

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

In the Matter of:	)	
	)	OAH No. 14-2196-MDS
T Q	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

T Q applied for Medicaid personal care assistance (PCA) services. On October 14, 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 March 4, 2015. Ms. Q appeared telephonically and testified on her own behalf. K H, Ms. Q’s ex-husband, testified for Ms. Q. Gena O’Neal represented the Division. Margaret Rogers, R. N., and David Chadwick, both of whom are employed by the Division, testified for the Division.

The evidence demonstrates that Ms. Q is eligible for very limited PCA services. 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 . . . .”<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>

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

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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 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.<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.<sup>4</sup> 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.<sup>5</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>6</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>7</sup>); **3** (the person requires extensive assistance<sup>8</sup>); **4** (the person is totally dependent<sup>9</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>10</sup>

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

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<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, p. 31.

<sup>5</sup> Ex. E, pp. 6 – 11.

<sup>6</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>7</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>8</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>9</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>10</sup> 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).<sup>11</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>12</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>13</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** (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).<sup>14</sup>

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 assistance<sup>15</sup> (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.<sup>16</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 is coded

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<sup>11</sup> Ex. E, p. 18.

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

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

<sup>14</sup> Ex. E, p. 26.

<sup>15</sup> 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.

<sup>16</sup> 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.<sup>17</sup>

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

### **III. Background Facts**

Ms. Q is 45 years old. Her diagnoses are abnormality of gait, myalgia and myositis, cervicalgia, and lumbago. She also has a colostomy. She uses a cane/walking stick for support when walking and when transferring from one surface to another.<sup>18</sup> Ms. Q participated in physical therapy from early June 2014 through the end of July 2014. Her physical therapy progress notes from that time period reflect that her mobility is impaired, that she has limited flexion and a great deal of pain, and an inability to maintain a position for more than 15 minutes.<sup>19</sup> Mr. H's testimony established that he accompanies Ms. Q to her medical appointments, and that Ms. Q's doctor would like her to be more physically active. Ms. Q's testimony was that her doctor wants her "to be able to move around."

Ms. Q was assessed on October 14, 2014 by nurse-assessor Margaret Rogers to determine her eligibility for the PCA program. Based upon her visual observation, functional testing, and statements made by Ms. Q, Ms. Rogers determined that Ms. Q had a good range of motion, had a strong grip in both hands, could raise her hands over her head, and could touch her feet from a sitting position, although Ms. Q reported that she had a torn right rotator cuff, and had back and shoulder pain.<sup>20</sup> Ms. Rogers further determined that Ms. Q was capable of performing transfers, locomotion, dressing, eating, toilet use, personal hygiene, or bathing without requiring physical hands-on assistance.<sup>21</sup> She also determined that while it was difficult for Ms. Q to prepare light meals and main meals, perform light housework, routine housework, grocery shopping, and laundry, she could do so with setup help.<sup>22</sup> As a result, Ms. Q's assessment found that she did not qualify for PCA assistance, and her application was denied.<sup>23</sup>

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<sup>17</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.

<sup>18</sup> Ex. E, p. 3; Ms. Q's testimony.

<sup>19</sup> Ex. 3 (Physical Therapy Notes June 2 – July 17, 2014).

<sup>20</sup> Ex. E, p. 4; Ms. Rogers's testimony.

<sup>21</sup> Ex. E, pp. 6 – 11, 18, 31.

<sup>22</sup> Ex. E, p. 26.

<sup>23</sup> Ex. D; Ex. E, p. 31.

#### 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.<sup>24</sup> Ms. Q challenged the results of the assessment with regard to the tasks of transfers, bathing, dressing, and shopping. If Ms. Q requires hands-on physical assistance with any one of these tasks, then she is eligible for PCA services. Each of the disputed tasks 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's ability to transfer, her range of motion, and Ms. Q's statements at the assessment.<sup>25</sup> Mr. H's written statement, filed before hearing, stated that he had been in Ms. Q's residence when she needed help getting out of bed.<sup>26</sup> At hearing, he testified that she requires weight-bearing assistance two to three times per week to get out of bed, and that once she is out of her bed, she is able to function, although with difficulty.

Ms. Q normally leans on her cane/walking stick to transfer out of her bed. Ms. Q testified that she has bad days where her back "locks up" and she is essentially bed bound. She obtains help from Mr. H or another friend (V) when she cannot get out of bed, off the couch, or off the toilet. Her testimony was that weight-bearing assistance was provided.

Ms. Q's and Mr. H's testimony established that it is more likely true than not true that Ms. Q requires weight-bearing assistance (extensive assistance – self-performance code of 3) 3 times per week for transfers from bed. However, given Mr. H's testimony that Ms. Q was essentially functional, albeit with difficulty, once she was out of bed, coupled with the fact that her doctor wants her to be more physically active, *i.e.*, she is capable of being more physically active, the evidence does not show that she requires more assistance with transfers other than getting out of bed 3 times per week.

##### 2. Dressing

The assessor determined that Ms. Q was independent (self-performance code of 0) with dressing, based upon Ms. Q's statement that she was able to dress herself.<sup>27</sup> Mr. H testified that he has to hold out her upper clothing, so that she can slip her arms into it, that he has to help her

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<sup>24</sup> 7 AAC 49.135.

<sup>25</sup> Ex. E, p. 6.

<sup>26</sup> Ex. 2.

<sup>27</sup> Ex. E, p. 8.

put on pants and also helps with her shoes, because she cannot bend over to touch her feet. Ms. Q testified that she can dress herself if it is easy clothing, such as sweats. Given Ms. Q's testimony, the weight of the evidence supports a finding that while it is not easy for Ms. Q to dress herself, she has not shown that it is more likely true than not true that she requires physical assistance with dressing herself.

### 3. Bathing

Mr. H testified that he has to help Ms. Q with getting in and out of the tub and washing herself. However, this somewhat contradicts his earlier testimony that she is independent, with difficulty, after she gets out of bed. Ms. Q has therefore not shown it is more likely true than not true that she requires physical assistance with bathing.

### 4. Instrumental Activities of Daily Living

The assessor determined that Ms. Q was independent, albeit with difficulty, in performing all of her IADLS (light meal preparation, main meal preparation, shopping, light housework, and laundry).<sup>28</sup>

Ms. Q did not dispute that she could prepare a simple meal or laundry without physical assistance, although it is not easy and takes time. She cannot perform heavier housecleaning tasks such as vacuuming, but did not indicate that she needed help with light housekeeping tasks. Mr. H helps her with cooking and dishes, but Ms. Q did not assert that she was incapable of performing these tasks without help.<sup>29</sup> She therefore did not present any evidence or argument that would counter the assessor's determination that she was independent, with difficulty, with regard to light and main meal preparation, light housework, and laundry.

Mr. H goes shopping with Ms. Q. She can walk and push a shopping cart. However, if there is an item that is heavier, Mr. H has to obtain it for her.<sup>30</sup> The evidence therefore establishes that it is more likely true than not true that she can partially participate with shopping, but that she requires hands-on physical assistance with this activity. Accordingly, she should be coded with a 2 in self-performance and a 3 in support, and receive assistance commensurate with that coding for shopping once per week.

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<sup>28</sup> Ex. E, p. 26.

<sup>29</sup> Ms. Q's testimony.

<sup>30</sup> Ms. Q's and Mr. H's testimony.

**V. Conclusion**

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

- Transfers                      extensive assistance (self-performance code 3) 3 times weekly
- Shopping:                      Physical assistance provided (coded 2/3) once weekly

DATED this 17<sup>th</sup> 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 1<sup>st</sup> day of May, 2015.

By: *Signed* \_\_\_\_\_  
Name: Lawrence A. Pederson  
Title/Agency: Admin. Law Judge/OAH

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