

**§ 722. Eligibility and individualized plan for employment**

**(a) Eligibility**

**(1) Criterion for eligibility**

An individual is eligible for assistance under this subchapter if the individual—

(A) is an individual with a disability under section 705(20)(A) of this title; and

(B) requires vocational rehabilitation services to prepare for, secure, retain, or regain employment.

**(2) Presumption of benefit**

**(A) Demonstration**

For purposes of this section, an individual shall be presumed to be an individual that can benefit in terms of an employment outcome from vocational rehabilitation services under section 705(20)(A) of this title, unless the designated State unit involved 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.

**(B) Methods**

In making the demonstration required under subparagraph (A), the designated State unit shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences, as described in section 705(2)(D) of this title, with appropriate supports provided through the designated State unit, except under limited circumstances when an individual cannot take advantage of such experiences. Such experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that the 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.

**(3) Presumption of eligibility**

**(A) In general**

For purposes of this section, an individual who has a disability or is blind as determined pursuant to title II or title XVI of the Social Security Act (42 U.S.C. 401 et seq. and 1381 et seq.) shall be—

(i) considered to be an individual with a significant disability under section 705(21)(A) of this title; and

(ii) presumed to be eligible for vocational rehabilitation services under this subchapter (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual) unless the designated State unit involved can demonstrate by clear and convincing evidence that such individual is incapable of bene-

fitting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual in accordance with paragraph (2).

**(B) Construction**

Nothing in this paragraph shall be construed to create an entitlement to any vocational rehabilitation service.

**(4) Use of existing information**

**(A) In general**

To the maximum extent appropriate and consistent with the requirements of this part, for purposes of determining the eligibility of an individual for vocational rehabilitation services under this subchapter and developing the individualized plan for employment described in subsection (b) of this section for the individual, the designated State unit shall use information that is existing and current (as of the date of the determination of eligibility or of the development of the individualized plan for employment), including information available 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.

**(B) Determinations by officials of other agencies**

Determinations made by officials of other agencies, particularly education officials described in section 721(a)(11)(D) of this title, regarding whether an individual satisfies one or more factors relating to whether an individual is an individual with a disability under section 705(20)(A) of this title or an individual with a significant disability under section 705(21)(A) of this title shall be used, to the extent appropriate and consistent with the requirements of this part, in assisting the designated State unit in making such determinations.

**(C) Basis**

The determination of eligibility for vocational rehabilitation services shall be based on—

(i) the review of existing data described in section 705(2)(A)(i) of this title; and

(ii) to the extent that such data is unavailable or insufficient for determining eligibility, the provision of assessment activities described in section 705(2)(A)(ii) of this title.

**(5) Determination of ineligibility**

If an individual who applies for services under this subchapter is determined, based on the review of existing data and, to the extent necessary, the assessment activities described in section 705(2)(A)(ii) of this title, not to be eligible for the services, or if an eligible individual receiving services under an individualized plan for employment is determined to be no longer eligible for the services—

(A) the ineligibility determination involved shall be made only after providing an opportunity for full consultation with the individual or, as appropriate, the individual's representative;

(B) the individual or, as appropriate, the individual's representative, shall be informed in writing (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual) of the ineligibility determination, including—

(i) the reasons for the determination; and

(ii) a description of the means by which the individual may express, and seek a remedy for, any dissatisfaction with the determination, including the procedures for review by an impartial hearing officer under subsection (c) of this section;

(C) the individual shall be provided with a description of services available from the client assistance program under section 732 of this title and information on how to contact that program; and

(D) any ineligibility determination that is based on a finding that the individual is incapable of benefiting in terms of an employment outcome shall be reviewed—

(i) within 12 months; and

(ii) thereafter, if such a review is requested by the individual or, if appropriate, by the individual's representative.

**(6) Timeframe for making an eligibility determination**

The designated State unit shall determine whether an individual is eligible for vocational rehabilitation services under this subchapter within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless—

(A) exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(B) the designated State unit is exploring an individual's abilities, capabilities, and capacity to perform in work situations under paragraph (2)(B).

**(b) Development of an individualized plan for employment**

**(1) Options for developing an individualized plan for employment**

If an individual is determined to be eligible for vocational rehabilitation services as described in subsection (a) of this section, the designated State unit shall complete the assessment for determining eligibility and vocational rehabilitation needs, as appropriate, and shall provide the eligible individual or the individual's representative, in writing and in an appropriate mode of communication, with information on the individual's options for developing an individualized plan for employment, including—

(A) information on the availability of assistance, to the extent determined to be ap-

propriate by the eligible individual, from a qualified vocational rehabilitation counselor in developing all or part of the individualized plan for employment for the individual, and the availability of technical assistance in developing all or part of the individualized plan for employment for the individual;

(B) a description of the full range of components that shall be included in an individualized plan for employment;

(C) as appropriate—

(i) an explanation of agency guidelines and criteria associated with financial commitments concerning an individualized plan for employment;

(ii) additional information the eligible individual requests or the designated State unit determines to be necessary; and

(iii) information on the availability of assistance in completing designated State agency forms required in developing an individualized plan for employment; and

(D)(i) a description of the rights and remedies available to such an individual including, if appropriate, recourse to the processes set forth in subsection (c) of this section; and

(ii) a description of the availability of a client assistance program established pursuant to section 732 of this title and information about how to contact the client assistance program.

**(2) Mandatory procedures**

**(A) Written document**

An individualized plan for employment shall be a written document prepared on forms provided by the designated State unit.

**(B) Informed choice**

An individualized plan for employment shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the plan, the entity that will provide the vocational rehabilitation services, and the methods used to procure the services, consistent with subsection (d) of this section.

**(C) Signatories**

An individualized plan for employment shall be—

(i) agreed to, and signed by, such eligible individual or, as appropriate, the individual's representative; and

(ii) approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit.

**(D) Copy**

A copy of the individualized plan for employment for an eligible individual shall be provided to the individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, of the individual's representative.

**(E) Review and amendment**

The individualized plan for employment shall be—

- (i) reviewed at least annually by—
  - (I) a qualified vocational rehabilitation counselor; and
  - (II) the eligible individual or, as appropriate, the individual's representative; and
- (ii) amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the designated State agency or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the service providers of the services (which amendments shall not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative, and by a qualified vocational rehabilitation counselor employed by the designated State unit).

**(3) Mandatory components of an individualized plan for employment**

Regardless of the approach selected by an eligible individual to develop an individualized plan for employment, an individualized plan for employment shall, at a minimum, contain mandatory components consisting of—

- (A) a description of the specific employment outcome that is chosen by the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual, and, to the maximum extent appropriate, results in employment in an integrated setting;
- (B)(i) a description of the specific vocational rehabilitation services that are—
  - (I) needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training in the management of such services; and
  - (II) provided in the most integrated setting that is appropriate for the service involved and is consistent with the informed choice of the eligible individual; and
- (ii) timelines for the achievement of the employment outcome and for the initiation of the services;
- (C) a description of the entity chosen by the eligible individual or, as appropriate, the individual's representative, that will provide the vocational rehabilitation services, and the methods used to procure such services;
- (D) a description of criteria to evaluate progress toward achievement of the employment outcome;
- (E) the terms and conditions of the individualized plan for employment, including, as appropriate, information describing—
  - (i) the responsibilities of the designated State unit;

(ii) the responsibilities of the eligible individual, including—

- (I) the responsibilities the eligible individual will assume in relation to the employment outcome of the individual;
  - (II) if applicable, the participation of the eligible individual in paying for the costs of the plan; and
  - (III) the responsibility of the eligible individual with regard to applying for and securing comparable benefits as described in section 721(a)(8) of this title; and
- (iii) the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefits requirements as described in section 721(a)(8) of this title;

(F) for an eligible individual with the most significant disabilities for whom an employment outcome in a supported employment setting has been determined to be appropriate, information identifying—

- (i) the extended services needed by the eligible individual; and
- (ii) the source of extended services or, to the extent that the source of the extended services cannot be identified at the time of the development of the individualized plan for employment, a description of the basis for concluding that there is a reasonable expectation that such source will become available; and

(G) as determined to be necessary, a statement of projected need for post-employment services.

**(c) Procedures****(1) In general**

Each State shall establish procedures for mediation of, and procedures for review through an impartial due process hearing of, determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services to applicants or eligible individuals.

**(2) Notification****(A) Rights and assistance**

The procedures shall provide that an applicant or an eligible individual or, as appropriate, the applicant's representative or individual's representative shall be notified of—

- (i) the right to obtain review of determinations described in paragraph (1) in an impartial due process hearing under paragraph (5);
- (ii) the right to pursue mediation with respect to the determinations under paragraph (4); and
- (iii) the availability of assistance from the client assistance program under section 732 of this title.

**(B) Timing**

Such notification shall be provided in writing—

- (i) at the time an individual applies for vocational rehabilitation services provided under this subchapter;

(ii) at the time the individualized plan for employment for the individual is developed; and

(iii) upon reduction, suspension, or cessation of vocational rehabilitation services for the individual.

**(3) Evidence and representation**

The procedures required under this subsection shall, at a minimum—

(A) provide an opportunity for an applicant or an eligible individual, or, as appropriate, the applicant's representative or individual's representative, to submit at the mediation session or hearing evidence and information to support the position of the applicant or eligible individual; and

(B) include provisions to allow an applicant or an eligible individual to be represented in the mediation session or hearing by a person selected by the applicant or eligible individual.

**(4) Mediation**

**(A) Procedures**

Each State shall ensure that procedures are established and implemented under this subsection to allow parties described in paragraph (1) to disputes involving any determination described in paragraph (1) to resolve such disputes through a mediation process that, at a minimum, shall be available whenever a hearing is requested under this subsection.

**(B) Requirements**

Such procedures shall ensure that the mediation process—

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay the right of an individual to a hearing under this subsection, or to deny any other right afforded under this subchapter; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

**(C) List of mediators**

The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under this subchapter, from which the mediators described in subparagraph (B) shall be selected.

**(D) Cost**

The State shall bear the cost of the mediation process.

**(E) Scheduling**

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

**(F) Agreement**

An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

**(G) Confidentiality**

Discussions that occur during the mediation process shall be confidential and may

not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

**(H) Construction**

Nothing in this subsection shall be construed to preclude the parties to such a dispute from informally resolving the dispute prior to proceedings under this paragraph or paragraph (5), if the informal process used is not used to deny or delay the right of the applicant or eligible individual to a hearing under this subsection or to deny any other right afforded under this subchapter.

**(5) Hearings**

**(A) Officer**

A due process hearing described in paragraph (2) shall be conducted by an impartial hearing officer who shall issue a decision based on the provisions of the approved State plan, this chapter (including regulations implementing this chapter), and State regulations and policies that are consistent with the Federal requirements specified in this subchapter. The officer shall provide the decision in writing to the applicant or eligible individual, or, as appropriate, the applicant's representative or individual's representative, and to the designated State unit.

**(B) List**

The designated State unit shall maintain a list of qualified impartial hearing officers who are knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under this subchapter from which the officer described in subparagraph (A) shall be selected. For the purposes of maintaining such list, impartial hearing officers shall be identified jointly by—

(i) the designated State unit; and

(ii) members of the Council or commission, as appropriate, described in section 721(a)(21) of this title.

**(C) Selection**

Such an impartial hearing officer shall be selected to hear a particular case relating to a determination—

(i) on a random basis; or

(ii) by agreement between—

(I) the Director of the designated State unit and the individual with a disability; or

(II) in appropriate cases, the Director and the individual's representative.

**(D) Procedures for seeking review**

A State may establish procedures to enable a party involved in a hearing under this paragraph to seek an impartial review of the decision of the hearing officer under subparagraph (A) by—

(i) the chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under section 721(a)(2) of this title; or

(ii) an official from the office of the Governor.

**(E) Review request**

If the State establishes impartial review procedures under subparagraph (D), either party may request the review of the decision of the hearing officer within 20 days after the decision.

**(F) Reviewing official**

The reviewing official described in subparagraph (D) shall—

(i) in conducting the review, provide an opportunity for the submission of additional evidence and information relevant to a final decision concerning the matter under review;

(ii) not overturn or modify the decision of the hearing officer, or part of the decision, that supports the position of the applicant or eligible individual unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved State plan, this chapter (including regulations implementing this chapter) or any State regulation or policy that is consistent with the Federal requirements specified in this subchapter;

(iii) make a final decision with respect to the matter in a timely manner and provide such decision in writing to the applicant or eligible individual, or, as appropriate, the applicant's representative or individual's representative, and to the designated State unit, including a full report of the findings and the grounds for such decision; and

(iv) not delegate the responsibility for making the final decision to any officer or employee of the designated State unit.

**(G) Finality of hearing decision**

A decision made after a hearing under subparagraph (A) shall be final, except that a party may request an impartial review if the State has established procedures for such review under subparagraph (D) and a party involved in a hearing may bring a civil action under subparagraph (J).

**(H) Finality of review**

A decision made under subparagraph (F) shall be final unless such a party brings a civil action under subparagraph (J).

**(I) Implementation**

If a party brings a civil action under subparagraph (J) to challenge a final decision of a hearing officer under subparagraph (A) or to challenge a final decision of a State reviewing official under subparagraph (F), the final decision involved shall be implemented pending review by the court.

**(J) Civil action**

**(i) In general**

Any party aggrieved by a final decision described in subparagraph (I), may bring a civil action for review of such decision. The action may be brought in any State

court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

**(ii) Procedure**

In any action brought under this subparagraph, the court—

(I) shall receive the records relating to the hearing under subparagraph (A) and the records relating to the State review under subparagraphs (D) through (F), if applicable;

(II) shall hear additional evidence at the request of a party to the action; and

(III) basing the decision of the court on the preponderance of the evidence, shall grant such relief as the court determines to be appropriate.

**(6) Hearing board**

**(A) In general**

A fair hearing board, established by a State before January 1, 1985, and authorized under State law to review determinations or decisions under this chapter, is authorized to carry out the responsibilities of the impartial hearing officer under this subsection.

**(B) Application**

The provisions of paragraphs (1), (2), and (3) that relate to due process hearings do not apply, and paragraph (5) (other than subparagraph (J)) does not apply, to any State to which subparagraph (A) applies.

**(7) Impact on provision of services**

Unless the individual with a disability so requests, or, in an appropriate case, the individual's representative, so requests, pending a decision by a mediator, hearing officer, or reviewing officer under this subsection, the designated State unit shall not institute a suspension, reduction, or termination of services being provided for the individual, including evaluation and assessment services and plan development, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual, or the individual's representative.

**(8) Information collection and report**

**(A) In general**

The Director of the designated State unit shall collect information described in subparagraph (B) and prepare and submit to the Commissioner a report containing such information. The Commissioner shall prepare a summary of the information furnished under this paragraph and include the summary in the annual report submitted under section 710 of this title. The Commissioner shall also collect copies of the final decisions of impartial hearing officers conducting hearings under this subsection and State officials conducting reviews under this subsection.

**(B) Information**

The information required to be collected under this subsection includes—

(i) a copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this subsection;

(ii) information on the number of hearings and reviews sought from the impartial hearing officers and the State reviewing officials, including the type of complaints and the issues involved;

(iii) information on the number of hearing decisions made under this subsection that were not reviewed by the State reviewing officials; and

(iv) information on the number of the hearing decisions that were reviewed by the State reviewing officials, and, based on such reviews, the number of hearing decisions that were—

(I) sustained in favor of an applicant or eligible individual;

(II) sustained in favor of the designated State unit;

(III) reversed in whole or in part in favor of the applicant or eligible individual; and

(IV) reversed in whole or in part in favor of the designated State unit.

### (C) Confidentiality

The confidentiality of records of applicants and eligible individuals maintained by the designated State unit shall not preclude the access of the Commissioner to those records for the purposes described in subparagraph (A).

### (d) Policies and procedures

Each designated State agency, in consultation with the State Rehabilitation Council, if the State has such a council, shall, consistent with section 720(a)(3)(C) of this title, develop and implement written policies and procedures that enable each individual who is an applicant for or eligible to receive vocational rehabilitation services under this subchapter to exercise informed choice throughout the vocational rehabilitation process carried out under this subchapter, including policies and procedures that require the designated State agency—

(1) to inform each such applicant and eligible individual (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit), through appropriate modes of communication, about the availability of, and opportunities to exercise, informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, throughout the vocational rehabilitation process;

(2) to assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services under this subchapter;

(3) to develop and implement flexible procurement policies and methods that facilitate the provision of services, and that afford eligible individuals meaningful choices among the methods used to procure services, under this subchapter;

(4) to provide or assist eligible individuals in acquiring information that enables those individuals to exercise informed choice under this subchapter in the selection of—

(A) the employment outcome;

(B) the specific vocational rehabilitation services needed to achieve the employment outcome;

(C) the entity that will provide the services;

(D) the employment setting and the settings in which the services will be provided; and

(E) the methods available for procuring the services; and

(5) to ensure that the availability and scope of informed choice provided under this section is consistent with the obligations of the designated State agency under this subchapter.

(Pub. L. 93-112, title I, §102, as added Pub. L. 105-220, title IV, §404, Aug. 7, 1998, 112 Stat. 1138; amended Pub. L. 105-277, div. A, §101(f) [title VIII, §402(c)(5)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-415.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Act are classified generally to subchapters II (§401 et seq.) and XVI (§1381 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### PRIOR PROVISIONS

A prior section 722, Pub. L. 93-112, title I, §102, Sept. 26, 1973, 87 Stat. 368; Pub. L. 93-516, title I, §111(e), Dec. 7, 1974, 88 Stat. 1620; Pub. L. 93-651, title I, §111(e), Nov. 21, 1974, 89 Stat. 2-5; Pub. L. 95-602, title I, §§103, 122(b)(1), Nov. 6, 1978, 92 Stat. 2959, 2987; Pub. L. 98-221, title I, §§104(a)(3), 112, Feb. 22, 1984, 98 Stat. 18, 20; Pub. L. 99-506, title I, §103(d)(2)(A), (B), title II, §203, title X, §1001(b)(5), Oct. 21, 1986, 100 Stat. 1810, 1815, 1842; Pub. L. 100-630, title II, §202(c), Nov. 7, 1988, 102 Stat. 3305; Pub. L. 102-569, title I, §§102(p)(8), 123, Oct. 29, 1992, 106 Stat. 4357, 4375; Pub. L. 103-73, title I, §107(b), Aug. 11, 1993, 107 Stat. 720, related to individualized written rehabilitation program, prior to the general amendment of this subchapter by Pub. L. 105-220.

#### AMENDMENTS

1998—Subsec. (c)(5)(F)(iv). Pub. L. 105-277 added cl. (iv).

### § 723. Vocational rehabilitation services

#### (a) Vocational rehabilitation services for individuals

Vocational rehabilitation services provided under this subchapter are any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including—

(1) an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;