

III. ELIGIBILITY AND INELIGIBILITY DETERMINATION

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III. ELIGIBILITY OR INELIGIBILITY DETERMINATION

ARS has the sole responsibility for determining eligibility for VR Services. The ARS Commissioner has delegated the responsibility of determination of eligibility to the counselor.

For all individuals applying for services, ARS 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(a).(2.)

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 ARS that prevent the Agency from making an eligibility determination within 60 days will require ARS and the individual to agree on a specific extension of time. 34 C.F.R. §361.41 (b-1) (i)

Basic eligibility requirements are:

1. A determination that the individual has a physical or mental impairment defined as an injury, disease or other condition that results in persistent functional limitations: 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.
2. A determination that the individual's physical or mental impairment constitutes or results in a substantial impediment to employment for the individual. A substantial impediment to employment exists when the impairment and the resultant limitation: Prevent the individual from obtaining a job consistent with their abilities; significantly interfere with preparing for employment consistent with their abilities, need for special accommodations or technology to perform essential job duties or barriers to job retention; for example loss of job due to impairment or unable to perform essential job duties.
3. A presumption that the individual can benefit in terms of an employment outcome from the provision of VR services. An individual is presumed capable of achieving an employment outcome, unless documented with clear and convincing evidence is obtained documenting for example: the severity of the diagnosis would preclude not obtainable that employment cannot be obtained due to the severity of the individual's disability.

4. 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 (i.-iv.) An individual is expected to require multiple VR services that will have a substantial impact on the individual's disability and resultant functional limitations or reduce the impediment to employment to allow the applicant to prepare for, obtain, retain or regain employment consistent with the individual's capabilities and abilities and the individual services cannot access these services without VR intervention.

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 in order to conclude the individual is incapable of benefiting from services in terms of an employment outcome. The term clear means unequivocal. Given this standard, the use of a standard intelligence test only, would not constitute clear and convincing evidence. A functional assessment of the individual's abilities, capabilities and capacity to perform work situations through the use of trial work experience with appropriate supports and training would assist in defining clear and convincing evidence.

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 Agency 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.

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 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, ARS 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 ARS 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.)

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

PROCEDURES - SSDI/SSI ELIGIBILITY

- The counselor will obtain verification of SSI/SSDI benefits and will be attached to ECF, i.e. awards letter, benefit's check, verification from Social Security Administration.
- **Exception:** The counselor must document in the case record the justification for completing a Certificate of Eligibility/Ineligibility before verification is obtained. (See procedures on page III-3.)
- Complete the Certificate of Eligibility/Ineligibility for VR, Trial Work Experience, or Extended Evaluation (EE) services (See Appendix E) The certification statement for the Certificate of Eligibility/Ineligibility is "**This individual meets the presumptive eligibility requirement.**" The area for limitations does not need to be completed.
- 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 functional limitations if this information is needed in the development of the IPE.

COMPLETION OF PRELIMINARY DIAGNOSTIC STUDY

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

CERTIFICATION OF ELIGIBILITY/INELIGIBILITY

ELIGIBILITY

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

The Certificate of Eligibility/Ineligibility must be completed simultaneously with an individual's acceptance for VR services, Trial Work or EE. As a minimum, the Certificate of Eligibility/Ineligibility will contain the client's name, date of eligibility, and a statement of primary or secondary disability with resulting limitations.

PROCEDURES –ELIGIBILITY

- To determine functional limitations, priority should be given to existing information.
- Complete the Certificate of Eligibility/Ineligibility for VR, Trial Work Experience, or Extended Evaluation services signed and dated by the counselor. (See Appendix E)

- The Certificate of Eligibility/Ineligibility will be generated by the case management system. (See Section X)
- The case management system will generate the status move after required data is keyed for Status 10 (VR) or Status 06 (Trial Work Experience or Extended Evaluation).

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

INELIGIBILITY

When clear and convincing evidence establishes that an applicant does not meet the VR eligibility conditions or intervening reasons prevent eligibility determination (i.e. applicant does not follow through with assessment, individual physical, educational, or medical records unavailable, applicant does not appear for scheduled appointments, for plan development, etc.) the counselor must include a Certificate of Eligibility/Ineligibility in the individual's record of services. This Certificate of Eligibility/Ineligibility will be dated and signed by the counselor. 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 service delivery system under the Workforce Investment Act.

PROCEDURES – INELIGIBILITY - See Closure Section VIII. Closed Not Rehabilitated.

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. § 361.43(c)

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, no longer resides in the state, or the whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal. 34 C.F.R. § 361.43(e)

ORDER OF SELECTION

When ARS is under an order of selection, this section will be utilized.

Under the Vocational Rehabilitation Act (Title IV of the Workforce Investment Act of 1998) certain state Vocational Rehabilitation agencies are required to have an order of selection. An order of selection requires that a priority be given to individuals with the most significant disabilities in the provision of vocational rehabilitation services. The order of selection is required in the event that the state is unable to provide the full range of vocational rehabilitation services to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals in the State who apply for the services

The ARS Order of Selection assures the highest priority in service provision is reserved for eligible individuals with the most significant disabilities. Services and expenditures are closely monitored to enable the ARS Commissioner to close or open priority categories as deemed appropriate. This will assure services are continued for cases determined eligible and receiving services under an Individualized Plan for Employment. Adequate funds will be reserved to provide diagnostic services for all applicants to determine eligibility and category placement.

The Order of Selection status is changed by the Commissioner notifying the Rehabilitation Services Administration (RSA). Notification of this change to ARS staff is made available through a directive from the Chief of Field Services. The notification of change of Order of Selection to ARS staff is placed permanently in **Appendix J** for reference.

DESCRIPTION OF PRIORITY SELECTION

The Order of Selection priority categories, justification for each, outcome and service goals are listed below:

When applicable, the ARS Order of Selection assures clients in Priority I and II will have first priority for the provision of services. If funds become available, individuals in Priority III may receive services.

Rehabilitation clients who have an Individualized Plan for Employment (IPE) for vocational rehabilitation (VR) services or extended evaluation (EE) services in place prior to the implementation of the Order of Selection policy will receive services as recorded in their IPE.

Priority Category I - Most Significantly Disabled

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

1) Seriously limits at least three functional capabilities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of employment outcome;

2) Whose vocational rehabilitation can be expected to require multiple VR services* over

an extended period of time**; and

3) Who has one or more physical or mental disabilities as defined below***.

Priority Category II - Significantly Disabled

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

1) Seriously limits two functional capacity area (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of employment outcome;

2) Whose vocational rehabilitation can be expected to require multiple VR services* over an extended period of time**; and

3) Who has one or more physical or mental disabilities as defined below***:

Priority Category III – Non-Significantly Disabled

An eligible individual with a non-significant disability is defined as one who has a significant physical or mental impairment which:

1) Seriously limits one functional capacity area (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of employment outcome;

2) Whose vocational rehabilitation can be expected to require multiple VR services* over an extended period of time**; and

3) Who has one or more physical or mental disabilities as defined below***:

Definitions:

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

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

*** 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.

PRIORITY OF CATEGORIES TO RECEIVE VR SERVICES UNDER THE ORDER

When applicable, the ARS Order of Selection assures clients in Priority I and II will have first priority for the provision of services. If funds become available, individuals in Priority III may receive services. Rehabilitation clients who have an Individualized Plan for Employment (IPE) for vocational rehabilitation (VR) services or extended evaluation (EE) services in place prior to the implementation of the Order of Selection policy will receive services as recorded in their IPE.

PROCEDURES - ORDER OF SELECTION

When applicable ARS Order of Selection follows the procedures outlined.

- 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 ECF. (See Appendix E)
- If under Order of Selection, document the Category in the case note. If the individual does not meet the level of the priority category necessary to receive services, the individual may choose to be placed in a waiting (list) Status 04, or be referred to other Workforce partners or agencies, or closed in Status 30.

If the individual 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 ECF.
- The case will be closed in Status 30.
- The case management system will generate the status move after required data is keyed for Status 30.

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

- Documentation of the action taken will be made in the case note.
- Complete the Certificate of Eligibility/Ineligibility. (See Appendix E)
- The case management system will generate the status move after required data is keyed for Status 04.
- If funding becomes available, an IPE will be completed and the case 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 38.