

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

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In the Matter of [REDACTED],

Consumer,

v.

ACCES-VR,

Respondent.

-----X

FINDINGS OF FACT AND DECISION

IHO: [REDACTED], Esq.

August 21, 2017.

PERSONS WHO APPEARED ON JUNE 20, 2017

██████████ : ██████████ of ██████████ ██████████
ACCES-VR, ██████████ District Office.

██████████ ██████████ n: Consumer-Pro Se.

BACKGROUND:

On June 20, 2017, I conducted an impartial hearing regarding a due process complaint filed by ██████████ ██████████ a Consumer, regarding a claim filed under the Rehabilitation Act of 1973, (29 U.C.S. 701, et. seq). The Consumer requested the hearing by filing the due process request on April 16, 2017. The hearing was held at the ACCES –VR office located at ██████████ ██████████ ██████████, ██████████ ██████████

ISSUE:

Whether ACCES-VR properly declined to fund the Consumer’s self-employment plan to open a ██████████ ██████████?

CONSUMER’S POSITION:

The Consumer contends that ACCES-VR inappropriately denied ██████████ request to fund ██████████ self-employment plan to open a ██████████ home.

ACCES-VR’s POSITION:

ACCES-VR contends that the Consumer’s self-employment plan was not viable and exceeded the \$11,000 maximum amount allowed for a self-employment plan.

FINDINGS OF FACT:

██████████ ██████████ is a Vocational Rehabilitation Counselor for the Consumer. On or about December 1, 2015, the Consumer told ██████████. ██████████ that ██████████ wanted to open ██████████ own ██████████ business. At that time, the Consumer informed ██████████. ██████████ that ██████████ had obtained a “Pass Plan” from the Department of Social Security. ██████████ ██████████ informed the Consumer that

ACCES-VR does not approve Social Security Pass Plans and, consequently, recommended that the Consumer go to the Small Business Administration to have [REDACTED] plan reviewed.

Thereafter, the Consumer requested that [REDACTED] case be closed. However, on May 9, 2016, the Consumer requested that [REDACTED] case be re-opened. Subsequently, [REDACTED] [REDACTED] provided the Consumer with a Self-Employment Plan Form (Exhibit 2 VR-70). At or about this time, the Consumer requested that ACCES-VR purchase a vehicle for [REDACTED] l [REDACTED] business. [REDACTED] [REDACTED] informed the Consumer that pursuant to its policy, ACCES-VR does not provide vehicles to its consumers.

On or about August 11, 2016, the Consumer submitted a Self-Employment Plan to [REDACTED]. [REDACTED] At that point, [REDACTED] [REDACTED] requested that a psychological assessment be administered to the Consumer in order to determine [REDACTED] readiness and ability to run a [REDACTED] business. To that end, Dr. Gus Papapetrou, Ph.D, conducted a psychological assessment of the Consumer, which found that the Consumer had the ability to run a business as long as [REDACTED] took [REDACTED] medication and as long as [REDACTED] illness remained in remission. The psychological report also noted that the Consumer possessed the appropriate credentials because the Consumer had an Associate Degree in [REDACTED] Science and because the Consumer had some experience working in a [REDACTED] [REDACTED].

On October 19, 2016, [REDACTED] [REDACTED] met with [REDACTED] supervisor at ACCES-

VR to discuss the Consumer's request. At that time it, ACCES-VR determined that the Consumer's business plan needed to be reviewed and/or assessed by an outside consultant (Exhibit VR 70, exhibit 2). To that end, [REDACTED] submitted the Consumer's plan to [REDACTED] Consulting Group, who conducted an assessment of the Consumer's business plan.

On February 13, 2017, [REDACTED] met with the Consumer and reviewed [REDACTED] business plan and the [REDACTED] report. The report confirmed that the Consumer had the necessary academic and work experience to work in the [REDACTED] field. However, the report indicated that the Consumer did not have the adequate financial acumen to maintain [REDACTED] business plan successfully. Specifically, [REDACTED] indicated that location of the business and the lack funds for the start-up costs were inadequate to start and maintain the Consumer's proposed business. [REDACTED] noted that the start-up costs were estimated at over \$100,000 and that the Consumer still required additional funds to sustain and maintain the business (Exhibit 5). The report further noted that the Consumer did not have any experience with invoicing or managing cash-flow, which would be an obstacle to [REDACTED] success. Additionally, the [REDACTED] report indicated that the business plan showed a negative start-up expense of \$159,018 and that there was no explanation as to how the Consumer would absorb this expense, except to note that [REDACTED] required "additional investment." [REDACTED] was also concerned about the Consumer's "income projections" and how the Consumer would be able to

fund the business if [REDACTED] income projections were lower than expected.

Finally, [REDACTED] reported that the business location was a concern because even a small space, with taxes and utilities, would cost approximately \$6,000 per month, which did not include the costs to retrofit the space into a [REDACTED] [REDACTED].

On cross-examination, [REDACTED]. [REDACTED] conceded that [REDACTED] did not reference a possible business location on [REDACTED] in [REDACTED], which the Consumer stated [REDACTED] had identified.

[REDACTED] is [REDACTED] supervisor. [REDACTED] testified that [REDACTED]. [REDACTED] told [REDACTED] about the results of the [REDACTED] report and that [REDACTED] was aware of the amount of the start up costs for the Consumer's proposed business.

On Cross: [REDACTED]. [REDACTED] stated that [REDACTED] could not remember meeting with the Consumer and [REDACTED]. [REDACTED] to discuss the Consumer's business plan.

The Consumer testified that sometime in 2015 [REDACTED] began working with [REDACTED] [REDACTED] on [REDACTED] proposed self-employment plan. However, the Consumer stated that ACCES-VR did not give [REDACTED] any "concrete" information regarding the financing of [REDACTED] self-employment plan.

With respect to [REDACTED] the Consumer noted that [REDACTED] had a second meeting with [REDACTED] in January 2017, wherein they discussed [REDACTED] experience in the [REDACTED] business and what it would take to open a [REDACTED] [REDACTED]. However, according to the Consumer, they never discussed [REDACTED]

business plan.

Regarding the proposed business location on [REDACTED] Avenue, the Consumer testified that [REDACTED] current pays \$600 a month for an office space located on [REDACTED] Avenue in [REDACTED], which [REDACTED] pays for from funds [REDACTED] received from the Social Security “Pass to Achieve” program.

The Consumer also testified that [REDACTED] discussed the issue of obtaining a Hearse and the pricing of the business equipment with [REDACTED]. [REDACTED] However, [REDACTED] denied that they had discussed the start-up costs. Additionally, the Consumer stated that the estimated start-up cost was actually \$17,000 and not \$158,000, and that the \$158,000 was actually the “projection cost” after the business was up and running.

On cross-examination, the Consumer stated that [REDACTED] did not know how much ACCES-VR was allowed to fund for a self-employment plan. However, the Consumer conceded that the self-employment policy indicated that it was only \$11,000 and that the participant would have to fund ten percent of the \$11,000.(Exhibit 2). The Consumer also conceded that ACCES-VR does not rent, lease or purchase vehicles (Exhibit 2).

LAW:

ACCES-VR is the New York State Agency authorized to administer federal funds under the Federal Rehabilitation Act of 1973 (“ACT”), which is codified at U.S.C. 701 et. Seq. ACCES-VR administers a federal program under Title I 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. (Section 2(b)). However, the ACT does not confer any entitlement to vocational rehabilitation (Section 102(a)(3)(B)).

To implement the ACT at the state level, ACCES-VR had promulgated various written policies. The Consumer Involvement Policy establishes various mechanisms that allow the consumer to play a major role in developing his Individual Plan for Employment [REDACTED] program.

ACCES-VR's Vehicle Modification Policy (IPE). However, the consumer does not have complete control of

441:00 states that ACCES-VR does not purchase, rent or lease vehicles...(Exhibit 2).

ACCES-VR's Self –Employment Policy 1301.00 D9(i) states, in relevant part, that ACCES-VR may fund up to \$11,000 of start –up costs and that in cases where ACCES-VR will contribute more than \$5,000 in start-up costs, consumers must have equity (cash or material) in the self-employment venture equal to at least 10 percent of the value of start-up costs to be funded by ACCES-VR.

ACCES-VR's Self –Employment Policy 1301.00 C states, in relevant part, that if a counselor or Self-Employment Evaluation team feel a lack of expertise to evaluate a consumer proposal, they can seek advice from independent consultants.

DISCUSSION:

After reviewing the facts of this hearing and the policies, regulations,

and law relating to this matter, I find that ACCES-VR's denial of funding for the Consumer's Self-Employment Plan for a [REDACTED] home was proper. Specifically, I find the Consumer's request for funding exceeded the \$11,000 allowed under ACCES-VR's policy and that the Consumer's business plan was not viable because there was no evidence that the Consumer could obtain sufficient investment to cover the cost of opening a [REDACTED] [REDACTED] and pay the expenses associated with operating the business. I note that although the Consumer claimed that [REDACTED] did not discuss [REDACTED] business plan, the report prepared by [REDACTED] clearly shows that the Consumer's business plan was carefully evaluated. Thus, I cannot credit the Consumer's contention that [REDACTED] business plan was not properly considered. Further, I note that although the Consumer is a highly capable person who will likely achieve success in the workplace, ACCES-VR is not required to optimize the services provided to the Consumer. Accordingly, under these facts, I find that the denial of funding for the Consumer's self-employment business plan was proper.

Dated: August 21, 2017

[REDACTED]
Impartial Hearing Officer

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.

[Note to IHO's: A list of Witnesses and Exhibits introduced at the hearing would typically follow this page.]

Exhibit and Witness List:

Exhibit 1-ACCES-VR policy 210.00.

Exhibit 2-Self-Employment Plan, VR 70 for [REDACTED].

Exhibit 3-Start-up Costs Worksheet.

Exhibit 4- Walter Goldman e-mail dated 1-24-2017.

Exhibit 5-[REDACTED]p Self-Employment Evaluation Plan for [REDACTED]

Exhibit 6-[REDACTED] business plan

Exhibit 7-Second Business Plan in the record.

Consumer Exhibit A-2017 General Supply Catalog Price List. Marked and received in evidence; 6-20-17, R.T.

Consumer B-handwritten summary of the start-up costs, five pages; is that right?

Witnesses:

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]