

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

In the Matter of: )  
 )  
 C M ) OAH No. 14-2385-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 C M is eligible. The Division conducted an assessment on October 24, 2014 and subsequently reduced Mr. M's PCA service level from 36.25 hours per week to 2.5 hour per week effective December 18, 2014.<sup>1</sup> This decision concludes, based on the evidence in the record, that the Division's determination of the PCA services for which Mr. M is currently eligible was partially correct, but also partially incorrect. Accordingly, the Division's determination is affirmed in part and reversed in part.

**II. Facts**

**A. Summary of Mr. M's Health Problems<sup>2</sup>**

Mr. M is 82 years old.<sup>3</sup> He lives in a single family residence with his wife and three other adults. His primary language is Tagalog. Mr. M's medical diagnoses include anemia, atherosclerosis, atrial fibrillation, back disorders, cardiac dysrhythmia, cataracts, diabetes mellitus (type II), gout, hypertension, kidney problems, lumbago, renal failure, and venous insufficiency.

**B. Summary of Relevant Hearing Testimony**

At hearing, P Q credibly testified in relevant part as follows:

1. He is Mr. M's primary PCA. H Q, who is Mr. Q's daughter-in-law, is Mr. M's backup PCA.
2. Mr. Q provides PCA services to Mr. M in the early morning before he goes to work at about 7:45 a.m. He returns at lunch time for an hour or so, provides additional PCA services for Mr. M, and then goes back to work. He comes home from work shortly after 5:00 p.m. and provides PCA services to Mr. M from about 5:20 p.m. until 10:00 p.m.
3. Mr. M is about 5 foot 7 inches tall and weighs about 161 pounds.

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<sup>1</sup> Exs. D, E.

<sup>2</sup> Voluminous medical records were submitted on behalf of Mr. M in this case. All of them were reviewed during the preparation of this decision, but only those necessary to decide the case have been cited.

<sup>3</sup> All factual findings in this paragraph are based on Exs. E1 - E3 unless otherwise stated.

4. When transferring, Mr. M requires hands-on assistance, for balance, most of the time.
5. Mr. M usually uses a cane when walking inside and outside, but sometimes uses a walker indoors. Mr. Q described that he provides supervision for Mr. M when he is walking; he stands close by in case Mr. M loses his balance.
6. Mr. M requires limited assistance with toileting 30-40% of the time. However, Mr. M is able to use the toilet by himself, at night, when no PCA is available.
7. Mr. M has a bad shoulder. He takes pain medications daily, and he requires assistance with taking his medications because his memory is bad. He currently attends physical therapy once per week.
8. He believes that Mr. M's condition has improved somewhat since the 2011 assessment, but not to the extent indicated by the 2014 assessment.

At hearing, N Q credibly testified in relevant part as follows:

1. She is the wife of P Q, and holds a power of attorney from Mr. M.
2. Mr. M requires assistance with transfers 60-80% of the time.
3. When Mr. M walks, she provides standby assistance but not physical assistance, and this is the case with in-home locomotion as well as with locomotion to medical appointments.
4. When going to medical appointments, her husband must provide Mr. M with physical assistance to get in and out of the car "almost every time."
5. Mr. M uses a bedside commode at night so he does not have to walk to the bathroom by himself. Mr. M received physical assistance with toileting four times during the week prior to the hearing.

At hearing, C M testified in relevant part as follows:

1. His PCAs must pull on his arm to help him with transfers.
2. He goes to medical appointments about once per week, and his PCAs take him to those medical appointments.

At hearing, O J, R.N. credibly testified in relevant part as follows:

1. She is a registered nurse and serves as the executive Director of No Name Services (NNS), the PCA agency which currently provides services for Mr. M. NNS has been Mr. M's PCA agency for "many years."
2. Mr. Q has worked for NNS as a PCA for at least four years. She is not aware of any problems with, or complaints against, Mr. Q. She believes the Qs provide compassionate care for their PCA clients, and go well beyond the minimum care required.
3. She has observed Mr. M on several occasions during her home visits. Based on her observations, Mr. M can walk indoors and outdoors, using his cane, with only supervision. However, Mr. M needs at least limited assistance with

transfers and toileting. She has observed Mr. M getting out of a vehicle, and Mr. M needed PCA assistance to do so.

At hearing, Sam Cornell, R.N., credibly testified in relevant part as follows:

1. Mr. M's 2014 assessment took place at the Division's building, not at Mr. M's home.
2. Mr. M was able to transfer out of the vehicle which brought him to the assessment with a "contact guard" from his PCA.

At hearing, Olga Ipatova credibly testified in relevant part as follows:

1. Mr. M had no current prescription for physical therapy on file with the Division at the time of his 2014 assessment.
2. As of the hearing date on which she testified, August 19, 2015, Mr. M still had no current prescription for physical therapy on file with the Division.

### **C. *Relevant Procedural History***

The Division performed the assessment at issue on October 24, 2014.<sup>4</sup> On December 8, 2014 the Division notified Mr. M that his PCA service level was being reduced from 36.25 hours per week to 2.5 hour per week effective December 18, 2014.<sup>5</sup> On December 17, 2014 Mr. M requested a hearing to contest the Division's reduction of his PCA services, and authorized P Q to represent him during the proceedings.<sup>6</sup>

Mr. M's hearing began on August 12, 2015 and continued on August 19 and September 23, 2015. All three hearing sessions were telephonic, and a Tagalog interpreter was available during each session. Mr. M was represented by his PCA, P Q. The Division was represented by Victoria Cobo. P and N Q testified on August 12th; Mr. M, Sam Cornell, R.N., and Olga Ipatova testified on August 19th; and Mr. M, O J, R.N., and Scott Chow, R.N. testified on September 23rd. The record was held open through October 13, 2015 for post-hearing filings, and one such filing was received on October 1, 2015. The record closed on October 13, 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 . . . ."<sup>7</sup>

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<sup>4</sup> Ex. E.

<sup>5</sup> Ex. D1.

<sup>6</sup> Ex. C1.

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

[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."<sup>8</sup>

***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."<sup>9</sup> 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).<sup>10</sup> The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairments.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

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 assistance<sup>14</sup>); **3** (the person requires extensive assistance<sup>15</sup>); and **4** (the person is totally

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<sup>8</sup> 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.*

<sup>9</sup> 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

<sup>10</sup> *See* 7 AAC 125.010(a).

<sup>11</sup> Ex. E.

<sup>12</sup> *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 October 8, 2015); *see also* Exs. B34 - B36; Ex. D8.

<sup>13</sup> *Id.*

<sup>14</sup> 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).

dependent<sup>16</sup>). 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 July 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*.<sup>17</sup> However, in January 2012 new PCA regulations were adopted (effective July 1, 2012), to implement a new system, under which the self-performance code and support code for the specific activity *automatically dictate* the amount of PCA time awarded.<sup>18</sup> Under the new (2012) regulations, recipients generally receive less PCA time than they did under the old regulations, even when the recipient's self-performance and support scores have not changed.

### ***C. Applicable Burden of Proof and Standard of Review***

The Division is seeking to reduce Mr. M's existing PCA services level, which he has been receiving since December 2011. The Division therefore has the burden of proving, by a preponderance of the evidence, that Mr. M's need for PCA services has decreased since his last assessment.<sup>19</sup> The standard of review in a Medicaid "Fair Hearing" proceeding, as to both the law and the facts, is *de novo* review.<sup>20</sup> In this case, evidence was presented at hearing that was not available to the Division's reviewers. The administrative law judge may

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<sup>15</sup> 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).

<sup>16</sup> 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).

<sup>17</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

<sup>18</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* sheet.

<sup>19</sup> 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).

<sup>20</sup> 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).

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.

***D. How Much PCA Time is Mr. M Eligible to Receive in This Case?***

The 2014 CAT scores with which Mr. M disagrees are listed in his Exhibit 5 at pages 3 - 5. Initially, it is important to remember that, under the current PCA regulations, the amount of time awarded is set automatically based on the recipient's self-performance code.<sup>21</sup> For example, a CAT code of three as to non-mechanical transfers (a transfer that uses hands-on assistance but does not use an assistive device such as a lift) gives a recipient 3.75 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*; a CAT code of four as 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*.<sup>22</sup> Neither the Division's employees nor the administrative law judge (ALJ) have the authority to modify the amount of PCA time provided by the regulations.

Mr. Q provided a list of the PCA services as to which Mr. M challenges the Division's 2014 assessment findings.<sup>23</sup> Based on that list, Mr. M's areas of disagreement with the 2014 assessment are as to bed / body mobility, transfers, locomotion, all instrumental activities of daily living (IADLs), assistance with medications, medical documentation, escort to medical appointments, and walking for exercise. Those eight items are addressed 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 himself / herself in a bed or chair, or to perform range of motion and stretching exercises.<sup>24</sup> In 2011 Ms. K found that Mr. M required limited assistance with body mobility (CAT score 2/2, frequency 1/7).<sup>25</sup> In 2014 Mr. Cornell reported that he observed Mr. M reposition himself on a chair, and also reported that Mr. M told him that he can reposition himself in bed without assistance; based on this, Mr. Cornell found that Mr. M is independent with body mobility (CAT score 0/0, frequency 0/0). Although Mr. M, Mr. and Ms. Q, and Ms. J all testified that Mr. M needs assistance with *transfers* (a *separate* ADL), none of these witnesses

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<sup>21</sup> See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

<sup>22</sup> *Id.*

<sup>23</sup> All factual findings in this paragraph are based on Ex. 5, pp. 3 - 4.

<sup>24</sup> 7 AAC 125.030(b)(1).

<sup>25</sup> Ex. F6.

testified that Mr. M requires assistance with the in-place repositioning which constitutes the ADL of *body mobility*.<sup>26</sup> Accordingly, the preponderance of the evidence indicates that Mr. M is independent with body mobility (CAT score 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.<sup>27</sup> In 2011, Ms. K found that Mr. M required limited assistance with transfers a total of 28 times per week (CAT score 2/2, frequency 4/7).<sup>28</sup>

In 2014, Mr. Cornell found that Mr. M requires only supervision and set-up help with transfers (CAT score 1/1, frequency 0/0).<sup>29</sup> However, Mr. Cornell reported in his assessment that Mr. M's PCA told him that his client needs a "balancing assist," and Mr. Cornell reported that he observed Mr. M's PCA provide a "contact guard" when Mr. M got out of a car.

It is obvious from the assessment, and from Mr. Cornell's hearing testimony, that he believes a contact guard does not constitute physical assistance. That is incorrect. It is true that, based on the definitions in the CAT, a contact guard, by itself, does not constitute *weight-bearing* or *extensive* assistance. However, it does constitute hands-on "maneuvering" or guiding." Accordingly, based on the 2014 assessment and Mr. Cornell's own testimony, Mr. M still requires *limited assistance* with transfers. In addition, Mr. and Ms. Q and Ms. J each testified that Mr. M requires assistance with transfers, and Ms. Q testified that Mr. M needs assistance with transfers 60-80% of the time.

In summary, the preponderance of the evidence indicates that Mr. M still requires limited assistance with transfers. Neither party provided testimony concerning the frequency with which Mr. M currently requires assistance with transfers. However, the Division bears the burden of proof. Accordingly, Mr. M's CAT scores for transfers should remain at their 2011 level (CAT score 2/2, frequency 4/7).

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<sup>26</sup> It appears that, in preparing Mr. M's statement of areas of disagreement, Mr. Q may have thought that the ADL of body mobility includes some of the activities which, in actuality, are within the PCA regulations' definition of transfers. This is a common misconception among recipients of PCA and waver services.

<sup>27</sup> 7 AAC 125.030(b)(2).

<sup>28</sup> Ex. F6.

<sup>29</sup> All factual findings in this paragraph are based on Ex. E6 unless otherwise stated.

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.<sup>30</sup> In 2011, Ms. K found that Mr. M was independent with single-level and multi-level locomotion (CAT score 0/0/), but required limited assistance with locomotion to medical appointments (CAT score 2).<sup>31</sup> In 2014, Mr. Cornell found that Mr. M requires only set-up help with single-level and multi-level locomotion, and with locomotion to medical appointments (CAT score 0/1).<sup>32</sup>

Mr. M's written statement of issues asserts that he requires an unspecified level of physical assistance with locomotion.<sup>33</sup> However, at hearing, Mr. and Ms. Q and Ms. J all testified that Mr. M requires only standby assistance (not physical assistance) with each of the three categories of locomotion. Their testimony was persuasive in this regard. Accordingly, the preponderance of the evidence indicates that Mr. M requires supervision and set-up help with single-level locomotion, multi-level locomotion, and locomotion to access medical appointments (CAT score 1/1).

4. Instrumental Activities of Daily Living (IADLs)

In 2011, Mr. M was found to be totally dependent on others for the performance of all IADLs except telephone use (as to which he was scored as independent with difficulty), and laundry (as to which he was found to require physical assistance).<sup>34</sup> In 2014, Mr. M was found to require physical assistance with all IADLs except for telephone use, as to which he was scored as being independent.<sup>35</sup> Normally a recipient would receive PCA time if found to require physical assistance with IADLs (CAT score 2/3). In this case, however, the Division determined that Mr. M is not eligible for PCA time for assistance with his IADLs because "two other PCA

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<sup>30</sup> 7 AAC 125.030(b)(3).

<sup>31</sup> Ex. F7.

<sup>32</sup> Ex. E7. The 2014 CAT actually states that Mr. M is independent with multi-level locomotion. However, it would be nonsensical to require a lesser level of assistance going up and down stairs, than on level ground. Accordingly, I find that the score of zero for multi-level locomotion is the result of a typographical / clerical error.

<sup>33</sup> Ex. 5 p. 3.

<sup>34</sup> Ex. F26.

<sup>35</sup> Ex. E26.



recipients reside in the same home and receive IADL services under 7 AAC 125.010 - 7 AAC 125.199."<sup>36</sup>

Pursuant to PCA regulation 7 AAC 125.040(a)(13)(C), a person is not entitled to PCA time for assistance with IADLs if other recipients living in the same residence already receive IADL services. In this case, it is undisputed that Mr. M's wife, R M, already receives PCA time for assistance with the household's IADLs.<sup>37</sup> Accordingly, under 7 AAC 125.040(a)(13)(C), Mr. M is not entitled to PCA time for assistance with IADLs because this would result in a duplication of services.

Mr. Q argues that 7 AAC 125.040(a)(13)(C) does not apply here because, at the time of the hearings in this case, R M's PCA services were under post-assessment review by the Division, and it was at least *possible* that her PCA time for assistance with IADLs would be eliminated under her new service plan.<sup>38</sup> Mr. Q is correct in that, when two or more PCA recipients live together, there is a very real possibility that both recipients could (at least temporarily) lose PCA assistance with their IADLs due to assessment timing issues. However, at the time the hearings were held in this case, there was no evidence that R M had lost her PCA assistance with IADLs. PCA time cannot be awarded in this case based on the mere *possibility* of what might occur, in the future, in another PCA case.

Also, a remedy exists, under the PCA regulations, for the "catch 22" or "whipsaw" effect that Mr. Q is (rightly) concerned about in this case. Pursuant to 7 AAC 125.026 (titled "Changes In Personal Care Service Level Authorization"), a recipient may file a PCA service plan amendment request when there has been "a material change in condition," which is defined to include situations in which "the recipient's living conditions have changed since the last assessment..."<sup>39</sup> Accordingly, were the Division to eliminate PCA assistance with IADLs from R M's service plan, Mr. M would be entitled to file an amendment request to have those services added to his own service plan.

#### 5. 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;

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<sup>36</sup> Exs. D3, D4.

<sup>37</sup> Ex. E2; P Q's and Olga Ipatova's hearing testimony.

<sup>38</sup> Ex. 5 pp. 3 - 4; P Q's hearing testimony.

<sup>39</sup> 7 AAC 125.026(d)(2).

(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;

Although the above regulation is simple to apply in isolation, the Division's regulations contain additional hurdles which a recipient must clear in order to obtain PCA time for medication assistance / administration. First, the recipient must receive a score of 1, 2, 4, 5, or 6 in Section G(1)(a) at page 20 of the CAT.<sup>40</sup> In this case, Mr. M received a score of four on his 2014 assessment.<sup>41</sup> Accordingly, Mr. M satisfies this first requirement.

The *amount* of PCA time allowed for medication assistance is, however, computed based on the recipient's personal hygiene score.<sup>42</sup> If the recipient's personal hygiene self-performance score is 0, 1, or 8, the recipient receives no time for assistance with medications.

In this case, the Division's 2014 assessment found that Mr. M requires only supervision and set-up help with personal hygiene tasks (CAT score 1/1).<sup>43</sup> In his written statement of issues, Mr. M indicated that he "agrees with the assessment" as to his personal hygiene scores.<sup>44</sup> Accordingly, Mr. M's undisputed personal hygiene score of 1/1 must be adopted.

In summary, based on the somewhat bizarre regulations applicable to PCA assistance with medications, Mr. M qualifies for PCA assistance under the first criterion, but under the second criterion, the actual amount of PCA time for which Mr. M is eligible, is zero. Accordingly, the Division was correct not to provide Mr. M with PCA time for assistance with his medications.

#### 6. 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, it is undisputed that Mr. M did not have a current prescription for PCA assistance with medical documentation during the period of time at issue in this case.<sup>45</sup> Accordingly, until he gets a new prescription, Mr. M is not entitled to receive PCA time for assistance with medical documentation.

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<sup>40</sup> See the Division's Personal Care Assistance Service Level Computation Chart at Exs. B34, B35.

<sup>41</sup> Ex. E20.

<sup>42</sup> Unless otherwise stated, all findings and conclusions in this paragraph are based on the Division's Personal Care Assistance Service Level Computation Chart at Exs. B34 - B35.

<sup>43</sup> Ex. E10.

<sup>44</sup> Ex. 5 p. 3.

<sup>45</sup> Ex. 5 p. 4.

7. 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 his doctor.

In 2011, the Division provided Mr. M with six minutes of PCA time per week for escort to medical and dental appointments.<sup>46</sup> In 2014, the Division found that Mr. M needed only "transportation, not an escort," and deleted his PCA time for escort to medical appointments.

One has only to listen to Mr. M's responses to the questions asked of him at hearing to conclude that he needs a PCA to accompany him to all medical appointments. First, Mr. M speaks Tagalog. Accordingly, unless the medical provider also speaks Tagalog, or unless Mr. M has an interpreter available (which is possible, but which cannot be presumed), he will be unable to communicate. Second, even with the capable interpreters used during the hearings in this case, Mr. M was not able to formulate a coherent response to most of the questions asked of him, and it became apparent that his cognitive abilities were significantly over-stated in the 2014 assessment. Thus, even aside from the language issue, Mr. M needs someone to speak to his doctors, on his behalf, based on cognitive issues.<sup>47</sup>

In summary, the Division erred in deleting PCA time for escort to medical appointments from Mr. M's current service plan. Accordingly, the Division must recalculate Mr. M's PCA time for escort to medical appointments based on the number and duration of the appointments listed at page five of the CAT.<sup>48</sup>

8. PCA Assistance with Walking for Exercise

Pursuant to 7 AAC 125.030(b)(3)(B), the Division will pay for PCA assistance with walking for exercise only if the service is prescribed by a physician, a physician assistant, or an advanced nurse practitioner. In addition, the prescription must be dated within one year of the assessment.<sup>49</sup>

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<sup>46</sup> All factual findings in this paragraph are based on Ex. D4 unless otherwise stated.

<sup>47</sup> The fact that Mr. M has cognitive problems is further underscored by the statements of Division employee Denise Kichura, R.N., made during a prior assessment involving Mr. M, that she would "have to reschedule [the assessment] because it appears he's mentally impaired" (Ex. 4 p. 4).

<sup>48</sup> Ex. E5.

<sup>49</sup> Ex. E5.

In 2011, Mr. M was found eligible for 270 minutes per week of PCA assistance with walking for exercise,<sup>50</sup> so presumably he had a valid prescription at that time. The assessment of October 24, 2014 indicates that Mr. M did not have a current prescription for walking for exercise.<sup>51</sup> Olga Ipatova testified at hearing that Mr. M had no current prescription for physical therapy on file with the Division at the time of his 2014 assessment. She further testified that, as of August 19, 2015, Mr. M still had no current prescription for physical therapy on file with the Division.

Ms. Ipatova's testimony was credible. Further, Mr. M provided no proof, during the hearing process, that he had a valid prescription, for walking for exercise, covering the period at issue in this case. Accordingly, based on its regulations, the Division was correct to remove PCA time for assistance with walking for exercise from Mr. M's current PCA service plan.<sup>52</sup>

#### **IV. Conclusion**

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

DATED this 15th day of October, 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 23rd day of November, 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.]

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<sup>50</sup> Ex. D4.

<sup>51</sup> Ex. E5.

<sup>52</sup> Of course, if Mr. M obtains a prescription in the future for PCA-assisted walking for exercise, or PCA-assisted range of motion exercises, he may submit an amendment request to add those services at that time.