

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

In the Matter of:)
)
 M L) OAH No. 15-1181-MDS
) Agency Case No.
_____)

DECISION

I. Introduction

The issue in this case is whether M L remains eligible for Medicaid Personal Care Assistant (PCA) services. The Division of Senior and Disabilities Services (DSDS or Division) conducted a functional assessment and concluded that Ms. L no longer requires at least limited assistance with at least one activity of daily living (ADL), and is not at least independent with difficulty as to at least one Instrumental Activity of Daily Living (IADL).¹ Based on these findings, the Division terminated Ms. L's PCA services.²

Ms. L's testimony at hearing conflicted with the Division's assessment findings in several areas, and created close factual issues as to Ms. L's ability to perform certain ADLs and IADLs. However, the preponderance of the evidence indicates that, while Ms. L's colon-related problems have gotten better since her last assessment, her back pain and hip pain have gotten worse. The preponderance of the evidence further indicates that, because of this, Ms. L still requires physical assistance with the IADLs of light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry.³ Accordingly, Ms. L remains eligible for Medicaid payment for these few PCA services. The Division's determination, that Ms. L is no longer eligible for PCA services, is therefore reversed.

II. Facts

A. Ms. L's Diagnoses and Medical Problems

Ms. L is 66 years old.⁴ She lives alone in an apartment.⁵ Her current medical diagnoses include acute kidney injury, anxiety, carpal tunnel syndrome, cervical disc degeneration, chronic obstructive pulmonary disease (COPD), chronic pain, depression, diverticulosis, hepatitis C, hypertension, hyponatremia, hypoxemia, lumbosacral disc degeneration, lumbosacral

¹ Ex. E.

² Ex. D.

³ These factual findings are made primarily based on medical records produced by Ms. L during the hearing process; the Division did not have these medical records at the time it issued its original determination.

⁴ Ex. E1; M L's hearing testimony.

⁵ Ex. E1; M L's hearing testimony.

spondylosis, midline low back pain without sciatica, pyelonephritis, and status post hip-joint replacement.⁶ She takes about ten prescription medications.⁷

Ms. L was once a nursing assistant, and performed a significant amount of physical work in that capacity.⁸ In 2006 she began to feel pain in her low back and neck, which has continued to worsen over the years. In 2007 she was involved in a motor vehicle accident in which she received a whiplash injury. As a result of these problems she began seeing a pain doctor in 2010. Since then she has received injections in her neck and back, about once per year, to help with her cervical and lumbar pain. In the last year she has also undergone radiofrequency ablation (RFA), again to reduce her cervical and lumbar pain. These treatments have relieved about 75% of her neck pain, but have not helped her lower back pain.

Ms. L underwent a surgery for bowel problems in April 2012.⁹ Her bowel condition has been significantly improved since that surgery.¹⁰

Ms. L fell and broke her collar bone in October 2014.¹¹ She had a plate installed on her collar bone at that time. The plate was scheduled to be surgically removed in November 2105.

On March 17, 2015 Ms. L's physician, K N, M.D., completed the Division's "verification of diagnosis" form and PCA program prescribed task form.¹² Dr. N wrote that Ms. L has a ventral hernia and is never to lift more than five pounds. Dr. N further wrote that Ms. L requires 15 minutes of foot care per day because "she can't bend over."

On October 27, 2015 Ms. L underwent a pre-physical therapy assessment.¹³ That assessment found that her cervical range of motion (ROM) is 75% of normal; her bilateral side bending and rotation is 50% of normal, with pain; her thoracic mobility is decreased; her lumbar ROM is decreased to 75% of normal, with pain (for flexion) and to 25% of normal, with pain (for extension and side-bending). The assessment summary noted "extremely poor motor control and core strength" with "decreased mobility and functional ability and pain."¹⁴

⁶ Ex. E3; Ex. 6 p. 3.

⁷ Ex. 6 pp. 7 - 8.

⁸ All factual findings in this paragraph are based on Ex. 6, pp. 4 - 5 unless otherwise stated.

⁹ Ex. 5 p. 3.

¹⁰ M L's hearing testimony.

¹¹ All factual findings in this paragraph are based on K J's testimony unless otherwise stated.

¹² All factual findings in this paragraph are based on Ex. 4 pp. 2 - 3 unless otherwise stated.

¹³ All factual findings in this paragraph are based on Ex. 6 pp. 5 - 6 unless otherwise stated.

¹⁴ Ex. 6 p. 6.

B. Ms. L's Functional Abilities as Determined by the Division

Ms. L was initially assessed for PCA eligibility on November 30, 2011 by Rae Norton, R.N. of DSDS.¹⁵ The assessment was recorded and scored on the Division's Consumer Assessment Tool or "CAT." Based on her assessment, Ms. Norton found that Ms. L had the following abilities with regard to her Activities of Daily Living (ADLs):¹⁶ body mobility - independent (CAT score 0/0); transfers - independent (CAT score 0/0); locomotion - independent (CAT score 0/0); dressing - required limited one-person physical assistance (CAT score 2/2, frequency 1/3); eating - independent (CAT score 0/0); toilet use - independent (CAT score 0/0); personal hygiene - independent (CAT score 0/0); and bathing - required limited one-person physical assistance (CAT score 2/2, frequency 1/7).

At the same 2011 assessment, Ms. Norton found that Ms. L required the following levels of assistance with her IADLs:¹⁷ independent as to financial management, telephone use, and light meal preparation (CAT score 0/0); independent with difficulty, requiring physical assistance as to main meal preparation, light housework, grocery shopping, and laundry (CAT score 1/3); and required physical assistance as to routine housework (CAT score 2/3).

Ms. L was most recently assessed for continuing PCA eligibility on August 10, 2015 by David Chadwick of DSDS.¹⁸ Mr. Chadwick's assessment is recorded and scored on the Division's Consumer Assessment Tool or "CAT." Mr. Chadwick found that Ms. L has the following physical abilities and limitations:¹⁹

Functional assessment.²⁰ Mr. Chadwick reported that Ms. L has good grip strength in her left and right hands, can touch her hands together over her head and behind her back, can stand up with her hands crossed on her chest, and can touch her feet while in a sitting position. Mr. Chadwick further reported that Ms. L used no assistive devices, that she "completed all aspects of the functional assessment with ease," and that her "movement was fluid and unassisted" during the assessment.

¹⁵ Ex. F. The name on the 2011 assessment document is a name other than Ms. L's. However, the date of birth and Medicaid identification number on the 2011 assessment are those of Ms. L. Accordingly, the preponderance of the evidence indicates that Ex. F is in fact Ms. L's assessment, but that the assessor simply failed to update the applicant/recipient name field of the assessment form.

¹⁶ Exs. F6 - F12.

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

¹⁸ All factual findings in this paragraph are based on Ex. E unless otherwise stated.

¹⁹ Exs. E4 - E12.

²⁰ All references in this paragraph are based on Ex. E4 unless otherwise stated.

Bed/Body Mobility:²¹ Mr. Chadwick reported Ms. L told him that she needs to toss and turn while in bed, and that staying in one position hurts her hip. Mr. Chadwick reported that he observed Ms. L (1) reposition herself repeatedly while in her recliner; and (2) bend forward and push her dog off of herself or her couch (scored 0/0).

Transfers:²² Mr. Chadwick reported Ms. L told him that she does not have a cane, and hasn't needed one since her hip was fixed. Mr. Chadwick reported that (1) he observed Ms. L transfer unassisted out of a deep recliner multiple times during the assessment; and (2) transfer to a standing position both with and without "pushing-up" from a fixed object (scored 0/0).

Locomotion (walking):²³ Mr. Chadwick reported that Ms. L told him that she takes her dog for walks every morning and afternoon, and that she does not use a cane or other assistive device. Mr. Chadwick reported that he observed Ms. L walk unassisted throughout her home (scored 0/0).

Dressing:²⁴ Mr. Chadwick reported that Ms. L indicated she is able to dress herself, but that "it's harder if I don't have my [pain] meds." Mr. Chadwick reported that he observed Ms. L to have "full ROM," "strong grips," and "excellent fine motor skills" (scored 0/0).

Eating:²⁵ Mr. Chadwick reported that Ms. L told him that she is able to eat using normal utensils. Mr. Chadwick reported that he observed Ms. L drinking coffee from a cup during the assessment (scored 0/0).

Toileting:²⁶ Mr. Chadwick reported that Ms. L told him that she does not use incontinence products, and that she does not have any trouble toileting/going to the bathroom. Mr. Chadwick reported that he observed Ms. L walking and transferring independently during the assessment (scored 0/0).

Personal Hygiene:²⁷ Mr. Chadwick reported that Ms. L told him that she manages her own personal hygiene. Mr. Chadwick reported that he observed Ms. L touch her face as well as the top and back of her head during the assessment (scored 0/0).

Bathing:²⁸ Mr. Chadwick reported that Ms. L told him that she was waiting until the next day, when her PCA would be there, to take a shower, because her PCA helps wash her hair and

21 Ex. E6.
22 Ex. E6.
23 Ex. E7.
24 Ex. E8.
25 Ex. E9.
26 Ex. E9.
27 Ex. E10.

her back. Mr. Chadwick reported that he observed that Ms. L displayed no limitations in her range of motion, "easily" bent to touch her feet, and transferred without difficulty (scored 0/0).

With regard to her Instrumental Activities of Daily Living (IADLs), the assessment of August 10, 2015 scored Ms. L as completely independent with telephone use, financial management, light meal preparation, grocery shopping, and laundry, and as being independent with difficulty, but requiring no support, as to main meal preparation and housework.²⁹

C. Relevant Procedural History

Ms. L has received PCA services since her first colon surgery in 2012.³⁰ The assessment at issue in this case was conducted on August 10, 2015.³¹ Based on this assessment, the Division found that Ms. L no longer qualifies for PCA services.³² On August 21, 2015 the Division notified Ms. L that she was no longer eligible for PCA services, and that Medicaid would cease paying for her PCA services after August 31, 2015.³³

Ms. L requested a hearing to contest the Division's decision on August 31, 2015.³⁴ Ms. L's hearing was held on October 21, 2015. Ms. L participated in the hearing by phone, represented herself, and testified on her own behalf. K J, Ms. L's PCA agency representative, also participated by phone and testified on Ms. L's behalf. The Division was represented by Victoria Cobo, who participated in the hearing by phone. David Chadwick and Olga Ipatova participated in the hearing by phone and testified for the Division. Following the hearing, the record was left open through November 2, 2015 for any additional medical records Ms. L wished to submit, and through November 12, 2015 for any response the Division wished to submit. The record was then closed.

III. Discussion

A. The PCA Program - Overview

The Medicaid program provides personal care services (PCA) 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

28 Ex. E11.
29 Ex. E26.
30 M L's hearing testimony.
31 Ex. E.
32 Exs. D, E.
33 Ex. D.
34 Ex. C.

other services based on the *physical condition* of the recipient"35 [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."36

B. Alaska's PCA Program - Use of the Consumer Assessment Tool (CAT)

The Division conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT."37 The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs).38 The CAT seeks to make the assessment process more objective by standardizing the evaluation of the applicant's or recipient's functional impairments.39

The ADLs scored by the CAT are body mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.40 In addition, the CAT scores five other ADL-like activities which are not technically ADLs. These are assistance with medications, assistance with taking and recording vital signs and glucose levels, assistance with non-sterile dressing/bandage changes, assistance with oxygen tank/equipment maintenance or use, assistance with sterile wound care, assistance with medical documentation, PCA escort to medical appointments, and assistance with range of motion exercises, walking for exercise, and foot care.41

The CAT numerical scoring system for ADLs has two components. The first is the *self-performance score*. These scores rate how capable a person is of performing a particular ADL. The self-performance codes related to scoring are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited

³⁵ 7 AAC 125.010(a).

³⁶ 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.*

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

³⁸ *See* 7 AAC 125.010(a).

³⁹ Ex. E.

⁴⁰ *See* Division of Senior and Disabilities Services' *Personal Care Assistance Service Level Computation* (accessed online at <http://www.hss.state.ak.us/dsds/pca/documents/PCA%20Service%20Computation.pdf>) (accessed December 18, 2015); *see also* Exs. E6 - E11.

⁴¹ *Id.*

assistance⁴²); **3** (the person requires extensive assistance⁴³); and **4** (the person is totally dependent⁴⁴).

The second component of the CAT scoring system for ADLs is the *support score*. These scores rate the degree of assistance that a person requires for an ADL. The support codes related to scoring are **0** (no setup or physical help required); **1** (only setup help required); **2** (physical assistance from one person required); and **3** (physical assistance from two or more persons needed).

The CAT also scores certain activities known as "instrumental activities of daily living" (IADLs).⁴⁵ These are light meal preparation, main meal preparation, light housekeeping, routine housekeeping, laundry, and grocery shopping. Finally, the CAT scores one other IADL-like activity which is not technically an IADL (oxygen maintenance).

The CAT scores IADLs slightly differently than ADLs.⁴⁶ 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).

The *support scores* for IADLs are also slightly different than the support scores for ADLs.⁴⁷ 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).

If a person requires limited assistance or extensive assistance, or is fully dependent as to at least one ADL (receives a self-performance scores of 2, 3, or 4 as to any one ADL), then the

⁴² Pursuant 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."

⁴³ Pursuant 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."

⁴⁴ Pursuant 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."

⁴⁵ Ex. E26.

⁴⁶ *Id.*

⁴⁷ *Id.*

person is eligible to receive PCA services.⁴⁸ Alternatively, if a person is independent with difficulty, requires assistance, or is dependent as to at least one IADL (i.e. receives self-performance scores of 1, 2, or 3 as to any one IADL), then the person is eligible to receive PCA services.⁴⁹

C. *Applicable Burden of Proof*

In this case, the Division is seeking to terminate existing PCA services. Accordingly, the Division has the burden of proving, by a preponderance of the evidence, that Ms. L's need for PCA services has decreased to the extent asserted.⁵⁰

D. *Does Ms. L Require Limited Assistance with an Activity of Daily Living?*

As stated above, in order to qualify (or remain qualified) for PCA services based on ADL scores, an applicant or recipient must receive a CAT score of 2/2 or better as to at least one ADL.⁵¹ Ms. L's CAT scores for each ADL are discussed below.

1. Body Mobility

For the ADL of body mobility, PCA time is allowed when a non-ambulatory person requires physical assistance to reposition in a bed or chair.⁵² The Division's 2011 assessment found that Ms. L was independent as to bed/body mobility.⁵³ The Division's 2015 assessment found that Ms. L is still independent as to bed/body mobility.⁵⁴ At hearing, Ms. L asserted that she now requires assistance with body mobility, but her testimony was vague when she was questioned about the specifics of this need. Because Ms. L did not previously have PCA time for assistance with body mobility, she bears the burden of proof on this issue. The preponderance of the evidence indicates that Ms. L is still independent as to body mobility. Accordingly, the Division's finding that Ms. L is independent as to body mobility (CAT score 0/0) is affirmed.

2. Transfers

PCA time is allowed for transfers 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

⁴⁸ 7 AAC 125.020(a).

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).

⁵¹ 7 AAC 125.020(a). The minimum standard applicable to ADLs, "limited assistance," is defined by 7 AAC 125.020(a)(1) as a situation in which the recipient, although "highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed."

⁵² 7 AAC 125.030(b)(1).

⁵³ Ex. F6.

⁵⁴ Ex. E6.

a person requires physical assistance to move from a lying or sitting position to a standing position.⁵⁵ The Division's 2011 assessment found that Ms. L was independent with transfers.⁵⁶ The Division's 2015 assessment found that Ms. L is still independent with transfers.⁵⁷

At hearing, Ms. L asserted that she now requires assistance with transfers. However, her testimony was vague when she was questioned about the specifics of this need. Further, although (as discussed below) Ms. L's independent physical therapy assessment indicates that she requires assistance with some activities, there is no medical evidence indicating that Ms. L needs assistance with transfers. Because Ms. L did not previously have PCA time for assistance with transfers, she bears the burden of proof on this issue. The preponderance of the evidence indicates that Ms. L is still independent with transfers. Accordingly, the Division's finding that Ms. L is independent with transfers (CAT score 0/0) is affirmed.

3. Locomotion

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, or outside the home to keep a medical or dental appointment; PCA time is also allowed when walking and simple exercises have been prescribed by a physician.⁵⁸ The Division's 2011 assessment found that Ms. L was independent with locomotion.⁵⁹ The Division's 2015 assessment found that Ms. L is still independent with locomotion.⁶⁰ At hearing, Ms. L asserted that she now requires assistance with locomotion. However, her testimony was vague when she was questioned about the specifics of this need. Further, although (as discussed below) Ms. L's independent physical therapy assessment indicates that she requires assistance with some activities, there is no medical evidence indicating that Ms. L needs assistance with locomotion. Because Ms. L did not previously have PCA time for assistance with locomotion, she bears the burden of proof on this issue. The preponderance of the evidence indicates that Ms. L is still independent with locomotion. Accordingly, the Division's finding that Ms. L is independent with locomotion is affirmed.

⁵⁵ 7 AAC 125.030(b)(2).

⁵⁶ Ex. F6.

⁵⁷ Ex. E6.

⁵⁸ 7 AAC 125.030(b)(3).

⁵⁹ Ex. F7.

⁶⁰ Ex. E7.

4. Dressing and Undressing

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.⁶¹ The Division's 2011 assessment found that Ms. L required limited assistance with dressing (CAT score 2/2).⁶² The Division's 2015 assessment found that Ms. L is now independent with dressing (CAT score 0/0).⁶³ At hearing, Ms. L stated that she does not dispute the Division's finding that she is now independent with dressing. Accordingly, the Division's finding that Ms. L is independent with dressing (CAT score 0/0) is affirmed.

5. Eating and Drinking

For the ADL of eating and drinking, 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.⁶⁴ The Division's 2011 assessment found that Ms. L was independent with eating and drinking (CAT score 0/0).⁶⁵ The Division's 2015 assessment found that Ms. L is still independent with eating and drinking (CAT score 0/0).⁶⁶ At hearing, Ms. L stated that she does not dispute the Division's finding that she is still independent with eating and drinking. Accordingly, the Division's finding that Ms. L is independent with eating and drinking (CAT score 0/0) is affirmed.

6. Toilet Use

For the ADL of toilet use, PCA time is, by regulation, allowed only to assist with moving to and from the toilet or urinal and transfers on and off the toilet.⁶⁷ The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.⁶⁸ The Division's 2011 assessment found that Ms. L was independent with toilet use (CAT score 0/0).⁶⁹ The Division's 2015 assessment found that Ms. L is still independent with toilet use (CAT score 0/0).⁷⁰ At hearing, Ms. L stated that she does not dispute the Division's

⁶¹ 7 AAC 125.030(b)(4).

⁶² Ex. F8.

⁶³ Ex. E8.

⁶⁴ 7 AAC 125.030(b)(5).

⁶⁵ Ex. F9.

⁶⁶ Ex. E9.

⁶⁷ 7 AAC 125.030(b)(6). For reasons that do not appear in the record, the regulation does not cover assisting the recipient with necessary personal hygiene after using the toilet. The PCA regulation for personal hygiene, 7 AAC 125.030(b)(7), likewise fails to cover such necessary activities.

⁶⁸ 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, emphasis added).

⁶⁹ Ex. F9.

⁷⁰ Ex. E9.

finding that she is still independent with toilet use. Accordingly, the Division's finding that Ms. L is independent with toilet use (CAT score 0/0) is affirmed.

7. Personal Hygiene

For the ADL of personal hygiene, PCA time is allowed for washing and drying the face, hands, and perineum; 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.⁷¹ The Division's 2011 assessment found that Ms. L was independent with her personal hygiene (CAT score 0/0).⁷² The Division's 2015 assessment found that Ms. L is still independent with her personal hygiene (CAT score 0/0).⁷³ At hearing, Ms. L stated that she does not dispute the Division's finding that she is independent with personal hygiene. Accordingly, the Division's finding that Ms. L is still independent with personal hygiene is affirmed.

8. Bathing

For the ADL of bathing, PCA time is allowed for "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."⁷⁴ The definition of bathing contained in the CAT is almost identical, but it excludes coverage when an applicant or recipient only requires assistance with the washing of his or her back and/or hair.⁷⁵ The Division's 2011 assessment found that Ms. L required limited assistance with bathing (CAT score 2/2).⁷⁶ The Division's 2015 assessment found that Ms. L is now independent with bathing (CAT score 0/0).⁷⁷

During her assessment and at hearing, Ms. L asserted that she still requires assistance with bathing. Specifically, she asserts that she requires PCA assistance with washing her back and hair. However, as stated above, the CAT's definition of bathing excludes coverage when the applicant or recipient only requires assistance washing his or her back and/or hair. Thus, even assuming Ms. L does in fact need assistance washing her back and hair, the need for this specific type of assistance does not qualify her to receive PCA assistance with bathing. The preponderance of the evidence indicates that Ms. L is independent with the covered portions of bathing. The Division's finding that Ms. L is independent with bathing is therefore affirmed.

⁷¹ 7 AAC 125.030(b)(7).

⁷² Ex. F10.

⁷³ Ex. E10.

⁷⁴ 7 AAC 125.030(b)(8).

⁷⁵ Ex. E11.

⁷⁶ Ex. F11.

⁷⁷ Ex. E11.

E. Does Ms. L Require Assistance with Instrumental Activities of Daily Living?

An applicant or recipient can also qualify for PCA services by being independent with difficulty as to at least one Instrumental Activity of Daily Living (IADL), by needing assistance with at least one IADL, or by being dependent as to at least one IADL (*i.e.* by having self-performance scores of 2, 3, or 4), *and* by requiring physical assistance for support or being totally dependent for support (*i.e.* by having support scores of 3 or 4).⁷⁸ Ms. L is entitled to receive PCA assistance with IADLs if she can demonstrate a need for assistance through her CAT scores.

1. 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.⁷⁹ The Division's 2011 assessment found that Ms. L was independent with light meal preparation (CAT score 0/0).⁸⁰ The Division's 2015 assessment found that Ms. L is still independent with light meal preparation (CAT score 0/0).⁸¹ Ms. L asserts that she requires physical assistance to prepare light meals (CAT score 2/3).⁸²

The Division's findings as to a recipient's ability to perform IADLs are essentially extrapolations from the Division's findings regarding the recipient's range of motion (ROM) and ability to perform ADLs; the Division's assessor does not watch the recipient attempt to perform any IADL. On the other hand, the summary from Ms. L's independent pre-physical therapy assessment found that Ms. L has "extremely poor motor control and core strength" with "decreased mobility and functional ability and pain."⁸³ In addition, Dr. N has ordered that Ms. L never lift more than five pounds.⁸⁴

The findings of the physical therapist and of Dr. N are contrary to the findings and testimony of Mr. Chadwick. Mr. Chadwick's testimony was not incredible. However, the

⁷⁸ See Ex. E-31 and 7 AAC 125.020(a). The minimum standard applicable to IADLs, "independent with difficulty," is defined by 7 AAC 125.020(a)(4) as a situation in which "the recipient can perform the activity without the help of another individual, but does so with difficulty or takes a great amount of time to perform it."

⁷⁹ 7 AAC 125.030(c)(1).

⁸⁰ Ex. F26.

⁸¹ Ex. E26.

⁸² M L's hearing testimony.

⁸³ Ex. 6 p. 6.

⁸⁴ Ex. 4 pp. 2 - 3.

opinions of treating physicians are entitled to substantial weight in Medicaid matters.⁸⁵ In this case, the writings of two independent medical providers, each of whom have treated Ms. L, indicate that she probably requires assistance with light meal preparation due to poor motor skills and an inability to lift anything but very light items. Accordingly, the preponderance of the evidence indicates that Ms. L requires physical assistance with light meal preparation (CAT score 2/3).

2. 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.⁸⁶ The Division's 2011 assessment found that Ms. L was independent with difficulty as to main meal preparation (CAT score 1/3).⁸⁷ The Division's 2015 assessment also found that Ms. L is independent with difficulty as to main meal preparation (CAT score 1/0).⁸⁸ Ms. L asserts that she requires physical assistance to prepare main meals (CAT score 2/3).⁸⁹ For the reasons discussed above in the context of light meals, the preponderance of the evidence indicates that Ms. L requires physical assistance with main meal preparation (CAT score 2/3). However, Ms. Ipatova credibly testified at hearing that Ms. L receives her main meal via "meals on wheels" five days per week. It would be duplicative to provide Ms. L with PCA time for assistance with main meal preparation for those days on which she receives "meals on wheels." Accordingly, Ms. L should receive PCA time for assistance with main meal preparation only for the two days per week that she does not receive "meals on wheels."

3. 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)

⁸⁵ See *Rush v. Parham*, 625 F.2d 1150, 1156 (5th Cir. 1980); *Pinneke v. Preisser*, 623 F.2d 546, 550 (8th Cir.1980); *Weaver v. Reagan*, 886 F.2d 194, 200 (8th Cir. 1989); *A.M.L. v. Department of Health, Division of Health Care Financing*, 863 P.2d 44 (Utah App. 1993), *Snyder v. Florida Department of Children & Family et. al.*, 705 So.2d 1067, 1068 (Fla. 1st DCA 1998); *Holman v. Ohio Department of Human Services*, 757 N.E.2d 382 (Ohio App. 7th Dist. 2001); *Smith v. Rasmussen*, 249 F.3d 755, 759 (8th Cir. 2001); *Hummel v. Ohio Department of Job & Family Services*, 844 N.E.2d 360 (Ohio App. 6th Dist. 2005); *Urban v. Meconi*, 930 A.2d 860 (Del. Super. 2007).

⁸⁶ 7 AAC 125.030(c)(2).

⁸⁷ Ex. F26.

⁸⁸ Ex. E26.

⁸⁹ M L's hearing testimony.

cares for the recipient's service animal.⁹⁰ The Division's 2011 assessment found that Ms. L was independent with difficulty as to light housework (CAT score 1/3).⁹¹ The Division's 2015 assessment also found that Ms. L is independent with difficulty as to light housework.⁹²

Ms. L asserts that she requires physical assistance with light housework (CAT score 2/3).⁹³ Ms. L testified that she has difficulty bending down and picking things up off the floor, and that she gets dizzy. This testimony is consistent with her diagnoses and her doctor's opinion.

Mr. Chadwick specifically testified that he saw Ms. L bend down and deploy a doggie "pee pad" during the assessment, and this testimony was credible. However, this does not by itself mean that Ms. L is able to perform the full range of light housework covered in the regulation. To the contrary, many light housekeeping tasks require the lifting of more than five pounds, and Dr. N has ordered that Ms. L never lift more than five pounds.⁹⁴ Accordingly, the preponderance of the evidence indicates that Ms. L requires physical assistance with light housework (CAT score 2/3).

4. Routine Housework

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."⁹⁵ Because Ms. L has received a score of 2/3 for the IADL of "light housekeeping" (above), her score for routine housework should be the same.

5. 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.⁹⁶

The Division's 2011 assessment found that Ms. L was independent with difficulty as to grocery shopping (CAT score 1/3).⁹⁷ The Division's 2015 assessment found that Ms. L is now independent with grocery shopping.⁹⁸

⁹⁰ 7 AAC 125.030(c)(3).

⁹¹ Ex. F26.

⁹² Ex. E26.

⁹³ M L's hearing testimony.

⁹⁴ Ex. 4 pp. 2 - 3.

⁹⁵ 7 AAC 125.030(c)(3).

⁹⁶ 7 AAC 125.030(c)(5).

⁹⁷ Ex. F26.

⁹⁸ Ex. E26.

At hearing, Ms. L testified that she needs help putting the heavier grocery items in her cart and carrying them. This is completely consistent with Dr. N's order that Ms. L never lift more than five pounds.⁹⁹ Accordingly, the preponderance of the evidence indicates that Ms. L requires physical assistance with grocery shopping (CAT score 2/3).

6. 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.¹⁰⁰ The Division's 2011 assessment found that Ms. L was independent with difficulty as to laundry (CAT score 1/3).¹⁰¹ The Division's 2015 assessment found that Ms. L is now independent with laundry.¹⁰² At hearing, Ms. L testified that she needs help carrying her laundry back and forth to the washer and dryer. This is completely consistent with Dr. N's order that Ms. L never lift more than five pounds.¹⁰³ Accordingly, the preponderance of the evidence indicates that Ms. L requires physical assistance with her laundry (CAT score 2/3).

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

8. 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." PCA time for escort to medical appointments is usually needed only when the recipient has memory or other cognitive problems which make it necessary for a PCA to speak to the recipient's doctor on the recipient's behalf in order to accurately convey medical information.

⁹⁹ Ex. 4 pp. 2 - 3.

¹⁰⁰ 7 AAC 125.030(c)(4).

¹⁰¹ Ex. F26.

¹⁰² Ex. E26.

¹⁰³ Ex. 4 pp. 2 - 3.

In this case, Mr. Chadwick found that Ms. L is a good historian and has no significant cognitive problems.¹⁰⁴ Likewise, review of Ms. L's medical records reveals no indication of significant cognitive problems. Accordingly, the preponderance of the evidence indicates that Ms. L does not currently qualify to receive PCA time for escorting her to medical appointments.

IV. Conclusion

Based on an independent review of the record, (which includes medical records which the Division did not have at the time it made its determination), Ms. L requires physical assistance (CAT score 2/3) with the IADLs of light meals, main meals, light housework, routine housework, grocery shopping, and laundry. A score of 2/3 on any one of these IADLs qualifies her to receive PCA services. Accordingly, Ms. L remains eligible for PCA services. The Division's determination that Ms. L is no longer eligible for PCA services is therefore reversed.¹⁰⁵

DATED this 29th day of December, 2015.

Signed

Jay 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 7th day of January, 2016.

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.]

¹⁰⁴ Exs. E4, E16.

¹⁰⁵ This decision does not calculate the hours per week of PCA services which Ms. L is eligible to receive. If Ms. L disagrees with the Division's calculation of the specific number of hours of PCA services for which she is eligible, she may request a new hearing on that issue.