WEST VIRGINIA CODE: §16b-15-5

§16B-15-5. Variance; appeals.

(a) If the director 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 director not later than 30 days after the date of the notice required by §16B-15-3 or §16B-15-4 of this code.

(b) The director may grant a variance if:

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

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

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

(d) The director shall send notice to the applicant and the department's bureau, covered provider, or covered contractor of the written decision indicating whether a variance has been granted or denied within 30 days of receipt of the written request, if the written request is submitted after receipt of an ineligibility determination, or within 60 days of receipt of the written request if the written request is submitted at the same time as the application.

(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 Inspector General that the applicant has appealed the accuracy of the criminal history records and provide the Inspector General with the updated results of the criminal history record information check, which the Inspector General shall review de novo in accordance with the provisions of this article.

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