



ADMINISTRATIVE RULES OF MONTANA

2.21.1427 CERTIFICATION OF PERSONS WITH DISABILITIES

- (1) As provided in 39-30-107, MCA, "the department of public health and human services shall certify persons with disabilities for the purpose of employment preference."
- (2) In order to be eligible for employment preference, a person with a disability must be certified by the department of public health and human services to have, as provided in 39-30-103, MCA, a "physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which limits the individual's ability to obtain, retain, or advance in employment." The certification process may also consider impairments which limit an individual's ability to know or reason; or an individual's ability to make a choice or decision. The person with a disability shall have a professional diagnosis establishing the disabling condition. Medical evidence shall be provided by a licensed physician or a licensed practitioner competent to treat and diagnose the particular disabling condition.
- (3) Each disabling condition will be individually evaluated on a case-by-case basis to determine eligibility for employment preference with the exception of those persons specifically excluded in this rule.
- (4) As provided in 39-30-103, MCA, "the term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge."
- (5) The department of public health and human services will establish a process and standards for certifying persons with disabilities for employment preference. The process shall include, but is not limited to:
 - (a) a determination established by a professional medical diagnosis that the person has a physical or mental impairment as defined by these rules; and
 - (b) a determination that the physical or mental impairment substantially limits one or more major life activities and as a consequence of the disability, the person's ability to obtain, retain, or advance in employment is substantially limited; or
 - (c) a determination by the counselor and medical consultant designated by the department of public health and human services that the disability is so severe or apparent that it has lead to or could lead to employment discrimination which would substantially limit the person's ability to obtain, retain, or advance in employment; or
 - (d) a determination that the person with a disability is totally disabled, is unable to use the preference because of the disability and therefore the person's spouse is eligible for preference.

- (6) Each determination will be provided in writing in a standard form as established by the department of public health and human services. The written notice shall include a statement regarding the duration of the certification. The written notice shall be provided to the person with a disability within 30 days of the receipt of all information necessary to make the certification decision.
- (7) The process shall allow for permanent certification of those impairments (in the judgment of the counselor and medical consultant designated by the department of public health and human services) considered to be permanent and shall allow for loss of certification for those impairments which may be considered temporary.
- (8) The person requesting certification by the department of public health and human services is responsible for providing all information necessary to document the claim to be certified for employment preference. All costs of obtaining the necessary information, including medical evidence to substantiate the claim, are the responsibility of the person requesting the certification.
- (9) The written notice of certification for an eligible spouse must clearly state the preference-eligible person is an eligible spouse.
- (10) The department of public health and human services shall ensure the confidentiality of information gathered when making employment preference determination in accordance with federal and state law and as provided in ARM 2.21.1424.
- (11) Any person with a disability, as provided in 39-30-103, MCA, who is dissatisfied with the department of public health and human services' certification decision regarding eligibility for employment preference, shall be advised of the right to file a request for an administrative review of that action and right to a fair hearing if dissatisfied with the outcome of the administrative review. The administrative review shall be conducted by the administrator of vocational rehabilitative services division or a designee. The fair hearing shall be conducted in accordance with the fair hearing rules of the department of public health and human services as provided for in ARM 46.2.201 et seq.

Authorizing statute(s): 39-30-106, MCA

Implementing statute(s): 39-30-103 and 39-30-107, MCA

History: NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1997 MAR p. 2277, Eff. 12/16/97.