

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

In the Matter of:)
)
 D S) OAH No. 14-1400-MDS
) Agency 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. D S is eligible.¹ The Division decreased Ms. S's PCA services from 35.75 hours per week to 3.0 hours per week effective August 2, 2014.²

This decision concludes, based on the evidence in the record, that the Division's determination of the PCA services for which Ms. S is currently eligible was correct as to the level and frequency of assistance that Ms. S requires with body mobility, dressing, eating, and personal hygiene. However, Ms. S is entitled to a greater level and frequency of assistance with transfers, locomotion, toileting, bathing, light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry. Accordingly, the Division's decision is affirmed in part and reversed in part.

II. Facts

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

Ms. S is 60 years old³ and weighs about 130 pounds.⁴ She lives in a single level apartment with one other person.⁵ Her primary and secondary diagnoses include anxiety, bipolar disorder, bone and cartilage disorder nos, chronic pain nec, convulsive epilepsy, intervertebral disc disorder and spinal stenosis of the cervical spine, disturbance of skin sensation, depression, gait abnormality, late effects of cerebrovascular disease, lesions of the brachial plexus, migraine headaches, osteoarthritis of the pelvic region and thighs, muscle spasms, schizophrenia nos, spastic

¹ Ms. S also has another case, currently pending before me, concerning her Medicaid Home and Community-Based Waiver services (OAH Case No. 14-1739-MDS). A separate written decision will be issued in that case in the near future.

² Ex. D1.

³ Ex. E1.

⁴ Ex. E10.

⁵ Ex. E1.

hemiplegia and hemiparesis affecting the non-dominant side, vascular myelopathies, and vitamin D deficiency nos.⁶

Ms. S's hemiplegia affects the left side of her body.⁷ Her seizures are petit mal seizures rather than grand mal seizures.

B. The Division's Findings from its 2011 and 2014 Assessments

Ms. S was previously assessed as to her eligibility for PCA services on September 29, 2011 by Division nurse-assessor Q X, R.N.⁸ Based on her 2011 assessment, Ms. X found that Ms. S required the following levels of assistance with her ADLs:⁹ body mobility - independent (CAT score 0/0, frequency 0/0); transfers - required extensive one-person physical assistance 28 times per week (CAT score 3/2, frequency 4/7); locomotion - required extensive one-person physical assistance 56 times per week (CAT score 3/2, frequency 8/7); dressing - required extensive one-person physical assistance 14 times per week (CAT score 3/2, frequency 2/7); eating - was independent, requiring only set-up assistance (CAT score 0/1, frequency 0/0); toilet use - required extensive one-person physical assistance 42 times per week (CAT score 3/2, frequency 6/7); personal hygiene - required limited one-person physical assistance 14 times per week (CAT score 2/2, frequency 2/7); and bathing - required extensive one-person physical assistance seven times per week (CAT score 3/2, frequency 1/7).¹⁰

At the same 2011 assessment, Ms. X found that Ms. S required the following levels of assistance with her IADLs:¹¹ independent with telephone use (CAT score 0/0); independent with difficulty, requiring set-up assistance as to financial management (CAT score 1/2); and totally dependent on others as to light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry (CAT score 3/4).

Ms. S was most recently assessed for continuing PCA eligibility on February 26, 2014 by M N, R.N. of DSDS.¹² Ms. N's assessment is recorded and scored on the Division's Consumer Assessment Tool or "CAT." Ms. N found that Ms. S has the following physical abilities and limitations:¹³

⁶ Ex. E3.

⁷ All factual findings in this paragraph are based on Ex. 4 unless otherwise stated.

⁸ Exs. F1 - F31.

⁹ All factual findings in this paragraph are based on Exs. F6 - F12 unless otherwise stated.

¹⁰ Notably, Ms. S's 2011 ADL scores were identical to the ADL scores from the assessment prior to the 2011 assessment, indicating that Ms. S's condition has remained stable and has gotten neither better nor worse (Ex. F12).

¹¹ All factual findings in this paragraph are based on Ex. F26 unless otherwise stated.

¹² Ex. E.

¹³ Exs. E4 - E13.

Functional assessment:¹⁴ Ms. N reported that Ms. S has no grip strength in her left hand, but strong grip strength in her right hand. Ms. N also reported that Ms. S cannot touch her hands together over her head or behind her back, and cannot stand up with her hands crossed on her chest, but can touch her feet while in a sitting position, and is able to raise her right hand over her head.

Body Mobility / Bed Mobility:¹⁵ Ms. N reported that Ms. S told her that she does not require assistance to turn or reposition herself in bed (scored 0/0, frequency 0/0).¹⁶

Transfers:¹⁷ Ms. N reported that Ms. S told her that she does not require assistance with transfers. Ms. N reported that she observed Ms. S move from a seated position on the floor to a standing position by pushing up from her coffee table (scored 0/0, frequency 0/0).

Locomotion (walking):¹⁸ Ms. N reported that Ms. S told her that she had not fallen for five months prior to the assessment, does not require assistance with walking, and that she was working out on a stationary exercise bike to build leg strength. Ms. N reported that she observed Ms. S demonstrate walking, and that she did not need assistance but did require set-up and supervision (scored 1/1, frequency 0/0).

Dressing:¹⁹ Ms. N reported that Ms. S told her that she always wears sweats and does not require assistance with dressing. Ms. N reported that she observed that Ms. S was dressed in sweats at the time of the assessment (scored 0/0, frequency 0/0).

Eating:²⁰ Ms. N reported that Ms. S told her that she needs assistance with meal preparation, but is able to feed herself, is not on any special diet, and does not have swallowing or choking problems (scored 0/0, frequency 0/0).

Toileting:²¹ Ms. N reported that Ms. S told her that she does not have any problems with incontinence and does not require assistance with toilet use. Ms. N reported that she observed that Ms. S did not require assistance transfers or locomotion (scored 0/0, frequency 0/0).

Personal Hygiene:²² Ms. N reported that Ms. S told her that she can perform all her personal hygiene tasks by herself. Ms. N reported that she observed that Ms. S was clean and well-groomed at the time of the assessment (scored 0/0, frequency 0/0).

¹⁴ All references in this paragraph are based on Ex. E5 unless otherwise stated.

¹⁵ All references in this paragraph are based on Ex. E7 unless otherwise stated.

¹⁶ The number before the first slash mark is the self-performance score; the number after the first slash mark is the support score; the number before the second slash mark is the number of times per day; and the number after the second slash mark is the number of days per week.

¹⁷ All references in this paragraph are based on Ex. E7 unless otherwise stated.

¹⁸ All references in this paragraph are based on Ex. E8 unless otherwise stated.

¹⁹ All references in this paragraph are based on Ex. E9 unless otherwise stated.

²⁰ All references in this paragraph are based on Ex. E10 unless otherwise stated.

²¹ All references in this paragraph are based on Ex. E10 unless otherwise stated.

Bathing:²³ Ms. N reported that Ms. S told her that she does not require any assistance with bathing (scored 0/0, frequency 0/0).

Notably, although Ms. S told Ms. N that she did not need assistance with her ADLs, her room-mate and PCA, H E, advised Ms. N that Ms. S does require some assistance with her ADLs.²⁴

The assessment also scored Ms. S's need for an escort to medical appointments.²⁵ Ms. N reported that Ms. S told her that she takes No Name or a bus to her medical appointments, and that she does not need anyone to go along to assist her.

Finally, the assessment scored Ms. S as to her ability to perform Instrumental Activities of Daily Living (IADLs).²⁶ The assessment scored Ms. S as follows: independent as to telephone use, financial management, light meal preparation, and light housework (CAT score 0/0); and independent with difficulty, requiring physical assistance as to main meal preparation, routine housework, grocery shopping, and laundry (CAT score 1/3).

C. Relevant Procedural History

The Division performed the assessment at issue on February 26, 2014.²⁷ On July 23, 2014 the Division notified Ms. S that her PCA service level was being reduced from 35.75 hours per week to 3.0 hours per week effective August 2, 2014.²⁸ Ms. S requested a hearing to contest the Division's reduction of her PCA services on August 8, 2014.²⁹

Ms. S's hearing was held on November 19, 2014 and December 31, 2014. Ms. S participated in the hearing by phone, represented herself, and testified on her own behalf. B L of No Name, Ms. S's care coordinator, T K, and Ms. S's PCA, H E, participated in the hearing by phone and testified on Ms. S's behalf. Victoria Cobo participated in the hearing by phone and represented the Division. Jan Bragwell, R.N. and David Chadwick participated in the hearing by phone and testified for 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

²² All references in this paragraph are based on Ex. E11 unless otherwise stated.

²³ All references in this paragraph are based on Ex. E12 unless otherwise stated.

²⁴ Ex. E31.

²⁵ All references in this paragraph are based on Ex. E22 unless otherwise stated.

²⁶ All references in this paragraph are based on Ex. E27 unless otherwise stated.

²⁷ Ex. E.

²⁸ Ex. D1.

²⁹ Ex. C.

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" ³⁰ [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." ³¹

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." ³² 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). ³³ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairments. ³⁴

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. ³⁵ 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. ³⁶

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 for ADLs are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance ³⁷); **3**

³⁰ 7 AAC 125.010(a).

³¹ 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.*

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

³³ See 7 AAC 125.010(a).

³⁴ Ex. E.

³⁵ 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 May 11, 2015); see also Exs. B34 - B36; Ex. D9.

³⁶ *Id.*

³⁷ 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).

(the person requires extensive assistance³⁸); or **4** (the person is totally dependent³⁹). 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 for ADLs 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).

The CAT also scores certain activities known as "instrumental activities of daily living" (IADLs).⁴⁰ These are light meal preparation, main meal preparation, light housekeeping, laundry, and grocery shopping. The CAT scores IADLs slightly differently than ADLs.⁴¹ The *self-performance scores 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 treated as a numerical score for purposes of calculating a service level: **8** (the activity did not occur).

The *support scores* for IADLs are also slightly different than the support codes for ADLs.⁴² The support scores 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 does not add to the service level: 8 (the activity did not occur).

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*

³⁸ 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).

³⁹ 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).

⁴⁰ Ex. E26.

⁴¹ *Id.*

⁴² *Id.*

activity at issue.⁴³ 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.⁴⁴

C. *Applicable Burden of Proof*

The Division is seeking to reduce Ms. S's existing PCA services (services which Ms. S was already receiving). Accordingly, the Division has the burden of proving, by a preponderance of the evidence, that Ms. S's need for PCA services has decreased.⁴⁵

D. *How Much PCA Time is Ms. S 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.⁴⁶ 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*.⁴⁷

Ms. S's PCA agency did not submit any statement outlining the particular activities that Ms. S asserts were improperly scored by the Division in calculating her PCA time. Based on Ms. S's hearing testimony, it is apparent that she disputes many of her ADL and IADL scores. Accordingly, each ADL and IADL 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 /herself in a bed or chair, or to perform range of motion and stretching exercises.⁴⁸ Ms. N found in her 2014 assessment that Ms. S is independent with body mobility. That finding is consistent with Ms. S's body mobility score from her 2011 assessment, and Ms. S did not assert at hearing that she requires PCA assistance with body mobility. Accordingly, based on the evidence in the record, the Division's assessment as to Ms. S's level of need for PCA assistance with body mobility is affirmed (CAT score 0/0, frequency 0/0).

⁴³ See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

⁴⁴ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

⁴⁵ See 42 CFR 435.930, 2 AAC 64.290(e), 7 AAC 49.135, and *Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁴⁶ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

⁴⁷ *Id.*

⁴⁸ 7 AAC 125.030(b)(1).

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.⁴⁹ Ms. N's 2014 assessment found that Ms. S is independent with transfers. The prior (2011) assessment found that Ms. S required extensive one-person physical assistance with transfers, 28 times per week (CAT score 3/2, frequency 4/7). At hearing, Ms. S testified that her need for assistance with transfers has decreased, but that she still requires limited assistance with transfers about three times per week. Ms. S's testimony was credible given her scores on the 2011 assessment. Accordingly, the preponderance of the evidence indicates that Ms. S requires limited PCA assistance with transfers three times per week (CAT score 2/2, frequency 1/3).

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.⁵⁰ Ms. N reported that Ms. S requires only set-up help and supervision with locomotion (CAT score 1/1). The prior (2011) assessment found that Ms. S required extensive one-person physical assistance 56 times per week (CAT score 3/2, frequency 8/7). At hearing, Ms. S testified that she requires at least some assistance with locomotion, but she could not recall how many times per day she requires assistance. I find that the preponderance of the evidence indicates that Ms. S currently requires limited physical assistance with locomotion one time per day (CAT score 2/2; frequency 1/7).

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.⁵¹ The Division's 2014 assessment found that Ms. S is independent with dressing (CAT score 0/0, frequency 0/0). At hearing, Ms. S confirmed that she is independent with dressing. Accordingly, I find that Ms. S is independent with dressing (CAT score 0/0, frequency 0/0).

⁴⁹ 7 AAC 125.030(b)(2).

⁵⁰ 7 AAC 125.030(b)(3).

⁵¹ 7 AAC 125.030(b)(4).

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.⁵² Ms. N found in her 2014 assessment that Ms. S is independent with eating (CAT score 0/0, frequency 0/0). The Division's prior (2011) assessment found that Ms. S was independent with eating, requiring only set-up assistance (CAT score 0/1, frequency 0/0). At hearing, Ms. S testified that she cannot use a knife, and that her PCA cuts up her food for her, but that otherwise she is able to eat independently. Accordingly, the preponderance of the evidence indicates that Ms. S is independent with eating (CAT score 0/0, frequency 0/0).

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.⁵³ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁵⁴

Ms. N found that Ms. S is independent with toileting. The Division's prior (2011) assessment found that Ms. S required extensive one-person physical assistance with toileting 42 times per week (CAT score 3/2, frequency 6/7). At hearing, Ms. S testified that she is unable to button and unbutton clothing with buttons, because her thumb does not work very well, but that she is otherwise able to toilet independently. Ms. S's hearing testimony on this point, which I find credible, indicates that Ms. S requires limited physical assistance with adjusting her clothing before and after toileting.⁵⁵ There is no evidence in the record indicating that Ms. S's frequency of toilet use has decreased since the 2011 assessment. Accordingly, the preponderance of the evidence indicates that Ms. S requires limited assistance with toilet use 42 times per week (CAT score 2/2, frequency 6/7).

⁵² 7 AAC 125.030(b)(5).

⁵³ 7 AAC 125.030(b)(6).

⁵⁴ 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).

⁵⁵ I would have also found that Ms. S requires limited assistance with dressing, for the same reason that she requires limited assistance with toileting, but did not because Ms. S did not qualify her statement that she can *dress* independently the same way she qualified her testimony about toilet use.

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 Ms. S is independent with personal hygiene. The Division's prior (2011) assessment found that Ms. S required limited one-person physical assistance with transfers 14 times per week (CAT score 2/2, frequency 2/7). At hearing, Ms. S testified that she is currently independent with her personal hygiene. Accordingly, the preponderance of the evidence indicates that Ms. S is currently independent with personal hygiene (CAT score 0/0, frequency 0/0).

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 Ms. S is currently independent with bathing. The Division's prior (2011) assessment found that Ms. S required extensive assistance from one person for bathing, once per day, seven days per week (CAT score 3/2, frequency 1/7). At hearing, Ms. S testified that she requires assistance getting into and out of the bath tub / shower. This testimony is consistent with Ms. S's 2011 assessment findings and with her medical diagnoses. With regard to frequency, there is no evidence indicating that Ms. S bathes more frequently or less frequently than she did in 2011. Accordingly, the preponderance of the evidence indicates that Ms. S requires limited assistance with bathing seven times per week (CAT score 2/2, frequency 1/7).

9. Light Meals

The PCA regulations define the IADL of light meal preparation as the preparation, serving, and cleanup in the recipient's home of any meal that is essential to meet the health needs of the recipient, and that is not the main meal of the day.⁵⁸ At the 2011 assessment, the Division found that Ms. S was totally dependent on others for light meal preparation. At the 2014 assessment, the Division found Ms. S to be independent with light meal preparation (CAT score 0/0). At hearing, Ms. S testified that she cannot open jars, but can pour cereal and milk and can make a sandwich. Accordingly, the preponderance of the evidence indicates that Ms. S is independent with difficulty, requiring set-up help, as to light meal preparation (CAT score 1/2).⁵⁹

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).

⁵⁸ 7 AAC 125.030(c)(1).

⁵⁹ Note that the CAT scores IADLs slightly differently than ADLs (see discussion in Section III(B), above).

10. Main Meals

The PCA regulations define the IADL of main meal preparation as the preparation, serving, and cleanup in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient.⁶⁰ In 2011 the Division found Ms. S to be dependent on others for main meal preparation (CAT score 3/4). In 2014 the Division found Ms. S to be independent with difficulty, requiring physical assistance, as to main meal preparation (CAT score 1/3). At hearing, Ms. S testified that she can stir a pot, but cannot cut / prepare vegetables or stand for very long at the stove or sink. Accordingly, the preponderance of the evidence indicates that Ms. S requires physical assistance with main meal preparation (CAT score 2/3).

11. Light Housework

The PCA regulations define the IADL of "light housekeeping" as (1) picking up, dusting, vacuuming, and floor-cleaning of the living spaces used by the recipient; (2) the cleaning of the kitchen and dishes used for preparation of the recipient's meals; (3) the cleaning of any bathroom used by recipient; (4) making the recipient's bed; (5) removing the recipient's trash; and (6) caring for the recipient's service animal.⁶¹ In 2011 the Division found Ms. S to be dependent on others for light housework (CAT score 3/4). In 2014 the Division found Ms. S to be independent with light housework (CAT score 0/0). At hearing, Ms. S testified that she can wipe down a counter-top, but is unable to perform the other aspects of light housework. Accordingly, the preponderance of the evidence indicates that Ms. S requires physical assistance with the IADL of light housework (CAT score 2/3).

12. Routine Housework

In 2011 the Division found Ms. S to be dependent on others for routine housework (CAT score 3/4). In 2014, the Division found that Ms. S is independent with difficulty, requiring physical assistance, as to routine housework (CAT score 1/3).

Although *the CAT* differentiates between "light housework" and "routine housework," *the PCA regulation* includes all the constituent activities of these two "CAT categories" within a single definition of "light housekeeping."⁶² Because Ms. S has already been scored 2/3 for the IADL of "light housekeeping" (above), the same score is appropriate for routine housework.

⁶⁰ 7 AAC 125.030(c)(2).

⁶¹ 7 AAC 125.030(c)(3).

⁶² 7 AAC 125.030(c)(3).

13. Grocery Shopping

The PCA regulations define the IADL of grocery shopping as shopping in the vicinity of a recipient's residence for groceries and other household items required for the health and maintenance of the recipient, and prescribed drugs and medical supplies required by the recipient.⁶³ In 2011 the Division found Ms. S to be dependent on others for grocery shopping (CAT score 3/4). In 2014, the Division found Ms. S to be independent with difficulty, requiring physical assistance, as to grocery shopping (CAT score 1/3). At hearing, Ms. S testified that she can make a shopping list, but that she needs help shopping because she gets dizzy, and that her PCA or a store employee must get things off the store shelves for her. Given her diagnoses, Ms. S's testimony on this point is credible. Accordingly, the preponderance of the evidence indicates that Ms. S requires physical assistance with the IADL of grocery shopping (CAT score 2/3).

14. Laundry

The PCA regulations define the IADL of laundry as the changing of a recipient's bed linens and the in-home or out-of-home laundering of a recipient's bed linens and clothing.⁶⁴ In 2011 the Division found Ms. S to be dependent on others for her laundry (CAT score 3/4). In 2014, the Division found Ms. S to be independent with difficulty, requiring physical assistance, for her laundry (CAT score 1/3). At hearing, Ms. S testified that she can separate her laundry prior to washing, and can fold it after washing, but cannot go up and down the stairs with a clothes basket full of clothes to her apartment's downstairs laundry room, and has trouble using the washer and dryer. Given the results of the 2011 assessment, and her medical diagnoses, Ms. S's testimony regarding her need for assistance with laundry is credible. Accordingly, the preponderance of the evidence indicates that Ms. S requires physical assistance with the IADL of laundry (CAT score 2/3).

IV. **Conclusion**

The Division's determination of the PCA services for which Ms. S is currently eligible was correct as to the level and frequency of assistance that Ms. S requires with body mobility, dressing, eating, and personal hygiene. However, Ms. S is entitled to a greater level and frequency of assistance with transfers, locomotion, toileting, bathing, light meal preparation, main meal

⁶³ 7 AAC 125.030(c)(5).

⁶⁴ 7 AAC 125.030(c)(4).

preparation, light housework, routine housework, grocery shopping, and laundry. Accordingly, the Division's decision is affirmed in part and reversed in part.

DATED this 15th day of May, 2015.

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 28th day of May, 2015.

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.]