

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-10
PERSONAL CARE ASSISTANCE PROGRAM**

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1240-08-10-.01 LEGAL BASIS.

The legal basis for the Personal Care Assistance Program is found in Tennessee Code Annotated, Title 71, Chapter 4, Part 12; Rehabilitation Act of 1973, as amended, Sections 101(a)(6) and 103(a) 29 U.S.C. §§ 701(a)(6) and 723 (a); Code of Federal Regulations, Title 34, Sections 361.42; and Code of Federal Regulations, Title 20, Section 404.1576.

Authority: T.C.A. §§ 4-5-202; 71-1-105(12); 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.02 DEFINITIONS.

As used in this chapter, the following terms have the following meanings:

- (1) "Division" means the Division of Rehabilitation Services of the Department of Human Services (also abbreviated "DRS").
- (2) "Eligibility Evaluation Team" is a team of at least two (2) persons, one (1) of whom is a licensed medical professional and one (1) of whom is a licensed occupational or physical therapist. The team is designated by the director of the Division to carry out the duties specified in Rule 1240-08-10-.05.
- (3) "Employed" means engaged in activity of thirty (30) or more hours per week for which the individual receives remuneration at a rate not less than the federal minimum wage. For self-employed individuals, the "net profit" from work activity must equate with this level of remuneration.
- (4) "Family Member" means an individual's parent, grandparent, sibling, child, spouse, spouse's parent, spouse's grandparent, spouse's sibling or spouse's child.
- (5) "Personal Care Assistant Services" (PCA) means services rendered at least five (5) days a week at the times of day which are required by an individual with a significant physical disability, to become physically independent in connection with actual employment. These services include, but are not limited to:
 - (a) Routine bodily functions, personal hygiene, bowel or bladder care;

(Rule 1240-08-10-.02, continued)

- (b) Dressing;
 - (c) Preparation and consumption of food;
 - (d) Moving into, out of, or turning in bed;
 - (e) Bathing;
 - (f) Ambulation and/or mobility; and
 - (g) Any other similar activity of daily living as determined appropriate by the Division.
- (6) "Significant Physical Disability" means a functional loss of both arms and both legs when it is anticipated that the loss will be permanent.
- (7) "Ready for Employment" means an individual, who is in or has been in the rehabilitation process, has completed the rehabilitation plan, has a legitimate job offer, and is within two (2) months of remunerative employment.
- (8) "Impairment Related Work Expense" means those work expenses that are impairment-related and are not reimbursed by a third party, and which are defined and allowed by Social Security Regulations in 20 C.F.R. 404.1576.
- (9) "Day Care Expense" means a work-related child care expense where the cost of child care is necessary to allow a recipient of PCA services to work.

Authority: T.C.A. §§ 4-5-202; 71-1-105(12); 71-4-1201 et seq.; 20 C.F.R. § 404.1576. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.03 PURPOSE AND SCOPE.

- (1) These rules describe policies and procedures for providing participant-directed Personal Care Assistance (PCA) services to eligible individuals through the Division's state-funding program. The Program provides participant-directed PCA services to significantly disabled persons to enable them to enter or maintain remunerative employment. The Program is designed for individuals who are employed or are ready for employment (i.e., have a legitimate job offer), but who need Personal Care Assistance in order to be successful in their employment efforts. An individual must be determined to need PCA services for not less than fourteen (14) hours per week. PCA services subsidy is limited to forty (40) hours per week.
- (2) PCA Subsidies.
- (a) The PCA program provides subsidies to eligible individuals who are in financial need, contingent upon the availability of funds. Eligible individuals are accepted into the Program so long as funds are available.
 - (b) When funds are exhausted, applications will continue to be taken, PCA evaluations performed, and the applications forwarded to the DRS State Office.
 - (c) A waiting list of eligible individuals will be established and maintained by a DRS staff member. Eligible individuals will be placed on the PCA program waiting list in order of the date and time their application was received. As funds become available, eligible

(Rule 1240-08-10-.03, continued)

individuals will receive services in the order they appear on the waiting list. Any individual who is not working or is otherwise ineligible or unable to participate in the PCA program must be removed from the waiting list. If he/she becomes eligible later, this individual must reapply and his/her name will be placed at the bottom of the waiting list based on date of re-application.

- (3) If funds are not adequate to provide a full subsidy, a partial subsidy may be provided to the extent of available funds, except as prohibited by Rule 1240-08-10-.12. An individual receiving a partial subsidy will be the first individual on the waiting list to receive full funding when it becomes available.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.04 GENERAL ELIGIBILITY REQUIREMENTS.

Subject to availability of funds, a participant-directed PCA subsidy will be provided to an individual who:

- (1) Is eighteen (18) years of age or older;
- (2) Has a significant disability;
- (3) Is receiving or has received vocational rehabilitation services;
- (4) Is employed or ready for employment;
- (5) Has a need documented by PCA evaluation for not less than fourteen (14) hours a week of Personal Care Assistance, provided by one other than a family member, to enable the individual to be employed or to maintain employment;
- (6) Has insufficient personal income or other support from public sources or family members, as determined under 1240-08-10-.07 and is not eligible for Personal Care Assistance under other state/federal programs;
- (7) Agrees to establish an employer-employee relationship by recruiting, hiring, firing (if necessary), and supervising the person who provides PCA services;
- (8) Agrees to disclose financial records pertaining to PCA program expenditures upon request by authorized Department of Human Services staff; and
- (9) Is able to demonstrate or establish a means to responsibly manage personal funds.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1203. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.05 APPLICATION AND ELIGIBILITY DETERMINATION.

- (1) Applications for PCA services may be filed at any DRS field office.
- (2) A DRS staff member will meet with the applicant, and complete the application for PCA services (Form PCA-1) and the financial needs test (Form PCA-2). Verification of income is required (i.e., income tax records, paycheck stubs, Clearing House, etc.).

(Rule 1240-08-10-.05, continued)

- (3) If the applicant meets the financial needs test described in Rule 1240-08-10-.07, the DRS staff member will arrange for a PCA evaluation by the eligibility evaluation team, to determine if a need for the PCA service exists and, if so, the approximate number of hours per week. Based on the evaluation, the eligibility evaluation team establishes the number of hours of subsidy per week the individual is to receive, and a PCA Service Plan (Form PCA-3) is developed. The non-financial eligibility determination and the determination of the hours of subsidy per week are based upon the best professional judgment of the team members. Factors that will be considered include the individual's ability or inability to perform normal daily tasks (as enumerated in Form PCA-4) and the time required to perform each.
- (4) The individual is notified in writing of his/her eligibility for a subsidy. The individual and the DRS staff member sign the service plan, and, to the extent that funds are available, subsidy authorizations are issued by the DRS staff member.
- (5) If funds are not available, the individual is notified of same in writing by the DRS staff member and given a priority standing on the waiting list based upon the application date. If a subsequent contact discloses that the individual no longer meets program eligibility requirements, that individual's name must be removed from the waiting list. He/she would then be assigned a new priority standing based on date of application if he/she later meets eligibility requirements again.
- (6) If the individual is determined ineligible to receive a PCA subsidy, he/she is notified in writing. The notice will specify the reason for ineligibility and the right to appeal, as provided in Rule 1240-08-10-.14.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.06 PERSONAL CARE ASSISTANCE RE-EVALUATIONS.

- (1) Each individual determined eligible for a Personal Care Assistance subsidy will have been evaluated by an evaluation team to determine the extent of need for Personal Care Assistance Services pursuant to Rule 1240-08-10-.05.
- (2) Individuals who receive a Personal Care Assistance subsidy must be reevaluated at least annually, to determine the continuing need for PCA services and the extent of that need. If an individual is determined to be eligible for a reduced subsidy because of income changes or for fewer hours of subsidized services, the individual may receive a partial subsidy and will be notified in writing of the reduction.
- (3) If an individual is determined to be ineligible following a reevaluation, he/she will be notified of such in writing as provided in Rule 1240-08-10-.05.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.07 DETERMINATION OF FINANCIAL NEED.

- (1) Financial need and eligibility for PCA services will be determined according to the following formula:

(Rule 1240-08-10-.07, continued)

- (a) Determine the individual's annual income, before taxes, from all sources, including wages, net profit from self-employment, interest, dividends, pensions and disability benefits such as SSDI and SSI. Do not include the spouse's income;
 - (b) Subtract federal income taxes from annual gross income;
 - (c) Subtract standard federal income tax exemptions from the remainder in subparagraph (b). Do not include spouse as an exemption if spouse's income is over five thousand dollars (\$5,000) per year;
 - (d) Subtract FICA and mandatory pension contributions from remainder in subparagraph (c);
 - (e) Subtract "impairment related" work expenses not reimbursed by a third party and which are defined and allowed by Social Security Regulations in 20 C.F.R. 404.1576. The cost of impairment related work expenses exceeding fifteen hundred dollars (\$1,500) (e.g., home or vehicle modifications, durable medical equipment such as wheelchairs) must be spread out over a period of five (5) years in equal amounts;
 - (f) Divide the remainder in subparagraph (e) by two (2);
 - (g) Subtract forty-eight hundred dollars (\$4,800) from the quotient in subparagraph (f).
- (2) After applying the above formula:
- (a) If there is no income remaining, the program shall subsidize PCA services at the maximum allowable rate subject to a maximum of three hundred twenty dollars (\$320) per week;
 - (b) If there is income remaining, the cost of the subsidy for PCA services provided shall be reduced by the amount of that income;
 - (c) If there is income remaining in excess of the maximum allowable amount for a PCA subsidy (three hundred twenty dollars (\$320) per week), the individual is not eligible for a subsidy.
- (3) The PCA program may supplement any other private program for Personal Care Assistance for which the individual is eligible, subject to a maximum of three hundred twenty dollars (\$320) per week. The PCA program may not supplement any state or federal personal care assistance program.

Authority: T.C.A. §4-5-202; 71-1-105(12); 71-4-1204; 20 C.F.R. 404.1576. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.08 AUTHORIZATION AND BILLING PROCEDURE.

When PCA program eligibility has been established, along with the amount of service time needed and a plan has been developed, an Authorization and Invoice form will be issued to the individual by a DRS staff member on a monthly basis. The individual shall be provided with a sufficient quantity of "time logs" to be completed and submitted with the Authorization and Invoice form to the State Coordinator by the 15th of the following month. Any overpayment resulting from the advance payment system must be repaid by the individual.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6,

(Rule 1240-08-10-.08, continued)

1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.09 RATE OF PAYMENT FOR PCA SERVICES.

- (1) The maximum allowable subsidy for services of a personal care attendant is two hundred forty (\$240.00) per week.
- (2) If the eligible individual is responsible for a portion of the cost of PCA services, the amount of the subsidy will be determined by the State Coordinator.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.10 RESPONSIBILITIES OF INDIVIDUALS RECEIVING PCA SERVICES.

As a condition of eligibility for receipt of the subsidy, individuals receiving PCA services are responsible for the following:

- (1) Selecting, hiring, training, and supervising their own personal care attendants. A family member, as defined herein, may not be employed as a personal care attendant.
- (2) Preparing and submitting time logs, authorizations, and other paperwork as directed by a DRS staff member.
- (3) Paying the personal care attendant and accepting full responsibility for the necessary employee withholding of Social Security and Federal income tax (if the latter is applicable) from the PCA subsidy.
- (4) Maintaining a financial record of payment.
- (5) Promptly notifying DRS of any problems or change in the need for PCA services, or change in financial status.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1997. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.11 ANNUAL FINANCIAL REVIEW.

Any significant changes in financial status must be reported by the individual throughout the year as provided in Rule 1240-08-10-.10(5). In addition, a Form PCA-2 will be sent to all individuals by DRS staff in February of each year. This form is designed to update the individual's financial status, and must be completed and returned by June 30th of that year. Failure by the individual to complete and return the form is grounds for termination of PCA services. Individuals applying after March 1st of a year will not be subject to the annual financial review until June 30th of the year following the first full year of service.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-9-10-.12 COMPARABLE BENEFITS.

- (1) If an individual is eligible for PCA services from any other program such as Medicaid, VA, Worker's Compensation, etc., such comparable benefits must be used. An individual eligible or potentially eligible for PCA services under any other state/federal program must apply and provide proof of denial before being determined eligible for PCA services under the DRS program.
- (2) An individual may be able to receive benefits from the DRS PCA program if he or she is eligible to receive PCA services from another private source of funding, but not if the individual receives PCA services from another state or federal program.
- (3) An individual may be eligible to receive benefits from the DRS PCA program if he or she is also receiving benefits that are not PCA services from private, state, or federally funded programs that are not related to personal care assistance.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1203 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.13 TERMINATION OR REDUCTION OF SUBSIDY.

A PCA subsidy may be terminated or reduced whenever a recipient fails to meet any of the eligibility requirements outlined in this chapter. If the subsidy is to be terminated or reduced, a DRS staff member will notify the individual in writing at least thirty (30) days prior to termination or reduction, giving the reasons for the action and the effective date and notifying the individual of the right to appeal that decision.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1201 et seq. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.

1240-08-10-.14 APPEALS PROCESS.

- (1) Any applicant/recipient of services pursuant to this chapter who is aggrieved by a decision as to his/her eligibility, the number of hours approved for PCA services, and/or the amount of the subsidy has the right to request and receive an administrative review and/or a fair hearing pursuant to Chapters 1240-05-01 through 1240-05-09, provided, however, that the maximum hourly rate of the subsidy, as provided in Rule 1240-08-10-.09(1) is not appealable.
- (2) An applicant/recipient of services is not required to request or receive an administrative review as a prerequisite to requesting a fair hearing.
- (3) No applicant/recipient of services pursuant to this chapter may request review by the Secretary of the Federal Department of Education pursuant to 34 C.F.R. § 361.48, unless he/she is being provided vocational rehabilitation services under an Individualized Plan for Employment (IPE) pursuant to Title I of the Vocational Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§4-5-202; 71-1-105(12); 71-4-1201 through 71-4-1209; 34 C.F.R. §361.48. **Administrative History:** Original rule filed December 9, 1986; effective March 31, 1987. Amendment filed April 22, 1997; effective July 6, 1997. Amendment filed December 5, 2003; effective April 29, 2004. Repeal and new rule filed June 30, 2009; effective September 13, 2009.