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

In the Matter of:	)	
	)	
S.T.	)	OAH No. 15-1275-MDS
	)	Agency No. 15-SDS-0587
	)	

DECISION

I. Introduction

The issue in this case is whether the State of Alaska Division of Senior and Disabilities Services (Division) correctly assessed the amount of Medicaid Personal Care Assistant (PCA) services for which S.T. is currently eligible.[1] The Division decreased S.T.'s PCA service level from 16.25 hours per week to 3.25 hours per week effective September 19, 2015.[2]

Independent review of the evidence in the record indicates that the Division's determination of the level of PCA services for which S.T. is currently eligible was partially correct, but partially incorrect. Accordingly, the Division's decision is affirmed in part and reversed in part.

II. Facts

A. S.T.'s Medical Diagnoses and Health Problems per his Medical Records[3]

S.T. is 60 years old.[4] He served in the U.S. Army and now receives healthcare services through the Veterans Administration (VA).[5] He lives alone in a basement apartment; from street level, it is necessary to climb a flight of about seven stairs to enter the apartment, and then descend another seven stairs or so to the living area of his apartment.[6] His medical diagnoses include atrial fibrillation, aortic valve stenosis, arthralgia, back pain with costochondritis, Barrett's esophagus, cellulitis, chronic obstructive pulmonary disease (COPD); congestive heart failure, coronary atherosclerosis, diabetes mellitus type II, diabetic neuropathy, hyperlipidemia, hypertension, hypersomnia, hypoxemia, morbid obesity, obstructive sleep apnea, onychomycosis, opioid dependence, peripheral vascular disease with edema, restless leg syndrome, retinopathy, status post

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1 Ex. D.

2 Ex. G1. The Division originally reduced S.T.'s service level to 2.75 hours per week (Ex. D), but discovered an error and issued a corrected notice reducing S.T.'s service level to 3.25 hours per week (Ex. G). The Division's hearing representative stated at hearing that the additional 0.5 hours was for non-sterile bandage changes, which activity was inadvertently omitted from the Division's initial notice letter (*see also* Ex. H).

3 Approximately 766 pages of medical records were submitted by S.T. in this case. All of those records were reviewed and considered during the preparation of this decision.

4 Ex. E1. S.T. will turn 61 within days of the issuance of this decision.

5 Ex. 152.

6 Ex. E1; S.T.'s hearing testimony.

coronary bypass surgery, status post heart valve replacement, and venous stasis.[7] He smoked about two packs of cigarettes per day from when he was 15 years old until June 2013.[8] He currently takes about 23 prescription medications daily.[9]

There are some references in S.T.'s medical records indicating that his diabetes is poorly controlled, and he has a history of chronic cellulitis and edema in both legs.[10] He visits the VA hospital every three months for callus care and diabetic nail care.[11]

On July 31, 2012 a computed tomography (CT) of S.T.'s brain was performed.[12] The CT found "mild diffuse cerebral atrophy in keeping with the patient's age."

On January 2, 2013 S.T.'s eyes were examined by P.L., M.D.[13] P.L. reported that S.T. has diabetic maculopathy OS and bilateral hypertensive retinopathy, but that, "at present, he has no ocular condition that significantly impacts his normal activities."

On January 23, 2013 the VA clinic assessed S.T.'s primary medical problems as:[14]

> Diagnosis #1: Veteran was diagnosed with Type II Diabetes 10-12 years ago. He is insulin dependent and takes daily oral hypoglycemics. He has retinopathy and peripheral neuropathy as a result of his diabetes.
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> Diagnosis #2: Posterior tibial dysfunction causing [left] foot drop - [he] began to lose balance and start to fall because of the [left] foot "giving out" and he was placed in an Arizona brace . . . and uses a wheeled walker all of the time.
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> Diagnosis #3: Veteran [was] diagnosed with COPD and began to require continuous oxygen therapy one year ago. He is exhausted all the time and becomes breathless with minimal exertion. He also has a CPAP for sleep apnea.

On January 30, 2013 S.T. was taken to a hospital emergency department suffering from shortness of breath; he was given medication (Lasix); responded well, and was released.[15]

On March 6, 2013 an ECG study was performed on S.T.'s heart; the study found that S.T. has moderate to severe aortic stenosis.[16] S.T. had a transesophageal echocardiography, a coronary

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7 Ex. E3; Exs. 9, 10, 24, 25, 35, 199, 535.
8 Exs. 534, 601.
9 Ex. E20; Exs. 35, 36, 37.
10 Ex. 8.
11 Ex. 84.
12 All factual findings in this paragraph are based on Ex. 713 unless otherwise stated.
13 All factual findings in this paragraph are based on Exs. 693 - 694 unless otherwise stated.
14 Ex. 417.
15 Exs. 688 - 692.
16 Exs. 386 - 390, 667 - 669.

bypass, and an aortic valve replacement on June 11, 2013.[17] He has reported chronic shortness of breath to his health care providers since that surgery.[18]

On August 8, 2013 a VA social worker wrote that S.T. "continues to request extensive care and financial resources."[19] On August 10, 2013 S.T. contacted the VA clinic complaining of difficulty sleeping.[20] On August 12, 2013 S.T. contacted the VA clinic complaining of anxiety, but also advised that he no longer needed the hospital bed which had been provided to him in June 2013.[21] He was given a prescription for sertraline.[22] On August 14, 2015 S.T. contacted the VA clinic again complaining of anxiety.[23]

On August 15, 2013 S.T. contacted the VA clinic complaining of low back pain which was impeding his "ability to do ADLs and causing decreased ROM;" he requested a consultation with a chiropractor.[24] On August 21, 2013 S.T. contacted the VA clinic to report numbness in his right leg which was making it difficult for him to walk.[25] On August 27, 2013 a podiatrist performed a diabetic foot exam on S.T. and gave him an assessment score of one (low risk).[26]

On September 11, 2013 S.T. was examined by Dr. Q.E.[27] Q.E. found that S.T. (1) had pain in his right thigh, but that it was "not . . . significant;" (2) had diabetes that was "controlled," (3) had atrial fibrillation with a rate that was "well controlled;" and (4) that he had a "painless range of motion" in his back and right hip.

On September 19, 2013 S.T. saw a physical therapist for an initial evaluation.[28] The physical therapist's report states in relevant part as follows:

> Patient was referred to physical therapy for pool exercises for general weakness following open heart surgery on 6/12/13. Patient stated that he feels really stiff in his muscles. He gets shortness of breath after about 5 minutes of walking or standing activities and needs to sit down. He is able to dress and shower independently but it requires multiple rest breaks and is very cumbersome. He has a sock assist and reacher. He . . . is able to prepare his own meals but sits down on a bar stool when preparing his food . . . . He gets assistance from his landlord carrying the groceries

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17 Ex. 263.
18 Ex. 123.
19 Ex. 325.
20 Ex. 322.
21 Exs. 317 - 320.
22 Ex. 320.
23 Ex. 310.
24 Ex. 320.
25 Exs. 302 - 304.
26 Ex. 313.
27 All factual findings in this paragraph are based on Ex. 273 unless otherwise stated.
28 All factual findings in this paragraph are based on Exs. 639 - 642 unless otherwise stated.

in/out of the house. Only able to carry something light (gallon of milk) up the stairs. He uses electric cart when he is shopping . . . .

On October 18, 2013 S.T. reported to a nurse that he had experienced ringing in his ears since December 2011, when he said he had a stroke, had fallen, hit his head, and lost consciousness.[29] Dr. Q.N. notes from his review of S.T.'s medical records on October 3, 2013 state that a CT scan of S.T.'s brain from 2012 does show evidence of an infarct.[30] However, Q.N. wrote that, "[a]lthough he may have had a TBI, it was in the mild category and [he] has no residual effects."[31]

On November 5, 2013 S.T. underwent a transthoracic echocardiogram (ECG).[32] On November 10, 2013 Patrick Davis, M.D. reported to S.T. regarding that ECG.[33] Q.E. stated that the ECG "turned out fine," and that S.T.'s heart "was strong with a normal left ventricular ejection fraction."

On November 19, 2013 S.T. underwent a CT angiogram of his abdomen, pelvis, and legs.[34] The study found that S.T. has "extensive atherosclerotic disease throughout the entire visualized vascular system," and that the blood vessels in his legs showed "multiple areas of near total occlusion."

In early January 2014 one of S.T.'s physicians, in completing one of the Division's "Level of Care Verification Request" forms, reported that S.T. needed only "minimal unskilled assistance" at that time.[35] Later that month S.T. reported falling out of his wheelchair during a Social Security interview and being taken to the hospital by ambulance for evaluation; his physician speculated that he may have fainted.[36] The physician found that S.T.'s left shoulder was tender and had a reduced range of motion, that his right hip had pain on rotation, and that he had some minor abrasions on his legs. Later that month S.T. reported that he had fallen "a couple more times" because his right leg would not bear weight due to pain.[37]

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29 Exs. 246, 260.
30 Ex. 260.
31 Ex. 260.
32 Exs. 635, 636.
33 All factual findings in this paragraph are based on Ex. 235 unless otherwise stated.
34 All factual findings in this paragraph are based on Exs. 633 - 634 unless otherwise stated.
35 Ex. 622.
36 All factual findings in this paragraph are based on Exs. 202, 203, 204, and 211.
37 Ex. 215.

On March 4, 2014 S.T. reported to his physician that he was able to check his own blood pressure, and perform his own diabetic "finger-prick" testing, when at home.[38] Later that month he reported to his physician that he had been using cocaine and marijuana.[39]

On May 23, 2014 S.T. underwent an initial assessment for physical therapy.[40] The physical therapist's report states in relevant part:

> [H]e was unable to tolerate cardiac rehab secondary to lack of endurance and [shortness of breath] so [he] has returned for further physical therapy treatment. VA . . . has given him an electric scooter and lift [which] he is able to use when he goes shopping . . . . [H]e does cook but for the most part sits on a bar stool during food prep . . . . [H]e does putter around in the house and go up/down 6-8 steps at home . . . Reported less difficulty overall with getting in/out of bed and transfers since having physical therapy.

On September 22, 2014 S.T. was seen by a psychologist.[41] The psychologist diagnosed S.T. as suffering from bipolar disorder, antisocial behaviors, and narcissistic traits. The psychologist's notes indicate that he and S.T. both agreed that the therapy he had previously been undergoing had been unproductive and should be terminated.

On October 20, 2014 a cardiology and primary care nurse who had been seeing S.T. wrote the following note regarding his need for PCA services:[42]

> It is unclear to me how the PCA is going to be assistive. [The patient] is able to ambulate at least short distances [of about] 10-20 yards without assistance, [and is] able to get on and off [his] scooter w/o help . . . . he needs to exercise and do more for himself. I am sending him to supervised exercise to help him recover and promote self-care and independence.

S.T. attended physical therapy sessions from October 24, 2014 through December 11, 2014 or later.[43] On November 12, 2014 S.T. complained to his physical therapist of pain in his left shoulder, right hip, sacroiliac joint, and tailbone at a level of 6-8/10.[44] On December 11, 2014 S.T. complained to his physical therapist of pain in his left shoulder, right hip, and sacroiliac joint at a

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38 Ex. 599.
39 Ex. 601.
40 All factual findings in this paragraph are based on Ex. 586 unless otherwise stated.
41 All factual findings in this paragraph are based on Ex. 141 unless otherwise stated.
42 Ex. 120.
43 Exs. 94, 113.
44 Ex. 104. The therapist's notes from that appointment also indicate that S.T. stated that he was able to walk unassisted within his apartment at that time, but used a motorized scooter when going out to appointments.

level of 7/10.[45] On December 16, 2014 S.T. complained to his physical therapist of pain in his sternum and right hip at a level of 8/10.[46]

B. Relevant Hearing Testimony

S.T. testified at hearing in relevant part as follows:

1. He had a stroke in 2012. He has had open heart surgery. He has hit his head and sustained a traumatic brain injury (TBI). He injured his sacro-iliac joint in an accident years ago, and as a result, he has sciatic pain. His sciatic pain can be extreme.

2. His current PCA, L.G., works from 9:00 a.m. - 11:00 a.m., with a few additional minutes in the afternoon. Other than his PCA, he has nobody to assist him.

3. He requires physical assistance with bed mobility because he is overweight, because of the lines to and from his CPAP machine, and because of his sciatic pain. He needs someone to change his position using a gait belt. Otherwise he gets bed sores on the back of his head, his lower back, and on his buttocks. The VA has prescribed topical ointments, including anti-bacterial and antifungal creams, for his sores.

4. While in the military he was "shot down" on three separate occasions, which resulted in breaking both his ankles and some bones in his feet. He is also on supplemental oxygen, which he must be connected to whenever he moves around. He can transfer independently, but because of his weight, his prior injuries, and his oxygen lines and equipment, he puts himself at risk of falling when he does so. He needs weight-bearing assistance to transfer safely.

5. His PCA uses a gait belt to pull him up. In the absence of PCA assistance, he transfers within his apartment by holding onto "rails" and pulling himself up.

6. He can walk, but just barely, for short distances. He has a walker which he uses within his apartment. He also has an electric scooter, but there is not much room to use it inside his apartment, so he generally only uses the scooter when he goes out to medical appointments.

7. He does not move around his apartment much when his PCA is not there, which is most of the time. If there was a fire, he would have to crawl up about seven stairs, and then crawl back down another seven stairs or so, to get outside the building.

8. When he goes up or down stairs, his PCA must use a gait belt and hold S.T.'s oxygen tank.

9. He goes to "several" medical appointments each week, and requires PCA assistance with locomotion to each of his appointments.

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45 Ex. 94.
46 Ex. 93.

10. He can put on zippered shirts himself, albeit with difficulty, but he only owns two of those. It is impossible for him to put on pull-over type shirts himself. He usually wears t-shirts, which are a pull-over type shirt.

11. He is required to wear compression socks to avoid ulcers on his calves. It is extremely difficult for him to put those socks on himself because they fit so tightly.

12. He needs assistance with eating. He can eat a small sandwich by himself, and he can eat oatmeal by himself. However, he has a tremor, and if he tries to eat something like soup by himself, he spills it all over himself. To eat something like a steak, he would need someone to cut it up for him first. He can drink a glass of water by himself, but he spills some of the water in the process.

13. He wears a nasal cannula to receive oxygen. He cannot take it off for an entire meal or he will get short of breath and choke. When he leaves it on, it interferes with eating and drinking.

14. He is incontinent and wears pull-ups. He cannot take a used one off by himself, and he cannot put a new one on by himself. He has a commode about three paces away from his bed. To use the bedside commode, he must have a PCA lower him down onto the seat using a gait belt. He cannot clean himself after toileting because of his weight. He also needs PCA assistance to get back up off the commode after toileting.

15. He needs assistance with personal hygiene tasks because of a tremor in his left hand and his use of oxygen. He has an electric toothbrush, but it is almost impossible for him to apply the toothpaste and position the brush. He can wash his hands, but it is hard for him to wash his face. He needs someone to keep the oxygen hose out of the way in order to perform any hygiene task. He sits on a little bench while doing these tasks.

16. He tries to bathe about *twice a day* due to his incontinence. Ideally he bathes once in the morning and once in the evening. However, because of his limited PCA hours (averaging about 2.4 hours per day), he often has to get by with one bath or shower per day. When bathing, he needs someone to help him in and out of the shower or tub. Once in the shower, he needs assistance washing himself.

17. He needs assistance with his medications. He needs someone to make up his med-sets; he needs someone to bring him his insulin from the refrigerator so he doesn't drop it; and he needs someone to prick his finger three times per day to check his glucose levels.

18. He has prescriptions for pain medications. If he doesn't have to move around, he doesn't need the pain medications, but if he moves around, it causes pain, and then he needs his pain medications.

19. He needs assistance preparing meals because he cannot stand long enough to cook most items, and he also needs physical assistance with the rest of his IADLs.

20. He had a few seizures and a few falls since the last (2013) assessment, but he has not had any new medical diagnoses / problems since the last assessment. Regardless, he feels his functional abilities have decreased since the 2013 assessment.

L.S., R.N, testified at hearing in relevant part as follows:

1. Pressure sores or decubitus ulcers are the sores which assistance with body mobility is meant to avoid. There are four different levels ("stages") of pressure sores.

2. Based on her observations during the assessment, S.T. has sufficient upper body strength to move himself in bed.

3. She observed S.T. transfer independently using a cane. She also read medical records indicating S.T. was able to transfer on and off an exam table by himself, although the exam table may have been one capable of being raised and lowered.

4. She did not observe S.T. attempt multi-level locomotion, or outdoor locomotion, during the assessment.

5. She was not informed that S.T. wears compression socks at the time of the assessment. Based on that new information, she feels his dressing score should be revised to 3/2 to reflect a need for weight-bearing or extensive assistance with dressing.

6. Cutting up food is classified under the IADL of meal preparation rather than the ADL of eating. She would classify dealing with a nasal cannula while eating as "setup."

7. The fact that S.T. is a diabetic does not necessarily mean that he cannot prepare his own meals. It is possible to prepare diabetic-friendly meals using a microwave oven.

H.G. testified at hearing in relevant part as follows:

1. He has previously worked as a registered nurse.

2. S.T. has venous ulcers on his calves, but he did not see anything in S.T.'s medical records indicating that he has *decubitus* ulcers.

C. The Division's Findings from its 2013 and 2014 Assessments

S.T. has received PCA services since 2013.[47] S.T.'s initial PCA eligibility assessment was conducted on August 23, 2013 by Division nurse-assessor B.N., R.N.[48] Based on her 2013 assessment, B.N. found that S.T. required the following levels of assistance with his ADLs:[49] body mobility - independent (CAT score 0/0); transfers - required setup assistance only (CAT score 0/1); locomotion - required setup assistance only (CAT score 0/1); dressing - required limited assistance 2 times per week (CAT score 2/2, frequency 2/1); eating - required only setup assistance (CAT

47 Ex. F1.
48 Exs. F1 - F32.
49 All factual findings in this paragraph are based on Exs. F6 - F12 unless otherwise stated.

score 0/1); toilet use - required limited assistance 21 times per week (CAT score 2/2, frequency 3/7); personal hygiene - required limited assistance seven times per week (CAT score 2/2, frequency 1/7); and bathing - required extensive assistance seven times per week (CAT score 3/2, frequency 1/7).

At the same 2013 assessment, B.N. found that S.T. required the following levels of assistance with his IADLs:[50] independent as to financial management (CAT score 0/0); independent with supervision for telephone use (CAT score 0/1); independent with difficulty as to light meal preparation (CAT score 1/0); and required physical assistance with main meal preparation, light housework, routine housework, grocery shopping, and laundry (CAT score 2/3).

S.T. was most recently assessed for continuing PCA services eligibility on December 9, 2014 by L.S., R.N. of DSDS.[51] L.S. found that S.T. has the following physical abilities and limitations:[52]

Functional assessment:[53] L.S. reported that S.T. has strong grip strength in his left and right hands, and can touch his face, his sides, and his lower legs, but cannot touch his hands together over his head or behind his back, cannot touch his feet while in a sitting position, and cannot stand up with his hands crossed on his chest.

Body Mobility / Bed Mobility:[54] L.S. reported that S.T. told her that he can turn himself from side to side in bed using his right arm (scored 0/0, frequency 0/0).

Transfers:[55] S.T. weighed about 323 pounds at the time of the assessment.[56] L.S. reported that S.T. told her that he can transfer between surfaces using his cane, but prefers to wait until his PCA arrives to help him get up out of bed. L.S. reported that she observed S.T. transfer from the edge of his bed to a bedside commode with no weight-bearing assistance, and with his care coordinator providing only standby assistance ("guided client by touching the back of his arm") (scored 1/1, frequency 0/0).

Locomotion (walking): [57] L.S. reported that S.T. told her that he is able to move about inside his home using a cane, but that he prefers to walk only when his PCA is present. L.S. reported that she observed S.T. take a couple of small steps, from his bed to his bedside commode,

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50 All factual findings in this paragraph are based on Ex. F27 unless otherwise stated.
51 Ex. E.
52 Exs. E1 - E31.
53 All references in this paragraph are based on Ex. E4 unless otherwise stated.
54 All references in this paragraph are based on Ex. E6 unless otherwise stated.
55 All references in this paragraph are based on Ex. E6 unless otherwise stated.
56 Ex. E23.
57 All references in this paragraph are based on Ex. E7 unless otherwise stated.

by holding onto furniture, and without any hands-on assistance (scored 1/0, frequency 0/0). L.S. also scored S.T. as being independent with multi-level locomotion,[58] and as needing limited assistance with locomotion to medical appointments.

Dressing:[59] L.S. reported that S.T. told her that he is able to dress himself independently, using the assistive devices available to him, but that "it takes forever," and that he would prefer to have PCA assistance with dressing. L.S. reported that she observed that S.T. has "good use of hands and arms," can reach his lower legs, and has a "grabber" and "sock aid" (assistive devices) available to him (scored 0/0, frequency 0/0).

Eating:[60] L.S. reported that S.T. told her that he still has his own teeth, and that he is able to feed himself and swallow his medications with water. L.S. reported that she observed that S.T. has a strong grip with each hand and is able to bring his hands up to his face (scored 0/0; frequency 0/0).

Toileting:[61] L.S. reported that S.T. told her that (1) he is incontinent about once per day, but uses adult diapers, and can change them himself using a "reacher" device; and (2) he uses a bedside commode for both bladder and bowel elimination. L.S. reported that she observed S.T. transfer to the commode without hands-on assistance (scored 0/0).

Personal Hygiene:[62] L.S. reported that S.T. told her that he can perform his own personal hygiene tasks independently as long as he has set-up assistance. L.S. reported that she observed that S.T. has a strong grip in each hand, and is able to bring his hands to his face (scored 0/1; frequency 0/0).

Bathing:[63] L.S. reported that S.T. told her that (1) he bathes two days per week; (2) someone must help him into the shower, but once there he can do "a lot of his own bathing," and (3) he sits on a shower bench while bathing and uses a "reacher" device to help wash his lower body. L.S. reported that she observed that S.T. has a standard bathtub without grab bars, and that he makes "good use of hands [and] arms" (scored 2/2, frequency 1/2).

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58 Based on additional information received at hearing, L.S. revised S.T.'s multi-level locomotion score to 2 (requires limited assistance). (L.S. testimony (12/10/15, at approximately 30:05)).

59 All references in this paragraph are based on Ex. E8 unless otherwise stated.

60 All references in this paragraph are based on Ex. E9 unless otherwise stated.

61 All references in this paragraph are based on Ex. E9 unless otherwise stated.

62 All references in this paragraph are based on Ex. E10 unless otherwise stated.

63 All references in this paragraph are based on Ex. E11 unless otherwise stated.

L.S. also scored S.T. as to his ability to perform Instrumental Activities of Daily Living (IADLs).[64] L.S. scored S.T. as follows: independent with telephone use and financial management (CAT score 0/0); independent with difficulty, requiring set-up assistance with light meal preparation and main meal preparation (CAT score 1/2); requiring physical assistance, but only as to set-up, with light housework (CAT score 2/2); and requiring physical assistance with routine housework, grocery shopping, and laundry (CAT score 2/3).

D. Relevant Procedural History

The Division performed the assessment at issue on December 9, 2014.[65] On September 9, 2015 the Division notified S.T. that his PCA service level was being reduced from 16.25 hours per week to 3.25 hours per week effective September 19, 2015.[66] S.T. requested a hearing to contest the Division's reduction of his PCA services on September 22, 2015.[67]

Hearings were held on December 1 and December 10, 2015, and on January 5, 2016. S.T. participated in the hearings by phone, represented himself, and testified on his own behalf. W.C. S.T.'s PCA agency representative, participated in the hearings by phone and testified on S.T.'s behalf. Laura Baldwin participated in the hearings by phone and represented the Division. L.S., R.N. and H.G. participated in the hearings by phone and testified for the Division. The record closed at the end of the third hearing.

III. Discussion

A. The PCA Program - Overview

The Medicaid program provides personal care assistant (PCA) services to eligible persons; "[t]he purpose of personal care services is to provide to a recipient *physical assistance* with activities of daily living (ADL), *physical assistance* with instrumental activities of daily living (IADL), and other services based on the *physical condition* of the recipient . . . ."[68] [Emphasis added]. Accordingly, "[t]he department will not authorize personal care services for a recipient if the assessment shows that the recipient only needs assistance with supervision, cueing, and setup in order to independently perform an ADL or IADL."[69]

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64 All references in this paragraph are based on Ex. E26 unless otherwise stated.
65 Ex. E.
66 Exs. D1, G1.
67 Ex. C.
68 7 AAC 125.010(a).
69 7 AAC 125.020(e). This regulation defines "cueing" as "daily verbal or physical guidance provided to a recipient that serves as a signal to the recipient that the recipient needs to perform an activity;" "setup" as "arranging items for use or getting items ready for use so that the recipient can independently perform an ADL or IADL;" and

B. Alaska's PCA Program - Use of the Consumer Assessment Tool (CAT)

The Department conducts an assessment for PCA services using the Consumer Assessment Tool or "CAT."[70] The goal of the assessment process is to determine the level of physical assistance that an applicant or recipient requires in order to perform their activities of daily living (ADLs) and instrumental activities of daily living (IADLs).[71] The CAT seeks to make the assessment process more objective by attempting to standardize the assessment of an applicant or recipient's functional impairments.[72]

The ADLs scored by the CAT are body mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.[73] The CAT's numerical scoring system for ADLs has two components. The first component is the *self-performance score.* This score rates how capable a person is of performing a particular ADL. The possible scores for ADLs are **0** (the person is independent and requires no help or oversight); **1** (the person requires supervision); **2** (the person requires limited assistance[74]); **3** (the person requires extensive assistance[75]); or **4** (the person is totally dependent[76]). There are also codes that are not treated as numerical scores for purposes of calculating a service level: **5** (the person requires cueing); and **8** (the activity did not occur during the past seven days).

The second component of the CAT's scoring system for ADLs is the *support score*. This score rates the degree of assistance that a person requires for a particular ADL. The possible scores for ADLs are **0** (no setup or physical help required); **1** (only setup help required); **2** (physical assistance from one person required); or **3** (physical assistance from two or more persons required). Again, there are additional codes that do not add to the service level: **5** (cueing required); and **8** (the activity did not occur during the past seven days).

"supervision" as "observing and giving direction, as needed, so that the recipient can independently perform an ADL or IADL." *Id.*

70 7 AAC 125.020(b). The CAT has been adopted into DHSS regulations by reference. *See* 7 AAC 160.900(d)(6).

71 *See* 7 AAC 125.010(a).

72 Ex. E.

73 *See* Division of Senior and Disability Services' *Personal Care Assistance Service Level Computation* (accessed online at http://www.hss.state.ak.us/dsds/pca/documents/PCA%20Service%20Computation.pdf) (accessed March 2, 2016); *see also* Exs. D4, D5, D7, and D10.

74 Limited assistance with an ADL "means a recipient, who is highly involved in the activity, receives direct physical help from another individual in the form of guided maneuvering of limbs, including help with weight-bearing when needed." 7 AAC 125.020(a)(1).

75 Extensive assistance with an ADL "means that the recipient is able to perform part of the activity, but periodically requires direct physical help from another individual for weight-bearing support or full performance of the activity." 7 AAC 125.020(a)(2).

76 Total dependence for an ADL or an IADL "means the recipient cannot perform any part of the activity, but must rely entirely upon another individual to perform the activity." 7 AAC 125.020(a)(3).

The CAT also scores activities known as "instrumental activities of daily living" (IADLs).[77] These are light meal preparation, main meal preparation, light housekeeping, routine housekeeping, laundry, and grocery shopping. The CAT scores IADLs slightly differently than ADLs.[78] The *self-performance scores 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 treated as a numerical score for purposes of calculating a service level: **8** (the activity did not occur).

The *support scores* for IADLs are also slightly different than the support codes for ADLs.[79] The support scores for IADLs are 0 (no support provided); 1 (supervision / cueing provided); 2 (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 does not add to the service level: 8 (the activity did not occur).

Finally, the CAT scores ten other activities which are technically neither ADLs nor IADLs. These are assistance with medications, assistance with taking and recording vital signs and glucose levels, assistance with non-sterile dressing / bandage changes, assistance with oxygen tank / equipment maintenance or use, assistance with sterile wound care, assistance with medical documentation, PCA escort to medical appointments, and assistance with range of motion exercises, walking for exercise, and foot care.[80]

C. Applicable Burden of Proof and Standard of Review

The Division is seeking to reduce S.T.'s existing PCA service level, which has been in effect since August 2013. As to each specific service which it seeks to decrease, the Division has the burden of proving, by a preponderance of the evidence, that S.T.'s need for that PCA service has decreased since his last assessment.[81] Conversely, S.T. asserts that he now requires a greater level of assistance with some activities than he was previously found to require. S.T. bears the burden of

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77 Ex. E26.
78 *Id.*
79 *Id.*
80 Ex. E.
81 *See* 42 CFR 435.930, 2 AAC 64.290(e), 7 AAC 49.135, and *Alaska Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

proof as to each service level increase which he seeks above the level he was found to require in his prior (2013) assessment.[82]

The standard of review in a Medicaid "Fair Hearing" proceeding, as to both the law and the facts, is *de novo* review.[83] In this case, evidence was presented at hearing that was not available to the Division's reviewers. The administrative law judge may independently weigh the evidence and reach a different conclusion than did the Division's staff, even if the original decision is factually supported and has a reasonable basis in law.

D. How Much PCA Time is S.T. Eligible to Receive in This Case?

S.T. submitted an affidavit dated November 17, 2015 in which he asserted he needs three hours of PCA services in the morning, three hours of PCA services in the afternoon, and two hours of PCA services in the evening (a total of eight hours per day or 56 hours per week). It was only at hearing, however, that he discussed the particular levels of assistance, and frequencies of assistance, which he asserts he requires with various covered activities. And, unfortunately, S.T. did not make a clear request, as to the specific CAT scores and frequencies he seeks, for many activities. This decision will address all activities that S.T. specifically asserted were improperly scored by the Division in calculating his PCA time, as well as all other activities on which S.T. provided evidence sufficient to make a determination as to the needed level and frequency of assistance.

1. Body Mobility

For the ADL of body mobility, PCA time is authorized when the person requires physical assistance to reposition himself / herself in a bed or chair, or to perform range of motion and stretching exercises.[84] In 2013 B.N. found that S.T. was independent with body mobility (CAT score 0/0). In 2014 L.S. found that S.T. is still independent with body mobility). At hearing, S.T. testified that he is *not* independent with body mobility, and needs his PCA to change his position using a gait belt. However, S.T. also testified that his current PCA only works from 9:00 a.m. - 11:00 a.m., with a few additional minutes in the afternoon, and that, in the absence of PCA assistance, he is able to transfer within his apartment by holding onto "rails" and pulling himself up. If S.T. is able to use his upper body strength (albeit limited) to transfer, it follows that he can use that same strength to reposition his body in bed or while sitting. Accordingly, the preponderance of

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[82] In cases where the service level from a prior assessment was later increased through the hearing process, the recipient bears the burden of proving his or her entitlement to services beyond those awarded by the decision.

[83] *See* 42 CFR 431.244; *Albert S. v. Dept. of Health and Mental Hygiene*, 891 A.2d 402 (2006); *Maryland Dept. of Health and Mental Hygiene v. Brown*, 935 A.2d 1128 (Md. App. 2007); *In re Parker*, 969 A.2d 322 (N.H. 2009); *Murphy v. Curtis*, 930 N.E.2d 1228 (Ind. App. 2010).

[84] 7 AAC 125.030(b)(1).

the evidence indicates that S.T. is still independent with body mobility, and that the Division's finding on this issue should be affirmed.

2. Transfers

For the ADL of transferring, PCA time is allowed when a person requires physical assistance to move between one surface and another (including to or from a bed, chair, or wheelchair), and/or when a person requires physical assistance to move from a lying or sitting position to a standing position.[85] In 2013 B.N. found that S.T. required setup assistance only with transfers (CAT score 0/1). In 2014 L.S. found that S.T. requires supervision and set-up help with transfers (scored 1/1, frequency 0/0).

At hearing, S.T. testified that he can transfer independently, but puts himself at risk of falling when he does so; that he needs weight-bearing assistance to transfer safely; that his PCA uses a gait belt to pull him up; and that, in the absence of his PCA, he transfers within his apartment by holding onto "rails" and pulling himself up.

S.T.'s assertion that he needs PCA assistance to transfer safely must be taken seriously. However, there is nothing in S.T.'s extensive medical records to support his assertion (see summary at pages 2 - 5, above). Accordingly, the preponderance of the evidence indicates that S.T. requires only supervision and set-up help with transfers (scored 1/1, frequency 0/0).

3. Locomotion / Walking

For the ADL of locomotion, PCA time is allowed when a person requires assistance with walking (whether with the support of a walker, cane, gait belt, braces, crutches, or manual wheelchair), either between different locations in the recipient's home, outside the home to keep a medical or dental appointment, and/or when walking and simple exercises have been prescribed by a physician.[86] In 2013 B.N. found that S.T. required only setup assistance with locomotion (CAT score 0/1). In 2014 L.S. found that S.T. requires only supervision with in-room locomotion (CAT score 1/0, frequency 0/0). L.S. also scored S.T. as being independent with multi-level locomotion, and as needing limited assistance with locomotion to medical appointments. However, based on additional information received during the hearing, L.S. testified that she believed a CAT score of 2/2 would be appropriate for S.T.'s multi-level locomotion needs.[87]

With regard to in-home, single-level locomotion, S.T. acknowledged at hearing that he can walk for short distances and uses a walker within his apartment. There is nothing in his medical

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85 7 AAC 125.030(b)(2).
86 7 AAC 125.030(b)(3).
87 L.S. testimony (12/10/15, at approximately 30:05).

records to indicate that he cannot safely walk within his home; a nurse's notes indicate that he is able to ambulate 10-20 yards without assistance. Accordingly, the preponderance of the evidence indicates that S.T. requires only supervision with in-room locomotion (CAT score 1/0).

With regard to multi-level locomotion, the Division acknowledged at the hearing that S.T.'s home should be considered "multi-level" because there are stairs at his front door, both inside and outside the home. L.S.'s revised assessment of S.T.'s needs is consistent with his testimony that he needs physical assistance going up and down those stairs. Therefore, the preponderance of the evidence indicates that S.T. requires limited assistance with multi-level locomotion (CAT score 2/2).

The parties did not specifically discuss an appropriate frequency for multi-level locomotion. However, the record as a whole supports a finding that S.T. needs assistance negotiating the stairs in and out of his home less than on a daily basis; a reasonable approximation would be three times per week.

Finally, with regard to locomotion to access medical appointments, S.T. asserts that he requires assistance. The Division found that he requires limited assistance. A physical therapist's notes dated May 23, 2014 indicate that S.T. was then able to use an electric scooter to go shopping and to medical appointments. Even without the scooter, there is nothing in S.T.'s medical records to indicate that he could not use his walker for outside locomotion, although he might need to stop and rest during an outing. Accordingly, S.T. requires, at most, limited assistance with outside locomotion, and the Division's finding is therefore affirmed.

4. Dressing and Undressing

For the ADL of dressing, PCA time is allowed for the donning, fastening, unfastening, and removal of the recipient's street clothing, support hose, or prosthesis.[88] In 2013 B.N. found that S.T. required limited assistance with dressing two times per week (CAT score 2/2, frequency 2/1). In 2014 L.S. found that S.T. is able to dress himself independently using the assistive devices available to him (CAT score 0/0, frequency 0/0).

At hearing, S.T. testified that he can put on zippered shirts himself, albeit with difficulty, but that it is impossible for him to put on pull-over type shirts (the kind he normally wears) by himself. He also testified that it is extremely difficult for him to put on the compression socks that he must wear to avoid ulcers on his calves, because they fit so tightly. L.S. stated at hearing that, based on this information, she felt S.T.'s dressing score should be revised to 3/2 to reflect a need for weight-

[88] 7 AAC 125.030(b)(4).

bearing or extensive assistance with dressing. S.T. did not assert that he is completely dependent with dressing. Accordingly, the preponderance of the evidence indicates that S.T. requires extensive assistance with dressing (CAT score 3/2).

The parties did not specifically discuss an appropriate frequency for dressing. However, S.T.'s testimony, which was credible on this topic, indicates that he needs assistance with dressing and undressing every day. Accordingly, S.T. should receive assistance with dressing twice per day, seven days per week.

5. Eating

For the ADL of eating, PCA time is allowed for feeding through a feeding tube, enteral feeding, and supervising the eating and drinking of a recipient who has swallowing, chewing, or aspiration difficulties.[89] In 2013 B.N. found that S.T. required only setup assistance with eating (CAT score 0/1, frequency 0/0). In 2014 L.S. found that S.T. is independent with eating (CAT score 0/0; frequency 0/0).

At hearing, S.T. testified that he can eat some things without assistance, like a sandwich or oatmeal, but that someone would have to feed him soup, because he would spill it all over himself, and that to eat something like a steak, he would need someone to cut it up for him. first. He stated that he can drink a glass of water by himself, but that he spills some of it.

Under the CAT, PCA assistance is not available for eating if a person can feed himself, "regardless of skill."[90] In other words, if you can get food and drink into your mouth by yourself, you are not entitled to PCA assistance, even if you spill and make a mess in the process. Accordingly, the fact that S.T. needs assistance to eat or drink without spilling does not make him eligible for PCA assistance. Further, there is nothing in S.T.'s medical records to indicate that he requires assistance with eating or drinking. Accordingly, the preponderance of the evidence indicates that S.T. is independent with eating (CAT score 0/0; frequency 0/0).

6. Toilet Use

For the ADL of toilet use, PCA time is limited by regulation to time spent moving to and from the toilet, transfers on and off the toilet, general hygiene care of a colostomy, ileostomy, or external catheter, and inserting and removal of a nonmedicated suppository, digital stimulation, or

89 7 AAC 125.030(b)(5).
90 Ex. E9.

other routine incontinence care.[91] The CAT's definition of "toilet use" is somewhat broader, encompassing post-toileting hygiene and clothing adjustments.[92]

The Division's prior (2013) assessment found that S.T. required limited assistance with toilet use 21 times per week (CAT score 2/2, frequency 3/7). The Division's current (2014) assessment found that S.T. is now independent with toilet use (CAT score 0/0).

At hearing, S.T. testified that, to use his bedside commode, he must have a PCA lower him down onto the seat using a gait belt; that he cannot clean himself after toileting because of his weight; and that he also needs PCA assistance to get back up off the commode after toileting.

For the reasons discussed above in the section pertaining to transfers, S.T.'s assertion that he requires weight-bearing assistance with toileting is not credible. On the other hand, given S.T.'s weight, and his somewhat limited range of motion, his assertion that he needs assistance with post-toileting hygiene *is* credible. Further, the Division did not provide a convincing rationale as to why S.T.'s ability to use the toilet would have improved between 2013 and 2014. Accordingly, the preponderance of the evidence indicates that S.T.'s toileting scores and frequencies should remain at their 2013 level (CAT score 2/2, frequency 3/7).

7. *Personal Hygiene*

For the ADL of personal hygiene, PCA time is allowed for washing and drying the face and hands, nail care, skin care, mouth and teeth care, brushing and combing the hair, shaving when done separately from bathing, and shampooing the hair when done separately from bathing.[93] The CAT's definition of personal hygiene is similar, but it adds the washing and drying of the perineum.

In 2013 B.N. found that S.T. required limited assistance with personal hygiene a total of seven times per week (CAT score 2/2, frequency 1/7). In 2014 L.S. found that S.T. requires only set-up help with personal hygiene (CAT score 0/1; frequency 0/0).

At hearing, S.T. testified that he needs assistance with personal hygiene tasks because of a tremor in his left hand and his use of oxygen; he also stated that he needs someone to keep his oxygen hose out of the way in order to perform hygiene tasks. However, there is nothing in S.T.'s extensive medical records to indicate that he needs assistance with those personal hygiene tasks which are *defined by regulation* (see summary at pages 2 - 5, above).

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91 7 AAC 125.030(b)(6).

92 The CAT form defines toilet use as "[h]ow person uses the toilet room (or commode, bedpan, urinal); transfers on/off toilet, *cleanses* . . . manages ostomy or catheter, adjusts clothes" (Ex. E10).

93 7 AAC 125.030(b)(7).

However, the situation is different as to *perineal care*, which is *covered as a personal hygiene task under the CAT*. S.T. testified that he is incontinent and wears pull-ups. He stated that he cannot take a used one off by himself or put a new one on by himself after an accident. He also stated that he cannot clean himself because of his weight. Given S.T.'s weight, and his somewhat limited range of motion, his testimony that he needs assistance with post-accident diaper changes and perineal care is credible. Accordingly, the preponderance of the evidence indicates that S.T. still requires limited assistance with personal hygiene (CAT score 2/2).

With regard to frequency, neither party presented convincing evidence that S.T.'s required frequency of assistance has increased or decreased since 2013. Accordingly, S.T.'s frequency should remain at its prior (2013) level (CAT score 2/2; frequency 1/7).

8. Bathing

For the ADL of bathing, PCA time is allowed for "the taking of a full-body bath, shower, or sponge bath and the required transfers in and out of the bathtub or shower."[94] The Division's prior (2013) assessment found that S.T. required extensive assistance with bathing once per day, seven days per week (CAT score 3/2, frequency 1/7).[95] The Division's current (2014) assessment found that S.T. now requires only limited assistance with bathing (scored 2/2, frequency 1/2).[96] At hearing, S.T. testified that, when bathing, he needs someone to help support him when entering the shower or tub, and that, once in the shower, he needs assistance washing himself.

Because S.T.'s shower / bath has no hand rail, and because assistive devices like canes and crutches can slip in a wet environment, S.T.'s testimony, that he still requires extensive / weight-bearing PCA assistance in order to bathe safely, is credible. Further, the Division did not provide a convincing rationale as to why S.T.'s bathing ability would have improved between 2013 and 2014. Accordingly, the preponderance of the evidence indicates that S.T. still requires extensive assistance with bathing (CAT score 3/2).

With regard to frequency, S.T. testified that, due to his incontinence, he tries to bathe about twice a day, once in the morning and once in the evening. He further stated, however, that because of his limited PCA hours (averaging about 2.4 hours per day), he often has to get by with one bath or shower per day.

The Division's *Personal Care Assistance Service Level Computation Chart,* which has been adopted by regulation, limits the maximum time available for PCA assistance with bathing to 22.5

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94 7 AAC 125.030(b)(8). The definition of bathing contained in the CAT is essentially identical (*see* Ex. E11).

95 Ex. F11.

96 Ex. E11.

minutes per day in cases where (as here) the recipient requires extensive assistance. The chart does not, however, place any limitation on how that time is divided. Accordingly, if S.T. and his PCA are able to complete a bath in 11 minutes or less, he can have two baths per day; if it takes longer, then PCA assistance is limited to one bath per day.

9. Light Meals

The PCA regulations define the IADL of light meal preparation as the preparation, serving, and cleanup in the recipient's home of any meal that is essential to meet the health needs of the recipient, and that is not the main meal of the day.[97] The Division's prior (2013) assessment found that S.T. was independent with difficulty as to light meal preparation (CAT score 1/0). The Division's current (2014) assessment similarly found that S.T. is independent with difficulty, requiring set-up assistance, with light meal preparation (CAT score 1/2).

At hearing, S.T. testified that he needs assistance preparing meals because he cannot stand long enough to cook most items. However, on September 19, 2013 S.T. told his physical therapist that he was able to prepare his own meals by sitting down on a bar stool when cooking. S.T.'s 2013 statement to his physical therapist is more consistent with S.T.'s abilities as indicated by his medical records. Accordingly, the preponderance of the evidence indicates that S.T. is independent with difficulty, requiring set-up assistance, with light meal preparation (CAT score 1/2).

10. Main Meals

The PCA regulations define the IADL of main meal preparation as the preparation, serving, and cleanup in the recipient's home of one main meal per day that is essential to meet the health needs of the recipient.[98] The Division's prior (2013) assessment found that S.T. required physical assistance with main meal preparation (CAT score 2/3). The Division's current (2014) assessment found that S.T. currently requires only set-up assistance with main meal preparation (CAT score 1/2). S.T. testified at hearing that he needs physical assistance preparing his meals. However, for the same reasons discussed above in the context of light meals, the preponderance of the evidence indicates that S.T. currently requires only set-up assistance with main meal preparation (CAT score 1/2).

11. Light Housework

The PCA regulations define the IADL of "light housekeeping" as (1) picking up, dusting, vacuuming, and floor-cleaning of the living spaces used by the recipient; (2) the cleaning of the

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97 7 AAC 125.030(c)(1).
98 7 AAC 125.030(c)(2).

kitchen and dishes used for preparation of the recipient's meals; (3) the cleaning of any bathroom used by recipient; (4) making the recipient's bed; (5) removing the recipient's trash; and (6) caring for the recipient's service animal.[99] The Division's prior (2013) assessment found that S.T. required physical assistance with light housework (CAT score 2/3). The Division's present (2014) assessment found that S.T. now requires physical assistance *only as to set-up* for light housework (CAT score 2/2). S.T. asserts that he still needs physical assistance with all aspects of light housekeeping.

Most of the tasks encompassed by light housekeeping involve the need to use both hands. It is difficult to imagine that a person who uses a cane or walker to stand and move, and who tows an oxygen tank or concentrator to breath, can at the same time perform complex tasks with his hands. Accordingly, the preponderance of the evidence indicates that S.T. still requires physical assistance with light housework (CAT score 2/3).

12. Routine Housework

The Division's prior (2013) assessment found that S.T. required physical assistance with routine housework (CAT score 2/3). The Division's current (2014) assessment found that S.T. still requires physical assistance with routine housework (CAT score 2/3).

Although *the CAT* differentiates between "light housework" and "routine housework," *the PCA regulation* includes all the constituent activities of these two "CAT categories" within a single definition of "light housekeeping."[100] Because S.T. has already been scored 2/3 for the IADL of "light housekeeping" (above), the same score is appropriate for routine housework.[101]

13. Grocery Shopping

The PCA regulations define the IADL of grocery shopping as shopping in the vicinity of a recipient's residence for groceries and other household items required for the health and maintenance of the recipient, and prescribed drugs and medical supplies required by the recipient.[102]

The Division's prior (2013) assessment found that S.T. required physical assistance with grocery shopping (CAT score 2/3). The Division's current (2014) assessment found that S.T. still requires physical assistance with grocery shopping (CAT score 2/3). S.T.'s statements to physical therapists indicate that he can use an electric scooter or cart when shopping, but that he requires

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99 7 AAC 125.030(c)(3).

100 7 AAC 125.030(c)(3).

101 S.T.'s hearing testimony indicates that he may assert that he is now fully dependent on others for light and routine housework. However, S.T. bears the burden of proving this increased need, and he did not satisfy his burden of proof on this issue.

102 7 AAC 125.030(c)(5).

help from his PCA to get some things off the store shelves. Accordingly, the preponderance of the evidence indicates that S.T. currently requires physical assistance with grocery shopping (CAT score 2/3).[103]

14. Laundry

The PCA regulations define the IADL of laundry as the changing of a recipient's bed linens and the in-home or out-of-home laundering of a recipient's bed linens and clothing.[104] The Division's prior (2013) assessment found that S.T. required physical assistance with laundry (CAT score 2/3). The Division's current (2014) assessment found that S.T. still requires physical assistance with his laundry (CAT score 2/3). At hearing, S.T. indicated that he can perform some aspects of clothes laundering, but requires help from his PCA in some areas. This is consistent with what would be expected of someone with S.T.'s medical diagnoses. Accordingly, the preponderance of the evidence indicates that S.T. currently requires physical assistance with clothes laundering (CAT score 2/3).[105]

15. PCA Assistance with Medication / Medication Management

Pursuant to 7 AAC 125.030(d), PCA assistance is available for:

> (1) assisting the recipient to self-administer routine oral medication, eye drops, and skin ointments; that assistance may include reminding the recipient and placing a medication within the recipient's reach;
>
> (2) assisting the recipient with the administration of medication; the task may be performed only by a [PCA] working for a consumer-directed personal care agency;

PCA time is only allowed for "medication assistance / administration" if the recipient receives a score of 1, 2, 4, 5, or 6 in Section G(1)(a) at page 20 of the CAT.[106] In this case, S.T. received a score of zero on his 2013 assessment, and a score of one on his 2014 assessment.

Based on S.T.'s 2014 score at Section G(1)(a) at page 20 of the CAT, he meets the *threshold test* for PCA time for medication administration. However, the *amount* of PCA time allowed for medication assistance is computed based on the recipient's personal hygiene score.[107] If the recipient's personal hygiene self-performance score is 0, 1, or 8, the recipient receives no time for

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[103] S.T.'s hearing testimony indicates that he may assert that he is now fully dependent on others for grocery shopping. However, S.T. bears the burden of proving this increased need, and he did not satisfy his burden of proof on this issue.

[104] 7 AAC 125.030(c)(4).

[105] S.T.'s hearing testimony indicates that he may assert that he is now fully dependent on others as to laundry. However, S.T. bears the burden of proving this increased need, and he did not satisfy his burden of proof on this issue.

[106] Ex. E20.

[107] All findings and conclusions in this paragraph are based on the *Division's Personal Care Assistance Service Level Computation Chart.*

medication assistance. If this case, S.T.'s revised self-performance and support scores for personal hygiene are 2/2 (see page 19, above). Accordingly, pursuant to the Division's *Personal Care Assistance Service Level Computation Chart,*[108] S.T. is eligible to receive two minutes per day for PCA assistance with medications / medication management.

16. PCA Assistance with Non-Sterile Dressings / Bandages

PCAs are authorized to provide nonsterile bandage or dressing changes pursuant to 7 AAC 125.030(d)(4). Under the *Division's Personal Care Assistance Service Level Computation Chart,* a person needing only limited assistance receives 2.5 minutes per change, a person needing extensive assistance receives 3.75 minutes per change, and a person requiring total assistance receives 5.0 minutes per change.

In his *Motion to Increase PCA Hours* dated November 17, 2015, S.T. requested PCA assistance with dressing changes.[109] S.T.'s medical records indicate that he has a history of chronic cellulitis and edema in both legs. At hearing, the Division did not dispute that S.T. develops venous ulcers on his legs.

S.T. has not previously received PCA time for assistance with non-sterile dressings.[110] However, it is clear from the medical literature that high compression bandaging, preferably consisting of four layers, is essential to the treatment of venous ulcers of the legs.[111]

S.T.'s medical records indicate that he has previously received care for his venous ulcers through periodic visits to the VA clinic. Although it is not clear exactly what level of assistance S.T. needs to allow dressing changes at home, it is clear that S.T. requires *some* level of assistance to change his dressings between visits to the VA. On the current record, the preponderance of the evidence indicates that S.T. is eligible to receive limited assistance with dressing changes (2.5 minutes per change).

The last issue concerns the frequency with which S.T.'s dressings should be changed. Although the record is silent on this issue, the medical literature indicates that, as long as an

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[108] The Division's *Personal Care Assistance Service Level Computation Chart* can be accessed online at http://dhss.alaska.gov/dsds/Documents/pca/PCA%20Service%20Computation.pdf.

[109] It is unclear from his filing whether S.T. asserts that he requires only dressing changes, or whether he also asserts that he requires sterile wound care. The latter service is addressed below.

[110] Ex. D8.

[111] *See* Simon, Dix, and McCollum, *Management of Venous Leg Ulcers* (June 5, 2004), article republished online by the U.S. National Library of Medicine and National Institutes of Health at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC420292/ (accessed March 29, 2016). "Correct application of bandages is essential to avoid pressure ulceration over bony high points and along the anterior border of the tibia." *Id.*

appropriately absorbent dressing is utilized, a dressing change is only needed every two to three days.[112] Accordingly, S.T. should receive PCA time for three changes per week.

17. PCA Assistance with Sterile Wound Care

PCAs are authorized to provide sterile dressing changes and wound care pursuant to 7 AAC 125.030(d)(8). However, S.T. did not provide any evidence that he requires *sterile* wound care under 7 AAC 125.030(d)(8), as opposed to "regular" wound care under 7 AAC 125.030(d)(4). S.T. has not previously received PCA assistance with sterile wound care,[113] so he bears the burden of proof on this issue. He did not satisfy his burden of proof. Accordingly, on the current record, S.T. is not entitled to receive PCA assistance with sterile wound care.[114]

18. PCA Assistance with Oxygen Use and/or Maintenance

PCAs are authorized to provide prescribed oxygen therapy and minor maintenance of respiratory equipment pursuant to 7 AAC 125.030(d)(6-7). S.T. did not provide evidence that he has a prescription for oxygen therapy. However, it is clear from S.T.'s medical records and hearing testimony that he is "on oxygen" and wears a nasal cannula, connected to an oxygen tank or concentrator, to receive that oxygen. It is also clear from S.T.'s medical records and hearing testimony that he has obstructive sleep apnea and wears a CPAP device at night. However, S.T. did not specify exactly what aspect of oxygen equipment and CPAP device maintenance he needs PCA assistance with, the degree of assistance he needs, or the frequency with which he needs assistance. Because S.T. has not previously received PCA assistance with these activities,[115] he bears the burden of proof on these issues. He did not satisfy his burden of proof. Accordingly, on the current record, S.T. is not entitled to receive PCA assistance with his oxygen equipment and/or CPAP device.[116]

19. PCA Escort to Medical Appointments

Pursuant to 7 AAC 125.030(d)(9), PCA time is available for "traveling with the recipient to and from a routine medical or dental appointment outside the recipient's home and conferring with medical or dental staff during that appointment." However, PCA escort to medical appointments is provided only when, *due to cognitive or behavioral issues*, the recipient is unable to communicate effectively with his or her doctor. If the recipient only requires assistance with locomotion to access

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112 *See* M. Velasco, *Diagnostic and Treatment of Leg Ulcers* (May 2011), published online at http://www.actasdermo.org/en/diagnostic-treatment-leg-ulcers/articulo/S1578219012000224/ (accessed on March 29, 2016).

113 Ex. D8.

114 S.T. is free to provide information on this subject to the Division at his next PCA assessment.

115 Ex. D8.

116 S.T. is free to provide information on this subject to the Division at his next PCA assessment.

medical appointments, or transportation to medical appointments, PCA time is provided under the separate categories of "locomotion" and "transportation." While S.T. previously received some PCA time for escort to medical appointments,[117] it is clear from his voluminous medical records that he does not require a PCA to help him communicate with his physicians. Accordingly, the preponderance of the evidence indicates that the Division was correct to deny S.T. PCA time for escort to medical appointments.

IV. Conclusion

The Division's determination of the PCA services for which S.T. is currently eligible was partially correct, but partially incorrect. Accordingly, the Division's decision is affirmed in part, and reversed in part, as indicated above.

DATED this 1st day of April, 2016.

Signed
Andrew M. Lebo
Administrative Law Judge

Adoption

The undersigned, by delegation from of 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 25th day of May, 2016.

By: *Signed*

Title: Executive Director, ORR, DHS

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

[117] Ex. D8.