

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

In the Matter of:)	
)	OAH No. 15-0142-MDS
L L)	Agency No.
_____)	

DECISION

I. Introduction

L L was receiving personal care assistance (PCA) services when he was reassessed to determine his continued eligibility for those services in 2014. Based primarily on a reassessment visit on June 4, 2014, the Division of Senior and Disabilities Services (Division) issued a decision on December 16, 2014 notifying Mr. L that his PCA services would be terminated in their entirety. Some of the reduction resulted from regulatory changes since his prior assessment, or were related to what the Division perceived as functional improvements in Mr. L's condition. Mr. L requested a hearing.

Mr. L's hearing was held on May 1, May 11, and May 29, 2015. Mr. L was represented by C L. U L, Mr. L's wife, testified on his behalf. Gena O'Neal represented the Division at the May 1 hearing. Darcie Shaffer represented the Division at the May 11 and May 29 hearings. Sam Cornell, R.N., and Olga Ipatova testified for the Division.

At the May 11, 2015 hearing, the Division agreed that Mr. L is eligible for PCA services, which left the amount of PCA services in dispute. Based upon the evidence presented, Mr. L is to be provided limited PCA services as specified below.

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 items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;" and

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 some degree of 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 medical appointments, 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

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**

“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 an 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.

(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** (setup 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, p. 26.

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 she 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 67 years old. He lives with his wife and minor son. Mr. L was receiving PCA services per week based on a 2011 assessment. When Mr. L was assessed back in 2011, he had pain in his knee, poor balance, and walked with a cane. The 2011 assessment found that he required limited assistance to access medical appointments, and bathing, and that he required assistance with all of his IADLs.¹⁷ Mr. L was reassessed on June 4, 2014 to determine his ongoing eligibility for the PCA program, and his benefit level. That assessment found that he was independent with all of his ADLs and IADLs.¹⁸ Based upon the 2014 assessment, on December 16, 2014, the Division completely terminated Mr. L's PCA benefits.¹⁹

Mr. L had a substantial post-assessment change in his health in July 2014. He had an acute stroke, which resulted in him being hospitalized on July 25, 2014. He was discharged to a rehabilitation facility on July 30, 2014 with the following diagnoses: hyperlipidemia, uncontrolled type II diabetes, back pain, knee problems, osteoarthritis, hard of hearing, acute ischemic left middle cerebral artery stroke, dysphagia – oropharyngeal phase (swallowing issues), global aphasia, impaired mobility and activities of daily living, and hemiparesis – neglect of right side.²⁰ He was discharged to his home on August 6, 2014 with no change in his diagnoses.²¹

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 Ex. F, pp. 7, 11, 26.

¹⁸ Ex. E, pp. 6 – 11, 26.

¹⁹ Ex. D.

²⁰ Ex. 1, pp. 1 – 2 (Medical records filed on May 5, 2015).

²¹ Ex. 1, pp. 304 – 305.

Physical therapy notes dating from August 5, 2014, the day before Mr. L's discharge from the rehabilitation facility, indicate that he was independent with bed mobility and transfers, and was walking in his room.²² Mr. L's occupational therapy notes show that he required supervision and set up with grooming, dressing, toileting, and transfers. Those same occupational therapy notes indicate that setup and cueing are required for bathing, with a one person assist. Regarding IADLs, Mr. L's abilities were not measured; his abilities were limited because of "sequencing and problem solving."²³

At hearing, Mr. L was observed to be unable to express himself. It took quite some time to obtain his consent to his wife's representing him at hearing. While some of this may be attributable to the language difference,²⁴ it was clear that Mr. L has difficulty with understanding others and expressing his needs. Ms. L testified that Mr. L needed help four hours per day, five days a week, and that his doctors told her that he should be observed almost all the time due to his stroke risk.

IV. Discussion

When the Division is seeking to reduce or eliminate a benefit that a citizen is already receiving, the Division has the overall burden to prove, by a preponderance of the evidence,²⁵ facts that show the citizen's level of eligibility has changed.²⁶ In the context of PCA services, the showing required of the Division is that the recipient has had a "material change of condition."²⁷ The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,²⁸ 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.²⁹ In particular areas where a citizen seeks to increase services or add services that were not previously provided, the citizen has the burden of proof.³⁰

²² Ex. 1, pp. 350 – 354.

²³ Ex. 1, pp. 361- 364.

²⁴ Mr. L speaks Korean.

²⁵ Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

²⁶ 7 AAC 49.135.

²⁷ 7 AAC 125.026(a). This is a term of art that encompasses not only changes in the patient's situation, but also changes in regulations affecting the authorized level of services. See 7 AAC 125.026(d).

²⁸ 2 AAC 64.290(a)(1).

²⁹ 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>).

³⁰ 7 AAC 49.135.

The areas in dispute, which are each addressed below, are: bed mobility, transfers, locomotion, locomotion to access medical appointments, dressing, toileting, personal hygiene, bathing, all IADLs, medical escort, and medication assistance.

1. Bed Mobility

Bed mobility is defined as how a “person moves to and from lying position, turns side to side, and position body while in bed.”³¹ Ms. L testified that her husband needed to be pulled up to a sitting position in bed. However, the physical therapy notes state that Mr. L is independent with bed mobility. Because physical therapists specialize in assessing physical functionality and helping people to improve it, those notes are more persuasive than Ms. L’s testimony. It is therefore more likely true than not true that Mr. L is independent with body mobility.

2. Transfers

Transfers are defined as how a “person moves between surfaces,” such as from a sitting to a standing position.³² The physical therapy notes state that Mr. L is independent with transfers. Based upon these notes, it is more likely true than not true that Mr. L is independent with transfers.

3. Locomotion

Locomotion is the act of moving about in the home. It may involve the use of an assistive device such as a cane, walker, or a wheelchair.³³ Ms. L testified that her husband can walk, but that he has to be physically guided because it is dangerous for him due to his impaired vision. Mr. L was observed at hearing being physically guided while walking. However, the physical therapy notes state that Mr. L was walking in his room. It is understandable that there are safety concerns regarding Mr. L walking without any assistance. Ms. L’s testimony about the safety issues establishes a need for supervision and cueing, but not for physical assistance. In order to receive PCA service time, physical assistance must be required, not supervision and cueing. It is therefore more likely true than not true that Mr. L is not eligible for PCA services for locomotion.

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³¹ Ex. E, p. 6.

³² Ex. E, p. 6.

³³ Ex. E, p. 7.

4. Locomotion to Access Medical Appointments

Based upon the locomotion evidence in this case, as recited above it is more likely true than not true that Mr. L is not eligible for PCA services with locomotion to access his medical appointments.

5. Dressing

Dressing is how a “person puts on, fastens, and takes off all items of street clothing.”³⁴ Ms. L testified that Mr. L requires dressing assistance. However, Mr. L’s occupational therapy notes indicate that he required supervision and setup assistance, not physical assistance, with dressing. Based upon those notes, it is more likely true than not true that Mr. L is not eligible for PCA services with dressing.

6. Toileting

Toileting is a complex process that combines locomotion, transfers, dressing, and cleansing.³⁵ As found above, Mr. L does not require any assistance with locomotion, transfers or dressing. In addition, the occupational therapy notes indicate that Mr. L requires supervision and setup assistance, not physical assistance, with toileting. Accordingly, it is more likely true than not true that Mr. L is not eligible for PCA services with toileting.

7. Personal Hygiene and Medication Assistance

a. Personal Hygiene

Personal hygiene includes items such as combing/brushing hair, shaving, brushing teeth, applying makeup, washing/drying face/hands and perineum. It does not include bathing or showering.³⁶ The occupation therapy notes indicate that Mr. L is able to groom himself with supervision and setup assistance, not physical assistance. It is therefore more likely true than not true that Mr. L is not eligible for PCA services with personal hygiene.

b. Medication Assistance

Mr. L takes a variety of medications. Ms. L testified that he needed assistance with those. Ms. L’s testimony is credible. However, medication assistance is linked to the personal hygiene score. A person can only receive PCA services for medication assistance if he or she has a personal hygiene score of limited assistance (self-performance code of 2) or higher **and** requires some degree of assistance (scores of 1, 2, 4, 5, 6) with medication is eligible for

³⁴ Ex. E, p. 8.

³⁵ Ex. E, p. 9.

³⁶ Ex. E, p. 10.

medication assistance.³⁷ As found above, Mr. L only requires supervision/setup assistance (self-performance score of 1) with personal hygiene. As a result, even though he requires help with his medications, he is not eligible for PCA services for medication.

8. Bathing

Bathing involves transfers in and out of the tub or shower and the actual bathing process. It also includes sponge baths. It does not include washing a person's back or hair.³⁸ Mr. L was previously provided limited assistance (self-performance code of 2) with bathing due to a need for transfer assistance.³⁹ Ms. L testified that Mr. L required daily assistance with transferring in and out of the tub, and has to be soaped, but can rinse himself. Mr. L's occupational therapy notes indicate that he requires a one-person assist with bathing. While Mr. L was found to be independent with transfers above, given the specialized nature of transfers in and out of a tub, and the occupational therapy notes showing his need for a one-person assist, it is more likely true than not true that he requires a one-person physical assistance with transfers. However, given his other abilities, it is more likely true than not true that he is capable of bathing (soaping, rinsing) without assistance. The need for transfer assistance with bathing means that Mr. L should receive limited assistance (self-performance code of 2) with bathing seven days per week.

9. Instrumental Activities of Daily Living

Mr. L was previously provided 8.75 hours of PCA services with his IADLS (light meal preparation, main meal preparation, shopping, light housework, and laundry).⁴⁰ The occupational therapy notes state that Mr. L's IADL skills were limited because of "sequencing and problem solving."⁴¹ Mr. L's debilitated state, his communication/understanding difficulties, and the occupational therapy notes, support a finding that he is dependent (self-performance code of 3) with all of his IADLs. Mr. L lives with his wife. In 2012, the PCA regulations changed so that a person, who resides with a capable spouse, may not receive PCA services with IADLs.⁴² Regardless of Mr. L's demonstrated need, he may not receive PCA services for his IADLs because he lives with his wife.

³⁷ Ex. B, pp. 34 - 35; Ex. E, p. 20.

³⁸ Ex. E, p. 11.

³⁹ Ex. F, p. 11.

⁴⁰ Ms. Ipatova's testimony.

⁴¹ Ex. 1, pp. 361- 364.

⁴² 7 AAC 125.040(a)(13)(B).

10. Medical Escort

Medical escort is provided for persons who require assistance “travelling . . . **and conferring**” with medical or dental staff during routine appointments.⁴³ It was clear that Mr. L cannot drive and that he experiences substantial communication difficulties as a result of his July 2014 stroke. Mr. L has therefore shown that it is more likely true than not true that he requires medical escort services. Ms. L testified that Mr. L has to go to the doctor three or four times monthly, and that the trip takes 30 minutes. Mr. L is therefore provided medical escort assistance three times per month at thirty minutes per appointment. This comes to 90 minutes per month, for a total of 21 minutes weekly.⁴⁴

V. Conclusion

Mr. L had a major stroke in late July 2014. However, the bulk of his needs consist of supervision, cueing, and setup, which are not allowable PCA services. As discussed above, Mr. L is to receive the following PCA services:

Bathing (self-performance code of 2) 7 times per week.

Medical escort 21 minutes per week.

DATED this 17th day of August, 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 1st day of September, 2015.

By: *Signed* _____
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge/OAH

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

⁴³ 7 AAC 125.030(d)(9) (emphasis supplied).

⁴⁴ 90 minutes per month comes to 1,080 minutes per year, which results in 21 minutes per week.