

NEW YORK STATE DEPARTMENT OF EDUCATION OFFICE OF
ADULT CAREER AND CONTINUING EDUCATION SERVICES

[REDACTED]

Petitioner

Against

DECISION OF IMPARTIAL
HEARING OFFICER

OFFICE OF ADULT CAREER AND CONTINUING
EDUCATION SERVICES (ACCES)

Respondent

Before: [REDACTED], Impartial Hearing Officer

The undersigned was designated by The State Education Department/Office of Adult Career and Continuing Education Services – VR (hereinafter, “ACCES” or “the Agency”) to serve as Impartial Hearing Officer in the matter above.

After notice was given, a hearing was opened on [REDACTED] at the [REDACTED] District Office of ACCES -VR, [REDACTED]. The hearing was scheduled to begin at [REDACTED]. ACCES was represented by [REDACTED] Assistant District Office Manager. Petitioner [REDACTED] was represented by [REDACTED] [REDACTED] [REDACTED] [REDACTED]. [REDACTED] also appeared on [REDACTED] behalf.

[REDACTED] and [REDACTED] testified on behalf of the Agency. [REDACTED]
[REDACTED], and [REDACTED] testified on behalf of the Petitioner.

Exhibits

IHO 1 - Notice of Hearing [REDACTED]

IHO 2 - Notice of Hearing [REDACTED]

- IHO 3 - Due Process Request [REDACTED]
- Agency 1 - Case Note 1 [REDACTED]
- Agency 2 - Case Note [REDACTED]
- Agency 3 - Individualized Diagnostic Vocational Evaluation (Abilities, Inc.)
- Agency 4 - Case Note [REDACTED]
- Agency 5 - Case Note [REDACTED]
- Agency 6 - 405.00 College and University Training Policy
- Agency 7 - Fact Sheet VR-844
- Agency 8 - Case Note [REDACTED]
- Agency 9 - IPE (Change - dated [REDACTED])
- Agency 10 - IPE (Change – dated [REDACTED])
- Agency 11 - Case Note [REDACTED]
- Agency 12 - Case Note [REDACTED]
- Agency 13 - Decision by IHO [REDACTED] (dated [REDACTED])
- Agency 14 - Case Note [REDACTED]
- Agency 15 - Letter from [REDACTED] to [REDACTED] (dated [REDACTED])
- Agency 16 - IPE (Change – dated [REDACTED])
- Agency 17 - Case Note [REDACTED]
- Agency 18 - Case Note [REDACTED]
- Agency 19 - Case Note [REDACTED]
- Agency 20 - Case Note [REDACTED]
- Agency 21 - Case Note [REDACTED]
- Agency 22 - Case Note [REDACTED]
- Agency 23 - Case Note [REDACTED]
- Agency 24 - Email Thread
- Agency 25 - Resume – [REDACTED]
- Agency 26 - Android Developer
- Agency 27 - Case Note [REDACTED]
- Agency 28 - Case Note [REDACTED]
- Agency 29 - Case Note [REDACTED]

Agency 30 - Email [REDACTED]

Petitioner's A Graduation Status/miscellaneous

Petitioner's B Letter from [REDACTED] - OTR (dated [REDACTED])

Petitioner's C [REDACTED] New Transfer Student Checklist

Petitioner's D Summary Report for Computer Network Support Specialist

Petitioner's E [REDACTED] Community College Fact Book [REDACTED]

Petitioner's F Letter from [REDACTED]

Petitioner's G Email from [REDACTED] to [REDACTED] (dated [REDACTED])

Issue

The parties agreed that the issue for the Impartial Hearing Officer to decide is whether the Agency will sponsor [REDACTED] in a program to earn a Bachelor of Science Degree. (R. 28).

Opening Statements

The Agency stated, through its representative, [REDACTED] that the Petitioner, [REDACTED] came to the Agency in [REDACTED] and that [REDACTED] requested college sponsorship at that time. [REDACTED] goal was to earn an Associates Degree and to become a computer support specialist.

The petitioner struggled academically while [REDACTED] was enrolled in [REDACTED] Associates Degree program. [REDACTED] was not able to complete either the program's core courses or the required remedial courses within the time frames mandated by Agency. The Agency was not able to sponsor the Petitioner for [REDACTED] final semester after the time frames embodied in Agency Policy was applied.

The Agency granted a request for a waiver of its time limitation policy to afford the Petitioner with one last semester to complete [REDACTED] remedial course requirements. The Petitioner did not complete [REDACTED] remedial course requirement at the conclusion of the semester.

The Agency remains willing to provide the Petitioner with job placement services. The Petitioner is now seeking Agency sponsorship so that the Petitioner can earn a Bachelor of Science Degree.

The Petitioner, through [REDACTED] stated that [REDACTED] has made great strides in courses related to computer science. [REDACTED] further stated that [REDACTED] limitations prevent [REDACTED] from working at a job that requires writing, wiring, and heavy lifting; and that a job involving computer programming was much better suited for [REDACTED]. The Petitioner wants to be sponsored in a computer programming college course that will provide a Bachelor of Science Degree at its conclusion.

The Petitioner further stated that [REDACTED] enrolled at [REDACTED] in [REDACTED] after [REDACTED] withdrew from the extra semester at [REDACTED] Community College that the Agency agreed to sponsor in the waiver; that [REDACTED] is currently attending [REDACTED] and, that [REDACTED] will receive [REDACTED] Associates Degree from [REDACTED] as soon as [REDACTED] completes a course at [REDACTED] and transfers the credits earned to [REDACTED]

The Petitioner also asserts that [REDACTED] wants to have a Functional Testing Evaluation (FTE) if [REDACTED] request for sponsorship in a Bachelor of Science program is denied because [REDACTED] current employment goal of computer specialist requires the performance of physical tasks that [REDACTED] cannot perform.

Testimony

[REDACTED] is a certified rehabilitation counselor who has worked as a vocational rehabilitation counselor (VRC) with the Agency for [REDACTED] years. [REDACTED] earned a Master's Degree in vocational rehabilitation counseling from [REDACTED]. [REDACTED] currently has a case load that includes [REDACTED] clients who require transitional counseling as they move on from high school to college. [REDACTED] asserted that [REDACTED] is very familiar with the Agency's policies and procedures related to college related services.

[REDACTED] began working with the Petitioner at the end of [REDACTED] [REDACTED] recommended that the Petitioner undergo a Diagnostic Vocational Assessment after noting impairments that included [REDACTED] [REDACTED] and a [REDACTED]

The vocational assessment recommended against college level academics. It did recommend

enrollment in a trade school with employment goals that included computer support specialist, computer network support specialist, computer automated teller machine and office machine repairs. VRC [REDACTED] considered the results of the DVE while making subsequent decisions involving the services that the Agency would provide to the Petitioner.

An initial IPE identified computer network support specialist as the Petitioner's employment goal. [REDACTED] on behalf of the Agency, also agreed that the Agency would provide college sponsorship on a probationary basis that required the Petitioner to earn grades of not less than a C. The Petitioner's ability to pass [REDACTED] remedial classes would also be considered for purposes of determining future college sponsorship. (R. 67 – 68).

Counselor [REDACTED] advised the Petitioner that the Agency could no longer continue to sponsor [REDACTED] enrollment in an Associate's Degree program at [REDACTED] when the Petitioner failed to pass remedial courses after [REDACTED] attempts. (R. 80).

[REDACTED] is a senior vocational rehabilitation counselor (SVRC). [REDACTED] has been with the Agency since [REDACTED]. [REDACTED] holds a Master's Degree in rehabilitation counseling from the University of [REDACTED]. [REDACTED] works with transition age Agency clients who are contemplating college as they move on from high school. [REDACTED] works with individuals who are seeking college training, trade school training, and job placement. [REDACTED] has been VRC [REDACTED] supervisor since [REDACTED]. [REDACTED] supervisory duties have included consultation, review, and approvals related to services received by or requested for the Petitioner. [REDACTED] also reviews Individualized Plans for Employment (IPEs).

SVRC [REDACTED] offered into evidence a prior Decision involving the Agency and the Petitioner. The Decision, dated [REDACTED] was rendered by IHO [REDACTED] after a hearing that was held on [REDACTED]. IHO [REDACTED] determined that the Agency was not required to provide the Petitioner with continuing sponsorship in pursuit of an Associate's Degree when, after numerous unsuccessful attempts, it was uncertain that the Petitioner could pass remedial courses that were required before the Petitioner could move onto core courses. The Decision applied to semesters up to and including the spring semester of [REDACTED].

After IHO [REDACTED] issued [REDACTED] Decision the Agency learned that the Petitioner was very close to earning [REDACTED] Associates Degree from [REDACTED]. The Agency agreed to issue a waiver that would afford the Petitioner with sponsorship for the fall [REDACTED] semester only so that the Petitioner could complete the requirements necessary to receive [REDACTED] Associate's Degree. An amended IPE, that memorialized the one-semester waiver, pledged subsequent services that were limited to job placement. (R 98). The employment goal remained computer support specialist.

The Agency learned in [REDACTED] that the Petitioner did not complete the fall [REDACTED] semester at [REDACTED] when VRC [REDACTED] asked the Petitioner to provide grades for the semester. The Petitioner advised VRC [REDACTED] that [REDACTED] withdrew from a [REDACTED] course because the Petitioner found the course to be too hard. [REDACTED] suggested that [REDACTED] and the Petitioner should discuss job placement services. The Petitioner responded by advising VRC [REDACTED] that [REDACTED] wanted to enroll in a program geared to receiving a Bachelor's Degree.

In January [REDACTED] the Petitioner enlisted the help of [REDACTED] a representative from CAP. [REDACTED] requested a Functional Capacity Evaluation (FCE). The Agency stated that they have agreed to initiate the process for providing a FCE. However, the offer to provide an FCE requires the Petitioner to agree to accept job placement services. The Agency states that the Petitioner has acquired skills that render [REDACTED] employable. The Agency also stated that they have offered to provide additional services related to securing a "work tryout" for the Petitioner.

[REDACTED] asserts that the Petitioner's physical limitations render the Petitioner's current employment goal unrealistic because the Petitioner lacks the ability to use [REDACTED] arm and [REDACTED] hand. [REDACTED] offered letters from an occupational therapist and a college professor that support [REDACTED] assertions. [REDACTED] wants an FCE so that the Agency will realize that the Petitioner's employment goal is not a viable one. [REDACTED] believes that [REDACTED] the Petitioner, is capable of doing work that is cerebral in nature; but not physical in nature. [REDACTED] stated that an FCE would establish the limits of [REDACTED] physical abilities.

[REDACTED] stated that the Petitioner [REDACTED] applied for jobs; but that [REDACTED] is not a viable candidate

because [REDACTED] does not have a Bachelor's Degree. [REDACTED] further asserted that the Petitioner is not likely to be hired without one because [REDACTED] lacks work experience that could compensate for lack of it. [REDACTED] offered letters from a college professor who support that position.

[REDACTED] testified that [REDACTED] began attending [REDACTED] in [REDACTED] [REDACTED] chose [REDACTED] for two reasons. The first is that [REDACTED] will permit a transfer of credits [REDACTED] earns at [REDACTED] so that [REDACTED] can complete [REDACTED] requirements [REDACTED] [REDACTED] Associate's Degree. The second is that [REDACTED] hopes to continue attending [REDACTED] in pursuit of a Bachelor's Degree. [REDACTED] needs credits from one [REDACTED] course from [REDACTED] to get [REDACTED] Associate's Degree.

Findings of Fact

On [REDACTED] Impartial Hearing Officer [REDACTED] held a hearing between the parties to this hearing to decide the issues of whether the Agency “properly denied sponsorship for additional semesters of college for the Consumer and whether the Consumer is eligible for a waiver for additional college sponsorship”. Impartial Hearing Officer [REDACTED] determined, in part, that the Petitioner (Consumer) was not eligible for additional college sponsorship by the Agency because the Petitioner “had reached the maximum benefits” that the Agency was permitted to provide. [REDACTED] further decided that the Agency is not required to optimize services provided to the Consumer by continuing college sponsorship when it is uncertain if the Consumer can pass remedial reading, remedial writing, and remedial English courses necessary to progress onto core courses.

After Impartial Hearing Officer [REDACTED] issued [REDACTED] Decision the Agency granted a waiver for the Petitioner to attend one final semester during the fall of [REDACTED] so that the Petitioner could complete the last course necessary to earn an Associates Degree. The Agency agreed to grant the waiver with the understanding that the Agency would not provide any subsequent college related services; and, that the Agency would provide the Petitioner with job placement services at the conclusion of the semester.

The Petitioner withdrew from [REDACTED] in the fall of [REDACTED] [REDACTED] did not

complete the fall [REDACTED] semester.

The Petitioner enrolled in [REDACTED] in [REDACTED] with the intention of transferring credits [REDACTED] earned at [REDACTED] to [REDACTED] [REDACTED] has not yet completed the courses necessary to receive [REDACTED] Associate's Degree.

Discussion

The undersigned heard much of the testimony that the parties offered during the hearing on [REDACTED] [REDACTED] with a declared understanding that hearing the evidence from the former hearing would be limited to providing the undersigned with a complete background. The undersigned specifically advised the parties that the undersigned would not disturb the Decision rendered by IHO [REDACTED] in [REDACTED] [REDACTED] [REDACTED] also advised the parties that [REDACTED] would only consider events that occurred after the prior Decision was rendered when deciding the issue presented for this hearing – whether the Agency's recent decision to deny the Petitioner's request for sponsorship in any college program and particularly a Bachelor's Degree - is supported by substantial evidence.

Both the Agency and the Petitioner, by way of [REDACTED] representatives, who included [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] a representative from CAP, agreed that they will strive to obtain a Functional Capacity Evaluation. The undersigned will not address the FCE logistics in light of the agreement by the parties to arrange one.

In [REDACTED] IHO [REDACTED] determined that the Agency correctly applied the Length of Training provisions contained in its College and University Training Policy 405.00 based on the Petitioner's failure to complete required course work within the time parameters provided in the rule. Neither party offered evidence in this hearing of any new events that might mitigate or change the disposition of IHO [REDACTED] Decision. Additional events that did occur since the Decision by IHO [REDACTED] include a waiver by the Agency that afforded the Petitioner one last opportunity to attend [REDACTED] [REDACTED] for the fall of [REDACTED] so that the Petitioner could complete the courses necessary to complete the requirements necessary to earn [REDACTED] Associate's Degree; the Petitioner's withdrawal

from the fall semester; and, [REDACTED] subsequent enrollment at another school in January [REDACTED]. The Petitioner has failed to raise any viable argument for disregarding, altering, or mitigating the Decision of IHO [REDACTED] or for disregarding the agreement [REDACTED] reached with the Agency when the Agency granted [REDACTED] request for a waiver to attend [REDACTED] in the fall of [REDACTED].

The Petitioner's conversion of [REDACTED] request for college training from [REDACTED] former pursuit of an Associate's Degree to [REDACTED] present request to pursue a Bachelor's Degree is a distinction without a difference. Converting [REDACTED] request from a request for sponsorship in pursuit of an Associate's Degree to pursuit of a Bachelor's Degree does not change the fact that any request [REDACTED] makes remains subject to IHO [REDACTED] Decision which applied the Length of Training provisions in the Agency's College and University Training Policy 405.

Decision

The Agency's determination to deny the Petitioner's request for additional sponsorship in a college training program that pursues a Bachelor's Degree is upheld.

Dated: [REDACTED] New York

[REDACTED]
Impartial Hearing Officer

An Original or Copies of this Decision were mailed to:

Anne Sternbach
ACCES-VR
89 Washington Avenue
Room 560 EBA
Albany, New York 12234

[REDACTED]
[REDACTED]
ACCES-VR
[REDACTED]

