

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

In the Matter of)
)
D T) OAH No. 17-1106-MDS
) Agency No.
_____)

DECISION

I. Introduction

D T applied to the Division of Senior and Disabilities Services for the personal care services program. The division assessed Ms. T’s physical condition, and concluded that her need for assistance was not sufficient to qualify her to participate in the program. The division denied the application, and Ms. T requested a hearing.

Because Ms. T requires physical assistance with dressing and with three instrumental activities of daily living, she is eligible to participate in the personal care services program. The division’s decision is reversed.

II. Facts

D T is 23 years old. She lives independently in a second-floor apartment in No Name City A, Alaska, having recently moved from No Name City B. She lives with a number of physical and mental conditions. She takes several medications, including Gabapentin and Tramadol for pain.¹ She has syringomyelia (a cyst or “syrinx” in her spinal cord), and experiences a slicing pain in her spine when she bends, twists, leans back, or sits down from a standing position.² She drives herself to her frequent medical appointments, but reports that driving is extremely painful.³ She cannot feel her left foot, and it bounces and drags when she walks. She has been practicing swinging that foot in physical therapy. While it is painful and takes a long time, she is able to navigate the stairs in her apartment building by using the handrails. Sometimes a neighbor will help her down the stairs. She keeps a walker in her car that she uses to get around when outside her apartment. Inside her apartment, she uses various pieces of furniture to stabilize herself.⁴ She cannot stand for long periods of time, and

¹ Division Ex. E at 20.
² Testimony of T.
³ T Ex. 4 at 2 - 4; Testimony of T.
⁴ Testimony of T.

experiences pain when standing.⁵ Ms. T has urinary incontinence and uses pads and liners, but can change liners and cleanse herself independently.⁶ The Social Security Administration concluded on March 21, 2016 that Ms. T is disabled.⁷

Ms. T's parents used to assist her with many activities of daily living that Ms. T finds difficult. However, her father has had multiple aneurisms and surgery, and her parents now see Ms. T much less frequently than before her father's health problems. When they come into town, they will stop by, take the trash out, pick up a prescription, put on Ms. T's socks for her, or help as they can. However, they are no longer able to assist Ms. T with her daily needs.⁸

Ms. T applied to the division for assistance. On October 5, 2017, the division assessed Ms. T at a local clinic using a videoconference link. The assessor observed Ms. T stand up from a seated position using one hand on her walker to stabilize herself, and walk around the room using the walker.⁹ The assessor asked Ms. T questions about her apartment, but did not visit the apartment.¹⁰

Ms. T's primary diagnosis is either myositis or fibromyalgia.¹¹ Her secondary diagnoses include chronic pain syndrome, syringomyelia and syringobulbia, as well as anxiety, panic, and depressive disorders.¹² In addition, Ms. T reports diagnosis of herniated discs, scoliosis, spinal stenosis, numbness of lower extremities, fibromyalgia, bulging discs, tachycardia, gastritis, herpes type 2, sleep apnea, restless leg syndrome, conversion disorder, sleep disorder, migraines, traumatic brain injury, myalgias, arthralgias, rebound headaches, postural hypotension, post-traumatic stress disorder, and borderline personality disorder.¹³

Ms. T submitted notes from her physical therapist in No Name City C for visits in April and May of 2017. That physical therapist noted that "some aspects of patient's history were not consistent throughout treatment." He worked with Ms. T on the use of a four-wheel walker,

⁵ Division Ex. E at 9; Testimony of T.

⁶ Division Ex. E at 23; Testimony of T.

⁷ T Ex. 4 at 3.

⁸ Testimony of T.

⁹ Division Ex. E at 6 - 7.

¹⁰ Division Ex. E; Testimony of Norton.

¹¹ Referring to the verification of diagnosis form completed by Ms. T's primary care physician D L, Ms. T's care coordinator listed a primary diagnosis of fibromyalgia. T Ex. 4 at 3. However, the CAT lists a primary diagnosis of myositis, and Ms. Norton testified that the diagnosis listed on the CAT were also drawn from Dr. L's verification of diagnosis form. That form was not filed as an exhibit by either party.

¹² Division Ex. E at 3; Testimony of Norton.

T Ex. 4 at 3.

¹³ T Ex. 5 at 5.

which he found to be the safest assistive device for her needs.¹⁴ Ms. T also submitted a functional assessment completed by a physical therapist in No Name City A on November 30, 2017, which observed that Ms. T “has great difficulty navigating the stairs. This does not seem to be the ideal environment for this woman.”¹⁵

Ms. T submitted patient progress notes from iron infusion therapy ordered by her primary care provider in No Name City A, but no notes of visits with that provider.¹⁶ She also submitted notes from her cardiologist.¹⁷

The division submitted notes from a neurologist in No Name City B Ms. T consulted from April through August 2017.¹⁸ The assessor relied heavily on these notes in her assessment of Ms. T.¹⁹ The neurologist wrote that Ms. T has “some elements of somatoform pain,” and opined that fibromyalgia rather than the syrinx caused most of Ms. T’s pain.²⁰ The neurologist also noted that Ms. T’s “left ankle examination showed highly variable tone, which is not an organic finding. In addition, she made minimal effort with toe flexion and extension when the lower extremities were tested simultaneously and when she was observed later, strength appeared intact in the toes. She complains of frequent falls but denies any injury from the falls. . . I suspect that she has conversion disorder.”²¹ The neurologist found Ms. T’s pain was most likely attributable to fibromyalgia, rather than the cyst in her spine.²²

The division’s assessor reported that in preparing her assessment of Ms. T, she relied heavily on the notes of the neurologist, in addition to what Ms. T told her during their videoconference. Specifically, she quoted the neurologist’s description of the numbness Ms. T reported in her left foot as “not organic” and “not consistent.”²³

On October 23, 2017, the division denied Ms. T’s application for personal care services.²⁴ Ms. T requested a fair hearing.²⁵ A telephonic hearing was held on November

¹⁴ T Ex. 3 at 3, 24.

¹⁵ T Ex. 6. Although this assessment was conducted after the date the division denied Ms. T’s application for PCS services, the division did not object to its admission into evidence.

¹⁶ T Ex. 1.

¹⁷ T Ex. 2.

¹⁸ Division Ex. F.

¹⁹ Testimony of Norton.

²⁰ Division Ex. F at 6, 10.

²¹ Division Ex. F at 19.

²² Division Ex. F at 6.

²³ Testimony of Norton.

²⁴ Division Ex. D at 1.

²⁵ Division Ex. C.

27, 2017 and December 1, 2017. Ms. T represented herself. Fair Hearing Representative Victoria Cobo represented the division. K M of ResCare, M E of Care Coordination Resource, and division assessor Rae Norton testified. The record was held open until December 4, 2017 to allow the parties to provide additional medical records.

III. Discussion

According to the personal care services program regulations, the division will authorize personal care services for an individual who experiences “functional limitations that ... are the result of the recipient’s physical condition” and that “cause the recipient to be unable to perform, independently or with an assistive device” a specified list of activities of daily living (ADLs) and instrumental activities of daily living (IADLs).²⁶ The division uses a standardized form, the Consumer Assessment Tool (CAT), to evaluate an applicant’s ability to perform the ADLs of bed mobility, transferring, locomotion, dressing, eating, toileting, and personal hygiene, and bathing, and the IADLs of light meal preparation, main meal preparation, housework, laundering, and shopping.²⁷ The program will not cover personal care services for an activity the division determines could be performed by the recipient.²⁸

The CAT scores a person’s ability to perform an ADL on a scale from 0 to 4. For ADLs other than bathing, 0 means the person can perform the activity independently, 1 means the person needs oversight, encouragement, or cueing three or more times a week, or supervision plus non-weight-bearing assistance once or twice a week, 2 means the person needs non-weight-bearing physical assistance three or more times a week or weight bearing assistance once or twice a week, 3 means the person needs extensive physical assistance, and 4 means the person is totally dependent on a caregiver to perform the activity.²⁹

The CAT also scores how much support a person requires in performing an ADL on a scale of 0 to 3. The support scale codes no setup or physical help needed as 0, setup help only as 1, physical assistance from one person as 2, and physical assistance from two or more people as 3.³⁰

²⁶ 7 AAC 125.010(b)(1).

²⁷ 7 AAC 125.030(b). The CAT is adopted as a regulation by reference in 7 AAC 160.900(d)(6).

²⁸ 7 AAC 125.040(a)(4).

²⁹ Division Ex. E at 6.

³⁰ *Id.*

The self-performance of IADLs is scored from 0 to 3, with 0 meaning no help was provided with the activity over the course of the preceding week, 1 meaning the person “performed task, but did so with difficulty or took a great amount of time to do it,” 2 meaning the person was involved but supervision, reminders, or hands-on help were provided, and 3 meaning the activity was performed by others and the recipient was not involved.³¹

The division will authorize personal care services for a recipient who receives a self-performance score of at least 2 for at least one ADL or IADL.³² In this case, the division determined that Ms. T did not require this level of assistance with any of the ADLs or IADLs. On October 23, 2017, the division denied Ms. T’s application for personal care services.³³

A. Bed Mobility

The ADL of bed mobility refers to the ability of a person to move to and from a lying position or turn from side to side in bed.³⁴ The July 2017 revisions to the personal care services program regulations added the phrase “for a recipient who is non-ambulatory” to the description of this ADL, effectively limiting its application to that group of recipients.³⁵

Ms. T argued that she needed assistance with bed mobility because she is unable to move or get out of bed on bad days due to pain. However, Ms. T did not dispute that she is ambulatory. The assessor observed Ms. T reposition herself in a chair, stand up using her walker, and then move around the room using the walker. Because Ms. T is ambulatory, the division’s score of 0/0 for this activity is affirmed.

B. Transfers

The program regulations allow PCS time for transfers when a person requires physical assistance to move between one surface and another, including to or from a bed or chair, or from sitting to standing.

Ms. T told the assessor that standing sometimes hurts and she would rather not move around due to pain.³⁶ At the hearing, Ms. T testified that she was unable to stand for long

³¹ Division Ex. E at 26.

³² 7 AAC 125.020(c)(1).

³³ Division Ex. D at 2.

³⁴ 7 AAC 125.030(b)(1).

³⁵ *Id.*

³⁶ Division Ex. E at 6.

periods of time, that standing triggered her syringomyelia and caused pain, and that standing increased her systolic blood pressure. However, Ms. T demonstrated during the assessment that she could stand up on her own using her walker.³⁷

The assessor scored Ms. T 0/0 for transfers. Ms. T did not show that she needs physical assistance to move from one surface to another, or to stand up. The division's score of 0/0 is affirmed.

C. Locomotion

The division may authorize personal care services time for locomotion for a person who requires physical assistance to walk between locations in the person's home, or to and from a vehicle used to access routine medical appointments. The regulation specifically prohibits the division from authorizing personal care services time for a recipient who is "self-sufficient with an assistive device."³⁸ The CAT form specifically asks the assessor to evaluate "how a person "moves between locations in his/her room and other areas on the same floor."³⁹

The assessor observed Ms. T moving around the room at the clinic independently using her walker. She described Ms. T as having a "slightly limping gait."⁴⁰ Ms. T disputed this characterization, testifying that her left foot drags. She testified that the noise of her foot dragging down the stairs sometimes attracts the attention of her neighbor, who will then assist Ms. T. She did not say how often she receives assistance from the neighbor. Ms. T also testified that she was able to navigate the stairs at her apartment building independently using the handrails, although it is very painful and takes her a long time. She also uses handrails to navigate the walkway to her parking space.

The assessor's observations and Ms. T's testimony both support the score of 0/0 for locomotion between locations within Ms. T's residence. For locomotion between her apartment and the car she uses to access routine medical appointments, she should be scored 1/2 because of her difficulty with the stairs and testimony that a neighbor sometimes helps her down the stairs.

³⁷ *Id.*

³⁸ 7 AAC 125.030(b)(3)(i).

³⁹ Division Exhibit E at 7.

⁴⁰ *Id.*

D. Dressing

The regulation permits the division to authorize personal care services for a person who needs physical assistance with “the putting on, fastening, unfastening, and removal of the recipient’s clothing, support hose, or prosthesis.”⁴¹ The CAT provides for a self-performance score of 1 for a person who needs oversight, encouragement or cuing with an ADL three or more times a week, or physical assistance once or twice a week. A support score of 1 corresponds to a need for setup help only; a person who needs physical assistance from one person should receive a support score of 2.

The assessor scored Ms. T 1/1 for the ADL of dressing. According to the assessor, this is a score she reserves for individuals who are able to dress themselves a majority of the time, but may need help once or twice a week.⁴² She noted that Ms. T’s family sometimes “sets up clothing, but they don’t live with her.”⁴³ The assessor noted that Ms. T had limited range of mobility, finding that Ms. T could touch her hands over her head, but not behind her back. She could not stand up with her hands across her chest. She could not touch her feet.⁴⁴ However, the assessor also found that Ms. T had adequate range of motion to dress herself, despite “some limitations reaching down and behind.”⁴⁵

Ms. T cannot reach her feet to put on socks, and she cannot reach behind her back to put on a bra. She can put on slip-on shoes. She is not able to put her left foot into a boot. She is able to put her legs into pants. She described pulling her pants up while falling backwards onto her bed, and explained that it can take multiple falls to get the waistband up to her waist.⁴⁶

Ms. T reported that her mother put Ms. T’s socks on Ms. T’s feet three days before the date of the assessment. Ms. T also testified that she keeps the same set of clothes on for as long as two weeks at a time, until someone comes to her apartment to assist her. She estimated that her parents come to her apartment once or twice a month. During the December 1, 2017 hearing session, she testified that she was still wearing the same clothes she had worn during the November 27, 2017 hearing session.

⁴¹ 7 AAC 125.030(b)(4).

⁴² Testimony of Norton.

⁴³ Division Ex. E at 8.

⁴⁴ Division Ex. E at 4.

⁴⁵ Division Ex. E at 8.

⁴⁶ T Ex. 5 at 6, 10; Testimony of T.

Because this is a new application for personal care services, Ms. T has the burden of proof.⁴⁷ Based on the assessor's observations about Ms. T's range of motion and Ms. T's own testimony, it is more likely than not that Ms. T needs physical assistance with dressing three or more times a week. Ms. T should be scored a 2/2 for the ADL of dressing.

The assessor's finding that Ms. T can put on most of her clothes without physical assistance from another person does not dictate that she should be scored lower; a previous decision found that a woman who could put her pants on but not her socks had shown that she needed physical assistance with dressing at least three times a week.⁴⁸

E. Eating

Ms. T does not require physical assistance with eating -- she can use cutlery, and she does not have a feeding tube. She does not have swallowing or aspiration difficulties that require supervision.⁴⁹ The difficulties Ms. T cited with this ADL relate to the IADLs of light meal preparation and main meal preparation, discussed below. The assessor correctly scored Ms. T at 0/0 for the ADL of eating.

F. Toileting

The assessor scored Ms. T 0/0 for the ADL of toileting, and Ms. T did not dispute this score.

G. Personal Hygiene

The division may authorize personal care services if a person needs physical assistance with any of several personal hygiene activities, including nail care for non-diabetic recipients and brushing and combing hair.⁵⁰ The assessor scored Ms. T 0/0 for the ADL of personal hygiene, noting that she "appears to have adequate ROM to groom."⁵¹

Ms. T argued that because she could not reach her feet, she needed help clipping her toenails.⁵² Ms. T told the assessor that her mother had groomed Ms. T's toenails the month before the assessment.⁵³ From this, the assessor concluded that Ms. T only needed physical

⁴⁷ 7 AAC 49.135.

⁴⁸ *In re E.C.*, OAH No. 15-1103-MDS at 4 (Commissioner of Health and Social Services 2015).

⁴⁹ Testimony of T. *See* 7 AAC 125.030(b)(5).

⁵⁰ 7 AAC 125.030(b)(7).

⁵¹ Division Ex. E at 10.

⁵² T Ex. 5 at 12.

⁵³ Division Ex. E at 10.

assistance with personal hygiene once a month, not often enough to justify personal care services for this activity.⁵⁴

The assessment cited Ms. T as reporting that she could “fix” her hair, but Ms. T testified that she was unable to brush the hair on the back of her head.⁵⁵

Ms. T also argued that she had skin problems, specifically calloused and cracked skin on her feet.⁵⁶ She testified that she had a loofah with a long handle that she can reach her feet with, but that the loofah is not a helpful tool for removing callouses or cleaning cracked, bleeding feet.

She also stated that she had a herpes infection with frequent outbreaks, and that she is on medication for that condition. She argued that she needed assistance washing, drying, and applying cream to the lesions.⁵⁷ However, none of the medical documentation submitted by Ms. T or the division refers to a herpes diagnosis or medication.

Although Ms. T may need some assistance with personal hygiene, particularly nail care, she did not demonstrate that she requires physical assistance three or more times a week or that she requires more assistance than her mother can provide with this activity. Because she apparently needs physical help trimming her toenails rather than just supervision, her condition may justify a score as high as 1/2 for personal hygiene. However, the frequency of this task does not justify a self-performance score of 2. To score a 2, a person must receive nonweight-bearing assistance at least three times a week, or weight-bearing assistance once or twice a week. A self-performance score of at least 2 is required to qualify for personal care services for this activity. Ms. T has not shown that she meets this threshold.⁵⁸

H. Bathing

The assessor scored Ms. T at 0/0 for the ADL of bathing. Ms. T argued that she only showers once or twice a month because it takes most of the day to shower, dry off, and get

⁵⁴ Testimony of Norton.

⁵⁵ Division Ex. E at 10; Testimony of T.

⁵⁶ T Ex. 5 at 12, 15; Testimony of T.

⁵⁷ T Ex. 5 at 15.

⁵⁸ 7 AAC 125.020(c).

dressed on her own.⁵⁹ She informed the assessor that she did not shower more often due to back pain.⁶⁰

Ms. T argued that she should be scored a 3/2 for bathing, because she needs help washing her hair, scrubbing her feet and legs, and scrubbing her back.⁶¹ However, Ms. T testified that using the loofah, she could reach her feet and legs. Also, she did not dispute that she could reach her arms above her head, so it is not clear why she needs help washing her hair.

Ms. T also questioned whether the assessor could adequately evaluate Ms. T's ability to shower by observing Ms. T through a video link on a laptop computer.⁶² However, assessors typically do not observe a person directly engaging in the activities of toileting or bathing, even when the assessment is performed in-person in the applicant's home. The assessor's testimony indicated that she evaluates a person's ability to complete the ADL of bathing by looking at physical condition and abilities. Specifically, she noted that usually if a person can balance, walk, and reach the person's head, the person will be scored as independent in the activity of bathing. Thus, she concluded that Ms. T could bathe independently.⁶³ Ms. T disputed the assessor's conclusion that Ms. T does not have balance problems or an unsteady gait.⁶⁴ The assessor did note that Ms. T limits her activities for fear of falling.⁶⁵ Although the bath bench was not yet in place at the time of the assessment, Ms. T now has a bath bench.⁶⁶

Ms. T did not show that she requires assistance with bathing.

I. Instrumental Activities of Daily Living

In addition to physical assistance with ADLs, the division may authorize personal care services where a recipient needs physical assistance to enable the recipient to prepare meals, do housework or laundry, or shop.⁶⁷

⁵⁹ T Ex. 5 at 13.

⁶⁰ Division Ex. E at 11.

⁶¹ T Ex. 5 at 2, 21.

⁶² T Ex. 5 at 13.

⁶³ Testimony of Norton.

⁶⁴ T Ex. 5 at 25.

⁶⁵ Division Ex. E at 23.

⁶⁶ Testimony of T.

⁶⁷ 7 AAC 125.030(c).

The assessor scored Ms. T at 0/0 for light meal preparation, main meal preparation, and light housework, indicating that Ms. T was independent with these activities. The assessor scored Ms. T 1/0 for routine housework (vacuuming, cleaning floors, trash removal, cleaning bathroom), grocery shopping, and laundry, indicating that she was independent with difficulty and that no support was provided. Ms. T argued that she should be scored 3/3 or 3/4 for each of these activities, meaning she was dependent on others to perform these activities and not involved when they were performed.

In explaining why she scored Ms. T as independent with these activities, the assessor emphasized Ms. T's ability to carry her three-pound dog and drive herself to appointments. She noted that most of the personal care services recipients that she sees are not able to drive, and most need hands-on assistance throughout the day. However, Ms. T testified credibly about her difficulty navigating the stairs to and from her apartment.

1. Light Meal Preparation and Main Meal Preparation

The division may authorize personal care services for a recipient who needs physical assistance to enable the recipient to prepare, serve, and clean up a meal that is not the main meal of the day.⁶⁸

Ms. T explained that she eats things that do not have to be cooked, ramen noodles, and microwavable meals. She does not feel it is safe to use the stove because it is too high, but she can use the microwave, and get things out of the refrigerator. She eats precut fruit and vegetables, but does not cut fruit or vegetables up herself. She testified that she is not able to prepare healthy meals because that would require the use of both hands while she balances on one leg. She keeps a rolling computer chair in the kitchen, but she does not have a cutting board, or a table or other work surface in the kitchen that she can comfortably reach.⁶⁹ She reports that she is not able to wash dishes.

Ms. T's testimony indicates that she can prepare light meals. The division's score of 0/0 for this IADL is affirmed. Ms. T's testimony also establishes that it is difficult for her to prepare main meals. However, Ms. T did not show that she is unable to prepare a main meal without assistance. Ms. T should be scored 1/0 for the IADL of main meal preparation.

⁶⁸ 7 AAC 125.030(c)(1).

⁶⁹ Testimony of T; T Ex. 5 at 2, 11.

2. Housework.

The PCS program regulations permit the division to authorize physical assistance for a recipient to make living spaces neat and orderly, including dusting and floor cleaning, cleaning the kitchen and washing dishes, cleaning the bathroom, making the recipient's bed, and removing trash.⁷⁰ The CAT scores "light housework" (doing dishes, dusting, and making the bed) and "routine housework" (vacuuming, cleaning floors, trash removal, cleaning bathroom) separately, and personal care services time is based on the higher score. The division scored Ms. T at 0/0 for light housework, and 1/0 for routine housework.

Ms. T testified that she was not able to take the garbage out, vacuum, or wash dishes. Most of her testimony about routine housework centered on taking out the garbage. She said her parents will take a bag of garbage out when they visit. Her care coordinator noted that there was garbage piled up in the kitchen when she visited.⁷¹ Taking out the garbage requires navigating down the stairs with a bag of trash. Ms. T's difficulties in navigating the stairs are discussed above.

Ms. T testified that taking the garbage out is impossible for her because it would require walking across an icy parking lot with the bag of garbage. Ms. T testified that she can walk to her car because she has a handicapped parking spot that she can get to using a walkway with handrails. Ms. T did not address whether there were any supports or aids that could help her make her way across the parking lot to throw away her garbage.

Ms. T did not specifically address any of the three examples of light housework except to say that she cannot do dishes. On cross-examination, she said that doing dishes was painful, but didn't elaborate further. The division's score of 0/0 for light housework will stand.

The division scored Ms. T at 1/0 for routine housework. Ms. T testified as to the conditions that prevented her from taking out the garbage, and testified that her parents took the trash out for her. This testimony was supported by the observation of the care coordinator that trash was piling up in the kitchen. All of this indicates that Ms. T receives help taking the trash out, and when she does not receive help, the activity does not occur. Ms. T should be scored 2/3 for routine housework.

⁷⁰ 7 AAC 125.030(c)(3).

⁷¹ T Ex. 5 at 2.

3. Grocery shopping.

Ms. T can drive to the grocery, and she uses an electric scooter in the store. She finds the process of grocery shopping scary and painful. She said that it takes days to recover from a shopping trip.⁷² Ms. T testified that her refrigerator was empty.⁷³ She testified that she needs help carrying groceries up the stairs when she gets home from the grocery. Her parents used to help her with grocery shopping. She has also paid a neighbor to carry her groceries upstairs for her. Although Ms. T has demonstrated her ability to access medical appointments independently while carrying a small dog, a full bag of groceries is likely to weigh more than the dog.

It is more likely than not that Ms. T requires physical assistance with the IADL of grocery shopping. She should be scored 2/3 for this IADL.

4. Laundry

The assessor gave Ms. T a 1/0 for the IADL of laundry, the same as for grocery shopping and routine housework -- meaning that the person performed the task within the last seven days, but did so with difficulty or took a great amount of time to do it, and support was not provided. The activity of doing laundry poses some of the same concerns as grocery shopping and routine housework.

Ms. T testified that she does not have a washer and dryer in her apartment building, but the assessment indicated that she had laundry facilities in her home.⁷⁴ The notes from her care coordinator state that the laundry room for Ms. T's apartment is located in the main office.⁷⁵ It must be inferred that the laundry facilities for Ms. T's apartment are located in a different building than Ms. T's apartment, and therefore pose the same challenges of navigating on ice without a handrail as taking out the garbage.

At the hearing, Ms. T said she cannot carry a bag of laundry because a bag of laundry is "huge." The division responded by asking whether Ms. T could carry three pounds of laundry. It is true that Ms. T can carry a very small dog. However, Ms. T also testified that her bath bench was sitting in her car on the day of the assessment because she could not carry it up to her apartment by herself. Eventually she paid a neighbor to carry it

⁷² Testimony of T; T Exhibit 5 at 1.

⁷³ Exhibit 5 at 2; Testimony of T.

⁷⁴ Division Ex. E at 26.

⁷⁵ T Ex. 5 at 1, 28.

up the stairs. So, Ms. T can carry small things up to her apartment, but she needs assistance with larger things.

A load of laundry is fairly voluminous, particularly with bed linens. It is more likely than not that a load of laundry is more than Ms. T can carry at once, particularly given that the laundry facilities are in a different building than her apartment. Ms. T testified that she does not do laundry. She did not explain how she gets her laundry done now. Based on Ms. T's testimony, given her gait and reliance on a walker and handrails, it is more likely than not that she does require help getting her laundry to and from the laundry room.

Ms. T is incontinent. She uses liners, and incontinence pads that she puts on her bed. Incontinence generally results in a greater need to do laundry, and the service level computation chart recognizes this.⁷⁶ The chart allows 15 minutes weekly for laundry in home (if a washer/ dryer is available "in the recipient's residence"), and 30 minutes weekly for laundry out of home.⁷⁷ If a recipient scores a "3" or "4" for incontinence, the computation chart allows time for two loads of laundry per week. This is true even if the recipient's laundry facilities are in the home (the chart does not permit a second load given in home laundry facilities, except in cases of incontinence).

The assessment scored Ms. T as "1" for incontinence, or "usually continent" with incontinent episodes once a week or less.⁷⁸ However, the care coordinator's notes indicate that Ms. T wets the bed multiple times a week.⁷⁹ That would be scored a "2" for "occasionally incontinent - 2 or more times a week but not daily." So, there is a factual disagreement about the extent of the incontinence, but the CAT documents incontinence and the division did not dispute that Ms. T has some degree of incontinence. It is more likely than not that Ms. T's incontinence does not rise to a level that would justify two loads of laundry under the service level computation chart, a score of "3" or "4." But the undisputed presence of incontinence underscores the needs for assistance with this IADL.

Because Ms. T needs physical assistance to do her laundry, particularly carrying the clean laundry back up the stairs to her apartment, she should be scored 2/3 for this IADL.

⁷⁶ The chart is adopted as a regulation by reference in 7 AAC 160.900(d)(29).

⁷⁷ Division Ex. B at 25.

⁷⁸ Division Ex. E at 23.

⁷⁹ T Ex. 5 at 2.

F. Overall Eligibility for Personal Care Services

A person is eligible for personal care services if she has a score of 2/2 or higher in one of the six ADLs or a score of 1/3 or higher in one of the IADLs. Ms. T has shown that she should have qualifying scores in the ADL of dressing (2/2), and the IADLs of routine housework (2/3), shopping (2/3), and laundry (2/3). She is therefore eligible for personal care services.

IV. Conclusion

The division’s October 23, 2017 decision denying Ms. T’s application for personal care services is reversed. The division shall calculate Ms. T’s personal care services time in accordance with this decision.

Dated: December 20, 2017.

Signed _____
Kathryn L. Kurtz
Administrative Law Judge

Adoption

The undersigned, by delegation from 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 8th day of January, 2018.

By: *Signed* _____
Name: Kathryn L. Kurtz
Title: Administrative Law Judge

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