



“moving to and from the toilet, commode, bedpan, or urinal; transfers on and off a toilet or commode; general hygiene care of a colostomy, ileostomy, or eternal catheter . . . or *other routine incontinence care.*”<sup>3</sup>

When activities that fall within the regulatory definition of "transfers" are performed incident to toileting, those activities are best assessed, under the CAT, within the ADL of toilet use. To do otherwise can result in the award of duplicate PCA time, under separate ADLs, for the performance of the same activity. Accordingly, Section III(C)(2) at page 7 of the ALJ's proposed decision is modified by adoption of the above analysis and by deleting the ten “toileting-related” transfers. V qualifies for two non-mechanical transfers at five minutes each, for a total of 10 transfer minutes per day, plus ten toileting episodes at 12 minutes each, for a total of 120 toileting minutes per day.<sup>4</sup> Adding the transfer and toileting time together results in a total of 130 minutes of PCA time per day between these two ADLs, a decrease of 50 minutes from the amount of PCA time provided under the ALJ's proposed decision.

*B. Dressing and Undressing*

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.<sup>5</sup> The nurse-assessor found that a dressing frequency of twice per day is appropriate (*i.e.*, once in the morning and once at night). In his proposed decision, the ALJ increased the frequency for dressing to six times per day under the rationale that “the Ws credibly testified that, *as a result of incontinence*, their son requires the undressing and re-dressing of his lower body as many as 10 times per day.”<sup>6</sup>

The ALJ was correct that the activities which V's PCA must perform for incontinence care technically involve "dressing" as defined by regulation. However, the ADL of toileting covers “routine incontinence care.”<sup>7</sup> Additionally, the CAT's definition of "toilet use" is broader than that of the regulation and includes consideration of how a person “adjusts clothes.”<sup>8</sup>

The PCA regulations and the CAT should be construed such that a particular activity falls within only one ADL. When activities that fall within the regulatory definition of "dressing" are performed incident to toilet use, those activities are best assessed, under the CAT, within the ADL of

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<sup>3</sup> 7 AAC 125.030(b)(6) (emphasis added).

<sup>4</sup> The number of toileting episodes does not increase because the 10 toileting-related transfers are each subsumed within their corresponding toileting episode.

<sup>5</sup> 7 AAC 125.030(b)(4).

<sup>6</sup> Proposed Decision at 9 (emphasis added).

<sup>7</sup> 7 AAC 125.030(b)(6)(D).

<sup>8</sup> See Exhibit E at 9.

toilet use. This avoids the assessment of duplicate PCA time under separate ADLs for the performance of the same activity. Accordingly, Section III(C)(4) at pages 8-9 of the ALJ's proposed decision is modified by substitution of the foregoing analysis, and by deleting the four "toileting-related" dressings/undressings. V will receive 2 dressings / undressing under the ADL of dressing at 11.25 minutes each, for a total of 22.5 dressing minutes per day.

**II. Revised PCA Award.**

In accordance with AS 44.64.060(e)(3), the undersigned revises the quantity of PCA time awarded by the ALJ's proposed decision as set forth above.

**III. Proposed Decision Adopted as Modified Above.**

Except to the extent modified above, all factual findings contained in the ALJ's proposed decision, and all legal conclusions not inconsistent with the above, are hereby adopted. This Commissioner's Decision, and the ALJ's proposed decision dated January 31, 2013 (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 25th day of February, 2013.

By: Signed  
Jared C. Kosin  
Executive Director, Office of Rate Review  
Department of Health and Social Services

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

In the Matter of:	)	
	)	
V W	)	OAH No. 12-0957-MDS
	)	HCS Case No.
_____	)	Medicaid ID No.

**DECISION**

**I. Introduction**

V W, a 13-year-old boy, applied through his representative for Medicaid Personal Care Assistant (PCA) services.<sup>9</sup> On November 19, 2012 the Division of Senior and Disabilities Services (Division) performed an assessment to determine V's eligibility for PCA services,<sup>10</sup> and on November 30 it gave notice that V had been found eligible to receive 21.75 hours per week of these services.<sup>11</sup> V promptly requested a hearing,<sup>12</sup> asserting that the amount of PCA services for which he had been found eligible was insufficient for his needs.

V's hearing was held on January 14, 2013. V attended the hearing and testified briefly on his own behalf, as did his parents (K and S W) as well as S F and C T of No Name. E A of No Name represented V at the hearing. The Division was represented by Shelly Boyer-Wood, who participated by phone. Suzanne Mittlestadt, a Health Program Manager employed by the Division, also participated by phone and testified on behalf of the Division. The record closed at the end of the hearing.

This decision concludes that the Division's scoring as to the extent of V's need for assistance was correct with regard to the activities of daily living (ADLs) of body mobility, transfers, dressing, and bathing, but that V requires a greater level of assistance with the ADLs of locomotion, toileting, and personal hygiene. In addition, V qualifies for a greater frequency of services with regard to the ADLs of transfers, locomotion, dressing, and toilet use. Accordingly, the Division's decision is affirmed in part and reversed in part.

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<sup>9</sup> Exs. D1, E. The exact date Mr. W's application was submitted to the Division is not in the record.  
<sup>10</sup> Ex. E.  
<sup>11</sup> Ex. D1.  
<sup>12</sup> Ex. C.

## II. Facts

### A. *V's Diagnoses and Relevant Medical History*

V was struck by a car while riding his bicycle in the summer of 2012.<sup>13</sup> He suffered a spinal cord injury and has lost the use of his legs, as well as other consequences explored more fully below. He has an additional history of developmental delay and reactive airway disease.<sup>14</sup>

V lives with his family. His father, K W, is a disabled veteran. For this reason, Mr. W is unable to provide his son with as much physical assistance as another person might be able to provide.

V, age 13, weighed 188 pounds at the time of his assessment.<sup>15</sup> His size is important as it relates to his ability to move himself using his arms. His T2 spinal cord injury, in addition to causing paraplegia, has left him incontinent<sup>16</sup> and has led to diagnoses, as of October 29, 2012, of cervical instability, essential hypertension, autonomic dysreflexia, neurogenic bowel, neurogenic bladder, and mild bilateral spasms of the lower extremities.<sup>17</sup> V has to wear an Aspen rigid cervical collar at all times to prevent spinal cord damage at the cervical level.<sup>18</sup>

V's physical injuries have also affected him psychologically. He is sometimes oppositional and uncooperative with those attempting to assist him.<sup>19</sup>

### B. *V's Functional Abilities as Determined by the Division*

Moli Atanoa, R.N. of DSDS assessed V for PCA eligibility on November 19, 2012.<sup>20</sup> Ms. Atanoa's assessment is recorded and scored on the Division's No Assessment Tool or "CAT." Ms. Atanoa found that V has the following abilities and limitations with regard to his Activities of Daily Living (ADLs):<sup>21</sup>

Body mobility / bed mobility:<sup>22</sup> Ms. Atanoa reported that she was told V sleeps in a hospital bed with side rails, and that his father and uncle assist him with repositioning due to the paralysis in his lower extremities. She reported observing V's father and uncle reposition V in his bed using a Hoyer sling with one person on each side of the bed holding onto the sling (coded / scored 3/2).

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<sup>13</sup> Ex. 2 p.1.

<sup>14</sup> *Id.*

<sup>15</sup> Ex. E9.

<sup>16</sup> Ex. E9.

<sup>17</sup> Ex. 2 p.1.

<sup>18</sup> Ex. 4 p.1.

<sup>19</sup> Ex. 2. p.2.

<sup>20</sup> Ex. E.

<sup>21</sup> Exs. E4 - E19; *see also* 7 AAC 125.199(1).

<sup>22</sup> Ex. E6.

Transfers:<sup>23</sup> Ms. Atanoa reported that she was told V is transferred using a Hoyer lift because his legs cannot bear weight. She reported observing V being repositioned by his father and uncle using the Hoyer sling, and stated that V may require oversight by a therapist during transfers due to his spinal cord injury (coded / scored 4/2).

Locomotion:<sup>24</sup> Ms. Atanoa reported that she was told V moves about the home using a wheelchair, which he propels using his arms, but that outside the home V must be pushed in his wheelchair because his arms become fatigued when traveling longer distances. She reported observing V in the High Fowler's position (patient's head raised 80-90 degrees) (coded / scored 0/1).

Dressing:<sup>25</sup> Ms. Atanoa reported that she was told V can put shirts on and take them off by himself, but that he requires assistance to dress his lower extremities due to his paralysis. She also reported being told that V wears TED hose and leg braces on both legs, and also a Miami J neck brace; she also observed this. She reported observing V raising his arms above his head, placing his hands behind his head while in bed, and sitting in bed in a High Fowler's position (coded / scored 3/2).

Toileting:<sup>26</sup> Ms. Atanoa reported that she was told V is incontinent as to bladder and bowel, wears adult diapers, is catheterized by his mother five times per day, and is given a suppository once per day (coded / scored 3/2).

Personal Hygiene:<sup>27</sup> Ms. Atanoa reported that she was told V is able to comb his hair, brush his teeth, and wash and dry his face. She observed that V had a good range of motion in his upper extremities and was well groomed for the assessment (coded / scored 0/1).

Bathing:<sup>28</sup> Ms. Atanoa reported that she was told V is transferred onto a shower chair, pushed into a roll-in shower, and assisted in washing his back side and legs each day. She reported that V had a mechanical lift for transfers, a good range of motion in his upper extremities, and that V should be able to actively participate in bathing (coded / scored 3/2).

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<sup>23</sup> Ex. E6.

<sup>24</sup> Ex. E7.

<sup>25</sup> Ex. E8.

<sup>26</sup> Ex. E9.

<sup>27</sup> Ex. E10.

<sup>28</sup> Ex. E11.

### III. Discussion

#### A. *The PCA Program - Overview*

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>29</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>30</sup>

#### B. *Alaska's PCA Program - Use of the No Assessment Tool (CAT)*

The Department uses the No Assessment Tool or "CAT" 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).<sup>31</sup> The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.<sup>32</sup>

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.<sup>33</sup> 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.

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<sup>34</sup>); **3** (the

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<sup>29</sup> 7 AAC 125.010(a) [emphasis added].

<sup>30</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>31</sup> See 7 AAC 125.010(a).

<sup>32</sup> Ex. E.

<sup>33</sup> See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (Exs. B29 - B30).

<sup>34</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."

person requires extensive assistance<sup>35</sup>); **4** (the person is totally dependent<sup>36</sup>). 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).

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).

The CAT also codes or scores certain activities known as "instrumental activities of daily living" (IADLs).<sup>37</sup> However, IADLs are not at issue in this case.

**C. How Much PCA Time is V Eligible to Receive in This Case?**

V's parents provided a written statement specifying seven particular activities as to which they believe their son's CAT was incorrectly scored.<sup>38</sup> These areas are (1) body mobility, (2) transfers, (3) locomotion, (4) dressing, (5) toileting, (6) personal hygiene and grooming, and (7) bathing. V's parents contest both the level of required assistance determined by the Division and the amount of time awarded for each particular task.

Initially, it should be noted that, due to the Division's recent amendment of its PCA regulations, the nurse assessor no longer has the discretion to determine how much time it actually takes to perform a given ADL. Under PCA regulations in effect until January, 2012, the Division would provide a recipient with time for a particular ADL based on the assessor's perception of how much time would reasonably be required to perform the activity at issue (up to a maximum level specified by regulation).<sup>39</sup> Currently, however, the self-performance code and support code for the specific activity automatically dictate the amount of PCA time awarded.<sup>40</sup> Thus, even were the Division to agree that the amount of time provided by the formula is insufficient for a particular PCA recipient's needs, the

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<sup>35</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>36</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>37</sup> Ex. E26.

<sup>38</sup> Ex. 1.

<sup>39</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

<sup>40</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.



regulations do not provide the Division with the discretion to increase the amounts specified by the formula.

*1. Body Mobility*

For the ADL of body mobility, PCA time is allowed when a non-ambulatory person requires physical assistance to reposition himself in a bed or chair, or to perform range of motion and stretching exercises.<sup>41</sup> The Division found that V requires extensive physical assistance from one person for bed mobility (CAT score of 3/2). V seeks a finding that he is totally dependent as to body mobility, and that he requires two people to maneuver him, which would correspond to a CAT score of 4/3.

In order to be found fully dependent as to body mobility, an applicant must require full performance of the activity by his caregiver during the entire week preceding the assessment.<sup>42</sup> However, the assessment states that V is able to maintain the high Fowler's position unassisted, which shows he is able to perform some body positioning himself. Accordingly, the preponderance of the evidence indicates that the Division was correct to determine that V requires extensive assistance with body mobility (self-performance score of 3), but is not totally dependent.

With regard to the appropriate support score, the Division's own assessment indicates that, when V requires assistance, he requires assistance from two people, and this was supported by K W's hearing testimony. Accordingly, a score of 3/3 is appropriate for the ADL of body mobility.

With regard to frequency, the Division found that a frequency of four times per day is appropriate. V's parents assert that their son must be repositioned at least ten times per day. They testified that V must be repositioned incident to each catheterization. Their testimony on this matter is credible, and would result in a higher frequency than four occasions per day. However, additional transfers have been authorized in this decision (see discussion immediately below). Because many incidents of body positioning are associated with transfers, increasing the frequency of body positioning *and* the frequency of transfers would result in a duplication of services. The amount of time awarded by the CAT for positioning is the same as the amount awarded for non-mechanical transfers.<sup>43</sup> Accordingly, in this context the Division's assigned frequency of four repositions per day is sufficient.

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<sup>41</sup> 7 AAC 125.030(b)(1); Ex. D2; Suzanne Mittlestadt hearing testimony.

<sup>42</sup> Ex. E6.

<sup>43</sup> Ex. E29.

## 2. Transfers

For the ADL of transferring, PCA time is allowed when a person requires physical assistance to move between one surface and another (including to or from a bed, chair, or wheelchair), and/or when a person requires physical assistance to move from a lying or sitting position to a standing position.<sup>44</sup>

The Division found that V is totally dependent as to transfers (CAT score 4/2). For V to qualify for additional PCA time in this category he must demonstrate that he requires more than the two transfers per day found necessary by the assessment. The assessor's notes indicate that two transfers per day were authorized based on the assessor's understanding that it was only necessary to transfer V from his bed to his wheelchair in the morning, and from his wheelchair back to his bed at night.<sup>45</sup> However, V's parents point out that their son is incontinent and that it is necessary to transfer him every time he has an accident.<sup>46</sup> The assessment found that V requires toileting five times per day<sup>47</sup> (or about once every 3.2 hours during waking hours); the Ws assert that their son requires toileting ten times per day<sup>48</sup> (or about once every 1.6 hours during waking hours). The Ws' testimony on this point was credible, and they are necessarily more familiar with the frequency with which their son requires toileting than the assessor could be expected to be. Accordingly, the preponderance of the evidence indicates that V requires toileting ten times per day, which in turn requires at least ten transfers per day.<sup>49</sup>

In summary, the Division correctly assigned V a score of 4/2 as to transfers. However, due to toileting difficulties resulting from his paraplegia, the Division should provide an additional ten transfers per day. Those ten transfers, added to the two transfers per day otherwise found necessary by the Division, result in a total of 12 transfers per day, seven days per week.

## 3. Locomotion

For the ADL of locomotion, PCA time is allowed when a person requires assistance with locomotion within the home, outside the home to keep a medical or dental appointment, or when doing prescribed exercises.<sup>50</sup> The Division found V to be independent as to locomotion once transferred into

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<sup>44</sup> 7 AAC 125.030(b)(2).

<sup>45</sup> Ex. E6.

<sup>46</sup> Ex. 1 p.2; K W hearing testimony.

<sup>47</sup> Ex. E9.

<sup>48</sup> Ex. 1 p. 4; K W hearing testimony.

<sup>49</sup> The CAT excludes transfers to and from the bath and the toilet. However, as discussed above, due to his incontinence, Mr. W is generally not transferred to the toilet. Rather, he generally has an accident and is cleaned-up afterward, or he is catheterized. Accordingly, this exclusion does not apply to Mr. W's situation.

<sup>50</sup> 7 AAC 125.030(b)(3).

his wheelchair (CAT score 0/1).<sup>51</sup> V's parents assert that their son requires extensive assistance from one person (CAT score 3/2).<sup>52</sup> They testified that their son requires extensive assistance because he has poor arm strength, and because his wheelchair had a flat tire at the time of the assessment.

The evidence indicates that, due to his lack of arm strength and core strength, V is not completely independent in his wheelchair. On the other hand, the Ws' testimony does not support a finding that their son requires extensive assistance. Rather, the preponderance of the evidence indicates that V requires limited assistance by one person while in his wheelchair. Accordingly, a score of 2/2 is appropriate for the ADL of locomotion.

With regard to frequency, the Division assigned a frequency of zero times per day; the Ws seek a frequency of at least six times per day.<sup>53</sup> Based on the number of times per day that locomotion would be required just for toileting-related transfers, it is more likely than not that V requires limited assistance with locomotion six times per day, seven days per week.

#### 4. Dressing and Undressing

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.<sup>54</sup> The Division found V to require extensive physical assistance from one person for dressing (CAT score 3/2) based largely on Ms. Atanoa's observation of V maintaining a High Fowler's position during the assessment.<sup>55</sup> On the other hand, V's parents assert that their son is fully dependent as to dressing because they need to dress his lower body in addition to assisting with his upper body.<sup>56</sup>

The Ws' testimony on this issue was credible. However, their testimony indicates that their son performs some portion of the dressing and undressing of his upper body. This being the case, it cannot be said, using the CAT's definitions, that V is fully dependent as to dressing. Accordingly, the preponderance of the evidence shows that the Division was correct to assign V a score of 3/2 as to dressing.

With regard to frequency, the Division found that a frequency of twice per day is appropriate (*i.e.*, once in the morning and once at night). However, the Ws credibly testified that, as a result of incontinence, their son requires the undressing and re-dressing of his lower body as many as 10 times

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<sup>51</sup> Ex. E7.

<sup>52</sup> Ex. 1 p.2; K W hearing testimony.

<sup>53</sup> Ex. 1 p.4; Ex. E7.

<sup>54</sup> 7 AAC 125.030(b)(4).

<sup>55</sup> Ex. E8.

<sup>56</sup> Ex. 1, pp. 2, 4; K W hearing testimony.

per day.<sup>57</sup> Based on this, they request a dressing frequency of six times per day.<sup>58</sup> The Ws' request is supported by the evidence. Accordingly, a frequency of six times per day, seven days per week is appropriate for the ADL of dressing.

#### 5. Toilet Use

For the ADL of toilet use, PCA time is limited by regulation to time spent moving to and from the toilet, transfers on and off the toilet, general hygiene care of a colostomy, ileostomy, or external catheter, and inserting and removal of a nonmedicated suppository, digital stimulation, or other routine incontinence care.<sup>59</sup> The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.<sup>60</sup>

The Division found V to require extensive assistance from one person for toilet use (CAT score 3/2).<sup>61</sup> The Division's assessment does not indicate, however, what aspect of toileting it asserts V is able to perform for himself. The undisputed evidence is that V is paraplegic and incontinent. Those facts, in the absence of specific evidence identifying aspects of toileting which V can perform himself, dictate the finding that V is completely dependent as to toileting (CAT score of 4/2).<sup>62</sup>

With regard to frequency, the Division assessed V as needing toileting only the five times per day that V's mother indicated she catheterized her son (or about once every 3.2 hours during waking hours).<sup>63</sup> However, this assessment of frequency does not take cognizance of the additional episodes of toileting required by V's incontinence. V's parents assert that their son requires toileting ten times per day<sup>64</sup> (or about once every 1.6 hours during waking hours). The Ws' testimony on this point was credible, and they are necessarily more familiar with the frequency with which their son requires toileting than the assessor could be expected to be. Given V's incontinence, it is more likely than not that he requires toileting at a frequency of ten times per day, seven days per week.

#### 6. Personal Hygiene

For the ADL of personal hygiene, PCA time is allowed for washing and drying the face, hands, and perineum; nail care, skin care, mouth and teeth care; brushing and combing the hair; shaving when

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<sup>57</sup> Ex. 1 p. 2; K W hearing testimony.

<sup>58</sup> Ex. 1 p. 4; K W hearing testimony.

<sup>59</sup> 7 AAC 125.030(b)(6). For reasons that do not appear in the record, the regulation does not cover assisting the recipient with necessary personal hygiene after using the toilet. The PCA regulation for personal hygiene, 7 AAC 125.030(b)(7), likewise fails to cover these necessary activities.

<sup>60</sup> The CAT form defines toilet use as "[h]ow person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, *cleanses* . . . manages ostomy or catheter, *adjusts clothes*" (Ex. E9, emphasis added).

<sup>61</sup> Ex. E9.

<sup>62</sup> Ex. E9.

<sup>63</sup> Ex. E9.

<sup>64</sup> Ex. 1 pp. 3, 4; K W hearing testimony.

done separately from bathing; and shampooing the hair when done separately from bathing.<sup>65</sup> The Division found V to be independent as to personal hygiene (CAT score 0/1). V's parents assert that their son requires extensive assistance with personal hygiene.<sup>66</sup>

Given their son's paraplegia, the Ws' testimony that their son requires assistance applying lotions to his skin, and with cleaning and applying medication to his perineum, is credible. On the other hand, V is able to use his arms and can perform all other personal hygiene tasks. Accordingly, it is more likely than not that V requires limited physical assistance with his personal hygiene, and a score of 2/2 is therefore appropriate.<sup>67</sup>

#### 7. Bathing

For the ADL of bathing, PCA time is allowed for "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."<sup>68</sup> The Division found V to require extensive assistance from one person as to bathing (CAT score 3/2).<sup>69</sup> V's parents assert that their son is totally dependent as to bathing.<sup>70</sup>

The Ws do not assert that their son is unable to perform *any* part of bathing; they assert only that the aspects of bathing as to which their son is fully dependent *outweigh* those aspects he is able to perform himself or with assistance.<sup>71</sup> However, based on the definition in the regulation and in the CAT, in order to obtain a rating of total dependence as to bathing, the recipient must have *all tasks* associated with bathing done for him. Based on this definition, the Division was correct to find that V requires extensive assistance from one person as to bathing (CAT score 3/2).<sup>72</sup>

#### IV. Conclusion

The Division's scoring as to the extent of V's need for assistance was correct with regard to the ADLs of body mobility, transfers, dressing, and bathing, but V requires a greater level of assistance with the ADLs of locomotion, toileting, and personal hygiene. In addition, V qualifies for a greater frequency of services with regard to the ADLs of transfers, locomotion, dressing, and toilet use. Accordingly, the Division's decision is affirmed in part and reversed in part. The Division must issue a

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<sup>65</sup> 7 AAC 125.030(b)(7).

<sup>66</sup> Ex. 1 p. 4.

<sup>67</sup> The Ws and the Division agree that the personal hygiene tasks are required once each day, so there is no dispute between the parties as to the appropriate frequency for this ADL.

<sup>68</sup> 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical (*see* Ex. E11).

<sup>69</sup> Ex. E11.

<sup>70</sup> Ex. 1 pp. 3, 4.

<sup>71</sup> Ex. 1 pp. 3, 4.

<sup>72</sup> The Ws and the Division agree that bathing is required once each day, so there is no dispute between the parties as to the appropriate frequency for this ADL.

new PCA Service Level Authorization Letter, consistent with this decision, within 30 days of the date that this decision becomes final.

This decision does not calculate the hours per week of PCA services which V is eligible to receive. If the Ws disagree with the Division's calculation of the specific number of hours of PCA services for which V is eligible, they may request a new hearing on that issue.

DATED this 31st day of January, 2013.

Signed  
\_\_\_\_\_  
Jay Durych  
Administrative Law Judge

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