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STATE OF WISCONSIN
DWD
Department of Workforce Development

Scott Walker, Governor
Reginald J. Newson, Secretary

January 4, 2016

TO: The Honorable Mary Lazich
President, Wisconsin State Senate
Room 219 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
PO Box 8953
Madison, WI 53708

FROM: Reginald J. Newson, Secretary
Department of Workforce Development

SUBJECT: **Appeal Procedures for Vocational Rehabilitation Services – Ch. DWD 75 (Clearinghouse Rules No. 15-055)**

Introduction

The Department of Workforce Development ("DWD") is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DWD will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

Rule Content

The proposed rule will do all of the following:

Definitions and Terms

- Updates the existing rule by creating and defining "administrator's representative," "contract administrator," "determination of ineligibility," and "secretary" for clarity.
- Repeals the definition "appellant," which is obsolete. The proposed rule incorporates the use of applicant or eligible individual, or representative of the applicant or eligible individual to be consistent with federal regulations.
- Modifies the terms "appeal," "hearing," "hearing coordinator," "hearing request," "intent to review," "party," "representative," and "Wisconsin client assistance program" for clarity.
- Replaces the term "IWRP" with "IPE" and "prehearing interview" with "prehearing conference."
- Changes the definition of "order of selection" to be consistent with federal regulations.

Representative of an Applicant or Eligible Individual

The proposed rule clarifies that a representative of an applicant or eligible individual may invoke the provisions under this chapter.

Right to a Hearing

Under s. DWD 75.04 an applicant or eligible individual, or the representative of the applicant or eligible individual, may appeal a decision concerning eligibility for services or the furnishing or denial of services. The proposed rules clarifies that an applicant or eligible individual, shall file an appeal when a determination of ineligibility for services or the decision of furnishing or denial of services for vocational rehabilitation services for an individual are denied, reduced, suspended or terminated.

Requesting a Hearing

The proposed rule clarifies, but does not change the time limits for requesting a hearing. The rule clarifies a request for hearing must be filed within 12 months after a determination of ineligibility for services or the decision of the furnishing or denial or services was mailed to the applicant or eligible individual, or the representative of the applicant or eligible individual.

The proposed rule updates the requirements for filing a written hearing request and requires the applicant or eligible individual, or representative of the applicant or eligible individual, to state the issues involved in the appeal and the desired outcome on a form provided by the department.

Time Limit for Holding a Hearing

Under s. DWD 75.07 a hearing shall be held within 45 days of the receipt of the hearing request. The proposed rule changes, from 45 days to 60 days, the time period in which a hearing must be held within receipt of a hearing request.

Filing Motions Relative to a Hearing

Under s. DWD 75.08 (5), a motion for a substitute hearing officer shall be filed with the hearing coordinator and the hearing coordinator forwards the request with their recommendation to the administrator with a copy of any relevant comments regarding that hearing officer's performance. If the motion is granted, the hearing coordinator assigns a different hearing officer. The proposed rule repeals this portion of the rule and requires a motion for a substitute hearing officer be filed with the hearing officer.

In addition, the proposed rule clarifies, but does not change, current rules related to the hearing coordinator acknowledging a hearing request in writing.

Services While a Hearing Officer's Decision is Pending

Under s. DWD 75.11, the department may not suspend, reduce or terminate vocational rehabilitation services pending the decision of a hearing officer unless the services were obtained through fraud, misrepresentation, collusion or criminal conduct. The proposed rule expands this section to include that the department may not suspend, reduce or terminate vocational rehabilitation services pending the decision of a hearing officer unless requested by the applicant or eligible individual, or the representative of the applicant or individual

Recording a Hearing and Transcripts of Hearings

Under s. DWD 75.16 (6), a hearing officer is required to tape record each hearing. The proposed rule eliminates that the method of recording be specifically by tape recording and creates a *note* with information on how to obtain a copy of the recorded hearing.

The proposed rule also provides that a party may file a written request for a copy of the record in an alternate format if the free copy of the recording cannot be used by a party due to a disability. A *note* was created with information on how to file a written request of the hearing record.

Hearing Officer's Decision

Section DWD 75.17 is updated to clarify the hearing officer shall issue a written decision within 10 calendar days of a motion and within 30 calendar days of a hearing. The decision shall also state the decision is final unless the applicant or eligible individual, or representative of the applicant or eligible individual, requests a review of the decision within 20 calendar days after the decision was issued. The proposed rule also directs the hearing officer to send a copy of the notice to the administrator's representative and to the hearing coordinator for placement in the applicant or eligible individual's case record.

Review and Modification of the Hearing Officer's Decision

Section DWD 75.19 (1) clarifies that the department, or the applicant or eligible individual, may initiate a review of the hearing officer's decision.

Under current rule, authority for modifying the decision of a hearing officer is conducted by the division administrator. The proposed rule requires the authority for modifying the hearing officer decision be conducted by the department secretary or the secretary's authorized designee. The proposed rule also provides that the division administrator conduct an initial review of the decision and submit a proposed review decision to the secretary or the secretary's designee for consideration. The secretary or secretary's designee will then conduct a review of the decision, the administrator's proposed review decision and issue a final review decision.

Technical Changes

- Modifies current *notes* to reflect the department's website address and includes a toll-free telephone number.
- Makes minor organizational, drafting and terminology changes.
- Corrects erroneous cross-references to federal and state laws.

Public Hearings

DWD held one public hearing in Madison on September 2, 2015. Three people attended the hearing and provided oral testimony and submitted written comments:

- Deb Henderson-Guenther, WI Client Assistance Program
- Linda Vegoe – WI Rehabilitation Council
- Kathy Steffke – Disability Rights Wisconsin

A public hearing summary of the comments received is attached.

DWD's Rule Changes in Response to Comments of Rules Clearinghouse, Public Hearings and Unemployment Insurance Advisory Council Comments

A summary of the public hearing comments received, and DWD's response to those comments is attached.

The Wisconsin Legislative Council Rules Clearinghouse made a number of comments on the proposed hearing draft rule. DWD implemented all of the Clearinghouse suggestions in the proposed final draft with the exception of the following:

Comment 5. e. "...throughout the proposed rule, the department alternates between measuring days in working days and calendar days. Unless such measurements are mandated by law, the department may consider consistently measuring days by one method or the other in the interest of clarity.

Response: It is not possible to incorporate consistency when measuring days due to federal and state requirements that are applied to ch. DWD 75.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Environmental Impact

This rule will not have any negative environmental impact.

Summary of, and comparison with, existing or proposed federal statutes and regulations

Under 29 USC 722 (c), each state is required to establish procedures for mediation of, and procedures for review through an impartial due process hearing of determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services to applicants or eligible individuals.

Under 34 CFR part 361, general guidelines and procedures for the review of determinations made by designated State unit personnel are provided in full detail.

The Federal Rehabilitation Act of 1973 (Act) as amended, is a federal law designed to protect individuals with disabilities and prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance.

Comparison with rules in adjacent states

Federal law requires all states to develop and implement procedures to ensure that an applicant or eligible individual who is dissatisfied with any determination that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination. All surrounding states are implementing federal requirements and therefore are similar to Wisconsin rules.

Summary of Factual Data and Analytical Methodologies

Proposed rule changes were developed after reviewing state statute and federal regulations.

Analysis and supporting document used to determine effect on small business or in preparation of an economic impact analysis

The proposed rule does not have an economic impact on small businesses as defined in s. 227.114 (1), Stats., and no analysis is required. The department posted the proposed rule online for 14 days to solicit public comment on the economic impact. No public comments were received on the economic impact.

Effect on Small Business

The proposed rule does not have an effect on small business.