

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

In the Matter of)	
)	OAH No. 15-0494-MDS
C C)	Agency No.
_____)	

DECISION

I. Introduction

C C applied for Personal Care Assistance (PCA) services. Senior and Disabilities Services (SDS) determined that she was not eligible, and Ms. C appealed.

A hearing was held on June 5, 2015 and June 12, 2015.¹ Ms. C represented herself at the hearing. SDS was represented by a lay advocate, Darcie Shaffer.

Based on the evidence presented, the denial of Ms. C's application is affirmed.

II. Facts

Registered nurse Margaret Rogers assessed Ms. C's functional abilities on March 12, 2015.² On March 26, 2015, SDS issued a notice denying her application for PCA services.³

Ms. C was 52 years old on the date of her assessment.⁴ She has several serious medical conditions, including cardiac problems with a history of heart attacks, diabetes, and kidney problems.⁵ Her vision is failing, and she is considered legally blind.⁶

III. Discussion

A. *The PCA Program*

The purpose of the PCA program

is to provide a recipient physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient.^[7]

SDS uses the Consumer Assessment Tool (CAT) to help assess the level of assistance needed.⁸

The amount of time allotted for needed assistance is determined by the Personal Care Assistance

¹ The hearing was held before Administrative Law Judge Rebecca L. Pauli. This matter was reassigned to ALJ Jeffrey A. Friedman, who has reviewed the entire record including the audio recording of the hearing.

² Exhibit E.

³ Exhibit D.

⁴ Exhibit E1.

⁵ Exhibit G; C testimony.

⁶ C testimony.

⁷ 7 AAC 125.010(a).

Service Level Computation chart.⁹ The Service Level Computation chart shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task. These times are then combined into a weekly total of authorized PCA hours.

The different levels of required assistance are defined by regulation and in the CAT.¹⁰ For each ADL or IADL, there is a self-performance code and an assistance code. For ADLs, the self-performance code describes the type of assistance needed, and the assistance code describes whether the assistance is set up help only, cueing only, or physical assistance from one or two people. With ADLs, Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.¹¹ Limited Assistance is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight bearing support no more than two times a week.¹² Extensive Assistance is defined as requiring direct physical help with weight bearing support at least three times a week, or full assistance without any involvement from the recipient at least three times a week, but not all of the time.¹³ Full Assistance means the recipient has to rely entirely on the caretaker to perform the activity.¹⁴ To receive PCA time for ADLs, the applicant must have a performance code of at least 2 (limited assistance).¹⁵

For IADLs, the performance code describes whether the individual can perform the activity independently, independently with difficulty, needs assistance, or is dependent on others to perform the activity.¹⁶ The support code describes whether the support is in the form of supervision or cueing, set up help, physical assistance, or total performance by others.¹⁷ To receive PCA time for IADLs, the applicant must have a performance code of at least 1 (independent with difficulty), and a support code of at least 3 (physical assistance).¹⁸

⁸ 7 AAC 125.020(b).

⁹ 7 AAC 125.024(1).

¹⁰ The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC 160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

¹¹ Exhibit E6.

¹² 7 AAC 125.020(a)(1); Exhibit E6.

¹³ 7 AAC 125.020(a)(2); Exhibit E6.

¹⁴ 7 AAC 125.020(a)(3); Exhibit E6.

¹⁵ Exhibit B34 (Service Level Computation chart).

¹⁶ Exhibit E26.

¹⁷ *Id.*

¹⁸ Exhibit B34.

This case involves a denial of benefits. Accordingly, Ms. C has the burden of showing she was eligible for PCA services.¹⁹ Because SDS notified Ms. C of its decision on March 26, 2015, her condition on that date is used when determining whether she is eligible.²⁰ Medical records and other evidence of her condition after March 26 would only be relevant if it helped explain her functional abilities as of March 26, 2015.

B. Ms. C's Eligibility for PCA Services

SDS determined that Ms. C needed supervision with bathing, and no other type of assistance for the remaining ADLs.²¹ SDS is not allowed to authorize services for supervision only.²² SDS also found that Ms. C only needed setup help with her IADLs.²³ SDS is not allowed to authorize services for set up help.²⁴

During the hearing, Ms. C confirmed several times that the findings in the CAT were accurate in March, but asserted that her condition had deteriorated since that date. By June, when the hearing was held, she was having far greater difficulties.²⁵ A representative from Ms. C's personal care services agency, S M. D, was also present when the CAT assessment occurred. She confirmed that the accuracy of the assessment as of that date.²⁶

Medical records also support SDS's decision. For example, on March 2, 2015, Dr. N noted that Ms. C could walk for roughly five minutes on a treadmill before stopping due to shortness of breath, and that she was able to perform all household tasks without shortness of breath.²⁷ On May 20, 2015, Dr. T noted that Ms. C could walk one block slowly before resting, and could climb one flight of stairs before resting.²⁸ These records confirm Ms. C's testimony that her physical condition declined after the assessment, but they also suggest that as of March 26, 2015, she would not have needed physical assistance with ADLs or IADLs.

¹⁹ 7 AAC 49.135.

²⁰ See *In re T.C.*, OAH Case No. 13-0204-MDS (Commissioner of Health and Social Services 2013), page 7 (notice sent to recipient is the decision under review), available at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>.

²¹ Exhibit D1 & D2; Exhibit E.

²² See Exhibit B44 (Service Level Computation Chart).

²³ Exhibit D2; Exhibit E.

²⁴ Exhibit B44.

²⁵ C testimony.

²⁶ D testimony. Ms. D explained that Ms. C's range of motion was somewhat less than what is shown on the CAT, but her testimony was not sufficient to outweigh the other evidence, including Ms. C's testimony, indicating that Ms. C was not eligible for services in March of 2015.

²⁷ Medical records submitted on May 22, 2015 from Ms. C.

²⁸ Medical records submitted on May 27, 2015 from Ms. C.

Ms. C testified that some of her difficulties are related to her poor vision. As noted during the hearing, Medicaid can pay for other types of assistance that might help with vision problems, and Ms. C's care coordinator can help her apply for those services. Vision-related services won't provide PCA type assistance, but could still be very useful.

In addition, Ms. C could have, and probably should have re-applied for services in April or May of 2015. She could have done that even though she had also requested a hearing on the March denial.²⁹ However, the only issue presented at this hearing is whether Ms. C was eligible for PCA services on March 26, 2015. Ms. C has not shown that SDS made an incorrect decision when it denied her application.

IV. Conclusion

The evidence in the record does not show that SDS was wrong to deny Ms. C's application for PCA services. While her condition has declined since that denial, she was able to perform ADLs and IADLs without physical assistance as of March 26, 2015. SDS's decision of March 26, 2015 is affirmed.

Dated this 17th day of August, 2015.

Signed

Jeffrey A. Friedman
Administrative Law Judge

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of September, 2015.

By: *Signed*

Name: Rebecca L. Pauli
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication.]

²⁹ Pursuant to 7 AAC 125.012(a), a person may request PCA services at any time. When the completed application is received, "the department will schedule an assessment under 7 AAC 125.020." 7 AAC 125.012(c). This regulation appears to require prompt processing of an application even if a prior hearing request is still unresolved.