

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

In the Matter of:)
)
 D V) OAH No. 14-1795-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 V is eligible. The Division decreased Ms. V's PCA services from 26 hours per week to 18.25 hours per week effective September 25, 2014.¹

This decision concludes, based on the evidence in the record, that the Division's determination of the PCA services for which Ms. V is currently eligible was substantially correct. The only errors made by the Division in determining Ms. V's current level of PCA services were as to the level of assistance and/or frequency of assistance that Ms. V requires with locomotion, dressing, eating, toileting, personal hygiene, shampooing, and bathing. Accordingly, the Division's decision is modified as to those activities, but is affirmed in all other respects.

II. Facts

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

Ms. V is 81 years old² and weighs about 250 pounds.³ She lives alone in a single level apartment within a senior housing development.⁴ Her primary diagnoses are anemia, atrial fibrillation, congestive heart failure, heart valve replacement, hypothyroidism, and osteoarthritis.⁵ Her secondary diagnoses are apnea, cardiac murmurs, chronic airway obstruction, chronic pain, cellulitis of a leg with abscess, constipation, depression, edema, fatigue and malaise, hypertension, morbid obesity, pressure ulcer of buttock, respiratory abnormalities, shoulder joint pain, urinary incontinence, varicose veins of the lower extremities, and wheelchair dependence.⁶

¹ Ex. D1.
² Ex. E1.
³ Ex. E9.
⁴ Ex. E1.
⁵ Ex. E3.
⁶ Ex. E3.

On October 2, 2014 physician's assistant (PAC) B G prepared a certificate of necessity stating that Ms. V requires a "lifeline" notification device in case of a medical emergency.⁷ Ms. G wrote that Ms. V lives alone, is at risk for falls, is unable to transfer from a bed to a chair, and would not be able to get up off the floor by herself if she fell.

Also on October 2, 2014 Ms. G prepared an opinion letter regarding Ms. V's condition. That letter states in relevant part as follows:⁸

I believe there may have been a mistake made in evaluating this patient for PCA services, and I would urge [the Division] to reconsider her circumstances . . . Ms. V is an 80 year old female with a history of chronic hip and shoulder pain secondary to osteoarthritis . . . [w]ith major arthritic and degenerative changes of her hips and shoulders recorded on x-ray. [She also] likely [has] a rotator cuff condition of her shoulder . . . She is unfortunately not a surgical candidate for joint replacement due to [congestive heart failure] and severe anemia.

[The patient's] areas of functional limitations are transfers, dressing, bathing, and toileting. [The patient] is wheelchair bound [and] does not ambulate. [She] requires assistance to transfer from [her] wheelchair to [the] toilet and back, or to her chair, due to instability of her hip joint. She is on chronic pain medication due to the severe deterioration of her joints. She is unable to fully clean herself due to limitations of shoulder movement and inability to reach her backside, legs, [and] feet . . . [and thus] requires assistance . . . to bathe [and for] dressing and basic foot hygiene / care. She is incontinent of urine, requiring more frequent bathing to prevent further skin breakdown. [She also requires] assistance with skin care for breakdown on her coccyx and legs. [She has a] coccyx area skin lesion associated with incontinence and pressure, [and] leg lesions and rash associated with chronic [lower extremity] edema and reduced venous blood return from her legs. She requires medicated cream to be applied to her legs twice daily whenever the rash flares, which has become more frequent over the past year. Edema also makes movement of her legs more difficult. Hand strength is decreased due to carpal tunnel syndrome bilaterally. Her anemia, [congestive heart failure], and [atrial fibrillation] cause her to have a decreased activity tolerance. She does not sleep in bed, [she] sits up in a recliner. [She] has . . . obstructive sleep apnea.

On November 17, 2014 Ms. V's PCA agency submitted a letter to the Division regarding her wheelchair use which states in relevant part as follows:⁹

The recipient stated that she has a scooter chair that she uses but [it] needs to be charged every day. While the scooter is getting charged the recipient uses the non-motor[ized] [wheel]chair. The non-motor[ized] [wheel]chair is used every day while the other chair is getting charged and when the PCA is working there with her. The PCA pushes her to the bathroom [for] toileting and shower[ing]. She needs

⁷ All factual findings in this paragraph are based on Exs. 4 and 5 unless otherwise stated.

⁸ All factual findings in this paragraph are based on Ex. 2 unless otherwise stated.

⁹ All factual findings in this paragraph are based on Ex. 3 unless otherwise stated.

assistance with the non-motor[ized] [wheel]chair [and] thinks she should have been scored for locomotion for that reason.

At hearing, Ms. V credibly testified that she uses her manual wheelchair while her power wheelchair is charging, but she can only use the manual wheelchair by pushing with her feet, and she can only do this a few feet at a time.

At hearing, C E credibly testified in relevant part as follows:

1. She is Ms. V's PCA. She comes to Ms. V's home twice a day.
2. She must assist Ms. V with body mobility four times per day.
3. She must assist Ms. V with transfers four times per day.
4. She must push Ms. V when she is using her manual wheelchair. She must do this about two times per day.
5. She must assist Ms. V with toileting nine times per day.
6. She must assist Ms. V with personal hygiene once per day except for oral hygiene, which she must assist with twice per day.
7. Ms. V has both urinary and bowel incontinence. She has accidents about twice per day. For this reason, she often must shower / bathe Ms. V about twice per day.

At hearing, F L credibly testified in relevant part as follows:

1. She is with Ms. V's PCA agency, and has worked with Ms. V for five to six years.
2. Ms. V's condition has not gotten better. Rather, it is deteriorating as Ms. V gets older. She is getting weaker and weaker.
3. She believes that Ms. V understated her care needs, at the time of the assessment, due to embarrassment.

At hearing, Angelika Fey-Merritt credibly testified in relevant part as follows:

1. Ms. V also receives services through the Medicaid Home and Community-Based Waiver Services Program.
2. At the time of her 2013 assessment, Ms. V received her chore-type services through assistance with her IADLs under the PCA program. However, by the time of the 2014 assessment, Ms. V had shifted her chore-type services from the PCA program to the waiver services program. Thus, while these hours and services were subtracted from her PCA services, they were added to her waiver services.

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

Ms. V was previously assessed as to her eligibility for PCA services on April 22, 2013 by Division nurse-assessor Sam Cornell, R.N.¹⁰ Based on the 2013 assessment, Mr. Cornell found that Ms. V required the following levels of assistance with her ADLs:¹¹ body mobility - was independent and required no set-up help; transfers - required limited one-person physical assistance 42 times per week; locomotion - required supervision and set-up help only; dressing - required limited one-person physical assistance 14 times per week; eating - was independent, requiring only set-up assistance; toilet use - required extensive one-person physical assistance 56 times per week; personal hygiene - required limited one-person physical assistance seven times per week; and bathing - required extensive one-person physical assistance four times per week.

At the same 2013 assessment, Mr. Cornell found that Ms. V required the following levels of assistance with her IADLs:¹² independent with telephone use; independent, requiring set-up assistance as to financial management; required physical assistance as to light meal preparation and grocery shopping; and was totally dependent on others as to main meal preparation, light housework, routine housework, and laundry.

Ms. V was most recently assessed for continuing PCA eligibility on May 16, 2014 by Scott Chow, R.N. of DSDS.¹³ Mr. Chow's assessment is recorded and scored on the Division's Consumer Assessment Tool or "CAT." Mr. Chow found that Ms. V has the following physical abilities and limitations:¹⁴

Functional assessment:¹⁵ Mr. Chow reported that Ms. V has *weak* grip strength in both hands, but also reported on the same page that she "displayed *strong* grips but poor fine motor skills" (emphasis added). Mr. Chow also reported that Ms. V cannot touch her hands together over her head or behind her back, cannot stand up with her hands crossed on her chest, and cannot touch her feet while in a sitting position, but is able to raise her left hand to head height and her right hand to chest height.

Body Mobility / Bed Mobility:¹⁶ Mr. Chow reported that Ms. V told him that she is unable to shift her weight, reposition herself, or sit up without help. Mr. Chow reported that he observed

¹⁰ Exs. F1 - F31.

¹¹ All factual findings in this paragraph are based on Exs. F6 - F12 unless otherwise stated.

¹² All factual findings in this paragraph are based on Ex. F26 unless otherwise stated.

¹³ Exs. E4 - E12.

¹⁴ Exs. E6 - E12.

¹⁵ All references in this paragraph are based on Ex. E4 unless otherwise stated.

¹⁶ All references in this paragraph are based on Ex. E6 unless otherwise stated.

that Ms. V is chair bound, and that she is able to make small adjustments to her limbs, but is not able to actually shift her weight (scored 3/2, frequency 4/7).¹⁷

Transfers:¹⁸ Mr. Chow reported that Ms. V told him that she stands up by having her PCA pull up on her while she leans on a table or walker. Mr. Chow reported that he observed Ms. V stand up, as described above, with assistance from her PCA (scored 3/2, frequency 4/7).

Locomotion (walking):¹⁹ Mr. Chow reported that Ms. V told him that she has an electric wheelchair which she can operate without assistance. Mr. Chow reported that he observed Ms. V propel her electric wheelchair without assistance (scored 0/0).

Dressing:²⁰ Mr. Chow reported that Ms. V told him that she requires assistance pulling shirts on over her head, putting on pants, and fastening buttons due to limited range of motion in her extremities. Mr. Chow again noted that Ms. V displayed strong grips, but poor fine motor skills, and has a limited range of motion (scored 2/2, frequency 2/7).

Eating:²¹ Mr. Chow reported that Ms. V told him that on her bad days, which occur about three days per week on average, she has difficulty raising her hands to her face, and needs her PCA to feed her. Mr. Chow again noted that he observed Ms. V to have strong grip strength, but poor fine motor skills and a limited range of motion, and concluded that Ms. V probably requires assistance with eating on her bad days (scored 2/2, frequency 3/4).

Toileting:²² Mr. Chow reported that Ms. V told him that she requires assistance with the transfers and hygiene tasks associated with toilet use. Mr. Chow reported that he observed that Ms. V required assistance transferring on and off the toilet, and concluded that she probably also needed assistance changing incontinence products (scored 3/2, frequency 4/7).

Personal Hygiene:²³ Mr. Chow reported that Ms. V told him that her PCA assists her with washing her face, combing her hair, and oral hygiene because she cannot bring her arms up high enough to perform these tasks. Mr. Chow again noted that he observed that Ms. V has a strong grip but poor fine motor skills and a limited range of motion, and concluded that she probably needs assistance to perform personal hygiene tasks (scored 2/2, frequency 1/7).

¹⁷ 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.

¹⁸ All references in this paragraph are based on Ex. E6 unless otherwise stated.

¹⁹ All references in this paragraph are based on Ex. E7 unless otherwise stated.

²⁰ All references in this paragraph are based on Ex. E8 unless otherwise stated.

²¹ All references in this paragraph are based on Ex. E9 unless otherwise stated.

²² All references in this paragraph are based on Ex. E9 unless otherwise stated.

²³ All references in this paragraph are based on Ex. E10 unless otherwise stated.

Bathing:²⁴ Mr. Chow reported that Ms. V told him that she requires physical assistance to transfer on and off her shower chair, and that she also needs assistance to wash herself because she cannot reach everywhere she needs to. Mr. Chow again noted that he observed that Ms. V has a strong grip but poor fine motor skills and a limited range of motion, and concluded that she requires assistance with transfers (scored 3/2, frequency 1/7).

The assessment also scored Ms. V's need for assistance with her medications.²⁵ Mr. Chow reported that Ms. V takes eight prescription medications and requires assistance with her medications three times per day, seven days per week.

Finally, the assessment scored Ms. V as follows with regard to her Instrumental Activities of Daily Living (IADLs):²⁶ independent as to financial management; independent with difficulty as to telephone use; independent with difficulty, requiring set-up assistance as to light meal preparation; independent with difficulty, requiring physical assistance as to shopping; requires physical assistance as to main meal preparation, light housework, and laundry; and totally dependent on others for routine housework.

C. Relevant Procedural History

The Division performed the assessment at issue on May 16, 2014.²⁷ On September 15, 2014 the Division notified Ms. V that her PCA service level was being reduced from 26 hours per week to 18.25 hours per week effective September 25, 2014.²⁸ Ms. V requested a hearing to contest the Division's reduction of her PCA services on September 18, 2014.²⁹

Ms. V's hearing was held on November 26, 2014. Ms. V participated in the hearing by phone, represented herself, and testified on her own behalf. Ms. V's PCA agency representative, F L, and Ms. V's PCA, C E, participated in the hearing by phone and testified on Ms. V's behalf. Terri Gagne participated in the hearing by phone and represented the Division. Scott Chow, R.N. and Angelika Fey-Merritt participated in the hearing by phone and testified for the Division. The record closed at the end of the hearing.

²⁴ All references in this paragraph are based on Ex. E11 unless otherwise stated.

²⁵ All references in this paragraph are based on Exs. E12 and E20 unless otherwise stated.

²⁶ All references in this paragraph are based on Ex. E26 unless otherwise stated.

²⁷ Ex. E.

²⁸ Ex. D1.

²⁹ Ex. C.

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" 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

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 April 21, 2015); *see also* Exs. B34 - B36; Ex. D9.

³⁶ *Id.*

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 assistance³⁷); **3** (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 are **0** (no setup or physical help required); **1** (only setup help required); **2** (physical assistance from one person required); or **3** (physical assistance from two or more persons required). Again, there are additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).

Under the PCA regulations in effect prior to January 26, 2012, the Division would provide a recipient with time for a particular ADL based on *the assessor's perception of how much time would reasonably be required* (up to a maximum level specified by regulation) *to perform the activity at issue*.⁴⁰ 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.⁴¹

C. How Much PCA Time is Ms. V 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.⁴² 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

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).

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

⁴¹ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

⁴² See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

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.*⁴³

Ms. V's PCA agency submitted a letter, dated November 13, 2014, outlining the particular activities that Ms. V asserts were improperly scored by the Division in calculating her PCA time.⁴⁴ These activities are body mobility, transfers, dressing, eating, toileting, personal hygiene, shampooing hair separate from bathing, bathing, light meal preparation, main meal preparation, shopping, and laundry. Each activity is discussed separately below.

1. Body Mobility

For the ADL of body mobility, PCA time is allowed when a person requires physical assistance to reposition himself / herself in a bed or chair, or to perform range of motion and stretching exercises.⁴⁵ Mr. Chow found that Ms. V requires extensive assistance with body mobility four times per day (28 times per week). Ms. V asserted prior to hearing that she was fully dependent with body mobility, and that she required her PCA to perform this function ten times per day (70 times per week). At hearing, however, Ms. E's description of the assistance she provides Ms. V with bed mobility was that of extensive assistance rather than full caregiver performance. Also, Ms. E testified that she assists Ms. V with body mobility four times per day (28 times per week). Thus, Ms. E testified that Ms. V requires the same level and frequency of assistance with body mobility as found by Mr. Chow. Accordingly, based on the evidence in the record, the Division's assessment as to Ms. V's level of need for PCA assistance with body mobility is affirmed (CAT score 3/2, frequency 4/7).

2. Transfers

For the ADL of transferring, PCA time is allowed when a person requires physical assistance to move between one surface and another (including to or from a bed, chair, or wheelchair), and/or when a person requires physical assistance to move from a lying or sitting position to a standing position.⁴⁶ Mr. Chow found that Ms. V requires extensive assistance with transfers four times per day (scored 3/2, frequency 4/7). Ms. V asserted prior to hearing that she was fully dependent with transfers, and that she required her PCA to perform this function ten times per day (70 times per week). At hearing, however, Ms. E's description of the assistance she provides Ms. V with transfers was that of extensive assistance rather than full caregiver

⁴³ *Id.*

⁴⁴ Ex. 1.

⁴⁵ 7 AAC 125.030(b)(1).

⁴⁶ 7 AAC 125.030(b)(2).

performance. Also, at hearing, Ms. E testified that she assists Ms. V with transfers four times per day (28 times per week). Thus, Ms. E testified that Ms. V requires the same level and frequency of assistance with transfers as found by Mr. Chow. Accordingly, based on the evidence in the record, the Division's assessment as to Ms. V's level of need for PCA assistance with transfers is affirmed (CAT score 3/2, frequency 4/7).

3. Locomotion / Walking⁴⁷

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.⁴⁸ Mr. Chow reported that Ms. V can operate her electric wheelchair without assistance (scored 0/0). At hearing, however, Ms. V credibly testified that she must use her manual wheelchair while her power wheelchair is charging, and she can only use the manual wheelchair by pushing with her feet. Ms. E credibly testified that she must push Ms. V in her manual wheelchair twice per day. Accordingly, it is apparent that Ms. V requires at least some assistance with locomotion. I find that the preponderance of the evidence indicates that Ms. V currently requires limited physical assistance from one person with locomotion twice per day (CAT score 2/2; frequency 2/7).

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.⁴⁹ The Division found that Ms. V currently requires limited physical assistance from one person for dressing (CAT score 2/2, frequency 2/7). Ms. V asserts that she is fully dependent with dressing (CAT score 4/2, frequency 2/7). Based on Ms. E's hearing testimony, I find that Ms. V requires extensive assistance with dressing twice daily, seven days per week (CAT score 3/2, frequency 2/7).

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

⁴⁷ Ms. V did not contest the Division's scoring as to locomotion in her written areas of disagreement, but she did contest it at hearing.

⁴⁸ 7 AAC 125.030(b)(3).

⁴⁹ 7 AAC 125.030(b)(4).

aspiration difficulties.⁵⁰ Mr. Chow found that Ms. V requires limited assistance with eating on her bad days (scored 2/2, frequency 3/4). However, the evidence in the assessment itself indicates that Ms. V is fully dependent as to eating on her three bad days per week. Accordingly, the preponderance of the evidence indicates that Ms. V is fully dependent on her caregiver for eating three times per day, three days per week (CAT score 4/2, frequency 3/3).

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.⁵¹ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁵²

The Division found that Ms. V currently requires extensive physical assistance with toilet use (scored 3/2, frequency 4/7). Ms. V asserted prior to hearing that she is fully dependent with toileting (CAT score 4/2, frequency 9/7). However, Ms. E's testimony at hearing, which I find credible, indicates that Ms. V requires extensive physical assistance with toileting (as found by the Division), but at a frequency of nine times per day. Accordingly, the preponderance of the evidence indicates that Ms. V requires extensive assistance with toilet use 63 times per week (CAT score 3/2, frequency 9/7).

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.⁵³

The Division found that Ms. V currently requires limited assistance with personal hygiene once per day (CAT score 2/2, frequency 1/7). Prior to hearing, Ms. V asserted that she is fully dependent on her PCA for personal hygiene. At hearing, however, Ms. E described providing what is best described as extensive assistance with personal hygiene. Her testimony was credible, and she is more familiar with Ms. V's needs than any of the other witnesses. Accordingly, the

⁵⁰ 7 AAC 125.030(b)(5).

⁵¹ 7 AAC 125.030(b)(6).

⁵² 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).

⁵³ 7 AAC 125.030(b)(7).

preponderance of the evidence indicates that Ms. V currently requires extensive physical assistance with personal hygiene (CAT score 3/2, frequency 1/7).

8. Shampooing Hair Separately From Bathing

PCA time is available when a recipient's hair is washed at times that are separate from, or in addition to, the recipient's showers or baths.⁵⁴ The Division did not award Ms. V any PCA time for shampooing her hair separately from bathing; it appears that the Division simply wasn't told this service was being performed.⁵⁵ Ms. V asserts that her PCA must shampoo her hair (separate from bathing) three times per week, and that she is fully dependent on her PCA for this activity. Neither party provided testimony at hearing addressing the specific level of assistance which Ms. V requires with shampooing. However, shampooing one's hair is an activity similar to other personal hygiene tasks in degree of difficulty, and I have found that Ms. V currently requires extensive physical assistance with personal hygiene (above). Accordingly, the preponderance of the evidence indicates that Ms. V requires extensive assistance with shampooing, three times per week.

9. 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."⁵⁶ The Division found that Ms. V currently requires extensive assistance from one person for bathing, once per day, seven days per week (CAT score 3/2, frequency 1/7). Prior to hearing, Ms. V asserted that she is fully dependent on her PCA for bathing. At hearing, however, Ms. E described providing what is best described as extensive assistance with bathing. This is consistent with Mr. Chow's 2014 assessment findings, with the prior (2013) assessment findings, and with Ms. V's scoring as to transfers, which is an ADL requiring movements similar to bathing. With regard to frequency, Ms. E credibly testified that, because Ms. V has both urinary and bowel incontinence, and has accidents about twice per day, she often must shower / bathe Ms. V about twice per day. This testimony is credible given Ms. V's medical diagnoses. Accordingly, the preponderance of the evidence indicates that Ms. V requires extensive assistance with bathing (as found by the Division), but at a frequency of 14 times per week (CAT score 3/2, frequency 2/7).

10. Instrumental Activities of Daily Living (IADLs)

Prior to hearing, Ms. V challenged the amount of PCA time which the Division is providing for assistance with her Instrumental Activities of Daily Living (IADLs). Specifically, Ms. V

⁵⁴ Ex. D9.

⁵⁵ Ex. D9.

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

challenges the amount of PCA time awarded for light meal preparation, main meal preparation, grocery shopping, and laundry. At hearing, however, Ms. Fey-Merritt testified that Ms. V is now receiving assistance with her IADLs through the waiver services program as "chore services." Ms. V did not contest this at hearing. Pursuant to 7 AAC 125.040(a)(11), a recipient may not receive personal care services which would duplicate the recipient's waiver services. Accordingly, the Division was correct to deny Ms. V PCA time for assistance with her IADLs because Ms. V is already receiving assistance with the same tasks, through the waiver services program, as "chore services."

IV. Conclusion

Based on the evidence in the record, the Division's determination of the PCA services for which Ms. V is currently eligible was substantially correct. As discussed above, the only errors made by the Division in determining Ms. V's current level of PCA services were as to the level of assistance and/or frequency of assistance that Ms. V requires with locomotion, dressing, eating, toileting, personal hygiene, shampooing, and bathing. Accordingly, the Division's decision is modified as to those activities, but is affirmed in all other respects.

DATED this 23rd 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 5th 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.]