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

In the Matter of K. T.	)))	OAH No. 23-0505-MDS
In the Matter of K. T.	)))	OAH No. 23-0506-MDS

CORRECTED DECISION[1]

I. Introduction

K. T. was receiving 14 hours per week of Medicaid Personal Care Services (PCS) in June of 2023, when she applied to receive Medicaid Home and Community-Based Waiver (Waiver) benefits. The Division of Senior and Disabilities Services subsequently assessed her on June 22, 2023. Following that assessment, the Division reduced her PCS to 9.5 hours per week and denied her application for Waiver benefits. Ms. T. disagreed with both the denial of her Waiver application and the reduction in her PCS. She requested a hearing to challenge the Division's actions.[2]

Ms. T.'s hearing was held by video (Zoom platform) on September 26 and 27, 2023. Ms. T. represented herself. Her parents, S. T. and Z. T.[3] testified on her behalf, as did L. L., her Medicaid Care Coordinator. Victoria Cobo-George, a Division Fair Hearing Representative, represented the Division. Division assessor Brian Hafferman testified for the Division.

The evidence in this case shows that Ms. T. should receive more PCS than provided in the Division's allocation of 9.5 hours. This change includes modifications to the PCS support plan made by the Division at hearing. Accordingly, the Division's allocation for PCS is changed in part as discussed in detail below. However, the evidence, while showing that Ms. T. has substantial physical limitations and complex medical needs, shows that Ms. T. does not satisfy

[1] This corrected decision is issued to correct a clerical error in the decision caption, specifically the agency's case numbers. It is otherwise unchanged.

[2] The case involving denial of Ms. T.'s Waiver application is OAH Case No. 22-0505-MDS. The case involving Ms. T.'s PCS hours is OAH Case No. 20-0506-MDS. The two cases were heard together, and this joint decision issued.

[3] To avoid confusion, K. T. is referred to as Ms. T. and Z. T. as Mrs. T.

the stringent requirements for Waiver benefits. As a result, the denial of her application for Waiver benefits is AFFIRMED.

II. Facts[4]

Ms. T. is 40 years old. She experiences a very complex set of medical conditions: diabetes, restrictive lung disease, respiratory acidosis, psoriasis, myotonic muscular dystrophy, psoriatic arthropathy, Pickwickian syndrome, rheumatoid arthritis, muscular dystrophy, obesity with alveolar hypoventilation, urinary incontinence, major depression, and intellectual disability.[5] Her medical records from Orthopedic Physicians show ongoing pain in her feet and ankles. She receives nerve blocking injections for pain.[6]

An August 31, 2023 letter from Deana Glick, PA-C, with Ms. T.'s primary medical care provider, summarizes Ms. T.'s condition:

> Ms. T. has a complex medical history including, but not limited to, psoriatic arthropathy, lung disease, sleep apnea, hypoventilation syndrome, muscular dystrophy, depression, social communication disorder, mild cognitive impairment, borderline intellectual functioning.
>
> Her medical conditions impact her daily function. Her finger joints are fused so she is unable to bend them. This, along with breathing limitations and daily chronic pain from her medical conditions, prevents her from conducting ADLs.[7]

Ms. T. was participating in physical therapy in late 2022 and early 2023. She was discharged from physical therapy following her March 31, 2023 visit. The discharge summary indicates that Ms. T. was unable to bear weight on her ankles and feet ("unable to weight bear on B ankle and foot")– but was slowly improving, that her walking had improved overall, but that she was still using a walker, and that there had been no improvement with standing: the long term goal is identified as being able to stand on either her right or left leg for 10 seconds, and that there was no improvement. The discharge summary did indicate that she had achieved her goal of using her left upper extremity to wash dishes.[8]

Ms. T. was participating in occupational therapy in the spring of 2023. She was discharged from it on May 30, 2023. The occupational therapy discharge notes her long-term

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[4] The following facts were established by a preponderance of the evidence. Unless otherwise specified, the referenced exhibits are those filed in OAH Case No. 23-0505-MDS.

[5] Ex. E, p. 3.

[6] *See* Orthopedic Physicians May 5, 2023 report (documents filed on September 11, 2023, p. 6).

[7] *See* Anchorage Neighborhood Health Center Family Medicine letter dated August 31, 2023 (filed on September 1, 2023).

[8] *See* Physical Therapy Discharge notes (OT/PT documents filed on September 11, 2023, pp. 1 – 2).

goals of improving her pain in her left wrist when carry items over five lbs., to improve her functioning in activities of daily living and instrumental activities of daily living and increasing her left grip strength were "progressing."[9]

Ms. T., who was receiving 14 hours of PCS, applied for Medicaid Home and Community-Based Waiver. The Division then assessed her to determine her eligibility on June 22, 2023. Following that assessment, the Division determined that Ms. T. was not eligible for Waiver benefits, and that her PCS should be reduced to 9.5 hours per week. The date of the denial notice for Waiver benefits was July 19, 2023.[10] The date of the Division's PCS reduction notice was July 26, 2023.[11]

Ms. T. disagreed with the denial of her application for Waiver benefits and the assessor's conclusions regarding her need for assistance with the Activities of Daily Living (ADLs) of transfers, locomotion within the home, toileting, and bathing. In addition, she also testified about her need for bed mobility assistance. She disagreed with the assessor's conclusion regarding her need for assistance with the Instrumental Activity of Daily Living (IADL) of light meal preparation, main meal preparation, light housework, shopping, and laundry. She also disagreed with the assessor's time provided for medical escort. Each of these are addressed below.

A. Bed Mobility

Bed mobility is defined as how a "person moves to and from lying position, turns side to side, and position body while in bed."[12] Ms. T. had been previously determined to be independent with this activity.[13]

During the assessment, the assessor was informed by Ms. T. that it was difficult to shift her weight in bed, but that she can move to some extent and that she can sit up in bed, but that she slept in a recliner when she was at home because it was difficult for her to get in and out of her bed. He observed her sitting in a recliner and shifting her position in it during the assessment. Based upon Ms. T.'s statements and his observation, the assessor determined that she continued to be independent in this activity.[14] Neither Ms. T., her witnesses, or the available

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9 *See* Occupational Therapy Discharge notes (OT/PT documents filed on September 11, 2023, p. 15).
10 Ex. D (OAH Case No. 23-0505-MDS).
11 Ex. D (OAH Case No. 23-0506-MDS).
12 Ex. E, p. 7.
13 Ex. E, p. 11.
14 Ex. E, p. 7; Mr. Hafferman's testimony.

physical/occupational therapy records provided additional information that rebutted the assessor's testimony.

B. Transfers

Transfers consists of how a person moves between surfaces, such as from a sitting to a standing position.[15] The assessor was told by Ms. T. that she was sometimes able to transfer, but also needed help transferring. He observed her transferring utilizing a 4-wheel walker for support without assistance other than her mother touching her under her arms to assist in transferring to a standing position. The assessor then concluded, based upon his observations and Ms. T.'s physical therapy records, that Ms. T. required transferring assistance using limited assistance (non-weight bearing) twice daily seven days per week, which was the same as she had previously been provided.[16] The physical therapy records referenced by the assessor were from November 2022 and March 17, 2023.[17]

Ms. L., who has known Ms. T. since 2016, and Mrs. T. both testified that Ms. T. had frequent falls.

C. Locomotion Within the Home

Locomotion within the home involves moving within the home on a single floor. It may involve the use of an assistive device, such as a cane or a walker or a wheelchair.[18] Ms. T. had not previously been receiving assistance with the ADL.[19] The assessor determined that Ms. T. could walk within the home, without assistance, using a walker, based on his observation of Ms. T., her statements and his review of physical therapy, and therefore continued to not require assistance with this ADL.[20]

Mrs. T. testified that Ms. T. had difficulty locomoting due to her hand issues and was unsteady.

D. Toileting

Toileting is a complicated process. It involves getting to and from the bathroom (which may involve transfers from a chair, bed, etc., and locomotion), transfers to and from the toilet,

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15 Ex. E, p. 7.
16 Ex. D (OAH Case No. 23-0506), p 9; Ex. pp.7 – 8; Mr. Hafferman's testimony.
17 Ex. E, pp. 7 -8; Mr. Hafferman's testimony.
18 Ex. E, p. 8.
19 Ex. E, p. 11.
20 Ex. E, p. 8; Mr. Hafferman's testimony.

cleansing, and adjusting clothing.[21] Ms. T. had previously been provided with limited assistance with this task six times daily (42 times per week).[22] The assessor found that Ms. T. was able to perform this activity with limited assistance, based upon her statements, the fact that she sometimes sleeps in her mother's home, and the fact that Ms. T.'s apartment's bathroom is more accessible to her, given there is a sink she can lean on to assist her with transfers and that she has a bidet which assists with cleansing, but reduced the frequency to 4 times per week.[23] The assessor primarily determined she needed limited assistance four times weekly based upon her having incontinence accidents, which required her having assistance with clothing changes.[24]

At hearing, the Division changed its position and reinstated Ms. T.'s toileting assistance to six times daily (42 times per week) at the limited assistance level.

Ms. T. testified that she can move to the bathroom using a walker, but that her mother had to physically bear her weight and help transfer down to the toilet seat because she would otherwise just "plop" down, and that her mother would help to cleanse her following toileting and helped her transfer up from the toilet. She, however, also testified that in her mother's absence, she was able to utilize her walker for support in transferring to and from the toilet. Mrs. T. testified that Ms. T. has frequent incontinence episodes and required cleansing and assistance with her clothing.

E. Bathing

Bathing includes transfers in and out of the tub/shower and the bathing of the body, excluding washing the hair and the back.[25] Ms. T. was previously receiving limited assistance with this task once daily, seven days per week.[26] The assessor found that Ms. T. required an increase in her assistance level, changing the degree of assistance from limited assistance to extensive assistance, with this activity, but lowered the frequency of assistance from once daily, seven days per week, to four days per week.[27]

At hearing, the Division changed its position and determined that Ms. T.'s bathing assistance should be once daily, seven days per week, at the intensive assistance level.

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21 Ex. E, p. 9.
22 Ex. D (OAH Case No. 23-0506), p. 9.
23 Ex. D (OAH Case No. 23-0506), p. 9; Ex. E, p. 9; Mr. Hafferman's testimony.
24 Ex. E, p. 9; Mr. Hafferman's testimony.
25 Ex. E, p. 10.
26 Ex. D (OAH Case No. 23-0506), p. 9.
27 Ex. D (OAH Case No. 23-0506), p. 9; Ex. E, p. 10.

Ms. T.'s testimony regarding bathing assistance was consistent with the intensive assistance level: she was not completely dependent but did require physical help in the actual bathing process.

F. Medical Escort

Medical escort is provided for a person who requires locomotion assistance to go to and from medical appointments.[28] It is calculated by allowing a maximum time of 45 minutes per appointment multiplied by the number of appointments and dividing that by 52 weeks to arrive at a weekly amount of time.[29]

Ms. T. was receiving 16 minutes per week of medical escort.[30] Following the assessment, the Division reduced it to five minutes per week, based upon its determination that Ms. T. had 13 yearly doctor's appointments, and that she required 20 minutes per appointment.[31] The assessment shows that Ms. T. has 13 regular medical appointments yearly: four visits per year each to her primary care physician, her rheumatologist, and her dermatologist, and one yearly visit to her podiatrist.[32] However, there is no indication in the record showing how the Division determined that Ms. T. required 20 minutes of medical escort time per medical appointment.

G. IADLs – Light and Main Meal Preparation

Light meal preparation is the preparation of "breakfast and light meals;" main meal preparation is the preparation of a "main meal." Ms. T. had been receiving no assistance with light meal preparation and minimal assistance with main meal preparation daily. The assessor found that Ms. T. required that same level of assistance: no assistance with light meal preparation and minimal assistance with main meal preparation.[33]

Ms. T. testified about her ability to prepare both light meals and main meals. She testified by video, and it was possible to view her hands, which showed clear signs of arthritic damage. She stated that she found it hard to grip items, drops items, and could not open jars or cans or even a container of yogurt. She can't hold a knife well and has difficulty with her grip which makes it difficult for her to safely cut items. She described her spoon usage as holding it

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28 7 AAC 125.030(d)(4).
29 Ex. D (OAH Case No. 23-0506), p. 6.
30 Ex. D (OAH Case No. 23-0506), p. 9.
31 Ex. D (OAH Case No. 23-0506), pp. 3, 9.
32 Ex. E, p. 6.
33 Ex. D (OAH Case No. 23-0506), p. 9; Ex. E, p. 28; Mr. Hafferman's testimony.

like a baby and frequently dropping items. She is able to use a microwave. She can only stand for very short periods of time but must be holding onto a walker at the same time. She provided an example, for instance, she could fill up a pot with water, but could not place it on the stove, and she could turn the stove on.

The Division's assessor testified that Ms. T. had the ability to prepare items such as a sandwich with only setup help such as having items like jars opened for her. He further testified that he saw her eating fruit out from a bowl unassisted. Ms. T. testified that her mother prepared the fruit and put it out for her to eat.

H. Light Housework

Light housework consists of doing housework such as "dishes, dusting ... making own bed."[34] Routine housework consists of tasks such as vacuuming, cleaning the floor, dumping the trash, and cleaning the bathroom.[35] Ms. T. had previously been provided with minimal assistance with this task. The assessor found that while she could perform light household independently and routine housework with a moderate level of assistance, i.e., she could participate in routine housework to some extent and was not completely dependent. Accordingly, the assessment provided for her to receive a moderate level of assistance weekly for housework assistance, which was an increase.[36]

Ms. T. testified that she could do minimal housework such as dusting and light tidying but was not capable of heavier items such as cleaning the bathroom, standing long enough to do dishes, making her bed, or vacuuming.

I. Shopping

This task is grocery shopping. It does not include transportation.[37] 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. Ms. T. had been receiving minimal assistance with that task. Following the assessment, the assessor determined that Ms. T. was able to participate in shopping with moderate assistance, meaning that while she needed a fair amount of help, she was still capable of participating in the task. [38]

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34 Ex. E, p. 28.
35 Ex. E, p. 28.
36 Ex. D (OAH Case No. 23-0506), p. 9; Ex. E, p 28; Mr. Hafferman's testimony.
37 Ex. E, p. 28.
38 Ex. D (OAH Case No. 23-0506), p. 9; Ex. E, p 28; Mr. Hafferman's testimony.

Ms. T. testified that she will accompany her mother shopping and that she must use a mobile cart to move within the store, and that she can grab some light items, depending upon their location, but she has a hard time grasping items. The assessor testified that he saw Ms. T. able to use her hands to hold onto a wallet and unzip during the assessment.

J. Laundry

Ms. T. was receiving minimal assistance with laundry once weekly. Following the June assessment, the Division determined that Ms. T. continued to need minimal assistance with laundry but increased the assistance from once per week to twice per week.[39] Ms. T. testified that she could not carry a laundry basket, but that she could perform light laundry tasks such as folding clothes.

III. Discussion

A. Burden of Proof

Ms. T. is an applicant for Waiver services. The Division is seeking to decrease some of her PCS ADLs/IADLs tasks, while she is seeking to increase some of those tasks. She therefore has the burden of proving by a preponderance of the evidence that she is eligible for Waiver services. The Division has the burden of proof regarding the PCS tasks that it seeks to decrease, and Ms. T. has the burden of proof regarding the PCS tasks that she seeks to increase.[40]

Parties can meet their burden of proof using any evidence on which reasonable people might rely in the conduct of serious affairs,[41] including such sources as written reports of firsthand evaluations of the patient. The relevant date for purposes of assessing the state of the facts is, in general, the date of the agency's decision under review.[42] This means that Ms. T.'s medical conditions and physical functionality are evaluated as of July 2023.

B. The Consumer Assessment Tool Scoring

The Alaska Medicaid program provides Waiver services to adults with physical disabilities who require "a level of care provided in a nursing facility."[43] The nursing facility level of care[44] requirement is determined by an assessment which is documented by the

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39 Ex. D (OAH Case No. 23-0506), p. 9; Ex. E, p 28; Mr. Hafferman's testimony.
40 7 AAC 49.135.
41 2 AAC 64.290(a)(1).
42 *See* 7 AAC 49.170; *In re T.C.,* OAH No. 13-0204-MDS (Commissioner of Health & Soc. Serv. 2013) (http://aws.state.ak.us/officeofadminhearings/Documents/MDS/HCW/MDS130204.pdf).
43 7 AAC 130.205(d)(4).
44 *See* 7 AAC 130.205(d)(4); 7 AAC 130.215.

Consumer Assessment Tool (CAT).[45] The CAT is also used to determine an applicant's eligibility for PCS and the amount of PCS that they should receive.[46]

The CAT records an applicant's needs for professional nursing services, therapies, and special treatments,[47] and whether an applicant has impaired cognition or displays problem behaviors.[48] Each of the assessed items are coded and contribute to a final numerical score. For instance, if an individual required 5 days or more of therapies (physical, speech/language, occupation, or respiratory therapy) per week, he or she would receive a score of 3.[49]

The CAT also records the degree of assistance an applicant requires for Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs).[50] For both ADLs and IADLs, the CAT provides recipients with a two-part numerical score to reflect the recipient's ability to perform the activity and need for assistance in doing so. In both types of activities, the score consists of a self-performance code, which rates a person's ability to perform the activity, followed by a support code, which reflects the degree of assistance required to do so.

The ADLs measured by the CAT are bed mobility, transfers, locomotion, dressing, eating, toilet use, personal hygiene, and bathing.[51] For ADLs, the possible self-performance codes relevant to determining a PCS level are as follows:

> **0 – "Independent."** This code is used if help or oversight was provided no more than twice in the prior seven days.
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> **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.
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> **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.

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45 7 AAC 130.215(4).
46 *See* 7 AAC 125.020(a)(1). The CAT is itself a regulation, adopted in 7 AAC 160.900(d)(6).
47 Exhibit E, pp. 12 – 14.
48 Exhibit E, pp. 15 – 18.
49 Exhibit E, p. 32.
50 Exhibit E, pp. 7 – 10, 28.
51 Ex. E, pp. 7 – 10.

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.[52]

For ADLs, the possible support codes used to determine a service level are as follows, with each option reflecting the "most support provided" over each 24-hour period during the prior seven days.

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.[53]

The IADLs measured by the CAT are light meal preparation, main meal preparation, light housekeeping, laundry, and shopping.[54] The CAT codes IADLs slightly differently than it does ADLs. The self-performance codes for IADLs are:

0 – "Independent either with or without assistive devices - no help provided."

1 – "Independent with difficulty; the person performed the task but did so with difficulty or took a great amount of time to do it."

2 – "Assistance / done with help - the person was somewhat involved in the activity, but help in the form of supervision, reminders, or physical assistance was provided."

3 – "Dependent / done by others - the person is not involved at all with the activity and the activity is fully performed by another person."[55]

The support codes for IADLs are also slightly different than the support codes for ADLs. The support codes for IADLs are:

0 – "No support provided."

1 – "Supervision / cueing provided."

2 – "Set-up help provided."

3 – "Physical assistance provided."

4 – "Total dependence - the person was not involved at all when the activity was performed."[56]

C. The Waiver Application

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52 Ex. E, p. 7.
53 Ex. E, p. 7.
54 Ex. E, p. 28.
55 Ex. E, p. 28.
56 Ex. E, p. 28.

Ms. T. is mentally competent, does not receive any specialized nursing services, nor did she receive any therapies three or more days per week in June or July of 2023, the relevant dates for the purposes of this case.[57] As a result, she does not qualify for Waiver services based on mental competency issues, nursing services, or therapies, nor do any of these help her with scoring a point towards waiver eligibility based upon her receiving therapy. As a result, her eligibility for Waiver services is dependent upon her scores on the CAT for five specified activities of daily living: bed mobility, transfers, locomotion within the home, eating, and toileting.[58]

To be eligible for Waiver services based entirely on physical assistance needs with ADLs, an individual would need a self-performance code of 3 (extensive assistance) or 4 (total dependence) for three or more of the five specified ADLs.[59] Extensive assistance is defined as being able to perform part of the activity, but only with "[w]eight-bearing support and/or [f]ull staff/caregiver performance" at least three times in the seven day period leading up to the assessment.[60] Total dependence means the individual required that a caregiver perform the activity for them entirely in the seven day period leading up to the assessment.[61]

Weight-bearing is not defined in the CAT or the Division's regulations. The definition of weight bearing has been established through a Commissioner's decision: "[f]or purposes of scoring the CAT, weight bearing means more than a minimum amount of support but may be less than 100% of a person's weight."[62]

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1. Bed Mobility

Ms. T. had previously been determined to be independent with Bed Mobility. The June assessment continued to find her as being independent with this task. The evidence presented at

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57 Ms. T. was not receiving any physical therapy or occupational therapy in the months of June or July 2023, which were respectively the months in which she was assessed and when she was advised of the results. She resumed physical therapy in mid-September 2023. *See* Physical Therapy A records filed on September 25, 2023.

58 See Ex. E, pp. 32 - 33

59 Ex. E, p. 32.

60 Exhibit E, p. 7.

61 Exhibit E, p. 7.

62 *ITMO K T-Q,* OAH No. 13-0271-MDS, at 4 "Weight bearing assistance should be interpreted as supporting more than a minimal amount of weight. It does not require that the assistant bear most of the recipient's weight, but instead that the recipient could not perform the task without assistance." (available online at https://aws.state.ak.us/OAH/Decision/Display?rec=2857).

hearing showed that she slept in a recliner while in her home, and that she did not need assistance with shifting weight, etc., while in the recliner. Accordingly, Ms. T. did not meet her burden of proof on this issue, and the finding of independence with this task is affirmed.

2. Transfers

Ms. T. had previously been determined to require limited assistance with transfers. The June assessment continued to find her as requiring limited assistance. The evidence in this case does shows that the assessor observed her transferring using her walker for support, with some hands-on assistance from her mother. In addition, Ms. T.'s testimony regarding toileting provided that she was able to do toileting related transfers, when her mother was not present, using the walker. This corroborates the assessor's observations. While Ms. L. and Mrs. T. both testified that Ms. T. is subject to frequent falls, this does not a need for extensive assistance, but rather a need for monitoring and supervision. Accordingly, Ms. T. did not meet her burden of proof on this issue, and the finding of limited assistance is affirmed.

3. Locomotion

Ms. T. had previously been determined to be independent in this task while using her walker for assistance. The June assessment continued to find her as independent. The physical therapy notes show a continued need for the walker, but do not show that she required physical help from another human being to locomote. While Mrs. T. testified that Ms. T. was unsteady while using the walker, this at most showed that Ms. T. would require monitoring and supervision, which does not rise to the level of either limited or extensive assistance. According, Ms. T. did not meet her burden of proof on this issue and the finding of independence with this task is affirmed.

4. Toileting

Ms. T. had previously been determined to require limited assistance with this task six times daily, seven days per week. The June assessment found her to continue to require limited assistance with this task but reduced it to only four times per week. At hearing, the Division changed its position and reinstated the assistance to six times daily, seven days per week, but kept the assistance level at limited assistance.

The evidence in this case shows that Ms. T. has frequent incontinence episodes and requires a fair amount of assistance, and that Ms. T. can utilize her walker for transferring to and from the toilet when someone else is not there to help her with transfers. She also told the

assessor that her own bathroom, as opposed to her mother's, is easier to utilize. Regardless, given the multiplicity of her medical conditions and their impact on her physical functionality, the evidence shows a continued need for ongoing physical hands-on assistance, which the Division has acknowledged by its continued finding of a need for limited assistance. Accordingly, Ms. T. has not met her burden of proof to demonstrate a need for extensive assistance. The finding of limited assistance with this task is affirmed.

5. Medicaid Waiver Eligibility

Ms. T. had been found to be independent with the activity of eating. She did not dispute that finding. For her to qualify for Waiver benefits, she would need to require extensive assistance in three out of the four remaining scored ADLS: bed mobility, transfers, locomotion, and toileting. As discussed immediately above, she is independent with bed mobility and locomotion, and requires only limited assistance with transfers and toileting. As a result, she is not eligible for Medicaid Waiver benefits.

D. PCS

The codes assigned to a particular ADL or IADL determine how much PCS time a person receives for each occurrence of a particular activity. For instance, a person coded as requiring extensive assistance (code of 3) with bathing would receive 22.5 minutes of PCA service time every day he or she is bathed.[63] The list of services, time allotted for each service based upon the severity of need, and the allowable frequencies for each service are all set out in the *Personal Care Services: Service Level Computation* instructions, which are adopted by reference into regulation.[64] Even if the Division agrees that the amount of time provided by the formula is insufficient for a particular PCS recipient's needs, the regulations do not provide the Division with the discretion to change the amounts specified by the formula.

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1. Bed Mobility

As found above, Ms. T. is independent with this task, and is therefore not eligible to receive PCS for this task.

2. Transfers

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63 *See* Ex, D (OAH Case No. 23-0506-MDS), p. 6.

64 7 AAC 125.024(a); 7 AAC 160.900(d)(29).

As found above, Ms. T. requires limited assistance with this task. The Division found she required assistance with this twice daily, seven days per week. Ms. T. wished to increase the number of times she receives assistance with this task. The evidence, however, does not support an increase. Ms. T. requires occasional assistance, but as found above, is for the most part able to perform the transfers by herself, given her testimony that she could perform toileting related transfers when someone was not there to assist her. Accordingly, Ms. T. has not met her burden to increase the number of times that she is provided help with this task. As a result, the Division's finding that she is to receive assistance with this task twice daily, seven days per week, is affirmed.

3. Locomotion Within the Home

As found above, Ms. T. is independent with this task. She is therefore not eligible to receive PCS for this activity.

4. Toileting

As found above, Ms. T. requires limited assistance in this task. The Division agreed at hearing that she should receive assistance with this task six times per day, seven days per week, which means that it no longer seeks to reduce the amount of assistance that she receives with toileting. There was no evidence showing that she requires toileting assistance more than six times daily. Accordingly, the amount of toileting assistance Ms. T. is to receive is limited assistance six times daily, seven days per week, for a total of 42 times per week.

5. Bathing

Ms. T. had previously been receiving limited assistance with bathing once daily, seven days per week. The June assessment found that her level of assistance should be increased from limited to extensive but reduced the frequency of assistance from seven times per week to four times per week. At hearing, the Division agreed that she should continue to receive daily bathing assistance. The evidence in this case showed that Ms. T. was not entirely dependent in bathing but did require an extensive level of assistance with that task. Accordingly, Ms. T. is to receive extensive assistance with this task once daily, seven days per week, which is the maximum number of times a recipient can receive PCS for bathing.[65]

6. Medical Escort

[65] *See* Ex, D (OAH Case No. 23-0506-MDS), p. 6.

Ms. T. was receiving 16 minutes per week for medical escort. The Division reduced this to five minutes per week, based upon its determination that she only required 20 minutes of medical escort per medical appointment. However, the record does not contain any information from which it can be determined that 20 minutes is enough time, especially given Ms. T.'s mobility needs. Accordingly, the Division has not met its burden of proof to reduce the time allotted for this task, and medical escort remains at the previous amount of 16 minutes per week.

7. Light and Main Meal Preparation

Ms. T. cannot stand without using her walker, which means that she needs at least one hand to hold onto the walker while performing tasks that require standing. She cannot stand for extended periods of time. She cannot lift heavier items. She has grips that are impaired by her medical conditions. She has a doctor's letter showing that she has fused finger joints, which affects her ability to bend her fingers. She must have lids loosened or removed for her. She acknowledged that she is not wholly incapable of assisting with either light or main meal preparation, but the evidence shows that she cannot engage in either light or main meal preparation with requiring some hands-on physical assistance. She has therefore met her burden of proof and should receive assistance at the moderate level (self-performance code 2, support code 3) with these tasks.[66] The frequency of assistance is twice daily for light meals, and once daily for main meals, seven days per week.

8. Light Housework

As with meal preparation, the evidence shows that Ms. T. cannot do housework with requiring hands-on physical assistance. As she acknowledged, she is not wholly incapable of participating in housework tasks such as light tidying up. The evidence therefore supports the Division's finding that she should receive a moderate level of assistance (self-performance code 2, support code 3) with this task.

9. Shopping

Ms. T. testified that she could participate to some degree in shopping, including grabbing some light items from the grocery shelves if they were located within her limited reach from the shopping scooter. The evidence therefore supports the Division's finding that she should receive a moderate level of assistance (self-performance code 2, support code 3) with this task.

[66] A self-performance score of 2 is provided when the recipient is involved in the activity, but help is provided. A support code of 3 is provided when physical assistance is provided. *See* Ex. E, p. 28.

10. Laundry

Ms. T. due to her medical impairments is not capable of such things as carrying loads of laundry or loading and unloading washers and dryers. She, however, did testify that she could participate to a minor degree in the task by doing such things as folding laundry. Given her medical conditions, use of walker, etc., it is difficult to envision her carrying a load of laundry or transferring loads of laundry in and out of the washer and dryer, both of which involve bending and lifting. She has therefore met her burden of proof and should receive assistance at the moderate level (self-performance code 2, support code 3) with this task. The frequency of assistance remains unchanged: twice per week, which is the amount provided for persons who experience incontinence.[67]

IV. Conclusion

A. Medicaid Waiver Eligibility

Ms. T. experiences substantial medical impairments that limit her physical functionality. However, because she does not require extensive assistance with any of the five scored ADLs, she does not qualify for Medicaid Waiver services. As a result, the Division denial of her application for Medicaid Waiver services is UPHELD.

B. PCS

The evidence presented at hearing demonstrated, including the changes made by the Division at hearing regarding toileting and bathing, by a preponderance of the evidence that some of the Division's allocations for PCS are changed, as follows:

Task	Assistance Level	Frequency or Amount
Toileting	Limited (2/3)	42 times weekly
Bathing	Extensive (3/2)	7 times weekly
Medical Escort		16 minutes weekly
Light Meals	Moderate (2/3)	14 times weekly
Main Meals	Moderate (2/3)	7 times weekly
Laundry – Incontinence	Moderate (2/3)	60 minutes weekly

Dated: October 30, 2023

Signed

Lawrence A. Pederson
Administrative Law Judge

[67] Ex. D (OAH Case No. 23-0506), p. 7.

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 16th day of November, 2023.

By: *Signed*
Name: Lawrence A. Pederson
Title: Administrative Law Judge

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