



STATE BOARD OF VOCATIONAL EDUCATION
DIVISION OF VOCATIONAL REHABILITATION

State Capitol Building

Charleston, West Virginia 25305

Earl W. Wolfe
Director

(304) 348-2375

NOTICE OF AGENCY ADOPTION

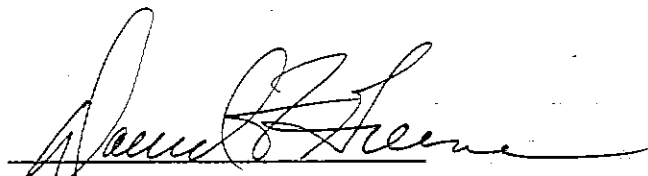
RULE TITLE: Rules of Procedure for Hearings Involving Applicants Who have
Been Found Not Eligible To Receive Services or Been Denied Services.

RULE TYPE: Procedural

The attached rule constitutes the official rule adopted by the

Division of Vocational Rehabilitation

and filed with the Secretary of State.


David Greene, Hearing Officer

SECRETARY OF STATE
DIVISION OF VOCATIONAL REHABILITATION
1988 DEC -2 PM 3:47
FILED



CLIENT ASSISTANCE PROGRAM

A Project of
WV Advocates for the Developmentally Disabled

A program to help
clients and applicants
receive vocational
rehabilitation services

October 21, 1986

Susan L. Edwards, Director
Anne Voorhees, Staff

David F. Greene, Attorney
P & P Building, Small Conference Room
West Virginia Rehabilitation Center
Institute, WV 25112

Dear Mr. Greene:

The purpose of this letter is to submit comments of
the Client Assistance Program on the proposed rules for:

1. Consumer Advisory Committee for General
Rehabilitation Services - meetings and duties.
2. Consumer Advisory Committee for Attendant Care
Services - meetings and duties.
3. Rules of Procedures for Hearings Involving Applicants
Who Have Been Found Not Eligible to Receive
Rehabilitation Services.
4. Rules of Procedure for Hearings Involving Applicants
Who Have Been Denied Attendant Care Services.

I will start by commenting on the Rules for Procedures
for Hearings Involving Applicants Who Have Been Found Not
Eligible to Receive Rehabilitation Services.

WV State Code § 18-10-A-9, passed in 1945, states:

Any individual applying for or receiving
vocational rehabilitation who is aggrieved
by any action or inaction of the division
shall be entitled, in accordance with
regulations, to a fair hearing by the state
board.

X
The regulations that have been proposed by the division,
presumably under this section of the law, deal with
regulations for people who have applied for services and
been found ineligible for services. It does not deal with
people who have any other type of grievance with the
division, for instance someone who is eligible for services
but has been denied a specific service. Is the division
going to propose a different set of regulations to cover

every situation except people found not eligible for services? Are there already state regulations covering everything else? How does the division intend to come into compliance with this section of the law?

The rest of my comments on the proposed rules for hearing procedures will pertain to both the rules for people found not eligible for attendant care services and applicants found not eligible for rehabilitation services, as both these sets of rules are essentially the same.

X
Local Reconciliation - the WVDVR's Case Services Manual makes Local Reconciliation an optional step for the client where these proposed regulations appear to make Local Reconciliation a mandatory step. Couple that with the fact that there are no timelines for holding a Local Reconciliation meeting, this section could be very harmful to a client's case. These regulations could be used to delay a client's case indefinitely.

The WVDVR Case Services Manual also requires clients to participate in the local reconciliation meetings. However, these proposed regulations take away this client right by stating that the client usually participates in Local Reconciliation.

Recommendations

Although in general we agree with the concept of a Local Reconciliation meeting, there may be circumstances where it is not appropriate. We recommend that the proposed regulations meet the WVDVR Case Services Manual and this meeting be made an optional step for the client.

2. We recommend that specific timelines be incorporated in the regulations for Local Reconciliation so that clients know what to expect and can exercise their right to pass on to the next step if there is no Local Reconciliation.

3. We recommend that the client's right to participate in the Local Reconciliation be given back to them. No meeting concerning a client's grievance, at which an agreement can be made between the two parties, should take place without all of the parties there.

Administrative Review - Two weeks before receiving the notice of Public Hearing, the Client Assistance Program received a new section of the Case Services Manual for hearing procedures. This new section, dated August 1986 but not yet in effect, provides for a face-to-face Administrative Review with client participation. Yet these new proposed rules, received two weeks later, again takes this right away. Furthermore, the proposed regulations do not state who will do the Administrative Review and gives no timelines for when Administrative

Review has to be held after the client requests one. Why are these regulations a step backward in client rights from the Case Services Manual?

Recommendations

1. The client should be given the right to participate in the Administrative Review, as the division presumably intended by issuing the new Case Services Manual section and including this right.

2. There should be a specific timeline set on how soon the Administrative Review has to be held after the client requests it.

3. The rules should also specify who will do the Administrative Review as well as who will participate in the Administrative Review.

Fair Hearing

The proposed regulations do finally give a 30-day timeline on how soon the hearing has to be held after the client requests it and a two-week timeline on the director to give a decision after he receives the Hearing Examiner's recommendations. However, there is no timeline on the Hearing Examiner for submitting his report to the director.

Under the proposed regulations, the Hearing Examiner is required to prepare a detailed summary of the hearing and submit it to the director. From past experience, a detailed summary of the hearing consists of the transcript of the hearing and a one-or-two-sentence recommendation of findings. The director in turn is supposed to make the final decision and inform the client of his decision as well as his rationale. This usually consists of a statement as to his finding and a sentence quoting some section of the law. Nowhere is there a statement of facts, based on the evidence presented at the hearing, to tell the client how the director came to the specific finding. Nor is there any time and effort put into stating the sections of laws brought out in the hearing and which laws have relevance. Therefore the client, should s/he want to appeal, has no idea on what basis to make the appeal.

Recommendations

1. A timeline should be set for the amount of time the Hearing Examiner has to submit his report and recommendations to the director.

2. The Hearing Examiner and Director should be required to submit findings of fact and conclusions of law as part of their hearing decisions.

The next set of comments will be on the proposed rules for Consumer Advisory Committees for General Rehabilitation Services and Consumer Advisory Committees for Attendant Care Services.

To start with, I must admit to being somewhat confused as to the purpose of proposing state rules for Consumer Advisory Committees for General Rehabilitation Services. In looking over the WV State Code § 18-10-A-1 through 15, as specified in the proposed rules, I could find no state legislative requirement for such Advisory Committees. I am aware that DVR already has consumer advisory committees in every district in the state. So what is the purpose of these new proposed rules for Consumer Advisory Committees? The law doesn't seem to require them.

However, §18-10A-4a of the WV Code does require a Consumer Advisory Committee for Attendant Care Services. The law states that the purpose of the Consumer Advisory Committee for Attendant Care Services is to advise the division on "policies and procedures and related matters involving the administration of the program." Although the proposed rules are supposed to include meetings and duties, there is no such reference to duties in the text of the proposed rules.

We also note that the Consumer Advisory Committees for General Rehabilitation Services and the Consumer Advisory Committee for Attendant Care Services are scheduled to meet on the same day in the same meeting room. Is it the division's intention that they should meet together?

It seems, according to the proposed rules, that the division intends to always hold the meetings in Charleston. If these are to be statewide Consumer Advisory Committees it would seem appropriate to schedule the meetings in different parts of the state to ensure consumer participation.

We also question whether or not the division released these proposed rules to the already-existing consumer advisory committee. Most of the members we talked to knew nothing about these proposed rules and public hearing. The division surely should have asked for input from the Consumer Advisory Committees on regulations concerning consumer advisory committees.

Recommendations

1. Add a section in both sets of regulations concerning consumer advisory committees that specifies under "Duties" that the committees will advise on all policies, procedures, and related matters involving the administration of the program.
2. Clarify whether or not both or all of the consumer advisory committees are to meet together.
3. Add some flexibility into the scheduling of the meetings so that they meet in different parts of the state at the convenience of the consumer advisory committee members.
4. Use advisory committees appropriately by asking for their input on matters involving policy change and procedure.

We were also recently notified that this hearing would deal with comments on the changes to Section 2300 of the WV Case Services Manual. For the most part we agree with the changes made in Section 2300 of the Case Services Manual. We would like a change that would require the Fair Hearing Examiner and the Director to issue Findings of Fact and Conclusions of Law as a part of their decisions.

Recommendations

1. Findings of Fact and Conclusions of Law be a part of the recommended hearing decision from the Hearing Examiner and part of the Director's decision.

2. Adopt the rest of the rules as written.

I want to take this opportunity to thank the Division for the opportunity to comment on the proposed rules and policy manual changes.

Thank you for your time.

Yours truly,



Susan L. Edwards, Director
Client Assistance Program



Nancy Mattox, Executive Director
West Virginia Advocates for the
Developmentally Disabled

SLE/ck
SLE/076/86

WEST VIRGINIA PROCEDURAL RULES
DIVISION OF VOCATIONAL REHABILITATION

Rules of Procedure for Hearings Involving
Applicants Who Have Been Found Not Eligible
To Receive Rehabilitation Services
Or For Eligible Clients Who Have been Denied
Specific Rehabilitation Services

Chapter 18-10A (1-15)
1986

FILED
1986 DEC -2 PM 3:47
WEST VIRGINIA
STATE

WEST VIRGINIA PROCEDURAL RULES
DIVISION OF VOCATIONAL REHABILITATION

Rules of Procedure for Hearings Involving
Applicants Who Have Been Found Not Eligible
To Receive Rehabilitation Services
Or For Eligible Clients Who Have Been Denied
Specific Rehabilitation Services

Chapter 18-10A (1-15)
Series 4
(1986)

INDEX

	Page
Section 1. General	1
Section 2. Application	1
Section 3. Definitions	1
Section 4. Application for Services	1
Section 5. Right to Appeal Decision if found not eligible for Rehabilitation Services	1
Section 6. Responsibility to Inform All Applicants of Their Right to Appeal	2
Section 7. Hearings	2

Title 130

~~WEST VIRGINIA PROCEDURAL RULES~~
DIVISION OF VOCATIONAL REHABILITATION

Rules of Procedure for Hearings Involving
Applicants Who Have Been Found Not Eligible
To Receive Rehabilitation Services
Or For Any Eligible Client Who Has Been Denied
Specific Rehabilitation Services

~~Chapter 18-10A (1-15)~~
Series ~~42~~ *5*
(1986) *e*

Section 1. General

1.1. Scope - These procedural rules establish the general procedures for conducting fair hearings for applicants who have been found not eligible to receive rehabilitation services or any specific rehabilitation services. Section 2300 of the West Virginia Division of Vocational Rehabilitation Manual shall be adhered to and followed in conducting the fair hearing process.

1.2. Authority and Related Code Citations - West Virginia Code - *W.Va. Code 18-10A-1 thru 15;*
Chapter 18-10A, Sections 1-15. West Virginia Code 18-10-4A. Section 2300 *18-10-4A*
Division of Vocational Rehabilitation Case Services Manual.

1.3. Filing Date *Dec 2, 1986*

1.4. Effective Date - *January 1, 1987*

Section 2. Applications - These procedural rules shall apply to every applicant who has been found not eligible to receive rehabilitation services, or for any eligible client who has been denied specific rehabilitation services.

Section 3. Definitions

3.1. Director - shall mean the Director of the West Virginia Division of Vocational Rehabilitation.

3.2. Division - shall mean the West Virginia Division of Vocational Rehabilitation.

3.3. General Rehabilitation Services - shall mean the providing of services, such as training, physical restoration, that will enable a hand-icapped individual to become gainfully employed.

Section 4. Application for Rehabilitation Services

4.1. Anyone can apply for rehabilitation services.

Section 5. Right to appeal decision if found not eligible to receive rehabilitation services

5.1. The Division of Vocational Rehabilitation shall be responsible for establishing an appeals procedure for those applicants who have been found not eligible to receive rehabilitation services.

Section 6. Responsibility to inform all applicants of their right to appeal

6.1. During the initial application interview, the Division through its duly authorized representative, such as a Rehabilitation Counselor or District Supervisor, shall inform all applicants of their right to appeal a decision of the Division.

Section 7. Hearings

7.1. After applying for Rehabilitation Services, the applicant will be evaluated to determine his eligibility to receive Rehabilitation Services.

7.2. If the applicant is found not eligible to receive Rehabilitation Services, the applicant shall have the right to appeal the decision under the following guidelines, which are more fully outlined in Section 2300 of the West Virginia Division of Vocational Rehabilitation Manual.

(a) Local Reconciliation - This procedure is done at the local level on an informal basis. The purpose of a local reconciliation is to settle the matter locally without having to go to the expense of an administrative review and a possible fair hearing. Those present at the local reconciliation are the applicant, the applicant's rehabilitation counselor, and the counselor's immediate supervisor.

(b) Administrative Review - When local reconciliation fails to satisfy the applicant, he/she has the right to request and receive an administrative review. The review will consist of a detailed examination of the complaint as stated by the applicant, a review of the recommendations made by the certified evaluation unit, and any statements made by the applicant's rehabilitation counselor or the applicant in response to requests of the reviewing official. The client has the right to attend the administrative review hearing.

(c) Fair Hearing - If the applicant is not satisfied with the decision made by the reviewing official at the administrative review, he/she has a right to request and receive a fair hearing. The fair hearing will be conducted by a disinterested Agency employee appointed by the Director on the basis of the employee's demonstrated ability in conducting hearings. The hearing is to be held not later than 30 days from the date received by the Hearing Examiner. The Hearing Examiner will prepare a detailed summary of the hearing and submit it to the Chairman, Board of Review, within 15 working days from the date of the hearing. The Chairman, Board of Review, will submit the Board's recommendation to the Director. The Director will act on the recommendation within 10 working days of its receipt. The Chairman, Board of Review, will prepare a letter to the client advising him of the decision of the fair hearing as arrived at by the Director.

The decision of the Director in the fair hearing is final and binding on the part of the Agency. After the decision is made, the applicant's recourses for relief from within the Agency are exhausted. Any client has the right to seek judicial review after all administrative appeals are exhausted.

National Federation Of The Blind Of West Virginia, Inc.

An Affiliate of the National Federation Of the Blind

VICTOR GONZALEZ *Chairman*
AGENCY RELATIONS COMMITTEE
P. O. BOX 35
ANMOORE, W. VA. 26323



P. O. Box #35
Anmoore, WV.
October 27, 1986

RECEIVED
OCT 28 1986

IN DIRECTOR'S OFFICE

Mr. Earl W. Wolfe, Director
WV., Division of Vocational Rehabilitation
Charleston, West Virginia

Dear Mr. Wolfe;

I want to submit the following written comments in response to a public hearing sponsored by the WV., Division of Vocational Rehabilitation which was held October 22, 1986 in the P. and P. Building, West Virginia Rehabilitation Center pertaining to Advisory Committees for General Rehabilitation Service meetings and Duties; Advisory Committees for Attendant Care Services Meetings and Duties: Rules and Procedures for Hearings involving Applicants who have been denied Attendant Care Services and applicants for General Rehabilitation Services.

With reference to the establishment of Advisory Committees you use the plural term "Committees". Do you intend to have a committee for each county, for each agency regional district or a state-wide committee for each impairment?

With reference to regular meetings, date, TIME and place: you have scheduled all regular meetings on a specific day and month in the SMALL conference room of the P. & P. building at the "Rehabilitation Center"; will this area accommodate all the committees holding a meeting? There is a need to set a specific time for the regular meetings to commence.

Mr. Earl W. Wolfe
Page Two
October 27, 1986

With reference to special meetings; how much authority is vested with the Advisory Committees? A provision for reasonable time notice for emergency special meetings should also be adopted.

With reference to a call for special meetings; members, other than the members of the Board of Directors, should be able to require the holding of a special meeting.

A vote by "phone" on any matter is similar to a "proxy" vote and should be prohibited.

With reference to membership of committees employees of the WV., Division of Vocational Rehabilitation should be prohibited from appointment to committee memberships except as EX-Officio non-voting status. Former agency clients and physically impaired persons who have never applied for services from the WV., Division of Vocational Rehabilitation should constitute seventy-five (75%) percent of the voting members of each committee. Each state-wide, not local or regional, consumer organizations should have equal representation on all Advisory Committees. A representative from the Legislative and Executive branches of state government should also be appointed as members of each Advisory Committee.

With reference to "Rules and Procedures involving both applicants who have been found not eligible to receive Rehabilitation Service or Attendant Care Services" I present the following recommendations.

Mr. Earl W. Wolfe
Page Three
October 27, 1986

During the initial contact between applicant and agency representative the applicant should be presented with a written copy of "Rules and Procedures" adopted by the agency pertaining to the applicant's "right of Appeal". The written form should be the type used by that particular impairment. For example, the blind should receive a copy on cassette or in Braille.

With reference to the grievance procedure, even on local initial action, the applicant should be permitted to have a representative present during every level of the grievance procedure.

Of equal importance; a definite time schedule should be adopted and a decision by the Director should be submitted within ninety (90) working days from the date of the initial contact between applicant, local counselor and regional supervisor.

The "Fair Hearing" procedure should be conducted by an individual who is not an employee of the WV., Division of Vocational Rehabilitation. The written decision that must be submitted by the hearing officer should include a copy of the state or federal law, rule or regulation applicable to the decision and also a detailed "Finding of Fact" used by the hearing officer in reaching the decision rendered. A need exists for a change in the federal law to relieve the Director from rendering the final decision.

Mr. Earl W. Wolfe
Page Four
October 27, 1986

In the event that a judicial review is required for the final settlement of a grievance the prevailing party should be eligible for reasonable legal expenses incurred in the final decision.

Sincerely,

Victor

Victor Gonzalez, Chairman
Agency Relations Committee

cc: Richard L. Porter

OCT 30 1986

10/23/86
Sawshoe Rd.
Statyfork, W.V.
26291

David F. Greene
WV Rehabilitation Center
P.O. Building
Institute, W.V. 25112

Dear Mr. Greene:

The new procedural rules that have been proposed for hearings of persons denied services (both VR & Attendant Care) should be amended in 3 ways:

1- All appeal steps should have definite time limits.

2- Clients should have the right to be present during all hearings.

3- All decisions should be written clearly and in detail in order that all involved can understand how the decision was reached.

Please clarify the proposed rules for the advisory committees:

1- What are the duties of the consumer advisory committee and who are the members?

2- Shouldn't there be 2 separate meetings for the 2 very different committees and shouldn't they be held occasionally? It's a long way to Charleston for some disabled consumers.

3- Please define the make-up of the attendant care committee. What percentage of disabled consumers are on the committee?

Respectfully
Diana M. Barton



CLIENT ASSISTANCE PROGRAM

A Project of
WV Advocates for the Developmentally Disabled

ACTION ALERT***ACTION ALERT***ACTION ALERT***ACTION ALERT

RECEIVED

OCT 6 1986

TO: People interested in Vocational Rehabilitation services

IN DIRECTOR'S OFFICE

FROM: Susan Edwards, Director *SE*
Client Assistance Program

DATE: October 2, 1986

RE: Vocational Rehabilitation proposes new rules to affect disabled people, Consumer Advisory Committees - Deadline: October 22nd.

The Client Assistance Program (CAP) recently received a Notice of Public Hearing from the West Virginia Division of Vocational Rehabilitation (DVR). These rules are very important because they will affect DVR's Consumer Advisory Committees, and people who have been denied eligibility for VR services.

The hearing will be held October 22, 1986, at 1:30 p.m. in the small conference room of the P&P Building, WVA Rehabilitation Center at Institute.

DVR has filed four (4) sets of rules, called procedural rules, with the Secretary of State's office. This is necessary to make rules into state regulations. These regulations would have the effect of law.

The four proposed rules deal with the following areas:

1. Consumer Advisory Committees for general rehabilitation services - meetings and duties
2. Consumer Advisory Committees for attendant care services - meetings and duties
- *3. Rules of procedure for Hearings involving applicants who have been found not eligible to receive rehabilitation services
- *4. Rules of procedure for Hearings involving applicants who have been denied attendant care services

(*These two rules are exactly the same.)

The following are some of our comments about the proposed rules. We strongly suggest that you request a copy of the Rules from DVR Director Earl Wolfe and make your own comments -- either verbally at the hearing or by writing to David Greene of DVR (see address at the end of ALERT). We would appreciate being sent a copy of your comments so we know areas you are concerned about.

RULES OF PROCEDURE FOR APPLICANTS DENIED VR SERVICES OR ATTENDANT CARE SERVICES

Step One: When a person has been told they are not eligible for VR services, or if they have been denied attendant care services, they can appeal. The first step in the appeal is called a Local Reconciliation (when the counselor, the counselor's supervisor and the disabled person try to work out an agreement). VR has been using their Case Services Manual which covers this area. The Case Services manual says Local Reconciliation is an option. This new rule however would make a local reconciliation mandatory. Because there are no timelines by when a local reconciliation must be held, this could delay the grievance procedure for a longer period of time, perhaps indefinitely.

The Case Services Manual also requires clients to participate in local reconciliations. The proposed rule states that the client is "usually" involved in the meeting. In other words, the proposed regulations take away what has been, up to this point, a client right - the right to participate in the Local Reconciliation.

Step Two: The next step of the Hearing process is called the Administrative Review. This is apparently a review of the client's case record as it has been developed up to this point in time. However, the proposed rules do not state who will do the Administrative Review and they do not allow for client participation, unless the reviewing officer asks for a statement from the client. Under federal policy, the client has the right to participate in the Administrative Review. (Note: just before we received these proposed rules, we were sent a copy of an updated Case Services Manual section. This new manual section - not in effect - also gave clients the right to participate in the Administrative Review.) So these proposed rules take away the client's right to participate in this meeting.

Again, there is no time limit set on the amount of time which should be taken to hold the Administrative Review and give a decision to the disabled person, so conceivably this part of the grievance procedure can drag on for a long period of time, too.

Step Three: The last step of the grievance proceeding is the Fair Hearing. At the Fair Hearing, the disabled person has the right to present their case (through a representative, if needed) to a Hearing Examiner. VR also presents its case. The Hearing Examiner makes a recommendation to the Board of Review and the Board of Review makes a recommendation to the State Director of DVR. The DVR Director is actually the one who makes a final ruling.

Under the proposed rules, the Fair Hearing process does have a timeline. After you request a hearing, the Hearing Examiner has thirty (30) days to schedule and hold a hearing. The DVR Director then has two (2) weeks after he receives a summary and recommendation from the Hearing Examiner to act upon the Examiner's recommendation. However, there is no timetable for how long the Hearing Examiner can take to write his report and submit it to the Director.

The Hearing Examiner, under these proposed rules, is required to prepare a detailed summary of the Hearing and submit it to the Director. We have done a number of Fair Hearings, and we find that the Examiner's opinion usually consists of the hearing transcript and a very short (often one line) recommendation ("Finding for/against the client"). With these kinds of summaries, it is very difficult for the client to understand how the decision was made and how an appeal can best be filed. In most administrative hearings (with the Social Security Administration and other government offices), it is standard practice for the Hearing Examiner to write a clear statement of the facts of the case from the evidence presented at the hearing and state what parts of law and regulations he used to base his decision on. We feel that this section should require the Hearing Examiner to develop these Findings of Fact and Conclusions of Law, rather than just an unspecific "detailed summary."

SUMMARY:

In this section, we have discussed proposed rules for disabled people who have been denied general VR services or attendant care services.

There are no timelines for any part of the procedure, except for the final stage called

the Fair Hearing. Even with the Fair Hearing, the Hearing Examiner is not given a maximum amount of time in which to make his report to the DVR Director. We feel timelines should be included at every stage.

Except for the Fair Hearing, there is no requirement that the client be included. We feel the disabled person should always be included in meetings about them, particularly at grievance proceedings.

Also we feel that all decisions coming from the Hearing Examiner and the Director should have findings of fact and conclusions of law.

PROPOSED RULES FOR CONSUMER ADVISORY COMMITTEES FOR GENERAL VR SERVICES AND ATTENDANT CARE SERVICES

These two rules are basically the same. However, they are confusing and perhaps the best thing we can do is raise questions about them and ask that they be clarified.

For example, both sets of proposed rules say that Consumer Advisory Committee meetings will be held on the last Friday of the months of January, April, July and October in the small conference room of the P&P Building at the Rehabilitation Center. Does this mean that the Committees will both be meeting together? If so, why were two different committees established for two different types of services?

We understand that every DVR district has at least one consumer advisory committee. Does this mean that all of

those committees are also going to meet in Charleston four times a year? Does this apply to all consumer advisory committees? If these rules apply just to the two statewide committees, shouldn't the location of the meetings be flexible enough to move to different locations in the State, to give interested disabled consumers an opportunity to attend one meeting closer to them?

In reviewing the law, we do not find a legal requirement for a Consumer Advisory Committee for General Rehabilitation Services (Chapter 18-10A(1-15)). There is a requirement for a Consumer Advisory Committee for attendant care services, but not for the other. While it is probably a good idea to have general procedures for the Committee on General Services, why is it necessary to go through the formality of filing regulations with the Secretary of State? Were the already existing Consumer Advisory Committees consulted in the development of these Rules?

It is possible that the drafters of the rules meant to refer to another section of the law mandating an Advisory Committee for Vocational Rehabilitation Facilities. This law is very specific as to how many people will be on this Committee, where they will come from and how long they will serve. If these newly proposed rules were intended to bring DVR into compliance with this section of the law, these proposed rules don't fit the requirements.

Neither of the proposed rules states what the duties of the Advisory Committee and its members are. The law establishing the Attendant Care Committee specifies that the Committee will advise on policies, procedures and related matters involving the administration of this new program. Why weren't these duties included in the proposed Rules?

SUMMARY:

The proposed rules for Consumer Advisory Committees for General Rehabilitation Services and Attendant Care Services are confusing. One is required by law and one is not. For the one Committee required by law (Attendant Care Services), duties specified in the law are not included in the Rules. Both Committees will meet on the same date in the same place (together?). We generally have concerns about whether the members of these existing Committees were asked to give their advice on developing these rules before they were released for public comment.

WHAT YOU CAN DO

We want to encourage everyone interested in Vocational Rehabilitation and its services to make written and oral comments to DVR on these regulations. Please come to the public hearing on October 22, 1986, at the Rehabilitation Center in Institute, West Virginia. Because this is during a working day, we know many interested people may not be able to make it, but we encourage you to submit written comments by October 22nd. to:

David F. Greene
West Virginia Rehabilitation Center
P&P Building
Institute, WV 25112

We would also like to receive copies of your comments so we know what you think. If you have questions about any of the information we have presented, please feel free to contact Susan Edwards at 800-642-9205 (voice and tty) or write: CAP/WVADD, 1200 Quarrier Street, Suite 27, Charleston, WV 25301.

KANAWHA VALLEY CHAPTER
NATIONAL FEDERATION OF THE BLIND OF WEST VIRGINIA



RECEIVED

OCT 24 1986

Dennis J. Ranker, Esquire
33 Downing St.
Charleston, WVa. 25301

DEPUTY DIRECTOR

David Greene
Division of Vocational Rehabilitation
West Va. Rehabilitation Center, P & P Bldg.
Institute, WVa.

To Whom it May Concern:

It has come to my attention that the Division of Vocational Rehabilitation is seeking to change, or rather, promulgate regulations impacting upon various purported Consumer Advisory Committees and the grievance procedures for various people seeking services from your agency. Neither the National Federation of the Blind, the entity I represent on the service advisory committee dealing with blind services. As of this writing, neither the National Federation of West Virginia, the oldest and largest group of organized blind people, nor the DVR committee on which I sit, was ever informed of these proposed changes. I have reviewed the minutes of the most recent meeting as well as my own personal transcription, contains even an informal sounding out of our committee about either of these subjects.

1. As I understand the proposed regulations, change the first step, local reconciliation, from a discretionary to a mandatory procedure. This is a change from the current procedures set out in the current case manual which lists this as an option instead. Moreover, there are no timelines for this step. DVR could stall the process indefinitely at this stage.

2. Regarding point 1 above, the current manual procedures emphasize client participation as a necessity rather than an option. Unfortunately, the proposed new regulations are vague because they say clients are usually involved rather than requiring them to attend; to say nothing of representatives such as consumer advocates, legal representatives, etc. Since entitlement to such services constitutes

KANAWHA VALLEY CHAPTER
NATIONAL FEDERATION OF THE BLIND OF WEST VIRGINIA



a property right obviously protected by the federal and west Virginia constitutions. As such, due process, among other substantive and procedural safeguards too numerous to mention, apply. Thus, the proposed regulations materially change a longstanding practice long used in the case manuals current local reconciliation process.

3. When examining the proposed rules concerning clients' rights, the division also seeks to radically change longstanding policy. These state grieved individuals proceeding to the Administrative Review stage are not required to participate unless the reviewing officer asks him/her to do so. This not only changes existing practice covered in the present Case Service manual, but is not allowed by Federal regulations promulgated by the Rehabilitation Services Administration, U. S. Department of Education. In order to continue receive federal funding, from which DVR obtains anywhere from eighty to ninety percent of its funds. Again, there are no timelines. This step of the process could drag on indefinitely.

4. Although the fair Hearing process does have some timelines, There is no timetable within which the Hearing Examiner must submit his proposed findings of fact and conclusions of law to the Director of the agency. Another problem involves the content of decisions from this stage. They merely summarise the aforementioned with specific findings of the agency are a vague imprecise narrative of the hearing followed by a boiler plate concluding paragraph.

5. The other proposals concern the consumer advisory committees. Again, the committee on blind services was never informed about these proposed changes. Moreover, these rules, causing some confusion on their perusal, lead me to state that our committee on blind services agreed at the last meeting to have our meetings at various places throughout the state in each of the local service districts. This does not mesh with the apparent intent of the new regulations proscribing the

KANAWHA VALLEY CHAPTER
NATIONAL FEDERATION OF THE BLIND OF WEST VIRGINIA



the aforementioned practice and locating all the meetings to Charleston.

6. Upon reviewing the current law(Chapter 18-10A(1-15)), requires a committee for attendant care but not the advisory committees covering the agency's provision of rehab services to the blind, deaf, and various disability groups. If these rules are meant to cover the newly enacted attendant care element, the regulations do not meet the requirments of the statute.

While this comment is somewhat wide of the mark, I also contend that the present blind services committee is unnecessary. This is because the National Federation of the Blind of West Virginia has conducted what we call an Agency Relations Committee. Besides DVR, other state agencies have freely participated without being required to do so by any state or federal legal or regulatory procedures. Mr. Wolfe has used the so-called blind advisory services committee as an excuse to repeatedly thumb his nose and has frequently failed to provide either officials familiar with the prepared questions we send his agency long ahead of the quarterly meetings we hold. As a final comment regarding the lack of significant communication between the rehab blind advisory committee, the following is a list of situations which demonstrates the agency's view of this and other groups as a necessary evil. Before I filed a complaint with the federal authorities, the agency never provided our committee with the option of receiving information in braille, large print, or tape(Title 34, Code of Federal Regulations, Section 104.4(b)(i)(b). Neither was the blind advisory committee consulted when DVR had a Handicapped Awareness Week, a proposed realignment where deaf and blind services were to be consolidated, not to mention this most recent example of non-information regarding the current matter.

Dennis W. Ranker
Dennis W. Ranker, Esquire

Huntington Center for Independent Living

Sultzer Building
Huntington, WV 25701

914½ Fifth Avenue
(304) 525-3324

RECEIVED

OCT 27 1986

DEPUTY DIRECTOR

OCTOBER 24, 1986

DAVID F. GREENE, ATTORNEY
WEST VIRGINIA DIVISION OF VOCATIONAL REHABILITATION
STATE CAPITOL BUILDING
CHARLESTON, WEST VIRGINIA 25305

DEAR MR. GREENE:

THE FOLLOWING COMMENTS ADDRESS CONCERNS ABOUT PORTIONS OF THE PROPOSED PROCEDURAL RULES INVOLVING CONSUMER ADVISORY COMMITTEES AND APPLICANTS WHO HAVE BEEN DENIED ATTENDANT CARE SERVICE.

CONSUMER ADVISORY COMMITTEES

SECTION 11, MEMBERSHIP DESCRIBES THE PERSONS WHO ARE ELIGIBLE TO BECOME MEMBERS OF CONSUMERS ADVISORY COMMITTEES. THOSE PERSONS ARE DISABLED CITIZENS, FAMILY MEMBERS OF DISABLED PERSONS, ADVOCATES, HUMAN SERVICES PROFESSIONALS, AND OTHER CONCERNED CITIZENS. BY DEFINITION, A "CONSUMER" IS ONE WHO USES SERVICES, IN THIS CASE OF THE WEST VIRGINIA DIVISION OF VOCATIONAL REHABILITATION. YET, IT IS POSSIBLE, ACCORDING TO THE PROPOSED RULES, FOR THE "CONSUMER" ADVISORY COUNCIL TO BE COMPRIZED ENTIRELY OF NON-DISABLED PERSONS. I BELIEVE IT IS NECESSARY TO MANDATE THAT A SPECIFIC PERCENTAGE (IE: 50%) BE DISABLED CITIZENS IN ORDER TO ASSURE THE "CONSUMER" ORIENTATION OF THE COMMITTEES.

PAGE TWO

APPLICANTS WHO HAVE BEEN DENIED ATTENDANT CARE SERVICES

SECTION 7 HEARINGS, OUTLINES THE PROCESS FOR REFERRAL TO A CERTIFIED EVALUATION UNIT AND FOR RECEIVING RECOMMENDATION FROM THE EVALUATOR. IT DOES NOT STATE, HOWEVER, THAT THE FINAL DECISION REGARDING ELIGIBILITY IS MADE BY THE STATE AGENCY, NOT BY THE EVALUATOR. ALL EVALUATORS HAVE BEEN INFORMED THAT THE AGENCY IS NOT BOUND TO ACCEPT THEIR RECOMMENDATIONS AND THAT ELIGIBILITY AND NUMBER OF ATTENDANT CARE HOURS AWARDED WILL BE ENTIRELY THE DECISION OF THE STATE AGENCY. THEREFORE, IT IS IMPORTANT TO INCLUDE SUCH A STATEMENT IN SECTION 7 TO AVOID THE POSSIBLE MISINTERPRETATION THAT CERTIFIED EVALUATORS ARE RESPONSIBLE FOR ELIGIBILITY DECISIONS.

THANK YOU FOR YOUR ATTENTION TO THESE COMMENTS.

SINCERELY,



JANE GIBBONS
INDEPENDENT LIVING SKILLS
TRAINING COORDINATOR

JG/BR

MEMORANDUM

Att: D. Green & A. Jones

RECEIVED

October 30, 1986

OCT 31 1986

TO: Joseph E. Lobuts

DEPUTY DIRECTOR

FROM: Stephen B. Preston

SUBJECT: Rules of Procedure for Hearings Involving Applicants Who Have Been Found Not Eligible to Receive Rehabilitation Services

I have read the materials contained in the Agenda for the meeting of the State Board of Education which is being circulated. Because I served for several years on the Board of Review, I was especially interested in the proposed rules governing appeal procedures (copy attached). I would like to offer the following comments and questions for consideration by the persons developing the rules.

Section 1.1 can be interpreted to limit services to persons whose cases have been closed as ineligible. The State Plan for Vocational Rehabilitation Services does not limit appeals to ineligibility decisions. It provides that applicants or recipients may appeal any action or denial of VR services. The State Plan for Independent Living Rehabilitation Services contains a similar provision.

Section 1.2 should also cite the federal law, federal regulations, the State Plan for Vocational Rehabilitation Services, and the State Plan for Independent Living Rehabilitation Services.

The comments on Section 1.1 above also apply to Section 2.

Section 3.3 defines "general rehabilitation services," a new term which has no antecedent in federal or state law. Both the federal and state rehabilitation laws contain definitions of "vocational rehabilitation services." The federal law defines "comprehensive services for independent living." Since appeals are based on rights under federal and state laws, the statutory names and definitions of services should be used in the rules.

Section 3.3 limits services to those that will enable a handicapped individual to become gainfully employed. What about independent living rehabilitation services? The federal regulations governing appeal procedures in the vocational rehabilitation program apply also to the independent living rehabilitation program.

The comments on Section 1.1 apply also to Section 5.1 and Section 7.2. Is Section 5 necessary? What purpose does it serve?

Section 7.2(b) does not say who will perform the administrative review.

Section 7.2(b) mentions a "certified evaluation unit." What is that?

The final paragraph does not mention the right of the individual who is being provided services under an IWRP to request the Secretary, United States Department of Education to review the Director's decision. As long as the current State Plans remain in effect, the individual has that right. However, the Rehabilitation Act Amendments of 1986 does not provide for Secretarial review.

Attachment

WEST VIRGINIA PROCEDURAL RULES
DIVISION OF VOCATIONAL REHABILITATION

Rules of Procedure for Hearings Involving
Applicants Who Have Been Found Not Eligible
To Receive Rehabilitation Services

Chapter 18-10A (1-15)
Series 4
(1986)

Section 1. General

1.1. Scope - These procedural rules establish the general procedures for conducting fair hearings for applicants who have been found not eligible to receive rehabilitation services.

1.2. Authority and Related Code Citations - West Virginia Code - Chapter 18-10A, Sections 1-15. West Virginia Code 18-10-4A.

1.3. Filing Date

1.4. Effective Date

Section 2. Application - These procedural rules shall apply to every applicant who has been found not eligible to receive rehabilitation services.

Section 3. Definitions

3.1. Director - shall mean the Director of the West Virginia Division of Vocational Rehabilitation.

3.2. Division - shall mean the West Virginia Division of Vocational Rehabilitation.

3.3. General Rehabilitation Services - shall mean the providing of services, such as training, physical restoration, that will enable a handicapped individual to become gainfully employed.

Section 4. Application for Rehabilitation Services

4.1. Anyone can apply for rehabilitation services.

Section 5. Right to appeal decision if found not eligible to receive rehabilitation services

5.1. The Division of Vocational Rehabilitation shall be responsible for establishing an appeals procedure for those applicants who have been found not eligible to receive rehabilitation services.

Section 6. Responsibility to inform all applicants of their right to appeal

6.1. During the initial application interview, the Division through its duly authorized representative, such as a Rehabilitation Counselor or District Supervisor, shall inform all applicants of their right to appeal a decision of the Division.

Section 7. Hearings

7.1. After applying for Rehabilitation Services, the applicant will be evaluated to determine his eligibility to receive Rehabilitation Services.

7.2. If the applicant is found not eligible to receive Rehabilitation Services, the applicant shall have the right to appeal the decision under the following guidelines -

(a) Local Reconciliation - This procedure is done at the local level on an informal basis. The purpose of a local reconciliation is to settle the matter locally without having to go to the expense of an administrative review and a possible fair hearing. Those present at the local reconciliation are usually the applicant, the applicant's rehabilitation counselor, and the counselor's immediate supervisor.

(b) Administrative Review - When local reconciliation fails to satisfy the applicant, he/she has the right to request and receive an administrative review. The review will consist of a detailed examination of the complaint as stated by the applicant, a review of the recommendations made by the certified evaluation unit, and any statements made by the applicant's rehabilitation counselor or the applicant in response to requests of the reviewing official.

(c) Fair Hearing - If the applicant is not satisfied with the decision made by the reviewing official at the administrative review, he/she has a right to request and receive a fair hearing. The fair hearing will be conducted by a disinterested agency employee appointed by the Director on the basis of the employee's demonstrated ability in conducting hearings. The hearing is to be held not later than 30 days from the date received by the Hearing Examiner. The Hearing Examiner will prepare a detailed summary of the hearing and submit it to the Director. The Director will act on the summary and opinion of the Hearing Examiner within 2 weeks of its receipt.

The decision of the Director in the fair hearing is final and binding on the part of the Agency. After the decision is made, the applicant's recourses for relief from within the Agency are exhausted. Any client has the right to seek judicial review after all administrative appeals are exhausted.

West Virginia University



University Affiliated Center for
Developmental Disabilities (UAC)
College of Human Resources & Education
304 293-4692/6220/3350
509-508 Alien Hall
P.O. Box 6122
Morgantown, WV 26506-6122

October 23, 1986

RECEIVED

OCT 28 1986

DEPUTY DIRECTOR

David R. Greene
West Virginia Rehabilitation Center
P & P Building
Institute, WV 25112

Dear Mr. Greene,

Please find enclosed my comments concerning Vocational Rehabilitation
proposed new rules filed with the Secretary of State.

Sincerely,

Robert Chamberland
Research Associate
University Affiliated Center for
Developmental Disabilities (UACDD)

Enclosure

RC/slb

West Virginia University



University Affiliated Center for
Developmental Disabilities (UAC)
College of Human Resources & Education
304 293-4692/6220/3350
509-508 Allen Hall
P.O. Box 6122
Morgantown, WV 26506-6122

Rules of procedure for applicants denied VR services or attendant care services.

Local reconciliation is presently an option and should remain the same. VR wishes to make local reconciliation mandatory and not having set any timelines could delay the grievance procedure. Having had first hand experience with local reconciliation on behalf of clients, the proposed changes are not in benefit of those attempting to get VR services. The proposed changes also states that the client is "usually" involved in the meeting. The Case Service Manual "requires" the client to be present. A client's rights must not be removed.

Administrative Review, the second step in the grievance procedure, under the proposed changes would again remove the "right" of the client to be in attendance. This right must not be deleted. Also, the proposed changes set no time frames in which the administrative review must be held, again dragging on the grievance procedure.

The third step of the grievance procedure is the Fair Hearing. The proposed rules does set time frames for the Fair Hearing process, however, the Hearing Examiner has no timetable for how long the Hearing Examiner can take to write his report and submit it to the Director. A time frame should be included.

Comments submitted by

Robert Chamberland
Research Associate
University Affiliated Center for
Developmental Disabilities (UACDD)

cc: Susan Edwards, Director of CAP

RB/slb

HUWV

HANDICAPPED UNITED OF WEST VIRGINIA
6 Diana Drive • Fairmont, West Virginia 26554 (304) 366-3942

October 22, 1986

RECEIVED

OCT 23 1986

DEPUTY DIRECTOR

David F. Greene, Hearing Officer
W. Va. Division of Vocational Rehabilitation
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Greene:

Having read the rules which will be covered at the October 22 hearing, I would like to submit the following comments. Before going into specifics, I would like to express my dismay with DVR for not getting input from the CAC's as these proposals were being developed. The CAC's were supposedly formed as a means of having consumer input into policy formation and change, but once again we have been presented with the information only in the final stages of development.

1. Rules of Procedure for Hearings Involving Applicants Who Have Been Found Not Eligible to Receive Rehabilitation Services:
 - a. In the interest of maintaining an open procedure, it would seem reasonable that the client's presence be required at all three phases of the hearings. Without the client's presence, the perception remains that things are being done to or for the client without his knowledge or consent, rather than as an active participant in the process.
 - b. Nothing in the rules states who is expected to take part in the administrative review on behalf of the agency. Surely this could be more explicit.
 - c. For Phase (c) a fair hearing officer independent of DVR should be employed. This would surely provide a more unbiased approach and possibly bring a fresh point of view to the subject.
 - d. Transcripts of all hearings should be maintained so that a complete and accurate record will be available to both sides.
 - e. Time limits should be set throughout instead of just at the fair hearing stage. Limits of 30 to 60 days should be set at all three points. This would not only expedite matters for all parties, but would certainly be fairer to the client. One of the reasons that there is so much animosity for DVR is the feeling that the agency does not always deal fairly with clients and potential clients. There must not only be a semblance of fair play, but a real effort to provide an open and equitable situation to resolve differences.
2. Rules of Procedure for Hearings Involving Applicants Who Have Been Denied Attendant Care Services:

The same comments can be applied verbatim.

3. CAC For General Rehabilitation Services Meetings and Duties:

David F. Greene
Page 2
October 22, 1986

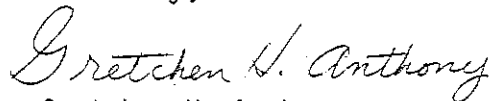
These rules as presented are minimal. They only leave questions. What will be the approximate size? More than 4? Less than 25? What is the function of the Committee? Where are the guidelines for its role and duties as they relate to DVR? Will this group supercede the existing CAC's or will it work in conjunction with them? This set of rules definitely needs to be fleshed out preferably with input from the existing CAC's.

4. CAC For Attendant Care Services Meetings and Duties:

My copy is a duplicate of that for General Rehab Services. If this is not a mistake, the same comments would apply.

I offer these comments as constructive criticism in the hope that it will help DVR to become more responsive to consumers' needs and less prone to their approbation.

Sincerely,



Gretchen H. Anthony
President

GHA:dh

KANAWHA VALLEY CHAPTER
NATIONAL FEDERATION OF THE BLIND OF WEST VIRGINIA



RECEIVED

OCT 22 1986

IN DIRECTOR'S OFFICE

Dennis V. Ranker, Esquire
33 Downing St.
Charleston, WVa. 25301

David Greene
Division of Vocational Rehabilitation
West Va. Rehabilitation Center, P & P Bldg.
Institute, WVa.

To Whom it May Concern:

It has come to my attention that the Division of Vocational Rehabilitation is seeking to change, or rather, promulgate regulations impacting upon various purported Consumer Advisory Committees and the grievance procedures for various people seeking services from your agency. Neither the National Federation of the Blind, the entity I represent on the service advisory committee dealing with blind services. As of this writing, neither the National Federation of West Virginia, the oldest and largest group of organized blind people, nor the DVR committee on which I sit, was ever informed of these proposed changes. I have reviewed the minutes of the most recent meeting as well as my own personal transcription, contains even an informal sounding out of our committee about either of these subjects.

1. As I understand the proposed regulations, change the first step, local reconciliation, from a discretionary to a mandatory procedure. This is a change from the current procedures set out in the current case manual which lists this as an option instead. Moreover, there are no timelines for this step. DVR could stall the process indefinitely at this stage.

2. Regarding point 1 above, the current manual procedures emphasise client participation as a necessity rather than an option. Unfortunately, the proposed new regulations are vague because they say clients are usually involved rather than requiring them to attend; to say nothing of representatives such as consumer advocates, legal representatives, etc. Since entitlement to such services constitutes

**KANAWHA VALLEY CHAPTER
NATIONAL FEDERATION OF THE BLIND OF WEST VIRGINIA**



a property right obviously protected by the federal and West Virginia constitutions. As such, due process, among other substantive and procedural safeguards too numerous to mention, apply. Thus, the proposed regulations materially change a longstanding practice long used in the case manuals current local reconciliation process.

3. When examining the proposed rules concerning clients' rights, the division also seeks to radically change longstanding policy. These state grieved individuals proceeding to the Administrative Review stage are not required to participate unless the reviewing officer asks him/her to do so. This not only changes existing practice covered in the present Case Service manual, but is not allowed by Federal regulations promulgated by the Rehabilitation Services Administration, U. S. Department of Education. In order to continue receive federal funding, from which DVR obtains anywhere from eighty to ninety percent of its funds. Again, there are no timelines. This step of the process could drag on indefinitely.

4. Although the fair Hearing process does have some timelines, There is no timetable within which the Hearing Examiner must submit his proposed findings of fact and conclusions of law to the Director of the agency. Another problem involves the content of decisions from this stage. They merely summarise the aforementioned with specific findings of the agency are a vague imprecise narrative of the hearing followed by a boiler plate concluding paragraph.

5. The other proposals concern the consumer advisory committees. Again, the committee on blind services was never informed about these proposed changes. Moreover, these rules, causing some confusion on their perusal, lead me to state that our committee on blind services agreed at the last meeting to have our meetings at various places throughout the state in each of the local service districts. This does not mesh with the apparent intent of the new regulations proscribing the

KANAWHA VALLEY CHAPTER
NATIONAL FEDERATION OF THE BLIND OF WEST VIRGINIA



the aforementioned practice and locating all the meetings to Charleston.

6. Upon reviewing the current law(Chapter 18-10A(1-15)), requires a committee for attendant care but not the advisory committees covering the agency's provision of rehab services to the blind, deaf, and various disability groups. If these rules are meant to cover the newly enacted attendant care element, the regulations do not meet the requirments of the statute.

While this comment is somewhat wide of the mark, I also contend that the present blind services committee is unnecessary. This is because the National Federation of the Blind of West Virginia has conducted what we call an Agency Relations Committee. Besides DVR, other state agencies have freely participated without being required to do so by any state or federal legal or regulatory procedures. Mr. Wolfe has used the so-called blind advisory services committee as an excuse to repeatedly thumb his nose and has frequently failed to provide either officials familiar with the prepared questions we send his agency long ahead of the quarterly meetings we hold. As a final comment regarding the lack of significant communication between the rehab blind advisory committee, the following is a list of situations which demonstrates the agency's view of this and other groups as a necessary evil. Before I filed a complaint with the federal authorities, the agency never provided our committee with the option of receiving information in braille, large print, or tape(Title 34, Code of Federal Regulations, Section 104.4(b)(i)(b). Neither was the blind advisory committee consulted when DVR had a Handicapped Awareness Week, a proposed realignment where deaf and blind services were to be consolidated, not to mention this most recent example of non-information regarding the current matter.

Dennis W. Ranker

Dennis W. Ranker, Esquire