


## CHAPTER 7: LRS Policy Manual

 <p>LOUISIANA <b>WORKFORCE</b> COMMISSION The Department of Labor</p>	<b>Part</b> 109	<b>Name</b> Eligibility and Ineligibility	<b>Effective Date</b> *March 28, 2022**	
	<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.			
	<b>Owner</b> Melissa Bayham, LRS Director		<b>Signature</b> Signature on File	
	<b>Appointing Authority</b> Ava Cates, Secretary		<b>Signature</b> Signature on File	

### A. Criteria for Eligibility

1. An individual is eligible for vocational rehabilitation services, if the individual:
  - a. Has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
  - b. Requires vocational rehabilitation services to prepare for, secure, retain, or regain employment; and
  - c. Can benefit in terms of an employment outcome from vocational rehabilitation services.

### B. Presumption of Benefit

1. An individual who meets criteria in Section 109A.1.a. and b. shall be presumed to be an individual who can benefit in terms of an employment outcome from vocational rehabilitation services, unless LRS can demonstrate by clear and convincing evidence that such individual is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.
2. In making the demonstration of clear and convincing evidence, LRS shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences, except under limited circumstances when an individual cannot take advantage of such experiences.
  - a. Such trial work experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine clear and convincing evidence that the individual is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services.
  - b. Trial work experiences shall also include appropriate supports and training.

### **C. Presumption of Eligibility**

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. Considered to be an individual with either a significant disability or a most significant disability, such determination to be made by LRS; and
  - b. Presumed to be eligible for vocational rehabilitation services, provided that the individual intends to achieve an employment outcome.
2. LRS can find an SSDI or an SSI recipient ineligible for vocational rehabilitation services if LRS 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 benefitting from vocational rehabilitation services in terms of an employment outcome.

### **D. Determinations by Officials of other Agencies**

1. To the extent appropriate and consistent with the requirements of this section, LRS will use determinations made by officials of other agencies, particularly Education Officials, regarding whether an individual satisfies one or more factors relating to whether an individual is an individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment.

### **E. Compliance Provisions**

1. Nondiscrimination and Non-exclusion
  - a. Eligibility decisions must be made without regard to sex, race, age, creed, color or national origin of the individual applying for services.
  - b. No group of individuals is excluded or found ineligible solely on the basis of type of disability.
  - c. No upper or lower age limit is established which will, in and of itself, result in a finding of ineligibility for any individual with a disability who otherwise meets the basic eligibility requirements specified in this manual.
  - d. Louisiana Rehabilitation Services does not impose a residence requirement. Illegal aliens, however, cannot be served. Disabled aliens who have a legal, unexpired work visa, and who otherwise meet the eligibility criteria, can be served.

## **F. Determination of Ineligibility**

1. A determination of ineligibility for vocational rehabilitation services is made:
  - a. when LRS is in possession of clear and convincing evidence that an individual has no physical and/or mental impairment which constitutes or results in a substantial impediment to employment; or
  - b. when LRS is in possession of clear and convincing evidence that an individual with a disability does not require vocational rehabilitation services to prepare for, secure, retain, or regain employment; or
  - c. when LRS is in possession of clear and convincing evidence that an individual is incapable of benefitting from vocational rehabilitation services, including available supported employment services in terms of an employment outcome.
2. If an individual who applies for vocational rehabilitation services is determined (based on the review of existing data and, to the extent necessary, the assessment of activities of a trial work period as described under the Presumption of Benefit) not eligible for services, or if an eligible individual receiving services under an Individualized Plan for Employment (IPE) is determined to be no longer eligible for services, LRS shall:
  - a. Provide an opportunity for full consultation with the individual or, as appropriate, the individual's representative; and
  - b. Inform the individual, or as appropriate, the individual's representative, in writing of
    - i. The reason(s) for the ineligibility determination; and
    - ii. An explanation of the means by which the individual may express and seek a remedy for dissatisfaction with the determination, including the procedures for review by an impartial hearing officer and the availability of services from the Client Assistance Program; and
    - iii. A referral to any other agencies or programs from whom the individual may be eligible to receive services, including other components of the statewide workforce investment system.
3. Any ineligibility determination that is based on a finding that the individual is incapable of benefitting in terms of an employment outcome shall be reviewed:
  - a. within 12 months; and
  - b. annually thereafter, if such a review is requested by the individual or the individual's representative.

## **G. Use of Existing Information**

1. To the maximum extent appropriate and consistent with the requirement of this Section, for purposes of determining eligibility of an individual for vocational rehabilitation services, LRS shall use information that is existing and current (as of the current functioning of the individual), including information available from the individual, programs, and providers, particularly education officials and the Social Security Administration.

## **H. Time Frame for Making an Eligibility Determination**

1. LRS shall determine whether an individual is eligible for vocational rehabilitation services 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 LRS' control preclude making an eligibility determination within 60 days and the individual agrees to an extension of time; or
  - b. LRS is exploring an individual's abilities, capabilities, and capacity to perform in trial work experiences.

## **I. Individual with a Significant Disability- Defined**

1. Individuals eligible for vocational rehabilitation services are determined to be significantly disabled if the disabling condition and subsequent functional limitations fall into one of the following three categories:
  - a. The individual is a recipient of Social Security Disability Insurance (SSDI); or
  - b. 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
  - c. The individual is one:
    - i. who has a severe physical or mental impairment which severely 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
    - ii. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time (extended period of time means three [per exception memo by LRS Director dated September 29, 2008] months or longer); and

- iii. who has one or more physical or mental disabilities resulting from:
  - (a). amputation;
  - (b). arthritis;
  - (c). autism;
  - (d). blindness;
  - (e). burn injury;
  - (f). cancer;
  - (g). cerebral palsy;
  - (h). cystic fibrosis;
  - (i). deafness;
  - (j). head injury;
  - (k). heart disease;
  - (l). hemiplegia;
  - (m). hemophilia;
  - (n). respiratory or pulmonary dysfunction;
  - (o). mental retardation;
  - (p). mental illness;
  - (q). multiple sclerosis;
  - (r). muscular dystrophy;
  - (s). musculoskeletal disorders;
  - (t). neurological disorders (including stroke and epilepsy);
  - (u). paraplegia, quadriplegia, other spinal cord conditions;
  - (v). sickle cell anemia;
  - (w). specific learning disability;
  - (x). end-stage renal disease; or
  - (y). 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 limitations.

**J. Functional Capacity Areas - Defined**

- 1. Functional Capacity Areas are defined as follows: mobility, motor skills, communication, self-care, self-direction, interpersonal skills, work tolerance, and work skills.

**K. Order of Selection**

- 1. LRS follows an Order of Selection to ensure that individuals with the most significant disabilities receive priority for vocational rehabilitation services.
- 2. The following factors shall not be used either in determining the order of selection or in determining the placement category of eligible individuals:

- a. any duration of residency requirement, provided the individual is present in the state;
  - b. type of disability;
  - c. age, gender, race, color, creed, or national origin;
  - d. source of referral;
  - e. type of expected employment outcome;
  - f. the need for specific services or anticipated cost of services required by an individual; or
  - g. the income level of an individual or an individual's family.
3. Prerequisite to Placement in the Order of Selection
- a. Assignment to a selection group is made after a determination of both of the following:
    - i. eligibility for Vocational Rehabilitation Services; and
    - ii. significance of disability.
4. Selection Groups. In accordance with the criteria below, an individual is placed in one of the following:
- a. Selection Group I - The Most Significantly Disabled. An eligible individual is considered the most significantly disabled when all of the following apply:
    - i. the individual meets the definition of an "individual with a significant disability" as defined in "I." above.
    - ii. the individual's significant physical or mental impairment seriously limits **\*three (3) or more\*\*** functional capacity areas; and
    - iii. the individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time;
  - b. Selection Group II - \*\*\* Significantly Disabled. An eligible individual is considered **\*\*\*** significantly disabled when the following apply:
    - i. the individual meets the definition of an "individual with a significant disability" as defined in "I." above.

- ii. the individual's severe physical or mental impairment seriously limits **\*one (1) or two (2)\*\*** functional capacity areas; and
- iii. the individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time.

c. Selection Group III - **\*Non-Significantly\*\*** Disabled. An eligible individual is considered non-significantly disabled when the following apply:

- i. **\*the individual has a physical or mental impairment;**
- ii. **the individual has been determined eligible for vocational rehabilitation services; and**
- iii. **the individual does not meet the above stated criteria for an individual who is either "the most significantly disabled" or "significantly disabled"\*\*.**

**\*\*\***

d. Other Considerations

- i. individuals shall be placed in the highest priority category for which they are eligible;
- ii. upon placement into a priority category, individuals will be notified in writing of their category assignment and of their right to appeal their category assignment.

5. Scope of Services Available.

LRS' order of selection shall not limit the scope of services available for eligible individuals within the selection group(s) being served.

6. Information and Referral.

LRS will, as appropriate, refer those individuals in Selection Groups(s) not being served to other components of the statewide workforce investment system that are best suited to address the specific employment needs of the individual with a disability.

7. Continuity of Services.

LRS shall provide for continuity of services once an otherwise eligible individual is selected for and begins to receive services under an IPE, irrespective of the severity of the individual's disability.

8. Other Assurances
  - a. All individuals within a higher priority category for services shall be served before individuals in the next lowest priority category.
  - b. When it is impossible to serve all eligible individuals within a priority category, the individuals (in addition to referral to other components of the statewide workforce investment system) will be placed on a deferred services waiting list. Individuals on the deferred services waiting list will be served in chronological order based on the date of application.
  - c. If the order of selection is rescinded, individuals on deferred services waiting lists and in unserved categories will be contacted and served in chronological order based on the date of application.
9. Client Participation in the Cost of Services. All LRS policy relative to client participation in the cost of services shall apply to individuals receiving services under the order of selection.

**CONTACT**

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