

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

In the Matter of)
)
 T X-T) OAH No. 14-2395-MDS
) Agency No.

DECISION

I. Introduction

T X-T applied for personal care attendant (PCA) services. She was notified by the Division of Senior and Disability Services (“Division”) that she was eligible for 1.75 hours of PCA services for toilet use¹ and laundering.² Ms. X-T appealed this decision by a letter dated December 20, 2014. A hearing was held on February 6, 2015 and was continued to February 12, 2015. Ms. X-T was assisted at the hearing by her daughter, Q (D) S. X-T, who also testified on her behalf. A Samoan interpreter also assisted Ms. X-T at these hearings. Ms. Terri Gagne represented the Division, while Angie Fey-Merritt and Scott Chow appeared at the first hearing on the Division’s behalf.³ At the second hearing, Geetha Samuel, the nurse assessor in this case, and Angie Fey-Merritt appeared on behalf of the Division. All parties appeared telephonically.

The record was held open until February 23, 2015. The Division submitted additional medical and physical therapy records to Ms. X-T that had been relied upon by the Division’s nurse assessor. Ms. X-T was given the opportunity to submit responsive information or argument related to such records, but did not do so.

Based upon the evidence presented, the Division’s initial assessment of Ms. X-T’s needs is upheld in part and reversed in part. The Division is directed to provide Ms. X-T with additional PCA services in accordance with this decision.

Although Ms. X-T testified that her condition worsened after surgery on January 7, 2015,⁴ this change in her condition occurred after the issuance of the Division’s denial letter. Because this occurred after the denial letter, this is beyond the scope of this hearing.

¹ Toilet use is an activity of daily living (ADL). See 7 AAC 125.030(b)(6).

² Laundry is an independent activity of daily living (IADL). See 7 AAC 125.030(c)(4).

³ Neither Ms. Fey-Merritt nor Mr. Chow testified at the first hearing.

⁴ Testimony of Ms. X-T.

II. Facts

T X-T is a 48-year-old female who lives with her spouse and other family members.⁵ She suffers from moderate obstructive sleep apnea, gout, obesity, osteoarthritis, hypertension, depression, esophageal reflux, and mixed hyperlipidemia.⁶ She also has reported that she has persistent pain in her legs, back, and arms.⁷ Medical records corroborated Ms. X-T's testimony that she suffers from persistent pain in her knees, lower back, and more recently has had some neck pain.⁸

On November 18, 2014, registered nurse Geetha Samuel conducted an assessment of Ms. X-T on behalf of the Division, the results of which were recorded on the Division's Consumer Assessment Tool (CAT).⁹ At the time of her assessment, Ms. X-T reported arthritis, back pain, and leg pain.¹⁰ Medical records substantiated that Ms. X-T had been suffering from back pain and knee pain for quite some time.¹¹

In October of 2014, Ms. X-T began physical therapy for pain in her lower back due to lumbar spondylosis and lumbar degeneration.¹² The plan for physical therapy was that Ms. X-T would attend physical therapy three times a week for 12 weeks.¹³ Ms. X-T began her physical therapy sessions began on October 7, 2014 and continued through November 4, 2014,¹⁴ attending a total of six physical therapy sessions.¹⁵ She either cancelled or was a "no show" at an additional six physical therapy sessions.¹⁶

Ms. X-T's medical records confirmed that she has experienced neck pain on an intermittent basis prior to her CAT assessment.¹⁷ However, when Ms. X-T had physical therapy from October 7 through November 4, 2014, there is no reference in the physical therapy notes of

⁵ Ex. E, at p. 1.

⁶ Ex. E, at p. 3.

⁷ Ex. C, at p. 2.

⁸ Testimony of Ms. X-T; *see also* Ex. E; Ex. F, at pp. 12, 16 & 18; Ex. C at p. 11.

⁹ Ex. E, at p. 1; Testimony of Ms. Samuel.

¹⁰ Ex. E, at pp. 3-4, 8 & 21; *see also* Testimony of Ms. Samuel.

¹¹ Ex. F, at pp. 4-5, 7-10, 13-16, 18-21, 25, 28, 31, 34, 37, 39-40, 42-43.

¹² Ex. F, at p. 24.

¹³ Ex. F, at p. 29.

¹⁴ Ex. F, at p. 45.

¹⁵ Ex. F, at p. 45.

¹⁶ Ex. F, at p. 45.

¹⁷ Ex. F, at pp. at 3, 12 & 18. The physical therapy records indicate that Ms. X-T "occasionally is not able to ambulate or perform transfers independently" and further noted that she "is unable to stand for more than 10 minutes without 10/10 pain." *See* Ex. F, at p. 28.

any neck pain or any problems with her arms or hands at that time.¹⁸ Similarly, medical records for Ms. X-T in October of 2014 do not reference neck pain or any difficulties with her hands.¹⁹ The CAT likewise does not mention that Ms. X-T complained about neck pain²⁰ and Ms. Samuel testified that Ms. X-T did not report any pain or issues with her neck or hands at the assessment.²¹ At a visit to her physician on November 25, 2014, one week after her assessment, Ms. X-T again primarily complained of knee pain and low back pain.²² The medical records for the November 25, 2014 visit noted that Ms. X-T did “not have a lot of neck pain,” but had been having “numbness and tingling in her hands” and “maybe . . . has a little difficulty with fine motor skills.”²³

On December 4, 2014, Ms. X-T had an MRI of her cervical spine which showed “mild diffuse discogenic degenerative disease with central canal stenosis.”²⁴ Ms. X-T’s physician recommended on December 18, 2014, that she have surgery to address her recently diagnosed cervical spinal stenosis.²⁵ Ms. X-T had surgery on January 7, 2015, consisting of a C3/4 anterior cervical decompression fusion with a C3/C7 Posterior Cervical Laminoplasty.²⁶ At the time of the first hearing, Ms. X-T was approximately four weeks post-surgery.²⁷ She testified at the hearing that her hands were worse after the surgery.²⁸ Both hands, she said, were numb and she could not brush her teeth or comb her hair because her fingers were numb as a result of the surgery.²⁹

The Division sent Ms. X-T a denial letter on December 11, 2014, based on the November 18, 2014 assessment.³⁰ The Division’s letter found that Ms. X-T was eligible for 1.75 hours of PCA services in two areas: toilet use,³¹ an activity of daily living (ADL), and laundry in the

¹⁸ Ex. F, at pp. 24-44.

¹⁹ Ex. F, at pp. 20-21.

²⁰ See Ex. E.

²¹ Testimony of Ms. Samuel.

²² Ex. C, at p. 11.

²³ Ex. C, at p. 11.

²⁴ Ex. C, at p. 13.

²⁵ Ex. C, at p. 4.

²⁶ Ex. C, at p. 15.

²⁷ See Ex. F, at p. 15.

²⁸ Testimony of Ms. X-T.

²⁹ Testimony of Ms. X-T.

³⁰ See Ex. D.

³¹ Ex. D, at p. 6. The Division found Ms. X-T eligible for 84 minutes per week of PCA services for toilet use, consisting of six minutes of PCA time twice a day.

home,³² an instrumental activity of daily living (IADL).³³ This appeal ensued. During the appeals process, Ms. X-T requested PCA services for the ADLs of transfer, personal hygiene, bathing, dressing, eating, locomotion, and asked for additional PCA time for toileting.³⁴ Ms. X-T also requested PCA services for the IADLs of light meal preparation, main meal preparation, and additional time for the IADL of laundry. In addition, Ms. X-T requested PCA services for taking her medications and medical escort.³⁵

Ms. X-T's testimony and prior statements in her request for an appeal were often contradicted by her medical records, the physical therapy notes, and Ms. Samuel's observations at the CAT assessment. For example, Ms. X-T stated in her appeal letter that she urinated on her bed and soaked her clothes because she was in too much pain to get up to go to the bathroom.³⁶ She testified similarly at the hearing.³⁷ D X-T also testified that her mother sometimes urinates in her bed if she does not have assistance to help her get out of bed.³⁸ However, Ms. X-T's medical records reported "no bowel or bladder problems"³⁹ and the CAT contained no mention of incontinence problems.⁴⁰

Ms. X-T's physical therapy notes, which covered the period from October 4, 2014 through November 7, 2014, largely corroborated the assessment. Although Ms. X-T told the physical therapist that she "occasionally is not able to ambulate or perform transfers independently,"⁴¹ Ms. X-T was able to do approximately 60 minutes of aquatic therapy, including walking in water for 15 minutes.⁴² Physical therapy notes, dated October 29, 2014, stated that Ms. X-T reported that she wakes up 5-6 times a night and "has to change positions," but said nothing about Ms. X-T requiring assistance to do that.⁴³ Other medical

³² Ex. D, at p. 6.

³³ Ex. D, at p. 6.

³⁴ Ms. X-T's daughter, D X-T, assisted Ms. X-T at the hearing, and she requested PCA services for the ADL of locomotion and toileting on behalf of her mother.

³⁵ D X-T, who assisted Ms. X-T at the hearing, requested PCA time for medical escort on behalf of her mother.

³⁶ Ex. C, at p. 2; *see also* Ex. E, at p. 23.

³⁷ Testimony of Ms. X-T.

³⁸ Testimony of D X-T.

³⁹ Ex. C, at p. 4.

⁴⁰ Ex. E, at p. 23.

⁴¹ *See* Ex. F, at p. 28.

⁴² *See* Ex. F, at pp. 32, 35, 38, 40 & 43.

⁴³ Ex. F, at p. 39.

records during this time period describe Ms. X-T as moving with a cane or a walker,⁴⁴ and say nothing about her needing assistance with transfers.⁴⁵

Ms. X-T also testified that she could not pick up anything with her right or left hand and thus could not feed herself.⁴⁶ She further stated that she has been unable to feed herself for the past two or three years and has been unable to take off her clothing or shoes for the past two or three years. In addition, Ms. X-T testified that she could not raise her arms above her head, and could not push her walker on her own.⁴⁷ This testimony was likewise contradicted by Ms. X-T's medical records, physical therapy records, and the CAT.⁴⁸ For example, Dr. F reported on November 25, 2014 that Ms. X-T "has been using a walker to get around."⁴⁹ Similarly, Dr. C's office reported on July 24, 2014 that Ms. X-T "is using a walker today."⁵⁰

Based on the record, Ms. X-T has overstated her care needs at the time of the Division's denial.⁵¹ Although Ms. X-T's condition may have worsened since that time based on her testimony, this appeal only focuses on Ms. X-T's eligibility for PCA services at the time of the Division's denial letter, which was issued on December 11, 2014.

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[. ^{52]}

The Division uses the CAT to help it assess the level of assistance needed.⁵³ The goal of the assessment process is to determine the level of physical assistance that an applicant requires in order to perform their ADLs and IADLs.⁵⁴ The CAT numerical coding system has two

⁴⁴ Ex. F, at pp. 8, 18 & 20.

⁴⁵ Ex. F, at pp. 3-22.

⁴⁶ Testimony of Ms. X-T.

⁴⁷ Testimony of Ms. X-T.

⁴⁸ See Ex. C, at p. 1; Ex. F, at p.16; & Ex. F, at p. 39(October 29, 2014 physical therapy notes stating that Ms. X-T "occasionally is not able to ambulate . . . independently").

⁴⁹ Ex. C, at p. 1.

⁵⁰ Ex. F, at p. 16.

⁵¹ Compare Testimony of Ms. X-T, Testimony of D X-T; & Ex. C at pp. 2-3 with Ex. C, at p. 11; Ex. E, at pp. 3-29; & Ex. F.

⁵² See 7 AAC 125.010(a).

⁵³ 7 AAC 125.020(b).

⁵⁴ See 7 AAC125.010(a).

components: a self-performance code⁵⁵ and a support code.⁵⁶ The CAT's "self-performance" codes rate how capable a person is with regard to performing a particular ADL⁵⁷ or IADL.⁵⁸ The CAT's "support" codes rate the degree of assistance that a person requires for a particular ADL⁵⁹ or IADL.⁶⁰

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If the person requires some degree of hands-on physical assistance with any *one* of the specific ADLs⁶¹ of transfers, locomotion, eating, toilet use, dressing, or bathing, **or** any *one* of the specific IADLs⁶² of meal preparation (either light or main meals), housework (either light or routine housework), grocery shopping, or laundry, then the person is eligible for PCA services. However, if a person is independent or only requires non-hands-on assistance (oversight, supervision, cueing, and set-up) with all of these specific ADLs and IADLs, then the person is not eligible for PCA services, regardless of whether he or she may require hands-on physical assistance with the ADLs or IADLs other than the specific ones used to determine eligibility.⁶³

⁵⁵ See Ex. D, at pp. 1-2.

⁵⁶ See Ex. D, at pp. 1-2.

⁵⁷ With regard to ADLs, the possible self-performance codes are: **0** (person is independent and requires no help or oversight); **1** (person requires supervision); **2** (person requires limited assistance); **3** (person requires extensive assistance); **4** (person is totally dependent); **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days). See Exhibit D, at p. 2; see also Ex. E, at pp. 6-11.

⁵⁸ The self-performance codes for IADLs are slightly different from the ADL self-performance codes. With regard to IADLs, the self-performance codes are: **0** (independent either with or without assistive devices – no help provided); **1** (independent with difficulty; the person performed the tasks, but did so with difficulty or took a great amount of time to do the task); **2** (assistance/done with help – the person was somewhat involved in the activity, but help in the form of supervision, reminders, physical assistance was provided); **3** (dependent/done by others – the person is not involved at all with the activity and the activity is fully performed by another person); and **8** (activity did not occur within the past seven days). See Ex. D, at p. 2; see also Ex. E, at p. 26.

⁵⁹ The support codes for the ADLs are: **0** (no set-up or physical help); **1** (set-up help only); **2** (one-person physical assist); **3** (two+ persons physical assist); **5** (cueing); and **8** (activity did not occur). See Ex. D, at p. 2; see also Ex. E, pp. 6-11.

⁶⁰ The support codes for the IADLs are slightly different from the ADL support codes. With regard to IADLs, the support codes are: **0** (no support provided); **1** (supervision/cueing provided); **2** (set up help only); **3** (physical assistance was provided); **4** (total dependence – person not involved); and **8** (activity did not occur). See Ex. D, at p. 2; see also Ex. E, at p. 26.

⁶¹ 7 AAC 125.020(a). "Limited Assistance" – the minimum hands-on physical assistance standard applicable to ADLs – is a situation in which the recipient, although "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." See 7AAC 125.020(a)(1).

⁶² 7 AAC 125.020(a). "Independent with Difficulty" – the minimum hands-on physical assistance standard applicable to IADLs -- is defined in AAC 125.020(a)(4) as a situation in which the "the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it." If a potential recipient's IADL self-performance score is a "1" – *i.e.*, independent with difficulty – then the support code must be a "3" or a "4" in order for the person to receive PCA services. See Ex. B, at p. 34.

⁶³ See Ex. E, at p. 31 (part of the CAT, adopted by reference in 7 AAC 125.02(a)(1) and 7 AAC 160.900).

B. Ms. X-T's Assessment

The assessment, as recorded on the CAT, found Ms. X-T to be independent (code of 0/0) with regard to the ADLs of body mobility, locomotion, eating, and personal hygiene.⁶⁴ The CAT concluded that Ms. X could perform the ADLs of transfers, dressing, and bathing with supervision and set-up held only (code of 1/1).⁶⁵ With regard to the ADL of toilet use, the CAT determined that Ms. X-T needed limited assistance and a one-person physical assist (code of 2/2), but only allowed her to receive PCA assistance twice a day to use the toilet.⁶⁶

With regard to the covered service of medication, the CAT assessment stated that Ms. X-T did not prepare her medications but did self-administer them (code of 4).⁶⁷ The CAT assessment also stated that Ms. X-T needed transportation to medical and dental appointments, but did not need medical escort to such appointments.⁶⁸

Because this is a denial of an initial request for PCA services, Ms. X-T bears the burden of proof of establishing that she is eligible for PCA services.⁶⁹ She has also requested additional PCA time for the ADL of toilet use and the IADL of laundry, and likewise bears the burden of proof in showing that she needs such additional time.⁷⁰

1. ADLs

a. Transfers

The ADL of transfers involves moving between one surface and another, including to and from a bed, chair or wheelchair and moving from a lying or sitting position to a standing position.⁷¹ Ms. X-T testified that she could not get out of bed by herself, could not turn over, and could not get out of a chair by herself.⁷² In her appeal letter dated December 20, 2014, she said that she could not transfer herself because her arms felt numb, and because of back pain.⁷³

The CAT and Ms. Samuel in her testimony portrayed a much different situation. The CAT reported that Ms. X-T could move about in her bed independently and could turn

⁶⁴ See Ex. E, at pp. 6, 7, 9, & 10.

⁶⁵ See Ex. E, at pp. 6, 8 & 11.

⁶⁶ See Ex. D, at p. 6; see also Ex. E, at p. 9.

⁶⁷ Ex. E, at p. 20.

⁶⁸ Ex. E, at p. 26.

⁶⁹ 7 AAC 49.135.

⁷⁰ 7 AAC 49.135.

⁷¹ 7 AAC 125.030(b)(2).

⁷² Testimony of Ms. X-T.

⁷³ Ex. C, at p. 2.

slowly, sit up in bed and reposition without any hands on assist.⁷⁴ According to CAT, Ms. X-T was able “to move to and from lying position, turn side & reposition slowly when in bed and when seated.”⁷⁵ Furthermore, Ms. Samuel testified that Ms. X-T was able to get up by herself from her bed by herself, although she took a long time and experienced pain.⁷⁶ Ms. Samuel testified that she confirmed her observations at the CAT by calling Ms. X-T’s physical therapist, who “verified that Ms. X-T is able to transfer independently in the home.”⁷⁷

Ms. X-T has not met her burden of proof for showing that she needs PCA services for transfers. To the extent that Ms. X-T’s condition has changed since December 11, 2014, she should file a change in information form.⁷⁸

b. Personal Hygiene

The ADL of personal hygiene encompasses combing hair, brushing teeth, shaving, washing/drying face and hands, and shampooing hair, if done separately from bathing.⁷⁹ Ms. X-T testified that she needed assistance with personal hygiene because she could not hold a comb, a brush, or a toothbrush.⁸⁰ However, Ms. X-T also testified that her hands were worse *after* she had neck surgery on January 7, 2015,⁸¹ several weeks after she received the Division’s denial letter.

The CAT relates that Ms. X-T told the nurse assessor, Ms. Samuel, that she was able to do her personal hygiene independently.⁸² Ms. Samuel also observed during the assessment that Ms. X-T had pincer grips, fine motor skills and strong grips.⁸³ Ms. X-T’s medical records prior to the time of the assessment made no mention of Ms. X-T having difficulty with her fine motor skills or grip.⁸⁴ A medical record written a week after the

⁷⁴ Ex. E, at p. 6.
⁷⁵ Ex. E, at p. 6.
⁷⁶ Testimony of Ms. Samuel.
⁷⁷ Ex. E, at p. 6
⁷⁸ See 7 AAC 125.028.
⁷⁹ See 7 AAC 125.030(b)(7).
⁸⁰ Testimony of Ms. X-T.
⁸¹ Testimony of Ms. X-T.
⁸² Ex. E, at p. 10.
⁸³ Ex. E, at p. 10.
⁸⁴ See Ex. F, at pp. 3-21.

assessment merely observed that Ms. X-T “*maybe* has a little difficulty with fine motor skills”⁸⁵

Consequently, Ms. X-T has not met her burden of proof in establishing that she needs PCA services for personal hygiene.

c. Bathing

The ADL of bathing refers to the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower.⁸⁶ Ms. X-T reported that she isn’t able to transfer her legs in and out of the shower by herself.⁸⁷ By contrast, the CAT states that the nurse assessor had observed Ms. X-T lift each leg over the tub.⁸⁸

Ms. X-T also testified that she needed assistance with shampooing her hair and bathing because she could not move her hands.⁸⁹ However, medical evidence in the record merely noted that Ms. X-T may have a “little bit of difficulty with fine motor skills.”⁹⁰ In addition, Ms. Samuel testified that Ms. X-T never complained about her hands during the assessment.⁹¹ Ms. Samuel also testified that Ms. X-T had brought her hands to her head while seated on her walker, raised her right hand to point to paperwork, and had raised her left hand above her head while seated on the toilet during the assessment.⁹² Furthermore, Ms. Samuel testified that she called Ms. X-T’s physical therapist as part of the assessment process and the therapist confirmed that Ms. X-T could raise her arms, although she experienced pain while doing that.⁹³

Ms. Samuel’s testimony was credible. Accordingly, Ms. X-T has not met her burden of proof in establishing that she is eligible for PCA services for the ADL of bathing.

d. Dressing

The ADL of dressing involves the donning, fastening, unfastening, and the removal of the recipient’s street clothing, support hose, or prosthesis.⁹⁴ At the hearing, Ms. X-T testified that she could not button her clothes or remove her shoes and had been unable to do

⁸⁵ Ex. C, at p. 11 (emphasis added).

⁸⁶ Ex. B, at p. 6.

⁸⁷ Ex. E, at p. 11.

⁸⁸ Ex. E, at p. 11.

⁸⁹ Testimony of Ms. X-T.

⁹⁰ Ex. C, at p. 11.

⁹¹ Testimony of Ms. Samuel.

⁹² Testimony of Ms. Samuel.

⁹³ Testimony of Ms. Samuel.

⁹⁴ 7 AAC 125.030(b)(4).

so for the past three years.⁹⁵ Neither the assessment nor the medical and physical therapy records corroborated this testimony.⁹⁶ Moreover, Ms. X-T asked for a letter from her doctor on June 24, 2014 releasing her to return to work⁹⁷ and the only medical condition mentioned in those records were her back and knee pain.⁹⁸ Accordingly, Ms. X-T has not met her burden of proof in establishing that she needs PCA assistance with this particular ADL.

e. Eating

Ms. X-T asked for PCA services for the ADL of eating, claiming that she cannot feed herself because she is unable to use her hands.⁹⁹ She further testified that her daughter has been assisting her with the ADL of eating for three years.¹⁰⁰ None of Ms. X-T's medical records corroborated her testimony that she has been unable to feed herself for the past three years because she could not use her hands.¹⁰¹

Ms. Samuel provided credible testimony that Ms. X-T had no complaints about her hands at the assessment.¹⁰² Ms. Samuel also observed that Ms. X-T's grip and handshake were strong.¹⁰³ Moreover, the CAT specifically notes that Ms. X-T reported that she could eat independently with her right hand, has no difficulty swallowing, uses regular utensils, and does not need assistance with the task of eating.¹⁰⁴ Ms. X-T did not, therefore, meet her burden of proof in establishing that she needs PCA services for the ADL of eating.

f. Locomotion

At the hearing, Ms. X-T requested PCA services for locomotion, testifying that she could not walk without assistance.¹⁰⁵ D X-T also testified that her mother needed to be assisted with the ADL of locomotion and stated that her mother was unable to walk using a cane.¹⁰⁶

⁹⁵ Testimony of Ms. X-T.

⁹⁶ See Ex. E, Ex. F, & Ex. C, at pp. 4-11.

⁹⁷ Ex. F, at p. 15.

⁹⁸ Ex. F, at p. 15.

⁹⁹ Testimony of Ms. X-T.

¹⁰⁰ Testimony of Ms. X-T.

¹⁰¹ See Ex. F, at pp. 3-21; see also Ex. C, at pp. 4-11.

¹⁰² Testimony of Ms. Samuel.

¹⁰³ Testimony of Ms. Samuel; see also Ex. E, at p. 9.

¹⁰⁴ Ex. E, at p. 9.

¹⁰⁵ Testimony of Ms. X-T.

¹⁰⁶ Testimony of D X-T.

Medical records specifically stated that Ms. X-T was using a cane at her medical appointment on August 7, 2014.¹⁰⁷ Ms. Samuel, the Division's witness, testified that Ms. X-T was able to walk independently in her home using her walker, although she walked slowly.¹⁰⁸ Ms. Samuel also testified that at one point during the assessment, Ms. X-T lifted up the walker to avoid some objects on the floor.¹⁰⁹ As part of the assessment, Ms. Samuel and her supervisor also spoke with Ms. X-T's physical therapist.¹¹⁰ The physical therapist told Ms. Samuel that Ms. X-T couldn't walk long distances but said that Ms. X-T had walked independently into the office using her walker.¹¹¹ Moreover, the physical therapy notes showed that Ms. X-T was doing walking exercises in the water.¹¹²

Ms. Samuel's testimony was credible and was corroborated by medical and physical therapy records.¹¹³ Consequently, Ms. X-T has failed to meet her burden of proof in establishing she needs PCA services for locomotion.

g. Toilet Use

The IADL of toileting includes moving to and from the toilet, commode, bedpan, or urinal; transfers on and off a toilet or commode; and general hygiene care of a colostomy, ileostomy, or external catheter.¹¹⁴ The Division found that Ms. X-T needed limited assistance and a one-person physical assist with this ADL (code 2/2).¹¹⁵ Ms. X-T did not challenge this finding. However, the Division has only allowed Ms. X-T assistance twice a day for the ADL of toileting.¹¹⁶ Ms. X-T testified that she soils herself three or four days a week because there is nobody to assist her sometimes when she needs to use the toilet.¹¹⁷ D X-T testified that her mother uses the toilet from four to six times a day,¹¹⁸ and her testimony in this regard was credible because it was consistent with the daily toilet use of an adult. Ms. X-T has, therefore, met her burden of proof in establishing that she needs additional PCA services for toileting each day. Consequently, the Division's decision

¹⁰⁷ Ex. F, at p. 18.

¹⁰⁸ Testimony of Ms. Samuel.

¹⁰⁹ Testimony of Ms. Samuel; *see also* Ex. E, at p. 7.

¹¹⁰ Testimony of Ms. Samuel.

¹¹¹ Testimony of Ms. Samuel; *see also* Ex. E, at p. E.

¹¹² *See* Ex. F, at pp. 32, 3538, 40 & 43.

¹¹³ *See* Ex. F, at pp. 16, 18, 32, 35, 38, 40 & 43; *see also* Ex. C, at p. 11.

¹¹⁴ 7 AAC 125.030(b)(6).

¹¹⁵ Ex. D, at p. 6.

¹¹⁶ Ex. D, at p. 6.

¹¹⁷ Testimony of Ms. X-T; *see also* Ex. C, at p. 2.

¹¹⁸ Testimony of D X-T.

concerning toilet use is reversed and the Division is directed to provide Ms. X-T with PCA services for toileting six times a day.

2. IADLs

The CAT noted that Ms. X-T's husband is receiving chore/waiver services in the home.¹¹⁹ Chore services include cleaning, food preparation and shopping.¹²⁰ The Division, as per its regulations, is not permitted to provide PCA services for IADLs when there are other PCA recipients in the home who are receiving home and community based waiver services.¹²¹ Consequently, Ms. X-T is not eligible for PCA services with regard to cleaning and shopping because her husband is receiving those services from the Division.

a. Laundry

The IADL of laundry is defined as changing the recipient's bed linens and the in-home or out-of-home laundering of a recipient's bed linens and clothing.¹²² Ms. Fey-Merritt on behalf of the Division testified that Ms. X-T was eligible for PCA services for the IADL of laundry even though her husband was receiving PCA services of various IADLs under a chore/waiver.¹²³ Ms. X-T testified that she soils herself three to four times a week.¹²⁴ Her daughter, D X-T, testified that Ms. X-T needed more time for PCA services for the IADL of laundry because of the need to change her bed linens due to Ms. X-T's incontinence.¹²⁵

Ms. Samuel, the nurse assessor, testified that she always asks about incontinence and bowel control at a CAT assessment.¹²⁶ Ms. Samuel further testified that Ms. X-T never mentioned to her that Ms. X-T was incontinent or had issues with bowel control.¹²⁷ In addition, Ms. Samuel testified that she had reviewed Dr. C's medical records for Ms. X-T, and had determined that Ms. X-T was not on any medications for incontinence.¹²⁸

Ms. Samuel's testimony was credible and corroborated by Ms. X-T's medical records.¹²⁹ Consequently, Ms. X-T has not met her burden of proof in establishing that she

¹¹⁹ Ex. E, at p. 2.

¹²⁰ See 7 AAC 130.245.

¹²¹ Ex. D, at p. 2; see also 7 AAC 125.050(a)(13).

¹²² 7 AAC 125.030(c)(4).

¹²³ Testimony of Ms. Fey-Merritt.

¹²⁴ Testimony of Ms. X-T.

¹²⁵ Testimony of D X-T.

¹²⁶ Testimony of Ms. Samuel.

¹²⁷ Testimony of Ms. Samuel; see also Ex. E, at p. 23.

¹²⁸ Testimony of Ms. Samuel; see also Ex. F, at pp. 3-21.

¹²⁹ See Ex. F, at pp. 3-21.

needs laundry service more than one time a week due to incontinence or a loss of bowel control.

b. Light Meal Preparation

The IADL of light meal preparation involves the preparation, serving, and clean-up in the recipient's home of any meal that is essential to meet the health needs of the recipient and that is not the main meal of the day.¹³⁰ The Division found that Ms. X-T could perform this task independently with difficulty, needing only set-up help (code 1/2).¹³¹

Ms. X-T testified that she needed PCA assistance with this IADL because she does not know how to use the microwave and does not know how to turn on the stove,¹³² but provided no other evidence to support of her request for PCA services for light meal preparation. Accordingly, Ms. X-T has not met her burden of proof in establishing her eligibility for PCA services for light meal preparation since she has only described a need for set-up help.

c. Main Meal Preparation

The IADL of main meal preparation means the preparation, serving, and clean-up in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient.¹³³ The Division found that Ms. X-T could perform this task independently with difficulty, needing only set-up help (code 1/2).¹³⁴ Ms. X-T testified that she cannot do main meal preparation because she does not know how to turn on the oven or the stove,¹³⁵ but provided no other evidence to support her request for PCA services for main meal preparation. Accordingly, Ms. X-T has not met her burden of proof in establishing her eligibility for PCA services for main meal preparation since she has only described needing set-up help for this IADL.

3. Other Covered Services

a. Medication

PCA services can be authorized for assisting the recipient with the administration of medication, if the task is performed by a personal care assistant working for a consumer-

¹³⁰ 7 AAC 125.030(c)(1).

¹³¹ See Ex. E, at p. 26.

¹³² Testimony of Ms. X-T.

¹³³ 7 AAC 125.030(c)(2).

¹³⁴ See Ex. E, at p. 26.

¹³⁵ Testimony of Ms. X-T.

directed personal care agency.¹³⁶ Ms. D X-T testified that her mother needed assistance in opening up medicine bottles because her fingers were tender and because Ms. X-T does not understand English.¹³⁷ 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.¹³⁸ Because Ms. X-T is not eligible for personal hygiene assistance as discussed above, she is similarly not eligible for medication assistance.

b. Medical Escort

D X-T testified that her mother, Ms. X-T, needed medical escort to physician appointments because Ms. X-T was unable to speak English.¹³⁹ Medical escort is defined as traveling with the recipient to and from a routine medical or dental appointment outside the recipient’s home **and** conferring with medical or dental staff during that appointment.¹⁴⁰ At the hearing, Ms. X-T testified that she could understand English, although she needed an interpreter in order to respond to questions.¹⁴¹ Ms. X-T presented no evidence that she needed somebody to accompany her to *confer* with medical or dental staff during the appointment. Consequently, Ms. X-T has not met her burden of proof in establishing that she is eligible for PCA time for medical escort.

V. Conclusion

The Division’s provision for Ms. X-T’s PCA services is upheld in part and reversed in part. As found above, Ms. X-T qualifies for limited assistance in toileting (self-performance code: 2) with a one-person physical assist (support code: 2) up to six times per day. The Division’s other findings are upheld.

DATED this 11th day of June, 2015.

Signed _____
Kathleen A. Frederick
Administrative Law Judge

¹³⁶ 7 AAC 125.030(d)(2).
¹³⁷ Testimony of D X-T.
¹³⁸ Ex. B, at p. 35; Ex. D, at p. 5.
¹³⁹ Testimony of D X-T.
¹⁴⁰ 7 AAC 125.030(d)(9)(emphasis added).
¹⁴¹ Testimony of Ms. X-T.

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 30th day of June, 2015.

By: Signed
Name: Kathleen A. Frederick
Title: Administrative Law Judge

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