

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

In the Matter of:)
)
 T C) OAH No. 14-2349-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. T C is eligible.¹ The Division decreased Ms. C's PCA services from 6.75 hours per week to 3.0 hours per week effective December 5, 2014.²

This decision concludes, based on the evidence in the record, that the Division's determination of the PCA services for which Ms. C is currently eligible was partially correct, but partially incorrect. Accordingly, the Division's decision is affirmed in part and reversed in part.

II. Facts

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

Ms. C is 69 years old.³ She lives alone, in a single-level apartment, with seven steps leading to her front door.⁴ Her medical diagnoses include anxiety, allergic rhinitis, arthritis, chronic airway obstruction / chronic obstructive pulmonary disorder (COPD), circadian rhythm sleep disorder, diabetes mellitus, depression / dysthymic disorder, gastroesophageal reflux disorder (GERD), hyperalimentation, hypertension, idiopathic sleep-related non-obstructive alveolar hypoventilation, insomnia, obesity, obstructive sleep apnea, osteoarthritis, osteopenia, right shoulder pain, and an unspecified bone and cartilage disorder.⁵

On or about January 27, 2015 Ms. C was seen in a hospital emergency department for near loss of consciousness caused by a fall in blood pressure.⁶ She was treated with prescription medications and released.

¹ Ex. D.

² Ex. D1.

³ Ex. E1.

⁴ Ex. E1.

⁵ Ex. 13 p. 31; Ex. E3.

⁶ All factual findings in this paragraph are based on Ex. 7 pp. 7 - 9 unless otherwise stated.

On February 8, 2015 Ms. C was seen in a hospital emergency department for depression.⁷ She was diagnosed with "major depressive disorder, recurrent episode, severe, without mention of psychotic behavior," and with psychosocial stressors.

On February 16, 2015 Ms. C completed an "Upper Extremity Functional Index" for Advanced Hand Orthopedics.⁸ In completing the form, Ms. C indicated that she would have extreme difficulty with, or be unable to perform, the following activities: carrying a suitcase, throwing a ball, opening a jar, doing laundry, tying or lacing shoes, cleaning, opening door, using tools or appliances, using buttons, dressing, vacuuming, sweeping, raking, driving, preparing food, brushing / combing hair, lifting bags of groceries, and/or performing normal housework.

A letter by K D, PA-C dated March 17, 2015 states in relevant part:⁹

On January 21, 2015 [Ms. C] fell on an outstretched hand and sustained a closed right distal radius fracture. She was initially . . . placed into a short arm splint. [She] was then seen for follow-up and definitive care on January 26, 2015 At that time treatment options were discussed and surgical treatment of the right distal radius . . . was performed on January 28, 2015.

The fracture puts considerable limitations on [Ms. C's] ability to do the normal functions of daily life. [She] is to be non-weight bearing on the right [arm] until the fracture is healed. She finds it difficult to drive and carry items such as her purse for appointments. [She] was given a referral for physical therapy . . . for care 1 - 3 times a week for range of motion and scar therapy for a period of 6 weeks. [She] lives alone and is in need of help to make it to these physical therapy appointments

I am concerned about [Ms. C's] recovery if she does not obtain some help with the task above. If she doesn't receive assistance . . . she will be forced to perform some of the tasks herself. Doing so would both lengthen recovery time and possibly prevent the wrist from healing properly.

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

1. Her physical condition has not gotten better since her prior (2010) assessment.
2. She has fallen twice since her latest (2014) assessment. She broke her arm in one of the falls, and hurt her shoulder in the other fall. She was still wearing a cast at the time of the hearing.
3. She needs knee replacement surgery, but her physician told her she can't have the surgery because of circumstances unique to her knee. Instead of the surgery, she is receiving periodic injections. However, neither of her knees is stable.

⁷ All factual findings in this paragraph are based on Ex. 11 pp. 1 - 4 unless otherwise stated.

⁸ All factual findings in this paragraph are based on Ex. 12 p. 1 unless otherwise stated.

⁹ All factual findings in this paragraph are based on Ex. 1 unless otherwise stated.

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

Ms. C was previously assessed as to her eligibility for PCA services on December 14, 2010 by Division nurse-assessor Olga Levy, R.N.¹⁰ Initially, in her 2010 assessment, Ms. Levy referenced ADL scores from the then-prior (presumably 2009) assessment.¹¹ Ms. Levy reported that the scores from the 2009 assessment were as follows: body mobility - independent (CAT score 0/0);¹² transfers - independent (CAT score 0/0); locomotion - independent (CAT score 0/0); dressing - independent (CAT score 0/0); eating - independent (CAT score 0/0); toilet use - independent (CAT score 0/0); personal hygiene - independent (CAT score 0/0); and bathing - independent (CAT score 0/0).

Based on her own 2010 assessment, Ms. Levy found that Ms. C required the following levels of assistance with her ADLs:¹³ body mobility - independent (CAT score 0/0); transfers - independent (CAT score 0/0); locomotion - independent (CAT score 0/0); dressing - independent (CAT score 0/0); eating - independent (CAT score 0/0); toilet use - independent (CAT score 0/0); personal hygiene - independent (CAT score 0/0); and bathing - independent (CAT score 0/0). At the same 2010 assessment, Ms. Levy found that Ms. C required the following levels of assistance with her IADLs:¹⁴ independent as to telephone use, financial management, and light meal preparation (CAT score 0/0); independent with difficulty as to main meal preparation (CAT score 1/0); and required physical assistance with light housework, routine housework, grocery shopping, and laundry (CAT score 2/3).

Ms. C was most recently assessed for continuing PCA eligibility on September 17, 2014 by Geetha Samuel, R.N. of DSDS.¹⁵ Ms. Samuel found that Ms. C has the following physical abilities and limitations:¹⁶

Functional Assessment:¹⁷ Ms. Samuel reported that Ms. C has strong grip strength in her left and right hands, and can touch her hands together over her head or behind her back, and can

¹⁰ Exs. F1 - F31.

¹¹ All factual findings in this paragraph are based on Ex. F12 unless otherwise stated.

¹² 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.

¹³ All factual findings in this paragraph are based on Exs. F5 - F12 unless otherwise stated.

¹⁴ All factual findings in this paragraph are based on Ex. F26 unless otherwise stated.

¹⁵ Ex. E.

¹⁶ Exs. E4 - E12.

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

touch her feet while in a sitting position, but cannot stand up with her hands crossed on her chest. Ms. Samuel also reported that Ms. C told her she requires a PCA escort to her appointments.

Body Mobility / Bed Mobility:¹⁸ Ms. Samuel reported that Ms. C told her that she does not require a hospital bed, and does not need assistance to reposition herself in bed. Ms. Samuel reported she observed Ms. C reposition herself multiple times during the assessment, both while on her bed and while seated, without any help (scored 0/0).

Transfers:¹⁹ Ms. Samuel reported that Ms. C told her that she uses a walker to help her transfer in the morning when her knees are stiff, but that otherwise she can stand up from, and sits down on, her bed and chair without assistance. Ms. Samuel reported that she observed Ms. C move from a seated position to a standing position, without assistance, by pushing against a table and other furniture (scored 0/0).

Locomotion (walking):²⁰ Ms. Samuel reported that Ms. C told her that (1) she is able to move around her apartment, without any hands-on assistance, by holding onto furniture or "wall-walking;" (2) that she is able to get up and down the steps outside her apartment by using the stair rails; and (3) her PCA accompanies her when walking outside because she has shortness of breath, and because her knees sometimes lock or give way. Ms. Samuel reported that she observed Ms. C ambulate independently, and Ms. Samuel opined that Ms. C should obtain a wheeled walker because she has difficulty using her "regular" walker due to her arthritis / shoulder pain (scored 1/1 for single-level locomotion, 0 for multi-level locomotion, and 2, frequency 2/1 for locomotion to access medical appointments).

Dressing:²¹ Ms. Samuel reported that Ms. C told her that, although she must take her time and do it slowly, she is able to dress herself independently without assistance. Ms. Samuel further reported that, based on her observations during the functional assessment, Ms. C should be able to dress and undress independently (scored 0/0).

Eating:²² Ms. Samuel reported that Ms. C told her that she cannot stand very long to cook, and needs a walker with a seat, but that she is able to feed herself independently and does not have any problems swallowing. Ms. Samuel reported that she observed Ms. C bring her hands up to her face, and concluded that she can eat and drink without difficulty (scored 0/0).

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

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

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

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

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

Toileting:²³ Ms. Samuel reported that Ms. C told her that (1) she wears incontinence products and can change them by herself; and (2) she is able to get on and off the toilet herself and perform post-toileting hygiene. Ms. Samuel reported that she observed (1) Ms. C sit down on the closed toilet lid by herself, using the bathroom door knob and countertop for support; (2) that Ms. C's toilet room was easily accessible; and (3) Ms. C's upper body range of motion is sufficient to allow her to use the toilet independently (scored 0/0).

Personal Hygiene:²⁴ Ms. Samuel reported that Ms. C told her that she can perform all her personal hygiene tasks independently without hands-on assistance. Ms. Samuel reported that she observed that Ms. C has a good upper body range of motion, is able to open her medication bottles, and is able to use her CPAP machine independently (scored 0/0).

Bathing:²⁵ Ms. Samuel reported that Ms. C told her that (1) it is very difficult for her to get in and out of her bathtub due to her knee problems, and that, for this reason, she prefers to take sink baths; (2) she is able to bathe herself independently; and (3) she would like to obtain PCA assistance with bathing so that she can bathe in her bathtub twice per week. Ms. Samuel reported that she observed that Ms. C requires assistance to transfer in and out of her bathtub due to her knee problems, but that, once in the tub, she should be able to wash herself based on her good upper body range of motion (scored 2/2, frequency 1/2).

Ms. Samuel also scored Ms. C as to her ability to perform Instrumental Activities of Daily Living (IADLs).²⁶ Ms. Samuel scored Ms. C as follows: independent as to telephone use and financial management (CAT score 0/0); independent with difficulty, requiring set-up assistance as to light meal preparation and main meal preparation (CAT score 1/2); independent with difficulty, requiring physical assistance as to light housework, grocery shopping, and laundry (CAT score 1/3); and requiring physical assistance with routine housework (CAT score 2/3).

C. Relevant Procedural History

The Division performed the assessment at issue on September 17, 2014.²⁷ On November 25, 2014 the Division notified Ms. C that her PCA service level was being reduced from 6.75 hours per week to 3.0 hours per week effective December 5, 2014.²⁸

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

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

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

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

²⁷ Ex. E.

²⁸ Ex. D1.

On December 9, 2014 Ms. C requested a hearing to contest the Division's reduction of her PCA services.²⁹ In her hearing request, Ms. C stated that her condition has not improved, but rather has gotten worse; that she cannot perform most activities alone; that she cannot touch her feet while sitting, or stand or walk for more than five minutes; that her mailbox is more than 50 feet from her house; and that she does not have laundry facilities in her home.

Ms. C's hearing was held on March 11, 2015. Ms. C participated in the hearing by phone, represented herself, and testified on her own behalf. Ms. C's friend, M Q, participated by phone and testified for Ms. C. Victoria Cobo participated in the hearing by phone and represented the Division. Geetha Samuel, R.N. and Laura Baldwin participated in the hearing by phone and testified for the Division. Following the hearing, the record was left open for ten days for post-hearing filings. The record closed on March 21, 2015.

III. Discussion

A. The PCA Program - Overview

The Medicaid program provides personal care assistant (PCA) services to eligible persons; "[t]he purpose of personal care services is to provide to a recipient *physical assistance* with activities of daily living (ADL), *physical assistance* with instrumental activities of daily living (IADL), and other services based on the *physical condition* of the recipient"³⁰ [emphasis added]. Accordingly, "[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL."³¹

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

The Department conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT."³² The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs).³³ The CAT seeks to make the

²⁹ All factual findings in this paragraph are based on Ex. C unless otherwise stated.

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).

assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairments.³⁴

The ADLs scored by the CAT are body mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion (to access medical appointments), dressing, eating, toilet use, personal hygiene, and bathing.³⁵ In addition, the CAT scores five other ADL-like activities which are not technically ADLs. These are medication, vital signs / glucose levels, dressings / bandages / oxygen, sterile wound care, and documentation.³⁶

The CAT's numerical scoring system for ADLs has two components. The first component is the *self-performance score*. This score rates how capable a person is of performing a particular ADL. The possible scores for ADLs are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance³⁷); **3** (the person requires extensive assistance³⁸); or **4** (the person is totally dependent³⁹). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).

The second component of the CAT's scoring system for ADLs is the *support score*. This score rates the degree of assistance that a person requires for a particular ADL. The possible scores for ADLs 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).

The CAT also scores activities known as "instrumental activities of daily living" (IADLs).⁴⁰ These are light meal preparation, main meal preparation, light housekeeping, routine housekeeping, laundry, and grocery shopping. The CAT scores IADLs slightly differently than ADLs.⁴¹ The *self-*

³⁴ Ex. E.

³⁵ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (accessed online at <http://www.hss.state.ak.us/dsds/pca/documents/PCA%20Service%20Computation.pdf>) (accessed July 13, 2015); see also Exs. B34 - B36; Ex. D9.

³⁶ *Id.*

³⁷ Limited assistance with an ADL "means a recipient, who is highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed." 7 AAC 125.020(a)(1).

³⁸ Extensive assistance with an ADL "means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity." 7 AAC 125.020(a)(2).

³⁹ Total dependence for an ADL or an IADL "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity." 7 AAC 125.020(a)(3).

⁴⁰ Ex. E26.

⁴¹ *Id.*

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). There is also a code that is not treated as a numerical score for purposes of calculating a service level: **8** (the activity did not occur).

The *support scores* for IADLs are also slightly different than the support codes for ADLs.⁴² The 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). Again, there is an additional code that does not add to the service level: 8 (the activity did not occur).

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*.⁴³ However, in January 2012 the PCA regulations were amended to implement a new system in which the self-performance score and support score for the specific activity *automatically dictate* the amount of PCA time awarded.⁴⁴ For example, a CAT score of three as to non-mechanical transfers gives a recipient 3.75 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*; a CAT code of four as to non-mechanical transfers gives a recipient five minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*.⁴⁵

C. Applicable Burden of Proof and Standard of Review

The Division is seeking to reduce Ms. C's existing PCA services (services which she was already receiving). Accordingly, the Division has the burden of proving, by a preponderance of the evidence, that Ms. C's need for PCA services has decreased since her last assessment.⁴⁶

The standard of review in a Medicaid "Fair Hearing" proceeding, as to both the law and the facts, is *de novo* review.⁴⁷ In this case, evidence was presented at hearing that was not available

⁴² *Id.*

⁴³ See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

⁴⁴ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

⁴⁵ *Id.*

⁴⁶ 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).

to the Division's reviewers. The administrative law judge may independently weigh the evidence and reach a different conclusion than did the Division's staff, even if the original decision is factually supported and has a reasonable basis in law. Likewise, the Commissioner is not required to give deference to the factual or legal determinations of his employees.

D. How Much PCA Time is Ms. C 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.⁴⁸ All other things being equal, recipients virtually always receive less PCA time under the new regulations than they did under the old regulations. Because Ms. C's prior assessment was conducted in December 2010, and the new PCA regulations did not become effective until July 2012, the new regulations are responsible for a significant portion of the decrease in Ms. C's PCA time under the 2014 assessment. Ms. C's PCA scores, for each of the 17 activities originally at issue in this case, are discussed below.

1. Body Mobility

For the ADL of body mobility, PCA time is allowed when a person requires physical assistance to reposition himself / herself in a bed or chair, or to perform range of motion and stretching exercises.⁴⁹ The 2009, 2010, and 2014 assessments all found that Ms. C is independent with body mobility (CAT score 0/0). At hearing, Ms. C acknowledged that she does not require assistance with bed / body mobility. Accordingly, based on the evidence in the record, the Division's assessment as to Ms. C's level of need for PCA assistance with body mobility is affirmed (CAT score 0/0, frequency 0/0).

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.⁵⁰ The 2009, 2010, and 2014 assessments all found that Ms. C is independent with transfers (CAT score 0/0). At hearing, Ms. C acknowledged that, although it is

⁴⁷ See 42 CFR 431.244; *Albert S. v. Dept. of Health and Mental Hygiene*, 891 A.2d 402 (2006); *Maryland Dept. of Health and Mental Hygiene v. Brown*, 935 A.2d 1128 (Md. App. 2007); *In re Parker*, 969 A.2d 322 (N.H. 2009); *Murphy v. Curtis*, 930 N.E.2d 1228 (Ind. App. 2010).

⁴⁸ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

⁴⁹ 7 AAC 125.030(b)(1).

⁵⁰ 7 AAC 125.030(b)(2).

difficult, she is independent with transfers. Accordingly, the preponderance of the evidence indicates that Ms. C is thus far independent with transfers (CAT score 0/0).

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 medical or dental appointment, and/or when walking and simple exercises have been prescribed by a physician.⁵¹ The 2009 and 2010 assessments found that Ms. C was independent with locomotion (CAT score 0/0). The current (2014) assessment found that Ms. C required only supervision and set-up help with single-level locomotion (CAT score 1/1), is independent with multi-level locomotion (CAT score 0), and requires limited assistance with locomotion to access medical appointments (CAT score 2, frequency 1/2). Ms. C's hearing testimony confirmed that the Division's self-performance scores for locomotion are correct, and Ms. C did not dispute the frequency assigned by the Division. Accordingly, the Division's CAT scores and assigned frequencies, regarding Ms. C's need for assistance with locomotion, are affirmed.

4. Dressing and Undressing

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.⁵² The Division's 2009, 2010, and 2014 assessments all scored Ms. C as being independent with dressing (CAT score 0/0). At hearing, Ms. C testified that she needs more assistance since her surgery, but that she was independent with dressing at the time of the assessment.⁵³ Accordingly, the preponderance of the evidence indicates that Ms. C is independent with the ADL of dressing (CAT score 0/0).

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.⁵⁴ The Division's 2009, 2010, and 2014 assessments all scored Ms. C as being independent with eating (CAT score 0/0). At hearing, Ms. C acknowledged that she is independent

⁵¹ 7 AAC 125.030(b)(3).

⁵² 7 AAC 125.030(b)(4).

⁵³ Ms. C may file a PCA service plan amendment request to obtain additional PCA time for limitations which arose *after* the Division's issuance of its November 2014 determination letter.

⁵⁴ 7 AAC 125.030(b)(5).

with eating. Accordingly, the preponderance of the evidence indicates that Ms. C is independent with eating (CAT score 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.⁵⁵ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁵⁶ The Division's 2009, 2010, and 2014 assessments all scored Ms. C as being independent with toileting (CAT score 0/0). At hearing, Ms. C acknowledged that she is independent with toileting. Accordingly, the preponderance of the evidence shows that Ms. C is independent with toilet (CAT score 0/0).

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.⁵⁷

The Division's 2009, 2010, and 2014 assessments all scored Ms. C as being independent with her personal hygiene (CAT score 0/0). At hearing, Ms. C acknowledged that she is independent with personal hygiene. Accordingly, the preponderance of the evidence indicates that Ms. C is independent with her personal hygiene (CAT score 0/0).

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."⁵⁸ The Division's 2009 and 2010 assessments scored Ms. C as being independent with bathing (CAT score 0/0). The Division's 2014 assessment found that Ms. C requires limited assistance with bathing two times per week (CAT score 2/2, frequency 1/2). At hearing, Ms. C testified that she requires assistance when getting into and out of the bathtub. However, in order to obtain the higher score of 3/2, Ms. C would need to also require PCA assistance with washing / bathing, not just with getting into and out of the tub.⁵⁹ No evidence was presented indicating that Ms. C required assistance with washing her

⁵⁵ 7 AAC 125.030(b)(6).

⁵⁶ 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).

⁵⁷ 7 AAC 125.030(b)(7).

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

⁵⁹ See Ex. E11.

body as of the time of the assessment. Accordingly, the preponderance of the evidence indicates that Ms. C requires limited assistance with bathing; with regard to frequency, it is uncontested that she takes a full tub bath or shower two times per week (CAT score 2/2, frequency 1/2).⁶⁰

9. Light Meals

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.⁶¹ The Division's prior (2010) assessment found that Ms. C was independent with light meal preparation (CAT score 0/0). The Division's current (2014) assessment found that Ms. C is independent with difficulty, requiring only set-up assistance, for light meal preparation (CAT score 1/2). At hearing, Ms. C testified that, although she cannot stand for long periods of time to prepare food, she is able to microwave light meals. Accordingly, the preponderance of the evidence indicates that Ms. C is independent with difficulty for light meal preparation (CAT score 1/2).

10. Main Meals

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.⁶² The Division's prior (2010) assessment found Ms. C to be independent with difficulty as to main meal preparation (CAT score 1/0). The Division's current (2014) assessment found that Ms. C is independent with difficulty, requiring only set-up assistance, for main meal preparation (CAT score 1/2). At hearing, however, Ms. C credibly testified that she is no longer able to stand for the comparatively long periods of time necessary to prepare a main meal. Her testimony is believable because of her weight, osteoarthritis, osteopenia, and fear of falling (which is well-founded given her recent history). Accordingly, the preponderance of the evidence indicates that Ms. C requires physical assistance with main meal preparation (CAT score 2/3).

11. Light Housework

The PCA regulations define the IADL of "light housekeeping" as (1) picking up, dusting, vacuuming, and floor-cleaning of the living spaces used by the recipient; (2) the cleaning of the kitchen and dishes used for preparation of the recipient's meals; (3) the cleaning of any bathroom used by recipient; (4) making the recipient's bed; (5) removing the recipient's trash; and (6) caring

⁶⁰ If Ms. C's condition changes such that she is able to take a full tub bath or shower every day, she would be entitled to a frequency of 1/7.

⁶¹ 7 AAC 125.030(c)(1).

⁶² 7 AAC 125.030(c)(2).

for the recipient's service animal.⁶³ The Division's prior 2010 and 2014 assessments both found that Ms. C requires physical assistance with light housework (CAT score 2/3). The evidence at hearing did not indicate that Ms. C is totally dependent on others for housework. Accordingly, the preponderance of the evidence indicates that Ms. C requires physical assistance with her light housework (CAT score 2/3).

12. Routine Housework

Although *the CAT* differentiates between "light housework" and "routine housework," *the PCA regulation* includes all the constituent activities of these two "CAT categories" within a single definition of "light housekeeping."⁶⁴ Because Ms. C has already received a score of 2/3 for the IADL of "light housekeeping" (above), the same score is appropriate for routine housework.

13. Grocery Shopping

The PCA regulations define the IADL of grocery shopping as shopping in the vicinity of a recipient's residence for groceries and other household items required for the health and maintenance of the recipient, and prescribed drugs and medical supplies required by the recipient.⁶⁵ The Division's prior (2010) assessment found Ms. C to require physical assistance with grocery shopping (CAT score 2/3). The Division's current (2014) assessment found Ms. C to be independent with difficulty as to grocery shopping (CAT score 1/3). At hearing, however, Ms. C credibly testified that her condition has not gotten better since the 2010 assessment, and in fact has gotten worse. She also testified that she becomes fatigued when shopping, and that she cannot complete an entire shopping trip by herself. Accordingly, the preponderance of the evidence indicates that Ms. C still requires physical assistance with grocery shopping (CAT score 2/3).

14. 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.⁶⁶ The Division's prior (2010) assessment found Ms. C to require physical assistance with her laundry (CAT score 2/3). The Division's current (2014) assessment found Ms. C to be independent with difficulty with her laundry (CAT score 1/3). At hearing, however, Ms. C credibly testified that her condition has not gotten better since the 2010 assessment, and in fact has gotten worse. Further, a need for continued physical assistance with laundry would be more consistent with what one might

⁶³ 7 AAC 125.030(c)(3).

⁶⁴ 7 AAC 125.030(c)(3).

⁶⁵ 7 AAC 125.030(c)(5).

⁶⁶ 7 AAC 125.030(c)(4).

reasonably expect from someone with Ms. C's medical diagnoses. Accordingly, the preponderance of the evidence indicates that Ms. C still requires physical assistance with the IADL of laundry (CAT score 2/2).⁶⁷

15. 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. C presented no evidence that she has a current prescription for PCA assistance with medical documentation. Accordingly, Ms. C is not currently entitled to receive PCA time for assistance with medical documentation.

16. 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.

Ms. C did not have PCA time for medical escort under her 2010 assessment. In 2014, the Division found that Ms. C requires an average of 18.46 minutes per week of PCA time for escorting her to medical appointments. No specific evidence was presented at hearing to support additional escort time. Accordingly, the Division's determination of the amount of PCA time for escort to medical appointments, to which Ms. C is entitled, is affirmed.

17. 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. C receives her PCA services through an agency-based program; the issue is whether she has a valid prescription.

The Division found that Ms. C currently has no prescription for range of motion (ROM) exercises. Ms. C 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.

⁶⁷ Also, based on Ms. C's hearing testimony, the assessment is incorrect in that it says she does her laundry in-home, whereas she actually does her laundry out of the home; this should be corrected. Finally, the Division agreed at hearing to increase Ms. C's frequency of assistance with laundry to two loads of laundry per week, instead of only one load of laundry per week.

C is not currently eligible to receive Medicaid payment for PCA assistance with range of motion exercises.

IV. Conclusion

The Division's determination of the PCA services for which Ms. C is currently eligible was partially correct, but partially incorrect. Accordingly, the Division's decision is affirmed in part and reversed in part.

DATED this 17th day of July, 2015.

Signed _____
Jay D. Durych
Administrative Law Judge, DOA/OAH

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 28th day of July, 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.]