

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

In the Matter of:)
)
 J E) OAH No. 17-0835-MDS
) Agency No.
_____)

DECISION

I. Introduction

J E applied for PCA services. Based primarily on an assessment visit on June 29, 2017, the Division of Senior and Disabilities Services (Division) notified Ms. E on July 20, 2017 that her application was approved, but the authorized services were limited to receiving assistance with laundry once weekly. Ms. E maintains that she should receive additional services and requested a hearing.

Ms. E’s hearing was held on October 16, 2017 Ms. E represented herself. Ms. E’s son, X Q, and N M from ResCare also participated. Terri Gagne represented the Division. Robin Platt, the assessor, testified for the Division.

Based upon the evidence presented, Ms. E is eligible for the following PCA services in addition to laundry: main meal preparation, light housekeeping, and shopping. The Division is directed to provide Ms. E with PCA services as specified in this decision.

II. The PCA Service Determination Process¹

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. . .”² 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.”³

¹ The Division’s approval letter was issued on July 20, 2017. Because this preceded the Personal Care program’s regulation changes, which went into effect on July 22, 2017, all references in this decision are to the regulations in effect as of July 20, 2017.

² 7 AAC 125.010(a).

³ 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.*

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.⁴ 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.⁵ 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 independent⁶ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁷); **3** (the person requires extensive assistance⁸); **4** (the person is totally dependent⁹). 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).¹⁰

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**

⁴ See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

⁵ Ex. E, pp. 5 – 10.

⁶ 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. 5.

⁷ 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.”

⁸ 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.”

⁹ 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.”

¹⁰ Ex. E, p. 17.

(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).¹¹

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.¹²

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).¹³

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).¹⁴

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 assistance¹⁵ (self-performance code of 1, 2, or 3, and a support code of 3 or 4) with any one of the IADLs of light

¹¹ Ex. E, p. 17.

¹² Ex. E, p. 25.

¹³ Ex. E, p. 25.

¹⁴ Ex. E, p. 25.

¹⁵ 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. 25.

or main meal preparation, light housework, routine housework, grocery shopping or laundry, then he or she is eligible for PCA services.¹⁶

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.¹⁷

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

III. Facts

Ms. E is 51 years old, and lives by herself.¹⁸ Her health conditions include dysphagia, migraines, irritable bowel syndrome, esophageal obstruction, disc degeneration both cervical and lumbar, and spondylosis in the lumbar region. She was hospitalized in late May to early June of 2017 for renal failure, has experienced multiple pulmonary embolisms, and fractured her ankle in March of 2017.¹⁹

Ms. E was assessed on June 29, 2017 determine her eligibility for the PCA program. Based upon her visual observation, functional testing, and statements made by Ms. E, the assessor determined that Ms. E had a strong grip in both hands, could raise her hands over her head, and behind her back, could move her legs, and was capable of performing bed mobility, transfers, locomotion while using a walker, dressing, eating, toilet use, personal hygiene, and bathing without requiring physical hands-on assistance.²⁰ She also determined that Ms. E did not require assistance with light meal preparation, main meal preparation, shopping, or light housework. However, she determined that because the laundry room for Ms. E's apartment building was not easily accessible and required going down steps, that Ms. E required physical hands-on assistance with laundry outside the home.²¹

¹⁶ Ex. E, p. 30.

¹⁷ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 17 - 19.

¹⁸ Ex. E.

¹⁹ Ex. E, p. 2.

²⁰ Ex. E, pp. 3, 5 - 10, 17; Ms. Platt's testimony.

²¹ Ex. E, p. 25; Ms. Platt's testimony.

On July 20, 2017, the Division sent Ms. E notice that while she qualified for personal care services, her eligibility was limited to receiving assistance with laundry once per week, for a total of 45 minutes.

Ms. E disagreed with the Division's assessment of her care needs. She testified as follows:

- She falls frequently.
- She can generally move throughout her house by using her walker.
- She requires assistance with transfers frequently, on the average of 10 times per week. Most of that time, if someone just grabs her hands, she can pull herself up. However, between three to four times per week, she needs to be pulled up by someone else.
- She has difficulty dressing herself every day. She has a hard time lifting her arms and cannot fasten her bra.
- She can feed herself, but chokes a lot.
- She can use the toilet by herself.
- She does not need help with personal hygiene.
- At one point, she said she needed help transferring in and out of the tub. At another point, she said she could transfer without assistance, but was afraid of falling. She then stated that she just needed someone to stabilize and/or supervise her while transferring to and from the tub. She can wash herself.
- While she can cook for herself, she has difficulty standing and needs help at least three to four times weekly.
- She also has difficulty doing housework herself.
- She can shop. However, she must use an electric cart and cannot reach items on the shelves.
- She cannot get to the laundry room for her building, but can fold and sort clothes.
- She is currently receiving oxygen, which she started on July 24, 2017.

Ms. E had a swallow study done in January 2016. It showed “normal esophageal peristalsis. No elicited gastroesophageal reflux.” The clinical impression was that there was “[m]ild likely narrowing seen at the gastroesophageal junction.”²²

Ms. E was seen at the emergency room “on July 14, 2017 for lower extremity edema and weakness.” On August 1, 2017, she told Dr. K that she was not having “difficulty with bathing, dressing or ADLs.”²³ At that time, she was “[u]sing a rolling walker without appearing ataxic.”²⁴

IV. Discussion

Ms. E, as the applicant, has the burden of proof by a preponderance of the evidence.²⁵ She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,²⁶ 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.²⁷ Based upon Ms. E’s testimony, the areas in dispute, which are each addressed below, are: transfers, bathing, eating – supervision, dressing, and all IADLs.

1. Transfers and Bathing.

Transfers are defined as how a “person moves between surfaces,” such as from a sitting to a standing position.²⁸ Bathing involves transfers in and out of the tub or shower and the actual bathing process.²⁹ Ms. E undeniably has some weakness. However, she told her doctor on August 1, 2017, that she could perform bathing and other ADLs. Transfers are ADLs. It is clear from Ms. E’s testimony that her concern was about transfers, both regular transfers and transfers involved in bathing. However, her testimony on bathing was inconsistent and after some inquiry, she testified that her concern was not that she needed hands-on assistance, but rather that she requires supervision because she is a fall risk. Given that transfers in and out of a tub are more difficult than simply transferring in and out of a chair, because tub transfers require lifting

²² See No Name Hospital Radiology Report from January 12, 2016.

²³ Ex. A.

²⁴ Ex. A, p. 3.

²⁵ 7 AAC 49.135.

²⁶ 2 AAC 64.290(a)(1).

²⁷ 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>).

²⁸ Ex. E, p. 5.

²⁹ Ex. E, p. 10.

the legs to get in and out of the tub, this need for simple supervision would also carry over into regular non-bathing transfers. As a result, the combination of Ms. E's testimony when coupled with her statement to her doctor, leads to the conclusion that it is more likely true than not true that Ms. E does not require hands-on assistance with either transferring or bathing, but just requires supervision for these activities. Supervision, no matter how necessary, is not a compensable personal care service. As a result, Ms. E has not proven that she is eligible for PCA assistance with either transfers or bathing.

2 Eating

Ms. E testified that she could eat without assistance, but that she has difficulty with choking while eating. This would qualify her for supervision while eating, the exception to the general rule that PCA assistance is not allowed for supervision.³⁰ Ms. E has a dysphagia diagnosis. However, the medical evidence on her dysphagia, which consists of a swallowing study, although it dates back to January of 2016, does not show that she has a swallowing issue. Instead, it indicates "normal esophageal peristalsis" and "[n]o elicited gastroesophageal reflux." As a result, Ms. E has not shown that she is eligible for PCA assistance with eating.

3. Dressing

Dressing is how a "person puts on, fastens, and takes off all items of street clothing."³¹ Ms. E testified she requires physical assistance with dressing, because she has trouble lifting her arms and could not reach behind her back. However, on August 1, 2017, Ms. E told her doctor that she was not having any problems with dressing. Accordingly, Ms. E has not shown that she is eligible for PCA assistance with dressing.

4. Instrumental Activities of Daily Living

The assessor determined that Ms. E was capable of performing her IADLS of light and main meal preparation, light housework, and grocery shopping. She also found, due to the physical location of the laundry, that Ms. E should receive assistance with that activity.

Ms. E has physical limitations. She uses a walker, and she was in the emergency room in June 2017 due to edema and weakness. As a result, the medical evidence shows that Ms. E cannot fully participate in domestic activities. Her testimony makes sense that she cannot fully participate in main meal preparation, housework, and shopping. However, light meal preparation

³⁰ Ex. B, p. 17.

³¹ Ex. E, p. 7.

does not generally require any more involvement than making a sandwich, having a bowl of cereal, or using a microwave; it does not require the standing effort involved in preparing a main meal. It is therefore unlikely that Ms. E requires assistance with light meal preparation.

With regard to main meal preparation, housework, and grocery shopping, the evidence does not show that Ms. E is completely incapable of participating in household tasks. Her testimony was that she needs help with meal preparation three to four times weekly. Her testimony was that she could shop, but could not reach everything. Her testimony was that she could fold and sort clothes. Ms. E has therefore shown that she is impaired in her ability to perform these basic household tasks, but that she is capable of participating to some extent, even if it is as minimal as helping prepare meals while sitting down, light dusting and cleaning, folding clothes, and helping with grocery shopping while seated in a motorized cart. Consistent with the evidence, she should receive some hands-on physical assistance (self-performance code of 2, support code of 3) with her IADLS as follows:

- main meal preparation four times per week.
- light housework.
- grocery shopping.

Because the Division already provided her with laundry assistance, this remains unchanged.

V. Conclusion

Based upon the evidence presented at hearing, Ms. E, in addition to the time previously allotted for laundry is to receive the following addition PCA services:

Main Meal: physical assistance (self-performance code 2, support code 3) 4 times weekly

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 15th day of November, 2017.

Signed _____
Lawrence A. Pederson
Administrative Law Judge

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 5 day of December, 2017.

By: Signed _____
Name: Erin E. Shine
Title/Agency: Special Assistant, DHSS

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