

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

In the Matter of: )  
 ) OAH Nos. 14-1512/1514-MDS  
 O S )  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

O S was receiving Medicaid Home and Community-based Waiver (Waiver) benefits and Personal Care Assistance (PCA) services. She was reassessed by the Division of Senior and Disabilities Services (Division) to determine her ongoing eligibility and benefit level for both programs. The Division notified her on August 1, 2014 that her PCA services were reduced, and on August 14, 2014 that her Waiver services were terminated. Ms. S requested a hearing to challenge both the PCA reduction and the Waiver termination actions. The PCA reduction case<sup>1</sup> and the Waiver termination case<sup>2</sup> were consolidated.

Ms. S's hearing was held on October 29, 2014. She represented herself. F R, Ms. S's PCA, testified on her behalf. Tammy Smith represented the Division. Denise Kichura, R.N., and Suzanne Mittlestadt testified for the Division.

After a review of the evidence, the Division's termination of Ms. S's Waiver services is upheld. However, its determination regarding her PCA services is affirmed in part and reversed in part, as discussed in detail below.

**II. Background Facts<sup>3</sup>**

Ms. S is 78 years old. She lives with her elderly husband in senior housing. She is diabetic, and experiences osteoarthritis, lumbago, osteoarthritis, cerebrovascular disease, right hemiplegia, anemia, and an anxiety disorder.<sup>4</sup> She drags her right foot and uses a walker for locomotion.<sup>5</sup>

Ms. S was receiving Waiver benefits and 32.75 hours of PCA services. Denise Kichura, a Division nurse, made a visit to reassess Ms. S's eligibility for Waiver and PCA service needs on March 10, 2014. She recorded the assessment visit in the CAT. Her findings resulted in a

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<sup>1</sup> OAH Case No. 14-1512-MDS.

<sup>2</sup> OAH Case No. 14-1514-MDS.

<sup>3</sup> Unless otherwise specified, all references to exhibits are to those contained in the position statement filed by the Division in OAH Case No. 14-1514-MDS.

<sup>4</sup> Ex. E, pp. 3 – 5; Ex. F., p. 3.

<sup>5</sup> Ex. E, p. 8.

termination of Ms. S's Waiver benefits and a reduction of her PCA services to 7.0 hours per week.<sup>6</sup> In general, Ms. Kichura found that Ms. S's physical functionality had increased, which resulted in her no longer qualifying for Waiver benefits, and in a decrease in her need for PCA services. The Division's determination that Ms. S no longer qualified for Waiver services was reviewed by Qualis Health, which concurred in the determination.<sup>7</sup>

Ms. S disputed the termination of her Waiver services and the reduction in her PCA services.

### III. Discussion

In this case, in which the Division is seeking to terminate or reduce a benefit a citizen is already receiving, the Division has the overall burden to prove, by a preponderance of the evidence,<sup>8</sup> facts that show the citizen's level of eligibility has changed.<sup>9</sup> Similarly, if the citizen is seeking to increase the level of benefits, the citizen has the burden of proof by a preponderance of the evidence.<sup>10</sup>

#### A. Waiver Eligibility

##### 1. Overview

The Alaska Medicaid program provides Waiver services to adults with physical disabilities who require "a level of care provided in a nursing facility."<sup>11</sup> The purpose of these services is "to offer a choice between home and community-based waiver services and institutional care."<sup>12</sup>

The nursing facility level of care<sup>13</sup> requirement is determined in part by an assessment which is documented by the CAT.<sup>14</sup> The CAT records an applicant's needs for professional nursing services, therapies, and special treatments,<sup>15</sup> and whether an applicant has impaired cognition or displays problem behaviors.<sup>16</sup> Each of the assessed items is coded and contributes to a final numerical score. For instance, if an individual required 5 days or more of therapies

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<sup>6</sup> Ex. D (OAH Case No. 14-1512-MDS); Ex. D (OAH Case No. 14-1514-MDS).

<sup>7</sup> Ex. D, pp. 2 – 3. (OAH Case No. 14-1514-MDS).

<sup>8</sup> Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

<sup>9</sup> 7 AAC 49.135.

<sup>10</sup> *Id.*

<sup>11</sup> 7 AAC 130.205(d)(1)(B) and (d)(2).

<sup>12</sup> 7 AAC 130.200.

<sup>13</sup> See 7 AAC 130.205(d)(2); 7 AAC 130.230(b)(2)(A).

<sup>14</sup> 7 AAC 130.230(b)(2)(B).

<sup>15</sup> Ex. E, pp. 15 - 17.

<sup>16</sup> Ex. E, pp. 18 - 19.

(physical, speech/language, occupation, or respiratory therapy) per week, he or she would receive a score of 3.<sup>17</sup>

The CAT also bases Waiver eligibility upon the coding provided for five specified activities of daily living (ADLs): body mobility, transfers, locomotion, toileting, and eating. The CAT numerical coding system 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); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>18</sup>); **3** (the person requires extensive assistance<sup>19</sup>); and **4** (the person is totally dependent<sup>20</sup>). 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).<sup>21</sup>

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); and **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).<sup>22</sup>

If a person has a self-performance code of 2 (limited assistance, which consists of non-weight bearing physical assistance three or more times during the last seven days, or limited assistance plus weight-bearing assistance one or two times during the last seven days), or 3 (extensive assistance, which consists of weight-bearing support three or more times during the past seven days, or the caregiver provides complete performance of the activity during a portion of the past seven days), plus a support code of 2 (physical assistance from one person) or 3 (physical assistance from two or more persons) with any of the five specified ADLs, that person receives points toward his or her total eligibility score on the CAT. A person can also receive

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<sup>17</sup> Ex. E, p. 31.

<sup>18</sup> Pursuant to 7 AAC 125.020(a)(1), limited assistance with an ADL “means a recipient, who is highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed.”

<sup>19</sup> Pursuant to 7 AAC 125.020(a)(2), extensive assistance with an ADL “means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity.”

<sup>20</sup> Pursuant to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, “means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity.”

<sup>21</sup> Ex. E, p. 20.

<sup>22</sup> Ex. E, p. 20.

points for combinations of required nursing services, therapies, impaired cognition (memory/reasoning difficulties), or difficult behaviors (wandering, abusive behaviors, etc.), and required assistance with any of the five specified ADLs.<sup>23</sup>

In order for a person who only has physical assistance needs to score as eligible for Waiver services on the CAT, he or she would need a self-performance code of 3 (extensive assistance) or 4 (total dependence) and a support code of 2 or 3 for three or more of the five specified ADLs (bed mobility, transfers, locomotion within the home, eating, and toileting).<sup>24</sup>

The results of the assessment portion of the CAT are then scored. If an applicant's score is 3 or higher, the applicant is medically eligible for Waiver services.<sup>25</sup>

## 2. Eligibility Decision

Ms. S was assessed and found eligible for Waiver benefits in October 2012. The 2012 assessment found that she was eligible for Waiver benefits because she required extensive assistance (self-performance code of 3) with three of the five specified ADLs: bed mobility, transfers, and toilet use. At the time of that assessment, she was experiencing right sided hemiplegia, with a weak/numb left leg.<sup>26</sup>

The 2014 assessment found that Ms. S was not receiving any therapies (physical, speech, occupation, respiratory, or specialized treatments/therapies), had no impaired cognition or behavioral issues, and was not receiving professional nursing services.<sup>27</sup> The record does not contain any evidence that contradicts those findings. Consequently, her only path to continued eligibility for Waiver benefits is if she requires extensive physical assistance (self-performance code of 3) or is completely dependent (self-performance code of 4) in three or more of the qualifying ADLs of bed mobility, transfers, locomotion within the home, eating, and toileting.

The 2014 assessment found that Ms. S did not require extensive assistance in any of the qualifying ADLs.<sup>28</sup> Ms. S argues that she required assistance in three ADLs: transfers, locomotion, and toileting. Each is addressed below.

### a. Transfers

Ms. S had previously been assessed as requiring extensive assistance (self-performance code of 3) with transfers.<sup>29</sup> In 2014, the nurse-assessor concluded that Ms. S only required

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<sup>23</sup> Ex. E, p. 31.

<sup>24</sup> Ex. E, p. 31.

<sup>25</sup> Ex. E, p. 31.

<sup>26</sup> Ex. F, pp. 3, 18, 29.

<sup>27</sup> Ex. E, pp. 7, 15 - 19.

<sup>28</sup> Ex. E, pp. 8 - 9, 11.

supervision/standby assistance (self-performance code of 1) for transfers. This conclusion was based upon her observation of Ms. S standing up from a kitchen chair, using the kitchen counter for support. The nurse-assessor stated that Ms. S told her she could get up from the floor on her own without requiring assistance.<sup>30</sup>

Ms. S's testimony was that her legs become numb and that she needs help with transfers. She stated that she needs someone by her side, but that she does not require hands-on assistance. Consequently, the Division met its burden of proof on this factual issue and demonstrated that Ms. S does not require extensive assistance, but rather supervision/standby assistance (self-performance code of 1).

b. Locomotion

Ms. S had previously been assessed as requiring limited assistance (self-performance code of 2) with locomotion.<sup>31</sup> In 2014, the nurse-assessor concluded that Ms. S only required supervision/standby assistance (self-performance code of 1) for locomotion. She arrived at this conclusion by observing Ms. S move around in her home using her walker.<sup>32</sup> Ms. S's testimony was consistent with the nurse-assessor's conclusion, with the qualification that her locomotion is very slow. F R, Ms. S's PCA, testified that Ms. S dragged her foot and that it took a long time for her to locomote.

Given the consistency of Ms. S's and Ms. R's testimony with that of the nurse-assessor, the Division has met its burden of proof on this point and established that Ms. S no longer requires limited assistance with transfers, and instead requires supervision/standby assistance.

c. Toileting

Ms. S had previously been assessed as requiring extensive assistance (self-performance code of 3) with toileting.<sup>33</sup> In 2014, the nurse-assessor concluded that Ms. S only required supervision/standby assistance (self-performance code of 1) for toileting. She arrived at this conclusion based upon the fact Ms. S used the bathroom independently twice during the assessment, and Ms. S's statement that she was able to cleanse herself and change her briefs herself.<sup>34</sup>

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<sup>29</sup> Ex. F, p. 6.

<sup>30</sup> Ex. E, p. 8; Denise Kichura's testimony.

<sup>31</sup> Ex. F, p. 5.

<sup>32</sup> Ex. E, p. 9; Ms. Kichura's testimony.

<sup>33</sup> Ex. F, p. 5.

<sup>34</sup> Ex. E, p. 11; Ms. Kichura's testimony.

Ms. S testified that she could use the toilet by herself, but that she needed someone to watch over her because she might lose her balance. Ms. R testified that Ms. S needed help cleaning her perineal area at night when her incontinence briefs were changed immediately before bed. Ms. R stated that the assistance was necessary because Ms. S has a curled right hand that makes it difficult for her to cleanse herself.

Ms. S's testimony is consistent with the nurse-assessor's finding that Ms. S does not require extensive assistance with toileting, but rather supervision/standby assistance. Ms. R's testimony does not support a finding of even limited assistance because the activity she described fell more within the area of personal hygiene, due to the fact that it was not associated with toileting activity, but instead with personal hygiene preparatory to sleep. The Division has therefore met its burden of proof and demonstrated that Ms. S no longer requires extensive assistance with toileting, but rather supervision/standby assistance.

d. Material Improvement

Before the Division may terminate Waiver services for a person who was previously approved for those services, Alaska Statute 47.07.045, enacted in 2006, requires that the Division must satisfy two conditions. First, it must conduct an assessment that shows the recipient's condition has materially improved to the point that the recipient "no longer has a functional limitation or cognitive impairment that would result in the need for nursing home placement, and is able to demonstrate the ability to function in a home setting without the need for waiver services."<sup>35</sup> It is undisputed that Ms. S's overall medical condition has not improved. However, her functionality, as determined through the assessment process, has improved to the point where she only requires supervision/standby assistance with three of the qualifying ADLS: locomotion, transfers, and toileting. This means that the Division has met its burden of proof on the larger question of whether Ms. S continues to qualify for Waiver benefits, since she no longer requires extensive assistance in three or more of the scored ADLs.

Second, the Division's assessment showing material improvement must be "reviewed by an independent qualified health care professional under contract with the department."<sup>36</sup> The Division satisfied this condition when Qualis Health performed its third-party review. The reviewer agreed with the Division's conclusion that Ms. S's condition had materially improved.

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<sup>35</sup> AS 47.07.045(b)(1) and (b)(3)(C).

<sup>36</sup> AS 47.07.045(b)(2).

The Division’s determination that Ms. S no longer qualifies for Waiver services is therefore affirmed.

**B. PCA Assistance**

The Medicaid program authorizes PCA services for the purpose of providing “*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 . . . .”<sup>37</sup> Accordingly, “[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL.”<sup>38</sup>

As with the Waiver program, the Division uses the Consumer Assessment Tool (CAT) to determine the level of physical assistance that an applicant or recipient requires in order to perform their ADLs and their IADLs.<sup>39</sup> The ADLs measured by the CAT for PCA services include bed mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access apartment or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.<sup>40</sup>

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.<sup>41</sup>

The CAT codes IADLs slightly differently than it does ADLs. The *self-performance codes for IADLs* are **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent / done by others - the person is not involved at all with the activity

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<sup>37</sup> 7 AAC 125.010(a) [emphasis added].

<sup>38</sup> 7 AAC 125.020(e). This regulation defines “cueing” as “daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity;” “setup” as “arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;” and “supervision” as “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” *Id.*

<sup>39</sup> See 7 AAC 125.020(a) and (b).

<sup>40</sup> Ex. E, pp. 6 – 11.

<sup>41</sup> Ex. E, p. 26.

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).<sup>42</sup>

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).<sup>43</sup>

If a person is coded as requiring limited or a greater degree of physical assistance (self-performance code of 2, 3, or 4, and a support code of 2, 3, or 4) in any one of the ADLs of transfers, locomotion, eating, toilet use, dressing or bathing, then he or she is eligible for PCA services. Similarly, if a person is coded as requiring some degree of hands-on assistance<sup>44</sup> (self-performance code of 1, 2, or 3, and a support code of 3 or 4) with any one of the IADLs of light or main meal preparation, light housework, routine housework, grocery shopping or laundry), then he or she is eligible for PCA services.<sup>45</sup>

The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each occurrence of a particular activity. 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 PCA service time every day he or she was bathed.<sup>46</sup>

The specific areas in dispute are:

1. Transfers

Ms. S had previously been provided extensive assistance with transfers 35 times weekly. The Division eliminated this assistance altogether.<sup>47</sup> As discussed above, the Division established that Ms. S no longer requires extensive assistance with transfers; she requires supervision/standby assistance. Because the PCA program does not provide a person with PCA services for supervision/standby assistance, Ms. S is no longer eligible to receive PCA assistance with locomotion.

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<sup>42</sup> Ex. E, p. 26.

<sup>43</sup> Ex. E, p. 26.

<sup>44</sup> For the purposes of this discussion, “hands-on” assistance does not include supervision/cueing or set-up assistance (support codes of 1 or 2). *See* Ex. E, pg. 26.

<sup>45</sup> Ex. E, p. 31.

<sup>46</sup> *See* 7 AAC 125.024(a)(1) and the Division’s *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 34 - 36.

<sup>47</sup> Ex. D, p. 10 (OAH Case No. 14-1512-MDS).



## 2. Locomotion Within Home

Ms. S had previously been provided extensive assistance with locomotion 35 times weekly. The Division eliminated this assistance altogether.<sup>48</sup> As discussed above, it is more likely true than not true that Ms. S no longer requires extensive assistance (self-performance code of 3) with locomotion within her home, but rather only requires supervision/standby assistance. Because the PCA program does not provide a person with PCA services for supervision/standby assistance, Ms. S is no longer eligible to receive PCA assistance with locomotion.

## 3. Toileting

Ms. S had previously been provided extensive assistance with toileting 35 times weekly. The Division eliminated this assistance altogether.<sup>49</sup> As discussed above, it is more likely than not true that Ms. S no longer requires extensive assistance (self-performance code of 3) with toileting, but rather only requires supervision/standby assistance. Because the PCA program does not provide a person with PCA services for supervision/standby assistance, Ms. S is no longer eligible to receive PCA assistance with toileting.

## 4. Dressing

Ms. S was previously provided extensive assistance with dressing twice daily. The Division reduced her level of assistance to limited assistance twice daily.<sup>50</sup> The reduction was based upon the nurse-assessor's observation of Ms. S being able to grab a sweater and to put it on, and "fix" her slippers, and Ms. S's statement that she helped her husband change his pants.<sup>51</sup>

Ms. S, however, testified that she needs assistance with dressing, that it is hard for her to use her right hand, and she needs someone to lift her right leg. Ms. R similarly testified that Ms. S has difficulty using her right hand, and has to have her right foot lifted. It is undisputed that Ms. S drags her right foot, and has right hemiplegia. Ms. S's testimony and Ms. R's testimony is consistent with Ms. S's medical history. Ms. S and Ms. R were both credible witnesses, as shown by the fact that they did not overstate Ms. S's care needs with regard to her activities of transfers, locomotion, or toileting. The weight of the evidence therefore shows that the Division has not met its burden of proof with regard to this factual issue. Ms. S should continue to receive extensive assistance with dressing twice daily.

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<sup>48</sup> Ex. D, p. 10 (OAH Case No. 14-1512-MDS).

<sup>49</sup> Ex. D, p. 10 (OAH Case No. 14-1512-MDS).

<sup>50</sup> Ex. D, p. 10 (OAH Case No. 14-1512-MDS).

<sup>51</sup> Ex. E, p. 10; Ms. Kichura's testimony.

## 5. Personal Hygiene

Ms. S was previously provided with extensive assistance with personal hygiene. The Division eliminated this assistance altogether, finding that Ms. S only required supervision/standby assistance.<sup>52</sup> The nurse-assessor found that Ms. S did not require either extensive or limited assistance by observing her range of motion, which included watching Ms. S comb her hair both with her right hand and her left hand, and seeing her fold a towel.<sup>53</sup> The nurse-assessor also reported that Ms. S stated she can wash her face: that “[s]he stands over the sink to wash her face. [She] will wash one hand at a time then dry [her]self.”<sup>54</sup>

Ms. S and Ms. R both testified that Ms. S cannot hold items in her hand and drops them. Ms. S testified she needs someone to brush her hair and to brush her dentures. As noted above, both Ms. S and Ms. R were credible witnesses. Their testimony described someone who needs some degree of hands-on assistance with items like combing the hair and brushing teeth, and cleansing her perineal area, but who does not require weight-bearing assistance. The Division has the burden of proof on this case. Given Ms. S’s and Ms. R’s testimony, the Division has not met its burden of proof to eliminate this assistance altogether. However, it has shown that it is more likely true than not true that Ms. S does not require extensive assistance, but rather limited assistance. Ms. S should therefore continue to receive daily personal hygiene assistance, but that level of assistance should be limited assistance instead of extensive assistance.

## 6. Medication

Ms. S had previously been provided medication assistance twice daily. The Division eliminated this assistance altogether.<sup>55</sup> In order to receive assistance with medication, a person must have a personal hygiene coding of limited assistance (self-performance code of 2) or higher. Ms. S has satisfied that threshold. Ms. S’s list of medications includes those taken twice daily.<sup>56</sup> It is therefore more likely true than not true that Ms. S requires medication assistance twice daily, especially given the testimony that she has difficulty holding onto items.

## 7. Medical Escort

The Division had previously provided Ms. S with medical escort assistance. It eliminated that assistance altogether.<sup>57</sup> The applicable regulation authorizes PCA services for medical

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<sup>52</sup> Ex. D, p. 10 (OAH Case No. 14-1512-MDS).

<sup>53</sup> Ex. E, p. 12; Ms. Kichura’s testimony.

<sup>54</sup> Ex. E, p. 12.

<sup>55</sup> Ex. D, p. 10 (OAH Case No. 14-1512-MDS).

<sup>56</sup> Ex. E, p. 22.

<sup>57</sup> Ex. D, p. 10 (OAH Case No. 14-1512-MDS).

escort for “traveling with the recipient to and from a routine medical or dental appointment outside the recipient’s home **and** conferring with medical or dental staff during that appointment.”<sup>58</sup> The regulation therefore requires that a person need both assistance traveling and assistance conferring to receive medical escort assistance.

The evidence did not show a continued need for either traveling or conferring at hearing. Ms. R’s testimony on this point was that PCA assistance was needed for locomotion, because Ms. S might fall down, and needed an interpreter. This is neither traveling<sup>59</sup> nor conferring. Although Ms. S required an interpreter during the hearing, and presumably also requires the use of an interpreter during medical appointments, that is a function normally supplied by telephone services, such as that used during the hearing. Consequently, the Division met its burden of proof on this point and established that it is more likely true than not true that medical escort should be eliminated.

#### 8. Instrumental Activities of Daily Living

Ms. S was previously provided the maximum assistance available with all of her IADLs (light meal preparation, main meal preparation, shopping, light housework, and laundry), based upon a previous determination that she was completely dependent upon someone else to perform them. The assessment reduced her assistance with four of those IADLs, finding that she did not require assistance with light meal preparation or main meal preparation, and required some physical assistance, but was not dependent, with shopping and laundry (was able to participate – self-performance code 2, but required physical assistance – support code 3). The assessment continued to find that she was dependent with regard to housekeeping.<sup>60</sup>

Ms. S disagreed with regard to the elimination of assistance with light meal and main meal preparation, and the reduction of assistance with laundry.

Ms. S testified that she is able to participate slightly with meal preparation, such as using a microwave, but that she cannot stand to cook and cannot otherwise assist with food preparation because she cannot hold onto items such as knives. Ms. R testified similarly. However, their testimonies do not show a complete inability to participate in food preparation, but instead show that Ms. S requires physical hands-on assistance with the food preparation. This is properly classified as her requiring assistance done with hands-on help (self-performance code of 2,

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<sup>58</sup> 7 AAC 125.030(d)(9) (emphasis supplied).

<sup>59</sup> Ms. S is being provided limited assistance with locomotion to access medical appointments once per week. Ex. D, p. 10 (OAH Case No. 14-1512-MDS).

<sup>60</sup> Ex. D (OAH Case No. 14-1512-MDS), pp. 4, 10; Ex. E, p. 26.

support code of 3) with both light meals and main meals. While the Division has met its burden of proof to demonstrate a reduction in the assistance for both light meals and main meals, it has not met its burden to demonstrate that the assistance should be eliminated in its entirety. Ms. S should receive assistance (self-performance code of 2, support code of 3) with light meals 14 times per week, and with main meals 7 times per week.

Ms. S's testimony with regard to laundry was that she could participate slightly with this activity; she stated that she could fold clothes. As with meal preparation, this does not show a complete inability to participate in the activity, but that she requires physical hands-on assistance. This is properly classified as her requiring assistance done with hands-on help (self-performance code of 2, support code of 3). The Division has therefore met its burden of proof and demonstrated that it is more likely true than not true that Ms. S is no longer completely dependent for assistance with laundry.

#### **IV. Conclusion**

Ms. S's condition, as measured by the CAT, has materially improved. She is no longer eligible for Medicaid Waiver services. The Division's decision to terminate those services is affirmed.

As discussed in detail above, Ms. S's PCA service plan does not accurately reflect her needs for assistance in the areas of dressing, personal hygiene, medication, light meal preparation, and main meal preparation. Her PCA service plan should be revised to be consistent with this decision.

DATED this 19<sup>th</sup> day of November, 2014.

*Signed*

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Lawrence A. Pederson  
Administrative Law Judge

### **Adoption**

The undersigned, under the authority of AS 44.64.060(e)(1), adopts the foregoing 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 1<sup>st</sup> day of December, 2014.

By: *Signed*

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Lawrence A. Pederson  
Administrative Law Judge/OAH

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