

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

In the Matter of )  
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T F ) OAH No. 18-0862-MDS  
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**DECISION**

**I. Introduction**

T F was receiving 13 hours per week of personal care assistance services (PCS). After reassessing him, the Division of Senior and Disabilities Services (Division) notified Mr. F that his PCS authorization was being reduced to 2.75 hours per week. Mr. F requested a hearing.

Based on the evidence in the record and after careful consideration, the Division’s decision is partially affirmed and partially reversed. Mr. F argued that he should receive more than 13 hours of PCS assistance, but he did not meet his burden to show a change that justifies increased assistance for any activities. The Division showed that PCS should be terminated for locomotion (between locations), and the frequency of assistance should be reduced for transfers and toilet use. It also showed that Mr. F can independently manage shopping with difficulty if he receives physical assistance; therefore, his PCS time for that activity should be reduced. The Division did not show a change in Mr. F’s needs for assistance with locomotion (access to medical appointments), dressing, main meal preparation, light housework, or laundry. Those reductions therefore are reversed.

**II. Background Facts**

T F is 55 years old.<sup>1</sup> He lives alone in a single-story home. Mr. F gets around using a cane, crutches, or a four-wheeled walker. His medical diagnoses include HIV infection, chronic gouty arthritis, hypertension, joint pain, chronic kidney disease (Stage 3, moderate), prediabetes, idiopathic peripheral neuropathy, mild asthma, hyperlipidemia, and osteopenia.<sup>2</sup> He weighs approximately 260 pounds.<sup>3</sup>

Mr. F’s HIV infection appears to be well controlled. His primary physical problems stem from chronic joint pain caused by gout, neuropathy, and arthritis.<sup>4</sup> He regularly experiences

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<sup>1</sup> Exhibit D, p. 11.  
<sup>2</sup> F submission (C X, M.D. LLC records dated 6/25/18).  
<sup>3</sup> *Id.*  
<sup>4</sup> F testimony.

significant pain in his ankles and knees, and he has a history of back pain.<sup>5</sup> He also frequently experiences pain in his hands and fingers as well as numbness that comes and goes. He has good and bad days. On good days, which happen roughly 50% of the time, he can manage many daily activities without any hands-on assistance.<sup>6</sup> On bad days, he limits his activities and requires some assistance.

Because of his leg pain and intermittent swelling, Mr. F cannot stand for extended periods of time.<sup>7</sup> When he is at home, he spends most of his time in bed, where he can adjust his position independently, lay down, roll over, or sit up as needed. He keeps water, snacks, medications, and a portable urinal within reach, so he does not have to get out of bed when he is in pain or at night. He also keeps a telephone handy, so he can call someone for help if needed.

Mr. F was receiving 13 hours of PCS assistance per week based on a January 2016 assessment.<sup>8</sup> That authorization included assistance with the activities of daily living (ADL) of transfers, locomotion (between locations) and locomotion (access to medical appointments), dressing, toilet use, and bathing. It also authorized assistance for the instrumental activities of daily living (IADL) of main meal preparation, light housework, shopping, and laundry.<sup>9</sup>

In addition to his PCS assistance, Mr. F regularly receives help from a friend, K G, who usually stops by his home several times per week.<sup>10</sup> When she is there, Ms. G spends two to three hours helping with cleaning, cooking, and laundry.<sup>11</sup> She does not help with other tasks.<sup>12</sup> Other friends and family also periodically stop by to visit or help. However, Mr. F typically is home alone at night and for the majority of each day.

Mr. F dislikes the extent to which he relies on friends for help, so he requested an increase in his PCS hours. On May 24, 2018, Robin Platt, a Division assessor and health program manager, met with Mr. F at his home.<sup>13</sup> Q F and N N also were present.<sup>14</sup> Ms. F is Mr.

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<sup>5</sup> F testimony. *See also* Exhibit J, p. 6 (October 2017 E.D. records regarding pain and swelling in left ankle and foot); Exhibit E, pp. 4-9 (knee and ankle pain complaints).

<sup>6</sup> N testimony.

<sup>7</sup> F testimony; N testimony.

<sup>8</sup> Exhibit D, pp. 1-10.

<sup>9</sup> Exhibit I, pp. 8-9.

<sup>10</sup> G testimony.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Exhibit D; F testimony.

<sup>14</sup> F testimony.

F's personal care assistant (PCA); she and Mr. F are married but separated.<sup>15</sup> Ms. N is his case manager.

When Ms. Platt arrived, Mr. F was in bed. She informed him she would not do the assessment in his bedroom, so he would have to get up.<sup>16</sup> Someone handed Mr. F a t-shirt and shorts, which he put on. He got out of bed and, using his four-wheeled walker, he walked to the living room without assistance.<sup>17</sup> He sat down on a couch by holding the walker for stability while lowering himself down.<sup>18</sup> Ms. Platt observed that Mr. F has balance problems when he is standing.<sup>19</sup> She also observed that he has good bilateral hand strength and grip, and he has good hand and arm mobility. He could reach above his head and behind his back, though he said his back hurt. He also could reach to his feet, though it too caused some pain. Mr. F stated that he could not perform some activities that Ms. Platt asked him to try, such as standing up with his arms crossed.<sup>20</sup>

Based on her visual observations, functional testing, and conversations with those in attendance, Ms. Platt determined that Mr. F requires physical help with parts of the bathing ADL.<sup>21</sup> Her assessment did not change the bathing score Mr. F received in the January 2016 assessment.<sup>22</sup> She found he requires extensive assistance for this task (self-performance code 3, support code 2). However, she concluded he can independently perform the other assessed ADLs, and he can manage each of the IADLs independently with difficulty.<sup>23</sup> Because he did not require hands-on assistance with these tasks, the Division eliminated PCS authorization for them.

On August 17, 2018, the Division notified Mr. F it was reducing his PCA service authorization from 13 to 2.75 hours per week.<sup>24</sup> A corrected notice issued on September 13, 2018, but it did not change the hours for which Mr. F was approved.<sup>25</sup> The affected activities

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<sup>15</sup> Some medical records describe Ms. F as his wife or his ex-wife; Mr. F clarified they are married but separated.

<sup>16</sup> *Id.*

<sup>17</sup> Exhibit D, p. 16; Platt testimony.

<sup>18</sup> Exhibit D, p. 15; Platt testimony.

<sup>19</sup> Exhibit D, p. 33.

<sup>20</sup> Exhibit D, p. 14.

<sup>21</sup> Exhibit D, p. 18.

<sup>22</sup> Exhibit I, p. 8; Exhibit H, p. 15.

<sup>23</sup> *See* Exhibit D, pp. 1-27, 35-36.

<sup>24</sup> Exhibit D, pp. 1-9. The 2.75 hours was based on his bathing ADL needs.

<sup>25</sup> Exhibit I.

were: the ADLs of transfers, locomotion (between locations and access to medical appointments), dressing, and toilet use; and the IADLs of main meal preparation, light housework, shopping, and laundry.<sup>26</sup>

Mr. F requested a hearing, which took place by telephone on October 12, 2018. It was audio-recorded. Mr. F represented himself and testified on his own behalf. K G and N N also testified. Terri Gagne represented the Division. Robin Platt testified for the Division. The record remained open after the hearing so Mr. F could submit additional medical documentation. He discussed being in the hospital in May 2018, but he did not submit those records. He submitted limited other documentation, including: (1) records from a June 25, 2018 appointment with J N, P.A., of Dr. X's office;<sup>27</sup> (2) results from an August 26, 2017 bone scan;<sup>28</sup> and (3) partial records from an October 3, 2018 appointment with a new primary care provider, Dr. E U of a medical center.<sup>29</sup> The Division had previously submitted other records, including HIV follow-up notes from some of Mr. F's 2017 appointments with Ms. N.<sup>30</sup> All submitted documents were admitted to the record, which closed on October 24, 2018.

### **III. Overview of the PCS Program**

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.<sup>31</sup> Covered activities are broken down into activities of daily living (ADLs) and instrumental activities of daily living (IADLs). Among other activities, the ADLs include transfers between surfaces, such as in and out of a chair, and locomotion between locations on the same floor of the recipient's home.<sup>32</sup> The IADLs include light meal preparation,

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<sup>26</sup> *Id.*

<sup>27</sup> These records do not discuss his functional abilities or needs for assistance. *See* C X MD LLC records dated 6/25/18.

<sup>28</sup> Exhibit E, pp. 10-15. This submission shows that Mr. F has low bone density, but his 10-year probability of major osteoporotic fracture is 2%, and his 10-year probability of a hip fracture is .1%.

<sup>29</sup> These records appear to be missing pages. The first two pages summarize Mr. F's medical history, diagnoses, and medications. They begin to summarize the physical exam but end abruptly at page two.

<sup>30</sup> Exhibit E, pp. 1-9. These records document Mr. F's complaints of ankle pain, knee pain, and dizziness when he first sits or stand up, but they do not discuss his functional abilities or needs for assistance in any detail.

<sup>31</sup> 7 AAC 125.010(b)(1)(A).

<sup>32</sup> 7 AAC 125.030(b); Exhibit D, p. 16.

main meal preparation, housework, laundry, and shopping.<sup>33</sup> PCS are furnished by a Personal Care Assistant, usually abbreviated as a “PCA.”

The Division determines PCS eligibility and the amount of PCS time authorized for covered activities or services using a methodology set out in the Consumer Assessment Tool or “CAT.”<sup>34</sup> The list of available services, time allotted for each service (based on severity of need), and maximum daily frequency for each service is described in the *Personal Care Services Service Level Computation* instructions, which are adopted by reference into regulation.<sup>35</sup>

PCS time is not provided for activities that can be performed by the recipient.<sup>36</sup> Nor is it allowed for “oversight or standby functions.”<sup>37</sup> For this reason, a person who needs only monitoring, supervision, or cueing to perform an ADL or IADL will not receive PCS assistance for that activity.<sup>38</sup> In addition, the Division will not authorize PCS for needs that can be met by a recipient’s representative, immediate family members, or natural supports.<sup>39</sup> “Natural supports” is defined to mean individuals who voluntarily and without payment provide care and support similar to PCS services for a recipient.<sup>40</sup>

#### A. Activity of Daily Living 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)<sup>41</sup>; **1** (the person requires supervision)<sup>42</sup>; **2** (the person requires limited assistance)<sup>43</sup>; **3**

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<sup>33</sup> 7 AAC 125.030(c).

<sup>34</sup> See 7 AAC 125.020(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900(d)(6).

<sup>35</sup> 7 AAC 125.024(a); 7 AAC 160.900(d)(29). The computation instructions are in the record at Exhibit D, pp. 5-6.

<sup>36</sup> 7 AAC 125.040(a)(4).

<sup>37</sup> 7 AAC 125.040(a)(10).

<sup>38</sup> 7 AAC 125.040(a)(9), (10). There is an exception for the ADL of eating, but only if the recipient has documented swallowing or aspiration difficulties. This exception is not relevant here.

<sup>39</sup> 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.

<sup>40</sup> 7 AAC 125.199(8).

<sup>41</sup> 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. 15.

<sup>42</sup> 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. 15.

<sup>43</sup> 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. 15.

(the person requires extensive assistance)<sup>44</sup>; **4** (the person is totally dependent).<sup>45</sup> There are also codes which are not used in calculating a service level: **5** (the person requires cueing)<sup>46</sup>; and **8** (the activity did not occur during the past seven days).<sup>47</sup>

The second component of the CAT scoring system is the *support code*. These codes rate the degree of assistance that a person requires for a particular ADL. The possible codes are: **0** (no setup or physical help required); **1** (only setup help required); **2** (one-person physical assist required); **3** (two-or-more person physical assist required). Again, there are additional codes which are not used to arrive at a service level: **5** (cueing support required 7 days a week); and **8** (the activity did not occur during the past seven days).<sup>48</sup>

To receive PCS time for an ADL, an individual must require at least limited assistance from one person to perform the activity (self-performance code 2, support code 2), or a higher degree of assistance.<sup>49</sup>

#### *B. Instrumental Activity of Daily Living Scoring*

The CAT codes IADLs slightly differently than ADLs. The *self-performance codes* are: **0** (independent either with or without assistive devices - no help provided); **1** (independent with difficulty; the person performed the task, but did so with difficulty or took a great amount of time to do it); **2** (assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided); and **3** (dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person). There is also a code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>50</sup>

The *support codes* for IADLs are also slightly different than those used for ADLs. They are **0**: (no support provided); **1** (supervision / cueing provided); **2** (set-up help only); **3** (physical

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<sup>44</sup> 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. 15.

<sup>45</sup> Total dependence is defined as “Full staff/caregiver performance of activity during ENTIRE 7 days.” See Exhibit D, p. 15

<sup>46</sup> 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. 15

<sup>47</sup> *Id.*

<sup>48</sup> See Exhibit D, p. 15.

<sup>49</sup> See Exhibit D, pp. 5-6.

<sup>50</sup> See Exhibit D, p. 35.

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).<sup>51</sup>

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.<sup>52</sup> For covered services beyond assistance with ADLs and IADLs, specific rules apply that are discussed as appropriate.

#### **IV. Discussion**

When a recipient seeks to increase PCS time or add services that were not previously provided, the recipient bears the burden of proof to show a change that justifies the additional time.<sup>53</sup> When the Division reduces a recipient's PCS time, it bears the burden to show a change that alters the recipient's need for physical assistance.<sup>54</sup> The standard is preponderance of the evidence.<sup>55</sup> In general, the relevant timeframe for assessing the state of the facts is the date of the agency's decision under review.<sup>56</sup>

This decision addresses each of the ADLs for which the Division reduced PCS assistance, as well as all the IADLs.

##### *A. 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.<sup>57</sup> Mr. F previously received limited assistance from one person (self-performance code 2, support code 2) for transfers 15 times weekly.<sup>58</sup>

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<sup>51</sup> *See id.*

<sup>52</sup> 7 AAC 125.024(a); 7 AAC 160.900(d)(29) (PCS Service Level Computation chart); Exhibit D, p. 5.

<sup>53</sup> 7 AAC 125.026(b).

<sup>54</sup> 7 AAC 125.026(a), (c). For recipients eligible to receive Medicaid Waiver services, the Division may not reduce PCS authorization if it would create a risk of institutionalization. 7 AAC 125.026(f). Mr. F is not eligible for Waiver services, so this provision does not apply. Regardless, there is no evidence he is at any risk of institutionalization.

<sup>55</sup> 7 AAC 49.135. Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

<sup>56</sup> *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>.

<sup>57</sup> 7 AAC 125.030(b)(2); Exhibit D, pp. 15-16.

<sup>58</sup> Exhibit I, p. 8.

The May 2018 assessment rated Mr. F as independent.<sup>59</sup> The assessor noted Mr. F's reports of pain but concluded that he can get himself to a standing or sitting position without any assistance, using his walker for stability. The assessor observed Mr. F lower himself to a couch in his living room while holding on to the walker.<sup>60</sup> She also observed that he had gotten out of bed and to a standing position, apparently without any assistance.

Mr. F did not perform any other transfers during the assessment, and Ms. Platt had only a limited opportunity to observe his functional ability or need for assistance with this task. The nature of the assessment also limited her ability to see how his needs for assistance may vary from day to day.

Mr. F acknowledged he sometimes can stand up from a sitting position if he can steady himself with his walker. Most often, he is transferring in or out of his bed, which is high enough that he can do it independently. He avoids sitting in low chairs, since they make it difficult for him to stand. On good days, he can stand up without hands-on help, though doing so may cause pain. On other days, he stated that he needs someone to help because of his pain. He described knee pain that limits the degree to which he can bend, causing instability when he is transferring. He also noted that he is often dizzy when he first stands up, and he needs someone to hold him so he doesn't lose his balance and fall.<sup>61</sup>

Ms. N sees Mr. F about once per month, either at her office or at his home. When he comes to her office, he usually walks with his cane. However, when his pain is bad, he will stay in the car. She has observed him move from a sitting to standing position without any help, and she said he most often tries to manage this on his own. When his pain is high, however, he has to lean on something or someone for stability, and he sometimes needs his PCA to provide help. When this happens, Mr. F holds on to his PCA to steady himself as he stands. Occasionally, the PCA helps pull him up. Once he is standing, Mr. F can walk using his assistive device, even on a bad day.<sup>62</sup>

Ms. G is regularly in Mr. F's home. She testified that he needs help with household tasks like dishes, cleaning, and laundry, because he cannot walk very well. She volunteers to assist

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<sup>59</sup> Exhibit D, p. 15.

<sup>60</sup> *Id.*

<sup>61</sup> Mr. F spent time at a Hospital in May 2018, apparently because of chest pain and dizziness. He did not submit medical records from that care, so it is difficult to ascertain his condition or functional abilities as of that time.

<sup>62</sup> N testimony.



with those activities, but stated that she does not help Mr. F with any ADLs. She stated that Mr. F is never out of bed when she is at his home. She therefore could not provide information about his functional ability to transfer or manage other ADLs.

The weight of the evidence in the record is that Mr. F can transfer to and from a standing position either independently or with supervision and set-up help on his good days. However, he experiences bad days roughly three or four days per week. On those days, he often requires physical assistance in the form of a steadying hand or occasional (once or twice per week) weight-bearing help to pull him up. This kind of assistance falls within the definition of limited assistance (self-performance code 2, support code 2).

Mr. F does not require this assistance every day. The authorization for weekly frequency therefore should be adjusted. He should receive limited assistance with transfers 8 times per week.

#### *B. Locomotion*

Two aspects of locomotion are relevant here. Locomotion (between locations) pertains to the act of moving from place to place on the same level of the recipient's home. It may involve the use of an assistive device such as a cane, walker, or a wheelchair. Locomotion (access to medical appointments) involves moving to and from the recipient's residence to a vehicle used to access medical appointments.<sup>63</sup> PCS time for locomotion may not be authorized for a recipient who is self-sufficient with an assistive device.

In 2016, Mr. F was found to require limited assistance from one person (self-performance code 2, support code 2) for locomotion.<sup>64</sup> During the 2018 assessment, Ms. Platt observed Mr. F walk from his bedroom to the living room using his walker but no other assistance. Mr. F argued that he needs someone with him when he walks because he is unsteady and at risk of falling. He has not fallen recently, but he recalled a fall at his prior residence, which had nine stairs. He also feels he needs someone to assure he gets in and out of the bathroom without falling.

Due to his leg pain and swelling, especially at his ankles, Mr. F has trouble standing for long or walking very far. In his home, however, it appears that his primary challenge is in transferring to a standing position. Once he is up, walking may be painful, but he is able to move

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<sup>63</sup> 7 AAC 125.030(b)(3).

<sup>64</sup> Exhibit D, pp. 9, 16.

from place to place on the same floor without hands-on assistance.<sup>65</sup> When asked to describe how he moves around within his home, Mr. F did not describe needing hands-on help. He discussed his concerns about falling, stating that his PCA follows him as he walks to the bathroom. This is consistent with Ms. N's testimony. The evidence is that Mr. F is either independent or (at most) requires supervision as he moves around within his home. He does not regularly require hands-on physical assistance from another person. For locomotion (between locations), the Division correctly eliminated PCS authorization.

For locomotion (access to medical appointments), Mr. F must navigate four steps to get in and out of his home. He indicated that his PCA holds and steadies him as he manages the stairs and as he gets in and out of the vehicle used for the appointment. He repeated that he cannot walk far, and his legs get weak. Ms. N observed that Mr. F cannot be up and walking for too long, and the assessor noted his unsteadiness. Medical records from an October 17, 2017 appointment also show that Mr. F cancelled an appointment on short notice because he could not walk down the stairs that day.<sup>66</sup>

The weight of the evidence supports a finding that Mr. F continues to require limited assistance with locomotion (access to medical appointments), because he regularly requires hands-on help to navigate stairs.

### *C. Dressing*

Dressing is how a "person puts on, fastens, and takes off all items of street clothing."<sup>67</sup> Mr. F testified that he has trouble dressing himself because he cannot bend his knees very far. This makes it hard to put pants or shorts on. Once his pants are in place and past his ankles, he can pull them up. His problem is in bending to get them there. He also has trouble doing buttons with sore fingers, and he has trouble putting on a t-shirt because he cannot lift his left arm high enough. Once he gets a shirt past his left arm, he stated that he can finish the job on his own.

Ms. Platt testified that Mr. F dressed himself in a t-shirt and shorts on the day of the assessment, which shows he can manage this task independently. Mr. F disputed this, saying his PCA helped him. Regardless, the assessment allowed a very limited opportunity to observe Mr. F perform dressing tasks. On a good day, he likely can manage putting on a t-shirt and shorts

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<sup>65</sup> N testimony. See also Exhibit E, p. 4 (walking with limp and cane at a September 18, 2017 doctor appointment).

<sup>66</sup> Exhibit E, p. 2.

<sup>67</sup> 7 AAC 125.030(b)(4).

independently. This fact is not inconsistent with a need for hands-on help with other aspects of dressing, or with a need for more help on his bad days.

Mr. F's difficulty bending his knees, in combination with his hand and wrist pain, means he likely requires regular hands-on help with some dressing tasks. These include tasks such as putting on long pants or socks and managing buttons or snaps. On bad days, he also may require hands-on help to put on or take off simpler items, like a t-shirt and shorts. These needs qualify as limited assistance. The Division did not show a change for this ADL, so Mr. F should continue to receive help with this task 14 times per week.

#### *D. Toilet Use*

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.<sup>68</sup> Bathing or showering is not included. Mr. F was previously rated as required limited assistance with this task. The 2018 assessment rated him as independent.

As discussed previously, Mr. F likely can ambulate to and from the bathroom in his home independently or with supervision. He agreed he can manage the hygiene and dressing aspects of the toileting ADL independently. On his good days, he can manage the transferring aspects independently as well. Ms. N has observed Mr. F getting to and from a bathroom on his own, using his crutches or a cane, and handling his business there alone, without any assistance. On bad days, however, he requires limited assistance with transfers because of his unsteadiness and knee problems. Because he requires hands-on assistance in the form of a steadying hand three or more times per week, his toilet use rating should be limited assistance (self-performance code 2, support code 2).

When at home, Mr. F typically uses a portable urinal in his bedroom so he will not have to get up and walk to the bathroom. However, he stated that he needs PCA help to get to and from the bathroom for bowel movements. When asked how he manages this when he is alone, he stated that he often only has a bowel every other day, so he can wait for his PCA to be there. This information shows that the frequency for this task has changed since the 2016 assessment. Mr. F no longer requires assistance with toileting activities 18 times per week. Instead, he should be authorized for assistance once per day, or 7 times per week.

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<sup>68</sup> 7 AAC 125.030(b)(6); Exhibit D, p. 15.

The Division has shown a change that merits a reduction in PCS authorization for the toilet use ADL, but not termination.

*E. Instrumental Activities of Daily Living*

The IADLs include light and main meal preparation,<sup>69</sup> light housework,<sup>70</sup> shopping,<sup>71</sup> and laundry.<sup>72</sup> Mr. F testified that he requires physical help with all of these activities, and he does not participate in them to any degree. In some part, his testimony seemed to be that his PCA will perform these tasks for him, so he need not participate. For purposes of PCS authorization, however, the question is whether he is functionally able to participate. The most significant hurdles to greater participation are his unsteadiness, difficulty standing for long periods, difficulty bending, and his problems using his dominant (left) hand because of arthritic pain.

Meal Preparation

Mr. F testified that he does not participate in any cooking or meal preparation because he cannot stand long enough and he does not have good strength in his left hand. He also has ongoing pain and some numbness in his hands and fingers, which make it difficult to use a knife. He therefore relies on his PCA to prepare all meals. The PCA or Ms. G heats the meals (if needed) and leaves them near his bed. Mr. F then chooses when to eat.

Light meal preparation generally does not involve complex tasks. It can be done with quite simple acts that require little standing, bending, or hand dexterity. These could include, for instance, microwaving a frozen meal or opening packages of prepared foods. The evidence in the record is that Mr. F can and does manage these kinds of activities independently. This need for assistance does not qualify for PCS time.

Main meal preparation tasks are more complex. The evidence does not support a finding that Mr. F can independently manage these tasks, even with difficulty. Ms. N stated that Mr. F may be able to participate in main meal preparation tasks in relatively small ways on his good days, but she noted that he consistently has significant pain and numbness in his hands.

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<sup>69</sup> Light and main meal preparation includes the preparation, serving, and cleanup of two light meals and one main meal that are essential to the recipient's health needs. 7 AAC 125.030(c)(1), (2).

<sup>70</sup> Light housework includes activities such as tidying the living space, dusting, cleaning floors, dishes and the kitchen, the bathroom, making the bed, and trash removal. 7 AAC 125.030(c)(3).

<sup>71</sup> Shopping includes shopping for groceries, household items, prescribed drugs and medical supplies, and other items required for the health and maintenance of the recipient. 7 AAC 125.030(c)(5).

<sup>72</sup> Laundry includes changing a recipient's bed linens and laundering linens and clothing. 7 AAC 125.030(c)(4).

Based on this information, Mr. F likely can be involved to some degree in main meal preparation, but he typically requires physical assistance from another person (self-performance code 2, support code 3, frequency 7 times per week). He qualifies for PCS assistance with this task.

#### Shopping

Mr. F's practice is to rely on others for his shopping. He noted his problems standing but agreed he probably could use an automated cart to get around inside a grocery store. Mr. F is mentally sharp; he can identify the items he requires and manage the check-out process independently. He has the physical capacity to ambulate in and out of the store, and he can operate an automated cart to do his shopping. He likely requires physical assistance reaching certain items on the shelves. He should be rated as independent with difficulty for this task (self-performance code 1, support code 3).

#### Light Housework and Laundry

Mr. F asserted that he cannot participate in these activities at all. When asked whether he could participate in some ways, such as by sorting laundry, he responded that he does not know because he never tries. The evidence is that, on good days, Mr. F can get around and manage a number of activities. However, he has consistent problems standing for long, bending, and using his left hand. These problems prevent him from managing laundry and light housework tasks independently, even with difficulty.

More likely than not, Mr. F can participate in relatively small ways in these activities, but he requires physical assistance. He should be rated as self-performance code 2, support code 3, which qualifies for PCS assistance.

#### **V. Conclusion**

Mr. F did not show he requires more PCS assistance than the Division authorized in 2016 for any activities. The Division showed that he has experienced a change that alters his need for physical assistance with the ADL of locomotion (between locations), transferring frequency, toilet use frequency, and the IADL of shopping. It did not show a change for the other activities at issue.

Accordingly, the Division's decision is partially affirmed and partially reversed. Mr. F CAT scores should be revised as follows:

ADLs:

Transfers (2/2, frequency 8);  
Locomotion between locations (0/0);  
Locomotion (access to medical appointments) 2/2;  
Dressing (2/2, frequency 14);  
Toilet Use (2/2, frequency 7);

IADLs:

Light meal preparation (0/0);  
Main meal preparation (2/3, frequency 7);  
Light Housework (2/3, frequency 1);  
Laundry (2/3, frequency 1);  
Shopping (1/3, frequency 1).

DATED: November 20, 2018.

Signed

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Kathryn Swiderski

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 6th day of December, 2018.

By:

Signed

\_\_\_\_\_

Signature

Cheryl Mandala

\_\_\_\_\_

Name

Administrative Law Judge

\_\_\_\_\_

Title

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