

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

In the Matter of: )  
 )  
 E K ) OAH No. 13-1750-MDS  
 ) Agency No.

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**DECISION**

**I. Introduction**

E K applied for personal care assistance (PCA) services. The Division of Senior and Disabilities Services (Division) notified him on November 11, 2013 that he was approved to receive 41 hours of PCA services per week. Mr. K requested a hearing.

Mr. K' hearing was held on December 23, 2013. Mr. K was represented by S F with Consumer Direct. Shelly Boyer-Wood represented the Division.

The Division's assessment of and provision for Mr. K' PCA service, while recognizing Mr. K' physical limitations and extraordinary care needs, did not fully provide him with the PCA services to which he was entitled. As a result, the Division's determination is reversed in part, as discussed in detail below.

**II. The PCA Service Determination Process**

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>1</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>2</sup>

The Division uses the Consumer Assessment Tool or "CAT" to determine the level of physical assistance that applicants or recipients require to perform their ADLs and their IADLs.<sup>3</sup> The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access apartment

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<sup>1</sup> 7 AAC 125.010(a) [emphasis added].

<sup>2</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>3</sup> See 7 AAC 125.020(a) and (b).

or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.<sup>4</sup>

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<sup>5</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>6</sup>); **3** (the person requires extensive assistance<sup>7</sup>); **4** (the person is totally dependent<sup>8</sup>). There are also codes which are not used in calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).<sup>9</sup>

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 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 which are not used to arrive at a service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).<sup>10</sup>

The CAT also codes certain activities known as "instrumental activities of daily living" (IADLs). These are light meal preparation, main meal preparation, housework, grocery shopping, and laundry.<sup>11</sup>

The CAT codes IADLs slightly differently than it does ADLs. The *self-performance codes for IADLs* are **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3**

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<sup>4</sup> Ex. E, pp. 6 – 11.

<sup>5</sup> A self-performance code of 0 is classified as "[I]ndependent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days." See Ex. E, p. 6.

<sup>6</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."

<sup>7</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>8</sup> Pursuant to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to and IADL, "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity."

<sup>9</sup> Ex. E, p. 18.

<sup>10</sup> Ex. E, p. 18.

<sup>11</sup> Ex. E, p. 26.

(dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person). There is also a code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>12</sup>

The *support codes* for IADLs are also slightly different than the support codes for ADLs. The support codes for IADLs are **0** (no support provided); **1** (supervision / cueing provided); **2** (set-up help); **3** (physical assistance provided); and **4** (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>13</sup>

The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each occurrence of a particular activity. For instance, if a person is coded as being completely dependent (code of 4) with bathing, he would receive 30 minutes of PCA service per day.<sup>14</sup> Even if the Division agrees that the amount of time provided by the formula is insufficient for a particular PCA recipient's needs, the regulations do not provide the Division with the discretion to change the amounts specified by the formula.

### **III. Facts**

The following facts were proven by a preponderance of the evidence.<sup>15</sup>

Mr. K is 66 years old.<sup>16</sup> His medical condition is extraordinarily complex. He is completely quadriplegic at C1 – C4, with attendant complications and care needs. He is completely wheelchair bound, cannot walk, has limited arm movement, cannot use his left hand, and has a limited ability to grasp with his right hand. He is at a very high risk of bed sores, as demonstrated by the fact that his left leg had to be amputated above the knee due to an infected bed sore which he developed while hospitalized. As a result of his paralysis, he has to take a number of precautions regarding his lung function, which include using a machine (MIE) that suctions mucus from his lungs a minimum of six times per day, depending on his health status. He has to be mechanically transferred to and from his wheelchair using a Hoyer lift. Although he is in an electric wheelchair, he is not fully capable of

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<sup>12</sup> Ex. E, p. 26.

<sup>13</sup> Ex. E, p. 26.

<sup>14</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 34 - 36.

<sup>15</sup> These factual findings are based upon the complete record in this case: Mr. D' testimony, Amanda McCrary's testimony; Sharon Girouard's testimony; Agency Exhibits A – E; D' Exhibits 1 – 4. Exhibit 5 was not admitted. Exhibit 6 is not evidence, but is instead written argument.

<sup>16</sup> Ex. E, p. 1.

maneuvering it and requires physical assistance to do so. In some situations, such as being in his home, he must use a manual wheelchair, which he cannot operate.

Mr. K was assessed to determine both his eligibility for PCA services and to determine, if eligible, the amount of those services. He was found eligible for PCA services and authorized to receive a total of 41 hours of PCA services. While Mr. K did not disagree, for the most part, with the assessment's findings regarding his level of ability to perform his activities of daily living and instrumental activities of daily living, he did disagree with the amount of time allotted for him to perform those tasks. Each area of disagreement is addressed below.

*A. Bed Mobility*

Mr. K was found to be totally dependent in the area of bed mobility (self-performance code 4, support code 2); he was not allotted any time for this activity. Mr. K's severe health condition requires that he be repositioned frequently. He is also at high risk for bed sores. He therefore requests that he receive 12 bed mobility adjustments (20 minutes each time) per day, seven days per week.

*B. Transfers*

Mr. K was found to be totally dependent in the area of transfers (self-performance code 4, support code 2), and allotted time for twice daily mechanical transfers (15 minutes each time) seven days per week. This would be from his bed to his wheelchair. Mr. K, however, does not stay in his wheelchair the entire day. He is transferred to an exercise mat a minimum of twice per day for an exercise/therapy routine which requires that he be transferred from his wheelchair. This comes to a minimum of six times per day. It is therefore more likely true than not true that he requires transfer assistance six times per day, seven days per week.

*C. Locomotion Within Home*

Mr. K was found to require limited assistance (self-performance code 2, support code 2) in moving within his home using his wheelchair (locomotion) and allotted time for twice daily assistance (3.5 minutes each time) seven days per week. He is not able to use his electric wheelchair within his home. He uses a manual wheelchair in his home, which he is unable to operate. In addition, he has to move throughout his home a minimum of ten times per day: to and from his bed (2), to meals (3 x 2), and to his exercise mat (2 x 2). However, he requested locomotion assistance only eight times per day. It is therefore more likely true than not true that he is completely dependent upon others for locomotion (self-performance code 4, support code 2)

within his home and requires assistance with in-home locomotion eight times per day, seven days per week.

*D. Locomotion – Medical Appointments*

Mr. K was found not to need to leave his home for medical appointments (self-performance code 8) and allotted no time for this activity. He requested that he be found totally dependent (self-performance code 4, support code 2) in this area and receive locomotion assistance four times per week. While Mr. K has a Veteran's Administration nurse and doctor who visit him in the home, he does have medical appointments outside the home. Mr. K' testimony established that it was more likely true than not true that he has medical and dental appointments outside the home: urology appointments once per month; visits to a pain doctor; visits to a VA doctor; dental appointments twice per month. He also has eye appointments twice a year and hearing aid appointments once a year. He will also have orthopedic appointments in the future, but does not have a current schedule for those. He has medical or dental visits outside the home at a minimum of once a week, sometimes more than that. Due to his medical conditions, he requires a substantial amount of assistance with his electric wheelchair, but is not completely dependent upon another person to operate it for him. As a result, it is more likely true than not true that he requires extensive assistance (self-performance code 3, support code 2) once per week for his locomotion to access medical appointments.<sup>17</sup>

*E. Eating/Supervised Eating*

Mr. K was found to require limited assistance (self-performance code 2, support code 2) for eating and allotted time for thrice daily assistance (7.5 minutes each time) seven days per week. He requested that he be found totally dependent in this area (self-performance code 4, support code 2) and receive assistance 10 times per day. Mr. K, however, is not wholly incapable of feeding himself. He has a brace on his right hand, which provides him with some limited grasping ability. In order for him to feed himself, he must have an eating utensil placed into his right hand and can use it to feed himself. However, he is prone to drop the utensil. He eats three meals per day and has at least three snacks per day. In addition, he carries a water bottle with him, which he can utilize by himself, but which needs to be refilled frequently. Given the fact that the utensil has to be placed in his hand, and then replaced when it is dropped, it is more likely true than not true that he

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<sup>17</sup> This factual finding does not constitute a finding that Mr. D requires PCA time for Medical Escort. In order to qualify for Medical Escort, a person must require not only transport but someone to confer with the medical or dental staff on his behalf. 7 AAC 125.030(d)(9). Mr. D, as demonstrated at hearing, is neither cognitively nor communicatively impaired.

is not totally dependent upon others for feeding, but instead should have been coded as requiring extensive assistance (self-performance code 3, support code 2). He eats six times per day (three snacks, three meals), and should have been found to require eating assistance for each of those times. He can drink water by himself, so he does not require additional assistance for hydration. He requires supervised eating due to choking/swallowing issues.

*F. Toileting*

Mr. K was found to be totally dependent in the area of toileting (self-performance code 4, support code 2) and allotted time for thrice daily assistance (25 minutes each time) seven days per week. Mr. K, however, is receiving toileting assistance from the VA, and as a result does not require PCA assistance from the Medicaid program for toileting. This time should be removed from his PCA service plan.

*G. Dressing*

Mr. K was found to be totally dependent in the area of dressing (self-performance code 4, support code 2), and allotted time for twice daily assistance (15 minutes each time) seven days per week. He requested dressing assistance eight times per day, which included changing clothes in the event he had a toileting accident or if he spilled something upon himself. He also objected to the amount of time provided for each dressing task (15 minutes), arguing that the actual time required for dressing exceeded the amount provided.

*H. Personal Hygiene and Bathing*

Mr. K was found to be totally dependent in the areas of personal hygiene and bathing (self-performance code 4, support code 2), and allotted 20 minutes per day for personal hygiene and 30 minutes per day for bathing. He argued that the actual time required to provide these services exceeded the time allotted.

*I. Medication*

Mr. K was found to require medication assistance due to being totally dependent (self-performance code 4, support code 2), and allotted time for assistance six times per day (4 minutes each time) seven days per week. The Division provided him with this amount of time because he requires two separate nebulizer (albuterol and ipratropium) treatments, each of which he receives four times per day. In addition, he also takes his main medications four times per day and may take his as-needed medications at least six times per day. It is therefore more likely true than not true

that he requires medication assistance at least 12 times per day (the nebulizer treatments – two separate treatments times four times per day, and his main medications).

*J. Oxygen Use/Maintenance*

Mr. K uses oxygen once per day. The Division found Mr. K to be totally dependent in this task (self-performance code 4, support code 2), and allotted time for once daily assistance (5 minutes each time) seven days per week. The Division provided him with 15 minutes once per week for oxygen equipment maintenance.

*K. Bi-pap and MIE*

Mr. K uses a bi-pap machine, which has to be adjusted several times per night, which takes at least five minutes each occurrence. He also has an MIE (machine for suctioning mucus from lungs) which is used multiple times per day, which takes at least ten minutes each occurrence, not counting the time it takes to clean it after each use. The Division did not provide him with any PCA time for using either of these machines.

*L. Vital Signs and Documentation*

Mr. K has his complete vital signs taken eight to ten times per day. His blood pressure alone is taken between 12 to 15 times per day. The Division did not provide Mr. K with PCA time for taking his vital signs or documentation. Mr. K does not have a prescription for taking vital signs in the record.

*M. Foot Care*

The Division did not provide Mr. K with PCA time for foot care. There is a physician's statement in the record that Mr. K requires physical assistance with prescribed foot and nail care for 30 minutes twice per month.

*N. Exercise*

The Division provided Mr. K with one hour per day, seven days per week, of PCA assistance for range of motion exercises. There is a physician's statement in the record that Mr. K requires physical assistance with prescribed range of motion exercises twice per day for thirty minutes each time (one hour total). Mr. K has other exercises he performs which the Division did not provide PCA time for. The record contains no prescriptions for those exercises.

*O. Laundry*

Mr. K was found to be totally dependent in this area (total assistance code of 3) and provided 30 minutes per week for laundry. Mr. K, however, is completely dependent upon others

for toileting (catheter and bowel routines). This results in accidents, which require more frequent laundry. As a result, it is more likely true than not true that he should have received the maximum time available due to incontinence, which is 60 minutes per week.

*P. Other Instrumental Activities of Daily Living*

Mr. K was found to be completely dependent (total assistance code of 3) for light meal preparation, main meal preparation, shopping, and housework. He was allotted the maximum time allowed for each of these tasks.

**IV. Discussion**

Mr. K challenged the amount of PCA services he was provided in a variety of areas, each of which is addressed below. One of the primary arguments made by Mr. K was that the time provided per task was insufficient given the amount of time actually required to accomplish the task in question. The PCA program has specific regulatory limits that set the amount of time per task, *e.g.*, a person who is completely dependent for mechanical transfers is only authorized to receive 15 minutes per transfer, or per day, *e.g.*, 30 minutes per day for bathing for complete dependence.<sup>18</sup> These are not discretionary amounts. The PCA regulations do not allow the times to be varied, even in the case of exceptional circumstances. Mr. K undoubtedly has very extensive care needs, where the actual time to complete most tasks exceeds the time allotted by regulation. Regardless, the regulations mandate certain times for specific tasks without deviation. This discussion will therefore not address whether the time allotted per task is adequate to meet Mr. K' needs, merely the degree of the need, *e.g.*, extensive versus limited, and the frequency of the task per day, etc.

*A. Bed Mobility*

Although Mr. K was found to be completely dependent for bed mobility, he was not provided any PCA service time for bed mobility. The PCA program only allows a maximum of 12 bed mobility assistance times per day. Those twelve times are reduced by the number of times that a person receives "for other ADL tasks (transfer, toileting, bathing, locomotion, etc.) where body mobility is a functional part of the overall task."<sup>19</sup> Mr. K argued that this limitation did not apply to his situation because his needs were due to body spasms, Autonomic Dysreflexia, and his high risk for bed sores. In other words his specific care needs and the fact that they only related to

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<sup>18</sup> *Person Care Assistance Service Level Computation*, Ex. B, pp. 34 - 36. This is adopted by reference in the PCA program regulations. See 7 AAC 160.900(d)(29).

<sup>19</sup> *Id.*



repositioning made the limitation inapplicable. His argument is not persuasive, given the explicit statement regarding transfers and locomotion contained in the PCA rules.

Mr. K, as discussed above, requires six transfers and eight locomotions per day. This totals 14 – an amount in excess of the maximum 12 times possible for bed mobility. Regardless of the acuity of his needs, the regulations do not allow Mr. K to receive PCA service time for bed mobility.

*B. Transfers*

As discussed above, Mr. K is totally dependent with regard to mechanical transfers assistance eight times per day, seven days per week, rather than the twice per day previously allotted. Because the time per transfer is set by regulation to 15 minutes per mechanical transfer for extensive assistance,<sup>20</sup> this is the amount of time he is to be provided per transfer.

*C. Locomotion Within Home*

As discussed above, Mr. K is totally dependent with regard to locomotion within his home eight times per day, seven days per week, rather than the twice per day limited assistance previously allotted. Because the time per act of locomotion is set by regulation to 10 minutes for extensive assistance,<sup>21</sup> this is the amount of time he is to be provided per act of locomotion.

*D. Locomotion – Medical Appointments<sup>22</sup>*

As discussed above, Mr. K has medical or dental appointments outside his home a minimum of once per week, rather than not having any. He requires extensive assistance with locomotion to access these appointments. Because the time per act of locomotion to access medical appointments is set by regulation to 7.5 minutes for extensive assistance,<sup>23</sup> this is the amount of time he is to be provided per act of locomotion to access a medical appointment.

*E. Eating/Supervised Eating*

As discussed above, Mr. K requires extensive assistance with eating six times per day (three snacks, three meals), seven days per week, rather than the three times daily limited assistance previously allotted. The regulations do not limit the amount of time a person can receive assistance for eating. Because the time per act of eating is set by regulation to 15 minutes for extensive

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Mr. D also leaves his home to attend church and visit family and friends. He requested locomotion time for these activities. However, the PCA regulations do not allow locomotion assistance outside the home for other than medical appointments.

<sup>23</sup> *Id.*

assistance, this is the amount of time he is to be provided each of the six times he eats per day. He requires supervised eating due to choking/swallowing issues. However, the regulatory time allotted for supervised eating is 45 minutes per day, which is concurrent with other eating assistance.<sup>24</sup> Because the time provided for eating assistance is 90 minutes per day (6 x 15), he is not entitled to receive additional time for supervised eating.

*F. Toileting*

As discussed above, toileting assistance should be removed from Mr. K' PCA service plan.

*G. Dressing*

Mr. K was found to be totally dependent in the area of dressing and allotted time for twice daily assistance seven days per week. He requested dressing assistance eight times per day, which included changing clothes in the event he had a toileting accident or if he spilled something upon himself. Changing clothes for a toileting accident would be included within the activity of toileting. He is therefore not provided additional dressing time in the case of a toileting accident. He also is not provided time for changing clothes in the event he spills something upon himself. This is not something that is arguably a predictable frequent occurrence, and time should not be allotted for it. The Division correctly provided him with standard dressing assistance for a person who is completely dependent, 15 minutes twice per day.<sup>25</sup> This allotment of time remains unchanged.

*H. Personal Hygiene and Bathing*

Mr. K was found to be totally dependent in the areas of personal hygiene and bathing and allotted 20 minutes per day for personal hygiene and 30 minutes per day for bathing. This is the maximum time allowed by regulation for each of these activities.<sup>26</sup> This allotment of time remains unchanged.

*I. Medication*

As discussed above, Mr. K is totally dependent with medication and requires that assistance at least 12 times per day. He therefore should be provided medication assistance 12 times per day, for 10 minutes each time.<sup>27</sup>

*J. Oxygen Use/Maintenance*

Mr. K uses oxygen once per day. The Division found Mr. K to be totally dependent in this task and allotted time for once daily assistance (5 minutes each time) seven days per week. There is

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

no dispute that he only requires oxygen more than once a day. This allotment of time remains unchanged.

The Division also provided Mr. K with 15 minutes per week for oxygen equipment maintenance. Mr. K argued that he should have also received maintenance time for his bi-pap, MIE, and nebulizer machines. The PCA program only allows a maximum of 15 minutes per week for respiratory equipment maintenance.<sup>28</sup> Because Mr. K has already received the maximum time available in this category, the allotment of time remains unchanged.

*K. Bi-pap and MIE*

The PCA program allows time for oxygen use. It does not discuss other items such as bi-pap or MIE machines.<sup>29</sup> Because the PCA program has explicit regulations that govern what service tasks are allowed, and the specific time allowed for them, the Division is limited in what PCA tasks it may authorize service time for. Because the bi-pap and MIE machines are not oxygen machines, the Division was correct to not provide PCA time for using the bi-pap (taking on, taking off, adjusting), or the use and cleaning of the MIE machine.

*L. Vital Signs and Documentation*

The Division did not provide Mr. K with PCA time for taking his vital signs or documentation. Mr. K does not have a prescription for vital signs in the record. In order to receive PCA service time for vital signs or documenting them, there must be a prescription for taking vital signs.<sup>30</sup> Because there was no prescription for taking vital signs, the Division appropriately did not provide PCA time in this area.

*M. Foot Care*

The Division did not provide Mr. K with PCA time for foot care. There is a physician's statement in the record that Mr. K requires physical assistance with prescribed foot and nail care for 30 minutes twice per month. The PCA program allows time for foot care when there is a prescription for it.<sup>31</sup> Because there is a prescription for foot and nail care, the Division should have provided Mr. K with an hour of foot and nail care per month, broken down on a weekly basis.

*N. Exercise*

The Division provided Mr. K with one hour per day, seven days per week, of PCA assistance for range of motion exercises. There is a physician's statement in the record that Mr. K

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> 7 AAC 125.030(d)(3).

<sup>31</sup> 7 AAC 125.030(d)(5).

requires physical assistance with prescribed range of motion exercises twice per day for thirty minutes each time (one hour total). Mr. K has other exercises he performs, but the record contains no prescriptions for those exercises. The PCA program allows time for prescribed range of motion and stretching exercises.<sup>32</sup> Because there is only a prescription for one hour per day of range of motion exercises, the Division appropriately declined to provide Mr. K with time for assistance beyond that one hour.

*O. Laundry*

As discussed above, Mr. K has an increased need for laundry assistance due to incontinence issues. His laundry assistance time should therefore be increased to 60 minutes per week, which is the maximum time available due to incontinence.<sup>33</sup>

*P. Other Instrumental Activities of Daily Living*

Mr. K was provided the maximum time available for light meal preparation, main meal preparation, shopping, and housework.<sup>34</sup> The Division's allotment of time remains unchanged.

**V. Conclusion**

Mr. K has extraordinary care needs, which often exceed the time legally allowed by the PCA program. The Division, however, is bound by the PCA program's regulatory requirements, regardless of Mr. K's actual care requirements. Its assessment of Mr. K's needs for PCA assistance correctly assesses, for the most part, the level of assistance he needs with his activities of daily living and instrumental activities of daily living, with the exception of locomotion within the home, locomotion to access medical appointments, and eating. The Division's assessment, understates Mr. K's allowable need for assistance with transfers, locomotion within the home, locomotion to access medical appointments, eating, medication, foot care, and laundry. The Division is to recalculate Mr. K's needs for PCA assistance consistent with this decision.

DATED this 23<sup>rd</sup> day of January, 2014.

*Signed*

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Lawrence A. Pederson  
Administrative Law Judge

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<sup>32</sup> 7 AAC 125.030(e).

<sup>33</sup> *Person Care Assistance Service Level Computation*, Ex. B, pp. 34 - 36.

<sup>34</sup> *Id.*

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

In the Matter of: )  
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 E K ) OAH No. 13-1750-MDS  
 ) Agency No.  
\_\_\_\_\_ )

**COMMISSIONER’S DECISION**

In accordance with AS 44.64.060(e)(3), the undersigned, by delegation from the Commissioner of the Department of Health and Social Services, revises the Administrative Law Judge’s January 23, 2014 proposed decision as set out below.

The proposed decision holds, at § IV (I) p. 10, that Mr. K should receive medication assistance 12 times each day, for 10 minutes each time. The proposed decision is revised to change the time allotted for medication assistance to 12 times per day, for four minutes each time, instead of 10 minutes each time. This revision is made, as the Division correctly pointed out in its proposal for action, because the PCA time allowed for medication assistance for a person who is totally dependent (self-performance code 4, assistance code 2) is four minutes each occurrence. *See Personal Care Assistance Service Level Computation*, Ex B, p. 35. The remainder of the proposed decision is adopted without change.

The Administrative Law Judge’s January 23, 2014 decision document, as modified above, constitutes the final decision of the Commissioner in this case.

***Appeal Rights:***

This decision is the final administrative action in the proceeding. 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 14<sup>th</sup> day of February, 2014.

By: Signed \_\_\_\_\_  
Name: Jared C. Kosin, J.D., M.B.A.  
Title: Executive Director  
Agency: Office of Rate Review, DHSS

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