

NON-ADOPTION

B. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(3), revises the enforcement action, determination of best interest, order, award, remedy, sanction, penalty, or other disposition of the case as follows and adopts the proposed decision as revised:

Based on the factual findings discussed in Section C, below, Mr. W does not presently qualify to receive Medicaid Personal Care Assistant (PCA) services under 7 AAC 125.020. Accordingly, the Division was correct to deny Mr. W's application for PCA services. The administrative law judge's decision is therefore reversed.

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 16th day of February, 2016.

By: Signed _____
Jared C. Kosin
Executive Director, Office of Rate Review
Department of Health and Social Services

C. The undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(4), rejects, modifies or amends one or more factual findings as follows, based on the specific evidence in the record described below:

In finding that the preponderance of the evidence indicates that Mr. W is independent with difficulty as to light meal preparation and main meal preparation, the Proposed Decision completely relies on the results from the CAT assessment and the assessment performed by the Alaska Center for the Blind and Visually Impaired. However, in finding that the preponderance of the evidence does not indicate that Mr. W is independent as to light housework, routine housework, and laundry, the Proposed Decision essentially disregards the results from the CAT assessment and the assessment performed by the Alaska Center for the Blind and Visually Impaired.

Unlike other cases, here, in addition to the CAT assessment, an independent third party—Alaska Center for the Blind and Visually Impaired—performed a standalone assessment concerning instrumental activities of daily living for Mr. W. The results from the standalone assessment are consistent with the results from the CAT assessment.

Given the consistency between the assessments, the Proposed Decision's reliance on the assessments' results to conclude that the preponderance of the evidence indicates that Mr. W is independent, albeit with difficulty, as to light meal preparation and main meal preparation is rational and correct. However, the Proposed Decision's departure from this logic and the assessments' results in its evaluation of other instrumental activities of daily living—light housework, routine housework, and laundry—is inconsistent and not persuasive.

Again, this case is unique in that there is an independent third-party assessment of instrumental activities of daily living, and the results of that assessment are consistent with the results of the CAT assessment. Given this consistency, and the fact that the Proposed Decision relies on the consistency for the instrumental activities of daily living of light meal preparation and main meal preparation, after review of the record and weighing the evidence therein, I find that the findings in the Division's CAT Assessment, coupled with the findings from the independent assessment performed by the Alaska Center for the Blind and Visually Impaired, are also more persuasive than Mr. W's hearing testimony for the instrumental activities of daily living of light housework, routine housework, and laundry.

Accordingly, I find that the preponderance of the evidence in the record demonstrates that Mr. W is currently independent with difficulty, and requires only set-up help, with light meal preparation, main meal preparation, light housework, routine housework, and laundry. Based on these factual findings, Mr. W is not currently eligible to receive Medicaid Personal Care Assistant services.

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 16th day of February, 2016.

By: Signed
Jared C. Kosin
Executive Director, Office of Rate Review
Department of Health and Social Services

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

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

In the Matter of:)
)
 N W) OAH No. 15-1471-MDS
) Agency Case No.

[REJECTED PROPOSED] DECISION

I. Introduction

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (DSDS or Division) correctly assessed N W’s eligibility for Medicaid Personal Care Assistant (PCA) services. The Division conducted an assessment and concluded that Mr. W does not require at least limited assistance with at least one activity of daily living (ADL), and is not at least independent with difficulty with at least one Instrumental Activity of Daily Living (IADL).¹ Based on these findings, the Division denied Mr. W’s application for PCA services.²

The testimony at hearing was conflicting in many areas, and it created close factual issues as to Mr. W’s ability to perform the activities at issue. However, the preponderance of the evidence indicates that Mr. W requires limited assistance with the IADLs of light housework, routine housework, and laundry, and also requires PCA escort to his medical appointments. Accordingly, the Division’s denial of Mr. W’s application for PCA services is reversed.

II. Facts

A. Mr. W’s Medical Problems, Physical Abilities, and Limitations

Mr. W is 47 years old.³ He lives alone in a ground floor apartment.⁴ Mr. W has diagnoses including right-eye blindness with prosthetic replacement, left-eye vision loss due to glaucoma and cataract(s), diabetes, gastroesophageal reflux disease (GERD), right shoulder pain, and rotator cuff injury.⁵ He takes two prescription medications on a daily basis, and another two on an as-needed basis.⁶

Mr. W is legally blind.⁷ He has no left eye and wears a prosthesis on that side. His right eye has macular scarring, and his best corrected vision with that eye is 20/400.

¹ Exs. D, E.

² Ex. D1.

³ Ex. E1.

⁴ Ex. E1.

⁵ Ex. 6 p. 2; Ex. E3.

⁶ Ex. E20.

⁷ All factual findings in this paragraph are based on Ex. 5 pp. 1 - 2.

On June 22, 2015 Mr. W saw H T, M.D. concerning his right shoulder pain.⁸ Dr. T's notes from that appointment state in relevant part:

[Mr. W] is here [for a] right shoulder injury He has had a chronic AC separation and then he fell. Now, he is having difficulty lifting his arm.

. . . .

Physical Examination: He is unable to lift the right arm at the shoulder. He has a very unstable prominent distal clavicle, but he states this is chronic and really not the current issue. The current issue is that of pain and severe weakness in that shoulder.

Data Reviewed: Radiographs including 3 views of the shoulder ordered and interpreted by me today show high-riding humeral head, mild degenerative change in the shoulder, high-grade AC separation with erosion of the distal clavicle and calcification of the CC ligaments consistent with chronic injury.

Impression: Worrisome exam for a full-thickness rotator cuff tear with a chronic acromioclavicular separation as a bit of a red herring.

Plan: We will get an MRI to understand the problem. He may need rotator cuff treatment if this [tear] is full thickness.

The MRI subsequently revealed:⁹

He has a large full-thickness tear involving the supraspinatus tendon. In infraspinatus, there is tendon retraction and the humeral head is high-riding. There is still fatty atrophy in his supraspinatus and infraspinatus. There is also chronic-appearing AC joint separation and a moderate joint effusion.

Following the MRI, Mr. W was referred to physical therapy, where he was to undergo therapy two to three times per week for a period of four to six weeks.¹⁰

In late July, 2015 the Alaska Center for the Blind and Visually Impaired (the Center) assessed Mr. W as to his abilities in performing activities of daily living (ADLs) and in using assistive technology for the blind.¹¹ The Center's assessor found that Mr. W has the following abilities with regard to the performance of his ADLs:

1. Mr. W has "average competency" for creating a menu and shopping list and managing a basic budget.
2. Mr. W has "above average competency" for performing his own personal hygiene and grooming; performing household tasks such as vacuuming, cleaning, and dusting;

⁸ All factual findings in this paragraph are based on Ex. 6 p.1.

⁹ All factual findings in this paragraph are based on Ex. 6 p. 2 unless otherwise stated.

¹⁰ All factual findings in this paragraph are based on Ex. 6 p. 2 unless otherwise stated.

¹¹ All factual findings in this paragraph are based on Exs. F3 - F7 unless otherwise stated.

shopping for food and other grocery items; using a clothes washer and dryer and ironing clothes; and identifying and organizing medications.

3. Mr. W has "outstanding competency" for cooking, cutting, and chopping food; using a mixer; pouring hot and cold liquids in a safe manner; using a microwave, gas, or electric oven or stove; serving and storing food; and cleaning and maintaining the cooking area / kitchen.

On September 3, 2015, after six sessions of physical therapy, Mr. W had a follow-up appointment for his right shoulder pain.¹² Mr. W's right shoulder was found to have 120 degrees of forward flexion, and normal internal and external rotation, but tenderness over the deltoid, and weakness in performing a strength test. It was recommended that he continue with his physical therapy.

On October 15, 2015, after another eleven sessions of physical therapy,¹³ Mr. W had another follow-up appointment for his right shoulder pain.¹⁴ Mr. W reported that he was not getting much relief from physical therapy, and that he wished to explore surgical options.

On October 29, 2015 Mr. W had another follow-up appointment for his right shoulder pain.¹⁵ Mr. W reported that he had difficulty raising his arm, and difficulty carrying any heavy object. At that time it was found that Mr. W could flex his right shoulder to 90 degrees, before the onset of pain, but that he had pain with any internal or external rotation.

On December 30, 2015, N D, a counselor with the Division of Vocational Rehabilitation (DVR), sent an e-mail to the Division's hearing representative stating as follows:¹⁶

As [Mr. W's] VR counselor, I do not have any information that would demonstrate an inability for him to be able to care for himself in the areas of interest *Unless there is an additional significant medical condition*, it is expected that individuals with visual impairment can be independent in these areas after training is complete. [Mr. W] will be able to begin training once he signs his plan *and is medically released from his shoulder surgery*. [Emphasis added].

B. Mr. W's Functional Abilities as Determined by the Division

On October 16, 2015 Mr. W was assessed for PCA eligibility by Mary Tanaka, R.N. of DSDS.¹⁷ Ms. Tanaka's assessment was recorded and scored on the Division's Consumer

¹² All factual findings in this paragraph are based on Ex. 6 p. 3 unless otherwise stated.

¹³ All factual findings in this paragraph are based on Ex. 6 pp. 7 - 8 unless otherwise stated.

¹⁴ All factual findings in this paragraph are based on Ex. 6 p. 4 unless otherwise stated.

¹⁵ All factual findings in this paragraph are based on Ex. 6 p. 5 unless otherwise stated.

¹⁶ All factual findings in this paragraph are based on Ex. F1 unless otherwise stated.

¹⁷ Ex. E.

Assessment Tool or "CAT," discussed in detail in Section III, below. Ms. Tanaka found that Mr. W has the following abilities and limitations with his Activities of Daily Living (ADLs):¹⁸

Functional Assessment:¹⁹ Ms. Tanaka reported that Mr. W has strong grip strength in both hands, and is able to touch his feet while in a sitting position, but is unable to touch his hands together over his head or behind his back, and is unable to stand up with his hands on his chest. She further reported that Mr. W could only raise his right arm to shoulder height, but could reach behind his back and over his head with his left arm.

Body Mobility:²⁰ Ms. Tanaka reported that Mr. W told her that he is able to move around his apartment independently, using his case if necessary. Ms. Tanaka reported that she observed Mr. W reposition himself on his bed and on a couch without assistance (scored 0/0).

Transfers:²¹ Ms. Tanaka reported that Mr. W told her that he can transfer from one surface to another independently. Ms. Tanaka reported that she observed Mr. W transfer on and off his bed and a couch, independently, during the assessment (scored 0/0).

Locomotion (walking):²² Ms. Tanaka reported that Mr. W told her that he has a cane which he uses when walking outside, indicating that he usually does not use a cane within his apartment. Ms. Tanaka reported that she observed Mr. W walk from room to room within his apartment independently without any assistance (scored 0/0).

Dressing:²³ Ms. Tanaka reported that Mr. W told her that he can dress himself independently, but that it takes him longer than usual to do so due to his right shoulder injury. Ms. Tanaka reported she observed that Mr. W's diagnoses, range of motion, grip strength, dexterity, and functional assessment indicate that he should be independent with dressing (scored 0/0).

Eating:²⁴ Ms. Tanaka reported that Mr. W told her that he cannot cook his own food, but that, once his food has been prepared, he is independent with regard to eating. Ms. Tanaka reported that she observed that, based on Mr. W's grip strength, he should be able to eat independently (scored 0/0).

¹⁸ Exs. E4 - E11. Although Mr. W stated at hearing that he is not seeking PCA time for assistance with his activities of daily living, evidence concerning Mr. W's ability to perform his ADLs is relevant here because it also sheds light on his ability to perform his instrumental activities of daily living (IADLs), which *are* at issue here.

¹⁹ Ex. E4.

²⁰ Ex. E6.

²¹ Ex. E6.

²² Ex. E7.

²³ Ex. E8.

²⁴ Ex. E9.

Toileting:²⁵ Ms. Tanaka reported that Mr. W told her that he is independent with toilet use. Ms. Tanaka reported she observed that, based on Mr. W's grip strength and his ability to transfer on and off a toilet, he should be independent with toilet use (scored 0/0).

Personal Hygiene:²⁶ Ms. Tanaka reported that Mr. W told her that he goes to a barber for hair care, but can perform the rest of his personal hygiene tasks independently. Ms. Tanaka reported that she observed that Mr. W was well-groomed at the time of the assessment, and that he has sufficient grip strength to perform his own personal hygiene tasks (scored 0/0).

Bathing:²⁷ Ms. Tanaka reported that Mr. W told her that he must use the tub wall to help get in and out of his bath tub, but that otherwise he is able to bathe himself independently. Ms. Tanaka reported that she observed that, based on Mr. W's grip strength and lower limb functionality, he should be able to bathe independently (scored 0/0).

The assessment of October 16, 2015 also scored Mr. W as follows with regard to his ability to perform Instrumental Activities of Daily Living (IADLs):²⁸ independent as to telephone use (CAT score 0/0); independent with set-up help as to financial management (CAT score 0/2); and independent with difficulty, requiring set-up help, as to light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, and laundry (all scored 1/2).

C. Relevant Procedural History

Mr. W applied for PCA services and was assessed on October 16, 2015.²⁹ The Division denied his application on October 26, 2015.³⁰ Mr. W requested a hearing to contest the Division's determination on November 16, 2015.³¹

Mr. W's hearing was held on January 4, 2016. Mr. W participated in the hearing by phone, represented himself, and testified on his own behalf. Darcie Shaffer participated in the hearing by phone and represented the Division. Mary Tanaka, R.N. participated by phone and testified on behalf of the Division. The record closed at the end of the hearing.

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

²⁵ Ex. E9.

²⁶ Ex. E10.

²⁷ Ex. E11.

²⁸ Ex. E26.

²⁹ Ex. D1. The exact date that Mr. W's application was submitted to the Division is not in the record.

³⁰ Ex. D.

³¹ Ex. C.

daily living (ADL), *physical assistance* with instrumental activities of daily living (IADL), and other services based on the *physical condition* of the recipient"³² [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."³³

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."³⁴ 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).³⁵ The CAT seeks to make the assessment process more objective by standardizing the evaluation of the applicant or recipient's functional impairments.³⁶

The ADLs scored by the CAT are body mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.³⁷ The CAT numerical scoring system for ADLs has two components. The first component is the *self-performance score*. These scores rate how capable a person is of performing a particular activity of daily living (ADL). The relevant scores are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance³⁸); and **3** (the person requires extensive assistance³⁹); **4** (the person is totally dependent⁴⁰).

³² 7 AAC 125.010(a).

³³ 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.*

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

³⁵ *See* 7 AAC 125.010(a).

³⁶ Ex. E.

³⁷ *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 January 13, 2016); *see also* Exs. E6 - E11.

³⁸ 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."

³⁹ 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."

⁴⁰ 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."

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 a particular ADL. The relevant scores are **0** (no setup or physical help required); **1** (only setup help required); **2** (one person physical assist required); and **3** (two or more person physical assist required).

The CAT also codes or scores certain activities known as "instrumental activities of daily living" (IADLs).⁴¹ These are light meal preparation, main meal preparation, light housekeeping, routine housekeeping, grocery shopping, and laundry. The CAT scores IADLs slightly differently than ADLs.⁴² 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.⁴³ 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 receives self-performance codes of 2, 3, or 4 and a support code of 2, 3, or 4 with regard to any one of the ADLs of transfers, locomotion, eating, toilet use, dressing, or bathing, then the person is eligible to receive PCA services.⁴⁴ Alternatively, if a person receives self-performance codes of 1, 2, or 3 and support codes of 3 or 4 with regard to any of the IADLs of light meal preparation, main meal preparation, light housework, routine housework, grocery shopping, or laundry, then the person is eligible to receive PCA services.⁴⁵

C. Does Mr. W Require Limited Assistance With an Activity of Daily Living?

In his written statement of his areas of disagreement,⁴⁶ and in his testimony at hearing, Mr. W stated that he is not seeking PCA assistance with any of his activities of daily living. Accordingly, it is not necessary to address Mr. W's ability to perform ADLs in this decision.

⁴¹ Ex. E26.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Ex. E31.

⁴⁵ *Id.*

⁴⁶ Ex. 1.

D. Does Mr. W 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).⁴⁷ However, before examining Mr. W's IADL scores, there is a threshold issue that must be addressed.

The Division asserts that Mr. W is not eligible for PCA assistance, even if he demonstrates that he requires assistance, because Medicaid is a payor of last resort and, under 7 AAC 160.200, Mr. W must exhaust services available through DVR and through the Alaska Center for the Blind and Visually Impaired before he is entitled to use services funded by Medicaid.

The Division is correct that the Medicaid program is intended to be the provider of last resort, with all other available resources having been exhausted prior to its use.⁴⁸ However, this rule does not bar Mr. W from obtaining PCA services under the facts of this case. First, Mr. W's testimony at hearing, as well as the Division's own Exhibit F, indicate that Mr. W is already accessing the services available through DVR and the Center, yet he apparently still requires PCA services. Second, the type of services available through DVR and the Center are not the same as the services provided by the PCA program. Finally, the bases for denial of Mr. W's application for PCA services are limited to those expressed in the Division's denial notice of October 26, 2015,⁴⁹ and the Division did not include its "payor of last resort" argument in its denial letter.⁵⁰ Accordingly, Mr. W is entitled to receive PCA assistance with IADLs if he can demonstrate his need for assistance through appropriate CAT scores.

⁴⁷ 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."

⁴⁸ *Wesley Health Care Center, Inc. v. DeBuono*, 244 F.3d 280 (2nd Cir. 2001); *Rehabilitation Association of Virginia, Inc. v. Kozlowski*, 42 F.3d 1444 (4th Cir. 1994); *Miller v. Gorski Wladyslaw Estate*, 547 F.3d 273 (5th Cir. 2008); *Caremark, Inc. v. Goetz*, 480 F.3d 779 (6th Cir. 2007); *Ahlborn v. Arkansas Department of Human Services*, 397 F.3d 620 (8th Cir. 2005).

⁴⁹ See *Algonquin Gas Transmission Company v. FERC*, 948 F.2d 1305, 1312 n. 12 (D.C.Cir.1991) (an administrative determination "must stand or fall on the grounds articulated by the agency" in that determination); *In Cherokee Nation of Oklahoma v. Norton*, 389 F.3d 1074, 1078 (10th Cir. 2004), *cert. denied*, 546 U.S. 812, 126 S. Ct. 333, 163 L.Ed.2d 46 (2005), (agency action must be upheld, if at all, on the basis articulated by the agency); *American Textile Manufacturers Institute, Inc. v. Donovan*, 452 U.S. 490, 539, 101 S. Ct. 2478, 69 L.Ed.2d 185 (1981) (an agency's *post hoc* rationalizations are an insufficient basis for agency action); 2 Charles H. Koch, Jr., *Administrative Law & Practice* § 8.22 (2nd Edition 1997) ("[t]he number of cases rejecting agency efforts to justify actions after the fact shows the strength of the prohibition against *post hoc* rationalization"); compare 42 CFR 431.241(a) (only matters to be considered at a Medicaid hearing are those pertaining to the agency's action).

⁵⁰ Ex. D.

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.⁵¹ The Division found Mr. W to be independent with difficulty as to light meals, requiring only setup assistance (CAT score 1/2).⁵²

Mr. W asserts that he requires assistance with light meal preparation because he cannot safely prepare a warm light meal due to the fact that he is legally blind, and also because of the pain in his right shoulder.⁵³ Mr. W's testimony on this point is, on its face, credible. However, the assessment performed by the Alaska Center for the Blind and Visually Impaired indicates that, during its multi-day assessment and training session, Mr. W demonstrated his ability to prepare meals independently in the Center's own training kitchen.⁵⁴ At hearing, Mr. W acknowledged that he had in fact received training from, and been assessed as to meal preparation by, the Center. Accordingly, based largely on the Center's assessment, I find that the preponderance of the evidence indicates that, as a result of training by the Center, Mr. W is currently independent as to light meal preparation (CAT score 0/0).

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.⁵⁵ The Division found Mr. W to be "independent with difficulty" as to main meal preparation, requiring setup help only (CAT score 1/2).⁵⁶ Mr. W asserts that he requires assistance with main meal preparation.⁵⁷ For the same reasons discussed above in the context of light meal preparation, and based largely on the Center's assessment, I find that the preponderance of the evidence indicates that, as a result of training by the Center, Mr. W is currently independent as to main meal preparation (CAT score 0/0).

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

⁵¹ 7 AAC 125.030(c)(1).

⁵² Ex. E26.

⁵³ Ex. 1 p. 2; N W's hearing testimony.

⁵⁴ Exs. F3, F4.

⁵⁵ 7 AAC 125.030(c)(2).

⁵⁶ Ex. E26.

⁵⁷ Ex. 1 p. 2.

used by recipient; (4) making the recipient's bed; (5) removing the recipient's trash; and (6) caring for the recipient's service animal.⁵⁸ The Division found Mr. W to be independent with difficulty as to light housework, requiring only setup assistance (CAT score 1/2).⁵⁹

Mr. W asserts that he requires physical assistance with light housekeeping because of his near blindness and his shoulder pain.⁶⁰ Based on his medical records, Mr. W's testimony on this issue was credible. Also, although the assessment prepared by the Center indicates that Mr. W is independent with housework, Mr. W testified that (unlike the Center's assessment as to meal preparation), the Center's assessor did not actually observe Mr. W perform any housework. Neither did the Division's assessor. Accordingly, the preponderance of the evidence indicates that Mr. W 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."⁶¹ Because Mr. W has already been scored 2/3 for the IADL of "light housekeeping" (above), no separate score is awarded for routine housework.

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.⁶² However, in his written statement of his areas of disagreement,⁶³ and in his testimony at hearing, Mr. W indicated that he is not seeking PCA assistance with grocery shopping. Accordingly, it is not necessary to address Mr. W's need for assistance with shopping in this decision.

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.⁶⁴ The Division found Mr. W to be independent with difficulty, and to require help with setup, as to laundry (CAT score 1/2).⁶⁵ Mr. W asserts that he requires assistance with his laundry due to his near blindness

⁵⁸ 7 AAC 125.030(c)(3).

⁵⁹ Ex. E26.

⁶⁰ Ex. 1 p. 2.

⁶¹ 7 AAC 125.030(c)(3).

⁶² 7 AAC 125.030(c)(5).

⁶³ Ex. 1 p. 2; N W's hearing testimony.

⁶⁴ 7 AAC 125.030(c)(4).

⁶⁵ Ex. E26.

and his shoulder pain.⁶⁶ For the same reasons discussed above in the context of light housework, the preponderance of the evidence indicates that Mr. W requires physical assistance with his laundry (CAT score 2/3).

7. 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." Mr. W asserts that, due to his near blindness, he requires PCA escort to eight doctor appointments per year and three dental appointments per year.⁶⁷ Based on Mr. W's extreme visual impairment, it is reasonable for him to have PCA escort to his medical appointments. Even using public transportation, Mr. W could reasonably require assistance navigating Anchorage's pothole-infested streets and sidewalks. This is particularly the case during the seven months per year in which Anchorage's roads are icy and dark. Accordingly, the preponderance of the evidence indicates that Mr. W is entitled to PCA time for escort to his medical appointments in the average amount of 8.25 minutes per week.

IV. Conclusion

Mr. W has scored a 2/3 with regard to the IADLs of light housework, routine housework, and laundry. A score of 2/3 on any of these IADLs qualifies Mr. W to receive PCA services. Accordingly, Mr. W is eligible for PCA services. The Division's determination that Mr. W is not eligible for PCA services is therefore reversed.⁶⁸

DATED this 25th day of January, 2016.

Signed _____
Jay Durych
Administrative Law Judge

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

⁶⁶ Ex. 1 p. 3; N W's hearing testimony.

⁶⁷ Ex. 1 p. 3.

⁶⁸ This decision does not calculate the hours per week of PCA services which Mr. W is eligible to receive. If Mr. W disagrees with the Division's calculation of the specific number of hours of PCA services for which he is eligible, he may request a new hearing on that issue.