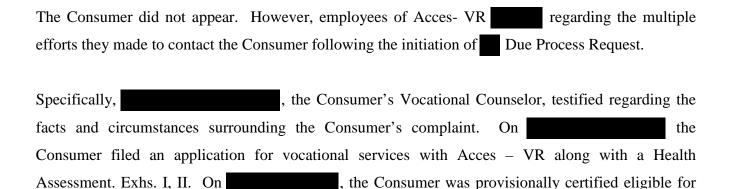
University of the State of New York State Education Department Office of Vocational and Educational Services for Individuals with Disabilities (Acces-VR-VR)		Findings of Fact and Decision	
		Case No. 2200047210	
In the matter of			
-against-			
Adult Career and Continu Vocational Rehabilitation	ing Education Services - (Acces-VR-VR), Respondent		
Before:			
zojore.	Impartial Hearing Officer		
For Petitioner:			
For Respondent:	, District O	fficer Manager	
	State Education Departmen	t	
	Office of Adult Career and	Continuing Education Services-	
	Vocational Rehabilitation:		
		_	
Location:	Office of Adult Career and	Continuing Education Services	
	Vocational Rehabilitation		
	District/Acces-VR Office		

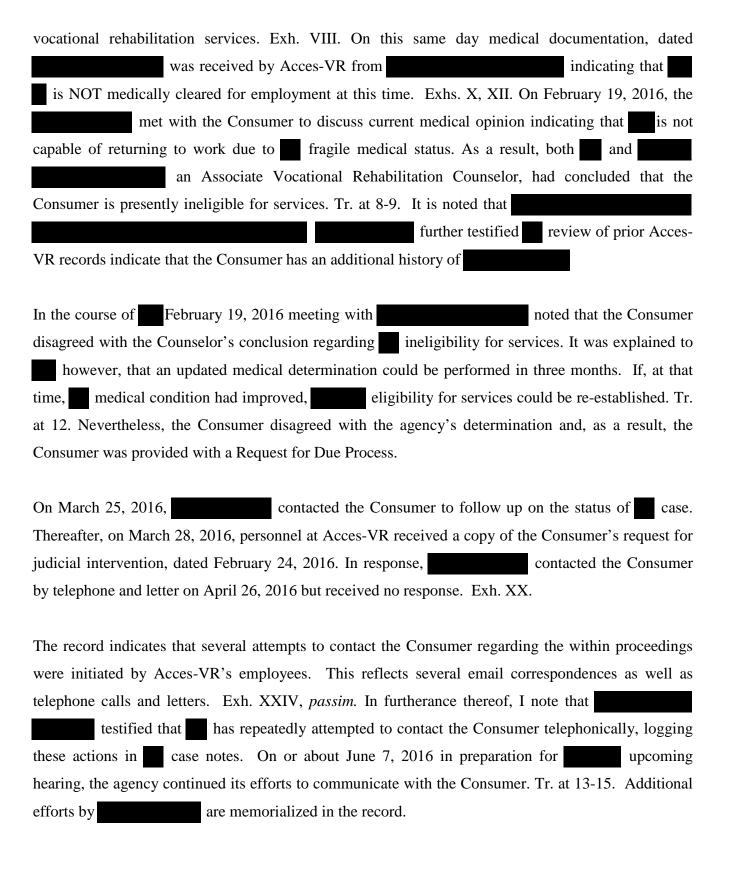
On March 28, 2016 the Consumer in the above-referenced matter initiated a Due Process Request pursuant to the *Rehabilitation Act*, 29 USC 701 *et. seq.*, 34 CFR 361 *et seq.* and 8 NYCRR § 247.2 *et seq.* Thereafter, the undersigned was appointed to hear the matter of against the New York State Office 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 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 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





At this point, the Consumer is eligible for an updated medical evaluation, as had been explained to earlier by Acces-VR personnel. complaint is now moot. In consideration with the Consumer's non-attendance at the hearing in addition to 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 it 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 has not met burden of proof.
Wherefore:
The Consumer's request is denied. is, however, offered leave to renew claim through the conduct of current medical evaluations.
Dated: June 23, 2016
New York State Impartial Hearing Officer
Persons in Attendance June 10, 2016
<u>For the Consumer</u> No appearances
For Acces-VR District Office Manager, State Education Department Office of Adult Career and Continuing Education Services- Vocational Rehabilitation Associate Rehabilitation Counselor, Acces-VR Vocational Rehabilitation Counselor, Acces-VR.