

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

In the Matter of	)	
	)	
E T	)	OAH No. 19-0050-MDS
_____	)	Agency No.

**DECISION**

**I. Introduction**

E T was receiving 10.75 hours per week of personal care services (PCS) when she was reassessed to determine her continued eligibility for those services. Based primarily on a reassessment visit on May 8, 2018, the Division of Senior and Disabilities Services notified Ms. T on January 9, 2019 that her PCS hours would be reduced to 2 hours. The reduction of services resulted from what the Division perceived as improvements or changes in Ms. T’s functioning and living conditions. Ms. T requested a hearing.

The evidence at the hearing showed that some of the reductions were appropriate. However, Ms. T continues to be eligible for some PCS hours that were reduced, and the Division conceded that some of the Division’s other findings were in error. Accordingly, the Division’s decision is affirmed in part and reversed in part. The Division shall provide Ms. T services as specified in this decision.

**II. The PCS Service Determination Process**

The Medicaid program authorizes PCS to provide physical assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs), and other services based on the recipient’s functional limitations and physical condition.<sup>1</sup> Accordingly, the Division will not authorize personal care services for a recipient if, after an assessment, it determines that the recipient does not need a certain level of assistance or that he or she “needs only cueing or supervision . . . to perform an ADL, IADL, or other covered service . . .”<sup>2</sup>

The Division uses the Consumer Assessment Tool, or “CAT,” to score eligibility for the PCS program, and the amount of assistance, if any, that an eligible person needs to perform ADLs, IADLs, and the other covered services.<sup>3</sup> In general, if a recipient requires certain levels of assistance, the regulations prescribe a fixed number of PCS minutes for each occurrence of that activity.

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<sup>1</sup> 7 AAC 125.010; 7 AAC 125.020.  
<sup>2</sup> 7 AAC 125.020(d)(2).  
<sup>3</sup> See 7 AAC 125.024(a)(1); 7 AAC 125.020(c)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900.

As a gateway to eligibility for PCS, the CAT evaluates a subset of the ADLs and IADLs. If a person requires some degree of hands-on physical assistance with any one of these ADLs or IADLs, then the person is eligible for PCS services. Once eligibility is established, time for additional ADLs and IADLs, as well as certain other covered services, can be added to the PCS authorization.

The ADLs measured by the CAT are bed mobility, transfers (mechanical or non-mechanical), locomotion (in room, between levels, and access to medical appointments), dressing, eating, toilet use, personal hygiene, and bathing.<sup>4</sup> The CAT numerical coding system for ADLs has two components: self-performance code and support code.

The *self-performance codes* rate how capably a person can perform a particular ADL. The possible codes are: **0** (the person is independent<sup>5</sup> and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance<sup>6</sup>); **3** (the person requires extensive assistance<sup>7</sup>); and **4** (the person is totally dependent<sup>8</sup>). There are also two other 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).<sup>9</sup>

The *support 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); and **3** (two or more persons physical assist required). Again, there are two 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).<sup>10</sup>

The CAT also codes certain activities known as “instrumental activities of daily living” (IADLs). These are light meal preparation, main meal preparation, telephone use, light and routine housekeeping,

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<sup>4</sup> Ex. D at 16-21.

<sup>5</sup> 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 at 16.

<sup>6</sup> Limited assistance with an ADL means a recipient who is “highly involved in the activity; received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance 3+ times – or – Limited assistance . . . plus weight-bearing 1 or 2 times during the last 7 days.” Ex. D at 16.

<sup>7</sup> Extensive assistance with an ADL means that the recipient “performed part of the activity, over last 7-day period, help of following type(s) provided 3 or more times: weight-bearing support or full staff/caregiver performance of activity during part (but not all) of last 7 days.” Ex. D at 16.

<sup>8</sup> Dependent as to an ADL, or dependent as to and IADL, means “full staff/caregiver performance of activity during ENTIRE 7 days.” Ex. D at 16.

<sup>9</sup> Ex. D at 16.

<sup>10</sup> Ex. D at 16.

management of finances, grocery shopping, laundry (in-home or out-of-home), and transportation.<sup>11</sup> Like ADLs, the CAT rates self-performance and support for IADLs.

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).<sup>12</sup>

The *support codes* for IADLs are also slightly different than the support codes for ADLs. The support codes for IADLs are: **0** (no support provided); **1** (supervision / cueing provided); **2** (set-up help only); **3** (physical assistance provided); and **4** (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>13</sup>

The codes assigned to a particular ADL or IADL determine how much PCS time a person receives for each incidence of a particular activity. For instance, if a person were coded as requiring extensive assistance (self-performance code of 3) with bathing, she would receive 22.5 minutes of PCS service time each time she was bathed.<sup>14</sup> The regulations do not provide the Division with the discretion to change the amounts specified by the formula.

### **III. Background Facts**

Ms. T is 64 years old.<sup>15</sup> Her health conditions include: cranial nerve disorder, double vision, hypertension, Type 2 Diabetes with polyneuropathy, restless leg syndrome, migraines, low back pain, morbid obesity, ankle pain, functional urinary incontinence, nerve palsy in her left eye, generalized arthritis, arteritis, chronic obstructive pulmonary disease, tremor, chronic idiopathic constipation, herniated disc L3-4 and L4-5, lumbar spondylosis, bilateral osteoarthritis in her knees, sacroiliac joint

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<sup>11</sup> Ex. D at 36-37.

<sup>12</sup> Ex. D at 36.

<sup>13</sup> Ex. D at 36.

<sup>14</sup> See 7 AAC 125.024(a)(1) and the Division's *Personal Care Assistance Service Level Computation* chart contained at Ex. D at 5-6.

<sup>15</sup> Ex. D at 11.

dysfunction, torn rotator cuff in her left shoulder, and sleep apnea.<sup>16</sup> There is also a note in her May 8, 2018 CAT about an “encounter for aftercare following heart transplant.”<sup>17</sup>

Ms. T was receiving 10.75 hours of weekly PCS services in 2018.<sup>18</sup> However, on May 8, 2018, Division Health Program Manager Robin Platt reassessed Ms. T’s PCS needs.<sup>19</sup> During the assessment, Ms. T demonstrated that she could touch her head; she could touch her hands over her head; she could touch her hands together behind her back; and she had a strong grip in both hands.<sup>20</sup> Although it was uncomfortable, Ms. T could touch her feet in a sitting position.<sup>21</sup> While Ms. T expressed concern about balance issues, she reported that she thought she could cross her arms to stand up.<sup>22</sup> Ms. Platt observed Ms. T lay down on the bed, get comfortable and then get up again on her own without any assistance.<sup>23</sup> Ms. Platt observed Ms. T use a walker to pull herself up to a standing position without any assistance.<sup>24</sup> Ms. Platt noted that Ms. T walks with the use of her walker independently inside her home—for example, she walked from the front room to the bedroom, bathroom, and back again without assistance.<sup>25</sup> Ms. Platt observed Ms. T reach to the floor to pick up and move shoes that were beside her bed so that she could move her walker between the wall and the bed.<sup>26</sup> Ms. Platt noted that Ms. T picked up and moved her walker with a large cat sitting on the seat of the walker.<sup>27</sup> Ms. T reported that she could fasten buttons, zippers, and snaps, and Ms. Platt observed Ms. T put on and remove a sweater independently without any assistance.<sup>28</sup> Ms. Platt opined that Ms. T had adequate range of motion.<sup>29</sup>

Ms. T, who lives alone,<sup>30</sup> provides most of her care independently.<sup>31</sup> For instance, Ms. T’s personal care assistant does not help Ms. T with transfers, locomotion, or toileting.<sup>32</sup> Ms. T cooks some of her own meals and feeds herself.<sup>33</sup> Ms. T brushes her own teeth, washes her own face, and combs her

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<sup>16</sup> Ex. D at 13; Ex. 1; Ex. 2.

<sup>17</sup> Ex. D at 13.

<sup>18</sup> Ex. D at 1.

<sup>19</sup> *See generally* Ex. D. Robin Platt Testimony.

<sup>20</sup> Ex. D at 15, 18; Platt Testimony.

<sup>21</sup> Ex. D at 15; Platt Testimony.

<sup>22</sup> Ex. D at 15; Platt Testimony.

<sup>23</sup> Ex. D at 16; Platt Testimony.

<sup>24</sup> Ex. D at 17; Platt Testimony.

<sup>25</sup> Ex. D at 17; Platt Testimony.

<sup>26</sup> Ex. D at 19; Platt Testimony.

<sup>27</sup> Ex. D at 19; Platt Testimony.

<sup>28</sup> Ex. D at 18; Platt Testimony.

<sup>29</sup> Platt Testimony.

<sup>30</sup> Ex. D at 11.

<sup>31</sup> T Testimony; Ex. D at 16-19.

<sup>32</sup> T Testimony; Platt Testimony; Ex. D at 16-19.

<sup>33</sup> Ex. D at 18.

own hair.<sup>34</sup> Although Ms. T dresses herself, including putting on her shoes and ankle braces, Ms. T needs assistance with putting on compression hose.<sup>35</sup> For bathing, Ms. T reported during her assessment that someone washes her back and hair, but she washes the rest of her body.<sup>36</sup> At hearing, Ms. T explained that although she can mostly bathe herself, she needs help cleaning and drying her feet, she gets dizzy when standing, and needs help getting in and out of the bathtub.<sup>37</sup> Ms. T has fallen several times.<sup>38</sup>

Ms. T is also mostly independent with her IADLs. She can sort and fold her laundry, but she needs assistance getting it to and from the laundry mat and putting it away.<sup>39</sup> Ms. T has difficulty and experiences agonizing pain performing some housework, such as mopping, sweeping, or vacuuming, but she can do some light housework, such as dusting and loading a dishwasher one meal at a time.<sup>40</sup> She needs assistance changing her bedding.<sup>41</sup> Ms. T cannot stand in front of the sink or stove for any extended period of time and bending over and standing up cause dizziness.<sup>42</sup> Although her hands are unsteady and it is difficult, Ms. T can prepare meals for herself.<sup>43</sup> Ms. T's personal care assistant helps her with her shopping.<sup>44</sup> At the store, Ms. T uses a motorized cart, and the assistant pushes a shopping cart and helps Ms. T get things that are too high or too heavy off the shelf.<sup>45</sup> Ms. T also needs help unloading the cart and putting the groceries away.<sup>46</sup>

Ms. T's hearing was held on March 29, 2019. Ms. T represented herself and testified on her own behalf. D L, from Ms. T's PCS agency, ResCare also testified on Ms. T's behalf. Victoria Cobo represented the Division. Health Program Manager and Assessor Robin Platt testified for the Division. The record was left open until April 1, 2019 to allow Ms. T the opportunity to submit additional medical records she wanted considered. All evidence submitted by the parties was admitted into the record without objection.

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<sup>34</sup> T Testimony; Ex. D at 18.

<sup>35</sup> T Testimony; Ex. D at 18.

<sup>36</sup> Ex. D at 19.

<sup>37</sup> T Testimony.

<sup>38</sup> T Testimony.

<sup>39</sup> T Testimony.

<sup>40</sup> T Testimony.

<sup>41</sup> T Testimony.

<sup>42</sup> T Testimony.

<sup>43</sup> T Testimony; Ex. D at 18.

<sup>44</sup> T Testimony.

<sup>45</sup> T Testimony.

<sup>46</sup> T Testimony.

#### IV. Discussion

When the Division is seeking to reduce or eliminate a benefit a recipient is already receiving, the Division has the overall burden to prove, by a preponderance of the evidence,<sup>47</sup> facts that show the recipient's level of eligibility has changed.<sup>48</sup> In the context of PCS services, the Division must show that the "recipient has experienced a change that alters the recipient's need for physical assistance with ADLs, IADLs, or other covered services."<sup>49</sup> The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs,<sup>50</sup> including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the basis of the Division's determination is generally the date of the agency's decision under review.<sup>51</sup>

##### A. *Transferring (Non-Mechanical)*

Transfers are defined in the CAT as "how a person moves between surfaces – to/from bed, chair, wheelchair, standing position (excluding to/from bath/toilet)."<sup>52</sup> Ms. T was previously assessed with a score of 2/2 (i.e. needing limited assistance with one-person physical assist), with a frequency of 28 times per week for non-mechanical transfers.<sup>53</sup> After reassessing Ms. T, the Division found that Ms. T is physically capable of standing on her own with the use of her walker, cane, or solid furniture and gave her a score of 0/0 (i.e. independent with no setup or physical help needed).<sup>54</sup> The Division removed time for transfers.<sup>55</sup>

In her assessment, Ms. T demonstrated how she stands up and sits down.<sup>56</sup> Ms. T has a walker and cane that she uses to stand from a seated position.<sup>57</sup> Ms. T was able to do so without any assistance.<sup>58</sup> Indeed, Ms. Platt observed Ms. T independently stand, bend over, lift and move shoes from her bedside.<sup>59</sup> In short, the Division has met its burden of proving that it is more likely true than

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<sup>47</sup> Proof by a preponderance of the evidence means that the fact in question is more likely true than not true.

<sup>48</sup> 7 AAC 49.135.

<sup>49</sup> 7 AAC 125.026(a).

<sup>50</sup> 2 AAC 64.290(a)(1).

<sup>51</sup> 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>).

<sup>52</sup> See Ex. D at 16.

<sup>53</sup> Ex. D at 2, 8.

<sup>54</sup> Ex. D at 8.

<sup>55</sup> Ex. D at 16.

<sup>56</sup> Platt Testimony; Ex. D at 16.

<sup>57</sup> Platt Testimony; Ex. D at 16.

<sup>58</sup> Platt Testimony; Ex. D at 16.

<sup>59</sup> Ex. D at 17; Platt Testimony.

not true that Ms. T can move between surfaces independently. And the Division’s decision to remove time for transfers is thus affirmed.

**B. Locomotion (Between Locations)**

Locomotion is defined in the CAT as “how a person moves between locations in his/her room and other areas on the same floor. . . .”<sup>60</sup> Ms. T was previously assessed with a score of 1/1 (i.e. needing supervision with set-up help only) for locomotion.<sup>61</sup> After reassessing Ms. T, the Division gave her a score of 0/0 (i.e. independent with no setup or physical help needed).<sup>62</sup> Because Ms. T did not receive PCS time for supervision and set-up help under the previous CAT, no time was removed for this activity.

As with transfers, Ms. Platt based her assessment on a finding that with an assisted device, such as a cane or walker, Ms. T was physically capable of walking without assistance.<sup>63</sup> Indeed, Ms. Platt testified, and Ms. T did not dispute, that Ms. T walked around her home with the use of her walker with no assistance during the assessment.<sup>64</sup> Accordingly, the Division met its burden of proving that it is more likely true than not true that with the use of a walker, Ms. T can move from room to room in her house without assistance. That decision is affirmed.

**C. Locomotion (Access to Medical Appointments)**

On Ms. T’s previous assessment, she was assessed as needing limited assistance to access medical appointments, with a frequency of one time per week.<sup>65</sup> After reassessing Ms. T, the Division gave her a score of 0 (i.e. independent) and removed time for this activity.<sup>66</sup>

Ms. Platt concluded that Ms. T can independently walk the short distances around her home with the use of a walker or cane.<sup>67</sup> Ms. Platt also noted that Ms. T reported going to garage sales the weekend before the assessment.<sup>68</sup> But the Division presented no evidence or argument at the hearing that was specific to Ms. T’s ability to ambulate the longer distances necessary to access medical appointments *without assistance*.<sup>69</sup> There is no evidence that Ms. T went to the garage sales without

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<sup>60</sup> See Ex. D at 17.  
<sup>61</sup> Ex. D at 2, 8.  
<sup>62</sup> Ex. D at 8, 16.  
<sup>63</sup> Ex. D at 17; Platt Testimony.  
<sup>64</sup> Platt Testimony.  
<sup>65</sup> Ex. D at 2, 8.  
<sup>66</sup> Ex. D at 8.  
<sup>67</sup> Ex. D at 17.  
<sup>68</sup> Ex. D at 17.  
<sup>69</sup> Ex. D at 17.

assistance, and there is nothing in the CAT that sheds any light on the rationale for reducing the level of assistance Ms. T requires.<sup>70</sup> The fact that Ms. T can navigate the short distances in her house or that she went to a garage sale is insufficient to establish that Ms. T is physically capable of ambulating to access medical appointments independently. Indeed, the preponderance of the evidence shows that Ms. T cannot be on her feet for any length of time.<sup>71</sup> In the absence of any evidence or argument at the hearing or any support in the CAT, the Division cannot be said to have met its burden of establishing by a preponderance of the evidence that Ms. T' locomotion to access medical appointments time should be removed. Accordingly, Ms. T' PCS time should be recalculated to include time for limited assistance to access medical appointments, with a frequency of one time per week.<sup>72</sup>

#### ***D. Dressing***

Dressing is defined in the CAT as “how a person puts on, fastens, and takes off all items of street clothing, including donning/removing prosthesis.”<sup>73</sup> Ms. T was previously scored 2/2 (i.e. needing limited assistance with one-person physical assist), with a frequency of 14 times per week for dressing.<sup>74</sup> After reassessing Ms. T, the Division gave her a score of 0/0 (i.e. independent with no set-up or physical help from staff) and eliminated time for this service.<sup>75</sup>

During the assessment, Ms. T demonstrated that she could touch her head; she could touch her hands over her head; she could touch her hands together behind her back; and she had a strong grip in both hands.<sup>76</sup> Although she had some discomfort when touching her feet in a sitting position, Ms. T could touch her feet.<sup>77</sup> Though difficult and painful, Ms. T can and does dress herself.<sup>78</sup> Nevertheless, at hearing, Ms. T reported that she needs assistance putting compression hose on, and the Division conceded that it would be appropriate to give some PCS time for putting on her compression hose.<sup>79</sup>

The preponderance of the evidence shows that Ms. T is physically capable of dressing herself, but she needs assistance with putting on her compression hose. For this reason, the Division conceded

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<sup>70</sup> Ex. D at 17.

<sup>71</sup> T Testimony.

<sup>72</sup> Ex. D at 2, 8.

<sup>73</sup> See Ex. D at 18.

<sup>74</sup> Ex. D at 2, 8.

<sup>75</sup> Ex. D at 8.

<sup>76</sup> Ex. D at 15; Platt Testimony.

<sup>77</sup> Ex. D at 15.

<sup>78</sup> Ex. D at 18; T Testimony.

<sup>79</sup> T Testimony; Victoria Cobo Testimony.



that Ms. T should be given a self-performance score of 2, and an overall score of 2/2 for dressing, with a frequency of 7 times per week.<sup>80</sup> Ms. T' PCS time should be recalculated to reflect this concession.

### ***E. Toileting***

The CAT defines “Toileting” as “how a person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, cleanses, changes pad, . . . adjusts clothes.”<sup>81</sup> Ms. T was previously scored 2/2 (i.e. needing limited assistance with one-person physical assist), with a frequency of 14 times per week for toileting.<sup>82</sup> After reassessing Ms. T, Ms. Platt scored her as independent, needing no set up or physical help (a score of 0/0) for toilet use.<sup>83</sup> Ms. Platt reasoned that Ms. T changes her own pads and cleans herself as needed after using the toilet.<sup>84</sup> Ms. Platt noted that during the assessment, Ms. T had a raised toilet seat in her bathroom, and she observed that Ms. T “independently went into the bathroom, and a few minutes later she exited the bathroom, presumably after using the toilet.”<sup>85</sup> Ms. T testified that she does not need assistance with toileting.<sup>86</sup>

Accordingly, the Division met its burden of proving that it is more likely true than not true that Ms. T can and does use the toilet room independently. That decision is affirmed.

### ***F. Bathing***

Bathing is defined as “how [a] person takes full body bath/shower, sponge bath, and transfers in/out of tub/shower.”<sup>87</sup> The CAT’s self-performance scoring for bathing differs somewhat from the scoring for the other ADLs.<sup>88</sup> For bathing, self-performance scores are as follows: A self-performance code of **1**, labeled as “Supervision,” is defined to mean “oversight help only.”<sup>89</sup> A self-performance code of **2** is defined as “physical help limited to transfer only.”<sup>90</sup> A self-performance code of **3** is defined as “physical help in part of bathing activity.”<sup>91</sup> A self-performance code of **4** is defined as “total dependence” with bathing.<sup>92</sup> Ms. T was previously scored 2/2 (i.e. needing one-person physical assist

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<sup>80</sup> Cobo Testimony.

<sup>81</sup> Ex. D at 18.

<sup>82</sup> Ex. D at 2, 8.

<sup>83</sup> Ex. D at 2, 8, 18.

<sup>84</sup> Ex. D at 18; Platt Testimony.

<sup>85</sup> Ex. D at 18; Platt Testimony.

<sup>86</sup> T Testimony.

<sup>87</sup> See Ex. D at 19.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> Ex. D at 19.

with transfers), with a frequency of 3 times per week for bathing.<sup>93</sup> After reassessing Ms. T, the Division gave her a score of 0/0 (i.e. independent with no set-up or physical help from staff) and eliminated time for this service.<sup>94</sup>

At hearing, Ms. T testified that although she can mostly bathe herself, she needs help cleaning and drying her feet, she gets dizzy, and needs help getting in and out of the bathtub.<sup>95</sup> She has fallen several times.<sup>96</sup>

The Division conceded that Ms. T needs assistance with getting in and out of her bath and agreed to amend the assessment to a 2/2, for assistance with bathing once a day, 7 days per week. Ms. T' PCS time should be recalculated to reflect this concession.

### ***G. Instrumental Activities of Daily Living***

Ms. T was previously provided assistance for her IADLs of light meal preparation, main meal preparation, light and routine housework, shopping, and in-home laundry.<sup>97</sup> After reassessing Ms. T, the Division concluded that she is independent and able to make her own light and main meals and do her own shopping without support.<sup>98</sup> The Division thus eliminated time for these services.<sup>99</sup> The Division approved the same level of service for light and routine housework, and because Ms. T' circumstances changed from in-home laundry to out-of-home laundry, the Division increased her laundry service time from 15 minutes per week to 45 minutes per week.<sup>100</sup>

#### **1. Light and Main Meal Preparation**

For light meal preparation and main meal preparation, the Division previously assessed Ms. T as independent, but because these activities were performed with difficulty, the Division provided physical assistance.<sup>101</sup> After reassessing Ms. T, the Division concluded that she is capable of independently preparing her own meals and removed time for these services.<sup>102</sup>

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<sup>93</sup> Ex. D at 2, 8.

<sup>94</sup> Ex. D at 2, 8, 19.

<sup>95</sup> T Testimony.

<sup>96</sup> T Testimony.

<sup>97</sup> Ex. D at 3, 8.

<sup>98</sup> Ex. D at 3, 8.

<sup>99</sup> Ex. D at 3, 8.

<sup>100</sup> Ex. D at 3, 8.

<sup>101</sup> Ex. D at 3, 8, 36.

<sup>102</sup> Ex. D at 3, 8, 36.

During the assessment, Ms. T demonstrated good range of motion and a strong grip in both hands.<sup>103</sup> Ms. T can independently stand from a seated position and move around her house with the use of a walker or cane.<sup>104</sup> Ms. T was independently able to reach to the floor, pick up and move shoes that were beside her bed, and move her walker between the wall and the bed.<sup>105</sup> Indeed, she was able to move her walker with a large cat sitting on its seat.<sup>106</sup> Ms. T cannot stand in front of the stove for any extended period of time and bending over and standing up cause dizziness, but she can prepare food at the kitchen table.<sup>107</sup> Although her hands are unsteady and although it may be more difficult or time-consuming for Ms. T to prepare her own meals, the evidence does not support a conclusion that Ms. T is unable to do so. On the contrary, Ms. T can and does prepare meals for herself.<sup>108</sup>

A person is not entitled to receive PCS assistance if the task can “reasonably be performed by the recipient.”<sup>109</sup> A review of the evidence demonstrates that Ms. T has enough physical functionality to put together a meal. Accordingly, the Division has met its burden to show that Ms. T can reasonably prepare her light and main meals. Accordingly, the Division’s decision to remove time for these activities is affirmed.

## 2. Shopping

Ms. T was previously scored 2/3 (i.e. assistance/done with help; physical assistance) for shopping.<sup>110</sup> After the May 2018 reassessment, the Division gave her a score of 1/0 (i.e. independent with difficulty; no support provided) and removed time for this activity.<sup>111</sup>

As discussed, Ms. T can use her arms and hands, and she has some grip strength in both hands.<sup>112</sup> She cannot stand for long periods of time, but she can independently stand, turn, bend over, lift and carry light objects, and walk for a short distance with the use of a walker or cane.<sup>113</sup> That said, Ms. T is not independent with her grocery shopping.<sup>114</sup> At the store, Ms. T uses a motorized cart, and her

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<sup>103</sup> Ex. D at 15; Platt Testimony.

<sup>104</sup> Ex. D at 16; Platt Testimony.

<sup>105</sup> Ex. D at 19; Platt Testimony.

<sup>106</sup> Ex. D at 19; Platt Testimony.

<sup>107</sup> T Testimony.

<sup>108</sup> T Testimony.

<sup>109</sup> 7 AAC 125.040(a)(4).

<sup>110</sup> Ex. D at 2, 8, 36.

<sup>111</sup> Ex. D at 2, 8, 36.

<sup>112</sup> Ex. D at 15; Platt Testimony.

<sup>113</sup> Ex. D at 19; Platt Testimony.

<sup>114</sup> T Testimony.

personal care assistant pushes a shopping cart and helps Ms. T get things that are too high or too heavy off the shelf.<sup>115</sup> Ms. T also needs help unloading the cart and putting the groceries away.<sup>116</sup>

There is nothing in the record or the CAT that explains the elimination of time for shopping.<sup>117</sup> The fact that Ms. T can navigate the short distances in her house or that she went to a garage sale is insufficient to establish that Ms. T is physically capable of shopping independently. Indeed, the preponderance of the evidence shows that Ms. T cannot be on her feet for any length of time, she gets dizzy standing up and sitting down, and she has a torn rotator cuff that limits her ability to reach for items.<sup>118</sup> In the absence of any evidence or argument at the hearing or any support in the CAT, the Division cannot be said to have met its burden of establishing by a preponderance of the evidence that Ms. T' time for shopping should be removed. Accordingly, Ms. T' PCS time should be recalculated to include time for grocery shopping once a week.<sup>119</sup>

**V. Conclusion**

Some of the Division's findings in its May 2018 assessment were in error. Accordingly, the Division's decision is affirmed in part and reversed in part. The Division shall recalculate Ms. T's PCS benefit time consistent with this decision.

Dated: April 10, 2019

*Signed* \_\_\_\_\_  
Jessica Leeah  
Administrative Law Judge

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<sup>115</sup> T Testimony.

<sup>116</sup> T Testimony.

<sup>117</sup> Ex. D at 17.

<sup>118</sup> T Testimony.

<sup>119</sup> Ex. D at 3, 8.

## 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 24<sup>th</sup> day of April, 2019.

By: Signed \_\_\_\_\_  
Jessica Leeah  
Administrative Law Judge

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