

APPEAL RIGHTS AND CONFIDENTIALITY

AUTHORITY

The Rehabilitation Act of 1973 as amended: Sections 20, 102(c), and 112(a)

Federal Regulation: CFR 361.38

State Administrative Regulation: 781 KAR 1:010

*For the purpose of this manual, use of the terms **must** or **shall** reflect requirements of Federal law or regulation or state law or administrative regulation and must be adhered to strictly.*

CONSUMER APPEALS

Each individual applying for or receiving services must be informed of the appeals opportunities available, including the names and addresses of individuals with whom appeals may be filed. This information is provided to each applicant in the Consumer Guide. An individual may appeal any action concerning the furnishing of or denial of Vocational Rehabilitation services within sixty (60) days of becoming aware of the action. An appeal may be requested in writing; by telephone through direct contact with the Director of Program Services or a designee; or on tape. A voice mail message does **not** constitute a request for a hearing.

The counselor should make every effort to rectify situations as they develop through communication and negotiation. If, however, the dispute is such that a resolution cannot be reached, the applicant or eligible individual has the option of requesting an informal review, mediation or impartial hearing. Requests must be made to the Director of Program Services or his/her designee. Regardless of the option chosen, an impartial hearing must be conducted within sixty (60) days of this request unless an informal resolution is achieved or the parties agree to a specific extension of time, not to exceed one (1) year. Requests for informal administrative review and mediation begin the 60-day time clock for conducting a hearing.

The applicant or eligible individual shall at the time of requesting a hearing identify accommodations required and submit an issue statement for the hearing. The individual will be notified in writing by the Director of Program services of the right to be represented by counsel or representative and will be informed of the availability of services from the Client Assistance Program (CAP). The Department shall not be responsible for any fees incurred by the individual for legal services.

Pending a final determination of a hearing or other final resolution, services provided under an Individual Plan of Employment shall **not** be suspended, reduced, or terminated unless:

- services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant or eligible individual.
- the applicant or eligible individual, or an authorized representative requests such action.

NOTIFICATION OF RIGHTS AND PROCEDURES FOR FILING AN APPEAL

The counselor shall supply each applicant or eligible individual with a copy of the Consumer Guide during the application process that provides information of appeal rights and procedures and explain these rights in a way that the client can fully understand. The counselor shall also advise all applicants and eligible individuals of the existence of the Client Assistance Program (CAP), the services provided by the program, and how to contact the program representatives. The individual will be reminded of this information during IPE development; whenever services are reduced, suspended or ceased; and as appropriate throughout the rehabilitation process.

INFORMAL ADMINISTRATIVE REVIEW

The applicant or eligible individual may chose to utilize the informal administrative review process to resolve disputes prior to an impartial hearing but is in no way required to use it. Once elected, the individual may halt the informal proceedings at anytime and pursue an impartial hearing. Even when an informal process is chosen, an impartial hearing must be conducted within sixty days of the request unless a satisfactory resolution is reached prior to that time or both parties agree to an extension of time not to exceed one year. An informal administrative review consists of a complete review of the case documentation, an examination of the individual's complaint including a determination of the degree to which the Department's policies and procedures were observed in the conduct of the case. It will also include a personal interview with the individual and/or his or her representative and the pertinent Department staff involved. The Director of Program Services or his/her designee will select an administrator from a district not involved in the action. The administrator will schedule and conduct the review within ten (10) days, either in person or by teleconference. The results of the informal review may support the actions of the counselor in the case or support the claims of the individual.

Within five (5) days the Administrator will provide a written determination to the individual, his or her representative and the Department.

The written determination will state the facts upon which the decision is based and include procedures for requesting mediation and/or an impartial hearing and information on the availability of the Client Assistance Program (CAP) should the client wish to pursue other options. The informal review decision is binding for involved Department personnel.

MEDIATION

The applicant or eligible individual may chose to utilize mediation to resolve disputes prior to an impartial hearing but is in no way required to use it. Once elected, the individual may halt the informal proceedings at anytime and pursue an impartial hearing. Even when an informal process is chosen, an impartial hearing must be conducted within sixty days of the request unless a satisfactory resolution is reached prior to that time or both parties agree to an extension of time not to exceed one year. Mediation is an alternative form of dispute resolution in which a neutral third party facilitates a voluntary agreement between the disputing parties.

The mediation process is voluntary on the part of the consumer and the Department. It will not be used to deny or delay the right of a consumer to a hearing. The Department shall maintain a list of qualified, impartial mediators, who are trained in effective mediation techniques. These mediators will be knowledgeable in the laws (including regulations) relating to the provision of Vocational Rehabilitation services under the Rehabilitation Act as well as disability issues in general. The Director of Program Services or his/her designee shall choose a mediator from this list and schedule a mediation meeting within five (5) days. The specific meeting place must be agreed upon by all parties involved in the dispute and should include accommodations for full participation of the individual. The terms and guidelines for the mediation process will be initiated by the mediator and will be reviewed and approved by both parties prior to meeting.

A consumer can withdraw from mediation at any time and request an impartial hearing or an informal administrative review. A dispute may be resolved prior to mediation. Mediation cannot be used to deny or delay the right of the applicant or eligible individual to an impartial hearing or to deny any other right afforded under the Rehabilitation Act.

The Parties: The parties involved in the session will be the mediator, the consumer and his/her representative and pertinent Department staff. The Department will have a representative in attendance, who is authorized to bind the Department to an agreement.

The Mediation Session: The mediator will open the session and each party will in turn be provided with an opportunity to present his or her position. The mediator will then ask questions to help the parties understand each other and the issues as well as to identify areas of impasse. The purpose is to open up communication in order to identify common ground and brainstorm possible solutions. At times it may be necessary for the mediator to meet privately in caucus with the individual parties to facilitate open communication.

The Mediation Agreement: Any agreement reached by the parties during this mediation process shall be set forth in a written mediation agreement. The mediator will act as scribe for the parties' agreement, which will then be signed by the parties.

The mediation agreement will be effective immediately unless the consumer wishes to have the agreement reviewed by counsel or representative during a three-day review period. If the consumer discovers a problem with the agreement during the three-day review period, he or she can request to return to mediation or can move forward with an impartial hearing or informal administrative review.

Confidentiality During The Mediation Process: Discussions that occur during the mediation process shall be held in strict confidence and shall not be used as evidence in any subsequent review, hearing or civil procedure. The parties involved in the mediation process may be required to sign a confidentiality pledge prior to the beginning of the process. Any notes or papers created and shared during the mediation process will be shredded excluding the mediation agreement.

IMPARTIAL HEARING (APPEAL)

The purpose of the hearing is to provide an individual who is dissatisfied with a Department action or inaction the opportunity to present evidence and information before an impartial hearing officer who will make a determination based on the evidence presented. At the time of requesting an impartial hearing, the applicant or eligible individual shall provide an issue statement for the hearing officer and identify accommodations required for the hearing (e.g. accessible formats for printed materials or an interpreter). An impartial hearing must be conducted within sixty (60) days of this request unless an informal resolution is achieved or the parties agree to a specific extension of time, not to exceed one (1) year. Requests for informal administrative review or mediation begin the 60-day time clock for conducting a hearing.

The hearing will be conducted by an impartial hearing officer randomly selected from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the Department and the Statewide Council for Vocational Rehabilitation. The hearing officer must have knowledge of the delivery of vocational rehabilitation services and the related Federal and State laws and administrative regulations. The hearing officer will not be involved in any hearing in which the officer has been involved in previous decisions regarding the applicant or eligible individual nor in any decision in which personal or financial interest might interfere with objectivity.

CONDUCT OF HEARING

The following is a summary of the conduct of a fair hearing. For specific details, consult KRS Chapter 13B.

Pre-hearing Conference: The hearing officer may convene and conduct a pre-hearing conference upon reasonable notice to all parties. This pre-hearing conference may deal

with clarification of issues, rulings on witnesses, and other matters that will promote the orderly and prompt conduct of the hearing.

Hearing: The hearing officer will preside over the hearing and regulate the course of the proceedings. The hearing officer shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination of witnesses and submit rebuttal evidence. The applicant or eligible individual may participate in person and/or be represented by an advocate or legal counsel. Other parties must participate in person and/or be represented by legal counsel.

Decision: The hearing officer must complete and submit to both parties as well as the Secretary of the Workforce Development Cabinet, the written recommended decision within thirty (30) days of receipt of the transcript of the hearing unless both parties agree to a time extension. Either party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the Secretary of the Workforce Development Cabinet. The Secretary of the Workforce Development Cabinet shall consider the record, including the recommended order and any timely exceptions filed to the recommended order. The Secretary of the Workforce Development Cabinet shall issue the final order within thirty (30) days of issuance of the recommended order.

CONFIDENTIALITY

Policies and practices related to maintaining confidentiality and the protection, use and release of information can be found in Section 361.38 of the Federal Regulations.

The Department of Vocational Rehabilitation shall safeguard the confidentiality of all personal information obtained in the course of the vocational rehabilitation programs, including but not limited to:

- names;
- addresses;
- photographs;
- Department records containing personal information regarding any individual.

The Department must assure that:

- specific safeguards protect current and stored personal information;
- all applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

- all applicants or their representatives are informed about the Department's need to collect personal information and the policies governing its use including:
- identification of the authority under which information is collected;
- explanation of the principle purposes for which the Department intends to use or release the information;
- explanation of whether providing requested information to the Department is mandatory or voluntary and the effects of not providing requested information;
- identification of those situation in which the Department requires or does not require informed written consent of the individual before information may be released;
- identification of other agencies to which information is routinely released.

USE OF PERSONAL INFORMATION

All personal information in the possession of the Department must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with other entities that do not have official responsibility for administration of the program.

INFORMED WRITTEN CONSENT

Informed written consent is required to release information when the written information is requested by:

1. an involved individual;
2. a parent;
3. a guardian;
4. one who has Power of Attorney;
5. any other program authority who uses vocational rehabilitation information for purposes not directly related to the administration of the vocational rehabilitation program.

To safeguard the confidentiality of records, established Department procedures require that informed consent include:

1. the purpose for which the information is desired;
2. specific information desired;
3. date of expiration of the informed written consent;
4. an assurance that information will not be re-released to the individual or others;
and
5. dated signature of individual or appropriate representative.

Department release forms that meet these requirements are available but any written document that includes the above information may be utilized.

Release to Involved Individuals

When requested in writing by the involved individual or the individual's representative, the Department shall make all information in the case record accessible to the individual or the individual's representative in a timely manner. Medical, psychological, or other information that the Department determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by the court to represent the individual, in which case the information must be released to the court appointed representative.

If personal information has been obtained from another agency or organization, it may only be released by or under the conditions established by the other agency or organization.

An applicant or eligible individual who believes information in the case record is inaccurate or misleading may request that the Department amend the information. If the information is not amended, the request for the amendment must be documented in the case record.

Release To Other Programs or Authorities

Information may be released to other programs or authorities for its program purposes under the same conditions that govern the release of information to an individual or that individual's representative, *but* only with the informed written consent of the individual. If the information requested may be considered to be harmful to the involved individual, the requesting agency must assure the Department that the requested information shall not be further released to the involved individual.

Requests for information from a member of the congressional delegation interceding on the behalf of an applicant or eligible individual in regard to vocational rehabilitation services are to be forwarded to the Director of Program Services or his/her designee.

Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with

administration of the vocational rehabilitation program, or for purposes which would significantly improve the quality of life for persons with disabilities and only if the organization, agency or individual assures that:

- the information shall be used only for the purposes for which it is being provided;
- the information shall be released only to persons officially connected with the audit, evaluation, or research;
- the information shall not be released to the involved individual;
- the information shall be managed in a manner to safeguard confidentiality; and
- the final product shall not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

EXCEPTIONS TO INFORMED WRITTEN CONSENT

Informed written consent is *not* required when the request is:

1. directly related to the administration of the vocational rehabilitation program, or
2. in response to judicial order.

Upon receipt of a judicial order or subpoena, or informal request from an attorney or any other legal process or request for access to, or production of, information contained in a case file or records, without the informed written consent of the individual or, as appropriate, that individual's representative, the following procedure should be followed:

- The counselor will immediately notify the supervisor and the Director of Program Services who will, when appropriate, notify the Department's Legal Office or the Attorney General's Office.
- Should circumstances make it impossible to obtain assistance prior to the time noted on the subpoena or the legal process for the counselor's appearance, the counselor will appear at the designated time and place, but will refuse to divulge, either verbally or by producing documents, the contents or substance of the individual's case file, until ordered to do so by a specific order of the Judge of the Court of jurisdiction. In refusing to divulge the information, the counselor will advise the person requesting the testimony or documents that disclosure is prohibited by Federal confidentiality regulations but, that if order to disclose by the Court, the counselor will comply.
- If the Judge orders the information to be released, the counselor will immediately comply.

The Department will release personal information when:

1. required by Federal or State law; or
2. in response to investigations in connection with law enforcement, fraud, or abuse (except where expressly prohibited by Federal or State laws or regulations), and in response to an order issued by a judge, magistrate, or other authorized judicial officer; or

The Department may release personal information when necessary to protect the individual or others when the individual poses a direct threat to the individual's safety or the safety of others.

FEES FOR DUPLICATING RECORDS

The Department has established reasonable fees to cover extraordinary costs of duplicating records or making extensive searches. A list of these fees can be found in the Department's Fee Schedule Manual.

CLIENT ASSISTANCE PROGRAM

The Department shall advise all individuals applying for or receiving services about the availability and purposes of the Client Assistance Program (CAP) and how to contact the program. The CAP may be reached at:

Client Assistance Program
209 St. Clair Street
Frankfort, KY 40601
502-564-8035
1-800-633-6283 (TTY)

Purpose

The Client Assistance Program is an independent state agency in the Cabinet for Workforce Development.

The purpose and functions of CAP include:

- advising and informing consumers, applicants, and individuals with disabilities in Kentucky of services and benefits available to them through programs authorized under the Rehabilitation Act as amended and Title I of the Americans with Disabilities Act of 1990;

- assisting and advocating for consumers and applicants in their relationships with projects, programs, and services;
- upon request, informing individuals of their rights and responsibilities in connection with services and benefits from vocational rehabilitation, and engage consumers or applicants in individual or systemic advocacy. When appropriate, CAP assists consumers and applicants in pursuing legal, administrative and other available remedies. To the maximum extent possible, CAP will use informal negotiation before resorting to formal administrative or legal remedies;
- providing assistance and advocacy with respect to services that are directly related to facilitating the employment of the individual;
- facilitating access to services by individuals with disabilities;
- providing information to the public concerning CAP.