

Office of Hearings and Appeals
3601 C Street, Suite 1322
P. O. Box 240249
Anchorage, AK 99524-0249
Ph: (907)-334-2239
Fax: (907)-334-2285

**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)	
)	
██████████,)	OHA Case No. 08-FH-304
)	
Claimant.)	Div. Case No. ██████████
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

██████████ (Claimant) is a recipient of Medicaid Personal Care Assistant (PCA) services. On April 23, 2008, the Division of Senior and Disabilities Services (Division) notified the Claimant her PCA services hours were reduced to 17.75 hours per week effective May 8, 2008 through March 10, 2009. (Ex. D, p. 1) The Claimant requested a fair hearing on May 5, 2008. (Ex. C) This office has jurisdiction pursuant to 7 AAC 49.010.

The hearing was held on June 16, 2008. The record was left open after the hearing for additional evidence and posthearing briefing.

The Claimant appeared telephonically for the hearing. ██████████, appeared telephonically and represented the Claimant. ██████████ all appeared telephonically and testified on the Claimant's behalf.

██████████, Assistant Attorney General, appeared in person and represented the Division. ██████████, a registered nurse employed with the Division, appeared in person and testified on the Division's behalf.

ISSUE

Was the Division correct when it reduced the Claimant's PCA benefits to 17.75 hours per week effective May 8, 2008?

FINDINGS OF FACT

1. The Claimant is a [REDACTED] year old woman (date of birth [REDACTED]). (Ex. E, p. 1) She is a paraplegic. *Id.* She lives with [REDACTED], who is her PCA and significant other. *Id.*

2. On August 28, 2007, the Claimant was assessed for PCA services by [REDACTED] a registered nurse employed by Arbitre Consulting, Inc.¹ The August 28, 2007 PCA service plan found the Claimant required the following services:

<u>Activity</u>	<u>Times Per Day</u>	<u>Amount Time</u>	<u>Days Per Week</u>	<u>Total Minutes Per Week</u>
Body Mobility	10	3	7	210
Transfer	6	5	7	210
Locomotion w/in Home	6	3	7	126
Locomotion for Med Appts	2	10	1	20
Dressing/Undressing	2	15	7	210
Bathing	1	45	7	315
Toilet Use	5	10	7	350
Toilet Use	1	15	7	105
Personal Grooming	1	10	7	70
Light Meal	2	15	7	210
Documentation	1	5	7	35
Medical Escort	1	30	1	<u>30</u>
Total				1891

(Ex. 1) 1,891 minutes is 31.52 hours per week.

3. [REDACTED] is a registered nurse employed by the Division. She visited the Claimant in her home on March 11, 2008. The purpose of her visit was to assess the Claimant's continued need for PCA services. The Claimant and her care coordinator, [REDACTED], were present for the March 11, 2008 assessment. [REDACTED] was at the Claimant's home between an hour and one-half to two hours. (Ex. E, p. 1; Mengel testimony) While [REDACTED] was physically in the home, he did not participate in the assessment because he was ill. ([REDACTED] testimony)

¹ Arbitre Consulting, Inc. was a contractor that performed assessments for the Division.

4. On March 11, 2008, [REDACTED] prepared a written assessment of the Claimant's needs for PCA services. Her written assessment, the 2008 PCA service plan, and testimony regarding her observations of the Claimant and her discussion with the Claimant and [REDACTED], the Claimant's care coordinator, on March 11, 2008 contain the following information:

- a. She reviewed the Claimant's August 27, 2007 written PCA assessment prior to her March 11, 2008 visit to the Claimant's home. ([REDACTED])
- b. She did not review the Claimant's medical records other than the medical certification completed by the Claimant's doctor. ([REDACTED] testimony)
- c. She was greeted at the door of the Claimant's home by the Claimant. She did not recall if the Claimant actually opened the door for her. ([REDACTED] testimony)
- d. [REDACTED] tested the Claimant's grip strength, which was good. (Ex. E, p. 2) She did not perform any further physical examination; she did a visual examination. ([REDACTED] testimony) She found the Claimant was "able to place her hands over her head and behind her back. She can touch her toes while seated but expresses some concern about falling out of chair with weight shift." (Ex. E, p. 2)
- e. The assessment states the Claimant told [REDACTED] that she needed help positioning herself in bed two to three times daily. (Ex. E, p. 2) The 2008 PCA service plan therefore allotted the Claimant body mobility assistance twice per day at 3 minutes per occurrence. *Id.* [REDACTED] did not allot the Claimant the maximum time available because she thought the Claimant was not totally dependent and could assist with her repositioning. ([REDACTED] testimony)
- f. [REDACTED] testified she observed the Claimant place her hands on the arms of the wheelchair and physically raise her body so that there was visible space between the body and the wheelchair seat cushion. ([REDACTED] testimony) Base upon her observation, [REDACTED] did not believe the Claimant needed assistance to reposition herself during the daytime. ([REDACTED] testimony)
- g. The assessment states the Claimant required help six times per day, seven days per week, to transfer in and out of the wheelchair, and that the Claimant is able to assist her PCA "with part of the pivot" in and out of the wheelchair. (Ex. E, p. 2) The 2008 PCA service plan allotted the Claimant 3 minutes for each transfer because that Claimant was able to assist in the transfer process. (Ex. E, p. 2; [REDACTED] testimony) [REDACTED] did not witness or assist in any transfers. ([REDACTED] testimony)

- h. The assessment states the Claimant is independent in moving around her home in her wheelchair, but that she requires assistance outside the home. (Ex. E, p. 2) The 2008 PCA service plan allotted no locomotion assistance for the Claimant in the home, but allotted her 5 minutes twice per day, two days per week, for locomotion assistance to access medical appointments. (Ex. E, p. 17; ██████ testimony)
- i. The Claimant told ██████ she could dress her upper body, but that she needed help with dressing her lower body and that she had to be laying on the bed and be physically lifted to put her lower clothing (pants etc.) on and off. (Ex. E, p. 2; ██████ testimony) Because of that, the 2008 PCA service plan allotted the Claimant 12 minutes twice per day, 7 days per week, for dressing and undressing. *Id.*
- j. The 2008 PCA service plan allotted the Claimant 23 minutes total for bathing assistance. (Ex. E, p. 18) ██████ arrived at this amount because the Claimant was able to assist in the process and was not totally dependent. (██████ testimony) ██████ stated that she gave the Claimant 75% of the maximum time available, 30 minutes, and that she would only have allotted over 30 minutes if the Claimant required a lift to get in and out of the shower. (██████ testimony)
- k. ██████ stated the Claimant has a handicapped accessible shower. (Ex. E, p. 3; ██████ testimony)
- l. ██████ testified the Claimant told her she was continent. (Ex. E, p. 3; ██████ testimony) She did not recall anyone mentioning incontinence issues with her. (██████ testimony)
- m. The 2008 PCA service plan allotted the Claimant toileting assistance 5 times per day, 9 minutes each time, 7 days per week. (Ex. E, p. 18) ██████ arrived at this time because the Claimant was able to assist in the process and was not totally dependent. (██████ testimony)
- n. The 2008 PCA service plan allotted the Claimant a total of 50 minutes per week for Personal Hygiene/Grooming Assistance. (Ex. E, p. 18) This is broken down into 10 minutes per day, 4 days per week, for shaving, and 10 minutes per day, once per week, for nailcare assistance. (Ex. E, p. 18; ██████ testimony) ██████ arrived at this time because the Claimant was able to wash her face, brush her teeth, comb her hair by herself, only required shaving every other day, and was not able to perform her own nailcare. (██████ testimony)
- o. The 2008 PCA service plan allotted the Claimant 10 minutes twice per day, 7 days per week for light meal preparation. (Ex. E, p. 18) ██████

████████ arrived at this time because the Claimant could reach into the refrigerator for items and assist in meal preparation.

- p. The 2008 PCA service plan did not provide for any medical escort assistance. (Ex. E, p. 19) ██████████ explained this was because the Claimant was taken to her medical appointments by ██████████, and not by her PCA. (████████ testimony) She also stated that medical escort assistance did not allow time for travel to a physician’s office, merely for time advocating for the Claimant with the physician. (████████ testimony)
- q. ██████████ explained that the PCA service plan had maximum time limits, and that the maximum time was only available to persons who were totally dependent and not able to assist in their own care. She further explained that the maximum time limits could only be exceeded in unusual circumstances and required extensive documentation. (████████ testimony)
- r. ██████████ opined that the August 2007 PCA service plan was “overinflated,” based upon her March 11, 2008 observation of the Claimant’s abilities. (████████ testimony)

5. The March 11, 2008 PCA service plan allows for the following total assistance:

<u>Activity</u>	<u>Times Per Day</u>	<u>Amount Time</u>	<u>Days Per Week</u>	<u>Total Minutes Per Week</u>
Body Mobility	2	3	7	42
Transfer	6	3	7	126
Locomotion w/in Home	0	0	0	0
Locomotion for Med Appts	2	5	2	20
Dressing/Undressing	2	12	7	168
Bathing	1	23	7	161
Toilet Use	5	9	7	315
Toilet Use	0	0	0	0
Personal Grooming	1	10	4	40
Personal Grooming	1	10	1	10
Light Meal	2	10	7	140
Documentation	1	5	7	35
Medical Escort	0	0	0	0
Total				1057

(Ex. E, pp. 17 - 19) 1057 minutes, rounded up, is 17.75 hours per week.

6. Photographs taken within the Claimant's home conclusively demonstrate the Claimant has a standard tub/shower combination rather than a handicapped accessible shower. (██████████ June 23, 2008 Affidavit with accompanying photographs)

7. ██████████, the Claimant's care coordinator, attended the March 11, 2008 PCA assessment and testified as follows:

- a. She had been the Claimant's care coordinator for the past three and one half years.
 - b. The Claimant is paralyzed from the T6 vertebrae down.
 - c. The Claimant is bipolar and schizophrenic, and sees a psychiatrist for those conditions.
 - d. ██████████ has transferred the Claimant into ██████████ car once on her own. It took her four attempts to transfer the Claimant. The Claimant was not able to use her arms to help maneuver herself into the car. She has observed and assisted with transfers to the car, and said it takes ten minutes.
 - e. She told ██████████ that the Claimant was incontinent. She also thinks she heard the Claimant inform ██████████ that the Claimant was incontinent. The Claimant requires a full change of her pants 4 to 5 times per day for bladder incontinence. The process of changing the Claimant's pants requires that she be moved to the bed to transfer her pants off and on.
 - f. She observed the Claimant shifting in her wheelchair. She said the Claimant can shift herself slightly, but is not able to lift her body up so that there is any space between her lower body and the chair cushion.
 - g. ██████████ did not ask the Claimant about daytime transfers, but rather only asked about nighttime transfers. The Claimant transfers during the day from her wheelchair to either the couch or to the bed to take naps.
 - h. The Claimant cannot get items from her closet, cannot reach to the kitchen sink and wash dishes. She can grab items from the refrigerator, but has difficulty in obtaining items from either low cupboards or high cupboards.
8. ██████████ is the Claimant's PCA. He is also her "significant other" and resides with her. He testified as follows:

- a. In the morning, the Claimant, while lying in bed, removes her nighttime catheter. ██████████ then moves the Claimant from the bed to her wheelchair. It takes from between 10 to 15 minutes to transfer the Claimant from the bed to the wheelchair. The transfer length varies

depending on whether the Claimant has had any problems with continence. He has to position the wheelchair next to the bed and position the Claimant parallel to the wheelchair. He then picks the Claimant up and slides her over to the wheelchair. He has to be very careful not to twist the Claimant's body.

- b. [REDACTED] then wheels the Claimant into the bathroom. He does this because the Claimant has her removed nighttime catheter lying on her lap and is therefore unable to wheel herself into the bathroom. At that point, the Claimant brushes her teeth.
- c. The next step is to transfer the Claimant from the wheelchair to the commode chair. Because the arms on the commode chair are higher than the arms on the wheelchair, he has to be very careful to avoid all pressure points. The transfer from the wheelchair to the commode chair takes between 10 to 12 minutes.
- d. When the Claimant is finished with the commode chair, [REDACTED] then moves her from the commode chair to the bathtub chair. He described the process as taking 15 minutes. It requires lifting her and moving her legs over the tub. If it is not done just right, then he has to restart the process.
- e. The Claimant can wash portions of her upper body, her arms, the front, and the upper parts of her legs. She cannot wash her lower legs, feet, buttocks, or back. When she is finished with her shower, [REDACTED] dries a portion of her in the tub. The showering process requires that [REDACTED] himself get wet and takes approximately 45 minutes.
- f. [REDACTED] then transfers the Claimant from the bathtub chair to her wheelchair. This takes approximately 15 minutes. He completes the drying process, wheels her into the bedroom and transfers her from the wheelchair to the bed.
- g. Once the Claimant has been transferred to the bed, [REDACTED] assists the Claimant with dressing. He has to lift the Claimant's lower body and place underpants on her. He has to repeat the process with her pants. He stated the process for underpants and pants took 15 minutes, and that the process for pants alone took 10 minutes. The Claimant wears support hose, for circulation, which take a few minutes (not specified) to put on her. The Claimant requires some minimal support with dressing her upper body, for instance if she is wearing a sweatshirt, she requires help with the arms and pulling it down in back.
- h. The entire bathing and dressing process takes two hours.
- i. The Claimant has incontinence accidents four or five times per day.

- j. The Claimant requires constant adjustments to her positioning in the wheelchair and to her pants and clothing, on the average of 8 times per day.
 - k. The Claimant uses the bathroom every three waking hours for urinating, and twice per day for bowel management.
 - l. The Claimant normally just relies on her catheter at night for toileting purposes.
 - m. ████████ repositions the Claimant every half hour in the bed when she is awake, or if he wakes up or the Claimant wakes him up. There is an average of 4 repositions per night, which take approximately 5 minutes apiece.
 - n. During the day, ████████ will transfer the Claimant from the wheelchair to the bed or couch. This happens at least twice each day, and each transfer takes approximately five minutes per transfer.
 - o. ████████ cooks meals for the Claimant and does the dishes. He said breakfasts took 25 minutes because they like fried potatoes and bacon for breakfast. He said lunch was usually soup and a sandwich and took 10 to 15 minutes.
 - p. The Claimant takes a transportation service (Caravan) to and from most medical appointments 6 to 8 times per month. ████████ accompanies her to medical appointments once or twice per month depending on if the Claimant needs his assistance, i.e. if the destination is not handicapped accessible.
9. The Claimant testified as follows:
- a. She is paralyzed and has a metal rod in her back.
 - b. Her 2007 authorized PCA hours met her needs.
 - c. Her condition has not improved since the 2007 PCA assessment. If anything, her medical condition has gotten worse, because of the metal rod in her back pushing out – she has a bump in her back due to the metal rod.
 - d. She cannot sit up in her wheelchair very long without pain and needs to move to the couch.
 - e. She is incontinent due to bladder spasms. She told ████████ that she had problems with urinary leakage and incontinence.

- f. She is able to catheterize herself, which she does either in bed or while in the bathroom. She self catheterizes every three hours while waking, and places an indwelling catheter in for the night at approximately 11 p.m. each night. Each catheterization requires a transfer.
 - g. ██████ asked her how many times she needed to transfer. However, ██████ did not ask her how long it took her to move or transfer. ██████ did ask how long it took her to go to the bathroom and shower.
 - h. The only physical demonstration requested by ██████ was placing her arms over her head. If she is not in the wheelchair, lifting her arms up causes her to fall to the side or backwards.
10. ██████ is the Claimant’s “surrogate mother.” She occasionally provides transportation for the Claimant to and from medical appointments when the transportation service does not pick the Claimant up as scheduled. (██████ testimony)

PRINCIPLES OF LAW

This case involves a reduction in the amount of PCA services the Claimant is authorized to receive. When the Division reduces the amount of benefits, the Division has the burden of proof² by a preponderance of the evidence.³

The PCA program is designed to assist Medicaid recipients with physical assistance with personal care and limited domestic chores in their homes, when the alternative would be placement in a medical or assisted living facility, or loss of the Medicaid recipient’s job. 7 AAC 43.750; 7 AAC 43.752.

The allowed PCA services are determined based upon the PCA assessment tool (PCAT) approved by the Division. 7 AAC 43.751. The PCAT is specifically adopted as part of the PCA regulations by reference. 7 AAC 43.751(a).

The PCAT contains a list of maximum times allowed for specified service activities. The times allowed for the service activities involved in this case are as follows:

<u>Category</u>	<u>Time Allowance</u>
-----------------	-----------------------

² “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

³ Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Preponderance of the evidence is defined as “[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” *Black’s Law Dictionary* 1064 (5th Ed. 1979)

Body Mobility	Up to 5 minutes.
Transfer	Up to 5 minutes.
Locomotion	Up to 10 minutes.
Dressing and Undressing	Up to 15 minutes.
Bathing	15 to 30 minutes.
Toilet Use	5 to 12 minutes per use.
Personal Hygiene/Grooming	Up to 20 minutes per day.
Light Meal	5 – 15 minutes.
Medical/Dental Escort	Up to 60 minutes per week.

(Ex. E, pp. 18 – 19) “These allowances reflect the maximum time normally allowed to accomplish the listed tasks. . . . If these times are not sufficient when considered in light of a consumer’s extraordinary circumstances as identified by the Authorized Agent in the general information section, the Authorized Agent may make an adjustment commensurate to the circumstances.” *PCAT Authorized Service Plan* (Ex. E, p. 20)

The regulations that set forth the authority for hearing officers in these cases are contained at 7 AAC 49.010 *et. seq.* “[T]he role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case, and whether the computation of the benefit amount, if in dispute, is in accordance with them.” 7 AAC 49.170. (emphasis supplied)

ANALYSIS

The issue in this case is whether or not the Division was correct when it reduced the Claimant’s PCA services from 31.52 hours (1891 minutes) per week to 17.75 hours (1057 minutes) per week. This Office has jurisdiction to decide if the Division’s “computation of the benefit amount, if in dispute, is in accordance” with the relevant laws, regulations, and policies. 7 AAC 49.170.

The Division argues this Office’s role, if it finds the Division has not properly calculated a Claimant’s benefits, is to remand the matter to the Division for its own computation of benefits. However, the hearing regulation, 7 AAC 49.170, does not limit this Office’s role as urged by the Division. It explicitly allows the Office to determine the level of benefits, given the mandate to decide if the Division’s “computation of the benefit amount” is consistent with legal requirements

The Claimant was found eligible for 31.52 hours (1891 minutes) of weekly PCA services in August 2007. On March 11, 2008, she was found eligible for 17.75 hours (1057 minutes) of weekly PCA services. Because this is a reduction in services, the Division has the burden of proof to demonstrate the Claimant only requires 17.75 hours of weekly PCA services.

It should be noted that the Division did not argue any improvement in the Claimant’s condition to justify its reduction in the Claimant’s weekly PCA services. Instead, the Division’s witness, [REDACTED] testified that the August 2007 PCA service plan was

“overinflated,” based upon her March 11, 2008 observation of the Claimant’s abilities. However, [REDACTED] did not review the Claimant’s medical records, nor did she speak to the Claimant’s PCA.

It should also be noted that the Claimant presented evidence on the fact that she is being treated for Bipolar Disease and Schizophrenia, however no evidence was presented that those mental health conditions affected her PCA assistance needs. Accordingly, mental health conditions are not addressed in the following analysis.

The Claimant testified that her August 2007 PCA services met her needs. Accordingly, this Decision will only address the differences between the Claimant’s August 2007 PCA service plan and the March 11, 2008 PCA service plan. Those are set out below.

A. Body Mobility

The August 2007 PCA service plan allows the Claimant body mobility (positioning) assistance 10 times per day of 3 minutes each time, 7 days per week for a total of 210 minutes per week. In contrast, the March 2008 PCA service plan allows the Claimant body mobility assistance twice per day for 3 minutes each time, 7 days per week, a decrease of 8 times per day.

The body mobility category only allowed the Claimant assistance twice per day for her in bed movement. It did not provide time for the Claimant requiring repositioning while in her wheelchair etc. during the day. This was based on [REDACTED] visual observation that the Claimant could lift herself above the wheelchair. [REDACTED] observation was rebutted by [REDACTED] and [REDACTED] testimony, who both stated the Claimant could not lift herself up entirely above her wheelchair cushion. [REDACTED] stated the Claimant required assistance positioning herself approximately 8 times per day, while not in bed.

[REDACTED] also stated he had to reposition the Claimant approximately 4 times per day in bed. He stated it took approximately 5 minutes each time to reposition the Claimant.

The cumulative weight of the evidence on this issue favors the Claimant. First, in 2007, the nurse assessor found a need for body mobility assistance 10 times per day for 3 minutes each occurrence. Second, the Claimant said the 2007 PCA service plan met her needs. Third, [REDACTED] is with the Claimant day in and out, and his testimony was credible and detailed. Fourth, [REDACTED] had only met with the Claimant during the March 11, 2008 assessment, and did not have detailed knowledge of the Claimant’s needs. Further, per the Claimant’s testimony, [REDACTED] did not ask her whether or not she required body mobility assistance during the daytime.

Although [REDACTED] testimony states the Claimant requires body mobility assistance 12 times per day (4 at night, 8 during the day) at 5 minutes each time, given the Claimant’s statement that the 2007 PCA service plan met her needs, the Division is directed to provide the Claimant with of PCA assistance for body mobility at the 2007

level: 10 times per day, 7 days per week, at 3 minutes for each occurrence. This is a total of 210 minutes.

B. Transfers

The August 2007 PCA service plan provides the Claimant with transfer assistance of 6 times per day, 5 minutes per occurrence, 7 days per week. In contract, the March 2008 PCA service plan allows the Claimant transfer assistance 6 times per day, 3 minutes per occurrence, 7 days per week. This is a decrease of 2 minutes for each occurrence. There is no decrease in the number of transfers allowed.

██████████ testified at length about transfers and the amount of time it took just transferring from the bed to the wheelchair (10 to 15 minutes). ██████████ and ██████████ testified about the number of incontinence accidents the Claimant experiences each time per day (4 to 5), each of which requires a transfer to and from the bed. ██████████ also testified about moving the Claimant to and from the couch and her taking naps on the bed during the day. He said those daytime transfers each took approximately 5 minutes.

██████████, on the other hand, did not witness or attempt any transfers, so her finding the Claimant requires only 3 minutes for each transfer was not based on actual observation. She also stated the Claimant was continent.

The cumulative weight of the evidence supports a finding the Claimant requires numerous transfers per day, due to continence issues, in addition to her transfers to and from the bed in the morning and night, and the transfers to the couch. ██████████ testimony showed a need of a minimum of 5 minutes per transfer.

The Claimant testified the 2007 PCA service plan met her needs, i.e. 6 transfers per day at 5 minutes per transfer 7 days per week. Given that ██████████ testimony that some transfers took 5 minutes and the Claimant's testimony the 2007 PCA service plan is adequate, transfers are allocated to the level set in the 2007 PCA service plan of 6 transfers per day, at 5 minutes per transfer, 7 days per week, for a total of 210 minutes.

C. Locomotion Within Home

The 2007 PCA service plan provides the Claimant with locomotion assistance within the home of 6 times per day, 3 minutes each occurrence, 7 days per week. The 2008 PCA service plan does not allow for any in home locomotion assistance.

██████████ found the Claimant to be fully mobile within the home in her wheelchair. The only hearing testimony that showed any need for in home locomotion assistance was ██████████ testimony. He stated he wheeled the Claimant into the bathroom in the morning. The reason for the assistance was not because the Claimant was physically unable to maneuver the wheelchair, but was because she had her nighttime catheter on her lap, which impeded her ability to propel the wheelchair. This is not a situation where

the Claimant cannot propel her wheelchair, but is rather an election by the Claimant and her PCA to carry her catheter on her lap.

Because the evidence in this case does not show the Claimant requires any physical assistance in locomotion within the home, the Division has met its burden of proof on this issue. The 2008 PCA service plan is correct on the issue of the home locomotion. Consequently, the Claimant is not allowed any time for PCA assistance for locomotion within the home.

D. Locomotion Outside The Home

The 2007 PCA service plan provides the Claimant with locomotion assistance outside the home, to access medical appointments, twice per day for 10 minutes per occurrence once per week for a total of 20 minutes per week. The 2008 PCA service plan provides the Claimant with locomotion assistance twice per day for 5 minutes each occurrence twice per week for a total of 20 minutes per week.

██████████ testified the Claimant has medical appointments outside the home twice per week and needed help pushing her wheelchair on uneven surfaces. She gave the Claimant PCA assistance for moving from her home to the car and from the car to the doctor's office. ██████████ stated that 5 minutes was adequate for each leg of the trip. Given the need for the Claimant to (1) move from her home to her transportation, and (2) move from her transportation to her medical appointment, 5 minutes is not adequate. This should have been set at 10 minutes for each leg of the trip as set out in the 2007 PCA service plan. Given that there are 2 medical appointments per week, the 2008 PCA service plan should have provided for twice a day, 10 minutes each occurrence, 2 days a week, for a total of 40 minutes per week.

E. Dressing and Undressing

The 2007 PCA service plan provides the Claimant with dressing/undressing assistance, twice per day for 15 minutes each occurrence, seven days per week, for a total of 210 minutes per week. The 2008 PCA service plan provides the Claimant with dressing/undressing assistance twice per day for 12 minutes each occurrence, 7 days per week, for a total of 168 minutes per week. While both service plans provide for dressing/undressing assistance twice per day, 7 days per week, the 2008 PCA service plan decreases the amount of time for each occurrence by 3 minutes, for a decrease of 6 minutes per day.

██████████ did not observe the Claimant changing clothes. ██████████ testified at length about the dressing process. The Claimant has to be physically lifted to put on and remove her underpants and pants. She has support hose that need to be put on and taken off. She sometimes requires help with her upper clothing, if she wears a sweatshirt. ██████████ testimony, based on his actual experience, that the Claimant requires 15 minutes to put on her underpants and pants, and requires some additional time for support hose, was comprehensive and credible.

There was considerable testimony about the Claimant's incontinence and her need to change clothing several times per day. However, the Claimant stated the 2007 PCA service plan met her needs. Because the Claimant stated the 2007 PCA service plan, which only provides for dressing and undressing twice per day, was adequate, the time allocated for dressing/undressing is set at the level in the 2007 PCA service plan, twice per day, for 15 minutes each occurrence, 7 days per week, for a total of 210 minutes.

F. Bathing

The 2007 PCA service plan provides the Claimant with bathing assistance once per day for 45 minutes 7 days per week for a total of 315 minutes per week. The 2008 PCA service plan provides the Claimant with bathing assistance once per day for 23 minutes 7 days per week for a total of 161 minutes per week. This is a decrease of 22 minutes per day.

██████████ opinion regarding the length of time required for a shower was based upon her mistaken belief that the Claimant had a handicapped shower. She clearly does not. The Claimant can not just be wheeled in and out of the shower: she has a standard bathtub. ██████████ testified at length about the transfer process to and from the shower. He testified about the actual bathing and drying assistance the Claimant requires. He stated the total showering time took 45 minutes. This time estimate is consistent with his description of the transfer and actual shower process. It is also consistent with the time allotted to showering in the 2007 PCA service plan.

The PCA service plan provides that the maximum time for bathing is 30 minutes. However, the PCA service plan also allows a variance for "a consumer's extraordinary circumstances." (Ex. E, pp. 18, 20) The Claimant's paraplegia and her lack of a handicapped accessible shower justify bathing time in excess of 30 minutes. The Claimant should have been provided with 45 minutes once per day for 7 days per week for bathing, a total of 315 minutes.

G. Toileting

The 2007 PCA service plan provides the Claimant with toileting assistance 5 times per day for 10 minutes each occurrence, 7 days per week for a total of 350 minutes per week. It also allows a "Plan B" Toileting Assistance once per day for 15 minutes 7 days per week for an additional 105 minutes per week. The portion of the 2007 PCA service plan admitted into evidence does not specify what "Plan B" is for. (Ex. 1, p. 2) The 2008 PCA service plan provides the Claimant with toileting assistance 5 times per day for 9 minutes each occurrence 7 days per week for a total of 315 minutes per week. The 2008 PCA service plan does not contain "Plan B" toileting assistance.

The 2007 and 2008 PCA service plans both allow the Claimant 5 times per day for toileting. The difference is in the amount of time allowed (10 minutes in 2007 versus 9 minutes in 2008) and the time allowed for "Plan B" in the 2007 PCA service plan.

The Claimant has to transfer off and on the commode chair from the wheelchair. ([REDACTED] testimony). Above, this Decision found the Claimant requires 5 minutes for each transfer. A transfer of and on the commode, which is part of the toileting process, therefore takes 10 minutes minimum. This does not include any assistance with the Claimant's clothing or any toileting supplies. The evidence therefore demonstrates the Claimant needs a minimum of 10 minutes each time for toileting assistance. 10 minutes per occurrence as allotted in the 2007 PCA service plan is appropriate.

The "Plan B" portion of the 2007 PCA service plan is more difficult. It allows one 15 minute toileting assistance per day 7 days per week. The evidence in this case does not reflect exactly what "Plan B" was for in 2007. However, there is substantial evidence showing the Claimant experiences frequent daily incontinence issues. Because of the need for extra time involved with incontinence care, the "Plan B" toileting assistance allotment of 15 minutes once per day 7 days per week (105 minutes per week) is also appropriate in this case.

H. Personal Grooming

The 2007 PCA service plan provides the Claimant with grooming assistance once per day for 10 minutes seven days per week for a total of 70 minutes per week. The 2008 PCA service plan provides the Claimant with grooming assistance once per day for 10 minutes five days per week for a total of 50 minutes per week. For the 2008 PCA service plan, the Claimant is allowed 4 days per week, essentially every other day, for shaving and 1 day for week for nailcare.

It was not disputed that the Claimant is able to use her arms to do such things brush her teeth, hair, and wash her face. She cannot reach her lower body to do such items as shaving legs or nailcare, which however do not need to be done daily. Given these factors, the 2008 PCA service plan allocation for grooming was reasonable and will not be adjusted.

I. Light Meal⁴

The 2007 PCA service plan provides the Claimant with assistance preparing and cleaning up after a light meal twice per day for 15 minutes each meal, 7 days per week for a total time of 210 minutes. The 2008 PCA service plan provides the Claimant with 10 minutes assistance for 2 meals a day 7 days per week. This is a decrease of 10 minutes per day.

The record does not show the Claimant as having any special or complex dietary needs. The Claimant cannot meaningfully assist in meal preparation or clean up. While she can

⁴ Meal planning and preparation is classified as an Instrumental Activity of Daily Living, which is normally not allowed if the Claimant or someone else who resides in the home is capable of performing the activity. 7 AAC 43.752(a)(2)(D); 7 AAC 43.755(a)(14)(A). However, because the PCAT form, which is adopted into regulation, allows light meals as an Activity of Daily Living in apparent conflict to 7 AAC 43.752, this Decision will follow the more expansive standard set forth in the PCAT.

reach into the refrigerator to obtain/replace items, she cannot reach into high or low cupboards, nor can she reach the kitchen sink and do dishes. Under these circumstances, 15 minutes total preparation and clean up time per meal is not unreasonable. The time allotted in the 2007 PCA service plan is appropriate, and the 2008 PCA service plan is increased to 15 minutes twice per day 7 days per week (210 minutes).

J. Medical Escort

The 2007 PCA service plan provides the Claimant with once weekly medical escort assistance of 30 minutes per week. The 2008 PCA service plan provides the Claimant with no medical escort assistance. ██████████ stated this was because ██████████, not her PCA, accompanied her to the medical appointments. The contrasting evidence from ██████████ was that the Claimant takes the transportation service herself for most of her medical appointments, and that he accompanied the Claimant to medical appointments once or twice per month. ██████████ testified that she will pick up the Claimant from medical appointments when the transportation service forgets to pick the Claimant up, which occurs a minimum of 6 times per year.

Based upon ██████████ testimony, the Claimant should receive PCA assistance for medical escort services twice per month. The Division argued, via ██████████ testimony, that time for travel to and from medical appointments was not allowed under the medical escort category. This argument is contradicted by the language of the enabling regulation, “assistance with (i) travel to and from routine medical and dental appointments”, and the language of the PCAT, “[t]ravel to/from routine medical or dental appointments.” 7 AAC 43.752(a)(2)(H); Ex. E, p. 19.⁵

The Division did not address the amount of time involved for medical escort services. This Decision will therefore use the amount set in the 2007 PCA service plan of 30 minutes per incident. However, since the PCA service plan is designed for weekly service and this Decision only allows PCA assistance twice per month, rather than weekly, the PCA service plan should provide for 15 minutes once per week for medical escort assistance. This is in addition to the locomotion assistance provided outside the home as addressed above.

CONCLUSIONS OF LAW

The Division substantially reduced the Claimant’s authorized PCA service hours as a result of its March 11, 2008 PCA assessment. The Division had the burden of proof to establish the reduction was justified. It did not meet its burden of proof in most of the categories, as explained above. The 2008 PCA service plan is to be revised as follows:

- a. Body Mobility assistance is increased from 3 minutes twice per day, 7 days per week to 3 minutes 10 times per day, 7 days per week.

⁵ The Division did not argue that the Claimant could not receive PCA assistance for medical escort because her PCA resides with her. See 7 AAC 43.755(a)(14)(A). It has therefore waived that argument.

- b. Transfer assistance is increased from 3 minutes 6 times per day, 7 days per week, to 5 minutes, 6 times per day, 7 days per week.
- c. Locomotion assistance within the home, as determined in the 2008 PCA service plan was correctly not allowed.
- d. Locomotion assistance outside the home is increased from 5 minutes twice per day, 2 days per week to 10 minutes twice per day, 2 days per week.
- e. Dressing assistance is increased from 12 minutes twice per day, 7 days per week, to 15 minutes, twice per day, 7 days per week.
- f. Bathing assistance is increased from 23 minutes once per day, 7 days per week, to 45 minutes per day, 7 days per week.
- g. Toileting Assistance is increased from 9 minutes 5 times per day, 7 days per week, to 10 minutes, 5 times per day, 7 days per week.
- h. Personal Hygiene/Grooming assistance was correctly assessed in the 2008 PCA service plan at a total of 10 minutes a day for 5 days per week total.
- i. Light Meal assistance is increased from 10 minutes twice per day, 7 days per week, to 15 minutes twice per day, 7 days per week.
- j. Medical Escort assistance is added in the amount of 15 minutes once per week.

DECISION

The Division was not correct to provide the Claimant with 17.75 hours per week of PCA services. The Claimant's authorized March 11, 2008 PCA service plan of care for May 5, 2008 through March 10, 2009 is to be revised as reflected in the Conclusions of Law above.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, The Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Senior and Disabilities Services
Department of Health and Social Services
PO Box 110680
Juneau, AK 99811-0680

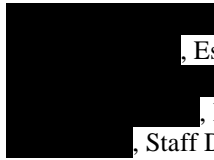




If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this 21st day of October, 2008.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 21st day of
October 2008, true and correct copies
of the foregoing were sent to:

 Certified Mail, Return Receipt Requested.
, Esq., Asst. Atty General
, Acting Director
, Policy & Program Development
, Staff Development & Training

Al Levitre, Law Office Assistant I