

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

In the Matter of)	
)	
D J)	OAH No. 16-1011-MDS
_____)	Agency No.

DECISION

I. Introduction

The Division of Senior and Disability Services denied D J’s application for personal care assistance benefits because Mr. J can generally do most activities of daily living without assistance. The evidence in this case shows, however, that Mr. J has balance problems and struggles with or cannot do most household chores. Although he is not eligible for benefits for doing his activities of daily living, he is eligible for assistance in doing household chores. The Division’s decision is reversed.

II. Facts

D J is a 66-year-old resident of No Name. Mr. J is a capable person who generally takes care of himself. As he has aged over the last few years, however, he has begun to experience difficulty in doing day-to-day tasks. His knees sometimes buckle unexpectedly, causing him to lose his balance.¹ He has trouble with his shoulders so any lifting or carrying is difficult.² His medical records show that he has significant glaucoma, which he described as being blind in one eye.³ They show that at some point in the past, he had a stroke (he reported having had three strokes). He has significant back problems and pain issues. He has kidney disease and Hepatitis-C. He also has had issues with taking more of his pain medication than was appropriate.⁴ Although his medical diagnoses do not necessarily explain why he has physical problems, Mr. J described his problem as a disconnect between what he was trying to do and what his body actually did.⁵

Because he is a resourceful and independent person, however, he has found ways to manage. For example, Mr. J has found that he needs to have something to hang onto when walking in his home or he will fall. Accordingly, he has arranged his furniture in his small

¹ J testimony; Z testimony.
² J testimony; Z testimony.
³ Unnumbered Exhibit (medical records from Dr. Q); J testimony.
⁴ Unnumbered Exhibit (medical records from Dr. Q).
⁵ J testimony.

apartment so that he always has something to hold onto. When he needs to go out, he is able to get to the bus stop by himself. When he does his laundry, he has an elaborate system involving lowering a laundry basket by a rope from his upper-floor apartment to the basement where the laundry room is. He struggles with preparing meals, so his church has been bringing him precooked dinners that he need only warm up.⁶

Even with his resourceful measures, however, Mr. J has been finding that he cannot do all that needs to be done to take care of himself. About twice a week, he may fall in the home. If he cannot reach one of his pre-arranged pieces of furniture, he may struggle with getting back up by himself. When he heats up his food, he sometimes burns himself. Getting to medical appointments might be difficult if he experiences one of his knee-buckling incidents. For example, he described a recent incident where he fell in the street and the police had to come to help him up to get home. Although for a while he was receiving regular assistance in cleaning his apartment, that assistance is no longer as consistent (Mr. J speculated that she might be angry with him), and his apartment is not being cleaned.⁷ Because he believes he needs help, Mr. J applied to the Division of Senior and Disabilities Services, seeking Medicaid assistance under the personal care assistance (PCA) program.

To determine whether Mr. J qualified for PCA benefits, Ernest Shipman, an assessor with the Division, conducted an assessment visit with Mr. J on October 28, 2014. The session was held by video. Mr. J traveled from his home to the telemedicine facility.

During the telemedicine session, Mr. Shipman evaluated Mr. J's physical ability to do his activities of daily living (ADLs) by having him do some of these activities, asking questions about his functional ability, and having him demonstrate function such as range of motion. He also evaluated Mr. J's ability to do what are called "instrumental activities of daily living" (IADLs)—household chores, such as laundry, shopping, and preparing a meal. The Division uses a standardized assessment format, called the Consumer Assessment Tool (CAT), to assess how much assistance an applicant needs.⁸ Under the CAT, the assessor will assign a numerical score for each of several ADLs and IADLs. The Division then uses the scoring on the CAT, and other information it may have, such as medical records, to determine the level of assistance the recipient needs.

⁶ J testimony.

⁷ J testimony.

⁸ Division Exhibit E.

While observing Mr. J, Mr. Shipman saw that Mr. J had problems with the range of motion in his arms and shoulders.⁹ Mr. J could not touch his hands over his head, behind his back, or touch his feet while in a sitting position. Mr. Shipman recorded that his grip was strong.¹⁰ Based on both his conversation with Mr. J, and his observation of Mr. J being able to get up out of his chair without help, and walk with no help or assistive devices, Mr. Shipman recorded in the CAT that Mr. J was completely independent for all ADLs and IADLs.¹¹

Based on Mr. Shipman's analysis, on August 24, 2016, the Division sent Mr. J a letter informing him that his request for PCA services was denied. On August 30, 2016, Mr. J requested a fair hearing to contest the denial.¹² A telephonic hearing was held on October 14, 2016. Mr. J was assisted by at the hearing by agency representative B Z, who also accompanied him to the assessment meeting.

III. Discussion

The Medicaid program authorizes PCA services for "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."¹³ As a general matter, personal care assistance minutes are assigned for scores that show that the recipient needs actual hands-on assistance to accomplish the ADL. Scores that show independence or need for only supervision, set-up help, or cueing will not qualify for assistance.¹⁴

⁹ Shipman testimony.

¹⁰ Shipman testimony.

¹¹ Division Exhibit E at 6-11.

¹² Division Exhibit C.

¹³ 7 AAC 125.010(a).

¹⁴ Scoring for ADLs is based on the following self-performance codes:

0. Independent.
1. Supervision - Oversight.
2. Limited Assistance.
3. Extensive Assistance.
4. Total Dependence.
5. Cueing.
8. Activity Did Not Occur During Entire 7 Days.

And the following support codes:

0. No setup or physical help from staff
1. Setup help only
2. One-person physical assist
3. Two+ persons physical assist
5. Cueing - cueing support required 7 days a week
8. Activity did not occur during entire 7 days

Scoring for IADL is based on the following Self-Performance Codes:

0. Independent.

PCA benefits may be awarded only when a person *needs* physical assistance. That means that even if Mr. J has difficulty, and is slow or clumsy in doing an activity of daily living, if he *can* do it without somebody else providing physical, hands-on assistance, he is not eligible for PCA assistance for that task.

For many tasks, such as bathing and accessing the bathroom in time, Mr. J struggles. But this record shows, and Mr. J agrees, that in general he is able to complete his ADLs without physical assistance from another person. The evidence suggests that he might qualify for PCA assistance on only two ADLs: walking in the home and to access to medical appointments. He is, however, requesting assistance on all of his IADLs. These issues are analyzed below.

A. Does Mr. J qualify for assistance on the ADLs of walking in the home or to access medical appointments?

The ADL of walking (called “locomotion” on the CAT because it also covers locomotion in forms other than walking) has three different components: walking in the home, walking between levels of a home, and walking to access medical appointments.¹⁵

Here, Mr. J does not qualify for PCA services for walking. He has proved that he does occasionally need some help because on rare occasions he will fall in his home or he might fall on his way to or from a medical appointment. In the home, he uses assistive devices (his furniture arrangement) to avoid falls, but still might fall once or twice a week. In the street, he cannot use a walker or a cane because he has shoulder problems and cannot make these devices work for him—in fact, in his view, they make it worse. He does, however, have the assistive device of his knee braces, which, if he uses them, prevent most or all falls in the street.

The reason Mr. J does not qualify, however, is that his falls are so rare and unpredictable, and would require only light physical assistance to avoid. On this evidence, he might fall in the home up to twice a week. His falls in the street are not common, and might be avoidable with the

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1. Independent with difficulty.
 2. Assistance / done with help.
 3. Dependent / done by others.
 8. Activity did not occur.

And the following IADLS Support Codes:

0. No support provided.
1. Supervision / cueing provided.
2. Set-up help only.
3. Physical assistance was provided.
4. Total dependence - the person was not involved at all when the activity was performed.
8. Activity did not occur.

¹⁵ Division Exhibit B at 44.

braces. Based on this evidence, the most help he might need from a PCA would be what is called “limited assistance” (which is a steadying hand, but not holding up the person’s weight) once or twice per week in the home, and rarely or never when accessing medical appointments. This level of assistance results in a performance score of “1.” Although the CAT score on locomotion should be changed from 0/0 to 1/2, this low-level, and low frequency, of assistance does not qualify for PCA benefits.¹⁶ If Mr. J is able to document a more frequent need of physical assistance in the future, he might qualify for PCA benefits for the ADL of locomotion.

B. Does Mr. J qualify for assistance to complete his IADLs?

In analyzing the assistance a person needs on IADLs (household chores), the CAT has essentially four different categories:

- a person who can do the chore themselves, or with verbal guidance or set-up help (a performance score of 0 or 1 and a support score of 0, 1, or 2; no PCA benefits);
- a person can do the chore only with difficulty and needs some physical assistance to reasonably accomplish the chore (a performance score of 1 and a support score of 3; minimal PCA benefits)
- a person who can do some of the chore, but needs assistance in order to complete the chore (a performance score of 2 and a support score of 3 or 4; some PCA benefits);
- a person who cannot do any of the chore (a performance score of 3 and a support score of 3 or 4; more PCA benefits).¹⁷

In short, the CAT scoring regimen establishes that a person should do as much of a chore as is reasonably possible for that person to do. It does not require, however, that a person push him or herself to the limit or do a task in a way that is unsafe.

In this regard, Mr. J’s situation is extremely difficult to analyze. He is resourceful, and able to do many things for himself. Falls and burns, however, are not appropriate.

In addition, although the Division suggested that Mr. J’s abuse of pain medication may be a factor in his instability, this record does not provide enough support for that theory to reach that conclusion. The medical records do show that Mr. J has pain and he was referred to physical medicine rehab.¹⁸ Nothing in the medical records or in the testimony provided any medical evidence that his overuse of the medication is causing his imbalance. Therefore, without more,

¹⁶ Division Exhibit E at 7.

¹⁷ Division Exhibit at 27.

¹⁸ Unnumbered Exhibit (medical records from Dr. Q) at 49.

this record is sufficient to conclude that his balance issues are due to a physical impairment, not a drug-related cause. This means he is eligible for assistance on IADLs as follows:

Main meal preparation. The Division argues that Mr. J does not need assistance to prepare his main meal because the meal is provided by Mr. J's church. All Mr. J needs to do is heat the meal up. Although the Division mistakenly thought that he had a microwave, it argued that he could easily avoid burning himself when heating up the food if someone gave him verbal cueing as he was doing the task himself. This level of assistance—verbal cueing—does not qualify for PCA assistance.

The Division is correct that under the regulations, the Division will not provide a service if the service supplants or duplicates a service being provided for free by a third party.¹⁹ Ms. Z testified, however, that the church's meal service was uncertain and could be discontinued at any time—in fact, she understood that it might be discontinued after this hearing was resolved. The Division did not provide any evidence that the service was longstanding or likely to continue. Because the service is voluntary, not institutional, the church's voluntary practice does not mean that Mr. J cannot receive PCA assistance for main meal preparation.

With regard to whether Mr. J needs assistance to cook a main meal, the Division did not assert that Mr. J could prepare and cook a main meal without physical assistance. Given his balance issues, shoulder problems, and many problems with accomplishing a multi-faceted task, he has met his burden of proving that he could not do this task if he no longer received free meals.

With regard to whether Mr. J is capable of assisting in meal preparation, although Mr. J asserted he could not assist in main meal preparation if the church should discontinue the service, I disagree. He is capable and resourceful. Although he has balance issues and shoulder problems, his hands function. He could sit at a table and assist in preparing a meal. On this record, Mr. J will receive a score of 1/3 on the IADL of main meal preparation.

Light meal preparation. Because Mr. J is capable of performing light tasks in the kitchen that do not involve cooking, he can fix his own light meals without physical assistance. His score on the IADL of light meal preparation of 0/0 is affirmed.

Housework. Although Mr. J argued he could not do any housework because of his balance issues, I disagree. He can and should do some household chores where he has something to hold onto or lean against for balance. I agree, however, that heavy housework is not something he can reasonably accomplish. He might do some vacuuming or dusting, but he could not get out

¹⁹ 7 AAC 125.040

the vacuum or move furniture to maneuver the vacuum without a risk of falling. Cleaning floors would be extremely difficult for him. His score for housework is 2/3.

Shopping. Although Mr. J does not currently do his own shopping, on this record, he is capable of doing most of his shopping. He could ride the motorized shopping cart, or push a cart using it for balance. Given his balance problems, however, I do not see how he could reasonably transport his groceries out of the store and back to his house by himself. His score for shopping is 1/3.

Laundry. Whether Mr. J qualifies for PCA assistance for laundry is a very difficult question. Mr. J currently does his own laundry through use of ingenuity—lowering a laundry basket on a rope down the stairwell. Carrying the laundry back up the stairs takes him several trips. Under the CAT, however, if a person acting alone has considerable difficulty or takes a great deal of time to do a chore, PCA assistance is available if the person needs physical assistance to do the task in a reasonable manner. Here, the multiple trips up the stairs for one load, combined with Mr. J's balance risk while on the stairs, make his current method impractical. In addition, the rope method, although ingenious, does not sound safe—not for Mr. J, necessarily, but for other tenants in the building should the rope come loose or the basket swing while in the stairwell. Therefore, he needs some physical assistance in order to safely and reasonably do his laundry. Mr. J's score for the IADL of laundry is 1/3.

IV. Conclusion

The Division's decision denying PCA benefits is reversed. The CAT is amended to reflect the following scores:

1. Locomotion: 1/2.
2. Main meal preparation: 1/3.
3. Housework: 2/3.
4. Shopping: 1/3.
5. Laundry: 1/3.

PCA benefits will be awarded accordingly.

DATED this 28th day of October, 2016.

By: Signed
Stephen C. Slotnick
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 16th day of November, 2016.

By: Signed _____
Name: Stephen C. Slotnick
Title: Administrative Law Judge/DOA

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