

## **APPEAL POLICY**

75-08-01-14 Administrative Review Procedures

### **I. Purpose**

Applicants and eligible individuals, or the individual's parent, legal guardian or authorized representative, have the right to timely appeal any decision made by the Division of Vocational Rehabilitation (DVR) concerning the provision or denial of vocational rehabilitation (VR) services.

Individuals may appeal any of the following:

1. The individual is denied the right to apply or reapply for VR services;
2. The individual is determined ineligible for VR services;
3. Any DVR action concerning the denial, suspension, reduction or termination of VR services under an Individualized Plan of Employment (IPE)

Options in the appeal process include:

1. Informal review (IR),
2. Mediation and/or,
3. Impartial due process hearing (hearing).

Individuals have the choice of participating in any or all of the appeal process options. DVR will not use the informal review or mediation to deny or delay the individual's right to a hearing.

An individual and/or their authorized representative must be informed in writing of their right to appeal DVR's decisions and of the Client Assistance Program (CAP):

1. At the time the individual applies for services;
2. At the time the IPE is developed;
3. Upon the reduction, suspension or termination of VR services; and
4. At the time the individual is assigned to an order of selection category, if DVR is on an order of selection.

VR services include evaluation and assessment, IPE development, and those services being provided under a current IPE. VR services may not be suspended, reduced or

terminated during the appeal process unless there is evidence the services were obtained through misrepresentation or fraud.

An appeal of a DVR decision must:

1. Be made in writing to: Chief of Field Services, 1000 E. Divide Ave, Bismarck, North Dakota 58501 fax (701) 328-1884;
2. Be made within thirty (30) days after the date DVR notifies the individual of the decision that is being appealed;
3. Clearly identify the DVR decision that is being appealed;
4. Clearly and concisely set out the reasons for the appeal; and
5. Be signed and dated by the individual or his/her legal guardian.

Disability related accommodations will be provided for the review, if required and approved in advance. The individual must notify Chief of Field Services if requesting disability related accommodations.

An individual has the right to present evidence and to have representation during the appeal process. DVR will not pay for an individual's representation or related legal fees.

## **II. Definitions**

Days: means calendar days.

Good Cause: Adequate or substantial grounds or reason to take a certain action.

Impartial due process hearing (hearing): a formal review of a decision regarding the provision of VR services before an impartial hearing officer.

Impartial hearing officer/mediator:

1. Is not an employee of a VR agency;
2. Is not a member of the State Rehabilitation Council (SRC);
3. Has not been involved previously in the vocational rehabilitation of the individual;
4. Has knowledge of the delivery of VR services, the State plan, and the Federal and State regulations governing the provision of services; and
5. Has no personal, professional, or financial interest that would cause bias with the objectivity of the individual.

Informal Review (IR): optional informal dispute resolution process available to an individual who is dissatisfied with a decision regarding any determination that affects the provision of VR services.

Mediation: a formal process of using an independent third party to act as an intermediary, mediator, or conciliator to assist in settling disputes prior to pursuing formal administrative or other legal remedies.

Written request: any form of permanent communication.

### **III. Process**

#### **A. Informal Resolution at the Local Level**

Prior to beginning the appeal process, if the VR counselor and the individual cannot resolve an issue, the concern should be brought to the attention of the local VR Regional Administrator, by either party in an attempt to come to an informal resolution. Often the VR Regional Administrator may help to resolve the issue, providing a timely resolution. The individual must also be given information about CAP at this time.

If the dispute cannot be resolved informally at the local level, the individual must be given written information about the right to appeal the decision.

#### **B. Informal Review (IR)**

An IR is an informal dispute resolution process. Participation in an IR does not waive the individual's rights to mediation or hearing.

An individual is not required to go through an IR in order to have a hearing, although it is strongly recommended. The IR has proven to be very effective in resolving disputes in a timely manner and hearing officers often expect that all other avenues have been exhausted prior to conducting a hearing.

Steps in the IR process (see Table 1 in this policy for more information):

1. A written request for an IR is made to the Chief of Field Services within thirty (30) days of the disputed DVR decision. The request must be specific as to the decision being appealed.

Even though the individual may not have specifically requested a hearing, the receipt of the request for a review of a decision initiates the sixty (60) day period in which a hearing must be conducted, unless an extension is agreed to by both parties.

2. The Chief of Field Services will either conduct the review or delegate the responsibility to another DVR employee who has had no previous involvement in the case.
3. The Chief of Field Services will ensure that the IR will be conducted within fifteen (15) days of receipt of the original request or at a time mutually agreed to by the parties involved, ensuring that the entire appeal process can be completed within sixty (60) days, unless the parties agree to a specific extension of time.
4. The review will be held at a time and place convenient to the individual, generally at the local DVR office. DVR will provide appropriate communication

methods for those individuals who have a sensory impairment. An interpreter will be provided for those individuals who cannot communicate in English. The individual will be provided transportation to and from the review site as needed. DVR will not pay for an individual's representation.

5. Failure of the individual to appear at the scheduled review or to be available for a telephone interview is a waiver of the right to an IR. The Chief of Field Services may dispose of the matter, or if the defaulted party submits a request for rescheduling within fifteen (15) days for good cause, the IR will be rescheduled.
6. The Chief of Field Service or the designee will make an effort to render a decision and to develop a written agreement with the individual by the close of the IR. If this is not possible, the Chief of Field Services or their designee must notify the individual and/or their representative in writing of the decision within ten (10) days of the IR, unless circumstances require additional time. If that occurs, the Chief of Field Services or the designee will notify the individual and/or their representative of the delay and the timeframe for the decision.
7. The Chief of Field Services will send the decision to the Director of Vocational Rehabilitation, the involved counselor(s) and the involved VR Regional Administrator and document the decision in the *AWARE* case management system.
8. If the Chief of Field Services or the designee is unable to resolve the matter to the satisfaction of the individual, the individual will be provided with information on the individual's right to other options in the appeals process: mediation or a hearing. The individual must notify DVR within fifteen (15) days of the IR decision that he/she wishes to proceed with mediation or a hearing.
9. The results of the IR are binding for DVR unless the decision of the Chief of Field Services or the designee is not permitted by law or the individual requests mediation or a hearing.

### **C. Mediation (see Table 1 in this policy for more information)**

Mediation is the formal process of using an independent third party to act as an intermediary to assist in settling disputes prior to pursuing formal administrative or other legal remedies.

Mediation is a voluntary process and will be held only if both parties agree to be involved in the process. At any point in the mediation process, either party involved or the mediator may elect to terminate the mediation.

Mediation cannot be used to deny or delay the individual's right to pursue a hearing.

The Chief of Field Services may deny a request for mediation in cases where it is not likely mediation will resolve the issue. In such cases, the individual may request a hearing. DVR will notify the individual of the mediation denial in writing within ten (10) days of receiving the mediation request.

Mediation must be conducted by a qualified mediator who is knowledgeable of the VR program.

Discussions that occur during mediation must be kept confidential and may not be used as evidence in a later hearing.

There is no appeal of a mediation agreement as it is an agreement between DVR and the individual and is not imposed on either DVR or the individual by a third party. In the event a mediation agreement is terminated, neither party is bound by the terms of the mediation agreement and either party may then pursue resolution of the disputed DVR decision through a hearing.

DVR pays the cost of mediation but does not pay for representation for the individual.

Steps in the process (see Table 1 in this policy for more information):

1. A written request for mediation is made to the Chief of Field Services within thirty (30) days of the disputed DVR decision or within fifteen (15) days of the Informal Review. The request must be specific as to the decision in question.

Even though the individual may not have specifically requested a hearing, the receipt of the request for mediation begins the sixty (60) day period in which a hearing must be conducted. A request for mediation following an IR does not begin a new sixty (60) day period.

2. The mediator will develop a written agreement, if an agreement between both parties is reached, to be signed by the individual, the mediator and the Chief of Field Services. The mediation agreement must be completed and signed within fifteen (15) days of the final verbal agreement.
3. If an agreement is not reached through mediation, the individual has the right to a hearing without submitting a written request for a hearing to DVR.
4. If the mediation agreement is not adhered to, the individual may request a hearing.

#### **D. Impartial Due Process Hearing**

An impartial due process hearing is a formal review of a DVR decision before an impartial hearing officer. An individual who is dissatisfied with any decision concerning the delivery of VR services may request a hearing without going through an IR or mediation.

Steps in the process (see Table 1 in this policy for more information):

1. A written request for a hearing is made to the DVR Chief of Field Services within thirty (30) days of the disputed decision. The request must be specific as to the decision in question and signed by the individual or their representative.

2. The hearing shall be conducted within sixty (60) days of receipt of the individual's request for review, unless informal resolution is achieved prior to the 60<sup>th</sup> day or the parties agree to an extension.
3. The hearing must be held before an attorney working in the Department of Human Service's Legal Advisory Unit.
4. The impartial hearing officer shall issue a written report of the findings and decision of the hearing within thirty (30) days of the completion of the hearing.
5. The decision of the impartial hearing officer must be made in compliance with federal and state laws and regulations, 34 CFR Part 361.57 and the subsequent implementing DVR policies.
6. The recommendation of the hearing officer becomes the decision of the division unless, within twenty days of issuance of the hearing officer's recommended decision, the director of the division notifies the claimant, in writing, of the director's intent to review the recommendation (per NDCC 75-01-03-02).

#### **E. Overview of Appeal Process**

The table below summarizes the appeal process options available once the dispute has moved beyond the local level.

**Table 1. Overview and Timeline of DVR Appeal Process**

<b>Day</b>	<b>Informal Review (IR) Appeal Process</b>
Day 1	DVR receives a written request for a review of a decision within 30 days of decision.
By Day 10	Individual agrees to IR. IR is scheduled.
By Day 15	IR is completed.
By Day 22	Individual and/or representative, VR Regional Administrator manager, and counselor notified of decision.
By Day 37	Individual does not agree with IR decision and requests a hearing or mediation.  DVR schedules a hearing or mediation.
By Day 60	Hearing occurs within 60 days of request unless both parties agree to an extension.

<b>Day</b>	<b>Mediation Appeal Process</b>
Day 1	DVR receives a written request for a review of a decision within 30 days of decision.
By Day 10	Individual chooses mediation prior to a hearing.  DVR reviews the request for mediation.  If DVR denies request, the individual is offered a hearing in the denial letter. The individual must notify DVR within fifteen (15) days if a hearing is desired.  If DVR agrees to mediation, a mediator is notified and mediation is scheduled.  The time required for mediation is included in the sixty (60) day requirement to conduct a hearing.
By Day 60	Hearing occurs within 60 days of request unless both parties agree to an extension.

<b>Day</b>	<b>Hearing Appeal Process</b>
Day 1	DVR receives a written request for a review of a decision within 30 days of decision.
By Day 10	Individual bypasses IR and mediation.  Request for hearing is acknowledged.  DVR proceeds to notify DHS Legal Unit of the individual's request for a hearing.
By Day 60	Hearing occurs within 60 days of request unless both parties agree to an extension.