

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

In the Matter of:)
)
 K M) OAH No. 13-1430-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 Mr. K M is eligible. The Division decreased Mr. M's PCA services from 25.5 hours per week to seven hours per week effective September 22, 2013.¹ This decision concludes, based on the evidence in the record, that the Division's determination of the PCA services for which Mr. M is eligible was substantially correct. The only error made by the Division in determining Mr. M's current level of PCA services was as to the appropriate frequency of assistance with transfers. Accordingly, the Division's decision is modified as to the appropriate frequency of transfers, and affirmed in all other respects.

II. Facts

A. Mr. M's Medical Diagnoses

Mr. M is 70 years old² and weighs 168 pounds.³ He lives with his wife in a second floor apartment in a building equipped with an elevator.⁴ His primary language is Korean.⁵ His primary diagnoses are diabetes mellitus (type 2) and degenerative disk disease of the lumbar spine.⁶ His secondary diagnoses include cervicalgia, degenerative disk disease of the cervical and sacral spine, hepatitis B, hyperlipidemia, hypersomnia, hypertension, peripheral neuropathy, proteinuria, and sleep apnea.⁷ He takes a number of prescription medications, including Gabapentin, Hydrochlorot, Lantus, Metformin, Novolog, and Tamsulosin.⁸

¹ Ex. D1.
² Ex. E1.
³ Ex. E23.
⁴ Ex. E1.
⁵ Ex. E1.
⁶ Ex. E3.
⁷ Ex. E3.
⁸ Ex. E20.

B. The Division's Findings From the 2010 and 2013 Assessments

Mr. M was previously assessed as to eligibility for PCA services on July 2, 2010.⁹ Based on his 2010 assessment, Mr. M was found to require the following levels of assistance with his ADLs:¹⁰ body mobility - required supervision and set-up help only; transfers - required extensive one-person physical assistance; locomotion - required limited one-person physical assistance; dressing - required limited one-person physical assistance; eating - independent, requiring set-up help only; toilet use - required limited one-person physical assistance; personal hygiene - required limited one-person physical assistance; and bathing - required limited one-person physical assistance. At the same 2010 assessment, Mr. M was found to require the following levels of assistance with his IADLs:¹¹ independent as to telephone use and finance management (scored 0/0); required physical assistance when grocery shopping (scored 2/3); and totally dependent with light meal preparation, main meal preparation, light housework, routine housework, and laundry (each scored 3/4).

Mr. M was most recently assessed for PCA eligibility by Olga Levy, R.N. of DSDS on May 17, 2013.¹² Ms. Levy found Mr. M to be alert, pleasant, and cooperative at the time of the assessment.¹³ She also found him to be oriented as to person, place, time, and situation.¹⁴ Mr. M was able to provide Ms. Levy with his health history and life history.¹⁵ Mr. M was able to raise his arms over his head, and to touch his feet, but could not put his arms behind his back due to pain in his shoulders.¹⁶ Mr. M advised Ms. Levy that he has chronic pain in his lower back and legs.¹⁷

Ms. Levy's assessment is recorded and coded on the Consumer Assessment Tool or "CAT." The codes or scores referenced below are those assigned by Ms. Levy based on the assessment. Ms. Levy found that Mr. M has the following abilities and limitations with regard to his Activities of Daily Living (ADLs):¹⁸

⁹ Exs. F1 - F31.
¹⁰ Exs. F6 - F12.
¹¹ Ex. F26.
¹² Ex. E.
¹³ Ex. E4.
¹⁴ Ex. E4.
¹⁵ Ex. E4.
¹⁶ Ex. E4.
¹⁷ Ex. E4.
¹⁸ Exs. E6 - E12.

Body Mobility / Bed Mobility:¹⁹ Ms. Levy reported that during the assessment she observed Mr. M reposition himself several times without assistance while reclining on a mattress on the floor. Ms. Levy also reported that Mr. M is ambulatory and does not have any skin breakdowns or sores (scored 0/0 - independent).

Transfers:²⁰ Ms. Levy reported that she was told by Mr. M (through an interpreter) that he can sometimes get up by himself using his cane, but sometimes requires physical assistance from his PCA when he is dizzy and when he is having pain in his legs. Ms. Levy reported she observed Mr. M transferring from a mattress on the floor by pushing himself up using his cane in one hand and his PCA on his other arm (scored 2/2, frequency 4/6). Nothing was stated in the assessment as to why transfers were authorized only six days per week instead of seven days per week.

Locomotion (walking):²¹ Ms. Levy reported that she was told by Mr. M (through an interpreter) that he requires physical assistance with locomotion inside and outside the home due to weakness in his legs, pain, poor balance, and dizziness. Ms. Levy reported that she observed Mr. M walking slowly in his living room using his cane and one-arm assistance from his PCA. Ms. Levy reported that Mr. M appeared unsteady and off-balance while walking this short distance (scored 2/2, frequency 4/7).

Dressing:²² Ms. Levy reported that she was told by Mr. M (through an interpreter) that he is able to dress and undress himself without physical assistance. Ms. Levy reported that she observed Mr. M to be adequately dressed in clean clothes for the assessment (scored 0/0).

Eating:²³ Ms. Levy reported that she was told by Mr. M (through an interpreter) that his meals are prepared by his wife or his PCA, and that he is able to feed himself without physical assistance. Ms. Levy reported that she observed Mr. M to be well nourished and to have a good grip and good fine motor skills (scored 0/1).

Toileting:²⁴ Ms. Levy reported that she was told by Mr. M (through an interpreter) that he can usually use the toilet independently, but that he sometimes needs his wife or PCA to provide physical assistance with transferring on and off the toilet when he has pain in his legs. Ms. Levy noted that Mr. M generally required physical assistance when transferring at other times during the assessment (scored 2/2, frequency 2/7).

¹⁹ All references in this paragraph are based on Ex. E6 unless otherwise stated.

²⁰ All references in this paragraph are based on Ex. E6 unless otherwise stated.

²¹ All references in this paragraph are based on Ex. E7 unless otherwise stated.

²² All references in this paragraph are based on Ex. E8 unless otherwise stated.

²³ All references in this paragraph are based on Ex. E9 unless otherwise stated.

²⁴ All references in this paragraph are based on Ex. E9 unless otherwise stated.

Personal Hygiene:²⁵ Ms. Levy reported that she was told by Mr. M (through an interpreter) that he can perform his own personal hygiene as long as he is given set-up assistance. Ms. Levy noted that Mr. M was clean and well groomed at the assessment (scored 0/1).

Bathing:²⁶ Ms. Levy reported that she was told by Mr. M (through an interpreter) that he requires physical assistance to get in and out of the bath tub to avoid falling, and that he also needs assistance to wash his back. Ms. Levy noted that Mr. M generally required physical assistance when transferring at other times during the assessment, and that his bathroom was equipped with grab bars and a shower chair (scored 2/2, frequency 1/7).

The assessment of May 17, 2013 also scored Mr. M as follows with regard to his Instrumental Activities of Daily Living (IADLs):²⁷ independent as to telephone use (scored 0/0); independent with difficulty, requiring set-up help as to finance management (scored 1/2); requires physical assistance as to light meal preparation, light housework, and grocery shopping (each scored 2/3); and totally dependent as to main meal preparation, routine housework, and laundry (each scored 3/4).

C. Relevant Procedural History

The Division performed the assessment at issue on May 17, 2013.²⁸ On September 11, 2013 the Division notified Mr. M that his PCA service level was being reduced from 25.50 hours per week to seven hours per week effective September 22, 2013.²⁹ The Division's notice letter specified several reasons for the reduction in Mr. M's PCA services. These were:

1. A decrease in the level of assistance required to complete certain activities of daily living (*i.e.* transfers, dressing, toilet use, and personal hygiene).³⁰
2. A decrease in the frequency of assistance required for certain activities of daily living (*i.e.* in-home locomotion).³¹
3. The fact that the regulations applicable to calculating the time for performing activities of daily living were amended between the 2010 and 2013 assessments, which amendments generally decrease the amount of time allowed for ADLs (locomotion for medical appointments).³²

²⁵ All references in this paragraph are based on Ex. E10 unless otherwise stated.

²⁶ All references in this paragraph are based on Ex. E11 unless otherwise stated.

²⁷ Ex. E26.

²⁸ Ex. E.

²⁹ Ex. D1.

³⁰ Exs. D2, D3.

³¹ Ex. D2.

³² Ex. D2.

4. The fact that, because Mr. M's wife is now living with him and assisting him with instrumental activities of daily living, he is no longer eligible, based on the applicable regulations, for PCA assistance with his IADLs (affects light and main meal preparation, shopping, light housework, and laundry).³³

5. The fact that the PCA regulations governing PCA time for monitoring / recording vital signs and glucose levels were amended between Mr. M's 2010 and 2013 assessments to require a current doctor's prescription in order to allow PCA time for these activities.³⁴

Mr. M requested a hearing to contest the Division's reduction of his PCA services on October 1, 2013.³⁵ The hearing was held on November 21, 2013. Mr. M participated in the hearing by phone, represented himself, and testified on his own behalf through an interpreter. Shelly Boyer-Wood participated in the hearing by phone and represented the Division. Teresa Burnett and Sharon Girouard participated in the hearing by phone and testified on behalf of the Division. At hearing Mr. M did not dispute the specific reasons why the Division decreased his level of PCA benefits. Rather, he simply testified that he wanted and needed more PCA time. The record closed at the end of the hearing.

III. Discussion

A. *The PCA Program - Overview*

The Medicaid program provides personal care assistant (PCA) services to eligible persons; "[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"³⁶ [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."³⁷

³³ Exs, D3, D4, D5.

³⁴ Exs. D4, D6.

³⁵ Ex. C.

³⁶ 7 AAC 125.010(a).

³⁷ 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.*

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."³⁸ 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).³⁹ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairment.⁴⁰

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.⁴¹ 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's 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 assistance⁴²); **3** (the person requires extensive assistance⁴³); **4** (the person is totally dependent⁴⁴). 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 coding 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

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

³⁹ See 7 AAC 125.010(a).

⁴⁰ Ex. E.

⁴¹ 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.

⁴² 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).

⁴³ 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).

⁴⁴ 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).

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*.⁴⁵ 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.⁴⁶

C. How Much PCA Time is Mr. M Eligible to Receive in This Case?

Initially, it is important to remember that the PCA regulations underwent significant revisions between Mr. M's prior and current assessments, and these amendments are partly responsible for the decrease in his current level of PCA services. Under the *old* PCA regulations and the *old* PCA assessment tool that existed when Mr. M was previously assessed in 2010, 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*.⁴⁷ Now, however, the amount of PCA time awarded is set automatically based on the applicant / recipient's self-performance code.⁴⁸ 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*.⁴⁹

At hearing Mr. M did not assert any particular errors made by the Division in calculating his PCA time. Rather, he simply asserted that he wanted and needed more PCA assistance. Independent review of the Division's assessment (Ex. E) and the digital recording of the hearing

⁴⁵ See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

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

⁴⁷ 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.

⁴⁸ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

⁴⁹ *Id.*

indicate that the Division made only one mistake in calculating the amount of PCA time for which Mr. M is currently eligible.

1. Body Mobility

For the ADL of body mobility, PCA time is allowed when a person requires physical assistance to reposition himself in a bed or chair, or to perform range of motion and stretching exercises.⁵⁰ Notably, a recent regulation change (which became effective before Mr. M's 2013 assessment) allows PCA time to be awarded for repositioning in a bed or chair *only when the applicant/recipient is non-ambulatory*.⁵¹ In this case it was never asserted that Mr. M is non-ambulatory. As a result of the recent regulation change, Mr. M does not qualify for PCA time for the ADL of body mobility because, even though Mr. M is frail, he can still walk, albeit with assistance. Further, Mr. M presented no evidence that he might require assistance with bed mobility. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Mr. M is eligible in the body mobility category is correct.⁵²

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.⁵³ The Division found that Mr. M requires limited physical assistance with transfers (CAT score 2/2). This resulted in him receiving 2.5 minutes per transfer. The only way Mr. M could qualify for additional PCA time in this category would be to demonstrate that he requires extensive assistance from his PCA for transfers (CAT score 3/2). However, Mr. M did not present any evidence to show that he requires extensive assistance with transfers; he merely asserted that he needs more PCA time for transfers.

The record indicates, however, that a minor mistake was made regarding the appropriate *frequency* for PCA assistance with Mr. M's transfers. The assessment recorded a frequency score of 4/6 (four transfers per day, six days per week). However, there was nothing stated in the assessment as to why transfers were authorized for six days per week instead of seven days per week as authorized by the prior assessment. The Division bears the burden of proving that its

⁵⁰ 7 AAC 125.030(b)(1).

⁵¹ 7 AAC 125.030(b)(1).

⁵² Mr. Lew did not offer any testimony to contest the Division's findings regarding the appropriate frequency for assistance with transfers.

⁵³ 7 AAC 125.030(b)(2).

assessed frequency is correct when (as here) the frequency is being reduced from the prior assessment. The Division did not carry that burden in this instance. Accordingly, the Division must revise Mr. M's PCA service plan to provide for transfers seven days per week.

3. Locomotion / Walking

For the ADL of locomotion, PCA time is allowed when a person requires assistance with walking (whether with the support of a walker, cane, gait belt, braces, crutches, or manual wheelchair), either between different locations in the recipient's home, outside the home to keep a medical or dental appointment, and/or when walking and simple exercises have been prescribed by a physician.⁵⁴ The Division found Mr. M to require limited physical assistance as to locomotion (CAT score 2/2). Mr. M presented no evidence of why he might require more extensive assistance with locomotion, or of why he might need a greater frequency of assistance. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Mr. M is eligible for help with locomotion is correct.

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.⁵⁵ The Division found Mr. M to be independent with dressing (CAT score 0/0). Mr. M presented no evidence of why he might require assistance with dressing, or how often he might need that assistance. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Mr. M is eligible for help with dressing and undressing is correct.

5. Eating

For the ADL of eating, PCA time is allowed for feeding through a feeding tube, enteral feeding, and supervising the eating and drinking of a recipient who has swallowing, chewing, or aspiration difficulties.⁵⁶ The Division found Mr. M to be independent with eating (CAT score 0/1). Mr. M presented no evidence of why he might require assistance with eating, or how often he might need that assistance. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Mr. M is eligible for help with eating is correct.

6. 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

⁵⁴ 7 AAC 125.030(b)(3).

⁵⁵ 7 AAC 125.030(b)(4).

⁵⁶ 7 AAC 125.030(b)(5).

external catheter, and inserting and removal of a nonmedicated suppository, digital stimulation, or other routine incontinence care.⁵⁷ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁵⁸ The Division found Mr. M to require limited physical assistance with toilet use (CAT score 2/2). Mr. M presented no evidence of why he might require more extensive assistance with toilet use, or of why he might need a greater frequency of assistance. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Mr. M is eligible for toilet use is correct.

7. 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.⁵⁹ The Division found Mr. M to be independent with personal hygiene (CAT score 0/1). Mr. M presented no evidence of why he might require assistance with personal hygiene, or how often he might need that assistance. Accordingly, based on the evidence of record, the Division's assessment of the amount of PCA time for which Mr. M is eligible for personal hygiene is correct.

8. 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."⁶⁰ The Division found Mr. M to require limited assistance from one person for bathing (CAT code 2/2). Mr. M presented no evidence of why he might require more extensive assistance with bathing, or of why he might need a greater frequency of assistance. Accordingly, based on the evidence of record, the Division's assessment of the PCA time for which Mr. M is eligible for bathing is correct.

9. PCA Time for Monitoring and Recording Vital Signs

Between Mr. M's 2010 and 2013 assessments the PCA regulations governing PCA time for monitoring / recording vital signs and glucose levels were amended to require a current doctor's prescription in order to allow PCA time for these activities. Pursuant to 7 AAC 125.030(d)(3), PCA time can be allowed for "taking and documenting the recipient's temperature, pulse, blood pressure,

⁵⁷ 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.

⁵⁸ 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).

⁵⁹ 7 AAC 125.030(b)(7).

⁶⁰ 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical (*see* Ex. E11).

and respiration," and for "setting up for diabetic testing and documentation," but only "if ordered by the recipient's physician, physician assistant, or advanced nurse practitioner." In this case, Mr. M presented no evidence of having a prescription for these services. Accordingly, the Division was correct not to award PCA time for these items.

10. Instrumental Activities of Daily Living (IADLs)

Pursuant to 7 AAC 125.040(a)(13)(B), PCA services are not available for assistance with IADLs when assistance with those activities is provided by the recipient's spouse. Mr. M's 2010 assessment indicates that he was not married at that time, and so he received PCA time for assistance with six different IADLs.⁶¹ However, Mr. M got married between his 2010 and 2013 assessments, and his 2013 assessment indicates that his wife lives with him.⁶² Mr. M acknowledged at hearing that his wife assists him in performing his IADLs. Accordingly, the Division was correct not to award Mr. M PCA time for assistance with his IADLs.

D. *Has the Division Proven a Material Change in Mr. M's Condition?*

In cases where (as here) the Division seeks to decrease a recipient's PCA services, the Division must demonstrate that there has been a material change in the recipient's condition since the recipient's last assessment.⁶³ When Mr. M's July 2, 2010 PCA assessment is compared with her current (May 17, 2013) assessment, it is clear that Mr. M's functional abilities have improved significantly.⁶⁴ Accordingly, 7 AAC 125.026's "change in condition" requirement is satisfied here.

IV. Conclusion

Based on the evidence in the record, the Division's determination of the amount of PCA services for which Mr. M is eligible was correct under the applicable regulations as to all covered services except frequency of assistance with transfers. Accordingly, the Division's decision is modified as to the appropriate frequency of transfers, and affirmed in all other respects.

DATED this 17th day of December, 2013.

Signed

Jay Durych

Administrative Law Judge

⁶¹ Exs. F1, F26.

⁶² Ex. E1.

⁶³ 7 AAC 125.026(a), (d).

⁶⁴ See Exs. E-3 - E12, E26, F3 - F11, and F27.

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 17th day of December, 2013.

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.]