

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

In the Matter of:)	
)	OAH No. 14-2239-MDS
C S)	Agency No.
_____)	

DECISION

I. Introduction

C S applied for Medicaid personal care assistance (PCA) services. On November 4, 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. S requested a hearing.

Ms. S’ hearing was held on February 10, 2015. Ms. S appeared telephonically and testified on her own behalf. N R, R. N., and O J, Ms. S’ daughter, testified for Ms. S. Angela Ybarra represented the Division. Moli Atanoa, R. N., testified for the Division. Denise Kichura, the assessor who performed the November 4, 2014 assessment, did not testify.

The evidence demonstrates that Ms. S is eligible for limited PCA services. The denial of those services is reversed and the Division is directed to provide Ms. S 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. S is 53 years old. Her diagnoses are sciatica, chronic pain, spondylosis, nephritis, nephropathy, chronic obstructive asthma, diabetes, incontinence, depression, and morbid obesity. She uses a cane when walking.¹⁷

Ms. S was assessed on November 4, 2014 by nurse-assessor Denise Kichura to determine her eligibility for the PCA program. Based upon her visual observation, functional testing, and statements made by Ms. S, Ms. Kichura determined that Ms. S had a good 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.¹⁸ She also determined that Ms. S was independent with preparing light meals and main meals, light housework, routine housework, grocery shopping, and laundry.¹⁹ As a result, Ms. S' assessment found that she did not qualify for PCA assistance, and her application was denied.²⁰

IV. Discussion

This case involves the denial of an application for benefits. As a result, Ms. S has the burden of proof by a preponderance of the evidence.²¹ Ms. S challenged the results of the assessment with regard to the tasks of dressing, toileting, bathing, main meal preparation, and shopping. Each of these is addressed below.

1. Dressing

The assessor determined that Ms. S was independent (self-performance code of 0) with dressing, based upon her observation of Ms. S during the assessment, Ms. S' range of motion, and Ms. S' statements during the assessment.²² Ms. S, Ms. J, and Ms. R consistently testified

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.

¹⁸ Ex. E, pp. 6 – 11, 18, 31.

¹⁹ Ex. E, p. 26.

²⁰ Ex. D; Ex. E, p. 31.

²¹ 7 AAC 49.135.

²² Ex. E, p. 8.

that Ms. S requires help with dressing: while she can pull on loose upper clothing without assistance, she requires help with putting shoes and socks on, and putting pants on. Ms. R stated that due to her size,²³ Ms. S does not have the range of motion to reach her feet. Ms. R is a registered nurse, who visited Ms. S and personally evaluated her need for services.²⁴ Given that the Division's nurse-assessor did not testify and the consistent testimony provided, Ms. S has met her burden of proof and established that it is more likely true than not true that she requires non-weight bearing, *i.e.*, limited assistance (self-performance code of 2) for dressing twice daily. This would place Ms. S 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.²⁵ Accordingly, Ms. S is eligible for PCA services and should receive limited assistance with dressing 14 times per week.

2. Toileting

The assessor determined that Ms. S was independent (self-performance code of 0) with toileting, based upon her observation of Ms. S' ability to transfer, her range of motion, and Ms. S' statements at the assessment.²⁶ The testimony of Ms. S, Ms. R, and Ms. J, however, show that it is more likely true than not true that while Ms. S can transfer on and off the toilet without receiving assistance, she requires physical assistance cleansing herself after toileting. Ms. S testified that she needs this assistance three times daily. There was no mention of need for weight-bearing, *i.e.*, extensive assistance. It is therefore more likely true than not true that Ms. S requires limited assistance (self-performance code of 2) three times daily, 21 times per week, for toileting.

3. Bathing

The assessor determined that Ms. S required supervision/encouragement/cueing (self-performance code of 1) with bathing, based upon her observation of Ms. S during the assessment, Ms. S' range of motion, and Ms. S' statements during the assessment that she does not actually take a bath, but instead hand washes herself outside the bath.²⁷ Ms. S, on the other hand, testified that she has fallen in the tub, that she has panic attacks, that she needs help transferring in and out of the tub to her shower chair, and that she needs help bathing her

²³ Ms. S is 61 inches tall and weighs 260 lbs. Ex. E, p. 9.

²⁴ Ms. R's testimony.

²⁵ Ex. E, p. 31.

²⁶ Ex. E, p. 9.

²⁷ Ex. E, p. 11.

backside. Ms. J testified about her mother's frequent dizzy spells and inability to fully bathe herself. The weight of the evidence shows that it is more likely true than not true that Ms. S requires daily bathing assistance with both transfers and the bathing activity. This is classified as extensive assistance (self-performance code of 3).²⁸

4. Instrumental Activities of Daily Living

The assessor determined that Ms. S was independent in performing all of her IADLS (light meal preparation, main meal preparation, shopping, light housework, and laundry).²⁹

Ms. S did not dispute that she could prepare a light meal, albeit with difficulty, nor that she could do light housekeeping (but not routine housework), and laundry. She, however, testified that while she could assist in preparation of main meals, she cannot stand for very long and needs hands-on assistance with actually preparing the meal. She testified that she had to use a shopping cart at the store, and would have to ask S for help reaching items.

Ms. S' testimony established that it is more likely true than not true that she can partially participate with main meal preparation and shopping, but that she requires hands-on physical assistance with both of these activities. Accordingly, she should be coded with a 2 in self-performance and a 3 in support, and receive assistance commensurate with that coding for main meal preparation, 7 times per week, and shopping once per week.

V. Conclusion

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

Dressing:	limited assistance (self-performance code 2) 14 times weekly
Toileting:	limited assistance (self-performance code 2) 21 times weekly
Bathing:	extensive assistance (self-performance code 3) seven times weekly
Main Meals:	physical assistance provided (coded 2/3) 7 times weekly
Shopping:	physical assistance provided (coded 2/3) once weekly

DATED this 13th day of February, 2015.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

²⁸ Ex. E, p. 11.

²⁹ Ex. E, p. 26.

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 27th day of February, 2015.

By: Signed _____
Name: Rebecca L. Pauli
Title: Administrative Law Judge

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