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Client

Department of Health Services  
Division of Mental Health & Substance Abuse Services

Rights

<http://dhs.wisconsin.gov/clientrights/index.htm>

Office

**Community Programs Training 2012**

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## GRIEVANCE DECISION TERMINOLOGY

“REPORT OF CLIENT RIGHTS SPECIALIST. (a) In this subsection:

1. **'Founded'** means that there has been a violation of a specific right guaranteed to the client under ch. DHS 92 or this chapter or ch. 51, Stats.
2. **'Unfounded'** means that the grievance is without merit or not a matter within the jurisdiction of ch. DHS 92 or this chapter or s. 51.61, Stats.

(b) When the inquiry under sub. (2) (c) is complete, the client rights specialist shall prepare a written report with a description of the relevant facts agreed upon by the parties or gathered during the inquiry, the application of the appropriate laws and rules to those facts, **a determination as to whether the grievance was founded or unfounded**, and the basis for the determination...”

DHS 94.41(3), Wis. Admin. Code (emphasis added)

To meet the standards of the law, you may simply use those terms to describe the outcome of your investigation. You should state **why** you have reached that determination.

Using the term **founded** would mean that the client was able to show that it was more probable than not that a rights violation took place. In that case, you should make recommendations to the service provider as to how to avoid future violations for that client or others.

However, the term **unfounded** can have many different **sub-categories** which may be useful to you in informing the client why no violation was found. Here are some examples:

### 1. **Unfounded - does not rise to the level of violation**

This decision implies that the significance of the facts reviewed in the grievance, even if corroborated, are not sufficient to constitute a rights violation.

[Example: A client complains that the traffic is too noisy near his residential setting. While the noise may be annoying at times, the traffic cannot be redirected and it is a part of urban life. The CRS doesn't need to do a full investigation on this grievance because even if the allegations of the grievance are true, they still do not rise to the level of a violation. But the CRS can offer suggestions for noise reduction, such as the use of earplugs or a small fan to reduce the noise.]

## 2. **Unfounded - unable to be substantiated**

This term means that there was some evidence to substantiate the client's claim, but not enough evidence to show that it was more probable than not that a rights violation occurred.

[Example: The CRS investigates a client/staff conflict and finds that there are conflicting stories between the parties involved. After interviewing client and staff witnesses, the CRS finds that there are many discrepancies between the various testimonies. Because there is not significantly reliable evidence to support the client's allegations, the CRS is unable to substantiate the facts alleged in the grievance.]

GRIEVANCES MAY ALSO BE **DISMISSED** FOR GOOD REASONS. THE FOLLOWING ARE EXAMPLES OF OUTCOMES INVOLVING DISMISSALS:

## 3. **Dismissed for mootness:**

There **must be an existing controversy** in order for an investigation and decision to have meaning. When **circumstances have changed** by the time the CRS investigates the matter, the issue may be moot. That is, whether or not a violation occurred, if the client is **no longer affected** by the situation or issue because whatever the relief sought has already been provided or no longer can be provided because of a change in circumstances, there is no need to continue an investigation into the matter.

[Example: A client in a facility complains about conditions on a unit but, by the time the CRS can investigate, the client has been discharged. There is no relief that could be provided that would benefit the client at this time.]

**However**, the CRS **may exercise discretion** to investigate a complaint that would otherwise be moot if one of the following applies:

1. The issue is of significant importance to other clients.
2. The complaint highlights a concern about a rule, policy, or procedure that is an important issue to address, rather than the specific individual situation from which the grievance stems.
3. The issue is of significant importance for different staff or different situations and could be addressed through the grievance procedure to prevent future conflicts, misunderstandings, or rights violations.

#### 4. **Dismissed as not grievable**

Clients sometimes file grievances which **do not raise client rights issues** or which **cannot be resolved by the grievance procedure**. These include grievances regarding a client's legal status, property lost at other facilities (such as county jails), etc. CRSs have the **discretion to assist** clients with such problems, such as by referral to the appropriate individual or agency and/or mediation efforts on the client's behalf.

#### 5. **Dismissed as redundant**

A grievance is redundant when it **raises the same issue** the complainant has already grieved in the past and there has been no significant change in circumstances since the prior grievance decision was issued. The complainant must be able to assert such changes in circumstances to avoid dismissal for redundancy.

Redundancy may also be found where the act or event complained of is **substantially similar** to that previously **grieved by others**, differing essentially only in the point in time or facility unit at which it occurs. In such cases, the complainant should be given a copy of the previous decision with any names blocked out to preserve confidentiality.

#### 6. **Dismissed as improbable**

A complaint is inherently improbable when, on its face, it is not credible.

[Examples: 1) A client files a complaint alleging that a particular staff member "eats human flesh." 2) A facility client files a complaint stating that the staff are deliberately pumping poisonous gas into the facility's ventilation system.]

#### 7. **Dismissed as trivial**

A complaint is trivial when, in the CRS's judgment, the relief that could potentially be granted is minimal compared to the CRS's expenditure of time and resources. In deciding whether or not a grievance is trivial, the CRS should consider:

- 1) The significance of the right affected.
- 2) The significance of any potential relief. [Example: A potential loss of \$1.06 is an insufficient amount to justify the expenditure of resources to investigate a complaint.]
- 3) Likelihood of the issue arising again in the future (based on the incidence of similar complaints in the past as a guideline).

#### 8. **Dismissed for being "brought in bad faith"**

A grievance may have been brought in "bad faith" when the underlying reason for filing the complaint was not related to the personal circumstance of the complainant, nor does it affect others. If the grievance is filed to harass or intimidate, or the **complainant has no personal interest in the outcome**, then the grievance may be dismissed for "bad faith."

## 9. **Dismissed without prejudice**

This can be used if the CRS believes that things changed for the client since the grievance was filed, but those changes may not be guaranteed to continue in the future. By dismissing a grievance without prejudice, a **complainant retains the ability to bring up the issue again in the future** if the client finds himself in the same circumstance that led to the filing of the initial grievance.

THERE ARE OTHER OUTCOMES THAT MAY APPLY.

## 10. **Resolved to client's satisfaction**

This term can be used if the CRS resolves the issue, such as by granting the requested relief or reaching a compromise or mediating a dispute. If the client is satisfied with the results, the matter should be concluded. The resolution that was achieved or the relief provided should be described in the CRS's decision on the matter.

## 11. **Resolved by referral**

Grievances may be referred to other appropriate sources, such as to law enforcement (if the client wants to file criminal charges), legal services, outside agencies. They may also be referred to other staff of the service provider for resolution.

## 12. **Resolved by interpretation of a policy, law or rule**

The CRS may consider a grievance resolved if the issue is based on a client's or staff member's misinterpretation or misunderstanding of a policy, law or rule and the actual meaning is clarified in the decision.