

locomotion, and eating, but does require physical assistance for the ADLs of transfer and toileting. Specifically, Ms. U was scored 3/3 for transfers and 3/2 for toileting.

Ms. U and the division are collaterally estopped from relitigating the scoring of body mobility, locomotion, and eating as well as transfers and toileting.⁴ Under this reasoning the division's determination to terminate PCA services is incorrect as a matter of law because the Waiver order found Ms. U required physical assistance to complete the ADLs of transfers and toileting. How often Ms. U required assistance (frequency) with transfers and toileting was not addressed in the Waiver order.

At the June 25, 2014 hearing on PCA services, the division presented the testimony of the assessor, Scott Chow R.N., and David Chadwick. The only evidence submitted by Ms. U was her letter requesting a fair hearing and letter identifying areas of disagreement.⁵ The division's sworn testimony is given more weight than a document outlining areas of disagreement. This document establishes only that Ms. U disagrees with the division. It does not provide evidence in support of those areas. For this reason it is not persuasive. However, the division's witnesses established that it is more probable than not that Ms. U requires physical assistance with toileting when there is a bowel movement, which occurs twice a day. Their testimony also established by a preponderance of the evidence that Ms. U transfers four times a day.

In *conclusion*, Ms. U is authorized to receive PCA services for Toileting scored at 3/2 with a frequency of two times per day, and Transfers scored at 3/3 with a frequency of four times per day. The division's scoring of the October 8, 2013 Consumer Assessment Tool is affirmed in all other respects.

DATED this 17th day of July, 2014.

By: Signed
Rebecca L. Pauli
Administrative Law Judge

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

⁴ Collateral estoppel is applicable to administrative proceedings. *Harrod v. Alaska Department of Revenue*, 255 P.3d 991 (Alaska 2011) (holding that collateral estoppel was properly invoked in administrative proceeding to determine ineligibility of applicant). Collateral estoppel prevents the relegation of issues where 1) collateral estoppel is asserted against the same party or one in privity with the party to the first action; 2) the issue to be precluded must be identical to the issue decided in the first action; and 3) the issue to be precluded must have been resolved by a final judgment on the merits. *Id.* at 14, 15.

⁵ Exhibit C.