

Chapter 202: Eligibility

Vermont Division of Vocational Rehabilitation
Policy and Procedures Manual

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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’s representative”**, for purposes of receiving vocational rehabilitation services, means a representative chosen by the applicant or eligible individual to act on his/her 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 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.
- D. **“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, musculoskeletal 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.
- E. **“Individual with a most significant disability”** means a person 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 person would not be able to prepare for, enter into, engage in, advance in, or retain gainful employment consistent with his/her strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.
- G. **“Trial Work Experience”** means supported employment, on the job training, progressive employment training placements and other experiences using realistic integrated work settings.
- H. **“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

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 person is in the United States illegally;

Guidance – Residency requirements.

- *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.*
- *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.*
- *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.*
- *Occasionally a referred person lives close to the border in a neighboring state but the mailing address is through a Vermont post office. Regardless 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:*

- ⊕ *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*
- ⊕ *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;*
- ⊕ *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*
- ⊕ *The person is not already a consumer of public vocational rehabilitation services in another state.*

End Guidance.

- B. No applicant or group of applicants shall be excluded or found ineligible solely on the basis of the type of disability; and the eligibility requirements are 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; or
 5. Age, gender, race, color, creed, or national origin of the applicant.

Guidance — Age exception.

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).

End Guidance.

- C. 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.
- D. 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 significance of disability (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, Current 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 two 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 – Case practice for substance abuse/dependency.

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 consumer 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 of 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 in 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 an 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.

End Guidance.

Section III. Basic Conditions of Eligibility

Requirements for 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, be chronic and persistent, and the benefit of services expected to last at least 6 months;
 3. The applicant must require vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment; and
 4. There is no entitlement to vocational rehabilitation services even if the applicant meets all of the requirements for services.
 5. Even if an applicant meets the basic conditions of eligibility, services can only be started if the applicant meets the Order of Selection (if applicable). The Rehabilitation Act requires DVR to prioritize services for individuals with the most severe disabilities. This requirement is to assure that, in the event that vocational rehabilitation services cannot be promptly provided to all eligible persons, the needs of those with the most significant disabilities, due to their probable costs and complexity, will not be deferred but rather will be given priority. The Order of Selection is the mechanism DVR uses to ensure this happens. For more information see Chapter 106.

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.

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. In this case a consumer 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 obtain, maintain or regain employment.

End Guidance.

Ability to Benefit from VR Services and Trial Work Experiences

- 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 and be successful without long-term supports. 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 must first explore the person's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences with appropriate supports. The Division must develop a written plan to periodically assess the individual's abilities, capabilities and capacity to perform in competitive integrated work situations through the use of trial work 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.
1. "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. Clear and convincing evidence must be based on a functional assessment of the individual's ability to benefit from vocational rehabilitation services through realistic employment settings.
- C. 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.
- D. 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.
- E. If the trial 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.

- F. In any instance when a counselor is considering utilizing status 06, they should consult with their Senior Counselor and/or Regional Manager for guidance around this decision and resulting processes. This status may be used when working with a consumer who has been consistently unsuccessful in multiple prior employment efforts with VR. A trial work experience will help demonstrate what has or has not changed in their situation before moving to a status 10. In other cases, a counselor may choose not to use this status and instead advance a medically eligible consumer to status 10 and use assessments similar to the trial work experience as a means of empowering the consumer and providing them an opportunity to determine their own ability to move into an Individualized Plan for Employment.

Presumptive Eligibility for SSDI and SSI Recipients

- G. 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. Signing an application for services shall be considered as the person's intent to achieve an employment outcome. Trial work experiences cannot be used for an eligibility determination for individuals receiving SSI/SSDI benefits as they are automatically considered medically eligible by meeting presumptive eligibility.
- H. If a counselor can verify the receipt of SSA benefits via an award letter, copy of deposits from SSA, a Benefit Query or other forms, no additional medical information is needed to find the person eligible.

Need for Further Medical Documentation or Functional Data

- I. From a counseling perspective, further medical documentation will almost always be needed to better understand 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.

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

- J. If the counselor needs further functional assessment data to make an eligibility determination, they may use a Trial Work Experience.

Section IV. 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 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 – Examples of counselor observation.

Examples of counselor observation might include:

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

Guidance – How to solicit and interpret existing information.

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. The counselor must then obtain medical information supporting the information used to certify the person as eligible for services. 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 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.

End Guidance.

- B. 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, trial work experiences, personal assistance services and any other support services) that are necessary to determine whether a person is eligible.

Section V. 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 consumer'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 person's ability to work should be reflected but there is no requirement to have two conditions listed.

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

No. The certification represents what the person was found eligible for at the time of certification and does not need to be amended. Changes in the consumer's circumstances and medical condition should be documented in case notes and updated medical documents.

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

- *Substance abuse or dependence can be used as either a primary or secondary disability depending on how much it impacts the person's functioning.*
- *When certifying someone using a substance abuse 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 person may meet eligibility criteria. This may be an example of a priority III case and could be discussed with a Senior Counselor or your Regional Manager.*

End Guidance.

Determining Type and Source Based on Impact of Disability

- B. Counselors should use their own discretion to determine the type and source based on information they have from observations, medical information, and consumer report. First, consider how the disabling condition impacts the person and then make an educated determination of which type code is most appropriate. Differentiation based on the person's experience is encouraged.

Example: The type and source may be different from one consumer to the next even when the medical diagnosis is the same. Multiple sclerosis could be considered type 10 (mobility orthopedic), type 11 manipulation/dexterity orthopedic), or type 12 (mobility/manipulation/dexterity orthopedic) depending on the person's experience of the neurological disorder. If the person primarily suffers from lack of coordination and muscle stiffness that impairs dexterity, then type 11 is appropriate. If the person experiences numbness and weakness in limbs, unsteady gait, and muscle stiffness which impairs mobility then type 10 is appropriate. Also consider which symptoms most impair the person's ability to work to help determine the most applicable type code.

Determining Functional Capacity

- C. It is important for counselors to consider how the person interprets their functional strengths and limitations in relation to their disabling condition. Completing this section of the Certification of Eligibility/Ineligibility Form by determining functional loss based on the consumer's experience is more helpful/accurate than only referring to what is typical of a particular medical diagnosis.

Example: A person who suffers from depression and stated they have difficulty with irritability and bouts of crying but are managing self-care and direction just fine. A second person suffers from 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 people even though the diagnosis is the same.

- D. When considering the mobility section of the Certification form, counselors will determine if mobility limitations are present as a result of the disabling condition(s). NOTE: This section is not intended to capture limited mobility as a result of 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.

Identifying Potential Services on the Certification Form

- E. Counselors will consider the following:
1. These are services that a counselor believes will be required to support their consumer in moving toward employment in addition to counseling and guidance.
 2. Services checked off should be reflected within a consumer's IPE to demonstrate support being offered by VR or in collaboration with a partner agency or community partner.
 3. Extended period of time (6 months or more): If a counselor determines a person will not need multiple services and the benefit from the provision of services will not extend for 6 months or more, this would be considered a Priority IV case under Order of Selection. When a consumer 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 VR Management on an annual basis.

Section VI. Timeframe for Determining Eligibility

- A. 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 60-day timeframe may occur only if:
1. 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. In this circumstance, the reason for the delay and the specific date the certification date will be completed by **must** be documented in the case record; or
 2. 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 implementation of a plan to explore the person's abilities, capabilities, and capacity to perform in competitive integrated work settings, including trial work experiences, will exceed the 60-day timeframe.

Guidance — Timeframes for determining eligibility.

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:

- *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*
- *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).*

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), the specific date by which the certification will be completed and that the person agrees to the delay. Certification 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 certification. Those situations are:

- *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.*
- *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.*

Plan Development and Implementation

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

- *The person 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 person 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.

- *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.*
- *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.*

End Guidance.

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

- A. 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.
- B. **A consumer cannot move to plan status or receive any paid services including counseling and guidance if they are determined eligible in a OSS Priority Category that is not open** (see Chapter 106, “Order of Selection for Services”).

Section IX. 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 X. 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.