

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

In the Matter of)	
)	
N M)	OAH No. 16-1046-MDS
_____)	Agency No.

DECISION

I. Introduction

This case involves the number of personal care assistance (PCA) hours for which N M is eligible under the Alaska Medicaid program. Following an August 2, 2016 assessment, the Division of Senior and Disabilities Services (Division) determined that Ms. M qualifies for 8.00 hours of PCA services per week. Through her legal guardian, Ms. M appealed.

This decision partially upholds and partially reverses the Division’s determination of the PCA services for which Ms. M is eligible, as further discussed below.

II. Background Facts

N M is 18 years old. She lives with her legal guardian, E M, and other family members in a multi-level home.¹ N M’s medical diagnoses include autistic disorder, severe intellectual disabilities, and unspecified convulsions.² She has the intellectual ability of a one- or two-year-old child, and she therefore requires continuous supervision.³ Her motor skills are roughly at the age level of a two-year-old child.⁴ She experiences seizures roughly three or four times per week.⁵

On August 2, 2016, the Division’s assessor Samantha Fili conducted an assessment of Ms. M’s functional abilities and needs for assistance, so that the Division could evaluate her eligibility for PCA assistance and determine the appropriate PCA service level.⁶ Shortly after the assessment, on August 15, 2016, the Division notified Ms. M that she is authorized for PCA assistance 8.00 hours per week.⁷ All of this service time is related to Ms. M’s need for assistance with her Instrumental Activities of Daily Living (IADLs). These activities include light and main

¹ Exhibit E, pp. 1-3.
² Exhibit E, pp. 3.
³ M Exhibit 1 (Letter from Dr. A B, M.D., dated 8/30/16, submitted at hearing).
⁴ Exhibit F, p. 6.
⁵ Testimony of E M; Exhibit F, p. 2.
⁶ Exhibit E.
⁷ Exhibit D.

meal preparation, shopping, light housework and laundry.⁸ Ms. M does not contest the time authorized for these activities.

Regarding the activities that are considered Activities of Daily Living (ADLs), the Division concluded that Ms. M can independently manage her eating activities. It found that she requires supervision and setup help with body mobility, transfers, locomotion in room, and locomotion to access medical appointments. For multi-level locomotion and dressing, the Division determined that Ms. M requires limited assistance from one person. It found that she requires extensive assistance from one person with toilet use, personal hygiene and bathing.⁹ The Division did not authorize any PCA time for multi-level locomotion, dressing or toilet use. For the latter two ADLs, it argued that PCA assistance would duplicate services Ms. M receives under her Medicaid Waiver Plan of Care. The Division did not allow PCA time for the activity of medical escort.

Through her legal guardian, Ms. M appealed.¹⁰ She argued that she should receive PCA service hours for her ADLs and for her escort needs.¹¹ The formal hearing took place on September 30, 2016. N M and E M appeared in person. E M represented N and testified on her behalf.¹² Hearing Representative Darcie Shaffer appeared in person and represented the Division. Ms. Shaffer and Health Program Manager Melissa Meade testified for the Division. The hearing was recorded. All submitted documents were admitted into the record, and the record closed at the end of the hearing.

III. Overview of the PCA Service Determination Process

The Medicaid program authorizes PCA services for the purpose of providing physical assistance with ADLs and IADLs, as well as other services based on the physical condition of the recipient.¹³ The Division may not authorize PCA services if the assessment shows that the

⁸ Exhibit E, p. 28. Regarding the IADLs, the Division concluded that Ms. M is “independent with difficulty,” and she requires physical assistance with light meal preparation. She is totally dependent on others for main meal preparation, routine housework and laundry. She requires physical assistance with light housework and grocery shopping.

⁹ Exhibit D, p. 6.

¹⁰ Exhibit C.

¹¹ She also expressed concern that applicable labor laws may require the Division to authorize PCA services in an entirely different manner. Because those concerns fall outside the scope of the Administrative Law Judge’s authority, they are not addressed in this decision.

¹² B C and L X, Case Managers from Ms. M’s PCA agency, also attended the hearing. They were sworn in as witnesses; however, they did not testify.

¹³ 7 AAC 125.010(a).

recipient only requires supervision, cueing, or setup assistance while he or she independently performs an ADL or IADL.¹⁴

When it assesses an applicant or an existing recipient of Medicaid services, the Division relies on the Consumer Assessment Tool or “CAT,” which guides the assessment process and scoring. The Division looks to the applicant’s CAT scores when it determines the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and other covered services.¹⁵ In general, certain levels of assistance will result in authorization for a fixed number of PCA minutes to assist the recipient each time he or she performs the activity in question.

As a gateway to eligibility for PCA services, the CAT evaluates a subset of 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, or multi-level), locomotion to access medical appointments, dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.¹⁶

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 and requires no help or oversight)¹⁷; **1** (the person requires supervision); **2** (the person requires limited assistance)¹⁸; **3** (the person requires extensive assistance)¹⁹; **4** (the person is totally dependent).²⁰ There are also codes that

¹⁴ “Cueing” means daily verbal or physical guidance that signals to the recipient that he or she needs to perform an activity. “Setup” includes “arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL.” “Supervision” means “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” 7 AAC 125.020(e).

¹⁵ See 7 AAC 125.010; 7 AAC 125.024(a)(1). The CAT itself is adopted by reference in 7 AAC 160.900(d)(6).

¹⁶ Exhibit E, pp. 6 – 11.

¹⁷ “Independent” means the person required no help or oversight, or, the person required help/oversight only 1 or 2 times during the last 7 days. See Exhibit E, p. 7.

¹⁸ “Limited assistance” means the person is highly involved in the activity. He or she may receive direct physical help in the form of guided maneuvering of limbs, or other non-weight-bearing assistance 3 or more times per week. He or she also may receive that assistance plus weight-bearing assistance 1 or 2 times during the last 7 days. See Exhibit E, p. 7. See also 7 AAC 125.020(a)(1).

¹⁹ “Extensive assistance” means the recipient is able to perform part of the activity, but at least 3 times per week, he or she requires direct physical help from another individual for weight-bearing support or full performance of the activity. See Exhibit E, p. 7; 7 AAC 125.020(a)(2).

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).²¹

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).²²

The CAT also codes certain activities known as “instrumental activities of daily living” or IADLs. These include light meal preparation, main meal preparation, light housework (such as doing dishes, dusting, making bed), laundry (in-home and out-of-home), and grocery shopping.²³

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 involved in the activity, but help in the form of supervision, reminders, or physical “hands-on” assistance was provided); and **3** (dependent / done by others – the activity was fully performed by others, and the person was not involved at all each time the activity was performed). There is also a code that is not used to arrive at a service level: **8** (the activity did not occur).²⁴

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 only); **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).²⁵

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, a person who is coded

²⁰ For ADLs and IADLs, “dependent” means “the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity.” 7 AAC 125.020(a)(3). See also Exhibit E, p. 7 (full performance of activity by another is required during entire last 7 days).

²¹ Exhibit E, p. 7.

²² *Id.* There also are codes that are not used to determine a service level: **5** (cueing required); and **8** (the activity did not occur during the past 7 days).

²³ Exhibit E, p. 28.

²⁴ *Id.*

²⁵ *Id.*

as requiring extensive assistance (code of 3) with bathing would receive 22.5 minutes of PCA service time for each bath.²⁶

For covered services beyond assistance with ADLs and IADLs, specific rules apply that are addressed as needed.

IV. Discussion

The issue in this case is the number of PCA service hours for which Ms. M qualifies. Because this is an initial award of PCA hours, Ms. M has the burden to prove by a preponderance of the evidence that the Division made a mistake when it authorized 8.00 hours of PCA assistance per week.²⁷ She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs.²⁸ In general, the relevant timeframe under review involves Ms. M's condition and functional abilities from the time of the assessment to the time of the agency's decision.²⁹

At the outset of the hearing, Ms. M indicated nine areas of disagreement with the Division's service authorization. The parties resolved a number of those issues during the hearing, and those resolutions are recited on the record. The remaining areas of disagreement involve the ADLs of dressing and toilet use.

After the assessment, the Division concluded that Ms. M requires limited assistance from one person for the ADL of dressing (self-performance code 2, support code 2, frequency 2 times per day), and extensive assistance from one person for her toilet use ADL (self-performance code 3, support code 2, frequency 6 times per day).³⁰ Ms. M does not contest her self-performance or support scores for either of these activities. She challenges the Division's determination that it cannot authorize PCA service time for either ADL, because she already receives assistance with them through her Medicaid Waiver Plan of Care.

A. Duplication of Services Issue

Even when an applicant's CAT scores are sufficient to qualify for PCA services, PCA assistance will not be authorized for IADLs if the applicant receives chore services under the

²⁶ See Exhibit B, pp. 44-46 (Division of Senior & Disabilities Services *Personal Care Assistance Service Level Computation* chart); 7 AAC 125.024(a).

²⁷ 7 AAC 49.135. A preponderance of the evidence is established when the fact in question is more likely true than not true. 2 AAC 64.290(e).

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), available online at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>.

³⁰ See Exhibit D, p. 6.

Medicaid Home and Community-Based Waiver program.³¹ Similarly, PCA assistance is not available if it duplicates services already provided under other programs.³² The Division argues that Ms. M already receives assistance with her toilet use and dressing ADLs under her Waiver Plan of Care, so she is not eligible for PCA assistance with these tasks.

On the issue of toilet use, the 2016 Plan of Care states only that “N continues to use adult diapers while also practicing toilet training.”³³ The 2015 Plan of Care makes a similar observation.³⁴ Both of these references arise in the discussion of Ms. M’s situational limitations or obstacles, not in reference to a particular goal regarding toilet use. The 2016 Plan of Care provides for day habilitation of 10.25 hours per week.³⁵ This service time is designed to support the acquisition or retention of skills. However, the Plan of Care day habilitation description and justification section explains that the service time is designed to provide Ms. M with the opportunity to build her community and safety skills, adding that she “will participate in activities to build social and communication skills while in the community.”³⁶

This information is not sufficient to conclude that Ms. M’s toilet use needs are provided for in her Waiver Plan of Care. The day habilitation services are intended primarily to work on Ms. M’s social and communication skills in the community, not her toilet use ADL. Further, the Plan does not identify any particular goal regarding Ms. M’s ability to manage her toilet use needs with less assistance. It simply recognizes that she will practice toilet training. There is no indication how often this will occur, or what it will involve.

On the issue of dressing, the 2016 Plan of Care identifies a goal that Ms. M will learn to get dressed with minimal assistance.³⁷ To do this, the plan states that “Staff will pre-teach N how to put her clothes on.”³⁸ Staff also will assist when necessary, but they will try to use encouragement so that Ms. M learns to independently dress herself.³⁹ As with the toilet use ADL, there is no duplication between the general educational goal stated in the Plan of Care and the kind of hands-on assistance that a PCA provides. Given the level of Ms. M’s intellectual ability and motor coordination, the goal of teaching her to dress in the morning is distinguishable from

³¹ 7 AAC 125.040(d).

³² See 7 AAC 125.040(a).

³³ Exhibit F, p. 6.

³⁴ Exhibit G, p. 6.

³⁵ Exhibit F, p. 10.

³⁶ *Id.*

³⁷ Exhibit F, p. 16.

³⁸ *Id.*

³⁹ *Id.*

her practical need to be dressed and undressed each day, for a total frequency of two per day or fourteen per week. The Plan of Care does not adequately explain that Ms. M's need for assistance with dressing and undressing is provided by her Waiver services. Therefore, she should receive PCA assistance with this task twice per day.

B. Frequency of Toilet Use ADL

During the assessment, the Division determined that Ms. M requires assistance with toileting six times per day. At the hearing, Ms. M argued that the frequency should be eight times per day, because she sometimes requires more than six diaper changes in a day. In support of this argument, she presented a doctor's prescription for incontinence supplies, which prescribed eight diapers per day.⁴⁰

E M testified that N typically requires six diaper changes per day. However, this can and does vary, and she sometimes requires additional help. The PCA program is designed to meet a recipient's typical needs, not the highest potential need for each ADL. Since Ms. M's needs are typically met with a frequency of six toileting activities per day, she did not show that the Division made a mistake in approving this daily frequency.

V. Conclusion

During the hearing, the parties resolved a number of disagreements regarding Ms. M's need for assistance with various ADLs and other activities. Those resolutions are noted on the hearing record. On the remaining issues, Ms. M met her burden to show that she should receive PCA service time for the ADLs of dressing and toilet use. However, she did not meet her burden to show that she requires assistance more than six times per day for her toilet use ADL. As a result, the Division's decision on these ADLs is partially upheld and partially reversed, as follows:

- Dressing (self-performance code 2, support code 2, frequency 14 times per week);
- Toilet use (self-performance code 3, support code 2, frequency 42 times per week).

DATED: October 14, 2016.

By: Signed
Kathryn Swiderski
Administrative Law Judge

⁴⁰ M Exhibit 2 (Certificate of Medical Necessity for Incontinence Supplies, dated 11/30/15).

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 9th day of November, 2016.

By: Signed
Signature
Douglas Jones
Name
Medicaid Program Integrity Manager
Title

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