

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

In the Matter of:)
)
 T Q) OAH No. 14-2030-MDS
) Agency No.
_____)

DECISION

I. Introduction

T Q applied for Medicaid personal care assistance (PCA) services. On September 8, 2014 the Division of Senior and Disabilities Services (Division) assessed her to determine whether she was eligible for those services. The Division then notified her that her application was denied. Ms. Q requested a hearing.

Ms. Q’s hearing was held on January 9, 2015. Ms. Q appeared in person. She did not testify. She was represented by her son, O C, who testified on her behalf. Angela Ybarra represented and testified on behalf of the Division. M T, the R. N. assessor who performed the September 8, 2014 assessment, testified for the Division.

The evidence demonstrates that Ms. Q is eligible for some of the PCA services she requested. The denial of those services is reversed and the Division is directed to provide Ms. Q 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 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

¹ 7 AAC 125.010(a).

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.*

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). 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

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.

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. 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

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

¹⁰ Ex. E, p. 18.

¹¹ Ex. E, p. 26.

¹² Ex. E, p. 26.

¹³ Ex. E, p. 26.

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.

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. Q is 68 years old. Her diagnoses are emphysema, chronic obstructive pulmonary diseases, and decreased mobility.¹⁷ She receives two liters of oxygen, and has nebulizer treatments.¹⁸ She walks using a cane.¹⁹ She lives in the lower unit of a duplex.²⁰ She was observed, at hearing, to have a cane and to have an oxygen tank with her. The undersigned did not personally observe her transfer or locomote.

Ms. Q was assessed on September 8, 2014 by nurse-assessor M T to determine her eligibility for the PCA program. Based upon her visual observation, functional testing, and statements made by Ms. Q, Ms. T determined that Ms. Q had an adequate range of motion, had a strong grip in both hands, could raise her hands over her head, 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.²¹ She also determined that although Ms. Q had difficulty in preparing light meals and main meals, and had difficulty doing light housework, routine housework, grocery shopping, and laundry, that she was capable of performing these tasks without requiring any hands-on physical assistance.²² As a result, Ms. Q's assessment found that she did not qualify for PCA assistance, and her application was denied.²³

IV. Discussion

This case involves the denial of an application for benefits. As a result, Ms. Q has the burden of proof by a preponderance of the evidence.²⁴ Ms. Q disagreed with the results of the assessment with regard to the tasks of transfers, locomotion, dressing, toileting, personal

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, p. 3; Ex. 3 (July 24, 2014 Verification of Diagnosis).

¹⁸ Ex. E, p. 3; Ex. 1 (Dr. J's August 28, 2014 letter); Mr. C's testimony; Ex. E, p. 20.

¹⁹ Ex. E, p. 7.

²⁰ Ex. E, p. 3.

²¹ Ex. E, pp. 6 – 11, 18, 31.

²² Ex. E, p. 26.

²³ Ex. D; Ex. E, p. 31.

²⁴ 7 AAC 49.135.

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. Transfers

The assessor determined that Ms. Q was independent (self-performance code of 0) with transfers, based upon her observation of Ms. Q getting up from her mattress, which is on the floor, and from the couch, without hands on assistance from another person, while using her cane for support. However, Ms. Q told the assessor that sometimes “she prefers to have someone help her up.”²⁵ Mr. C testified that he held his mother’s hand and lifted her up, providing her with weight-bearing assistance to help his mother transfer more than five to six times daily.²⁶ Ms. Ybarra testified that she personally observed Mr. C providing Ms. Q with assistance with transfers at the time of the hearing. However, that assistance consisted of holding her hand, *i.e.*, not lifting her – not providing weight bearing support.²⁷

Given that Ms. Q did not testify, the overall weight of the evidence demonstrates that it is more likely true than not true that Ms. Q has to have someone hold her hand while she transfers. Merely holding someone’s hand is not weight-bearing assistance; it is more stabilizing assistance. However, this would qualify as limited physical assistance (self-performance code of 2) if it is provided three or more times per week.²⁸ Mr. C testified regarding multiple transfers daily (transfer on and off the bed to attend three meals a day and going to watch TV) and said they occurred more than five or six times daily. Based upon Mr. C’s testimony, it is more likely true than not true that Ms. Q requires her transfer assistance six times daily, for 42 times per week. This would place Ms. Q as qualifying for PCA assistance overall, because there is only a need for limited assistance in one of the scored ADLs, of which transfer is one, to qualify.²⁹ Accordingly, Ms. Q is eligible for PCA services and should receive limited assistance with transfers 42 times per week.

2. Locomotion

The assessor determined that Ms. Q was independent (self-performance code of 0) with locomotion, based upon her observation of Ms. Q walking on her own, without hands-on

²⁵ Ex. E, p. 7; Ms. T’s testimony.

²⁶ Mr. C initially testified that he could not provide a figure for the number of daily transfers because it was many times daily. After questioning, he clarified his testimony.

²⁷ Ms. Ybarra’s testimony.

²⁸ Ex. E, p. 6.

²⁹

assistance from another person.³⁰ Mr. C testified that he held his mother's hand while walking.³¹ Ms. Ybarra testified that she personally observed Mr. C providing Ms. Q with assistance with walking by holding her hand.³² The overall weight of the evidence shows that it is more likely true than not true that Ms. Q requires limited assistance (self-performance code of 2) with locomotion. Consistent with the amount of transfers previously provided and with Mr. C's testimony about Ms. Q's movement in the home, she is provided that assistance six times daily, for limited assistance 42 times per week.

3. Dressing

The assessor determined that Ms. Q required some supervision/encouragement/cueing (self-performance code of 1) with dressing, based upon her observation of Ms. Q during the assessment, Ms. Q's range of motion, and Ms. Q's statements during the assessment.³³ Mr. C's testimony frankly appeared to overstate Ms. Q's needs, saying that she needed to have her arms and legs physically picked up and placed in her clothing, and then had to have her clothing buttoned for her. The assessor's testimony on this point was more persuasive than Mr. C's. As a result, Ms. Q did not meet her burden of proof. It is more likely true than not true that Ms. C does not require physical hands-on help with dressing and does not qualify for PCA assistance with dressing.

4. Toileting

The assessor determined that Ms. Q was independent (self-performance code of 0) with toileting, based upon her observation of Ms. Q's ability to transfer, her range of motion, and Ms. Q's statements at the assessment.³⁴ However, as found above, Ms. Q requires limited assistance with transfers. The toileting process includes transferring on and off the toilet. Mr. C testified that she needs toileting assistance three to four times per day. This is not an unreasonable amount. It is therefore more likely true than not true that Ms. Q requires limited assistance (self-performance code of 2) four times daily, 28 times per week, for toileting.

³⁰ Ex. E, p. 7; Ms. T's testimony.

³¹ Mr. C initially testified that he could not provide a figure for the number of daily transfers because it was many times daily. After questioning, he clarified his testimony.

³² Ms. Ybarra's testimony.

³³ Ex. E, p. 8; Ms. T's testimony.

³⁴ Ex. E, p. 9; Ms. T's testimony.

5. Personal Hygiene and Medication Assistance

The assessor determined that Ms. Q was independent (self-performance code of 0) with personal hygiene, based upon her observation of Ms. Q's ability to transfer, her range of motion, and Ms. Q's statements at the assessment.³⁵ Mr. C's testimony on this point was that his mother needed to have a container of water brought to her so that she could groom herself, not that she was incapable of or needed hands-on assistance with grooming herself. As a result, she did not meet her burden of proof on this point. It is more likely true than not true that she does not require personal hygiene assistance.

Eligibility for medication assistance is dependent upon being eligible for personal hygiene assistance.³⁶ Because Ms. Q is not eligible for personal hygiene assistance, she is similarly not eligible for medication assistance.

6. Bathing

The assessor determined that Ms. Q required some supervision/encouragement/cueing (self-performance code of 1) with bathing, based upon her observation of Ms. Q during the assessment, Ms. Q's range of motion, and Ms. Q's statements during the assessment about her fear of falling and needing some setup help.³⁷ Mr. C testified that his mother required help transferring, with soaping, rinsing, and drying, which would be extensive assistance. He also testified that she could receive bathing assistance twice daily. Mr. C's testimony was not fully supported by the evidence presented on Ms. Q's range of motion. It has already been established that Ms. Q needs limited assistance with transfers. Consistent with that finding, it is more likely true than not true that Ms. Q similarly requires limited assistance (self-performance code of 2) with bathing once daily, for a total of seven times per week.

7. Prescribed Tasks

Ms. Q's doctor wrote a letter stating that Ms. Q should receive daily time for exercise and range of motion exercises.³⁸ Those tasks require a prescription.³⁹ However, Ms. Q's doctor's letter was not a prescription, nor was it contained on the Division's standard *Prescription Task Form*. Given the lack of a prescription, Ms. Q is not entitled to receive assistance for exercise activities.

³⁵ Ex. E, p. 10; Ms. T's testimony.

³⁶ Ex. B, p. 35 (*Personal Care Assistance Service Level Computation*).

³⁷ Ex. E, p. 11; Ms. T's testimony.

³⁸ Ex. 1.

³⁹ 7 AAC 125.030(d)(5) and (e)(4).

8. Instrumental Activities of Daily Living

The assessor determined that Ms. Q had difficulty in performing all of her IADLS (light meal preparation, main meal preparation, shopping, light housework, and laundry), but needed simple non-hands on assistance with those tasks, which consisted of supervision on light meal preparation, and setup help with all the other tasks.⁴⁰ She arrived at this determination based upon her assessment of Ms. Q's functional abilities.⁴¹

Mr. C testified that Ms. Q was completely dependent upon all of her IADLs, with the exception of a very limited ability to participate in light housekeeping. His testimony on this point overstates her care needs and is not credible, as shown by his testimony that Ms. Q cannot fold clothing. Even though Ms. Q certainly has some limitations, they are with regard to locomotion and transfer-related activities. Although she receives oxygen, which limits her mobility due to needing to take the oxygen tank with her, it is more likely true than not true that she can stand for short periods of time, which would allow her to participate to some degree with light housekeeping and shopping, and can participate in tasks such, as food preparation and laundry, which she can help perform from a sitting position. However, she is not independent, even with difficulty, with those tasks, and requires some hands-on assistance. Accordingly, she should be coded with a 2 in self-performance and a 3 in support, and receive assistance commensurate with that coding for light meal preparation 14 times per week, main meal preparation 7 times per week, light housework, shopping, and laundry once per week.

IV. Conclusion

The Division's denial of Ms. Q's PCA application for services is reversed. As found above, Ms. Q qualifies for the following assistance:

Transfers:	Limited assistance (self-performance code 2) 42 times weekly
Locomotion:	Limited assistance (self-performance code 2) 42 times weekly
Toileting;	Limited assistance (self-performance code 2) 28 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

⁴⁰ Ex. E, p. 26.

⁴¹ Ms. T's testimony.

Light Housework: Physical assistance provided (coded 2/3) once weekly
Laundry: Physical assistance provided (coded 2/3) once weekly.
DATED this 11th 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 26th day of February, 2015.

By: *Signed* _____
Name: Christopher Kennedy
Title: Administrative Law Judge

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