

PCA Services: Assessment, Eligibility and Appeal

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What will we cover tonight?

- ❑ Overview of changes in the PCA law (MS. §256B.0659; handout has portions.)
- ❑ Preparing for a good PCA assessment: discussion of definitions/ what the assessors are looking for.
- ❑ How to appeal, the fair hearing process and issues to raise on appeal.
- ❑ DHS changes in assessment/ services

PCA eligibility prior to 2010

- Until December 31, 2009, Public Health Nurses (PHNs) used an assessment tool that evaluated
 - Need for assistance with ADLs,
 - Need for behavioral assistance and supervision, including prompting,
 - Need for assistance with medications
 - Instrumental ADLs (IADLs), including cooking, cleaning, laundry, shopping
- Amount of PCA time **authorized** was based on **all** of these activity areas—not any more!

Eligibility as of July 2011 (after special session)

- ❑ Must have dependency in 2 ADLs to qualify for full authorization of hours.
- ❑ Those with only 1 ADL dependency, or Level I behavior will get only 30 minutes per day (3.5 hours per week)—no additional time for critical ADLs, behaviors or complex health needs.
- ❑ Need for assistance with IADLs does not count toward PCA eligibility or authorization of hours, although PCA can complete IADL activities as part of care plan.

Example 1

- ❑ Joe has serious behaviors--getting lost, banging his head, punching walls and hitting others when they help.
 - ❑ Joe has a dependency in the ADL of dressing.
 - ❑ Joe will get a **half hour per day total**—no extra time for behaviors.
 - ❑ If Joe had 2 ADL needs, his time would be **3 hours per day**.
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Example 2

- June has diabetes and requires wound care. She frequently gets confused if she does not eat properly and needs help preparing meals.
- She has 1 ADL dependency --bathing.
- June gets PCA of a half-hour per day.
- If June had 2 ADL needs, she would get 2.25 hours per day.

What is now considered a “dependency” in an ADL?

- Having a “**dependency**” in ADLs means that
 - “a person requires **assistance to begin and complete**” one or more ADLs.
- By law, there are **8 ADLs**:
 - grooming, dressing, bathing,
 - transferring, mobility, positioning,
 - eating and toileting.
- “Critical ADLs” of eating, toileting, transferring and mobility each get additional 30 minutes.
- IADL needs aren’t part of the formula!

Dependency refined...

- Dependency is further defined as having a need on a daily basis, or *on the days that the task is performed*, for
 - **Cuing and constant supervision** to complete the task OR
 - **Hands-on assistance** to complete the task
- Can include tasks that may not need to be done every day but need constant supervision or hands-on assistance to complete.
(examples—shaving, bathing, nail or skin care)

2 ADLs...let me count the ways...

- ❑ If a person has an ADL dependency in bathing, s/he often will need help with grooming.
 - ❑ Bathing includes skin care. Grooming includes shaving, hair and nail care.
 - ❑ Dressing includes choosing, applying and changing clothing.
 - ❑ Eating does NOT include meal preparation or bringing food to table. It MIGHT include cutting up food or assisting with the act of eating.
 - ❑ Mobility MIGHT include constant supervision of child while out in public. (court case)
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Kids: when is it a dependency?

- ❑ NOT dependent in ADL if because of the child's age an adult would perform or assist with the activity (p. 5 handout)
 - If assistance needed is that which is appropriate for a typical child of the same age—no dependency.
 - Example—a 6 y.o. will need help with a nebulizer; a 14 y.o. should not.
- ❑ Testing results or other evaluations may help to establish deficits in ADL areas.

Communicating with the assessor— what to focus on with ADLs

- ❑ Think “constant supervision” or “hands on assistance”, not “prompting”
- ❑ Think assistance from beginning to end of task
- ❑ Does the supervision include a teaching component, for example how to wash one’s hair or brush teeth? Is this documented?
- ❑ Does a child’s school IEP include bathroom assistance, help with clothing, eating, etc.?
- ❑ Be able to explain what happens if the assistance/supervision is not provided; recent real life examples are very helpful

How is Level I Behavior defined for eligibility?

- “Level I Behavior” means “physical aggression towards self, others or destruction of property that requires the immediate response of another person.” M.S. §256B.0659, Subd. 1 (b)
 - “Immediate response” includes intervention that was required to prevent an injury or destruction
 - Must have occurred within last year
- If Level I behavior exists, the PCA base rate for authorization of time is higher

How are behaviors evaluated for additional PCA time?

- If one has 2 ADL needs (eligible for full authorization), behaviors may qualify for additional time **whether or not the person is determined to be Level I** if they demonstrate:
 - Increased vulnerability due to cognitive deficits or socially inappropriate behavior
 - Resistive to care, verbally aggressive—interferes with care
 - Physical aggression to self or others or destruction of property

The behaviors must require assistance at least 4 times per week:

- In the past 7 days:
 - the behavior must have occurred at least 4 times or
 - been redirected and prevented through positive behavioral interventions
- Care or treatment plans, behavior intervention plans, IEPs are all useful in demonstrating this requirement
- If criteria are met, can qualify for additional 30 minutes per day for each of these areas (maximum of 90 minutes)

Examples of these behaviors:

- ❑ Vulnerability--wanders, cannot call 911, goes with strangers
- ❑ Socially inappropriate—thoughts, behavior or communication causes child to be a target, isolated, or to self isolate
- ❑ Resistive to care/verbal aggression- fights getting dressed, throws food
- ❑ Physical aggression- hits, bangs head, punches walls, breaks things on purpose

Gray area-constant supervision of ADLs...or behavior intervention?

- A boy, 9, with autism is nonverbal; must have constant attention, hand holding, supervision so he does not run away. His family argued that this is a mobility need that **meets the statutory definition for hands-on assistance and constant supervision.**
- DHS argued that dependency in mobility is limited to those physically incapable of walking without assistance– and that this is a behavioral intervention.

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- ❑ The district court agreed with the family—he cannot move from one spot to another safely w/o hands-on assistance/constant supervision.
 - ❑ MN Court of Appeals agreed with DHS—physically capable of movement from one spot to another, so not dependent in mobility; need is “behavioral” in nature.
 - ❑ On appeal –to Minnesota Supreme Court

Complex health related needs

- Defined as one or more interventions ordered by physician, specified in the PCA plan of care and one of several categories:
 - tube feeding, wound care, parental therapy, respiratory interventions, bowel programs, neurological interventions
- Each complex health need gets 30 additional minutes authorized per day
- Must first have 2 ADL needs to qualify for time for complex health needs.

DHS authorization chart

- ❑ Step 1: How many ADLs and/or Level I? If less than 2 and/or Level I, stop! 30 min per day
- ❑ Step 2: if 2 or more ADLs, determine base rate
- ❑ Step 3: determine additional time for critical ADLs, behaviors or complex health needs
- ❑ Chart can be found at

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_FILE&RevisionSelectionMethod=LatestReleased&noSaveAs=1&Rendition=Primary&allowInterrupt=1&dDocName=dhs16_157228

Take the initiative to provide good information to the assessor

- ❑ Test results, medical evaluations, summaries of doctor or hospital visits and doctor orders, IEPs, behavior plans, PCA care plans, risk management plans
- ❑ Medication lists help document mental health, seizure or pain conditions
- ❑ Responsible party/ parent or other support person *should sit in* to ensure assessor has full information.

New assessment can occur:

- At least annually
- When there is a significant change in condition
- When there is a change in the need for PCA services
- Must occur within 30 days of request
- Denial of new assessment would be an appealable issue

Extended PCA services

- ❑ “Extended PCA” is a Home and Community Based waived service
- ❑ This can allow PCA hours beyond the amount allowed by the PCA assessment **if needed to assure health, safety and welfare.**
- ❑ **Requires PCA eligibility, i.e. at least 2 ADL dependencies.**
- ❑ May require waiver budget increase, also appealable issue if denied.

Possible issues related to appeal of PCA assessment:

- How long was the assessor there?
- Did the assessor observe the recipient; were his/her actions typical?
- Were there language or cultural barriers?
- Did the assessor put the questions in context and seek further details? (i.e. if you say "prompting needed" did s/he inquire further?)

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- Did the assessor review documentation provided or ask follow up questions?
 - Is the assessment different than last year even though needs are the same?
 - Do you disagree with the assessor on #ADLs/behaviors/complex needs?

Appeal Rights="due process" rights

- ❑ Procedural due process rights ensure the protection of other fundamental or substantive rights.
- ❑ Right to hearing based on the U.S. Constitution, federal and state laws: *Goldberg v. Kelly*, 397 U.S. 254 (1970)
- ❑ Notion of fair play and level playing field applies to county social services and state health care programs.

Who may have a fair hearing?

- “any person...receiving public assistance, medical care, or a program of social services...whose application for assistance is denied, not acted upon with reasonable promptness, or whose assistance is suspended, reduced, terminated...or any party aggrieved by a ruling of a prepaid health plan” (§256.045, Subd. 3)

How to ask for a fair hearing

- ❑ Written request to county or DHS within 30 days or 90 days if good cause. Can be done by fax or mail to county, or DHS (fax 651-431-7523; 444 Lafayette Rd. St Paul MN 55155.)
- ❑ **Only a 10 day max window if you want PCA services to continue pending appeal.**
- ❑ Request does not have to be detailed: “I appeal the reduction/termination of PCA services. I want phone/in person appeal in my county, Anoka. I want PCA services to continue pending appeal.” Can also use DHS form.

Appeal rights include:

- ❑ Right to specific written rationale for denying/terminating service
- ❑ Notice of right to appeal and how to appeal
- ❑ Right to fair hearing in front of DHS Human Services Judge
- ❑ Right to continue existing service pending appeal under public health programs, including managed care.

Right to continued service or benefit pending appeal (PCA):

- ❑ Should include in appeal a request for continuing service pending appeal before reduction/ within 10 days.
- ❑ This includes state managed care plans.
- ❑ State and health plan permitted to seek recoupment of cost of continuing service if you lose. DHS does not generally do.
- ❑ Health plans generally don't seek to recoup from recipient but may try to adjust payment to vendor—status not clear

DHS Fair Hearing Process

- ❑ Hearing can be by phone or in person in the county where the person lives
- ❑ In front of DHS Human Services Judge, less formal than district court.
- ❑ Hearing is tape-recorded.
- ❑ Witnesses can also be by phone.
- ❑ Right to have attorney or “other representative of [your] choice”.

Hearing Rights

- ❑ Other side must provide appeal summary with specific basis for the action. For PCA appeals, DHS/plan will provide copies of PCA assessment and a form memo about the new criteria.
- ❑ Right to notice of the hearing at least five days in advance. May ask for a continuance if not, or for other reason.
- ❑ HSJ may do preliminary hearing to address schedule, conflicts, subpoenas.

Additional rights

- ❑ Opportunity to examine contents of the file/documents to be used by other side at a reasonable time before hearing.
- ❑ May request additional information relevant to the appeal, including further assessment.
- ❑ Right to appear personally, testify, offer evidence, and examine and cross examine witnesses. DHS does not usually appear; health plans do.

Right to coverage of appeal related costs (§256.045, subd.4(b))

- ❑ The person appealing can claim copying, transportation, child care, medical assessment and witness costs and “other necessary and reasonable costs”. Keep receipts!
- ❑ County “shall provide reimbursement”.
- ❑ HSJ can order that costs be paid.

Evidence

- ❑ “all evidence commonly accepted by reasonable people in the conduct of their affairs as have probative value with respect to the issues.” §256.045, Subd. 4.
- ❑ Burden of proof on the party seeking to change the status quo.
- ❑ The agency must present its evidence *before or at* the hearing and the petitioner must have the opportunity to respond.
- ❑ HSJ may hold the record open for additional documentation.

What evidence might help my case?

- ❑ PCA care plans and prior assessments
- ❑ IEPs, assessments done in and for the school setting, or day care records
- ❑ Medical records, including day treatment, hospital, medications
- ❑ Letters from medical providers that are specific and address need for assistance to complete ADLs or need for supervision of specific behaviors

Effective Testimony

- ❑ Testimony of parent which details step by step needs for assistance with each ADL or behavior and gives specific examples
- ❑ Testimony of PCA or school aide which buttresses parent and shows need for assistance in other settings.
- ❑ Testimony of therapists or other involved providers –ILS, CTSS etc.
- ❑ Testimony can occur by phone

Decision-making process

- ❑ HSJ recommends order which commissioner accepts or rejects.
- ❑ Order must have findings of fact based on entire record, and
- ❑ Conclusions of law—legal authority for the decision.
- ❑ Right to have decision reconsidered by DHS within 30 days and/or district court review by filing within 30 days.

Managed care appeals

- ❑ 30 day notice usually called a “DTR”: denial, termination, reduction in service.
- ❑ Plans have *optional* 30 day complaint process with optional appeal to DHS; THIS IS ALSO 30 DAYS. We do not usually recommend!
- ❑ Can ask for second opinion outside plan.
- ❑ 30 day timelines for appeal, reconsideration and district court appeal are the same.

What does the future hold?

- ❑ DHS is rolling out a new assessment tool called MNChoices in 2013.
- ❑ DHS is redesigning PCA services under the “Community First” option
- ❑ Many service modifications requested under DHS “Reform 2020”

<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-6535B-ENG>

MNChoices Assessment— effective in 2013

- ❑ Automated application, assessment and service planning tool for waivers, PCA, LTCC and PDN; lengthy process
- ❑ Trained, certified assessors evaluate several “domains” including ADLs, IADLs, psychosocial, safety, etc.
- ❑ MNchoices does NOT change any current eligibility criteria

“Community First” Services & Supports (“1915 (k)” option)

- ❑ MA state plan service; requires at least 1 ADL need or Level 1 behavior; criteria still the same although federal law much broader-- allows cuing and prompting.
- ❑ Minimum amount of time- 75 minutes
- ❑ Services include current PCA plus skills acquisition, health related tasks, transition supports; self-directed option
- ❑ Awaiting federal approval; has +6% federal match.

Resources and links

- DHS: www.dhs.state.mn.us
(home>disabilities>personal care assistance)
 - PCA assessment: eDocs # 3244-ENG 10-11
 - PCA instructions: eDocs #3244A-ENG 10-11
- Minnesota Disability Law Center :
 - Intake: 1-800-292-4150; 612-334-5970
or online <http://www.mylegalaid.org/mdlc/contact>
 - FAQ:
<http://www.mylegalaid.org/mdlc/current-projects/pca-changes/pca-changes-faqs>