

Chapter 202: Eligibility

Vermont Division of Vocational Rehabilitation
Policy and Procedures Manual

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Section 1. Definitions

- A) **“Family member”**, for purposes of receiving vocational rehabilitation services, means an individual:
- 1) Who either –
 - a) Is a relative or guardian of an applicant or eligible individual; or
 - b) Lives in the same household as an applicant or eligible individual;
 - 2) Who has a substantial interest in the well-being of that individual; and
 - 3) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.
- B) **“Individual’s representative”**, for purposes of receiving vocational rehabilitation services, means a representative chosen by the applicant or eligible individual to act on their behalf, including a parent or other family member, guardian, or advocate, unless a representative has been appointed by a court to represent the individual.
- C) **“Individual with a disability”** means an individual 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 the provision of vocational rehabilitation services.
- D) **“Individual with a significant disability”** means an individual:
- 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; 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 illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, intellectual or developmental disability, specific learning disability, end-stage renal disease, substance use disorder 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.

- E) **“Individual with a most significant disability”** means an individual who has been determined by DVR to have a physical or mental impairment that constitutes or results in a substantial impediment to employment and that seriously limits function in four or more areas of functional capacity (mobility, communication, work tolerance, work skills, self-care, self-direction, interpersonal skills, dexterity/coordination), requiring multiple services over a period of six months or more.
- F) **“Requires services”** means that, without provision of vocational rehabilitation services, the individual would not be able to prepare for, obtain, retain, regain, or advance in employment consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.
- G) **“Trial Work Experience”** is defined as an exploration of an individual's ability to perform in realistic work situations before a determination whether the individual is unable to benefit from VR services in terms of an employment outcome because of the severity of his or her disability. It can include supported employment, on the job training, progressive employment training placements and other experiences in realistic integrated work settings.
- H) **“Substantial impediment to employment”** means that a physical or mental impairment (considering medical, psychological, vocational, educational, and other associated factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with their abilities and capabilities.

Section 2. Prohibited Factors

When determining eligibility for vocational rehabilitation services, the following factors apply or are prohibited:

- A) No duration of residence requirement shall be imposed that excludes from services any applicant who is present in the state unless the applicant is in the United States illegally. The Division may not require an applicant to provide documentation of presence in the state that under state or local law, or practical circumstances, results in a de facto duration of residence requirement.
- B) The Division cannot prohibit services for an eligible individual present in the state, but whose legal residence is out of state.

Guidance: — Residency requirements.

- If the Division receives an enquiry from an individual who lives in another state, that individual should be encouraged to contact their state's DVR agency for services. In most circumstances, their state DVR agency will be best positioned to serve them over the Vermont DVR. There may be some exceptions to this general guideline when an individual has connections to the state.

For example, if an individual lives in a bordering community and is employed or goes to high school or college in Vermont, it may be more favorable for the individual to receive services through the Vermont DVR.

- If an individual is a college student in Vermont but has permanent residence in another state, it is recommended the counselor consult with the regional manager or field services manager. In these circumstances, the Division may develop an agreement with the student's home state DVR agency to open concurrent cases. Under such an agreement, each state may develop an IPE for complementary services. For example, the Division may provide assistive technology and work-based learning services while the student is in Vermont. The home state may provide job placement services once the student returns to that community.

End Guidance.

- C) No applicant or group of applicants shall be excluded or found ineligible solely based on the type of disability; and the eligibility requirements must be applied without regard to the:
- 1) Employment history or current employment status of the applicant;
 - 2) Expected employment outcome of the applicant;
 - 3) Educational status or current educational credential of the applicant;
 - 4) Source of referral for vocational rehabilitation services;
 - 5) Service needs or anticipated cost of services required by the applicant;
 - 6) Income level of the applicant or the applicant's family; or
 - 7) Age, gender, gender identity, sexual orientation, race, color, creed, or national origin of the applicant.

Guidance: – Age exception.

DVR will not usually serve persons under age 18 without the permission of the legal representative (See Chapter 308, "Pre-Employment Transition Services.")

End Guidance.

Section 3. Basic Conditions of Eligibility

Requirements for Eligibility

- A) An applicant's eligibility for vocational services shall be based on all the following requirements:
- 1) The applicant must be an individual with a disability;

- a) The applicant's disability must constitute or result in a substantial impediment to employment,
 - b) The applicant must require DVR services to prepare for, obtain, retain, regain, or advance in employment.
- B) The individual's priority for services under DVR's order of selection for services will be determined at the time at the time the individual's eligibility is established. The Rehabilitation Act requires DVR to prioritize services for individuals with the most severe disabilities when vocational rehabilitation services cannot be provided promptly to all individuals eligible for services. The OSS mechanism assures that those with severe disabilities with more complex needs, will not be deferred but rather given priority for services. (See Chapter 106, "Order of Selection for Services.")

Guidance: – Requirements for service.

Conditions resolvable with treatment such as a short-term injury with a good prognosis for recovery – i.e., a broken bone that will heal without permanent disability resulting, staph infection with hospitalization resulting, knee or hip replacement with no complications, etc. – do not meet the eligibility criteria.

An applicant who is an "individual with a disability," as defined in Section 1, may still be ineligible for services if they do not require services to achieve an employment outcome. In this case an applicant has adequate supports, work experience, and skills to achieve their employment goals and there is no substantial impediment to employment, and they do not require services to prepare for, obtain, retain, regain, or advance in employment.

End Guidance.

Ability to Benefit from DVR Services and Trial Work Experiences

- C) It is presumed that an applicant can benefit from vocational rehabilitation services unless clear and convincing evidence demonstrates that the applicant 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.
- D) Before making an ineligibility determination due to the severity of the applicant's disability, the counselor must:
 - 1) Explore the applicant's abilities, capabilities, and capacity to perform in realistic integrated work situations using trial work experiences (TWE) including supported employment, on the job training, progressive employment, and other experiences;
 - 2) Provide the applicant with appropriate supports necessary to accommodate the individual's needs during the trial work experiences, including but not limited to, assistive technology devices and services, and personal assistance services; and
 - 3) Develop a written plan to periodically assess the applicant's abilities, capabilities, and capacity to perform in typical competitive integrated work situations using trial work experiences.

- E) Trial work experiences must be:
- 1) In competitive, integrated employment settings to the maximum extent possible;
 - 2) Consistent with the informed choice and rehabilitation needs of the applicant; and
 - 3) Of sufficient variety and over a sufficient period to determine the eligibility of the applicant or to determine the existence of clear and convincing evidence that the applicant is indeed incapable of benefiting in terms of an employment outcome.
- F) "Clear and convincing evidence" means the Division shall have a high degree of certainty before it can conclude that an applicant 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. "Clear and convincing evidence" must be based on a functional assessment of the applicant's ability to benefit from vocational rehabilitation services through realistic employment settings.
- G) Although there is no required timeframe for this determination, the Division believes that such an exploration can be completed within one hundred eighty (180) calendar days of the end of the usual sixty (60) calendar day timeframe for determining eligibility – in other words, within two hundred forty (240) calendar 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.
- H) The case record must contain the rationale for believing the applicant may not be able to benefit in terms of an employment outcome, the need for more than the usual sixty (60) calendar days to determine eligibility, and how, using integrated work settings, the determination of eligibility may be made.
- I) If the TWE necessitates going past the sixty (60) calendar day timeframe from application to eligibility determination, the case status in the Division's case management system must be adjusted to extended evaluation to indicate that a TWE is in progress. No formal individualized plan signed by the applicant is required. However, the counselor must develop a written plan noting questions or concerns to be resolved during the TWE. They also must evaluate and document the information received on each TWE site and compare that against the stated needs.
- J) In any instance when a counselor is considering utilizing an extended evaluation, they must consult with their senior counselor and/or regional manager for guidance around this decision and resulting processes. Extended evaluation may be used when working with an applicant who has been consistently unsuccessful in multiple prior employment efforts with DVR. A TWE will help demonstrate what has or has not changed in their situation before determining eligibility and moving to development of an Individualized Plan for Employment (IPE). In other cases, a counselor may choose not to use extended evaluation. Instead, they may decide to use TWEs as assessments that can be a means of empowering the applicant and providing them an opportunity to determine their own ability to move into an IPE.

Individuals with Substance Use Disorder

- K) An applicant with a disclosed substance use disorder will be processed in the usual fashion. There is no arbitrary waiting period or any pre-conditions. Each case will be evaluated individually.
- L) An applicant may be eligible for vocational rehabilitation services based on a substance use disorder diagnosis made by a psychiatrist, psychologist, medical doctor, or certified substance use disorder counselor.
- M) When determining an applicant's eligibility for services, including determining the significance of the disability, the DVR counselor needs to consider substance use related characteristics which may interfere with employment. These include, but are not limited to:
 - 1) Mobility (slowed reflexes, organic brain damage, gait problems);
 - 2) Interpersonal Skills (mood swings, attitude changes, continued association with active substance users, inability to sustain positive personal relationships, having stigma of being a substance user);
 - 3) Communication (withdrawal, short attention span, difficulty assimilating information);
 - 4) Self-Care (problems with personal appearance or hygiene, insomnia, oversleeping, memory loss);
 - 5) Self-Direction (poor task completion, difficulty working independently).

A review of the information on substance use disorder in the current edition of the DSM (Diagnostic and Statistical Manual of Mental Disorders) may be helpful in making these determinations.

- N) When an applicant discloses a substance use disorder but has abstained from substance misuse for several years, the counselor must determine eligibility consistent with the requirements of Section 3. of this chapter. Factors to consider include but are not limited to whether there has been cognitive or physical damage caused by the substance use or if psychological issues are present.
- O) In general, an applicant who presents with a substance use disorder is eligible for DVR services based on that diagnosis, provided that all criteria of eligibility are met. This is true whether the applicant is actively misusing substances or is in recovery. There is no requirement to be in treatment to be eligible for DVR services.

Guidance: – Case practice for substance use disorders.

DVR counselors cannot treat an applicant with a substance use disorder differently than an applicant with another disability. As with any disability group, DVR services for individuals with substance use disorders must be individualized according to their specific needs, goals, challenges, and circumstances.

The above approach does not preclude a DVR counselor from talking with an individual about participating in treatment as part of their IPE. This is part of the rehabilitation counseling process. However, if the individual declines, the DVR counselor may consider whether the applicant is ineligible for services following the procedures set forth in Section 9 of this chapter.

Example

An applicant presents with a history of repeated job loss due to substance misuse. At the time of application, they acknowledge current substance misuse. They express no interest in treatment as part of their DVR services. In this instance, the DVR counselor may require the applicant to participate in trial work experiences before determining their eligibility for DVR services. This situation is no different from the counselor considering a history of job loss that was related to an untreated mental illness or physical illness.

However, the counselor must assess each applicant's needs and circumstances on an individualized basis. The counselor must document in the case record why said conditions are necessary for the applicant to prepare for, obtain, retain, regain, or advance in employment.

End Guidance.

Presumptive Eligibility for SSDI and SSI Recipients

- P) A recipient of Social Security Disability Insurance (SSDI, aka Title II) or Supplemental Security Income (SSI, aka Title XVI) is considered an individual with a significant disability and is therefore presumed able to benefit from DVR services. A recipient's signature on an application for services shall be considered their intent to achieve an employment outcome. Trial work experiences (TWE) cannot be used to determine eligibility for anyone receiving SSDI/SSI benefits.
- Q) If a counselor can verify the receipt of SSA benefits via an award letter, copy of deposits from SSA, a Benefit Query or other documentation, no additional medical information is needed to find the individual eligible.

Need for Further Medical Documentation or Functional Data

- R) From a counseling perspective, further medical documentation will almost always be needed to better understand the applicant's strengths, limitations, accommodation needs, and to develop a strong plan for employment. In some cases, a counselor may not be able to proceed with development of an IPE if medical information is not obtained.

Example: There are serious health consequences that could result from DVR supporting a work goal that is unknowingly in direct opposition to medical recommendations.

- S) If the counselor needs further functional assessment data to make an eligibility determination, they may use a trial work experiences as a form of assessment for applicants other than SSDI/SSI beneficiaries.

Section 4. Using Existing Information

- A) Existing data, including counselor observation, shall be used whenever possible to expedite the determination of eligibility. Existing information may include medical and psychological records, education records, information provided by the applicant or their family members, information used by the Social Security Administration, and determinations made by officials of other agencies involved with individuals with disabilities.

Guidance: – Counselor observation.

Examples of counselor observation might include:

- An applicant who is clearly deaf and uses an ASL interpreter.
- An applicant who presents with a significant and observable physical disability.

End Guidance.

Guidance: – How to solicit and interpret existing information.

Information furnished by the applicant, or their 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 applicant also may include their physical presence and/or behaviors as observed by the counselor.

Determination of eligibility may be made immediately based on information furnished by the applicant or a family member if the counselor feels that a disability exists which is a substantial impediment to employment and that the applicant requires services for work. The counselor must then obtain medical information supporting the information used to determine the applicant eligible for services. Additional information to develop a good plan of services may be gathered after eligibility has been determined if both the applicant 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 sources other than education and Social Security Administration officials may be used to expedite the eligibility determination process. Examples are the applicant's personal physician, a previous or current employer, an insurance company, an advocate or representative of the applicant, and any organization or individual suggested by the applicant 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.

End Guidance.

- B) If existing information does not describe the current functioning of the applicant or it is unavailable, insufficient, or inappropriate to make an eligibility determination, the counselor must obtain additional information to determine eligibility. This includes, but is not limited to, examinations, tests, assessments, assistive technology devices/services, trial work experiences, personal assistance services, and any other support services that are necessary to determine whether an applicant is eligible.

Section 5. Factors and Decisions in Determining Eligibility

Determining Primary vs. Secondary Disability

- A) The primary disability impedes function significantly and the secondary disability impedes function to a lesser degree. Function in this case is related to work tasks and work tolerance. This determination is often derived from the applicant's stated experience, but in some cases the counselor may determine the primary disability based on intensity of related service need.

Guidance: – Need for primary and secondary disability determination.

Is a Secondary Disability required?

No, the disabling conditions that impact the applicant's ability to work should be reflected but there is no requirement to have two conditions listed.

If the medical diagnosis changes, should the Determination of Eligibility/Ineligibility be amended?

No. The determination of eligibility represents the information used to determine the individual's initial eligibility for DVR services. That decision does not need to be amended if a medical diagnosis changes. Changes in the individual's circumstances and medical condition must be documented in the case record and updated medical documents should be obtained.

Can a diagnosis related to substance use disorder be used as a source for a primary or secondary disability?

- Substance use disorder can be used as either a primary or secondary disability depending on how much it impacts the applicant's functioning.
- When determining eligibility for someone with a substance use disorder diagnosis, consider whether this diagnosis is presenting a current and significant barrier to employment.

- In the instance when someone is in recovery and there are no current barriers to employment, the applicant may still meet eligibility criteria. This may be an example of a Priority IV case and could be discussed with a senior counselor or regional manager.

End Guidance.

Determining Type of Disability

- B) Counselors should use their own discretion to determine the disability category and specific disability to enter into the Division's case management system. These determinations must be based on observations, medical information, and the individual's report, including symptoms that most impair their ability to work. Differentiation based on the individual's experience is encouraged.

Determining Functional Capacity

- C) It is important for counselors to consider how the applicant interprets their functional strengths and limitations in relation to their disabling condition. Determination of eligibility or ineligibility by establishing functional loss based on the applicant's experience is more helpful/accurate than only referring to what is typical of a particular medical diagnosis.

Guidance: – Functional capacity.

One applicant experiences depression and states they have difficulty with irritability and bouts of crying but are managing self-care and direction just fine. Another applicant experiences depression and is having difficulty getting out of bed, paying bills, and initiating action. The Functional Capacity section should be completed differently for these two applicants even though the diagnosis is the same.

End Guidance

- D) When considering the applicant's mobility as part of the eligibility determination process, counselors need to determine if mobility limitations are present as a result of the individual's disability(ies).

Guidance: – Mobility.

This section is not intended to capture limited mobility resulting from a criminal suspension or legal limitations. If criminal involvement does impact their access to transportation, this would not be used as an eligibility criterion, but rather an aspect of their plan for employment to assist with this barrier if possible.

End Guidance

Identifying Potential Services

- E) Counselors must consider whether:
- 1) Services will be required to support the individual in moving toward employment in addition to counseling and guidance.
 - 2) The services are reflected in the individual's IPE and demonstrate the support being offered by the Division or in collaboration with a partner agency, or community partner.
 - 3) The individual requires multiple services over a period of fewer than six (6) months. This would be considered a Priority IV case under Order of Selection for Services. When an eligible individual is placed in a Priority IV, they are not able to receive paid services, which include counseling and guidance, until permission is provided by the State Rehabilitation Council (SRC) and Division management on an annual basis.

Section 6. Timeframe for Determining Eligibility

- A) The eligibility determination shall be made as soon as possible but no later than sixty (60) calendar days after the individual has applied for services. Exceptions to this 60-day timeframe may occur only if:
- 1) Exceptional and unforeseen circumstances beyond the control of the Division preclude a determination within sixty (60) calendar days and the applicant agrees to a specific extension of time, or
 - 2) The counselor believes that the Division may not be able to make an eligibility determination within the sixty (60) calendar day timeframe due to the severity of the applicant's disability and the need to:
 - a) Determine whether the applicant can benefit in terms of an employment outcome and implementation of an IPE; and
 - b) Explore the applicant's abilities, capabilities, and capacity to perform in competitive integrated work settings, including trial work experiences.

Guidance: – Timeframes for determining eligibility.

The need to use sixty (60) calendar 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 an applicant's disability makes them eligible for services as soon as the initial meeting. This determination may be made in many situations such as the following:

- The applicant has received services on a prior occasion and their record of services remains pertinent, is available, and will become part of the new record; or

- Information from another source adequate to fulfill the eligibility criteria is known to exist, is attainable, and has been requested from that source; or
- The disability is obvious to the counselor (as well as to any other reasonable person).

End Guidance.

- 3) If more than sixty (60) calendar days are needed, the case record must document;
- a) The reason(s) more time is needed;
 - b) The specific date by which the eligibility determination will be made; and
 - c) The applicant agrees to the delay.

Guidance: – Eligibility and IPE development.

Determination of eligibility means that an IPE can be developed and that services can begin. Each case may fall into one of three types:

Fast Track

In some situations, the IPE may be written at the same time as eligibility is determined. Those situations are:

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

Plan Development and Implementation

In some situations, more time is needed for gathering information and for planning. For example:

- The applicant has acquired a disability and must change jobs but doesn't know how, to what type of job, etc. Aptitude testing, counseling and guidance, and referral to pertinent resources may be the only services needed to identify a suitable direction and write an IPE.
- The applicant receives Workers' Compensation and must work through the Workers' Compensation "protocol" for returning to work. An IPE may be written with counseling and 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.

Information and Extensive Support

In other situations, more time is needed for planning as well as service delivery. For example:

- The applicant has no work history and very significant disabilities. A series of evaluations and trial work experiences will be needed to identify an employment goal. It is known from the start that long-term involvement may be needed.
- The applicant has excellent work and educational histories but has recently acquired a disability. Although the applicant may be able to resume their former job with accommodations and assistive technology, they will likely need multiple services over an extended period.

End Guidance.

Section 7. Citizenship

Division services are available to individuals who are U.S. citizens or are eligible non-citizens. Eligible non-citizens are those who are authorized to work in the United States. The Division cannot provide services to an applicant that does not meet these requirements.

Section 8. Data for Service Priority under Order of Selection for Services (OSS)

- A) If operating under an Order of Selection for Services as set forth in Chapter 106 of DVR's Policy and Procedures Manual, 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.
- B) An applicant cannot move to plan status or receive any paid services including counseling and guidance if they are determined eligible in an OSS Priority Category that is not open (See Chapter 106, "Order of Selection for Services").

Section 9. Ineligibility Determinations

If the Division determines that an applicant is ineligible for services, it shall:

- A) Make the determination only after providing an opportunity for full consultation with the applicant or, as appropriate, the applicant's representative;
- B) Inform the applicant of their ineligibility. The decision shall be in writing and supplemented as needed by other appropriate modes of communication consistent with the needs and informed choice of the applicant. The written notice of ineligibility must include:

- 1) The reasons for the determination,
 - 2) The requirements under this section, and
 - 3) How the applicant can express and seek remedy for any dissatisfaction. This includes the procedures for review of a determination by the counselor, through mediation, administrative review, and/or fair hearing. (See, Chapter 105, "Appeals Process").
- C) Provide the applicant with a description of services available from the Client Assistance Program (CAP) and information on how to contact that program;
- D) Refer the applicant to:
- 1) Other programs that can address the applicant's training or employment-related needs; or
 - 2) Independent living programs and extended employment providers, best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the applicant has chosen not to pursue or is incapable of achieving an employment outcome.
- E) Review the individual's eligibility within twelve (12) months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative when the ineligibility determination was based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, is no longer present in the state, whose whereabouts is unknown, or whose medical condition is rapidly progressive or terminal.

Section 10. Closure without Eligibility Determination

- A) The Division may not close an applicant's case record prior to making an eligibility determination unless:
- 1) The applicant declines to participate in vocational rehabilitation services, or
The applicant is unavailable to complete an assessment for determining eligibility and priority for services, and
 - 2) 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. The phrase "reasonable number of attempts" is defined as at least three (3) times. Contact may be made by any combination of communication methods, including by mail, email, telephone, and/or another mode of communication available to the individual. At least one contact must be by mail.