



assessment are no longer representative of Mr. M's need for physical assistance to complete his activities of daily living and independent activities of daily living, because Mr. M suffered a stroke in February 2014. As a result of his stroke, Mr. M is weak, has difficulty swallowing, cannot feed himself, and generally requires more assistance.<sup>2</sup> The division's final determination reducing his PCA services does not take into account Mr. M's needs post stroke.

## I. Discussion

### A. *Burden of Proof*

The division has the burden of proof because it seeks to reduce Mr. M's PCA services.<sup>3</sup>

### B. *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 the instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient."<sup>4</sup> The division uses the CAT (consumer Assessment Tool) to help it assess the level of assistance needed.<sup>5</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 or living quarters), dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.<sup>6</sup> Measured IADLs include meal preparation, shopping, light housework, and laundry.<sup>7</sup>

The amount of time authorized for needed assistance is determined by the Personal Care Assistance Service Level Computation Chart (SLC).<sup>8</sup> The SLC provides a set amount of time allotted for each ADL, depending on the level of physical assistance needed for each task. PCA recipients are assessed annually to determine what physical assistance is required to perform an ADL (performance) and how often physical assistance is required (frequency).

The different levels of performance assistance with ADLs and IADLs are defined by regulation, and described in the CAT.<sup>9</sup> Supervision (scored as a 0 or 1) is defined as oversight,

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<sup>2</sup> T Testimony.

<sup>3</sup> 7 AAC 49.135.

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

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

<sup>6</sup> Exhibit E at 6 – 11.

<sup>7</sup> Exhibit E at 26.

<sup>8</sup> 7 AAC 125.024(1).

<sup>9</sup> The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.<sup>10</sup> Limited assistance (scored as a 2) is defined as requiring direct physical help or hands on guidance from another individual three or more times a week, with weight-bearing support no more than two times a week.<sup>11</sup> Extensive assistance (scored as a 3) is defined as requiring direct physical help with weight-bearing support at least three times a week, or full assistance without any involvement from the recipient at least one time a week, but not all of the time.<sup>12</sup> Total dependence (scored as a 4) means full caregiver performance of the activity during the entire seven days.<sup>13</sup>

The performance levels for IADLs are slightly different than for ADLs. Independence (scored as a 0) is defined as independent either with or without assistive devices - no help provided.<sup>14</sup> Independence with difficulty (scored as a 1) is characterized by the person performing the task with difficulty or taking a great amount of time to do it.<sup>15</sup> Assistance/done with help (scored as a 2) is when the person is somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance is provided.<sup>16</sup> Dependent/done by others (scored as a 3) means the person is not involved at all with the activity and the activity is fully performed by another person.<sup>17</sup> If the activity did not occur it is scored as an 8.<sup>18</sup>

The parties resolved several areas of dispute prior to the hearing. Their resolution is recorded. The only areas in remaining is dispute are: transfer (frequency only), locomotion in room (frequency only), locomotion medical appointment (frequency only), eating, toilet use (frequency only), and escort.

### C. *Activities of Daily Living*

#### 1. Transfers

Transferring is the act of moving between surfaces, such as getting out of or into a bed, or getting up from a chair to a standing position.<sup>19</sup> The parties are in agreement that Mr. M requires extensive assistance to transfer (score 3/2). They disagree as to the frequency with

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<sup>10</sup> See e.g., Exhibit E at 6.

<sup>11</sup> 7 AAC 125.020(a)(1); Exhibit E at 6.

<sup>12</sup> 7 AAC 125.020(a)(2); Exhibit E at 6.

<sup>13</sup> 7 AAC 125.020(a)(3); Exhibit E at 6. Bathing and the IADLs have their own assistance level definitions.

<sup>14</sup> Exhibit E at 26.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Exhibit E at 6.

which he transfers. Mr. M had been authorized for a transfer frequency of 56 times a week. The division reduced that number to 42 times a week. Mr. Cornell could not recall how the division arrived at a frequency of 42.

The frequency with which Mr. M required assistance with transfers captured by the assessor at the interview over five months prior to the division's determination is different from that presented at the hearing. The hearing process revealed that Mr. M transfers from bed, locomotes to another room, and then transfers to a chair to eat. He then gets up and out of the chair, locomotes to his bedroom and transfers back into bed. Sometimes he will stop and toilet on one of these locomotes, and at other times he transfers out of bed specifically to toilet. If the frequency with which Mr. M transfers is as just described, excluding transferring out of and into bed specifically to go toilet, then he transfers 12 times a day or 84 times per week. His frequency should reflect 84 times a week.

## 2. Locomotion

The ADL of locomotion refers to the manner in which a person moves within his or her own room or other areas on the same floor.<sup>20</sup> The only area of disagreement as to the ADL of locomotion is frequency. Mr. M had been authorized 42 locomotes per week, on May, 7, 2014 he was authorized only 28 locomotes per week. The division explained the reduction in score by noting that if physical assistance was required, it was not required for each locomote. If things had not changed, the division's frequency of 28 times per week, would likely be correct. However, the unchallenged evidence is that Mr. M suffered a stroke in February, and as a result remained hospitalized for five days. The unchallenged testimony is that he has gotten progressively weaker since his stroke and now requires physical assistance on a regular basis. On the record presented, the division has not met its burden of proof that as of May, 2014, Mr. M requires limited physical assistance 28 times a week. He should be returned to a frequency of 42.

## 3. Locomotion to Medical Appointments

Mr. M was previously scored as requiring limited assistance for locomoting to medical appointments. The division recognizes that Mr. M's need for assistance has increased and he now requires extensive assistance (score 3/2) for locomoting to medical appointments. As discussed below under escort, Mr. M travels to the doctor approximately

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<sup>20</sup> See Exhibit E7.

15 times a year for a total of 30 frequencies. The division correctly assessed Mr. M at a weekly frequency of 1.

#### 4. Escort

PCA services are allowed when needed for “travelling with the recipient to and from a routine medical or dental appointment outside the recipient’s home and [for] conferring with medical or dental staff during the appointment.”<sup>21</sup> The division authorized 12 visits per year at 30 minutes for each visit. Ms. T testified credibly that her grandfather goes to the doctor at least once a month but that sometimes it is more frequent. She estimated 15 times a year. Fifteen times a year is supported by the record. This does not seem to be an inflated number of doctor visits when considering Mr. M’s age and medical conditions.

The time allotted is in error. Mr. Cornell testified that he selected 30 minutes based on the travel time. That also included time parking, not just driving. 40 minutes for travel to and from (20 minutes each way) is a more accurate reflection of what is required for an Anchorage resident to travel to and from a medical appointment. The 40 minutes does not account for time spent consulting with Mr. M’s providers. 15 minutes is reasonable for consulting with a provider. Therefore, Mr. M should receive 55 minutes for escort 15 times a year. Mr. M should receive 15.86 minutes per week for escort.<sup>22</sup>

#### 5. Eating

The ADL of eating refers to tube feeding, enteral feeding, and supervised eating for a person who has swallowing, chewing or choking difficulties.<sup>23</sup> In 2010, Mr. M was scored as requiring full caregiver performance (score 4/2). In his most recent assessment he was scored as requiring supervision and setup help (1/1).

Mr. Cornell explained that he scored Mr. M as supervision only because if Mr. M could lift his hand to his face, he could raise his hand to feed himself because the standard is how a person eats regardless of skill.<sup>24</sup>

Ms. T testified credibly that at the time of the assessment visit, Mr. M required prompting and some assistance with swallowing, but that he could feed himself. After the February stroke her uncontradicted testimony is that Mr. M required more hands on

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<sup>21</sup> 7 AAC 125.030(d)(9).

<sup>22</sup> 15 visits at 55 minutes each = 825 minutes; 825 minutes / 52 weeks = 15.86 minutes per week.

<sup>23</sup> 7 AAC 125.030(b)(5).

<sup>24</sup> Cornell Testimony; Exhibit E at 9; Exhibit E at 10.

assistance and help with eating, particularly help to ensure he does not choke. Moreover, he cannot always get the food to his mouth.<sup>25</sup>

The stroke occurred prior to the division's assessment determination. The testimony provided by Ms. T describes a natural decline in her grandfather's abilities. What has been described is the need for limited assistance (score 2/2). Ms. T testified that Mr. M does not require hands on assistance at every meal. The need described can be met by providing limited assistance twice a day or 14 times a week.

At the hearing's conclusion the division attempted to shift the burden to Mr. M by asserting that the type of assistance requested was found on the SLC under (1)(d), supervised eating and drinking, which is a different type of eating than what was scored in the CAT. The division's argument is rejected. The Supervised eating under SLC (d)(1) requires that chewing and swallowing is checked in the section of the CAT addressing Nutritional Problems or Approaches.

#### 6. Toileting

The ADL of toileting includes transfers on and off the toilet, cleaning oneself, and adjusting clothing and routine incontinence care.<sup>26</sup> The only area of disagreement with this ADL is frequency. Mr. M has a frequency of 42 times per week. This was reduced to 14 times a week, in large part due to the use of a catheter, which replaced the act of using a commode or incontinence product with the emptying of a urine bag as needed. Mr. M also has bowel incontinence issues. The division has established that a lower frequency is appropriate.

#### **IV. Conclusion**

The evidence received at the hearing presents a slightly different picture of Mr. M needs than those observed at the assessment interview. For those areas that remained unresolved and proceeded to hearing, the division's May 7, 2014 determination is affirmed as to toileting and locomotion to medical appointments. The division's determination as to transfer, locomotion, eating, and escort is modified as set out above. The division's decision is reversed in part and

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<sup>25</sup> T Testimony.

<sup>26</sup> 7 AAC 125.030(b)(6).

affirmed in part, with instructions to recalculate the number of authorized minutes of PCA services in accordance with this decision.

DATED this 10<sup>th</sup> day of October, 2014.

By: Signed  
Rebecca L. Pauli  
Administrative Law Judge

### **Adoption**

The undersigned, by delegation from 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 22<sup>nd</sup> day of October, 2014.

By: Signed  
Name: Christopher Kennedy  
Title: Administrative Law Judge

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