

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. In Mr. P’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.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). 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

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.”

⁹ Ex. E, p. 18.

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

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.¹⁴ 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.

¹⁰ Ex. E, p. 18.

¹¹ Ex. E, p. 26.

¹² Ex. E, p. 26.

¹³ Ex. E, p. 26.

¹⁴ 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.

III. Background Facts

Mr. P is 30 years old, and lives with his mother. He is profoundly intellectually and physically disabled. He has epilepsy, intellectual disability, aphasia, autism spectrum disorder, infantile cerebral palsy, is incontinent, has Norrie's syndrome with blindness and progressive deafness, and is non-verbal. He also engages in self-injurious behavior such as head-banging.¹⁵

Mr. P was receiving 56 hours of weekly PCA services in 2014 based on a 2009 assessment. Michelle Russell-Brown, a Division nurse, made a visit to reassess Mr. P's PCA service needs on May 9, 2014. She recorded the assessment visit in the CAT. Her findings resulted in a reduction of Mr. P's PCA services to 44.25 hours per week.¹⁶ In general, the assessment does not show an improvement in Mr. P's physical functionality, but it does decrease the number of times weekly that assistance with specific tasks is provided.

In addition to the PCA services provided to Mr. P, he receives eight hours per day of supported living services, which consists of a person coming from No Name Services every day at 3 p.m. and staying until 11 p.m.¹⁷

Mr. P is already receiving the maximum assistance allowed by regulation with all of his IADLs.¹⁸ As a result, his IADLs will not be addressed. The tasks of body mobility, transfers, locomotion in-room, locomotion multi-level, locomotion to access medical appointments, toilet use, dressing, medication assistance, documentation, medical escort, and prescribed activities are in dispute. Those portions of the assessment and the associated PCA time awards not in dispute will not be discussed.

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,¹⁹ facts that show the citizen's level of eligibility has changed.²⁰ In the context of PCA services, the showing required of the Division is that the recipient has had a "material change of

¹⁵ Ex. E, pp. 3 -4; Mr. W T's testimony.

¹⁶ Ex. D, p. 10.

¹⁷ Ms. P's testimony.

¹⁸ See the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 34 – 36; Ex. D, p. 10.

¹⁹ Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

²⁰ 7 AAC 49.135.

condition.”²¹ The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,²² 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.²³

In particular areas where Mr. P seeks to increase services or add services that were not previously provided, Mr. P has the burden of proof.²⁴

A. Body Mobility

The 2014 assessment eliminated body mobility assistance in its entirety. It was previously assessed at extensive assistance (self-performance code of 3) provided 35 times per week.²⁵ While the assessment found that Mr. P continued to require limited assistance (self-performance code of 2), it eliminated this assistance because Mr. P is ambulatory, albeit with assistance.²⁶

Mr. P disputed the elimination of bed mobility. Mr. W T testified that Mr. P continued to require extensive assistance with body mobility because he had to be repositioned in bed. However, as discussed below, Mr. P is ambulatory, albeit with extensive assistance, which makes him technically ineligible for assistance with body mobility. The Division has therefore met its burden of proof for the elimination of this assistance.²⁷

B. Transfers

The 2014 assessment provided for extensive assistance (self-performance code of 3) for transfers 42 times weekly. It was previously assessed at extensive assistance 56 times per week.²⁸ The nurse-assessor did not testify and the CAT does not contain sufficient information from which the reason for the reduction in the number of times that assistance was provided can be determined.²⁹

²¹ 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).

²² 2 AAC 64.290(a)(1).

²³ 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>).

²⁴ 7 AAC 49.135.

²⁵ Ex. D, pp. 2, 10.

²⁶ Ex. D, p. 2; Ex. E, p. 6.

²⁷ Body mobility assistance for “positioning or turning in a bed or chair” is only provided if “the recipient is nonambulatory.” 7 AAC 125.030(b)(1)(A).

²⁸ Ex. D, pp. 2, 10.

²⁹ Ex. E, p. 6.

Mr. P did not disagree with the finding that he required extensive assistance. However, both Ms. P and Mr. W T testified that Mr. P requires an increase in the number of times assistance is provided, rather than a reduction. Ms. P testified that transfers occurred between 14 – 16 times daily on an average day during the time period that supported living services were not available. Mr. W T testified that transfers occurred approximately 20 times on an average day. Mr. W T stated that this was because Mr. P would get into bed and then immediately want to move. He described Mr. P’s behavior as being “manic” on occasions, and that he would not sleep for 24 hours at a time.

Because there is no reasoning provided for the Division’s reduction of assistance with this task from 56 times weekly to 42 times weekly, the Division has not met its burden of proof on this point. While Ms. P and Mr. W T were both credible, concerned, and caring witnesses, transferring somewhere between 14 to 20 times daily seems excessive, given that Mr. P has eight hours daily of supported living, during which no PCA assistance is provided, and has to sleep. Accordingly, Mr. P has not met his burden of proof and shown that it is more likely true than not true that PCA assistance for transfers should be increased from 56 times per week (8 times daily). PCA assistance for transfers remains at extensive assistance 56 times weekly.

C. *Locomotion – In Room*

The 2014 assessment provided for extensive assistance (self-performance code of 3) for locomotion in room (single level locomotion) 42 times weekly. This was the same amount as previously provided.³⁰

Mr. P did not disagree with the finding that he required extensive assistance. However, both Ms. P and Mr. W T testified that Mr. P requires an increase in the number of times assistance is provided, rather than it staying the same. Ms. P testified that locomotion assistance (in room) occurred between 14 – 16 times daily on an average day during the time period that supported living services were not available. Mr. W T testified that the number was 20 times daily. As found above, with regard to transfer assistance, locomotion assistance 14 to 20 times daily seems excessive, given that Mr. P has eight hours daily of supported living, during which no PCA assistance is provided, and has to sleep. Accordingly, Mr. P has not met his burden of proof and shown that it is more likely true than not true that PCA assistance for locomotion

³⁰ Ex. D, pp. 3, 10.

assistance (in room) should be increased from 42 times per week (6 times daily). PCA assistance for locomotion assistance (in room) remains at extensive assistance 42 times weekly.

D. Locomotion Multi-Level

The 2014 assessment provided for extensive assistance (self-performance code of 3) for locomotion (multi-level) 14 times weekly. It was previously assessed at extensive assistance 42 times per week.³¹ The nurse-assessor did not testify and the CAT does not contain sufficient information from which the reason for the reduction in the number of times that assistance was provided can be determined.³²

Mr. P did not disagree with the finding that he required extensive assistance. However, both Ms. P and Mr. W T testified that Mr. P requires an increase in the number of times assistance is provided to 20 times daily, rather than a reduction.

Because there is no reasoning provided for the Division's reduction of assistance with this task from 42 times weekly to 14 times weekly, the Division has not met its burden of proof on this point. As with transfers and locomotion in room, given that Mr. P has eight hours daily of supported living, during which no PCA assistance is provided, and has to sleep, 20 times daily for PCA assistance for multi-level locomotion seems excessive. Accordingly, Mr. P has not met his burden of proof and shown that it is more likely true than not true that PCA assistance for locomotion assistance (multi-level) should be increased from 42 times per week (6 times daily). PCA assistance for locomotion assistance (multi-level) remains at extensive assistance 42 times weekly.

E. Locomotion to Access Medical Appointments

The 2014 assessment provided for extensive assistance (self-performance code of 3) for locomotion to access medical appointments once weekly. It was previously assessed at extensive assistance 7 times per week.³³

Mr. P disagreed with both the degree of assistance and the reduction in the number of times provided. Ms. P testified that Mr. P has medical appointments eight times per year: neurologist - three times; primary care – once; orthopedist – once; dentist – once; and a “couple” visits to the phlebotomist for blood work. However, Ms. P's testimony shows that Mr. P has

³¹ Ex. D, pp. 3, 10.

³² Ex. E, p. 7.

³³ Ex. D, pp. 3, 10.

medical appointments less than once per month, so the Division has met its burden of proof to reduce the amount of assistance to once weekly.

With regard to the type of assistance, the CAT states that Mr. P uses a wheelchair to go to medical appointments, which he is not able to self-propel.³⁴ Mr. W T's testimony was similar. Because Mr. P has to use a wheelchair, which he cannot propel himself, it is more likely true than not true that he is totally dependent in this category. Accordingly, Mr. P has met his burden of proof to increase the degree of assistance provided. Mr. P should therefore receive assistance at the total dependence level (self-performance code of 4) with locomotion to access medical appointments once per week.

F. Toileting

Mr. P was previously provided extensive assistance (self-performance code of 3) 85 times per week. The 2014 assessment increased the type of assistance to total dependence (self-performance code of 4), but reduced the number of times assistance is provided to 42 times per week.³⁵ The nurse-assessor did not testify and there is no information on the CAT explaining the decrease in frequency.³⁶

Mr. P disagreed with the decrease in frequency, and instead requested an increase in frequency. Mr. W T and Ms. P both testified that Mr. P is severely incontinent and requires toileting almost every waking hour. Ms. P says that they obtain diapers through Medicaid (No Name Agency), but they always exceed the amount provided and need to purchase wipes and additional diapers from Costco. Given the lack of support for the Division's decrease, the Division has not met its burden of proof to justify a decrease in toileting assistance. However, given the fact that Mr. P has 8 hours per day of supported living services during which he cannot receive PCA services, the previous provision of 85 times per week, which is just slightly over 12 times a day for the remaining 16 hours of the day, is a reasonable amount of toileting assistance. Accordingly, Mr. P has not met his burden of proof to justify an increase. Accordingly, the amount of toileting assistance is total dependence (self-performance code of 4) 85 times per week.

³⁴ Ex. E, p. 7.

³⁵ Ex. D, pp. 3, 10.

³⁶ Ex. E, p. 9.

G. Dressing

Mr. P was previously provided extensive assistance (self-performance code of 3) 14 times per week. The 2014 assessment increased the type of assistance to total dependence (self-performance code of 4) and kept the number of times assistance is provided at 14.³⁷ Mr. P requested that Mr. P be provided assistance to change his clothing 3 to 4 times daily, rather than the 2 times allowed. Mr. W T testified that the reason for the increased clothing changes was not due to incontinence issues but was rather due to the fact that Mr. P is very active with his body movements and will sweat through his clothing, and that his clothing needed to be changed frequently to avoid rashes. Ms. P also testified that Mr. P needed his clothing changed 3 to 4 times daily, which is not due to incontinence issues.

Mr. P had the burden of proof on this issue because he is requesting an increase in the number of times assistance is provided. Mr. P has not met his burden. Mr. P, as discussed above, receives toileting assistance 85 times weekly due to incontinence issues. Ms. P and Mr. W T both testified that he requires clothing changes due to incontinence, which would be included under toileting. Given that Mr. P has frequent toileting assistance, which includes clothing changes, that should meet satisfy any need for clothing changes that exceed the twice daily provided for under dressing assistance. Dressing assistance shall remain at total dependence (self-performance code of 4) twice daily for a total of 14 times per week.

H. Medication Assistance

Mr. P was previously provided medication assistance twice daily. The 2014 assessment increased the type of assistance to total dependence (self-performance code of 4) and increased the number of times assistance is provided at 3 times daily (21 times per week).³⁸ Ms. P testified that Mr. P receives medication five times daily: 7:00 a.m., 9:00 a.m., 3:00 p.m., 9:00 p.m., and 11:00 p.m. Given the multiplicity of conditions that Mr. P experiences, Ms. P's testimony is accepted regarding the frequency of medication assistance. However, Mr. P has daily supported living services that begin at 3:00 p.m. and end at 11:00 p.m. Responsibility for medication assistance during that time period would not be that of the PCA. Given the potential overlap, PCA assistance is eliminated only for one of the medication administration times, that at 9:00 p.m. Mr. P has therefore met his burden of proof and established that his medication assistance

³⁷ Ex. D, p. 10.

³⁸ Ex. D, p. 10.

should be increased, albeit to four times daily (28 times per week), rather than the five times requested.

I. Documentation

Mr. P was previously provided PCA assistance with documentation for 70 minutes per week. The Division eliminated that assistance because Mr. P did not have a prescription for that assistance.³⁹ Ms. P did not dispute the fact that Mr. P does not have a prescription for documentation.

In order for a person to receive PCA assistance with medical documentation, there must be a prescription for that task.⁴⁰ Because there is no evidence in the record showing that Mr. P 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 documentation should be eliminated.

J. Medical Escort

Mr. P was previously provided PCA assistance with medical escort for 4 minutes per week. The Division increased his assistance to 8.08 minutes per week, based upon its finding that he had a combination of 7 medical and dental appointments per year, each of which required 60 minutes of escort time.⁴¹

As found above, however, Mr. P has 8 appointments per year. Mr. P did not dispute the provision of 60 minutes per appointment. When 8 appointments are allowed, rather than 7, the weekly time for medical escort increases slightly to 9.23 minutes per week.⁴² Mr. P should therefore receive 9.23 minutes per week for medical escort.

K. Prescribed Tasks (Exercises, and Foot Care).

Mr. P had a prescribed task form signed by his doctor on October 30, 2013,⁴³ which the Division did not allow time for in its assessment. The reasoning provided by the Division was that the form was incomplete.⁴⁴ A review of that task form shows that it is a blank form which is merely signed by the doctor. It does not specify what type of assistance (range of motion

³⁹ Ex. D, pp. 4, 10.

⁴⁰ 7 AAC 125.030(d)(3).

⁴¹ Ex. D, p. 10; Ex. E, p. 5. 7 appointments at 60 minutes for each appointment results in a total of 420 minutes per year. When divided by 52 weeks per year, the result in 8.08 minutes per week.

⁴² 8 appointments at 60 minutes for each appointment results in a total of 480 minutes per year. When divided by 52 weeks per year, the result in 9.23 minutes per week.

⁴³ Ex. G.

⁴⁴ Ex. D, p. 5.

exercises, walking exercises, or foot care) is necessary. Nor does it contain any indication of what amount of assistance should be provided.

In order for a person to receive PCA assistance with medical documentation, exercises, or foot care, there must be prescription for those tasks.⁴⁵ Because the prescription is completely devoid of any information as to what is being prescribed, the Division's determination that no assistance should be provided for prescribed tasks is upheld.

V. Conclusion

The Division's findings regarding body mobility, locomotion in-room, dressing, documentation, and prescribed tasks (exercises and foot care) are upheld. As discussed above, its findings regarding transfers, locomotion multi-level, locomotion to access medical appointments, toileting, medication assistance, and medical escort are reversed. His PCA benefit time is to be recalculated consistent with this decision.

DATED this 5th day of December, 2014.

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 19th day of December, 2014.

By: *Signed* _____

Jared C. Kosin
Executive Director, Office of Rate Review
Department of Health and Social Services

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

⁴⁵ 7 AAC 125.030(d)(5), and (e).