

Non-Adoption Options

C. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

The finding that Mr. J requires hands on physical assistance with housework is reversed. I have reviewed the record in this case, including an audio recording of the hearing, and find Mr. J's statement that he is unable to do routine housework lacks credibility¹. I find this in light of his own assessment of his ability to perform routine housework: "No vacuuming, cleaning of floors. I do trash removal. I clean the bottom of the shower to keep my feet clean,"² as well as his report to his physical therapist on February 22, 2018 that he was able to swim laps.³ I find that Mr. J is able to complete routine housework tasks including cleaning floors independently with difficulty, and is therefore not eligible for services for this IADL.

D. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(5), rejects, modifies or amends the interpretation or application of a statute or regulation in the decision as follows and for these reasons:

I reject the interpretation in the proposed decision of the IADL of laundry as too broad. The activity of laundry is not the act of getting laundry to and from one's home to the location of the washer and dryer, but rather is limited to the act of putting the laundry into the machines, taking it out again, and folding the laundry.

Based on Mr. J's Testimony that he would need a chair to put clothing in the washing machine,⁴ I find that Mr. J could, using a chair as an assistive device, perform these tasks independently. Therefore, Mr. J is not eligible for services for this IADL.

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 30th day of July, 2018.

By: Signed
Deborah Erickson, Project Coordinator
Office of the Commissioner
Department of Health and Social Services

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

¹ June 6, 2018 hearing session, part 2 at 10:53 to 14:04.

² J Statement Part 2 at 8 (J filing 4/26/18 at 11 of 45).

³ J filing 4/26/18 at 35 of 45

⁴ June 6, 2018 hearing session, part 2 at 7:48 – 10:52.

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

In the Matter of:)
) OAH No. 18-0313-MDS
 S J)
)
_____)

DECISION

I. Introduction

S J applied for assistance from the Personal Care Services (PCS) program. Based on a telehealth consumer assessment, the Division of Senior and Disabilities Services (the division) denied the application. Mr. J requested a hearing.

This decision concludes that Mr. J requires physical assistance with laundry and routine housework and is therefore eligible for the PCS program.

II. Facts

Mr. J is 49 years old. He lives by himself in City A in a second-floor apartment.⁵ He has been diagnosed with necrosis of the femur, degeneration of the cervical spine, cubital tunnel syndrome, and lesion of the ulnar nerve. He has had a hip replacement.⁶

Mr. J walks with a cane, but he is able to drive himself around City A to where he needs to go. Mr. J describes himself as being in constant pain. He has pain in his neck, his shoulders, and his back. He has found ways to manage many activities of daily living on his own despite the pain.⁷ Mr. J is concerned about falling, both in his home and out in the community.⁸ His medical records confirm that he has an ataxic gait.⁹

A caseworker based in City A testified for Mr. J. His case worker has known Mr. J for three years and described Mr. J's physical abilities as "extremely limited." She testified that he walks very slowly, uses a cane, does not bend over, cannot turn his head from right to left, and cannot lift his arms over his shoulders. Her testimony was based on her observation of Mr. J in her office, and getting from his car to her office, as well as things Mr. J has told her. She has not visited Mr. J's home.¹⁰

⁵ Ex. D at 8 - 9; Testimony of J.

⁶ Ex. D at 9; Ex. E at 9.

⁷ Testimony of J.

⁸ J Statement Part 2.

⁹ Exhibit F at 15.

¹⁰ Testimony of Q.

The division assessed Mr. J on January 19, 2018 to determine his eligibility for the PCS program. The division did not conduct a home visit; rather, Mr. J was assessed using a video link in what the division calls a “telehealth” assessment. During the assessment, the assessor took Mr. J through a functional assessment and evaluated his ability to perform various activities based on her observations of Mr. J through the video link and Mr. J’s statements. The assessor concluded that Mr. J was fully independent with all activities of daily living (ADLs) and instrumental activities of daily living (IADLs) assessed by the Consumer Assessment Tool (CAT) for purposes of the PCS program and had not required any support with these activities over the last seven days. On March 15, 2018, the division denied Mr. J’s application for PCS services.¹¹ Mr. J requested a fair hearing.¹²

The telephonic hearing in this matter convened May 21, 2018, and by agreement of both parties continued on June 6, 2018. Mr. J represented himself with assistance and testimony from his case worker S Q. Fair Hearing Representative Terri Gagne represented the division. Health Program Manager II Robin Platt testified.

III. Discussion

The division denied Mr. J’s application for PCS because it concluded that he was fully independent with his ADLs and IADLs, and had not received any support with these activities over the last seven days. Because Mr. J’s application for PCS was an application for new benefits, Mr. J must prove by a preponderance of the evidence that the division incorrectly denied his application.¹³

The division will authorize PCS for a Medicaid recipient if the division determines that the recipient needs at least limited assistance with one ADL, or physical assistance with one IADL, and those needs cannot be met by the recipient’s “representative, immediate family members, or natural supports.”¹⁴ In Mr. J’s case, the division found that Mr. J did not require limited assistance with any ADLs or physical assistance with any IADLs.

¹¹ Ex. D at 1 - 2.

¹² Ex. C at 2.

¹³ 7 AAC 49.135.

¹⁴ 7 AAC 125.020(c). “Limited assistance” with an ADL is defined as a “[p]erson 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 seven days.” *See* Ex. D at 12. Note that the self-performance codes for the activity of bathing are different than for the other ADLs

Mr. J contested the division’s finding for each ADL and IADL, filing a detailed nine-page analysis of his CAT assessment.¹⁵ It should be noted in this context that the division uses the CAT for other purposes besides evaluating recipients’ eligibility for the PCS program. The CAT is also used to determine eligibility for the waiver program. Some of the items on the CAT are used to determine eligibility for the waiver program, but not the PCS program. Therefore, not all of the points Mr. J makes in his statement are specifically addressed in this decision. Nonetheless, Mr. J’s complete Statement has been read and considered.

A. The Consumer Assessment Tool (CAT)

According to the PCS program regulations, the division will authorize personal care services for an individual who experiences “functional limitations that ... are the result of the recipient’s physical condition” and that “cause the recipient to be unable to perform, independently or with an assistive device” a specified list of activities of daily living (ADLs) and instrumental activities of daily living (IADLs).¹⁶ The division uses a standardized form, the Consumer Assessment Tool (CAT), to evaluate an applicant’s ability to perform the ADLs of bed mobility, transferring, locomotion, dressing, eating, toileting, and personal hygiene, and bathing, and the IADLs of light meal preparation, main meal preparation, housework, laundering, and shopping.¹⁷ The program will not cover personal care services for an activity the division determines could be performed by the recipient.¹⁸

The CAT scores a person’s ability to perform an ADL on a scale from 0 to 4. For ADLs other than bathing, 0 means the person can perform the activity independently, 1 means the person needs oversight, encouragement, or cueing three or more times a week, or supervision plus non-weight-bearing assistance once or twice a week, 2 means the person needs non-weight-bearing physical assistance three or more times a week or weight bearing assistance once or twice a week, 3 means the person needs extensive physical assistance, and 4 means the person is totally dependent on a caregiver to perform the activity.¹⁹

The CAT also scores how much support a person requires in performing an ADL on a scale of 0 to 3. The support scale codes no setup or physical help needed as 0, setup help

¹⁵ J Statement Part 2.

¹⁶ 7 AAC 125.010(b)(1).

¹⁷ 7 AAC 125.030(b). The CAT is adopted as a regulation by reference in 7 AAC 160.900(d)(6).

¹⁸ 7 AAC 125.040(a)(4).

¹⁹ Division Ex. D at 12.

only as 1, physical assistance from one person as 2, and physical assistance from two or more people as 3.²⁰

The self-performance of IADLs is scored from 0 to 3, with 0 meaning no help was provided with the activity over the course of the preceding week, 1 meaning the person “performed task, but did so with difficulty or took a great amount of time to do it,” 2 meaning the person was involved but supervision, reminders, or hands-on help were provided, and 3 meaning the activity was performed by others and the recipient was not involved.²¹

The division will authorize PCS for a recipient who receives a self- performance score of at least 2 for at least one ADL or IADL.²² In this case, the division determined that Mr. J did not require this level of assistance with any of the ADLs or IADLs. On March 15, 2018, the division denied Mr. J’s application for PCS.²³ The evidence relating to each ADL and IADL is discussed below.

B. Bed Mobility

The ADL of bed mobility refers to the ability of a recipient who is non-ambulatory to move to and from a lying position or turn from side to side in bed.²⁴ Mr. J reports that he “hurts so much that [he] can’t get out of bed,” and that it takes him about 30 minutes and a great deal of effort to get out of bed.²⁵ However, although Mr. J walks with difficulty using a cane, Mr. J is ambulatory. Therefore, under the regulation, Mr. J does not qualify for PCS assistance with bed mobility.

C. Transfers

The program regulations allow PCS time for transfers when a person requires physical assistance from another person to move between one surface and another, including to or from a bed or chair, or from sitting to standing. Mr. J demonstrated during the CAT that he could transfer from a seated position into a standing position using his hands to push against the table.²⁶

²⁰ *Id.*

²¹ Division Ex. D at 32.

²² 7 AAC 125.020(c)(1).

²³ Division Ex. D at 2.

²⁴ 7 AAC 125.030(b)(1).

²⁵ J Statement Part 2 at 2.

²⁶ Exhibit D at 12.

The CAT scored Mr. J 0/0 for transfers. Mr. J did not show that he needs physical assistance to move from one surface to another, or to sit and stand. Mr. J did not show that the division's score for transfers is incorrect.

D. Locomotion

The division may authorize PCS time for locomotion for a person who requires physical assistance to walk between locations in the person's home, or to and from a vehicle used to access routine medical appointments. The regulation specifically prohibits the division from authorizing PCS time for a recipient who is "self-sufficient with an assistive device."²⁷ The CAT form specifically asks the assessor to evaluate "how a person 'moves between locations in his/her room and other areas on the same floor.'"²⁸

The assessor's observations and Mr. J's testimony both support the score of 0/0 for locomotion between locations within Mr. J's residence. During the assessment, the assessor observed Mr. J take a few steps using his cane.²⁹

Mr. J uses his vehicle to get around town.³⁰ During a recess in the hearing, Mr. J drove himself from his home to his case worker's office. The case worker watched Mr. J getting from his vehicle to her office. She testified that slowly, with a cane, "he shuffled his way here."³¹ He did not report needing assistance in getting into and out of the car. In his Statement, he wrote that "[he] get[s] in . . . [his] truck by leaning against my seat. [He] hop[s] up a little and drag [his] right leg in and lean on [his] right arm and use the steering wheel to pull the rest of [him]self in."³²

Mr. J told the assessor that depending on his pain level, he sometimes has to sit down and scoot on his backside up or down the stairs to his home.³³ Mr. J expressed concern about his safety on the stairs, stating that he needs to hold onto the railing and his balance is not "safe" especially if he has something in his hand. He also said he had difficulty leaving and entering his home, writing that "[he] feel[s] like [he] could fall over the railing outside on the stairs."³⁴

²⁷ 7 AAC 125.030(b)(3)(i).

²⁸ Division Exhibit D at 12.

²⁹ Exhibit D at 12.

³⁰ J Statement Part 2 at 8.

³¹ Testimony of Q.

³² J Statement Part 2 at 3.

³³ Exhibit D at 12

³⁴ J Statement Part 2 at 1, 7.

Mr. J did not show that he requires physical assistance to walk between locations in his home, or to and from a vehicle used to access routine medical appointments. Therefore, he was correctly scored as independent in the activity of locomotion.

E. Dressing

Mr. J reports that dressing is painful and time-consuming for him, but that he is physically capable of dressing himself independently.³⁵ He told the assessor that he could manage fasteners on his own.³⁶ His written statement described it taking an hour and a half to get ready for the telehealth assessment.³⁷ The assessor noted on the CAT that Mr. J was wearing jeans and a t-shirt for the assessment, and that she observed him put on a denim coat with a hoodie jacket without assistance during the assessment.³⁸ Mr. J disputed this, writing that during the assessment a worker helped him put his arms through the sleeves of the coat.³⁹ While Mr. J's testimony establishes that dressing is difficult and time-consuming for him, Mr. J has not shown that he requires physical assistance with dressing.

F. Eating

Mr. J does not require physical assistance with eating — he can use a fork and drink from a cup.⁴⁰ He does not have a feeding tube or swallowing or aspiration difficulties that require he have supervision when eating.⁴¹ The difficulties Mr. J cited with this ADL relate to the IADLs of light meal preparation and main meal preparation, discussed below. The assessor correctly scored Mr. J 0/0 for the ADL of eating.

F. Toileting

The activity of toileting encompasses using the toilet room, transferring on and off the toilet, cleansing, and adjusting clothing.⁴² The assessor scored Mr. J as independent with this activity because he was able to sit down, stand up, and walk independently during the assessment. He also reported that he has a four-inch toilet seat riser, which was not

³⁵ J Statement Part 2 at 4; Testimony of J;

³⁶ Exhibit D at 14.

³⁷ J Statement Part 2 at 4.

³⁸ Exhibit D at 14.

³⁹ J Statement at 4.

⁴⁰ Testimony of J

⁴¹ Testimony of J; Exhibit D at 14, 17. *See* 7 AAC 125.030(b)(5).

⁴² Exhibit D at 14.

noted on the assessment.⁴³ However, the need for an assistive device does not necessarily indicate a need for PCS if, as here, the person is independent in the activity when using the device. Mr. J also reported having fallen when getting off the toilet. However, he did not provide details such as when he fell or whether he was hurt. He did not address why physical assistance was needed, rather than additional assistive devices (such as grab bars). Mr. J did not prove that he requires physical assistance with toileting.

G. Personal Hygiene

The division may authorize personal care services if a person needs physical assistance with any of several personal hygiene activities, including combing hair, brushing teeth, and shaving.⁴⁴ The assessor observed that Mr. J could raise his hands up by his ears, and also observed Mr. J put on a hat without assistance before leaving the assessment room.⁴⁵ Mr. J explained that brushing his teeth and shaving really hurt, and that he gives up on these activities. He expressed a desire for someone to remind him to shave and brush his teeth.⁴⁶ The assessor found that Mr. J was independent with maintaining personal hygiene, and Mr. J has not shown that he requires assistance.

H. Bathing

Bathing involves transfers in and out of the tub or shower and the actual bathing process.⁴⁷ Mr. J indicated that he needs a shower stool. His case worker reported that it is difficult for Mr. J to get in and out of the shower, and that Mr. J is concerned about falling in the shower.

Based on all of the testimony at the hearing, as well as Mr. J's written statement and the CAT, it is more likely than not that Mr. J does not require hands-on assistance with bathing, but might benefit from supervision and oversight, additional devices such as grab bars, or both. However, supervision is not a compensable personal care service. As a result, Mr. J has not proven that he is eligible for PCS assistance with bathing.

⁴³ Exhibit D at 34.

⁴⁴ 7 AAC 125.030(b)(7).

⁴⁵ Exhibit D at 14.

⁴⁶ J Statement Part 2 at 1, 5.

⁴⁷ Ex. D at 15.

I. Instrumental Activities of Daily Living

In addition to physical assistance with ADLs, the division may authorize personal care services where a recipient needs physical assistance to enable the recipient to prepare meals, do housework or laundry, or shop.⁴⁸

Mr. J prepares his own meals. He uses a toaster oven and a rice pot to prepare chicken breasts and rice. He will cook that for dinner and eat the rest the next day.⁴⁹ He prepares chicken and rice frequently because it is easy to cook and clean up. He always needs to rest in between cooking and cleaning.⁵⁰ Mr. J also testified that he sometimes has salsa and chips. Although Mr. J's description of his ability to prepare light meals and main meals might better be categorized as independent with difficulty, Mr. J has not shown that he requires assistance with the activity of meal preparation.

Mr. J also does his own shopping. He does not always remember what he needs to get at the grocery store. He can only carry one bag of groceries up the stairs at a time. He does not feel safe carrying anything more up the stairs, and he finds shopping tiring and painful.⁵¹ Mr. J has not shown that he requires assistance with shopping.

However, Mr. J's difficulty with carrying things up the stairs poses a greater obstacle to doing laundry than it does to grocery shopping. Although Mr. J acknowledged that he might be able to throw a duffle bag of laundry down the stairs, it is not apparent how he would get the clean laundry back up the stairs. The assessor noted Mr. J's balance problems and at least one fall within the past 180 days.⁵² The medical records Mr. J submitted contain numerous references to ataxic and antalgic gait.⁵³ Mr. J uses a cane. Furthermore, Mr. J testified that his cousin and his cousin's wife come by periodically and pick up Mr. J's laundry, so Mr. J is currently getting assistance with this task. Mr. J described washing clothes in his kitchen sink and hanging them to dry in the shower when his cousin does not come to get the laundry. However, this, like washing his own dishes, demonstrates Mr. J's ability to do light housework, not a full load of laundry. Based on the totality of the evidence, it is more likely true than not true that while Mr. J is not completely unable to do

⁴⁸ 7 AAC 125.030(c).

⁴⁹ Testimony of J.

⁵⁰ J Statement Part 2 at 3.

⁵¹ J Statement Part 2 at 1.

⁵² Exhibit D at 29.

⁵³ See for example 1/28/18 SEARHC outpatient final report.

laundry, he is not able to do his laundry without assistance. Mr. J does not have a laundry located in his home and should receive assistance with laundry once weekly.

Mr. J is also not able to manage routine housework such as vacuuming and cleaning floors. He reported that his house is not clean, and that he has tried to clean and vacuum, but that he gets worn out, frustrated, and housework hurts too much. He has also shared this concern with his case worker.⁵⁴

The PCS program regulations permit the division to authorize physical assistance for a recipient to make living spaces neat and orderly, including dusting and floor cleaning, cleaning the kitchen and washing dishes, cleaning the bathroom, making the recipient's bed, and removing trash.⁵⁵ The CAT scores "light housework" (doing dishes, dusting, and making the bed) and "routine housework" (vacuuming, cleaning floors, trash removal, cleaning bathroom) separately, and PCS time is based on the higher score.⁵⁶ Although Mr. J is managing the light housework tasks independently with difficulty, he needs physical assistance with routine housework including cleaning the floors.

IV. Conclusion

Based upon the evidence presented at hearing, Mr. J is eligible for PCA services because he requires hands on physical assistance with two of his IADLs, specifically laundry and housework. He should receive authorization for personal care services as follows:

Laundry, out of home:	30 minutes weekly
Routine Housework:	self-performance code 2, support code 3, 45 min. weekly

DATED: July 6, 2018.

Signed

Kathryn L. Kurtz
Administrative Law Judge

⁵⁴ Testimony of J; Testimony of Q.

⁵⁵ 7 AAC 125.030(c)(3).

⁵⁶ Exhibit D at 5, 32.