

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

In the Matter of	)	
	)	
T. T.	)	OAH No. 24-0306-MDS
	)	
	_____)	

**DECISION**

**I. Introduction**

T. T. is a Medicaid recipient who was receiving 14.5 hours per week in personal care services (PCS). The Division of Senior and Disabilities Services (the Division) reassessed Mr. T.'s functional abilities and subsequently reduced the amount of PCS time he would receive to 2.0 hours each week. Mr. T. contested that decision and requested a hearing.

A hearing was held on July 25, 2024. Mr. T. represented himself and testified on his own behalf through an interpreter. C. J., Mr. T.'s care coordinator, also participated in the hearing on Mr. T.'s behalf. The Division was represented by Victoria Cobo-George. Jerry Fromm, the supervisor for the review unit, testified for the Division.

Based on the evidence presented, this decision partially upholds and partially reverses the Division's determination of the PCS for which Mr. T. is eligible, as further discussed below.

**II. Facts<sup>1</sup>**

T. E. T. is a 76-year-old male who was born in Jordan. Mr. T.'s primary language is Arabic, and while he is capable of understanding basic English, he communicates through an interpreter for more complex conversations. Mr. T. has received around 14.5 hours of personal care assistance (PCA) services since, at least, 2015.<sup>2</sup> Mr. T.'s last assessment was in 2020.

Mr. T. has a complex medical history with frequent ER utilization.<sup>3</sup> Mr. T. has chronic combined systolic and diastolic heart failure, chronic obstructive pulmonary disease, type 2 diabetes, knee pain, and gout. Mr. T. has had multiple cardiac surgeries: including an aortic valve replacement and Coronary artery bypass graft in 2010; multiple cardiac catheterizations; a cardiac ablation; a pacemaker insertion in November of 2014; and subsequent pacemaker

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<sup>1</sup> The following facts were established by a preponderance of the evidence.

<sup>2</sup> Testimony of Mr. Fromm.

<sup>3</sup> T. Exhibit, p. 1.

insertion in August of 2023.<sup>4</sup> Mr. T. has also had laser surgery to correct his vision, and knee surgery.<sup>5</sup>

July 17, 2023 Mr. T. was admitted to the hospital for shortness of breath and lower extremity edema. Mr. T. was discharged a week later.<sup>6</sup> On December 3, 2023 Mr. T. was still suffering from a lower extremity edema. As of December 11, 2023 Mr. T. no longer had edema in his legs.<sup>7</sup>

On October 27, 2023, two months after Mr. T.'s most recent pacemaker placement, he was admitted to the hospital with ventricular tachycardia and severe hypokalemia (low potassium). Mr. T. was diagnosed with NYHA class III/IV congestive heart failure. Mr. T. improved slightly to NYHA class III.<sup>8</sup> Mr. T. was discharged from the hospital on November 8, 2023. At discharge, Mr. T. was prescribed four new medications.<sup>9</sup> Despite the discharge, Mr. T.'s records indicate that "[p]alliative care was consulted for goals of care discussion given his near end stage cardiomyopathy intolerant of guideline therapies."<sup>10</sup>

On November 24, 2023 Mr. T. went to the ER because he had been unable to have a bowel movement for over four days. On November 27, 2023 Mr. T. had a follow up visit with Dr. M. Dr. M. charted that Mr. T. had not appropriately filled his medications and was not taking any of the four new medications prescribed to him when he was discharged from the hospital on November 8, 2023. Dr. M. recommended that Mr. T. "continue with nurse visits once a week to ensure he is getting the medications he needs, set up a medication box for him." Additionally, Dr. M. counseled Mr. T. on the importance of taking his medications and scheduled a follow up in two weeks to "make sure he is taking these medications."<sup>11</sup>

On December 3, 2023 Mr. T. went to the ER and was diagnosed with an acute fracture of the lateral aspect of the patella.<sup>12</sup> While it's not clear exactly when from the record, at some point after that diagnosis Mr. T. had knee surgery.<sup>13</sup> While Mr. T. originally engaged in physical

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<sup>4</sup> T. Exhibit, pp. 2-3. *See also* Testimony of Mr. Fromm. (whole paragraph)

<sup>5</sup> Testimony of Mr. Fromm. *See also* T. Exhibit, pp. 2-3. (whole paragraph)

<sup>6</sup> Ex. E, p. 4.

<sup>7</sup> T. Exhibit, p. 6.

<sup>8</sup> T. exhibit, p. 11.

<sup>9</sup> T. exhibit, pp. 8-12.

<sup>10</sup> T. Exhibit, p. 11.

<sup>11</sup> T. Exhibit, p. 13. (whole paragraph)

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

<sup>13</sup> Testimony of Mr. T.

therapy and occupational therapy for his knee, he stopped engaging in therapy because it made him too tired.<sup>14</sup> Mr. T. still experiences knee pain that limits his activities.<sup>15</sup>

Mr. T.'s primary medical issue is his cardiac function. As of January 29, 2020 Mr. T.'s left ventricular ejection fraction was 10-15%.<sup>16</sup> By July 17, 2023 Mr. T.'s ejection fraction had slightly improved to 20-25%.<sup>17</sup> Despite this slight improvement, Mr. T. condition is very serious, and if Mr. T. does not follow his medication regimen, he can go back into heart failure again.<sup>18</sup> Mr. T. needs help reminding him to take his medications.<sup>19</sup>

A few weeks prior to the hearing, Mr. T. went to the hospital with shortness of breath, inability to urinate, and with a sharp shooting pain on the left side of his body. He received medication to treat to his potassium levels. During the hearing, Mr. T. described currently feeling a pain, like electricity, on his left side.<sup>20</sup>

In addition to cardiac issues, Mr. T. has type 2 diabetes. Mr. T. has a history of uncontrolled diabetes, and he does not test his own blood sugar. As of November 27, 2023 Mr. T.'s average A1C percentage was 9.8, a result "significantly above goal".<sup>21</sup>

Mr. T.'s medical issues significantly impact his ability to engage in some activities. To address his medical issues, Mr. T. goes to regular doctor appointments. Mr. T. does not drive. To get these appointments he relies on his caregiver to get him into and out of a car. The caregiver accomplishes this by placing his arms in Mr. T.'s armpits and lifting Mr. T. out of the car. When the caregiver does this, he is bearing some of Mr. T.'s weight. Once out of the car, Mr. T. will walk a few steps to a place where he can sit down and wait for his caregiver to go into the hospital to retrieve a wheelchair. Mr. T. is then pushed in the wheelchair to the location of his appointment. Mr. T. relies on the assistance of his caregiver to access every medical appointment.<sup>22</sup>

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<sup>14</sup> Testimony of Mr. T.

<sup>15</sup> Testimony of Mr. T.

<sup>16</sup> T. Exhibit, p. 28.

<sup>17</sup> T. Exhibit, p. 20.

<sup>18</sup> Testimony of Mr. Fromm.

<sup>19</sup> T. exhibit, pp. 1 & 18. *See also* 7/18/24 T. Request for Assistance letter.

<sup>20</sup> Testimony of Mr. T.

<sup>21</sup> T. Exhibit, pp. 1 & 18. *See also* Testimony of Mr. T. (whole paragraph).

<sup>22</sup> Testimony of Mr. T.

Mr. T. is capable of doing some light housework, such as wiping down a counter. However, Mr. T. is unable to stand for extended periods of time. He is unable to do dishes, take out the trash, do his laundry outside the home, or engage in more intensive cleaning. He relies on his care giver to do those tasks for him.<sup>23</sup>

Mr. T. does not go grocery shopping on his own. While Mr. T. can use a motorized cart, make a list, and pay for his groceries he cannot do the bending and lifting required to select items. Instead, Mr. T. tells his care provider what items he needs from the store, and the care provider goes to the store to pick these items up. Mr. T. is unable to prep his own main meal, cannot do dishes, and relies on his care giver to cook for him.<sup>24</sup>

Mr. T. has also found ways to adapt. While he moves slowly and haltingly, Mr. T. is capable of transferring from a bed or chair and moving around his own home. To accomplish this Mr. T. relies on his walker or leans on objects as he walks. To use the bathroom Mr. T. lifts himself out of a chair with the use of his walker, or the arms of the chair. Then Mr. T. is able to slowly walk to the bathroom using his walker or leaning on objects. Once in the bathroom, Mr. T. is able to lower himself on the toilet, cleanse himself, and raise himself off the toilet without assistance. Mr. T. does not use incontinence products.<sup>25</sup>

Mr. T. has also adapted to managing his personal hygiene and bathing. Once in the bathroom Mr. T. uses a shower chair. Mr. T. is only able to reach down to his ankles and is not able to reach his back. He uses a long-handled brush to clean his feet and back. This allows Mr. T. to shower without assistance, once to twice a week. Mr. T. still experiences shortness of breath that makes it difficult to shower. Mr. T. has good range of motion in his upper extremities and is able to comb his hair, brush his teeth, and wash his face and hands. To dress himself, Mr. T. sits in a chair and is able to put on his shirt and pants without assistance.

However, Mr. T. cannot put on socks and outdoor shoes and relies on his caregiver to put on his socks and shoes.<sup>26</sup>

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<sup>23</sup> Testimony of Mr. T.

<sup>24</sup> Testimony of Mr. T. (whole paragraph).

<sup>25</sup> Testimony of Mr. T. (whole paragraph).

<sup>26</sup> Testimony of Mr. T. (whole paragraph).

On April 8, 2024 Angel Moody, an assessor with the Division, evaluated Mr. T. using the Division's Consumer Assessment Tool (CAT). The Division completed its assessment and issued a notice on April 10, 2024, informing Mr. T. that his PCS hours would be reduced from 14.5 to 2 hours each week.<sup>27</sup>

A hearing was originally scheduled for July 1, 2024. Mr. T. failed to appear for that hearing and a notice of opportunity to show good cause was issued. After Mr. T. presented good cause, the hearing was rescheduled, and eventually held on July 25, 2024.

At the hearing Mr. T. readily provided detailed responses to questions about how he accomplishes his activities of daily living (ADL) and incidental activities of daily living (IADL). Mr. T.'s willingness to admit his strengths, as well as his weakness, increased the credibility of his testimony.

At the hearing Jerry Fromm was called as a witness. Mr. Fromm was not the assessor in Mr. T.'s case. However, Mr. Fromm has been working for the Division for over 10 years, he is the supervisor for the review unit, and is a registered nurse in Minnesota. Mr. Fromm reviewed Mr. T.'s partial medical records and the Consumer Assessment Tool (CAT). Mr. Fromm's testimony established three changes in Mr. T.'s functional capabilities: Mr. T. now uses adaptive equipment; the edema in Mr. T.'s lower extremities has resolved; and Mr. T. is on different medication which he is responding to when he remembers to take them.<sup>28</sup> Mr. Fromm originally testified that Mr. T.'s condition had improved from the 2020 assessment because he had a pacemaker implanted. During further question it was highlighted to Mr. Fromm that Mr. T. first had a pacemaker implanted in 2014, well before his last assessment.

Exhibits A through F were admitted with objection. Mr. T.'s medical records were also admitted and will be referred to as "T. Exhibit" throughout this decision. Despite being ordered to provide a copy of Mr. T.'s 2020 CAT, the Division did not produce one.<sup>29</sup> Mr. T.'s previously assessed needs are deduced from the Division's other exhibits, unless otherwise noted.

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<sup>27</sup> Ex. D, p. 1.

<sup>28</sup> Testimony of Mr. Fromm (whole paragraph).

<sup>29</sup> Scheduling Order, July 12, 2024. "**Additional Records From The Division** by close of business on this date the Division is to submit a copy of Mr. T.'s 2020 CAT and a revised copy of the chart in exhibit D, pages 9-12, so that all the columns appear on one page"

### **III. Discussion**

#### ***A. The PCS Determination Process***

The purpose of the PCS program is to provide a recipient physical assistance ADLs, physical assistance with IADLs, and other services based on the physical condition of the recipient.<sup>30</sup>

The Division uses the CAT to help it assess the level of assistance needed.<sup>31</sup> The amount of time allotted for needed assistance is determined by the Personal Care Assistance Service Level Computation.<sup>32</sup> The Service Level Computation chart shows the amount of time allotted for each ADL or IADL depending on the level of assistance needed for each task. The different levels of assistance are defined by regulation and in the CAT.<sup>33</sup>

Supervision is defined as oversight, encouragement, or cueing three or more times a week, with physical assistance no more than two times a week.<sup>34</sup> Limited Assistance is defined as requiring direct physical help or guidance from another individual three or more times a week, with weight bearing support no more than two times a week.<sup>35</sup> Extensive Assistance is defined as requiring direct physical help with weight bearing support at least three times a week, or full assistance without any involvement from the recipient at least three times a week, but not all of the time.<sup>36</sup> Full assistance means the recipient has to rely entirely on the caretaker to perform the activity.<sup>37</sup>

#### ***B. Burden of Proof***

To reduce the number of allotted PCS hours the Division must show by a preponderance of the evidence that the recipient has experienced a change that alters the need for physical assistance.<sup>38</sup> In Mr. T.'s case, the Division must show it's more likely than not that he experienced a change in his functional capabilities between assessments that would justify a reduction in PCS from the levels set in the 2020 CAT. As the Division notified Mr. T. of its

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<sup>30</sup> 7 AAC 125.010(a).

<sup>31</sup> 7 AAC 125.020(b).

<sup>32</sup> 7 AAC 125.024(1).

<sup>33</sup> The July 29, 2009 version of the CAT has been adopted as a regulation by reference, 7 AAC160.900(d)(6), and therefore the definitions in the CAT are themselves regulations.

<sup>34</sup> Ex. E, pp. 7-8; 7 AAC 127.990(15).

<sup>35</sup> *Id.*

<sup>36</sup> Ex. E, pp. 7-8

<sup>37</sup> *Id.*

<sup>38</sup> 7 AAC 125.026(a). 7 AAC 49.135. (Proof by a preponderance of the evidence means that the fact in question is more likely true than not true).

decision on April 10, 2024, his condition on that date is used when determining the amount of services he is eligible to receive.<sup>39</sup>

In addition to challenging the Division's reductions, Mr. T. also requested to receive PCA services for an escort to medical appointments. As it appears that Mr. T. was not previously receiving escort services, he bears the burden of proof for this service. The parties can meet their burden of proof using any evidence on which reasonable people might rely in the conduct of serious affairs.<sup>40</sup> This includes sworn testimony from the recipient, which can be helpful filling in the gaps of a medical record that does not include physical therapy or occupational therapy notes.

### ***C. Activities of Daily living***

#### **1. Transferring**

When Mr. T. was assessed in 2020, he was found to need limited assistance with transferring with a frequency of 28 times per week.<sup>41</sup> In the 2024 assessment, the Division found that Mr. T. was independent with transferring, and removed services for this ADL.<sup>42</sup> Transferring consists of how a person moves between surfaces, such as from a sitting to a standing position.<sup>43</sup>

At the hearing, Mr. Fromm testified that Mr. T. is no longer experiencing edema and this, plus Mr. T.'s functional assessments, support that Mr. T. can transfer independently. Mr. T. testified, through an interpreter, that he is able to get himself up by using the edge of a chair or his walker. Additionally, the assessor witnessed Mr. T. stand up independently using his hands to press into the arms of the chair. While Mr. T.'s care provider did lightly place his hands on Mr. T.'s shoulders, this is best described as standby assistance. Based on the evidence presented, the Division has met its burden to eliminate services for this ADL.

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<sup>39</sup> See *In re MT.*, OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2017) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=3003>).

<sup>40</sup> 2 AAC 64.290(a)(1).

<sup>41</sup> Ex. F, p. 1.

<sup>42</sup> Ex. F, p. 1.

<sup>43</sup> Ex. E, p. 8.

## 2. Locomotion within the Home

When Mr. T. was assessed in 2020, he was found to need supervision with locomotion.<sup>44</sup> In the 2024 assessment, the Division found that Mr. T. was independent with locomotion inside the home. Mr. T.'s testimony supports this conclusion.

Mr. T. testified that he is able to get around his home with his walker, or by leaning on the walls. Moving is still difficult for him, and he often feels faint, so his care provider is nearby in case he falls. Having someone nearby in case of a fall is classified as standby assistance. Alaska Medicaid regulations do not allow PCS for standby assistance.<sup>45</sup> As Mr. T. is able to move around his home without hands on assistance, it is more likely true than not true that Mr. T. does not require PCS for locomotion within the home. Therefore, the Division has met its burden to remove services for this ADL.

## 3. Locomotion for Medical Appointments

Unlike location within the home, location to access medical appointments often involves exiting the home, entering and exiting a vehicle, and often, significant travel within the building. When Mr. T. was assessed in 2020, he was found to need limited assistance with locomotion to medical appointments with a frequency of once per week.<sup>46</sup> In the 2024 assessment, the Division found that Mr. T. was independent with locomotion for attending medical appointments and removed services for this ADL.<sup>47</sup>

At the hearing Mr. T. testified, that to access his medical appointments his care provider assists him out of the car. To do this, the care provider places his arms underneath Mr. T.'s armpits and lifts him out of the car. Then Mr. T. walks a few steps, sits down, and waits for his care provider to return with a wheelchair. Mr. T. is then pushed in the wheelchair to his appointment. Mr. T. testified that he requires this assistance every time he goes to a medical appointment and could not access his medical appointments without this level of assistance.

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<sup>44</sup> Ex. F, p. 1.

<sup>45</sup> *In re K.S.*, Oah No. 20-0931-MDS, p. 12 (Commissioner Health & Soc. Serv. 2021)(Available at <https://aws.state.ak.us/OAH/Decision/Display?rec=6670>)

<sup>46</sup> Ex. F, p. 1.

<sup>47</sup> Ex. F, p. 1.

Prior decisions have defined weight bearing assistance as supporting more than a minimal amount of weight where the recipient would be unable to perform the task without that assistance.<sup>48</sup> Therefore, Mr. T. requires hands on weight bearing assistance to complete this ADL and the Division has not met its burden of proving a material change of condition to justify the reduction.

#### 4. Dressing

When Mr. T. was assessed in 2020, he was found to need limited assistance with a frequency of 14 times per week.<sup>49</sup> In the 2024 assessment, the Division found that Mr. T. was independent with dressing, and removed services for this ADL.<sup>50</sup> The Division's determination that Mr. T. was independent as to dressing was based, partly, on Mr. T.'s statements and partly on the assessor witnessing Mr. T. unzip and remove his coat.<sup>51</sup> The assessor also witnessed Mr. T. reach down to the level of his ankles and that he was able to pick up a penny. The assessment notes that Mr. T. said he got dressed by himself and he was able to wash his feet at least 5 times a day before prayer.<sup>52</sup> However, while Mr. T. is able to wash his feet in the shower, he does this with the assistance of a long-handled brush.<sup>53</sup> There is nothing in the record to indicate Mr. T. has adaptive equipment he uses to put on his shoes and socks. Additionally, Mr. T.'s testimony at the hearing, was more nuanced than the statement memorialized in the CAT.

Mr. T. testified that he can dress himself part of the way. For his shirt and pants, he gets himself dressed in a chair. While it seems that Mr. T. has some improved flexibility, putting on socks and shoes can involve more time, stamina, and strength than picking up a penny. Just as with the rest of his clothing, Mr. T. would need to put on his shoes and socks from a seated position which involves different levels of flexibility and rotation than picking up an object from a standing position. While the assessor seems to have understood Mr. T.'s ability to wash his feet as being done without adaptive equipment, his testimony was clear that he can only do this with the help of a long-handled brush. Additionally, Mr. T. credibly testified that he is not able

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<sup>48</sup> See *In re K T-Q*, OAH No. 13-0271-MDS (Commissioner of Health & Soc. Serv. 2013) (available at <https://aws.state.ak.us/OAH/Decision/Display?rec=2857>) p. 4

<sup>49</sup> Ex. F, p. 1.

<sup>50</sup> Ex. F, p. 1.

<sup>51</sup> Ex. E, p. 9.

<sup>52</sup> Ex. E, p. 9.

<sup>53</sup> Testimony of Mr. T.

to put on his own outdoor shoes and socks, and that his care provider does this for him. He testified he needs this assistance four days a week. This assistance would necessarily involve guiding and maneuvering of Mr. T.'s limbs, which is limited assistance.<sup>54</sup> While this is a close call, it is the Division's burden to prove that the reduction in time is appropriate.

Here, the evidence shows that while Mr. T. has found adaptive ways to get partially dressed on his own, he still needs physical help in the guided maneuvering of limbs from his caregiver four days a week. Therefore, Mr. T. should still be scored as needing limited assistance with this ADL.

As the 2020 CAT is not in the record, it is hard to determine why Mr. T. was assessed as needing this assistance 14 times a week. However, based on Mr. T.'s testimony and the assessor's observations, he does not need assistance getting dressed as often. Therefore, while Mr. T. still requires limited assistance, the frequency should be reduced. Mr. T. should receive services for this ADL twice a day, taking his shoes on and off, four days a week for a total frequency of 8.

#### 5. Toileting

Toileting is a complicated process. It involves getting to and from the bathroom, transfers to and from the toilet, cleansing, and adjusting clothing.<sup>55</sup> When Mr. T. was assessed in 2020, he was found to need limited assistance with toileting with a frequency of 14 times per week.<sup>56</sup> In the 2024 assessment, based largely on Mr. T.'s statements, the Division found that Mr. T. was independent with toileting, and removed services for this ADL.<sup>57</sup>

In the hearing the Division noted that the edema in Mr. T.'s legs, which had limited his mobility, has resolved. The Division argued that this change should allow Mr. T. to complete this ADL independently. This argument is supported by Mr. T.'s forthright testimony.

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<sup>54</sup> *In re K.B.*, OAH No. 14-0799-MDS (Commissioner of Health and Soc. Serv. 2014)(available at <https://aws.state.ak.us/OAH/Decision/Display?rec=3170>)

<sup>55</sup> Ex. E, p. 9.

<sup>56</sup> Ex. F, p. 1.

<sup>57</sup> Ex. F, p. 1.

Mr. T. testified he can get up out of a chair on his own, using his walker. He is also able, with difficulty, to get himself to the bathroom using his walker or leaning on objects. Once there, he can transfer himself to and from the toilet, and does not require assistance with cleansing himself or adjusting his clothing. Therefore, the Division has met its burden to show a change justifying the reduction, and that Mr. T. should be scored as independent for this ADL.

#### 6. Personal Hygiene

When Mr. T. was assessed in 2020, he was found to need limited assistance with a frequency of 7 times per week.<sup>58</sup> In the 2024 assessment the Division found, based on Mr. T.'s statements and the assessor's observations, that Mr. T. was independent with hygiene, and removed services for this ADL.<sup>59</sup> Personal hygiene assistance is provided to assist a recipient with "combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands," and other similar activities with the exclusion of bathing or showering.<sup>60</sup>

The assessor was able to observe Mr. T. touch his face and recorded that he had a good range of motion in his upper extremities.<sup>61</sup> Mr. T.'s statements to the assessor and testimony at the hearing also support that he is able to complete tasks related to his personal hygiene without assistance. Therefore, the Division has met its burden to show a change justifying the reduction, and that Mr. T. should be scored as independent for this ADL.

#### 7. Bathing

Bathing includes transfers in and out of the shower and the bathing of the body, excluding washing the hair and the back.<sup>62</sup> When Mr. T. was assessed in 2020, he was found to need extensive assistance with a frequency of 7 times per week.<sup>63</sup> This was based, in part, on Mr. T.'s need for assistance with transferring and an inability to reach his feet.<sup>64</sup> In the 2024 assessment the Division found, based on Mr. T.'s statements and the assessor's observations, that Mr. T. was independent with bathing, and removed services for this ADL.<sup>65</sup>

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<sup>58</sup> Ex. F, p. 1.

<sup>59</sup> Ex. F, p. 1.

<sup>60</sup> Ex. E, p. 9.

<sup>61</sup> Ex. E, p. 10.

<sup>62</sup> Ex. E, p. 10.

<sup>63</sup> Ex. F, p. 1.

<sup>64</sup> Testimony of Mr. Fromm.

<sup>65</sup> Ex. F, p. 1.

Since his last assessment Mr. T. has gotten some adaptive equipment to help him shower on his own. Mr. T. uses a shower chair, so he is not forced to stand to take a shower, and a long-handled brush to reach his feet. Mr. T. testified he is able to shower 1-2 times per week without any assistance.

While Mr. T. still has difficulty showering, and the task can be exhausting for him, if a recipient can complete the task without physical assistance, they are not eligible for PCA for that ADL. Therefore, the Division has met its burden to show a change justifying the reduction, and that Mr. T. was correctly scored as independent for this ADL.

***D. Incidental Activities of Daily Living***

**1. Light Meal Preparation**

The CAT divides meal preparation into light meals and main meals.<sup>66</sup> Light meals can be a quick snack that does not involve any chopping, cooking, etc. The IADL of light meal preparation includes 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. In 2020, Mr. T. received a score of 1/3 for light meal (independent with difficulty) with a frequency of 14. In 2024 the Division scored him as independent with light meals removing PCA services for this IADL.

The assessor did not observe Mr. T. preparing a meal or a snack. Mr. T. is Muslim, and the assessment was conducted on April 8, 2024, which was during the Ramadan holiday. During Ramadan, practicing Muslims do not consume food or water after sun rise or before sun set. While not noted specifically in the CAT, Mr. T. did express to the assessor that he was fasting and could not hold food or water.

Mr. T. testified that he relies on paper plates and plastic spoons, as he cannot clean dishes. For light meals, this would eliminate the need for much cleanup. Mr. T.'s testimony was very forthcoming, and he admitted that he can wipe off a counter with a sponge. Mr. T.'s mobility has somewhat improved since his edema has resolved and he is able, with difficulty, to get around his home. Additionally, Mr. T. has enough fine motor control in his hands and fingers to pick up a penny. Taken together it is more likely than not that Mr. T. can walk to the fridge or pantry and pull out the supplies to assemble a light meal. Therefore, the Division has met its burden to eliminate services for this IADL.

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<sup>66</sup> 7 AAC 125.030(c)(1), (c)(2).

## 2. Main Meal Preparation

Just as with light meals the IADL of main meal preparation involves 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. Main meals, however, are presumed to require a longer time standing in the kitchen to prepare the meal.

In 2020, Mr. T. received a score of 2/3 for main meal (done with help, physical assistance provided) with a frequency of 7.<sup>67</sup> In 2024 the Division scored him as independent with difficulty for main meals, reducing the frequency to once per week.<sup>68</sup>

Mr. T. testified repeatedly that he has difficulty standing for extended periods of time due to continued issues with his heart. While the available medical records only go through December of 2023, Mr. T.'s medical records support that he has had serious cardiac issues for over a decade. Despite multiple cardiac surgeries and two pacemakers, Mr. T. condition continues to be very serious, and his doctors have gone so far as to discuss palliative care with him.

When Mr. T. wants something cooked, he pays his caregiver, with his own funds, to cook for him. Unlike other ADLs and IADLs there is nothing in the record to indicate that Mr. T. has adaptive equipment that would allow him cook on his own. While paper plates and plastic utensils might be appropriate for a light meal, a main meal is more involved. A nutritious main meal often requires a more significant amount of time chopping food, mixing ingredients, putting items in the oven or on the stove. Items may need to be taken down from the shelves, pans pulled out of the cupboards, or at the conclusion of the meal, the dishwasher must be loaded. There is nothing in the record to show that Mr. T. has disposable cookware. Rather, Mr. T.'s reliance on his care giver, despite years of working in the restaurant industry, show that Mr. T. still cannot cook for himself. Taken together, it is more likely than not, that Mr. T. cannot stand long enough and does not have sufficient strength to cook a meal, and clean the cookware, on his own.

The Division did not meet its burden to show that Mr. T. has improved such that he can independently prepare a main meal. Therefore, Mr. T. should receive a score of 2/3 for main meal preparation, 7 times per week.

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<sup>67</sup> Ex. F, p. 1.

<sup>68</sup> Exhibit D, page 8.

### 3. Laundry

Laundry includes the tasks of changing a recipient's bed linens or laundering his or her linens and clothing.<sup>69</sup> When Mr. T. was assessed in 2020, he was found to need moderate assistance (2/3), with a frequency of 1 times per week for laundry within the home.<sup>70</sup> In the 2024 assessment, the Division determined that Mr. T.'s laundry is done outside of the home, but reduced his level of assistance to independent with difficulty (1/3).<sup>71</sup>

While Mr. T. does have a somewhat improved ability to move around his own home, he still struggles with persistent knee pain and cannot stand for extended periods.<sup>72</sup> Other than being outside the home, there is no indication where Mr. T.'s laundry is located. That laundry access may involve stairs and may not be accessible to Mr. T. Regardless, doing laundry would involve carrying the laundry outside the home, accessing the machine, removing the wet laundry and placing it in the dryer, then removing the laundry, folding the laundry and putting it away. Mr. T.'s testimony was that he cannot, and does not, do these actions. During Mr. T.'s testimony he readily admitted areas where he has improved and was very forthright and credible in his answers. As it has already been established that Mr. T. requires assistance to travel outside the home, that Mr. T. has difficulty standing for extended periods of time, and Mr. T. testified that his care provider does all of the laundry for him, the Division has not met its burden to reduce amount of support provided for this IADL. However, since the evidence does support that laundry is done entirely outside the home, Mr. T. should receive the same support level as in his prior CAT, 2/3, but it should be applied to out of home laundry.

### 4. Housework

When Mr. T. was assessed in 2020, he was scored requiring moderate assistance (2/3) for light housework, with a frequency of one time per week.<sup>73</sup> In the 2024 assessment, the Division determined that Mr. T. was independent with difficulty (1/3). Light housework consists of doing housework such as dishes, dusting on a daily basis, and making the bed.<sup>74</sup> The CAT contains no commentary regarding the factors taken into account by the Division in reaching this scoring.

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<sup>69</sup> 7 AAC 125.030(c)(4).

<sup>70</sup> Ex. F, p. 1.

<sup>71</sup> Ex. F, p. 1.

<sup>72</sup> Testimony of Mr. T.

<sup>73</sup> Ex. F, p. 1.

<sup>74</sup> Ex. B, p. 8.

While the 2020 score is not in the record, the 2024 CAT also assessed Mr. T. for routine housework as independent with difficulty. Routine housework consists of vacuuming, cleaning the floor, trash removal, and cleaning the bathroom as needed.<sup>75</sup> The Division's rules state that for housework, that assistance is determined as follows: "[c]ompute time based on higher score of either light or routine housework."<sup>76</sup>

Mr. T. credibly testified that he can occasionally participate in some cleaning tasks, such as wiping down a counter, or throwing away paper plates. However, routine housework encompasses tasks that require kneeling, bending, scrubbing, and at times, vigorous activity. While Mr. T. can move, haltingly, around his home there is not documentation that he can get down on his hands and knees and clean a bathroom. Mr. T. credibly testified that he is reliant on his care provider, or the assistance of a neighbor, to take on tasks like taking out the trash and more intensive cleaning. The CAT notes that Mr. T. relayed he "does not lift a finger to clean, if it needs done, I wait for him the next day to come over"<sup>77</sup>

Taken together the evidence therefore shows that while he can do some light housework, he is not able to complete routine housework without physical hands-on assistance with it. Because Mr. T. requires hands-on physical assistance with routine housework, the Division has not met its burden to reduce time for this IADL.

## 5. Shopping

This task is grocery shopping. It does not include transportation.<sup>78</sup> In order to go grocery shopping, a recipient would need to be able to move within the store and be able to bend and lift to some degree. The Division's exhibits show that when Mr. T. was assessed in 2020, he was found to need moderate assistance (2/3).<sup>79</sup> In the 2024 assessment, the Division determined that Mr. T. needs had reduced, and he now is independent with difficulty (1/3).

While Mr. T. is able to move around his own home with a walker, and leaning on objects, he does so haltingly. When Mr. T. goes to a medical appointment, which involves walking distances similar to a grocery store, he uses a wheelchair. The CAT notes that Mr. T. likes "to go and use the electric chair at Costco for groceries" and that he uses the electric cart to get

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<sup>75</sup> Ex. E, p. 28.

<sup>76</sup> Ex. D, p. 7.

<sup>77</sup> Ex. E, p. 33.

<sup>78</sup> Ex. B, p. 8.

<sup>79</sup> Ex. F, p. 1.

around the store and go to pay.<sup>80</sup> However, these actions are not the entirety of the IADL of shopping. There is no evidence in the record that Mr. T. is able to get out of the cart, lift an item, and place it in his basket. Rather, Mr. T. credibly testified he cannot shop on his own and relies on the assistance of his caregiver. Therefore, the Division has not met its burden as to this reduction.

#### 6. Medical Escort

Medical escort is allowed for a person who requires limited or extensive assistance with locomotion to access medical appointments.<sup>81</sup> One of the Division's exhibits indicates that Mr. T. was not receiving escort services. However, Mr. T.'s adverse action letter notes, "on the assessment 03/10/2020 you were given 5 minutes a week of time for escort. However, on the current assessment you were given 0."<sup>82</sup> As the 2020 CAT is not in the record, it cannot be determined which of these conflicting exhibits is correct. Regardless of which exhibit is correct, Mr. T. meets the qualifications for a medical escort.

As found above, Mr. T. requires limited assistance to access medical appointments. He therefore qualifies for medical escort time.<sup>83</sup> Medical escort is a limited service. It is provided only to escort a recipient to and from a medical appointment.<sup>84</sup> It does not allow PCS for the time actually spent at the appointment. The amount of time is derived by taking the amount of time necessary to go to and from the appointment, multiplied by the number of yearly appointments, divided by 52 to arrive at a weekly number of minutes. The maximum time allowed per appointment is 45 minutes.<sup>85</sup>

While the record is limited on how many appointments Mr. T. goes to, the CAT lists 4 appointments per year with his primary care physician, 1 appointment with his Orthopedist, and 2 with his Cardiologist, resulting in 7 appointments a year. All of these appointments have a listed escort time of 30 minutes, which multiplied by 7, equals 210 minutes. Divided by 52 weeks, his medical escort time is 4.038 minutes per week. Rounded to the next whole number, Mr. T. should receive 5 minutes per week, the same number indicated on the adverse action

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<sup>80</sup> Ex. E, p. 33.

<sup>81</sup> Ex. B, p. 9.

<sup>82</sup> Ex. D, p. 4.

<sup>83</sup> 7 AAC 125.030(d)(4)

<sup>84</sup> 7 AAC 125.030(d)(4)

<sup>85</sup> Ex. B, p. 68.

letter. Therefore, even if it is Mr. T.'s burden of proof, he qualifies for 5 minutes of escort time per week.

## 7. Medication

The Division's exhibits indicate that Mr. T. previously was scored 2/2 for Medications.<sup>86</sup> The frequency was previously set at zero, so Mr. T. received no services for this IADL. As the 2020 CAT is not in the record, it is not clear why Mr. T. was not previously allotted time for this IADL. While not noted in his adverse action letter, likely because his support time did not change, in 2024 Mr. T. was assessed a score of 0/0 for this IADL.

The assessor found that Mr. T. prepared and administered all his own medication and that he was always compliant with his taking his medication.<sup>87</sup> Additionally, the assessor found that Mr. T. does not have difficulty remembering and using information and does not require directions or reminding from others.<sup>88</sup> However, this finding is somewhat contradicted by Mr. T.'s medical records, which document that on 11/27/2023 his memory was mildly impaired.<sup>89</sup>

Mr. T.'s medical records are mixed on his medication compliance. During an August 3, 2023 appointment Mr. T. relayed that he was compliant with all his medications.<sup>90</sup> However, during a November 27, 2023 Mr. T.'s provider charted that Mr. T. had not appropriately filled his medications. The records note that Mr. T. was not taking any of the four new medications prescribed to him on discharge from the hospital. Dr. M. recommended the Mr. T. "continue with nurse visits once a week to ensure he is getting the medications he needs, set up a medication box for him." Additionally, Dr. M. counseled Mr. T. on the importance of taking his medications and scheduled a follow up in two weeks to "make sure he is taking these medications."

Mr. T. records indicate that he was reliant on a med-set but that he last received a med-set October 17, 2023.<sup>91</sup> A med-set is blister pack of all of a patient's medication, so that a patient can push out the medication they need for each day and check the pack if they forget if the medication has been taken. As of December 11, 2023 Mr. T. was no longer receiving a med- set from the pharmacy and there was concern about Mr. T. getting all the appropriate

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<sup>86</sup> Ex. F, p. 1. Both in CD only – assistance and AB and CD – reminder.

<sup>87</sup> Ex. E, p. 21.

<sup>88</sup> Ex. E, p. 15

<sup>89</sup> T. exhibit, p. 17

<sup>90</sup> T. exhibit, p. 20

<sup>91</sup> T. exhibit, pp. 1 & 18.

medication. Based on this concern, Dr. M. charted that Mr. T. “had an appointment today with our pharmacy team to clarify his medications, they are going to be contact Genoa pharmacy to see if he can get back on a med set”.<sup>92</sup>

7 AAC 125.030(d)(1) includes assisting a recipient with self-administration of oral medication. The act of assisting with self-administration of oral medication includes, among other activities: reminding the recipient to take the medication; observing the recipient while the recipient takes or use the medication; checking the recipient’s dosage against the label; reassuring the recipient that they are taking the correct dosage.<sup>93</sup> Mr. T.’s medical records indicate, that he still struggles with remembering to take his medication. Failing to take his medication, or to take the correct dose, can be extremely hazardous to Mr. T. Finally, in a letter sent shortly before the hearing Mr. T. stated that he needs help remembering to take his medication.<sup>94</sup> Taken together, this supports that Mr. T. still needs some assistance with the self-administration of oral medications.

The applicable regulation notes that services can be provided if for the “following activities if physical assistance is necessary for a recipient to complete the activity” and specifically lists out reminding a recipient to take medication and confirming they have taken the correct dose. However, while Mr. T. may be eligible for assistance with medications, the amount of PCA time allowed for medication assistance is calculated based on the recipient’s personal hygiene score.<sup>95</sup> As Mr. T. is not eligible for PCA services for personal hygiene, he still cannot be allotted time for this IADL.

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<sup>92</sup> T. exhibit, p. 1.

<sup>93</sup> 7 AAC 125.030(g)(1)

<sup>94</sup> 7/18/24 letter from Mr. T.

<sup>95</sup> *In re V.M.*, OAH No 15-0184-MDS (Commissioner of Health and Soc. Serv. 2014)(available at <https://aws.state.ak.us/OAH/Decision/Display?rec=3268>).

#### IV. Conclusion

It was the Division's burden to prove a material change of condition justifying a reduction in Mr. T.'s PCA services. When evidence is split equally in both directions, or there is insufficient evidence, the Division has not met its burden. In this matter the Division met that burden as to some of the ADLs and IADLs, but not as to all of them. Accordingly, the Division is to recalculate Mr. T.'s PCA service time consistent with this decision.

Dated: September 3, 2024

By: Signed  
Signature  
Eric M. Salinger  
Name  
Administrative Law Judge  
Title

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

## Adoption

The undersigned, by delegation from the Commissioner of Health, 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 18th day of September, 2024.

By: Signed  
Signature  
Eric M. Salinger  
Name  
Administrative Law Judge  
Title

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