

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

In the Matter of:)
)
 S T) OAH No. 15-0346-MDS
) Agency No.
_____)

DECISION

I. Introduction

S T applied for personal care assistance (PCA) services. On February 23, 2015, the Division of Senior and Disabilities Services (Division) assessed him to determine his eligibility for those services. The Division then notified him that he did not qualify for PCA services. Mr. T requested a hearing.

Mr. T's hearing was held on May 1 and May 5, 2015. Mr. T appeared telephonically and testified on his own behalf. Q N-D, with No Name Agency, assisted Mr. T. Mr. T's daughter-in-law, K T, testified on his behalf. Darcie Shaffer represented the Division. Mary Tanaka, R.N., the Division's nurse-assessor, testified on its behalf.

The evidence demonstrates that Mr. T is eligible for a limited amount of PCA services. The denial of Mr. T's application is reversed and the Division is directed to provide Mr. T with PCA services as specified in this decision.

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

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 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 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

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

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.

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 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

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.

¹⁵ Ex. E, p. 31.

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 he was bathed.¹⁶

For covered services beyond assistance with ADLs and IADLs, specific rules apply that will be discussed below.

III. Background Facts

Mr. T is 55 years old. He lives with his son, daughter-in-law, and their children. His diagnoses include hypertension, diabetes, end stage renal disease, peripheral neuropathy, fatigue, vertigo, poor balance, and cataracts with blurred vision. He receives dialysis three days per week.¹⁷ Mr. T uses a cane, and has a walker.¹⁸

Ms. T was assessed on February 23, 2015 by nurse-assessor Mary Tanaka to determine if he qualified for the PCA program. Based upon her visual observation, functional testing, and statements made by Mr. T, Ms. Tanaka determined that Mr. T had a good range of motion, had a strong grip in both hands, could raise his hands over his head, could touch his feet from a sitting position, and was capable of performing transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing without requiring physical hands-on assistance.¹⁹ She noted Mr. T's poor vision by her notes that he "put [his] head close to the paper to see."²⁰ She also determined that Mr. T was independent with preparing light meals and main meals, light housework, routine housework, grocery shopping, and laundry.²¹ As a result, Mr. T's assessment found that he did not qualify for PCA services.²²

IV. Discussion

This case involves an application for PCA services. As a result, Mr. T has the burden of proof by a preponderance of the evidence to demonstrate his eligibility.²³ Mr. T challenged the results of the assessment with regard to the tasks of transfers, locomotion, dressing, toileting, bathing, medical escort, and all of his IADLs. Each of these is addressed below.

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. E, p. 3; Dr. E and Dr. U's verification of diagnosis forms; April 8, 2015 fax, p. 9 (Dr. E's notes).

¹⁸ Mr. T's testimony.

¹⁹ Ex. E, pp. 6 – 11, 18, 31.

²⁰ Ex. E, p. 4.

²¹ Ex. E, p. 26.

²² Ex. D; Ex. E, p. 31.

²³ 7 AAC 49.135.

1. Transfers

The nurse-assessor determined that Mr. T was independent (self-performance code of 0) with transfers, based upon her observation of Mr. T during the assessment, and Mr. T's statements during the assessment.²⁴ Mr. T testified that he needed hands-on physical assistance with transfers, stating that he could not get out of bed due to dizziness, and that he needed someone to help his transfer between surfaces due to dizziness. Mr. T's medical records show he has consistently mentioned being dizzy, and losing his balance to his health care providers.²⁵ However, No Name Center (No Name Center) records state that on April 2, 2015, he demonstrated that "he can get up and ambulate without difficulty."²⁶

The weight of the evidence does not support a finding that Mr. T requires hands-on physical assistance with transfers. Although Mr. T experiences frequent dizziness, the nurse-assessor's observations of Mr. T, along with the No Name Center records, show that it is more likely true than not true that Mr. T can transfer without assistance. At the most, he requires standby assistance or supervision when he transfers, which is coded as "1/1" and would not qualify him for PCA assistance.

2. Locomotion

The nurse-assessor determined that Mr. T was independent (self-performance code of 0) with locomotion, based upon her observation of Mr. T during the assessment, and Mr. T's statements during the assessment.²⁷ As noted above, Mr. T experiences dizziness. Dr. E's notes indicate that she saw Mr. T lose his balance during his March 16, 2015 appointment.²⁸ Mr. T testified that he is experiencing hand and feet numbness that make him unable to use a walker. That is a very recent occurrence (two weeks before the May 1, 2015 hearing), per his testimony.

The weight of the evidence does not support a finding that Mr. T requires hands-on physical assistance with locomotion. Although Mr. T experiences frequent dizziness, the nurse-assessor's observations of Mr. T, along with the April 2, 2015 No Name Center records show that it is more likely true than not true that Mr. T can locomote without assistance. At the most, he requires standby assistance or supervision when he locomotes, which is coded as "1/1" and would not qualify him for PCA assistance.

²⁴ Ex. E, p. 6.

²⁵ See, e.g., April 16, 2015 fax, pp. 2, 42; April 8, 2015 fax, pp. 5, 7.

²⁶ See April 16, 2015 fax, p. 42.

²⁷ Ex. E, p. 7.

²⁸ April 8, 2015 fax, p. 7.

3. Dressing

The nurse-assessor determined that Mr. T was independent (self-performance code of 0) with dressing, based upon her observation of Mr. T during the assessment, and Mr. T's statements during the assessment. Mr. T testified that he had a swollen left wrist. He then stated that he had problems using his right arm, but was able to use his left arm. His daughter-in-law K T testified he had difficulty with his right arm. His right arm is where he has his fistula for dialysis. Mr. T's medical records do not reflect any problems with the use of either arm, although they mention his right arm hurting on January 7, 2015, which was after there was difficulty accessing his fistula for dialysis.²⁹

There is not enough evidence to support a finding that it is more likely true than not true that Mr. T requires hands-on physical assistance with dressing. He has therefore not met his burden of proof on this point.

4. Toileting

The nurse-assessor determined that Mr. T was independent (self-performance code of 0) with toileting, based upon her observation of Mr. T during the assessment, and Mr. T's statements during the assessment.³⁰ Mr. T specifically demonstrated his ability to transfer to and from the toilet during the assessment without requiring any assistance.³¹ Mr. T testified that he could sit on the toilet without help. He then testified that he did not need any help cleansing himself after toilet use. He then changed his testimony to state that he needed help every couple days. He then stated that he needed help every day.

Given the variance in Mr. T's testimony, coupled with the conclusion above that he does not require hands-on assistance with transferring, along with the nurse-assessor's observations, Mr. T has not shown that it is more likely true than not true that he requires hands-on physical assistance with toileting.

5. Bathing

The nurse-assessor determined that Mr. T was independent (self-performance code of 0) with bathing, based upon her observation of Mr. T during the assessment, Mr. T's range of motion, and Mr. T's statements during the assessment.³² Mr. T testified that he requires

²⁹ April 16, 2015 fax, p. 2.

³⁰ Ex. E, p. 9.

³¹ Ex. E, p. 8.

³² Ex. E, p. 11.

assistance with both transferring in and out of the tub due to dizziness, and for washing himself. However, as found above, Mr. T needs at most standby/supervision assistance with transfers, not hands-on physical assistance. Further, there is no support in the medical records showing any impaired range of motion issues which would support a finding that he needs help washing himself.

The weight of the evidence shows that it is more likely true than not true that Mr. T does not require physical hands-on assistance with bathing. At the most, he requires standby assistance or supervision while transferring in and out of the tub, which is coded as “1/1” and would not qualify him for PCA assistance.

6. Instrumental Activities of Daily Living

The nurse- assessor determined that while it was difficult for Mr. T to perform all of his IADLS (light meal preparation, main meal preparation, shopping, light housework, and laundry), he was able to do so without requiring assistance other than set-up help.³³

Mr. T’s testimony and that of his daughter-in-law was that he was completely dependent with all of his IADLS. Their testimony is not supported by the medical evidence in the record. However, given his diagnoses of vertigo, blurred vision due to cataracts, and the fact that he uses a cane or walker, he is most likely not able to stand for any period of time, use both hands while standing, or perform any of these activities completely on his own, even with set-up assistance. It is therefore more likely true than not true that he requires some hands-on assistance with all of his IADLS. However, the evidence does not show complete dependence. He should be provided with an assistance code of with a 2 in self-performance and a 3 in support, which does qualify him for PCA assistance, and receive assistance commensurate with that coding for light meal preparation 14 times weekly, main meal preparation 7 times per week, and with laundry, light housework, and shopping once per week.

V. Conclusion

The Division’s denial of Mr. T’s application for PCA services is reversed. As found above, Mr. T qualifies for the following assistance:

Light Meals	Physical assistance provided (coded 2/3) 14 times weekly
Main Meals:	Physical assistance provided (coded 2/3) 7 times weekly
Light Housework:	Physical assistance provided (coded 2/3) once weekly

³³ Ex. E, p. 26.

Laundry: Physical assistance provided (coded 2/3) once weekly
Shopping: Physical assistance provided (coded 2/3) once weekly
DATED this 20th 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 4th 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.]