

PETITIONER: [REDACTED]

RESPONDENT: ADULT CAREER & CONTINUING EDUCATION SERVICES
VOCATIONAL REHABILITATION PROGRAM (ACCES-VR)

STATE: NEW YORK; [REDACTED]

In the matter of a complaint of .

[REDACTED] .

challenging the quality of counseling provided to [REDACTED] by ACCES-VR, highlighting the delays in providing [REDACTED] with services, requesting reimbursement for travel expenses and challenging ACCES-VR's insistence on a current psychiatric evaluation of the petitioner

. DECISION

Notwithstanding the frustrating delays in ACCES-VR's providing services to Petitioner, I find going forward that requiring a current psychiatric evaluation is reasonable and appropriate and within the scope and power of the organization. I find that a senior counselor and additional transportation reimbursement are not appropriate. There has been no denial of client's rights or entitlements.

PLEASE TAKE NOTICE:

The Decision of the Impartial Hearing Officer becomes final and ACCES-VR will begin to implement the decision within 20 days of the postmark on the written report submitted by the Officer. If the client disagrees with the decision of the hearing officer the client can seek judicial review of the decision through an action in either a New York State or United States District Court of competent jurisdiction.

This decision rendered [REDACTED]

Impartial Hearing Officer

On [REDACTED] a hearing was held before me in the matter of [REDACTED]
[REDACTED] In attendance were: [REDACTED], Petitioner; [REDACTED]
Vocational Rehabilitation Counselor, and [REDACTED] Assistant District Office
Manager, ACCES-VR [REDACTED] Office.

Appended to the record is a list of documents received in evidence.

[REDACTED] requested an impartial hearing to challenge the quality of counseling services provided by ACCES-VR and to ask for a senior counselor—"a sophisticated and knowledgeable counselor." (Transcript, p.62) Petitioner requested reimbursement for transportation expenses (as a means to highlight the numerous trips required of [REDACTED], to and from ACCES-VR's offices, still with no employment outcome.) Petitioner challenged the Agency's requirement of a current psychiatric evaluation.

PETITIONER'S POSITION

[REDACTED] stated that ACCES-VR has had [REDACTED] case for at least two years, but [REDACTED] still has not been given an appropriate job placement. [REDACTED] wants the delays to stop. [REDACTED] wants assistance in resume writing. [REDACTED] wants to be sent out on interviews. [REDACTED] wants the help of a head-hunter who is focused on Petitioner's specific needs. In [REDACTED] Due Process Request (Arbitrator's Exhibit # 2), [REDACTED] asked that a senior staff member work with [REDACTED] because the counselors assigned to [REDACTED] were incompetent. Also in [REDACTED] Due Process Request, [REDACTED] asked if possible, that a Public Advocate be assigned to [REDACTED] case.

Describing [REDACTED] experiences with ACCES-VR, [REDACTED] said that [REDACTED] felt that [REDACTED] had been spoken to in a very demeaning way by [REDACTED] vocational rehabilitation counselor, [REDACTED] (Transcript, p. 39) Petitioner was concerned that [REDACTED] had contacted Cap Advocate, [REDACTED] to get information about [REDACTED] "without having any authorization to do so. Why you would do that—to support your claim against me? I don't know. I don't know." (Transcript, p.95) [REDACTED] also noted in scheduling [REDACTED] evaluation, [REDACTED] showed no respect for [REDACTED] religious observance. (Transcript, p. 41) Petitioner stated that

during [REDACTED] NYU [REDACTED] interview, “the counselor clearly felt that I had no idea what was going on”. (Transcript, p. 44) Describing [REDACTED], [REDACTED] said, “With all due respect for [REDACTED], they’re not equipped to do an evaluation on somebody like me. So I’m set up for failure.” [REDACTED] “serves very, very well if your intelligence is limited or your education is very limited.” (Transcript, pp. 46-7)

[REDACTED] explained why [REDACTED] had asked ACCES-VR for additional reimbursement for transportation expenses. [REDACTED] hope was that [REDACTED] request for travel reimbursement would spark a review of the numerous unnecessary trips to the agency, which were required of [REDACTED] for intake sessions, evaluations and/or reviews and interpretations of test results. “So yes, I did ask for transportation...because I thought it would come up for some type of review...is this system being abused?” (Transcript, p. 54)

Petitioner explained the circumstance leading [REDACTED] to voluntarily give up [REDACTED] license as a psychologist. [REDACTED] said that [REDACTED] had been unjustly accused of Medicaid insurance fraud. (Transcript, pp. 55-62) Speaking of [REDACTED] future, [REDACTED] said, “I know what I want to be—I want to have the training necessary to be a specialist in RAD (Reactive Attachment Disorder)”. (Transcript, pp. 62-6)

On the issue of evidence, [REDACTED] reported that [REDACTED] had made numerous requests to ACCES-VR for a copy of [REDACTED] complete file to be sent to [REDACTED] in advance of the hearing so that [REDACTED] might prepare [REDACTED] case. The two folders which [REDACTED] finally received did not include electronic notes. According to [REDACTED], the electronic case notes and Petitioner’s entire file had in fact been copied with the assistance of ACCES-VR, for [REDACTED], Petitioner’s CAP representative. But [REDACTED], having learned that Petitioner’s earlier case had been closed, withdrew from the second case and did not appear at our hearing. Upon request by Petitioner, ACCES-VR sent new folders directly to [REDACTED] mistakenly without electronic case notes. At our hearing, [REDACTED] proposed a solution-- that ACCES-VR be restricted in its testimony during the hearing to the contents of the two folders which were actually mailed to

Petitioner and received by [REDACTED] (Consumer's #1) The Agency agreed. (Transcript, p. 18))

On the issue of representation at our hearing, Petitioner in [REDACTED] Due Process Request had asked that a Public Advocate be assigned to [REDACTED] case. CAP advocate, [REDACTED] was scheduled to appear at our hearing. However, [REDACTED] was told that CAP withdrew upon learning that Petitioner's first case to which [REDACTED] had originally been assigned was actually closed in May 2016. [REDACTED] said that to enable Petitioner to be represented by an advocate in [REDACTED] now second case, Anne Sternbach of Quality Assurance in Albany had asked Petitioner if [REDACTED] wanted to request an adjournment of [REDACTED] second case for a second time. (It had already been adjourned once from [REDACTED] to [REDACTED] [REDACTED] In response to that suggestion, [REDACTED] stated, "it may...be postponed for many months. Therefore, ... I'll just do the best I can." (Transcript, pp. 22-3) At that point, the parties were asked if they agreed to proceed without representation. Both parties responded affirmatively. (Transcript, p. 23)

ACCES-VR'S POSITION

[REDACTED], Assistant District Office Manager and [REDACTED], Vocational Rehabilitation Counselor verified that there had been two cases for [REDACTED] [REDACTED] The first case was opened in [REDACTED] and closed in [REDACTED], allegedly because Petitioner did not get in touch with [REDACTED] counselor to discuss [REDACTED] program. [REDACTED] had been the counselor assigned to [REDACTED] in [REDACTED] first case. (Consumer's Exhibit #1 Previous Case folder p. B49) In September, 2016, when [REDACTED] requested a change in counselor so [REDACTED] might replace [REDACTED] was told that [REDACTED] request was made more than 90 days from the closure date. Consequently, Petitioner filed a new application for ACCES-VR services, dated [REDACTED] and stamped by ACCES-VR on [REDACTED]. (Consumer's #1, A-15, Previous Case Folder, B-1)

It is Petitioner's second case that was the subject of our hearing.

██████████, testified that within 3-5 days of ACCES-VR's opening ██████████ new case, ██████████ was assigned as Vocational Rehabilitation Counselor. ██████████ said ██████████ was told to expedite the case. (Transcript, p. 154) ██████████ reached out to Petitioner to schedule an intake. Petitioner did not attend their first appointment because it had been scheduled on a ██████████ holiday. ██████████ and ██████████ did meet on October 31, 2016. They discussed Petitioner's application for services and they reviewed documents from ██████████ old case file--██████████ psychological evaluation and some reports from ██████████ Institute. ██████████ suggested that to expedite matters, they follow the recommendations in the old case file and arrange for a Diagnostic Vocational Evaluation. They initially agreed to send Petitioner to the ██████████ Institute because that was the site of Petitioner's job placement screening for the first case. ██████████ requested an appointment as soon as possible. ██████████ submitted a referral, but ██████████ insisted on additional medical documentation regarding some of the psychological and psychiatric issues brought up in the old case. ██████████ said ██████████ had specific instructions from ██████████ not to release any previous case records. ██████████ informed ██████████ that the Petitioner did not wish to submit further medical documentation. ██████████ stated that without the psychological and psychiatric information, it would not be able to accept ██████████ referral.

██████████ then sought other providers for the DVE. ██████████ was chosen because it could schedule the evaluation in a timely manner. In addition, it was close to Petitioner's residence and ██████████ did not require further medical documentation. ██████████ explained that it is "ACCES-VR's practice to choose ...(contracted psychological)... providers who are geographically feasible given where our district offices are located and where our consumers reside."... "Those providers are the only ones that ACCES-VR is authorized to pay for services for one of our consumers." (Transcript, p. 187-8) ██████████ emphasized, "we have very few providers and a lot of referrals." (Transcript, p. 80) ██████████ testified that ██████████ had been offered a second choice—in lieu of a comprehensive psychological evaluation, petitioner could submit a new or more current psychiatric medical form filled out by a qualified health provider. (Transcript, p. 188). ACCES-VR requires a professional opinion as to petitioner's mental health ability and work ability

estimate. Petitioner did submit a psychiatric medical form which was found insufficient because it was filled out by a licensed psychiatrist, [REDACTED], who no longer resides in the U.S. In addition, [REDACTED] was asked for a work ability estimate. [REDACTED] response was “Unable to assess accurately as I have not followed [REDACTED] during [REDACTED] work career” (ACCES-VR Exhibit VR #4)

[REDACTED] attended the [REDACTED] evaluation in late [REDACTED] and early [REDACTED]. [REDACTED] received a completed vocational evaluation report in [REDACTED] [REDACTED] (Exhibit ACCES-VR # 3) and then met with Petitioner in [REDACTED] to review the results and discuss the next steps. Advocating on behalf of [REDACTED] at the March meeting was [REDACTED], CAP representative. The parties discussed the recommendation in the report that [REDACTED] complete another Comprehensive Psychological Evaluation “to understand Petitioner’s current functional limitations...how [REDACTED] psychiatric disabilities...(which)...were self-reported, would possibly limit or otherwise...be accounted for and accommodated...in the workplace.” (Transcript, p.76)

[REDACTED] acknowledged that there were scheduling difficulties. [REDACTED] mistakenly had set up an appointment date during the [REDACTED] holidays. Some providers had openings only for weekend appointment dates. [REDACTED] would not work because Petitioner is a [REDACTED] observer. There was another scheduling conflict because of [REDACTED]

On cross examination, Petitioner asked [REDACTED] about a telephone conversation during which [REDACTED] asked Cap representative [REDACTED] about Petitioner. Introduced in evidence was a release form, signed by Consumer (Consumer’s Exhibit # 1, p. A13) stating, “I give [REDACTED] permission to send my 2-page application to whomever [REDACTED] wishes. [REDACTED] insisted that the release DID NOT give permission to [REDACTED] to share information about Petitioner with [REDACTED]. [REDACTED] argued that the release goes both ways.

Another adversarial discussion took place re: Petitioner’s disability—ADD or ADHD. There were contradictory documents in evidence. ([REDACTED] P DVE—ACCES-

VR #3;-- [REDACTED]—Comprehensive Psychological Evaluation—ACCES-VR #5;
Application for VR services—Consumer’s #1, p. A-15;

A third controversial issue concerned ACCES-VR’s standard practice of sending closure letters by regular mail, not certified mail.

[REDACTED] concluded [REDACTED] testimony commenting on [REDACTED] job readiness. “In my opinion, and in my working with Vocational Rehabilitation Consumers, I feel that some of the evaluation results do point to behaviors and observations that...[REDACTED]...may not be job ready...which is why again we recommend the evaluation, and then possibly other vocational counseling, to understand ...the limitations...to employment and how we might help [REDACTED] to overcome those.” (Transcript, p. 86)

[REDACTED] in [REDACTED] closing statement said, “We feel like you have strong educational and vocational history, but having sent you to [REDACTED] and getting their report...we’re really concerned more about your social emotional functioning right now.” (Transcript, pp. 201-2) “We want to put supports in place that will help you move towards getting a job.” (Transcript, p. 203) According to [REDACTED], a professional opinion as to the benefit to [REDACTED] of psychiatric-psychotherapy and medication would help ACCES-VR in terms of vocational planning for Petitioner.

APPLICABLE STANDARDS

Section 100.00 Consumer Involvement Policy

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 IPE’s. They will apply their professional judgment; vocational rehabilitation expertise, applicable laws, regulations, and policies; sound planning consideration; and responsible use of public funds.

FINDINGS

Applying ACCES-VR's policies and procedures to the facts of this case, I find that it is necessary to establish a realistic vocational goal before job placement. I further find that the ACCES-VR counselors have applied their professional judgment and vocational rehabilitation expertise in insisting on a current psychiatric evaluation of [REDACTED], which includes a work ability estimate.

Applying Consumer Policy Section 100 to the facts of the case, I find additional support for an updated psychiatric evaluation to determine whether Petitioner is job ready. "While individuals are encouraged to actively participate, make meaningful choices, and develop all parts of the IPE, consumer choice does not mean that they have complete control over their programs." [REDACTED] whose comprehensive psychological evaluation is in evidence said that Petitioner [REDACTED] has specific expectations of what jobs [REDACTED] wants and the salary [REDACTED] expects. It is questionable if the salary [REDACTED] expects (\$100,000) is realistic at this time. [REDACTED] recommendation: "certainly securing some updated information from current treating professionals is suggested." (ACCES-VR #5, p.6)

I also find that an updated psychiatric report might help with vocational planning for RAD [REDACTED] or for another specialty yet to be suggested to this intelligent, well educated and experienced consumer.

On the issue of Petitioner's request for a senior counselor, according to [REDACTED], ACCES-VR's policy is for senior supervisors to supervise counselors, rather than to manage cases. (Transcript, p. 35) Based on the ACCES-VR policy, I therefore find it appropriate that [REDACTED] remain Petitioner's counselor but with diligent oversight by Managers [REDACTED] and [REDACTED].

I also find in accordance with Acces-VR's policy, unless a physician can document the need for special private transportation, it is appropriate for Petitioner to continue to receive reimbursement only for [REDACTED] public travel. (Transcript, p. 35)

LIST OF WITNESSES

For the Petitioner:

[REDACTED]

Petitioner

For the Respondent:

[REDACTED]

[REDACTED]
[REDACTED] ACCES-VR

[REDACTED]

[REDACTED]
[REDACTED] ACCES-VR

LIST OF EXHIBITS FOR THE ARBITRATOR

#A-1	Notice of Hearing	4/28/17
#A-2	Petitioner's Request for an Impartial Hearing	12/5/16
#A-3	Notice of Hearing	12/20/16

LIST OF EXHIBITS FOR THE CONSUMER

#C-1 ACCES-VR'S 2 Folders for the Consumer

LIST OF EXHIBITS FOR THE RESPONDENT

#VR-1	Consumer Involvement Policy Section 100.00	
#VR-2	Goldstein v. VESID	
#VR-3	Diagnostic Vocational Evaluation	12/27/16-12/30/16
#VR-4	Shimrati Evaluation	3/17/17
#VR-5	Comprehensive Psychological Evaluation	1/9/16

