


**THE STATE OF NEW YORK
COMMISSIONER OF EDUCATION**

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Petitioner,

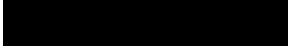
-against-

**Vocational and Educational Services of Individuals with
Disabilities (ACCES-VR).**

Respondent.

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DECISION

Hearing Officer:  Esq.
Hearing Date: 
Hearing Place: 

NAMES AND TITLES OF PERSONS WHO APPEARED ON [REDACTED]

[REDACTED]		Petitioner
[REDACTED]	Senior Vocational Rehabilitation Counselor	ACCES-VR
[REDACTED]	Vocational Rehabilitation Counselor	ACCES-VR
[REDACTED]		ACCES-VR

DOCUMENTATION ENTERED INTO THE RECORD ON DECEMBER 1, 2015

Exhibits entered for ACCES-VR: 1 to 15

1. ACCES-VR Decision In the Matter of Arthur Goldstein, 12/6/93, 3 pp.
2. ACCES-VR 202.00 Eligibility for Services Policy, 4/09, 9 pp.
3. ACCES-VR 204.00 Assessment Policy, 9/10, 5 pp
4. ACCES-VR 010.00 Employment Outcome Policy, 2/03, 4 pp.
5. ACCES-VR 100.00 Consumer Involvement Policy, 2/07, 3 pp.
6. Eligibility Certification, [REDACTED]
7. Email of Application for ACCES-VR Services, [REDACTED], [REDACTED]
8. Letter from Consumer, [REDACTED], [REDACTED]
9. Notes from [REDACTED], undated, 1 p.
10. Social Security Administration Decision, [REDACTED], [REDACTED]
11. Copy of Contact Case Notes, [REDACTED] 13 pp.
12. Scheduling Letter for Appointment for [REDACTED]
13. Resume, various dates, [REDACTED]
14. Functional Capacity Evaluation, [REDACTED]
15. Email and Documentation re: Disqualification from Traffic Enforcement, various dates, 6pp.

Exhibits entered for Impartial Hearing Officer: I to II

- I Letter of Appointment to serve as a Fair Hearing Officer, [REDACTED]
- II Consumer's Request for an Impartial Hearing, [REDACTED]

RELEVANT LAWS, REGULATIONS AND POLICIES

Title 1 of the Rehabilitation Act of 1973, ACCES-VR 100.00 Consumer Involvement Policy, ACCES-VR 204.00 Assessment Policy, ACCES-VR 202.00 Eligibility for Services Policy, ACCES-VR 010.00 Employment Outcome Policy, The New York State Court of Appeals in the Matter of Goldstein, 199 A.D. 2d 766 (Third Dept. 1993) and Title 8 of the Regulations of the Commission Part 247.

PRELIMINARY STATEMENT

On [REDACTED] I was appointed as the impartial hearing officer (hereinafter "IHO") by the Office of Adult Career and Continuing Education Services-Vocational-Rehabilitation (hereinafter "ACCES-VR") formerly known as the Officer of Vocational Educational Services for Individuals with Disabilities (hereinafter "VESID") in the matter of [REDACTED] petitioner (hereinafter "the Consumer") (IHO Exh. I). The Consumer requested the due process hearing by letter dated [REDACTED] (IHO Exh. II). Under Regulations of the Commissioner (See 8 NYCRR Part 247.4[a]) the request for an impartial hearing shall be made no later than 90 days after the individual is informed of the agency's decision or action which the individual seeks to review. The hearing was conducted on [REDACTED] at the ACCES-VR [REDACTED]
[REDACTED]

The decision for this due process hearing was due 21 days after the receipt of the transcript. The transcript was received on [REDACTED]. The transcript of the hearing shall be available to a party upon request. (See 8 NYCRR Part 247.4 [m]) Appended to the record are lists of persons in attendance and of documents submitted into evidence.

ISSUE

The issue is whether ACCES-VR acted properly in refusing to guarantee a job under Section 55-a of the New York City Civil Service Law and whether ACCES-VR acted appropriately and in accordance with the relevant federal and state laws, and ACCES-VR's written policies to train the Consumer and to assist the Consumer in obtaining employment and whether ACCES-VR acted properly in refusing to reimburse the Consumer for the fees for the [REDACTED]

BACKGROUND

The Consumer is a [REDACTED] veteran and possesses a certification as a [REDACTED] electronic technician, and possesses a New York City Hack License and a New York City Dept. of Consumer Affairs Locksmith License as well as passed a course as a Professional Truck Driver from [REDACTED] (Exh. 13;

Tr. 12.) [REDACTED] medical condition includes "severe impairments; lumbar radiculopathy, left proximal fibula hairline fracture, bilateral upper and lower extremity movement, left hand tremor, post-traumatic stress disorder, major depressive disorder and bipolar disorder" and [REDACTED] disability of Orthopedic Impairment was not contested (Exh. 10 at 3;Tr. at 22; 24). The Consumer meets the "Significant Disability criteria due to a disability which seriously limits one or two functional capacities" (Exh. 6 at 2). The Consumer presented a decision from the Social Security Administration dated [REDACTED] which stated that the Consumer was disabled on [REDACTED] (Exh. 10 at 2) and was under the care of [REDACTED] for injuries relating to work-related motor vehicle accident which occurred on [REDACTED] (Exh. 10 at 3).

CONSUMER'S POSITION

The Consumer seeks training to obtain position in New York City to work within the income guides of Social Security Disability (Tr. at 15). [REDACTED] stated that [REDACTED] was a New York City bus operator for [REDACTED] and was hired by the New York [REDACTED] and was hit by a speeding car on [REDACTED] during [REDACTED] probation with the [REDACTED] and was terminated before [REDACTED] was able to achieve the position of [REDACTED] (Tr. at 19). [REDACTED] stated that [REDACTED] applied for three-quarter accident pension under New City Employees' Retirement System ("NYCERS") and was informed that [REDACTED] could apply for the one-third disability pension for NYCERS members with ten years of services (Tr. at 21). [REDACTED] noted that as a result of [REDACTED] physical impairment [REDACTED] was unable to perform the duties and responsibilities of the New York City [REDACTED] [REDACTED] (Tr. at 24). [REDACTED] stated that [REDACTED] required two pay checks from New York City service to complete [REDACTED] application for retirement under NYCERS (Tr. at 66) and that [REDACTED] had been involved in litigation with the Civil Service Commission (Tr. at 31), and that [REDACTED] wanted a job with 55-a accommodation as [REDACTED] was a New York City employee with [REDACTED] years of service (Tr. at 30).

ACCES-VR'S POSITION

The representative maintained that the Consumer was seeking employment with New York under the 55-a Program and that ACCES-VR was able to assist the Consumer in obtaining employment, but was unable to guarantee a particular type of employment (Tr. at 45; 81). ■ stated that the determination for a 55-a Program was made by the New York City Department of Citywide Administrative Services (Tr. at 29).

CONSUMER'S CASE

The Consumer testified that that ■ was hired by the New York City ■ and was hit by a speeding car during ■ probation period with the ■ and was terminated before ■ was able to achieve the position of ■ (Tr. at 19). ■ stated that ■ applied for three-quarter accident pension under NYCERS and was informed that ■ could apply for the one-third disability pension for members with ten years of services (Tr. at 21). The Consumer stated that took the exam for the ■ and sought a 55-a accommodation for that job, but was disqualified because of ■ disability (Tr. at 30).

The Consumer stated that ■ was licensed in New York City as a locksmith, a tow truck driver and a taxi driver, but because of ■ disability ■ was unable to perform those jobs (Tr. at 33). At the hearing the Consumer requested that ACCES-VR provide ■ training for a clerical position, and that ACCES-VR and ■ agreed that ■ required additional evaluations and training to obtain a clerical position (Tr. at 34). The Consumer stated ■ completed the ■ to establish an individualized plan of employment ("IPE"), but in the interim ■ obtained a position at ■ with an accommodation as a driver and that ■ is currently employed by ■ (Tr. at 35).

ACCES-VR'S CASE

■ Vocational Rehabilitation Counselor ("VRC") reviewed that the Consumer's history with ACCES-VR and noted that ■ was a vocational counselor and

that the Consumer opened [REDACTED] case in [REDACTED] on [REDACTED] and that the Consumer was determined eligible for ACCES-VR services on [REDACTED] (Exh. 6; Tr. at 35). [REDACTED] testified that [REDACTED] was assigned to the Consumer's case by [REDACTED] senior vocational counselor, [REDACTED], as the Consumer was seeking a 55-a job and [REDACTED] had experience with the 55-a Program. Section 55-a of the New York Civil Service Law permits municipalities to employ persons who have been certified as physically or mentally disabled in civil service positions on a non-competitive basis. The provision is implemented by the City of New York through the 55-a Program administered by the New York City Department of Citywide Administrative Services ("DCAS"). [REDACTED] stated that the determination for a 55-a Program was made by the DCAS, not by ACCES-VR (Tr. at 29). [REDACTED] stated that the 55-a assignment was title specific for someone who was a New York City employee and for someone who was not a New York City employee, such as the Consumer, then the Equal Employment Office coordinator at DCAS makes the determination of eligibility for the 55-a Program (Tr. at 20).

[REDACTED] stated the [REDACTED] arranged for [REDACTED] manager, [REDACTED] Senior Vocational Rehabilitation Counselor ("SVRC"), to meet with the Consumer and submitted [REDACTED] note (Exh. 9), to confirm that the Consumer was eligible (Exh. 6) for assistance from ACCES-VR. [REDACTED] also submitted the Social Security Administration Decision (Exh. 10) and ACCESS-VR policies (Exhs.1 through 5). [REDACTED] stated that [REDACTED] informed the Consumer that [REDACTED] was unable to guarantee a particular type of employment (Tr. at 45). [REDACTED] stated that the Consumer informed [REDACTED] that [REDACTED] wanted employment as a clerical worker, but that there were no skills demonstrated by the Consumer for employment as a clerical worker (Tr. at 46). [REDACTED] explained that the Consumer had completed the [REDACTED], but that the Consumer informed [REDACTED] that [REDACTED] the Consumer, was not satisfied with [REDACTED] performance and requested another counselor so [REDACTED] referred the Consumer to [REDACTED]

[REDACTED] SVRS, spoke with the Consumer and the Consumer's resume was updated (Exh. 13; Tr. at 51). After the results of the [REDACTED] (Exh. 14) were obtained, the Consumer's case conference was held on [REDACTED] [REDACTED] and that the [REDACTED] established that the consumer's choice of employment as a [REDACTED] was not suitable for the Consumer based

on [REDACTED] limitations, but that clerical employment was suitable (Tr. at 65; 75; Exh. 14 at 4). [REDACTED] stated that [REDACTED] informed the Consumer that ACCES-VR was unable to assist the Consumer obtain a position as a [REDACTED] as [REDACTED] disability disqualified [REDACTED] for the position (Tr. at 77). [REDACTED] stated that when the IPE is developed for the Consumer [REDACTED] and the counselor will review the plan. [REDACTED] also stated that ACCES-VR was very willing to help the Consumer with training for a clerical position (Tr. at 89).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Title 1 of the Rehabilitation Act of 1973 provides for a variety of services to assist eligible persons with disabilities to achieve an employment outcome. 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 and community. [See U.S.C. Section 701(a)]

There is no entitlement to any vocational rehabilitation service. [See U.S.C. Section 102(a)(3)(B)] Section 103(a) describes vocational rehabilitation services as "any service described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome." There was no dispute that the consumer was disabled. The Commissioner's regulations regarding the IPE provides that the IPE "shall be developed by the individual with assistance of a vocational rehabilitation counselor to the extent the individual determines. The plan shall be a written document using forms provided by the agency and must be agreed to and signed by the individual or, if appropriate, the individual representative. It must be approved and signed by a qualified vocational rehabilitation counselor employed by the agency." [See 8 NYCRR Part 247.11]

I find that under ACCES-VR 100.00 Consumer Involvement policy mandates that a VRC assist in the attainment of the educational goal. I find ACCES-VR 202.00 Eligibility for Services Policy provides that "eligibility is not a guarantee of the provisions of specific services." ACCES-VR 202.00 further provides that "consumer choice does not mean they unilaterally can control their programs. While the decision making process is a collaborative

one, the final decision must reflect the vocational rehabilitation counselor's application of professional judgment; applicable laws, regulations and policies; and sound planning considerations of the individual's employment factors."

Further, I find that the New York Appellate Division had addressed the degree of deference the vocational rehabilitation counselors should be afforded. In accordance with Matter of Goldstein, 199 A.D. 2d 76 (3rd Dept., 1993), the court held that the opinions of the vocational rehabilitation counselors should be afforded the upmost consideration since, the ACCES-VR counselor is the vocational rehabilitation specialist, not the consumer.

After reviewing the facts of this case, the policies, regulations, and law regarding to this matter, I agree with ACCES-VR's decision to explain to the Consumer that ACCES-VR cannot guarantee a position under the 55-a Program. I find the Consumer failed to submit copies of any expenses relating to the [REDACTED] and left the hearing before explaining expenses [REDACTED] incurred relating to the [REDACTED]. I find the Consumer has established [REDACTED] has viable and transferable work skills; however, I find that the Consumer did not work with [REDACTED] ACCES-VR counselor so both the Consumer and [REDACTED] ACCES-VR counselor could develop an IPE and could decide together on an appropriate goal. Testimony adduced at the hearing established the willingness of the ACCES-VR counselor to pursue the goal of a clerical position for the Consumer. Accordingly, I find there was no indication the ACCES-VR failed to act in a manner consistent with applicable laws, regulations and policies. I find that ACCES-VR complied with its policies and raised appropriate questions concerning the feasibility of the request for a position under the 55-a Program.

CONCLUSION

For the reasons listed above and based on the evidence and testimony in this case I must concluded that ACCES-VR acted properly in refusing to guarantee a position under the 55-a Program. I note that the ACCES-VR representative agreed to continue to work with the Consumer. I urge the Consumer to work with the [REDACTED] ACCES-VR office and to comply with the ACCES-VR policies and to develop an IPE to obtain a position.

Dated: [REDACTED]

[REDACTED]
Impartial Hearing Officer

PLEASE TAKE NOTICE

This is a final decision of the Impartial Hearing Officer and ACCES-VR will begin to implement the decision within 20 (twenty) days. If either party to the Impartial Hearing disagrees with my decision, [REDACTED] may seek judicial review of the decision through an action in either a New York State or United States District Court of competent jurisdiction.