

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

In the Matter of )  
 )  
K J ) OAH No. 14-2284-MDS  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

K J applied for Personal Care Assistance (“PCA”) services that are paid for by Medicaid. The Division of Senior and Disabilities Services (“Division”) denied her application in December 2014. Ms. J contested that decision and requested a hearing.

The hearing was held on March 5 and May 1, 2015. Ms. J appeared telephonically, and she represented herself and testified on her own behalf. E D, a representative of a PCA agency, also appeared on March 5, 2015 via telephone and assisted Ms. J. Ms. J’s cousin F J testified telephonically on her behalf. The Division was represented at the hearing by fair hearing representative Victoria Cobo. Nurse assessor Margaret Rogers testified for the Division.

This decision concludes that Ms. J met her burden of proof establishing that the Division’s denial of her application for PCA services was incorrect. Therefore, the Division’s determination regarding Ms. J’s PCA services is reversed.

**II. Facts**

Ms. J is 53 years old and has been diagnosed as suffering from bipolar disorder, posttraumatic stress disorder, attention deficit disorder, severe low back pain and neck pain, spinal stenosis, lumbago, bladder incontinence, and schizoaffective disorder.<sup>1</sup> In addition to these diagnoses, Ms. J testified that she experiences pain and weakness on her right side and numbness in her right hand, as well as periodic, uncontrollable shaking and dizziness.<sup>2</sup>

Ms. J was the victim of an assault in No Name in either 2005 or 2008,<sup>3</sup> and some of her physical maladies, as well as her posttraumatic stress disorder, resulted from that assault.<sup>4</sup> Some of her symptoms such as weakness and numbness may also be due to a cervical spinal fusion procedure that was performed on her after this incident. Her

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<sup>1</sup> Exh. E3; letters from Dr. T L, Dr. X G.

<sup>2</sup> Testimony of K. J.

<sup>3</sup> Ms. J recalled in her testimony that this incident took place in 2008, but a physician’s letter in the record indicates that it took place in 2005.

<sup>4</sup> Testimony of K. J.

experience of periodic, uncontrollable shaking is likely due to a combination of her anxiety, pain, PTSD, and bipolar disorder and the side effects of the many medications she takes for these disorders.

On November 19, 2014 Registered Nurse Margaret Rogers conducted an assessment of Ms. J using the Division’s Consumer Assessment Tool (CAT).<sup>5</sup> After this assessment, the Division sent Ms. J a letter dated December 1, 2014, stating that PCA services were denied.<sup>6</sup> It is this decision that is the subject of Ms. J’s request for a hearing.

### III. Discussion

#### A. *The PCA Program*

The purpose of the PCA program is:

to provide a recipient physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient[.]<sup>7</sup>

The Division uses the CAT to help it assess the level of assistance needed.<sup>8</sup> The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.<sup>9</sup> The Service Level Computation chart shows the amount of time allotted for each ADL or IADL, depending on the level of assistance needed for each task.

The CAT numerical coding system has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular activity of daily living (ADL). The possible codes are: **0** (the person is independent<sup>10</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>11</sup>); **3** (the person requires extensive assistance<sup>12</sup>); **4** (the person is totally dependent<sup>13</sup>). There are also codes which are not used in calculating a service level: **5** (the person requires

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<sup>5</sup> Exh. E1.

<sup>6</sup> Exh. D.

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

<sup>8</sup> 7 AAC 125.020(b).

<sup>9</sup> 7 AAC 125.024(1).

<sup>10</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 Exh. E6.

<sup>11</sup> Under 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>12</sup> Under 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>13</sup> Under 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, “means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity.”

cueing); and **8** (the activity did not occur during the past seven days).<sup>14</sup> In addition, the self-performance codes for the ADL of bathing differ somewhat from the above definitions: a **2** denotes “physical help limited to transfer only,” and a **3** denotes “physical help in part of bathing activity.”<sup>15</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 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>16</sup>

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, housework, grocery shopping, and laundry.<sup>17</sup> The CAT codes for IADLs differ slightly from those for 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>18</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>19</sup>

The codes assigned to a particular ADL or IADL are used to determine how much PCA service time a person receives for each occurrence of a particular activity, through a formula set out in Division regulations. For instance, if a person is coded as being completely dependent

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<sup>14</sup> Exh. E18.

<sup>15</sup> Exh. E11.

<sup>16</sup> *Id.*

<sup>17</sup> Exh. E26.

<sup>18</sup> Exh. E26.

<sup>19</sup> *Id.*

(code of 4) with bathing, and she informs the assessor that she bathes every day, she would receive 30 minutes of PCA service per day for that ADL.<sup>20</sup> Even if the Division agrees that the amount of time provided by the formula is insufficient for a PCA recipient's actual needs, the regulations do not provide the Division with the discretion to change the amounts specified by the formula.

When the Division wishes to reduce the amount of allotted time for PCA services, the Division has the burden of proving a change of condition justifying that reduction by a preponderance of the evidence, *i.e.*, that it is more likely true than not true.<sup>21</sup> When the claimant is contesting a denial of an initial application, as Ms. J is doing in this case, the claimant has the burden of showing that the Division's determination was incorrect, also by a preponderance of the evidence.<sup>22</sup>

Ms. J contested the Division's determination that she is ineligible to receive PCA services as to certain ADLs: transfers, dressing, toileting, and bathing. In addition, she contested the "other covered activity" of medication assistance, and she contested certain IADLs: main meal preparation, housework, laundry, and shopping. The other ADLs and IADLs addressed in the assessment were not contested and thus were not at issue in the hearing.

### ***B. Eligibility – ADLs and IADLs***

With regard to many of the ADLs and IADLs at issue in this case, the Division took the position that Ms. J was physically able to perform the activity in question, but she was apparently prevented from performing the activity due to anxiety arising from her mental or emotional disorders.<sup>23</sup> The Division, however, presented no legal authority in support of the proposition that a physical inability that arises from or is related to a mental disorder cannot be used in support of a request for PCA services. The appropriate question to be answered in a PCA services case is whether or not the recipient is unable to perform a given ADL or IADL, not whether their inability is based on a physical deficit as opposed to a mental or emotional deficit.

#### **1. Transfers**

Ms. J received a score of 0/0 for transfers, meaning that she was deemed independent and did not require any assistance in this activity. On the CAT, however, Nurse Rogers

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<sup>20</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Exh. B34-36.

<sup>21</sup> 7 AAC 49.135.

<sup>22</sup> *Id.*

<sup>23</sup> See, *e.g.*, Nurse Rogers' March 5, 2015 testimony regarding the IADL of laundry, at hearing record 0:57:36 – 0:58:30.

recorded a note stating that Ms. J reported that “she fell about three weeks ago when moving from sitting to standing and called her sister to assist with getting [up].”<sup>24</sup> Ms. J corroborated this note in the CAT through her testimony, stating that she frequently falls while transferring.<sup>25</sup> Although Nurse Rogers noted that “Ms. J was observed transferring from sitting to standing without assistance during the assessment,”<sup>26</sup> she provided no explanation in the CAT or in her testimony regarding how a person who had recently fallen while attempting to transfer could be deemed independent. The most reasonable explanation is that Ms. J was not experiencing one of her periodic episodes of uncontrollable shaking at the time that Nurse Rogers made her observations during the assessment.

Ms. J testified credibly that she has difficulty and sometimes falls while transferring. Based on this testimony and Nurse Rogers’ notes in the CAT, Ms. J met her burden of proof to establish that it is more likely true than not true that she requires physical, hands-on assistance with the ADL of transfers. The evidence established that Ms. J should have been given a score of 2/2 for transfers (limited assistance). Because the CAT indicated Ms. J was ineligible, it did not record the frequency of her transfers. Ms. J’s testimony, however, established that a reasonable frequency of her need for hands-on assistance with transfers is three times per day, or 21 times per week.

## **2. Dressing**

Ms. J received a score of 0/0 for dressing, meaning that she was deemed independent and did not require any assistance in this activity. On the CAT, Nurse Rogers recorded a note stating that Ms. J reported that “she has difficulty with fastening her pants. She reports she is able to place clothing on her limbs as well as straighten her clothing. She complains [of] numbness in her hands . . . .”<sup>27</sup> Nurse Rogers did not observe Ms. J dressing during the assessment.<sup>28</sup>

Ms. J testified on her own behalf that on days when her shaking is very bad, she just stays in her nightgown until the shaking subsides.<sup>29</sup> When questioned by the Division’s

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<sup>24</sup> Exh. E6.

<sup>25</sup> Testimony of K. J. She admitted that sometimes she simply falls back into the chair or onto her bed.

<sup>26</sup> *Id.*

<sup>27</sup> Exh. E8.

<sup>28</sup> *Id.*

<sup>29</sup> Testimony of K. J.

representative, however, Ms. J admitted that “basically I can dress myself.”<sup>30</sup> Based on the CAT and Ms. J’s testimony, she did not meet her burden of proof to establish that it is more likely true than not true that she requires physical, hands-on assistance with the ADL of dressing.

### 3. Toileting

Ms. J received a score of 0/0 for toileting, meaning that she was deemed independent and did not require any assistance in this activity. On the CAT, Nurse Rogers recorded a note stating that Ms. J reported that “she is able to transfer onto and off of the toilet most of the time, she reports she is able to cleanse after using the toilet.”<sup>31</sup> Ms. J testified, however, that periodically she is unable to get up from the toilet and has to call her neighbor to come help her get up.<sup>32</sup> She also testified that sometimes her shaking is so bad that she cannot cleanse herself after using the toilet.<sup>33</sup> Nurse Rogers did not observe Ms. J toileting during the assessment, and instead based her scoring on observations of Ms. J’s functional abilities in other areas.<sup>34</sup>

Based on Ms. J’s credible testimony, she met her burden of proof to establish that it is more likely true than not true that she sometimes requires physical, hands-on assistance with the ADL of toileting. The weight of the evidence established that Ms. J should have been given a score of 2/2 for toileting (limited assistance). Because the CAT indicated Ms. J was ineligible for PCA services for toileting, it did not record the frequency of her need for assistance with this ADL. Ms. J’s testimony, however, established that a reasonable frequency of her need for hands-on assistance with toileting is two times per day, or 14 times per week.

### 4. Bathing

Ms. J received a score of 0/0 for bathing, meaning that she was deemed independent and did not require any assistance in this activity. On the CAT, Nurse Rogers recorded a note stating that Ms. J reported that “she is able to bathe without assistance” and “she is able to transfer into and out of the shower as well as washing her body.”<sup>35</sup> Nurse Rogers did not

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<sup>30</sup> *Id.*

<sup>31</sup> Exh. E9.

<sup>32</sup> Testimony of K. J; Ms. J explained that the neighbor recently started a new job and is no longer available to come assist her when needed.

<sup>33</sup> Testimony of K. J.

<sup>34</sup> Testimony of Nurse Rogers.

<sup>35</sup> Exh. E11.

observe Ms. J bathing during the assessment, and instead based her scoring on Ms. J's apparent self-reporting during the assessment. Ms. J testified under oath, however, that she is unable to reach down in the shower to wash her feet or her legs because she gets dizzy.<sup>36</sup> She also testified that she can usually get into the shower on her own, but she needs physical assistance to get out of the shower, across its wet surfaces, due to her bouts of shaking and dizziness.<sup>37</sup>

Based on Ms. J's credible testimony, she met her burden of proof to establish that it is more likely true than not true that she requires physical, hands-on assistance with the ADL of bathing. The weight of the evidence established that Ms. J should have been given a score of 3/2 for toileting (physical help with both transfers and part of bathing activity, by one person). Because the CAT indicated Ms. J was ineligible for PCA services for bathing, it did not record the frequency of her need for assistance with this ADL. Ms. J's testimony, however, established that a reasonable frequency of her need for hands-on assistance with bathing is one time per day, or seven times per week.

## 5. Medications

Nurse Rogers recorded in the CAT that Ms. J needs assistance with her medications one time per day, seven days per week. Ms. J did not receive any authorized PCA time for medications, however, because she did not receive a qualifying score for the ADL of personal hygiene, which is a prerequisite for being awarded PCA time for assistance with medications.<sup>38</sup> In order for Ms. J to meet her burden of proof regarding the activity of medication assistance, therefore, she needed to establish at the hearing that she should have been given a score of at least 2/2 for personal hygiene.<sup>39</sup>

Regarding personal hygiene, Nurse Rogers recorded in the CAT that Ms. J reported "she is able to perform mouth care, skin care and nail care without assistance."<sup>40</sup> Nurse Rogers testified that Ms. J demonstrated adequate range of motion with her arms in order to perform personal hygiene. Ms. J also testified that she can comb her own hair, brush her teeth and wash her face without assistance.<sup>41</sup> Her testimony, therefore, essentially

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<sup>36</sup> Testimony of K. J.

<sup>37</sup> *Id.*

<sup>38</sup> Exh. B34-35.

<sup>39</sup> *Id.*

<sup>40</sup> Exh, E10.

<sup>41</sup> Testimony of K. J (in this context Ms. J testified that she needs help with "wiping," apparently confusing the ADL of personal hygiene with the ADL of toileting).

corroborated the scoring in the CAT regarding this ADL. Based on this record, Ms. J did not meet her burden of establishing that it is more likely true than not true that she requires physical, hands-on assistance with the ADL of personal hygiene. This in turn mandates the conclusion that she did not meet her burden of proof with regard to the activity of assistance with medications.

## **6. Main Meal Preparation**

Ms. J received a score of **1/2** for the IADL of main meal preparation, meaning that she is “independent with difficulty” and that she needs assistance in the form of “set-up help only” in performing this activity.<sup>42</sup> Although the CAT contains no notes or commentary regarding the factors taken into account in reaching this scoring, Nurse Rogers testified that the Division, in scoring a recipient’s need for assistance with this IADL, examines the person’s functional abilities, such as whether they can reach items on a kitchen shelf or in the refrigerator, lift pans on and off of a hot stove, handle knives or other sharp utensils, etc.<sup>43</sup>

In connection with main meal preparation, Ms. J testified that although she can perform some aspects of cooking a meal with supervision, she needs physical assistance with lifting and moving heavy pots and pans. Consequently she can no longer bake cookies for her grandson or cook a pot of spaghetti, because she cannot safely lift or maneuver the cookware on and off the stove or in and out of the oven.<sup>44</sup>

Apparently due to her mental health issues, on two recent occasions Ms. J forgot that she had left items cooking on the stove, and as a result she caused fires to break out in her kitchen. During the hearing the Division appeared to focus on this aspect of Ms. J’s claim regarding main meal preparation, characterizing her need for assistance as only a need for supervision. This characterization, however, misses the point that Ms. J established through her testimony that physically she cannot perform some aspects of the task of cooking a main meal, because of her physical limitations in lifting and maneuvering heavy pots and pans (that also are often hot).

Based on Ms. J’s credible testimony, she met her burden of proof to establish that it is more likely true than not true that she requires physical, hands-on assistance with the

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<sup>42</sup> Exh. E26. Medicaid will not pay for assistance provided to a recipient in the form of set-up help.

<sup>43</sup> Testimony of Nurse Rogers.

<sup>44</sup> Testimony of K. J.



IADL of main meal preparation. The weight of the evidence established that Ms. J should have been given a score of **2/3** (“assistance/done with help,” “physical assistance provided”) for this IADL, at a frequency of one time per day, or seven times per week.

### **7. Housework**

Ms. J received a score of **1/2** for the IADL of routine housework, meaning that she is “independent with difficulty” and that she needs assistance in the form of “set-up help only” in performing this activity.<sup>45</sup> The CAT contains no notes or commentary regarding the factors taken into account by the Division in reaching this scoring. Nurse Rogers testified that, as with the IADL of main meal preparation, the Division will score a recipient’s need for assistance with this IADL by examining the person’s functional abilities, such as whether they have adequate range of motion in their arms, can walk, and can grip and lift up items such as cleaning products and implements.<sup>46</sup>

Ms. J testified that although she can perform some aspects of housework, such as dusting or wiping down a counter, she cannot do dishes or scrub out a pot because she essentially has to do it with only one good hand, and she cannot lift anything heavy or bend down to put items away. She can take trash out to the trash dumpster bin but cannot lift it up to place it in the dumpster. In addition, due to her episodes of shaking she often will spill the trash when she tries to take it out without assistance.

Based on Ms. J’s credible testimony, she met her burden of proof to establish that it is more likely true than not true that she requires physical, hands-on assistance with the IADL of routine housework. The weight of the evidence established that Ms. J should have been given a score of **1/3** (“independent/done with difficulty,” “physical assistance provided”) for this IADL. She should receive the appropriate amount of PCA time listed in the Division’s Personal Care Assistance Service Level Computation chart.<sup>47</sup>

### **8. Laundry – In Home**

Ms. J received a score of **1/2** for the IADL of “laundry – in home,” meaning that she is “independent with difficulty” and that she needs assistance in the form of “set-up help only” in performing this activity.<sup>48</sup> The CAT contains no notes or commentary regarding the factors taken into account by the Division in reaching this scoring. Nurse Rogers

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<sup>45</sup> Exh. E26.

<sup>46</sup> Testimony of Nurse Rogers.

<sup>47</sup> See Exh. B34.

<sup>48</sup> Exh. E26.

testified, however, that the Division viewed Ms. J's difficulties primarily as arising from her anxiety about going to the laundry room in her building, and that she had the necessary physical abilities to perform this task (i.e. she can walk, can move her arms, can carry items, etc.). Ms. J, however, testified that due to the pain and numbness on one side of her body, she cannot lift heavy laundry items such as bedding or towels into or out of the washer and drier, nor can she sort and fold such heavier items. Ms. J also noted that due to her incontinence, her bedding must be laundered more often than otherwise might be needed. When questioned at the hearing, Nurse Rogers admitted that a person who can sort some laundry items, but cannot lift heavy items due to pain and numbness in her hand, should be given a "three under support" for this IADL.<sup>49</sup>

Ms. J, through her credible testimony and Nurse Rogers' testimony, met her burden of proof to establish that it is more likely true than not true that she requires physical, hands-on assistance with the IADL of laundry. She should have been given a score of **1/3** ("independent/done with difficulty," "physical assistance provided") for this IADL, with PCA time as allowed by the Division's Personal Care Assistance Service Level Computation chart, with the additional time allowed for laundry due to incontinence.<sup>50</sup>

### **9. Grocery Shopping**

Ms. J received a score of **1/2** for the IADL of grocery shopping, meaning that she is "independent with difficulty" and that she needs assistance in the form of "set-up help only" in performing this activity.<sup>51</sup> Again, the CAT contains no notes or commentary regarding the factors taken into account by the Division in reaching this scoring. Nurse Rogers' testimony, however, indicated that the Division viewed Ms. J's difficulties primarily as arising from her anxiety about going to the grocery store. Ms. J did testify that she experiences extreme anxiety when leaving her home, including on occasions when she has to go to the store. She also testified, however, as to her physical, functional limitations that impact on her ability to perform this IADL. She can prepare a shopping list and can take some items off of the store shelves, but she cannot reach items on higher shelves, she cannot lift heavy items into a cart, nor can she push the shopping cart around the store with just one good hand.

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<sup>49</sup> Testimony of Nurse Rogers, at hearing record 0:58:35.

<sup>50</sup> See Exh. B34.

<sup>51</sup> Exh. E26.

Based on Ms. J's credible testimony, she met her burden of proof to establish that it is more likely true than not true that she requires physical, hands-on assistance with the IADL of grocery shopping. She should have been given a score of **1/3** ("independent/ done with difficulty," "physical assistance provided") for this IADL, and she should receive the appropriate amount of PCA time listed in the Division's Personal Care Assistance Service Level Computation chart.<sup>52</sup>

#### **IV. Conclusion**

Ms. J met her burden of proof establishing that the Division's denial of her application for PCA services was incorrect. The Division's determination regarding Ms. J's PCA services, therefore, is reversed. She should receive authorization for PCA time for the ADLs of transfers, toileting, and bathing, and the IADLs of main meal preparation, routine housework, laundry in-home, and grocery shopping.

DATED this 25th day of August, 2015.

*Signed*

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Andrew M. Lebo

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 9th day of September, 2015.

By: *Signed*

\_\_\_\_\_  
Name: Andrew M. Lebo

\_\_\_\_\_  
Title: Administrative Law Judge

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

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<sup>52</sup> See Exh. B34.