

## ISSUE

Petitioner's appeal of MRS' determination to not amend Petitioner's IPE relating to the costs for a vehicle purchase.

## FINDINGS OF FACT

1. Petitioner is diagnosed with Facioscapulohumeral Muscular Dystrophy (FSHD), which results in progressive muscle loss. (Transcript (Tr), p 8.)
2. In 2022, Petitioner started a new job in student accessibility and accommodation services at the University of Michigan. (Tr, pp 10-11.)
3. At the time, Petitioner was using a portable electric wheelchair at work, but the chair was painful and unreliable. (Tr, p 12.) The wheelchair did fit into the back of her vehicle, a Honda Fit, for transportation. (*Id.*)
4. Due to this, Petitioner was evaluated for a custom power wheelchair. (*Id.*) A custom power wheelchair would weigh approximately 400 pounds and would not fit in the back of her vehicle. (Tr, p 13.)
5. On May 9, 2022, Petitioner applied for vocational rehabilitation (VR) services with MRS. (Exhibit 1; Tr, pp 8-9.)
6. Petitioner wrote to her MRS VR Counselor indicating that she was "a wheelchair user seeking support in purchasing a wheelchair accessible vehicle to travel from my home to my job (and vis versa)." (Exhibit 2, p 4.)
7. On July 7, 2022, MRS found that Petitioner was eligible for VR services. (Exhibits 3, 4.)
8. Petitioner's VR counselor referred Petitioner to MRS's business network division (BND) for an assessment. (Tr, p 17.) BND determined that "having access to a wheelchair accessible van will allow [Petitioner] to continue transporting herself to/from work as well as being independent with community mobility." (Exhibit 7, p 124.)
9. Petitioner's first Individualized Plan for Employment (IPE) did not include any services relating to a wheelchair accessible vehicle. (Exhibit 8; Tr, pp 21-22.) Petitioner testified that she signed the IPE because it included other VR services that she needed. (Tr, pp 22-23.)
10. On April 25, 2023, Petitioner received her new power wheelchair but she still did not have a vehicle to transport it in. (Tr, p 24.)

11. On July 14, 2023, Petitioner and her advocate met with her VR Counselor regarding obtaining a wheelchair accessible vehicle. (Tr, p 28.) Petitioner testified that her VR Counselor informed her during this meeting that MRS management had determined that Petitioner would have to pay for the base vehicle and MRS would pay to have it modified. (Tr, p 29.)
12. On February 6, 2024, Petitioner signed a new IPE (Exhibit 9), which included the following provisions:

I am currently in need of a Wheelchair Accessible Vehicle.  
(Exhibit 9, p 144.)

It is my understanding that MRS will contribute \$59,956.50  
toward the cost of vehicle modifications. (Exhibit 9, p 145.)

I am responsible for the cost of purchasing the vehicle to be  
modified (Chassis, plus fees, taxes, and any additional  
items out of this agreement. (Exhibit 9, p 144.)
13. Petitioner testified that based on her discussions with her VR Counselor, she believed she had no choice but to pay for the base vehicle, with MRS then paying to have it modified. (Tr, p 31.)
14. Petitioner's VR Counselor testified that she had no recollection of ever telling Petitioner that she could choose to have MRS pay for any part of the base vehicle. (Tr, p 64.)
15. The VR Counselor's record of services for Petitioner's case does not include any notes explaining how Petitioner exercised informed choice in agreeing to pay for the base vehicle. (Exhibit 5, pp 22-105.)
16. After beginning a new job which involved the review of VR rules and regulations, Petitioner began to question whether MRS had enabled her to exercise informed choice when she agreed to purchase the base vehicle. (Tr, pp 33-34.)
17. On September 17, 2024, Petitioner wrote to MRS asking to amend her IPE because "my financial participation in the IPE was based on erroneous information that MRS provided me regarding transportation related [VR] services." (Exhibit 10; Tr, p 33.)
18. On November 27, 2024, MRS informed Petitioner via email that her request to amend her IPE was denied. (Exhibit 11; Tr, p 34.)
19. On December 18, 2024, Petitioner submitted a request for hearing to MRS seeking review of "MRS's determination that it will not amend my IPE to include costs for the vehicle purchased in connection with the rehabilitation technology in my IPE ..." (Exhibit 12; Tr, pp 34-35.)

## 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." P.L. 105-220 § 100(a)(2). Emphasis added.

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. MRS Policy 3100.

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, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual. 34 CFR 361.45; MRS Policy 3275.

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 of services and providers. The applicant shall be involved in providing and securing existing assessment information to the maximum extent possible. 34 CFR 361.52; MRS Policy 2255; Emphasis added. Clients are responsible for providing information needed to determine eligibility and to develop an IPE. 34 CFR 361.38, 361.46 & 361.57; MRS Policy 2250.

Petitioner argues that MRS failed to enable her to exercise informed choice regarding her financial participation in her VR services as required by federal law. Petitioner argues that under federal regulations, MRS was required to ensure that the vehicle she needed to participate in the vehicular modifications was available to her. Petitioner also argues that under MRS's rules, Petitioner was not required to financially participate in the cost of the vehicle. Petitioner further argues that MRS has an affirmative obligation to provide individuals with the information they need to exercise informed choice about how their VR services are procured. Petitioner argues that her VR Counselor's claim that they discussed a used vehicle is contradicted by the fact that no such discussion is described in the record of services. Finally, Petitioner argues that MRS's retroactive authorization rules do not prohibit amendment of Petitioner's IPE.

Respondent argues that its decision should be affirmed because Petitioner's appeal is time-barred and her request for retroactive authorization is not permitted by law. Respondent argues that Petitioner should have brought her hearing request within 30 days of signing her February 2024 IPE. Respondent argues that even if Petitioner is permitted to bring her appeal, her request for retroactive authorization is not supported by law.

Based upon the foregoing findings of fact and conclusions of law I find that Petitioner has proven, by a preponderance of the evidence, that MRS erred in denying her request to amend her IPE.

The Rehabilitation Act provides that an IPE "shall be developed and implemented in a manner that affords eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the plan, the entity that will provide the vocational rehabilitation services, and the methods used to procure the services, ...." 29 U.S.C. § 722(b)(3)(B); Emphasis added. Federal regulations implementing the Rehabilitation Act also provide that the state must ensure that eligible individuals are allowed to exercise informed choice in determining their VR services by providing them the information needed to make such a choice. 34 CFR 361.52(a); CFR 361.52 (b)(4); Emphasis added. Finally, MRS administrative rules provide that "[t]hroughout the individual's rehabilitation program, every opportunity must be provided to the individual to make informed choices regarding the rehabilitation process." Mich Admin Code R 395.54(3); Emphasis added.

Here, Petitioner was not given enough information by her VR Counselor to make an informed choice about her decision to purchase a base vehicle that MRS would then pay to modify. Instead, Petitioner's VR Counselor *informed* Petitioner that MRS management had determined that Petitioner would have to pay for the base vehicle and MRS would pay to have it modified. (Tr, p 31.) This conclusion is supported by the fact that Petitioner's VR Counselor testified that she had no recollection of ever telling Petitioner that she could choose to have MRS pay for any part of the base vehicle. (Tr, p 64.) Furthermore, Petitioner's VR Counselor did not note in the case record any discussion around informed choice and the purchase of a base vehicle. (Tr, p 64; Exhibit 5, pp 22-105.) Similarly, while Petitioner's VR Counselor may have discussed a used car with Petitioner, she did not note it in the case records. (*Id.*)

Both rehabilitation technology, which includes vehicle modifications, and transportation (which includes vehicles) are available VR services. 34 C.F.R. § 361.48(b)(17); 34 C.F.R. § 361.5(c)(45); and 34 C.F.R. § 361.48(b)(8).) As Petitioner points out, there is no provision in law, policy, or rule that would require Petitioner to pay for a base vehicle to obtain a wheelchair accessible vehicle. In fact, federal regulations limit MRS's ability to require financial participation based on financial need to instances where the agency has specific policies that apply a financial needs test. 34 C.F.R. § 361.54(b)(1); 4 C.F.R. § 361.54(b)(2)(i). The only specific policies MRS has that apply a financial needs test relate to the areas of college and vocational training. Mich Admin Code R 395.72(2). As such, given that a vehicle can be a covered VR service, and the fact that Petitioner's VR counselor never informed Petitioner of this fact, it cannot be said that Petitioner exercised informed choice in agreeing to purchase a base vehicle that MRS then paid to modify.

Respondent's arguments to the contrary are not persuasive. First, Respondent argues that Petitioner's claim is time barred because she needed to bring it within 30 days of her February 2024 IPE. MRS Rule 395.88 provides, in relevant part, "(1) An individual who is dissatisfied with any determination made by MRS concerning the provision of VRS may seek a redetermination of agency action before an impartial hearing officer. (2) The individual must submit a written appeal within 30 calendar days of the agency notice regarding its determination or decision." (Emphasis added.)

Here, Respondent seeks to tie Petitioner's appeal to her February 2024 IPE, but Petitioner is not appealing her February 2024 IPE. At the time Petitioner signed her IPE, she was satisfied with it and had no reason to appeal. It was only after Petitioner started a new job and learned more about informed choice that she began to question what she had agreed to in the February 2024 IPE. So, on September 17, 2024, Petitioner wrote to MRS asking to amend her IPE because "my financial participation in the IPE was based on erroneous information that MRS provided me regarding transportation related [VR] services." (Exhibit 10; Tr, p 33; Emphasis added.)

On November 27, 2024, MRS informed Petitioner via email that her request to amend her IPE was denied, and on December 18, 2024, Petitioner submitted a request for hearing to MRS appealing that notice and that determination. (Exhibits 11, 12; Tr, pp 34-35; Emphasis added.). As such, the "notice" and "determination" Petitioner appealed was MRS's determination on November 27, 2024, to deny her request to amend her IPE. Petitioner's December 18, 2024, request for hearing was well within the 30-day timeline to appeal that determination, so Petitioner's appeal is not time barred. Again, an individual may appeal "any determination" made by MRS and here MRS made a determination in November 2024 to deny Petitioner's request to amend her IPE.

Furthermore, if Respondent's argument was accepted, MRS would be able to circumvent the informed choice requirements of law and policy any time an individual failed to realize within 30 days of signing an IPE that MRS failed to follow informed choice requirements. Clearly, that is not the intent of the Rehabilitation Act or regulations and policy implementing the Act.

Second, Respondent argues that MRS's retroactive authorization rules prohibit amendment of Petitioner's IPE relating to the purchase of the base vehicle. When Petitioner signed her IPE on February 7, 2024, MRS's rule regarding retroactive authorization provided, "Case service expenditures, whether assessment or IPE services, require written authorization by MRS prior to or simultaneously with the initiation of the service. Retroactive authorizations are prohibited." (Mich Admin Code R 395.54(8); see also Resp Exhibit E, p 0034; Emphasis added.) This rule was amended on March 13, 2024 to provide, "Case service expenditures, whether assessment or IPE services, require written authorization by MRS before or simultaneously with the initiation of the service. Retroactive authorizations are allowed if the MRS customer made reasonable efforts to ensure MRS was able to provide the service and failure to authorize payment for services is due to MRS error or delay." (Mich Admin Code R 395.54(8); Emphasis added.)

Here, Respondent argues that retroactive authorizations were not allowed at all when Petitioner signed her IPE in February 2024 because the rule in effect at that time prohibited retroactive authorization under any circumstances. Further, Respondent argues that even if the amended version of R. 395.54(8) is used, a retroactive authorization would not be allowed here because MRS made no error.

However, as Petitioner points out, the policy that should be used is the policy that was in effect at the time the agency decision was made. *Brightmoore Gardens, LLC v. Marijuana Regulatory Agency*, 337 Mich. App. 149, 171, 975 N.W.2d 52, 65 (2021). In this case, it has already been determined that the "notice" and "determination" Petitioner is appealing from was dated November 27, 2024, so the amended version of R 395.54(8) would apply. And, having already determined that Respondent erred in failing to provide Petitioner informed choice when she signed her IPE in February 2024, MRS certainly made an error in authorizing Petitioner's services. As such, a retroactive authorization would not be prohibited in this case.

Therefore, it is determined that Respondent erred in denying Petitioner's request to amend her IPE. Petitioner was not allowed informed choice in her decision to purchase a base vehicle that MRS paid to modify. Petitioner's claim is not time-barred and Petitioner is not prohibited from seeking retroactive authorization.

This All makes no determination as to whether Petitioner is entitled to a retroactive authorization for the cost of the vehicle she purchased as that decision would involve other laws and policies not before the Tribunal. The All only concludes that Petitioner is not barred from seeking such an authorization.

## **DECISION AND ORDER**

For all the reasons stated in the foregoing opinion, MRS's decision to deny Petitioner's request to amend her IPE is **REVERSED**. MRS should amend Petitioner's IPE relating to the costs for a vehicle purchase and allow Petitioner to seek retroactive authorization for that cost.

**This All makes no determination as to whether Petitioner is entitled to a retroactive authorization for the cost of the vehicle she purchased as that decision would involve other laws and policies not before the Tribunal. The ALJ only concludes that Petitioner is not barred from seeking such an authorization.**