

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

In the Matter of)	
)	
B K)	OAH No. 15-0137-MDS
<hr style="width:45%; margin-left:0"/>)	Agency No.

DECISION

I. Introduction and Summary

B K is a pleasant gentleman in his late thirties who has made an initial application for personal care assistant (PCA) services. After assessing him on December 18, 2014, the Division of Senior and Disabilities Services (Division) notified him eleven days later that his application would be denied. Mr. K requested a hearing. After several short delays to accommodate the parties, the full hearing on the merits took place on April 8, 2015.

Mr. K’s fundamental medical difficulty is obesity: He is 5’7” and his weight is well in excess of 500 pounds. This has made it quite painful and difficult for Mr. K to get around. Recognizing that this is a distressing and difficult problem to struggle with, at this time his caregivers believe he can and should do for himself the activities at issue for PCA eligibility. His present activities and the Division’s assessment show that this expectation is reasonable. This means he is not eligible for PCA services.

II. The PCA Service Determination Process

The Medicaid program authorizes PCA services for the purpose of providing “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”¹ Accordingly, “[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL.”²

The Division uses the Consumer Assessment Tool, or “CAT”, as a methodology to score eligibility for the PCA program, and the amount of assistance, if any, that an eligible person

¹ 7 AAC 125.010(a).

² 7 AAC 125.020(e). This regulation defines “cueing” as “daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity;” “setup” as “arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;” and “supervision” as “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” *Id.*

needs to perform ADLs, IADLs, and the other covered services.³ In general, if certain levels of assistance are required, the regulations prescribe a fixed number of PCA minutes per instance of that activity.

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If a person requires some degree of hands-on physical assistance with any one of the specific ADLs of transfers, locomotion, eating, toilet use, dressing, or bathing, or any one of the specific IADLs 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. If a person is independent or only requires non-hands-on assistance (oversight, supervision, cueing, setup) with all of these specific ADLs and IADLs, the person is not eligible for PCA services.⁴

PCA services can also be authorized for a few additional functions beyond direct performance of ADLs and IADLs, such as escort to medical appointments. These additional services are never available if the person has been determined to fall below the level for services in every one of the gateway ADL and IADL categories.⁵

III. Background Facts

B K weighed 580 pounds at the beginning of 2014 and more than 600 pounds in January of 2015. Weight is his primary medical challenge, although he also suffers from COPD. According to cardiologist L G, his heart is strong at this point.

Mr. K lives with his girlfriend and family in a two-story dwelling, with his bedroom downstairs and the dining location upstairs. He drives a car occasionally. About once a week he goes to No Name to do light weightlifting, calisthenics, and two or three minutes on a treadmill.

Mr. K moved to Alaska in June of 2014. He came by air, and was able to walk on and off the plane, although he used a cart for long distances.

On December 18, 2014, a Division nurse conducted an assessment visit with Mr. K. She concluded that he had good physical function, strength, and range of motion, and that although it was difficult and laborious for him to perform some ADLs and IADLs, he could accomplish them all without hands-on assistance.

³ See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

⁴ Ex. E, p. 31.

⁵ See *id.*

IV. Discussion

In this case, in which he is seeking a benefit he has not previously received, Mr. K has the burden to prove, by a preponderance of the evidence,⁶ facts that show he is eligible.⁷ Mr. K can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,⁸ including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review,⁹ which in this case is December 29, 2014.

A. ADLs

1. Bathing

Mr. K has contested the agency's assessment regarding only one ADL, that of bathing. The primary concern here, raised in the Areas of Disagreement (AOD) letter submitted on his behalf by No Name Services, is that he cannot reach his back. However, washing the back is not part of the ADL of bathing for purposes of determining PCA eligibility.¹⁰ The AOD letter admits that getting in and out of the bath presents only "minor difficulties." Mr. K clearly needs a chair to use in the shower, and this has been prescribed.¹¹

2. Other ADLs

Mr. K did not contest Nurse Samuel's conclusion that he is independent with the other ADLs. The AOD letter submitted on his behalf by No Name Services records a similar assessment.

B. IADLs

1. Meal Preparation

The issue with meal preparation is that there had been a concern about Mr. K climbing the stairs to the kitchen, because it had been thought that this could present a cardiac risk for him. Dr. G's determination that his heart is strong has allayed that concern.

⁶ Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

⁷ 7 AAC 49.135.

⁸ 2 AAC 64.290(a)(1).

⁹ See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

¹⁰ This is suggested by 7 AAC 125.030(b)(8), and is made clear by a notation on page 11 of the CAT, which has been adopted as a regulation in 7 AAC 160.900.

¹¹ Dr. X's notes indicated the chair prescription was given on January 6, 2015. However, according to his testimony, Mr. K has not yet obtained the chair.

2. *Laundry*

Testimony at the hearing showed that Mr. K cannot currently do laundry in the laundry area in his house (which is located on his level) because of clutter in the laundry room and because the way the machines are positioned leaves him inadequate room to maneuver. However, clearing or rearranging the laundry room to make it possible for him to do this chore would be considered “setup,” and would not qualify for PCA assistance. Moreover, if the home laundry area is not usable, Mr. K would still not qualify for assistance in this area unless he showed that he could not make his way to a laundromat. If he can drive and go to No Name, he can go to a laundromat.

3. *Housekeeping*

Nurse Samuel assessed that Mr. K can do housekeeping chores such as vacuuming, although it is difficult and slow for him to do so. It is clear that Mr. K would be short of breath at times doing housekeeping and would have to rest, but this alone does not qualify him for assistance. Nothing in the physical abilities he demonstrated prevents him from getting the task accomplished.

4. *Grocery Shopping*

Probably the most difficult of the gateway IADLs for Mr. K is grocery shopping. Testimony indicated that he currently waits in the car while shopping is done for him, because his knees hurt if he walks around the store. However, Mr. K did not prove that he cannot reasonably do this activity using an in-store scooter or other device.

V. Conclusion

Mr. K did not prove eligibility for PCA services. The decision of December 29, 2015 is affirmed.

DATED this 14th day of April, 2015.

Signed

Christopher Kennedy
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 1st day of May, 2015.

By: Signed _____
Name: Christopher M. Kennedy
Title: Administrative Law Judge

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