

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

In the Matter of)
)
D S) OAH No. 17-1058-MDS
) Agency No.
_____)

DECISION AND ORDER

I. Introduction

D S was receiving 6.75 hours per week of personal care assistance (PCA) services when she was reassessed to determine her continued eligibility for those services. Based primarily on a reassessment visit on September 20, 2017, the Division of Senior and Disabilities Services (Division) notified Ms. S on October 3, 2017 that her PCA services would be terminated. The termination of services resulted from regulation changes and what the Division perceived as improvements or changes in Ms. S’s functioning and living conditions. Ms. S requested a hearing.

The evidence at the hearing showed that Ms. S’ physical functionality has improved since her last assessment. However, some of the Division’s findings in its 2017 assessment were in error, and Ms. S continues to be eligible for some PCA services. Accordingly, the Division’s decision is affirmed in part and reversed in part. The Division shall provide Ms. S services as specified in this decision.

II. The PCA Service Determination Process

The Medicaid program authorizes PCA services to provide physical assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs), and other services based on the recipient’s functional limitations and physical condition.¹ Accordingly, the Division will not authorize personal care services for a recipient if, after an assessment, it determines that the recipient does not need a certain level of assistance or that he or she “needs only cueing or supervision . . . to perform an ADL, IADL, or other covered service”²

The Division uses the Consumer Assessment Tool, or “CAT,” to score eligibility for the PCA program, and the amount of assistance, if any, that an eligible person needs to perform

¹ 7 AAC 125.010; 7 AAC 125.020.

² 7 AAC 125.020(d)(2).

ADLs, IADLs, and the other covered services.³ In general, if a recipient requires certain levels of assistance, the regulations prescribe a fixed number of PCA minutes for each occurrence 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 (mechanical or non-mechanical), locomotion (in room and between levels), dressing, eating, toilet use, personal hygiene, and bathing.⁴ The CAT numerical coding system for ADLs has two components: self-performance code and support code.

The *self-performance codes* rate how capably a person can perform a particular ADL. The possible codes are: **0** (the person is independent⁵ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁶); **3** (the person requires extensive assistance⁷); and **4** (the person is totally dependent⁸). There are also two other 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).⁹

The *support 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); and **3** (two or more persons physical assist

³ See 7 AAC 125.024(a)(1); 7 AAC 125.020(c)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

⁴ Ex. E at 6 – 12, 20.

⁵ 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 at 6.

⁶ Limited assistance with an ADL means a recipient who is “highly involved in the activity; received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance 3+ times – or – Limited assistance . . . plus weight-bearing 1 or 2 times during the last 7 days.” Ex. E at 6.

⁷ Extensive assistance with an ADL means that the recipient “performed part of the activity, over last 7-day period, help of following type(s) provided 3 or more times: weight-bearing support or full staff/caregiver performance of activity during part (but not all) of last 7 days.” Ex. E at 6.

⁸ Dependent as to an ADL, or dependent as to and IADL, means “full staff/caregiver performance of activity during ENTIRE 7 days.” Ex. E at 6.

⁹ Ex. E at 6.

required). Again, there are two 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).¹⁰

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, telephone use, light housekeeping, management of finances, routine housekeeping, grocery shopping, laundry (in-home or out-of-home), and transportation.¹¹ Like ADLs, the CAT rates self-performance and support for IADLs.

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).¹²

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 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).¹³

The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each incidence of a particular activity. For instance, if a person were coded as requiring extensive assistance (self-performance code of 3) with bathing, she would receive 22.5 minutes of PCA service time each time she was bathed.¹⁴ The regulations do not provide the Division with the discretion to change the amounts specified by the formula.

¹⁰ Ex. E at 6.

¹¹ Ex. E at 26.

¹² Ex. E at 26.

¹³ Ex. E at 26.

¹⁴ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B at 24-25.

III. Background Facts

Ms. S is 57 years old.¹⁵ Her health conditions include: Type 2 Diabetes with polyneuropathy, chronic obstructive pulmonary disease, hypertension, osteoarthritis in her knee, anxiety disorder, obstructive sleep apnea, lumbago, hyperlipidemia, hidradenitis suppurativa (a skin condition), backaches, hypothyroidism, edema, and chronic pain.¹⁶ She underwent gastric bypass surgery in January 2016 and lost 100 pounds since her most recent assessment.¹⁷ She gained some of the weight back because she was unable to exercise due to pain and an infection in her leg.¹⁸

Ms. S was receiving 6.75 hours of weekly PCA services in 2017.¹⁹ However, due to improvements in Ms. S's physical condition (i.e. she lost significant weight) and changes in her living conditions (i.e. she moved to a new apartment with better amenities), on September 20, 2017, Division Health Program Manager Rae Norton reassessed Ms. S's PCA service needs.²⁰ During the assessment, Ms. S demonstrated that she could touch her head; she could touch her hands over her head; she could place her hands across her chest and stand up; she could touch her hands together behind her back; and she had a strong grip in both hands.²¹ Although she had some difficulty touching her feet with a straight leg, Ms. Norton observed Ms. S touch her feet and noted that she could touch her feet when they were on the couch.²² Ms. Norton observed Ms. S stand from the couch independently to get medications and paperwork and to answer the door.²³ Ms. Norton noted that Ms. S walks independently inside her home—she moves around her house with a medium, moderately paced, normal gait, without using any assisted devices or holding onto anything to balance herself.²⁴ She sometimes uses a walker for longer distances.²⁵ But her overall mobility is balanced, smooth, and fluid.²⁶ Ms. S demonstrated good fine motor skills: she handled a clipboard, wrote with a pen; and opened medication bottles.²⁷ Ms. Norton

¹⁵ Ex. E at 1.

¹⁶ Ex. E at 3; Ex. F.

¹⁷ Ex. E at 3; Testimony of D S; Testimony of Rae Norton.

¹⁸ S Testimony; *see also* Ex. E at 3.

¹⁹ S Testimony; Ex. E at 4, 9.

²⁰ *See generally* Ex. E. Norton Testimony.

²¹ Ex. E at 4; Norton Testimony.

²² Ex. E at 4, 8, 10; Norton Testimony.

²³ Ex. E at 6; Norton Testimony.

²⁴ Ex. E at 1, 7; Norton Testimony.

²⁵ Ex. E at 7.

²⁶ Norton Testimony.

²⁷ Ex. E at 9; Norton Testimony.

opined that Ms. S had adequate range of motion.²⁸ In general, Ms. Norton found that Ms. S's physical functionality had increased, which resulted in an effective termination of PCA services—from 6.75 hours per week to 0.00 hours per week.²⁹

At the time of the September 20, 2017 assessment, Ms. S's personal care assistant visited her for about 2 hours, 3 days a week.³⁰ Ms. S, who lives alone,³¹ provides most of her care independently.³² For instance, Ms. S's personal care assistant does not help Ms. S with transfers, locomotion, or toileting.³³ Ms. S cooks her own meals and feeds herself.³⁴ Once a week, Ms. S's personal care assistant puts lotion on her feet.³⁵ Otherwise, her personal care assistant does not help her with grooming, and Ms. S takes care of her own personal hygiene needs.³⁶ Although Ms. S was previously approved for assistance with bathing and dressing, her personal care assistant at the time of her assessment, did not bathe Ms. S or assist her with dressing.³⁷ For bathing, Ms. S reported during her assessment that she sits on a shower bench, holds a grab bar, and swings her legs over the tub.³⁸ She uses grab bars on two walls of the tub to keep her balance.³⁹ At hearing, Ms. S explained that she still needs assistance with bathing and dressing.⁴⁰ In particular, Ms. S cannot effectively clean herself with soap and water—more specifically, she cannot thoroughly clean her skin folds; she cannot clean under her stomach; she cannot reach her private areas; and as a result, she develops boils and bad rashes between her stomach and groin area.⁴¹ She explained that the only reason she tries to bathe herself is because her male personal care assistant is uncomfortable and will not assist her with bathing.⁴² Her previous personal care assistant—a woman who worked for her up until August 2017—helped her with bathing until a month before her September 2017 assessment.⁴³ At the time of the hearing, Ms. S was looking for a different personal care assistant, preferably female, who would

²⁸ Ex. E at 10; Norton Testimony.

²⁹ Ex. D at 1, 2-3.

³⁰ S Testimony; Ex. E at 4, 9.

³¹ Ex. E at 1, 3.

³² S Testimony; Ex. E at 4, 9.

³³ S Testimony; Norton Testimony; Ex. E at 10.

³⁴ Ex. E at 9; Norton Testimony.

³⁵ Ex. E at 10.

³⁶ S Testimony; Norton Testimony; Ex. E at 10.

³⁷ S Testimony; Ex. E at 11, 19.

³⁸ Ex. E at 11.

³⁹ Ex. E at 8; Norton Testimony.

⁴⁰ S Testimony.

⁴¹ S Testimony.

⁴² S Testimony.

⁴³ S Testimony.

help her with bathing.⁴⁴ Though difficult and painful, Ms. S can and does dress herself.⁴⁵ She reported at the assessment that she does not wear compression hose anymore.⁴⁶

Ms. S is also mostly independent with her IADLs. Although her personal care assistant helps her get her laundry out of the washer and dryer, he does not help her with laundry.⁴⁷ Ms. S has difficulty and it takes a great amount of time and effort to perform some housework, such as folding sheets, making her bed, sweeping, or vacuuming, but Ms. S does her own light and routine housework.⁴⁸ Because Ms. S sold her car and stopped driving in June 2017, she uses cab vouchers to get to medical appointments.⁴⁹

Ms. S has moved to a new apartment since her previous assessment.⁵⁰ Her new apartment building has built-in supports for Ms. S. It has an outside ramp and an elevator.⁵¹ She now has a washer and dryer in her apartment.⁵² A shuttle bus from her apartment to the store is available on Tuesdays and Thursdays.⁵³ And her apartment complex provides carts for residents to get groceries up to their units via an elevator.⁵⁴

Ms. S's hearing was held on December 8, 2017. And a supplemental hearing was held on December 14, 2017. Ms. S represented herself and testified on her own behalf. Terri Gagne represented the Division. Health Program Manager and Assessor Rae Norton testified for the Division. All evidence submitted by the parties was admitted into the record, and the record closed at the end of the hearing.

IV. Discussion

When the Division is seeking to reduce or eliminate a benefit a recipient is already receiving, the Division has the overall burden to prove, by a preponderance of the evidence,⁵⁵ facts that show the recipient's level of eligibility has changed.⁵⁶ In the context of PCA services,

⁴⁴ S Testimony.

⁴⁵ Ex. E at 11; S Testimony.

⁴⁶ Ex. E at 11; S Testimony. At hearing, Ms. S testified that she continues to need the compression hose, but she did not explain why she was not utilizing the PCA services to wear them.

⁴⁷ S Testimony.

⁴⁸ Ex. E at 26; Norton Testimony; S Testimony.

⁴⁹ Ex. E at 3.

⁵⁰ Ex. E at 1, 3; Norton Testimony.

⁵¹ Ex. E at 7; Norton Testimony.

⁵² Ex. E at 9; Norton Testimony.

⁵³ Ex. E at 3; S Testimony.

⁵⁴ Ex. E at 9.

⁵⁵ Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

⁵⁶ 7 AAC 49.135.

the showing required of the Division is that the “recipient has experienced a change that alters the recipient’s need for physical assistance with ADLs, IADLs, or other covered services.”⁵⁷ The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,⁵⁸ including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the basis of the Division’s determination is generally the date of the agency’s decision under review.⁵⁹

A. Dressing

Dressing is defined in the CAT as “how a person puts on, fastens, and takes off all items of street clothing, including donning/removing prosthesis.”⁶⁰ Ms. S was previously scored 2/2 (i.e. needing limited assistance with one-person physical assist), with a frequency of 14 times per week for dressing.⁶¹ After reassessing Ms. S, the Division gave her a score of 0/0 (i.e. independent with no set-up or physical help from staff) and eliminated time for this service.⁶²

During the assessment, Ms. S demonstrated that she could touch her head; she could touch her hands over her head; she could place her hands across her chest and stand up; she could touch her hands together behind her back; and she had a strong grip in both hands.⁶³ Although she had some difficulty touching her feet with a straight leg, Ms. S could touch her feet when they were on the couch.⁶⁴ Though difficult and painful, Ms. S can and does dress herself.⁶⁵ Although she claimed at hearing that she needs assistance putting compression hose on, she reported at the assessment that she does not wear compression hose anymore.⁶⁶

The preponderance of the evidence shows that Ms. S is physically capable of dressing herself, and although Ms. S testified that she continues to need compression hose, she did not explain why, despite available PCA services, she was not wearing them at the time of the assessment. Accordingly, the Division met its burden of proof that at the time of the assessment,

⁵⁷ 7 AAC 125.026(a).

⁵⁸ 2 AAC 64.290(a)(1).

⁵⁹ 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>).

⁶⁰ See Ex. E at 8.

⁶¹ Ex. D at 2, 8.

⁶² Ex. D at 3, 11; Ex. E at 8; T Testimony.

⁶³ Ex. E at 4; Norton Testimony.

⁶⁴ Ex. E at 4, 8, 10; Norton Testimony.

⁶⁵ Ex. E at 11; S Testimony.

⁶⁶ Ex. E at 11; S Testimony.

Ms. S had experienced a change that altered her need for physical assistance with dressing. The Division’s decision to remove time for assisting Ms. S with dressing is affirmed.

B. Bathing

Bathing is defined as “how [a] person takes full body bath/shower, sponge bath, and transfers in/out of tub/shower.”⁶⁷ The CAT’s self-performance scoring for bathing differs somewhat from the scoring for the other ADLs.⁶⁸ For bathing, self-performance scores are as follows: A self-performance code of **1**, labeled as “Supervision,” is defined to mean “oversight help only.”⁶⁹ A self-performance code of **2** is defined as “physical help limited to transfer only.”⁷⁰ A self-performance code of **3** is defined as “physical help in part of bathing activity.”⁷¹ A self-performance code of **4** is defined as “total dependence” with bathing.⁷² Ms. S was previously scored 2/2 (i.e. needing one-person physical assist with transfers), with a frequency of 7 times per week for bathing.⁷³ After reassessing Ms. S, the Division gave her a score of 0/0 (i.e. independent with no set-up or physical help from staff) and eliminated time for this service.⁷⁴

At hearing, Ms. S testified about her difficulties with bathing. That testimony was very credible—indeed, compelling.⁷⁵ In short, Ms. S cannot effectively clean herself. She described her excess skin and fat as heavy.⁷⁶ She explained that she is unable to thoroughly clean her skin folds.⁷⁷ She cannot clean under her stomach and she cannot reach her private areas.⁷⁸ As a result, Ms. S develops boils and bad rashes between her stomach and groin area.⁷⁹ That condition, hidradenitis suppurativa, is documented in Ms. S’s medical records.⁸⁰ Ms. S explained that the only reason she tries to bathe herself is because her male personal care assistant is uncomfortable and will not assist her with bathing.⁸¹ At the time of the hearing,

⁶⁷ See Ex. E at 11.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Ex. E at 11.

⁷³ Ex. D at 8.

⁷⁴ Ex. D at 8; Ex. E at 11; Rae Testimony.

⁷⁵ S Testimony.

⁷⁶ S Testimony.

⁷⁷ S Testimony.

⁷⁸ S Testimony.

⁷⁹ S Testimony.

⁸⁰ Ex. F.

⁸¹ S Testimony.

Ms. S was looking for a different personal care assistant, preferably female, who would help her.⁸²

The Division did not refute Ms. S's testimony. And thus, the Division did not meet its burden of establishing by a preponderance of the evidence that Ms. S was properly given a self-performance score of 0. Instead, the preponderance of the evidence establishes that Ms. S needs more than transfer assistance—she needs physical help in part of a bathing activity.⁸³ For this reason, Ms. S should be given a self-performance score of 3, and an overall score of 3/2 for bathing, with a frequency of 7 times per week for bathing.⁸⁴

C. Instrumental Activities of Daily Living

Ms. S was previously provided assistance for her IADLs of light and routine housework, shopping, and out-of-home laundry.⁸⁵ For light housework and out-of-home laundry, the Division previously assessed Ms. S as independent, but because these activities were performed with difficulty, the Division provided physical assistance.⁸⁶ For shopping, the Division previously determined that Ms. S was able to be involved, but needed physical assistance.⁸⁷ After reassessing Ms. S, the Division concluded that she is independent and able to perform all three activities without support.⁸⁸ The Division thus eliminated time for these services.⁸⁹

Ms. S has experienced significant improvements in her physical condition and her living conditions since her last assessment.⁹⁰ She lost a significant amount of weight, and as a result, her physical functionality has increased.⁹¹ During the assessment, Ms. S demonstrated good range of motion, good fine motor skills, and a strong grip in both hands.⁹² Ms. S can independently stand from the couch and move around her house with a medium, moderately paced, normal gait.⁹³ Her overall mobility is balanced, smooth, and fluid.⁹⁴ In addition, Ms. S

⁸² S Testimony.

⁸³ *Id.*

⁸⁴ *See* Ex. D at 8.

⁸⁵ Ex. D at 3, 8.

⁸⁶ Ex. D at 3, 8.

⁸⁷ Ex. D at 3, 8.

⁸⁸ Ex. D at 3, 8.

⁸⁹ Ex. D at 3, 11; Ex. E at 8; T Testimony.

⁹⁰ *See generally* Ex. E. Norton Testimony.

⁹¹ *See generally* Ex. E. Norton Testimony.

⁹² Ex. E at 4, 9, 10; Norton Testimony.

⁹³ Ex. E at 1, 7; Norton Testimony.

⁹⁴ Norton Testimony.

has moved to a new apartment with built-in supports since her previous assessment.⁹⁵ Ms. S now has a washer and dryer in her apartment.⁹⁶ She has a shuttle bus that takes her from her apartment to the store on Tuesdays and Thursdays.⁹⁷ And her apartment complex provides carts for residents to get groceries up to their units via an elevator.⁹⁸ Ms. S can and does her own shopping.⁹⁹ Although Ms. S has difficulty and it takes a great amount of time and effort to do her laundry and perform some housework, such as folding sheets, making her bed, sweeping, or vacuuming, Ms. S can reasonably do her own housework and laundry.¹⁰⁰

A person is not entitled to receive PCA assistance if the task can “reasonably be performed by the recipient.”¹⁰¹ A review of the evidence demonstrates that the Division has met its burden to show that Ms. S has experienced a change that alters her need for physical assistance with IADLs. The Division has effectively demonstrated that Ms. S can “reasonably” perform her IADLs of light and routine housework, shopping, and laundry without physical assistance. Accordingly, the Division’s decision to remove time for these activities is affirmed.

V. Conclusion

The evidence at the hearing showed that Ms. S’ physical functionality has improved since her last assessment. However, some of the Division’s findings in its 2017 assessment were in error. Accordingly, the Division’s decision is affirmed in part and reversed in part.

In particular, the Division’s decision about PCA services for dressing and IADLs of housework, shopping, and laundry is affirmed. But the preponderance of the evidence shows that Ms. S needs physical help with bathing. Accordingly, Ms. S should be given a self-performance score of 3, and an overall score of 3/2, with a frequency of 7 times per week for bathing. And the Division shall recalculate Ms. S’s PCA benefit time consistent with this decision.

Dated: January 16, 2018

Signed _____
Jessica Leeah
Administrative Law Judge

⁹⁵ Ex. E at 1, 3; Norton Testimony.

⁹⁶ Ex. E at 9; Norton Testimony.

⁹⁷ Ex. E at 3; S Testimony.

⁹⁸ Ex. E at 9.

⁹⁹ Ex. E at 9; Norton Testimony.

¹⁰⁰ Ex. E at 26; Norton Testimony; S Testimony.

¹⁰¹ 7 AAC 125.040(a)(4).

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 8th day of February, 2018.

By: *Signed* _____
Name: Jessica Leeah _____
Title: Administrative Law Judge _____

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