

## **PROCEDURES FOR MEDIATION, REVIEW THROUGH IMPARTIAL HEARING AND REVIEW OF DECISION OF IMPARTIAL HEARING**

The Georgia policy on due process has remained the same, and the procedures for alternative dispute resolution are included in this policy. To enhance the Georgia Department of Labor (GDOL)/ Vocational Rehabilitation (VR) Program's ability to participate successfully in a mediation process, appropriate policy unit members have received training in mediation. Two new policy unit members are scheduled to attend mediation training in May 2004.

Impartial hearings in Georgia are conducted by Administrative Law Judges within the Office of State Administrative Hearings (OSAH). OSAH also provides mediation through certified mediators at no cost to the GDOL/VR Program. OSAH is an independent State of Georgia government agency.

The statistical information relating to Georgia's due process procedures for FY2003 were included in the 722 Report.

### **POLICY**

A client/applicant or authorized representative who does not agree with a decision by the Vocational Rehabilitation Program regarding the provision or denial of services, including inaction or failure to act with reasonable promptness, may request review and redetermination of the decision. This request shall be in writing.

The client/applicant shall be notified, in writing, of any agency decision regarding the provision or denial of services that adversely affects the client/applicant. This notice shall include notification of the client/applicant's right to seek mediation and review of the decision through an impartial hearing, and of the availability of resources within the Client Assistance Program. The written notice shall be supplemented, as necessary, with appropriate alternate modes of communication.

Upon receipt by the agency of the request for review, an administrative review shall be conducted and informal resolution shall be attempted through the use of negotiation or mediation between the client/applicant and authorized representative, if appropriate, and the agency.

The agency shall not institute a suspension, reduction, or termination of a service(s) being provided under a work plan, unless the client/applicant so requests, during the thirty (30) day period following issuance of a notice of change letter. If the client/applicant requests review of an agency decision or action, services being provided at the time the review is requested shall continue without suspension, reduction or termination until the agency's final decision is rendered. This provision shall not apply, and services shall be terminated immediately, where:

- The client has died;
- The client has moved and left no forwarding address; or

- The client has obtained service(s) through misrepresentation, fraud, collusion, or has committed a criminal act.

NOTE: If service(s) are being provided in a facility, and the client/applicant commits a criminal act or serious infraction of the facility's client code of conduct, the client may be provided notice and immediately discharged from the facility. If the facility-based services are the only services being provided to the client/applicant at the time of the infraction, the case may be closed.

The written decision(s)/agreement(s) of any informal administrative review, mediation and/or impartial hearing shall be made a permanent part of the client's case file.

## **PROCEDURE**

### **Notice of Due Process**

The client/applicant shall be informed in writing and supplemented, as necessary, by appropriate alternate mode(s) of communication of his/her right to and the procedures by which s/he may request review of an agency decision, including mediation and/or an impartial hearing, at the following stages in the vocational rehabilitation process.

- A. At application, the applicant shall be provided the agency's brochure and the fact sheet explaining the above.
- B. The VR Counselor shall notify an applicant for vocational rehabilitation services under this policy using the agency's notice form when either: ineligibility is determined; or the individual is determined eligible for services, but shall not be provided services under the order of selection.
- C. At the development of the work plan (case status 06 or 12), the VR Counselor shall provide the client with a copy of the work plan and shall explain to the client his/her right to and procedures by which s/he may request review.
- D. Any time a work plan is amended, the VR Counselor shall provide the client with a signed copy of the amendment and shall inform the client of the right to appeal the amendment using the agency's notice form.
- E. In any case whereby reclassification into another priority category under the order of selection alters in any way the services being proposed or provided, the VR Counselor shall provide the individual written notice of such change.
- F. At closure or termination (case status 08, 26, 28, 30, 33, 35, 37 or 38), the VR Counselor shall notify the applicant/client of the closure or termination, of his/her right to appeal, and of the procedures by which s/he may file a request for an impartial hearing using the agency's notice form unless closure or termination

occurs because: the client has died; or, the client's residence is unknown, as indicated by envelope(s) returned by the post office. The envelope(s) shall become a part of the case file.

- G. When any agency action adversely affects the client's participation in the vocational rehabilitation program, the client shall be informed by the VR Counselor using the agency's notice form of the agency's action.

#### **Notice of Rehabilitation Services Action and Client/Applicant Request for Review**

- A. The Notice of Change concerning Rehabilitation Services to a client/applicant shall state the specific reason(s) for the agency's action and shall state the policy or procedural provision(s) relied upon. The reason(s) shall be documented in the client/applicant's file.
- B. The notice shall advise the applicant/client of his/her right to appeal the decision through an impartial hearing, and to whom to appeal the decision (including a name and address).
- C. The notice of change shall be supplemented, as necessary, by other appropriate modes of communication consistent with the informed choice of the individual.
- D. The notice of change shall inform the client/applicant of the availability of the resources of the Client Assistance Program.

The request for an impartial hearing must be made in writing within thirty (30) calendar days of the date of the notice of change letter and should be directed to the VR Counselor. The VR Counselor shall forward the request with appropriate case file documentation supporting the agency decision to the Regional Director who shall send it to the policy consultant.

Upon request of the client, the VR Counselor shall assist the client to submit any request for a review and/or impartial hearing. The client must be allowed access to his/her file as provided in the agency policy on release of confidential information (120.1.03).

#### **Informal Administrative Review**

- A. The administrative review shall be conducted by the Regional Director, or the Regional Director's designee, of the region in which the client is served. The Regional Director's designee shall not be the Employment Manager of the VR Counselor who made the decision.
- B. The Regional Director or Regional Director's designee shall schedule and conduct an informal administrative review within fifteen (15) calendar days after the date of receipt of the request for review. The informal review may be either a document review of the issue(s) within the case file, a telephone review with the

client, a face-to-face review with the client and counselor, or any combination thereof.

If the review is to involve a face-to-face-review with the client/applicant, the individual shall be notified in writing at least five (5) calendar days prior to the review of the time, date, place and the issue(s) to be discussed. The Regional Director or designee may extend the time for the review upon a request from the client or other parties showing good cause or by mutual written agreement with the client. The face-to-face informal administrative review shall include the client and authorized representative (if applicable) and the VR Counselor.

The face-to-face informal administrative review may include also the Employment Manager and any other person(s) (witnesses) the Regional Director, designee, policy appeals advisor or any person deemed necessary for an accurate review of the decision. The client/applicant and/or authorized representative shall have the right to bring witnesses, present evidence and to question or refute any adverse witnesses or evidence. The Regional Director or designee shall have full discretion over the conduct of the review. The Regional Director or designee shall render a written decision within five (5) working days from the date any informal review is conducted.

- C. The informal review decision shall be written and shall be provided to the client, the client's representative, the VR Counselor and the Employment Manager. I-A copy shall be placed in the client's case file and a copy shall be mailed to the Regional Director and the policy consultant. The decision shall state the policy relied upon and the facts upon which the decision is based, and shall include procedures for continuing with an impartial hearing. Refer to 1060.0.00.

### **Alternative Dispute Resolution**

Alternative dispute resolution (ADR), including negotiation and mediation, may be used at any point in the review process. A client/applicant who is appealing an agency action shall be informed of the availability of both negotiation and mediation, and provided a description of each method. The use of negotiation or mediation shall not be used to deny or delay client/applicant access to an impartial hearing. ADR is a voluntary process; neither negotiation nor mediation shall be attempted unless all parties agree to participate in the process. All requests for negotiation and/or mediation should be forwarded to the policy unit.

- A. Negotiation may be facilitated by the policy consultant or Employment Manager or Regional Director. Negotiation should not be used if the client has requested or will request mediation.
- B. Mediation shall be facilitated by an impartial qualified mediator. Mediation agreements shall be written and signed by both the agency and the client/ applicant. Any agreement shall become a permanent part of the client/applicant case file.
- C. On-going services shall not be interrupted, reduced or terminated pending the ADR outcome unless the services were obtained through fraud or criminal conduct.

## **Impartial Hearing**

- A. If the applicant/client is not satisfied with the decision resulting from the informal administrative review, s/he may request to continue with an impartial hearing before an Administrative Law Judge (ALJ) of the Office of State Administrative Hearings (OSAH).

The request must be made in writing within ten (10) calendar days from receipt of the informal administrative review decision. The request to continue with an impartial hearing should be directed to the Regional Director or designee, with a copy to the policy appeals advisor and policy consultant.

The policy consultant, within three (3) working days upon receipt of the request from the applicant/client, shall request the impartial hearing process, continue by notifying the DOL Legal Services Office. Alternatively, the applicant/client may directly request the impartial hearing process be continued by notifying the GDOL Legal Services Office, Appeals Reviewer.

The OSAH must schedule and conduct the hearing within forty-five (45) calendar days from the date of the original request for the impartial hearing from the client/applicant, unless both parties agree to a specific extension of the time. The ALJ shall provide notice to the applicant/client, at least ten (10) calendar days prior to the hearing, of the time, date and place of the hearing, and of the issue(s) to be considered. The client, his/her authorized representative, the VR Counselor, Employment Manager, Regional Director or designee and other interested parties may appear at the impartial hearing.

The client/applicant or, if appropriate, the authorized representative, shall be afforded an opportunity to present additional evidence, information, and witnesses to the ALJ, to be represented by counselor or other appropriate advocate, and to examine all witnesses and other relevant sources of information and evidence. The hearing shall be conducted in accordance with the Georgia Administrative Procedure Act, O.C.G.A. 50-13-1 et seq., as modified by 34 CFR 361.57.

The decision of the ALJ shall be based on the evidence of the record, the approved state plan, the Rehabilitation Act of 1973, as amended and implemented by the code of federal regulations 34 CFR 361 et seq., this policy manual and other material introduced at the hearing, and shall state the facts upon which the decision was reached. The written decision shall be rendered within thirty (30) calendar days of the completion of the impartial hearing. This decision shall be provided to the applicant/client or, if appropriate, the authorized representative, the Regional Director of the region in which the applicant/client is being served, the director of the agency and to the Rehabilitation Services' policy consultant.

- B. The ALJ shall be selected on a random basis from among a pool of qualified ALJs jointly identified by Rehabilitation Services and the State Rehabilitation Council.

- C. An ALJ who has been previously involved in a decision regarding the vocational rehabilitation of a client/applicant shall be excluded from the pool of qualified ALJs who may hear a future appeal(s) brought by same client/applicant.