

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

In the Matter of)
)
 B C) OAH No. 15-0972-MDS
) Agency No.

DECISION

I. Introduction

B C applied to receive Personal Care Assistance (“PCA”) services that are paid for by Medicaid. The Division of Senior and Disabilities Services (“Division”) assessed her condition and awarded her 15 hours per week of PCA services. Ms. C contested that decision and requested a hearing.

A telephonic hearing was held on October 8, 2015. Ms. C did not appear or participate, but she was represented by her father E C (who is also her legal guardian), and G V, her PCA agency representative.¹ The Division was represented at the hearing by fair hearing representative Laura Baldwin and health program managers David Chadwick and Jerry Fromm. Mr. Chadwick and Mr. Fromm testified for the Division.

Based upon the evidence in the record, and as further discussed below, the Division’s decision is reversed in part and affirmed in part.

II. Facts

Ms. C is 33 years old and is diagnosed as suffering from traumatic brain injury, cerebral palsy, panhypopituitarism, hemiplegia, generalized convulsive epilepsy, and high blood pressure, along with having suffered a recent stroke about six weeks before the assessment at issue in this matter.² The Division’s assessment took place on July 9, 2015, when Mr. Chadwick assessed Ms. C for PCA services eligibility, using the Division’s Consumer Assessment Tool (CAT).³ After the assessment visit, the Division concluded that Ms. C qualified for 15 hours of PCA services per week.⁴ The Division notified Ms. C of the

¹ Ms. C’s care coordinator N T initially appeared and participated in the parties’ off-record discussions, but she was unable to participate in the primary portion of the hearing.

² Exhibit E3; qualifying diagnosis certification dated 4/4/15 from Dr. Q.

³ Exhibit E1.

⁴ Exhibit D1.

assessment results and the level of authorized PCA benefits in a letter dated July 17, 2015.⁵ It is this decision that is the subject of Ms. C's request for a hearing.

III. Discussion

A. *The PCA Program*

The purpose of the PCA program

is to provide a recipient physical assistance with activities of daily living (ADL), physical assistance with instrumental activities of daily living (IADL), and other services based on the physical condition of the recipient[.⁶]

The Division uses the CAT to help it assess the level of assistance needed.⁷ The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation chart.⁸ The Service Level Computation chart shows the amount of time allotted for each ADL or IADL, depending on the level of assistance needed for each task.

The different levels of assistance with ADLs are defined by regulation and in the CAT.⁹ "Supervision" is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.¹⁰ "Limited assistance" is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight-bearing support no more than two times a week.¹¹ "Extensive assistance" is defined as requiring direct physical help with weight-bearing support at least three times a week, or full assistance without any involvement by the recipient at least three times a week, but not all of the time.¹² "Full assistance" or "total dependence" means the recipient has to rely entirely on the caretaker to perform the activity.¹³

When the Division wishes to reduce the amount of allotted time for PCA services, the Division has the burden of proving a change of condition justifying that reduction by a preponderance of the evidence, *i.e.*, that it is more likely true than not true.¹⁴ However, when the claimant is contesting the results of an initial application, as Ms. C is doing in this case, the

⁵ *Id.*

⁶ 7 AAC 125.010(a).

⁷ 7 AAC 125.020(b).

⁸ 7 AAC 125.024(1).

⁹ The July 29, 2009 version of the CAT has been adopted by reference, 7 AAC 160.900(d)(6), and therefore the definitions in the CAT have the same effect as a regulation.

¹⁰ Exhibit E6.

¹¹ 7 AAC 125.020(a)(1); Exhibit E6.

¹² 7 AAC 125.020(a)(2); Exhibit E6.

¹³ 7 AAC 125.020(a)(3); Exhibit E6. Bathing and the IADLs have their own assistance level definitions.

¹⁴ 7 AAC 49.135.

claimant has the burden of showing that the Division's determination was incorrect, also by a preponderance of the evidence.¹⁵

Prior to the beginning of the hearing, the parties engaged in off-record discussions to attempt to resolve some of their areas of disagreement. After those discussions, the following issues remained in dispute: **bed mobility** (service level need and frequency); **transfers** (service level need and frequency); **locomotion/in room** (service level need and frequency); **locomotion/multi-level** (service level need and frequency); **locomotion/access medical appointments** (service level need only); **dressings** (service level need only); **eating** (service level need only); **toilet use** (service level need and frequency); **personal hygiene** (service level need and frequency); **bathing** (service level need and frequency); **grocery shopping** (service level need and frequency); **housework** (service level need and frequency); and **laundry/in-home** (service level need and frequency).

The Division's July 17, 2015 letter did not provide any specific explanation to Ms. C as to the Division's service level determinations regarding each of the ADLs and IADLs. To the extent that the CAT itself provided specific information regarding those determinations, it is discussed below.

As a preliminary matter, it must be noted that at the time of the July 9 assessment, Ms. C was already receiving certain services pursuant to a "plan of care" under the Division's Home and Community-Based Waiver program ("Waiver program"). As a result, certain of the Division's determinations in this case regarding Ms. C's requested PCA services were based in part on the fact that she apparently receives similar services under the Waiver program. Division regulations bar it from awarding PCA services that duplicate services a recipient is already receiving under the Waiver program.¹⁶ Mr. Chadwick and Mr. Fromm indicated that Ms. C's Waiver services had an impact on her PCA authorization for personal hygiene, bathing, shopping and housework, as further discussed below.

B. Bed Mobility

Bed mobility, also referred to as body mobility, is defined in the CAT as "how a person moves to and from lying position, turns side to side and positions body while in bed."¹⁷ The assessor's notations regarding bed mobility in the CAT state the following: "[Ms. C] was

¹⁵ *Id.*

¹⁶ 7 AAC 125.040(a)(11), (12).

¹⁷ Exhibit E6.

observed repositioning in bed and in her chair. She is ambulatory.”¹⁸ Ms. C was given a score of **0/1** for bed mobility on the CAT.¹⁹

Mr. C testified that Ms. C requires physical, hands-on assistance with shifting positions in bed if she needs to roll onto her left side.²⁰ This testimony would normally be sufficient to result in a score of at least **2/2** for bed mobility. However, because Ms. C is technically “ambulatory,” i.e. she is able to walk, the Division determined that she is ineligible for PCA assistance with bed mobility. This is because a Division regulation specifically dictates that bed mobility PCA services can only be awarded to a recipient who is “nonambulatory.”²¹

Even though Ms. C does need physical assistance with bed mobility, the administrative law judge has no authority to disregard a Division regulation that directly applies to an issue raised by a claimant. Because there is no dispute that Ms. C can walk, i.e. she is ambulatory, she did not meet her burden of establishing by a preponderance of the evidence that the Division erred in not finding her eligible for PCA services for bed mobility.

C. Transfers

Transfers are defined as “how a person moves between surfaces – to/from bed, chair, wheelchair, standing position (excluding to/from bath/toilet).”²² The assessor’s notations in the CAT regarding transfers state as follows:

Dad: We have a gait belt for her now because she will lose her balance when she comes to a standing position. She . . . gets weaker and weaker. She generally has balance issues when she is trying to get up.

Observed transfer with steady assistance. Stood by pushing off the arm rests of her chair while Direct Service Provider held onto gait belt with one hand to steady. [Ms. C] bore her own weight rising to a standing position.²³

Ms. C was given a score of **2/2** for transfers (limited assistance) on the CAT, with a frequency of four times per day, seven days per week.²⁴

Mr. C testified credibly that Ms. C “absolutely” needs weight-bearing assistance with transfers more than twice per week (as discussed above, a need for weight-bearing assistance at last three times per week is a threshold for an “extensive assistance” level of need). Mr. C stated that he needs to hold onto her and bear her weight when she is moving from one surface, such as

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Apparently Ms. C does not need assistance with rolling in the other direction, i.e., onto her right side.

²¹ 7 AAC 125.030(b)(1)(A).

²² Exhibit E6.

²³ *Id.*

²⁴ *Id.*

a chair or a couch, to another surface. He testified that Ms. C has a “good day,” i.e., she feels strong enough to not need such weight-bearing assistance, at most one day per week.

Based on the above discussion, Ms. C met her burden of proof to establish by a preponderance of the evidence that she needs weight-bearing assistance with transfers more than twice a week. Therefore, she should be given a **3/2** score (extensive assistance) for transfers. Regarding frequency of transfer assists, the CAT provides no guidance as to the basis for the assessor’s conclusion that Ms. C needs assistance for transfers four times per day. Mr. Chadwick testified that in determining frequency for transfers, he took into account the fact that Ms. C apparently spends most of her time in her room and also spends a certain number of hours per day with her Waiver service providers. However, the connection between these facts and his conclusion that four is the appropriate daily frequency for transfers was not made clear.

No evidence was presented, however, to indicate that Ms. C needs assistance with transfers more than four times per day. Therefore, Ms. C did not meet her burden of establishing that the assigned frequency of four transfers per day was incorrect.

D. Locomotion

The ADL of locomotion refers to the manner in which a person moves within his or her own room or other areas on the same floor.²⁵ The assessor’s notations in the CAT regarding locomotion state as follows:

Dad/Guardian: She has good days and bad days. Sometimes she will put her foot out and her other won’t follow and she will cross her feet and fall. We need to stand beside her and guide her to help her keep her balance. Observed [Ms. C] need steadying assistance while she walked to the bathroom. She used short shuffling steps placing her hands on the nearest furniture to help balance. [Service provider] held onto gait belt correcting her when she would start to list to one side.²⁶

Ms. C was given a score of **2/2** for locomotion (limited assistance) on the CAT, with a frequency of four times per day, seven days per week.²⁷ She received the same score for locomotion/multi-level (Ms. C lives in a two-story home), at two times per day, seven days per week; and the same score for locomotion/access medical appointments, at one time per week.

²⁵ See Exhibit E7.

²⁶ Exhibit E7.

²⁷ *Id.*

Mr. C testified that early in the day, and then again at night before bed, Ms. C needs more help with locomotion than mere steadying assistance, in that she needs weight-bearing help. He testified, credibly, that these occasions occur significantly more often than twice per week. These facts translate to a need for extensive assistance rather than limited assistance. Mr. C also testified, credibly, that at certain times Ms. C actually is close to being totally dependent on physical assistance with locomotion. Because she is able to walk on her own at times, however, her locomotion does not meet the total dependence standard, i.e., “full staff/caregiver performance of activity” every day.

Ms. C met her burden of establishing by a preponderance of the evidence that she requires extensive assistance with locomotion. Therefore, she should be given a **3/2** score for this ADL. This score should also be applied to locomotion/multi-level and locomotion to access medical appointments.

Regarding frequency of locomotion assists, the CAT provides no guidance as to the basis for the assessor’s conclusion that Ms. C needs assistance for single level locomotion four times per day, and multi-level locomotion twice per day. Mr. Chadwick testified that he took into account the amount of time Ms. C was out of the house each day for day habilitation (a Waiver service under her plan of care), and he concluded that she needs two locomotion assists in the morning and two in the evening.

Mr. C, on the other hand, testified credibly that the appropriate frequency is, at a minimum, eight times per day for locomotion single level. He also stated that, for locomotion/multi-level, Ms. C requires assistance at minimum four times per day. Mr. C, however, understood multi-level locomotion to be analyzed in terms of round trips (i.e., down the stairs and then back up the stairs). The Division, on the other hand, views each trip up **or** down the stairs as a separate locomotion event.²⁸

Ms. C met her burden of establishing that the assigned frequency of four locomotion assists per day was incorrect. Therefore, the appropriate frequency for locomotion (both single level and multi-level) should be eight times per day.

²⁸ Comments of Mr. Fromm and Ms. Baldwin.

E. Dressing

The ADL of dressing is defined as “[h]ow [a] person puts on, fastens, and takes off all items of street clothing.”²⁹ The assessor’s notations in the CAT regarding dressing state as follows:

[Direct service provider]: She can’t bend over to get her feet into the pants[,] she’s weak and I need to help her finish the task. She doesn’t do buttons right now, she just doesn’t wear those clothes. She has Velcro shoes and pre-tied laces. Observed weak movement of limbs. [Ms. C] was unable to touch her feet and required assistance to don/doff socks. Observed full range of motion of the upper extremities. Assistance provided for lower extremity dressing.³⁰

Ms. C was given a score of **2/2** on the CAT for dressing, at a frequency of two times per day, seven days per week. For this ADL, the only disputed issue at the hearing was the score; Ms. C did not dispute the frequency for dressing.

Mr. C testified that he believes Ms. C is closest to being totally dependent for dressing, but he confirmed that his daughter does pick clothes out and she does attempt to assist in the process of getting dressed. Even that minimal level of participation by Ms. C, however, means that she would not qualify for total dependence.³¹ Mr. C’s credible testimony made clear, however, that his daughter typically is not “highly involved” in the activity of dressing, as the limited assistance score given her by the assessor would indicate. His testimony regarding the type of assistance that he and her caregivers must provide to her in getting dressed indicates that her level of need falls squarely within the definition of extensive assistance; and the assessor’s notations quoted above regarding her “weak movement of limbs” support that conclusion.

Ms. C met her burden of establishing that the Division’s score of **2/2** was incorrect. She should be scored at **3/2**, and her PCA services for the ADL of dressing should be calculated in accordance with that score.

F. Eating

The ADL of eating is defined in the CAT as “how [a] person eats and drinks regardless of skill.”³² The assessor’s notations in the CAT regarding dressing stated as follows:

[Dad] change[s] out the bags for the feeding tube daily. 60 calories/hour + 15 ml water hourly. Another 30-60 ml of water when taking meds. She is not currently eating anything by mouth/NPO. . . .

²⁹ Exhibit E8.

³⁰ *Id.*

³¹ See 7 AAC 125.020(a)(3), reproduced at Exhibit B2-3 (“‘dependent’ means the recipient cannot perform any part of the activity”).

³² Exhibit E9.

Observed feeding tube. Meds are currently crushed and taken by tube. Cans of formula are opened by the father and poured in the bag for nutrition. Meals are not prepared, they are served by pouring them into the machine.³³

Ms. C was given a score of **2/2** on the CAT for eating, at a frequency of three times per day, seven days per week. For this ADL, the only disputed issue at the hearing was the score; Ms. C did not dispute the frequency for eating.

Mr. C testified that he considers Ms. C totally dependent on her caregivers' assistance for eating. He acknowledged an exception to this, however, in that when Ms. C eats pudding or yogurt she can use a spoon to eat (although a caregiver has to open the container for her). Mr. C explained that he considered his daughter's consumption of such foods to be "recreational," as her nutritional needs are almost exclusively provided via her feeding tube.

When Mr. Chadwick was questioned about the basis for the limited assistance (2/2) score given for eating, he explained that Ms. C has sufficient upper extremity range of motion to participate in the process of filling the bags for her feeding tube. He stated that he "erred on the side of the recipient" by providing a frequency of three eating assists per day. Frequency, however, was not in dispute in the hearing.

Mr. C's testimony was consistent with both his daughter's medical conditions and with the notes in the CAT regarding how her meals are provided via the feeding tube. It is not realistic to expect Ms. C to participate in eating in the manner suggested by Mr. Chadwick's assessment and testimony. Therefore, Ms. C met her burden of establishing that the **2/2** score for this ADL was incorrect. She would likely qualify for total dependence with this ADL, but her participation in the activity through her occasional eating of soft foods with a spoon means that her level of need is extensive assistance rather than total dependence. She should be given a **3/2** score for this ADL.

G. Toileting

Toilet use includes "how [a] person uses the toilet room (or commode, bedpan, urinal)," including transfers on and off the toilet, cleaning oneself, adjusting clothing and routine incontinence care.³⁴ The assessor's notations in the CAT regarding toileting state as follows:

³³ *Id.*

³⁴ Exhibit E9; 7 AAC 125.030(b)(6).

Dad: All her stool is liquid right now, she is having some trouble with the transition to the feeding tube. No diapers or protective garments. She has trouble getting to the bathroom on time. Dad: she has accidents often. Dad reported toileting every 20 minutes. [Ms. C] was not observed needing to toilet during a 2 hour assessment. Frequency reflects waiver services 40 hours weekly & nutrition intake. Guided assistance for steadying w/transfers, locomotion.³⁵

Ms. C was given a score of **2/2** on the CAT for toileting, at a frequency of six times per day, seven days per week. For this ADL, both the score and the frequency were disputed by Ms. C. Mr. Chadwick explained in his testimony that the above-quoted comment to the effect that “frequency reflects waiver services” refers to the fact that Ms. C was receiving Waiver services, both inside the home from “direct service providers” (“DSPs”) and day habilitation outside the home. To the extent that Ms. C is outside of the home several hours per day for day habilitation, PCA services cannot be authorized for toileting within her home during those periods. Similarly, to the extent that a DSP may be assisting Ms. C with toileting, Division regulations prohibit authorizing duplicative services for toileting from a PCA.³⁶ Mr. Chadwick, however, did not point to any provisions in Ms. C’s plan of care that would indicate potential duplication of efforts regarding toileting.

Mr. C explained in his testimony that at night Ms. C uses the toilet about twice per hour, and more frequently during the daytime. He estimated the total of her toileting events to be a minimum of 24 times per day. He also testified that she requires significant, weight-bearing physical assistance with her toileting and with cleaning herself afterwards, and his testimony on this point is consistent with her level of need with transfers and locomotion, as discussed above. Based on Mr. C’s testimony, Ms. C met her burden of establishing that the **2/2** score given to her by the Division was incorrect. She should be given a **3/2** score for this ADL.

Mr. Chadwick testified that as of the July 9 assessment, Ms. C received about 40 hours of Waiver program services per week, which means that there were about ten hours per day when she was not either working with her Waiver service providers or sleeping.³⁷ Mr. Chadwick also

³⁵ Exhibit E9.

³⁶ See 7 AAC 125.040(a)(11).

³⁷ Mr. C testified that in mid-August, Ms. C’s Waiver services were reduced from 40 hours to 22 hours per week. That reduction, however, cannot be considered in this hearing, because it took place after the date of the Division’s July 17 letter that is at issue in this matter. In order to have the Division consider the reduction of Waiver services in connection with Ms. C’s PCA services, she will need to submit a “change of information – amendment”

noted that Ms. C went through the entire assessment, approximately two hours long, without having to use the toilet. He explained that the assigned frequency of six per day was based on toileting every two hours, plus once at night.

Mr. C's response to this testimony was to note that his daughter was having a very good day on the date of the assessment. In addition, he testified that due to her traumatic brain injury, Ms. C could be feeling an urge to use the toilet where no voiding actually takes place, and that this occurs very frequently. Mr. Fromm, in his testimony, did not dispute that this could occur. Mr. C also commented that Ms. C's water intake has been dramatically increased in order to prevent her from becoming dehydrated.³⁸

Based on a review of all the testimony and other evidence, Ms. C met her burden of establishing that the Division's frequency estimate for toileting was incorrect, in that six times over the ten hours per day when she is not with her Waiver service providers is too low. Mr. C's testimony was convincing that Ms. C needs a higher frequency, but not as high as he estimated. A frequency of 11 times a day, or once per hour when she is not receiving Waiver services, plus once at night, is more reasonable.

H. Personal Hygiene

The ADL of personal hygiene is defined as "combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands, and perineum."³⁹ Ms. C was given a score of **2/2** on the CAT for this ADL, but she was also accorded a frequency of **zero** times per day. By way of explanation, the assessor's comments on the CAT stated: "goal 2.2 supported living is PH/G. No frequencies authorized."⁴⁰ Mr. Chadwick explained that "PH/G" means personal hygiene and grooming, and "goal 2.2" is found in Ms. C's Waiver program plan of care. Goal 2.2 states, in pertinent part, as follows:

[Ms. C] will follow the necessary steps to brush her teeth with no more than one verbal prompt per step. Staff will pre-teach [Ms. C] how to properly brush her teeth independently and will quality assure during and after. . . . Staff will verbally prompt [Ms. C] as necessary to complete the steps in order, though the expectation for [Ms. C] is to be successful with no more than two verbal prompts.⁴¹

request. Mr. Fromm stated that he would ensure that the Division would process any such filing from Ms. C in an expedited manner.

³⁸ Ms. C was recently hospitalized due, in part, to her becoming severely dehydrated. Exhibit E21.

³⁹ Exhibit E10.

⁴⁰ *Id.*

⁴¹ 6/21/15 Plan of Care, p. 14.

Mr. C testified that Ms. C is close to being totally dependent for her personal hygiene needs now, including brushing her teeth, washing her face, and brushing her hair. He also explained that her toothbrushing needs have recently changed very significantly under her amended Waiver plan of care, because she is now using a suction toothbrush in order to minimize the risk of aspiration. However, that change took place after the July 9, 2015 assessment and July 17, 2015 notice letter from the Division, and therefore it cannot be considered in this Decision.

Because Ms. C's Waiver plan of care that was in effect in July provided that her service providers would assist her with personal hygiene activities, the Division cannot authorize PCA services for this ADL. Ms. C, therefore, did not meet her burden of establishing that the Division erred in not finding her eligible for PCA services for personal hygiene.

I. Bathing

The ADL of bathing is defined as "how [a] person takes full-body bath/shower, sponge bath, and transfers in/out of tub/shower."⁴² Ms. C was given a score of **3/2** on the CAT for this ADL, but she was also accorded a frequency of **zero** times per day. The assessor's notations in the CAT regarding bathing state as follows:

Dad: She takes a bath 2-3 times weekly. She is very wary of water. She can help wash herself but she is weak and cannot finish washing. Goal 2.1 supported living is [b]athing/showering. No frequencies authorized. [Ms. C] was observed placing her hands over her head, touching her feet with her fingers and reaching around her back with her hands across her chest. Presented with weak unsteady movements, requiring assistance to complete the task.⁴³

The definitions of the different levels of need for assistance with bathing differ somewhat from the other ADLs. For bathing, a self-performance score of **2** is defined as "physical help limited to transfer only;" a **3** is defined as "physical help in part of bathing activity;" a **4** is defined as "total dependence."⁴⁴

Contrary to the assessor's notes in the CAT, Mr. C testified that Ms. C needs to bathe, on average, once per day throughout the week. He also testified that she cannot participate in bathing to any meaningful extent, and that this was true even as of the time of

⁴² Exhibit E11.

⁴³ *Id.*

⁴⁴ *Id.*

the assessment. He explained that his comments to the assessor in July related to Ms. C's abilities and needs prior to her suffering a stroke and being hospitalized twice, with the latter instance lasting until early July 2015, just before the assessment visit. He testified that the extent of the changes to her need for assistance did not become completely apparent to him until later.

Mr. Chadwick explained that, as with the personal hygiene ADL, the comment in the CAT to "goal 2.1 supported living" is a reference to a goal in Ms. C's Waiver plan of care that was in effect in July 2015. Goal 2.1 states as follows:

[Ms. C] will follow the steps necessary to take a shower with no more than one verbal prompt per step. . . . Staff will assist in teaching [Ms. C] how to properly complete her shower routine by pre teaching and assisting in completing the necessary steps with unlimited assistance. . . . Staff will also give physical assistance as needed but will support [Ms. C] to be [as] independent as possible.⁴⁵

Mr. C's testimony appears to indicate that Ms. C qualifies for extensive assistance with the ADL of bathing. However, because her Waiver plan of care that was in effect in July provided that her service providers would assist her with bathing activities, the Division cannot authorize PCA services for this ADL. Ms. C, therefore, did not meet her burden of establishing that the Division erred in not finding her eligible for PCA services for bathing.

J. Housework

Ms. C was given a **2/3** score for the IADLs of light housework and routine housework, which means "assistance/done with help," "physical assistance was provided."⁴⁶ However, she was assigned **zero** time for these IADLs.⁴⁷ Mr. C testified that his daughter "does no housework" and is not capable of participating in these activities at all (although she does create the need for housework); therefore he believes she should have received a **3/4** score, meaning "full performance of the activity was done by others - the person was not involved at all when the activity was performed."⁴⁸ Under questioning by Ms. Baldwin, however, Mr. C conceded that his daughter could participate in some housework activities if

⁴⁵ 6/21/15 Plan of Care, p. 14.

⁴⁶ Exhibit E26.

⁴⁷ Service Level Authorization Chart, 7/9/15.

⁴⁸ *Id.*

someone helped support her physically or if she were sitting down while performing the activity (e.g., wiping a table or counter while seated).

The CAT provides no information as to the basis for the assessor's scoring on this activity, nor for the zero hours of authorized PCA time. Mr. Chadwick explained that Ms. C's Waiver plan of care included a supported living goal that relates to these IADLs. Goals 1.1 and 1.2 in the plan of care state, in pertinent part, as follows:

[Ms. C] will organize her room with unlimited verbal prompts [and] assistance from staff one time per week.
[She] will return her possession[s] to her system of organization in her room after playing each evening 100% of the time.
Staff will minimally assist [Ms. C] with creating a system of organization in her room through space savers and other creative organizational methods.
Each week [Ms. C] will go over her room and make sure that her room continues to be organized.
Staff will assist [Ms. C] with maintain[ing] a clean room through minimal prompting. [She] will put her items in their designated space before moving on to a new activity, with unlimited assistance from staff.⁴⁹

It must be noted that the plan of care sets forth these goals within the context of the overall goal that “[Ms. C] will further develop her independence and safety within the home.”⁵⁰ In addition, these goals primarily relate to Ms. C keeping her room picked up and organized; they do not directly correspond to the types of activities encompassed by the housework IADLs, such as washing dishes, dusting, vacuuming, or taking out the trash.⁵¹ The plan of care goals are simply too disconnected from the IADLs to pose a barrier to Ms. C being authorized to receive PCA services for light housework and routine housework.

Ms. C did not meet her burden of establishing that the **2/3** score for the housework IADLs was incorrect. She did, however, meet her burden of establishing that she should receive PCA services for these IADLs.

K. Shopping

Ms. C was given a **2/3** score for the IADL of shopping (“assistance/done with help,” “physical assistance was provided”),⁵² but she was assigned **zero** time for this IADL.⁵³ Mr. C testified that his daughter enjoys “recreational shopping” through her day habilitation

⁴⁹ 6/21/15 Plan of Care, pp. 13-14.

⁵⁰ 6/21/15 Plan of Care, p. 13.

⁵¹ Exhibit E26.

⁵² Exhibit E26.

⁵³ Service Level Authorization Chart, 7/9/15.

services under the Waiver program, but it has nothing to do with shopping for supplies, groceries or necessities. He did acknowledge, however, that she would be capable of participating in shopping with a PCA, to some extent, although she would be limited by the fact that she would be in a wheelchair.

Again, the CAT provides no guidance as to the basis for the assessor's scoring on this activity, nor for the zero hours of authorized PCA time. Mr. Chadwick testified that the **2/3** score was based on Ms. C having sufficient dexterity and range of motion to participate to some degree in shopping activities. As to the **zero** time authorized for shopping, he testified that it was due to a day habilitation goal in her Waiver plan of care, which provides that her service providers take her shopping. Goal IV states that Ms. C "will increase her money management skills," and it is followed by specific objectives regarding Ms. C selecting items to purchase, determining the price, counting out money, paying the cashier, and comparing the change she receives with the written receipt, etc.⁵⁴ Although these goals in Ms. C's plan of care do not directly relate to "grocery shopping" *per se*, the plan of care does not rule out Ms. C choosing to shop for groceries with the assistance of her Waiver service providers. Therefore, there is a sufficient nexus between the activities discussed in the plan of care and the grocery shopping IADL to prevent the Division from authorizing PCA time for this activity. Ms. C, therefore, did not meet her burden of establishing that the Division erred in not finding her eligible for PCA services for grocery shopping.

L. Laundry/In-Home

Ms. C was given a **2/3** score for the IADL of laundry/in-home ("assistance/done with help," "physical assistance was provided").⁵⁵ Mr. C testified that Ms. C's occasional incontinence does cause a need for additional laundry, and that an additional factor relevant to laundry is that she does not use diapers. Mr. Chadwick testified, however, that Ms. C has sufficient range of motion and dexterity to be able to participate in the laundry IADL to the extent of folding some laundry and putting items away. Mr. Chadwick also explained that the frequency given in the CAT, twice per week, reflects the fact that her incontinence creates the need for additional loads of laundry (absent the incontinence factor, laundry PCA assistance could only be authorized one time per week).

⁵⁴ 6/21/15 Plan of Care, p. 16.

⁵⁵ *Id.*

Mr. C did not dispute the Division's evidence regarding laundry. Because it is undisputed that Ms. C can participate to some degree in the activity, she did not meet her burden of establishing that her scoring for laundry was incorrect.

IV. Conclusion

Ms. C suffers from a variety of serious ailments that significantly limit her ability to engage in activities of life. At the hearing, she met her burden of proving that the Division's determinations were not correct as to the ADLs of transfers (scoring only), locomotion (scoring and frequency), dressing (scoring only), eating (scoring only), and toileting (scoring and frequency), and the IADLs of light and routine housework (eligibility for services). The Division's assessment decision is reversed as to these ADLs and IADLs, and is affirmed in all other respects.

Dated this 18th day of November, 2015.

Signed _____
Andrew M. Lebo
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 13th day of December, 2015.

By: *Signed* _____
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

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