
CHAPTER 20: APPEALS PROCESS

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SECTION 1: GENERAL DESCRIPTION

It is anticipated that most disagreements between the individual and the counselor will be resolved through open communication. When a difference of opinion persists, the individual may use one or more of the following four appeal options:

- A. Mediation
- B. Administrative Review
- C. Fair Hearing
- D. Civil Action

The individual may start with any option, although some choices will eliminate some options. The following outlines the various options available and those options that are left if the individual remains dissatisfied.

The individual chooses:

Option A: Mediation - If the results are not satisfactory to the individual, options B, C, and D are still available.

Option B: Administrative Review - Options C and D are still available if the individual is dissatisfied with the decision. If Option A was not used prior to Option B, it remains available for use prior to pursuing Options C or D.

Option C: Fair Hearing - Only Option D remains if the individual is still dissatisfied with the decision.

Option D: Civil Action - This is the final step in the appeal process. Once entered, the individual cannot go back to any options previously skipped.

Mediation and Administrative Review shall not be used to deny or delay the right of the individual to a Fair Hearing or to any other rights granted by Title I of the Rehabilitation Act. No suspension, reduction, or termination of services provided under an Individualized Plan for Employment (IPE) will be made pending a final determination of the appeal process unless the individual requests or DBVI has determined that the services were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.

To assure that the process is known and understood, communication of the appeal process must ensure that the individual understands it. A written description of it and of the availability of the Client Assistance Program (CAP) will be given to the person at the time of application for services, at the time the IPE is written, when services are being reduced, suspended, or terminated, and at any other point at which an issue does not appear able to be resolved by communicating with the counselor. The individual shall be encouraged to contact CAP if he/she has not already done so. To help ensure understanding of the appeal process, the written description may be supplemented by other appropriate modes of communication. Oral explanations, braille, and/or audio of appeal rights will be provided upon request of the individual and in situations where the counselor deems necessary.

SECTION 2: MEDIATION

Mediation may be requested by writing to the DBVI Director. The mediation option must be voluntary on the part of both parties; either party can choose not to participate in mediation in a given situation. The person may choose a mediator from a list maintained by DBVI of qualified mediators trained in mediation techniques and knowledgeable in laws and regulations relating to the provision of vocational rehabilitation services set forth in the Rehabilitation Act as amended. The individual may submit evidence and information that supports his/her position during the mediation process.

Applicants and eligible individuals have the right to be represented during the mediation sessions and Administrative Review process by any individual selected by the individual; the representative does not have to be an attorney or professional advocate per se; the representative may be a friend, relative, parent, etc. DBVI shall bear the reasonable costs of the mediation process but will not pay for the individual's legal representation, if any. Mediation will be timely and in a location that is convenient to both parties.

All discussions held during the mediation process shall be confidential. Neither party can use any of the discussions that occur during the mediation process as evidence during any subsequent Fair Hearing or Civil Action.

The mediator shall describe the confidentiality requirement before the mediation process begins.

The mediation process shall be completed within 60 days of its request unless both parties agree to a specific extension of time. The mediator will submit to both parties a written summary of the proceeding that outlines next steps or a formal agreement reached by both parties. A copy shall be placed in the individual's case record.

SECTION 3: ADMINISTRATIVE REVIEW

A. General considerations

The Administrative Review is an informal process conducted by an impartial vocational rehabilitation supervisor. The review often involves only the individual (and representative, if applicable), the counselor, and the review officer.

The person may bring to the review other pertinent parties, advocates, and/or legal counsel. The review officer may request the presence of other DBVI personnel who may have been involved in the decision or action in dispute or other individuals who may be helpful for informational or facilitation purposes.

The Administrative Review gives the individual the opportunity to show why actions, inactions, or agency policy affecting his/her rehabilitation should be adjusted or reconsidered. The person has the right to bring witnesses and to submit evidence and information that supports his/her position and may question DBVI employees about their actions, inactions, or decisions.

All facts relevant to the individual's grievance will be fully discussed at the review, and any party may submit documentary material. Direct access to the case record will be in compliance with Federal law and State rules on confidentiality.

The proceedings will be recorded. A transcript of the recording will be made available to the individual upon request. Access to the recording by parties not directly involved in the administration of DBVI programs

requires written consent of the person. DBVI may assist the individual in paying reasonable costs associated with the review (e.g., transportation, reader, etc).

An Administrative Review will be completed (including a written recommendation by the review officer) within sixty (60) days of the request unless the parties agree to a specific extension of time.

DBVI will not use this informal process to deny or delay the right of the individual to Mediation or a Fair Hearing.

B. The Review Officer

The review officer will be a supervisor from the Vermont Division of Vocational Rehabilitation and from a region other than the one from which the individual is dissatisfied. The review officer shall not have been involved in the decision/action under appeal.

C. Requests for an Administrative Review

A request for an Administrative Review shall be made in writing to the DBVI Director. The request shall be filed in the individual's case record.

An Administrative Review will be held as soon as possible after the request for it unless a resolution is achieved prior to the review.

D. Procedures for the Administrative Review

1. The DBVI Director will:
 - a. Acknowledge receipt of the request for the review; the individual will also be informed of the name of the review officer.
 - b. Forward the case record and copies of all correspondence related to the review to the review officer.
2. The review officer will:
 - a. Set the date, time, and location of the review and notify all parties. A certified letter will be sent to the individual allowing adequate notice of the review. The review officer may allow a postponement for good cause.
 - b. Arrange for meeting space and for accommodations needed by the person.
 - c. Study the case record, research relevant State and Federal laws, and consult with legal staff or others as appropriate.

- d. Ensure that a recording device is present.
- 3. Procedures at the meeting:
 - a. The review officer will:
 - i. Facilitate the meeting and be responsible for recording the proceedings (beginning with noting time, date, reason for the review, and individuals present).
 - ii. Introduce the participants and their roles.
 - iii. Explain his/her role, the objectives of the meeting, and the procedures to be followed.
 - b. Each party will have an opportunity to present information and state their cases. The review officer may raise questions to either party and ask for clarification where necessary.
 - c. The review officer may disallow discussion or information that is repetitive or not relevant to the issue.
 - d. Parties will be encouraged to negotiate a solution to the issue. If this occurs, the review officer will summarize the resolution in writing and send copies to all parties. A copy of this document will be placed in the individual's case record.
 - e. If a resolution is not reached, the review officer will consider all the information from the hearing and all relevant State and Federal laws and regulations. A written decision will be provided to all parties, including a copy to the Division Director. The written conclusions and recommendations will summarize the complaint; the major points of the review and evidence presented, and will cite relevant laws or regulations that helped as a basis for the decision.
 - f. The recording of the proceedings will be forwarded to Central Office. A copy of the recording will be provided at no cost to the individual bringing the appeal upon request. A transcript of the recording will be provided at DBVI expense only when the person is deaf or hard of hearing or otherwise unable to access the recording.

SECTION 4. FAIR HEARING

A. General Policy

A Fair Hearing may be requested at any time. While Administrative Review and/or Mediation are encouraged as a first step in the appeal process, the choice to go directly to a Fair Hearing rests with the individual.

Fair Hearings are held before a board designated by the Agency of Human Services. They are more formal than an Administrative Review and are conducted according to rules developed by the Human Services Board.

The individual may present his/her case at the hearing or be represented by legal counsel or an advocate. During the hearing, the individual or his/her representative will have the opportunity to examine all documents used and to present any evidence, either oral or written. The individual may bring witnesses and cross-examine any witnesses testifying for DBVI.

B. Requests for a Fair Hearing

Requests for a Fair Hearing must be made in writing to the Division Director after the receipt of the review decision/mediation or after waiving a consideration for an Administrative Review/Mediation. The Director shall promptly forward the request to the fair hearing officer, retaining a copy for the individual's case record.

The hearing officer will set the date, time, and place of the hearing. The Human Services Board will send written notice of the meeting to all parties and to their representatives with a copy of the Fair Hearing rules.

C. Other

DBVI will pay for reasonable transportation costs if necessary and will provide necessary accommodations, such as interpreter or reader services.

The decision regarding the results of the Fair Hearing will be made by the fair hearing officer and will be provided to the individual.

The decision of the Human Services Board is final unless one of the parties requests a review of that decision via Civil Action. Even if a

Civil Action is filed, the Board's decision must be implemented pending the court's decision.

SECTION 5: CIVIL ACTION

If not satisfied with a decision of the Human Services Board, either party may file a Civil Action either in State court or in Federal district court. Vermont's Rules of Civil Procedure (if in State court) or the Federal Rules of Civil Procedure (if in Federal court) will dictate most requirements, such as filing deadlines, evidentiary requirements, representation, etc.

The court must receive the records relating to the hearing and the Board's review; hear additional evidence at the request of either party; and render a decision, based on the preponderance of the evidence, and grant appropriate relief.