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**STATE OF ALASKA  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
OFFICE OF HEARINGS AND APPEALS**

In the Matter of	)	
	)	
██████████,	)	OHA Case No. 11-FH-2290
	)	
Claimant.	)	Agency No ██████████
_____	)	

**FAIR HEARING DECISION**

**STATEMENT OF THE CASE**

Ms. ██████████ (Claimant) was assessed on July 13, 2011 for Personal Care Assistant (PCA) program services through the Senior and Disabilities Services (SDS) Division of the Department of Health and Social Services (Division).<sup>1</sup> (Ex. A, p. 2; Ex. E) On July 18, 2011, Claimant was notified that her application for PCA services had been denied because the assessment showed she did not meet the Medicaid Personal Care Services eligibility criteria. (Ex. A, p. 2; Ex. D). On July 21, 2011, Claimant requested a Fair Hearing. (Ex. C)

This office has jurisdiction pursuant to 7 AAC 125.180(c) and 7 AAC 49.010.

A Fair Hearing took place on August 24, 2011. Claimant attended telephonically, represented herself and testified on her own behalf, through a translator. Mr. ██████████, Program Manager for ██████████ Service Agency, appeared telephonically and testified on behalf of Claimant. Also present telephonically to testify on behalf of Claimant were Mr. ██████████, Claimant's husband, and Mr. ██████████, a representative from ██████████. Mr. ██████████ was accepted by the parties and the Hearing Authority as a translator of the Hmong language. Mr. ██████████, Medical Assistance Administrator with the Division, attended the hearing in person, and testified on behalf of the Division. Personal Care Assistance Unit Manager ██████████ appeared telephonically and testified on behalf of the Division. Personal Care Assistance Review Supervisor, Ms. ██████████, appeared on behalf of the Division but did not testify.

All offered exhibits were admitted. The record was held open so the parties could supplement the record and have an opportunity to respond to each others' submissions. On August 30, 2011, the Division

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<sup>1</sup> The acronym "PCA" is used routinely to mean Personal Care Assistant and Personal Care Assistance Services Program. (Ex. D, p. 1; *see also* 7 AAC 125.090).

supplemented the record with “work credentials” of the assessor, Ms. [REDACTED]. No other supplementary documents were received. The evidentiary record closed on October 5, 2011.

### ISSUE

On July 13, 2011, was the Division correct when it found Claimant not eligible for Personal Care Assistance services?

### FINDINGS OF FACT

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

1. Claimant is an unemployed, 45 year old, married woman, who is 5 feet 9 inches tall and weighs 162 pounds, and whose primarily language is Hmong. Claimant applied for PCA services. (Ex. E, p. 1)
2. Claimant lives in Anchorage in a five person household consisting of Claimant, her husband, her 19 year old son who attends college, and two grandchildren. Her son is very fluent in English. (Ex. E, p. 1; Claimant’s testimony) Claimant applied for PCA services because she wants her son to be her personal care assistant during the day, to help her with her needs while her husband is at work. (Claimant’s testimony)
3. Claimant supplied documentation in support of her application as follows: (Exs. F, G)
  - a. On July 22, 2011, Claimant supplied a “Verification of Diagnosis” signed by a physician’s assistant at [REDACTED] on June 21, 2011, describing diagnoses of “hypertension, depression, PTSD, DDD L5SI, cough w/ACE, constipation w/ (illegible) hemorrhoids, grade II, internal hemorrhoids, post-menopausal” (Ex. F)
  - b. On August 24, 2011, Claimant supplied a prescription dated June 21, 2011, signed by the physician’s assistant at [REDACTED] which prescribed 30 minutes of walking exercise daily plus 30 minutes daily of stretching and range of motion exercises for her spine. (Ex. G, p. 4)
  - c. On August 24, 2011, Claimant supplied a second “Verification of Diagnosis” form completed August 22, 2011 by the same physician’s assistance from [REDACTED], [REDACTED] which listed Claimant’s diagnoses as “hypertension, arthritis lumbar spine (000), depression, PTSD, recent surgery for hemorrhoids, tendonitis (illegible) wrist.” (Ex. G, p. 3)
  - d. Claimant supplied no other medical records in support of her application.
4. On July 13, 2011, Claimant was assessed to determine if she was eligible for personal care assistance services (PCA). (Ex. E) Claimant’s assessment was conducted by the Division of Senior and Disabilities Services (Division) assessor Ms [REDACTED] (Assessor). (Ex. E, p. 1; Ex. A, p. 2) During the assessment, Claimant was accompanied by her husband, her adult son, and the [REDACTED] Program Manager. (Claimant’s testimony; [REDACTED] Program Manager’s testimony)

5. On July 13, 2011, the Assessor applied the Consumer Assessment Tool (CAT) to evaluate Claimant's need for Personal Care Assistant (PCA) services.<sup>2</sup> (Ex. E) Present at the assessment were Claimant's son, her husband, and the [REDACTED] Program Manager. ([REDACTED] Program Manager's testimony)

6. On July 14, 2011, Claimant was determined not eligible for PCA services because she did not need a nursing facility level of care. (Ex. E, p. 30) On July 18, 2011, the Division sent Claimant a letter informing her she had been denied for PCA services. (Ex. D) The Division supported its determination by informing Claimant her assessment scores had not met the minimum required for eligibility for PCA services. The letter summarized the scores Claimant received in each category and provided a description of each score. (Ex. D)

7. Claimant's testimony at the hearing included the following:

a. She had hemorrhoid surgery in May 2011 and subsequently experienced pain on her right side, including her hand, arm, lower back and right leg. The pain has just kept getting worse. These parts of her body are not working properly and this fact increases her depression because she cannot care for herself when her husband is at work.

b. Subsequent to her surgery in May 2011, Claimant's son has assisted her with her physical needs during the day, including guiding her to the bathroom, when her husband is at work.

c. Claimant has been depressed for a long time and does not know why, but the doctor diagnosed it as depression and she and her family accept that. Claimant was diagnosed with depression before she moved to Alaska in 2001.

d. Claimant began using a cane in 2003 because her leg was painful. In 2006, Claimant obtained several injections into her hand to alleviate pain in her hand. It is still painful.

e. Claimant disputed three points concerning the assessment:

1. The assessor stated Claimant had engaged in a number of tests but no cause for her pain and condition could be found. (Ex. E, p. 6) Claimant provided no evidence to support her dispute with this statement.

2. The assessor believed Claimant's illnesses result from depression and have no physical cause. (E.g., Ex. E, p. 9)

3. Claimant could not recall saying what the assessor wrote Claimant said, and Claimant believes the assessor incorrectly reported what Claimant actually said.

8. Claimant's husband believed the assessor was mistaken as to what his wife's abilities were when the assessor made her notes. (Claimant's husband's testimony)

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<sup>2</sup> The acronym PCAT means personal care assessment tool (PCAT). 7 AAC 125.010(a); 7 AAC 125.199(9), (10). The PCAT includes the Consumer Assessment Tool (CAT) and the PCAT Authorized Services Plan. 7 AAC 125.199(11). *See also* 7 AAC 125.020. The Division did not create a PCAT Authorized Services Plan for this Claimant.

9. The Program Manager for ██████████ Agency, who was present at the assessment, was uncomfortable with the way the assessor conducted the assessment. The Program Manager speaks some English. (██████████ Program Manager's testimony)

10. The Division's PCA Unit Manager testified:

a. The Assessor is fully qualified to conduct assessments, has been working since 2009 as an assessor, and has never shown any reason to doubt the credibility of her work. The Assessor has a Bachelor's degree in psychology and meets the minimum qualifications required of a Health Program Manager II and Disabilities Assessor.

b. The assessment found that Claimant was physically able to perform the ADL's and IADL's but needed cueing. The Assessor's assessment and conclusion were reviewed by a supervising nurse on July 14, 2011 and the reviewer agreed with the Assessor's conclusion. The PCA Unit Manager reviewed the assessment again and supports the Assessor's denial.

c. An applicant must receive a minimum of a score of 2 in self-performance and 2 in support for at least one activity of daily living (ADL) or receive a minimum score of 1 in self-performance and 3 in support on any single instrumental activity of daily living (IADL) to be eligible for PCA services. The PCA program rules do not provide PCA services for cueing or supervision, which is what Claimant was assessed to need.

d. Claimant did not qualify for PCA services on the basis of her needs in regards to the Instrumental Activities of Daily Living because she has a spouse and son living with her who are capable of providing, and do provide, her with the assistance she needs. PCA services are not authorized in such circumstances.

e. Claimant's prescription for 30 minutes of daily walking exercise and 30 minutes daily range of motion and stretching exercises for her spine does not entitle her to PCA services. A recipient must be eligible for PCA services for other reasons before a prescription can support receiving PCA services.

11. ADL's. The Assessor documented on the Consumer Assessment Tool (CAT) the following that she noted about Claimant's abilities and condition in relation to her activities of daily living (ADL's):

a. Claimant was not able to draw a clock or remember one item out of three after a five minutes delay. The Assessor explained: "She appears very depressed and groggy w/poor eye contact, clock drawing deferred d/t cultural education, able to recall 15 yr employment at electronic company, unable to recall any of 3 words, says does not speak English." (Ex. E, p. 4)

b. Claimant was unable to cross her hands across her chest and stand up, put her hands behind her back or put her hands over her head. She was able to grip with both hands. The Assessor wrote that Claimant had a brace on her right wrist and "needed prompting to complete w/L though she does not have pain on this side, ct refused to

move arms from lap without great deal of prompting d/t pain, ct says she cannot stand without a cane and assist from son, appears depressed.” (Ex. E, p. 4)

c. Claimant receives no therapies provided by a qualified therapist and does not have a prescription requiring “hands-on” assistance. (Ex. E, p. 5) Claimant receives no professional nursing services, treatments, therapies (Ex. E, pp. 13-15)

d. Claimant needed only cueing (a score of 5) in both the self-performance and the support aspects of the following activities:

1. bed mobility and transfers between surfaces; (Ex. E, p. 6)
2. locomotion; (Ex. E, p. 7)
3. dressing; (Ex. E, p. 8)
4. toilet use; (Ex. E, p. 9)
5. personal hygiene; (Ex. E, p. 10)
6. bathing; (Ex. E, p. 11)

e. Claimant was scored as independent in the self-performance category for eating (a score of 0) but requires set-up help (cooking), a score of 1 in the support category. (Ex. E, p. 9)

f. Claimant appears to have some problems with short term memory and was able to recall the season, location of her room, names and faces and where she was. She had no problems with long term recall and was independent in her daily decision making. (Ex. E, p. 16)

g. Claimant repeatedly indicated symptoms of substantial depression. (Ex. E, pp. 4, 6, 7, 8, 9, 10, 11, 25) She has sleep cycle issues and an unpleasant mood in the morning. She has loss of interest manifested by sad, pained, or worried facial expressions. She has withdrawal from activities of interest and reduced social interaction. (Ex. E, p. 25) Claimant was scored 2 (indicators present, not easily altered) for mood persistence which is described as “[o]ne or more indicators of depressed, sad or anxious mood were not easily altered by attempts to “cheer-up”, console or reassure the person over the last 7 days.” (Ex. E, p. 25)

h. Claimant exhibits no problem behaviors. (Ex. E, p. 17)

i. Claimant takes 13 medications that she self-administers and is compliant in taking. (Ex. E, p. 20)

j. Claimant’s hearing is adequate, she uses no communication devices and is able to make herself understood and understand others. Claimant wears eyeglasses. (Ex. E, p. 22)

k. Claimant has no nutritional problems in terms of chewing, swallowing, tasting foods, food allergies, needing mechanically altered or therapeutic diet, or of following such a diet. (Ex. E, p. 23)

l. She has no difficulties of incontinence, and had no accidents or danger of falling due to unsteady gait or balance when standing but does limit her activities because of fear of falling. (Ex. E, p. 23)

m. Claimant has no special needs in relation to oral or dental health, and skin or feet. (Ex. E, p. 24)

n. Claimant does not have a needed bath bench, grab bars, hand-held shower, and walker. (Ex. E, p. 27)

o. Claimant has a cane and is independent with its use. (Ex. E, p. 27)

12. IADL's. The Assessor documented on the Consumer Assessment Tool (CAT) the following that she noted about Claimant's abilities in relation to performing Instrumental Activities of Daily Living (IADL's). (Ex. E, p. 26)

a. Meal preparation: Claimant was scored 1, "independent with difficulty" in self-performance and scored 1, "supervision / cueing provided" in the support category.

b. Main meal preparation: Claimant was scored 2, "assistance / done with help" in self-performance and scored 1, "supervision / cueing provided" in the support category.

c. Telephone use: Claimant was independent and scored a 0 in both categories.

d. Light housework: Claimant was scored 1, "independent with difficulty" in self-performance and scored 1, "supervision / cueing provided" in the support category.

e. Managing finances: Claimant was independent and scored a 0 in both categories.

f. Routine housework: Claimant was scored 1, "independent with difficulty" in self-performance and scored 1, "supervision / cueing provided" in the support category.

g. Grocery shopping: Claimant was scored 2, "assistance / done with help" in self-performance and scored 1, "supervision / cueing provided" in the support category.

h. Laundry: Claimant was scored 1, "independent with difficulty" in self-performance and scored 1, "supervision / cueing provided" in the support category. Claimant does her laundry at home.

13. On July 13, 2011, in the summary assessment of Claimant's eligibility for personal care services, Claimant's scores of "independent with difficulty" (1 in self performance) and "supervision or cueing provided" (1 in support) for meal preparation, light and routine housework, and laundry, and her score of "assistance, done with help" (2 in self performance) and "supervision or cuing provided" (1 in support) for main meal preparation, routine housework, and grocery shopping resulted in a total score of "1". (Ex. E, p. 31) The total score of one (1) means that Claimant is functionally eligible for Personal Care Assistant Services. (Ex. E, p. 31)

14. On July 14, 2011, the Assessor signed the assessment and summarized the coded results. (Ex. E, p. 29) The summary resulted in a coding of “0” for the total Nursing score applicable to ADL’s. (Ex. E, p. 29) The Division determined Claimant did not require a nursing facility level of care. (Ex. E, p. 29-30)

15. On August 24, 2011, Claimant supplied a letter explaining her disagreement with the results of the assessment, in particular that the assessor “believed that [Claimant] has no physical impairment; most of her illnesses are resulted from depression.” (Ex. G, p. 2) Claimant also wrote she receives SSI (Supplemental Security Income from the federal government) and with her spouse working full-time, she cannot do many of her daily living activities. (Ex. G, p. 2) C

### PRINCIPLES OF LAW

In proceedings concerning an initial application, the burden is on the applicant. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985).

Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm’n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). “Where one has the burden of proving asserted facts by a preponderance of the evidence, he must induce a belief in the minds of the [triers of fact] that the asserted facts are probably true.” *Robinson v. Municipality of Anchorage*, 69 P.3d 489, 495 (Alaska 2003) (quoting *Saxon v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

#### Authority of the Office of Hearings and Appeals

Alaska Regulation 7 AAC 49.170 describes the “[l]imits of the hearing authority” as relates to Fair Hearings. It states:

Except as otherwise specified in applicable federal regulations and 7 AAC 49.160, the role of the hearing authority is limited to the ascertainment of whether the laws, regulations, and policies have been properly applied in the case and whether the computation of the benefit amount, if in dispute, is in accordance with them.

#### The Personal Care Assistance Program

Federal Medicaid regulation 42 C.F.R. § 440.167 provides

(a) *Personal care services* means services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or an institution for mental disease that are

(1) Authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State;

(2) Provided by an individual who is qualified to provide such services and who is not a member of the individual’s family; and

(3) Furnished in a home, and at the State's option, in another location.

(b) For purposes of this section, *family member* means a legally responsible relative.

The purpose of Alaska Personal Care Assistance services is:

“to enable an individual...whose needs would otherwise result in placement in a general acute care hospital or nursing facility ... to remain at home or prevent job loss.” 7 AAC 125.010.

The Division administers its interpretation of regulation 7 AAC 125.010 as authorizing eligibility for PCA services to an individual who receives at minimum a score of “2” in self performance and “2” in physical assistance/support for any single ADL or who receives at minimum a score of “1” in self-performance and “3” in physical assistance/support for any single IADL.<sup>3</sup>

The determination whether an individual is eligible for PCA services is the result of an assessment conducted using the Personal Care Assessment Tool (PCAT). 7 AAC 125.020. The PCAT consists of two primary parts: 1) a Consumer Assessment Tool (CAT) and 2) a PCAT Authorized Services Plan. 7 AAC 125.020(a)(1), (2); 7 AAC 125.199(11).

An eligible individual may have the Department of Health and Social Services pay for personal care services which are reimbursed by Medicaid. 7 AAC 125.030.

#### A. Activities of Daily Living

An individual may be eligible for “assistance with the recipient’s activities of daily living (ADL).” 7 AAC 125.030(a)(1). These include:

(A) physical assistance with basic hygiene and grooming, including (i) bathing; (ii) dressing; (iii) care of the mouth, hair, and skin; and (iv) filing of toenails and both cutting and filing of fingernails, excluding nail care for recipients who are diabetic or have poor circulation;

(B) physical assistance with bladder and bowel routines, including (i) helping the recipient to and from the bathroom; (ii) assisting the recipient with a bedpan or other toileting procedures; (iii) providing general hygiene care of a colostomy, an ileostomy, or an external catheter; (iv) giving suppositories that do not contain medication; (v) providing digital stimulation; and (vi) providing routine care of an incontinent recipient;

(C) assistance with eating;

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<sup>3</sup> On August 12, 2009, the Department of Health and Social Services, Division of Senior and Disabilities Services (Division) established eligibility for PCA services if an individual has a particular need for assistance in relation to any single Activity of Daily Living (ADL) shown by a score of 2 in self-performance and 2 in support or a score of 1 in self-performance and 3 in support for any single Instrumental Activity of Daily Living (IADL). Director’s Program Memo of August 12, 2009. This is a more liberal standard than that found in Alaska regulation 7 AAC 125.030(h) and (i).



(D) physical assistance with transferring the recipient in and out of a bed, chair, or wheelchair and helping the recipient walk with support of a walker, cane, gait belt, braces, or crutches; and

(E) physical assistance with positioning or turning a nonambulatory recipient in a bed or chair,

A score of 5 in self-performance means the individual needs “Cueing – Spoken instruction or physical guidance which serves as a signal to do an activity ...” A score of 5 in support means “Cueing.” Exhibit E, e.g., p. 9. A score of 2 in self-performance means “Limited assistance – Person highly involved in activity; received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance.... A score of 2 in support means “One-person physical assist.” Exhibit E, e.g., p. 9.

### B. Instrumental Activities of Daily Living

An individual may be eligible for “assistance with a recipient’s instrumental activities of daily living (IADL).” 7 AAC 125.030(a)(1). Some of the actions for which PCA services are provided include: light housekeeping, laundering bed linen and clothing, meal planning and preparation, shopping and some additional services. 7 AAC 125.030(a)(2), (3). Also covered is physical assistance with a prescribed walking or exercise plan and assistance with travel to and from routine medical and dental appointments. 7 AAC 125.030(a)(3)(G), (H).

A score of 1 in self-performance means the individual is “Independent with difficulty: Person performed task, but did so with difficulty or took a great amount of time to do it.” A score of 1 in support means “Supervision / cueing provided.” Exhibit E, e.g., p. 26. A score of 2 in self-performance means “Assistance / done with help: Person involved in activity but help (including supervision, reminders, and/or physical “hands-on” help) was provided. A score of 2 in support means “Set-up help only.” A score of 3 in support means “Physical assistance was provided.” Exhibit E, e.g., p. 26.

### C. Actions Excluded from Personal Care Assistance Services

Certain actions are excluded from Personal Care Assistance services and are identified in Alaska regulation 7 AAC 125.040. Some of the actions that are excluded from PCA services are:

- 1) actions an individual can reasonably perform by himself (7 AAC 125.040(a)(4));
- 2) supervision, monitoring, cueing, social visitation, general monitoring for equipment failure (7 AAC 125.040(a)(11));
- 3) IADL’s if another relative, caregiver of the recipient, community or volunteer agency, ... is capable of or responsible for the provision of the IADL services (7AAC 125.040(a)(13)(B));

### Duty of Support

Alaska regulation 7 AAC 125.199(7), applicable to Medicaid coverage for Personal Care Services and Home Health Care Services (7 AAC 125.010-7 AAC 125.199), defines “immediate family member of the recipient” as “a relative of the recipient with a duty to support the recipient under state law.” Alaska Statute 25.20.030 attributes parents and children with a duty to support each other: “[e]ach parent is

bound to maintain the parent's children when poor and unable to work to maintain themselves. Each child is bound to maintain the child's parents in like circumstances."

## ANALYSIS

### I. Issue

Claimant requested a Fair Hearing asserting the Division erred in finding her not eligible for Personal Care Assistance (PCA) services. The purpose of providing Personal Care Assistance services to individuals is:

"to enable an individual...whose needs would otherwise result in placement in a general acute care hospital or nursing facility ... to remain at home or prevent job loss." 7 AAC 125.010.

The issue in this case is whether the Division was correct when it found Claimant not eligible for Personal Care Assistance services based on the assessment conducted on July 13, 2011.

### II. Burden of Proof, Standard of Proof

In proceedings concerning an initial application, the burden is on the applicant. *State, Alcoholic Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985). Because Claimant is applying for the Medicaid funded Personal Care Assistance services, Claimant has the burden of proving she is eligible for the public assistance she seeks.

The standard of proof in an administrative proceeding is a "preponderance of the evidence," unless otherwise stated. *Amerada Hess Pipeline Corp. v. Alaska Public Utilities Com'n*, 711 P.2d 1170, 1179 n. 14 (Alaska 1986). Claimant must prove she is eligible for the services she seeks by a preponderance of the evidence. Claimant must prove that without the PCA services she requests, she would be required to become a resident of a nursing facility or acute care hospital and must prove that she is eligible for the services she seeks.

### III. Eligibility Analysis

It is undisputed Claimant is 45 years old, unemployed and living at her home with her adult son and husband. She has been diagnosed as depressed and it is undisputed she has been depressed for a "long time." She takes 13 medications and is compliant in self-administering them. It is undisputed she is independent in her use of the telephone and in her daily decision making. It also is undisputed that Claimant feels pain, had surgery for hemorrhoids in May 2011 and uses a cane to help herself get around. The undisputed testimony is that Claimant is able to conduct most activities independently but that she needs cueing, supervision, or guidance. Claimant testified that her son provides her with the assistance she needs during the day, when her husband is at work.

The Division assessed Claimant on July 13, 2011, nearly two months after Claimant's surgery in May 2011. The results of its assessment were that, for activities of daily living, Claimant needed cueing or supervision (code 5) in the categories of transfer, locomotion, dressing, toilet use and bathing. In the

eating category, Claimant was scored independent (code 0) in self-performance and scored needing set up help only (code 1) in support.

Claimant asserted at the Fair Hearing that the Assessor mis-understood or mistakenly recorded what Claimant told her. However, during the assessment, Claimant was accompanied by her son, who speaks English very well, and by the [REDACTED] Program Manager. These two persons were available to ensure Claimant's communications were correctly understood. It is Claimant's burden, as an applicant for services, to ensure she meets the eligibility requirements for the services she requests. Therefore, Claimant cannot hold the Division accountable for failing to communicate in light of the help she had available during the assessment.

Claimant's testimony was that she suffers depression, pain, and that her right side does not work well. She testified her son assists her during the day by "guiding" her. Guiding is less assistance than physical assistance which provides weight bearing help from one or two persons. Claimant's testimony is that she is mobile with the use of her cane. Thus, it is undisputed that Claimant does not need weight-bearing physical assistance to conduct her activities of daily living.

In terms of scoring, Claimant's scores of 5 (cueing and supervision) did not satisfy the eligibility criteria that she have at least a 2 in self-performance and a 2 in support for any single activity of daily living. The score of 2 represents an individual's need to receive physical help in guided maneuvering of limbs or other nonweight-bearing assistance. It is undisputed Claimant can move her limbs without someone helping her to move them. Therefore, the Division's assessment of Claimant's need for assistance in her activities of daily living is correct.

On the instrumental activities of daily living, Claimant's scores of 2 (assistance/done with help) in self-performance for main meal preparation, routine housework and grocery shopping, coupled with her scores of 1 (supervision / cueing provided) did not meet the eligibility requirements of a score of at least a 1 (independent) in self-performance and 3 (physical assistance provided) in support. *See* Footnote 3, hereinabove. Claimant's scores of 1 in self-performance and 1 in support in the categories of meal preparation, light housework, and laundry likewise did not meet the eligibility requirements.

The Division denied Claimant PCA services because Claimant was determined not to meet the minimum amount of need that would qualify her for a nursing facility level of care. Claimant's chief complaint was that she suffered pain and that her right side did not function well, and that she was depressed. It is undisputed that Claimant can function physically, although she is not comfortable even though she uses a cane. Claimant's evidence did not prove by a preponderance that the Division was mistaken.

Claimant was assessed to need assistance for the incidental activities of daily living (IADL's) of preparing a main meal, doing routine housework and grocery shopping and was scored 2 in these categories. However, PCA services are not authorized for IADL's if a relative, caregiver of the recipient, community or volunteer agency is capable of or responsible for the provision of the IADL services. 7AAC 125.040(a)(13)(B) Claimant's son and husband are both relatives and immediate family members of Claimant who each are capable, and do, provide the assistance needed by Claimant to carry out her IADL's. Alaska Statute 25.20.030 imposes on a child the duty to support his parent when the parent is incapable. Therefore, the Division's determination that Claimant's son is "capable of or responsible for" the provision of the IADL services is correct, according to law.

#### IV. Conclusion

The Division determined that Claimant was not eligible for PCA services because she was assessed as not needing a nursing facility level of care, because her assessment scores did not meet the minimum eligibility requirements and because PCA services are not authorized for her needs which were met or capable of being met by her son and husband.

Claimant, as applicant, had the burden of proving by a preponderance of the evidence that the Division was incorrect. Claimant did not meet that burden. Claimant provided no medical records other than two Verification of Diagnosis forms. These forms did not supply facts showing Claimant was physically or mentally impaired to the point of being eligible for PCA services. Also, Claimant has not met her burden of proving by a preponderance of the evidence that she is eligible for PCA services because without PCA services she would be required to live in a nursing facility or acute care hospital.

#### **CONCLUSIONS OF LAW**

1. Claimant did not prove by a preponderance of the evidence that she is eligible to receive Personal Care Assistance services.
2. The Division assessed Claimant on July 13, 2011 and determined that Claimant did not meet the minimum eligibility requirements to receive Personal Care Assistance Services. 7 AAC 125.010-.030

#### **DECISION**

On July 18, 2011, the Division was correct when it found Claimant not eligible for PCA services based on Claimant's assessment on July 13, 2011.

#### **APPEAL RIGHTS**

If for any reason the Claimant is not satisfied with this decision, the Claimant has the right to appeal by requesting a review by the Director. If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

To do this, send a written request directly to:

Director of the Division of Senior and Disabilities Services  
Department of Health and Social Services  
PO Box 110680  
Juneau, AK 99811-0680

Dated November 30, 2011.

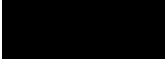
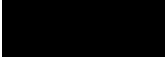

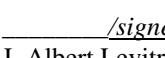
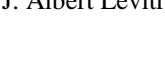
\_\_\_\_\_  
*/signed/*  
Claire Steffens  
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on November 30, 2011 true and correct copies of the foregoing were sent to:

Claimant, Certified Mail, Return Receipt Requested.

\_\_\_\_\_ and to other listed persons via secure, encrypted e-mail on November 30, 2011:

, Director, DSDS  
, Hearing Representative  
, Director, DHCS  
, Chief, Policy & Program Dev.  
, Staff Development & Training

      /signed/      

J. Albert Levitre, Jr., Law Office Assistant I