

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

In the Matter of:	)	
	)	OAH No. 15-1092-MDS
M M	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

M M applied for PCA services. Based primarily on an assessment visit on July 16, 2015, the Division of Senior and Disabilities Services (Division) notified Ms. M on July 28, 2015 that her application was denied. Ms. M requested a hearing.

Ms. M’s hearing was held on October 1, 2015. Ms. M represented herself and testified on her own behalf. Victoria Cobo represented the Division. David Chadwick testified for the Division.

Based upon the evidence presented, Ms. M is not eligible for PCA services. The denial of her 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 . . .”<sup>1</sup> 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.”<sup>2</sup>

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.<sup>3</sup> 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.

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<sup>1</sup> 7 AAC 125.010(a).

<sup>2</sup> 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.*

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

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.<sup>4</sup> 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 independent<sup>5</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>6</sup>); **3** (the person requires extensive assistance<sup>7</sup>); **4** (the person is totally dependent<sup>8</sup>). 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).<sup>9</sup>

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 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).<sup>10</sup>

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<sup>4</sup> Ex. E, pp. 6 – 11.

<sup>5</sup> 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.

<sup>6</sup> 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.”

<sup>7</sup> 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.”

<sup>8</sup> According to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, “means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity.”

<sup>9</sup> Ex. E, p. 18.

<sup>10</sup> Ex. E, p. 18.

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.<sup>11</sup>

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).<sup>12</sup>

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** (setup 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).<sup>13</sup>

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 assistance<sup>14</sup> (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.<sup>15</sup>

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

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<sup>11</sup> Ex. E, p. 26.

<sup>12</sup> Ex. E, p. 26.

<sup>13</sup> Ex. E, p. 26.

<sup>14</sup> For the purposes of this discussion, “hands-on” assistance does not include supervision/cueing or setup assistance (support codes of 1 or 2). See Ex. E, pg. 26.

<sup>15</sup> 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.<sup>16</sup>

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

### **III. Background Facts**

Ms. M is 69 years old. She lives in a single-level home with several other family members.<sup>17</sup> Her health conditions include lumbago. She has a compression fracture of the thoracic spine (T11) with chronic back pain.<sup>18</sup>

Ms. M was assessed on July 16, 2015 to determine her eligibility for the PCA program. Based upon his visual observation, functional testing, and statements made by Ms. M, the assessor determined that Ms. M was capable of performing transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing without requiring physical hands-on assistance.<sup>19</sup> The assessor specifically noted that Ms. M complained that she had pain in her right shoulder, then later complained about her left shoulder, and then used both arms interchangeably. He also noted that he saw Ms. M transfer up from a chair unassisted, when she had specifically told him she could not transfer without assistance. He also determined that Ms. M did not need physical assistance with her IADLs (light meal preparation, main meal preparation, shopping, light housework, and laundry).<sup>20</sup> On July 28, 2015, the Division sent Ms. M notice that she was not eligible for PCA services.<sup>21</sup>

Ms. M's testimony was that she required daily weight-bearing assistance with transfers and toileting, and that she could not walk, dress, bathe, or groom herself without hands-on physical assistance. She also testified that while she could participate to some very limited extent with her IADLs, she required hands-on physical assistance with each. For instance, she testified she could not bend to perform light housekeeping, and that if she stood to help cook, someone would have to stand beside her and hold her up. Ms. M's most recent medical records are from September 26, 2014, May 6, 2015, and May 12, 2015. They do not support her

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<sup>16</sup> 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.

<sup>17</sup> Ex. E, p. 1.

<sup>18</sup> Ex. E, p. 3; June 16, 2014 medical records, p. 1.

<sup>19</sup> Ex. E, pp. 6 – 11; Mr. Chadwick's testimony.

<sup>20</sup> Ex. E, p. 26.

<sup>21</sup> Ex. D.

testimony. For instance, the September 26, 2014 records show normal extremity use.<sup>22</sup> The May 6 and May 12, 2015 medical records are for visits due to back pain. They note that Ms. M was having back spasms, with no evidence of sciatica or neurologic compromise, on May 6, and that on May 12, despite still experiencing back pain with ongoing muscle spasms, she was “ambulating without difficulty.”<sup>23</sup> Ms. M’s previous medical records show several instances of her reporting weakness and pain. For instance, on September 4, 2013, she, while reporting leg weakness and pain, stated that she could walk 1 – 2 miles using a cane or walker, and her physician observed her walking slowly but steadily.<sup>24</sup> On April 22, 2014, she was observed walking with an unsteady gait, and having upper and lower extremity weakness and a limited range of motion.<sup>25</sup>

#### **IV. Discussion**

Ms. M, as the applicant, has the burden of proof by a preponderance of the evidence.<sup>26</sup> She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,<sup>27</sup> 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.<sup>28</sup> The areas in dispute, which are each addressed below, are: transfers, locomotion, dressing, toileting, personal hygiene, bathing, and all IADLs.

##### **1. Transfers**

Transfers are defined as how a “person moves between surfaces,” such as from a sitting to a standing position.<sup>29</sup> Ms. M would not transfer during the assessment without assistance.<sup>30</sup> She testified that she had to be pulled up to complete a transfer. However, when leaving the home, the assessor viewed Ms. M transferring on her own without assistance.<sup>31</sup> Ms. M denied that her transferring on her own occurred and said that the assessor must have seen someone else

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<sup>22</sup> Facility X, September 26, 2014, p. 1.

<sup>23</sup> Facility X, May 6 and 12, 2015, pp. 3 – 4.

<sup>24</sup> K C, MD, medical records, September 4, 2013, pp. 1 - 2.

<sup>25</sup> K C, MD, medical records, April 22, 2014, p. 2.

<sup>26</sup> 7 AAC 49.135.

<sup>27</sup> 2 AAC 64.290(a)(1).

<sup>28</sup> 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>).

<sup>29</sup> Ex. E, p. 8.

<sup>30</sup> Ex. E, p. 6; Mr. Chadwick’s testimony.

<sup>31</sup> Ex. E, p. 6; Mr. Chadwick’s testimony.

transfer.<sup>32</sup> Given the disparity between Ms. M's testimony regarding her inability to perform physical tasks and her recent medical records, which showed no difficulty with her extremities or her ability to ambulate, the assessor is more credible. As a result, Ms. M has not met her burden of proof on this point. She does not require physical hands-on assistance with transfers.

## 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.<sup>33</sup> The assessor determined that Ms. M was able to locomote without assistance based upon his observation of Ms. M walking unassisted, while using a walker.<sup>34</sup> Ms. M testified that she had to be held onto while walking.<sup>35</sup> This is inconsistent with her May 2015 medical records, which show her able to ambulate without difficulty. The assessor's findings are therefore more credible. As a result, Ms. M has not met her burden of proof on this point. She does not require physical hands-on assistance with locomotion.

## 3. Dressing

Dressing is how a "person puts on, fastens, and takes off all items of street clothing."<sup>36</sup> The assessor determined that Ms. M was able to dress herself independently, based upon his observation of her using her arms. Ms. M, however, told the assessor that she couldn't dress herself because she couldn't move her arms.<sup>37</sup> At hearing, she testified that she could not bend over. Again, the assessor is more credible than Ms. M for several reasons: first, her recent medical records do not show any limitations with her extremities, and second, because, as found above, Ms. M exaggerated her care needs with regard to locomotion and transfers. Consequently, Ms. M has not met her burden of proof on this point. She does not require physical hands-on assistance with dressing.

## 4. Toileting

Toileting is a complex process that combines locomotion, transfers, dressing, and cleansing.<sup>38</sup> As found above, Ms. M does not require assistance with transfers, locomotion, or

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<sup>32</sup> Ms. M's testimony.

<sup>33</sup> Ex. E, p. 7.

<sup>34</sup> Ex. E, p. 7; Mr. Chadwick's testimony.

<sup>35</sup> Ms. M's testimony.

<sup>36</sup> Ex. E, p. 8.

<sup>37</sup> Ex. E, p. 8; Mr. Chadwick's testimony.

<sup>38</sup> Ex. E, p. 11.

dressing. It is therefore more likely true than not true that Ms. M does not require any hands-on physical assistance with toileting.

#### 5. Personal Hygiene

Personal hygiene includes items such as combing hair, brushing teeth, washing the face and hands.<sup>39</sup> Ms. M told the assessor that she could not do her hair, and that her shoulder hurt, which limited her abilities to perform personal hygiene activities. The assessor, however, concluded that Ms. M was able to perform personal hygiene tasks, based upon his observation of her movements using both arms interchangeably.<sup>40</sup> Ms. M's testimony at hearing was that she did not need assistance with personal hygiene per se: she was able to perform the actual personal hygiene task when she was seated on a stool, but needed help transferring to the stool. The activity of personal hygiene does not include transfers. Accordingly, based upon the assessor's testimony, his assessment visit observations, and Ms. M's hearing testimony, Ms. M has not met her burden of proof. She does not require personal hygiene assistance.

#### 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.<sup>41</sup> The assessor concluded, based upon his observation of Ms. M transferring and walking and ability to use her arms, that Ms. M did not require help bathing.<sup>42</sup> Ms. M testified that she required assistance both with transfers in and out of the tub and with the actual bathing process. The assessor's conclusions are more credible than Ms. M's testimony. She therefore has not met her burden of proof. She does not require bathing assistance.

#### 7. Instrumental Activities of Daily Living

The assessor determined that Ms. M did not require physical assistance with any of her IADLs (light meal preparation, main meal preparation, shopping, light housework, and laundry).<sup>43</sup> Ms. M's testimony was that she could participate in these activities, but only at a very minimal level, and required physical assistance with each of them. As discussed above, the medical evidence and the assessor are deemed more credible than Ms. M. Accordingly, it is

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<sup>39</sup> Ex. E, p. 10.

<sup>40</sup> Ex. E, p. 10; Mr. Chadwick's testimony.

<sup>41</sup> Ex. E, p. 11.

<sup>42</sup> Ex. E, p. 11; Mr. Chadwick's testimony.

<sup>43</sup> Ex. E, p. 26; Mr. Chadwick's testimony.

therefore more likely true than not true that Ms. M is not eligible for PCA services with her IADLs.

## V. Conclusion

An applicant for PCA services is only eligible for PCA services if he or she requires 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 assistance (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. As discussed above, Ms. M failed to meet her burden of proof and establish that she required assistance with any of these PCA tasks. Accordingly, Ms. M is not eligible for PCA services. The Division's denial of her application is upheld.

DATED this 8th day of October, 2015.

*Signed* \_\_\_\_\_  
Lawrence A. Pederson  
Administrative Law Judge

## Adoption

The undersigned, by delegation from 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 22nd day of October, 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.]