

WSR 08-14-005
EXPEDITED RULES
DEPARTMENT OF
SERVICES FOR THE BLIND

[Filed June 19, 2008, 11:19 a.m.]

Title of Rule and Other Identifying Information: WAC 67-25-065 Trial work experience, 67-25-570 Resolving a disagreement about vocational rehabilitation services, 67-25-384 Vocational rehabilitation services—Physical and mental restoration services, and 67-25-388 Vocational rehabilitation services—General training provisions.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Patrick Dymond, Department of Services for the Blind, P.O. Box 40933, Olympia, WA 98504-0933, AND RECEIVED BY September 3, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed changes to:

WAC 67-25-065 is to clarify language regarding trial work experience and the time in which is [it] occurs (prior to eligibility). The proposed changes are based on federal statute and don't change the effect of the rule.

WAC 67-25-570(13) is to adopt rule changes made by another Washington state agency, the department of social and health services (DSHS), division of vocational rehabilitation (DVR), which extends the amount of time a customer has to request a fair hearing from twenty days to forty-five calendar days. The proposed changes amend the procedures relating to agency hearings.

WAC 67-25-384 is to correct a typo where language was left out. The proposed changes don't change the effect of the rule.

WAC 67-25-388 is to clarify the language and correct the Washington state constitution article reference regarding use of state funds to support education and training for an employment goal that is religious in nature. The proposed changes are based on state statute and don't change the effect of the rule.

Statutory Authority for Adoption: Code of Federal Regulations, the Rehabilitation Act and Washington state constitution.

Statute Being Implemented: 34 C.F.R. 361.42, Rehabilitation Act and Washington state constitution.

Rule is necessary because of federal law, 34 C.F.R. 361.42 and Rehabilitation Act.

Name of Proponent: Client assistance program; DSHS, division of vocational rehabilitation; Department of Education, Rehabilitative Services Administration (RSA), public and governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Patrick Dymond, 4565 7th Avenue S.E., Lacey, WA 98503, (360) 725-3834.

June 12, 2008

Ellen Drumheller
 Rules Coordinator

NEW SECTION

WAC 67-25-595 Work skills assessment. (1) A work skills assessment is a process of providing assessment and related vocational rehabilitation services, after eligibility, to a customer with significant disabilities, for the purpose of collecting information necessary to assess his or her capability to continue benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the significance of his or her disability. The individualized plan for employment, developed in accordance with WAC 67-25-260, must be inactivated while the individual is involved in the work skills assessment.

(2) A work skills assessment plan will be created by the VR counselor and the VR customer and include:

(a) Intermediate objectives that outline steps or activities that will determine what barriers are preventing the customer from making successful progress in their individual plan for employment;

(b) Responsibilities of the customer and VR counselor for the achievement of each individual objective;

(c) Methods for evaluating progress;

(d) Vocational services which support the achievement of each intermediate objective;

(e) Timelines for the overall work skills assessment plan and each service;

(f) Cost for each service with consideration of comparable benefits;

(g) Comments from the customer regarding the objectives, services and service providers;

(h) A statement that the individualized plan for employment can be amended at any time during the life of the individualized plan for employment; and

(i) Signatures of both the customer and VR counselor. The signature date shall reflect the date the work skills assessment plan is signed.

(3) A work skills assessment may take place more than once and may extend as long as necessary to determine that:

(a) There is sufficient evidence that the customer can benefit from vocational rehabilitation services and achieve an employment outcome and is to continue to receive vocational rehabilitation services; or

(b) There is sufficient evidence based on functional and situational assessments that the customer cannot benefit from vocational rehabilitation services and achieve an employment outcome, due to the significance of his or her disability, and is no longer eligible for vocational rehabilitation services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-065 Trial work experience. (1) Trial work experience is a process of providing assessment and related vocational rehabilitation services to an applicant with significant disabilities, for the limited purpose of collecting information necessary to make an eligibility determination, if there is concern that the individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the significance of his or her disability.

~~(2) ((Trial work experience will be provided for a customer in an individualized plan for employment, if necessary, to assess his or her capability to continue benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the significance of his or her disability.~~

~~(3))~~ (3)) Trial work experience allows the individual to explore his or her abilities, capabilities, and capacities to perform in a realistic work situation, while addressing identified barriers to employment through the provision of appropriate vocational rehabilitation services, including supported employment, on-the-job training, rehabilitation technology and personal assistance services in order to accommodate the rehabilitation needs of the individual during the trial work experience.

~~((4))~~ (3) A written trial work plan, including periodic assessments, must be developed to determine the individual's abilities, capabilities, and capacities, to perform in work situations through the use of trial work experiences. ~~((The individualized plan for employment, developed in accordance with WAC 67-25-260, must be inactivated while the individual is involved in the trial work experience.~~

~~(5) Trial work experience may take place more than once and may extend as long as necessary to determine that:~~

~~(a) There is sufficient evidence that the individual can benefit from vocational rehabilitation services and achieve an employment outcome, and is eligible to receive or to continue to receive vocational rehabilitation services; or~~

~~(b) There is clear and convincing evidence (a high degree of certainty) based on functional and situational assessments, that the individual cannot benefit from vocational rehabilitation services and achieve an employment outcome, due to the significance of his or her disability, and is not eligible or no longer eligible for vocational rehabilitation services.~~

~~(6))~~ (4) If a trial work experience is provided, it must occur in a variety of work environments, include an appropriate range of tasks, must occur in the most integrated settings possible and be consistent with the individual's informed choice and rehabilitation needs.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-384 Vocational rehabilitation services—Physical and mental restoration services. (1) Physical and mental restoration services shall be provided to a customer under an individualized plan for employment when the vocational rehabilitation counselor determines that such services are likely, within a reasonable period of time, to substantially correct or modify a stable or slowly progressive physical or

mental impairment that constitutes a substantial impediment to employment for the customer.

(2) All authorized physical and mental restoration services shall be provided by qualified personnel who meet state licensing requirements.

(3) When receiving physical and mental restoration services, the customer may choose the physician or other health professional and appropriate facilities. Service providers and facilities should, to the maximum extent appropriate, be selected from those who will accept reimbursement in accordance with the *Washington State Department of Labor and Industries Schedule of Maximum Allowances and Program Descriptions*.

(4) Physical and mental restoration services may be provided to an applicant or customer during trial work experience or extended evaluation, in accordance with WAC 67-25-065 and 67-25-070, if it is necessary to stabilize or halt progression of a chronic illness for purposes of determining eligibility or continued eligibility.

(5) Physical and mental restoration services include but are not limited to:

(a) Surgical and therapeutic treatment;

(b) Diagnosis and treatment for mental or emotional disorders;

(c) Dental treatment;

(d) Nursing services;

(e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(f) Convalescent or nursing home care;

(g) Drugs and supplies;

(h) Prosthetic, orthopedic or other assistive devices;

(i) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by qualified medical practitioners;

(j) Podiatry;

(k) Physical therapy;

(l) Occupational therapy.

(6) Physical and mental restoration services shall be provided only after consideration of comparable services and benefits except as specified in WAC 67-25-360.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-388 Vocational rehabilitation services—General training provisions. (1) The individualized plan for employment may include any organized form of instruction providing the knowledge and skills necessary for a customer to perform competitively in an occupation and achieve an employment outcome. Knowledge and skills may be acquired through training in an institution, on the job, by correspondence, by tutors, or through a combination of these methods. Training may be given for any occupation, except as prohibited in subsection (2) of this section.

(2) Article ~~((IX))~~ I, Subsection 11 of the Washington state Constitution forbids the use of public funds to ~~((assist))~~ support an individual in ~~((the pursuit of a career or degree in~~

~~theology or related areas~~) education or training for an employment goal that is religious in nature.

(3) Programs or schools used to provide training shall be limited to those which are accredited, licensed, or approved either by a legal authority, or are recognized as adequate by the professional or trade group with which they are associated.

(4) The department may provide books, tools and other training materials and shall periodically establish guidelines for determining the provision of these services.

AMENDATORY SECTION (Amending WSR 05-08-097, filed 4/4/05, effective 5/5/05)

WAC 67-25-570 Resolving a disagreement about vocational rehabilitation services. (1) If at any time during the vocational rehabilitation process, the department makes a decision relating to the provision of vocational rehabilitation services that a customer does not agree with, the customer or the customer's representative has the right to use one or more of the following options to resolve the issue:

(a) Talk to the vocational rehabilitation counselor or to the counselor's supervisor to resolve the disagreement;

(b) Ask for help or information from the client assistance program;

(c) Request mediation; and/or

(d) Request a fair hearing.

(2) Efforts to reach agreement with the vocational rehabilitation counselor or supervisor will not be used to deny or delay mediation or a fair hearing.

(3) Mediation is voluntary and must be agreed to by both the customer and the department. Mediation is not used to deny or delay a fair hearing. A customer may request both mediation and a fair hearing at the same time. If agreement is:

(a) Reached during mediation, the fair hearing is canceled.

(b) Not reached during mediation, the fair hearing is held as scheduled.

(4) Mediation is conducted by a trained mediator who knows the laws and rules about vocational rehabilitation services and who does not work for the department. The mediator does not make case service decisions.

(5) During mediation, the mediator:

(a) Allows each party to present information or evidence;

(b) Helps each party listen to and understand the other party's position;

(c) Reviews and explains any laws that apply; and

(d) Facilitates an agreement, if possible, between the parties.

(6) If agreement is reached during mediation, the department will provide a written statement of the agreement to the customer. Agreements made through mediation are not legally binding.

(7) The customer may choose to be represented by a family member, advocate or other individual at the mediation meeting.

(8) The department schedules mediation sessions in a timely manner at a convenient location to all parties.

(9) The department pays for costs related to mediation, except costs related to a representative or attorney engaged by the customer.

(10) The department will pay for vocational rehabilitation services necessary for the customer to participate in mediation, such as transportation or child care.

(11) Information discussed during mediation is kept confidential and may not be used in a later hearing or civil proceeding, if one is held. Before beginning a mediation session, all parties must sign a statement of confidentiality.

(12) A fair hearing is a proceeding as outlined under the Administrative Procedure Act, chapter 34.05 RCW and chapter 388-02 WAC. An administrative law judge who works for the office of administrative hearings holds a fair hearing.

(13) A customer who does not agree with a decision made by the department about eligibility or vocational rehabilitation services may ask for a fair hearing within ~~((twenty))~~ forty-five calendar days of that decision.

(14) To ask for a fair hearing, the customer must send a written request to the office of administrative hearings. The written request must include:

(a) The customer's name, address, and telephone number;

(b) A written statement about the decision and the reasons for disagreement; and

(c) Any other information that supports the customer's position.

(15) The office of administrative hearings must hold a formal hearing within sixty days of receipt of written request for a hearing, unless:

(a) The customer or the department ask for a delay; and

(b) There is a reasonable cause for the delay.

(16) After the customer submits a request for a fair hearing, the department will offer the customer a prehearing meeting. The prehearing is optional for the customer and can be conducted in person, by telephone, or by another method agreeable to both parties. The purpose of the prehearing meeting is to:

(a) Clarify the decision with which the customer disagrees;

(b) Provide copies of laws, rules or other information to be presented in the fair hearing;

(c) Explain how the fair hearing is conducted; and

(d) Settle the disagreement, if possible.

(17) During the formal hearing, the customer and the department may present information, witnesses and/or documents to support their position.

(18) The customer may choose to be represented by an attorney, a relative, or someone else;

(19) The administrative law judge makes a decision after:

(a) Hearing all of the information presented;

(b) Reviewing any documents submitted; and

(c) Reviewing relevant federal and state laws and regulations.

(20) The office of administrative hearings sends a written report of the findings and decisions to the customer and to the department within thirty days of the formal hearing.

(21) The office of administrative hearings decision is final and the department must implement the decision.

(22) If a customer does not agree with the office of administrative hearings decision, the individual may pursue civil action through superior court to review that decision.

(23) The department will not suspend, reduce, or terminate services to a customer while waiting for a formal hearing decision, unless the department believes the customer:

(a) Provided false information to obtain vocational rehabilitation services; or

(b) Committed fraud or other criminal action to obtain vocational rehabilitation services.