

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

In the Matter of	)	
	)	
K S	)	OAH No. 14-0909-MDS
_____	)	Agency No.

**DECISION AFTER REMAND**

**I. Introduction**

K S applied for PCA services.<sup>1</sup> The Division denied his application on April 30, 2014. Mr. S appealed this denial by a letter dated May 29, 2014. A hearing was held on July 15, 2014. Mr. S represented himself and testified in his own behalf. His niece, H N, assisted Mr. S and testified on his behalf. Tammy Smith represented the Division while Naomi Schlup and David Teague testified on behalf of the Division.

A proposed decision was issued on July 30, 2015, which concluded that Mr. S was eligible for PCA services in the areas of meal preparation, shopping, light housework, grocery shopping, laundry, and medical escort services based on his testimony. The Division then filed a proposal for action, which gave a variety of reasons why the Division’s denial of Mr. S’ application for PCA services should be upheld.

On August 6, 2014, the Division remanded the case to the administrative law judge to take additional evidence in the form of medical and hospital records concerning the dates of a series of strokes that Mr. S alleged he had suffered and whether such strokes occurred prior to the issuance of the Division’s letter denying him PCA services. In addition, the case was remanded so that the administrative judge could take additional evidence in the form of medical records concerning Mr. S’ vision problems and his prognosis.

Several supplemental hearings were scheduled during the fall of 2014 but were rescheduled or continued due to scheduling conflicts, or adjourned shortly after the scheduled supplemental hearing had commenced because the requisite medical records had not been obtained by Mr. S’ case manager. On January 27, 2014, the supplemental hearing finally occurred. Mr. S appeared and testified on his own behalf at the supplemental hearing. Ms. L J, a case manager at No Name, Inc. also testified on Mr. S’ behalf. Ms. Tammy Smith represented

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<sup>1</sup> The exact date when Mr. S’ application was submitted to the Division is not in the record.

the Division. Janice Bragwell, a supervisor of the nurses who perform assessments, testified on behalf of the Division at the supplemental hearing.

Both the medical/hospital records and testimony from the supplemental hearing failed to establish that Mr. S had suffered a series of strokes prior to the Division's denial of his application for PCA services. The medical records produced at the supplemental hearing did, however, establish that Mr. S has had severe double vision since June of 2013.

Because this is an initial application for PCA services, Mr. S bears the burden of proof of establishing that he is eligible for PCA services.<sup>2</sup> Based upon testimony from the hearings and the medical records from the supplemental hearing, Mr. S is not eligible for PCA services for any of his activities of daily living (ADLs), but is eligible for PCA services for the following independent activities of daily living (IADLs): main meal preparation, grocery shopping, and laundry. Evidence from the medical and hospital records produced for the supplemental hearing established that Mr. S currently is not eligible for medical escort services.

## **II. Facts**

Mr. S is 65 years old<sup>3</sup> and lives alone.<sup>4</sup> He has had esophageal cancer,<sup>5</sup> and suffers from severe double vision.<sup>6</sup> Mr. S also testified that he has no reflux valve and thus is unable to bend over,<sup>7</sup> but he provided no medical evidence to corroborate his testimony in this regard. At the first hearing, Mr. S also testified that he had suffered a series of strokes.<sup>8</sup> However, neither Mr. S nor H N, his niece, could recall at the initial hearing the exact date in 2014 when Mr. S had been suffered such strokes.<sup>9</sup>

Registered Nurse Naomi Schlup evaluated Mr. S' need for PCA services on April 2, 2014, using the Consumer Assessment Tool (CAT).<sup>10</sup> The Division's CAT assessment scored

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<sup>2</sup> 7 AAC 49.135.

<sup>3</sup> Ex. E, at p. 1.

<sup>4</sup> Ex. C, at p. 2; *see also* Ex. F, at pp. 2-6.

<sup>5</sup> Ex. E, at p. 3.

<sup>6</sup> Testimony of Mr. S; *see also* Ex. F, at pp. & 6.

<sup>7</sup> Testimony of Mr. S. Medical records produced at the supplemental hearing established that Mr. S had an esophagectomy with gastric pull-through. *See* Ex. G, at p. 3. The medical records did not explicitly address whether Mr. S had no reflux valve in his stomach.

<sup>8</sup> Testimony of Mr. S.

<sup>9</sup> Ms. N initially testified that she thought the stroke could have occurred shortly after the assessment took place. However, after a recess was taken during this hearing, Ms. N testified that she had just found paperwork relating to Mr. S' being transported by ambulance on March 5, 2014 to Providence Hospital and speculated that this might be the date when her uncle suffered a stroke.

<sup>10</sup> Ex. D, at p. 1; *see also* 7 AAC 125.020 (b).

Mr. S as independent (code of 0/0)<sup>11</sup> with regard to each activity of daily living (ADL) and each instrumental activity of daily living (IADL).<sup>12</sup> Ms. Schlup further testified that Mr. S never mentioned that he had had a stroke when she did the assessment.<sup>13</sup> The assessment did not mention that Mr. S had severe double vision.<sup>14</sup>

Based on the results of the CAT assessment, the Division concluded that Mr. S was not eligible for PCA services related to his ADLs – *i.e.*, transfer, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.<sup>15</sup> The Division also found that Mr. S was not eligible for PCA services related to the following independent activities of daily living (IADLs): meal preparation, shopping, light housework, and laundry.<sup>16</sup>

In his appeal, Mr. S requested PCA assistance with “grooming,”<sup>17</sup> which would be encompassed under the ADL of personal hygiene.<sup>18</sup> He also requested PCA assistance with meal preparation, laundry, grocery shopping,<sup>19</sup> cleaning<sup>20</sup> – tasks which are IADLs. In addition, Mr. S asked for assistance with transportation.<sup>21</sup> In his testimony at both hearings, Mr. S stated that he needed transportation to go grocery shopping.<sup>22</sup> He testified that at times he had to drive himself to the grocery store even though he knew he should not do that.<sup>23</sup> While “transportation” itself is not an IADL, it is included in the IADL of shopping.<sup>24</sup> The CAT assessment corroborated Mr. S’ testimony about his need for transportation<sup>25</sup> in this regard.

At the initial hearing, Mr. S testified that he could perform the various ADLs independently, although it was sometimes difficult for him to do so.<sup>26</sup> However, Mr. S testified

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<sup>11</sup> Mr. S scored a “0” under both the self-performance and support codes associated with the ADLs and IADLs. *See* Ex. D, at pp. 1-2.

<sup>12</sup> *See* Ex. D, at pp. 1-2.

<sup>13</sup> Testimony of Ms. Schlup.

<sup>14</sup> Ex. E, at p. 22.

<sup>15</sup> *See* Ex. D, at pp.1 -2.

<sup>16</sup> *See* Ex. D, at pp. 1-2.

<sup>17</sup> *See* Ex. C, at p. 2.

<sup>18</sup> The ADL of person hygiene includes washing and drying face and hands, nail and skin care, mouth and teeth care, brushing and combing hair, and shaving and shampooing hair if done separately from bathing. *See* 7 AAC 125-030(b)(7).

<sup>19</sup> *See* Ex. C, at p. 2.

<sup>20</sup> “Cleaning” is part of the IADL of light housekeeping. *See* 7 AAC 125.030(c).

<sup>21</sup> Ex. C, at p. 2.

<sup>22</sup> Testimony of Mr. S.

<sup>23</sup> Testimony of Mr. S.

<sup>24</sup> 7 AAC 125.030(c)(5).

<sup>25</sup> Ex. E, at p. 26.

<sup>26</sup> Testimony of Mr. S.

that he is unable to perform the various IADLs without assistance<sup>27</sup> due to his severe double vision and his inability to bend over because of his lack of a reflux valve. Ms. N, who visits Mr. S on a weekly basis, also testified that Mr. S was unable to perform the IADLs without assistance.<sup>28</sup> Their testimony was in sharp contrast with the Division’s CAT assessment of Mr. S regarding the IADLs.

The focus of the remand is on Mr. S’ medical condition at the time of the April 2, 2014 CAT assessment and at the time of the April 30, 2014 denial letter. One of the issues on remand is whether Mr. S’ stroke occurred before the Division issued its denial letter on April 30, 2014. In the initial hearing, Mr. S could not remember when he had a stroke.<sup>29</sup> Ms. N testified that she thought Mr. S’ stroke occurred after his CAT assessment.<sup>30</sup> However, after a brief recess during the initial hearing, Ms. N found medical records showing that Mr. S was hospitalized on March 5, 2014 and speculated that this hospitalization occurred at the time Mr. S had suffered a stroke.<sup>31</sup>

Mr. S at both hearings referenced a stroke, and he repeatedly described difficulty in remembering things and losing his train of thought.<sup>32</sup> In one of his medical records, there was a notation that Mr. S had seen a Dr. E in November of 2013, yet Mr. S did not remember seeing Dr. E according to medical records dated March 11, 2014.<sup>33</sup> Records associated with Mr. S’ hospitalization in March of 2014 showed that he was hospitalized due to an “altered mental status” resulting from cocaine use while he had pneumonia, not because of a stroke.<sup>34</sup> No other hospital records were produced to establish that Mr. S had a stroke prior to the issuance of the Division’s denial record. Accordingly, Mr. S did not substantiate that he had suffered a stroke or series of strokes prior to the Division’s the issuance of the denial letter.<sup>35</sup>

During the supplemental hearing on January 27, 2015, medical records obtained by Ms. J from No Name established that Mr. S has had “severe double vision” since he suffered an orbital blow and fracture in June of 2013.<sup>36</sup> Mr. S at the second hearing testified that his vision problems had worsened since surgery, but medical records established that his diplopia (double

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<sup>27</sup> See Testimony of Mr. S.

<sup>28</sup> See Testimony of Ms. N.

<sup>29</sup> Testimony of Mr. S.

<sup>30</sup> Testimony of Ms. N.

<sup>31</sup> Testimony of Ms. N.

<sup>32</sup> Testimony of Mr. S.

<sup>33</sup> See Ex. F, at pp. 2-3.

<sup>34</sup> See Ex. G, at p. 3; *see also* Testimony of Ms. Bragwell.

<sup>35</sup> See Ex. G; *see also* Testimony of Ms. Bragwell.

<sup>36</sup> Ex. F, at p. 6.

vision) had not worsened since surgery.<sup>37</sup> The medical records also suggested that this orbital fracture may have resulted in traumatic brain injury (TBI),<sup>38</sup> but neither Mr. S nor his care manager introduced any evidence at the hearings that would establish that Mr. S suffers from TBI.

The Division took the position at the second hearing that the scoring of the CAT assessment should be upheld since Mr. S appears to have failed to mention his double vision to the nurse assessor.<sup>39</sup> The Division further argued that the medical evidence considered during the supplemental hearing should be limited to the medical information available to the nurse assessor at the time of the CAT assessment.<sup>40</sup> The Division did not, however, explain why 7 AAC 49.120(3) – which allows the recipient or his authorized representative to present documents relevant to the case at the hearing and establish facts relevant to the case – was inapplicable here.<sup>41</sup>

### **III. Discussion**

#### **A. The 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>42</sup>]

The Division uses the CAT to help it assess the level of assistance needed.<sup>43</sup> The goal of the assessment process is to determine the level of physical assistance that an applicant requires in order to perform their ADLs and IADLs.<sup>44</sup> The CAT numerical coding system has two

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<sup>37</sup> Compare Testimony of Mr. S with Ex. F, at p. 2. However, since the medical records established that Mr. S had “severe double vision” on October 17, 2013, the fact the medical records state that his “severe double vision” had not worsened by March 11, 2014 corroborates Mr. S’ testimony that, at the time of the CAT assessment, he was suffering from “severe double vision.”

<sup>38</sup> See Ex. F, at p. 3

<sup>39</sup> See Ex. EE, at p. 22; see also Testimony of Janice Bragwell. The nurse assessor, Naomi Schlup, no longer was working for the Division at the time of the supplemental hearing and thus could not be questioned regarding her scoring of Mr. S’ vision.

<sup>40</sup> See Supplemental Hearing Transcript.

<sup>41</sup> 7 AAC 49.120(3) establishes the right of a recipient to a *de novo* review in a hearing related to the administration of the Medicaid program.

<sup>42</sup> See 7 AAC 125.010(a).

<sup>43</sup> 7 AAC 125.020(b).

<sup>44</sup> See 7 AAC 125.010(a).

components: a self-performance code<sup>45</sup> and a support code.<sup>46</sup> The CAT's "self-performance" codes rate how capable a person is with regard to performing a particular ADL<sup>47</sup> or IADL.<sup>48</sup> The CAT's "support" codes rate the degree of assistance that a person requires for a particular ADL<sup>49</sup> or IADL.<sup>50</sup>

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If the person requires some degree of hands-on physical assistance with any *one* of the specific ADLs<sup>51</sup> of transfers, locomotion, eating, toilet use, dressing, or bathing, **or** any *one* of the specific IADLs<sup>52</sup> of meal preparation (either light or main meals), housework (either light or routine housework), grocery shopping, or laundry, then the person is eligible for PCA services. However, if a person is independent or only requires non-hands-on assistance (oversight, supervision, cueing, and setup) with all of these specific ADLs and IADLs, then the person is not eligible for PCA services, regardless of whether he or she may require hands-on physical assistance with the ADLs or IADLs other than the specific ones used to determine eligibility.<sup>53</sup>

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<sup>45</sup> See Ex. D, at pp. 1-2.

<sup>46</sup> See Ex. D, at pp. 1-2.

<sup>47</sup> With regard to ADLs, the possible self-performance codes are: **0** (person is independent and requires no help or oversight); **1** (person requires supervision); **2** (person requires limited assistance); **3** (person requires extensive assistance); **4** (person is totally dependent); **5** (the person requires cueing), and **8** (the activity did not occur during the past seven days). See Exhibit D, at p. 2; see also Ex. E, at pp. 6-11.

<sup>48</sup> The self-performance codes for IADLs are slightly different from the ADL self-performance codes. With regard to IADLs, the self-performance codes are: **0** (independent either with or without assistive devices – no help provided); **1** (independent with difficulty; the person performed the tasks, but did so with difficulty or took a great amount of time to do the task); **2** (assistance/done with help – the person was somewhat involved in the activity, but help in the form of supervision, reminders, physical assistance was provided); **3** (dependent/done by others – the person is not involved at all with the activity and the activity is fully performed by another person); and **8** (activity did not occur within the past seven days). See Ex. D, at p. 2; see also Ex. E, at p. 26.

<sup>49</sup> The support codes for the ADLs are: **0** (not setup or physical help); **1** (setup help only); **2** (one person physical assist); **3** (two+ persons physical assist); **5** (cueing); and **8** (activity did not occur). See Ex. D, at p. 2; see also Ex. E, pp. 6-11.

<sup>50</sup> The support codes for the IADLs are slightly different from the ADL support codes. With regard to IADLs, the support codes are: **0** (no support provided); **1** (supervision/cueing provided); **2** (set up help only); **3** (physical assistance was provided); **4** (total dependence – person not involved), and **8** (activity did not occur). See Ex. D, at p. 2; see also Ex. E, at p. 26.

<sup>51</sup> 7 AAC 125.020(a). "Limited Assistance" – the minimum hands-on physical assistance standard applicable to ADLs – is a situation in which the recipient, although "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." See 7AAC 125.020(a)(1).

<sup>52</sup> 7 AAC 125.020(a). "Independent with Difficulty" – the minimum hands-on physical assistance standard applicable to IADLs -- is defined in AAC 125.020(a)(4) as a situation in which the "the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it." If a potential recipient's IADL self-performance score is a "1" – *i.e.*, independent with difficulty – then the support code must be a "3" or a "4" in order for the person to receive PCA services. See Ex. B, at p. 34.

<sup>53</sup> See Ex. E, at p. 31 (part of the CAT, adopted by reference in 7 AAC 125.02(a)(1) and 7 AAC 160.900).

## **B. Mr. S' CAT Assessment**

The CAT assessment found Mr. S to be independent (code of 0/0) with regard to all of the ADLs and IADLs. At the supplemental hearing, the Division argued that the scoring in the CAT assessment should be upheld, but also admitted through its representative that Mr. S was “independent with difficulty” and needed supervision and cueing with regard to the IADL of grocery shopping (CAT score 1/2).<sup>54</sup>

### **1. ADLs**

At the initial hearing, Mr. S testified that he could perform the ADLs of transfers, dressing, toileting, and bathing independently,<sup>55</sup> which was consistent with the Division’s assessment (CAT score 0/0).<sup>56</sup> While Mr. S admitted that he occasionally used a cane for balance, he did not otherwise contradict the CAT assessment’s finding that he was independent in the ADL of locomotion.<sup>57</sup> Similarly, although Mr. S has esophageal cancer, he did not request assistance with eating in his appeal or during his testimony at the initial hearing, although he said swallowing was difficult.<sup>58</sup> Consequently these ADLs are not at issue in this appeal.

#### **a. Personal Hygiene**

Mr. S in his appeal letter requested assistance with “grooming.”<sup>59</sup> Personal hygiene is an ADL which encompasses “grooming” because it includes combing hair, brushing teeth, shaving, washing/drying face and hands.<sup>60</sup> The Division concluded that Mr. S performed these tasks independently, giving him a CAT score of 0/0.

At the initial hearing, Mr. S testified that he can independently wash/dry his face and hands, can brush his teeth, and shave himself using an electric razor.<sup>61</sup> Ms. N also stated that Mr. S doesn’t shave regularly, but that appears to be a matter of choice since Mr. S testified that he has an electric razor and is able to use it.<sup>62</sup> In light of this testimony, the Division’s assessment that Mr. S is independent with regard to the ADL of personal hygiene

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<sup>54</sup> See Transcript of Supplemental Hearing.

<sup>55</sup> Testimony of Mr. S.

<sup>56</sup> See Ex. D, at pp. 1-2.

<sup>57</sup> Compare Testimony of Mr. S with Ex. D, at p. 1.

<sup>58</sup> Ex. C, at p. 2; see also testimony of Mr. S. Although Mr. S at the initial hearing testified that he had difficulty swallowing, he did not express a need for assistance with eating.

<sup>59</sup> Ex. C, at p. 2.

<sup>60</sup> See Ex. E, at p. 10.

<sup>61</sup> Testimony of Mr. S.

<sup>62</sup> Testimony of Ms. N.

is accurate. Accordingly, Mr. S did not meet his burden of proof in establishing that he needs PCA services in connection with the ADL of personal hygiene.

## **2. IADLs**

### **a. Light Meal Preparation**

According to the CAT assessment, Mr. S needs no assistance with light meal preparation.<sup>63</sup> The IADL of light meal preparation is the preparation, serving, and cleanup in the recipient's home of any meal that is essential to meet the health needs of the recipient, and that is not the main meal of the day.<sup>64</sup> Mr. S testified that he can use a microwave and pull things out of the refrigerator – such as meat, bread, and fruit that Ms. N brings to him<sup>65</sup> on a weekly basis. At the second hearing, Mr. S confirmed that if a jar of peanut butter was set in front of him, he could make a sandwich.<sup>66</sup> Mr. S' testimony thus was consistent with his independent performance with difficulty (code of 0/1), of the IADL of light meal preparation.<sup>67</sup> However, this score does not make him eligible for PCA services for light meal preparation.

### **b. Main Meal Preparation**

The IADL of main meal preparation involves the preparation, serving, and cleanup in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient.<sup>68</sup> There was extensive testimony from Mr. S and Ms. N which contradicted the Division's conclusion that Mr. S did not need assistance with main meal preparation. Mr. S testified that he cannot see well enough due to his severe double vision to cut up vegetables, cook, or engage in other similar types of food preparation that one would normally associate with a main meal.<sup>69</sup> Although Ms. N testified that she brings one or two prepared meals over to her uncle each week,<sup>70</sup> Mr. S has no other source for his main meals. The testimony of Ms. N and Mr. S as to main meal preparation was credible and consistent with the medical records produced at the supplemental hearing which diagnosed Mr. S as

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<sup>63</sup> Mr. S received a 0/0 score on the CAT assessment with regard to the IADL of meal preparation. *See* Exhibit D, at p. 2.

<sup>64</sup> 7 AAC 125.030(c)(1).

<sup>65</sup> Testimony of Ms. N.

<sup>66</sup> Testimony of Mr. S.

<sup>67</sup> Testimony of Mr. S.

<sup>68</sup> 7 AAC 125.030(c)(2).

<sup>69</sup> Testimony of Mr. S.

<sup>70</sup> Testimony of Ms. N.



having “severe double vision.”<sup>71</sup> However, Mr. S did not establish that he was completely unable to participate in his main meal preparation. Consequently, Mr. S is found to require physical hands-on assistance with main meal preparation, but is not completely dependent with this task. This would be a score of 2/3.<sup>72</sup> He is therefore eligible for PCA services for this IADL.

**b. Grocery Shopping**

The Division initially concluded that Mr. S was independent as to grocery shopping, giving him a CAT score of 0/0 for this IADL.<sup>73</sup> The 0/0 score means that Mr. S can perform the activity independently and does not need any assistance.<sup>74</sup> In contrast, Mr. S at the first hearing and at the supplemental hearing testified that he needed assistance with grocery shopping. He explained that he cannot see which package he is grabbing off of a shelf because he has severe double vision that cannot be corrected.<sup>75</sup> He also testified that he cannot read labels or price tags because of his double vision.<sup>76</sup> Ms. N at the first hearing confirmed that she often buys food and meat for her uncle so that Mr. S has something other than old food in the refrigerator.<sup>77</sup>

At the supplemental hearing, Mr. S testified that he is not supposed to drive but occasionally has done so in order to get to the grocery store to buy some food.<sup>78</sup> Mr. S also said that his stepson accompanies him to the grocery store when he is available since Mr. S cannot see the labels and often grabs the wrong food off of the shelf.<sup>79</sup>

The Division’s analysis of Mr. S’ ability to perform the IADL of grocery shopping is seriously flawed. First, the term “independent” means that Mr. S can perform the activity *without the help of another individual*.<sup>80</sup> Mr. S testified that he could only go grocery shopping with help: either his stepson had to help him or Ms. N had to bring food to his

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<sup>71</sup> See Ex. F, at pp. 2 & 6.

<sup>72</sup> A score of “2” is appropriate because Mr. S has testified that he can open up the refrigerator and get food left in there and then heat that food up in the microwave. In other words, he needs some hands-on help for his main meal since the main meal has to be prepared by somebody else. See Ex. E, at p. 26.

<sup>73</sup> See Ex. E, at p. 26.

<sup>74</sup> See Ex. D, at p. 2.

<sup>75</sup> Testimony of Mr. S.

<sup>76</sup> Testimony of Mr. S.

<sup>77</sup> Testimony of Ms. N.

<sup>78</sup> Testimony of Mr. S (second hearing).

<sup>79</sup> Testimony of Mr. S (second hearing).

<sup>80</sup> Cf. 7 AAC 125.020(a)(4)(stating that “independent with difficulty” means that the recipient can perform the activity without the help of another individual but does so with difficulty or requires a greater amount of time to perform the task).

home.<sup>81</sup> Given his documented diagnosis of “severe double vision,” Mr. S’ testimony that he could not do shopping independently was credible. Second, Mr. S requires something more than “supervision”<sup>82</sup> – *i.e.*, being given direction -- in order to read labels on products and to remove the products from the shelf. He testified that he cannot read the labels due to his double vision and often pulls the wrong product from the shelf.<sup>83</sup> He also requires more than “cueing,” since cueing is simply designed to alert a recipient that he needs to perform the activity.<sup>84</sup> Based on the evidence in the record, Mr. S should be scored as requiring physical hands-on assistance, but not complete dependence, (code of 2/3) on the IADL of grocery shopping.

***c. Light Housework***

The IADL of “light housekeeping” is defined as including the tasks of dusting, vacuuming, washing dishes, cleaning the bathroom, making the bed, and removing trash.<sup>85</sup> The Division gave Mr. S a CAT score of 0/0 for this IADL, finding him to be independent as to light housework.<sup>86</sup>

Mr. S and Ms. N each testified at the initial hearing that Mr. S was dependent upon others with regard to light housekeeping. In fact, Ms. N testified that, shortly before the CAT assessment, she had cleaned up the Mr. S’ living space.<sup>87</sup> Mr. S said his severe double vision, coupled with the fact that he is unable to bend over or pick up anything on the ground because he has no reflux valve, have affected his ability to do light housekeeping.<sup>88</sup> Ms. N testified that when she comes over each week, she washes his dishes and cleans up the house.<sup>89</sup> Mr. S stated that he has double vision, tunnel vision, no side vision, and can

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<sup>81</sup> Testimony of Mr. S (first and supplemental hearing).

<sup>82</sup> See 7 AAC 125.020(e)(3).

<sup>83</sup> Testimony of Mr. S.

<sup>84</sup> See 7 AAC 125.020(e)(1). The term “daily” used in the definition of “cueing” contemplates that “cueing” is a reminder for a recipient to do something. Mr. S did not testify that he could not remember to go grocery shopping; he testified that he needed assistance while grocery shopping to read labels and to take the correct items he needed off of the shelf. See Testimony of Mr. S.

<sup>85</sup> 7 AAC 125.030(c)(3).

<sup>86</sup> See Ex. D, at p. 2. Although the regulation applicable to this IADL refers to it as “light housekeeping”, the Division has used the term “light housework” to describe this task. Compare 7 AAC 125.030(c)(3) with Ex. D, at p. 26.

<sup>87</sup> Testimony of Ms. N.

<sup>88</sup> Testimony of Mr. S.

<sup>89</sup> Testimony of Ms. N.

only see things directly in front of him, so he can't see very well to do vacuuming or cleaning.<sup>90</sup>

It is undisputed that the CAT is silent concerning Mr. S' double vision.<sup>91</sup> However, the appeal constitutes a *de novo* review, so testimony and medical records about Mr. S' vision problems may be introduced and considered.<sup>92</sup> The medical records introduced at the supplemental hearing corroborate Mr. S' statements about his "severe double vision."<sup>93</sup> However, although Ms. N helps her uncle with light housekeeping, Mr. S has not said he can't do the task of vacuuming and cleaning without assistance – just that he can't do it very well because of his double vision. Consequently, Mr. S has not demonstrated that he needs PCA services for the IADL of light housekeeping.

#### *d. Laundry*

The IADL of laundry is defined as changing the recipient's bed linens and the in-home or out-of-home laundering of a recipient's bed linens and clothing.<sup>94</sup> The Division determined that Mr. S was independent (CAT score of 0/0) with the IADL of laundry. Mr. S' testimony regarding his need to depend on others to perform this task was credible. He described how he was unable to bend over because he had no stomach reflux valve,<sup>95</sup> which prevents him from picking up things. He also testified that he cannot read dials due to his double vision,<sup>96</sup> which would preclude him from using a washing machine or dryer. In addition, Ms. N testified that she did all of his wash when she came over each week.<sup>97</sup>

Since the Division produced no evidence which would dispute Mr. S' medical diagnosis of "severe double vision," Mr. S' testimony concerning his inability to do laundry unless he had some physical assistance is credible. He is not, however, entirely dependent on physical assistance because he could still do some tasks related to laundry such as

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<sup>90</sup> Testimony of Mr. S (second hearing).

<sup>91</sup> See Ex. E.

<sup>92</sup> 7 AAC 49.120(3)(D).

<sup>93</sup> Ex. F, at p. 2 & 6.

<sup>94</sup> 7 AAC 125.030(c)(4).

<sup>95</sup> Testimony of Mr. S. The medical records do not specifically reference Mr. S' lack of a reflux valve, although they do confirm that he has had an esophagectomy with gastric pull-through. See Ex. G, at p. 3 (hospital records from Providence Alaska Medical Center). However, it is Mr. S' double vision and his inability to read dials or handle other aspects of doing the wash (such as pre-spotting clothing or reading labels as to how a garment is to be laundered) that compels the conclusion that he needs physical assistance with this task.

<sup>96</sup> Testimony of Mr. S.

<sup>97</sup> Testimony of Ms. N

folding or hanging up clothes. Based on the evidence in the record, Mr. S should receive a score of 2/3 on the IADL of laundry.

### **3. *Medical Escort Services***

A Medicaid recipient is eligible for PCA services for traveling “to and from a routine medical or dental appointment outside the recipient’s home and conferring with medical or dental staff during the appointment.”<sup>98</sup> The original decision in this case found Mr. S eligible to receive medical transport services based on his testimony concerning his decreased ability to remember following his stroke in 2014 which, according to testimony from his niece may have occurred at the time of his hospitalization in March of 2014.<sup>99</sup>

Evidence in the record produced after remand for the supplemental hearing failed to establish that Mr. S’ stroke occurred prior to April 30, 2014, the date of the Division’s denial letter. Mr. S testified that he takes a bus to his medical appointment.<sup>100</sup> In order to be eligible for medical escort, Mr. S had the burden of proving that at the time of the Division’s denial letter, he needed medical escort for transportation and for conferring with the medical/dental staff.<sup>101</sup> It may be that Mr. S’ cognitive abilities have declined since the Division’s denial letter and that he now needs such assistance. However, for purposes of this appeal and remand, the issue is whether he needed such services on or before April 30, 2014. Mr. S’ has not established by a preponderance of the evidence that he was suffering from cognition issues prior to April 30, 2014 resulting from a stroke so that he needed an individual to accompany him to medical/dental appointments to confer with the medical professionals.

### **IV. Conclusion**

Mr. S has scored as not being completely dependent, but requiring hands-on physical assistance (score of 2/3) with regard to the IADLs of main meal preparation, grocery shopping, and laundry. A score of 2/3 with regard to any one of these IADLs qualifies him to receive PCA services. Consequently, Mr. S is eligible for PCA services due to his demonstrated need for assistance in the area of main meal preparation, grocery shopping, and laundry.

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<sup>98</sup> 7 AAC 125.020(d)(9).

<sup>99</sup> Testimony of Ms. N.

<sup>100</sup> Testimony of Mr. S.

<sup>101</sup>

The Division's determination that Mr. S is not eligible for PCA services is, therefore, reversed as it pertains to the IADLs of main meal preparation, grocery shopping, and laundry. This matter is remanded to the Division to calculate PCA time in accordance with this decision.

DATED this 20th day of April, 2015.

*Signed* \_\_\_\_\_

Kathleen A. Frederick  
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 5th day of May, 2015.

By: *Signed* \_\_\_\_\_

Name: Kathleen A. Frederick  
Title: Chief Administrative Law Judge

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