

## Appealing a Denial or Reduction of Personal Care Services

This document explains:

- The NC Medicaid Personal Care Services program, also known as aide services.
- The criteria used to make the decision about whether or not a person is eligible for Personal Care Services.
- How to appeal a decision that denies or reduces personal care service hours.
- The mediation and appeal process used to contest a decision to reduce services.
- Step-by-step instructions for how to represent yourself during a mediation and hearing. It is common for people to represent themselves successfully in a Medicaid appeal like this.

### What are Personal Care Services?

Personal Care Services (PCS) are sometimes known as in-home care or aide services. For most, PCS means someone comes to your home to help you a few days a week with taking a bath, getting dressed, and fixing meals. In North Carolina, PCS provides **hands-on assistance** to people with certain activities of daily living (ADLs): **bathing, dressing, eating, toileting, and mobility**. Although a person may need assistance with activities they want to do, Activities of Daily Living (ADL) is a medical term with a specific meaning when it is used to talk about personal care services.

If you need help with these activities, the aide may also help with “helping tasks” such as cleaning, laundry, kitchen cleanup, and other tasks (known as incidental ADLs, or IADLs). The helping tasks that an aide may do must be related to the five ADLs of bathing, dressing, eating, toileting, and mobility. **You cannot receive aide services for the helping tasks unless you qualify for PCS because you need hands on assistance with your ADLs.** A person must need at least limited hands-on assistance with ADLs. A need for cueing or prompting to personally perform the task is not sufficient to qualify for services.

### **You qualify for PCS if you need:**

- Limited hands-on assistance with 3 of the 5 qualifying ADLs
- Extensive hands-on assistance with at least 1 of the qualifying ADLs and at least

*COPYRIGHT 2016 by Disability Rights NC. All rights reserved. This document contains general information for educational purposes and should not be construed as legal advice. It is not intended to be a comprehensive statement of the law and may not reflect recent legal developments. If you have specific questions concerning any matter contained in this document or need legal advice, we encourage you to consult with an attorney.*

- limited hands-on assistance with 1 of the 5 qualifying ADLs
- Fully dependent assistance with at least 1 of the qualifying ADLs and at least limited hands-on assistance with 1 of the 5 qualifying ADLs

**Hands-on assistance** means that you need someone there with you providing physical help; their hands are helping you in doing the task. This could mean helping you get dressed by helping you in pulling on your pants or buttoning your shirt. Hands-on assistance with bathing could be that you cannot reach your whole body to bathe or that you need someone to help you get in and out of the shower or tub. Limited, extensive, and fully dependent levels indicate how much assistance you need—either a little, some, or a lot—and this determines the number of hours of PCS you get per month.

### **Who Decides Eligibility and How?**

The letter you received about your services being denied or reduced should be from Liberty Healthcare. Liberty is the contractor for the NC Medicaid agency responsible for authorizing PCS. Among other tasks, Liberty processes referrals from your doctor, schedules initial assessments and reassessments, sends nurses to perform assessments, determines eligibility, sets the number of hours, and notifies you of the assessment results and other information related to your services.

### **The Independent Assessment—What It is and Why It is Important**

The assessment is conducted by a nurse who comes to your home and asks questions about what kind of help you need and asks you to demonstrate how you do things around your house. The assessment is used to determine your eligibility and the number of service hours.

The letter you received that told you whether or not you were eligible for PCS should have basic information about your ADLs, the level of assistance you need to complete the ADLs, and the number of days that assistance is needed, or “days of unmet need.” You should obtain a copy of your full assessment for your appeal because it gives you the information Liberty used in making its decision. Reading the assessment can help you figure out what the assessor may have gotten wrong.

You may request a copy of your assessment from Liberty by faxing 919-322-5942 or 855-740-0200, or by mailing to 5540 Centerview Drive, Suite 114, Raleigh, NC 27606.

If you have been receiving services, your provider should have a copy of your most recent assessment and you can request a copy from them. Your provider may also be willing to help explain the assessment to you.

## How Does Liberty Decide How Much Assistance I Need?

- Totally Able: The individual is able to self-perform 100 percent of the activity without supervision or assistance.
- Needs Verbal Cueing or Supervision Only: The individual is able to perform 100 percent of the activity, but requires supervision, monitoring, or assistance retrieving or setting up supplies or equipment.
- Limited Hands-On Assistance: The individual is able to do more than 50 percent of the activity and requires hands-on assistance to complete the rest of the activity.
- Extensive Hands-on Assistance: The individual is able to do less than 50 percent of the activity and requires hands-on assistance to complete the remainder of the activity.
- Full Dependence/Cannot Do at All: The individual is unable to perform any of the activity and is totally dependent on another to complete the activity.

When you look at your assessment, you will want to compare how you were assessed by Liberty with what your needs are. Does the assessment say you only need supervision, but you really need limited or extensive hands-on assistance? The differences between the assessment and the reality of your day-to-day life are the basis for your appeal. For each ADL, you will have to explain why you believe Liberty was wrong in its assessment of your needs.

**Example:** The assessment notes that I do not need help with dressing because I can pull on my sweatpants or nightgown. However, I have difficulty using zippers, buttons, and snaps because of my arthritis. This means that I do need hands-on assistance with dressing.

## How is the Number of Hours Determined?

After Liberty has determined that you qualify for services, then they calculate the number of hours you will receive based on the assistance levels you demonstrated during the assessment. The maximum number of authorized PCS hours is **80 hours per month** for adults (21 years and older) or **60 hours per month** for children (under 21 years old)

unless the child’s need for additional hours is approved under EPSDT.<sup>1</sup> A person may be eligible for up to **130 hours** (up to 50 additional hours) if certain conditions are met.<sup>2</sup>

The following chart shows how minutes are assigned for qualifying ADLs and IADLs based on the level of assistance required:

<b>Daily Minutes for Qualifying ADLs</b>			
ADL	Limited Assistance	Extensive Assistance	Full Dependence
Bathing	35	50	60
Dressing	20	35	40
Mobility	10	20	20
Toileting	25	30	35
Eating	30	45	50
<b>Medication Assistance</b>			
Reminders/ Set-Up/Supervision	Routine Administration 8 or Fewer	Routine Administration Plus PRN	Poly Pharmacy and/or Complex
10 minutes/day	20 minutes/day	40 minutes/day	60 minutes/day

*If the total assigned time for all ADLs is less than 60 minutes per day, the total time is increased to 60 minutes per day.*

**Example:** Mrs. Betty needs limited assistance with dressing, eating, toileting, and bathing 7 days a week and needs help with eating 5 days a week (her daughter fixes her meals on the weekends). Mrs. Betty’s calculation of hours would be:

- Limited assistance with dressing: 20 minutes x 7 days per week x 4 weeks/month=140
- Limited assistance with bathing: 35 minutes x 7 days per week x 4 weeks/month=980
- Limited assistance with toileting: 25 minutes x 7 days per week x 4 weeks/month=700
- Limited assistance with eating: 30 minutes x 5 days per week x 4 weeks/month=600

Total: 140 + 980 + 700 + 600= 2420 minutes/60 minutes per day = 40 hours/month

**What if I’m Receiving Hours but Think I Need More?**

If you are receiving personal care services, but think you need more hours to complete your ADLs, you should discuss this with the agency and then decide if it is in your best

---

<sup>1</sup> EPSDT is an acronym that refers to Early Periodic Screening, Diagnosis, and Treatment, which is a Medicaid benefit for children that requires the State to provide comprehensive and preventive health care for children enrolled in Medicaid. In practice, it allows a child to receive services above a policy limit if medically necessary. Children may have additional tasks such as ongoing supervision or monitoring covered under EPSDT that are not covered for adults.

<sup>2</sup> The number of hours a person can receive is explained in the NC Medicaid Clinical Coverage Policy 3L for Personal Care Services, which is available at [https://ncdma.s3.amazonaws.com/s3fspublic/documents/files/3L\\_1.pdf](https://ncdma.s3.amazonaws.com/s3fspublic/documents/files/3L_1.pdf)

interest to request more hours. Once you decide to request more hours, ask your provider agency (the company that employs your aide) to submit a change of status request for you. The provider agency will need to know what has changed about your ability to accomplish your ADLs since your last assessment and what tasks you need help with that your aide currently is not doing for you. For instance, previously your daughter was able to cook twice a week, but now she isn't able to do so, your provider would submit a change of status and explain the situation. Another example would be if you have increased pain or decreased stamina that affects your ability to perform your ADLs or changes how much help you need. Generally, a new assessment is necessary when you request more hours. Please be aware that if you have a reassessment, it is possible that you could be awarded more or less hours or determined not to qualify.

### **When You Can Get Additional Time:**

**Exacerbating Symptoms and Environmental Conditions:** If a person has conditions or symptoms that exacerbate or interfere with their ability to perform tasks, up to 25 percent more time may be authorized. If there are environmental conditions and circumstances that affect the person's ability to perform qualifying ADLs, up to 25 percent more time may be allowed. For all conditions affecting the beneficiary's ability to perform ADLs, no more than 25 percent of additional time is allowed.

**Memory Care and Supervision:** A person may qualify for **up to 50 additional hours**, making the maximum total of hours allowed 130 per month. In order for a beneficiary to qualify for more than 80 hours per month, a physician must attest that the beneficiary needs each of the following:

An increased level of supervision;

- Caregivers with training or experience in caring for individuals who have a degenerative disease, characterized by irreversible memory dysfunction, that attacks the brain and results in impaired memory, thinking, and behavior, including gradual memory loss, impaired judgment, disorientation, personality change, difficulty in learning, and the loss of language skills;
- A physical environment that includes modifications and safety measures to safeguard the individual because of gradual memory loss, impaired judgment, disorientation, personality change, difficulty in learning, and the loss of language skills; and

- Assistance because of a history of safety concerns related to inappropriate wandering ingestion, aggressive behavior, and an increased incidence of falls.<sup>3</sup>

## The Appeal

### How Do I Fight the Decision and Keep My Services?

The letter that reduced or denied your services should come with a Hearing Request Form.

**This Hearing Request Form must be submitted to the Office of Administrative Hearings (OAH) and DHHS within 30 days from the date on the denial letter, or you will lose your right to appeal. If you do not appeal your services will be reduced or end on the date stated in the letter. You must submit your request for hearing within 10 days of the date of the letter to ensure that you do not have a gap in your services.**

You are not entitled to services pending the appeal if the denial is from an initial request for services. If you do not have an appeal form with your letter, you can call Liberty Health Care Corporation of North Carolina at (919) 322-5944 or (855) 740-1400 and have the form sent to you.

Medicaid appeals are intended to allow a person to appeal a denial or reduction of a service with or without an attorney. Although an attorney can be helpful, people are often successful in Medicaid appeals on their own or with the help of a trusted relative or friend. Your provider also may be willing to assist you. The keys to successful appeal are: know your rights, be organized, and present information that shows your medical need and explains why you qualify for personal care services

The appeals process generally involves two steps: Mediation and Hearing.

**Mediation** - Before you get to a hearing you will have an opportunity to discuss your need for in-home aide services through mediation. This is an informal, non-binding process in which both parties are guided through a discussion by a neutral, third-party mediator to see if they can reach an agreement.

**Hearing** - If mediation does not resolve the issue, the next step is a hearing at the Office of Administrative Hearings (OAH) before an Administrative Law Judge. The hearing involves

---

<sup>3</sup> In accordance with NC Session Law 2013-306, the total authorized PCS hours may only exceed 80 hours per month for adults if there is present: a) physician attestation of need for more hours; and b) qualifying criteria outlined above. The number of exacerbating conditions is related to the number of additional hours. For 1 exacerbating condition present, up to 10 additional hours may be approved. For 2 exacerbating conditions present, up to 20 additional hours may be approved. This pattern continues up to 5 or more exacerbating conditions where up to 50 additional hours may be approved.

presenting evidence, including introducing documents and witness testimony, and making arguments to an Administrative Law Judge.

## **Step-by-Step Instructions**

### **Step #1: Filing the “Hearing Request” Form.**

The Hearing Request Form is enclosed with the letter informing you of your denial.

- Instructions on how to file this form are on the form itself. The form must be returned by mail or by fax to OAH and DHHS to appeal the termination of your services.
- Most hearings will be done over the telephone. However, you can request an in-person hearing. If you request an in-person hearing, it will be held in Raleigh, unless you request otherwise. You can request that the hearing be held closer to your county of residence if you can show “good cause,” such as your disability prevents you from traveling to Raleigh.
- The letter you received says that you may be required to pay for the services that continue because of your appeal. While this is possible if you ultimately lose at a hearing, it does not generally occur.

### **Step #2: Preparing for Mediation.**

Within 25 days of filing your appeal, you will be contacted by a mediator to schedule a time for the mediation, which will take place in a telephone conference call. If you agree to participate in mediation, but fail to attend mediation without good cause, OAH will dismiss your case.

**Who is Involved in Mediation** – If you are not represented by an attorney, the parties at the mediation will be a neutral, third-party mediator, yourself, and a representative from Liberty. Your doctor, nurse, aide, case manager or family member may also participate in the mediation to explain your need for the services. If you choose to have an attorney represent you, your attorney and an Assistant Attorney General representing Liberty and DHHS will also be present at the mediation.

- **Request Documents** – You are entitled to see the information that was used by Liberty when it made its decision to deny or reduce your services. You can request a copy of your entire case file, including your most recent assessment, by contacting the Assistant Attorney General assigned to your case in the NC Department of Justice, Division of Health and Public Assistance at 919-716-6855.
- **Gather Documents** – Organize any information or records you have documenting your need for personal care services. Your provider is required to create a plan for your care, and you should be able to use this plan to help show why all of the hours are

necessary.

- **Share Documents** – If you have documents, such as a letter from your doctor, that you would like Liberty to see before mediation to help your discussions, you can provide a copy to the mediator, who will give it to the Liberty representative.
  - Remember: The type of documents that you should share are those that show you need hands-on assistance with your activities of daily living (ADLs) of bathing, dressing, toileting, mobility, and eating.
- **Witnesses** – Your aide and your doctor are probably the best witnesses concerning your need for personal care services. He or she can provide a letter explaining why you need services, or they can participate by phone at the mediation.
- **Have a Number of Hours in Mind** – Be ready to explain what would happen if you lose your services. Liberty may offer to do a new assessment, or Liberty may offer you fewer hours than you were receiving. Think about the number of hours that you feel would allow you to continue living independently. If you are willing to settle for fewer hours, you may be able to resolve the case at mediation and avoid a hearing.

### **Step#3: The Mediation.**

Mediation is a voluntary and confidential process. There is no penalty if you do not reach agreement during mediation. There are advantages to mediation, including settling the issue or investigating the reasoning behind the decision to terminate services prior to a hearing. There is nothing to lose at mediation. If you do not settle at mediation, you will go on to a hearing at OAH. The information you gather during mediation can be used to make better arguments during the hearing.

### **Step #4: The Hearing.**

If you did not settle your case at mediation, the next step will be a hearing at OAH. Like mediation, you will be able to present evidence and witness testimony at the hearing.

**Who is Involved at Hearing** - The parties at the hearing will be an Administrative Law Judge, yourself, and a representative from Liberty. In addition, an Assistant Attorney General will be assigned to represent Liberty and DHHS.

- **Evidence** – Any evidence in support of your case, such as a letter from your doctor or the plan of care from your provider, must be submitted to OAH and the Assistant Attorney General assigned to your case at least **5 business days** prior to the hearing.
- **Witnesses** – Your doctor, nurse, aide, family members, or anyone else who can testify to your need for personal care services can be a witness.
  - Witnesses can testify by phone if they are not available to attend the hearing in

person. You need to provide OAH with contact information for witnesses who will testify by phone.

- You should check with your witnesses to make sure they are available the date of your hearing. If they are not, this may be good cause for requesting that the hearing be scheduled for a time when the witnesses are available.

- **Administrative Law Judge's Decision** – The ALJ's decision is final.
- **Appealing the Decision** - If you disagree with the Administrative Law Judge's decision, you can appeal to Superior Court within 30 days from the date of the decision. This is done by filing a Petition for Judicial Review in the Superior Court in the county where you reside or Wake County Superior Court. If you feel the need to appeal your case to Superior Court, you should contact an attorney to assist you with this process.

---

Disability Rights North Carolina is a 501(c)(3) nonprofit organization headquartered in Raleigh. It is a federally mandated protection and advocacy system with funding from the U.S. Department of Health and Human Services, the U.S. Department of Education, and the Social Security Administration.

Its team of attorneys, advocates, paralegals and support staff provide advocacy and legal services at no charge for people with disabilities across North Carolina to protect them from discrimination on the basis of their disability. All people with disabilities living in North Carolina are eligible to receive assistance from Disability Rights NC.

Contact us for assistance or to request this information in an alternate format.

**Disability Rights North Carolina**

3724 National Drive, Suite 100

Raleigh, North Carolina 27612

[www.disabilityrightsncc.org](http://www.disabilityrightsncc.org)

919-856-2195

877-235-4210 (toll free)

888-268-5535 (TTY)

919-856-2244 (fax)