

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, or they may decide to cut the number of hours you have. 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. If you appeal, you will have a hearing before an Appeals Referee of the Department of Human Services. If necessary, you can continue to appeal through the state court system.

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

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 social services office should have an appeal form that you can use. When you mail your 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:

Appeals and Regulations Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3813
Fax: 651-297-3173

You can also appeal to your local county social 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 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. So if your letter was dated May 6 but you didn't get it until May 9, you have until June 8 to get your appeal 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 won't. 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 an *Appeals Referee* to listen to your case. The Appeals Referee is someone who didn't 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 social service office.

Sometimes, the Appeals Referee 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 phone with the Appeals Referee in St. Paul. You **never** 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 Referee's schedule. Or, if it is hard for you

to get out, you might ask to do the appeal by phone 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 can't help everyone who gets his/her PCA hours cut. You should ask your PCA provider to help you because they know what your care needs are. If they won't help you, ask them why. If you don't think they are trying to do what is best for you, then you should consider getting a different PCA provider.

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 won't 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. You can also appeal if the state won't let you be a part of the *PCA Choice program*.

If someone from DHS or the Appeals Referee tells you that you can't appeal, call MDLC for help.

11. What information do I need for this appeal?

These are the documents you need for your appeal:

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.

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.

DHS Bulletin 00-56-12

This document explains the role and responsibilities of the county public health nurse. If you have computer access, go to www.dhs.mn.us, and click on the "Bulletins" link under "Publications." Then click on the 2000 year listing of bulletins. You should also review the Consumer Guidebook for the Personal Care Assistant Program. The guidebook, and its updated March 2004 version, can be found on line by going again to the "Bulletins" section of the DHS website and clicking on the 2002 listings. The guidebook is in Bulletin #02-56-20.

DHS Prior Authorization File

You have a right to see all of the information in DHS's files 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.

Worksheet

If you are appealing a denial for PCA hours or a cut in your hours, then you need a copy of the DHS worksheet. This is the form that DHS filled out when they looked over your request and decided what your hours should be.

The worksheet will show 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 DHS only allowed 15 minutes per day. Sometimes, DHS will also write the reasons on the worksheet. Any reasons are usually on the second page.

To get the worksheet or any other information from DHS, contact:

Mickey Ellis
Disability Services Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3853
651-582-1948

Once you get this worksheet, you can see if the county public health nurse didn't ask for enough hours. Or maybe the nurse asked for enough hours, but DHS made a cut. Once you see where the mistake was made, then you and your support people (see Question #13) can show the Appeals Referee why the decision was wrong.

If you have trouble getting any papers from the state or the county, you should call the Appeals Referee. Ask the Referee 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.

12. Who should I ask to be a witness?

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 Referee 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.

13. 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 won't agree to be a witness, call the Appeals Referee 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 so they know they have to go.

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

14. 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 phone, be sure to tell the Appeals Referee to get their telephone number. That way, the Referee can help set up a specific time to call the witness.

15. What is the appeal hearing like?

The Appeals Referee from the Department of Human Services is in charge of the hearing. Usually, the hearing is in a conference room, and everyone sits around a table. The Referee records everything on a tape recorder. The Referee will ask each person to talk in turn, and may ask questions. You have the right to ask questions of any witness, including witnesses for the state.

16. Will someone from DHS be at the hearing?

Sometimes. DHS might just send a letter to the Appeals Referee as "evidence."

17. Can either side give more information to the Referee after the hearing?

Yes. DHS may want to give the Appeals Referee 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 Referee after the hearing. DHS can respond to anything you give to the Referee.

18. When will I get the final decision?

The Appeals Referee makes a decision after the hearing. S/he will write the decision and give it to the *Chief Appeals Referee*. The Chief Appeals Referee reviews the decision. S/he may approve or change it. If the Chief Appeals Referee 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 haven't seen a final decision 90 days after you first filed your appeal, contact the Appeals Referee.

19. What if I lose?

If you lose, you can write a letter to the Chief Appeals Referee 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 Appeals Referee 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, phone number, what kind of cut you got in PCA hours, when you got your notice, and when the Start Date is. We can't represent everyone who has their hours cut or denied. If we can't 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.

Appeals Referee – 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 Appeals Referee 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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Contact Information:

Minnesota Disability Law Center (MDLC)

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Minneapolis, MN 55401-1780

Web Address: www.mndlc.org

New client intake: 612-334-5970

Toll Free: 1-800-292-4150

TTY: 612-332-4668

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