

PCA Appeals

PCA = Personal Care Assistant

A Self-Advocacy Fact Sheet from the Minnesota Disability Law Center

The Department of Human Services (DHS) may decide that you or your child can no longer have PCA hours, they may decide to cut the number of hours you have, or deny flexible use of hours or the PCA Choice option. If this happens, you have a right to appeal. An *appeal** is a formal request to have an official review your case. This is a chance to give more information and bring other people in to support your case. You do not need a lawyer but you can get others to help you. If you appeal, you will have a hearing before a Human Services Judge of the Department of Human Services. If necessary, you can continue to appeal through the state court system.

1. How do I appeal?

The first step is to write a simple letter of appeal. In the letter, state that you appeal the decision of the Department of Human Services (DHS) to deny or reduce PCA services. The county human services office should have an appeal form that you can use. When you mail your signed letter, be sure to include a copy of the notice from DHS telling you what PCA hours you will be getting.

Keep a copy of everything you mail to DHS.

2. Where should I send the appeal?

It is best to send the appeal to:

Minnesota Department of Human Services
Appeals Office
PO Box 64941
St. Paul, MN 55164-0941
Metro: (651) 431-3600 (voice)
Outstate: (800) 657-3510
TTY/TDD: (800) 627-3529
Fax: (651) 431-7523.

You can also appeal to your local county human services office, if that is easier for you.

3. When do I appeal?

If you want to appeal a DHS decision about PCA hours, you have to do it before the deadline. The deadline is usually 30 days. If you do not meet the deadline, you cannot appeal. Be sure to read #4 (below) for more information about the deadlines.

4. Can I keep my same PCA services while the appeal is in process?

Yes. If you have PCA services now and you got a notice from DHS telling you that your hours will be cut, look on the notice for the Start Date. The Start Date is usually on the right side of the paper. DHS must get your letter either before that Start Date or within ten days of the date on the letter. So, if the date of the letter is May 6, they have to get your appeal letter either by May 16 or before the Start Date. If you meet this deadline, then your PCA services will not be cut while your appeal is being heard.

You have 30 days from the day you received the letter from DHS that denied or reduced your PCA services. Therefore, if your letter was dated May 6 but you did not get it until May 9, you have until June 8 to get your

*Look at the end of this fact sheet for the meaning of words printed in bold and italics, such as *appeal*.

appeal letter to DHS. You should write your appeal right away to meet all of the possible deadlines.

5. Are there any exceptions to the deadlines?

If you have *good cause for delay* – a good reason why you could not get your appeal to DHS in time – then you have 90 days from the date you received the notice. Using the example of a letter dated May 6, 90 days would give you until about August 6 to appeal. Examples of good cause are: a death in the family, or if you were ill or hospitalized during the 30-day period.

6. What if I lose my appeal? Will I have to pay for the PCA services I got during the process?

If you lose, the state can ask you to pay for the PCA services you got from the time of the Start Date until the date the appeal is decided. They can, but they probably will not. We have not heard of any cases where the state sent a bill for those services.

7. Who is in charge of the appeal?

The Department of Human Services will choose a *Human Services Judge* to listen to your case. The Human Services Judge is someone who did not have anything to do with the decision about your PCA hours. S/he will listen carefully to you and to DHS, and then make a decision about your case.

8. Where will the appeal hearing be?

Usually, appeal hearings are at the county human services office.

Sometimes, the DHS Human Services Judge may ask to hear your case by telephone. In that case, you go to the county office with

your witnesses and talk on a speaker telephone with the Judge in St. Paul.

You do **not** have to agree to a telephone appeal. In most cases, you should ask for an in-person appeal. However, if you need the decision to happen in a hurry, a telephone appeal might work better for the Judge's schedule. Or, if it is hard for you to get out, you might ask to do the appeal by telephone from your own home.

9. Who can help me with my appeal?

Anyone can help you with your appeal. You can try to get an *advocate*. The Minnesota Disability Law Center (MDLC) might be able to help you, but we cannot help everyone whose PCA hours are cut. You should ask your PCA provider to help you because they know what your care needs are. If they will not help you, ask them why. If you do not think they are trying to do what is best for you, then you should consider getting a different PCA provider. A number of disabilities organizations such as the ARC, the Multiple Sclerosis Society or the Brain Injury Association of Minnesota have advocates who might be able to help you.

10. What can I appeal?

If you apply for PCA services and are denied, you can appeal. If the number of PCA hours you get is cut, you can appeal. If you ask for more PCA hours and DHS will not let you have them, you can appeal. If the state says there is a limit or "cap" on how many hours you can get, you can appeal to show you should be in a different home care rating category with a higher limit. See PCA Decision Tree for Home Care Rating Categories and Limits. You can also appeal if the state will not let you be a

part of the *PCA Choice program*, or if they say you cannot use your PCA hours on a flexible schedule. If someone from DHS, the county or the Human Services Judge tells you that you cannot appeal, call MDLC for help.

11. What information do I need for this appeal?

These are the documents you need for your appeal. Links to all of them are located in the definition section at the end of this fact sheet.

MA Health Status Assessment

This is a form that the county public health nurse used to make your MA Home Care Service Plan. The nurse sent the form to DHS to look over and approve. This form is available on the DHS website and has specific time allowed for each area like eating, dressing, etc. You need the document with all the county public health nurse information filled in about you and your PCA needs.

MA Home Care Service Plan

This is another form filled out by the county public health nurse and sent to DHS for approval. It tells how many service hours the nurse thinks you should get.

Physician Statement of Need

You must have a Physician's Statement of Need from your doctor to get PCA services.

DHS PCA Consumer Guidebook

You should also review the Consumer Guidebook for the Personal Care Assistant Program. The guidebook, and its updates, can be found on line by going again to the DHS website, clicking first on "Disabilities" at the top, then on "Disability services" on the left, then on "Consumer Handbooks,

then finally on the link to the PCA Guidebook.

DHS Information about your PCA Services

You have a right to see all of the information DHS has about you and your PCA services. If you want an *advocate* to get the file for you, you have to give permission by signing a Release of Information form. DHS will not let anyone else see your file without your permission.

MA Home Care Prior Authorization Form

If you are appealing a denial of PCA services or a cut in your hours, then you should have received a copy of the DHS MA Home Care Prior Authorization Form. This notice gives you information about what action DHS is taking to reduce your hours or deny your flexible use of hours or use of the PCA Choice option. This form is difficult to understand. If you need help to understand it, contact your county public health nurse or the DHS Member Help Line (800-657-3739 or 651-431-2670) for assistance and to get copies of DHS information about your case.

You should be able to tell how many minutes of PCA time you requested for a certain activity, and how many you were allowed. For example, it may show that you requested 30 minutes per day for bathing, but were only allowed 15 minutes per day.

Once you figure out the area of the cut – such as not enough time for behavior, seizure monitoring, eating or bathing, or why you were denied flexible use or PCA Choice – you should find out if the decision was made by the county public health nurse or by DHS. Once you see where the mistake was made, then you and your support people

(see Question #13) can show the Human Services Judge why the decision was wrong.

If you have trouble getting any papers from the state or the county, you should call the Human Services Judge. Ask the Judge to make the state or county give you the papers you need BEFORE the hearing.

MDLC has copies of the state PCA law and some other documents about these issues. If you would like to see them, let us know and we will send them to you. You can also check the PCA Consumer Guidebook.

12. Do I need medical evidence?

Once you understand why you are being denied, reduced in hours or cut off, you can decide whether you need a letter from your doctor or therapist or mental health professional to show what help you need.

13. Who should I ask to be a witness at the appeal hearing?

Your provider organization nurse, your PCA, the public health nurse or your doctor might be good witnesses. They can come with you to the hearing and explain to the Judge about the hours you need and why you need them. A witness can include anyone who knows about your disability and needs, or the needs of your child with a disability.

14. Can I make people come to testify?

Yes, you can. If you want a state or county employee (like the county public health nurse) to be a witness, ask them if they will come to the hearing. If they say yes, ask them to agree to it in writing. Be sure to remind them of the time and place.

If they will not agree to be a witness, call the Judge and ask for a *subpoena*. A subpoena is a written demand for a person to show up at a hearing. You must make sure the witness gets the subpoena from you so they know they have to go.

If you have any questions about making someone testify at your hearing, call MDLC.

15. How do I present my appeal?

You and all of your witnesses testify. To testify means to give information and talk truthfully about the case. Sometimes you will have a witness with a very crowded schedule, like a doctor or a therapist. They can testify by telephone if that would be easier for them.

If you are going to have a witness testify by telephone, be sure to tell the Human Services Judge before the hearing and talk with the Judge about getting the witness's telephone number. That way, the Judge can help set up a specific time to call the witness.

16. What is the appeal hearing like?

The Human Services Judge is in charge of the hearing. Usually, the hearing is in a conference room, and everyone sits around a table. The Judge records everything on a tape recorder. The Judge will ask each person who is going to testify to take an oath swearing they will tell the truth. Then, each person will talk and the Human Services judge may ask them questions. You have the right to ask questions of any witness, including witnesses for the state or the county.

17. Will someone from DHS be at the hearing?

Sometimes, DHS might just send a letter to the Judge as “evidence.” You should be given a copy of any evidence submitted by DHS and an opportunity to respond.

18. Can either side give more information to the Judge after the hearing?

Yes. DHS may want to give the Judge more information after the hearing. They can do this, but only if you agree. You do not have to agree. If you let them submit more information, you can respond to anything they say.

You can also give more information to the Judge after the hearing. DHS can respond to anything you give to the Judge.

19. When will I get the final decision?

The Human Services Judge makes a decision after the hearing. S/he will write the decision and give it to the *Chief Human Services Judge*. The Chief Human Services Judge reviews the decision. S/he may approve or change it. If the Chief Human Services Judge makes a change to the decision, you will have a chance to respond. The entire appeal process is supposed to take no more than 90 days. However, because of the high number of appeals, many decisions take longer. If you still have not seen a final decision 90 days after you first filed your appeal, contact the Human Services Judge.

20. What if I lose?

If you lose, you can write a letter to the Chief Human Services Judge and tell him/her why you think the decision was

wrong, and ask him/her to change it. This is a *request to reconsider*. Or, you can appeal to the state district court in your county. You have 30 days from the date of the decision to do one of these things.

If you ask the Chief Human Services Judge to reconsider and you get turned down, then you have 30 more days to appeal to state district court. There is no fee for making an appeal to the state district court.

MDLC might be able to help you with an appeal to state district court. Be ready to give the following information: name, telephone number, what kind of cut you got in PCA hours, when you got your notice and when the Start Date is. We cannot represent everyone who has their hours cut or denied. If we cannot represent you, we will try to give you some advice over the phone to help you make your appeal.

*****Definitions*****

Advocate - Someone who is on your side and will help you understand the law and fight for your rights. An advocate can be a lawyer or anyone else who understands your problem and can help you.

Appeal - A formal request to have an official review your case. This is a chance to give more information and bring other people in to support your case.

DHS MA Health Status Assessment for PCA Services – <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-3244-ENG> (225 pages).

DHS MA Home Care Service Plans – <http://edocs.dhs.state.mn.us/lf/Legacy/DHS-3244A-ENG> (9 pages).

DHS PCA Consumer Guidebook – <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-3858-ENG> (92 pages).

DHS Physician Statement of Need – <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4690-ENG> (1 page).

DHS PCA Decision Tree, Home Care Ratings and Limits (DHS 4201) – <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-4201-ENG> (1 page).

Human Services Judge - An official in the Department of Human Services, unconnected to your case. S/he will listen to your appeal, consider both sides of the case, and make a decision.

Good cause for delay - A good reason for not meeting a deadline. For example, a death in the family or a serious illness would be a good cause for delay.

PCA - Personal Care Assistant. A person who helps with the activities of daily living, like cooking, cleaning, getting dressed and bathing.

PCA Choice program - A program that allows people to hire and fire their own PCA, rather than hiring them through a PCA agency. This gives greater flexibility in whom they can hire and how much they pay.

Request to reconsider - Asking the Chief Human Services Judge to look over your case and your argument about why you think the decision was wrong.

Subpoena - A written demand from the court for a person to show up at a hearing.

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