



# Challenging Personal Assistance Service Denials in Community HealthChoices (CHC) A Toolkit for Consumers

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## I. Introduction

The Community HealthChoices (CHC) program can pay for a caregiver to provide Personal Assistance Services (PAS). PAS includes help with activities of daily living like bathing, dressing, toileting, meal preparation, shopping, managing medications, transportation, and more. These services are meant to help people stay in their own homes and to maintain their health, welfare, and safety. The definition of PAS is attached to this guide at Appendix 1.

You have the right to appeal when your CHC plan denies PAS. This includes any time:

1. your CHC plan denies your request for more PAS hours
2. your CHC plan tries to take away some or all PAS hours you already have
3. your CHC plan denies your request for PAS entirely

This guide explains how to appeal a PAS denial, and how to present and prove your case during the appeal process.

## II. How to Appeal

An appeal is how you challenge the decision by your CHC Plan to deny, reduce, or end PAS. Here are the steps to appeal any PAS denial:

### Step one: Ask for a Grievance

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A grievance is the first level of an appeal. A grievance is a review of the PAS denial by the CHC plan; it is your chance to explain why the decision to deny you PAS was wrong. During the grievance, the denial is reviewed by a panel of three people, including a doctor. You have the right to take part in the grievance review meeting, either in person, by videoconference, or by phone. You also have the right to have a family member, your caregiver, your doctor or others take part with you or on your behalf. Ask your doctor to participate, or to write a letter that explains why the service is medically necessary. Ask your caregiver to write a log of your daily care needs. The grievance decision must be made by the CHC plan within 30 days from when you asked for the grievance.

Ask for a grievance by calling your CHC plan or by completing the Grievance Request form that came with your denial letter.

You have **60 days** from the date on the letter to file a grievance, but only **15 days** if you want to continue receiving denied services during the grievance process.

### **Step two: Ask for a Fair Hearing and an External Review at the same time**

If you do not agree with the grievance decision, you have the right to file two more appeals: a fair hearing and an external review. Both of these appeal types are discussed in the section below.

If a grievance decision reduces or ends your PAS services, you must request **both** a fair hearing and an external review within fifteen (15) days of the date on the grievance decision. Requesting both types of appeal within fifteen (15) days and at the same time will allow you to keep your existing PAS hours throughout the appeal process.

#### **Can I continue getting services during the appeal process?**

Yes. Ask for your grievance within 15 days of the date on the denial letter. Also ask for a fair hearing and external review within fifteen days of the date on the grievance decision letter. Services you are already getting will continue during the appeal process. This rule only applies if your plan is taking away or ending a service you are already getting.

#### **Can I get a faster decision?**

Yes. If your health could be harmed by waiting the normal timeframe for a grievance or fair hearing decision, ask for a faster review. This is called an “expedited” appeal. Get a letter from your doctor that says you need a faster review and why waiting the normal time period would harm your health. For an “expedited” appeal, the panel or Judge should give you a decision within 72 hours of your request.

**DO NOT wait for the external review decision before requesting a fair hearing.** If you wait and the external reviewer says your hours should be cut, you will lose those hours while waiting for your fair hearing.

## Fair Hearings

A fair hearing is a meeting where the CHC plan has to explain and defend its decision to an Administrative Law Judge (ALJ). You, or someone acting on your behalf, must participate in the fair hearing. You can do this in person or by phone. Your family members, caregivers, doctor or others can also take part. The Judge will issue a decision within about 90 days of your request for hearing.

You must ask for a fair hearing in writing. To ask for a fair hearing, complete and mail the form that came with your grievance decision. Include the grievance decision with your form. Use certified mail so you can prove you sent your fair hearing request. You have **15 days** from the date on the grievance decision to mail your fair hearing if you want your PAS hours to continue while waiting for the fair hearing decision. If you miss this deadline or if you are asking for a fair hearing about a denial of new or more PAS hours, you have 120 days from the date on the grievance decision to mail your fair hearing request.

## External Review

An external review is a review of the CHC plan's grievance decision by a company chosen by the PA Department of Insurance. The external reviewer will be a doctor who must give you a decision within 60 days of your request. The external review is a review of the paper file that includes all the documents related to the request for PAS and the CHC plan's denial of the request. You cannot participate in any meeting with the external reviewer, but you can submit additional information and documents to be considered by the external reviewer. The letter that tells you what company was chosen for the review will have instructions about how to submit additional information and the deadline for submitting information.

Call your CHC plan to ask for an external review. You have **15 days** from the date on the grievance decision to request an external review. So long as you request the external review within 15 days of the date of the grievance decision, your PAS hours will continue while waiting for the external review decision.

**NOTE:** You can **and should** ask for an external review and a fair hearing **at the same time**. If either appeal is decided in your favor, the CHC plan must approve the service.

### III. Understanding Medical Necessity

Your goal during the appeal process 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. Essentially, this means explaining what kind of help you need to do everyday tasks like bathing, dressing, walking, grooming, toileting, and eating. These tasks are called activities of daily living (ADLs). PAS hours 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.

### IV. Proving Your Case

The rest of this guide explains how to prove your case during your appeal. Remember, your goal during the appeal process is to prove the “medical necessity” of the PAS hours that have been denied. Here’s how best to do that:

#### Step 1: Plan Your Arguments

Start by picking out one or two main arguments to make during your appeal. You should try to include arguments about why the denied PAS are medically necessary and why the approved PAS are not enough. Here are examples of common arguments you could make:

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

- My condition has changed, and it now takes me more time to do ADLs
- 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.)
- I have unscheduled needs such as toileting, incontinence accidents, or taking 'as needed' medications.
- The CHC plan did not consider my overnight needs.
- My activities of daily living require extra time due to my specific disabilities.

**NOTE:** The definition of PAS specifically includes “supervision to assist a participant who cannot be left safely alone.” It also includes “intermittent or ongoing awake, overnight assistance.”

## Step 2: Gather Evidence and Identify Witnesses

Once you identify your argument(s), think about what evidence and witnesses you can use to support your argument that the PAS hours you are seeking are medically necessary.

### A. Request Documents from Your CHC Plan

You have a right to review the plan’s documents related to the PAS denial. Call your CHC plan and request that they send you the following documents (you have a right to receive this information, free of charge and in an accessible format, upon request):

- The assessment done by your Service Coordinator (aka the “interRAI”)
- Your Person-Centered Service Plan (“PCSP”)

- Any “tasking tool” or other “time for task” tool used by the plan to determine the number of hours of PAS you should receive
- Any advisor, utilization management, or physician reviews
- Any notes, 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 (interRAI) 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— i.e. the “time for task” or “tasking tool.” If either the assessment or the “time for task” chart is wrong or is missing information, you should point this out at the grievance or fair hearing.

## **B. Gather Your Own Documents**

Try to get a doctor’s letter and any other medical records that support your need for the PAS hours you are seeking.

Ask your doctor(s) to write a letter that explains why the PAS hours you are seeking are medically necessary. A letter that lists your health problems and diagnoses is not enough. The letter should explain in detail any limitations you have with activities of daily living and self-care, any cueing or reminders you need to complete tasks, and any supervision you need to keep you safe. It should also explain in detail how the PAS hours are medically necessary to main your “health, welfare and safety.” E.g., Are you a fall risk? Do you have a history of falls (and injuries)? Do you need help managing medications?

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 activities of daily living (ex: a physical therapist’s or occupational therapist’s evaluation/report);
- Recent hospital records or emergency room reports;
- Other medical records (such as a hospital discharge report);
- Home health agency’s care log or other caregiver records – for example, records of falls, wandering, seizures, 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; and/or
- A list of all the tasks your caregivers help you with (e.g. bathing, dressing, etc.) and how long each of those tasks takes.

If you are participating in the appeal hearing by phone or videoconference, make sure all your documents get to the grievance panel or the hearing officer (called an Administrative Law Judge) before the scheduled hearing 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 appeal hearing.

This table includes general contact information for each of the three CHC plans. Contact information for the hearing office where your fair hearing will be held can be found on the fair hearing scheduling notice you get in the mail.

<b>AmeriHealth Caritas &amp; Keystone First</b>	<b>PA Health &amp; Wellness</b>	<b>UPMC for You</b>
Phone: 855-332-0729 Fax: 215-937-5367	Phone: 844-626-6813 Fax: 844-873-7451	Phone: 844-833-0523 Fax: 412-454-7920
<i>PAMemberAppeals@amerihealthcaritas.com</i>	<i>PHWComplaintsandGrievances@PaHealthWellness.com</i>	<i>UPMCCHC@upmc.edu</i>

### **C. Choose Your Witnesses**

You have the right to have witnesses take part in your appeal hearing. Witnesses may include yourself, a direct care (PAS) worker or aide, a family member, or others who are familiar with your health and care needs.

It is fine for you to be your only “witness” during your appeal. Many people find it helpful to have additional witnesses to help 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 medically necessary.

You should discuss the appeal hearing 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 at the hearing. Make sure you give them the date and time of the hearing and confirm how they will be participating—Will they be with you? Will they be participating from a separate phone? You will want to let your CHC plan or the Administrative Law Judge know that you will have witnesses. If your witnesses will be participating from a separate phone, don’t forget to provide their contact information to your plan’s grievance department or to the Administrative Law Judge (ALJ) when you send any documents you plan to submit for the appeal.

### Step 3: Present Your Case

During your grievance or fair hearing, the CHC plan will present first. They will explain they feel their decision to deny your PAS hours was correct. After that, you will be allowed to present your case. Remember, your goal is to explain to the decision maker—i.e. the grievance panel or the ALJ—why the PAS hours you are seeking are medically necessary. Aim to keep your presentation to no longer than 30 minutes. For reference, a sample hearing testimony outline is provided at Attachment 2 at the end of this guide.

Start by introducing yourself. If you sent documents in advance, confirm that they were received. If they do not have the documents you sent in, ask if you can email or fax the documents right after the hearing.

Next, give a short statement explaining the issue for the grievance panel or the ALJ. Give a summary of your health problems and explain what kind of care or assistance you need on a daily basis. Make your main arguments for why the PAS hours are medically necessary. Then, present your witness or witnesses to talk about why the PAS hours you are asking for are medically necessary. It may be helpful for you or your witness to explain what a typical day looks like for you—e.g. what kind of care you require with what tasks, and how often.

When you present your own “testimony”, talk about your conditions and needs. Explain, in as much detail as possible, why the PAS hours the plan is offering are not enough. Give examples of why you need the denied hours and go through the arguments you prepared. Highlight the most helpful parts of any documents you have provided, such as your doctor’s letter or evidence of falls from your medical records.

Once you present all your evidence – both testimony and documents – the CHC plan or the ALJ may have follow-up questions for you and your witnesses. Answer their questions honestly and clearly, without going off-topic.

After any 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 decision-maker to know before the hearing ends.



## Appendix 2: Definition of 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 (2023), *Excerpt*

## Appendix 2: **Hearing Testimony Outline**

The CHC plan will present their case first. You have the right to ask them questions once they finish their presentation. Then it will be your turn to present your case. Use this guide to help outline your presentation during the hearing.

### **Diagnosis, History, and Request/Authorization**

1. Diagnoses and history
2. How long have you been receiving PAS services?
3. What are your current hours?
4. How long have you had your current PAS hours?
5. Has anything changed with your living situation or care needs to warrant the denial of hours or taking away hours?

**Activities of Daily Living (ADL) Needs** - Refer to letters of medical necessity and assessment to show your testimony is supported by doctor.

1. What does a typical day look like for you?
  - a. Including hours your paid caregiver helps you and when family or other informal supports (friends, neighbors, etc.) help you.
2. What ADLs do you need help with daily?
  - a. How much help do you need?
  - b. Do you have bad days where you need more care than others?
3. Can you do any daily tasks without help?
  - a. If yes, do you require supervision or reminders during those tasks?
4. How do you move around inside your home? Have you fallen recently? When was the last time you fell?
5. Recent hospitalizations?
6. What Instrumental Activities of Daily Living (IADLs) do you need help with?
  - a. For example, help with cooking, cleaning, laundry, medication administration, meal preparation, and transportation to and from appointments.

- b. If you need help with transportation, how often do you have appointments, how far do you travel?
7. Are there any errors with the CHC plan's documents related to ADL or IADL needs?
  - a. This includes inaccuracies in the original denial notice or grievance decision or any of the evidence they are submitting, such as the interRAI assessment.
  - b. In the grievance decision, what was the specialty of the doctor reviewing, was it appropriate?

NOTE: Focus more on ADLs than IADLs throughout testimony.

### **Housing and Informal Supports**

1. What is your living situation?
2. Who is providing your paid care?
  - a. i.e., Agency, family, Tempus
3. Would the current paid caregiver be able to provide the care unpaid?
  - a. How easy would it be for the caregiver to seek other employment?
4. Is there family available to provide the care unpaid?
  - a. Why or why not?

### **Consequences if Hours are Reduced**

1. If the hours are reduced, what happens?
  - a. Safety issues?
  - b. Will you end up in a facility?
    - i. If yes, is your goal to remain in the community?
  - c. Does risk of infection increase when you don't get care or don't get all the care you need?
2. How does that impact your quality of life? What won't you be able to do that you can do now with your hours?
3. What ADLs would you be unable to complete?
  - a. Would you miss your appointments?
  - b. Would you miss medications?



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