

STATE OF MICHIGAN

RICK SNYDER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

IN THE MATTER OF:

MAHS Docket No.: [REDACTED]

[REDACTED] [REDACTED]
[REDACTED]

Agency Case No.: [REDACTED]

v

Case Type: MRS

[REDACTED]
[REDACTED]

_____/

Issued and entered
this 2nd day of December, 2016
by:
Steven Kibit
Administrative Law Judge

DECISION AND ORDER

PROCEDURAL HISTORY

On April 5, 2016, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing from Respondent Michigan Rehabilitation Services (MRS). Along with the Request for Hearing was a letter from Petitioner [REDACTED] dated March 31, 2016 in which Petitioner stated that he wished to appeal a decision to deny him services.

Following the receipt of the Request for Hearing, MAHS scheduled a telephone pre-hearing conference for May 17, 2016.

On May 12, 2016, MAHS received a request for adjournment from Petitioner's representative in which he asked that the pre-hearing conference be adjourned and rescheduled because he had only recently been retained, he had just begun obtaining evidence and engaging in discovery, and the issues of the case will be clearer in a few weeks.

Respondent did not object to an adjournment; Petitioner's request was granted; and the telephone pre-hearing conference was subsequently rescheduled for June 7, 2016.

On June 7, 2016, the telephone pre-hearing conference was held as scheduled. Attorney [REDACTED] appeared on behalf of the Petitioner. Assistant Attorney General [REDACTED] represented the Respondent.

During that telephone pre-hearing conference, the representatives and undersigned Administrative Law Judge discussed three pending requests for records or documents filed by Petitioner and the undersigned Administrative Law Judge granted a request for a subpoena, but denied Petitioner's request for some agency records.

The undersigned Administrative Law Judge also inquired about setting a hearing date and Petitioner's representative responded that he would prefer to hold a status conference instead after he has had a chance to serve the subpoena and review the requested documents, present the requested documents to a psychologist for review, and review other records he is waiting on. Respondent's representative then stated that he did not object to holding a status conference, and the representatives and Administrative Law Judge agreed on a time and date for the status conference: 10:00 a.m. on July 8, 2016.

On July 8, 2016, the status conference was held as scheduled. The same representatives as before appeared on behalf of the parties.

During that status conference, Petitioner's representative indicated that he has received the documents requested in the subpoena and they had been reviewed by his expert, but that he just received his expert's report the night before and had not yet submitted it to Respondent. In response, Respondent's representative indicated that he would like an opportunity to review the report and, if necessary, request to depose the expert.

Both representatives then agreed that, while there might still be some outstanding discovery issues, the matter could be set for hearing at this time. The representatives and Administrative Law Judge also agreed on a time and date for the hearing: 10:00 a.m. on September 7, 2016.

On September 6, 2016, MAHS received a request for adjournment from Petitioner. In that request, Petitioner's representative asked that the matter be adjourned so that Petitioner could have time to consider a settlement offer made by Respondent and the parties could engage in further discussions. Given the timing of the motion, which was received the day before the hearing was to start, MAHS staff contacted Respondent's representative directly for a response. Respondent's representative had no objection to an adjournment.

Petitioner's request for adjournment was then granted and the hearing was rescheduled for November 2, 2016.

On November 2, 2016, the hearing was held as scheduled under the authority of Section 102 of the 1998 amendments to the Rehabilitation Act of 1973, 29 USC 722, and Act 232 of the Public Acts of 1964, MCL 395.81 *et seq.*

Attorney [REDACTED] again appeared on behalf of the Petitioner. Assistant Attorney General [REDACTED] again represented the Respondent

During the hearing, the parties submitted the following exhibits:

Petitioner's Exhibits

Exhibit 1: Review of Evaluation by [REDACTED], Ph.D.

Exhibit 2: Curriculum Vitae of [REDACTED]

Exhibit 3: Letter and Medical Report by [REDACTED], M.D.

Exhibit 4: Vocational Psychological Evaluation by [REDACTED].D., LLP

Exhibit 5: Notes from Evaluation by [REDACTED]

Exhibit 6: Data from Evaluation by [REDACTED]

Exhibit 7: Letter from [REDACTED] dated March 3, 2016

Exhibit 8: Extended Evaluation Plan

Exhibit 9: Freedom of Information Act (FOIA) Request

Exhibit 10: Letter from [REDACTED] dated March 25, 2016

Exhibit 11: Request for documents from [REDACTED] April 4, 2016

Exhibit 12: Appeal of Partial Denial of FOIA Request

Exhibit 13: Letter from [REDACTED] dated April 28, 2016

Exhibit 14: Letter from [REDACTED] dated May 10, 2016

Exhibit 15: Excerpts from [REDACTED] Manual

Exhibit 16: Petitioner's MRS Case File

Exhibit 17: Petitioner's MRS Application

Exhibit 18: Health Care Provider Information given to Petitioner

Exhibit 19: Health Care Provider Information found in file

Exhibit 20: Note from [REDACTED], M.D.

Exhibit 21: Receipt from Social Security Administration

Respondent's Exhibits

Exhibit A: Introduction Section of Rehabilitation Services Manual

Exhibit B: Forward to Rehabilitation Services Manual

Exhibit C: MRS Policy 2000

Exhibit D: MRS Policy 3100

Exhibit E: MRS Policy 3125

Exhibit F: MRS Policy 3175

Exhibit G: MRS Policy 3275

Exhibit H: Case Note dated December 3, 2015

Exhibit I: Case Note dated December 14, 2015

Exhibit J: Case Note dated January 12, 2016

Exhibit K: Case Note dated January 25, 2016

Exhibit L: Case Note dated February 4, 2016

Exhibit M: Extended Evaluation Plan

Exhibit N: Case Note dated March 3, 2016

Exhibit O: Letter from [REDACTED] dated March 3, 2016

Exhibit P: Case Note dated May 5, 2016

Exhibit Q: Letter from [REDACTED] dated May 10, 2016

The parties also presented the following witnesses:

Petitioner's Witness

1. [REDACTED], Petitioner

Respondent's Witnesses

1. [REDACTED]

[REDACTED]

[REDACTED]

ISSUE

Is Respondent proper in requiring further testing before moving forward with Petitioner's case?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Petitioner is a [REDACTED] who was referred for services through [REDACTED] in November of 2015. (Exhibit 17, page 1; Testimony of Ms. [REDACTED])
2. [REDACTED] [REDACTED] was initially assigned as Petitioner's Vocational Rehabilitation Counselor. (Exhibit H, page 1; Testimony of Ms. [REDACTED]).
3. She attempted to contact Petitioner on November 3, 2015 and November 4, 2015 without success, but Petitioner called her back on November 5, 2015 and they set a meeting for December 2, 2015. (Exhibit 16, page 8-10).
4. On December 2, 2015, Petitioner and Ms. [REDACTED] completed an Orientation/Intake meeting. (Exhibit 16, page 1; Exhibit H, pages 1-3).
5. Petitioner also completed an Application for Employment Services through Respondent that same day. (Exhibit 17, pages 1-2).

6. In that application, Petitioner identified his primary disabilities as mobility, standing for a long time, rising from a seated position, and urinary incontinence. (Exhibit 17, page 1).
7. He also indicated that he wanted assistance in getting an engineering job. (Exhibit 17, page 1).
8. Petitioner had previously worked as an engineer for years before retiring in the year 2003. (Testimony of Petitioner).
9. During that meeting, Petitioner and Ms. [REDACTED] discussed, among other things, an incident on August 13, 2009 where Petitioner was attacked by the police. (Exhibit H, page 2).
10. According to Ms. [REDACTED], Petitioner was quite agitated when describing the incident. (Testimony of Ms. [REDACTED]).
11. Petitioner testified during the hearing that the incident caused him major psychological trauma. (Testimony of Petitioner).
12. Petitioner also identified his medical providers, including a psychiatrist named Dr. [REDACTED] and a psychologist named Dr. [REDACTED]. (Exhibit 19, pages 1-2; Exhibit H, page 2).
13. Following the meeting, Ms. [REDACTED] entered a case note indicating that she found Petitioner to be quite cantankerous, somewhat argumentative, and confused at times. (Exhibit H, pages 1-3).
14. During the hearing, Petitioner denied being cantankerous or argumentative, but did testify that he felt violated by Ms. [REDACTED] and believes something is wrong with her. (Testimony of Petitioner).
15. Based on Petitioner's behavior during intake, his reports regarding the incident with the police and his treatment by a psychiatrist and psychologist, Ms. [REDACTED] enlisted the services of Dr. [REDACTED] for an evaluation of Petitioner. (Testimony of Ms. [REDACTED]).
16. Dr. [REDACTED] is a psychologist and an independent contractor who Respondent refers clients to. (Testimony of Ms. [REDACTED]).
17. In addition to that referral, Ms. [REDACTED] also sent letters and forms to the doctors identified by Petitioner. (Exhibit K, page 1).
18. On December 14, 2015, Ms. [REDACTED] with [REDACTED], who indicated that he had not seen Petitioner for almost five years and could not complete the requested MRS forms. (Exhibit I, page 1).

19. Dr. [REDACTED] also indicated that Petitioner was involuntarily admitted to a hospital psychiatric unit in the year 2009 after interaction with the police and identified a number of diagnoses, including Bipolar Disorder, with psychiatric features, in remission; multiple phobias; obsessive compulsive disorder; and Personality Disorder with obsessive compulsive features. (Exhibit I, page 1).
20. On December 17, 2015, Petitioner underwent a Vocational Psychological Evaluation with [REDACTED]. (Exhibit 4, page 1).
21. On or about December 31, 2015, [REDACTED] issued a report of her evaluation. (Exhibit 4, pages 1-7).
22. According to that report, [REDACTED] was evaluating Petitioner to assess his intellectual, academic, and emotional functioning for vocational purposes. (Exhibit 4, page 1).
23. Regarding her behavioral observations, [REDACTED] noted that Petitioner presented as frustrated when he arrived, he displayed agitation, his grooming was less than adequate, he was guarded, and he did not want to answer many questions asked of him. (Exhibit 4, pages 1-2).
24. Regarding Petitioner's cognitive functioning, [REDACTED] found that Petitioner is generally in the high average range. (Exhibit 4, pages 3-4).
25. Similarly, she found that Petitioner demonstrated very superior to superior scores in his achievement functioning. (Exhibit 4, pages 4-5).
26. Regarding Petitioner's social-emotional functioning, Dr. [REDACTED] wrote that, although the measure is based on a population of individuals between ages 18 and 59, she gave Petitioner the Achenbach System of Empirically Based Assessment (ASEBA) and Petitioner did not endorse any emotional difficulties, though he was also guarded and presented with limited insight. (Exhibit 4, page 5).
27. Overall, [REDACTED] found in part:

[Petitioner] presented with significant frustration about the process of the evaluation and did not want to answer questions during the clinical interview. He indicated that he felt "scrutinized" and was unable to be reassured about the process, even after this evaluator attempted to explain the procedure to him.

The client's hygiene and grooming were less than adequate and he struggled to make eye contact with this evaluator.

* * *

[Petitioner] presented with paranoia and frustration. He often felt that he was being "scrutinized" and had difficulties understanding his emotions and behaviors. The client's emotional history is unknown, since he was guarded and did not want to disclose information; however, given the information he provided, there are questions about a hospitalization after legal authorities were called to his home. Given his presentation and history, the client meets the criteria for Delusional Disorder. There are also questions about a possible mood disorder, with psychotic features and this should be ruled out.

The following are recommendations for [Petitioner]:

- 1) The client's medical records should be obtained to assess if his medical problems are contributing to the decline in his functioning.
- 2) [Petitioner] is recommended to participate in a psychiatric evaluation to assess his emotional functioning, and possible treatment options. He also recommended to participate in case management services, to help him with his independent functioning abilities, including his grooming and hygiene.
- 3) At this time, [Petitioner] does not present with the emotional stability needed to maintain employment, given his difficulties distinguishing between reality and fantasy, paranoia, and frustration. Additionally, his lack of hygiene will present a barrier to employment.

Exhibit 4, page 6

28. On January 12, 2016, after receiving [REDACTED] report, Ms. [REDACTED] scheduled a review of the report with Petitioner and [REDACTED] (Exhibit J, page 1).
29. In a January 25, 2016 Case Note regarding the information she had received from Petitioner's providers, Ms. [REDACTED] identified the diagnoses listed by [REDACTED] during their telephone conversation, but did not indicate that Dr. [REDACTED] had stated that Petitioner's Bipolar Disorder was in remission. (Exhibit K, page 1).
30. Ms. [REDACTED] also wrote that:

Dr. [REDACTED] did not have a fax # & he was sent a letter on 12/14/15, requesting information about customer along with signed release of information. Dr. [REDACTED] provided supportive psychotherapy without medication for customer – whom he alleged he was medicated against his will, customer “smelling of urine with poor hygiene, mild grandiosity, hatred toward [REDACTED], going back to school to earn a Masters in Engineering.” Also in Dr.'s notes indicate customer had hospitalization records from [REDACTED] [REDACTED] CUSTOMER ACKNOWLEDGES IN 12/4/09 CASE NOTE THAT HE OVERDOSED ON XANAX AFTER HIS WIFE FILED FOR DIVORCE . . .

Exhibit K, pages 1-2

31. The December 4, 2009 Case Note from [REDACTED] referenced by Ms. [REDACTED] actually provided in part:

We discussed his plans to sue the Farmington Hills police for brutality and the [REDACTED] Hospital for unlawful detainment as well as his desire to regain his Glock pistol which was taken away from him. We also discussed the fact that he was unmedicated over the past 22 years since his discharge from [REDACTED] [REDACTED] and [REDACTED] Hospital after he overdosed on Xanax. It was after those hospitalizations that his wife filed for divorce.

Exhibit 20, page 1

32. On January 27, 2016, Ms. [REDACTED] developed an Extended Evaluation Plan for Petitioner. (Exhibit 8, page 1; Exhibit M, page 1).
33. In that plan, Ms. [REDACTED] noted in part that Petitioner's ability to benefit from MRS is being questioned and that he has both an extensive psychiatric history and unrealistic expectations that have lasted for more than eight years. (Exhibit N, page 3).
34. Petitioner did not sign the Extended Evaluation Plan developed by Ms. [REDACTED] (Exhibit N, page 3).
35. On February 4, 2016, Petitioner, [REDACTED], and [REDACTED] completed a review regarding [REDACTED] findings. (Exhibit L, pages 1-2).
36. Following that review, Ms. [REDACTED] entered a Case Note stating that Petitioner repeatedly interrupted [REDACTED]; he was very rude; and that he yelled at both Ms. [REDACTED] and [REDACTED]. (Exhibit L, page 1).
37. She also noted that she ended the meeting after Petitioner stretched out his arm and pointed his finger in [REDACTED] face. (Exhibit L, page 1).
38. She further noted that Petitioner requested a new counselor after the meeting. (Exhibit L, page 2).
39. Petitioner describes the meeting with [REDACTED] and [REDACTED] as an "organized lynching" and testified that they were demeaning to him during the meeting and laughed at him after he left the room. (Testimony of Petitioner).
40. On or about February 29, 2016, Petitioner's case was reassigned to Ms. [REDACTED]. (Exhibit N, page 1; Testimony of Ms. [REDACTED]).
41. On March 3, 2016, Petitioner and Ms. [REDACTED] met for an appointment in the MRS office. (Exhibit N, pages 1-2).
42. During that meeting, they discussed Dr. [REDACTED] report and Petitioner's displeasure with it. (Exhibit N, pages 1-2).
43. Petitioner also indicated a desire to see the full report, but was advised that [REDACTED] could release it. (Exhibit N, pages 1-2).
44. They also called [REDACTED] during the meeting and she declined to release the documentation at that time. (Exhibit N, page 1).

45. Ms. [REDACTED] advised Petitioner that, given the results of his psychological evaluation, his eligibility for services could not be determined at that time due to questions regarding his ability to benefit from services. (Exhibit N, page 2).
46. She further discussed the recommendation that Petitioner undergo a psychiatric evaluation in order to determine his eligibility for services. (Exhibit N, page 2).
47. Ms. [REDACTED] subsequently amended Petitioner's Extended Evaluation Plan. (Exhibit N, pages 3-4).
48. In doing so, she removed everything written by Ms. [REDACTED]. (Testimony of Ms. [REDACTED].
49. Regarding the purpose and rationale of the Extended Evaluation, Ms. [REDACTED] indicated:

Results from a recent psychological evaluation indicate the customer does not present with the emotional stability needed to maintain employment. Due to this, customer may not be able to benefit from services. The purpose of the Extended Evaluation is to obtain additional information and assessments as recommend to determine customer's ability to benefit from services in order to determine eligibility for services.

Exhibit 8, page 1; Exhibit M, page 1

50. She also wrote that Petitioner is to participate in a psychiatric evaluation, either through a chosen psychiatrist that accepts his insurance or through [REDACTED], and that further progress and determination of eligibility is contingent upon the results of the psychiatric evaluation. (Exhibit 8, pages 1-2; Exhibit M, pages 1-2).
51. Ms. [REDACTED] also sent Petitioner a letter that same day in which she included the updated Extended Evaluation Plan and further discussed the next steps that needed to be taken. (Exhibit 7, page 1; Exhibit O, page 1).
52. Petitioner did not agree with that plan during the meeting and did not return any signed copy in response to Ms. [REDACTED] letter. (Exhibit N, page 4; Testimony of [REDACTED])

53. On March 6, 2016, Dr. [REDACTED] sent a letter to Ms. [REDACTED] advising her that Petitioner's request for full disclosure of her report and evaluation was denied because, in her professional judgment, such a disclosure would be detrimental to Petitioner's mental health. (Exhibit 16, page 44).
54. On March 14, 2016, Petitioner's representative made a FOIA request to Respondent for, among other things, Dr. [REDACTED] reports, test materials, and clinical notes and observations. (Exhibit 9, pages 1-3).
55. On March 25, 2016, Ms. [REDACTED] sent a letter in response stating that the items requested cannot be obtained through a FOIA request and must be requested directly from the provider. (Exhibit 10, page 1).
56. On March 31, 2016, Petitioner sent Respondent a letter indicating that he wished to appeal a decision to deny him services.
57. On April 4, 2016, Petitioner's representative sent a letter to Respondent indicating that Petitioner is in the process of appealing its decision and was requesting, among other things, Dr. [REDACTED] reports, test materials, and clinical notes and observations. (Exhibit 11, pages 1-2).
58. On April 22, 2016, Petitioner's representative sent Respondent an Appeal of Partial Denial of FOIA Request, in which he stated that Petitioner is appealing Respondent's decision to deny Petitioner access to documents from Dr. [REDACTED] psychological evaluation of Petitioner. (Exhibit 12, pages 1-3).
59. On April 28, 2016, [REDACTED], from the [REDACTED], Legal Affairs, sent Petitioner's representative a letter stating that Petitioner's representative's two letters had been processed as a request for records, and not a FOIA request, because a client has a right to request a copy of his own file. (Exhibit 13, page 1).
60. Ms. [REDACTED] also wrote that Respondent does not release medical records obtained from other agencies or providers, but that Petitioner can obtain the records from the providers directly and it was her understanding that Dr. [REDACTED] has authorized MRS to release her evaluation and that Petitioner's representative should contact her if he has not received it. (Exhibit 13, page 1).
61. In May of 2016, [REDACTED] attempted to follow up with Petitioner to see if he was still interested in service and was willing to undergo the recommended psychiatric evaluation. (Exhibit 14, page 1; Exhibit P, page 1; Exhibit Q, page 1).

62. Petitioner's case remains open while this matter is pending. (Testimony of Ms. [REDACTED])

CONCLUSIONS OF LAW

The purpose of Title I of the Rehabilitation Act of 1973, as amended, 29 USC § 720 *et seq.*, is to provide for a comprehensive, coordinated, effective, efficient, and accountable program of vocational rehabilitation which is an integral part of a statewide workforce investment system, and designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, and capabilities, interests and informed choice, so that such individuals may prepare for and engage in gainful employment. See 29 USC 720(a)(2).

Applicants are eligible for agency services if they have a physical or mental impairment that constitutes or results in a substantial impediment to employment and if they require Agency services to prepare for, secure, retain or regain employment consistent with their abilities and capabilities:

Policy:

Applicants shall be eligible for Michigan Rehabilitation Services (MRS) services if they have a physical or mental impairment that constitutes or results in a substantial impediment to employment and if they require MRS services to prepare for, secure, retain or regain employment consistent with their abilities and capabilities. Applicants who have been determined to have a disability under the SSDI (Title II) and/or SSI (Title XVI) program of the Social Security Act shall be considered to have a significant disability and presumed to be eligible for MRS services provided they intend to achieve an employment outcome consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. Once an individual has been informed of the employment nature of the program, the completion of an MRS application for services shall be considered as intent to achieve an employment outcome.

All applicants shall be presumed to be able to benefit in terms of an employment outcome from vocational rehabilitation services unless found to be ineligible for services due to the severity of the disability by clear and convincing evidence, including applicants who have been determined to have a disability under SSDI and SSI.

Applicants who are legally blind shall not be served by MRS but will be referred instead to the Michigan Commission for the Blind. For further information, see Policy and Procedures 4400, Visual Impairments.

Applicants who have a third party legally responsible for the payment of their vocational rehabilitation costs shall be promptly referred to the MRS Disability Management Program for services.

Procedure:

1. At intake, the counselor shall ask applicants whether they are eligible for, or receiving SSI and/or SSDI benefits, or for any other third party benefits. The counselor seeks verification, such as a copy of an SSA award letter or other SSA correspondence or a copy of the individual's Ticket to Work, and places it in the case record.
2. When an applicant states he or she is an SSI or SSDI beneficiary but has no documentation of SSA status, the counselor shall promptly obtain an AWARE Social Security Benefit Report to validate the individual's Social Security status.
3. The counselor shall make an eligibility determination for SSI or SSDI recipients, no later than 60 days from the date of application. The only exception to this federal requirement is when the case record is moved to Trial Work Experiences (TWE - Application T in AWARE) or Extended Evaluation (EE - Application X in AWARE) within 60 days of the date of application. TWE or EE are only done when the counselor has serious doubt about the individual's ability to benefit from MRS services to achieve an employment outcome (See RSM 3175, Extended Assessment, for further instructions).
4. Eligibility Determination Extension (Application-E in AWARE) shall not be used for SSI or SSDI applicants. Eligibility determination shall not be delayed to secure diagnostic records for such applicants.
5. When insufficient diagnostic and assessment information is available prior to an eligibility decision, additional

information needed to determine vocational rehabilitation needs shall be obtained after eligibility and prior to IPE development. The counselor uses available disability information obtained from the application process to determine the disability and uses the default disability priority rating of significantly disabled. The counselor updates the disability and the priority rating, as appropriate, when further information is obtained, per Manual Item 3200.

6. In the event an SSI or SSDI applicant refuses to release information, or refuses to participate in the vocational rehabilitation needs assessment, the counselor shall continue to presume eligibility by validating SSA status via the AWARE benefit report and by completing an eligibility determination or, when ability to benefit is in doubt, TWE or EE. If the individual continues to refuse to release records or participate in assessment, the case may be considered for closure.
7. When an individual indicates he or she is receiving third party benefits such as Worker's Compensation, Auto No Fault, or Long Term Disability, the individual shall promptly be referred to the Disability Management Program, using form RA-2947 – Request for Services, to determine third party liability and appropriate case management. (See RSM 8075, Disability Management Program for referral procedures.)

Information:

For further information about the criteria for legal blindness, see Policy and Procedures 4400, Visual Impairments.

Applicants who are eligible for SSI due to their disability and/or SSDI due to their disability are presumed to meet all criteria for eligibility:

- Have a mental or physical impairment that creates a substantial impediment to employment and
- To require vocational rehabilitation services to achieve an employment outcome consistent with their abilities and capabilities, and

- Be able to benefit from MRS services, unless determined unable to benefit by clear and convincing evidence, consistent with Policy 3175, Extended Assessment.

It is not necessary to receive a cash benefit to be eligible for SSI or SSDI. Only SSI and SSDI applicants are accorded the presumption of eligibility.

*MRS Policy 3100 – Eligibility Criteria
pages 1-3 of 3*

Regarding the eligibility assessment, MRS policy also provides:

Once an individual has completed an application for services, an assessment of eligibility and priority for service shall be conducted and an eligibility determination made within 60 days unless exceptional and unforeseen circumstances beyond the control of Michigan Rehabilitation Services (MRS) preclude a determination within 60 days and MRS and the individual agrees to a specific extension of time, or an extended assessment of eligibility (which may include trial work experiences with supports) is necessary.

To the maximum extent possible and appropriate, the assessment shall consist of a review of existing data, be conducted in integrated settings, and be consistent with the applicant's informed choice.

Procedures:

Sources of information that may be used to substantiate a physical or mental impairment and related limitations caused by the impairment include:

- Existing records from qualified facilities or practitioners familiar with diagnosing or treating the impairment(s) in question, especially practitioners or facilities that are currently treating the applicant. This would include records from qualified medical personnel, mental health or developmental disability programs, substance abuse treatment clinics, and individually licensed practitioners operating within their legal scopes of practice;

- Special Education records, including an Individualized Education Plan (IEP) which identifies the impairment;
- Veteran's Administration disability benefits records that identify the disability;
- Counselor observation of a readily visible anatomical impairment such as amputation, deformity, or muscle wasting associated with paralysis;
- Verification of current eligibility for Social Security Disability Insurance (SSDI), Supplemental Security Income (SSI); and
- Verification of State Disability Insurance (SDA) that identifies the disability.

Medical or other evaluations may be purchased or provided if other sources of documentation are not available, the nature of the disability is not stable, observable, or clearly defined, or information needed to determine the severity of the disability is not available.

The age of diagnostic information should be appropriate to the applicant's impairment(s) and the planned use of the information. Generally, more current information will be needed if the impairment is unstable, progressive, or the diagnosis is unclear.

The existence of a substantial impediment to employment (due to a mental or physical impairment) may be substantiated by any of the information sources noted above if the record in question addresses work or training limitations. The following information may also be used to substantiate the existence of substantial barriers to employment:

- Counselor observation of behavioral or functional limitations of an impairment;
- Written or verbal reports or descriptions of vocationally relevant limitations from the applicant, their

representative, family members, school staff, employers and others familiar with the individual.

The existence of behavioral or functional limitations alone is not sufficient to establish a substantial impediment to employment. The counselor must determine that these limitations result in a substantial, material and significant barrier (given the individual's training, education and employment history) to the individual in terms of preparing for, securing or retaining employment consistent with their abilities and capabilities.

Licensed counselors and/or certified rehabilitation counselors may conduct appraisals and assessments directly as allowed by their scope of practice, and should document such findings in case notes apart from the eligibility determination.

If the applicant's informed, written consent is needed to secure information from another source, it may be obtained by a letter of authorization, the Client Information Release Authorization Form, RA-24 or a document provided by the information source. It may be necessary to pay for the information provided.

Applicants who have been determined to have a disability under SSI and/or SSDI are presumed eligible for vocational rehabilitation services unless their ability to benefit from an employment outcome is in doubt. (See Policy and Procedures 3175 Extended Assessment) Verification of eligibility for SSI and/or SSDI or a copy of an SSA issued "Ticket to Work" must be on file. No further eligibility assessment is necessary. However, existing assessments from SSA and additional assessments may be obtained for a determination of vocational rehabilitation needs.

An applicant eligible for SSI/SSDI can be entered into eligibility status and certified eligible for vocational rehabilitation services immediately upon verification of eligibility for SSI/SSDI by noting under all portions of the Certificate of Eligibility the individual's eligibility for SSI or SSDI (Title II).

Verification of disability for SSDI, SSI, SDA, Special Education, or Veterans Administration disability may include, for example:

- Copies of award notice or letters notifying the applicant of eligibility.
- A copy of an Individualized Educational Plan (IEP) indicating that the applicant has been determined eligible for Special Education.
- Written confirmation of receipt of social Security Disability Insurance or Supplemental Security Income (on the basis of disability) from the local Social Security office or a Ticket to Work issued by SSA.

Evidence of eligibility for Special Education presumes only that the applicant has a physical or mental impairment and a substantial impediment to employment. The counselor must still determine whether the individual requires vocational rehabilitation services to achieve an employment outcome consistent with ability and capability.

An appraisal of current health is not required for eligibility in addition to information documenting the disability, but should be provided, for example, if there is a question regarding the applicant's overall health status and how it may impact employability.

The assessment to determine rehabilitation needs should begin concurrently with the assessment to determine eligibility.

The RA-2908 may be used to provide the applicant with a schedule of any diagnostic assessments or other appointments that may be made.

Information

The following are definitions of terms used in the determination of eligibility:

Ability to Benefit - likely to achieve an employment outcome with the provision of vocational rehabilitation services.

Disability – a physical or mental impairment that results in a substantial impediment to employment and which is not temporary.

Mental Impairment – any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disorders.

Physical Impairment – any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

Requires Services - would not be able to achieve employment consistent with the individual's abilities and capabilities without vocational rehabilitation services.

Substantial Impediment to Employment - means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication and other related factors) materially hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities or capabilities. A substantial impediment to employment may be established if the impairment significantly limits one or more functional capacities of the individual in terms of an employment outcome.

*MRS Policy 3125 – Eligibility Assessment
pages 1-4 of 3*

Along with the eligibility determination, a vocational needs assessment shall be conducted to determine the goals, nature and scope of rehabilitation services to be included in the Individualized Plan for Employment. The emphasis shall be on using existing and current information to the maximum extent possible. When current or existing information is not sufficient to assess vocational rehabilitation needs, a comprehensive assessment of the individual's strengths, resources, priorities, concerns, abilities, capabilities and rehabilitation needs, including the need for supported employment, shall be provided. See MRS Policy 3275;

In some cases, it may be necessary to undertake an extended assessment to determine eligibility and vocational rehabilitation needs:

Policy:

Before an applicant with a significant disability can be determined to be incapable of benefiting from services in terms of an employment outcome, an extended assessment shall first be provided. The presumption of employability continues during the extended assessment and may be refuted only if Michigan Rehabilitation Services (MRS) demonstrates by clear and convincing evidence that the applicant cannot benefit from services in terms of an employment outcome. During the extended assessment MRS shall explore the individual's abilities, capabilities, and capacity to perform in work situations in the most integrated settings, through the use of trial work experiences with appropriate supports except under limited circumstances when an individual cannot or is not ready to take advantage of such experiences (These circumstances include individuals who are medically unstable and require treatment to achieve stability and individuals whose disabilities are not treatable, remediable or who are near death). Trial work experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine 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 individual's disability. A written extended assessment plan shall be developed which includes identification of these services necessary to determine eligibility and the nature and scope of services required to achieve an employment outcome. Applicants or their representatives shall be full and active participants in the development of their extended assessment plan and in the selection of services and service providers and shall sign and be provided a copy of the written document. Progress toward achieving the assessment outcomes shall be evaluated regularly and routinely. The extended assessment shall be terminated at any time that an eligibility determination can be made, or after 12 months, unless substantial need for additional time is documented.

Procedure:

AWARE includes two extended assessment modules, Trial Work Experiences and Extended Evaluation.

If the question of ability to benefit relates to an unstable or untreated disability that would preclude the arrangement of trial work experiences, an extended evaluation is called for which can include the arrangement of appropriate treatment.

A written Extended Evaluation Plan or Trial Work Experiences plan shall be completed with only those services that are required to make the eligibility decision and identify the nature and scope of services needed to achieve an employment outcome.

Once the issues related to the applicant's extended evaluation or trial work experiences are resolved, an eligibility determination shall be completed, or case closure pursued, as appropriate. A determination that a client is incapable of benefiting from services in terms of an employment outcome because of the severity of the disability must be based on clear and convincing evidence. (See Policy and Procedure 3225)

The 12-month extended assessment period begins with the date the Extended Evaluation or Trial Work Experiences Plan is completed. The extended assessment plan can be amended at any time, but cannot be extended beyond the maximum period, unless exceptional circumstances are documented by the counselor. An eligibility decision should be made at any time prior to the maximum 12-month period of extended assessment when there is adequate data to support the determination.

If an applicant is determined eligible, the applicant's case should be moved to pre-service status if under order of selection or eligibility status, as appropriate.

If a case that had been served in extended evaluation is closed and subsequently reopened, a new extended assessment plan may be carried out provided that the basic conditions are met.

Information:

Trial Work-Experiences (TWE) or Extended Evaluation are provided when the counselor and applicant have established the presence of an impairment(s) and a substantial impediment to employment, but serious questions exist (due to the severity or instability of the individual's disability) as to what services may be needed to achieve employment. When the question relates to the severity of disability, trial work experiences in an integrated, real work setting, with supports, should be arranged in accordance with the informed choice of the individual. If the question of ability to benefit relates to an unstable or untreated disability that would preclude the arrangement of trial work experiences, an extended assessment is called for which can include the arrangement of appropriate treatment. For example, an individual with severe and untreated addiction may not be able to benefit from MRS services or trial work experiences unless the addictive disorder is treated and controlled.

The purposes of the trial work experiences and/or extended evaluation are to assess and explore services such as accommodations, restoration, training and assistive technology which would enhance the applicant's abilities, strengths, and capabilities, and reduce, remove or circumvent the barriers that might prevent the individual from benefiting from services to achieve an employment outcome.

Trial Work Experiences may utilize supported employment settings, on-the job evaluation with supports, volunteer work experience in community settings, or any other work experience in real work settings. These experiences may be arranged directly or purchased as a service package from qualified rehabilitation providers.

*MRS Policy 3175 – Extended Assessment
pages 1-2 of 3*

It is only after the completion of the eligibility determination and the assessment of vocational rehabilitation needs that the process can begin for the development of the Individualized Plan for Employment (IPE). See MRS Policy 5000, page 1 of 3. The IPE is a written document prepared on a form approved by MRS, but developed so that it affords the eligible individual meaningful opportunity to exercise informed choice in the selection of the employment goal, the specific vocational rehabilitation services required to achieve the employment goal, the entities that will provide services, and the methods

of service provision. Planning and approval of the IPE shall be conducted within the framework of a counseling relationship and the counselor must approve the IPE and verify that it is consistent with MRS policies and guidelines, complete, and is expected to lead to an employment outcome. See MRS Policy 5050.

Throughout the entire process, MRS staff also follow general policies of ethical conduct:

Michigan Rehabilitation Services (MRS) staff shall place the interests of the individuals whom they serve above their own personal interests. They shall treat their positions as a public trust, using public resources and their duties and powers only to advance the public interest.

MRS staff shall adhere to the following principles of ethical conduct, in addition to any other ethical standards appropriate to their professions.

- Each individual will be treated with integrity and as a unique individual.
- Each individual's trust and confidence will be maintained consistent with policies and laws regarding confidentiality and disclosure.
- A professional relationship with each individual will be maintained which contributes to the individual's rehabilitation and employment. The individual-counselor relationship will not be exploited for monetary, sexual, personal or other reasons.
- Professional standards in the provision of rehabilitation services will be adhered to so as to not cause or contribute to the harm of the individual or others.
- Personal and professional strengths and limitations will be recognized and supervisory or other consultation will be sought when necessary to assure appropriate service delivery.
- Professional competence in rehabilitation practices will be maintained through continuous personal and

professional development, so that individuals are assured of the highest level of service.

- Personal integrity and honesty will be maintained in dealing with the public, colleagues, and individuals so as not to discredit the profession or MRS.

*MRS Policy 2000 – Ethical Conduct
page 1 of 1*

MRS policy also addresses Informed Choice:

Applicants and eligible individuals shall be full and active participants in their vocational rehabilitation. They shall have the opportunity to obtain information about options and make informed choices throughout their rehabilitation program including: evaluation and assessment services and providers; trial work experience services and providers; their specific employment goal; the rehabilitation services required to accomplish their rehabilitation program; procurement methods; and the service providers which will be used.

Information about potential services shall include cost, accessibility, duration of services, the qualifications of the providers, the types of services offered by those providers, the degree to which the services are provided in an integrated setting, and as available, information about user satisfaction.

Applicants and eligible individuals shall be informed through appropriate means of communication, about the availability and scope of informed choice, how it may be exercised, and of the availability of support services for clients with cognitive or other disabilities who require assistance in exercising informed choice.

* * *

Informed Choice Throughout the Rehabilitation Program

The applicant and/or eligible individual shall have the opportunity to exercise informed choice through all the phases of the rehabilitation program, from assessment through closure.

* * *

Assessment of Eligibility and Rehabilitation Needs

The applicant shall be involved in providing and securing existing assessment information to the maximum extent possible. The applicant should understand the purpose and need for any additional assessments that are to be completed. When the purchase of assessment services is indicated, the applicant will be offered the opportunity to select from among appropriate types of assessment services and service providers. Before purchasing additional assessments to determine rehabilitation needs, counselors and applicant should explore the use of self-assessment tools in facilitating self-awareness and development. Once assessment information has been obtained, the counselor and applicant should fully discuss findings and their relevance to an identification of the individual's strengths, concerns, abilities, capabilities, interests and barriers to employment and how these may affect vocational planning decisions. See Policy 2250 for further information.

Extended Assessment and Trial Work Experiences with Supports

The applicant shall be a full partner with the counselor in choosing from among assessment and trial work experience options and providers as well as support services needed to complete the extended assessment. Individuals receiving these services may require specific support services to facilitate making informed decisions. When an extended assessment calls for medical treatment interventions to refute or confirm the ability to benefit from vocational rehabilitation services (such as addiction treatment), the individual should be provided an understanding of treatment options and the consequences of not pursuing treatment.

*MRS Policy 2225 – Informed Choice
pages 1-2 of 6*

Here, Petitioner's counselors both questioned whether Petitioner had the ability to benefit from services and therefore developed an Extended Evaluation Plan that included Petitioner undergoing a psychiatric evaluation. Petitioner has declined to undergo any such evaluation; Respondent will not move forward with his case until he has done so; and Petitioner filed the appeal in this case challenging that decision.

In support of Respondent's decision, Ms. [REDACTED] testified regarding the eligibility determination process for services through Respondent and the steps a counselor can take when an assessment cannot be completed in 60 days and/or where there is a question of whether a client can benefit from services. Among the options for counselors in that situation is setting up a trial work experience or an extended evaluation, and Ms. [REDACTED] also testified that policy provides that a trial work experience shall be used unless the circumstances are such that an individual cannot or is not ready to take advantage of such experiences. Ms. [REDACTED] further testified that a client is presumed to be able to benefit from services unless there is clear and convincing evidence otherwise. She also confirmed that the ethical conduct guidelines in MRS Policy 2000 apply in this case and that it would be a violation of that policy for a counselor to act out of personal animus to a client or intentionally misstate facts.

Ms. [REDACTED] testified that she was the counselor initially assigned to Petitioner's case and that, once she was able to meet with him, which only occurred after some initial difficulties contacting him, she found Petitioner to be cantankerous and difficult. She also testified that, in addition to his general behavior, Petitioner became quite agitated when discussing an incident he had with the police and he reported being treated by both a psychologist and a psychiatrist; all of which lead Ms. [REDACTED] to schedule Petitioner for an evaluation with Dr. [REDACTED] who was the earliest available psychologist that works with MRS, and to seek information from Petitioner's treating physicians. Ms. [REDACTED] further testified that she subsequently learned from Dr. [REDACTED] that he had not treated Petitioner for years, but that Petitioner had a significant psychiatric history, and she received [REDACTED] report, which noted that Petitioner was difficult during the evaluation; concluded that Petitioner does not present with the emotional stability needed to maintain employment; and recommended that the Petitioner participate in psychiatric evaluation. According to Ms. [REDACTED], she then scheduled an appointment with Petitioner and [REDACTED] to review the evaluation and developed an Extended Evaluation Plan for Petitioner in order to determine his ability to benefit from services. She also testified that Petitioner never signed that plan; he became very upset during the review meeting; and he requested a new counselor, which was approved and which ended her involvement in the case.

Ms. [REDACTED] also denied having any personal animus toward Petitioner. She further testified that it is common to have difficulties contacting clients and that she only noted Petitioner's verbosity, overly political comments, and threats of legal action because they might affect his ability to maintain employment. Ms. [REDACTED] did agree that she did not indicate in her January 25, 2016 Case Note that Dr. [REDACTED] identification of a diagnosis of Bipolar Disorder also included a statement that Petitioner was in remission. She further gave conflicting statements regarding her interactions with Dr. [REDACTED] before finally stating that she never spoke with him or asked him to elaborate on the information he submitted.

Ms. [REDACTED] testified that she received Petitioner's case after it was reassigned from Ms. [REDACTED] she only met Petitioner once, and she was unable to make a determination

regarding his eligibility. Specifically, Ms. [REDACTED] testified that given [REDACTED] report, there was some question as to whether Petitioner would be able to benefit from services and there was a need for further evaluation, including the psychiatric evaluation Dr. [REDACTED] recommended. According to [REDACTED], a trial work experience could be helpful, but that it would not be the only thing Respondent needs and, based on the recommendations in the evaluation, a psychiatric evaluation is more appropriate. Ms. [REDACTED] further testified that she deleted everything in the Extended Evaluation Plan developed by [REDACTED] and amended it to specifically follow the recommendations of the evaluation, but that Petitioner refused to sign the plan or undergo the evaluation. Ms. [REDACTED] also testified that the remainder of her involvement with Petitioner's case was related to attempts by Petitioner and his representative to obtain a copy of [REDACTED] evaluation, but that Petitioner's case remains open.

In response, Petitioner testified regarding his educational background and work experience as an engineer, which ended in 2003 after he effectively retired. Petitioner also testified that he decided to return to work in 2008, but had difficulties finding a job due to his age, the job market, and a lack of recent experience. Petitioner further testified that he therefore sought assistance through JVS, which never required a psychological or psychiatric report, but that JVS could not assist him because he was over their income limit. Instead, JVS referred him to Respondent.

Petitioner testified that he brought his resume and all necessary documentation to his initial meeting with Ms. [REDACTED] but he did not have a social security card, which upset Ms. [REDACTED]. He also testified that he was not difficult or cantankerous during the meeting, but that he did discuss the job market; his belief that he was being discriminated against; and politics in an attempt to gain rapport with Ms. [REDACTED]. Petitioner further testified that he asked several questions in order to clarify things, but that Ms. [REDACTED] became annoyed by the questions and delay. According to Petitioner, Ms. [REDACTED] also mistreated him, he felt like he had been violated, and there is something wrong with her.

Petitioner also testified that he discussed his issues with the police with Ms. [REDACTED], as well as the effect they had on him. According to Petitioner's testimony during the hearing, the incident, which also lead to Petitioner being detained in a psychiatric hospital against his will, caused both major psychological trauma and physical issues. He similarly testified that he only saw [REDACTED] pursuant to a court order and Dr. [REDACTED] at the recommendation of an attorney in order to strengthen a lawsuit.

Petitioner further testified that he saw [REDACTED] at Ms. [REDACTED] request, but that he thought it was just to test his vocational aptitude. He did briefly discuss his incident with the police with [REDACTED], but also told her he did not want to talk about his psychiatric hospitalizations. He also told Dr. [REDACTED] that Ms. [REDACTED] had been invasive and coerced him into giving her the names of all of Petitioner's past medical providers. With respect to the testing itself, Petitioner knew he had aced it.

According to Petitioner, the subsequent meeting with [REDACTED] went poorly as [REDACTED] had already discussed his case and Dr. [REDACTED] was very demeaning to him. During the hearing, Petitioner described it as an “organized lynching”, with [REDACTED] in complete control and telling the doctor how to proceed. Petitioner tried to get some points in, and did raise a finger for emphasis at one point, but [REDACTED] then ended the meeting and laughed with [REDACTED] after Petitioner left the room.

Petitioner also provided a report from [REDACTED] in which he reviewed [REDACTED] report. See Exhibit #1, pages 1-5. According to [REDACTED] report was flawed because she failed to get informed consent from Petitioner, establish an adequate rapport with him, consider his doubts about the necessity of the test, or consider that Petitioner may have declined to answer certain questions because he has legitimate concerns about his civil liberties. [REDACTED] also found that [REDACTED] failed to mention Petitioner’s good performance on tests, which shows a lack of mental impairment, and discounted other clinical evidence that contradicted her findings. He further opined that [REDACTED] only used one instrument that directly assesses psychopathology or maladaptive behavior, but that the tool she used has only been normed on adults up to age 59 and Petitioner is 72. Additionally, [REDACTED] found that [REDACTED] never identified what delusions she thinks Petitioner has or explained her diagnosis of Delusional Disorder and her entire report should be discounted. He also noted that he conducted a psychological examination of Petitioner in January of 2011 and, while there was some evidence of paranoid attitudes, neither he nor Petitioner’s psychiatrist for several years saw evidence of any delusions or other psychotic symptoms.

Given the above record and the applicable policies, the undersigned Administrative Law Judge finds that Respondent acted properly and its decision should be affirmed.

While Petitioner may have wished to proceed directly to discussing his employment goal and the specific vocational rehabilitation services he might need to achieve that goal, it is only after the completion of the eligibility determination and the assessment of vocational rehabilitation needs that the process can begin for the development of the IPE.

Moreover, while applicants such as Petitioner are presumed to be eligible for services, further assessments may still be required where questions remain regarding that eligibility, including questions relating to the nature and severity of a disability; the applicant’s vocational rehabilitation needs resulting from that disability; and the applicant’s ability to benefit from MRS services.

Such basic questions regarding the nature and severity of Petitioner’s disabilities and his ability to benefit from services exist in this case and, consequently, MRS properly sought further information regarding Petitioner’s eligibility through an extended evaluation and psychiatric evaluation. For example, while he has not received

treatment for years, it is clear that Petitioner has an extensive psychiatric history, including involuntary inpatient hospitalizations and events that left him, in his own words, with major psychological trauma. Moreover, he was recently evaluated by a psychologist and she expressly found both that Petitioner does not present at this time with the emotional stability needed to maintain employment and that Petitioner should participate in a psychiatric evaluation to assess his emotional functioning and possible treatment options.

Petitioner has refused to undergo a psychiatric evaluation, but his reasons for doing so are unpersuasive.

Petitioner first argues that there was no reason to even question his mental status or do an extended assessment, and that the requirement to undergo a psychiatric evaluation is instead based on [REDACTED] personal animus toward him and her attempts to humiliate him and/or deny him services. Along those same lines, Petitioner also argues that [REDACTED] violated Respondent's policies regarding ethical conduct and informed consent by manipulating reports, denying Petitioner information and treating him poorly due to his political views or her dislike of him.

[REDACTED] clearly made mistakes in her case notes. For example, she failed to note that [REDACTED] had described Petitioner's Bipolar Disorder as being in remission, as opposed to being an active diagnosis, and she misstated information from [REDACTED] by indicating that Petitioner had overdosed on Xanax in 2009 rather than twenty-two years earlier. Moreover, [REDACTED] testimony during the hearing was occasionally inconsistent, such as when she was discussing her interactions with Dr. [REDACTED] or contradicted by other witnesses, such as when she identified parts of the Extended Evaluation Plan as having been written by her when [REDACTED] testified that the entire plan had been rewritten. Moreover, with respect to [REDACTED] report, the undersigned Administrative Law Judge also agrees with [REDACTED] review to the extent it finds that [REDACTED] report is flawed in that she diagnosed Petitioner with Delusional Disorder without ever identifying what delusions she thinks Petitioner has or adequately explaining her diagnosis.

However, while mistakes were made, the undersigned Administrative Law Judge does not find them to be sufficient evidence of a conspiracy against Petitioner or for a finding that Respondent erred by requiring further assessment. [REDACTED] credibly denied having personal animus toward Petitioner and she explained why she noted Petitioner's political views and other behaviors in her case notes. Moreover, her failure to note that Petitioner's Bipolar Disorder was in remission is negligible given that Petitioner's entire psychiatric history and Dr. [REDACTED] report, along with her observations of his behavior during their first meeting, were what triggered the Extended Evaluation Plan. Similarly, the misstatements regarding [REDACTED] notes are insignificant given the basis for the decision to require a psychiatric evaluation. Furthermore, while [REDACTED] report is flawed in some respects, it need not be completely discounted and Respondent is not relying on it to find that Petitioner cannot benefit from services and close out his case.

Instead, it is merely using it as one factor to determine that further evaluation is required and it, along with Petitioner's past psychiatric history, at least suggests a need for further assessment.

Petitioner also argues that, even if further assessment is required, Petitioner should undergo a trial work experience rather than an extended evaluation/psychiatric evaluation. However, as provided in the above policy, a trial work experience is inappropriate and an extended evaluation is called for when there is a question of the client's ability to benefit from services relates to an unstable or untreated disability, which is exactly the situation here where Petitioner is not currently being treated and Respondent is questioning his stability.

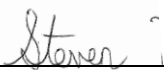
Petitioner further argues that Respondent erred in requiring a psychiatric evaluation because applicants such as Petitioner are presumed to be able to benefit in terms of an employment outcome from vocational rehabilitation services unless found to be ineligible for services due to the severity of the disability by clear and convincing evidence and there is no such clear and convincing evidence in this case. However, Petitioner's argument is premature given that Respondent has not made a finding that Petitioner is ineligible and is still in the process of gathering the necessary information. A presumption that Petitioner would benefit is not dispositive and Petitioner's argument would preclude Respondent from gathering further information and determining whether clear and convincing evidence exists.

Respondent has attempted to work with Petitioner to address its concerns regarding his eligibility for services, but Petitioner has refused to undergo the psychiatric evaluation it requires in order to move forward with his case and Respondent has declined to provide services at this time. For the reasons discussed above, the undersigned Administrative Law Judge finds that Respondent's decision to do so is proper and must be affirmed.

DECISION AND ORDER

For all of the reasons stated in the foregoing opinion, MRS's decision is **AFFIRMED**.

SK/tm



Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE: THE PETITIONER HAS NOW EXHAUSTED ALL AVAILABLE ADMINISTRATIVE REMEDIES. ANY FURTHER APPEAL OF THIS DECISION IS THROUGH JUDICIAL REVIEW. ANY PARTY MAY BRING A CIVIL ACTION IN ANY STATE COURT OF COMPETENT JURISDICTION OR IN A DISTRICT COURT OF THE UNITED STATES OF COMPETENT JURISDICTION.

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 2nd day of December, 2016.



Antonette Mehi
Michigan Administrative Hearing System

[REDACTED]
[REDACTED]
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