

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

In the Matter of )  
 )  
 B D )  
\_\_\_\_\_ )

OAH No. 14-2143-MDS  
Agency No.

**DECISION**

**I. Introduction**

B D was receiving 23.75 hours per week of personal care assistance (PCA) services when he was reassessed to determine his continued eligibility for those services in 2014. Based primarily on a reassessment visit on June 20, 2014, the Division of Senior and Disabilities Services (Division) issued a decision on November 7, 2014 notifying Mr. D that his PCA services would be reduced to 6.75 hours per week. The reduction resulted from both changes in the PCA regulations and what the Division perceived as improvements in Mr. D’s condition. Mr. D requested a hearing.

Mr. D’s hearing was held on January 13, 2015. Mr. D was represented by S D, who is his sister and holds his power-of-attorney. Ms. D and O D, his brother and PCA, testified on his behalf. Mr. D did not attend the hearing. Victoria Cobo represented the Division. Sam Cornell, R.N., and David Chadwick testified for the Division.

Mr. D is physically capable of engaging in most of his own care needs. He does have some limitations, which are due to his mental illness and a contracted left hand. The Division’s allocation of PCA service time is upheld for the most part. However, it is reversed, in part, with regard to the tasks of bathing, light meal preparation, shopping, laundry, and medical escort.

**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 . . . .”<sup>1</sup> 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.”<sup>2</sup>

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<sup>1</sup> 7 AAC 125.010(a).

<sup>2</sup> 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

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.<sup>3</sup> 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. D’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.<sup>4</sup> 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 independent<sup>5</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>6</sup>); **3** (the person requires extensive assistance<sup>7</sup>); **4** (the person is totally dependent<sup>8</sup>). 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).<sup>9</sup>

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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.*

<sup>3</sup> See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

<sup>4</sup> Ex. E, pp. 6 – 11.

<sup>5</sup> 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.

<sup>6</sup> 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.”

<sup>7</sup> 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.”

<sup>8</sup> 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.”

<sup>9</sup> Ex. E, p. 18.

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).<sup>10</sup>

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.<sup>11</sup>

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).<sup>12</sup>

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** (setup 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).<sup>13</sup>

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.<sup>14</sup> The regulations do not provide the Division with the discretion to change the amounts specified by the formula.

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<sup>10</sup> Ex. E, p. 18.

<sup>11</sup> Ex. E, p. 26.

<sup>12</sup> Ex. E, p. 26.

<sup>13</sup> Ex. E, p. 26.

<sup>14</sup> 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.

For covered services beyond assistance with ADLs and IADLs, specific rules apply that will be discussed below.

### **III. Background Facts**

Mr. D is 56 years old. He is diabetic and a paranoid schizophrenic. He has a contracture of his left hand. While he can move his fingers, they are stiff, and it is hard for him to pick items up with his left hand. Mr. D is left-handed.<sup>15</sup> The 2014 assessment, however, did not indicate that Mr. D's left hand was contracted. It also indicated that he had a strong grip in his left hand, but that he had poor fine motor skills.<sup>16</sup>

Mr. D was receiving 23.75 hours of weekly PCA services in 2014 based on a 2008 assessment. Scott Chow, a Division nurse, made a visit to reassess Mr. D's PCA service needs on June 20, 2014. He recorded the assessment visit in the CAT. His findings resulted in a reduction of Mr. D's PCA services to 6.75 hours per week.<sup>17</sup> In general, the assessment shows that Mr. Chow found that Mr. D's physical functionality had increased, which resulted in a decrease in both the degree of assistance required and the number of times weekly that assistance was required.

Mr. D did not disagree with all of the reductions in his PCA services. He disputed the reductions in dressing, toileting, personal hygiene, bathing, light meal preparation, main meal preparation, shopping, housework, laundry, and medical escort.

### **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,<sup>18</sup> facts that show the citizen's level of eligibility has changed.<sup>19</sup> In the context of PCA services, the showing required of the Division is that the recipient has had a "material change of condition."<sup>20</sup> The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,<sup>21</sup> including such sources as written reports of

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<sup>15</sup> O D's testimony. Pictures of Mr. D's left hand, showing the contracture, are contained in the post-hearing email sent by O D on January 13, 2015.

<sup>16</sup> Ex. E, pp. 3 – 4.

<sup>17</sup> Ex. D, p. 10.

<sup>18</sup> Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

<sup>19</sup> 7 AAC 49.135.

<sup>20</sup> 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).

<sup>21</sup> 2 AAC 64.290(a)(1).

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.<sup>22</sup>

A. *Activities of Daily Living*

1. Dressing

Mr. D was previously provided extensive assistance with dressing (self-performance code of 3) 14 times per week.<sup>23</sup> The Division reduced his assistance based upon its finding that he required limited assistance (self-performance code of 2) 14 times per week.<sup>24</sup> Although S D testified that Mr. D needs to have his arms put into sleeves, and legs placed in his pants, the overall evidence shows that Mr. D is physically capable of dressing himself with the only limitations imposed by his mental condition and the contracture of his left hand. The record does not show that his mental condition makes him incapable of lifting his limbs to dress himself. However, the contracture of his left hand certainly limits his ability to perform task requiring dexterity in both hands. This would be items such as buttoning shirts, using zippers, and tying laces on shoes, none of which require weight-bearing support. This is limited assistance. As a result, the Division has met its burden of proof and demonstrated that it is more likely true than not true that he requires limited assistance with dressing, rather than the extensive assistance previously provided.

2. Toileting

Mr. D was previously provided extensive assistance with toileting (self-performance code of 3) 28 times weekly.<sup>25</sup> The Division reduced his assistance based upon its finding that he required limited assistance (self-performance code of 2) 14 times per week due to a need for assistance with bowel hygiene.<sup>26</sup> Mr. D did not dispute that he was capable of walking to and from the bathroom, or that he was capable of transferring on and off the toilet. Mr. D requires assistance cleansing himself after using the toilet.<sup>27</sup> This would not be weight-bearing assistance, but would be properly typified as limited assistance. Because the cleansing assistance would only be required after bowel movements, the twice daily allotment (14 times per week) is also appropriate. The Division has therefore met its burden of proof and demonstrated that it is

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<sup>22</sup> 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>).

<sup>23</sup> Ex. D, p. 11.

<sup>24</sup> Ex. D, p. 11; Ex. E, p. 8.

<sup>25</sup> Ex. D, p. 11.

<sup>26</sup> Sam Cornell's testimony; Ex. D, p. 11; Ex. E, p. 9.

<sup>27</sup> O D's testimony.

more likely true than not true that Mr. D's toileting assistance should be reduced to limited assistance 14 times per week.

### 3. Personal Hygiene

Mr. D was previously provided limited assistance (self-performance code of 2) with personal hygiene 14 times weekly.<sup>28</sup> The Division eliminated this assistance based upon its finding that he only required cueing (self-performance code of 5).<sup>29</sup> O D testified that Mr. D was physically capable of participating in personal hygiene activities and would perform them when in a good mood, but did not like to follow instructions. Based upon O D's testimony, the Division has met its burden of proof and shown that Mr. D does not require hands-on physical assistance with personal hygiene. His not liking to follow instructions, and only performing his personal hygiene when in a good mood, is not the same as him requiring physical assistance with personal hygiene. Accordingly, the Division has demonstrated that Mr. D's assistance with hygiene should be eliminated.

### 4. Bathing

Mr. D was previously provided physical assistance with the bathing activity (self-performance code of 3) seven times weekly.<sup>30</sup> The Division eliminated this assistance based upon its finding that he only required supervision.<sup>31</sup> S D testified that Mr. D required assistance with bathing himself because he cannot clean or wash himself well. This is similar to the need, agreed to by the Division, of a need for cleansing assistance after bowel movements. Physical assistance with the bathing activity has a self-performance code of 3.<sup>32</sup> Given the Division's prior acknowledgement that Mr. D required help cleansing after bowel movements, a similar activity, and Ms. D's testimony, the Division has not met its burden of proof to eliminate bathing assistance. It remains at physical assistance with the bathing activity (self-performance code of 3) seven times weekly.

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<sup>28</sup> Ex. D, p. 11.

<sup>29</sup> Ex. E, p. 10.

<sup>30</sup> Ex. D, p. 11.

<sup>31</sup> Ex. E, p. 11.

<sup>32</sup> Ex. E, p. 11.

*B. Instrumental Activities of Daily Living*

1. Meal Preparation

Mr. D was previously found to be completely dependent with regard to both light meal preparation and main meal preparation.<sup>33</sup> The Division eliminated light meal assistance, based upon its conclusion that he could prepare a light meal, albeit with difficulty. It reduced the main meal assistance based upon its finding that while he needed help, he was able to participate in main meal preparation.<sup>34</sup> Given the facts that Mr. D has contracture of his left hand, has difficulty picking things up with his left hand, and he is left-handed, it is more likely true than not true that Mr. D requires physical assistance with preparing both his light meal and his main meal. However, it is also more likely true than not true that Mr. D can participate to some extent in preparing both types of meals. Accordingly, the Division has shown that his assistance with these tasks should be reduced. Its reduction of assistance with main meal preparation is upheld. However, the elimination of light meal assistance is not supported by the evidence. Mr. D should receive physical assistance (self-performance code of 2, support code of 3) with light meals 14 times weekly.

2. Shopping

Mr. D was previously found to be completely dependent with shopping.<sup>35</sup> The Division eliminated his shopping assistance, based upon its finding that he could shop independently with some setup help.<sup>36</sup> Mr. D can walk. He can push a cart. He can carry light bags. However, he does not know what to buy, and he leaves the shopping activity up to his PCA.<sup>37</sup> The weight of the evidence therefore shows that Mr. D cannot shop independently, even with supervision/cueing/setup help. However, Mr. D can participate to some degree with shopping. The Division has therefore shown that Mr. D's shopping assistance should be reduced. However, it has not shown that it should be eliminated. It is more likely true than not true that Mr. D should receive physical assistance (self-performance code of 2, support code of 3) with shopping once weekly.

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<sup>33</sup> Ex. D, p. 11.

<sup>34</sup> Ex. D, p. 11; Ex. E, p. 26.

<sup>35</sup> Ex. D, p. 11.

<sup>36</sup> Ex. D, p. 11; Ex. E, p. 36.

<sup>37</sup> O D testimony.

### 3. Light Housework

Mr. D was previously found to be completely dependent with light housework.<sup>38</sup> The Division reduced his assistance, based upon its finding that he could participate in the activity.<sup>39</sup> O D testified that Mr. D helps a little bit with housework, but that he stops helping, and that he becomes angry if prompted to help. O D's testimony demonstrates that while Mr. D cannot perform housework entirely on his own, he can help to some degree. Accordingly, the Division has met its burden of proof on this point and demonstrated that Mr. D's assistance with housework should be reduced.

### 4. Laundry

Mr. D was previously found to be completely dependent with laundry.<sup>40</sup> The Division eliminated his laundry assistance, based upon its finding that he could do his own laundry with some setup help.<sup>41</sup> O D testified that Mr. D could not help at all with laundry due to his left hand. O D's testimony is contradicted by his testimony about Mr. D's abilities with housework and shopping. Consistent with the findings that Mr. D cannot do those activities independently, but that he can participate in them, it is similarly found that he requires physical assistance with laundry, but is not completely dependent. As a result, Mr. D's assistance with laundry is reduced, but not eliminated. He is to be provided physical hands-on assistance (self-performance code of 2, support code of 3) with laundry. Because he is incontinent,<sup>42</sup> he is to be provided laundry assistance 45 minutes weekly.<sup>43</sup>

### C. Medical Escort

Mr. D was receiving 30 minutes of PCA assistance weekly for medical escort. After the 2014 assessment, the Division reduced that time to 3.86 minutes per week, based upon a finding that he had 2 doctor appointments per year, each at 15 minutes of escort time, 12 psychiatric appointments, each at 10 minutes of escort time, and 2 optometrist appointments, each at 15 minutes of escort time.<sup>44</sup> The Division did not indicate how it arrived at the amount of time required for each appointment.

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<sup>38</sup> Ex. D, p. 11.

<sup>39</sup> Ex. D, p. 11; Ex. E, p. 36.

<sup>40</sup> Ex. D, p. 11.

<sup>41</sup> Ex. D, p. 11; Ex. E, p. 36.

<sup>42</sup> Ex. E, p. 23; O D's testimony.

<sup>43</sup> Ex. D, p. 8.

<sup>44</sup> Ex. D, pp. 5, 11; Ex. E, p. 5.



Mr. D is non-verbal for the most part. Ms. D's written statement provides that "[h]e cannot tell us or the doctors if he's in pain or what. He mumbles to himself or act[s] strange, that's when we take him to his doctors trying to find out what's wrong." It further states that Mr. D can "only answer yes or no. He can't even say a full sentence."<sup>45</sup>

The activity of medical escort encompasses both transportation and conferring with the medical provider.<sup>46</sup> The time allotted by the Division for each of his appointments is the total for transportation to and from an appointment, along with the time for attending each appointment. The Division's allocation of 10 minutes for each psychiatric appointment, and 15 minutes for medical appointments and optometric appointments, is unrealistic. Even assuming a close proximity to each provider, it is more likely that transportation would require a minimum of 10 minutes each way. In addition, given Mr. D's deficiencies in communication, conferring with his medical providers is a necessity which would probably take a minimum of 10 minutes. He should therefore be allotted 30 minutes for each appointment. The CAT provides that he has a total of 16 yearly appointments. Allowing 30 minutes for each of his 16 yearly appointments, Mr. D's total yearly minutes for medical escort totals 480. This results in him receiving 9.23 minutes per week. As a result, the Division demonstrated that it is more likely true than not true that Mr. D's medical escort time should be reduced from the 30 minutes per week previously allowed. However, the weight of the evidence demonstrates that he should receive 9.23 minutes per week rather than the 3.86 minutes allotted by the Division.

## **V. Conclusion**

The bulk of the Division's reductions to Mr. D's PCA assistance are supported by the evidence. However, his bathing assistance is not reduced, and he is to receive physical hands-on assistance with his IADLs of light meal preparation, shopping, and laundry. His medical escort assistance is reduced to 9.23 minutes per week. His PCA benefit time is to be recalculated consistent with this decision.

DATED this 2<sup>nd</sup> day of July, 2014.

*Signed* \_\_\_\_\_

Lawrence A. Pederson  
Administrative Law Judge

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<sup>45</sup> Ex. C, p. 2.

<sup>46</sup> 7 AAC 125.030(d)(9).

## Adoption

The undersigned 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 23rd day of July, 2015.

By: Signed  
Lawrence A. Pederson  
Administrative Law Judge  
Office of Administrative Hearings