

Chapter 24

Order of Selection

24.1 Authority: 34 CFR 361.36

24.2 Policy

In the event that USOR lacks the resources to provide all eligible individuals VR services necessary to obtain, retain, or engage in employment, USOR must show and provide the justification for the order to be followed in selecting individuals to whom VR services will be provided. The order of selection for the provision of VR services shall be determined on the basis of significance of disability. First priority will be given to eligible individuals with the **most significant** disabilities, followed by eligible individuals with **significant** disabilities, and finally eligible individuals with **disabilities** (that are not-significant). Significance of disability is determined by the VR Counselor at the time of eligibility determination in accordance with criteria established by USOR.

24.3 Description of the Order of Selection

Priority 1 - Eligible individuals with the **Most Significant Disabilities (MSD)**.

Priority 2 - Eligible individuals with **Significant Disabilities (SD)**.

Priority 3 - All other eligible individuals with **Disabilities (D)**.

24.4 Definitions

A. Individuals with the Most Significant Disabilities

1. An individual with the most significant disability means a severe physical or mental impairment causes serious limitations in **two or more** functional capacities. Functional capacities include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills. In addition, the individual must require multiple VR services over an extended period of time in order to engage in employment. Examples of serious limitations under functional capacities include but are not limited to:
 - a. Mobility
 - i. Requires assistive devices (cane, canes for the blind, crutches, prosthesis, walker, wheelchair) to be mobile.
 - ii. Is unable to climb one flight of stairs without pause.
 - iii. Is unable to walk 100 meters without pause.
 - iv. Cannot evacuate from a building in less than three minutes without assistance.
 - v. Unable to travel to and from worksite (including accessing public transportation) without assistance.
 - vi. Other similar mobility deficits.
 - b. Communication
 - i. Expressive and receptive primary mode of communication is unintelligible to non-family members.

- ii. Does not demonstrate understanding of simple requests or is unable to understand one-to-two step instructions including instructions given through an interpreter.
- iii. Is unable to read or understand any written material or instructions due to disabling condition
- iv. Other similar communication deficits.
- c. Self-care
Is unable to perform activities of daily living without assistance (ie loss of manual dexterity or coordination sufficient that he/she cannot perform personal hygiene tasks, dress self, prepare own meals etc. without assistance)
- d. Self direction
 - i. Is unable to provide informed consent for life issues without the assistance of a court appointed legal representative or guardian; or has been declared legally incompetent.
 - ii. Is unable to understand rights or responsibilities in judicial or other proceedings even with utilization of an interpreter.
 - iii. Is unable to perform work in an integrated setting without support because is unable to tell time, manage time, and/or stay on task without assistance.
 - iv. Is unable to perform work outside sheltered environment.
 - v. Other similar deficits in self-direction.
- e. Interpersonal Skills
 - i. Has disfigurement or deformity so pronounced as to cause social rejection.
 - ii. Has demonstrated behavior such that the individual is a danger to self and others without supervision.
 - iii. Is unable to respond appropriately to supervision or to respond appropriately to co-workers or the public.
 - iv. Consistently demonstrates behavior toward others which is considered offensive, unpredictable or explosive.
 - v. Other similar interpersonal skill deficits.
- f. Work Tolerance
Is unable to perform sustained work for more than 4 hours per day.
- g. Work Skills
 - i. Is unable to perform work tasks outside sheltered environment.
 - ii. Is unable to perform several types of work tasks (regardless of training) due to disabling condition.
 - iii. Other similar work skill deficits.

2. Determinations Made by Other Agencies.

While Federal Regulations prohibit assigning Order of Selection categories by disability type or automatically assigning categories, determinations made by other agencies may be utilized to assist the VR Counselor in documenting the priority category as they provide information about functional limitations. For example, the VR Counselor may receive documentation that the individual is:

- a. Eligible for services from the Division of Services for People with Disabilities; or

- b. Determined Seriously and Persistently Mentally Ill (SPMI) by the Mental Health System, a duly licensed physician, licensed psychologist, other qualified provider under the Mental Health Professional Practice Act, the Judicial System in accordance with DSM-IV-TR; or
- c. Found to be permanently and totally disabled by the State Labor Commission.

In such cases the VR Counselor can be assured that the individual has demonstrated limitations in some functional areas. Regardless of the client's eligibility for other programs, however, the VR Counselor must still document the specific functional deficits.

NOTE: Individuals who are allowed SSI/SSDI disability benefits from the Social Security Administration MAY or MAY NOT be considered Most Significantly Disabled. To be considered Most Significant there must be two or more functional limitations or a determination from another agency as described under 24.3(A)(2)(a-c)

B. Individuals with **Significant Disabilities**

An individual with a significant disability can be classified in any one of the following three categories at any time while he or she is in the VR process:

Category 1. An individual who:

- a. Has a severe 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; **and**
- b. Whose vocational rehabilitation is expected to require multiple services over an extended period of time; **and**
- c. Who has one or more severe physical or mental impairments 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 to cause comparable substantial functional limitation.

Category 2. A recipient of a Social Security Disability Insurance benefits (SSDI) who requires multiple vocational rehabilitation services over an extended period of time.

Category 3. A recipient of a Supplemental Security Income (SSI) payment by reason of blindness or disability who requires multiple vocational rehabilitation services over an extended period of time.

NOTE: Individuals who are allowed SSI/SSDI disability benefits from the Social Security Administration are considered to be **at least** Significantly Disabled.

C. Individuals with Disabilities

An individual with a disability means an individual who:

1. Has a physical or mental impairment which for that individual constitutes or results in a substantial impediment to employment;
2. Can benefit in terms of an employment outcome after receiving vocational rehabilitation services; and
3. Requires vocational rehabilitation services to prepare for, enter, engage in or retain gainful employment.

D. Multiple Services

Multiple VR services means - three or more services as listed under Section 103 of the Act.

E. Extended Period of Time

Extended Period of time means - the life span of the case is projected to be six months or more.

24.5 Restrictions on Establishing Priorities

The following factors must **not** be used as criteria for establishing selection priorities:

- A. Type of disability
- B. Age, sex, race, color, creed, or national origin.
- C. Vocational expectation
- D. Income level
- E. Duration of residency requirement
- F. Source of referral or cooperative agreements with other agencies/programs
- G. Cost of services or availability of comparable services and benefits

24.6 Continuity of Service Provision under Order of Selection

During the implementation of an order of selection, USOR must:

- A. Continue to accept applications and make determinations of eligibility.
- B. Reserve sufficient resources to meet these obligations, and
- C. Continue providing needed services to eligible individuals with IPEs implemented prior to the effective date of the Order of Selection.

NOTE: Continuity of Service in all areas is subject to the availability of funding.

24.7 General Administrative Requirements

- A. When setting up the Order of Selection, USOR must take into consideration all eligible individuals and prioritize each one of them.
- B. The Order of Selection must be implemented statewide with the same priority levels in all areas of the state.
- C. USOR in consultation with the State Rehabilitation Council (SRC) must describe and explain its order of selection and this decision must be disseminated to the public for review and comment prior to implementation.

24.8 Order of Selection Procedures

- A. When the Executive Director of USOR invokes an order of selection to prioritize the provision of VR services each eligible individual will be classified into one of the three priority categories listed above based on the determination of the significance/severity of their disability. If necessary, further prioritization within a category will be done by application date.
- B. The priority classification shall be determined solely on the significance/severity of the disability.
- C. All applicants, including individuals in trial work exploration status (06) and eligible without IPE status (10), shall be notified in writing of the Order of Selection and their subsequent priority classification. Included in the written notification will be their right to appeal the determination of their priority classification and the availability of the Client Assistance Program (CAP).
- D. Diagnostic services necessary to determine eligibility, including services in extended evaluation, shall not be impacted by the Order of Selection.
- E. An individual who is found to be eligible but whose priority category is closed at the time of eligibility determination shall be placed in Order of Selection Deferred Status (04).
- F. No services, including non-paid IPE services, shall be provided to individuals in status (04).

EXCEPTION: If the individual appeals the determination and there is justification, additional diagnostic services necessary to reassess the **significance/severity** of the individual's disability and subsequent priority category may be provided (See Section 24.11).

24.9 Change in Priority Levels

- A. If the Executive Director of USOR determines that resources are further limited to where the Order of Selection must be restricted to a higher priority, the field will be notified in writing of the level and the implementation date. All other procedures such as applicant/client notification of the new priority level, continuity of services of those with IPEs, diagnostics, etc. shall continue as they did with the initial implementation of the Order of Selection.
- B. If the Executive Director of USOR determines that additional resources are available but are not sufficient to serve an entire category, individuals will be pulled out of Status (04) in the category that was opened, in the order of application date.

24.10 Client Service Checklist for Priority Classification

- A. The VR Counselor must have sufficient data, either through existing information or purchased diagnostics, to establish a priority category for each individual determined to be eligible.
- B. The VR Counselor must determine the eligible individual's priority level before the development of an IPE. (Current USOR policy requires priority category classification at eligibility determination).

- C. The client record must contain the documentation and rationale which would support the priority level given.
- D. Each eligible individual shall be classified in the highest priority level for which he/she is qualified.
- E. Once classified, that individual shall remain in the highest priority achieved regardless of improvement through restoration, therapy, or spontaneous recovery.
- F. In instances where it is felt that the severity of the disability has increased to the point that a VR Counselor or client believes a change in priority categories is justified, a reassessment may be implemented.
- G. During an active Order of Selection, Counseling Supervisor review and approval must be obtained prior to changing the initial classification.
- H. The priority level and the justification for that determination shall be communicated to each eligible individual with documentation in the client record. This would include:
 - 1. Original notification of priority level.
 - 2. Notification of reclassification as a result of changes in client circumstances.
 - or**
 - 3. Notification of non-reclassification following a requested review.

Each notification shall include the right to appeal and the availability of the CAP.

NOTE: ALL INFORMATION REGARDING NOTIFICATION OF ORDER OF SELECTION PRIORITY LEVELS SHALL BE AVAILABLE IN ALTERNATIVE FORMATS.

24.11 Expenditures for Reassessing Significance of Disability

- A. During an Order of Selection, no VR funds shall be authorized or expended on any individual on the waiting list or any subsequently determined eligible individuals when classification puts him or her in a closed priority category, unless the expenditure is necessary to reassess the significance of the individual's disability. Additional or new information obtained through records, assessments and client self-report are utilized to assist the VR Counselor in a classification determination process. The significance of a disability is determined by the VR Counselor based on the criteria defined in section 24.4 of this chapter.
- B. Instances when it would be necessary and appropriate for USOR to authorize for reassessing the significance of a disability include:
 - 1. The determination that existing records or authorized evaluations and assessments do not describe the most current functioning of the individual due to a change in the impairment or the development of a new impairment; or
 - 2. The determination that existing records or authorized evaluations and assessments are insufficient or inappropriate.
- C. Counseling Supervisor review and approval is required prior to the provision of additional services directly related to reassessing the significance of a disability. Approval must be documented in the client base management system.

24.12 Monitoring

Individuals in Order of Selection Deferred Status (04) shall be contacted at least once in the first 90 days after being placed in deferred status. USOR best practice is for individuals on the wait list to be contacted every 90 Days. Documented contact between USOR and clients on the wait list must not exceed 180 Days. Contact and monitoring lists will be computer generated with minimal efforts required of staff.

24.13 Information and Referral Services

- A. When operating under an Order of Selection, USOR shall provide Information and Referral services to individuals placed on the waiting list in Deferred Status (04). USOR Staff may provide advice and guidance to appropriately explain referral sources available and offer to initiate referrals to other programs, as appropriate.
- B. USOR staff shall provide clients on the waiting list with written information and referrals for services provided by other components of the statewide workforce investment system and other Federal and State programs, such as the Department of Workforce Service (DWS) and Employment Networks under the Ticket to Work program, which offer employment related services. Written referrals will identify a specific point of contact (the name of the agency or organization) and the most suitable services to meet the client's employment needs.
- C. USOR staff shall document information and referral services in the client record. This includes utilization of the Partnership Form-360 for direct referrals to the Department of Workforce Services (DWS).

24.14 Closure

Individuals not wanting to be in Deferred Status (04) after being informed that their priority category is currently not open, or individuals no longer interested in remaining in deferred status after the first 90 day or a subsequent contact, will be closed in status 38.

24.15 Post-Employment Services

Order of Selection does not impact or alter the provision of post-employment services. Post-employment services are considered an amendment of the IPE, and therefore, an individual who needs post-employment services is not required to meet the highest priority category currently being served under an OOS nor is the individual required to wait for services. If the VR Counselor, in consultation with the District Director, determines that substantial services are needed a new application is completed subject to Order of Selection.