

Rehabilitation Services Policy Manual

SECTION
PART

Administrative Issues
Appeals – Review of Rehabilitation Counselor Decisions

SECTION NO.
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Section 1 Administrative Issues

Part 6 Appeals – Review of Rehabilitation Counselor Decisions

Rehabilitation Services (RS) procedures

Applicants, clients or former clients who are dissatisfied with any determination by the rehabilitation counselor regarding the provision or denial of vocational rehabilitation (VR) services may request timely review of those determinations through a mediation process, informal resolution or formal hearing. A client's or applicant's representative may also make such a request. Such requests must be made within 30 days of the agency decision in question.

Applicants and clients are informed of their appeal rights in writing at key stages of the rehabilitation process. Key stages of the rehabilitation process include, but are not limited to, application, determination of eligibility, determination of ineligibility, Individualized Plan for Employment (IPE) development, IPE/service changes and case closure. The information on appeal rights must include the name and address with whom to file requests for reviews. Information about the Client Assistance Program (CAP) must also be provided. One method of providing this information is through the Handbook of Services. This information will be made available in an accessible mode of communication.

When exercising appeal rights, the individual or his/her representative may present evidence or information to support their position. The individual may be represented by an attorney, advocate or any other person selected by the individual if that is his/her choice.

Informal resolution: Individuals are encouraged to discuss any problems directly with their counselor or counselor's supervisor to see if the problem can be resolved. Often CAP facilitates such informal discussions. Or, an administrative review may be conducted by a RS Program Administrator who has not been involved in the case. Use of these informal methods is not required. If the individual chooses not to pursue informal methods, or if the issues were not resolved informally, the next step is a formal hearing which must be conducted within 45 days of the individual's original request for review.

Mediation: Applicants and eligible individuals may resolve disputes through mediation. Mediation services must be presented as an option whenever an individual requests a fair hearing.

- Mediation is voluntary.
- Mediation may not be used to deny or delay the rights of an individual to a fair hearing or to any other rights afforded that individual under Title I of the Rehabilitation Act.
- Mediation must be conducted by qualified and impartial mediators.
- Services, including assessment services and services authorized through an IPE, may not be suspended, reduced or terminated pending the mediation process. Exceptions to this requirement would include situations where the individual requests the change in services, or situations where the individual and/or his/her representative have obtained the services through misrepresentation, fraud or criminal conduct.
- RS will pay for all costs related to mediation.
- If an agreement is reached, the mediator will put the agreement in writing.

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- All information learned during mediation is confidential and cannot be used in subsequent appeal actions.

Formal hearings (fair hearings): These hearings are conducted by Fair Hearing Officers from the Office of Administrative Hearings. These hearings must occur within 45 days of an individual's request for review, unless resolution is achieved, or the parties agree to a specific extension of time. While such a hearing is pending, services being provided under an IPE may not be suspended, reduced or terminated unless requested by the client or unless there is evidence that the services have been obtained through misrepresentation or fraud.

During a fair hearing, the client or his/her representative and the agency have the opportunity to present evidence or witnesses and to question other witnesses and evidence. The client may be represented by an attorney or advocate if that is his/her choice. The hearings officer makes decisions based on the State Plan, the Rehabilitation Act, VR regulations and state policies. Decisions are provided to the individual and RS Director within 30 days of the hearing.

In most situations, if the client is not represented by an attorney during fair hearings or other proceedings, RS will not be represented by an attorney. Exceptions will be made at the discretion of the RS Director. Staff may seek consultation or technical assistance from the DCF Legal Department or local office Attorneys prior to the hearings or proceedings if appropriate.

Review of formal hearings (fair hearings) decisions: Kansas has established the following procedures for the review of decisions of the fair hearings officer.

- The client or the agency may request a review of the fair hearing decision. The authority for this review is vested in the Secretary of the Kansas Department for Children and Families (DCF), the director of the Designated State Agency. Per Kansas Statute 77-527, the Secretary delegates this authority to the State Appeals Committee. Such authority may not be delegated to RS, the Designated State Unit. Parties may submit additional evidence to the State Appeals Committee through legal briefs or presentation of oral arguments. Appeals committee decisions are presented to the Secretary for review, approval and signature.
- The client or the agency must file a petition for a review of the fair hearing decision within 15 days of the date of the decision, if the decision is delivered in person; or within 18 days of the date of the decision, if the decision is mailed.
- After the request for an impartial review, reasonable time extensions may be granted for good cause.
- The State Appeals Committee reviews the decision of the hearings officer to assure consistency with the State Plan, the Rehabilitation Act, VR regulations, and state policies consistent with federal requirements. Any decision of the fair hearings officer that supports the position of the VR applicant or eligible individual can only be overturned or modified by the State Appeals Committee if there is clear and convincing evidence that the decision of the fair hearings officer was erroneous because it was contrary to the State Plan, the Rehabilitation Act, federal regulations, or state policies that are consistent with federal requirements.
- The decision of the State Appeals Committee/Secretary of DCF must be made within 30 days of receipt of legal briefs and oral arguments. A full written report of the decision and the rationale for the decision is provided to the applicant, eligible individual or his/her representative, and to RS.

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District Court: The client may bring a civil action for review of decisions by hearings officers or the State Appeals Committee/Secretary of DCF. The civil action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

In such actions, the court:

- Shall receive the records related to the hearing and the records related to the state review;
- Shall hear additional evidence at the request of a party to the action; and
- Basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate.

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