

**ARTICLE 75-08
VOCATIONAL REHABILITATION**

Chapter
75-08-01 Vocational Rehabilitation

**CHAPTER 75-08-01
VOCATIONAL REHABILITATION**

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75-08-01-01. Definitions.

In this chapter:

1. "Appeal" means a request for an impartial due process hearing or an impartial due process hearing to resolve the issue under dispute.
2. "Assistive technology device", also referred to as "rehabilitation technology device", means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, used to increase, maintain, or improve the functional capabilities of an individual with disabilities.
3. "Assistive technology service", also referred to as "rehabilitation technology service", means a service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.
4. "Client assistance program" means the program that informs and advises an individual of all available benefits under the Rehabilitation Act, as amended, and, if requested, may assist and advocate for the individual in matters related to the division's decisions and services. Client assistance program services include assistance and advocacy in pursuing mediation, administrative, legal, or other appropriate remedies for the protection of the rights of an individual.
5. "Department" means the North Dakota department of human services.
6. "Division" means the vocational rehabilitation division of the department.
7. "Employment outcome" means, in a manner consistent with this chapter:
 - a. Entering, advancing in, or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;
 - b. Supported employment; or
 - c. Satisfying any other type of employment in an integrated setting that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including self-employment, telecommuting, and business ownership.
8. "Existing data" means information from any source that currently exists that describes the current functioning of the individual and may be available to the division for an eligibility determination. The school records of an individual are considered to be existing data; however, the division may request additional information if there is an indication of changes in functioning or if there is conflicting information.
9. "Extended employment" means work in a nonintegrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with section 14(c) of the Fair Labor Standards Act.
10. "Extreme medical risk" means a risk of increasing functional impairment or risk of death if medical services, including mental health services, are not provided expeditiously.
11. "Individual with a disability" means any individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment or from advancing in employment and who can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to this chapter.
12. "Individual with a most significant disability" means an individual:
 - a. Who meets the criteria for a significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction,

interpersonal skills, work tolerance, or work skills in terms of an employment outcome;
and

- b. Who requires multiple core services over an extended period of time of six months or more.

13. "Individual with a significant disability" means:

- a. An individual who is receiving social security disability insurance or supplemental security income; or
- b. An individual:
 - (1) Who has severe physical or mental impairments that seriously limit the individual's functional capacity, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome;
 - (2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time of six months or more; and
 - (3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.

14. "Informed choice" means a choice based on disclosure of facts and alternatives to allow a person to make decisions based on relevant information, options, and consequences.

15. "Mediation" means using an independent third party to assist vocational rehabilitation applicants and clients in settling differences or disputes prior to formal action regarding vocational rehabilitation decisions or services.

16. "Personal assistance services" means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be necessary in order to achieve an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. Personal assistance services may include training in managing, supervising, and directing personal assistance services.

17. "Postsecondary training" means training offered by institutions that qualify for federal financial student aid and is provided only when necessary to achieve a vocational goal consistent with an individual's capabilities and abilities.

18. "Pre-employment transition services" means services for all students with disabilities in need of such services, without regard to the type of disability, and which must be made available to students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

19. "Qualified rehabilitation professional" means a vocational rehabilitation counselor or administrator who meets educational and experience standards consistent with requirements for certification by the commission on rehabilitation counseling certification.
20. "Student with a disability" means an individual with a disability in a secondary, postsecondary, or other recognized education program who:
 - a. Is not younger than the earliest age for the provision of transition services under the Individuals with Disabilities Education Act [20 U.S.C. 1414(d)(1)(A)(i)(VIII)] and is not older than twenty-one years of age;
 - b. Is a student who is an individual with a disability, for purposes of section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794]; or
 - c. Is a student who is eligible for and receiving special education services under part B of the Individuals with Disabilities Education Act [20 U.S.C.1411 et seq.].
21. "Substantial impediment to employment" means that a physical or mental impairment in light of attendant medical, psychological, vocational, educational, communication, and other related factors hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment, consistent with the individual's abilities and capabilities.
22. "Suitable" means consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual.
23. "Supported employment" means competitive integrated employment, in which an individual with a most significant disability, including a youth with a most significant disability, is working toward employment that is consistent with their individualized plan for employment. The following terms are defined concerning supported employment:
 - a. "Competitive employment" means work that, at the time of transition to extended services, is performed on a full-time or part-time basis, as determined in the individualized plan for employment, and for which an individual is compensated at or above the federal minimum wage.
 - b. "Extended services" means ongoing support services that are:
 - (1) Needed to support and maintain an individual with a most significant disability in supported employment;
 - (2) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining employment;
 - (3) Based on the needs of an eligible individual, as specified in an individualized plan for employment;
 - (4) Provided by a state agency, private nonprofit organization, employer, or any other appropriate resource after an individual has been determined stable in employment and has made the transition from support from the division; and
 - (5) Provided to a youth with a most significant disability, who will not immediately be able to access extended services from an alternative source. The division shall provide extended services for a period not to exceed four years, or at such time that a youth reaches age twenty-five and no longer meets the definition of a youth with a disability, whichever occurs first. The division may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.

- c. "Integrated setting" means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals.
 - d. "Ongoing support services" is as defined in 34 C.F.R. 361.5.
 - e. "Time-limited services" means support services provided by the division for a period not to exceed twenty-four months, unless a longer period to achieve job stabilization has been established in the individualized plan for employment, before the individual transitions to extended services.
24. "Trial work experiences" means an exploration of an individual's abilities, capabilities, and capacity to perform realistic work in the most integrated setting possible in which appropriate support and training are provided.
25. "Vocational goal" means an employment outcome.
26. "Youth with a disability" means an individual with a disability who:
- a. Is at least fourteen years of age; and
 - b. Is not older than twenty-four years of age.
27. "Youth with a most significant disability" means an individual with a disability who:
- a. Is at least fourteen years of age;
 - b. Is not older than twenty-four years of age;
 - c. Meets the criteria for a most significant disability, and is seriously limited in two or more functional capacities, including mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and
 - d. Requires multiple core services over an extended period of time of six months or more.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16

Law Implemented: NDCC 50-06.1

75-08-01-02. General requirements of the vocational rehabilitation program.

- 1. The vocational rehabilitation program assists an eligible individual with physical or mental disabilities to prepare for and achieve an employment outcome. The vocational rehabilitation process is based upon an individualized plan for employment oriented to the achievement of a suitable vocational goal. An individual with disabilities must require the service provided to minimize and accommodate the impediment to employment. Services must be reasonable and provided as cost effectively as possible.
- 2. The division presumes that an individual will benefit in terms of an employment outcome from vocational rehabilitation services, unless the counselor can document, on the basis of clear and convincing evidence and only after trial work experiences, that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.
- 3. Auxiliary aids and services will be provided at no cost to applicants or clients when they are necessary to access the vocational rehabilitation program. The purpose of auxiliary aids and services is to provide effective communications for participants in determining eligibility, assessments, and plan development.

4. Unless otherwise specified in this chapter, eligibility to participate in the vocational rehabilitation program is governed by federal vocational rehabilitation statutes and the federal procedures embodied in the rehabilitation services administration notices and policy memos. The program must conform to lawfully issued regulations and policies of the rehabilitation services administration and the division. Terms used in this chapter have the same meaning as the terms used in the regulations and policies of the rehabilitation services administration and the division, unless this chapter specifically provides otherwise.
5. The division must provide services without regard to sex, race, creed, age, color, national origin, political affiliation, or type of disability.
6. There is no residency requirement, durational or other, that may exclude an otherwise eligible individual present in the state from eligibility. For individuals who are not United States citizens, the division must verify that the individual has the necessary documentation to allow them to work.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: 29 USC 720, et seq.

75-08-01-03. Variance.

Upon written application and good cause shown to the satisfaction of the division, the division may grant a variance from the provisions of this chapter upon terms prescribed by the division.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: 29 USC 720, et seq.

75-08-01-04. Establishment and maintenance of records.

The division shall establish and maintain a record of service for each individual applying for or receiving vocational rehabilitation services. The record must include data necessary to comply with state vocational rehabilitation and federal rehabilitation services administration requirements.

History: Effective October 1, 1995; amended effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: 29 USC 720, et seq.

75-08-01-05. Expenditure authorization.

Case service expenditures require written authorization prior to the initiation of services. Oral authorizations are permitted in emergency situations, but must be confirmed promptly in writing.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: 29 USC 720, et seq.

75-08-01-06. Referrals to other services.

When appropriate, counselors shall provide the referral necessary to support an individual with disabilities in securing necessary services from other agencies and organizations.

History: Effective October 1, 1995.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: 29 USC 720, et seq.

75-08-01-07. Notification of appeals and mediation procedures.

Repealed effective January 1, 2019.

75-08-01-08. Confidentiality.

All information acquired by the division about an individual applying for or receiving services must remain the property of the division and must only be used and released for purposes directly connected with the administration of the vocational rehabilitation program. Information obtained from another agency or organization may be released only by or under the conditions established by the other agency or organization. The division's use and release of personal information must conform with applicable state and federal regulations.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-09. Informed written consent.

Informed written consent must:

1. Be in language that the individual or the individual's authorized representative understands;
2. Be signed and dated by the individual or the individual's authorized representative;
3. Include an expiration date;
4. Be specific in designating the department or person authorized to disclose information;
5. Be specific as to the nature of the information that may be released;
6. Be specific in designating the parties to whom the information may be released; and
7. Be specific as to the purpose or purposes for which the released information may be used.

History: Effective October 1, 1995; amended effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-10. Release of information within the department.

Intradepartmental exchange of information may occur without informed written consent when the individual is served by other divisions if the information is directly related to the purpose of the vocational rehabilitation program.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-11. Release of information to the individual and others.

1. Upon informed written consent by the individual with disabilities or the individual's authorized representative, all information in the record of service must be made available to the individual with disabilities or the individual's authorized representative in a timely manner, except:
 - a. Medical, psychological, or other information the division believes may be harmful to the individual and that may not be released directly to the individual, and must be provided

through the individual's authorized representative, physician, or licensed psychologist;
and

- b. Information obtained from outside the division that may be released only under the conditions established by the outside agency, organization, or provider.
2. Upon informed written consent of the individual with disabilities or the individual's authorized representative, the division may release information that may be released under subsection 1 to the individual with disabilities to another agency or organization.
3. The division may release personal information, with or without consent of the individual:
 - a. If required by state or federal law;
 - b. In response to investigations connected with law enforcement, fraud, or abuse (except where expressly prohibited by federal or state laws or regulations); or
 - c. In response to judicial order.
4. The division may release personal information, without informed written consent of the individual, in order to protect the individual or others when the information poses a threat to the individual's safety or the safety of others, except for human immunodeficiency virus test results that may not be released without informed written consent of the individual.
5. The division and social security disability determination services may exchange information, without the informed written consent of the individual.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-12. Release of information for program audit, evaluation, or research.

At the discretion of the division director, personal information may be released to an organization, agency, or individual engaged in program audit, program evaluation, or program research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for an individual with disabilities, and only if the organization, agency, or individual assures that:

1. The information is used strictly for the purposes for which it is being provided;
2. The information is released only to an individual officially connected with the audit, evaluation, or research;
3. The information is not released to the individual involved;
4. The information is managed in a manner to safeguard confidentiality; and
5. The final product does not reveal any personal identifying information without the informed written consent of the individual involved or the individual's representative.

History: Effective October 1, 1995; amended effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-13. Subpoenas.

An employee of the division may testify in court or in an administrative hearing, but may not release information or records, without the consent of the individual with disabilities, unless ordered to do so by a judge or hearing officer.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-05

75-08-01-14. Administrative review procedures - Appeals.

Repealed effective January 1, 2019.

75-08-01-15. Application for services.

All individuals desiring vocational rehabilitation services must apply for services. An individual is considered to have applied for services when the division receives a signed, written request for those services from the individual or the individual's authorized representative.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04; 29 USC 722

75-08-01-16. Period of time to determine eligibility.

The division shall determine eligibility for services within a reasonable period of time not to exceed sixty days after the receipt of the application for services, unless:

1. The individual is notified that exceptional and unforeseen circumstances beyond the control of the counselor preclude the counselor from completing the determination within the prescribed time frame, and the individual agrees to a specific extension of time; or
2. The division conducts trial work experiences to explore the individual's abilities, capabilities, and capacity to work in various situations.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-17. Presumption of eligibility and significant disability.

1. An individual who has a disability or is blind as determined under title II or title XVI of the Social Security Act [42 U.S.C. 301, et seq.] and who receives social security disability insurance benefits or supplemental security income benefits is presumed to be eligible for vocational rehabilitation services if the individual intends to achieve an employment outcome.
2. An individual who receives supplemental security income benefits or social security disability insurance benefits is presumed to have a significant disability.
3. The presumption of eligibility described in this section shall be overcome if the division can demonstrate by clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of the individual's disability. The demonstration that the individual cannot benefit from vocational rehabilitation services may be determined only after conducting trial work experiences as described in section 75-08-01-20.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-18. Eligibility criteria and documentation.

1. The division must base eligibility determinations on existing data as the primary source of information to the maximum extent possible and appropriate. The individual requesting services, the family of the individual, or other sources may provide the information. An individual is eligible for vocational rehabilitation if:
 - a. The individual has a mental or physical impairment;
 - b. The impairment constitutes or results in a substantial impediment to employment as determined by a qualified rehabilitation professional;
 - c. The individual can benefit from vocational rehabilitation services in terms of an employment outcome. An individual is presumed to be able to benefit from vocational rehabilitation services in terms of an employment outcome unless the division can demonstrate by clear and convincing evidence that the individual cannot benefit due to the severity of the disability. This demonstration that the individual cannot benefit can be determined only after conducting trial work experiences as described in section 75-08-01-20; and
 - d. The individual requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment.
2. In all cases in which the division determines an individual eligible for services, the record of service must include documentation of eligibility, dated and signed by a qualified rehabilitation professional, which demonstrates that the individual:
 - a. Has a physical or mental impairment that constitutes or results in a substantial impediment to employment; and
 - b. Requires vocational rehabilitation services to prepare for, enter, retain, advance in, or regain employment.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-19. Eligibility criteria for supported employment.

An individual is eligible for supported employment services if:

1. The individual is eligible for vocational rehabilitation services;
2. The individual is determined to have a most significant disability; and
3. A comprehensive assessment of rehabilitation needs, including an evaluation of rehabilitation, career, and job needs identifies supported employment as the appropriate employment outcome for the individual.

History: Effective October 1, 1995; amended effective November 1, 2002.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-20. Trial work experiences and extended evaluation.

1. Before an individual can be determined ineligible due to the severity of a disability, the individual must receive trial work experiences and there must be a written trial workplan. The trial work must:
 - a. Be sufficiently varied and over a sufficient period of time to determine eligibility or ineligibility;
 - b. Show by clear and convincing evidence that the individual cannot benefit due to the severity of the disability; and
 - c. Include support services such as assistive technology or personal assistance, which must be provided by the division.
2. Trial work experiences shall explore the individual's abilities, capabilities, and capacity to perform in work situations, including experiences in which appropriate supports and training are provided.
3. The division must provide assessments periodically during the trial work experiences regarding the individual's abilities, capabilities, and capacity to perform the work.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-21. Ineligibility determination.

1. The division may make a determination that an individual is ineligible for vocational rehabilitation services only after providing an opportunity for full consultation with the individual or the individual's representative, as appropriate.
2. When the division determines that an individual is ineligible to receive vocational rehabilitation services, the individual or the individual's representative shall be informed of the ineligibility determination in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including:
 - a. The reasons for the determination; and
 - b. A written description of the means by which the individual may express and seek a remedy for any dissatisfaction with the determination. This includes the procedures for appeal as provided in section 75-08-01-37, mediation, and the client assistance program.
3. When an ineligibility determination is based on a finding that the individual is incapable of benefiting in terms of an employment outcome due to the severity of the disability, that determination shall be reviewed by the division:
 - a. Within twelve months and twenty-four months of the date of the determination of ineligibility; and
 - b. After that date only if such a review is requested by the individual or the individual's representative, as appropriate.
4. Ineligibility decisions concerning the severity of a disability must be based on clear and convincing evidence and require trial work experiences as described in section 75-08-01-20 prior to closure.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-22. Assessment for determining eligibility and vocational rehabilitation needs.

1. An assessment for determining eligibility and vocational rehabilitation needs means, as appropriate in each case, a review of existing data to determine:
 - a. Whether an individual is eligible for vocational rehabilitation services;
 - b. The priority for an order of selection as described in section 75-08-01-23;
 - c. The necessity of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;
 - d. Referral, for the provision of assistive technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and
 - e. An exploration of the individual's abilities, capabilities, and capacity to perform in realistic, integrated work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.
2. To the extent additional data is necessary for the division to make a determination of employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment, a comprehensive assessment may be done by the division. The purpose is to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, including the need for supported employment. A comprehensive assessment includes, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, the following:
 - a. Information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;
 - b. Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in section 75-08-01-23;
 - c. Any information as can be provided by the individual and, when appropriate, by the family of the individual;
 - d. As necessary, an assessment of the personality, interests, interpersonal skills, intelligence, and related functional capacities, educational achievements, work experiences, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual; and
 - e. As necessary, an appraisal of the individual's patterns of work behavior and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-23. Order of selection.

1. The division must provide to an individual applying for services, including an individual receiving trial work experiences, all services necessary to determine eligibility for vocational rehabilitation services and an order of selection priority classification. The division must provide these services on a timely basis in accordance with federal law.
2. When the division notifies an individual of eligibility, the division must also notify the individual of the individual's priority category and right to request mediation, appeal the assigned category, and to utilize the client assistance program.
3. If the division cannot provide services to all eligible individuals who apply due to a lack of resources, an order of selection procedure must be implemented.
 - a. An individual receiving services under an individualized plan for employment must continue to receive all required services. An individual requiring or receiving postemployment services must be considered to be under an individualized plan for employment. An individual described in paragraphs 1 through 4 must be assigned a priority in the order in which the paragraphs are listed.
 - (1) Category 1a: An individual with a most significant disability that seriously limits four or more functional capacities.
 - (2) Category 1b: An individual with a most significant disability that seriously limits two or three functional capacities.
 - (3) Category 2: An individual with a significant disability that seriously limits one or more functional capacities.
 - (4) Category 3: Other individuals with disabilities.
 - b. An eligible individual who is not in a priority category that is being served will have access to services provided through information and referral.

History: Effective October 1, 1995; amended effective March 1, 1997; November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-04

75-08-01-24. Individualized plan for employment.

An individualized plan for employment is developed for all individuals who are determined eligible for vocational rehabilitation.

1. Prior to developing the individualized plan for employment, the division must give the individual a written copy of the options for developing the plan.
2. The individualized plan for employment may be developed by the individual alone or by the individual with assistance from the division or other parties.
3. The individualized plan must be agreed to and signed by the individual or the individual's authorized representative and approved and signed by a qualified rehabilitation professional employed by the division.

4. The individualized plan for employment for eligible individuals must be developed and approved within ninety days from the date of determination of their eligibility for service.
5. The individualized plan for employment is designed to assist the individual's achievement of the vocational goal, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. The record of service must support the selection of the vocational goal.
6. Counselors shall provide a copy of the individualized plan for employment, and any amendments, to the individual.
7. With the exception of assessment services, the division may provide goods and services only in accord with the individualized plan for employment.
8. The individualized plan for employment is not a legal contract.
9. The division must review the individualized plan for employment at least annually in the same manner as it was originally developed and described in subsection 3.
10. The division must include in the individualized plan for employment:
 - a. A specific employment outcome in an integrated setting, which must be consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual; and
 - b. The specific services to be provided and the projected dates for initiation and anticipated duration of each service, including:
 - (1) If appropriate, a statement of the specific assistive technology services;
 - (2) If appropriate, a statement of the specific on-the-job and related personal assistance services, and, the individual's appropriate and desired training in managing, supervising, and directing personal assistance services;
 - (3) An assessment of the need for postemployment services and, if appropriate, extended services;
 - (4) The terms and conditions under which goods and services are to be provided in the most integrated settings;
 - (5) The terms and conditions for the provision of services, including the individual's:
 - (a) Responsibilities and the division's responsibilities;
 - (b) Participation in the cost of services; and
 - (c) Access to comparable services and benefits under any other program;
 - (6) An assurance that the individual with disabilities was informed of:
 - (a) The availability of services through the client assistance program;
 - (b) The individual's rights, means of expression, and remedies for any dissatisfaction, including the individual's right to request mediation; and
 - (c) The opportunity for review of a determination by the division regarding terms of the individualized plan for employment, as set forth in section 75-08-01-37;

- (7) Information identifying services and benefits from other programs to enhance the capacity of the individual to achieve the individual's vocational goal;
 - (8) A reassessment of the need for postemployment services, or extended services prior to the point of successful closure; and
 - (9) If appropriate, any plans for the provision of postemployment services and the basis on which the plans are developed.
11. For an individual with a most significant disability for whom supported employment services are appropriate, in addition to the requirements in subsection 10, the following must be addressed:
- a. A description of time-limited services that the division provides, not to exceed twenty-four months in duration, unless the individualized plan for employment documents a longer period to achieve job stabilization; and
 - b. A description of the extended services necessary and identification of the state, federal, or private programs, which may include natural supports, that provide the extended support, or, to the extent that is not possible at the time the individualized plan for employment is written, a statement describing the basis for concluding that there is a reasonable expectation that those sources will become available.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02

75-08-01-25. Comparable services and benefits.

- 1. Before providing any vocational rehabilitation service, except those listed in subsection 5, to an eligible individual or to members of the individual's family, the division must determine whether comparable services and benefits exist under any other program and whether the services and benefits are available to the individual.
- 2. If comparable services and benefits do exist and are available to the individual at the time needed to achieve the provisions of the individualized plan for employment, they must be used to meet, in whole or in part, the cost of vocational rehabilitation services.
- 3. If comparable services and benefits do exist but are not available to the individual at the time they are needed, the division shall provide the services until comparable services and benefits become available.
- 4. The use of comparable services and benefits does not apply if such a determination would interrupt or delay:
 - a. The progress of an individual toward achieving the employment outcome identified in the individualized plan for employment;
 - b. An immediate job placement; or
 - c. The provision of vocational rehabilitation services to an individual with disabilities who is at extreme medical risk.
- 5. The following categories of service do not require that comparable services and benefits be used:
 - a. Assessment for determining eligibility and rehabilitation needs;

- b. Counseling and guidance, including information and support services to assist in exercising informed choice;
- c. Information and referral;
- d. Job-related services, including job search, job placement, job retention services, followup, and follow-along services;
- e. Rehabilitation technology, including telecommunications, sensory, and other rehabilitative technological aids and devices; and
- f. Postemployment services that would be included under subdivisions a through e.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02

75-08-01-26. Determination of financial participation.

1. In all cases, the division shall encourage an individual with disabilities and the individual's family to financially contribute as much as possible to the cost of vocational rehabilitation goods and services provided as part of an individualized plan for employment. When available, comparable services and benefits must be used, as described in section 75-08-01-25, and the division must apply a financial participation threshold to specified vocational rehabilitation services. The individual's refusal to provide financial information will constitute the individual's not meeting the financial participation threshold. In that event, the individual may be unable to access the services without participating in the cost of such service.
 - a. If an individual is single, under the age of eighteen years, and unemancipated, the individual's income, and the income of the individual's parents, must be considered.
 - b. If an individual is single, under the age of eighteen years, and living with a guardian, the division shall determine financial participation based on the individual's income.
 - c. If an individual is single, eighteen years of age or over, but is living with a parent, the division shall determine financial participation based on the individual's income only.
 - d. If an individual is married, regardless of age, the division shall determine financial participation based on the income of the individual and the individual's spouse.
2. Calculation of financial participation is based on a fee schedule established and administered by the division and must be used to determine client participation. Copies of the fee schedule, which may be updated from time to time, are available from the division upon request. When determining client participation, the division must take into consideration disability-related expenses incurred by or for the individual. A vocational rehabilitation administrator may adjust or waive the client financial participation to ensure the level of an individual's participation in the cost of services is not so high as to effectively deny the individual a necessary service.
3. The division must re-evaluate financial participation annually or whenever financial or other circumstances regarding the individual significantly change, whichever occurs first. Significant change includes marriage or divorce, other changes in dependent status, radical change in income, or to the individualized plan for employment.
4. Regional vocational rehabilitation administrators may adjust or waive client financial participation. Documentation must be maintained indicating the conditions under which a waiver or adjustment is made and a copy placed in the client's file.

5. The division may not require the financial participation of any individual who receives social security disability insurance benefits or supplemental security income benefits as determined under title II or title XVI of the Social Security Act [42 U.S.C. 301, et seq.].
6. If the individual or the individual's authorized representative disagrees with the outcome of the determination of financial participation, the individual has the right to have the determination reviewed in accordance with section 75-08-01-37.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02

75-08-01-27. Services exempt from participation by an individual in the cost of vocational rehabilitation services.

The division shall provide the following services without regard to the financial resources available to the individual:

1. Information and referral;
2. Assessments to determine eligibility and priority for services except for nonassessment services provided during trial work experiences;
3. Assessments to determine vocational rehabilitation needs;
4. Counseling and guidance;
5. Interpreter services;
6. Vocational training, except at institutions of higher education. For example, on-the-job training, personal adjustment training, and supported employment training;
7. Orientation and mobility services;
8. Reader and notetaker services;
9. Placement services;
10. Assistive technology services, excluding assistive technology devices; and
11. Personal assistance services.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02

75-08-01-28. Services subject to participation by an individual in the cost of vocational rehabilitation services.

The division shall apply a financial participation schedule as a consideration for eligibility for the following vocational rehabilitation services:

1. Physical and mental restoration;
2. Maintenance, unless required for assessment purposes;
3. Transportation, unless required for assessment purposes;
4. Assistive technology aids and devices;

5. Occupational licenses;
6. Tools, equipment, and initial stock, including livestock, supplies, and necessary shelters;
7. Services to members of an individual's family, which are necessary for the rehabilitation of the individual with a disability;
8. Telecommunications, sensory, and other technological aids and devices for purposes other than evaluation;
9. Postemployment services necessary to assist individuals in maintaining suitable employment, excluding services normally provided without regard to financial participation;
10. Home modifications, including adaptive devices and minor structural changes necessary for the individual to function independently in order to achieve a vocational goal;
11. Other goods and services for which the individual may reasonably expect to receive benefits in terms of the individual's employability; and
12. Higher education as described in section 75-08-01-30.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-29. Vocational rehabilitation services necessary to enable the individual to achieve an employment outcome.

Consistent with the individualized plan for employment, the division may provide, as appropriate to the vocational rehabilitation needs of each eligible individual, goods or services necessary to enable the individual to achieve an employment outcome. Services include:

1. An assessment for determining eligibility and vocational rehabilitation needs;
2. Counseling, guidance, and work-related placement services for an individual with disabilities, including job search assistance, placement assistance, job retention services, personal assistance services, and followup;
3. Physical and mental restoration services necessary to correct or modify the physical or mental condition of an individual who is stable or slowly progressive. In the purchase of medical goods or services, the division shall comply with the prevailing medical assistance fee schedule, except for certain diagnostic services that Medicaid excludes;
4. Home modifications that may include those adaptive devices and minor structural changes necessary for the individual with disabilities to function independently in order to achieve a vocational goal. Funds for home modifications may not be applied to the purchase or construction of a new residence;
5. Vocational and other training services, including:
 - a. Personal and vocational adjustment training;
 - b. Correspondence courses; and
 - c. Services to the individual's family that are necessary to the personal and vocational adjustment or rehabilitation of the individual;

6. Except in institutions of higher education, where comparable benefits, including services for students with disabilities must be used, the division may provide:
 - a. Interpreter services and note-taking services for an individual who is deaf, including tactile interpreting for an individual who is deaf and blind;
 - b. Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services; and
 - c. Telecommunications, sensory, and other technological aids and devices;
7. Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement, and other appropriate public service employment;
8. Occupational licenses, tools, equipment, initial stocks, and supplies necessary in order to enter an occupation, except that the division shall not purchase land or buildings for an individual with disabilities;
9. Time-limited, ongoing support services for an individual receiving supported employment services, including:
 - a. Diagnostic services necessary to determine the individual's rehabilitation needs for supported employment that are supplemental to the assessment for eligibility used to determine vocational rehabilitation eligibility, and are provided only after vocational rehabilitation eligibility has been determined. The purpose of supplemental evaluations is to help develop, finalize, or reassess a supported employment plan of services;
 - b. Job development and placement services; and
 - c. Other time-limited services necessary to support the individual in employment. The maximum time period for time-limited services is twenty-four months, unless the individualized plan for employment indicates that more than twenty-four months of services are necessary in order for the individual to achieve job stability prior to transition to extended services. Time-limited services include:
 - (1) Intensive on-the-job skills training and other training and support services necessary to achieve and maintain job stability;
 - (2) Followup services with employers, supported employees, parents and guardians, and others for the purpose of supporting and stabilizing the job placement;
 - (3) Discrete postemployment services, following transition to extended services, which are not available from the extended service provider and which are needed to maintain job placement; and
 - (4) Other needed services listed in this subsection;
10. Postemployment services for an individual with disabilities who is employed but requires one or more services to assist with maintaining or advancing in suitable employment. An individual requiring multiple services over an extended period of time and a comprehensive or complex rehabilitation plan is not eligible for postemployment services, but may be encouraged to reapply. Postemployment services may:
 - a. Include counseling and guidance services to assist an individual to advance in employment; and
 - b. Require an amendment to the individualized plan for employment;

11. Assistive technology services to meet the needs and address the barriers confronted by an individual with disabilities in the areas of education, rehabilitation, employment, and transportation. The division shall provide assistive technology services at any time in the rehabilitation process, including the assessment for determining eligibility and vocational rehabilitation needs, trial work experiences, services provided under an individualized plan for employment, annual reviews of ineligibility decisions, annual reviews of extended employment in rehabilitation facilities, and postemployment services;
12. Transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and objectives;
13. Other supportive services, including:
 - a. Maintenance for additional costs incurred while participating in rehabilitation;
 - b. Transportation, including travel and related expenses in connection with transporting an individual and an individual's attendants for the purpose of supporting and deriving the full benefit of other vocational rehabilitation services, with the following restrictions:
 - (1) Reimbursement cannot exceed the state rate level;
 - (2) Transportation may include relocation, moving expenses, and vehicle modifications only when the individual is otherwise precluded from achieving a vocational goal;
 - (3) Reimbursement must be provided at the prevailing rate for the service; and
 - (4) The division shall not contribute to the purchase of a vehicle; and
 - c. On-the-job or other related personal assistance services provided while an individual with disabilities is receiving vocational rehabilitation services; and
14. Other vocational rehabilitation goods and services that an individual with disabilities is reasonably expected to benefit from in terms of an employment outcome.

History: Effective October 1, 1995; amended effective November 1, 2002; January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-30. Postsecondary training.

If an individual receives postsecondary training, the following conditions apply:

1. The division may not provide postsecondary training unless maximum efforts have been made to secure grant assistance in whole, or in part, from other sources;
2. The division's participation shall not be calculated until the institution's financial aid office needs analysis has been received. The financial needs analysis award letter must identify all available aid;
3. An individual must accept all offered grant assistance;
4. An individual may choose to participate in the cost of attendance through the use of college work study and student loans;
5. The division may not participate in payment for postsecondary training if the individual is in default status, or is ineligible for financial aid due to a drug conviction or drug convictions as determined by free application for federal student aid (FAFSA) regulations;

6. Comparable benefits must be used for the following services:
 - a. Interpreter services and note-taking services for an individual who is deaf, including tactile interpreting for an individual who is deaf and blind;
 - b. Reader services, rehabilitation teaching services, note-taking services, and orientation and mobility services; and
 - c. Telecommunications, sensory, and other technological aids and devices;
7. If the individual attends an in-state public institution, vocational rehabilitation funding for tuition, room and board, books, supplies, transportation, and incidentals for a full-time student will be based on the following:
 - a. The estimated financial need as stated on the award letter from the financial aid office;
 - b. The unmet need as calculated by the division;
 - c. The results of the budget assessment conducted by the division; and
 - d. Total aid from all sources may not exceed the school's budget as determined by the financial aid office;
8. If the individual chooses to attend a private in-state or an out-of-state institution when the coursework is available in state, the division will not fund more than it would at an in-state public institution;
9. If, because of the individual's vocational impediment or vocational goal, the only available postsecondary training is at an in-state private or out-of-state institution, the division may fund more than it would at an in-state public institution;
10. Funding for tuition and books for a part-time student may not exceed the financial aid office estimated financial need. For an individual not taking sufficient credit hours to apply for financial aid, the limit is the North Dakota university system rate per credit hour;
11. An individual shall maintain a grade point average that meets the school's requirement for graduation and shall otherwise demonstrate progress toward meeting the goal of the individualized plan for employment. If the individual is placed on academic probation, continued funding is dependent on the approval of the regional vocational rehabilitation administrator;
12. Participation in the cost of graduate study is determined on a case-by-case basis if a suitable vocational goal is otherwise unachievable; and
13. Expenditure policies in subsections 1 through 9 do not apply to vocational technical training programs not participating in a federal financial aid program. If comparable training is available through a program that does participate in a federal financial aid program, vocational rehabilitation costs shall not exceed the costs for attendance in that program.

History: Effective November 1, 2002; amended effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-31. On-the-job training.

When the division provides on-the-job training, there must be a written agreement among the individual, counselor, and employer. The agreement must state the areas of training, the hourly wage

which must comply with state and federal wage and hour laws, responsibility for workers' compensation coverage, expected results of the training, and any other conditions of employment.

History: Effective November 1, 2002; amended effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-32. Closure due to ineligibility.

1. The division shall close the individual's case as ineligible if the individual has no disability, no substantial impediment to employment, or does not require services to achieve an employment outcome. Closure for ineligibility under these circumstances requires:
 - a. The opportunity for the individual or the individual's representative to participate in the closure decision;
 - b. Written notification of the closure decision and reasons for the decision;
 - c. Written notification of mediation, appeal rights, and informal review, including the name and address of the division's chief of field services with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program;
 - d. An individualized plan for employment amendment if appropriate;
 - e. Documentation of ineligibility in the record of service that identifies the reasons for closure, dated and signed by a qualified rehabilitation professional employed by the division; and
 - f. Referral to other agencies and community rehabilitation programs as appropriate.
2. The division shall close the individual's case, if there is clear and convincing evidence, after trial work experiences or after a period of service provision under an individualized plan of employment that the individual with disabilities is incapable of benefiting from vocational rehabilitation services in terms of achieving an employment outcome due to the severity of the individual's disabilities. The division shall provide the following when it closes a case due to ineligibility under these circumstances:
 - a. The opportunity for the individual or the individual's representative to participate in the closure decision;
 - b. Written notification of the closure decision and reasons for the decision;
 - c. Written notification of informal review, mediation, and appeal rights, including the address of the division's chief of field services with whom an appeal may be filed, and written notification of the availability of, and how to contact, the client assistance program;
 - d. An individualized plan for employment amendment if appropriate;
 - e. Review of the ineligibility determination within twelve months. A review is not required in situations in which the individual refuses it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal;
 - f. Documentation of ineligibility in the record of service that identifies the reasons for closure, dated and signed by a qualified rehabilitation professional employed by the division; and

- g. Referral to other agencies and community rehabilitation programs as appropriate.

History: Effective November 1, 2002; amended effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-33. Closure for reasons other than ineligibility.

The division shall close a case when an individual is unavailable during an extended period of time for an assessment to determine eligibility and vocational rehabilitation needs or when an individual is unavailable for an extended period to participate in planned vocational rehabilitation services. The division shall make good-faith efforts to contact the individual and to encourage the individual's participation. Closure under these circumstances requires:

1. Documentation of the rationale for closure in the record of service;
2. Written notification of the closure decision;
3. Written notification of mediation, appeal rights, and informal review, including the name and address of the division's chief of field services with whom an appeal may be filed, and written notification of the availability of and how to contact the client assistance program; and
4. An individualized plan for employment amendment if appropriate.

History: Effective November 1, 2002; amended effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-34. Closure for an individual determined to be rehabilitated.

1. An individual is determined to be rehabilitated if the individual has maintained suitable employment for at least ninety calendar days. The individual's record of service must contain documentation that the division has:
 - a. Determined that the individual is eligible;
 - b. Provided an assessment for eligibility and determination of vocational rehabilitation needs;
 - c. Provided counseling and guidance;
 - d. Provided appropriate and substantial vocational rehabilitation services in accordance with the individualized plan for employment;
 - e. Determined that the individual has maintained suitable employment for at least ninety calendar days and that the individual and counselor view the employment and the individual's performance in that employment as satisfactory;
 - f. Determined that the employment is in an integrated setting;
 - g. Provided an opportunity for the individual's involvement in the closure decision;
 - h. Reassessed the need for and informed the individual of the purpose and availability of postemployment services, when necessary; and
 - i. Provided written notification of mediation, appeal rights, and informal review, including the name and address of the division's chief of field services with whom an appeal may

be filed, and written notification of the availability of and how to contact the client assistance program.

2. An individual in supported employment is determined rehabilitated when:
 - a. The individual has substantially met the goals and objectives of the individual's individualized plan for employment;
 - b. Extended services are immediately available to preclude any interruption in the provision of the ongoing support needed to maintain employment;
 - c. The individual has maintained employment for at least ninety days after the transition to extended services; and
 - d. The employment is in an integrated setting.

History: Effective November 1, 2002; amended effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-35. Annual review of individuals compensated below federal minimum wage.

If an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act [29 U.S.C. 214(c)] or the division closes the record of services of an individual in extended employment on the basis the individual is unable to achieve an employment outcome due to severity of the individual's disabilities, the division shall document the results of semiannual and annual reviews of the individual's progress and interest to obtain employment at or above the federal minimum wage.

History: Effective November 1, 2002; amended effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-36. Pre-employment transition services.

The division shall provide or make available the following pre-employment transition services:

1. Job exploration counseling;
2. Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting, which is provided in an integrated environment in the community to the maximum extent possible;
3. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
4. Workplace readiness training to develop social skills and independent living; and
5. Instruction in self-advocacy, which may include peer mentoring.

History: Effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-06

75-08-01-37. Vocational rehabilitation determinations - Administrative review procedures - Appeals.

1. As used in this section:

- a. "Claimant" means an applicant or eligible individual who is dissatisfied with any determination made by the division that effects the provisions of vocational rehabilitation services and who has made a timely request for review of the determination.
 - b. "Party" or "parties" refers to the division and to a claimant.
 - c. "Request for review" means a request for informal review, mediation, or an appeal under this section.
2. The division shall inform each individual applying for or receiving vocational rehabilitation services of the availability of mediation services, the name and address of the division's chief of field services, the manner in which a mediator may be selected, and the availability of the client assistance program to assist the individual during mediation sessions. The division shall provide the right to mediation notice at the time the:
 - a. Individual applies for vocational rehabilitation services;
 - b. Individual is assigned to a category set forth in section 75-08-01-23;
 - c. Individualized plan for employment is developed; and
 - d. Whenever the vocational rehabilitation services for an individual are reduced, suspended, or terminated.
 3. The division shall inform each individual applying for or receiving vocational rehabilitation services of the appeals procedure, the name and address of the division's chief of field services, the manner in which an impartial hearing officer may be selected, and the availability of the client assistance program. The division shall provide the right to appeal notice at the time the:
 - a. Individual applies for vocational rehabilitation services;
 - b. Individual is assigned to a category set forth in section 75-08-01-23;
 - c. Individualized plan for employment is developed; and
 - d. Whenever the vocational rehabilitation services for an individual are reduced, suspended, or terminated.
 4. The division shall make reasonable accommodation of the individual's disability in the conduct of the process that is undertaken to review the determination with which the claimant is dissatisfied.
 5. Nothing in this chapter may be construed to forbid any informal, mutually consensual meetings or discussions between the individual and the division.
 6. A claimant who is dissatisfied with any determination made by the division that affects the provision of vocational rehabilitation services may request a timely review of that decision to the division, by requesting an informal review, mediation or appeal hearing. A request for review is timely if the filing date of the request is no more than thirty days after notice of the determination with which the claimant is dissatisfied. If appropriate, any request for review may be made through claimant's authorized representative.
 7. A claimant's appeal may not result in suspension, reduction, or termination of vocational rehabilitation services pending resolution of claimant's appeal unless:
 - a. The claimant or, in appropriate cases, the claimant's authorized representative, requests a suspension, reduction, or termination of services; or

- b. There is evidence fraud has occurred or the vocational rehabilitation services were obtained through misrepresentation, collusion, or criminal conduct by claimant or claimant's authorized representative.
8. A claimant may request an informal review to resolve the decision under dispute without mediation or an appeal hearing. A claimant's request for informal review does not prohibit claimant of the right to an appeal hearing or mediation.
 - a. A claimant may not be required to go through an informal review prior to, or instead of, an appeal hearing.
 - b. A written request for an informal review must be made by claimant to division within thirty days of the determination with which claimant is dissatisfied.
 - c. The informal review must be conducted by either the division's chief of field services, or a division employee appointed by the chief of field services, who has had no prior involvement in the case.
 - d. An informal review must be conducted within fifteen days of the initial request unless both parties agree additional time is necessary. Informal review may not delay an appeal hearing if one has been requested. The appeal hearing must be conducted within sixty days of the claimant's request for review of a determination made by division with which claimant is dissatisfied, unless the division and the claimant agree to a specific extension of time.
 - e. The informal review process, if completed, must result in a decision by the division regarding the division's determination under dispute. The division shall notify claimant by writing of the decision within ten days of the informal review, unless circumstances require additional time.
 - f. If the informal review does not resolve the issue, the claimant, or authorized representative, may request an appeal hearing or mediation. The claimant shall notify division within fifteen days of the informal review decision that the claimant wishes to proceed with mediation or an appeal hearing.
9. The claimant may request mediation by a qualified and impartial mediator as a means to resolve a dispute with a decision by the division. Both parties must agree to the request. The claimant may bring an authorized representative to assist during the mediation process. A claimant's request for mediation does not prohibit claimant of the right to an appeal hearing.
 - a. The request for mediation must be submitted, in writing, to the division within thirty days of the disputed decision, or within fifteen days of issuance of the informal review decision. The request shall identify the decision being disputed, why it is being disputed, and what solution is requested.
 - b. A qualified and impartial mediator arranged by the division, pursuant to written division policy, must be provided at no cost to the claimant. Mediation sessions must be held in a location and manner convenient to the claimant and the division.
 - c. The claimant or, if appropriate, the claimant's authorized representative, must be given the opportunity to submit evidence and other information that supports the claimant's position.
 - d. Mediation may not delay the claimant's right to pursue an appeal hearing unless both parties agree additional time is necessary. The appeal hearing must be conducted within sixty days of the claimant's request for review of a determination made by division with

which claimant is dissatisfied, unless the division and the claimant agree to a specific extension of time.

- e. If an agreement is reached pursuant to mediation, the consensus reached by both parties must be documented in writing by the mediator and provided to both parties. Each party shall sign the agreement, which indicates agreement with its terms and a commitment to fulfill each party's respective responsibilities. If agreement on all issues is reached, the parties shall withdraw any pending informal review or appeal hearing request.
 - f. At any point in the mediation process, either party may elect to terminate mediation.
 - g. If mediation is not successful, the claimant may request an appeal hearing regarding the decision under dispute.
 - h. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent proceedings.
 - i. Costs of mediation must be paid by the division. The division is not required to pay for legal or other representation for claimant.
10. A claimant may request an appeal hearing to resolve the decision under dispute without having requested or engaging in mediation or an informal review.
- a. Written request for an appeal hearing must be made to division within thirty days of the determination with which the claimant is dissatisfied.
 - b. A hearing by an impartial hearing officer selected by the division must be conducted within sixty days of the claimant's request for review of a determination made by the division with which claimant is dissatisfied, unless resolution is achieved before that time, or the parties agree to an extension.
 - c. The claimant or, if appropriate, the claimant's authorized representative, must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence.
 - d. The impartial hearing officer shall:
 - (1) Make a decision based on federal vocational rehabilitation regulations and state regulations and policies consistent with federal requirements; and
 - (2) Provide to the claimant or, if appropriate, the claimant's authorized representative, and to the division a full written report of the findings and grounds for the decision within thirty days of the completion of the hearing.
 - e. The hearing officer's decision is final.

History: Effective January 1, 2019.

General Authority: NDCC 50-06-16, 50-06.1

Law Implemented: NDCC 50-06.1-02, 50-06.1-04, 50-06.1-10