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Report From Agency

Rules Clearinghouse No. 15-055

Proposed Final Draft
January 4, 2016

PROPOSED ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
ADOPTING RULES

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The Wisconsin department of workforce development proposes the following order *to repeal* DWD 75.03 (4); *to renumber and amend* DWD 75.11 and 75.19 (2) ; *to amend* DWD 75.01, 75.02, 75.03 (3), (8), (9), (10) to (16), (17), 75.04, 75.05 (1), (2) and (note), 75.06, 75.07, 75.08 (intro.) and (1) to (5), 75.09 (1) to (3), 75.10 (1) and (2), 75.12 (intro.), (1) and (3), 75.13 (1) and (3), 75.14 (title), (1) (intro.), (2) and (3), 75.16 (1), (3) to (5), (6) (a) and (b), (7), (8) (b), (9), (14) (a) and (b), and (15) to (17), 75.17, 75.18, and 75.19 (title), (1) and (2) (title), and (3) to (5) ; and *to create* DWD 75.03 (2m), (3m), (5r), and (16m), 75.11 (2), 75.16 (6) (a) (note) and (b) (note), and 75.19 (2) (b) and (c); relating to appeal procedures for vocational rehabilitation services.

**Analysis Prepared by the Department of
Workforce Development**

Statutes interpreted

Statutes Interpreted: Section 47.02, Stats.

Statutory authority

Statutory Authority: Sections 47.02 (5) and 103.005 (1), Stats.

Explanation of statutory authority

Chapter 47, Stats., governs the vocational rehabilitation program and adopts methods of administering the vocational rehabilitation program to maximize federal participation. Under s. 47.02 (5), Stats., any person aggrieved by a determination of eligibility or ineligibility for vocational rehabilitation services, or by the furnishing or denial of vocational rehabilitation

services, may commence an appeal as provided under the rules promulgated by the department. As provided under s. 103.005 (1), Stats., the department is directed to adopt reasonable and proper rules and regulations to govern the proceedings and regulate the mode and manner of all investigations and hearings.

Related statutes or rules

Wisconsin statutes and rules relating to the appeal procedures for vocational rehabilitation services are set forth in ch. 47, Stats., and ch. DWD 75, Wis. Admin. Code.

Plain language analysis

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," "hearing officer," 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 "TWRP" 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 of 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.

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 documents used to determine effect on small business or in preparation of the 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.

Agency contact person

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Place where comments are to be submitted and deadline for submission

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The department held a public hearing on September 2, 2015 and is no longer accepting comments on the rule.

1 **SECTION 1.** DWD 75.01 is amended to read:

2 DWD 75.01 **Authority and purpose.** This chapter is promulgated under the authority
3 of ss. 47.02(5) and ~~227.11(2)(a)~~ 103.005 (1), Stats., and in conformity with requirements under
4 29 USC 741 (e) and ~~722(d)~~ 722 (c), and 34 CFR ~~361.48~~ 361.57, to ~~establish~~ develop and
5 implement procedures for an applicant or eligible individual appealing decisions the
6 determination of ineligibility for services or the decision of the furnishing or denial of services
7 issued by the department's division of vocational rehabilitation concerning eligibility for services
8 ~~or the furnishing or denial of services~~ under the rehabilitation act of 1973, as amended.

9 **SECTION 2.** DWD 75.02 is amended to read:

10 DWD 75.02 **Applicability.** This chapter applies to the department, ~~to applicants for~~
11 ~~and recipients of services under the act~~ eligible individuals, and the representative of the
12 applicant or eligible individual. An applicant or eligible individual ~~who wish to appeal~~
13 ~~decisions of~~ is dissatisfied with any determination issued by the department's division of
14 vocational rehabilitation concerning eligibility for or the furnishing or denial of services under
15 the act, ~~and to~~ or a decision issued by a hearing officers appointed to hear the appeals officer that

1 affects the provisions of vocational rehabilitation services, may request a timely review of that
2 determination or decision.

3 **SECTION 3.** DWD 75.03 (2m) is created to read:

4 DWD 75.03 (2m) “Administrator's representative” means an employee of the department
5 designated by the administrator to represent the department at each hearing.

6 **SECTION 4.** DWD 75.03 (3) is amended to read:

7 DWD 75.03 (3) “Appeal” means a request for relief filed with the division by the
8 applicant or eligible individual based a-on the determination of ineligibility of services or the
9 decision of the furnishing or denial of services issued by the division relating to eligibility for-
10 services or the furnishing or denial of services under the act.

11 **SECTION 5.** DWD 75.03 (3m) is created to read:

12 DWD 75.03 (3m) "Contract administrator" means an employee of the department
13 responsible for administering the contracts with the hearing officer.

14 **SECTION 6.** DWD 75.03 (4) is repealed.

15 **SECTION 7.** DWD 75.03 (5r) is created to read:

16 DWD 75.03 (5r) “Determination of ineligibility” means a determination issued by the
17 department to an individual who applies for vocational rehabilitation services and is determined
18 not to be eligible for the services; or a decision issued by the department to an eligible individual
19 receiving services under an IPE and is determined to no longer be eligible for services.

20 **SECTION 8.** DWD 75.03 (8) and (9) are amended to read:

21 DWD 75.03 (8) “Hearing” means a formal review by an impartial hearing officer of-a
22 the determination of ineligibility for services or the decision of the-division-furnishing or denial
23 of services issued by an impartial hearing officer the division.

1 (9) "Hearing coordinator" means ~~the person~~ an employee of the department within the
2 division who maintains the records of hearings ~~under the act~~, contacts hearing officers to ~~initiate~~
3 schedule hearings and ensures that ~~required~~ time limits requirements for the completion and
4 reporting of hearings are observed.

5 **SECTION 9.** DWD 75.03 (10) to (16) are amended to read:

6 DWD 75.03 (10) "Hearing request" means a written request for a hearing signed by an
7 ~~appellant or an appellant's representative which states the issue involved in the appeal and the~~
8 desired outcome applicant or eligible individual to appeal a determination of ineligibility of
9 services or the decision of the furnishing or denial of services.

10 (11) "Intent to review" means ~~that the administrator~~ department will review the decision
11 of a hearing officer to determine if the decision will ~~be allowed to stand or will be modified as~~
12 ~~provided by the act.~~

13 (12) "IWRP" "IPE" means individualized ~~written rehabilitation program plan for~~
14 employment.

15 (13) "Order of selection" ~~has the meaning prescribed in s. DWD 65.03 (17)~~ means the
16 order of priority for service, by category, required by 29 USC 721 (a) (5) (A) to ensure that
17 clients with the most severe functional limitations who need multiple services over an extended
18 period of time are served before clients who have less severe functional limitations or do not
19 require multiple services over an extended period of time.

20 (14) "Party" means ~~the appellant or appellant's~~ an applicant or eligible individual, or the
21 representative of the applicant or eligible individual, or the administrator's representative.

22 (15) "Prehearing ~~interview~~ conference" means a joint face-to-face meeting, a telephone
23 conference, separate meetings or separate telephone calls by the hearing officer with the parties

1 prior to the hearing to formulate a statement of the ~~issue or issues~~ presented by an appeal, to
2 identify potential witnesses, to establish a schedule for discovery and deadlines for exchange of
3 witness lists and exhibits, to receive motions and to clarify any remaining issues to be considered
4 or excluded from a hearing.

5 (16) "Representative" means a parent ~~or~~ guardian of an appellant under age 18, a person
6 ~~designated in writing by an adult appellant as the~~, other family member or advocate designated
7 in writing by the applicant or eligible individual, or a representative, ~~a person of the applicant or~~
8 eligible individual appointed by a court ~~to represent an appellant or the person designated by the~~
9 ~~administrator as his or her representative for a hearing.~~

10 **SECTION 10.** DWD 75.03 (16m) is created to read:

11 DWD 75.03 (16m) "Secretary" means the secretary of the department.

12 **SECTION 11.** DWD 75.03 (17) is amended to read:

13 DWD 75.03 (17) "Wisconsin client assistance program" ~~or "client assistance program"~~
14 means a service program established by the governor under 34 CFR 370.2 (a) to (d) ~~and funded~~
15 ~~in whole or in part by the act to assist individuals with disability related issues and appeals under~~
16 ~~the act.~~

17 **SECTION 12.** DWD 75.04 is amended to read:

18 DWD 75.04 **Right to a hearing.** An applicant or eligible individual ~~or a~~
19 ~~representative of an individual~~ may appeal a determination of ineligibility for services or the
20 decision concerning eligibility for services ~~or of the furnishing or denial of services under the~~
21 ~~act~~, including a decision relating to an order of selection for services, whenever vocational
22 rehabilitation services for an individual are denied, reduced, suspended, or terminated.

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1 **SECTION 13.** DWD 75.05 (1), (2) and (Note) are amended to read:

2 DWD 75.05 (1) TIME LIMITS. The time limit for filing a hearing request shall be within
3 12 months after a determination of ineligibility for services or the notice of a decision or action
4 of the furnishing or denial of services was mailed to the ~~appellant~~ applicant or eligible individual,
5 or the representative of the applicant or eligible individual. Failure to file a hearing request
6 within the 12 month limit shall be cause for the hearing request to be dismissed.

7 (2) HOW TO FILE. ~~A~~ An applicant or eligible individual shall file a written hearing
8 request ~~shall be filed~~ and state the issues involved in the appeal and the desired outcome on a
9 form provided by the department with the hearing coordinator.

10 **Note:** ~~The address for requesting~~ To obtain a hearing is request form, or for
11 questions relating to filing a hearing request, contact the Hearing
12 Coordinator, Division of Vocational Rehabilitation, P.O. Box 7852,
13 Madison, Wisconsin 53707, telephone (800) 442-3477 or access the form
14 online at <http://dwd.wisconsin.gov/dvr/>.
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16 **SECTION 14.** DWD 75.06 is amended to read:

17 DWD 75.06 **Acknowledgment of a hearing request.** The hearing coordinator shall
18 acknowledge receipt of a hearing request in writing and notify the parties ~~when a hearing request~~
19 ~~has been properly filed~~ within 5 working days after receiving the request. If a representative has
20 been designated, the ~~notice shall be sent to~~ hearing coordinator shall notify the applicant's or
21 eligible individual's representative in writing. ~~If the appellant has a representative, a copy shall~~
22 ~~also be sent to the appellant by certified mail. This notice~~ The acknowledgment of a hearing
23 request shall include as enclosures a copy of this chapter, a brochure explaining the and
24 information on appeal process rights and a the Wisconsin client assistance program brochure.
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1 **SECTION 15.** DWD 75.07 is amended to read:

2 DWD 75.07 **Time limit for hearing.** A hearing shall be held within ~~45~~ 60 calendar
3 days of the receipt of the hearing request by a the hearing coordinator unless the ~~hearing officer~~
4 ~~grants an parties agree to a specific extension for good cause at the request of either party time.~~

5 **SECTION 16.** DWD 75.08 (intro.) and (1) to (5) are amended to read:

6 DWD 75.08 (intro.) **Motions relative to a hearing.** Motions shall be filed ~~by the~~
7 ~~parties~~ in writing as soon as possible and are expected at least within 5 working days prior to a
8 scheduled hearing. A motion shall state the grounds of the motion and the relief or order
9 requested. Briefs, affidavits, documentary evidence and other papers in support of a motion
10 shall be filed with the motion and the hearing officer. ~~The Motions relative to a hearing may~~
11 include any of the following ~~are examples of common motions but motions are not limited to~~
12 ~~these examples:~~

13 (1) MOTION TO EXTEND TIME LIMITS. A motion to extend any time limit, including the
14 ~~45~~ 60-day time limit for holding a hearing ~~shall be filed with the hearing officer.~~

15 (2) MOTION TO DISMISS A HEARING REQUEST FOR LACK OF SUBJECT MATTER JURISDICTION.
16 A motion to dismiss a hearing request on the grounds that the ~~division~~ department does not have
17 subject matter jurisdiction may be filed at any time ~~with the hearing officer.~~

18 (3) MOTION TO AMEND A HEARING REQUEST. A motion to expand or restrict the nature
19 or scope of the hearing ~~shall be filed with the hearing officer.~~

20 (4) MOTION TO WITHDRAW A HEARING REQUEST. An appellant applicant or eligible
21 individual, or the representative of the applicant or eligible individual, may withdraw from the
22 appeal process at any time. ~~If the appellant has made a verbal request to withdraw and a motion~~

1 ~~has not been filed with the hearing officer within 10 days, the hearing officer shall act on the~~
2 ~~verbal request and issue a decision.~~

3 (5) MOTION FOR A SUBSTITUTE HEARING OFFICER. Either party may file a motion for a
4 substitute hearing officer for reasons of conflict of interest, bias or qualifications. ~~A motion for a~~
5 ~~substitute hearing officer shall be filed with the hearing coordinator. The hearing coordinator~~
6 ~~shall immediately forward the request with his or her recommendation to the administrator with a~~
7 ~~copy of any relevant comments regarding that hearing officer's performance. If the motion is~~
8 ~~granted, the hearing coordinator shall assign a different hearing officer. The hearing coordinator~~
9 ~~shall forward a copy of any administrator's comments regarding the performance of that hearing~~
10 ~~officer to the division contract administrator as comments on hearing officer's performance~~
11 ~~under a contract.~~

12 SECTION 17. DWD 75.09 (1) to (3) are amended to read:

13 DWD 75.09 (1) ADMINISTRATOR'S REPRESENTATIVE. ~~The administrator shall designate~~
14 ~~a representative~~ An administrator's representative shall be designated for each hearing.

15 (2) ~~APPELLANT'S REPRESENTATIVE~~ REPRESENTATIVE OF APPLICANT OR ELIGIBLE
16 INDIVIDUAL. ~~Designation of a representative is optional for the appellant. An appellant~~
17 applicant or eligible individual may select any responsible adult as designate a representative or,
18 as permitted under federal law, an appellant may ask for a hearing. As provided under 34 CFR
19 370.4, upon the request of an applicant or eligible individual, the Wisconsin client assistance
20 program to may provide assistance in resolving the disagreement, including preparing the request
21 for a hearing or serving as the appellant's and advocacy services for the applicant or eligible
22 individual and may be the designated representative of an applicant or eligible individual.

1 (3) NOTICE OF REPRESENTATION. Notice of representation shall be filed with the hearing
2 officer as part of the prehearing ~~interview~~ conference under s. DWD 75.14, or at least within 5
3 working days in advance of the scheduled hearing. If ~~an appellant's~~ the representative of the
4 applicant or eligible individual has been properly designated in writing prior to a hearing request,
5 that designation shall be valid for a hearing unless revoked by the ~~appellant~~ applicant or eligible
6 individual. If the ~~appellant~~ applicant or eligible individual is not present at a hearing to introduce
7 a representative, the hearing officer may require the representative to present identification
8 before the hearing may proceed.

9 **SECTION 18.** DWD 75.10 (1) and (2) are amended to read:

10 DWD 75.10 (1) DOCUMENTS FILED WITH REPRESENTATIVE. If ~~a party~~ the applicant or
11 eligible individual has designated a representative in writing, all correspondence and other
12 documents related to the hearing shall be mailed to the representative of the applicant or eligible
13 individual. For documents sent by mail, the date the document is received by the ~~addressee~~
14 ~~named in this chapter~~ applicant or eligible individual, or representative of the applicant or
15 eligible individual, determines the date of filing.

16 (2) FILING IN PERSON. For papers filed in person, the date the ~~addressee named in this~~
17 ~~chapter~~ applicant or eligible individual, or the representative of the applicant or eligible
18 individual, receives the document determines the filing date.

19 **SECTION 19.** DWD 75.11 is renumbered DWD 75.11 (intro.) and as renumbered is
20 amended to read:

21 DWD 75.11 **Services while a hearing officer's decision is pending.** Pending the
22 decision of a hearing officer, the department may not suspend, reduce or terminate vocational

1 rehabilitation services under an IWRP including evaluation and assessment services and IPE
2 development unless the any of the following apply:

3 (1) The services were obtained through misrepresentation, fraud, collusion or criminal
4 conduct.

5 **SECTION 20.** DWD 75.11(2) is created to read:

6 (2) The applicant eligible individual, or, in appropriate cases, the applicant or eligible
7 individuals representative requests a suspension, reduction or termination of services.

8 **SECTION 21.** DWD 75.12 (intro.), (1) and (3) are amended to read:

9 DWD 75.12 (intro.) **Hearing officer qualifications.** A hearing officer shall be
10 ~~knowledgeable about impartial and have knowledge of~~ the delivery of vocational rehabilitation
11 services, the requirements of the state plan for services under the act, the rules federal regulations
12 and state regulations and policy governing the provision of the services and the procedures for
13 conducting an impartial hearing, but may. The hearing officer shall not:

14 (1) Be an ~~employe~~ employee of the ~~division~~ department or other public agency ~~involved~~
15 ~~in any decision about furnishing or denying vocational rehabilitation services except as an~~
16 ~~administrative law judge, a hearing examiner or an employe employee of an institution of higher~~
17 ~~education. An individual is not considered an employe employee of the division department~~
18 ~~solely because the individual is paid by the division department to serve as a hearing officer.~~

19 (3) Have been previously involved in ~~previous decisions regarding~~ the vocational
20 rehabilitation of the appellant applicant or eligible individual.

21 **SECTION 22.** DWD 75.13 (1) and (3) are amended to read:

22 DWD 75.13 (1) The hearing officer shall conduct a prehearing ~~interview,~~ conference
23 with the parties as specified under s. DWD 75.14. The hearing officer may receive and act on

1 motions under s. DWD 75.08, ~~may~~ use the power of subpoena under s. 885.01, Stats., and ~~may~~
2 contact any party prior to a scheduled hearing to obtain needed information or ~~to~~ suggest
3 mediation if the parties agree that agreement is possible prior to the hearing. The parties retain all
4 rights under this chapter regardless of their participation or nonparticipation in mediation.

5 (3) ~~The~~ Except as provided under s. DWD 75.19, the decision of the hearing officer is
6 final ~~except when the administrator acts under s. DWD 75.19 to change the decision.~~

7 **SECTION 23.** DWD 75.14 (title), (1) (intro.), (2) and (3) are amended to read:

8 DWD 75.14 (title) **Prehearing interview conference.**

9 (1) PURPOSE. The hearing officer shall ask the parties to participate in a prehearing
10 interview conference to do one or more of the following:

11 (2) PARTICIPATION. The administrator's representative shall participate in the
12 prehearing interview conference. If the ~~appellant~~ applicant or eligible individual, or the
13 representative of the applicant or eligible individual, fails to participate in a prehearing ~~interview~~
14 conference without prior notice, the hearing officer shall continue the prehearing ~~interview~~
15 conference period for 5 working days. During this period the ~~appellant~~ applicant or eligible
16 individual, or the representative of the applicant or eligible individual, may file a good cause
17 explanation, including the need for reasonable and specific disability accommodations, and
18 request that the prehearing interview conference be rescheduled. If a motion is not filed within 5
19 working days, the hearing officer shall schedule the hearing within the ~~4560~~-day limit and notify
20 the parties and the hearing coordinator of this decision. The ~~administrator~~ department may
21 review this decision as provided in s. DWD 75.19.

22 (3) HEARING NOT DELAYED BY PARTICIPATION IN A PREHEARING ~~INTERVIEW~~ CONFERENCE.
23 Participation in a prehearing interview conference shall not delay a hearing and does not affect

1 time limits under this chapter. The parties shall not forfeit any rights under this chapter by
2 participating in a prehearing ~~interview~~ conference or meeting to reach agreement prior to a
3 hearing.

4 **SECTION 24.** DWD 75.16 (1), (3) to (5), and (6) (a) are amended to read:

5 DWD 75.16 (1) HEARING IS CLOSED. A hearing shall be closed to the public as a
6 confidential matter ~~under the act~~ unless the ~~appellant~~ applicant or eligible individual, or the
7 representative of the applicant or eligible individual files a motion to open the hearing ~~at least~~
8 within 5 working days in advance of the scheduled hearing.

9 (3) ATTENDANCE AT A HEARING. Parties and witnesses shall attend a scheduled hearing
10 unless a motion has been filed with the hearing officer ~~at least~~ within 5 working days prior to ~~the~~
11 a scheduled hearing stating reasonable cause for an individual to participate in the hearing,
12 including the need for reasonable and specific disability accommodations, by a live, real time
13 electronic means as an alternative to ~~a~~ appearing in person. The hearing officer may grant the
14 request if the other party has no objection.

15 (4) TESTIMONY BY WITNESSES. Witnesses may testify in person by answering questions
16 posed to them, in narrative form, or by deposition provided that the witness agrees in advance, as
17 part of the deposition, to permit the recording of the testimony and any subsequent cross-
18 examination and the witness understands ~~that he or she may be subpoenaed~~ a subpoena to appear
19 may be issued by the hearing officer based on the information in the deposition. ~~Requests for~~ For
20 reasonable and specific disability accommodations or to provide testimony ~~by witnesses~~ by
21 deposition or electronic means, witnesses shall file a request with the hearing officer ~~at least~~
22 within 5 working days prior ~~the~~ to a scheduled hearing ~~date~~. The hearing officer may grant the
23 request if the other party does not object provided that the witness agrees in advance, ~~and~~ on the

1 record, to permit the recording of ~~his or her~~ the witness's telephone testimony and any
2 subsequent cross-examination.

3 (5) IDENTIFICATION OF WITNESSES AND EXHIBITS. Each party shall file ~~lists~~ a list of
4 witnesses and ~~copies~~ submit a copy of exhibits not previously identified in the prehearing
5 conference with the hearing officer and the other party ~~at least~~ within 5 working days prior to a
6 scheduled hearing.

7 (6) (a) ~~Tape recording~~ Recording. The hearing officer shall record ~~the~~ each hearing ~~on~~
8 ~~tape~~. The ~~appellant~~ applicant or eligible individual, or the representative of the applicant or
9 eligible individual, may obtain one free copy of the ~~tape from~~ recording by contacting the
10 hearing coordinator. No other ~~tape~~ recording of the hearing is permitted.

11 **SECTION 25.** DWD 75.16 (6) (a) (Note) is created to read:

12 **Note:** To obtain a copy of the recorded hearing, contact the Hearing Coordinator,
13 Division of Vocational Rehabilitation, P.O. Box 7852, Madison, Wisconsin
14 53707 or telephone (800) 442-3477.
15

16 **SECTION 26.** DWD 75.16 (6) (b) is amended to read:

17 DWD 75.16 (6) (b) *Transcript*. Transcripts of the hearing record may be provided at the
18 expense of the requestor. However, a party who cannot, due to a disability, use the free copy of
19 the ~~tape recording~~ provided in ~~s. DWD 75.17~~ par. (a) may file a written request with the hearing
20 coordinator for a copy of the record in ~~a different media~~ an alternate format as a reasonable
21 accommodation.

22 **SECTION 27.** DWD 75.16 (6) (b) (Note) is created to read:

23 **Note:** To file a written request for a transcript of the hearing record, contact the
24 Hearing Coordinator, Division of Vocational Rehabilitation, P.O. Box
25 7852, Madison, Wisconsin 53707 or telephone (800) 442-3477.
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SECTION 28. DWD 75.16 (7), (8) (b), (9), (14) (a) and (b), and (15) to (17) are amended

to read:

DWD 75.16 (7) OPENING STATEMENT BY HEARING OFFICER. The hearing officer shall open the hearing with a brief statement of the date, the location of the hearing, the issues, the parties directly involved in the hearing and the standard procedures, and shall remind all ~~participants~~ parties and witnesses present that all personally identifiable information made available for the hearing is confidential.

(8) (b) If either party fails to appear at a hearing without prior notice, the hearing officer shall immediately reschedule the hearing to a date ~~at least~~ within 5 working days after the current date to allow the absent party to explain the absence. The hearing officer shall notify the parties and the hearing coordinator by certified mail of the new hearing date and the reason for rescheduling the hearing. If the ~~appellant~~ applicant or eligible individual, or the representative of the applicant or eligible individual, fails to appear at the rescheduled hearing, the hearing officer shall dismiss the appeal. This dismissal shall not be construed as violation of the ~~45~~ 60-day limit for holding a hearing since the hearing was scheduled and held but the ~~appellant~~ applicant or eligible individual, or the representative of the applicant or eligible individual, did not appear to present ~~his or her arguments~~ testimony or evidence. The ~~administrator~~ department may review this decision as provided in s. DWD 75.19.

(9) ADMISSIBILITY OF EVIDENCE OR TESTIMONY. At the request of either party, the hearing officer may exclude testimony or evidence. The hearing officer may also exclude immaterial, irrelevant or unduly repetitious testimony. A decision to exclude evidence or testimony shall be made on the record and shall include the rationale and arguments used by the

1 hearing officer to exclude the material. The hearing officer may issue reserved rulings on
2 evidence and determine, before the close of the hearing, if the material will be considered in his-
3 ~~or her~~ the decision.

4 (14) (a) The hearing officer shall ask the ~~appellant~~ applicant or eligible individual, or
5 the representative of the applicant or eligible individual, to make the first presentation and to
6 question the administrator's representative and witnesses.

7 (b) The hearing officer shall ask the administrator's ~~designee~~ representative to make the
8 second presentation and to question the ~~appellant~~ applicant or eligible individual, or the
9 representative of the applicant or eligible individual, and witnesses.

10 (15) REBUTTAL AND QUESTIONS. The hearing officer shall give the ~~appellant~~ applicant
11 or eligible individual, or the representative of the applicant or eligible individual, the opportunity
12 to make a rebuttal of evidence presented at the hearing and to question the administrator's
13 representative and witnesses and then give the same opportunity to the administrator's
14 representative.

15 (16) CLOSING ARGUMENTS. The hearing officer shall ask the administrator's
16 representative to present closing arguments. ~~then~~ and then ask the ~~appellant~~ applicant or eligible
17 individual, or the representative of the applicant or eligible individual, to present closing
18 arguments. Closing arguments may be submitted both as verbal arguments and as written briefs.

19 (17) ENDING THE HEARING. The hearing officer shall inform the parties that a written
20 decision will be sent to them by certified mail within 30 ~~working~~ calendar days after the date of
21 the hearing and state the date and time at in which the hearing was closed.

22 **SECTION 29.** DWD 75.17 is amended to read:

1 DWD 75.17 ~~Notice of hearing officer's decision~~ **Decision of the hearing officer.**

2 The hearing officer shall issue a written decision within 10 calendar days of a written motion
3 under s. DWD 75.08 and within 30 calendar days of a hearing. The hearing officer shall provide
4 a report of the hearing including the findings and the grounds for the decision. ~~This~~ The decision
5 ~~notice~~ shall state that the decision is final unless the ~~administrator acts under s. DWD 75.19 to~~
6 ~~change the decision~~ administrator's representative, applicant or eligible individual, or the
7 representative of the applicant or eligible individual, requests a review of the decision of the
8 hearing officer within 20 calendar days after the decision is issued, under s. DWD 75.19, or the
9 appellant, under s. 227.53, Stats., applicant or eligible individual, or the representative of the
10 applicant or eligible individual, chooses to petition the circuit court under s. 227.53, Stats. The
11 notice shall specify the procedures for filing a claim in circuit court. The hearing officer shall
12 send the original to the ~~appellant~~ applicant or eligible individual, or the representative of the
13 applicant or eligible individual, and send ~~copies~~ a copy of the notice to the administrator's
14 representative, to the division office of record and to the hearing coordinator for placement in the
15 appellant's applicant's or eligible individual's case record and to the hearing coordinator.

16 **SECTION 30.** DWD 75.18 is amended to read:

17 DWD 75.18 **Hearing officer's report.** The hearing officer shall forward the ~~tape~~
18 recording of the hearing, a written summary of the hearing and any other items specified by
19 contract to the hearing coordinator. The hearing coordinator shall ensure that all required
20 materials have been received and shall forward the materials to the ~~administrator~~ department for
21 a decision as to whether a formal review of the hearing officer's decision is needed.

22 **SECTION 31.** DWD 75.19 (title), (1) and (2) (title) are amended to read:

23 DWD 75.19 (title) ~~Administrator's review~~ **Review of hearing officer's decision.**

1 (1) NOTICE OF INTENT TO REVIEW. The department, or the applicant or eligible
2 individual, may initiate a review of the hearing officer's decision issued under s. DWD 75.17. If
3 the ~~administrator~~ department decides to initiate a review of the hearing officer's decision, written
4 notice of this decision shall be filed with the parties by certified mail within 20 calendar days of
5 the date that the decision of the hearing officer was mailed. The intent to review notice shall
6 advise the parties that additional evidence and information relevant to the final decision may be
7 filed with the ~~administrator~~ department ~~not later than~~ within 30 calendar days following the date
8 of the intent to review notice and that the ~~administrator~~ department may also collect new
9 evidence from other sources during that period.

10 (2) (title) ~~NO DELEGATION OF ADMINISTRATOR'S AUTHORITY~~ REVIEW PROCEDURE.

11 **SECTION 32.** DWD 75.19 (2) is renumbered DWD 75.19 (2) (a) and amended to read:

12 DWD 75.19 (2) (a) Authority for modifying the decision of a hearing officer under this
13 chapter is reserved to the ~~administrator~~ department secretary or the secretary's authorized
14 designee and may not be otherwise delegated.

15 **SECTION 33.** DWD 75.19 (2) (b) and (c) are created to read:

16 DWD 75.19 (2) (b) The administrator shall conduct an initial review of the hearing
17 officer's decision and shall submit a proposed review decision to the secretary or the secretary's
18 authorized designee.

19 (c) The secretary or the secretary's authorized designee shall conduct a review of the
20 decision of the hearing officer, the administrator's proposed decision under par. (b) and issue a
21 final review decision.

22 **SECTION 34.** DWD 75.19 (3) to (5) are amended to read:

1 DWD 75.19 (3) BASIS FOR CHANGING HEARING OFFICER DECISION. The ~~administrator~~
2 department may not modify a decision of a hearing officer which supports the position of the
3 ~~appellant~~ applicant or eligible individual unless, based on clear and convincing evidence, the
4 decision is clearly contrary to law or federal policy issuances.

5 (4) CONSULTATION WITH HEARING OFFICER. The ~~administrator~~ department may consult
6 with the hearing officer regarding the decision.

7 (5) NOTICE OF OUTCOME OF ~~ADMINISTRATOR'S~~ THE DEPARTMENT'S REVIEW. The
8 ~~administrator~~ department shall notify the parties in writing by certified mail of the outcome of
9 the review within 30 calendar days after the date of the ~~intent to review~~ intent to review notice.
10 The notice shall state the findings, the grounds for the final decision, that it is the final decision
11 unless modified by a court and information on how to file a request for circuit court review. The
12 ~~administrator~~ department shall send copies of the letter and any attachments to the hearing
13 coordinator for placement in the applicant's or eligible individual's case record, to the hearing
14 officer and to the ~~division office of record for placement in the appellant's case record~~ contract
15 administrator.

16 **SECTION 35. EFFECTIVE DATE:** This rule shall take effect on the first day of the month
17 following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2)
18 (intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF
WORKFORCE DEVELOPMENT

By: _____
Reginald J. Newson, Secretary

