

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

|                   |   |                     |
|-------------------|---|---------------------|
| In the Matter of: | ) |                     |
|                   | ) | OAH No. 14-2221-MDS |
| N T               | ) | Agency No.          |
| _____             | ) |                     |

**DECISION**

**I. Introduction**

N T applied for Medicaid personal care assistance (PCA) services. On November 5, 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. T requested a hearing.

Ms. T’s hearing was held on February 5, 2015. Ms. T appeared telephonically and testified on her own behalf. M R, program coordinator with No Name Agency, assisted Ms. T during the hearing and also testified on her behalf. L S, Ms. T’s daughter, also attended the hearing. Angela Ybarra represented the Division. Philip Martinez, a health program manager employed by the Division, testified for the Division.

The evidence demonstrates that Ms. T is eligible for PCA services. The denial of those services is reversed and the Division is directed to provide Ms. T 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>

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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.*

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.<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

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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.

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>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

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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.

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 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. T is 82 years old. Her diagnoses include osteoarthritis, anemia, hypertension, sick sinus syndrome, ground glass syndrome, dyspnea, fatigue with exertion, paroxysmal atrial fibrillation, left ventricular function, and congestive heart failure. She has a biventricular cardiac pacemaker.<sup>18</sup> She has had bilateral hip replacements.<sup>19</sup> She uses a cane and a walker.<sup>20</sup> She lives in a multilevel home with her daughter and other family members.<sup>21</sup>

Ms. T underwent a physical therapy evaluation on October 28, 2014. That evaluation found generally that she had impaired gait, transfers, bed mobility, and her activities of daily living were limited by shortness of breath and mobility. It also found that she experienced pain on standing, and tachycardia and shortness of breath with conversation, transfers, and activities of daily living.<sup>22</sup> It more specifically found that Ms. T could not ascend or descend stairs due to her shortness of breath, that she required help with all of her activities of daily living, including dressing, and bathing, and that she was dependent upon assistance for all meals and grocery shopping.<sup>23</sup> Ms. T was found to have an 84% impairment rating for her lower extremity functional scale.<sup>24</sup>

Ms. T was assessed on October 21, 2014 by nurse-assessor P H to determine her eligibility for the PCA program. Based upon her visual observation, functional testing, and

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<sup>16</sup> Ex. E, p. 31.

<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; Ex. 7; Ex. 8, pp. 3 -4, 7.

<sup>19</sup> Ex. 3, p. 3.

<sup>20</sup> Ex. E, p. 4; Ms. T's testimony.

<sup>21</sup> Ex. E, p. 1; Ms. T's testimony.

<sup>22</sup> Ex. 3, p. 1.

<sup>23</sup> Ex. 3, p. 2.

<sup>24</sup> Ex. 3, p. 5.

statements made by Ms. T, Ms. H determined that Ms. T 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.<sup>25</sup> Ms. H further determined that Ms. T was capable of performing transfers, locomotion, dressing, eating, toilet use, personal hygiene, or bathing without requiring physical hands-on assistance.<sup>26</sup> She also determined that Ms. T could prepare light meals, perform light housework, go grocery shopping, and do laundry without assistance. However, while it was difficult for Ms. T to prepare main meals, she could do so with setup help.<sup>27</sup> As a result, Ms. T's assessment found that she did not qualify for PCA assistance, and her application was denied.<sup>28</sup>

#### **IV. Discussion**

This case involves the denial of an application for benefits. This means that Ms. T has the burden of proof by a preponderance of the evidence.<sup>29</sup> Ms. T challenged the results of the assessment with regard to the tasks of transfers, personal hygiene, bathing, dressing, light meal preparation, main meal preparation, light housework, shopping, and laundry. If Ms. T requires hands-on physical assistance with any one of these tasks, then she is eligible for PCA services. In evaluating the evidence in this case, it should be noted that Ms. T was a credible witness. Her testimony was direct. She answered questions clearly. She did not exaggerate or equivocate. It must be also noted that the nurse-assessor did not testify.

Ms. T would also like assistance with multi-level locomotion, and locomotion to access medical appointments. Each disputed task is addressed below.

##### **1. Transfers**

The nurse-assessor determined that Ms. T was independent (self-performance code of 0) with transfers, based upon her observation of Ms. T's ability to transfer, her range of motion, and Ms. T's statements at the assessment.<sup>30</sup> Ms. T requested that she receive limited assistance (self-performance code of 2) twice daily with transfers due to weakness, shortness of breath, and dizziness.<sup>31</sup> The physical therapy notes state that she requires contact guard assistance ("CGA") for transferring from sitting to standing.<sup>32</sup> The physical therapy notes are persuasive because

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<sup>25</sup> Ex. E, p. 4.

<sup>26</sup> Ex. E, pp. 6 – 11, 18, 31.

<sup>27</sup> Ex. E, p. 26.

<sup>28</sup> Ex. D; Ex. E, p. 31.

<sup>29</sup> 7 AAC 49.135.

<sup>30</sup> Ex. E, p. 6.

<sup>31</sup> Ex. 1, p. 2.

<sup>32</sup> Ex. 3, p. 4.

they are records prepared by a professional, who specializes in physical functioning, and they were conducted roughly at the same time as Ms. T's assessment.<sup>33</sup> A contact guard assist is not weight-bearing assistance. However, it is hands-on physical assistance, and not merely standby/supervision. Ms. T has therefore satisfied her burden of proof and shown that it is more likely true than not true that she requires limited assistance with her transfers. Given the physical therapy notes showing a need for an assist in transferring from sitting to standing, twice a day is also reasonable.

## 2. Locomotion

The nurse-assessor determined that Ms. T was independent with locomotion within her home, with locomotion from one level of the home to another, and with locomotion outside the home to access her medical appointments. She based her conclusion on watching Ms. T walking both upstairs and downstairs, while using a cane and a walker.<sup>34</sup> Ms. T did not dispute that she could walk within her home, on one level, without assistance. She, however, argues that she requires locomotion assistance to move between floors in her home, and to access her medical appointments.

### a. Multi-level Locomotion

Ms. T is requesting extensive assistance (self-performance code of 3) for locomotion between the floors in her home four times daily. She testified that her daughter has to provide her with weight-bearing assistance to move between floors. Ms. R, who was present at the assessment visit, took notes of the visit. Her notes show that Ms. T needed assistance to go up and down the stairs, and that Ms. T's daughter bore her weight. The nurse-assessor's notes on the CAT state that Ms. T told her that she "needs help navigating stairs; prefers holding on to daughters shoulder vs. railing; no hand rail at stairs."<sup>35</sup> With these facts: Ms. T's statement to the nurse-assessor that she had help moving between floors, Ms. T's testimony, and Ms. R's assessment notes, Ms. T has met her burden of proof and demonstrated that it is more likely true than not true that she requires extensive assistance (self-performance code of 3) with multi-level locomotion four times daily.

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<sup>33</sup> The assessment visit occurred on October 21, 2014. The physical therapy evaluation occurred on October 28, 2014.

<sup>34</sup> Ex. E, p. 7.

<sup>35</sup> Ex. E, p. 3.

b. Locomotion to Access Medical Appointments

Ms. T is requesting extensive assistance (self-performance code of 3) twice weekly for locomotion to access medical appointments. There are two outside steps at her home.<sup>36</sup> As discussed above, she requires extensive assistance to transit stairs. In addition, she has to transfer in and out of the car, which is a more involved process than transferring off of a chair. Ms. T has therefore met her burden of proof on her need to receive extensive assistance with locomotion to access medical appointments. However, the record does not show that she has frequent enough medical appointments to support her receiving this assistance twice weekly. Accordingly, she is allowed extensive assistance (self-performance code of 3) for PCA services for locomotion to access medical appointments once weekly.

3. Dressing

The nurse-assessor determined that Ms. T was independent (self-performance code of 0) with dressing, based upon her observations, and Ms. T's statement that she was able to dress herself.<sup>37</sup> Ms. R's notes from the assessment, her testimony, and Ms. T's testimony consistently indicate that Ms. T requires limited assistance (self-performance code of 2) with dressing primarily with her lower extremities, due to her inability to bend.<sup>38</sup> The physical therapy notes corroborate Ms. T's need for dressing assistance: "[n]eeds help with all ADL's including dressing (unable to bend forward at hips), donning/doffing shoes."<sup>39</sup> Ms. T has therefore met her burden of proof and demonstrated that it is more likely true than not true that she requires limited assistance with dressing twice daily.

4. Personal Hygiene and Medication Assistance

The nurse-assessor determined that Ms. T was independent with personal hygiene based upon Ms. T's statements, and the observation of Ms. T during the assessment, including watching Ms. T brush her hair and place it in a ponytail.<sup>40</sup> Ms. T requested limited assistance (self-performance code of 2) with personal hygiene once daily, so that her daughter could assist with her hair and apply lotion to her legs and feet.<sup>41</sup> Ms. T testified that she can lean slightly and can touch her knees, but cannot reach any lower. The physical therapy notes reflect that she

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<sup>36</sup> Ex. E, p. 1.

<sup>37</sup> Ex. E, p. 8.

<sup>38</sup> Ex. 6, p. 1; Ms. R's testimony; Ms. T's testimony.

<sup>39</sup> Ex. 3, p. 2.

<sup>40</sup> Ex. E, p. 10.

<sup>41</sup> Ex. 1, p. 3.

cannot bend. Ms. R testified that Ms. T becomes short of breath with any exertion and that while she was able to put up her hair during the assessment, she needed to rest for several minutes afterwards. Again, the shortness of breath after exertion is corroborated by the physical therapy notes. The evidence therefore demonstrates that it is more likely true than not true that Ms. T requires limited assistance (self-performance code of 2) with personal hygiene, once daily.

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.<sup>42</sup> Ms. T takes medications three times daily.<sup>43</sup> She needs medication assistance for her daughter to open the bottles for her due to her arthritis.<sup>44</sup> Accordingly, it is more likely true than not true that she requires limited assistance (self-performance code of 2) with medications three times daily

#### 5. Bathing

The nurse-assessor determined that Ms. T was independent with bathing based upon Ms. T's statements, and the observation of Ms. T during the assessment. However, Ms. T did tell the nurse-assessor that her daughter assisted her with bathing.<sup>45</sup> Ms. T requested help with transfers and washing her lower extremities.<sup>46</sup> Her difficulty with transfers and with reaching her lower extremities is discussed several times above. Ms. T has therefore shown it is more likely true than not true that she requires physical assistance with bathing, consisting of both transfers and washing, once daily. This is properly classified as extensive assistance (self-performance code of 3).<sup>47</sup>

#### 6. Instrumental Activities of Daily Living

The nurse-assessor determined that Ms. T was able to independently prepare main meals, with difficulty if she received setup help, but was able to perform all of her remaining IADLS (light meal preparation, shopping, light housework, and laundry) without any assistance.<sup>48</sup>

Ms. T disagreed. She did not maintain that she was incapable of performing these tasks in her entirety, but instead that she required hands-on physical assistance (self-performance code

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<sup>42</sup> Ex. B, p. 35; Ex. D, p. 5.

<sup>43</sup> Ex. 6, p. 2.

<sup>44</sup> Ex. 1, p. 4.

<sup>45</sup> Ex. E, p. 11.

<sup>46</sup> Ex. 1, p. 3.

<sup>47</sup> Ex. E, p. 11.

<sup>48</sup> Ex. E, p. 26.



of 2, support code of 3).<sup>49</sup> Ms. T's position is supported by the physical therapy evaluation. She cannot bend to pick items up. Standing is painful for her. She cannot lift items.<sup>50</sup> These are all essentials components necessary to accomplish her IADLs. Ms. T has therefore shown it is more likely true than not true that she requires physical hands-on assistance with all of her IADLs. However, the record shows that she receives Meals on Wheels for her main meals.<sup>51</sup> She would therefore not be allowed to receive PCA services for main meal preparation because it would duplicate her Meals on Wheels.

**V. Conclusion**

The Division's denial of Ms. T' PCA application for services is reversed. As found above, Ms. T qualifies for the following assistance:

|                         |  |
|-------------------------|--|
| Transfers               | limited assistance (self-performance code 2) 14 times weekly   |
| Locomotion – Multilevel | extensive assistance (self-performance code 3) 28 times weekly |
| Locomotion - Medical    | extensive assistance (self-performance code 3) once weekly     |
| Dressing                | limited assistance (self-performance code 2) 14 times weekly   |
| Personal Hygiene        | limited assistance (self-performance code 2) 7 times weekly    |
| Medication Assistance   | limited assistance (self-performance code 2) 28 times weekly   |
| Bathing                 | extensive assistance (self-performance code 3) 7 times weekly  |
| Light Meal Preparation  | physical assistance provided (coded 2/3) 14 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 12<sup>th</sup> day of May, 2015.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

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<sup>49</sup> Ex. 1, p. 4.  
<sup>50</sup> Ms. T's testimony.  
<sup>51</sup> Ex. E, p. 2; Ex. 1, p. 4.

## 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 27<sup>th</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.]