

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

In the Matter of:)
)
 D M) OAH No. 15-0387-MDS
) Agency No.
_____)

DECISION

I. Introduction

D M applied for personal care assistance (PCA) services. On February 24, 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. M requested a hearing.

Mr. M’s hearing was held on May 27, 2015. Mr. M appeared telephonically and testified on his own behalf. E M, Mr. M’s son, testified on his behalf. Darcie Shaffer represented the Division. Geetha Samuel, R.N., the Division’s nurse-assessor, and Laura Baldwin, a health program manager employed by the Division, testified on its behalf.

The evidence demonstrates that Mr. M is not eligible for PCA services. The denial of Mr. M’s application is affirmed.

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. M is 75 years old. He lives with his family. His diagnoses include acute gouty arthropathy, stage III kidney disease, hypertension, depressive disorder, coronary artery disease, unstable gait, generalized osteoarthritis, and chronic obstructive pulmonary disease. He has a pacemaker and had a stroke in 2006. Mr. M uses a cane.¹⁷

Mr. M was assessed on February 24, 2015 by nurse-assessor Geetha Samuel to determine if he qualified for the PCA program. Based upon her visual observation, functional testing, and statements made by Mr. M, Ms. Samuel determined that Mr. M 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.¹⁸ She also determined that Mr. M was independent with preparing light meals and main meals, light housework, routine housework, grocery shopping, and laundry.¹⁹ As a result, Mr. M's assessment found that he did not qualify for PCA services.²⁰ Ms. Samuel spoke to a nurse in Mr. M's doctor's office on May 19, 2015. That nurse told Ms. Samuel that Mr. M did not require hands-on physical assistance.²¹

Mr. M's medical records show the following:

- On May 15, 2014, he was ambulating without the use of a cane.²² On June 6, 2014, he had bunions on both feet and was using a cane.²³
- On July 1, 2014, his gait was shuffling. The records do not mention the use of a cane.²⁴

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, pp. 1, 3, 6 – 7; Ex. 1 (Documents faxed by No Name on May 8, 2015).

¹⁸ Ex. E, pp. 6 – 11, 18, 31; Ms. Samuel's testimony.

¹⁹ Ex. E, p. 26.

²⁰ Ex. D; Ex. E, p. 31.

²¹ Ms. Samuel's testimony.

²² Ex. 2, p. 45 (Medical records from No Name 2).

²³ Ex. 2, pp. 41 – 42.

²⁴ Ex. 2, p. 36.

- On August 15, 2014, his gait was cautious and he was able to “get up and go <5 seconds without need for cane now.”²⁵
- He had a gout attack on October 27, 2014. As of November 14, 2014, he still had pain and tenderness, but was walking with a cane.²⁶
- On February 3, 2015, he notified his doctor that he was having pain in both feet and had metatarsal swelling.²⁷
- On March 4, 2015, he had had no falls since his prior visit and was not using any assistive devices.²⁸
- On April 1, 2015, he “[a]mbulates using a cane with a limp, slow gait.”²⁹
- On April 29, 2015, he mentioned difficulty walking and recent falls. However, the physician found that he was walking using a cane, and that his gait and station were normal.³⁰

IV. Discussion

This case involves an application for PCA services. As a result, Mr. M has the burden of proof by a preponderance of the evidence to demonstrate his eligibility.³¹ Mr. M challenged the results of the assessment with regard to the tasks of transfers, locomotion, toileting, bathing, and medication assistance. Each of these is addressed below.

1. Transfers

The nurse-assessor determined that Mr. M was independent (self-performance code of 0) with transfers, based upon her observation of Mr. M, who used a cane during the assessment, and Mr. M’s statements during the assessment.³² E M, Mr. M’s son, testified that his father needed weight-bearing assistance with transfers. However, his testimony did not show a need for frequent (daily or even weekly transfer assistance). Mr. M himself testified that he had to be picked up for transfers. Mr. M’s medical records, however, depict a person whose only assistance requirement consists of the need to use a cane. The doctor’s nurse corroborated that Mr. M does not require hands-on assistance. Mr. E M’s testimony and Mr. M’s testimony are

²⁵ Ex. 2, p. 32.

²⁶ Ex. 2, p. 27.

²⁷ Ex. 2, pp. 20, 22.

²⁸ Ex. 2, p. 17.

²⁹ Ex. 2, p. 12.

³⁰ Ex. 2, p. 8.

³¹ 7 AAC 49.135.

³² Ex. E, p. 6.

both inconsistent with Mr. M's medical records and the nurse-assessor's observations, including the nurse-assessor's discussion with the nurse from Mr. M's doctor's office. Given the consistency between the nurse-assessor's observations, her discussion with the doctor's nurse, and the medical records, it is more likely true than not true that Mr. M is independent with his transfers. He therefore would not qualify for PCA assistance due to a need for help with transfers.

2. Locomotion

The nurse-assessor determined that Mr. M was independent (self-performance code of 0) with locomotion, based upon her observation of Mr. M during the assessment, and his statements during the assessment.³³ E M testified that his father could walk with a cane, but that he needed hands-on assistance for safety reasons. Mr. M's medical records, however, show cane usage, but no need for hands-on assistance. Given the consistency between the medical records, the nurse-assessor's observation, and her discussion with the doctor's nurse, it is more likely true than not true that Mr. M is independent with his locomotion. He therefore would not qualify for PCA assistance due to a need for help with locomotion.

3. Toileting

The nurse-assessor determined that Mr. M was independent (self-performance code of 0) with toileting, based upon her observation of Mr. M during the assessment, and his statements during the assessment.³⁴ Mr. M specifically demonstrated his ability to transfer to and from the toilet during the assessment.³⁵ Mr. M testified that he needed weight-bearing assistance transfers for toileting. E M testified that his father needed help cleansing after using the bathroom, and help with transfers. However, the weight of the evidence, being the medical records, the nurse-assessor's findings, and her discussion with the doctor's nurse, instead show that it is more likely true than not true that Mr. M is independent with toileting. He therefore would not qualify for PCA assistance due to a need for help with toileting.

4. Bathing

The nurse-assessor determined that Mr. M was independent (self-performance code of 0) with bathing, based upon her observation of Mr. M during the assessment, his range of motion, his demonstration that he was able to independently transfer in and out of the tub while holding

³³ Ex. E, p. 7.

³⁴ Ex. E, p. 9.

³⁵ Ex. E, p. 8.

onto the wall for support, and his statements during the assessment.³⁶ E M testified that his father required bathing assistance with transfers and washing himself. Mr. M's testimony was similar. Again, the weight of the evidence, being the medical records, the nurse-assessor's findings and her discussion with the doctor's nurse, demonstrates that it is more likely true than not true that Mr. M is independent with bathing. He therefore would not qualify for PCA assistance due to a need for help with bathing.

5. Medication Assistance

Mr. M takes multiple medications. The nurse-assessor found that he did not require any assistance in taking them, based in part on her observation of him opening a child-proof medication bottle.³⁷ 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.³⁸ Mr. M's assessment found that he was independent (self-performance code of 0) with personal hygiene.³⁹ Mr. M did not disagree with his personal hygiene score. It is therefore established that he does not require assistance with personal hygiene. As a result, regardless of whether or not Mr. M requires help with his medications, he is not eligible for PCA services for medication.

V. Conclusion

Mr. M has the burden of proof by a preponderance of the evidence to demonstrate his eligibility for PCA services. He has not satisfied his burden of proof. The Division's denial of Mr. M's application for PCA services is affirmed.

DATED this 25th day of August, 2015.

Signed

Lawrence A. Pederson
Administrative Law Judge

³⁶ Ex. E, p. 11.

³⁷ Ex. E, pp. 10, 20.

³⁸ Ex. B, pp. 34 – 35; Ex. E, p. 20.

³⁹ Ex. E, p. 10.

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 9th day of September, 2015.

By: Signed
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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