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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 CARMEN BAKER and CATHERINE )  
5 BURTNESS, on behalf of themselves )  
6 and all those similarly situated, )

7 Plaintiffs, )

8 vs. )

9 STATE OF ALASKA, DEPARTMENT OF )  
10 HEALTH AND SOCIAL SERVICES, )  
11 Karleen Jackson, in her official capacity as )  
12 Commissioner of the Department, )  
13 DIVISION OF SENIOR AND DISABILITIES )  
14 SERVICES, and Rod Moline, in his official )  
15 capacity as Director of the Division, )

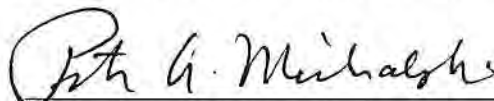
16 Defendants. )

17 Case No. 3AN-06-10871 CI

18 **ORDER**

19 This Court, having considered the factors enumerated by the Alaska  
20 Supreme Court in *Weiss v. State*, 939 P.2d 380, 386-87 (Alaska 1997), and being  
21 otherwise fully advised in the premises, HEREBY FINDS that the above Settlement  
22 Agreement reached by the parties is fair, adequate, reasonable, and in the best interests of  
23 the class members. Accordingly, the terms of the Settlement Agreement are hereby  
24 adopted as the Order of this Court. **IT IS SO ORDERED.**

25 DATED this 27<sup>th</sup> day of February, 2012, at Anchorage, Alaska.

26 

PETER A. MICHALSKI  
SUPERIOR COURT JUDGE

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CARMEN BAKER, on behalf of herself )  
and all those similarly situated, )

Plaintiff, )

vs. )

STATE OF ALASKA, DEPARTMENT OF )  
HEALTH AND SOCIAL SERVICES, )  
Karleen Jackson, in her official capacity )  
as Commissioner of the Department, )  
DIVISION OF SENIOR AND DISABILITIES )  
SERVICES, and Rod Moline, in his official )  
capacity as Director of the Division, )

Defendants. )

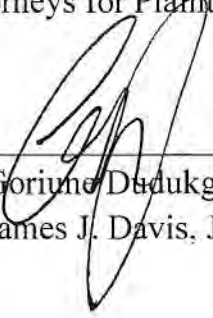
Case No. 3AN-06-10871 CI

**STIPULATION TO LIFT STAY OF ADMINISTRATIVE HEARINGS**

The parties, by and through counsel, hereby stipulate that the court order dated February 24, 2009 staying administrative hearings related to this litigation be lifted and the underlying hearings be dismissed as moot.

DATED this 27<sup>th</sup> day of February, 2012 at Anchorage, Alaska.

NORTHERN JUSTICE PROJECT, LLC  
Attorneys for Plaintiffs

By:   
Gorune Dudukgian, AK Bar No. 0506051  
James J. Davis, Jr., AK Bar No. 9412140

imaged 8-07-12 JLS

**Northern Justice Project, LLC**

A Private Civil Rights Firm

310 K Street, Suite 200

Anchorage, AK 99501

Phone: (907) 264-6634 • Fax: (866) 813-8645

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Phone: (907) 264-6634 • Fax: (866) 813-8645

DATED this 27<sup>th</sup> day of February, 2012 at Anchorage, Alaska.

MICHAEL C. GERAGHTY  
ATTORNEY GENERAL

By: Stacie L. Kraly  
Stacie L. Kraly  
AK Bar No. 9406040

**ORDER**

IT IS SO ORDERED. The stay that was entered on February 24, 2009 is lifted and the underlying administrative hearings subject to this stay should now be dismissed as moot.

DATED this 27<sup>th</sup> day of February, 2012 at Anchorage, Alaska.

Peter A. Michalski  
PETER A. MICHALSKI  
SUPERIOR COURT JUDGE

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
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CARMEN BAKER and CATHERINE )  
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SERVICES, and Rod Moline, in his official )  
capacity as Director of the Division, )

Defendants. )

Case No. 3AN-06-10871 CI

**STIPULATED SETTLEMENT AGREEMENT AND ORDER**

The parties, by and through their respective counsel of record, hereby stipulate and agree as follows in full settlement of the above-entitled action:

**RECITALS**

1. The plaintiffs Carmen Baker and Catherine Burtness and the plaintiff class members are Medicaid beneficiaries and participants in the State of Alaska's Personal Care Attendant ("PCA") program.

2. At the time this case was filed, the purpose of the PCA program was "to enable an individual, of any age, whose needs would otherwise result in placement in an acute care hospital or nursing facility or loss of that individual's

1  
2 employment solely related to activities of daily living (ADL) to remain at home or  
3 prevent job loss.” (7 AAC 43.750). That statement of purpose has been amended and is  
4 currently set forth in 7 AAC 125.010.

5           3.     The PCA program provides eligible recipients with assistance in  
6 performing the various activities of daily living (ADLs), such as bathing, dressing,  
7 toileting, eating, transfers, care of the mouth, hair, skin, fingernails and toenails, as well  
8 as assistance with various instrumental activities of daily living (IADLs), such as  
9 housekeeping, shopping, laundering bed linens and clothing, meal planning and  
10 preparation, assistance with taking vital signs, bandage care, administering routine  
11 medications, and travel to and from medical and dental appointments. *See*  
12 7 AAC 125.030.

14           4.     In 2006, the State sent a notice to Ms. Baker which sought to  
15 terminate plaintiff Baker's PCA services and sent a notice to Ms. Burtness which sought  
16 to reduce plaintiff Burtness' PCA services.

18           5.     In August 2006, plaintiffs filed a class action lawsuit against the  
19 State claiming that: (a) the notices used by the State in terminating and/or reducing PCA  
20 services violated due process; and (b) the State's termination or reduction of a person's  
21 PCA services without showing how that person's conditions have materially improved  
22 violates due process.

24           6.     In December 2006, this Court certified a class of all PCA recipients  
25 who, since April 2006, had their PCA services reduced or terminated by the State.



1  
2 7. In January 2007, this Court entered a restraining order against the  
3 State finding that: (a) the notices used by the State to terminate services to PCA  
4 recipients violated due process; and, (b) the notices used by the State to reduce services  
5 to PCA recipients did not violate due process.

6 8. Subsequent to this Court's ruling, the State reinstated the PCA  
7 benefits for all class members who had their PCA benefits terminated by the State by  
8 way of the due process violative notice.

9  
10 9. The plaintiffs filed a petition for review from this Court's decision  
11 that the notices used by the State to reduce services to PCA recipients did not violate  
12 due process.

13 10. The plaintiffs prevailed in the Alaska Supreme Court in  
14 *Baker v. State*, 191 P.3d 1005 (Alaska 2008).

15  
16 11. Subsequent to the Supreme Court's ruling, the State reinstated the  
17 PCA benefits for all class members who had their PCA benefits reduced by way of the  
18 due process violative notice.

19 12. The State has developed and now agrees to use due process  
20 compliant notices whenever it believes it is necessary to terminate or reduce services to  
21 a PCA recipient. The notices which the State will henceforth use are discussed more  
22 fully in ¶A below.

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24 13. The major remaining issue in this matter concerns plaintiffs'  
25 contention that, under due process, the State cannot not reduce or terminate PCA  
26 services without first showing that the consumer's conditions have materially improved.

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14. The State agrees that, in order to resolve this case, prior to reducing or terminating PCA services to a PCA recipient, the State will first show that there has been a material change in the PCA recipient's health such that the recipient needs less PCA services and/or that the recipient is no longer receiving services in his or her own residence and is thus no longer eligible for PCA services in accord with 7 AAC 125.050. The parties also agree that a person can be reduced or terminated from the program due to regulatory changes.

**AGREEMENT**

The plaintiffs, by and through the Northern Justice Project, and defendants, by and through Chief Assistant Attorney General Stacie L. Kraly, hereby agree to the settlement of all claims raised in this action on the following terms and conditions:

A. The State will not reduce nor terminate a PCA recipient's benefits unless the State first shows that there has been: (1) a material change in the PCA recipient's health such that the recipient needs less PCA services; and/or (2) the PCA recipient is prohibited from receiving PCA benefits because s/he has moved into a living environment that is excluded under 7 AAC 125.050; or (3) the original service plan or current service plan is not accurate because a regulation has been adopted or amended that prohibits the services that were previously authorized. Recipients will be

ATTORNEY GENERAL, STATE OF ALASKA  
DIMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

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2 noticed of any reduction or termination by the State using the letters<sup>1</sup> attached hereto as  
3 Exhibit A and B, and, if the recipient requests a fair hearing, the State must prevail at  
4 the fair hearing before reducing or terminating a person's PCA benefits.

5 B. For the 35 recipients who are still receiving benefits under their  
6 2006 service authorizations, and whose Medicaid ID numbers are set forth on Exhibit C  
7 to this agreement, the parties agree that the State will establish the above material  
8 change in condition by showing that: (1) the original service plan did not accurately  
9 show the recipient's needs for services at that time of assessment, (2) the person has  
10 materially improved since the original assessment; or (3) the original service plan is not  
11 accurate because a regulation has been adopted or amended that prohibits the services  
12 that were previously authorized. Such an action will be subject to the same notice and  
13 fair hearing provisions as set forth in paragraph 1 above.  
14

15 C. This settlement and court order shall apply to all assessments  
16 conducted after January 1, 2012.  
17

18 D. While the State does not anticipate the need for changes to the  
19 notices set forth in paragraph A, the State agrees that for a three year period from the  
20

21  
22 <sup>1</sup> The parties agree that Exhibits A and B include all of the necessary information  
23 to inform recipients of the decision that has been made, how that decision was made,  
24 and how to challenge that decision if the recipient disagrees. However, in order to  
25 present a more complete picture to the court, Exhibit A (the reduction letter) is not in  
26 the format in which the letter will actually be sent to PCA recipients. Rather, the parties  
agree that the State will format each letter to include only the specific information that  
is applicable to the recipient. In other words, the notices attached hereto are more  
inclusive than the actual notice that will be provided.



1  
2 date of this agreement any substantive changes to the notices will be subject to review  
3 and comment by plaintiffs' counsel. Plaintiffs may challenge any such change in these  
4 notices with this Court.

5  
6 E. The parties agree that upon the execution of this Order by the Court  
7 the stay of administrative hearings issued by this court shall be lifted and all of the  
8 stayed administrative hearings will be dismissed as moot. A proposed order lifting the  
9 stay is being filed with this Settlement Agreement.

10  
11 F. This agreement is based upon regulations and process that exist  
12 under the personal care regulation adopted on April 1, 2006, as amended on  
13 January 26, 2012, and policies and procedures adopted thereafter. Nothing in this  
14 agreement precludes the State from amending or changing the aforementioned PCA  
15 regulations so long as those changes are made pursuant to the Administrative Procedure  
16 Act. Nothing in this agreement precludes counsel for plaintiffs from challenging any of  
17 these changes.

18  
19 G. The State agrees that plaintiffs are the prevailing parties in this  
20 case. Plaintiffs shall have 45 days from the execution of this Settlement Agreement to  
21 file their motion for attorneys' fees and costs. Plaintiffs may move for an award of  
22 enhanced fees. Defendants may oppose the request.  
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H. This action shall be DISMISSED WITH PREJUDICE after this Court executes this Order and rules on plaintiffs' motion for fees and costs.

DATED this \_\_\_\_ day of February, 2012 at Anchorage, Alaska.

NORTHERN JUSTICE PROJECT, LLC  
Attorneys for Plaintiffs

By: \_\_\_\_\_  
Goriune Dudukgian, AK Bar No. 0506051  
James J. Davis, Jr., AK Bar No. 9412140

DATED this \_\_\_\_ day of February, 2012 at Juneau, Alaska.

MICHAEL C. GERAGHTY  
ATTORNEY GENERAL

By: \_\_\_\_\_  
Stacie L. Kraly  
AK Bar No. 9406040

ATTORNEY GENERAL, STATE OF ALASKA  
DIAMOND COURTHOUSE  
P.O. BOX 110300, JUNEAU, ALASKA 99811  
PHONE: 465-3600

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Case No. 3AN-06-10871 CI

**ORDER**

This Court, having considered the factors enumerated by the Alaska Supreme Court in *Weiss v. State*, 939 P.2d 380, 386-87 (Alaska 1997), and being otherwise fully advised in the premises, HEREBY FINDS that the above Settlement Agreement reached by the parties is fair, adequate, reasonable, and in the best interests of the class members. Accordingly, the terms of the Settlement Agreement are hereby adopted as the Order of this Court. **IT IS SO ORDERED.**

DATED this \_\_\_\_ day of February, 2012, at Anchorage, Alaska.

\_\_\_\_\_  
PETER A. MICHALSKI  
SUPERIOR COURT JUDGE

**STATE OF ALASKA**  
**DEPT. OF HEALTH & SOCIAL SERVICES**

SEAN PARNELL, GOVERNOR  
550 W 8<sup>th</sup> Avenue  
ANCHORAGE, AK 99501  
PHONE: (907) 269-3666  
FAX: (907) 269-8164  
TOLL FREE: 1-800-478-9996

CERTIFIED RETURN RECEIPT REQUESTED  
'usps number'

recipient name/address  
address  
State and zip code

**Medicaid #:** 'number'  
**Assessment Date:**  
**Service Level:**            hours  
**Type of PCA Services:** Choose an item.  
**Start Date:**                **End Date:**  
**Diagnosis Code:** not reported

Re: Personal Care Assistance (PCA) Service Level Authorization (Reduction)

Dear 'name of recipient':

**WHAT IS THE PURPOSE OF THIS NOTICE?**

The purpose of this notice is to (1) notify you of a proposed reduction in your PCA services from **x hours** per week to **y hours** per week effective **z date**; (2) explain the reason(s) for the proposed reduction in your PCA services; (3) explain how your service level of **y hours** per week was calculated; and (4) explain how you can challenge the proposed reduction in your PCA services.

**WHY ARE YOUR PCA SERVICES BEING REDUCED?**

The State of Alaska, Division of Senior and Disabilities Services (SDS) manages the personal care assistant (PCA) program under Medicaid regulations 7 AAC 125.010 through 7 AAC 125.199. These regulations require all individuals who have been receiving PCA services to be reassessed annually with the *Consumer Assessment Tool (CAT)* in 7 AAC125.020. The CAT determines your ongoing eligibility for PCA services, identifies the areas with which you need assistance, and is used to determine your service level for the following year.

On \_\_\_\_\_, you were assessed via the CAT to determine whether you still need PCA services and, if so, how much. A copy of your assessment is enclosed for your review. Based on our review of the enclosed assessment, and our review of the following documents *what documents were reviewed by SDS in reaching its decision*, we have determined that a reduction in your PCA service level from **x hours** per week to **y hours** per week is appropriate. Our proposed reduction in your PCA assistance is based on one or more of the following:

- Your medical condition(s) has materially changed since the last PCA assessment such that you need less PCA services. [INSERT SHORT NARRATIVE STATEMENT EXPLAINING CHANGE IN MEDICAL CONDITION]
- You were receiving PCA services as a result of a medical prescription for foot care under 7 AAC 125.030(a)(3)(C)(ii) or walking and simple exercises under 7 AAC 125.030 (a)(3)(G) or range of motion under 7 AAC

SEARCHED \_\_\_\_\_ INDEXED \_\_\_\_\_  
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125.030(b), and that prescription(s) has not been renewed [INSERT SHORT NARRATIVE STATEMENT EXPLAINING CHANGE PRESCRIPTIONS]

You were receiving some or all of your PCA services as a result of a time-limited condition. [INSERT SHORT NARRATIVE STATEMENT EXPLAINING CHANGE IN PRESCRIPTIONS]

The level of PCA services previously approved for you has been reduced because of settlement and/or a regulation change. [INSERT SHORT NARRATIVE STATEMENT EXPLAINING CHANGE IN STATUS E.G., QUIARATE AND IADL ISSUES]

Your current hours were authorized prior to April 1, 2006, when the new PCA regulations were adopted. As such, certain services and authorizations are no longer available thereby reducing your overall hours. [INSERT SHORT NARRATIVE STATEMENT EXPLAINING THE REGULATORY ISSUES RELATED TO THE DIFFERENCE BETWEEN A PRE-PCAT AND A POST PCAT ASSESSMENT]

There was a clerical and/or mathematical error in your prior service plan [INSERT SHORT NARRATIVE STATEMENT EXPLAINING THE NATURE OF THE ERROR]

Your original service plan did not accurately show your needs for PCA services at the time of assessment.

#### HOW DID YOUR CAT SCORES CHANGE FROM LAST YEAR TO THIS YEAR?

The chart below shows how your self-performance and support scores on the CAT changed from last year to this year. The chart also shows how the weekly frequency for each activity of daily living (ADL) and instrumental activity of daily living (IADL) changed from last year to this year. Please see the enclosed Key for Reading Your Chart for more information on what these scores mean and how they were used to calculate your PCA service level for the upcoming year.

EX-104 4  
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Activities of Daily Living	Prior Assessment Self Perform /Support Score	Prior Assessed Weekly Frequency	Current Self Perform /Support Score	Current Assessed Weekly Frequency	Total Weekly Minutes Authorized
Body Mobility	/		/		
Transfer	/		/		
Locomotion-single level residence	/		/		
Locomotion-multi level residence	/		/		
Locomotion-access medical appointments	/		/		
Dressing	/		/		
Eating	/		/		
Toilet use	/		/		
Personal Hygiene	/		/		
Shampooing Hair separate from bathing		Yes/no		Yes/no	
Bathing	/		/		
<b>IADL</b>					
Light Meal preparation	/		/		
Main Meal Prep	/		/		
Shopping	/		/		
Light housework	/		/		
Laundry	/		/		
<b>OTHER COVERED ACTIVITIES</b>	<i>Needed?</i>		<i>Use personal Hygiene score</i>		
Medication	Yes/no		/		
Vital Signs, Glucose Levels	Yes/no		/		
Non Sterile Dressing/Bandages	Yes/no		/		
Oxygen use	Yes/no		/		
Sterile Wound Care	Yes/no		/		
Documentation	Yes/no		/		
Oxygen Maintenance	Yes/no		<i>Use Light Housekeeping score</i> /		
Escort	Yes/no		<i>Use number of dr visits per year x duration</i>	<i>Divide by 52 wks per year</i>	
<b>ACTIVITIES REQUIRING RX</b>	<b>AS PRESCRIBED</b>				
Range of Motion					
Walking/Simple Exercise					
Foot Care					

ADL Self Performance Key  
0 – Independent  
1 – Supervision  
2 – Limited assistance  
3 – Extensive assistance  
4 – Total Dependence  
5 – Cueing  
8 – Activity did not occur

Support Key  
0 – no setup or physical help  
1 – Setup help only  
2 – One person physical assist  
3 – Two+ persons physical assist  
5 – Cueing  
8 – Activity did not occur

IADL Self Performance Key  
0 – Independent  
1 – Independent with difficulty  
2 – Assistance/done with help  
3 – Dependent/done by others  
8 – Activity did not occur

Support Key  
0 – No support provided  
1 – Supervision/cueing provided  
2 – Set up help only  
3 – Physical assistance was provided  
4 – Total dependence-person not involved  
8 – Activity did not occur

EX-101 A  
Page 3 7



## HOW DID WE CALCULATE YOUR PCA SERVICE LEVEL FOR THE UPCOMING YEAR?

Your authorized service level of **y hours** per week is based upon the scores in your recent CAT assessment, which is enclosed for your review. We calculated your eligible PCA time by taking each eligible activity of daily life (ADL) and instrumental activity of daily life (IADL), assigning the amount of minutes for each activity based on your self-performance score, and multiplying the minutes by the number of times per week the activity occurs. This scoring method is authorized under 7 AAC 160.900. For example, a score of "2" for dressing is equal to 7.5 minutes, multiplied times 2x daily, multiplied times 7 days a week, equals 105 minutes. All of the minutes from the scores are added and are changed to hours to determine the amount of time you are authorized per week. You may use your **authorized PCA time** for any listed activity where the total minutes are greater than 0 displayed on the above chart.

The enclosed Key for Reading your chart provides a detailed explanation of how SDS calculated your authorized PCA time for the coming year. Your authorized PCA services will take effect as indicated above in the "Effective Start Date". 'name of provider agency' will review the service level with you and will work with you to notify all PCAs working for you of the type and amount of services authorized in your current service level.

If you received a '0' under Total Minutes Authorized even though you received:

- a self performance score of 2, 3, or 4 and a support score of 2 or 3 for the corresponding ADL activity, or
- a score of 1, 2, 4, 5, 6 under Section G and a 2 or 3 under Section C.3 for medication reminders, or
- a self performance score of 1, 2, or 3 and a support score of 3 or 4 for the corresponding IADL activity, or
- a self performance score of 1 or 5 and Section K. 3.a. is selected for supervision when eating :

- The service level authorized is based on concurrent performance of activities (7AAC 160.900)
- If there is a second recipient in a residence, the department may authorize a personal care assistant to perform an IADL for both recipients residing in the same residence. (7AAC 125.020(a)(2))
- A recipient who is eligible for chore services through the Home and Community Based Waiver (HCBW) program is not eligible for IADL services if a HCBW services provider is willing to provide chore services to the recipient. (7AAC125.040(d))
- Recipients are not eligible to receive PCA assistance for assistance with supervision, monitoring, cueing, general monitoring for equipment failure, babysitting, social visitation, home maintenance, pet care. (7AAC125.040(a)(11)); or that duplicate/supplant transportation provided under 7 AAC 120.405 or other services provided under 7 AAC 130.200-319.
- Recipients are not eligible to receive PCA assistance for tasks that supplant or duplicate assistance offered by an individual or organization without charge or that are paid for by a third party. (7AAC125.040(a)(12))
- Recipients are not eligible to receive PCA assistance with an IADL if the recipient or anyone else in the residence offers to perform or financially provide the IADL for the recipient. (7AAC125.040(a)(13)(A))
- Recipients are not eligible to receive PCA assistance with an IADL if another relative, caregiver of the recipient, community or volunteer agency, or third-party payer is capable of or responsible for the provision of the IADL services. (7 AAC 125.040(a) (13)(B))
- Recipients are not eligible to receive PCA assistance with tasks to provide necessary food, clothing, shelter, or medical attention for a minor recipient that are a parental responsibility and are considered neglect under AS 47.10.014 if not performed. (7AAC125.040(a)(14))

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- PCA services are provided to a Medicaid eligible recipient. (7 AAC 125.012(a)(1))
- Positioning or turning in a bed or chair, if the recipient is nonambulatory. (7AAC125.030(b)(1)(A))
- The department has determined the recipient can reasonably perform the activity independently (medical Provider clarified 'independent' for RX). (7AAC125.040 (a)(4))
- The service level authorized is based on concurrent performance of activities such as laundry while other tasks are being performed. (7AAC160.900)
- Inefficiency of an assistant and/or the extent a recipient's habits make the service level larger are not factors of self-performance scoring and are not included in the service level computation. (7AAC160.900)
- The department will pay only a PCA enrolled in the Agency Based Personal Care Assistance program for physical assistance with range of motion exercises, if (1)the physical asst. is provided to a recipient in accordance with the recipient's PCAT; and (2)the exercises are prescribed by a MD/PA/ANP, who is licensed in this state or practicing or employed in a federally or tribally owned or leased health facility in this state. (7AAC125.030(e))
- Body mobility-positioning is reduced due to position changes provided as a part of other activities like transfers, toileting, locomotion, bathing, etc. as referenced in the PCA Service Level Computation. (7AAC160.900)
- Escort if for routine medical and dental only. (7AA125.030(d)(9))
- Medicaid billing records do not support the reported frequency of routine medical/dental appointments. (7AA125.030(d)(9))
- Supervising eating occurs concurrently with feeding assistance. (7AAC125.030 (e)(5) & 7AAC160.900 (referenced PCA Service Level Computation))
- Administration of medications, tube feeding, sterile wound care, or activities requiring aseptic techniques are authorized under the Consumer Directed Personal Care Assistance program only. (7AAC125.030(c))
- Set up of medisets is defined as dispensing medication and is not a covered PCA activity. (7AAC120.10-140, AS 80.080)
- Recipients are eligible for PCA assistance with taking and documenting the recipient's temperature, pulse, blood pressure, respiration, and setting up for diabetic testing and documentation. *only* if ordered by the recipient's physician, physician assistant, or advanced nurse practitioner, (7AAC125.030(d)(3))
- excluding nail care for recipients who are diabetic. (7AAC125.030(b)(7)(B))
- the department cannot authorize a personal care assistant to provide assistance with IADLs for both recipients concurrently when a second recipient resides in the same residence. (7AAC125.030(f))
- 'for additional determination items if needed'

**WHAT IF YOU DISAGREE WITH THE PROPOSED REDUCTION IN YOUR PCA SERVICES?**

If you disagree with this decision, you may request a fair hearing. **You must do so within 30 days of receipt of this letter.** If you do not request a fair hearing, the proposed reduction of your PCA services will become effective on **z date**. If you request a fair hearing, your PCA hours will not be reduced until a decision is made by the Hearing Officer.

To request a fair hearing, please contact the state's contractor, Affiliated Computer Services, Inc. via telephone at 800-780-9972 outside of Anchorage, or in writing to:

Affiliated Computer Services, Inc.  
 Fair Hearing Representative  
 1835 S. Bragaw Street, Suite 200  
 Anchorage, AK 99508

EX-123 A  
 PAGE 5 7

At the hearing, you may either represent yourself, or use legal counsel, a relative, a friend or other spokesperson. You may be able to obtain free legal representation from Alaska Legal Services Corporation (1 888-478-2572 or [anchorage3@alsc-law.org](mailto:anchorage3@alsc-law.org)). If requested, the state will help you prepare your case, and provide information on legal representation. Prior to the hearing, you will be given an opportunity to examine all documents and records relied upon by the Division in reaching its decision. You also have the right to review the content of your case file upon request.

**Continuation of benefits:** If you do not want your PCA benefits continued automatically pending your fair hearing, you must inform the Fair Hearing Representative from Affiliated Computer Services, Inc., about your decision while making your request. Please be aware that if you continue to receive benefits, and the hearing authority determines the Division was correct to stop, suspend or reduce the service, the state may require you to repay the cost of those services (42 CFR 431.230(b), 7 AAC 49.060, 7 AAC 49.190, 7 AAC 49.200).

If you are interested in reviewing the regulations that govern the personal care services, they may be found at the following link: <http://www.hss.state.ak.us/dsds/pca/default.htm>.

If you have questions about this notice, please contact the PCA Unit at (907) 269-3666 or toll free at (800) 478-9996. Also, you may be able to receive additional assistance from an Aging and Disability Resource Center by calling (877) 625-2372.

Sincerely,

Diane Dishman  
Health Program Manager I

Cc:

Attachments: Consumer Assessment Tool (CAT)  
Individualized **PCA Service Level Computation**

EX-100  
PAGE 6 of 7



**Key for reading your chart:** This chart provides information on how your total service level was calculated. It is not for billing purposes or to designate specific time for any specific authorized covered task. Your total service level time is a calculation where the authorized amount of time that matches your self-performance score from your assessment for an activity, is multiplied times the frequency the activity was assessed as needed. **NOTE: tasks below are listed in minutes**

Covered Activities of Daily Living for Personal Care Services	If your self-performance score is 2 and your support score is a 2 or 3; you will be authorized for:	If your self-performance score is 3 and your support score is a 2 or 3; you will be authorized for:	If your self-performance score is 4 and your support score is a 2 or 3; you will be authorized for:
Body Mobility	2.5	3.75	5
Transfer-non mechanical	2.5	3.75	5
Transfer- mechanical	7.5	11.25	15
Locomotion- in room	5	7.5	10
Locomotion- between levels	5	7.5	10
Locomotion- to access appt.	5	7.5	10
Dressing	7.5	11.25	15
Eating <sup>1</sup>	7.5	11.25	15
Toilet Use	6	9	12
Personal Hygiene	10	15	20
Personal Hygiene-shampoo	7.5	11.25	15
Bathing	15	22.5	30
<b>Other Covered Activities (use personal hygiene score)</b>	<b>If your personal hygiene self-performance score is 2 and your support score is a 2 or 3; you will be authorized for:</b>	<b>If your personal hygiene self-performance score is 3 and your support score is a 2 or 3; you will be authorized for:</b>	<b>If your personal hygiene self-performance score is 4 and your support score is a 2 or 3; you will be authorized for:</b>
Medication <sup>2</sup>	2	3	4
Vital signs/glucose levels	2	3	4
Dressings/bandages/oxygen	2.5	3.75	5
Sterile wound care	7.5	11.25	15
Documentation	5	7.5	10
<b>Covered Instrumental Activities of Daily Living for Personal Care Services</b>	<b>If your self-performance score is 1 and your support score is a 3 or 4; you will be authorized for:</b>	<b>If your self-performance score is 2 and your support score is a 3 or 4; you will be authorized for:</b>	<b>If your self-performance score is 3 and your support score is a 3 or 4; you will be authorized for:</b>
Light Meal prep	7.5	11.25	15
Main meal prep	12.5	18.75	25
Light Housekeeping	45 min weekly	60 min weekly	90 min weekly
Laundry-in home	15 min weekly	22.5 min weekly	30 min weekly
Laundry-out of home/incontinence	30 min weekly	45 min weekly	60 min weekly
Shopping	30 min weekly	45 min weekly	60 min weekly
<b>Other Covered Activity</b>	<b>If your light housekeeping self-performance score is 2 and your support score is a 3 or 4; you will be authorized for:</b>	<b>If your light housekeeping self-performance score is 3 and your support score is a 3 or 4; you will be authorized for:</b>	
Oxygen maintenance (use light housekeeping score)	7.5 min weekly	15 min weekly	

<sup>1</sup> a self performance score of 1 or 5 and Section K. 3.a. is selected for supervision when eating

<sup>2</sup> a score of 1, 2, 4, 5, 6 under Section G and a 2 or 3 under Section C.3 for medication reminders

EXHIBIT A  
Page 7 of 7



# STATE OF ALASKA

**DEPT. OF HEALTH & SOCIAL SERVICES**

SEAN PARNELL, GOVERNOR

550 W 8<sup>th</sup> Avenue  
ANCHORAGE, AK 99501  
PHONE: (907) 269-3666  
FAX: (907) 269-8164  
TOLL FREE: 1-800-478-9996

Certified Return Receipt Requested

**Medicaid #:**  
**Assessment Date:**

**Regarding:** TERMINATION OF PCA SERVICES

Dear:

The State of Alaska, Division of Senior and Disabilities Services (SDS) manages the Personal Care Assistant (PCA) program under Medicaid regulations 7 AAC 125.010 – 7 AAC 125.199. Medicaid regulation 7 AAC 125.020 requires that SDS use the Consumer Assessment Tool (CAT) each year to determine your continued eligibility for PCA services.

You were re-assessed with the CAT on [insert date] to determine whether you are still eligible to receive PCA services. A copy of your CAT assessment is enclosed for your review. In addition, the relevant scores from your assessment are summarized on the chart attached to this notice.

In order to continue to receive PCA service, your assessment must show that you need physical assistance from at least one person with any single Activity of Daily Living (ADL) or show that you have difficulty with shopping, light housework, laundry, or preparing meals on your own and that physical assistance is provided to you (from someone other than your spouse or other legally obligated person). 42 CFR 440.167, 7 AAC 125.199(7), and 7 AAC 125.040(a)(13). In addition, to obtain PCA services, you must have a medical diagnosis that supports the need for such services.

SDS cannot authorize PCA services for you if your assessment shows that you only need assistance by someone providing supervision, cueing, or setup help only.

Based on your enclosed CAT assessment and our review of the following documents (insert documents that were reviewed, if any), SDS has determined that you no longer qualify for PCA services. This is because

\_\_\_ Your medical condition(s) has materially changed since your last PCA assessment such that you no longer need PCA services. [INSERT SHORT NARRATIVE STATEMENT EXPLAINING CHANGE IN MEDICAL CONDITION]

\_\_\_ You are no longer living in your own residence. [INSERT SHORT NARRATIVE STATEMENT EXPLAINING WHICH EXCLUDED LIVING ENVIRONMENT PERSON HAS MOVED TO AND CITE THE REGULATION]

\_\_\_ You were receiving PCA services as a result of a medical prescription for foot care under 7 AAC 125.030(a)(3)(C)(ii) or walking and simple exercises under 7 AAC 125.030 (a)(3)(G) or range of motion under 7 AAC 125.030(b), and that prescription(s) has not been renewed [INSERT SHORT NARRATIVE STATEMENT EXPLAINING CHANGE PRESCRIPTIONS]

\_\_\_ You were receiving some or all of your PCA services as a result of a time-limited condition. [INSERT SHORT NARRATIVE STATEMENT EXPLAINING CHANGE IN PRESCRIPTIONS]

1 B 5

**STATE OF ALASKA**  
**DEPT. OF HEALTH & SOCIAL SERVICES**

*SEAN PARNELL, GOVERNOR*

**550 W 8<sup>th</sup> Avenue**  
ANCHORAGE, AK 99501  
PHONE: (907) 269-3666  
FAX: (907) 269-8164  
TOLL FREE: 1-800-478-9996

\_\_\_ The level of PCA services previously approved for you has been reduced to 0 hours because of settlement and/or a regulation change. [INSERT SHORT NARRATIVE STATEMENT EXPLAINING CHANGE IN STATUS E.G., QUIARATE AND IADL ISSUES]

\_\_\_ Your current hours were authorized prior to April 1, 2006, when the new PCA regulations were adopted. As such, certain services and authorizations are no longer available thereby reducing your overall hours: [INSERT SHORT NARRATIVE STATEMENT EXPLAINING THE REGULATORY ISSUES RELATED TO THE DIFFERENCE BETWEEN A PRE-PCAT AND A POST PCAT ASSESSMENT]

\_\_\_ There was a clerical and/or mathematical error in your prior service plan [INSERT SHORT NARRATIVE STATEMENT EXPLAINING THE NATURE OF THE ERROR]

\_\_\_ Your original service plan did not accurately show your needs for PCA services at the time of your assessment ([INSERT SHORT NARRATIVE STATEMENT EXPLAINING THE NATURE OF THE ERROR])

If you disagree with this decision, you may request a fair hearing. **You must do so within 30 days of receipt of this letter**. If you do not request a fair hearing, the termination of your PCA services will become effective on **z date**. If you request a fair hearing, your PCA hours will not be terminated until a decision is made by the Hearing Officer.

To request a fair hearing, please contact the state's contractor, Affiliated Computer Services, Inc. via telephone at 800-780-9972 outside of Anchorage, or in writing to:

Affiliated Computer Services, Inc.  
Fair Hearing Representative  
1835 S. Bragaw Street, Suite 200  
Anchorage, AK 99508

At the hearing, you may either represent yourself, or use legal counsel, a relative, a friend or other spokesperson. You may be able to obtain free legal representation from Alaska Legal Services Corporation (1 888-478-2572 or [anchorage3@alsc-law.org](mailto:anchorage3@alsc-law.org)). If requested, the state will help you prepare your case, and provide information on legal representation. Prior to the hearing, you will be given an opportunity to examine the contents of your case file, as well as all documents and records relied upon by the Division in reaching its decision.

**Continuation of benefits:** If you do not want your PCA hours continued automatically pending your fair hearing, you must inform the Fair Hearing Representative from Affiliated Computer Services, Inc., about your decision while making your request. Please be aware that if you continue to receive benefits, and the hearing authority determines the Division was correct to stop, suspend or reduce the service, the state may require you to repay the cost of those services (42 CFR 431.230(b), 7 AAC 49.060, 7 AAC 49.190, 7 AAC 49.200).

If you are interested in reviewing the regulations that govern the personal care services, they may be found at the following link: <http://www.hss.state.ak.us/dsds/pca/default.htm>.

Handwritten initials and numbers: "B", "2", "5".

**STATE OF ALASKA**  
**DEPT. OF HEALTH & SOCIAL SERVICES**

*SEAN PARNELL, GOVERNOR*

*550 W 8<sup>th</sup> Avenue  
ANCHORAGE, AK 99501  
PHONE: (907) 269-3666  
FAX: (907) 269-8164  
TOLL FREE: 1-800-478-9996*

If you have questions about this notice, please contact the PCA Unit at (907) 269-3666 or toll free at (800) 478-9996. Also, you may be able to receive additional assistance from an Aging and Disability Resource Center by calling (877) 625-2372.

Sincerely,

Diane Dishman  
Health Program Manager I

Cc:

Attachments: Current Consumer Assessment Tool (CAT); CAT Summary Chart

3 3 5



Activities of Daily Living	Prior Assessment Self Perform /Support Score	Prior Assessed Weekly Frequency	Current Self Perform /Support Score	Current Assessed Weekly Frequency	Total Weekly Minutes Authorized
Body Mobility	/		/		
Transfer	/		/		
Locomotion-single level residence	/		/		
Locomotion-multi level residence	/		/		
Locomotion-access medical appointments	/		/		
Dressing	/		/		
Eating	/		/		
Toilet use	/		/		
Personal Hygiene	/		/		
Shampooing Hair separate from bathing		Yes/no		Yes/no	
Bathing	/		/		
<b>IADL</b>					
Light Meal preparation	/		/		
Main Meal Prep	/		/		
Shopping	/		/		
Light housework	/		/		
Laundry	/		/		
<b>OTHER COVERED ACTIVITIES</b>	<i>Needed?</i>		<i>Use personal Hygiene score</i>		
Medication	<i>Yes/no</i>		/		
Vital Signs, Glucose Levels	<i>Yes/no</i>		/		
Non Sterile Dressing/Bandages	<i>Yes/no</i>		/		
Oxygen use	<i>Yes/no</i>		/		
Sterile Wound Care	<i>Yes/no</i>		/		
Documentation	<i>Yes/no</i>		/		
Oxygen Maintenance	<i>Yes/no</i>		<i>Use Light Housekeeping score</i> /		
Escort	<i>Yes/no</i>		<i>Use number of dr visits per year x duration</i>	<i>Divide by 52 wks per year</i>	
<b>ACTIVITIES REQUIRING RX</b>	<b>AS PRESCRIBED</b>				
Range of Motion					
Walking/Simple Exercise					
Foot Care					

**ADL Self Performance Key**  
0 – Independent  
1 – Supervision  
2 – Limited assistance  
3 – Extensive assistance  
4 – Total Dependence  
5 – Cueing  
8 – Activity did not occur

**Support Key**  
0 – no setup or physical help  
1 – Setup help only  
2 – One person physical assist  
3 – Two+ persons physical assist  
5 – Cueing  
8 – Activity did not occur

**IADL Self Performance Key**  
0 – Independent  
1 – Independent with difficulty  
2 – Assistance/done with help  
3 – Dependent/done by others  
8 – Activity did not occur

**Support Key**  
0 – No support provided  
1 – Supervision/cueing provided  
2 – Set up help only  
3 – Physical assistance was provided  
4 – Total dependence-person not involved  
8 – Activity did not occur

EX-110  
4 B 5



**Key for reading your chart:** This chart provides information on how your total service level was calculated. It is not for billing purposes or to designate specific time for any specific authorized covered task. Your total service level time is a calculation where the authorized amount of time that matches your self-performance score from your assessment for an activity, is multiplied times the frequency the activity was assessed as needed. **NOTE: tasks below are listed in minutes**

Covered Activities of Daily Living for Personal Care Services	If your self-performance score is 2 and your support score is a 2 or 3; you will be authorized for:	If your self-performance score is 3 and your support score is a 2 or 3; you will be authorized for:	If your self-performance score is 4 and your support score is a 2 or 3; you will be authorized for:
Body Mobility	2.5	3.75	5
Transfer-non mechanical	2.5	3.75	5
Transfer- mechanical	7.5	11.25	15
Locomotion- in room	5	7.5	10
Locomotion- between levels	5	7.5	10
Locomotion- to access appt.	5	7.5	10
Dressing	7.5	11.25	15
Eating <sup>1</sup>	7.5	11.25	15
Toilet Use	6	9	12
Personal Hygiene	10	15	20
Personal Hygiene-shampoo	7.5	11.25	15
Bathing	15	22.5	30

Other Covered Activities (use personal hygiene score)	If your personal hygiene self-performance score is 2 and your support score is a 2 or 3; you will be authorized for:	If your personal hygiene self-performance score is 3 and your support score is a 2 or 3; you will be authorized for:	If your personal hygiene self-performance score is 4 and your support score is a 2 or 3; you will be authorized for:
Medication <sup>2</sup>	2	3	4
Vital signs/glucose levels	2	3	4
Dressings/bandages/oxygen	2.5	3.75	5
Sterile wound care	7.5	11.25	15
Documentation	5	7.5	10
Covered Instrumental Activities of Daily Living for Personal Care Services	If your self-performance score is 1 and your support score is a 3 or 4; you will be authorized for:	If your self-performance score is 2 and your support score is a 3 or 4; you will be authorized for:	If your self-performance score is 3 and your support score is a 3 or 4; you will be authorized for:
Light Meal prep	7.5	11.25	15
Main meal prep	12.5	18.75	25
Light Housekeeping	45 min weekly	60 min weekly	90 min weekly
Laundry-in home	15 min weekly	22.5 min weekly	30 min weekly
Laundry-out of home/incontinence	30 min weekly	45 min weekly	60 min weekly
Shopping	30 min weekly	45 min weekly	60 min weekly
Other Covered Activity	If your light housekeeping self-performance score is 2 and your support score is a 3 or 4; you will be authorized for:	If your light housekeeping self-performance score is 3 and your support score is a 3 or 4; you will be authorized for:	
Oxygen maintenance (use light housekeeping score)	7.5 min weekly	15 min weekly	

<sup>1</sup> a self performance score of 1 or 5 and Section K. 3.a. is selected for supervision when eating

<sup>2</sup> a score of 1, 2, 4, 5, 6 under Section G and a 2 or 3 under Section C.3 for medication reminders

3211  
5 B 5



medicaid#	dsdsid	most recent EPCAT assessed hours <sup>4</sup>	2011 approved Hours <sup>1</sup>	2006 hours <sup>1</sup>
600877801	607	0	34.50	34.50
600239440	1415	2.5	28.00	28.00
600122717	1602	3	3.00	3.00
601055900	1920	4.75	27.75	27.75
600082697	1941	4.75	28.00	28.00
600021824	2112	5.5	66.25	66.25
600460477	2187	6	40.00	40.00
600067298	2451	6.75	17.00	17.00
600031416	2949	6.75	22.00	22.00
600007675	3000	7	22.75	22.75
600705112	3352	8.5	12.50	12.50
600464302	3545	9	35.00	35.00
600740449	3695	9	44.50	44.50
600003554	3827	10	16.50	16.50
600230869	3841	12.25	33.25	33.25
600012671	4059	12.5	15.50	15.50
600787581	4322	12.75	26.75	26.75
600839649	4657	13.5	35.00	35.00
600288811	4804	15.75	35.00	35.00
600293439	4938	16.5	38.75	38.75
600378056	4965	16.75	35.00	35.00
600259423	5033	16.75	37.75	37.75
600936631	5154	17	35.00	35.00
600246602	5587	17.25	24.00	24.00
600153073	5884	19.5	43.75	43.75
600332014	6190	20.5	35.00	35.00
601028514	6350	20.75	34.25	34.25
600088940	6373	21	33.00	33.00
600400301	6496	21.5	35.00	35.00
600194810	6867	22.5	36.50	36.50
600965078	7086	22.5	35.00	35.00
600011958	7098	23	27.00	27.00
600362631	7311	23.25	33.50	33.50
600039154	7345	25	82.75	82.75
600140315	7503	25.5	32.00	32.00

211