

### III. ELIGIBILITY AND INELIGIBILITY DETERMINATION

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**This Document has been superseded**

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## HI. ELIGIBILITY OR INELIGIBILITY DETERMINATION

The Rehabilitation Services Administration (DCRSA) has the sole responsibility for determining eligibility for VR Services. **The Administration has delegated the responsibility of determination of eligibility to the Counselor.**

For all individuals applying for services, DCRSA will conduct an assessment to determine eligibility and priority for services if the state is operating under an Order of Selection, 34 C.F.R. §§ 361.42(d) and (g).

Eligibility requirements will be applied in compliance with Titles VI and **VII** of the Civil Rights Act, the Americans with Disabilities Act, and without regard to age, religion, disability, sex, race, color or national origin. The eligibility requirements are applicable without regard to the particular service need or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family. **Eligibility determination will be made within 60 days of the application date.** Exceptional and unforeseen circumstances beyond the control of DCRSA that prevent the Administration from making an eligibility determination within 60 days will require the counselor and the individual to agree on a specific extension of time, 34 C.F.R. § 361.41 (b)(1)(i).

Basic eligibility requirements are:

- A determination by a qualified medical professional that the individual has a physical or mental impairment;
- A determination that the individual's physical or mental impairment constitutes or results in a substantial impediment to employment for the individual; and
- A presumption that the individual can benefit in terms of an employment outcome from the provision of VR services; and a determination that the individual requires VR services to prepare for entrance into, engage in, or retain gainful employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities and informed choice, 34 C.F.R. § 361.42 (a)(1)(iii).

Each individual who meets the eligibility requirements is presumed to be able to benefit from VR services in terms of an employment outcome, unless determined, based on clear and convincing evidence, that the applicant is incapable of benefiting in terms of an employment outcome due to the severity of the disability. Clear and convincing evidence requires a high degree of certainty to conclude the individual is incapable of benefiting from services in terms of an employment outcome.

## PRESUMPTIVE ELIGIBILITY SSDI/SSI RECIPIENTS

Social Security Disability Income (SSDI) beneficiaries and Supplemental Security Income (SSI) recipients are considered to be individuals with a significant disability (Category II) and presumed eligible for VR services, if the intent of the individual is to achieve an employment outcome. The employment outcome must be consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice of the individual. The Administration is responsible for informing individuals through the application process that the individual must intend to achieve an employment outcome in order to receive VR services. No additional tests or procedures may be used to assess disability in order to determine eligibility. 34 C.F.R. §361.42(a)(3).

**Note: The individual who is presumed eligible as a recipient of SSI/SSDI and who intends to achieve an employment outcome is eligible unless clear and convincing evidence demonstrate that the individual is incapable of benefiting from vocational rehabilitation services in terms of achieving an employment outcome due to the severity of the disability.**

Although an SSDI/SSI recipient is considered an individual with a significant disability, presumptive eligibility for VR services does not entitle the individual to priority for services over other individuals with significant disabilities or most significant disabilities if the state is operating under an Order of Selection.

If an applicant for VR services asserts that he or she is eligible for Social Security benefits, but is unable to provide **appropriate evidence**, such as an award letter, to support that assertion, **the counselor must verify the applicant's eligibility by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the counselor to determine the applicant's eligibility for VR services within 60 days of the individual submitting an application for services, 34 C.F.R. § 361.42(a)(3)(B)(ii).**

**Note: Information in this section should not be construed to create entitlement to any vocational rehabilitation service.**

## PROCEDURES - SSIDUSSI ELIGIBILITY

The counselor will obtain verification of SSI/SSDI benefits and a copy will be placed in the individual's file i.e. awards letter, benefits check, verification from Social Security Administration, or a verified/valid Ticket to Work.

**Exception:** The counselor must document in the case record the justification for completing a Certificate of Eligibility before verification is obtained, (See procedures on page III-3.)

Complete the Certificate of Eligibility for VR, Trial Work Experience, or Extended Evaluation services. (Form RS-600-B (1) in Appendix E). The certification statement for the Certificate of Eligibility is **"This individual meets the presumptive eligibility requirement."**

The counselor must be aware of the Ticket to Work Program. If the Applicant is eligible under "presumptive eligibility", the counselor must follow guidelines outlined in Ticket to Work in Appendix B (Special Programs).

The applicant can be scheduled for additional testing, or medical, psychological, or psychiatric evaluation based on informed choice to determine limitations if this information is needed in the development of the IPE.

## **CERTIFICATION OF ELIGIBILITY**

The counselor must include a formal certification statement signed and dated by the counselor in each individual's record of services indicating eligibility for VR, Trial Work or Extended Evaluation (EE) services.

The Certificate of Eligibility must be completed prior to or simultaneously with an individual's acceptance for VR services, Trial Work or EE. As a minimum, the Certificate of Eligibility will contain the client's name, last 4 digits of client's social security number, date of eligibility, and a statement of mental or physical impairment with resulting limitations, 34 C.F.R. § 361.42(a) (4).

## **COMPLETION OF PRELIMINARY DIAGNOSTIC STUDY**

The counselor completes the preliminary diagnostic study when enough information is obtained to write the Certificate of Eligibility or Ineligibility.

## **PROCEDURES - CERTIFICATE OF ELIGIBILITY**

To determine functional limitations, priority should be given to existing information.

Complete the Certificate of Eligibility for VR, Trial Work Experience, or Extended Evaluation services signed and dated by the counselor. {Form RS-600-B (1)} (See Appendix E)

The Certificate of Eligibility must be placed in the individual's file. (See Section X)

Case notes should be made to reflect Status 10 (VR) or Status 06 (Trial Work Experience or Extended Evaluation). (See Appendix E)

Key Case Management Information System data for Status 10 (VR) or Status 06; (Trial Work Experience or Extended Evaluation). (See Supervisor of assistance)

**Note: Under presumptive eligibility, the Certificate of Eligibility will be completed using documented verification that the consumer is a recipient of SSI/SSDI benefits.**

## **CERTIFICATION OF INELIGIBILITY**

When clear and convincing evidence establishes that an applicant does not meet the VR eligibility conditions or intervening reasons prevent eligibility determination, the counselor must include a formal Certificate of Ineligibility in the individual's record of services. This Certificate of Ineligibility will be dated and signed by the counselor. Ineligibility certification will be made only after full participation with the individual or, as appropriate, their representative, or after an opportunity for consultation. The counselor will notify the applicant in writing of the action taken, or by other appropriate modes of communication consistent with the informed choice of the individual, including the reasons for the ineligibility determination. When appropriate, referral will be made to other agencies and programs that are part of the One-Stop Career Center service delivery system under the Workforce Investment Act, 34 C.F.R. §361.43.

**Note: For procedures see Caseload Management Section IX.**

## **APPEAL/INELIGIBILITY DETERMINATION**

The individual may appeal the ineligibility determination. The counselor will provide the individual with information on the means by which an appeal can occur, including informal and formal due process procedures, such as administrative review, mediation and review by an impartial hearing officer. The counselor will also provide the individual with information regarding services available from the Client Assistance Program and how to contact the Client Assistance Program. See Due Process Section XIV, 34 C.F.R. § 361.57.

**Note: An Annual Review is required on a case that has been closed as incapable of achieving an employment outcome due to the severity of disability. This review need not be conducted if the individual refuses to participate, is no longer present in the state, or the whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal, 34 CFR § 361.43(e) .**

## Order of Selection

~~Superseded by new [Order of Selection Policy \(2014-RSA-POL-001\)](#)~~

~~If DCRSA is unable to provide the full range of vocational rehabilitation services to all eligible consumers, the Administration will operate under an Order of Selection. DCRSA will provide services based on an Order of Selection on a city wide basis. The Order of Selection assures that consumers with the most significant disabilities will be selected first for the provision of vocational rehabilitation services.~~

~~Under an Order of Selection, DCRSA will designate which priority categories will be served based on availability of resources. Staff will be notified by the Chief of Vocational Rehabilitation Services Division when the category served is raised or lowered, C.F.R. §§ 361.36 and 361.42(g).~~

~~A copy of the notification will be filed under the eligibility certificate in the case record file for documentation. Changing conditions may cause a category that has already been assigned to be reclassified downward or upward.~~

~~In determining priority category, consumers are placed in the highest category for which they qualify. All consumers will be informed of the priority category for which they qualify. Rehabilitation consumers who have an IPE for VR, Trial Work or EE services in place prior to the implementation of the Order of Selection policy will receive services as recorded in their IPE. Consumers who are not served due to the priority under the Order of Selection will be referred by the counselor to Workforce Investment Programs or other agencies for consideration of benefits/services.~~

~~The consumer may appeal the determination of the priority category placement. DCRSA will provide the consumer with information on the appeal process including informal and formal due process procedures, such as administrative review, mediation and review by an impartial hearing officer, 34 C.F.R. § 361.57.~~

## PRIORITY CATEGORY I - MOST SIGNIFICANTLY DISABLED

~~An individual with a most significant disability is defined as one who has a significant physical or mental impairment:~~

- ~~• that seriously limits multiple (two or more) **functional capacities** (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome and requires at least two significant services. 34 C.F.R. § 361.5 (30);~~
- ~~• whose vocational rehabilitation can be expected to require multiple VR services\* over an extended period of time; and~~
- ~~• who has one or more physical or mental disabilities as defined below.~~

## **~~PRIORITY CATEGORY II - SIGNIFICANTLY DISABLED~~**

~~An individual with a significant disability is defined as one who has a significant physical or mental impairment:~~

- ~~• that seriously limits multiple (two or more) **functional capacities** (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome and requires at least two non-significant services. 34 C.F.R. 361.5 (31);~~
- ~~• whose vocational rehabilitation can be expected to require multiple VR services\* over an extended period of time\*\*; and~~
- ~~• who has one or more physical or mental disabilities as defined below\*\*\*~~

~~\*\*\***Definition:** One or more physical or mental disabilities resulting from: amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), 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.~~

~~29 U.S.C. 705(21) (A).~~

## **~~PRIORITY CATEGORY III – NON-SIGNIFICANTLY DISABLED NEEDING MULTIPLE SERVICES~~**

~~Eligible consumers limited in at least one functional capacity and require at least two significant services. A non-significantly disabled consumer is someone whose vocational rehabilitation is expected to require multiple VR services\*. 34 C.F.R. 361.5 (29)~~

## **~~PRIORITY CATEGORY IV NONSIGNIFICANTLY DISABLED~~**

~~Eligible consumers limited in at least one functional capacity and require at least two non-significant services. A non-significantly disabled consumer is someone who cannot be classified into a higher priority and is expected to require multiple VR services\*.~~

## Definitions:

~~\* Two (2) or more major VR services, i.e. physical or mental restoration, training, counseling and guidance, or placement.~~

~~\*\* 90 days or more from the date services are initiated.~~

## PROCEDURES - ORDER OF SELECTION

Eligibility (Status 10) must be established **prior** to applying the Order of Selection.

Complete the Assessment for Determining Priority Category for Services. (See Appendix E)

The consumer will be notified in writing of the priority category using the required form letter. The original will be mailed to the individual and a copy will be placed in the case file. (See Appendix E)

The counselor will document the Category placement in the case notes by using the Order of Selection heading.

If the consumer does not meet the level of the priority category necessary to receive services, the consumer may choose to be placed on a **waiting list** in Status 04, or be referred to other Workforce partners or agencies, or closed in Status 30.

If the consumer chooses to be referred to other Workforce partners or agencies, referral will be made to the appropriate Workforce partner.

Documentation of the referral will be placed in the case file.

The case will be closed in Status 30 by completing DP8 and DP9 forms in the Case Management Information System for supervisory approval.

Key Status 30 in Case Management Information System.

If the consumer chooses to be placed on a deferred services list (Status 04):

- Documentation of the action taken will be made in the case notes.

Complete the Certificate of Eligibility. (See Appendix E)

Key Status 04 in the Case Management Information System.

If funding becomes available, an IPE will be completed and the case will be moved to Status 12 and services will be provided without further delay.



If funding is not available, any cases remaining in Status 04 at the end of the fiscal year will be closed in Status 30, and subsequently on an annual basis at the request of the individual.

Individuals will be sent a certified letter to determine if they wish to remain on the waiting list. The letter will state the current status of the Order of Selection and whether or not there is the likelihood that services can be provided in the near future.

The record of services will be closed as follows:

1. If the eligible individual placed on the waiting list requests that the record be closed within the first 12 months; or
2. after one (1) year in waiting status, unless the individual requests to remain on the list.