

WEST VIRGINIA CODE: §16-49-5

§16-49-5. Variance; appeals.

(a) If the secretary issues a notice of ineligibility, the applicant, or the employer on the applicant's behalf, may file a written request for a variance with the secretary not later than 30 days after the date of the notice required by §16-49-3 or §16-49-4 of this code.

(b) The secretary may grant a variance if:

(1) Mitigating circumstances surrounding the negative finding or disqualifying offense is provided; and

(2) The secretary finds that the individual will not pose a danger or threat to residents, members and their property.

(c) The secretary shall establish in legislative rule factors that qualify as mitigating circumstances.

(d) The secretary shall mail to the applicant and the bureau, covered provider, or covered contractor a written decision within 60 days of receipt of the request indicating whether a variance has been granted or denied.

(e) If an applicant believes that their criminal history record information within this state is incorrect or incomplete, they may challenge the accuracy of such information by writing to the State Police for a personal review. However, if the discrepancies are at the charge or final disposition level, the applicant must address this with the court or arresting agency that submitted the record to the State Police.

(f) If an applicant believes that their criminal history record information outside this state is incorrect or incomplete, they may appeal the accuracy of such information by contacting the Federal Bureau of Investigation for instructions.

(g) If any changes, corrections, or updates are made in the criminal history record information, the State Police shall notify the secretary that the applicant has appealed the accuracy of the criminal history records and provide the secretary with the updated results of the criminal history record information check, which the secretary shall review de novo in accordance with the provisions of this article.