

## Title 32 Rehabilitation and Disabilities

### Part 21 Vocational Rehabilitation Policy and Resource Guide

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## OVR/OVRB POLICY AND PROCEDURE GUIDE

### MISSIONS AND ASSURANCES

#### 1.0 MDRS Mission

It is the mission of the Mississippi Department of Rehabilitation Services to provide appropriate and comprehensive services to Mississippians with disabilities in a timely and effective manner.

All policy statements expressed within this *Office of Vocational Rehabilitation/Office of Vocational Rehabilitation for the Blind Policy and Procedure Manual* reflect a commitment to the mission of the Agency as being the guiding principle with respect to all activities of the Department.

#### 1.1 General Policies

*(Pertinent sections of The Rehabilitation Act of 1973 As Amended by The Rehabilitation Act Amendments of 1998 are found in parentheses following some sections. MDRS is committed to achieving satisfactory performance outcomes through complying with, monitoring, and reporting the Evaluation Standards and Performance Indicators, as listed at 34 CFR Part 361.80, Subpart E)*

All policies in this manual were reviewed by the State Rehabilitation Council in accordance with the Rehabilitation Act of 1973, as amended in the 1998 Workforce Investment Act, and with applicable federal regulations.

##### 1.1.1 Nondiscrimination

No individual or group of individuals is excluded or found ineligible on the basis of sex, age, race, creed, color, religion, or, national origin, type of disability, duration of residence in Mississippi, public assistance status, citizenship, type of expected employment outcome, source of referral, particular service needs or anticipated costs of services required, or income level of an applicant or applicant's family. This applies to all locations in which rehabilitation services are provided by this agency, including one-stop centers.

##### 1.1.2 Informed Choice

MDRS provides applicants and clients with opportunities to exercise informed choice throughout the VR process, including making decisions about the employment goal, VR services, service providers, settings for employment and service provision, and methods for procuring services.

To enable an individual to make such decisions, MDRS provides information, support and assistance needed by the individual. MDRS has implemented policies, procedures, and practices and developed resources that enable applicants and clients to exercise informed choice throughout the entire VR process; these policies, procedures, and practices are consistent with Federal statutory and regulatory requirements.

Specifically, MDRS ensures that the individual, or if appropriate, the individual through his or her representative:

- makes decisions related to the assessment process and to selection of the employment outcome and the settings in which employment occurs, vocational rehabilitation services, service providers, the settings for service provision, and the methods for procuring services;
- has a range of options from which to make these decisions or, to the extent possible, the opportunity to create new options that will meet the individual's specific rehabilitation needs;
- has access to sufficient information about the consequences of various options;
- has skills for evaluating the information and for making decisions, or, to the extent possible, the opportunity to develop such skills or support and assistance in carrying out these functions;
- makes decisions in ways that reflect the individuals strengths, resources, priorities, concerns, abilities, capabilities, and career interests; and
- takes personal responsibility, to the extent possible, for implementing the chosen options.

For individual Areas of Responsibility, see the *OVR/OVRB Resource Guide*.

### 1.1.3. Timely Processing of Referrals, Applications and Services

The staff of MDRS shall process referrals and applications, determine eligibility or ineligibility for services, and provide services in a timely prompt and appropriate equitable manner. Vocational Rehabilitation staff should contact referred individuals within 14 days by telephone, letter, or personal visit. Good faith effort to inform individuals of application requirements, including the requirement that individuals who receive services under the program must intend to achieve an employment outcome, shall be made and a specific time and place to meet should be scheduled. Application forms are available statewide, including at One-Stop Centers established under Section 121 of the Workforce Investment Act of 1998. Evaluation and services are to be provided in the most integrated setting possible, consistent with the individual's needs and informed choice, without undue delay.

For purposes of determining eligibility within the 60 day federal requirement, an individual is considered to have submitted an application when the individual or their representative, as appropriate, (a) has completed and signed an agency application form or common intake form at a one-stop center or other outside source or has otherwise requested services from MDRS, (b) has provided to MDRS information necessary to initiate an assessment to determine eligibility and priority for services, and (c) is available to complete the application process.

The individual with disabilities shall be determined to be eligible or ineligible within a reasonable period of time, not to exceed 60 days after the individual has submitted an application to receive services unless:

1. the Agency notifies the individual that exceptional and unforeseen circumstances beyond the control of the Agency preclude the Agency from completing the determination within the prescribed time and the individual agrees that a specific extension of time is warranted; or,
2. unless the individual and the Agency agree to Trial Work Experiences.

As outlined in the Rehabilitation Act Amendments of 1998, to the maximum extent appropriate and consistent with the requirements under the Act, existing information available From other programs, particularly information used by educational officials and the Social Security Administration, and information provided by the individual with a disability or the individual's family, will be used in determining eligibility for vocational rehabilitation services, identifying rehabilitation needs, and developing Individualized Plan for Employment (IPE) goals, and services.

The Rehabilitation Act Amendments of 1998 established presumptive eligibility for disabled individuals who are recipients of Supplemental Security Income (SSI) or beneficiaries of Social Security Disability Insurance (SSDI) payments and who intend to achieve a specific employment outcome, (*Section 102(a)(3) of the 1998 Rehabilitation Act Amendments*) unless the Agency can prove by clear and convincing evidence *documented in the case file* that the applicant could not benefit from vocational rehabilitation services due to the severity of his or her disability.

#### 1.1.4 Case File Documentation

A case file must be maintained for each applicant/client containing all required forms and case records. The counselor will record all decisions to provide, deny or modify services.

#### 1.1.5. Data Collection

Counselors shall insure the provision of client and financial data necessary for the operation of the MDRS Management Information System.

#### 1.1.6 Cost Effective Service Provision

Services shall be provided in a cost-effective manner. Vocational rehabilitation services will be provided after a determination that comparable services and benefits are not available under any other program, except in three instances.

Such a determination of comparable services and benefits shall not be required prior to the provision of services planned on an IPE

1. If the determination would delay the provision of such services to any individual at extreme medical risk;
2. if an immediate job placement would be lost due to a delay in the provision of such comparable benefits; or,
3. if the search would delay or interrupt the progress of the individual toward achieving the specific employment outcome identified in the IPE. (Section 101(a)(8) of the 1998 Rehabilitation Act *Amendments*)

#### 1.1.7 Outreach Activities

MDRS shall ensure issues of traditionally underserved populations are addressed. These issues include, but are not limited to, the following:

- the rapid changing racial profile of America,
- the disproportionately high rate of disability in ethnic and racial minorities,
- the historic inequitable treatment of minorities in the vocational rehabilitation process, and,
- the need to recruit larger numbers of minorities into the rehabilitation profession.

MDRS addresses strategies regarding minority outreach through the ten geographical case service districts. The following strategies for district outreach activities are designed to ensure that the philosophy of MDRS is implemented at all levels of the organization.

1. District Managers shall be familiar with the ethnic minorities (American Indian, African-Americans, Asian-Americans, and Latinos) located in their service areas.
2. Staff persons shall be designated in all districts to coordinate outreach activities related to minorities and other traditionally unserved or underserved individuals.
3. Each service area shall maintain an outreach program by establishing contact with community centers, churches, clubs, and social organizations where ethnic minorities participate actively and maintain their identity.

4. Service delivery patterns shall be analyzed throughout the district to develop strategies to eradicate current deficiencies in service provision to minority individuals and thereby increase employment outcomes among those groups.
5. Each district shall provide in-service training periodically to increase awareness, sensitivity, and attitudinal shift or change on multi-cultural issues for counselors and support staff.
6. MDRS shall recruit qualified staff of various ethnic origins to fill professional staff vacancies.

#### 1.1.8 Services to American Indians Who Are Disabled

MDRS will provide vocational rehabilitation services to American Indians with disabilities residing in the State to the same extent as the State provides such services to other significant segments of the population of individuals with disabilities residing in the State. Vocational rehabilitation services will continue to be provided, including as appropriate, services traditionally used by Indian tribes, to American Indians with disabilities on reservations eligible for services by special tribal programs under other sections of the Rehabilitation Act. (Section 101(a) (13) and 130 of the 1998 Rehabilitation Act Amendments)

#### 1.1.9 Agreements with Other Agencies and Organizations, including the Mississippi Workforce Investment System

Counselors shall comply with the provisions of agreements between MDRS and other agencies and organizations; including those in the Mississippi Workforce Investment System. These agreements provide for interagency cooperation which may include establishing interagency working groups; coordinating policies, practices, and procedures; identifying available resources; setting up a comprehensive information and referral system; and defining the financial responsibility of each agency for paying for necessary services and resolving disputes. (Section 101(a)(11) of the 1998 Rehabilitation Act Amendments)

The Mississippi Department of Rehabilitation Services will make available an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the Agency's order of selection criteria for receiving vocational rehabilitation services if the Agency is operating on an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, or regaining employment; and will refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce investment system.

In making these referrals, MDRS will refer the individual to Federal or State programs, including programs carried out by other components of the statewide workforce investment system, best

suited to address the specific employment needs of an individual with a disability, and provide the individual who is being referred—

1. A notice of the referral by MDRS to the agency carrying out the program;
2. Information identifying a specific point of contact within the agency to which the individual is being referred; and
3. Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

In providing the information and referral services under this section to eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under an order of selection, if one is in effect, MDRS will maintain and report data on the number of eligible individuals who did not meet the Agency's order of selection criteria for receiving vocational rehabilitation services and did receive information and referral services.

4. MDRS shall maintain a list of interpreters fluent in languages spoken by the targeted populations.
5. District Managers shall maintain formal relationships with historically Black Colleges and Universities in their service area by assigning a liaison person(s) to encourage referrals, job placement, training, outreach, and recruitment.

MDRS has an agency-wide Cultural Diversity Committee that is responsible for the following:

1. developing strategies for outreach in the district offices to be implemented by the staff designated outreach workers;
2. establishing reporting formats for each district office to summarize outreach activities, which occurred during the quarter;
3. reviewing the quarterly outreach reports and submitting a summary to the MDRS Executive Director; and,
4. making recommendations to the MDRS Executive Director for additional outreach activities designed to increase contact with culturally diverse populations.

#### 1.1.10 Utilization of Community Rehabilitation Programs

MDRS will, when in the best interest of the consumer, utilize community rehabilitation programs to meet the identified needs of those persons served by the Agency. In order to ensure quality of services provided by community rehabilitation programs, MDRS will institute a mechanism for review and maintenance of community rehabilitation program utilization statistics. Individuals

with disabilities are active and full partners in their rehabilitation programming through the exercise of informed choices with respect to selection of services and service providers.

#### 1.1.11 Utilization of Profit-Making Organizations

Mississippi Code, Section 37-33-157, gives MDRS direct purchasing authority for the purchase of services from a profit-making organization for the purpose of providing on-the-job training and related programs. Profit-making organizations may be utilized when they are better qualified than not-for-profit agencies and organizations to provide needed services. This can be determined based on past performance, quality of service, client satisfaction, and similar factors.

#### 1.1.12 Establishment and Construction Authority

MDRS through its Office of Vocational Rehabilitation and Office of Vocational Rehabilitation for the Blind officially exercises the option of Establishment or Construction Authority as provided for in the 1998 Amendments to the Rehabilitation Act. In utilizing such special authority, MDRS will adhere to all applicable rules and regulations as set forth by the State of Mississippi, the Rehabilitation Services Administration, and the U.S. Department of Education.

MDRS will use this authority for the establishment, development, or improvements of community rehabilitation programs, including, under special circumstances, the construction of a facility and the provision of other services (including services offered at community rehabilitation programs) which promise to contribute substantially to the rehabilitation of a group of individuals but which are not related directly to the individualized rehabilitation program of any one individual with a disability. Such programs will be used to provide services that promote integration and competitive employment. (Section 103(b)(2) and Section 104 of the 1998 Rehabilitation Act Amendments)

### 1.2 Vocational Rehabilitation Services for Employees of MDRS

The practice for providing services to MDRS employees who have disabilities are exactly the same as those for providing vocational rehabilitation services to any person with a disability. Every case being considered for vocational rehabilitation services must be subjected to the eligibility criteria established in *Section 102(a), Title I of the 1998 Rehabilitation Act Amendments*. These criteria are equally applicable to employees of MDRS who may apply for vocational rehabilitation services. An employee of MDRS who is seeking vocational rehabilitation services should never confuse these services with having reasonable accommodations on the job. The concept of reasonable accommodations on the job applies to the accommodations needed at the job site in order to function on the job. The use of comparable benefits must be evident in all rehabilitation programs.

### 1.3 Client Assistance Information

In accordance with requirements of the Rehabilitation Act Amendments of 1998, MDRS will advise all individuals with disabilities seeking or receiving services through the Department, or their authorized representatives, of the availability and purpose of the Client Assistance Program (CAP), including the means to seek CAP assistance. (*Section 20 of the 1998 Rehabilitation Act Amendments*)

#### 1.4 PUBLIC HEARING PROCEEDINGS ON PROPOSED POLICY CHANGES THAT SUBSTANTIALLY IMPACT SERVICES TO CLIENTS

1. Scope. - The following policy and procedures apply to all public hearings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new policies and amendments to existing policies before the Department (MDRS) that substantially impact services to clients.

2. When Public Hearing Proceedings will be Scheduled on Proposed Policies. The Department will conduct a public hearing proceeding within thirty (30) days after the first notice of public hearing is run in certain regional and statewide newspapers on proposed policy or amendment to existing policies that substantially impact services to clients.

3. Requested Format. Each request to comment must be printed or typewritten, or must be in legible handwriting. Each request to comment must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests to comment may be in the form of a letter addressed to the MDRS Executive Director and signed by the requestor(s).

4. Notification of Public Hearing Proceedings. The date, time and place of all public hearing proceedings will be announced via notice in certain regional and statewide newspapers, public service announcements via Mississippi Public Radio, notice on the MDRS website, and press releases to numerous consumer organizations who represent or serve people with disabilities. The public hearing proceeding will be scheduled within thirty (30) days after the first notice of public hearing is run in certain regional and statewide newspapers.

5. Presiding Officer. The Executive Director, or his/her designee, who is familiar with the substance of the proposed policy, shall preside at the public hearing proceeding on a proposed policy.

6. Public Presentations and Participation.

- a. At a public hearing proceeding on a proposed policy, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed policy.
- b. Persons wishing to make oral presentations at such a proceeding shall notify the Department at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer at his or her discretion may allow individuals to participate that have not previously contacted the Department.

- c. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- d. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the public hearing proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- e. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- f. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

## 7. Conduct of Oral Proceeding.

- a. Presiding officer. The presiding officer shall have authority to conduct the proceeding at his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed policy, a statement of the statutory authority for the proposed policy; (iii) call on those individuals who have contacted the Department about speaking on or against the proposed policy; (iv) allow for rebuttal statements following all participant's comments; (v) adjourn the proceeding.
- b. Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that policy-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.
- c. Physical and Documentary Submissions. Submissions presented by participants in a public hearing proceeding shall be submitted to the presiding officer. Such submissions become the property of the Department and are subject to the Department's public records request procedure.
- d. Recording. The Department may record oral proceedings by stenographic or electronic means.

## CASE RECORD

### 2.0 Case Record Policy Statement

The Mississippi Department of Rehabilitation Services, with input from the State Rehabilitation Council, will establish and maintain a case record for each applicant and/or recipient of vocational rehabilitation services. This record will contain all information relevant and necessary to provide the individual with rehabilitation services.

## 2.1 Purpose

The primary purpose of a case record is to facilitate the client-study process. Case records are indispensable as a device by which the Agency maintains and improves the quality of its operations and tests the effectiveness of the services it provides. Good case records are essential for supervision. They can provide information for making an evaluation of the program. Program administrators rely on case records to ensure the acceptance of cases, the provision of counseling and planning services, and that service provision meets the criteria that are established by law and regulations.

## 2.2 Scope

During early contact with the client, the case recording should emphasize history, present adjustment and environmental situations, and the objective measures of, or reports on, his/her physical and mental capacities.

Good documentation provides continuity with respect to all general information, evaluations, and services provided. The recorded information about a client should be accurate and reliable. If there are any contradictory reports, they are to be fully explained or reconciled in the case record. Reported observations or generalizations about a client should be recorded in such a way that the reliability of the reports can be determined. The source of all recorded data about the client should be clearly indicated.

The case record should indicate the nature and extent of professional contribution to the progress of the case. It should include any problems the counselor encountered in working with the client or helping secure services from other community agencies. The case documentation should reflect the effectiveness of the services. There should be enough information in the record to indicate whether or not treatment was successful, the client developed the vocational skills that were planned, and the personal counseling and social adjustments resulted in an improvement in the client's situation. All case records are subject to legal subpoena and may be used as evidence in fair hearings or court proceedings. Therefore, opinion-based (non-factual) observations should not be entered into the record.

## 2.3 Required Documentation

There can be no specific rules regarding the amount of information that will actually be included in the case record. In instances where a form is completed to document a particular event in a case file, a corresponding case note is not required. However, to the degree applicable, each case record will contain documentation:

1. sufficient to determine eligibility for vocational rehabilitation services, or supported employment;

2. for presumptive eligibility in regards to recipients of SSI and/or SSDI appropriate evidence, such as an award letter, is sufficient for eligibility, although medical documentation of disability would be necessary before planning of services on the IPE;
3. for ineligibility specifying the reason for ineligibility determination and an annual review of the ineligibility determination;
4. of significance of disability(ies) and impediment(s) to employment;
5. of periodic assessment (not to exceed 30 days) of the applicant during Trial Work Experiences to determine vocational rehabilitation;
6. of an Individualized Plan for Employment (IPE) and any amendments to the plan;
7. supporting the determination that the clinical status of the applicant is stable or slowly progressive, in the event that physical and mental restoration services are provided, unless he/she is involved in Trial Work Experiences to assess rehabilitation potential;
8. supporting any decision to provide services to family members;
9. relating to the participation in the cost of any vocational rehabilitation service;
10. relating to the eligibility of the applicant or client for any available comparable benefits;
11. that the applicant or client has been advised of the confidentiality of all information pertaining to his/her case, and documentation that information about the applicant or client will not be released without his/her written consent;
12. as to the reason for closing a client's case including their employment status and, if determined to be rehabilitated, the basis on which the employment was determined to be suitable;
13. concerning any action and decision involving the request by the applicant or client for review of the rehabilitation counselor's determination;
14. of appropriate reviews of a client's status who has been provided vocational rehabilitation services under an IPE then determined to be no longer capable of achieving a specific employment outcome in an integrated setting;
15. of the source of the ongoing support services at the time of IPE for supported employment services;
16. of the progress of clients assisted under supported employment to determine whether services should be continued, modified, or discontinued;

17. if necessary, documentation as to the reason eligibility determination required more than 60 days including the applicant's response; and

18. how informed choice was provided throughout the rehabilitation process.

### 2.3.1 Request for Amendment of Case Information

An applicant or client who believes that information in the case record is inaccurate or misleading may request that the Agency amend the information. If the information is not amended, the request for an amendment must be documented in the case record.

## 2.4 Case Folder As An Official Document

The case folder in the local district office is considered to be the legal record of the case and should be treated as such by all vocational rehabilitation personnel.

All materials must be legible and written in ink or typed. Documentation presented in the case record must be initialed or signed by the individual responsible. Any form that is initiated or completed by any Agency personnel must be signed and dated. All bills are to be initialed by the counselor. Case materials should be fastened in the folder in an orderly manner.

Information is not to be given out indiscriminately, but must follow guidelines as set forth in the Confidentiality section of this manual (Section 3.0).

Records are to be secured where any unauthorized parties may not gain access to or abstract information from them. If the counselor needs to take the case record out of the office, it should be signed out so anyone needing access to information from the file will know where it is.

## 2.5 Case Record Organization

The case record should be organized in such a way as to allow for easy access of information. All materials should be filed in reverse chronological order (most recent on top) based on the date the information was received. The left side of the file should contain all financial information. Case notes should be in front of the financial documents. The right side of the file will contain all other documents. The IPE and all amendments will be filed on the top of the right hand side of the file, with the Certificate of Eligibility filed directly beneath the IPE on the right side.

## 2.6 Case Record Retention

Federal and State regulations require the retention of closed client files for a period of three years, beginning with the date of the submission of the final expenditure report for the year during which the case was closed.

If any litigation, claim, negotiation, audit, or other action has been initiated before the expiration of the three-year period, the records will be retained until the completion of the action and resolution of all issues which arise, or until the end of the regular three-year period, whichever is later.

All offices will be notified when the records of a particular year will be retained for the purpose of resolving any action initiated prior to the expiration of the three-year period.

The following situations may also require records to be retained longer than three years from closure:

1. Applicants closed from application status - Records must be maintained for at least three years after the last annual review.
2. Clients closed from service status - Records must be maintained for at least three years after the last annual review.
3. Clients closed in non-competitive, extended employment in a community rehabilitation program - Records must be maintained for at least three years after the last review and reevaluation takes place.
4. Clients who received post-employment services - Records must be maintained for at least three years after the case has been closed from post-employment.
5. Applicants or clients who received a fair hearing - Records must be maintained for at least three years after a final determination is made.

## 2.7 Case Record Disposal

When disposing of records, care must be taken to prevent inappropriate disclosure of confidential information contained in Agency files. Such files must be shredded, burned, or otherwise destroyed to prevent the unwarranted use of this information.

## CONFIDENTIALITY

### 3.0 Confidentiality

MDRS hereby expresses written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures ensure that—

1. Specific safeguards are established to protect current and stored personal information;
2. All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;
3. All applicants or their representatives are informed about MDRS' need to collect personal information and the policies governing its use, including—
  - a. Identification of the authority under which information is collected;
  - b. Explanation of the principal purposes for which MDRS intends to use or release the information;
  - c. Explanation of whether providing requested information to MDRS is mandatory or voluntary and the effects of not providing requested information;
  - d. Identification of those situations in which MDRS requires or does not require informed written consent of the individual before information may be released; and
  - e. Identification of other agencies to which information is routinely released;
4. An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and
5. These policies and procedures provide no fewer protections for individuals than State laws and regulations.

#### State Program Use

All personal information in the possession of MDRS is used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information is not shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, MDRS may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided elsewhere in this section.

#### Release to Applicants and Eligible Individuals

1. Except as provided elsewhere in this section, if requested in writing by an applicant or eligible individual, MDRS makes all requested information in that individual's record of services accessible to and will release the information to the individual or the individual's representative in a timely manner.
2. Medical, psychological, or other information that MDRS determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.
3. If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.
4. An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request that the designated Agency amend the information. If the information is not amended, the request for an amendment will be documented in the record of services.

#### Release for Audit, Evaluation, and Research

Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if the organization, agency, or individual assures that—

1. The information will be used only for the purposes for which it is being provided;
2. The information will be released only to persons officially connected with the audit, evaluation, or research;
3. The information will not be released to the involved individual;
4. The information will be managed in a manner to safeguard confidentiality; and
5. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

#### Release to Other Programs or Authorities

1. Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, MDRS may release personal information to another agency or organization for its program purposes only to the extent that the information may be released

to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

2. Medical or psychological information that MDRS determines may be harmful to the individual may be released if the other agency or organization assures MDRS that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.
3. MDRS must release personal information if required by Federal law or regulations.
4. MDRS must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.
5. MDRS also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Act; 29 U.S.C. 709(c) and 721(a)(6)(A))

MDRS has established reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and has established policies and procedures governing access to records.

If duplication of records is requested, by a client or a client's personal representative, for that client's own use, no fees for reproducing those records shall be charged, unless the volume of such requested information is so extensive as to exceed 20 pages. Should a request for information exceed twenty pages, the Agency employee processing the request shall institute common procedure for such requests by persons authorized to have access to this information by contacting the Office of Finance for the Agency and requesting a "fund number" for receipt of money collected to defray the cost of duplicating the requested records. The employee may then charge the requesting party a fee of \$1.00 (one dollar) for each page in excess of 20 pages for the information. Payment should be requested in the form of check or money order, payable to the "Mississippi Department of Rehabilitation Services." When funds are collected, a receipt will be issued to the purchaser. A duplicate receipt will be forwarded to the State Office along with the check or money order. There will be no charge to State or Federal agencies associated in providing services directed toward the client's rehabilitation program, or any other agencies that have an exchange of information agreement with this Agency.

### 3.1 Ownership of Records

All confidential information acquired by the Agency is the property of the Agency and shall remain so.

### 3.1.1 Maintaining Client File Records

The Agency shall maintain in its records only such information about a client as is relevant and necessary to accomplish any purpose of the Agency required by State or Federal law, regulation or policy. These client file records should be maintained in an orderly, formal manner. Any information relating to the Agency's evaluation of factual information should be labeled as such. Any such information should be stated as objectively as possible.

### 3.1.2 Improper Removal

No information in the case record shall be removed, destroyed, or altered for purposes of avoiding compliance with these regulations.

### 3.1.3 Notice

When the Agency makes a disclosure to any person or entity other than the client, the following or similar statement shall accompany the disclosure:

#### NOTICE

THIS IS CONFIDENTIAL INFORMATION FROM THE RECORDS OF THE MISSISSIPPI DEPARTMENT OF REHABILITATION SERVICES. STATE AND FEDERAL LAW AND REGULATIONS PROHIBIT YOU FROM MAKING ANY FURTHER DISCLOSURE OF THIS INFORMATION WITHOUT THE INFORMED WRITTEN CONSENT OF THE CLIENT TO WHOM THIS INFORMATION PERTAINS. ANY SUCH FURTHER DISCLOSURE COULD RESULT IN CIVIL OR CRIMINAL LIABILITY.

### 3.2 Statement of Consent for Disclosure

All applicants, clients, or client representatives are to be informed of the confidentiality of records. Release of such information must be by written consent of the client or authorized representative and must include:

1. name and Social Security number of the client;
2. designation of the parties to whom the information may be released;
3. nature of the information to be released;

4. specific purposes for which the released information may be used;
5. designation of the Agency person authorized to disclose the information;
6. dates of initiation and termination of consent; and,
7. signature of the client and/or client representative.

### 3.2.1 Case Record Memorandum

When confidential information is released, Form VR-19 “Client Consent to Disclose Information” must be completed and placed in the case file.

### 3.3 Release of Confidential Information Without the Consent of the Client

In the direct course of providing vocational rehabilitation services an employee may disclose confidential information to other Agency employees, who have a legitimate need for the information, without the prior consent of the client. Also, the Agency may share confidential information on a need-to-know basis with its trainees, interns, and volunteers, who shall be bound by Agency rules concerning confidentiality, in the same manner as employees. Additional instances in which confidential information may be released without consent of the client are discussed earlier in this section.

### 3.5 Subpoenas

If an employee of the Agency is subpoenaed for appearance in court, by law the employee must appear at the time and place indicated in the subpoena. Unless specific records are subpoenaed, no files or records should be taken into the courtroom. When a client is involved in litigation or in an administrative proceeding and a subpoena for the production of only the client's records is received by the Agency, the employee receiving it shall do as follows:

1. Contact their immediate supervisor for assistance; and,
2. The subpoenaed employee shall do the following:
  - a. If the subpoena is from the client's attorney, contact that attorney immediately and request written confirmation of his/her status as the client's attorney.
  - b. If the subpoena is from an attorney other than the client's, contact the client's attorney, if known, or the client, and request written consent to release the information, and release the information only after such consent is received.

- c. If the subpoena is received and the consent has not been received by the due date of the subpoena, the employee shall appear before the court or administrative body and inform them of the requirements by law and regulations concerning confidentiality. The employee shall testify only upon order, or if the client consents, at the hearing.
- d. If an employee receives a subpoena to testify in court or in an administrative hearing, the employee shall appear according to the terms of the subpoena, and shall testify if the client consents to such testimony. If no consent is given, the employee shall testify only under order and after informing the court or administrative body of the requirements of the law and regulations concerning confidentiality.
- e. This section applies only to client records. The employee may testify without client consent about general information concerning the Agency, such as services available and eligibility criteria.

If an employee of the Agency is required to give sworn testimony, the employee should limit his/her remarks to professional aspects of the case with which the employee is familiar, and avoid unsubstantiated personal opinions. If travel expense is required in order to present testimony, travel costs are usually paid by the court or by one of the parties in the litigation. If no other reimbursement is provided, the employee may claim official reimbursement in keeping with Agency regulations.

### 3.6 Social Security Administration Case Record

Information in case records received from, or developed for, the Social Security Administration shall be controlled by the regulations governing confidentiality established by the Social Security Administration. Such information may be contained in the Agency's records as the result of a referral from the Office of Disability Determination Services in connection with the delivery of services to the client. However, should such information be sought by any client for any other reason, the client shall be directed to contact the Office of Disability Determination Services. Please note, under Federal law, a Member of Congress has a right to receive this information upon request. Congressional inquiries shall be forwarded to the Office of the Executive Director.

### 3.7 Release of Information Regarding Deceased Client

If information is requested concerning a deceased client, the Agency shall release such information only to the executor of a probated will or the administrator of the estate upon written proof of such status by the court. No other heirs or family members shall be given any information without a court order.

## HEARING PROCEDURES

### 4.0 Hearing Policy Statement

Throughout the rehabilitation process the counselor shall advise applicants or clients, or, if appropriate, their representative, of their right to request a timely review when they are dissatisfied with any determination made by MDRS personnel that affects the provision of vocational rehabilitation services and the procedures available for such review. This review may include mediation. The applicant or client or their representative shall be informed in writing regarding the right to obtain a review of agency determinations that affect the provision of vocational rehabilitation services through mediation or impartial due process hearings at the time of application for services; assignment to a category in the Agency's order of selection; at the time the IPE is developed; and, whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated. The applicant or client or, if appropriate, their representative shall be provided with the names and addresses of the individuals with whom requests for mediation or due process hearings may be filed, the manner in which a mediator or impartial hearing officer may be selected, and, the availability of the Client Assistance Program (CAP) to assist the applicant or client during mediation sessions or impartial due process hearings. The information provided to the applicant or client or their representative regarding the review of the counselor's decision(s) shall be made available in a mode of communication that is accessible (understandable) to the applicant or client.

Applicants who are found ineligible for vocational rehabilitation services and previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services are permitted to challenge the determinations or ineligibility under the procedures described in this section.

#### 4.1 Informal Review

The Mississippi Department of Rehabilitation Services has the authority to implement the informal review process when it is likely to result in a timely resolution of the issue(s) in disagreement. MDRS does not have the authority to require the applicant or client to use the informal review process or mediation prior to or instead of the provision of a formal review by an Impartial Hearing Officer. The Mississippi Department of Rehabilitation Services will not use the informal review process or mediation as a means to delay a formal review unless the parties jointly agree to the delay.

The timing of the informal review and/or mediation must take into account the fact that should the informal process not result in a resolution of the dispute, the informal and formal process must be concluded within 60 days of the date the individual requests a review of the rehabilitation counselor's decision or determination, unless both parties agree to a specific extension of the time period.

##### 4.1.1 Informal Review Procedures

The entire informal review process, including mediation, shall be completed within a maximum of 15 days from the date of the receipt of the original request for an informal review to the date of the decision letter from the Director of the Office of Vocational Rehabilitation. The requestor may stop this informal process, including mediation, at any point (or bypass it entirely) and request the dispute be sent to an Impartial Hearing Officer for a formal review.

1. Within a maximum of 3 days from receipt of the original verbal/written request for an informal review, the District Manager having line supervision over the requestor's counselor shall:
  - a. contact the requestor to set up appointment (time, date, place) for the informal review--this review date should be no later than 5 days from the receipt of the original verbal/written request for an informal review;
  - b. advise the requestor of the availability and function of the Mississippi Client Assistance Program;
  - c. advise the requestor that he/she may attend the review in person and, if he/she desires, be accompanied by a family member or an advocate from the Client Assistance Program; or any individual selected by the client to represent him/her,
  - d. contact the requestor if additional information is needed prior to the review; and,
  - e. offer mediation as a means of settling the dispute.
2. The requestor is to be notified immediately of the District Manager's decision. The District Manager may notify the requestor verbally of his/her decision. However, this is to be followed up with notification to the requestor via Certified Mail, return receipt requested, with a copy to the case file. The letter shall:
  - a. state the matter(s) in dispute,
  - b. include the rationale for the decision, and,
  - c. advise the requestor to notify the Director of the Office of Vocational Rehabilitation (verbally or in writing), no later than five days from the receipt of the letter, if he/she is dissatisfied and wishes to have the Office Director review the decision, wishes to have the dispute mediated, or proceed with the formal review.
3. If the requestor seeks a review from the Director of the Office of Vocational Rehabilitation, this review must be conducted within a maximum of 15 days from the original request for an informal review. The review by the Office Director is to document review and does not necessitate the presence of the applicant or client. Should mediation be requested, the process must be completed no later than 15 days from the original request for an informal review.

4. The requestor is to be notified immediately of the Office Director's decision. The Office Director may notify the requestor verbally of his/her decision. However, this is to be followed up with notification to the requestor via Certified Mail, return receipt requested, with a copy to the case file. The letter shall:
  - a. state the matter(s) in dispute;
  - b. include the rationale for the decision;
  - c. advise the requestor to notify the Office Director (verbally or in writing), no later than five days from the receipt of the letter, if he/she is dissatisfied and wishes to proceed with the formal review by an Impartial Hearing Officer;
  - d. advise the requestor that an Impartial Hearing Officer will be selected at random from a list of qualified Impartial Hearing Officers; and,
  - e. advise the requestor that mediators are available should he/she choose mediation as a means to settle the dispute.

#### 4.2 Mediation

Should the Informal Review process fail to resolve disputes involving Agency determinations that affect the provision of vocational rehabilitation services, accessible mediation may be used if both parties agree to this procedure. Participation in the mediation process is voluntary on the part of the applicant or client, as appropriate, and on the part of the Agency. The Mississippi Department of Rehabilitation Services shall maintain a list of qualified and impartial mediators from which one may be selected on a random basis to mediate the dispute. This process shall be at no cost to the client.

1. Each mediator on the list shall have knowledge of effective mediation techniques.
2. Mediation sessions shall be scheduled and conducted in a timely manner and shall be held in a location that is convenient to the parties in the dispute. Use of the mediation process is not used to deny or delay that applicant's or client's right to pursue resolution of the dispute through an impartial hearing held within the required time period or any other rights provided under this policy.
3. All agreements reached by the mediation process shall be set forth in a written mediation agreement developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement will be sent to both parties.
4. 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.

5. The parties to the mediation process shall sign a confidentiality pledge prior to the commencement of the mediation process.
6. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing.
7. The use of mediation to resolve a dispute does not remove the Agency from the responsibility to conclude the hearing process within 60 days.
8. The client, as a party to the dispute, has full discretion to choose an attorney, a guardian, a family member, a friend, or other person to serve as his or her advocate during mediation or a hearing.
9. The Agency will provide the applicant or client or, as appropriate, his or her representative, an opportunity to submit during mediation sessions information that supports his or her position.
10. MDRS shall bear the cost of the mediation process except for any costs related to the representation of an applicant or client.

#### 4.2.1 Definition of a Qualified and Impartial Mediator

Qualified and Impartial Mediator is defined in the *OVR/OVRB Resource Guide*.

#### 4.3 Impartial Due Process Hearing

The impartial due process hearing is to be conducted and completed by an Impartial Hearing Officer within 60 days from the day the applicant or client makes the original request for a review of a determination made by Agency personnel that affects the provision of vocational rehabilitation services to the applicant or client unless informal resolution or a mediation agreement is achieved prior to the 60th day or both parties agree to a specific extension of time. This includes any days utilized as part of the informal review.

1. The applicant or client, or if appropriate, a parent, guardian, or other representative shall be furnished an opportunity to present additional witnesses, evidence and information to the Impartial Hearing Officer. The applicant or client or his/her representative will also be given the opportunity to be represented by counsel or other appropriate advocate and examine all witnesses and other relevant sources of information and evidence.
2. The Impartial Hearing Officer is responsible for making a decision based on provisions of the approved State plan, the Rehabilitation Act as amended, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal regulations.

The decision shall be based on the provisions of the Mississippi Department of Rehabilitation Services approved State Plan and the Rehabilitation Act. A full written report of the findings and grounds for the decision will be completed within 30 days of the completion of the impartial due process hearing and provided to the requestor, or, if appropriate, the applicant or client's parent, guardian, or other representative and to the Executive Director of the Mississippi Department of Rehabilitation Services.

#### 4.3.1 Definition of Impartial Hearing Officer

Impartial Hearing Officer is defined in the *OVR/OVRB Resource Guide*.

#### 4.3.2 Conduct of the Hearing

##### 1. Duties of the Impartial Hearing Officer:

Once selected, at random from a list of qualified impartial hearing officers maintained by the Agency and identified by the Agency and State Rehabilitation Council, the Impartial Hearing Officer shall have the authority and responsibility to:

- a. establish a date, time, and place for the hearing and give proper notice of the hearing to the parties;
- b. review the case file prior to the hearing;
- c. maintain order;
- d. make a record of the proceedings;
- e. establish reasonable time limits for the conduct of the proceedings, to include extending time limits for good cause;
- f. rule on the admissibility of evidence;
- g. hold a pre-hearing conference, if necessary, to clarify the matter(s) in dispute; establish the order of presentation; allow and establish time limits for the exchange of exhibits and names of witnesses; and,
- h. enter an order on any other matter that will facilitate the conduct of the review.

##### 1. The Requestor Shall be Afforded the Opportunity to:

- a. receive timely and adequate notice of all events and/or proceedings related to and including the hearing; and,

- b. be heard, present evidence, call witnesses, cross-examine witnesses, be represented by counsel at his/her own expense (if he/she so chooses), and receive a written decision based on the evidence.

### 3. Notice of an Impartial Due Process Hearing

Once the Impartial Hearing Officer has established the date, place, and time of the hearing, written notice (in language understandable to the requestor) shall be provided to the requestor via Certified Mail, return receipt requested, and to the Executive Director of the Mississippi Department of Rehabilitation Services. Such notice shall contain:

- a. the name and address of the requestor and the requestor's file number;
- b. the name and address (including the District) of the requestor's counselor;
- c. a brief statement of the matter(s) in conflict; and,
- d. a brief statement of the date, place, and time of the hearing.
- e. the right of the applicant or client or, as appropriate, his or her representative, to submit during impartial due process hearings information that supports his or her position.

### 4. Informal Dispositions

Issues in dispute may be resolved informally at any point in the process by stipulation, agreed settlement, consent order, default, or by another method agreed upon by the parties. An informal disposition shall be reduced to writing, signed by the parties, and made a part of the record of the proceedings.

### 5. Record of Proceedings

- a. The record of a formal review shall include:
  - i. the notice of a formal review;
  - ii. a copy of the request for the review, specifying the matter(s) in dispute;
  - iii. the informal review decision(s), if any;
  - iv. all evidence received during the review (informal and formal);
  - v. a statement of all matters officially noticed;
  - vi. all questions, offers of proof, objections, and rulings thereon,
  - vii. a transcript of the hearing proceedings; and,
  - viii. written decision of the Impartial Hearing Officer.
- b. The hearing shall be recorded by a certified court reporter. A copy of the transcript may be requested by either party (in addition to the official copy) with the expense of transcribing and reproducing the copy being charged to that party. The record of the proceedings shall be confidential and maintained by MDRS.

## 6. Rules of Evidence

- a. The technical rules of evidence shall be relaxed to the degree specified by the Hearing Officer.
- b. All witnesses shall be sworn in by the court reporter, testify under oath, and be subject to cross-examination.
- c. The Impartial Hearing Officer shall have the authority and discretion to admit into the record any and all evidence that has a reasonable degree of relevance to the dispute. The Impartial Hearing Officer shall have broad discretion to exclude evidence that is irrelevant, immaterial, or unduly cumulative to the matter(s) in dispute. Questions of admissibility should be decided in favor of admissibility even if only remotely relevant.
- d. The Impartial Hearing Officer shall cause documents that are offered for admission into evidence to be marked and attached to the record of the proceedings.

## 7. Order of Proceedings

- a. The requestor shall be the first to present his or her principle case. The case may be presented by direct examination of witnesses with an opportunity for cross-examination, redirect examination, and introduction of documentary evidence.
- b. At the close of the requestor's presentation, the Department shall present its principle case. The Department shall be afforded the same opportunity for direct, cross and redirect examination of witnesses, and introduction of documentary evidence.

## 8. Impartial Hearing Officer's Decision

- a. Upon completion of the impartial due process hearing, the Impartial Hearing Officer shall render a decision based on an application of State and Federal law and regulations, to the facts as presented in the hearing. The decision shall consist of a statement of facts found by the Impartial Hearing Officer and a recitation of the application of State and Federal statutes, regulations, policies, and procedures, to those facts. The full written report of the findings and grounds for the decision and the record shall be submitted to the Agency, within 30 days of the completion of the hearing.
- b. The full written report of the findings and grounds for the decision shall also be mailed to the requestor, or, if appropriate, his or her representatives, via certified mail, return receipt requested, within 30 days of the completion of the hearing.

c. If the Client Assistance Program was involved, a copy of the decision should be mailed to CAP.

#### 4.4 Suspension, Reduction or Termination of Services

At no time in which an informal review, mediation, or impartial due process hearing is pending or during the conduct of any informal review, mediation or formal dispute resolution process, shall vocational rehabilitation services being provided to an applicant or client, including evaluation or assessment services and IPE development, be suspended, reduced or terminated; unless, (a) the applicant or client or his or her representative requests a suspension, reduction, or termination of services; or (b) the Agency has evidence that services have been obtained as a result of fraud, collusion, or criminal conduct on the part of the applicant or client or his or her representative. If a party brings a civil action to challenge the final decision of a hearing officer, the final decision of the hearing officer must be implemented pending review by the court.

MDRS, as an indirect provider, frequently provides services through other agencies or organizations that have their own eligibility rules. When such a service provider modifies or terminates a service, MDRS shall be obligated to assess the circumstances and in concert with the client make an appropriate and expedited amendment to the IPE.

#### 4.5 Civil Action

Any party who disagrees with the findings and decision of an impartial hearing officer has a right to bring a civil action with respect to the matter in dispute. 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.

In any such action, the court—

- (a) Receives the records related to the impartial due process hearing;
- (b) Hears additional evidence at the request of a party; and
- (c) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

### ELIGIBILITY

#### 5.1 Policy Statement

The Agency 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 services. The eligibility determination period may be extended if:

(a) exceptional and unforeseen circumstances beyond the control of the Agency preclude the making of the eligibility determination within 60 days and the Agency and the individual agree to a specific extension of time, or (b) if the Agency is exploring an individual's abilities, capabilities, and capacity to perform in work situations through the use of Trial Work Experiences.

## 5.2 Implementation

It is the sole responsibility of the Office of Vocational Rehabilitation, Mississippi Department of Rehabilitation Services to determine if an individual is eligible for vocational rehabilitation services and to determine the nature and scope of said services. The 1998 Amendments to the Rehabilitation Act made several significant changes in the area of eligibility to streamline the process for making determinations. The most significant of these changes is the creation of several presumptions by which an individual may be presumed to meet one or more of the criteria for eligibility; however, the ultimate decision of whether an individual is or is not eligible for vocational rehabilitation services shall be made by a qualified rehabilitation counselor (as defined by Sections 361.42(2)(i) and 361.45(c)(i)(A) of the 1998 Rehabilitation Act Amendments).

## 5.3 Assessment for Determining Eligibility and Vocational Rehabilitation Needs

Assessment for Determining Eligibility and Vocational Rehabilitation Needs means, as appropriate in each case:

- i. a review of existing data to:
  - a. to determine eligibility, and,
  - b. to assign priority for an order of selection;
2. to the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;
2. to the extent additional data are necessary to make a determination of the employment outcomes, and the objectives, nature, and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment determines the unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice, including the need for supported employment, of the eligible individual;
4. Rehabilitation Technology assessment: referral for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and,

5. Trial Work Experiences assessment: an exploration of the individual's abilities, capabilities, and capacity to perform in work situations which shall be assessed periodically, including experiences in which the individual is provided appropriate supports and training.

#### 5.4 Determination of Eligibility

An applicant for vocational rehabilitation services is eligible for those services if the applicant can be shown to be:

1. an individual with a disability (*Section 7(20)(A) of the 1998 Rehabilitation Act Amendments*), who
2. requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with his or her unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.

##### 5.4.1 Determining If the Applicant Is an Individual With a Disability

To be an individual with a disability, an applicant must be:

1. an individual who has a physical or mental impairment which for that individual constitutes or results in a substantial impediment to employment; and,
2. who requires, in terms of an employment outcome, specific vocational rehabilitation services.

The 1998 Amendments have created two presumptions to facilitate the process of determining whether an applicant is an individual with a disability. *Section 102(a)(3)(A) of the 1998 Rehabilitation Act Amendments* states that an individual who has been determined to have a disability, or to be statutorily blind pursuant to either Title II or Title XVI of the Social Security Act shall be considered:

1. to be an individual with a significant disability under *Section 7(21)(A) of the 1998 Rehabilitation Act Amendments*; and,
2. presumed to be eligible for vocational rehabilitation services under this title (provided that the individual intends to achieve a specific employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice of the individual) unless the Agency involved can demonstrate by clear and convincing evidence documented in the case file that such individual is incapable of benefiting in terms of an employment outcome from specific vocational rehabilitation services due to the severity of the disability of the individual.

Thus, valid documentation from the Office of Disability Determination Services or the Social Security Administration is sufficient to show that an applicant meets the first part of the definition of an individual with a disability. No additional tests or procedures are used to

assess “intent” of applicants who are allowed SSDI beneficiaries and SSI recipients that would hinder speedy access to vocational rehabilitation services.

*Section 102(a)(4) of the 1998 Rehabilitation Act Amendments* creates a presumption that determinations of the existence of a disability, made by officials of other agencies, may be presumed to satisfy one or more factors leading to the determination that an individual is an individual with a disability or an individual with a significant disability as defined in the 1998 Amendments. "Other agencies" include but are not limited to:

- State Department of Education - determinations of special education status i.e., learning disabilities, and the like;
- State Department of Mental Health - mental illness or retardation;
- Workmen's Compensation Commission - findings of disability;
- Medicare/Medicaid - findings of disability;
- personal physicians - medical histories;
- advocates and advocacy groups;
- referring agencies; and,
- documentation from any entity that includes findings of disability as part of its services.

A determination of the existence of a disability by another agency may be sufficient evidence to show that an applicant is an individual with a disability, or such a determination may provide a starting point from which a preliminary assessment can be conducted to obtain any additional information necessary to show that an applicant is an individual with a disability.

Regardless of the results of the assessments and/or presumptions above to determine if an applicant has a disability which constitutes a substantial impediment to employment, a qualified rehabilitation counselor must still determine if the applicant intends to achieve an employment outcome in an integrated setting and requires specific vocational rehabilitation services in terms of an employment outcome.

Substantial Impediment to Employment means that a physical or mental impairment (in light of medical, psychological, vocational, educational, or other related factors) inhibits an individual's occupational performance by impeding the individual's ability to prepare for, secure, retain, or regain employment consistent with his or her unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice. A substantial impediment to employment exists when the physical or mental impairment results in a functional limitation or limitations that:

1. require the individual to modify or change his or her regular occupation;
2. make it difficult for the individual to prepare for, secure, retain, or regain employment;
3. cause the refusal or reluctance of the former employer to re-employ the individual because of the impairment;
4. necessitate additional preparation in order to perform the occupation;
5. result in the deterioration of skills or of performance in the occupation;
6. could result in termination of employment as the impairment progresses;
7. reflect a direct relationship between the impairment and the individual's employability; or,
8. continue to exist when an individual is employed, but prevent that individual from functioning at an occupational level consistent with his/her unique strengths, resources, priorities, concerns, abilities, capacities, career interests, and informed choice

Functional Limitations - To be an impediment to employment, a physical or mental impairment must be assessed in terms of the limitations that impairment presents to an individual's ability to function vocationally - i.e., to prepare for, secure, retain, or regain competitive employment.

Such assessment may include, to the degree needed to make such a determination, an assessment of the personality, interests, career choices, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual;

Such assessment may also include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, habits, tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment.

#### 5.4.2 Determining Whether an Individual Will Require Specific Vocational Rehabilitation Services to Prepare For, Secure, Retain, or Regain Employment

*Section 102(a)(4)(A) of the 1998 Rehabilitation Act Amendments* states that an individual shall be presumed to be an individual with a disability who will benefit, in terms of an employment outcome, from vocational rehabilitation services, unless the Agency can establish, by clear and

convincing evidence documented in the case file, that such individual will not benefit, in terms of an employment outcome, from specific vocational rehabilitation services.

This means that an applicant who can be shown to be an individual with a disability will be presumed to be able to benefit from specific vocational rehabilitation services (and is, therefore, eligible) unless the applicant can be shown, to a high degree of certainty, to be unable, due to the severity of the disability, to prepare for, secure, retain, or regain employment.

In order to collect sufficient data to either, 1) determine eligibility and define the scope of necessary rehabilitation services, or 2) determine ineligibility, an applicant must undergo an "assessment for determining eligibility and vocational rehabilitation needs" (*Section 7(2) of the 1998 Rehabilitation Act Amendments*).

## 5.5 Comprehensive Assessment

A comprehensive assessment shall be performed, to the extent necessary, in the most integrated setting possible consistent with the individual's needs and informed choice, to determine eligibility for and the scope of, vocational rehabilitation and supported employment services. The assessment shall be sufficient to determine, and the case record shall document, whether an individual has a physical or mental impairment that for the individual constitutes or results in a substantial impediment to employment. The assessment will include an appraisal of the individual based, to the extent possible, on available medical information, and, as appropriate, evaluation by qualified personnel of the potential to benefit from rehabilitation services.

To the extent additional data is necessary to make a determination of the employment outcomes, and the objectives, nature, and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment will be conducted.

The comprehensive assessment may include:

1. Diagnostic testing;
2. The provision of rehabilitation technology services;
3. The assessment of an assortment of work-related factors in "real job" situations where possible and/or appropriate to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice, including the need for supported employment of the eligible individual.
4. To the degree needed, an assessment of the personality, interests, career choices, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other

pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual;

5. To the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in the work environment.
6. An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during Trial Work Experiences, including experiences in which the individual is provided appropriate supports and training.

In all cases of mental or emotional disorders an examination will be provided by a physician skilled in the diagnosis and treatment of such disorders, or by a psychologist licensed or certified in accordance with state laws and regulations. Any assessment to determine eligibility for supported employment must be supplementary to an assessment to determine eligibility for vocational rehabilitation services. Whether performed to ascertain the scope of rehabilitation services or to determine eligibility, a comprehensive assessment is limited to information necessary to identify the rehabilitation needs of and develop the Individualized Plan for Employment.

#### 5.5.1 Trial Work Experiences

A case closed as ineligible due to the severity of the applicant's disability must have been provided Trial Work Experiences in order to produce clear and convincing evidence documented in the case file supporting that judgment. Trial Work Experiences are not required in those limited circumstances when the applicant cannot take advantage of such experience. Trial Work Experiences are explorations of an individual's abilities, capabilities, and capacity to perform in work situations, through the use of Trial Work Experiences provided in the most integrated setting possible consistent with the informed choice and rehabilitation needs of the individual, including experiences in which an individual is provided appropriate supports and training. Staff will explore an individual's ability to perform in real work situations through Trial Work Experiences including supported employment, on-the-job training, or other experiences using realistic work settings.

Such experiences shall be of sufficient variety and over a sufficient length 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. Clear and convincing evidence must be determined on a case-by-case basis, constitutes the highest standard used in our civil system of law, and requires that staff have a high degree of certainty before concluding that an individual is incapable of benefiting from services in terms of an employment outcome. Thus, the review of existing information still would not provide clear and convincing evidence, meaning that, for example, the use of an intelligence test result alone would not constitute clear and convincing evidence. On the other hand, clear and convincing evidence

could include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. Also, a demonstration of clear and convincing evidence requires that the Agency explore the applicant's abilities, capabilities, and capacity to perform in work situations and provide appropriate supports.

The counselor will initiate a Trial Work Experiences Plan that must be agreed upon and signed by the counselor and the client or, as appropriate, the client's representative. The individual's progress during the Trial Work Experiences will be assessed no less often than every 30 days during the trial work period.

An individual may not be determined to be ineligible for vocational rehabilitation services due to the unavailability of trial work settings since an inability to find suitable trial work would not constitute clear and convincing evidence that the individual cannot benefit from VR services in terms of an employment outcome.

Under limited circumstances if an individual cannot take advantage of Trial Work Experiences or if options for Trial Work Experiences have been exhausted before the Agency is able to make determinations of whether an individual may benefit from rehabilitation services, MDRS must conduct an Extended Evaluation to make these determinations. During the Extended Evaluation period, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice and rehabilitation needs of the individual. During the Extended Evaluation period, the Agency must develop a written plan for providing services necessary to make the determination. During the Extended Evaluation period, the Agency provides only those services that are necessary to make the determinations and terminates Extended Evaluation services when the Agency is able to make the determinations.

## 5.6 Certification of Eligibility, Determination of Ineligibility

The previously referenced 60 day period for determining eligibility is initiated according to the following guidelines: An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, (a) has completed and signed an agency application form or common intake form at a one-stop center or other outside source or has otherwise requested services from MDRS, (b) has provided to MDRS information necessary to initiate an assessment to determine eligibility and priority for services, and (c) is available to complete the assessment process.

The currency of existing data is not a function of when the data were produced but whether the data describe the current functioning of the individual. Assessments to gather additional data should be authorized only when the existing data are either not current, unavailable, insufficient, or inappropriate to make a determination with respect to the eligibility of the applicant.

Once an assessment for determining eligibility has been completed, the counselor may either:

1. certify the applicant as eligible for vocational rehabilitation services, or;
2. if an individual who applies for services is determined, based on the review of existing data and, to the extent necessary, the assessment activities described in *Section 7(2)(A)(ii) of the 1998 Rehabilitation Act Amendments*, not to be eligible for the services, or if an eligible individual receiving services under an Individualized Plan for Employment (IPE) 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 mediation and a review by an impartial hearing officer, consistent with the agency's due process procedures.

The individual shall also be provided with a description of services available from the client assistance program and information on how to contact that program; and 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, 1) within 12 months; and, 2) thereafter, if such a review is requested by the individual or, if appropriate, by the individual's representative. The review need not be conducted if the individual has refused it, the individual is no longer present in the state, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

#### 5.6.1 Certificate of Eligibility

A *Certificate of Eligibility* for each applicant who is determined to be eligible for vocational rehabilitation services shall be dated and signed by the counselor and shall show that the individual:

1. has a disability that is a substantial impediment to employment;
2. can benefit from specific vocational rehabilitation services; and,
3. will require specific vocational rehabilitation services to prepare for, secure, retain, or regain employment.

#### 5.7 Client Order of Selection

It is the intent of the Mississippi Department of Rehabilitation Services to provide comprehensive vocational rehabilitation services to all eligible individuals who apply for services. In the event that vocational rehabilitation services cannot be provided to all eligible applicants due to financial limitations, the Agency has adopted an Order of Selection that establishes a system for prioritizing individuals with the most significant disabilities to receive services.

Should a funding shortfall occur, the agency will continue to serve those individuals on an existing Individualized Plan for Employment, including the provision of post-employment services. If at any time, services cannot be provided to all of those individuals who can reasonably be expected to be determined eligible during the coming year, the Executive Director of the Department may declare the implementation of the Order of Selection.

An IPE cannot be developed for individuals in a closed priority category. However, the Order of Selection system does not preclude delivery of non-purchased services (i.e., counseling, guidance, placement, referral services, coordination of comparable benefits and services paid by a third party) for these individuals. The Order of Selection system will in no way restrict the provision of diagnostic and evaluation services. The Executive Director will notify staff by Executive Director Memorandum when the Order of Selection is to be implemented or withdrawn.

Allowed SSDI beneficiaries or SSI recipients are not afforded any special consideration in establishing the priority categories of the order, notwithstanding the automatic classification of such an individual as an “individual with a significant disability.”

An Order of Selection should be designed to ensure that individuals with the most significant disabilities as described in the *OVR/OVRB Resource Guide* above, will receive services in preference to less significantly disabled individuals, as described in the *OVR/OVRB Resource Guide*, in the event of a shortfall in funding.

## ORDER OF SELECTION

### 1. Priority 1.

Individual With A Most Significant Disability: An individual who meets the criteria for "significantly disabled" (Section 7(21) of the 1998 Rehabilitation Act Amendments) and:

- (i) whose physical or mental impairments seriously limit two or more functions in terms of employment outcomes, and,
- (ii) who will require vocational rehabilitation services in order to prepare for, secure, retain, or regain employment that is consistent with that individual's unique strengths, resources, priorities, concerns, abilities, capacities, interests, and informed choice

(Authority: Sections 7(21)(E)(i) and 101(a)(5)(C) of the Act; 29 U.S.C. 705(21)(E)(i) and 721(a)(5)(C))

## 2. Priority 2.

Individual With A Significant Disability: An individual with a disability—

- (i) who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- (ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- (iii) who has one or more physical or mental disabilities, or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(21)(A) of the Act; 29 U.S.C. 705(21)(A))

## 3. Priority 3.

Individuals with disabilities who do not meet the definitions of either "individuals with the most significant disabilities" or "individuals with significant disabilities", but will require specific vocational rehabilitation services to prepare for, secure, retain, or regain employment.

Individuals having an active plan under the former Order Of Selection will continue to receive services uninterrupted. Persons meeting eligibility requirements but in a closed category have access to a comprehensive information and referral system (see the *OVR/OVRB Resource Guide*). Specific details about referral to another agency are to be documented in the case record.

Individualized Plan for Employment

### 6.0 Individualized Plan for Employment (IPE)

#### 6.1 IPE Policy Statement

The Mississippi Department of Rehabilitation Services is required to initiate an Individualized Plan for Employment, periodically update it, and conduct an annual IPE review for each eligible individual being provided services. Vocational rehabilitation services must be provided in accordance with the IPE. The IPE sets forth the specific employment outcome, services to be provided, time frames, service providers, evaluation criteria, and dates of review. The client will have informed choice throughout the vocational rehabilitation process including selecting a specific employment outcome, specific vocational rehabilitation services, and the provider and methods by which these services will be provided.

## 6.2 Scope of the IPE

The intended purpose of the IPE is to document and describe the required rehabilitation services necessary for the client to prepare for, secure, retain, or regain employment. It shall be presumed that an individual can benefit in terms of a specific employment outcome through specific vocational rehabilitation services provided under the IPE, unless the Agency can demonstrate by clear and convincing evidence documented in the case file that the individual is incapable of benefiting from services in terms of a specific employment outcome due to the severity of the disability of the individual.

Each IPE shall be designed to achieve the specific employment objective chosen by the individual, consistent with his/her unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice. Clients will be active and full partners in the vocational rehabilitation process, making meaningful and informed choices during assessments for vocational rehabilitation needs and in the selection of specific employment outcomes, services needed to achieve the outcomes, entities providing such services, and the methods used to secure such services. Eligible individuals will be informed about their options for developing an IPE, including the option for the individual to develop an IPE on agency forms without assistance from anyone.

## 6.3 Initiation of the IPE

The IPE must be initiated after eligibility determination by a qualified rehabilitation counselor has occurred. The Agency 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 services. The eligibility determination period may be extended if: (a) exceptional and unforeseen circumstances beyond the control of the Agency preclude the making of the eligibility determination within 60 days and the Agency and the individual agree to a specific extension of time, or (b) if the Agency is exploring an individual's abilities, capabilities, and capacity to perform in work situations through the use of Trial Work Experiences. Such experiences should be of sufficient variety and over a sufficient period of time to determine the eligibility of an individual.

## 6.4 Development of the IPE

When an individual is determined to be eligible for vocational rehabilitation services, the IPE shall be completed. An IPE shall be a written document prepared on current forms provided by the Agency as outlined in Section 361.45(b)(2) of the 1998 Rehabilitation Act Amendments regarding general requirements.

The eligible individual or his/her representative will be provided information, in writing and in an appropriate mode of communication, regarding the individual's options for developing an IPE including:

1. information on the availability of assistance, to the extent determined to be appropriate by the eligible individual, from a qualified vocational rehabilitation counselor in developing all or part of the IPE for the individual, and the availability of technical assistance in developing all or part of the IPE for the individual;
2. a description of the full range of components as defined in Section 361.48 that shall be included in an IPE; and,
3. as appropriate--
  - a. an explanation of Agency guidelines and criteria associated with financial commitments concerning an Individualized Plan for Employment;
  - b. additional information the eligible individual requests or the Agency determines to be necessary;
  - c. information on the availability of assistance in completing designated Agency forms required in developing an IPE; and,
  - d. a description of the rights and remedies available to such an individual including, if appropriate, a description of the availability of a Client Assistance Program and information about how to contact the CAP.

An IPE for a student with a disability receiving special education services is developed--

- a. In consideration of the student's IEP; and
- b. In accordance with the plans, policies, procedures, and terms of the interagency agreement between MDRS and the local school district.

In planning transition services for students, the IPE for a student determined to be eligible for vocational rehabilitation services must be developed and approved (i.e., agreed to and signed by the individual and the counselor) before the student leaves the school setting and as early as possible during the transition planning process.

## 6.5 Informed Choice

An IPE shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting a specific 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. Informed Choice implies that the specific employment outcome be both realistic and achievable for the individual.

The specific employment outcome should be based upon an objective assessment of specific vocational rehabilitation needs and reflecting the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice. The IPE should reflect specific vocational rehabilitation services necessary to achieve the individual's chosen employment outcome and the case file should reflect how the client was informed about and involved in choosing among alternative services. All available comparable benefits should be applied toward each service.

Information regarding available vendors, certified/licensed vendors, cost and duration of all planned services, and like information, shall be provided to the client in the appropriate accessible mode of communication. Accessibility of the vendor's location will be discussed with the client. All rehabilitation services will be provided in the least restricted and most integrated setting compatible with the client's interest and abilities.

## 6.6 Individualized Plan for Employment Form Completion

The IPE is organized into the following sections--

### Part 1            General Information

This section includes the plan number, general plan type (i.e. training, physical restoration), the client's specific employment outcome/objective, and the anticipated date for achievement of the employment outcome.

### Part 2            Planned Services

This section describes services needed, dates of initiation, provider(s) of choice, and the estimated costs for each service and the total plan (including comparable benefits).

### Part 3            Participant Responsibilities

This section will include a list of the client's responsibilities toward completion of the plan; including any financial responsibilities.

### Part 4            Plan Documentation

This section must contain the agreed-upon criteria for evaluating progress toward the goal.

### Part 5            Terms and Conditions

This section contains post-employment services and the identification of the extended services provider for Supported Employment cases only.

Part 6            Statements of Mutual Understanding

The counselor will complete the information under Review Process and Client Assistance Program. The counselor will review all information in this section in detail with each client and/or his/her representative.

Part 7            Plan Certification

The IPE is finalized and signed by the client or his/her representative and the counselor prior to service(s) being initiated.

6.7    Basic IPE Contents

Regardless of the approach selected by an eligible individual to develop an Individualized Plan for Employment, an IPE shall, at a minimum, contain mandatory components consisting of--

1. a description of the specific employment outcome that is chosen by the eligible individual, and, to the maximum extent appropriate, results in employment in an integrated setting and for which the individual is compensated at, or above, the minimum wage;
2. a description of the specific vocational rehabilitation services that are-
  - a. needed to achieve a specific employment outcome, including, as appropriate, provision of assistive technology devices and services, and personal assistance services, including training in the management of such services;
  - b. 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,
  - c. time lines for the achievement of the employment outcome and for the initiation of the services;
3. 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;
4. a description of criteria to evaluate progress toward achievement of the employment outcome;
5. the terms and conditions of the IPE, including, as appropriate, information describing:
  - a. the responsibilities of the Agency;
  - b. 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;
  - iii. the responsibility of the eligible individual with regard to applying for and securing comparable benefits; and, the responsibilities of other entities as the result of arrangements made pursuant to comparable services or benefit requirement;
6. 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--
  - a.the extended services needed by the eligible individual; and,
  - b.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 IPE, a description of the basis for concluding that there is a reasonable expectation that such source will become available; and,
7. as determined to be necessary, a statement of projected need for post-employment services.

#### 6.7.1 Amendments to the IPE.

The IPE is amended, as necessary, by the applicant or client or, as appropriate, his or her representative, in collaboration with a representative of MDRS 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 providers of the vocational rehabilitation services.

Amendments to the IPE do not take effect until agreed to and signed by the applicant or client or, as appropriate, his or her representative and by a qualified vocational rehabilitation counselor employed by MDRS.

#### 6.8 Conclusion

The Individualized Plan for Employment should include the appropriate outcomes and services necessary to achieve the individual's specific chosen employment outcome. Outcomes and services should be consistent with the client's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice. No service(s) that is a part of the client's IPE should be initiated until the plan has been finalized and signed by the client and counselor.

Each IPE should include time frames for employment outcome completion and service initiation. Additionally, the IPE should include use of all available comparable benefits. Even with careful

evaluation and planning, circumstances may occur which precipitate a need for additional outcomes, evaluation criteria, or services. In such cases, a plan amendment should be considered.

A qualified rehabilitation counselor shall furnish a copy of the IPE and plan amendments to the individual with a disability or, as appropriate, a parent, other family member, guardian, advocate, or other authorized representative of the individual.

The counselor and client or, as appropriate, the client's representative shall review the IPE at least annually.

## 7.0 Services

### Substantiality of Services Policy:

The definition of substantiality of services includes all the needs that should be met in the IPE, its amendments, and otherwise in the case record. These needs should include both those pertaining to the vocational abilities of the individual and those relating to the barriers to employment posed by the disability or disabilities. Substantial services are those services that address an individual's major needs as identified in the assessment process or later in the case record that the counselor and the client agree have to be met in order for the individual to achieve an employment outcome consistent with that individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The services required to meet the needs of an individual should be planned on the IPE and/or its amendments, regardless of the source of payment or service provider. The source of payment and service provider must be listed on the IPE for each service.

Specific Vocational Rehabilitation Services are any services described in an Individualized Plan for Employment (IPE) necessary to assist an individual 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. assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology.
2. an assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
3. vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice as defined in the OVR/OVRB Resource Guide, Section 4.4 page 21;
4. referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce investment system and to advise those individuals about Client Assistance Programs

(OVR/OVRB Policy Manual Section 1.1.9; OVR/OVRB Resource Guide Section 4.4 page 28 & Form MDRS-VR-02, Information and Referral, following Section 2.7.3 of the Resource Guide);

5. Physical and mental restoration services, to the extent that financial support is not readily available from a source other than the Agency (such as through health insurance or a comparable service or benefit.
6. vocational and other training services, including the provision of personal and vocational adjustment, books, tools, and other training material, except that no training services provided at an institution of higher learning shall be paid with funds under this title unless maximum efforts have been made by the counselor and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training;
7. maintenance for additional costs incurred while participating in an assessment for determining eligibility and rehabilitation needs or while under an IPE as defined in the *OVR/OVRB Resource Guide, Section 4.4, page 28*;
8. transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service described in this section and needed by the individual to achieve an employment outcome as defined in the *OVR/OVRB Resource Guide, Section 4.4, page 36*;
9. vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome;
10. interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel;
11. reader services, rehabilitation teaching services and orientation and mobility services for individuals who are blind;
12. job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services as defined in the *OVR/OVRB Resource Guide, Section 3.11*;
13. supported employment services in accordance with the definition in the *OVR/OVRB Resource Guide, Section 4.4, pages 34 – 35*;
14. personal assistance services in accordance with the definition in the *OVR/OVRB Resource Guide, Section 4.4, page 31*;
15. post-employment services in accordance with the definition in the *OVR/OVRB Resource Guide, Section 4.4, page 32 - 33*;

16. occupational licenses, tools, equipment, and initial stock and supplies;
17. rehabilitation technology services including vehicular modifications, telecommunications, sensory and other technological aids and devices in accordance with the definition in the *OVR/OVRB Resource Guide, Section 4.4, page 33 & Section 3.2*;
18. transition services in accordance with the definition in the *OVR/OVRB Resource Guide, Section 4.4, page 35 - 36 & Section 3.17*;
19. technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources, to the extent such resources are authorized to be provided through the statewide workforce investment system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;
20. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(Authority: Section 103(a) of the Act; 29 U.S.C. 723(a))

## FINANCIAL ACCOUNTABILITY

### 8.0 Financial Accountability Policy Statement

The Mississippi Department of Rehabilitation Services is committed to ensuring all funds are handled using sound financial management and proper accounting practices. These practices should facilitate the goals and objectives of the program. Only those funds necessary for diagnostic, evaluation and other services, which lead to the attainment of a vocational goal, should be expended.

Authorizations and expenditures for services will be made in accordance with all applicable Agency fee schedules; Agency operating agreements and contracts; State contract rates; vendor's usual and customary charges; and state/federal laws, regulations, policies, and procedures. Rates of payment for services provided in agency-operated facilities shall be determined by the Agency's facility cost reporting system.

Documentation supporting the decision to obligate funds, change amounts obligated, and recommended payment must be present in the case file.

### 8.1 Financial Needs Tests / Comparable Services and Benefits

MDRS chooses to consider the financial need of clients or applicants who are receiving services through Trial Work Experiences or during an Extended Evaluation for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified below. The *OVR/OVRB Resource Guide* explains the method for determining the financial need of an eligible individual; and specifies the types of vocational rehabilitation services for which MDRS has established a financial needs test;

Policies are applied uniformly to all individuals in similar circumstances. Policies do not require different levels of need for different geographic regions in the State, and policies ensure that the level of an individual's participation in the cost of vocational rehabilitation services is:

1. reasonable;
2. based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and,
3. not so high as to effectively deny the individual a necessary service.

MDRS does not apply a financial needs test, or require the financial participation of the individual as a condition for furnishing the following vocational rehabilitation services:

1. assessment for determining eligibility and priority for services, except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of Trial Work Experiences or an Extended Evaluation;
  - a. assessment for determining vocational rehabilitation needs;
  - b. vocational rehabilitation counseling and guidance;
  - c. referral and other services;
  - d. interpreter services;
  - e. reader services;
  - f. job-related services;
  - g. personal assistance services; or
2. as a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act.

Comparable Services and Benefits are defined in the *OVR/OVRB Resource Guide*.

In all cases full consideration will be given to any comparable services and benefits available under any other program including those of other workforce agencies. This includes maximum utilization of public or other vocational/ technical training facilities to meet, in whole or part, the cost of any vocational rehabilitation service(s) provided to the individual. MDRS cannot supplement payments from any other source(s) in excess of the prevailing fee for services being purchased.

Appropriate comparable benefits must be used when purchasing services, as long as the determination of whether comparable services and benefits are available under any other program would interrupt or delay:

1. the progress of the individual toward achieving the employment outcome in the individualized plan for employment of the individual;
2. an immediate job placement; or,
3. the provision of such service to any individual at extreme medical risk.

Exceptions are as follows:

1. assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;
2. counseling and guidance, including information and support services to assist an individual in exercising informed choice;
3. referral and other services to secure needed services from other agencies including other workforce agencies through cooperative agreements, if such services are not available through this agency;
4. job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;
5. rehabilitation technology, including telecommunication, sensory, and other technological aids and devices; and,
6. post-employment services consisting of the aforementioned services (in items 1– 5 in this list.)

## 8.2 Fee Schedule

The Agency has established a Fee Schedule that represents the Department's "*maximum allowable fee*" for medical services, equipment, supplies, and the like. The Fee Schedule Manual offers guidelines on authorizing for these types of services and must be adhered to when the Agency is providing these services.

### 8.3 State Vendor Contracts

The State of Mississippi enters into contracts with vendors for certain goods and services on an annual basis. When State contracts are in effect, these items must be obtained from the vendor indicated on the contract. No bids are required.

### 8.4 State Purchasing Regulations

Items not covered by the Agency Fee Schedule or a State Contract are subject to the Mississippi Public Purchases law. This law requires the following for all client service purchases authorized by the counselor:

1. Purchases of \$5,000.00 or under, exclusive of freight or shipping charges, may be authorized to any vendor with no bids or approval required (except for Computer /telecommunication related purchases).
2. Purchases over \$5,000.00, but not in excess of \$25,000.00, exclusive of freight or shipping charges, require at least two written quotes or certification that the vendor is a single source\*. The Request for Purchase form (DRS-FIN 1) or client authorization and quotes or certification are to be submitted to the District Manager. Purchases will be made from the lowest and best overall quote that meets the specifications. **DO NOT ISSUE AUTHORIZATIONS UNTIL NOTIFIED OF APPROVAL.** After receiving written approval, the Authorization and Statement of Account may be issued. A copy of the approval document and quotes must be attached to the Statement of Account when submitted to the Finance Office for payment.

*\*Single source vendor considerations* - Do other companies make similar commodities that will do the same job or meet the same goals? If so, why is this commodity unique from all others? What can it do that the others can't? Is there a copyright or patent on this commodity? Will the company write a letter certifying this to be true? Are there distributors outside of Mississippi or will the manufacturer give you a quote?

3. For purchases over \$25,000.00, exclusive of freight and shipping charges, you must send the specifications for the items being purchased or construction projects being proposed to the District Manager, who will then submit the request to the Finance Office. (See *Section 6.2.7* of the *OVR/OVRB Resource Guide* for requirements for AT related purchases). **IT IS UNLAWFUL TO SPLIT A PURCHASE TO CIRCUMVENT THE REQUIREMENTS FOR ADVERTISING.** The Finance Office will arrange for the advertising in the newspaper, provide guidance in obtaining the bids, and obtain approval from the Bureau of Purchasing (P-1). Purchases will be made from the lowest and best overall bidder that meets the specifications. **AUTHORIZATIONS SHOULD NOT BE ISSUED UNTIL NOTIFICATION IS RECEIVED.**

## 8.5 Purchase of Computer/Telecommunication Equipment and/or Services

The Mississippi Department of Information Technology Services (ITS) governs the acquisition of any computer/telecommunications equipment, word processing equipment, computer software, or computer/telecommunications services. Requests for purchase of any of the above for clients, regardless of cost, must be sent to the District Manager, prior to submission to the Agency's Office of Management Information Services (MIS). Approval from MIS must be secured before further action is taken.

## 8.6 Purchase of Drugs

Drugs and medication may be authorized when necessary for the treatment of a condition that affects the rehabilitation program. They may also be provided as part of a broader physical rehabilitation program.

The Agency will approve drugs that comply with rates established by the State Division of Medicaid. If a prescription is not on the Medicaid Formulary, the authorization will be based on the pharmacist's usual and customary charge. Similar benefits must be considered before the Agency can pay for this type of service.

## 8.7 Authorizations

Authorizations will be issued only after a case has been placed in application status. A written authorization for services shall be made either before or at the same time as the purchase of the services. After eligibility has been determined, in emergency situations that might cause extreme medical risk or loss of placement, or like circumstances, an authorization may be made orally. In such instances there must be prompt documentation and the authorization must be confirmed in writing and forwarded immediately to the provider of the services.

## 8.8 Statement of Accounts

Payment of a valid obligation may be approved when the authorized goods or services have been received by the client or authorized agency personnel and the vendor has signed, returned our Statement of Account and supplied an invoice when required. State purchasing law requires payment within 45 days of receipt of authorized good

## CLOSURES

## 9.0 Closures

A client's case shall be closed when it has been determined by the counselor that planned services are completed, as appropriate, or that additional vocational rehabilitation services are either unnecessary or inappropriate.

## 9.1 Criteria and Requirements for Closing Case Records as Rehabilitated

### 9.1.1 Criteria

The minimum criteria, which must be met for an individual to be determined, rehabilitated are the following:

1. The individual has been determined to be eligible.
2. The individual was provided an evaluation of vocational rehabilitation potential, and counseling and guidance as essential vocational rehabilitation services.
3. The provision of services under the IPE has contributed significantly to the achievement of specific employment outcome that is consistent with the client's strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.
4. The employment outcome is in the most integrated setting possible, consistent with the client's informed choice, and the client has maintained the employment outcome for a period of at least 90 days. At the end of the 90-day period, the individual and the counselor consider the employment to be satisfactory and agree that the individual is performing well on the job.
5. Additional Supported Employment provisions in relation to employment are--
  - a. employment must be competitive work and for the maximum number of hours possible based on the individual's abilities and capability; and,
  - c. the client received on-going support services prior to closure and continues to need on-going support.

### 9.1.2 Requirements for Closing Case Records as Rehabilitated

Upon the determination that the client has achieved an employment outcome in accordance with the above criteria, the client's case may be closed as rehabilitated.

#### 1. Procedural requirements--

- a. Prior to closure, the counselor must personally address the following issues with the client or, as appropriate, the client's representative:
  - i. the need for post-employment services must be reviewed and reassessed through appropriate modes of communication; and,

- ii. the employment outcome must be determined to have been satisfactory and the client performing well on the job. The client must indicate whether he/she agrees or disagrees with this decision.
- b. The client must be informed in writing of the case closure decision. This “Closing Statement” must be dated and signed by the counselor and contain statements concerning-
  - i. the basis on which the client was determined to have achieved a specific employment outcome;
  - ii. the expected need for post-employment services and, if needed, terms and conditions for provision of services; and,
  - iii. if appropriate, a statement as to how post-employment services will be provided through cooperative agreements with other service providers.
- 2. Case record documentation requirements--
  - a. The results of the contact with the client in which case closure was discussed must be documented in the case file.
  - b. If the IPE provides for job placement in a non-integrated setting, there must be a justification for that non-integrated setting. Clients choosing extended employment as an employment outcome will not be considered rehabilitated.

There must be verification that the client is compensated at or above minimum wage and that the wage and level of benefits are not less than that customarily paid by the employer for the same or similar work by non-disabled clients. (Note: Some rehabilitants are placed in extended [sheltered] employment earning less than minimum wage under a sub-minimum wage certificate issued by the U.S. Department of Labor. This is legal and appropriate for certain clients but would not be considered a competitive employment outcome in terms of MDRS receiving credit for these types of closures.)

The case record must reflect the fact that the counselor annually reviews and reevaluates the status of each individual with a disability served under the vocational rehabilitation program who has achieved an employment outcome either in an extended employment setting in a community rehabilitation program or in any other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act for two years after the individual achieves the employment outcome (and thereafter if requested by the individual or, if appropriate, the individual's representative) to determine the interests, priorities, and needs of the individual with respect to competitive employment or training for competitive employment.

The record must also show that the counselor enabled the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and documents that input in the record of services with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted.

The record must also reflect that the counselor has made maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist individuals placed in extended employment to engage in competitive employment. As noted, clients choosing extended employment as an employment outcome will not be considered rehabilitated.

## 9.2 Criteria and Requirements for Closure of Case Records in a Non-Rehabilitated Status Subsequent to Initiation of IPE -- Closed, Not Rehabilitated

### 9.2.1 Criteria

In order to close the case record of a client as closed, not rehabilitated, the client must have been provided at least one service under the IPE. In addition, one or more of the following must be determined as NOT met:

1. The client was provided counseling and guidance;
2. The client was provided appropriate and substantial vocational rehabilitation services in accordance with IPE requirements;
3. The client achieved and maintained a suitable employment goal of at least 90 days; or,
4. The client continues to meet eligibility criteria.

### 9.2.2 Requirements for Closing Case Records Not Rehabilitated

#### 9.2.2.1 Closure for Reasons Other Than Eligibility Criteria Not Met (Intervening Reasons)

The case record may be closed subsequent to the initiation of the IPE if the client:

1. becomes unable to locate or contact or has moved;
2. refuses services or further services;
3. dies;
4. is institutionalized;
5. transfers to another agency;
6. fails to cooperate;

7. has no transportation available to participate in rehabilitation services; or;
8. other reasons not encompassed above.

#### Case record documentation requirement--

The case record must indicate the reason for closure including the employment status if known.

#### 9.2.2.2 Closure Because Eligibility Requirements Are No Longer Met

If it is determined that a client receiving services under an IPE is no longer capable of benefiting from services in terms of an employment outcome because of the severity of his/her disability, the case record may be closed.

##### 1. Procedural requirements --

- a. The determination shall be made only after providing an opportunity for full consultation with the client or, as appropriate, with the client's representative.
- b. A (closing) amendment to the IPE must be developed jointly and signed by a qualified rehabilitation counselor and client or, as appropriate, the client's representative. The client must indicate whether he/she agrees or disagrees with the closure decision. The amendment must include the decision, the reason(s) on which the decision was based, and a copy must be provided to the client.
- c. The client must be informed in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the client, of the ineligibility determination, including the reason(s) for the determination, appeal rights, and availability of the Client Assistance Program.
- d. The client must be referred to other agencies and facilities including, as appropriate, the State's Independent Living Program and to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act.
- e. There must be a review of the ineligibility decision within 12 months and annually thereafter if requested by the client or, if appropriate, by the client's representative. This review need not be conducted in situations in which the client has refused it, the client is no longer present in the State, the client's whereabouts are unknown, or the client's medical condition is rapidly progressive or terminal.

##### 2. Case record documentation requirements--

- a. The determination that a client is not capable of achieving an employment outcome and is no longer eligible to receive services under an IPE, must be recorded on a Certification of Ineligibility which is signed and dated by a qualified rehabilitation counselor. The

determination must also be recorded on an IPE Closing Amendment that must be dated and signed by the counselor and client or, as appropriate, the client's representative.

- b. The case file must contain evidence of written notification to the client of the ineligibility decision including the reason(s) for the determination, appeal rights, availability of the Client Assistance Program, and review of decision.
- c. The closure consultation between the client and counselor must be recorded in the case file.

### 9.3 Criteria and Requirements for Closure of Case Records Subsequent to Eligibility Certification But Prior to Rendering IPE Services

#### 9.3.1 Criteria

These closures occur when the client has been determined eligible, but IPE services were not initiated.

#### 9.3.2 Requirements for Closing Case Records

##### 9.3.2.1 Closure for Reasons Other Than Eligibility Criteria Not Met (Intervening Reasons)

The case record may be closed subsequent to the eligibility determination but prior to rendering IPE services if the client:

1. becomes unable to locate or contact or has moved;
2. refuses services or further services;
3. dies;
4. is institutionalized;
5. transfers to another agency;
6. fails to cooperate;
7. has no transportation available to participate in rehabilitation services; or,
8. other reasons not encompassed above.

Case record documentation requirement--

The case record must indicate the reason for closure including the employment status if known.

### 9.3.2.2 Closure Because Eligibility Requirements Are No Longer Met

If it is determined that a client is no longer capable of benefiting from services in terms of an employment outcome because of the severity of his/her disability, the case record may be closed.

#### 1. Procedural requirements --

- a. the determination shall be made only after providing an opportunity for full consultation with the client or, as appropriate, with the client's representative.
- b. If an IPE has been developed and signed (closure from Status 12), a closing amendment to the IPE must be developed jointly and signed by a qualified rehabilitation counselor and client or, as appropriate, the client's representative. The client must indicate whether he/she agrees or disagrees with the closure decision. The amendment must include the decision, the reason(s) on which the decision was based, and a copy must be provided to the client.
- c. the client must be informed in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the client, of the ineligibility determination, including the reasons for the determination, appeal rights, and availability of the Client Assistance Program.
- d. the client must be referred to other agencies and facilities including, as appropriate, the State's Independent Living Program and to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act.
- e. There must be a review of the ineligibility decision within 12 months and annually thereafter if requested by the client or, if appropriate, by the client's representative. This review need not be conducted in situations in which the client has refused it, the client is no longer present in the State, the client's whereabouts are unknown, or the client's medical condition is rapidly progressive or terminal.

#### 2. Case record documentation requirements--

- a. The determination that a client is not capable of achieving an employment outcome and is no longer eligible to receive services must be recorded in a case note which is dated and initialed by a qualified rehabilitation counselor.
- b. The case file must contain evidence of written notification to the client of the ineligibility decision including the reason(s) for the determination, appeal rights, availability of the Client Assistance Program, and review of decision.
- c. The closure consultation between the client and counselor must be recorded in the case file.

## 9.4 Criteria and Requirements for Closure of Case Records From Referral and Applicant Status

### 9.4.1 Criteria

This closure status is used to identify an applicant who was not accepted for vocational rehabilitation services, either because the client did not meet the eligibility criteria or due to reasons other than the eligibility criteria not being met. A case closed in this status as ineligible due to the severity of the applicant's disability must have been provided Trial Work Experiences, with appropriate supports, to explore the client's abilities, capabilities, and capacity to perform in work situations to support the determination that the client is incapable of benefiting from specific vocational rehabilitation services in terms of an employment outcome. Trial Work Experiences are not required in those limited circumstances when the client cannot take advantage of such experience.

### 9.4.2 Requirements for Closing Case Records from Application Status

#### 9.4.2.1 Closure for Reasons Other Than Eligibility Criteria Not Met

An applicant's case record may not be closed prior to making an eligibility determination unless the applicant declines to participate in or is unavailable to complete an assessment for determining eligibility and priority for services.

##### 1. Procedural requirement --

The agency must make a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.

##### 2. Case record documentation requirements--

The attempts to contact the applicant must be documented in the case record. The reason for closure including the employment status, if known, must also be indicated.

#### 9.4.2.2 Closure Because Eligibility Requirements are Not Met

1 .An ineligibility determination must be based on one of the following requirements:

- a. The applicant does not have a physical or mental impairment;
- b. The applicant's physical or mental impairment does not constitute or result in a substantial impediment to employment;
- c. The applicant does not require vocational rehabilitation services to prepare for, secure, retain, or regain employment; or,

d. The applicant is not capable of benefiting from services in terms of an employment outcome due to the severity of his/her disability. This determination shall be made only after the agency has provided the applicant Trial Work Experiences with appropriate support to determine whether or not there is clear and convincing evidence documented in the case file to support the determination. Exceptions may be made in limited circumstances when the applicant cannot take advantage of such experiences.

## 2. Procedural requirements --

- a. The determination shall be made only after providing an opportunity for full consultation with the applicant or, as appropriate, with the applicant's representative.
- b. The applicant must be informed in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the applicant, of the ineligibility determination, including the reason(s) for the determination, appeal rights, and a description of services available from the Client Assistance Program.
- c. The applicant must be referred to other agencies and facilities including, as appropriate, the State's Independent Living Program and to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act.
- d. A review of the ineligibility decision must be conducted within 12 months and annually thereafter if requested by the applicant or, if appropriate, by the client's representative. This review need not be conducted in situations in which the applicant has refused it, the client is no longer present in the State, the client's whereabouts are unknown, or the applicant's medical condition is rapidly progressive or terminal.

## 3. Case record documentation requirements--

- a. The determination that an applicant is not eligible to receive services must be recorded in the case notes that are dated and initialed by the counselor. The case notes must include the basis for the decision.
- b. The case file must contain evidence of written notification to the client of the ineligibility decision including the reasons for the determination, appeal rights, availability of the Client Assistance Program, and review of decision.
- c. The closure consultation between the applicant and counselor must be recorded in the case file.

## 9.5 Closure from Pre-Service Listing

### 9.5.1 Criteria

This status is used for an applicant who was certified eligible for vocational rehabilitation services but did not meet the Order of Selection criteria, and the case file never advanced to service status.

## 9.5.2 Requirements for Closing Case Records

### 9.5.2.1 Closure for Reasons Other Than Eligibility Criteria Not Met (Intervening Reasons)

The case record may be closed subsequent to the eligibility determination but prior to rendering IPE services if the individual:

1. becomes unable to locate or contact or has moved;
2. refuses services or further services;
3. dies;
4. is institutionalized;
5. transfers to another agency;
6. fails to cooperate;
7. has no transportation available to participate in rehabilitation services; or,
8. other reasons not encompassed above.

Case record documentation requirement--

The case record must indicate the reason for closure including the employment status if known.

### 9.5.2.2 Closure Because Eligibility Requirements Are No Longer Met

If it is determined that a client is no longer capable of benefiting from services in terms of an employment outcome because of the severity of his/her disability, the case record may be closed.

#### 1. Procedural requirements --

- a. The determination shall be made only after providing an opportunity for full consultation with the client or, as appropriate, with the client's representative.
- b. The client must be informed in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the client, of the ineligibility determination, including the reasons for the determination, appeal rights, and availability of the Client Assistance Program.

- c. The client must be referred to other agencies and facilities including, as appropriate, the State's Independent Living Program and to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act.
- d. There must be a review of the ineligibility decision within 12 months and annually thereafter if requested by the client or, if appropriate, by the client's representative. This review need not be conducted in situations in which the client has refused it, the client is no longer present in the State, the client's whereabouts are unknown, or the client's medical condition is rapidly progressive or terminal.

## 2. Case record documentation requirements--

- a. The determination that a client is not capable of achieving an employment outcome and is no longer eligible to receive services must be recorded on a case note which is dated and initialed by a qualified counselor.
- b. The case file must contain evidence of written notification to the client of the ineligibility decision including the reasons for the determination, appeal rights, availability of the Client Assistance Program, and review of decision.
- c. The closure consultation between the client and counselor must be recorded in the case file.

## 9.6 Post-Employment Services

### 9.6.1 Criteria for Provision of Post-Employment Services

Post-employment services may be one or more services that are provided subsequent to the achievement of an employment outcome and are necessary for a client to maintain, regain, or advance in employment, consistent with the client's strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. Post-employment service(s) must be related to the original IPE.

### 9.6.2 Requirements for Provision of Post-Employment Services

Procedural requirements -- Post-employment services are provided under an amended IPE which must be developed jointly, agreed to, and signed by a qualified rehabilitation counselor and client or, as appropriate, the client's representative. A copy must be provided to the client. A re-determination of eligibility is not required.

### 9.6.3 Closure from Post-Employment Service Status

#### 9.6.3.1 Closure from Post-Employment Services-Case Reopened

If, after the closure of the case from post-employment, the counselor determines more comprehensive services are required, a new rehabilitation effort should be considered.

Case record documentation requirement--

The case record must indicate the basis for the decision.

#### 9.6.3.2 Closure from Post Employment Services-Successful

A client is placed in this status after the provision of post-employment services result in the client maintaining, regaining, or advancing in employment that is consistent with his/her strengths, resources, priorities, concerns, abilities, capabilities, and career interests.

1. Procedural requirements--

- a. Prior to closure, the counselor must personally address with the client or, as appropriate, the client's representative whether the employment is satisfactory and if the client is performing well on the job. The client must indicate whether he/she agrees or disagrees with this decision.
  - b. The client must be informed in writing of the case closure. This "Closing Statement" must be dated and signed by the counselor and contain statements concerning the basis on which the client has been determined to have achieved an employment outcome, whether he/she agrees or disagrees with the closure decision, appeal rights, and availability of Client Assistance Program.
2. Case record documentation requires the results of the client contact in which case closure was discussed must be documented in the case file.

#### 9.6.3.3 Closure from Post-Employment Services - Unsuccessful

A client is placed in this status when post-employment services do not result in the client maintaining employment and additional rehabilitation services are not considered appropriate.

Case record documentation requirement--

The case record must indicate the reason for closure.