

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

In the Matter of)
)
U N) OAH No. 18-0380-MDS
) Agency No.
_____)

FINAL DECISION

A proposed decision in this matter was issued on June 7, 2018. The Division of Senior and Disabilities Services submitted a Proposal for Action objecting to the decision’s findings regarding Mr. N’s needs for assistance with bed mobility and laundry.

After reviewing the evidence in the record, the undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(3) and (e)(4), make the following findings that modify or amend a factual finding regarding laundry and that clarify the effect of the decision’s bed mobility rating.

The proposed decision is adopted with the following revision and clarification:

- Laundry: Mr. N has functional use of his right side, including his right hand. For the IADL of laundry, the weight of the evidence supports a finding that he is able to participate in laundry tasks using his right hand; he is not fully dependent on others. His score therefore should be self-performance code 2, support code 3. The frequency of two times per week is appropriate due to his incontinence.
- Bed Mobility: Regarding the ADL of bed mobility, the finding of limited assistance is adopted. Despite this, the frequency for this activity is reduced to zero after required reductions are made for the frequency of assistance Mr. N receives with transfers, locomotion, toilet use and bathing. *See* Exhibit B, p. 24 (Personal Care Assistance Service Level Computation chart), adopted into regulation at 7 AAC 160.900(d)(29). As a result, PCS time may not be authorized for this activity.

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 16th day of July, 2018.

By Signed _____
Deborah Erickson
Project Coordinator
Department of Health and Social Services

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DECISION

I. Introduction

U N applied for Medicaid personal care assistance services (PCS). On April 2, 2018, the Division of Senior and Disabilities Services (Division) assessed him to determine whether he is eligible for those services. On April 4, 2018, the Division informed him that he is approved for PCS services totalling 23.5 hours per week. Through his daughter and power-of-attorney, E D, Mr. N requested a hearing and argued that he requires additional PCS time.

The hearing took place by telephone on June 1, 2018. It was audio-recorded. A Spanish interpreter was provided. E D represented Mr. N and testified on his behalf. She was assisted by her husband, X D, who also testified. Terri Gagne represented the Division. Eric Talbert, a program manager and assessor for the Division, testified for the Division. All submitted documents were admitted to the record, which closed at the end of the hearing.

At the start of the hearing, the Division agreed it should have rated Mr. N as requiring extensive assistance with the activity of transfers. This will increase his PCS authorization. Mr. N also showed that he should receive additional PCS time in the areas of bed mobility (limited assistance, frequency 4 per day); toilet use (frequency 6 per day) and laundry (total dependence, frequency two times per week). The Division is directed to provide Mr. N with the PCS services it authorized, as adjusted by this decision.

II. Facts

Mr. N is 75 years old.¹ He lives with three adult family members: his daughter, E D, her husband X D, and Ms. D's twenty-year-old daughter.² His primary language is Spanish. His health conditions include cerebellar stroke syndrome, hemiplegia, dysarthria, neurogenic bladder, hypertension, low back pain, and sleep apnea.³ Mr. N suffered a catastrophic stroke during the summer or early fall of 2017. The stroke resulted in left side hemiplegia, which leaves Mr. N's

¹ Exhibit D, p. 9.

² *Id.* at p. 9; Exhibit E, p. 6.

³ Exhibit D, p. 10; Exhibit E, p. 33.

left side entirely flaccid. The stroke also affected his speech (dysphasia) and his cognition.⁴ Because of his extreme left-side weakness and related balance problems, Mr. N is dependent on a wheelchair for ambulation. He has a history of impulsive behavior, including poor safety judgment as he tries to move or perform activities of daily living.⁵ For this reason, he is a high fall risk and he cannot be left alone.⁶

On April 2, 2018, Mr. N was assessed by Eric Talbert, a Division assessor, to determine his eligibility for the PCS program. Mr. Talbert noted that Mr. N is generally oriented to people, time, and place, and he has some capacity to make decisions for himself.⁷ However, due to the stroke, he has trouble recalling information and events. He has full use of his right hand and leg, but no functional use of his left hand or leg. For this reason, Mr. N had limited ability to perform certain activities during the assessment.⁸

Based on Mr. Talbert's observations during the assessment, combined with his review of Mr. N's medical records, the Division concluded that Mr. N requires extensive assistance from one person for the activities of locomotion, toilet use, and bathing. It determined he requires limited assistance for transfers, dressing, and personal hygiene; he requires supervision and set-up help for bed mobility, but he can eat and drink independently. The Division found he is dependent on others for the instrumental activities of daily living of main and light meal preparation and light housework, but he can participate in shopping and laundry (in-home) if physical assistance is provided. It also found he requires some assistance with his medications.⁹

Consistent with these conclusions, on April 4, 2018, the Division sent Mr. N a notice approving 23.5 hours of PCS assistance each week.¹⁰ Through Ms. D, Mr. N requested a hearing.¹¹ The written appeal asserted that Mr. N should receive additional PCS time for the activities of bed mobility, transfers, locomotion (between locations and access to medical appointments), toilet use, personal hygiene (shampoo), bathing, medication assistance, shopping, and laundry. During the hearing, Ms. D additionally challenged her father's score for dressing and the time allotted for main and light meal preparation.

⁴ *Id.*

⁵ Exhibit C.

⁶ *Id.*

⁷ Exhibit D, p. 11.

⁸ Exhibit D, p. 12.

⁹ *See* Exhibit D, pp. 6-7.

¹⁰ Exhibit D, p. 1.

¹¹ Exhibit C.

III. The PCS Determination Process

The Medicaid program authorizes PCS for the purpose of providing assistance to a Medicaid recipient whose physical condition results in functional limitations that cause the recipient to be unable to perform, independently or with an assistive device, the activities covered by the program.¹² Covered activities are broken down into activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The ADLs are bed mobility, transfers, locomotion, dressing, eating, toileting, personal hygiene, and bathing.¹³ The IADLs are light meal preparation, main meal preparation, housework, laundry, and shopping.¹⁴ In addition, PCS can be provided for medication assistance, maintaining respiratory equipment, dressing changes and wound care, medical escort, and passive range-of-motion exercises.¹⁵ PCS are furnished by a Personal Care Assistant, usually abbreviated as “PCA.”

PCS hours are not provided for activities that can “be performed by the recipient.”¹⁶ Nor are they allowed for “oversight or standby functions.”¹⁷

The Division assesses recipients using the Consumer Assessment Tool, or “CAT”, as a methodology to score both eligibility for the PCS program and the amount of assistance needed for covered activities and services.¹⁸ The list of available services, time allotted for each service based upon severity of need, and the allowable frequency for each service is set out in the *Personal Care Services: Service Level Computation* instructions, which are adopted by reference into regulation.¹⁹

As a gateway to eligibility for PCS, 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, or has a medically documented need for supervision while eating, then the person is

¹² 7 AAC 125.010(b)(1)(A).

¹³ 7 AAC 125.030(b).

¹⁴ 7 AAC 125.030(c).

¹⁵ 7 AAC 125.030(d). The regulation contains specific conditions that a recipient must satisfy to receive these specialized services.

¹⁶ 7 AAC 125.040(a)(4).

¹⁷ 7 AAC 125.040(a)(10).

¹⁸ See 7 AAC 125.020(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900(d)(6).

¹⁹ 7 AAC 125.024(a); 7 AAC 160.900(d)(29). The *PCS Service Level Computation* chart is in the record at Exhibit D, pp. 3-4. It can be found online at:

http://dhss.alaska.gov/dsds/Documents/regulationMaterials/PCS_SL_A_Computation_Chart_6-2-2017.pdf.

eligible for services from a PCA.²⁰ Once eligibility is established, time for additional ADLs, IADLs, and certain other covered services can be added to the authorization.

A. Activity of Daily Living (ADL) Scoring

The CAT numerical coding system for ADLs has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular ADL. The possible codes are: **0** (the person is independent and requires no help or oversight)²¹; **1** (the person requires supervision)²²; **2** (the person requires limited assistance)²³; **3** (the person requires extensive assistance)²⁴; **4** (the person is totally dependent).²⁵ There are also codes which are not used in calculating a service level: **5** (the person requires cueing)²⁶; and **8** (the activity did not occur during the past seven days).²⁷

The second component of the CAT scoring system is the *support code*. These codes rate the degree of assistance that a person requires for a particular ADL. The possible codes are: **0** (no setup or physical help required); **1** (only setup help required); **2** (one-person physical assist required); **3** (two-or-more person physical assist required). Again, there are additional codes which are not used to arrive at a service level: **5** (cueing support required 7 days a week); and **8** (the activity did not occur during the past seven days).²⁸

B. Instrumental Activities of Daily Living (IADL) Scoring

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

²⁰ 7 AAC 150.020(c)(1).

²¹ A self-performance code of 0 is classified as “Independent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days.” See Exhibit D, p. 12.

²² Supervision includes “Oversight, encouragement or cueing provided 3+ times during last 7 days – or – Supervision plus nonweight-bearing physical assistance provided only 1 or 2 times during last 7 days.” See Exhibit D, p. 13.

²³ Limited assistance with an ADL is defined 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 last 7 days.” See Exhibit D, p. 13.

²⁴ Extensive assistance is defined as “While person performed part of activity, over last 7-day period, help of following type(s) provided 3 or more times: Weight-bearing support [;] Full staff/caregiver performance during part (but not all) of last 7 days.” See Exhibit D, p. 13.

²⁵ Total dependence is defined as “Full staff/caregiver performance of activity during ENTIRE 7 days.” See Exhibit D, p. 13.

²⁶ Cueing is defined as “Spoken instruction or physical guidance which serves as a signal to do an activity are required 7 days a week. Cueing is typically used when caring for individuals who are cognitively impaired.” See Exhibit D, p. 13.

²⁷ See *id.*

²⁸ See *id.*

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).²⁹

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 was 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).³⁰

C. PCS Eligibility

There are three ways to qualify for PCS. First, a person can qualify if he or she requires a limited or greater degree of physical assistance in any one of the ADLs of transfers, locomotion, eating, toilet use, dressing or bathing (self-performance code 2, 3, or 4, and a support code of 2, 3, or 4). Second, a person can qualify if he or she requires some degree of hands-on assistance with any one of the IADLs (self-performance code 1, 2, or 3 and a support code of 3 or 4).³¹ Finally, though the general rule is that mere monitoring, supervision, or cueing for an ADL or IADL will not confer eligibility for PCS, a medically documented need for supervision while eating does confer eligibility.³²

The codes assigned to a particular ADL or IADL determine how much PCS time a person receives for each occurrence of a particular activity. For instance, if a person is coded as requiring extensive assistance (self-performance code 3) with bathing, he or she would receive 22.5 minutes of PCS time every day he or she is bathed.³³ For covered services beyond assistance with ADLs and IADLs, specific rules apply that are discussed as appropriate.

When the Division denies an initial request for PCS service time, the applicant bears the burden to show that he or she qualifies for the services requested.³⁴ The standard is preponderance

²⁹ See *id.*

³⁰ See *id.*

³¹ See Exhibit D, p. 38. For the purposes of this discussion, “hands-on” assistance does not include supervision/cueing or set-up assistance (support codes of 1 or 2).

³² 7 AAC 125.020(c)(1).

³³ 7 AAC 125.024(a); 7 AAC 160.900(d)(29) (PCS Service Level Computation chart); Exhibit D, p. 3.

³⁴ 7 AAC 49.135.

of the evidence. An applicant can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,³⁵ including such sources as written reports of firsthand evaluations of the patient. In general, the relevant timeframe for assessing the state of the facts is the date of the agency's decision under review.³⁶

IV. Discussion

As the applicant for new PCS services, Mr. N bears the burden of proof to show his eligibility. The areas in dispute are addressed below.

A. Bed Mobility

Physical assistance with the ADL of bed mobility is available only to individuals who are non-ambulatory, as Mr. N is. Bed mobility activities include moving a person to and from a lying position, repositioning, or turning from side to side in bed, as long as those activities are not incidental to moving, turning or positioning during the ADLs of transfers, locomotion, toileting or bathing.³⁷ The Division determined that Mr. N requires supervision and set-up help to move himself in bed. It based this conclusion on the fact that Mr. N showed no sign of skin breakdown or bedsores, and Mr. Talbert's observation that Mr. N could reposition himself using his right side while seated in his wheelchair.³⁸ Even then, however, Mr. Talbert noted that Mr. N had difficulty shifting his weight in the wheelchair.

During the assessment, Mr. N told Mr. Talbert that he needs help to turn in bed.³⁹ He said his body feels very heavy, so his family assists by turning him. Ms. D testified that her father can manage some movement in bed, but he requires hands-on assistance for activities like turning from side to side. She indicated that he can maneuver himself to the edge of his bed, against a wall, where he tries to turn by pushing against the wall. However, when he tries to turn without assistance, he falls out of bed, thereby placing himself at risk of injury.

Ms. D and Mr. D were asked more than once to describe in more detail the kind of physical assistance Mr. N requires to turn over or perform other bed mobility tasks. They both emphasized his history of falling out of bed, as well as his incontinence, which regularly results in soiled bed linens. Though they testified that he requires hands-on assistance with bed mobility,

³⁵ 2 AAC 64.290(a)(1).

³⁶ See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013), available online at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>.

³⁷ 7 AAC 125.030(b)(1); Exhibit B, p. 5.

³⁸ Talbert testimony; Exhibit D, p. 13.

³⁹ Exhibit D, p. 13.

they did not clarify whether that assistance typically involves the guided maneuvering of limbs and occasional weight-bearing help (limited assistance), or whether it regularly requires weight-bearing support (extensive assistance). As a result, there is insufficient evidence in the record to conclude that Mr. N requires extensive assistance with this ADL.

The weight of the evidence does support the conclusion that Mr. N requires at least the guided maneuvering of limbs and occasional weight-bearing help to turn from side to side or to sit up in bed. He does not have a hospital bed or assistive devices that might allow him to perform these activities safely with less assistance. In addition, due to his left-side weakness, he requires extensive assistance with other ADLs that involve significant physical movement: transfers, locomotion, and toileting. Though he was able to reposition himself in a chair during the assessment, with difficulty, bed mobility tasks performed while laying down likely are significantly more difficult for Mr. N than simply shifting his weight while sitting upright in a chair.

The Division's scoring for this activity is not consistent with the other evidence in the record. On the existing record, Mr. N more likely than not requires limited assistance with bed mobility (self-performance code 2, support code 2). The assessment noted a frequency of four times per day for bed mobility tasks, so that frequency will apply to the PCS time authorization.

B. Transfers

Transfers refers to how a person moves between surfaces, including to and from a bed, chair, or wheelchair. It does not include transfers to or from the toilet or the shower/bathtub for bathing.⁴⁰ The Division initially authorized PCS time based on a finding that Mr. N requires limited assistance to transfer. However, at the outset of the hearing it clarified that it was revising its scoring to extensive assistance (self-performance code 3, support code 2), with a frequency of three transfers per day. The frequency excludes any transfers associated with the activities of toileting and bathing.

The extensive assistance determination is consistent with the other evidence in the record. Because of his hemiplegia and history of falls when he has tried transferring on his own, Mr. N clearly requires regular weight-bearing assistance to move to/from his bed, a chair, or his wheelchair. However, he can be involved in the activity; he is not fully dependent on others.⁴¹ At

⁴⁰ 7 AAC 125.030(b)(2); Exhibit B, p. 5.

⁴¹ See Exhibit C (physical therapy records).

times, Mr. D chooses to provide assistance by picking Mr. N up, even when it is not necessary to do so. Other times, Mr. D uses a gait belt to pull his father-in-law's left foot up, while Mr. N hops on his right foot to transfer. Mr. N has not shown any error in the Division's revised scoring or the frequency allotted for this activity.

C. Locomotion

Locomotion (between locations) pertains to how someone moves between locations in his or her room and between other areas on the same floor of the person's home. The assessment concluded that Mr. N requires extensive assistance with this task (self-performance code 3, support code 2), with a frequency of four times per day. The frequency determination excludes any locomotion needed to get to and from the bathroom for toileting or bathing activities.

The evidence in the record supports the Division's conclusions for this ADL. Mr. N cannot maneuver his wheelchair from place to place using only his right arm. As a result, he requires someone to physically push the wheelchair. This is correctly documented as extensive assistance. Mr. N did not show that he needs to move from place to place within his home more than four times per day, excluding his bathing and toileting needs.

Locomotion (access to medical appointments) involves physical assistance getting to and from a recipient's residence to a vehicle used to access routine medical or dental appointments. PCS time for this activity is not authorized for recipients who are self-sufficient with an assistive device or as part of the ADLs of toileting and bathing. The Division again rated Mr. N as requiring extensive assistance with this activity, with an average frequency of one medical appointment per week.⁴²

Ms. D stated that her father typically has two or three medical appointments in a month. He has not participated in physical therapy since February 2018. The Division correctly scored Mr. N for this activity.

D. Toilet Use

Under the CAT, the ADL of toileting includes use of the toilet, including transfers on/off and locomotion to/from the bathroom, cleansing, changing pads and adjusting clothing.⁴³ Bathing or showering is not included. The Division rated Mr. N as requiring extensive assistance with this task (self-performance code 3, support code 2), four times per day.

⁴² Exhibit D, p. 6.

⁴³ 7 AAC 125.030(b)(6); Exhibit D, p. 15.

The testimony at hearing on this issue focused less on the extensive assistance rating and more on the frequency determination. As with the other ADLs, nothing in the record would support a finding that Mr. N is totally dependent on others for his toilet use needs. Extensive assistance is the correct score. Ms. D and Mr. D both testified that the frequency should be higher, in part because Mr. N is incontinent and he requires frequent changes of his adult incontinence protection (Depends). Ms. D stated that, on average, he needs to use the toilet or change his incontinence protection six to seven times per day. This assertion is supported by Mr. N's neurogenic bladder diagnosis, his medical records, and his physical therapy records, which also document his incontinence.⁴⁴ Mr. N has met his burden to show he more likely than not requires extensive assistance with toileting six times per day rather than four.

E. Dressing

The ADL of dressing includes the putting on, fastening, unfastening and removal of a person's street clothing, support hose, or prosthesis.⁴⁵ The Division rated Mr. N as requiring limited assistance with this activity (self-performance code 2, support code 2), twice per day. Ms. D testified that Mr. N can take off his pants without assistance, but he requires help with all other parts of dressing. Mr. N's physical therapy records indicate he also can take off a shirt, but they show his need for physical assistance with many other dressing tasks.⁴⁶ The Division recognized this in its limited assistance score. Ms. D did not show that her father regularly requires weight-bearing assistance to get dressed or undressed. These activities typically can be performed with little or no weight-bearing. Mr. N has not shown any error in the Division's rating or frequency of twice per day.

F. Personal Hygiene

Personal hygiene includes washing/drying face, hands, or feet (when done separately from bathing), nail and skin care, mouth and teeth care, brushing and combing hair, shaving (when done separately from bathing), or washing hair (when done separately from bathing).⁴⁷

The Division concluded that Mr. N requires limited assistance with these tasks once per day because he cannot fully groom himself with his right hand only. This is consistent with all the other evidence in the record. Mr. N receives PCS time for washing his hair daily as part of the

⁴⁴ See, e.g., Exhibit C, pp. 36, 49; Exhibit E, p. 33.

⁴⁵ 7 AAC 125.030(b)(4); Exhibit D, p. 15.

⁴⁶ See Exhibit C, p. 65.

⁴⁷ 7 AAC 125.030(b)(7); Exhibit D, p. 15.

bathing ADL. Therefore, duplicative PCS time for that task need not be provided through the personal hygiene authorization. Though Mr. N clearly requires hands-on assistance to complete many personal hygiene tasks, there is no evidence that assistance requires regular weight-bearing support. More likely than not, it involves non-weightbearing assistance, which is properly rated as limited assistance.

G. Bathing

Bathing involves the washing of a person's entire body including hair, in a bathtub, shower, or by sponge bath. It includes all transfers and locomotion necessary to complete the bathing process.⁴⁸ The Division rated Mr. N as requiring extensive assistance from one person for this activity, once per day.

To receive a greater level of PCS assistance with this task, Mr. N would have to show that he is totally dependent on others to perform the bathing ADL. He did not make this showing. Total dependence means a caregiver provided full performance of the activity. Though Mr. N has no use of his left side, he can participate in bathing using his right arm. Therefore, the Division correctly scored him as requiring extensive assistance.

H. Medication assistance

PCS time may be provided for recipients who require physical assistance with self-administration of prescribed oral medications, eye drops, and skin ointments.⁴⁹ The Division agreed Mr. N requires limited assistance with taking his medications once per day.⁵⁰ This result is based primarily on Mr. N's need for limited assistance with the ADL of personal hygiene.⁵¹ Mr. N did not show any error with this rating or the Division's frequency determination.

I. Instrumental Activities of Daily Living

For the activities of main and light meal preparation and light housework, the Division found that Mr. N is dependent on others (self-performance code 3, support code 4). This recognizes that he is not able to participate in these tasks, and they are fully performed by others. Mr. N's score reflects the maximum level of assistance available.

⁴⁸ 7 AAC 125.030(b)(8); Exhibit D, p. 16.

⁴⁹ 7 AAC 125.030(d)(1).

⁵⁰ Exhibit D, p. 7.

⁵¹ See Exhibit D, p. 3.

Ms. D argued that her father should receive more PCS time than the Division allotted for these activities. However, the time authorized for each activity is set by regulation. The Division has no authority to deviate from it.

The IADL of shopping includes shopping for groceries, household items, prescribed drugs and medical supplies, and other items required for the health and maintenance of the recipient.⁵² The IADL of laundry includes changing a recipient's bed linens and laundering linens and clothing.⁵³ For each of these IADLs, the Division rated Mr. N as able to be involved in the activity, but requiring physical help (self-performance code 2, support code 3), with a frequency of once per week.

For the IADL of shopping, the Division explained that Mr. N can meaningfully participate by identifying the items he wishes to purchase, though he requires physical assistance to pick the desired items off the shelf and complete the purchase. Ms. D agreed that her father enjoys going shopping and she takes him on those outings. Mr. D also stated that Mr. N can point out the items he wants. This information is consistent with the Division's scoring for this IADL. Mr. N has not shown any error.

Mr. N did show that his PCS authorization for laundry (in-home) should increase. Ms. D asserted that her father cannot assist with laundry in any way, and he is totally dependent on others. She also asserted that the frequency for this task should be twice per week, because of her father's incontinence and regularly soiled clothing and bed linens. The Division agreed that Mr. N can not participate in loading, unloading, or folding clothing. It argued that he could sort clothes into piles before they are washed, and he is therefore not totally dependent on others. This contention is unpersuasive, particularly since it is not clear that sorting is needed for Mr. N's laundry. The weight of the evidence is that Mr. N is fully dependent on others for his laundry needs.

The Division agreed Mr. N can be authorized for laundry assistance twice per week, if his incontinence is documented in his medical records. As discussed previously, that documentation exists, and it supports the testimony of both Ms. D and Mr. D regarding Mr. N's need for frequent laundering of his clothing and bedding. Accordingly, Mr. N should receive PCS authorization for

⁵² 7 AAC 125.030(c)(5).

⁵³ 7 AAC 125.030(c)(4).

laundry (in-home) based on a finding of total dependence (self-performance code 3, support code 4) and a frequency of twice per week.

As the hearing ended, the Division argued that any increase in IADL assistance is unjustified because Mr. N has “natural supports” in the home to assist with those activities. However, it conceded that the PCS time it already authorized for these tasks should remain in place; it only opposes an award for additional time. The Division bears the burden of persuasion on this claim.

By regulation, the Division may not authorize personal care services for needs that can be met by a recipient’s representative, immediate family members, or natural supports.⁵⁴ “Natural supports” is defined to mean individuals who voluntarily and without payment provide care and support similar to PCS services for a recipient.⁵⁵ Here, the Division did not show that anyone in Mr. N’s household voluntarily provides those services. Ms. D indicated that she has her own medical problems, which prevent her from providing care for her father. She testified from a hospital in Seattle, where she was undergoing a surgical procedure. Though Ms. D’s testimony on other topics was often somewhat general, she was quite clear about her unwillingness to provide voluntary assistance. Similarly, Mr. D, who was in Seattle supporting his wife, clearly indicated that he does not voluntarily provide IADL services for Mr. N. As a result, there is no basis for denying additional IADL assistance because of natural supports in the home.

V. Conclusion

Based upon the evidence presented, Mr. N met his burden to show he is entitled to more PCS time than the Division initially approved. For the reasons discussed above, Mr. N is to receive the PCS assistance the Division initially authorized, with the following adjustments:

- Bed mobility: limited assistance (self-performance code 2, support code 2), frequency 4 per day;
- Transfers: extensive assistance (self-performance code 3, support code 2), frequency 3 per day;
- Toilet Use: extensive assistance (self-performance code 3, support code 2), frequency 6 per day;

⁵⁴ 7 AAC 125.020(c). “Immediate family members” is not defined by regulation but has been interpreted as applying to family members such as spouses and parents of minor children.

⁵⁵ 7 AAC 125.199(8).

- Laundry: full dependence (self-performance code 3, support code 4), frequency twice weekly.

DATED: June 7, 2018.

Signed _____

Kathryn Swiderski
Administrative Law Judge

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