INDIANA
WORKFORCE
DEVELOPMENT

TO: Workforce Investment Board Chairperson
Workforce Investment Board Director
Regional Workforce Board Chairpersons
Regional Operators
Regional Coordinators

FROM: Andrew J. Penca
Commissioner

THROUGH: Scott B. Sanders
Chief Financial Officer

DATE: July 9, 2007

SUBJECT: DWD Policy 2007-03
Audit and Monitoring Resolution Appeals Procedure

Purpose: To provide uniform guidelines for appealing Indiana Department of Workforce Development's final determinations in connection with audit and monitoring disputes.

Rescission: DWD Policy 2004-41, dated May 31, 2005

Content: Appeals Procedure for Audit and Monitoring Resolution Disputes

Federal regulations require the Governor to prescribe an appeal procedure for nonfederal audit and monitoring resolution disputes (20 CFR 667.500). The purpose of this directive is to advise grant recipients of the appeals procedure following the issuance of a final determination by the Indiana Department of Workforce Development (DWD) in the event of an audit or monitoring resolution dispute.

I. Time to File an Appeal after Final Determination

Grant Recipients of Workforce Investment Act (WIA) funds through DWD may request an administrative hearing on a final determination, issued by DWD's Oversight Division, concerning administrative findings and disallowed costs deriving from an audit or monitoring report of the Grant Recipient. Hearing requests must be mailed, by Certified Mail - Return Receipt Requested, within twenty-one (21) days after receipt of the final determination letter by the Grant Recipient's administrative entity. The request must include a copy of the final determination and a statement specifying those sections of the final determination upon which a hearing is requested.

The request must be mailed to:

Attn: Commissioner
Indiana Department of Workforce Development
10 N. Senate Avenue, Room SE302
Indianapolis IN 46204-2277

Failure to request a hearing within twenty-one (21) days from receipt of the final determination shall result in termination of the Grant Recipient's right to appeal the final determination.

II. Rules of Procedure

A. Hearing Officer: The Hearing Officer shall be an impartial individual who is an attorney licensed to practice law by the State of Indiana, and who is designated by the Commissioner of the Indiana Department of Workforce Development.

B. Scheduling the Hearing: Within 20 days of requesting an appeal, the appellant shall contact the Chief Financial Officer, Indiana Department of Workforce Development 317.232-7472. Indiana Department of Workforce Development's Chief Financial Officer and the appellant shall determine three (3) proposed hearing dates. Thereafter, the parties shall submit the three (3) proposed dates to the Hearing Officer who shall set the hearing date. Once the hearing date is set, it will not be rescheduled without a showing of good cause.

C. Discovery: The parties shall engage in informal pre-hearing discovery for the purpose of exchanging relevant information, and avoiding delays or surprises. The hearing officer shall have the discretion to resolve any pre-hearing discovery objections.

D. Exchange of Witness/Exhibit List: The parties shall exchange witness lists, a summary of witness testimony, and exhibit lists twenty days (20) before the scheduled hearing date.

E. Voluntary Withdrawal of Appeal: The appellant may voluntarily withdraw the appeal upon written notice to the Hearing Officer.

F. Involuntary Withdrawal of Appeal: Upon notice to the appellant, the department may submit a motion for involuntary withdrawal of appeal upon the appellant's failure to timely prosecute its appeal. The Hearing Officer shall rule upon such a motion upon twenty (20) days of receipt.

G. Representation: Appellant maybe represented, at its own expense and without the use of federal or State funds, by counsel or, unless prohibited by law, by another representative.

H. Witnesses and Evidence: Both parties will have the opportunity to present evidence and witnesses and to cross-examine witnesses at the hearing. Evidence and witnesses will be limited to only those issues specified in appellant's request for hearing.

I. General Procedures: Audit or Monitoring Resolution appeal hearings shall be conducted informally. Formal rules of evidence shall not apply. The Administrative Orders and Procedures Act ("AOPA"), IC 4-21.5-1 et seq. The Hearing Officer has the discretion to exclude evidence that he or she determines is immaterial or redundant.

J. Close of Record: All evidence must be submitted and argued, and the record must be closed, no later than fourteen (14) days following the first day of the hearing.

K. Written Decision:
   1. Thirty (30) Day Requirement: The Hearing Officer shall submit to the parties a written decision no later than thirty (30) days from the close of record date. This time frame may only be extended with consent of all parties for good cause.
   2. Final Agency Action: The Hearing Officer's written decision shall constitute final agency action.

L. Determination of Time Periods:
   1. In computing any period of time under this article, the day of the act, event or default from which the designated period of time begins to run is not included. The last day of the computed period is to be included unless it is a:
      (a.) Saturday;
      (b.) Sunday;
      (c.) legal holiday under a state statute; or,
      (d.) day that the office in which the act is to be done is closed during regular business hours.
   2. A period runs until the end of the next day after a day described in subdivisions (a) - (d) above.
   3. Unless otherwise stated herein, a period of time that commences when a person is served with a paper commences with respect to a particular person on the earlier of the date that:
      (a.) the person is personally served with the notice, or
      (b.) a notice for that person is deposited in the United States mail.

III. Timely Submission of Evidence

A. Conduct of Hearing: Parties may make opening statements, to advise the Hearing Officer about the issues and to summarize the evidence to be presented. Parties are responsible for furnishing all information relevant and available to resolve the issue during the presentation of the case. The Hearing Officer may elicit any testimony and information that may be necessary to discover the truth and arrive at a fair decision. In examination of the witnesses, the party calling the witness is entitled to conduct initial questioning. Witnesses are subject to cross-examination by the other party and the Hearing Officer.

B. Transcript: The proceedings shall be memorialized by a court reporter, the expense for which shall be borne by the appellant without the use of federal or State funds.

C. Admission of Evidence: Evidence should not be received unless it is relevant, material, and not unduly repetitious.

1. Procedure: When admitting evidence, the Hearing Officer should:
   (a.) determine whether testimony of each witness is based on personal or direct knowledge, or is based on hearsay;
   (b.) request that a witness who testifies about a conversation or occurrence describe dates, place, persons, and times as precisely as possible; and,
   (c.) require that witnesses who present opinions regarding professional or technical matters state their qualifications.
2. Exhibits: The Hearing Officer should ensure that all exhibits are marked with date of submission, numbered and initialed. Exhibits admitted into evidence should be placed in a file in order of receipt.
3. Objections to Evidence: Parties may object to clearly irrelevant, immaterial, and/or unduly repetitious evidence.

IV. Timing of Decisions

The Hearing Officer shall issue a written decision within thirty (30) days from the closing of the record (last day that evidence is submitted).

A. Contents of the Decision: The Hearing Officer's decision shall be comprised of written findings of fact, and conclusions of law that are based upon the application of applicable law to the facts.

B. Decision: The Hearing Officer's decision shall constitute final agency action. The decision may be appealed to the US Department of Labor (USDOL) within 30 days of the mailing of the Hearing Officer's decision. Administrative appeal to the USDOL shall be a prerequisite to an appeal to a State or federal court. Failure to appeal to the USDOL within the 30-day period waives all administrative and judicial appellate rights.

Questions or Comments:

Any questions of comments may be directed to the Oversight Resolution Specialist at 317.233.6082 or driggle@dwd.in.gov

Ownership: Oversight Division
Indiana Department of Workforce Development
10 North Senate Avenue, Room SE308
Indianapolis IN 46204-2277
317.232.1725

Effective Date: Immediately

Action: Grant Recipients should comply with the direction/action as outlined in this communication and share this communication with relevant staff person(s).

Review Date: June 1, 2009