

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

In the Matter of:)
)
 B N) OAH No. 16-0083-MDS
) Agency No.
_____)

NON-ADOPTION

The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

The proposed decision makes a factual finding that Ms. N requires limited assistance with dressing twice daily, seven days per week.¹ Dr. L’s two letters, which are relied on in making that proposed finding, refer to Ms. N having arthritis in her shoulders, affecting her range of motion.² However, the other medical documents in the record, while repeatedly mentioning Ms. N’s severe knee osteoarthritis, do not mention Ms. N as having either arthritis in her shoulder or an impaired upper body range of motion. Given that Dr. L only saw Ms. N once, and the lack of corroborating medical evidence, his letters are given little weight. As a result, Ms. N did not demonstrate that it was more likely true than not true that she requires assistance with dressing, and the proposed decision’s factual finding regarding dressing assistance is stricken. Instead, the evidence shows that Ms. N is not eligible for PCA services with dressing.

The remainder of the decision remains unchanged.

APPEAL RIGHTS

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: May 12, 2016.

By: Signed
Deborah Erickson, Project Coordinator
Medicaid Redesign Initiative
Office of the Commissioner
Department of Health and Social Services

¹ See Proposed Decision, pp. 7 – 8.

² Ex. J, p. 2; unmarked exhibit received on March 3, 2016.

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[PARTIALLY REJECTED PROPOSED] DECISION

I. Introduction

B N applied for PCA services. Based primarily on an assessment visit on December 31, 2015, the Division of Senior and Disabilities Services (Division) notified Ms. N on January 12, 2016 that her application was denied. Ms. N requested a hearing.

Ms. N’s hearing was held on March 18, 2016. Ms. N was represented by her daughter G N, who testified on her behalf. B K with No Name Services assisted Ms. N. Darcie Shaffer represented the Division. Natasha Fromm testified for the Division.

Based upon the evidence presented, Ms. N is eligible for PCA services. The denial of her application is reversed and the Division is directed to provide Ms. N with PCA services as specified in this decision.

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 . . .”³ 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.”⁴

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.⁵ In general, if certain levels of

³ 7 AAC 125.010(a).

⁴ 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.*

⁵ See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

assistance are required, the regulations prescribe a fixed number of PCA minutes to be assigned per instance of that activity.

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.⁶ 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 independent⁷ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁸); **3** (the person requires extensive assistance⁹); **4** (the person is totally dependent¹⁰). 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).¹¹

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

⁶ Ex. E, pp. 6 – 11.

⁷ 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.

⁸ 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.”

⁹ 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.”

¹⁰ According to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to and IADL, “means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity.”

¹¹ Ex. E, p. 18.

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).¹²

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.¹³

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).¹⁴

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** (set-up 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).¹⁵

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 assistance¹⁶ (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.¹⁷

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

¹² Ex. E, p. 18.

¹³ Ex. E, p. 26.

¹⁴ Ex. E, p. 26.

¹⁵ Ex. E, p. 26.

¹⁶ For the purposes of this discussion, “hands-on” assistance does not include supervision/cueing or set-up assistance (support codes of 1 or 2). See Ex. E, pg. 26.

¹⁷ 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.¹⁸

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

III. Background Facts

Ms. N is a 72 year old widow, who lives with her family.¹⁹ Her health conditions include dysphagia, osteoarthritis of the knee and lower leg, neuropathy, hypertension, and GERD.²⁰

Ms. N was assessed on December 31, 2015 determine her eligibility for the PCA program. Based upon her visual observation, functional testing, and statements made by Ms. N, the assessor determined that Ms. N had a strong grip in both hands, could raise her hands over her head, but not behind her back, could move her legs, and was capable of performing bed mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing without requiring physical hands-on assistance.²¹ She also determined that Ms. N only required set up assistance with light meal preparation, main meal preparation, shopping, light housework, and laundry.²² On January 12, 2016, the Division sent Ms. N notice that she was not eligible for PCA services.²³ Ms. N had two earlier assessments performed in 2015, both of which concluded that Ms. N was not eligible for PCA services.²⁴

Dr. L wrote a letter on March 2, 2016, indicating that he had seen Ms. N once and that she had “limited range of motion of her knees and shoulders most of which [he] attributed to osteoarthritis.”²⁵ He wrote a much more extensive letter on November 12, 2016, stating that she had “severe degenerative arthritis involving her shoulders and knees. She is not able to walk, dress herself, or perform activities of daily living by herself.”²⁶ D J, PA-C, examined Ms. N on October 8, 2015. His notes state that she has leg pain, numbness, that she lacked full extension, and that her x-rays showed significant joint space narrowing and osteophyte formation in both legs. His notes further indicate that it was doubtful that conservative (non-surgical) treatment

¹⁸ 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.

¹⁹ Ex. E, p. 1.

²⁰ Ex. E, p. 3; Ex. G.

²¹ Ex. E, pp. 4, 6 - 11.

²² Ex. E, p. 26.

²³ Ex. D.

²⁴ Exs. F, I.

²⁵ Ex. J.

²⁶ Unmarked exhibit received on March 3, 2016.

would “provide her any significant benefit for any length of time.”²⁷ On October 8, 2015, he wrote that he was treating Ms. N for an orthopedic condition and that she “has severe osteoarthritis of both knees.”²⁸ Mr. J further wrote on March 10, 2016, that he was unable to address issues regarding her upper extremities, but that with regard to her knees:

she has difficulty ambulating and she could benefit from a personal care attendant helping her in mobility with regards to getting up out of chairs, sitting down in to chairs, and moving from place to place with contact guard assistance. She would need help standing for long periods of time, as well as any kind of walking/ambulation. She would not be able to lift with her knees at this point, as this would be too painful for her.²⁹

N F, PA-C, on March 9, 2016, wrote that the last time she saw Ms. N was in September 2015, and that she was ambulatory, and could sit and do some chores.³⁰ Ms. N had a physical therapy evaluation performed in July 2015, which showed that “impairments are present with gait, joint mobility, posture and range of motion,” that she had “[l]imited walking tolerance, [l]imited and painful with sit to stand transitions,” and that she reported that she required assistance with transfers from chairs and on and off the toilet.³¹

IV. Discussion

Ms. N, as the applicant, has the burden of proof by a preponderance of the evidence.³² She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,³³ 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.³⁴ The areas in dispute, which are each addressed below, are: bed mobility, transfers, locomotion, dressing, toileting, bathing, personal hygiene, and all IADLs.

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²⁷ Ex. L, pp. 5 – 6.

²⁸ Unmarked exhibit received on March 3, 2016.

²⁹ Unmarked exhibit received on March 18, 2016.

³⁰ Ex. M, p. 2.

³¹ Advanced Physical Therapy July 16, 2015 assessment, pp. 1, 3 (unmarked exhibit received on March 3, 2016).

³² 7 AAC 49.135.

³³ 2 AAC 64.290(a)(1).

³⁴ 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>).

1. Bed Mobility

Bed mobility is defined as how a “person moves to and from lying position, turns side to side, and positions body while in bed.”³⁵ The assessor did not see Ms. N moving in bed. Ms. N told the assessor that she needed help to turn in bed, but that she could sit up on her own in bed. However, the assessor coded Ms. N as being independent with bed mobility, based upon her observation of Ms. N walking backwards, scooting backward on the couch, and repositioning herself in her dining chair.³⁶ Ms. N testified at hearing. She stated that Ms. N did not require help turning from side to side, but rather needed help sitting up in bed.

Ms. N’s testimony is the direct opposite of her mother’s statements during the assessment. Her mother said that she needed help moving from side to side, but could sit up. There is also very limited medical evidence showing that Ms. N is severely limited in using her arms for activities such as turning, other than a statement that she had some limitations in her shoulders due to osteoarthritis. Given the limited medical evidence and the disparity between her mother’s statement and Ms. N’s testimony, Ms. N has not met her burden of proof and established that she requires any hands-on physical assistance with bed mobility.

2. Transfers

Transfers are defined as how a “person moves between surfaces,” such as from a sitting to a standing position.³⁷ The assessor observed Ms. N transferring with her daughters holding onto her arms on each side. One of Ms. N’s daughters and Ms. N both told the assessor that she needed help in getting up. The assessor concluded that Ms. N was capable of transferring by herself, without physical assistance, but did require some oversight/supervision/cueing.³⁸

Ms. N testified that she has to provide weight-bearing assistance with transfers eight times daily. Mr. J’s March 10, 2016 letter and his earlier October 8, 2015 letter, when taken into conjunction with other medical evidence, including the physical therapy evaluation, show a definite need for assistance with transfers due to severe osteoarthritis in the knees. Given Ms. N’s documented severe osteoarthritis in her knees, and her shoulder osteoarthritis, Ms. N’s testimony that Ms. N requires weight-bearing assistance with transfers is credible. Eight transfers a day is a reasonable number, given Ms. N’s testimony regarding Ms. N’s daytime

³⁵ Ex. E, p. 6.

³⁶ Ex. E, p. 6.

³⁷ Ex. E, p. 6.

³⁸ Ex. E, p. 8.

activity. Accordingly, Ms. N has met her burden of proof and demonstrated that she is eligible for PCA services with transfers: extensive assistance (self-performance code of 3) eight times daily, seven days per week.

3. 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.³⁹ The assessor determined that Ms. N was able to locomote without assistance based upon her observation of Ms. N walking “backward hurriedly” then sitting down when the assessor entered the apartment. The assessor also observed Ms. N walking into the dining room with a daughter’s arm on her hand. Ms. N told the assessor that she needed help with walking due to her arthritis. However, the assessor did not notice weight-bearing assistance with walking.⁴⁰

Ms. N testified that Ms. N required weight-bearing assistance with walking. However, her testimony regarding the degree of assistance is not supported by the medical records. Those demonstrate that Ms. N is ambulatory, but that it is very painful for her, and that she needs contact guard assistance. Contact guard assistance properly falls within the category of limited assistance (self-performance code of 2) because it is physical nonweight-bearing assistance. Ms. N testified that Ms. N required assistance with walking eight times daily, which is a reasonable number given the description of Ms. N’s activity. Accordingly, Ms. N has met her burden of proof and demonstrated that she is eligible for PCA services with locomotion: limited assistance (self-performance code of 2) eight times daily, seven days per week.

4. Dressing

Dressing is how a “person puts on, fastens, and takes off all items of street clothing.”⁴¹ The assessor determined that Ms. N was able to dress herself independently, based in part of her observation of her putting on a head scarf. Ms. N, however, told the assessor that she required assistance with dressing.⁴² Ms. N testified that Ms. N needs assistance with dressing because she cannot lift her arms. Dr. L wrote that Ms. N’s osteoarthritis affected her ability to dress herself. However, there is no medical evidence that Ms. N requires weight-bearing assistance with dressing. Based upon Dr. L’s letter, Ms. N has met her burden of proof and demonstrated

³⁹ Ex. E, p. 7.

⁴⁰ Ex. E, pp. 6 – 7; Ms. Fromm’s testimony.

⁴¹ Ex. E, p. 8.

⁴² Ex. E, p. 8.

that she is eligible for PCA services with dressing: limited assistance (self-performance code of 2) twice daily, seven days per week.

5. Toileting

Toileting is a complex process that combines locomotion, transfers, dressing, and cleansing.⁴³ Ms. N testified that Ms. N required weight-bearing assistance with transfers on and off the toilet, in addition to help with adjusting her clothing, six times daily. As found above, Ms. N requires extensive assistance with transfers. It is therefore more likely true than not true that Ms. N requires extensive assistance (self-performance code 3) with toileting six times daily, seven days per week.

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.⁴⁴ The assessor was told by Ms. N that she sat on a chair and her daughter washes her. The assessor concluded, based upon her observations, that Ms. N was capable of bathing by herself, without requiring hands-on physical assistance.⁴⁵ Ms. N testified that Ms. N sits and is hand-bathed by her. Bathing would therefore involve both transfers and physical assistance with bathing. Ms. N has previously been found to require extensive assistance with transfers, and to require limited assistance with dressing due to her shoulder osteoarthritis. This correlates to extensive assistance (self-performance code 3) with bathing because Ms. N is physically bathed.⁴⁶ Ms. N has therefore shown it is more likely true than not true that she requires extensive assistance with bathing once daily, seven days per week.

7. Personal Hygiene

Personal hygiene consists of basic grooming tasks: combing hair, brushing teeth, washing the face.⁴⁷ The assessor found that Ms. N could perform her personal hygiene independently based upon Ms. N's statements and her observation of Ms. N putting on a head scarf.⁴⁸ Ms. N, however, testified that Ms. N could brush her own teeth but had to be assisted with brushing her hair and washing her face. Based upon Ms. N's statements to the assessor and

⁴³ Ex. E, p. 9.

⁴⁴ Ex. E, p. 11.

⁴⁵ Ex. E, p. 11.

⁴⁶ Ex. E, p. 11.

⁴⁷ Ex. E, p. 10.

⁴⁸ Ex. E, p. 10; Ms. Fromm's testimony.

the assessor's observations, Ms. N has not shown that it is more likely true than not true that she requires PCA assistance with personal hygiene.⁴⁹

8. Instrumental Activities of Daily Living

The assessor determined that Ms. N was capable of performing her IADLS of light and main meal preparation, light housework, grocery shopping, and laundry independently as long as someone provided her with some set up help.⁵⁰ Ms. N testified that Ms. N was completely dependent in all of her IADLS and could not participate in them to any degree. The medical evidence shows that Ms. N certainly has mobility issues, a limited range of motion, and cannot stand for extended periods of time. However, it does not show that she is completely incapable of participating in household tasks. Based upon the medical evidence, Ms. N has shown that she is impaired in her ability to perform these basic household tasks, but that she is capable of participating to some extent, even if it is as minimal as helping prepare meals while sitting down, minimal dusting and cleaning, folding clothes, and helping with grocery shopping while seated in a motorized cart. Accordingly, it is more likely true than not true that she should receive some hands-on physical assistance (self-performance code of 2, support code of 3) with her IADLS of light and main meal preparation, light housework, grocery shopping, and laundry.

V. Conclusion

Ms. N forcefully argued that Ms. N should receive eight hours per day of PCA services. However, the total amount of PCA services is based upon the degree of assistance a person needs with a specified task, multiplied by the number of times that task is performed. The medical evidence shows that, based upon Ms. N's severe osteoarthritis in both of her knees and her shoulder osteoarthritis, that Ms. N is eligible for PCA services as follows:

Transfers: extensive assistance (self-performance code 3) 56 times weekly
Locomotion: limited assistance (self-performance code 2) 56 times weekly
Dressing: limited assistance (self-performance code 2) 14 times weekly
Toileting: extensive assistance (self-performance code 3) 42 times weekly
Bathing: extensive assistance (self-performance code 3) 7 times weekly
Light Meal: physical assistance (self-performance code 2, support code 3) 14 times weekly
Main Meal: physical assistance (self-performance code 2, support code 3) 7 times weekly

⁴⁹ This finding is not incompatible with the finding that Ms. N requires limited assistance with dressing, given that personal hygiene requires a lesser range of motion than required for dressing.

⁵⁰ Ex. E, p. 26.

Light Housekeeping: physical assistance (self-performance code 2, support code 3) once weekly
Grocery Shopping: physical assistance (self-performance code 2, support code 3) once weekly
Laundry: physical assistance (self-performance code 2, support code 3) once weekly

DATED this 31st day of March, 2016.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

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