

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

In the Matter of )  
 )  
J W ) OAH No. 17-1087-MDS  
 ) Agency No.  
\_\_\_\_\_)

**FINAL DECISION AFTER REMAND**

**I. Introduction**

J W experiences severe schizoaffective disorder. This case involves the number of Personal Care Services (PCS) hours for which he is eligible under the Alaska Medicaid program. Following a September 2017 reassessment of Mr. W’s medical condition and functional abilities, the Division of Senior and Disabilities Services (Division) notified him it was reducing his PCS authorization from 12.25 hours per week to 5.25 hours. Through F F, Mr. W’s sister and legal guardian, Mr. W appealed.

The issues on appeal involve Mr. W’s functional abilities and needs for assistance with the activity of daily living (ADL) of personal hygiene, the instrumental activities of daily living (IADLs) of light meal and main meal preparation, shopping, and laundry, and the other covered activities of medication assistance, vital signs/glucose levels, and escort to medical appointments.

The Commissioner’s delegee declined to adopt the proposed decision that was issued on January 19, 2018. The remand order stayed resolution of this case pending a final decision in another matter, which would clarify recent PCS regulation changes and provide guidance on whether and how the Division is to consider cognitive impairment when assessing a person’s physical condition and functional limitations. The remand order also required the ALJ to reexamine whether Mr. W can participate in the preparation, serving, or cleanup of his main meal.

The decision in *In re P.J.* became final on May 30, 2018.<sup>1</sup> There, the Commissioner’s delegee determined that new PCS regulations resulted in no significant changes to PCS eligibility rules or goals, and that they do not preclude consideration of a recipient’s cognitive or mental impairment when determining his or her physical condition or functional limitations. This clarifies that Mr. W’s schizoaffective disorder can be the basis for authorizing PCS assistance.

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<sup>1</sup> *In re P.J.*, OAH No. 17-1083-MDS (Comm’r of Dep’t. Health & Soc. Services, May 30, 2018).

The evidence shows that his schizophrenia and resulting cognitive impairment are part of his physical condition, which results in functional limitations and needs for physical assistance.

Following a supplemental hearing on August 9, 2018, this final decision partially upholds and partially reverses the Division's determination of the PCS services for which Mr. W is eligible. Except for the main meal preparation score, it reflects the same ratings set out in the proposed decision. For main meals, the Division correctly determined that Mr. W requires physical assistance, but he can be involved; he is not totally dependent on others, as the proposed decision had found. Like the proposed decision, this decision reverses reductions in the areas of personal hygiene, light meal preparation, grocery shopping, laundry (in-home), and medication assistance, since the Division did not show that Mr. W's functionality and needs for physical assistance have changed. It affirms the elimination of PCS authorization for the activities of vital signs/glucose levels and escort to medical appointments due to regulatory changes.

## **II. Background**

The following facts were established by a preponderance of the evidence.

### *A. Material Facts*

J W is 50 years old. He experiences severe schizoaffective disorder that impairs his ability to function independently in many areas of daily life.<sup>2</sup> His other medical diagnoses include anorexia, Type 2 diabetes mellitus, and lumbago.<sup>3</sup> Mr. W lives with Ms. F and her family.

Apart from his mental illness, Mr. W has the physical capacity to engage in the ADLs and IADLs that are relevant to PCS service determinations. He can walk and get in and out of bed or chairs, and he has good range of motion and functionality with his hands.<sup>4</sup> The parties disagreed whether he requires physical assistance for certain activities because his mental illness regularly prevents him from comprehending or following verbal instructions or other cues.

Mr. W's cognitive disorder is extreme, and his impairment appears to be worsening as he ages.<sup>5</sup> Ms. F likened his overall self-management and response skills to those of a two-year-old. She credibly testified that her brother's condition and ability to function varies widely from hour

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<sup>2</sup> Exhibit E; Exhibit 1, pp. 5 - 9 (Alaska Community Mental Health evaluation dated 4/2/17); Exhibit 1, pp. 12-17 (Anchorage Neighborhood Health Center records); F testimony.

<sup>3</sup> Exhibit E, p. 3.

<sup>4</sup> Exhibit 1; Exhibit E.

<sup>5</sup> Exhibit 1, p. 12.

to hour. In his good moments, Mr. W can do some tasks on his own or with mere supervision or verbal cueing. However, there are certain tasks he will not undertake, even when things are going well. When things are not going well, which happens frequently, Mr. W simply does not respond to repeated prompts. He also may become aggressive and more difficult to work with.

Mr. W can be physically or verbally aggressive, and he can be extremely agitated or anxious even after proper evaluation and treatment.<sup>6</sup> He regularly resists care. When he is aggressive or acting inappropriately, his behavior is not easily altered.<sup>7</sup> For these reasons, Ms. F's minor children do not supervise or assist their uncle. Because of his comprehension problems and history of aggression, he cannot be trusted to work with tools or sharp objects.

Mr. W is often confused and easily loses his train of thought. Ms. F explained that he may begin a sentence quite logically, but his statements typically devolve into an incoherent "word salad."

## *B. Procedural History*

### 1. The PCS Determination Process

The Medicaid program authorizes PCS for the purpose of providing assistance to a Medicaid recipient whose physical condition results in functional limitations that cause the recipient to be unable to perform, independently or with an assistive device, the activities covered by the program.<sup>8</sup> Covered activities are broken down into ADLs and IADLs. The only ADL at issue in this case is personal hygiene.<sup>9</sup> The IADLs at issue are light meal preparation, main meal preparation, laundry, and shopping.<sup>10</sup> PCS also can be provided for other covered activities, such as medication assistance, vital signs/glucose levels, and medical escort.<sup>11</sup> PCS are furnished by a Personal Care Assistant, usually abbreviated as "PCA."

PCS hours are not provided for activities that can "be performed by the recipient."<sup>12</sup> Nor are they allowed for "oversight or standby functions."<sup>13</sup>

The Division assesses recipients using the Consumer Assessment Tool, or "CAT", as a

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<sup>6</sup> Exhibit E, p. 18; F testimony; Exhibit 1, pp. 5-7.

<sup>7</sup> See Exhibit E, pp. 17, 26.

<sup>8</sup> 7 AAC 125.010(b)(1)(A).

<sup>9</sup> 7 AAC 125.030(b).

<sup>10</sup> 7 AAC 125.030(c).

<sup>11</sup> 7 AAC 125.030(d). The regulation contains specific conditions that a recipient must satisfy to receive these specialized services.

<sup>12</sup> 7 AAC 125.040(a)(4).

<sup>13</sup> 7 AAC 125.040(a)(10).

methodology to score both eligibility for the PCS program and the amount of assistance needed for covered activities and services.<sup>14</sup> The list of available services, time allotted for each service based upon severity of need, and the allowable frequency for each service is set out in the *Personal Care Services: Service Level Computation* instructions, which are adopted by reference into regulation.<sup>15</sup>

The CAT numerical coding system for ADLs has two components. The first component is the *self-performance code*. These codes rate how capable a person is of performing a particular ADL. The possible codes are: **0** (the person is independent and requires no help or oversight)<sup>16</sup>; **1** (the person requires supervision); **2** (the person requires limited assistance)<sup>17</sup>; **3** (the person requires extensive assistance)<sup>18</sup>; **4** (the person is totally dependent).<sup>19</sup> There are also codes which are not used in calculating a service level: **5** (the person requires cueing)<sup>20</sup>; and **8** (the activity did not occur during the past seven days).<sup>21</sup>

The second component of the CAT scoring system is the *support code*. These codes rate the degree of assistance that a person requires for a particular ADL. The possible codes are: **0** (no setup or physical help required); **1** (only setup help required); **2** (one-person physical assist required); **3** (two-or-more person physical assist required). Again, there are additional codes which are not used to arrive at a service level: **5** (cueing support required 7 days a week); and **8** (the activity did not occur during the past seven days).<sup>22</sup>

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<sup>14</sup> See 7 AAC 125.020(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900(d)(6).

<sup>15</sup> 7 AAC 125.024(a); 7 AAC 160.900(d)(29). The *PCS Service Level Computation* chart is in the record at Exhibit B, pp. 24-25. It can be found online at:

[http://dhss.alaska.gov/dsds/Documents/regulationMaterials/PCS\\_SL\\_A\\_Computation\\_Chart\\_6-2-2017.pdf](http://dhss.alaska.gov/dsds/Documents/regulationMaterials/PCS_SL_A_Computation_Chart_6-2-2017.pdf).

<sup>16</sup> A self-performance code of 0 is classified as “Independent – No help or oversight – or – Help/oversight provided only 1 or 2 times during the last 7 days.” See Exhibit E, p. 6.

<sup>17</sup> Limited assistance with an ADL is defined as “Person highly involved in activity; received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance 3+ times – or – Limited assistance (as just described) plus weight-bearing 1 or 2 times during last 7 days.” See Exhibit E, p. 6.

<sup>18</sup> Extensive assistance is defined as “While person performed part of activity, over last 7-day period, help of following type(s) provided 3 or more times: Weight-bearing support [;] Full staff/caregiver performance during part (but not all) of last 7 days.” See Exhibit E, p. 6.

<sup>19</sup> Total dependence is defined as “Full staff/caregiver performance of activity during ENTIRE 7 days.” See Exhibit E, p. 6.

<sup>20</sup> Cueing is defined as “Spoken instruction or physical guidance which serves as a signal to do an activity are required 7 days a week. Cueing is typically used when caring for individuals who are cognitively impaired.” See Exhibit E, p. 6.

<sup>21</sup> See *id.*

<sup>22</sup> See *id.*

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>23</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 was provided); and **4** (total dependence - the person was not involved at all when the activity was performed). Again, there is an additional code that is not used to arrive at a service level: **8** (the activity did not occur).<sup>24</sup>

When an individual qualifies for PCS, the codes determine how much PCS time the individual receives for each occurrence of a particular activity. For instance, if a person is coded as requiring extensive assistance (self-performance code 3) with bathing, he or she would receive 22.5 minutes of PCS time every day he or she is bathed.<sup>25</sup> For covered services beyond assistance with ADLs and IADLs, specific rules apply that are discussed as appropriate.

## 2. Mr. W's 2014 PCS Authorization

In 2014, the Division approved 12.25 PCS hours per week for Mr. W. It primarily based this authorization on a March 3, 2014 assessment of his medical condition and functional abilities, as adjusted after an administrative appeal.<sup>26</sup> In relevant part, the 2014 PCS authorization was based on the Division's conclusions that:

- *Personal Hygiene ADL*: Mr. W required limited assistance, (self-performance code 2, support code 2, frequency 7 per week);

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<sup>23</sup> See *id.*

<sup>24</sup> See *id.*

<sup>25</sup> 7 AAC 125.024(a); 7 AAC 160.900(d)(29) (PCS Service Level Computation chart).

<sup>26</sup> Exhibits D, H; *In re J W*, OAH No. 14-1382-MDS (Comm'r, DHSS, December 16, 2014).

- *IADLs*: Mr. W could be involved, but he required physical assistance with main meal preparation, light meal preparation, shopping and in-home laundry (self-performance code 2, support code 3);<sup>27</sup>
- *Other Covered Activities*: Mr. W qualified for medication assistance (56 minutes per week); documentation of vital signs/glucose levels (56 minutes per week); and escort to medical appointments (131.5 minutes per week).<sup>28</sup>

### 3. Mr. W's 2017 Assessment

On September 26, 2017, Assessor Samantha Fili reassessed Mr. W so the Division could evaluate his ongoing program eligibility and appropriate PCS service level.<sup>29</sup> On October 23, 2017, the Division notified Mr. W it was reducing his PCS hours from 12.25 to 5.25 hours per week.<sup>30</sup> As of September and October 2017, Mr. W was not a recipient of Medicaid Home and Community-based Waiver program services.

The Division determined that Mr. W's medical or living condition had changed since the 2014 authorization.<sup>31</sup> It also concluded that recent regulatory changes required some service hour reductions. In relevant part, the 2017 assessment determined that Mr. W can perform his personal hygiene tasks without physical assistance, since he only requires cueing (self-performance code 5, support code 5).<sup>32</sup> As a result, the Division removed PCS assistance for this activity.

For Mr. W's IADLs, the Division removed PCS authorization for light meal preparation and shopping. It determined that Mr. W can prepare light meals twice daily without any assistance (self-performance code 0, support code 0). For shopping, it determined he is independent with difficulty and requires only set-up help (self-performance code 1, support code 2). For main meal

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<sup>27</sup> After the 2014 assessment, the score for main meal preparation was adjusted through the administrative appeal process, resulting in a finding that Mr. W was totally dependent on others. *In re J W*, OAH No. 14-1382-MDS. The PCS authorization nonetheless remained at self-performance code 2, support code 3. Exhibit D, pp. 9-10; Exhibit H, p. 7; Exhibit G. The parties agreed to leave that rating in place when they resolved a dispute arising from a June 2017 reduction notice. *See* Exhibit H, pp. 1, 8.

<sup>28</sup> Exhibit D; Exhibit H, p. 7. The 2014 assessment also allotted PCS time for the ADL of dressing. Exhibit H, p. 7. The 2017 assessment did not decrease this assistance. *See* Exhibit D, p. 9.

<sup>29</sup> Exhibit E. In June 2017, the Division had notified Mr. W it was reducing certain PCS hours, but it did not perform an assessment. *See* Exhibit H, p. 1. That reduction never took effect, because the parties agreed to leave in place the prior service authorization for 12.25 weekly hours until a new assessment was done. Exhibit H, p. 8.

<sup>30</sup> Exhibit D. The Division issued a corrected notice reflecting the same reduction on November 8, 2017. Exhibit G.

<sup>31</sup> Exhibit G, p. 2.

<sup>32</sup> Exhibit E, p. 10; Exhibit G.

preparation, it determined Mr. W can be involved, but he requires physical assistance (self-performance code 2, support code 3). The Division reduced the PCS authorization for laundry (in-home), after concluding Mr. W is independent with difficulty and requires physical assistance (self-performance code 1, support code 3).<sup>33</sup>

Due to Mr. W's improved personal hygiene rating, the Division removed PCS authorization for medication assistance. Due to regulatory changes, it removed PCS for escort to medical appointments and vital signs/glucose levels.<sup>34</sup>

Through his legal guardian, Mr. W appealed.<sup>35</sup> He argued that his service authorization should either remain the same or increase. The formal hearing took place on January 8, 2018. Ms. F represented Mr. W and testified on his behalf. L M, the program coordinator at Mr. W's PCS agency, and E S, Mr. W's PCS case manager, also testified. Hearing Representative Terri Gagne represented the Division. Samantha Fili testified for the Division. The hearing was recorded. All submitted documents were admitted into the record.

The parties fundamentally disagreed whether Mr. W requires physical assistance for certain activities because his mental illness regularly prevents him from comprehending or following verbal instructions or other cues. Ms. F argued that her brother is often incapable of responding to cues. The Division argued that Mr. W can perform many activities either independently, with supervision, or with verbal prompts/cues. It suggested that his frequent failure to respond to verbal prompting should be interpreted as behavioral resistance rather than a functional limitation.

The undersigned issued a proposed decision on January 19, 2018, upholding the elimination of PCS assistance for vital signs/glucose levels and escort to medical appointments. The proposed decision otherwise found that the Division had not shown that Mr. W's functionality and needs for physical assistance had changed, and it reversed the other reductions.

The Division's proposal for action argued that new PCS regulations preclude consideration of Mr. W's mental illness and cognitive impairment unless they are so severe as to physically

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<sup>33</sup> Exhibit E, p. 27; Exhibit G. Mr. W's score for light housework did not change. Exhibit D, p. 9.

<sup>34</sup> Exhibit G.

<sup>35</sup> Exhibit C.

prevent him from any ability to respond, such as in the case of advanced Alzheimer's disease. It also argued that the proposed decision overstated Mr. W's needs for physical assistance.

The Commissioner's delegee declined to adopt the proposal decision and returned the case to the ALJ under AS 44.64.060(e)(2). The remand ordered a stay until a final decision was issued in *In re P.J.*, which also involved questions about regulatory changes and consideration of cognitive or mental impairments when assessing an individual's physical condition and functional limitations. The remand also ordered a re-examination of whether and in what ways Mr. W may be able to assist in the preparation, serving, or cleanup of his main meal.

The final decision in *In re P.J.* held that recent regulatory changes did not make any significant changes to the relevant language or goals of the PCS program; the new regulations require assessment of a recipient's physical condition and functional abilities based on definitions and scoring that have not changed.<sup>36</sup> It concluded that the PCS regulations do not preclude consideration of a recipient's cognitive or mental disabilities when determining his or her functional limitations.<sup>37</sup>

A supplemental hearing in this matter took place on August 9, 2018. Ms. F represented Mr. W, with assistance from U Z and K W, case managers at No Name Care, Inc. Ms. Gagne represented the Division. A June 2, 2018 neuropsychological assessment of Mr. W was admitted to the record over the Division's objection, since it more likely than not provides relevant evidence regarding Mr. W's condition and abilities as of September and October 2017, the time period under consideration.

### **III. Discussion**

When the Division reduces a recipient's PCS time, it must show that the recipient has experienced a change that alters his or her need for physical assistance with ADLs, IADLs or other covered services.<sup>38</sup> The standard is preponderance of the evidence.<sup>39</sup> The Division can meet this burden using any evidence on which reasonable people might rely in the conduct of serious affairs, including such sources as written reports of firsthand evaluations of the patient. In general, the

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<sup>36</sup> See *In re P.J.* at p. 8.

<sup>37</sup> *Id.* at p. 9.

<sup>38</sup> 7 AAC 125.026(a). Mr. W bears the burden as to any activities for which he seeks an increase in PCS time.

<sup>39</sup> 7 AAC 49.135. Preponderance of the evidence means a fact in question is more likely true than not true. 2 AAC 64.290(e).



relevant timeframe for assessing the state of the facts is the date of the agency's decision under review.<sup>40</sup>

The parties agree Mr. W is eligible for PCS services. Following issuance of *In re P.J.*, they also agree that his schizoaffective disorder can be the basis for functional limitations that result in a need for physical assistance. The issues involve the extent of his functional limitations and the number of service hours for which he qualifies.

Mr. W did not challenge specific CAT scores. As a result, this decision reviews each area for which the Division initially reduced his service time: the ADL of personal hygiene; the IADLs of light meal and main meal preparation, shopping, and laundry (in home); and the covered services of medication assistance, vital signs/glucose levels, and escort to medical appointments.

#### *A. Personal Hygiene*

Personal hygiene includes matters such as combing hair, brushing teeth, shaving, and washing/drying face, hands and perineum, when done separately from bathing. It excludes baths and showers, but includes hair washing up to three times per week if bathing does not occur on the same day.<sup>41</sup>

The Division concluded that Mr. W can perform these activities if he receives cueing. Ms. F credibly testified that her brother regularly requires physical assistance to perform certain personal hygiene tasks, such as washing his hair. She indicated that he never completes this task independently, and mere reminders or other cues are not sufficient. She also observed that he will not shave or trim his fingernails without hands-on assistance. She submitted an April 2017 evaluation done by the Alaska Community Mental Health Service (ACMHS), which concluded that Mr. W's impairment is "extremely severe" with regard to the daily living activities of "health practices," "personal hygiene" and "grooming."<sup>42</sup>

On the day of his 2017 assessment, Ms. Fili observed that Mr. W understood and generally complied with her requests, though he displayed confusion and comprehension difficulties.<sup>43</sup> He required repeated prompting. Noting that Mr. W can transfer and ambulate independently, and he

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<sup>40</sup> See 7 AAC 49.170; *In re T.C.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013), available online at <http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf>.

<sup>41</sup> 7 AAC 125.030(b)(7); Exhibit E, p. 10; Exhibit B, p. 24 (*PCS Service Level Computation* chart).

<sup>42</sup> Exhibit 1, pp. 5-9. ACMHS has worked with Mr. W for approximately 15 years. F testimony.

<sup>43</sup> Exhibit E, p. 10.

can use his hands well, she concluded he can perform all his hygiene tasks if he receives cueing.<sup>44</sup> During the hearing, she indicated that Mr. W's family often provides set-up help in addition to prompts for his personal hygiene activities.

As clarified in *In re P.J.*, Mr. W's range of motion and ability to move are not determinative of his functional abilities if his cognitive impairment regularly causes him to be unresponsive and incapable of completing certain tasks. The assessment also offers a snapshot of Mr. W's functionality at a particular date and time, but it does not provide a complete picture. As Ms. F explained, her brother is at times capable of following instructions and doing certain things for himself. More often, however, he cannot respond appropriately. More significantly, the assessor did not observe Mr. W perform activities for which he has particular problems, such as hair washing, nail care, and shaving. For these tasks, he more likely than not requires hands-on assistance three or more times per week. This assistance is most accurately characterized as limited assistance from another person (self-performance code 2, support code 2, frequency 7 times per week). The Division did not meet its burden to show Mr. W can perform all components of this ADL if he receives cueing.

#### *B. Light Meal Preparation*

For light meal preparation, the Division reduced Mr. W's 2014 rating. It found that he is independent because he can prepare simple cold meals for himself, such as a bowl of breakfast cereal or a sandwich (self-performance code 0, support code 0).<sup>45</sup>

Ms. F asserted that her brother cannot prepare light meals without support. She agreed that, on a good day, he can sometimes prepare a bowl of cold cereal or a very simple sandwich if he receives supervision, cueing and set-up help. However, unless he receives physical assistance, on most days he either will not prepare anything at all or he will omit important components of the meal, such as milk for the cereal or cheese for the sandwich.<sup>46</sup> On one recent occasion when Ms. F left Mr. W home alone for an overnight, she returned to find that he had not been eating or drinking at all, and he required emergency care for dehydration and renal failure.<sup>47</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> Exhibit D, p. 9.

<sup>46</sup> F testimony.

<sup>47</sup> F testimony; Exhibit 1, pp. 14-15.

The fact that Ms. F left her brother for an overnight suggests she believed he could function independently for a short period of time. She learned that he is not capable of such independence. This incident suggests there may be times when Mr. W can prepare very simple light meals if he receives only supervision or reminders. Even so, however, the evidence also shows that his cognitive impairment regularly causes him to shut down and become unresponsive. When that happens, he is not simply behaviorally resisting; he is functionally incapable of responding because of his cognitive impairment.

Mr. W lacks the cognitive ability to reliably perform relatively simple tasks. Ms. F credibly reported that his condition has not improved since the last assessment, and he is typically incapable of following the directions he is given even when he is repeatedly prompted. Ms. M and Mr. S from the PCS agency corroborated this observation. Ms. M, who has known Mr. W for years, testified that his abilities have not changed with time, and he still lacks the cognitive ability to perform his IADLs on his own. Mr. S affirmed that during his December 2017 visit, Mr. W simply did not respond to Ms. F's repeated prompts to come downstairs and take his medications, even after 7 to 10 requests.

Because of his cognitive disability, Mr. W requires assistance to prepare light meals; he is not independent. On good days, he may be able to prepare a light meal on his own with difficulty if he receives cueing and set-up help. However, more often than not, his mental illness prevents him from responding to cueing or set-up support, and he requires physical assistance to prepare light meals twice a day.

Mr. W should be rated as requiring physical assistance with light meal preparation (self-performance code 2, support code 3, frequency 14 times per week).

### *C. Main Meal Preparation*

Main meal preparation involves the preparation, serving, and cleanup of one main meal a day.<sup>48</sup> The 2017 assessment concluded that Mr. W can be involved, but he requires assistance (self-performance code 2, support code 3, frequency 7 times per week).<sup>49</sup>

The weight of the evidence is that Mr. W cannot be trusted to use a knife or other sharp

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<sup>48</sup> 7 AAC 125.030(c)(2).

<sup>49</sup> Exhibit E, p. 27. This is a reduction from the outcome of the 2014 administrative appeal but the same that has been in place since 2014, and the parties agreed to it when they settled a reduction dispute in 2017.

object, and he does not have the cognitive ability to operate machinery, including a stove or microwave.<sup>50</sup> Therefore, he cannot participate in main meal tasks that require cutting, chopping or cooking/heating. However, the evidence does not show that Mr. W is totally dependent on others for every aspect of this IADL. Ms. F argued to the contrary; however, her claim that Mr. W cannot participate to any degree is inconsistent with other evidence, including that regarding his ability to participate in light meal preparation.

As with his involvement in light meal preparation, Mr. W's role in main meal preparation is likely to be quite limited. He more likely than not can participate in simple tasks like taking items from the refrigerator, moving items to the table, taking out plates, cups, or utensils from a cupboard, and/or putting used items in the sink. He necessarily performs these kinds of activities when he participates in light meal preparation. The evidence does not justify a finding that he cannot or does not perform such acts, which are sufficient to show he is not totally dependent. The Division has shown that it properly scored Mr. W as able to be involved, but requiring physical assistance with this task, seven times per week.

#### *D. Shopping*

The shopping IADL pertains to items necessary for the recipient's health and maintenance, including groceries, household items, prescribed drugs and medical supplies.<sup>51</sup> The 2014 assessment concluded that Mr. W could be involved with shopping tasks, but he required physical assistance (self-performance code 2, support code 3, frequency 1 time per week). In 2017, the Division concluded he was independent with difficulty, and he required only set-up help (self-performance code 1, support code 2), so it removed his PCS time for this activity. The Division based its conclusion on Mr. W's ability to move around independently and to follow cues or other prompts.

Ms. F asserted it would be highly inappropriate to leave her brother in a grocery store without physical assistance, even if he were provided set-up help such as a shopping list and grocery cart. She noted that he cannot self-regulate, and he lacks the cognitive ability to understand and follow a list. He also does not understand money.<sup>52</sup>

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<sup>50</sup> F testimony.

<sup>51</sup> 7 AAC 125.030(c)(5).

<sup>52</sup> F testimony.

The evidence supports Ms. F's conclusion. Supervision and cueing support are not sufficient for this task because of Mr. W's documented behavior problems and regular inability to respond to cues. The Division has not met its burden to show he can perform this task without hands-on assistance. Mr. W should be rated as requiring physical assistance for the IADL of grocery shopping (self-performance code 2, support code 3, frequency 1 time per week).

*E. Laundry (in home)*

Laundry involves changing a recipient's bed linens and laundering linens and clothing.<sup>53</sup> Mr. W was previously scored as requiring physical assistance in this area (self-performance code 2, support code 3, frequency 1 time per week). The current assessment rated him as independent with difficulty, and physical assistance was provided (self-performance code 1, support code 3, frequency 1 time per week).

Ms. F argued that her brother cannot operate laundry machines or work with detergents and chemicals, and he is not independent in any way. The record supports this conclusion. The Division's support rating concedes that Mr. W requires physical assistance. This means he is not independent with difficulty; he can only perform laundry tasks if he receives physical help. Mr. W likely can be involved in some laundry tasks, such as moving clothing in and out of the washer and helping fold clothes. However, he requires hands-on assistance for other tasks, including operating the machinery and managing detergents (self-performance code 2, support code 3, frequency 1 time per week).

*F. Medication Assistance*

The 2017 assessment identified eleven different medications that Mr. W takes on a daily basis, from one to three times per day.<sup>54</sup> The Division eliminated PCS time for the covered activity of medication assistance, because Mr. W's revised personal hygiene score fell below the threshold for receiving assistance.

PCS time for medication assistance is allowed only if the recipient requires hands-on assistance with the ADL of personal hygiene.<sup>55</sup> For the reasons discussed previously, Mr. W requires limited assistance from one person for personal hygiene (self-performance code 2,

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<sup>53</sup> 7 AAC 125.030(c)(4).

<sup>54</sup> See Exhibit E, p. 21.

<sup>55</sup> See Exhibit B, p. 24 (PCS Service Level Computation chart).

support code 2). Under the PCS computation chart, he also should receive PCS time of 2 minutes per day for medication assistance, seven days a week.<sup>56</sup>

*G. Vital Signs/Glucose Levels*

Mr. W previously received PCS time to measure his vital signs and glucose levels. Recent regulatory changes have eliminated this assistance.<sup>57</sup> Therefore, the Division correctly removed PCS authorization for this activity.

*H. Escort*

Escort services include traveling with the recipient to and from routine medical or dental appointments. Under regulation changes that became effective in July 2017, PCS for escort is only available to recipients who require physical assistance with the ADL of locomotion (self-performance code 2, 3, or 4).<sup>58</sup> There is no disagreement that Mr. W can ambulate independently. Accordingly, the Division correctly eliminated PCS time for this activity.

**IV. Conclusion**

For the reasons discussed above, the Division's PCS authorization is partially upheld and partially reversed. The Division correctly eliminated PCS time for the covered activities of vital signs/glucose levels and escort to medical appointments. It also correctly rated Mr. W as able to participate in main meal preparation if he receives physical assistance. Those determinations are affirmed.

The Division did not show that Mr. W has experienced a change that alters his need for assistance with the other ADL, IADLs, and covered activities in dispute. Those reductions therefore are reversed and additional PCS time is authorized. For the areas at issue in this case, the PCS authorization should reflect the following:

- Personal hygiene (2/2, frequency 7 per week);
- Light meal preparation (2/3, frequency 14 per week);
- Main meal preparation (2/3, frequency 7 per week);
- Shopping (2/3, frequency 1 per week);
- Laundry (in home) (2/3, frequency 1 per week);

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<sup>56</sup> 7 AAC 125.030(d)(1), (g); Exhibit B, p. 24.

<sup>57</sup> See 7 AAC 125.030(d).

<sup>58</sup> 7 AAC 125.030(d)(4).

- Medication assistance authorized per personal hygiene score, 7 days per week.

Mr. W should receive PCS time consistent with the 2017 assessment, as adjusted by this decision.

DATED: August 23, 2018.

*Signed* \_\_\_\_\_  
Kathryn Swiderski  
Administrative Law Judge

DATED: August 24, 2018.

*Signed* \_\_\_\_\_  
Deborah Erickson, MBA  
Project Coordinator, Office of the Commissioner  
Department of Health & Social Services

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

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