

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

In the Matter of)
)
D L) OAH No. 20-0957-MDS
) Agency No.
_____)

NOTICE OF PARTIAL ADOPTION

On January 22, 2021, the Administrative Law Judge that heard this case issued a proposed decision. After a review of that proposed decision, the proposal for action submitted by the Division of Senior and Disabilities Services,¹ and the underlying evidence, including the testimony of the witnesses, the undersigned, by delegation from the Commissioner of Health and Social Services and in accordance with AS 44.64.060(e)(4), rejects two factual findings as follows:

A. Dressing

The proposed decision found that Ms. L should receive limited assistance (score of 2/2) with dressing four times weekly. Instead, the totality of the evidence shows that while it might be difficult for Ms. L to dress herself, she does not require hands-on physical assistance to dress herself. Accordingly, the portion of the proposed decision that provides Ms. L with personal care services (PCS) for dressing is eliminated in its entirety.

B. Light Meal Preparation

The proposed decision found that Ms. L should receive moderate assistance (score of 2/3) for light meal preparation seven times weekly. This was predicated on Ms. L’s morning stiffness, which resulted in her eating cookies in lieu of a healthier breakfast. The evidence, however, does not show that Ms. L is incapable of independently preparing a very light meal such as toast, cereal, or yogurt and fruit. As a result, the portion of the proposed decision that provides Ms. L with PCS for light meal preparation is eliminated in its entirety.

The remainder of the January 22, 2021 proposed decision is adopted without change.

¹ Ms. L did not submit a proposal for action.

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 8th day of March, 2021.

By: Signed _____
Jillian Gellings
Project Analyst
Alaska Dept. of Health and Social Services

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

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

In the Matter of)
)
D L) OAH No. 20-0957-MDS
) Agency No.
_____)

DECISION

I. Introduction

D L applied for Medicaid Personal Care Services (PCS). Following an assessment, the Division of Senior and Disabilities Services (Division) denied her application on December 1, 2020. Ms. L requested a hearing to challenge that denial.

Ms. L’s hearing was held on January 14, 2020. Ms. L did not participate. C T, her daughter, who also holds her power of attorney, represented her and testified on her behalf. Terri Gagne, a fair hearing representative with the Division, represented the Division. Barbara Rodes, the Division’s assessor, testified for the Division.

The evidence provided at hearing demonstrated that it is more likely true than not true that Ms. L 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.”² Those activities are broken down into eight specific “activities of daily living” (ADLs) – bed mobility, transfers, locomotion, dressing, eating, toileting, personal hygiene, and bathing³ -- and five specific “instrumental activities of daily living” (IADLs) – light meal preparation, main meal preparation, housework, laundry, and shopping.⁴ Some degree of hands-on assistance is required in order to qualify for

² 7 AAC 125.010(b)(1)(A)(iii).

³ 7 AAC 125.030(b).

⁴ 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.

PCS; PCS are not provided for activities that can “be performed by the recipient,”⁵ nor for “oversight and standby functions.”⁶

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.⁷ 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.⁸ 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.⁹

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.

⁵ 7 AAC 125.040(a)(4).

⁶ 7 AAC 125.040(a)(10).

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

⁸ Ex. D, pp. 13 - 16.

⁹ Ex. D, p. 13.

- 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.¹⁰

The independent activities of daily living (IADLs) measured by the CAT are light meal preparation, main meal preparation, light housekeeping, laundry, and shopping.¹¹ 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.”¹²

The support codes for IADLs are also slightly different than the support codes for ADLs. The support codes for IADLs are:

- 0 – “No support provided.”
- 1 – “Supervision / cueing provided.”
- 2 – “Set-up help provided”
- 3 – “Physical assistance provided.”
- 4 – “Total dependence - the person was not involved at all when the activity was performed.”¹³

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 preparation, light housework, routine housework, grocery shopping or laundry, they are eligible for PCA services.¹⁴

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

¹⁰ Ex. D, p. 13.

¹¹ Ex. D, p. 34.

¹² Ex. D, p. 34.

¹³ Ex. D, p. 34.

¹⁴ Ex. D, p. 39.

service time every day he or she is bathed.¹⁵ 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.¹⁶

III. Facts

D L is 62 years old and lives by herself. She has a number of health conditions: chronic obstructive pulmonary disease, Hepatitis C, atrial fibrillation, congestive heart failure, valve stenosis, hypertension, stage IV cervical cancer, osteoarthritis, failed back surgical syndrome, cervicgia, lumbar radiculitis, and idiopathic peripheral neuropathy.¹⁷ Notes from an October 15, 2020 patient visit at City A Health Center state that she has osteoarthritis in both knees, which limit her mobility for toileting and grooming, that she must use a four wheel walker, and that she is “[e]ncouraged to quit smoking so she may be eligible for joint replacement when pandemic is over.”¹⁸ Notes from an October 30, 2020 new patient visit at Business A Physicians reflect that Ms. L described chronic urinary leakage, and some mild anal leakage.¹⁹ Notes from a November 2, 2020 patient visit at Business A Physicians state that she was able to get up from a seated position, and that she was unsteady on both of her feet when walking without a walker. The physician found that she had good strength through both her upper and lower extremities, but he did not test her ability to walk heel-to-toe or standing on one leg, because he did not think it was possible.²⁰ Those same notes reflect moderate to severe spinal issues: cervical myelopathy and stenosis, lumbosacral foraminal stenosis, a prior lumbar fusion, lumbar spondylosis and degenerative disc diseases, and radiculopathy, both cervical and lumbar. They further indicate both morning stiffness, and urinary incontinence.²¹ Physical therapy evaluation notes from October 22, 2020, under the “General Objective Analysis” provide that both knees “are contractured with 10deg flx when straight and lack functional flexion.” Those same notes

¹⁵ See Ex, D, p. 4.

¹⁶ Ex. D, pp. 4 - 5; 7 AAC 125.024(a); 7 AAC 160.900(d)(29).

¹⁷ Ex. D, p. 10; Ex. 1 - verification of diagnosis forms - City A Health Center.

¹⁸ Ex. E, p. 12.

¹⁹ Ex. 1 - Business A Physicians - patient visit of October 30, 2020, p. 1.

²⁰ Ex. 1 - Business A Physicians - patient visit of November 2, 2020, p. 2.

²¹ Ex. 1 - Business A Physicians - patient visit of November 2, 2020, pp. 2 - 3.

state that Ms. L “ambulates stiff-leggedly with lack of knee/hip/ankle movement.”²² They also reflect that Ms. L reported urinary incontinence.²³

Ms. L experiences substantial pain due to her medical conditions. She went to the emergency room three times in November (the 20th, 21st, and 27th) 2020 due to pain.²⁴

Ms. L applied for PCS on October 13, 2020.²⁵ Following her application, Barbara Rodes, a Division assessor, performed a video assessment of Ms. L on November 23, 2020. Ms. L was at one of her daughters’ home for the assessment because that daughter had a video device. Based upon that assessment, the results of which were recorded on the CAT, Ms. Rodes found that Ms. L was not eligible for PCS. She specifically determined as follows:

- Based upon her observation of Ms. L moving within a chair and Ms. L’s statements, she determined that Ms. L did not require assistance with bed mobility.²⁶
- Based upon her observation of Ms. L standing up and sitting down and Ms. L’s statements, she determined that Ms. L did not require any assistance with transfers.²⁷
- Based upon her observation of Ms. L walking inside the home, without using an assistance device, and Ms. L’s statements, she determined that Ms. L did not require any assistance with locomotion.²⁸
- Ms. Rodes also determined that Ms. L did not require any assistance with locomotion to access her medical appointments.²⁹
- Based upon her observation of Ms. L’s putting on a jacket, and Ms. L’s statements that she can dress herself, although she sometimes has trouble fastening buttons, Ms. Rodes determined Ms. L did not require assistance with dressing.³⁰
- Ms. Rodes determined that Ms. L does not require assistance with eating.³¹

²² Ex. 1 - Business B Physical Therapy - visit of October 22, 2020, p. 2.

²³ Ex. 1 - Business B Physical Therapy - visit of October 22, 2020, p. 2.

²⁴ Ex. 2 – Business C Emergency Dept. records, p. 17.

²⁵ Ex. E, pp. 1 - 8.

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

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

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

²⁹ Ms. Rodes’ testimony; Ex. D, p. 14.

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

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

- Based upon Ms. L's statements and her observation of Ms. L's range of motion, transferring, and ability to grip items, Ms. Rodes determined that Ms. L did not require assistance with toileting.³²
- Ms. Rodes similarly concluded that Ms. L did not require assistance with personal hygiene, although Ms. L did tell her that it was difficult to comb her hair with her dominant hand.³³
- Ms. Rodes concluded that Ms. L was independent with bathing, although Ms. L told her that she is not always able to transfer into the shower due to problems with her knees bending.³⁴
- Ms. Rodes concluded that Ms. L did not require hands-on physical assistance with any of her IADLs, although she could use some setup help with main meal preparation, routine housework, shopping, and laundry.³⁵

Ms. T is Ms. L's daughter. She visits her mother every weekend to clean her apartment and speaks with her every day. Ms. L's other daughter sees her every other day.³⁶ Ms. T testified about her mother's care needs as follows:

- Ms. L only requires infrequent help with bed mobility (less than once per week).
- Ms. L needs help with transfers approximately twice per week because her knees lock up on her. She must be pulled up for those transfers.
- She does not generally require help with locomotion within the home.
- She needs help with locomotion to access medical appointments. Her bad days are such that she has to either cancel an appointment or she has to find someone to go with her. She has approximately 2 medical appointments per week, and needs help going to them approximately 70% of the time. On the visits where she needs help, it is hands-on physical assistance and is stabilizing. She also needs help getting into the vehicle because it is lower to the ground.
- She can dress herself most of the time but needs help about 30% of the time with her bra, underwear, and occasionally shoes.

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

³³ Ms. Rodes' testimony; Ex. D, p. 15.

³⁴ Ms. Rodes' testimony; Ex. D, p. 16.

³⁵ Ms. Rodes' testimony; Ex. D, p. 34.

³⁶ Ms. T's testimony.

- She can toilet independently, although she sometimes experiences incontinence because she cannot get to the bathroom in time. She also experiences frequent urinary leakage.
- She is independent with personal hygiene 95% of the time.
- She is unable to transfer in and out of the tub almost all of the time. She would like to shower at least once every three days.
- She receives Meals on Wheels daily, which she eats midday as her main meal. She cannot prepare her breakfast due to stiffness and will eat cookies instead. She cannot even prepare instant oatmeal first thing in the morning. She can prepare a light meal later in the day after the stiffness has subsided.
- She can occasionally participate in cleaning tasks such as vacuuming but cannot on most days of the week. However, she can do some household tasks such as dishes or wiping down the counter but is not capable of cleaning the toilet.
- She can participate in shopping while using a motorized cart but is limited in the weight of the items that she can pick up. Her doctor has limited her to 10 lbs, but her actual ability is less – 5 lbs.
- She can participate to some extent with laundry, such as sorting and folding clothes. The laundry room in her building is located down the hall, but it is too far for her to walk.
- She is not an accurate historian. She exaggerates her capabilities and is confused. For instance, she did not know she had heart failure even though her doctors told her. As far as she is concerned, everything is fine.
- Her memory problems impact her ability to take her medications.
- She has a CPAP machine.
- Her medical appointments are generally at the Alaska Regional campus, which is approximately one mile from her home.

IV. Discussion

A. Burden of Proof

This is a new application for PCS. As a result, Ms. L has the burden of proof by the preponderance of the evidence.³⁷ The parties can meet their burden of proof using any evidence on which reasonable people might rely in the conduct of serious affairs,³⁸ including such sources

³⁷ 7 AAC 49.135.

³⁸ 2 AAC 64.290(a)(1).

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.³⁹

B. Areas of Dispute

Ms. T's testimony was that Ms. L needs assistance with the ADLs of transfers, locomotion to access medical appointments, dressing, bathing, medical escort, medication assistance, medical equipment maintenance and the IADLs of light meal preparation, 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. Prior to addressing each of the disputed items, it must be noted that Ms. T was an exceedingly credible witness, based upon her direct and non-evasive testimony, including her thoughtful answers to questions. She is also very knowledgeable about her mother's care needs and sees her mother weekly, when she goes to her home to care for her by cleaning the house. She speaks to her every day. She spoke candidly about her mother's care needs and abilities. She did not ask for assistance for tasks that she thought her mother could perform. Further, the medical records show that Ms. L has extensive spinal damage and needs bilateral knee replacements, both of which affect a person's physical functionality, and which corroborate Ms. T's testimony. In contrast, Ms. Rodes saw Ms. L once by video. Ms. Rodes' limited interaction means that Ms. T's testimony is given more weight than Ms. Rodes' conclusions.

1. Transfers

Transfers consists of how a person moves between surfaces, such as from a sitting to a standing position.⁴⁰ The assessor determined that Ms. L was able to transfer without needing hands on physical assistance. Ms. T testified that Ms. L must be pulled up to a standing position approximately twice per week because her knees lock up. The medical records on this point are mixed. On one hand, the City A Health Center records from October 15, 2020 refer to Ms. L's need for bilateral knee replacements. On the other hand, the November 2, 2020 Business A Physician's records document that she was able to stand up on her own. However, these are not inconsistent with Ms. T's testimony, which was to the effect that Ms. L can generally transfer on her own, but due to her knees, she needs to be pulled up from her chair, which would be weight-

³⁹ 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>).

⁴⁰ Ex. D, p. 13.

bearing assistance, approximately twice per week. As a result, Ms. L has shown that it is more likely true than not true that she requires weight-bearing assistance with transfers twice weekly.

To qualify for extensive assistance, however, she would need weight-bearing assistance three or more times per week.⁴¹ As a result, she does not qualify due to only requiring weight-bearing assistance twice weekly. To qualify for limited assistance, she would require a minimum of non-weight bearing assistance three or more times per week. Her need for weight-bearing assistance only twice per week, on its own, would not qualify her for limited assistance: the way the CAT's definition of limited assistance is written does not allow for twice a week of weight-bearing assistance to qualify, unless there is also a need for three or more times per week of non-weight bearing hands-on physical assistance.⁴² This means that Ms. L is not eligible for PCS with locomotion.

2. Locomotion

Locomotion has two components, moving within the home, and moving outside the home to access medical appointments. The assessor determined that Ms. L did not require assistance with either. It is undisputed that Ms. L does not need assistance with locomotion within her own home.

Locomotion to access medical appointments is a different matter. Ms. T testified that her mother requires hands-on physical stabilizing assistance, not weight-bearing, approximately 70% of the time for locomotion to access medical appointments, and that she has two medical appointments, on the average, per week. Ms. T's credible testimony has therefore established that Ms. L should receive limited assistance for PCS for locomotion to access medical appointments. Because she requires help 70% of the time, this assistance is provided for both of her regular medical appointments per week.

3. Dressing

Dressing is the act of putting on and taking off clothing.⁴³ The assessor found that Ms. L did not require assistance with dressing. Ms. T's credible testimony was that Ms. L required hands-on physical assistance with dressing 30% of the time. Ms. L's medical history with her documented spinal issues supports a finding that Ms. L's range of motion can be insufficient to

⁴¹ Ex. D, p. 13.

⁴² Ex. D, p. 13.

⁴³ Ex. D, p. 15.

allow her to completely dress herself. There are fourteen dressing events per week. 30% of those would be 4.2 dressing events. As a result, Ms. L has demonstrated that it is more like true than not true that she requires limited assistance with dressing four times weekly.

4. Bathing

Bathing includes transfers in and out of the tub/shower and the bathing of the body, excluding washing the hair and the back.⁴⁴ The assessor found that Ms. L 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. T disagreed, testifying that Ms. L's knee issues caused her to be unable to transfer into the tub to bathe. Ms. T's credible testimony, which was corroborated by the medical evidence demonstrating knees issues to the point that Ms. L needs bilateral knee replacements, shows that it is more likely true than not true that Ms. L must have hands-on physical assistance for bathing transfers. Ms. T testified that her mother would like to be bathed every three days. This would be three days some weeks and two days other weeks. She is therefore to be provided limited assistance with bathing three times per week.

5. Medical Escort

Medical escort is allowed for a person who requires limited or more extensive assistance with locomotion to access medical appointments.⁴⁵ As found above, Ms. L 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.⁴⁶ 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 arrive at a weekly number of minutes. The maximum time allowed per appointment is 45 minutes.⁴⁷

Ms. L has an average of two medical appointments per week. She resides in close proximity to her doctors and 10 minutes each way, even in bad traffic and poor road conditions, should provide adequate time. This would come to 20 minutes per appointment, multiplied by 104 (two appointments per week for 52 weeks). Divided by 52 weeks, her medical escort time is 40 minutes per week.

⁴⁴ Ex. D, p. 16.

⁴⁵ Ex. D, p. 5.

⁴⁶ 7 AAC 125.030(d)(4).

⁴⁷ Ex. D, p. 4.

6. 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.”⁴⁸ Ms. L receives her main meal through Meals on Wheels, and Ms. T testified that Ms. L can prepare her later light meal. The only issue is therefore Ms. L’s morning light meal. Ms. T credibly testified that Ms. L is too stiff in the morning to prepare any type of meal, and that, in lieu of preparing a meal, she just eats cookies. Ms. T’s testimony regarding morning stiffness is corroborated by Ms. L’s medical records. Because Ms. L is diabetic, cookies are not an adequate substitute for breakfast. As a result, Ms. L has shown that she requires hands-on physical assistance with preparing her morning light meal. Ms. L, despite her medically documented limitations, is able to assist with the meal preparation.

She therefore requires a moderate level of assistance (self-performance score of 2, support score of 3) with light meal preparation. She is to receive this assistance once daily, seven days per week.

7. Housework

Light housework consists of doing housework such as “dishes, dusting ... making own bed.”⁴⁹ Routine housework consists of tasks such as “vacuuming, cleaning floor, trash removal, cleaning bathroom.”⁵⁰ The assessor determined that Ms. L was independent with light housework and that she needed setup help for routine housework. Ms. T credibly testified that Ms. L can occasionally participate in cleaning tasks such as vacuuming but cannot on most days of the week. However, she can do some household tasks such as dishes or wiping down the counter but is not capable of cleaning the toilet. The evidence therefore shows that she can assist in routine housework, but is not able to complete it herself, and requires physical hands-on assistance with it. 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.”⁵¹ Because Ms. L requires hands-on physical assistance with routine housework, her assistance with this task is to be provided at the moderate assistance level (performance score of 2, support score of 3 or

⁴⁸ Ex. D, p. 34.

⁴⁹ Ex. D, p. 34.

⁵⁰ Ex. D, p. 34.

⁵¹ Ex. D, p. 5.

4).

8. Shopping

This task is grocery shopping. It does not include transportation.⁵² 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. L did not require assistance with this task. Ms. T credibly testified that Ms. L can do most shopping, while in a motorized cart, but can only lift lighter items. The evidence therefore shows that Ms. L can participate with shopping, but still requires hands-on physical assistance with it. She should therefore receive assistance at the moderate level (performance score of 2, support score of 3).

9. Laundry

The Division determined that Ms. L's laundry is classified as out of the home, but that she did not require hands-on physical assistance to perform that task.⁵³ Ms. T credibly testified that Ms. L could participate to some degree, for instance folding clothes while seated. Ms. L's physical functionality makes it not possible for her to do laundry on her own. For instance, the evidence shows that her combination of impairments makes it not possible to perform laundry without requiring hands-on physical assistance. As a result, she has shown that she should receive a moderate level of assistance (performance score of 2, support score of 3) 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, as does the fact that she experiences urinary leakage – incontinence, as reflected in both her medical records and Ms. T's testimony.⁵⁴

10. Medication Assistance

Ms. T testified that Ms. L needed help with her medications, primarily due to forgetting to take them. Eligibility for medication assistance is dependent upon a need for assistance with personal hygiene.⁵⁵ It is undisputed that Ms. L does not require assistance with personal hygiene. As a result, she is not eligible for medication assistance.

⁵² Ex. D, p. 34.

⁵³ Ex. D, p. 34.

⁵⁴ Ex. D, p. 5.

⁵⁵ Ex. D, p. 4.

11. Respiratory Equipment Maintenance

Ms. L has a CPAP machine. If a recipient is eligible for assistance with routine housework, they are also eligible for assistance with respiratory equipment maintenance.⁵⁶ As found above, Ms. L requires a moderate level of assistance with routine housework. She is therefore eligible for PCS for maintaining her CPAP.

V. Conclusion

Ms. L'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>
Locomotion – Medical	Limited (2/2)	2 times
Dressing	Limited (2/2)	4 times
Bathing	Limited (2/2)	3 times
Medical Escort		40 minutes
Light Meals	Moderate (2/3)	7 times
Housework	Moderate (2/3)	67.5 minutes
Shopping	Moderate (2/3)	45 minutes
Laundry - out of home	Moderate (2/3)	Twice Weekly (incontinence)
Respiratory Equipment		9 minutes

Dated: January 22, 2021

Signed _____
Lawrence A. Pederson
Administrative Law Judge

⁵⁶ Ex. D, p. 5.