



abilities also prevent her from managing her daily schedule and affairs without assistance.<sup>[2]</sup>

This description is consistent with the diagnoses listed in the division's Consumer Assessment Tool (CAT).<sup>3</sup>

### III. Discussion

#### A. PCA Program

The purpose of the PCA program

is to provide 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[.]<sup>4</sup>

The division uses the CAT to assess the level of assistance needed.<sup>5</sup> The amount of time allotted for that assistance is determined by the Personal Care Assistance Service Level Computation.<sup>6</sup> This document shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task.

The different levels of assistance are defined by regulation and in the CAT.<sup>7</sup> Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.<sup>8</sup> Limited Assistance is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight bearing support no more than two times a week.<sup>9</sup> Extensive Assistance is defined as requiring direct physical help with weight bearing support at least three times a week, or full assistance without any involvement from the recipient at least three times a week, but not all of the time.<sup>10</sup>

The division may change the number of hours of allotted PCA time if there has been a material change in the recipient's condition.<sup>11</sup> When, as in the case, the division wishes to reduce the amount of allotted time, the division has the burden of proving a change of condition justifying that reduction.<sup>12</sup>

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<sup>2</sup> December 17, 2013 letter.

<sup>3</sup> See Exhibit E.

<sup>4</sup> 7 AAC 125.010(a).

<sup>5</sup> 7 AAC 125.020(b).

<sup>6</sup> 7 AAC 125.024(1).

<sup>7</sup> The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

<sup>8</sup> Exhibit E6.

<sup>9</sup> 7 AAC 125.020(a)(1); Exhibit E6.

<sup>10</sup> 7 AAC 125.020(a)(2); Exhibit E6

<sup>11</sup> 7 AAC 125.026(a).

<sup>12</sup> 7 AAC 49.135.

***B. The Reduction in PCA Time is Partially Upheld and Partially Reversed***

***1. Body Mobility***

Ms. L had been receiving PCA services for body mobility. A regulatory change has made bed mobility available only for recipients who are not ambulatory.<sup>13</sup> This regulatory change constitutes a material change in condition justifying the reduction of services for this ADL.<sup>14</sup> The division correctly removed time for assistance with body mobility.

***2. Toileting***

Ms. L needs extensive assistance with using the toilet. The time allowed for this ADL includes time moving to or from the toilet, transferring on or off the toilet, and managing a catheter.<sup>15</sup> The frequency for this ADL was reduced from eight times a day to four times a day. D L testified that Ms. L has bladder problems and has been instructed to use the toilet every two hours while awake. In addition, she uses a catheter to empty her bladder four times a day. Toileting every two hours would be at least eight times a day. These eight times would include the catheter use on half of the occasions. Neither the current assessment nor the testimony during the hearing explained why the toileting frequency was reduced. The division has not met its burden of proving a material change to justify this reduction.

***3. Transfers***

The most recent assessment reduced the frequency for transfers. Transfers are how a person moves to or from a bed, or to and from a chair, but do not include transferring to or from the bath or toilet.<sup>16</sup> The prior assessment indicated a need for eight transfers each day. Nothing in the current assessment or in the testimony at the hearing explained why the frequency was reduced to four times each day. The division has not met its burden of proving a material change to justify this reduction.

***4. Locomotion***

The recent assessment reduced the frequency of locomotion from eight to four times each day. Locomotion is how a person moves between locations within a room, or within a

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<sup>13</sup> 7 AAC 125.030(b)(1)(A).

<sup>14</sup> A material change in condition is confirmed where the services previously received are no longer authorized. 7 AAC 125.026(d)(3)(C).

<sup>15</sup> Exhibit E9.

<sup>16</sup> Exhibit E6. Standing up to move to the toilet is an allowable transfer for this ADL, as is sitting down after walking away from the toilet. However, transfers onto and off of the toilet are not allowable under this ADL as they are included in the time allowed for the toileting ADL.

single floor of a home.<sup>17</sup> Moving to and from the toilet is included within the time allowed for the ADL of toileting rather than this ADL category. Because Ms. L is allowed time for moving between locations as part of the eight separate toileting activities, an additional four instances of locomotion under this ADL is appropriate. The division's reduction of frequency for locomotion from eight to four is upheld.

#### 5. *Dressing*

Exhibit D states that the ADL of dressing was reduced from 18 times a week to 14 times a week.<sup>18</sup> However, the prior assessment showed a frequency of only two times a day, or 14 times a week. In addition, the summary chart on Exhibit D6 shows the prior frequency at 14 times a week. It appears that there was an error in the notice letter. Allowing a frequency of two times a day for dressing does not appear to be a reduction. If Ms. L had previously been allowed more times for dressing, the reduction to twice a day appears appropriate, and the division's award of time based on a frequency of twice a day is upheld.

#### 6. *Bathing*

The reduction in time for bathing was due to a change in regulation that assigned exact time for this activity. This regulatory change constitutes a material change of condition. Accordingly, the division's reduction of time allowed for this activity is upheld.

#### 7. *Light Meal Preparation*

Time for this IADL was removed because Ms. L is using Chore Services to provide these meals. PCA time for the same service would be duplicative, and is not allowed.<sup>19</sup>

#### 8. *Escort to Medical Appointments*

Time for an escort to medical appointments was removed. Based on the testimony presented, the division acknowledged that time for escort services appeared supportable, and asked for an opportunity to review that issue. Accordingly, the division should revisit whether Ms. L should be allowed PCA time for an escort to medical appointments and, if so, the amount of time to be allowed.<sup>20</sup>

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<sup>17</sup> Exhibit E7.

<sup>18</sup> Exhibit D3.

<sup>19</sup> 7 AAC 125.040(a)(11).

<sup>20</sup> The division also noted that Ms. L might be in need of some nursing assistance with her catheter care.

#### **IV. Conclusion**

The division did not meet its burden of proof to support all of the reductions in PCA services. It shall recalculate the number of hours of PCA services for Ms. L in accordance with the discussion above.

Dated this 23<sup>rd</sup> day of December, 2013.

*Signed* \_\_\_\_\_  
Jeffrey A. Friedman  
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 7<sup>th</sup> day of January, 2014.

By: *Signed* \_\_\_\_\_  
Name: Jeffrey A. Friedman  
Title: Administrative Law Judge

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