

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

In the Matter of	)	
	)	OAH No. 15-0343-MDS
M Z	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

M Z applied to receive Personal Care Assistance (PCA) services. Senior and Disabilities Services (SDS) notified her that she was not eligible for services, and Ms. Z appealed that decision.

A hearing was held on May 6, 2015.<sup>1</sup> SDS was represented by a lay advocate, Darcie Shaffer. Ms. Z represented herself. An interpreter was used to interpret between English and Tagalog for Ms. Z.

Based on the evidence presented, SDS's decision denying benefits is upheld.

**II. Facts**

Registered Nurse Geetha Samuel assessed Ms. Z on February 25, 2015.<sup>2</sup> At that time, Ms. Z was 76 years old.<sup>3</sup> She is diagnosed with end stage renal disease, and receives dialysis three times a week.<sup>4</sup> SDS determined that she did not meet the eligibility requirements of the PCA program. SDS notified her of its determination on March 5, 2015.<sup>5</sup>

**III. Discussion**

**IV. *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.<sup>[6]</sup>

SDS uses the Consumer Assessment Tool (CAT) to help calculate the level of assistance needed.<sup>7</sup> The amount of time allotted for needed assistance is determined by the Personal Care

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<sup>1</sup> The hearing was held before Administrative Law Judge Rebecca L. Pauli. This matter was reassigned to ALJ Jeffrey A. Friedman, who has reviewed the entire record and listened to the hearing recording.

<sup>2</sup> Exhibit E.

<sup>3</sup> Exhibit E1.

<sup>4</sup> Exhibit E3.

<sup>5</sup> Exhibit D.

<sup>6</sup> 7 AAC 125.010(a).

Assistance Service Level Computation chart.<sup>8</sup> The Service Level Computation chart shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task. These times are then combined into a weekly total of authorized PCA hours.

The different levels of required assistance are defined by regulation and in the CAT.<sup>9</sup> For each ADL or IADL, there is a self-performance code and an assistance code. For ADLs, the self-performance code describes the type of assistance needed, and the assistance code describes whether the assistance is set up help only, cueing only, or physical assistance from one or two people. With ADLs, Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.<sup>10</sup> Limited Assistance is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight bearing support no more than two times a week.<sup>11</sup> Extensive Assistance is defined as requiring direct physical help with weight bearing support at least three times a week, or full assistance without any involvement from the recipient at least three times a week, but not all of the time.<sup>12</sup> Full Assistance means the recipient has to rely entirely on the caretaker to perform the activity.<sup>13</sup> To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).<sup>14</sup>

For IADLs, the performance code describes whether the individual can perform the activity independently, independently with difficulty, needs assistance, or is dependent on others to perform the activity.<sup>15</sup> The support code describes whether the support is in the form of supervision or cueing, set up help, physical assistance, or total performance by others.<sup>16</sup> To receive PCA time for IADLs, the applicant must have a performance code of at least 1 (independent with difficulty), and a support code of at least 3 (physical assistance).<sup>17</sup>

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<sup>7</sup> 7 AAC 125.020(b).

<sup>8</sup> 7 AAC 125.024(1).

<sup>9</sup> The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC 160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

<sup>10</sup> Exhibit E6.

<sup>11</sup> 7 AAC 125.020(a)(1); Exhibit E6.

<sup>12</sup> 7 AAC 125.020(a)(2); Exhibit E6.

<sup>13</sup> 7 AAC 125.020(a)(3); Exhibit E6.

<sup>14</sup> Exhibit B34 (Service Level Computation chart).

<sup>15</sup> Exhibit E26.

<sup>16</sup> *Id.*

<sup>17</sup> Exhibit B34.

This case involves a request for new benefits. Accordingly, Ms. Z has the burden of proving she meets the eligibility requirements.<sup>18</sup> Because SDS notified Ms. Z of its decision on March 5, 2015, her condition on that date is used when determining whether she is eligible for services.<sup>19</sup>

**A. Ms. Z Did Not Establish Her Eligibility**

*1. Assistance with Activities of Daily Living*

In order to be eligible for PCA services to assist with an ADL, Ms. Z must need at least limited assistance with that activity at least three times a week.<sup>20</sup> Based on her testimony, Ms. Z did not need physical assistance with transfers, locomotion, eating, or toileting. Her testimony was consistent with the Ms. Samuel's assessment scores on the CAT.

Ms. Z testified that she sometimes needs help with dressing because her hands get tired, and she sometimes needs help with bathing to wash her hair.<sup>21</sup> Ms. Z would only be eligible to receive PCA services for dressing or bathing if she needed at least limited assistance three times a week for either one or both of those activities. Ms. Z did not specify how often she needed help with either of these ADLs. Ms. Z might wash her hair three times a week, and she might need assistance with dressing three times a week. However, Ms. Z has not shown that she does either of these that often. She has the burden of proof, and eligibility cannot be established based on a possibility.

*2. Assistance with Instrumental Activities of Daily Living*

Ms. Z is also not eligible for PCA services for IADLs. Her testimony suggests that the scoring she received for these activities might be too low, but no ruling is made on that factual question. Instead, Ms. Z is not eligible because, at the time of SDS's decision, she was living with her husband.<sup>22</sup> By regulation, the PCA program does not pay for any IADL if that activity is provided by the recipient's spouse.<sup>23</sup> This regulation has previously been interpreted to exclude services for any IADL if the recipient lives with a spouse who is capable of performing

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<sup>18</sup> 7 AAC 49.135.

<sup>19</sup> See *In re T.C.*, OAH Case No. 13-0204-MDS (Commissioner of Health and Social Services 2013), page 7 (notice sent to recipient is the decision under review), available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>.

<sup>20</sup> See Exhibit E6 (definition of limited assistance); Exhibit B44 (Service Level Computation Chart).

<sup>21</sup> Shampooing hair is part of bathing if the person takes a full bath or shower, but is not part of bathing if they only wash their hair. 7 AAC 125.030(b)(8) ("washing only the back and hair does not constitute bathing under this paragraph.") Hair washing separate from a bath falls under the ADL of personal hygiene. 7 AAC 125.030(b)(7)(G).

<sup>22</sup> Her husband was working in No Name for an extended period at the time of the hearing, but was still at home in March when the determination was made. Z testimony.

<sup>23</sup> 7 AAC 125.040(a)(13)(B).

that service.<sup>24</sup> Because the current regulations do not allow time for these IADLs, SDS properly removed that time.<sup>25</sup>

## V. Conclusion

Ms. Z has not shown that she requires at least limited assistance with her ADLs. By regulation, she was not eligible to receive assistance with her IADLs at the time SDS made its decision. If her functional abilities have changed, or if her living situation has changed, she may reapply for services. However, SDS's decision of March 5, 2015, is affirmed.

Dated this 17<sup>th</sup> day of August, 2015.

*Signed* \_\_\_\_\_  
Jeffrey A. Friedman  
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 1<sup>st</sup> day of September, 2015.

By: *Signed* \_\_\_\_\_  
Name: Rebecca L. Pauli  
Title: Administrative Law Judge

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

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<sup>24</sup> *In re G H*, OAH No. 13-1327-MDS (Commissioner of Health and Social Services 2013), page 3. Available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS131327.pdf>.

<sup>25</sup> 7 AAC 125.026(d)(3)(C) (services may be reduced if the server is no longer authorized).