

# **ARIZONA DEPARTMENT OF ECONOMIC SECURITY**

**Program Name:** Vocational Rehabilitation (VR)

**Policy Number:** VR-15.1-v5

**Effective Date:** July 1, 2008

**Last Revision:**

**CHAPTER 15:** Appeals

**Section 15.1:** Overview of Appeals

## **I. Policy Statement**

This policy provides an overview of the appeal rights and due process available to applicants/clients who wish to appeal decisions that affect the provision of Vocational Rehabilitation (VR) services. This policy includes information regarding the VR process for an appeal following the issuance of a VR Decision letter.

## **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 CFR § 361.57, Review of determination made by designated State unit personnel.
- Arizona Revised Statutes:
  - § 23-502, and
  - § 23-503.
- Arizona Administrative Code, Title 6, Chapter 4, § R6-4-210, Appeal Resolution Options.

## **III. Applicability**

This policy applies when an applicant/client wishes to pursue the appeal process, and when VR staff must execute the appeal process.

## **IV. Standards**

### **A. Overview of Appeals**

1. An applicant/client may appeal a decision made by VR that affects the provision of their VR services.
2. VR must issue a VR Decision letter, which includes the Appeal Rights and Client Assistance Program (CAP) information, when:
  - a) The applicant/client applies for services,
  - b) VR makes an eligibility decision,
  - c) VR determines placement into an Order of Selection category,
  - d) An Individualized Plan for Employment (IPE) is developed or amended,
  - e) VR decides to or intends to reduce, suspend, or terminate current or planned services and/or goods, or
  - f) VR notifies the applicant/client of the intent to close the case for any reason.
3. The VR Decision letter must be mailed or emailed to the applicant/client.
4. Applicants/clients who are dissatisfied with a VR decision must submit a written Request for Appeal to VR within 20 calendar days from the date of the VR Decision letter.
5. VR staff must provide the VR Request for Appeals form to applicants/clients when requested by the applicant/client.
6. VR Appeal Resolution Options:
  - a) VR staff must inform the applicants/clients of their Appeal options.
  - b) Applicants/clients can request a review of a VR decision through the following Appeal options:
    - (1) Informal Review,
    - (2) Mediation, and/or
    - (3) Fair Hearing.
  - c) If an Informal Review or Mediation is not successful in resolving the dispute within 60 calendar days of the Request for Appeal, a Fair Hearing must be conducted within the same 60 calendar days, unless all parties agree to a specific extension of time.
7. An applicant/client may request case record documents, as described in Section 2.1 Protection, Use, and Release of Client Information of this policy manual, to use during the Appeal process.
8. Impact on VR Services Delivery

- a) VR may not institute a suspension, reduction, or termination of VR services being provided to an applicant/client, including evaluation and assessment services and an individualized plan for employment development, that are related to the Appeal Request, pending a resolution through Informal Review, Mediation, or Fair Hearing, unless:
  - (1) The applicant/client requests a suspension, reduction, or termination of services, or
  - (2) VR has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant/client.
- b) The VR Counselor must ensure the continuation of all other VR services, as listed on the most recent and approved IPE, during the appeal process.
- c) The appeals process must not be used to delay or deny the applicant's/client's right to a fair hearing or any other right afforded under laws regulating the VR program.

9. Applicant/Client Representation

- a) VR must inform the applicant/client of the availability of the Client Assistance Program (CAP) and provide the client with their contact information.
- b) Applicants/clients may have representation during Informal Review, Mediation, or Formal Hearings by counsel or another advocate of their choice.
- c) All expenses incurred for such representation, including legal fees, are the responsibility of the applicant/client.

10. Ineligibility: Applicants/clients who are found ineligible for VR services, as well as those who were previously eligible but are now deemed ineligible, have the right to challenge these determinations following the procedures described in Chapter 15 of this policy manual.

11. When an applicant/client or their legal guardian requests assistance with a written appeal, the VR Counselor, VR Program Supervisor, or the RSA Ombudsman must provide guidance to assist the client with the timely submission of the VR Request for Appeal form.

12. The VR Counselor must work with the applicant/client or their legal guardian and the RSA Ombudsman throughout the appeal process until a final resolution is determined and implemented.

**B. Request for Appeal**

1. An applicant or client has 20 calendar days from the date the VR Decision letter is mailed or emailed by VR to submit a written Request for an Appeal to VR.
2. VR must receive a written Appeal Request submitted by:
  - a) Mail,
  - b) Email,
  - c) In person,
  - d) Fax, or
  - e) Webform.
3. The Appeals request can be submitted to:
  - a) The local VR office, or
  - b) The office of the RSA Ombudsman.
4. An Applicant or VR Client shall submit a written request for an appeal using:
  - a) The RSA Request for Appeal form, or
  - b) Any other written request that includes the following:
    - (1) A description of the specific VR decision being appealed,
    - (2) The applicant's/client's and legal guardian, if applicable, contact information,
    - (3) The applicant's/client's and legal guardian, if applicable, signature,
    - (4) The date, and
    - (5) An indication of whether the applicant/client is requesting to resolve the issue through:
      - (a) An Informal Review,
      - (b) Mediation, or
      - (c) Fair Hearing.
    - (6) If the applicant or client chooses to proceed only with a Fair Hearing, they must clearly state in their written request that they are declining all other options for resolution. If the applicant does not specify whether they are open to resolving the issue through an Informal Review or Mediation, VR will interpret this as a choice to have a Fair Hearing only.

## **V. Procedure**

### **A. Processing an Appeal Request**

1. An appeals request must be received within 20 calendar days. VR must record the earliest date the request was received by:
  - a) The date the VR office receives the document in person,
  - b) If received by email, web form, or fax, the timestamp of the email or the fax is the date of receipt, or
  - c) If received by mail carrier or courier, the VR staff's date stamp is the date of receipt.
2. When VR receives an appeals request, the VR Counselor must:
  - a) Forward the request for appeal electronically to the RSA Ombudsman within two (2) business days of receipt of the document, and
  - b) Scan and upload the written request for appeal into the applicant's/client's electronic case file (ECF) within two (2) business days of receipt.

### **B. Untimely Submission of an Appeal Request**

1. In instances when the applicant/client did not submit the appeals request within the 20 calendar-day timeframe, the RSA Ombudsman must review and determine whether the delay in submission was due to:
  - a) VR error or misinformation, or
  - b) A delay or other action of the U.S. Postal Service.
2. The RSA Ombudsman will determine if the Appeal Request is:
  - a) Accepted and will proceed with the appeal process, or
  - b) Denied due to late submission.
3. The RSA Ombudsman will send a letter to the applicant/client confirming the submission of the late Appeal Request and the outcome of the untimeliness review.

## **VI. Documentation Requirements**

The applicant's/client's ECF must include the following, if applicable:

- A. VR Decision letter, and
- B. A written Request for Appeal.