

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

In the Matter of)	
)	OAH No. 15-1103-MDS
E C)	Agency No.
_____)	

DECISION

I. Introduction

E C applied for Personal Care Assistance (PCA) services. Senior and Disabilities Services (SDS) denied her application. Ms. C appealed.

A hearing was held on September 21, 2015. Ms. C represented herself with assistance from her care coordinator, L A. SDS was represented by a lay advocate, Laura Baldwin. The record was kept open until September 28, 2015 to allow Ms. C time to submit additional medical records, but no additional records were submitted.

Based on the evidence presented, Ms. C does need some physical assistance with Activities of Daily Living and Instrumental Activities of Daily Living.

II. Facts

Ms. C was evaluated on May 13, 2015, by nurse assessor Marianne Sullivan. At the time, Ms. C was 49 years old.¹ She lives in an upstairs apartment, and her sister lives across the hall in another apartment.²

Ms. C suffers from migraines, rheumatoid arthritis, disc degeneration, peptic ulcer, and convulsions.³ Medical records from the Facility X show that she has an implanted nerve stimulator.

Prior to the hearing, Ms. C submitted a letter outlining her disagreement with the evaluation. Only those areas of disagreement are at issue, and only those areas are ruled on in this decision.

III. Discussion

A. *The PCA Program*

The purpose of the PCA program

¹ Exhibit E.
² C testimony.
³ Exhibit E3.

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.^[4]

SDS uses the Consumer Assessment Tool (CAT) to help assess the level of assistance needed.⁵

The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.⁶ 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.⁷ 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. 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. 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. Full Assistance means the recipient has to rely entirely on the caretaker to perform the activity. To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).⁸

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.⁹ The support code describes whether the support is in the form of supervision or cueing, set up help, physical assistance, or total performance by others. To

⁴ 7 AAC 125.010(a).

⁵ 7 AAC 125.020(b).

⁶ 7 AAC 125.024(1).

⁷ See 7 AAC 125.020 and Exhibit E. 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.

⁸ Service Level Computation chart.

⁹ Exhibit E.

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).¹⁰

This case involves a denial of benefits. Accordingly, Ms. C has the burden of showing she was eligible for PCA services.¹¹ Because SDS notified Ms. C of its decision on August 10, 2015, her condition on that date is used when determining whether she is eligible.¹² Evidence of her condition after August 10 is only relevant if it helps explain her functional abilities as of August 10, 2015.

B. Ms. C's PCA Needs

1. Dressing

Ms. C was scored as independent with the ADL of Dressing. Ms. C asserts that she can mostly dress herself, but she needs help with putting on her shoes and socks.

In conducting the functional assessment, Ms. Sullivan noted that Ms. C was not able to “flex forward while seated to touch her feet . . .”¹³ However, Ms. C is able to put her own pants on in the morning. Ms. Sullivan concluded that, while Ms. C was unable to touch her feet while sitting in her recliner, she could reach her feet while getting dressed in the morning sitting on her bed. Ms. Sullivan noted that to put her feet into her pant legs, Ms. C would need sufficient flexibility to reach her feet.

Ms. C described how she manages to put on her pants in the morning. She holds the pants near her feet by holding on to the waistband or belt loop. She is then able to maneuver her feet into the legs without actually reaching down to touch her feet. She can bend her knee enough to get her feet into her pants, but not enough to put on her socks and shoes. Ms. C also testified that she is not able to cross her foot over her leg to make it easier to put on her socks and shoes.

Ms. C's testimony is credible. It would require more sustained bending to put on socks and shoes than to put on pants, especially with the method used by Ms. C. In addition, throughout the hearing Ms. C readily acknowledged activities that she could perform on her own

¹⁰ Exhibit B34.

¹¹ 7 AAC 49.135.

¹² 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>.

¹³ Exhibit E4.

with difficulty. There was no indication during the hearing that she was minimizing her actual ability to perform ADLs or IADLs.

The medical records do state that Ms. C's pain medication helps to keep her functional. However, Ms. C's reports in those records that the pain medication helps her remain functional are not an assertion that she is *fully* functional. She does have chronic pain, and an inability to put on her socks and shoes is consistent with her diagnoses of arthritis and disc degeneration.

Ms. C has the burden of proof. She must show that it is at least slightly more likely true that she does need physical assistance with dressing at least three times a week. Ms. C has met that burden here. Ms. C should have been scored as needing limited physical assistance with dressing twice each day.

2. Toileting

The ADL of Toileting includes how one uses the toilet or bedside commode, transfers during toileting, cleaning, and adjusting clothing after using the toilet. Toileting also includes any locomotion associated with using the toilet.¹⁴ Ms. C reported during her assessment that she was able to toilet independently. During the hearing, however, she explained that she sometimes needs help. Ms. C occasionally has incontinence or accidents when she is unable to get out of bed quickly enough to get to the toilet. Her sister will change the bedding and help her clean up afterwards when this happens.

The letter she submitted also explains that she sometimes needs help to safely transfer to or from the toilet. She explained at the hearing that she needs help more often when it is cold outside or cold in her house. This is consistent with an April 28, 2015 medical note that mentions the weather is getting better in connection with a comment about Ms. C's pain medication helping her remain functional.

To qualify for PCA assistance with Toileting, Ms. C must need some form of physical assistance at least three times a week. She is able to dress herself, transfer, and walk within her home without physical assistance. While help with toileting is probably very useful, Ms. C has not met her burden of showing that she needs that physical assistance at least three times a week.

¹⁴ *In re F V*, OAH No. 13-1306-MDS (Commissioner of Health and Social Services 2013), available at http://aws.state.ak.us/officeofadminhearings/Documents/MDS/PCA/MDS131306.pdf?_ga=1.33947881.918744964.1442344522.

3. *Personal Hygiene*

Ms. C asserts that she needs assistance with foot care and skin care for her feet and lower legs. As with dressing, Ms. Sullivan concluded that Ms. C has sufficient flexibility to reach her feet. However, for the same reasons as stated in section B 1, above, Ms. C has shown that she likely does need assistance with foot care. She is not able to clip her own toenails or put lotion on her feet. Ms. C should have been scored as needing one person limited assistance with this ADL. She testified that she needs help with lotion a couple of times a week, so her service level authorization should be for limited assistance, twice a week. When necessary, her nail care can occur at the same time.

4. *Bathing*

Ms. C reported that she needs help getting in and out of the bath tub. Ms. Sullivan noted that Ms. C usually has her sister nearby during a shower in case she has a seizure.¹⁵ Ms. Sullivan testified that she viewed the assistance provided as mostly supervision. However, for the ADL of Bathing, the CAT specifically allows for physical help limited to transfers. The undisputed testimony in this case was that Ms. C does need help stepping in and out of the bath tub. There are no grab bars near the tub.¹⁶ Stepping in and out of a bath tub can be more difficult, and Ms. C's testimony that she needs assistance is consistent with her chronic pain and difficulty lifting her knees. Ms. C should have been scored as needing physical help limited to transfers, and the service level authorization should allow this assistance daily.

5. *Main Meal Preparation*

Ms. C has not asked for assistance with light meal preparation, but has asked for limited assistance preparing her main meals. Ms. C testified that she doesn't eat much. She can prepare simple meals for herself, and sometimes her sister will bring food over for her. She also testified that she would have trouble standing long enough to prepare a main meal. However, part of the meal preparation process can occur while sitting on a chair or stool. In addition, if Ms. C is not actually going to eat anything other than a light meal, and since she can prepare light meals without assistance, there would be no need to authorize PCA services for a main meal. Ms. C has not met her burden of showing she needs physical assistance with main meal preparation.

¹⁵ Exhibit E11.

¹⁶ Exhibit E11.

6. *Shopping*

Ms. C testified that her sister does her shopping, or sometimes assists her with shopping. However, Ms. C acknowledged that she is able to shop on her own using a store-provided electric cart. She can also lift most items out of the shopping basket to put them on the conveyer belt. It is likely difficult for Ms. C to shop by herself. She has not, however, shown that she needs physical assistance with this activity.

7. *Light Housework*

Light Housework includes the tasks of vacuuming, cleaning a bathroom, and making the bed.¹⁷ Ms. C requested limited assistance for this IADL. She testified that the motion used for vacuuming and sweeping is particularly hard on her lower back. She does have chronic pain and disc degeneration. She also has limitations in her ability to bend. While she has the manual dexterity, hand grip, and upper extremity range of motion to perform housekeeping tasks, it is likely that she would only be able to make her bed or clean a bathtub with difficulty and that she would need some physical assistance to complete these tasks. She should have been scored with a 1/3 for this activity.

8. *Laundry*

The laundry facility for Ms. C's apartment is on the first floor. She would have to walk up and down the stairs carrying a laundry basket to complete this activity. She testified that she is not able to do that. However, she did not fully explain why she can't carry a laundry basket. While there is evidence to suggest that she might need assistance with this task, she has not quite met her burden of showing that it is more likely true that she does need assistance.

IV. Conclusion

Ms. C has met her burden of showing she needs physical assistance for Dressing, Personal Hygiene, Bathing, and Light Housework. Assuming she meets all other eligibility requirements, her application for services should be approved, and her service level authorization should allow the assistance levels discussed in this decision.

Dated this 30th day of September, 2015.

Signed

Jeffrey A. Friedman
Administrative Law Judge

¹⁷ 7 AAC 125.30(c)(3).

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 14th day of October, 2015.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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