PUBLIC HEARING SUMMARY - DWD 75

The Department of Workforce Development (DWD) held one public hearing on ch. DWD 75 relating to appeal procedures for vocational rehabilitation services in Madison on September 2, 2015. Three people attended the hearing and provided oral testimony and submitted written comments.

Name	Comment	Response
Deb Henderson-Guenther WI Client Assistance Program	Changes to Ch. DWD 75 are occurring prior to the final federal regulations for the Workforce Investment and Opportunity Act (WIOA) being promulgated and could result in the rule being out of compliance.	There is no language contained in the WIOA regulations under promulgation related to due process. Moving forward in promulgating ch. DWD 75 will not result in any compliance issues.
	The change under s. DWD 75.06 is silent on what mode of communication will be used to acknowledge a hearing request.	DWD 75.06 was modified and the hearing coordinator shall acknowledge receipt of a hearing request in writing.
	Administrative Law Judges (ALJ) do not meet the hearing officer requirements under DWD 75.12 and the rule fails to mention the hearing officer should take into account DVR's policy.	DWD 75.12 was modified to include an ALJ shall have knowledge of state policy. ALJ's received 6 hours of training by DWD, have access to all DVR state issued policy and guidance, and the legal authority, training and experience to conduct due process hearing within state and federal regulations.
	The change under s. DWD 75.19 (1) could result in the hearing officer's legal interpretation in a decision carrying more deference in a court of law.	Section DWD 75.19 was modified to address this concern.
Linda Vegoe WI Rehabilitation Council	The WI Rehabilitation Council (WRC) should have been consulted on the proposed changes in policy related to the hearing process as required under 34 CFR 341.16(2)(iii).	DWD apologized for not consulting with WRC and will do so as the rule proceeds.
	There is no language in the rule to reflect that WRC would monitor the performance of ALJs as part of the agreement of the Division of Hearing and Appeals (DHA) handling DVR cases, which began in the beginning of 2014.	The rule is not intended to alter policy related to the hearing process, rather align language and process with current regulations.

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<tr><td>Linda Vegoe (Con't)</td><td>Requested s. DWD 75.02 relating to appeals reflect the language under s. 34 CFR 361.57. A common appeal issue is requesting a change in a vocational rehabilitation counselor and the rule as proposed may diminish this right.</td><td>DWD 75.02 was modified to address this comment.</td></tr>
<tr><td rowspan="2">Kathy Steffke
Disability Rights Wisconsin</td><td>ALJs lack knowledge of federal regulations and found failure on part of the ALJ to:

•Understand the regulations 34 CFR Sec 361 et seq.
•Apply these same regulations to make impartial decisions.
•Understand disability and how services are individualized according to the needs of a person with a disability.

ALJs typically receive 4-5 hours of training, whereas the impartial hearing officer retained by DVR prior to 2014 had received many hour of training and in most cases, had significant pre-existing experience with VR issues and relevant state and federal regulatory requirements.</td><td>DWD 75.12 was modified to include an ALJ shall have knowledge of state policy. ALJ's received 6 hours of training by DWD, have access to all DVR state issued policy and guidance, and the legal authority, training and experience to conduct due process hearing within state and federal regulations.</td></tr>
<tr><td>In 2014, only 5 DVR cases were completed by DHA. However, DHA completed hundreds of hearings related to Medicaid, Long-Term Care Waivers, Social Security, etc. In addition, ALJs favored DVR positions that are not supported by law. Since DHA has been adjudicating cases, two appeals have been filed, with a third being considered. Only one case was appealed when impartial hearing officers were handling hearings.</td><td>The number of case decisions issued has remained consistent since 2011(with the exception of 2012). The chart below highlights the number of requests received and the number of decisions issued. The majority of cases were resolved prior to, or during, the hearing process and some were carried over from one year to the next.

<table>
<tr><td></td><td>2014</td><td>2013</td><td>2012</td><td>2011</td></tr>
<tr><td>Total Requests:</td><td>37</td><td>52</td><td>61</td><td>61</td></tr>
<tr><td>Total Decisions Issued</td><td>5</td><td>6</td><td>12</td><td>7</td></tr>
<tr><td>Favored Individual</td><td>1</td><td>2</td><td>2</td><td>1</td></tr>
<tr><td>Favored Department</td><td>4</td><td>4</td><td>10</td><td>6</td></tr>
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Kathy Steffke (Con't)	Objects to the changes under s. DWD 75.19. This will allow ALJs decisions more deference in court. An ALJs inexperience with these issues and a higher level of deference placed on ALJ's legal interpretations effectively subverts the appeal rights of individual who received decision based on errors of law.	Section DWD 75.19 was modified to address this concern.
	ALJ's have denied simple accommodations that any rehabilitation professional would. If an ALJ does not understand a client's needs for frequent bathroom breaks due to a disability, it's difficult to understand the full range of disabilities.	The department requested examples of the types of accommodations being denied to further investigate.
	Because of the multiple changes expected under the WIOA regulations under promulgation, DWD should consider postponing this rule since many updates will need to be made as a result of WIOA being updated.	The changes under this rule relate to "due process" and there are no proposed language changes within WIOA regarding this. Once WIOA regulations are officially updated, DWD will review all relevant administrative rule chapters for potential changes.