

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

In the Matter of)
)
 R J) OAH No. 15-0139-MDS
) Agency No.

DECISION

I. Introduction

R J applied for Personal Care Attendant (PCA) services.¹ The Division of Senior and Disabilities Services (“Division”) denied his application on December 31, 2014. Mr. J requested a fair hearing concerning the denial of his request for PCA services on January 12, 2015.

A hearing was held on April 14, 2015. Mr. J represented himself and testified on his own behalf. Dr. B N, Mr. J’s physician, and Ms. L M, the supervisor of Mr. J’s case manager at No Name Agency, also appeared as witnesses testifying on behalf of Mr. J. Victoria Cobo represented the Division, while C P and E V appeared as witnesses on behalf of the Division. The nurse assessor who performed the CAT is no longer with the Division and was not present at the hearing.

This decision concludes that Mr. J is eligible for PCA services due to his need for physical assistance in the area of main meal preparation. Therefore, the Division’s denial of his application is reversed in regard to main meal preparation, an instrumental activity of daily living (IADL). In addition, Mr. J is eligible for medical escort services for dental and medical appointments other than his appointments with Dr. B N.

II. Facts

Mr. J is a 48-year-old male who lives alone.² He has a history of severe Traumatic Brain Injury (TBI), complicated by a later mild TBI.³ After his request for PCA services, registered Nurse O T evaluated Mr. J’s need for PCA services on December 16, 2014, using the Consumer Assessment Tool (CAT).⁴ The Division’s CAT assessment rated Mr. J as being independent (code of 0/0) with regard to each rated activity of daily living (ADL)⁵ and further rated him as being able to perform all of his rated instrumental activities of daily living (IADLS)

¹ The exact date when Mr. J’s application for PCA services was submitted to the Division is not in the record.

² Ex. E, at p. 1.

³ Ex. E, at p. 3; Ex. F, at p. 3.

⁴ Ex. E.

⁵ Ex. D, at pp. 1-2; *see also* Ex. E, at pp. 6-20 & 23-26.

independently, albeit with difficulty (code of 1/2).⁶ Based on the results of this assessment, the Division concluded that Mr. J was not eligible for PCA services related to his rated ADLs – *i.e.*, transfer, locomotion, dressing, eating, toilet use, personal hygiene and bathing.⁷ The Division also concluded that Mr. J was not eligible for PCA services relating to the following IADLs – meal preparation (both light meal and main meal), shopping, light housework, and laundry.⁸ The Division awarded him no time for medical escort services, although the CAT indicated that he had a need for such services.⁹

After his appeal was filed, Mr. J’s case manager¹⁰ at No Name Agency and Ms. M filed a list of “Areas of Disagreement.”¹¹ This list stated that Mr. J needed PCA services for the IADLs of light meal preparation, main meal preparation, and grocery shopping, and that he also needed certain other covered services¹² – *i.e.*, medical escort¹³ and assistance with self-administered medication.¹⁴

Because this is an initial denial of a request for PCA services, Mr. J bears the burden of proof of establishing that he is eligible for PCA services for the IADLs of light meal preparation, main meal preparation, and grocery shopping and that he needs medical escort to physician appointments and assistance with his daily medication routine.¹⁵

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[. ¹⁶]

⁶ Ex. D, at p. 2; *see also* Ex. E, at pp. 27-30.

⁷ Ex. D, at pp. 1-2.

⁸ Ex. D, at p. 2.

⁹ Ex. E, at p. 27.

¹⁰ Ex. F, at p. 2; *see also* Testimony of L M.

¹¹ Ex. F., at p. 2.

¹² A covered service under the PCA program includes travel to and from routine medical appointments and conferring with medical or dental staff for routine medical or dental appointments. *See* 7 AAC 124.030(d)(9). Another covered service under the PCA program is assistance with self-administered routine oral medication, such as reminding the recipient and placing the medication within his reach. *See* 7 AAC 125.030(d)(8).

¹³ Ex. F, at p. 2.

¹⁴ Ex. F, at p. 2.

¹⁵ 7 AAC 49.135.

¹⁶ *See* 7 AAC 125.010(a).

The Division uses the CAT to help it assess the level of assistance needed.¹⁷ 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.¹⁸ Here, no ADLs were at issue.¹⁹

The CAT numerical coding system with regard to IADLs has two components: a self-performance code²⁰ and a support code.²¹ The CAT's "self-performance" codes rate how capable a person is with regard to performing a particular IADL.²² The CAT's "support" codes rate the degree of assistance that a person requires for a particular IADL.²³

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the IADLs. If the person requires some degree of hands-on physical assistance with any *one* of the specific IADLs²⁴ 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, or setup) with all of these IADLs, then the person is not eligible for PCA services, regardless of whether he or she may require hands-on physical assistance with the IADLs other than the specific ones used to determine eligibility.²⁵

B. Mr. J's Assessment

The Division on December 31, 2014 issued a letter stating that Mr. J did not qualify for PCA services²⁶ because he could perform all ADLs independently and could perform the IADLs

¹⁷ 7 AAC 125.020(b).

¹⁸ See 7 AAC125.010(a).

¹⁹ Compare Ex. E with Ex. F at p. 2.

²⁰ See Ex. D, at p. 2.

²¹ See Ex. D, at p. 2.

²² 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 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. 27.

²³ See Ex. E, at p. 27. The support codes for IADLS are: **0** (no support provided); **1** (supervision/cueing provided); **2** (set-up help provided); **3** (physical assistance was provided); **4** (total dependence – the person was not involved at all when the activity was performed); and **8** (activity did not occur).

²⁴ 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.

²⁵ See Ex. E, at p. 32 (part of the CAT, adopted by reference in 7 AAC 125.02(a)(1) and 7 AAC 160.900).

²⁶ See Ex. C, at p. 2.

independently, albeit with difficulty, and only required set up help.²⁷ Mr. J did not contest the Division’s findings that he could perform the ADLs without assistance,²⁸ so this is not an issue in this appeal. However, Mr. J appealed the Division’s determination that he did not need any PCA services whatsoever.²⁹

Mr. J maintains that he needs assistance with certain IADLs³⁰ -- *i.e.*, the IADLs of light meal preparation, main meal preparation, and grocery shopping.³¹ In addition, Mr. J has indicated that he needs two other covered services: medical escort and assistance with medication.³²

1. IADLs

a. Light Meal Preparation

The IADL of light meal preparation is the preparation, serving, and cleanup 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.³³ The Division found Mr. J “independent with difficulty,” needing set-up help only (CAT score 1/2).³⁴ However, Mr. J in his “areas of disagreement” tacitly disputed this scoring, requesting PCA assistance for light meal preparation.³⁵

Mr. J admitted that he could make light meals that simply required him to remove food from the refrigerator.³⁶ He also stated that he was able to chop vegetables, make a sandwich using cold cuts, make a breakfast or snack of cereal with milk, and remove and eat cheese or yogurt from the refrigerator.³⁷ Dr. N, his treating physician, also testified that Mr. J could prepare light meals so long as it did not involve use of heat-producing devices.³⁸ Accordingly, Mr. J did not meet his burden of proof in establishing that he needs PCA services with regard to the IADL of light meal preparation.

²⁷ See Ex. D, at pp. 1-2.

²⁸ Compare Ex. F, at p. 2 with Ex. E, at pp. 6-20.

²⁹ Ex. C, at p. 2; see also Ex. D, at pp. 1-2.

³⁰ Ex. F, at p. 2.

³¹ See Exhibit F, at p. 2 (“Areas of Disagreement”).

³² Ex. F, at p. 2.

³³ 7 AAC 125.030(c)(1).

³⁴ Ex. E, at p. 27.

³⁵ Ex. F, at p. 2.

³⁶ Testimony of R J.

³⁷ Testimony of R J.

³⁸ Testimony of Dr. B N.

b. Main Meal Preparation

The PCA regulations define the IADL of main meal preparation as the preparation, serving, and cleanup in the recipient’s home of one main meal per day that is essential to meet the health needs of the recipient.³⁹ The Division found Mr. J “independent with difficulty,” needing set-up help only (CAT score 1/2).⁴⁰ Mr. J, however, disputed this assessment.⁴¹

At the hearing, Mr. J’s physician, Dr. N, testified that Mr. J needed physical assistance for the IADL of main meal preparation because he could not safely prepare meals that involved the use of heat-producing equipment such as a toaster, microwave, stove, or oven.⁴² Dr. N testified that Mr. J had been treated by her for severe burns on his hands on multiple occasions because he was unaware that the burners on his stovetop were turned to “on”. She also stated that even if somebody were standing in the kitchen reminding Mr. J to turn off the burner or not touch the burner, he would forget this information immediately due to his TBI and still touch the hot burner.⁴³ Although Mr. J at one point in his testimony stated that if he had somebody telling him not to touch the stove, it *might* help him to remember,⁴⁴ he also said that if he is doing a task such as heating up food and somebody was giving him instructions at the same time, he probably could not process the instructions since he can only focus on one thing at a time due to his TBI.⁴⁵

Dr. N, who practices with the Providence Medical Group Brain Injury Services, was emphatic that Mr. J needs more than cuing or supervision – he actually needs somebody to operate the heat-producing equipment and electronic devices needed for main meal preparation.⁴⁶ Dr. N’s testimony was compelling and is given great weight because she is a physician who treats brain injuries and is Mr. J’s treating physician. Her testimony also was corroborated by other evidence in the record.⁴⁷ Furthermore, testimony from C P,⁴⁸ one of the Division’s witnesses, lent support to Dr. N’s assertion that Mr. J’s diminished cognitive capacity

³⁹ 7 AAC 125.030(c)(2).

⁴⁰ Ex. E, at p. 27.

⁴¹ See Ex. F, at p. 2.

⁴² Testimony of Dr. B N.

⁴³ Testimony of Dr. B N.

⁴⁴ Testimony of R J.

⁴⁵ Testimony of R J.

⁴⁶ Testimony of Dr. B N.

⁴⁷ Ex. F, at pp. 2-3.

⁴⁸ Testimony of C P. Ms. P admitted that the situation Dr. N and Mr. J described was analogous to situations involving elderly persons with dementia, who receive PCA services to assist them with meal preparation because of the safety risks.

due to his TBI prevents him from safely operating electronic kitchen devices and heat-producing equipment in the kitchen.⁴⁹

There was no testimony from the Division to rebut Dr. N's testimony that Mr. J could not safely use the oven, stove, microwave, or toaster. Although E V testified that Mr. J could obtain his main meals through Meals on Wheels, Mr. V admitted that Mr. J would still need to heat such meals.⁵⁰ Consequently, a score of 2/3 is appropriate in connection with the IADL of main meal preparation. Based on the evidence and testimony, Mr. J has met his burden of proof in establishing that his TBI requires him to have physical assistance with main meal preparation in order to avoid serious injury to himself.

c. Grocery Shopping

The PCA regulations define the IADL of grocery shopping as shopping in the vicinity of the recipient's residence for groceries and other household items required for the health and maintenance of the recipient.⁵¹ The Division found Mr. J to be "independent with difficulty", needing set-up help only (CAT score 1/2) with regard to this IADL. Mr. J disagreed with this assessment.⁵²

At the hearing, L M testified that Mr. J no longer drives; she also said that he has a rep payee who assists him in managing his finances.⁵³ However, her testimony did not establish that Mr. J needed physical assistance with grocery shopping.⁵⁴ Similarly, Dr. N expressed no concern regarding Mr. J's ability to do grocery shopping for himself. She said that Mr. J was able to pull things off the shelf on his own, although the math part of shopping was difficult for him.⁵⁵ Later in the hearing, Mr. J explained that he currently takes a bus to go grocery shopping and that he did not need assistance to get the items off of the shelves.⁵⁶ Mr. J described grocery shopping as being difficult for him because he has to pay for his food and then has to count the money he receives back from the cashier and he worries about not getting the right amount of money back.⁵⁷

⁴⁹ Testimony of Dr. B N.

⁵⁰ Testimony of E V. Heating up those meals typically would require a microwave, oven, or toaster oven and Dr. N was emphatic that Mr. J should not be allowed to operate such heat-producing devices.

⁵¹ 7 AAC 125.030(c)(5)(A).

⁵² See Ex. F, at p. 2.

⁵³ Testimony of L M.

⁵⁴ Testimony of L M.

⁵⁵ Testimony of Dr. B N.

⁵⁶ Testimony of R J.

⁵⁷ Testimony of R J.

Based on this testimony, the Division's 1/2 score for this IADL is appropriate.⁵⁸ Accordingly, Mr. J has not met his burden of proof in establishing that he is eligible for PCA services in regard to the IADL of grocery shopping.

2. Other Services

a. Medical Escort

PCA services are provided for travel with the recipient to and from a routine medical or dental appointment outside the recipient's home and conferring with medical or dental staff.⁵⁹ The CAT indicates that Mr. J needed: (1) arrangement for transportation to medical and dental appointments; (2) needed transportation to medical and dental appointments, and (3) needed escort to medical appointments. Inexplicably, the Division provided no PCA time to Mr. J for this task.⁶⁰

Mr. J at the hearing testified that he takes the bus to medical appointments but stated that he has difficulty remembering his appointments.⁶¹ Ms. M testified that Mr. J needed a medical escort because sometimes Mr. J has headed off to a medical appointment but then cannot remember where he is going.⁶² Dr. N at the hearing stated that she has been unable to schedule certain therapies for Mr. J because he can't remember to get to the appointments.⁶³ Dr. N also said Mr. J cannot understand the paperwork required for these other appointments and that unless Mr. J is given simple, clear directions accompanied by written instructions, he can't remember what occurred at the appointment.⁶⁴ Consequently, Dr. N felt that Mr. J needed a medical escort for his appointments with other physicians.⁶⁵

With regard to the appointments which Mr. J has with her, Dr. N testified that her office repeatedly reminds him about these appointments, and that she speaks in a way that Mr. J can understand and also provides him with clear, simple written instructions. Dr. N's concerns thus did not extend to Mr. J's appointments with her, but related to other medical appointments that he had or that she had scheduled for him.

⁵⁸ Ex. D, at p. 2.

⁵⁹ 7 AAC 125.030(d)(9).

⁶⁰ Nurse assessor O T no longer works for the Division and did not attend the hearing.

⁶¹ Testimony of R J

⁶² Testimony of L M.

⁶³ Testimony of Dr. B N.

⁶⁴ Testimony of Dr. B N.

⁶⁵ Testimony of Dr. B N; *see also* Ex. F, at p. 2.

Given Dr. N's status as Mr. J's treating physician and her expertise in brain injuries, her testimony is accorded great weight. Although there is no evidence in the record that Mr. J currently has other medical appointments besides his monthly appointments with Dr. N,⁶⁶ Dr. N testified that she would like to schedule additional therapies for him if he had medical escort.⁶⁷ If Mr. J does have medical appointments other than with Dr. N, he should supply the Division with a change of information form and request increased services.⁶⁸

b. Medication

PCA services may also be provided to assist a recipient in self-administering routine oral medications, eye drops, and skin ointment; such assistance may involve reminding the recipient and placing a medication within his reach.⁶⁹ Mr. J received a 0/1 score in connection with medication in the CAT.⁷⁰ Mr. J tacitly disagreed with the scoring, since he requested PCA services with regard to his medication because it is difficult for him to remember to take his daily medications.⁷¹

Testimony from Dr. N established that Mr. J only needed supervision with regard to taking his medication, not physical assistance.⁷² Mr. J's testimony similarly established that he simply needed somebody to remind him to take his medication, rather than having somebody physically administer his medication or place the medication within his reach.⁷³ Because Mr. J does not need physical assistance to take his medicine or put the medication within his grasp, he does not qualify for PCA services in connection with his medication. Accordingly, the Division's denial of PCA services in regard to this task is upheld.

IV. Conclusion

Mr. J has scored 2/3 with regard to the IADL of main meal preparation and thus is eligible for PCA services for this IADL. In addition, he is eligible for medical escort services in connection with his medical and dental appointments, other than his appointments with Dr. N. The Division's determination is, therefore, reversed as it pertains to the IADL of main meal

⁶⁶ Ex. E, at p. 5

⁶⁷ Testimony of Dr. B N.

⁶⁸ See 7 AAC 125.026(b)(1).

⁶⁹ 7 AAC 125.030(d)(8).

⁷⁰ Ex. E, at p. 21.

⁷¹ Testimony of R J; see also Ex. F, at pp. 2-3.

⁷² Testimony of Dr. B N.

⁷³ Testimony of R J.

preparation and medical escort service. In all other areas, the Division's determination that Mr. J is not eligible for PCA services is upheld.

DATED this 20th day of April, 2015

Signed _____
Kathleen A. Frederick
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 5th day of May, 2015.

By: *Signed* _____
Signature
Kathleen A. Frederick _____
Name
Chief Administrative Law Judge _____
Title

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