

## ISSUE

Did MRS improperly close Petitioner's case?

## 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 REDACTED of 2018, Petitioner applied for services through MRS. (Exhibit B, page 83).
2. At that time, Petitioner indicated that he wanted a neuropsychological examination because, while doctors had previously found that he had a mental illness, he did not believe he had a mental illness and wanted a new examination to confirm that Petitioner only had a traumatic brain injury (TBI) and post-traumatic stress disorder (PTSD). (Exhibit B, page 84).
3. Petitioner also indicated that he was interested in working in construction as a builder, and that he needed a residential builder's license. (Exhibit B, page 84).
4. Petitioner's application for a residential builder's license had previously been denied by the Bureau of Commercial Services for the Department of Labor & Economic Growth on October 5, 2005. (Exhibit C, pages 94-97).
5. In December of 2018, Petitioner was deemed eligible for services through MRS. (Exhibit B, page 84).
6. Through MRS, Petitioner also underwent a neuropsychological evaluation at Henry Ford Medical Center in REDACTED of 2018. (Exhibit B, page 84).
7. As part of his subsequent 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 B, pages 84-85).

<sup>1</sup> Respondent's exhibits are numbered collectively as pages 1-534, and the AU will refer to those stamped page numbers for ease of convenience in this Decision and Order.

<sup>2</sup> During the hearing, Petitioner did generally reference "documents" that had been attached to an update sent to MOAHR regarding a separate, federal case Petitioner is involved in. However, the documents were not sent to Respondent prior to the deadline for proposed exhibits; Petitioner did not move to admit them; and they were not admitted as exhibits.

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8. The neuropsychologist also found that "cultural incompatibility between [Petitioner] and his providers likely factored into a previous diagnosis of paranoid schizophrenia", and that a diagnoses of PTSD and social anxiety were more appropriate. (Exhibit B, page 85).
9. The neurologist further recommended that Petitioner complete another neuropsychological evaluation in 12 to 18 months. (Exhibit D, page 136).
10. Petitioner subsequently sent objections to both the neurologist and MRS regarding the neuropsychological evaluation report and its findings regarding Petitioner's cognitive ability and a lack of a TBI. (Exhibit B, page 85).
11. MRS began working with Petitioner to obtain a residential builder's license, with assistance including funds to pay for an application and help in requesting accommodations for testing for the license. (Exhibit B, pages 85-87).
12. On REDACTED, 2020, Petitioner took the Michigan Residential Builders Examination. (Exhibit B, page 87).
13. In taking that examination, Petitioner was approved for extended time. (Exhibit B, page 87).
14. Petitioner was not approved for alternative hands-on testing. (Exhibit B, page 87).
15. Petitioner failed the examination he took on REDACTED 2020. (Exhibit B, page 87).
16. In August of 2020, Petitioner requested an administrative hearing with MRS, alleging that it had (1) failed to provide Petitioner with assistance in obtaining a residential builder's license and (2) erred in determining the nature of Petitioner's medical and psychological issues for purposes of eligibility. (Exhibit B, pages 80-83).
17. The case was assigned to the undersigned AU and, following prehearing conferences and motions, a hearing was held on February 24, 2021. (Exhibit B, pages 80-82).
18. On March 22, 2021, the undersigned AU issued a Decision and Order in which he affirmed MRS' actions. (Exhibit B, pages 80-93).
19. Petitioner continued to have an open case with MRS on-and-off over the next few years. (Testimony of Vocational Rehabilitation Counselor).
20. In April of 2024, Petitioner's case with MRS closed due to MRS being unable to contact him. (Exhibit A, page 42; Testimony of Vocational Rehabilitation Counselor).

21. On REDACTED 2024, Petitioner reapplied for services through MRS. (Testimony of Vocational Rehabilitation Counselor).
22. At that time, Petitioner was still seeking assistance in obtaining a residential builder's license. (Testimony of Petitioner).
23. Following Petitioner's new case being opened and Petitioner being determined eligible for services, MRS determined that a new neuropsychological evaluation needed to be completed to redetermine Petitioner's disabilities and barriers for employment. (Exhibit D, page 136; Testimony of Vocational Rehabilitation Counselor).
24. Petitioner has previously completed such an evaluation in 2018, and, while it had been recommended then that Petitioner complete a new assessment in 12 to 18 months, no new assessment had been completed since that time. (Exhibit D, page 136; Testimony of Vocational Rehabilitation Counselor).
25. Petitioner subsequently completed a neuropsychological evaluation with Dr. George Parris. (Exhibit D, page 1; Testimony of Petitioner).
26. Following that evaluation, Dr. Parris diagnosed Petitioner with PTSD and depression. (Exhibit D, page 132).
27. Dr. Parris also concluded that, based on Petitioner's cognitive, emotional, and physical limitations, it is unlikely that Petitioner would be successful in being able to use a builder's license to do home renovation. (Exhibit D, page 132).
28. On August 26, 2024, Petitioner and his Vocational Rehabilitation Counselor discussed the findings in the evaluation report, with Petitioner indicating that he disputed the findings. (Exhibit D, page 132; Testimony of Petitioner).
29. The Vocational Rehabilitation Counselor then indicated that a trial work experience could be completed to assess Petitioner's ability to perform the job functions of his desired employment goal, but Petitioner responded that he did not want to complete any further assessments because he was not in the right frame of mind for them and did not want to give MRS more evidence to use against him. (Exhibit A, pages 132-133; Testimony of Petitioner).
30. On August 28, 2024, Petitioner, his Vocational Rehabilitation Counselor and an MRS Manager held an in-office meeting. (Exhibit D, pages 128-129; Testimony of Petitioner; Testimony of Vocational Rehabilitation Counselor).
31. During that meeting, Petitioner and the representatives for MRS again reviewed the report regarding the recent neuropsychological evaluation Petitioner had undergone, including Dr. Parris' findings regarding Petitioner's diagnoses and his determination that it would be unlikely that Petitioner would be successful in obtaining a residential builder's license. (Exhibit D, page 128; Testimony of Petitioner; Testimony of Vocational Rehabilitation Counselor).

32. The representatives from MRS also indicated that Petitioner's next step would be to complete a work/situational assessment to determine his strengths and weaknesses as it relates to working in a physical environment. (Exhibit D, page 128; Testimony of Petitioner; Testimony of Vocational Rehabilitation Counselor).
33. Petitioner again disputed the diagnoses identified by Dr. Parris and declined to complete any assessments. (Exhibit A, pages 128-129; Testimony of Petitioner).
34. The MRS representatives then advised Petitioner that, if he did not want to move forward with the recommended assessment, MRS would close his case and Petitioner could reapply when ready. (Exhibit A, page 129; Testimony of Petitioner).
35. Petitioner again declined to complete any assessment. (Exhibit D, page 129; Testimony of Petitioner).
36. MRS subsequently set Petitioner written notice that his case was being closed for failure to participate. (Testimony of Petitioner; Testimony of Vocational Rehabilitation Counselor).
37. On September 27, 2024, MRS received a letter from Petitioner dated September 9, 2024, and appealing the closure of his case. (Exhibit A, pages 2, 4-79).

#### 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 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. See Rehabilitation Services Manual (RSM) Policy 3100, page 1; Exhibit G, page 236.

Following the eligibility determination, a vocational needs assessment (VNA) is conducted to determine the goals, nature and scope of rehabilitation services to be included in a client's Individualized Plan for Employment (IPE). See RSM Policy 3275, page 1; Exhibit G, page 253.

Regarding a VNA, MRS policy states in part:

The VNA consists of a comprehensive analysis of the customer's unique strengths, resources, priorities, concerns, abilities, capabilities, and interests. The VNA also includes assessment to determine if there is a need for supported employment or customized employment programming.

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**Vocational Need Assessment (VNA)** — A VNA represents comprehensive evaluations, tests, and assessments of a customer's unique strengths, resources, priorities, concerns, abilities, capabilities, and interests, including the need for supported employment or customized employment services consistent with the informed choice of the customer. Information included in a VNA is required to be current and include information that originates from other programs and providers, collected from the customer and customer's family, and include data from the assessment of eligibility and priority for services.

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## **PROCEDURES**

### **Initiation of VNA**

MRS counselors initiate the VNA in Aware Application status through the collection of existing information obtained through the application and intake process, from resources provided by the customer including treatment providers or other agencies the customer is affiliated with, and vocational rehabilitation counseling activities.

MRS counselors document information that supports the VNA in applicable Aware data/information pages and, when appropriate, complete Aware Actual Service entries summarizing the analysis of collected information. VNA information collected by MRS includes but is not limited to:

- Information collected from the MRS Application.
- Information collected from the MRS Eligibility including disability/medical diagnosis, prognosis, treatment modalities, medications, restrictions, functional limitations, abilities, and capabilities.

Note: Forms to facilitate collection of information include *MRS-4683 Physical Capacities Assessment* and *MRS-2738 Mental Health Report*. This information may also be used to determine MRS Eligibility in alignment with *RSM 3125 -Eligibility Assessment*.

- MRS counselor vocational rehabilitation counseling activities summarized in *Aware - Actual Service* entries.
- Information collected from other agencies with analysis of impact summarized in *Aware - Actual Service entries*.
- MRS staff administered vocational evaluations, testing and assessments, examples include vocational aptitude, interests, personality, interpersonal skills, functional capacity evaluations, personal/social adjustment, and other industry-recognized assessment/evaluation tools used by MRS. With analysis of impact summarized in *Aware - Actual Service* entries.

Includes vocational evaluations facilitated by the Business Network Division (BND) and Michigan Career & Technical Institute (MCTI).

- Educational history, formal and informal.
- Vocational history including work characteristics, traits and job duties.
- Career advancement considerations indicating vocational skills, ability, values, interests, and/or preferences summarized in *Aware - Actual Service entries*.
- Counselor's observations including the need for supported employment or customized employment with analysis summarized in *Aware - Actual Service* entries.
- Transferable Skills Analysis (TSA).
- Note: TSA alone cannot be used to limit the selection of an employment goal as they do not consider cultural and disability-related barriers to employment that may have influenced the selection of previous employment positions.
- Obtainment of Labor Market Information (LMI).

Note: LMI alone cannot be used to rule out an employment goal if it is otherwise consistent with the customer's unique strengths, resources, priorities, concerns, abilities, interests, capabilities, and the customer is willing to relocate to a job market where the particular job is available.

Following the assessment of vocational rehabilitation needs, the process can begin for the development of the IPE. See RSM Policy 5000, page 1; Exhibit G, page 263. 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 RSM Policy 5050, page 1; Exhibit G, page 271.

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 RSM Policy 5000, page 2, Exhibit G, page 264, 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 RSM Policy 5000, pages 2-3; Exhibit G, pages 263-264.

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", RSM Policy 5000, page 3, Exhibit G, page 265, and, if the situation cannot be resolved, the customer may contact the Client Assistance Program or the MRS Rights Representative, see RSM Policy 5000, page 3, Exhibit G, page 265. 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. See RSM Policy 2175, page 1; Exhibit G, page 201.

MRS may also decide to close a case when appropriate, even when the case has not been successfully rehabilitated, including closure due to a failure to participate:

#### PURPOSE

In accordance with state and federal regulations, this policy and procedure outlines processes for case record closure from the Vocational Rehabilitation (VR) program.

#### POLICY

Michigan Rehabilitation Services (MRS) VR case record is closed

when the customer:

- Achieves Competitive Integrated Employment (CIE)
- Does not achieve CIE
- Determined ineligible for services

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PROCEDURES

Final Billing of Authorizations

MRS staff are required to final bill or cancel all authorizations prior to case record closure in accordance with Section 9 of the Rehabilitation Services Manual (RSM).

Categories of Case Record Closure and Documentation Requirements

MRS counselors select from the following 18 program case record closure categories and assure all listed documentation requirements are met prior to case record closure:

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14. Failure to Participate

Aware Administrative Note summarizing customer actions result in inability to continue MRS services. Examples may include repeated failure to keep appointments, participate in assessment, engage in counseling, or other MRS counselor services identified as necessary to develop or support the IPE employment goal.

*RSM 7000, pages 1, 4  
Exhibit G, pages 449, 452*

Here, MRS decided to close Petitioner's case pursuant to the above policies and on the basis that Petitioner failed to participate in services.

In support of that decision, the Vocational Rehabilitation Counselor testified regarding the history of Petitioner's most recent case with MRS and the determination that, while Petitioner was eligible for services, Petitioner would have to undergo further assessments, specifically a work trial assessment, before an IPE could be developed and agreed to. She further testified regarding MRS' basis for requiring further assessment, including the specific recommendation of the doctor who evaluated Petitioner, and why Petitioner's case had to be closed given his refusal to participate in any further assessments. The Vocational Rehabilitation Counselor agreed during her testimony that she does not know the qualifications of the doctor who conducted the neuropsychological evaluation and just knows he is an approved consultant for MRS.

In response, Petitioner testified regarding the assistance he is seeking, i.e., help in getting his builder's license reinstated after it was revoked over twenty years ago, and why he needs the requested assistance, including a refusal by the State to allow Petitioner to qualify for the license through a work trial. He also testified that he has all the required knowledge and skills; and that he is currently on a job and performing all the duties of a contractor.

Petitioner further testified that, for any other job, he would just have to submit a resume and that it is unfair to make him undergo further assessments. He also testified that the neuropsychological report by Dr. Parris is fraudulent, with both Petitioner's diagnoses and abilities misidentified.

Petitioner also testified that, as there is no legitimate basis for requiring further assessments, he refused to participate in the assessment requested by MRS in this case and the case closure was an error.

Given the record and applicable policies in this case, the decision to close Petitioner's case was proper and must be affirmed.

It is undisputed that MRS closed Petitioner's case after Petitioner refused to participate in an assessment that MRS is requiring him to complete to move forward with his case.

As discussed above, MRS may close a case due to a customer's failure to participate resulting in an inability to continue MRS services, with a failure to participate in assessments a specific example of grounds for closure.

MRS policy also provides that, as part of the required vocational need assessment (VNA) process for its customers, information collected by MRS includes MRS staff administered vocational evaluations, testing and assessments.

Moreover, while Petitioner testified that he has all the necessary knowledge and skills to obtain a residential builder's license, the record reflects that MRS was correct to require further assessments prior to moving forward with the IPE process.

Specifically, the record demonstrates that Petitioner's last had a residential builder's license over twenty years ago; that license was revoked; Petitioner's subsequent applications for the license have been denied; MRS previously assisted Petitioner with obtaining the requested license in 2019 and 2020, with no success after Petitioner failed the required examination; and that the most recent neuropsychological report concluded that Petitioner would be unsuccessful in his identified employment goal.

Given that past history, Petitioner's claims regarding his abilities alone are insufficient to complete the VNA and move forward with an IPE; and MRS was correct to require further assessment. Moreover, given Petitioner's refusal to participate in the required assessment, MRS was also correct to close out his case.

To the extent Petitioner still wants services through MRS, he can always reapply and complete the required assessment. At this time however, MRS properly closed out his case given Petitioner's failure to participate and 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**.