

ARIZONA DEPARTMENT OF ECONOMIC SECURITY

Program Name: Vocational Rehabilitation (VR)

Policy Number: VR-15.5-v3

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Last Revision:

CHAPTER 15: Appeals

Section 15.5: Director Review of Fair Hearing Decision

I. Policy Statement

This policy outlines the process of the Arizona Department of Economic Security (DES) Director's Review of a Fair Hearing decision when this option is chosen by the applicant, client, or the DES Rehabilitation Services Administration (RSA) Administrator 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 CFR § 361.57 (g-i), 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 (hereafter referred to as "Appellant") or RSA Administrator requests the DES Director review a Fair Hearing decision issued by the Hearing Officer.

IV. Standards

A. General Provisions

1. If the RSA Administrator, Appellant, or the Appellant's legal guardian, if applicable, disagrees with the Hearing Officer's Fair Hearing decision, either Party may require a review of the Hearing Officer's decision by the Director.
2. To request a Director Review of the Fair Hearing decision, the Appellant or RSA Administrator must submit a written request to the Office of Appeals within 20 calendar days of the mailing date of the Hearing Officer's decision, following the guidelines issued in the Hearing Officer's decision.
3. The written request for review of a Hearing Officer's decision must contain the following information:
 - a. Party's name,
 - b. Contact information, and
 - c. A statement regarding the legal bases for the review.
4. The Office of Appeals must notify all involved Parties within five (5) calendar days of receipt that a request for review of the Hearing Officer's decision has been filed.
5. If an Appellant or RSA Administrator submits a request for a Director Review of the Hearing Officer's decision, the other Party may submit a written response to the request for review of the Hearing Officer's decision to the Office of Appeals.
6. The Appellant and RSA Administrator can submit additional evidence and information relevant to the Hearing Officer's decision to the Office of Appeals.
7. The Appellant or RSA Administrator must submit additional evidence to the Office of Appeals within 10 calendar days.
8. The Party requesting a review of the Hearing Officer's decision may voluntarily withdraw the request for review at any time before the Director issues a decision by making a request by telephone or in writing to the RSA Ombudsman or Office of Appeals.
9. 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.

B. Director Review Decision

1. The Director must issue a final decision following a review of the entire Fair Hearing record and provide the final decision in writing, including a full report of the findings and the statutory, regulatory, or policy bases for the

decision, to the Appellant within 30 calendar days of receipt of the request for the Director's Review of the Hearing Officer's decision.

2. The Director may issue the following findings:
 - a. Request a new Fair Hearing,
 - b. Agree and affirm the Hearing Officer's decision, or
 - c. Issue a final DES decision containing a modified finding on which the decision is based.
3. The Director may not overturn or modify the Hearing Officer's decision, or any part of that decision, that supports the position of the Appellant unless the Director concludes, based on clear and convincing evidence, that the decision of the impartial Hearing Officer is clearly inaccurate based on being contrary to the approved vocational rehabilitation services portion of the Unified or Combined State Plan, the Rehabilitation Act of 1973, federal vocational rehabilitation regulations, or State regulations and policies that are consistent with federal requirements.
4. The Director cannot delegate the responsibility to make any final decisions to any other officer or RSA staff.
5. The Director's decision is final.
6. DES must provide a copy of the Director's decision, which includes an explanation of a Party's right to civil action with respect to the matter in dispute, to each Party.
7. The RSA Ombudsman will provide the final decision to the VR Counselor.
8. The Appellant can bring a civil action.

C. Civil Action

1. Any Party who disagrees with the finding and decision of a Hearing Officer or with the decision of the DES Director has the right to bring a civil action with respect to the matter in dispute.
2. If a Party brings a civil action to challenge the final decision of a Hearing Officer or to challenge the final decision of the DES Director, the last and final decision of the Hearing Officer or DES Director must be implemented pending review by the court.
3. VR is not responsible for any costs associated with legal representation of an Appellant during a civil action.
4. The court will provide the final decision to all parties.
5. The RSA Ombudsman will provide the final decision to the VR Counselor.

V. Procedure

- A. Refer to IV. (A)(1-8), (C)(1-3) of this policy section.
- B. Refer to Standard Work, if available.
- C. Requests for a Director Review must not be scanned into the Appellant's electronic case file (ECF).
- D. The VR Counselor must scan the Director's final decision in the Appellant's ECF.
- E. The VR Counselor must scan the court's final decision in the Appellant's ECF, if applicable.

VI. Documentation Requirements

The Appellant's ECF must include the following:

- A. DES Director's decision, if applicable, and
- B. The court's final decision, if applicable.