

**10A NCAC 63F .0623 SECRETARY'S REVIEW AND FINAL DECISION**

- (a) Either party may request a review of the hearing officer's decision 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) The hearing officer's decision shall not be arbitrary, capricious, abuse of discretion, or otherwise unreasonable.
  - (2) The hearing officer's decision shall be supported by substantial evidence, i.e. consistent with facts and applicable federal and state policy.
  - (3) In reaching the decision, the hearing officer shall consider such factors as:
    - (A) the federal statute and regulations as they apply to a specific issue in question;
    - (B) the State Plans as they apply to a specific issue in question;
    - (C) Commission rules as they apply to a specific issue in question;
    - (D) key portions of conflicting testimony;
    - (E) Division options in the delivery of services where such options are permissible under federal statute; and
    - (F) restrictions in the federal statute with regard to 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 from receipt of the request to review the hearing officer's decision. 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 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) If the applicant or consumer does not request the Secretary's review, 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 CAP Director, the area rehabilitation supervisor, and the applicant's or consumer's representative, if one is designated. A copy shall also be included in the individual's official case record.

*History Note: Authority G.S. 143B-157; 143-545.1; 150B-2; 150B-23; 34 C.F.R. 361.57; P.L. 105-220; Eff. December 1, 1990; Amended Eff. January 1, 1996; Temporary Amendment Eff. March 15, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. August 1, 2001; Amended Eff. August 1, 2002; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 23, 2015.*