed on April 28, 2014 by nurse-assessor T H to determine her on-going eligibility for the PCA program and her benefit level. Based upon her visual observation, functional testing, and statements made by Ms. O, Ms. H determined that Ms. O had an adequate range of motion, had a strong grip in both hands, could raise her hands over her head and behind her back, could move her legs, and was capable of performing transfers, locomotion, dressing, eating, toilet use, personal hygiene, or bathing without requiring physical hands-on assistance.¹⁸ She also determined that Ms. O needed some minimal hands-on physical assistance with preparing light meals and main meals,¹⁹ and required moderate hands-on physical assistance

¹⁴ For the purposes of this discussion, “hands-on” assistance does not include supervision/cueing or set-up assistance (support codes of 1 or 2). See Ex. E, pg. 26.

¹⁵ Ex. E, p. 31.

¹⁶ 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.

¹⁷ Ex. E, pp. 1, 3; Ex. 1 (Documents received by OAH on November 20, 2014), pp. 4 – 5; Ex. 2 (Documents received by OAH on December 4, 2014), p. 20.

¹⁸ Ex. E, pp. 6 – 11, 18, 31.

¹⁹ Ms. O was assessed as being independent with difficulty (self-performance code of 1) and requiring physical assistance (support code of 3) with light and main meal preparation. Ex. E, p. 26.

with light housework, routine housework, grocery shopping, and laundry²⁰ As a result, the Division determined that Ms. O was still eligible for PCA services; however, her PCA service hours were reduced.²¹

On August 11, 2014, which was after Ms. O's assessment but before the Division issued its reduction letter, Ms. O was admitted to the hospital for a total left knee replacement. Post-surgery, while in the hospital, she had a stroke, which resulted in left upper extremity weakness. She was discharged from the hospital on August 29, 2014. The hospital discharge summary notes provide that "her weakness slowly improved with physical therapy" and that "she did not have any appreciable deficits at time of discharge." However, those same notes also indicate that Ms. O "was offered discharge to a skilled nursing facility for further rehabilitation, but declined."²²

IV. Discussion

This case involves a reduction in benefits. As a result, the Division has the overall burden of proof by a preponderance of the evidence. Similarly, Ms. O has the burden of proof on tasks where she is requesting an increase.²³ Ms. O disagreed with the results of the assessment with regard to the tasks of bed mobility, transfers, locomotion in-home, locomotion to access medical appointments, dressing, toileting, personal hygiene, medication assistance, bathing, PCA assisted exercises, meal preparation (both light meal and main meal), housekeeping, shopping, and laundry. Each of these is addressed below.

1. Bed Mobility

Ms. O was assessed in 2010 as being independent in the area of bed mobility. Upon her 2014 reassessment, she was again found to be independent in the area of bed mobility.²⁴ At hearing, she testified that she did not require assistance at the time of the assessment, but was unable to do so without weight-bearing assistance after her August hospitalization. However, the only medical evidence in the file shows ongoing weakness in the legs, as of November 4, 2014.²⁵ While she has osteoarthritis in her shoulder, that has been an ongoing concern which did not affect her ability to move/reposition in bed in 2010, and per her testimony, in April 2014. The

²⁰ Ms. O was assessed as being able to participate in light housework, shopping, and laundry (self-performance code of 2), but requiring physical assistance (support code of 3) Ex. E, p. 26.

²¹ Ex. D; Ex. E, p. 31.

²² Ex. 2, pp. 20 - 21.

²³ 7 AAC 49.135.

²⁴ Ex. D, p. 10; Ex. E, p. 6; Ex. F, p. 6.

²⁵ Ex. 1, p. 8.

fact of her knee surgery and subsequent stroke does not provide a sufficient basis from which to determine that her needs with regard to bed mobility have increased. Ms. O has therefore failed to meet her burden of proof on this issue. Accordingly, it is more likely true than not true that she continues to be independent with the task of bed mobility.

2. Transfers

Ms. O was assessed in 2010 as requiring limited assistance (self-performance code of 2) with transfers 28 times per week. Upon her 2014 reassessment, she was found to be independent.²⁶ The assessor determined that Ms. O was independent (self-performance code of 0) with transfers, based upon her observation of Ms. O getting up from the sofa, while using her cane for support, and based upon Ms. O's statement. However, Ms. O told the assessor that if she has been sitting for some time, she needs help transferring from the couch.²⁷ Ms. O testified that she was able to transfer independently before the August hospital stay, and that she does not need help sitting down, but has to be physically lifted to transfer up from a surface.

The Division's witness, Mr. Cornell, testified that the medical records showing that Ms. O did not have any "appreciable deficits" at discharge demonstrates that she had fully returned to her pre-hospitalization functionality. However, that same discharge summary stated that Ms. O had received physical therapy treatment while hospitalized, and that Ms. O was provided the option of moving to another facility for rehabilitation after discharge.²⁸ Based on those discharge notes, it is more likely true than not true that Ms. O had a continued need for rehabilitative services and was not completely recovered from her hospital stay and stroke when she was discharged. The November 4, 2014 medical notes show weakness in her legs. In addition, Ms. O told the assessor that she required occasional help transferring from the couch. Ms. O also has osteoarthritis in her shoulders and some upper left extremity weakness after her stroke.²⁹ Her osteoarthritis and even slight residual weakness could foreseeably impair her ability to push up and transfer herself. Ms. O's testimony was credible given that she claimed a need for lifting assistance with transfers, when she could have claimed that she also required assistance with transfers. Ms. O testified that she transferred 8 to 10 times daily. Based upon the evidence as a whole, it is more likely true than not true that Ms. O requires extensive assistance

²⁶ Ex. D, p. 10; Ex. E, p. 6; Ex. F, p. 6.

²⁷ Ex. E, p. 6.

²⁸ Ex. E, p. 21.

²⁹ Ex. E, p. 3, Ex. 1, p. 21.

(self-performance code of 3), because she has to be lifted up for her transfers. Because she only has to be lifted up and not set down, she should receive transfer assistance for 4 times daily, instead of the 8 to 10 times she testified to, for transfer assistance 28 times per week.

3. Locomotion In-Home

Ms. O was assessed in 2010 as requiring limited assistance (self-performance code of 2) with locomotion 28 times per week. Upon her 2014 reassessment, she was found to be independent and her time for assistance was eliminated.³⁰ The assessor determined that Ms. O was independent (self-performance code of 0) with transfers, based upon her observation of Ms. O walking in the home, while using her cane for support, and based upon Ms. O's statement.³¹ Ms. O testified that she was able to locomote independently before the August hospital stay, but that since the stay she requires someone to either stand beside her or hold her hand. She further testified that if she is using her walker, she simply needs someone to stay behind her.

Based upon Ms. O's testimony, she does not require either limited assistance or extensive assistance for locomotion when she is using her walker. It is therefore more likely true than not true that she needs standby assistance (self-performance code of 1) as a safeguard in the event of falling. A need for standby assistance for a task does not entitle a person to receive PCA services for that task. As a result, the Division properly eliminated assistance for Ms. O for this task.

4. Locomotion - Medical

Ms. O was assessed in 2010 as requiring limited assistance (self-performance code of 2) with locomotion to access medical appointments twice weekly. Upon her 2014 reassessment, she was found to be independent and her time for assistance was eliminated.³² As discussed above, Ms. O does not require physical hands-on assistance for locomotion while using her walker. Consequently, the Division properly eliminated assistance for locomotion to access medical appointments

5. Dressing

Ms. O was assessed in 2010 as requiring limited assistance (self-performance code of 2) with dressing 14 times per week. Upon her 2014 reassessment, she was found to be independent

³⁰ Ex. D, p. 10; Ex. E, p. 7; Ex. F, p. 7.

³¹ Ex. E, p. 7.

³² Ex. D, p. 10; Ex. E, p. 7; Ex. F, p. 7.

and her time for assistance was eliminated.³³ The assessor noted that she had “excellent upper and lower extremity function.”³⁴ Ms. O strong disagreed, testifying that she told the assessor she needed assistance with dressing at the time of her assessment, and that she continues to need assistance. Ms. O’s history of osteoarthritis with her shoulder corroborates her testimony. The Division had the burden of proof on this point and failed to meet it. It is more likely true than not true that Ms. O continues to require limited assistance with dressing 14 times per week.

6. Toileting

Ms. O was assessed in 2010 as requiring limited assistance (self-performance code of 2) with toileting 35 times per week. Upon her 2014 reassessment, she was found to be independent and her time for assistance was eliminated.³⁵ However, as found above, Ms. O requires extensive assistance with transfers up from a surface. The toileting process includes transferring on and off the toilet. Ms. O testified that while she can cleanse herself, she needs toileting assistance about 10 times for transfers off the toilet daily because she takes a diuretic. One of Ms. O’s listed diagnoses is hypertension, for which diuretics are a common treatment. However, 10 times a day for toileting appears excessive. It is more likely true than not true that Ms. O does not require assistance 10 times a day for toileting assistance. In the absence of other evidence, she should only receive it for 5 times daily. It is more likely true than not true that Ms. O requires extensive assistance 5 times daily for toileting assistance, for 35 times per week. The Division did not meet its burden to eliminate this assistance. Ms. O met her burden of proof to increase it from limited to extensive.

7. Personal Hygiene and Medication Assistance

Ms. O was assessed in 2010 as requiring limited assistance (self-performance code of 2) with personal hygiene 14 times per week. Upon her 2014 reassessment, she was found to be independent and her time for assistance was eliminated.³⁶ Ms. O testified that her PCA combs her hair. She then testified that she has short hair and just adjusts it with her fingers. She further testified that she has to have her face washed for her. She testified that her PCA has to put toothpaste on toothbrush, but that she can brush her own teeth. Her testimony was contradictory and was not entirely credible due to its contradictory nature. Although Ms. O has documented

³³ Ex. D, p. 10; Ex. E, p. 8; Ex. F, p. 8.

³⁴ Ex. E, p. 8.

³⁵ Ex. D, p. 10; Ex. E, p. 9; Ex. F, p. 9.

³⁶ Ex. D, p. 10; Ex. E, p. 10; Ex. F, p. 10.

issues with her shoulders, given her inconsistent testimony, she did not appear to be unable to perform her personal hygiene activities without physical assistance. It is therefore more likely true than not true that Ms. O no longer requires limited assistance to perform the task of personal hygiene.

Ms. O had not received medication assistance in the past. The Division did not allow her any assistance upon reassessment.³⁷ She requested that she be provided it because of her memory problems. However, eligibility for medication assistance is dependent upon being eligible for personal hygiene assistance.³⁸ Because Ms. O is not eligible for personal hygiene assistance, she is similarly not eligible for medication assistance.

8. Bathing

Ms. O was assessed in 2010 as requiring extensive assistance (self-performance code of 2) with bathing 7 times per week. Upon her 2014 reassessment, she was found to be independent and her time for assistance was eliminated.³⁹ Ms. O testified that she can bathe herself, but only needs transfer assistance in and out of the tub. It has already been established that Ms. O needs extensive assistance with transfers. Consistent with that finding, it is more likely true than not true that Ms. O similarly requires transfer assistance with bathing. Because a transfer for bathing, when the act of bathing itself is not involved, is only classified as limited assistance (self-performance code of 2),⁴⁰ while the Division has not met its burden to demonstrate assistance with this activity should be totally eliminated, it has shown that it is more likely true than not true that assistance with bathing should be reduced to limited assistance once daily, for a total of seven times per week.

9. Prescribed Tasks

Ms. O was previously provided PCA assistance for range of motion exercises and walking/simple exercises. That assistance was eliminated.⁴¹ Ms. O does not have a current prescription authorizing PCA assistance for exercises.⁴² Those tasks require a prescription.⁴³ Given the lack of a prescription, Ms. O is not entitled to receive assistance for exercise activities.

³⁷ Ex. D, p. 10; Ex. E, p. 20; Ex. F, p. 20.

³⁸ Ex. B, p. 35 (*Personal Care Assistance Service Level Computation*).

³⁹ Ex. D, p. 10; Ex. E, p. 11; Ex. F, p. 11.

⁴⁰ See Ex. E, p. 11.

⁴¹ Ex. D, p. 10.

⁴² Ms. O's testimony.

⁴³ 7 AAC 125.030(d)(5) and (e)(4).

10. Instrumental Activities of Daily Living

Ms. O was previously assessed as being dependent for assistance with all of her IADLS ((light meal preparation, main meal preparation, shopping, light housework, and laundry)).⁴⁴ As a result of her 2014 assessment, the assessor determined that Ms. O still required some PCA assistance, but was no longer dependent with any of these tasks. Specifically, she determined that Ms. O needed some minimal hands-on physical assistance with preparing light meals and main meals,⁴⁵ and required moderate hands-on physical assistance with light housework, routine housework, grocery shopping, and laundry⁴⁶ The assessor did not testify, so it was not possible to determine the exact basis for her conclusions.

Ms. O did not dispute that she could participate with laundry by folding clothes. She also did not dispute that she could participate to a slight degree with light meal preparation, but required hands on assistance with it. However, she maintained that she was not capable of participating in main meal preparation, housework, or grocery shopping. The totality of the evidence, however, shows that Ms. O can participate in all of her IADLS to some degree. With her difficulty with mobility (she uses a walker or a cane in the home), transfers, and her upper extremity limitations, she cannot be said to be independent with difficulty with IADLS. However, her limitations are not so severe as to preclude her from helping with all of her IADLS as long as someone physically helps her with each of these tasks. This would be properly coded as being able to participate, (self-performance code of 2), but requiring physical assistance (support code of 3).⁴⁷

As a result, it is more likely true than not true that Ms. O's PCA assistance with all of her IADLS should be reduced from complete dependence. However, that reduction should be to physical assistance provided (coded 2/3) for light meal and main meal preparation, rather than the independent with difficulty with physical assistance (coded 1/3) provided by the Division. The Division's reduction from complete dependence (coded 3/3) to physical assistance provided (coded 2/3) for shopping, light housework, and laundry is supported by the evidence.

⁴⁴ Ex. D, p. 10; Ex. F, p. 26.

⁴⁵ Ms. O was assessed as being independent with difficulty (self-performance code of 1) and requiring physical assistance (support code of 3) with light and main meal preparation. Ex. E, p. 26.

⁴⁶ Ms. O was assessed as being able to participate in light housework, shopping, and laundry (self-performance code of 2), but requiring physical assistance (support code of 3) Ex. E, p. 26.

⁴⁷ See Ex. E, p. 26.

V. Conclusion

The Division’s reduction of Ms. O’s PCA services is upheld in part and reversed in part.

As found above, Ms. O qualifies for the following assistance:

- Transfers: Extensive assistance (self-performance code 3) 28 times weekly
- Dressing: Limited assistance (self-performance code 2) 14 times weekly
- Toileting: Extensive assistance (self-performance code 3) 35 times weekly
- Bathing: Limited assistance (self-performance code 2) seven times weekly
- Light Meals: Physical assistance provided (coded 2/3) 14 times weekly
- Main Meals: Physical assistance provided (coded 2/3) 7 times weekly
- Shopping: Physical assistance provided (coded 2/3) once weekly
- Light Housework: Physical assistance provided (coded 2/3) once weekly
- Laundry: Physical assistance provided (coded 2/3) once weekly.

DATED this 13th day of February, 2015.

Signed _____
Lawrence A. Pederson
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 27th day of February, 2015.

By: *Signed* _____
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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