

ARIZONA DEPARTMENT OF ECONOMIC SECURITY

Program Name: Vocational Rehabilitation (VR)

Policy Number: VR-15.5-v1

Effective Date: July 1, 2008

Last Revision: March 31, 2021

CHAPTER 15: Appeals

Section 15.5: Director Review of Fair Hearing Decision

I. Policy Statement

- A. This policy provides guidance on the process pertaining to the DES Director's administrative review of the decision made by the hearing officer (i.e., Administrative Law Judge or ALJ) when this option is chosen by the applicant/client or RSA to dispute a decision that affects the provision of VR services.

II. Authority

Authority for policies contained in this document includes the following:

- Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. § 3101 et seq.
- Title IV Amendments to the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.
- State Vocational Rehabilitation Services Program, 34 C.F.R. § Review of determination made by designated State unit personnel 361.57 (g) and (h)
- A.R.S. §§ 23-502 and 503
- Arizona Administrative Code -Title 6 Administrative review and fair hearing R-6-4-404

III. Applicability

- A. This applies to circumstances when an applicant or client (hereafter referred to as "appellant") wishes to pursue the DES Director to review the ALJ's decision must:
- B. File a request in person or by letter with the DES Office of Appeals within 20 calendar days of the ALJ's decision.
- C. Follow the directions included in the ALJ's decision and instructions pertaining to the appeal process.

IV. Standards

- A. VR staff must redirect the appellant to follow the direction included in the ALJ's decision in instances when a request to dispute the ALJ's decision is received.
- B. Any requests for review from appellants to dispute the ALJ's decision may not be accepted or scanned in the client's ECF.
- C. In instances when the RSA Administrator disagrees with the ALJ's decision a request for review must be submitted to the Director of DES or their designee to review the decision within 20 calendar days of the ALJ's decision.
- D. The RSA Ombudsman must coordinate the review of information and gathering of evidence for RSA as necessary to validate the disagreement of the ALJ's decision.
- E. When a request for reconsideration is filed by VR or the appellant and/or their representative, the other party must have 20 calendar days to file a response to the request.
- F. The request for review must be filed in person or by letter to the DES Office of Appeals.
- G. The request must contain the client's name, Social Security Number, and a statement regarding the reason for the appeal.
- H. Within 30 calendar days of receipt of the request for review of the ALJ's decision, the Director of DES, or their designee must do one of the following in writing:
 - 1. Request a rehearing,
 - 2. Agree with the decision on record; or
 - 3. Issue a final DES decision containing a modified finding upon the grounds which the decision is based.
- I. Documentation of additional evidence must be provided based on the following substantive criteria in instances when a re-hearing is requested:
 - 1. The ALJ's decision is inconsistent with the facts or evidentiary record and applicable federal and state laws or VR policy and is not supported,
 - 2. The ALJ's decision erroneously or fails to interpret or apply the provisions of federal laws, regulations, WIOA Combined State Plan, or Arizona VR policies in consistent with federal requirements, or
 - 3. The ALJ's decision fails to find appropriate or adequate interpretations to key portions of conflicting testimony or fails to recognize state agency

options in the delivery of services which are permissible by federal law or regulations.

- J. Reasonable time extensions must be granted at the sole discretion of the DES Director upon request of either or both parties for demonstrable good cause.
- K. The DES Director's office must distribute a copy of the decision and statement explaining the right for judicial review of the decision to each interested party.
- L. The Director must not delegate the responsibility to make any final decisions to any officer or VR staff.

V. PROCEDURE

- A. Refer to A, C-D, I, and K above.
- B. Refer to Standard Work (if applicable).

VI. Documentation Requirements

The applicant/client's electronic case file must include the DES Director's Order.