



Mr. Q is not functionally impaired due to any *physical* issues.<sup>8</sup> However, he does have balance problems.<sup>9</sup> Also, when he is especially angry due to his autism, he needs to hold on to someone's arm when walking down stairs or outside, to prevent falls.<sup>10</sup> Also, due to his autism, he requires assistance with some aspects of dressing, toilet use, personal hygiene, and bathing.<sup>11</sup> He also has memory problems and his cognitive skills for daily decision-making are moderately impaired.<sup>12</sup> Mr. Q cannot speak coherently or make his needs known; he often cannot recall items of information even with prompting; he is nearly always confused, he often requires cuing; and he would get lost in the neighborhood outside his home if left alone.<sup>13</sup>

Mr. Q also has some behavioral problems related to his autism.<sup>14</sup> He sometimes resists care, engages in socially inappropriate or disruptive behavior, and is physically abusive. His sleep is often disturbed and he wakes up at all hours of the night. He often wanders outside, at which times he is oblivious to safety concerns. Because of his cognitive and behavioral problems, Mr. Q requires professional nursing assessment, observation, and management at least once per month.<sup>15</sup> Mr. Q takes Haloperidol once per day, and medical marijuana 3-4 times per day, to help with his cognitive and behavioral issues.<sup>16</sup>

***B. The Division's Findings From its Assessments***

Mr. Q was previously assessed as to his eligibility for PCA services on October 26, 2009.<sup>17</sup> Based on his 2009 assessment, Mr. Q was found to require the following levels of assistance with the activities of daily living (ADLs) at issue in this case: locomotion (multi-level home) - extensive one-person physical assistance (CAT score 3/2, frequency 28 times per week); locomotion (to access medical appointments) - extensive one-person physical assistance (CAT score 3/2, frequency 3 times per week).<sup>18</sup> With regard to medication management, Mr. Q was found not to be taking any medications at the time, and so he was found not to require any assistance with medication management.<sup>19</sup>

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Ex. E7.

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Exs. E25, F25.

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Ex. E7; D H hearing testimony.

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Exs. E8, E9, E10, and E11.

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Ex. E16.

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Ex. E17.

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All factual findings in this paragraph are based on Exs. E18 and E19 unless otherwise stated.

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Exs. E16, E18.

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Ex. E22.

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Ex. F.

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Ex. F7.

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Ex. F22. Mr. Q had been taken off all his medications at that time in preparation for a full medical examination which was to be performed on him while under anesthesia (Ex. F23).

Mr. Q was most recently assessed for PCA eligibility on January 28, 2014 by Sharon Schober, R.N. of DSDS.<sup>20</sup> Ms. Schober's assessment was recorded and scored on the Division's Consumer Assessment Tool or "CAT".<sup>21</sup> With regard to locomotion (walking), Ms. Schober reported that she was told that Mr. Q (1) can walk without help; (2) holds on to someone's arm when walking outside or on stairs; and (3) needs to be lead down the stairs to prevent falls when he is especially angry.<sup>22</sup> Ms. Schober reported that she observed Mr. Q walk, run, and jump throughout the house, and go up and down the stairs from the home's upper level to its lower level once without assistance. Based on this, Ms. Schober found that Mr. Q requires only supervision and cueing for single-level locomotion (scored 1/5). With regard to multi-level locomotion, Ms. Schober found that Mr. Q requires only cueing. With regard to locomotion to medical appointments, Ms. Schober found that Mr. Q requires only supervision.

With regard to medication management, Ms. Schober found that Mr. Q "requires administration of medications due to severe and disabling illness" (score of 6).<sup>23</sup>

**C. Relevant Procedural History**

Mr. Q has received PCA services since 2009 or before.<sup>24</sup> He also receives services through the Medicaid Home and Community-Based Waiver Services program.<sup>25</sup> The Division performed the assessment at issue on January 28, 2014.<sup>26</sup> On April 29, 2014 the Division notified Mr. Q (through Ms. H) that his PCA service level was being reduced from 64.25 hours per week to 24.75 hours per week effective May 9, 2014.<sup>27</sup> Mr. Q requested a hearing to contest the Division's reduction of his PCA services on May 8, 2014.<sup>28</sup> Mr. Q's hearing was held on June 23, 2014. Mr. Q was represented by his legal guardian, D H, who participated in the hearing by phone and testified on Mr. Q's behalf. B Z, Mr. Q's PCA agency representative, also participated by phone and assisted in representing Mr. Q. Victoria Cobo participated by phone and represented the Division. Kathryn Heaslet participated by phone and testified for the Division. The record closed at the end of the hearing.

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<sup>20</sup> Ex. E.

<sup>21</sup> Ex. E.

<sup>22</sup> All factual findings in this paragraph are based on Ex. E7 unless otherwise stated.

<sup>23</sup> Ex. E22.

<sup>24</sup> Ex. F.

<sup>25</sup> Ex. E2. Mr. Q receives 56 hours per week of supported living services, and 10 hours per week of respite services, under his current waiver services plan of care (Kathryn Heaslet hearing testimony).

<sup>26</sup> Ex. E.

<sup>27</sup> Ex. D1.

<sup>28</sup> Ex. C.

### 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 . . . ." <sup>29</sup> [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." <sup>30</sup>

#### B. *Alaska's PCA Program - Use of the Consumer Assessment Tool (CAT)*

The Division conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT." <sup>31</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>32</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>33</sup> 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. <sup>34</sup>

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. The self-performance codes for activities of daily living (ADLs) are **0** (the person is independent

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<sup>29</sup> 7 AAC 125.010(a).

<sup>30</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>31</sup> 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

<sup>32</sup> *See* 7 AAC 125.010(a).

<sup>33</sup> Ex. E.

<sup>34</sup> *See* Division of Senior and Disabilities Services' *Personal Care Assistance Service Level Computation* (accessed online at <http://www.hss.state.ak.us/dsds/pca/documents/PCA%20Service%20Computation.pdf>) (accessed July 15, 2014); *see also* Exs. B34 - B36.

and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>35</sup>); **3** (the person requires extensive assistance<sup>36</sup>); and **4** (totally dependent).<sup>37</sup>

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. The support codes for ADLs are **0** (no setup or physical help required); **1** (only setup help required); **2** (one person physical assist required); and **3** (two or more person physical assist required).

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>38</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 per unit of frequency.<sup>39</sup>

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

In this case, because the Division is seeking to reduce existing PCA services (services which Mr. Q is now receiving), the Division has the burden of proving, by a preponderance of the evidence, that Mr. Q's need for PCA services has decreased to the extent asserted.<sup>40</sup>

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

As previously noted, the parties engaged in negotiations prior to hearing and were able to resolve all issues except for three. The only items still in dispute are the amounts of PCA time for which Mr. Q is eligible in the areas of multi-level locomotion, locomotion to medical appointments, and medication management. These three activities will be addressed below in the order stated.

#### ***1. Multi-Level Locomotion***

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

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<sup>35</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>36</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>37</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>38</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

<sup>39</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

<sup>40</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).

medical or dental appointment, and/or when walking and simple exercises have been prescribed by a physician.<sup>41</sup> In this case, Ms. Schober found that Mr. Q requires only supervision and cueing for single-level locomotion (scored 1/5), and only cueing for multi-level locomotion (CAT score of 5). Because 7 AAC 125.020(e) precludes authorization of 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, the Division awarded Mr. Q no PCA time for multi-level locomotion.

Ms. H testified, however, that Mr. Q is very unstable after receiving his medical marijuana. Mr. Q's apartment is located in the lower level of Ms. H's home, and the marijuana is always administered in a particular room in the lower level. Mr. Q generally only eats immediately after taking his marijuana, and the kitchen and dining room are located on the upper level of Ms. H's home. Thus, Mr. Q must normally go up and down the stairs each time he takes his marijuana, except for the fourth / last time right before bed. Ms. H testified that Mr. Q requires hands-on assistance when going up and down the stairs three times per day following medication administration, and that the assistance given is weight-bearing assistance.

Ms. H's testimony regarding Mr. Q's need for assistance with multi-level locomotion was credible. Further, given the somewhat unique effect the medicinal marijuana has on Mr. Q's appetite and meal schedule, and the layout of Ms. H's home and Mr. Q's lower-level apartment, it is not surprising that this information failed to come to light during the assessment. Accordingly, the undersigned finds that the preponderance of the evidence indicates that Mr. Q requires extensive physical assistance from one person, three times per day (21 times per week), when negotiating the stairs between the two levels of his home. The regulations allow 7.5 minutes of PCA time for each instance of multi-level locomotion when (as here) the recipient requires extensive assistance.<sup>42</sup> Accordingly, Mr. Q is entitled to 157.5 minutes of PCA time per week for assistance with multi-level locomotion.

## 2. Locomotion to Access Medical Appointments

With regard to locomotion to medical appointments, Ms. Schober found that Mr. Q requires only supervision. Because 7 AAC 125.020(e) precludes authorization of personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing,

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<sup>41</sup> 7 AAC 125.030(b)(3).

<sup>42</sup> See the Division's *Personal Care Assistance Service Level Computation Chart* at Ex. B34.

and setup in order to independently perform an ADL, the Division awarded Mr. Q no PCA time for locomotion to access medical appointments.

Ms. H testified, however, that Mr. Q has to be medicated before going to his doctor appointments, and that she must lead him by the arm through the back door of the doctor's office. This testimony was credible and indicates a need for limited physical assistance with locomotion to and from medical appointments (CAT score 2). The regulations allow five minutes of PCA time for each instance of locomotion to / from medical appointments when (as here) the recipient requires limited assistance during those outings.<sup>43</sup> Ms. H testified that Mr. Q goes to medical appointments about once every three months. Accordingly, Mr. Q is entitled to five minutes of PCA time every three months for assistance with locomotion to / from medical appointments.

### 3. Assistance with Medication / Medication Management

Pursuant to 7 AAC 125.030(d), PCA assistance is available for:

- (1) assisting the recipient to self-administer routine oral medication, eye drops, and skin ointments; that assistance may include reminding the recipient and placing a medication within the recipient's reach;
- (2) assisting the recipient with the administration of medication; the task may be performed only by a [PCA] working for a consumer-directed personal care agency;

PCA time is allowed for "medication assistance / administration" if the recipient receives a score of 1, 2, 4, 5, or 6 in Section G(1)(a) at page 22 of the CAT.<sup>44</sup> Here, Mr. Q is eligible for PCA time for medication administration because he received a score of six as to this item.<sup>45</sup>

The *amount* of PCA time allowed for medication assistance is computed based on the recipient's personal hygiene score.<sup>46</sup> If the recipient's personal hygiene self-performance score is 0, 1, or 8, the recipient receives no time for medication assistance. If the recipient's personal hygiene self-performance score is 2 or 5, the recipient's personal hygiene time is multiplied by .5 to compute medication assistance time. If the recipient's personal hygiene self-performance score is 3, the recipient's personal hygiene time is multiplied by .75 to compute medication assistance time. Finally, If the recipient's personal hygiene self-performance score is 4, the recipient's personal hygiene time is multiplied by 1.0 to compute medication assistance time.

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<sup>43</sup> See the Division's *Personal Care Assistance Service Level Computation Chart* at Ex. B34.

<sup>44</sup> Exs. B34, B35, E22.

<sup>45</sup> Ex. E22.

<sup>46</sup> All statements in this paragraph are based on the Division's *Personal Care Assistance Service Level Computation Chart* at Exs. B34 - B35.

In this case, Mr. Q's self-performance score for personal hygiene was 3 (extensive assistance required).<sup>47</sup> Pursuant to regulation, a self-performance score of 3 in personal hygiene gives a recipient 15 minutes of PCA time per day for assistance with that ADL.<sup>48</sup> Multiplied by seven, this results in a total of 105 minutes of PCA time per week for personal hygiene. Since Mr. Q's personal hygiene self-performance score is 3, his 105 minutes per week of personal hygiene time is multiplied by .75 to compute his medication assistance time. This results in 78.75 minutes of PCA time per week for medication assistance / administration.

Alternatively, PCA time is also allowed for "supervised medication assistance / administration" when the recipient is found to have problems chewing or swallowing.<sup>49</sup> In this case, the Division found that Mr. Q has difficulty chewing and/or swallowing.<sup>50</sup> For this reason, and because Mr. Q received a self-performance score of 3 as to personal hygiene, he is also eligible for three minutes per frequency of medication.<sup>51</sup> The Division found that Mr. Q receives medication four times per day.<sup>52</sup> Accordingly, the Division found Mr. Q eligible for 12 minutes per day, or 84 minutes per week, of PCA assistance with medications.

Ms. H did not dispute the Division's calculations as set forth above. Rather, she testified that allowing only three minutes for each administration of medication is insufficient where (as here) the medication being administered is marijuana. She testified that administering the marijuana actually takes about thirty minutes per time, four to five times per day, for a total of at least two hours per day or 14 hours per week.

Ms. H's testimony on this issue was credible. However, the PCA time available for medication assistance / administration is limited by regulation based on the formula discussed above. Accordingly, the Division was correct when it determined that Mr. Q is entitled to 84 minutes per week of PCA assistance with his medications.

***E. Has the Division Proven a Material Change in Mr. Q's Condition?***

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

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<sup>47</sup> Ex. E10.

<sup>48</sup> See the Division's Personal Care Assistance Service Level Computation Chart at Ex. B34.

<sup>49</sup> See the Division's Personal Care Assistance Service Level Computation Chart at Ex. B35.

<sup>50</sup> Ex. E25.

<sup>51</sup> Ex. B35.

<sup>52</sup> Kathryn Heaslet hearing testimony. The Division's assessment indicates that Mr. Q takes Haloperidol once per day, and medical marijuana 3-4 times per day, to help with his cognitive and behavioral issues (Ex. E22). Accordingly, using four as the average medication frequency per day is reasonable.



last assessment.<sup>53</sup> Ms. H testified at hearing that Mr. Q's functional abilities have improved dramatically, as a result of taking medical marijuana, since his last assessment. Accordingly, 7 AAC 125.026's "change in condition" requirement is satisfied in this case.

#### **IV. Conclusion**

The Division's scoring of Mr. Q's eligibility for assistance with medication management was correct. However, Mr. Q is entitled to additional PCA time for assistance with multi-level locomotion and for locomotion to medical appointments. Accordingly, the Division's decision is affirmed in part and reversed in part.

DATED this 16th day of July, 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 25<sup>th</sup> day of July, 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.]

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<sup>53</sup> 7 AAC 125.026(a), (d).