

ELIGIBILITY and INELIGIBILITY

I. LEGAL AUTHORITY:

Rehabilitation Act of 1973 (PL 93-112), as amended through P.L. 105-220, the Workforce Investment Act of 1998; Sect. 102, CFR 34, Part 361.42, 361.43.

II. POLICY STATEMENT AND PURPOSE:

Qualified vocational rehabilitation counselors at the Office of Rehabilitation Services will (1) make eligibility determinations of applicants for services within sixty (60) days of application unless particular circumstances apply (see II., B.,2.); (2) utilize existing information provided by the individual and/or from other programs and providers, particularly information used by education officials and the Social Security Administration, information provided by the individual and the family of the individual, and information obtained under the assessment for determining eligibility and vocational rehabilitation needs; (3) presume individuals can benefit from vocational rehabilitation services in terms of an employment outcome unless clear and convincing evidence demonstrates otherwise; and (4) provide due process whenever an individual is aggrieved by an Agency decision.

An individual who has a disability or is blind pursuant to Title II (SSDI) or Title XVI (SSI) of the Social Security Act shall be considered to be an individual with a significant disability and presumed to be eligible for vocational rehabilitation services, providing that the individual intends to achieve an employment outcome, i.e., becoming employed or retaining or regaining employment.

A. Definitions:

1. Individual with a Disability

The term "individual with a disability" means any individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment and who can benefit in terms of an employment outcome from vocational rehabilitation services. It shall be presumed that the individual can benefit in terms of an employment outcome from VR Services unless clear and convincing evidence demonstrates otherwise.

2. Substantial Impediment to Employment

The term "substantial impediment to employment" means that the physical or mental impairment (in light of attending medical, psychological, educational, or other related factors) prevents the individual from preparing for, entering,

engaging in or retaining gainful employment consistent with the individual's abilities and capabilities.

**B. Eligibility**

1. An individual is eligible for vocational rehabilitation services if all of the following apply:
  - a. The individual has a disability that constitutes a significant impediment to employment; and
  - b. The individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice unless ORS can demonstrate by clear and convincing evidence that such individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.
2. To the extent possible, existing information will be used to make the determination of eligibility. Rehabilitation services, including rehabilitation technology in the evaluation process, must be provided as appropriate to determine eligibility.
3. It shall be presumed that the individual can benefit in terms of an employment outcome from vocational rehabilitation services unless clear and convincing evidence demonstrates otherwise.
4. The determination of eligibility will be made in sixty (60) or fewer calendar days following application unless:
  - a. The agency and the individual agree that exceptional and unforeseen circumstances beyond the control of the agency prevents determination within sixty (60) days; and
  - b. The agency and individual agree to a specific time-limited extension; or
  - c. The agency is exploring an individual's potential for employment through trial work.
5. When eligibility cannot be determined within sixty (60) days, the individual is so advised in writing.

**C. Ineligibility**

1. An individual is ineligible for services if one of the following is applicable:
  - a. The individual does not have an impairment which constitutes a substantial impediment to employment, or
  - b. The individual cannot, on the basis of clear and convincing evidence using trial work, benefit from vocational rehabilitation services, or
  - c. The individual does not need vocational rehabilitation services to become employed.
2. Prior to a determination that an individual is ineligible (either before or after services are initiated), the individual (or his/her parent, legal guardian, or other representative, as appropriate) will be included in the decision-making process.
3. If an individual is found to be ineligible, the individual shall receive notification in writing or by other appropriate modes of communication in accordance with the individual's informed choice, of the reason, his/her rights and remedies, and the availability of services provided by the Client Assistance Program.
4. Refer individual to other Agency or other disability services or training related program, as appropriate to address needs.