

ISSUE

Did Respondent improperly close Petitioner's case pursuant to MRS' Threats and Acts of Violence policy?

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 REDACTED 2022, the Respondent received from Petitioner, an application for MRS services. (Exhibit A.)
2. Shortly after receipt of the application, Petitioner was approved for MRS services. (Testimony.)
3. Upon case opening, Petitioner worked with Respondent staff member McBride to determine what services the Respondent could provide Petitioner to assist with Petitioner's employment goal of starting a commercial fishing business. (Testimony.)
4. The Respondent hired Ned Stoler of Foresight Services, LLC, to assist the Respondent in reviewing Petitioner's equipment and help determine what services Petitioner may need in order to achieve an employment outcome. (Testimony.)
5. On August 31, 2022, Mr. Stoler issued his report. (Exhibit C.)
6. On October 25, 2022, Petitioner's assigned Counselor left the Respondent and Mr. Roy Del Valle took over Petitioner's case. (Testimony.)
7. On January 6, 2023, Petitioner left a voicemail message for Mr. Del Valle wherein Petitioner stated "that Ned there, you know you know, if he is not here Monday don't send him around me, you know what I mean. Might not be good for Ned." (Exhibit F.)
8. On January 9, 2023, Petitioner told a Respondent staff member that he could snap Ned Stoller's neck with a snap of his thumb. Shortly after this incident, Mr. Del Valle documented the incident in a case note in a Respondent case note. (Exhibit E; Exhibit F; Testimony.)
9. On January 13, 2023, Petitioner participated in a Respondent meeting with two other Respondent staff. During the meeting, Petitioner stated that although he was getting old and suffered from disabilities, he could still take them on; shared stories of people threatening him with firearms and his concern his efforts to fish would result in "gunplay"; and how he was not allowed to possess a firearm due to prior felony convictions but permitted to possess a "muzzleloader." Petitioner, thereafter, became agitated and aggressive, stood up from his seat, yelled at one of the staff and later took off his jacket and flexed his muscles while grunting loudly. (Exhibit F.)
10. On January 19, 2023, Petitioner told Mr. Del Valle that he was "going to choke someone" and that he wanted to move on from the Respondent. Later that same day, Petitioner left a voice message for Mr. Del Valle using profane language and stating that after he received his services, Mr.

Dell Valle could "beat it" and "[y]ou don't want to hear that you don't want. You don't want to do that.". (Exhibit F; Testimony.)

11. On January 20, 2023, Respondent Division Director, Eric Bachmann, spoke with Petitioner following the exchange of several voicemails. During the conversation, Petitioner told Mr. Bachmann he was so mad he felt he wants to fight and even felt like "going postal." Mr. Bachmann indicated that any threats toward him or any other Respondent staff would result in Petitioner's case being closed and further asked Petitioner what he had meant. Petitioner indicated he was going to contact everyone he could at the Respondent as well as attorneys, newspapers, media outlets, etc., (Exhibit F.)
12. On May 2, 2023, Petitioner participated in a meeting with the Respondent to cover different options of the services the Respondent could provide. During the meeting, Petitioner indicated to Mr. Del Valle, that he had "done research" on him. Mr. Del Valle considered this a direct threat. (Exhibit B; Testimony.)
13. Following the meeting, Mr. Del Valle discussed the verbal threats from Petitioner with Mr. Bachmann. During this conversation, it was determined Petitioner had violated Respondent policy and Petitioner's case would be closed and coded as a "Failure to Participate" based on Petitioner's actions leading to an inability to continue services. (Exhibit B; Exhibit I; Testimony.)
14. On May 8, 2023, the Respondent sent Petitioner a notice indicated Petitioner's case would be closed due to the threats made against Respondent staff and vendors. (Exhibit B; Exhibit G; Testimony.)
15. On May 19, 2023, Petitioner submitted an appeal, appealing the case closure. (Exhibit G.)

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.¹

¹ 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.²

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.³

Following the assessment of vocational rehabilitation needs, the process can begin for the development of the IPE.⁴ 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.⁵ It must also include the anticipated date by which the employment goal will be reached.⁶

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, 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.'

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". If the situation cannot be resolved, the customer may contact the Client Assistance Program or the MRS Rights Representative.⁹ Ultimately, if the client wants to move forward with an IPE but MRS denies the request to do so, the client may request mediation and/or a hearing when appropriate.⁹

² MRS Policy 3100, p 1.

³ MRS Policy 3275, p 1.

⁴ MRS Policy 5000, p 1.

⁵ MRS Policy 5050, p 1.

⁶ MRS Policy 5050, p 1.

⁷ MRS Policy 5000, pp 2-3.

⁸ MRS Policy 5000, p 3.

⁹ MRS Policy 2175, p 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. 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 within 30 calendar days by scheduling an appointment, it can be assumed they are satisfied with their IPE as originally written. The counselor is responsible for completing the annual review documentation.¹⁰

The Respondent is "committed to promoting and maintaining a safe workplace and service delivery environment for MRS staff and applicants or eligible individuals of MRS."¹¹ Consequently, "Acts of violence will not be tolerated" and "[i]n order to preserve a safe work environment for MRS staff, and a safe service delivery environment for individuals being served, MRS may deny, suspend, or terminate services to applications or eligible individuals and/or close the case of individuals who threat or commit acts of violence."¹²

Respondent policy provide the following procedures as found in MRS Policy 2375:

Procedure:

The following definitions used in policy and procedures apply:

Act of violence means any intentional, reckless, or grossly negligent act that would reasonably be expected to cause physical injury or death to another person.

Threat of violence means any intentional communication or other act that threatens an act of violence and would cause a reasonable person to feel terrorized, threatened, or fear physical injury or death on oneself or another person. Any threat of violence, whether verbal, written, visual, or by gesture, is presumed to be an expression of intent to do harm to another person. Threat of violence as used in this definition includes harassment as defined in MCL 750.411i.¹³

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¹⁰ MRS Policy 5175, p 1.

¹¹ MRS Policy 2375, p 1.

¹² *Id.*

¹³ MCL 750.411i — "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

5. Denial, suspension, or termination of services and/or case closure:

MRS may deny, suspend, or terminate services provided to an individual who has subjected MRS staff or other persons in the service delivery environment to threats or acts of violence, or who refuses to participate in assessment, treatment, accommodations, or behavioral contracts to reduce or eliminate threatening or violent behavior. MRS may also close the individual's case record. The case record shall document consideration or provision of assessments, treatments, behavioral contracts and/or accommodations to reduce or eliminate an individual's threatening or violent behavior.¹⁴

In this case, two Respondent witnesses testified to the verbal threats made by Petitioner and directed toward them. These witnesses also indicated it was because of these documented threats as well as other documented threats toward other individuals that the decision was made to close Petitioner's case.¹⁵

Initially after the first set of threats, the Respondent attempted to continue working with Petitioner and attempted to accommodate Petitioner pursuant to Respondent policy until they had no choice but to close Petitioner's case on May 8, 2023, after the threats continued to persist.¹⁶

During the course of the hearing, Petitioner vehemently contested the testimony presented by the Respondent's witnesses and questioned the validity of the documents put forth to substantiate allegations of threatening conduct attributed to the Petitioner. Despite this, the Petitioner failed to furnish any supporting evidence to validate his self-serving assertions. Notably, a concerning aspect emerged during the closing of the record as the Petitioner openly conceded in his introductory statement of his closing brief that some of the allegations against him were accurate but were purportedly "taken out of context."¹⁷

Irrespective of the contextual nuances invoked by Petitioner, it remains evident that his actions, as delineated in Respondent Policy 2375, amount to a threat of violence. Furthermore, the acknowledgment by the Petitioner during the hearing regarding his usage of the phrase "going postal", along with an acknowledgment of its negative connotation, underscores the undeniable nature of the threat conveyed in the specified context.

¹⁴ MRS Policy 2375, pp 1, 3-4.

¹⁵ Documented threats towards Mr. Stoller, Mr. Del Valle, Mr. Bachmann, and another staff member. (See Exhibits B, D, E, F, and H.)

¹⁶ See Exhibits B and H.

¹⁷ "(1) Petitioner REDACTED REDACTED states, any claim against him was either taken out of context, not the truth or a combination thereof." Petitioner's Closing Brief, November 6, 2023, p 1.

In addition to the aforementioned points, the Petitioner's contention regarding the inability to call witnesses is misguided. Contrary to his assertion, he was clearly afforded the opportunity to summon witnesses of his choosing. Regrettably, the Petitioner's inability to furnish mailing addresses for the identified individuals, despite submitting several subpoena requests, resulted in the non-issuance of said requests. This failure on the part of the Petitioner to provide essential contact information has consequently precluded the validation of his claim of being denied the ability to call witnesses.

Accordingly, given that Respondent credibly and thoroughly demonstrated its basis for closing Petitioner's case and Petitioner failed to refute that evidence, I find 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.**