

Education and Workforce Development Cabinet
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

RELATES TO: KRS 151B.190, 34 C.F.R. 361.36, 361.53, 361.54, 29 U.S.C. 721(a)(5), (15), (21)(A)

STATUTORY AUTHORITY: KRS 151B.185(2), (3), 151B.195(1), 29 U.S.C. 709(c), 34 C.F.R. 361.36, 361.54

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195(1) requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency. 34 C.F.R. 361.36(c) requires the office to determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection for state vocational rehabilitation services. 34 C.F.R. 361.36(d) establishes federal guidelines for the imposition of an order of selection. 34 C.F.R. 361.54(b) authorizes the office to consider an individual's financial need for vocational rehabilitation services. This administrative regulation establishes when an order of selection and an economic need test shall be applied to the provision of vocational rehabilitation services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions.

- (1) "Eligible individual" means an individual who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services.
- (2) "Executive director" means Executive Director of the Office of Vocational Rehabilitation.
- (3) "Individual with a most significant disability" means an individual who has a ~~[significant] disability that limits two or more areas of functional capacity[and who:]~~
~~[(a)] [Requires intensive long term support to facilitate the performance of work activities or daily living activities on or off the job which would typically be performed independently if the individual did not have a disability; or]~~
~~[(b)] [Has serious limitations in four (4) or more functional capacities in terms of an employment outcome].~~
- (4) "Functional capacity" means the capacity to perform tasks required in employment including:
 - (a) Mobility;
 - (b) Communication;
 - (c) Self-care;
 - (d) Self-direction;
 - (e) Interpersonal skills;
 - (f) Work tolerance; or
 - (g) Work skills.
- (5) "Office" means the Office of Vocational Rehabilitation, and its appropriate staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.
- ~~(6) "Non-significant disability" means a disability that does not limit a functional capacity.~~

Section 2. Economic Need.

- (1) Economic need shall be considered in determining whether to grant vocational rehabilitation services.
- (2) The executive director shall exempt services from the economic needs test if the office is able to provide services to all eligible individuals with significant disabilities pursuant to Section 3 of this administrative regulation, with consideration of applicable comparable benefits as provided in 34 C.F.R. 361.53.
- (3) An economic needs test as established in subsection (5) of this section shall be applied as a condition for furnishing the following vocational rehabilitation services:
 - (a) Physical and mental restoration services;
 - (b) Tuition and registration fees for vocational or college training;
 - (c) Maintenance other than diagnostic;
 - (d) Transportation other than diagnostic;
 - (e) Services, other than diagnostic, to members of an individual's family necessary to the adjustment or rehabilitation of the individual with a disability;
 - (f) Occupational licenses, tools, equipment, or initial stock (including livestock) or supplies;
 - (g) Postemployment services except as provided in subsection (4)(a)-(m) of this section;
 - (h) Other goods and services which can reasonably be expected to benefit an eligible individual in terms of employment outcomes;
 - (i) Initial vehicle and property modifications in excess of \$10,000;
 - (j) Second or subsequent vehicle modifications regardless of cost;
 - (k) Vehicle modification repair or upgrades; or
 - (l) Hearing aid in excess of \$1,000.
- (4) The following services shall be excluded from an economic needs test:
 - (a) Assessment for determining eligibility and vocational rehabilitation needs;
 - (b) Counseling and guidance;
 - (c) Placement;
 - (d) Services provided by staff at state-owned and operated rehabilitation facilities;
 - (e) Rehabilitation technology except as specifically provided in subsection (3) of this section;
 - (f) Communication assistance in the individual's native language;
 - (g) Books, supplies, tools, or equipment for vocational or other training;
 - (h) Supported employment;
 - (i) Interpreter services for the deaf;
 - (j) Reader services for the blind;
 - (k) Personal assistance services;
 - (l) Tutors, note takers, or assistive technology education aids; or
 - (m) Other training, including driver training, on-the-job training, job coaching, job development, or job training.
- (5) The office's economic needs test shall be based on the most current Kentucky Median Adjusted Gross Income developed by the U.S. Department of Commerce. If the individual has a monthly income that exceeds 100 percent of the most current median gross income, the individual shall apply the excess income to rehabilitation services necessary to achieve the employment goal except as provided for in 34 C.F.R. 361.54.

Section 3. Order of Selection. If the executive director determines that the office shall be unable to provide services to all eligible applicants, the office shall implement the order of selection on a state-wide basis.

- (1) An eligible individual previously declared eligible for and receiving vocational rehabilitation services under an individualized plan for employment shall not be affected if the office implements an order of selection.

- (2) The order of selection shall not regulate the provision of information or referral services.
- (3) On implementation of the order of selection, the office shall continue to accept referrals of and applications from individuals with disabilities.
- (4) The order of selection shall not regulate the provision or authorization of assessment for determining eligibility.
- (5) An applicant shall be declared eligible or ineligible as appropriate.
- (6)
- (a) An eligible individual entering accepted status after implementation of the order of selection shall be assigned to a priority category.
 - (b) If the priority category is open, the individual shall be served.
 - (c) If the priority category is closed, the individual's case shall be held on a waitlist in accepted status until the priority category assigned is opened or the order of selection is lifted.
- (7) The order of selection shall permit immediate reclassification into a higher priority category if circumstances justify the reclassification.
- (8) If the office is unable to provide services to all eligible individuals with significant disabilities, the office shall serve eligible individuals with a most significant disability first and then serve eligible individuals with a significant disability on a first-applied, first-served basis, as established by the date of application within a category. If funds become available, the executive director and Statewide Council for Vocational Rehabilitation shall adjust the priority categories to be served as appropriate to provide services to as many consumers as funds allow.
- (9) The order of selection described in this section shall be followed with the categories to be served designated at the time of implementation.
- (10) The order of selection shall have ~~five (5)~~ priority categories as follows:
- (a) Priority Category I - eligible individuals with a most significant disability that limits three (3) or more functional capacities;
 - (b) Priority Category II - eligible individuals with a most significant disability that limits two (2) functional capacities~~[who have serious limitations in three (3) functional capacities]~~;
 - (c) Priority Category III - eligible individuals with a most significant disability that limits (1) one functional capacity~~[who have serious limitations in two (2) functional capacities]~~;
 - (d) Priority Category IV - Eligible individuals with a non-significant~~[significant]~~ disability~~[who have serious limitations in one (1) functional capacity; or]~~
 - ~~[(e)] [Priority Category V] - [eligible individuals with a nonsignificant disability].~~

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians, specifically the order of selection of services and financial need provided for in Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.36, 361.54.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to implement provisions of Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.36, 361.54. (c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of rehabilitation services as set out in, and mandated by, Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.36, 361.54.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

No answer provided.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation provides specific administrative guidance for the implementation of the state's provision of rehabilitation services that establish eligibility priorities, order of selection and economic needs test to applicants and eligible individuals with disabilities as required by Section 721(a)(5) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.36, 361.54.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The proposed amendment is made to align the regulation from the recent merger of the Office of the Blind and the Office for Vocational Rehabilitation. This includes changes to the priority order for eligibility, reducing the number of priority categories which will enhance eligibility for individuals with disabilities in terms of order of selection. This will provide better guidance to individuals with disabilities and clarify the provision of services for more efficient use of limited agency resources.

(b) The necessity of the amendment to this administrative regulation:

The changes made to the regulation were needed to more clearly define the order of selection procedures and eligibility requirements for receiving services. (c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of eligibility and order of selection for providing rehabilitation services to applicants or eligible individuals as necessary for the achievement of a competitive integrated employment outcome.

(c) How the amendment conforms to the content of the authorizing statutes:

No answer provided.

(d) How the amendment will assist in the effective administration of the statutes:

This provides clarification for staff to determine eligibility for individuals with a disability. This amendment provides more specific guidance to individuals with disabilities on what is required to be eligible and obtain vocational rehabilitation services.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Any individual with a disability that applies for vocational services to assist in the achievement of a competitive integrated employment outcome, and all vocational rehabilitation staff statewide that assist disabled individuals with disabilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Agency staff will not have any additional requirements as a result of this amendment. Individuals with a disability will have no different expectations or requirements when applying for services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There are no new costs to staff or individuals with disabilities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Both agency staff and applicants and eligible individuals with disabilities will have a better understanding of the requirements for eligibility for obtaining rehabilitation services to achieve a competitive integrated employment outcome.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

No additional costs are expected.

(b) On a continuing basis:

The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Federal Rehabilitation Funds received by the Office of Vocational Rehabilitation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

There is no increase in fees or funding necessary to implement this amendment to the existing regulation. (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No answer provided.

(9) TIERING: Is tiering applied?

Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Education and Workforce Development Cabinet, Department of Workforce Investment, Office of Vocational Rehabilitation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. § 701 et seq., 29 U.S.C. § 721(a)(5), 34 C.F.R. §§ 361.36, 361.54.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

No revenue will be generated.

(c) How much will it cost to administer this program for the first year?

There shall be no cost associated with this amendment.

(d) How much will it cost to administer this program for subsequent years?

There shall be no cost associated with this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: