

ISSUE

Can Petitioner have an IPE goal of "post-secondary education"?

Did Respondent act appropriately in denying post-secondary education reimbursement to Petitioner for attending the University of Colorado at Colorado Springs based upon the January 23, 2020 IPE?

FINDINGS OF FACT

1. Respondent is a state agency that helps individuals with disabilities become and stay employed. (Testimony.)
2. Petitioner is a current customer of Respondent and has been diagnosed with Williams Syndrome. Williams Syndrome impacts Petitioner's emotions, motor skills, visual-spatial processing, and memory. (Testimony; Exhibit (Ex) I.)

⁴ Copies of the policy were not provided. To the extent necessary the MRS policy in effect on January 23, 2000 can speak for itself.

3. Petitioner attended Black River Public Schools but never received a diploma.⁵ While attending Black River Public Schools, Petitioner focused on career prep and college prep. (Testimony.)

4. In approximately 2016, Petitioner began working with Respondent. (Testimony; Ex A.)

5. On or around May 8, 2017, Petitioner was determined by Respondent to be eligible for the MRS program and entered an Individualized Plan for Employment (IPE). At the time of execution, Petitioner and Respondent agreed to an employment goal of "Human Services — Career Pathway".⁶ At the time of the agreement, Petitioner was completing her Junior year at Black River and exploring different jobs in the community. (Testimony; Ex B.)

6. A Career Pathway goal allows a transition student the ability to explore the world of work until the student completes secondary education. (Ex Q.)

7. From October 10, 2017 through November 28, 2017, Petitioner worked at REDACTED. At the conclusion of the placement, it was noted Petitioner would "need quite a bit more training in a variety of work related skills/behaviors... At the completion of the final 20 hours, additional training will be recommended at REDACTED (Testimony; Ex C.)

8. From April 10, 2018 through May 9, 2018, Petitioner was again placed at REDACTED. At the conclusion of the placement, it was recommended Petitioner would "need quite a bit more training in a variety of work related skills/behaviors if she is going to seek employment. She will need a full time job coach, as she is unable to perform any job related activities at REDACTED at an independent level. She requires A LOT of prompting (5-15 times per hour) when attempting work skills/tasks." (Testimony; Ex D.)

9. On July 10, 2018, following graduation from Black River with a Certificate of Completion, Petitioner executed a second IPE. In executing the IPE, Petitioner indicated a career goal of "All Other Food Service Workers, Retail, Cleaning, Customer Service." At the time, Petitioner intended to take classes part-time at Black River and focus on career exploration and finding paid employment in the community. (Testimony; Ex E.)

10. Prior to January 14, 2019, Petitioner had a brief period of employment at REDACTED. Petitioner did not enjoy this experience. (Testimony.)

11. On or around January 14, 2019, Petitioner was hired by REDACTED. (Ex F.)

⁵ Black River Public Schools requires all attendees apply for college and in order to receive a diploma, attendees must be accepted into a 4-year university.

⁶ Petitioner signed the May 8, 2017 IPE.

⁷ REDACTED.

12. In October 2019, Petitioner visited the University of Colorado at Colorado Springs Office of Inclusive Services (UCCS). UCCS offers a program for students with intellectual disabilities that allows students to take classes, participate in social activities, and experience college. When the program is completed, students would receive a certificate and not a degree. (Testimony; Ex 4; Ex 9.)

13. On January 23, 2020, Petitioner entered another IPE with an employment goal of "All Other Service Workers, Retail, Customer Service, Food Services". Petitioner affixed her signature to this IPE and indicated she would continue to take classes part-time and focus on career exploration with a heavy focus on post-secondary planning all while continuing to work at REDACTED Upon leaving the January 23, 2020 IPE meeting, Petitioner placed a copy of the IPE documents in her backpack.⁹ (Testimony; Ex G.)

14. In March of 2020, Petitioner was accepted into the UCCS program. (Testimony; Ex 4.)

15. Prior to April 2020, Petitioner's mother began inquiring of MRS, funding for the UCCS program. (Testimony; Ex 4.)

16. In April 2020, MRS indicated to Petitioner that MRS could not financially support Petitioner's participation in the UCCS program. (Testimony; Ex 4.)

17. On May 15, 2020, MRS sent Petitioner a letter. The letter indicated Petitioner had been provided with the opportunity to explore multiple work experiences consistent with Petitioner's abilities and capabilities based on Petitioner's vocational needs assessments. The letter indicated Petitioner was eligible to attend the Young Adult Services (YAS) program. A "program designed to address the transitional needs of students with disabilities once they complete their educational program at their local high school." If Petitioner did "not wish to attend the YAS program, an updated vocational needs assessment would need to be completed to determine the goals, nature and scope of rehabilitation services to be included in Petitioner's IPE." (Testimony; Ex H.)

18. From REDACTED 2020 through REDACTED 2020, Petitioner participated in a neuropsychological evaluation conducted by Doctor Don A. Boyd, Ed. D., a Licensed Psychologist. The evaluation was for the purpose of contributing to Petitioner's vocational, rehabilitation, and case planning. Dr. Boyd concluded the following:

Her reading word recognition is near around the 3rd grade level and her oral reading sample reveals extreme difficult in

⁸ Employment Goal also indicated that "Achieving high school diploma or GED is not a goal".

⁹ While Petitioner did not recall the IPE meeting, Respondent's witness, Julie Zeller, specifically recalled the document being placed in Petitioner's backpack. The testimony of Ms. Zeller was very specific and leads me to believe, that more likely than not, the 2020 IPE meeting did take place and that a copy of the document was placed in Petitioner's backpack.

reading. She will not semantically extract material, again unless there is repetition, support, interpretation, and then structured output as part of that learning. This bodes poorly for independent work in an open academic setting, but she may have carryover to long-term memory with extensive initial over-learning, and supports in a classroom environment, as has been reported previously.

...this neurocognitive profile is far from being able to yield a certain or positive outlook for higher level employment, regardless of the quality of education. It is mostly due to difficulties with adaptive or flexible responses to the job ecology. A prolonged on-the-job training, which starts at precompetitive and gradually assumes increased hours and task competence almost certainly will be required, but true vocational independence given the nature of deficits noted, is much more in doubt.

... Lastly, I am very concerned about her moving from a protective and structured environment to an open social setting and competitive training or work. Intense stress response cannot be ruled-out when she is under high stimulus load or criticism. Educative psychotherapy in tandem with very supportive work relationships will be important to maintain stability and monitor her wellbeing. (Ex I.)

19. On REDACTED 2020, Petitioner participated in a comprehensive vocational evaluation. Mark Leeson, a vocational evaluator, performed the evaluation. The evaluation was requested by MRS to determine Petitioner's level of skills and interests, feasibility for employment and at what level. Following the evaluation, Mr. Leeson concluded Petitioner "was not at the level necessary for success in the world of independent competitive employment" and "would be best served with Supported Employment Services" moving forward. (Ex J.)

20. On September 10, 2020, Petitioner submitted to Respondent a request for hearing. (Ex 7.)

21. Since 2017, Petitioner has received from Respondent, over 100 hours of job coaching and has participated in multiple services offered by Respondent. (Testimony; Ex K; Ex L.)

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."¹⁰

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.¹¹

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.¹²

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,

¹⁰ P.L. 105-220 § 100(a)(2).

¹¹ 34 CFR 361.42; MRS Policy 3100.

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

recreational, and environmental factors that affect the employment and rehabilitation needs of the individual.¹³

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. The applicant shall be involved in providing and securing existing assessment information to the maximum extent possible.¹⁴ Clients are responsible for providing information needed to determine eligibility and to develop an IPE.¹⁵

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.¹⁶

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.¹⁷

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.¹⁸

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

¹³ 34 CFR 361 .45; MRS Policy 3275.

¹⁴ ~~34 CFR 361 .52; MRS Policy 2255.~~

¹⁵ 34 CFR 361 .38, 361.46 & 361.57; MRS Policy 2250.

¹⁶ 34 CFR 361 .43; MRS Policy 3225.

¹⁷ 34 CFR 361 .45, 34 CFR 361.46; MRS Policy 5050.

¹⁸ 34 CFR 361 .45; MRS Policy 5150.

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.¹⁹

Petitioner filed an appeal and alleged several issues. Although Petitioner identified a numerous subset of issues, all the issues can be boiled down to a basic disagreement with the Respondent and whether "post-secondary education" is an appropriate IPE goal and/or in the alternative, whether Petitioner's current IPE goal requires a "post-secondary education".

In this case, the governing policies support Respondent's decision to not support "post-secondary education" as an employment goal.²⁰ 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."²¹ To be an MRS employment goal, **it must be a specific long-term vocational goal with the general goal of competitive employment.** "Post-secondary education" is not in and of itself an employment goal. Therefore, Petitioner cannot have attendance at a "post-secondary education" as an employment goal.

In the alternative, Petitioner's most current IPE goal does not require a "post-secondary education". The record is void of any evidence that suggests, "post-secondary education" is needed for the goal of "All Other Service Workers, Retail, Customer Service, Food Service"²². And although, Petitioner argues she did not sign the 2020 IPE document and disagrees that an IPE was ever developed, the evidence suggests otherwise. There is a clear pattern that was developed over the prior IPE's and Petitioner's signature appears in each of those documents as well. Each of the preceding IPE's appears to be building on the last one and working towards a more specific IPE goal. Moreover, the evidence suggests, Petitioner continued to engage in and utilize the services being offered by Respondent for each of the IPE's now being called into question. This all indicates that more likely than not, the Petitioner engaged in the informed choice process in selecting and agreeing to the IPE goal of "All Other Service Workers, Retail, Customer Service, Food Service"²³.

Based upon the foregoing findings of fact and conclusions of law, I find that Respondent was proper in denying Petitioner's requests for Respondent to assist with the costs of Petitioner's attendance at UCCS and request to have an IPE goal of "post-secondary education".

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

²⁰ See 34 CFR 361.45; 34 CRR 361.56; and MRS Policy 5025.

²¹ MRS Policy No 5025, p 4.

²² See Exhibit G.

²³ **1d**

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.

DECISION AND ORDER

For all the reasons stated in the foregoing opinion, MRS's decisions to deny Petitioner financial assistance with Petitioner's attendance at UCCS and request to have "post-secondary education" as an IPE goal 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.