

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

In the Matter of)	
)	
E Q)	OAH No. 20-0822-MDS
_____)	Agency No.

DECISION

I. Introduction

E Q applied for PCA services. The Division of Senior and Disabilities Services (Division) notified Ms. Q that her application was denied. Ms. Q requested a hearing. The hearing took place November 23, 2020.

Evidence at the hearing showed Ms. Q is physically capable of performing many activities. However, she does require assistance with some of her activities of daily living and instrumentalities of daily living. Accordingly, the Division’s decision is affirmed in part and reversed in part.

The Division shall provide Ms. SQ services as specified in this decision.

II. The PCS Service Determination Process

The Medicaid program authorizes Personal Care Services (PCS) to provide 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.”¹ 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.² The IADLs are Light Meal Preparation, Main Meal Preparation, Housework, Laundry³, and Shopping.⁴ PCS can also be authorized for a few additional services. Specific rules regarding eligibility for these services exist.⁵

PCS are furnished by a Personal Care Assistant, usually abbreviated as “PCA.” Due to regulatory specificity, PCS are provided solely to assist in the performance of enumerated tasks.

¹ 7 AAC 125.010(b)(1)(A)(iii).

² 7 AAC 125.030(b).

³ Differing amounts of PCA time are allotted depending on whether Laundry is performed in or out of the care recipient’s residence. Ex. B., p. 41.

⁴ See Ex. D.

⁵ 7 AAC 125.030(d).

PCS do not exist to provide generalized care. In addition, PCS are not provided for activities that can “be performed by the recipient.”⁶ A person who can perform the task on their own-- even with great difficulty-- will not qualify for PCS for that task.

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.⁷ 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.⁸

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 ADLs are Bed Mobility, Transfers, Locomotion, Dressing, Eating, Toileting, Personal Hygiene, and Bathing.⁹ The possible codes are: **0** (the person is independent¹⁰ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance¹¹); **3** (the person requires extensive assistance¹²); **4** (the person is totally dependent¹³). 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).¹⁴

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

⁶ 7 AAC 125.040(a)(4).

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

⁸ 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

⁹ 7 AAC 125.030(b).

¹⁰ 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. 15.

¹¹ 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+ times – or – Limited assistance (as just described) 1 or 2 times during last seven days.” See Ex. D, p. 15.

¹² 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. 15.

¹³ Total dependence is defined as “[f]ull staff/caregiver performance of activity during ENTIRE 7 days.” See Ex. D., p. 15.

¹⁴ See Ex. D., p. 15.

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).¹⁵

The IADLs measured by the CAT are Light Meal Preparation, Main Meal Preparation, Housekeeping, Laundry, and Shopping.¹⁶ 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).¹⁷

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).¹⁸

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. A person who can perform an activity independently or with supervision or who needs no physical assistance to perform the ADL or IADL will not be eligible for PCS. This is true regardless of how difficult it may be for the person to perform the activity unassisted.

If a person needs help to perform the activity and physical assistance is required, commonly referred to a score of 2/2, the person will be eligible for PCS. If the person scores a 2/2 or higher, a fixed number of PCS minutes is assigned for each activity.¹⁹ That number is then multiplied by the times a day the activity is performed and a weekly total of minutes is calculated.²⁰ For instance, if a person is coded as requiring extensive assistance (code of 3) with

¹⁵

Id.

¹⁶

See Ex. D., pp. 35 - 36.

¹⁷

See Id., p. 35.

¹⁸

Id.

¹⁹

Ex. B., pp. 40-41; *Ex. D.*, pp. 5-6.

²⁰

Id.

bathing, he or she would receive 22.5 minutes of PCA service time every day he or she is bathed.²¹

III. Facts and Procedural History²²

E Q is a seventy-three-year-old woman who lives by herself. Her health conditions include pain and weakness related to disc displacement, bursitis, failed back surgery syndrome, and spinal stenosis. She has unsteady gait and balance with a history of occasional falls. Ms. Q has also been diagnosed with anxiety, borderline personality disorder, PTSD, and she is bi-polar. She sees a mental health provider weekly and has medications to manage her mood.²³

Until July 2020 Ms. Q lived with a domestic partner. Her domestic partner did most of the housework and shopping, prepared meals, and helped with her bathing. He was also routinely nearby to supervise her locomotion and provide transportation when she left the house. When that relationship ended, Ms. Q moved to her own apartment where she has had to adjust to living independently.²⁴

Ms. Q submitted an initial application for PCS services and was assessed on September 14, 2020.²⁵ Division assessor Julie White conducted the evaluation over Zoom due to Covid pandemic precautions.

The Division denied the request for PCS services on September 23, 2020.²⁶ The Division concluded Ms. Q did not require physical assistance to perform any of the qualifying ADL or IADL and, thus, was not eligible for any PCS aid.

Ms. Q appealed,²⁷ and the hearing was held November 23, 2020. Victoria Cobo-George represented the Division. She called Julie White, the assessor, and Jerold Fromm, a Division supervisor as witnesses. Ms. Q represented herself. She called two witnesses, N T, a friend, and K J, the trustee of her Miller Trust, in addition to testifying herself.

²¹ 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

²² These facts were established by a preponderance of the evidence from the testimony presented at the hearing, the agency record, and the exhibits submitted by Ms. Q.

²³ Ex. D.

²⁴ Testimony of D. Q and M. T.

²⁵ Ex. D., pp. 8-40.

²⁶ Id., pp. 1-7.

²⁷ Ex. C.

A. Details of Ms. Q's 2020 CAT assessment and Supporting Testimony at the Hearing

Division assessor Julie White conducted the September 14, 2020 CAT assessment. Ms. White has been an assessor the past five years. Prior to her employment with the Division, she spent 10 years providing social work services to the disabled. The assessment was conducted via Zoom. Ms. White prefers face-to-face assessments, but the Zoom connection allowed her to observe Ms. Q in her own home and conduct a good interview with her. Ms. White also reviewed all the medical records submitted by Ms. Q.²⁸

During the assessment, Ms. Q told Ms. White that she was able to independently perform the qualifying ADLs and IADLs, although with great anxiety and difficulty. Ms. White observed Ms. Q's range of motion. She observed Ms. Q sit, stand, and walk within her apartment. Ms. Q had "wobbly" balance and appeared at one point to steady herself by laying a hand on the kitchen counter. Ms. Q also appeared to have difficulty Transferring from one surface to another, but she did so unassisted except for her cane.²⁹

Ms. Q reported she could eat unassisted, but she had trouble with the fine motor skills necessary to handle and take her medication. She can take care of her own basic hygiene, dress, and use the toilet. She makes her own meals, but they are simple things like oatmeal and cereal. She travels by car to shop and visit her doctors. Ms. Q said she could do those things only with great functional difficulty. In addition, Ms. Q stated she experienced anxiety and avoided performance of some activities. For example, she does not bathe except by using "wet wipes" due to fear of getting in and out of the tub/shower area.³⁰

Based on her observations, Ms. Q's self-reports, and the medical information provided with the application, Ms. White concluded Ms. Q had a strong grip in both hands, could raise her hands over her head, and behind her back, and could move her legs. She determined Ms. Q could Independently perform the ADLs of Bed Mobility, Transfer, Locomotion, Dressing, Eating, Toileting, Personal Hygiene, and Bathing without requiring physical hands-on assistance. That is, Ms. Q did not need set up or physical help from to complete those activities.³¹ Ms. White also concluded Ms. Q could Independently perform the IADL of Light or Main Meal Preparation, Shopping, and taking care of her Finances without requiring physical hands-on

²⁸ Testimony of J. White.

²⁹ *Id.*; Ex. D., pp. 15-17.

³⁰ *Id.*

³¹ *Id.*, p. 24.

assistance. She did not need set up or physical help from staff to perform those tasks, either.³² Lastly, Ms. White concluded Ms. Q could Independently with Difficulty perform the IADL of Laundry and Housework without requiring physical hands-on assistance. Those activities were harder for Ms. Q to perform but she could do so without set up or physical help from staff.³³

Ms. White discussed these conclusions at the hearing. She also testified that this was a difficult assessment because although Ms. Q had the functional capabilities to perform the ADL and IADLs, it was clear doing so was both physically difficult and mentally arduous for her. Ms. Q had fallen in the past and her balance was poor. She informed Ms. White that she felt anxious and at risk each time she participated in certain activities. That concerned Ms. White. In addition, prior to the hearing Ms. White became aware that Ms. Q was investigating neurological screening to assess causation for her impaired balance and physical therapy to address her other declining abilities. Ms. White would have liked the results of such screenings at the time the CAT was conducted. She believed such records would be valuable for an updated assessment in the future.³⁴

Jerold Fromm was the Division's second witness. Mr. Fromm is a Division supervisor with a background in nursing. He was the second level reviewer for Ms. Q's CAT assessment and reviewed supplemental materials submitted by her prior to the hearing. He, too, concluded Ms. Q's current functional abilities made her capable of performing the ADL and IADL independently and without physical assistance from staff. Her fear of falling was understandable, but she did not need physical assistance from staff each time she engaged in an ADL or IADL or often enough within the week to meet governing standards.³⁵ Her falls, although frightening when they occurred, did not occur frequently enough to qualify her for PCS services. The post-CAT medical records that he reviewed documented a pending neurological examination and possible physical therapy. If a change in her diagnosis or treatment occurred, a new request for services could be submitted and the Division would re-evaluate her needs.³⁶

Ms. Q testified on her own behalf. She was disappointed in Ms. White's conclusions because she believed she needed significant assistance. Since September 14, 2020, when the

³² *Id.*, at 33-34.

³³ *Id.*; Ms. White did not retain an independent memory of the discussion about these tasks.

³⁴ Testimony of J. White

³⁵ Testimony of J. Fromm.

³⁶ *Id.*

assessment took place, she has fallen 4 or 5 times. She has fallen when she “rolls from” the bed or couch to get up after sleeping. Once she fell when she tried to stand from the toilet.³⁷ On two occasions she was helpless on the floor for several hours before she could successfully contact assistance. On two other occasions, she had to scream for help until the apartment manager arrived to help her rise. Her balance is always poor, especially when she leans over.³⁸

She cannot get in the tub or shower. Her inability is physical as well as emotional. Her landlord will not permit her to install handicapped bars. She cannot stand on one foot and raise her other leg over the tub. The damage to her back and hip from the labral tear and other medical conditions make it impossible for her to perform the complex physical maneuver involved while balancing. Were she to fall in the tub, she could not get out. The risk of falling causes her so much anxiety that she only washes herself using “wet wipes.” This does not make her feel clean.³⁹

Ms. Q is concerned there is a neurological component to her increasingly poor balance. She has an appointment with a specialist in November. She should be participating in physical therapy, but her care providers are trying to get her pain management stabilized first.⁴⁰

Her good friend, N T, drives Ms. Q wherever she needs to go. Ms. Q believes she cannot safely get in and out of the car without physical assistance. She will not drive while taking her prescription pain medication, but she has multiple medical appointments each month, including weekly psychiatric appointments and bimonthly appointments with one of her doctors. Ms. T also helps her with shopping and does housework for her. Ms. Q cannot mop, vacuum, or carrying something heavy, like a six-pack of soda pop.⁴¹ In the store she cannot reach items on the upper shelves and is often unable to participate for more than half an hour.⁴²

N T testified. She is seventy-five. She knows Ms. Q from church. Until July 2020, Ms. Q lived with a domestic partner who “did everything” for her. He cooked, cleaned, shopped, held her arm when she walked, “boosted” her into the car, and assisted her with bathing and dressing. Now that Ms. Q is living in her own apartment, Ms. T drives her to appointments. She helps with shopping, housekeeping, and laundry. Ms. Q lacks the physical strength and stamina

³⁷ Testimony of D. Q.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Testimony of M. T.

to do those things independently. Ms. T has observed Ms. Q's wobbly balance for quite some time. She has been told about the recent falls.⁴³

K J was the final witness. She has known Ms. Q for 20 years since Ms. Q acted as peer counselor at a mental health clinic where Ms. J worked. Ms. J is now trustee for Ms. Q's Miller Trust. Ms. Q has always had an anxiety disorder, but in Ms. J's opinion, her current issues are more a result of physical decline. Ms. Q has "great difficulty" getting out of bed and performing some other activities because she has unstable balance, but there are also some things she "can't do." She cannot lift her leg up to get into the tub to shower or bathe. She cannot drive. She cannot carry items or clean her home. Her fear of falling is legitimate based on past experience, and Ms. J worries she will isolate further rather than risk physical harm. That isolation would exacerbate her decline.⁴⁴

IV. Discussion

A. Standard of Review

Because this is an initial application, Ms. Q has the burden of proof by a preponderance of the evidence.⁴⁵ She can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs.⁴⁶

B. Did the Division Err In Assessing the ADLs

As previously discussed, in order to qualify for PCS services, the care recipient must require a certain amount of hands-on physical assistance to perform the activity. If the care recipient can perform the ADL or IADL by herself, no matter how difficult the effort, she will not qualify for PCS.

The Division concluded Ms. Q could Independently perform the ADLs of Bed Mobility, Transfer, Locomotion, Toileting, Bathing, Eating, Dressing, and Personal Hygiene. Ms. Q did not actively dispute that she can Independently perform the ADLs of Eating, Dressing, and Personal Hygiene. Therefore, they will not be specifically addressed.

Ms. Q's argument that she could not Independently perform the ADLs of Bed Mobility, Transfer, Locomotion, Toileting, and Bathing rested on her assertion that she does not have sufficient balance to reliably perform those activities and is at risk of falling without additional

⁴³ Testimony of M. T.

⁴⁴ Testimony of J. J.

⁴⁵ 7 AAC 49.135

⁴⁶ 2 AAC 64.290(a)(1)

aid. Regarding Bed Mobility and Transfer, she testified she has fallen in the past when she “rolled out” of bed or to rise from the couch. She described a few occasions where she lost her balance or fell attempting to transfer from her bed or couch to a standing a position. Her general weakness and spinal difficulties can make it impossible for her to rise after falling even with use of an assistive device. Thus, on at least four occasions in the past three months she has had to call for aid from her neighbors or the City A Fire Department to rise.

However, it was clear that the rolling action Ms. Q described only defined how she sometimes gets out of bed or off the couch after a nap. Typically, she uses her cane or walker to steady herself and to stand from the bed and couch. The evidence established that Ms. Q’s mental health diagnosis substantially impacts her approach to rising or “rolling out” from the bed or couch and standing from the toilet or other surfaces. She has a great deal of anxiety and fear when doing so. She has fallen occasionally in the past, and it may be that her falls are becoming more frequent.

Ms. Q’s concerns regarding her balance and declining capabilities are legitimate. Nevertheless, she does not currently need physical assistance as defined in the CAT to perform Bed Mobility or Transfer. At most she needs someone to supervise her and catch her were she to start to fall, but that need does not trigger eligibility for PCS aid.⁴⁷ Supervision, no matter how necessary, is not a compensable personal care service. As a result, Ms. Q has not proven that she is eligible for PCA assistance with either Bed Mobility or Transfers.

The same is true for the ADLs of Locomotion and Toileting. Ms. Q, Ms. White, Ms. T, and Ms. J all testified that Ms. Q can move about in her apartment. She sometimes uses a hand on a countertop, furniture, or wall to steady herself, but she regularly locomotes with her cane or walker. She uses the toilet unassisted. Although she is afraid of falling in the future, she does not need hand’s on assistance from another person every day or often enough within the week to trigger PCS assistance. As a result, Ms. Q has not proven that she is eligible for PCS assistance with either Locomotion or Toileting.

Ms. Q did prove she needs physical assistance with Bathing. The testimony was credible that separate from her anxiety, Ms. Q cannot balance on one foot and swing her other leg up and over into the tub to bathe. This is a complex movement that is much more difficult than a simple

⁴⁷ She may also need to move from using a cane to using her walker more often.

Transfer. Her medical records support this conclusion. Ms. Q needs limited assistance from one person to perform this activity. This ADL should have been scored as Limited Assistance (2/2).

C. Did the Division Err In Assessing the IADLs

The assessor determined that Ms. Q could independently perform the IADLs of Light and Main Meal preparation, Housework, Laundry, and Shopping. Ms. SQ has physical limitations. She uses a cane, has torn muscles, and spinal disorders. The medical evidence alone shows that Ms. Q cannot fully participate in these domestic activities.

The testimonial evidence from Ms. Q and her witnesses regarding her ability to participate in domestic activities was also significant and persuasive. Ms. Q and her witnesses credibly testified that her prior domestic partner provided this support until she moved to her own apartment July 2020. It made sense that she cannot cook, scrub floors, change sheets, and perform other housework by herself. Nor is she able to carry the laundry from her apartment me to the laundry area in the apartment complex. When shopping she cannot reach items on the higher shelves or independently carry items like a six-pack of soda into her home.⁴⁸ Therefore, it was established that although Ms. Q can be involved with the actions necessary to perform the IADLs of Main Meal Preparation, Housework, Laundry, and Shopping, she also needs supervision and regular physical hands' on help from another person to perform them.

As a result, Ms. Q has proven that she is eligible for PCA assistance with certain IADLs. Consistent with the evidence, she should receive hands-on physical assistance (self-performance code of 2, support code of 3) with the following IADLs:

- Main meal preparation 7 days a week
- Routine Housework
- Shopping
- Laundry out of the home.

However, Light Meal Preparation does not generally require any more involvement than making a sandwich, having a bowl of cereal, or using a microwave; it does not require the standing effort involved in preparing a main meal. Ms. Q testified she can and does prepare this type of meal. Therefore, she did not prove she is eligible for PCS assistance with the Light Meal IADL.

⁴⁸ It does appear Ms. SQ could fold and sort clothes, perform light dusting, and help with meal preparation while seated, but she needs physical assistance to fully complete these IADL.

V. Conclusion

The evidence at the hearing showed that Ms. Q is physically capable of performing many activities. However, some of the Division’s findings in the September 2020 assessment were in error. Accordingly, the Division’s decision is affirmed in part and reversed in part. Specifically, the Division’s determination that Ms. Q did not require PCS for the following activities are affirmed: Bed Mobility, Transfers, Locomotion, Eating, Toileting, Personal Hygiene, and Light Meal Preparation.

But the preponderance of the evidence shows that Ms. Q needs some assistance with and is eligible for PCS assistance for the following activities: Bathing, Main Meal Preparation, Light and Routine Housework, Laundry, and Shopping.

As a result, the Division’s decision is upheld in part and reversed in part, with the 2020 CAT adjusted as follows:

<u>Activity</u>	<u>Scoring</u>	<u>Weekly Frequency</u>
<u>IADLs</u>		
Main Meal preparation	2/2	7 (once daily)
Bathing	2/2	3
Laundry	2/2	1
Routine Housework	2/2	1

The remainder of the PCS service plan remains unchanged.

Dated: December 18, 2020

Signed _____
Carmen E. Clark
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 29th day of December, 2020.

By: Signed _____
Name: Carmen Clark
Title: Administrative Law Judge

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