

STATE OF NEW YORK  
COMMISSIONER OF EDUCATION

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[REDACTED]

Petitioner

Against

ACCES-VR

Respondent

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DECISION & ORDER

Impartial Hearing Officer: [REDACTED]

Date of Hearing: [REDACTED]

Received

[REDACTED]

By: left blank

## INTRODUCTION

The office of Adult Career and Continuing Education Services- Vocational Rehabilitation of the State of NY State Department of Education appointed me to act as the impartial hearing officer in a case brought by the consumer under the Federal Rehabilitation Act of 1973. (29 U.S.C. 701 et seq.). The consumer requested a hearing by filing a due process complaint with Access-VR on [REDACTED] (Arb. Exhibit (Ex.) B.) The hearing was conducted on [REDACTED] at the District Office in [REDACTED] New York. A list of all the exhibits introduced as evidence at the hearing are attached to this decision.

## ISSUES

Did ACCES-VR act appropriately and lawfully under federal and state law in refusing to provide the consumer with an appropriate VR counselor? Did they act appropriately and lawfully under federal and state law in refusing to provide the consumer with a new employment placement provider? Did ACCES-VR act appropriately and lawfully under federal and state law in refusing to provide the consumer with an expert to help the consumer secure federal employment? Did ACCES-VR act appropriately and lawfully under federal and state law ... when they refused to handle the consumer's "Ticket to Work" to another agency for services?

## CONSUMERS CASE

The Consumer failed to appear at an impartial hearing. The consumer was notified of the location, place and time of the impartial hearing by [REDACTED] letter sent certified and regular mail to [REDACTED] known address and subsequent communications between the parties. IHO Ex. A; Transcript (T) at 4-5 & 51-52. On [REDACTED] at the time of the hearing, the consumer did not contact the [REDACTED]. T at 51-52.

The consumer has the burden of proof to establish that ACCES VR's actions were improper. As the consumer failed to appear at the hearing and thus offered no evidence to substantiate [REDACTED] claims, [REDACTED] has failed to sustain [REDACTED] burden.

In any event, upon review of the evidence presented, to determine if it provided the consumer with vocational services, I find that ACCES-VR acted appropriately and lawfully under state and federal law.

#### ACCES-VR's Case

[REDACTED] District Office Mgr, in [REDACTED] acted as Access-VR's representative. [REDACTED] first witness was [REDACTED] the consumer's vocational counselor. [REDACTED] holds a Master's degree from [REDACTED] in rehabilitation and a bachelor's degree from [REDACTED] in rehabilitation counseling. [REDACTED] worked with Access for over [REDACTED] years and in the vocational rehabilitation field for over [REDACTED] years. T at 10 & 33.

ACCES-VR's second witness was [REDACTED] an Associate Vocational Rehab Counselor, also known as the Director of Counseling. T at 34 [REDACTED] has a master's degree in vocational rehabilitation counseling from [REDACTED] and a license in mental health counseling. [REDACTED] has worked for ACCES-VR for over [REDACTED] years and in the vocational rehabilitation field for over [REDACTED] T at 10 & 33.

In [REDACTED] the consumer sought employment assistance at ACCES-VR; [REDACTED] case was opened, [REDACTED] was made eligible and a plan was developed. As the consumer did not follow the plan, [REDACTED] case was closed. T at 9, 35 & 37-38.

[REDACTED] testified that on [REDACTED], the consumer participated in an orientation event at ACCES-VR. T at 9 & 34-35; Ex. R-10. [REDACTED] appeared anxious and asked to speak with [REDACTED] indicated [REDACTED] was about to be evicted and it was difficult for people

like [REDACTED] to obtain white collar jobs. [REDACTED] testified that [REDACTED] told the consumer had the documentation and [REDACTED] case was opened. T at 9 & 35; Ex R-10. [REDACTED] described the services provided by ACCES-VR, [REDACTED] due process rights and the levels of management at ACCES-VR. [REDACTED] testified that [REDACTED] requested to speak with [REDACTED] supervisor, [REDACTED]; [REDACTED] spoke with [REDACTED] and [REDACTED] was told about procedures at ACCES-VR. T at 36; Ex. R-10 [REDACTED] testified that [REDACTED] did not wait to assign a counselor to a consumer, but instead, immediately approached [REDACTED] and appointed [REDACTED] as [REDACTED] counselor. T at 36-37

On [REDACTED], [REDACTED] called the consumer and they met on the [REDACTED] [REDACTED] Ex R-11. [REDACTED] testified that on [REDACTED] [REDACTED], [REDACTED] met with the consumer to conduct an intake. The consumer sought an accountant position or similar employment. [REDACTED] testified that the consumer specifically requested placement services from [REDACTED] a job placement provider on [REDACTED]. and that [REDACTED] was not interested in any other job placement providers. T at 10 & 40; Ex R-12, R13 & R14. [REDACTED] asked the consumer about [REDACTED] specific request because there were other job placement providers. T at 40; Ex. R-12 [REDACTED] testified that [REDACTED] was concerned about the consumer's ability to benefit from Acces-VR's services considering [REDACTED] psychiatric history and how [REDACTED] presented to [REDACTED] and [REDACTED] T at 10; Ex. R-1. [REDACTED] recommended a work evaluation to assess [REDACTED] work behavior and overall readiness skills. On [REDACTED] [REDACTED] requested that [REDACTED] provide [REDACTED] with a copy of [REDACTED] resume. T at 10-11.

On [REDACTED] [REDACTED] submitted a referral to [REDACTED] on behalf of the consumer. Tat 11; Ex. R-14 & R-16. Thereafter, [REDACTED] a program manager at [REDACTED] conducted a placement intake with the consumer. Ex. R-18 [REDACTED] informed [REDACTED] and the consumer that the consumer's resume contained fictitious information and [REDACTED] salary expectations would be

difficult to attain; [REDACTED] recommended an open salary range. T at 12; Ex. R-18. Thereafter, [REDACTED] also suggested to the consumer, based on feedback received from recruiters to whom [REDACTED] submitted the consumer's resume, that the consumer revise [REDACTED] resume to make it more appealing. Ex. R-22.

In [REDACTED] the consumer was notified that [REDACTED] would be on vacation for a period of time. While [REDACTED] was on vacation, the consumer called various staff at [REDACTED] asking a lot of questions about [REDACTED] placement application. T at 12; Ex. R-17, On [REDACTED] [REDACTED] reported to [REDACTED] that the consumer demonstrated a lack of judgement and correspondence protocols. Tat 12-14; Ex. R-18 For example during a 30 minutes period while [REDACTED] reported to [REDACTED] that the consumer demonstrated a lack of judgement and correspondence protocol: T at 12-14; R.18. For example, during a 30 minute period while [REDACTED] [REDACTED] was on the telephone, the consumer called 3 times, called 2 supervisors, and another job placement counselor. T at 13 & 17; R-18. The consumer exhibited similar behavior in [REDACTED] [REDACTED], when [REDACTED] emailed the various [REDACTED] staff and supervisors indicating that [REDACTED] wanted a job placement counselor that could give the consumer 100% of [REDACTED] or [REDACTED] time. T-14; R-19 & R 25.

The consumer indicated to both [REDACTED] and [REDACTED] that due to [REDACTED] dire financial situation, [REDACTED] needed reimbursement for travel costs to the job interviews. [REDACTED] informed the consumer that ACCES-VR could reimburse [REDACTED] for [REDACTED] travel expenses. T 22-24 Ex. 34, [REDACTED] [REDACTED] testified that when the consumer requested a mentor to help revise [REDACTED] resume, [REDACTED] indicated that [REDACTED] would try to provide a mentor T at 14 & 17 Ex. R-5.

In [REDACTED] [REDACTED] informed the consumer was informed of job fairs, networking events, interviews and potential job opportunities, but the consumer did

not respond to [REDACTED] or did not attend the events or interviews. For example, [REDACTED] failed to show up for an interview at [REDACTED] and then cancelled an interview with [REDACTED] for a financial analyst position. T at 15, 18-20, 22 & 24; Ex. R-5, R-6, R20, R21, R27, R-29, R30, R31, R33, R-34 & R -36. The consumer also turned down an offer to meet with a representative from [REDACTED] for potential job placement. T at 18.

[REDACTED] testified that [REDACTED] sent the consumer information about a job fair in September 2015, but the customer did not contact [REDACTED] about the job fair and did not attend the event. T at 20 & 40-41 Ex. R-2 & R 27.

In [REDACTED] the consumer requested a new job placement. T at 24; Ex. 35 [REDACTED] [REDACTED] scheduled an appointment with the consumer to review and discuss [REDACTED] request. Ex. R-47.

The consumer emailed [REDACTED] indicating that [REDACTED] was not available to meet with [REDACTED] on the suggested date, but offered another date and meet time. Ex. R-38 [REDACTED] testified that [REDACTED] met with the consumer and told [REDACTED] that [REDACTED] approached several new job placement providers and the providers required consumers to participate in placement activities; thus, the consumer would be required to participate in placement activities; thus, the consumer would be required to participate in placement activities with any new placement provider. [REDACTED] testified that the consumer would be required to participate in placement activities with any new placement provider. [REDACTED] testified that the consumer indicated that the participating in placement activities was not an option and that [REDACTED] would only meet with providers when there was a need to prepare for a job interview. T at 25-26 & 28; Ex. R39, R 40, R41 & R42.

Thereafter, [REDACTED] contacted the consumer on numerous occasions to schedule an appointment for further placement and the consumer failed to show up or cancelled the

appointment. [REDACTED] testified that in [REDACTED] when the consumer failed to respond to a letter [REDACTED] wrote to [REDACTED] requesting a meeting, [REDACTED] closed [REDACTED] case. T at 25 & 28-30; R-43.

Based on the consumer's complaint that ACCES-VR was not assisting [REDACTED] with job placement services, in [REDACTED] [REDACTED] case was reopened. T at 30; Ex. R-26 [REDACTED] testified that on [REDACTED] [REDACTED] sent a certified letter to the consumer scheduling and appointment with [REDACTED] on [REDACTED] [REDACTED] testified that on [REDACTED] the consumer sent [REDACTED] email indicating that [REDACTED] would not attend the appointment. T at 31 & 42-43; Ex. R-8 & R9. Thereafter, [REDACTED] was notified that the consumer filed a due process complaint; the case was reverted back to closed. T at 31.

#### LAW AND FINDINGS

ACCES-VR is the New York State agency authorized to administer federal funds under the Rehabilitation Act of 1973 (the Act), which is codified at 29 U.S.C. 701 et seq. Access-VR administers a federal program under Title 1 of the Act to assist eligible individuals in achieving their employment goals. The purpose of the Act is to develop comprehensive programs that will maximize the employment of disabled individuals and their integration into society. (2 (b)) of the Act). However, despite its broad reach, the Act specifically provides that it is not intended to confer any entitlement to vocational rehabilitation services. (102 (a)(3) (B) of the Act).

After reviewing the evidence in the case, I conclude that Access-VR acted appropriately. I give substantial weight to [REDACTED] and [REDACTED] testimony which I found credible. I also give credit to the documents provided by Access-VR.

I find that upon request, ACCES-VR immediately opened the consumer's case. I find that [REDACTED] was promptly assigned as [REDACTED] counselor and that [REDACTED] quickly set up a meeting with [REDACTED] to discuss [REDACTED] employment concerns. T at 9 & 35-37; Ex.. R-10; & R-11 I also find that [REDACTED].

████ promptly contacted █████ the job placement provider the consumer specifically requested, despite █████ concerns about its location and █████ overall concern about the consumer's ability to benefit from ACCES-VR services. T at 10 & 40; Ex. R-1, R-12, R13 & R-14.

I find that █████ maintained regular contact with the consumer and █████ the consumer's contact at █████ I find that there is ample evidence in the record of █████ attempts to assist the consumer in obtaining interviews and employment. Over several months, █████ and █████ provided the consumer with information on several job fairs, set up interviews between the consumer and potential employers and offered the consumer concrete advice and support regarding how to obtain employment. However, I find that the record is also replete with consistent examples of the consumer's failure to attend the recommended job fairs or interviews scheduled for █████ T at 15, 18-20, 22, 24, & 40-41; Ex. R-2, R-5, R-6, R-20, R-21, R-27, R-29, R-30, R-31, R-33 R-34, & R-36

In sum, I find that although the consumer, at times, maintained contact with █████ and the █████ provider and appeared to diligently research employment opportunities, the evidence also indicates the consumer was repeatedly unwilling to fully take part in the services offered to █████ and to take the steps necessary to gain and secure employment.

#### DECISION

It is my decision that ACCES-VR acted promptly and lawfully and provided the consumer with appropriate vocational services and an appropriate counselor, access to new employment placement providers. I find that the consumer's requests for a federal employment expert and that █████ "Ticket to Work" be provided to another agency for services are wholly without merit.



## RIGHT TO APPEAL

This decision will become final and ACCES-VR will begin to implement the decision within 20 days of its execution. A party who disagrees with this decision may seek final judicial review of the decision in either New York State Supreme Court or the United States District Court.

The decision rendered:

[REDACTED]

[REDACTED]

Impartial Hearing Officer