

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

In the Matter of)	
)	
T S)	OAH No. 14-1916-MDS
_____)	Agency No.

DECISION

I. Introduction

This matter concerns a dispute regarding T S’s authorized time for Medicaid Personal Care Assistance (PCA) services. Ms. S is a long-time recipient of PCA services. Prior to October 3, 2014, Ms. S received 42.5 PCA hours per week; after that date her PCA services were reduced to 19 hours per week.¹ The parties, through the alternative dispute resolution process have resolved all areas of disagreement except five concerning three activities of daily living:

- Transfers – Self Performance Score and Weekly Frequency
- Locomotion – Self Performance Score and Weekly Frequency
- Toileting – Self Performance Score.

Based on the evidence in the record, Ms. S requires extensive assistance (score 3/2) to complete the ADLs of transfers and toileting. Her frequency for transfers should be increased to 56 and her frequency for locomotion should be increased to 49. Her self-performance score for locomotion should remain at limited assistance (score 2/2).

II. The PCA Service Determination Process

A. In General

The Medicaid program authorizes PCA services for the purpose of providing “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”² 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.”³

¹ Ms. S has continued to receive services at her prior level or at the level agreed to by the parties through the ADR process.

² 7 AAC 125.010(a).

³ 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

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.⁴ In general, if certain levels of assistance are required, the regulations prescribe a fixed number of PCA minutes per instance of that activity.

B. *Performance Scores*

The different levels of assistance are defined by regulation and in the CAT.⁵ The level of assistance is captured by two types of performance scores: self-performance scores and support scores.

“Self-performance” scores assign a numerical value capturing the recipient’s ability to perform the ADL being scored. Supervision, score of 1, is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.⁶ Limited Assistance, score of 2, is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight bearing support no more than two times a week.⁷ Extensive Assistance, score of 3, is defined as requiring direct physical help with weight bearing support at least three times a week, or full assistance without any involvement from the recipient at least three times a week, but not all of the time.⁸ Full assistance means the recipient has to rely entirely on the caretaker to perform the activity. Weight bearing assistance means supporting more than a minimal amount of weight where the recipient would be unable to perform the task without that assistance.⁹

“Support scores” assign a numerical value on the amount of support required. A score of 2 is assigned if the recipient requires a one person physical assist and a score of 3 is assigned if the recipient requires two people to complete the ADL.

The amount of PCA time authorized is a function of the level of assistance required and the frequency with which the ADL occurs. The level of assistance required determines the amount of

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

⁴ See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

⁵ See generally 7 AAC 120.020(a).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *In re K T-Q*, OAH No. 13-0271-MDS (Commissioner of Health and Social Services 2013), page 4; *See In re L D*, OAH No 13-0306-MDS (Commissioner of Health and Social Services 2014), page 10.

time authorized to complete that ADL. The amount of time authorized is then multiplied by the weekly frequency resulting in a total minutes authorized for that particular ADL.

III. Background Facts

T S is 70 years old. She lives alone with her birds and dogs in a two story home. She suffers from osteoarthritis, disc degeneration, and urge incontinence.¹⁰ Because of her health she does not go to the upper floor. Most of her time is spent in a reclining lift chair. When Ms. S is alone she stays in her lift chair.¹¹ She takes her meals in the chair and because of the constant dribble of urine inserts additional incontinence products as needed.

F T has been Ms. S's PCA for many years and testified regarding what she does for Ms. S. Ms. T testified that she is at Ms. S's seven days a week, six hours per day. Most of that time is spent keeping Ms. S up and moving. Ms. T explained how she would physically assist Ms. S transfer and locomote around the apartment so Ms. S can care for her pets, help her move so she can look out the window, go to the bathroom, do her exercises, fix meals, help Ms. S bathe, grocery shop, etc.

On August 5, 2014, Ms. S's left knee was replaced. Two weeks later, on August 18, 2014, she started physical therapy.¹² During her initial evaluation the physical therapist noted that Ms. S required assistance with moving from a sitting position to a laying position, but was independent moving from a sitting to a standing position if the table was raised and she could reach her walker.¹³ Once up and with her walker Ms. S was independent and walked with an antalgic gait.¹⁴

On September 23, 2014, Marianne Sullivan, R.N. conducted the assessment interview for the division. She has over 30 years of nursing experience and has conducted assessments for the division for four years. Ms. Sullivan estimates she has performed well over 1,600 assessments. She testified regarding the assessment process and how she scores her assessments. She testified that Ms. S required physical assistance with transfers and required hands on supervision with locomotion. Nurse assessors do not observe a recipient while toileting.

¹⁰ Exh. F3.

¹¹ T Testimony.

¹² Exh. 2.

¹³ Exh. 2 at 1, 2.

¹⁴ Exh. 2. An antalgic gait is a limp resulting from a shorted gait developed to alleviate the pain experienced with weight bearing on one side. *The American Heritage Steadman's Medical Dictionary* 1st Ed. p. 50.

IV. Discussion

The division believes Ms. S requires limited assistance (score 2/2) to complete these ADLs and Ms. S believes she requires extensive assistance (score 3/2). Ms. S also believes the division's weekly frequencies for transfer and locomotion are understated and inconsistent with the frequencies agreed upon through the ADR process for locomotion to medical appointments (2 times per week), dressing (14 times per week), toileting (56 times per week), bathing (7 times per week), walking for exercise (120 minutes per week). Their differences are presented in the following table:

ADL	SDS Proposed Performance Score	SDS Proposed Weekly Frequency	S Proposed Performance Score	S Proposed Weekly Frequency
Transfer	2/2	35	3/2	105
Locomotion - In Room	2/2	35	3/2	49
Toilet Use	2/2	56	3/2	56

A. *Transfer*

The ADL of transfer captures how a person moves between surfaces such as moving from a lying or sitting position to a standing position or between one surface and another surface.¹⁵ The division scored Ms. S as requiring limited assistance (score 2/2). Ms. Sullivan explained that she assigned this score because, although Ms. S required weight bearing assistance to transfer, Ms. S supported most of her own weight.¹⁶ Ms. Sullivan went on to explain the difference between a self-performance score of 2 and a score of 3 was whether the caregiver was supporting most of the weight. If the recipient was able to support most of his or her weight, then Ms. Sullivan assigned a self-performance score of 2; if the caregiver did most of the work and weight bearing, Ms. Sullivan would assign a self-performance score of 3.¹⁷

Ms. Sullivan's understanding regarding the difference between a self-support score of 2 and 3 was incorrect. It is well settled that the extent of weight bearing does not determine a recipient's self-performance score, but whether any weight bearing support is

¹⁵ 7 AAC 125.030(b)(6); Exh. F6.

¹⁶ Sullivan Testimony.

¹⁷ Sullivan Testimony.

required to complete the task, and if so, the number of times per week weight bearing support is required.¹⁸

Therefore, when deciding if a self-performance score of 2 or 3 because of the need for weight bearing assistance, the assessor's inquiry should be:

- 1) Can the recipient reasonably complete the ADL without weight bearing support?¹⁹ If "yes," then weight bearing support is not required. If "no," then weight bearing support is required and the assessor moves to step 2.
- 2) Does the recipient require weight bearing support more than twice a week?²⁰ If "yes," then a score of 3 is appropriate.

Applying this two-step inquiry to Ms. Sullivan's testimony, Ms. Sullivan testified that she observed Ms. S requiring weight bearing assistance to transfer. Ms. S transfers with weight bearing assistance more than twice a week, which is extensive assistance.

Neither side presented extensive evidence regarding the frequency of transfers. The division selected 35 transfers per week or 5 per day and Ms. S proposes 105 transfers per week or 15 per day. Because one transfer may suffice for two ADLs, determining the frequency is not as simple as adding all opportunities for transfers because a person will often combine several ADLs in one trip. If a recipient were to use the toilet once he or she is in the bathroom to shower, or while on his or her way to the kitchen to eat, there would be only one associated transfer to get up to perform the ADL.²¹

Frequency is both art and science. The need for accuracy in the expenditure of limited public Medicaid funding must be balanced with the need for prompt affordable resolution recognizing the limited resources available to all parties. Therefore, while a recipient should not be discouraged from keeping some sort of ADL log, an ADL log or

¹⁸ *In re K T-Q*, OAH No. 13-0271-MDS (Commissioner of Health and Social Services 2013), page 4; *See In re L D*, OAH No 13-0306-MDS (Commissioner of Health and Social Services 2014), page 10.

¹⁹ Weight bearing assistance has been defined as: supporting more than a minimal amount of weight. It does not require that the assistant bear most of the recipient's weight, but instead that the recipient could not perform the task without the weight bearing assistance.

In re K T-Q, OAH No. 13-0271-MDS (Commissioner of Health and Social Services 2013), page 4.

²⁰ The dividing line between limited assistance and extensive assistance with transfers is whether the recipient was receiving weight bearing assistance two times per week or (instead) three times per week.

In re L D, OAH No 13-0306-MDS (Commissioner of Health and Social Services 2014), page 10.

²¹ For example if a recipient is authorized 56 toilets and 7 baths per week, he or she has a possible 63 transfers associated with those ADLs, If toileting occurs while in the bathroom to shower, there would be one transfer associated with the two ADLs (bathing and toileting).

bringing in numerous witnesses is not necessary to prove or disprove a case. Here, when the record is viewed in its entirety, Ms. S's physical therapist noted she could transfer independently if certain assistance was available. Ms. Sullivan observed the need for physical assistance; presumably because the assistive devices present in physical therapy were lacking. Ms. S contends she only transfers (gets out of her chair) when her PCA is present. Her PCA is present 6 hours per day. 56 transfers or 8 per day is reasonable and considers ADLs that are likely to be combined with toileting such as locomotion to medical appointments, walking for exercise, bathing, etc. Ms. S requires extensive assistance (score 3/2) 56 times per week.

B. *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.²² Moving to and from the toilet is not "counted" as a locomotion.²³ However, if the movement is from the living room to the kitchen and the recipient stops on the way to toilet, then the locomotion is between the locations of the living room and the kitchen, movement to the toilet is incidental to the movement to the kitchen and the movement would be counted as one frequency (living room to kitchen).

Ms. S was scored as requiring limited assistance (score 2/2) 35 times a week. As discussed above, Ms. Sullivan misunderstood the difference between a self-performance score of a 2 and 3. However, with transfers the division readily admitted that Ms. S required weight bearing assistance. Here there is no such admission by the division. Rather, Ms. Sullivan testified that what she observed was hands on assistance.

Ms. S relied on Ms. T's testimony and the Lower Extremity Functional Scale (LEFS) score of three as reported in the Physical Therapist's evaluation notes. The LEFS is a questionnaire containing 20 subjective questions about a person's ability to perform certain tasks used to evaluate functional impairment.²⁴ The LEFS scores range from a low of 0 to a high of 100. Ms. S scored 3. On this scale it appears she has almost no lower extremity function.

²² See Exh. E7.

²³ *In re F.V.* OAH No. 13-1306-MDS (Commissioner of Health and Human Services, August 16, 2013) p. 5 (December 2013) ("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....").

²⁴ Exh. 5.

The LEFS is not persuasive evidence. First, the assessment interview took place four weeks after Ms. S commenced physical therapy. A short term goal of physical therapy was that within 4 weeks she would be ambulating without assistive devices.²⁵ Ms. S's reliance on a gait belt and hands on, not weight bearing, assistance is consistent with this goal. Second, a LEFS score of 3 would appear to be almost nonexistent functional impairment. What the physical therapist observed was some functional impairment that was expected to improve.²⁶ Finally, the LEFS questionnaire presented subjective questions to be answered by Ms. S. The physical therapist's written observations and notes are given more weight because they were taken by an independent, uninvolved healthcare professional in the course of carrying out her professional duties as a treating provider. Because the LEFS score does not match the physical therapist's written observation, the LEFS score is not persuasive.

The record supports a finding that it is more likely true than not that Ms. S continued to improve and at the time of the assessment interview required limited assistance to locomote (score 2/2).

Regarding locomotion frequency, because there are 56 transfers, a frequency of 35 is likely to understate the frequency with which Ms. S locomotes. Some transfers may not result in locomotion and some are specific to toileting and are not counted as a separate ADL. Therefore, on the record presented it is more likely than not that a frequency of 49 is representative and realistic of Ms. S's actual needs than the 35 proposed by the division.

C. Toilet Use

Toilet use includes transfers on and off the toilet, cleaning oneself, and adjusting clothing and routine incontinence care.²⁷ The parties agree that a frequency of 56 is appropriate. The division contends Ms. S requires limited assistance (score of 2/2) with this ADL. Ms. Sullivan explained that she scored Ms. S at this level because Ms. S exhibited good upper extremity strength and dexterity. Based on her observation, Ms. Sullivan concluded that Ms. S could clean herself. Ms. Sullivan also noted that Ms. S has a raised toilet seat so she should be able to transfer.

²⁵ Exh. 2 at 3.

²⁶ Prognosis was fair to good. Exh. 2 at 1.

²⁷ 7 AAC 125.030(b)(6).

As discussed above, Ms. Sullivan misunderstood the difference between limited and extensive weight bearing assistance. The type of help recorded in the CAT, “assistance on/off toilet with elevated seat” corresponds with the type of help described when transferring out of a raised chair. Transferring is part of toileting. In this instance it is more likely true than not true that Ms. S should receive extensive assistance with toileting (score of 3/2).

IV. Conclusion

Based on the evidence in the record, Ms. S requires extensive assistance (score 3/2) to complete the ADLs of transfers and toileting. Her frequency for transfers should be increased to 56 and her frequency for locomotion should be increased to 49. The self-performance score for locomotion should remain at limited assistance (score 2/2).

Dated this 16th day of June, 2015

Signed

Rebecca L. Pauli
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 2nd day of July, 2015.

By: *Signed*

Name: Rebecca L. Pauli
Title: Administrative Law Judge

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