

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

In the Matter of:)
)
 M F) OAH No. 14-2178-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. M F is eligible. The Division conducted an assessment on September 5, 2014 and subsequently decreased Ms. F's PCA services from 40.25 hours per week to 29.25 hours per week effective November 2, 2014.¹

This decision concludes, based on the evidence in the record, that the Division's determination of the PCA services for which Ms. F is currently eligible was correct as to most self-performance scores, but incorrect as to two self-performance scores, and was correct as to some required frequencies of assistance, but incorrect as to other required frequencies of assistance. Accordingly, the Division's determination is affirmed in part and reversed in part.

II. Facts

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

Ms. F is 32 years old.² She lives in a single family residence with her husband and three children.³ Ms. F's medical diagnoses include infantile cerebral palsy, other encephalopathy, congenital quadriplegia, hardware removal (left hip), stiffness in the left and right hips, limited / impaired mobility, upper extremity weakness, muscle spasms, osteoarthritis, sciatica, mixed incontinence, asthma, allergic rhinitis, gastroesophageal reflux disease (GERD), history of peptic ulcers, migraine headaches with aura, and dysthymic disorder.⁴

Ms. F's paralysis affects all her limbs, except she has some limited use of her left hand.⁵ With her left hand she is able to eat, write, use her cell phone, and operate her powered wheelchair.

¹ Ex. D1.

² Ex. E1.

³ Ex. E1.

⁴ Ex. 1 pp. 1 - 2; Ex. E3.

⁵ All factual findings in this paragraph are based on Ex. E4 unless otherwise stated.

Ms. F had hip replacement surgery on one hip about 20 years ago.⁶ The hardware from that old surgery now requires revision.

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

1. In general, her medical condition has worsened, and her physical abilities have decreased rather than increased, since her 2010 assessment.
2. She needs additional instances of assistance with body mobility at night because she gets muscle cramps.
3. Because of her kidney and bladder problems, she sometimes needs to urinate every half hour. She needs additional dressing changes due to her episodes of incontinence.
4. Her PCA must redo the personal hygiene tasks that she tries to do. Thus, in reality, she is dependent as to personal hygiene tasks.
5. Although she tries, she is not really effective at washing herself when bathing. Thus, in reality, she is also dependent as to bathing.

At hearing, David Chadwick testified in relevant part as follows:

1. Nursing standards generally require that a bedbound person be moved at least once every two hours to prevent pressure sores.
2. A recent Superior Court decision upheld the Division's Personal Care Assistance Service Level Computation formula for body mobility, but held that there is an exception to the formula for nighttime transfers necessary to meet the nursing guideline requiring at least one change in position every four hours.
3. The need to change clothes due to incontinence is now covered under toileting.
4. Ms. F previously had PCA time for range of motion (ROM) exercises. This is because she previously had a prescription for ROM exercises. However, Ms. F did not have a current prescription for ROM exercises at the time of her 2014 assessment. Because the regulations require a current prescription, no PCA time for ROM exercises could be awarded. However, if Ms. F obtains a current prescription for ROM exercises, she may file a PCA service plan amendment request and potentially regain the PCA time she lost for this activity.

B. The Division's Findings from its 2010 and 2014 Assessments

Ms. F was previously assessed as to her eligibility for PCA services on November 18, 2010 by Division nurse-assessor X B, R.N.⁷ Based on the 2010 assessment, Mr. B found that Ms. F

⁶ All factual findings in this paragraph are based on Ex. E3 unless otherwise stated.

required the following levels of assistance with her ADLs:⁸ body mobility required extensive one-person assistance (CAT score 3/2, frequency 8/7); transfers - was totally dependent, and required one-person physical assistance (CAT score 4/2, frequency 12/7); locomotion - independent in motorized wheelchair (CAT score 0/0); dressing - required extensive one-person physical assistance (CAT score 3/2, frequency 2/7); eating - was independent, requiring only set-up assistance (CAT score 0/1); toilet use - was totally dependent, and required one-person physical assistance (CAT score 4/2, frequency 4/7); personal hygiene - required extensive one-person physical assistance (CAT score 3/2, frequency 2/7); and bathing - was totally dependent, and required one-person physical assistance (CAT score 4/2, frequency 1/7).

At the same 2010 assessment, Mr. B found that Ms. F required the following levels of assistance with her IADLs:⁹ required set-up help with telephone use (CAT score 2/2); totally dependent as to financial management, light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry (CAT score 3/4).

Ms. F was most recently assessed for continuing PCA eligibility on September 5, 2014 by S H, R.N. of DSDS.¹⁰ Mr. H's assessment is recorded and scored on the Division's Consumer Assessment Tool or "CAT." Mr. H found that Ms. F has the following physical abilities and limitations:¹¹

Functional assessment:¹² Mr. H reported that Ms. F has good grip strength in her left hand, but that she 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.

Body Mobility / Bed Mobility:¹³ Mr. H reported that Ms. F told him that she has to be placed into lying or sitting positions in her bed, and must be repositioned routinely in order to avoid pressure ulcers. Mr. H reported that he observed that Ms. F is wheelchair bound, did not reposition herself at any time during the two hour assessment, and has a standard bed and mattress (scored 4/2, frequency 6/7).¹⁴

⁷ Exs. F1 - F31.

⁸ All factual findings in this paragraph are based on Exs. F6 - F12 unless otherwise stated.

⁹ All factual findings in this paragraph are based on Ex. F26 unless otherwise stated.

¹⁰ Ex. E.

¹¹ Exs. E4 - E12.

¹² All references in this paragraph are based on Ex. E4 unless otherwise stated.

¹³ All references in this paragraph are based on Ex. E6 unless otherwise stated.

¹⁴ 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.

Transfers:¹⁵ Mr. H reported that Ms. F told him that she requires either mechanical or non-mechanical assistance / lifts with all transfers and from her bed and wheelchair. Mr. H reported that he observed that Ms. F has a track-mounted power lift over her bed, as well as a portable Hoyer lift, and that she did not transfer during the two hour assessment (scored 4/2, frequency 8/7).

Locomotion:¹⁶ Mr. H reported that Ms. F told him that she is independently mobile within her home once situated in her electric wheelchair, which she can operate without assistance. Mr. H reported that he observed Ms. F propel her electric wheelchair within her home without assistance during the assessment (scored 1/0).

Dressing:¹⁷ Mr. H reported that Ms. F told him that she can help with dressing as far as her left hand can reach, but that, otherwise, she is dependent on her caregivers for dressing. Mr. H noted that Ms. F has a diagnosis of quadriplegia and that she was dressed appropriately at the time of the assessment (scored 3/2, frequency 2/7).

Eating:¹⁸ Mr. H reported that Ms. F told him that she feeds herself using her left hand, and can take her medications herself with a glass of water or soda. Mr. H stated that he observed Ms. F drink soda from a cup with a lid, using a straw (scored 0/1).

Toileting:¹⁹ Mr. H reported that Ms. F told him that she needs to be transferred on and off the toilet using a lift; that she is incontinent of bladder and bowel; that she wears Depends at all times; and that when incontinent she must be cleaned and changed by her caregiver. Mr. H noted that Ms. F is quadriplegic (scored 4/2, frequency 5/7).

Personal Hygiene:²⁰ Mr. H reported that Ms. F told him that she can wash her face and hands and brush her teeth, but that her caregivers must comb her hair, trim her nails, and apply her various barrier creams, moisturizers, and medicated ointments. Mr. H stated that he observed that Ms. F was groomed appropriately at the time of the assessment, and is quadriplegic (scored 3/2, frequency 1/7).

Bathing:²¹ Mr. H reported that Ms. F told him that she is transferred in and out of the tub by a track lift which is suspended from the ceiling; that she washes the parts of her body that she can reach with her left hand; and that her caregiver must wash and dry the rest of her. Mr. H noted that

¹⁵ All references in this paragraph are based on Ex. E6 unless otherwise stated.

¹⁶ All references in this paragraph are based on Ex. E7 unless otherwise stated.

¹⁷ All references in this paragraph are based on Ex. E8 unless otherwise stated.

¹⁸ All references in this paragraph are based on Ex. E9 unless otherwise stated.

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

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

²¹ All references in this paragraph are based on Ex. E11 unless otherwise stated.

he observed that Ms. F was groomed appropriately at the time of the assessment, and that she is quadriplegic (scored 3/2, frequency 1/7).

Ms. F's 2014 ADL scores were the same as her 2010 ADL scores as to body mobility, transfers, locomotion, dressing, eating, and toilet use.²² Ms. F's self-performance score for personal hygiene increased from a two to a three. The only ADL self-performance score which decreased was as to bathing, which was scored a four in 2010 and was reduced to a three in 2014.

The assessment also scored Ms. F's need for assistance with her medications.²³ Mr. H reported that Ms. F takes four prescription medications; is able to prepare and self-administer these medications; and is always compliant in taking her medications.

Finally, the assessment scored Ms. F as follows with regard to her Instrumental Activities of Daily Living (IADLs):²⁴ independent as to telephone use and financial management; totally dependent on others as to light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry.

C. Relevant Procedural History

The Division performed the assessment at issue on September 5, 2014.²⁵ On October 23, 2014 the Division notified Ms. F that her PCA service level was being reduced from 40.25 hours per week to 29.25 hours per week effective November 2, 2014.²⁶ Ms. F requested a hearing to contest the Division's reduction of her PCA services on November 7, 2014.²⁷

Ms. F's hearing was held on February 19, 2015. Ms. F attended the hearing, represented herself, and testified on her own behalf. Ms. F's PCA agency representative, Q J, and Ms. F's waiver services care coordinator, L K, also attended the hearing and testified on Ms. F's behalf. Gena O'Neal attended the hearing and represented the Division. S H, R.N. and Health Program Manager David Chadwick attended the hearing and testified for the Division. The record closed at the end of the hearing.

III. Discussion

A. The PCA Program - Overview

The Medicaid program provides personal care assistant (PCA) services to eligible persons; "[t]he purpose of personal care services is to provide to a recipient *physical assistance* with

²² All references in this paragraph are based on Ex. E12 unless otherwise stated.

²³ All references in this paragraph are based on Ex E20 unless otherwise stated.

²⁴ All references in this paragraph are based on Ex. E26 unless otherwise stated.

²⁵ Ex. E.

²⁶ Ex. D1.

²⁷ Ex. C1.

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"28 [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."29

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."30 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).31 The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairments.32

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.33 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.34

The CAT's numerical scoring system has two components. The first component is the *self-performance score*. This score rates how capable a person is of performing a particular activity of daily living (ADL). The possible scores are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance35); **3** (the

²⁸ 7 AAC 125.010(a).

²⁹ 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.*

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

³¹ See 7 AAC 125.010(a).

³² Ex. E.

³³ 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 July 6, 2015); see also Exs. B34 - B36; Ex. D9.

³⁴ *Id.*

³⁵ 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).

person requires extensive assistance³⁶); or **4** (the person is totally dependent³⁷). 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*.³⁸ 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.³⁹

C. Applicable Burden of Proof

The Division is seeking to reduce Ms. F's existing PCA services (services which Ms. F has been receiving since 2010). Accordingly, the Division has the burden of proving, by a preponderance of the evidence, that Ms. F's need for PCA services has decreased since her last assessment.⁴⁰

D. How Much PCA Time is Ms. F 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.⁴¹ 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

³⁶ 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).

³⁷ 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).

³⁸ See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

³⁹ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* sheet.

⁴⁰ See 42 CFR 435.930, 2 AAC 64.290(e), 7 AAC 49.135, and *Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

⁴¹ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

time *regardless of the actual amount of time it takes to perform the transfer*; a CAT code of four as to non-mechanical transfers gives a recipient 5 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*.⁴²

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.⁴³ In 2010 Mr. B found that Ms. F required extensive one-person physical assistance with body mobility 56 times per week (CAT score 3/2, frequency 8/7). In 2014 Mr. H found that Ms. F is fully dependent with body mobility and needs help 42 times per week (CAT scored 4/2, frequency 6/7).

Ms. F did not challenge the Division's self performance or support scores for body mobility. Rather, she challenged the assessed frequency. As a result of the regulation changes which became effective in July 2012, an assessor's finding that an individual actually *needs* assistance with body mobility 42 times a week does not mean that the Division will actually *provide* that amount. This is due to the application of a formula contained in the Division's *Personal Care Assistance Service Level Computation* sheet (hereafter "computation sheet").⁴⁴ According to that formula, "[b]ody mobility is less than or equal to every two hours as a standard (12 x daily) reduced by any frequencies for other ADL tasks (transfers, toileting, bathing, locomotion, etc.) where body mobility is a functional part of the overall task."⁴⁵

The Division found the total weekly frequency of assistance, for all ADLs which necessarily include some amount of body mobility (*i.e.* transfers, locomotion, toileting, and bathing), to be 98. Pursuant to the computation sheet, the Division then subtracted the total weekly number of assists for transfers, locomotion, toileting, and bathing (98) from Ms. F's assessed weekly body mobility frequency (42) and arrived at a frequency of -56. The Division then rounded this negative number up to zero.

The Division's *calculations* were correct. However, the Division presented no evidence at hearing to show that Ms. F's required frequency of assistance with any of her ADLs has *decreased*

⁴² *Id.*

⁴³ 7 AAC 125.030(b)(1).

⁴⁴ The March 20, 2012 version of the Division's *Personal Care Assistance Service Level Computation* sheet is adopted into regulation by reference at 7 AAC 160.900(d)(29). A copy of the Divisions *Personal Care Assistance Service Level Computation* sheet can be found at Exs. B34 - B36.

⁴⁵ Ex. B34.

since her 2010 assessment. Rather, Ms. F credibly testified that her physical abilities have decreased, rather than increased, since her 2010 assessment.

Accordingly, in calculating Ms. F's body mobility frequency for 2014, the starting point must be Ms. F's 2010 body mobility frequency of 56. From that number is subtracted the total 2010 frequency of assistance for the ADLs of transfers, locomotion, toileting, and bathing (119). This again results in a negative number (-63). So, based solely on the computation sheet's formula, Ms. F's frequency of assistance with body mobility is again zero.

At hearing, however, Mr. Chadwick acknowledged that a recent Superior Court decision created an exception to the computation sheet's formula to allow for nighttime transfers necessary to meet the nursing guidelines which require at least on change in position every four hours. This exception should be applied here. Accordingly, Ms. F is entitled to four frequencies of body mobility per day for each eight hour period (CAT score 4/2, 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 In 2010 Mr. B found that Ms. F was fully dependent on others for transfers, and required one-person physical assistance with transfers a total of 84 times per week (CAT score 4/2, frequency 12/7).⁴⁷ In 2014 Mr. H found that Ms. F is fully dependent with transfers and needs help 56 times per week (CAT scored 4/2, frequency 8/7).

Ms. F did not challenge the Division's self-performance and support scores for transfers, and independent review of the record indicates that they are correct. However, the Division presented no evidence at hearing to show that Ms. F's required frequency of assistance with transfers has decreased since her 2010 assessment. Rather, Ms. F credibly testified that her physical abilities have decreased, rather than increased, since her 2010 assessment. Accordingly, frequency of assistance must remain at 2010 levels (CAT score 4/2, frequency 12/7).

3. Locomotion / Walking

For the ADL of locomotion, PCA time is allowed when a person requires assistance with walking (whether with the support of a walker, cane, gait belt, braces, crutches, or manual wheelchair), either between different locations in the recipient's home, outside the home to keep a

⁴⁶ 7 AAC 125.030(b)(2).

⁴⁷ This includes both mechanical and non-mechanical transfers.

medical or dental appointment, and/or when walking and simple exercises have been prescribed by a physician.⁴⁸ In 2010 Mr. B found that, once in her motorized wheelchair, Ms. F was independent with in-room locomotion (CAT score 0/0, frequency 0/0). In 2014 Mr. H found that Ms. F requires only supervision with locomotion (CAT score 1/0, frequency 0/0).⁴⁹

Ms. F did not challenge her CAT scores for locomotion at hearing. Further, the hearing testimony, and my observations at hearing, indicate that Ms. F can operate her electric wheelchair independently, with only supervision. Accordingly, the Division's self-performance and support scores for locomotion are affirmed (CAT score 1/0, frequency 0/0).

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.⁵⁰ In 2010 Mr. B found that Ms. F required extensive one-person physical assistance with dressing a total of 21 times per week (CAT score 3/2, frequency 3/7). In 2014 Mr. H likewise found that Ms. F requires extensive one-person physical assistance with dressing 14 times per week (CAT score 3/2, frequency 2/7).

At hearing, Ms. F did not assert that she is fully dependent on others for dressing. Rather, she asserts that she requires additional dressing changes due to incontinence. The Division asserts, however, that clothing changes incident to incontinence problems must be considered under the ADL of toileting rather than the ADL of dressing.

This issue was addressed by the Commissioner of Health and Social Services in a 2013 PCA decision.⁵¹ The decision states that "[t]he PCA regulations and the CAT should be construed such that a particular activity falls within only one ADL," and that, [w]hen activities that fall within the regulatory definition of 'dressing' are performed incident to toilet use, those activities are best assessed, under the CAT, within the ADL of toilet use." The Commissioner noted that "[t]his avoids the assessment of duplicate PCA time under separate ADLs for the . . . same activity."

Under the *V.W.* decision, Ms. F cannot be given additional dressing frequencies due to her incontinence problems. Accordingly, the Division's CAT scores and frequency assessment for dressing are correct (CAT score 3/2, frequency 2/7).

⁴⁸ 7 AAC 125.030(b)(3).

⁴⁹ Ms. F did not challenge her scores or assessed frequencies for multi-level locomotion, or for locomotion to access medical appointments.

⁵⁰ 7 AAC 125.030(b)(4).

⁵¹ See *In re V.W.* at pp. 2-3, OAH No. 12-0957-MDS (Commissioner of Health and Social Services 2013).

5. Eating

For the ADL of eating, PCA time is allowed for feeding through a feeding tube, enteral feeding, and supervising the eating and drinking of a recipient who has swallowing, chewing, or aspiration difficulties.⁵² In 2010 Mr. B found that Ms. F was independent with eating, requiring only set-up assistance (CAT score 0/1, frequency 0/0). In 2014 Mr. H likewise found that Ms. F requires only supervision with eating (CAT score 0/1, frequency 0/0).

Ms. F did not challenge her CAT scores for eating at hearing. Further, the hearing testimony indicates that Ms. F can eat and drink with only supervision. The Division's self-performance and support scores for eating are therefore affirmed (CAT score 1/0, frequency 0/0).

6. Toilet Use

For the ADL of toilet use, PCA time is limited by regulation to time spent moving to and from the toilet, transfers on and off the toilet, general hygiene care of a colostomy, ileostomy, or external catheter, and inserting and removal of a nonmedicated suppository, digital stimulation, or other routine incontinence care.⁵³ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁵⁴ In 2010 Mr. B found that Ms. F fully dependent with toileting, requiring assistance 28 times per week (CAT score 4/2, frequency 4/7). In 2014 Mr. H found that Ms. F is fully dependent with toileting, but found that she needs assistance with toileting 35 times per week (CAT score 4/2, frequency 5/7).

Ms. F did not challenge her self-performance or support scores for toileting at hearing. Rather, she asserts that she requires an increased frequency of assistance with toileting. She testified that, because of her kidney and bladder problems, she sometimes needs to urinate every half hour.

Based on the fact that Ms. F was able to make it through the hearing, as well as significant post-hearing discussions between the parties, without taking a bathroom break, the undersigned does not believe that Ms. F *typically* requires toileting assistance every half hour. In general, most adults urinate about once every two to four hours when awake, for a total of about six to eight times in a 24-hour period.⁵⁵ Given her health problems and medications, it is likely that Ms. F falls on the

⁵² 7 AAC 125.030(b)(5).

⁵³ 7 AAC 125.030(b)(6).

⁵⁴ The CAT form defines toilet use as "[h]ow person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, *cleanses* . . . manages ostomy or catheter, adjusts clothes" (Ex. E9).

⁵⁵ See article by Dr. Jennifer Shu at <http://www.cnn.com/2011/HEALTH/expert.q.a/11/20/male.urination.frequency.shu/> (accessed on July 6, 2015). My own observations are consistent with Dr. Shu's findings.

higher end of this average. Accordingly, the preponderance of the evidence indicates that Ms. F's CAT score for toileting should be 4/2, frequency 8/7.

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.⁵⁶ In 2010 Mr. B found that Ms. F required extensive one-person physical assistance with personal hygiene a total of 14 times per week (CAT score 3/2, frequency 2/7). In 2014 Mr. H found that Ms. F requires extensive one-person physical assistance with personal hygiene 7 times per week (CAT score 3/2, frequency 1/7).

At hearing, Ms. F did not deny telling Mr. H, during the assessment, that she could assist with some aspects of her personal hygiene. She testified, however, that her PCA must re-do the personal hygiene tasks that she has tried to do, because she is not able to do them well enough. Based on Ms. F's medical diagnoses and my observations at hearing, this testimony was credible. Accordingly, the preponderance of the evidence indicates that Ms. F is, for all practical purposes, dependent as to personal hygiene (CAT score 4/2).

With regard to frequency, the Division presented no evidence at hearing to show that Ms. F's required frequency of assistance with personal hygiene has decreased since her 2010 assessment. Rather, Ms. F credibly testified that her physical abilities have decreased, rather than increased, since her 2010 assessment. Accordingly, frequency of assistance must remain at 2010 levels (CAT score 4/2, frequency 2/7).

8. Bathing

For the ADL of bathing, PCA time is allowed for "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."⁵⁷ In 2010 Mr. B found that Ms. F was fully dependent on her caretakers for bathing (CAT score 4/2, frequency 1/7). In 2014 Mr. H found that Ms. F requires extensive one-person physical assistance with bathing 7 times per week (CAT score 3/2, frequency 1/7).

At hearing, Ms. F did not deny telling Mr. H, during the assessment, that she tried to wash some portions of her body herself during bathing. She testified, however, that although she tries, she is not really effective at washing herself when bathing, and that, in reality, she is actually

⁵⁶ 7 AAC 125.030(b)(7).

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

dependent as to bathing. Based on Ms. F's medical diagnoses and my observations at hearing, this testimony was credible. Accordingly, the preponderance of the evidence indicates that Ms. F is, for all practical purposes, dependent as to bathing (CAT score 4/2, frequency 1/7).⁵⁸

9. Instrumental Activities of Daily Living (IADLs)

The Division asserts that Ms. F is not eligible for PCA assistance with her IADLs, even though she demonstrates that she requires assistance with them, because she resides with her spouse, and there is no evidence that he is physically unable to assist her with performing her IADLs.⁵⁹ For this reason, the Division did not award PCA time for assistance with IADLs to Ms. F in 2010 or in 2014. In order to be eligible for PCA assistance with IADLs, Ms. F bears the burden of proving that her spouse is not reasonably able to assist her with IADLs. Ms. F did not contest the Division's determination on this issue at hearing. Accordingly, based on the record, Ms. F is not currently eligible to receive PCA assistance with IADLs.

10. PCA 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.⁶⁰ In 2010 Mr. B assigned Ms. F a CAT score of four for Section G(1)(a). In 2014 Mr. H assigned Ms. F a CAT score of zero for Section G(1)(a). However, the Division must have felt that Ms. F required some amount of assistance with her medications, because it provided her with 63 minutes per week in spite of her score.⁶¹ Accordingly, it is more probable than not that Ms. F should have received a score of at least one on this item in her current assessment. Accordingly, Ms. F is eligible for PCA time for medication administration.⁶²

⁵⁸ Ms. F did not contest the Division's assessed bathing frequency of once per day, seven days per week.

⁵⁹ See 7 AAC 125.040(a)(13).

⁶⁰ Exs. B34, B35, E20.

⁶¹ Ex. D10.

⁶² Exs. E20, F20.

The *amount* of PCA time allowed for medication assistance is computed based on the recipient's personal hygiene score.⁶³ 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 3/2, the Division provided Ms. F with 63 minutes of PCA assistance per week for this activity. This decision increases Ms. F's personal hygiene score to 4/2 (see above). Accordingly, the Division will need to re-compute Ms. F's PCA time based on this decision; this will result in a slight increase in Ms. F's PCA time for assistance with medications.

11. PCA Assistance with Medical Documentation

Pursuant to 7 AAC 125.030 (d)(3), PCA time is available for "taking and documenting the recipient's temperature, pulse, blood pressure, and respiration *if ordered by the recipient's physician, physician assistant, or advanced nurse practitioner*, and setting up for diabetic testing and documentation" (emphasis added). In this case, Ms. F presented no evidence that she has a current prescription for PCA assistance with medical documentation. Accordingly, Ms. F is not currently entitled to receive PCA time for assistance with medical documentation.

12. 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 her doctor.

In 2010, the Division provided Ms. F with 28 minutes of PCA escort time per week.⁶⁴ In 2014, the Division found that Ms. F went to 11 doctor appointments per year, and that she needs 60 minutes of PCA escort time per appointment. Accordingly, the Division found that Ms. F is entitled to 660 minutes per year, or 12.69 minutes per week, of PCA escort time.

⁶³ All findings and conclusions in this paragraph are based on the Division's *Personal Care Assistance Service Level Computation* sheet at Exs. B34 - B35.

⁶⁴ All factual findings in this paragraph are based on Exs. D5 and D10 unless otherwise stated.

At hearing, Ms. F did not dispute the number of appointments per year, or the time per appointment, used by the Division in its calculation of her PCA time for escort services. Accordingly, the Division's assessment of Ms. F's PCA time for escort to medical appointments is affirmed.

13. 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 and stretching exercises 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 was not disputed that Ms. F receives her PCA services through an agency-based program; the issue is whether she has a valid prescription.

The Division found that Ms. F currently has no prescription for range of motion (ROM) exercises. Ms. F presented no evidence at hearing that she has a current / valid prescription for ROM exercises. Accordingly, the Division correctly determined that, based on its regulations, Ms. F is not currently eligible to receive Medicaid payment for PCA assistance with range of motion exercises.

IV. Conclusion

Based on the evidence in the record, the Division's determination of the PCA services for which Ms. F is currently eligible was correct as to most self-performance scores, but incorrect as to two self-performance scores, and was correct as to the required frequencies of assistance for some ADLs, but was incorrect as to the required frequencies of assistance for other ADLs. Accordingly, the Division's determination is affirmed in part and reversed in part.

DATED this 9th day of July, 2015.

Signed
Jay 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 20th day of July, 2015. By:

Signed
Signature
Jay Durych
Name
Administrative Law Judge
Title

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