

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

In the Matter of)	
)	
Z C J)	OAH No. 15-1476-MDS
)	Agency No.

DECISION

I. Introduction

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

Ms. J’s hearing was held on December 22, 2015. Ms. J testified and represented herself. N “N” Z, who is employed with the PCA agency No Name Health Care, LLC, was present with Ms. J but he did not testify. Laura Baldwin represented the Division.

Based upon the evidence presented, Ms. J 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 ADLs or IADLs, then the person is eligible for PCA services. Once eligibility is established, time

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.

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

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);

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.

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. J is 76 years old. She lives with her roommate in a single level apartment.¹⁷ Her roommate receives Medicaid Waiver services, including chore services. Ms. J's health conditions include lumbar disc disorder with myelopathy, chronic pain syndrome unspecified, and diabetes.¹⁸

The Division's assessor, Mary Tanaka, assessed Ms. J on October 13, 2015 to determine Ms. J's eligibility for the PCA program. Based upon Ms. Tanaka's visual observation, functional testing, and statements made by Ms. J, the assessor determined that Ms. J 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 Ms. J required supervision and setup help for the IADLs of light meal prep, shopping, and laundry, that she required limited physical assistance with main meal preparation, and she was dependent requiring physical assistance with light housework.²⁰ On October 29, 2015, the Division sent Ms. J notice that she was not eligible for PCA services.²¹

Ms. J's testimony did not focus on her need for PCA assistance with her activities of daily living. There was some testimony regarding difficulty with controlling her diabetes and upper extremity restricted movement. She, however, requested assistance with all of her IADLs and for 30 minutes per day of doctor prescribed assistance with walking exercise. Ms. J's testimony was that she could not shop on her own because she needed someone to go with her and interpret for her. She could not make her own doctor appointments and did not know how to use public transportation. Because of language and cultural differences, Ms. J was stuck in her house and required a PCA to go anywhere. Ms. J has a prescription from her doctor, dated October 2, 2015, 2015, for PCA assistance with walking exercise, for 30 minutes each day, 7 days per week.²²

Ms. J's recent medical records show that she has some joint pain, lower back pain, and pain in her right shoulder and upper extremity, and some limitation in her range of motion.²³ Her gait is normal.²⁴ Her recent medical records do not show any issues with her legs, although some records from 2014 mention ongoing lower leg/knee pain.²⁵ None of her records reflect any

¹⁷ Ex. E, p. 1.

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

¹⁹ Ex. E, pp. 6 – 11.

²⁰ Ex. E, p. 26.

²¹ Ex. D.

²² PCA Application p. 14.

²³ See generally Medical Records from Orthopedic Physicians Anchorage.

²⁴ *Id.*

²⁵ Medical Records from Alaska Senior Care.

limitations on her ability to walk, transfer, etc. Finally, Ms. J experienced an increase in blood sugar attributable to a steroid injection in her shoulder for pain control. This was an expected side effect which the doctor discussed with her prior to administering the shot. Other than this, her blood sugar is well controlled.

IV. Discussion

Ms. J, as the applicant, has the burden of proof by a preponderance of the evidence.²⁶ She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,²⁷ 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.²⁸

Ms. J's testimony was not specific other than her need for interpretive and transportation services. When assessing the accuracy of the Division's ADL scores, greater weight is given to her medical records than her testimony. The medical records support 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 eligible for PCA assistance if she needs some degree of hands-on assistance²⁹ (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.³⁰

Although she was found eligible for PCA services with the IADLs of main meal preparation and light housework, the Division did not authorize time for these services because Ms. J's roommate received services. The controlling regulation, 7 AAC 125.040(13)(C) provides that PCA time for IADLs is not authorized under 7 AAC 125.030 if "other recipients living in the same residence receive IADL service under 7 AAC 125.010 – 7 AAC 125.199 or under 7 AAC 130...." Therefore, even though Ms. J's scores reveal she would benefit from PCA services, the Division's conclusion that it could not authorize PCA services for IADLs should be affirmed.

²⁶ 7 AAC 49.135.

²⁷ 2 AAC 64.290(a)(1).

²⁸ 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>).

²⁹ 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.

³⁰ Ex. E, p. 31.

The medical evidence does not demonstrate any limitations on Ms. J's ability to perform basic physical tasks, including walking, although she does have issues with pain. Ms. J's testimony and medical records, when read together, demonstrate that she is capable of completing all of her ADLs and most of her IADLs – 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 ADLs, even though it is difficult for her to perform those tasks. As a purely legal matter, even though she is technically eligible for PCA services due to her need for assistance with her IADLs, the regulations preclude her from receiving PCA services for IADLs when her roommate receives Medicaid Waiver Chore Services for IADLs.

Although she is not eligible to receive PCA services for main meal prep and light housework, Ms. J is technically eligible for PCA services associated with those activities. Therefore, if the medical records supported the need for physical assistance to complete the prescribed task of walking, Ms. J could receive PCA services for that activity.

Finally, Ms. J did not establish that she required someone to travel with her to confer with the health care provider. The medical records established that her roommate's PCA was of assistance during a medical appointment as a translator, not because Ms. J had cognitive or memory deficits.

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. J failed to meet her burden of proof and establish that she required hands-on assistance with any of the ADL tasks, and she is ineligible to receive PCA services for IADL tasks. She also failed to meet her burden with respect to the need for physical assistance with walking exercise and escort services. The Division's denial of her application is upheld.

DATED this 19th day of February, 2016.

Signed

Rebecca L. Pauli
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 4th day of March, 2016.

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.]