EDUCATION AND LABOR CABINET
Department of Workforce Development
Office of Vocational Rehabilitation
(Amended at ARRS Committee)

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

CERTIFICATION STATEMENT:

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) requires 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 disability that limits two (2) or more areas of functional capacity.]~~

~~[(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.

(1) If the executive director determines that the office<u>'s projected fiscal or personnel resources are insufficient</u>~~[shall be unable]~~ to provide <u>the full range of</u> services <u>as required by the Rehabilitation Act of 1973, as amended</u>, to all eligible <u>individuals</u>~~[applicants]~~, the office shall <u>inform the Statewide Council and</u> implement the order of selection on a statewide basis <u>in compliance with 34 C.F.R. **361**~~[**6**]~~**.36**</u>.

(2) ~~[(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 and continue determining eligibility for services.

(4) The order of selection shall not impact[regulate] the provision of information, referral services, 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 first serve [eligible]individuals with the[a] most significant disability in the highest open priority category. Within each priority category, individuals shall be served in order of application date[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].

(6) [(9)] The order of selection established in this section shall be followed with the categories to be served designated at the time of implementation.

(7) The executive director may serve individuals from the waitlist, open, or close one ***(1)*** or more priority categories as appropriate, to provide services to as many individuals as funds allow.

[(10)] [The order of selection shall have 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;]

[(c)] [Priority Category III - eligible individuals with a significant disability that limits (1) one functional capacity;]

[(d)] [Priority Category IV - Eligible individuals with a non-significant disability.]

(781 KAR 001:030. 17 Ky.R. 787; Am. 1497; 1718; eff. 12-7-1990; 19 Ky.R. 517; 949; eff. 11-9-1992; 1432; eff. 2-4-1993; 2323; eff. 6-7-1993; 21 Ky.R. 556; 1151; eff. 11-3-1994; 23 Ky.R. 2283; 2737; eff. 1-9-1997; 3425; 3829; 4128; eff. 6-16-1997; 25 Ky.R. 131; 844; eff. 10-1-1998; 29 Ky.R. 1352; 1793; eff. 1-16-2003; 36 Ky.R. 2232; 37 Ky.R. 362; eff. 9-3-2010; 42 Ky.R. 1614; 2106; eff. 2-5-2016; 48 Ky.R. 1006; 49 Ky.R. 45; eff. 10-4-2022; 52 Ky.R. 1413, 1857, 2063; eff. 7-6-2026.)

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