

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

In the Matter of )  
 )  
X D ) OAH No. 17-1183-MDS  
 ) Agency No.  
\_\_\_\_\_ )

**DECISION**

**I. Introduction**

X D was receiving 31.75 hours per week of personal care assistance (PCA) services when she was reassessed to determine her continued eligibility for those services. Based primarily on a reassessment visit on October 12, 2017, the Division of Senior and Disabilities Services (Division) notified Ms. D on November 3, 2017 that her PCA services would be reduced to 10.25 hours per week. The reduction of services resulted from regulation changes and what the Division perceived as improvements or changes in Ms. D’s functioning and living conditions. Ms. D requested a hearing.

The evidence at the hearing showed that Ms. D has experienced some changes that alter her needs for physical assistance with some activities. However, some of the Division’s findings in its 2017 assessment were in error. Accordingly, the Division’s decision is affirmed in part and reversed in part. The Division shall provide Ms. D services as specified in this decision.

**II. The PCA Service Determination Process**

The Medicaid program authorizes PCA services to provide physical assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs), and other services based on the recipient’s functional limitations and physical condition.<sup>1</sup> Accordingly, the Division will not authorize personal care services for a recipient if, after an assessment, it determines that the recipient does not need a certain level of assistance or that he or she needs only cueing, supervision, or set-up help to perform an ADL, IADL, or other covered service.<sup>2</sup>

The Division uses the Consumer Assessment Tool, or “CAT,” to score eligibility for the PCA program, and the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.<sup>3</sup> In general, if a recipient requires certain levels

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<sup>1</sup> 7 AAC 125.010; 7 AAC 125.020.

<sup>2</sup> 7 AAC 125.020(d)(2).

<sup>3</sup> See 7 AAC 125.024(a)(1); 7 AAC 125.020(c)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

of assistance, the regulations prescribe a fixed number of PCA minutes for each occurrence of that activity.

As a gateway to eligibility for PCA services, the CAT evaluates a subset of the ADLs and IADLs. If a person requires some degree of hands-on physical assistance with any one of these ADLs or IADLs, then the person is eligible for PCA services. Once eligibility is established, time for additional ADLs and IADLs, as well as certain other covered services, can be added to the PCA authorization.

The ADLs measured by the CAT are bed mobility, transfers (mechanical or non-mechanical), locomotion (in room, between levels, and to access medical appointments), dressing, eating, toilet use, personal hygiene, and bathing.<sup>4</sup> The CAT numerical coding system for ADLs has two components: self-performance code and support code.

The *self-performance codes* rate how capably a person can perform a particular ADL. The possible codes are: **0** (the person is independent<sup>5</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>6</sup>); **3** (the person requires extensive assistance<sup>7</sup>); and **4** (the person is totally dependent<sup>8</sup>). There are also two other codes which are not used in calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).<sup>9</sup>

The *support codes* rate the degree of assistance that a person requires for a particular ADL. The possible codes are: **0** (no setup or physical help required); **1** (only setup help required); **2** (one-person physical assist required); and **3** (two or more persons physical assist required). Again, there are two additional codes which are not used to arrive at a service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).<sup>10</sup>

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<sup>4</sup> Ex. F at 6 – 12, 19.

<sup>5</sup> A self-performance code of 0 is classified as “[I]ndependent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days.” See Ex. F at 6.

<sup>6</sup> Limited assistance with an ADL means a recipient who is “highly involved in the activity; received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance 3+ times – or – Limited assistance . . . plus weight-bearing 1 or 2 times during the last 7 days.” Ex. F at 6.

<sup>7</sup> Extensive assistance with an ADL means that the recipient “performed part of the activity, over last 7-day period, help of following type(s) provided 3 or more times: weight-bearing support or full staff/caregiver performance of activity during part (but not all) of last 7 days.” Ex. F at 6.

<sup>8</sup> Dependent as to an ADL, or dependent as to an IADL, means “full staff/caregiver performance of activity during ENTIRE 7 days.” Ex. F at 6.

<sup>9</sup> Ex. F at 6.

<sup>10</sup> Ex. F at 6.

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, telephone use, light housekeeping, management of finances, routine housekeeping, grocery shopping, laundry (in-home or out-of-home), and transportation.<sup>11</sup> Like ADLs, the CAT rates self-performance and support for IADLs.

The CAT codes IADLs slightly differently than it does ADLs. The *self-performance codes for IADLs* are: **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person). There is also a code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>12</sup>

The *support codes* for IADLs are also slightly different than the support codes for ADLs. The support codes for IADLs are: **0** (no support provided); **1** (supervision / cueing provided); **2** (set-up help only); **3** (physical assistance provided); and **4** (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>13</sup>

The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each incidence of a particular activity. For instance, if a person were coded as requiring extensive assistance (self-performance code of 3) with bathing, she would receive 22.5 minutes of PCA service time each time she was bathed.<sup>14</sup> The regulations do not provide the Division with the discretion to change the amounts specified by the formula.

### **III. Background Facts**

Ms. D is 88 years old.<sup>15</sup> Her health conditions include: low back pain, osteoarthritis in one of her knees and lower leg, Type 2 Diabetes, dyspnea, chronic obstructive pulmonary

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<sup>11</sup> Ex. F at 27.

<sup>12</sup> Ex. F at 27.

<sup>13</sup> Ex. F at 27.

<sup>14</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. B at 24-25.

<sup>15</sup> Ex. F at 1.

disease, chronic airway obstruction, lumbago, chronic pain, hypertension, and other respiratory abnormalities.<sup>16</sup>

Ms. D was receiving 31.75 hours of weekly PCA services in 2017.<sup>17</sup> However, on October 12, 2017, Division Health Program Manager Julie White reassessed Ms. D's PCA service needs.<sup>18</sup> Because Korean is Ms. D's primary language, Ms. White was accompanied by an interpreter for the assessment.<sup>19</sup>

During the assessment, Ms. D demonstrated range of motion with reduced movement: she could touch her head; she could touch her hands over her head; and she could touch her legs mid-calf when asked to touch her toes.<sup>20</sup> Ms. D could not, however, touch her hands behind her back, place her hands across her chest and stand up, or touch her feet in a sitting position.<sup>21</sup> And although Ms. D was able to hold a pen, she did not have enough grip strength to draw a clock.<sup>22</sup> Ms. White observed Ms. D stand from the couch with assistance from her daughter.<sup>23</sup> Ms. D walked a couple of steps and had to sit down due to cramping in her legs.<sup>24</sup> Ms. White observed that Ms. D's balance was wobbly, and she has a history of falling.<sup>25</sup> According to Ms. D's medical records, she walks slowly and carefully and moves briskly with confidence.<sup>26</sup> Ms. D's doctors have encouraged her to use a cane.<sup>27</sup>

Ms. D's daughter, D O C is Ms. D's personal care assistant.<sup>28</sup> Ms. D, who lives alone, spends every day with Ms. C from about 10 a.m. to 6 p.m.<sup>29</sup> Ms. C bathes Ms. D, combs her hair, helps her dress, and prepares her meals.<sup>30</sup> Ms. D is able to wash her hands and face, but she

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<sup>16</sup> Ex. F at 3; *see also* Ex. E at 4-5, 9-10, 13-14, 17-18.

<sup>17</sup> Ex. D at 1.

<sup>18</sup> *See generally* Ex. F; Testimony of Julie White.

<sup>19</sup> Testimony of T O D; Ex. F at 2. There was some confusion about who the interpreter was. The Consumer Assessment Tool (CAT, Ex. F) identifies the interpreter as John Doe, but Mr. Doe is not a Korean interpreter. Ex. F at 2; White Testimony. It appears that this was a typographical error in the report. Nevertheless, although Mr. D took issue with the error, he acknowledged that a Korean interpreter was available for the assessment, and his sister, who was also present for the assessment, speaks some English. D Testimony.

<sup>20</sup> Ex. F at 4, 8; White Testimony.

<sup>21</sup> Ex. F at 4.

<sup>22</sup> Ex. F at 9.

<sup>23</sup> Ex. F at 6; White Testimony.

<sup>24</sup> Ex. F at 6; White Testimony.

<sup>25</sup> Ex. F at 6, 8; White Testimony.

<sup>26</sup> Ex. E at 7 & 10; White Testimony.

<sup>27</sup> Ex. E at 8 & 11; White Testimony.

<sup>28</sup> Ex. F at 2; White Testimony.

<sup>29</sup> D Testimony; Ex. F at 1.

<sup>30</sup> D Testimony; Ex. F at 8, 10, 11, 27.

does not comb her hair.<sup>31</sup> Ms. D has dentures, but she does not wear them.<sup>32</sup> Although Ms. D does not have a good appetite, she is able to feed herself, drink from an open cup, and swallow her medications whole.<sup>33</sup> Ms. D reported that she does not like anyone to help her in the bathroom and that she is able to manipulate her clothing and wipe herself.<sup>34</sup> Ms. D's son, T O D, testified that family members help her walk to the bathroom door and wait outside until she is finished and opens the door.<sup>35</sup> According to Ms. C, Ms. D does sometimes let Ms. C help her.<sup>36</sup> In particular, Ms. D lets Ms. C help when she has accidents.<sup>37</sup>

Ms. D is usually home alone from 6 p.m. to 10 a.m.<sup>38</sup> According to Mr. D, Ms. D spends most of the time on her sofa when she is home alone.<sup>39</sup> Sometimes Ms. D spends the night at Ms. C's house, and occasionally—maybe one night per month—a family member will stay with Ms. D overnight.<sup>40</sup> When she is alone, Ms. D uses a walker to help her stand and walk around her home.<sup>41</sup>

Ms. D's hearing was held on January 30, 2018. Ms. D's son and Power of Attorney, T O D, represented Ms. D and testified on her behalf. Victoria Cobo represented the Division. Health Program Manager and Assessor Julie White testified for the Division. All evidence submitted by the parties was admitted into the record. The record was held open until close of business February 14, 2018 to allow Mr. D time to submit additional medical records he believed may be helpful to his mother's case. No additional records or exhibits were submitted and the record closed on February 15, 2018.

#### **IV. Discussion**

When the Division is seeking to reduce or eliminate a benefit a recipient is already receiving, the Division has the overall burden to prove, by a preponderance of the evidence,<sup>42</sup> facts that show the recipient's level of eligibility has changed.<sup>43</sup> In the context of PCA services,

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<sup>31</sup> Ex. F at 10.

<sup>32</sup> Ex. F at 10.

<sup>33</sup> Ex. F at 9.

<sup>34</sup> D Testimony; Ex. F at 8, 10, 11, 27.

<sup>35</sup> D Testimony.

<sup>36</sup> Ex. F at 9.

<sup>37</sup> Ex. F at 9.

<sup>38</sup> D Testimony.

<sup>39</sup> D Testimony.

<sup>40</sup> D Testimony.

<sup>41</sup> Ex. F at 6; White Testimony.

<sup>42</sup> Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

<sup>43</sup> 7 AAC 49.135.

the showing required of the Division is that the “recipient has experienced a change that alters the recipient’s need for physical assistance with ADLs, IADLs, or other covered services.”<sup>44</sup> The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,<sup>45</sup> including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the basis of the Division’s determination is generally the date of the agency’s decision under review.<sup>46</sup>

**A. Transferring (Non-Mechanical)**

Transfers are defined in the CAT as “how a person moves between surfaces – to/from bed, chair, wheelchair, standing position (excluding to/from bath/toilet).”<sup>47</sup> Ms. D was previously assessed with a score of 3/2 (i.e. needing extensive assistance with one-person physical assist), with a frequency of 6 times per day, 7 times per week, for a total of 157.50 weekly minutes for non-mechanical transfers.<sup>48</sup> After reassessing Ms. D, the Division found that she needs only set up help for transfers and gave her a score of 0/1 (i.e. independent with set up help only).<sup>49</sup> The Division removed time for transfers.<sup>50</sup>

At the hearing, Ms. White testified that her assessment was based on a finding that with a walker, Ms. D was physically capable of rising into a standing position.<sup>51</sup> Indeed, Ms. D spends a large amount of time alone, and she reported during the assessment that she uses her walker to rise into a standing position.<sup>52</sup> Moreover, Ms. D’s ability to transfer herself is supported by the fact that she refuses help in the bathroom: Her caregivers merely walk her to the bathroom door, where she independently sits and rises from the toilet.<sup>53</sup>

In short, the Division met its burden to show by a preponderance of the evidence that it is more likely true than not true that Ms. D’s transfer time should be removed. And the Division’s decision to remove time for assisting Ms. D with transfers is thus affirmed.

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<sup>44</sup> 7 AAC 125.026(a).

<sup>45</sup> 2 AAC 64.290(a)(1).

<sup>46</sup> See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

<sup>47</sup> See Ex. F at 6.

<sup>48</sup> Ex. D at 2.

<sup>49</sup> Ex. D at 2, 10; Ex. F at 6; White Testimony.

<sup>50</sup> Ex. D at 3, 10.

<sup>51</sup> White Testimony; Ex. F at 28.

<sup>52</sup> Ex. F at 6, 9, 28; White Testimony.

<sup>53</sup> Ex. F at 9; White Testimony.

**B. Locomotion (between locations)**

Locomotion is defined in the CAT as “how a person moves between locations in his/her room and other areas on the same floor. . . .”<sup>54</sup> Ms. D was previously assessed with a score of 2/2 (i.e. needing limited assistance with one-person physical assist), with a frequency of 7 times per day, 7 days per week times for a total of 245 weekly minutes for locomotion.<sup>55</sup> After reassessing Ms. D, the Division gave her a score of 1/1 (i.e. needing supervision with set up help only) and removed time for this activity.<sup>56</sup>

As with transfers, Ms. White based this finding on the fact that with her walker, Ms. D is capable of walking without assistance.<sup>57</sup> Although Ms. D’s balance is wobbly and she is at risk for falls, with a cane or a walker, she can walk around her house without assistance.<sup>58</sup> And while her doctors believe that she should be using a cane or a walker, they note that Ms. D walks slowly and carefully and moves briskly with confidence.<sup>59</sup> Indeed, when she is alone—which is a significant amount of time each day—Ms. D uses a walker to help her stand and walk around her home.<sup>60</sup>

In short, the Division met its burden to show by a preponderance of the evidence that it is more likely true than not true that Ms. D’s time for locomotion between locations should be removed. And the Division’s decision to remove time for assisting Ms. D with locomotion between locations in her home or other areas on the same floor is affirmed.

**C. Locomotion (access to medical appointments)**

Ms. D was previously assessed as needing limited assistance, 2 times per week for a total of 10 weekly minutes to access medical appointments.<sup>61</sup> After reassessing Ms. D, the Division gave her a score of 0/0 (i.e. independent, with no set up or physical help) and removed time for this activity.<sup>62</sup> The rationale for concluding that Ms. D can independently move to access medical appointments, however, does not appear in the CAT.<sup>63</sup> Nor did the Division present any

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<sup>54</sup> See Ex. F at 7.

<sup>55</sup> Ex. D at 3, 10.

<sup>56</sup> Ex. D at 3, 10; Ex. F at 7; White Testimony.

<sup>57</sup> White Testimony.

<sup>58</sup> White Testimony; Ex. F at 6, 28.

<sup>59</sup> Ex. E at 7 & 10; White Testimony.

<sup>60</sup> Ex. F at 6; White Testimony.

<sup>61</sup> Ex. D at 3, 10.

<sup>62</sup> Ex. D at 3, 10; Ex. F at 7; White Testimony.

<sup>63</sup> See Ex. D at 3, 10; Ex. F at 7.

testimony or other evidence to explain the new assessment.<sup>64</sup> Although the Division has presented sufficient evidence to demonstrate that, with set-up help and supervision, Ms. D is physically capable of maneuvering the short distances in her home with a walker or a cane, the record is void of any evidence to support a conclusion that Ms. D can independently ambulate longer distances outside of her home to access medical appointments.<sup>65</sup>

In the absence of any evidence or argument at the hearing, and without any support in the CAT, the Division cannot be said to have met its burden of establishing by a preponderance of the evidence that Ms. D's PCA services for locomotion to access medical appointments should be removed. On the contrary, the preponderance of the evidence shows that Ms. D's balance is wobbly, she is at risk for falls, and she experiences pain with walking.<sup>66</sup> In short, the Division failed to show that Ms. D has experienced a change that alters her need for physical assistance with locomotion to access medical appointments.<sup>67</sup> Accordingly, Ms. D should be scored as a "2/2" for locomotion to access medical appointments, 2 times per week for a total of 10 weekly minutes to access medical appointments.<sup>68</sup>

#### ***D. Toilet Use***

Toileting is defined in the CAT as "how a person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, cleanses, changes pad, . . . adjusts clothes."<sup>69</sup> Ms. D was previously assessed with a score of 3/2 (i.e. needing extensive assistance with one-person physical assist), with a frequency of 8 times per day, 7 days per week times for a total of 504 weekly minutes for toileting.<sup>70</sup> After reassessing Ms. D, the Division gave her a score of 0/0 (i.e. independent, with no set up or physical help) and removed time for this activity.<sup>71</sup>

Ms. White testified that she based this score on Ms. D's report that she does not like anyone to help her in the bathroom and that she is able to manipulate her clothing and wipe herself.<sup>72</sup> Ms. D's son, who testified that family members help Ms. D walk to the bathroom door

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<sup>64</sup> See Ex. D at 3, 10; Ex. F at 7.

<sup>65</sup> See Ex. D at 3, 10; Ex. F at 7.

<sup>66</sup> White Testimony; Ex. F at 6, 28.

<sup>67</sup> 7 AAC 125.026(a).

<sup>68</sup> Ex. D at 3, 10.

<sup>69</sup> See Ex. F at 9.

<sup>70</sup> Ex. D at 3, 10.

<sup>71</sup> Ex. D at 3, 10; Ex. F at 7; White Testimony.

<sup>72</sup> D Testimony; Ex. F at 8, 10, 11, 27.



and wait outside until she opens the door, supported Ms. White's conclusion.<sup>73</sup> Ms. D is reportedly independent with her toileting.

Accordingly, the Division met its burden to show by a preponderance of the evidence that it is more likely true than not true that Ms. D's time for toileting should be removed. And the Division's decision to remove time for assisting Ms. D with toileting is affirmed.

***E. Personal Hygiene***

Personal hygiene includes the tasks of combing hair, brushing teeth, shaving, washing/drying face, hands, and perineum, when done separately from bathing.<sup>74</sup> Ms. D was previously assessed as needing limited assistance with one person physical assistance ("2/2"), with a frequency of 1 time per day, 7 days week, for a total of 70 weekly minutes for personal hygiene.<sup>75</sup> In Ms. White's reassessment, she assessed Ms. D as independent, needing no set up help or physical assistance and removed time for this activity.<sup>76</sup>

Ms. D is reportedly able to wash her hands and face.<sup>77</sup> Ms. D can touch her head and touch her hands over her head.<sup>78</sup> But she has reduced range of motion and lacks sufficient strength in her grip to draw a clock.<sup>79</sup> Ms. C helps Ms. D with her personal hygiene when Ms. D does not feel well.<sup>80</sup> And Ms. C combs Ms. D's hair.<sup>81</sup>

This is a close call. However, the Division bears the burden of proving by a preponderance of the evidence that Ms. D has experienced a change that alters her need for physical assistance with her personal hygiene. Based on the record, it is more likely true than not true that Ms. D needs physical assistance with her personal hygiene care.<sup>82</sup> Accordingly, Ms. D should be scored as a "2/2" for personal hygiene, 7 times per week for a total of 70 weekly minutes for personal hygiene care.<sup>83</sup>

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<sup>73</sup> D Testimony.

<sup>74</sup> Ex. F at 10.

<sup>75</sup> Ex. D at 3, 10.

<sup>76</sup> Ex. D at 3, 10; Ex. F at 10.

<sup>77</sup> Ex. F at 10; White Testimony.

<sup>78</sup> Ex. F at 4, 8; White Testimony.

<sup>79</sup> Ex. F at 10; White Testimony.

<sup>80</sup> Ex. F at 10.

<sup>81</sup> D Testimony.

<sup>82</sup> 7 AAC 125.026(a).

<sup>83</sup> Ex. D at 3, 10.

**F. Instrumental Activities of Daily Living**

**1. Light Meal Preparation**

Ms. D was previously provided assistance for light meal preparation.<sup>84</sup> In her previous assessment, the Division assessed Ms. D as dependent, needing assistance 2 times per day, 7 days per week for a total of 210 weekly minutes.<sup>85</sup> After reassessing Ms. D, the Division concluded that she is independent with difficulty, needing set up help only.<sup>86</sup> The Division thus eliminated time for this service.<sup>87</sup>

The CAT, however, provides no rationale for concluding that Ms. D can independently prepare light meals.<sup>88</sup> And the Division did not present any testimony or other evidence to explain the new assessment.<sup>89</sup> Instead, the Division presented evidence that Ms. D struggles with her appetite and that Ms. D's doctors have recommended supplementing her diet with Ensure.<sup>90</sup> But this does not support a conclusion that Ms. D can independently prepare her own light meals. Instead, the preponderance of the evidence shows that Ms. D is underweight, she lacks grip strength, and she lacks range of motion.<sup>91</sup> Ms. C prepares all of Ms. D's meals, and she cooks meals to induce Ms. D to eat.<sup>92</sup> Based on this record, the Division cannot be said to have met its burden of establishing by a preponderance of the evidence that Ms. D's PCA services for light meals should be removed.<sup>93</sup> Nevertheless, the preponderance of the evidence does support the conclusion that at least some of Ms. D's meals are provided by her natural supports: Ms. D eats meals with her family on the weekends.<sup>94</sup> Accordingly, Ms. D should be scored as a "3/4" for light meal preparation, but the frequency should be reduced to 10 times per week for a total of 150 weekly minutes for light meal preparation.<sup>95</sup>

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<sup>84</sup> Ex. D at 3, 10.

<sup>85</sup> Ex. D at 3, 10.

<sup>86</sup> Ex. D at 3, 10; Ex. F at 27.

<sup>87</sup> Ex. D at 3, 10.

<sup>88</sup> See Ex. F at 27; Ex. D at 3.

<sup>89</sup> See Ex. D at 3, 10; Ex. F at 7.

<sup>90</sup> White Testimony.

<sup>91</sup> White Testimony; Ex. F at 6, 28.

<sup>92</sup> White Testimony; D Testimony.

<sup>93</sup> See Ex. D at 3, 10; Ex. F at 7.

<sup>94</sup> White Testimony; D Testimony.

<sup>95</sup> Ex. D at 3, 10.

## 2. *In-Home Laundry*

Ms. D was previously provided assistance for in-home laundry.<sup>96</sup> In her previous assessment, the Division assessed Ms. D as dependent, needing assistance (“3/4”), 2 times per week for a total of 60 weekly minutes.<sup>97</sup> After reassessing Ms. D, the Division assessed Ms. D with a score of 3/2, concluding that she needs assistance, 2 times per week for a total of 45 minutes.<sup>98</sup>

There is no explanation for the new rating in the CAT.<sup>99</sup> And the Division did not present any testimony or other evidence to explain the new assessment.<sup>100</sup> In the absence of any evidence or argument explaining the reduction in time, the Division cannot be said to have met its burden of establishing by a preponderance of the evidence that Ms. D has experienced a change that alters her need for physical assistance with her laundry.<sup>101</sup> Accordingly, Ms. D should be scored as a “3/4” for in-house laundry, 2 times per week for a total of 60 weekly minutes for light meal preparation.<sup>102</sup>

### G. *Other Covered Activities*

#### 1. *Escort Services for Medical Appointments*

Ms. D was previously assessed as needing 10 minutes per week of escort services for medical appointments.<sup>103</sup> After reassessing Ms. D, the Division concluded that Ms. D no longer needs escort services and she no longer needs assistance with locomotion to access medical appointments.<sup>104</sup> As discussed, the rationale for concluding that Ms. D can independently ambulate to access medical appointments does not appear in the CAT, and the Division did not present any evidence to explain the new assessment.<sup>105</sup> Similarly, the record is void of any evidence to support a conclusion that Ms. D no longer needs escort services for medical appointments.<sup>106</sup> Instead, the CAT indicates that Ms. D does need an escort to medical and

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<sup>96</sup> Ex. D at 3, 10.

<sup>97</sup> Ex. D at 3, 10.

<sup>98</sup> Ex. D at 3, 11; Ex. F at 27.

<sup>99</sup> See Ex. F at 27; Ex. D at 3.

<sup>100</sup> See Ex. D at 3, 10; Ex. F at 7.

<sup>101</sup> See Ex. D at 3, 10; Ex. F at 7.

<sup>102</sup> Ex. D at 3, 10.

<sup>103</sup> Ex. D at 3, 11.

<sup>104</sup> Ex. D at 3, 11.

<sup>105</sup> See Ex. D at 3, 10; Ex. F at 7.

<sup>106</sup> See Ex. D at 3, 10; Ex. F at 7.

dental appointments, necessary engagements, and other activities.<sup>107</sup> In the absence of any evidence or argument at the hearing, and without any support in the CAT, the Division has failed to meet its burden of establishing by a preponderance of the evidence that Ms. D's escort services for medical appointments should be removed. Accordingly, Ms. D's medical escort time should be restored at 10 minutes per week.<sup>108</sup>

## **2. Medication Assistance**

Ms. D was previously assessed as needing assistance with her medication 2 times per day, 7 days per week, for a total of 28 weekly minutes.<sup>109</sup> After reassessing Ms. D, the Division removed time for medication assistance.<sup>110</sup> The Personal Hygiene Scores are used to determine if a recipient is eligible for medication assistance. As discussed above, Ms. D should be scored as a "2/2" for personal hygiene. The Division failed to show that Ms. D has experienced a change that alters her need for physical assistance with medication.<sup>111</sup> On the contrary, the CAT indicates that Ms. D does need help with medications.<sup>112</sup> And the preponderance of the evidence shows that Ms. D has reduced range of motion and lacks grip strength.<sup>113</sup> Accordingly, Ms. D should continue to receive assistance with her medication 2 times per day, 7 days per week, for a total of 28 weekly minutes.

## **V. Conclusion**

The evidence at the hearing showed that Ms. D has experienced some changes that alter her needs for physical assistance with some activities. However, some of the Division's findings in its 2017 assessment were in error. Accordingly, the Division's decision is affirmed in part and reversed in part.

In particular, the Division's decision about PCA services for transfers, locomotion between locations, and toileting is affirmed. But the preponderance of the evidence shows that Ms. D needs physical help with locomotion to access medical appointments, personal hygiene, light meal preparation, in-home laundry, escort services to medical appointments, and administering her medication. But because Ms. D eats meals with her family on the weekends,

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<sup>107</sup> See Ex. F at 27.

<sup>108</sup> Ex. D at 3, 10.

<sup>109</sup> Ex. D at 3, 11.

<sup>110</sup> Ex. D at 3, 11.

<sup>111</sup> 7 AAC 125.026(a).

<sup>112</sup> See Ex. F at 12.

<sup>113</sup> Ex. F at 10; White Testimony.

the frequency for light meal preparation services should be reduced to 10 times per week for a total of 150 weekly minutes. And the Division shall recalculate Ms. D's PCA benefit time consistent with this decision.

Dated: February 28, 2018

*Signed* \_\_\_\_\_  
Jessica Leeah  
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 16<sup>th</sup> day of March, 2018.

By: *Signed* \_\_\_\_\_  
Name: Jessica L. Leeah  
Title: Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]