

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.

Grievance Scheduling Process

Your CHC plan is required to hold the grievance within 30 days of your grievance request. This can be extended an additional 14 days if you request it. You should receive at least 2 letters from your CHC plan before the grievance:

1. **Grievance Acknowledgement Letter:** This letter confirms that the CHC plan received your grievance request and provides additional information about how to obtain information related to your grievance. It is usually sent out within a few days of your grievance request.

2. **Grievance Scheduling Notice:** This letter states the date and time of your grievance. It may also confirm the phone number will use to contact you, or provide information on how you can dial in to your grievance. Your CHC plan is required to send out the grievance scheduling notice at least 10 days in advance.

If you don't receive any communication from the CHC plan within two weeks of requesting a grievance, call the plan to ask about the status of the grievance.

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 or your loved one needs 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 the participant needs either hands-on help or cueing (prompting) to do these activities, or when supervision is needed to keep them safe.

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

Preparing for Your Grievance

Step 1: Brainstorm Arguments

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

Here are examples of common arguments you could make:

1. The PAS hours I/my loved one requested are medically necessary because . . .

- My (loved one's) condition has changed and it takes me/them additional time to do activities of daily living
- Having a caregiver help me/my loved one 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/my loved one keep my/their current level of function or prevent a loss of function
- They will allow me/my loved one to participate in activities in the community, such as grocery shopping, church, and attending social gatherings with friends and family
- They will allow me/my loved one to continue living in my home / Without the denied PAS, I /my loved one would be at risk of having to go to a nursing home

2. The PAS hours the CHC plan is proposing are not enough because . . .

- My loved one needs 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 /my loved one has unscheduled needs such as toileting, incontinence accidents, or taking ‘as needed’ medications
- The insurance company did not consider my (loved one's) 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. Don't wait until the grievance is scheduled – it may take time to get documents!

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 the Service Coordinator (aka "InterRAI")
- 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

Be prepared to follow up with the CHC plan every few days until you receive the documents. Review the plan's documents to make sure they are accurate. Take note of how much help the assessment says are needed 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, flag this to talk about 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 or your loved one have with self-care activities. If accurate, it should also explain in detail how the PAS hours are medically necessary to maintain "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 that demonstrate safety risk (falls, wandering, etc.)
- Other medical records that speak to the need for the PAS hours
- 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 (see Section D. below).

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, doctor, 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, remember to provide their contact information to the plan.

D. Submit Documents to Plan: As soon as you get the date and time of the grievance, contact the CHC plan to let them know you plan on participating. **If you do not notify the plan, they may hold the grievance without you.** When you talk to the plan, ask them for the dial-in information for the grievance or, if you requested a videoconference, the videoconference link and login information. Also ask them where/how to submit your documents before the grievance. If possible, try to get a fax or e-mail.

Submit your documents at least 1-2 business days before the grievance, using the fax or e-mail you got from the plan. If you weren’t able to talk to someone at the plan, check the grievance scheduling letter to see if it lists a fax or e-mail for you to submit documents. Otherwise, bring the documents with you to the in-person grievance meeting. **INCLUDE A COVER SHEET** that contains:

1. Your name (or your loved one’s name);
2. Participant ID number or Date of Birth;
3. Grievance Date;
4. The names and phone numbers of everyone who will be participating in the grievance;
and
5. A list of the documents you are sending.

If you aren’t able to send your documents ahead of time, tell the grievance panel you have documents you want them to consider and ask if you can fax or e-mail the documents right after the grievance.

Step 3: Present Your Case

At the time of the grievance, the CHC plan will call you to start the meeting. If they don't call you after 5 minutes, dial in to the grievance yourself using the dial-in information in the grievance scheduling notice. **UPMC MEMBERS:** Be sure to ask for the dial-in information for your grievance in advance – this will not be provided in the letter!

A CHC plan employee called the grievance coordinator will facilitate the meeting. The grievance coordinator will start the grievance by asking everyone to introduce themselves. The grievance panel will include 3 voting members: a doctor from the plan, another employee of the plan, and a non-employee voter. 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.

When it's your turn to present, **introduce yourself** and why you're there. If you're speaking on behalf of a loved one, introduce them as well. **Confirm that the grievance panel received any documents you sent.** If it did not, ask the coordinator if you can email or fax the documents right after the meeting.

Once you've introduced yourself, **give a one-sentence summary of your main argument**, and then lay out all the information that supports your argument. When you finish your testimony, let your other witnesses present any additional information they have. You and your witnesses may want to make an outline or checklist before the grievance to help remember what you plan to talk about. Here are some topics you might want to cover:

- Diagnoses: Give a short run down of your (loved one's) major health problems. Refer to any medical records you submitted, if appropriate.
- Functional Needs: Explain your (loved one's) functional needs - what are the activities of daily living you/they need assistance with? Be as specific as possible, without overstating or understating your/their needs. If there are good days and bad days, be sure to tell the grievance panel about the bad days as well as the good. Remember to include activities that require prompting or supervision, as well as activities where you need hands-on assistance.
- Living Situation: If you/your loved one lives alone, point that out!
- Mistakes in Assessment: If the assessment you received from the plan had missing or inaccurate information about your (loved one's) functional needs, point this out and correct it.
- Changes in Condition: If your (loved one's) condition hasn't improved, SAY SO. If your/their condition has actually become worse, explain how.
- Safety Risks: Discuss any reasons why you/ your loved one can't be left safely alone, such as falls, wandering, or seizures. Give one or two recent examples and give details about the frequency of falls or wandering episodes. When discussing fall risk, include

“near misses” where you/ they almost fell. If you have medical records showing these safety risks, highlight those as well.

- Unscheduled or Intermittent tasks: Highlight any needs that are unscheduled, such as toileting or assistance with as-needed medications.
- Experience with Reduced Hours: If you/your loved one is already getting reduced PAS hours while waiting for the grievance, talk about that experience. Give specific examples of how your/their needs are not being met, or how you/they have been impacted by the reduced hours.
- Household Chores Done Exclusively for Participant: Explain any chores that are done specifically for the person getting PAS services. This could include cleaning the participant’s separate bedroom or bathroom, doing extra laundry due to incontinence, or making separate grocery trips due to special dietary needs. Avoid discussing chores that are done for the entire household, such as cleaning common spaces, doing shared laundry, or shopping for the household. **REMEMBER: PAS workers who live in the same household cannot be paid for household chores such as shopping, laundry and cleaning unless the activity is being completed solely to benefit the participant.**
- Lack of Unpaid Supports: CHC plans often assume family members are available as “informal” or unpaid support, especially if they live with the participant. If applicable, explain any reasons why informal support is limited or not available to meet your (loved one’s) needs. For example, if family members live far away or are not able to assist due to work, their own health problems, or raising small children, it may be helpful to point that out.

Once you present all of your evidence – both testimony and documents – the grievance panel may have follow-up questions for you and your witnesses. Listen carefully to their questions and ask them to repeat or clarify any questions you don’t understand. Answer their questions honestly and clearly, without going off-topic. Sometimes the grievance panel will ask you questions before you finish presenting your evidence. If that happens tell the panel that you are happy to answer their questions, but you would also like to finish your presentation.

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 recap the main points you want the grievance panel to take away from your presentation. Finish by thanking the grievance panel for their time.

Video Grievances

While most grievances are done over the phone as a conference call, you have the option to participate in your grievance by videoconference if you prefer. Video grievances are usually done using an internet-based app such as Zoom or Skype. Attending the grievance by video gives the grievance panel an opportunity to see you face-to-face and may help them notice

things about your functioning that they might not pick up over the phone. However, many participants are successful in telephone grievances, and appearing by video does not necessarily increase your chances of success.

Here are some additional suggestions for video grievances:

- Make sure you let your CHC plan know in advance that you want a video grievance.
- A few days before your grievance, check with your plan to make sure you have the link and any other information you will need to log in to the video conference.
- Don't forget to share the link and any login information with your witnesses, unless they will be there with you.
- Ask what application (such as Zoom or Skype) your CHC plan uses for video grievances. If you plan on using a mobile device, make sure that app works on your device.
- If you aren't familiar with the app your plan uses, try practicing with friends or family members ahead of time to get yourself used to it. (This might also be a good opportunity to practice what you want to say to the grievance panel.)
- If you are using a mobile device, make sure it is fully charged.
- Set yourself up in a well-lit area so the grievance panel can see you well, and make sure your camera/device is aimed at your face.
- If you are not comfortable with technology, have a caregiver or a family member on hand who can help you if you run into technical difficulties.

In-Person Grievances

In addition to telephone and videoconferencing, you have the option to attend your grievance in-person. As with a video grievance, it may not improve your chances of success, but it does give the grievance panel an opportunity to meet you face to face. ***NOTE: CHC plans may have limits on in-person grievances due to the ongoing COVID-19 pandemic.***

If you choose an in-person grievance, at least one of the grievance panel members must be physically present at the meeting. The other panel members must participate by video conference. None of the panel members should be participating by phone.

Here are some additional suggestions for in-person grievances:

- Make sure you let your CHC plan know you plan to participate in person, and let them know if you will need any accommodations, such as a wheelchair-accessible room.
- Confirm the address with the CHC plan a few days before the grievance.
- If you have witnesses who will be traveling to the grievance separately from you, make sure you give them the address!
- Dress like you normally would for a doctor's appointment or a trip to the grocery store. Don't feel like you have to dress up in business attire or church clothes.
- Have a plan for how you're going to get to your grievance and leave extra time for traffic. If someone is giving you a ride, confirm your ride the night before.

- Try to arrive 10-15 minutes early. If you are running late, give the plan a call so they know you're on your way.
- The night before your grievance, pack up a copy of any documents that you plan on showing to the grievance panel. Put your packed bag by the front door or in another place where you won't forget it.

What Happens After My Grievance?

After your grievance, the CHC plan is required to mail out a written grievance decision within five (5) business days. You might also get a call from your service coordinator to let you know the outcome. **IF YOU DON'T HEAR ANYTHING ABOUT YOUR GREIVANCE DECISION WITHIN ONE WEEK**, contact your service coordinator or the CHC plan.

If the grievance decision is unfavorable and you want to appeal, make sure to 1) call your plan to request External Review **AND** 2) mail your Fair Hearing request, **WITHIN 10 DAYS of the mail date on the grievance decision** to keep your current PAS hours in place during your appeal. If you miss this 10-day deadline, you still have time to request a Fair Hearing or External Review, but your hours may be reduced while you wait for those decisions. For more information about additional levels of appeal, see [How to Appeal a Denial in Community HealthChoices: A Factsheet for Consumers](#).

If you win your grievance and the CHC plan does not immediately put the correct number of hours in place, contact your service coordinator or the CHC plan.

For more help

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



Pennsylvania Health Law Project
Helpline: 1-800-274-3258
www.phlp.org

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)

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 ...
- 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 PAS provide intermittent or ongoing awake, overnight assistance to a participant in their home for up to eight hours. Overnight PAS 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:

- Accompanying the participant into the community for purposes related to PAS, 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.
- Homemaker tasks that are incidental to the delivery of PAS 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.

Homemaker tasks are provided only for the participant and not for other household members, and only when neither the participant nor anyone else in the household, relative or informal caregiver is available, willing, and able to perform such activities for the participant.

PAS workers who live in the same residence as the participant cannot be compensated for carrying out household chores such as shopping, laundry and cleaning unless the activity is being completed solely to benefit the participant.

Source: Community HealthChoices 1915(c) Waiver (2021), *Excerpt*