

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

In the Matter of)
)
 K N)
_____)

OAH No. 14-1329-MDS
Agency No.

DECISION

I. Introduction

K N was receiving 48.75 hours per week of personal care assistance (PCA) services when she was reassessed to determine her continued eligibility for those services in 2014. Based primarily on a reassessment visit on February 25, 2014, the Division of Senior and Disabilities Services (Division) issued a decision on July 24, 2014 notifying Ms. N that her PCA services would be reduced to 6.75 hours per week. Some of the reduction resulted from regulatory changes since her prior assessment or were related to what the Division perceived as improvements in Ms. N's condition. Ms. N requested a hearing.

Ms. N's hearing was held on October 20, 2014. Ms. N represented herself. B T with No Name Agency and S L, her PCA, testified on her behalf. Victoria Cobo represented the Division. J J, who wrote the reduction decision for the Division, testified for the Division.

The Division's February 25, 2014 Consumer Assessment Tool and its subsequent July 24, 2014 reduction decision may well reflect Ms. N's needs for functional assistance as of the date of the assessment visit. However, five months passed between the assessment visit and the date of the Division's reduction decision. During that five month period, Ms. N experienced a decline in her health, which led to her being diagnosed with lung cancer and having to undergo radiation and chemotherapy, all of which resulted in a change in her PCA care needs. Consequently, the evidence demonstrates that the Division's assessment of and provision for Ms. N's PCA service needs was correct in part and incorrect in part. The Division's allocation of PCA service time is therefore affirmed in part and reversed in part as discussed below.

II. The PCA Service Determination Process

The Medicaid program authorizes PCA services for the purpose of providing "physical assistance with activities of daily living (ADLs), physical assistance with instrumental activities of daily living (IADLs), and other services based on the physical condition of the

recipient”¹ 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.”²

The Division uses the Consumer Assessment Tool, or “CAT”, as a methodology to score eligibility for the PCA program, and the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.³ In general, if certain levels of assistance are required, the regulations prescribe a fixed number of PCA minutes to be assigned per instance of that activity.

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If a person requires some degree of hands-on physical assistance with any one of these ADLs or IADLs, then the person is eligible for PCA services. Once eligibility is established, time for additional ADLs and IADLs, as well as certain other covered services, can be added to the PCA authorization. In Ms. N’s case, there is no dispute that she needs hands-on help with some of the gateway ADLs and IADLs.

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.⁴ The CAT numerical coding system for ADLs has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular ADL. The possible codes are **0** (the person is independent⁵ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁶); **3** (the person requires extensive assistance⁷); **4** (the person is totally dependent⁸).

¹ 7 AAC 125.010(a).

² 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.*

³ See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

⁴ Ex. E, pp. 6 – 11.

⁵ A self-performance code of 0 is classified as “[I]ndependent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days.” See Ex. E, p. 6.

⁶ According to 7 AAC 125.020(a)(1), 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.”

There are also codes which are not used in calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).⁹

The second component of the CAT scoring system is the *support code*. These codes rate the degree of assistance that a person requires for a particular ADL. The possible codes are **0** (no setup or physical help required); **1** (only setup help required); **2** (one-person physical assist required); **3** (two or more person physical assist required). Again, there are additional codes which are not used to arrive at a service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).¹⁰

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping.¹¹

The CAT codes IADLs slightly differently than it does ADLs. The *self-performance codes for IADLs* are **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person). There is also a code that is not used to arrive at a service level: **8** (the activity did not occur).¹²

The *support codes* for IADLs are also slightly different than the support codes for ADLs. The support codes for IADLs are **0** (no support provided); **1** (supervision / cueing provided); **2** (set-up help); **3** (physical assistance provided); and **4** (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional code that is not used to arrive at a service level: **8** (the activity did not occur).¹³

⁷ According to 7 AAC 125.020(a)(2), 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.”

⁸ According to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, “means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity.”

⁹ Ex. E, p. 18.

¹⁰ Ex. E, p. 18.

¹¹ Ex. E, p. 26.

¹² Ex. E, p. 26.

¹³ Ex. E, p. 26.

The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each occurrence of a particular activity. For instance, if a person were coded as requiring extensive assistance (self-performance code of 3) with bathing, she would receive 22.5 minutes of PCA service time each time she was bathed.¹⁴ The regulations do not provide the Division with the discretion to change the amounts specified by the formula.

For covered services beyond assistance with ADLs and IADLs, specific rules apply that will be discussed below.

III. Background Facts

Ms. N is 57 years old. She has “multiple sclerosis with permanent neurological sequelae, chronic low back pain with degenerative disc disease, type 2 diabetes and chronic bronchitis.”¹⁵ The multiple sclerosis is a long-term condition. She has muscle spasticity and hemiplegia related to her multiple sclerosis.¹⁶

Ms. N was receiving 48.75 hours of PCA services in 2014 based on an assessment from 2006 and a 2009 amendment. Sharon Schober, a Division nurse, made a visit to reassess Ms. N’s PCA service needs on February 25, 2014. She recorded the assessment visit in the CAT. Her findings, coupled with recent regulatory changes, resulted in a reduction of Ms. N’s PCA services to 6.75 hours per week.¹⁷ In general, the assessment shows that Ms. Schober found that Ms. N’s physical functionality had increased, which resulted in a decrease in both the degree of assistance required and the number of times weekly that assistance was required. Ms. Schober, the nurse assessor who conducted the February 25, 2014 assessment visit and completed the CAT, did not testify at hearing.

After the assessment was conducted (February 25, 2014) and before the Division issued its benefit reduction decision (July 24, 2014), Ms. N experienced a decline in her health that decreased her functionality, and was diagnosed with lung cancer on June 9, 2014. She has been receiving radiation and chemotherapy treatments.¹⁸

Ms. N disputed virtually every portion of the assessment. Those portions of the assessment and the associated PCA time awards not in dispute will not be discussed.

¹⁴ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 34 - 36.

¹⁵ Ex. 1, p. 2 (October 16, 2014 fax from No Name Agency).

¹⁶ Ex. 1, p. 2; Ex. 2 (October 21, 2014 letter from Dr. I G).

¹⁷ Ex. D, p. 10.

¹⁸ Ms. N’s testimony; Ex. 1, p. 2.

IV. Discussion

When the Division is seeking to reduce or eliminate a benefit a citizen is already receiving, the Division has the overall burden to prove, by a preponderance of the evidence,¹⁹ facts that show the citizen's level of eligibility has changed.²⁰ In the context of PCA services, the showing required of the Division is that the recipient has had a "material change of condition."²¹ The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,²² including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.²³

In particular areas where Ms. N seeks to increase services or add services that were not previously provided, Ms. N has the burden of proof.²⁴

It must be noted that Ms. Schober, the nurse assessor who conducted the February 25, 2014 assessment visit and completed the CAT, did not testify at hearing. Accordingly, there was no evidence that rebutted Ms. N's and Mr. L's testimony that an increase in her case needs occurred in the time period between the date of the assessment visit and the date of the Division's reduction decision.

A. *Body Mobility*

The 2014 assessment eliminated bed mobility assistance in its entirety. It was previously assessed at extensive assistance (self-performance code of 3) provided 70 times per week.²⁵ The reasons provided for the elimination of this assistance was that assessment, as reflected on the CAT, found that Ms. N did not require any assistance (self-performance code of 0) with this activity and was able to walk without help.²⁶

Ms. N did not explicitly dispute the elimination of bed mobility, nor did she agree that its elimination was appropriate. However, as discussed below, she is ambulatory, albeit with

¹⁹ Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

²⁰ 7 AAC 49.135.

²¹ 7 AAC 125.026(a). This is a term of art that encompasses not only changes in the patient's situation, but also changes in regulations affecting the authorized level of services. See 7 AAC 125.026(d).

²² 2 AAC 64.290(a)(1).

²³ See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

²⁴ 7 AAC 49.135.

²⁵ Ex. D, pp. 2, 10.

²⁶ Ex. D, p. 2; Ex. E, p. 6.

limited assistance, which makes her technically ineligible for assistance with body mobility. The Division has therefore met its burden of proof for the elimination of this assistance.²⁷

B. Transfers

The 2014 assessment eliminated assistance for transfers. It was previously assessed at limited assistance (self-performance code of 2) provided 84 times per week.²⁸ The basis for the elimination of this assistance was the assessor's observation, as noted on the CAT, that Ms. N was able to stand up from the couch and sit back down without assistance, and the statement by Ms. N during the assessment that she could get up from chairs, bed, and toilet without help. The assessor then concluded that Ms. N was independent (self-performance code of 0) with this activity.²⁹

Ms. N testified that she had a downturn in her health and requires a great deal more assistance. She went to the doctor because of her health downturn and was diagnosed with cancer. Her cancer diagnosis was made in early June 2014. She needed the extra assistance in June and continues to need extra assistance. She has to be lifted up and set down approximately 10 times per day for transfers.

S L has been a friend of Ms. N's for an extended period of time. He has been her PCA for a number of years and is very familiar with her care needs. His testimony was consistent with Ms. N's. He has to put his arms around Ms. N ("bear hug") and lift her up and sit her down for transfers approximately 10 times daily. This is weight-bearing assistance, *i.e.*, extensive assistance.

Although there is certainly a potential for exaggeration on Mr. L's part, given his long friendship with Ms. N, his testimony is consistent with Ms. N's, and is corroborated by Ms. N's recent cancer diagnosis, which occurred approximately six weeks before the Division's reduction letter. There was no one with personal knowledge of Ms. N's care needs or the assessment to rebut Ms. N's and Mr. L's testimony. The preponderance of the evidence is therefore that Ms. N's need for assistance with transfers has not decreased, but has actually increased. Consistent with Ms. N's and Mr. L's testimony, Ms. N should receive extensive assistance (self-performance code of 3) 10 times daily, for a frequency of 70 times per week. While this is a

²⁷ Body mobility assistance for "positioning or turning in a bed or chair" is only provided if "the recipient is nonambulatory." 7 AAC 125.030(b)(1)(A).

²⁸ Ex. D, pp. 2 -3, 10.

²⁹ Ex. E, p. 6.

reduction in frequency, it is an overall increase in the amount of time provided for transfer assistance.

C. *Locomotion In Room*

The 2014 assessment reduced the degree of assistance from extensive (self-performance code of 3) to independent (self-performance code of 0), which eliminated assistance for this activity altogether. Ms. N had previously been receiving extensive assistance with locomotion 42 times per week.³⁰ The basis for the elimination of this assistance was Ms. N's statement to the assessor that she was able to walk and the assessor's observation of Ms. N walking to the bathroom and up the stairs without assistance.³¹

Neither Ms. N nor Mr. L testified that Ms. N required extensive assistance with walking on one level of the home. Ms. N uses a walker in her home. When she uses the walker, Mr. L walks beside her holding her hand or her arm, so that he can catch her if she starts to fall.³² This is physical hands-on assistance, but is not weight-bearing assistance. It is therefore classified as limited assistance (self-performance code of 2). With regard to the frequency of transfers, there was nothing in the record to support a reduction from the 42 times previously provided per week. Accordingly, it is more likely true than not true that while Ms. N no longer requires extensive assistance with locomotion, she requires limited assistance 42 times per week.

D. *Locomotion Multi-Level*

The 2014 assessment reduced the degree of assistance from extensive (self-performance code of 3) to independent (self-performance code of 0), which eliminated assistance for this activity altogether. Ms. N had previously been receiving extensive assistance with multi-level locomotion 42 times per week.³³ The evidence at hearing was that Ms. N has to be assisted going up the stairs; she leans on Mr. L and he physically picks each leg up, one at a time, to move her up and down the stairs. She has to move between levels a minimum of twice daily, once downstairs and once upstairs. On days when she has medical appointments, she has an additional one or two round trips between levels. She has between five to six medical

³⁰ Ex. D, pp. 3, 10; Ex. E, p. 7.

³¹ Ex. E, p. 7.

³² Ms. N's and Mr. L's testimony.

³³ Ex. D, pp. 3, 10; Ex. E, p. 7.

appointments per month, between her chemotherapy appointments every three weeks, her oncologist, and her pain management clinic.³⁴

Based upon the evidence presented at hearing, it is more likely true than not true that Ms. N continues to require extensive assistance with multi-level locomotion because her PCA has to physically lift her legs to go up and down the stairs. The evidence shows, however, that she does not move between levels as often, one round trip per day on non-medical appointment days, which comes to 14 transits, and on the average another two round trips up and down the stairs per week, 4 additional transits, per week due to medical appointments.³⁵ She would therefore have the number of times provided for multi-level locomotion assistance reduced to 16 times per week.

E. Locomotion To Access Medical Appointments

The 2014 assessment found that Ms. N was independent (self-performance code of 0) with locomotion to access medical appointments. Ms. N had not previously been receiving assistance with this activity.³⁶ The basis for the assessor's finding of independence consisted of Ms. N's statement that she was able to walk and the observation of Ms. N walking to the bathroom and up the stairs without assistance.³⁷

Ms. N's testimony was that her PCA helps her to the car, lifts her in and out of the car, and pushes her in a wheelchair at the hospital. Her testimony was consistent with her and Mr. L's testimony regarding her need for assistance with transfers, *i.e.*, that she requires weight-bearing assistance. Mr. L's testimony was that Ms. N has 5 to 6 medical appointments per month, which averages out to approximately 1.5 medical appointments per week, which rounded up would be twice weekly. Ms. N has met her burden of proof on this point and established that it is more likely true than not true that she requires extensive assistance (self-performance code of 3) with locomotion to access medical appointments twice weekly.

F. Dressing

The 2014 assessment found that Ms. N no longer required limited assistance (self-

³⁴ Ms. N's and Mr. L's testimony.

³⁵ Five to six medical appointments per month would result in approximately 1.5 medical appointments per week. When you factor in the testimony that Ms. N requires an additional one or two round trips up and down the stairs per medical appointment, she would have a minimum of two additional round trips up and down the stairs per week.

³⁶ Ex. D, pp. 3, 10; Ex. E, p. 7.

³⁷ Ex. E, p. 7.

performance code of 2) with dressing, which she had been receiving twice daily, and was instead independent. Assistance with dressing was eliminated in its entirety.³⁸

The Division's determination that Ms. N was independent with dressing was based upon the assessor's observation that Ms. N has a good range of motion and manual dexterity.³⁹ Ms. N's and Mr. L's testimony presented a substantially different picture, being that Ms. N is lacking in manual dexterity; her fingers are numb and she cannot fasten buttons. The PCA has to place her arms through sleeves, put her shoes and socks on, and tie her shoes. Ms. N's and Mr. L's testimony regarding dressing showed a great deal of hands-on assistance, but not weight-bearing assistance, with dressing. As a result, the weight of the evidence demonstrates a continued need for limited assistance with dressing. The Division has therefore not met its burden of proof to justify a reduction with this activity, which is continued at its previous level of limited assistance 14 times per week.

G. Toileting

The 2014 assessment found Ms. N no longer required limited assistance (self-performance code of 2) with toileting and was instead independent. Assistance with toileting was eliminated in its entirety.⁴⁰ The Division's determination was based upon the assessor's statement that Ms. N told her she did not need toileting assistance with the exception of being helped to sit down when she felt stiff.⁴¹

As found above, Ms. N requires extensive assistance with transfers. Ms. N testified that she similarly has to be transferred on and off the toilet. She estimated the number of times she needs to use the bathroom between four to five times per day. Based upon the evidence presented at hearing, it is more likely true than not true that Ms. N's toileting assistance should not be eliminated. Instead, she should receive extensive assistance (self-performance code of 3) five times daily, for 35 times per week.

H. Personal Hygiene

The 2014 assessment found Ms. N no longer required limited assistance (self-performance code of 2) with personal hygiene and was instead independent. Assistance with

³⁸ Ex. D, pp. 3, 10.

³⁹ Ex. E, p. 8.

⁴⁰ Ex. D, pp. 3, 10.

⁴¹ Ex. E, p. 9.

personal hygiene was eliminated in its entirety.⁴² The Division’s determination was based upon the assessor’s statement that Ms. N told her she was able to wash her face and care for her teeth, but that her PCA sometimes needed to brush her hair, and the assessor’s observation that Ms. N had “overhead mobility” and could use both hands.⁴³

Ms. N’s and the PCA’s testimony showed that Ms. N requires a great deal of hands-on assistance with her personal hygiene. However, Ms. N did not establish that weight-bearing assistance was required. Accordingly, it is more likely true than not true that Ms. N continues to require limited assistance with personal hygiene.

I. Bathing

The 2014 assessment reduced the degree of assistance from extensive (self-performance code of 3) to limited (self-performance code of 2) for the activity of bathing. The number of times per week assistance is provided remains the same: seven times per week.⁴⁴ The assessment’s reduction was based upon Ms. N’s and the PCA’s statements that she could step into the tub and sit down without help, but that she was helped out of the tub, and the assessor’s observation that Ms. N could transfer independently and had a good upper body range of motion.⁴⁵

Ms. N and Mr. L’s testimony was that Ms. N requires weight-bearing assistance with transfers, and cannot completely bathe herself and needs to be dried off after bathing. Based upon their testimony, it is more likely true than not true that Ms. N continues to require extensive assistance with bathing seven times per week.

J. Medication Assistance

The Division previously provided Ms. N with medication assistance 42 times weekly based upon Ms. N requiring limited assistance (self-performance code of 2) with personal hygiene. It eliminated that assistance altogether based upon the assessment’s finding that she no longer required limited assistance with personal hygiene.⁴⁶

By regulation, medication assistance is provided for based upon the personal hygiene score.⁴⁷ As discussed above, Ms. N continues to require limited assistance with personal

⁴² Ex. D, pp. 3 - 4, 10.

⁴³ Ex. E, p. 10.

⁴⁴ Ex. D, pp. 4, 10.

⁴⁵ Ex. E, p. 11.

⁴⁶ Ex. D, pp. 5, 10.

⁴⁷ Ex. D, p. 10; *Personal Care Assistance Service Level Computation*, pp. 1 - 2. (Ex. B, pp. 34 - 35).

hygiene. Her medication list contained in the CAT shows that she takes numerous medications multiple times daily.⁴⁸ Accordingly, the Division has not met its burden of proof to reduce medication assistance; it remains at 42 times weekly based upon her need for limited assistance (self-performance code of 2) with personal hygiene.

K. Medical Escort

Ms. N has not received Medical Escort assistance in the past. The 2014 assessment found that she was able to drive herself to appointments and that she did not require medical escort.⁴⁹ Ms. N testified that Mr. L drives her to the hospital. Mr. L testified that he drives her to the hospital and attends her medical appointments with her, so that he can provide an explanation for Ms. N. At hearing, Ms. N had trouble focusing on questions and answering them. Given that lack of focus, Mr. L's testimony regarding the need to participate in Ms. N's doctor's appointments was credible.

Mr. L testified that Ms. N has five to six medical appointments per month. Three of those are for chemotherapy, which do not require Mr. L to provide explanations.⁵⁰ Ms. L would therefore need to accompany Ms. N to medical appointments two to three times per month. Ms. L lives in the No Name Area. All of her medical appointments are in the No Name Area with the exception of her neurologist, who is in Anchorage and is seen twice yearly. Mr. L testified that her doctor's appointments in the No Name Area require 25 to 30 minutes of travel each way. Assuming that an average time spent with the physician would be approximately 10 minutes, each of two to three monthly medical appointments would need approximately one hour of medical escort time. Since there are two to three non-chemotherapy monthly medical appointments, a figure of 2.5 medical appointments per month would require approximately 2.5 hours of medical escort time per month, for a yearly figure of 30 hours per year. When the twice yearly neurologist appointments in Anchorage, which take approximately 2 hours each (transportation time plus consultation time), are factored in, this results in 34 hours yearly. This comes to 39 minutes per week of medical escort time. Ms. N has met her burden of proof on this increase and established that she should receive 39 minutes of medical escort time weekly.

⁴⁸ Ex. E, p. 20.

⁴⁹ Ex. D, p. 10; Ex. E, p. 7; Ms. J's testimony.

⁵⁰ Chemotherapy sessions are excluded because they normally would not require consultation with a physician: medical escort consists "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." 7 AAC 125.030(d)(9) (emphasis supplied).

L. Instrumental Activities of Daily Living

Ms. N was previously provided the maximum assistance available with all of her IADLs (light meal preparation, main meal preparation, shopping, light housework, and laundry) based upon a previous determination that she was completely dependent upon someone else to perform them. The assessment reduced her assistance with four of those IADLs, finding that she required minimal assistance (independent with difficulty – self-performance code of 1, requiring some physical assistance – support code 3) with light meal preparation, main meal preparation, and shopping, and required physical assistance with laundry (was able to participate – self-performance code 2, but required physical assistance – support code 3). The assessment continued to find that she was dependent with regard to housekeeping.⁵¹

Ms. N testified that she is able to participate slightly with meal preparation such as using a microwave, but that she cannot hold onto items because she drops things, including dropping a carton of milk. Mr. L testified that if she is sitting down, she can do some meal preparation such as making a sandwich. Both Mr. L's and Ms. N's testimony demonstrate that, while she can participate to some degree with meal preparation, she requires physical assistance, and is not independent with difficulty as assessed. It is therefore more likely true than not true that while Ms. N is not completely dependent with regard to light meal and main preparation, she can participate to some degree if physical assistance is provided. Accordingly, she should be coded with a 2 in self-performance and a 3 in support, and receive assistance commensurate with that coding for light meal preparation 14 times per week and main meal preparation 7 times per week.

Ms. N testified that she can accompany her PCA shopping. She uses a motorized shopping cart and if something is within her reach and is not too heavy, she can reach over and grab it. As with meal preparation, her testimony demonstrates that she is not completely dependent with regard to shopping, but can participate to some degree if physical assistance is provided. Accordingly, she should be coded with a 2 in self-performance and a 3 in support, and receive assistance commensurate with that coding for shopping. A similar conclusion is also reached with regard to laundry, given Ms. N's testimony that she can participate to some degree with laundry, such as folding clothes.

⁵¹ Ex. D, pp. 4, 10; Ex. E, p. 26.

M. Prescribed Tasks – Range of Motion Exercises

Ms. N had previously been provided 6.5 hours of PCA assistance weekly for prescribed range of motion exercises. The Division eliminated that assistance based upon its finding that she no longer had a prescription for range of motion exercises.⁵² B T, the consumer support specialist with Ms. N’s PCA agency, testified that Ms. N did not have a current prescription for range of motion exercises.

Ms. N was provided an opportunity to present a current prescription for range of motion exercises. She did not provide a prescription. Instead, she submitted a doctor’s letter, dated October 21, 2014, that stated:

A home exercise program including range of motion exercises, 30 minutes 3 times daily x 7 days weekly has been recommended. This was initially recommended in 2011. Continuation of this regimen was appropriate for 2012 – 2013 and 2013 – 2014 and is still recommended as of this date.⁵³

In order to receive PCA services for range of motion exercises, those exercises must be prescribed: “[t]he department will pay for range-of-motion and stretching exercises on if those services are . . . (2) prescribed by a physician, a physician assistant, or an advanced nurse practitioner.”⁵⁴ The doctor’s recommendation is not a prescription. The Division’s determination that Ms. N no longer qualifies for PCA services for range of motion exercises is correct as a matter of law.

V. Conclusion

Ms. N’s physical functioning declined in the time between the Division’s assessment and the issuance of its decision reducing her PCA benefits. A review of the evidence demonstrates that, as a result, the reduction in her benefits is not wholly justified. The Division is to recalculate Ms. N’s PCA service time consistent with this decision.

DATED this 13th day of November, 2014.

Signed

Lawrence A. Pederson
Administrative Law Judge

⁵² Ex. D, pp. 5, 10.
⁵³ Ex. 2.
⁵⁴ 7 AAC 125.030(e).

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 28th day of November, 2014.

By: Signed _____
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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