

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

In the Matter of)	
)	
X T J)	OAH No. 14-2341-MDS
_____)	Agency No.

DECISION

I. Introduction

The division reduced X T J’s PCA services from 24.75 hours per week to 15 hours per week. A telephonic hearing was held on March 2, 2015 and March 16, 2015. The record remained open for one week and closed on March 23, 2015 without further participation from either party.

The division was represented by its hearing representative, Terri Gagne, and it presented the testimony of the nurse assessor, Kelly Russell, and the nurse reviewer, Laura Baldwin. Power of Attorney W J, X T J’s uncle, testified for and asked questions on his nephew’s behalf.

The hearing process revealed that the division was not applying the Commissioner of Health and Human Services’ policy regarding limited and extensive assistance. It also revealed that the record did not support the division’s decision that Mr. J had improved to the point that he should no longer be scored as dependent in his Instrumental Activities of Daily Living. A review of the evidence demonstrates that the Division has not met its burden of proof to demonstrate that Mr. J can “reasonably” perform most of his ADLs or all of his IADLs with the level of support proposed in his November 24, 2014 assessment.¹ Therefore, his PCA service level should be recomputed in accordance with the discussion below.

II. Overview of 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”² Accordingly, “[t]he department will not authorize personal care services for a

¹ A person is not entitled to receive PCA assistance if the task can “reasonably be performed by the recipient.” 7 AAC 125.040(a)(4). Presumably, the same would apply if the person could not reasonably perform the task without a certain level of assistance.

² 7 AAC 125.010(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.”³

The Division uses the Consumer Assessment Tool, or “CAT”, to score eligibility for the PCA program. The PCA program is designed to provide a recipient with the physical assistance necessary to complete activities and independent activities of daily living that he or she cannot reasonably perform without assistance. The CAT helps assess whether a person is eligible for the program by scoring a person’s ability to self-perform an activity with or without physical assistance, the amount of assistance needed, and the frequency of the assistance provided.⁴

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.

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.⁵ The CAT’s 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 independent⁶ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁷); **3** (the person requires extensive assistance⁸); **4** (the person is totally dependent⁹). 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).¹⁰

³ 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.”

⁴ See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

⁵ Ex. E, pp. 6 – 11.

⁶ 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.

⁷ 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.”

⁸ 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.”

⁹ According to 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.”

¹⁰ 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).¹¹

The performance levels for IADLs are slightly different than for ADLs and are discussed in part B below.

III. Facts

X T J is a 64-year-old male who suffers from end stage renal disease. He has been receiving dialysis three days a week since 2007. He is frail, fatigued, and in pain.¹² On September 4, 2014, the division's nurse assessor, Kelly Russell, R.N., performed an assessment interview. It was unknown if the day of the interview was a dialysis day.

Mr. J was last assessed in 2011. Since that time there has been a regulatory change regarding how the CAT scores drive the time allowed for each ADL or IADL. There is no indication in the record that Mr. J's medical condition or his abilities have changed or improved. He was receiving range of motion exercises, but Ms. Russell observed Mr. J had difficulty with his upper extremity range of motion. There had been a prescription which has since lapsed and not been renewed. The CAT does not reveal any change in Mr. J's living environment. The assessor observed him to be unsteady on his feet and require some form of weight-bearing assistance to complete the ADLs of transfer, locomotion, and toileting.¹³

IV. Discussion

A. *The ADLs*

1. Bed Mobility

The ADL of body mobility includes the activity of positioning or turning in a bed or chair. The CAT refers to this as bed mobility, which is described as how a person moves to or from a lying position, or turns side to side, or positions his or her body while lying in bed.¹⁴ Mr. J can walk, albeit with assistance.¹⁵ Regardless, this is considered ambulation.

¹¹ Exhibit E 18.

¹² Exhibit E.

¹³ Russell Testimony; Exhibit E 6-8.

¹⁴ 7 AAC 125.030(b)(1); Exhibit E 6.

¹⁵ Exhibit E 7. (Mr. J took a few steps with his PCA supporting him.)

To receive PCA services for the ADL of body mobility, the recipient must be non-ambulatory.¹⁶ Therefore, the division's decision to remove time associated with bed mobility is correct.

2. Transfers

Transferring is the act of moving between surfaces, such as getting out of or into a bed, or getting up from a chair to a standing position.¹⁷ Mr. J's prior assessment found that he required weight-bearing assistance (extensive assistance, score 3/2), 28 times a week. As a result of this assessment, it was reduced to non-weight bearing physical assistance (limited assistance, score 2/2), 14 times a week. During her testimony, Ms. Russell explained the difference between limited assistance and extensive assistance. Notably, she scored the CAT with the understanding that extensive assistance was "close to dependence but not quite," that the recipient "may need weight-bearing support such as being lifted on and off the toilet."¹⁸

Ms. Russell is correct that weight-bearing assistance is more than a minimal amount of weight. However, to be extensive it does not require that the assistant bear most of the recipient's weight, but instead that the recipient could not perform the task without the weight-bearing assistance three or more times per week.¹⁹ In a case such as Mr. J's, where he can perform some of the activity, Mr. J will require extensive assistance if he needs weight-bearing assistance three or more times in the past seven days.

The division does not dispute that on dialysis days Mr. J requires some form of weight-bearing assistance. He receives dialysis three days a week. Therefore, he requires extensive assistance. As discussed below, he toilets 28 times a week and locomotes 21 times per week. Each locomotion is preceded and followed by a transfer. It is likely that Mr. J will combine, some of the time, toileting with some of his moving from room to room or place to place. He should receive 52 transfers per week.

¹⁶ 7 AAC 125.030(b)(1)(A).

¹⁷ 7 AAC 125.030(b)(2); Exhibit E 6.

¹⁸ Russell Testimony, March 2, 2015 Hearing.

¹⁹ Prior decisions discuss weight-bearing assistance without fully defining what that means, and the parties have not referred to any formally adopted definition.

3. Locomotion

The ADL of locomotion refers to the manner in which a person moves within his or her own room or other areas on the same floor.²⁰ If a person is in the process of locomoting from one room to another and stops to toilet on the way, that is scored as one locomotion.²¹ Locomotion remained at a 2/2; however, the division reduced the frequency from 21 to 14 times a week because Mr. J reported he spends most of his time in bed.

While he may spend most of his time in bed, it is known that he attends dialysis 3 times a week, the division expects him to bathe 4 times a week, and attends to his personal hygiene 14 times a week. Mr. J also does go to the living room and, from the scoring on the instrumental activities of daily living, they expect Mr. J to be involved in the activity with physical assistance. Therefore, the reduction in frequency is not supported by the record and should be returned to 21 times per week.

Regarding performance and self-performance scoring, the observation of the assessor that Mr. J took “a few steps while the PCA supported him under the arms and around the waist” supports a score of 3/2.

4. Dressing

Dressing is how a person puts on, fastens, and takes off all items of clothing.²² This ADL is undisputed.

5. Eating

The ADL of Eating refers to how a person eats and drinks regardless of skill.²³ This includes supervising the eating and drinking of a recipient who can feed himself but has swallowing, chewing, or aspiration difficulties.²⁴ It is undisputed that Mr. J does not require physical assistance with this ADL.

²⁰ 7 AAC 125.030(b)(3); Exhibit E 7.

²¹ *See In re F.V.*, OAH No. 13-1306-MDS at 5 (2013 Commissioner of Health and Social Services) “Transfers in which one of the surfaces is a toilet or commode are incidental to the ADL of toileting and are exclusively covered within the ADL of toileting. Additionally, when a recipient locomotes between locations in his or her home, and one of those locations is the toilet, commode, bedpan, or urinal, then that locomotion is exclusively covered with the ADL of toileting as ‘move[ment] to and from the toilet, commode, bedpan, or urinal.’”

Available on line at: <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS131306.pdf>.

²² 7 AAC 125.030(b)(4).

²³ 7 AAC 125.030(b)(5); Exhibit E 9.

²⁴ 7 AAC 125.030(b)(5)(C).

6. Toilet Use

Toilet use includes transfers on and off the toilet, cleaning oneself, adjusting clothing, and routine incontinence care.²⁵ Because Mr. J is on dialysis, his urinary output is less than a person who is not on dialysis. However, there is still some output. He also has bowel movements on a regular basis and requires assistance with toilet hygiene. Ms. Russell observed that Mr. J had limited range of motion in his arms and required steadying with transfers on and off the toilet. What is described is closer to weight-bearing assistance (extensive assistance) than limited assistance. The division has not established that Mr. J requires less assistance in 2014 than he did in 2011. Therefore, Mr. J's score and frequency should remain at its prior level of extensive assistance (score of 3/2), 28 times a week.

7. Personal Hygiene

Personal hygiene includes the combing of hair, brushing teeth, shaving, applying makeup, and washing and drying a person's hands and face.²⁶ In 2011, Mr. J received a score of limited assistance (score of 2/2). This was reduced to independent (score of 0/1). The testimony establishes that Mr. J is weak and has restricted range of motion in his upper extremities. He cannot reach the top of his head. The division based its score in large part on Mr. J's ability to feed himself. The division reasoned that if he had the fine motor skills and strength to pick up and lift a utensil to his mouth, he should be able to perform his own personal hygiene. The logic is attractive, yet flawed. The muscle movement and skill necessary to reasonably wash a face, shave, and brush hair is different than picking up a fork and bringing it to your mouth. Therefore, Mr. J's score should be returned to limited assistance (score of 2/2), seven times a week. Additionally, any other scores dependent upon this score, such as medication, should be updated.

8. Escort

The CAT shows Mr. J requires 91.15 minutes per week for escort services.²⁷ However, dialysis does not typically require an escort. Transportation may be required, but is a different service. The CAT does state that Mr. J sees his primary care provider two times a year and requires 30 minutes of escort time each visit. Therefore, the amount of PCA service should reflect 60 minutes of escort.

²⁵ 7 AAC 125.030(b)(6); Exhibit E 9.

²⁶ 7 AAC 125.030(b)(7); Exhibit E 10.

²⁷ Exhibit E 5.

B. *IADLs of Light Meal Preparation, Main Meal Preparation, Shopping, Light Housework, and Laundry*

The performance levels for IADLs are slightly differently than for ADLs. Independence (scored as a 0) is defined as independent either with or without assistive devices - no help provided.²⁸ Independence with difficulty (scored as a 1) is characterized by the person performing the task with difficulty or taking a great amount of time to do it.²⁹ Assistance/done with help (scored as a 2) is when the person is somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided.³⁰ Dependent/done by others (scored as a 3) means the person is not involved at all with the activity and the activity is fully performed by another person.³¹ If the activity did not occur it is scored as an 8.³²

In 2011, Mr. J was scored as being fully dependent (score of 3/4) on others for each of these tasks. In 2014, he was assessed as independent with difficulty in each of these with supervision.³³ Neither the termination notice, the testimony, nor the CAT provides an explanation for this change, and there was no evidence that Mr. J's living situation had changed or that his physical condition materially improved between these years. Therefore, his score should be returned to dependent (score of 3/4) in each IADL.

V. Conclusion

Mr. J cannot reasonably perform most ADLs or his IADLs without physical assistance. The division erred when it reduced his PCA services. His PCA service level should be recomputed in accordance with the discussion above.

Dated: April 21, 2015.

Signed

Rebecca Pauli
Administrative Law Judge

²⁸ Exhibit E 26.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

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 11th day of May, 2015.

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

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