

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

In the Matter of)	
)	
Q N)	OAH No. 14-2020-MDS
_____)	Agency No.

DECISION

I. Introduction

Q N applied for personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) approved her application for 5.5 hours of PCA services per week. Ms. N disagreed with the amount of PCA services she was provided, and she requested a hearing.

The hearing was held on February 3, 2015. Ms. N represented herself and testified on her own behalf. She was assisted by her program coordinator Q Z. Ms. Z, Ms. N's sister B T, and Ms. N's friend B C also testified on her behalf.¹ Fair hearing representative Angela Ybarra represented the Division. Nurse assessor Mary Tanaka testified for the Division.

This decision concludes that the Division's allowance of 5.5 hours of PCA services to Ms. N did not accurately reflect her care needs. She should have been approved for additional services, as discussed below.

II. The PCA Service Determination Process

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. C provides both paid and unpaid personal care services, and Ms. T provides unpaid personal care services, for Ms. N.

² 7 AAC 125.010(a) [emphasis added].

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

The Division uses the Consumer Assessment Tool or "CAT" to determine the level of physical assistance that applicants or recipients require to perform their ADLs and their IADLs.⁴ The ADLs measured by the CAT are bed mobility (often referred to as "body mobility"), transfers, locomotion, dressing, eating, toileting, personal hygiene, and bathing.⁵

The CAT numerical coding system has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular activity of daily living (ADL). The possible codes are **0** (the person is independent⁶ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁷); **3** (the person requires extensive assistance⁸); **4** (the person is totally dependent⁹). 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).¹⁰ It should also be noted that the self-performance codes for the ADL of bathing differ somewhat from the above definitions. For bathing, a **2** denotes "physical help limited to transfer only," and a **3** denotes "physical help in part of bathing activity."¹¹

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).¹²

The CAT also codes certain activities known as "instrumental activities of daily living" (IADLs). These are light meal preparation, main meal preparation, housework, grocery shopping, and laundry.¹³

⁴ See 7 AAC 125.020(a) and (b).

⁵ Exh. E6 – 11.

⁶ 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 Exh. E6.

⁷ 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."

⁸ 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."

⁹ Pursuant to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity."

¹⁰ Exh. E18.

¹¹ Exh. E11.

¹² *Id.*

¹³ Exh. E26. IADLs were not at issue in this hearing.

The CAT codes for IADLs differ slightly from those for 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).¹⁴

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).¹⁵

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 via a formula set out in Division regulations. For instance, if a person is coded as being completely dependent (code of 4) with bathing, and he informs the assessor that he bathes every day, he would receive 30 minutes of PCA service per day.¹⁶ Even if the Division agrees that the amount of time provided by the formula is insufficient for a particular PCA recipient's needs, the regulations do not provide the Division with the discretion to change the amounts specified by the formula.

III. Facts

Ms. N is 60 years old. She suffers from asthma, a degenerative disc, fibromyalgia, depression, anxiety, and chronic pain resulting from two car accidents that took place between 10 and 20 years ago.¹⁷

After Ms. N applied for PCA services, she was assessed to determine her initial eligibility and benefit level on September 8, 2014. The Division notified her of its determination to approve

¹⁴ Exh. E26.

¹⁵ *Id.*

¹⁶ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Exh. B34-36.

¹⁷ Exh. E3. Ms. N and her witnesses also testified that she suffers, and has long suffered, from rheumatoid arthritis. The medical documents submitted for this hearing, however, do not reflect an arthritis diagnosis. In addition, Ms. N testified that in recent months she has started experiencing seizures or tremors that leave her very weak and disoriented, but her physician has not been able to diagnose these symptoms.

her for 5.5 hours of PCA services by letter dated October 7, 2014.¹⁸ She then requested this hearing. Ms. N disputed the Division’s determinations regarding the ADLs of dressing, toileting, personal hygiene, bathing, and medical escort, as well as the Division’s denial of a “prescribed task form” from her physician for PCA services for walking exercise.¹⁹ The facts pertinent to these disputed issues are discussed below.

The Division’s nurse assessor, Ms. Tanaka, stated in the CAT that Mr. N “answered all questions appropriately” and “was a good health historian” at the assessment. Ms. Tanaka provided the following information on the assessment form:²⁰

- The assessor evaluated Ms. N’s overall physical functioning by asking her to perform some basic physical movements. She found that Ms. N was unable to touch her hands over her head, touch her hands behind her back, or place her hands on her chest and stand up; that she had a strong grip in her right hand, and a weak grip in her left hand; and that she could not touch her feet while sitting.²¹
- Regarding locomotion,²² the assessor noted that Ms. N’s wheelchair was at her sister’s home at the time of the assessment, and that Ms. N told her “when she has her electric w/chair she locomotes independently. ... Says she can’t walk – Prescription for walking denied.”²³ During the hearing, nurse Tanaka testified that when she asked Ms. N to get up from her chair and demonstrate her walking abilities, Ms. N was able to stand up but she did not walk, and she was unsteady on her feet. Nurse Tanaka also testified, however, that at that time, there was no PCA there to assist Ms. N.²⁴ Nurse Tanaka gave Ms. N a score of **1/1** for locomotion, denoting “supervision and setup help only.”²⁵
- Regarding the ADL of dressing, based upon her observations and conversation with Ms. N, nurse Tanaka gave Ms. N a **0/0** score, denoting complete independence. She stated in her notes on the CAT that Ms. N said “she dresses herself most of the

¹⁸ Exh. D.

¹⁹ Ms. N submitted an “areas of disagreement” letter prior to the hearing (Exh. 1) which only listed the five ADLs mentioned here, but during the hearing she also disputed the denial of the walking exercise prescribed task form.

²⁰ See September 8, 2014 Consumer Assessment Tool assessment form (Exh. E).

²¹ Exh. E4.

²² Although Ms. N did not dispute the Division’s determinations regarding the ADL of locomotion, the assessor’s findings on locomotion are pertinent to the question of the physician’s prescribed task form for walking exercises.

²³ Exh. E7.

²⁴ Tanaka testimony.

²⁵ Exh. E7.

time[,] she sits up & threads her sleeves in[,] threads her legs into her pants or wears loose housedress.”²⁶ She further stated that she “observed [Ms. N] move her hands to her face and head during the assessment, demonstrated strong [right] pincher grasp, and hand grip.”²⁷

- Regarding the ADL of toileting, nurse Tanaka gave Ms. N a **1/1** score, denoting supervision and setup help only (which does not qualify for PCA assistance). She stated in her notes on the CAT that Ms. N said “she has pads for leaking, and can change herself, friends come to help her to the toilet. She can clean herself after toileting and rearrange her clothes. When she has a walker and electric w/chair she is able to toilet herse[lf].”²⁸
- Regarding the ADL of personal hygiene, Ms. N was given a score of **0/1**, denoting “independent with setup help only” (which also does not qualify for PCA assistance). Nurse Tanaka reported that Ms. N “says she can groom herself and can do her own personal hygiene. She likes to have set-up help.”²⁹ Nurse Tanaka observed that Ms. N “moved her hands to her face and head throughout the assessment.”³⁰
- Regarding the ADL of bathing, Ms. N was given a score of **2/2**, denoting “physical help limited to transfer only, one-person physical assist.” Nurse Tanaka reported that Ms. N “says she needs help transferring into the bathtub onto a shower chair to bathe, she can bathe herself, sometimes needs set up help. ... [S]he can transfer using a walker and may be able to transfer to a shower chair but the tub has a wall to transfer over. ... [Ms. N] showed good upper extremity [range of motion] to be able to wash.”³¹
- Regarding Ms. N’s prescribed task form for walking exercise, nurse Tanaka noted in connection with the ADL of locomotion that Ms. N stated she could not walk, and Ms. Tanaka testified that she concluded that Ms. N is “chair-bound.” As mentioned above, in the CAT nurse Tanaka noted “prescription for walking denied,”³² and in her testimony she confirmed that Ms. N’s inability to walk was the reason for the

²⁶ Exh. E6.

²⁷ *Id.*

²⁸ Exh. E9.

²⁹ Exh. E10.

³⁰ *Id.*

³¹ Exh. E11.

³² Exh. E7.

Division's denial of the prescribed task. The Division's determination letter of October 7, 2014, however, states: "Walking for exercise via [prescribed task form] is denied because you were assessed as only requiring supervision with locomotion. Time for walking exercise is only allowed if you require physical assistance."³³ The prescribed task form itself has not been submitted as part of the record of this hearing.

- The CAT contains no discussion of medical escort as an area of need for Ms. N, other than the statement "no appointments needing escort listed."³⁴ The Division's October 7, 2014 letter does not mention medical escort.

Ms. N and her witnesses disputed the Division's factual assertions and determinations, as set out below. In this context, it should be noted that Ms. Z was present for the September 8 assessment.

- As to the ADL of dressing, Ms. N testified that due to her chronic pain, she is unable to put on or remove her "lower bottom clothes"³⁵ such as pants, socks, underwear, etc. She could not explain a perceived discrepancy between nurse Tanaka's report of her statements regarding dressing during the assessment, and the testimony on this issue from herself, Ms. Z, Ms. C and Ms. T, other than to suggest that she misspoke during the assessment. Ms. N testified that she was feeling fairly unsteady on the day of the assessment, and Ms. Tanaka testified that at the time of the assessment she felt that Ms. N's medications were of concern because they were "fairly sedating."³⁶ Ms. Z also testified that Ms. N told nurse Tanaka during the assessment about her difficulties and need for assistance with dressing.
- Regarding toileting, Ms. N explained that she needs help getting into the bathroom, and getting on and off the toilet. She can usually cleanse herself, unless she has an accident, which sometimes happens when she doesn't have assistance and can't get into the bathroom quickly enough. In that event, she needs help cleaning herself, because she can't bend over. Ms. C and Ms. T confirmed in their testimony that they

³³ Exh. D2.

³⁴ Exh. E5.

³⁵ Exh. 1.

³⁶ Ms. N takes pain medications, anxiety medications, and anti-depression medications. Exh. E3.

have to assist Ms. N whenever she has to go to the bathroom, and that if she is at home alone she will wait for someone to arrive before going to the bathroom.

- As to personal hygiene, Ms. N testified that she needs PCA assistance with shaving and lotioning her legs. Lotioning is included under the ADL of personal hygiene as “skin care;” shaving is included “when done separately from bathing.”³⁷ In addition, Ms. N stated that she sometimes needs assistance with toenail care, which also is covered under the ADL of personal hygiene.³⁸
- Regarding the ADL of bathing, Ms. N testified that not only does she need assistance getting in and out of the tub (as noted in the CAT), she also needs assistance washing her lower extremities. Ms. C confirmed in her testimony that she has to physically assist Ms. N with washing her legs every time she bathes.
- Regarding medical escort PCA services, Ms. N’s areas of disagreement letter requests assistance with transportation to her doctors’ appointments. Transportation, however, is not included within the PCA services that can be paid for by the Division.³⁹ Ms. N and Ms. T also testified, however, that she needs assistance with getting in and out of the car, getting in and out of the doctors’ offices, and with communicating and advocating for herself with medical professionals. Ms. N’s letter indicates that she visits her primary physician every two weeks, her dentist twice yearly, and her eye doctor once per year.⁴⁰
- As to the physician’s prescribed task form for walking exercise, Ms. N testified that she can stand up and walk for a short distance if she has a PCA next to her to ensure that she does not fall.

III. Discussion

A. Application of the PCA Determination Process

This case involves an application for benefits. As a result, Ms. N has the burden to prove by a preponderance of the evidence that the Division erred in its determinations regarding her authorized PCA service levels.⁴¹ Each of the disputed service areas is discussed below:

³⁷ 7 AAC 125.030(b)(7).

³⁸ *Id.* (listed as “nail care, if the recipient is not diabetic”).

³⁹ See 7 AAC 125.030, 7 AAC 125.040.

⁴⁰ Exh. 1.

⁴¹ 7 AAC 49.135.

Nurse Tanaka’s assessment of Ms. N’s need for PCA help with dressing was primarily based on Ms. N’s own statements during the assessment. Contrary to Ms. Tanaka’s comment in the CAT to the effect that Ms. N could be relied upon to accurately report her abilities, the administrative law judge found her to be easily confused and easily led. Her witnesses, however, testified consistently and credibly that she needs physical assistance, on a regular basis, with dressing. She cannot bend down and put on clothing on her lower extremities, and she also experiences difficulty in pulling shirts and blouses over her head. Ms. N met her burden of proof regarding the ADL of dressing. Her scoring should be a **2/2**, “limited assistance.” Her requested frequency for dressing assists of two times per day, or 14 per week, in her areas of disagreement letter,⁴² is a reasonable frequency.

Regarding toileting, nurse Tanaka’s assessment is internally inconsistent, in that it scores Ms. N as being nearly self-sufficient at the same time that it acknowledges that her “friends come to help her to the toilet.” PCA services for the ADL of toileting can include assistance with “moving to and from the toilet.”⁴³ In addition, the testimony from all witnesses was consistent that she needs assistance getting on and off the toilet. Ms. N, therefore, met her burden of proof regarding toileting. Her scoring should be a **2/2**, and her requested frequency of three times per day, or 21 per week, is reasonable.⁴⁴

Regarding personal hygiene, the Division’s assessment relied on Ms. N’s statement that she “can groom herself” and nurse Tanaka’s comment that she could move her hands to her face and head. These comments, however, do not go far enough. Ms. N testified that she needs PCA help with shaving and applying lotion to her legs, and sometimes she needs assistance with toenail care. This testimony addresses types of personal hygiene assistance that Ms. Tanaka’s assessment simply did not address. Ms. N, therefore, met her burden of proof regarding personal hygiene. Her scoring should be a **2/2**, and her requested frequency of one time per day, or 7 per week, is reasonable.⁴⁵

The Division’s assessment gave Ms. N a **2/2** score for bathing, with a frequency of one per day or seven per week. The self-performance score of **2** reflected nurse Tanaka’s conclusion, based on Ms. N’s statement, that she only needs assistance getting in and out of the tub. Ms. N and her witnesses testified credibly, however, that she consistently needs physical assistance with washing her lower extremities. She therefore met her burden of proof, establishing that she needs “physical

⁴² See Exh. 1.

⁴³ 7 AAC 125.030(b)(6).

⁴⁴ See Exh. 1.

⁴⁵ See Exh. 1.

help in part of [the] bathing activity.” Her score should be a **3/2**, with the same frequency of seven per week.

The Division’s basis for denying medical escort services is not apparent from the record. There may have been a miscommunication between Ms. N and the Division, resulting in the comment in the CAT that “no appointments needing escort” had been listed in her application. Ms. N’s request for transportation to her medical appointments does not fall within the scope of medical escort services. However, her request for a PCA to accompany her to help her with getting in and out of the car, getting in and out of the doctors’ offices, and communicating and advocating for herself with medical professionals, does fall within the scope of allowable services.⁴⁶ She met her burden of proving that she needs medical escort services. The Division should give Ms. N a score of **2** for “locomotion–access medical appointments,” and should also approve PCA time for accompanying her to medical appointments and assisting her with communicating and advocating with her medical providers. The frequencies of her medical appointments listed in her areas of disagreement letter should be used by the Division to calculate the associated PCA time – they equal a total of 29 visits per year. An allocation of 30 minutes per visit is reasonable, which averages out to 16.7 minutes per week.

Finally, regarding Ms. N’s prescribed task form for walking exercise, nurse Tanaka wrote in the CAT that the prescription was denied because Ms. N was unable to walk. The evidence at the hearing, however, was undisputed that Ms. N can walk for short distances, if she has a PCA to support her and ensure she doesn’t fall. In any event, the Division’s adverse action letter stated that the walking exercise was denied because she was assessed as only requiring supervision with locomotion, asserting that “time for walking exercise is only allowed if you require physical assistance.”⁴⁷ There are two problems here. First, the Division cannot give inconsistent explanations for a denial of PCA services; in instances where this occurs, the Division’s determination letter controls.⁴⁸ Second, Ms. N can walk, but it is obvious that she requires physical assistance with walking; there is no dispute on this point. Therefore, the Division’s rationale for denying the prescribed task form was not supported by the facts, and Ms. N met her burden on this

⁴⁶ 7 AAC 125.030(d)(9).

⁴⁷ See Division’s determination letter, 10/7/14, at p.

⁴⁸ See *Allen v. State, Dept. of Health and Social Services, Division of Public Assistance*, 203 P.3d 1155, 1167-1168 (Alaska 2009); *Baker v. State, Dept. of Health and Social Services*, 191 P.3d 1005, 1009 (Alaska 2008); see also OAH Case No. 13-1517-MDS, p. 10 (Commissioner of Health & Social Services 2014); *In re U.W.*, OAH Case No. 13-0796-MDS (Commissioner of Health and Social Services 2013), page 6.

issue. The prescribed task form should be approved. Although the form itself does not appear in the record of this hearing, it is presumed that the Division has a copy of it and can enter the appropriate service levels onto Ms. N's service level authorization chart.

IV. Conclusion

Ms. N met her burden of proof as to the ADLs of dressing, toileting, personal hygiene, bathing, and medical escort, as well as the prescribed task of walking exercise. The Division's determination on these services is reversed. The Division's determination as to the other services addressed in Ms. N's CAT is affirmed. The Division should amend Ms. N's service level authorization chart to reflect these changes.

DATED this 28th day of April, 2015.

Signed _____
Andrew M. Lebo
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 13th day of May, 2015.

By: *Signed* _____
Name: Andrew M. Lebo
Title: Administrative Law Judge

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