

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

In the Matter of:)	
)	
L B)	OAH No. 12-0406-MDS
)	HCS Case No.
_____)	Medicaid ID No.

DECISION

I. Introduction

This is L B’s second challenge to an assessment performed by the Division of Senior and Disabilities Services (DSDS or Division) in April 2012. The first challenge (*B I*) involved the Division’s denial of Mr. B’s application for Medicaid Personal Care Assistance (“PCA”) services on the grounds that the PCA services applied for duplicated services already being provided under the Waiver Services program.¹ In *B I* it was determined that Mr. B was eligible for PCA services involving transfers because such activities required a two-person assist which was not provided by Mr. B’s Waiver Services. Following issuance of the decision in *B I*, the Division determined that Mr. B was eligible for 4.75 hours per week of PCA services in the transfers category. Mr. B then requested a hearing as to that determination, which hearing request resulted in the present case (*B II*).

The issue in this case is the number of hours of PCA services for which Mr. B is eligible based on the applicable regulations and the determinations previously made in *B I*. The Division approved Mr. B for 4.75 hours per week of PCA services in the transfers category.² Mr. B requested additional PCA time for transfers, toilet use/incontinence care, bathing, hygiene, dressing, eating, medication management, and range-of-motion exercises.³ This decision concludes that Mr. B is eligible for additional PCA time in the areas of toilet use/incontinence care, bathing, and dressing because these activities necessarily involve transfers. However, Mr. B is not eligible for additional PCA time in the areas of hygiene, eating, medication management, and range of motion exercises because those activities do not necessarily involve transfers.

¹ See *In the Matter of L.B.*, OAH Case No. 12-0622-MDS (decision issued August 6, 2012).

² Ex. D1.

³ Exs. 1-1 through 1-6; K1, K2.

II. Facts

A. *Matters Established in Mr. B's Prior OAH Case No. 12-0622-MDS*⁴

Mr. B is a severely disabled young man. He is quadriplegic, non-verbal, incontinent, wheelchair bound, has a seizure disorder, and cannot feed himself.⁵ Mr. B's care requires that he be transferred in and out of his bed, wheelchair, bathtub, etc.⁶ He is too big for one person to perform the transfer task safely. Because he is constantly moving, it is safer for two people to transfer him than to rely on an assistive device such as a Hoyer lift.⁷ In addition, while Mr. B has a Hoyer lift available to him in his natural family's home, it is not present or used in his foster home because it is too big and bulky for use there.⁸

Mr. B resides in a licensed foster home which has a Community Care license.⁹ The Community Care license states that M T and K T are licensed to operate a two child foster home.¹⁰ However, Mr. T works outside the home and is gone for 12 hours at a time for work.¹¹ Thus, Ms. T is Mr. B's sole foster care provider for 12 hours of every day that her husband works outside the home.

Mr. B receives Medicaid Home and Community-Based Waiver Services ("Waiver Services").¹² His foster home placement is provided as part of his Medicaid Waiver services. Mr. B's approved Waiver Services plan of care states that he has "one consistent provider 24 hours a day."¹³

Mr. B requested PCA services to supplement his Waiver Services. Cassie Buck, a registered nurse employed by the Division, performed an eligibility assessment on April 27, 2012 to determine whether Mr. B's care needs were sufficient to qualify for PCA services. Ms. Buck's assessment concluded that Mr. B was functionally eligible for PCA services.¹⁴

⁴ As discussed further in Section III, below, these factual and legal issues were conclusively established, for purposes of this case, in the prior decision (*In the Matter of L.B.*, OAH Case No. 12-0622-MDS) issued by Administrative Law Judge Lawrence Pederson on August 6, 2012.

⁵ OAH Case No. 12-0622-MDS, Ex. G, p. 7; Ex. J, p. 3.

⁶ OAH Case No. 12-0622-MDS, Linda Bjore, R.N. hearing testimony.

⁷ OAH Case No. 12-0622-MDS, Laura Jones, M.D. hearing testimony.

⁸ OAH Case No. 12-0622-MDS, Ex. E, p. 29; Linda Bjore hearing testimony.

⁹ OAH Case No. 12-0622-MDS, Ex. G, p. 6; Ex. J, pp. 11 – 12.

¹⁰ OAH Case No. 12-0622-MDS, Ex. G, p. 6.

¹¹ OAH Case No. 12-0622-MDS, Ex. O; A hearing testimony.

¹² OAH Case No. 12-0622-MDS, Ex. F, p. 1. The Division notified Mr. B on May 4, 2012 that he had satisfied the applicable Level of Care requirements for participation in the Waiver Services Program (Ex. H12).

¹³ OAH Case No. 12-0622-MDS, Ex. L, p. 14. Mr. B's Waiver Services plan of care was approved by the Division on June 12, 2012 (Ex. F1).

¹⁴ OAH Case No. 12-0622-MDS, Ex. E, p. 33.

The Division denied Mr. B's application for PCA services on the basis that his care needs were already being met through his Waiver Services foster home placement.¹⁵ Mr. B requested a hearing on May 8, 2012. A hearing was held before Administrative Law Judge (ALJ) Lawrence Pederson on June 20, 2012 in OAH Case No. 12-0622-MDS. ALJ Pederson's proposed decision was issued on August 6, 2012 and was adopted on August 17, 2012.¹⁶

ALJ Pederson found that Mr. B's Medicaid Waiver Services Plan of Care does not provide him with two foster home caregivers, but instead requires only that the Ts provide him with "one consistent provider 24 hours a day."¹⁷ However, ALJ Pederson also found that Mr. B requires two persons to transfer him safely, and that Ms. T therefore cannot safely perform transfers alone without assistance. Because Mr. T is out of the home for 12 hours at a time due to his work, Ms. T is Mr. B's sole caregiver during that part of the day. Accordingly, ALJ Pederson concluded that because Mr. B's Waiver Services, as provided in his foster home, do not provide him with the two persons necessary to transfer him safely, *providing PCA assistance for activities involving transfers* would not duplicate any services being provided to Mr. B through his Medicaid Waiver Services Plan of Care. However, because the Division's denial was based on duplication of services, ALJ Pederson's decision did not address the specific types or amounts of PCA services for which Mr. B is eligible. That issue was left for later determination by the Division, subject to Mr. B's right to request a new hearing if he disagreed with the specific amount or type of PCA services authorized.¹⁸

B. Mr. B's Functional Limitations as Determined by the Division

On April 27, 2012 Mr. B was assessed as to eligibility for PCA services by Cassie Buck, R.N. of DSDS.¹⁹ Ms. Buck performed the assessment using the Consumer Assessment Tool or "CAT," a system for scoring disabilities that is described in detail in Part III. The scores set forth below are the CAT scores assigned by Ms. Buck in assessing Mr. B's abilities and limitations with regard to his Activities of Daily Living (ADLs):²⁰

¹⁵ OAH Case No. 12-0622-MDS, Ex. D.

¹⁶ The Division did not file a Proposal for Action to contest any of the factual findings or legal conclusions in ALJ Pederson's decision in OAH Case No. 12-0622-MDS.

¹⁷ OAH Case No. 12-0622-MDS, Ex. L, p. 14.

¹⁸ See decision in OAH Case No. 12-0622-MDS at p. 3.

¹⁹ Ex. E.

²⁰ Exs. E6 - E21; see also 7 AAC 125.199(1).

Bed Mobility: Mr. B can reposition himself in bed as needed (scored 0/1; frequency 0/0).²¹

Transfers: Mr. B can "bear weight if you hold onto him."²² He "is lifted from his chair to other surfaces" (scored 4/2; frequency 8/7).²³

Locomotion: Mr. B is pushed in a wheelchair by his caregivers (scored 8/7).²⁴

Dressing: Mr. B is dependent with dressing (scored 4/2; frequency 2/7).²⁵

Eating: Mr. B eats a regular diet by mouth, and also receives nutrition via a gastrostomy feeding tube or "g-tube" (scored 3/2; frequency 4/7).²⁶

Toileting: Mr. B is incontinent of bladder and bowel and wears diapers (scored 4/2; frequency 7/7).²⁷

Personal Hygiene: Mr. B is completely dependent as to personal hygiene tasks (scored 4/2; frequency 2/7).²⁸

Bathing: The assessment states only that Mr. B is "good with bath times" and "is bathed twice a day at times" (scored 4/2; frequency 1/7).²⁹

The assessment of April 27, 2012 also indicates that Mr. B requires assistance with his medications³⁰ and has severely impaired cognitive abilities.³¹

The assessment of April 27, 2012 scored Mr. B as follows with regard to his Instrumental Activities of Daily Living (IADLs):³² Meal Preparation (light) 3/4; Meal Preparation (main) 3/4; Telephone 3/4; Light Housework 3/4; Managing Finances 3/4; Routine Housework 3/4; Grocery Shopping 3/4; Laundry 3/4.

C. Mr. B's Functional Limitations as Described by his Medical Professionals And Care Givers

M T has stated that transferring Mr. B requires two people, and that in the evenings if he is upset it takes two people to feed him and perform hygiene because he fights it.³³ According to

²¹ Ex. E6.
²² Ex. E4.
²³ Ex. E6.
²⁴ Ex. E7.
²⁵ Ex. E8.
²⁶ Ex. E9.
²⁷ Ex. E9.
²⁸ Ex. E10.
²⁹ Ex. E11.
³⁰ Ex. E12.
³¹ Ex. E16.
³² Ex. E27.
³³ Ex. I10.

Mr. X of the PCA agency utilized by Mr. B, Mr. B requires the assistance of two persons at feeding times, changing times, bath times, and before and after school.³⁴ Linda Bjore, R.N. of Mat-Su Services for Children & Adults, Inc. has opined that Mr. B requires two people "for much of the special equipment [he] uses, such as standers, transfer to tilt-in-space wheelchair, gait trainer, and monitoring him in his specialized Pedicraft bed."³⁵

In a letter dated September 28, 2012, physical therapist Jeff LePage stated as follows:³⁶

[Mr. B] is at high risk of integument problems and is at increased risk of soft tissue trauma during transfers and general mobility due to his spasticity. He may not be able to voice when he is feeling discomfort due to increased contracture or spasticity. He does make this evident at times during changes in position that put greater stress on his contracted tendons and soft tissue . . . by . . . increased vocalization and combative behavior. If this occurs during a transfer it puts [Mr. B] and the caregiver at great risk of injury.

. . . .

In the past, mechanical lift devices have proved ineffective due to [Mr. B's] fear or at least discontent with the mechanical device. During one of his "fits" it is difficult to control him during transfers and during normal daily activities

In a letter dated October 8, 2012 Mr. B's pediatrician, M Jones, M.D., stated in relevant part as follows:³⁷

[Mr. B] is not able to coordinate his movements to walk but does move his arms and legs. When frustrated or over-stimulated he will kneel and fall forward to bang his head and chin. He will often push on his eyes or poke his fingers into his eyelids or his ears. He also pulls his g-tube out at times

. . . .

[Mr. B's] extensive medical needs in combination with his agitation, self-injurious behavior and movements means that two persons are required to assist with transfers, feeding, fluids, medication, bathing, hygiene and skin care, dressing and changing, range of motion exercises, and stoma care. Equipment such as a Hoyer lift, Stander, Gait Trainer, or Therapy Trike also require two adults for safe use.

D. Relevant Procedural History

Following the adoption of ALJ Pederson's proposed decision in OAH Case No. 12-0622-MDS on August 17, 2012,³⁸ the Division notified Mr. B that it had found him eligible to receive

³⁴ Ex. 1, pp. 7-8.

³⁵ Ex. K; *see also* Linda Bjore, R.N. hearing testimony.

³⁶ Ex. 1 p. 6.

³⁷ Ex. 1 p. 3.

³⁸ The relevant procedural history from Mr. B's prior case (OAH Case No. 12-0622-MDS) is set forth in Section II(A), above.

4.75 hours per week of PCA services in the area / category of transfers.³⁹ Mr. B subsequently requested a hearing, asserting that the number of hours of PCA services authorized by the Division was insufficient for his needs.⁴⁰

Mr. B's hearing in the present case was held on October 16, 2012. Mr. B, a disabled minor, did not participate in the hearing. His mother, T H, participated in the hearing by telephone, represented her son, and testified on his behalf. Care Coordinator D K D assisted in representing Mr. B and also testified on his behalf. Pediatrician Dr. M Jones, M.D., Linda Bjore, a registered nurse employed by Mat-Su Services, N X of PCA provider agency No Name Care, Inc., and licensed foster home operator M T, all testified by telephone on Mr. B's behalf. Medical Assistance Administrator Gerry Johnson represented the Division. Health Program Managers Maria Del Rosario and Tammy Smith testified on behalf of the Division. The record closed at the end of the hearing.

III. Discussion

A. The PCA Program - Overview

Under the Medicaid program, some categories of medical assistance (such as inpatient and outpatient hospital care) are mandatory for participating states, while other categories of medical assistance, including in-home "personal care services," are optional.⁴¹ Alaska has opted to provide these optional personal care services.⁴² Personal care services "include a range of human assistance provided to persons with disabilities and chronic conditions ... which enables them to accomplish tasks that they would normally do for themselves if they did not have a disability," and "most often relate[] to ... eating, bathing, dressing, toileting, transferring, ... maintaining continence, ... personal hygiene, light housework, laundry, meal preparation,

³⁹ Ex. D.

⁴⁰ Ex. C.

⁴¹ See 42 U.S.C. 1396a(a)(10)(A). 42 U.S.C. § 1396d(a)(24) defines "personal care services" as services that are:

furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (A) authorized for the individual by a physician or in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (C) furnished in a home or other location.

See also 42 C.F.R. § 440.167.

⁴² A.S. 47.07.030(b).

transportation, grocery shopping, using the telephone, medication management, and money management.”⁴³

PCA services are provided only in a recipient’s personal residence or to a Medicaid Waiver recipient who receives residential habilitation services provided in a licensed foster home.⁴⁴ PCA services are not provided if they duplicate services that are already provided to a Medicaid Waiver Services recipient as part of that recipient’s Medicaid Waiver Services Plan of Care (POC).⁴⁵

Significantly, "[t]he purpose of personal care services is to provide to a recipient *physical assistance* with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient"⁴⁶ [Emphasis added]. 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."⁴⁷

B. Alaska's PCA Program - Use of the Consumer Assessment Tool (CAT)

The Department conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT."⁴⁸ The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs).⁴⁹ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.⁵⁰

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 activity of daily living (ADL). The possible codes are **0** (the person is independent and requires no help

⁴³ Centers for Medicare and Medicaid Services, *State Medicaid Manual* § 4480(C), at 4–495 (1999).

⁴⁴ 7 AAC 125.050 (a) and (b)(3).

⁴⁵ 7 AAC 125.040(a)(11).

⁴⁶ 7 AAC 125.010(a).

⁴⁷ 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.*

⁴⁸ 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

⁴⁹ *See* 7 AAC 125.010(a).

⁵⁰ Ex. E at pages 5-33.

or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance); **3** (the person requires extensive assistance); **4** (the person is totally dependent). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).⁵¹

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 activity of daily living (ADL). The possible codes are **0** (no setup or physical help required); **1** (only setup help required); **2** (one person physical assist required); **3** (two or more person physical assist required). Again, there are additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).⁵²

The ADLs coded or scored by the CAT are body 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.⁵³ In addition, the CAT codes or scores five other ADL-like activities which are not technically ADLs. These are medication, vital signs/glucose levels, dressings / bandages / oxygen, sterile wound care, and documentation.⁵⁴

The CAT also codes or scores 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.⁵⁵ Finally, the CAT codes or scores one other IADL-like activity which is not technically an IADL (oxygen maintenance).⁵⁶

The amount of PCA time for which a person qualifies is generally dependent on how high the person's self-performance codes are. A self-performance code of 4 gets more time than a self-performance code of 3, and a self-performance code of 3 gets more time than a self-performance code of 2. However, the number of minutes awarded for the particular code (2, 3, or 4) varies by activity (for example, a code of 4 qualifies a person for 30 minutes of PCA

⁵¹ See, for example, Ex. E at page 6; Ex. D at page 2.

⁵² See, for example, Ex. E at page 6; Ex. D at page 2.

⁵³ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (accessed online at <http://www.hss.state.ak.us/dsds/pca/documents/PCA%20Service%20Computation.pdf>) (accessed October 26, 2012); see also Ex. D5.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

assistance for bathing, but only 12 minutes of PCA assistance for toileting).⁵⁷ Time is generally not awarded for codes of “5” (cueing only) or “8” (activity did not occur).

C. Matters Previously Determined in OAH Case No. 12-0622-MDS

As discussed in Section II, above, this case follows on the heels of a related case (OAH Case No. 12-0622-MDS) in which certain factual findings and legal conclusions were previously made. Two related legal doctrines come into play when a party seeks to re-assert claims or issues which have been determined in a prior proceeding. These two doctrines are *res judicata* and *collateral estoppel*.

The broader doctrine, *res judicata*, “generally bars litigation of an issue which has already been decided or which could have been decided in a prior proceeding.”⁵⁸ The goal of *res judicata* and *collateral estoppel* is finality: both doctrines “aim to prevent parties from again and again attempting to reopen a matter that has been resolved”⁵⁹ The two doctrines “bind the parties and their privies to factual findings, as well as legal conclusions, that have been the subject of prior litigation.”⁶⁰ The principles of *res judicata* and *collateral estoppel* apply in administrative proceedings as well as in court proceedings.⁶¹ Thus, as an initial matter, it is important to determine which of the issues raised by the parties in this case were previously determined in Mr. B's prior case, because *res judicata* prevents those prior determinations from being re-examined here.

⁵⁷ *Id.*

⁵⁸ *Commercial Fisheries Entry Commission v. Byayuk*, 684 P.2d 114 (Alaska 1984). In *State v. Baker*, 393 P.2d 893, 896-897 (Alaska 1964), the Alaska Supreme Court defined the application and purpose of *res judicata* as follows:

This doctrine bars a second suit between the same parties on the same subject matter resolving the same issues between the parties in the same capacity or quality. It is founded upon the principle that parties ought not to be permitted to litigate the same issue more than once and that when a right or fact has been judicially determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them [footnotes omitted].

⁵⁹ *Alaska Public Interest Research Group v. State of Alaska*, 167 P.3d 27 (Alaska 2007).

⁶⁰ *Id.*

⁶¹ *Sublett v. State of Alaska Commercial Fisheries Entry Commission*, 773 P.2d 952 (Alaska 1989) (“principles of *res judicata* and *collateral estoppel* preclude collateral attack of a final agency decision made in an adjudicatory hearing”), citing *Jeffries v. Glacier State Telephone Company*, 604 P.2d 4, 8-9 (Alaska 1979); *Astoria Fed. Savings and Loan Association v. Solimino*, 501 U.S. 104, 107, 111 S.Ct. 2166, 115 L.Ed.2d 96 (1991) (unless contrary to legislative intent, *collateral estoppel* should be applied to decisions of administrative bodies that have attained finality); *Alaska Public Interest Research Group v. State*, 167 P.3d 27 (Alaska 2007).

1. The Division's "Duplication of Services" Argument

The Division's main argument in this case is that any PCA services (other than the 4.75 hours per week which the Division has already awarded for transfers) would be inappropriate because such services would duplicate care already being paid for and provided to Mr. B under his Waiver Services plan of care. However, the Division's "duplication of services" argument was previously raised and addressed in OAH Case No. 12-0622-MDS. The decision in that case acknowledged the general proposition that, as a matter of law, PCA services cannot be provided if they duplicate services that are already provided as part of a recipient's Medicaid Waiver Services Plan of Care (POC).⁶² However, the decision in OAH Case No. 12-0622-MDS found, as a matter of fact, that (a) Mr. B requires two persons to transfer him safely; (b) Mr. B has only one caregiver available at any one time under his Waiver Services Plan of Care; and therefore (c) any PCA services which provide a second person to assist with activities involving transfers *do not* duplicate the services currently provided to Mr. B by his Waiver Services Plan of Care.⁶³

Accordingly, the question of whether providing PCA time for transfers would be duplicative was conclusively determined in Mr. B's prior case. The task *in this case* is to identify all those specific PCA activities which involve transfers. Because the decision in OAH Case No. 12-0622-MDS established that two persons are required to safely transfer Mr. B, if an activity involves a transfer, then Mr. B is eligible for PCA time to assist with that transfer.

2. Mr. B's Request for PCA Time for Activities Not Involving Transfers

In this case, Mr. B has asserted that, in addition to second-person PCA assistance with activities involving transfers, he also requires PCA assistance with other activities such as eating, medication management, and range-of-motion exercises.⁶⁴ The Division responds that Mr. B is not eligible for PCA time for these activities because the assistance requested for these activities involves supervision, cueing, and setup. However, it is not necessary to reach the merits on these issues because (as discussed above) the prior decision in OAH Case No. 12-0622-MDS limits Mr. B's eligibility for PCA services to those activities involving transfers. Thus, the doctrine of *res judicata* cuts both ways.

⁶² 7 AAC 125.040(a)(11).

⁶³ See decision in OAH Case No. 12-0622-MDS at pp. 2-3.

⁶⁴ Exs. 1-1 through 1-6; K1, K2.

D. How Much PCA Time is Mr. B Eligible to Receive in This Case?

The Activities of Daily Living (ADLs) which involve transfers of some kind, based on their definitions in the CAT, are toilet use/incontinence care, bathing, and dressing.⁶⁵ These must each be examined to determine whether Mr. B is eligible for additional PCA time in any of these three categories.

1. Toilet Use/Incontinence Care

Mr. B is non-ambulatory;⁶⁶ he generally spends his time in his wheelchair or pediatric bed.⁶⁷ He is also incontinent and wears diapers.⁶⁸ Thus, as a practical matter, "toileting" for Mr. B involves physically moving him into a position in which he can be cleaned and his diaper changed.

The Division's assessment scored Mr. B as "totally dependent" in this area.⁶⁹ This gives Mr. B a CAT self-performance score of four. The decision in OAH Case No. 12-0622-MDS, finding that Mr. B requires a two-person physical assist with activities involving transfers, gives Mr. B a CAT support code of four. Based on the Division's Personal Care Assistance Service Level Computation Form,⁷⁰ Mr. B's toileting score of 4/4 results in 12 minutes of PCA time per toileting episode. The Division's CAT indicates that Mr. B requires toileting seven times per day, seven days per week.⁷¹ This results in a computation of 12 X 7 X 7, for a total of 588 minutes (9.8 hours) of PCA time per week for toileting.

2. Bathing

With regard to bathing, the applicable PCA regulation covers "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."⁷² As previously stated, Mr. B is non-ambulatory⁷³ and he generally spends his time in his

⁶⁵ Exs. E8 - E11. *See also* 7 AAC 125.030(b)(6) (the ADL of toileting includes moving to and from the toilet, commode, bedpan, or urinal, and transfers on and off the toilet); 7 AAC 125.030(b)(8) (the ADL of bathing includes the required transfers in and out of the bathtub or shower); 7 AAC 125.030(b)(4) (the ADL of dressing includes the donning, fastening, unfastening, and removal of the recipient's street clothing).

⁶⁶ Ex. 1-3.

⁶⁷ Ex. H4.

⁶⁸ Ex. E9.

⁶⁹ Ex. E9.

⁷⁰ Exs. B29, B30.

⁷¹ Ex. E9.

⁷² 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical.

⁷³ Ex. 1-3.

wheelchair or pediatric bed.⁷⁴ Thus, Mr. B must be physically transferred in and out of the bath tub.

The Division's assessment scored Mr. B as "totally dependent" with regard to bathing.⁷⁵ This gives Mr. B a CAT self-performance score of four. The decision in OAH Case No. 12-0622-MDS, finding that Mr. B requires a two-person physical assist with activities involving transfers, gives Mr. B a CAT support code of four. Based on the Division's Personal Care Assistance Service Level Computation Form,⁷⁶ Mr. B's bathing score of 4/4 results in 30 minutes of PCA time per bath. The Division's CAT indicates that Mr. B requires bathing one time per day, seven days per week.⁷⁷ This results in a computation of 30 X 1 X 7, for a total of 210 minutes (3.5 hours) of PCA time per week for bathing.

3. Dressing

The applicable PCA regulation, 7 AAC 125.030(b)(4), states that the ADL of dressing includes the donning, fastening, unfastening, and removal of the recipient's street clothes. As indicated above, Mr. B is non-ambulatory⁷⁸ and he generally spends his time in his wheelchair or pediatric bed.⁷⁹ Thus, Mr. B must be physically moved into positions which will allow him to be dressed and/or undressed.

The Division's assessment scored Mr. B as "totally dependent" with regard to dressing.⁸⁰ This gives Mr. B a CAT self-performance score of four. The decision in OAH Case No. 12-0622-MDS, finding that Mr. B requires a two-person physical assist with all activities involving transfers, gives Mr. B a CAT support code of three. Based on the Division's Personal Care Assistance Service Level Computation Form,⁸¹ Mr. B's dressing score of 4/3 results in 15 minutes of PCA time per episode of dressing/undressing. The Division's CAT indicates that Mr. B requires dressing/undressing two times per day, seven days per week.⁸² This results in a computation of 15 X 2 X 7, for a total of 210 minutes (3.5 hours) of PCA time per week for dressing.

⁷⁴ Ex. H4.
⁷⁵ Ex. E11.
⁷⁶ Exs. B29, B30.
⁷⁷ Ex. E11.
⁷⁸ Ex. 1-3.
⁷⁹ Ex. H4.
⁸⁰ Ex. E.8.
⁸¹ Exs. B29, B30.
⁸² Ex. E8.

IV. Conclusion

Mr. B is not eligible for additional PCA time in the areas of hygiene, eating, medication management, and range of motion exercises because those activities do not necessarily involve transfers. However, Mr. B is eligible for PCA time, in addition to the transfer time previously allowed, in the additional areas of toilet use/incontinence care, bathing, and dressing because those activities necessarily involve transfers, and transferring Mr. B requires a two-person assist. Accordingly, the Division must issue a new PCA Service Level Authorization Letter, consistent with this decision, within 30 days of the date that this decision becomes final. Mr. B has the right to request a new hearing should he assert that the new PCA Service Level is inconsistent with this decision.

DATED this 30th day of November, 2012.

Signed _____
Jay Durych
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 11th day of December, 2012.

By: *Signed* _____
Name: Jay D. Durych
Title: Administrative Law Judge

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