

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

In the Matter of:	)	
	)	OAH No. 16-0808-MDS
Q Y	)	Agency No.
_____	)	

**DECISION**

**I. Introduction**

Q Y is a severely disabled young man who was receiving 64 hours per week of PCA services. On July 5, 2016, the Division of Senior and Disabilities Services (Division) notified him that his PCA services were reduced to 40 hours per week. Mr. Y requested a hearing.

In order to reduce Mr. Y’s PCA services, the Division is required to demonstrate that his condition has materially improved. However, the Division did not show that Mr. Y’s medical condition, physical functionality, or environment had changed so as to lessen his overall need for PCA services. The Division did demonstrate that the amount of PCA services for bed mobility was not fully justified and should be reduced. It also demonstrated, due to the change in Mr. Y’s prescription, that his PCA services for range of motion exercises should be reduced. With regard to the remaining reductions in Mr. Y’s PCA service plan, the Division did not demonstrate that Mr. Y’s condition had materially improved. In addition, Mr. Y requested that two prescribed tasks, walking exercise and foot care, be added to his PCA service plan. He did not demonstrate that those should be added. Accordingly, the Division’s reduction of Mr. Y’s PCA services is upheld in part and reversed in part. The Division is directed to provide Mr. Y 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 . . .”<sup>1</sup> Accordingly, “[t]he department will not authorize personal care services for a recipient if the

---

<sup>1</sup> 7 AAC 125.010(a).

assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL.”<sup>2</sup>

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.<sup>3</sup> 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.

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.<sup>4</sup> 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 independent<sup>5</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>6</sup>); **3** (the person requires extensive assistance<sup>7</sup>); **4** (the person is totally dependent<sup>8</sup>).

---

<sup>2</sup> 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.*

<sup>3</sup> See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

<sup>4</sup> Ex. E, pp. 6 – 11.

<sup>5</sup> 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.

<sup>6</sup> 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.”

<sup>7</sup> 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.”

<sup>8</sup> 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.”

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).<sup>9</sup>

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).<sup>10</sup>

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.<sup>11</sup>

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).<sup>12</sup>

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 provided); **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).<sup>13</sup>

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.

---

<sup>9</sup> Ex. E, p. 18.

<sup>10</sup> Ex. E, p. 18.

<sup>11</sup> Ex. E, p. 26.

<sup>12</sup> Ex. E, p. 26.

<sup>13</sup> Ex. E, p. 26.

Similarly, if a person is coded as requiring some degree of hands-on assistance<sup>14</sup> (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.<sup>15</sup>

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.<sup>16</sup>

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

### **III. Background Facts**

Mr. Y is 25 years old.<sup>17</sup> His health conditions include mixed incontinence, severe intellectual disabilities, and congenital quadriplegia.<sup>18</sup>

Mr. Y was receiving 64 hours a week of PCA services after an agreement reached with the Division on April 15, 2015. Slightly more than a month thereafter, on May 19, 2015, the Division assessed Mr. Y to determine his ongoing eligibility for PCA services. The assessor found that there was a decrease in Mr. Y's care needs from those agreed upon just slightly a month before.<sup>19</sup> The Division, however, did not reduce Mr. Y's PCA services at that time.

A portion of Mr. Y's 64 hours of PCA services was for 420 minutes (7 hours) per week of range of motion exercises. That was according to a prescription that expired in March 2016. Mr. Y submitted a new prescription in February 2016, that requested four hours per week of range of motion exercises, and time for walking exercise and foot care.<sup>20</sup> On July 5, 2016, the Division notified Mr. Y that his PCA services for body mobility, transfers, locomotion, toilet use, and laundry would be reduced. He was additionally notified that his time for range of motion exercises would be reduced from seven hours to four hours and he would not receive the

---

<sup>14</sup> 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.

<sup>15</sup> Ex. E, p. 31.

<sup>16</sup> 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.

<sup>17</sup> Ex. E, p. 1.

<sup>18</sup> Ex. E, p. 3; Ex. G.

<sup>19</sup> Exs. D, E.

<sup>20</sup> Ex. D, pp. 4, 9; Ex. H, p. 1.

walking exercise and foot care which he was prescribed in February. The basis for the Division's reduction was the May 19, 2015 assessment and the February 2016 prescription.<sup>21</sup>

Mr. Y requested a hearing to challenging the Division's decision. That hearing was held on August 5 and September 2, 2016 before Administrative Law Judge Jay Durych. Mr. Y was represented by his aunt T Z, who is his aunt and guardian. She also testified on his behalf. Darcie Shaffer represented the Division. Melissa Mead and Jerry Fromm, both of whom are employed by the Division, testified. G Z, who is employed by the PCA agency that provides services for Mr. Y, also testified. After hearing, the case was reassigned to Administrative Law Judge Lawrence Pederson.

#### **IV. Discussion**

The Division has the burden of proof by a preponderance of the evidence on services which it seeks to decrease. Mr. Y, similarly, has the burden of proof on services which he seeks to increase.<sup>22</sup> The parties can meet their respective burdens using any evidence on which reasonable people might rely in the conduct of serious affairs,<sup>23</sup> 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.<sup>24</sup> Increasing, reducing, or terminating services, or the amount of time provided requires a "material change in condition."<sup>25</sup> A "material change in condition" is defined as a change in a recipient's medical condition, a change in living conditions, an expiration of a prescription for a prescribed task, or a change in the underlying Medicaid regulations.<sup>26</sup>

In evaluating the evidence, the following is noted:

- a. The Division did not present any factual evidence showing that Mr. Y's medical conditions, his physical functioning, or his environment had changed.
- b. Mr. Fromm, the Division's primary witness regarding Mr. Y's need for PCA services, was not the person who performed Mr. Y's assessment.<sup>27</sup> That assessor did not testify.

---

<sup>21</sup> Ex. D.

<sup>22</sup> 7 AAC 49.135.

<sup>23</sup> 2 AAC 64.290(a)(1).

<sup>24</sup> 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>).

<sup>25</sup> 7 AAC 125.026(a).

<sup>26</sup> 7 AAC 125.026(d).

<sup>27</sup> Mr. Fromm's testimony.

- c. Mr. Y's primary witness did not provide testimony regarding Mr. Y's specific care needs. Rather, she stated that Mr. Y continued to require the same level of assistance.<sup>28</sup>
- d. G Z, who is the representative of Mr. Y's PCA agency, generally testified that he thought the Division's changes were appropriate. Mr. Z is not Mr. Y's PCA and was not present during the May 19, 2015 assessment, which provides the basis for the Division's proposed reduction.<sup>29</sup>

The areas in dispute, which are each addressed below, are: body mobility, transfers, locomotion, toilet use, laundry, range of motion exercises, walking exercise, and foot care. The items which are not in dispute are not addressed.

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."<sup>30</sup> Mr. Y was previously classified as totally dependent (self-performance code 4, support code 2) with this activity and received assistance with it 28 times weekly.<sup>31</sup> The assessor concluded, based upon her observation of Mr. Y moving his arms and legs "with no controlled movements" that he was capable of performing bed mobility with only limited assistance (self-performance code 2, support code 2) 14 times per week.<sup>32</sup> At hearing, the Division's witness stated that because Mr. Y had some body movement, he was not totally dependent, and should be classified as requiring weight-bearing assistance (self-performance code 3, support code 2). The witness then calculated the amount of times Mr. Y should receive assistance daily, and determined that he should only receive assistance three times per day, for mobility during the night, because his body mobility needs during the daytime were taken care of by transfers and other body movement activities.<sup>33</sup>

If Mr. Y were capable of controlled body movements, then the Division's position that he is not dependent, but should only receive weight-bearing assistance, would be supported by the evidence, inasmuch as he would be able to cooperate in bed mobility. However, given that the assessment states that his body movements were uncontrolled, the Division has not shown that Mr. Y is able to participate with his body mobility or that his level of assistance should be

---

<sup>28</sup> Ms. Z's testimony.

<sup>29</sup> Ex. E, p. 3.

<sup>30</sup> Ex. E, p. 6.

<sup>31</sup> Ex. D, p. 9.

<sup>32</sup> Ex. E, p. 6.

<sup>33</sup> Mr. Fromm's testimony.

reduced from total dependence (self-performance code of 4, support code of 2). However, the witness's testimony regarding the frequency is supported by the evidence, and not meaningfully controverted by Mr. Y. Accordingly, while the Division has not shown that the degree of assistance should be reduced, it has shown the frequency of the assistance should be reduced. Mr. Y is to receive body mobility assistance at the total dependence level (self-performance code of 4, support code of 2) three times daily for a weekly frequency of 21.

## 2. Transfers

Transfers are defined as how a "person moves between surfaces," such as from a sitting to a standing position.<sup>34</sup> Mr. Y was previously classified as totally dependent (self-performance code 4, support code 2) with this activity and received assistance with it 70 times weekly.<sup>35</sup> The assessor concluded that Mr. Y continued to be totally dependent with this task. However, she determined, without explanation, that the frequency should be reduced to four times daily.<sup>36</sup> The Division's hearing witness, however, calculated that Mr. Y should receive transfer assistance a minimum of six times daily (once from bed, once to bed, three times for meals, and once for television). He also said the Division was willing to provide an extra two transfers per day for a total of eight times daily.<sup>37</sup>

No factual evidence was presented that Mr. Y's medical or physical condition was changed, or that his actual care needs are changed. Accordingly, the Division's analysis does not provide an evidentiary basis for decreasing the amount of transfers provided Mr. Y. The Division has therefore not met its burden of proof on this point. Mr. Y's transfer assistance, remains at a total dependence level (self-performance code 4, support code 2) for ten times per day (70 times 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.<sup>38</sup> Mr. Y was previously classified as totally dependent (self-performance code 4, support code 2) with this activity and received assistance with it 70 times weekly.<sup>39</sup> Mr. Y cannot walk and is carried from room to room. The

---

<sup>34</sup> Ex. E, p. 6.

<sup>35</sup> Ex. D, p. 9.

<sup>36</sup> Ex. D, pp. 3, 9; Ex. E, p. 6.

<sup>37</sup> Mr. Fromm's testimony.

<sup>38</sup> Ex. E, p. 7.

<sup>39</sup> Ex. D, p. 9.

assessor concluded that Mr. Y continued to be totally dependent with this task. However, she determined, without explanation, that Mr. Y should not receive any assistance with it.<sup>40</sup> The Division's letter informing Mr. Y that this service would be reduced stated the assessment was in error and that he should receive assistance four times daily, 28 times per week.<sup>41</sup>

The Division's witness, at hearing, testified that Mr. Y should not receive any assistance with locomotion because he is carried from room to room, so his locomotion was essentially a simultaneous act of transfer and locomotion, and providing him with locomotion assistance would duplicate his transfer services.<sup>42</sup> Not only does this argument ignore the fact that transfers and locomotion are physically and legally distinguishable activities, it is a new position from the Division, which does not comply with applicable notice requirements for reduction of benefits: "the department will state in the written notice the reasons for the proposed action."<sup>43</sup> The Division is therefore limited to the position taken in its benefit reduction notice that Mr. Y should only receive locomotion assistance four times daily.

The reason provided for the reduction in locomotion, as stated in the Division's benefit reduction notice, was that it was "consistent with the frequency for other ADL activities."<sup>44</sup> As with transfers discussed above, no factual evidence was provided to support a finding that Mr. Y's locomotion assistance should be changed. The Division has therefore not met its burden of proof to reduce Mr. Y's locomotion assistance. It remains at the dependent level (self-performance code 4, support code 2) ten times per day (70 times per week).

#### 4. Toileting

Toileting is a complex process that combines locomotion, transfers, dressing, and cleansing.<sup>45</sup> Mr. Y was previously classified as totally dependent (self-performance code 4, support code 2) with this activity and received assistance with it 70 times weekly.<sup>46</sup> Mr. Y is incontinent. The assessor was told during the assessment that Mr. Y wore a diaper and was taken to the bathroom between eight to twelve times daily. The assessor found that Mr. Y continued to be dependent with this activity, but concluded, without explanation, that Mr. Y only

---

<sup>40</sup> Ex. D, p. 9; Ex. E, p. 7.

<sup>41</sup> Ex. D, p. 3.

<sup>42</sup> Mr. Fromm's testimony.

<sup>43</sup> 7 AAC 49.070.

<sup>44</sup> Ex. D, p. 3.

<sup>45</sup> Ex. E, p. 9.

<sup>46</sup> Ex. D, p. 9.



required toileting assistance four times daily.<sup>47</sup> The Division’s benefit reduction notice stated that Mr. Y needed only toileting assistance four times per day, because he wore diapers.<sup>48</sup> Reducing assistance to four times daily would undoubtedly result in Mr. Y wearing soiled diapers, which is not only unreasonable but which also poses a health risk.

The Division’s hearing witness testified that if Mr. Y has optimal kidney function, he would need diaper changes nine times per day.<sup>49</sup> While this is an increase from the four times daily provided in the benefit reduction notice, this was an abstract opinion not based on knowledge of Mr. Y’s actual care needs. As a result, the Division has not met its burden of proof to reduce toileting assistance. Mr. Y remains dependent with toileting, and the frequency remains ten times daily (70 times per week).

#### 5. Laundry

Mr. Y was previously found to require assistance with laundry for incontinence.<sup>50</sup> Mr. Y continues to be incontinent. However, his laundry assistance was reduced to once per week because “you reported controlled incontinence.”<sup>51</sup> The assessment does not show such a report, only that Mr. Y wears diapers.<sup>52</sup> The assessor did not testify. There is nothing in the record to support a finding of controlled incontinence; the use of diapers does not mean that there are no accidents or leakage, such as would require increased laundry usage. According, the Division has not met its burden of proof to decrease this assistance.

#### 6. Prescribed Tasks

Mr. Y was receiving 420 minutes (7 hours) of range of motion exercises per week pursuant to a one year prescription that expired in March 2016. Before that prescription expired, Mr. Y received a new prescription which provided for four hours per week of range of motion exercises, and additional time for walking exercise, and for foot care.<sup>53</sup> The Division allowed the range of motion exercises, which was a reduction from before. However, it did not allow walking exercise or foot care. The denial of walking exercise was based upon Mr. Y being unable to walk. The denial of foot care was based upon a lack of medical justification.<sup>54</sup>

---

<sup>47</sup> Ex. E, p. 9.

<sup>48</sup> Ex. D, p. 3.

<sup>49</sup> Mr. Fromm’s testimony.

<sup>50</sup> Ex. D, p. 9.

<sup>51</sup> Ex. D, p. 4.

<sup>52</sup> Ex. E, p. 9.

<sup>53</sup> Ex. D, pp. 4 – 5; Ex. H.

<sup>54</sup> Ex. D, pp. 4 – 5.

The hearing in this case was conducted in two parts. The first part of the hearing was on August 5, 2016. The parties were unable to finish the hearing on that date and the hearing was continued until September 2, 2016. On September 2, 2016, the Division notified the Office of Administrative Hearings that it had contacted the physician's assistant who wrote the prescription for range of motion exercise, walking exercise, and foot care, and that he was rescinding that prescription:

Per my conversation with Darcie Shaffer on 9/1/2016, I wish to rescind the RPPCA prepared on 2/5/2016 as the patients needs are not adequately addressed by this form. He is to have formal evaluation by [physical therapist/occupational therapist] at the earliest possible time.<sup>55</sup>

Although this was late developed information, for which the Division cannot be faulted, it does not relieve the Division of its obligation to provide proper notice. It cannot raise this rescission of the prescription as a basis for denial at the hearing.<sup>56</sup> Accordingly, this decision will only address the grounds for the reduction/denial of these prescribed services contained in benefit reduction/denial notice.<sup>57</sup>

The Division's denial of walking exercise and foot care is clearly supported by the evidence. Prescribed exercises must be "consistent with the assessment, and . . . meet[s] the identified needs of the applicant/recipient."<sup>58</sup> In this case, Mr. Y cannot walk. Providing him with walking exercise is totally inconsistent with his physical condition, and will not meet his needs. With regard to foot care, there is no indication whatsoever of a medical or physical condition requiring foot care other than that provided through normal bathing and personal hygiene activities. The denial of these prescribed services is upheld.

With regard to range of motion exercises, the reduction of that benefit from 420 minutes per week to 240 is upheld because the new prescription only provides for four hours (240 minutes) per week.

## **V. Conclusion**

Mr. Y remains a quadriplegic with extensive care needs. The Division, however, based upon the evidence provided, has demonstrated that his PCA services should be slightly reduced.

---

<sup>55</sup> Ex. I, p. 2.

<sup>56</sup> 7 AAC 49.070.

<sup>57</sup> The Division has the option of issuing a new benefit reduction notice. *Allen v. State, DHSS* 203 P.3d 1155, 1169 (Alaska, 2009). Mr. Y would have hearing rights with regard to that new action.

<sup>58</sup> Personal Care Assistance Service Level Computation § 6. See Ex. B, p. 46.

However, most of his PCA services remain unaffected. As discussed above, the areas in dispute are resolved as follows:

1. Bed mobility continues to be an activity where Mr. Y is dependent (self-performance code 4, support code 2). The frequency for this assistance is reduced from 28 times per week to 21 times per week.
2. Transfers continue to be an activity where Mr. Y is dependent (self-performance code 4, support code 2). The frequency remains 70 times per week.
3. Locomotion continues to be an activity where Mr. Y is dependent (self-performance code 4, support code 2). The frequency for this assistance remains 70 times per week.
4. Toileting continues to be an activity where Mr. Y is dependent (self-performance code 4, support code 2). The frequency for this assistance remains 70 times per week.
5. Laundry is an activity where Mr. Y continues to require an enhanced level of assistance due to his incontinence. The level of assistance remains the same.
6. Prescribed range of motion exercises are reduced from 420 minutes per week to 240 minutes per week.
7. Prescribed walking exercise is denied.
8. Prescribed foot care is denied.

DATED this 12<sup>th</sup> day of October, 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 26<sup>th</sup> 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.]