

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

In the Matter of:)
)
 J W) OAH No. 14-1105-MDS
) HCS Case No.

DECISION

I. Introduction

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (Division) correctly assessed the amount of Medicaid Personal Care Assistant (PCA) services for which Ms. J W is eligible. The Division decreased Ms. W's PCA services from 23.75 hours per week to 14 hours per week effective June 15, 2014.¹

This decision concludes, based on the evidence in the record, that the Division's determination of the PCA services for which Ms. W is currently eligible was substantially correct. The only errors made by the Division in determining Ms. W's current level of PCA services were as to the level of assistance that Ms. W requires with locomotion, personal hygiene, and medication management. Accordingly, the Division's decision is reversed as to Ms. W's required level of assistance with locomotion, personal hygiene, and medication management, but is affirmed in all other respects.

II. Facts

A. Ms. W's Medical Diagnoses and Health Problems

Ms. W is 76 years old² and weighs 110 pounds.³ She lives with her husband and three adult children in a second floor apartment.⁴ Her primary language is Tagalog.⁵ Her primary diagnoses are hypertension, osteopenia, and rheumatoid arthritis.⁶ Her secondary diagnoses are chronic pain, failure to thrive, incontinence, insomnia, and weight loss.⁷ Ms. W takes a number of prescription medications, including Atorvastatin, Fluticasone, folic acid, Furosemide, Hydrochloroquine, Losartan, Metoprolol, Nitrostat, Prednisone, Spironolactone, Tramadol, and a combination of

¹ Ex. D1.
² Ex. E1.
³ Ex. E23.
⁴ Ex. E1.
⁵ Ex. E1.
⁶ Ex. E3.
⁷ Ex. E3.

Tylenol #3 and codeine.⁸ Ms. W had knee surgery at some time in the past, and she had an angiography with stents in early 2013.⁹

B. The Division's Findings from the 2013 and 2014 Assessments

Ms. W was previously assessed as to her eligibility for PCA services on February 6, 2013 by Division nurse-assessor Olga Levy, R.N.¹⁰ Ms. Levy conducted a functional assessment.¹¹ She found that Ms. W's hands and fingers were deformed due to her arthritis, she had very weak grip strength in both hands, and she was unable to draw a clock because of pain in her hands. Ms. Levy reported that Ms. W complained of chronic pain in her shoulders, elbows, legs, and knees, and that Ms. W was unable to raise her arms over her head or reach behind her back due to limited range of motion in her joints. With regard to memory and cognition, Ms. Levy found that Ms. W had both short-term and long-term memory problems, and that her cognitive abilities were moderately impaired.¹²

Based on the 2013 assessment, Ms. Levy found that Ms. W required the following levels of assistance with her ADLs:¹³ body mobility - was independent and required no set-up help; transfers - required extensive one-person physical assistance 28 times per week; locomotion - required extensive one-person physical assistance 21 times per week; dressing - extensive one-person physical assistance 14 times per week; eating - requiring extensive one-person physical assistance 21 times per week; toilet use - required extensive one-person physical assistance 42 times per week; personal hygiene - required extensive one-person physical assistance seven times per week; and bathing - required extensive one-person physical assistance seven times per week.

At the same 2013 assessment, Ms. Levy found that Ms. W required the following levels of assistance with her IADLs:¹⁴ independent with set-up help as to telephone use (scored 1/2); required physical assistance with finance management (scored 2/3); and was totally dependent as to light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry (each scored 3/4).

⁸ Ex. E20.

⁹ Ex. E3.

¹⁰ Exs. F1 - F31.

¹¹ All factual findings in the remainder of this paragraph are based on Ex. F4 unless otherwise stated.

¹² Ex. F16.

¹³ All factual findings in this paragraph are based on Exs. F6 - F12 unless otherwise stated.

¹⁴ All factual findings in this paragraph are based on Ex. F26 unless otherwise stated.

Ms. W was most recently assessed for continuing PCA eligibility on January 21, 2014 by Sam Cornell, R.N. of DSDS.¹⁵ An interpreter was present. Mr. Cornell reported that Ms. W had weak grip strength in both hands, but declined to participate in functional tests at the time of the assessment due to pain.¹⁶ However, Mr. Cornell reported that, at other times during the assessment, he actually observed Ms. W reach her face, the side of her head, and her ankles.¹⁷

Mr. Cornell's assessment is recorded and scored on the Division's Consumer Assessment Tool or "CAT." Mr. Cornell found that Ms. W has the following abilities and limitations with regard to her Activities of Daily Living (ADLs):¹⁸

Body Mobility / Bed Mobility:¹⁹ Mr. Cornell reported that he was told that Ms. W sleeps in a regular bed, has no bed sores or skin breakdowns, wears a diaper to bed at night, and does not get up to use the bathroom overnight. Mr. Cornell reported he observed that Ms. W sleeps in a regular bed, without assistive devices, in her own room (scored 0/0 - independent).

Transfers:²⁰ Mr. Cornell reported that he was told by Ms. W that she is assisted with transfers due to weakness, pain, and balance problems; that she stays in bed most of the day; and that she normally gets out of bed only to eat with her family and use the bathroom. Mr. Cornell reported that he observed that Ms. W has good balance, uses no assistive devices, and is able to transfer with assistance (scored 2/2, frequency 2/7).

Locomotion (walking):²¹ Mr. Cornell reported that he was told by Ms. W that (1) she has pain with all walking and movement; (2) she no longer uses a cane or walker, and prefers to use a family member or her PCA for support when moving around indoors; and (3) uses a manual wheelchair, without assistance, when moving around outdoors. Mr. Cornell did not report any actual observation of Ms. W walking (scored 1/1).

Dressing:²² Mr. Cornell reported that he was told that Ms. W requires assistance to dress and undress due to stiffness and pain from her arthritis. Mr. Cornell reported that he observed that Ms. W's hands were somewhat deformed and that her grip strength was "intermittent depending on activity" (scored 2/2, frequency 2/7).

¹⁵ Ex. E.

¹⁶ Exs. E3, E4.

¹⁷ Ex. E4.

¹⁸ Exs. E6 - E12.

¹⁹ All references in this paragraph are based on Ex. E6 unless otherwise stated.

²⁰ All references in this paragraph are based on Ex. E6 unless otherwise stated.

²¹ All references in this paragraph are based on Ex. E7 unless otherwise stated.

²² All references in this paragraph are based on Ex. E8 unless otherwise stated.

Eating:²³ Mr. Cornell reported that he was told by Ms. W that she does not cook. Mr. Cornell reported that he observed Ms. W to have grip strength sufficient to pull socks and pant legs up and down, and that she was able to bring her hands to the side of her face during the assessment (scored 0/1).

Toileting:²⁴ Mr. Cornell reported that he was told by Ms. W that she requires assistance with the transfers, hygiene tasks, and clothing adjustments associated with toilet use. Mr. Cornell observed that there were no assistive devices present in Ms. W's bathroom at the time of the assessment (scored 2/2, frequency 4/7).

Personal Hygiene:²⁵ Mr. Cornell reported that he was told that Ms. W requires assistance with her personal hygiene due to arthritis pain. Mr. Cornell reported that he observed Ms. W actually reach her face, the sides of her head, and below her knees during the assessment, and noted that she was neat at the time of the assessment (scored 1/1).

Bathing:²⁶ Mr. Cornell reported that he was told by Ms. W that she requires physical assistance to get in and out of the bathtub, and that she also needs assistance to wash herself. Mr. Cornell reported that he observed that Ms. W has a standard bathtub and shower, and that there was a bath stool in the tub (scored 2/2, frequency 1/7).

The assessment also scored Ms. W's need for assistance with her medications. Mr. Cornell reported that Ms. W is assisted with her medications three times per day, seven days per week.²⁷ Finally, the assessment scored Ms. W as follows with regard to her Instrumental Activities of Daily Living (IADLs):²⁸ independent with difficulty, requiring cueing and set-up assistance as to telephone use (scored 1/1); requires physical assistance as to finance management, light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry (each scored 2/3).

C. Relevant Procedural History

The Division performed the assessment at issue on January 21, 2014.²⁹ On June 5, 2014 the Division notified Ms. W that her PCA service level was being reduced from 23.75 hours per week

²³ All references in this paragraph are based on Ex. E9 unless otherwise stated.

²⁴ All references in this paragraph are based on Ex. E9 unless otherwise stated.

²⁵ All references in this paragraph are based on Ex. E10 unless otherwise stated.

²⁶ All references in this paragraph are based on Ex. E11 unless otherwise stated.

²⁷ All references in this paragraph are based on Ex. E12 unless otherwise stated.

²⁸ Ex. E26.

²⁹ Ex. E.

to 14 hours per week effective June 15, 2014.³⁰ Ms. W requested a hearing to contest the Division's reduction of her PCA services on June 24, 2014.³¹

The hearing was held on August 7, 2014. Ms. W was represented by her Pastor, S B, who participated by phone. Ms. W participated in the hearing by phone and testified on her own behalf through an interpreter. Ms. W's husband, E W; her power-of-attorney, Q W; and her PCA, M R, also participated in the hearing.

Tammy Smith participated in the hearing by phone and represented the Division. Sam Cornell, R.N. and Jerald Fromm participated in the hearing by phone and testified on behalf of the Division. The record closed at the end of the hearing.

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 . . ."³² [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."³³

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

The Department conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT."³⁴ 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).³⁵ The CAT seeks to make the

³⁰ Ex. D1.

³¹ Ex. C.

³² 7 AAC 125.010(a).

³³ 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.*

³⁴ 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. See 7 AAC 160.900(d)(6).

³⁵ See 7 AAC 125.010(a).

assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairments.³⁶

The ADLs scored by the CAT are body mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access medical appointments), dressing, eating, toilet use, personal hygiene, and bathing.³⁷ In addition, the CAT scores five other ADL-like activities which are not technically ADLs. These are medication, vital signs / glucose levels, dressings / bandages / oxygen, sterile wound care, and documentation.

The CAT's numerical scoring system has two components. The first component is the *self-performance score*. This score rates how capable a person is of performing a particular activity of daily living (ADL). The possible scores are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance³⁸); **3** (the person requires extensive assistance³⁹); or **4** (the person is totally dependent⁴⁰). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).

The second component of the CAT's scoring system is the *support score*. This score rates the degree of assistance that a person requires for a particular activity of daily living (ADL). The possible scores are **0** (no setup or physical help required); **1** (only setup help required); **2** (physical assistance from one person required); or **3** (physical assistance from two or more persons required). Again, there are additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).

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*.⁴¹ However, in January 2012 the PCA regulations were amended to implement a

³⁶ Ex. E.

³⁷ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (accessed online at <http://www.hss.state.ak.us/dsds/pca/documents/PCA%20Service%20Computation.pdf>) (accessed September 4, 2014); see also Exs. B34 - B36.

³⁸ 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).

³⁹ 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).

⁴⁰ 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).

⁴¹ See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

new system in which the self-performance code and support code for the specific activity *automatically dictate* the amount of PCA time awarded.⁴²

C. *How Much PCA Time is Ms. W Eligible to Receive in This Case?*

Initially, it is important to remember that, under the current PCA regulations, the amount of time awarded is set automatically based on the applicant / recipient's self-performance code.⁴³ For example, a CAT code of three as to non-mechanical transfers (a transfer that uses hands-on assistance but does not use an assistive device such as a lift) gives a recipient 3.75 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*; a CAT code of four as to non-mechanical transfers gives a recipient 5 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*.⁴⁴

At hearing, Ms. W did not assert particular CAT scoring errors made by the Division in calculating her PCA time. Rather, she basically asserted that she needed more PCA assistance with all activities. Independent review of the Division's assessment (Ex. E) and the digital recording of the hearing indicate that the Division's assessment was substantially correct, but that Ms. W is eligible for additional PCA time as to three covered activities. Each covered activity is discussed separately below.

1. Body Mobility

For the ADL of body mobility, PCA time is allowed when a person requires physical assistance to reposition himself in a bed or chair, or to perform range of motion and stretching exercises.⁴⁵ In this case, the Division found that Ms. W is independent as to body mobility, and Ms. W presented no evidence indicating that she requires assistance with bed mobility. Accordingly, based on the evidence in the record, the Division's assessment as to Ms. W's lack of need for PCA assistance with body mobility is affirmed (CAT score 0/0, frequency 0/0).

2. Transfers

For the ADL of transferring, PCA time is allowed when a person requires physical assistance to move between one surface and another (including to or from a bed, chair, or wheelchair), and/or when a person requires physical assistance to move from a lying or sitting position to a standing position.⁴⁶ The Division found that Ms. W requires limited physical

⁴² See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

⁴³ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

⁴⁴ *Id.*

⁴⁵ 7 AAC 125.030(b)(1).

⁴⁶ 7 AAC 125.030(b)(2).

assistance with transfers (CAT score 2/2). This resulted in her receiving 2.5 minutes per transfer. The only way Ms. W could qualify for additional PCA time in this category would be to demonstrate that she requires extensive assistance from his PCA for transfers (CAT score 3/2). However, Ms. W did not present any evidence to show that she requires extensive assistance with transfers. Accordingly, the Division's finding that Ms. W requires physical assistance from one person for transfers is affirmed.

The next issue concerns the appropriate *frequency* for PCA assistance with Ms. W's transfers. The 2013 assessment recorded a frequency score of 28 transfers per week. The 2014 assessment reduced transfer frequency to 14 per week, based on the assessor's finding that Ms. W only gets out of bed to use the bathroom and (occasionally) to eat. Ms. W did not present specific evidence to contest the assessor's finding. Accordingly, the Division's finding that Ms. W currently requires physical assistance with transfers 14 times per week is affirmed.

3. Locomotion / Walking

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 medical or dental appointment, and/or when walking and simple exercises have been prescribed by a physician.⁴⁷ The Division's 2013 assessment found that Ms. W required extensive physical assistance with locomotion (CAT score 3/2). The Division's 2014 assessment found that Ms. W currently requires no physical assistance with locomotion. However, Ms. W testified at hearing that she still requires physical assistance with walking. Given her prior CAT score of 3/2, Ms. W's testimony in this regard is credible. Further, the fact that she does not use a cane or walker is not dispositive, because the assessment indicates that Ms. W has a weak grip, and a person generally needs a reasonably good grip to safely use a cane or walker. Accordingly, the preponderance of the evidence indicates that Ms. W currently requires limited physical assistance from one person with locomotion (CAT score 2/2).

With regard to frequency, the Division's 2013 assessment found that Ms. W required physical assistance with locomotion 21 times per week. There is no evidence in the record indicating that Ms. W's frequency of locomotion has decreased since her 2013 assessment, and the Division bears the burden of proof on this issue. Accordingly, Ms. W is entitled to PCA time for assistance with locomotion 21 times per week.

⁴⁷ 7 AAC 125.030(b)(3).

4. Dressing and Undressing

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.⁴⁸ The Division found that Ms. W currently requires limited physical assistance from one person for dressing (CAT score 2/2). Ms. W presented no evidence as to why she might require extensive assistance with dressing, or how often she might need that assistance. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Ms. W is eligible for assistance with dressing and undressing is affirmed (CAT score 2/2, frequency of 14 assists per week).

5. Eating

For the ADL of eating, PCA time is allowed for feeding through a feeding tube, enteral feeding, and supervising the eating and drinking of a recipient who has swallowing, chewing, or aspiration difficulties.⁴⁹ The Division found Ms. W to be essentially independent with eating (CAT score 0/1). Ms. W testified at hearing that she cannot move her hands up to her mouth to feed herself. However, this testimony conflicted with specific testimony from Mr. Cornel that he observed Ms. W raise her hands to her face during the assessment. Although the testimony is conflicting, the undersigned finds that the preponderance of the evidence indicates that Ms. W does not require assistance with eating. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Ms. W is eligible for help with eating is affirmed (CAT score 0/1).

6. Toilet Use

For the ADL of toilet use, PCA time is limited by regulation to time spent moving to and from the toilet, transfers on and off the toilet, general hygiene care of a colostomy, ileostomy, or external catheter, and inserting and removal of a nonmedicated suppository, digital stimulation, or other routine incontinence care.⁵⁰ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁵¹ The Division found that Ms. W currently requires limited physical assistance with toilet use (CAT score 2/2, frequency 28 times per week). Ms. W presented no evidence that she requires more extensive assistance with toilet use, or that she needs a greater frequency of assistance. Accordingly, based on the evidence in the record,

⁴⁸ 7 AAC 125.030(b)(4).

⁴⁹ 7 AAC 125.030(b)(5).

⁵⁰ 7 AAC 125.030(b)(6).

⁵¹ The CAT form defines toilet use as "[h]ow person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, *cleanses* . . . manages ostomy or catheter, adjusts clothes" (Ex. E9).

the Division's assessment of the amount of PCA time for which Ms. W is eligible for toilet use is affirmed (CAT score 2/2, frequency 28 times per week).

7. Personal Hygiene

For the ADL of personal hygiene, PCA time is allowed for washing and drying the face and hands, nail care, skin care, mouth and teeth care, brushing and combing the hair, shaving when done separately from bathing, and shampooing the hair when done separately from bathing.⁵²

The Division found that Ms. W currently requires only set-up help and supervision with personal hygiene (CAT score 1/1). At hearing, however, Ms. W testified that she still requires assistance due to the weakness and pain in her hands caused by her rheumatoid arthritis. Based on Ms. W's 2013 CAT score of 3/2, her testimony on this point is credible. Further, although the undersigned found that Ms. W does not need assistance with eating, personal hygiene tasks typically require more hand strength and dexterity than eating normally does. Accordingly, the preponderance of the evidence indicates that Ms. W currently requires limited physical assistance with personal hygiene (CAT score 2/2).

The next issue concerns the appropriate *frequency* for PCA assistance with Ms. W's personal hygiene. The 2013 assessment recorded a frequency score of seven assists per week. There is no evidence in the record indicating that the frequency with which Ms. W performs personal hygiene tasks has decreased since her 2013 assessment, and the Division bears the burden of proof on this issue. Accordingly, Ms. W is entitled to PCA time for assistance with personal hygiene tasks seven times per week.

8. Bathing

For the ADL of bathing, PCA time is allowed for "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."⁵³ The Division found that Ms. W currently requires limited assistance from one person for bathing (CAT score 2/2, frequency seven times per week). Ms. W presented no evidence that she requires extensive assistance with bathing, or that she needs a greater frequency of assistance. Accordingly, based on the evidence in the record, the Division's assessment of the PCA time for which Ms. W is eligible for bathing is affirmed (CAT score 2/2, frequency seven times per week).

⁵² 7 AAC 125.030(b)(7).

⁵³ 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical (*see* Ex. E11).

9. Instrumental Activities of Daily Living (IADLs)

The Division's current assessment scored Ms. W as follows with regard to her Instrumental Activities of Daily Living (IADLs):⁵⁴ independent with difficulty, requiring cueing and set-up assistance as to telephone use (scored 1/1), but requiring physical assistance as to finance management, light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry (each scored 2/3). These findings are credible based on Ms. W's ADL scores, discussed above. Moreover, Ms. W did not present specific testimony contesting the Division's scoring as to the degree of assistance that she requires with her IADLs. Accordingly, based on the evidence in the record, the Division's assessment of the PCA time for which Ms. W is eligible for assistance with her IADLs is affirmed.

10. 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 20 of the CAT.⁵⁵ Here, Ms. W is eligible for PCA time for medication administration because she received a score of four as to this item.⁵⁶

The *amount* of PCA time allowed for medication assistance is computed based on the recipient's personal hygiene score.⁵⁷ 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.

⁵⁴ Ex. E26.

⁵⁵ Exs. B34, B35, E20.

⁵⁶ Ex. E20.

⁵⁷ All findings and conclusions in this paragraph are based on the Division's Personal Care Assistance Service Level Computation Chart at Exs. B34 - B35.

In this case, the undersigned has found that Ms. W's self-performance score for personal hygiene should be "2" (limited assistance required).⁵⁸ Pursuant to regulation, a self-performance score of 2 in personal hygiene gives a recipient 10 minutes of PCA time per day for assistance with that ADL.⁵⁹ This figure is then multiplied by 0.5 to calculate time for assistance with medication (i.e. five minutes per assist). Ms. W's 2013 assessment indicated a need for assistance with medication 14 times per week, and there is no indication in the record that this frequency has decreased. Accordingly, Ms. W is entitled to 14 assists per week, at five minutes per assist, for a total of 70 minutes of PCA time per week for medication assistance.

11. PCA Escort to Medical Appointments

Pursuant to 7 AAC 125.030(d)(9), PCA time is available for "traveling with the recipient to and from a routine medical or dental appointment outside the recipient's home and conferring with medical or dental staff during that appointment." Mr. Cornell found that Ms. W is currently entitled to 3.46 minutes of PCA time per week for escort to medical appointments.⁶⁰ This equates to about 14 minutes per month, or about three hours per year. Ms. W did not present specific testimony at hearing to demonstrate that she has a greater number of medical appointments than found by the assessor, or that each appointment requires a greater amount of PCA time than was found by the assessor. Accordingly, based on the evidence in the record, the Division's assessment of the PCA time for which Ms. W is eligible for PCA escort to her medical appointments is affirmed.

D. Has the Division Proven a Material Change in Ms. W's Condition?

In cases 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 last assessment.⁶¹ When Ms. W's 2013 PCA assessment is compared with her current (2014) assessment, it is apparent that Ms. W's functional abilities have improved with regard to certain activities (as discussed above), but that her functional abilities have remained unchanged as to other activities (also discussed above). Accordingly, 7 AAC 125.026's "change in condition" requirement is satisfied as to those activities as to which this decision has approved reductions, but is not satisfied with regard to those activities as to which this decision has found reductions to be inappropriate.

⁵⁸ See above.

⁵⁹ See the Division's Personal Care Assistance Service Level Computation Chart at Ex. B34.

⁶⁰ Ex. D9.

⁶¹ 7 AAC 125.026(a), (d).

IV. Conclusion

Based on the evidence in the record, the Division's determination of the PCA services for which Ms. W is currently eligible was substantially correct. The only errors made by the Division in determining Ms. W's current level of PCA services was as to the level of assistance that Ms. W requires with locomotion, personal hygiene, and medication management. Accordingly, the Division's decision is reversed as to Ms. W's required level of assistance with locomotion, personal hygiene, and medication management, but is affirmed in all other respects.

DATED this 8th day of September, 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 17th day of September, 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.]