

10A NCAC 89B .0223 SECRETARY'S REVIEW AND FINAL DECISION

(a) Either party may request an impartial review of the hearing officer's decision according to the standards in Paragraph (d) of this Rule by the Secretary of the Department of Health and Human Services within 20 days of the receipt of the decision.

(b) The Secretary may delegate the responsibility for reviewing the hearing officer's decision and making the final decision to another employee of the Department but shall not delegate the responsibility to any officer or employee of the Division.

(c) In conducting the review, the reviewing official shall send the written notification to both parties and allow the submission of additional evidence as required by Sec. 102 (c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The written notification shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(d) The reviewing official's review shall be based on the following standards of review:

- (1) Is the hearing officer's decision arbitrary, capricious, an abuse of discretion, or otherwise unreasonable?
- (2) Is the hearing officer's decision supported by substantial evidence and consistent with facts and applicable federal and state policy?
- (3) In reaching the decision, has the hearing officer given appropriate and adequate interpretation to such factors as:
 - (A) the federal statute and regulations as they apply to specific issue(s) in question;
 - (B) the state plan as it applies to the specific issue(s) in question;
 - (C) division rules as they apply to the specific issue(s) in question;
 - (D) key portions of conflicting testimony;
 - (E) division options in the delivery of services where such options are permissible under the federal statute; and
 - (F) restrictions in the federal statute with regard to such supportive services as maintenance and transportation.

(e) The reviewing official shall make the final decision and provide such decision in writing to both parties within 30 days of the date the request for a review of the hearing officer's decision was received. The decision shall include a full report of the findings and the grounds for the decision. The reviewing official shall not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual except as allowed under Sec. 102 (c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220). The final decision shall be given to both parties or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(f) The hearing officer's decision shall be the final decision under the conditions specified in Sec. 102(c) of the Rehabilitation Act of 1973 (as amended by the Rehabilitation Act Amendments of 1998, P.L. 105-220).

(g) The division director shall forward a copy of the final decision, whether issued under Paragraph (e) or (f) of this Rule, to the Chief of Operations, the CAP director, the regional director, and the applicant's or client's representative, as appropriate. A copy shall also be included in the individual's official case record.

History Note: Authority G.S. 143-545.1; 143-546.1; 150B-1; P.L. 105-220; Eff. September 1, 1989; Amended Eff. April 1, 1997; October 1, 1994; Temporary Amendment Eff. March 15, 1999; Amended Eff. July 1, 2000; Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.