

MEMORANDUM

DATE: December 22, 2008

TO: Mr. Ed Tos, Deputy Director
Division of Vocational Rehabilitation

FROM: Daniese McMullin-Powell, Chairperson
State Council for Persons with Disabilities

RE: DVR Order of Selection Policy

I write on behalf of the State Council for Persons with Disabilities (SCPD) regarding the Division of Vocational Rehabilitation's (DVRs) Order of Selection Final Policy (attached). As background, DVR presented an overview of its proposed Order of Selection policy at the October 9, 2008 SCPD P&L Committee meeting. DVR had provided an August 20 draft in early October which formed the basis for an October 8 DLP analysis. Unfortunately, this was a superseded draft. A new draft was reviewed at the October 9 meeting. Both the SCPD and the Governor's Advisory Council for Exceptional Citizens (GACEC) then issued comments resulting in an October 29 memo to the SCPD and November 3 letter to the GACEC. The P&L Committee reviewed the latter documents at its November 13 meeting but deferred further commentary pending receipt of the final policy. Since the final policy has been provided, Council has the following observations.

First, SCPD recommended "fleshing out" the I&R and counseling sections of the policy. DVR indicated in its October 29th memo that "(l)anguage was added to support this requirement." Reliance is also placed on the Disability Navigator Program. Some additional language was added to Section 11.7.

Second, SCPD recommended an explicit recital that the Order of Selection does not affect diagnostic and evaluation services. DVR agreed and added a provision. The recital appears as Section 11.4 b.

Third, SCPD recommended incorporation of an explicit "grandfather" provision for existing clients.

DVR indicated that “this information has been added to the policy”. The “grandfather” provision is incorporated in Section 11.5.

Fourth, SCPD recommended that DVR defer to other State agency findings that an applicant meets SSDI/SSI medical eligibility criteria. DVR declined to adopt this approach, but will use other agency findings as “a resource in making appropriate decisions”. The policy [Sections 11.3 and 11.4c] does not explicitly recite that other agency decisions will be considered.

Fifth, SCPD recommended incorporation of a standard contemplating review of the policy and its implementation by the State Rehabilitation Council. DVR indicates that the SRC was involved in the “development of policies”. DVR did not address prospective review by the SRC to assess implementation. Although the August version of the policy included a reference to SRA review, later editions omit any reference to SRA. This is unfortunate.

Sixth, SCPD recommended inclusion of referral information to the DLP for SSI/SSDI beneficiaries affected by the policy. DVR agreed to “make arrangements to obtain and distribute [DLP] materials with materials from the Client Assistance Program.” Conforming references have been added to Sections 11.4d and 11.6.

Seventh, SCPD identified a potential problem if DVR and DVI orders of selection have different eligibility criteria since disability-based distinctions are barred by RSA regulations. DVR indicates that RSA will review the State Plan amendment for compliance with federal standards. This observation did not contemplate amendment to the policy.

Eighth, SCPD promoted adoption of an objective assessment system and sharing of findings with applicants. DVR responded that “(c)ounselors will document specific information about applicable functional limitations (and)...(c)lients will be informed of the results of these determinations...(and) have access to the record of such determination.” Sections 11.4c and 11.6 envision DVR counselor documentation of the basis for classification and notification of the qualifying category to the applicant. However, the applicant is not provided with the basis for the classification decision which may violate due process. See *Ortiz v. Eichler*, 794 F.2d 889 (3d Cir. 1989). SCPD believes it would enhance the viability of the system if DVR proactively notified the consumer of the basis regarding denial/ineligibility of services. This would be part of the Division’s quality control system.

Ninth, it appears that DVR attempted to address SCPDs suggestion in the October 24 memo that SSI/SSDI beneficiaries be given priority status within categories. In a previous version provided to the Developmental Disabilities Council, DVR did include separate “a” and “b” sections with “a” covering SSDI/SSI beneficiaries and “b” covering non-SSDI/SSI beneficiaries. However, there was no prioritization of “a” over “b”. Therefore, as a “footnote”, SCPD believes that if DVRs intent was to establish prioritization within Category II consistent with Council’s recommendation, the language in the earlier version did not necessarily implement SCPDs suggestion. Currently, Section

11.3, Priority Category II, of the final policy does not incorporate a “distinct” priority status since “RSA took the position that it was inappropriate to use that as a criteria to decide who gets served and who waits”. See attached information.

In summary, SCPD truly appreciates that DVR responded to Council suggestions, incorporated multiple edits prompted by the SCPD commentary and the Division’s willingness to collaborate on this important issue.

Thank you for the opportunity to comment and please contact SCPD if you have any questions or comments regarding our observations on the final policy.

cc: Ms. Andrea Guest
Ms. Harriet Ann Litwin
Mr. Brian Hartman, Esq.
Client Assistance Program
State Rehabilitation Council
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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