

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

In the Matter of)	
)	
G G)	OAH No. 17-1071-MDS
_____)	Agency No.

DECISION

I. Introduction

G G was receiving 18.75 hours per week in personal care services (PCS). The Division of Senior and Disabilities Services performed an assessment on May 9, 2017 to determine whether she continued to be eligible for PCS and, if so, the amount of PCS she should receive. Following that assessment, the Division notified Ms. G that her PCS time would be reduced to 12.75 hours per week. Ms. G requested a hearing to challenge the Division’s determinations.

The evidence at hearing demonstrated that Ms. G’s PCS time should be reduced. The reduction is upheld with one change. Ms. G is to receive limited assistance with toileting 24 times per week, instead of the reduction to 14 times per week allotted by the Division.

II. Background Facts and Procedural History

The following facts were established by a preponderance of the evidence.

Ms. G is 46 years old and has a complicated medical history. Her diagnoses include anemia due to kidney disease, hyperparathyroidism, lower back pain, and end stage renal disease.¹ She has dialysis three days per week.² She underwent heart catheterization in January 2017.³ In addition, she recently received a cancer diagnosis, which will require treatment.⁴

Ms. G was receiving 18.75 weekly hours of PCS in May 2017, when her ongoing need for PCS was assessed during a home visit by Keith Masker, a Division assessor.⁵ Based upon that assessment, the Division sent Ms. G notice on October 13, 2017 that her PCS were being reduced to 12.75 hours per week. PCS for transfers, dressing, bathing, main meal preparation, housework, shopping, and laundry were not reduced. The areas of reductions were as follows:

<u>Task</u>	<u>Original Amount</u>	<u>Reduced Amount</u>
Locomotion	Limited Assist – 28x/wk	Completely eliminated

¹ Ex. E, pp. 1, 3.
² Ms. G’s testimony.
³ See Medical records filed on January 9, 2018, p. 1.
⁴ See Medical records filed on January 9, 2018, p. 2.
⁵ Mr. Masker’s testimony; Ex. E.

Locomotion – Medical	Limited Assist – 6x/wk	Completely eliminated
Toileting	Limited Assist – 28x/wk	Limited Assist – 14x/wk
Light Meals	Partial Assist – 14x/wk	Completely eliminated

In addition, the Division provided Ms. G PCS time for personal hygiene (limited assistance once weekly) and medication assistance (limited assistance 21 times weekly), both of which were new services not previously provided to Ms. G.⁶

III. Discussion

A. *The PCS Determination Process*

The Medicaid program authorizes PCS for the purpose of providing assistance to a Medicaid recipient who has functional limitations, resulting from his/her physical condition, that “cause the recipient to be unable to perform, independently, or with an assistive device, the activities specified in 7 AAC 125.030.”⁷ Those activities are broken down into activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The ADLs are bed mobility, transfers, locomotion, dressing, eating, toileting, personal hygiene, and bathing.⁸ The IADLs are light meal preparation, main meal preparation, housework, laundry, and shopping.⁹ In addition, PCS are provided for medication assistance, maintaining respiratory equipment, dressing changes, wound care, medical escort, and passive range-of-motion exercises.¹⁰ PCS are furnished by a Personal Care Assistant, usually abbreviated as “PCA.”

PCS are not provided for activities that can “be performed by the recipient.”¹¹ Nor are they allowed for “oversight and standby functions.”¹²

The Division assesses recipients by using the Consumer Assessment Tool, or “CAT”, as a methodology to score both eligibility for the PCS program and the amount of assistance needed for covered activities and services.¹³ The actual list of services, time allotted for each service based upon the severity of need, and the allowable frequencies for each service are set out in the

⁶ Ex. D, pp. 9 – 10.

⁷ 7 AAC 125.010(b)(1)(A)(iii).

⁸ 7 AAC 125.030(b).

⁹ 7 AAC 125.030(c).

¹⁰ 7 AAC 125.030(d). The regulation contains specific conditions that a recipient must satisfy to receive these specialized services.

¹¹ 7 AAC 125.040(a)(4).

¹² 7 AAC 125.040(a)(10).

¹³ See 7 AAC 125.020(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900(d)(6).

Personal Care Services: Service Level Computation instructions, which are adopted by reference into regulation.¹⁴

As a gateway to eligibility for PCS, 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, or has a medically documented need for supervision while eating, then the person is eligible for services from a PCA.¹⁵ Once eligibility is established, time for additional ADLs and IADLs, as well as certain other covered services, can be added to the 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.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 independent¹⁷ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance¹⁸); **3** (the person requires extensive assistance¹⁹); **4** (the person is totally dependent²⁰). 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).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). Again, there are additional codes

¹⁴ 7 AAC 125.024(a); 7 AAC 160.900(d)(29). The *Personal Care Services: Service Level Computation* instructions are located at Ex. D, pp. 6 -7.

¹⁵ 7 AAC 125.020(c)(1).

¹⁶ Ex. E, pp. 6 – 11.

¹⁷ 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.

¹⁸ Limited assistance with an ADL is defined as “[p]erson highly involved in activity; received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance 3+ time – or – Limited assistance (as just described) 1 or 2 times during the last seven days.” See Ex. E, p. 6.

¹⁹ Extensive assistance is defined as “[w]hile person performed part of activity, over last 7-day period, help of following type(s) provided 3 or more times: Weight-bearing support [;] Full staff/caregiver performance during part (but not all) of last 7 days.” See Ex. E, p. 6.

²⁰ Total dependence is defined as “[f]ull staff/caregiver performance of activity during ENTIRE 7 days.” See Ex. E, p. 6.

²¹ See Ex. E, p. 6.

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).²²

The IADLs measured by the CAT are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and 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 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).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** (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).²⁵

There are three routes to qualify for PCS. First, a person qualifies by being coded as requiring a limited or 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, a person qualifies if he or she is coded as requiring some degree of hands-on assistance²⁶ (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.²⁷ Finally, unlike the general rule that mere monitoring/supervision/cueing for an ADL or IADL will not confer eligibility for PCS, a medically documented need for supervision while eating confers eligibility.²⁸

²² See Ex. E, p. 6.

²³ See Ex. E, p. 26.

²⁴ See Ex. E, p. 26.

²⁵ See Ex. E, p. 26.

²⁶ 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, p. 26.

²⁷ See Ex. E, p. 31.

²⁸ 7 AAC 125.020(c)(1)(B).

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 is bathed.²⁹

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

B. PCS Approval

Ms. G appeared for the hearing in person. She was unaccompanied and was not using a walker. She explained that she did not have a PCA to assist her that day because her PCA's car broke down, and that she took twice her normal dose of pain medication in order to appear at the hearing. She appeared to be in a fair amount of discomfort as the hearing, which lasted 2.5 hours, came to a close. Based upon an observation of her demeanor, she was a credible witness. It must be noted that the assessor, Mr. Masker, also appeared in person. Based upon an observation of his demeanor, he was also a credible witness.

Ms. G disagreed with the reduction in services, stating that she needed more hours, not less. Her testimony, however, showed that her real need for PCS occurs on the three days per week when she attends dialysis. She did not dispute the elimination in locomotion, stating that she uses a walker on dialysis days, with supervision, but that she really doesn't walk on dialysis days with the exception of going to the restroom. It should be noted that PCS is not provided for supervision, only for hands-on physical assistance.³⁰

Ms. G's testimony revealed the following areas of disagreement: transfers, toileting, light meal preparation, and laundry.

1. Transfers

Transfers involve the act of moving to and from one surface to another.³¹ Ms. G had been receiving limited assistance with this activity 28 times per week. Upon reassessment, the Division did not change this amount of assistance.³² The assessor explained that he thought that Ms. G should continue to receive this amount of assistance because of her need for assistance

²⁹ 7 AAC 125.024(a); 7 AAC 160.900(d)(29). The *Personal Care Services: Service Level Computation* instructions are located at Ex. D, pp. 6 – 7.

³⁰ 7 AAC 125.040(a)(10).

³¹ Ex. E, p. 6.

³² Ex. D, p. 9; Ex. E, p. 6.

during dialysis days. As noted above, Ms. G was able to attend her hearing unaccompanied, without the use of an assistive device. The hearing occurred on a non-dialysis day. This supports a finding that Ms. G does not need transfer assistance during non-dialysis days.

Ms. G credibly testified that she requires transfer assistance on dialysis days. She did not provide any evidence that she required extensive assistance.³³ Accordingly, the evidence shows that it is more likely true than not true that she only requires limited assistance with transfers. She testified that she requires transfers approximately three times a day on her dialysis days.³⁴ If this is construed, in the light most favorable to Ms. G, as three transfers off a surface, such as her bed, and then back to her bed, then this would be six transfers. Six transfers a day is the maximum allowed.³⁵ Six transfers per day multiplied by the three dialysis days comes to 18 times per week. This is less than the 28 times per week allotted by the Division. Accordingly, Ms. G has not shown that her transfer assistance should be increased, and the Division's provision for transfer assistance is upheld.

2. Toileting

Ms. G was previously provided limited assistance with toileting 28 times per week.³⁶ Upon reassessment, the Division reduced her assistance with toileting to limited assistance 14 times per week.³⁷

The assessor testified that persons who undergo dialysis can have extremely varying needs with regard to toileting on dialysis days, either having to toilet frequently or very infrequently.³⁸ Ms. G credibly testified that she fell within the category of someone that required frequent toileting, and that she has to urinate eight times per day on dialysis days.³⁹ Eight times per day is the maximum allowable frequency for toileting.⁴⁰ Eight times per day multiplied by three dialysis days comes to 24 times per week. Accordingly, the Division has shown that the amount of time toileting is allowed should be reduced from the 28 times per week previously

³³ Ms. G's testimony.

³⁴ Ms. G's testimony.

³⁵ *The Personal Care Services: Service Level Computation*, Ex. D, p. 6

³⁶ Ex. D, p. 9.

³⁷ Ex. D, p. 9; Ex. E, p. 9.

³⁸ Mr. Masker's testimony.

³⁹ Ms. G's testimony.

⁴⁰ *The Personal Care Services: Service Level Computation*, Ex. D, p. 6

allowed, but not to the full extent proposed by the Division. The evidence shows that Ms. G, instead, should receive limited assistance with toileting 24 times per week.

3. Light Meal Preparation

Ms. G had previously been determined to be able to prepare her light meals with some hands-on physical assistance. Upon reassessment, the assessor determined that, although it might be difficult, she could prepare a meal without requiring any hands-on physical assistance.⁴¹ The assessor testified that he basically looked at whether a person could prepare a basic light meal such as peanut butter and jelly sandwich.⁴² Ms. G did not dispute that she could make a basic sandwich, even on dialysis days, but did state that she was not very physically capable on dialysis days.⁴³ The evidence therefore shows that, even given the fact that Ms. G is physically much less capable on dialysis days, that she is capable of preparing a light meal on dialysis days, as well as her non-dialysis days. Accordingly, the Division's elimination of light meal preparation assistance is upheld.

4. Laundry

Ms. G had previously been determined to be able to do laundry with some hands-on physical assistance. She was allotted 45 minutes per week of PCS time for that service, which is the amount of time allowed when there is no in-home laundry available.⁴⁴ Upon reassessment, the assessor determined that she required the same amount of help with laundry; the Division did not reduce the PCS time for this activity.⁴⁵ Ms. G did not dispute that she could help to some extent with laundry. Instead, her testimony was that she had to go to a laundromat for laundry.⁴⁶ However, the Division has already provided her with 45 minutes, which is the time allowed by regulation for laundry done out of the home, *i.e.* at a laundromat.⁴⁷ Accordingly, the Division's allowance of 45 minutes of PCS time per week for laundry is upheld.

IV. Conclusion

The Division has successfully demonstrated that Ms. G's PCS time should be reduced. Its reduction is upheld overall, with one change. The reduction for the number of times toileting

⁴¹ Ex. D, p. 9; Ex. E, p. 26; Mr. Masker's testimony.

⁴² Mr. Masker's testimony.

⁴³ Ms. G's testimony.

⁴⁴ *The Personal Care Services: Service Level Computation*, Ex. D, p. 7; Ex. D, p. 9; Ex. E, p. 26.

⁴⁵ Ex. D, p. 9; Ex. E, p. 26.

⁴⁶ Ms. G's testimony.

⁴⁷ *See The Personal Care Services: Service Level Computation*; Ex. D, p. 7.

is provided per week is 24 times per week, instead of the 14 times per week allotted by the Division.

DATED this 1st day of February, 2018.

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 15th day of February, 2018.

By: *Signed*

Name: Christopher Kennedy

Title/Agency: Commissioner's Delegate/OAH