

# Chapter 5

## Eligibility

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## 5.1 Authority

34 CFR 361.42

## 5.2 Policy

USOR policy is that eligibility is determined as soon as possible, at least within 60 days from the date the application is received. The only exception to this 60 day deadline is in the event of extenuating circumstances beyond the control of USOR and in cases where the client has agreed to an extension for a specific period of time. The VR Counselor must document the reason for the time extension, the anticipated length and the applicant's agreement for the extension in the case file system (AWARE). If the eligibility determination is not completed before the original extension expires, a new time extension is required. Every new extension must include the reason for the time extension, and its anticipated length. The applicant's agreement to every new time extension must be in the client record and completed prior to the expiration of the current extension. Once a VR Counselor has taken possession of the necessary documentation required to make an eligibility determination it is USOR policy that that determination be made as soon as possible. USOR policy is that an eligibility determination has been officially made only when a "Certificate of Eligibility", the official title of the eligibility letter, has been completed by the VR Counselor. The date that the eligibility letter was prepared is the official eligibility date and should match the date in the body of the letter. USOR policy prohibits false, fraudulent, or manipulative practices such as backdating or changing the date in the body of the eligibility letter to any other date than the letter actually prepared.

## 5.3 Definitions

- a. **Applicant** means an individual who has signed an application (USOR 4) requesting vocational rehabilitation services.
- b. **Assessment for determining eligibility** means that as appropriate and necessary for each individual a review of existing data is conducted to determine whether an individual is eligible for vocational rehabilitation services. A preliminary evaluation of additional data may be necessary to determine an individual's eligibility for vocational rehabilitation services.
- c. **Employment outcome** means entering or retaining full time, or if appropriate, part time competitive employment in an integrated labor market (including satisfying the vocational outcome of supported employment) or satisfying any other vocational outcome

consistent including the vocational outcome of self-employed, telecommuting, or business ownership.

- d. **Individual with a disability (D)** means an individual has a physical or mental impairment that results in a substantial impediment to employment and can benefit in terms of an employment outcome from vocational rehabilitation services.
- e. **Individual with a significant disability (SD)** means an individual has a severe physical or mental impairment which seriously limits one or more functional categories.
- f. **Individual with the most significant disabilities (MSD)** means an individual has an impairment that causes serious limitations in **two or more** functional categories.
- g. **Presumption of Eligibility** means the VR counselor can assume that the applicant meets criteria for the vocational rehabilitation program based upon the benefits the applicant receives from the Social Security Administration. Presumption of eligibility also indicates a thorough review of medical and functional capacity has been completed.
- h. **Supported Employment (SE)** means competitive work in an integrated work settings for individuals with the most significant disabilities (including significant disabilities due to mental illness) for whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work. Ongoing support services to support and maintain an individual in supported employment is also made in a way to assist an eligible individual in entering or maintaining integrated competitive employment. (For additional information see CSM 30).
- i. **Trial Work Experience (TWE)** means an opportunity to explore an individual's abilities, capabilities, and capacity to perform in realistic work situations, in the most integrated setting possible with supports. A TWE is conducted to determine whether or not there is evidence that the individual is too severely disabled to benefit from the services of USOR. (For additional information see CSM 6).
- j. **Youth with Disabilities (YWD)** means youth aged 14 to 24 who receive transition services. Given the age range YWD although may or may not be enrolled in school or training program. Specific considerations must be given to YWD regarding eligibility. Requirements must also be met prior to seeking subminimum wage employment. See CSM 31.4, 31.5, and 31.6.

## 5.4 Eligibility Criteria

The VR counselor reviews information to determine whether an individual is eligible for vocational rehabilitation services based upon the following criteria:

1. The individual has a physical or mental impairment and
2. The individual's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and
3. The applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice. For the purposes of assessment and determining eligibility for vocational rehabilitation, an individual is presumed to have a goal of an employment outcome (361.42; 29 USC 722)

## 5.5 Presumption of Eligibility

34 CFR 361.42 (3)(i) states that any applicant who has been determined eligible for Social Security benefits under Title II (SSI) or Title XVI (SSDI) of the Social Security Act is presumed eligible for vocational rehabilitation services:

1. Provided the applicant intends to achieve an employment outcome consistent with primary employment factors; and
2. USOR has not demonstrated clear and convincing evidence that the individual is incapable of benefiting in terms of an employment outcome through trial work exploration due to the severity of the individual's disability.

It is USOR policy that the VR Counselor proceeds with presumptive eligibility as soon as SSI/SSDI beneficiary status is verified through updates in the case management system, AWARE. Individuals who are allowed SSI/SSDI disability benefits from the Social Security Administration may not necessarily be considered Most Significantly Disabled. Applicants who meet criteria for "Most Significant Disability" must have two or more functional limitations as described under 24.4(B)(a-c).

## 5.6 Use of Existing Information

When possible, USOR should use existing and current information to determine eligibility for the vocational rehabilitation program. Use of existing information may also include counselor observations, education records, information provided by the individual or the individual's family, information used by education officials, and determinations made by other agencies including the Social Security Administration and Division of Services for People with Disabilities (DSPD). When existing information does not describe the current functioning of the individual, or the documents are unavailable or insufficient or inappropriate to make an eligibility determination, an assessment may be necessary. Additional assessment may also include trial work experiences, assistive technology devices and services, personal assistance services, and any other support services necessary to determine whether an individual is eligible.

### A. Initial Interview

During the initial interview the counselor should gather information provided by the individual or if appropriate the family.

- a. The applicant or the family of the applicant may provide information indicating the presence of an existing physical or mental impairment and impediment to employment. The VR counselor may determine diagnostic information is needed to establish the presence of a disability.
- b. The VR counselor may observe the presence of an impairment such as an amputation. The counselor should document the observation and assume the presence of an impairment. Further documentation of the impairment and impediment to employment may be necessary.
- c. The counselor may determine that there is no impairment present or impediment to employment. The counselor should inform the applicant that the referral for vocational rehabilitation services is inappropriate. The counselor should not register the application in the case management system. Rather, the counselor should complete the Form 74 (Initial Contact Report). If the case was registered, a letter documenting the reasons for ineligibility determination and the Client Assistance Program (CAP) is provided to the client.

### B. Current and Timeliness of Information

USORs interpretation of existing information and current information is that as of the date of eligibility the information was "valid" at that time. Older data may be appropriate under specific circumstances. This is particularly true for the permanent or chronic nature of the individual's disability (SR 102-357, p.38).

### C. Trial Work Experience

Prior to determination that an individual with a disability is unable to benefit from vocational rehabilitation services and an employment outcome, a trial work experience is appropriate for individuals with significant disabilities. See section 5.11 of this chapter for additional information.

## 5.7 60 Day Eligibility Determination Time Limitation

Federal regulations and the Rehabilitation Act as amended mandates that eligibility determinations should be made within 60 calendar days from receipt of an individual's application for vocational rehabilitation services. The VR counselor is expected to gather information, medical records, and documentation necessary to determine eligibility for vocational rehabilitation. It is the expectation of USOR that once the VR counselor has received the documentation a decision will be rendered as soon as possible provided the information received is sufficient. If the received information is insufficient to determine eligibility, the VR counselor may rule additional assessment is needed to determine eligibility. In this circumstance or for other extenuating circumstances beyond the control of USOR, an eligibility extension is appropriate.

### A. Eligibility Extension

Appropriate reasons for an eligibility extension may include:

- a. Lack of information and medical records needed to complete an eligibility determination
- b. Additional evaluation and assessment may be required including the availability of an appointment with an evaluator, time to complete the assessment, and review of medical records post assessment
- c. The client is temporarily unavailable whether through no fault of the client to participate in evaluations due to illness, hospitalization, or relocation
- d. Pending Trial Work Experience prior to eligibility determination

### B. Documentation of Extension

- a. When an eligibility extension is necessary, the VR counselor must document the reason for the time extension, the anticipated length and the applicant's agreement for the extension in the case management system (AWARE).
- b. If the eligibility determination is not completed before the original extension expires, a new time extension is required. Every new extension must include the reason for the time extension, and its anticipated length. The applicant's agreement to every new time extension must be documented in the client record and completed prior to the expiration of any prior extension.
- c. If during the extension period, an applicant has been unavailable to complete an assessment for determining eligibility and repeated efforts have been made and documented to contact the individual and to encourage his/her participation, the individual's case may be closed without a determination of eligibility.

### C. Disagreement of Eligibility Extension

If agreement cannot be reached, the District Director will rule on the extension of time. An individual who disagrees with the District Director's decision must be advised of the

rights and remedies that are available, including the right to a hearing by an impartial hearing officer and the availability of the Client Assistance Program (CAP).

USOR policy prohibits false, fraudulent, or manipulative practices or misrepresentation of the applicant's consent for an extension in the case management system.

## 5.8 Eligibility Determination Process and Disability Classification

The VR counselor begins the eligibility determination process once an application is received and an initial interview has been completed with the applicant. It is presumed that an individual applying for VR services has the intent of achieving an employment outcome. In addition, it is presumed that an individual can benefit from vocational rehabilitation services in terms of an employment outcome unless the agency can demonstrate by clear and convincing evidence that the individual is incapable of benefiting from services in terms of an employment outcome. An eligibility determination for vocational rehabilitation services is conducted based upon the criteria provided in section 5.4 of this chapter including review of documentation and presumptive eligibility based upon Social Security Administration data.

After determination of eligibility, the VR counselor then determines the placement of the individual in a disability category based upon the functional limitations presented by the disability. The following are the disability categories (additional information regarding disability category can be found in Chapter 24):

- a. **An “Individual with a Disability” (D) is an individual who:**
  1. Has a physical or mental impairment that results in a substantial impediment to employment; and
  2. Can benefit in terms of an employment outcome from vocational rehabilitation services.
- b. **An “Individual with a Significant Disability” (SD) is an individual who:**
  1. Has a severe physical or mental impairment which seriously limits one or more functional categories which include: 1) mobility, 2) communication, 3) self care, 4) self direction, 5) interpersonal skills, 6) work tolerance, or 7) work skills) in terms of an employment outcome; **and**
  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.

- c. **An “Individual with the most Significant Disabilities” (MSD) is an individual who:**
  1. Has an impairment that causes serious limitations in **two or more** functional categories. Functional categories include: 1) mobility, 2) communication, 3) self care, 4) self direction, 5) interpersonal skills, 6) work tolerance, or 7) work skills. In addition, the individual must require multiple VR services over an extended period of time in order to engage in employment; **and**
  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. For additional information see CSM 24.4.

## 5.9 Use of Medical Consultation

A medical consultation is a collaborative dialogue between the VR counselor and a medical professional in order to review the applicant's documentation, medical history, functional limitations, and stability of disability. This consultation may be necessary depending upon the circumstances when reviewing medical information. Regardless of a consultation conducted, the VR counselor is the professional responsible for completing an eligibility determination when an individual applies for vocational rehabilitation services.

In many instances medical consultation may be more appropriate after the determination of eligibility. For example, a consultation with a medical professional may assist when planning for restoration services or assessing functional limitations regarding a client's choice of an

employment outcome. Medical consultation may also be appropriate in determining the appropriateness of services, costs of surgeries, and other physical restoration or psychiatric treatment. Information obtained through a medical consultation may be included in a Client Service Recommendation (CSR) or other case documentation.

## 5.10 Certification of Eligibility/ Ineligibility

Upon completion of the assessment for eligibility determination, the counselor should document the decision and rationale for the eligibility decision in the case management system.

**A. Decision of Ineligibility**

USOR policy is that a decision of ineligibility has been made when a letter of ineligibility has been completed by the VR counselor. The date of decision and the date that the eligibility letter was prepared and the date of determination should match. The letter of ineligibility is provided to the client. A determination of ineligibility may be overturned if additional information is obtained.

**B. Certificate of Eligibility**

USOR policy is that an eligibility determination has been made only when a "Certificate of Eligibility" (the official title of the eligibility letter), has been completed by the VR Counselor. The date that the eligibility letter was prepared is the official eligibility date and should match the date in the body of the letter.

USOR policy prohibits false, fraudulent, or manipulative practices such as backdating or changing the date in the body of the eligibility letter to any other date than that on which the letter is actually being prepared.

Decision letters include information on the Client Assistance Program (CAP).

## 5.11 Conditions Warranting Trial Work Exploration

USOR policy is that individuals who apply for vocational rehabilitation services are presumed to benefit in terms of an employment outcome. VR counselors conduct a review of information to determine an applicant's eligibility for VR services. When a VR counselor questions the applicant's benefit from VR services, federal law mandates additional procedures. In such cases, VR must conduct an assessment of the individual's ability to work prior to determining that an individual is ineligible due to the severity of an individual's disability. In order to determine if an applicant is capable of work, VR agencies are required to provide trial work services exploring an applicant's abilities, capabilities, and capacity to perform in competitive integrated work settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual (34 CFR 361.42(e)(2)(i)). Trial work experiences may include supported employment, on the job training and other experiences using realistic integrated work settings.

In cases where a counselor determines that Trial Work Exploration (TWE) is appropriate, the VR counselor develops a written plan listing the goal of the TWE, services to be provided, the rights and responsibilities of the individual participating in the TWE, and the responsibilities of USOR. The plan also outlines the specific work activities, job tasks, work shift, duration, and the support needed to complete the work experience. Supports may include transportation services, assistive technology, job coaching, and other services to accommodate the rehabilitation needs of the individual during the TWE. The plan should also include the evaluation criteria for determining the outcome of the TWE. Based on the results of the TWE, the counselor determines if there is clear and convincing evidence to conclude whether or not the individual is capable of benefiting from the provision of vocational rehabilitation services in terms of an employment outcome (S. Rep. No 357, 102d Cong., 2d. Sess. 37-38 (1992); 34 CFR 361.42(e)(2)(iii)(B) The counselor will then proceed with determining eligibility for vocational rehabilitation services and provide written notification of the decision to the client.

For additional information please refer to CSM 6 *Trial Work Experience and Extended Evaluation*.

## 5.12 Youth Entering Subminimum Wage Employment

A Youth with a Disability (YWD) may exercise informed choice and choose not to engage in competitive integrated employment upon application for VR services. However, prior to entering subminimum wage employment YWD must meet specific requirements and conditions.

YWD who choose not to seek competitive, integrated employment should be determined ineligible for VR services. Counselors should review CSM 31.6 and consult supervision when making a determination of ineligibility for a YWD.

The ineligibility letter is considered the certificate of ineligibility and the YWD may use the letter to seek other options including entering subminimum wage employment.

## 5.13 Annual Review of Ineligibility

When an ineligible determination has been made for the reason that the individual is not capable of achieving a vocational outcome, it is required that the decision is reviewed annually.

The results on the assessment from the trial work experience must be documented in the case management system

- a. USOR will initiate the first review

- b. Subsequent reviews are initiated at the request of the individual or the individual's parent or representative. (Complete a release of information Form 45b)
- c. A review is not required when the individual is no longer present in the state, no longer wishes to participate in the review, or the individual is unavailable, whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal (34 CFR 361.43(d)).

## 5.14 Closure Without Eligibility Determination

In cases where an applicant is unavailable to participate due to the applicant relocating, becoming institutionalized or incarcerated after application, or applicant death occurs, counselors may close the case prior to making an eligibility determination. When the counselor receives notification of any of these circumstances the counselor should proceed immediately with case closure. Counselors should select the appropriate description from the closure reason list. The counselor must document the circumstances for case closure however, the 30 day closure letter, case closure letters, and other additional attempts to contact the applicant or applicant's representative are not required.