

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

In the Matter of:)
)
 V M) OAH No. 15-0184-MDS
) Agency No.

DECISION

I. Introduction

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (Division) correctly assessed the amount of Medicaid Personal Care Assistant (PCA) services for which Ms. V M is eligible.¹ The Division decreased Ms. M's PCA services from 40.25 hours per week to 13.5 hours per week effective November 22, 2014.²

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

II. Facts

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

Ms. M is 82 years old³ and weighs about 110 pounds.⁴ She lives alone in a third floor apartment that has elevator access.⁵ Her primary language is Korean.⁶ Her medical diagnoses include anemia, cardiac pacemaker, chronic pain syndrome, congestive heart failure, deformity of the back and joints, edema, hyperlipidemia, hypertension, hypothyroidism, intervertebral disc disorder of the lumbar spine with myelopathy, lumbago, muscle spasms, osteoarthritis, sciatica, headaches, dementia, and memory loss.⁷

On March 5, 2014 Ms. M had a medical appointment / examination with X D, ANP.⁸ The notes from that examination indicate that Ms. M had shingles in the past "that she is still not done with," and that she was prescribed Acyclovir to treat it.

On March 11, 2015 Ms. M complained to ANP D that she was having headaches almost every day.⁹ ANP D recommended that she have a CT scan taken of her brain.

¹ Ex. D.

² Ex. D1.

³ Ex. E1.

⁴ Exs. E9, E23.

⁵ Ex. E1.

⁶ Ex. E1.

⁷ Ex. E3, Ex. 1 p. 1.

⁸ All factual findings in this paragraph are based on Ex. 1 p. 5 and Ex. G10 unless otherwise stated.

On April 20, 2015 Ms. M had another medical appointment / examination with ANP D.¹⁰

The notes from that examination state in relevant part as follows:

[Lady] with a complex cardiac history; she sees cardiology on a regular basis. She has aortic valve replacement, mitral insufficiency, ascending aortic aneurism, proximal ventral tachycardia, pacemaker in situ, congestive heart failure with edema in the [lower extremities] . . . anemia, [and] severe fatigue related to anemia and DOE I also noticed that she has severe atrial calcification in the carotids and the basilar artery She has noted cranial atrophy, atherosclerotic changes of the brain. I would like to start her on a better statin I also want her to have [increased] physical activity as monitored by her PCA and want her to have monitored walking activity with her walker. She has decreasing range of motion and is becoming more dependent on family members and PCA for assistance. She is at great risk of falling and I advised that she use a walker for all her ambulation needs. I would like her to get a four wheeled walker with seat and basket. I see that she [had] a fall last year [and that] her whole side had severe contusions.

Z Q is Ms. M's daughter-in-law.¹¹ At hearing, Ms. Q testified in relevant part:

1. She has known Ms. M for about 20 years, and currently sees her every day. She feels that, in general, Ms. M's condition has gotten worse since her last assessment.
2. Ms. M spends most of her time in bed, and does not require assistance repositioning herself in bed.
3. Ms. M does require assistance with transfers. Sometimes she can pull herself up, but sometimes she needs someone to give her weight-bearing assistance. She needs some level of assistance with transfers about 10 times per day.
4. Ms. M moves around her apartment using a walker. Sometimes someone must hold on to Ms. M, while she is using her walker, in order to balance her. This "balancing assistance" must be given about 10 times per day.
5. Ms. M is able to put on and take off shirts or blouses. However, she needs assistance taking her pants, socks, and shoes on and off.
6. Ms. M is able to eat solid food by herself, and is also able to drink liquids by herself using a straw.
7. Ms. M needs assistance to partially disrobe when using the toilet. She then needs assistance lowering herself down to the toilet. Once she has finished using the toilet, she sometimes (but not always) needs help cleaning herself. Finally, Ms. M needs assistance getting back up off the toilet. She needs help with toileting eight to ten times per day; of these, she needs weight-bearing assistance with toileting three or more times per week.

⁹ All factual findings in this paragraph are based on Ex. 1 p. 15 and Ex. G20 unless otherwise stated.

¹⁰ All factual findings in this paragraph are based on Ex. 1 p. 1 unless otherwise stated.

¹¹ All factual findings in these numbered paragraphs are based on Ms. Q's hearing testimony.

8. Ms. M is able to brush her teeth and comb her hair by herself. She can wash her face and hands by herself about half the time; the other 50% of the time she requires assistance. She also needs help trimming her fingernails and toenails, and applying lotions.

9. Ms. M needs "balancing assistance" when getting into and out of the bath tub. She can wash her face and the front of her body herself, but needs assistance washing her back and the lower part of her body.

10. Ms. M is not able to prepare any meals for herself or perform any housework.

B. The Division's Findings from its 2012 and 2014 Assessments

Ms. M was previously assessed as to her eligibility for PCA services on January 5, 2012 by Division nurse-assessor S O, R.N.¹² Initially, in her 2012 assessment, Ms. O referenced ADL scores from the then-prior (presumably 2011) assessment.¹³ Ms. O reported that the scores from the 2011 assessment were as follows: body mobility - required limited assistance (CAT score 2/2);¹⁴ transfers - required extensive assistance (CAT score 3/2); locomotion - required limited assistance (CAT score 2/2); dressng - required limited assistance (CAT score 2/2); eating - was independent, requiring only set-up assistance (CAT score 0/1); toilet use - required extensive assistance (CAT score 3/2); personal hygiene - required limited assistance (CAT score 2/2); and bathing - required extensive assistance (CAT score 3/2).

Based on her own 2012 assessment, Ms. O found that Ms. M required the following levels of assistance with her ADLs:¹⁵ body mobility - required limited assistance (CAT score 2/2, frequency 4/6); transfers - required extensive assistance 56 times per week (CAT score 3/2, frequency 8/7); locomotion - required extensive assistance 56 times per week (CAT score 3/2, frequency 8/7); locomotion to access medical appointments - required extensive assistance twice per week (CAT score 3/2, frequency 2/1); dressng - required limited assistance 14 times per week (CAT score 2/2, frequency 2/7); eating - required limited assistance once per day (CAT score 2/2, frequency 1/7); toilet use - required extensive assistance 56 times per week (CAT score 3/2, frequency 8/7); personal hygiene - required limited assistance 7 times per week (CAT score 2/2, frequency 1/7); and bathing - required extensive assistance seven times per week (CAT score 3/2,

¹² Exs. F1 - F31.

¹³ All factual findings in this paragraph are based on Ex. F12 unless otherwise stated.

¹⁴ 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.

¹⁵ All factual findings in this paragraph are based on Exs. F6 - F12 unless otherwise stated.

frequency 1/7).¹⁶ At the same 2012 assessment, Ms. O found that Ms. M required the following levels of assistance with her IADLs:¹⁷ required assistance as to telephone use (CAT score 2/2); was physically dependent as to light housework (CAT score 3/3); and totally dependent on others as to light meal preparation, main meal preparation, financial management, routine housework, grocery shopping, and laundry (CAT score 3/4).

Ms. M was most recently assessed for continuing PCA eligibility on October 7, 2014 by P T, R.N. of DSDS.¹⁸ The assessment was conducted using a Korean interpreter.¹⁹ Ms. T found that Ms. M has the following physical abilities and limitations:²⁰

Functional assessment:²¹ Ms. T reported that Ms. M has strong grip strength in her left and right hands, and can touch her hands together over her head or behind her back, but cannot stand up with her hands crossed on her chest, and cannot touch her feet while in a sitting position. Ms. T also reported that Ms. M complained of pain and stiffness during the assessment, but had good range of motion in her upper body.

Body Mobility / Bed Mobility:²² Ms. T reported that Ms. M told her that she does not require assistance to reposition herself in bed. Ms. T reported she observed Ms. M reposition herself multiple times during the assessment without any help (scored 0/0, frequency 0/0).

Transfers:²³ Ms. T reported that Ms. M told her that she stands up from and sits down on her bed and chair with help from her son, using her walker for balance, and that her son holds her arm but does not lift her. Ms. T reported that she observed Ms. M move from a seated position to a standing position as described above (scored 2/2, frequency 4/7).

Locomotion (walking):²⁴ Ms. T reported that Ms. M told her that she is able to walk without hands-on assistance using her walker, although she is short of breath, and although a family member stays close by in case she needs assistance. Ms. T reported that she observed (1) Ms. M walk from her living room (where her bed is located) to the bathroom and back using her walker, while her son stayed close by; and (2) that Ms. M walked slowly and haltingly but did not need

¹⁶ Notably, Ms. M's 2012 ADL scores were, except as to locomotion and eating, identical to the ADL scores from her prior (2011) assessment. Thus, contrary to the Division's assertion that Ms. M's 2012 CAT scores were far higher than normal that year due to a skin infection, the scores from the 2011 and 2012 assessments indicate that Ms. M's condition was relatively stable during this period (Ex. F12).

¹⁷ All factual findings in this paragraph are based on Ex. F26 unless otherwise stated.

¹⁸ Ex. E.

¹⁹ Ex. E2.

²⁰ Exs. E4 - E12.

²¹ All references in this paragraph are based on Ex. E4 unless otherwise stated.

²² All references in this paragraph are based on Ex. E6 unless otherwise stated.

²³ All references in this paragraph are based on Ex. E6 unless otherwise stated.

²⁴ All references in this paragraph are based on Ex. E7 unless otherwise stated.

assistance (scored 1/1, frequency 0/0). Ms. T also scored Ms. M as requiring limited assistance with locomotion to access medical appointments (CAT score 2/2, frequency 2/1)

Dressing:²⁵ Ms. T reported that Ms. M told her that she is able to dress her upper body without assistance, but that her son must help her put on her pants, socks, and shoes. Ms. T reported that Ms. M is unable to reach her feet while sitting due to longstanding back problems, but has good fine motor skills and upper body ROM (scored 2/2, frequency 2/7).

Eating:²⁶ Ms. T reported that Ms. M told her that her family sets up meals for her, but that she is able to feed herself, and does not have any problems swallowing her medications with a beverage. Ms. T reported that she observed Ms. M drink from an open glass without difficulty (scored 0/1, frequency 0/0).

Toileting:²⁷ Ms. T reported that Ms. M told her that (1) she wears incontinence products and can change them by herself; and (2) she requires assistance getting on and off the toilet because of its low height. Ms. T reported she observed Ms. M sit down on the closed toilet lid by herself, and then stand up again with help from her son (scored 2/2, frequency 6/7).

Personal Hygiene:²⁸ Ms. T reported that Ms. M told her that her son must set-up her personal hygiene products for her, but that once this is done she can perform all her personal hygiene tasks without hands-on assistance. Ms. T reported that she observed that Ms. M has a strong grip and good upper body range of motion (scored 1/1, frequency 0/0).

Bathing:²⁹ Ms. T reported that Ms. M told her that she requires assistance to get into and out of the shower, but that, once in the bathtub / shower, she can bathe herself. Ms. T reported that she observed that Ms. M requires some assistance with transfers, but that she has strong grip strength and good upper body range of motion (scored 2/2, frequency 1/7).

Ms. T also scored Ms. M as to her ability to perform Instrumental Activities of Daily Living (IADLs).³⁰ Ms. T scored Ms. M as follows: independent as to telephone use (CAT score 0/0); independent with difficulty, requiring set-up assistance as to light meal preparation (CAT score 1/2); and requiring physical assistance as to main meal preparation, light housework, routine housework, financial management, grocery shopping, and laundry (CAT score 2/3).

²⁵ All references in this paragraph are based on Ex. E8 unless otherwise stated.

²⁶ All references in this paragraph are based on Ex. E9 unless otherwise stated.

²⁷ All references in this paragraph are based on Ex. E9 unless otherwise stated.

²⁸ All references in this paragraph are based on Ex. E10 unless otherwise stated.

²⁹ All references in this paragraph are based on Ex. E11 unless otherwise stated.

³⁰ All references in this paragraph are based on Ex. E26 unless otherwise stated.

C. Relevant Procedural History

The Division performed the assessment at issue on October 7, 2014.³¹ On November 12, 2014 the Division notified Ms. M that her PCA service level was being reduced from 40.25 hours per week to 13.5 hours per week effective November 22, 2014.³² Ms. M requested a hearing to contest the Division's reduction of her PCA services on November 19, 2014.³³

Ms. M's hearing was held on April 8, 2015 and April 28, 2015. Ms. M participated in the hearing by phone and testified on her own behalf. Ms. M's daughter-in-law and power-of-attorney holder, Z Q, participated by phone, represented Ms. M, and testified on her behalf. Ms. M's PCA agency representative, Mr. G, also participated by phone but did not testify. Darcie Shaffer participated in the hearing by phone and represented the Division. Scott Chow, R.N. and Laura Baldwin participated in the hearing by phone and testified for the Division. The record closed at the end of the hearing.

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 . . ."³⁴ [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."³⁵

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."³⁶ 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

³¹ Ex. E.

³² Ex. D1.

³³ Ex. C.

³⁴ 7 AAC 125.010(a).

³⁵ 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.*

³⁶ 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. See 7 AAC 160.900(d)(6).

(ADLs) and instrumental activities of daily living (IADLs).³⁷ The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairments.³⁸

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.³⁹ 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.⁴⁰

The CAT's numerical scoring system for ADLs has two components. The first component is the *self-performance score*. This score rates how capable a person is of performing a particular ADL. The possible scores for ADLs are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁴¹); **3** (the person requires extensive assistance⁴²); or **4** (the person is totally dependent⁴³). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).

The second component of the CAT's scoring system for ADLs is the *support score*. This score rates the degree of assistance that a person requires for a particular ADL. The possible scores for ADLs are **0** (no setup or physical help required); **1** (only setup help required); **2** (physical assistance from one person required); or **3** (physical assistance from two or more persons required). Again, there are additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).

The CAT also scores activities known as "instrumental activities of daily living" (IADLs).⁴⁴ These are light meal preparation, main meal preparation, light housekeeping, routine housekeeping,

³⁷ See 7 AAC 125.010(a).

³⁸ Ex. E.

³⁹ 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 May 21, 2015); see also Exs. B34 - B36; Ex. D9.

⁴⁰ *Id.*

⁴¹ 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).

⁴² 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).

⁴³ 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).

⁴⁴ Ex. E26.

laundry, and grocery shopping. The CAT scores IADLs slightly differently than ADLs.⁴⁵ The *self-performance scores for IADLs* are **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty - the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person). There is also a code that is not treated as a numerical score for purposes of calculating a service level: **8** (the activity did not occur).

The *support scores* for IADLs are also slightly different than the support codes for ADLs.⁴⁶ The support scores for IADLs are 0 (no support provided); 1 (supervision / cueing provided); 2 (set-up help); 3 (physical assistance provided); and 4 (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional code that does not add to the service level: 8 (the activity did not occur).

Under the PCA regulations in effect prior to January 26, 2012, the Division would provide a recipient with time for a particular ADL based on *the assessor's perception of how much time would reasonably be required* (up to a maximum level specified by regulation) *to perform the activity at issue*.⁴⁷ However, in January 2012 the PCA regulations were amended to implement a new system in which the self-performance score and support score for the specific activity *automatically dictate* the amount of PCA time awarded.⁴⁸ For example, a CAT score of three as to non-mechanical transfers gives a recipient 3.75 minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*; a CAT code of four as to non-mechanical transfers gives a recipient five minutes of PCA time *regardless of the actual amount of time it takes to perform the transfer*.⁴⁹

C. Applicable Burden of Proof

The Division is seeking to reduce Ms. M's existing PCA services (services which Ms. M was already receiving). Accordingly, the Division has the burden of proving, by a preponderance of the evidence, that Ms. M's need for PCA services has decreased since her last assessment.⁵⁰

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See former regulations 7 AAC 43.750, 7 AAC 43.751, 7 AAC 43.752, and 7 AAC 43.755.

⁴⁸ See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart.

⁴⁹ *Id.*

⁵⁰ 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).

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

Initially, it is important to remember that, under the current PCA regulations, the amount of time awarded is set automatically based on the applicant / recipient's self-performance code.⁵¹ All other things being equal, recipients virtually always receive less PCA time under the new regulations than they did under the old regulations. Because Ms. M's prior assessment was conducted in January 2012, and the new PCA regulations did not become effective until July 2012, the new regulations are responsible for a significant portion of the decrease in Ms. M's PCA time under the 2014 assessment.

Ms. M did not submit any statement outlining the particular activities that Ms. M asserts were improperly scored by the Division in calculating her PCA time. However, review of Ex. D10 indicates that Ms. M's PCA scores were reduced as to either level or frequency of assistance in the following areas: body mobility, transfers, locomotion (in room), locomotion (to access medical appointments), eating, toilet use, personal hygiene, bathing, light meal preparation, main meal preparation, light housework, shopping, laundry, medication management, medical documentation, and medical escort. Each of these 16 activities is discussed separately below.

1. Body Mobility

For the ADL of body mobility, PCA time is allowed when a person requires physical assistance to reposition himself / herself in a bed or chair, or to perform range of motion and stretching exercises.⁵² The 2011 and 2012 assessments found that Ms. M required limited assistance with body mobility (CAT score 2/2, frequency 4/7). Ms. T found in her 2014 assessment that Ms. M is independent with body mobility, based in part on Ms. M's alleged statements during the assessment. At hearing, Ms. Q confirmed that Ms. M does not require assistance with bed / body mobility. Accordingly, based on the evidence in the record, the Division's assessment as to Ms. M's level of need for PCA assistance with body mobility is affirmed (CAT score 0/0, frequency 0/0).

2. Transfers

For the ADL of transferring, PCA time is allowed when a person requires physical assistance to move between one surface and another (including to or from a bed, chair, or wheelchair), and/or when a person requires physical assistance to move from a lying or sitting

⁵¹ See Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* at Exs. B34 - B36.

⁵² 7 AAC 125.030(b)(1).

position to a standing position.⁵³ The 2012 assessment found that Ms. M required extensive assistance with transfers 56 times per week (CAT score 3/2, frequency 8/7). The 2014 assessment found that Ms. M requires limited assistance with transfers 28 times per week (CAT score 2/2, frequency 4/7). At hearing, Ms. Q credibly testified that Ms. M needs assistance with transfers about 10 times per day, and that some (but not all) of these are weight-bearing assists. The Division did not prove that Ms. M requires weight-bearing assistance less than three times per week. Accordingly, the preponderance of the evidence indicates that Ms. M still requires extensive assistance with transfers, but that she requires that level of assistance only about half the time (CAT score 3/2, 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.⁵⁴ The prior (2012) assessment found that Ms. M required extensive one-person physical assistance with locomotion 56 times per week (CAT score 3/2, frequency 8/7). The current (2014) assessment found that Ms. M must use her walker slowly and haltingly but does not need assistance (CAT score 1/1, frequency 0/0). At hearing, Ms. Q credibly testified that, when Ms. M moves around her apartment using her walker, someone must hold onto Ms. M in order to balance her, and that this "balancing assistance" must be given about 10 times per day. Accordingly, the preponderance of the evidence indicates that Ms. M currently requires limited physical assistance with locomotion 10 times per day (CAT score 2/2; frequency 10/7).

With regard to locomotion to access medical appointments, the 2012 assessment found that Ms. M required extensive assistance twice per week (CAT score 3/2, frequency 2/1), while the 2014 assessment found that Ms. M requires limited assistance twice per week (CAT score 2/2, frequency 2/1). I find the 2014 assessment scoring is consistent with Ms. Q's testimony on this item, and find that Ms. M requires limited assistance with access to medical appointments twice per week (CAT score 2/2, frequency 2/1).

⁵³ 7 AAC 125.030(b)(2).

⁵⁴ 7 AAC 125.030(b)(3).

4. 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.⁵⁵ The Division's prior (2012) assessment found that Ms. M required limited assistance with eating once per day (CAT score 2/2, frequency 1/7). The Division's current (2014) assessment found that Ms. M requires only set-up help with eating (CAT score 0/1, frequency 0/0). At hearing, Ms. Q credibly testified that Ms. M is able to eat solid food by herself, and is also able to drink liquids by herself using a straw. Accordingly, the preponderance of the evidence indicates that Ms. M requires only set-up help with eating (CAT score 0/1, frequency 0/0).

5. 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.⁵⁶ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁵⁷

The Division's prior (2012) assessment found that Ms. M required extensive assistance with toileting 56 times per week (CAT score 3/2, frequency 8/7). The Division's current (2014) assessment found that Ms. M requires limited assistance with toilet use 42 times per week (CAT score 2/2, frequency 6/7). At hearing, Ms. Q testified that M needs assistance to partially disrobe when using the toilet; that she then needs assistance lowering herself down to the toilet; that, when she has finished using the toilet, she sometimes (but not always) needs help cleaning herself; and that Ms. M then needs assistance getting back up off the toilet. Ms. Q testified that Ms. M needs help with toileting eight to ten times per day, and that, of these, she needs weight-bearing assistance with toileting three or more times per week. Ms. Q's hearing testimony on this point, which I find credible, indicates that Ms. M still requires extensive assistance with toileting. There is also no evidence in the record indicating that Ms. M's frequency of toilet use has decreased since 2012. Accordingly, the preponderance of the evidence indicates that Ms. M still needs extensive assistance with toilet use 56 times per week (CAT score 3/2, frequency 8/7).

⁵⁵ 7 AAC 125.030(b)(5).

⁵⁶ 7 AAC 125.030(b)(6).

⁵⁷ 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).

6. 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.⁵⁸

The Division's prior (2012) assessment found that Ms. M required limited assistance with her personal hygiene seven times per week (CAT score 2/2, frequency 1/7). The Division's current (2014) assessment found that Ms. M requires only supervision and set-up help with personal hygiene (CAT score 1/1, frequency 0/0). At hearing, Ms. Q credibly testified that Ms. M is able to brush her teeth and comb her hair by herself; can wash her face and hands by herself about half the time; and needs help trimming her fingernails and toenails and applying lotions. Accordingly, the preponderance of the evidence indicates that Ms. M still requires limited assistance with personal hygiene seven times per week (CAT score 2/2, frequency 1/7).

7. 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."⁵⁹ The Division's prior (2012) assessment found that Ms. M required extensive assistance with bathing once per day, seven days per week (CAT score 3/2, frequency 1/7). The Division's current (2014) assessment found that Ms. M now requires only limited assistance with bathing (CAT score 2/2, frequency 1/7). At hearing, Ms. Q credibly testified that Ms. M needs "balancing assistance" when getting into and out of the bath tub, and that she can wash her face and the front of her body herself, but needs help washing her back and the lower part of her body. This testimony is consistent with Ms. M's 2014 assessment findings. Accordingly, the preponderance of the evidence indicates that Ms. M needs limited assistance with bathing seven times per week (CAT score 2/2, frequency 1/7).

8. Light Meals

The PCA regulations define the IADL of light meal preparation as the preparation, serving, and cleanup in the recipient's home of any meal that is essential to meet the health needs of the recipient, and that is not the main meal of the day.⁶⁰ The Division's prior (2012) assessment found that Ms. M was totally dependent on others for light meal preparation (CAT score 3/4). The Division's current (2014) assessment found that Ms. M is independent with difficulty, requiring only set-up assistance for light meal preparation (CAT score 1/2). At hearing, Ms. Q credibly

⁵⁸ 7 AAC 125.030(b)(7).

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

⁶⁰ 7 AAC 125.030(c)(1).

testified that Ms. M cannot prepare her own meals, and this is consistent with what could reasonably be expected from an 82-year-old with Ms. M's medical diagnoses. Accordingly, the preponderance of the evidence indicates that Ms. M is dependent on others for light meal preparation (CAT score 3/4).⁶¹

9. Main Meals

The PCA regulations define the IADL of main meal preparation as the preparation, serving, and cleanup in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient.⁶² The Division's prior (2012) assessment found Ms. M to be dependent on others for main meal preparation (CAT score 3/4). The Division's current (2014) assessment found Ms. M to requiring physical assistance with main meal preparation (CAT score 2/3). At hearing, Ms. Q credibly testified that Ms. M is unable to help prepare her own meals, and this is consistent with what could reasonably be expected from an 82-year-old with Ms. M's medical diagnoses. Accordingly, the preponderance of the evidence indicates that Ms. M is dependent on others for main meal preparation (CAT score 3/4).

10. Light Housework

The PCA regulations define the IADL of "light housekeeping" as (1) picking up, dusting, vacuuming, and floor-cleaning of the living spaces used by the recipient; (2) the cleaning of the kitchen and dishes used for preparation of the recipient's meals; (3) the cleaning of any bathroom used by recipient; (4) making the recipient's bed; (5) removing the recipient's trash; and (6) caring for the recipient's service animal.⁶³ The Division's prior (2012) assessment found Ms. M to be dependent on others for light housework (CAT score 3/3). The Division's current (2014) assessment found Ms. M to require physical assistance with light housework (CAT score 2/3). At hearing, Ms. Q credibly testified that Ms. M is unable to assist with any housework, and this is consistent with what could reasonably be expected from an 82-year-old with Ms. M's medical diagnoses. Accordingly, the preponderance of the evidence indicates that Ms. M is dependent on others for light housework (CAT score 3/4).

11. Routine Housework

The Division's prior (2012) assessment found Ms. M to be dependent on others for routine housework (CAT score 3/4). The Division's current (2014) assessment found that Ms. M requires physical assistance with routine housework (CAT score 2/3).

⁶¹ Note that the CAT scores IADLs slightly differently than ADLs (see discussion in Section III(B), above).

⁶² 7 AAC 125.030(c)(2).

⁶³ 7 AAC 125.030(c)(3).

Although *the CAT* differentiates between "light housework" and "routine housework," *the PCA regulation* includes all the constituent activities of these two "CAT categories" within a single definition of "light housekeeping."⁶⁴ Because Ms. M has already been scored 3/4 for the IADL of "light housekeeping" (above), the same score is appropriate for routine housework.

12. *Grocery Shopping*

The PCA regulations define the IADL of grocery shopping as shopping in the vicinity of a recipient's residence for groceries and other household items required for the health and maintenance of the recipient, and prescribed drugs and medical supplies required by the recipient.⁶⁵ The Division's prior (2012) assessment found Ms. M to be dependent on others for grocery shopping (CAT score 3/4). The Division's current (2014) assessment found Ms. M to require physical assistance with grocery shopping (CAT score 2/3). At hearing, however, Ms. Q testified that Ms. M's condition has not gotten better since the 2012 assessment, and in fact has gotten worse. Further, a finding of dependency on others for grocery shopping would be consistent with what could reasonably be expected from an 82-year-old with Ms. M's medical diagnoses. Accordingly, the preponderance of the evidence indicates that Ms. M is dependent on others for the IADL of grocery shopping (CAT score 3/4).

13. *Laundry*

The PCA regulations define the IADL of laundry as the changing of a recipient's bed linens and the in-home or out-of-home laundering of a recipient's bed linens and clothing.⁶⁶ The Division's prior (2012) assessment found Ms. M to be dependent on others for her laundry (CAT score 3/4). The Division's current (2014) assessment found Ms. M to require physical assistance with her laundry (CAT score 2/3). At hearing, however, Ms. Q testified that Ms. M's condition has not gotten better since the 2012 assessment, and in fact has gotten worse. Further, a finding of dependency on others for laundry would be consistent with what could reasonably be expected from an 82-year-old with Ms. M's medical diagnoses. Accordingly, the preponderance of the evidence indicates that Ms. M is dependent on others for the IADL of laundry (CAT score 3/4).

14. *PCA Assistance with Medication / Medication Management*

Pursuant to 7 AAC 125.030(d), PCA assistance is available for:

⁶⁴ 7 AAC 125.030(c)(3).

⁶⁵ 7 AAC 125.030(c)(5).

⁶⁶ 7 AAC 125.030(c)(4).

- (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;
- (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;

PCA time is allowed for "medication assistance / administration" if the recipient receives a score of 1, 2, 4, 5, or 6 in Section G(1)(a) at page 20 of the CAT.⁶⁷ Here, Ms. M received a score of four on her 2012 assessment, and a score of zero on her 2014 assessment. Based on Ms. M's diagnoses of dementia and memory loss, I find it more probable than not that Ms. M should have received a score of four on this item in her current assessment. Accordingly, Ms. M is eligible for PCA time for medication administration because she received a score of four as to this item.⁶⁸

The *amount* of PCA time allowed for medication assistance is computed based on the recipient's personal hygiene score.⁶⁹ If the recipient's personal hygiene self-performance score is 0, 1, or 8, the recipient receives no time for medication assistance. If the recipient's personal hygiene self-performance score is 2 or 5, the recipient's personal hygiene time is multiplied by .5 to compute medication assistance time. If the recipient's personal hygiene self-performance score is 3, the recipient's personal hygiene time is multiplied by .75 to compute medication assistance time. Finally, if the recipient's personal hygiene self-performance score is 4, the recipient's personal hygiene time is multiplied by 1.0 to compute medication assistance time.

Based on the Division's personal hygiene score of 2/2, Ms. M would seemingly be entitled to PCA time for assistance with medications. However, the aspect of medication use with which Ms. M requires assistance is preparation or set-up; there is no evidence that she requires assistance with actually *taking* her medications. The regulation governing PCA time for assistance with medications, 7 AAC 125.030(d), does not cover preparation of med-sets. Accordingly, on the facts of this particular case, Ms. M is not entitled to receive PCA time for assistance with medications.

15. PCA Assistance with Medical Documentation

Pursuant to 7 AAC 125.030 (d)(3), PCA time is available for "taking and documenting the recipient's temperature, pulse, blood pressure, and respiration *if ordered by the recipient's physician, physician assistant, or advanced nurse practitioner*, and setting up for diabetic testing and

⁶⁷ Exs. B34, B35, E20.

⁶⁸ Exs. E20, F20.

⁶⁹ All findings and conclusions in this paragraph are based on the Division's Personal Care Assistance Service Level Computation Chart at Exs. B34 - B35.

documentation" (emphasis added). In this case, Ms. M presented no evidence that she has a current prescription for PCA assistance with medical documentation. Accordingly, Ms. M is not currently entitled to receive PCA time for assistance with medical documentation.

16. PCA Escort to Medical Appointments

Pursuant to 7 AAC 125.030(d)(9), PCA time is available for "traveling with the recipient to and from a routine medical or dental appointment outside the recipient's home and conferring with medical or dental staff during that appointment." This is usually only provided when, due to cognitive or behavioral issues, the recipient is unable to communicate effectively with her doctor.

In 2012, the Division provided Ms. M with 60 minutes of PCA escort time per medical appointment.⁷⁰ In 2014, the Division found that Ms. M went to 12 doctor appointments per year, but that she now needs only 30 minutes of PCA escort time per appointment. While the Division's use of 12 appointments per year appears to be appropriate based on Ms. M's medical records (Ex. 1 and Ex. G), no evidence was provided to support the reduction in time from 60 minutes per appointment to 30 minutes per appointment. Accordingly, the Division must recalculate Ms. M's PCA time for escort to medical appointments based on twelve 60 minute appointments per year.

IV. Conclusion

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

DATED this 29th day of May, 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 9th day of June, 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.]

⁷⁰ All factual findings in this paragraph are based on Exs. D4, D5, and D10 unless otherwise stated.