2015-#12

STATE OF NEW YORK
COMMISSIONER OF EDUCATION

==========X

[redacted]

Consumer

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AUG 19 2015
BY:

- against -

ACCES-VR

Respondent

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DECISION & ORDER

Hearing Officer: [redacted], Esq.
Date of Hearing: 7/14/15

INTRODUCTION

On May 28, 2015 the office of Adult Career and Continuing Education Services (ACCES) of the NY State Department of Education appointed me to act as the impartial hearing officer (IHO) in a case brought by the Consumer under the Federal Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.). The Consumer requested the hearing by filing a due process complaint with ACCES on May 21, 2015 (IHO Exhibit #2). The hearing was conducted on July 14, 2015 at ACCES's [redacted] office, located at [redacted], NY. A list of all the exhibits introduced as evidence at the hearing is attached to this decision.

The Consumer had previously filed a due process complaint with ACCES involving related issues on February 10, 2015 (ACCES #27). However, she withdrew this earlier complaint when she filed the present complaint on May 21, 2014 (Hearing Officer #2).

ISSUE

Did ACCES act appropriately and lawfully under federal and state law in refusing to pay for the Consumer's training as a Patient Care Technician (PCT), after she had received ACCES funded training to become a Certified Alcoholism and Substance Abuse Counselor (CASAC)?

CONSUMER'S CASE

The Consumer did not present a chronological narrative of her case history. A more detailed summary of the history can be found in the following section of this decision. However, in her direct testimony and on cross-examination, she made the following points.

She testified that she had suffered from alcoholism, but was now in recovery and was attending Alcoholic Anonymous meetings (T. at 102, 112). However, she noted that she still suffers from depression (T. at 104).

In response to questions from the IHO about her educational and job history, the Consumer testified that she attended Touro College in 2006, but dropped out

because she could not "keep up" her GPA (T. at 101). She explained that she had 15 years of experience in sales, including real estate, and had served as the director of a private security company until it went out of business (T. at 98-100).

In response to a question from the ACCES representative, the Consumer explained that when she was in treatment for alcohol abuse, one of her counselors, who was impressed with her progress, suggested that she consider counseling as a career (T. at 113). The treatment program then referred her to [redacted], so that she could study to become a CASAC (T. at 113).

Discussing her classroom CASAC training at [redacted], which was paid for by ACCES, she described the school as a "living hell" (T. at 94). She explained that she had undergone several major surgeries while enrolled at the school and had missed some classes as a consequence (T. at 85-7). She also complained that some school administrators had treated her unfairly, because she had "stood up" for her rights while at the school (T. at 89).

However, toward the end of her testimony, she acknowledged that she had learned "a lot" from the classroom training and that the professors were "excellent" (T. at 110).

The Consumer also blamed [redacted] and ACCES for delays that she encountered in obtaining the necessary paperwork so that she could receive her CASAC trainee certificate (CASAC-T) from the NY State Office of Alcohol and Substance Abuse (OASAS) (T. at 92-3).

After finally obtaining the CASAC-T, she testified that she worked briefly as a counselor at [redacted], which she described as a provider of support services for 60 women and 15 children (T. at 108). She characterized the environment at [redacted] as "stressful" because the clients were either on parole or probation from the criminal justice system (T. at 108-9). [redacted] was also poorly managed, she alleged (T. at 110).

She testified that she quit her job at [redacted] on May 31, 2015 after only three weeks on the job and is no longer looking for employment as a CASAC (T. at 86, 104).

In general, the Consumer was critical of the services she received from ACCES, claiming that her

counselor "never had my side" and that ACCES did not help her find suitable employment (T. at 96-7). According to her testimony, ACCES forced her into the CASAC program and never informed her that it generally paid for only one training (T. at 87, 102).

She explained that she was no longer interested in the CASAC field because of her experiences at [redacted] and [redacted] and expressed concern that encounters with alcoholics and substance abusers could act as "triggers" for her own problems (T. at 104, 109). She added that she was now interested in studying to become a PCT or massage therapist and submitted documents into evidence to show that courses in these fields were provided by schools in the local area (T. at 87, Consumer A, B).

ACCES'S CASE

ACCES'S first witness was [redacted], who testified that she is employed as a Vocational Rehabilitation Counselor at ACCES, where she has worked for 12½ years (T. at 16-7). She is a licensed mental health counselor and certified rehabilitation counselor and holds a Master's degree in rehabilitation counseling from NYU (T. at 16).

According to her testimony, the Consumer had been referred to ACCES by [redacted] in the fall of 2013 (T. at 18). [redacted] testified that the Consumer had been diagnosed with alcohol dependence and depression and submitted medical reports as corroboration (T. at 19, ACCES #1, 2).

She explained that when the Consumer expressed a desire to become a CASAC, she advised her to obtain a GED, since this was one of the credentialing requirements for a CASAC (T. at 32). She also asked her to prepare an essay explaining why she wanted to become a CASAC (T. at 18, ACCES #5).

After the NYS Department of Education informed her in July 2014 that the Consumer had qualified for her GED, [redacted] testified that she prepared an Individualized Employment Plan (IPE), which the Consumer signed on July 9, 2014 (T. at 33, ACCES #8).

[redacted] summarized the terms of the IPE, pointing out that ACCES agreed to pay $4700 for the Consumer's CASAC training at [redacted], plus $530 for miscellaneous expenses including transportation (T. at 34). The Consumer began her classroom training on July 28, 2014, according to her testimony (T. at 34).

[redacted] testified that, during her time at [redacted], the Consumer had problems with attendance and lateness and was even placed on probation (T. at 35). She also noted that the Consumer had behavior issues and had walked out of a meeting with her when she visited [redacted] (T. at 36). She also submitted documents showing that various administrators at [redacted] had complained about the Consumer's attitude (ACCES #16-18, 21).

During her testimony, the witness described the credentialing process for CASACs in New York State. To summarize briefly, the candidate must complete 350 hours of classroom training before receiving a CASAC-T from OASAS. After receiving the CASAC-T, the candidate must then complete 6000 hours of work experience at approved work sites and pass an examination before becoming a fully credentialed CASAC (T. at 47-9).

[redacted] testified that, in December 2014, the Consumer had informed her and her supervisor [redacted], who also testified at the hearing, that she no longer wanted to work in the CASAC field and wanted to receive training to become a licensed practical nurse (LPN) (T. at 40). [redacted] explained that ACCES was unable to

grant this request for a second training since the Consumer was still in training to become a CASAC (T. at 41).

On February 5, 2015, the Consumer filed a due process complaint, alleging that [redacted] had not issued a Certificate of Completion (C of C), which she needed to prove that she had completed the required 350 hours of classroom training (ACCES #27). She further complained that [redacted] was not helping her find an internship and asserted that she no longer wanted to become a CASAC (ACCES #27).

[redacted] submitted a case note into evidence showing that before sending the Consumer a due process complaint form, she spoke to her on the telephone and told her that ACCES could not pay for training in a new field and that [redacted] would provide placement services once she obtained her CASAC-T (ACCES #23). She also testified that the Consumer was not entitled to a final C of C at the time of the complaint because she was short of the required 350 hours of classroom training (T. at 43, 46).

[redacted] observed that the issues involving the C of C were ultimately resolved and the Consumer received

the document later in February and her CASAC-T the following month (T. at 46, 50). As noted in the Introduction to this decision, the Consumer formally withdrew the first complaint when she filed the current one (IHO #2).

[redacted] briefly discussed the Consumer's job at [redacted], describing it as a treatment program in a shelter (T. at 52). She explained that the job was a paid position and that the Consumer worked 24-30 hours per week (T. at 57).

At the conclusion of her testimony, [redacted] opined that the Consumer could be successful as a CASAC "in an entry level position in an environment where she would be comfortable" (T. at 55). She also noted that the Consumer never mentioned massage therapy as a career option in any of her conversations with her (T. at 58).

The next witness for ACCES was [redacted], who testified that she is employed as a Senior Rehabilitation Counselor at ACCES, where she has worked for 14 years (T. at 61). She is a certified rehabilitation counselor and holds a Master's degree from Hunter College in rehabilitation counseling (T. at 61).

[redacted] testified that she is [redacted] supervisor and that she spoke on the telephone with the Consumer on January 5, 2015 (T. at 63). According to her testimony, the Consumer asked her whether ACCES would pay for LPN training and [redacted] informed her that it would not, because the Consumer had not yet completed her CASAC training (T. at 63-4). [redacted] quoted the Consumer as saying that she would try to find an internship job as a CASAC, but if she could not find one within 6 months, she would file a fair hearing request (T. at 65).

The third witness for ACCES was [redacted], who testified that he is the District Office Manager for the [redacted] office of ACCES, where he has worked for 22 years (T. at 68). He is a licensed mental health counselor and certified rehabilitation counselor and holds a Master's degree in rehabilitation counseling from Hofstra (T. at 68).

He introduced into evidence various policy statements issued by ACCES and briefly summarized their contents (T. at 69-76, ACCES #35-40).

ACCES's final witness was [redacted], who testified that she is the director of counseling at ACCES, where she has worked since 1989 (T. at 77). She is a certified rehabilitation counselor and holds a Master's degree in rehabilitation counseling from Hunter College (T. at 77).

[redacted] testified that she met twice with the Consumer (T. at 77). The first meeting, which the witness described as informal, occurred in March or April of 2015 (T. at 78). She testified that, in response to the Consumer's expressed desire for another type of training, she "informed her that if we're headed toward one type of training, we need to complete it and see if we can find placement" (T. at 78).

The second meeting, which was more formal, occurred on May 21, 2015 (T. at 79, ACCES #33). At this meeting the Consumer expressed her interest in PCT training and her dissatisfaction with [redacted] (T. at 79). [redacted] testified that she informed her that "in terms of our policy and procedure, we had already sponsored her for one type of training that was agreed upon and that it

seemed that it was something definitely doable for her" (T. at 79).

She added that she encouraged the Consumer to look for less stressful jobs in the CASAC field (T. at 79). According to her case note of the meeting, she also offered to provide the Consumer with placement assistance and told her that PCT work might also be stressful (ACCES #33).

At the end of the meeting, the Consumer rescinded her first due process complaint (ACCES #27) and submitted a new due process request, which is the subject of this hearing (T. at 80, IHO #2).

LAW

Before discussing the legal issues in this case, I must address one minor preliminary matter. In her due process complaint, the Consumer requested funding for PCT training (IHO #2). However, the record also contains references to a funding request for LPN training (ACCES #24).

For purposes of simplicity, I shall treat the requests for PCT and LPN training as the same request, since they both relate to the same occupational field.

ACCES is the New York State agency authorized to administer federal funds under the Rehabilitation Act of 1973, which is codified at 29 U.S.C. 701 et seq. ACCES administers a federal program under Title 1 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 (§2(b) of the Act). However, despite its broad reach, the Act specifically provides that it is not intended to confer any entitlement to rehabilitation services (§102(a)(3)(B) of the Act).

After reviewing the evidence in this case, I conclude that ACCES acted appropriately and lawfully under the Act in refusing to pay for the Consumer's PCT training. In reaching this conclusion, I have given substantial weight to the credible testimony of [redacted] and the other vocational counselors, which firmly establishes that ACCES has a general policy of not paying

for multiple trainings (hereinafter the "one training policy") (T. at 41, 63-4, 78-9).

In my opinion, this policy is consistent with the purposes of the Act, since the Act states that services provided under it are not an entitlement (§102(a)(3)(B) of the Act). Moreover in *Murphy v. Office of Vocational and Individuals with Disabilities* (92 NY2d 477), the Court of Appeals acknowledged that VESID, which was the predecessor agency to ACCES, had only "finite" resources and could consider cost in allocating its resources.

If ACCES were to grant the Consumer's request to be trained in a new career path, then the approximately $5000 already spent on her CASAC training will have been wasted. Further, because ACCES's resources are limited, spending money on a second training for the Consumer would reduce the amount of money available to help other deserving applicants achieve their career goals.

Although I credit the Consumer's testimony that she was never specifically told about the one training policy, this argument fails to justify an exception to the policy (T. at 102). There is no evidence that the Consumer ever raised the issue of a second training

during her intake and the Consumer should have known, as a matter of common sense, that she could not tap ACCES's resources every time she changed her career plans.

Apart from these general policy considerations, the particular facts of this case provide a compelling justification for the application of the one training policy, since the Consumer did not diligently follow through on her CASAC training even after she received her CASAC-T. By her own admission, she quit her job at [redacted] after only 3 weeks and is no longer seeking a job as a CASAC (T. at 86, 104).

The Consumer sought to explain her decision to leave the field by pointing to the problems she had encountered at [redacted] and the stressful work environment at [redacted] (T. at 94, 108-9). However, these explanations are not persuasive.

Since the Consumer completed her classroom training and received her CASAC-T, her problems at [redacted] are "water under the bridge" and no longer relevant to this case. Further, the Consumer herself acknowledged that she had learned "a lot" at [redacted] and that the teachers were "excellent" (T. at 110).

As to her experience at [redacted], I credit her testimony that she was uncomfortable dealing with ex-convicts and parolees (T. at 108-9). However, the case note from [redacted] meeting with the Consumer on May 21, 2015, which I credit, shows that [redacted] told the Consumer that ACCES would help her find a less stressful job in the CASAC field (ACCES #33). Instead of availing herself of this offer, she decided to leave the field altogether.

I did not credit the Consumer's testimony that she had found her job at [redacted] on her own and ACCES was not helpful in her job search (T. at 96-7). The documentary evidence submitted by ACCES, which I find credible, shows that even before she completed her courses, [redacted] had contacted [redacted] and several other organizations on her behalf about possible internships (ACCES #20).

The Consumer also asserted at the hearing that Ms. [redacted] forced her into the CASAC program (T. at 87). However, this testimony is not credible and is inconsistent with the essay she wrote before agreeing to

the IPE, which shows that she was eager to pursue this career path (ACCES #5).

I credit the testimony of [redacted], who opined that the Consumer had the potential for success as a CASAC and that this field has many "facets" that would not be as stressful as [redacted] (T. at 55). The courts in New York State have held that hearing officers may rely on the opinions of vocational counselors in deciding whether ACCES has acted appropriately [*Matter of Goldstein* v. *VESID*, 199 AD2d 766 (3rd Dept. 1993)].

Furthermore, as [redacted] pointed out to the Consumer in their May 21st meeting, working as a PCT might also prove stressful (ACCES #33). In addition, if the Consumer could find less stressful work in the CASAC field, it might allay her concern that dealing with alcohol and substance abusers might trigger a return of her own problems with abuse, since a fair reading of her testimony shows that these concerns stemmed largely from her bad experience at [redacted] (T. at 103, 109).

Before closing, I must address one further issue, which was raised at the hearing for the first time. In her testimony, the Consumer stated that she was also

interested in massage therapy as an alternative career path (T. at 90, Consumer B).

However, the Consumer's due process request does not mention massage therapy (IHO #2). In addition, [redacted] credibly testified that the issue was never raised in any of her meetings with the Consumer (T. at 58). I therefore find that the Consumer's request for funding for massage therapy is outside the scope of the complaint and must be dismissed.

CONCLUSION

ACCES acted properly and lawfully in denying the Consumer's request that it fund her PCT training. I urge the Consumer, who has overcome serious personal problems and demonstrated a sincere interest in helping others, to resume her job search and work with her counselors at ACCES to find a suitable opening in the CASAC field

[redacted]

[redacted], Esq.
Impartial Hearing Officer
Dated: August 14, 2015

APPEAL NOTICE

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

WITNESS LIST

CONSUMER

[redacted]

ACCES

[redacted],
Vocational Rehabilitation Counselor

[redacted],
Rehabilitation Counselor

[redacted],
District Office Manager

[redacted],
Director of Counseling

IHO EXHIBITS

#1 Notice of Hearing, dated 5/28/15

#2 Impartial Hearing Request, dated 5/21/15

CONSUMER'S EXHIBITS

A Letter from Access Careers, dated 7/13/15

B Enrollment Agreement with [redacted], dated 6/24/15

ACCESS'S EXHIBITS

#1 Psychiatric Disability Report, dated 8/26/13

#2 [redacted] Letter, undated

#3 Background Case Note, dated 11/18/13

#4 Eligibility Case Note, dated 11/18/13

#5 Consumer's Essay, dated 9/24/13

#6 Letter from NYSED, dated 7/1/14

#7 IPE Development for Original IPE Case Note, dated 7/2/4

(ACCES'S EXHIBITS, CONT.)

#8 IPE, dated 7/2/14

#9 [redacted] Attendance Probation Letter, dated 8/13/14

#10 Case Note, dated 9/3/14

#11 Excerpts from [redacted] Student Policy and Procedures Manual, undated

#12 E-mail to [redacted], dated 9/23/14

#13 E-mail from [redacted], dated 11/11/14

#14 E-mail from [redacted], dated 12/17/14

#15 Case Note, dated 1/5/15

#16 Progress notes from [redacted], various dates

#17 E-mail to [redacted], dated 1/26/15

#18 E-mail to [redacted], dated 1/26/15

#19 E-mail from [redacted] to Consumer, dated 1/26/15

#20 List of internship sites which received Consumer's resume, various dates

#21 [redacted] notes, dated 1/28/15

(ACCES'S EXHIBITS, CONT.)

#22 E-mail to [redacted], dated 1/28/15

#23 Letter from [redacted] to Consumer, dated 1/28/15

#24 Case Note, dated 1/28/15

#25 Case Note, dated 1/28/15

#26 Certificate of Completion for hours completed as of 2/2/15

#27 Due Process Complaint, dated 2/5/15

#28 Case Note, dated 2/10/15

#29 E-mail from [redacted], dated 2/13/15

#30 Final Certificate of Completion, undated

#31 Case Note concerning CASAC-T, dated 3/8/15

#32 Employment (Status 22) Case Note, dated 5/10/15

#33 Case Note, dated 5/21/15

#34 Case Note, dated 6/22/15

#35 Appellate Division decision in *Matter of Goldstein* v. *VESID*, decided 12/16/1993

(ACCES'S EXHIBITS, CONT.)

#36 Employment Outcome Policy (ACCES-VR 010.00), dated 2/03

#37 Employment Outcome Procedure (ACCES-VR 010.00), dated 2/03

#38 Consumer Involvement Policy (ACCES-VR 010.00), dated 2/07

#39 Individualized Plan for Employment Policy and Procedure (ACCES-VR 206.00), dated 2/08

#40 Eligibility for Services Policy (ACCES-VR 202.00), dated 4.09