

ISSUE

Did MRS improperly close 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. In January of 2016, Respondent found Petitioner eligible for services through Respondent. (Exhibit B, page 3).
2. On May 13, 2016, Petitioner and his MRS counselor at the time signed a completed Individualized Plan for Employment (IPE). (Exhibit B, page 3).
3. The Employment Goal in that IPE was: "Community and Social Service Specialist, Peer Support Specialist/ Recovery Coach". (Exhibit B, page 3).
4. The planned services identified in the IPE included counseling and guidance; benefits counseling; mental health treatment and counseling; support services; and follow up services. (Exhibit B, page 4).
5. Petitioner subsequently decided to work as independent contractor providing services as Peer Recovery Specialist/Coach and Chaplain. (Exhibit B, page 5).
6. Petitioner also subsequently requested services through MRS that had not been part of his original IPE. (Exhibit B, page 5).
7. Given the changes that had occurred, Respondent determined that Petitioner's IPE needed to be amended and that, essentially, a new plan had to be developed. (Exhibit B, pages 5-6).
8. In particular, Respondent decided to address Petitioner's case as a small business development/advancement case. (Exhibit B, page 6).
9. As part of that process, Respondent referred Petitioner to a Small Business Consultant for a Small Business Feasibility Study. (Exhibit B, page 18).
10. On February 16, 2017, the Small Business Consultant created a report with respect to the Small Business Feasibility Study he had completed. (Exhibit B, page 6).
11. As a Final Recommendation, the Feasibility Study stated in part that it recommended that MRS allow the Small Business Consultant to draft a business plan to support Petitioner's venture as his vocational rehabilitation goal once Petitioner addressed a number of listed items. (Exhibit B, pages

7-8).

12. On March 23, 2018, the Small Business Consultant completed the "Complete Recovery Outreach International LLC Business Plan". (Exhibit B, page 8).
13. The amounts and budget in the Business Plan were further noted to be a recommendation subject to approval by MRS and based on all items in the appendix to the plan being completely satisfied. (Exhibit B, page 10).
14. In addition to the items identified in the Feasibility Study and the appendix to the Business Plan, Respondent also requested that Petitioner provide it with documentation regarding potential clients interested in doing business with Petitioner and the volume of business that could be expected. (Exhibit B, page 11).
15. Petitioner provided some information with respect to the requested items. (Exhibit B, pages 11-12).
16. Respondent continued to deny Petitioner's request for move forward with a new or amended IPE. (Exhibit B, page 12).
17. In January of 2019, Petitioner requested an administrative hearing with respect to the denial of his request for a new or amended IPE. (Exhibit B, pages 3, 12).
18. Petitioner also provided some additional information along with that request or as part of the hearing process. (Exhibit B, pages 12-13).
19. MOAHR docketed Petitioner's request for hearing as Docket No. 19-001508 and the case was assigned to the undersigned Administrative Law Judge. (Exhibit B, page 1).
20. On June 27, 2019, an in-person hearing was held with respect to Docket No. 19-001508. (Exhibit B, page 1).
21. On July 26, 2019, the undersigned Administrative Law Judge issued a Decision and Order affirming Respondent's decision to deny Petitioner's request for a new or amended IPE. (Exhibit B, pages 1-23).
22. In part, that Decision and Order stated:

For the reasons discussed below, the undersigned Administrative Law Judge finds that Respondent's decision was proper and should be affirmed.

As a preliminary matter, the undersigned Administrative Law Judge would note that, to the extent

Petitioner relies on MRS Policy 9075 in support of his case, that argument must be rejected. By its own terms, MRS Policy 9075 involves MRS clients using independent contractors as service providers and it is irrelevant to whether Petitioner can establish an employment goal of being an independent contractor.

Applicable policies that do apply in this case include MRS Policy 5000, which provides that the counselor may only sign and approve an IPE if, in the counselor's professional judgment, the IPE will achieve the specific employment outcome identified, and MRS Policy 5200, which provides that self-employment is only an vocational option if it is consistent with an individual's strengths, resources, abilities and capabilities; all self-employment plans that involve starting a business venture must have a viable Business Plan prior to the approval of the IPE; and that small business enterprises may only be supported by MRS as part of an IPE that is designed to become a major source of income for the individual to the greatest extent practical. It was pursuant to those policies that Respondent requested information on or the resolution of barriers that may prevent Petitioner's self-employment from being successful or viable.

Moreover, based on what was received from Petitioner, Respondent properly denied the request to move forward with the new IPE requested by Petitioner. In particular, Respondent's witnesses found that Petitioner failed to show that he had any additional capital to leverage any potential funding from MRS, which left his new business in danger of being underfunded in its initial, crucial stages; he failed to demonstrate any specific clients interested in working with him or the volume of business that they might provide, which was necessary to show where money would be coming from and the potential viability of Petitioner's self-employment; he did not have a driver's license, which the Business Plan noted was required for some types of work; he did not have dependable transportation, with availability of his scooter dependent on the weather and public transportation not always being reliable; he still had other potential financial liabilities, including outstanding tickets, absent tax filings and unknown federal loans, that

would be pitfalls to successful self-employment; and he failed to provide the Annual Statements required by the State of Michigan with respect to his LLC.

Altogether, those issues raised significant concerns about the viability or potential of Petitioner's self-employment and prevented Respondent from approving the IPE that Petitioner wants. Specifically, given the available information, Respondent could not find that the IPE will achieve the specific employment outcome identified; that self-employment is consistent with Petitioner's resources and capabilities; that there is a viable Business Plan; or that Petitioner's enterprise is designed to become a major source of income for Petitioner to the greatest extent practical.

In response, Petitioner argues that Respondent's denial of the request to move forward with a new IPE was wrong given what he wants and what he provided. Specifically, Petitioner asserts that Respondent erred by treating his employment goal as a small business, as opposed to Petitioner being a self-employed, independent contractor, and that Respondent's error lead it to require information that does not apply to Petitioner's case. Moreover, Petitioner also asserts that he has provided all the requested information that is relevant to his case, despite that fact that Respondent keeps changing what it wants and that there are no specific requirements in policy for what it asked for, and that it is time to enter a new IPE.

As asserted by Petitioner, MRS Policy 5200 distinguishes between self-employment and small business, with the terms not being interchangeable and with a small business only being a subset of self-employment. However, the undersigned Administrative Law Judge does not find Petitioner's argument that his IPE does not involve a small business, and that Respondent therefore erred by requesting things related to a small business in order to approve the IPE, to be persuasive. Under the applicable policy, "self-employment" is just defined as employment where the "consumer owns, manages and operates the planned endeavor for profit or fee and is not considered to be an employee of another person, business, or organization" and a small business being

a type of business enterprise that is “[i]ndependently owned and operated and not dominant in its field”. MRS Policy 5200, page 2 of 3. Both self-employment and small business, are therefore very general terms and, given the circumstances of this case, it appears that Petitioner, who is not just holding himself out for services, would have a business enterprise that qualifies as a small business given that he has an LLC, with both the Feasibility Study and the Business Plan, which Petitioner helped develop and still likes, specifically completed for that LLC; he plans on employing other independent contractors; and he is requesting services more appropriate for a small business.

Additionally, the undersigned Administrative Law Judge agrees with Respondent that the difference between self-employment and small business is not very significant in this case and that, even if Petitioner is not operating a small business, Respondent’s requests and its reliance on Petitioner’s failure to satisfy those requests when making its decision were proper. Regardless of whether a self-employment goal involves a small business, MRS Policy 5000 still requires that Respondent find that an IPE will achieve the specific employment outcome prior to the IPE being approved and MRS Policy 5200 still provides that self-employment is only a vocational option if it is consistent with the individual’s strengths, resources, priorities, abilities, and capabilities. Accordingly, pursuant to those policies, and irrespective of whether Petitioner has a small business, Respondent would be proper in determining the viability and feasibility of Petitioner’s planned self-employment; his resources, including any additional capital and the status of his existing LLC; and his capability for generating business and income.

Moreover, while Petitioner correctly notes that he addressed some of the concerns raised in the Business Plan or thereafter, that argument is unpersuasive for at least some of the concerns that he purports to have addressed, including the lack of driver’s license, his potential financial liabilities, and the absence of any list of providers that would like to contract with him and in what amount. For those concerns, Petitioner’s response only confirmed that

those barriers identified by Respondent are in-fact present, and, while the Small Business Consultant found Petitioner's career to be feasible, and a business plan developed, both that feasibility study and business plan were contingent on Petitioner providing further information and resolving potential barriers.

Similarly, while Petitioner correctly notes that Respondent has added items to be addressed over time, which presented a moving target for Petitioner and made it more difficult for Petitioner to satisfy Respondent's concerns, that fact is not dispositive here. The Small Business Consultant properly made initial recommendations and requests for information, both in the Feasibility Study and the Business Plan, but Respondent makes the final decision in this case and it can request more information if and when necessary or appropriate, with everything it asked for here reasonable and relevant to its findings.

Petitioner further notes correctly that nothing requested by Respondent is a specific requirement for establishing a new or amended IPE and that, as conceded by Respondent's witnesses, there will always be some barriers that would need to be overcome and that no self-employment is ever guaranteed to be a success at the beginning, with Petitioner having the ability to grow his business over time. However, Respondent can only approve an IPE if it has determined, in its professional judgement, that the IPE will achieve the specific employment outcome identified in that IPE and, consequently, Respondent must make a determination prior to approving an IPE as to the plan's viability and potential for success.

Here, based on the available information, including what was provided by Petitioner and what was notably not provided by Petitioner, as well as the applicable policies, Respondent properly denied Petitioner's request for a new or amended IPE at this time.

Exhibit B, pages 19-22

23. After the Decision and Order was issued, Petitioner submitted some additional information. (Testimony of Petitioner; Testimony of Site Manager).

24. However, Respondent found that limited information to again be insufficient to move forward with a new or amended IPE. (Testimony of Site Manager).
25. Respondent did offer to assist Petitioner in obtaining direct employment as a worker, but Petitioner was not interested. (Testimony of Site Manager).
26. On September 9, 2019, Respondent sent Petitioner written notice that it was closing his case with Respondent. (Exhibit A).

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. See MRS Policy 3100, page 1.

Following the eligibility determination, a vocational needs assessment is conducted to determine the goals, nature and scope of rehabilitation services to be included in the IPE. See MRS Policy 3275, page 1.

Following the assessment of vocational rehabilitation needs, the process can begin for the development of the IPE. See MRS Policy 5000, page 1. 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. See MRS Policy 5050, page 1. It must also include the anticipated date by which the employment goal will be reached. See MRS Policy 5050, page 1.

Eligible individuals have the opportunity to choose the extent to which they wish to use the assistance of a qualified MRS rehabilitation counselor in developing part or all of their IPE, see MRS Policy 5000, page 2, but any IPE or IPE amendment must be both signed by the eligible individual and approved and signed by an MRS rehabilitation counselor before taking effect, with the counselor's approval signifying, among other things, that in the counselor's professional judgment the IPE will achieve the individual's specific employment outcome and that the job goal is consistent with the employment characteristics of the individual. See MRS Policy 5000, pages 2-3.

If differences arise between the client and the counselor regarding the IPE, they are to attempt to “negotiate resolution of differences in the context of a counseling and partnership relationship, respectfully considering the eligible individual’s continuing substantive role in making informed choices about his or her IPE, while at the same time adhering to MRS requirements”, MRS Policy 5000, page 3, and, if the situation cannot be resolved, the customer may contact the Client Assistance Program or the MRS Rights Representative, see MRS Policy 5000, page 3. Ultimately, if the client wants to move forward with an IPE but MRS denies the request to do so, the client may request medication and/or a hearing when appropriate. See MRS Policy 2175, page 1.

Once established, an IPE is to be reviewed annually by a qualified rehabilitation counselor to assess the individual’s progress in achieving the employment goal and to give the client an opportunity to review the program and jointly redevelop and agree to its terms. See MRS Policy 5175, page 1. The annual review is initiated by the sending of a notice to the client regarding such a review, but if the client does not respond by respond within 30 calendar days by scheduling an appointment, it can be assumed they are satisfied with their IPE as originally written. See MRS Policy 5175, page 1. The counselor is responsible for completing the annual review documentation. See MRS Policy 5175, page 1.

When necessary, during the annual review or at any other appropriate time, an IPE amendment should be completed if the IPE needs to be revised. See MRS Policy 5150, page 1. The IPE Amendment does not take effect until agreed to and signed by both the MRS counselor and the individual client. See MRS Policy 5150, page 1. Amendments are expressly required by policy in the following circumstances: (1) a change in the IPE employment goal or outcome; (2) the addition or removal of a substantial service; (3) a substantial change in a service provider; (4) a substantial lengthening of time required to achieve an employment outcome; or (5) a substantial increase in total estimated service costs to MRS beyond those noted in the current IPE. See MRS Policy 5150, pages 1-2.

Respondent may also decide to close a case when appropriate, even when the case has not been successfully rehabilitated:

Policy:

The case record of an applicant or eligible individual may be closed as not rehabilitated.

Procedure:

Reasons for closing a case not rehabilitated other than for ineligibility include,

- Inability to locate the applicant or eligible individual, or the client has moved out-of-state,

- Individual's refusal of Michigan Rehabilitation Services' (MRS) services,
- Death of the individual,
- The individual will be institutionalized for an extended or indefinite period of time,
- The individual has failed to cooperate,
- Transportation is not possible or available, and
- The individual has committed an act of violence or threatened violence consistent with Policy 2375, Threats and Acts of Violence.

The closure is denoted as Closure-Other in AWARE.

The closure letter in the AWARE letters catalog shall be utilized to notify the client of the case closure.

MRS Policy 7100, page 1

Here, Respondent has decided to close Petitioner's case pursuant to the above policies and, for the reasons discussed below, the undersigned Administrative Law Judge finds that Respondent's decision was proper and should therefore be affirmed.

In support of that decision, Respondent's Site Manager described the history of Petitioner's case, including the previous administrative matter in which Respondent's decision to deny Petitioner's request to move forward with a new or amended IPE was affirmed, and Respondent's need to close Petitioner's case. In particular, she extensively described how Petitioner submitted some new information after the earlier Decision and Order was issued regarding his IPE, but how the new information continued to be insufficient and how, after years of attempting to move forward, Petitioner has continued to fail to cooperate with Respondent by providing required information. Moreover, the Site Manager also credibly testified regarding other services that were offered to Petitioner in support of a goal of Petitioner in obtaining direct employment as a worker, and how Petitioner declined such services.

Respondent's Policy Consultant further testified regarding the specific policy outlining the reasons for closing a case not rehabilitated other than for ineligibility, which include an individual's refusal of services and an individual's failure to cooperate. He also discussed his understanding of this case and how Petitioner has failed to cooperate with Respondent by providing necessary information.

In response, Petitioner does not dispute Respondent's evidence or rely on any new information he submitted following the previous Decision and Order to suggest that the case closure was an error. Instead, Petitioner just wants to re-litigate the previous administrative matter regarding Respondent's denial of his request to move forward with a new or amended IPE and argue why that decision was wrong.

However, Petitioner had an opportunity to appeal the previous decision in circuit court to the extent he disagreed with it, but he did not do so and, as reiterated by the undersigned Administrative Law Judge multiple times during the hearing in this case, the pending matter is limited to reviewing Respondent's decision to close Petitioner's case and the judge will not be revisiting his earlier decision. That earlier decision was a final decision decided on the merits that involved the same parties and that expressly addressed Respondent's denial of Petitioner's request to move forward with a new or amended IPE; and, as such, Petitioner is precluded from bringing that same action again pursuant to the doctrine of res judicata.

“The doctrine of res judicata is intended to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication, that is, to foster the finality of litigation.” *In re Bibi Guardianship*, 315 Mich App. 323, 333; 890 NW2d 387 (2016) (quotation marks and citation omitted). There are four essential elements for res judicata: (1) the prior action was decided on the merits, (2) the prior decision was final, (3) both actions involve the same parties or their privies, and (4) the claims to be precluded either were or could have been decided in the prior action. *Duncan v Michigan*, 300 Mich App. 176, 194; 832 NW2d 761 (2013).¹ “Michigan courts have broadly applied the doctrine of res judicata. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.” *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 817 (1999).

Accordingly, given that Respondent credibly and thoroughly demonstrated its basis for closing Petitioner’s case and Petitioner failed to refute that evidence, with Petitioner’s attempt to re-litigate the previous administrative action barred and mostly irrelevant to this matter, the undersigned Administrative Law Judge finds both that Respondent properly decided to close Petitioner’s case and that its decision to do so must be affirmed.

DECISION AND ORDER

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

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.

¹ By merging the first and second elements, other decisions sometimes list three elements for res judicata. See, e.g., *Estes v Titus*, 481 Mich. 573, 585; 751 N.W.2d 493 (2008); *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999).