

Chapter 202

ELIGIBILITY

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Section I. Definitions

A. "Family member", for purposes of receiving vocational rehabilitation services, means a person:

1. Who either—
 - a. Is a relative or guardian of an applicant or eligible person; or
 - b. Lives in the same household as an applicant or eligible person;
2. Who has a substantial interest in the well-being of that person; and
3. Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible person to achieve an employment outcome.

B. "Individual with a disability" means any person who:

1. Has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
2. Can benefit in terms of an employment outcome from vocational rehabilitation services.

C. "Individual with a significant disability" means a person:

1. Who has a significant physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
3. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to

cause comparable substantial functional limitation.

- D. “Requires services”** means that, without provision of vocational rehabilitation services, the person would not be able to prepare for, enter into, engage in, or retain gainful employment consistent with his/her strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.
- E. “Substantial impediment to employment”** means that a physical or mental impairment (in light of attendant, medical, psychological, vocational, educational, and other related factors) hinders a person from preparing for, entering into, engaging in, or retaining employment consistent with his/her abilities and capabilities.

Section II. Prohibited Factors

The following factors shall not be considered in determination of eligibility:

- A. No duration of residence requirement shall be imposed that excludes from services any applicant who is present in the State unless the person is in the United States illegally;

GUIDANCE:

1. Length of time in the state shall not be a factor in provision of services to a person provided that the basic conditions of eligibility are met.
2. In the case of inquiries for services from persons residing in other states, no application will be furnished or accepted by DVR until the person is in the state. The person will normally be directed to the closest Vocational Rehabilitation office in the state from which s/he is inquiring.
3. Persons from neighboring states receiving treatment in Vermont facilities will be referred to their home state. DVR may, at its discretion, assist in expediting the referral to the receiving state agency.
4. Occasionally a referred person lives close to the border in a neighboring state but the mailing address is through a Vermont post office. In spite of the mailing address, the person will normally be expected to be served by the agency of the state in which s/he resides. An exception may be allowed if:

- a. The person's employment is/was in Vermont, and s/he carries out the preponderance of his/her business here--for example, shopping and banking; and
- b. Either s/he was injured at work so falls under Vermont's Workers' Compensation Act or his/her employer participates with DVR in an Employee Assistance Program;
- c. Access to vocational rehabilitation counseling (e.g., frequency of contact with a Rehabilitation Counselor and geographic distance from one) is more favorable to the referred person with Vermont DVR than with the neighboring state's rehabilitation agency; and
- d. The person is not already a consumer of public vocational rehabilitation services in another state.

- B. No applicant or group of applicants shall be excluded or found ineligible solely on the basis of the type of disability;
- C. Eligibility requirements shall be applied without regard to the age, gender, race, color, creed, or national origin of the applicant; and

GUIDANCE:

DVR will not normally serve persons under age 18 without permission of the parent, guardian, or legal representative. (See Chapter 306, "School-to-Work Transition" for more information.)

- D. Eligibility requirements shall be applied without regard to the particular service needs or anticipated cost of services required by an applicant or applicant's family.
- E. Referrals of persons with disclosed substance abuse issues will be processed in the usual fashion; there will be no arbitrary waiting period and each case will be evaluated individually. Individuals may be eligible for vocational rehabilitation services based on a substance abuse diagnosis that may be made by a psychiatrist, psychologist, medical doctor or certified substance abuse counselor.

The usual "Certification of Eligibility/Ineligibility" form will be used in accordance with all of its instructions, including those for determining the significance of the disability. Some possible characteristics for consideration in the eligibility and SD determinations which may be related to substance abuse and which may interfere with employment may fall under: Mobility

(slowed reflexes, organic brain damage, gait problems); Interpersonal Skills (mood swings, attitude changes, continued association with active substance abusers, inability to sustain positive personal relationships, having stigma of being a substance abuser); Communication (withdrawal, short attention span, difficulty assimilating information); Self-Care (problems with personal appearance or hygiene, insomnia, oversleeping, memory loss); Self-Direction (poor task completion, difficulty working independently). A review of the information on Substance Abuse in the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition) may be helpful in making these determinations.

Occasionally a person who has abstained from substance abuse for several years applies for DVR services. Although the person may have a disability present (Eligibility Criterion #1), the Counselor should determine if a substantial impediment to employment still exists (Eligibility Criterion #2). The Counselor should assess if there has been cognitive or physical damage caused by the substance abuse or if psychological issues are present. This would then lead to a determination of the need for vocational rehabilitation services (Eligibility Criterion #3.)”

In general, a person who presents with a substance abuse or substance dependence is eligible for VR services based on substance abuse or dependence as the disability provided that the other 2 criteria of eligibility are met. This is true whether the person is actively using substances or is in recovery. There is no requirement to be in treatment to be eligible for VR services

GUIDANCE: Counseling Issues and Case Practices for individuals with substance abuse/dependence disorders: In the past DVR had recommended a standard set of case practices when serving people with substance abuse issues. These recommended case practices included a requirement that the customer to actively seek treatment and pursue abstinence. The guidelines also stated that a person must achieve six months of abstinence before a successful employment outcome was likely. This guidance became increasingly out of alignment with the current practice individualized services and was not consistent with current research. It also did not take into account the wide variety of individual needs and circumstances DVR consumers face or the wide divergence in the research about how to best support people with substance abuse or dependence issues.

Therefore, in 2007 DVR revised policy and guidance around this issue to reflect a more individualized approach. In general DVR counselors should not treat individuals with substance abuse issues in any different or special way than we do for persons with other disabilities. As with any disability

group, DVR services for people with substance abuse issues must be individualized according to each person's individual needs, goals, challenges and circumstances.

The above approach does not preclude a DVR counselor from taking into account substance abuse or treatment issues into the rehabilitation counseling process. For example, a counselor may require a consumer enter treatment or demonstrate a period of abstinence, before providing paid services, if he/she presents a history of repeated job loss, related to a substance abuse issue. This would be no different from the DVR counselor taking into account a history of job loss that was related to an untreated mental illness or physical illness. However, the DVR counselor must assess each person's needs and circumstances individually. If a DVR counselor does require treatment or any other conditions as part of a Individualized Plan for Employment, those conditions must be directly related to the employment goal. The DVR counselor should document in the case record, why said conditions are necessary for the consumer to gain and maintain employment.

Section III. Basic Conditions of Eligibility

- A. An applicant's eligibility for vocational rehabilitation services shall be based on all of the following requirements:
 - 1. The applicant must be an individual with a disability;
 - 2. The disability must constitute or result in a substantial impediment to employment for the applicant; and
 - 3. The applicant must require vocational rehabilitation services to prepare for, secure, retain, or regain employment
- B. It shall be presumed that a person can benefit from vocational rehabilitation services unless clear and convincing evidence demonstrates that the person is incapable of benefiting from such services in terms of an employment outcome. This does not change the requirement that an applicant must require vocational rehabilitation services. Before making an ineligibility determination due to the significant nature of the disability, the Division shall

first explore the person's abilities, capabilities, and capacity to perform in work situations through the use of trail work experiences with appropriate supports, except under limited circumstances when a person cannot take advantage of such experiences. Such experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the person or to determine the existence of clear and convincing evidence that the person is indeed incapable of benefiting in terms of an employment outcome.

GUIDANCE: A person who is an "individual with a disability" may still be ineligible for services if s/he does not **require** services to obtain or retain an employment outcome. "Clear and convincing evidence" means the Division shall have a high degree of certainty before it can conclude that a person is incapable of benefiting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in our civil system of law and is to be applied on a case-by-case basis. The term "clear" means unequivocal. Given these requirements, a review of existing information generally would not provide clear and convincing evidence. For example, the use of an intelligence test result alone would not necessarily constitute clear and convincing evidence.

Clear and convincing evidence might include a description of assessments, including situational assessments at work setting and supported employment assessments, from service providers who have concluded that they would be unable to meet the person's needs due to the significance of the person's disability. The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real work settings. Most persons should be able to take advantage of such experiences. Although there is no time limit for this determination, the Division feels that such an exploration should be able to be completed within 180 days of the end of the usual 60 day limit for eligibility—in other words within 240 days from the date of application. However, more time may be used if needed. It is suggested that local job developers and supported employment programs, if appropriate, be used to locate suitable work settings. The Division carries liability insurance to hold a "host employer" harmless in the event the person is injured or damages property at the work setting; if the host employer desires proof of such insurance, contact Risk Management at 828-2899. Of course, the case record must contain the rationale for believing the person may not be able to benefit in terms of an employment outcome, the need for more than the usual 60 days, and how, using work settings, the determination of eligibility may be made. If the trail work experience (TWE) necessitates going past the 60-day limit from application to certification, the case status in the VR data system should be adjusted to "06" to indicate that a TWE is in progress. No formal individualized plan must be signed by the person; however, the

Counselor must develop a written plan noting questions or concerns to be resolved during TWE and evaluating information received on each site against the stated needs.

- C. A recipient of Social Security Disability Insurance (SSDI, aka Title II) or Supplemental Security Income (SSI, aka Title XVI) shall be considered to be a person with a significant disability and shall be presumed to be eligible for services (provided that he/she intends to achieve an employment outcome consistent with his/her unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the person) unless the Division can demonstrate by clear and convincing evidence that he/she is incapable of benefiting in terms of an employment outcome due to the significance of the disability.

GUIDANCE: SSDI or SSI recipients shall be considered to have a significant disability and shall be determined eligible. Signing an application for services shall be considered as the person's intent to achieve an employment outcome. However, as with all applicants, a discussion of the Division's mission occurs very early in the process, and an Individualized Plan for Employment must be developed before most services can begin.

Section IV. Using Existing Information

Existing data, including Counselor observation, shall be used whenever possible to expedite the determination of eligibility. Existing information may include medical and psychological records, Counselor observations, education records, information provided by the person or with his/her family members, information used by the Social Security Administration, and determinations made by officials of other agencies involved with people with disabilities.

GUIDANCE: Information furnished by the person or his/her family may be very useful in determining eligibility. Such information need not be in writing but may be responses to pertinent questions such as: "How does your disability affect your ability to work?" and "What types of services do you think you need to get past the disability and get to work?" Information furnished by the person also may include his/her physical presence and/or behaviors as observed by the Counselor. Certification of eligibility may be made immediately based on information furnished by the person or a family member if the Counselor feels that a disability exists which is a substantial impediment to employment and that

the person requires services for work. Additional information to develop a good plan of services may be gathered after eligibility has been determined if both the person seeking services and the Counselor feel it may be helpful.

The rationale for using existing data is to streamline the eligibility process and to expedite access to services. Decisions regarding whether and how specific data are to be used must be made on a case-by-case basis, and while the accuracy and timeliness of existing data are important factors in determining their usefulness, older data can be used if still pertinent.

Information from the Social Security Administration may be used to determine whether or not a person meets the definition of an individual with a disability. A person who receives Title II (SSDI) or Title XVI (SSI) of the Social Security Act is considered to have a significant physical or mental impairment which results in a substantial impediment to employment--i.e., the person meets the **first** element of the definition of an "individual with a disability". However, eligibility for SSDI and/or SSI does not mean the person is automatically eligible for services. The Counselor must still determine whether the presumption that the person can benefit from services in terms of an employment outcome can be rebutted by clear and convincing evidence and whether the person **requires** services to prepare for, enter, engage in, or retain employment.

Information from sources other than education and Social Security officials may be used to expedite the eligibility determination process. Examples are the person's personal physician, a previous or current employer, an insurance company, an advocate or representative of the person, and any organization or individual suggested by the person seeking services. Other sources may include mental health and developmental disabilities agencies, Medicaid and Medicare agencies, Workers' Compensation, and other programs that require that a "disability" be established as a condition for receiving services.

To the extent existing information does not describe the current functioning of the person or is unavailable, insufficient, or inappropriate to make an eligibility determination, the Counselor will procure and assess whatever examinations, tests, assessments, etc. (including assistive technology devices/services and worksite assessments) necessary to determine whether a person is eligible.

Section V. Timeframe for Determining Eligibility

The eligibility determination shall be made as soon as possible but no later than sixty (60) days after the person has applied for services. Exceptions to this sixty day timeframe may occur only if:

- A. Exceptional and unforeseen circumstances beyond the control of the Division preclude a determination within sixty days and the person and the Division agree to a specific extension of time; or
- B. The Counselor feels that, due to the significance of the disability, the person may not be able to benefit in terms of an employment outcome and will put in place a plan which may include an evaluation in a real work setting which will take more time.

GUIDANCE: The need to use sixty days to determine eligibility should be rare. In some cases written information from other sources to determine existence of a disability and ultimate eligibility may not be needed. In the absence of newly written materials from other sources, a Counselor may determine that a person's disability makes him/her eligible for services as soon as the initial meeting in many situations such as the following:

- A. The person has received services on a prior occasion and his/her record of services remains pertinent, is available, and will become part of the new record; or
- B. Information from another source adequate to fulfill the eligibility criteria is known to exist, is attainable, and has been requested from that source; or
- C. The disability is obvious to the Counselor (as well as to any other reasonable person).

If medical/psychological data from another source is not in the record, the Counselor must describe the functional limitations posed by the disability and how they interfere with gainful work.

If more than sixty (60) days is needed, the record of services should indicate the reason(s) and that the person agrees. Certification of eligibility means that an IPE can be developed and that services can begin. Each case may fall into one of three types:

A. Fast Track

In some situations the IPE may be written at the same time as certification. Those situations are:

1. The person is known to the Division, disability-related data are present or easily attainable, and the vocational goal, services needed and resources are known and attainable.
2. The person is new to the Division, but other features in the example above are the same, and the Counselor and individual feel comfortable with proceeding.

B. Plan Development and Implementation

In some situations more time is needed for gathering information and for planning.

1. The person has acquired a disability and must change jobs but doesn't know how, to what type of job, etc. Aptitude testing, counseling/guidance, and referral to pertinent resources may be the only services needed to identify a suitable direction and write an IPE.
2. The person receives Workers' Compensation and must work through the Workers' Compensation "protocol" for returning to work. An IPE may be written with counseling/guidance re: Workers' Compensation rules and working through the protocol in collaboration with a private rehabilitation worker as the initial service. The IPE may be amended later if necessary.

C. Information and Extensive Support

In other situations more time is needed for planning as well as service delivery.

1. The person has no work history and very significant disabilities. A series of evaluations and trials will be needed to identify a vocational goal. It is known from the start that long-term involvement may be needed.
2. The person has excellent work and educational histories but has recently become disabled. Although the person may be able to resume his/her former job with accommodations and assistive technology, s/he will likely need multiple services over an extended period of time.

Section VI. Aliens

Prior to developing an Individualized Plan for Employment, the immigration status of aliens must be clarified. An IPE will not be developed with an alien whose visa prohibits work. Also, an illegal alien does not have proper credentials and an IPE cannot be completed; consequently, services will not be provided.

Section VII. Data for Priority of Services Under An Order of Selection for Services

If operating under an order of selection for services (See Chapter 106, "Order of Selection for Services"), the Division shall base its priority assignments on:

1. A review of the data developed to make the eligibility determination; and
2. An assessment of additional data to the extent necessary.

Section VIII. Ineligibility Determinations

If the Division determines that an applicant is ineligible for services or determines that a person receiving services under an IPE is no longer eligible, the Division shall:

- A. Make the determination only after providing an opportunity for full consultation with the person or, as appropriate, the person's representative;
- B. Inform the person in writing (supplemented as needed by other appropriate modes of communication consistent with the informed choice of the person) of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the person may

express and seek remedy for any dissatisfaction, including the procedures for review of a determination by the Counselor, by way of mediation, administrative review, and/or fair hearing;

- C. Provide the person with a description of services available from the Client Assistance Program and information on how to contact that program; and
- D. Review within twelve (12) months (and annually thereafter if requested by the person or, if appropriate, by the person's representative) any ineligibility determination that is based on a finding that the person is incapable of achieving an employment outcome. This review need not be conducted in situations in which the person has refused it, is no longer present in the State, whose whereabouts is unknown, or whose medical condition is rapidly progressive or terminal.

Section IX. Closure Without Eligibility Determination

The Division may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete an assessment for determining eligibility and priority for services, and the Division has made a reasonable number of attempts to contact the applicant (or, if appropriate, the applicant's representative) to encourage the applicant's participation.