2015-#3

STATE OF NEW YORK
ADULT CAREER AND CONTINUING EDUCATION SERVICES –
VOCATIONAL REHABILITATION SERVICES

In the matter of:

[redacted],

Petitioner,

-vs-

Adult Career and Continuing Education Services –
Vocational Rehabilitation (ACCES-VR),

Respondent.

FINDINGS and DECISION

Before: [redacted]
Impartial Hearing Officer

For Petitioner: [redacted], **Petitioner *Pro Se***

For Respondent: [redacted], **Senior Counselor for ACCESS-VR's** [redacted], **NY Office**

Place of Hearing: **ACCES-VR Office located at**
[redacted]

Date of Hearing: **October 9, 2014**

RECEIVED
NOV 21 2014
BY: [illegible]

Parties present: [redacted]

In the matter of:

[redacted]

Petitioner,

-vs-

Adult Career and Continuing Education Services – Vocational Rehabilitation (ACCES-VR),

Respondent.

Date of Hearing: October 9, 2014

HISTORY OF CASE BEFORE THIS IHO

A "Chronological Case History/Important Events Case Note" dated August 13, 2014 was written up by the Agency's [redacted] from the NY State's Education Department's Office of Adult Career and Continuing Education Services – Vocational Rehabilitation (hereinafter "ACCES-VR" or "the Agency"), describing the events of that day, in relation to [redacted] conversations with the Petitioner (see Ex. 10). In the last few sentences of that document, [redacted] proposed closing the Petitioner's case for "failure to comply."

The Petitioner did not agree with that last proposal/decision, and therefor he requested an impartial hearing.

On August 21, 2014, the instant Petitioner filed with ACCES-VR a Form VR-711, i.e. a "Due Process Request" – a request for Administrative Review/Mediation/Impartial Hearing. Included in that request was language from the Petitioner stating: "There is no reason I need [to] see a Dr." The form VR-711 was signed by the Petitioner on August 16, 2014 (see Ex. 13).

On August 28, 2014, a "Notice of Hearing" alerting the Petitioner of the date, time, and place of the scheduled hearing was sent by [redacted], Rehabilitation Provider

Specialist of ACCES-VR's Albany, NY Headquarters to the Petitioner at his last known address by regular and certified mail. A copy of said letter was provided to myself as IHO, as well as to [redacted], [redacted], [redacted], [redacted] and [redacted]. A copy of said letter is attached herewith (Ex. 14).

Pursuant to the above request, on October 9, 2014, at 10:AM a hearing was conducted at the Agency's Office in [redacted] NY with myself, Attorney [redacted] conducting the hearing as an Impartial Hearing Officer (hereinafter "IHO").

On November 5, 2014, I received a complete and accurate Transcript of the hearing from Associated Reporters Int'l. Inc.

SOLE QUESTION BEFORE THIS IHO:

Whether ACCESS-VR's prior proposal/decision was appropriate.

Petitioner/Consumer's position:

Petitioner, in his Form VR-711, argued that he was not required to see a doctor (psychologist) to obtain benefits from the Agency.

ACCESS-VR's position:

The Agency argues that the Petitioner should be required to see a doctor (psychologist) to obtain further benefits from the Agency.

LIST OF SUBMISSIONS (header of first page noted)

Respondent's Exhibits (all for ID only)

Ex. 1 "[redacted]" letter to the Petitioner from [redacted] and attached "Medical Report" (2 pages) signed by [redacted], MD of the [redacted] Family Practice and dated June 19, 2012 – total of 3 pages

Ex. 2. "Case Note – Background Information and Current Impressions…" dated May 27, 2014 by [redacted] – 3 pages.

Ex. 3. "Pending Eligibility (Status 07) Case Note -Reason for Extension"…..dated May 27, 2014 by [redacted] –1 page

Ex. 4. "Chronological Case History…" dated June 18, 2014 by [redacted] – 1 page

Ex. 5. "Chronological Case History/Important Events Case Note…" dated June 24, 2014 by [redacted] – 2 pages

Ex. 6. "Chronological Case History…" dated July 9, 2014 by [redacted] – 1 page

Ex. 7. "Chronological Case History…" (three) dated 7/16/2014, 7/25/2014, and 7/25/2014 all by [redacted] – 3 pages

Ex. 8. "Written Plan for Trial Work Experience/Extended Evaluation Case Note" dated August 11, 2014 by [redacted] – 3 pages

Ex. 9. "e-mail from [redacted] to [redacted] and [redacted]' dated 8/11/2014 – 1 page

Ex. 10. "Chronological Case History…" dated August 13, 2014 by [redacted] – 2 pages

Ex. 11. "ACCES-VR 200.00 Referral and Applying for Services Policy (3 pages), ACCES-VR 202.00 Eligibility for Services Policy (7 pages), and ACCES-VR 204.00 Assessment Policy (4 pages)" – information from web site: www.acces.nysed.gov/vr

Ex. 12. "Facsimile Transmittal Form", dated March 21, 2014 from [redacted] to Education Department (3 pages)

IHO FILE DOCUMENTS ADMITTED INTO EVIDENCE

Ex. 13. Form VR-711, "Due Process Request" executed by the Petitioner on 8-16-2014 and filed with ACCES-VR on August 21, 2014

Ex. 14. "Notice of Hearing" letter dated August 28, 2014 from [redacted] to the Petitioner – 2 pages

Ex. 15. Copy of US Postal Form 3811, signed for by the Petitioner 8-30-14 - 1 page

Ex. 16. Letter to Petitioner from IHO [redacted] dated October 10, 2014 – 1 page

SUMMARY OF HEARING

The Petitioner did not appear for the hearing. This IHO called the Agency's head office in Albany, NY on October 9, 2014 at 10:30 AM and inquired if the Petitioner had made any contact with that head office. The receptionist at the Agency's head office in Albany answered in the negative. This IHO also asked all persons at the Agency's [redacted] NY Office if the Petitioner had made any contact with them stating why he would not be at the hearing. All persons at the [redacted] Office answered similarly in the negative.

From [redacted] Rehabilitation Provider Specialist of ACCES-VR's Albany, NY Headquarters, I was subsequently provided a copy of the US Postal Form 3811 (green return receipt card) signed on August 30, 2014 by the Petitioner [redacted] as evidence that [redacted] had properly received the certified letter with notice as to the date, place, and time of his hearing. A copy of same is provided with this decision (Ex. 15).

The Petitioner was afforded, through a letter sent by this IHO on October 10, 2014 to the Petitioner at his last known address, an opportunity to re-open his case for a period of 10 business days, upon a demonstration that his absence from the October 9, 2014 hearing in [redacted] was due to circumstances beyond his control, or for other good cause. A copy of that letter is provided herewith (Ex. 16). This IHO kept the record open for an additional 4 days to comport with the 14 days allowed for in the transcript of proceedings (see Transcript, page 12). Even after a 14 day period had elapsed, no response was ever received from the Petitioner.

On November 5, 2014, this IHO received the transcript from the hearing of October 9, 2014, prepared by [redacted] Inc. I have reviewed the transcript, and it represents an accurate and complete account of what transpired on October 9, 2014.

DECISIONS OF THE IHO

The instant matter is controlled by Federal Statute and regulations (29 USC §§ 701 et seq., 34 CFR §361) as well as NY State statute and regulations (NYS Education Law Article 21, §1001-1009, 8 NYCRR Part 247).

The Petitioner has the burden of proof in the instant matter (See NY State Administrative Procedures Act §306).

In order to prevail, the Petitioner must demonstrate that his position is supported by "substantial evidence". *See* Matter of Goldstein, 199 AD 2d 766 (Third Dept. 1993)."Substantial Evidence" is defined as less than a "preponderance of the evidence", yet is more than a "scintilla of evidence". Due deference will be accorded to the Agency regarding its policies and prior Administrative Decisions pertaining thereto.

In the instant matter, it is clear to this IHO that the Petitioner, by failing to appear, has failed to carry his burden of proof.

This IHO therefore issues the following Orders:

ORDER: it is hereby ordered that all prior recommendations by the Agency are affirmed and upheld;

ORDER: all reasonable and necessary steps are to be taken by the Agency in furtherance of this order.

The Agency's District Office in [redacted], NY is hereby ordered to implement the above orders within 20 days of this decision.

Dated 11-21-2014

[redacted], Impartial Hearing Officer

APPEAL NOTICE: Petitioner: Please take notice that this is a final decision. If you disagree with this decision, you may seek judicial review through an action commenced in a NY State or Federal court of competent jurisdiction.