

107 CMR: MASSACHUSETTS REHABILITATION COMMISSION

107 CMR 4.00: REFERRAL, APPLICATION, ELIGIBILITY, AND ORDER OF SELECTION

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4.01: Scope and Purpose

107 CMR 4.00 establishes conditions, requirements, and policies for referral, application, eligibility, ineligibility and order of selection for vocational rehabilitation services.

4.02: Nondiscrimination

The Massachusetts Rehabilitation Commission does not discriminate or in any way deny services on the basis of race, color, national origin, religion, sexual orientation, sex, age, disability, expected employment outcome, referral source, the service needed or the cost of the service.

4.03: Meaning of Terms in 107 CMR 4.00

The terms used in 107 CMR 4.00 have the meanings ascribed in 107 CMR 3.00, unless otherwise specified in 107 CMR 4.00.

Assessment for Eligibility, Order of Selection Priority and Rehabilitation Needs refers to the review by a qualified vocational rehabilitation counselor of existing medical, psychological or other documentation to determine:

- (a) The existence of a physical or mental impairment that is a substantial impediment to employment for the individual that;
- (b) The individual can benefit in terms of achieving an employment outcome and;
- (c) The individual does require vocational rehabilitation services to prepare for, enter, engage in or retain gainful employment.

Documentation may include information directly obtained from the individual with a disability, the individual's guardian or family members and counselor observation. It may also be obtained with the individual's consent from a treating physician, a qualified licensed or certified practitioner skilled in the diagnosis and/or treatment of the disability, the Social Security Administration, school personnel or other qualified sources that confirms the existence of the disability and can assist the vocational rehabilitation counselor in determining how the disability is a substantial impediment to employment.

Comprehensive Assessment refers to the additional assessment that may be required if the existing information is insufficient for a vocational rehabilitation counselor to determine an individual's eligibility, priority category or vocational rehabilitation needs.

Presumption of Benefit refers to the assumption that all individuals who meet the eligibility requirements listed above can benefit from vocational rehabilitation services in terms of an employment outcome unless it can be proved by clear and convincing evidence that they can not benefit due to the severity of their disability.

Presumption of Eligibility refers to the assumption that individuals who receive Social Security benefits under Title II or XVI of the Social Security Act (SSI or SSDI) are eligible for vocational rehabilitation services.

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Trial Work Experience means an exploration of abilities, capabilities and capacity to perform in work situations using a variety of realistic work settings that must be provided to an individual before a determination of ineligibility based on severity of disability can be made. The counselor must develop a written plan to periodically assess the individual's progress at least once every 90 days. Under limited circumstances if an individual is unable to take advantage of a trial work experience then an extended evaluation must be provided. An extended evaluation must also include a written plan and be reviewed at least once every 90 days

4.04: Referral and Application

(1) An individual may refer him or herself, be referred by any other individual, agency or organization to the Commission for services. The referral may be made in writing, by phone or in person. Individuals who are not US citizens must be able to prove that they are legally able to work in the United States as determined by the U.S. Citizenship and Immigration Services.

(2) Once a referral is received, the counselor will make every attempt to contact the individual to arrange an appointment to discuss Commission services, eligibility requirements, and the vocational rehabilitation process.

(3) Any individual or if appropriate, his or her designee, may apply for vocational rehabilitation services by making a written, dated and signed application. The application needs to include the individual's name, address, age, sex, disability and social security number.

4.05: Assessments for Determining Eligibility, Order of Selection Priority, and Vocational Rehabilitation Needs

(1) The determination of an individual's eligibility, order of selection priority and vocational rehabilitation needs will, as much as possible, be based upon a review of existing data and documentation that may be provided directly by the individual or, as appropriate the individual's family or representative. With the individual's consent it may be obtained from the Social Security Administration, education officials, or from other service sources.

(2) The Commission will obtain only that data and information which is necessary to determine eligibility, order of selection priority and vocational rehabilitation needs. All information will be obtained and maintained in accordance with the Commission's confidentiality requirements.

(3) The review of existing data and preliminary assessment must be documented in the individual's record and include an appraisal of the current general health status of the individual, and existing medical records as necessary and available.

(4) If existing information does not describe the current functioning of the individual, is unavailable, inappropriate or insufficient for a vocational rehabilitation counselor to determine eligibility, order of selection priority or to identify an eligible individual's vocational rehabilitation needs, a comprehensive assessment must be done. The assessment may include trial work experiences, assistive technology devices and services, personal assistance services and any other supports that are necessary to determine whether an individual is eligible.

(5) To the maximum extent feasible, the comprehensive assessment must be based on existing data, information provided by the individual and, as appropriate, and the individual's family. This assessment should be limited to information that is necessary to determine the individual's vocational rehabilitation needs and the goals, objectives, nature and scope of vocational rehabilitation services to be included in an Individualized Plan for Employment (IPE). It may include a review of the individual's unique strengths, resources, priorities, interests and vocational rehabilitation needs, including, if appropriate, the need for supported employment services. All assessments should be conducted in the most integrated settings possible.

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(6) As necessary to develop the IPE, the comprehensive assessment may include: assessments of the individual's personality, interests, interpersonal skills, intelligence and related functional capabilities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, employment opportunities, and the medical, psychiatric, psychological and other pertinent vocational, educational, cultural, social, recreational and environmental factors that affect the employment and rehabilitation needs of the individual. As needed, the assessment may include an appraisal of the individual's work patterns, the services needed by the individual to acquire occupational skills and develop work attitudes, work habits and work tolerance and the social and behavioral patterns which are necessary for successful job performance. Assessments in real work situations may be used to assess and develop the individual's capacities to perform adequately in a work environment. As appropriate, rehabilitation technology services shall be utilized to assess and develop the individual's capacities to perform in a work environment.

(7) Consideration of comparable benefits and services available under other programs is not required before providing services that are essential to assess an individual's eligibility, order of selection priority, and vocational rehabilitation needs. However, the Commission encourages the use of resources that are readily available to an applicant.

(8) Services that are essential to assess an individual's eligibility, order of selection priority, and vocational rehabilitation needs are not subject to determination of financial need.

4.06: Presumption of Eligibility

If an individual with a disability can provide verification that he or she is receiving SSI or SSDI benefits as determined by the Social Security Administration; he or she is presumed to be eligible for vocational rehabilitation services. SSI and SSDI recipients will be considered eligible with at least a significant disability by federal regulation, unless they meet the criteria for a most significant disability.

4.07: Eligibility, Ineligibility, Trial Work Experience and Extended Evaluation

(1) An individual is eligible for vocational rehabilitation assistance if the individual:

- (a) Has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
- (b) Requires vocational rehabilitation services to prepare for, enter, engage in or retain gainful employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities and informed choice; and
- (c) Can benefit from vocational rehabilitation services in terms of an employment outcome. It will be presumed that an individual can benefit from vocational rehabilitation services in terms of an employment outcome unless the Commission can demonstrate by clear and convincing evidence that he or she is incapable of benefiting from such services in terms of an employment outcome.

(2) Substantial impediment to employment refers to a physical or mental impairment which, in light of medical, psychological, vocational, educational and other related factors, impedes an individual's occupational performance by preventing his/her obtaining, retaining, or preparing for employment consistent with his/her capacities and abilities. The existence and extent of the impairment must be the primary reason the individual is unable to achieve an employment outcome consistent with his or her strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice and this decision must be made by a qualified vocational rehabilitation counselor. Individuals who are currently employed can be determined eligible for services to maintain, regain or to advance in employment if their impairment results in a substantial impediment to advancing or retaining employment. Eligibility for vocational rehabilitation services should be considered when, due to the impairment, the individual's current employment is not consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

4.07: continued

- (3) An individual who has a disability and receives SSI or SSDI benefits under Title II or Title XVI will be considered an individual with a significant disability who has a physical or mental impairment that constitutes or results in a substantial impediment to employment.
- (4) If it appears that, due to the nature and severity of an individual's disability, the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome, the Commission is required to obtain clear and convincing evidence before making an ineligibility decision. In order to meet this requirement the Commission will consult with the individual and provide an opportunity for a trial work experience. If the individual is incapable of participating in a trial work experience then or an extended evaluation must be provided.
- (5) An individual must be provided vocational rehabilitation services under a trial work experience or extended evaluation when the Commission's assessment determines that:
 - (a) The individual has a physical or mental impairment, which for the individual constitutes or results in a substantial impediment to employment; and
 - (b) Because of the nature and severity of the individual's impairment, there is an inability to make a determination that vocational rehabilitation services can benefit the individual in terms of an employment outcome unless there is trial work experience or extended evaluation to determine eligibility for vocational rehabilitation services.
- (6) A written plan for the trial work experience must be outlined in the case record. Only services to determine eligibility or to determine the existence of clear and convincing evidence that the individual is incapable of benefiting from an employment outcome because of the severity of the disability can be provided during a trial work experience or if necessary, an extended evaluation. The written plan must include the expected duration of services, identification of the service provider and how the experience will contribute to the determination of the individual's eligibility. All services will be provided under the same parameters as when the services are provided under an Individualized Plan for Employment (IPE), that it be conducted in the most integrated setting possible, using a variety of realistic work experiences including, supported employment, on the job training and must be of sufficient duration and variety to provide all the necessary information needed to make an eligibility decision with the goal of employment. Only one trial work experience or extended evaluation will be permitted following the individual's application for services and the determination of eligibility or ineligibility should be made as soon as there is sufficient evidence available to the Commission.
- (7) The Commission must make a thorough assessment of the individual's progress as often as necessary, but at least once every 90 days during the period in which services are being provided under a trial work experience or extended evaluation for determination of eligibility.
- (8) The trial work experience or extended evaluation for the determination of eligibility will end when the individual is:
 - (a) Determined to be eligible for vocational rehabilitation services since it has been shown that he/she can benefit from such services in terms of an employment outcome; or
 - (b) Determined to be ineligible for vocational rehabilitation services on the basis of clear and convincing evidence that he/she is incapable of benefiting from such services in terms of an employment outcome; or
 - (c) Unavailable to complete an evaluation of eligibility for an extended period of time and repeated efforts have been made to contact the individual and encourage his/her participation. All efforts to contact the individual must be documented in the individual's case record before closure.
- (9) When completing the assessment for determining eligibility, the counselor must document the findings about how the individual does or does not meet the basic conditions for eligibility.
- (10) Only those services necessary to assess eligibility, order of selection assignment, and nature and scope of vocational rehabilitation services may be provided prior to the completion of the certification of eligibility and Individualized Plan for Employment, unless an individual is certified for a trial work experience or extended evaluation to determine eligibility.

4.07: continued

(11) Eligibility will be determined as soon as there is sufficient information to decide whether or not the individual meets or does not meet the requirements for eligibility but not more than 60 days from the date of application. The 60 day time period for determining eligibility can be extended only if there are exceptional and unforeseen circumstances beyond the Commission's control that prevent an eligibility decision within the 60 day time period. If an extension of time for the purposes of determining eligibility is needed, the counselor must: reach an agreement with the individual to extend the 60 day limit, provide him or her written notice concerning the circumstances for the delay, and discuss how the eligibility determination can be completed within the new time frame. If an extension of time is needed and no agreement can be reached, an individual must be advised of the rights and remedies that are available, including the right to a hearing by an impartial hearing officer and a referral to the Client Assistance Program.

(12) The assignment of an order of selection priority will be made after an eligibility determination is completed and before an IPE is developed, based on the availability of necessary and appropriate documentation and the requirements of order of selection.

(13) A determination of ineligibility may be made only after an assessment to determine eligibility has been provided and the Commission finds that the individual does not meet the basic conditions for eligibility as set forth in 107 CMR 4.07. All ineligibility decisions must be made only after full consultation with the individual, or as appropriate his or her representative, and the individual is informed of the decision in writing; including the reasons for the decision, information about appeal rights and the availability of the Client Assistance Program, as well as other appropriate services or resources including Independent Living Centers. A dated certificate which states that the individual is ineligible for services and the reasons for the ineligibility must be completed and placed in the individual's case record. Before a determination of ineligibility can be made, that due to the nature and severity of an individual's disability, he or she cannot benefit from vocational rehabilitation services in terms of an employment outcome, an individual must first be provided an opportunity to participate in a trial work experience or extended evaluation. Information from the trial work experience or extended evaluation must be included in the case record and support the determination of ineligibility with clear and convincing evidence. The counselor should also inform the individual of his or her right to reapply for Commission services if circumstances change.

(14) Any decision of ineligibility, which is based on a finding that the nature and severity of disability are such that an individual cannot presently benefit from vocational rehabilitation services in terms of an employment outcome, will be reviewed at least annually in consultation with the individual. The results of such review will be documented in the individual's case record and submitted for approval by personnel as may be required by the Commission. The Commission will initiate the first review. Any subsequent reviews must be initiated by the individual. A review is not required when the individual is no longer present in the state; or the individual has refused it; or the individual's whereabouts are unknown; or the individual's medical condition is rapidly progressive or terminal.

4.08: Order of Selection

Order of selection refers to the process of selecting eligible individuals with disabilities who can be provided vocational rehabilitation services when the Commission has determined that resources are inadequate to provide services to all eligible individuals.

- (1) All eligible individuals will be assigned to:
 - (a) Priority Category I if they have been determined to be individuals with most significant disabilities, or
 - (b) Priority Category II if they have been determined to be individuals with significant disabilities;
or
 - (c) Priority Category III if they have been determined to be individual with disabilities.

4.08: continued

(2) An individual will be considered to be:

(a) An individual with a disability when he or she has a physical or mental impairment which constitutes or results in a substantial impediment to employment and can benefit in terms of an employment outcome from vocational rehabilitation services.

(b) An individual with a significant disability when he or she has a significant physical or mental impairment which seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cognitive dysfunction, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability or end-stage renal disease that causes comparable substantial functional limitation.

An individual who has been recently determined to have a disability by the Social Security Administration under Title II [SSDI] or Title XVI [SSI] of the Social Security Act is considered to have a physical or mental impairment which constitutes or results in a significant physical or mental impairment which seriously limits one or more functional capacities in terms of an employment outcome.

(c) An individual with a most significant disability has a significant physical or mental impairment which seriously limits three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome and whose vocational rehabilitation can be expected to require:

1. Vocational rehabilitation services over an extended period of time of no less than six months; and
2. Two or more separate and distinct vocational services within the following categories:
 - a. Interpreter or CART services provided by qualified personnel for individuals who are deaf or hard of hearing;
 - b. Services within 107 CMR 4.08(2)(c)2.a. and/or 107 CMR 4.08(2)(c)b. through i. the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;
 - c. Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;
 - d. Diagnosis and treatment of physical and mental impairments;
 - e. Occupational licenses, tools, equipment and initial stocks and supplies;
 - f. Technical assistance and other consultation services to conduct market analyses; develop business plans and otherwise provide resources to pursue self-employment or telecommuting or establishing a small business operation as an employment outcome.
 - g. Rehabilitation technology, including vehicle modification, telecommunications, sensory, and other technological aids and devices;
 - h. Supported employment services; and
 - i. Specific post-employment service in 107 CMR 4.08(2)(c)a. through j. necessary to assist an individual with a disability to, retain, regain, or advance in employment;
 - j. Transportation in connection with the rendering of any vocational rehabilitation service and in accordance with the following definition:

Transportation means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems;

- k. Rehabilitation teaching services, and orientation and mobility services;
- l. Job placement assistance of a specialized nature including job seeking skills, job club, purchased direct placement assistance and job retention services;

4.08: continued

m. Transition services in accordance with the following definition: Transition services means a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment(including supported employment), continuing and adult education, adult services, independent living or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-schooladult living objectives, and, if appropriate, acquisition of daily living skills and functional; vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome; and

n. Personal assistance services in accordance with the following definition: Personal assistance services means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(3) First priority in selection for service will be given to individuals with the most significant disabilities. Eligible individuals with the most significant disabilities will be first selected to be provided vocational rehabilitation services.

(4) Second priority in selection for service will be given to individuals with significant disabilities. Eligible individuals with significant disabilities may be selected only after determination that funds are available to provide vocational rehabilitation services to all eligible individuals with the most significant disabilities.

(5) Last priority in selection for service will be given to other eligible individuals with disabilities. Eligible individuals with disabilities may be selected only after determination that funds are available to provide vocational rehabilitation services to all eligible individuals with most significant disabilities and all eligible individuals with significant disabilities.

(6) Based upon a determination that funds are insufficient to provide vocational rehabilitation services to all individuals determined eligible for such services, the Commission may institute or amend a statewide waiting list of eligible individuals who have not been selected to receive vocational rehabilitation services. A statewide waiting list of eligible individuals who have not been selected to receive vocational rehabilitation services will be maintained, and will list individuals by order of selection priority category assignment and the dated of the signed application for vocational rehabilitation services.

(7) A decision that resources are inadequate to provide vocational rehabilitation services to all eligible individuals with disabilities will be reviewed by the Commission at least annually. The Commissioner will report the findings of such review to the Commission's State Rehabilitation Council.

(8) Prior to instituting or amending order of selection or a related waiting list, the Commission will ensure that its actions comply with applicable state and federal statutory and regulatory requirements.

(9) The Rehabilitation Services Administration of the U.S. Department of Education and the Executive Office of Health and Human Services of the Commonwealth will be advised of the impact of an order of selection for serving eligible individuals and the impact of not providing vocational rehabilitation services to all eligible individuals.

4.08: continued

(10) The order of selection by priority category will not affect vocational rehabilitation services to eligible individuals with disabilities who have been selected to receive vocational rehabilitation services and for whom an individualized plan for employment has been developed, agreed to, and approved until such time as the individualized plan for employment is terminated for reasons other than achievement of the employment objective of the individual.

(11) An eligible individual selected to receive vocational rehabilitation services may receive vocational rehabilitation services necessary to render such individual employable consistent with an individualized plan for employment and subsequent amendments.

(12) Eligible individuals with disabilities not selected to receive vocational rehabilitation services are limited to assessment for determining eligibility and vocational rehabilitation needs, referral and other services designed to assist individuals with disabilities in securing needed services from Federal, State, and local public agencies.

(13) The order of selection does not apply to assessments necessary to make determination of eligibility, order of selection priority assignment, and vocational rehabilitation needs. All applicants may receive goods and services during such assessments, to the extent necessary to make determination of eligibility and determination of order of selection priority assignment.

(14) Order of selection priority category assignment of eligible individuals with disabilities will be determined after certification of eligibility and will be based on the review of existing data to the maximum extent possible. A certification of order of selection assignment will include reasons for the priority category determination.

(15) Order of selection of eligible individuals who have not been selected to receive vocational rehabilitation services may be amended if there has been a change in the nature and severity of a physical or mental impairment which results in a change in functional capacities, changes to expected requirement for multiple vocational rehabilitation services over an extended period of time or the priority category assignment was a consequence of a misclassification.

(16) At the time of determination or change of order of selection assignment the individual (or, as appropriate a representative of the individual) will be notified in writing of the determination of order of selection assignment, the appeal rights available to the individual including the availability of services provided by the Client Assistance Program.

(17) Order of selection priority category classification or reclassification may be appealed in writing within 30 days of notification of priority category classification or reclassification.

REGULATORY AUTHORITY

107 CMR 4.00: M.G.L. c. 6, § 75 and 29 USC 706 and 722.