

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

In the Matter of)
)
G J) OAH No. 18-0311-MDS
_____) Agency No.

DECISION

I. Introduction

G J applied for Medicaid personal care assistance services (PCS). On February 28, 2018, the Division of Senior and Disabilities Services (Division) assessed him to determine whether he is eligible for those services. The Division notified him on March 15, 2018, that his application was denied. Through K J, his sister and power of attorney, Mr. J requested a hearing.

The hearing took place by telephone on May 18, 2018. It was audio-recorded. K J represented Mr. J and testified on his behalf. Mr. J's niece, M X, also testified on his behalf. Terri Gagne represented the Division. Barbara Rodes, a Division assessor, testified for the Division. The record remained open after the hearing so Mr. J could submit additional documentation regarding his physical condition, functional limitations, or needs for assistance. All submitted documents were admitted to the record, which closed on June 5, 2018.

Based on the evidence presented, Mr. J has limited insight and generally poor judgment as a result of his schizophrenia diagnosis. He therefore requires supervision for many tasks. However, he has good physical functionality, and the evidence is that he is typically responsive to supervision, verbal prompts or cueing, and set-up help. With this kind of assistance, which does not qualify for PCS, he can perform activities such as dressing, toileting, and bathing. This level of assistance likely is also sufficient for him to perform main and light meal preparation, light housekeeping, shopping, and laundry. Mr. J did not meet his burden to show he requires physical or "hands-on" assistance for any of the activities at issue. Therefore, the Division's decision denying his request for PCS services is affirmed.

II. Facts

Mr. J is 59 years old. His primary language is Spanish, but he has a good working knowledge of English.¹ He currently lives alone in a duplex apartment owned by one of his

¹ Rodes testimony.

sisters.² However, his living situation appears to be quite fluid, and it changes frequently.³ Because of his current living situation, Mr. J is alone for extended periods of time every day.⁴ Ms. X usually stops at his house twice per day, once in the late morning and then again in the early evening, to drop off meals and assist with dressing, bathing, toilet needs, laundry, and other activities.⁵

Mr. J was once a professional guitar player, and he still plays guitar.⁶ His health conditions include schizoaffective disorder, chronic low back pain, drug-induced subacute and/or tardive dyskinesia, and benign lipomatous neoplasm.⁷ His primary health concerns are his mental illness and related problems with self-awareness and judgment.⁸ However, his medical records also show he has complained of right shoulder pain that bothers him at times, and his sister reported that he experiences chronic shoulder pain.⁹ In November 2017, Mr. J had a lump (lipoma), removed from his right shoulder.¹⁰ He has limited flexibility in one ankle because bones were fused years ago during a surgical repair of a gunshot wound.¹¹ Likely for this reason, he has some balance problems when he is standing.¹²

The evidence in the record is that Mr. J's mental illness is stable and well-managed. He is oriented to people, place, and time, and he is generally calm and cooperative.¹³ His medical history includes visual and auditory hallucinations, but Mr. J's medications substantially reduce those symptoms and improve his mood.¹⁴ However, he is known to have poor insight and judgment, and he therefore requires regular and ongoing supervision.¹⁵

² J testimony. There was some disagreement at the hearing as to whether Mr. J lives alone or with family. This decision assumes he lives alone, as Ms. J and Ms. X both testified.

³ In October 2017, he was living with Ms. X. Exhibit F, p. 50. In January 2018, he was living with two other adults. Exhibit F, p. 4. The February 2018 assessment indicates he lived with three other people. Exhibit D, p. 8. Mr. J also lived in Puerto Rico somewhat recently, and he frequently spends extended periods of time with family in Georgia. Exhibit F, p. 50.

⁴ Rodes testimony; X testimony; Exhibit D, p. 11.

⁵ X testimony.

⁶ Exhibit D, p. 9; Exhibit F, pp. 42-43.

⁷ Exhibit E, p. 3; Exhibit F, p. 12.

⁸ See Exhibit F; Exhibit I.

⁹ Exhibit F, p. 50; J testimony.

¹⁰ Exhibit F, pp. 50-52.

¹¹ J testimony.

¹² Exhibit D, p. 29.

¹³ See, e.g., Exhibit D, E, F.

¹⁴ Exhibit F, pp. 43-45.

¹⁵ See Exhibit F.

On February 28, 2018, Mr. J was assessed by Barbara Rodes to determine his eligibility for the PCS program. K J, M X, and a representative from a PCS agency also were present.¹⁶ Using a telephonic Spanish interpreter, Ms. Rodes found that Mr. J communicated well, and he was responsive to her requests.¹⁷ After talking with Mr. J and performing a functional assessment of his abilities, Ms. Rodes next discussed his abilities and needs for assistance with Ms. J and Ms. X.

Ms. Rodes observed that Ms. J and Ms. X often tried to speak for Mr. J, and they sought to provide assistance during the assessment that she concluded Mr. J does not actually require, such as a supporting arm while he walked.¹⁸ Based on her visual observations and functional testing, Ms. Rodes determined that he has strong grips with both hands and good range of motion, although he could not touch his hands together over his head.¹⁹ He quickly and independently performed all the functional tasks Ms. Rodes requested. He reported being alone for most of each day. He also reported that he is able to perform most activities on his own, though he stated that his family took care of activities like cooking and laundry for him. Mr. J indicated that he does not need any particular assistance.²⁰

Ms. Rodes watched Mr. J stand up and reach down to his ankles. She observed him move from place to place within his home, get in and out of chairs and his bed on his own, sit on a closed toilet seat and stand back up, walk up and down stairs, roll over in bed, take a glass from a cabinet, and pour himself orange juice from the refrigerator. Ms. Rodes concluded that he moved comfortably, and he is capable of performing each of the activities of daily living (ADL) she assessed without any physical assistance.²¹

Ms. Rodes learned that Mr. J's family nonetheless regularly provides hands-on support for certain ADLs and the instrumental activities of daily living (IADL) that are included in the assessment. For instance, they assist him with dressing, cleansing after toileting, and bathing. They also drop off three prepared meals a day and do his laundry. However, Ms. Rodes

¹⁶ Rodes testimony.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Exhibit D, p. 11.

²⁰ *Id.* Due to his generally poor insight, Mr. J's self-reporting of his abilities is given little or no weight unless supported by other evidence. As Ms. J commented, her brother "also would tell you he could fly a plane," if asked.

²¹ Exhibit D, pp. 2, 13-18; Rodes testimony.

concluded that he is capable of performing all those activities independently.²² During the hearing, she clarified that Mr. J is particularly capable of performing all his ADLs and IADLs if he receives supervision or cueing.

On March 15, 2018, the Division notified Mr. J that he is not eligible for PCS assistance.²³ Mr. J requested a hearing.²⁴ During the hearing, Ms. J and Ms. X asserted that Mr. J requires physical assistance with the activities of transfers, dressing, toilet use, personal hygiene, bathing, and all of the IADLs that are included in the assessment: main and light meal preparation, light housework, shopping, and laundry (in-home).

III. The PCS Determination Process

The Medicaid program authorizes PCS for the purpose of providing assistance to a Medicaid recipient whose physical condition results in functional limitations that cause the recipient to be unable to perform, independently or with an assistive device, the activities covered by the program.²⁵ Covered activities are broken down into ADLs and IADLs. The ADLs are bed mobility, transfers, locomotion, dressing, eating, toileting, personal hygiene, and bathing.²⁶ The IADLs are light meal preparation, main meal preparation, housework, laundry, and shopping.²⁷ In addition, PCS can be provided for medication assistance, maintaining respiratory equipment, dressing changes and wound care, medical escort, and passive range-of-motion exercises.²⁸ PCS are furnished by a Personal Care Assistant, usually abbreviated as “PCA.”

PCS hours are not provided for activities that can “be performed by the recipient.”²⁹ Nor are they allowed for “oversight or standby functions.”³⁰ In addition, the Division may not authorize PCS for needs that can be met by a recipient’s representative, immediate family members, or natural supports.³¹ “Natural supports” is defined to mean individuals who

²² Exhibit D, p. 2. She concluded he requires set-up support for the activity of dressing, but he was independent and needed no assistance for all other assessed activities.

²³ Exhibit D, p. 1.

²⁴ Exhibit C.

²⁵ 7 AAC 125.010(b)(1)(A).

²⁶ 7 AAC 125.030(b).

²⁷ 7 AAC 125.030(c).

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

²⁹ 7 AAC 125.040(a)(4).

³⁰ 7 AAC 125.040(a)(10).

³¹ 7 AAC 125.020(c). “Immediate family members” is not defined by regulation but has been interpreted as applying to family members such as spouses and parents of minor children.

voluntarily and without payment provide care and support similar to PCS services for a recipient.³²

The Division assesses recipients 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.³³ The list of available services, time allotted for each service based upon severity of need, and the allowable frequency for each service is set out in the *Personal Care Services: Service Level Computation* instructions, which are adopted by reference into regulation.³⁴

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.³⁵ Once eligibility is established, time for additional ADLs, IADLs, and certain other covered services can be added to the authorization.

A. *Activity of Daily Living Scoring*

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)³⁶; **1** (the person requires supervision)³⁷; **2** (the person requires limited assistance)³⁸; **3** (the person requires extensive assistance)³⁹; **4** (the person is totally dependent).⁴⁰ There are also

³² 7 AAC 125.199(8).

³³ See 7 AAC 125.020(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900(d)(6).

³⁴ 7 AAC 125.024(a); 7 AAC 160.900(d)(29). The *PCS Service Level Computation* chart is in the record at Exhibit D, pp. 4-5.

³⁵ 7 AAC 150.020(c)(1).

³⁶ A self-performance code of 0 is classified as “Independent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days.” See Exhibit D, p. 12.

³⁷ Supervision includes “Oversight, encouragement or cueing provided 3+ times during last 7 days – or – Supervision plus nonweight-bearing physical assistance provided only 1 or 2 times during last 7 days.” See Exhibit D, p. 12.

³⁸ Limited assistance with an ADL is defined as “Person highly involved in activity; received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance 3+ times – or – Limited assistance (as just described) plus weight-bearing 1 or 2 times during last 7 days.” See Exhibit D, p. 12.

³⁹ Extensive assistance is defined as “While 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 Exhibit D, p. 12.

⁴⁰ Total dependence is defined as “Full staff/caregiver performance of activity during ENTIRE 7 days.” See Exhibit D, p. 12

codes which are not used in calculating a service level: **5** (the person requires cueing)⁴¹; and **8** (the activity did not occur during the past seven days).⁴²

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 which are not used to arrive at a service level: **5** (cueing support required 7 days a week); and **8** (the activity did not occur during the past seven days).⁴³

B. Instrumental Activity of Daily Living Scoring

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).⁴⁴

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 was 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).⁴⁵

C. PCS Eligibility

There are three ways to qualify for PCS. First, a person can qualify if he or she requires a limited or greater degree of physical assistance in any one of the ADLs of transfers, locomotion, eating, toilet use, dressing or bathing (self-performance code 2, 3, or 4, and a support code of 2,

⁴¹ Cueing is defined as “Spoken instruction or physical guidance which serves as a signal to do an activity are required 7 days a week. Cueing is typically used when caring for individuals who are cognitively impaired.” See Exhibit D, p. 12

⁴² See *id.*

⁴³ See Exhibit D, p. 13.

⁴⁴ See Exhibit D, p. 42.

⁴⁵ See *id.*

3, or 4). Second, a person can qualify if he or she requires some degree of hands-on assistance with any one of the IADLs (self-performance code 1, 2, or 3 and a support code of 3 or 4).⁴⁶ Finally, though the general rule is that mere monitoring, supervision, or cueing for an ADL or IADL will not confer eligibility for PCS, a medically documented need for supervision while eating does confer eligibility.⁴⁷

The codes assigned to a particular ADL or IADL determine how much PCS time a person receives for each occurrence of a particular activity. For instance, if a person is coded as requiring extensive assistance (self-performance code 3) with bathing, he or she would receive 22.5 minutes of PCS time every day he or she is bathed.⁴⁸ For covered services beyond assistance with ADLs and IADLs, specific rules apply that are discussed as appropriate.

When the Division denies an initial request for PCS service time, the applicant bears the burden to show that he or she qualifies for the services requested.⁴⁹ The standard is preponderance of the evidence. An applicant can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,⁵⁰ including such sources as written reports of firsthand evaluations of the patient. In general, the relevant timeframe for assessing the state of the facts is the date of the agency's decision under review.⁵¹

IV. Discussion

As the applicant for new PCS services, Mr. J bears the burden of proof to show his eligibility. The areas in dispute are addressed below.

A. Transfers

Transfers refers to how a person moves between surfaces, including to and from a bed, chair, or wheelchair. It does not include transfers to or from the toilet or the shower/bathtub for bathing.⁵² During the assessment, Ms. Rodes observed Mr. J transfer out of a recliner in his living room, walk to his dining area and sit down on a chair independently. He also walked to

⁴⁶ See Exhibit D, pp. 37-38. For the purposes of this discussion, "hands-on" assistance does not include supervision/cueing or set-up assistance (support codes of 1 or 2).

⁴⁷ 7 AAC 125.020(c)(1).

⁴⁸ 7 AAC 125.024(a); 7 AAC 160.900(d)(29) (PCS Service Level Computation chart); Exhibit D, p. 4.

⁴⁹ 7 AAC 49.135.

⁵⁰ 2 AAC 64.290(a)(1).

⁵¹ 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>.

⁵² 7 AAC 125.030(b)(2); Exhibit B, p. 5.

his bed, slipped off his shoes, laid down and rolled on his side, then sat up, slipped on his shoes, and stood back up without any assistance.⁵³

Mr. J did not present any testimony or other evidence showing that he requires physical help to transfer. The evidence supports the Division's determination that he is independent with this activity.

B. Dressing

Dressing is how a "person puts on, fastens, and takes off all items of street clothing."⁵⁴ Ms. J testified that her brother usually wears a bathrobe, because he can easily put it on and take it off himself, as he demonstrated during the assessment. However, she said he can not put on socks or tie his shoes without hands-on help, and he can not put on a shirt independently because his shoulder pain limits his range of motion. She challenged the validity of the Division's scoring, because Ms. Rodes did not observe Mr. J perform these particular tasks.

Ms. X also testified that Mr. J has difficulty putting on t-shirts because he can not raise his arms above his shoulders. Without providing other background, she also indicated that Mr. J can not put on socks, tie his shoes, pull up his pants, do buttons, or put on underwear unless someone physically assists him. She indicated that she provides hands-on assistance with those tasks every day.

The medical documentation does not identify any physical limitations that would require hands-on assistance for Mr. J to get dressed and undressed every day. Even accepting that he has some range of motion limitations and pain in his shoulders, he should be able to put on a shirt without lifting his arms high over his head. During the assessment, he demonstrated how he takes his bathrobe off and puts it on. He also slipped off his shoes to climb into bed, then slipped them back on. He reported needing help to put on his socks, though it is not clear why he could not manage this task on his own. He has good hand and finger dexterity, as evidenced by his guitar-playing ability, and he can reach his feet.

To the extent Mr. J's mental illness interferes with his ability to put on his socks or other clothing, the evidence on this issue is insufficient to meet Mr. J's burden of proof. Nothing in the record suggests that his cognitive impairment is so significant that he is unable to respond to supervision, verbal prompting, or cueing. Rather, the weight of the evidence strongly supports

⁵³ Exhibit E, p. 7.

⁵⁴ 7 AAC 125.030(b)(4); Exhibit E, p. 8.

the conclusion that he can and typically does respond to that kind of “hands-off” assistance and support, though he may be slow and require more time to get dressed than most caregivers would like.

In March 2018, Mr. J’s medical provider wrote that Mr. J “can mostly dress himself, however, at times he will need assistance with this.”⁵⁵ She then clarified: “The client benefits from assistance with getting dressed. If he is alone, he will require an additional 15 min of time to get dressed, or sometimes even with assistance this can be a time consuming process.”⁵⁶

This evidence is consistent with Ms. Rodes’ observations during the assessment. That is, Mr. J can manage his dressing activities independently if he is given set-up support. He also may require supervision and prompting for items like his socks and shoes, pulling up pants, and putting on underwear. Though Mr. J may require an additional 15 minutes to get dressed with this kind of oversight, this is not an excessive amount of time. It does not justify a conclusion that he requires hands-on assistance, even if that assistance would be more expedient. Mr. J did not show he requires physical assistance to dress himself, and the Division correctly denied his request for PCS time for this ADL.

C. Toilet Use

Under the CAT, the ADL of toileting includes use of the toilet, including transfers on/off and locomotion to/from the bathroom, cleansing, changing pads and adjusting clothing.⁵⁷ Bathing or showering is not included. Ms. X testified that Mr. J is independent with most toilet use tasks, but he requires someone to wipe him after a bowel movement. If left on his own, he does it poorly and makes a mess that requires extensive cleanup. For this reason, when she checks on him around 10-11 a.m. every morning, she helps him put on an adult incontinence product (Depends). If he needs to make a bowel movement during the day, she said he will call her and ask her to come over and help. Or, he will try to hold it back until she returns to his home around 4:30 in the afternoon.

Again, the record offers no indication that Mr. J has physical limitations that prevent him from cleaning himself after using the toilet. It appears he does a poor job because of his limited self-awareness, which is consistent with his mental health diagnosis. The undersigned does not

⁵⁵ Exhibit 1.

⁵⁶ *Id.*

⁵⁷ 7 AAC 125.030(b)(6); Exhibit D, p. 15.

doubt that Mr. J manages this aspect of toilet use poorly if he is left alone, resulting in a larger mess and additional cleaning and laundry. However, Ms. J and Ms. X did not explain why Mr. J could not or would not respond and more appropriately manage this task if he is given supervision and verbal prompting.

Mr. J lives alone and must manage his self-care for most of every day. The evidence in the record is that, despite his poor self-awareness, he can and does respond when supervision and prompting is available. This kind of assistance does not qualify for PCS time. The record remained open after the hearing, to provide Mr. J a full opportunity to submit documentation showing the extent of his cognitive impairment and resulting physical limitations, if any. On the existing record, Mr. J has not met his burden to show he requires hands-on assistance with his toilet use ADL.

D. Personal Hygiene

Personal hygiene includes washing/drying face, hands, or feet (when done separately from bathing), nail and skin care, mouth and teeth care, brushing and combing hair, shaving (when done separately from bathing), or washing hair (when done separately from bathing).⁵⁸ Ms. X stated that Mr. J needs someone to perform some of these activities for him. For instance, she shaves him once per week, because he either can not or will not do it himself.

Here again, the weight of the evidence in the record is that Mr. J has the physical functionality to perform each of the tasks involved in personal hygiene independently. Due to his schizophrenia, he may not perform certain tasks unless someone is there to supervise and prompt him. He also may be slow. However, these circumstances do not show eligibility for PCS assistance.

E. Bathing

Bathing involves the washing of a person's entire body including hair, in a bathtub, shower, or by sponge bath. It includes all transfers and locomotion necessary to complete the bathing process.⁵⁹ Mr. J told Ms. Rodes during the assessment that he showers daily and requires no assistance. Ms. X asserted that Mr. J showers every other day, and he needs hands-on help to step in and out of the bathtub. She also stated that he needs physical help to wash his hair and backside, because he cannot manage these activities on his own.

⁵⁸ 7 AAC 125.030(b)(7); Exhibit D, p. 15.

⁵⁹ 7 AAC 125.030(b)(8); Exhibit D, p. 16.

Mr. J has not met his burden of proof on this issue. His bathroom and shower are on the second level of his home. Ms. Rodes observed Mr. J walk up the stairs independently to a landing during the assessment. He did this so comfortably that she asked him to stop and come back down.⁶⁰ She documented that Mr. J has some balance problems when standing, and this may explain why Ms. X typically helps him in and out of the shower. However, the evidence is that he can independently get himself to the bathroom and in and out of the shower. At most, Ms. X's testimony could show he requires supervision and stand-by assistance, in case he loses his balance. Similarly, Mr. J's medical provider generally indicated that, "without supervision and assistance," Mr. J has fallen and injured himself.⁶¹ This suggests that supervisory assistance is what Mr. J most needs.

As with the dressing ADL, though Ms. X normally provides hands-on assistance washing Mr. J's hair and backside in the shower, this may be because it is the most expedient way of completing the task. More likely than not, Mr. J can physically manage his bathing ADL if given supervision and verbal prompts, though the process is slower than it otherwise would be. Mr. J did not show that his mental illness prevents him from responding to cues or completing tasks like washing his hair. He also did not show that his shoulder problems prevent him from lifting his hands high enough to wash his hair. Ms. Rodes testified that he showed her he could do this. On this record, there is insufficient evidence to conclude that Mr. J regularly requires hands-on assistance with bathing.

F. Instrumental Activities of Daily Living

Mr. J requested PCS assistance with all his IADLs: main and light meal preparation,⁶² light housework,⁶³ shopping,⁶⁴ and laundry (in-home).⁶⁵

⁶⁰ Rodes testimony.

⁶¹ Exhibit 1.

⁶² Main and light meal preparation includes the preparation, serving, and cleanup of two light meals and one main meal that are essential to the recipient's health needs. 7 AAC 125.030(c)(1), (2).

⁶³ Light housework includes activities such as tidying the living space, dusting, cleaning floors, dishes and the kitchen, the bathroom, making the bed, and trash removal. 7 AAC 125.030(c)(3).

⁶⁴ Shopping includes shopping for groceries, household items, prescribed drugs and medical supplies, and other items required for the health and maintenance of the recipient. 7 AAC 125.030(c)(5).

⁶⁵ Laundry includes changing a recipient's bed linens and laundering linens and clothing. 7 AAC 125.030(c)(4).

1. Main and light meal preparation

Ms. J and Ms. X testified that Mr. J cannot prepare meals of any kind on his own. Illustrating the dangers of leaving him unsupervised for this task, they emphasized that he once accidentally started a fire and nearly burned down a neighbor's home when he was alone and tried to use the stove. They also indicated that he can not push buttons on a microwave to heat up simple foods.

Ms. X agreed that Mr. J can pour himself a glass of water or orange juice, which he loves and drinks regularly. He also can take cold items out of the refrigerator with prompting, but she said he rarely does. As a result, Ms. X's practice is to bring him three meals per day. She delivers them in the morning, leaves them on a counter, and he eats them on his own.

On March 21, 2018, Mr. J's medical provider summarized Mr. J's situation as follows:

G is not safe to cook his own meals, grocery shop on his own, manage money on his own or physically move about without supervision. G needs assistance with cooking his own meals. . . . He is not able to plan for meals or cook meals that require use of putting together multiple ingredients, using the stove, etc.⁶⁶

It appears that Mr. J has difficulty with multi-step tasks like those required for more complex meal preparation. The issue is whether he can manage these tasks with supervision, cueing, or set-up help, or whether he requires physical assistance because his cognitive impairment prevents him from responding to lesser supports. His medical provider's note clearly states that he requires supervision, and he is not safe to perform these activities on his own. However, it does not explain whether Mr. J can follow step-by-step directions if someone is there to provide them, or whether someone else must physically perform certain tasks for him.

Mr. J already serves himself the meals Ms. X brings him. Light meal preparation generally does not require complex tasks. It can involve quite simple acts like making a sandwich, setting out cheese and crackers, an apple, yogurt, or a bowl of cereal. It may involve using a microwave, though that is not necessary. Even accepting that Mr. J requires assistance for such tasks, the evidence is that supervision and reminders are adequate. This correlates to self-performance code 2 (requires assistance/done with help) and support code 1 or 2 (supervision/cueing or set-up help).

⁶⁶ Exhibit 1.

For main meal preparation, Mr. J clearly should not be left alone, since main meals often involve use of the stove and knives to cut or chop ingredients. Mr. J does not have the insight or judgment to do these things without any oversight or support. Here again, his self-performance score should be a two -- he can be involved in the activity, but help is provided.

The more difficult question is the appropriate support code for main meal preparation. The burden of proof rests with Mr. J, who did not show that his mental illness makes him regularly incapable of responding to non-physical forms of assistance with main meal preparation. He has operated a stove in the past, even if badly because he was unsupervised. This nonetheless shows an ability to operate the knobs, and he likely can safely prepare and cook a simple main meal if someone is with him to supervise or provide set-up help. Since there is no showing that physical assistance is necessary, PCS time is not available for main or light meal preparation.

2. Light housework, shopping, and laundry

Ms. J and Ms. X did not present any evidence specifically addressing Mr. J's abilities or need for assistance with light housekeeping tasks. They agreed he can go to the store for shopping, where he rides an electric scooter to get around. However, Ms. J asserted that he has no idea what items he needs or wants, except orange juice. Regarding laundry, Ms. X stated that Mr. J physically can not push the buttons on the machines, and he does not know how to turn the washer and dryer on or off. If left on his own, she asserted that he could not successfully do his own housework, shopping, or laundry. Ms. X regularly provides physical assistance with these tasks.

More likely than not, Ms. X and Ms. J are correct when they say Mr. J can not complete these IADLs if he is left entirely on his own. When this happens, he may act unwisely or unsafely, or he may simply avoid the task altogether. However, they did not show that he can not successfully complete these tasks if someone is with him, supervising and providing verbal cues or prompts. Based on the evidence in the record, he can be involved in each of these IADLs, but he requires help in the form of supervision, cueing, or set-up help (self-performance code 2; support code 1 or 2).

No matter how necessary and important, supervision, cueing, and set-up help are not compensable personal care services. It is understandable that Mr. J's family has a difficult time offering the nearly constant supervision and prompting Mr. J appears to require, and they often

choose to provide physical assistance as a matter of efficiency. However, that does not meet Mr. J's burden to show that he qualifies for PCS assistance.

V. Conclusion

Mr. J has not shown that he more likely than not requires physical or "hands-on" assistance to perform the ADLs and IADLs at issue. Accordingly, the Division's decision denying PCS authorization is affirmed.

DATED: June 11, 2018.

Signed _____
Kathryn Swiderski
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 26th day of June, 2018.

By: *Signed* _____
Name: Kathryn A. Swiderski
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]