



MISSILE DEFENSE AGENCY

PERSONAL ASSISTANCE SERVICES

MDA INSTRUCTION 1438.01-INS

February 2, 2021

Office of Primary Responsibility: Human Resources Directorate (DOH)

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DOH

1438.01-INS

References: (a) Rehabilitation Act of 1973 (Section 501 Rule)
(b) Code of Federal Regulations, Title 29, Part 1614, current edition
(c) Executive Order (EO) 13164, July 26, 2000

1. PURPOSE. This instruction establishes procedures for providing Personal Assistance Services (PAS) in accordance with the Rehabilitation Act of 1973 [Reference (a)], 29 C.F.R. § 1614.203(d)(5) [Reference (b)] and Executive Order 13164 [Reference (c)]. This instruction identifies procedures and assigns responsibilities for submitting and processing PAS requests made by MDA employees with targeted disabilities.

2. APPLICABILITY.

a. This instruction applies to all MDA Executives, Managers, Supervisors, and federal civilian employees with targeted disabilities at any of its duty locations.

b. Reference (a) requires federal agencies to provide PAS to employees who, because of a targeted disability, require such assistance to be present in the workplace and participate in work-related travel unless the provision of such services would impose an undue hardship on the Agency.

3. POLICY. It is MDA policy to fully comply with the PAS requirements of Reference (a) and Reference (b). The Agency is committed to providing PAS to qualified employees in order to assure that individuals with targeted disabilities have full access to employment opportunities. MDA will process both oral and written requests for PAS in a prompt and efficient manner in accordance with the timeframes set forth in Paragraph 6.

4. RESPONSIBILITIES.

a. The Executive Director (DX) will:

(1) Exercise the powers of the Director on all matters arising from the responsibilities and functions identified in this issuance not otherwise restricted by higher authority or prohibited by law.

(2) Oversee the PAS policies and procedures.

(3) Promote the use of PAS throughout the Agency.

b. The Director for Operations (DO) will:

- (1) Oversee the implementation of PAS in accordance with law, this instruction, and other applicable DoD policies.
- (2) Ensure sufficient resources (personnel and funds) are provided for the effective and efficient accomplishment of the PAS process.
- (3) Redesignate human resources authorities as necessary to meet operational and functional needs.

c. The Director for Human Resources (DOH) will:

- (1) Exercise overall responsibility for administering PAS procedures.
- (2) Provide advice and guidance to MDA supervisors, managers, and employees regarding PAS requests.
- (3) Designate a Disability Program Manager (DPM) to process PAS requests.
- (4) Ensure training is provided to supervisors, managers, and federal employees regarding PAS.
- (5) Consult, as appropriate, with General Counsel (GC) on PAS requests.
- (6) Submit PAS data to the Director for Equal Opportunity and Diversity Management (EO) for external reporting requirements, as required.
- (7) Ensure employees providing PAS are fully employed throughout the day by assigning other duties when not performing PAS activities.

d. The Director of Equal Opportunity and Diversity Management (EO) will:

- (1) Submit reports to the Equal Employment Opportunity Commission (EEOC) and other federal agencies, as required, regarding MDA's PAS activity and compliance.
- (2) Provide advice and guidance to the DX, DO, DOH, DPM, supervisors and managers, and employees regarding PAS.

e. The Disability Program Manager (DPM) will:

- (1) Process all requests for PAS.
- (2) Coordinate with GC, supervisors, and managers on PAS issues and the interactive process.

(3) Assist in obtaining appropriate documentation supporting a PAS request (such as medical documentation) as part of the interactive process.

(4) Provide advice to supervisors, managers, and federal employees on options for appropriate action in response to PAS requests.

(5) Provide training to supervisors, managers, and federal employees regarding PAS and the interactive process.

(6) Ensure the MDA Form 23, "Request for Personal Assistance Services," and MDA Form 24, "Resolution of Personal Assistance Services Request" is completed and maintained with the PAS record.

(7) Compile and provide data to DOH and EO on requests for PAS from federal employees, and use the PAS data to conduct an ongoing assessment of the MDA PAS program.

f. The General Counsel (GC) will provide legal advice to Agency officials regarding PAS matters.

g. The First-Level Supervisor will:

(1) Serve as MDA's decision maker on PAS requests.

(2) Consult with the DPM and GC, when necessary, no later than 2 business days after receipt of a PAS request. If the supervisor grants the request, they will work with the DPM to ensure PAS is provided within the applicable time limits.

(3) Participate in the interactive process with other interested parties.

h. The Second-Level Supervisor will:

(1) Serve as MDA's final decision maker if a federal employee requests reconsideration.

(2) In consultation with the DPM and GC, respond to appeals for reconsideration within 10 business days.

i. The Federal Employee/Person with the Targeted Disability (PWTD) (or a third party on behalf of the employee) will:

(1) Initiate the PAS request using MDA Form 23. If making an oral request, follow up with the MDA Form 23.

(2) Provide medical documentation within 15 business days (except for extenuating circumstances) supporting the request.

(3) Participate in the interactive process with the first level supervisor, GC (when necessary), and the DPM, to provide a resolution to the PAS request in a prompt, fair, and efficient manner.

5. ELIGIBILITY. An MDA federal employee is eligible for PAS if:

- a. The individual is an employee of the Agency,
- b. The individual has a targeted disability,
- c. The individual requires services because of their targeted disability,
- d. The individual will be able to perform the essential function of the job, without posing a direct threat to safety, once PAS and any reasonable accommodations have been provided, and
- e. Providing such services would not impose undue hardship on the Agency.

6. PROCEDURES.

a. Requesting Personal Assistance Services (PAS).

(1) An employee may request PAS by informing any official listed in Paragraph 6.a.(3) that they need assistance with daily life activities because of a targeted disability.

(2) A list of targeted disabilities can be found on the Office of Personnel Management Standard Form 256 "Self-Identification of Disability," and are identified in Part II of the Glossary of this instruction.

(3) The PAS request may be made orally and/or in writing to any of the following MDA officials:

- (a) DPM.
- (b) An employee's first-level supervisor.
- (c) An employee's second-level supervisor.
- (d) DOH.
- (e) EO.

(4) Any official receiving the request, other than the DPM, must forward the request to the DPM within 2 business days.

(5) A request does not have to use any special words, such as Section 501, EEOC regulations explicitly, or use terms such as “PAS” or affirmative action to trigger MDA’s obligation to consider the request.

b. Written Request for Record-Keeping Purposes.

(1) When an employee makes an oral request for PAS, the employee should follow up the oral request in writing by completing the MDA Form 23. The written request is used to maintain accurate records regarding PAS requests.

(2) The DPM will begin processing the oral request as soon as it is made without waiting for the employee to follow up with the written request.

c. Processing the Request. While the DPM has the responsibility for processing and tracking requests for PAS, they work closely with the requestor’s supervisor to gather relevant information so the supervisor can appropriately assess and respond to the request.

d. Interactive Process.

(1) After an employee makes a request for PAS, the next step is for the stakeholders to begin the interactive process. The interactive process is the dialogue between the employee, the supervisor, the DPM, the GC (when necessary), and any other interested party with the objective of completing requests in a timely and effective manner.

(2) The DPM will contact the federal employee within 5 business days after receipt of the request to begin discussing the PAS request.

e. Timeframes for Processing Requests.

(1) PAS requests will be processed as soon as possible, but no later than 30 business days (absent extenuating circumstances) from the date the DPM receives the request.

(2) If the DPM or a health care provider acting on behalf of MDA requests medical information or documentation from a requestor’s doctor or other health professional, the timeframe will stop on the day the request is made to the individual to obtain medical information or sends a request for information. The process will resume on the day acceptable medical information is received by the DPM or health care provider making the request.

(3) When extenuating circumstances are present, the time for processing a PAS request and providing the service will be extended as reasonably necessary. Extensions will be limited to circumstances where they are necessary and only for as long as required to deal with the extenuating circumstances.

(4) If there is a delay in processing a PAS request, the DPM must notify the employee in writing of the specific reasons for the delay, and to the extent possible, keep the employee informed of the date on which MDA expects to complete the process.

(5) The DPM will work with the employee and management official to explore alternatives to mitigate the adverse effect of any delay.

f. Medical Information.

(1) When the disability or need for PAS is not obvious, MDA may require medical documentation to determine whether the individual requesting PAS has a targeted disability. Only the DPM or a health care provider designated by MDA may determine whether medical information is needed and request such information from the individual and/or the appropriate health professional.

(2) The DPM may request information about the targeted disability, the activities it limits, and the need for PAS, but only if the targeted disability is not obvious, or if the information submitted by the individual is insufficient for the deciding official to make an informed determination. Specifically, the DPM may request information regarding:

- (a) The nature, severity, and duration of the individual's impairment.
- (b) The activity or activities the impairment limits.
- (c) The extent to which the impairment limits the individual's ability to perform the activity or activities.
- (d) The reason(s) the individual requires PAS and how PAS will assist the individual to be present in the workplace and enjoy the benefits of the workplace.

(3) It is the employee's responsibility to provide all medical information requested within 30 business days. The failure to provide appropriate documentation or to cooperate with efforts to obtain such documentation may result in a denial of the PAS request.

(4) If the initial information provided by the health professional or volunteered by the requestor is insufficient to enable the DPM to determine whether the individual has a targeted disability and/or that PAS is needed, the DPM or a health care provider designated by MDA will explain why the documentation is insufficient and what additional information is needed. If necessary, the individual should ask their health care provider or other appropriate professional to provide the requested information. The DPM may also give the individual a list of questions to give to the health care provider or other appropriate medical professional to answer.

g. Confidentiality Requirements.

(1) Under Reference (a), medical information obtained in connection with the PAS process must be kept confidential. All medical information MDA obtains in connection with a request for PAS must be kept in a separate file. This includes the PAS request, approval/disapprovals, and information about functional limitations. Any MDA employee who obtains or receives such information is also strictly bound by these confidentiality requirements.

(2) The DPM may share certain information with an employee's supervisor or other MDA official(s) as necessary to make appropriate determinations on a PAS request. Under these circumstances, the DPM will inform the recipients about the confidentiality requirements, and those individuals may not disclose this information except as follows:

(a) To supervisors and managers who need to know may be told about necessary adjustments to the work environment/facilities.

(b) To first aid and safety personnel if the targeted disability might require emergency treatment.

(c) To workers compensation offices or insurance carriers, when required.

(3) Supervisors are not permitted to discuss specific details about an individual's PAS request with peers or subordinates. Supervisors will consult with the DPM and GC prior to answering any specific questions from the individual's co-workers.

h. Selection of PAS Providers.

(1) MDA's preferred method of selecting a service provider will be through a contracted vendor centrally funded and managed through DOH. To the extent possible, a service provider will provide PAS to more than one employee.

(2) MDA will give consideration to the employee's PAS provider of choice, to the extent permitted by law. This will be determined on a case-by-case basis, and it may not be possible to honor the employee's preference. MDA may choose a different PAS provider as appropriate. For example, if the PAS is unable to obtain appropriate credentials for entry into the facility or costs otherwise dictate.

(3) Provided there is no cost to MDA, an employee may request to bring their own PAS provider to work if the employee does not request MDA to assume the cost of providing the services, and if the provider can obtain security credentials and meet all other requirements for entry into MDA facilities. MDA may grant or terminate this arrangement at its sole discretion when it determines it is no longer appropriate to allow it.

i. Approval of PAS Request.

(1) When a request for PAS is approved, the deciding official and the DPM will give the MDA Form 24, "Resolution of Personal Assistance Services Request," to the requestor, and discuss implementation of the request.

(2) If the PAS request is approved but cannot be provided immediately due to extenuating circumstances, the DPM will inform the individual in writing of the projected timeframe for providing the services.

(3) MDA may provide a PAS different from the one requested provided it is equally effective as the one requested. Approval of an alternate service is a modification rather than a denial of a PAS request. The deciding official will provide written notification explaining the reason for the rejection of the service requested and the reason(s) when the chosen alternative is deemed to be equally effective.

j. Denial of PAS Request.

(1) The deciding official must coordinate with GC and the DPM before denying a PAS request and informing the requestor of the denial. The deciding official must provide documentation that demonstrates the effort made to explore, other options for services. When the deciding official denies a request for PAS, they must notify the requestor of the denial in writing.

(2) If MDA denies an individual's request for PAS, the deciding official will give the MDA Form 24, "Resolution of Personal Assistance Services Request," to the requestor and discuss the reason(s) for the denial.

(3) When completing the form, the explanation for denial will clearly state the specific reason(s) for the denial. The supervisor cannot simply state a PAS request is denied because of undue hardship or because it would be ineffective. The form will state specifically why the request would result in undue hardship or why it would be ineffective.

k. Reconsideration Process. An individual dissatisfied with the resolution of a PAS request may file a written appeal to their second-level supervisor within 10 business days of receiving the decision. The second-level supervisor will issue a response to the appeal within 10 business days of receipt of the request for reconsideration. The second-level supervisor serves as the final MDA decision-maker on requests for reconsideration of denials.

l. Equal Employment Opportunity (EEO) Complaints. If an individual wants to file an EEO complaint pursuant to part 1614 of Title 29, Code of Federal Regulations [Reference (b)], they must contact the Office of Equal Opportunity and Diversity Management within 45 calendar days from the date they received written or verbal notification (whichever occurs first) of the final denial of their request for PAS.

7. EFFECTIVE DATE. This instruction is effective immediately.

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LAURA M. DESIMONE
Executive Director

Enclosure
Glossary

ENCLOSURE

GLOSSARY

PART I. ACRONYMS

DO	Director for Operations
DOH	Director for Human Resources
DPM	Disability Program Manager
DX	Executive Director
EO	Director of Equal Opportunity and Diversity Management
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
GC	General Counsel
MDA	Missile Defense Agency
PAS	Personal Assistant Services

PART II. DEFINITIONS

interactive process. A dialogue between the employee requesting PAS, their supervisor, and the DPM that determines the employee's eligibility to receive PAS and the services required in order to participate in the workplace or work-related travel. The interactive process begins upon receipt of the employee's request for PAS, occurs throughout the processing of the request, and continues after PAS has been approved to ensure the employee's need for PAS has been met.

PAS for official travel. When work-related travel results in the employee's inability to rely on their usual source of PAS, MDA must provide PAS at all times (both work and off-work hours) during the work-related travel, independent of the new regulations, as a reasonable accommodation (absent undue hardship). Additionally, even if employee's usual PAS provider is available during work-related travel, MDA is required to pay any additional costs related to providing PAS while on travel, such as transportation costs for the PAS provider, as a reasonable accommodation. MDA also has the option of arranging for PAS at the destination site, rather than paying for the employee's own PAS provider to travel with them, as long as it is considered effective. MDA may cover the PAS provider's travel costs in various ways, depending on the type of PAS provider (e.g. family member or spouse or other provider, federal employee, or contractor). Applicable policies or regulations as set forth in the Department of Defense (DoD) Joint Travel Regulations and/or as outlined in the contract shall be followed.

PAS during telework. MDA is required to provide PAS during telework if the individual is entitled to PAS and is entitled to telework under MDA's telework policy or as a reasonable accommodation. Permission to telework should not be revoked solely due to an employee's

need for PAS. The determination of whether PAS can be provided to an employee while teleworking should be made on a case-by-case basis.

Personal Assistance Services (PAS). Assistance with performing activities of daily living that an individual would typically perform if they did not have a disability, and that is not otherwise required as a reasonable accommodation, including assistance with removing and putting on clothing, eating, and using the restroom. These services are needed by individuals whose specific disabilities make it difficult for them to perform such activities on their own. PAS does not include services of a medical nature such as administering shots or monitoring blood pressure, and does not include assistance with commuting to and from work.

Personal Assistance Services (PAS) provider. An employee or independent contractor whose primary job functions include provision of personal assistance services. The PAS provider can provide the service to more than one individual, and can perform tasks unrelated to PAS, but only to the extent that doing so does not result in failure to provide services in a timely manner. If MDA is hiring a PAS provider to assist a single individual, the employee's preferences will be considered to the extent permitted by law.

Providing PAS to a single individual. In determining a PAS provider for a single individual, MDA must give primary consideration to the requestor's preferences to the extent permitted by law. In some cases, the employee who needs PAS will be able to recommend a provider, and may also be able to get a referral from a local center for independent living or a state vocational rehabilitation agency. The option of using a family member or spouse as a PAS provider can also be considered.

Providing PAS to more than one employee in the Agency. If there is more than one employee requiring PAS in the organization, MDA may use a pool of PAS providers, rather than assign one PAS provider to each employee, so long as the services are provided in a timely manner.

Providing provisional PAS. MDA recognizes it may take an extended period of time between when the request for PAS is approved and when PAS is implemented, due to the nature of federal recruitment and contracting. In the event that provisional PAS is required, the employee's first-line supervisor and coworkers may volunteer to assist with minimal non-personally invasive tasks to support the employee, such as, but not limited to, removing and putting on a coat, opening doors, retrieving items in the workplace that are out of reach, and replenishing water. If volunteer assistance by the employee's first-line supervisor or coworkers is being considered, the supervisor should seek advice from legal counsel before agreeing to such an arrangement. Employees who do not perform PAS as a primary job function shall not assist employees who require PAS with personally invasive tasks that they may not be qualified to perform, such as feeding, toileting, bathing, or lifting or moving employees from vehicles, beds, or wheelchairs. Until a contract is secured or a billet is in place, interim arrangements can be made for performing these more personal tasks through exploring the availability of local resources or providing temporary base access to spouses or family members who can assist with PAS.

reasonable accommodation. A change to the work environment or the way things are usually done that allows an individual with a disability to apply for a job, perform the essential functions of the position, or enjoy equal access to benefits available to other individuals in the workplace. Reasonable accommodation differs from PAS as the assistance or modification provided as an accommodation is directly related to the performance of job-related tasks. Examples of an accommodation include providing a reader to enable individuals who have visual impairments to read printed text, or a sign language interpreter to facilitate deaf-to-hearing communication.

targeted disabilities. A subset of disabilities deemed to be severe. The federal government has recognized that qualified individuals with targeted disabilities face significant barriers to employment, above and beyond the barriers faced by people with the broader range of disabilities. The targeted disabilities are provided on the Office of Personnel Management's Standard Form 256, "Self-Identification of Disability." The October 2016 version of the form identifies the following as targeted disabilities:

- Developmental Disability, for example, autism spectrum disorder;
- Traumatic Brain Injury;
- Deaf or serious difficulty hearing, benefitting from, for example, American Sign Language, CART, hearing aids, a cochlear implant and/or other supports;
- Blind or serious difficulty seeing even when wearing glasses;
- Missing extremities (arm, leg, hand, and/or foot);
- Significant mobility impairment, benefitting from the utilization of a wheelchair, scooter, walker, leg brace(s), and/or other supports;
- Partial or complete paralysis (any cause);
- Epilepsy or other seizure disorders;
- Intellectual disability;
- Significant Psychiatric Disorder, for example, bipolar disorder, schizophrenia, PTSD, or major depression;
- Dwarfism; and
- Significant disfigurement, for example, disfigurements caused by burns, wounds, accidents, or congenital disorders.

undue hardship. The term "undue hardship" is based on an individualized assessment of established factors that show a request for PAS would cause significant difficulty or expense. Determinations are made in accordance with the law on a case-by-case basis, considering all relevant factors including the nature and cost of the request and its impact on MDA operations.