

ISSUE

Petitioner's appeal of MRS' decision to deny her request to amend her Individualized Plan for Employment (IPE) to add vocational rehabilitation services in the form of payments for commercial rent.

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 November of 2016, Petitioner, who was working as a cosmetologist and has a bachelor's degree in business administration, was seriously injured in a car accident. (Testimony of Petitioner).
2. She subsequently applied, and was found eligible, for services through MRS. (Testimony of Petitioner).
3. On September 3, 2021, Petitioner and her MRS counselor at the time signed a completed Individualized Plan for Employment (IPE). (Exhibit #4, pages 20-30).
4. Prior to the drafting of the IPE, Petitioner worked with a Small Business Consultant and developed a business plan. (Exhibit #1, pages 2-7; Exhibit #2, pages 9-11; Exhibit #3, pages 13-18; Testimony of Petitioner; Testimony of Business Consultant).
5. In that IPE, Petitioner's "Employment Goal" was identified as follows: "Personal Service Managers, All Other, Salon Suite Business Owner". (Exhibit #4, page 20).
6. With respect to services as part of the IPE, the IPE stated in part:

Michigan Rehabilitation Services (MRS) has received my business plan and financial projections provided August 1, 2021.

I will provide MRS a copy of the Certificate of Occupancy documenting the building at REDACTED MI REDACTED, has passed the City of REDACTED final building inspection. At that time, MRS will cover the cost of rent for 5 months not to exceed \$6,416 per month and an additional \$1,169 toward the cost of the sixth month of rent.

Rental charges beyond the 6th month will not be covered by MRS. MRS will not cover the cost for rent during any months where the property owner is not charging for rent.

I understand that authorizations for rent will not be issued and sent to the property owner until the rent is due for the upcoming month and that the rent will be authorized by MRS month by month. I will submit a copy of the proposed lease and monthly invoice to MRS as a means to confirm and document costs as a reference prior to MRS authorizing this expenditure. I will also provide a copy of the lease to MRS once signed.

Payment for the portion of rent for which MRS has agreed to fund will be released when invoice is provided as proof of service, to include the amount, dates provided, property location and name of service provider. I understand payment for this service will not be released without the invoice. All ongoing rental costs are my responsibility.

Exhibit #4, page 21

7. In support of that service, the IPE estimated the planned service costs as \$33,249.00. (Exhibit #4, page 22).
8. With respect to "Participant Responsibilities", the IPE also stated in part:

I will provide MRS a copy of the Certificate of Occupancy documenting the building at REDACTED MI REDACTED, has passed the City of REDACTED final building inspection

* * *

I am responsible to all ongoing expenses needed to establish and maintain the business, in all categories, including those where MRS is assisting with some startup costs as identified in this IPE.

* * *

I will be covering all other costs associated with startup and operations and sustaining the identified business as outlined in the attached Business Plan and estimated projections dated August 1, 2021, which show \$138,500 in personal resources REDACTED projected loan, REDACTED credit line, REDACTED personal resources).

Exhibit #4, pages 26-27

9. With respect to "Plan Evaluation", the IPE further stated in part:

My counselor will review the profit and loss statement and business bank statements that I provide to determine my progress with this business. I will follow up with my MRS counselor at least monthly in this regard and to discuss my progress and eventual closure of my case.

Other Comments

The services listed in this Individualized Plan for Employment (IPE) reflect MRS' assistance toward startup costs of the business based on the Business Plan and estimated projections provided to my Counselor dated August 1, 2021.

I will be covering all other costs associated with startup and operations and sustaining the identified business as outlined in the attached Business Plan and estimated projections dated August 1, 2021, which show \$138,500 in personal resources REDACTED projected loan, \$REDACTED credit line, REDACTED personal resources).

Exhibit #4, page 28

10. The Certificate of Occupancy referenced in the IPE was approved by the City of REDACTED on September 28, 2022, and subsequently provided by Petitioner to MRS. (Exhibit B, page 1; Testimony of Petitioner).
11. MRS then provided the authorized rental assistance for the months of September of 2022 through March of 2023. (Testimony of Petitioner).
12. In October of 2022, Petitioner's business opened its doors. (Testimony of

Petitioner).

13. On January 19, 2023, Petitioner emailed her MRS counselor and requested an IPE amendment, noting in part that she did not believe her current services were sufficient for her to achieve stability of employment and that she would need several months of additional commercial rent services. (Exhibit #5, page 32).
14. On February 2, 2023, Petitioner's representative followed up on that request. (Exhibit #6, page 34).
15. Petitioner's MRS counselor then indicated via an email on February 6, 2023, that MRS was not in agreement with amending the IPE. (Exhibit #6, page 34).
16. However, the parties also subsequently met; Petitioner provided additional or updated information to MRS; and MRS approved an additional two months of rental assistance. (Exhibit F, pages 156-169)
17. As part of the email approving the request, the MRS counselor wrote in part:

After consideration of the presenting facts, MRS is willing to assist with two additional months of rent payment for the months of April 2023 and May 2023. Per the leasing terms, the monthly rent amounts increased as of March 1, 2023 to \$6,710.00. This means MRS contribution would be \$6,710.00 for rent in April 2023 and an additional \$6,710.00 to assist with May 2023. Costs that include but are not limited to: past due, interest, or other fees applied above the lease costs are the responsibility of the customer Subsequent to the above rental assistance, any further business costs remaining are the responsibility of [Petitioner].

Exhibit #8, page 39

18. The MRS counselor then drafted an amended IPE. (Exhibit #10, pages 46-57).
19. In part, that draft amended IPE contained language stating that "[s]ubsequent to April and May 2023 rental assistance, MRS would consider startup costs to be fulfilled for the small business" (Exhibit #10, page 47) and that Petitioner's "case will be closed subsequent to 90 days of follow along services, which will initiate upon the date MRS releases the final rental payment in May 2023" (Exhibit #10, page 55).

20. However, that language was removed after further discussion and at Petitioner's request. (Exhibit #13, page 69; Testimony of Petitioner).
21. On March 30, 2023, Petitioner and her MRS counselor at the time signed an amended IPE. (Exhibit C, pages 18-30).
22. With respect to services as part of the amended IPE, it stated in part:

Michigan Rehabilitation Services (MRS) has received my business plan and financial projections provided August 1, 2021.

I will provide MRS a copy of the Certificate of Occupancy documenting the building at REDACTED MI REDACTED, has passed the City of REDACTED final building inspection. At that time, MRS will cover the cost of rent for 5 months not to exceed \$6,416 per month and an additional \$1,169 toward the cost of the sixth month of rent. MRS will assist with two additional months of rent payment for the months of April 2023 and May 2023 respectively. Per the leasing terms, the monthly rent amounts increased as of March 1, 2023 to \$6,710.00. The MRS contribution will be \$6,710.00 for rent in April 2023 and an additional \$6,710.00 to assist with May 2023, As such, this plan amendment includes an additional \$13,420 in rent assistance.

MRS will not cover the cost for rent during any months where the property owner is not charging for rent. MRS will not cover costs that include but are not limited to, past due, interest, or other fees applied.

I understand that authorizations for rent will not be issued and sent to the property owner until the rent is due for the upcoming month. I will submit a copy of the proposed lease and monthly invoice to MRS as a means to confirm and document costs as a reference prior to MRS authorizing this expenditure. I will also provide my profit and lost statements and supporting source documentation for expenses provided for review for each of the months. Subsequent to the above rental assistance, rent costs remaining are my responsibility.

23. In support of that service, the IPE estimated the planned service costs as \$46,669.00. (Exhibit C, page 20).

24. With respect to "Participant Responsibilities", the IPE also stated in part:

I am responsible for all ongoing expenses needed to establish and maintain the business, in all categories, including those where MRS is assisting with some startup costs as identified in this IPE.

* * *

I will be covering all other costs associated with startup and operations and sustaining the identified business as outlined in the attached Business Plan and estimated projections dated August 1, 2021, which show \$138,500 in personal resources REDACTED projected loan, REDACTED credit line, REDACTED personal resources).

Exhibit C, pages 25-26

25. With respect to "Plan Evaluation", the IPE further stated in part:

Other Comments

The services listed in this Individualized Plan for Employment (IPE) reflect MRS' assistance toward startup costs of the business based on the Business Plan and estimated projections provided to my Counselor dated August 1, 2021.

I will be covering all other costs associated with startup and operations and sustaining the identified business as outlined in the attached Business Plan and estimated projections dated August 1, 2021, which show \$138,500 in personal resources REDACTED projected loan, REDACTED credit line, REDACTED personal resources).

Exhibit C, page 27

26. MRS then provided the authorized rental assistance for the months of April of 2023 and May of 2023. (Testimony of Petitioner).

27. On April 17, 2023, Petitioner emailed her MRS counselor and requested an appointment, while also indicating that she would need assistance

beyond May of 2023. (Exhibit D, page 31).

28. On April 27, 2023, following a virtual meeting with Petitioner, Petitioner's MRS counselor sent her an email advising Petitioner that it would be helpful to outline what the specific request was and noting that there will need to be some work with her financial documents given that there is now data available from a few months of Profit and Loss statements. (Exhibit F, pages 198-199).
29. During May of 2023, Petitioner submitted information from herself and her Small Business Consultant to MRS, in addition to having meetings with her MRS counselor. (Exhibit #17, pages 91-93; Exhibit #18, pages 95-96; Exhibit #19, pages 98-99; Exhibit #20, pages 101-106; Exhibit E, page 135; Exhibit F, pages 193, 201-204, 206-209, 211, 213).
30. On May 24, 2023, following a meeting with Petitioner and a representative from the Client Assistance Program (CAP), Petitioner's MRS counselor noted that Petitioner was asking for rental assistance through at least August 2023. (Exhibit F, pages 214-215).
31. However, Petitioner did not identify any set timeline and wanted rental assistance for as long as it was needed. (Testimony of Petitioner).
32. On May 27, 2023, Petitioner's MRS counselor sent Petitioner an email stating that her request for additional assistance with rental payments had been denied. (Exhibit #21, pages 108-109).
33. In part, that email stated:

I want to apologize to you for the delay in response. The following is a summarization of information shared and considered. We have met several times over the past few weeks to discuss the presenting needs of your business. I understand that you are requesting a plan amendment for MRS to provide additional rent payments through December 2023.

We have looked at your business profit and loss statements, various projections and models of business costs and revenues. I shared from an MRS perspective how important documentation and rationale are as a basis of decision making. I shared an outline at the end of April to help you organize and outline the request and rationale. As we have discussed your businesses financial needs, I also have to weigh bureau considerations. MRS has assisted and contributed to business startup costs in the business plan, IPE and subsequent IPE

amendment. In the last plan amendment, we agreed to additional financial assistance for rent payments for the months of April and May 2023 respectively for which payments have been made.

From what you have shared, including the financial statements, banking statements and projections, the business is unable to meet minimum monthly operating expenditures without financial assistance and is fragile. You shared in our conversations the increases in minimum monthly revolving credit payments secondary to interest rate increases by your credit lenders in May 2023. You also mentioned a court case in which a settlement was made with the utility companies to cover basic utility needs for your business and establish a minimum monthly payment to prevent utility shut off. You also shared that without available capital, your business is limited in its ability to offer the kinds of incentives and promotional content of competing entities to attract and retain clientele. Any increases to business costs and/or the loss of a single renter at this time places your business at financial risk of meeting its operational and minimum monthly expenses, even with MRS assistance and which could result in additional requests and need for MRS assistance to maintain the business. There also will be additional rate increases in the future based on the fee schedule shared by the landlord. You shared that you have made additional efforts to secure loans, grants, and funds from other sources. You said that these efforts have not been successful, at least in part, because of the amount of outstanding debt currently owed.

The business would appear to be in need of assistance for the maintenance of the business no longer related to start up costs that were included in the business plan, IPE and subsequent IPE amendment. What I am unable to agree to is an additional IPE amendment that places MRS in a position as a funding source to subsidize business maintenance when the business cannot meet its minimum monthly financial obligations, which would be beyond the scope of MRS.

I will be back in the office Tuesday, May 30 and Wednesday, May 31. I will continue to seek out

bureau guidance and input from policy regarding your request and options. I am also open to other suggestions. You also have the right to appeal. I am hopeful we can find some options for resolution and will continue to work hard to that end.

Exhibit #21, pages 108-109

34. Following that denial, a representative from CAP sent an email disagreeing with the decision on Petitioner's behalf and the parties continued to discuss Petitioner's request and additional documents that might be needed. (Exhibit #22, page 111; Exhibit #23, pages 114-115; Exhibit #24, pages 117-118; Exhibit F, pages 225-226, 231-233, 238).
35. On June 20, 2023, Petitioner's attorney emailed MRS to both express concerns about MRS' decision not to amend the IPE and to request an additional two months of rent assistance, with potential further services to be evaluated later. (Exhibit F, pages 234-235).
36. On June 26, 2023, Petitioner, through her attorney, also filed a request for hearing with MRS. (Exhibit G, page 244).
37. In part, the request for hearing stated:

[Petitioner] is requesting a hearing with respect to MRS's determination that her small business is in need of assistance for the maintenance of business no longer related to start-up costs (as set forth in [MRS counselor's] May 27, 2023 email) and with respect to MRS's decision based on this determination to not amend [Petitioner's] individualized plan for employment to provide additional commercial rent services needed to achieve her employment outcome.

Exhibit G, page 244

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 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." 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.

Regarding the Development of the IPE, MRS Policy 5000 states in part:

Policy:

At the completion of the eligibility determination and the assessment of vocational rehabilitation needs, eligible individuals or their representatives shall be provided, in writing and in appropriate modes of communication, information about their options available in developing the Individualized Plan for Employment (IPE).

Procedure:

Information about the options in developing the IPE shall include:

- the availability the assistance from the Michigan Rehabilitation Services (MRS) rehabilitation counselor in developing all or part of the IPE;
- the option of requesting assistance from a disability advocacy organization when developing the IPE;
- the availability of technical assistance in developing all or part of the IPE;

- the option of using other resources, including a qualified rehabilitation counselor not employed by MRS, in developing all or part of the IPE;
- the option of completing an IPE without MRS assistance on a form provided by MRS;
- a description of the rights and remedies available including the Client Assistance Program, and how to contact it.

For individuals who receive SSI/SSDI, the options in developing the IPE shall also include the availability of information on assistance and supports available to individuals desiring to enter the workforce, including benefit planning assistance.

This information shall also include, as appropriate:

- a description of the required components which must be included in the IPE;
- an explanation of MRS policies and guidelines associated with financial commitments related to an IPE;
- additional information required by the customer or MRS.

When the determination of eligibility and assessment of rehabilitation needs has been completed, eligible individuals shall be provided the MRS guide "Choosing Your Employment Plan" in a language or format appropriate to their communication needs. This guide meets policy requirements regarding the provision of written information about the individual's options in developing their IPE. The case record shall be annotated to indicate that the individual has been provided this written information.

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 individualized plan for employment (IPE). They are to be informed of the availability of help or technical assistance in completing all or part of the IPE. Counselors may need to facilitate decision making by individuals regarding these decisions, depending on the individual's decision-making

skills, or to utilize technical or other assistance in helping individuals to obtain information and make decisions about their IPE.

Some eligible individuals may only need help in completing the printed MRS IPE form (see AWARE or RA-2915-S). Other individuals, with knowledge of MRS services, experience and skill in career planning, ability to work independently, knowledge of community resources, and ability in information gathering and decision making will need little or no assistance in completing an IPE.

Technical Assistance (assistance aimed at improving information gathering and decision-making skills needed in plan development) may be provided directly by other MRS staff, arranged, or provided by external sources. Examples of technical assistance are Rehabilitation Renaissance advisers, empowerment groups, and individualized decision-making assistance for persons with significant cognitive impairments. Technical assistance may be purchased by MRS only when the type of technical assistance required is not available directly through MRS staff or comparable community services or benefits. Technical assistance does not include vocational guidance and counseling, which is provided directly through MRS counselors. Counselors may work concurrently with technical advisers and eligible individuals in developing the IPE. Providers of technical assistance must meet provider standards as applicable.

Other plan development assistance may be provided through the use of interagency planning teams, person centered planning, peer groups, various consumer training activities, and other methods of helping individuals gather information and making informed choices. Such assistance may be purchased when not available through MRS staff or comparable community resources.

The IPE (and any IPE amendment) is signed by the eligible individual and approved and signed by an MRS rehabilitation counselor before taking effect. The Counselor's approval signifies that in the counselor's professional judgment:

- the IPE will achieve the individual's specific employment outcome;

- the job goal is consistent with the employment characteristics of the individual, and not contraindicated by health or safety reasons;
- the IPE services are essential to reach the individual's job goal;
- the IPE is complete (contains the federally mandated components identified in policy);
- and otherwise meets MRS policy and accountability requirements (e.g. use of comparable services and benefits and "least cost to MRS".)

When differences between an eligible individual (or their representative) and the counselor arise the counselor is 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 at 1-800-288-5923 or the MRS Rights Representative at 1-800-605-6722.

MRS Policy 5000, pages 1-3

Moreover, regarding the Employment Goal and Outcome referenced in MRS Policy 5000, MRS Policy 5025 states in part:

PURPOSE

In accordance with state and federal regulations, this policy and procedure establishes guidelines for determination of an employment goal and outcome.

POLICY

The employment goal identified in the Individualized Plan for Employment (IPE) is structured to result in achievement of an employment outcome in Competitive Integrated Employment (CIE).

DEFINITION

Competitive Integrated Employment (CIE)

Means employment that:

1. Is performed on a full-time or part-time basis (including self-employment).
2. Customer is compensated at a rate that:
 - Is not less than the higher of the rate specified in the Fair Labor Standards Act of 1938, or the State minimum wage law.
 - Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.
 - In the case of a customer who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills.
 - Is eligible for the level of benefits provided to other employees.

* * *

Employment Outcome

Means entering, advancing in or retaining full-time or, if appropriate, part-time competitive integrated employment; supported employment including customized employment; telecommuting; self-employment; business ownership or any other type of employment in an integrated work setting that is consistent with a customer's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

PROCEDURES

Michigan Rehabilitation Services (MRS) counselors identify the IPE employment goal based on the completed vocational needs assessment and customer informed choice.

Determining Employment Meets Criteria! of CIE

MRS counselors are responsible for determining if the employment goal and outcome meet the defined criteria of CIE.

MRS counselors, when an employment position is in question, conduct a review of the position using the Competitive Integrated Employment Determination Form (MRS-66).

MRS manager approval is required prior to selection of an employment goal or employment outcome in positions within:

- A Community Rehabilitation Organization (CRO) or other organizations that provide services or specific employment for individuals with disabilities as one of its major functions
- Javits-Wagner-O'Day (JWOD) — Act/AbilityOne contracts
- Michigan Community Rehabilitation Organization Set-Aside contracts
- Any occupation funded or contracted specifically to serve individuals with disabilities

MRS Counselor Documentation of CIE

MRS counselors are responsible for certifying that employment meets the defined criteria of CIE at:

1. IPE Development - MRS counselor signature on an IPE, or IPE plan amendment, certifies that the identified employment goal is expected to result in a CIE outcome.
2. Placement - MRS counselor entry of attained employment position on the Aware Employment page certifies determination that the position meets the definition of CIE.
3. Case Record Closure - MRS counselor entry of attained employment position on the Aware Case Closure page certifies determination that the position meets the definition of CIE.

Additionally, regarding the IPE itself, MRS Policy 5050 states in part:

Policy:

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.

Procedure:

The IPE shall be designed to achieve the employment goal of the individual. It shall include the following:

- 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.
- Services necessary to achieve the employment goal. Planning for services to address serious limitations shall be consistent with the third component of eligibility that requires services to achieve an employment outcome (see Rehabilitation Services Manual (RSM) Item 3100 — Eligibility Criteria). The IPE shall, therefore, include treatment, supports or other interventions that address substantial barriers to employment by ameliorating, reducing or removing serious limitations in one or more of the functional capacity areas.

These services shall be provided in integrated settings, to the maximum extent possible and appropriate. As needed, they shall include assistive technology devices; assistive technology services; personal assistance services and training in managing, supervising and directing personal assistance services.

- The anticipated date by which the employment goal will be reached;

- An expected and timely beginning date for each service, and as appropriate, an ending date or event for the service;
- Objective and measurable criteria to evaluate progress in achieving the employment goal;
- Identification of the service providers and their responsibilities.
- Identification of the responsibilities of MRS and the individual in achieving the employment goal;
- The extent of MRS participation and the participation of the individual in the cost of services.
- The extent to which comparable services and benefits, available under any other program, will be used to cover service costs or provide needed services.

* * *

Information:

The IPE is developed between MRS and the eligible individual. It is a statement of intent and is not legally binding. If a case is transferred between counselors, the IPE is to be honored by the receiving counselor unless the vocational goal, services or time frames are ambiguous or no longer appropriate.

The IPE letter in the AWARE Letters catalog may be used as the cover letter to help the counselor obtain the individual's signature on the IPE.

MRS Policy 5050, pages 1-4

Moreover, regarding IPE Amendments, MRS Policy 5150 states in part:

Policy:

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.

Procedure:

An IPE amendment (new Plan in AWARE) is required in any of the following circumstances:

1. Change in an IPE employment goal or outcome.

An IPE Amendment is required when the Job Title described in the AWARE Employment record is not within the same job group as the IPE employment goal(s) described in the IPE. When the Employment Goal(s) in the existing IPE and the Job title in the Employment record are within the same job group in AWARE, they are considered to match and an IPE amendment is not required. A job group is defined as an OES Job Title Category or as a "minor occupational group" in the Standard Occupational Classification (SOC) System.

An IPE amendment revising the Employment Goal must be accompanied by completion of a counseling summary at the time of initiating an IPE including:

- The basis and rationale for the job goal.
- The services necessary to address serious limitations associated with disability.
- Other services necessary to achieve the employment goal.
- The customer's involvement in the Vocational Needs Assessment/Individualized Plan for Employment development process.

2. Addition or removal of a substantial service.

A service that costs MRS \$1000 or more meets the definition of a substantial service, regardless of how it is authorized. However, a service costing less than \$1000 may also be considered a substantial service based on the discretion of the counselor.

3. A substantial change in the service provider.

A change in a service provider that results in an increase in service costs to MRS, a longer period of time to complete, or a significant change in outcome is considered substantial.

4. A substantial lengthening of time required to achieve an employment outcome.

A substantial lengthening of time is defined as a lengthening of the IPE completion date by more than six months.

5. A substantial increase in total estimated service costs to MRS beyond those noted in the current IPE.

A substantial increase is defined as an increase of more than \$2000 beyond the previous total estimated cost.

Changes to the IPE, as agreed to by the individual and counselor, shall be recorded in AWARE or on MRS Form RA-2915s. Use of the RA-2915s must be supplemented by recording the IPE Amendment in AWARE.

Information:

An IPE amendment may also be warranted when a substantial comparable benefit is added or removed, such as the addition or removal of mental health treatment services provided by another agency or organization.

Amending an IPE actually requires the counselor to create a new IPE in AWARE. The counselor should refer to the AWARE training manual for more information.

MRS Policy 5150, pages 1-2

Regarding Self-Employment and Small Business, MRS Policy 5200 states in part:

Policy:

Self-employment, including small business, may be considered as a vocational option for eligible individuals if:

- it reflects the individual's informed choice;
- is consistent with the individual's strengths, resources, priorities, concerns, interests, abilities and capabilities, including appropriate accommodations.

Procedure:

Self-employment plans shall be supported, at least in part, by resources beyond MRS, and make appropriate use of available community benefits and resources.

All self-employment plans that involve starting a business venture shall have a viable Business Plan prior to the approval of the Individualized Plan for Employment.

Small business enterprises may be supported by Michigan Rehabilitation Services (MRS) as part of an IPE **if they:**

- comply with all relevant state, federal and local laws and regulations
- are owned and operated by the individual being served by MRS
- are organized as a "for profit", as appropriate
- do not involve speculative activities (i.e., pyramid ventures)
- are designed to become a major source of income for the individual to the greatest extent practical.

A case closed successfully in any form of self-employment shall reflect income and other criteria described in the Business Plan or the IPE.

Because business enterprise plans require extensive development activities, the period of time required to develop an IPE will often exceed the standard 90-day time frame. Closure of business enterprise and other self-employment cases must be considered on an individual basis, consistent with the criteria for successful employment established in the IPE and is likely to exceed the minimum 90-day follow-up period required for all successful closure.

Information:

Services in support of self-employment, including small business, may include technical assistance and other consultation services to conduct market analyses and develop business plans, as well as other services necessary,

including but not limited to training, restoration, occupational licenses, association fees, tools, equipment, initial stocks and supplies, and assistive technology.

Self-employment is a broad category for various options. It may include self-employed tradesmen, professionals, contractual service or technical workers, as well as various forms of small or micro business enterprise. Generally, self-employment is defined as: "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."

Business enterprise, as a type of self-employment, may be supported by MRS if it falls into one of the following sub-categories:

- Micro enterprise — a proprietorship that usually consists of only the owner, has difficulty securing loans from traditional lending sources, and generally requires a modest initial investment of funds.
- Small business — Independently owned and operated and not dominant in its field.
- Telecommuting: "commuting via electronic transmission from a geographically disperse location where an individual can work at home on a computer and transmit data and documents via telephone lines and is not employed by any other entity." (Note: Telecommuting may also be other than self-employment.)

Assistance with business enterprise development should include coordination of all possible resources including local and statewide partners/providers, businesses, institutions of higher education, family members, banks, and micro-enterprise lenders. Technical assistance for business planning and financial support may be purchased or acquired at no cost from local providers. Judgment must be exercised in using informed choice principles to enable consumers to select provider(s) who have demonstrated performance and best meet the needs of the individual consumer at the least expense to MRS. Contributions by the individual may include non-financial resources.

A primary role of the rehabilitation counselor is to assist the individual with a plan for business enterprise to obtain support and information for assessment, planning, and implementation of the business plan. This should include the identification and acquisition of resources to support the plan. Each district office has a small business champion who is responsible for providing current and more detailed guidance for small business development, especially identification of pertinent resources and service providers.

A step-by-step process for determining the viability, feasibility, market and financial resources for each business proposal is contained in the Michigan Rehabilitation Services Handbook for Business Enterprises.

MRS Policy 5200, pages 1-3

Here, as discussed, above, Petitioner was found to be eligible for services; an IPE was developed and signed; services, including assistance with rent, were provided; Petitioner requested an IPE amendment; the request was granted, at least in part; an amended IPE was developed and signed; additional assistance with rent was provided; Petitioner requested another IPE amendment to include additional assistance with rent; MRS denied that request; and Petitioner requested a hearing with respect to that denial.

As a preliminary matter in reviewing that denial, the specific request at issue must be identified.

Petitioner did not identify a time frame for additional assistance in her initial email requesting services beyond May of 2023 while, at different times, her MRS counselor at the time described it as a request for additional rental assistance through at least August of 2023 or through December of 2023.

However, Petitioner subsequently testified during the hearing that the request for additional rental assistance was not for any specific time frame and, instead, was for assistance as long as it was needed to reach her employment goal.

Moreover, while her attorney also subsequently emailed MRS and requested only two months of rental assistance, with further services to be evaluated thereafter, Petitioner's testimony is echoed by the relief requested in Petitioner's Closing Brief, which requested that Petitioner's IPE be amended to provide commercial rent services until she achieves her employment, in addition to retroactive rental assistance that was not paid while this matter was pending.¹

¹ MRS's Closing Brief asserts that Petitioner's representative stipulated during the hearing that the current request was for four months of additional commercial rent payments, from June of 2023 through September of 2023, but there was no such stipulation. It did prove more difficult that expected to narrow down exactly what Petitioner was requesting, and her representative did identify those four months at one point during the hearing, but Petitioner's representative never stipulated to that time frame.

Petitioner's testimony regarding what she requested is credible while her counselor's descriptions are unsupported by any testimony or evidence, and the undersigned ALJ therefore finds that, as outlined in Petitioner's Closing Brief, Petitioner was requesting to amend her IPE to include payments for commercial rent until Petitioner achieves her employment outcome.

Regarding the denial of that request, Petitioner correctly argues that MRS would have erred to the extent its denial was based on the grounds that the request rental assistance was no longer related to the start-up costs.

The use of the term "start up costs" in the email denying Petitioner's request to amend her IPE did not come out of nowhere, with that term specifically used in both IPEs agreed upon and signed by the parties in this case.

Moreover, its use in the IPEs does not demonstrate that, as argued in Petitioner's Closing Brief, the plans were wrongly designed to only provide her with start-up costs for her small business irrespective of whether providing those start-up costs would enable Petitioner to achieve competitive integrated employment. Regardless of whether it succeeded, and even if Petitioner knew that she could request more services later if necessary and appropriate, the initial IPE was clearly designed to achieve the specific agreed-upon employment outcome with specific agreed-upon services that were expected, hoped, or planned to be sufficient to achieve that outcome.²

Regardless of the plan design however, the fact that MRS only agreed, and did, provide the start up costs identified in the IPE, and Amended IPE cannot form the basis for the denial in this case alone. No statute, rule, or policy limits MRS to providing start-up costs for a small business; Petitioner had not achieved her specific employment outcome; and IPEs can be amended as needed. Moreover, MRS did not defend any such decision during the hearing or in its Closing Brief.

However, while Petitioner argues otherwise, the record reflects that the denial in this case was not based on a finding that the requested assistance would not be related to start-up costs. Instead, after discussing the status of Petitioner's business and referencing the start-up costs that had been approved and provided, the MRS counselor went on to state in the denial email that:

What I am unable to agree to is an additional IPE amendment that places MRS in a position as a funding source to subsidize business maintenance when the

² For the Amended IPE, the record reflects that the same belief for MRS, *i.e.*, that the additional services were sufficient to achieve the employment outcome and would be the end of rental assistance. However, for Petitioner, while she signed the Amended IPE containing language that rent costs would be her responsibility after the agreed-upon assistance was provided, she clearly intended to, and did, seek additional rental assistance soon after that agreement was signed. Instead of signing that Amended IPE, Petitioner could have appealed a partial denial of her request for additional services.

business cannot meet its minimum monthly financial obligations, which would be beyond the scope of MRS.

Exhibit #21, page 109

In that language, the denial email set forth the basis for denying Petitioner's request testified to by MRS' witness during the hearing, and argued in MRS' closing brief, *i.e.*, that the requested IPE amendment and additional rent assistance had be denied because they would not result in Petitioner obtaining her specific employment outcome or competitive integrated employment. While it did not use that express language, the denial clearly provided that MRS no longer believed that Petitioner's business could succeed; it was refusing to become a permanent funding source to maintain Petitioner's business; and Petitioner's request to amend her IPE was being denied on those grounds.

The remainder of the denial email only reinforces that finding as the MRS Counselor spent the bulk of the email discussing concerns that Petitioner's business was fragile and dependent on MRS assistance to continue.

Accordingly, MRS denied the requested IPE amendment on the basis that that the requested amendment and services would not result in Petitioner obtaining her specific employment outcome and competitive integrated employment, and Petitioner was provided with sufficient notice of its decision.

Moreover, in making that determination, MRS was correct.

As noted in the denial email, and uncontradicted by Petitioner during the hearing, Petitioner's business was still unable to meet minimum monthly operating expenditures without financial assistance; Petitioner's minimum monthly revolving credit payments were increasing due to interest rate increases by her credit lenders; Petitioner had to reach a settlement with the utility companies, including the establishment of a minimum monthly payment, to prevent her utilities from being shut off; Petitioner lacked the capital to offer the kinds of incentives and promotional content made by competing entities to attract and retain clientele; there would be additional rent increases in the future pursuant to a fee schedule; and Petitioner had been unsuccessful in securing additional loans, grants or funds from other sources due to the amount of debt she already owed.³

None of those factors weighs in favor of finding that Petitioner can achieve competitive integrated employment through her small business and, while additional assistance

³ Petitioner's Business Consultant credibly testified that Petitioner's debt is common for a small business start-up like Petitioner's, but neither her testimony nor Petitioner's testimony addressed MRS' ~~specific concerns about the effect~~ of the debt on Petitioner's ability to secure additional loans, grants, or funds from sources other than MRS.

from MRS might help temporarily, MRS' determination regarding Petitioner's ultimate chance at success was still proper.

As noted in the denial email, any increase in business costs or the loss of a single renter at this time would only place Petitioner's business at further financial risk of failing to meet its operational and minimum monthly expenses while increasing her reliance on MRS.

Moreover, with respect to past assistance from MRS, the denial correctly noted that MRS has provided rental assistance pursuant to agreements between the parties stating that, as discussed above, the approved services would be all that Petitioner needs, but that Petitioner's business is still failing despite that substantial assistance.

Petitioner testified and argued that it was MRS' refusal to provide services, such as marketing assistance, until after Petitioner obtained the Certificate of Occupancy for her building that delayed her progress toward her employment goal. However, that argument is unpersuasive as MRS was only abiding by the specific terms of IPE agreed to by Petitioner.

And, while Petitioner's Business Consultant opined that Petitioner still achieve profitability and competitive integrated employment through her small business with additional assistance from MRS, possibly within months, her general testimony alone is unpersuasive given the remainder of the record; the history of Petitioner's business; and the unlimited nature of the request at issue in this case, where Petitioner is unable to identify a time when, if ever, she might achieve her employment goal.

In her Closing Brief, Petitioner argues that MRS' finding that Petitioner would not be able to achieve competitive integrated employment through her small business is a post hoc justification and unsupported by any evidence of MRS making such a determination in its case notes.

However, as discussed above, the undersigned All finds that a determination regarding Petitioner's ability to achieve competitive integrated employment through her small business is found in the denial sent to her. Additionally, the lack of case notes regarding such a determination is not unexpected given that MRS was either providing the requested rental assistance or gathering information to make a decision on Petitioner's request beforehand.

Petitioner also argues MRS' determination that Petitioner could not reach competitive integrated employment is undermined by the fact that, only two months before MRS supposedly made that determination, MRS agreed to amend Petitioner's IPE to add two months of rent, which it would not do without finding that Petitioner could still achieve competitive integrated employment.

However, the mere fact that MRS approved rental assistance in the past does not require that it continue to approve it going forward and there was additional data arising

in those two months that supported MRS' findings. For example, at the very least, there were two more months of financial statements and two more months of Petitioner failing to reach her employment goal despite receiving the agreed-upon rental assistance from MRS. Moreover, as testified to by MRS' witness, it had also learned that Petitioner would agree to an IPE amendment with certain specified services, and then, almost immediately requested another amendment for more services, which is permitted but does raise concerns about the chances for Petitioner's business. Additionally, Petitioner fails to point to any significant progress during those two months, outside of signing up a single tenant.

Finally, Petitioner argues that, if MRS had determine that Petitioner would not be able to achieve competitive integrated employment through her small business, then its proper course of action should have been to propose amending Petitioner's IPE, which MRS did not do.

However, while it is undisputed that MRS did not raise the issue of amending Petitioner's IPE to address her employment goal, which would be proper under MRS Policy 5150 regarding IPE amendments, the undersigned ALJ does not find its failure to immediately do so to be dispositive or even very probative, given that Petitioner disagreed with MRS' determination; the parties were continuing to talk; and Petitioner soon filed a request for administrative hearing.

Accordingly, for the reasons discussed above, the undersigned ALJ finds that MRS properly denied Petitioner's request to amend her IPE to add vocational rehabilitation services in the form of payments for commercial rent.

DECISION AND ORDER

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