

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

In the Matter of)
)
D G) OAH No. 21-0370-MDS
) Agency No.
_____)

DECISION

I. Introduction

D G receives Personal Care Services (PCS) that are paid for by Medicaid. In 2021 the Division of Senior and Disabilities Services (Division) reassessed her condition and reduced her PCS time from 49.25 hours per week to 38.00 hours per week. Ms. G contested that decision and requested a hearing.

A Zoom hearing was held June 7, 2021. The record remained open until June 18, 2021.

Following the hearing, the Division agreed to reinstate PCS, without reduction, for Passive Range of Motion exercises. This left PCS for Bed Mobility, Locomotion-Multilevel, Locomotion to Access Medical Appointments, Medication Assistance, and Medical Escort at issue. As discussed in detail below, the evidence presented at hearing supported the Division’s requested reductions in Bed Mobility, Locomotion Multi-Level and Medication Assistance were appropriate, whereas the evidence did not support the requested reduction for Locomotion to Access Medical Appointments, and did not entirely support the reduction in PCS for Medical Escort.

Following the hearing the Division amended Ms. G’s service authorization to include PCS for Passive Range of Motion and Eating.

Accordingly, the Division shall provide Ms. G services as specified in this decision.

II. The PCS Determination Process

Medicaid recipients may be eligible for services from several state programs. The Medicaid program authorizes Personal Care Services (PCS) to provide assistance to a Medicaid recipient who has functional limitations, resulting from his/her physical condition, that “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 activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The ADLs are Bed Mobility,

¹ 7 AAC 125.010(b)(1)(A)(iii).

Transfers, Locomotion, Dressing, Eating, Toileting, Personal Hygiene, and Bathing.² The IADLs are Light Meal Preparation, Main Meal Preparation, Light Housekeeping, Laundry (in-home), Laundry (out-of-home), and Shopping.³

PCS care can also be authorized for a few additional services. Specific rules regarding eligibility for these services exist.⁴ The additional services relevant to this case are Locomotion to Access Medical Appointments,⁵ Locomotion to Escort for Medical Appointments (Escort),⁶ Medication Assistance,⁷ and Passive Range of Motion (PROM).⁸

PCS are furnished by a Personal Care Assistant, usually abbreviated as “PCA.” Due to regulatory specificity, PCS are provided solely to assist in the performance of enumerated tasks. PCS do not exist to provide generalized care. In addition, PCS are not provided for activities that can “be performed by the recipient.”⁹ A person who can perform the task on their own-- even with great difficulty-- will not qualify for PCS for that task.

The Division assesses recipients by using the Consumer Assessment Tool, or “CAT”, as a methodology to code both eligibility for the PCS program and the amount of assistance needed for covered activities and services.¹⁰ The actual list of services, time allotted for each service based upon the severity of need, and the allowable frequencies for each service are set out in the *Personal Care Services: Service Level Computation* instructions, which are adopted by reference into regulation.¹¹

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 ADLs are Bed Mobility, Transfers, Locomotion, Dressing, Eating, Toileting, Personal Hygiene, and Bathing.¹² The possible codes are: **0** (the person is

² 7 AAC 125.030(b).

³ See Ex. D.

⁴ 7 AAC 125.030(d).

⁵ 7 AAC 125.030(b)(3)(B).

⁶ Locomotion to Access Medical Appointments covers PCS only to help the recipient move from their residence to a vehicle used by the recipient to access routine medical or dental appointments. Locomotion to Escort for Medical Appointments, covers the time in transit to and from a medical appointment. 7 AAC 125.030(d)(4).

⁷ 7 AAC 125.030(g).

⁸ 7 AAC 125.030(d)(5)

⁹ 7 AAC 125.040(a)(4).

¹⁰ See 7 AAC 125.020(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900(d)(6).

¹¹ 7 AAC 125.024(a); 7 AAC 160.900(d)(29). The *Personal Care Services: Service Level Computation* instructions can be found online at

http://dhss.alaska.gov/dsds/Documents/regulationMaterials/PCS_SLA_Computation_Chart_6-2-2017.pdf

¹² 7 AAC 125.030(b).

independent¹³ and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance¹⁴); **3** (the person requires extensive assistance¹⁵); **4** (the person is totally dependent¹⁶). There are also codes which are not used in calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).¹⁷

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 required); and **8** (the activity did not occur during the past seven days).¹⁸

The IADLs measured by the CAT are Light Meal Preparation, Main Meal Preparation, Light Housekeeping, Laundry (in-home), Laundry (out-of-home), and Shopping.¹⁹ 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); 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).²⁰

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**

¹³ A self-performance code of 0 is classified as “[I]ndependent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days.” See Ex. D.

¹⁴ Limited assistance with an ADL is defined as “[p]erson 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) 1 or 2 times during last seven days.” See Ex. D.

¹⁵ Extensive assistance is defined as “[w]hile 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 Ex. D.

¹⁶ Total dependence is defined as “[f]ull staff/caregiver performance of activity during ENTIRE 7 days.” See Ex. D.

¹⁷ See Ex. D.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

(set-up help); **3** (physical assistance 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).²¹

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. A fixed number of PCS minutes is assigned for each activity.²² That number is then multiplied by the times a day the activity is performed and a weekly total of minutes is calculated.²³ For instance, if a person is coded as requiring extensive assistance (code of 3) with bathing, he or she would receive 22.5 minutes of PCA service time every day he or she is bathed.²⁴

Once a person receives PCS services, they must be regularly reassessed to maintain eligibility.²⁵ Before the Division can eliminate or reduce services, the assessment must find that the recipient “has experienced a change that alters the recipient's need for physical assistance with ADLs, IADLs, or other covered services.”²⁶ Regulatory changes are also considered a material change, allowing an increase or decrease in PCS services.²⁷ The Division may not reduce authorized PCS time if the reduction would create a risk of institutionalization within 30 days.²⁸

III. Facts and Procedural History²⁹

A. Ms. G's Background

D G is a forty-four-year-old woman diagnosed with Lennox Gastaut syndrome³⁰ and cerebral palsy.³¹ She has scoliosis and experiences significant muscle rigidity which impacts her

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 7 AAC 125.024(a); 7 AAC 160.900(d) (29). The *Personal Care Services: Service Level Computation* instructions can be found online at http://dhss.alaska.gov/dsds/Documents/regulationMaterials/PCS_SLA_Computation_Chart_6-2-2017.pdf

²⁵ AS 47.07.045(b)(1); 7 AAC 125.012(b).

²⁶ 7 AAC 126.026(a).

²⁷ 7 AAC 125.026(b)(3)(C).

²⁸ 7 AAC 125.026(f) and(g).

²⁹ These facts were established by a preponderance of the evidence from the testimony at the hearing and the exhibits presented.

³⁰ Lennox-Gastaut syndrome is a severe condition characterized by recurrent seizures (epilepsy) that begin early in life. Affected individuals have multiple types of seizures, a particular pattern of brain activity (called slow spike-and-wave) measured by a test called an electroencephalogram (EEG), and impaired mental abilities.

³¹ Cerebral palsy is a group of disorders that affect movement and muscle tone or posture. IT is caused by damage to the immature brain as it develops, most often before birth. People with cerebral palsy commonly have problems swallowing, sucking, and eating. They also typically stiff muscles, tremors or involuntary muscle

range of motion. Ms. G also has intellectual disabilities. She is non-verbal but expresses a wide range of emotions through her facial expressions and body movement.³²

As she has aged, Ms. G's health has gotten worse. She is now wheelchair bound. She has had an increase in petit, grand, and cluster seizures. Over the past two years there have been near constant changes in her medication management in an attempt to reduce the frequency and intensity of her seizures. To visit her specialist, Dr. X C, and most other doctors, Ms. G must drive approximately an hour and a half to the main hospital for the City A. Prior to 2020 Ms. G saw Dr. C and other care providers at regular and frequent intervals. Her appointments have been reduced during the COVID-19 pandemic, but she will return to regular office visits supplemented with telemedicine as soon as pandemic restrictions are lifted. She has some in-person appointments scheduled for the summer of 2021.³³

Ms. G has also received regular range of motion therapy. Ms. G's range of motion therapy is critical for her wellbeing. Range of motion exercises reduce the physical limitations that accompany contractures from her cerebral palsy. The exercises reduce the rigidity of her muscles and improve muscle strength. They also help maintain good circulation which reduces the break down in her skin that leads to potentially life-threatening infections.³⁴

Ms. G's utilization of services has enabled her to continue to live in her own home with her mother and engage in life activities, despite the progression of her diseases and the side effects of her treatments. According to her mother, Y M, for the past 20 years, "a great team" has been supporting Ms. G. One of her personal care attendants is leaving in 2021 after 20 years with the family. Her other care provider has been with Ms. G for more than a decade. The City B health community is small, but it has worked to provide Ms. G the best opportunities possible. Ms. M feels that she had been able to give her daughter "a good life, but it takes work."³⁵

B. Procedural Background.

Ms. G started to receive services at the age of twenty-two when she moved to City B with her mother. Her most recent prior CAT assessment was conducted in 2014. That assessment evaluated Ms. G as totally dependent (*self-performance code 4*) on one other person (*support*

movement, and exaggerated reflexes (spasticity). Those problems lead to reduced range of motion at various joints in their body.

³² M testimony.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

code 2) to perform the ADLs of Bed Mobility, Transfer, Locomotion Between Locations; Locomotion Multi-Level; Locomotion to Access Medical Appointments, Dressing, Eating, Toileting, Personal Hygiene, and Bathing. The assessment evaluated Ms. G as dependent (*self-performance code 3*) and not involved at all when the activity was performed (*support code 4*) to perform the IADLs of Meal Preparation, Housework, Shopping, Laundry and Medication Assistance.³⁶

Assessments did not occur between 2014 and 2021.³⁷

A re-assessment took place February 27, 2021. The *self-performance* and *support code* scores on the February 27, 2021 were identical to the 2014 CAT assessment for both ADLs and IADLs.³⁸ Ms. G was again assessed as totally dependent on her caregiver. However, PCS for Bed Mobility was eliminated. Weekly frequencies for Transfers was increased from 35 to 42; Locomotion Between Locations on the same floor of her home increased from 35 to 42; Locomotion Multi-Level was eliminated; Locomotion to Access Medical Appointments was reduced from 2 to 1; Eating was eliminated; Toileting was increased from 35 to 56; and Medication Assistance reduced from 28 to 14.³⁹

The February 27, 2021 CAT also eliminated PCS for range of motion assistance because the required renewal materials were not submitted on time.⁴⁰ The proper form and medical documentation were provided before the hearing.

The February 27, 2021 CAT added 3 minutes of weekly Escort time.⁴¹

Based on the results of the February 27, 2021 CAT the Division notified Ms., G that her PCS service hours were being reduced from 49.25 hours a week to 38.00 hours a week.⁴²

Ms. G appealed that decision on March 10, 2021.⁴³

³⁶ Ex. D., p. 10.

³⁷ This is unusual. However, Division Representative Terri Gagne did a thorough investigation and determined intervening assessments did not occur. It is possible assessments were not done because Ms. G's medical condition was stable. *See*, 7 AAC 125.012(d)(permitting authorization without updated assessments in certain circumstances).

³⁸ Ex. D., p. 10.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Ex. D., pp. 1-6.

⁴³ Ex. C.

The administrative hearing to determine that appeal was held June 7, 2021. The Division was represented by Terri Gagne. Ms. Gagne called one witness, Peter Ndenderoh, the Division assessor, who testified as set forth below.

Ms. G was represented by her mother and guardian, Y M. Ms. M; T K, Ms. G's care coordinator; and Z Q, from Business A, testified on Ms. G's behalf.

The record was held open until June 18, 2021, for Ms. G to submit additional evidence.

C. Details of the February 27, 2021 Assessment

Peter Ndenderoh conducted the February 27, 2021 CAT assessment for the Division. Mr. Ndenderoh received his degree from the University of Nairobi in 1984. He has worked as a Division assessor since 2009 and performed more than 3,000 CAT assessments. Mr. Ndenderoh conducted Ms. G's assessment via telehealth due to the COVID-19 pandemic and because she lives in a coastal town without full-time SDS staffing.⁴⁴ Mr. Ndenderoh was a thoughtful and credible witness.

In his testimony, Mr. Ndenderoh identified seven areas where the February 27, 2021 CAT differed from Ms. G's prior assessment. First, the weekly frequency for Bed Mobility was eliminated due to a change in regulation. Current 7 AAC 125.030(b)(1) permits the Division to authorize PCS for Bed Mobility, but it "will not authorize time for the ADL of bed mobility if moving, turning, or positioning a recipient is necessary for the performance of the ADL of transferring, locomotion, toileting, or bathing." Thus, the Division has established a maximum daily frequency of 12 for Bed Mobility that allows positioning every two hours as needed but which is reduced by performance of other ADLs. Because Mr. Ndenderoh assessed frequencies for the ADLs Transferring, Locomotion, Toileting, and Bathing at more than 12 times a day, those activities offset the 12 possible frequencies for Bed Mobility. As result, PCS for Bed Mobility was not authorized.⁴⁵

Second, Mr. Ndenderoh concluded a change in Ms. G's physical condition and current use of her physical environment authorized elimination of PCS for Locomotion Multi-Level.⁴⁶ Ms. G lives with her mother in a two-story home. Ms. G's bedroom, a modified bath, and a small sitting area are on the first floor. The home is fitted with a stair glide to assist Ms. G

⁴⁴ Denderoh testimony.

⁴⁵ *Id.*; See, *CFC Personal Care Service Level Reduction*; Ex. C., pp. 8-9.

⁴⁶ 7 AAC 125.026(a).

access the second story and main living area. In her 2014 assessment Ms. G was assessed as totally dependent on one person to perform the activity of Multi-Level Locomotion with a frequency of need of 2 times a day, 7 days a week. However, according to her mother, Ms. G no longer engages in that activity. Ms. G is now wheelchair bound making use of the stair glide impractical. Therefore, Mr. Ndenderoh eliminated PCS time for that activity.⁴⁷

Third, Mr. Ndenderoh reduced the frequency of Locomotion to Access Medical Appointments based on his conclusion Ms. G no longer needed to see her care providers as often as she had in the past. Mr. Ndenderoh was told that Ms. G was able to see her long-time medical care specialist, Dr. X C, only six times in 2020. As a result, he maintained her assessment of total dependency on one person to perform the activity but reduced the frequency from 2 times per week to 1 time per week. Mr. Ndenderoh acknowledged that the reduction in Ms. G's medical care appointments was likely directly attributable to the COVID-19 pandemic and it was probable she would return to her prior levels of treatment and monitoring in 2021 or as soon as she could safely do so.⁴⁸

Fourth, based on the conclusion Ms. G needed an escort to attend her medical appointments, Mr. Ndenderoh added 3 minutes of weekly PCS time for Escort pursuant to 7 AAC 125.030(d)(4).⁴⁹

Fifth, the assessor concluded that Ms. G's prior PCS award for Eating should be eliminated as duplicative of services under her Supported Living Services plan. The 2014 CAT assessed Ms. G as totally dependent on a one-person physical assist to perform the activity of Eating with a frequency of 3 times a day, 7 days a week. Mr. Ndenderoh based his conclusion that continued PCS for Eating would be duplicative on specific language regarding her goals. That portion of the plan stated Ms. G needed to "drink fluid to stay hydrated" and "consume [a] targeted food portion at each meal or communicate that [you] don't want any more."⁵⁰

Sixth, Mr. Ndenderoh eliminated Ms. G's PCS time for passive range of motion (PROM) exercises because she did not submit the required Request for Passive Range of Motion Personal Care Activity Form and supporting medical documentation on time. She did submit the form

⁴⁷ Denderoh testimony.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

after the February 27, 2021 CAT assessment was complete.⁵¹ 7 AAC 125.030(d)(5) authorizes PCS for PROM if the recipient has a documented physical condition associated with contractures that results in a need for PROM, a written plan from an appropriate medical care provider has been prepared, and the request is submitted with the application for services. Because Mr. Ndenderoh did not have the appropriate supporting documents, he could not authorize services.⁵²

Finally, Mr. Ndenderoh determined that a change in Ms. G's medication supported a reduction in Ms. G's PCS time for Medication Assistance. 7 AAC 125.030(d) permits authorization of PCS to assist a recipient with self-administration of oral medication. Ms. G was totally dependent on a one-person physical assist to take her medication. In 2014 she was awarded a frequency of 4 times a day, seven days a week. However, her current need is twice daily⁵³

D. Details of Ms. G's Presentation from the Hearing

Ms. M and Mr. K provided extensive testimony on Ms. G's behalf at the hearing. Ms. Q provided more limited testimony.

Ms. M described the joys and challenges of raising her daughter. She provided an explanation of Ms. G's medical conditions and on-going treatment. She wants Ms. G to get back to her regular therapy appointments and to be able to see her doctors more frequently as soon as COVID-19 restrictions are lifted. During 2020 when Ms. G could not see her doctors in person, they had numerous appointments through telemedicine. Those appointments were useful and Ms. M plans to continue with them as a supplement to in-person appointments.⁵⁴

Ms. M disagreed with denial of authorization for PROM. She explained the benefits to Ms. G from PROM. She requested that authorization be approved since the documentation was now in place.⁵⁵

Ms. M also testified that she did not believe PCS for Eating would be duplicative of Ms. G's existing or planned Supported Living services.⁵⁶

⁵¹ *Id.*

⁵² Ex. C., p. 8.*Id.*

⁵³ *Id.*; *See, CFC Personal Care Service Level Reduction*; Ex. C., pp. 8-9.

⁵⁴ M testimony.

⁵⁵ *Id.*

⁵⁶ *Id.*

Lastly, Ms. M agreed changes in regulations required modification of Ms. G's PCS. However, she expressed significant concerns the current reductions placed her daughter's health and safety in jeopardy. The lessened hours were simply insufficient to meet her needs and there was no way to absorb the workload.⁵⁷

Care coordinator T K testified regarding his relationship with Ms. G. He has been her care-coordinator for only a few years but has known the family and been part of Ms. G's health care team in other positions for many years. Mr. K explained why the PROM request and documentation were not submitted prior to the CAT. He requested the services be authorized.⁵⁸

Mr. K also requested PCS for Eating be returned to Ms. G. He testified that PCS for Eating would not be duplicative of other services provided to Ms. G. Mr. K understood why Mr. Ndenderoh concluded that the goals listed in the Supported Living plan would overlap with the ADL of Eating given the language used in the plan. However, the language was misleading. Mr. K explained that providing services for Ms. G to eat was not part of her supported living plan.⁵⁹

When Mr. K wrote the updated Supported Living plan, Mr. K wanted it to reflect that Ms. G had been losing weight and her ability to participate with moving food or drink to her mouth seemed to be getting worse. The language contained in her goals section was intended to convey those problems; it was not included to request additional Supported Living services. Once Mr. K realized the language could be misunderstood, he immediately had the misleading language removed from the plan of care. Mr. K believed the language had been removed before the CAT assessment but requested the opportunity to submit written corroboration after the hearing.⁶⁰

E. Post Hearing Determinations by the Division

The hearing was held open until June 18, 2021, for Ms. G to submit information demonstrating the potentially confusing language regarding her eating and drinking had been

⁵⁷ *Id.*: According to Ms. M the prior 49.25 hours was not enough to provide Ms. G with all the care she needed. The amount has been just enough to prevent Ms. M from being overwhelmed. It has also been just enough to hire consistent PCA help. Ms. G has been very lucky; she has had the same two PCA for her daughter for decades. But PCA need a certain amount of guaranteed work hours. If she cannot offer them at least reliable parttime work (20 hours a week), Ms. M will not be able to employ her current caregivers or any appropriate caregivers. Ms. M concluded her testimony by expressing appreciation to the Division for the assistance it provides but requesting re-evaluation of certain decisions to prevent a risk of institutionalization of her daughter.

⁵⁸ K testimony.

⁵⁹ *Id.*

⁶⁰ *Id.*

removed from her Supported Living plan of care. Documentation was received by email on June 7, 2021.

On June 10, 2021, the Division submitted an updated service authorization for Ms. G. The updated assessment authorized 420 minutes of weekly PROM. It also reinstated PCS for Eating to 21 time weekly.

IV. Discussion

A. Burden of Proof

Because the Division seeks to reduce the established number of PCS hours assigned to Ms. G, it bears the burden to prove by a preponderance of the evidence that its decision was correct.⁶¹ A preponderance of the evidence means the fact in question is more likely true than not true.⁶² The Division can meet this burden using any evidence on which reasonable people would rely in the conduct of their serious affairs.⁶³

Before the Division can eliminate or reduce services, the assessment must find that the recipient “has experienced a change that alters the recipient's need for physical assistance with ADLs, IADLs, or other covered services.”⁶⁴ Modification may also be based on regulatory changes.⁶⁵ The Division may not reduce authorized PCS time if the reduction would create a risk of institutionalization within 30 days.⁶⁶

Because the Division reinstated PCS for PROM and Eating at their previous levels, the disputed tasks are Bed Mobility, Multi-Level Locomotion, Medication Assistance, Locomotion to Access Medical Appointments, and Medical Escort.

B. Did the Division Err in Its Determination?

The Division met its burden of proof to eliminate PCS for Multi-Level Locomotion. Ms. G has experienced a physical change that alters her need for physical assistance with that ADL. She no longer moves between floors in her residence. Thus, it was not error to remove services to assist her to do so.

The Division met its burden of proof to eliminate PCS for Bed Mobility. The Division did not err when it determined regulatory updates since Ms. G's 2014 CAT assessment required

⁶¹ 7 AAC 49.135.

⁶² *In the matter of T.E.*, OAH 16-1342-MDS (Commissioner of Health and Social Servs. 2017), n. 14.

⁶³ 2 AAC 64.290(a)(1).

⁶⁴ 7 AAC 126.026(a).

⁶⁵ 7 AAC 125.026(b)(3)(C).

⁶⁶ 7 AAC 125.026(f) and(g).

modification of her PCS awards for that activity. Changes in regulation justify changes in authorization. The *CFC Personal Care Service Level Reduction Chart* relied upon by Mr. Ndenderoh in making his determination was adopted by regulation.⁶⁷ Its guidance on how to calculate Bed Mobility is binding.

The Division also met its burden to reduce PCS for Medication Assistance.

The final question is whether the Division met its burden of proof to reduce Ms. G's PCS for Locomotion Access to Medical Appointments. The Division was informed that Ms. G's visits to Dr. C, her specialist, and her other doctors were reduced in 2020. Normally a reduction in medical visits or other care would indicate improvement in the care recipient's functioning from which a reduction in need for services could be inferred.

However, that is not the case here. The reduction in medical appointments was not due to an improvement in Ms. G's condition. Instead, the reduction was directly caused by the COVID-19 pandemic and restrictions that prevented Ms. G's access to her doctors.

7 AAC 126.026(a) authorizes a reduction in services upon a showing that the care recipient "has experienced a change that alters the recipient's need for physical assistance with ADLs, IADLs, or other covered services." It is undisputed that Ms. G did not, in fact, experience a change that altered her need for services. To the contrary, had Ms. G been able to safely do so, she would have seen her medical care providers more than 6 times in 2020. The number of medical appointments she will actually have is unknown at this point given that her health is worse and guidance on medical response to the pandemic is fluid as the virus mutates. However, given the compelling circumstances surrounding the global COVID-19 pandemic and the fact that it is more probable than not Ms. G will attend more medical appointments in 2021 than she did in 2020, this decision concludes in the limited circumstance presented here that the Division did not meet its burden of proof to reduce Ms. G's PCS for Locomotion to Access Medical Appointments. Her authorized frequency will remain at 2. As a result, her time for Escort is modified from 3 to 6 minutes per week.

V. Conclusion

After the hearing the Division amended Ms. G's service authorization to include time for PROM and Eating.

⁶⁷ 7 AAC 125.024(a); 7 AAC 160.900(d)(29).

The Division met its burden to show that reduction or elimination of PCS for Bed Mobility and Medication Assistance was correct. It also met its burden of proof to eliminate PCS for Multi-Level Locomotion.

The Division did not meet its burden to show that Ms. G experienced a physical change that altered her need for physical assistance with Locomotion to Access Medical Appointments.

As a result, the Division's decision is upheld in part and reversed in part, with the 2021 CAT adjusted as follows:

<u>Activity</u>	<u>Scoring</u>	<u>Weekly Frequency</u>
Eating	4/2	21
Locomotion Access Medical	4/2	2
Medication Assistance	4/2	14
Escort		6 weekly minutes
Range of Motion		420 weekly minutes

The remainder of the PCS service plan remains unchanged.

Dated: July 30, 2021

Signed _____
Carmen E. Clark
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 13th day of August, 2021.

By: *Signed* _____
Name: Carmen Clark
Title: Administrative Law Judge

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