

DEPARTMENT OF REVENUE

Hearings Division

RULES FOR THE LENGTH OF RESTRAINT AND ISSUANCE OF PROBATIONARY DRIVER'S LICENSES

1 CCR 211-3

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

RULE 1. DEFINITIONS

Basis and Purpose: This Rule is promulgated pursuant to §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126(3)(b), 42-2-127, and 42-2-127.9, C.R.S. The purpose of this Rule is to define words and terms of art used in these Rules and in the administrative proceedings held by the Colorado Department of Revenue's Hearings Division in which a PDL is either issued or denied.

- A. "Base Period" – Means six months.
- B. "Carelessness" – Means either:
 - 1. Driving that meets the definition of carelessness under § 42-4-1402, C.R.S. and resulted in a conviction for Careless Driving appearing in a Respondent's Driver History; or
 - 2. Driving that meets the definition of carelessness under § 42-4-1402, C.R.S. but did not result in a conviction for Careless Driving.
- C. "Department" – The Colorado Department of Revenue.
- D. "Driver History" – The Department's computer-generated report on a specific driver, including, but not limited to: the driver's name, address, and license status; documents issued to the driver; and abstracts of citations, Restraints, outstanding judgments and unpaid citations.
- E. "Driver Record" – Any and all records pertaining to the Respondent held by the Department pursuant to § 42-2-121, C.R.S.
- F. "Evidence of Insurance" – Proof provided by the Respondent to the Department that the Respondent has a compliant insurance policy in full force and effect as required by Part 6 of Article 4 of Title 10, C.R.S. Proof may be made through presentation of either a copy of such complying insurance policy or a card issued to the Respondent by the insurance carrier reflecting such policy.
- G. "Hearing Officer" – An authorized representative of the Executive Director of the Department, with the statutory authority to conduct hearings pursuant to Titles 24 and 42, C.R.S.
- H. "PDL" or "Probationary Driver's License" – A document issued by the Department authorizing a driving privilege restricted to driving only at certain times and locations and for certain purposes established either by statute, by rule, or upon terms and conditions set forth by a Hearing Officer at hearing. PDLs may be issued for a period no longer than the term of the suspension under which the license is authorized.

- I. "PDL Restrictions Page" – A document issued by the Department that authorizes and sets forth the specific terms and conditions of the PDL. The PDL Restrictions Page must be carried with the PDL for the term of the suspension under which the PDL is authorized.
- J. "Respondent" – The person whose driving privilege is the subject of the hearing.

RULE 2. LENGTH OF RESTRAINT

Basis and Purpose: This Rule is promulgated pursuant to §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126(3)(b), 42-2-127, and 42-2-127.9, C.R.S. The purpose of this Rule is to describe the factors that a Hearing Officer will consider when determining the length of Restraint.

- A. The Hearing Officer shall consider public safety as well as modification of the Respondent's future driving behavior in determining the length of Restraint for hearings conducted pursuant to § 42-2-127, C.R.S. The Hearing Officer must consider the Respondent's driving history as a whole. The Hearing Officer has discretion in determining the weight to be given to any aggravating or mitigating factor and whether to issue a PDL.
- B. In any hearing for an action where the Hearing Officer has discretion to determine the length of the Restraint, other than for actions pursuant to § 42-2-132.5, C.R.S., the aggravating and mitigating factors set forth in these Rules shall be the primary basis used for determining the length of the Restraint.
 - 1. Where the Hearing Officer finds that the aggravating and mitigating factors weigh evenly, the duration of the Restraint shall be the Base Period;
 - 2. Where the Hearing Officer finds that the aggravating factors outweigh the mitigating factors, the duration shall be longer than the Base Period;
 - 3. Where the Hearing Officer finds that the mitigating factors outweigh the aggravating factors, the duration shall be shorter than the Base Period.

RULE 3. AGGRAVATING AND MITIGATING FACTORS

Basis and Purpose: This Rule is promulgated pursuant to §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126(3)(b), 42-2-127, and 42-2-127.9, C.R.S. The purpose of this rule is to establish aggravating and mitigating factors that a Hearing Officer will consider when determining the duration of Restraint or whether a PDL will be granted.

- A. Aggravating Factors:
 - 1. The Hearing Officer shall consider the following as aggravating factors.
 - a. Any collision involving death or bodily injury to another where the Respondent is determined to be at fault on the basis of a conviction, accident report or other evidence presented at hearing;
 - b. Any conviction for a violation that carries a point assessment of six or more points prior to any point reductions authorized for prompt payment ~~or plea agreement that amends charges to one or more different offenses;~~
 - c. Any conviction for an offense specifically designated by the habitual offenders law, § 42-2-202, C.R.S., *et seq.*;

- d. Carelessness as shown by the Driver Record and/or information gathered at hearing;
- e. Repeated or willful disregard for the law or public safety as shown by the Driver Record and/or information gathered at hearing;
- f. Conviction for any driving violation involving alcohol or drugs;
- g. A prior driver's license Restraint with an end date within seven (7) years of the hearing date;
- h. A prior issuance of a PDL within seven (7) years of the hearing date;
- i. Respondent's degree of truthfulness and candor at the hearing;
- j. Any evidence of a violation of the terms and/or conditions of any previously issued PDL;
- k. One or more traffic collisions where the Respondent was found to be at fault;
- l. Any evidence of failing to be an insured driver at any time Respondent was operating a motor vehicle; and
- m. Respondent's demonstrated failure to accept responsibility and/or understanding of a need to change driving behavior.

B. Mitigating Factors

- 1. The Hearing Officer shall consider the following as mitigating factors. The Hearing Officer shall have sole discretion in determining the weight to be given any mitigating factor:
 - a. Respondent's demonstrated efforts to correct behavior that led to the Restraint under consideration;
 - b. Any errors by the Department that have adversely affected the Respondent's driving privileges;
 - c. Time without driving already served under any currently active Restraint if Restraints were caused by the same event(s);
 - d. Lack of traffic violations committed subsequent to the time frame under consideration;
 - e. In cases where there is evidence that Respondent has an alcohol or substance abuse problem, evidence demonstrating such problem is under control;
 - f. Respondent's completion of a safe driving course prior to the date of the hearing;
 - g. Respondent's demonstrated acceptance of responsibility and understanding of a need to change driving behavior;
 - h. Respondent's truthfulness or candor at the hearing, as determined by the Hearing Officer; and
 - i. Any factors the Respondent establishes that mitigate the severity of the record.

RULE 4. PDL CONSIDERATION

Basis and Purpose: This rule is promulgated pursuant to §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126(3)(b), 42-2-127, and 42-2-127.9, C.R.S. The purpose of this rule is to describe certain factors that a Hearing Officer must consider when deciding whether to issue a PDL in an administrative proceeding before the Division regarding a driver's license. It also clarifies Hearing Officer discretion to include an Interlock requirement as part of a PDL.

- A. When exercising discretion to issue a PDL pursuant to Title 42, C.R.S., the Hearing Officer shall consider public safety as well as modification of Respondent's future driving behavior in determining whether it is appropriate to issue a PDL. The Hearing Officer must consider the Respondent's driving history as a whole. The Hearing Officer shall have discretion in determining the weight to be given any aggravating or mitigating factor listed in Rule 3. The aggravating and mitigating factors set forth in Rule 3 shall be the primary basis used for determining whether to issue a PDL.
- B. For PDLs issued in hearings conducted pursuant to § 42-2-127, C.R.S. where the license is suspended, in part, due to a conviction for DUI, DWAI, DUI per se, or UDD pursuant to § 42-2-127.9, C.R.S., the Hearing Officer may only deny a PDL if there is a statutory reason for denial or if aggravating circumstances exist in the Driver Record, or as presented at the hearing, showing Respondent is unsafe to drive for any reason. The Hearing Officer shall make specific findings to support such denial of the PDL.
- C. For PDLs granted to Respondents with existing Interlock restricted licenses, Respondents who would have this restriction upon reinstatement of the Respondent's privilege, or Respondents who are persistent drunk drivers as defined in § 42-1-102(68.5), C.R.S., the PDLs must include the Interlock requirement. The Hearing Officer has the discretion to impose an Interlock requirement in the PDL in other circumstances when deemed reasonable and necessary upon evidence showing the Respondent's history of alcohol-related convictions and/or Restraints, even though the Interlock restriction may no longer be statutorily mandated.

RULE 5. PDL ISSUANCE

Basis and Purpose: This rule is promulgated pursuant to §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126(3)(b), 42-2-127, and 42-2-127.9, C.R.S. The purpose of this rule is to describe when a PDL must be denied due to ineligibility, Hearing Officer discretion to issue a PDL to eligible respondents, and Hearing Officer discretion to determine the specific restrictions of a PDL.

- A. The Hearing Officer shall review the Respondent's Driver Record for the purposes of ensuring that the Respondent is eligible for a PDL. The Hearing Officer shall deny a PDL in the following circumstances:
 - 1. The Respondent has another active or pending Restraint for which they are not fully eligible for reinstatement, and which Restraint does not permit the issuance of a PDL;
 - 2. The Respondent has never held a valid driver's license issued by Colorado or any other state;
 - 3. The Respondent has an outstanding violation, where a conviction would result in a Restraint for which no PDL is available;
 - 4. The Respondent has had a PDL within 7 years of the hearing date, unless the Hearing Officer makes specific findings that the mitigating factors outweigh this serious aggravating factor. Prior issuance of a PDL is alone sufficient reason for denial.

- B. In any hearing where the Hearing Officer has discretion to issue or deny a request for a PDL, the aggravating and mitigating factors set forth in these Rules shall be used to determine whether or not a request for a PDL will be approved.
- C. If the Hearing Officer authorizes the PDL, the Hearing Officer must then determine, based on the aggravating and mitigating factors, other information appearing on the Driver Record, and information gathered at the hearing, the terms, conditions and restrictions under which the PDL will issue.
- D. Any PDL issued must include all restrictions and conditions required by applicable statute.
- E. A PDL shall not include operation of any commercial motor vehicle as defined by law, or driving on the job for any Respondent under the age of seventeen.
- F. A PDL shall not be used for operation of a motor vehicle outside of the State of Colorado.
- G. If proficiency testing is required for reinstatement under the active or pending Restraint, the Hearing Officer may allow the Respondent to drive under the authority of the PDL to complete such proficiency testing.

RULE 6. CANCELLATION OF A PDL

Basis and Purpose: This rule is promulgated pursuant to §§ 24-1-107, 24-1-117, 24-35-103, 42-1-102(24), 42-1-201, 42-1-204, 42-2-126(3)(b), 42-2-127, and 42-2-127.9, C.R.S. The purpose of this rule is to describe the circumstances for cancelling a PDL and process for reviewing cancellation of a PDL.

- A. The Department may cancel a PDL if it determines Respondent violated a restriction of the PDL or upon notification of a moving traffic violation while driving with a PDL. Notification can include a citation, incident report, or other reliable communication from a law enforcement officer.
- B. The Respondent may request a hearing by telephone, in person, or in writing on the issue of PDL cancellation. The Respondent must surrender any license or permit at the time of the request, unless the PDL has been previously surrendered to the Department or to a law enforcement officer.
- C. The hearing shall be held as promptly as possible with consideration given to the docketing requirements for the hearing location, the schedule of the Respondent and any representative of the Respondent, and the availability of a Hearing Officer.
- D. The Department and/or the Respondent may submit evidence or present testimony at the hearing.
- E. After consideration of the evidence, the Hearing Officer shall make a final decision regarding the cancellation of the PDL. The Hearing Officer may sustain the cancellation, re-issue the PDL, or modify the terms and conditions of the PDL.

Editor's Notes

History

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