

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

In the Matter of: )  
 )  
C W ) OAH No. 15-0086-MDS  
 ) Agency No.

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**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. C W is eligible. The Division conducted an assessment on September 24, 2014 and subsequently decreased Ms. W's PCA service level from 23.5 hours per week to 1.0 hour per week effective December 22, 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 Ms. W 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. Ms. W's Medical Diagnoses and Health Problems**

Ms. W is 70 years old.<sup>2</sup> She lives in a single family residence with her husband, three adult children, six minor children, and one adult relative. Her primary language is Hmong. Ms. W's medical diagnoses include depressive disorder, memory loss, osteoporosis, and lumbago. She has pain in her shoulders, neck, back, and legs, which can sometimes be relieved with massage. She had cataracts in both her eyes. As of the date of the assessment, one of the cataracts had been surgically removed, and the other cataract was scheduled for removal in the near future.

Ms. W is unable to read or write, and her family assists with making all her financial and health care decisions.<sup>3</sup> When asked if she would be able to exit her home in the event of a fire, she replied that she would not be able to and that she "would just burn up."

At hearing, Ms. W testified that, since her prior (2011) assessment, some of her medical problems have remained unchanged, and some of have gotten worse, but none have gotten better.

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<sup>1</sup> Ex. D1.

<sup>2</sup> All factual findings in this paragraph are based on Exs. E1 - E3 unless otherwise stated.

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

***B. The Division's Findings from its 2011 and 2014 Assessments***

Ms. W was previously assessed as to her eligibility for PCA services on December 9, 2011 by Division nurse-assessor Shalome Cederberg, R.N.<sup>4</sup> Based on her assessment, Ms. Cederberg found that Ms. W required the following levels of assistance with her ADLs:<sup>5</sup> body mobility - required only supervision and set-up help (CAT score 1/1, frequency 0/0); transfers - required limited one-person physical assistance (CAT score 2/2, frequency 5/7); locomotion - required limited one-person physical assistance (CAT score 2/2, frequency 5/7); dressing - required limited one-person physical assistance (CAT score 2/2, frequency 2/7); eating - was independent, requiring only set-up assistance (CAT score 0/1, frequency 0/0); toilet use - required limited one-person physical assistance (CAT score 2/2, frequency 5/7); personal hygiene - required limited one-person physical assistance (CAT score 2/2, frequency 1/7); and bathing - required extensive one-person physical assistance (CAT score 3/2, frequency 1/7).

At the same 2011 assessment, Ms. Cederberg found that Ms. W required the following levels of assistance with her IADLs:<sup>6</sup> independent as to financial management (CAT score 0/0); required physical assistance with grocery shopping (CAT score 2/3); and was totally dependent as to light meal preparation, main meal preparation, light housework, routine housework, and laundry (CAT score 3/4).

Ms. W was most recently assessed for continuing PCA eligibility on September 24, 2014 by Sam Cornell, R.N. of DSDS.<sup>7</sup> Mr. Cornell's assessment is recorded and scored on the Division's Consumer Assessment Tool or "CAT." Mr. Cornell found that Ms. W has the following physical abilities and limitations:<sup>8</sup>

Functional assessment:<sup>9</sup> Mr. Cornell reported that Ms. W has good grip strength in her left and right hands, but that she cannot touch her hands together over her head or behind her back, cannot stand up with her hands crossed on her chest, and cannot touch her feet while in a sitting position. Mr. Cornell further reported that Ms. W told him that she had broken her left wrist about 30 years ago, and had difficulty using or moving her left arm. Finally, Mr. Cornell reported that he saw Ms. W move her left arm and hand getting out of her vehicle when arriving at the assessment, but that she sat with her left hand in her lap during the assessment.

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<sup>4</sup> Exs. F1 - F31.

<sup>5</sup> All factual findings in this paragraph are based on Exs. F6 - F11, and F18, unless otherwise stated.

<sup>6</sup> All factual findings in this paragraph are based on Ex. F26 unless otherwise stated.

<sup>7</sup> All factual findings in this paragraph are based on Ex. E unless otherwise stated.

<sup>8</sup> Exs. E4 - E12.

<sup>9</sup> All references in this paragraph are based on Ex. E4 unless otherwise stated.

Body Mobility / Bed Mobility:<sup>10</sup> Mr. Cornell reported that Ms. W told him that she sleeps with her spouse, does not have any night-time incontinence, and is able to slowly turn herself from side to side while in bed. Mr. Cornell reported that he did not observe Ms. W reposition herself in bed, but did observe Ms. W reposition herself "minimally" in a chair (scored 0/0).<sup>11</sup>

Transfers:<sup>12</sup> Mr. Cornell reported that Ms. W told him that she is unable to transfer out of bed by herself, and is generally unable to transfer to and from other surfaces, because of pain in her shoulders, neck, back, hips, and legs. Mr. Cornell reported that he observed that Ms. W's strength appeared to be fair and her balance appeared to be good, and stated he could find nothing in her medical records to support a difficulty standing / transferring (scored 1/1, frequency 0/0).

Locomotion:<sup>13</sup> Mr. Cornell reported that Ms. W told him (on one hand) that she is able to ambulate independently within her home by "wall-walking" and by using her cane, and has had no falls within the last six months, but that, on the other hand, she needs help daily to walk. Mr. Cornell reported that he observed Ms. W walk indoors and outdoors by using her cane and a one-hand contact guard provided by her daughter / PCA (scored 1/1, frequency 0/0).

Dressing:<sup>14</sup> Mr. Cornell reported that Ms. W told him that she cannot manipulate buttons or zippers since she broke her left wrist, is not able to participate much with dressing, and requires assistance with dressing on a daily basis. Mr. Cornell reported that he observed that Ms. W was dressed neatly / appropriately at the time of the assessment (scored 1/1, frequency 0/0).

Eating:<sup>15</sup> Mr. Cornell reported that Ms. W told him that (1) she cannot assist with preparation of meals, but (2) she can feed herself, and does not require a special diet or special utensils, and (3) does not have any chewing or choking problems. Mr. Cornell concluded that Ms. W's range of motion and fine motor skills indicated that she should be able to eat and drink independently (scored 0/1, frequency 0/0).

Toileting:<sup>16</sup> Mr. Cornell reported that Ms. W told him that she needs to be walked to the toilet, and needs assistance to transfer on and off the toilet, but that she can perform her post-toileting hygiene by herself. Mr. Cornell concluded that Ms. W's stated need for assistance with

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<sup>10</sup> All references in this paragraph are based on Ex. E6 unless otherwise stated.

<sup>11</sup> 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.

<sup>12</sup> All references in this paragraph are based on Ex. E6 unless otherwise stated.

<sup>13</sup> All references in this paragraph are based on Ex. E7 unless otherwise stated.

<sup>14</sup> All references in this paragraph are based on Ex. E8 unless otherwise stated.

<sup>15</sup> All references in this paragraph are based on Ex. E9 unless otherwise stated.

<sup>16</sup> All references in this paragraph are based on Ex. E9 unless otherwise stated.

toileting-related locomotion and transfers was not supported by recent medical records / reports (scored 1/1, frequency 0/0).

Personal Hygiene:<sup>17</sup> Mr. Cornell reported that Ms. W told him that she can wash her face and hands and brush her teeth, but that she requires assistance with her hair and feet. Mr. Cornell also reported that Ms. W had not previously indicated any foot sores or any need for foot care (scored 1/1, frequency 0/0).

Bathing:<sup>18</sup> Mr. Cornell reported that Ms. W told him that she washes the parts of her body that she can reach; that her caregiver must wash her hair and back; and that she takes a shower or bath every other day. Mr. Cornell noted that Ms. W reportedly used the same assistive devices as at the time of the prior assessment (scored 2/2, frequency 1/4).

The assessment also scored Ms. W as follows with regard to her Instrumental Activities of Daily Living (IADLs):<sup>19</sup> independent as to telephone use (CAT score 0/0); requires physical assistance with light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry (CAT score 2/3); and totally dependent on others for financial management (CAT score 3/4).

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

The Division performed the assessment at issue on September 24, 2014.<sup>20</sup> On December 12, 2014 the Division notified Ms. W that her PCA service level was being reduced from 23.5 hours per week to 1.0 hour per week effective December 22, 2014.<sup>21</sup> On December 30, 2014 Ms. W requested a hearing to contest the Division's reduction of her PCA services.<sup>22</sup>

Ms. W's hearing was held on March 24, 2015. Ms. W participated in the hearing by phone, represented herself, and testified on her own behalf using a Hmong interpreter. Ms. W's PCA agency representative, Mr. G N, also participated in the hearing by phone and testified on Ms. W's behalf. Gena O'Neal participated in the hearing by phone and represented the Division. Sam Cornell, R.N., and Health Program Manager David Chadwick, participated in the hearing by phone and testified for the Division. The record was left open through the day of the hearing to allow Ms. W to file a complete and more legible copy of the documents which her PCA agency had faxed to

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<sup>17</sup> All references in this paragraph are based on Ex. E10 unless otherwise stated.

<sup>18</sup> All references in this paragraph are based on Ex. E11 unless otherwise stated.

<sup>19</sup> All references in this paragraph are based on Ex. E26 unless otherwise stated.

<sup>20</sup> Ex. E.

<sup>21</sup> Ex. D1.

<sup>22</sup> Ex. C.

the Office of Administrative Hearings (OAH) on March 9, 2015.<sup>23</sup> However, no copy was ever received by OAH, and the record closed on March 25, 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>24</sup> [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>25</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>26</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>27</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>28</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>29</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>30</sup>

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<sup>23</sup> These documents were marked as Exhibit 1.

<sup>24</sup> 7 AAC 125.010(a).

<sup>25</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>26</sup> 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

<sup>27</sup> *See* 7 AAC 125.010(a).

<sup>28</sup> Ex. E.

<sup>29</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 July 15, 2015); *see also* Exs. B34 - B36; Ex. D8.

<sup>30</sup> *Id.*

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>31</sup>); **3** (the person requires extensive assistance<sup>32</sup>); or **4** (the person is totally dependent<sup>33</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>34</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>35</sup>

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

The Division is seeking to reduce Ms. W's existing PCA services level, which she has been receiving since 2011. The Division therefore has the burden of proving, by a preponderance of the evidence, that Ms. W's need for PCA services has decreased since her last assessment.<sup>36</sup>

The standard of review in a Medicaid "Fair Hearing" proceeding, as to both the law and the facts, is *de novo* review.<sup>37</sup> In this case, evidence was presented at hearing that was not available

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<sup>31</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).

<sup>32</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>33</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>34</sup> See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

<sup>35</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* sheet.

<sup>36</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).

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. W Eligible to Receive in This Case?***

The 2014 CAT scores with which Ms. W disagrees are listed in her Exhibit 1 at page 3. 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.<sup>38</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 5 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*.<sup>39</sup>

***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>40</sup> In 2011 Ms. Cederberg found that Ms. W required only supervision and set-up help with body mobility (CAT score 1/1, frequency 0/0). In 2014 Mr. Cornell found that Ms. W is independent with body mobility (CAT score 0/0, frequency 0/0). Ms. W did not challenge the Division's self performance or support scores for body mobility.<sup>41</sup> Accordingly, Ms. W is not currently eligible for PCA assistance with body mobility.

***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>42</sup> In 2011 Ms. Cederberg found that Ms. W required limited one-

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<sup>37</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).

<sup>38</sup> See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

<sup>39</sup> *Id.*

<sup>40</sup> 7 AAC 125.030(b)(1).

<sup>41</sup> Ex. 1 p. 3.

<sup>42</sup> 7 AAC 125.030(b)(2).

person physical assistance with transfers a total of 35 times per week (CAT score 2/2, frequency 5/7). In 2014 Mr. Cornell found that Ms. W requires only supervision and set-up help with transfers (CAT scored 1/1, frequency 0/0).

At hearing, the Division's witness testified that Ms. W's medical records did not support Ms. W's asserted need for assistance with transfers. However, the Division did not introduce any of these alleged medical documents into evidence. On the other hand, Ms. W was found to require limited assistance with transfers at her prior assessment, and she testified that her medical condition and functional abilities have not improved, and that she still requires limited assistance with transfers. Accordingly, the preponderance of the evidence indicates that Ms. W currently requires limited assistance with transfers.

With regard to frequency, Ms. W asserts that her transfer frequency should be increased to 49 per week. However, she did not explain why she requires a greater frequency of assistance with transfers now than she did at the time of her 2011 assessment. Accordingly, Ms. W's transfer frequency should remain at its 2011 level (CAT score 2/2, frequency 5/7).

### 3. Locomotion / Walking

For the ADL of locomotion, PCA time is allowed when a person requires assistance with walking (whether with the support of a walker, cane, gait belt, braces, crutches, or manual wheelchair), either between different locations in the recipient's home, outside the home to keep a medical or dental appointment, and/or when walking and simple exercises have been prescribed by a physician.<sup>43</sup> In 2011 Ms. Cederberg found that Ms. W required limited assistance with in-room locomotion (CAT score 2/2, frequency 5/7). In 2014 Mr. Cornell found that Ms. W requires only supervision and set-up help with in-room locomotion (CAT score 1/1, frequency 0/0).<sup>44</sup>

Ms. W was found to require limited assistance with locomotion at her prior assessment, and she testified that her medical condition and functional abilities have not improved, and that she still requires limited assistance with locomotion. At hearing, the Division's assessor acknowledged that Ms. W walked with a "contact guard" from her PCAs. The Division characterized a contact guard as constituting "supervision" or "cueing." However, for purposes of locomotion, limited assistance is defined by the CAT as receiving "physical help in guided maneuvering of limbs, or other non-weight bearing assistance" three or more times per week. Accordingly, a contact guard, which is essentially putting one or both hands on a person to help steady them, constitutes "non-weight

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<sup>43</sup> 7 AAC 125.030(b)(3).

<sup>44</sup> Ms. W did not challenge her scores or assessed frequencies for multi-level locomotion, or for locomotion to access medical appointments.



bearing assistance" rather than cueing. Accordingly, Ms. W still requires "limited assistance" with locomotion as that term is defined by the CAT.

With regard to frequency of assistance, Ms. W asserts that her frequency for locomotion should be increased to 56 times per week. However, she did not explain why she requires a greater frequency of assistance with locomotion now than she did at the time of her 2011 assessment. Accordingly, Ms. W's locomotion frequency should remain at its 2011 level (CAT score 2/2, frequency 5/7).

#### 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.<sup>45</sup> In 2011 Ms. Cederberg found that Ms. W required limited one- person physical assistance with dressing a total of 14 times per week (CAT score 2/2, frequency 2/7). In 2014 Mr. Cornell found that Ms. W requires only supervision and set-up help with dressing (CAT score 1/1, frequency 0/0).

The Division's position (that Ms. W's ability to dress herself has improved) is based primarily on its assertion that Ms. W's medical records do not indicate that she should require assistance with dressing. However, one of Ms. W's medical diagnoses is lumbago. Even discounting Ms. W's testimony regarding the limitations caused by her old left wrist injury, back pain can certainly decrease range of motion and balance to the extent that a person would need some assistance with dressing. Further, the Division's prior assessment found that Ms. W required limited assistance, and there is no evidence in the record indicating that Ms. W's condition has improved since that time. Accordingly, the preponderance of the evidence indicates that Ms. W still requires limited assistance with dressing.

With regard to frequency of assistance, Ms. W asserts that her frequency for assistance with dressing should remain at 14 times per week. There is no evidence in the record indicating that Ms. W requires a greater or lesser frequency. Accordingly, Ms. W's frequency for assistance with dressing should remain at its 2011 level (CAT score 2/2, frequency 2/7).

#### 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.<sup>46</sup> In 2011 Ms. Cederberg found that Ms. W was independent with eating,

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<sup>45</sup> 7 AAC 125.030(b)(4).

<sup>46</sup> 7 AAC 125.030(b)(5).

requiring only set-up assistance (CAT score 0/1, frequency 0/0). In 2014 Mr. Cornell likewise found that Ms. W requires only set-up assistance with eating (CAT score 0/1, frequency 0/0).

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

#### 6. Toilet Use

For the ADL of toilet use, PCA time is limited by regulation to time spent moving to and from the toilet, transfers on and off the toilet, general hygiene care of a colostomy, ileostomy, or external catheter, and inserting and removal of a nonmedicated suppository, digital stimulation, or other routine incontinence care.<sup>47</sup> The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.<sup>48</sup> In 2011 Ms. Cederberg found that Ms. W required limited assistance with toilet use 35 times per week (CAT score 2/2, frequency 5/7). In 2014 Mr. Cornell found that Ms. W is requires only supervision and set-up help with toileting (CAT score 1/1, frequency 0/0).

The Division's position (that Ms. W's ability to use the toilet by herself has improved) is based primarily on its assertion that Ms. W's medical records do not indicate that she should require assistance with toileting. Again, however, one of Ms. W's medical diagnoses is lumbago. Even discounting Ms. W's testimony regarding the limitations caused by her old left wrist injury, back pain can certainly decrease range of motion and balance to the extent that a person would need some assistance with toileting-related transfers. Further, the Division's prior assessment found that Ms. W required limited assistance with toilet use, and there is no evidence in the record indicating that Ms. W's condition has improved since that time. Accordingly, the preponderance of the evidence indicates that Ms. W still requires limited assistance with toilet use.

With regard to frequency of assistance, Ms. W asserts that her need for help with toileting has increased from 35 times per week to 49 times per week. Most adults urinate about once every two to four hours when awake, for a total of about six to eight times in a 24-hour period.<sup>49</sup> Ms. W's request falls exactly in the middle of this average. Accordingly, the preponderance of the evidence indicates that Ms. W's CAT score for toileting should be 2/2, frequency 7/7.

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<sup>47</sup> 7 AAC 125.030(b)(6).

<sup>48</sup> 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).

<sup>49</sup> See article by Dr. Jennifer Shu at <http://www.cnn.com/2011/HEALTH/expert.q.a/11/20/male.urination.frequency.shu/> (accessed on July 16, 2015). My own observations are consistent with Dr. Shu's findings.

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.<sup>50</sup> In 2011 Ms. Cederberg found that Ms. W required limited assistance with personal hygiene a total of seven times per week (CAT score 2/2, frequency 1/7). In 2014 Mr. Cornell found that Ms. W requires only supervision and set-up help with personal hygiene (CAT score 1/1, frequency 0/0).

The Division's prior assessment found that Ms. W required limited assistance with personal hygiene; Ms. W asserts that she still requires limited assistance with personal hygiene; and there is no evidence in the record indicating that Ms. W's condition has improved since her prior assessment. Accordingly, the preponderance of the evidence indicates that Ms. W still requires limited assistance with personal hygiene tasks.

With regard to frequency, Ms. W asserts only that her frequency of assistance with personal hygiene should remain at its existing level of seven times per week. The Division presented no evidence at hearing to show that Ms. W's required frequency of assistance with personal hygiene has decreased since her 2011 assessment. Accordingly, Ms. W's CAT scores for personal hygiene must remain at 2011 levels (CAT score 2/2, frequency 1/7).

8. Bathing

For the ADL of bathing, PCA time is allowed for "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."<sup>51</sup> In 2011 Ms. Cederberg found that Ms. W required extensive assistance with bathing (CAT score 3/2, frequency 1/7). In 2014 Mr. Cornell found that Ms. W requires limited assistance with bathing four times per week (CAT score 2/2, frequency 1/4).

There is no evidence in the record indicating that Ms. W's need for assistance with bathing has decreased since her last assessment, and her diagnosis of lumbago is sufficient to support Ms. W's claimed need for weight-bearing assistance with bath-related transfers. Accordingly, the preponderance of the evidence indicates that Ms. W still requires extensive assistance with bathing (CAT score 3/2).

With regard to frequency, Ms. W asserts that her frequency of assistance with bathing should remain at its existing level of seven times per week. However, the preponderance of the

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<sup>50</sup> 7 AAC 125.030(b)(7).

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

evidence indicates that Ms. W has decreased the frequency with which she takes a full bath to every other day / four times per week. Accordingly, Ms. W's CAT scores for bathing should be 3/2, frequency 1/4).

9. Instrumental Activities of Daily Living (IADLs)

Pursuant to PCA regulation 7 AAC 125.040(a)(13)(C), a person is not entitled to PCA time for assistance with Instrumental Activities of Daily Living (IADLs) if other recipients living in the same residence already receive IADL services. The undisputed hearing testimony of Mr. Cornell and Mr. Chadwick was that Ms. W's husband already receives PCA time for assistance with the household's IADLs. Accordingly, under 7 AAC 125.040(a)(13)(C), Ms. W is not entitled to PCA time for assistance with IADLs because this would result in a duplication of services.

**IV. Conclusion**

Based on the evidence in the record, the self-performance and support scores which the Division assigned to Ms. W were partially correct, but were also partially incorrect. Likewise, the Division's assessment of the frequencies of assistance for which Ms. W is eligible was correct as to some ADLs, but was incorrect as to other ADLs. Accordingly, the Division's determination of Ms. W's PCA service level is affirmed in part and reversed in part.

DATED this 17<sup>th</sup> day of July, 2015.

Signed  
Jay D. Durych  
Administrative Law Judge

**Adoption**

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

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

DATED this 28<sup>th</sup> 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.]