

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

Department of Workforce Investment

Office of Vocational Rehabilitation

(Amended at ARRS Committee)

781 KAR 1:010. Office of Vocational Rehabilitation ~~Department of Vocational Rehabilitation~~ appeal procedures.

RELATES TO: KRS 151B.190, 151B.200, 34 C.F.R. Part 361, 29 U.S.C. 722

STATUTORY AUTHORITY: KRS 13B.170, 151B.195(1), 29 U.S.C. 722(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations that are necessary to carry out the provisions of KRS Chapter 13B concerning administrative hearings. 29 U.S.C. 722(c) requires state procedures for the review of determinations made by rehabilitation personnel for basic rehabilitation services. Pursuant to KRS 151B.200, the Commonwealth of Kentucky, agreed to comply with all provisions relating to Federal Vocational Rehabilitation Acts. KRS 151B.195(1) authorizes the commissioner to promulgate administrative regulations for the department. This administrative regulation establishes hearing and appeal procedures for a person seeking vocational rehabilitation benefits.

Section 1. Definitions.

(1) "Administrative hearing" is defined by ~~has the same meaning as~~ KRS 13B.010(2).

(2) "Administrative review" means an informal process through which ~~the~~ office personnel not involved in the initial decision conduct ~~conducts~~ a review of an office decision to ensure the decision complies with office policy. ~~The review shall be conducted by office personnel not involved in the initial decision.~~

(3) "Appellant" means an applicant, potentially eligible, or eligible individual who requests an appeal of an office decision in accordance with this section.

(4) "Applicant" means an individual who submits an application for vocational rehabilitation services.

(5) "Branch manager" means the office staff who is responsible for the operations of an office branch.

(6) "Case record" means the official written or electronic record of the vocational rehabilitation case of an applicant, potentially eligible, or eligible individual.

(7) "Competitive integrated employment" is defined by ~~has the same meaning as~~ 34 C.F.R. 361.5(c)(9).

(8) ~~(2)~~ "Eligible individual" means an applicant for vocational rehabilitation services who the office determines is an individual with a disability who requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.

(9) ~~(3)~~ "Executive director" means the Executive Director of the Office of Vocational Rehabilitation.

(10) "Hearing officer" is an individual who meets the qualifications established ~~set forth~~ in KRS 13B.010(7) and who has knowledge of the laws applicable to the office.

(11) ~~(4)~~ "Office" means the Office of Vocational Rehabilitation ~~and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement~~.

(12) "Office Appeal Form" means ~~is~~ the office form incorporated by referenced and used by an applicant, potentially eligible, or eligible individual to request an appeal of an office decision.

(13) "Potentially eligible individual" means an individual who ~~might~~ ~~may~~ be eligible for vocational rehabilitation services, but whose eligibility has not yet been determined.

(14) "Secretary" means the Secretary of the Education and Workforce Development Cabinet.

Section 2. Right to Appeal ~~[Hearing Officer]~~.

(1) The office shall notify every applicant, potentially eligible individual, or eligible individual that the individual has the right to appeal any determination made by the office that affects the provision, denial, reduction, suspension, or cessation of that individual's vocational rehabilitation services.

~~[(1)] [To conduct a hearing under this administrative regulation, a hearing officer shall not:]~~

~~[(a)] [Be an employee of a public agency, other than an administrative law judge, hearing examiner, or employee of an institution of higher education;]~~

~~[(b)] [Be a member of the Vocational Rehabilitation Council;]~~

~~[(c)] [Have been involved in previous decisions regarding the vocational rehabilitation of the applicant or eligible individual; or]~~

~~[(d)] [Have personal or financial interest that would be in conflict with the objectivity of the individual.]~~

(2) The office shall provide to every applicant, potentially eligible individual, or eligible individual:

(a) *As established in the Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual*, the procedure for requesting an appeal, including the name and address of office staff to whom a request for appeal shall be submitted; and

(b) The Office Appeal Form.

~~[(2)] [To conduct a hearing under this administrative regulation, a hearing officer shall:]~~

~~[(a)] [Have knowledge of the delivery of vocational rehabilitation services, the federal and state laws and the administrative regulations governing the provision of vocational rehabilitation services; and]~~

~~[(b)] [Have training with respect to the performance of official duties.]~~

(3) A request for appeal shall be submitted using the Office Appeal Form and shall be submitted to the office within fourteen (14) days of receipt of written notice of an office decision ~~f, f~~ or receipt of verbal notice of an office decision, as determined by the date in the case record.

(4) An appellant shall have the right to be represented by an advocate or attorney at all appellate proceedings, and the appellant shall bear all cost for ~~f-such-f~~ representation.

(5) Upon receipt of a request for an administrative hearing, the office shall:

(a) Conduct an administrative review of the decision on appeal prior to the administrative hearing; and

(b) Convene an administrative hearing within sixty (60) days, except that a time extension, not to exceed one (1) year, shall be granted upon agreement by both parties.

(6) During an appeal, the office shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:

(a) It has evidence that the service was obtained through:

1. Misrepresentation;

2. Fraud;

3. Collusion; *or*

4. Criminal conduct; or

(b) The appellant requests the action.

Section 3. Administrative Review.

(1) Upon receipt of a notice of appeal, the office shall conduct an informal administrative review of the decision. ~~[An applicant or eligible individual may request an informal administrative review conducted by an office staff member from the director of program services or a designee.]~~

(2) The director or designee shall select ~~a[n] branch manager~~administrator ~~from a district~~ not involved in the action in question who shall conduct the administrative review of the decision within ten (10) days.

(3) The ~~administrator shall conduct the~~ administrative review shall be conducted either in person or by teleconference, and the appellant shall be invited to participate.

(4) The ~~branch manager~~administrator shall issue a written a determination within five (5) business days~~make a determination~~ and notify~~forward a copy to~~ the appellant via electronic mail or U.S. Mail~~individual and the office within five (5) days of the administrative review~~.

~~[(5)] [The applicant or eligible individual shall attend the administrative review and may be represented by an advocate or counsel.]~~

Section 4. Mediation.

(1) The appellant shall have the right to participate in mediation before an administrative hearing is convened~~office and the applicant or eligible individual may agree voluntarily to submit a request concerning the provision or denial of benefits to mediation~~.

(2) The office shall maintain a list of qualified mediators.

(3) If mediation is requested, the office shall:

(a) Choose a mediator from the list and schedule the mediation for a date prior to an administrative hearing;

(b) Convene the mediation in a location convenient to the office and the appellant ~~f, f~~ and provide reasonable accommodations if requested;

(c) Bear the cost of mediation; and

(d) Send a representative of the office to the mediation who is authorized to bind the office to an agreement. ~~[The Director of Program Services or a designee shall choose a mediator from the list and schedule a mediation meeting within five (5) days from the receipt of the request for mediation.]~~

~~[(4)] [A representative of the office who is authorized to bind the office to an agreement shall attend the mediation.]~~

~~[(5)]~~ (4) The appellant~~applicant or eligible individual~~ shall attend the mediation.

~~[(6)]~~ (5) Discussions or agreements arising from the mediation~~process~~shall be confidential and shall not be used as evidence in any subsequent administrative hearing or civil proceeding.

~~[(6)]~~ (6) An agreement reached by the parties through mediation shall be documented in writing, signed by both parties prior to the conclusion of the mediation, and a copy shall be issued to both parties.

Section 5. Administrative Hearing ~~[Right of Appeal and Information]~~. The office shall conduct an administrative hearing in accordance with KRS Chapter 13B and Section 2 of this administrative regulation ~~iffwhen~~ the appellant elects not to participate in mediation~~f, f~~ or if the mediation did not result in an agreement.~~[An applicant or eligible individual may appeal to the Director of Program Services determinations made by the office affecting:]~~

~~[(a)] [Furnishing of vocational rehabilitation benefits; or]~~

~~[(b)] [Denial, reduction, suspension, or cessation of vocational rehabilitation services.]~~

~~[(2)] [An applicant or eligible individual shall:]~~

~~[(a)] [Be informed of the:]~~

~~[1.] [Entitlements available under this administrative regulation;]~~

~~[2.] [Right to appeal;]~~

~~[3.] [Right to be represented by an advocate or counsel; and]~~

~~[4.] [Names and addresses of office individuals with whom an appeal shall be filed.]~~

~~[(b)] [Request an appeal:]~~

~~[1.] [In writing;]~~

~~{2.} [By telephone through direct contact with the Director of Program Services or a designee; or]~~

~~{3.} [On tape, except that a voice mail message shall not constitute a request for a hearing.]~~

~~{(3)} [The director of program services or a designee shall convene a hearing within sixty (60) days of a request made pursuant to subsection (1) of this section. Reasonable time extensions, not to exceed one (1) year, may be granted for good cause with the agreement of both parties. The hearing shall be conducted pursuant to:]~~

~~{(a)} [KRS Chapter 13B; and]~~

~~{(b)} [This administrative regulation.]~~

~~{(4)} [Pending a final determination of a hearing or other final resolution, the office shall not suspend, reduce, or terminate services provided under the individualized plan for employment unless:]~~

~~{(a)} [It has evidence that the service was obtained by an applicant or eligible individual through:]~~

~~{1.} [Misrepresentation;]~~

~~{2.} [Fraud;]~~

~~{3.} [Collusion; or]~~

~~{4.} [Criminal conduct; or]~~

~~{(b)} [The applicant or eligible individual, or an authorized representative, requests this action.]~~

Section 6. Client Assistance Program. The office shall advise an applicant, potentially eligible individual, or eligible individual of:

(1) The existence of the Client Assistance Program~~[created by KRS 151B.225];~~

(2) The services provided by the program; and

(3) How to contact a program representative.

~~{Section 7.} [Appeal Time and Hearing Procedures.]~~

~~{(1)} [An applicant or eligible individual shall file an appeal:]~~

~~{(a)} [Within sixty (60) days of becoming aware, through the exercise of due diligence, of an office determination affecting the provision or denial of vocational rehabilitation services.]~~

~~{(b)} [By contacting the Director of Program Services.]~~

~~{(2)} [An applicant or eligible individual shall, at the time of requesting a hearing:]~~

~~{(a)} [Identify accommodations required; and]~~

~~{(b)} [Submit an issue statement for the hearing.]~~

~~{(3)} [A hearing officer shall be selected on a random basis from a pool of trained hearing officers in the Administrative Hearings Division of the Office of the Attorney General approved by the office and Statewide Council for Vocational Rehabilitation.]~~

Section 7. [Section 8.] Findings and Decision.

(1) The hearing officer shall issue a recommended order in accordance with KRS 13B.110.~~[complete and submit to both parties and the Secretary of the Education Cabinet the written recommended order within thirty (30) days of receipt of the transcript of the hearing, unless both parties agree to a time extension].~~

(2) Either party shall have the right to submit exceptions to the recommended order to the secretary[secretary] as established[set forth] in KRS 13B.110.~~[twenty (20) days from the date the recommended order is mailed within which to file exceptions to the Secretary of the Education Cabinet.]~~

(3) The secretary or designee ~~[of the Education Cabinet]~~ shall ~~[consider the record, including the recommended order and any timely exceptions filed to the recommended order.]~~ issue the final order in accordance with KRS 13B.120~~[(4) The Secretary of the~~

Education Cabinet shall issue the final order within thirty (30) days from expiration of the time period for filing exceptions].

Section 8. Incorporation by Reference.

(1) "Kentucky Office of Vocational Rehabilitation Policies and Procedures Manual", June 2022, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Vocational Rehabilitation, 500 Mero Street 4th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available at kcc.ky.gov/vocational-rehabilitation.

(17 Ky.R. 779; 1491; eff. 12-7-1990; 21 Ky.R. 1953; 2702; eff. 5-4-1995; 23 Ky.R. 3110; 3768; eff. 5-12-1997; 26 Ky.R. 2030; 27 Ky.R. 114; eff. 7-17-2000; 28 Ky.R. 1210; 1634; eff. 1-14-2002; 48 Ky.R.999; 49 Ky.R. 41; eff. 10-4-2022.)

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