

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

In the Matter of)
)
T T) OAH No. 18-0182-MDS
) Agency No.

DECISION

I. Introduction

T T was receiving 12.75 hours per week of personal care services (PCS) when she was reassessed in April 2017. After her reassessment, Ms. T submitted an amendment to increase her services. Based primarily on a video-conferenced reassessment on April 27, 2017, the Division of Senior and Disabilities Services (Division) notified Ms. T on February 12, 2018 that her PCS hours would be eliminated. Ms. T requested a hearing.

The evidence at the hearing showed that Ms. T is physically capable of performing many activities. But 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. T services as specified in this decision.

II. Factual and Procedural Background

Ms. T is 31 years old.¹ She lives with her two children, aged 8 and 11, in a ground-level apartment in City A, Alaska.² She lives with a number of physical and mental conditions, many of which resulted from complications of Type 1 diabetes mellitus when she was a child.³ In addition to the Type 1 diabetes mellitus, Ms. T's diagnoses include: right hip dysplasia with secondary osteoarthritis, hemidystonia, diabetic retinopathy, reduced mobility, mild cervical stenosis, foraminal stenosis, neck pain with radiculopathy, dysthymic disorder, spastic hemiplegic and hemiparesis, cerebral palsy, contracture (multiple sites/multiple joints), parathesia of skin, post-traumatic stress disorder, low back pain, and pelvic joint pain.⁴ When she was 8 years old, she suffered a brain injury that resulted in physical impairments of her right upper and lower extremities.⁵ She has not been able to ambulate without an assistive device,

¹ Ex. E at 3 – 4.
² Ex. D at 11; Testimony of Julie White; Testimony of K H.
³ Ex. D at 13; Ex. E at 3 – 4.
⁴ Ex. D at 13; Ex. E at 3 – 4.
⁵ Ex. 1 at 1, 37; Ex. E at 7.

primarily crutches, since that time.⁶ Over time, she has developed an equinovarus contracture of the right foot and severe spasticity below the knee.⁷ She is unable to flex her right ankle upward.⁸ Her right knee varies from complete extension to complete flexion—and changes position—without her volitional control.⁹ Right leg and hip spastic dystonia cause her right foot to bend fully underneath her, causing her to sit on her foot.¹⁰ Ms. T reports that her right arm goes limp with shocking pain that radiates from her shoulder to her hand.¹¹ Ms. T signs her name with an “X” because of pain in her hand.¹² Due to several years of using crutches, Ms. T has also developed right axillary pain and skeletal deformities.¹³ It has become increasingly difficult and painful for her to use crutches.¹⁴ Ms. T needs a wheelchair when ambulating longer distances.¹⁵ But due to weakness and pain in her right arm and hand, Ms. T cannot propel a manual wheelchair.¹⁶ Ms. T has urinary incontinence a few times each week, but she does not use pads or liners.¹⁷ Ms. T has exhausted many treatment options, and her doctors have discussed amputation with use of a prosthesis as a possibility to improve her symptoms.¹⁸

Based on an assessment conducted in 2013, Ms. T was receiving 12.75 hours of weekly PCS services in 2017.¹⁹ On April 27, 2017, Division Health Program Manager Julie White reassessed Ms. T’s PCS service needs through a videoconference link (TeleHealth).²⁰ Ms. White used a checklist of questions and a standardized form, the Consumer Assessment Tool, or “CAT,” to score Ms. T’s eligibility for the PCS program.²¹ Ms. White assessed Ms. T’s functional abilities by observing her through a camera from the moment Ms. T entered the room.²²

⁶ Ex. 1 at 1, 37.

⁷ Ex. 1 at 1.

⁸ Ex. 1 at 1.

⁹ Ex. 1 at 1.

¹⁰ Ex. 1 at 1.

¹¹ Ex. E at 7.

¹² Testimony of Y Z; Ex. E at 2.

¹³ Ex. 1 at 75.

¹⁴ Ex. D at 17.

¹⁵ Ex. D at 17.

¹⁶ Z Testimony.

¹⁷ Ex. D at 19.

¹⁸ Ex. 1 at 1, 6, 37; H Testimony.

¹⁹ Ex. D at 1 – 2, 12 – 13.

²⁰ *See generally* Ex. D. Testimony of Julie White.

²¹ White Testimony.

²² White Testimony.

During the assessment, Ms. White observed Ms. T walk a short distance between the doorway and a chair (about 3 to 5 feet) with crutches.²³ Ms. T, who was seated in an office chair with armrests, independently repositioned herself, stood up, sat back down, and brought both legs up onto the chair several times during the assessment to try to find a comfortable position.²⁴ Ms. T also stood, holding onto the chair, with stable balance.²⁵ Ms. T reported that she is able to stand up out of chairs with armrests.²⁶ Ms. White, who takes contemporaneous notes during an assessment, noted that Ms. T could draw a clock; touch her hands over her head; and touch her hands together behind her back.²⁷ Ms. T could not touch her feet in a seated position; and she could not place her hands across her chest and stand up.²⁸ Ms. White was not physically present to feel Ms. T's grip strength, but based on Ms. T's ability to grip her crutches, Ms. White concluded that Ms. T had a strong grip in both hands.²⁹ Ms. T, however, reported that her muscle strength is declining.³⁰ And she reported daily, chronic pain in her back.³¹ Ms. T informed Ms. White that she usually uses crutches, but due to pain in her arms and her leg, it was getting increasingly difficult to use crutches.³² Ms. T reported that she needs a wheelchair when ambulating longer distances.³³

On December 6, 2017, Ms. T filed a PCS Amendment to Service Plan.³⁴ In the amendment, Ms. T claimed that due to continued loss of mobility in her arms and legs, she was unable to do things for herself.³⁵ She requested an increase in PCS time for bed mobility, non-mechanical transfers, locomotion, dressing, eating/drinking, toileting, personal hygiene, bathing, light meal preparation, and main meal preparation.³⁶

²³ Ex. D at 16; White Testimony.

²⁴ Ex. D at 16; White Testimony.

²⁵ Ex. D at 16; White Testimony.

²⁶ Ex. D at 16.

²⁷ Ex. D at 14, 19. Ms. White did not, however, remember Ms. T draw the clock. White Testimony.

²⁸ Ex. D at 14.

²⁹ White Testimony; Ex. D at 14, 19.

³⁰ White Testimony; Ex. D at 14.

³¹ Ex. D at 13.

³² Ex. D at 17.

³³ Ex. D at 17.

³⁴ Ex. E at 1 – 2.

³⁵ Ex. E at 1.

³⁶ Ex. E at 1.

Ms. T's parents live near her.³⁷ They assist her with many activities of daily living that Ms. T finds difficult.³⁸ However, Ms. T's father injured himself, and Ms. T's mother, Ms. H, has less time to take care of Ms. T.³⁹ As a result, Ms. T spends a significant amount of time at home alone.⁴⁰ Ms. T's children spend the majority of the time with their grandparents.⁴¹ Ms. H cooks for the children, and the children bring food home to Ms. T.⁴² Although Ms. H claims that Ms. T is bedridden, there is no support of that in the record. Indeed, it is hard for Ms. T to lay in bed all day, and she moves frequently to relieve her pain.⁴³ Ms. T can get out of bed to use the bathroom; she smokes outside; and with set up help from a caregiver, Ms. T can put prepared food in a microwave or crockpot.⁴⁴

Ms. T's hearing was held on April 13, 2018. Because the parties ran out of time, a supplemental hearing was held on April 16, 2018. Ms. T did not participate. Instead, Ms. T's mother and power of attorney, K H represented Ms. T. In addition to her own testimony, Ms. H presented testimony from Ms. T's father, Z H, and her Care Coordinator, Y Z. Terri Gagne represented the Division. Health Program Manager and Assessor Julie White testified for the Division. All evidence submitted by the parties, including 175 pages of medical records submitted by Ms. H, was admitted into the record. The record closed at the end of the supplemental hearing on April 16, 2018.

III. The PCS Service Determination Process

The Medicaid program will authorize and pay for PCS to provide physical assistance “to a Medicaid recipient that . . . experiences functional limitations that . . . are the result of the recipient’s physical condition; . . . are evident during assessment of the recipient using the Consumer Assessment Tool (CAT) adopted by reference in 7 AAC 160.900; and . . . cause the recipient to be unable to perform [activities of daily living (ADLs), instrumental activities of daily living (IADLs), and other services] . . .”⁴⁵ The PCS program focuses on a Medicaid recipient’s physical condition and functional abilities, and the Division will not authorize PCS

³⁷ H Testimony.

³⁸ H Testimony.

³⁹ H Testimony.

⁴⁰ H Testimony.

⁴¹ H Testimony.

⁴² H Testimony.

⁴³ Testimony of Z H; White Testimony.

⁴⁴ K H Testimony; Z H Testimony.

⁴⁵ 7 AAC 125.010; 7 AAC 125.020.

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 . . .”⁴⁶

A functional limitation is an impairment or limit on a person’s ability to perform an action or activity.⁴⁷ The Division uses a standardized form, the Consumer Assessment Tool, or “CAT,” to score eligibility for the PCS program, and the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.⁴⁸ In general, if a recipient requires certain levels of assistance, the regulations prescribe a fixed number of PCS minutes for each occurrence of that activity.

As a gateway to eligibility for PCS 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 PCS services. Once eligibility is established, time for additional ADLs and IADLs, as well as certain other covered services, can be added to the PCS 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.⁴⁹ 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 on a scale of 0 to 4. The possible codes are: **0** (the person is independent⁵⁰ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance⁵¹); **3** (the

⁴⁶ 7 AAC 125.020(d)(2).

⁴⁷ Merriam-Webster defines “functional” as “of, connected with, or being a function” or “affecting physiological or psychological functions but not organic structure.” See <https://www.merriam-webster.com/dictionary/functional>.

⁴⁸ 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.

⁴⁹ Ex. D at 5 – 6, 9 – 10, 16 – 21, 28 – 29.

⁵⁰ 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. D at 16.

⁵¹ 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. D at 16.

person requires extensive assistance⁵²); and **4** (the person is totally dependent⁵³). 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).⁵⁴

The *support codes* rate the degree of assistance a person requires for a particular ADL on a scale of 0 to 3. 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).⁵⁵

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 and routine housekeeping, management of finances, grocery shopping, laundry (in-home or out-of-home), and transportation.⁵⁶ 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 rated on a scale of 0 to 3: **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).⁵⁷

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

⁵² 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. D at 16.

⁵³ Dependent as to an ADL, or dependent as to and IADL, means “full staff/caregiver performance of activity during ENTIRE 7 days.” Ex. D at 16 (capitalized emphasis in original).

⁵⁴ Ex. D at 16.

⁵⁵ Ex. D at 16.

⁵⁶ Ex. D at 5 – 6, 9 – 10, 36.

⁵⁷ Ex. D at 36.

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).⁵⁸

The codes assigned to a particular ADL or IADL determine how much PCS 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 PCS service time each time she was bathed.⁵⁹ The regulations do not provide the Division with the discretion to change the amounts specified by the formula.

The division will authorize personal care services for a recipient who receives a self-performance score of at least 2 for at least one ADL or IADL.⁶⁰ In this case, the division determined that Ms. T did not require this level of assistance with any of the ADLs or IADLs. On February 12, 2018, the Division denied Ms. T's requested amendment to service plan and removed time for the PCS services Ms. T was receiving.⁶¹

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,⁶² facts that show the recipient's level of eligibility has changed.⁶³ However, Ms. T bears the burden of proving that she is eligible for the additional services she requested in the amendment to service plan.⁶⁴ The parties can meet their respective burden using any evidence on which reasonable people might rely in the conduct of serious affairs,⁶⁵ 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.⁶⁶

⁵⁸ Ex. D at 36.

⁵⁹ 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.

⁶⁰ 7 AAC 125.020(c)(1).

⁶¹ Ex. D at 2.

⁶² Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

⁶³ 7 AAC 49.135.

⁶⁴ 7 AAC 49.135.

⁶⁵ 2 AAC 64.290(a)(1).

⁶⁶ See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013). OAH cases are available online at <http://doa.alaska.gov/oah/Decisions/index.html>.

A. Bed Mobility

Ms. T requested assistance with bed mobility in her amendment to service plan.⁶⁷ “Bed Mobility” means how a *non-ambulatory* recipient moves to and from a lying position, turns side to side, or positions his or her body while in bed.⁶⁸

Ms. T was previously assessed with a score of 0/0 (i.e. independent with no setup or physical help needed).⁶⁹ After reassessing Ms. T, the Division again found that Ms. T is physically capable of sitting up, turning side to side, and repositioning herself and gave her a score of 0/0 (i.e. independent with no setup or physical help needed).⁷⁰ Accordingly, the Division did not give Ms. T the PCS time she requested for this activity.⁷¹

The only explanation Ms. T gave for her amendment request is that she “is unable to do things for herself due to loss of mobility in her arms and legs.”⁷² But according to the 2017 CAT notes, Ms. T reported that she has a regular bed, and she is able to sit up completely and turn from side to side without assistance.⁷³ Ms. White observed Ms. T reposition herself, stand, sit and bring her legs up numerous times while sitting in an office chair. Although Ms. T’s mother, Ms. H claims that Ms. T is bedridden, there is no support of that in the record. Indeed, it is hard for Ms. T to lay in bed all day, and she moves frequently to relieve her pain.⁷⁴

Moreover, Ms. T is eligible for assistance with this activity only if she is “non-ambulatory” within the meaning of 7 AAC 125.030(b)(1).⁷⁵ The term “non-ambulatory” has not been defined for purposes of the PCS program. But under a common understanding of the term, a person who is capable of moving about while erect, even if with the aid of an assistive device such as crutches, braces, or a walker, would be considered ambulatory.⁷⁶ This is so even if such a person cannot ambulate effectively, that is, walk a significant distance or over rough ground.⁷⁷ Applying that definition, Ms. T is ambulatory, and accordingly, ineligible for assistance with bed mobility under 7 AAC 125.030(b)(1).

⁶⁷ Ex. E at 1.

⁶⁸ 7 AAC 125.030(b)(1) (Ex. B at 5); Ex. D at 16.

⁶⁹ Ex. D at 9.

⁷⁰ Ex. D at 9, 16, 28; White Testimony.

⁷¹ Ex. D at 9, 16, 28; White Testimony.

⁷² Ex. E at 1.

⁷³ Ex. D at 16.

⁷⁴ Testimony of Z H; White Testimony.

⁷⁵ 7 AAC 125.030(b)(1) (Ex. B at 5); Ex. D at 16.

⁷⁶ See 7 AAC 49.170; *In re N.O.*, OAH No. 14-2191-MDS (Commissioner of Health & Soc. Serv. 2015).

OAH cases are available online at <http://doa.alaska.gov/oah/Decisions/index.html>.

⁷⁷ *Id.*

In short, Ms. T failed to meet her burden of proving that it is more likely true than not true that she is eligible for PCS assistance with this activity. And the Division’s decision to deny her request for PCS time for Bed Mobility is affirmed.

B. Transferring (Non-Mechanical)

Ms. T requested assistance with transfers in her amendment to service plan.⁷⁸ Transfers are defined as “how a person moves between surfaces – to/from bed, chair, wheelchair, standing position (excluding to/from bath/toilet).”⁷⁹ Ms. T was previously assessed with a score of 0/0 (i.e. independent with no setup or physical help needed).⁸⁰ After reassessing Ms. T, the Division again gave her a score of 0/0 (i.e. independent with no setup or physical help needed).⁸¹ Accordingly, the Division did not give Ms. T the PCS time she requested for this activity.⁸²

During the assessment, Ms. White observed Ms. T independently stand up and sit down numerous times.⁸³ Ms. T reported that she is able to stand up out of chairs with armrests.⁸⁴ And according to Ms. T’s parents, Ms. T can get out of bed to use the bathroom and go outside to smoke.⁸⁵ The preponderance of the evidence shows that Ms. T is able to move from a bed, chair, or wheelchair into a standing position without assistance. Accordingly, Ms. T has failed to meet her burden of proof, and the Division’s decision to deny her request for PCS time for Transfers is affirmed.

C. Locomotion (Between Locations)

Ms. T requested assistance with locomotion in her amendment to service plan.⁸⁶ Locomotion is defined as “how a person moves between locations in his/her room and other areas on the same floor. . . .”⁸⁷ The Division will not authorize PCS time for a recipient who is self-sufficient with an assistive device.⁸⁸ Ms. T was previously assessed with a score of 0/0 (i.e. independent with no setup or physical help needed).⁸⁹ After reassessing Ms. T, the Division

⁷⁸ Ex. E at 1.
⁷⁹ See Ex. D at 16; see also 7 AAC 125.030(b)(2) (Ex. B at 5)
⁸⁰ Ex. D at 9.
⁸¹ Ex. D at 9, 16, 28; White Testimony.
⁸² Ex. D at 9.
⁸³ White Testimony; see also Ex. D at 16.
⁸⁴ Ex. D at 16.
⁸⁵ K H Testimony; Z H Testimony.
⁸⁶ Ex. E at 1.
⁸⁷ See Ex. D at 17; 7 AAC 125.030(b)(3).
⁸⁸ 7 AAC 125.030(b)(3)(B)(i).
⁸⁹ Ex. D at 9.

again gave her a score of 0/0 (i.e. independent with no setup or physical help needed) and denied her request for PCS time for this activity.⁹⁰

As with transfers, Ms. White based her assessment on a finding that with an assistive device, such as crutches, Ms. T was physically capable of walking without assistance.⁹¹ Indeed, although Ms. White was only able to observe Ms. T walk a short distance (about 3 to 5 feet between the door and a chair), there is no dispute that Ms. T independently walked into and out of the room where her assessment occurred.⁹² Moreover, Ms. T's father testified that it is difficult for Ms. T to lay in bed all day, and she moves frequently to relieve her pain.⁹³ Ms. T can independently get out of bed to use the bathroom, go outside to smoke, and go to the kitchen to put prepared food in a microwave or crockpot.⁹⁴ Accordingly, the preponderance of the evidence shows that, albeit difficult, Ms. T is able to ambulate the short distances in her home independently with her crutches. Accordingly, Ms. T has failed to meet her burden of proof, and the Division's decision to deny her request for PCS time for locomotion between locations in her home is affirmed.

D. Locomotion (Multi-Level)

The CAT defines multi-level locomotion as "how a person moves in a multi-level house."⁹⁵ The Division scored Ms. T with a 0/0 (i.e. independent with no setup or physical help needed) and denied her request for PCS time for this activity.⁹⁶

If the person lives in a single-level house, the Division must score this activity with a 0.⁹⁷ The undisputed evidence shows that Ms. T lives in a ground-level apartment with a half-step to the entry.⁹⁸ Accordingly, the preponderance of the evidence shows that, the Division correctly denied Ms. T's request for PCS assistance for multi-level locomotion in her home, and thus the Division's decision is affirmed.

⁹⁰ Ex. D at 9, 17, 28; White Testimony.

⁹¹ Ex. D at 9, 17, 28; White Testimony.

⁹² Ex. D at 16; White Testimony.

⁹³ Z H Testimony; White Testimony.

⁹⁴ K H Testimony; Z H Testimony.

⁹⁵ See Ex. D at 17.

⁹⁶ Ex. D at 9, 17, 28; White Testimony.

⁹⁷ Ex. D at 17.

⁹⁸ Ex. D at 11; Testimony of Julie White; Testimony of K H.

E. Locomotion (Access to Medical Appointments)

The Division will authorize PCS if the recipient needs physical assistance “to and from a location in the recipient’s residence to a vehicle used by the recipient to access a routine medical or dental appointment.”⁹⁹ On Ms. T’s previous assessment, she was assessed as needing limited assistance to access medical appointments, with a frequency of two times per week.¹⁰⁰ After reassessing Ms. T, 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.¹⁰¹

Ms. White concluded that Ms. T can independently walk the short distances around her home with the use of her crutches, and she noted in the CAT that Ms. T uses a wheelchair for longer distances.¹⁰² But the Division presented no evidence or argument at the hearing that was specific to Ms. T’s ability to ambulate the longer distances necessary to access medical appointments without assistance.¹⁰³ There is nothing in the CAT that sheds any light on the rationale for reducing the level of assistance Ms. T requires.¹⁰⁴ The only basis for this conclusion is Ms. White’s limited observation—via videoconferencing—that Ms. T could walk independently with her crutches the 3 to 5 feet from the door to a chair.¹⁰⁵ The fact that Ms. T uses a wheelchair in the community or that she can navigate the short distances in her house with crutches is insufficient to establish that Ms. T is physically capable of ambulating to access medical appointments without assistance. Indeed, the preponderance of the evidence shows that Ms. T requires assistance to walk longer distances: her right arm goes limp with shocking pain that radiates from her shoulder to her hand, effecting her ability to use her crutches;¹⁰⁶ due to several years of using crutches, Ms. T has also developed right axillary pain and skeletal deformities;¹⁰⁷ it has become increasingly difficult and painful for her to use crutches;¹⁰⁸ and due to weakness and pain in her right arm and hand, Ms. T cannot propel a manual wheelchair.¹⁰⁹

⁹⁹ 7 AAC 125.030(b)(3)(B); Ex. D at 17.

¹⁰⁰ Ex. D at 9.

¹⁰¹ Ex. D at 9, 17, 28; White Testimony.

¹⁰² Ex. D at 17; White Testimony.

¹⁰³ Ex. D at 17.

¹⁰⁴ Ex. D at 17.

¹⁰⁵ Ex. D at 17; White Testimony.

¹⁰⁶ Ex. E at 7.

¹⁰⁷ Ex. 1 at 75.

¹⁰⁸ Ex. D at 17.

¹⁰⁹ Z Testimony.

Ms. T’s boyfriend has had to carry her into her apartment because she got stuck.¹¹⁰ 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. T’s locomotion to access medical appointments time should be removed. Accordingly, the Division’s decision is reversed.

That said, the evidence shows that Ms. T had 28 medical appointments in 2017—significantly less than two appointments per week.¹¹¹ Accordingly, Ms. T’s self-performance score should remain a 2, but the frequency of that assistance should be reduced from 2 times per week, to a frequency that is consistent with 28 appointments per year.¹¹²

F. 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.”¹¹³ Ms. T was previously scored 2/2 (i.e. needing limited assistance with one-person physical assist), with a frequency of 14 times per week for dressing.¹¹⁴ After reassessing Ms. T, the Division gave her a score of 1/1 (i.e. needing supervision and set up help only) and removed time for this service.¹¹⁵

The CAT defines “supervision as “[o]versight, encouragement or cuing provided 3+ times during the last 7 days – or – [s]upervision plus nonweight-bearing physical assistance provided only 1 or 2 times during the last 7 days.”¹¹⁶ Whereas, the definition of “limited assistance” is “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.”¹¹⁷ Ms. White’s assessment was based on her observations that Ms. T could stand with stable balance using her crutches for balance and support; and that she sat in a chair and pulled both legs up, bending them at the knee, and resting them on the seat of the chair.¹¹⁸ According to Ms. White’s notes from the assessment, Ms. T demonstrated that she could touch her head; she could touch her hands over

¹¹⁰ Z H Testimony.

¹¹¹ Ex. D at 15.

¹¹² Ex. D at 9, 15.

¹¹³ Ex. D at 18; *see also* 7 AAC 125.030(b)(4).

¹¹⁴ Ex. D at 9.

¹¹⁵ Ex. D at 9, 18.

¹¹⁶ Ex. D at 18.

¹¹⁷ Ex. D at 18.

¹¹⁸ Ex. D at 17; White Testimony.

her head; she could touch her hands together behind her back; and based on her ability to grasp her crutches, she had some grip strength in both hands.¹¹⁹ Though difficult and painful, Ms. T can participate in dressing herself.¹²⁰ However, Ms. T reported that she needs help getting dressed.¹²¹ She cannot lift her right arm,¹²² and she is unable to flex her right ankle upward.¹²³ Her right knee varies from complete extension to complete flexion—and changes position without her volitional control.¹²⁴ Spastic dystonia in her right leg and hip cause her right foot to bend fully underneath her, causing her to sit on her foot.¹²⁵ Ms. T’s right arm goes limp with shocking pain that radiates from her shoulder to her hand.¹²⁶ Due to the pain in her right hand, Ms. T signs her name with an “X.”¹²⁷ Ms. T reported that her boyfriend helps her get dressed,¹²⁸ and her mother testified that she has worn the same clothes for a week because she did not have anyone to help her dress.¹²⁹ In short, the preponderance of the evidence supports the conclusion that Ms. T needs limited assistance with dressing.

Accordingly, the Division has failed to meet its burden of establishing by a preponderance of the evidence that Ms. T’s PCS time for dressing should be removed. And the Division’s decision is reversed.

G. Eating/Drinking

Ms. T requested assistance with eating and drinking in her amendment to service plan.¹³⁰ On her previous assessment, Ms. T was assessed with a score of 0/1 (i.e. independent with setup help only).¹³¹ After reassessing Ms. T, the Division again gave her a score of 0/1 and rejected her request for PCS time for this activity.¹³² Ms. White explained that when she assesses someone for this activity, she looks at the person’s ability to get food from the plate or table to the mouth, regardless of whether he or she can use utensils.¹³³

¹¹⁹ Ex. D at 14.
¹²⁰ Ex. D at 18.
¹²¹ Ex. D at 18.
¹²² Ex. D at 18.
¹²³ Ex. 1 at 1.
¹²⁴ Ex. 1 at 1.
¹²⁵ Ex. 1 at 1.
¹²⁶ Ex. E at 7.
¹²⁷ Testimony of Y Z; Ex. E at 2.
¹²⁸ Ex. D at 18.
¹²⁹ K H Testimony.
¹³⁰ Ex. E at 1.
¹³¹ Ex. D at 9.
¹³² Ex. D at 9, 16, 28; White Testimony.
¹³³ White Testimony.

During the assessment, Ms. T reported that although her appetite is poor and she has difficulties preparing her meals, she is able to feed herself and drink from an open cup.¹³⁴ Ms. T reported that others cut her food up for her.¹³⁵ Thus the preponderance of the evidence supports Ms. White’s assessment that with setup help, Ms. T can eat without help or supervision. Accordingly, the Division correctly denied Ms. T’s request for PCS assistance for eating and drinking, and the Division’s decision is affirmed.

H. Toileting

Ms. T requested assistance with toileting in her amendment to service plan.¹³⁶ 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.”¹³⁷ Ms. T was previously scored 1/0 (i.e. needing supervision with no set up or physical help).¹³⁸ After reassessing Ms. T, Ms. White scored her as needing supervision and set up help only (a score of 1/1) for toilet use.¹³⁹ Ms. White based the assessment on observations of Ms. T standing and sitting several times to alleviate her pain during the assessment.¹⁴⁰

The CAT defines “supervision as “[o]versight, encouragement or cuing provided 3+ times during the last 7 days – or – [s]upervision plus nonweight-bearing physical assistance provided only 1 or 2 times during the last 7 days.”¹⁴¹ Whereas, the definition of “limited assistance” is “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.*”¹⁴²

Here, Ms. T 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 based on her ability to grasp her crutches, she had some grip strength in both hands.¹⁴³ Ms. T spends a significant amount of time at home alone.¹⁴⁴ And she can independently use the bathroom.¹⁴⁵ Although Ms. T

¹³⁴ Ex. D at 19.

¹³⁵ Ex. D at 19.

¹³⁶ Ex. E at 1.

¹³⁷ Ex. D at 19; *see also* 7 AAC 125.030(b)(6).

¹³⁸ Ex. D at 9.

¹³⁹ Ex. D at 9, 19.

¹⁴⁰ Ex. D at 19.

¹⁴¹ Ex. D at 19.

¹⁴² Ex. D at 19.

¹⁴³ Ex. D at 14.

¹⁴⁴ H Testimony.

reported that her ability to wipe, get her pants up or down, and get on or off the toilet depend on whether or not she has leg spasms, and her medical records confirm that she has spastic dystonia in her right leg, there is no evidence from which to determine how often Ms. T requires more than supervision with toileting.¹⁴⁶ This is a close call. But because Ms. T is requesting additional time for this activity, she bears the burden of proving her eligibility. And the preponderance of the evidence does not establish that Ms. T needs more than supervision more than two times per week.¹⁴⁷ Accordingly, the Division's decision is affirmed.

I. Personal Hygiene

Ms. T requested assistance with personal hygiene in her amendment to service plan.¹⁴⁸ Personal hygiene includes the tasks of combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands, and perineum, when done separately from bathing.¹⁴⁹ Ms. T was previously assessed with a score of 0/1 (i.e. independent with no setup or physical help needed).¹⁵⁰ After reassessing Ms. T, the Division again gave her a score of 0/1 and denied her request for PCS time for this activity.¹⁵¹ As discussed, Ms. T can touch her head, touch her hands over her head, touch her hands together behind her back, and has the ability to grasp objects.¹⁵² Ms. T spends a significant amount of time at home alone.¹⁵³ Ms. T can and does take care of her own personal hygiene needs: she can brush her teeth and wash her hands; and if she is given a washcloth, she can wash her face.¹⁵⁴ Because Ms. T is requesting additional time for this activity, she bears the burden of proving her eligibility. And the preponderance of the evidence does not establish that Ms. T needs more than setup help to take care of her personal hygiene needs.¹⁵⁵ Accordingly, the Division's decision is affirmed.

¹⁴⁵ K H Testimony; Z H Testimony.

¹⁴⁶ Ex. D at 19; Ex. 1 at 1.

¹⁴⁷ Ex. D at 19.

¹⁴⁸ Ex. E at 1.

¹⁴⁹ Ex. D at 9; 7 AAC 125.030(b)(7).

¹⁵⁰ Ex. D at 9.

¹⁵¹ Ex. D at 9, 20, 28; White Testimony.

¹⁵² Ex. D at 14.

¹⁵³ H Testimony.

¹⁵⁴ Ex. D at 20.

¹⁵⁵ Ex. D at 20.

J. Bathing

Bathing is defined as “how [a] person takes full body bath/shower, sponge bath, and transfers in/out of tub/shower.”¹⁵⁶ The CAT’s self-performance scoring for bathing differs somewhat from the scoring for the other ADLs.¹⁵⁷ 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;”¹⁵⁸ and **4**, labeled as “Total dependence.”¹⁵⁹ Ms. T was previously scored 3/2 (i.e. needing physical help in part of bathing activity), with a frequency of 7 times per week for bathing.¹⁶⁰ After reassessing Ms. T, the Division gave her a score of 1/1 (i.e. supervision and setup help only) and removed time for bathing.¹⁶¹ Again, Ms. White’s assessment was based her limited observations that Ms. T could stand with stable balance using her crutches for balance and support; and that she sat in a chair and pulled both legs up, bending them at the knee, and resting them on the seat of the chair.¹⁶²

The undisputed facts show that Ms. T does not have a shower bench, and she needs help getting in and out of the bathtub.¹⁶³ Her boyfriend carries her in and out of the shower, and someone is always in the bathroom with her when she showers.¹⁶⁴ Although Ms. T prefers to use her parents’ walk-in shower, she does not live with her parents, and she needs assistance to get in and out of the shower in her home. At minimum, the preponderance of the evidence shows that Ms. T should be scored with a 2/2 (“physical help limited to transfer only” and “one-person physical assist”).¹⁶⁵ But the evidence also shows that Ms. T is not able to reach her feet or lower extremities.¹⁶⁶ So to sufficiently wash those parts of her body, she needs assistance. Accordingly, the evidence also supports a conclusion that in addition to physical help

¹⁵⁶ Ex. D at 21, 29.

¹⁵⁷ Ex. D at 21, 29.

¹⁵⁸ Ex. D at 21, 29.

¹⁵⁹ Ex. D at 21, 29.

¹⁶⁰ Ex. D at 9.

¹⁶¹ Ex. D at 9, 21, 28.

¹⁶² Ex. D at 17; White Testimony.

¹⁶³ Ex. D at 21.

¹⁶⁴ Ex. D at 21.

¹⁶⁵ Ex. D at 21.

¹⁶⁶ Ex. D at 21.

transferring in and out of her shower, she requires “physical help in *part* of bathing activity” (a score of 3).¹⁶⁷

Either way, the Division bears the burden of proof, and it did not meet its burden of establishing by a preponderance of the evidence that Ms. T was properly given a self-performance score of 1 and support score of 1. Instead, the preponderance of the evidence establishes that Ms. T needs more than supervision and set up help—she needs both transfer help and physical help in part of a bathing activity.¹⁶⁸ For this reason, Ms. T 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.¹⁶⁹

C. Instrumental Activities of Daily Living

Ms. T was previously provided assistance for her IADLs of light meal preparation, main meal preparation, light and routine housework, shopping, and laundry.¹⁷⁰ After reassessing Ms. T, the Division concluded that she can perform all of the activities with difficulty, and at most, she needs supervision or set up help.¹⁷¹ The Division thus removed time for all IADLs.¹⁷²

1. Light Meal Preparation

Ms. T was previously scored 2/3 (i.e. assistance/done with help; physical assistance provided) for light meal preparation.¹⁷³ After reassessing Ms. T, the Division gave her a score of 1/1 (i.e. independent with difficulty; supervision) and removed time for meal preparation.¹⁷⁴ Ms. White explained that when assessing a recipient’s ability to prepare a light meal, the Division looks at whether the person has the ability to make a sandwich or warm up soup or microwave meals.¹⁷⁵

During the assessment, Ms. T demonstrated that she can use her arms and hands, and she has some grip in both hands—as evidenced by her ability to use crutches.¹⁷⁶ She can

¹⁶⁷ Ex. D at 21 (emphasis added).

¹⁶⁸ Ex. D at 21.

¹⁶⁹ See Ex. D at 9, 21.

¹⁷⁰ Ex. D at 9.

¹⁷¹ Ex. D at 36.

¹⁷² Ex. D at 36.

¹⁷³ Ex. D at 9.

¹⁷⁴ Ex. D at 36.

¹⁷⁵ Ex. D at 9.

¹⁷⁶ Ex. D at 14 (she could touch her head; she could touch her hands over her head; she could touch her hands together behind her back); White Testimony.

independently walk with crutches.¹⁷⁷ Ms. T can stand with stable balance using her crutches for support.¹⁷⁸ Ms. T cannot stand and cook at the stove, but she can put prepared food in a microwave or crockpot.¹⁷⁹ Ms. T could sit to prepare a light meal, such as a sandwich, soup, or fruits and vegetables. She is able to reheat food. And although it may be more difficult or time-consuming for Ms. T to prepare her own light meals, the evidence does not support a conclusion that her physical conditions require physical assistance to prepare a light meal.

A person is not entitled to receive PCS assistance if the task can “reasonably be performed by the recipient.”¹⁸⁰ A review of the evidence demonstrates that Ms. T requires more support than supervision. But if someone helps her with set up (i.e. sets up a place for her to work and/or sets up ingredients), Ms. T has sufficient physical functionality to put together a light meal. Accordingly, the Division has met its burden to show that with set up help, Ms. T can reasonably prepare her light meals. Accordingly, the Division’s decision to remove time for this activity is affirmed.

2. Main Meal Preparation

Ms. T was previously scored 3/4 (i.e. dependent; total dependence) for main meal preparation.¹⁸¹ After reassessing Ms. T, the Division gave her a score of 1/2 (i.e. independent with difficulty; set up help only) and removed time for main meal preparation.¹⁸² Ms. White explained that when assessing a recipient’s ability to prepare a main meal, the Division looks at whether the person can use pots, pans, an oven, and a stove.¹⁸³ Ms. White looks at the person’s ability to stand, lift, and carry things.¹⁸⁴

The evidence does not support a finding that Ms. T is totally dependent on others for her meals (i.e. requiring “full performance of the activity performed by others”)—that due to her physical conditions, Ms. T cannot be involved at all in her main meal preparation.¹⁸⁵ But the evidence does not support a conclusion that Ms. T can make her own meals with difficulty, either.¹⁸⁶ Fortunately, the CAT offers a self-performance code between totally dependent and

¹⁷⁷ Ex. D at 17; White Testimony.

¹⁷⁸ Ex. D at 17; White Testimony.

¹⁷⁹ Ex. D at 19; White Testimony; K H Testimony; Z H Testimony

¹⁸⁰ 7 AAC 125.040(a)(4).

¹⁸¹ Ex. D at 9.

¹⁸² Ex. D at 36.

¹⁸³ White Testimony.

¹⁸⁴ White Testimony.

¹⁸⁵ Ex. D at 36.

¹⁸⁶ Ex. D at 36.

independent with difficulty. “Assistance/done with help:” means “Person involved in activity but help (including supervision, reminders, and/or physical ‘hands-on’ help) was provided.”¹⁸⁷

Here, Ms. White’s assessment was based primarily on her observations that Ms. T could stand with stable balance using her crutches for balance and support.¹⁸⁸ As discussed, although she has some restrictions, Ms. T can use her arms and hands, and she has some grip—as evidenced by her ability to use crutches.¹⁸⁹ She can walk with crutches.¹⁹⁰ But Ms. T cannot stand and cook at the stove.¹⁹¹ She cannot stand and balance with her crutches while lifting or carrying ingredients, dishes, pots, or pans.¹⁹² She cannot lift her right arm,¹⁹³ and it goes limp with shocking pain that radiates from her shoulder to her hand.¹⁹⁴ Ms. T has difficulty and pain with gripping with her right hand—as evidenced by the fact that she signs her name with an “X.”¹⁹⁵

Based on these facts, the Division did not meet its burden of establishing by a preponderance of the evidence that Ms. T was properly given a self-performance score of 1 and a support code of 2. Instead, the preponderance of the evidence establishes that Ms. T is not independent—she is physically capable of participating, but she needs hands-on physical assistance with preparing her main meals.¹⁹⁶ For this reason, Ms. T should be given a self-performance score of 2 and a support code of 3, with a frequency of 7 times per week for main meals.¹⁹⁷

3. Light and Routine Housework, Laundry, and Shopping

Ms. T was previously scored 3/4 (i.e. dependent, done by others and total dependence) for light and routine housework.¹⁹⁸ She was scored 2/3 (i.e. assistance/done with help; physical

¹⁸⁷ Ex. D at 36.

¹⁸⁸ Ex. D at 17; White Testimony.

¹⁸⁹ Ex. D at 14 (she could touch her head; she could touch her hands over her head; she could touch her hands together behind her back); White Testimony.

¹⁹⁰ Ex. D at 17; White Testimony.

¹⁹¹ Ex. D at 19; White Testimony.

¹⁹² K H Testimony.

¹⁹³ Ex. D at 18.

¹⁹⁴ Ex. E at 7.

¹⁹⁵ Ex. D at 36.

¹⁹⁶ *Id.*

¹⁹⁷ *See* Ex. D at 4, 12.

¹⁹⁸ Ex. D at 9.

assistance) for laundry and shopping.¹⁹⁹ After the reassessment, the Division gave her a score of 1/1 (i.e. independent with difficulty; supervision) and removed time for all of these activities.²⁰⁰

As discussed, Ms. White’s assessment was based primarily on her observations that Ms. T could stand with stable balance using her crutches for balance and support.²⁰¹ Although she has impairments, Ms. T does have some use of her arms and hands, and she has some grip in both hands.²⁰² She can get around with crutches.²⁰³ But Ms. T cannot lift her right arm,²⁰⁴ it goes limp, and she suffers shocking pain that radiates from her shoulder to her hand.²⁰⁵ Because of pain in her hand, Ms. T no longer writes a full signature—she signs her name with an “X.”²⁰⁶ She does not have control of the extremities on her right side.²⁰⁷ She cannot walk without her crutches, and she cannot propel herself with a manual wheelchair. She cannot stand and balance with her crutches while lifting or carrying items, such as a laundry basket, a vacuum cleaner, dishes, trash, mops, brooms, etc.²⁰⁸ She cannot lift or carry groceries. She could not reasonably run a vacuum, dust, make a bed, or load and empty a dishwasher while trying to support and balance herself on her crutches.

Based on these facts, the Division did not meet its burden of establishing by a preponderance of the evidence that Ms. T was properly given a self-performance score of 1 and a support code of 1 for any of these activities. Instead, the preponderance of the evidence establishes that although Ms. T is not independent, she is physically capable of performing some parts of some of these activities, but she needs hands-on physical assistance with all of them.²⁰⁹ For this reason, Ms. T should be given a self-performance score of 2 and a support code of 3, for light and routine housework, laundry and shopping.²¹⁰

¹⁹⁹ Ex. D at 9.

²⁰⁰ Ex. D at 36.

²⁰¹ Ex. D at 17; White Testimony.

²⁰² Ex. D at 14 (she could touch her head; she could touch her hands over her head; she could touch her hands together behind her back); White Testimony.

²⁰³ Ex. D at 17; White Testimony.

²⁰⁴ Ex. D at 18.

²⁰⁵ Ex. E at 7.

²⁰⁶ Ex. D at 36.

²⁰⁷ K H Testimony.

²⁰⁸ K H Testimony.

²⁰⁹ *Id.*

²¹⁰ *See* Ex. D at 4, 12.

C. 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. T’s ability to ambulate the longer distances necessary to access medical appointments without assistance.²¹¹ The CAT does not explain why Ms. T’s level of assistance was downgraded.²¹² The only basis for this conclusion is Ms. White’s limited observation—via videoconferencing—that Ms. T could walk 3 to 5 feet from the door to a chair with her crutches.²¹³ The fact that Ms. T uses a wheelchair in the community or that she can navigate the short distances in her house with crutches is insufficient to establish that Ms. T is physically capable of ambulating to access medical appointments without assistance. Indeed, the preponderance of the evidence shows that Ms. T requires assistance to walk longer distances: her right arm goes limp and she suffers from shocking pain that radiates from her shoulder to her hand;²¹⁴ the crutches have caused right axillary pain and skeletal deformities;²¹⁵ it has become increasingly difficult and painful for her to use crutches;²¹⁶ and due to weakness and pain in her right arm and hand, Ms. T cannot propel a manual wheelchair.²¹⁷ In short, the Division has failed to meet its burden of establishing by a preponderance of the evidence that time for medical escorts should be removed. Accordingly, the Division’s decision is reversed.

Nevertheless, the evidence shows that Ms. T had 28 medical appointments in 2017—significantly less than two appointments per week that formed the basis for the escort time previously authorized.²¹⁸ And so, Ms. T should receive escort time that is consistent with her self-performance score of 2, but the weekly minutes should be recalculated to correspond to the actual frequency of appointments.²¹⁹

²¹¹ Ex. D at 17.

²¹² Ex. D at 17.

²¹³ Ex. D at 17; White Testimony.

²¹⁴ Ex. E at 7.

²¹⁵ Ex. 1 at 75.

²¹⁶ Ex. D at 17.

²¹⁷ Z Testimony.

²¹⁸ Ex. D at 15.

²¹⁹ Ex. D at 9, 15.

V. Conclusion

The evidence at the hearing showed that Ms. T 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.

Specifically, the Division’s decisions about PCS assistance for the following activities are affirmed: Bed Mobility, Non-Mechanical Transfers, Locomotion (Between Locations), Eating (Oral Intake), Toileting, Personal Hygiene; and Light Meal Preparation. But the preponderance of the evidence shows that Ms. T needs some assistance with and is eligible for PCS assistance for the following activities: Locomotion (Access to Medical Appointments), Dressing, Bathing, Main Meal Preparation, Light and Routine Housework, Laundry, Shopping, and Medical Escort.

The evidence also shows that Ms. T had 28 medical appointments in 2017—significantly less than two appointments per week in her previous assessment.²²⁰ Accordingly, the time for assistance for Locomotion (Access to Medical Appointments) and Escorts should be reduced to the frequency and time that is consistent with 28 appointments per year.²²¹

Accordingly, the Division shall recalculate Ms. T’s PCS benefit time consistent with this decision.

Dated: May 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 23rd day of May, 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.]

²²⁰ Ex. E at 6.

²²¹ Ex. E at 6; *see also* Ex. D at 3, 12.