Rules Clearinghouse No. _____

Proposed Hearing Draft
August 4, 2015

PROPOSED ORDER OF THE WISCONSIN
DEPARTMENT OF WORKFORCE DEVELOPMENT
ADOPTING RULES

The Wisconsin department of workforce development proposes the following order ***to repeal*** DWD 75.03 (4) and 75.04 ; ***to renumber and amend*** DWD 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), 75.11, 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), (9r), and (16m), 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: Section 47.02 (5), 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.

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- Repeals the definition "appellant," which is obsolete.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 "IWRP" 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 individual may appeal a decision concerning eligibility for services or the furnishing or denial of services. The proposed rules clarifies an applicant or eligible individual, or the representative of the applicant or eligible individual, may appeal a determination of ineligibility for services or the decision of furnishing or denial of services whenever 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 or 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.

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 hearing officer's decision is the department's final decision unless any party decides to initiate a review.

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 will post the proposed rule online for 14 days to solicit public comment 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 anticipates holding a public hearing on September 2, 2015. The department will accept public comments until September 4, 2015.

SECTION 1. DWD 75.01 is amended to read:

DWD 75.01 **Authority and purpose.** This chapter is promulgated under the authority of ss. 47.02(5) and ~~227.11(2)(a)~~ 103.055 (1), Stats., and in conformity with requirements under 29 USC ~~711 (c) and 722(d)~~ 722 (c), and 34 CFR ~~361.48~~ 361.57, to ~~establish~~ develop and implement procedures for an applicant or eligible individual appealing ~~decisions~~ the determination of ineligibility for services or the decision of the furnishing or denial of services issued by the department's division of vocational rehabilitation ~~concerning eligibility for services or the furnishing or denial of services~~ under the rehabilitation act of 1973, as amended.

SECTION 2. DWD 75.02 is amended to read:

DWD 75.02 **Applicability.** This chapter applies to the department, ~~to~~ applicants ~~for and recipients of services under the act~~, eligible individuals, and representatives for the applicants or eligible individuals who wish to appeal ~~decisions~~ the determination of ineligibility for services or the decision of the furnishing or denial of services issued by the department's division of vocational rehabilitation ~~concerning eligibility for or the furnishing or denial of services under the act~~, and to hearing officers ~~appointed~~ assigned to hear the appeals.

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

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

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

DWD 75.03 (3) "Appeal" means a request for relief filed with the division based ~~a~~ on the determination of ineligibility of services or the decision of the furnishing or denial of services

issued by the division ~~relating to eligibility for services or the furnishing or denial of services under the act~~.

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

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

SECTION 6. DWD 75.03 (4) is repealed.

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

DWD 75.03 (5r) "Determination of ineligibility" means an individual who applies for vocational rehabilitation services and is determined not to be eligible for the services; or an eligible individual receiving services under an IPE and is determined to no longer be eligible for services.

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

DWD 75.03 (8) "Hearing" means a formal review by an impartial hearing officer of ~~a~~ the determination of ineligibility for services or the decision of ~~the division~~ the furnishing or denial of services issued by ~~an impartial hearing officer~~ the division.

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

SECTION 9. DWD 75.03 (9r) is created to read:

DWD 75.03 (9r) "Hearing officer" includes an administrative law judge.

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

DWD 75.03 (10) "Hearing request" means a written request for a hearing signed by an ~~appellant~~ applicant or eligible individual, or ~~an appellant's~~ the representative of the applicant or eligible individual, ~~which states the issue involved in the appeal and the desired outcome~~.

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

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

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

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

(15) "Prehearing ~~interview~~ conference" means a joint face-to-face meeting, a telephone conference, separate meetings or separate telephone calls by the hearing officer with the parties prior to the hearing to formulate a statement of the ~~issue or~~ issues presented by an appeal, ~~to~~ identify potential witnesses, ~~to~~ establish a schedule for discovery and deadlines for exchange of witness lists and exhibits, ~~to~~ receive motions and ~~to~~ clarify any remaining issues to be considered or excluded from a hearing.

(16) "Representative" means any representative chosen by an applicant or eligible individual, as appropriate, including a parent ~~or~~, guardian ~~of an appellant under age 18, a person designated in writing by an adult appellant as the~~, other family member or advocate, unless a representative~~, a person~~ has been appointed by a court to represent ~~an appellant or the person designated by the administrator as his or her~~ the individual, in which case the court-appointed representative ~~for a hearing~~ is the individual's representative.

SECTION 11. DWD 75.03 (16m) is created to read:

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

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

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

SECTION 13. DWD 75.04 is amended to read:

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

SECTION 14. DWD 75.05 (1), (2) and (Note) are amended to read:

DWD 75.05 (1) TIME LIMITS. The time limit for filing a hearing request shall be within 12 months after a determination of ineligibility for services or the ~~notice of a~~ decision ~~or action~~

of the furnishing or denial of services was mailed to the ~~appellant~~ applicant or eligible individual, or the representative of the applicant or eligible individual. Failure to file a hearing request within the 12 month limit shall be cause for the hearing request to be dismissed.

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

Note: ~~The address for requesting~~ To obtain a hearing ~~is~~ request form, or for questions relating to filing a hearing request, contact the Hearing Coordinator, Division of Vocational Rehabilitation, P.O. Box 7852, Madison, Wisconsin 53707, telephone (800) 442-3477 or access the form online at http://dwd.wisconsin.gov/dvr/.

SECTION 15. DWD 75.06 is amended to read:

DWD 75.06 **Acknowledgment of a hearing request.** The hearing coordinator shall acknowledge receipt of a hearing request and notify the parties ~~when a hearing request has been properly filed~~ within 5 working days after receiving the request. If a representative has been designated, the ~~notice shall be sent to~~ hearing coordinator shall notify the applicant's or eligible individual's representative. ~~If the appellant has a representative, a copy shall also be sent to the appellant by certified mail. This~~ ~~notice~~ The acknowledgment of a hearing request shall include ~~as enclosures~~ a copy of this chapter, ~~a brochure explaining the~~ and information on appeal ~~process~~ rights and ~~a~~ the Wisconsin client assistance program ~~brochure~~.

SECTION 16. DWD 75.07 is amended to read:

DWD 75.07 **Time limit for hearing.** A hearing shall be held within ~~45~~ 60 days of the receipt of the hearing request by ~~a~~ the hearing coordinator unless the hearing officer grants an extension for good cause at the request of either party.

SECTION 17. DWD 75.08 (intro.) and (1) to (5) are amended to read:

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

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

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

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

(4) MOTION TO WITHDRAW A HEARING REQUEST. An ~~appellant~~ applicant or eligible individual, or the representative of the applicant or eligible individual, may withdraw from the appeal process at any time. If the ~~appellant~~ applicant or eligible individual or the representative of the applicant or eligible individual, has made a verbal request to withdraw and a motion has not been filed with the hearing officer within 10 calendar days, the hearing officer shall act on the verbal request and issue a decision.

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

SECTION 18. DWD 75.09 (1) to (3) are amended to read:

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

(2) ~~APPELLANT'S REPRESENTATIVE~~ REPRESENTATIVE OF APPLICANT OR ELIGIBLE INDIVIDUAL. Designation of a representative is optional for the ~~appellant~~ applicant or eligible individual. An ~~appellant~~ applicant or eligible individual may select any responsible adult as a representative or, as permitted under federal law, an ~~appellant~~ applicant or eligible individual may ask the Wisconsin client assistance program to provide assistance in resolving the disagreement, including preparing the hearing request ~~for a hearing~~ or serving as the ~~appellant's~~ representative of the applicant or eligible individual.

(3) NOTICE OF REPRESENTATION. Notice of representation shall be filed with the hearing officer as part of the prehearing ~~interview~~ conference under s. DWD 75.14, or ~~at least~~ within 5 working days in advance of the scheduled hearing. If ~~an appellant's~~ the representative of the applicant or eligible individual has been properly designated prior to a hearing request, that

designation shall be valid for a hearing unless revoked by the ~~appellant~~ applicant or eligible individual. If the ~~appellant~~ applicant or eligible individual is not present at a hearing to introduce a representative, the hearing officer may require the representative to present identification before the hearing may proceed.

SECTION 19. DWD 75.10 (1) and (2) are amended to read:

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

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

SECTION 20. DWD 75.11 is amended to read:

DWD 75.11 **Services while a hearing officer's decision is pending.** Pending the decision of a hearing officer, the department may not suspend, reduce or terminate vocational rehabilitation services including evaluation and assessment services under an ~~IWRP~~ IPE unless the services were obtained through misrepresentation, fraud, collusion or criminal conduct, or unless requested by the applicant or eligible individual, or the representative of the applicant or eligible individual.

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

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

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

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

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

DWD 75.13 (1) The hearing officer shall conduct a prehearing ~~interview,~~ conference with the parties as specified under s. DWD 75.14. The hearing officer may receive and act on motions under s. DWD 75.08, ~~may~~ use the power of subpoena under s. 885.01, Stats., and ~~may~~ contact any party prior to a scheduled hearing to obtain needed information or ~~to~~ suggest mediation if the parties agree that agreement is possible prior to the hearing. The parties retain all rights under this chapter regardless of their participation or nonparticipation in mediation.

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

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

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

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

(2) PARTICIPATION. The administrator's representative shall participate in the prehearing ~~interview~~ conference. If the ~~appellant~~ applicant or eligible individual, or the representative of the applicant or eligible individual, fails to participate in a prehearing ~~interview~~ conference without prior notice, the hearing officer shall continue the prehearing ~~interview~~ conference period for 5 working days. During this period the ~~appellant~~ applicant or eligible individual, or the representative of the applicant or eligible individual, may file a good cause explanation and request that the prehearing ~~interview~~ conference be rescheduled. If a motion is not filed within 5 working days, the hearing officer shall schedule the hearing within the ~~45~~60-day limit and notify the parties and the hearing coordinator of this decision. The ~~administrator~~ department may review this decision as provided in s. DWD 75.19.

(3) HEARING NOT DELAYED BY PARTICIPATION IN A PREHEARING ~~INTERVIEW~~ CONFERENCE. Participation in a prehearing ~~interview~~ conference shall not delay a hearing and does not affect time limits under this chapter. The parties shall not forfeit any rights under this chapter by participating in a prehearing ~~interview~~ conference or meeting to reach agreement prior to a hearing.

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

DWD 75.16 (1) HEARING IS CLOSED. A hearing shall be closed to the public as a confidential matter ~~under the act~~ unless the ~~appellant~~ applicant or eligible individual, or the

representative of the applicant or eligible individual files a motion to open the hearing ~~at least~~ within 5 working days in advance of the scheduled hearing.

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

(4) TESTIMONY BY WITNESSES. Witnesses may testify in person by answering questions posed to them, in narrative form, or by deposition provided that the witness agrees in advance, as part of the deposition, to permit the recording of the testimony and any subsequent cross-examination and the witness understands ~~that he or she may be subpoenaed~~ a subpoena to appear may be issued by the hearing officer based on the information in the deposition. Requests for testimony by witnesses by deposition or electronic means shall be filed with the hearing officer ~~at least~~ within 5 working days prior ~~the~~ to a scheduled hearing ~~date~~. The hearing officer may grant the request if the other party does not object provided that the witness agrees in advance~~,~~ and on the record~~,~~ to permit the recording of ~~his or her~~ the witness's telephone testimony and any subsequent cross-examination.

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

(6) (a) ~~*Tape recording*~~ *Recording*. The hearing officer shall record ~~the~~ each hearing ~~on tape~~. The ~~appellant~~ applicant or eligible individual, or the representative of the applicant or

eligible individual, may obtain one free copy of the ~~tape from~~ recording by contacting the hearing coordinator. No other ~~tape~~ recording of the hearing is permitted.

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

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

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

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

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

Note: To file a written request for a transcript of the hearing record, contact the Hearing Coordinator, Division of Vocational Rehabilitation, P.O. Box 7852, Madison, Wisconsin 53707 or telephone (800) 442-3477.

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

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

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

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

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

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

SECTION 29. DWD 75.17 is amended to read:

DWD 75.17 ~~**Notice of hearing officer's decision**~~ **Decision of the hearing officer.** The hearing officer shall issue a written decision within 10 calendar days of a written motion under s. DWD 75.08 and within 30 calendar days of a hearing. The hearing officer shall provide a report of the hearing including the findings and the grounds for the decision. ~~This~~ The decision ~~notice~~ shall state that the decision is final unless the ~~administrator acts under s. DWD 75.19 to change the decision~~ administrator's representative, applicant or eligible individual, or the representative of the applicant or eligible individual, requests a review of the decision of the hearing officer within 20 calendar days after the decision is issued, under s. DWD 75.19, or the ~~appellant, under s. 227.53, Stats.,~~ applicant or eligible individual, or the representative of the applicant or eligible individual, chooses to petition the circuit court under s. 227.53, Stats. The

notice shall specify the procedures for filing a claim in circuit court. The hearing officer shall send the original to the ~~appellant~~ applicant or eligible individual, or the representative of the applicant or eligible individual, and send ~~copies~~ a copy of the notice to the administrator's representative~~, to the division office of record~~ and to the hearing coordinator for placement in the ~~appellant's~~ applicant's or eligible individual's case record ~~and to the hearing coordinator~~.

SECTION 30. DWD 75.18 is amended to read:

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

SECTION 31. DWD 75.19 (title) and (1) are amended to read:

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

(1) NOTICE OF INTENT TO REVIEW. The hearing officer's decision shall be the department's final decision unless any party decides to initiate a review. If the ~~administrator~~ department decides to initiate a review of the hearing officer's decision, written notice of this decision shall be filed with the parties by certified mail within 20 calendar days of the date that the decision of the hearing officer was mailed. The intent to review notice shall advise the parties that additional evidence and information relevant to the final decision may be filed with the ~~administrator not later than~~ department within 30 calendar days following the date of the intent to review notice and that the ~~administrator~~ department may also collect new evidence from other sources during that period.

SECTION 32. DWD 75.19 (2) (title) is amended to read:

DWD 75.19 (2) (title) ~~NO DELEGATION OF ADMINISTRATOR'S AUTHORITY~~ REVIEW PROCEDURE.

SECTION 33. DWD 75.19 (2) is renumbered DWD 75.19 (2) (a) and amended to read:

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

SECTION 34. DWD 75.19 (2) (b) and (c) are created to read:

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

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

SECTION 35. DWD 75.19 (3) to (5) are amended to read:

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

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

(5) NOTICE OF OUTCOME OF ~~ADMINISTRATOR'S~~ THE DEPARTMENT'S REVIEW. The ~~administrator~~ department shall notify the parties in writing by certified mail of the outcome of

the review within 30 calendar days after the date of the ~~intent-to-review~~ intent to review notice. The notice shall state the findings, the grounds for the final decision, that it is the final decision unless modified by a court and information on how to file a request for circuit court review. The ~~administrator~~ department shall send copies of the letter and any attachments to the hearing coordinator for placement in the applicant's or eligible individual's case record, to the hearing officer and to the ~~division office of record for placement in the appellant case record~~ contract administrator.

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

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF
WORKFORCE DEVELOPMENT

By: _____
Reginald Newson, Secretary