

Proving Your Case When Personal Assistance Services Have Been Denied



A Guide for Consumers at the Grievance Stage

Introduction

In the Community HealthChoices (CHC) program, Personal Assistance Services provide a caregiver to help people with bathing, dressing, toileting, meal preparation, shopping, managing medications, transportation, and more. These services are intended to help people stay in their own homes and to maintain their “health, welfare, and safety.” The definition of Personal Assistance Services (PAS) is attached to this guide.

You have the right to appeal when your CHC plan denies PAS. This includes when the plan denies you more hours of PAS, when the plan tries to take away PAS hours you have been getting, or when the plan denies PAS altogether.

There are different levels of appeals for PAS denials. This guide focuses on the first level, which is called a “grievance.” A grievance involves a meeting where a panel of three people, including a doctor who works for the CHC plan, reviews the PAS denial. The panel decides whether it agrees that the PAS denial was correct. To learn more about the different levels of appeals in CHC, see [How to Appeal a Denial in Community HealthChoices: A Factsheet for Consumers](#).

Tell the CHC plan that you want to participate in the grievance meeting. You can choose whether to participate by phone, in-person, or by video conference. If you cannot take part in the meeting, try to submit information such as medical records or a letter about your need for the PAS for the grievance panel to review.

Medical Necessity

Your goal during the grievance meeting is to prove the “medical necessity” of the PAS hours that have been denied. This is true even though PAS is not always “medical” in nature. In practical terms, this means explaining what kind of help you need to do everyday tasks like bathing, dressing, walking, grooming, and toileting. These tasks are called activities of daily living. PAS are considered medically necessary when you need either hands on help or cueing to do these activities, or when supervision is needed to keep you safe.

It will help if you can show that your need for PAS meets any one of the following parts of the medical necessity definition. You can also just explain your need in plain language.

A service is **medically necessary** if it does one or more of the following:

1. It will, or is reasonably expected to, prevent the onset of an illness, condition, or disability;
2. It will, or is reasonably expected to, reduce or ameliorate the physical, mental or developmental effects of an illness, condition, injury, or disability;
3. It will assist a Participant to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the Participant and those functional capacities that are appropriate for Participants of the same age; or
4. It will provide the opportunity for a Participant receiving Long Term Services and Supports (LTSS) to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of his or her choice.

Step 1: Plan Your Arguments

Start by picking out one or two main arguments to make in your grievance. You should try to include arguments about why the denied PAS are medically necessary and why the approved PAS are not enough. Try to use the wording from the Medical Necessity definition and explain how your case meets any part of that definition.

Here are examples of common arguments you could make:

1. The PAS hours I requested are medically necessary because . . .

- My condition has changed and it takes me additional time to do activities of daily living
- Having a caregiver help me with ... (examples: walking, toileting, bathing) ... will prevent the onset of an illness, condition or disability ... (for example, unnecessary falls, bed sores, choking, malnutrition, dehydration)
- Having help with ... (examples: taking walks, range-of-motion exercises, medication management) ... will help me keep my current level of function or prevent a loss of function
- They will allow me to participate in activities in the community, such as grocery shopping, church, and attending social gatherings with friends and family
- They will allow me to continue living in my home / Without the denied PAS, I would be at risk of having to go to a nursing home.
- I need supervision and cannot be left safely alone (specify reasons for supervision, such as fall risk, risk of wandering or eloping etc.) **NOTE: The definition of PAS specifically includes “supervision to assist a participant who cannot be left safely alone.”**

- I have unscheduled needs such as toileting, incontinence accidents, or taking ‘as needed’ medications.
- The insurance company did not consider my overnight needs. **NOTE: The PAS definition also includes “intermittent or ongoing awake, overnight assistance”**
- My activities of daily living require extra time due to my specific disabilities

Step 2: Gather Evidence & Identify Witnesses

Once you identify your argument(s), think about what evidence or witnesses you can use to support your argument.

A. Request Documents from Your Plan: You have a right to review the managed care plan’s documents related to the PAS denial. Call your CHC plan and request that they send you the following documents:

- The assessment done by your Service Coordinator (aka “InterRAI”);
- Your Person-Centered Service Plan (“PCSP”);
- Any “tasking tool” or other “time for task” tool used by the plan;
- Any advisor or physician reviews;
- Any notes or other documents or policies relied on in the plan’s determination.

Review the plan’s documents to make sure they are accurate. Take note of how much help the assessment says you need for activities like bathing, dressing, hygiene, and walking/locomotion. Also take note of the chart that assigns the time needed for tasks like meal prep and toileting. If either the assessment or the “time for task” chart is wrong or missing information, talk about this at the grievance.

B. Gather Your Own Documents: Consider submitting a doctor’s letter or other medical records and non-medical documents that support your need for the requested PAS hours.

Ask your doctor to write a letter that explains why the PAS hours that you are seeking are medically necessary. A list of your health problems and diagnoses is not enough. The letter should explain in detail any limitations you have with self-care activities. If accurate, it should also explain in detail how the PAS hours are medically necessary to main your “health, welfare and safety.”

In addition to a letter of medical necessity from your doctor(s), the following documents may also be helpful:

- Evidence of limits or restrictions in performing daily living tasks & activities (ex: a physical therapy report);
- Recent hospital records or ER reports
- Other medical records (such as a hospital discharge report);
- Home health agency care log or other caregiver records – for example, records of falls, wandering, aides’ observations about unmet needs or changes in functioning.

- Letters from caregivers, friends or family members that talk about why you need the PAS hours
- A list of all of the tasks your caregivers help you with (ex: bathing, dressing, etc) and how long each of those tasks take.

If you are participating in the grievance by phone or videoconference, make sure all your documents get to the grievance panel before the scheduled meeting takes place. Ask for a fax number, e-mail address, or address where you can send the information ahead of time. Otherwise, bring it with you to the in-person grievance meeting.

C: Choose Your Witnesses: You have the right to have witnesses take part in your grievance. Witnesses may include yourself, a direct care worker, a family member, or others who are familiar with your needs.

It is fine for you to be your only “witness” during the grievance, but many people find it helpful to have additional witnesses to present their case. You should choose witnesses who are familiar with your care needs and able to help explain why the denied PAS hours are necessary. Because the grievances are typically short (less than one hour) you should not bring more than 2-3 witnesses, including yourself.

You should discuss the grievance with your witnesses ahead of time to make sure they are ready to participate. It may be helpful to give them a list of questions or topics you want them to talk about. Make sure you give them the date and time of the grievance and confirm how they will be participating. Will they be with you? Will they be participating from a separate phone? If your witnesses will be participating from a different phone, provide their contact information to your plan’s grievance department when you send any documents you plan to submit.

Step 3: Present Your Case

At the grievance review, a CHC plan employee called the grievance coordinator will facilitate the meeting. The grievance coordinator will ask everyone from the plan, you, and your witnesses to introduce themselves. Sometimes the CHC plan will present an explanation of its decision at the beginning of the grievance. After that, you should be allowed to present your case. Aim to keep your presentation to no longer than 25-30 minutes. If you need more time, tell the grievance coordinator and ask if they can schedule additional time for you.

Start by introducing yourself. If you sent the documents in advance, ask the grievance panel if it received a copy of your paperwork evidence. If it did not, ask the coordinator if you can email or fax the documents right after the meeting.

Give a short statement where you frame the issue for the grievance panel. Give a brief summary of your health problems and your care needs. Identify your main argument(s) for

why the PAS hours in question are medically necessary. Then present your witness or witnesses to talk about why the PAS hours you are asking for are medically necessary.

Then present your own “testimony.” Talk about your conditions and needs and explain, in as much detail as possible, how the PAS hours they are offering are not enough. Give examples of why you need the denied hours and go through the arguments you prepared (see Step 1). Highlight the most helpful parts of any documents you have provided, such as your doctor’s recommendation or evidence of falls from your medical records.

Once you present all of your evidence – both testimony and documents – the grievance panel may have follow-up questions for you and your witnesses. Answer their questions honestly and clearly, without going off-topic. Sometimes the grievance panel will ask you questions before you present your evidence. If that happens tell the panel that you are happy to answer their questions, but you also need time to present your case.

After the grievance panel is finished with their questions, you can choose to give a short closing statement. A closing statement is where you wrap up your argument and reiterate anything you want the grievance panel to know before the meeting ends.

For more help

Call the Pennsylvania Health Law Project’s Helpline at 1-800-274-3258 or e-mail us at staff@phlp.org.



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This publication is intended to provide general legal information, not legal advice. Each person’s situation is different. If you have questions about how the law applies to your particular situation, please call the Helpline at 1-800-274-3258.

Definition: Personal Assistance Services (PAS)

Source: *Community HealthChoices 1915(c) Waiver (2020)*, Excerpt

Personal Assistance Services primarily provide hands-on assistance to participants that are necessary, as specified in the service plan, to enable the participant to integrate more fully into the community and ensure the health, welfare and safety of the participant.

Personal Assistance Services are aimed at assisting the individual to complete tasks of daily living that would be performed independently if the individual had no disability. These services include:

- Care to assist with activities of daily living (e.g., eating, bathing, dressing, personal hygiene), cueing to prompt the participant to perform a task, and providing supervision to assist a participant who cannot be safely left alone.
- Health maintenance activities provided for the participant, such as bowel and bladder routines, ostomy care, catheter, wound care and range of motion as indicated in the individual's service plan and permitted under applicable State requirements.
- Routine support services, such as meal planning, keeping of medical appointments and other health regimens needed to support the participant.
- Assistance and implementation of prescribed therapies.

Overnight Personal Assistance Services provide intermittent or ongoing awake, overnight assistance to a participant in their home for up to eight hours. Overnight Personal Assistance Services require awake staff.

Personal Assistance may include assistance with the following activities when incidental to personal assistance and necessary to complete activities of daily living:

- Activities that are incidental to the delivery of Personal Assistance to assure the health, welfare and safety of the participant such as changing linens, doing the dishes associated with the preparation of a meal, laundering of towels from bathing may be provided and must not comprise the majority of the service.
- Services to accompany the participant into the community for purposes related to personal care, such as shopping in a grocery store, picking up medications and providing assistance with any of the activities noted above to enable the completion of those tasks, and to enable the Participant to work and to otherwise engage in activities in the community.

Activities that are incidental to the delivery of Personal Assistance Services are provided only when neither the participant nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caregiver, landlord, community/volunteer agency, or third party payer is capable of or responsible for their provision.