

ARIZONA DEPARTMENT OF ECONOMIC SECURITY

Program Name: Vocational Rehabilitation (VR)

Policy Number: VR-15.5-v2

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CHAPTER 15: Appeals

Section 15.5: Director Review of Fair Hearing Decision

I. Policy Statement

This policy provides guidance on the process of the Arizona Department of Economic Security (DES) Director's administrative review of the decision made by the hearing officer (i.e., Administrative Law Judge (ALJ)) when this option is chosen by the applicant, client, or the DES Rehabilitation Services Administration (RSA) to dispute a decision that affects the provision of Vocational Rehabilitation (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. § 361.57 (g) and (h), Review of determination made by designated State unit personnel.
- Arizona Revised Statutes:
 - § 23-502, and
 - § 23-503.
- Arizona Administrative Code, Title 6, Chapter 4 R6-4-404, Administrative review and fair hearing.

III. Applicability

This policy applies when an applicant/client (hereafter referred to as "appellant") requests the DES Director review the ALJ's decision.

IV. Standards

- A. The appellant must:

1. File a request, in person or by letter with the DES Office of Appeals, within 20 calendar days of the ALJ's decision, and
 2. Follow the directions included in the ALJ's decision and the instructions for the appeal process.
- B. VR staff must redirect the appellant to follow the direction included in the ALJ's decision when a request to dispute the ALJ's decision is received.
- C. Any requests for review from appellants, to dispute the ALJ's decision, must not be accepted or scanned in the appellant's electronic case file (ECF).
- D. When the Rehabilitation Services Administration (RSA) Administrator disagrees with the ALJ's decision, a request to review the decision must be submitted to the DES Director or their designee within 20 calendar days of the ALJ's decision.
- E. The RSA Ombudsman must coordinate the review of information and the gathering of evidence for RSA, as necessary, to validate the disagreement with the ALJ's decision.
- F. When a request for reconsideration is filed by VR, the appellant, and/or their legal guardian, the other party must be provided 20 calendar days to file a response to the request.
- G. The request for review should contain:
1. The appellant's name,
 2. The appellant's Social Security Number, and
 3. 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 DES Director 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 on which the decision is based.
- I. When a rehearing is requested, documentation of additional evidence must be provided based on the following substantive criteria:
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 incorrectly interprets or fails to interpret or apply the provisions of federal and state laws, regulations, WIOA State Plan, or Arizona VR policies 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 that are permissible by federal law or regulations.

J. Reasonable time extensions may be granted at the sole discretion of the DES Director, upon the 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 DES Director must not delegate the responsibility to make any final decisions to any other officer or VR staff.

V. Procedure

A. Refer to IV. B, D, E, I, and K above.

B. Refer to Standard Work, if available.

VI. Documentation Requirements

A. The appellant's ECF must include the DES Director's Order.