


# LRS CHAPTER 4, TECHNICAL ASSISTANCE & GUIDANCE MANUAL

 <p>LOUISIANA <b>WORKFORCE</b> COMMISSION The Department of Labor</p>	<b>Part</b> 405	<b>Name</b> Determining Eligibility for Vocational Rehabilitation Services	<b>Effective Date</b> * 9/01/2022**
	<p><b>Authorization</b> Federal Register, Volume 81, Department of Education, 34 CFR 361, Part VI, State Vocational Rehabilitation Services Program, §361.36, 361.37, 361.42, 361.43, and 361.44.</p>		

## I. APPLICANT ELIGIBILITY

- A. The Counselor should determine eligibility for vocational rehabilitation services as soon as sufficient information is obtained to do so. The eligibility determination must be made no later than 60 days from the date of an individual’s application for services, as per the Rehabilitation Act.

Presumption of Eligibility for SSI/SSDI Recipients - Refer to Chapter 4, Part 405 II(D)- SSI/SSDI Recipients, for Counselor’s responsibilities.

- B. Exceptions to the 60-day timeline are as follows:

1. Exceptional and unforeseen circumstances beyond the control of the agency preclude an eligibility determination and the counselor and the consumer agree to a specific extension of time.
  - a. The counselor must make an entry in AWARE to document the circumstances that prevent a timely (60 day) eligibility determination and the individual’s consent to the specific extension of time (i.e. an additional two weeks, thirty days, etc.) The entry is made in the Participant Module, Pages Button, Eligibility, Eligibility Determination Ext. page. A signed statement by the consumer is not required.
  - b. If the individual does not agree to a specific extension of time after the Counselor has given a full explanation of the reason(s) for the delay and the Counselor continues to need further information before a determination of eligibility is made, the Counselor will advise the consumer to request an administrative review to resolve the issue.
2. The individual is provided vocational rehabilitation services through a period of trial work to assess the individual’s ability to benefit from services in terms of employment.

## II. ELIGIBILITY CRITERIA

- A. An individual is eligible for vocational rehabilitation services if the individual:
1. Has a physical or mental impairment for which such individual constitutes or results in a substantial impediment to employment; and
  2. Requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment; and
  3. Intends to achieve an employment outcome.
  4. Presumption of Eligibility for SSI/SSDI recipients - refer to II.(D) below for eligibility criteria.

NOTE: The Counselor may not use an applicant's employment or education as a factor in determining his or her eligibility for vocational rehabilitation services.

B. Use of Existing Information

1. The Counselor, to the extent appropriate, is to make an eligibility determination based upon the review of existing medical/psychological data, including information provided by the individual and/or the individual's family, education records, the Social Security Administration, and determinations made by officials of other agencies. Existing IEP information should be used for transition students if the information is available and it reflects the present functioning status of the individual, even if the individual has exited the school system.
2. To the extent existing data does not describe the current functioning of the individual, or the information is not available, insufficient, or inappropriate to make a determination of eligibility, the Counselor must obtain additional information.

C. Evaluations to Determine Eligibility

The Counselor must discuss and review with the consumer their medical history. (The Counselor can use forms found in the Counselor's Toolkit in the Share (S) drive/OWD/LRS/Forms folder to assist in gathering this information.)

1. The following licensed professionals can provide evaluations necessary to determine eligibility:

Medical Doctors; Psychologists; Occupational Therapists; Physical Therapists; Clinical Audiologists; Optometrists; Chiropractors; Speech

Therapists; Licensed Clinical Social Workers; Physician's Assistant (PA), or Nurse Practitioner (NP).

A Licensed Professional Counselor (LPC) can complete evaluations to determine eligibility for individuals with any diagnoses EXCEPT the following:

- Schizophrenia or schizoaffective disorder
- Bi-polar disorder
- Panic disorder
- Obsessive-compulsive disorder
- Major depressive disorder, moderate to severe
- Anorexia/bulimia
- Intermittent explosive disorder; (Louisiana Administrative 5 Code April 2015)
- Autism
- Psychosis NOS (not otherwise specified) when diagnosed in a child under 17 years of age
- Rett's disorder
- Tourette's disorder
- Dementia

LPCs may not assess, diagnose, or provide treatment to any individual suffering from a serious mental illness when medication may be indicated. In such instances the LPC must consult and collaborate with a practitioner who is licensed or holds a permit with the Louisiana State Board of Medical Examiners or is an advanced practice registered nurse licensed by the Louisiana State Board of Nursing who is certified as a psychiatric nurse practitioner.

2. The Counselor can use professional judgment and Counselor observation in lieu of medical reports to determine eligibility for obvious physical disabilities. In lieu of a medical report, the Counselor must appropriately record observations in the case record.

For example, the Counselor can document in the consumer's case record the Counselor's observation and assessment of an obvious physical impairment, such as amputation, disfigurement, spinal cord injury resulting in paralysis, or other obvious physical impairment. However, Counselor observation is not sufficient for documenting impairments such as epilepsy, emotional disorders, vision loss or hearing impairments.

3. Timeline for Existing Evaluations

Medical/psychological assessment of any age may be used as long as the report(s) accurately describes the consumers' current condition and functional capacity.

4. Authorizing Additional Evaluations

The Counselor must schedule the appropriate exam(s) if:

- a. the review of the consumer's existing medical reports/history reveals significant problems not already addressed by a licensed professional;
- b. the consumer does not have existing medical information;
- c. the Counselor is unable to obtain the information from the appropriate licensed professional(s); or
- d. the existing reports/documentation do not describe the current functioning of the individual, are insufficient or inappropriate to make an eligibility determination.

5. Pupil Appraisal Reports

If the applicant is a student in the school system, the Counselor can use the Pupil Appraisal Report/Evaluation to determine eligibility for vocational rehabilitation services, regardless of the professional who completed the report.

D. SSI/SSDI Recipients

1. An individual who has a disability or who 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:
  - a. Presumed to be eligible for vocational rehabilitation services, provided that the individual intends to achieve an employment outcome; and
  - b. Considered to be an individual with a significant disability, such determination to be made by LRS;
2. The following steps must be taken by the Counselor to assure prompt and proper eligibility determination and placement in the Order of Selection:
  - a. Verification of the applicant's SSI/SSDI status will be obtained from the individual or by the Counselor.
  - b. If the applicant is unable to provide appropriate verification (i.e. an award letter), the Counselor must verify applicant's SSI/SSDI eligibility by contacting the Social Security Administration.

- c. Order of Selection Placement – Refer to Chapter 4, Part 405.2(III.B) SSI/SSDI Applicants.
3. The Counselor can find an SSDI or an SSI recipient ineligible for vocational rehabilitation services if the Counselor can demonstrate by clear and convincing evidence through the use of trial work experiences that the severity of the individual’s disability prohibits the individual from benefiting from vocational rehabilitation services in terms of an employment outcome.

### III. MEDICAL CONSULTATION

Counselors can obtain medical consultation on a medical report from the physician who wrote/authorized the report in order to:

- A. Further explain complex disabilities.
- B. Provide opinions regarding the vocational rehabilitation benefits of recommended surgery or therapy.
- C. Advise Counselors regarding estimated costs for proposed surgery or therapy.
- D. Provide information on possible functional limitations of a particular disability.

### IV. ELIGIBILITY DETERMINATION

The Counselor must make an eligibility determination by completing the AWARE Pages, Eligibility, Eligibility Determination page. Once these pages are completed, \*\*\* the Counselor will sign the Eligibility Determination Report and forward to the Supervisor \*for review and approval\*\*. \*\*\*

### V. APPROVAL SIGNATURES

If the District Supervisor \*\*\* agrees that the information submitted supports an eligibility decision, then they will approve the eligibility by entering the approval date in AWARE. Within the same day the District Supervisor will sign and date the Eligibility Determination. The AWARE date and Supervisor signature date MUST be the same. \*The case is then moved to Eligible status in AWARE.\*\*

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## **SUBSECTION 405.1 CERTIFICATION OF ELIGIBILITY/TRIAL WORK/ INELIGIBILITY**

### **I. COUNSELOR’S DETERMINATION OF ELIGIBILITY**

- A. To determine whether an individual is eligible for vocational rehabilitation, the Counselor must take the following action:
1. Obtain from an appropriate professional both a diagnosis and substantiating information to confirm the resultant functional limitations. (Refer to Chapter 4, Part 405, Subsection 405, II. C.)
  2. Assess the impairment(s) related to the diagnosis and other information. The impairments must be substantiated/supported by medical/psychological reports and/or Counselor observation. The Counselor should research the diagnosis using resources such as:

*Merck Manual at <http://www.merckmanuals.com/home/index.html>*

*DSM-IV at <http://allpsych.com/disorders/dsm.html>*

*Handbook of Severe Disability at <https://archive.org/stream/handbookofsevere00walt#page/n0/mode/2up>*

*Medical, Psychosocial & Vocational Aspects of Disability at [www.kvccdocs.com/KVCC/2014-Spring/MHT226/Medical Aspects.pdf](http://www.kvccdocs.com/KVCC/2014-Spring/MHT226/Medical Aspects.pdf)*

3. Determine whether the individual has significant limitations in functional capacities. The Counselor must determine the manifestations of the disability (ies) and the employment-related consequences in terms of the individual’s ability to enter, engage in, advance in or prepare for employment. The Counselor can also use consumer’s statements to assist in establishing functional limitations.

Refer to Chapter 4, Part 406 for further guidelines on functional capacity areas.

If a consumer is employed, the Counselor must establish that vocational rehabilitation services are needed to maintain or advance in the consumer’s employment; (Refer to Chapter 4, Part 417).

4. To determine and document eligibility in AWARE go to the Participant Module, Eligibility, Eligibility Determination.
  - a. Determine the substantial impediment(s) to employment based on limitations in functional capacities. The Counselor must also determine that vocational rehabilitation services are required to assist the individual to prepare for, secure, advance in, retain, or regain employment.
  - b. Decide to what extent the consumer's disability significantly limits the consumer's functional capacities. This is required to distinguish between individuals who are eligible with a most significant or significant disability or eligible with a non-significant disability.
  - c. Severe functional limitations should be selected on the check off boxes listed on the Disability Priority Page. The impediments should be selected on the check off boxes listed on the Eligibility Determination Page in AWARE. If a consumer is determined to be non-significantly disabled (Category \*III\*\*) then non-severe limitations should be addressed in the "Comments" or "Other" box.
- B. Once the Counselor determines eligibility and the Consumer's placement in an Order of Selection Category (refer to Chapter 4, Part 406), the Counselor must notify the consumer using:
  1. Form RS-3(A), Order of Selection Notification Letter for Order of Selection Group(s) currently being served; or
  2. Form RS-3(B) for Order of Selection Group(s) not currently being served.

These forms can be found in AWARE under Reports, Participant Letters, Eligibility.

## II. TRIAL WORK PERIODS

### A. Presumption of Benefit

If the physical/mental disability is of such a significant nature that it is difficult for the Counselor to determine how vocational rehabilitation services will benefit the consumer in terms of gainful employment, the Counselor must initially presume that the individual can, in fact, benefit. When the issue concerns the severity of the individual's disability and uncertainty of an employment outcome, the Counselor should conduct a "trial work period."

## B. Determining Need for Trial Work

To determine whether a period of trial work is appropriate, the Counselor must take the following action:

1. Obtain from an appropriate professional both a diagnosis and substantiating information to confirm the resultant functional limitations. Such information should reflect the current status of the individual.
2. Assess the impairment(s) related to the diagnosis. As appropriate, the impairments must be substantiated/supported by the medical/psychological reports, the consumer's own statements, and/or Counselor observation. The Counselor should research the diagnosis using resources such as:

*Merck Manual* at <http://www.merckmanuals.com/home/index.html>

*DSM-IV* at <http://allpsych.com/disorders/dsm.html>

*Handbook of Severe Disability* at  
<https://archive.org/stream/handbookofsevere00walt#page/n0/mode/2up>

*Medical, Psychosocial & Vocational Aspects of Disability* at  
[www.kvccdocs.com/KVCC/2014-Spring/MHT226/Medical Aspects.pdf](http://www.kvccdocs.com/KVCC/2014-Spring/MHT226/Medical%20Aspects.pdf)

3. Determine and assess the individual's functional capacity limitations. The Counselor must determine and assess the manifestations of the disability (ies) and the employment-related consequences in terms of the individual's ability to enter, retain, advance in, or prepare for employment.

Refer to Chapter 4, Part 406 (Functional Capacity Chart) for further guidelines on functional capacity areas.

4. Determine that the limitations are a substantial impediment to employment. The Counselor must also determine what vocational rehabilitation services provided during the period of trial work are needed to further assess, and make a determination of, the consumer's ability to benefit from vocational rehabilitation services in terms of employment.

## C. Trial Work Plans

Trial work experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or determine that there is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of gainful employment.



1. When the Counselor determines the need for a period of trial work experiences the Counselor's documentation in the AWARE Participant Module also develops the Plan. A Plan is needed to outline for the consumer the objective criteria used to measure the consumer's progress, services, service methods, and providers the Counselor will use to evaluate the consumer's ability to enter and retain employment.
2. The Counselor must set up a minimum number of trial work experiences at various job sites in the community on the Plan (Refer to Chapter 5, Part 511, Section 3 – Trial Work Experience Component for further guidance.)
3. The Counselor must complete the Trial Work Experience page in AWARE to certify the need for a period of trial work. In addition, the following parts of the Eligibility Determination page must be completed:
  - a. The disability priority must be selected in Section 1.
  - b. The disability information must be documented in Section 2.
4. Once this is complete, \*\*\* the Counselor and the Consumer must sign the \*Trial Work Plan\*. Next, the Counselor or RCA must forward the signed Plan \*\*\* to the District Supervisor for review and approval. Counselors who have Independent Approval Status are not required to obtain supervisory approval for Trial Work Plans.

#### D. Approval Signatures

If the District Supervisor is required to approve the Trial Work Plan and they agree that the information submitted supports trial work, then they will approve the plan by entering the approval date in AWARE. Within the same day the District Supervisor will sign or initial and date the Trial Work Plan. The AWARE date and Supervisor signature date MUST be the same.

1. \*\*\*
2. Upon plan approval, the case will be moved to Application - T.
3. A copy of the signed, approved plan must be provided to the consumer.

#### E. 90-Day Reviews of Trial Work

1. The Counselor must thoroughly assess the individual's progress in Trial Work as often as necessary, but at least every 90 days.
2. The Counselor must document the progress in AWARE case notes.

F. Amendments to Trial Work

The Counselor can amend the Plan as follows:

1. Make a case note detailing the changes needed on the Plan and the reasons for the change.
2. Make the required changes on the Trial Work Experience Plan in AWARE and print out the revised copy.
3. Review the revised Plan with the consumer and obtain the necessary signatures.
4. Submit the Plan to the RCA to complete any required authorizations.
5. Submit to the District Supervisor for review and approval if not on Independent Approval Status.
6. As the signature/start date was entered upon approval of the Original Plan, the Counselor with Independent Approval Status and/or Supervisor will approve the amended Plan by signing the hard copy.

G. Length of Trial Work

Trial Work must not exceed 12 months.

H. End of Trial Work Period

1. The Trial Work period must end when the individual is found eligible for services or is found ineligible based on clear and convincing evidence that the individual cannot be expected to benefit in terms of an employment outcome from vocational rehabilitation services.
2. At the end of the trial work period, or at any time that the consumer is found eligible or ineligible for vocational rehabilitation services, the Counselor must complete the Eligibility Determination page in AWARE (if eligible) or begin case closure process (if ineligible) as defined in Chapter 4, Part 405, item IV. Ineligibility.

### III. INELIGIBILITY

#### A. Determination of Ineligibility

The Counselor must make a determination of ineligibility for vocational rehabilitation services when:

1. The Counselor is in possession of clear and convincing evidence that the applicant has no physical and/or mental impairment.
2. Information available to the Counselor indicates that a diagnosed disability does not constitute or result in a substantial impediment to employment.
3. No limitations in functional capacity or no substantial vocational impediments can be determined.
4. The Counselor is in possession of clear and convincing evidence that an individual with a disability does not require vocational rehabilitation services to prepare for, advance in, enter, engage in, or retain gainful employment.
5. The Counselor is in possession of clear and convincing evidence that an individual is incapable of benefiting from vocational rehabilitation services, including available supported employment services, in terms of an employment outcome.

A Counselor cannot make such a determination solely on the basis of medical and/or psychological examinations. Clear and convincing evidence is derived from a combination of a trial work period(s) and other appropriate assessments.

#### B. Once the Counselor determines that the consumer is ineligible by clear and convincing evidence to receive vocational rehabilitation services, the Counselor must:

1. Provide the consumer an opportunity for full consultation of the decision prior to closure of the case record. This will include:
  - a. Providing written notification (RS-11A) to explain:
    - (1) the action to be taken and why;
    - (2) Counselor contact information for further discussion, if requested;
    - (3) the process for appealing the decision;
    - (4) a description of services available from the Client Assistance Program (CAP) and how to contact that program; and
    - (5) referral resources of programs and/or facilities that may further assist the consumer.

- b. File a copy of the RS-11A in the consumer's case record.
  2. Document the rationale for ineligibility by completing the Closure page in AWARE.
  3. The following reasons for closure do not constitute a decision of ineligibility:
    - a. The individual is deceased;
    - b. The individual has refused services;
    - c. The individual has not achieved specific criteria outlined on an IPE/Plan as a condition for continuation of services;
    - d. The individual is no longer present in the state;
    - e. The individual's whereabouts are unknown;
    - f. Transportation is not available.
- C. Annual Review of Cases Closed as Ineligible
  1. The Counselor must perform an Annual Review \*\*\* of the ineligibility determination approximately 12 months after a determination of ineligibility is made, if such a determination is based on either of the following:
    - a. Clear and convincing evidence that the individual is too significantly disabled to benefit in terms of an employment outcome; or
    - b. The individual is institutionalized.
  2. The review is not conducted if:
    - a. The individual refuses the review.
    - b. The individual is no longer present in the state.
    - c. The individual's whereabouts are unknown.
    - d. The individual's medical condition is rapidly progressive or terminal.
  3. The case is not reassessed prior to the 12-month review unless such a review is requested by the individual.
  4. To document annual review of ineligibility in AWARE, Participant Module, find/select the participant, select the Pages button, Follow-up Browse, Edit.

## **SUBSECTION 405.2 DETERMINATION OF SIGNIFICANT DISABILITY**

### **I. AUTHORITY**

Federal regulations, 34 CFR 361.47 (a)(4), require documentation supporting a determination that a consumer's disability is significant.

### **II. DEFINITION**

Individuals determined eligible for vocational rehabilitation services are classified as significantly disabled if the disabling condition and subsequent functional limitations fall into one of the three following categories:

1. The individual is a recipient of Social Security Disability Insurance (SSDI); or
2. The individual is a recipient of Supplemental Security Income (SSI) by reason of blindness or disability (SSI based on age alone does not automatically render an individual significantly disabled); or
3. The individual is one:
  - a. Who has a significant physical or mental impairment which significantly limits one or more functional capacities (mobility, motor skills, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; AND
  - b. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services<sup>1</sup> over an extended period of time<sup>2</sup>; AND
  - c. Who has 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, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, 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 significant functional limitations.

<sup>1</sup>Multiple Vocational Rehabilitation Services – means that the individual must require vocational counseling and guidance (relative to achieving an employment outcome), and at least one other vocational rehabilitation service in order to obtain, maintain or advance in employment. The need for multiple substantial services is documented in AWARE on the Eligibility Determination page. Refer to Technical Assistance and Guidance Manual Parts 403 and 412.2 for information on Guidance and Counseling.

<sup>2</sup>Extended Period of Time - means that the individual requires vocational rehabilitation services that are anticipated to extend three months or longer. The three-month time period will begin with the earliest service initiation date on the IPE through the 90-day follow-up period after employment is obtained and stable. (Services provided in Application-T status in AWARE cannot be counted towards the three-month time period).

### III. DOCUMENTATION

#### A. General Provisions

LRS requires the Counselor to initially address the issue of the significance of the disability at the time of eligibility or acceptance for trial work. The information contained in the case record (data, medical/psychological reports, etc.) must support that determination.

#### B. SSI/SSDI Applicants

The following steps must be taken to assure prompt and proper placement of SSI/SSDI applicants in the Order of Selection:

1. \*When appropriate documentation has been provided to verify the consumer receives SSI/SSDI benefits (refer to Chapter 4, Part 405.II.D.2.b), the Eligibility Determination is completed with the individual being considered presumed eligible and must be assigned to Order of Selection category for Significantly Disabled (Group II); or, if medical documentation is provided and substantiates severe functional limitations in three or more functional capacity areas, the individual should be assigned to the Order of Selection category for Most Significantly Disabled (Group I)\*\*. The Counselor should ensure that all necessary documentation of the consumer's functional limitations has been received prior to placing in an Order of Selection Group not being served, as no further assessments can be authorized by LRS once a consumer is placed in a delayed status. An extension can be requested from the consumer in such instances as further documentation or assessment is needed to ensure proper placement in a Selection Group.

2. If additional information is provided by the consumer after placement in a Selection Group and it is determined that assignment to a higher Section Group is more appropriate, the individual should be placed in that Selection Group and notified. Refer to IV below.
- C. The Counselor should take into account the nature of progressive disabilities and assess severity of the functional limitations over time relative to the medical prognosis for such disabilities.

#### **IV. REDETERMINATION OF SIGNIFICANT DISABILITY**

- A. If a consumer was classified as eligible but NOT significantly disabled at the time of eligibility, but subsequent information/circumstances indicate that the consumer is Significantly Disabled, a redetermination of significant disability can be made.
- B. In order to make a redetermination of significant disability, the Counselor must follow instructions on changing the Order of Selection placement in Chapter 4, Part 406, III.A.
- C. Improvement of Condition

In the event that a consumer's disability improves after they were correctly determined to be significantly disabled, the case will remain classified as significantly disabled. (Example: Improvement through restoration, therapy, or spontaneous recovery causes the consumer to no longer be considered significantly disabled). In such instances, a redetermination would not be completed and the consumer would remain in the category originally determined.