

2500 ELIGIBILITY

2501 Eligibility for Vocational Rehabilitation Services

2501.1 Criteria. Determination of an applicant's eligibility for vocational rehabilitation services shall be based only on the following:

A. Eligibility Criteria

1. The applicant has a physical or mental impairment; and,
2. The applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and,
3. The applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and,
4. The applicant requires vocational rehabilitation services to prepare for, enter into, engage in, or retain employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

B. Presumption of Benefit. An applicant who meets eligibility requirements 1 and 2 above is presumed to be able to benefit in terms of an employment outcome unless it is demonstrated, based on clear and convincing evidence, that the applicant is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the disability. See 2502 Trial Work Experience later in this section.

C. Presumption of Significant Disability and Eligibility for SSDI or SSI. Individuals who receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits based on disability are deemed significantly disabled. Further, such individuals will be presumed eligible for vocational rehabilitation services upon stating their intention to achieve an employment outcome consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The determination of eligibility and presumption of significant disability for individuals who receive SSDI/SSI does not eliminate the need for a Trial Work Experience and Rehabilitation Technology Consultation in Status 10 when there is a question regarding the severity of the disability. If there is doubt that the eligible applicant

can benefit in terms of an employment outcome due to the severity of the disability, the Counselor will initiate a Trial Work Experience in Status 10 to determine whether the applicant may benefit from services. The same services that are made available in Status 07 should be provided, including a trial work experience and a rehabilitation technology consultation. The outcome of the trial work experience will be used to establish whether there is clear and convincing evidence that the SSDI/SSI beneficiary can attain an employment outcome with provision of vocational rehabilitation services.

1. Applicants who receive SSI or SSDI need to provide evidence of their eligibility for benefits. If an applicant is unable to provide evidence such as an award letter or check, the Counselor must verify this eligibility by contacting the Social Security Administration (SSA). Verbal confirmation from SSA of receipt of benefits is acceptable, but only if paper copies are not available. Documentation of evidence received will be maintained in the applicant's case record.

2. Verification of SSA benefits must occur within 60 days, the required timeline for determining eligibility for vocational rehabilitation services.

2501.2 Assessment for Determining Eligibility and Priority for Services.

To the maximum extent possible and appropriate, consistent with confidentiality requirements, the Counselor shall review and assess relevant information that exists and is current in determining whether an applicant is eligible for vocational rehabilitation services and to determine the appropriate priority category to which the applicant should be assigned for purposes of the order of selection. The Counselor also may provide appropriate assessment services and activities to obtain additional information when necessary to make such determinations.

A. Use of Existing Information

1. *Applicant and Family Members.* The applicant and, when appropriate and consistent with confidentiality requirements, the applicant's family members, will be considered by the Counselor as a primary source of information regarding whether the applicant has a physical or mental impairment which, for that individual, results in a substantial impediment to employment.

2. *Information from Direct Observation.* The Counselor often will be able to determine the presence or absence of physical impairment by direct observation of a physical condition, thus reducing the need for medical

consultations having the limited purpose of merely documenting an otherwise obvious impairment.

a. Counselor determinations of impairment based on direct observation shall be limited to those physical disabilities which are readily apparent; e.g. the various plegias, amputations, deformities, and similar conditions. Cognitive and emotional impairments, of course, are not directly observable.

b. In no instance will the Counselor request or attempt to make any observation in a manner which the applicant or the applicant's representative might be reasonably expected to find inappropriate, intrusive, or otherwise offensive; e.g., the Counselor will neither touch the applicant nor request the applicant to remove any article of apparel in the course of observing a physical condition.

3. *Information from Other Programs and Providers.* To the maximum extent appropriate, the Counselor will utilize information and determinations available from other federal, state, and local programs or from private providers, particularly such relevant information as may be available from Division records regarding previous cases; the Social Security Administration; public schools and higher education institutions; physicians, hospitals, and psychologists; Workforce West Virginia; and other agencies that are members of the state workforce development system.

B. *Additional Assessment Information.* To the extent existing information does not describe the current functioning of the applicant or is unavailable, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including rehabilitation technology consultation, vocational explorations, and assessments will be undertaken as needed to determine whether an applicant is eligible.

C. *Recency of Medical or Psychological Information.* When the applicant reports a physical or mental condition which is progressive or unstable and has had an adequate medical or psychological evaluation within one year, the report of that evaluation may be accepted in lieu of a new evaluation. If the applicant reports a physical or mental condition which is permanent and stable (e.g. amputation, intellectual disability, or blindness), any previous medical or psychological report verifying the condition will suffice, regardless of recency.

D. *Determining Priority of Services.* Determination of priority for services under the order of selection will be based on a review of data as described above and an assessment of additional data to the extent necessary. An order of selection priority code must be assigned at the time of eligibility determination. (Section 2200 Order of Selection)

2501.3 Assessment and Comparable Benefits. Assessment services to determine eligibility are exempt from economic needs testing. All comparable benefits, such as insurance, are to be utilized for assessment services.

2501.4 Medical/Psychological Assessments. Additional medical or psychological data may be obtained by referring the applicant for assessment services, including general medical and psychological evaluations.

2501.5 Medical Consultations

A. *Use of Medical Consultants.* Medical consultations should provide direct assistance to Division staff members in matters relating to medical aspects of casework. Staff members will contact the medical consultant, when appropriate and available, regarding such issues as:

1. Lack of clarity about whether reported conditions represent disabilities as defined within the vocational rehabilitation program;
2. Interpretation of medical information and the identification of functional limitations;
3. Prognosis of disability(ies) when medical information obtained needs clarification; and,
4. Feasibility of providing vocational rehabilitation services to individuals with conditions that are progressive or subject to remission and exacerbation.

B. *Required Documentation.* When appropriate, the record of services shall have information reflecting the medical consultant's response and/or recommendations.

2501.6 Assessment to Determine Rehabilitation Needs. Following the determination of eligibility, to the extent that additional data is necessary for

development of the rehabilitation plan, the Counselor shall conduct an assessment to determine rehabilitation needs.

2501.7 Required Timeline. The Counselor shall determine eligibility for services within a reasonable period of time, not to exceed 60 days after the completed and signed *WVDRS Statement of Application* has been received by the Division unless:

A. *Exceptional and Unforeseen Circumstances.* Exceptional and unforeseen circumstances beyond the control of the Counselor may preclude completing the determination within 60 days. The Counselor will notify the applicant or the applicant's representative of those circumstances and mutually agree to an extension for an additional 90 days. Prior to electronically signing the Eligibility Extension form, the Counselor will provide documentation in *Actions/Details* that indicate communication and agreement with the applicant or the applicant's representative regarding the Extension and detailing the exceptional, unforeseen circumstances that prohibit eligibility determination. Once the extension form is signed by the Counselor, it will be filed in the applicant's case record.

B. *Trial Work Experience for Eligibility Extension.* Agreement for the applicant's participation in a trial work experience shall be deemed an agreement to the extension of the eligibility determination. In such instances, the Counselor will specify the reason for the Eligibility Extension as "until completion of the trial work experience."

2501.8 Certification of Eligibility. When an applicant has been determined eligible for vocational rehabilitation services, a *Certificate of Eligibility* shall be completed and dated, with the Counselor's name typed on the form.

2501.9 Required Documentation. The case record will contain documentation supporting the applicant's eligibility for vocational rehabilitation services including:

- A. Completed *Health Assessment Questionnaire*;
- B. Completed *Medical/Psychiatric/Psychological*;
- C. Insofar as possible, information identifying the physical or mental

disability(ies) from medical records or a statement from a physician, psychiatrist, a licensed psychologist, a psychologist employed by the school system, a certified nurse practitioner, or a physician assistant under supervision by a licensed and qualified physician;

D. Information regarding the applicant's work limitations, capabilities, and career aspirations;

E. Completed *Certificate of Eligibility*, including information supporting the severity of the applicant's disability and information noting the determination of the Order of Selection category as Non-Significant with permanent functional limitations, Significant, or Most Significant Disability;

F. Completion of appropriate coding as required; and,

G. Other information as appropriate.

2502 Trial Work Experience

2502.1 Purpose. A trial work experience must be provided when, because of the severity of the applicant's disability, the Counselor finds insufficient assessment data to determine whether the applicant can benefit from vocational rehabilitation services in terms of competitive integrated employment outcome. In such cases, prior to any determination of ineligibility, the Counselor must conduct an exploration of the applicant's abilities, capabilities, and capacity to perform in a realistic work situation to determine whether there is clear and convincing evidence to support such a determination. The trial work experience must also include a rehabilitation technology consultation. Under limited circumstances, if an applicant cannot take advantage of trial work experiences, or if options for trial work experiences have been exhausted before the Counselor is able to obtain sufficient evidence for an eligibility decision, the Counselor will discuss with the client how VR services are not appropriate and will move forward with the case closure.

2502.2 Statuses in Which Trial Work Experience is Conducted. The case will be placed in and remain in Status 07 during the entire period that the applicant is receiving trial work experience services. Trial Work Experience services also may be provided in Status 10 for those clients receiving SSI or SSDI and who have been presumed eligible.

2502.3 Trial Work Experience Plan. Services provided as part of a trial work experience require documentation in *Actions/Details* indicating development of a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in competitive integrated work situations. The Counselor will formulate a plan that addresses the services to be provided in each of the following categories:

A. *Rehabilitation Technology Consultation.* Rehabilitation technology consultation will be provided prior to any determination that an individual with a significant disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of the disability except when such consultation is specifically refused by the individual or the individual's representative.

B. *Types of Trial Work Experiences.* Trial work experiences are vocational exploration and assessment services including supported employment, OJT, training, job shadowing and other experiences consistent with the individuals informed choice and rehabilitation needs and conducted-in-the-most-integrated work-settings-possible to evaluate the individual's capacities to perform in work situations. The trial work experience will conclude when the Counselor has sufficient assessment data to determine if the applicant can benefit from vocational rehabilitation services in terms of a competitive integrated employment outcome.

2502.4 Time Limits. Trial work experiences must be of sufficient variety and occur over a sufficient period for the Counselor to make a determination of the individual's eligibility. However, the total period allowed for a trial work experience will not exceed 90 days. The Counselor may conclude trial work experience services at any time during the 90-day period upon determining whether vocational rehabilitation services will or will not benefit the applicant in terms of a competitive integrated employment outcome.

2502.5 Outcomes of Trial Work Experience- The applicant will receive counseling and guidance to assure that the individual has received adequate explanation of how the eligibility decision affects the applicant's future relationship with the Division. The trial work experience may have only two outcomes:

A. *Applicant Determined Eligible.* If the Counselor determines that the applicant meets eligibility requirements, the individual will be certified

eligible. The Counselor will conclude the extended assessment, complete the *Certificate of Eligibility*, and move the case into Status 10.

B. *Applicant Determined Ineligible.* Prior to the determination of ineligibility, the Counselor will document clear and convincing evidence resulting from the rehabilitation technology consultation and trial work experience(s) to support such a determination. when a trial work experience was provided in Status 10, the case will be moved into Status 30. (See Section 3000 for closure information and requirements. See also Section 6800 for the definition of “*clear and convincing evidence.*”)

C. *Referral to other programs.* If the individual is determined Ineligible because of the Trial Work Experience the Counselor will refer the individual to a Workforce Development System partner under WIOA or other federal, state, local programs or service providers, including independent living programs and extended employment providers (e.g., non-integrated or sheltered setting), best suited to meet the individual’s rehabilitation needs.

2503 Ineligibility for Vocational Rehabilitation Services

2503.1 Certification of Ineligibility/Closure of Record of Services. When an applicant has been determined ineligible for vocational rehabilitation services, a *Closure Notification* shall be completed, dated, and signed by the Counselor and a copy given to the individual along with a copy of *Rights and Responsibilities*. The record of services will be closed according to Section 3000, *Record of Services Closure*.

2503.2 Notification to Applicant. The Counselor will inform the applicant in writing, or by appropriate modes of communication, of the ineligibility determination, including the reasons for that determination and the rights of the applicant, including the right to due process. (Section 3400 *Due Process*.) The Counselor will provide the applicant with a description of services available from the Client Assistance Program (CAP) and information on how to contact CAP.

2503.3 Information and Referral. The Counselor shall, as appropriate, refer the applicant to other federal, state, or local programs for services and benefits that will enhance the individual’s capacity to achieve vocational objectives. The Counselor will refer the applicant to other training or employment-related programs that are part of the state workforce development system under Workforce West Virginia. Information also will be provided about other programs

that may benefit the applicant, including Centers for Independent Living (CILs) and Community Rehabilitation Programs (CRPs).

2503.4 Required Documentation. The record of services will include the following documentation related to the determination of ineligibility:

- A. As appropriate, medical records or a statement from a medical professional supporting the existence or lack of a disability;
- B. Documentation that the applicant does not require or may not benefit from vocational rehabilitation services to prepare for, enter, engage in, or retain gainful employment; and,
- C. A *Closure Summary* documenting in *Actions/Details* the reasons for the ineligibility determination. If the reason for ineligibility is that the applicant is unable to benefit from vocational rehabilitation services due to the severity of the disability, findings of the rehabilitation technology consultation and results of trial and/or extended work experience(s) are required, showing clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome;
- D. Completed *Closure Notification*.

2503.5 Review of Ineligibility Decision. If an ineligibility determination is based on a determination that the applicant cannot achieve an employment outcome, that determination will be reviewed within twelve months. The determination may be reviewed thereafter if requested by the applicant or, if appropriate, by the applicant's representative. Such reviews are not required when:

- A. The applicant has been determined not to have a physical or mental impairment which constitutes or results in a substantial impediment to employment for that individual;
- B. The applicant or the applicant's representative refuses the review;
- C. The applicant is no longer present in the state; or,
- D. The applicant's whereabouts are unknown.

2504 Special Considerations for Eligibility

2504.1 Substance-Related Disorders. Substance-related disorders include the abuse of alcohol, drugs, or toxins. Eligibility for the primary impairment of alcohol or drug abuse must be focused on a careful assessment of the impact and chronicity of the impairment. The most important question to be answered is, “Can the applicant benefit in terms of an employment outcome from the provision of vocational rehabilitation services?”

A. *Detoxification.* The Division will not authorize treatment for any inpatient detoxification program. Requests for administrative exceptions must be submitted through supervisory channels for approval by the Assistant Director, Field Services.

B. *Eligibility Requirements:* The following indicators are necessary to support a determination that the client is eligible to receive vocational rehabilitation services:

1. The applicant has acknowledged a problem and is willing to quit and maintain abstinence; and,
2. The applicant shows an effort to seek or utilize community resources and is willing to participate in a program to support abstinence; and,
3. If the applicant is receiving substance abuse treatment from a medical or psychological professional, the applicant must allow the Counselor to acquire progress reports toward treatment outcomes from the treating professional throughout the rehabilitation plan.

C. *Ineligibility.* If the applicant’s actions are not consistent with the above indicators, the Division considers that to be clear and convincing evidence that the applicant would not benefit from vocational rehabilitation services in terms of an employment outcome.

2504.2 Drug Testing. The Counselor may authorize drug testing when requested by the client, provided the testing is vocationally relevant. Drug test results cannot be used to determine eligibility or to discontinue services.

2504.3 Temporal Mandibular Joint Disease. Services related to temporal mandibular joint (TMJ) disease will not be underwritten as a vocational rehabilitation service.

2504.4 Complex Diseases. Complex diseases are those in which the disease process and progression affect the applicant's abilities in a broad spectrum of functional performance areas due to interrelated symptoms characterizing the disease or condition. Examples of these diseases include, but are not limited to, cancers, HIV/AIDS, and leukemia. Eligibility for applicants with complex diseases requires a written medical diagnosis with prognosis supporting an expectation of stability sufficient to permit the client to pursue employment opportunities.

2504.5 Visual Impairments. In order for an applicant to meet the eligibility criteria for substantial impediment to employment, the applicant must experience at least one of the following conditions as verified by a licensed optometrist or ophthalmologist and demonstrate functional limitation(s) that result in a substantial impediment to employment:

A. *Visual Acuity.* A measure of visual acuity of 20/50 or less in the better eye with best correction recorded for either near or distance vision;

B. *Visual Field Limitation.* The angle of vision is 60 degrees or less in the better eye;

C. *Progressive Eye Disease.* A deteriorating eye condition which will result in the loss of visual efficiency (e.g. glaucoma, retinitis pigmentosa, or macular degeneration) as verified by a licensed optometrist or ophthalmologist; or,

D. *Cortical Visual Impairment.* A visual loss caused by a disturbance of the posterior visual pathway and/or cortex. This does not include refractive amblyopia.

E. *Exceptions.* Instances may occur wherein the applicant does not meet any of the above conditions but for whom, in the Counselor's judgment, the visual impairment does create a substantial impediment to employment. In such cases, requests for exceptions must have approval of the District Manager and they must be submitted with justification in writing to the Program Supervisor of Blind and Visually Impaired Services. The Program Supervisor will recommend either

granting or not granting the exception and forward the request to the Assistant Director of Field Services for final decision.

2504.6 Hearing Impairments

A. Deafness and Hard of Hearing. To meet the eligibility criteria for substantial impediment to employment, the applicant must demonstrate functional limitation(s) in communication, such as difficulty understanding speech, inability to participate in conversation without speech reading, sign language or other visual cues, cannot interpret telephone conversation, cannot hear or understand the content of spoken conversations or cannot be readily understood by others. These functional limitations in communication must result in a substantial impediment to employment and the applicant must experience at least one of the following conditions as verified by an Otolaryngologist (ENT) and a licensed Audiologist:

1. Average pure tone loss of 40 dB (ANSI) or more in the worst ear in the speech range (500, 1,000, and 2,000 cycles per second), unaided; or
2. Average pure tone hearing loss of 20 dB (ANSI) or more in the better ear in the speech range when pure tone average loss in the other ear exceeds 80 dB (ANSI), unaided; or
3. Speech discrimination of 80%, or less, at the Most Comfortable Level (MCL) in an unaided environment regardless of pure tone average loss; or
4. ENT statement of rapidly progressive and/or chronic condition, not contingent on upon decibel loss in either ear.

B. Deaf Blindness. To meet the eligibility criteria for substantial impediment to employment, the applicant must meet all of the following criteria:

1. The applicant must be either legally blind or have a progressive visual loss that may result in blindness; and,
2. The applicant must have a hearing impairment of 55db or more, unaided for either speech reception threshold (SRT) or pure tone average (PTA) in the better ear; and,

3. The applicant must have speech discrimination less than 50 percent or a statement by an Otolaryngologist (ENT) indicating progressive loss.

C. Exceptions. Exceptions to these eligibility criteria will be submitted to the Assistant Director of Field Services through supervisory channels for review and approval.

2504.7 Asthma. The National Institute on Health has issued guidelines for the diagnosis and treatment of asthma which includes classifications for asthma severity. The four classifications include: mild/intermittent; mild/persistent; moderate/persistent; and, severe/persistent. The primary difference between the mild/persistent and moderate/persistent classifications is the existence of daily symptoms and symptoms at night that persist more than five times per month. For the purposes of determining eligibility, the applicant must exhibit symptoms at least at the moderate/persistent level as determined by a physician. Symptoms at that level include:

A. The applicant has symptoms of breathlessness while talking or while at rest;

B. Breathing problems persist so that the applicant's speech is affected when talking in phrases or with each word;

C. The applicant's awareness is usually agitated, or the applicant is often drowsy or confused;

D. Wheezing is usually loud enough to be detected and reported by a physician during an examination;

E. Daily use of an inhalant is prescribed;

F. Exacerbations of symptoms more than two times a week that may last for days; and,

G. Exacerbations daily affect the applicant's activity level.

2504.8 Upgrading. An applicant who is already employed may be determined eligible for vocational rehabilitation services when the current employment is unsuitable if the applicant meets the Division's basic eligibility criteria. Unsuitable employment is characterized as employment that is clearly and

substantially below the applicant's intellectual abilities and skill levels. Current employment which is reasonably consistent with the applicant's capacities and abilities would not be considered unsuitable simply because the applicant desires a promotion or greater income and needs training or other services to improve career opportunities. The assessment of substantiality of vocational impediment in such instances will require the Counselor to exercise professional expertise in determining and documenting on the *Eligibility Summary* that either of the following criteria is met:

A. The applicant's current employment is substantially below the individual's capacities and/or abilities as documented by a thorough vocational assessment. The assessment may include psychological testing, vocational evaluation, job analysis, and/or any other assessment technique(s) which the Counselor determines appropriate; or,

B. The applicant lacks skills to be competitive in the current labor market.

2504.9 Borderline Intelligence. Borderline intelligence may meet eligibility criteria when intelligence testing results are within 15 standard deviation points of the intellectual disability range (70-85). Additionally, the applicant must present at least one of the following functional limitations:

A. Display of inappropriate behaviors (poor impulse control, inappropriate comments or reactions, diminished maturation);

B. Poor interpersonal skills (difficulty relating to peers, teachers, co-workers);

C. Difficulty communicating or expressing thoughts and ideas;

D. Difficulty understanding instructions or adapting to new situations;

E. Performance below appropriate grade level in school; or,

F. Inability to perform work with adequate speed or acceptable quality levels.

2504.10 Specific Learning Disability (SLD) or Autism Spectrum Disorder (ASD). To determine the eligibility of an applicant based on the diagnosis of SLD or ASD, the Counselor will determine whether the applicant is currently enrolled in a secondary school, and, if so, whether the applicant also is enrolled in a special education program. If the client is enrolled in secondary education and receiving services for SLD or ASD, the Counselor must obtain the Individualized Educational Plan (IEP), the Eligibility Committee Report, and Psychoeducational.

A. Applicant currently enrolled in special education services at a secondary school. The following process will be used to maintain consistency with Federal and State requirements placed on public school systems for the identification of students with special needs.

1. The responsibility for diagnosing a student with SLD or ASD is placed on the county school system's Special Education Eligibility Committee. This committee may use formal assessments, teacher reports, and any other information it deems pertinent in determining whether the student has a SLD or ASD. Therefore, if the Special Education Eligibility Committee determines that an applicant has SLD or ASD, the Counselor will accept this determination as verification of the diagnosis.

2. The Counselor also must determine whether there are functional limitations that lead to substantial impediments to employment. The Counselor should obtain any pertinent information, including educational assessments, applicant self-reports, etc., to assist in identifying the functional limitations.

3. Both the diagnosis of SLD or ASD and the presence of functional limitations that result in substantial impediment to employment are necessary to determine the applicant eligible. Therefore, the fact that an applicant is receiving or has received special education services alone does not constitute eligibility for rehabilitation services.

B. Applicant enrolled in a secondary education program, but not in special education. The Counselor should refer the applicant for assessments through the school before pursuing an outside assessment. If obtaining assessments through the applicant's school would cause undue delay, the Counselor may obtain an outside assessment through agency funds.

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C. *Applicant not currently enrolled in a secondary school.* The Counselor will follow the usual process of obtaining assessment information from a licensed Psychologist to verify the diagnosis of SLD or ASD and identify functional limitations that constitute a substantial impediment to employment.