

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

In the Matter of)
)
K S) OAH No. 20-0931-MDS
) Agency No.
_____)

DECISION

I. Introduction

K S applied for Medicaid Personal Care Services (PCS). Following an assessment, the Division of Senior and Disabilities Services (Division) denied her application on November 10, 2020. Ms. S requested a hearing to challenge that denial.

Ms. S’s hearing was held over the course of multiple days. It was a telephonic hearing. Ms. S represented herself and testified on her own behalf. Ms. S’s other witness was U Q, her daughter and former personal care assistant (PCA). Her grandson N B, a former PCA, attended the hearing. Victoria Cobo-George, a fair hearing representative with the Division, represented the Division. Barbara Rodes, the assessor, and Jerry Fromm, a supervisor in the Division’s PCA unit, testified for the Division.

The evidence provided at hearing demonstrated that it is more likely true than not true that Ms. S is eligible for PCS. Accordingly, the denial of her application is reversed, and she is to receive PCS as specified in detail below.

II. The Personal Care Service Determination Process

The Medicaid program authorizes Personal Care Services (PCS) for the purpose of providing assistance to a Medicaid recipient whose physical condition causes functional limitations which “cause the recipient to be unable to perform, independently, or with an assistive device, the activities specified in 7 AAC 125.030.”¹ Those activities are broken down into eight specific “activities of daily living” (ADLs) – bed mobility, transfers, locomotion, dressing, eating, toileting, personal hygiene, and bathing² -- and five specific “instrumental activities of daily living” (IADLs) – light meal preparation, main meal preparation, housework,

¹ 7 AAC 125.010(b)(1)(A)(iii).

² 7 AAC 125.030(b).

laundry, and shopping.³ Some degree of hands-on assistance is required in order to qualify for PCS; PCS are not provided for activities that can “be performed by the recipient,”⁴ nor for “oversight and standby functions.”⁵

The Division assesses recipients by using the Consumer Assessment Tool (“CAT”) to score both eligibility for the PCS program and the amount of assistance needed for covered activities and services.⁶ For both ADLs and IADLs, the CAT provides recipients with a two-part numerical score to reflect the recipient’s ability to perform the activity and need for assistance in doing so. In both types of activities, the score consists of a self-performance code, which rates a person’s ability to perform the activity, followed by a support code, which reflects the degree of assistance required to do so. These codes then dictate whether a recipient is eligible for PCS for the activity, and, if so, the amount of PCS time allocated to that activity.

The ADLs measured by the CAT are bed mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.⁷ For ADLs, the possible self-performance codes relevant to determining a PCS level are as follows:

0 – “Independent.” This code is used if help or oversight was provided no more than twice in the prior seven days.

1 – “Supervision.” This code is used if the person requires only “oversight, encouragement, or cueing” while performing the activity.

2 – “Limited Assistance.” This Code is used if the person is “highly involved” in the activity” and “received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance” three or more times in the last seven days or received physical help in guided maneuvering of limbs plus weight bearing assistance no more than twice in the last seven days.

3 – “Extensive Assistance.” This code is used where the person performed part of the activity, but over the past seven days received weight-bearing support and/or full caregiver performance of the activity three or more times.

4 – “Total Dependence.” This code is used where there has been full staff/care giver performance of the activity during the entire prior seven days.⁸

³ 7 AAC 125.030(c). PCS are also provided for medication assistance, maintaining respiratory equipment, dressing changes, and wound care, medical escort, and passive range-of-motion exercises. 7 AAC 125.030(d). The regulation contains specific conditions that a recipient must satisfy to receive these specialized services.

⁴ 7 AAC 125.040(a)(4).

⁵ 7 AAC 125.040(a)(10).

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

⁷ Ex. D, pp. 13 - 16.

⁸ Ex. D, p. 13.

For ADLs, the possible support codes used to determine a service level are as follows, with each option reflecting the “most support provided” over each 24-hour period during the prior seven days.

- 0** – The person required no set up or physical help.
- 1** – The person required only setup help.
- 2** – The person required a one-person physical assist.
- 3** – The person required a physical assist from two- or more people.⁹

The independent activities of daily living (IADLs) measured by the CAT are light meal preparation, main meal preparation, light housekeeping, laundry, and shopping.¹⁰ The CAT codes IADLs slightly differently than it does ADLs. The self-performance codes for IADLs are:

- 0** – “Independent either with or without assistive devices - no help provided.”
- 1** – “Independent with difficulty; the person performed the task but did so with difficulty or took a great amount of time to do it.”
- 2** – “Assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided.”
- 3** – “Dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person.”¹¹

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 provided”
- 3** – “Physical assistance provided.”
- 4** – “Total dependence - the person was not involved at all when the activity was performed.”¹²

If an applicant/recipient has a self-performance code of 2 (limited assistance) in any of the ADLs of transfer, locomotion, eating, toilet use, dressing or bathing or a self-performance code of 1,2, or 3 and a support code of 3 or 4 in any of the IADLs of light or main meal

⁹ Ex. D, p. 13.

¹⁰ Ex. D, p. 34.

¹¹ Ex. D, p. 34.

¹² Ex. D, p. 34.

preparation, light housework, routine housework, grocery shopping or laundry, they are eligible for PCA services.¹³

The codes assigned to a particular ADL or IADL determine how much PCA service time a person receives for each occurrence of a particular activity. For instance, a person coded as requiring extensive assistance (code of 3) with bathing would receive 22.5 minutes of PCA service time every day he or she is bathed.¹⁴ The list of services, time allotted for each service based upon the severity of need, and the allowable frequencies for each service are all set out in the *Personal Care Services: Service Level Computation* instructions, which are adopted by reference into regulation.¹⁵

III. Facts

Ms. S is 67 years old with multiple complicated health conditions. These include lymphedema, type 2 diabetes with hyperglycemia, moderate persistent asthma, chronic obstructive pulmonary disease, cardiomyopathy, glaucoma, gait instability, recurrent pulmonary emboli, hypertension, gastroesophageal reflux disease, and stage 3 kidney disease.¹⁶ She has a history of lung cancer, where she had a lung resection performed.¹⁷ She also has a history of degenerative disk disease dating back to 2009, with a severely degenerated disk at C6-7 with an extrusion and herniation, and central canal narrowing.. She also had a right carpal tunnel release performed on December 19, 2006 and a subsequent left carpal tunnel release performed on January 2, 2007.¹⁸

Ms. S's medical records show that she was also diagnosed with degenerative disk disease at L2-3, L3-4, and L4-5, with radiculitis at L5 on the right.¹⁹ Recently, in September and October 2020, she was seen by a podiatrist due to a superficial ulcer on her fifth right metatarsal. She had been told to wear a pneumatic fracture boot, which she did not like and was placed into a surgical shoe. The diagnosis was "ulcer of right foot due to type 2 diabetes mellitus."²⁰

¹³ Ex. D, p. 39.

¹⁴ See Ex, D, p.4.

¹⁵ Ex. D, pp. 4 - 5; 7 AAC 125.024(a); 7 AAC 160.900(d)(29).

¹⁶ *Verification of Diagnosis* form completed October 20, 2020; HealthPartners medical appointment notes from April 30, May 19, and July 1, 2020.

¹⁷ HealthPartners medical appointment notes from August 4, 2014.

¹⁸ Business A records from December 19, 2006, January 2, 2007 and January 21, 2009.

¹⁹ Business A records from December 8, 2010.

²⁰ X J, DPM, medical records from September 28 and October 6, 2020.

Ms. S moved from Minnesota to Alaska in September 2020 along with her daughter, Ms. Q, and her grandson, Mr. B. While in Minnesota, she was receiving a variety of services through the Minnesota Elderly Waiver program. As part of those services, she was receiving 9.5 hours per day of PCS and PCS supervision services. The Minnesota Coordinated Services and Supports Plan states that Ms. Q and Mr. B, Ms. S's daughter and grandson, provided both informal and formal supports. The informal supports included tasks such as supervision, transportation to medical appointment, shopping, meal preparation, picking up medications and "other tasks as requested" by Ms. S.²¹ Flexible use PCS assistance was approved as follows:

Daily 9.5 hours, [Ms. S] is able to communicate her own care preferences to her PCA's [Ms. Q and Mr. B]. She is requesting assistance with dressing both UE and LE, safe transfers in/out of shower, washing/drying [Ms. S], clipping her toenails, styling her hair, shaving, stand by assistance with ambulation and navigating stairs, transfers to/from chair, bed, wheelchair, assistance with hygiene cares with toileting, meals are set up, food cut up. Household tasks also completed by PCA's in areas of bed linen change, wash/dry/fold personal clothes, linens, vacuuming, mopping floors, cleaning bathroom fixtures, transportation to medical appointments, shopping for groceries, personal care products, community outings and other tasks as identified by [Ms. S].²²

After Ms. S moved to Alaska, she applied for PCS from Alaska Medicaid on September 11, 2020. In her application, she stated that she required PCS for bed mobility, transfers, locomotion, dressing, toileting, personal hygiene, bathing, medical escort, light meal and main meal preparation, housework, shopping, and laundry.²³

After Ms. S applied for PCS, Ms. Rodes, one of the Division's assessors, conducted an assessment of Ms. S on November 3, 2020. The purpose of that assessment was to determine if Ms. S was eligible for PCS, and if so, the amount of PCS. Ms. S was in her apartment for the assessment and Ms. Rodes assessed her by video (Zoom) due to Covid-19 precautions. There are six exterior steps leading down to the apartment entrance.²⁴

The results of the assessment were recorded on the Division's Consumer Assessment Tool (CAT). As reflected in the CAT and her testimony, the assessor found as follows:

²¹ Minnesota Coordinated Services and Supports Plan for June 1, 2020 through May 31, 2021, pp. 2, 5.

²² Minnesota Coordinated Services and Supports Plan for June 1, 2020 through May 31, 2021, p. 10.

²³ Personal Care Services Initial Application dated September 11, 2020, p. 4.

²⁴ Ex. D, p. 10.

- Ms. S could touch her hands over her head and behind her back and had a strong grip in both of her hands but was not able to stand up while her hands were across her chest, nor could she touch her feet while in a sitting position.²⁵
- Ms. S reported that she sleeps in a regular bed, and must be turned twice at night by others, and that she has no open wounds. The assessor, however, concluded that Ms. S was independent with bed mobility based upon the assessor's observation of Ms. S repositioning herself in the bed to reach her medication bottles.²⁶
- Ms. S told the assessor that she can transfer using a cane, and usually her family helps her to transfers. She was asked if she could transfer using a walker and said that she could but that her walker is in storage. The assessor concluded that Ms. S was independent with transfers but required some setup help, based upon her observation of Ms. S getting up from the bed using a cane as a support. During that transfer, her grandson came over unsolicited to help her straighten up, but she did not appear to need assistance.²⁷
- Ms. S told the assessor that she was able to ambulate (walk, move about) without help using either her cane, a walker, or a scooter, or her manual wheelchair, but that both her walker and the wheelchair were in storage. The assessor observed her walking without assistance while using a cane. The assessor then concluded that Ms. S was able to walk independently in her home but did require some setup help. The assessor also concluded that Ms. S was able to move outside her home to go to medical appointments without needing any help.²⁸
- Ms. S told the assessor that she needed help with dressing her lower body but was able to put on shirts and fasten buttons and zippers without assistance. The assessor, based upon her observation of Ms. S reaching down to the floor and ability to reach overhead and behind herself, concluded that Ms. S was able to dress herself without assistance.²⁹

²⁵ Ex. D, p. 12; Ms. Rodes' testimony.

²⁶ Ex. D, p. 13; Ms. Rodes' testimony.

²⁷ Ex. D, p. 13; Ms. Rodes' testimony.

²⁸ Ex. D, p. 14; Ms. Rodes' testimony.

²⁹ Ex. D, p. 15; Ms. Rodes' testimony.

- Ms. S told the assessor that she was able to eat without assistance, but that she did occasionally need help cutting up food. The assessor concluded that she was able to eat without requiring any assistance.³⁰
- Ms. S told the assessor that she was able to transfer on and off the toilet using grab bars and that she was able to cleanse herself after toileting. Based upon her observations of Ms. S's mobility (stretching, reaching, grabbing, transferring) and Ms. S's statements, the assessor concluded that she was able to toilet without requiring any assistance.³¹
- Ms. S told the assessor that she was able to perform personal hygiene tasks, brushing her teeth, wash her face, and comb her hair without assistance. Based upon Ms. S's statements and her observation of Ms. S's ability to reach and move, the assessor concluded that she was able to perform personal hygiene tasks without requiring any assistance.³²
- Ms. S has a shower located within a standard bathtub. She told the assessor that she needed help with transferring into the tub and washing her legs and feet. The assessor concluded, based upon her observation of Ms. S, that Ms. S was able to bathe independently.³³
- The assessment notes that Ms. S has balance problems while standing.³⁴
- The assessor recorded that Ms. S notified the assessor that her daughter did laundry and shopping, although Ms. S also goes to the store to help select food items, and that she can get a snack and assist with food preparation, but that her family does almost everything for her. The assessor then found that that Ms. S was able to prepare light meals, main meals, perform routine housework, go shopping, and do laundry without requiring hands-on physical assistance. The assessment noted that it was difficult for Ms. S to perform main meal preparation and routine housework.³⁵
- The assessor recorded that Ms. S requires transportation to access medical appointments.³⁶

³⁰ Ex. D, p. 15; Ms. Rodes' testimony.

³¹ Ex. D, p. 15; Ms. Rodes' testimony.

³² Ex. D, p. 15; Ms. Rodes' testimony.

³³ Ex. D, p. 16; Ms. Rodes' testimony.

³⁴ Ex. D, p. 31.

³⁵ Ex. D, p. 34.

³⁶ Ex. D, p. 34

- The results of the assessment resulted in the Division finding that Ms. S was not eligible for PCS.³⁷

Ms. S testified as follows:

- The assessor did not perform a functional assessment on her.
- She does not sleep in a bed. She sleeps in a recliner and does not need assistance moving within it.
- She, however, is not able to transfer out of the chair by herself. While she has a lift chair, it is in storage. Because she does not currently have a lift chair, in order to transfer out of the chair, she has to be pulled up from the chair to a standing position.
- She is unsteady when she transfers and has to be physically supported when she initially stands. She requires assistance for transferring, for non-toileting related transfers, about four times daily.
- The foot sore/ulcer issue she was experiencing in September and October 2020 is a recurrent one. She has had three separate foot sores in four months.
- When she walks after standing up, someone needs to walk beside her.
- When she has to go to a medical appointment, she has to have someone holding onto her when she transits the stairs outside her apartment. Due to Covid-19 and her recent move from Minnesota, it has been difficult for her to schedule medical appointments.
- She is unable to dress her lower body because she cannot reach down. She needs someone to help her with her underclothing, pants, socks, and shoes.
- She can eat without requiring assistance, although she sometimes needs help cutting her food.
- During the December 18, 2020 portion of the hearing, Ms. S testified that she tries to transfer from the toilet herself, but that she sometimes becomes dizzy and her daughter has to help her up. Ms. S testified consistently with this during the January 11, 2020 portion of the hearing, including explaining that while there are grab bars on the seat itself, they are not stable enough to completely support her while attempting to transfer. She requires assistance with transferring from her chair and walking to the bathroom six to seven times a day.

³⁷ Ex. D, pp. 39; Ms. Rodes' testimony.

- She needs setup help for personal hygiene. However, she cannot comb her hair when she is having a bad day, which she estimates as occurring five days per week.
- She requires physical assistance with bathing, both with transferring in and out of the tub, and washing her feet and legs.
- She uses a nebulizer and a CPAP machine.
- She is able to open most medicine bottles, but it depends on the bottle.
- She can make a sandwich if someone sets it up for her.
- Because she has difficulty standing, she cannot do any cooking. She also has problems using her hands and mentioned her prior surgery on her hands. She is, however, able to participate to a very minor degree in food preparation, although her hand grip is not strong enough for her to grip a knife and cut up food.
- She cannot participate in housework due to her difficulty with standing and the issues with her hands.
- She can participate in laundry to a small extent, such as folding clothes while she is seated. The laundry machines are not located inside the apartment.
- She can go shopping by using a motorized cart in the store. She can sometimes reach for items on the shelves depending on how close she is to the item.
- She had lung cancer in 2013 and a lung resection, which affects her ability to breathe.
- The assessment mentions her driving from Minneapolis to Seattle. That is incorrect. Her daughter and grandson drove. She was a passenger. While she still has a driver's license, she keeps that for identification purposes, and estimated she has only driven about twice since 2013.
- Her standard non-emergency medical appointments are quarterly. In addition, she sees the eye doctor and dentist twice each per year. She also needs to see a kidney doctor.³⁸

Both Ms. S and Ms. Q expressed concerns about how the assessment was conducted.

Ms. S and Ms. Q testified that the assessment started with the assessor asking Ms. S about irrelevant matters: how Ms. S got to Alaska, where was her furniture, and asking about her personal belongings, and that the assessor did not ask her questions about her functionality.³⁹

Ms. Q further testified that the assessment started off badly with the assessor frowning at them at

³⁸ Ms. S's testimony.

³⁹ Ms. S's and Ms. Q's testimony.

the very outset.⁴⁰ Ms. S expressed her opinion that the assessment results were the product of racial discrimination, which was disputed by the Division.⁴¹

Mr. Fromm testified. He is one of the supervisors for the PCA program. He has a substantial background as a registered nurse, although he is not currently licensed in the state of Alaska. He reviewed Ms. S's recent medical records and only found them to refer to her experiencing instability with her gait. He specifically referenced Ms. S's record of a medical appointment on July 1, 2020, which referred to Ms. S's oxygen saturation and that her breathing did not appear to be labored.⁴²

IV. Discussion

A. Burden of Proof

Ms. S recently received PCS through the State of Minnesota's Medicaid program. However, this is an application for PCS from the State of Alaska's Medicaid program. This is therefore a new application. As a result, Ms. S has the burden of proof by the preponderance of the evidence.⁴³ This means that her prior approval for PCS in Minnesota does not carry over and result in an automatic approval for PCS in Alaska.

The parties can meet their burden of proof using any evidence on which reasonable people might rely in the conduct of serious affairs,⁴⁴ including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.⁴⁵

B. The Minnesota Medicaid Program vs. the Alaska Medicaid Program

It should first be noted that Minnesota and Alaska Medicaid programs handle PCS very differently. For example, the Minnesota program allows PCS for cueing and supervision.⁴⁶ Minnesota also allows a flexible use of PCS hours.⁴⁷ All of these are reflected in Ms. S's

⁴⁰ Ms. Q's testimony.

⁴¹ The issues in this case are limited to the PCS program and this decision does not express an opinion on this point. Ms. S was advised that she could file a complaint with the Dept. of Health and Social Services, the Alaska Human Rights Commission, and the Ombudsman's office.

⁴² Mr. Fromm's testimony.

⁴³ 7 AAC 49.135.

⁴⁴ 2 AAC 64.290(a)(1).

⁴⁵ See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (<http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>).

⁴⁶ "Dependency in an ADL means a person requires assistance for 1. Cuing **and** constant supervision to complete the task **or** 2. Hands-on assistance to complete the task." *Minnesota Person Care Assistance (PCA) Assessment and Service Plan*, p. 8 (accessed online at [DHS-3244-2-14 \(state.mn.us\)](https://dhs.3244-2-14.state.mn.us) on January 14, 2021).

⁴⁷ *Minnesota PCS Manual* (accessed online at [Flexible Use \(state.mn.us\)](https://flexible.use.state.mn.us) on January 14, 2021).

Minnesota PCS plan: the Minnesota plan documents submitted by Ms. S contains authorization for her to receive 9.5 hours of PCS per day, for flexible use, allows standby assistance, has a general list of tasks, including community outings and a general authorization for other tasks as identified by Ms. S. Minnesota also calculates PCS time based upon the number of ADLs a recipient needs help with and whether the recipient has complex health needs.⁴⁸

In marked contrast, Alaska, as explained above, does not allow PCS for standby assistance. It does not allow PCS for community outings. It also does not allow a flexible use of PCS hours. And its computation of PCS time is based not upon the number of ADLs for which assistance is needed. Instead, there is a specific itemization of what tasks are allowed, how many times per week PCS for those tasks are allowed, and how many minutes are authorized for each task. For instance, if extensive assistance with bathing is allowed, then the PCS plan would specify how many days per week the assistance is to be provided and that the recipient would receive 22.5 minutes of PCA service time each time he or she is bathed.⁴⁹

C. Areas of Dispute

Ms. S's testimony did not present any disagreement as to whether she required assistance with bed mobility⁵⁰ or eating.⁵¹ Instead, her testimony was that she needed assistance with the ADLs of transfers, locomotion, locomotion to access medical appointments, dressing, toileting, personal hygiene, bathing, medical escort, and all of the IADLs of light and main meal preparation, light housework, shopping, and laundry. If she requires hands-on physical assistance with any one of these, she will be eligible for PCS. Each of the disputed areas are addressed below.

1. Transfers

Transfers consists of how a person moves between surfaces, such as from a sitting to a standing position.⁵² The assessor determined that Ms. S was able to transfer without needing hands on physical assistance, merely setup assistance, which would not qualify her for PCS. There is a marked disparity between Ms. S's testimony and the assessor's. Ms. S's testimony was that she could get up if she had a lift chair, which she did not and does not have access to,

⁴⁸ [DHS-4201-ENG \(PCA Decision Tree\) \(state.mn.us\)](#) (accessed on January 14, 2021).

⁴⁹ See Ex, D, p. 7.

⁵⁰ She sleeps in a recliner and does not require assistance while in the recliner per her testimony.

⁵¹ She can feed herself, although she might occasionally need help cutting up food per her testimony.

⁵² Ex. D, p. 13.

because it is in storage. Ms. S testified that she has to be pulled up to a standing position and that she has to be stabilized after standing up. The assessor testified and the assessment states that Ms. S stood up on her own and that her grandson came over and took her elbow.

Ms. S has substantial medically documented health issues that impact mobility: her lung issues (COPD, asthma, lung resection), her degenerative disk disease, her weight, and her gait instability. She is also 67. It is difficult to visualize Ms. S, at her age with her combination of impairments, as being able to physically move herself up from her chair absent some degree of physical assistance. A lift chair would provide that assistance, but she does not currently have a lift chair. Given her medical conditions, the evidence shows that it is more likely true than not true that Ms. S does have to be pulled up from her chair and steadied upon first standing up. The pulling is weight-bearing assistance, which is extensive assistance. The steadying would be limited assistance (non-weight bearing physical assistance). However, given that she does not have a lift chair and must be pulled up in addition to being steadied once she is up means that she requires extensive assistance with transfers. This qualifies her for PCS.

Per Ms. S's testimony, she requires transfer assistance for non-toileting related transfers four times daily. As a result, Ms. S has shown that she required weight-bearing assistance four times daily for transfers.

2. Locomotion

Locomotion has two components, moving within the home, and moving outside the home to access medical appointments. It may involve the use of an assistive device, such as a cane or a walker or a wheelchair.⁵³ The assessor determined that Ms. S could walk within the home, without assistance, using a cane, based on her observation of Ms. S. Ms. S testified that she needs someone to walk beside her, that she has someone holding onto her, and that she is subject to falls. Her medical records show that she has an unstable gait. However, what the weight of the evidence shows is that she requires someone to be beside her in the event she falls, but that she does not need hands on physical assistance to walk within her own home. This is standby assistance. Alaska Medicaid regulations do not allow PCS for standby assistance. As a result, it is more likely true than not true that Ms. S does not require PCS for locomotion within the home.

Locomotion to access medical appointments is a different matter. Navigating stairs is much more difficult than moving across a level surface. Ms. S has six stairs outside her

⁵³ Ex. D, p. 13.

apartment that she must take to go to medical appointments. Her testimony was that she had to be steadied while using the stairs. Given her multiple conditions, her testimony is credible and demonstrates that she requires limited (steadying and stabilizing, but not weight-bearing) assistance to travel to medical appointments. Because she has multiple normal medical appointments but does not have them more than once a week, she is to be provided this assistance once weekly.

3. Dressing

Dressing is the act of putting on and taking off clothing.⁵⁴ The assessor found that Ms. S did not require dressing. Ms. S testified that she needs assistance with dressing her lower body. Ms. S's credible testimony was that she could not dress her lower body without help. The assessor found that Ms. S could reach down to the floor. As found above, Ms. S has multiple impairments that impact her mobility. It is more likely true than not true, that even if she can reach down to the floor, she does not have the ability to put on lower body clothing such as underwear, pants, socks, and shoes without some degree of physical assistance. As such, Ms. S has shown that she requires limited assistance with dressing, twice daily, seven days per week.

4. Toileting

Toileting is a complicated process. It involves getting to and from the bathroom (which may involve transfers from a chair, bed, etc., and locomotion), transfers to and from the toilet, cleansing, and adjusting clothing.⁵⁵ Even though Ms. S does not always need assistance in transferring from the toilet itself, the evidence, as recited above, shows that Ms. S requires extensive assistance to transfer from her chair. She would require this same level of assistance to move to the toilet because toileting includes all transfers involved in going to and from the bathroom. Ms. S testified that she required toileting related between six to seven times daily. She is therefore to receive extensive assistance with toileting six times daily.

5. Personal Hygiene

Personal Hygiene involves personal hygiene care including “combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands, and perineum.”⁵⁶ The assessor found that she was independent with this activity. Ms. S testified that she cannot fully perform

⁵⁴ Ex. D, p. 15.

⁵⁵ Ex. D, p. 15.

⁵⁶ Ex. D, p. 15.

all of these tasks all of the time, specifically combing her hair and that she needed help with personal hygiene about five days per week. This is a close call given Ms. S's combination of impairments. However, while she is unable to reach down and dress her lower body, there is insufficient evidence to show that she does not have the range of motion necessary to perform her personal hygiene tasks. While Ms. S was credible and showed that it is difficult for her to perform the full range of personal hygiene tasks, there is insufficient evidence to demonstrate or imply that she is unable to perform those tasks without requiring hands-on physical assistance.

6. Bathing

Bathing includes transfers in and out of the tub/shower and the bathing of the body, excluding washing the hair and the back.⁵⁷ The assessor found that Ms. S had a sufficient range of motion, and an ability to transfer independently, which meant that she did not require hands-on physical assistance to bathe. Ms. S disagreed, testifying that she required physical assistance to transfer into the tub and that she was not able to completely wash her lower body. As found above, Ms. S requires hands-on physical assistance with transfers and also requires hands-on physical assistance with clothing her lower body. These same limitations would carry over to the act of bathing. While transfers, for bathing, are only classified as limited assistance, assistance with washing/drying is extensive assistance.⁵⁸ As a result, Ms. S has shown that it is more likely true than not true that she requires extensive assistance bathing. She bathes daily, so the frequency is once daily, seven days per week.

7. Medical Escort

Ms. S does not drive. Medical escort is allowed for a person who requires limited or more extensive assistance with locomotion to access medical appointments.⁵⁹ As found above, Ms. S requires limited assistance to access medical appointments. She therefore qualifies for medical escort. Medical escort is a limited service. It is provided only to escort a recipient to and from a medical appointment. It does not allow PCS for the time actually spent at the appointment.⁶⁰ The amount of time is derived by taking the amount of time necessary to go to and from the appointment, multiplied by the number of yearly appointments, divided by 52 to

⁵⁷ Ex. D, p. 16.

⁵⁸ Bathing is scored differently than the other ADLs. See Ex. D, p. 16.

⁵⁹ Ex. D, p. 5.

⁶⁰ 7 AAC 125.030(d)(4).

arrive at a weekly number of minutes. The maximum time allowed per appointment is 45 minutes.⁶¹

Ms. S is still getting medically situated in City A per her testimony. However, between her normal quarterly appointments, her need to see a dentist and an eye doctor due to her glaucoma, and her need for a kidney doctor, once a month is a reasonable estimate. She resides in midtown City A and a reasonable transit time of 15 minutes each way, even in bad traffic, is allowed. This would come to 30 minutes per appointment, multiplied by 12, which equals 360 minutes. Divided by 52 weeks, her medical escort time is 7 minutes per week.

8. IADLs – Light and Main Meal Preparation

Light meal preparation is the preparation of “breakfast and light meals;” main meal preparation is the preparation of a “main meal.”⁶² The assessor found that Ms. S was able to prepare both light and main meals herself, although it was difficult for her to prepare main meals. Ms. S testified that she could prepare a sandwich if items were setup for her, and that she could participate to a minor extent on main meal preparation. Ms. S uses a cane or a walker and needs that support while standing. Ms. S also testified about her grip strength affecting her ability to prepare a meal. However, while the evidence shows that she had carpal tunnel releases on both hands a number of years ago, there was no medical evidence showing her grip strength is currently impaired.

The weight of the evidence therefore shows that Ms. S is able to prepare a light meal, without requiring hands-on physical assistance. This would not qualify her for assistance with light meal preparation. However, main meals require both some food preparation and cooking – which require some standing, which she cannot really do. The weight of the evidence shows that she can do some limited portion of main meal preparation but requires hands-on physical assistance to complete the task. She therefore requires a moderate level of assistance (self-performance score of 2, support score of 3) with main meal preparation. She is to receive this assistance seven days per week.

⁶¹ Ex. D, p. 4.

⁶² Ex. D, p. 34.

9. Light Housework

Light housework consists of doing housework such as “dishes, dusting ... making own bed.”⁶³ Routine housework consists of tasks such as “vacuuming, cleaning floor, trash removal, cleaning bathroom.”⁶⁴ The assessor determined that Ms. S was independent with light housework and that it was difficult for her to perform routine housework. Ms. S has functional and mobility limitations; the evidence is clear that she cannot fully participate in light housework and that it is highly unlikely that she can participate in routine housework. The Division’s rules state that for housework, that assistance is determined as follows: “[c]ompute time based on higher score of either light or routine housework.”⁶⁵ Because Ms. S is not able to participate in routine housework, her assistance with this task is to be provided at the maximum assistance level (performance score of 3, support score of 3 or 4).

10. Shopping

This task is grocery shopping. It does not include transportation.⁶⁶ In order to go grocery shopping, a recipient would need to be able to move within the store and be able to bend and lift to some degree. The assessor determined that Ms. S did not require assistance with this task. Ms. S testified that she participated to a minor extent with shopping, that she rode in a motorized scooter, and could grab lighter items that did not require reaching. The evidence regarding her mobility and range of motion, especially with regard to reaching down established that she is not completely incapable of helping with shopping but is substantially limited in her abilities. She should therefore receive assistance at the moderate level.

11. Laundry

The Division determined that Ms. S’s laundry is classified as out of the home, but that she did not require hands-on physical assistance to perform that task.⁶⁷ Ms. S testified that she could participate to some degree, for instance folding clothes while seated. Ms. S’s physical functionality makes it not possible for her to do laundry on her own. For instance, the evidence shows that she cannot carry a laundry basket and would not be able to bend down if that were necessary to load or unload the laundry machines. As a result, she has shown that she should

⁶³ Ex. D, p. 34.

⁶⁴ Ex. D, p. 34.

⁶⁵ Ex. D, p. 5.

⁶⁶ Ex. D, p. 34.

⁶⁷ Ex. D, p. 34.

receive a moderate level of assistance with laundry. Because the laundry is not located inside the apartment, which the Division has acknowledged by the assessment showing the laundry is outside the home, this provides a greater degree of assistance than she would receive if the laundry were in her home.⁶⁸

V. Conclusion

Ms. S’s physical condition is such that she requires hands-on physical assistance with a number of her ADLs and IADLs. She is therefore eligible for PCS. As discussed in detail above, she is to receive the following PCS:

<u>Task</u>	<u>Assistance Level</u>	<u>Weekly Frequency/Minutes</u>
Transfers	Extensive (3/2)	28 times
Locomotion – Medical	Limited (2/2)	1 time
Dressing	Limited (2/2)	14 times
Toileting	Extensive (3/2)	42 times
Bathing	Extensive (3/2)	7 times
Medical Escort		7 minutes
Main Meals	Moderate (2/3)	7 times
Housework	Dependent (3/3 or 4)	90 minutes
Shopping	Moderate (2/3)	45 minutes
Laundry – Out of Home	Moderate (2/3)	45 minutes

Dated: January 15, 2021

Signed

 Lawrence A. Pederson
 Administrative Law Judge

⁶⁸ Ex. D, p. 5.

Adoption

The undersigned, by delegation from the Commissioner of Health and Social Services, adopts this Decision, under the authority of AS 44.64.060(e)(1), as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 26th day of February, 2021.

By: Signed _____
Name: Jillian Gellings
Title: Project Analyst
Agency: Office of the Commissioner, DHSS

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