

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

In the Matter of

W. D.

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OAH No. 24-0340-MDS

DECISION

I. INTRODUCTION

W. D. has been receiving Medicaid Personal Care Services (“PCS”) for assistance with certain Activities of Daily Living and Instrumental Activities of Daily Living. A recent assessment determined that Ms. D. does not require sufficient assistance to continue qualifying for PCS. The Division of Senior and Disability Services denied her application to renew and expand her benefits based on the assessment and documents Ms. D. had submitted. Ms. D. challenged the decision. Based on the evidence provided by the parties, and for the reasons discussed below, the Division correctly determined that Ms. D. does not qualify for PCS. Its decision is affirmed.

II. BACKGROUND

W. D., age 44, has been diagnosed with multiple sclerosis (“MS”), anxiety, chronic obstructive pulmonary disease (“COPD”), chronic pain syndrome, and overactive bladder.¹ She has been receiving PCS benefits for assistance with certain Activity of Daily Living (“ADL”) of bathing and Instrumental Activities of Daily Living (“IADLs”) of main meal preparation, housework, shopping, and laundry.² Ms. D. applied to renew her PCS benefits on November 29, 2023 and included requests for additional PCS benefits to cover the ADLs of transferring, dressing, and personal hygiene.³ The Division conducted an assessment by videoconference on March 5, 2024.⁴ The assessor evaluated Ms. D.’s need for assistance with certain activities based on her observations of Ms. D. replicating the movements for those activities, Ms. D.’s statements, and a verification of diagnosis and other medical records submitted with her

¹ Ex. F. at 6.

² Ex. D at 8.

³ Ex. F at 1-5.

⁴ Ex. E.

application.⁵ The assessor determined that her observations did not support continued eligibility for PCS benefits and that Ms. D.’s statements were not supported by current medical records to demonstrate continued eligibility.⁶

The Division notified Ms. D. that she was no longer eligible for PCS on May 9, 2024.⁷ Ms. D. appealed.⁸ The Division submitted a position statement and exhibits. Ms. D. also submitted documents. A hearing was held on July 19, 2024. The record was held open for Ms. D. to submit additional documents, which she did on August 5, 2024. The Division was given an opportunity to respond to the additional documents but elected not to do so.

An assessment takes into account both the assessor’s observations and the applicant’s self-reporting, as supported by evidence such as medical records.⁹ The assessor explained that with Ms. D.’s MS, there can be relapses and remissions, so the diagnosis alone is not conclusive for determining Ms. D.’s current needs and abilities. Rather the assessment and medical records from the 12 months leading up to the assessment provide information about any current limitations.¹⁰ Thus the fact that Ms. D. was previously found eligible for PCS does not mean that her condition and needs were the same as of the March 5, 2024 assessment or May 9, 2024 denial. Similarly, medical records from months after the assessment and denial of benefits do not generally demonstrate how and whether Ms. D. could perform relevant tasks at the time.

Ms. D. submitted physician’s notes from monthly pain management appointments with Dr. U. T. from July 2023 through July 2024.¹¹ All of these appointments were by telehealth and consist of Ms. D.’s self-reporting of her condition.¹² Throughout the notes, Dr. T. repeatedly stated that Ms. D. needed MRIs of her spine and brain for MS management, but that she cancelled MRI appointments multiple times, even after being prescribed additional pain medication for the procedure.¹³ In notes from a January 4, 2024 telehealth appointment, Dr. T. stated that Ms. D. “continuously confabulates reasons for

⁵ D. F. testimony.

⁶ *Id.*; Ex. E.

⁷ Ex. D.

⁸ Ex. C.

⁹ D. F. testimony.

¹⁰ *Id.*

¹¹ D. August 2, 2024 submission. Some of these appointments are outside the time period relevant to the assessment.

¹² *Id.*

¹³ *Id.* at 12, 20, 26-27, 34, 41, 48, 56, 64, 69, 96, 102-03.

not receiving MRI ordered in previous visits over 3 years.”¹⁴ In notes from their January 31, 2024 appointment, Dr. T. raised concerns that Ms. D. is a “long-term virtual patient she has never been assessed in person by me” and noted that “albeit, patient has Multiple Sclerosis over the last year I do not believe she has had flare-up.”¹⁵ Ms. D. also submitted notes from a telehealth visit with Dr. G. F. regarding her MS. He too noted the need for her to get an MRI, stating that her most recent MRI was in 2018 and showed mild disease burden with no clear cord lesions on her spine.¹⁶

Ms. D. submitted additional medical records following the hearing, but none of these records address her ability to perform any of the pertinent ADLs or IADLs. The records include (1) a general medical history and patient summary;¹⁷ (2) notes from medical appointments from June 2023 through the date of the assessment and denial, none of which address Ms. D.’s ability to conduct the activities for the ADLs or IADLs, and most of which concern unrelated medical issues, such as UTIs, mental health, and a request for an emotional support animal;¹⁸ (3) notes from medical appointments and physical therapy *after* the assessment and denial, which are outside the time period at issue;¹⁹ (4) various lab tests;²⁰ and (5) various x-ray and MRI orders (not results), many of which appear not to have been fulfilled.²¹

III. DISCUSSION

The Medicaid program provides PCS to assist recipients who require a certain level of assistance with (1) ADLs consisting of bed mobility, transfers, locomotion, dressing, eating, toileting, personal hygiene, and bathing; and (2) IADLs consisting of light meal preparation, main meal preparation, housework, laundry, and shopping.²² PCS is not available for activities that can “be performed by the recipient.”²³

¹⁴ *Id.* at 56.

¹⁵ *Id.* at 48.

¹⁶ *Id.* at 86.

¹⁷ Ex. 2 at 2-18.

¹⁸ *Id.* at 33-108.

¹⁹ *Id.* at 25-32, 168-210.

²⁰ *Id.* at 109-51.

²¹ *Id.* at 152-65.

²² 7 AAC 125.030(b), (c).

²³ 7 AAC 125.040(a)(4).

A. The Consumer Assessment Tool

The Division uses a Consumer Assessment Tool (“CAT”) to score recipients for both eligibility for the PCS program and the amount of assistance.²⁴ For both ADLs and IADLs, the CAT provides recipients with a self-performance code that rates a person’s ability to perform the activity and support code that reflects the degree of assistance a person requires to do so. These codes then dictate whether a recipient is eligible for PCS for the activity, and, if so, the amount of PCS time allocated to that activity.

For ADLs, the assessment looks at a person’s ability to perform tasks and need for support during the seven days leading up to the assessment.²⁵ Self-performance is scored:

- 0 – “Independent.”** This code is used if help or oversight was provided no more than twice in the prior seven days.
- 1 – “Supervision.”** This code is used if the person requires only “oversight, encouragement, or cueing” while performing the activity.
- 2 – “Limited Assistance.”** This code is used if the person is “highly involved” in the activity” and “received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance” three or more times in the last seven days or received physical help in guided maneuvering of limbs plus weight bearing assistance no more than twice in the last seven days.
- 3 – “Extensive Assistance.”** This code is used where the person performed part of the activity, but over the past seven days received weight-bearing support and/or full caregiver performance of the activity three or more times.
- 4 – “Total Dependence.”** This code is used where there has been full staff/care giver performance of the activity during the entire prior seven days.²⁶

The ADL support codes, reflecting the “most support provided” over each 24-hour period during the prior seven days are:

- 0** – The person required no set up or physical help.
- 1** – The person required only setup help.
- 2** – The person required a one-person physical assist.
- 3** – The person required a physical assist from two- or more people.²⁷

²⁴ See 7 AAC 125.020(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900(d)(6).

²⁵ Ex. E at 7.

²⁶ *Id.*

²⁷ *Id.*

For IADLs, the self-performance codes 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.”
- 3 – “Dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person.”²⁸

The IADL support codes are:

- 0 – “No support provided.”
- 1 – “Supervision / cueing provided.”
- 2 – “Set-up help provided”
- 3 – “Physical assistance provided.”
- 4 – “Total dependence - the person was not involved at all when the activity was performed.”²⁹

A person may qualify for PCS with a score at least a two for both self-performance and support in an ADL or a score of at least a one for self-performance and at least a three for support in one of the IADLs.³⁰

B. Burden of Proof and Evidence

On her application to renew PCS benefits, Ms. D. asked to renew her benefits for bathing, main meal preparation, light/routine housework, shopping, and laundry and add new benefits for transferring, dressing, and personal hygiene.³¹ For the newly requested benefits, Ms. D. bears the burden of showing, by a preponderance of the evidence, that she is eligible for those PCS benefits. For the benefits the Division is not renewing, it bears the burden.³²

The evidence here includes the assessment, medical records, and Ms. D.’s testimony and representations during the assessment. Ms. D. submitted hundreds of pages of medical records. But not all medical records are necessarily pertinent or informative. In particular, there

²⁸ Ex. E at 28.

²⁹ *Id.*

³⁰ Ex. E at 33. If a person has these scores, there are additional considerations regarding their cognitive capacity. *Id.* at 33-34.

³¹ Ex. F at 3.

³² 7 AAC 49.135.

is a difference between a doctor noting a patient's complain and a doctor confirming a medical condition. Much of Ms. D.'s records consist of her own self-reporting. Records of Ms. D. self-reporting is evidence that Ms. D. believed she had a condition at a particular time, but it is not evidence that a medical professional agreed with her self-diagnosis. There is no question that Ms. D. is and has been dealing with challenging medical conditions. But as the assessor explained, PCS eligibility looks an applicant's condition and ability to perform ADLs and IADLs as of the time of the assessment. Supporting medical evidence from the 12 months prior to the assessment and leading up the agency's decision can be considered. But support comes from a medical professional's opinion or from an MRI or other test results, not merely a doctor notating a patient's self-reporting.

Ms. D.'s testimony and statements during the assessment are evidence and were taken into account. But there were a number of inconsistencies with these statements or between these statements and Ms. D.'s medical records that were also taken into account. For example:

- Ms. D.'s primary diagnosis is multiple sclerosis. Ms. D. testified that she has secondary progressive MS, not relapse-remitting MS, and therefore her conditions are permanent and do not improve or vary over time.³³ This assertion is contradicted by the medical records she submitted. In notes from a June 5, 2024 appointment, Dr. T. stated that Ms. D. is "under [the] impression of non-relapse remitting type of multiple sclerosis, but chart notes indicate otherwise."³⁴
- As another example, Ms. D. told the assessor that she has a dog and enjoys taking the dog on walks.³⁵ But at the hearing, Ms. D. claimed she is completely unable to walk her dog and that her ankle and foot bones continuously fracture when she walks.³⁶ Her medical records indicate she told her pain doctor on November 6, 2023 that she had stress fractures in her feet from recently walking her dog for too long because she forgot her cell phone, and had followed up with her primary care physician.³⁷ The records she submitted from her

³³ W. D. testimony.

³⁴ D. August 2, 2024 submission at 12.

³⁵ D. F. testimony.

³⁶ W. D. testimony.

³⁷ D. August 2, 2024 submission at 63.

primary care, however, do not indicate that she followed up or that she had any bone fractures in this time period.³⁸ Notes from her following pain management appointment confirm that she did not follow up on these self-diagnosed bone fractures.³⁹ The only suggestion of any bone fracture is a note in her patient summary that she came in about a “possible foot fracture” on May 19, 2020 — four years before the time period at issue.⁴⁰

- Ms. D. told the assessor she drives herself to the grocery store.⁴¹ But at the hearing, she testified that she cannot drive because she has narcolepsy.⁴² Ms. D.’s Verification of Diagnosis does not list a narcolepsy diagnosis.⁴³
- Ms. D. told the assessor that she uses buttons on her recliner when standing and then transferring to a walker.⁴⁴ The assessor observed her stand up from her recliner and transfer to her walker independently, confirming Ms. D.’s statements.⁴⁵ At the hearing, however, Ms. D. testified that her 12-year-old daughter helps her in and out of her chair every day, including lifting her from the chair.⁴⁶ Ms. D. weighs 268 pounds.⁴⁷
- Ms. D. testified that since the age of 22, one of her shoulders would come out of its socket if she raised her arms above her head and therefore she cannot do so.⁴⁸ But she could not recall if it was her right or left shoulder.⁴⁹ Ms. D. did not raise any concerns with her shoulder during the assessment, and the assessor observed her raising her arms above her head.⁵⁰
- Ms. D. testified that she has no control over the right side of her body because of a stroke several years ago.⁵¹ The medical records she submitted do not

³⁸ Ex. 2.

³⁹ D. August 2, 2024 submission at 56.

⁴⁰ Ex. 2 at 12.

⁴¹ D. F. testimony; Ex. E at 33.

⁴² W. D. testimony.

⁴³ Ex. F at 6.

⁴⁴ Ex. E at 7.

⁴⁵ *Id.*

⁴⁶ W. D. testimony.

⁴⁷ Ex. 2 at 170.

⁴⁸ W. D. testimony.

⁴⁹ *Id.*

⁵⁰ Ex. E; D. F. testimony.

⁵¹ W. D. testimony.

mention or support this assertion, nor did she claim or demonstrate an inability to use her right side during the assessment.⁵²

Ms. D.'s explanation for lack of support in her medical records is that her doctors are not good at record keeping.⁵³ Her doctor, on the other hand, noted that Ms. D. "continuously confabulates reasons for not receiving MRI" and is a "poor historian."⁵⁴

C. Ms. D. Did Not Score High Enough on any ADL or IADL to qualify for PCS

On her application, Ms. D. marked that she needs assistance with transferring, dressing, personal hygiene, bathing, main meal preparation, light/routine housework, shopping, and laundry.⁵⁵ The assessor did not score her high enough in any of these ADLs or IADLs.

For the ADLs, Ms. D. would need a self-performance score of at least two (limited assistance) and support code of at least two (one-person physical assist) to qualify for benefits.

For the ADL of transfers — a new benefit Ms. D. requested — Ms. D. told the assessor that she uses buttons on the recliner when standing and sometimes has her daughter help her.⁵⁶ The assessor observed Ms. D. transfer independently multiple times during the assessment, including in and out of a recliner and to a walker.⁵⁷ This was a change from her 2018 assessment, when the assessor observed Ms. D. pulling on a friend's arm to transfer off her recliner.⁵⁸ That 2018 assessment scored Ms. D. with a one for both self-performance and support — scores still too low to qualify for PCA benefits.⁵⁹ Given her observations of Ms. D. now transferring independently, the assessor scored her with a zero for both the self-performance and support categories.⁶⁰ Ms. D. described experiencing pain and the medical records show she is receiving pain medication.⁶¹ Considering the multiple independent transfers observed by the assessor, though, it does not appear pain prevents Ms. D. from transferring between surfaces. The assessor further explained that in considering an applicant's report of pain, an assessment looks for evidence such as an MRI to explain a basis for and severity of the

⁵² See Ex. E; Ex. 1-2; D. August 2, 2024 submission.

⁵³ W. D. testimony.

⁵⁴ D. August 2, 2024 submission at 46, 56.

⁵⁵ Ex. F at 3.

⁵⁶ *Id.*

⁵⁷ D. F. testimony; Ex. E at 7.

⁵⁸ Ex. G at 6.

⁵⁹ *Id.*

⁶⁰ D. F. testimony; Ex. E at 7.

⁶¹ W. D. testimony; D. August 2, 2024 submission.

pain.⁶² Ms. D.'s records state she has not had an MRI since 2018, despite her doctors' repeated instructions to get a new MRI and one doctor prescribing additional pain medication to address pain during an MRI.⁶³ The evidence Ms. D. provided does not contradict the assessor's observations that Ms. D. could transfer independently or otherwise support a score of two or more for self-performance and support. Ms. D. did not meet her burden to show she is eligible for benefits for transfers.

For the ADL of dressing — also a newly requested benefit — Ms. D. reported being able to dress herself, but getting her daughter's assistance with putting on socks and shoes.⁶⁴ The assessor observed Ms. D. reach over her head, behind her back, and touch her toes, replicating the motions necessary to put on shirts and pants.⁶⁵ The assessor also observed Ms. D. put on socks, demonstrating her ability to independently put on sock and shoes.⁶⁶ The assessor scored her with a zero for both self-performance and support categories.⁶⁷ Ms. D.'s prior assessment, from 2018, included the same scores for dressing.⁶⁸ The documentation Ms. D. submitted does not address her ability to dress herself. She described periodic difficulties moving her limbs,⁶⁹ but the medical records she submitted do not include a recent MRI, physical examination, or other evidence that contradicts the assessor's observations that Ms. D. could independently dress herself as of the date of the assessment. The evidence does not support a score of two or more for self-performance and support. Ms. D. did not meet her burden to show she is eligible for benefits for dressing.

For the ADL of personal hygiene — another newly requested benefit — the assessor observed Ms. D. replicate the movements needed for personal hygiene, including reaching above her head, touching her feet, and holding and passing a mug between her hands.⁷⁰ Ms. D. reported performing personal hygiene tasks herself, including braiding her hair, brushing her teeth, washing her face and hands, and clipping her fingernails.⁷¹ Ms. D. stated that she did not clip her toenails because she could not bend and reach her toes, but the assessor observed

⁶² D. F. testimony.

⁶³ D. August 2, 2024 submission at 12, 20, 26-27, 34, 41, 48, 56, 64, 69, 86, 96, 102-03.

⁶⁴ Ex. E at 8.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Ex. G at 8.

⁶⁹ Ex. 1 at 12; W. D. testimony.

⁷⁰ Ex. E at 9.

⁷¹ *Id.*

Ms. D. bend over and put on socks, demonstrating she could bend to clip her toenails.⁷² The assessor scored her with a zero for both the self-performance and support categories.⁷³ Ms. D.'s prior assessment, from 2018, included the same scores for personal hygiene.⁷⁴ The documentation Ms. D. submitted does not address or support an inability to independently attend to personal hygiene tasks. The evidence does not support a score of two or more for self-performance and support. Ms. D. did not meet her burden to show she is eligible for benefits for personal hygiene

For the ADL of bathing, Ms. D. reported during the assessment and again during the hearing that she was unable to step into the shower “due to her muscles not working.”⁷⁵ While Ms. D. does have an MS diagnosis, that diagnosis can manifest in many ways and vary over time.⁷⁶ The issue is whether Ms. D.'s condition at the time of the assessment supported higher scoring on the assessment. The assessor explained that supporting medical documentation is needed for an applicant's self-reporting of difficulty with muscles.⁷⁷ The medical records Ms. D. submitted do not demonstrate that her muscles did not work or that she was unable to make the movements necessary for bathing as of the assessment. Indeed, Dr. T. noted that “albeit, patient has Multiple Sclerosis over the last year I do not believe she has had flare-up.”⁷⁸ The assessor observed Ms. D. transfer, touch her fingers above her head, bend over, and hold and pass a coffee mug between her hands, replicating the movements of bathing. These observations showed an improvement over her 2018 assessment, when Ms. D. was unable to touch her hands over her head and used a friend's hands to assist with transferring.⁷⁹ The 2018 assessment includes scores of one for both self-performance and support — scores still too low to qualify for PCA benefits. After observing Ms. D. with a broader range of independent movement, the current assessor scored her with a one (supervision) for self-performance and zero for support.⁸⁰ Considering the assessor's observations of improvement, and with no contrary medical evidence, the Division met its burden showing that

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Ex. G at 8.

⁷⁵ Ex. E at 10; W. D. testimony.

⁷⁶ D. F. testimony. As discussed above, Ms. D. claimed that she has a form of MS that does not have periods of relapse and remission, but her own doctor stated otherwise in her medical records.

⁷⁷ D. F. testimony.

⁷⁸ *Id.* at 48.

⁷⁹ Ex. G at 9.

⁸⁰ Ex. E at 10.

Ms. D.’s abilities had changed since the prior assessment and that the evidence does not support a score of two or more for self-performance and support.

To be eligible for benefits for any of the IADLs, Ms. D. needs a score of at least a one for self-performance and at least a three for support.⁸¹

For the IADL of main meal preparation, the assessor considered her observations of Ms. D. standing, sitting down, sitting on her walker, and moving her arms to smoke a cigarette as approximating movements for meal preparation.⁸² Ms. D. testified that she has difficulty cooking, but told the assessor about cutting up ingredients and making soup.⁸³ The assessor scored her with a one (setup help) for self-performance and two (assistance) for self-performance — which are the same scores as her prior 2018 assessment.⁸⁴ The medical records Ms. D. submitted do not address or demonstrate a need for “physical assistance” with main meal preparation to score a three. Considering the assessor’s observations, Ms. D.’s statements during the assessment, and the lack of supporting medical evidence, the evidence shows Ms. D. requires some assistance and setup, but that she is able to carry out the motions for main meal preparation without physical assistance. The Division has met its burden.

The IADLs of housework include both daily light housework, such as dishes, dusting, and making beds, and routine housework, such as vacuuming, cleaning bathrooms, and removing trash.⁸⁵ For benefits, the Division takes the higher score of the two housework categories, which here is routine housework.⁸⁶ Ms. D.’s 2018 assessment scored her with a one for self-performance and three for support for light housework and a two for self-performance and three for support for routine housework.⁸⁷ For the current assessment, the assessor considered her observations of Ms. D. independently transferring, walking around, and gripping items as one might while cleaning.⁸⁸ The assessor thus scored Ms. D. with zeroes for self-performance and support for light housework and a one for self-performance and two for support for routine

⁸¹ Ex. E at 33. If a person has these scores, there are additional considerations regarding their cognitive capacity. *Id.* at 33-34.

⁸² D. F. testimony.

⁸³ W. D. testimony; Ex. E at 33.

⁸⁴ Ex. E at 28; Ex. G at 26. Since the scores are the same, the Division does not have a burden to show that there was a change since the prior assessment.

⁸⁵ Ex. E at 28.

⁸⁶ Victoria Cobo-George testimony.

⁸⁷ Ex. G at 27.

⁸⁸ D. F. testimony; Ex. E at 7; Ex. G at 6.

housework.⁸⁹ Since the higher scoring category of housework is the focus, the pertinent score change from the 2018 assessment is a decrease from three to two for support with routine housework. A three indicates a need for physical assistance. The 2018 assessor observed Ms. D. using physical assistance with transfers, whereas in 2024, the assessor observed Ms. D. transferring independently. The medical records do not include up to date information about the state of Ms. D.'s MS. Nor do they indicate her MS or any other condition prevents her from conducting routine housework without physical assistance. Ms. D. told the assessor it had been difficult for her to do housework because of stress fractures, but as discussed above, these stress fractures were only ever self-diagnosed by Ms. D. Overall, the assessor observed Ms. D. exercising greater independence than the 2018 assessor and the medical evidence Ms. D. provided does not indicate a current basis for needing physical assistance with housework. The Division has met its burden.

The IADL of shopping includes shopping for groceries, household items, prescription drugs, and medical supplies, but not transportation.⁹⁰ Ms. D.'s 2018 assessment scored her with a one for self-performance and a three for support, which is the minimum score that would be necessary here to qualify for benefits.⁹¹ For the current assessment, Ms. D. told the assessor that she has been going to the store herself where she uses a motorized cart. Either her daughter will grab items off shelves or Ms. D. will park the motorized cart next to a grocery cart and then use the grocery cart like a walker.⁹² The assessor also considered her observations of Ms. D. using her walker and grabbing and gripping items, similar to movements one would make pushing a cart and picking items off shelves when shopping.⁹³ The assessor scored Ms. D. with a one for self-performance, but with a two for support.⁹⁴ At the hearing, Ms. D. denied that she went shopping by herself, despite having told the assessor that she did.⁹⁵ Notably, Ms. D. stated that she went shopping with her daughter or a neighbor, not with assistance provided through PCS.⁹⁶ Overall, both the 2018 and 2024 assessor observed Ms. D. have good grip strength. But for transfers, similar to moving about a grocery store, the

⁸⁹ Ex. E at 28.

⁹⁰ 7 AAC 125.030(c)(5); Ex. E at 28.

⁹¹ Ex. G at 27.

⁹² Ex. E at 33.

⁹³ D. F. testimony.

⁹⁴ Ex. E at 28.

⁹⁵ W. D. testimony.

⁹⁶ *Id.*

2018 assessor had observed Ms. D. using a friend's arm whereas the 2024 assessor observed her transferring independently. With a diagnosis like MS that can present differently over time, the assessors' different observations indicate an improvement in Ms. D.'s condition and abilities. It is possible that is not the case, but the medical records do not include current information about the state of Ms. D.'s MS, such as an MRI, to support finding that her condition has not in fact improved. The assessor's observations and the medical records do not indicate that Ms. D. requires physical assistance with an activity like shopping. The Division has met its burden.

The IADL of laundry applies to changing bed linens or laundering linens and clothing.⁹⁷ The 2018 assessment scored Ms. D. with a one for self-performance and a three for support, which is the minimum score that would be necessary here to qualify for benefits.⁹⁸ For the current assessment, the assessor also scored Ms. D. with a one for self-performance, but with a two for support.⁹⁹ The assessor considered her observations of Ms. D. transferring and moving about her home, standing up, and sitting on her walker and moving her arms, all movements that one might make when doing laundry.¹⁰⁰ Here again, the 2018 assessor had observed Ms. D. using a friend's arm for transfers, whereas the 2024 assessor observed her transferring independently. Ms. D. testified that she had difficulty getting up and down the stairs to where the laundry is located in her building.¹⁰¹ But she also told the assessor that she had not had assistance with laundry in the past seven days.¹⁰² The assessor further observed Ms. D. walking in her home and demonstrating grip strength, motions she would use for carrying laundry to and from the laundry facility and putting clothes in and out of the machines.¹⁰³ Again, the medical records do not indicate the current state of Ms. D.'s MS, so the assessor's observations are key. The 2024 assessor observed her moving with more independence than the 2018 assessor had, indicating an improvement in her condition. The 2024 assessor did not observe Ms. D. needing physical assistance with the movements one makes for doing laundry, Ms. D. did not report having relied on physical assistance with laundry in the prior seven

⁹⁷ 7 AAC 125.030(c)(4).

⁹⁸ Ex. G at 27.

⁹⁹ Ex. E at 28.

¹⁰⁰ D. F. testimony.

¹⁰¹ W. D. testimony.

¹⁰² Chritina Earhart testimony.

¹⁰³ *Id.*

days, and the medical records she submitted did not address or support a need for physical assistance with laundry. The Division met its burden.

With each of the ADLs and IADLs discussed above, the lack of current medical evidence about Ms. D.'s condition, such as an MRI, was important. MS presents differently over time. Ms. D.'s own doctors have been urging her to get an MRI so they can better provide treatment for her. An MRI could indicate whether Ms. D.'s MS has improved, stayed the same, or worsened since the 2018 assessment. Without an MRI or other medical records that actually address her condition, we are left with Ms. D.'s self-reporting and the assessors' observations. As noted above, Ms. D.'s self-reporting is at times inconsistent and contradicted by her own medical records. The assessors' observations, when compared between 2018 and 2024, indicate Ms. D. has had some improvement. An MRI showing that she has not improved or has worsened would potentially support continuing or expanding her PCS benefits. But without such evidence, the improvement observed by the 2024 assessor meets Division's burden for denying benefits. Ms. D. has failed to meet her burden for additional benefits with the lack of medical evidence to contradict the assessor's observations or support Ms. D.'s self-reporting.

IV. CONCLUSION

For the reasons discussed above, the Division's decision is affirmed.

Dated: August 19, 2024

By: Signed
Signature
Rebecca Kruse
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 5th day of September, 2024.

By: Signed
Signature
Rebecca Kruse
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.]