

PETITIONER: [REDACTED]

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

STATE: NEW YORK; COUNTY OF [REDACTED]

In the matter of a complaint of

[REDACTED]

RECEIVED
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BY: *[Signature]*

that in her pursuit of support for a five-month paralegal certificate program at [REDACTED] University, ACCES-VR had treated her unfairly and had treated her with bias because of her learning disability.

DECISION

I find ACCES-VR's treatment of Petitioner to be reasonable and appropriate and within the scope and power of the organization. I further find that there has been no denial of Petitioner'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 April 6, 2015

[REDACTED]

Impartial Hearing Officer

On February 27, 2015, a hearing was held before me in the matter of [REDACTED]. In attendance were: [REDACTED], Petitioner; [REDACTED], Assistant District Office Manager, ACCES-VR, [REDACTED]; [REDACTED], Vocational Rehabilitation Counselor; and [REDACTED], Senior Vocational Rehabilitation Counselor.

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

[REDACTED] requested an impartial hearing because ACCES-VR will not make a decision on Petitioner's eligibility for educational services without a vocational evaluation.

PETITIONER'S POSITION

Ms. [REDACTED] sought assistance from ACCES-VR to receive support for a five-month paralegal certificate program at [REDACTED] University. Petitioner described her disappointment in dealing with two different vocational counselors at ACCES-VR—first, Mr. [REDACTED] (now retired) and second, [REDACTED] (Transcript, pp. 46-55) [REDACTED] testified that based only on her transcript, which revealed a low GPA and a low cumulative average, [REDACTED] decided that [REDACTED] was not eligible for the agency's support for educational training. Petitioner criticized [REDACTED] because he did not arrange for an assessment. He did not look for medical documentation of her ADHD, and he did not give proper weight to the recommendations and reference letters from her professors, [REDACTED] and [REDACTED]. As for vocational counselor [REDACTED] according to Petitioner, she provided a five second interview, after which, rather than approving support for educational training, the counselor referred Petitioner to an agency for job placement. ... She...([REDACTED])... said you have a skill set, you are not going to be considered for job training at this time, you're going to be referred to [REDACTED] for job placement because you have experience, and you can transfer the skills and ACCES-VR's ...(goal)...is to return people to employment." (Transcript, p52-3)

Petitioner testified that in 2010, she participated in a study of adults with ADHD. She was included in a clinical trial involving the medication, Droxidopa.

█████ introduced into evidence the psychiatrist's report which states, "She...(█████)... did fully meet the criteria for a diagnosis of ADHD by psychiatric evaluation, standardized screening tools, and by ruling out other physical and neurological ailments including by physical exam, neurological exam and laboratory blood tests." (Petitioner's Exhibit #1) Petitioner explained "that...(ADHD)... is the reason I was not ...as...successful in college as I had hoped to be or could have been because I had this condition for many years." (Transcript, p. 71)

To demonstrate that she is capable of academic success in the future, specifically in the paralegal certificate program at █████ University, █████ introduced into evidence letters from her on-line law professors at █████ University (Petitioner's Exhibits 2,3,4) (Transcript, pp. 71-78). In support of Petitioner's reinstatement at █████, Professor █████ had written, "She demonstrated a comprehension of the concepts of the course as well as excellent writing skills." (Transcript, (p. 73) (Exhibit #3). Professor █████ said, " ...she received a B in both courses, however I would rate her performance in my class as superior." (Transcript, p.77), Exhibit # 4)

█████ challenged the psychological assessment, which had been conducted by Dr. █████, at the request of ACCES-VR "... (he)...describes a person who is not capable, who cannot keep up with the work" (Transcript, p. 78). "...he talks a lot about my deficiencies and doesn't mention any of my strengths." (Transcript, p. 85) "He has a lot of errors in terms of my background, my family" (Transcript, p. 86). █████ claimed, "I was denied services and was misled because I believe that I was referred to Dr. █████ for an assessment. My understanding was so that he could write a diagnosis of ADHD, because I had not provided my diagnosis...It was a lot more. It was very misleading. It should have been explained that my appointment was ...(for)...this person to evaluate me personally, ...(look into)...my background..." (Transcript, p. 98)

On the issue of her work experience, █████ described her position of mortgage loan officer as stressful. (Transcript, p 64). More satisfying to her was her job

with [REDACTED] where she worked with judges, probation officers, parole officers, court officers and court clerks. Unfortunately she was injured on the job. She fell, broke her knees, required physical therapy and has been unable to continue in that job. (Transcript, pp. 79-81) [REDACTED] said, "I really want to get back to work. I love working. I'm very good at it." (Transcript, p. 85)

Petitioner clarified the fact that prior to her approaching ACCES-VR for support, she on her own had applied for jobs and had been offered a job in customer service, which she declined. (Transcript, pp. 33-35)

ACCES-VR'S POSITION

ACCES-VR's first witness was [REDACTED], Vocational Rehabilitation Counselor. Based on her review of Petitioner's case record, [REDACTED] noted that [REDACTED] had initially contacted ACCES-VR for assistance in job placement, at which point, a plan was developed and Petitioner was referred to an agency. (Transcript, pp. 23-24) [REDACTED] more recently requested support for training as a paralegal. Vocational Rehabilitation Counselor [REDACTED] looked at Petitioner's transcripts and GPA and suggested that it might not be wise to move in that direction. [REDACTED] also requested corroboration of [REDACTED] self-reported ADHD learning disability. Mr. [REDACTED], [REDACTED] supervisor was brought into the case. According to the case note, he informed [REDACTED] that it was too late to be considered for college sponsorship because her request was made in September and the fall term was about to start. Petitioner requested a change of counselor. [REDACTED] was assigned to the case in late September.

[REDACTED] and [REDACTED] met at the end of October. Petitioner [REDACTED] had been unable to attend two earlier appointments. [REDACTED] described the paralegal certificate program at [REDACTED] which she had researched. To demonstrate her ability to do well in the program, she brought [REDACTED] two letters of recommendation. [REDACTED] testified that she complimented Petitioner on her research and also reminded her of ACCES-VR's mission –to help individuals from where they are, into employment. [REDACTED] said that based on her review of [REDACTED] file, Petitioner's work history, and her transferable skills, she referred

Petitioner to [REDACTED] at [REDACTED] for an employment assessment. [REDACTED] told the counselor she didn't want a job; she wanted a career. (Transcript, p. 25)

On the issue of transferable skills, [REDACTED] cited ACCES-VR's policy: "Another area to stress is that of transferable skills. People need to know from the outset that transferable skills without retraining may enable them to directly obtain employment through ACCES-VR's assistance. This would mean that ACCES-VR would offer job placement assistance, rather than a training program. "

[REDACTED] also referred Petitioner for a psychological assessment because she hadn't received documentation of [REDACTED] learning disability. Petitioner asked if she were to provide a letter indicating her ADHD diagnosis, might the psychological be unnecessary. [REDACTED] explained that the psychological evaluation would provide more than a diagnosis. There might be information regarding limitations and possible accommodations. [REDACTED] noted that a psychological was initially scheduled for November 19th and subsequently rescheduled for December 2nd because Petitioner was unable to attend the earlier date.

[REDACTED] referred to several emails in [REDACTED] file between Petitioner and [REDACTED], Senior Vocational Officer. The issues raised by [REDACTED] in those emails included medical documentation of Petitioner's ADHD, the fact that Petitioner had not yet heard from [REDACTED] and Petitioner's reasons for not wanting job placement.

Also in [REDACTED] file were emails which [REDACTED] had received, updating her on Petitioner's case, informing her that [REDACTED] had in fact, attended the psychological evaluation, and that Miss [REDACTED] of the placement department at [REDACTED] had in fact spoken with [REDACTED].

On December 19th, [REDACTED] emailed [REDACTED], requesting that copies of the psychological be sent to Petitioner and to her CAP representative, [REDACTED]. [REDACTED] complied and suggested a January 12th meeting so that she and [REDACTED] might review the results. [REDACTED] responded that the appointment was fine. On

December 24th, [REDACTED] was copied on an email from [REDACTED] to [REDACTED] and to CAP, inquiring as to the purpose of the January 12th appointment and as to the next steps moving forward. Petitioner indicated that the psychological report did not accurately reflect her skills and abilities and that she didn't want to go over the report with anyone. On January 7th [REDACTED] was copied on an email from [REDACTED] to [REDACTED], cancelling the January 12th appointment, saying she wasn't sure of her availability the next week, but that she would follow up with [REDACTED]. On January 9th, [REDACTED] emailed [REDACTED] indicating her availability on January 26th and January 27th. On January 21st, [REDACTED] phoned [REDACTED] CAP representative, [REDACTED] to find out the status of the case. She was told that [REDACTED] had informed [REDACTED] that CAP was no longer needed. On February 5th, the Notice of Hearing was received. (Transcript, pp. 31-39)

On cross examination, [REDACTED] was asked about [REDACTED] services. She explained that [REDACTED] assesses an individual to determine his background and skill set. Is he eligible for direct placement services? Will he benefit from work readiness? Should the option of refresher training be explored? (Transcript, pp. 37-40)

[REDACTED], Assistant Office Manager, ACCES-VR [REDACTED] explained to Petitioner that the referral to [REDACTED] was to determine the best way to proceed—work readiness, training, or direct job placement. Addressing [REDACTED] directly, [REDACTED] said, "We don't yet know that you're placeable in the area that you want to go into." (Transcript, p. 42) [REDACTED] emphasized that the agency's Eligibility for Services Policy sets out a decision-making process by which a consumer works with his counselor. "The final decision must reflect the vocational rehabilitation counselor's application of professional judgment, applicable laws, regulations and policies and sound planning considerations of the individual's employment factors." (Exhibit D).

Next to testify was [REDACTED], Senior Rehabilitation Counselor. She said that she had become involved with [REDACTED] case in November when Petitioner had indicated her dissatisfaction with what had happened to date. [REDACTED] spoke with

██████████ who explained that she wanted ██████████ to go to ██████████ for an employment assessment and she also recommended that Petitioner have a psychological evaluation because of her self-reported learning disability. ██████████ advocated for both assessments. ██████████ emailed Petitioner, "We are not denying you a change of vocational goal at this point. However, the psychological assessment is needed in order for us to move forward and assist you with vocational planning so you and your counselor can arrive at a goal that you will be successful at. We cannot consider approval of a paralegal goal and assist you with this program until we have information which the psychological will provide." (Transcript, pp.57-8) ██████████ emphasized that the psychological is considered in conjunction with employment factors—consumer's abilities, preferences, past working history and skills. ██████████ offered to participate in the January 12th meeting with Petitioner and ██████████ to discuss the results of the psychological assessment. That meeting never took place. ██████████ suggested that Petitioner was turned off by ██████████ not agreeing to withdraw ██████████ report from her record. (Transcript, p. 66)

APPLICABLE STANDARDS

Section 100.00P Consumer Involvement Procedure

Orientation and Intake

Another area to stress is that of transferable skills. People need to know from the outset that transferable skills, without retraining, may enable them to directly obtain employment through ACCES-VR assistance. This would mean that ACCES-VR would offer direct job placement assistance rather than a training program.

Section 202.00 Eligibility for Services Policy

While individuals are encouraged and expected to actively participate and make meaningful choices in conjunction with their vocational rehabilitation counselor, consumer choice does not mean they unilaterally can control their programs. While the decision making process is a collaborative one, the final decision must reflect the vocational rehabilitation counselor's application of

professional judgment, applicable laws, regulations and policies; and sound planning considerations of the employment factors.

Section 204.00 Assessment Policy

Individual's Participation in the Assessment Process

Assessment is a learning process that requires mutual cooperation between the VR counselor and the individual.

The individual should have an opportunity to respond to assessment results and include a representative (e.g. family member or advocate) in any discussions. While the decision making process is a collaborative one, decisions must reflect the judgment of the VR counselor in accordance with vocational rehabilitation policy.

FINDINGS

Applying ACCES-VR's policies and procedures to the facts of this case, and based on the testimony and evidence presented at the hearing, I find that ACCES-VR's treatment of Ms. [REDACTED] has been reasonable and appropriate. I further find in accordance with ACCES-VR, Section 100.00P Consumer Involvement Procedure, and ACCES-VR, Section 202.00 Eligibility for Services Policy, and Section 204.00 Assessment Policy, there has been no denial of Ms. [REDACTED] rights or entitlements.

I find that ACCES-VR has not denied training at this point. In accordance with the agency's regulations and policy, without an employment assessment of Petitioner, ACCES-VR is unable to make a decision on the appropriateness of educational training for Petitioner. I therefore find that the fact that [REDACTED] has not been approved for the paralegal certificate program at [REDACTED] University does not suggest that she has been denied services, nor that she has been treated unfairly because of her ADHD disability, nor has she been misled.

In the instant case, the critical employment intake, which may be used as an assessment tool, has not yet happened. I therefore find that the case is in limbo. [REDACTED] said, "We are still in the assessment phase...we are not there yet...It should

have been explained to you that we gather information, we have to make our assessment...we need to...do...what we call a vocational evaluation, diagnostic evaluation...Sometimes, we do employability assessments. Sometimes, we need to do medical, functional capacity evaluations. (Transcript, pp. 94-5) ██████ said, "We don't know that you are placeable in the area you want to go into." I find that ACCES-VR's insistence that an employment assessment is a prerequisite to the decision making process of how best to move forward is reasonable and mandated by the policies of the agency. Understanding a consumer's abilities, preferences, past work history and skills is likely to lead to a better employment outcome.

100.00P Consumer Involvement Procedure discusses the issue of transferable skills.

"Another area to stress is that of transferable skills. People need to know from the outset that transferable skills, without retraining, may enable them to directly obtain employment through ACCES-VR's assistance. This would mean that ACCES-VR would offer direct job placement assistance rather than a training program."

Notwithstanding the fact that ██████ is determined to pursue a career as a paralegal, and to that end, enroll at ██████ University in a five-month program, it is clear that the policy of ACCES-VR supports transferring one's skills to another employment option before approving retraining. I therefore find that Petitioner has not been treated unfairly by counselors ██████ and ██████ who have directed her towards job placement before considering retraining.

Section 204.00 Assessment Policy provides:

"Assessment is a learning process that requires mutual cooperation between the VR counselor and the individual."

Supervisor [REDACTED] and Senior Rehabilitation Counselor [REDACTED] assured [REDACTED] that ACCES-VR is prepared to work with Petitioner going forward. They proposed an intake placement at [REDACTED] or, alternatively, they suggested a diagnostic vocational evaluation conducted by a rehabilitation agency. Despite the fact that [REDACTED] insists "I'm all tested out" (Transcript, p. 113), working with [REDACTED] and [REDACTED] may prove productive. In [REDACTED] closing statement, she said, "I would just say that job training is not out of the question. We have not denied job training at this point. We feel we need more assessment." (Transcript, p. 118) [REDACTED] was particularly optimistic at one point during the hearing. "My experience has been very positive. I can see that they... ([REDACTED] and [REDACTED]...are very forthcoming and encouraging." (Transcript, p. 67). The combination of [REDACTED] optimism and [REDACTED] closing statement suggests the possibility of mutual cooperation should the parties decide to continue to work together.

LIST OF WITNESSES

For the Petitioner:

[REDACTED] Petitioner

For the Respondent:

[REDACTED] Vocational Rehabilitation
Counselor

[REDACTED] Senior Vocational Rehabilitation
Counselor

[REDACTED] Assistant District Office Manager,
ACCES-VR, [REDACTED]

LIST OF EXHIBITS FOR THE ARBITRATOR

#A-1 Appointment Letter 7/27/15
#A-2 Petitioner's Request for an Impartial Hearing 1/14/15

LIST OF EXHIBITS FOR THE PETITIONER

#P-1 Letter from Dr [REDACTED]
#P-2 Letter from [REDACTED], JD Adjunct Professor [REDACTED] University 2/20/11
#P-3 Grade for [REDACTED] on Final Project 12/20/10
#P-4 Letter from [REDACTED], JD 2/21/11
#P-5 Announcement of Job Opportunity for [REDACTED] Paralegal Graduate 2/18/15
#P-6 [REDACTED] Psychological Evaluation Report of [REDACTED] 12/2/14

#P-7 E-mail from [REDACTED] 11/3/14

LIST OF EXHIBITS FOR THE RESPONDENT

- #VR-A Consumer Involvement Procedure Section 100.00
- #VR-B [REDACTED] Case Note 10/28/14
- #VR-C Direct Placement Intake
- #VR-D Eligibility for Services Policy
- #VR-E Goldstein v. VESID
- #VR-F Case Note [REDACTED] 11/19/14
- #VR-G Note to [REDACTED] from [REDACTED] 11/24/14
- #VR-H Assessment Policy Section 204