

The University of the State of New York
The State Education Department
Office of Adult Career and Continuing Education Services -
Vocational Rehabilitation (ACCES-VR)

In the Matter of

[REDACTED]

Consumer,

FINDINGS OF FACT AND DECISION

Before: [REDACTED]

For Consumer: [REDACTED] (hereinafter the "Consumer")

For ACCES-VR: [REDACTED] District Office Manger

Date of Hearing: [REDACTED]

Place: New York State Office of Adult Career
and Continuing Educational Services
Vocational Rehabilitation ACCES-VR

[REDACTED]

Witnesses:

For Consumer:
[REDACTED], Consumer

For ACCES-VR:
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PRELIMINARY STATEMENT

I am an Impartial Hearing Officer, approved by the State Education Department, and I was appointed to a hearing scheduled for [REDACTED], and was notified of this appointment in a letter by [REDACTED] dated [REDACTED] and sent to me and the Consumer. Due to issues with the Consumer receiving adequate notice of the hearing, the hearing was adjourned to [REDACTED] in a letter by [REDACTED] dated [REDACTED] and sent to me and the Consumer. The hearing began at 10:42 a.m. on [REDACTED] at ACCES-VR, located at the [REDACTED] [REDACTED] and continued until 12:20 p.m. The Consumer was advised in the letters dated [REDACTED] and October 3, 2016 about the [REDACTED]) and [REDACTED] right to have someone represent [REDACTED]. Both ACCES-VR and the Consumer appeared without representation. A list of the exhibits offered into evidence is attached to the transcript. The transcript was received by this Impartial Hearing Officer on [REDACTED]. All of the exhibits are enclosed with the transcript.

ISSUE

Did ACCES-VR act appropriately when it denied Consumer's request to fund a Masters degree in Literature?

CONSUMER'S POSITION

The Consumer applied for ACCES-VR services on [REDACTED] seeking a Masters degree in Literature, so [REDACTED] could teach college-level creative writing classes or teach English overseas. According to the Consumer, since God had told [REDACTED] to write, and those books directed by God would be free, [REDACTED] needed to identify a job goal and employment (i.e., college professor)

in order to qualify for funding for a degree beyond a bachelor's degree under the ACCES-VR policies. Although [REDACTED] already has an MBA, [REDACTED] states that [REDACTED] had a [REDACTED] when [REDACTED] tried to work a job at a local hotel using the MBA degree, and during that hospitalization was when God told [REDACTED] to write. Therefore, it could be dangerous for [REDACTED] not to pursue a writing career, similar to that prophet in the bible who refused to do what God had told him and was symbolically thrown into a fish stomach and spent three days there. The same thing could happen to [REDACTED]. The Consumer states that the ACCES-VR counselor repeatedly denied [REDACTED] career plan and employment goal without asking for writing samples, and despite all of the information that [REDACTED] submitted that going back was dangerous, and is going against God's command. Now [REDACTED] has started hearing from the Devil which causes [REDACTED] to have insomnia.

ACCES-VR'S POSITION

The Consumer's disability which was documented as [REDACTED] has certain limitations for [REDACTED] such as problems remembering to take [REDACTED] medications, medication side effects, [REDACTED]. ACCES-VR denied funding for a Masters degree in Literature based on the Consumer's lack of an employment history in that field, the difficult job market, and also based on the fact that the Consumer already has a MBA. Instead the Consumer was referred for a [REDACTED] of jobs that [REDACTED] could do with [REDACTED] MBA. Several compatible jobs were determined (Exhibit 6). The Consumer was not open to exploring any of the compatible jobs, so [REDACTED] case was closed.

FINDINGS OF FACT

1. The Consumer was found to be eligible for ACCES-VR services on [REDACTED] based on the fact that [REDACTED] receives [REDACTED] as well as [REDACTED] impairment, which is documented as [REDACTED] (51). The Consumer currently has a MBA (34).

2. By email dated [REDACTED], the Consumer summarized [REDACTED] goal as seeking to have ACCES-VR sponsor a MA in [REDACTED], as a stepping stone towards a Ph.D., which is [REDACTED] ultimate career goal (Exhibit A).

3. By email dated [REDACTED], Vocational Rehabilitation Counselor, sent a treatment form for the Consumer to have [REDACTED] [REDACTED] complete, that would address [REDACTED] ability to work in [REDACTED] current field of a MBA, and the justification for the needed career change. (Exhibit B).

4. On [REDACTED] the Consumer's [REDACTED] submitted the Treatment Form indicating that the Consumer should avoid [REDACTED] [REDACTED] [REDACTED]. The [REDACTED] that the Consumer has a passion for writing, which helps [REDACTED] [REDACTED] [REDACTED]. However, the [REDACTED] does not address [REDACTED] ability to work in fields using [REDACTED] MBA or the justification for a Masters degree in Literature. (Exhibit G).

5. By email [REDACTED] Consumer was advised by [REDACTED] Vocational Rehabilitation Counselor, that ACCES-VR was not supporting funding a MA in Literature in that it is not a requirement for [REDACTED] job goal and employment, since [REDACTED] has jobs available to [REDACTED] using [REDACTED] MBA degree. (Exhibit B).

6. The Consumer was further offered a [REDACTED] to assess [REDACTED] current [REDACTED] that could generate some jobs that ACCES-VR could

explore and support (Exhibit B).

7. Although the Consumer also sought to appeal the denial of an individual business plan to support [REDACTED] creative writing, during the hearing [REDACTED] withdrew that appeal request (43).

8. On [REDACTED] Director of Counseling states in a chronological case note that the Consumer emphatically states that [REDACTED] would like to obtain [REDACTED] Masters in Literature as [REDACTED] would like to be a writer. The Consumer does not seek other employment alternatives as indicated during the vocational evaluation. [REDACTED] feels that God had directed [REDACTED] to write and this is what [REDACTED] is meant to do. (Exhibit 9)

9. By letter date [REDACTED] the Consumer was notified that [REDACTED] case was being closed due to the inability of both parties to arrive at an agreement on [REDACTED] employment goal. (Exhibit 11).

10. An Administrative Review was conducted by [REDACTED], [REDACTED], [REDACTED] [REDACTED], [REDACTED] denying the Consumer's request for ACCESS-VR to fund a Masters degree in Literature based on research by [REDACTED] that teaching at the college level is highly competitive with many qualified candidates pursuing very limited opportunities. Also, that attending graduate degree training and working as a college instructor may be [REDACTED] (Exhibit 12).

LAWS, REGULATIONS AND POLICIES

Consumer Involvement Policy Section 100 states in part that, while individuals are encouraged to actively participate, make meaningful choices, and develop all or parts of the IPE, consumer choice does not mean that they have complete control over their programs. Vocational

rehabilitation counselors must review, consider and approve all IPEs. Vocational Rehabilitation Counselors will apply their professional judgment, applicable laws, regulations and policies, sound planning considerations, and responsible use of public funds. Services must lead directly to employment goals that are feasible, timely and attainable within the fiscal constraints of the program.

The Third Department decision in Goldstein v. VESID, 199 A.D.2d 766, 769, 605 N.Y.S.2d 425, 427 (3d Dept 1993) recognizes this policy. In Goldstein, the Court held that while the policy encourages individual involvement, “ACCES-VR formerly VESID” counselors are professionals whose opinions may be relied upon by hearing officers when deciding cases involving rejection of consumer requests for services, and consumers may not disregard ACCES-VR’s suggestions about services and then use the hearing process to obtain the preferred services.

The Individual Plan for Employment Policy(IPE) , Section 206 references the expectation that the IPE must be consistent with applicable policies and procedures, sound judgment and planning considerations and the responsible use of public funds.

The graduate training section of the College Policy and Procedures states as a criteria for approving advanced study that the Consumer requires graduate training in order to enter the profession, which is **an agreed upon employment goal of the IPE**.

In Matter of Murphy v. VESID, 92 NY2d 477, the Court of Appeals upheld the principle that VESID makes the final decision stating that the Act does not require VESID to, “provide individuals with *idealized personal preferences for actual optimal employment*.”(emphasis added).

ACCES-VR Policy 206.00, “Individualized Plan for Employment Policy and Procedure,” (Feb. 2008) stresses that the employment goal must be based on an assessment of vocational rehabilitation needs, considering the individual’s employment factors that are their strengths, resources, priorities, concerns, **abilities, capabilities,** career interests and informed choice.” (emphasis added)(Exhibit 13).

DECISION

After reviewing the facts of this hearing, and the policies, regulations and laws relating to this matter, I have decided that ACCES-VR’s denial of funding for a Masters degree in literature was proper. The Consumer has the burden of proof and [REDACTED] has provided no evidence that [REDACTED] has the appropriate “functional abilities” to support graduate-level schooling and employment in the field of academia. In fact, the Consumer acknowledged that the main reason for this career goal is to fit within the criteria of the ACCES-VR’s policy for funding, when [REDACTED] real reason is to become a better writer to, “write books directed by God that could be offered for free.” The Consumer also failed to provide sufficient justification for a career change from the business field. Although [REDACTED] previous employments in the business field allegedly caused [REDACTED] [REDACTED] which lead to [REDACTED], [REDACTED] has refused to consider other occupations related to either [REDACTED] undergraduate or business degree that could be [REDACTED] (i.e., working at a not-for-profit company). [REDACTED] also does not consider the [REDACTED] that would be caused in a graduate school program even though [REDACTED] [REDACTED] states that [REDACTED] should avoid [REDACTED] [REDACTED] both of which would exist in a graduate degree program and the quest to find employment at the college level. Based on the foregoing ACCES-VR laws, regulations and policies, in this situation the opinions of the

counselors who are the professionals must be relied on by this Impartial Hearing Officer. The Consumer is a bright young [REDACTED] so I would encourage [REDACTED] to explore through ACCES-VR other employment opportunities USING [REDACTED] business degree, and pursue [REDACTED] creative writing on [REDACTED] free time.

Dated: [REDACTED]

_____, Impartial Hearing Officer
[REDACTED]

APPEAL NOTICE

Please take notice that this is a final decision. If you disagree with the decision, you may seek judicial review through action in a court of competent jurisdiction.