

ISSUES

- (1) Did Respondent improperly fail to provide Petitioner with assistance in obtaining a Michigan Residential Builders License?
- (2) Did Respondent err in determining the nature of Petitioner's medical and psychological issues for purposes of eligibility?

FINDINGS OF FACT

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

1. On September 12, 2018, Petitioner completed Respondent's Online Orientation. (Exhibit #1, page 1).
2. On REDACTED 2018, Petitioner completed an application for services through Respondent. (Exhibit C, pages 54-60).
3. As part of that application, Petitioner identified his disabilities as follows: "Brain and Spinal Cord Injury, Post Traumatic Stress." (Exhibit C, page 55).
4. Petitioner also indicated that he was receiving Social Security Disability Insurance (SSDI) benefits. (Exhibit C, pages 56-57).
5. Petitioner has been authorized those benefits based on a diagnosis of paranoid schizophrenia. (Testimony of Petitioner).
6. On October 23, 2018, Petitioner and the Vocational Rehabilitation Counselor assigned to his case completed an Intake Summary. (Exhibit A, pages 1-3).
7. During Intake, Petitioner indicated that he wanted a neuropsychological examination because, while doctors had previously found that he had a mental illness, he does not have a mental illness and he wanted a new exam to state that and that Petitioner has a traumatic brain injury and post traumatic stress disorder (PTSD). (Exhibit A, page 1).
8. Petitioner also indicated that he was interested in working in construction as a builder, but that he needed a Residential Builders License. (Exhibit A, page 1).
9. By October 29, 2018, Respondent verified that Petitioner was receiving SSDI benefits. (Exhibit A, page 3).
10. On REDACTED 2018, Petitioner underwent a neuropsychological evaluation at Henry Ford Medical Center (HFMC). (Exhibit D, pages 61-

73).

11. During the evaluation, Petitioner reported that he disagreed with previous neuropsychological evaluations that indicated a diagnosis of paranoid schizophrenia and ignored evidence of post-traumatic stress disorder (PTSD) and a brain injury. (Exhibit D, page 61).
12. On December 17, 2018, Respondent determined that Petitioner was eligible for services based on his receipt of SSDI benefits and appropriate employment goal. (Exhibit A, pages 11-12; Testimony of Vocational Rehabilitation Counselor).
13. At that time, the Vocational Rehabilitation Counselor also noted that she was waiting on documentation related to a consultation by Respondent's Business Network Division (BNU) and the neurological evaluation completed on REDACTED, 2018 at Henry Ford Hospital. (Exhibit A, pages 11-12).
14. On January 14, 2019, the Neuropsychological Evaluation Report from HFMC was completed and signed. (Exhibit D, pages 61-73).
15. As part of that report, the neuropsychologist found that "current results did not yield any evidence of a thought disorder such as paranoid schizophrenia, delusional disorder, or other psychotic disorder." (Exhibit D, page 62).
16. The neuropsychologist also found that "cultural incompatibility between [Petitioner] and his providers likely factored into a previous diagnosis of paranoid schizophrenia", and that a diagnosis of PTSD and Social Anxiety were more appropriate. (Exhibit D, pages 62-63).
17. On February 8, 2019, Petitioner contacted the neuropsychologist's office to object to the Neuropsychological Evaluation Report and its findings regarding Petitioner's cognitive ability and a lack of a traumatic brain injury. (Exhibit #2, pages 1-2).
18. The neuropsychologist's office did not alter its findings in response to Petitioner's objection. (Exhibit #2, pages 1-2).
19. Petitioner also reported to the Vocational Rehabilitation Counselor that he was dissatisfied with the Neuropsychological Evaluation Report and wanted the diagnosis of a brain injury added. (Exhibit A, pages 13-14).
20. On February 18, 2019, the Vocational Rehabilitation Counselor further noted that the Client Assistance Program (CAP) had emailed her on Petitioner's behalf to report that Petitioner was still dissatisfied with the Neuropsychological Evaluation Report and that the doctors were refusing to make the changes he requested. (Exhibit A, pages 12-13).

21. That same day, the Vocational Rehabilitation Counselor received the Neuropsychological Evaluation Report itself from HFMC. (Exhibit A, page 13).
22. On REDACTED 2019, Petitioner had an office visit with his Vocational Rehabilitation Counselor. (Exhibit A, page 14).
23. During that visit, Petitioner reported that he wanted a Residential Builders License through the Michigan Department of Licensing and Regulatory Affairs (LARA), but that he needed an alternative form of testing, specifically on the job testing, instead of the written examination LARA offered. (Exhibit A, page 14).
24. The Vocational Rehabilitation Counselor then began working with Petitioner to obtain the requested accommodations and they learned that the accommodations would have to be approved by PSI, the company administering the examination. (Exhibit A, pages 15-16).
25. They also learned that Petitioner would need to support his request for any accommodations with medical documentation. (Exhibit A, pages 15-16).
26. They further planned on having the Vocational Rehabilitation Counselor assist Petitioner with the application and accommodation request. (Exhibit A, page 18; Testimony of Petitioner; Testimony of Vocational Rehabilitation Counselor).
27. Respondent would also pay for the \$195.00 fee for Petitioner for the Residential Builder License's application. (Exhibit A, pages 20-21).
28. On May 2, 2019, Respondent's BND issued its Consultative Report with respect to Petitioner. (Exhibit D, pages 74-86).
29. On June 27, 2019, Petitioner and his Vocational Rehabilitation Counselor completed the application for the Residential Builders License's examination together. (Exhibit A, page 21).
30. On July 19, 2019, Petitioner's Individualized Plan for Employment (IPE) was completed and signed, with an employment goal of Petitioner becoming a licensed builder. (Exhibit A, page 23; Testimony of Vocational Rehabilitation Counselor).
31. On July 23, 2019, Respondent authorized \$195.00 for Petitioner for the application fee with respect to a Residential Builder License. (Exhibit A, page 24).
32. On September 11, 2019, a doctor with Henry Ford Health System wrote a letter with respect to Petitioner stating in part:

[Petitioner] was seen today for return to work. Based on our Neurology and Behavioral Health evaluation there is no evidence of a traumatic brain injury in the past. It is my medical opinion that [Petitioner] can proceed with a labor-intensive job starting today with no restrictions.

Exhibit #3, page 1

33. On December 20, 2019, Petitioner registered for the Michigan Residential Builders Examination. (Exhibit B, page 49).
34. On January 4, 2020, Petitioner submitted a request for accommodations during the examination. (Testimony of Petitioner; Testimony of Vocational Rehabilitation Counselor).
35. He submitted the request on his own and without showing it to the Vocational Rehabilitation Counselor or asking for her assistance as previously discussed. (Exhibit A, pages 26-27; Testimony of Petitioner; Testimony of Vocational Rehabilitation Counselor).
36. On January 7, 2020, Respondent authorized \$117.00 for Petitioner for payment of the fee for the examination. (Exhibit A, pages 27-28).
37. Payment for the examination was made on January 28, 2020. (Exhibit B, page 49).
38. On February 4, 2020, Petitioner took the Michigan Residential Builders Examination. (Petitioner's Exhibit #4, page 1).
39. In taking that examination, Petitioner was approved for extended time. (Exhibit B, page 48; Testimony of Petitioner; Testimony of Bureau of Construction Codes Licensing Manager).
40. Petitioner was not approved for alternative hands-on testing. (Testimony of Petitioner).
41. Petitioner failed the examination he took on February 4, 2020. (Exhibit #4, page 1; Exhibit B, page 48).

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).

Regarding eligibility for agency services pursuant to the Rehabilitation Act, MRS Policy 3100 states in part:

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, advance in 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.

* * *

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, 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) within 60 days of the date of application. TWE 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 Manual Item 3175, Trial Work Experience, 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, Determination of Eligibility and Priority Category.

* * *

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, i.e.:

- Have a mental or physical impairment that creates a substantial impediment to employment, and
- Require vocational rehabilitation services to achieve an employment outcome consistent with their abilities and capabilities, and
- Are able to benefit from MRS services, unless determined unable to benefit by clear and convincing

evidence, consistent with Manual Item 3175, Trial Work Experience.

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, pages 1-3

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.

Here, as discussed, above, Petitioner was found to be eligible for services; an IPE was developed; and services were provided.

With respect to his case with Respondent, Petitioner raises two issues on appeal: (1) Did Respondent improperly fail to provide Petitioner with assistance in obtaining a Michigan Residential Builders License, and (2) Did Respondent err in determining the nature of Petitioner's medical and psychological issues for purposes of eligibility?¹

Regarding Petitioner's eligibility, the record and applicable policies demonstrate that Respondent acted properly in determining the nature of Petitioner's medical and psychological issues for purposes of eligibility.

¹ Petitioner's request for hearing was unclear as to the issues he was raising, but Petitioner expressly identified the above two issues as the sole issues in this case on the record during a subsequent conference.

In applying for services through Respondent, Petitioner indicated that he was receiving SSDI benefits and MRS Policy details the procedure that Respondent must follow in determining the eligibility of such applicants, with the applicants 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.

Here, Respondent followed that procedure by verifying Petitioner's SSDI benefits, confirming that he had an appropriate employment goal, and finding him eligible for services; and, while Petitioner argues that Respondent erred by basing that eligibility on Petitioner's alleged paranoid schizophrenia, that argument is completely unpersuasive as even Petitioner agrees that was approved for SSDI benefits on the basis of a diagnosis of paranoid schizophrenia. Respondent simply acted in response to the information it had and acted properly in finding Petitioner eligible. Petitioner testified that he does not have paranoid schizophrenia and that he wants his medical record corrected, which is understandable, but there was no error in Respondent finding Petitioner eligible based on the information it had.

Moreover, while it is beyond the scope of this proceeding, the undersigned Administrative Law Judge would note that Respondent finding Petitioner eligible was not the end of his case or the inquiry into the nature of his medical and psychological issues. Respondent cannot generally correct Petitioner's medical records, but MRS 3100 further provides that, even after an eligibility determination has been made, additional diagnostic and assessment information may be needed in order to determine vocational rehabilitation needs; and, here, after the eligibility determination, Respondent requested and received a copy of the neurological evaluation completed on REDACTED 2018. However, Respondent's witness also testified that nothing changed in terms of Petitioner's needs or services as a result of that report and Petitioner, who subsequently signed an IPE agreed upon by himself and Respondent, never identified any effect of a misdiagnosis or an updated diagnosis on his needs and services either.

Similarly, the record and applicable policies also demonstrate that Respondent acted properly in assisting Petitioner in obtaining a Michigan Residential Builders License. It is undisputed that, as part of the IPE and in support of Petitioner's employment goal, the Vocational Rehabilitation Counselor assisted Petitioner in completing the application for the Residential Builders License; Respondent paid the \$195.00 application fee; and Respondent paid a \$117.00 examination fee. Moreover, Respondent also planned on assisting Petitioner with completing an accommodation request for the required examination, but Petitioner subsequently submitted the request on his own and without showing it to the Vocational Rehabilitation Counselor or asking for her assistance as previously discussed. Overall, it is not clear what more Respondent could have done or what Petitioner even wanted it to do.

Petitioner argues that the requested accommodations should have all been granted, and that the failure to do so is why he failed the examination, but Respondent is not the one who denied any request and it has no authority to order any accommodations. Petitioner's

dispute is with LARA and Respondent clearly did not err in providing Petitioner with assistance in obtaining a Michigan Residential Builders License.

DECISION AND ORDER

For all of the reasons stated in the foregoing opinion, Respondent's actions are **AFFIRMED**.