

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

In the Matter of)
)
C C) OAH No. 18-0154-MDS
) Agency No.
_____)

DECISION

I. Introduction

C C was receiving 32.25 hours per week of personal care assistance (PCA) services when the Division reassessed her to determine her continued eligibility. Based primarily on a reassessment visit on August 16, 2017, the Division of Senior and Disabilities Services (Division) notified Ms. C on January 9, 2018 that her PCA services would be reduced to 4.75 hours. The reduction of services resulted from regulation changes and what the Division perceived as changes in Ms. C’s functioning and living conditions. Ms. C requested a hearing.

The evidence at the hearing showed that Ms. C’s physical functionality has improved since her last assessment. 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. C 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.¹ 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 or supervision . . . to perform an ADL, IADL, or other covered service . . .”²

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.³ In general, if a recipient requires certain levels

¹ 7 AAC 125.010; 7 AAC 125.020.

² 7 AAC 125.020(d)(2).

³ 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 access to medical appointments), dressing, eating, toilet use, personal hygiene, and bathing.⁴ 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 independent⁵ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁶); **3** (the person requires extensive assistance⁷); and **4** (the person is totally dependent⁸). 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).⁹

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).¹⁰

⁴ Ex. E at 7 – 13, 19 – 20.

⁵ 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. E at 7.

⁶ 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. E at 7.

⁷ 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. E at 7.

⁸ Dependent as to an ADL, or dependent as to and IADL, means “full staff/caregiver performance of activity during ENTIRE 7 days.” Ex. E at 7.

⁹ Ex. E at 7.

¹⁰ Ex. E at 7.

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.¹¹ 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).¹²

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).¹³

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.¹⁴ The regulations do not provide the Division with the discretion to change the amounts specified by the formula.

III. Factual and Procedural Background

Ms. C is 63 years old.¹⁵ Her health conditions include: thoracic spine pain, osteoarthritis in both knees, migraines, lumbar radiculopathy, gastritis, osteopenia, gastroparesis, chronic pain,

¹¹ Ex. E at 27.

¹² Ex. E at 27.

¹³ Ex. E at 27.

¹⁴ 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.

¹⁵ Ex. E at 1.

edema, and asthma.¹⁶ Although not listed in her Verification of Diagnosis forms, Ms. C also claims that she has occasional right shoulder pain.¹⁷

Ms. C was receiving 32.25 hours of weekly PCA services in 2017.¹⁸ On August 16, 2017, Division Health Program Manager Robin Platt reassessed Ms. C's PCA service needs.¹⁹ During the assessment, Ms. C demonstrated that she could touch her hands over her head;²⁰ she could touch the top of her head with both hands;²¹ she could touch her hands together behind her back;²² she could grip—although weakly—with both hands;²³ she could independently sit and stand with the use of her electric recliner and cane;²⁴ she could independently walk around her home with the use of her cane or holding onto furniture;²⁵ she could wrap a scarf around her shoulders;²⁶ and she could sit on the toilet seat and stand back up without any assistance.²⁷ Ms. C testified that due to right shoulder pain, it is very painful to raise her right arm over her head.²⁸ Although she could not touch her feet in a sitting position, Ms. C could touch her ankle area.²⁹ Ms. Platt also observed Ms. C independently stand, turn, bend over, lift a pink cloth box used to store Ms. C's medications from a shelf on the floor, and carry it two steps back to her recliner.³⁰ Ms. C's activities are limited because she is fearful of falling, but she gets around her home well using a cane, furniture, or walls to hold on.³¹ Ms. C uses a cane or a walker when she is out in the community.³² When going up or down the stairs in her home, Ms. C's personal care assistant (PCA) walks in front of her, and she holds onto the PCA's shoulders to keep steady.³³ In general, Ms. Platt found that Ms. C's physical functionality had improved with respect to the

¹⁶ C Testimony; Ex. 2 at 12; *But see* Ex. G.

¹⁷ Ex. G; Ex. H.

¹⁸ Ex. D at 1, 12-13.

¹⁹ *See generally* Ex. E. Testimony of Robin Platt.

²⁰ Ex. E at 5; Platt Testimony.

²¹ Ex. E at 11; Platt Testimony.

²² Ex. E at 5; Platt Testimony.

²³ Ms. Platt explained that Ms. C's use of an iPad, cane, and walker indicate some grip strength. Platt Testimony. *See also* Ex. E at 5.

²⁴ Ex. E at 7; Platt Testimony.

²⁵ Ex. E at 7; Platt Testimony.

²⁶ Ex. E at 5, 9; Platt Testimony.

²⁷ Ex. E at 10; Platt Testimony.

²⁸ C Testimony.

²⁹ Ex. E at 5.

³⁰ Ex. E at 8; Platt Testimony.

³¹ Ex. E at 8, 24; Platt Testimony.

³² Ex. E at 8; Platt Testimony.

³³ Ex. E at 8; Platt Testimony.

2014 CAT, which resulted in a reduction of PCA services from 32.25 hours per week to 4.75 hours per week.³⁴

At the time of the August 16, 2017 assessment, Ms. C was receiving personal care assistant services 5 days a week.³⁵ Ms. C's PCA helps her get dressed and puts Ms. C's socks and shoes on her feet.³⁶ On the days when Ms. C's PCA is not there, Ms. C does not change her clothes.³⁷ If Ms. C has to change her clothes because of incontinence when her PCA is not there, Ms. C's friend helps her.³⁸ On good days, Ms. C does her own peri-care with help from her PCA.³⁹ But Ms. C has difficulty cleaning herself without help and has wipes for when her PCA is not there to help her.⁴⁰ Though difficult and sometimes painful, Ms. C can and does take care of her own personal hygiene needs: she does her own oral care, washes her face, and combs her hair.⁴¹ Because of her occasional shoulder pain, she has a short "buzz" haircut to make combing her hair easier.⁴² For bathing, Ms. C's PCA helps her get in and out of the bathtub, washes her back and feet, and helps her dry.⁴³ Ms. C has a taller, deeper tub with no shower chair, no hand-held shower, and no grab bars.⁴⁴ At hearing, Ms. C credibly testified that she needs assistance with bathing—that she cannot get in and out of the bathtub without assistance, and she cannot reach her feet.⁴⁵

Ms. C relies heavily on her PCA for some IADLs. Ms. C cannot stand for any length of time.⁴⁶ As a result, she has difficulty performing some housework, such as hanging laundry, sweeping, or vacuuming.⁴⁷ Ms. C cannot dust because she has severe asthma.⁴⁸ Ms. C lives upstairs and never goes up or down the stairs without assistance.⁴⁹ Because the kitchen is

³⁴ Ex. D at 1, 3-5, 12-13.

³⁵ Platt Testimony.

³⁶ Platt Testimony; Ex. E at 9.

³⁷ C Testimony.

³⁸ C Testimony.

³⁹ Ex. E at 10; C Testimony. Ms. C was not using incontinence products at the time of the assessment, but since the assessment her diarrhea has worsened, and she is using incontinence products.

⁴⁰ Ex. 2 at 14; C Testimony.

⁴¹ C Testimony; Ex. E at 11.

⁴² Ex. 2 at 13; Platt Testimony.

⁴³ Ex. E at 12; Ex. 2 at 15. Under the CAT, the assessor must exclude washing of back and hair when making an assessment. *See* Ex. 2 at 15.

⁴⁴ Platt Testimony; Ex. 2 at 15.

⁴⁵ C Testimony.

⁴⁶ C Testimony.

⁴⁷ C Testimony.

⁴⁸ C Testimony.

⁴⁹ C Testimony. Ms. C testified that in an emergency, if she did not have assistance, she would "slide on her butt" down the stairs.

downstairs, Ms. C's PCA prepares all of her meals (breakfast, lunch, dinner, and snacks) and brings them up to her room.⁵⁰ Ms. C cannot stand for long periods of time, but there are stools at the island in the kitchen.⁵¹ Ms. C's PCA also helps her with her shopping.⁵² At the store, Ms. C uses a motorized cart, and the PCA helps her get things that are too high or too heavy off the shelf.⁵³ The PCA also helps unload the cart and put the groceries away.⁵⁴

Ms. C's hearing was held on March 9, 2018. Ms. C represented herself. In addition to her own testimony, Ms. C presented testimony from Consumer Direct Program Coordinator, K X. Terri Gagne represented the Division. Health Program Manager and Assessor Rae Platt testified for the Division. All evidence submitted by the parties was admitted into the record, and the record closed at the end of the hearing.

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,⁵⁵ facts that show the recipient's level of eligibility has changed.⁵⁶ In the context of PCA services, 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."⁵⁷ The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,⁵⁸ 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.⁵⁹

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)."⁶⁰ Ms. C was

⁵⁰ C Testimony.

⁵¹ C Testimony. With no explanation, Ms. C testified that preparing a meal on a stool at the island "is not feasible."

⁵² C Testimony.

⁵³ C Testimony.

⁵⁴ C Testimony.

⁵⁵ Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

⁵⁶ 7 AAC 49.135.

⁵⁷ 7 AAC 125.026(a).

⁵⁸ 2 AAC 64.290(a)(1).

⁵⁹ 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>).

⁶⁰ See Ex. E at 7.

previously assessed with a score of 3/2 (i.e. needing extensive assistance with one-person physical assist), with a frequency of 42 times per week for non-mechanical transfers.⁶¹ After reassessing Ms. C, the Division found that Ms. C is physically capable of standing on her own with the use of her electric recliner and cane and gave her a score of 0/0 (i.e. independent with no setup or physical help needed).⁶² The Division removed time for transfers.⁶³

In her assessment, Ms. C demonstrated how she stands up and sits down.⁶⁴ Ms. C has an electric lift recliner.⁶⁵ The recliner raises Ms. C to a mostly standing position, at which point she uses her cane to pull herself to a fully standing position.⁶⁶ Ms. C was able to do so without any assistance.⁶⁷ Indeed, Ms. Platt observed Ms. C independently stand, turn, bend over, lift a small box from a low shelf, and carry it two steps back to her recliner.⁶⁸ Ms. C also demonstrated in the assessment how she would sit and stand from a toilet seat.⁶⁹ Ms. C was able to sit on a special assist toilet seat and then stand without any assistance.⁷⁰ In short, the Division has met its burden of proving that it is more likely true than not true that Ms. C's transfer time should be removed. And the Division's decision to remove time for Transfers is affirmed.

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. . . .”⁷¹ Ms. C was previously assessed with a score of 3/2 (i.e. needing extensive assistance with one-person physical assist), with a frequency of 28 times per week for locomotion.⁷² After reassessing Ms. C, the Division gave her a score of 0/0 (i.e. independent with no setup or physical help needed) and removed time for this activity.⁷³

As with transfers, Ms. Platt based her assessment on a finding that with an assisted device, such as a cane or walker, Ms. C was physically capable of walking without assistance.⁷⁴ Indeed, Ms. Platt testified, and Ms. C did not dispute, that Ms. C walked around her home with

⁶¹ Ex. D at 3, 12.
⁶² Ex. D at 3, 12; Ex. E at 7; Platt Testimony.
⁶³ Ex. D at 3, 12.
⁶⁴ Platt Testimony; *see also* Ex. E at 7.
⁶⁵ Platt Testimony; *see also* Ex. E at 7.
⁶⁶ Platt Testimony; *see also* Ex. E at 7.
⁶⁷ Platt Testimony; *see also* Ex. E at 7.
⁶⁸ Ex. E at 8; Platt Testimony.
⁶⁹ Platt Testimony; *see also* Ex. E at 7.
⁷⁰ Platt Testimony; *see also* Ex. 2 at 13.
⁷¹ *See* Ex. E at 8.
⁷² Ex. D at 3, 12.
⁷³ Ex. D at 3, 12; Ex. E at 8; Platt Testimony.
⁷⁴ Ex. D at 3, 12; Ex. E at 8; Platt Testimony.

the use of her cane, or by holding onto furniture or the wall with no assistance during the assessment.⁷⁵ Although Ms. C claims that she has come close to falling and believes that she would have done so if her PCA had not been there,⁷⁶ this would at best demonstrate a need for supervision—and supervision is inadequate to warrant PCA services.⁷⁷ Accordingly, the Division met its burden of proving that it is more likely true than not true that time for locomotion between locations should be removed. That decision is affirmed.

C. Locomotion (Multi-Level)

The CAT defines multi-level locomotion as “how a person moves in a multi level house.”⁷⁸ Ms. C was previously assessed with a score of 3 (i.e. needing extensive assistance), with a frequency of 14 times per week for multi-level locomotion.⁷⁹ After reassessing Ms. C, the Division gave her a score of 1 (i.e. needing supervision) and removed time for this activity, based on a finding that Ms. C is physically capable of ambulating up and down stairs, but needs supervision to make sure that she doesn’t fall.⁸⁰

The undisputed evidence shows that Ms. C’s PCA walks in front of her and Ms. C holds onto her PCA’s shoulders when going up or down the stairs.⁸¹ Ms. C’s knee frequently “gives out,” and she never goes up or down the stairs without assistance.⁸² Indeed, Ms. C testified that in an emergency, she would have to go down the stairs by sliding on her bottom.⁸³

The Division characterizes the PCA’s help under these circumstances as “supervision.”⁸⁴ But the CAT defines “supervision” as “oversight, encouragement or cuing provided 3+ times during the last 7 days – or – Supervision plus nonweight-bearing physical assistance provided *only 1 or 2 times during the last 7 days.*”⁸⁵ I agree that the evidence does not support a finding that Ms. C requires extensive assistance or a CAT score of 3 (i.e. at least three instances of “weightbearing support [and/or] full staff/caregiver performance during part (but not all) of last

⁷⁵ Ex. E at 8; Platt Testimony.

⁷⁶ C Testimony.

⁷⁷ 7 AAC 125.040(a)(9) (excluding supervision from personal care services).

⁷⁸ See Ex. E at 8.

⁷⁹ Ex. D at 3, 12.

⁸⁰ Ex. D at 3, 12; Ex. E at 8; Platt Testimony.

⁸¹ C Testimony; Ex. E at 8; Platt Testimony.

⁸² C Testimony.

⁸³ C Testimony.

⁸⁴ Ex. D at 3, 12; Ex. E at 8; Platt Testimony.

⁸⁵ Ex. E at 8 (emphasis added).

7 days”).⁸⁶ But I conclude that the preponderance of the evidence shows that Ms. C requires limited assistance navigating the stairs in her home.

The CAT defines “limited assistance” as “person highly involved in activity; received physical help in guided maneuvering of limbs, *or other nonweight-bearing assistance 3+ times – or Limited Assistance (as just described) plus weight-bearing 1 or 2 times during the last 7 days.*”⁸⁷ Ms. C is highly involved in ambulating up and down her stairs, but her knee frequently “gives out,” and she must lean on someone’s shoulders to keep herself steady *every* time she goes up or down her stairs.⁸⁸ This is far more assistance than “supervision” as defined by the CAT. Even if it is reasonable to conclude that leaning on her PCA is not “weightbearing” physical assistance, the assistance Ms. C receives is at minimum, “other nonweight-bearing assistance.” Because Ms. C requires assistance every time she goes up or down her stairs, and she must go downstairs to perform other activities, she requires that assistance more than three times a week.

Accordingly, the Division did not meet its burden of establishing by a preponderance of the evidence that Ms. C was properly given a self-performance score of 0. Instead, the preponderance of the evidence establishes that Ms. C needs more than supervision—she needs limited assistance ambulating up and down her stairs.⁸⁹ For this reason, Ms. C should be given a self-performance score of 2, with a frequency of 14 times per week for multi-level locomotion.⁹⁰

D. Locomotion (Access to Medical Appointments)

On Ms. C’s previous assessment, she was assessed as needing extensive assistance to access medical appointments, with a frequency of two times per week.⁹¹ After reassessing Ms. C, the Division gave her a score of 1 (i.e. needing supervision) and removed time for this activity.⁹²

Ms. Platt concluded that Ms. C can independently walk the short distances around her home with the use of a cane, and Ms. Platt noted in the CAT that Ms. C uses a cane or a walker

⁸⁶ Ex. E at 8.

⁸⁷ Ex. E at 8 (emphasis added). *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.

⁸⁸ C Testimony.

⁸⁹ *Id.*

⁹⁰ *See* Ex. D at 3, 12.

⁹¹ Ex. D at 3, 11; Ex. E at 8.

⁹² Ex. D at 3, 12; Ex. E at 8; Platt Testimony.

to ambulate in the community.⁹³ But the Division presented no evidence or argument at the hearing that was specific to Ms. C’s ability to ambulate the longer distances necessary to access medical appointments without assistance.⁹⁴ There is nothing in the CAT that sheds any light on the rationale for reducing the level of assistance Ms. C requires.⁹⁵ The fact that Ms. C uses a walker or cane in the community or that she can navigate the short distances in her house is insufficient to establish that Ms. C is physically capable of ambulating to access medical appointments merely with supervision. Indeed, the preponderance of the evidence shows that Ms. C requires assistance to walk longer distances: she cannot be on her feet for any length of time, and her PCA assists her to the car and inside the store for shopping.⁹⁶ In the absence of any evidence or argument at the hearing or 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. C’s locomotion to access medical appointments time should be removed.

That said, the evidence shows that Ms. C had 23 medical appointments in 2017—significantly less than two appointments per week.⁹⁷ Accordingly, Ms. C’s self-performance score should remain a 3, but the frequency of that assistance should be reduced from 2 times per week, to a frequency that is consistent with 23 appointments per year.⁹⁸

E. Dressing

Dressing is defined in the CAT as “how a person puts on, fastens, and takes off all items of street clothing, including donning/removing prosthesis.”⁹⁹ Ms. C was previously scored 3/2 (i.e. needing extensive assistance with one-person physical assist), with a frequency of 14 times per week for dressing.¹⁰⁰ After reassessing Ms. C, the Division gave her a score of 2/2 (i.e. needing limited assistance with one-person physical assist) and reduced time for this service.¹⁰¹

As discussed above, the CAT defines “limited assistance” as “person highly involved in activity; received physical help in guided maneuvering of limbs, *or other nonweight-bearing assistance 3+ times* – or Limited Assistance (as just described) plus weight-bearing 1 or 2 times

⁹³ Ex. E at 8; Platt Testimony.

⁹⁴ Ex. E at 8.

⁹⁵ Ex. E at 8.

⁹⁶ C Testimony.

⁹⁷ Ex. E at 6.

⁹⁸ Ex. E at 6; *see also* Ex. D at 3, 12.

⁹⁹ *See* Ex. E at 9.

¹⁰⁰ Ex. D at 4, 12.

¹⁰¹ Ex. D at 4, 12; Ex. E at 9; Platt Testimony.

during the last 7 days.”¹⁰² Whereas, the definition of “extensive assistance” is “while person performed part of activity, over last 7-day period, help of the following type(s) provided 3 or more times: weightbearing support [and/or] full staff/caregiver performance during part (but not all) of last 7 days.”¹⁰³ The preponderance of the evidence supports the Division’s conclusion that Ms. C needs limited assistance with dressing. During the assessment, Ms. C demonstrated that she could touch her head; she could touch her hands over her head; she could touch her hands together behind her back; and she had some, albeit weak, grip strength in both hands.¹⁰⁴ Although she could not touch her feet, Ms. C could touch her ankle area.¹⁰⁵ She demonstrated that she could wrap a scarf around her shoulders.¹⁰⁶ Though difficult and sometimes painful, Ms. C is highly involved in dressing herself.¹⁰⁷ Her PCA holds her articles of clothing, and Ms. C puts them on.¹⁰⁸ Her PCA does not provide weightbearing support.¹⁰⁹ Nor does she dress Ms. C.¹¹⁰ Thus, the assistance as described by Ms. C is more consistent with the CAT definition of “limited assistance” than “extensive assistance.”

Accordingly, the Division met its burden of proof, and the Division’s decision to reduce time for assisting Ms. C with dressing is affirmed.

F. Toileting

The CAT defines “Toileting” as “how a person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, cleanses, changes pad, . . . adjusts clothes.”¹¹¹ Ms. C was previously scored 3/2 (i.e. needing extensive assistance with one-person physical assist), with a frequency of 42 times per week for toileting.¹¹² After reassessing Ms. C, Ms. Platt scored her as independent, needing no set up or physical help (a score of 0/0) for toilet use.¹¹³ Ms. Platt reasoned that Ms. C denied use of incontinence supplies; she does her own peri-care with help from her PCA when her PCA is on duty; and she has to manage on her own when no one is with

¹⁰² Ex. E at 8 (emphasis added). 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.

¹⁰³ Ex. E at 8.

¹⁰⁴ Ex. E at 5; Platt Testimony.

¹⁰⁵ Ex. E at 5; Platt Testimony.

¹⁰⁶ Ex. E at 5; Platt Testimony.

¹⁰⁷ Ex. E at 9; C Testimony.

¹⁰⁸ Ex. E at 9; C Testimony.

¹⁰⁹ Ex. E at 9; C Testimony.

¹¹⁰ Ex. E at 9; C Testimony.

¹¹¹ Ex. E at 10.

¹¹² Ex. D at 4, 12.

¹¹³ Ex. D at 4, 12; Ex. E at 10.

her.¹¹⁴ Ms. Platt also observed Ms. C sit on the toilet seat and then stand back up without assistance.¹¹⁵ Ms. C testified that on good days, she can get to the bathroom and does her own peri-care with help from her PCA.¹¹⁶ But Ms. C has difficulty cleaning herself without help and has wipes for when her PCA is not there to help her.¹¹⁷ Ms. C also testified that on average she has bad days four out of seven days a week, and on bad days—especially when she has diarrhea—she is weak and unsteady and needs assistance cleaning herself and getting on and off the toilet.¹¹⁸

I agree that the evidence does not support a finding that Ms. C requires extensive assistance or a CAT score of 3 (i.e. while person performed part of activity; over last 7-day period, help of the following type(s) provided 3 or more times: weightbearing support [and/or] full staff/caregiver performance during part (but not all) of last 7 days”).¹¹⁹ But the CAT defines “limited assistance” as “person highly involved in activity; received physical help in guided maneuvering of limbs, *or other nonweight-bearing assistance 3+ times* – or Limited Assistance (as just described) plus weight-bearing 1 or 2 times during the last 7 days.”¹²⁰

Here, Ms. C is highly involved in toileting activities, but she needs physical, nonweight-bearing help from her PCA three or more times per week.¹²¹ Although she manages the best she can when she does not have a PCA or other help, she is not “independent,” as defined by the CAT (needing “no help or oversight” or having “help or oversight provided only 1 or 2 times during last 7 days”).¹²² Because Ms. C requires physical assistance of a nonweight-bearing nature at least 3 times per week, I conclude that the preponderance of the evidence shows that Ms. C requires limited assistance with toileting.

Accordingly, the Division did not meet its burden of establishing by a preponderance of the evidence that Ms. C was properly given a self-performance score of 0. Instead, the preponderance of the evidence establishes that Ms. C is not independent—she needs limited

¹¹⁴ Ex. E at 10; Platt Testimony.

¹¹⁵ Ex. E at 10; Platt Testimony.

¹¹⁶ Ex. E at 10; C Testimony. Ms. C was not using incontinence products at the time of the assessment, but since the assessment her diarrhea has worsened, and she is using incontinence products.

¹¹⁷ Ex. 2 at 14; C Testimony.

¹¹⁸ C Testimony.

¹¹⁹ Ex. E at 10.

¹²⁰ Ex. E at 10 (emphasis added). *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.

¹²¹ Ex. E at 10; C Testimony.

¹²² Ex. E at 10; C Testimony.

assistance with toileting.¹²³ For this reason, Ms. C should be given a self-performance score of 2, with a frequency of 42 times per week for toileting.¹²⁴

G. Personal Hygiene

Personal hygiene includes the tasks of combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands, and perineum, when done separately from bathing.¹²⁵ Ms. C was previously assessed as needing limited assistance (“2/2”) for personal hygiene.¹²⁶ In Ms. Platt’s reassessment, she assessed Ms. C as independent, needing no set up or physical help for personal hygiene (“0/0”).¹²⁷

Though difficult and sometimes painful, Ms. C can and does take care of her own personal hygiene needs: she does her own oral care; she washes her face; and she combs her hair.¹²⁸ Although she has a short “buzz” cut to mitigate shoulder pain when combing her hair, Ms. C is still physically capable of performing this activity without assistance.¹²⁹ Accordingly, the Division met its burden of proof, and the Division’s decision to remove time for assisting Ms. C with personal hygiene activities is affirmed.

H. Bathing

Bathing is defined as “how [a] person takes full body bath/shower, sponge bath, and transfers in/out of tub/shower.”¹³⁰ The CAT’s self-performance scoring for bathing differs somewhat from the scoring for the other ADLs.¹³¹ For bathing, self-performance scores are as follows: **0**, labeled as “Independent” (“no help provided”); **1**, labeled as “Supervision” (“oversight help only”); **2**, labeled as “physical help limited to transfer only;” **3**, labeled as “physical help in part of bathing activity;”¹³² and **4**, labeled as “Total dependence.”¹³³ Ms. C was previously scored 3/2 (i.e. needing physical help in part of bathing activity), with a

¹²³

Id.

¹²⁴

See Ex. D at 4, 12.

¹²⁵

Ex. E at 11.

¹²⁶

Ex. D at 4, 12.

¹²⁷

Ex. D at 4, 12; Ex. E at 11.

¹²⁸

C Testimony; Ex. E at 11.

¹²⁹

Ex. 2 at 13; Platt Testimony.

¹³⁰

See Ex. E at 12.

¹³¹

Ex. E at 12.

¹³²

Ex. E at 12.

¹³³

Ex. E at 12.

frequency of 7 times per week for bathing.¹³⁴ After reassessing Ms. C, the Division gave her a score of 2/2 (i.e. physical help limited to transfer only) and reduced time for this service.¹³⁵

The undisputed facts show that Ms. C’s PCA helps her get in and out of the bathtub, washes her back and feet, and helps her dry.¹³⁶ Ms. C has a taller, deeper tub with no shower chair, no hand-held shower, and no grab bars.¹³⁷ At hearing, Ms. C credibly testified that she needs assistance with bathing—that she cannot get in and out of the bathtub without assistance, that she needs help washing her back, and she cannot reach her feet.¹³⁸ Although the CAT requires the assessor to exclude washing of back and hair when making an assessment, a score of 3 requires “physical help in *part* of bathing activity.”¹³⁹ In this case, the Division did not refute Ms. C’s testimony that the PCA helps her in and out of the bathtub *and* washes her feet.

The Division did not meet its burden of establishing by a preponderance of the evidence that Ms. C was properly given a self-performance score of 2. Instead, the preponderance of the evidence establishes that Ms. C needs more than transfer assistance—she needs physical help in part of a bathing activity.¹⁴⁰ For this reason, Ms. C should be given a self-performance score of 3, and an overall score of 3/2 for bathing, with a frequency of 7 times per week for bathing.¹⁴¹

C. Instrumental Activities of Daily Living

Ms. C was previously provided assistance for her IADLs of light meal preparation, main meal preparation, light and routine housework, shopping, and laundry.¹⁴² The Division previously assessed Ms. C as dependent, done by others and total dependence for all of her IADLs.¹⁴³ After reassessing Ms. C, the Division concluded that she needs some assistance with some of her IADLs, but she is not completely dependent—she can perform the activities with assistance or set up help.¹⁴⁴ The Division thus reduced or removed time for IADLs.¹⁴⁵

1. Light and Main Meal Preparation

¹³⁴ Ex. D at 4, 12.

¹³⁵ Ex. D at 4, 12; Ex. E at 12. In its Adverse Action letter, the Division stated that Ms. C was previously scored as needing extensive assistance, and on reassessment, she was scored as needing limited assistance. As discussed, the self-performance score definitions for bathing are different from other ADLs. Ex. E at 12.

¹³⁶ Ex. E at 12; Ex. 2 at 15. *See* Ex. 2 at 15.

¹³⁷ Platt Testimony; Ex. 2 at 15.

¹³⁸ C Testimony.

¹³⁹ Ex. E at 12 (emphasis added).

¹⁴⁰ Ex. E at 12.

¹⁴¹ *See* Ex. D at 12.

¹⁴² Ex. D at 4-5, 12-13.

¹⁴³ Ex. D at 4-5, 12-13.

¹⁴⁴ Ex. D at 4-5, 12-13; Ex. E at 27.

¹⁴⁵ Ex. D at 4-5, 12-13; Ex. E at 27.

Ms. C was previously scored 3/4 (i.e. dependent, done by others and total dependence) for light and main meal preparation.¹⁴⁶ After reassessing Ms. C, the Division gave her a score of 2/2 (i.e. assistance/done with help; set up help only) and removed time for meal preparation.¹⁴⁷

During the assessment, Ms. C demonstrated that she can use her arms and hands, and albeit weak, she has grip strength in both hands.¹⁴⁸ She could independently walk around her home with the use of her cane or holding onto furniture.¹⁴⁹ Ms. C was independently able to stand, turn, bend over, lift a light box from a shelf on the floor, and carry it two steps back to her recliner.¹⁵⁰ Ms. C cannot stand for long periods of time, but there are stools at the island in her kitchen.¹⁵¹ While sitting at an island counter to prepare a meal may not be ideal, and although it may be more difficult or time-consuming for Ms. C to prepare her own meals, the evidence does not support a conclusion that Ms. C's physical condition makes her completely dependent on others to prepare her meals.

Instead, the biggest obstacle to Ms. C's participation in meal preparation has been her inability to go up and down the stairs.¹⁵² As discussed, Ms. C lives upstairs and never goes up or down the stairs without assistance.¹⁵³ Because the kitchen is downstairs, Ms. C's PCA prepares all of her meals (breakfast, lunch, dinner, and snacks) and brings them up to her room.¹⁵⁴ I have already concluded that Ms. C needs limited assistance with ambulating the stairs. But that is a separate inquiry from whether Ms. C is physically capable of preparing her meals.

A person is not entitled to receive PCA assistance if the task can "reasonably be performed by the recipient."¹⁵⁵ A review of the evidence demonstrates that if someone helps her with set up (i.e. sets up a place for her to work and/or sets up ingredients), Ms. C has sufficient physical functionality to put together a meal. Accordingly, the Division has met its burden to show that with set up help, Ms. C can reasonably prepare her light and main meals.

Accordingly, the Division's decision to remove time for these activities is affirmed.

¹⁴⁶ Ex. D at 4, 12.

¹⁴⁷ Ex. D at 4, 12; Ex. E at 27.

¹⁴⁸ Ex. E at 5 (she could touch her head; she could touch her hands over her head; she could touch her hands together behind her back); Platt Testimony.

¹⁴⁹ Ex. E at 7; Platt Testimony.

¹⁵⁰ Ex. E at 8; Platt Testimony.

¹⁵¹ C Testimony. With no explanation, Ms. C testified that preparing a meal on a stool at the island "is not feasible."

¹⁵² C Testimony.

¹⁵³ C Testimony.

¹⁵⁴ C Testimony.

¹⁵⁵ 7 AAC 125.040(a)(4).

2. Light and Routine Housework, Shopping, and Laundry

Ms. C was previously scored 3/4 (i.e. dependent, done by others and total dependence).¹⁵⁶ After the August 2017 reassessment, the Division gave her a score of 2/3 (i.e. assistance/done with help; physical assistance) and reduced time for these activities.¹⁵⁷

As discussed, Ms. C can use her arms and hands, and she has some grip strength in both hands.¹⁵⁸ She cannot stand for long periods of time, but she can independently stand, turn, bend over, lift and carry light objects, and walk for a short distance.¹⁵⁹ Although Ms. C's asthma prevents her from dusting, and although she has difficulty and it takes a great amount of time and effort, Ms. C is physically capable, with assistance, of doing housework and laundry.¹⁶⁰ Ms. C's PCA helps her, but Ms. C can and does participate in her grocery shopping.¹⁶¹ She uses a motorized cart, and the PCA helps her get things that are too high or too heavy off the shelf.¹⁶² The PCA also helps unload the cart and put the groceries away.¹⁶³ In other words, the preponderance of the evidence does not support a conclusion that Ms. C's physical condition makes her completely dependent on others to perform these activities.

A person is not entitled to receive PCA assistance if the task can "reasonably be performed by the recipient."¹⁶⁴ The Division has met its burden to show that with some physical assistance, Ms. C can reasonably perform light and routine housework, shopping, and laundry. Accordingly, the Division's decision to reduce time for these activities is affirmed.

C. Other Covered Activities

1. Minor Respiratory Equipment Maintenance

During the assessment, Ms. C did not report that she needed oxygen or assistance with any respiratory equipment.¹⁶⁵ And thus the Division removed time for Minor Respiratory Equipment Maintenance. Ms. C did not dispute this. Accordingly, the Division's decision to remove time for this activity is affirmed.

¹⁵⁶ Ex. D at 4, 12.

¹⁵⁷ Ex. D at 4, 12; Ex. E at 27.

¹⁵⁸ Ex. E at 5 (she could touch her head; she could touch her hands over her head; she could touch her hands together behind her back); Platt Testimony.

¹⁵⁹ Ex. E at 8; Platt Testimony.

¹⁶⁰ Ex. E at 27; Platt Testimony; C Testimony.

¹⁶¹ C Testimony.

¹⁶² C Testimony.

¹⁶³ C Testimony.

¹⁶⁴ 7 AAC 125.040(a)(4).

¹⁶⁵ Ex. E at 6, 14, 15 30.

2. Medical Escort

The Locomotion (Access to Medical Appointments) Scores are used to determine if a recipient is eligible for escort time. As discussed above, the Division presented no evidence or argument at the hearing that was specific to Ms. C's ability to ambulate the longer distances necessary to access medical appointments without assistance.¹⁶⁶ The CAT does not any light on why Ms. C's level of assistance was downgraded.¹⁶⁷ The fact that Ms. C uses a walker or cane in the community is insufficient to establish that Ms. C is physically capable of ambulating to access medical appointments merely with supervision. Indeed, the preponderance of the evidence shows that Ms. C requires assistance to walk longer distances: she cannot be on her feet for any length of time, and her PCA assists her to the car and inside the store for shopping.¹⁶⁸

Nevertheless, the evidence shows that Ms. C had 23 medical appointments in 2017—significantly less than the two appointments per week that formed the basis for the escort time previously authorized.¹⁶⁹ And so, Ms. C should receive escort time that is consistent with her self-performance score of 3, but the weekly minutes should be recalculated to correspond to the actual frequency of appointments.¹⁷⁰

3. Medication Assistance

The Personal Hygiene Scores are used to determine if a recipient is eligible for medication assistance. As discussed above, though difficult and sometimes painful, Ms. C can and does take care of her own personal hygiene needs.¹⁷¹ Accordingly, the Division met its burden of proof, and the Division's decision to remove time for assisting Ms. C with medication is affirmed.

V. Conclusion

The evidence at the hearing showed that Ms. C is physically capable of performing many 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.

¹⁶⁶ Ex. E at 8.

¹⁶⁷ Ex. E at 8.

¹⁶⁸ C Testimony.

¹⁶⁹ Ex. E at 6.

¹⁷⁰ Ex. E at 6; *see also* Ex. D at 3, 12.

¹⁷¹ C Testimony; Ex. E at 11.

Specifically, the Division’s decisions about the following PCA services are affirmed: ADLs of Transfers, Locomotion (Between Locations), Dressing, and Personal Hygiene; IADLs of Light and Main Meal Preparation, Light and Routine Housework, Shopping, and Laundry; and Other Covered Activities of Minor Respiratory Equipment Maintenance and Medication Assistance. But the preponderance of the evidence shows that Ms. C needs limited assistance with the following: Locomotion (Multi-Level), Locomotion (Access to Medical Appointments), Toileting, Bathing, and Medical Escort.

The evidence also shows that Ms. C had 23 medical appointments in 2017—significantly less than two appointments per week in her 2014 assessment.¹⁷² Accordingly, in addition to the reduction in time that corresponds to limited assistance (as opposed to extensive assistance), the time for assistance for Locomotion (Access to Medical Appointments) and Escorts should be reduced to the frequency and time that is consistent with 23 appointments per year.¹⁷³

Accordingly, the Division shall recalculate Ms. C’s PCA benefit time consistent with this decision.

Dated: April 9, 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 26th day of April, 2018.

By: *Signed* _____
Name: Jessica 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.]

¹⁷² Ex. E at 6.

¹⁷³ Ex. E at 6; *see also* Ex. D at 3, 12.