

3325.0478 REVIEW AND MEDIATION OF DETERMINATIONS.

Subpart 1. **Written request.** An appellant may make a written request for review and mediation to the director if dissatisfied with any determination that affects the provision of rehabilitation services. To preserve the appellant's right to a review and mediation, the request must be received by the director no more than 60 calendar days after the appellant is notified of the action for which the review is requested. The appellant must identify the determination with which the appellant is dissatisfied. SSB must not institute a suspension, reduction, or termination of rehabilitation services being provided to an appellant until completion of the review process unless the appellant requests a suspension, reduction, or termination, or if SSB has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the appellant.

Subp. 2. **Review and mediation options.** SSB must contact the appellant within five calendar days following receipt of the request and explain review and mediation options. SSB must also provide the appellant a description of services available from and information on how to contact the client assistance program, established under Code of Federal Regulations, title 34, section 370, to assist the appellant in the review of determinations. An appellant may request one or more of the following options: informal review, mediation, or impartial hearing. If the appellant is dissatisfied with the results of an informal review or mediation, or chooses an impartial hearing initially, an impartial hearing must commence within 60 calendar days of the request in subpart 1 unless the parties agree to a specific extension of time.

Subp. 3. **Communication.** If the appellant is disabled in communication, then SSB must appoint an interpreter, consistent with Minnesota Statutes, sections 546.42 to 546.44. Review and mediation process information, decisions and reports, agreements if applicable, and any required supporting documentation resulting from a request under subpart 1 must be provided to the appellant in writing. Consistent with the informed choice of the appellant, review and mediation proceedings and related communication must be provided in the native language of the appellant, supplemented as necessary by other appropriate modes of communication including the use of auxiliary aids and services.

Subp. 4. **Informal review.** An appellant may request an informal review. An informal review must not be used to deny the right of an appellant to pursue mediation or an impartial hearing.

A. Participation in the informal review is voluntary on the part of the appellant and on the part of SSB. The appellant or SSB may terminate the informal review at any time. In the event an informal review is terminated, the appellant or SSB may pursue resolution through mediation or an impartial hearing.

B. The informal review must be conducted by supervisory staff not involved in the original determination that caused the appellant to ask for a review. An appellant may choose:

(1) an informal review of written materials only. Supervisory staff conducting the review must consider all written evidence presented from the time the request for informal review is received until the final decision is made; or

(2) an informal review of written materials with a review conference. Supervisory staff conducting the informal review must consider all written and oral evidence presented from the time the request for review is received until the final decision is made.

C. The final decision regarding the informal review must be made by the reviewing supervisory staff either within ten calendar days following the request for an informal review of written materials only, or within ten calendar days following the conclusion of an informal review conference, unless the parties agree to a specific extension of time. The supervisory staff conducting the informal review must notify the appellant in writing by mail of the informal review decision. The informal review decision must contain a summary of the nature and basis of the decision and the appellant's review rights under this part.

Subp. 5. **Mediation.** An appellant may request mediation at any time. Mediation must not be used to deny the right of an appellant to pursue an impartial hearing.

A. Participation in the mediation process is voluntary on the part of the appellant and on the part of SSB. The appellant, SSB, or mediator may terminate mediation at any time. In the event mediation is terminated, the appellant or SSB may pursue resolution through an impartial hearing.

B. A qualified and impartial mediator who meets the requirements of Code of Federal Regulations, title 34, section 361.5(b)(43), must be chosen on a random basis, by mutual agreement of the director of SSB and the appellant or, as appropriate, the appellant's designated representative, or in accordance with SSB's procedure for assigning mediators in a neutral manner. Mediation sessions must be held in a timely manner and at a location convenient to both parties.

C. Mediation discussions are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties may be required to sign a confidentiality pledge prior to the commencement of mediation. Any agreement resulting from mediation must be in writing with the assistance of the mediator, signed by both parties, and copies provided to both parties. SSB must pay for the cost of mediation, but is not required to pay for any costs related to the representation of an appellant.

Subp. 6. **Impartial hearing.** An appellant may choose an impartial hearing.

A. The impartial hearing officer for a particular case must be selected on a random basis from a list of qualified impartial hearing officers who have been jointly identified by SSB and the State Rehabilitation Council for the Blind.

B. The hearing must be initiated and conducted according to parts 1400.5100 to 1400.8400; Minnesota Statutes, sections 14.57 to 14.62; and Code of Federal Regulations, title 34, part 361.57 (e).

C. The impartial hearing officer must provide by mail to both parties a full written report of the findings and grounds for the decision within 30 calendar days of the completion of the hearing. The impartial hearing officer's decision is final unless a review is requested under item D.

D. An appellant may request a review of the impartial hearing officer's decision using the following process:

(1) A party who is dissatisfied with the impartial hearing officer's decision may request a review of the decision within 20 calendar days of the mailing of the impartial hearing officer's decision. The review must be conducted by the commissioner of employment and economic development, who may not delegate the review to any employee of SSB.

(2) The commissioner must provide both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review.

(3) The commissioner may not overturn or modify the impartial hearing officer's decision, or any part of the decision, that supports the position of the appellant unless the commissioner concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved state plan, federal law and regulations, or state rules and policies that are consistent with federal requirements.

(4) The commissioner must make an independent, final decision within 30 calendar days of the request after reviewing the entire hearing record and provide the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision to both parties.

(5) The commissioner's decision is final unless either party disagrees and brings a civil action, in which case the commissioner's decision must be implemented pending review by the court.

(6) Any party dissatisfied with the commissioner's decision after reviewing the impartial hearing officer's decision may bring a civil action with respect to the matter in

dispute in any state court of competent jurisdiction or district court of the United States of competent jurisdiction, as provided in Code of Federal Regulations, title 34, section 361.57 (i).

Statutory Authority: *MS s 248.07*

History: *36 SR 33*

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