

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

In the Matter of:)
)
 V T) OAH No. 14-2185-MDS
) Agency Case No.

DECISION

I. Introduction

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (DSDS or Division) correctly assessed the amount of Medicaid Personal Care Assistant (PCA) services for which V T is currently eligible. The Division conducted a functional assessment, using its Consumer Assessment Tool (CAT), and concluded that Ms. T is eligible to receive 3.5 hours per week of PCA services.¹ Ms. T asserts that she qualifies for additional PCA services.²

This decision concludes that Ms. T qualifies for additional PCA time and assistance in eight of the contested areas, but that the Division's determination was correct with regard to four of the disputed areas. Accordingly, the Division's October 28, 2014 determination as to Ms. T's PCA service level is affirmed in part and reversed in part.

II. Facts

A. Ms. T's Diagnoses and Medical Problems

Ms. T is 62 years old.³ She lives in an apartment with five adult children.⁴ Ms. T's primary language is Samoan.⁵ She has diagnoses of asthma, diabetes mellitus type 2 with dialysis, end-stage renal disease, essential hypertension, osteoarthritis, vertigo / loss of balance, and vision problems.⁶

Ms. T goes to dialysis three days per week; the CAT indicates that Ms. T goes to dialysis on Mondays, Wednesdays, and Fridays, but her daughter testified that she goes to dialysis on Tuesdays, Thursdays, and Saturdays.⁷ On her dialysis days she gets up at about 5:30 a.m., takes a shower, and takes No Name Transportation to the dialysis facility. After dialysis, she returns home

¹ Exs. D, E.

² Ex. C.

³ Ex. E1.

⁴ Ex. E1.

⁵ Ex. E1.

⁶ Ex. 1; Ex. 3 p. 16; Ex. E3.

⁷ All factual findings in this paragraph are based on Ex. E4 unless otherwise stated.

via No Name Transportation, arriving back home at about 11:30 a.m. She is usually tired after dialysis and sleeps for the rest of the day.

Dr. N, M.D. is Ms. T's physician for dialysis and diabetes-related issues.⁸ On January 21, 2015 Dr. N stated in a letter dated January 21, 2015 that Ms. T has told him that, since undergoing dialysis, she feels weak.

Ms. T has also been seen by an ophthalmologist for diabetes-related vision problems.⁹ The ophthalmologist's exam notes state that Ms. T's vision is bad enough that she can only recognize people when they are very close to her.¹⁰

Dr. H, M.D. is one of Ms. T's treating physicians.¹¹ In a fax dated January 26, 2015, she stated that Ms. T is unable to go up a flight of stairs by herself,¹² and that she has a loss of balance following her dialysis sessions.¹³

At hearing, G T testified in relevant part as follows:

1. She is the daughter of V T. She lives with her mother, her older sister, and her niece. She works at No Name from noon to 5:30 p.m.
2. Her mother slept on a mattress on the floor at the time of the assessment, but now sleeps on a bed. Her mother spends most of her time in bed. She must assist her mother to move around on her bed. She moves her mother by either pushing against her, or by pulling on the sheet beneath her. However, when her mother is sitting on the couch, she can reposition herself.
3. Her mother gets up at about 4:30 a.m. on her dialysis days, which are Tuesdays, Thursdays, and Saturdays. Her mother is dizzy when she gets up.
4. No Name Transportation provides a van that takes Ms. T to her dialysis sessions. She must help her mother in and out of the van and fasten and unfasten her seatbelt.
5. She must help her mother transfer off her bed or chair. She puts her arms under her mother's arms, and pulls up; this is weight-bearing assistance. She must do this about twice a day on dialysis days, and about four times a day on non-dialysis days.
6. Her mother must lean on her when walking around the house; this is mostly because her mother cannot see. She must also help her mother up the stairs to get to her apartment.

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

⁹ Ex. 3 pp. 4 - 15.

¹⁰ Ex. 3 p. 14.

¹¹ Ex. 3.

¹² Ex. 3 p. 1.

¹³ Ex. 3 p. 2.

7. She must help her mother get dressed. Her mother sits at the end of the bed. She must put her mother's arms into her shirt sleeves, put her legs into her pant legs, and put on her socks and shoes.
8. Her mother can drink through a straw. However, on dialysis days, she must help her mother eat by lifting the spoon or fork to her mouth.
9. She must help her mother to the bathroom about three times per day, mostly for bowel movements. She must help adjust her mother's clothes, help lower her down onto the toilet, perform post-toileting hygiene, and then pull her up off of the toilet.
10. Her mother can brush her teeth and wash her face and hands, but she requires assistance to brush her hair and to apply skin cream.
11. Her mother takes one or more showers every day. She can step over the side of the tub herself as long as her daughter guides her. She must wash her mother's body. After the shower, she must help guide her mother out of the tub and lay out her towel and clothes.
12. Her mother cannot pour cereal, make a sandwich, cook a meal, wash dishes, dust, make her bed, vacuum, mop the floor, or take out the trash.
13. Sometimes her mother goes shopping with her, sometimes she does not. Her mother cannot get most things off the store shelves by herself.
14. Her apartment building has a laundry room for its tenants. The laundry room is down a flight of stairs from her mother's apartment. Her mother cannot do her laundry by herself; she must do it for her.
15. Her mother is "out of it" when she comes home after dialysis. After dialysis her mother basically just lies down and goes to bed.
16. Her mother feels a little better on the days that she does not undergo dialysis, than she does on the days that she undergoes dialysis.
17. Her mother's vision is variable; sometimes it is better, but sometimes it is worse.
18. Although her mother requires assistance with her activities as described above, she sometimes performs the activity at issue for her mother because it is quicker that way.

B. Ms. T's Functional Abilities as Determined by the Division

On October 20, 2014 Ms. T was assessed for PCA eligibility by Denise Kichura, R.N. of DSDS.¹⁴ Ms. Kichura's assessment is recorded and scored on the Division's Consumer Assessment

¹⁴ Ex. E.

Tool or "CAT."¹⁵ Ms. Kichura found that Ms. T has the following abilities and limitations with regard to her activities of daily living (ADLs):¹⁶

Functional Assessment:¹⁷ Ms. Kichura reported that Ms. T has a strong grip in both hands, is able to touch her hands together over her head and behind her back, and can touch her hands to her feet while sitting, but cannot stand up with her arms crossed on her chest. Ms. Kichura also reported that Ms. T is able to sit cross-legged on a mattress on the floor, and can reposition by pushing with her hands.

Body Mobility:¹⁸ Ms. Kichura reported that Ms. T told her during the assessment that (1) she had just returned from dialysis and was tired; (2) she sleeps on a mattress on the floor; (3) she can move from side to side, and sit up, while in bed; and (4) she does not need anyone to move her or adjust her pillows. Ms. Kichura reported that she observed Ms. T sit up from a supine position in bed, cross her legs, and then lie back down, all without assistance (scored 0/0).

Transfers:¹⁹ Ms. Kichura reported that Ms. T told her that on her dialysis days she needs someone to help keep her balanced while she gets up from her mattress on the floor, but that on non-dialysis days she can stand up without assistance. Ms. Kichura reported that she observed Ms. T reposition herself on her mattress, independently, without assistive devices (scored 2/2, frequency 2/3).

Locomotion (walking):²⁰ Ms. Kichura reported that Ms. T told her that, on dialysis days, she needs standby assistance, but that otherwise she can walk independently. Ms. Kichura reported that Ms. T declined to demonstrate walking during the assessment, and wrote that Ms. T has "no diagnosis to support [that] she cannot walk" (scored 1/1 as to single-level locomotion, zero as to multi-level locomotion, and 2, frequency 2/3 as to locomotion to access medical appointments).

Dressing:²¹ Ms. Kichura reported that Ms. T told her that she can dress herself, and that on dialysis days she gets dressed prior to undergoing dialysis. Ms. Kichura reported that she observed that Ms. T has a strong grip in both hands and a good range of motion, and should therefore be able to dress herself (scored 0/0).

¹⁵ The CAT's scoring methodology is explained in Section III, below.

¹⁶ Exs. E4 - E12.

¹⁷ All factual findings in this paragraph are based on Ex. E4 unless otherwise stated.

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

¹⁹ All factual findings in this paragraph are based on Ex. E6 unless otherwise stated.

²⁰ All factual findings in this paragraph are based on Ex. E7 unless otherwise stated.

²¹ All factual findings in this paragraph are based on Ex. E8 unless otherwise stated.

Eating:²² Ms. Kichura reported that Ms. T told her that she can eat and drink independently, and can swallow her medications with water. Ms. Kichura reported that she observed Ms. T drink from a regular cup during the assessment (scored 0/0).

Toileting:²³ Ms. Kichura reported that Ms. T told her that (1) she does not produce much urine because she is on dialysis; (2) she uses her right hand for post-toileting hygiene because she has a fistula in her left arm; and (3) that she can transfer onto the toilet easily. Ms. Kichura reported that she did not observe Ms. T use the toilet, but concluded that Ms. T (1) can walk to the bathroom on her non-dialysis days; (2) rarely goes to the bathroom on her dialysis days due to dehydration-related constipation; and (3) has a range of motion sufficient to complete toileting independently (scored 1/1).

Personal Hygiene:²⁴ Ms. Kichura reported that Ms. T told her that she can wash her face, brush her teeth, and perform all other morning personal hygiene tasks independently. Ms. Kichura reported that she observed that Ms. T has good grip strength, good fine motor skills, and range of motion sufficient to perform her personal hygiene tasks independently (scored 0/0).

Bathing:²⁵ Ms. Kichura reported that Ms. T told her that (1) she showers before going to dialysis on the three days that she has dialysis sessions; (2) she can stand up while showering and does not need a bath bench; and (3) her daughter provides stand-by assistance. Ms. Kichura reported that she observed that Ms. T has grip strength and range of motion sufficient to bathe independently (scored 1/1).

The assessment of October 20, 2014 also scored Ms. T as follows concerning her ability to perform her instrumental activities of daily living (IADLs):²⁶ (1) Ms. T is independent as to telephone use and light meal preparation (scored 0/0); (2) Ms. T is independent with difficulty, and requires set-up help, as to laundry (scored 1/2); and (3) Ms. T requires assistance with main meal preparation, light housework, financial management, routine housework, and grocery shopping (all scored 2/3).

C. Relevant Procedural History

Ms. T applied for PCA services and was assessed on October 20, 2014.²⁷ On October 28, 2014 the Division notified Ms. T that she had been approved for 3.5 hours per week of PCA

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

²³ All factual findings in this paragraph are based on Ex. E9 unless otherwise stated.

²⁴ All factual findings in this paragraph are based on Ex. E10 unless otherwise stated.

²⁵ All factual findings in this paragraph are based on Ex. E11 unless otherwise stated.

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

²⁷ Ex. D1, Ex. E. The exact date that Ms. T's application was submitted to DSDS is not in the record.

services.²⁸ Ms. T requested a hearing on November 12, 2014 to contest the Division's determination.²⁹ Ms. T's hearing was held on February 18, 2015. Ms. T participated in the hearing by phone; she authorized her daughter, G T, to represent her and testify on her behalf. Ms. T's PCA agency representative also participated by phone and testified for Ms. T.

Angela Ybarra participated in the hearing by phone and represented the Division. Denise Kichura, R.N. and Laura Baldwin also participated by phone and testified on behalf of 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 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 of Health and Social Services (DHSS) 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 standardizing the evaluation of the 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 apartment

²⁸ Ex. D.

²⁹ Ex. C.

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.

or living quarters), 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 medications, vital signs/glucose levels, dressings/bandages/oxygen, sterile wound care, and documentation.

The CAT numerical scoring system for ADLs has two components. The first component is the *self-performance score*. These scores rate how capable a person is of performing a particular activity of daily living (ADL). The relevant scores are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance³⁶); **3** (the person requires extensive assistance³⁷); and **4** (the person is totally dependent³⁸).

The second component of the CAT scoring system for ADLs is the *support score*. These scores rate the degree of assistance that a person requires for a particular activity of daily living (ADL). The relevant scores are **0** (no setup or physical help required); **1** (only setup help required); **2** (one person physical assist required); and **3** (two or more person physical assist required).

The CAT also scores certain activities known as "instrumental activities of daily living" (IADLs).³⁹ These are light meal preparation, main meal preparation, light housekeeping, routine housekeeping, laundry, and grocery shopping. Finally, the CAT scores one other IADL-like activity which is not technically an IADL (oxygen maintenance).

The CAT scores IADLs slightly differently than ADLs.⁴⁰ The *self-performance scores for IADLs* are **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person). The *support scores* for IADLs are also slightly different than

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 22, 2015); see also Exs. E6 - E11.

³⁶ Pursuant to 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."

³⁷ Pursuant to 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."

³⁸ Pursuant to 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."

³⁹ Ex. E26.

⁴⁰ *Id.*

the support scores for ADLs.⁴¹ The relevant support scores for IADLs are **0** (no support provided); **1** (supervision / cueing provided); **2** (set-up help); **3** (physical assistance provided); and **4** (total dependence - the person was not involved at all when the activity was performed).

C. What Level and Frequency of Assistance Does Ms. T Require With her Activities of Daily Living and Instrumental Activities of Daily Living?

Ms. T disagrees with the Division's assessment findings as to her need for assistance with body mobility, transfers, locomotion to access medical appointments, dressing, toileting, personal hygiene, and bathing (all ADLs), as well as with light and main meal preparation and laundry (all IADLs), and with taking medications and performing range of motion exercises.⁴² Each of these areas of disagreement is discussed below in the order stated.

1. Body Mobility

For the ADL of body mobility, PCA time is allowed when a person requires physical assistance to reposition in a bed or chair, or to perform range of motion and stretching exercises.⁴³ Ms. Kichura reported that Ms. T told her during the assessment that she can move from side to side, and sit up, while in bed, and that she does not need anyone to move her or adjust her pillows. Ms. Kichura reported that she observed Ms. T sit up from a supine position in bed, cross her legs, and then lie back down, all without assistance (scored 0/0). On the other hand, G T testified at hearing that she must assist her mother to move around on her bed, and that she does so by either pushing against her, or by pulling on the sheet beneath her.

Initially, it is important to determine whether Ms. T's assessment occurred on a dialysis day or a non-dialysis day. This is because, according to G T, her mother is more capable on non-dialysis days than she is on dialysis days.⁴⁴ The day the assessment was performed (October 20, 2014) was a Monday. The CAT indicates that Ms. T goes to dialysis on Mondays, Wednesdays, and Fridays. However, G T testified that her mother goes to dialysis on Tuesdays, Thursdays, and Saturdays. G T is likely to know her mother's dialysis schedule intimately because she is with her mother every day. Accordingly, I find that Ms. T's dialysis days ("bad days") are Tuesdays,

⁴¹ *Id.*

⁴² Ex. C1

⁴³ 7 AAC 125.030(b)(1).

⁴⁴ The concept that a person undergoing dialysis is less capable immediately after dialysis, and more capable after having time to recuperate from dialysis, appears to be so well-accepted in the medical community that it cannot reasonably be contested. *See* the Mayo Clinic's website at <http://www.mayoclinic.org/tests-procedures/hemodialysis/basics/risks/prc-20015015> (date accessed April 29, 2015). The effects of dialysis often include shortness of breath, nausea, abdominal cramps, muscle cramps, anemia (which causes fatigue), sleep problems, and depression. *Id.*

Thursdays, and Saturdays, and that her non-dialysis days ("good days") are Mondays, Wednesdays, Fridays, and Sundays.

The Division asserted at hearing that Ms. T has no diagnoses which could support a need for assistance with body mobility. However, I find that Ms. T's diagnoses of diabetes mellitus type 2 with dialysis, end-stage renal disease, and osteoarthritis easily support a need for assistance with body mobility on Ms. T's bad days. I find that the preponderance of the evidence indicates that Ms. T requires weight bearing assistance with body mobility on her bad days, but is independent with body mobility on her good days.

In *Matter of E.W.*, OAH Case No. 14-0601-MDS (Commissioner of Health and Social Services 2014), the Commissioner ruled that, in cases in which a recipient has good days and bad days, the recipient should be given the highest self-performance score for the type of assistance they require within a week, but that, if the recipient is sometimes able to perform the activity without physical assistance, the recipient's frequency level should be limited to the number of times that he or she requires physical help. Accordingly, I find that Ms. T requires extensive assistance with body mobility once per day on her bad days (CAT score 3/2, frequency 1/3).

2. Transfers

For the ADL of transfers, 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.⁴⁵ Ms. Kichura reported that Ms. T told her that on her dialysis days she needs someone to help keep her balanced while she gets up from her mattress on the floor, but that on non-dialysis days she can stand up without assistance. At hearing, G T testified that she must help her mother transfer off her bed or chair by putting her arms under her mother's arms and pulling up (providing weight-bearing assistance), and that she must do this about twice a day on non-dialysis days, and about four times a day on dialysis days.

Based on Ms. T's diagnoses, I find it likely that she requires weight-bearing assistance with transfers on her dialysis days. Accordingly, based on the Commissioner's decision in *Matter of E.W.*, Ms. T is entitled to extensive assistance with transfers, but the frequency is based solely on her "bad" days (CAT score 3/2, frequency 4/3).

⁴⁵ 7 AAC 125.030(b)(2).

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, or outside the home to keep a medical or dental appointment; PCA time is also allowed when walking and simple exercises have been prescribed by a physician.⁴⁶

Ms. T contests her scores for locomotion to access medical appointments. Ms. Kichura found that Ms. T requires limited assistance with locomotion to medical appointments two times per day, three times per week. G T testified at hearing that the type of assistance she gives her mother with locomotion is generally non-weight bearing assistance to help with balance. Accordingly, on this issue there is no real disagreement between the parties; Ms. T is entitled to limited assistance with locomotion to access medical appointments on the days she goes to dialysis (CAT score 2, frequency 2/3).

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.⁴⁷ Ms. Kichura reported that Ms. T told her that she can dress herself, and that on dialysis days she gets dressed prior to undergoing dialysis. Ms. Kichura did not feel that Ms. T's functional assessment indicated any need for assistance with dressing. G T testified at hearing that she must help her mother get dressed, and that she must put her mother's arms into her shirt sleeves, put her legs into her pant legs, and put on her socks and shoes. Dr. H, M.D., one of Ms. T's treating physicians, stated that Ms. T has a loss of balance following her dialysis sessions. Based on the evidence as a whole, I find that Ms. T is independent with dressing on her good days, but requires extensive assistance with dressing on her bad days. Accordingly, based on the Commissioner's decision in *Matter of E.W.*, Ms. T is entitled to extensive assistance with dressing, twice per day, three days per week (CAT score 3/2, frequency 2/3).

//
//
//
//

⁴⁶ 7 AAC 125.030(b)(3).

⁴⁷ 7 AAC 125.030(b)(4).

5. Toilet Use

For the ADL of toilet use, PCA time is, by regulation, allowed only to assist with moving to and from the toilet or urinal and transfers on and off the toilet.⁴⁸ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁴⁹

Ms. Kichura reported that Ms. T told her that (1) she does not produce much urine because she is on dialysis; (2) she can use her right hand for post-toileting hygiene and (3) that she can transfer onto the toilet easily. Ms. Kichura concluded that Ms. T (1) can walk to the bathroom on her non-dialysis days; (2) rarely goes to the bathroom on her dialysis days due to dehydration-related constipation; and (3) has a range of motion sufficient to complete toileting independently (scored 1/1). On the other hand, G T testified that she must help her mother to the bathroom about three times per day, mostly for bowel movements; that she must help adjust her mother's clothes; that she must help lower her down onto the toilet; that she must perform post-toileting hygiene; and that she must then help raise her mother up off of the toilet.

Based on the evidence as a whole, I find that requiring extensive assistance with toilet use on dialysis days would be consistent with Ms. T's medical diagnoses. Accordingly, based on the Commissioner's decision in *Matter of E.W.*, Ms. T is entitled to extensive assistance with toileting, three times per day, three days per week (CAT score 3/2, frequency 3/3).

6. 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.⁵⁰

Ms. Kichura reported that Ms. T told her that she can wash her face, brush her teeth, and perform all other morning personal hygiene tasks independently. Ms. Kichura reported that she observed that Ms. T has good grip strength, good fine motor skills, and range of motion sufficient to perform her personal hygiene tasks independently (scored 0/0). At hearing, G T testified that her mother can brush her teeth and wash her face and hands, but requires assistance to brush her hair and to apply skin cream. I find that requiring limited assistance with personal hygiene on dialysis days would be consistent with Ms. T's medical diagnoses and reconciles the parties' testimony.

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

⁴⁹ The CAT form defines toilet use as "[h]ow person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, *cleanses* . . . manages ostomy or catheter, *adjusts clothes*" (Ex. E9, emphasis added).

⁵⁰ 7 AAC 125.030(b)(7).

Accordingly, based on the Commissioner's decision in *Matter of E.W.*, Ms. T is entitled to limited assistance with personal hygiene, one time per day, three days per week (CAT score 2/2, frequency 1/3).

7. 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."⁵¹ Ms. Kichura reported that Ms. T told her that (1) she showers every Monday, Wednesday, and Friday before going to dialysis; (2) she can stand up while showering and does not need a bath bench; and (3) her daughter provides stand-by assistance. Ms. Kichura reported that she observed that Ms. T has grip strength and range of motion sufficient to bathe independently (scored 1/1). G T testified that (1) her mother takes one or more showers every day; (2) her mother can step over the side of the tub herself as long as she guides her; (3) she must help wash her mother's body; and (4) after the shower, she must help guide her mother out of the tub and lay out her towel and clothes. I find that requiring limited assistance with bathing on dialysis days would be consistent with Ms. T's medical diagnoses and reconciles the parties' testimony. Accordingly, based on the Commissioner's decision in *Matter of E.W.*, Ms. T is entitled to limited assistance with bathing, one time per day, three days per week (CAT score 2/2, frequency 1/3).

D. Does Ms. T Require Assistance With any Instrumental Activities of Daily Living?

1. Light Meal Preparation

The PCA regulations define the IADL of light meal preparation as the preparation, serving, and cleanup in the recipient's home of any meal that is essential to meet the health needs of the recipient, and that is not the main meal of the day.⁵² The Division found Ms. T to be independent as to light meals (CAT score 0/0). On the other hand, at hearing, G T testified that her mother cannot pour cereal, make a sandwich, cook a meal, wash dishes, dust, make her bed, vacuum, mop the floor, or take out the trash. I find that being dependent on others for light meal preparation on dialysis days would be consistent with Ms. T's medical diagnoses and reconciles the parties' testimony. Accordingly, based on the Commissioner's decision in *Matter of E.W.*, Ms. T is entitled to full PCA performance of light meal preparation, two times per day, three days per week (CAT score 3, frequency 2/3).

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

⁵² 7 AAC 125.030(c)(1).

2. Main Meal Preparation

The PCA regulations define the IADL of main meal preparation as the preparation, serving, and cleanup in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient.⁵³ The Division found Ms. T to require physical assistance with main meal preparation (CAT score 2/3). On the other hand, G T testified at hearing that her mother is dependent on others for main meal preparation. For the reasons discussed above in the context of light meals, the preponderance of the evidence indicates that Ms. T requires full caregiver performance as to main meal preparation on dialysis days (CAT score 3/4; frequency 1/3).

3. Laundry

The PCA regulations define the IADL of laundry as the changing of a recipient's bed linens and the in-home or out-of-home laundering of a recipient's bed linens and clothing.⁵⁴ The Division found that Ms. T is independent with difficulty, requiring set-up help as to laundry (CAT score 1/2). On the other hand, G T testified that her mother is completely dependent on others for laundry service. I find that Ms. T would require assistance to do her laundry *following dialysis*. However, I further find that Ms. T can do her laundry on a Sunday or Monday, after she has recuperated from dialysis, and that she should require no assistance with laundry on those days.

4. 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.⁵⁵ In this case, Ms. T received a score of zero as to Section G(1)(a) at page 20 of the CAT. Accordingly, based on the CAT, which has been incorporated into the Division's regulations by reference, Ms. T is not eligible for PCA assistance with administering her medications.

⁵³ 7 AAC 125.030(c)(2).

⁵⁴ 7 AAC 125.030(c)(4).

⁵⁵ Exs. B34, B35, E20.

5. 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 only if those services (1) are provided by a personal care agency enrolled in the agency-based program; and (2) are prescribed by a physician, a physician assistant, or an advanced nurse practitioner. In this case, it was not disputed that Ms. T receives her PCA services through an agency-based program; the issue is whether she has a valid prescription.

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

IV. Conclusion

Ms. T qualifies for additional PCA time and assistance in eight of the areas she contested, but the Division's determination was correct with regard to the other four disputed areas. Accordingly, the Division's October 28, 2014 determination as to Ms. T's PCA service level is affirmed in part and reversed in part.⁵⁶

DATED this 7th day of May, 2015.

Signed
Jay D. Durych
Administrative Law Judge

Adoption

The undersigned, by delegation from of the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 18th 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.]

⁵⁶ This decision does not calculate the number of hours per week of PCA services which Ms. T is eligible to receive. If Ms. T disagrees with the Division's calculation of the specific number of hours of PCA services for which she is eligible, she may request a new hearing on that issue.