

ISSUE

Was Respondent proper in denying Petitioner's request to complete an Individualized Plan for Employment (IPE) with a goal of becoming a pediatric nurse?

FINDINGS OF FACT

1. In 2016, Respondent opened a case for Petitioner with the goal of having Petitioner participate in a school to work/program while Petitioner was in high school. (Testimony.)
2. Prior to enrolling in the program, Respondent determined Petitioner was eligible for MRS services based on an Individualized Education Plan (IEP), psychological evaluations and other materials. (Testimony.)
3. On REDACTED, 2017, Petitioner applied for services with MRS. (Exhibit A.)
4. On April 26, 2017, Respondent sent Petitioner a letter. The letter indicated Respondent determined Petitioner was eligible for MRS services and that the Individualized Plan for Employment (IPE) would begin. (Exhibit A; Testimony.)
5. On June 27, 2017, Petitioner entered an IEP with an employment goal of "All Other Health Service Workers, ped nurse or career in health field" pediatric nurse. The IEP indicated Petitioner understood that she must maintain academic satisfaction with at least a C average and that if her average falls below a C average her placement in the program could be affected. Petitioner's goal was reached because of Petitioner participating in school to work program and participating in Oakland School Technical campus in health career field and completing the requirements to become a Certified Nursing Assistant (CNA). (Exhibit A; Testimony.)
6. The plan for 2017/2018 was for Petitioner to have a 1-year trial to see if Petitioner could be successful in an academic setting. (Exhibit H01; Testimony.)
7. On June 27, 2017, Petitioner submitted to Respondent a request for hearing regarding the June 27, 2017 IEP. (Exhibit H02.)²

² Petitioner's Exhibit 19 is one page of Exhibit HO2. Thus, HO2 will be referenced throughout this decision in place of Petitioner's 19, as it is a true and accurate reflection of the complete document.

8. On August 24, 2017, a hearing took place regarding Petitioner's June 27, 2017 appeal. (Exhibit HO2.)

9. On September 21, 2017, a Decision and Order was issued affirming the Respondent's actions.³ (Exhibit HO2.)

10. For the Fall 2017 term, Petitioner had a GPA of 1.44, later adjusted to 2.16. Petitioner received a grade of F in Biology, D+ in Sociology, B in Intro African Dance, and an S (Satisfactory in Basic Writing and Warrior Band.) (Exhibit HO1.)

11. On January 30, 2018, Petitioner submitted a hearing request regarding transportation and tuition assistance. (Exhibit HO2.)

12. On May 8, 2018, a hearing took place regarding Petitioner's January 30, 2018 appeal. (Exhibit HO2.)

13. On May 25, 2018, a Decision and Order was issued REVERSING the Respondent's actions regarding Petitioner's claim for transportation/vehicle purchase assistance and dismissing all other claims. The Decision and Order ordered Respondent to initiate a reassessment of Petitioner's request for services. The Decision and Order providing the following reasoning/rational for the reversal:

It is not clear from the record in this case that assistance with purchasing a vehicle or changes to the approved assistance with transportation are necessary or appropriate, but, given the time that passed following the previous decision and new developments or information in her case, Petitioner has identified an appealable issue with respect to transportation/vehicle purchase assistance; Respondent's decision must be reversed; and it should be ordered to conduct a reassessment of Petitioner's request. (Exhibit HO2.)

14. For the Spring 2018 term, Petitioner had a GPA of .30, reducing Petitioner's overall GPA to .99. Petitioner received a grade of F in Biology, a D in English, a UNC (Incomplete) in Algebra, and an F in Psychology. (Exhibit HO1.)

15. On June 27, 2018, Petitioner's IPE expired. Petitioner's IPE was not renewed due to Petitioner's Fall/Winter grades not reflecting the occupation of nurse as an appropriate goal. (Exhibit HO1; Testimony.)

³ The Decision and Order issued focused on the issues of transportation and tuition assistance.

16. Throughout the summer of 2018, MRS met with Petitioner and Petitioner's mother in an attempt to agree on a new employment goal, other than nursing, but the parties were unable to come to an agreement. (Exhibit HO1; Testimony.)

17. On August 13, 2018, MRS sent Petitioner a letter informing Petitioner that it would not be continuing tuition reimbursement for the Fall of 2018 semester. The letter indicated that Petitioner's case would remain open and that the decision could be revisited if Petitioner's grades improved as Petitioner planned at that time to continue attending Wayne State University on her own. (Exhibit HO1.)

18. On September 10, 2018, Petitioner submitted to Respondent, a request for hearing. (Exhibit HO1.)

19. On December 6, 2018, a hearing took place regarding Petitioner's September 10, 2018 request for hearing. (Exhibit HO1.)

20. On December 11, 2018, a Decision and Order was issued affirming the Respondent's decision to discontinue tuition assistance. The December 11, 2018 Decision and Order indicated the following:

Petitioner's mother testified that they have not been able to come to an agreement on a new employment goal because MRS is pushing a goal of Certified Nursing Assistant (CNA), which Petitioner is not interested in... Petitioner's mother testified that every career in the health field requires additional training and they have worked in good faith with MRS to develop a new IPE but cannot get anywhere because they cannot agree on an employment goal. Petitioner's mother testified that Petitioner should be able to pick her vendor of choice and she has chosen Wayne State University... (Exhibit HO1.)

21. Following June 27, 2018 and continuing up through September 18, 2019, Respondent and Petitioner met several times to work on an IEP. During these meetings Petitioner and Respondent could not agree on an IPE goal. At times, Petitioner appeared open to other goals but would always regress after the discussion and insist on being a nurse. (Testimony.)

22. On or around August 28, 2019, Petitioner brought to a meeting with MRS a proposed IPE in draft form. The proposed IPE reflected the goal of Registered Nurse. (Exhibit C; Testimony.)

23. On September 18, 2019, Respondent sent Petitioner a letter. The letter was issued at the request of Petitioner wanting something in writing identifying why the goal of nursing would not be supported. (Exhibit D; Testimony.). The letter stated:

At this time, we have come to an impasse in identifying an appropriate goal that will lead to employment. This goal is based on an assessment of your unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice...

Given the above requirements and in review of the information gathered to date, we are unable to support your vocational goal of a Pediatric Nurse. We will be glad to meet with you to explore other vocational options at this time. (Exhibit D.)

24. On October 15, 2019, Respondent received from Petitioner, a request for hearing. (Exhibit E.). Petitioner's request for hearing reflected Petitioner as having issues with the following:

- Respondent not providing services under each of the five pre-employment transition service categories.
- Respondent not agreeing to Petitioner's goal of becoming a nurse.
- Respondent retaliating against Petitioner after an adverse decision being issued by Administrative Law Judge Kibit.
- Respondent not supporting training and transportation.
- Respondent not providing requested case information.
- Respondent's use of findings from a third-party psychological consultant, Dr. DiGioia. (Exhibit E.)

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."

Applicants are eligible for MRS services if they have a physical or mental impairment that constitutes or results in a substantial impediment to employment and if they require 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 are presumed to be eligible for MRS services provided they intend to achieve an employment outcome consistent with their individual circumstances.⁵

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 trial work experiences with supports.

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.⁶

Once an eligibility determination has been made, a vocational needs assessment is 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, and information provided by the individual and by the individual's family, as appropriate. 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. The comprehensive assessment shall be limited to information that is necessary to identify rehabilitation needs and to develop an

individualized plan for employment. To the degree needed, the comprehensive assessment shall include such things as an assessment of the personality, career interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the client and the medical, psychiatric, psychological, neuropsychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual.?

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

⁴ P.L. 105-220 § 100(a)(2).

⁵ 34 CFR 361.42; MRS Policy 3100.

⁶ 34 CFR 361.41, 34 CFR 361.42; MRS Policy 3125.

⁷ 34 CFR 361.45; MRS Policy 3275.

make informed choices throughout their rehabilitation program including evaluation and assessment services and providers. The applicant shall be involved in providing and securing existing assessment information to the maximum extent possible.⁸ Clients are responsible for providing information needed to determine eligibility and to develop an IPE.⁸

Eligibility shall be continually reassessed as part of routine counseling and guidance provided to the individual. Eligibility for ongoing services is contingent upon the individual continuing to meet all agency eligibility criteria.¹⁰

The Individualized Plan for Employment (IPE) shall be a written document prepared on a form approved by Michigan Rehabilitation Services (MRS). It shall be 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. The IPE shall be signed by the individual or, as appropriate, the individual's representative and by a qualified MRS rehabilitation counselor. Planning and approval of the IPE shall be conducted within the framework of a counseling relationship. Counselor approval of an IPE verifies that the IPE is consistent with MRS policies and guidelines, is complete and is expected to lead to an employment outcome. The IPE shall be designed to achieve the employment goal of the individual and shall include a specific employment goal in an integrated setting. The employment goal shall be consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.¹¹

An Individualized Plan for Employment (IPE) amendment shall be developed when, as a result of the annual review or at any other time, the IPE needs to be revised. An IPE Amendment shall not take effect until agreed to and signed by the Michigan Rehabilitation Services (MRS) counselor and the individual or, as appropriate, the individual's representative. A copy of the amendment shall be provided to the individual and, as appropriate, to the individual's representative.¹²

The IPE shall have a specific employment goal, in an integrated setting, consistent with the individual's strengths, resources, priorities, concerns, abilities, and capabilities, taking into account the individual's interests and informed choice. Achievement of an employment outcome shall mean entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; telecommuting; self-employment; or any other type of employment in an integrated work setting that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.⁷³

⁸ 34 CFR 361.52; MRS Policy 2255.

⁹ 34 CFR 361.38, 361.46 & 361.57; MRS Policy 2250.

¹⁰ 34 CFR 361.43; MRS Policy 3225.

¹¹ 34 CFR 361.45, 34 CFR 361.46; MRS Policy 5050.

¹² 34 CFR 361.45; MRS Policy 5150.

¹³ 34 CFR 361.45, 34 CFR 361.56; MRS Policy 5025.

Petitioner filed an appeal and alleged several issues. Although Petitioner identified a numerous subset of issues, all of the issues can be boiled down to a basic disagreement with MRS' professional view that Petitioner is not a viable nursing school candidate based on Petitioner's documented educational credentials. All other issues are not relevant to the present case.

The governing policies support Respondent's decision to not support nursing as an employment goal. Before an IPE can be developed, the customer and the counselor must agree on an appropriate employment goal. As mentioned previously, "[i]n selecting an employment goal, primary consideration shall be given to the individual's strengths, capabilities, abilities, priorities and career interests — as well as to the individual's functional limitations, family, environmental, and labor market issues."¹⁴ In adherence to this policy, and in the professional judgment of Respondent's counselors, nursing was not a viable employment goal. The evidence presented indicates nursing school has a competitive application process and requires a minimum grade point average of 3.0 and at least a 3.0 for all prerequisite courses including basic biology. Petitioner did allege to have improved her grades, but the documentary evidence presented does not corroborate these claims regarding core class grades. The lone grade report provided reflected Petitioner as most recently receiving a C- in biology and a D in a math class. Petitioner also argued that they were open to other nursing programs, but the evidence suggests that more likely than not, those discussions did not occur until after the appeal was filed. And while Petitioner alleged that the low grades were attributable to other reasons, the record is void of any evidence that suggests the Wayne State Nursing program would alter their admission criteria.

During the hearing, Petitioner mentioned she was open to other IPE goals other than nursing. More specifically, Petitioner indicated she would accept medical assistant as an agreeable employment goal. However, the evidence provided and Petitioner's closing brief, paint a different picture. Respondent's witness, Mrs. Caesar, testified adamantly throughout her examination that Petitioner would at times seem agreeable to something other than nurse, but would then revert shortly thereafter. Petitioner's proposed IPE¹⁵ and Petitioner's testimony¹⁶, all in one way or another support Mrs. Caesar's testimony. Petitioner does point to a case note as evidence of Petitioner's intent or agreement to have her goal be a "medical assistant". The note however is not the "red herring" Petitioner wishes it to be. The overwhelming evidence suggests that Petitioner was in fact hesitant and reluctant to accept anything less than a nurse.

Petitioner also asserts Respondent is obligated to develop an IPE within 90 days of her eligibility determination. The development of an IPE, however, requires an agreement between two parties. So, when there is an impasse, as is here, an IPE cannot be developed. The Rehabilitation Act of 1973 considers this event by allowing for the parties to extend the 90 day deadline when the parties agree to an extension.⁷⁷

¹⁴ MRS Policy No 5025, p 4.

¹⁵ See Exhibit C.

¹⁶ See Hearing Transcript from July 22, 2020 wherein Petitioner testified she did not want CNA as a goal.

¹⁷ Rehabilitation Act of 1973, as amended through P.L. 114-95, enacted December 10, 2015, Sec 102(b)(3)(F).

Likewise, MRS Administrative Code R 395.68 requires IPE's to be completed within 90 days but provides for an extension when the individual [Petitioner] and MRS counselor require more time to arrive at an agreed upon IPE. In this case, it is clear that the parties could not agree on an IPE. As previously discussed, Petitioner was insistent on having the goal as a nurse while the Respondent determined this goal was not an appropriate employment goal. For argument's sake, if the Respondent was required to develop an IPE within 90 days and there were no exceptions, the only other option for the Respondent would be to close the Petitioner's case under MRS Administrative Code R 395.80 (2)(i).¹⁸

Petitioner also asserted issues with the Respondent not providing support for training and transportation. These issues, however, are premature as the applicable policy provides that these services be rendered in support of an IPE, not prior to an IPE.¹⁹

Lastly, the Petitioner contends MRS has retaliated against her following the issuance of an adverse decision and order issued by All Kibit. The record, however, is void of any evidence to support Petitioner's position. On May 25, 2018, All Kibit issued the decision and order in question.²⁹ In that decision and order, ALJ Kibit rejected each of Petitioner's claims against Respondent and ordered Respondent to reassess Petitioner for transportation services. That decision was based on a then-existing IPE. That IPE is now expired and not at issue in this case. All Kibit ordered the reassessment due to new information provided by Petitioner. Based on the evidence provided, the Respondent appears to be trying to work with the Petitioner on developing an IPE. The Department has other options available to them including the ability to close Petitioner's case under MRS Administrative Code R 395.80(2)(i).

Based upon the foregoing findings of fact and conclusions of law, I find that Respondent was proper in denying Petitioner's request for an IPE with the goal of nursing.

Petitioner is still eligible for MRS services, however, based on the evidence presented, there is no question that MRS' decision was proper and should be upheld.

¹⁸ Reasons for closing a case not rehabilitated other than for ineligibility include scenarios where an individual whose actions or non-actions make it impossible to begin or continue the vocational rehabilitation program.

¹⁸ MRS policy Nos 5000, 5050, 6850.

²⁰ See Exhibit HO2.

DECISION AND ORDER

For all the reasons stated in the foregoing opinion, MRS's decision to not accept an IPE with the goal of nursing 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.