

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

In the Matter of	)	
	)	
N D	)	OAH No. 17-1275-MDS
_____	)	Agency No.

**DECISION**

**I. Introduction**

N D received personal care assistance (PCA) services through the Division of Senior and Disabilities Services (Division). The Division reassessed Ms. D and reduced her PCA benefits from 22.75 hours per week to 0 hours per week. Ms. D appealed and requested a fair hearing to dispute the reduction and effective termination of her eligibility for services.

The hearing was held on January 26 and 30, 2018. Ms. D was present and testified on her own behalf. The Division was represented by fair hearing representative Terri Gagne. Health program managers Robin Platt and Barbara Rodes testified for the Division.

The evidence at the hearing showed that several of the Division’s disputed determinations were erroneous. The Division’s decision, therefore, is reversed in part and affirmed in part.

**II. Facts**

N D is 67 years old and lives in a trailer in No Name City.<sup>1</sup> Ms. D suffers from hypertension, fibromyalgia, type 2 diabetes, mononeuritis, a history of ovarian and uterine cancer, and chronic kidney disease.<sup>2</sup> She has a nephrostomy maintained by a catheter on her right side.<sup>3</sup> In 2012, Ms. D had a partial colectomy and colostomy and she wears a colostomy bag on her left side.<sup>4</sup>

On February 8, 2017, the Division received a request for reauthorization for Ms. D’s PCA services. The Division conducted an assessment of Ms. D’s eligibility for PCA benefits on October 20, 2017. The Division uses a standardized assessment format, called the Consumer Assessment Tool (CAT), to assess how much assistance an applicant needs.<sup>5</sup> Under the CAT, the assessor will assign a numerical score for “activities of daily living” (ADLs) and “instrumental activities of daily living” (IADLs). The Division then uses the scoring on the

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<sup>1</sup> Division Exhibit E at 1.

<sup>2</sup> Division Exhibit E at 3; medical documentation from Ms. D, submitted on January 29, 2017 (medical documentation) at 002.

<sup>3</sup> Medical documentation at 002.

<sup>4</sup> Medical documentation at 002.

<sup>5</sup> Division Exhibit E.

CAT, and other information it may have, such as medical records, to determine the level of assistance the recipient needs.

As part of the assessment process, Robin Platt, a health program manager and assessor with the Division, visited Ms. D in her home. She was accompanied by Barbara Rodes, also a health program manager, who shadowed Ms. Platt as part of her training.<sup>6</sup> Because Hmong is Ms. D's primary language, an interpreter was available for the assessment by phone.<sup>7</sup>

Ms. Platt evaluated Ms. D's physical and functional abilities by having her perform some activities like transferring and walking within her home (referred to as "locomotion" in the assessment documents). Ms. Platt asked questions about Ms. D's functional ability, and had her demonstrate physical functions, such as range of motion.

Ms. Platt observed that Ms. D was able to get up from her bed and sit down on her own. Ms. D walked with and without her cane at the home independently, without hands-on support.<sup>8</sup> Only two doctor appointments were reported for the whole year of 2017, in comparison to 14 appointments in a previous assessment of 2014.<sup>9</sup> Ms. Platt also concluded that Ms. D did not require physical hands-on assistance for dressing, eating, personal hygiene, or bathing.<sup>10</sup> Further, Ms. Platt testified that Ms. D demonstrated that she can reach her feet and her head during her functional assessment.<sup>11</sup> Ms. Platt determined that Ms. D was independent with regard to transfers, locomotion, toilet use, dressing, and bathing, and that she was also independent with regard to light and main meal preparation, light and routine housework, shopping and laundry. Based on these findings, the Division found that Ms. D no longer qualified for PCA benefits.

The Division notified Ms. D on November 19, 2017, that her PCA services would be reduced from 22.75 hours per week to 0 hours per week, effective on November 30, 2017.<sup>12</sup> The adverse action letter explained that the reduction of services resulted from regulation changes and what the Division perceived as improvements or changes in Ms. D's medical or living

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<sup>6</sup> Rodes testimony.

<sup>7</sup> Platt testimony, Division Exhibit E at 2.

<sup>8</sup> Platt testimony, Division Exhibit 5 at 7.

<sup>9</sup> Division Exhibits E at 5 and F at 5.

<sup>10</sup> Platt testimony, Division Exhibit E at 8, 9, 10, and 11.

<sup>11</sup> Platt testimony, Division Exhibit E at 4.

<sup>12</sup> Division Exhibit D at 1.

conditions.<sup>13</sup> The letter provides a specific explanation for the reductions for each ADL, but it provides no explanations for the reductions for IADLs.<sup>14</sup>

On December 5, 2017, Ms. D requested a fair hearing.<sup>15</sup> In her appeal letter, Ms. D claimed that she still needs “help with some sort of dressing, bathing, locomotion to doctor appointment, meal preparation, laundry, shopping and housework.”<sup>16</sup> She did not specify the scoring she thought she should have received regarding her level of need for assistance with these activities. At the hearing, she further asserted that she needs assistance with the change of her nephrostomy and colostomy bags and with cleaning of the incision areas.

A telephonic hearing was held on January 26, 2018. Because the hearing could not be finished in time, a second hearing day was scheduled for January 30, 2018. On January 26, 2018, the Division submitted a 2015 CAT, pursuant to the request of the administrative law judge (ALJ).<sup>17</sup> Ms. D submitted four sets of additional medical documentation on January 29, 2018.<sup>18</sup> The second hearing day was held on January 30, 2018, and the record closed on that date.

### **III. Discussion**

#### *A. The PCA program*<sup>19</sup>

In this case, because the Division is seeking to terminate Ms. D’s PCA benefits, the Division has the burden of proving by a preponderance of the evidence that she no longer qualifies for the same level of service that she received in the past.<sup>20</sup>

The Medicaid program authorizes PCA services for “physical assistance with activities of daily living (ADLs), physical assistance with instrumental activities of daily living (IADLs), and

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<sup>13</sup> Division Exhibit D at 2.

<sup>14</sup> The only mention of IADLs is the following generic statement: “You are not eligible to receive PCA services for ADL’s or IADL’s where the assessment shows you only need assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL. (7AAC 125.040(a))”. Division Exhibit D at 4.

<sup>15</sup> Division Exhibit C.

<sup>16</sup> Division Exhibit C.

<sup>17</sup> Division Exhibit I. The 2015 assessment was done for an application for the Division’s waiver program, which uses the same CAT form as the PCA program. The Division objected to producing the 2015 CAT, arguing that it was irrelevant because it was for the waiver program, but the ALJ ruled that the information in it could be relevant to determining Ms. D’s physical condition and needs for assistance.

<sup>18</sup> Three sets of 35 pages of medical documentation are identical. The fourth set contains 71 pages, but the first 35 pages are the same as in the other three sets. Therefore, this decision refers to the medical documentation as one single set of documents.

<sup>19</sup> The Division’s PCA program regulations were recently amended with an effective date in late July 2017, before the Division took action to reduce Ms. D’s PCS services; therefore, the new version of the regulations applies here.

<sup>20</sup> 7 AAC 49.135.

other services based on the physical condition of the recipient.”<sup>21</sup> As a general matter, PCA minutes are allowed for recipients with scores that show that the person needs actual hands-on, physical assistance to accomplish the ADL or IADL. Scores that show independence or need for only supervision, set-up help, or cueing will not qualify for assistance.

The ADLs measured by the CAT are bed mobility, transfers, locomotion, dressing, eating, toileting, personal hygiene, and bathing.<sup>22</sup> The CAT numerical coding system for ADLs has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular ADL. The possible codes are: **0** (the person is independent<sup>23</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>24</sup>); **3** (the person requires extensive assistance<sup>25</sup>); **4** (the person is totally dependent<sup>26</sup>). There are also 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>27</sup>

The second component of the CAT scoring system is the *support code*. These 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); **3** (two or more person physical assist required). Again, there are 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>28</sup>

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, light housework, routine housework, laundry (in-home), laundry (out-of-home), and grocery shopping.<sup>29</sup>

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<sup>21</sup> 7 AAC 125.010(a).

<sup>22</sup> Division Exhibit E at 6-11.

<sup>23</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 Division Exhibit E at 6.

<sup>24</sup> According 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.”

<sup>25</sup> According 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.”

<sup>26</sup> According 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.”

<sup>27</sup> Division Exhibit E at 6.

<sup>28</sup> Division Exhibit E at 6.

<sup>29</sup> Division Exhibit E at 26.

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>30</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); **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>31</sup>

In order to qualify for PCA services, a person must be coded as requiring limited or a greater degree of physical assistance (self-performance code of 2, 3, or 4, and a support code of 2, 3, or 4) in any one of the ADLs of transfers, locomotion, eating, toilet use, dressing or bathing. Similarly, if a person is coded as requiring some degree of hands-on assistance (self-performance code of 1, 2, or 3, and a support code of 3 or 4) with any one of the IADLs of light or main meal preparation, light housework, routine housework, grocery shopping or laundry, then he or she is eligible for PCA services.<sup>32</sup>

Ms. D challenged several ADLs (dressing, bathing, toileting, and locomotion to doctor's appointments) and IADLs (meal preparation, laundry, shopping and housework). All areas in dispute are addressed individually below.

## *B. ADLs*

### 1. Dressing

Ms. Platt testified that she observed Ms. D adjusting her skirt on her own. She also saw her removing one arm from the sleeve of her jacket. In addition, Ms. Platt observed that she was able to zip and unzip her medication bag without assistance.<sup>33</sup> Based on these observations, Ms. D was scored 0/0 for dressing.<sup>34</sup> In both the 2014 and the 2015 CATs, the assessors noted that

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<sup>30</sup> Division Exhibit E at 26.

<sup>31</sup> Division Exhibit E at 26.

<sup>32</sup> Division Exhibit E at 31.

<sup>33</sup> Platt testimony.

<sup>34</sup> Division Exhibit E at 8.

Ms. D requires assistance with dressing when she goes out of the house, about two times a week, and gave her a score of 2/2.<sup>35</sup> At hearing, Ms. D testified that she can slowly dress herself if somebody gives her the clothes.<sup>36</sup>

Ms. D's testimony established that she can dress herself with set-up assistance. Based on this admission, and Ms. Platt's testimony regarding her observations during the assessment, the Division met its burden of establishing that a 0/0 score for the ADL of dressing was correct for Ms. D.

## 2. Bathing

Ms. D was scored 0/0 for bathing in the most recent assessment.<sup>37</sup> Ms. Platt's notes in the CAT indicate that Ms. D was independent with transfer and locomotion, and Ms. Platt testified that Ms. D demonstrated that she could reach to her feet and to her head during her functional assessment.<sup>38</sup> Ms. Platt's notes in the CAT, however, indicate that Ms. D could not reach her feet while seated; they also indicate that she could raise only her left hand to her head, while her right hand remained in her lap because she "said it hurts."<sup>39</sup> According to the CAT, Ms. D reported at that time that she washes her front private area on her own, and that her daughter-in-law washes her hair.<sup>40</sup> Notes in the CAT also indicate that Ms. D has a hand held shower head and a bath bench as assisting devices.<sup>41</sup>

It is noted that the 2014 CAT showed a score of 4/2 for bathing,<sup>42</sup> and the 2015 CAT a score of 3/2.<sup>43</sup> Both of the earlier CATs noted that Ms. D needed PCA assistance to tape the nephrostomy site.<sup>44</sup> Ms. D testified at the hearing that she cannot shower on her own and that either her son or daughter-in-law helps her with bathing.<sup>45</sup>

Overall, the evidence on the ADL of bathing was equivocal. Ms. D's testimony was unequivocal that she needs physical assistance with bathing, while Ms. Platt's testimony regarding Ms. D's range of motion abilities was not entirely consistent with her

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<sup>35</sup> Division Exhibits F at 8, I at 8.

<sup>36</sup> D testimony.

<sup>37</sup> The self-performance scores for bathing on the CAT are slightly different than the other ADLs. A self-performance score of 2 for bathing means "physical help limited to transfer only;" a 3 means "physical help in part of bathing activity." Division Exhibit E at 11.

<sup>38</sup> Division Exhibit E at 11; Platt testimony.

<sup>39</sup> Division Exhibit E at 4.

<sup>40</sup> Division Exhibit E at 11.

<sup>41</sup> Division Exhibit E at 27.

<sup>42</sup> Division Exhibit F at 11.

<sup>43</sup> Division Exhibit I at 11.

<sup>44</sup> Division Exhibits F at 11 and I at 11.

<sup>45</sup> D testimony.

contemporaneous notes in the CAT. If Ms. D cannot reach her feet while seated and can only reach up and touch her head with one of her hands, it is unlikely that she can engage in bathing without physical assistance.<sup>46</sup> Therefore, the Division did not meet its burden of establishing that a 0/0 score for bathing was correct for Ms. D. Based on all the evidence submitted, including Ms. D's apparent ability to transfer without assistance, the previous score of 3/2 ("physical help in part of bathing activity") is appropriate.

### 3. Toileting

In her previous assessment of 2014, Ms. D was given a score of 3/2 for toileting, because she had a right nephrostomy and a colostomy and needed assistance with care of the collection bags and incision sites.<sup>47</sup> The 2015 CAT showed a score of 2/2, noting that she needed daily help with her nephrostomy tube and colostomy bag.<sup>48</sup> In the current assessment, Ms. D scored 0/0, even though Ms. Platt acknowledged in her notes in the October 2017 CAT that Ms. D has a catheter and a colostomy bag.<sup>49</sup> Ms. Platt testified that Ms. D raised her shirt and showed plastic tubes for the catheter coming out of her right side, but Ms. Platt did not inspect them more closely.<sup>50</sup> Ms. Platt explained that she asked Ms. D about the catheter and the colostomy bag and whether they were used, but that Ms. D did not know and could not answer her questions.<sup>51</sup> Ms. Platt also explained in her testimony that due to the new PCA regulations, Ms. D was required to submit medical documentation about the catheter and colostomy bag, but she did not provide any pertinent documents prior to the first day of the hearing.<sup>52</sup> Ms. Platt also reported that she observed Ms. D sitting down on the toilet and standing back up without assistance.<sup>53</sup>

At hearing, Ms. D denied that she had said during the assessment that she did not know about her colostomy and catheter.<sup>54</sup> She also pointed out that due to the catheter and colostomy bag, she does not use the toilet in the traditional sense. She testified that she is not able to

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<sup>46</sup> In addition, it is difficult to reconcile the 2014 CAT score of 4/2 (total dependence) and the 2015 CAT score of 3/2 (physical help in part of bathing activity) with the current score of 0/0 (independent – no help provided). No evidence was presented by the Division to explain the apparently dramatic improvement since 2015 in Ms. D's ability to perform the ADL of bathing without any physical assistance.

<sup>47</sup> Division Exhibit F at 9, 11.

<sup>48</sup> Division Exhibit I at 9. Even though the 2014 and 2015 CATs scored the care for the catheter and colostomy under "toileting," at the hearing Ms. Platt testified that if assistance for the catheter and colostomy were to be granted, it should fall under the IADL of housekeeping, rather than under toileting. The Division, however, presented no authority for this argument.

<sup>49</sup> Division Exhibit E at 9.

<sup>50</sup> Platt testimony.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> D testimony.

change the bags herself, and she needs assistance from her son. If he is not available and the colostomy bag is full, she goes to the toilet and empties the bag through an opening. However, she cannot remove the bag on her own, because she would need both hands, one to hold the bag and one to clean, and her left hand is too weak. In addition, Ms. D claimed that the incision area of the catheter and the colostomy need to be cleaned every day, and she needs assistance with that care.<sup>55</sup>

As previously noted, Ms. D submitted a packet of medical documents prior to the second day of the hearing. The documents show that Ms. D has had a “chronic right nephrostomy tube” since 2010,<sup>56</sup> and she had a colostomy procedure on August 3, 2012 and has had a colostomy bag since that time.<sup>57</sup> Nevertheless, after reviewing those documents the Division did not change its position that Ms. D does not need assistance with toileting due to her catheter and colostomy bag.

The Division’s position regarding Ms. D’s assistance level for toilet use is puzzling. The previous assessments, performed by qualified Division assessors, both clearly acknowledged Ms. D’s need for assistance with toileting as a result of the nephrostomy tube and colostomy bag. At the time of the current assessment, there was no evidence that the fact of the existence of the nephrostomy tube and colostomy bag had changed; the Division apparently based its 0/0 scoring on Ms. D’s failure to submit medical documentation to establish her continuing need for the two items. However, when she eventually submitted the required documentation, the Division still refused to concede that her score for toilet use should be anything but 0/0.

The Division failed to meet its burden of establishing that Ms. D does not need physical assistance with toileting and therefore that a 0/0 score for this ADL was correct. Based on all the evidence submitted, including evidence that Ms. D does not need weight-bearing assistance for toileting to any significant degree, the previous score of 2/2 is appropriate.

#### 4. Locomotion to access medical appointments

The Division recorded only two doctor appointments of Ms. D in 2017—a decrease from 14 appointments in 2014.<sup>58</sup> However, the medical documents that Ms. D submitted after the first hearing day show that Ms. D had at least 13 appointments in 2017 to replace the nephrostomy

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<sup>55</sup> D testimony.

<sup>56</sup> Medical documentation at 002.

<sup>57</sup> *Id.* The documents also show that the nephrostomy drain was replaced at least 13 times in 2017. Medical documentation at 007-008.

<sup>58</sup> Division Exhibits E at 5 and F at 5.



tube.<sup>59</sup> The report of her most recent visit of January 25, 2018 recommends a replacement of the nephrostomy drain within four weeks “given the patient’s current tube obstruction.”<sup>60</sup> Ms. D confirmed that she gets a replacement every four weeks. If the tube is blocked before the appointment, she goes to the ER.<sup>61</sup>

Ms. Platt observed Ms. D getting up from her bed, walking down the hallway of the trailer and sitting down on the couch by herself and without the cane. Later, Ms. D stood up and used the cane, but she did not need any further assistance with walking.<sup>62</sup> She scored 0/0 both for transfers and locomotion.<sup>63</sup> Ms. Platt testified that as a result, the Division declined PCA services for escort to medical appointments, because escort time can only be considered if a recipient is eligible for assistance with locomotion.<sup>64</sup>

Ms. D testified that she lay in bed when Ms. Platt visited. Her son wanted to help her get up, but Ms. Platt told her that she had to do it on her own. She stated that she tried hard and got up slowly and walked to the couch on her own.<sup>65</sup> Ms. D did not contest the Division’s 0/0 score for locomotion on the latest assessment.

The Division is correct that under 7 AAC 125.030(d)(4), a person must be eligible for PCA assistance with locomotion in order to be eligible for assistance with escort to medical appointments. The issue here, however, is Ms. D’s request for assistance with locomotion to access medical appointments, which is a different category of assistance from escort. Nonetheless, to be eligible for assistance with locomotion to access medical appointments, a person must require hands-on, physical assistance in order to walk.<sup>66</sup> Regardless of the corrected number of Ms. D’s medical appointments in 2017, the Division presented evidence that she is independent with locomotion in her home, and there was no evidence to contradict that conclusion. Therefore, the Division met its burden of establishing that the 0/0 score for locomotion to access medical appointments was correct.

### *C. IADLs*

The Division’s 2017 assessment also evaluated Ms. D’s need for assistance with her instrumental activities of daily living (IADLs)—household chores, including light meal

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<sup>59</sup> Medical documentation at 007-008.

<sup>60</sup> Medical documentation at 052.

<sup>61</sup> D testimony.

<sup>62</sup> Platt testimony.

<sup>63</sup> Division Exhibit E at 6, 7.

<sup>64</sup> 7 AAC 125.030(d)(4).

<sup>65</sup> D testimony.

<sup>66</sup> See 7 AAC 125.030(b)(3)(B).

preparation, main meal preparation, light housework, routine housework, and laundry (in-home), as well as grocery shopping. In the 2017 CAT, Ms. D scored significantly lower than in the two previous CATs, resulting in her not being eligible for any PCA assistance. In 2017, she scored 0/0 for light meal preparation and 2/2 for main meal preparation,<sup>67</sup> as compared with her 2014 scores of 3/4 for both light meal and main meal preparation,<sup>68</sup> and her 2015 scores of 1/3 for light meal and 3/4 for main meal preparation.<sup>69</sup> In 2017, Ms. D scored 1/2 for light housework, routine housework, grocery shopping and in-home laundry;<sup>70</sup> whereas, in the 2014 CAT, she scored 3/4 for each of those IADLs,<sup>71</sup> and in the 2015 CAT, she scored 2/3 for light housework, 3/4 for routine housework and shopping, and 2/3 for laundry.<sup>72</sup>

At the hearing, the Division presented very little evidence regarding the IADLs. Ms. Platt did not testify about them at all. Ms. Rodes, who observed the 2017 assessment while shadowing Ms. Platt, testified that she did not recall if IADLs were discussed during the assessment.<sup>73</sup> Nevertheless, Ms. Rodes believed that the 2017 scores were accurate, based on her observations of Ms. D's physical abilities in general (performance of locomotion, transfers, and use of hands) and her belief that Ms. D can perform IADLs independently.<sup>74</sup> However, Ms. Rodes could not explain the 2015 scores, which indicate that Ms. D needed physical assistance with IADLs. In the 2015 CAT, the Division's assessor Geetha Samuel noted at that time that Ms. D's condition had improved since 2014, and that Ms. D's doctor had written a letter requesting only IADL help.<sup>75</sup>

At hearing, Ms. D testified that her left arm is very weak.<sup>76</sup> Therefore, she is not able to prepare her own meals, because she cannot prepare a meal with one hand. However, she agreed that she could make her own noodles if somebody would bring her boiling water.<sup>77</sup> In her testimony, Ms. Rodes confirmed that she observed that Ms. D had less freedom of movement with one arm than the other.<sup>78</sup>

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<sup>67</sup> Division Exhibit E at 26.

<sup>68</sup> Division Exhibit F at 26.

<sup>69</sup> Division Exhibit I at 26.

<sup>70</sup> Division Exhibit E at 26.

<sup>71</sup> Division Exhibit F at 26.

<sup>72</sup> Division Exhibit I at 26.

<sup>73</sup> Rodes testimony.

<sup>74</sup> Rodes testimony.

<sup>75</sup> Division Exhibit I at 30.

<sup>76</sup> D testimony.

<sup>77</sup> D testimony.

<sup>78</sup> Rodes testimony.

Ms. D also claimed that she cannot lift more than 10 pounds according to her doctor. This testimony is confirmed by the medical documentation that Ms. D submitted prior to the second day of hearing. The instructions after a replacement of the nephrostomy drain on January 20, 2017, read that she cannot lift anything heavier than 10 pounds, and that she should avoid strenuous activities, such as mowing the lawn, vacuuming, or engaging in anything that will cause the tubing to be pulled or moved.<sup>79</sup> The nephrostomy drain is replaced every four weeks, so it is likely that these instructions remain in place.

As previously noted, the Division's adverse action letter did not address IADLs at all, other than the generic statement that assistance cannot be approved for IADLs if the person "only need[s] assistance with supervision, cueing, and setup in order to independently perform an ... IADL."<sup>80</sup> Although this generic statement was sufficient to put Ms. D on notice as to the basis for the Division's denial of benefits for IADL assistance, the Division still had the burden of proof at the hearing to establish that its scoring for each IADL was correct. The Division presented no evidence that Ms. D needs only supervision, cueing, or setup help to perform the IADLs. On the other hand, Ms. D testified credibly as to her physical limitations, and her testimony was corroborated by the medical documentation in the record.

The Division did not meet its burden of establishing that the scores in the 2017 CAT for IADLs were correct. Based on the whole of the evidence, the scores in the 2015 CAT are appropriate, and her PCA authorization shall be adjusted accordingly.

#### **IV. Conclusion**

The Division's determination is affirmed as to the ADLs of dressing and locomotion to access medical appointments, and as to the other ADLs not contested by Ms. D. It is reversed as to the ADLs of bathing and toilet use, and the IADLs of light meal preparation, main meal preparation, light housework, routine housework, and laundry (in-home). Ms. D's PCA authorization shall be amended to reflect the scores discussed above.

DATED this 5<sup>th</sup> day of April, 2018.

By: Signed  
Andrew M. Lebo  
Administrative Law Judge

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<sup>79</sup> Medical documentation at 025.

<sup>80</sup> Division Exhibit D at 4.

## Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision 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 19<sup>th</sup> day of April, 2018.

By: *Signed* \_\_\_\_\_  
Name: Andrew M. Lebo  
Title: Administrative Law Judge/OAH

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