

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

In the Matter of:)
)
 N R) OAH No. 15-0549-MDS
) Agency No.
_____)

DECISION

I. Introduction

N R applied for PCA services. Based primarily on an assessment visit on April 2, 2015, the Division of Senior and Disabilities Services (Division) notified Ms. R on April 9, 2015 that her application was denied. Ms. R requested a hearing.

Ms. R’s hearing was held on June 11, 2015. Ms. R was assisted in her representation by P Q. Both Ms. R and Mr. Q testified. Victoria Cobo represented the Division. Mary Tanaka, R.N., testified for the Division.

Based upon the evidence presented, Ms. R is eligible for PCA services. The denial of her application is reversed and the Division is directed to provide Ms. R 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 needs to perform ADLs, IADLs, and the other covered services.³ In general, if certain levels of

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.*

³ *See* 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

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

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 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

Ms. R is 70 years old. She lives with her husband in a two story private home which they share with two other couples.¹⁷ Her health conditions include diabetes, chronic kidney disease, urinary incontinence, hypertension, cataracts, and GERD.¹⁸

Ms. R was assessed on April 2, 2015 determine her eligibility for the PCA program. Ms. R did not have any assistive devices of her own; she used a borrowed cane during the assessment.¹⁹ Based upon her visual observation, functional testing, and statements made by Ms. R, the nurse-assessor determined that Ms. R was substantially cognitively impaired, had a strong grip in both hands, could not raise her hands over her head or behind her back, could move her legs, and was capable of performing transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing without requiring physical hands-on assistance.²⁰ She also determined that Ms. R required some physical assistance with main meal preparation, shopping, light housework, and laundry.²¹ On April 9, 2015, the Division sent Ms. R notice that she was not eligible for PCA services, based upon her scoring for her ADLs. It did not allow PCA services for her IADLs, because Ms. R resided with her husband.²²

Medical records from an April 22, 2015 appointment state that Ms. R reported problems with balance, an inability to dress herself, including vertigo/dizziness with bending over to put on socks/shoes, and memory problems. Those records contain the physician assistant's findings that Ms. R had an unstable and shuffling gait, poor balance, a slight limp, and an inability to ambulate without either holding onto the wall or onto another person.²³

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; Mr. Q's testimony.

¹⁸ Ex. E, p. 5; Ex. 2, p. 13.

¹⁹ Ex. E, pp. 5, 8, 30.

²⁰ Ex. E, pp. 1, 8 - 14.

²¹ Ex. E, p. 29.

²² Ex. D.

²³ Ex. 2, pp. 13 - 15.

IV. Discussion

Ms. R, as the applicant, has the burden of proof by a preponderance of the evidence.²⁴ She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,²⁵ 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.²⁶ The areas in dispute, which are each addressed below, are: transfers, locomotion, locomotion to access medical appointments, dressing, toileting, bathing, all IADLs, and medical escort.

1. Transfers

Transfers are defined as how a "person moves between surfaces," such as from a sitting to a standing position.²⁷ The nurse-assessor did not observe Ms. R transferring during the assessment. Instead, when she asked Ms. R to stand up from a chair, Ms. R "scoted forward & slid down on her knees saying I can't get up."²⁸ There was a person present who helped Ms. R get up, who also found a cane for Ms. R to use. The nurse-assessor then observed Ms. R going up the stairs without assistance. The nurse-assessor felt there was a significant difference between what she observed at the assessment and the medical records from Ms. R's January 21, 2015 medical appointment.²⁹ The medical records do not show Ms. R having anyone accompanying her to that appointment. Nor do they reference any cognition problems, and they mention that Ms. R "goes up and down the stairs at home." They also state under the "Social History" category that there is "no physical disability."³⁰ The nurse-assessor concluded that Ms. R was capable of transferring by herself, without physical assistance.³¹

Ms. R testified that she had to be pulled up to transfer from surfaces, and that she needed that level of assistance five to six times during the day and three to four times at night. Being pulled up that many times a day would constitute extensive assistance (self-performance code 3). Mr. Q, who has known Ms. R since 2011, also testified that Ms. R required transfer assistance.

²⁴ 7 AAC 49.135.

²⁵ 2 AAC 64.290(a)(1).

²⁶ 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>).

²⁷ Ex. E, p. 8.

²⁸ Ex. E, p. 8.

²⁹ Ms. Tanaka's testimony.

³⁰ See Ex. 2, pp. 17 – 18; Ms. Tanaka's testimony.

³¹ Ex. E, p. 8.

In reviewing Ms. R's care needs, the April 22, 2015 medical records are more probative of her care needs than the January 21, 2015 medical records, due to the fact that the April 22, 2015 records are much closer to her assessment date of April 2, 2015. Although the April 22, 2015 medical appointment was after the assessment date (April 2) and denial date (April 9), it is unlikely that Ms. R's care needs changed greatly in the 13 days that elapsed between the denial date and the medical appointment.

The April 22, 2015 medical records indicate issues with balance and walking. They do not indicate any difficulty with transfers, although impaired balance could result in a need for assistance with transfers. However, given that Ms. R has the burden of proof in this case, the medical evidence is insufficient to establish that it is more likely true than not true that Ms. R requires physical hands on assistance with transfers (self-performance codes 2, 3, or 4). Consequently, Ms. R is not eligible for PCA services for transfer assistance.

2. 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.³² The nurse-assessor determined that Ms. R was able to locomote without assistance based upon her observation of her walking up and down the stairs, using a borrowed cane and holding onto the stair railing, without having any balance issues.³³ Ms. R testified that she holds onto walls when she walks. This is consistent with her April 22, 2015 medical records. It is therefore more likely true than not true that Ms. R can ambulate in her own home by leaning on walls for support, and does not require another person's assistance. She therefore is not eligible for PCA services for locomotion assistance within her home.

3. Locomotion to Access Medical Appointments

Ms. R was also determined to be independent with locomotion assistance to access medical appointments. However, as found above under locomotion within home, she has to lean on walls for support when locomoting. There are not always walls available for support when locomoting to medical appointments, for instance, when moving to or from a building. The April 22, 2015 medical records demonstrate a need for physical hands-on assistance for stabilization purposes. This would be limited assistance (self-performance code 2), not extensive

³² Ex. E, p. 9.

³³ Ex. E, p. 9; Ms. Tanaka's testimony.

assistance. Ms. R has quarterly medical appointments.³⁴ It is therefore more likely true than not true that Ms. R should receive limited assistance with locomotion to access medical appointments once per week.³⁵ However, this assistance is dependent upon Ms. R's overall eligibility for PCA assistance: a need for locomotion to access medical appointments does not qualify an applicant for PCA assistance.

4. Dressing

Dressing is how a "person puts on, fastens, and takes off all items of street clothing."³⁶ The nurse-assessor determined that Ms. R was able to dress herself independently.³⁷ Ms. R, however, told the nurse-assessor that she required assistance with dressing, and testified similarly to that effect, as did Mr. Q. Ms. R also told the physician's assistant, on April 22, 2015, that she needed assistance with dressing, due to shoulder pain, and because she could not bend down to put on shoes and socks. Ms. R's medical records do not reference shoulder pain. However, they do show that the physician's assistant observed Ms. R to have problems with both gait and balance.³⁸ Given Ms. R's balance issues, it is more likely true than not true that she cannot bend over to put on socks and shoes, and consequently requires limited assistance (self-performance code 2) with those twice daily. A need for limited assistance with dressing qualifies her for PCA assistance.

5. Toileting

Toileting is a complex process that combines locomotion, transfers, dressing, and cleansing.³⁹ As found above, Ms. R does not require assistance with transfers or locomotion. Her need for assistance with dressing is limited to shoes and socks, which are not normally involved in the toileting process. However, she does use a bucket, as a bedside commode substitute, at night, because her bedroom is upstairs and the bathroom is downstairs.⁴⁰ The nurse-assessor testified that this would allow limited assistance (self-performance code 2) once

³⁴ Ex. E, p. 7.

³⁵ Given how PCA assistance is calculated, the minimum number of times assistance can be provided is once per week; there is no mechanism to allow two assists once every three months for someone such as Ms. R who only requires assistance quarterly.

³⁶ Ex. E, p. 10.

³⁷ Ex. E, p. 10.

³⁸ Ex. 2, pp. 14 – 15.

³⁹ Ex. E, p. 11.

⁴⁰ Ms. R's testimony.

daily for emptying the bucket/commode.⁴¹ It is therefore more likely true than not true that Ms. R requires limited assistance (self-performance code 2) with toileting once daily.

6. 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.⁴² The nurse-assessor found that there were grab bars in the bathtub, a bath bench, and a hand-held shower. She concluded that Ms. R required supervision, but no hands-on assistance, for bathing.⁴³ Ms. R testified that she required assistance both with transfers in and out of the tub and with the actual bathing process. The medical evidence in the record, with Ms. R's balance problems, supports a finding that Ms. R requires transfer assistance, given the fact that a transfer in and out of a tub is more difficult than a normal transfer. However, her medical records do not support a finding that she requires assistance other than with transfers. Physical assistance with bathing transfers is limited assistance (self-performance code 2).⁴⁴ Ms. R has therefore shown it is more likely true than not true that she requires limited assistance with bathing once daily, seven days per week.

7. Instrumental Activities of Daily Living

The nurse-assessor determined that Ms. R required some physical assistance with main meal preparation, shopping, light housework, and laundry.⁴⁵ However, the Division did not allow Ms. R PCA services for her IADLs, because she resided with her husband.⁴⁶

The Medicaid PCA regulations do not allow PCA services to be allowed for IADLs if the applicant resides with a spouse who can provide those services.⁴⁷ Ms. R and Mr. Q both testified that Mr. R was not physically capable of providing IADL services. However, Ms. R repeatedly testified that her husband gave her help with her ADLs. Given that he is capable of helping with her ADLs, it may be presumed that he is capable of performing her IADLs. It is therefore more likely true than not true that Ms. R is not eligible for PCA services with her IADLs because her husband is capable of providing the necessary assistance.

⁴¹ Ms. Tanaka's testimony.

⁴² Ex. E, p. 13.

⁴³ Ex. E, p. 13; Ms. Tanaka's testimony.

⁴⁴ Ex. E, p. 13.

⁴⁵ Ex. E, p. 29.

⁴⁶ Ex. D.

⁴⁷ 7 AAC 125.040(a)(13)(B).

8. Medical Escort

Medical escort is provided for persons who require assistance “travelling . . . **and conferring**” with medical or dental staff during routine appointments.⁴⁸ Ms. R does not drive and was found by the nurse-assessor to have a relatively severe cognitive impairment.⁴⁹ Her medical records from April 22, 2015, state that her memory was fair and that she did “OK on the limited testing” she did that day.⁵⁰ At hearing, she was not completely responsive to questions and appeared not to fully understand them, despite the fact that an interpreter was used. It is therefore more likely true than not true that she requires medical escort assistance for someone to drive her to medical appointments and for someone to confer with the medical staff on her behalf. A total of 30 minutes per visit is reasonable for someone in the Anchorage bowl for driving both ways and for conferring (physician waiting room time is not compensable). Ms. R only has four regular medical appointments yearly, which comes to a total of 120 minutes per year for medical escort. This then results in 2.5 minutes of medical escort time weekly.

V. Conclusion

Ms. R is eligible for PCA services as follows:

Locomotion - medical:	limited assistance (self-performance code 2) once weekly
Dressing:	limited assistance (self-performance code 2) 14 times weekly
Toileting:	limited assistance (self-performance code 2) 7 times weekly
Bathing:	limited assistance (self-performance code 2) 7 times weekly
Medical Escort:	2.5 minutes per week.

DATED this 28th day of August, 2015.

Signed

Lawrence A. Pederson
Administrative Law Judge

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

⁴⁹ Ex. E, p. 1.

⁵⁰ Ex. 2, pp. 14 – 15.

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 11th 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.]