

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

In the Matter of)
)
N C M) OAH No. 20-0980-MDS
) Agency No.
_____)

DECISION

I. Introduction

N M receives Personal Care Services (PCS) from the Department of Health and Social Services, Division of Senior and Disabilities Services (Division). Recipients of these services are regularly assessed to determine whether their need for services has changed. Ms. M was most recently assessed on November 5, 2020, via videoconference due to the Coronavirus. Based on this assessment and a review of medical records, the Division determined that Ms. M is eligible for only 3.75 hours of PCS per week, rather than the 10.75 hours based on her prior assessment.

Ms. M disputes that her level of service should be decreased.¹ This decision finds that the Division has failed to meet its burden to show that Ms. M’s condition has improved over the last 7 years and she should continue to receive limited assistance for dressing and toilet use, and physical assistance for main meal preparation, light housework, and shopping.

II. Background Facts and Procedural History

Ms. M is a 78 year old female who lives alone.² She has been diagnosed with Type 2 diabetes, hypertension, hyperlipedemia, heart disease, and gastro-esophageal reflux disease.³ During Ms. M’s assessment, an interpreter was used to translate between English and Korean and her PCA was present with her.⁴

Ms. M was receiving 10.75 hours per week of PCS in November of 2020, consisting of limited assistance (score of 2/2) with dressing 14 times per week, limited assistance with toileting (score of 2/2) 28 times per week, limited assistance with bathing (score of 2/2), 7 times per week, moderate assistance (score of 2/3) with main meal preparation, moderate assistance (score of 2/3) with light housework once weekly, moderate assistance (score of 2/3) with shopping once weekly, and moderate assistance (score of 2/3) with laundry in the home.⁵

¹ Exhibit C, page 2.
² Exhibit D, pages 11-12.
³ Exhibit D, page 12.
⁴ Exhibit D, page 11; Testimony of Robin Platt.
⁵ Ex. D, page 8.

Following an assessment conducted on November 5, 2020, the Division determined and notified her that she should no longer required assistance with dressing, toileting, and main meal preparation. It also reduced her assistance level for light housework from moderate to limited (score of 1/3) for both light housework and shopping. Although it also determined that she only required limited (score of 1/3) assistance with laundry rather than moderate, it changed the laundry location from in-home to out-of-home, which resulted in a slight increase from 22.5 minutes per week to 30 minutes per week for assistance with this task.⁶ The Division's assessment also provided Ms. M with limited assistance (score of 2/2) with personal hygiene once weekly, which was an addition to her previously authorized tasks.

Ms. M disagreed with the reductions in her PCS, and also maintained that she required assistance with transfers and toileting. She requested a hearing. Her hearing was held on January 8, 2021. An interpreter was used to translate English to Korean and vice versa. Ms. M represented herself, and Ms. Cobo-George represented the Division and called assessor Robin Platt to testify.

III. The PCS Determination Process

The Medicaid program authorizes Personal Care Services (PCS) for Medicaid recipients who need physical assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs) due to a functional limitation.⁷ After an individual is found initially eligible to receive PCS, the Division must assess on an ongoing basis and the service level is then amended based on the new assessment.⁸

To determine whether an individual is eligible for PCS, and the level of service authorized, the Division uses the Consumer Assessment Tool, or CAT.⁹ Time for PCS is authorized if an individual needs at least limited assistance for ADLs and IADLs based on the number of times per week the recipient needs help with the task.¹⁰ Minutes per task are allotted based on regulation.¹¹

The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access medical

⁶ Ex. D, page 6 (Chart of PCS times provided per activity); Ex. D, page 8.

⁷ 7 AAC 125.010.

⁸ 7 AAC 125.020.

⁹ 7 AAC 125.020(a).

¹⁰ 7 AAC 125.024.

¹¹ 7 AAC 125.024; Exhibit B, pages 40-41.

appointments), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.¹² 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 or some help or oversight but only 1-2 times in the last 7 days); 1 (the person requires supervision which is defined as “[o]versight, encouragement, or cueing provided 3+ times during last 7 days” or “supervision plus nonweight-bearing physical assistance provided” only 1-2 times in the last 7 days); 2 (the person requires limited assistance, defined as being “highly involved in activity” with “physical help” to guide or maneuver limbs or other “nonweight bearing assistance” 3 or more times per week or weight-bearing assistance only 1-2 times in the last 7 days); 3 (the person requires extensive assistance which means the person performed part of the activity but required weight-bearing support or possibly full support (the person cannot complete the activity) but not all the time in the last 7 days); 4 (the person is totally dependent on caregiver support for the entire last 7 days). 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).¹³

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).¹⁴

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping.¹⁵

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

¹² Exhibit B, page 40.

¹³ See Exhibit D, page 18.

¹⁴ See, Exhibit D, page 18.

¹⁵ Exhibit D, page 25.

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).¹⁶

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).¹⁷

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 (code of 3) with bathing, he or she would receive 22.5 minutes of PCS time every day he or she was bathed.¹⁸

IV. Discussion

The Division asserts that Ms. M no longer requires physical assistance with dressing, toilet use, and main meal preparation.¹⁹ The Division also determined that Ms. M requires less assistance than she did previously with housework, laundry and shopping, but an increased level of assistance to take care of her personal hygiene needs.²⁰ The assessor in 2020 did not review the previous assessment conducted in June of 2013.²¹ Because the Division is reducing Ms. M's current benefits, it is the Division's burden of proof to show that Ms. M has improved and no longer needs the level of services she is currently authorized for.²² When Ms. M requested a hearing, she asked for assistance with transfers and locomotion.²³ These would be new services, and Ms. M has the burden of proof to demonstrate that she needs help in these areas.²⁴ As outlined below, the evidence shows that Ms. M's

¹⁶ Exhibit D, page 25.

¹⁷ Exhibit D, page 25.

¹⁸ See, Exhibit B, page 40.

¹⁹ Testimony of Robin Platt, Exhibit D, page 8.

²⁰ Testimony of Robin Platt, Exhibit D, page 8.

²¹ Testimony of Robin Platt.

²² 7 AAC 49.135.

²³ Exhibit C, page 2.

²⁴ 7 AAC 49.135.

condition has not improved in the last seven years, but it has also not decreased such that she requires assistance with any new Activities of Daily Living.

A. *Transfers*

Transfers include “moving a recipient between one surface and another, including to and from a bed, chair, or wheelchair.”²⁵ Ms. M states, in her request for hearing, that she needs help with transfers, and she added (as to both transfers and locomotion) that she needs “a lot of help and assistance as I’m at risk of falling due to poor balance and serious pain from the hip born [sic] surgery. I have so much pain on my both legs and hip. Due to the pain, it is hard to stand up and sit down. That’s why I hardly walk around.”²⁶ Ms. Platt reported that during the assessment, she observed Ms. M stand up and sit down, independently, many times.²⁷ During the hearing, Ms. M testified that she could not get on and off her couch and her chair, where she spends her time, by herself.²⁸ When asked what type of assistance she needs, she testified that she uses her walker, and the arms of the chair.²⁹ For purposes of this program, one is considered independent if they can complete an activity with an assistive device, and therefore Ms. M was scored appropriately, she is independent with transfers.³⁰

B. *Locomotion*

Locomotion is split into parts including the physical assistance necessary “for a recipient to walk between locations in the recipient’s residence,” and any assistance necessary for the recipient to get to a vehicle used “to access a routine medical or dental appointment.”³¹ Ms. M was assessed both in 2013 and in 2020 as independent to move within her own home and to access medical appointments.³² During her assessment in 2020, Ms. Platt observed her walking independently within her home, though she notes that Ms. M reported that she typically uses a walker both in her home and in the community.³³ Ms. M testified consistently with this report, she said that she moves with a walker in her home.³⁴ Therefore, the Division’s determination that Ms. M is independent with locomotion is upheld.

C. *Toileting*

Toileting includes the transfers associated with the act of using the toilet, and assistance

²⁵ 7 AAC 125.030(b)(2).

²⁶ Exhibit C, page 2.

²⁷ Exhibit D, page 15, Testimony of Robin Platt.

²⁸ Testimony of N M.

²⁹ Testimony of N M.

³⁰ See, e.g., 7 AAC 125.030(3)(B)(i).

³¹ 7 AAC 125.030(b)(3).

³² Exhibit D, page 8.

³³ Exhibit D, pages 15-16; Testimony of Robin Platt.

³⁴ Testimony of N M.

necessary to complete the use of a bedpan or urinal.³⁵ In 2013, Ms. M was assessed as requiring limited assistance (2/2) with toileting 28 times per week.³⁶ In 2020, she was assessed as independent (0/0) with toileting.³⁷ Ms. Platt acknowledges that Ms. M uses briefs, and that she reported that she waits for a caregiver to help her clean up – but can do it herself if needed.³⁸ She also relied on other observations about what Ms. M can do, though she did not specifically observe Ms. M to sit on and off her toilet (which is obviously a different type of surface than her couch or chair with arm rests).³⁹ Ms. M testified that she cannot use the toilet because of leg pain, which is why she uses briefs or holds the need to use the toilet until her caregiver comes.⁴⁰ Ms. M did testify that she can change her briefs on her own, with difficulty, and that it involves sitting on the floor to change.⁴¹ She said that she cannot reach to clean herself.⁴² Ms. M’s testimony is credible and consistent with limited assistance, and the Division’s testimony does not rise to the level required to meet its burden of proof. Therefore, Ms. M should continue to receive limited assistance 28 times per week.

D. Dressing

The ADL of dressing includes “the putting on, fastening, unfastening, and removal of the recipient’s clothing, support hose, or prosthesis.”⁴³ Ms. M received limited assistance twice daily in 2013.⁴⁴ In 2020, Ms. Platt scored Ms. M as independent because Ms. M was able to get a coat from her closet and put it on during the assessment.⁴⁵ The coat had a zipper, and Ms. M could not zip it because she could not lean forward.⁴⁶ Ms. M told Ms. Platt during the assessment that her caregiver helps her to change after a shower.⁴⁷ Ms. M testified credibly that she only changes her clothes when her caregiver visits, which is three days per week.⁴⁸ The totality of the evidence indicates that Ms. M still requires assistance with dressing, even though she can maneuver some of her clothing by herself. Therefore, the

³⁵ 7 AAC 125.030(b)(6).

³⁶ Exhibit D, page 8.

³⁷ Exhibit D, page 8.

³⁸ Testimony of Robin Platt.

³⁹ Testimony of Robin Platt.

⁴⁰ Testimony of N M.

⁴¹ Testimony of N M.

⁴² Testimony of N M.

⁴³ 7 AAC 125.030(b)(4).

⁴⁴ Exhibit D, page 8.

⁴⁵ Exhibit D, page 17, Testimony of Robin Platt.

⁴⁶ Exhibit D, page 17.

⁴⁷ Exhibit D, page 17.

⁴⁸ Testimony of N M.

Division did not meet its burden as to dressing, Ms. M should receive limited assistance 14 times per week.

E. Meal Preparation

The CAT divides meal preparation into light meals and main meals, and the IADL covers the preparation, serving, and cleanup of these meals.⁴⁹ Light meals could be a quick snack that does not involve any chopping, cooking, etc. Main meals are presumed to require a longer time standing in the kitchen to prepare the meal.

In 2013, Ms. M received a score of 2/2 for light meal (independent with set-up help; which does not provide assistance through the PCS program), and a 2/3 for main meal (physical assistance provided).⁵⁰ In 2020, the Division scored her as independent with both types of meal preparation.⁵¹ Ms. M testified that she is able to use the microwave to heat up a prepared meal, but that it hurts to stand for any longer period of time to do the preparation of a meal.⁵² Her caregiver makes meals when at the home, and then she heats them throughout the week.

The division did not meet its burden to show that Ms. M has improved such that she can independently prepare a main meal. While Ms. M can navigate through her home, her testimony is credible that she cannot stand for long periods, and there is no reason to believe this is easier for her now than nearly a decade ago. Therefore, Ms. M should receive a score of 2/3 for main meal preparation, 7 times per week.

F. Housework

The IADL of housework includes picking up, dusting, cleaning all areas in the home, making the recipient's bed, and trash removal.⁵³ In 2013, Ms. M was found to need assistance from others for her housework (a score of 2/3).⁵⁴ In 2020, Ms. Platt determined that Ms. M should be able to empty the bathroom garbage, dust, and make her bed, but that she would need help with the heavier garbage and scrubbing floors, cleaning the tub, etc.⁵⁵ She therefore reduced Ms. M's service level to a 1/3, which does not qualify an individual for any PCS assistance. For the same reasons that Ms. M requires assistance with main meal preparation, there is no evidence that she is able to participate in cleaning her

⁴⁹ 7 AAC 125.030(c)(1), (c)(2).

⁵⁰ Exhibit D, page 8.

⁵¹ Exhibit D, page 8.

⁵² Testimony of N M.

⁵³ 7 AAC 125.030(c)(3).

⁵⁴ Exhibit D, page 8.

⁵⁵ Testimony of Ms. Platt.

home because she is unable to stand and bend for an extended period of time. Therefore, the Division has not met its burden to show that Ms. M has improved in the area of housework, and she should continue to receive a 2/3 one time per week.

G. Shopping

Shopping includes all activities associated with “shopping for items required for the health and maintenance of the recipient, including groceries, household items, prescribed drugs, and medical supplies.”⁵⁶ In 2013, Ms. M received a score of 2/3 for shopping, and in 2020, she received a score of 1/3 meaning that the Division determined that Ms. M did not require hands-on physical assistance to perform this task.⁵⁷ Ms. Platt did not discuss shopping with Ms. M at the assessment, but determined that she should be able to participate with some assistance.⁵⁸ Ms. M testified that she relies on her caregiver for the entire activity of shopping.⁵⁹ For the same reasons that Ms. M requires assistance with main meal preparation and housework, there is no evidence that she is able to participate in shopping because she is unable to stand and bend for extended period. Therefore, the Division has not met its burden to show that Ms. M has improved in the area of shopping, and she should continue to receive a score of 2/3 one time per week.

H. Laundry

Laundry includes changing bed linens and washing linens and clothing.⁶⁰ Ms. M had been receiving a score of 2/3 for doing laundry in her home.⁶¹ In 2020, the Division scored her as a 1/3 (reduced level of assistance), but for laundry out of her home.⁶² Ms. Platt explained that this was because the laundry facility at Ms. M’s residence is located outside of her apartment, making the out of home scoring more appropriate.⁶³ Ms. Platt gave the score of 1/3 because she had observed Ms. M get a jacket from her closet and off of a hangar to remove it; therefore she determined that Ms. M would be able to assist in putting her clothing away, but not with getting the laundry out of the apartment and dealing with the physical action of doing laundry.⁶⁴ While Ms. Platt’s reasoning is sound, Ms. M only retrieved one item from her closet. This is different than the effort that it would take to put a week’s

⁵⁶ 7 AAC 125.030(c)(5).

⁵⁷ Exhibit D, page 8.

⁵⁸ Testimony of Robin Platt.

⁵⁹ Testimony of N M.

⁶⁰ 7 AAC 125.030(c)(4).

⁶¹ Exhibit D, page 8.

⁶² Exhibit D, page 8.

⁶³ Testimony of Robin Platt.

⁶⁴ Testimony of Robin Platt.

worth of laundry away, which will involve significantly more standing. And because the Division bears the burden of proof, this decision finds that it has not met its burden. Ms. M should therefore receive a score of 2/3 for laundry outside of her home.

V. Conclusion

The Division has failed to show that Ms. M has meaningfully improved such that she requires less assistance. Similarly, Ms. M has not shown that she needs physical assistance with transfers or locomotion. Accordingly, the reduction in her PCS for the activities of dressing, toilet use, main meal preparation, light house work, laundry, and shopping, is reversed, and she should receive the same level of assistance as previously provided. The remainder of the Division’s PCS plan remains unchanged.

Dated: February 22, 2021

Signed _____
Elizabeth Smith
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 9th day of March, 2021.

By: *Signed* _____
Name: Elizabeth Smith
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.]

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