



ADMINISTRATIVE RULES OF MONTANA



37.30.1401 FAIR HEARINGS

- (1) An applicant for or consumer of services provided through this chapter who is the subject of an adverse action of the department may pursue a fair hearing as permitted by and in accordance with this rule, the applicable rules in ARM Title 37, chapter 5 specified in ARM 37.5.125 and Montana Vocational Rehabilitation Policy E, "Counselor Determinations".
- (2) An adverse action is any determination made by the department with respect to an applicant's or consumer's concerning eligibility for, placement into a particular category for purposes of order of selection, or termination from services, or with respect to the selection and delivery of services delivered to a consumer under this chapter.
- (3) At the time of application an applicant is informed of:
 - (a) the right of an applicant or consumer to a fair hearing;
 - (b) the procedure for requesting a fair hearing;
 - (c) the right to representation by legal counsel or others;
 - (d) the availability of any advocacy and free legal representation; and
 - (e) the availability of mediation provided through the services of a qualified impartial mediator.
- (4) The department provides notice of an adverse action at least 10 days prior to the action unless the action relates to a change mandated by law or applied to the appealing party as a member of a class of consumers.
- (5) An attorney or third party person may represent an appealing party. Representation must be shown by written consent. If an appealing party is unable to provide written consent, the hearing officer may make a written determination that the representative for the appealing party is proper.
- (6) The hearing officer renders a written opinion, including findings and conclusions, within 30 days of final submission of the case.
- (7) The hearing officer must reach a decision in the matter based on the provisions of the relevant state and federal statutory and rule authorities and of the state plan submitted by the vocational rehabilitation agency to and approved by the federal government.
- (8) Appeal from a decision of a hearing officer is available as provided in ARM 37.5.334. Appeals of determinations under this chapter may not be made to the board of public assistance.
- (9) The department adopts and incorporates by reference the conciliation procedures, dated December 27, 2002, and published by the department as Policy E, "Counselor Determinations", of

the Montana Vocational Rehabilitation Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability, Employment, and Transitions Division, 111 N. Last Chance Gulch, P.O. Box 4210, Helena, MT 59604-4210.

Authorizing statute(s): 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315, 53-19-112, MCA

Implementing statute(s): 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106, 53-19-112, MCA

History: NEW, Eff. 1/3/77; AMD, 1984 MAR p. 511, Eff. 3/30/84; AMD, 1992 MAR p. 2572, Eff. 11/26/92; TRANS, from SRS, 1998 MAR p. 2040; AMD, 2002 MAR p. 3628, Eff. 12/27/02; AMD, 2005 MAR p. 2257, Eff. 11/11/05; AMD, 2013 MAR p. 789, Eff. 5/10/13.