

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

In the Matter of:	)	
	)	
E Q	)	OAH No. 13-1185-MDS
	)	HCS Case No.
_____	)	Medicaid ID No.

**DECISION**

**I. Introduction**

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (Division) correctly assessed the amount of Medicaid Personal Care Assistant (PCA) services for which E Q is currently eligible. The Division decreased Ms. Q's PCA services from 22 hours per week to 12 hours per week effective August 19, 2013.<sup>1</sup> This decision concludes, based on the evidence in the record, that the Division's scoring as to the extent of Ms. Q's need for assistance was correct with regard to shampooing, oxygen administration, and shopping, but that Ms. Q requires a greater level of assistance with regard to multi-level locomotion, personal hygiene, medication administration, and medical escort. In addition, Ms. Q qualifies for a greater frequency of service with regard to multi-level locomotion, personal hygiene, and bathing. Accordingly, the Division's decision is affirmed in part and reversed in part.

**II. Facts**

**A. Ms. Q's Medical Diagnoses**

Ms. Q is 85 years old and weighs about 148 pounds.<sup>2</sup> She lives alone in a private home.<sup>3</sup> Her current or recent diagnoses include chronic kidney disease / chronic renal failure, adenocarcinoma / malignant neoplasm of the lungs / lung cancer, severe chronic obstructive pulmonary disease (COPD), abnormal thyroid function, anemia / thrombocytopenia, essential hypertension, cervical spinal stenosis, cataract, hearing loss, weight loss, memory loss with mild dementia, depression, sleepwalking, ataxia, tremor, dizziness, and cachexia.<sup>4</sup> Ms. Q is weak and has no energy; she is able to be on her feet for only a short period of time before she must lie down

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<sup>1</sup> Ex. D1.

<sup>2</sup> Ex. E1; Ex. 2 p. 1.

<sup>3</sup> Ex. E1.

<sup>4</sup> Ex. 1; Ex. 2 p. 1; Ex. 2 p. 14; Ex. 2 p. 22; Ex. 2 p. 45; Ex. 3 p. 1; Ex. 5 p. 2; Ex. E3. Ataxia is the loss of the ability to coordinate muscular movement; cachexia is weight loss, wasting of muscle, loss of appetite, and general debility that can occur as a result of a chronic disease. See American Heritage Dictionary of the English Language, Fourth Edition (Houghton Mifflin Company 2009), accessed online on January 13, 2014 at <http://www.thefreedictionary.com/cachexia>.

and rest.<sup>5</sup> Bernard Farzin, M.D., Ms. Q's primary treating physician since July 2012, has stated that Ms. Q's conditions are degenerative and that her dependence on others will likely increase over time.<sup>6</sup>

On September 19, 2013 Dr. Farzin wrote a letter to the Division stating in relevant part:<sup>7</sup>

Ms. Q's overall level of intellectual functioning is significantly compromised and she experiences memory loss. Therefore, it is essential she have an escort to medical appointments and assistance with medications. Ms. Q requires assistance with meal preparation, medication reminders, completion of household tasks, personal hygiene . . . [and] assistance with her one flight of outside stairs.

Ms. Q is dependent on others for most activities of daily living and all instrumental activities of daily living . . . .

Ms. Q's current and recent medications include Advair, amiodipine, aspirin, citalopram, cyanocobalamin, levalbuterol, metoprolol, prednisone, and trazadone.<sup>8</sup> On September 27, 2012 Dr. Farzin wrote Ms. Q a prescription for lavatory assistance, assistance with shampooing of hair separate from bathing, supervision during meals to prevent choking, and assistance with locomotion when going up or down stairs.<sup>9</sup>

A number of medical records were submitted to the Division, on Ms. Q's behalf, in conjunction with Ms. Q's submission of a PCA service plan amendment request dated November 26, 2013.<sup>10</sup> These medical records appear to be relevant to Ms. Q's service plan amendment request. However, although these records were admitted into evidence in this case, they have little relevance here because they relate to Ms. Q's medical condition during times *well after* the assessment and determination at issue here.

***B. Ms. Q's Service Utilization History and Relevant Case Procedural History***

Ms. Q has received PCA services since March 2012.<sup>11</sup> She does not currently receive Medicaid Home and Community-Based Waiver services.<sup>12</sup>

Ms. Q was initially assessed regarding her eligibility for PCA services on March 8, 2012.<sup>13</sup> The Division's findings from the 2012 assessment, as to the matters at issue here, were:

Locomotion (multi-level dwelling): Assessed as being independent (scored 0/0).<sup>14</sup>

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<sup>5</sup> Ex. 1 p. 1.

<sup>6</sup> Ex. 4 p. 1.

<sup>7</sup> Ex. 4 p. 2.

<sup>8</sup> Ex. 2 p. 6; Ex. 2 p. 30.

<sup>9</sup> Ex. 2 p. 48.

<sup>10</sup> Ex. 5.

<sup>11</sup> Ex. F.

<sup>12</sup> Ex. E28.

<sup>13</sup> Ex. F.

Personal Hygiene: Assessed as requiring limited assistance (scored 2/2).<sup>15</sup>

Bathing: Assessed as requiring limited assistance (scored 2/2).<sup>16</sup>

Shampooing of Hair (separately from bathing): No findings / not scored.<sup>17</sup>

Medication and Oxygen Use: Assessed as requiring assistance twice per day, seven days per week.<sup>18</sup>

Shopping: Assessed as being totally dependent (scored 3/4).<sup>19</sup>

Medical Escort: Assessed as requiring transportation to medical appointments, but as not requiring a medical escort *per se*.<sup>20</sup>

The Division found Ms. Q eligible for 22 hours per week of PCA services based on the 2012 assessment.<sup>21</sup>

Ms. Q was most recently assessed regarding her continued eligibility for PCA services on June 17, 2013.<sup>22</sup> The Division's findings from the 2013 assessment, as to the matters at issue here, were as follows:

Locomotion (multi-level dwelling): Assessed as being independent (scored 0/0).<sup>23</sup>

Personal Hygiene: Assessed as requiring supervision only (scored 1/1).<sup>24</sup>

Bathing: Assessed as requiring physical assistance as to all bathing-related activities (scored 3/2).<sup>25</sup>

Shampooing of Hair (separately from bathing): No findings / not scored.<sup>26</sup>

Medication and Oxygen Use: Assessed as requiring assistance with preparation, but not administration; frequency not indicated.<sup>27</sup>

Shopping: Assessed as requiring physical assistance (scored 2/3).<sup>28</sup>

Medical Escort: Assessed as requiring transportation to medical appointments, but as not requiring a medical escort *per se*.<sup>29</sup>

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<sup>14</sup> Ex. F7.  
<sup>15</sup> Ex. F10.  
<sup>16</sup> Ex. F11.  
<sup>17</sup> Ex. F.  
<sup>18</sup> Exs. F12, F22.  
<sup>19</sup> Ex. F28.  
<sup>20</sup> Ex. F28.  
<sup>21</sup> Ex. D1.  
<sup>22</sup> Ex. E.  
<sup>23</sup> Ex. E7.  
<sup>24</sup> Ex. E10.  
<sup>25</sup> Ex. E11.  
<sup>26</sup> Ex. E.  
<sup>27</sup> Ex. E20.  
<sup>28</sup> Ex. E26.

The Division found Ms. Q eligible for 12 hours per week of PCA services based on the 2013 assessment.<sup>30</sup>

On August 9, 2013 the Division notified Ms. Q that her PCA service level was being reduced from 22 hours per week to 12 hours per week effective August 19, 2013.<sup>31</sup> The Division's notice letter specified several reasons for the reduction in Ms. Q's PCA services. These were:

1. A change in Ms. Q's medical condition and corresponding decrease in the level of assistance required to complete certain activities of daily living and instrumental activities of daily living.

2. The fact that some of the regulations applicable to eligibility for and/or calculation of PCA time for activities of daily living were amended following Ms. Q's 2012 assessment, which amendments generally decreased the amount of PCA time allowed.

3. That Ms. Q was previously receiving certain PCA services based on a prescription from her physician, which prescription expired (and was not renewed) prior to the Division's 2013 eligibility determination.

Ms. Q requested a hearing to contest the Division's reduction of her PCA services on August 21, 2013.<sup>32</sup> The hearing was held on December 3, 2013. Ms. Q and her son and surrogate decision-maker S Q participated in the hearing by phone, represented Ms. Q, and testified on her behalf. Ms. Q's Program Coordinator T F, and her PCA M B, also participated by phone and testified on Ms. Q's behalf. Angela Ybarra (the Division's hearing representative), Denise Kichura, R.N. (the nurse who conducted the 2013 assessment), and Angelika Fey-Merritt (who prepared the service reduction notice) participated in the hearing by phone, represented the Division, and testified on behalf of the Division. The record closed at the end of the hearing.

### **III. Discussion**

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

The purpose of the Medicaid personal care services program is to provide assistance to the elderly, people with disabilities, and individuals with chronic or temporary conditions so that they can remain in their homes and communities.<sup>33</sup> Alaska's PCA program authorizes services for the purpose of providing "physical assistance with activities of daily living (ADL), physical assistance

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<sup>29</sup> Ex. E26.

<sup>30</sup> Ex. D1.

<sup>31</sup> Ex. D1.

<sup>32</sup> Ex. C.

<sup>33</sup> See Social Security Act § 1905(a)(24), codified at 42 USC 1396d(a)(24); see also 42 CFR 440.167 (defining personal care services).

with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient . . .".<sup>34</sup> The ADLs for which PCA services are provided are body mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.<sup>35</sup> PCA services are provided when the recipient requires limited or extensive assistance to perform an ADL, or when the recipient is fully dependent on the PCA to perform the ADL.<sup>36</sup> However, "[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>37</sup> Further, pursuant to 7 AAC 125.040(a)(11), PCA services are not available in cases where they would duplicate Home and Community-Based Waiver services provided under 7 AAC 130.

**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."<sup>38</sup> 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).<sup>39</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>40</sup>

The ADLs 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>41</sup> In addition, the CAT 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.

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<sup>34</sup> 7 AAC 125.010(a) [emphasis added].

<sup>35</sup> 7 AAC 125.030(b).

<sup>36</sup> 7 AAC 125.020(a).

<sup>37</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>38</sup> 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

<sup>39</sup> *See* 7 AAC 125.010(a).

<sup>40</sup> Ex. E.

<sup>41</sup> *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 December 17, 2013); *see also* Exs. B34 - B36.

The CAT's numerical scoring 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>42</sup>); **3** (the person requires extensive assistance<sup>43</sup>); **4** (the person is totally dependent<sup>44</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's 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 scores 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).

Under the PCA regulations in effect prior to January 26, 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* (up to a maximum level specified by regulation) *to perform the activity at issue*.<sup>45</sup> However, in January 2012 the PCA regulations were amended to implement a new system in which the self-performance code and support code for the specific activity *automatically dictate* the amount of PCA time awarded.<sup>46</sup>

### ***C. Applicable Burden of Proof and Standard of Proof***

In this case, because the Division is seeking to reduce existing PCA services (services which Ms. Q is already receiving), the Division has the burden of proving, by a preponderance of the evidence, that Ms. Q no longer requires her prior level of PCA services.<sup>47</sup>

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<sup>42</sup> 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." 7 AAC 125.020(a)(1).

<sup>43</sup> 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." 7 AAC 125.020(a)(2).

<sup>44</sup> Total dependence for an ADL or an IADL "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity." 7 AAC 125.020(a)(3).

<sup>45</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

<sup>46</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

<sup>47</sup> See 42 CFR 435.930, 2 AAC 64.290(e), 7 AAC 49.135, and *Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

***D. How Much PCA Time is Ms. Q Eligible to Receive in This Case?***

Initially, it is important to remember that the PCA regulations underwent significant revisions in 2012, and these amendments may be partly responsible for the decrease in the current level of Ms. Q's PCA services. Under the *old* PCA regulations and the *old* PCA assessment tool, the assessor was allowed to award as much time as the assessor thought the applicant/recipient reasonably needed to perform an ADL, up to certain specified limits, *regardless of the person's self-performance code*.<sup>48</sup> Now, however, the amount of PCA time awarded is set automatically, based on the applicant / recipient's self-performance code.<sup>49</sup> For example, a CAT code of three as to non-mechanical transfers (a transfer that uses hands-on assistance but does not use an assistive device such as a lift) gives a recipient 3.75 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*; a CAT code of four as to non-mechanical transfers gives a recipient 5 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*.<sup>50</sup>

Ms. Q does not contest all her 2013 PCA assessment scores. Rather, she contests the Division's findings as to the degree of assistance that she requires in seven specific areas.<sup>51</sup> These are locomotion (multi-level), personal hygiene, bathing, shampooing of hair separate from bathing, medication and oxygen use, shopping, and medical escort. Ms. Q's eligibility for PCA services will be addressed separately, as to each of these seven services at issue, in the order stated.

***1. Multi-Level Locomotion / Walking***

The CAT defines multi-level locomotion as "how a person moves in a multi-level house."<sup>52</sup> Ms. Kichura testified that, although the inside of Ms. Q's apartment / home is single level, there is a long set of steps leading up to her second story apartment. Ms. Q's 2013 CAT contains no narrative findings as to her ability to move from one floor to another.<sup>53</sup> The Division's findings with regard to *single-level* locomotion were that Ms. Q did not use her walker, but instead "wall-walked" down the hall unassisted, coughing as she walked.<sup>54</sup> In her letter dated November 27, 2013 Ms. Q stated that she "could possibly get down the stairs if [she] had to," but that she cannot make it up the stairs

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<sup>48</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755. The former "per unit" maximum time allowances for ADLs were as follows: body mobility - up to 5 minutes; transfers - up to 5 minutes; locomotion - up to 10 minutes; dressing and undressing - up to 15 minutes; bathing - 15 to 30 minutes; toilet use - 5 to 12 minutes per use; personal hygiene/grooming - up to 20 minutes per day.

<sup>49</sup> See Division of Senior and Disabilities Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

<sup>50</sup> *Id.*

<sup>51</sup> Ex. 1 pp. 2-3.

<sup>52</sup> Ex. E7.

<sup>53</sup> Ex. E7.

<sup>54</sup> Ex. E7.

by herself, and is at risk for falls.<sup>55</sup> At hearing, Ms. Q testified that for the last 18 months or so she has had dizziness when standing, and this could obviously affect her ability to move about on a single level as well as between levels.<sup>56</sup> Ms. Q's PCA M B, who has been Ms. Q's PCA since July 2012, testified that Ms. Q cannot negotiate the apartment building stairs by herself and that there is no elevator. Ms. Q's son testified that two to three years ago his mother fell while trying to get down these stairs and broke her right arm / shoulder.

In summary, the record contains no evidence supporting the Division's assertion that Ms. Q is independent with multi-level locomotion. The preponderance of the evidence demonstrates that Ms. Q requires, at minimum, limited physical assistance from one person for multi-level locomotion. Accordingly, Ms. Q's CAT score for this activity is revised to 2/2. With regard to frequency, Ms. Q has written that she must leave her apartment five to ten times per month for doctor appointments,<sup>57</sup> and this is consistent with her medical records and with Ms. B's testimony. The preponderance of the evidence thus indicates that a frequency of twice per week (eight times per month) is appropriate.

## 2. Personal Hygiene

For the ADL of personal hygiene, PCA time is allowed for washing and drying the face and hands, nail care, skin care, mouth and teeth care, brushing and combing the hair, shaving when done separately from bathing, and shampooing the hair when done separately from bathing.<sup>58</sup>

The Division found Ms. Q to require only set-up help and supervision with regard to personal hygiene (CAT score 1/1).<sup>59</sup> Ms. Kichura reported that Ms. Q told her at the assessment that she brushes her hair and cleans her dentures by herself. Ms. Kichura reported that she observed Ms. Q demonstrate how she picks up her comb with her right hand, that she mimicked combing her hair, that she was able to turn the water faucet on and off, and she was able to sit on the toilet (with the seat down) while she performed these tasks.

In her letter of November 27, 2013 Ms. Q stated that she does not have complete range of motion in her right arm since she broke it two to three years ago falling down the stairs (see discussion in preceding section).<sup>60</sup> Ms. Q wrote that, for this reason, her PCA must assist her with

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<sup>55</sup> Ex. 1 p. 2.

<sup>56</sup> This is consistent with and supported by Ms. Q's diagnoses of ataxia, tremor, dizziness, and cachexia.

<sup>57</sup> Ex. 1 p. 3.

<sup>58</sup> 7 AAC 125.030(b)(7). Note that, since personal hygiene *includes* the shampooing of hair when performed separately from bathing, Ms. Q is not entitled to separate PCA time for shampooing.

<sup>59</sup> All factual findings in this paragraph are based on Ex. E10.

<sup>60</sup> Ex. 1 p. 2.



personal hygiene tasks such as clipping and filing her nails, and with skin care.<sup>61</sup> These statements are supported by Ms. Q's and Ms. B's hearing testimony.

The information recoded by the Division on the CAT consisted largely of statements made to the assessor by Ms. Q. This is problematic, since Ms. Q's diagnoses include memory loss and mild dementia. Ms. Q's diagnoses also include hearing loss, and Ms. B testified that Ms. Q is hard of hearing and sometimes answers questions that she has not completely heard and understood. Accordingly, it is likely that the information which Ms. Kichura received from Ms. Q at the assessment was not totally accurate.

Accordingly, the preponderance of the evidence demonstrates that Ms. Q requires limited assistance from one person to perform personal hygiene tasks (CAT score 2/2). Frequency is returned to once per day, seven days per week, based on Ms. Q's 2012 assessment,<sup>62</sup> because the Division did not carry its burden in proving a decreased frequency.

### 3. 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>63</sup> The limitation on the maximum amount of PCA-assisted bathing time available each day varies according to the level of assistance required: persons needing limited assistance get 15 minutes per day; persons needing extensive assistance get 22.5 minutes per day; and persons who are fully dependent get 30 minutes per day.<sup>64</sup>

The Division's assessment as to Ms. Q's need for assistance with bathing was based on Ms. Q's answers to questions posed by the assessor.<sup>65</sup> However, Ms. Q's statements, as recorded on the CAT, were partly self-contradictory. On one hand, Ms. Kichura reported that Ms. Q told her that she could get into the shower without her PCA, use handrails to lower herself to a shower chair, and wash her hair and feet by herself.<sup>66</sup> On the other hand, Ms. Kichura reported that Ms. Q told her that her PCA washed her back and hair.<sup>67</sup> Based on this information Ms. Q was found to require extensive one-person assistance with bathing (CAT score 3/2). With regard to frequency, Ms. Kichura testified she was told that Ms. Q likes to take a complete bath only twice per week, and that she takes sponge baths the other five days per week.

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<sup>61</sup> Ex. 1 p. 2.

<sup>62</sup> Ex. F10.

<sup>63</sup> 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical (*see* Ex. E11).

<sup>64</sup> *See* the Division's *Personal Care Assistance Service Level Computation chart* at Ex. B34.

<sup>65</sup> Ex. E11.

<sup>66</sup> Ex. E11.

<sup>67</sup> Ex. E11.

Ms. Q does not contest her assigned CAT score of 3/2. Rather, she simply asserts that she should receive PCA time for the sponge baths as well as for the "full" baths, to a maximum of five times per week.<sup>68</sup> The PCA regulation on bathing provides time for the taking of a full-body bath / shower, *or a sponge bath*, and the regulations provide the same amount of time for a full-body bath / shower, or a sponge bath.<sup>69</sup> Accordingly, Ms. Q is entitled to 22.5 minutes per day for bathing, five days per week, regardless of whether she chooses to take a "full" bath / shower, or a sponge bath. Her bathing frequency should thus be increased to five days per week.

4. *Shampooing Hair (Separate from Bathing)*

Ms. Q has requested PCA time for shampooing her hair on the days that she does not take a "full" bath / shower.<sup>70</sup> Pursuant to 7 AAC 125.030(b)(8), washing only one's hair does not fall within the definition of "bathing." Instead, shampooing the hair, when done separately from bathing, falls within the ADL of personal hygiene.<sup>71</sup> Ms. Q has already been awarded PCA time for personal hygiene (see Section III(D)(2), above). Since the shampooing of hair, when performed separately from bathing, is considered personal hygiene, and since Ms. Q has already received PCA time for personal hygiene, she is not entitled to separate / additional PCA time for shampooing.

5. *Medication Administration and Oxygen Use*

Pursuant to 7 AAC 125.030(d)(1), personal care services include "assisting the recipient to self-administer routine oral medication, eye drops, and skin ointments," and that assistance "may include reminding the recipient and placing a medication within the recipient's reach." On the CAT, Ms. Q scored a four as to preparation / administration of her medications, and a one as to her compliance with taking her medications.<sup>72</sup> The *Division's Personal Care Assistance Service Level Computation* chart states (at Ex. B35) that these scores "may" indicate a need for assistance. If authorized, time for medication management is calculated using the same table as personal hygiene.<sup>73</sup>

In her letter of November 27, 2013 Ms. Q stated as follows:<sup>74</sup>

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<sup>68</sup> At hearing Ms. Q testified that she wants to take four "full" baths / showers per week, which, given her request for a total of five baths per week, would mean that she would now be receiving only one sponge bath per week.

<sup>69</sup> See 7 AAC 125.030(b)(8) and the Division's *Personal Care Assistance Service Level Computation* chart at Ex. B34.

<sup>70</sup> Ex. 1 p. 2.

<sup>71</sup> 7 AAC 125.030(b)(7).

<sup>72</sup> Ex. E20.

<sup>73</sup> Ex. E35.

<sup>74</sup> Ex. 1 p. 2.

I don't have the greatest memory in the world, and my [PCA] helps me keep up with my weekly medicines. M sets up my medications and helps remind me . . . . I am taking 4 medications [per day] . . . .

This statement was confirmed by the credible testimony of Ms. Q and Ms. B at hearing. Accordingly, the preponderance of the evidence indicates that Ms. Q requires limited assistance with medication administration, for two minutes per day, seven days per week.<sup>75</sup>

Pursuant to 7 AAC 125.030(d)(6), personal care services also include PCA assistance with prescribed oxygen therapy. However, the CAT limits coverage for PCA assistance with administration of oxygen to situations in which the "recipient's condition warrants professional observation for a new / recent (within thirty days) condition."<sup>76</sup> There was no hearing testimony as to exactly when Ms. Q began using oxygen. However, her medical records indicate that she did not have a prescription for oxygen at the time of her assessment in June 2013.<sup>77</sup> In addition, Ms. Kichura testified that she contacted Ms. Q's doctor's office on or after the assessment and was told that Ms. Q does not need the administration of oxygen. Accordingly, the preponderance of the evidence indicates that the Division was correct to deny Ms. Q PCA time for the administration of oxygen. Should Ms. Q receive a prescription for oxygen in the future, she may file an amendment request / change of information.

#### 6. *Shopping*

Pursuant to 7 AAC 125.030(c)(5), the IADL of shopping includes "shopping in the vicinity of a recipient's residence, not including the cost of transportation, for (A) groceries and other household items required for the health and maintenance of the recipient, including items used by the recipient and other occupants of the recipient's residence; and (B) prescribed drugs and medical supplies required by the recipient." Pursuant to 7 AAC 125.040(a)(15), Medicaid will not pay for more than four hours per month of PCA assistance with shopping. The Division's assessment found that Ms. Q requires physical assistance with shopping (CAT score 2/3).<sup>78</sup> This finding entitles Ms. Q to 45 minutes per week of PCA-assisted shopping.<sup>79</sup>

In her letter of November 27, 2013 Ms. Q admitted that she may have stated at the assessment that she sometimes goes shopping with her PCA.<sup>80</sup> However, she stated that, in the recent past, she had not been able to go shopping with her PCA because walking leaves her

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<sup>75</sup> Ex. B35.

<sup>76</sup> Ex. E13.

<sup>77</sup> Ex. 2 p. 12.

<sup>78</sup> Ex. E26.

<sup>79</sup> See the Division's *Personal Care Assistance Service Level Computation chart* at Ex. B34.

<sup>80</sup> Ex. 1 p. 3.

exhausted and she gets "worn out real quick."<sup>81</sup> At hearing, Ms. Q testified that she no longer goes out shopping and that (as of the date of the hearing) she had not gone shopping with her PCA in "months." She seeks a finding that she is fully dependent on her PCA for shopping (CAT score of 3/4), which would give her a total of 60 minutes per week.<sup>82</sup>

The preponderance of the evidence indicates that, as of the date of the hearing in this case in December 2013, Ms. Q was fully dependent on her PCA for shopping. However, the relevant period for determining the extent of assistance required by Ms. Q is the period from the week of her June 2013 assessment through the date of the Division's notice letter (August 9, 2013). Ms. Q and Ms. B both testified that Ms. Q's condition has deteriorated mainly since she was diagnosed with cancer, and that this happened since the assessment. Accordingly, the preponderance of the evidence indicates that, as of the date of the assessment and notice letter, Ms. Q was not yet fully dependent on her PCA for shopping. The Division's scoring of Ms. Q's PCA time for shopping was therefore correct.

#### 7. Medical Escort

Pursuant to 7 AAC 125.030(d)(9), personal care services include "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." The amount of PCA "medical escort" time allowed is calculated by taking the number of the recipient's documented medical and dental appointments over the past year, and dividing that number by 52 weeks.<sup>83</sup> The amount of time awarded must be "consistent with the assessment" and must also "meet the identified needs of the applicant/recipient."<sup>84</sup>

In this case, the Division found that Ms. Q needs transportation to her medical and dental appointments, but does not need a person to escort her to the appointment.<sup>85</sup> In her letter of November 27, 2013 Ms. Q asserted that she requires a PCA escort to her medical appointments.<sup>86</sup> She stated that she has five to ten doctor appointments per month, plus appointments for blood work, lung function tests, and CAT scans (*i.e.* three more medical appointments per month). She further stated that, at these appointments, her PCA (1) gets a wheelchair to transport her from the car to the doctor's office; (2) talks to the doctors and takes notes during the appointments; and (3)

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<sup>81</sup> Ex. 1 p. 3.

<sup>82</sup> Ex. 1 p. 3; Ex. B34.

<sup>83</sup> See the Division's *Personal Care Assistance Service Level Computation chart* at Ex. B36.

<sup>84</sup> See the Division's *Personal Care Assistance Service Level Computation chart* at Ex. B36.

<sup>85</sup> Ex. E26.

<sup>86</sup> All subsequent facts found in this paragraph are from Ex. 1, p. 3.

assists Ms. Q in providing specimens for lab tests; and (4) assists Ms. Q with her prescriptions. These statements were corroborated by Ms. B's testimony at hearing.

Based on Ms. Q's diagnoses, and especially her cognitive problems, Ms. Q is clearly entitled to medical escort services under 7 AAC 125.030(d)(9). The only question is the extent of the services she should receive. The preponderance of the evidence indicates that Ms. Q has an average of eight medical appointments (including both doctor appointments and lab tests) per month. This equates to 96 appointments per year, or (dividing by 52) approximately 1.9 appointments per week.

Finally, no evidence was presented as to the average length of Ms. Q's medical appointments, and the regulations provide no formula for calculating an arbitrary figure. Following issuance of this decision, the parties should confer and determine the average duration of Ms. Q's medical appointments. Should Ms. Q not be satisfied as to the Division's determination, she may request a hearing on that issue.

#### **IV. Conclusion**

Based on the evidence in the record, the Division's scoring as to the extent of Ms. Q's need for assistance was correct with regard to shampooing, oxygen administration, and shopping. However, Ms. Q requires a greater level of assistance with regard to multi-level locomotion, personal hygiene, medication administration, and medical escort. In addition, Ms. Q qualifies for a greater frequency of service with regard to multi-level locomotion, personal hygiene, and bathing. Accordingly, the Division's decision is affirmed in part and reversed in part.

DATED this 15th day of January, 2014.

*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 24<sup>th</sup> day of January, 2014.

By: *Signed*  
Name: Jay D. Durych  
Title: Administrative Law Judge, DOA/OAH

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