

University of the State of New York
State Education Department
Office of Vocational and Educational Services for
Individuals with Disabilities (Acces-VR-VR)

***Findings of Fact and
Decision***

Case No. 2200047210

In the matter of [REDACTED]

-against-

Adult Career and Continuing Education Services -
Vocational Rehabilitation (Acces-VR-VR), Respondent

Before:

[REDACTED]

Impartial Hearing Officer

[REDACTED]

[REDACTED]

For Petitioner:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

For Respondent:

[REDACTED], District Officer Manager

State Education Department

Office of Adult Career and Continuing Education Services-

Vocational Rehabilitation: [REDACTED]

[REDACTED]

[REDACTED]

Location:

Office of Adult Career and Continuing Education Services

Vocational Rehabilitation

District/Acces-VR Office

[REDACTED]

[REDACTED]

On March 28, 2016 the Consumer in the above-referenced matter initiated a Due Process Request pursuant to the *Rehabilitation Act*, 29 USC 701 *et. seq.*, 34 CFR 361 *et seq.* and 8 NYCRR § 247.2 *et seq.* Thereafter, the undersigned was appointed to hear the matter of [REDACTED] against the New York State Office of Adult Career and Continuing Education Services-Vocational Rehabilitation (hereinafter referred to as “Acces-VR”). On June 10, 2016 a hearing was held. Although hearing on the substantive merits had been scheduled, after duly waiting for one hour, the proceedings were concluded and the matter was dismissed. It is noted that this is a Consumer request seeking to re-open [REDACTED] case pursuant to 8 NYCRR 247.14. *See* also 29 U.S.C. § 722(c)(5)(A)-(C); 34 C.F.R. § 361.57(f); VESID Policy 105.00.

Issue

The issue at bar concerns [REDACTED] eligibility to receive services following Acces-VR-VR’s determination that, consistent with the Consumer’s medical inability to maintain gainful employment, vocational services are not appropriate at this time.

Summary of the Facts

The Consumer did not appear. However, employees of Acces- VR [REDACTED] regarding the multiple efforts they made to contact the Consumer following the initiation of [REDACTED] Due Process Request.

Specifically, [REDACTED], the Consumer’s Vocational Counselor, testified regarding the facts and circumstances surrounding the Consumer’s complaint. On [REDACTED] the Consumer filed an application for vocational services with Acces – VR along with a Health Assessment. Exhs. I, II. On [REDACTED], the Consumer was provisionally certified eligible for

vocational rehabilitation services. Exh. VIII. On this same day medical documentation, dated [REDACTED] was received by Acces-VR from [REDACTED] indicating that [REDACTED] is NOT medically cleared for employment at this time. Exhs. X, XII. On February 19, 2016, the [REDACTED] met with the Consumer to discuss current medical opinion indicating that [REDACTED] is not capable of returning to work due to [REDACTED] fragile medical status. As a result, both [REDACTED] and [REDACTED] an Associate Vocational Rehabilitation Counselor, had concluded that the Consumer is presently ineligible for services. Tr. at 8-9. It is noted that [REDACTED] [REDACTED] further testified [REDACTED] review of prior Acces-VR records indicate that the Consumer has an additional history of [REDACTED]

In the course of [REDACTED] February 19, 2016 meeting with [REDACTED] noted that the Consumer disagreed with the Counselor's conclusion regarding [REDACTED] ineligibility for services. It was explained to [REDACTED] however, that an updated medical determination could be performed in three months. If, at that time, [REDACTED] medical condition had improved, [REDACTED] eligibility for services could be re-established. Tr. at 12. Nevertheless, the Consumer disagreed with the agency's determination and, as a result, the Consumer was provided with a Request for Due Process.

On March 25, 2016, [REDACTED] contacted the Consumer to follow up on the status of [REDACTED] case. Thereafter, on March 28, 2016, personnel at Acces-VR received a copy of the Consumer's request for judicial intervention, dated February 24, 2016. In response, [REDACTED] contacted the Consumer by telephone and letter on April 26, 2016 but received no response. Exh. XX.

The record indicates that several attempts to contact the Consumer regarding the within proceedings were initiated by Acces-VR's employees. This reflects several email correspondences as well as telephone calls and letters. Exh. XXIV, *passim*. In furtherance thereof, I note that [REDACTED] testified that [REDACTED] has repeatedly attempted to contact the Consumer telephonically, logging these actions in [REDACTED] case notes. On or about June 7, 2016 in preparation for [REDACTED] upcoming hearing, the agency continued its efforts to communicate with the Consumer. Tr. at 13-15. Additional efforts by [REDACTED] are memorialized in the record.

At this point, the Consumer is eligible for an updated medical evaluation, as had been explained to [REDACTED] earlier by Acces-VR personnel. [REDACTED] complaint is now moot. In consideration with the Consumer's non-attendance at the hearing in addition to [REDACTED] lack of response to Acces-VR's overtures, I find that this matter must be dismissed.

Discussion

The purpose of the Rehabilitation Act is to develop and implement, through research, training, services and the guarantee of equal opportunity, comprehensive coordinated programs of vocational rehabilitation and independent living, for disabled individuals, in order to maximize their employability, independence and integration into the work place the community. *See* 29 U.S.C. § 701(b). In furtherance thereof, the Rehabilitation Act, "authorizes federal grants to those states who wish to provide vocational rehabilitation services to individuals with handicaps." *Buchanan v. Ives*, 793 F. Supp. 361, 363 (D. Maine 1991). While state participation in the program's funding opportunities is voluntary, should the state elect to participate, it must comply with federal guidelines and regulations governing the Act.

Having opted into the Rehabilitation Act's opportunities for federal funding, New York is responsible for developing an IPE and for providing rehabilitation services "appropriate to the vocational rehabilitation needs of each individuals . . ." consistent with 34 C.F.R. 361.46 and 34 C.F.R. 48. In its discussion of eligibility and Individualized Plans for Employment, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Chapter 16, subsection 102(a)(1), clearly articulates, "Nothing in this paragraph shall be construed to create an entitlement to any vocational rehabilitation service." Rather, it is within the participating state's discretion to determine eligibility utilizing the framework of 34 C.F.R. 361.42(a). *See also* 343 C.F.R. 361.42 (5), 8 NYCRR 247.6 and 8 NYCRR 247.14; Murphy v. Office of Vocational and Educational Services for Individuals with Disabilities, 92 N.Y.2d 477, 683 N.Y.S. 139, 705 N.E.2d 1180 (1998). Nevertheless, Acces-VR, the State agency charged with the Rehabilitation Act's implementation, is mandated to offer those services "at a cost not to exceed that which is necessary and reasonable." N.Y. Educ. Law § 1004(9). In furtherance thereof, New York State has defined clear parameters within which rehabilitation services must be offered. As such,

Acces-VR's responsibilities for evaluation and acceptance of eligibility must be viewed within the entirety of its federal and state mandate.

Although not expressly articulated by Acces-VR, it is clear that Congress did not intend to provide Acces-VR consumers with unlimited rehabilitative resources under Title I of the Rehabilitation Act. Carrigan v. New York Dep't of Ed., 485 F. Supp. 2d 131, (2007) U.S. Dist. LEXIS 32315, *citing* Murphy v. VESID, 92 N.Y.2d at 477, 705 N.E. 2d 1180, 683 N.Y.S. 2d. 139 (1998). Rather, "the realistic and laudable legislative goal is to empower eligible individuals with the opportunity to access their maximum employment, not to provide individuals with idealized preferences for optimal employment." *Ibid.*

Consistent with this reasoning, while there is a presumption of eligibility, pursuant to SAPA Section 306 the burden of proof rests upon the Consumer as the "moving party." Having said this, the Consumer must meet █████ burden with the production of substantial evidence. In the matter at bar, the Consumer's request for due process was initiated on March 28, 2016. Since then, Acces-VR's personnel has attempted to reach out to the Consumer without success.

It is within the State's discretion to determine whether a person desiring employment exhibits either a physical or mental impairment which effectively precludes that individual's ability to benefit from employment. 29 USC 705 (20)(B). In furtherance thereof, it is clear that each disabled individual presents with their own needs and abilities. Having met criteria for establishing one's disabled status, this does not translate into automatic eligibility for vocational services. Under the circumstances at bar, vocational training is simply not a Federal or State entitlement and the Consumer has not met █████ burden of establishing █████ entitlement to services. At █████ last medical evaluation, it was clear that █████ medical impairments were such that employment was not feasible. Several months have transpired and the Consumer is entitled to a new medical assessment. For this reason, █████ action has become moot as █████ ability to benefit from training may well have changed, rendering █████ eligible for services. Under these circumstances, I must deny the Consumer's claim.

Conclusion

For the reasons cited above and based upon the Consumer's failure to appear for the proceedings, it is clear that [REDACTED] has not met [REDACTED] burden of proof.

Wherefore:

The Consumer's request is denied. [REDACTED] is, however, offered leave to renew [REDACTED] claim through the conduct of current medical evaluations.

Dated: June 23, 2016

[REDACTED]

[REDACTED]

New York State Impartial Hearing Officer

Persons in Attendance June 10, 2016

For the Consumer

No appearances

For Acces-VR

[REDACTED] *District Office Manager, State Education Department Office of Adult Career and Continuing Education Services- Vocational Rehabilitation*

[REDACTED] *Associate Rehabilitation Counselor, Acces-VR*

[REDACTED] *Vocational Rehabilitation Counselor, Acces-VR.*