

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

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|-------------------|---|---------------------|
| In the Matter of: |) | |
| |) | OAH No. 15-0149-MDS |
| W G |) | Agency No. |
| _____ |) | |

DECISION

I. Introduction

W G was receiving 27.75 hours per week of personal care assistance (PCA) services when he was reassessed to determine his continued eligibility for those services in 2014. Based primarily on a reassessment visit on June 26, 2014, the Division of Senior and Disabilities Services (Division) issued a decision on October 30, 2014 notifying Mr. G that his PCA services would be reduced to 6.25 hours per week. Some of the reduction resulted from regulatory changes since his prior assessment, or were related to what the Division perceived as functional improvements in Mr. G’s condition. Mr. G requested a hearing.¹

Mr. G’s hearing was held on May 20, 2015. Mr. G was represented by his daughter K G, who holds his power of attorney. Ms. G testified on Mr. G’s behalf, as did W W, who is the owner of the PCA agency that provides assistance to Mr. G. Darci Shaffer represented the Division. Olga Ipatova and Denise Kichura, R.N., testified for the Division.

Based upon the evidence presented, the Division’s assessment of Mr. G’s needs is upheld.

II. The PCA Service Determination Process

The Medicaid program authorizes PCA services for the purpose of providing “physical assistance with activities of daily living (ADLs), physical assistance with instrumental activities of daily living (IADLs), and other services based on the physical condition of the recipient . . .”² 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.”³

¹ Mr. G requested a hearing on November 3, 2014. The Division referred the case to the Office of Administrative Hearings for hearing on January 26, 2015.

² 7 AAC 125.010(a).

³ 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

The Division uses the Consumer Assessment Tool, or “CAT”, as a methodology to score eligibility for the PCA program, and the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.⁴ In general, if certain levels of assistance are required, the regulations prescribe a fixed number of PCA minutes to be assigned per instance of that activity.

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If a person requires some degree of hands-on physical assistance with any one of these ADLs or IADLs, then the person is eligible for PCA services. Once eligibility is established, time for additional ADLs and IADLs, as well as certain other covered services, can be added to the PCA authorization.

The ADLs measured by the CAT are bed mobility, transfers (non-mechanical), transfers (mechanical), locomotion (in room), locomotion (between levels), locomotion to medical appointments, dressing, eating, toilet use, personal hygiene, personal hygiene-shampooing, and bathing.⁵ The CAT numerical coding system for ADLs has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular ADL. The possible codes are: **0** (the person is independent⁶ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁷); **3** (the person requires extensive assistance⁸); **4** (the person is totally dependent⁹). There are also codes which are not used in calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).¹⁰

The second component of the CAT scoring system is the *support code*. These codes rate the degree of assistance that a person requires for a particular ADL. The possible codes are: **0**

“supervision” as “observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL.” *Id.*

⁴ See 7 AAC 125.024(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

⁵ Ex. E, pp. 6 – 11.

⁶ A self-performance code of 0 is classified as “[I]ndependent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days.” See Ex. E, p. 6.

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

⁸ According to 7 AAC 125.020(a)(2), extensive assistance with an ADL “means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity.”

⁹ According to 7 AAC 125.020(a)(3), dependent as to an ADL, or dependent as to an IADL, “means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity.”

¹⁰ Ex. E, p. 18.

(no setup or physical help required); **1** (only setup help required); **2** (one-person physical assist required); **3** (two or more person physical assist required). Again, there are additional codes which are not used to arrive at a service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).¹¹

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, light housekeeping, laundry (in-home), laundry (out-of-home), and shopping.¹²

The CAT codes IADLs slightly differently than it does ADLs. The *self-performance codes* for IADLs are: **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person). There is also a code that is not used to arrive at a service level: **8** (the activity did not occur).¹³

The *support codes* for IADLs are also slightly different than the support codes for ADLs. The support codes for IADLs are: **0** (no support provided); **1** (supervision / cueing provided); **2** (setup help); **3** (physical assistance provided); and **4** (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional code that is not used to arrive at a service level: **8** (the activity did not occur).¹⁴

In order to qualify for PCA services, a person must be coded as requiring limited or a greater degree of physical assistance (self-performance code of 2, 3, or 4, and a support code of 2, 3, or 4) in any one of the ADLs of transfers, locomotion, eating, toilet use, dressing or bathing. Similarly, if a person is coded as requiring some degree of hands-on assistance¹⁵ (self-performance code of 1, 2, or 3, and a support code of 3 or 4) with any one of the IADLs of light or main meal preparation, light housework, routine housework, grocery shopping or laundry,

¹¹ Ex. E, p. 18.

¹² Ex. E, p. 26.

¹³ Ex. E, p. 26.

¹⁴ Ex. E, p. 26.

¹⁵ For the purposes of this discussion, “hands-on” assistance does not include supervision/cueing or set-up assistance (support codes of 1 or 2). See Ex. E, p. 26.

then he or she is eligible for PCA services.¹⁶ It is undisputed that Mr. G remains eligible for PCA services.

The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each occurrence of a particular activity. For instance, if a person is coded as requiring extensive assistance (code of 3) with bathing, he or she would receive 22.5 minutes of PCA service time every day he or she was bathed.¹⁷

For covered services beyond assistance with ADLs and IADLs, specific rules apply that will be discussed below.

III. Background Facts

Mr. G is 72 years old. He lives with family. His health conditions include sleep apnea, hypoxemia, lumbar/sacral disc degeneration, spinal stenosis – lumbar, sciatica chronic pain, osteoarthritis, chronic airway obstruction, enlarged prostate, gout, diabetes, and he is morbidly obese.¹⁸

Mr. G was receiving 27.75 hours of PCA services per week based on a 2006 assessment. When Mr. G was assessed back in 2006, he had recently had surgery (laparotomy) to remove a kidney stone, and he weighed 400 lbs.¹⁹ The 2006 assessor observed that Mr. G was not able to sit up in bed without “much assistance,” was in pain (“winced”), and was extremely short of breath, and told the assessor that he could not stand. He also had severe edema in his legs and open skin on his feet.²⁰ The 2006 assessment found that he used a walker and required extensive assistance with bed mobility, transfers, locomotion, dressing, eating, toilet use, and personal hygiene.²¹ Mr. G was reassessed on June 26, 2014 to determine his on-going eligibility for the PCA program, and his benefit level. That assessment found that he used a cane, not a walker, and that he was independent with bed mobility, required supervision with transfers and locomotion, was independent with dressing, eating, toilet use, and personal hygiene, although he did need transfer assistance while bathing.²² The assessor also determined that Mr. G did not require physical hands-on assistance with light meal preparation, but that he needed some hands-

¹⁶ Ex. E, p. 31.

¹⁷ See 7 AAC 125.024(a)(1) and the Division’s *Personal Care Assistance Service Level Computation* chart contained at Ex. B, pp. 34 - 36.

¹⁸ Ex. E, pp. 1, 3; Ex. G.

¹⁹ Ex. F, pp. 1, 7.

²⁰ Ex. F, p. 1.

²¹ Ex. F, p. 4.

²² Ex. E, pp. 6 – 11.

on physical assistance with main meal preparation, shopping, light housework, and laundry.²³ Assistance for taking vital signs, glucose levels, and documentation was eliminated.²⁴ The 2014 assessment states that Mr. G weighs 200 lbs.²⁵ However, Mr. G's medical records clearly show that he weighed 299 lbs. on November 5, 2014.²⁶ His medical records for late 2014 and early 2015 indicate that he is not having any lower extremity edema or foot problems.²⁷

IV. Discussion

When the Division is seeking to reduce or eliminate a benefit that a citizen is already receiving, the Division has the overall burden to prove, by a preponderance of the evidence,²⁸ facts that show the citizen's level of eligibility has changed.²⁹ In the context of PCA services, the showing required of the Division is that the recipient has had a "material change of condition."³⁰ The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,³¹ including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.³² In particular areas where a citizen seeks to increase services or add services that were not previously provided, the citizen has the burden of proof.³³

The areas in dispute, which are each addressed below, are: transfers, locomotion, locomotion to access medical appointments, dressing, toileting, personal hygiene, bathing, the IADLs of main meal preparation and laundry, medical escort, medication assistance, and prescribed range of motion and walking exercises, prescribed foot care, and vital signs.

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²³ Ex. E, p. 26.

²⁴ Ex. D, pp. 4, 10.

²⁵ Ex. E, p. 9.

²⁶ Ex. G, p. 9.

²⁷ Ex. G.

²⁸ Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

²⁹ 7 AAC 49.135.

³⁰ 7 AAC 125.026(a). This is a term of art that encompasses not only changes in the patient's situation, but also changes in regulations affecting the authorized level of services. See 7 AAC 125.026(d).

³¹ 2 AAC 64.290(a)(1).

³² See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

³³ 7 AAC 49.135.

1. Transfers

Transfers are defined as how a “person moves between surfaces,” such as from a sitting to a standing position.³⁴ Mr. G was previously provided extensive assistance (self-performance code of 3) for transfers 28 times weekly, based upon the 2006 assessment and the assessor’s observation and statements made during that assessment.³⁵ In 2014, the assessor found Mr. G could transfer with only supervision assistance, based upon Mr. G’s statements, and her observation of Mr. G transferring multiple times using furniture for support.³⁶

K G, Mr. G’s daughter, testified that he had chronic back pain and required extensive assistance during transfers. Ms. G’s testimony is not corroborated by the medical evidence, which does not mention an inability to transfer. Although, Mr. G undeniably has chronic back pain, chronic knee pain, and gout, no limitations are noted on his ability to transfer or stand up. In addition, Mr. G’s 2006 assessment, which noted the need for extensive assistance with transfers, was conducted when he weighed 400 lbs., had recently had surgery, and was having problems with his feet. In 2014, he weighed 300 lbs., 100 lbs. less, was not having foot problems, and had not had a recent surgery. Given these changes, the weight of the evidence demonstrates that it is more likely true than not true that Mr. G’s condition has improved so that he no longer requires hands-on physical assistance with transfers. Accordingly, the Division has met its burden of proof and shown that Mr. G’s transfer assistance should be eliminated.

2. Locomotion

Locomotion is the act of moving about in the home. It may involve the use of an assistive device such as a cane, walker, or a wheelchair.³⁷ In 2006, Mr. G was found to require extensive assistance (self-performance code of 3) for locomotion 35 times weekly, based upon the assessor’s observation and statements made during that assessment. In 2014, the assessor found Mr. G to be able to locomote with supervision, based upon Mr. G’s statements and her observation of Mr. G walking independently using a cane.³⁸

Ms. G’s testimony was substantially different. It provided that Mr. G has to be provided either limited or extensive assistance four times daily for walking. Her testimony is directly

³⁴ Ex. E, p. 6.

³⁵ Ex. F, pp. 1-2, 4, 16. The 2006 PCA service plan provides for transfer assistance 35 times per week. Ex. F, p. 16. However, at the time of the 2014 assessment, Mr. G was receiving transfer assistance 28 times weekly. Ex. D, p. 10.

³⁶ Ms. Kichura’s testimony; Ex. E, p. 6.

³⁷ Ex. E, p. 7.

³⁸ Ms. Kichura’s testimony; Ex. E, p. 7.

contradicted by Mr. G's medical records, which stated that Mr. G told his doctor that he walks daily for exercise, and that he walks outside the house when he goes to church. Although Mr. G told his doctor he experiences shortness of breath while walking, the medical records do not contain any mention of an inability to walk without assistance.³⁹ Mr. G weighs 100 lbs. less than he did in 2006 and does not experience the foot problems he was experiencing in 2006. The absence of any reference to a need for locomotion assistance, the medical records which reference walking for exercise and leaving the home to go to church, the substantial weight loss and the absence of foot problems corroborate the assessor's observations, and render them more persuasive than Ms. G's testimony. As a result, the Division has met its burden of proof to eliminate Mr. G's assistance with locomotion; it is more likely true than not true that he no longer requires it.

3. Locomotion to Access Medical Appointments

Mr. G was previously provided locomotion to access medical appointments once weekly.⁴⁰ Based upon the locomotion evidence in this case, as recited above, the Division has met its burden of proof and shown that it is more likely true than not true that Mr. G no longer requires physical assistance with locomotion to access his medical appointments.

4. Dressing

Dressing is how a "person puts on, fastens, and takes off all items of street clothing."⁴¹ In 2006, Mr. G was found to require extensive assistance (self-performance code of 3) for dressing.⁴² In 2014, the assessor found Mr. G to be able to dress himself without requiring physical assistance, based upon Mr. G's statement, and her observation of Mr. G's range of motion and grip strength.⁴³

Ms. G testified that Mr. G requires dressing assistance. However, Mr. G's medical records do not show physical impairments that limit his ability to dress himself. While he has pain, and experiences shortness of breath, there is no indication his functionality is limited to the point where he cannot dress himself. The assessor's finding is therefore considered more

³⁹ Ex. G, which contains notes from August 6, 2014, November 5, 2014, and February 4, 2015 medical appointments.

⁴⁰ Ex. D, p. 10.

⁴¹ Ex. E, p. 8.

⁴² Ex. F, p. 4.

⁴³ Ms. Kichura's testimony; Ex. E, p. 8.

persuasive. The Division has therefore met its burden of proof on this point and demonstrated that it is more likely true than not true that Mr. G no longer requires assistance with dressing.

5. Toileting

Toileting is a complex process that combines locomotion, transfers, dressing, and cleansing.⁴⁴ Mr. G was provided extensive (weight-bearing) assistance (self-performance code of 3) with toileting 28 times per week.⁴⁵ Upon his 2014 reassessment, he was found to be independent with toileting, based upon Mr. G's statements to the assessor, and the assessor's specific observation of him walking to and transferring on and off the toilet. His time for assistance was eliminated.⁴⁶

As found above, Mr. G does not require any assistance with locomotion, transfers or dressing. The evidence also does not show that he requires help with cleansing himself. Accordingly, the Division has met its burden of proof and established that it is more likely true than not true that Mr. G no longer requires assistance with toileting.

6. Personal Hygiene and Medication Assistance

a. Personal Hygiene

Personal hygiene includes items such as combing/brushing hair, shaving, brushing teeth, applying makeup, washing/drying face/hands and perineum. It does not include bathing or showering.⁴⁷ Mr. G was previously provided extensive assistance (self-performance code of 3) seven times weekly.⁴⁸ Upon his 2014 reassessment, based upon his statements to the assessor and the assessor's observation of his upper body range of motion, and use of his hands, he was found to be independent, needing no assistance, and his time for assistance was eliminated.⁴⁹ Personal hygiene tasks rely upon a person's upper extremities' range of motion and an ability to use his hands.

Ms. G testified that Mr. G continues to require personal hygiene assistance, due primarily to difficulty using his hands, which is occasioned by his osteoarthritis. She also mentioned that his gout as a factor; his gout flares up once or twice per month.⁵⁰ However, the medical evidence in this case shows no real impediment to either Mr. G's upper extremities' range of motion or his

⁴⁴ Ex. E, p. 9.

⁴⁵ Ex. D, p. 10; Ex. F, pp. 2, 5.

⁴⁶ Ex. D, p. 3; Ex. E, p. 9.

⁴⁷ Ex. E, p. 10.

⁴⁸ Ex. F, pp. 2, 5.

⁴⁹ Ex. D, p. 3; Ex. E, p. 10; Ms. Kichura's testimony.

⁵⁰ Ms. G's testimony.

use of his hands. The weight of the evidence therefore demonstrates that the Division has met its burden of proof, and shown that it is more likely true than not true that Mr. G no longer requires assistance with personal hygiene.

b. Medication Assistance

Mr. G did not receive medication assistance.⁵¹ He is now requesting it three times daily. Because this is a new service for him, he would have the burden of proof.⁵² Ms. G testified that he has a med set, and she places his medications on the table, at which point he can take the medications himself. Medication assistance is linked to the personal hygiene score. A person who receives a personal hygiene score of limited assistance (self-performance code of 2) or higher **and** requires some degree of assistance (scores of 1, 2, 4, 5, 6) with medication is eligible for medication assistance.⁵³ As found above, Mr. G does not require personal hygiene assistance. It should also be noted that Ms. G does not prepare his medications for him: they are in a med set and she just places them out for him. As a result, Mr. G is not eligible for medication assistance.

7. Bathing

Bathing involves transfers in and out of the tub or shower and the actual bathing process. It also includes sponge baths. It does not include washing a person's back or hair.⁵⁴ Mr. G was previously provided extensive assistance (self-performance code of 3) with bathing.⁵⁵ Mr. G's 2014 assessment found that he had to be "guided into the shower/tub" but was able to bathe himself. As a result, he was found to require limited assistance (self-performance code of 2) with transfers into the tub, 7 times weekly.⁵⁶ Ms. G testified that Mr. G needed physical assistance with not only transferring into the tub, but also with bathing himself. This would be extensive assistance (self-performance code of 3), as it is measured for bathing.⁵⁷ The evidence does not demonstrate that Mr. G's functionality is limited to such an extent that he is unable to bathe himself. In addition, when he was found in 2006 to require extensive assistance, he weighed 400 lbs., which undoubtedly limited his range of motion. Although, he currently weighs 300 lbs., the loss of the 100 lbs. would have substantially increased his range of motion,

⁵¹ Ex. D, p. 10.

⁵² 7 AAC 49.135.

⁵³ Ex. B, pp. 34 - 35; Ex. E, p. 20.

⁵⁴ Ex. E, p. 11.

⁵⁵ Ex. D, p. 10; Ex. F, p. 4.

⁵⁶ Ms. Kichura's testimony; Ex. D, pp. 4, 10; Ex. E, p. 11.

⁵⁷ Ex. E, p. 11.

and rendered it much easier for him to bathe himself. As a result, the Division has met its burden of proof and demonstrated that it is more likely true than not true that Mr. G's assistance with bathing should be reduced to limited assistance with transfers (self-performance code of 2) 7 times per week.

8. Instrumental Activities of Daily Living

Mr. G was previously assessed as being dependent for assistance with all of his IADLS (light meal preparation, main meal preparation, shopping, light housework, and laundry).⁵⁸ In 2014, the Division found that he was able to prepare light meals with difficulty, if some supervision or cueing was provided (self-performance code of 1, support code of 1) and his assistance with that task was eliminated.⁵⁹ He was found to be not completely dependent, but still requiring hands-on physical assistance (self-performance code of 2, support code of 3) with main meal preparation, light housework, shopping, and laundry.⁶⁰ Mr. G only disagreed with the Division's findings on main meal preparation and laundry.

On inquiry, Ms. G stated that Mr. G could not prepare his main meals, however, she also stated that it was not customary for someone such as her father to prepare meals, and that she always served him his meals.⁶¹ However, the facts of this case demonstrate that Mr. G does have the physical functionality to participate to some degree in meal preparation. Accordingly, the Division has met its burden of proof on this point.

With regard to laundry, Mr. G does not perform laundry because it is customary for him not to perform that task. However, as testified to by Ms. G, he could fold clothes.⁶² Because he can participate to some degree with laundry, the Division has met its burden of proof.

9. Medical Escort

Medical escort is provided for persons who require assistance "travelling . . . **and** conferring" with medical or dental staff during routine appointments.⁶³ The 2014 assessment found that he did not require medical escort assistance.⁶⁴ The medical records, supplied by Mr. G for hearing, do not contain a diagnosis of dementia or a communication difficulty that would

⁵⁸ Ex. D, p. 10; Ex. F, p. 10.

⁵⁹ Ms. Kichura's testimony; Ex. D, p. 10; Ex. E, p. 26.

⁶⁰ Ms. Kichura's testimony; Ex. D, p. 10; Ex. E, p. 26.

⁶¹ Ms. G's testimony.

⁶² Ms. G's testimony.

⁶³ 7 AAC 125.030(d)(9) (emphasis supplied).

⁶⁴ Ex. D, p. 10; Ex. E, p. 5.

justify a need for someone to confer with medical staff on his behalf.⁶⁵ Mr. G is not an English speaker, however, that alone does not justify an escort because telephone translation services are widely available and used in medical settings.

Because Mr. G does not need someone to “confer” with medical staff on his behalf, the Division has met its burden of proof and demonstrated that it is more likely true than not true that he does not require medical escort assistance.

10. Vital Signs/Glucose Levels/Documentation

Mr. G was previously provided assistance with taking his vital signs, checking his glucose levels, and for documentation.⁶⁶ Ms. G checks his blood sugar levels several times daily.⁶⁷ However, after the 2014 assessment, the Division completely eliminated any assistance for Mr. G for taking vital signs, checking glucose levels, or documentation. The Medicaid PCA regulations have been changed several times since 2006. They now require a physician’s order before PCA time can be allowed for these tasks.⁶⁸ The record contains a physician’s order, dated January 28, 2014, for taking vital signs. However, taking of vital signs, checking glucose levels, or completing documentation is linked to the personal hygiene score. If a person is independent with person hygiene, as Mr. G is, then he is not entitled to receive any assistance with these tasks.⁶⁹ As a purely legal matter, given the previous finding on personal hygiene, the Division correctly eliminated Mr. G’s assistance with these tasks.

11. Prescribed Tasks

PCA services are available for persons who have a prescription for, and need help with, simple exercises, walking exercises, range of motion/stretching exercises, or foot care.⁷⁰ Mr. G was not previously provided PCA assistance for range of motion exercises, walking exercises or foot care.⁷¹

There is a physician’s prescription for these in the record dated January 28, 2014. The “PCA Prescriber Form” completed by the physician is confusing and the handwriting is very poor. The form provides for assistance with each of these tasks three times per week. However, under the “duration” column, which would normally contain the number of minutes for each

⁶⁵ Ms. G’s physician’s notes from October 13, 2014 (faxed on March 11, 2015).

⁶⁶ Ex. D, p. 10.

⁶⁷ Ms. G’s testimony.

⁶⁸ 7 AAC 125.030(d)(3).

⁶⁹ Ex. B, p. 35.

⁷⁰ 7 AAC 125.030(b)(3)(B), (d)(5), and (e)(2); Ex. B, p. 36.

⁷¹ Ex. D, p. 10.

time the assistance was provided, it contains “3 mo,” which is reasonably interpreted as three months, rather than a number of minutes.⁷² Then, under the column entitled “Length of Prescription,” it reads “1 yr.” It is not possible to determine the intent of the physician, given the inherent contradiction on the document: a duration of three months and the length of one year for the prescription is inconsistent. The most reasonable reading of the document is that the physician wanted Mr. G to have PCA assistance with range of motion exercises, walking exercises, and foot care for a three month period. However, that three month period would have expired at the end of April 2014, which was before the assessment was conducted.

Mr. G has the burden of proof on this point, because he is seeking to add assistance for these prescribed tasks.⁷³ Because the prescription for these tasks expired before the assessment was conducted and acted upon, Mr. G has not met his burden.

V. Conclusion

The Division’s reduction of Mr. G’s PCA services is upheld.

DATED this 27th day of July, 2015.

Signed

Lawrence A. Pederson
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 11th day of August, 2015.

By: *Signed*

Name: Cheryl Mandala
Title: Administrative Law Judge

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

⁷² It seems unlikely that a physician would prescribe only three minutes of time for walking exercise or range of motion exercises three times per week.

⁷³ 7 AAC 49.135.