Due Process and Appealing Decisions with CAP’s Help

Overview of Due Process in VR:

Vocational Rehabilitation (VR) services are any number of services/supports an individual may need to meet their employment goal. They are highly individualized and need to be agreed upon by both the consumer and the Vocational Rehabilitation Counselor (VRC). Each consumer’s services are documented along with their employment goal in their Individualized Plan for Employment (IPE). If the individual disagrees about a decision made about their services, they can appeal the decision. Before doing so, they should consider whether the service is included in their Individualized Plan for Employment (IPE), why it is needed to reach their employment goal, and the reason why VR denied the service. Although written decisions can be easier and more straightforward to deal with during appeals, decisions can be appealed even if not made in writing.

How CAP Helps:

VR Consumers can get an objective opinion about their case from the Client Assistance Program (CAP). Additionally, if the consumer’s position is consistent with state and federal regulations, CAP may be able to provide representation in informal and formal appeals.

Reviewing the VR Case File:

An essential aspect of preparing for and participating in the appeals process is reviewing the VR case record. If CAP has agreed to assist an individual in their appeal, the file review is included. However, individuals can also do this on their own. When doing so, it is important to ascertain VR’s position and the basis for the denial. This information should inform the individual’s argument at appeal.

Levels of Appeal:

There are multiple levels of appeals, starting from least formal to most formal. Before getting to the formal appeals process, consumers can engage in informal negotiations with or without CAP. Informal negotiations are typically casual conversations had with VR supervisors and/or other upper level staff regarding the denial. They might involve continued conversations, compromise, and further research.

Administrative Review:

The first level of formal appeal is the administrative review. It is presided over by an administrative review officer, who is someone within the VR agency but who is not affiliated with the case. They have relevant knowledge and experience about VR processes. The administrative review officer is responsible for making the decision about whether or not VR’s service denial is consistent with VR policies and regulations. The consumer (with or without CAP’s assistance) must be able to explain why the service is, in fact, necessary for them to meet their employment goal. In attendance can also be representatives from VR, including the VRC and their supervisor, to explain and provide context for their decision. The administrative review officer runs the meeting, which tends to flow like a casual conversation, as each party discusses their position and answers clarifying questions. If a decision cannot be reached that day, the administrative review officer has 30 days to provide a decision in writing. If unsatisfied, the consumer can appeal that decision within another 30 days.

Mediation:

The next level of formal review, which is optional and voluntary for the VR agency, is mediation. At this level, a mediator presides over the meeting. This person is someone with knowledge and experience about VR policies and regulations, but is not affiliated with the current case. The role of the mediator is to allow each side to express their position and to facilitate an agreement from both to move forward in a given direction. Both the consumer and representatives with relevant knowledge to the case have the opportunity to speak and answer questions from the mediator. If a decision cannot be reached during the mediation session, the case moves onto the next level of appeal.

Fair Hearing:

The next highest level is the fair hearing. It is presided over by a fair hearing officer. This person is outside of the VR agency and has relevant knowledge about state and federal regulations as well as internal VR processes. The fair hearing officer is responsible for making the decision about whether or not the decision made by VR is consistent with regulations. The consumer has to be able to explain with compelling supporting information why the service they requested is required for them to meet their goal. Representatives from the VR office are available to explain the reasoning for the denial. Unlike the somewhat casual setting of the administrative review, however, the fair hearing is formal, with parties taking their turn at the direction of the presiding officer. Although legal memos are not required, they are highly encouraged as they help organize the argument in the most compelling way. The fair hearing officer is allowed to ask clarifying questions of both parties. They have up to 30 days to provide a decision in writing. If the individual is unsatisfied with this decision, their next option is to appeal in court with legal representation.