

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

In the Matter of:)
)
 P T) OAH No. 15-1213-MDS
) Agency No.
_____)

DECISION

I. Introduction

P T applied for PCA services. Based primarily on an assessment visit on August 13, 2015, the Division of Senior and Disabilities Services (Division) notified Ms. T that her application was denied. Ms. T requested a hearing.

Ms. T’s hearing was held on October 27, 2015. Ms. T represented herself. N “N” Z, who is employed with the PCA agency No Name, LLC, also testified on her behalf. Laura Baldwin represented the Division. David Chadwick testified for the Division.

Based upon the evidence presented, Ms. T 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 . . .”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”, 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

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

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.

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 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

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 an 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.

¹⁰ Ex. E, p. 18.

¹¹ Ex. E, p. 26.

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** (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).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 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.

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 setup assistance (support codes of 1 or 2). See Ex. E, pg. 26.

¹⁵ Ex. E, p. 31.

¹⁶ See 7 AAC 125.024(a)(1) and the Division’s *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 44 - 46.

III. Background Facts

Ms. T is 75 years old. She lives by herself in a single level apartment.¹⁷ Her health conditions include lumbar disc disorder with myelopathy, cardiac dysrhythmia, diabetes, hypertension, anxiety, lumbago, and cataracts.¹⁸

Ms. T was assessed on August 13, 2015 to determine her eligibility for the PCA program. Based upon her visual observation, functional testing, and statements made by Ms. T, the assessor determined that Ms. T was capable of performing transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing without requiring physical hands-on assistance.¹⁹ The assessor also determined that although it was difficult for her, and she sometimes needed some set up help, Ms. T did not need someone to provide her with hands-on physical assistance with her IADLs (light meal preparation, main meal preparation, shopping, light housework, and laundry).²⁰ On September 1, 2015, the Division sent Ms. T notice that she was not eligible for PCA services.²¹

Ms. T did not request PCA assistance with her activities of daily living. She, however, requested assistance with all of her IADLs and for 30 minutes per day of doctor prescribed assistance with walking exercise. Ms. T's testimony was that she could prepare light meals and her main meal. She testified that she was sometimes capable of performing light housework, but could not always participate in it. She testified that if she got a ride to the grocery store, then she could do her own shopping. With regard to laundry, she testified that she could do light loads of laundry by herself, but she was unable to launder heavy loads, such as blankets, by herself. She testified that she required help because she lived by herself, experienced pain, had vision problems in her right eye, and she felt helpless. Ms. T has a prescription from her doctor, dated August 6, 2015, for PCA assistance with walking exercise, for 30 minutes each day, 7 days per week.²²

Ms. T's recent medical records show that she has some vision problems, lower back pain, and pain in her right shoulder and upper extremity, but that she does not have any limitation in

¹⁷ Ex. E, p. 1.

¹⁸ Ex. E, p. 3; June 16, 2014 medical records, p. 1.

¹⁹ Ex. E, pp. 6 – 11; Mr. Chadwick's testimony.

²⁰ Ex. E, p. 26.

²¹ Ex. D.

²² Ex. 2.

her range of motion or numbness.²³ Her recent medical records do not show any issues with her legs, although her records from February 2014 mention ongoing left knee and lower leg pain, and her October 2014 records show a prescription of Voltaren gel for knee and leg pain.²⁴ None of her records reflect any limitations on her ability to walk, transfer, etc.

IV. Discussion

Ms. T, as the applicant, has the burden of proof by a preponderance of the evidence.²⁵ She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,²⁶ 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.²⁷

Ms. T does not dispute the assessment's findings that she was able to perform her activities of transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing without requiring physical hands-on assistance. She is therefore not eligible for PCA assistance based upon a need for physical hands-on assistance with those activities. As a result, she is only be eligible for PCA assistance if she needs some degree of hands-on assistance²⁸ (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.²⁹

Ms. T argued that she could participate to some very limited extent with her light meal preparation but needs hands-on assistance with it, and that she was completely unable to prepare light meals, do housework, shopping and laundry.³⁰ The assessor determined that Ms. T did not

²³ Ex. 1, pps. 3 – 10 (medical records from 9/22/2015, 9/4/2015, 8/14/2015, and 8/6/2015).

²⁴ Ex. 1, pp. 13, 16 (medical records from February 5, 2014 and October 10, 2014).

²⁵ 7 AAC 49.135.

²⁶ 2 AAC 64.290(a)(1).

²⁷ 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>).

²⁸ 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.

²⁹ Ex. E, p. 31.

³⁰ Ms. T submitted a list of requested PCA services, which contain specific time requests. Ex. 1, p. 2 (October 6, 2015 fax sent by Mr. Z). The times contained in that list correspond to classifications contained in the Division's *Personal Care Assistance Service Level Computation* chart, e.g., 90 minutes for light housework is the amount of assistance provided someone who is completely unable to participate in that activity. See Ex. B, p. 45.

require physical assistance with any of her IADLs (light meal preparation, main meal preparation, shopping, light housework, and laundry).³¹

The medical evidence does not demonstrate any limitations on Ms. T's ability to perform basic physical tasks, including walking, although she does have issues with pain and with her vision. Ms. T's testimony, as recited above, established that she can perform her IADLs without assistance, although it might be difficult for her.³² Ms. T's testimony and medical records, when read together, demonstrate that she is capable of doing her household tasks – even though it is difficult for her. It is therefore more likely true than not true that she does not require physical assistance with her IADLs, even though it is difficult for her to perform those tasks. A person who is classified as able to do her or his IADLs independently, even if it is difficult for her or him to do them, does not meet satisfy the minimum the threshold necessary to qualify for PCA services. Consequently, Ms. T is not eligible for PCA services.

Ms. T's lack of eligibility for PCA services also means that she cannot receive them for her prescribed walking exercise.

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. T failed to meet her burden of proof and establish that she required hands-on assistance with any of these PCA tasks. Accordingly, Ms. T is not eligible for PCA services, including any walking exercise assistance. The Division's denial of her application is upheld.

DATED this 4th day of November, 2015.

Signed

Lawrence A. Pederson
Administrative Law Judge

³¹ Ex. E, p. 26; Mr. Chadwick's testimony.

³² Although Ms. T testified that she could do shopping if transportation was provided, transportation to shopping is not a PCA service. See 7 AAC 125.030(c)(5). Consequently, her testimony is interpreted to mean that she can do her IADL of shopping without assistance.

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 18th day of November, 2015.

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

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