

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

In the Matter of:)	
)	OAH No. 15-0103-MDS
W L)	Agency No.
_____)	

DECISION

I. Introduction

W L receives personal care assistance (PCA) services. On December 16, 2014, the Division of Senior and Disabilities Services (Division) assessed him to determine his continuing eligibility for those services. The Division then notified him that his PCA services would be reduced from 28.75 hours per week to 14 hours per week. Mr. L requested a hearing.

Mr. L’s hearing was held on May 12, 2015. He did not participate. He was represented by Q U, his daughter, who holds his power-of-attorney. X Y assisted. T L, who is his daughter and his PCA, testified. Victoria Cobo represented the Division. Sam Cornell, R.N., and Laura Baldwin testified on the Division’s behalf. Geetha Samuel, R.N., who performed the December 16, 2014 assessment, did not testify.

The Division has met its burden of proof and demonstrated by a preponderance of the evidence that Mr. L’s PCA services should be reduced. Its decision is affirmed, with two changes. The amount of time allowed for medical escort is increased from 1.73 minutes per week to 3.5 minutes per week, and he is to be provided with 30 minutes per week for prescribed foot care.

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

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

The Division uses the Consumer Assessment Tool, or “CAT”, as a methodology to score eligibility for the PCA program, and the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.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 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

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.*

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.

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).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

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.

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 as requiring extensive assistance (code of 3) with bathing, he or he 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

Mr. L is at least 66 years old.¹⁷ He lives with family. His diagnoses include cervicalgia, hypertension, diabetes, stage V kidney disease, depression, and dementia. He has refused dialysis treatment. He experiences incontinence and uses a cane.¹⁸

Mr. L was assessed on December 16, 2014 by nurse-assessor Geetha Samuel to determine his ongoing eligibility for PCA services. Based upon her visual observation, functional testing, and statements made by Mr. L, Ms. Samuel determined that Mr. L had a good range of motion, had a strong grip in both hands, could not raise his hands over his head, could not touch his hands behind his back, could not touch his feet from a sitting position, and was capable of performing transfers, locomotion, eating, and toilet use without requiring physical hands-on assistance.¹⁹ She further determined that he required limited hands-on physical assistance with locomotion to access medical appointments, dressing, personal hygiene, and bathing.²⁰ She determined that Mr. L was able to participate in, but still required some physical hands-on assistance, with light meal preparation, shopping, and laundry, and was dependent with preparing main meals and performing light housework.²¹ The Division also determined that Mr. L required 1.73 minutes of PCA assistance for medical escort based upon two yearly medical appointments per year, allowing 45 minutes for each appointment.²²

¹⁵ Ex. E, p. 31.

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 The birth year on Mr. L's identification is 1948. The family states that he was actually born in 1939. See Exh. E, p. 3.

¹⁸ Ex. E, pp. 1, 3; No Name Agency Records, May 7, 2015.

¹⁹ Ex. E, pp. 6 – 11, 18, 31.

²⁰ Ex. E, p. 4.

²¹ Ex. E, p. 26.

²² Ex. D, p. 10; Ex. E, p. 5.

On January 3, 2015, two and one-half weeks after the December 16, 2014 assessment visit and less than one week after the Division issued its December 29, 2014 benefit reduction letter, Ms. Samuels, the nurse-assessor, encountered Mr. L at Costco. She took three photographs of Mr. L at Costco.²³ Those three photos show (1) Mr. L standing in front of a baking display rack holding a package of muffins in his left hand and reaching for a package of muffins with the right hand; (2) Mr. L standing in front of that same display rack, leaning over to reach for a package of muffins with his right hand; he is not using his cane for support; it is leaning against the display rack; he is not holding onto the display rack for support with his left hand; and (3) squatting in front of the same display rack with his feet flat on the floor; he does not appear to be holding onto the display rack for support, and is not using his cane for support; his cane is leaning against the display rack. Those photos were taken some distance from Mr. L – there are no other persons shown in the photographs with the exception of one other person in photo (3) who is by casual estimation, at least 10 feet away.²⁴ It is undisputed that those photos are of Mr. L. Although Mr. L’s PCA testified that he was having an extremely good day when he was photographed, those photos are highly probative of Mr. L’s physical abilities at the time of the Division’s benefit reduction decision.

IV. Discussion

This case involves a reduction in PCA services. As a result, the Division has the burden of proof by a preponderance of the evidence to support that reduction.²⁵ Mr. L’s objections are addressed below.

1. Body Mobility

Mr. L was previously provided limited assistance (self-performance code of 2) with body mobility 42 times weekly. The Division eliminated that assistance in its entirety, based upon the assessor’s observations that he was ambulatory and he was able to move around in bed.²⁶ Mr. L’s PCA testified that he continues to require assistance with body mobility. However, as discussed below, Mr. L is ambulatory. A person who is ambulatory is not allowed to receive

²³ Mr. Cornell’s testimony.

²⁴ See photos in record.

²⁵ 7 AAC 49.135.

²⁶ Ex. D, p. 10; Ex. E, p. 6.

PCA assistance with body mobility.²⁷ The Division has therefore met its burden of proof on this point and established that PCA time for this task should be eliminated.

2. Transfers

Mr. L was previously provided limited assistance (self-performance code of 2) with transfers 42 times weekly. The Division eliminated that assistance in its entirety, based upon the assessor's observations that he was able to transfer without requiring hands-on physical assistance, and merely needed some supervision.²⁸ Mr. L's PCA testified that he needed weight-bearing hands-on physical assistance with transfers. However, the photos of Mr. L directly contradict her testimony, and corroborate the nurse-assessor's observations. Given those photos, which demonstrate an ability to stand, lean over, and move to a squatting position on the floor, with no one standing next to him to assist, it is more likely true than not true that Mr. L has the physical capability to transfer without needing hands-on physical assistance. Accordingly, PCA time for this task is eliminated.

3. Locomotion

Mr. L was previously provided limited assistance (self-performance code of 2) with locomotion 42 times weekly. The Division eliminated that assistance in its entirety, based upon statements made to the nurse-assessor and her observations during the assessment visit.²⁹ Mr. L's PCA testified that he needed weight-bearing hands-on physical assistance with locomotion.³⁰ However, the photos of Mr. L directly contradict her testimony, and corroborate the nurse-assessor's observations. Given those photos, which demonstrate an ability to stand, lean over, and move to a squatting position on the floor, with no one standing next to him to assist, it is more likely true than not true that Mr. L has the physical capability to walk, while using his cane for assistance, and does not require hands-on physical assistance when he walks. Accordingly, PCA time for this task is eliminated.

4. Locomotion – Medical Appointments

Mr. L was previously provided limited assistance (self-performance code of 2) with locomotion to access medical appointments 14 times weekly. The Division determined that he

²⁷ 7 AAC 125.030(b)(1)(A).

²⁸ Ex. D, p. 10; Ex. E, p. 6.

²⁹ Ex. D, p. 10; Ex. E, p. 7.

³⁰ Ms. L testified that she holds Mr. L up when he walks.

continued to require limited assistance, but reduced the frequency to twice weekly.³¹ As noted above, Mr. L's PCA testified that he needed weight-bearing hands-on physical assistance with locomotion.³² However, as noted above, the evidence shows that he does not require weight-bearing assistance for locomotion. And he has few medical appointments, his PCA having testified that he has quarterly medical appointments. The Division has therefore met its burden of proof and demonstrated that it is more likely true than not true that Mr. L should receive limited assistance twice weekly with locomotion to access his medical appointments.

5. Dressing

Mr. L was previously provided limited assistance (self-performance code of 2) with dressing 14 times weekly. The Division did not reduce this assistance.³³ Mr. L's PCA testified that he needed weight-bearing hands-on physical assistance with dressing. This is an increase in benefits, for which Mr. L has the burden of proof. However, given the photos of Mr. L with their demonstration of Mr. L's physical abilities, he has not met his burden of proof. The amount of dressing assistance remains unchanged.

6. Eating

Mr. L was not previously given assistance with eating. The Division did not provide him with eating assistance following the assessment, finding that he did not require any hands-on physical assistance.³⁴ Mr. L's PCA testified that he was completely dependent upon others for eating, stating that he had to be fed. This would be an increase in benefits, for which Mr. L has the burden of proof. However, given the photos of Mr. L with their demonstration of Mr. L's physical abilities – reaching for and holding items in both hands, while standing and squatting on the floor, he has not met his burden of proof. He is not eligible for PCA assistance for eating.

7. Toileting

Mr. L was previously provided limited assistance (self-performance code of 2) with toileting 42 times weekly. The Division eliminated that assistance in its entirety, based upon statements made to the nurse-assessor and her observations during the assessment visit.³⁵ Mr. L's PCA testified that he needed weight-bearing support with toileting. However, as found above, Mr. L can walk, transfer, and use his arms without requiring hands-on physical assistance.

³¹ Ex. D, p. 10; Ex. E, p. 7.

³² Ms. L testified that she holds Mr. L up when he walks.

³³ Ex. D, p. 10; Ex. E, p. 8.

³⁴ Ex. D, p. 10; Ex. E, p. 9.

³⁵ Ex. D, p. 10; Ex. E, p. 9.

The Division has therefore shown that it is more likely true than not true that Mr. L does not require hands-on physical assistance with toileting. He is therefore no longer eligible for PCA services with this task.

8. Bathing

Mr. L was previously provided extensive assistance (self-performance code of 3) with bathing 7 times weekly. The Division reduced that assistance to limited assistance (self-performance code of 2) 7 times weekly, based upon statements made to the nurse-assessor and her observations during the assessment visit.³⁶ Mr. L's PCA testified that he continued to need extensive assistance due to transfers and washing himself. However, as noted several times above, Mr. L demonstrably has a good range of motion and the ability to transfer. Limited assistance with bathing is the very maximum assistance he could possibly be eligible for. The Division has therefore shown that it is more likely true than not true that Mr. L requires, at the most, limited assistance with bathing. The Division's reduction of Mr. L's assistance with this task is upheld.

9. Instrumental Activities of Daily Living

Mr. L was previously determined to be completely dependent with regard to each IADL task (self-performance code of 3, support code of 4). The Division continued to provide assistance with each of his IADLs, but reduced the level of assistance provided for light meal preparation, shopping, and laundry.³⁷ Mr. L did not object to the reduction for shopping, agreeing that he could participate with shopping on a good day. However, his PCA testified that he was completely dependent, and totally unable to participate with light meal preparation, or laundry. However, as noted above, the Division's photographs demonstrate that he has an adequate range of motion, can hold things in his hands, and can stand. It is therefore more likely true than not true that he is no longer completely dependent in the tasks of light meal preparation and laundry. The Division's reduction of his benefits with these tasks is upheld.

10. Medical Escort

Mr. L was previously provided 3 minutes per week for medical escort services. This was reduced to 1.73 minutes per week. PCA medical escort is provided for transportation to routine

³⁶ Ex. D, p. 10; Ex. E, p. 11.

³⁷ Ex. D, p. 10; Ex. E, p. 26.

medical and dental appointments and for conferring with the doctor.³⁸ The Division's allocation of time was based upon Mr. L have only two medical appointments per year. It allowed 45 minutes of escort time for each medical appointment.³⁹ Based upon the PCA's testimony, 45 minutes of escort time per appointment continues to be appropriate. The PCA further testified that Mr. L has quarterly medical appointments. Given Mr. L's medical conditions, which include diabetes and stage V renal disease, it is probable that he has quarterly medical appointments. Allowing 45 minutes per appointment would result in 3.5 minutes per week of medical escort time,⁴⁰ rather than the 1.73 minutes provided by the Division. Accordingly, Mr. L's medical escort time should be increased to 3.5 minutes per week.

11. Prescribed Tasks

Mr. L was not previously allowed time for prescribed tasks of range of motion exercises, walking exercise, or foot care. There is a completed prescribed task form in the record which prescribes assistance with each of those tasks. It is dated July 9, 2014 and is for one year. The Division did not allow any time for these prescribed tasks The Division stated, in its December 29, 2014 benefit reduction letter, that it was not allowing time for range of motion exercises because no exercise plan was attached, and that it was not allowing time for walking exercise, because he could walk by himself.⁴¹

There is a requirement that there must be a range of motion exercise plan provided the Division as part of the prescribed task form: "[t]he [passive range of motion] exercise plan must be attached."⁴² The record does not contain such a plan. As a result, the denial of PCA services for range of motion exercises is upheld.

In order for a person to receive assistance with items such as walking exercise, they must both be prescribed and there must be a physical need for them.⁴³ As discussed above, the photos of Mr. L taken on January 3, 2015, demonstrate his physical capabilities. The denial of PCA services for walking exercise is therefore upheld.

³⁸ 7 AAC 125.030(d)(9).

³⁹ Ex. E, p. 5.

⁴⁰ 45 minutes per appointment, at 4 appointments per year, results in 180 minutes per year of allowable PCA time. When that is divided by 52 weeks, the result is 3.46 minutes per week.

⁴¹ Ex. D, pp. 4 – 5.

⁴² See July 9, 2014 Prescribed Task Form.

⁴³ 7 AAC 125.030(d)(5) and (e)(2); Ex. B, p. 36 (*Personal Care Assistance Service Level Computation*, adopted by reference in 7 AAC 160.900(d)(29)).

With regard to foot care, the Division's December 29, 2014 letter did not assert that Mr. L could perform foot care himself. Instead, it stated that foot care was already provided for under bathing and personal hygiene.⁴⁴ The PCA regulations allow for bathing, personal hygiene, and prescribed foot care. They do not state that allowance of time for bathing and/or personal hygiene precludes a person from receiving prescribed foot care.⁴⁵ Accordingly, foot care is allowed for the amount of time provided on the July 9, 2014 prescribed task form, 30 minutes per week.

V. Conclusion

The photographs taken of Mr. L on January 3, 2015, only two and one-half weeks after the Division's assessment visit, support the Division's reduction of Mr. L's PCA services. The Division's reduction of Mr. L's PCA services is therefore upheld with two changes: he should receive 3.5 minutes per week for medical escort, and 30 minutes per week for foot care.

DATED this 26th day of May, 2015.

Signed

Lawrence A. Pederson
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 June, 2015.

By: *Signed*

Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge, DOA/OAH

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

⁴⁴ Ex. D, p. 5.

⁴⁵ See 7 AAC 125.030 and 7 AAC 125.040.