

How to Appeal a Denial, Reduction, or Termination of Community First Choice Personal Assistance Services

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This document explains personal assistance services within the Maryland Medicaid Community First Choice (CFC) program: what services are covered; how to appeal a decision that denies, reduces, or ends personal assistance hours; and how you may represent yourself during a hearing.¹ This is general information for educational purposes only and should not be construed as legal advice.

Note that this document focuses on CFC services specifically. For more general information on preparing for a Medicaid hearing, please review our guide titled “How to Request and Prepare for a Medicaid Service Appeal,” available at <https://disabilityrightsmd.org/resources/>.

What are personal assistance services under CFC?

Personal assistance services (PAS) are also known as in-home care or aide services. For most people, PAS means that someone comes to your home to help you a few to several times each week with day-to-day tasks. Other programs in Maryland provide in-home aide care as well, such as through the Department of Disabilities or county health departments; this guidance does not apply to those programs. If you have CFC, you have a case manager (also called a “supports planner”) who may be a resource for you during an appeal process. If the state has decided to change your CFC hours, you will receive a notice about it that will confirm that your CFC hours (rather than a different Medicaid or other service) are at issue and advise you regarding appeal rights.

In Maryland, CFC aide services can cover assistance with certain activities of daily living (ADLs): **bathing, dressing, eating, toileting, and mobility**, and with some instrumental activities of daily living (IADLs), such as assisting you with taking your medication, grocery

¹ We gratefully acknowledge the use of Disability Rights North Carolina’s document regarding a similar personal care program, available at <https://www.disabilityrightsnc.org/wp-content/uploads/2018/05/PCS-Appeal-Denial-or-Reduction-FAQ.pdf>. This document adapts DRNC’s materials for Maryland’s CFC program. Funding for this handbook was provided in part by grants from MLSC, Fund for Change and the Krieger Foundation.

shopping, and light cleaning.² Although a person may need assistance with activities they want to do more generally, ADL and IADL are medical terms with a specific meaning when used to talk about personal care services. To receive CFC services in Maryland, you must require:

- 1) Hands-on assistance with at least two of these listed ADLs, OR
- 2) Supervision with at least two of these ADLs if you have a certain score on a test of cognitive function *and* if you need assistance with at least three IADLs as well, OR
- 3) Supervision with at least two of these ADLs “combined with the need for supervision/redirection for an individual exhibiting at least two of the following behavior problems: wandering several times a day, hallucinations/delusions at least weekly, aggressive/abusive behavior several times a week, disruptive/socially inappropriate behavior several times a week and/or self-injurious behavior several times a month.”³

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 mean 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. The amount of assistance you need—a little, some, or a lot—will help determine the number of PAS hours you will receive each week.

Once you are eligible for the CFC program through one of the three options above, you can receive help with other ADLs and IADLs as well. If you need hands-on assistance with only one ADL, you may be eligible instead for Community Personal Assistance Services (CPAS), another Medicaid in-home aide program. CPAS defines the ADLs and IADLs in the same way; regulations are at COMAR 10.09.20.⁴ The same guidance as below applies in preparing for a hearing regarding a denial, termination, or reduction of your CPAS hours.

Who decides what services I receive, and how?

The Maryland Department of Health (MDH) runs the state Medicaid program and decides how many personal assistance hours per week you will receive. After you or someone else requests CFC, a nurse or social worker from your county’s health department visits you to make an in-person assessment. If you are found eligible for CFC, you will get another such visit each year (called an annual redetermination) or whenever you apply for additional weekly CFC hours. The

² For more information about what each of these terms means in this context, see Code of Maryland Regulations (COMAR) 10.09.84.02B, available at <http://www.dsd.state.md.us/comar/comarhtml/10/10.09.84.02.htm> and at the end of this document.

³ See MDH policy documents describing level of care: <https://mmcp.health.maryland.gov/longtermcare/SiteAssets/SitePages/Nursing%20Home%20Services/Nursing%20Facility%20LOC%20Transmittal%20213.pdf>; <https://mmcp.health.maryland.gov/longtermcare/SiteAssets/SitePages/Nursing%20Home%20Services/Nursing%20Facility%20LOC%20Transmittal%20213.pdf>.

⁴ Available at http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=10.09.20.*.

nurse or social worker will ask questions about what kind of help you need. It is important to describe for the nurse or social worker how much assistance you need in order to do each ADL and IADL in a safe and sustainable way. They will ask you very personal questions, but it is important to answer since this information will help determine your eligibility and the number of service hours you will receive each week.

The assessment—called the “interRAI”—will look at how many personal care tasks you need help with and evaluate your overall health care needs. For each ADL and IADL, the assessor will also evaluate what level of help you require. The levels are:

- Independent – no help, setup, or supervision needed
- Setup help only – item is provided or placed within reach, no physical assistance or supervision at any time
- Supervision – oversight/cueing required
- Limited assistance – help required on some occasions; for physical tasks, this means guided maneuvering of arms/legs, physical guidance without taking weight
- Extensive assistance – help required throughout the task, but you perform 50% or more of the task on your own; includes weight-bearing support from someone else while you’re doing the task.
- Maximal assistance – help required throughout task, but you perform less than 50% of the task on your own; includes weight-bearing support from someone else while you’re doing the task.
- Total dependence – others fully perform the activity during the entire period the task requires.

What if I disagree with the findings from my assessment?

The differences between the assessment and the reality of your day-to-day life are the basis for your appeal. For each ADL and IADL, you will have to explain why you believe the assessment is wrong or incomplete. Errors can happen. If you disagree with the number of hours MDH has authorized for you, you need to look carefully at the results of your assessment—particularly regarding ADLs, IADLs, diagnoses, and recent medical treatments. You will want to compare the findings of the nurse/social worker with your actual needs. For example:

- Does the assessment say you only need supervision with a particular ADL, but you really need limited or extensive hands-on assistance?
- Did the assessment consider your typical needs? The assessment generally asks about what happened in the three days before the in-home visit. Were those three days typical of how you usually live? For instance, did you have family help over the weekend that isn’t available during the week—such that your needs were met during those 2-3 days—or was your health better or worse than usual?

- Does the assessment fail to identify certain problems? For example, if the assessment notes that you do not need help with dressing because you can pull on your sweatpants or nightgown, does it leave out your problems with using zippers, buttons, and snaps due to your arthritis?

If my services are denied, reduced, or terminated, how do I fight the decision? May I continue to receive my services while I appeal?

You must request a fair hearing within 90 days of the date on the denial letter you received.

If the letter you received *reduces* or *terminates* your services, you should file the hearing request within 10 days of the date on the letter. By requesting a hearing within 10 days of the date on the letter, you may keep your current services until a fair hearing decision if you state this on your hearing request.⁵ If you do not appeal within those 10 days, then your services will be reduced or terminated (depending on what the letter says) on the effective date in the letter; you still have the right to appeal if you request a hearing within 90 days, but you will not receive your current level of services pending the hearing decision.

If you applied for an *increase* in your weekly CFC hours and were *denied*, your current level of services will remain the same while you appeal. Some MDH notices that deny increases in service include the statement: “If you wish to continue receiving services during your appeal, you must appeal within 10 calendar days from the date of this notice.” This language only applies if your hours were reduced or terminated. If you were denied an increase in services, your current hours will continue regardless of whether you file the appeal request within 10 or 90 days after the date of the notice. If you applied for an *increase* and received *some but not all* of the additional hours requested, you may receive the partial increase in hours, and you have 90 days to request an appeal.

You are not entitled to services pending the appeal if the denial is from a *first* request for services: that is, you are not already receiving CFC services.

To request a hearing, send a fax, email, or letter to the MDH Office of Health Services. Contact information is on the last page of this document. Especially if you are requesting that current services continue until the outcome of the hearing, or if you are near the 90-day deadline to request a hearing at all, you should send the hearing request in a way that confirms the date you sent it: via fax (keeping a copy of your fax confirmation sheet) or email. If you mail your request to MDH, be sure to keep copies of all of your records.

⁵ If you lose the hearing, the state does have the right to ask you to pay them back for services provided after you requested the hearing, but this rarely, if ever, happens.

- For more information about the hearing process in general, see DRM’s guide titled “How to Request and Prepare for a Medicaid Services Appeal,” available at <https://disabilityrightsmd.org/resources/>. This includes more information about how to request a hearing, how to request the state’s record and case file, and how to request telephone testimony if your witnesses are not able to come to the hearing in person.

What if I’m receiving CFC PAS hours but think I need more?

If you are receiving PAS, but think you need more hours to complete your ADLs and IADLs to live safely at home, you should discuss this with your supports planner and then decide if it is in your best interest to request more hours. Once you decide to request more hours, ask your supports planner to submit a “change of status” request for you. To do this, your supports planner will need to know what has changed about your ability to accomplish your ADLs and IADLs since your last assessment and what tasks you need help with that your aide is not currently doing for you. For instance, if previously your son was able to cook for you twice a week, but now he isn’t able to do so, your supports planner would submit a new request and explain the situation. Alternatively, if you have increased pain or decreased stamina, that may then affect your ability to perform your ADLs or change 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 for CFC any longer.*

How should I prepare for a Medicaid fair hearing on my CFC services?

Medicaid appeals allow a person to appeal a denial, reduction, suspension or termination of a service with or without an attorney: you do not need an attorney in order to appeal. Although an attorney can be helpful, people may be successful in Medicaid appeals on their own or with the help of a trusted relative or friend. Make sure to know your rights, to be organized, and to present information that shows your medical need and explains why you qualify for CFC personal care services. Specifically, you should be able to describe why the assessment was in error or how your needs have changed since the assessment was completed, and what will happen without the CFC support you need. The information in the DRM guide on Medicaid appeals (see link above) applies to CFC appeals as well and can be helpful to read.

You will need witnesses and evidence to explain to the administrative law judge that the assessor made an error or that there is new information about your situation. You can be a witness for yourself and testify about your own condition.

To prepare for the hearing, you should request a copy of your most recent CFC assessment—the full interRAI assessment (lettered sections A through T), not just the summary, including all of

the information that the county nurse or social worker recorded when s/he met with you in your home. Reviewing the assessment before the hearing can help you figure out what the assessor may have gotten wrong or missed. You may request a copy of these assessments from your supports planner or from the county health department. Reading these assessments before the hearing will also help you gather additional evidence—such as medical records or a letter from your doctor—to supplement or correct what the nurse/social worker wrote down about your health needs.

If you currently have CFC services and received a notice reducing or terminating those services, you should request the most recent two assessments so you can compare them. If your hours have been reduced or terminated, yet your needs as recorded on the two assessments have not really changed, then that can support an argument that your hours per week shouldn't change. Alternatively, if you now need more assistance—for instance, you have less family support, or your health situation has gotten worse—and that isn't reflected in the more recent assessment, then that can support an argument that it was incomplete.

To show the tasks you need help with, you need to bring copies of an updated, complete task schedule: a chart listing the tasks you need help with each day, ideally in 15-minute intervals. If some of these tasks happen during times in which you currently do not have an aide, you should be able to discuss how those needs are currently being met (or not met). Make sure that the CFC program will cover the tasks, as listed in the regulation at the end of this document.

Remember to bring with you three copies of any document that you want the judge to consider as evidence: one for the administrative law judge (ALJ), one for the attorney representing MDH, and one for you.

Offer of compromise

At the hearing, an attorney from the state Office of the Attorney General (representing MDH) may offer to do a new assessment or may offer a compromise number of weekly CFC hours as a settlement. Think about whether a new assessment would have a better outcome for you. If the state is offering more hours than are authorized in the notice you are appealing, consider whether that number of hours would allow you to continue living independently. If you are willing to settle for fewer hours, then you may be able to discuss that with the MDH attorney prior to the hearing. If you agree to a settlement and later request an increase in hours without a change in circumstance, though, this may make it more difficult to obtain that increase.

When can I expect a decision?

The ALJ will issue a written decision within 30 days of the hearing. If you disagree with that decision, you can appeal to state court within 30 days from the date of the decision. This is done by filing a petition for judicial review in the circuit court in the county where you live or in Baltimore City Circuit Court. It is helpful but not required to have an attorney to assist you in this process.

If your CFC hours are being reduced or terminated, appealing to state court does not automatically stop that from happening; you need to separately file a motion asking the court to pause (or “stay”) the ALJ’s decision so you can retain your current CFC services while you are appealing. You should explain what will happen if the ALJ’s decision goes into effect and your hours are reduced or terminated while you wait for a state court appeal.

Selected Regulations Governing the CFC Program

State CFC regulations are at Code of Maryland Regulations (COMAR) 10.09.84, available at http://www.dsd.state.md.us/COMAR/SubtitleSearch.aspx?search=10.09.84.*. DRM has included here several sections that are most relevant to figuring out which services CFC will cover.

<http://www.dsd.state.md.us/comar/comarhtml/10/10.09.84.14.htm>

.14 Covered Services — Personal Assistance.

A. The Program covers personal assistance services that are approved in the plan of service and rendered to a participant by a qualified provider in the participant's home or a community setting.

B. The Program covers the following services when provided by a personal assistance provider:

- (1) Assistance with activities of daily living;
- (2) Delegated nursing functions if this assistance is:
 - (a) Specified in the participant's plan of service; and
 - (b) Rendered in accordance with the Maryland Nurse Practice Act, COMAR 10.27.11, and other requirements of the Maryland Board of Nursing;
- (3) Assistance with tasks requiring judgment to protect a participant from harm or neglect;
- (4) Assistance with or completion of instrumental activities of daily living, provided in conjunction with the services covered under §B(1)—(3) of this regulation; and
- (5) Assistance with the participant's self-administration of medications, or administration of medications or other remedies, when ordered by a physician.

C. Personal assistance services may not include:

- (1) Services rendered to anyone other than the participant or primarily for the benefit of anyone other than the participant;
- (2) The cost of food or meals prepared in or delivered to the home or otherwise received in the community; or
- (3) Housekeeping services, other than those incidental to services covered under §B of this regulation.

<http://www.dsd.state.md.us/comar/comarhtml/10/10.09.84.02.htm>

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “**Activities of daily living (ADLs)**” means tasks or activities that include, but are not limited to:

- (a) Bathing and completing personal hygiene routines;
- (b) Dressing and changing clothes;
- (c) Eating;
- (d) Mobility, including:
 - (i) Transferring from a bed, chair, or other structure;
 - (ii) Moving, turning, and positioning the body while in bed or in a wheelchair;

and

- (iii) Moving about indoors or outdoors; and
- (e) Toileting, including:
 - (i) Bladder and bowel requirements;
 - (ii) Routines associated with the achievement or maintenance of continence; and
 - (iii) Incontinence care.

[. . .]

- (3) **“Assistance”** means that another individual:
 - (a) Physically performs the activity for the participant;
 - (b) Physically helps the participant to perform the activity;
 - (c) Monitors the participant’s performance of the activity in order to ensure health and safety; or
 - (d) Cues or encourages the participant to perform the activity.

[. . .]

- (11) **“Delegated nursing functions”** means nursing services provided to a participant by an enrolled personal assistance worker under the supervision of a:
 - (a) Registered nurse in accordance with COMAR 10.27.11; or
 - (b) Nurse practitioner in accordance with COMAR 10.27.07.

[. . .]

- (15) **“Instrumental activities of daily living”** [IADLs] means tasks or activities that include, but are not limited to:
 - (a) Preparing meals;
 - (b) Performing light chores that are incidental to the personal assistance services provided to the participant;
 - (c) Shopping for groceries;
 - (d) Nutritional planning;
 - (e) Traveling as needed;
 - (f) Managing finances and handling money;
 - (g) Using the telephone or other appropriate means of communication;
 - (h) Reading; and
 - (i) Planning and making decisions.

[. . .]

- (23) **Personal Assistance Services.**
 - (a) **“Personal assistance services”** means assistance specific to the functional needs of a participant with a chronic illness, medical condition, or disability.
 - (b) **“Personal assistance services”** includes:
 - (i) Assistance with activities of daily living and instrumental activities of daily living; and
 - (ii) The performance of delegated nursing function.

Contact Information

Accuracy confirmed as of March 2018

For more general information about hearing preparation, see DRM's guide on "How to Request and Prepare for a Medicaid Services Appeal," available at <https://disabilityrightsmd.org/resources/>

MDH Contact Information

Fax Number for MDH Appeal Requests: (410) 333-5154
Mailing Address: Maryland Department of Health
Office of Health Services
Attention: Appeals
201 West Preston St., 1st Floor
Baltimore, MD 21201
Email Address for Appeal Requests: Kristina.White@maryland.gov

OAH Contact Information

Main Telephone Number: (410) 229-4100
OAH Fax Number: (410) 229-4266 or -4268
OAH Docket Specialists for MDH: Warda Bekeit (410) 229-4245
Amber McCraney (410) 229-4263
Jean Tepelides (410) 229-4262
Dawn Banks (410) 229-4290
Mailing Address: Office of Administrative Hearings
11101 Gilroy Rd.
Hunt Valley, MD 21031
Postponement Officers: Pamela Johnson (410) 229-4274
Vikki Carter (410) 229-4273

State OAG Contact Information

Fax Number: (410) 333-7894
Mailing Address: Office of the Attorney General
Maryland Department of Health
300 West Preston Street, Suite 302
Baltimore, MD 21202

Maryland Legal Aid Bureau

Baltimore City Office: (410) 951-7777
Baltimore County Office (Towson): (410) 427-1800
Statewide Directory for all other counties: <http://www.mdlab.org/contact>

Maryland Volunteer Lawyers Service

Telephone Number: (410) 547- 6537 (Baltimore metro)
Toll Free: (800) 510-0050
Online intake form: <https://mvlslaw.org/get-legal-help/apply-for-services/>