

APPEAL RIGHTS UNDER THE REHABILITATION ACT (RS)

A Fact Sheet from the Minnesota Disability Law Center

This fact sheet is intended as a brief introduction to the rights of disabled individuals under the federal Rehabilitation Act. This information does not constitute legal advice because each individual's case is different and the law is constantly subject to change. This fact sheet is based on Minnesota and federal laws and regulations. Therefore, it may not be valid in other states. Contact the Client Assistance Project for advice about your individual case.

Background Information:

The Rehabilitation Act of 1973, as amended, requires Rehabilitation Services (RS) to have an "appeal" procedure. In general, if you are unhappy with a decision made by RS about your case, you have a right to:

1. have someone else review that decision;
2. ask for mediation, where an impartial third person will work with you and RS to come to an agreement; and/or
3. present evidence, information and witnesses to an impartial hearing officer.

Notice of Appeal Rights:

All applicants and clients must receive notice of their appeal rights. The notice must be in writing; be in the individual's preferred mode of communication (*i.e.*: foreign language, Braille, etc.); and tell the individual that the Client Assistance Project (CAP) may be able to help him/her with the "appeal."

RS must notify all applicants and clients of their "appeal rights" in the following circumstances:

1. when an individual applies for RS services;
2. when the client's individualized plan for employment (EP) is developed; and
3. when RS plans to suspend, reduce or stop vocational rehabilitation services.

If you appeal a decision that results in a change to your EP, RS must continue the services about which you are appealing. These services must continue until a final decision is made through the informal review, mediation or formal hearing process unless you obtained those services through fraud, false misrepresentation or some other criminal conduct.

Different Types of Appeals:

If you are unhappy with a decision made by RS, there are several different ways to handle this problem. These different ways are divided into three basic types: informal review, mediation and formal hearing. You do not have to pursue these alternatives in any particular order, *i.e.*; you do not have to use the informal review or mediation

processes before asking for a formal hearing.

A. Informal Review Process:

1. Supervisory Review - - If you are unhappy with your counselor's decision, you may ask the counselor's supervisor to review your case. You may ask for a supervisory review in writing, in person or by phone/TTY at any time.

a. If you do not know the name or address of the supervisor, you can call the main office in St. Paul and someone will be able to give you this information. In the metro area, you can call 651-296-5616 or 651-296-3900 (TTY); in Greater Minnesota, call 1-800-328-9095 or 1-800-657-3973 (TTY).

2. Program Manager Review - You also have the right to ask the Program Manager for Consumer Services to review your case. Send your request to:

Rehabilitation Services
332 Minnesota Street,
Suite E 200
St. Paul, Minnesota 55101

Or, in the metro area, call: 651-296-9138 or 651-296-3900 (TTY); in Greater Minnesota, call 1-800-328-9095 or 1-800-657-3973 (TTY)

The supervisor's role will be to determine whether RS policy and rules have been correctly applied to your case and if there is any compromise or other course of action that will resolve your concern.

B. Mediation Process:

Mediation is a way to settle a dispute which:

1. helps individuals and RS staff solve disagreements about your needs and services; and
2. uses a qualified, impartial mediator to guide the participants towards a solution everyone agrees to.

Mediation does not take away your right to pursue administrative review or a formal hearing. RS must pay for any mediator fees or other expenses. The mediators used for vocational rehabilitation mediation are coordinated by the Minnesota Office of Dispute Resolution.

Either you or RS can request mediation. Mediation is entirely voluntary; all parties must agree to participate in order for a mediation conference to take place. If both you and RS agree to mediate, a Request for Mediation form must be signed by the parties and sent to the VR Mediation Office. These forms are available from your rehabilitation counselor.

Once mediation is requested, the parties will be asked when they can meet and a mediator will be assigned. Most mediation sessions can be scheduled within 15-20 working days, and will last about a half-day.

You can bring an advocate or representative with you to the mediation session. RS must bring someone who has the authority to

make decisions. Either party can also bring persons who know what you need or who have specialized knowledge of the issues in your case. The parties must agree, however, on who can attend the mediation session.

The mediation session itself will typically include an introduction, opportunity for both parties to talk about the issues from their point of view, discussion of options for resolution and development of a written mediation agreement. If you and RS are able to come to an agreement, the mediator will help you write it down and each party will receive a copy.

C. Formal Hearing Process:

- 1. Formal Hearing --** If you are unhappy with a decision made by RS on your case, you can ask for a formal hearing. The formal hearing, also known as a Fair Hearing, is like a judicial hearing, but it is not a court trial. The hearing is handled by an administrative law judge and is governed by the Administrative Procedures Act.

You must ask for a Fair Hearing in writing, within 120 days of the date you were notified in writing of a counselor's decision. Your letter should be sent to:

Director of Vocational
Rehabilitation
Rehabilitation Services
332 Minnesota Street,
Suite E 200
St. Paul, MN 55101

The hearing must be held within 45 days of your request for a fair hearing. As with any stage in the informal review process, you have the right to be represented by an advocate. You should know that an attorney from the Attorney General's office will represent RS at the formal hearing. You have a right to bring any information or witnesses that you think will be helpful to your case. After the hearing is concluded, the administrative law judge will issue a written decision.

- 2. Commissioner's Review of ALJ's decision -- Within 20 days after the written decision,** either party may request that the Commissioner of the Minnesota Department of Employment and Economic Development review the administrative law judge's decision. You have the right to submit more information at this stage that you think might help your case.

The Commissioner cannot overturn the administrative law judge's decision unless there is "clear and convincing evidence" that the decision is "clearly erroneous." The Commissioner must make a final decision in a timely manner. The decision must be in writing and must include a full report of the

findings and grounds for the decision.

3. **Judicial Review** – Either party may bring a civil action in state or federal court for review of the commissioner’s decision. Civil lawsuits must be filed **within 30 days** of the final decision. It is best to seek legal help for this kind of case as soon as possible. Time deadlines are very strict in these kinds of cases.

The Client Assistance Project (CAP):

If you are a client or an applicant of RS, you can call CAP for help if you have questions, concerns or complaints about RS. CAP does not provide direct vocational rehabilitation services, such as education, training or equipment.

In general, a CAP advocate MAY be able to help you in any of the following ways:

1. help you or advocate on your behalf to obtain appropriate vocational rehabilitation services from RS;
2. review and challenge eligibility decisions made by RS;
3. inform you of your rights and services available under the Rehabilitation Act;
4. advise you in developing an individualized plan for employment; or
5. advise or help you in pursuing legal, administrative

or other appropriate remedies when a determination has been made by CAP that your case has legal merit.

For more information about CAP or to apply for CAP services, call 612-334-5970 (metro area);
1-800-292-4150 (Greater Minnesota) or
612-332-4668 (TTY).

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