

107 CMR: MASSACHUSETTS REHABILITATION COMMISSION

107 CMR 3.00: DEFINITIONS

Section

3.01: Scope and Purpose

3.02: Meaning of Terms in 107 CMR

3.01: Scope and Purpose

107 CMR 3.00 provides definitions for terms frequently used in 107 CMR. The terms are based on the Rehabilitation Act Amendments of 1992, P.L. 102-569 and current Commission usage common to several Commission programs.

The terms used in 107 CMR have the meanings ascribed in 107 CMR 3.00, unless otherwise specified in the regulations or unless the context otherwise requires.

3.02: Meaning of Terms in 107 CMR

Adjudicatory Proceeding refers to a proceeding where the legal rights, duties or privileges of an eligible individual or applicant are determined. An adjudicatory proceeding does not include proceedings:

- (a) solely to determine whether the Commission will institute or recommend institution of proceedings in a court;
- (b) for the arbitration of labor disputes voluntarily submitted by the parties to such disputes;
- (c) for the disposition of grievance of employees of the Commonwealth;
- (d) to classify or reclassify, or allocate or reallocate, appointive officers and positions in the government of the Commonwealth. The term "Adjudicatory proceeding" shall also be taken to mean a "fair hearing " and the terms shall be used interchangeably.

Administrative Review or Informal Administrative Review refers to an optional appeal process whereby an eligible individual or applicant may elect to request and obtain an informal review and reconsideration of Commission decisions, actions, or inaction's affecting that individual's service provision.

Applicant refers to an individual who has completed a written, dated and signed application or request for services of the Commission but whose eligibility for such services has not yet been determined.

Assistive Technology Device means any item, piece of equipment, or product system, whether acquired commercially off-the-shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Assistive Technology Service means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive device. Such term includes:

- (a) the evaluation of needs of an individual with a disability, including functional evaluation of the individual in the individual's customary environment;
- (b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;
- (c) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;
- (d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) training or technical assistance for an individual with disabilities, or, where appropriate, the family of an individual with disabilities; and
- (f) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities.

Center for Independent Living means a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that:

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- (a) is designed and operated within a local community by individuals with disabilities and
- (b) provides an array of independent living services.

Client Assistance Program refers to a program of assistance funded pursuant to the federal Rehabilitation Act of 1973, administered by the Massachusetts Office on Disability as designated by the Governor, and independent of any agency providing treatment, services, or rehabilitation under the Act. The purpose of this program is to provide assistance in informing individuals with disabilities, eligible individuals and applicants of all available benefits under the Rehabilitation Act and the Americans with Disabilities Act and if requested by eligible individuals and applicants to assist and advocate for them in their relationships with projects, programs, and facilities providing services to them under the Rehabilitation Act of 1973.

Community Rehabilitation Program means a program that provides directly or facilitates the provision of vocational rehabilitation services to persons with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement:

- (a) medical, psychological, social, and vocational services that are provided under one management;
- (b) testing, fitting, or training in the use of prosthetic and orthotic devices;
- (c) recreational therapy;
- (d) physical and occupational therapy;
- (e) speech language, and hearing therapy;
- (f) psychiatric, psychological, and social services, including positive behavior management;
- (g) assessment for determining eligibility and vocational rehabilitation needs;
- (h) rehabilitation technology;
- (i) job development, placement, and rehabilitation services;
- (j) evaluation or control of specific disabilities;
- (k) orientation and mobility services for individuals who are blind;
- (l) extended employment;
- (m) psychosocial rehabilitation services;
- (n) supported employment services and extended services;
- (o) services to family members when necessary to the vocational rehabilitation of the individual;
- (p) personal assistance services;
- (q) services similar to the services described in 107 CMR 3.02: Community Rehabilitation Program(a) through (p).

Competitive Employment refers to gainful work in self-employment or for a private or public employer in the competitive labor market for which the individual receives wages, salary, commission, tips or other compensation in accordance with applicable Department of Labor regulations.

Consumer Control means, with respect to an entity, that the entity vests power and authority in individuals with disabilities.

Disability means, except as otherwise provided, a physical or mental impairment that results in a substantial impediment to employment.

Employment Outcome means, with respect to an individual, entering or retaining full-time, or if appropriate, part-time competitive employment in the integrated labor market (including satisfying the vocational outcome of supported employment) or satisfying any other vocational outcome the U.S. Secretary of the Department of Education may determine, consistent with the federal Rehabilitation Act of 1973.

Extended Services means ongoing support services and other appropriate services needed to support and maintain an individual with the most severe disability in supported employment that are:

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- (a) provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining integrated, competitive employment;
- (b) based on a determination of needs of an individual, as specified in an individualized written rehabilitation program; and
- (c) provided by a state agency, a nonprofit private organization, employer, or any other appropriate resource, after an individual has made the transition from support provided by the Commission pursuant to Title I of the Rehabilitation Act of 1973 and supported employment services pursuant to Title VI Part C of the Rehabilitation Act of 1973.

Impartial Hearing Officer refers to an individual who is selected to conduct a fair hearing for an eligible individual, who is receiving or seeking services from the Commission's vocational rehabilitation program or from independent living programs funded by Title VII B of the federal Rehabilitation Act of 1973, provided that the individual selected shall:

- (a) have knowledge of the delivery of vocational rehabilitation services, the Commission's state plans for vocational rehabilitation and independent living services, the federal and state rules governing such services, and training with respect to performing the official duties of a hearing officer;
- (b) not have been involved in previous decisions regarding independent living services of the consumer who has requested the appeal, or the vocational rehabilitation of the eligible individual who has requested the appeal;
- (c) have no personal or financial interest that will be in conflict with the individual's objectivity as a hearing officer;
- (d) not be an employee of the Commission or another public agency, except that payment by the Commission solely for services as a hearing officer shall not constitute employment by the Commission for the purpose of determining the individual's impartiality; and provided further that the term "impartial hearing officer" or "fair hearing officer" when applied to an individual assigned by the Commission to conduct a fair hearing involving an eligible individual appeal relative to state-funded programs shall not require adherence to 107 CMR 3.02: Impartial Hearing Officer(d);
- (e) not be a member of the State Rehabilitation Advisory Council or the Independent Living Council; and
- (f) be selected from among a pool of qualified individuals who have been identified jointly by the Commission and the State Rehabilitation Advisory Council.

Independent Living Core Services means:

- (a) information and referral services;
- (b) independent living skills training;
- (c) peer counseling (including cross-disability peer counseling); and
- (d) individual and systems advocacy.

Independent Living Services refers to independent living core services and:

- (a) counseling services, including psychological, psychotherapeutic, and related services;
- (b) services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of the Rehabilitation Act of 1973 and the titles of the Act, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);
- (c) rehabilitation technology;
- (d) mobility training;
- (e) services and training for persons with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;
- (f) personal assistance services, including personal assistance and the training of personnel providing such services;
- (g) surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;
- (h) consumer information programs on rehabilitation and independent living services available under the Rehabilitation Act of 1973, especially for minorities and other individuals with disabilities who have been unserved or under served by programs under the Rehabilitation Act;

3.02: continued

- (i) education and training necessary for living in a community and participating in community activities;
- (j) supported living;
- (k) transportation, including referral and assistance for such transportation;
- (l) physical rehabilitation;
- (m) therapeutic treatment;
- (n) provision of needed prostheses and other appliances and devices;
- (o) individual and group social and recreational services;
- (p) training to develop skills specific designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;
- (q) services for children;
- (r) services under other federal, state, or local programs designed to provide resources, training, counseling, or other assistance, of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;
- (s) appropriate preventive services to decrease the need of individuals under the Rehabilitation Act of 1973 for similar services in the future;
- (t) community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and
- (u) such other services as may be necessary and not inconsistent with the provisions of the Rehabilitation Act of 1973.

Individual with a Disability, as used in vocational rehabilitation, is any individual who:

- (a) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
- (b) can benefit in terms of an employment outcome from vocational rehabilitation services.

Individual with a Severe Disability means an individual who has a significant physical, mental, cognitive or sensory impairment whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment.

Individual with a Significant Disability, as used in vocational rehabilitation, is an individual:

- (a) who has a significant physical or mental impairment which seriously limits one 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
- (b) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time or 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; and
- (c) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, 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, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

Individual with a Most Significant Disability, as used in vocational rehabilitation is an individual:

- (a) who has a significant physical or mental impairment which seriously limits three or more functional capacities in terms of an employment outcome; and

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(b) whose vocational rehabilitation can be expected to require two or more separate and distinct vocational services over an extended period of time of no less than six months that may include: Interpreter or CART services for individuals who are deaf; vocational and other training services; diagnosis and treatment of physical and mental impairments; occupational licenses; tools; equipment and initial stocks and supplies; technical assistance and other consultation services to conduct market analysis; develop business plans and provide other services for self employment, telecommuting or small business as an employment outcome; rehabilitation technology including vehicle modification, telecommunications, sensory and other technological aids and devices; supported employment services; transportation; job placement services of a specialized nature; transition; and personal assistance services as well as post employment and services to family members which may include any of the services listed above to assist the individual attain, regain or maintain an employment outcome.

Ongoing Support Services, as used in the definition of Supported Employment Services, means services:

- (a) provided to individuals with the most severe disabilities;
- (b) provided, at a minimum, twice monthly:
 1. to make an assessment, regarding the employment situation, at the worksite of each individual in supported employment, or, under special circumstances, especially at the request of the eligible individual, off site and
 2. based on the assessment, to provide for the coordination or provision of specific intensive services, at or away from the worksite, that are needed to maintain employment stability; and
- (c) consisting of:
 1. a particularized assessment supplementary to the comprehensive assessment,
 2. the provision of skilled job trainers who accompany the individual for intensive job skill training at the work site,
 3. job development and placement,
 4. social skills training,
 5. regular observation or supervision of the individual,
 6. follow-up services such as regular contact with employers, the individuals, the parents, family members, guardians, advocates, or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement,
 7. facilitation of natural supports at the worksite,
 8. any other vocational rehabilitation service,
 9. a service similar to another service described in 107 CMR 3.02: Ongoing Support Services(c)1. through 8.

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 will typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

Rehabilitation Technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs and address the barriers confronted by individuals with disabilities in areas which include employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

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Substantial Functional Limitation refers to a determination that an individual with a disability has:

- (a) a substantial impediment to performance capacity and restriction of activity in the areas of mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills attributable to physical or mental factors, such that he or she is unable to make use of public bus or train; or is unable to perform sustained work activity of six hours or more; or has disfigurement or deformity so pronounced as to cause social rejection; or has speech which is unintelligible to non-family members; or is unable to climb one flight of stairs or walk 100 yards on the level without pause; or has loss of manual dexterity or coordination sufficient that he or she is unable to button buttons, wind a watch or write legibly; and
- (b) will require vocational rehabilitation services over an extended period of time.

Substantial Impediment to Employment refers to a physical or mental impairment which, in light of attendant 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 or her capacities and abilities.

Supported Employment means competitive work in integrated work settings for individuals with the most severe disabilities:

- (a) for whom competitive employment has not traditionally occurred, or for whom competitive employment has been interrupted or intermittent as a result of severe disability; and
- (b) who because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work. This term includes transitional employment for persons who are individuals with the most severe disabilities due to mental illness.

Supported Employment Services means ongoing support services and other appropriate services needed to support and maintain an individual with the most severe disability in supported employment, that:

- (a) are provided singly or in combination and are organized and made available in such a way to assist an eligible individual in entering or maintaining integrated, competitive employment;
- (b) are based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and
- (c) are provided by the designated state unit for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized plan for employment.

Supported Work refers to a specialized, time-limited paid work training program conducted at work sites for persons with disabilities. Its purpose is to provide the participants with job readiness and placement assistance in order to facilitate their transition into competitive employment consistent with their training.

Transitional Employment Program refers to a program which provides remunerative work experiences on a regular daily basis to persons with disabilities at a business or industry for the purpose of providing evaluation, training, and supervision to the person.

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

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Vocational Rehabilitation Services means any goods or services necessary to render an individual with a disability employable, including, but not limited to, the following:

- (a) assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, assessment by personnel skilled in rehabilitation technology;
- (b) counseling, guidance, and work-related placement services for individuals with a disability, including job search assistance, placement assistance, job retention services, personal assistance services, and follow-up, follow along, and specific post employment services necessary to assist such individuals to maintain, regain, or advance in employment;
- (c) vocational and other training services for individuals with a disabilities, which shall include personal and vocational adjustment, books, or other training materials, and such services to the families of such individuals as are necessary to the adjustment or rehabilitation of the individual;
- (d) physical and mental restoration services, including but not limited to,
 - 1. corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive and constitutes a substantial impediment to employment, but is of such nature that such correction or modification may be expected to eliminate or reduce such impediment to employment with a reasonable length of time,
 - 2. necessary hospitalization in connection with surgery or treatment,
 - 3. prosthetic and orthotic devices,
 - 4. eyeglasses and visual services as prescribed by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select,
 - 5. special services (including transplantation and dialysis), artificial kidneys, and supplies necessary for the treatment of individuals with end stage renal disease, and
 - 6. diagnosis and treatment for mental and emotional disorders by a physician or licensed psychologist in accordance with State licensure laws;
- (e) maintenance for additional cost incurred while participating in rehabilitation;
- (f) interpreter services for individuals who are deaf;
- (g) recruitment and training services for individuals with disabilities to provide them with new employment opportunities in the fields of rehabilitation, health, welfare, public safety, and law enforcement and other appropriate service employment;
- (h) occupational licenses, tools, equipment, and initial stocks and supplies;
- (i) transportation in connection with the rendering of any vocational rehabilitation service;
- (j) telecommunications, sensory, and other technological aids and devices;
- (k) rehabilitation technology services;
- (l) referral and other services designed to assist individuals with disabilities in securing needed services from other agencies through utilization of the services and facilities of Federal, State, and local public agencies providing services related to the rehabilitation of individuals with disabilities if such services are not available under the Rehabilitation Act;
- (m) transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate objectives;
- (n) on-the-job and related personal assistance services provided while an individual with a disability is receiving services described in 107 CMR 3.02: Vocational Rehabilitation Services; and
- (o) supported employment services.

REGULATORY AUTHORITY

107 CMR 3.00: M.G.L. c. 6, § 75; 29 USC 706 and 722, as amended by the Rehabilitation Act Amendments of 1992, P.L. 102-569.

NON-TEXT PAGE