

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

In the Matter of)	
)	OAH No. 15-0762-MDS
C C)	Agency No.
_____)	

DECISION

I. Introduction

C C applied for Personal Care Assistance (PCA) services. Senior and Disabilities Services (SDS) evaluated his need for those services and determined he was not eligible. Mr. C appealed.

A hearing was held on August 10, 2015.¹ Mr. C represented himself. SDS was represented by a lay advocate, Laura Baldwin. Based on the evidence presented, Mr. C should have been authorized for PCA services.

II. Facts

Registered Nurse Margaret Rogers evaluated Mr. C on May 26, 2015.² At the time, Mr. C was 58 years old.³ He is diagnosed with hepatitis, kidney disease, hypertension, and lumbago.⁴ His prescriptions include 10 mg of Oxycodone three times a day and 30 mg of OxyContin two times a day, presumably to help control his back pain.⁵ He also receives injections every few months for pain control.⁶ Mr. C is on a high dose of blood pressure medication to help get his hypertension under control.⁷ He lives in a small efficiency apartment.⁸

III. Discussion

A. *The PCA Program*

The purpose of the PCA program

¹ The hearing was held before Administrative Law Judge Stephen C. Slotnick. This matter was reassigned to ALJ Jeffrey A. Friedman, who has reviewed the entire record including the audio recording of the hearing.

² Exhibit E; Rogers testimony.

³ Exhibit E3.

⁴ Exhibit E4.

⁵ Exhibit E22.

⁶ C testimony.

⁷ Exhibit E22; C testimony.

⁸ C testimony.

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^{9]}

SDS uses the Consumer Assessment Tool (CAT) to help evaluate the level of assistance needed.¹⁰ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.¹¹ 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.¹² 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.¹³ 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.¹⁴ 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.¹⁵ Full Assistance means the recipient has to rely entirely on the caretaker to perform the activity.¹⁶ To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).¹⁷

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.¹⁸ The support code describes whether the support is in the form of

⁹ 7 AAC 125.010(a).

¹⁰ 7 AAC 125.020(b).

¹¹ 7 AAC 125.024(1).

¹² 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.

¹³ Exhibit E6.

¹⁴ 7 AAC 125.020(a)(1); Exhibit E8.

¹⁵ 7 AAC 125.020(a)(2); Exhibit E8.

¹⁶ 7 AAC 125.020(a)(3); Exhibit E8.

¹⁷ Exhibit B44 (Service Level Computation chart).

¹⁸ Exhibit E28.

supervision or cueing, set up help, physical assistance, or total performance by others.¹⁹ 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).²⁰

This case involves a denial of benefits. Accordingly, Mr. C has the burden of showing he was eligible for PCA services.²¹ Because SDS notified Mr. C of its decision on June 2, 2015, his condition on that date is used when determining whether he is eligible.²²

B. Mr. C's PCA Services

At the beginning of the hearing, the parties conferred off the record, and narrowed the issues in dispute to the ADLs of Locomotion, Dressing, and Bathing, and all of the IADLs.

1. Locomotion

Locomotion refers to how a person moves within their own room, or within one floor of their own home.²³ Mr. C's blood pressure medicine makes him very dizzy.²⁴ He can walk in his home using his cane.²⁵ However, a representative from his PCA services agency noted that he loses balance quickly and he has to hold onto his cane in one hand and furniture with his other hand to get across the room.²⁶

Mr. C had the burden of showing that he needs physical assistance at least three times a week from another person to walk within his home. Based on the evidence presented, he did not meet that burden. Although difficult, Mr. C can move within his own home without assistance from another person.

2. Locomotion to Medical Appointments

PCA services may also be used for assistance walking to medical and dental appointments.²⁷ As discussed above, Mr. C is frequently dizzy. When walking to medical appointments, Mr. C would not have furniture available to hold onto; he would only have his

¹⁹ *Id.*

²⁰ Exhibit B44.

²¹ 7 AAC 49.135.

²² *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>.

²³ Exhibit E9.

²⁴ C testimony.

²⁵ *Id.*

²⁶ E T-C testimony.

²⁷ 7 AAC 125.030(b)(3)(A)(ii).

cane to help with balance. He would also have to travel longer distances. Mr. C does need limited assistance with locomotion when traveling to and from medical appointments.

The evidence in the record is not sufficient to calculate how many medical appointments he needs help with.²⁸ Accordingly, once he is approved for PCA services Mr. C should submit a change of information form to SDS that provides information about where his medical appointments are, and how frequently those appointments will be likely to occur.²⁹

3. *Dressing*

In the summer, Mr. C can dress himself in shorts and a shirt. He balances by leaning against his bed while he gets dressed.³⁰ Dressing in the winter is more difficult because he needs to wear warmer clothing.³¹ While winter dressing would be more difficult, Mr. C's testimony was not sufficient to show that he would be unable to dress himself. He did not meet his burden of proof on this ADL.

4. *Bathing*

Mr. C acknowledged that he could shower on his own, but he has fallen at times, and is concerned that he will lose his balance and fall again.³² Mr. C would benefit from supervision during his showers, and might find a shower chair useful. However, he has not shown that he currently needs physical assistance with his showers.

5. *Instrumental Activities of Daily Living*

IADLs include meal preparation, housekeeping, laundry, and shopping.³³ Because he quickly gets dizzy, Mr. C will often need one hand on his cane and one hand on a wall or piece of furniture to keep from falling. It is difficult to perform any IADL if both hands are occupied just to maintain a standing position. However, Mr. C can perform some tasks, such as folding laundry, while sitting on his bed. He could get a tall chair with arms to help balance himself

²⁸ He testified that he currently has frequent medical appointments, but there was no testimony as to how long this current frequency will continue.

²⁹ Locomotion to access medical appointments is different than time spent traveling with a recipient to attend a medical appointment. Traveling to an appointment and conferring with a medical provider is covered by escort time. 7 AAC 125.030(e)(9); *In re E C*, OAH No. 13-0438-MDS (Commissioner of Health and Social Services 2013), pages 5 – 6, available at http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS130438.pdf?_ga=1.84196763.383574439.1441128070.

³⁰ C testimony.

³¹ *Id.*

³² *Id.*

³³ 7 AAC 125.030(c).

while which would allow him to assist with meal preparation. He also could do some housekeeping, and assist with the grocery shopping.

However, he could not do any of these IADLs without physical assistance from another person. Because of his back pain and dizziness, Mr. C should have received a self-performance score of 2, indicating he can only accomplish these tasks with assistance. He should have received a support score of 3, indicating physical assistance is needed.

IV. Conclusion

Mr. C has shown that he needs assistance with his IADLs. He should be approved for PCA services, and his service level authorization should be recalculated to include time for light meal preparation, main meal preparation, housework, shopping, and laundry. Mr. C has also shown that he needs limited assistance with locomotion to medical appointments, but has not shown the number of appointments he is likely to have. He should submit a change of information regarding his anticipated appointments.

Dated this 2nd day of September, 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 18th 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.]