

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

In the Matter of:)
)
 E N) OAH No. 14-2139-MDS
) Agency No.
_____)

DECISION

I. Introduction

E N was receiving personal care assistance (PCA) services. On June 3, 2014 the Division of Senior and Disabilities Services (Division) assessed her to determine her continuing eligibility for those services. The Division then notified her that she no longer qualified for PCA services, and that they would be terminated. Ms. N requested a hearing.

Ms. N’s hearing was held on March 13, 2015. Ms. N appeared telephonically and testified on her own behalf. S F, with No Name, assisted Ms. N. K C, Ms. N’s PCA, testified on Ms. N’s behalf. Terri Gagne represented the Division. Olga Ipatova, a Health Care Program Manager employed with the Division, testified on its behalf. Denise Kichura, the assessor who performed the June 3, 2014 assessment, did not testify.

The evidence demonstrates that Ms. N remains eligible for limited PCA services. The termination of those services is reversed and the Division is directed to provide Ms. N 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

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.*

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). 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

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.

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. 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

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.

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. N is 54 years old. She lives with her two minor grandchildren. Her diagnoses are cervicalgia, lumbago, osteoarthritis, and bilateral carpal tunnel syndrome.¹⁷ Ms. N uses a cane, and is trying to obtain a walker.¹⁸ Ms. N was found eligible for PCA services in 2011 based upon an assessment that found she required hands-on physical assistance with locomotion to access medical appointments, dressing, personal hygiene, bathing, and all of her IADLs.¹⁹

Ms. N was assessed on June 3, 2014 by nurse-assessor Denise Kichura to determine her ongoing eligibility for the PCA program. She was wearing a right hand brace during the assessment visit. Based upon her visual observation, functional testing, and statements made by Ms. N, Ms. Kichura determined that Ms. N had a good range of motion, had a strong grip in both hands, could raise her hands over her head, could move her legs, could stand up from a sitting position while both hands were crossed against her chest, and was capable of performing transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing without requiring physical hands-on assistance.²⁰ She also determined that Ms. N was independent with preparing light meals and main meals, light housework, routine housework, grocery shopping, and laundry.²¹ As a result, Ms. N's assessment found that she no longer qualified for PCA services, and that they would be terminated.²²

IV. Discussion

This case involves the termination of PCA services. As a result, the Division has the burden of proof by a preponderance of the evidence to demonstrate that Ms. N has had a material

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; See Dr. X medical notes – June through November 2014.

¹⁸ Ms. N's testimony.

¹⁹ Ex. F, p. 31.

²⁰ Ex. E, pp. 6 – 11, 18, 31.

²¹ Ex. E, p. 26.

²² Ex. D; Ex. E, p. 31.

change in her condition.²³ Ms. N challenged the results of the assessment with regard to the tasks of transfers, locomotion to access medical appointments, dressing, personal hygiene, bathing, medication assistance, and all of her IADLs. Each of these is addressed below.

1. Transfers

Ms. N has not been receiving assistance with transfers. Her 2011 assessment found that she did not require hands-on physical assistance with transfers, merely supervision.²⁴ The 2014 nurse assessor determined that Ms. N was independent (self-performance code of 0) with transfers, based upon her observation of Ms. N during the assessment, and Ms. N's statements during the assessment.²⁵

Ms. C has been Ms. N's PCA for several years. Ms. C testified that Ms. N required physical weight-bearing assistance (extensive assistance – self-performance code of 3) six to seven times daily as of the beginning of November, which was a combination of transfers to and from bed and from a chair. She further testified that Ms. N fell and injured herself, and spent most of October with her arm in a sling, and that she wore that sling until the second week of November.

The doctor's notes from Ms. N's visits for the time period from June 2014 through November 2014, however, do not mention Ms. N wearing a sling, or an arm injury necessitating a sling. Nor do the notes indicate that Ms. N required assistance for transfers. They, instead, refer to Ms. N experiencing chronic generalized pain, muscle spasms, chronic right wrist pain, and a painful right thumb with a decreased range of motion. In addition, they refer to specific instances, *e.g.*, Ms. N tripping and injuring her right thumb on September 9, 2014.²⁶

The weight of the evidence does not support a finding that Ms. N requires transfer assistance. Given the specificity and frequency of the doctor's notes, which did not mention any need for transfer assistance – or of any instances where Ms. N required a sling, coupled with the assessor's observations, the evidence shows that it is more likely true than not true that Ms. N's mobility was not sufficiently impaired, nor her ability to use her arms sufficiently impaired, for her to require transfer assistance.

²³ 7 AAC 49.135; 7 AAC 125.026(a) and (d).

²⁴ Ex. F, p. 6.

²⁵ Ex. E, p. 6.

²⁶ See Dr. X's notes re September 9, 2014 patient visit.

2. Locomotion to Access Medical Appointments

Ms. N was previously found, in 2011, to require limited assistance (self-performance code of 2) with locomotion to access medical appointments. The 2011 CAT reflects that she needed that assistance to transit stairs to go to her outside appointments.²⁷ In 2014, the Division determined that she no longer required assistance for locomotion to access medical appointment. Ms. N's 2014 CAT provides that she lives on the ground floor, *i.e.*, there is no need for assistance on stairs.²⁸ Ms. N did not dispute that she is capable of locomotion without assistance. Ms. C testified that Ms. N requires the assistance to get in and out of the car. However, as found above, Ms. N does not require transfer assistance. Accordingly, it is more likely true than not true that Ms. N no longer requires PCA services for transfers.

3. Dressing

Ms. N was previously found, in 2011, to require limited assistance (self-performance code of 2) with dressing.²⁹ In 2014, the assessor determined that Ms. N was independent (self-performance code of 0) with dressing, based upon her observation of Ms. N during the assessment, Ms. N's range of motion, and Ms. N's statements during the assessment.³⁰ Ms. C testified that Ms. N requires help with dressing, and described what could potentially be weight-bearing assistance. The doctor's visits notes consistently refer to right wrist pain and some problems with the right thumb, from which a reasonable inference can be drawn that Ms. N continues to require limited (non-weight bearing support) for dressing. However, those same notes do not describe a sufficient impairment that would justify a need for weight-bearing support with dressing.

Given Ms. N's medically documented ongoing difficulties with her right wrist and thumb, it is more likely true than not true that she continues to require limited assistance (self-performance code of 2) with dressing twice daily. This would place Ms. N as qualifying for PCA assistance overall, because there is only a need for limited assistance in one of the scored ADLs, of which dressing is one, to qualify.³¹ Accordingly, Ms. N is eligible for PCA services and should receive limited assistance with dressing 14 times per week.

²⁷ Ex. F, p. 7.

²⁸ Ex. E, p. 1.

²⁹ Ex. F, p. 8.

³⁰ Ex. E, p. 8.

³¹ Ex. E, p. 31.

4. Personal Hygiene and Medication Assistance

Ms. N was previously found, in 2011, to require limited assistance (self-performance code of 2) with personal hygiene, due to a need for assistance with her hair and nail/foot care.³² In 2014, the assessor determined that Ms. N was independent (self-performance code of 0) with personal hygiene, based upon her observation of Ms. N during the assessment, Ms. N's range of motion, and Ms. N's statements during the assessment.³³ Ms. C testified that Ms. N continued to require assistance with personal hygiene. As discussed immediately above, Ms. N does have medically documented ongoing issues with her right hand and thumb. This would affect her ability to perform her personal hygiene activities. Accordingly, it is more likely true than not true that Ms. N continues to require limited assistance (self-performance code of 2) with personal hygiene. This is a twice daily activity, which would result assistance needed 14 times weekly.

Medication assistance is driven by the personal hygiene score. A person who receives a personal hygiene score of limited assistance (self-performance code of 2) is eligible for medication assistance.³⁴ Ms. N's 2014 CAT states that she takes medications up to four times daily.³⁵ This is consistent with her power of attorney's prehearing written statement that Ms. N continues to require limited assistance four times daily.³⁶ Accordingly, it is more likely true than not true that she requires limited assistance (self-performance code of 2) with medications four times daily, for a total of 28 times per week.

5. Bathing

Ms. N was previously found, in 2011, to require limited assistance (self-performance code of 2) with bathing, due to her need with assistance with transfers.³⁷ In 2014, the assessor determined that Ms. N was independent (self-performance code of 0) with bathing, based upon her observation of Ms. N during the assessment, Ms. N's range of motion, and Ms. N's statements during the assessment.³⁸ Ms. C testified that Ms. N required help with transfers, and with washing her back, top of neck/shoulders, and hair. However, as found above, Ms. N does not require assistance with transfers. Additionally, there is insufficient medical evidence that

³² Ex. F, p. 10.

³³ Ex. E, p. 10.

³⁴ Ex. B, p. 35; Ex. D, p. 5.

³⁵ Ex. E, p. 20.

³⁶ Ex. 1, p. 3.

³⁷ Ex. F, p. 11.

³⁸ Ex. E, p. 11.

would support a finding that Ms. N requires assistance washing the top of her neck/shoulders.³⁹ The weight of the evidence shows that it is more likely true than not true that Ms. N no longer requires assistance with bathing.

6. Instrumental Activities of Daily Living

Ms. N was previously found, in 2011, to be dependent (self-performance code of 3) with regard to main meal preparation and laundry, and able to participate but required physical hand-on assistance (self-performance code of 2) with light meal preparation and light housework. The laundry was out of the home.⁴⁰ In 2014, the assessor determined that Ms. N was independent in performing all of her IADLS (light meal preparation, main meal preparation, shopping, light housework, and laundry). The laundry was in-home.⁴¹

Ms. C's testimony at hearing was that Ms. N needed help, but not that she was incapable of participating with these IADLS. In addition, Ms. N has two grandchildren now living with her, for whom she has to provide care. Further, the doctor's notes from September 9, 2014, where Ms. N had just injured her thumb, indicate that Ms. N was upset because the injury impacted her ability to cook dinner, *i.e.*, cooking dinner was part of her normal routine.⁴² These facts show that Ms. N is capable of, and does participate, in her IADLS.

However, given Ms. N's ongoing wrist and thumb issues, it is more likely true than not true that Ms. N is capable of performing minor IADLS without assistance, while she requires some hands-on physical assistance with anything more than minor IADLS. This is because her wrist and other pain would impact her ability to engage in protracted activity, or to lift and handle heavy items. For instance, light meal preparation consists of simple tasks such as making a sandwich, microwaving a frozen meal, or preparing a bowl of cereal, none of which involve lifting heavier items or extended activities. In contrast, main meal preparation, shopping, laundry, or light housekeeping, involve some lifting or prolonged activity. Accordingly, Ms. N should be coded as independent, with difficulty (self-performance code of 1), but not requiring hands-on assistance, with light meals, which does not entitle her to receive assistance with that task. However, she should be provided with an assistance code of with a 2 in self-performance and a 3 in support, which does qualify for assistance, and receive assistance commensurate with

³⁹ Bathing assistance is not available for washing a person's back and hair. *See* Ex. E, p. 11. It is arguable that bathing the top of the neck & shoulders fall within this exclusion.

⁴⁰ Ex. F, p. 26.

⁴¹ Ex. E, p. 26.

⁴² *See* Ex. 1.

that coding for main meal preparation, 7 times per week, and with laundry, light housework, and shopping once per week.

V. Conclusion

The Division’s termination of Ms. N’s PCA services is reversed. As found above, Ms. N qualifies for the following assistance:

- Dressing: limited assistance (self-performance code 2) 14 times weekly
- Personal Hygiene: limited assistance (self-performance code 2) 14 times weekly
- Medication: limited assistance (self-performance code 2) 28 times weekly
- Main Meals: Physical assistance provided (coded 2/3) 7 times weekly
- Light Housework: Physical assistance provided (coded 2/3) once weekly
- Laundry: Physical assistance provided (coded 2/3) once weekly
- Shopping: Physical assistance provided (coded 2/3) once weekly

DATED this 22nd day of April, 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 8th day of June, 2015.

By: *Signed* _____
Name: Jared C. Kosin, J.D., M.B.A.
Title: Executive Director
Agency: Office of Rate Review, DHSS

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