

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

In the Matter of: )  
 )  
 N N ) OAH No. 14-1428-MDS  
 ) Agency Case No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (DSDS or Division) correctly assessed the amount of Medicaid Personal Care Assistant (PCA) services for which Ms. N N is eligible. The Division decreased Ms. N's PCA services from 32.25 hours per week to 27.25 hours per week effective August 10, 2014.<sup>1</sup>

This decision concludes, based on the evidence in the record, that the Division's determination concerning the PCA services for which Ms. N is currently eligible was substantially correct. The only error made by the Division in determining Ms. N's current level of PCA services was in denying PCA assistance with range of motion (ROM) exercises and walking for exercise. Accordingly, the Division's decision is reversed as to its denial of PCA assistance with ROM exercises and walking for exercise, but is affirmed in all other respects.

**II. Facts**

**A. Ms. N's Living Situation and Medical Problems**

Ms. N is 77 years old<sup>2</sup> and weighed about 253 pounds at the time of the assessment.<sup>3</sup> She lives with two other adults (one of whom is her PCA) in a single story residence equipped with an entryway ramp and bathroom safety features.<sup>4</sup> Her primary diagnosis is spinal stenosis.<sup>5</sup> Her secondary diagnoses are anemia, arthritis, asthma, cervical disk displacement, fatigue, generalized muscle weakness, hypertension, hypothyroidism, malaise, obesity, thoracic or lumbosacral neuritis or radiculitis, sleep apnea, and tinnitus.<sup>6</sup> She takes a number of prescription medications including

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<sup>1</sup> Ex. D1.

<sup>2</sup> Ex. E1.

<sup>3</sup> Ex. E9.

<sup>4</sup> Exs. E1, E3.

<sup>5</sup> Ex. E3.

<sup>6</sup> Ex. E3.

Advair, acetylsalicylic acid (aspirin), Celebrex, Duloxetine, Ferrous Sulphate, Gabapentin, Levothyroxine, Metoclopramide, Metoprolol, and Nexium.<sup>7</sup>

**B. The Division's Findings From its 2014 Assessment**

Ms. N was previously assessed as to eligibility for PCA services on October 18, 2006.<sup>8</sup> Based on her 2006 assessment, Ms. N was found to require the following levels of assistance with her ADLs:<sup>9</sup> body mobility - extensive one-person physical assistance; transfers - extensive one-person physical assistance; locomotion - extensive one-person physical assistance; dressing - extensive one-person physical assistance; eating - supervision only; toilet use - extensive one-person physical assistance; personal hygiene - limited one-person physical assistance; and bathing - extensive one-person physical assistance. At the same 2006 assessment, Ms. N was found to require the following levels of assistance with her IADLs:<sup>10</sup> required physical assistance with shopping (scored 2/3); was totally dependent with light meal preparation, main meal preparation, light housework, routine housework, and laundry (each scored 3/3 or 3/4).

Ms. N was most recently assessed for PCA eligibility by Sam Cornell, R.N. of DSDS on March 7, 2014.<sup>11</sup> Mr. Cornell found Ms. N to be alert, oriented, reasonable, and consistent at the time of the assessment.<sup>12</sup> Ms. N was able to provide Mr. Cornell with her health / medical history.<sup>13</sup> Ms. N reported that she had lower back pain and leg pain when standing or bending.<sup>14</sup> However, Ms. N had strong grip strength in both her hands, and was able to touch her hands together over her head and behind her back, but was unable to stand up with her hands crossed on her chest, or touch her feet while sitting.<sup>15</sup> Ms. N advised Mr. Cornell that she was receiving physical therapy two days per week.<sup>16</sup>

Mr. Cornell's assessment is recorded and coded on the Consumer Assessment Tool or "CAT." The codes or scores referenced below are those assigned by Mr. Cornell based on the assessment. Mr. Cornell found that Ms. N has the following abilities and limitations with regard to her Activities of Daily Living (ADLs):<sup>17</sup>

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<sup>7</sup> Ex. E20.  
<sup>8</sup> Ex. D2.  
<sup>9</sup> Ex. D9.  
<sup>10</sup> Ex. D9.  
<sup>11</sup> Ex. E.  
<sup>12</sup> Ex. E4.  
<sup>13</sup> Ex. E4.  
<sup>14</sup> Ex. E4.  
<sup>15</sup> Ex. E4.  
<sup>16</sup> Ex. E5.  
<sup>17</sup> Exs. E6 - E12.

Body Mobility / Bed Mobility:<sup>18</sup> Mr. Cornell reported that he was told by Ms. N that she was able to position herself in bed, except that her PCA "sometimes" pulls her legs. Mr. Cornell reported that he observed Ms. N reposition herself while on her bed, with her PCA pulling on her leg (scored 1/1 - requires supervision and set-up help only).

Transfers:<sup>19</sup> Mr. Cornell reported that he was told by Ms. N that her legs were weak and that she needed help to stand up. Mr. Cornell reported that he observed Ms. N transfer to and from her bed with assistance from her PCA (scored 3/2, frequency 4/7).

Locomotion (walking):<sup>20</sup> Mr. Cornell reported that he was told by Ms. N that (1) she uses a walker when inside, but still requires PCA assistance using a gait belt, and (2) that she uses a wheelchair when going to outside appointments, but requires someone to help push the wheelchair. Mr. Cornell reported that he observed Ms. N walking slowly in her home using her walker while receiving gait-belt assistance from her PCA. Mr. Cornell reported that Ms. N appeared unsteady while walking (scored 3/2, frequency 4/7).

Dressing:<sup>21</sup> Mr. Cornell reported that he was told by Ms. N that she can use buttons and zippers herself, but that she needs some help dressing and undressing, particularly with her socks and shoes. Mr. Cornell reported that he observed Ms. N to be adequately dressed for the assessment (scored 2/2, frequency 2/7).

Eating:<sup>22</sup> Mr. Cornell reported that he was told by Ms. N that she is able to feed herself without physical assistance. Mr. Cornell reported that he saw no medical diagnoses related to swallowing problems or choking issues (scored 0/1).

Toileting:<sup>23</sup> Mr. Cornell reported that he was told by Ms. N that (1) she uses the toilet about six times per day; (2) she needs her PCA to provide physical assistance with transferring on and off the toilet; and (3) due to a medical procedure performed shortly before the assessment, she also needed assistance cleaning herself at the time of the assessment. Mr. Cornell reported that Ms. N's toilet is equipped with a raised seat (scored 3/2, frequency 6/7).

Personal Hygiene:<sup>24</sup> Mr. Cornell reported that he was told by Ms. N that she can wash her face, hands, and the front of her body, but that she needs PCA assistance to brush her hair because

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<sup>18</sup> All references in this paragraph are based on Ex. E6 unless otherwise stated.  
<sup>19</sup> All references in this paragraph are based on Ex. E6 unless otherwise stated.  
<sup>20</sup> All references in this paragraph are based on Ex. E7 unless otherwise stated.  
<sup>21</sup> All references in this paragraph are based on Ex. E8 unless otherwise stated.  
<sup>22</sup> All references in this paragraph are based on Ex. E9 unless otherwise stated.  
<sup>23</sup> All references in this paragraph are based on Ex. E9 unless otherwise stated.  
<sup>24</sup> All references in this paragraph are based on Ex. E10 unless otherwise stated.

she cannot hold her arms up for very long. Mr. Cornell noted that Ms. N appeared clean and well groomed at the assessment, but that Ms. N's functional assessment supported a need for limited assistance with some personal hygiene tasks (scored 2/2, frequency 1/7).

Bathing:<sup>25</sup> Mr. Cornell reported that he was told by Ms. N that (1) she takes a shower every other day; (2) requires physical assistance to get in and out of the bath tub; and (3) also requires assistance washing her hair, back, legs, and feet. Mr. Cornell reported that he observed that Ms. N's bathroom is equipped with grab bars and a shower chair (scored 3/2, frequency 1/7).

The assessment of March 7, 2014 also scored Ms. N as follows with regard to her Instrumental Activities of Daily Living (IADLs):<sup>26</sup> independent as to telephone use and finance management (scored 0/0 and 0/2, respectively); is dependent on others as to light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry (each scored 3/4).

On August 20, 2013 Physician's Assistant (PA) R P completed a DSDS prescribed task form (PTF) for Ms. N.<sup>27</sup> He prescribed range of motion (ROM) exercises five days per week for 20 minutes per day, walking exercise five days per week for 20 minutes per day, and foot care. The duration of the prescription was one year, so the prescription was in effect at the time of the March 7, 2014 assessment and the July 31, 2014 determination letter.

### ***C. Relevant Procedural History***

The Division performed the assessment at issue on March 7, 2014.<sup>28</sup> On July 31, 2014 the Division notified Ms. N that her PCA service level was being reduced from 32.25 hours per week to 27.25 hours per week effective August 10, 2014.<sup>29</sup> The Division's notice letter specified several reasons for the reduction in Ms. N's PCA services. These were:

1. The fact that the PCA regulations were amended since Ms. N's last assessment in 2006, which amendments generally decreased the amount of time allowed.<sup>30</sup>
2. The assertion that Ms. N's medical and/or living condition had improved since the date of her last assessment, such that she no longer requires as much PCA assistance as she did previously with body mobility, locomotion, dressing, and personal hygiene.<sup>31</sup>

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<sup>25</sup> All references in this paragraph are based on Ex. E11 unless otherwise stated.

<sup>26</sup> Ex. E26.

<sup>27</sup> All references in this paragraph are based on Ex. 1 unless otherwise stated.

<sup>28</sup> Ex. E.

<sup>29</sup> Ex. D1.

<sup>30</sup> Ex. D2.

<sup>31</sup> Exs. D2, D3.

3. The fact that the PCA regulations have been amended to end the prior practice of rounding PCA time for a particular activity up to the nearest whole number.<sup>32</sup>

4. The fact that the regulation governing PCA assistance with medications was amended since Ms. N's last assessment, such that she is no longer eligible for assistance.<sup>33</sup>

5. The assertion that Ms. N no longer has a need for, and did not request assistance with, non-sterile dressing / bandage changes.<sup>34</sup>

6. The fact that the regulation governing PCA assistance with medical documentation was amended since Ms. N's last assessment, such that a prescription is now required to obtain such assistance, and Ms. N does not have the necessary prescription.<sup>35</sup>

7. The assertion that Ms. N no longer requires escort services.<sup>36</sup>

Ms. N requested a hearing to contest the Division's reduction of her PCA services on August 12, 2014.<sup>37</sup> The hearing was held on October 1, 2014. Ms. N participated in the hearing by phone, represented herself, and testified on her own behalf. Mr. Q, Ms. N's PCA agency representative, participated by phone and assisted Ms. N. Tammy Smith participated in the hearing by phone and represented the Division. Sam Cornell, R.N. and Jerold Fromm participated in the hearing by phone and testified on behalf of the Division.

At hearing, Ms. N did not dispute the specific reasons why the Division decreased her level of PCA services. Rather, she simply testified that she wanted and needed more PCA assistance. 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 . . . ." <sup>38</sup> [emphasis added]. Accordingly, "[t]he department will not authorize personal care services for a recipient if

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<sup>32</sup> Ex. D2.  
<sup>33</sup> Exs. D3, D4.  
<sup>34</sup> Ex. D3.  
<sup>35</sup> Ex. D3.  
<sup>36</sup> Ex. D4.  
<sup>37</sup> Ex. C.  
<sup>38</sup> 7 AAC 125.010(a).

the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL."<sup>39</sup>

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

The Division conducts assessments for PCA services using the Consumer Assessment Tool or "CAT."<sup>40</sup> 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).<sup>41</sup> The CAT seeks to make the assessment process more objective by attempting to standardize and quantify the determination of an applicant or recipient's level of functional impairment.<sup>42</sup>

The ADLs scored by the CAT are body 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, and bathing.<sup>43</sup> In addition, the CAT scores five other ADL-like activities which are not technically ADLs. These are medication, vital signs / glucose levels, dressings / bandages, sterile wound care, oxygen, and documentation.

The CAT's numerical coding system has two components. The first component is the *self-performance score*. These scores rate 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 assistance<sup>44</sup>); **3** (the person requires extensive assistance<sup>45</sup>); and **4** (the person is totally dependent<sup>46</sup>). There are also

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<sup>39</sup> 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.*

<sup>40</sup> 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

<sup>41</sup> *See* 7 AAC 125.010(a).

<sup>42</sup> Ex. E.

<sup>43</sup> *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 March 31, 2015); *see also* Exs. B34 - B36.

<sup>44</sup> 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).

<sup>45</sup> 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).

<sup>46</sup> 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).

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*. These scores rate the degree of assistance that a person requires for a particular ADL. The possible scores 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 that do not add to the service level: **5** (cueing required); and **8** (activity did not occur during the past week).

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*.<sup>47</sup> However, in January 2012 the PCA regulations were amended to implement a new system in which the self-performance score and support score for the specific activity *automatically dictate* the amount of PCA time awarded.<sup>48</sup>

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

Initially, it is important to remember that the PCA regulations underwent significant revisions between Ms. N's prior (2006) and current (2014) assessments, and these amendments are partly responsible for the decrease in her current level of PCA services. Under the *old* PCA regulations and the *old* PCA assessment tool that existed when Ms. N was previously assessed in 2006, the assessor was allowed to award as much time as the assessor thought the applicant/recipient reasonably needed to perform an ADL, up to certain specified limits, *regardless of the recipient's self-performance score*.<sup>49</sup> Now, however, the amount of PCA time awarded is set automatically based on the recipient's self-performance score.<sup>50</sup> For example, a CAT score of three as to non-mechanical transfers gives a recipient 3.75 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*.<sup>51</sup>

At hearing, Ms. N did not assert any particular errors made by the Division in calculating her PCA time. Rather, she simply asserted that she wanted and needed more PCA assistance.

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<sup>47</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

<sup>48</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

<sup>49</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755. The former "per unit" maximum time allowances for ADLs were as follows: body mobility - up to 5 minutes; transfers - up to 5 minutes; locomotion - up to 10 minutes; dressing and undressing - up to 15 minutes; bathing - 15 to 30 minutes; toilet use - 5 to 12 minutes per use; personal hygiene/grooming - up to 20 minutes per day.

<sup>50</sup> See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

<sup>51</sup> *Id.*

Independent review of the Division's assessment (Ex. E) and the digital recording of the hearing indicate that the Division made only one mistake, concerning PCA assistance with range of motion (ROM) exercises and walking for exercise, in calculating the amount of PCA time for which Ms. N is currently eligible.

1. Body Mobility

For the ADL of body mobility, PCA time is allowed when a person requires physical assistance to reposition himself in a bed or chair, or to perform range of motion and stretching exercises.<sup>52</sup> Notably, a recent regulation change (which became effective before Ms. N's 2014 assessment) allows PCA time to be awarded for repositioning in a bed or chair *only when the applicant/recipient is non-ambulatory*.<sup>53</sup> In this case it was never asserted that Ms. N is non-ambulatory. As a result of the regulation change, Ms. N no longer qualifies for PCA time for the ADL of body mobility because, even though Ms. N requires extensive assistance, she can still locomote using a walker, gait belt, or wheelchair. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Ms. N is eligible in the body mobility category is affirmed.

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.<sup>54</sup> The Division found that Ms. N requires extensive physical assistance with transfers (CAT score 3/2), which is the same score she received on her prior assessment. The current assessment also *increased* the Ms. N's transfer frequency from 21 per week to 28 per week. Ms. N did not present any evidence to show that she is fully dependent with transfers, or that she requires a greater frequency. Accordingly, the Division's scoring as to Ms. N's level of need for assistance with transfers is affirmed.

3. Locomotion / Walking

For the ADL of locomotion, PCA time is allowed when a person requires assistance with walking (whether with the support of a walker, cane, gait belt, braces, crutches, or manual wheelchair), either between different locations in the recipient's home, outside the home to attend a medical or dental appointment, and/or when walking and simple exercises have been prescribed by

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<sup>52</sup> 7 AAC 125.030(b)(1).

<sup>53</sup> 7 AAC 125.030(b)(1).

<sup>54</sup> 7 AAC 125.030(b)(2).



a physician.<sup>55</sup> The Division found that Ms. N requires extensive physical assistance as to locomotion (CAT score 3/2), which is the same score she received on her prior assessment. The current assessment also *increased* Ms. N's locomotion frequency from 14 per week to 28 per week. Ms. N presented no evidence of why she might be fully dependent as to locomotion, or of why she might need a greater frequency of assistance. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Ms. N is eligible for assistance with locomotion is affirmed.

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.<sup>56</sup> The Division found Ms. N to require limited assistance with dressing (CAT score 2/2). Ms. N presented no evidence of why she might require extensive assistance with dressing, or why she might require a greater frequency of assistance. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Ms. N is eligible for help with dressing and undressing 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.<sup>57</sup> The Division found Ms. N to be independent with eating, requiring only set-up help (CAT score 0/1). Ms. N presented no evidence of why she might require assistance with eating, or why she might require a greater frequency of assistance. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Ms. N is eligible for help with eating is affirmed.

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.<sup>58</sup> The CAT's definition of "toilet use" is somewhat broader,

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<sup>55</sup> 7 AAC 125.030(b)(3).

<sup>56</sup> 7 AAC 125.030(b)(4).

<sup>57</sup> 7 AAC 125.030(b)(5).

<sup>58</sup> 7 AAC 125.030(b)(6). For reasons that do not appear in the record, the regulation does not cover assisting the recipient with necessary personal hygiene after using the toilet. The PCA regulation for personal hygiene, 7 AAC 125.030(b)(7), likewise fails to cover these necessary activities.

encompassing post-toileting hygiene and clothing adjustments.<sup>59</sup> The Division found that Ms. N requires extensive physical assistance with toilet use (CAT score 3/2), which is the same score she received on her prior assessment. The current assessment also *increased* Ms. N's toileting frequency from 28 per week to 42 per week. Ms. N presented no evidence of that she is fully dependent with toilet use, or of why she might require a greater frequency of assistance. Accordingly, based on the evidence in the record, the Division's assessment of the amount of PCA time for which Ms. N is eligible for toilet use is affirmed.

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.<sup>60</sup> The Division found Ms. N to require limited assistance with personal hygiene (CAT score 2/2), which is the same score she received on her prior assessment. Ms. N presented no evidence of why she might require extensive assistance with personal hygiene, or why she might need a greater frequency of assistance. Accordingly, based on the evidence of record, the Division's assessment of the amount of PCA time for which Ms. N is eligible for personal hygiene is affirmed.

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."<sup>61</sup> The Division found that Ms. N requires extensive assistance from one person for bathing (CAT code 3/2), which is the same score she received on her prior assessment. Bathing frequency also remained the same as on Ms. N's prior assessment. Ms. N presented no evidence of why she might be fully dependent as to bathing, or of why she might require a greater frequency of assistance. Accordingly, based on the evidence of record, the Division's assessment of the PCA time for which Ms. N is eligible for bathing is affirmed.

9. Instrumental Activities of Daily Living (IADLs)

In the current assessment, the Division found that Ms. N is fully dependent as to all of her IADLs. Four of Ms. N's IADL scores increased since her last assessment. Ms. N is now receiving the highest level of assistance with her IADLs authorized by current regulations. Accordingly,

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<sup>59</sup> 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, emphasis added).

<sup>60</sup> 7 AAC 125.030(b)(7).

<sup>61</sup> 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical (*see* Ex. E11).

based on the evidence in the record, the Division's scoring of Ms. N's level of need for PCA assistance with her IADLs is affirmed.

*10. Assistance with Medication / Medication Management*

Pursuant to 7 AAC 125.030(d), PCA assistance is available for:

- (1) assisting the recipient to self-administer routine oral medication, eye drops, and skin ointments; that assistance may include reminding the recipient and placing a medication within the recipient's reach;
- (2) assisting the recipient with the administration of medication; the task may be performed only by a [PCA] working for a consumer-directed personal care agency;

PCA time is allowed for "medication assistance / administration" if the recipient receives a score of 1, 2, 4, 5, or 6 in Section G(1)(a) at page 20 of the CAT.<sup>62</sup> Here, Ms. N is eligible for PCA time for medication administration because she received a score of four as to this item.<sup>63</sup>

The *amount* of PCA time allowed for medication assistance is computed based on the recipient's personal hygiene score.<sup>64</sup> If the recipient's personal hygiene self-performance score is 0, 1, or 8, the recipient receives no time for medication assistance. If the recipient's personal hygiene self-performance score is 2 or 5, the recipient's personal hygiene time is multiplied by .5 to compute medication assistance time. If the recipient's personal hygiene self-performance score is 3, the recipient's personal hygiene time is multiplied by .75 to compute medication assistance time. Finally, if the recipient's personal hygiene self-performance score is 4, the recipient's personal hygiene time is multiplied by 1.0 to compute medication assistance time.

Based on the Division's personal hygiene score of 2/2, Ms. N would seemingly be entitled to PCA time for assistance with medications. However, the aspect of medication use with which Ms. N requires assistance is preparation or set-up; she does not require assistance with actually taking her medications.<sup>65</sup> The regulation governing PCA time for assistance with medications, 7 AAC 125.030(d), does not cover preparation of med-sets. Accordingly, on the facts of this particular case, Ms. N is not entitled to receive PCA time for assistance with medication.

*11. PCA Assistance with Non-Sterile Dressings / Bandages*

Pursuant to 7 AAC 125.030(d)(4), PCA time may be provided for assistance with non-sterile bandage or dressing changes. Ms. N did not dispute the Division's finding that she currently has no

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<sup>62</sup> Exs. B34, B35, E21.

<sup>63</sup> Ex. E20.

<sup>64</sup> All findings and conclusions in this paragraph are based on the Division's Personal Care Assistance Service Level Computation Chart at Exs. B34 - B35.

<sup>65</sup> Ex. E20.

need for PCA assistance with non-sterile bandage or dressing changes. Accordingly, based on the evidence in the record, the Division's finding that Ms. N does not currently require PCA assistance with non-sterile bandage or dressing changes is affirmed.

12. PCA Assistance with Monitoring and Recording Vital Signs

Between Ms. N's 2006 and 2014 assessments the PCA regulations governing PCA time for monitoring / recording vital signs and glucose levels were amended to require a current doctor's prescription in order to allow PCA time for these activities. Pursuant to 7 AAC 125.030(d)(3), PCA time can be allowed for "taking and documenting the recipient's temperature, pulse, blood pressure, and respiration," and for "setting up for diabetic testing and documentation," but only "if ordered by the recipient's physician, physician assistant, or advanced nurse practitioner." In this case, Ms. N presented no evidence of having a prescription for these services. Accordingly, based on the evidence in the record, the Division was correct not to award PCA time for these items.

13. 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." This is usually only provided when, due to cognitive or behavioral issues, the recipient is unable to communicate effectively with his or her doctor. In this case, however, Ms. N was found to have no cognitive or behavioral issues which would prevent her from communicating adequately with her health care providers.<sup>66</sup> Accordingly, based on the evidence in the record, the Division was correct not to award PCA time for this item.

14. PCA Assistance with Range of Motion Exercises

Pursuant to 7 AAC 125.030(e), the Division will pay for PCA assistance with range-of-motion (ROM) and stretching exercises only if those services (1) are provided by a personal care agency enrolled in the agency-based program; and (2) are prescribed by a physician, a physician assistant, or an advanced nurse practitioner.

In this case, it is not disputed that Ms. N receives her PCA services through an agency-based program. It is also not disputed that Ms. N had a valid prescription for ROM exercises at the time of her March 7, 2014 assessment and the July 31, 2014 determination letter.<sup>67</sup> In this case, the assessor's notes on the CAT concerning ROM exercises state "[n]o PCA time given for PTF<sup>68</sup> dated

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<sup>66</sup> Exs. E16, E17.

<sup>67</sup> Ex. 1.

<sup>68</sup> PTF is an abbreviation for the Division's prescribed task form, on which the recipient's health care provider writes the prescription for ROM exercises, walking for exercise, and/or foot care, as appropriate.

prior to recent back surgery; agency rep to contact MD related to re-write of PTF if provider considers it appropriate."<sup>69</sup> Based on this notation, the Division denied Ms. N PCA time for her range of motion (ROM) exercises.<sup>70</sup>

The assessor's notes indicate that he denied Ms. N PCA time for ROM exercises based on his assumption that Ms. N would not be able to perform the ROM exercises based on her recent back surgery. It may be true as a factual matter that Ms. N's back surgery prevented her from performing her ROM exercises for a period of time following her surgery. However, absent written confirmation from Ms. N's doctor, it was inappropriate for the assessor to over-rule the doctor's prescription on that basis. First, although the assessor's decision was no doubt made with good intentions, its effect was to add additional criteria to those stated in the regulation. Second, the prescription on the prescribed task form was good for a full year. Thus, the assessor's outright denial of PCA time for ROM exercises had the effect of taking away Ms. N's PCA time for this activity for a full year, when the actual period for Ms. N's recovery from her back surgery would have been much shorter. Finally, even if Ms. N subsequently filed an amendment request to get this PCA time back following her recovery from surgery, the burden of proof as to eligibility would shift from the Division to Ms. N, making this an unsatisfactory alternative.

In summary, Ms. N was eligible for PCA assistance with ROM exercises from the date of the current assessment through the date of the Division's determination notice. Accordingly, the Division erred in denying Ms. N PCA time for assistance with range of motion exercises.

15. PCA Assistance with Walking for Exercise

Pursuant to 7 AAC 125.030(b)(3)(B), the Division will pay for PCA assistance with walking for exercise only if the service is prescribed by a physician, a physician assistant, or an advanced nurse practitioner. In this case, it was not disputed that Ms. N receives her PCA services through an agency-based program. It is also not disputed that Ms. N had a valid prescription for walking for exercise at the time of her March 7, 2014 assessment and the July 31, 2014 determination letter. In this case, the assessor's notes on the CAT concerning ROM exercises state "[n]o PCA time given for PTF dated prior to recent back surgery; agency rep to contact MD related to re-write of PTF if provider considers it appropriate."<sup>71</sup> Based on this notation, the Division denied Ms. N PCA time for assistance with walking for exercise.

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<sup>69</sup> Ex. E4.

<sup>70</sup> Ex. D5.

<sup>71</sup> Ex. E4.

The Division's denial of PCA time for assistance with walking for exercise was incorrect for the same reasons as the Division's denial of PCA time for assistance with ROM exercises, discussed above. Accordingly, Ms. N is eligible to receive Medicaid payment for PCA-assisted walking.

***D. Has the Division Proven a Material Change in Ms. N'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.<sup>72</sup> When Ms. N's 2006 PCA assessment is compared with her current (2014) assessment, it is apparent that, in general, Ms. N's functional abilities have not improved over the last eight years.<sup>73</sup> Accordingly, in this case 7 AAC 125.026's "change in condition" requirement is satisfied only as to body mobility and dressing, the two areas as to which this decision has approved reductions.

**IV. Conclusion**

Based on the evidence in the record, the Division's determination concerning the PCA services for which Ms. N is currently eligible was substantially correct. The only error made by the Division in determining Ms. N's current level of PCA services was in denying PCA assistance with range of motion (ROM) exercises and walking for exercise. Accordingly, the Division's decision is reversed as to its denial of PCA assistance with ROM exercises and walking for exercise, but is affirmed in all other respects.

DATED this 1<sup>st</sup> day of April, 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 14<sup>th</sup> day of May, 2015.

By: *Signed* \_\_\_\_\_

Name: Jared C. Kosin, J.D., M.B.A.

Title: Executive Director

Agency: Office of Rate Review, DHSS

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

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<sup>72</sup> 7 AAC 125.026(a), (d).

<sup>73</sup> See Ex. D9.