

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

In the Matter of )  
 )  
 J N )  
 )  
\_\_\_\_\_ )

OAH No. 14-2394-MDS  
Agency No.

**DECISION**

**I. Introduction**

On behalf of J N, Facility X filed a Request for Expedited Consideration of a Change in Information (COI) form along with the COI form itself (collectively, the “Request”) on July 22, 2014. The Request stated that Mr. N recently had a stroke with partial paralysis and had experienced a significant decline in his functional abilities. Medical records and physical therapy records (“Accompanying Documents”) for Mr. N related to this stroke accompanied the Request. On October 23, 2014, the Division of Senior and Disabilities Services notified Mr. N that it was reducing the number of hours of personal care attendant (PCA) services he had been receiving from 18.25 hours to 7.5 hours a week based upon the information contained in the Accompanying Documents. Mr. N filed an appeal of this decision on October 23, 2014.

The hearing in this matter commenced on March 5, 2015. It was continued after the first session, with a brief second hearing session taking place on March 13, 2015.<sup>1</sup> The final hearing session took place on March 26, 2015.<sup>2</sup> U T, who holds a power of attorney for Mr. N,<sup>3</sup> participated at the hearings on Mr. N’s behalf. M H, who works for Facility X and is Mr. N’s care coordinator, also attended the hearings and briefly testified at the March 26, 2015 hearing regarding the circumstances surrounding Mr. N’s appeal. Ms. T was questioned by Ms. O’Neal, the Division’s representative, but did not otherwise present testimony on Mr. N’s behalf.<sup>4</sup>

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<sup>1</sup> At March 13, 2015 hearing, Mr. Chadwick began his testimony on behalf of the Division when the interpreter suddenly dropped from the call. Another Samoan interpreter was not available, so S N, who is the sister-in-law of Mr. N, served as the interpreter for the remainder of that second hearing session with the consent of the Division. The hearing was then continued to March 26, 2015.

<sup>2</sup> With the Division’s consent, Ms. S N served as an interpreter for March 26, 2015 hearing since a state-approved Samoan interpreter was not available.

<sup>3</sup> Mr. N is Ms. T’s boyfriend. See Testimony of Ms. T. She has been his power of attorney since July of 2014. See Ex. F, at p. 7.

<sup>4</sup> Ms. T stated that she wished to rely on the documents that had previously been submitted in this case in lieu of giving testimony.

Ms. Gena O'Neal represented the Division at the hearings. Amanda McCrary, a nurse assessor supervisor, testified on the Division's behalf at the March 5, 2015 hearing, while David Chadwick, the health program manager for the Division, testified on the Division's behalf at the March 13, 2015 and March 26, 2015 hearings.

The Division's decision, as modified by the Division at the hearing, is upheld in part and reversed in part. The Division has met its burden of proof in establishing by the preponderance of the evidence that Mr. N's condition had improved as of the date of the Request so that he no longer needed PCA services for physical assistance with certain activities of daily living (ADLs)<sup>5</sup> – *i.e.*, transfers, dressing, toileting, personal hygiene, and bathing.<sup>6</sup> The Division at the hearing agreed that Mr. N should continue to receive medication assistance 21 times a week.<sup>7</sup> The Division has not, however, met its burden of proof with regard to eliminating PCA time for Mr. N's locomotion to medical appointments, although it has established that the frequency of such visits should be reduced to two times a month. Accordingly, the PCA time is to be recalculated consistent with this Decision and the Division's agreement, recited at the hearing, with regard to medication assistance.

## II. Facts

On February 28, 2013, registered nurse Eileen Heaston<sup>8</sup> conducted an initial assessment of Mr. N on behalf of the Division, the results of which were recorded on the Division's Consumer Assessment Tool (CAT).<sup>9</sup> The assessment established that Mr. N had a stroke in 2010 which had affected his right side and also had other medical issues including osteoarthritis, degeneration of cervical intervertebral disc, obstructive sleep apnea, diabetes mellitus, acute cerebrovascular disease, hypertension, and chronic pain.<sup>10</sup> Amanda McCrary, the nurse assessor who testified at the hearing, stated that the February 28, 2013 assessment was the only assessment of Mr. N conducted by the Division.<sup>11</sup>

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<sup>5</sup> Mr. N had been receiving PCA services for the ADLs of transfers, locomotion with regard to access to medical appointments, dressing, toileting, personal hygiene, and bathing. *See* Ex. D, at p. 7. Mr. N also had been receiving PCA services for his instrumental activities of daily living (IADLs). *See* Ex. D, at p. 7. The Division did not make any changes to the PCA time Mr. N was receiving for IADLs, so that is not an issue in this appeal... *See* Ex. D, at p. 7.

<sup>6</sup> *See* Ex. D, at p. 7.

<sup>7</sup> Testimony of David Chadwick.

<sup>8</sup> Ms. Heaston no longer works for the Division and did not testify.

<sup>9</sup> Ex. E, at p. 1.

<sup>10</sup> Ex. E, at p. 3.

<sup>11</sup> Testimony of Amanda McCrary.

The initial assessment, as recorded on the CAT, found Mr. N to be independent (code of 0/0) with regard to the ADLs of body mobility, locomotion, and eating.<sup>12</sup> The CAT concluded that Mr. N could perform the ADLs of transfers, dressing, toileting and personal hygiene bathing with limited assistance and a one-person physical assist (code of 2/2).<sup>13</sup> With regard to the ADL of bathing, the assessment found that Mr. N required one-person physical assistance with part of the bathing activity (code of 3/2).<sup>14</sup> The initial assessment also found that while Mr. N could help with the instrumental activities of daily living (IADLs) of light meal preparation, main meal preparation, grocery shopping, and laundry, he needed physical assistance with these tasks (code of 2/3). For the IADL of the housework, the initial assessment concluded that Mr. N was totally dependent on the physical assistance of others for this task.<sup>15</sup> Based on the initial assessment, Mr. N began receiving 18.5 hours of PCA services a week.<sup>16</sup>

On May 30, 2014, Mr. N was admitted to Facility Y after he suffered a stroke accompanied by left-sided weakness.<sup>17</sup> He was 57 years old at the time<sup>18</sup> and was described as having a severe hearing loss.<sup>19</sup> Mr. N remained hospitalized at Facility Y until June 25, 2014,<sup>20</sup> when he was discharged to Facility Z (“Facility Z”) for acute inpatient rehabilitation.<sup>21</sup> He subsequently was discharged from Facility Z on July 4, 2014.<sup>22</sup> Facility Z prepared a discharge summary for Mr. N, which included an assessment of his functional status at the time he was admitted to Facility Z, his physical therapy progress notes, and his level of functioning upon his discharge from Facility Z.<sup>23</sup>

On July 22, 2014, Facility X submitted the Request and the Accompanying Documents on Mr. N’s behalf and sought an expedited review<sup>24</sup> of the Request. The Request stated that Mr. N’s recent stroke, coupled with Mr. N’s “limited mobility” on his left side, had resulted in a

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<sup>12</sup> See Ex. D, at pp. 4 & 7.  
<sup>13</sup> See Ex. D, at pp. 4-5 & 7.  
<sup>14</sup> See Ex. D, at pp. 4-5 & 7; Ex. E, p. 11.  
<sup>15</sup> See Ex. D, at pp. 4-5 & 7.  
<sup>16</sup> Ex. C, at p. 4.  
<sup>17</sup> Ex. F, at p. 1.  
<sup>18</sup> Ex. F, at p. 10.  
<sup>19</sup> Ex. F, at pp. 10-11.  
<sup>20</sup> Ex. F, at pp. 3 & 19.  
<sup>21</sup> Ex. F, at p. 1.  
<sup>22</sup> Ex. F, at p. 1.  
<sup>23</sup> Ex. F, at pp. 1-45.  
<sup>24</sup> See Ex. F.

“significant decline in his functional abilities” which required “extensive assistance.”<sup>25</sup> Mr. H testified that he filed the Request after Mr. N had told him that he needed more PCA time due to his 2014 stroke.<sup>26</sup> The discharge summary from Facility Z was part of the Accompanying Documents that Facility X submitted to the Division with its Request.

The Request, the Accompanying Documents, and the 2013 assessment of Mr. N were initially reviewed by Theresa Kern, a registered nurse with the Division.<sup>27</sup> Since Ms. Kern no longer works for the Division, Amanda McCrary, who is also a nurse assessor, reviewed the same records that Ms. Kern had reviewed and testified about the conclusions that the Division had reached based upon the Accompanying Documents.<sup>28</sup> Ms. McCrary testified that the Accompanying Documents established that Mr. N only needed supervision with regard to the ADLs of transfer, locomotion, dressing, toilet use, personal hygiene, and bathing.<sup>29</sup> Because a Medicaid recipient must need physical assistance with an ADL in order to receive PCA time for that specific ADL,<sup>30</sup> the Division reduced Mr. N’s PCA services to reflect that he no longer needed such physical assistance with these enumerated ADLs.<sup>31</sup>

On October 23, 2014, the Division notified Mr. N that it was reducing his PCA hours from 18.25 hours to 7.5 hours a week.<sup>32</sup> The Division thus eliminated all of the PCA hours that Mr. N had been receiving for his ADLs and other covered services such as medication assistance and assistance with locomotion to medical appointments.<sup>33</sup> The Division did not reduce the PCA hours that Mr. N has been receiving since his 2013 assessment for his IADLs, finding that he still needed physical assistance to perform the IADLs.<sup>34</sup>

David Chadwick, the Division’s health program manager, testified that when the Division receives a COI form, it reviews the medical records and other similar documentation to

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<sup>25</sup> Ex. F, at p. 3.

<sup>26</sup> Testimony of M H.

<sup>27</sup> See Testimony of Amanda McCrary; see also Ex. A, at p 2.

<sup>28</sup> Testimony of Amanda McCrary.

<sup>29</sup> Testimony of Amanda McCrary; see also Ex. F, at pp. 20-23.

<sup>30</sup> See 7 AAC 125.020(a).

<sup>31</sup> Testimony of Amanda McCrary.

<sup>32</sup> Ex. A. The Division relied heavily upon the physical therapy records that were part of the discharge summary for Mr. N when he was released from Facility Z in determining that Mr. N only needed supervision and/or set-up and cueing with regard to the ADLs at issue. See Testimony of Amanda McCrary; see also Testimony of David Chadwick.

<sup>33</sup> See Ex. D, at p. 7.

<sup>34</sup> See Ex. D, at p. 7.

determine whether an increase or decrease in PCA hours is warranted.<sup>35</sup> Mr. Chadwick explained that the Division then compared Mr. N’s 2013 assessment with the Accompanying Documents in arriving at its decision to reduce Mr. N’s PCA hours.<sup>36</sup> The Division is not required to conduct a new assessment after it receives a COI form but can instead rely on documents submitted with the COI form, as was done in Mr. N’s case.<sup>37</sup> Mr. Chadwick also testified that the Division had erred in not providing Mr. N with medication assistance 21 times a week when it reduced his overall PCA hours.<sup>38</sup> The Division then agreed at the hearing that Mr. N should continue to receive medication assistance 21 times a week.<sup>39</sup>

At the hearing, Ms. T stated that she wished to rely on the documents in the record rather than to testify on Mr. N’s behalf.<sup>40</sup> She did, however, answer several questions posed to her by Ms. O’Neal. Ms. T, in response to those questions, stated that her son, who is Mr. N’s PCA, works with Mr. N in the morning and in the evening and that she helps Mr. N the remainder of the time.<sup>41</sup> Ms. T also testified that Mr. N cannot be left alone because he cannot hear and further stated that when he moves around, he needs somebody to watch him.<sup>42</sup> Ms. T’s testimony that Mr. N needs somebody to “watch him” when he moves around was consistent with certain conclusions found in the Accompanying Documents – *i.e.*, Mr. N only needs supervision for locomotion in the home and for transfers.<sup>43</sup> Ms. T did not provide any evidence to rebut the Accompanying Documents,<sup>44</sup> which found that Mr. N now only required supervision, set-up, or cueing to perform the ADLs of bathing, dressing, toileting, personal hygiene, and transfers.<sup>45</sup> However, the Accompanying Documents did not address whether Mr. N would need PCA assistance with locomotion to medical appointments, although it was noted that Mr. N did need a one-person assist with stairs.<sup>46</sup>

### **III. Discussion**

#### **A. The PCA Program**

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<sup>35</sup> Testimony of David Chadwick.

<sup>36</sup> Testimony of David Chadwick.

<sup>37</sup> Testimony of David Chadwick; *see also* 7 AAC 125.028(c).

<sup>38</sup> Testimony of David Chadwick.

<sup>39</sup> Testimony of David Chadwick.

<sup>40</sup> Testimony of U T.

<sup>41</sup> Testimony of U T.

<sup>42</sup> Testimony of U T.

<sup>43</sup> *Compare* Testimony of U T with Ex. F, at pp. 17-18 & 21-22.

<sup>44</sup> *See* Testimony of U T.

<sup>45</sup> *See* Ex. F, at p. 22; *see also* Ex. F, at pp. 16-18, 20-21 & 42-44.

<sup>46</sup> *See* Ex. F, at pp. 10-44; *see also* Ex. F, at p. 43.

The purpose of the PCA program is:

to provide a recipient physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient[.<sup>47</sup>]

The Division uses the Consumer Assessment Tool, or “CAT”, as a methodology to score eligibility for the PCA program, and determine the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.<sup>48</sup> The CAT numerical coding system has two components: a self-performance code<sup>49</sup> and a support code.<sup>50</sup> The CAT’s “self-performance” codes rate how capable a person is with regard to performing a particular ADL<sup>51</sup> or IADL.<sup>52</sup> The CAT’s “support” codes rate the degree of assistance that a person requires for a particular ADL<sup>53</sup> or IADL.<sup>54</sup>

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If the person requires some degree of hands-on physical assistance with any *one* of the specific ADLs<sup>55</sup> of transfers, locomotion, eating, toilet use, dressing, or bathing, **or** any *one* of

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<sup>47</sup> See 7 AAC 125.010(a).

<sup>48</sup> See 7 AAC 125.024(a)(1); *see also* 7 AAC 125.020(b). The CAT itself is a regulation, adopted in 7 AAC 160.900.

<sup>49</sup> See Ex. D, at pp. 1-2.

<sup>50</sup> See Ex. D, at pp. 1-2.

<sup>51</sup> With regard to ADLs, the possible self-performance codes are: **0** (person is independent and requires no help or oversight); **1** (person requires supervision); **2** (person requires limited assistance); **3** (person requires extensive assistance); **4** (person is totally dependent); **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days). See Exhibit D, at p. 2; *see also* Ex. E, at pp. 6-11.

<sup>52</sup> The self-performance codes for IADLs are slightly different from the ADL self-performance codes. With regard to IADLs, the self-performance codes are: **0** (independent either with or without assistive devices – no help provided); **1** (independent with difficulty; the person performed the tasks, but did so with difficulty or took a great amount of time to do the task); **2** (assistance/done with help – the person was somewhat involved in the activity, but help in the form of supervision, reminders, physical assistance was provided); **3** (dependent/done by others – the person is not involved at all with the activity and the activity is fully performed by another person); and **8** (activity did not occur within the past seven days). See Ex. D, at p. 2; *see also* Ex. E, at p. 26.

<sup>53</sup> The support codes for the ADLS are: **0** (no set-up or physical help); **1** (set-up help only); **2** (one-person physical assist); **3** (two+ persons physical assist); **5** (cueing); and **8** (activity did not occur). See Ex. D, at p. 2; *see also* Ex. E, pp. 6-11.

<sup>54</sup> The support codes for the IADLS are slightly different from the ADL support codes. With regard to IADLs, the support codes are: **0** (no support provided); **1** (supervision/cueing provided); **2** (set up help only); **3** (physical assistance was provided); **4** (total dependence –person not involved); and **8** (activity did not occur). See Ex. D, at p. 2; *see also* Ex. E, at p. 26.

<sup>55</sup> 7 AAC 125.020(a). “Limited Assistance” – the minimum hands-on physical assistance standard applicable to ADLs – is a situation in which the recipient, although “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.” See 7AAC 125.020(a)(1).

the specific IADLs<sup>56</sup> of meal preparation (either light or main meals), housework (either light or routine housework), grocery shopping, or laundry, then the person is eligible for PCA services. However, if a person is independent or only requires non-hands-on assistance (oversight, supervision, cueing, and set-up) with all of these specific ADLs and IADLs, then the person is not eligible for PCA services, regardless of whether he or she may require hands-on physical assistance with the ADLs or IADLs other than the specific ones used to determine eligibility.<sup>57</sup> In Mr. N's case, there is no dispute that he needs hands-on help with some of the gateway IADLs.

### **B. The Change in Information Form**

A personal care agency is required to report any change in the Medicaid recipient's mental, physical or medical condition that may require an increase or decrease in the level of service provided to the recipient.<sup>58</sup> Facility X used the Division's COI form to make such a report.<sup>59</sup> Upon receiving a COI report, the Division may conduct a new assessment of the recipient or may accept an assessment completed by the personal care agency.<sup>60</sup> Here, the Division opted to use the COI form and the Accompanying Documents as Facility X's assessment when the Division determined that Mr. N's PCA hours should be reduced.<sup>61</sup> The Division then compared this information with the 2013 assessment before arriving at its decision to decrease Mr. N's PCA services.<sup>62</sup> Although the Division initially denied Mr. N time for medication assistance when it issued its letter responding the Request,<sup>63</sup> at the hearing the Division agreed that Mr. N should receive medication assistance 21 times a week.<sup>64</sup>

### **C. The Reduction in Mr. N's PCA Services**

The Division bears the burden of proving, by the preponderance of evidence standard, that the PCA hours Mr. N has been receiving pursuant to the 2013 assessment should be reduced

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<sup>56</sup> 7 AAC 125.020(a). "Independent with Difficulty" – the minimum hands-on physical assistance standard applicable to IADLs -- is defined in AAC 125.020(a)(4) as a situation in which the "the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it." If a potential recipient's IADL self-performance score is a "1" – *i.e.*, independent with difficulty – then the support code must be a "3" or a "4" in order for the person to receive PCA services. *See* Ex. B, at p. 34.

<sup>57</sup> *See* Ex. E, at p. 31 (part of the CAT, adopted by reference in 7 AAC 125.02(a)(1) and 7 AAC 160.900).

<sup>58</sup> 7 AAC 125.028(b).

<sup>59</sup> *See* Ex. F, at pp. 3-4

<sup>60</sup> 7 AAC 125.028(c).

<sup>61</sup> Testimony of David Chadwick.

<sup>62</sup> Testimony of David Chadwick.

<sup>63</sup> Ex. D, at p. 7.

<sup>64</sup> Testimony of David Chadwick.

for the ADLs of transfers, locomotion with regard to access to medical appointments, dressing, toileting, personal hygiene, and bathing. The physical therapy notes that are part of the Accompanying Documents describe Mr. N as having “very mild left-sided weakness” due to his recent stroke at the time he arrived at Facility Z.<sup>65</sup> The physical therapy notes further state that Mr. N made “excellent gains” while during his inpatient rehabilitation program.<sup>66</sup> Most importantly, for purposes of this appeal, the physical therapy notes include a Discharge Status Level of Function (hereinafter, “Discharge Report”) for Mr. N.<sup>67</sup> According to the Discharge Report, Mr. N is able to perform transfers with supervision or set-up help;<sup>68</sup> requires supervision with regard to mobility,<sup>69</sup> bathing,<sup>70</sup> and toileting;<sup>71</sup> can dress with set-up help,<sup>72</sup> and can perform personal hygiene tasks with supervision.<sup>73</sup> There was no evidence presented during the hearings that rebutted the assessment of Mr. N’s capabilities in the Discharge Report with regard to these specific ADLs.

At the hearing, Ms. T – the power of attorney for Mr. N – opted to rely solely on the COI and the Accompanying Documents, included the Discharge Summary, as evidence in support of Mr. N’s appeal.<sup>74</sup> Mr. H testified briefly about why Mr. N had appealed the Division’s reduction of his PCA services but provided no evidence to rebut the assessment of Mr. N’s functional abilities set forth in the physical therapy notes accompanying the COI form.<sup>75</sup> These physical therapy notes, which detailed Mr. N’s progress from his June 25, 2014 admission to Facility Z until his July 4, 2014 discharge, provide persuasive evidence of Mr. N’s physical condition in July of 2014, when the Request was made. Specifically, the physical therapy notes describe Mr. N as only needing set-up, supervision, or cueing with regard to the following ADLs: the ADLs of transfers, dressing, toileting, personal hygiene, and bathing.<sup>76</sup> Because a Medicaid recipient can only receive PCA services for physical assistance with these tasks, the Division appropriately reduced Mr. N’s PCA time to eliminate PCA assistance for these particular ADLs.

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<sup>65</sup> Ex. F, at p. 10.

<sup>66</sup> Ex. F, at p. 21.

<sup>67</sup> Ex. F, at pp. 10-45.

<sup>68</sup> Ex. F, at pp. 17-18.

<sup>69</sup> Ex. F, at pp. 18, 22 & 41.

<sup>70</sup> Ex. F, at p. 20

<sup>71</sup> Ex. F, at p. 20.

<sup>72</sup> Ex. F, at p. 20; *see also* Testimony of Amanda McCrary.

<sup>73</sup> Ex. F, at p. 20.

<sup>74</sup> Testimony of U T.

<sup>75</sup> Testimony of David Chadwick.

<sup>76</sup> *See* Ex. F, at pp. 17-18, 20-24 & 26; *see also* Testimony of Amanda McCrary.



However, the Accompanying Documents did not address whether Mr. N would need PCA assistance with locomotion to medical appointments, although the physical therapy notes stated that Mr. N needed a one-person assist with stairs.<sup>77</sup> Because there was no evidence in the record to support the Division's conclusion that Mr. N no longer needs PCA services for locomotion to medical appointments, the Division has not met its burden of proof with regard to completely eliminating the PCA time that Mr. N has been receiving for this task. Testimony from Ms. T established the Mr. N has physician visits twice each month,<sup>78</sup> which is less than the once a week frequency indicated in his initial assessment.<sup>79</sup> Consequently, Mr. N should continue to receive PCA assistance with regard to locomotion to medical appointments but the frequency of such assistance should be reduced to two times a month.

## V. Conclusion

The Division's decision eliminating Mr. N's PCA services for the ADLS of transfers, dressing, toileting, personal hygiene, and bathing is upheld, but is modified by the Division's agreement at the hearing to continue to provide medication assistance to Mr. N in accordance with the 2013 assessment. The Division's decision to eliminate Mr. N's PCA time for locomotion to medical appointments is reversed, but is modified as to the frequency of such appointments consistent with the testimony on Mr. N's behalf. Mr. N's IADLs remain unchanged.

**DATED** this 30th day of June, 2015.

*Signed* \_\_\_\_\_

Kathleen A. Frederick  
Administrative Law Judge

## Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

**DATED** this 21st day of July, 2015.

By: *Signed* \_\_\_\_\_

Signature

Kathleen A. Frederick

Name

Chief Administrative Law Judge

Title

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

<sup>77</sup> See Ex. F, at pp. 10-44; see also Ex. F, at p. 43.

<sup>78</sup> See Testimony of U T.

<sup>79</sup> See Ex. F, at p. 7.