

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

In the Matter of	)	
	)	
S B	)	OAH No. 14-1901-MDS
<hr style="width:45%; margin-left:0"/>	)	Agency No.

**DECISION**

**I. Introduction**

S B receives Personal Care Assistance (“PCA”) services that are paid for by Medicaid. The Division of Senior and Disabilities Services (“Division”) reassessed her condition in May 2014 and reduced her PCA services. Ms. B contested that decision and requested a hearing.

The hearing was held on January 23, 2015. Ms. B appeared in person, and she represented herself and testified on her own behalf. W C, a representative of Ms. B’s PCA agency, and M H, a PCA who works with Ms. B, both also appeared in person and testified on her behalf. The Division was represented at the hearing by fair hearing representative Terri Gagne. Health program manager Katie Heaslet testified for the Division.

This decision concludes that the Division did not meet its burden of proof as to some of its proposed reductions in Ms. B’s PCA service. Therefore, the Division’s determination regarding her PCA services is reversed in part and affirmed in part.

**II. Facts**

Ms. B is 89 years old and has been diagnosed as suffering from osteoarthritis, osteoporosis, urinary incontinence, hypertension, vertigo, atrial fibrillation, acute pyelonephritis, paroxysmal supraventricular tachycardia, cerebral artery occlusion with cerebral infarction, rectal prolapse and hyperlipidemia.<sup>1</sup> In addition to these diagnoses, Ms. B testified that recently she “was ill,” and consequently her ability to take care of herself and conduct activities of daily living had deteriorated. Ms. B, however, described this recent illness in only general terms, and she could not pinpoint an exact date for when the resultant deterioration began. At one point in her testimony she stated that it began in early October, 2014; later in the hearing, however, she revised her testimony and stated that the deterioration predated the May 2014 reassessment and had been ongoing for many months. Ms. H testified that Ms. B’s illness occurred in August, 2014 (after the May reassessment,

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<sup>1</sup> Exh. E3; Ms B’s medical documents (Ms. B submitted approximately 240 pages of medical records which were not paginated or marked with exhibit numbers – the Division did not object to admission of any of these records).

but before the date of the Division’s September 2014 notice of the proposed reduction in services).

Prior to her reassessment Ms. B received 33.25 hours of PCA services per week.<sup>2</sup> On May 15, 2014 registered nurse Sheila Griffin evaluated Ms. B using the Division’s Consumer Assessment Tool (CAT).<sup>3</sup> Ms. C was present with Ms. B for the reassessment.<sup>4</sup> After the reassessment the Division sent Ms. B a letter dated September 22, 2014, stating that her PCA services would be reduced to 5.5 hours per week.<sup>5</sup> It is this decision that is the subject of Ms. B’s request for a hearing.

### III. Discussion

#### A. *The PCA Program*

The purpose of the PCA program is:

to provide 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>6</sup>

The Division uses the CAT to help it assess the level of assistance needed.<sup>7</sup> The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.<sup>8</sup> The Service Level Computation chart shows the amount of time allotted for each ADL or IADL, depending on the level of assistance needed for each task.

The CAT numerical coding system has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular activity of daily living (ADL). The possible codes are: **0** (the person is independent<sup>9</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>10</sup>); **3** (the person requires extensive assistance<sup>11</sup>); **4** (the person is totally dependent<sup>12</sup>).

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<sup>2</sup> Exh. D1.

<sup>3</sup> Exh. E1.

<sup>4</sup> Exh. E2; testimony of Ms. C.

<sup>5</sup> Exh. D.

<sup>6</sup> 7 AAC 125.010(a).

<sup>7</sup> 7 AAC 125.020(b).

<sup>8</sup> 7 AAC 125.024(1).

<sup>9</sup> A self-performance code of 0 is classified as “[I]ndependent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days.” See Exh. E6.

<sup>10</sup> Under 7 AAC 125.020(a)(1), limited assistance with an ADL “means a recipient, who is highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed.”

<sup>11</sup> Under 7 AAC 125.020(a)(2), extensive assistance with an ADL “means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity.”

There are also codes which are not used in calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).<sup>13</sup> In addition, the self-performance codes for the ADL of bathing differ somewhat from the above definitions: a **2** denotes “physical help limited to transfer only,” and a **3** denotes “physical help in part of bathing activity.”<sup>14</sup>

The second component of the CAT scoring system is the *support code*. These codes rate the degree of assistance that a person requires for a particular ADL. The possible codes are: **0** (no setup or physical help required); **1** (only setup help required); **2** (one-person physical assist required); **3** (two or more person physical assist required). Again, there are additional codes which are not used to arrive at a service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).<sup>15</sup>

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, housework, grocery shopping, and laundry.<sup>16</sup> The CAT codes for IADLs differ slightly from those for ADLs. The *self-performance codes* for IADLs are: **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance/done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent/done by others - the person is not involved at all with the activity and the activity is fully performed by another person). There is also a code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>17</sup>

The *support codes* for IADLs are also slightly different than the support codes for ADLs. The support codes for IADLs are: **0** (no support provided); **1** (supervision/cueing provided); **2** (set-up help); **3** (physical assistance provided); and **4** (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>18</sup>

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<sup>12</sup> Under 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, “means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity.”

<sup>13</sup> Exh. E18.

<sup>14</sup> Exh. E11.

<sup>15</sup> *Id.*

<sup>16</sup> Exh. E26.

<sup>17</sup> Exh. E26.

<sup>18</sup> *Id.*

The codes assigned to a particular ADL or IADL are used to determine how much PCA service time a person receives for each occurrence of a particular activity, through a formula set out in Division regulations. For instance, if a person is coded as being completely dependent (code of 4) with bathing, and she informs the assessor that she bathes every day, she would receive 30 minutes of PCA service per day for that ADL.<sup>19</sup> Even if the Division agrees that the amount of time provided by the formula is insufficient for a PCA recipient's actual needs, the regulations do not provide the Division with the discretion to change the amounts specified by the formula.

When the Division wishes to reduce the amount of allotted time for PCA services, the Division has the burden of proving a change of condition justifying that reduction by a preponderance of the evidence, *i.e.*, more likely true than not true.<sup>20</sup> When the recipient is seeking additional time for specific services, the recipient has the burden of showing a change that would justify the need for the increase, also by a preponderance of the evidence.<sup>21</sup> All of the service categories at issue in this case involve reductions by the Division – thus the burden was on the Division to justify those changes.

As mentioned above, the Division conducted its reassessment of Ms. B on May 15, 2014. However, the Division did not notify Ms. B of its decision until September 22, 2014. Her condition on the latter date is used when determining the amount of services she is eligible to receive.<sup>22</sup>

Ms. B contested the service levels for certain ADLs: transfers, locomotion (multi-level), toileting, dressing, and bathing. She also contested certain IADLs: light meal preparation, main meal preparation, shopping, housework, laundry, and shopping. In addition, she disputed the denial of PCA time for the “other covered activities” of medication, medical escort and vital signs/glucose levels. The other ADLs and IADLs addressed in the reassessment were not contested and thus were not at issue in the hearing.

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<sup>19</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Exh. B34-36.

<sup>20</sup> 7 AAC 49.135.

<sup>21</sup> *Id.*

<sup>22</sup> See *In re T C*, OAH Case No. 13-0204-MDS (Commissioner of Health and Social Services 2013), page 7 (finding that the notice sent to recipient is the decision under review). OAH cases are available online at <http://aws.state.ak.us/officeofadminhearings/categoryList.aspx>.

**B. Eligibility – ADLs and IADLs**

The notes recorded by the assessor in the CAT are the only direct evidence presented by the Division regarding each of the ADLs and IADLs in dispute in this case. On the other side of the case, Ms. B presented direct evidence in the form of her own testimony and that of Ms. C and Ms. H. Because Ms. B was present for the hearing, the undersigned ALJ was able to make first hand observations which supported the credibility of her testimony. Each activity in question is discussed below.

As a general, preliminary matter, this decision finds by a preponderance of the evidence that Ms. B became ill during the period between the May 15, 2014 assessment and the September 22, 2014 adverse action letter, and that her physical abilities deteriorated as a result of that illness. To the extent that the nurse assessor’s written observations differ from the testimony of Ms. B and her witnesses, these differences are likely due to that deterioration of Ms. B’s abilities.

**1. Transfers**

Ms. B had received a score of 3/2 for transfers on her prior assessment, meaning that she required extensive assistance from one person to move between surfaces. On the recent assessment, the Division’s assessor gave Ms. B a score of 1/1 for transfers, i.e., finding that she required only supervision and setup help. On the CAT, the assessor recorded notes regarding transfers, stating that Ms. B “can get in and out of bed and up and down from chairs independently. [She] does not use any assistive devices when transferring from [one] surface/place to another. [She] says she did not bring her walker w/her when she moved to this apartment. No pain med[.]”<sup>23</sup> Under “assessor observation,” the notes indicate that “[she] was observed to stand up and down many times independently during the assessment[,] she even demonstrated getting in and out of bed. [Her] PCA was standing by but did not provide any weight bearing assistance.”<sup>24</sup> The nurse assessor who conducted the assessment, however, did not testify at the hearing.<sup>25</sup>

Ms. B, on the other hand, stated that she simply cannot accomplish transfers without physical assistance from another person.<sup>26</sup> Ms. C and Ms. H also testified that she requires a

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<sup>23</sup> Exh. E6.

<sup>24</sup> *Id.*

<sup>25</sup> Ms. Gagne stated at the hearing that the nurse assessor in question no longer works for the Division. In addition, a Division nurse who had reviewed Ms. B’s case was not available to testify at the hearing.

<sup>26</sup> B testimony.

hands-on, physical assist in getting up and moving between surfaces.<sup>27</sup> Ms. C, who was present for the assessment, also stated that she felt that the assessor distorted her findings in the CAT regarding transfers and other ADLs.<sup>28</sup> The Division's response to this testimony was to suggest that Ms. B's need for physical assistance has only arisen recently, after the September 22, 2014 adverse action letter. The Division, however, presented no evidence to support this assertion.

Ms. B testified credibly about her need for physical assistance, and her testimony regarding this ADL was corroborated by Ms. C's and Ms. H's testimony. The witnesses' direct testimony carries more weight than the assessor's notes, and in addition the witnesses described Ms. B's condition after the assessment, leading up to the September 2014 adverse action letter. Taking these factors into account, the Division did not meet its burden of proof to establish that it is more likely true than not true that Ms. B's condition improved to such an extent that she could be given a score of 1/1 for transfers. The evidence established that Ms. B should have been given a score of 3/2 for transfers, at the same frequency as that listed in the prior assessment (28 times per week).

## **2. Locomotion – multi-level**

Ms. B lives in a two-story apartment. She had received a score of 2/2 for “locomotion – multi-level” on her prior assessment, meaning that she required limited physical assistance from one person to go up or down stairs. On the recent assessment, the assessor gave her a score of 1/1, i.e., finding that she required only supervision and setup help for this ADL. Within the section of the CAT relating to the ADL of locomotion on a single floor, the assessor recorded the following notes that are pertinent to multi-level locomotion. Under “consumer report,” the notes state:

[Ms. B] walked independently w/o any assistive devices or weight bearing assistance inside home. [She] says she walks up and down 12 stairs to get to her bedroom and back down to the living room using the hand rail.<sup>29</sup>

Under “assessor observation,” the notes state: “[She] walked up 12 stairs to show me her bedroom, using hand rail; her PCA walked next to her.”<sup>30</sup>

Ms. B, on the other hand, testified credibly that she cannot safely walk up or down stairs without physical assistance. This was corroborated by the testimony of Ms. C and

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<sup>27</sup> C and H testimony.

<sup>28</sup> C testimony.

<sup>29</sup> Exh. E7.

<sup>30</sup> *Id.*

Ms. H, to the effect that a PCA needs to provide hands-on assistance for Ms. B to use the stairs in her home.<sup>31</sup> Weighing the testimony of these three witnesses against the only direct evidence offered by the Division, the assessor's written notes, this decision concludes that the Division did not meet its burden of proof to establish that it is more likely true than not true that Ms. B's condition improved to such an extent that she could appropriately be given a score of 1/1. The evidence established that Ms. B should have been given a score of 2/2 for locomotion multi-level, at the same frequency as that awarded in the prior assessment (14 times per week, or twice per day).

### **3. Dressing**

Ms. B had received a score of 2/2 for dressing on her prior assessment, finding that she required limited physical assistance from one person with putting on and taking off clothing. On the recent assessment, the Division's assessor gave Ms. B a score of 0/0, i.e., finding that she is independent with regard to this ADL. On the CAT, the assessor's notes state that Ms. B reported "I can dress myself without any help but sometimes I have to go slow because of my pain." The assessor noted Ms. B had good upper extremity range of motion, and that stated: "[She] demonstrated don/doffing her jacket zipping and unzipping. She also don/doff [*sic*] her sock and shoe to show how she could do this herself."<sup>32</sup>

Ms. B and her witnesses credibly testified, however, that she requires hands-on physical assistance with dressing. Ms. B pointedly stated that she cannot even put on her socks without assistance. Weighing the testimony of these witnesses against the assessor's written notes, the only direct evidence offered by the Division, this decision concludes that the Division did not meet its burden of proof to establish that it is more likely true than not true that Ms. B's condition improved to such an extent that she could appropriately be given a score of 0/0. The evidence established that Ms. B should have been given a score of 2/2 for dressing, at the same frequency as that awarded in the prior assessment (14 times per week, or twice per day).

### **4. Toileting**

Ms. B had received a score of 3/2 for toileting on her prior assessment, meaning that she required extensive physical assistance from one person. On the recent assessment, the

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<sup>31</sup> H and C testimony. Ms. C testified that the nurse assessor refused to allow the PCA to assist Ms. B up the stairs during the assessment, and that as a result it took Ms. B a very long time to tentatively make her way up the 12 stairs to the upper floor.

<sup>32</sup> Exh. E8.

Division's assessor gave Ms. B a score of 1/1, i.e., finding that she required only supervision and setup help. On the CAT, the assessor's notes state:

[Ms. B] said no one has to help her use bathroom, get there, transfer, clean herself & she uses a regular bathroom. She wears Depends which she changes herself. She said she gets up and goes to the bathroom completely by herself in the middle of the night.

The assessor also noted "[t]oileting not observed."<sup>33</sup>

Ms. B, Ms. H, and Ms. C all testified, however, that Ms. B needs physical assistance with toileting. Whether the nurse assessor misinterpreted Ms. B's comments during the assessment, or Ms. B exaggerated her abilities at that time, it is clear that her abilities deteriorated between the May assessment and the September notice. Weighing the testimony of the witnesses against the assessor's written notes, this decision concludes that the Division did not meet its burden of proof to establish that it is more likely true than not true that Ms. B's condition improved to such an extent that she could be given a score of 0/0. The evidence established that Ms. B should have been given a score of 3/2 for toileting, at the same frequency as that awarded in the prior assessment (28 times per week, or four times per day).

### **5. Bathing**

Ms. B had received a score of 3/2 for bathing on her prior assessment, meaning that she required "physical help in part of bathing activity" from one person.<sup>34</sup> On the recent assessment, the Division's assessor gave Ms. B a score of 2/2, i.e., finding that she required "physical help limited to transfer only" from one person.<sup>35</sup> On the CAT, the assessor's notes state: "PCA and [Ms. B] stated client places hand on wall and tub side to step over the side of tub and stands to wash herself. PCA says she stands by for assistance, [s]he showers just once or twice a week and she can wash herself when she showers."<sup>36</sup> The assessor noted that Ms. B was generally "very independent w/ADLs" and had good upper extremity range of motion, and further stated "no assistive devices noted at shower i.e. no grab bars, hand held shower, shower chair – so may need transfer assist."<sup>37</sup> The assessor,

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<sup>33</sup> Exh. E9.

<sup>34</sup> Exh. E11.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Exh. E11.



however, did not observe Ms. B bathing or ask her to demonstrate her abilities regarding this ADL.

Ms. B and Ms. C testified that Ms. B cannot bathe herself without hands-on, physical assistance with bathing itself, not just with the act of transferring into the shower. Weighing this testimony against the assessor's written notes, this decision concludes that the Division did not meet its burden of proof to establish that it is more likely true than not true that Ms. B's condition improved to such an extent that she could be given a score of 2/2 for this ADL. The evidence established that Ms. B should have been given a score of 3/2 for bathing. Ms. B and her witnesses, however, presented no evidence to counter the assessor's comment that she bathes only "once or twice per week," so services for this ADL should be authorized at the frequency set forth in the current assessment.<sup>38</sup>

## **6. Light Meal Preparation**

According to the Division's Service Level Authorization Chart, on her prior assessment Ms. B had received a score of 3/4 for light meal preparation,<sup>39</sup> meaning "full performance of the activity was done by others," and physical assistance was provided.<sup>40</sup> On the recent assessment, the Division's assessor gave Ms. B a score of 1/3, i.e., finding that she was "independent with difficulty" in performing this IADL, with physical assistance.<sup>41</sup> The CAT contains no notes or commentary from the assessor regarding the IADL of light meal preparation. Light meal preparation typically involves such activities as making a sandwich, serving a bowl of cereal or making toast.

Ms. B and Ms. H testified that Ms. B requires physical assistance with meal preparation in general, but they did not specify the level of assistance that she needs with light meal preparation or provide any evidence showing that it exceeds the level authorized in the current CAT. In the absence of any such evidence, the Division met its burden of proof to establish that it is more likely true than not true that Ms. B's condition improved to such an extent that she could be given a score of 1/3 for this IADL.

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<sup>38</sup> *Id.*

<sup>39</sup> Exh. D11.

<sup>40</sup> Exh. E26.

<sup>41</sup> *Id.*

## 7. Main Meal Preparation

According to the Division's Service Level Authorization Chart, on her prior assessment Ms. B was given a score of 3/4 for main meal preparation,<sup>42</sup> meaning that "full performance of the activity was done by others," with physical assistance provided.<sup>43</sup> On the recent assessment, the Division's assessor gave Ms. B a score of 1/3, i.e., finding that she was "independent with difficulty" in performing this IADL, with physical assistance.<sup>44</sup> The CAT contains no notes or commentary from the assessor regarding the IADL of main meal preparation, which involves actual cooking and preparation of the main meal of the day.

Ms. B and Ms. H testified that Ms. B cannot cook for herself and that her caregivers must perform this task for her on a daily basis. In the face of this testimony, the Division presented no evidence other than the assessor's scoring in the CAT. Weighing all of the evidence, the Division did not meet its burden of proof to establish that it is more likely true than not true that Ms. B's condition improved to such an extent that she could be given a score of 1/3 for main meal preparation. The evidence established that Ms. B should have been given a score of 3/4 for this IADL, at the frequency of seven times per week (the frequency authorized on both the previous and current CAT).

## 8. Grocery Shopping

According to the Division's Service Level Authorization Chart, on her prior assessment Ms. B was given a score of 3/4 for shopping,<sup>45</sup> meaning that "full performance of the activity was done by others," with physical assistance provided.<sup>46</sup> On the recent assessment, the Division's assessor gave Ms. B a score of 1/3, i.e., finding that she was "independent with difficulty" in performing this IADL, with physical assistance.<sup>47</sup> The CAT contains no notes or commentary from the assessor regarding the IADL of grocery shopping.

Ms. B and Ms. H testified that Ms. B needs extensive assistance with grocery shopping and that her caregivers must perform this task. In opposition to this testimony, the Division presented no evidence other than the assessor's scoring in the CAT. Weighing all

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<sup>42</sup> Exh. D11.

<sup>43</sup> Exh. E26.

<sup>44</sup> *Id.*

<sup>45</sup> Exh. D11.

<sup>46</sup> Exh. E26.

<sup>47</sup> *Id.*

of the evidence, the Division did not meet its burden of proof to establish that it is more likely true than not true that Ms. B's condition improved to such an extent that she could be given a score of 1/3 for grocery shopping. The evidence established that Ms. B should have been given a score of 3/4 for this IADL, at the frequency of once per week (the frequency authorized on both the previous and current CAT).

### **9. Housework**

Ms. B was given a score of 3/4 for housework on her prior assessment, meaning that "full performance of the activity was done by others," with physical assistance provided.<sup>48</sup> On the recent assessment, the Division's assessor gave Ms. B a score of 2/3, which is described in the CAT essentially as "assistance/done with help . . . person involved in activity but help . . . was provided" in the form of physical assistance.<sup>49</sup> The CAT contains no notes or commentary from the assessor regarding this IADL.

Ms. B and Ms. H testified generally that Ms. B needs assistance with housework, but they did not specify the level of her ability to participate in the activity or provide any evidence showing that the assistance that she needs exceeds the level authorized in the current CAT. In the absence of any such evidence, the Division met its burden of proof to establish that it is more likely true than not true that Ms. B's condition improved to such an extent that she could be given a score of 2/3 for this IADL.

### **10. Laundry**

Ms. B was given a score of 3/4 for laundry on her prior assessment, meaning that "full performance of the activity was done by others," with physical assistance provided.<sup>50</sup> On the recent assessment, the Division's assessor gave Ms. B a score of 1/3, i.e., finding that she was "independent with difficulty" in performing this IADL with physical assistance.<sup>51</sup> The CAT contains no notes or commentary from the assessor regarding the IADL of laundry, other than a notation that the laundry is done "in home."

However, Ms. B, Ms. H, and Ms. C did not provide any testimony or other evidence regarding Ms. B's need for assistance with laundry. In the absence of any such evidence, the Division met its burden of proof to establish that it is more likely true than not true that

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<sup>48</sup> Exh. E26.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

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

Ms. B's condition improved to such an extent that she could be given a score of 1/3 for this IADL.

### **11. Medical Escort**

Medical escort services are distinct from transportation to appointments; they include traveling with the recipient to and from routine medical or dental appointments and assisting the recipient in conferring and communicating with medical or dental providers during the appointments. On her previous assessment, Ms. B was assessed as needing medical escort services and was allotted 60 minutes per week. On the current CAT the assessor simply checked the box for "person needed transportation to medical, dental appointments . . . ." <sup>52</sup> The CAT provides no other information pertinent to this service. The Division's September 22, 2014 adverse action letter, however, states: "On this year's assessment . . . you indicated on page 26 that you needed transportation. Transportation is not covered as a service in the PCA program." <sup>53</sup> The letter does not explain, however, the basis for attributing this assertion to Ms. B herself, and it simply concludes that time for this service "has been removed." At the hearing, the Division did not provide any other rationale for concluding that Ms. B does not need escort assistance for her medical and dental appointments.

Ms. B and Ms. C, on the other hand, testified that Ms. B needs assistance with her medical appointments, apart from her transportation needs. Based on this evidence, and the absence of any contrary evidence or argument at the hearing or in the CAT, the Division cannot be said to have met its burden of establishing by a preponderance of the evidence that Ms. B's PCA services for medical escort should be removed. Therefore, her services for medical escort should be set at the level previously authorized.

### **12. Medication**

According to the Division's adverse action letter, on her previous CAT Ms. B had been allotted 77 minutes per week of PCA assistance with administering her medications. <sup>54</sup> The current assessment did not provide any PCA time for this service. It noted that a recipient's score for the ADL of personal hygiene is used to determine eligibility for assistance with medications; because Ms. B was given a 0/0 score for personal hygiene ("independent – no set up help") she was deemed not eligible for this service. <sup>55</sup>

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<sup>52</sup> Exh. E26.

<sup>53</sup> Exh. D5.

<sup>54</sup> Exh. D5.

<sup>55</sup> *Id.*

Ms. B and her witnesses did not provide any testimony or other evidence regarding Ms. B's need for assistance with personal hygiene. In the absence of any such evidence, the Division met its burden of proof to establish that it was appropriate to remove time for medications from Ms. B's PCA services.

### **13. Vital Signs**

According to the Division's adverse action letter, on her previous CAT Ms. B had been allotted 35 minutes per week of PCA assistance with "documentation."<sup>56</sup> The current assessment did not provide any PCA time for this service. It noted that the score for the ADL of personal hygiene is used to determine eligibility for assistance with recording vital signs, and in addition, a physician's prescription is required. Because Ms. B was given a 0/0 score for personal hygiene ("independent – no set up help"), and she did not have a current prescription on file, she was deemed not eligible for this service.<sup>57</sup>

Ms. B and her witnesses did not provide any testimony or other evidence regarding Ms. B's need for assistance with personal hygiene, nor did they dispute that she did not have a current prescription for recording of vital signs. In the absence of any such evidence, the Division met its burden of proof to establish that it was appropriate to remove time for this service from Ms. B's PCA authorization.

### **IV. Conclusion**

The Division's determination to reduce Ms. B's PCA services for transfers, locomotion (multi-level), dressing, toileting, bathing, main meal preparation, shopping, and medical escort is reversed. The Division's reassessment decision as to the other service areas covered in her CAT is affirmed.

Dated this 16th day of July, 2015.

*Signed* \_\_\_\_\_  
Andrew M. Lebo  
Administrative Law Judge

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<sup>56</sup> Exh. D5.

<sup>57</sup> *Id.*

## 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 31st day of July, 2015.

By: Signed \_\_\_\_\_  
Name: Christopher M. Kennedy  
Title: Administrative Law Judge

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