

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

In the Matter of:)	
)	OAH No. 16-0333-MDS
Z N M)	Agency No.
<hr/>		

DECISION

I. Introduction

Z N M applied for PCA services. Based primarily on an assessment visit on February 25, 2016, the Division of Senior and Disabilities Services (Division) notified Ms. M that her application was denied. Ms. M requested a hearing.

Ms. M’s hearing was held on May 10, 2016. Ms. M represented herself. W Z, who is employed with the PCA agency No Name, also testified on her behalf. Laura Baldwin represented the Division. Julie White, the assessor, and Lorelei Crewdson 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 . . .”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

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.

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.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

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 and 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.

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); **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

¹¹ Ex. E, p. 26.

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.

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.

III. Background Facts

Ms. M is 53 years old. She lives with her children.¹⁷ Her health conditions include depression, disc degeneration in the lumbosacral region, post-traumatic stress disorder, asthma, a meniscal tear, bilateral knee pain, and gastroesophageal reflux disease.¹⁸

Ms. M was assessed on February 25, 2016 to determine her eligibility for the PCA program. During that assessment, Ms. M informed the assessor that she had numbness in her finger, arthritis pain, headaches, lower back pain, could not walk far, and experienced shortness of breath.¹⁹ Based upon her 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. Notably, the assessor saw Ms. M lower herself to a sitting position on the floor and get up from the floor without assistance, and walk without assistance.²⁰ The assessor also determined that although it was difficult for her, Ms. M did not need someone to provide her with either hands-on physical assistance or setup assistance with her IADLs (light meal preparation, main meal preparation, shopping, light housework, and laundry).²¹ On March 11, 2016, the Division sent Ms. M notice that she was not eligible for PCA services.²²

Ms. M requested assistance with transfers, locomotion, toileting, dressing, bathing, personal hygiene, medication assistance, and medical escort. She also wanted assistance with all of her IADLs.²³ Ms. M had a right knee MRI performed in October 2015, which showed a tear in her right medial meniscus, some right medial compartment osteoarthritis, joint effusion, and a popliteal cyst.²⁴ Ms. M's medical records show that she reported having shortness of breath

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.

¹⁷ Ex. E, p. 1.

¹⁸ Ex. E, p. 3; Ex. 1, pp 44 - 46. (Medical Records filed on May 9, 2016).

¹⁹ Ex. E, p. 3.

²⁰ Ex. E, pp. 6 – 11; Ms. White's testimony.

²¹ Ex. E, p. 26; Ms. White's testimony.

²² Ex. D.

²³ Ms. M's testimony.

²⁴ Ex. 1, p. 46.

with walking one block or more or climbing one flight of stairs on March 25, 2015.²⁵ She reported arm and leg pain on September 8, 2015.²⁶ She reported leg pain on October 19, 2015; the physician who examined her that day noted issues with both legs, and that her “gait appears painful.” However her muscle strength was “grossly intact.”²⁷ On February 5, 2016, Ms. M again reported knee pain, with pain on walking. She also reported that she “[h]as to have children help her up at times.” Ms. M was prescribed a capsaicin cream for her knee pain.²⁸

Ms. M testified that she needed weight-bearing assistance with transfers a minimum of three times a day. She testified that she needs hands-on (being held onto) with walking a minimum of four times per week. She testified that that she need weight-bearing help with toileting twice daily, and help with bathing daily. She testified that she needs help with dressing due to shortness of breath. She testified that she has soreness, tingling, and numbness in her hands. She testified that she is unable to do most of her IADLs, but can go shopping with her children if they help her. Ms. Z is employed with the PCA agency that helped Ms. M apply for benefits. She testified that when she first met Ms. M, that Ms. M was lying in bed due to pain and was having trouble breathing. She further testified that Ms. M had trouble getting up from a chair.

IV. Discussion

Ms. M, as the applicant, has the burden of proof by a preponderance of the evidence.²⁹ She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,³⁰ 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.³¹

The medical records in this case show that Ms. M undoubtedly has knee pain, which is aggravated by walking or standing. She also has asthma, and develops shortness of breath upon exertion. However, they do not show that she requires hands-on physical assistance with any of her activities of living, either ADLs or IADLs, other than her own report that her children need

²⁵ Ex. 1, p. 27.

²⁶ Ex. 1, p. 36.

²⁷ Ex. 1, pp. 38 – 39.

²⁸ Ex. 1, pp. 43 – 44.

²⁹ 7 AAC 49.135.

³⁰ 2 AAC 64.290(a)(1).

³¹ 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>).

to help her up occasionally. The medical records do not contain any reference whatsoever to numbness/pain/tingling in her hands which affect her ability to perform day to day tasks. The medical records also do not show that Ms. M is prescribed any strong pain medications. Instead, she has a capsaicin ointment, a non-narcotic, for her knee pain.

It is possible that Ms. M's physical condition has deteriorated since the date of her last medical records (February 5, 2016).³² However, the medical records provide the best evidence regarding Ms. M's physical care needs. They show a person with knee pain who becomes short of breath on exertion. However, they do not show that her knee pain or shortness of breath are severe enough that she is unable to perform her day-to-day tasks around the home (IADLs) or that she requires either limited or extensive assistance with transfers, locomotion, toileting, dressing, eating, or bathing. The assessor's observations of Ms. M are more consistent with the medical records than either Ms. M's testimony or Ms. Z's testimony. Given an examination of the evidence as a whole, Ms. M has not met her burden of proof and shown that it is more likely true than not true that she qualifies for PCA services.

V. Conclusion

Ms. M is not eligible for PCA services. The Division's denial of her application is AFFIRMED.

DATED this 18th day of May, 2016.

Signed

Lawrence A. Pederson
Administrative Law Judge

³² Ms. Z speculated that the medical records may be incomplete due to language barriers faced by Ms. M and her physician. However, that speculation cannot form the basis for a decision in this case.

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 1st day of June, 2016.

By: *Signed* _____
Name: Lawrence A. Pederson
Title/Agency: Admin. Law Judge/OAH

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