

**RSM 1
ADMINISTRATIVE MANUAL
SECTION 300**

ADMINISTRATIVE ISSUES

Updated: 08/17

301 Non-discrimination	1
301.01 Non-discrimination and Rehabilitation Services	1
301.02 Type of Disability	1
301.03 Age	2
301.04 Residency	2
301.05 Citizenship, Legal Residence and Employment Status	2
302 Ethics	2
302.01 Ethical Standards	2
302.02 DORS Employee Ethical Guidelines and Practices	2
303 Appropriate Modes of Communication	2
303.01 Provision	2
303.02 Timeline	3
304 Appeal Hearing	3
304.01 Right to Appeal Hearing	3
304.02 Alternative Dispute Resolution	3
304.03 Notification and Timing	3
304.04 Continuation of Services	4
304.05 Assistance to Individuals in Appeals	4
304.06 Requirements for Filing an Appeal	4
304.07 Acknowledgment and Delegation to Hearing Officer	5
304.08 Burden of Proof	5
304.09 Rights of the Individual at the Hearing	5
304.10 Accommodations	5
304.11 Division Presentation	5
304.12 Prohibition of Ex Parte Communication	5
304.13 Final Decision	6
304.14 Further Appeal Rights and Notice	6
304.15 File of Final Decision	6
304.16 Extension of Time	6

301 Non-discrimination

301.01 Non-discrimination and Rehabilitation Services

The Division of Rehabilitation Services (DORS) complies with the Civil Rights Act and the Americans with Disabilities Act (ADA). No individual will, on the grounds of gender, race, creed, color, age, national origin, residence, physical or mental disability, or political affiliation be excluded from participation in or be denied the benefits of rehabilitation services. During the initial interview the individual will be notified orally and in writing of this policy.

301.02 Type of Disability

No group of individuals will be excluded or found ineligible for rehabilitation services solely on the basis of type of disability.

301.03 Age

No individual will be determined ineligible for rehabilitation services solely on the basis of age.

301.04 Residency

No residency requirement, durational or other, will be imposed which excludes from services any individual who is present in the state.

301.05 Citizenship, Legal Residence and Employment Status

Individuals who are not U.S. citizens shall be requested to present evidence of their Lawful Permanent Residence (“green card”) or other applicable identification and employment authorization issued by the United States Citizenship and Immigration Services (USCIS) (formerly the Immigration and Naturalization Service). See **Attachment 300-1: Documents that Establish Identity and Employment Eligibility** for examples of appropriate documentation. Non-US citizens requesting vocational rehabilitation services must provide documentation that they can work legally in the United States; those requesting independent living services must provide documentation that they are legal residents of the United States. The need for this documentation shall be discussed at the time of application and the documentation shall be required prior to plan development.

Resources to enhance provision of services to individuals from other cultures and nationalities are available in the Multicultural Resources section of InDORS.

The DORS counselor shall assure that the Alien Registration Number and pertinent related information are included in the Miscellaneous Personal Characteristics – Identification Numbers section of the application.

302 Ethics

302.01 Ethical Standards

All DORS staff will demonstrate adherence to ethical standards and will assure that these standards are vigorously enforced consistent with their particular job responsibilities and duties. Staff will perform their job duties in a manner that is consistent with their education, experience and expertise, guided by the ideals of competence, integrity and objectivity.

302.02 DORS Employee Ethical Guidelines and Practices

RSM 1, Section 1000, DORS Employee Ethical Guidelines and Practices will be provided to all employees and to new employees during orientation. All new employees will sign an acknowledgement of receipt of the **DORS Employee Ethical Guidelines and Practices** indicating their obligation to abide by the stated guidelines.

303 Appropriate Modes of Communication

Appropriate modes of communication are specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated.

303.01 Provision

Appropriate modes of communication will be provided, including but not limited to the use of interpreters, open and closed captioned videos, specialized telecommunication services and audio recordings, Braille and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations and simple language materials (see **RSM 2, Section 706.03**, for provision of auxiliary aids in institutions of post-secondary education).

303.02 Timeline

Every effort will be made to be sure that the need for a translator, interpreter, or other appropriate mode of communication does not affect provision of timely services. Interpreting services for deaf/hard of hearing and translation/interpreter services for non-English speaking consumers shall be obtained in accordance with **RSM 5, Attachment 100-1** and **Attachment 100-2**, respectively.

304 Appeal Hearing

304.01 Right to Appeal Hearing

Any applicant for or recipient of rehabilitation services who is dissatisfied with any action concerning the furnishing or denial of rehabilitation services under the State Plans has the right to an appeal hearing.

304.02 Alternative Dispute Resolution

- a. **Informal resolution** – Staff are encouraged to resolve at the lowest organizational level dissatisfaction of an applicant or eligible individual with any action concerning the furnishing or denial of rehabilitation services, including reviews by rehabilitation directors. Informal dispute resolution shall not be used to deny or delay the right of an applicant or eligible individual to an appeal hearing.
- b. **Formal mediation** – A formal mediation process is available once a formal appeal has been filed. The following requirements apply:
 1. Mediation is voluntary on the part of both parties.
 2. Mediation shall be scheduled in a timely manner at a place convenient to both parties and shall be scheduled so that it will not delay the scheduled appeal hearing.
 3. Mediation shall be conducted by a qualified and impartial mediator trained in effective mediation techniques.
 4. Both parties may submit evidence and information during mediation which supports their position.
 5. During mediation the applicant/eligible individual may be represented by a person selected by the applicant/eligible individual.
 6. Any agreement reached through mediation shall be documented in a written mediation agreement.
 7. Discussions occurring during the mediation process shall be confidential and may not be used as evidence in any subsequent appeal hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the mediation process.

304.03 Notification and Timing

The DORS counselor shall notify all applicants and eligible individuals of:

- a. Their right to appeal determinations made by DORS personnel which affect the provision of rehabilitation services.
- b. Their right to request mediation, per **Section 304.02**.
- c. Availability of assistance from the Client Assistance Program (CAP).

Such notification shall be provided by the counselor at the time an individual applies for rehabilitation services; at the time the **Individualized Plan for Employment (IPE)/Independent Living Plan (IPE)** is developed; and upon reduction, suspension, or cessation of rehabilitation services for the individual.

304.04 Continuation of Services

DORS may not suspend, reduce or terminate any services being provided, as a result of an individual filing an appeal, unless the eligible individual, or if appropriate, the individual's representative so requests, pending a mediated agreement or final determination of an impartial hearing or other final resolution. Services need not be continued if they have been obtained through fraud, collusion, or criminal conduct on the part of the individual.

If an individual who has filed an appeal requests either of the following, the request will be referred to the regional director or designee for consultation and direction:

- a. Services specified on the **IPE/ILP** but not yet initiated; and/or
- b. Additional services not on the **IPE/ILP** which are related to the rehabilitation goal but are not related to the subject of the appeal.

304.05 Assistance to Individuals in Appeals

DORS staff shall assist applicants and eligible individuals in exercising appeal rights. This shall include:

- a. Assistance in writing the request for an appeal hearing.
- b. Advising the individual of the various stages of the appeal process.
- c. Advising the individual about formal mediation.
- d. Providing information regarding services available through the Client Assistance Program (CAP).

304.06 Requirements for Filing an Appeal

A request for an appeal hearing shall be:

- a. Filed within 60 days of receiving notice of the determination.
- b. In writing, clearly identifying the action appealed and stating the reasons for the appeal and the action that the individual requests DORS to take.
- c. Signed by the individual or, if appropriate, the individual's representative.
- d. Mailed or delivered to:

The Assistant State Superintendent in Rehabilitation Services
Division of Rehabilitation Services
2301 Argonne Drive
Baltimore, MD 21218

It is requested that all appeals include the address and phone number of the individual to facilitate response to the appeal request.

304.07 Acknowledgment and Delegation to Hearing Officer

The Assistant State Superintendent shall acknowledge in writing the receipt of the appeal, and shall ensure that the written appeal request is documented/attached in the consumer's electronic case record using attachment category: "Appeal Process—Hearing Requested in Writing."

The Assistant State Superintendent shall delegate a request for an appeal hearing to the Office of Administrative Hearings (OAH), in accordance with the State government Article Section 10-205, Annotated Code of Maryland, to conduct the hearing and issue a final decision.

The appeal hearing shall be conducted by an administrative law judge within the Office of Administrative Hearings, consistent with state law and regulation and OAH rules of procedures.

The State Rehabilitation Council and DORS shall jointly identify qualified impartial hearing officers from administrative law judges within OAH.

The hearing officer shall hold the hearing within 60 days of DORS' receipt of the request for an appeal hearing, unless the parties jointly agree to a delay.

304.08 Burden of Proof

- a. In an appeal of a determination that an applicant is ineligible for vocational rehabilitation services because the individual is incapable of benefiting from such services in terms of an employment outcome due to the severity of the disability, DORS has the burden of proof by clear and convincing evidence that the individual is incapable of so benefiting.
- b. In all other matters, the individual has the burden of proof by a preponderance of the evidence.

304.09 Rights of the Individual at the Hearing

At the hearing, the individual shall have the right to:

- a. Be represented by counsel or other appropriate representative.
- b. Present witnesses.
- c. Cross-examine witnesses.
- d. Present documentary or other evidence which is relevant.
- e. Make opening and closing statements.

304.10 Accommodations

DORS or the hearing officer shall provide reasonable accommodations, including appropriate modes of communication, for an individual who requires assistance in exercising rights under the appeal hearing policy.

304.11 Division Presentation

DORS shall participate in the hearing and present any relevant evidence or testimony at the hearing.

304.12 Prohibition of Ex Parte Communication

The hearing officer and any DORS employee authorized to participate in the appeal process may not communicate outside the presence of the individual or the individual's representative with any person not authorized to participate in the appeal process regarding any issue of fact or law in the case.

If the hearing officer or any DORS employee involved in the appeal process becomes personally aware of a prohibited communication, that person shall follow the procedures set forth in the State Government Article, Section 10-219 (b), Annotated Code of Maryland, concerning these communications.

304.13 Final Decision

The hearing officer shall submit in writing to the Assistant State Superintendent and to the applicant/ eligible individual, and/or the individual's representative if appropriate, within 30 days of the conclusion of the hearing, a final decision affirming, reversing, or modifying the determination being appealed.

The final decision shall be promptly implemented.

304.14 Further Appeal Rights and Notice

Review of an administrative law judge's final decision shall be a civil action in either the State circuit court or in the federal district court. The written decision of the administrative law judge (see **Section 304.13**) shall include a statement of the individual's right of review.

The final decision shall be implemented pending any review by any court.

304.15 File of Final Decision

- a. The Assistant State Superintendent shall maintain a separate file of final decisions issued after appeal hearings that shall be available for public inspection. Before placing decisions in the public inspection file, the Assistant State Superintendent shall delete any names or references in the body of the decision that would allow identification of any applicant for or recipient of DORS services.
- b. The final decision shall be scanned and attached to the consumer's electronic case record using attachment category: "Appeal Process-Hearing Final Decision."

304.16 Extension of Time

Reasonable time extensions may be granted by the Assistant State Superintendent for good cause shown at the request of the individual or the individual's representative or at the request of the hearing officer.