

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

| | | |
|------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Q N |) | OAH No. 12-0538-MDS |
| |) | DSDS Case No. |
| _____ |) | Medicaid ID No. |

COMMISSIONER'S DECISION

After due deliberation, for the reasons specified below, and in accordance with AS 44.64.060(e)(3) and AS 44.64.060(e)(4), the Commissioner of the State of Alaska Department of Health and Social Services declines to adopt the proposed decision of the Administrative Law Judge (ALJ) as issued, and revises the disposition of the case as set forth below.¹

I. Revised Factual Findings.

The undersigned, in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings contained in the ALJ's proposed decision as follows, based on the specific evidence in the record described below:

- a. The testimony presented by the PCA provider and the assessor, as well as the written assessment, confirm that Q N is ambulatory. Accordingly, she does not require PCA assistance for bed mobility or transfers.
- b. The testimony of the PCA provider and the assessor confirm that Q N does not require hands-on PCA assistance for dressing/undressing, medication, or eating.

Accordingly, the factual findings set forth at pages 7-10 of the ALJ's proposed decision are modified as indicated above. All other factual findings contained in the ALJ's proposed decision are adopted.

Based on the revised factual findings set forth above, the Division was correct to approve Ms. N for 6.5 hours per week of PCA services in the areas of bathing, toilet use, access to medical appointments, and escort services. The evidence in the record demonstrates that Ms. N *was not*, at the time of the assessment, eligible for any additional PCA time in the areas of bed mobility, transfers, dressing/undressing, medication, or eating.

¹ Those findings of fact and conclusions of law set forth in the ALJ's proposed Decision, which are not rejected or revised by this Decision, are adopted to the extent they are consistent with this Decision.

II. Case Disposition.

The undersigned, in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows: This case is remanded *directly to the Division of Senior and Disabilities Services* with the following order:

1. Pursuant to 7 AAC 125.026, the PCA agency with whom E T is employed shall, within seven (7) business days of the date of this order, submit all relevant documentation and required forms to the Division of Senior and Disabilities Services to support the request for increased hours of service to Q N.
2. Within 7 business days of receipt of the above-referenced documents, the Division of Senior and Disabilities Services shall have a registered nurse reassess Q N. A registered nurse shall be used in this instance in order that, should the Division receive a timely application for waiver services, the same assessment may also be used as a basis for a waiver determination.
3. As part of the reassessment the Division of Senior and Disabilities Services shall specifically determine (a) if meal preparation in the home is managed in the fashion contemplated by 7 AAC 125.030(g), and (b) if Q N is found eligible for the IADL of light housekeeping, whether there are areas of the home contemplated in 7 AAC 125.030(c)(3) that, by virtue of being unique to the recipient, are not excluded due to chore services and/or IADL services included in another resident recipient's plan of care.
4. Within 7 business days of completing the reassessment, the Division of Senior and Disabilities Services shall complete an eligibility and service plan determination and serve its determination on Q N's legal representative.

This Commissioner's Decision, and the ALJ's proposed decision dated October 3, 2012 (as modified above), together constitute the final decision of the Commissioner in this case.

APPEAL RIGHTS

This decision is the final administrative action in this proceeding. Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of October, 2012.

By: Signed _____
Kimberli M. Poppe-Smart
Deputy Commissioner,
Department of Health and Social Services

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DECISION AND ORDER

I. Introduction

The issue in this case is the number of hours of Medicaid Personal Care Assistance (“PCA”) services for which Ms. Q N is eligible based on the applicable regulations. The Division of Senior and Disabilities Services (DSDS or Division) approved Ms. N for 6.5 hours per week of PCA services in the areas of bathing, toilet use, access to medical appointments, and escort services.² This decision concludes that Ms. N is eligible for additional PCA time in the areas of bed mobility, transfers, dressing/undressing, medication, and eating.

II. Facts

A. Ms. N's Diagnoses and Prescription Medications

Ms. N is 83 years old and weighs 87 pounds.³ She has a primary diagnoses of osteoarthritis, chronic pain, and dementia - Alzheimer's type, and secondary diagnoses of essential hypertension, gastro esophageal reflux, restless leg syndrome, and urinary incontinence.⁴ A prescription from Jay D. Makim, M.D. dated June 26, 2012 also indicates that Ms. N has psycho-behavioral issues, Parkinson's disease, and is at risk for falls.⁵

Ms. N takes denepizil, metoprolol, omeprazole, risperidone, and zolpidem daily.⁶ She can take these medications herself as long as someone else prepares them for her.⁷

B. Ms. N's Functional Abilities as Determined by the Division

Ms. N currently lives in a home with four other people.⁸ One of them receives PCA services, and another receives PCA and Choice Waiver services.⁹

² Ex. D2.
³ Ex. E1.
⁴ Exs. 2, E3.
⁵ Ex. 3.
⁶ Ex. E22.
⁷ Ex. E22.
⁸ Ex. E1.

Ms. N has significant memory impairment which impacts her safety and ability to care for herself.¹⁰ She is typically unable to recall entire events or the names of close friends and relatives without prompting.¹¹ She cannot follow written instructions, has difficulty remembering and using information, and requires reminders or re-direction from others at least four times per day.¹² She is periodically confused during the daytime and gets lost in her own neighborhood.¹³ During the week prior to the assessment she wandered at least once, and her wandering is not easily controlled.¹⁴ She can carry on only simple conversations.¹⁵ Her decision-making skills are moderately impaired; her decisions are poor, and she requires supervision and cueing.¹⁶

Ms. N uses a bath bench, cane, bedside commode, elevated toilet, bath/shower grab bars, and a walker as assistive devices.¹⁷ Ms. N wears dentures.¹⁸

On February 22, 2012 Ms. N was assessed as to eligibility for PCA services by Rae Norton of DSDS.¹⁹ Ms. Norton has been performing PCA assessments for the Division since 2009 and has performed over 1,000 assessments during that time.²⁰ Ms. Norton stated that, physically, Ms. N was "fit as a fiddle" at the time she performed the assessment.²¹ More specifically, Ms. Norton found that Ms. N has the following abilities and limitations with regard to her Activities of Daily Living (ADLs):²²

Bed Mobility: Ms. N can reposition herself in her bed as needed (scored 0/0; frequency 0/0).²³

Transfers: Ms. N can stand and sit as needed (scored 0/0; frequency 0/0).²⁴

⁹ Ex. E3, E T hearing testimony.

¹⁰ Ex. E23.

¹¹ Ex. E17.

¹² Ex. E17.

¹³ Ex. E17.

¹⁴ Ex. E18.

¹⁵ Ex. E17.

¹⁶ Ex. E16.

¹⁷ Ex. E29.

¹⁸ Ex. E26.

¹⁹ Ex. E.

²⁰ Rae Norton hearing testimony.

²¹ Ms. Norton stressed that the PCA program is for *physically* disabled people who need hands-on assistance and that it does not cover the cueing or supervision which may be needed for people who are *cognitively* impaired.

²² Exs. E6 - E21; see 7 AAC 125.199(1).

²³ Exs. E6, E20.

²⁴ Exs. E6, E20.

Locomotion: Ms. N can walk independently within her home most of the time, but requires cueing and supervision (scored 5/5; frequency 0/0).²⁵

Dressing: Ms. N has no mechanical difficulties with dressing, but requires others to provide set-up, cueing, and supervision (scored 5/5; frequency 2/7).²⁶

Eating: Ms. N has no mechanical difficulties with eating, but she cannot remember if she has eaten or not, and only eats when a meal is set-out for her (scored 0/1; frequency 0/0).²⁷

Toileting: Ms. N requires cueing all the time, but limited physical assistance with clean-up (scored 2/2; frequency 6/7).²⁸ Ms. N has urinary incontinence most or all of the time, and occasional bowel incontinence.²⁹ She utilizes incontinence pads or briefs.³⁰

Personal Hygiene: Ms. N can perform the tasks but requires others to provide set-up, cueing, and supervision (scored 5/5; frequency 0/0).³¹

Bathing: Ms. N requires a transfer assist into the tub, help to sit on the bath chair, and cueing support to wash her hair and body (scored 2/2; frequency 1/7).³²

The assessment of February 22, 2012 scored Ms. N as follows with regard to her Instrumental Activities of Daily Living (IADLs):³³ Meal Preparation (light) 2/3; Meal Preparation (main) 3/3; Telephone 0/0; Light Housework 2/3; Managing Finances 2/3; Routine Housework 3/3; Grocery Shopping 3/3; Laundry 3/3.

C. Ms. N's Functional Limitations as Explained by her PCA

E T has been a certified PCA in Alaska since 2000.³⁴ She is Ms. N's PCA. She is also the PCA for another person who lives in the same mobile home as Ms. N. She provides five hours of PCA services per day to that person, who also receives Choice Waiver services. She is not related to either of her PCA clients.

Ms. T believes that Ms. N had dementia and Alzheimer's disease at the time of the assessment in February 2012. In June 2012 Ms. N had a mini-stroke, and since that time she has

²⁵ Exs. E7, E20.

²⁶ Exs. E8, E20.

²⁷ Exs. E9, E20.

²⁸ Exs. E9, E20.

²⁹ Ex. E25.

³⁰ Ex. E25.

³¹ Exs. E10, E20.

³² Exs. E11, E21.

³³ Ex. E28; see 7 AAC 125.199(6).

³⁴ All facts found in this section are based on the hearing testimony of E T.

also been diagnosed as having Parkinson's disease. Sometimes Ms. N's behavior is out-of-control. Ms. T makes sure Ms. N takes her anti-anxiety medication.

Ms. N is not aware when she is urinating or having bowel movements. She can get up and walk, but she has no idea where she's going or what she's doing. She sometimes walks around the house all night long. She has gotten lost outside on two occasions and the police had to be called to look for her.

Ms. T cooks Ms. N's food, makes sure she takes her medicine, physically assists her with bathing, showers, personal hygiene, dressing, and undressing; and physically assists her with bed mobility and transfers. She also has to monitor Ms. N while she eats and drinks because Ms. N chokes on her food and water.

Ms. T believes that the assessor's notes do not accurately reflect what she and Mr. N told the assessor at the time of the assessment. Ms. T also believes that Ms. N's condition has gotten worse in the six months since the assessment was performed.

D. Relevant Procedural History

Ms. N applied for Medicaid Personal Care Assistance (“PCA”) services.³⁵ As described above, an assessment was performed at Ms. N's home on February 22, 2012.³⁶ On March 8, 2012 the Division of Senior and Disabilities Services (DSDS or Division) notified Ms. N that it had found her eligible to receive 6.5 hours per week of PCA services.³⁷ The following month, Ms. N requested a hearing, asserting that the number of hours of PCA services authorized by the Division was insufficient for her needs.

Ms. N's hearing was held on August 20, 2012. Ms. N did not participate in the hearing. Ms. N's son, P N, attended the hearing, represented his mother, and testified on her behalf. Ms. N's PCA, E T, also attended the hearing and testified on Ms. N's behalf. Gerry Johnson, a Medical Assistance Administrator employed by the Division, participated in the hearing by telephone and represented the Division. Angelika Fey-Merritt and Rae Norton, both of whom are Health Program Managers employed by the Division, participated in the hearing by telephone and testified on behalf of the Division. The record closed at the end of the hearing.

III. Discussion

A. The PCA Program - Overview

³⁵ Ex. E. The exact date Ms. N's application was submitted to the Division is not in the record.

³⁶ Ex. E1.

³⁷ Ex. D.

Under the Medicaid program, some categories of medical assistance (such as inpatient and outpatient hospital care) are mandatory for participating states; other categories of medical assistance, such as in-home “personal care services,” are optional.³⁸ Alaska has opted to provide these optional personal care services.³⁹ 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, transportation, grocery shopping, using the telephone, medication management, and money management.”⁴⁰

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”⁴¹ [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.”⁴²

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.”⁴³ 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

³⁸ 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.

³⁹ A.S. 47.07.030(b).

⁴⁰ Centers For Medicare And Medicaid Services, *State Medicaid Manual* § 4480(C), at 4–495 (1999).

⁴¹ 7 AAC 125.010(a).

⁴² 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.*

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

daily living (ADLs) and instrumental activities of daily living (IADLs).⁴⁴ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.⁴⁵

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 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).⁴⁶

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).⁴⁷

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.⁴⁸ 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.⁴⁹

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,

⁴⁴ See 7 AAC 125.010(a).

⁴⁵ Ex. E at pages 5-33.

⁴⁶ See, for example, Ex. E at page 6; Ex. D at page 5.

⁴⁷ See, for example, Ex. E at page 6; Ex. D at page 5.

⁴⁸ 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 2, 2012); see also Ex. D5.

⁴⁹ *Id.*

laundry (in-home), laundry (out-of-home), and shopping.⁵⁰ Finally, the CAT codes or scores one other IADL-like activity which is not technically an IADL (oxygen maintenance).⁵¹

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 assistance for bathing, but only 12 minutes of PCA assistance for toileting).⁵² Time is generally not awarded for codes of "5" (cueing only) or "8" (activity did not occur).

C. How Much PCA Time is Ms. N Eligible to Receive in This Case?

Ms. N's son provided a written statement specifying the six particular activities as to which he believes his mother's CAT was incorrectly scored. These areas are (1) Bed Mobility, (2) Transfers, (3) Dressing / Undressing, (4) Toileting, (5) Bathing, and (6) Medication.⁵³ In addition, at hearing, Ms. N's PCA testified that additional PCA time was also needed for eating. These seven activities will be addressed below in the order stated.

1. Bed Mobility

Ms. Norton testified that Ms. N appeared "fit as a fiddle" at the time she performed the assessment,⁵⁴ and gave Ms. N a bed mobility code or score of 0/0.⁵⁵ While there is no reason to doubt Ms. Norton's veracity, her assessment on this point was based on the recipient's report; she did not actually observe Ms. N's movement in bed.⁵⁶ Also, the native language of Ms. N, her son, and her PCA is Laotian, and it is clear that there were some communication difficulties between the parties at hearing which must also have been present during the assessment.⁵⁷

Mr. N asserts that his mother needs assistance from her PCA turning from side to side in bed, and sitting up in bed, due to chronic pain in her shoulders, hips, and knees.⁵⁸ He

⁵⁰

Id.

⁵¹

Id.

⁵²

Id.

⁵³

Ex. 1.

⁵⁴

Rae Norton hearing testimony.

⁵⁵

Exs. E6, E20.

⁵⁶

Ex. E6.

⁵⁷

Observation of the Administrative Law Judge at hearing.

⁵⁸

Ex. 1.

emphasizes that although his mother had a fairly good range of motion on the date of the assessment, on many days his mother's movements are significantly impaired by chronic pain.⁵⁹

Based on the parties' testimony, it is more probable than not that Ms. N requires⁶⁰ limited physical assistance with bed mobility, provided by one person, at least three days per week. Accordingly, Ms. N should receive a code of 2/2 as to bed mobility.

2. Transfers

Ms. Norton found that Ms. N can stand and sit as needed and can use a walker during those times she is suffering from arthritis pain; accordingly, she gave her a score of 0/0 as to transfers.⁶¹ Ms. N's son and PCA assert, however, that Ms. N requires hands-on assistance with transfers when Ms. N's osteoarthritis flares up as it does 2-3 times per week.⁶²

The testimony of all witnesses at hearing was credible. However, Ms. Norton was able to observe Ms. N for only a few hours on the day of the assessment, while Ms. N's son and PCA see her on a daily basis. It is therefore more probable than not that Ms. N requires⁶³ limited physical assistance with transfers, provided by one person, at least three days per week. Ms. N should therefore receive a code of 2/2 for transfers.

3. Dressing and Undressing

Ms. Norton found that Ms. N has no mechanical difficulties with dressing, but requires others to provide set-up, cueing, and supervision.⁶⁴ However, the CAT indicates that, although Ms. Norton had Ms. N mimic certain movements associated with dressing, she did not actually observe Ms. N put on or take off any article of clothing.⁶⁵ Ms. N's son and PCA assert that Ms. N requires assistance in maneuvering arms into sleeves, legs into pant-legs, and feet into socks, on those days that she is experiencing arthritis pain.⁶⁶ Given that two of Ms. N's primary diagnoses are osteoarthritis and chronic pain, the testimony that she needs limited assistance with dressing is credible. It is therefore more probable than not that Ms. N requires⁶⁷ limited physical assistance with dressing, provided by one person, at least three days per week. Accordingly, Ms. N should receive a code of 2/2 as to dressing.

⁵⁹ Ex. 1; *see also* E T hearing testimony.

⁶⁰ Currently requires, and required during the week prior to her assessment.

⁶¹ Exs. E6, E20.

⁶² Ex. 1; *see also* E T hearing testimony.

⁶³ Currently requires, and required during the week prior to her assessment.

⁶⁴ Exs. E8, E20.

⁶⁵ Ex. E8.

⁶⁶ Ex. 1; *see also* E T hearing testimony.

⁶⁷ Currently requires, and required during the week prior to her assessment.

4. Toileting

Mr. N asserts that his mother does not only need cueing with regard to toilet use, but also requires PCA assistance with wiping, washing, and other hygiene-related processes.⁶⁸ Ms. Norton in fact assessed Ms. N as requiring limited assistance from one person for toileting, and gave her a code of 2/2. In order to receive more PCA time for toileting, Ms. N would need to demonstrate either that she requires weight-bearing support, or that she is fully dependent with toileting at least three times per week.⁶⁹ There is no evidence of this in the record. Accordingly, the Division's coding of Ms. N's toileting needs was correct.

5. Bathing

Mr. N asserts that his mother requires PCA assistance with getting into and out of the bath tub and with washing her body.⁷⁰ Ms. Norton assessed Ms. N as requiring limited assistance from one person in getting into and out of the bath tub, but as needing only cueing support for washing her body and hair, and gave her a code of 2/2.⁷¹ The PCA recipient has the burden of showing that she requires physical assistance with the bathing activity itself as well as with the transfers, but the hearing testimony on this point was equivocal. Accordingly, the Division's CAT coding of Ms. N's bathing needs was correct.

6. Medication

Ms. Norton found that Ms. N did not need help with her medications.⁷² Mr. N asserts, however, that his mother requires PCA "assistance with medication reminder set up once a day."⁷³

At hearing both Ms. Norton and Ms. Fey-Merritt testified that the PCA program does not cover non-physical assistance such as cueing, coaching, and supervision. This is *generally* true.⁷⁴ However, 7 AAC 125.030(d) specifically authorizes Personal Care Assistance Services for:

⁶⁸ Ex. 1; *see also* E T hearing testimony.

⁶⁹ *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 2, 2012); *see also* Ex. E9.

⁷⁰ Ex. 1; *see also* E T hearing testimony.

⁷¹ Ex. E11.

⁷² Ex. E12.

⁷³ Ex. 1; *see also* E T hearing testimony.

⁷⁴ *See* 7 AAC 125.010(a); 7 AAC 125.020(e).

- (1) assisting the recipient to self-administer routine oral medication, eye drops, and skin ointments; that assistance may include reminding the recipient and placing a medication within the recipient's reach

There was no factual dispute as to Ms. N's *need* for supervision and cueing with regard to the taking of her medications; her cognitive deficiencies are well documented. Rather, the Division believed that its regulations did not authorize it to award PCA time for supervision and cueing for medications. This belief was clearly mistaken based on 7 AAC 125.030(d)(1), above. Accordingly, the Division must include PCA time for the assistance with the self-administration of Ms. N's medications at the level of limited physical assistance by one PCA (code 2/2).

7. Eating

Ms. Norton reported on the CAT that Ms. N has no mechanical difficulties with eating.⁷⁵ However, Ms. T testified at hearing that that she has to monitor Ms. N while she eats and drinks because Ms. N chokes on her food and water.

At hearing Ms. Norton and Ms. Fey-Merritt defended the CAT code assessed for eating based on the general rule (referenced above) that the PCA program does not cover non-physical assistance such as coaching and supervision. However, 7 AAC 125.030(b)(5)(C) specifically authorizes Personal Care Assistance Services for "supervising the eating and drinking of a recipient who has swallowing, chewing, or aspiration difficulties." That is the situation here. Accordingly, the Division must include PCA time for the supervision for Ms. N's meals.

IV. Conclusion

The Division was correct to approve Ms. N for 6.5 hours per week of PCA services in the areas of bathing, toilet use, access to medical appointments, and escort services. However, as demonstrated above, Ms. N is also eligible for additional PCA time in the areas of bed mobility, transfers, dressing/undressing, medication, and eating. 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. Ms. N has the right to request a new hearing should she assert that the new PCA Service Level is inconsistent with this decision.

DATED this 3rd day of October, 2012.

Signed

Jay Durych
Administrative Law Judge

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

⁷⁵ Exs. E9, E20.