

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

In the Matter of:)	
)	OAH No. 16-0657-MDS
T L)	Agency No.
_____)	

DECISION

I. Introduction

T L was receiving 7.5 hours per week of Personal Care Assistance (PCA) services. Based primarily on an assessment visit on May 5, 2016, the Division of Senior and Disabilities Services (Division) notified Ms. L on May 26, 2016 that her PCA services were being reduced to 4.75 hours a week. Ms. L disagreed and requested a hearing, which was held on July 18, 2016.

The evidence shows that Ms. L has significant mobility issues. However, she is capable of performing most, but not all, of her day to day tasks without requiring hands-on physical assistance. The Division’s May 26, 2016 change to Ms. L’s PCA service plan is upheld with the following changes: Ms. L is to continue to receive light housekeeping assistance, and shopping assistance is added to her plan.

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 If two PCA recipients reside in the same home, the Medicaid regulations provide that the Division “may authorize a personal care assistant to provide assistance with an IADL for both recipients.”³ However, those same

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 7 AAC 125.030(g).

regulations state that PCA services do not include assistance with an IADL if “other recipients living in the same residence receive IADL services . . .”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 assistance are required, the regulations prescribe a fixed number of PCA minutes to be assigned per instance of that activity.

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

⁴ 7 AAC 125.040(a)(13)(C).

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

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. L is 69 years old. She lives with her disabled daughter, who she helps to care for, in a single level home, which has entrance steps, two on the outside and one inside.¹⁹ Her health conditions include spondylosis, gait abnormality, osteoarthritis, chronic obstructive pulmonary disease, lumbago, and several mental health conditions.²⁰

Ms. L was receiving very limited PCA services in May 2016, which consisted of limited assistance with dressing, 14 times weekly, extensive assistance with bathing, seven times weekly, and some assistance with main meal preparation, housework, and laundry.²¹ She was assessed on May 5, 2016, to determine her ongoing need for PCA services.²²

Based upon her visual observation, functional testing, and statements made by Ms. L, the assessor determined that Ms. L could grip with both hands, but had no strength in her right hand, could not raise her hands over her head, could not touch her hands behind her back, could not stand up while her hands were placed across her chest, and could not touch her feet. The assessor stated Ms. L could only lift her arms to shoulder height, and could only reach to her mid shins from a sitting position.²³

The assessor found that Ms. L was capable of performing bed mobility, transfers, locomotion using her walker, eating, toilet use, and personal hygiene without requiring physical hands-on assistance, but that she required limited assistance with dressing, and extensive assistance with bathing.²⁴ She also determined that Ms. L required set up assistance with light meal preparation, main meal preparation, shopping, light housework, and shopping, and that

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. C; Ex. E, p. 1; Ms. L's testimony.

²⁰ Ex. E, p. 3; Ex. G.

²¹ Ex. D, p. 17.

²² Ex. E.

²³ Ex. E, pp. 3 - 4.

²⁴ Ex. E, pp. 4, 6 - 11; Ms. Fromm's testimony.

while she could partially perform main meal preparation, light housework, and laundry, she required hands-on physical assistance with those IADLs.²⁵

The Division notified Ms. L on May 26, 2016, that she would continue to receive PCA services for dressing, bathing, and laundry. It cancelled her PCA services for main meal preparation and light housework because another recipient in the household, her daughter, was receiving those services.²⁶

IV. Discussion

This case has a mixed burden of proof. The Division has the burden of proof by preponderance of the evidence on those items that it wishes to reduce or eliminate, which are assistance with main meal preparation and light housework. Ms. L has the burden of proof by a preponderance of the evidence on those items she wishes to add or increase, which are single and multi-level locomotion, locomotion to access medical appointments, toilet use, and grocery shopping.²⁷ The parties can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,²⁸ 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.²⁹ Each of the areas in dispute, locomotion within the home, both single and multi-level, locomotion to access medical appointments, toileting, and the IADLs of main meal preparation, light housework, and grocery shopping, are addressed below.

1. Locomotion within the home – both single and multi-level.

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.³⁰ The assessor determined that Ms. L was able to locomote in her home with the walker, based both upon her observation and Ms. L's statements.³¹

²⁵ Ex. E, pp. 26; Ms. Fromm's testimony.

²⁶ Ex. D.

²⁷ The regulation which defines which party has the burden of proof is located at 7 AAC 49.135.

²⁸ 2 AAC 64.290(a)(1).

²⁹ 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>).

³⁰ Ex. E, p. 7.

³¹ Ex. E, pp. 6 – 7; Ms. Fromm's testimony.

Ms. L has had two recent falls (June 17 and July 9, 2016).³² However, there was no evidence presented that she requires anything more than supervision for locomoting. In addition, while there are steps into her home, the home itself is not multi-level. Accordingly, she has not met her burden of proof to add locomotion in the home to her PCA service plan.

2. Locomotion to access medical appointments.

Ms. L requested assistance with locomotion to access her medical appointments. However, she goes shopping on her own and goes to appointments, although she cannot take her pain medications before those excursions and it is very difficult.³³ However, regardless of transportation issues, this category of assistance does not involve driving. It, instead, involves “walking with support of a walker, cane, gait belt, braces, crutches, or manual wheelchair.”³⁴ As discussed immediately above, she can locomote without PCA assistance, and she is capable of walking to and from her car for shopping and appointments. She has therefore not met her burden of proof to demonstrate that she requires assistance with locomotion to access medical appointments.

3. Toileting

Toileting is a complex process that combines locomotion, transfers, dressing, and cleansing.³⁵ Ms. L stated that her legs fall asleep if she sits too long on the toilet and that she needs assistance with transferring up from the toilet.³⁶ While she has diagnoses of spondylosis, gait instability, and osteoarthritis, the limited evidence did not support her testimony or establish how often she requires transfer assistance, or what that assistance specifically consisted of. She therefore has not met her burden of proof to add toileting assistance to her PCA service plan.

4. Instrumental Activities of Daily Living

a. Main meal preparation.

Ms. L was receiving main meal preparation assistance. Her 2016 assessment found that she continued to require main meal preparation assistance.³⁷ However, the Division terminated her assistance because her daughter, with whom she lives, already receives that assistance.³⁸

The Division allows multiple recipients in a home to each receive IADL assistance, but does not

³² Ex. 1, p. 1.

³³ Ex. 1, p. 1; Ms. L’s testimony.

³⁴ 7 AAC 125.030(b)(3).

³⁵ Ex. E, p. 9.

³⁶ Ex. E, p. 1.

³⁷ Ex. D, p. 17; Ex. E, p. 26.

³⁸ Ex. D, p. 3; Ex. G, p. 1.

allow duplication of assistance.³⁹ In this case, preparing a main meal for two people does not take any more time than to prepare a main meal for one person. Accordingly, the Division has met its burden of proof to remove main meal preparation from Ms. L's PCA service plan.

b. Light housework.

Ms. L was receiving light housework assistance (self-performance code of 2, support code of 3). Her 2016 assessment found that she continued to require that same degree of assistance.⁴⁰ However, the Division terminated her assistance because her daughter, with whom she lives, already receives light housekeeping assistance.⁴¹ The Division allows multiple recipients in a home to each receive IADL assistance, but does not allow duplication of assistance.⁴² The evidence shows that Ms. L has her own separate bathroom and her own bedroom.⁴³ Light housework involves cleaning the recipient's living space, including bedrooms, and bathrooms.⁴⁴ Because Ms. L's daughter's PCA is not be allowed, under the PCA program regulations,⁴⁵ to clean Ms. L's totally separate space, *i.e.*, her separate bedroom and bathroom, allowing this service will not duplicate PCA services allowed Ms. L's daughter. An example of the Division recognizing that supplying assistance with an IADL to two recipients in the same household does not duplicate services is shown in this case: Ms. L and her daughter are both provided laundry assistance.⁴⁶ Similarly, providing light housework assistance to Ms. L for cleaning her separate parts of the home does not duplicate the light housework assistance provided to her daughter. Accordingly, the Division has not met its burden of proof on this point. Ms. L is to continue to receive light housework assistance (self-performance code of 2, support code of 3) as part of her PCA service plan.

c. Shopping

Ms. L's prior PCA service plan did not provide her with shopping assistance. Her 2016 assessment found that although it was hard for her to shop, she only required setup assistance with shopping (self-performance code of 2, support code of 2). As a result, Ms. L did not receive

³⁹ 7 AAC 125.030(g); 7 AAC 125.040(a)(13)(C).

⁴⁰ Ex. D, p. 17; Ex. E, p. 26.

⁴¹ Ex. D, p. 3; Ex. G, p. 1.

⁴² 7 AAC 125.030(g); 7 AAC 125.040(a)(13)(C).

⁴³ Ex. 1, p. 2.

⁴⁴ 7 AAC 125.030(c)(3).

⁴⁵ 7 AAC 125.040(a)(10).

⁴⁶ Ex. D, p. 17; Ex. G, p. 1.

shopping assistance.⁴⁷ Ms. L's daughter does not receive shopping assistance.⁴⁸ There is therefore no question of duplication of services. Ms. L admittedly does the shopping now for both her and her daughter.⁴⁹ However, she credibly testified regarding her difficulty with the shopping, and the fact that she has to forgo her regular medication in order to drive to shop. While shopping does not "include[e] the cost of transportation,"⁵⁰ the act of shopping inherently includes the act of getting to and from the store. Given Ms. L's testimony, she is able to participate in shopping, but it is not reasonable for her to shop completely unassisted. Ms. L has therefore met her burden of proof to add shopping (self-performance code of 2, support code of 3) to her PCA service plan.

IV. Conclusion

Ms. L has a number of debilitating medical conditions. However, she retains independent mobility, although with difficulty. As a result, the Division's provision for her PCA service plan is upheld with the following additions:

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

DATED this 19th day of September, 2016.

Signed _____

Lawrence A. Pederson

Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 October, 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.]

⁴⁷ Ex. B, p. 44; Ex. D, p. 17; Ex. E, p. 26.

⁴⁸ Ex. G, p. 1.

⁴⁹ Ex. 1, p. 1; Ms. L's testimony.

⁵⁰ 7 AAC 125.030(c)(5).