

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

In the Matter of:)
)
 E W) OAH No. 14-1106-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 Mr. E W is eligible. The Division decreased Mr. W's PCA services from 32.5 hours per week to 2.25 hours per week effective June 14, 2014.¹

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

II. Facts

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

Mr. W is 74 years old² and weighs 134 pounds.³ He lives with his wife and three adult children in a second floor apartment.⁴ His primary language is Tagalog.⁵ His primary diagnoses are amnestic disorder,⁶ dementia without behavioral disturbance, and adult failure to thrive.⁷ His secondary diagnoses are central pain syndrome,⁸ chronic pain, chronic kidney disease, dysphagia,⁹

¹ Ex. D1.

² Ex. E1.

³ Ex. E9.

⁴ Ex. E1.

⁵ Ex. E1.

⁶ Amnestic disorders are mental disorders characterized by acquired impairment in the ability to learn and recall new information, sometimes accompanied by the inability to recall previously learned information, and not coupled to dementia or delirium. Miller-Keane Encyclopedia and Dictionary of Medicine, Nursing, and Allied Health, Seventh Edition (Elsevier 2003), accessed online at <http://medical-dictionary.thefreedictionary.com/amnestic+disorders> (date accessed September 11, 2014).

⁷ Ex. E3.

⁸ Central pain syndrome is a neurological condition caused by damage to or dysfunction of the central nervous system (CNS). National Institute of Neurological Disorders and Stroke website, accessed online at http://www.ninds.nih.gov/disorders/central_pain/central_pain.htm (date accessed September 11, 2014). This syndrome can be caused by stroke, multiple sclerosis, tumors, epilepsy, brain or spinal cord trauma, or Parkinson's disease. *Id.* The character of the

foreign body in respiratory system, gout, hyperlipidemia, hypertension, hypothyroidism, osteoarthritis of multiple sites,¹⁰ paralysis agitans,¹¹ stress incontinence, unspecified hearing loss, unqualified visual loss in both eyes, and vitamin D deficiency.¹² Mr. W takes a number of prescription medications, including Amiodipine, ASA, Levothyroxine, and Pravastatin.¹³

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

Mr. W was previously assessed as to his eligibility for PCA services on February 6, 2013 by Division nurse-assessor Olga Levy, R.N.¹⁴ Ms. Levy conducted a functional assessment.¹⁵ She found that Mr. W had very weak grip strength in both hands. Ms. Levy reported that Mr. W complained of pain in his right ankle, legs, and shoulders, and that he was unable to perform most of the functional assessment tests. Mr. W was unable to raise his arms over his head, touch his hands behind his back, place his hands across his chest and stand up, or touch his feet. With regard to memory and cognition, Ms. Levy found that Mr. W had both short-term and long-term memory problems, and that his cognitive abilities were moderately impaired.¹⁶

Based on the 2013 assessment, Ms. Levy found that Mr. W required the following levels of assistance with his ADLs:¹⁷ body mobility - was independent and required no set-up help; transfers

pain associated with this syndrome differs widely among individuals partly because of the variety of potential causes. *Id.* Central pain syndrome may affect a large portion of the body or may be more restricted to specific areas, such as hands or feet. *Id.* The extent of pain is usually related to the cause of the CNS injury or damage. *Id.* Pain is typically constant, may be moderate to severe in intensity, and is often made worse by touch, movement, emotions, and temperature changes, usually cold temperatures. *Id.* Individuals experience one or more types of pain sensations, the most prominent being burning. *Id.* Mingled with the burning may be sensations of "pins and needles;" pressing, lacerating, or aching pain; and brief bursts of sharp pain. *Id.* Individuals may have numbness in the areas affected by the pain. *Id.* The burning and loss of touch sensations are usually most severe on the distant parts of the body, such as the feet or hands. *Id.* Central pain syndrome often begins shortly after the causative injury or damage, but may be delayed by months or even years, especially if it is related to post-stroke pain. *Id.*

⁹ Dysphagia is difficulty in swallowing. See Dorland's Medical Dictionary for Health Consumers (Elsevier 2007), accessed online at <http://medical-dictionary.thefreedictionary.com/dysphagia> (accessed September 11, 2014).

¹⁰ Osteoarthritis, which is also known as osteoarthritis (OA) or degenerative joint disease (DJD), is a progressive disorder of the joints caused by gradual loss of cartilage and resulting in the development of bony spurs and cysts at the margins of the joints. Gale Encyclopedia of Medicine (Gale Group 2008), accessed online at <http://medical-dictionary.thefreedictionary.com/osteoarthritis> (date accessed September 11, 2014). OA is one of the most common causes of disability due to limitations of joint movement, particularly in people over 50. *Id.* It is estimated that 2% of the United States population under the age of 45 suffers from osteoarthritis; this figure rises to 30% of persons between 45 and 64, and 63-85% in those over 65. *Id.* About 90% of the American population will have some features of OA in their weight-bearing joints by age 40. *Id.* OA occurs most commonly after 40 years of age and typically develops gradually over a period of years. *Id.* Men tend to develop OA at earlier ages than women. *Id.*

¹¹ Paralysis agitans is another name for Parkinson's disease. See Mosby's Medical Dictionary, 8th edition (Elsevier 2009), accessed online at <http://medical-dictionary.thefreedictionary.com/paralysis+agitans> (date accessed September 11, 2014).

¹² Ex. E3.

¹³ Ex. E20.

¹⁴ Exs. F1 - F31.

¹⁵ All factual findings in the remainder of this paragraph are based on Ex. F4 unless otherwise stated.

¹⁶ Ex. F16.

¹⁷ All factual findings in this paragraph are based on Ex. D9, Exs. F6 - F12, and Ex. F19 unless otherwise stated.

- required extensive one-person physical assistance 28 times per week; locomotion - required extensive one-person physical assistance 28 times per week; dressing - required extensive one-person physical assistance 14 times per week; eating - requiring limited 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 Mr. W required the following levels of assistance with his IADLs:¹⁸ was totally dependent as to light meal preparation, main meal preparation, light housework, routine housework, financial management, grocery shopping, and laundry (each scored 3/4).

Mr. W was most recently assessed for continuing PCA eligibility on January 21, 2014 by Sam Cornell, R.N. of DSDS.¹⁹ An interpreter was present. Mr. Cornell reported that Mr. W had strong grip strength in both hands, was able to touch his hands together over his head and behind his back, and was able to reach down and touch his toes, but was not able to stand up from a sitting position with his hands crossed over his chest.²⁰ Mr. Cornell found that Mr. W has the following abilities and limitations with regard to his Activities of Daily Living (ADLs):²¹

Body Mobility / Bed Mobility:²² Mr. Cornell reported that he was told that Mr. W has no bed sores or skin breakdowns and is independent with bed / body mobility. Mr. Cornell reported he observed that Mr. W sleeps in a regular bed with no assistive devices, and was able to change position independently using his arms and hands (scored 0/0 - independent).

Transfers:²³ Mr. Cornell reported that he was told by Mr. W that he can transfer independently from his bed and chairs, but that it is difficult and painful for him to get up from his bed and low sofa. Mr. Cornell reported that he observed that Mr. W uses no assistive devices for transfers and is able to transfer with "contact guard / standby help" (scored 1/1).

Locomotion (walking):²⁴ Mr. Cornell reported that he was told by Mr. W that (1) he uses a cane when walking on a single level indoors; (2) receives supervision and assistance when using the stairs; and (3) uses a wheelchair with assist when going to medical appointments. Mr. Cornell reported that he observed Mr. W walk inside his home using a one-hand contact guard, and that his

¹⁸ All factual findings in this paragraph are based on Exs. D9 and F27 unless otherwise stated.

¹⁹ Ex. E.

²⁰ Ex. E4.

²¹ Exs. E6 - E12.

²² All references in this paragraph are based on Ex. E6 unless otherwise stated.

²³ All references in this paragraph are based on Ex. E6 unless otherwise stated.

²⁴ All references in this paragraph are based on Ex. E7 unless otherwise stated.

gait was slow but steady with good balance, but that he used his cane "with difficulty"²⁵ (scored 1/1).

Dressing:²⁶ Mr. Cornell reported that he was told that Mr. W can dress and undress himself, but that doing so is painful. Mr. Cornell reported that he observed that Mr. W's hands showed "minimal intermittent tremor" (scored 1/1).

Eating:²⁷ Mr. Cornell reported that he was told by Mr. W that he uses dentures, has no chewing or choking problems, takes his medications with liquids or sometimes with a banana, and can eat independently as long as his meals are prepared and set out for him. Mr. Cornell reported that he observed no adaptive or special eating utensils during the assessment (scored 0/1).

Toileting:²⁸ Mr. Cornell reported that he was told by Mr. W that he uses adult diapers, does not need to get up very often at night to use the bathroom, and that he transfers to and from the toilet with "contact guard / standby help" but without any assistive devices. Mr. Cornell further reported that "toileting [was] not observed," but that "sometimes need for transfer assistance support need for assistance" (scored 1/1).

Personal Hygiene:²⁹ Mr. Cornell reported that he was told that Mr. W is able to perform all his personal hygiene tasks with only supervision and cueing. Mr. Cornell reported that he observed Mr. W to be clean shaven and neatly groomed at the time of the assessment (scored 5/5).

Bathing:³⁰ Mr. Cornell reported that he was told that Mr. W takes a shower five to seven times per week, and is generally able to wash himself, but that he requires assistance to transfer in and out of the tub and to wash his feet and hair. Mr. Cornell reported that he observed that Mr. W has a standard bathtub, and that there was a bath stool in the tub, but that there were no grab bars and no handheld shower nozzle (scored 2/2, frequency 1/7).

The assessment also scored Mr. W's need for assistance with his medications. Mr. Cornell reported that Mr. W requires assistance with his medications two times per day, seven days per week.³¹ Finally, the assessment scored Mr. W as follows with regard to his Instrumental Activities of Daily Living (IADLs):³² independent with difficulty as to light meal preparation (scored 1/3); requires physical assistance main meal preparation, light housework, routine housework, grocery

²⁵ Ex. E8.

²⁶ All references in this paragraph are based on Ex. E8 unless otherwise stated.

²⁷ All references in this paragraph are based on Ex. E9 unless otherwise stated.

²⁸ All references in this paragraph are based on Ex. E9 unless otherwise stated.

²⁹ All references in this paragraph are based on Ex. E10 unless otherwise stated.

³⁰ All references in this paragraph are based on Ex. E11 unless otherwise stated.

³¹ Ex. E12.

³² Ex. E26.

shopping, and laundry (each scored 2/3); and dependent as to financial management (scored 3/4). However, Mr. W's wife already receives PCA time for assistance with the household's IADLs. Accordingly, Mr. W is not entitled to PCA time for assistance with IADLs because this would result in a duplication of services.

C. Relevant Procedural History

The Division performed the assessment at issue on January 21, 2014.³³ On June 4, 2014 the Division notified Mr. W that his PCA service level was being reduced from 32.5 hours per week to 2.25 hours per week effective June 14, 2014.³⁴ Mr. W requested a hearing to contest the Division's reduction of his PCA services on June 24, 2014.³⁵

The hearing was held on August 7, 2014. Mr. W was represented by his Pastor, S B, who participated by phone. Mr. W participated in the hearing by phone and testified on his own behalf through an interpreter. Mr. W's wife, J W; his power-of-attorney, Q W; and his 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 Olga Ipatova 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"³⁶ [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."³⁷

³³ Ex. E.

³⁴ Ex. D1.

³⁵ Ex. C.

³⁶ 7 AAC 125.010(a).

³⁷ 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.*

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."³⁸ 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).³⁹ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairments.⁴⁰

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.⁴¹ 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 assistance⁴²); **3** (the person requires extensive assistance⁴³); or **4** (the person is totally dependent⁴⁴). 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).

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

³⁹ See 7 AAC 125.010(a).

⁴⁰ Ex. E.

⁴¹ 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 11, 2014); see also Exs. B34 - B36.

⁴² 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).

⁴³ 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).

⁴⁴ 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).

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.*⁴⁵ 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.⁴⁶

C. How Much PCA Time is Mr. 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.⁴⁷ 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.*⁴⁸

At hearing, Mr. W did not assert particular CAT scoring errors made by the Division in calculating his PCA time. Rather, he basically asserted that he 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 Mr. W is eligible for additional PCA time for transfers, locomotion, and toileting. Each covered activity is discussed separately below.

I. 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.⁴⁹ In this case, the Division found that Mr. W is independent as to body mobility, and Mr. W presented no evidence indicating that he requires assistance with bed mobility. Accordingly,

⁴⁵ See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

⁴⁶ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

⁴⁷ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

⁴⁸ *Id.*

⁴⁹ 7 AAC 125.030(b)(1).

based on the evidence in the record, the Division's assessment as to Mr. 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.⁵⁰ The Division found that Mr. W requires only set-up help and supervision with transfers (CAT score 1/1). However, Mr. W asserted at hearing that he still requires physical assistance with transfers. Given his prior CAT score of 3/2, Mr. W's testimony in this regard is credible. Further, Mr. Cornell's assessment states that Mr. W requires a "contact guard" for transfers, and requires limited assistance with transfers related to toileting and bathing, so it stands to reason that Mr. W requires a like amount of assistance with his other transfers. Accordingly, the preponderance of the evidence indicates that Mr. W currently requires limited physical assistance from one person with transfers (CAT score 2/2).

The next issue concerns the appropriate *frequency* for PCA assistance with Mr. W's transfers. The 2013 assessment recorded a frequency score of 28 transfers per week. There is no evidence in the record indicating that this transfer frequency should be varied, and the Division bears the burden of proof on this issue. Accordingly, the preponderance of the evidence indicates that Mr. W currently requires physical assistance with transfers 28 times per week.

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.⁵¹ The Division's 2013 assessment found that Mr. W required extensive physical assistance with locomotion (CAT score 3/2). The Division's 2014 assessment found that Mr. W currently requires only supervision and set-up help with locomotion (CAT score 1/1). However, Mr. W asserted at hearing that he still requires some physical assistance with walking. Given his prior CAT score of 3/2, Mr. W's testimony in this regard is credible. Further, Mr. Cornell reported that he observed Mr. W walk inside his home using "a one-hand contact guard," which itself

⁵⁰ 7 AAC 125.030(b)(2).

⁵¹ 7 AAC 125.030(b)(3).

constitutes physical assistance. Accordingly, the preponderance of the evidence indicates that Mr. W requires limited assistance with locomotion (CAT score 2/2).

With regard to frequency, the Division's 2013 assessment found that Mr. W required physical assistance with locomotion 28 times per week. There is no evidence in the record indicating that Mr. W's frequency of locomotion has decreased since his 2013 assessment, and the Division bears the burden of proof on this issue. Accordingly, Mr. W is entitled to PCA time for assistance with locomotion 28 times per week.

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.⁵² The Division found that Mr. W currently requires only supervision and set-up assistance with dressing (CAT score 1/1). Mr. W presented no evidence demonstrating that he still needs assistance with dressing, or how often he might need assistance. Accordingly, based on the evidence in the record, the Division's assessment as to Mr. W's lack of need for PCA assistance with dressing is affirmed.

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.⁵³ The Division found Mr. W to be essentially independent with eating (CAT score 0/1). Mr. W presented no evidence that he still requires assistance with eating. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Mr. 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.⁵⁴ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁵⁵ The Division found that Mr. W currently requires only supervision and set-up help with toilet use (CAT score 1/1). However, Mr. W asserts that he still requires assistance with toilet use, and the narrative from Mr. Cornell's

⁵² 7 AAC 125.030(b)(4).

⁵³ 7 AAC 125.030(b)(5).

⁵⁴ 7 AAC 125.030(b)(6).

⁵⁵ 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).

assessment states that Mr. W's "sometimes need for transfer assistance support[s] need for assistance." Given his prior CAT score of 3/2, and Mr. Cornell's narrative findings, Mr. W's testimony is credible. Accordingly, the preponderance of the evidence indicates that Mr. W requires limited physical assistance from one person with toileting (CAT score 2/2).

With regard to frequency, the Division's 2013 assessment found that Mr. W required physical assistance with toileting 42 times per week. There is no evidence in the record indicating that Mr. W's frequency of toileting has decreased since his 2013 assessment, and the Division bears the burden of proof on this issue. Accordingly, Mr. W is entitled to PCA time for assistance with toileting 42 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.⁵⁶ The Division found that Mr. W currently requires only cueing with personal hygiene (CAT score 5/5). Mr. W did not provide specific testimony at hearing to contest the Division's finding. Accordingly, based on the evidence in the record, the Division's assessment as to Mr. W's lack of need for PCA assistance with personal hygiene tasks is affirmed (CAT score 5/5).

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."⁵⁷ The Division found that Mr. W currently requires limited assistance from one person for bathing (CAT score 2/2, frequency seven times per week). Mr. W presented no evidence that he requires extensive assistance with bathing, or that he needs a greater frequency of assistance. Accordingly, based on the evidence in the record, the Division's assessment of the PCA time for which Mr. W is eligible for bathing is affirmed (CAT score 2/2, frequency seven times per week).

9. Instrumental Activities of Daily Living (IADLs)

Pursuant to PCA regulation 7 AAC 125.040(a)(13)(C), a person is not entitled to PCA time for assistance with Instrumental Activities of Daily Living (IADLs) if other recipients living in the same residence already receive IADL services. The undisputed hearing testimony of Mr. Cornell and Ms. Ipatova was that Mr. W's wife already received PCA time for assistance with the

⁵⁶ 7 AAC 125.030(b)(7).

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

household's IADLs. Accordingly, under 7 AAC 125.040(a)(13)(C), Mr. W is not entitled to PCA time for assistance with IADLs because this would result in a duplication of services.

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.⁵⁸ Here, Mr. W is potentially eligible for PCA time for medication because he received a score of four as to this item.⁵⁹

The *amount* of PCA time allowed for medication assistance is computed based on the recipient's personal hygiene score.⁶⁰ 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.

In this case, Mr. Cornel found that Mr. W's self-performance score for personal hygiene should be five (cueing required).⁶¹ However, pursuant to regulation, a self-performance score of five in personal hygiene gives a recipient no (0 minutes) PCA time per day for assistance with that ADL.⁶² Accordingly, under the applicable regulation, which is admittedly somewhat difficult to follow, Mr. W receives no PCA time for assistance with his medications.

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 Mr. W is currently entitled to 3.46 minutes of PCA time per week for escort to medical appointments.⁶³ This equates to about 14 minutes per month, or about three hours per year. Mr. W did not present specific testimony at hearing to demonstrate that he 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

⁵⁸ Exs. B34, B35, E20.

⁵⁹ Ex. E20.

⁶⁰ All findings and conclusions in this paragraph are based on the Division's Personal Care Assistance Service Level Computation Chart at Exs. B34 - B35.

⁶¹ Ex. E10.

⁶² See the Division's Personal Care Assistance Service Level Computation Chart at Ex. B34.

⁶³ Ex. D9.

assessor. Accordingly, based on the evidence in the record, the Division's assessment of the PCA time for which Mr. W is eligible for escort to medical appointments is affirmed.

D. Has the Division Proven a Material Change in Mr. 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.⁶⁴ When Mr. W's 2013 PCA assessment is compared with his current (2014) assessment, it is apparent that Mr. W's functional abilities have improved with regard to certain activities (as discussed above), but that his 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.

IV. Conclusion

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

DATED this 12th day of September, 2014. *Signed* _____
Jay D. 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 23rd 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.]

⁶⁴ 7 AAC 125.026(a), (d).