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

In the Matter of )  
 )  
 [REDACTED], ) OHA Case No. 08-FH-610  
 )  
 Claimant. ) Div. Case No. [REDACTED]  
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**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

[REDACTED] (Claimant) is a recipient of Medicaid Personal Care Assistant (PCA) services. On August 22, 2008, the Division of Senior and Disabilities Services (Division) notified the Claimant her PCA services hours were reduced to 5 hours per week effective September 6, 2008 through January 7, 2009. (Ex. D, p. 1) She had previously been receiving a total of 26.05 hours per week in PCA services. (Ex. 2) The Claimant requested a fair hearing on August 27, 2008. (Ex. C) This office has jurisdiction pursuant to 7 AAC 43.791(c) and 7 AAC 49.010.

The hearing was held on November 3, 2008.

The Claimant appeared in person for the hearing, and represented herself. [REDACTED], the program director for Acacia Personal Care Services, and [REDACTED], the Claimant's PCA, appeared in person and testified on the Claimant's behalf.

[REDACTED], a Health Program Manager III employed with the Division of Health Care Services, appeared in person and represented the Division. [REDACTED], a registered nurse employed with the Division, appeared in person and testified on the Division's behalf.

The record was held open, after the November 3, 2008 hearing, for the Claimant to submit additional medical information.

## ISSUES

Was the Division correct when it reduced or eliminated the Claimant's PCA services in the following:

1. Transfers.
2. Locomotion both inside the home and outside the home for medical appointments.
3. Dressing and undressing.
4. Eating – supervision.
5. Medication.
6. Bathing.
7. Toilet use.
8. Personal Hygiene/Grooming.
9. Light Meal preparation.
10. Medical escort.

## FINDINGS OF FACT

1. The Claimant is an [REDACTED] year old woman (date of birth [REDACTED]) who resides in senior housing. (Ex. E, p. 1) Her health conditions include a hiatal hernia, esophageal dyamotility, dysphasia (impaired speech and verbal comprehension), chronic obstructive pulmonary disease, osteoarthritis, feet and shoulder neuropathy. (Exs. E, p. 1; 3) Her hiatal hernia is large “with one-quarter to one-half of the stomach seen in the thorax.” (Ex. 3) She also has a pacemaker. (Exs. E, p. 1; F, p. 7) She has end stage osteoarthritis in her right shoulder with limited range of motion and pain. (Ex. F, pp. 7 - 10)

2. The Claimant was assessed for her PCA service needs on November 29, 2006. She had her 2006 PCA service plan amended on July 9, 2007 (hereinafter 2007 PCA service plan). Her 2007 PCA service plan provided her with a total of 26.05 hours per week in PCA services. (Ex. 2)

3. [REDACTED] is a registered nurse employed by the Division. She visited the Claimant in her home on June 26, 2008. The purpose of her visit was to assess the Claimant's continued need for PCA services. The Claimant and her PCA [REDACTED] were present for the June 26, 2008 assessment. (Ex. E, p. 1)

4. On June 26, 2008, Ms. [REDACTED] prepared a written assessment of the Claimant's needs for PCA services that included her 2008 PCA service plan. (Ex. E) The 2007 PCA service plan, Ms. [REDACTED]'s June 26, 2008 written assessment, the 2008 PCA service plan, and testimony regarding her June 26, 2008 meeting with the Claimant and Ms. [REDACTED] contain the following:

- a. Ms. [REDACTED] performed a functional assessment of the Claimant. She noted the Claimant could only put her right hand to her chest level, and

not over her head. She also noted the Claimant had a very weak grip and pain in her right hand. (Ex. E, pp. 2 – 3)

- b. Ms. ██████ observed the Claimant performing transfers without any assistance. (██████ testimony, Ex. E, p. 3) The Claimant told Ms. ██████ she could not bend at the waist, but she was able to transfer using her walker. *Id.* Ms. ██████ also observed the Claimant stand up to put a sweater on, with her PCA holding the Claimant's left arm, and then observed the Claimant sit down without any assistance. *Id.* The 2007 PCA service plan provided the Claimant with 84 minutes per week of transfer assistance. (Ex. 2, p. 1) The 2008 PCA service plan eliminated transfer assistance in its entirety. (Ex. E, p. 18)
- c. Ms. ██████ observed the Claimant walking (locomotion) to her bedroom and bathroom, using her walker, without any assistance. (██████ testimony, Ex. E, p. 3) The Claimant told Ms. ██████ she could walk using her walker, and that she walked to day service. *Id.* The distance to day service is about a block. (██████ testimony) The 2007 PCA service plan provided the Claimant with 145 minutes per week of locomotion assistance (140 minutes for locomotion within the home, and 5 minutes for locomotion assistance outside the home to access medical appointments). (Ex. 2, p. 1) The 2008 PCA service plan eliminated locomotion assistance in its entirety. (Ex. E, p. 18)
- d. Ms. ██████ observed the Claimant's PCA put her sandals on, and help the Claimant put her sweater on. (██████ testimony, Ex. E, p. 3) The Claimant told Ms. ██████ that she needs help with dressing because of her arm and that her PCA dresses her in the morning and undresses her at night. *Id.* The Claimant does not need weight bearing assistance with dressing, merely help guiding her limbs. (██████ testimony) The 2007 PCA service plan provided the Claimant with 154 minutes per week (11 minutes twice per day, 7 days per week) for dressing/undressing assistance. (Ex. 2, p. 1) The 2008 PCA service plan reduced dressing assistance to 70 minutes per week (5 minutes twice per day, 7 days per week). (Ex. E, p. 18)
- e. Ms. ██████ did not observe the Claimant eating, but determined the Claimant did not require assistance in feeding herself. (██████ testimony, Ex. E, p. 3) The Claimant told Ms. ██████ that she required soft food because she had difficulty swallowing. (Ex. E, p. 1) Ms. ██████ said she had no documentation showing the Claimant required supervision when eating due to swallowing/aspiration difficulties. (██████ testimony) Ms. ██████ also stated the Claimant's lack of need for eating supervision because of swallowing problems was demonstrated by the fact she eats her lunch at day service, where her PCA is not present. The 2007 PCA service plan provided the Claimant with 128

minutes per week of eating assistance (8 minutes twice per day 7 days per week, and 8 minutes once per day 2 days per week), for eating supervision due to swallowing/chewing difficulties. (Ex. 2, p. 1) The 2008 PCA service plan eliminated eating assistance in its entirety. (Ex. E, p. 18)

- f. The Claimant told Ms. [REDACTED] she took her own blood pressure reading using a wrist cuff. (Ex. E, p. 2) She also told Ms. [REDACTED] that the PCA leaves her medication set out for her, or brings them to her. (Ex. E, p. 4; [REDACTED] testimony) Ms. [REDACTED] noted the Claimant had medications in both a mediset and in a bubble pack. (Ex. E, p. 4) The 2007 PCA service plan provided the Claimant with 56 minutes per week of medication/vital signs testing assistance (4 minutes twice per day 7 days per week). (Ex. 2, p. 1) The 2008 PCA service reduced medication/vital signs testing assistance to 7 minutes per week (1 minute once per day 7 days per week). (Ex. E, p. 18)
- g. The Claimant told Ms. [REDACTED] she only took a shower once a week due to dry skin issues. ([REDACTED] testimony; Ex. E, p. 4) She said she needed her PCA to wash her back and legs. *Id.* Ms. [REDACTED] did not recall the Claimant mentioning taking sponge baths. ([REDACTED] testimony) The 2007 PCA service plan provided the Claimant with 161 minutes per week of bathing assistance (23 minutes once per day 7 days per week). (Ex. 2, p. 2) The 2008 PCA service reduced bathing assistance 15 minutes once per week. (Ex. E, p. 19)
- h. The Claimant requires toileting assistance. ([REDACTED] testimony; Ex. E, p. 4) She has a bedside commode she uses at night that needs emptying in the morning. *Id.* She wears pads and depends because she is incontinent and she needs assistance putting them on twice per day. *Id.* She can sit down and get up from the commode herself, but is not able to completely cleanse herself after a bowel movement. *Id.* The 2007 PCA service plan provided the Claimant with 195 minutes per week of toileting assistance (5 minutes 5 times per day 5 days per week, and additional 7 minutes 5 times per day 2 days per week). (Ex. 2, p. 2) The 2008 PCA service reduced toileting assistance to 105 minutes per week (3 minutes 5 times per day 7 days per week). (Ex. E, p. 19)
- i. The Claimant told Ms. [REDACTED] that her PCA handed her a washcloth, cleaned her dentures, combed her hair, and files her nails. ([REDACTED] testimony; Ex. E, p. 4) The 2007 PCA service plan provided the Claimant with 140 minutes per week of personal hygiene/grooming assistance (20 minutes once daily 7 days per week). (Ex. 2, p. 2) The 2008 PCA service reduced personal hygiene/grooming assistance to 70 minutes per week (10 minutes once daily 7 days per week). (Ex. E, p. 19)

- j. The Claimant informed Ms. [REDACTED] she could only eat soft food due to her problems in swallowing. (Ex. E, p. 1) The Claimant's PCA makes her breakfast, lunch, and dinner. (Ex. E, p. 3) The 2008 PCA assessment states that the Claimant is completely dependent upon others for meal preparation (score of 3). (Ex. E, p. 12) However, the 2008 PCA service plan eliminated light meal assistance. (Ex. E, p. 19) In contrast, the 2007 PCA service plan provided the Claimant with a total of 145 minutes per week of light meal assistance (15 minutes once per day 7 days per week, and 15 minutes once per day 2 days per week). (Ex. 2, p. 2) At hearing, Ms. Vandenberg stated the elimination of light meal assistance was a mistake, and the Claimant should be allowed 140 minutes per week in light meal assistance (10 minutes twice per day 7 days per week). ([REDACTED] testimony)
- k. The Claimant told Ms. [REDACTED] she has medical tests (laboratory) 2 times per month if she is stable, that she sees her doctor as necessary, and was going to physical therapy once per week, but stopped because of her insurance coverage. ([REDACTED] testimony; Ex. E, p. 2) The 2007 PCA service plan provided the Claimant with 60 minutes once per week for medical escort assistance. (Ex. 2, p. 3) The 2008 PCA service plan eliminated medical escort assistance. (Ex. E, p. 20)
5. The Claimant was discharged from physical therapy on June 30, 2008. (Ex. F, p. 12) As of the hearing date, she did not have a prescription for physical therapy. ([REDACTED] testimony)
6. Ms. [REDACTED] is the Claimant's PCA. She was present for most of the June 26, 2008 assessment, but had to leave before it was completed because her time was up. ([REDACTED] testimony). Ms. [REDACTED] stated she goes to see the Claimant twice per day. She further testified as follows:
- a. She assists the Claimant with transfers 3 times in the morning and at least 3 times in the evening. She said 3 minutes for each transfer was enough time for a transfer. She said that Claimant would settle for 4 transfer events per day as set out in the 2007 PCA service plan.
- b. The Claimant needs help with walking (locomotion). She helps physically support the Claimant's arm, or helps with steadying the walker. She also sometimes walks behind the Claimant. She stated the Claimant needs assistance in her apartment with locomotion 5 times in the morning, and 4 times in the evening. She says it takes 3 to 4 minutes each time the Claimant locomotes in her home. Ms. [REDACTED] also indicated the Claimant did walk without assistance, using her walker, approximately a block to day service. She described how she assists the Claimant in locomotion outside the home to access medical appointments. She said she assists the Claimant with moving to and getting in and out of the car.

- c. Ms. [REDACTED] has to dress the Claimant. She puts on the Claimant's bra, shirt, pants, socks, and shoes. She says the Claimant cannot dress herself because of her arms. She said it takes more than 11 minutes each time to dress or undress the Claimant.
- d. She has to watch the Claimant when she eats to make sure the Claimant does not choke because she has problems with swallowing. It takes about 8 minutes each meal to observe the Claimant. She explained that the 2007 PCA service plan did not provide for eating assistance 3 meals a day 7 days per week because the Claimant eats her lunch during the weekdays at day service, where she is watched by other people for choking problems. However, the Claimant does not always go to day service 5 days per week.
- e. The Claimant gets her medications from the pharmacy, and then Ms. [REDACTED] fills up a mediset weekly and then sets out the medications for the Claimant every day, for her breakfast, dinner, and bedtime. She said it takes it takes 5 minutes to set up the weekly mediset. She said it takes about 3 minutes daily to set out the daily medications. In addition, the Claimant needs medication assistance to have her Spirea capsule punctured, and the Albuterol pumped. She stated the Claimant tries to take her own blood pressure readings, but cannot do it successfully. Ms. [REDACTED] uses a machine to take the Claimant's blood pressure and pulse twice a day and records them, which takes 2 minutes to do each time.
- f. The Claimant takes a shower once a week. It takes about 20 minutes for the shower. The Claimant gets a sponge bath every day when she changes her pad. The sponge bath takes about 15 minutes. The Claimant is not able to shower or sponge bathe herself because of her mobility and range of motion problems. Ms. [REDACTED] did not ask about whether the Claimant took sponge baths.
- g. The Claimant needs help transferring on and off the toilet, and adjusting her clothes. The Claimant is not able to wipe her back, and needs to be cleansed twice per day. The time allowed by the 2007 PCA service plan for toileting assistance, which consisted of 5 times per day during the weekdays, and 7 times per day during the weekend, for 5 minutes each occurrence, was adequate to meet the Claimant's needs.
- h. The Claimant requires at least 20 minutes a day for personal hygiene. Ms. [REDACTED] hands her a washcloth to wash her face, combs combing her hair, moisturizes her very dry skin, rubs her with non-prescription pain liniment, shaves her twice per week, files her fingernails at least once a week, and takes care of her hammertoes.

- i. She prepares breakfast and lunch for the Claimant. The Claimant takes her lunch with her to day service during the week. The Claimant requires 15 minutes for each light meal preparation and clean up time.
  - j. The Claimant has irregular medical appointments. They range from no weekly appointments to three appointments per week. She has at least 4 appointments a month. Ms. [REDACTED] goes with the Claimant when she goes to the doctor, and sits in on the appointment, and keeps records of what occurs during the appointment. A regular appointment takes an hour. The 2007 PCA service plan that allowed one hour of medical escort assistance was adequate.
7. The Claimant testified as follows:
- a. She is right handed and does not have the use of that hand. She has to use her left hand.
  - b. She can transfer by herself if she has to. She has to use her left arm or her walker to transfer. It is a difficult and painful process that is causing her physical condition to further deteriorate.
  - c. The Claimant cannot dress herself because she cannot use her right hand. She also cannot bend at the waist.
  - d. Her medications are taken multiple times per day.
  - e. She does physical therapy home exercises.
  - f. She has to be observed while eating due to choking problems. When she is at day service and eats lunch there, her PCA is not there to observe her. However, she is observed by day service staff to make sure she does not choke.
  - g. Ms. [REDACTED] did not ask her about whether she took sponge baths; she only asked about bathing.

### **PRINCIPLES OF LAW**

This case involves a change 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 proof<sup>1</sup> by a preponderance of the evidence.<sup>2</sup>

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<sup>1</sup> “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)

<sup>2</sup> 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

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 PCA program does not provide services for actions a Medicaid recipient can reasonably perform on her own. 7 AAC 43.755(a)(4). Nor does the PCA program provide supervision or monitoring assistance. 7 AAC 43.755(a)(11).

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).

### ANALYSIS

The issues in this case are whether the Division was correct in its allotment of time for the Claimant in the following PCA service categories:

1. Transfers.
2. Locomotion both inside the home and outside the home for medical appointments.
3. Dressing and undressing.
4. Eating – supervision.
5. Medication.
6. Bathing.
7. Toilet use.
8. Personal Hygiene/Grooming.
9. Light Meal preparation.
10. Medical escort.

It should first be noted this case does not require a credibility analysis. All of the witnesses were credible. This case does, however, require weighing of the evidence to see if the Division met its required evidentiary burden of proof.

#### 1. Transfers

The 2007 PCA service plan provided the Claimant with 84 minutes per week of transfer assistance. (Ex. 2, p. 1) The 2008 PCA service plan eliminated transfer assistance in its entirety. (Ex. E, p. 18) The undisputed evidence is that the Claimant can do her own transfers and does her own transfers, albeit with some difficulty. If a Claimant can reasonably perform her own transfers, the PCA program is not authorized to pay for transfers. *See* 7 AAC 43.755(a)(4). Because the Claimant is reasonably capable of

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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)



performing the transfers on her own, the Division met its burden of proof on this issue. The Division was correct to eliminate transfer assistance in the Claimant's 2008 PCA service plan.

## 2. Locomotion

The 2007 PCA service plan provided the Claimant with 145 minutes per week of locomotion assistance (140 minutes for locomotion within the home, and 5 minutes for locomotion assistance outside the home to access medical appointments). (Ex. 2, p. 1) The 2008 PCA service plan eliminated locomotion assistance in its entirety. (Ex. E, p. 18)

The undisputed evidence was that the Claimant can locomote on her own, using her walker, with occasional difficulties. In fact, the Claimant walks (locomotes) on her own, using a walker, to day service during the week. This is a distance of approximately one block. Given the Claimant's ability to walk on her own to day service, she reasonably can walk on her own and does not require PCA assistance for locomotion. *See* 7 AAC 43.755(a)(4). Ms. Garcia's testimony, at best, establishes that she occasionally monitors and supervises the Claimant's locomotion, which is not an authorized PCA service. *See* 7 AAC 43.755(a)(11). The Division met its burden of proof on this issue. The Division was correct to eliminate locomotion assistance in the Claimant's 2008 PCA service plan.

## 3. Dressing and Undressing

The 2007 PCA service plan provided the Claimant with 154 minutes per week (11 minutes twice per day, 7 days per week) for dressing/undressing assistance. (Ex. 2, p. 1) The 2008 PCA service plan reduced dressing assistance to 70 minutes per week (5 minutes twice per day, 7 days per week). (Ex. E, p. 18)

This issue requires an evaluation of contrasting testimony. Ms. Vandenberg observed the Claimant receive assistance with putting her sweater and sandals on. She did not observe the Claimant getting fully dressed and undressed. On the other hand, Ms. Garcia described in detail how she has to dress the Claimant, and that it took over the 11 minutes twice per day provided in the 2007 PCA service plan to dress and undress the Claimant.<sup>3</sup> The Claimant told Ms. Vandenberg she could not bend at the waist. Ms. Vandenberg's functional assessment found the Claimant could only move her right hand to her chest and had a very weak right handed grip with pain. These conditions are corroborated by medical evidence showing the Claimant has end stage osteoarthritis in her right shoulder with limited range of motion. Ms. Garcia's testimony regarding the amount of dressing assistance the Claimant requires was consistent with the Claimant's documented physical condition.

Accordingly, the Division did not meet its burden of proof on this issue to show that the Claimant did not require the same amount of dressing/undressing as she received in her

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<sup>3</sup> Ms. [REDACTED] did not testify as to the exact amount of time it took to dress and undress the Claimant, only that it took over 11 minutes for each occurrence.

2007 PCA service plan. Nor did the Claimant prove that the level of dressing/undressing assistance she received in the 2007 PCA service plan was inadequate for her current needs. The Claimant is therefore to receive the same level of dressing/undressing assistance as she received in her 2007 PCA service plan: 11 minutes twice per day, 7 days per week.

4. Eating – Supervision

The 2007 PCA service plan provided the Claimant with 128 minutes per week of eating assistance (8 minutes twice per day 7 days per week, and 8 minutes once per day 2 days per week), for eating supervision due to swallowing/chewing difficulties. (Ex. 2, p. 1) This plan provided for her to receive supervision for 3 meals a day on the two weekend days and for 2 meals per day during the weekdays, due to her attending day service during the week. The 2008 PCA service plan eliminated eating assistance in its entirety. (Ex. E, p. 18)

Ms. [REDACTED] did not observe the Claimant eating but concluded the Claimant did not need assistance because there was no documentation showing the Claimant had difficulties swallowing food. Ms. [REDACTED] also stated the fact the Claimant ate her weekday lunches at day service without her PCA present showed she did not require eating supervision.

The Claimant has a medically documented large hiatal hernia with esophageal dynamotility. She told the nurse assessor she needed to eat soft foods because of difficulty swallowing. The Claimant testified that when she ate lunch at day service, the staff observed her eating to make sure she did not choke. The presence of the hiatal hernia with esophageal dynamotility is consistent with the need to eat soft foods to avoid choking. This in turn demonstrates that the Claimant has a problem with choking while eating. In addition, the Claimant's testimony shows she is supervised at all meals for choking hazards, whether it be by her PCA or someone else.

The Division did not meet its burden of proof on this issue to show the Claimant no longer required the eating assistance she was provided in her 2007 PCA service plan. The Claimant is therefore to receive the same level of eating assistance that she was provided in her 2007 PCA service plan – 128 minutes per week (8 minutes twice per day 7 days per week, and 8 minutes once per day 2 days per week), for eating supervision due to swallowing/chewing difficulties.

5. Medication/Vital Signs Testing

The 2007 PCA service plan provided the Claimant with 56 minutes per week of medication/vital signs testing assistance (4 minutes twice per day 7 days per week). (Ex. 2, p. 1) The 2008 PCA service provided the Claimant with 7 minutes per week of medication/vital signs testing assistance (1 minute once per day 7 days per week). (Ex. E, p. 18)

The undisputed evidence is that the Claimant is right handed, but cannot use her right hand, i.e. she cannot open medication bottles. She has to take medications several times per day, which Ms. [REDACTED] sets out for her. Ms. [REDACTED] testified some of the medications require some limited preparation (pumping an inhaler, and puncturing a capsule) the Claimant cannot perform. While the Claimant told Ms. [REDACTED] she took her own blood pressure, Ms. [REDACTED] explained the Claimant tries to take her blood pressure and is unable to do it correctly. As a result, Ms. [REDACTED] takes the Claimant's blood pressure and pulse, using a machine, twice a day, and records it, which takes 2 minutes each time. This, in itself would take a total of 4 minutes per day, which is longer than the 1 minute per day allowed in the Claimant's 2008 PCA service plan. Ms. [REDACTED] also stated that setting out the Claimant's medications every day takes approximately 3 minutes. This comes to a total of 7 minutes daily. Ms. [REDACTED] also testified she has to take extra steps on several of the medications: puncturing the Spirea capsule and pumping the Albuterol.

Ms. [REDACTED]'s testimony shows that the Claimant requires at least 8 minutes a day for medication assistance/vital signs testing, which is consistent with the Claimant's 2007 PCA service plan.<sup>4</sup> The Division did not meet its burden of proof on this issue to show the Claimant only required 1 minute of medication and vital signs testing per day. The Claimant is therefore to receive the same level of medication and vital signs testing assistance she received in her 2007 PCA service plan – 56 minutes per week (4 minutes twice per day 7 days per week).

#### 6. Bathing

The 2007 PCA service plan provided the Claimant with 161 minutes per week of bathing assistance (23 minutes once per day 7 days per week). (Ex. 2, p. 2) The 2008 PCA service provided the Claimant with 15 minutes per week of bathing assistance (15 minutes once per day 1 day per week). (Ex. E, p. 19) This was based on the Claimant's statement to Ms. [REDACTED] that she only took a shower once a week because of her dry skin.

Ms. [REDACTED] explained the Claimant is only showered once per week, and that process takes approximately 20 minutes. She further explained that the Claimant receives a daily sponge bath, on the non shower days, which takes about 15 minutes. The Division only allowed the Claimant 1 bathing day in the 2008 PCA service plan, for the shower day only.

This Division's allocation of only one day for showering and no allowance for sponge baths is not based on a difference of opinion regarding the Claimant's need for bathing. Instead, the testimony of the parties shows that it is based on miscommunication between the parties. The nurse assessor did not ask about sponge baths. The Claimant and/or her PCA did not mention them.

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<sup>4</sup> Please note this does not include the time for preparing the Claimant's weekly mediset, which was acknowledged to not be a coverable service by Ms. [REDACTED], the program director at Claimant's PCA agency.

Given the Claimant's medical conditions and the testimony at the hearing about her daily sponge baths, she is entitled to receiving bathing assistance daily. Ms. [REDACTED] who bathes the Claimant, either in the shower or a sponge bath, testified as to the amount of time required for each activity: 20 minutes for a shower and 15 minutes for a sponge bath. This was the only evidence as to the actual amount of time involved in bathing.

The Division therefore did not meet its burden of proof on the issue of bathing assistance. The Claimant should receive the amount of time identified by Ms. [REDACTED] – a total of 110 minutes per week (20 minutes once per week for showering, and 15 minutes once per day for 6 days per week for sponge baths). This is less than the amount of time provided in the Claimant's 2007 PCA service plan of 161 minutes. However, the reduction is supported by Ms. [REDACTED]'s testimony as to the actual amount of time involved.

#### 7. Toileting

The 2007 PCA service plan provided the Claimant with 195 minutes per week of toileting assistance (5 minutes 5 times per day 5 days per week, and additional 7 minutes 5 times per day 2 days per week). (Ex. 2, p. 2) The 2008 PCA service provided the Claimant with 105 minutes per week of toileting assistance (3 minutes 5 times per day 7 days per week). (Ex. E, p. 19)

The Claimant undisputedly requires her bedside commode to be emptied in the morning. She requires assistance with her depends twice daily. She requires cleansing assistance, after toilet use, twice daily. The real factual dispute in this case involved whether she requires assistance in transferring on and off of the toilet. Ms. [REDACTED] testified that toileting takes 5 minutes each time, which includes helping the Claimant to transfer on and off the toilet. Ms. [REDACTED] also stated the Claimant needed more assistance during the weekend because she was home more.

However, as this Decision noted above, the Claimant can transfer herself. And it does not make sense that the Claimant would need more assistance toileting on a weekend than on a weekday. Accordingly, the Claimant only requires toileting assistance 5 times daily: once to empty her bedside commode, twice with her depends, and cleaning herself, after toilet use, twice per day. An allocation of 3 minutes for each time assistance is provided is reasonable.

The Division met its burden of proof on the issue of toileting assistance. The Claimant shall receive toileting assistance, as set out in the 2008 PCA service plan - 105 minutes per week of toileting assistance (3 minutes 5 times per day 7 days per week).

#### 8. Personal Hygiene/Grooming

The 2007 PCA service plan provided the Claimant with 140 minutes per week of personal hygiene/grooming assistance (20 minutes once daily 7 days per week). (Ex. 2, p. 2) The 2008 PCA service provided the Claimant with 70 minutes per week of personal hygiene/grooming assistance (10 minutes once daily 7 days per week). (Ex. E, p. 19)

The Claimant undoubtedly requires assistance in daily grooming. Ms. [REDACTED] provided a clear description of the daily assistance she provides the Claimant: she hands her a washcloth to wash her face, combs her hair, moisturizes her very dry skin, rubs her with non-prescription pain liniment, shaves her twice per week, files her fingernails at least once a week, and takes care of her hammertoes. Ms. [REDACTED] stated this takes at least 20 minutes per day. Ms. [REDACTED]'s credible, reasonable testimony demonstrates the need for continued personal hygiene/grooming assistance at the level provided in the Claimant's 2007 PCA service plan, 20 minutes per day, 7 days per week.

The Division did not meet its burden of proof on the issue of personal hygiene/grooming assistance. The Claimant shall receive personal hygiene/grooming assistance as set out in her 2007 PCA service plan – 140 minutes per week (20 minutes daily, 7 days per week).

#### 9. Light Meal Preparation

The 2007 PCA service plan provided the Claimant with a total of 145 minutes per week of light meal assistance (15 minutes once per day 7 days per week, and 15 minutes once per day 2 days per week). The 2008 PCA service eliminated light meal assistance. At hearing, Ms. [REDACTED] stated the elimination of light meal assistance was a mistake, and the Claimant should be allowed 140 minutes per week in light meal assistance (10 minutes twice per day 7 days per week).

Ms. [REDACTED] testified the Claimant should receive 15 minutes per light meal, which included preparation and cleanup. Her testimony on this point is credible and reasonable, given the fact the Claimant cannot assist in the meal preparation and cleanup, which is corroborated by the 2008 PCA assessment's statement that the Claimant is completely dependent upon others for meal preparation (score of 3). (Ex. E, p. 12)

The Division therefore did not meet its burden of proof on the issue of light meal preparation assistance. The Claimant demonstrated she required 15 minutes for each light meal (twice per day), seven days per week. The Claimant is to be provided a total of 210 minutes per week (15 minutes twice daily, 7 days per week) for light meal preparation assistance. It should be noted this is an increase in time from the 2007 PCA service plan. This increase is accounted for by the Division's statement at hearing that the Claimant should receive light meal assistance twice daily, 7 days per week.

#### 10. Medical Escort

The 2007 PCA service plan provided the Claimant with 60 minutes once per week for medical escort assistance. (Ex. 2, p. 3) The 2008 PCA service plan eliminated medical escort assistance. (Ex. E, p. 20)

The Claimant is an elderly woman with a multiplicity of medical conditions. Ms. [REDACTED] testified as to the irregularity of her medical appointments, but that they averaged out to a minimum of 4 appointments per month. She also testified that she took the Claimant to

and from her medical appointments, that she sat in on the appointments and kept records for the Claimant. She said a medical appointment took approximately an hour.

The Claimant's medical conditions are consistent with Ms. [REDACTED]'s testimony. The Claimant has dysphasia (impaired speech and verbal comprehension), uses a walker, has limited range of motion (inability to bend at the waist, etc.), and cannot really use her right hand. She requires assistance getting to and from the doctor's office, and with her appointment itself.

The Division did not meet its burden of proof to show the Claimant no longer required medical escort assistance. The Claimant is to be provided the same level of medical escort assistance provided in her 2007 PCA service plan – 60 minutes once per week.

### **CONCLUSIONS OF LAW**

1. The Division met its burden of proof and was correct when it eliminated transfer assistance in the Claimant's 2008 PCA service plan.
2. The Division met its burden of proof and was correct when it eliminated locomotion assistance in the Claimant's 2008 PCA service plan.
3. The Division did not meet its burden of proof and was not correct when it reduced the time allowed the Claimant for dressing/undressing assistance in the Claimant's 2008 PCA service plan. The Claimant is to have her dressing/undressing assistance restored to the amount of assistance provided in her 2007 PCA service plan – 154 minutes per week (11 minutes twice per day, 7 days per week).
4. The Division did not meet its burden of proof and was not correct when it eliminated eating assistance in the Claimant's 2008 PCA service plan. The Claimant is to have her eating assistance restored to the amount of assistance provided in her 2007 PCA service plan for eating supervision due to swallowing/chewing difficulties – 128 minutes per week (8 minutes twice per day 7 days per week, and 8 minutes once per day 2 days per week).
5. The Division did not meet its burden of proof and was not correct when it reduced the time allowed the Claimant for medication/vital signs testing in the Claimant's 2008 PCA service plan. The Claimant is to have her medication/vital signs testing assistance restored to the amount of assistance provided in her 2007 PCA service plan – 56 minutes per week (4 minutes twice per day 7 days per week).
6. The Division did not meet its burden of proof and was not correct when it reduced bathing assistance in the Claimant's 2008 PCA service plan. The Claimant is to receive a total of 110 minutes per week in bathing assistance (20 minutes once per week for showering, and 15 minutes once per day for 6 days per week for sponge

baths). While this is less than the amount of time provided in the Claimant's 2007 PCA service plan of 161 minutes, it is supported by Ms. [REDACTED]'s testimony as to the actual amount of time involved.

7. The Division met its burden of proof on the issue of the reduction of the Claimant's toileting assistance. The Claimant shall receive the amount of toileting assistance as identified in the Claimant's 2008 PCA service plan.
8. The Division did not meet its burden of proof and was not correct when it reduced the time allowed the Claimant for personal hygiene/grooming assistance in the Claimant's 2008 PCA service plan. The Claimant is to have her personal hygiene/grooming assistance restored to the amount of assistance provided in her 2007 PCA service plan – 140 minutes per week (20 minutes daily 7 days per week).
9. The Division did not meet its burden of proof and was not correct when it reduced the time allowed the Claimant for light meal preparation assistance in the Claimant's 2008 PCA service plan.<sup>5</sup> The Claimant is to receive a total of 210 minutes per week for light meal assistance (15 minutes twice daily, 7 days per week). This is an increase in light meal assistance, which allows the Claimant light meal preparation assistance twice daily, 7 days per week.
10. The Division did not meet its burden of proof and was not correct when it reduced the time allowed the Claimant for medical escort assistance in the Claimant's 2008 PCA service plan. The Claimant is to have medical escort assistance restored to the amount of assistance provided in her 2007 PCA service plan – 60 minutes per week (60 minutes once per week).

### **DECISION**

The Claimant's 2008 PCA service plan of care 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

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<sup>5</sup> The Division initially eliminated light meal preparation assistance altogether, but at hearing indicated that was an error and the Claimant should receive light meal preparation assistance for twice daily for 10 minutes at each light meal, 7 days per week.

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 12th day of January, 2009.

Larry Pederson  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 12th day of  
January 2009, true and correct copies  
of the foregoing were sent to:

Claimant. Certified Mail, Return Receipt Requested.

[REDACTED], Hearing Representative  
[REDACTED], Director  
[REDACTED], Policy & Program Development  
[REDACTED], Staff Development & Training

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Al Levitre, Law Office Assistant I