

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

In the Matter of)
)
C C) OAH No. 20-0853-MDS
) Agency No.
_____)

DECISION

I. Introduction

C C applied for Medicaid Personal Care Services (PCS). Following an assessment, the Division of Senior and Disabilities Services (Division) approved that application for a limited amount, two hours per week, for a limited duration of three months. Mr. C disagreed and requested a hearing.

Mr. C’ hearing was held on November 23, 2020. Mr. C represented himself. Mr. C’ Medicaid Care Coordinator J K, and B M and E G, both of whom are with Mr. C’ PCS agency Business A Network, participated on Mr. C’ behalf. Victoria Cobo-George, the Division’s Fair Hearing Representative, represented the Division. Rae Norton, who conducted the assessment for the Division, testified.

The evidence shows that the Division’s assessment of Mr. C’ PCS needs was accurate for the most part. As a result, as discussed in detail below, the Division’s determination of Mr. C’ PCS is upheld for the most part and reversed in part.¹

II. The Personal Care Service 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.”² 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.³ The IADLs are light meal preparation, main meal preparation, housework, laundry, and shopping.⁴ In addition,

¹ Mr. C’ Fair Hearing Brief did not list the limited duration of his PCS as one of his points of disagreement. Nor did he argue that at hearing. As a consequence, that is not addressed in this decision. If Mr. C wishes to extend his PCS beyond the short-term duration, he will need to request reauthorization. See 7 AAC 125.020(b).

² 7 AAC 125.010(b)(1)(A)(iii).

³ 7 AAC 125.030(b).

⁴ 7 AAC 125.030(c).

PCS are provided for medication assistance, maintaining respiratory equipment, dressing changes, wound care, medical escort, and passive range-of-motion exercises.⁵ 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.”⁶ Nor are they allowed for supervision, or “oversight and standby functions.”⁷

The Division assesses recipients by using the Consumer Assessment Tool, or “CAT”, as a methodology to code both eligibility for the PCS program and the amount of assistance needed for covered activities and services.⁸ 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 *Personal Care Services: Service Level Computation* instructions, which are adopted by reference into regulation.⁹

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.¹⁰ 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 independent¹¹ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance¹²); **3** (the person requires extensive assistance¹³); **4** (the person is totally dependent¹⁴).

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

⁶ 7 AAC 125.040(a)(4).

⁷ 7 AAC 125.040(a)(9) and (10).

⁸ See 7 AAC 125.020(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900(d)(6).

⁹ 7 AAC 125.024(a); 7 AAC 160.900(d)(29). The *Personal Care Services: Service Level Computation* instructions can be found online at http://dhss.alaska.gov/dsds/Documents/regulationMaterials/PCS_SLA_Computation_Chart_6-2-2017.pdf.

¹⁰ Ex. D, pp. 13 -16.

¹¹ 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. D, p. 12

¹² 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. D, p. 13.

¹³ 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. D, p. 13.

¹⁴ Total dependence is defined as “[f]ull staff/caregiver performance of activity during ENTIRE 7 days.” See Ex. D, p. 13.

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).¹⁵

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 required); and **8** (the activity did not occur during the past seven days).¹⁶

The IADLs measured by the CAT are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping.¹⁷ 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).¹⁸

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).¹⁹

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: 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. The list of services, time allotted for each service

¹⁵ See Ex. D, p. 13.

¹⁶ See Ex. D, p. 13.

¹⁷ See Ex. D, p. 34.

¹⁸ See Ex. D, p. 33 - 34.

¹⁹ See Ex. D, p. 34.

based upon the severity of need, and the allowable frequencies for each service are set by regulation.²⁰

III. Facts

Mr. C is 56 years old. He has significant health problems, which include COPD, emphysema, spondylosis, orthostatic tremors, restless legs syndrome, and depression. He was a prior recipient of both Medicaid Home and Community Based Waiver benefits and PCS. However, he left Alaska in 2017 and returned in 2019, and has reapplied for PCS.

The Division assessed Mr. C for PCS eligibility at his home on September 17, 2020. The assessment was conducted by video. Ms. Norton was the assessor. Ms. K and E G were present at the assessment. Ms. Norton asked Mr. C to participate in some basic functional tests, where she found that he could touch his hands over his head and behind his back, had a strong grip with both hands, could touch his feet while in a sitting position, but could not stand while his hands were crossed over his chest.²¹

Based on her observations and Mr. C's statements, Ms. Norton concluded that Mr. C was independent with bed mobility, transfers, walking within the home with the help of a cane, but that he needed limited (non-weight bearing) hands on physical assistance for access his medical appointments one day a week. She determined that he was independent with eating, did not require assistance with medications, but required limited assistance (transferring into the tub) with bathing, and required supervision or setup help, but no hands-on physical assistance with dressing, eating, toileting, and personal hygiene. She also determined that although he needed some assistance with domestic chores (main meal preparation, housework, shopping, and laundry), that he was not eligible for PCS because his wife could perform those tasks.²²

On September 28, 2020, Mr. C was sent a copy of the Division's assessment, as recorded on the Division's Consumer Assessment Tool (CAT), which concluded that he was eligible for PCS, consisting of limited assistance with locomotion to access medical appointments, limited assistance with bathing, and two minutes per week for medical escort. PCS were to be provided for a limited duration, until December 28, 2020.²³

²⁰ 7 AAC 125.024(a); 7 AAC 160.900(d)(29). The *Personal Care Services: Service Level Computation* instructions can be found online at http://dhss.alaska.gov/dsds/Documents/regulationMaterials/PCS_SLA_Computation_Chart_6-2-2017.pdf.

²¹ Ex. D, p. 12.

²² Ms. Norton's testimony; Ex. D, pp 1 – 2, 7, 13 – 16, 34.

²³ Ex. D, pp. 1 - 2, 7.

Mr. C had a physical therapy evaluation conducted on October 12, 2020. That evaluation notes that Mr. C, due to a fear of falling, had practiced avoidance spending his time either in bed or sitting. This in turn led to deconditioning. The subjective portion of the evaluation stated that he that he was able to walk, sit, and stand, could lift up to 15 pounds occasionally, and was able to bath and dress himself, although he needed more time to do so. The subjective portion also provided he could not bend forward, and was unable to do housework, and did not specifically address his ability to transfer, just noting that he has a recovery mechanism (getting on knees then pulling/pushing up) for falls.²⁴ The objective portion of the evaluation contains less information, providing that Mr. C' "Gait/Locomotion" is full weight-bearing on both legs using a cane, and that his spinal range of motion is decreased.²⁵

E G took notes during the assessment.²⁶ Those notes contain the following information from her observation of the assessment, and what Mr. C told the assessor:

- Mr. C was sleeping in the living room because his wife was taping and mudding their room.
- Mr. C displayed some memory problems during the assessment: he could not remember his address, could not remember his phone number without prompting, and did not know what day it was, although he remembered the year and the season.
- Mr. C could "almost" touch his feet while in a sitting position.
- Mr. C can usually get up from his bed while using a cane.
- He uses a cane for walking, and also used the wall to stand.
- He can transfer on and off the toilet by leaning on the handles and his cane for support.
- He needs help dressing. He has a hard time bending over which causes problems with him putting on pants. He sometimes needs help with his socks.
- He needs help with personal hygiene. His toenails are long because he has not been able to cut them.
- He needs help getting out of the tub.
- He has had falls that did not require medical attention. He has had three falls since March.²⁷

²⁴ Physical Therapy Evaluation, p. 1.

²⁵ Physical Therapy Evaluation, p. 2.

²⁶ Ms. G's testimony.

²⁷ Ms. G's notes (Ex. 7).

Mr. C testified at hearing. He said that he fell twice in the week preceding the hearing, and that he needs someone next to him for transfers to catch him if he falls. He also said he needs hands-on assistance while walking, because someone needs to steady him to prevent him from falling. With regard to dressing, he said it was hard for him to bend over and that he needs help to put on his pants, socks, etc. He can put his socks on if he is wearing pants by grabbing his pant leg and pulling his leg up. While he can use zippers and put on a t-shirt, his shakiness sometimes causes him to need help fastening buttons. For toileting, he does not use incontinence supplies, experiences incontinence approximately twice per month, and can transfer on/off the toilet by himself, although he occasionally needs help. Due to his shakiness, he has trouble grooming himself, and he cannot stand in front and shave himself. He also cannot always open his pill bottles. He has respiratory equipment and an oxygen machine. Mr. C also said that his wife was capable of performing normal housework tasks such as cooking, laundry, etc., but that because she has had surgeries on her wrist and other issues, she cannot lift really heavy items like a cast iron skillet and cannot obtain items from the top shelf at the grocery store.²⁸

Ms. K has known Mr. C for years. She did not believe the physical therapy records accurately reflected Mr. C' physical capabilities, and that she had never known Mr. C to be able to stand for more than a couple of minutes.²⁹

Ms. C provided a letter from her doctor, dated October 12, 2020, which states that while she can cook, she is not able to lift him, bathe him, walk with him, or prevent him from falling, due to her own disabilities. Copies of her recent medical records were also provided.³⁰

III. Discussion

A. Burden of Proof

Mr. C had received PCS in the past. However, there was a lapse of several years due to the fact that he left the State of Alaska. This is therefore a new application for PCS. As a result, Mr. C has the burden of proof by the preponderance of the evidence.³¹

²⁸ Mr. C' testimony.

²⁹ Ms. K's testimony.

³⁰ See Ms. C' medical information, filed on November 19, 2020.

³¹ 7 AAC 49.135.

The parties can meet their burden of proof using any evidence on which reasonable people might rely in the conduct of serious affairs,³² including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.³³

IV. Discussion

The Division provided Mr. C with limited assistance for locomotion to access medical appointment twice weekly, limited assistance with bathing daily, and assistance with medical escort of 2 minutes per week. Mr. C did not disagree with these. However, he argued that he additionally required transfer assistance, locomotion assistance within the home, dressing assistance, toileting assistance, personal hygiene assistance, that he should receive assistance with all his IADLs because his wife was prevented by her own disability from completing those tasks, respiratory equipment maintenance, and medication assistance. Each of these are addressed below.

A. Transfers

Transfers consists of how a person moves between surfaces, such as from a sitting to a standing position.³⁴ The assessment found that he did not require assistance with this task. The physical therapy evaluation states in the subjective portion, i.e., what Mr. C reported, that he could stand. Ms. G's assessment notes provide that Mr. C can usually get up using his cane. Mr. C' hearing testimony was that he needs someone next to him, i.e., standby assistance, in the event he falls. As such, the weight of the evidence shows that Mr. C can transfer without requiring hands-on physical assistance, although it might not be easy for him. Mr. C has therefore not met his burden of proof to receive PCS for this task.

B. Locomotion Within Home

Locomotion involves moving within the home. It may involve the use of an assistive device, such as a cane or a walker.³⁵ Based upon her observations of Mr. C walking in his home and Mr. C' statements during the assessment visit, the assessor concluded that he did not require assistance with this task. The subjective portion of the physical therapy evaluation stated that he

³² 2 AAC 64.290(a)(1).

³³ 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>).

³⁴ Ex. D, p. 13.

³⁵ Ex. D, p. 13.

could walk. The objective portion provided that he was full weight-bearing while using a cane. Ms. G's notes provide that he can walk by using his cane and leaning on the use a cane for walking and leans on the wall for support. Mr. C' hearing testimony was that he needed hands-on stabilizing assistance while walking to avoid falling. However, even though Mr. C testified that he fell twice in the week preceding the hearing, neither the physical therapy evaluation nor Ms. G's notes reference falls that are frequent enough to support hands-on physical assistance to avert frequent falls. At most, he may need standby assistance, which is not provided through PCS. As such, the evidence as a whole shows that it is more likely true than not true that Mr. C can walk within his apartment without requiring someone to provide him with hands-on physical assistance.

C. Dressing

Dressing is the act of putting on and taking off clothing.³⁶ The consistent evidence in this case shows that Mr. C has difficulty bending forward and that impedes his ability to dress himself. Ms. G's assessment notes record that Mr. C could almost touch his feet, whereas the assessor concluded that he could. The physical therapy evaluation, in the subjective portion shows a reported inability to bend forward, and the objective portion shows a decreased spinal range of motion. Mr. C' testimony was that he needed help with dressing his lower extremities (pants, socks, etc.). As such, the evidence shows that it is more likely true than not true that Mr. C requires physical hands-on assistance daily help, twice daily, to dress himself. Mr. C has therefore met his burden of proof on this point and has established that he requires limited assistance for this task.

D. Toileting

Toileting is a complicated process. It involves getting to and from the bathroom, transferring on and off the toilet, cleansing, and adjusting clothing.³⁷ Mr. C' testimony was that he only occasionally needed help with this task. Ms. G's notes from the assessment did not contradict this. As found above, Mr. C is capable of locomotion and transfers without requiring hands-on physical assistance. As a result, Mr. C has not demonstrated that it is more likely true than not true that he requires hands-on physical assistance with this task.

³⁶ Ex. D, p. 15.

³⁷ Ex. D, p. 15.

E. Personal Hygiene

Personal hygiene assistance is provided to assist a recipient with “combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands,” and other similar activities with the exclusion of bathing or showering.³⁸ The assessor found, based on Mr. C’ statements and her observations, that Mr. C was able to perform his personal hygiene tasks without help.

Mr. C’ testimony was that he needed help with personal hygiene. He specifically referenced problems with basic grooming, including shaving because of his shakiness. He has documented orthostatic tremors. Ms. G’s assessment notes state that he cannot cut his toenails. As found above, he has trouble bending forward. As a result, the weight of the evidence shows that Mr. C requires limited (non-weight bearing) assistance with personal hygiene daily. He has met his burden of proof on this issue.

F. Respiratory Equipment Maintenance

The Division did not provide Mr. C with PCS for respiratory equipment maintenance.³⁹ Mr. C has diagnoses of COPD and emphysema and testified that he has respiratory equipment and an oxygen machine. The Division, at hearing, stated that it was not opposed to him receiving PCS for respiratory equipment maintenance. The time for respiratory equipment maintenance is set by the findings for routine housework.⁴⁰ The Division assessed Mr. C with a score of “2/3” for housework, meaning that he needed assistance with light housework but was not completely unable to participate in that task.⁴¹ Accordingly, Mr. C should receive 9 minutes per week for respiratory equipment maintenance.

G. Medication Assistance

The Division did not provide Mr. C with any medication assistance.⁴² Mr. C experiences some memory issues as detailed in Ms. G’s notes. Further, Mr. C testified that he was not always capable of opening his pill bottles. This is consistent with his testimony that his shakiness sometimes making it hard for him to perform personal hygiene tasks and to manipulate buttons for dressing. The overall weight of the evidence, consistent with his need for limited assistance with both personal hygiene and dressing, therefore shows that it is more likely true

³⁸ Ex. D, p. 15.

³⁹ Ex. D, p. 1.

⁴⁰ Ex. D, p. 4.

⁴¹ Ex. D, pp. 7, 34.

⁴² Ex. D, p. 7.

than not true that he requires reminder/physical assistance with medications. The CAT shows that he takes multiple medications, one of which is taken three times daily.⁴³ Because he has, as found above, a personal hygiene score of limited assistance (“2/2”), he is to receive medication assistance at that level three times daily, seven days per week.⁴⁴

H. IADLs

The IADLs consist of light and main meal preparation, housework, shopping, and laundry. It is undisputed that Mr. C requires physical hands-on assistance with all these tasks. However, assistance with IADLs is not provided when an applicant resides with a spouse who is capable of performing them.⁴⁵ Mr. C was not provided assistance with his IADLs, despite his need, because he lives with his wife.

Mr. C argued that his wife is disabled and unable to perform the IADLs. The record contains a letter from Ms. C’ doctor stating that she cannot perform tasks such as lifting him or bathing him. It, however, does say she can cook.⁴⁶ Mr. C’ testimony provides that she can perform IADLs overall, with the exception that she cannot lift heavy objects such as a cast iron skillet and that she cannot reach items on the top shelf at the grocery store. Ms. C provided her medical records, which do show that she has some physical functionality problems. She had a physical therapy evaluation on June 15, 2020. It shows she is only 61 inches.⁴⁷ Her inability to reach items on the top shelf can fairly be attributed to her stature. Her medical examination notes from Dr. Y, dated October 27, 2020, provide, under the orthopedic exam section, that she has a normal range of motion, but with “pain at the endpoints.”⁴⁸ Her examination notes from Business B Clinic for October 29, 2020 provide that she has a normal range of motion for both her upper and lower extremities, but does have cervical spinal tenderness and a reduced range of motion.⁴⁹ In addition, Ms. G’s assessment notes state that Mr. C was sleeping in the living room because his wife was taping and mudding their bedroom, which requires bending, lifting, and repetitive motions.

⁴³ Ex. D, p. 27.

⁴⁴ The score of personal hygiene controls the amount of time a person receives for medication assistance: a person with a personal hygiene score of limited assistance (2/2) receives two minutes of PCS each time medication is administered. *See* Ex. D, pp. 3 – 4.

⁴⁵ 7 AAC 125.040(a)(14)(A).

⁴⁶ *See* Dr. V’s October 14, 2020 letter, filed on November 19, 2020.

⁴⁷ *See* Select Physical Therapy evaluation dated June 15, 2020, p. 1, filed on November 19, 2020.

⁴⁸ *See* Dr. Y’s October 27, 2020 examination notes, p. 1, filed on November 19, 2020.

⁴⁹ *See* Business B, October 29, 2020 examination notes, p.10.

The combination of Ms. C' medical information, Mr. C' testimony, and Ms. G's notes establish that it is more likely true than not true that Ms. C is capable of performing all of the IADLs. As a result, Mr. C has not met his burden of proof on this issue.

V. Conclusion

This Division's determination of Mr. C' need for PCS is upheld for the most part. However, as discussed above, he is to receive the additional following assistance:

<u>Activity</u>	<u>Scoring</u>	<u>Weekly Frequency</u>
Dressing	2/2	14 (once daily)
Personal Hygiene	2/2	7 (once daily)
Respiratory Equip Maint.	2/3	9 minutes/week
Medication Assistance	2/2	21 (thrice daily)

Dated: December 18, 2020

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 4th day of January, 2021.

By: *Signed*

Name: Lawrence A. Pederson
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.]