

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 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.

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.

- (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 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.
- (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 I - eligible individuals with a most significant disability;
 - (b) Priority Category II - eligible individuals with a significant disability who have serious limitations in three (3) functional capacities;
 - (c) Priority Category III - eligible individuals with a significant disability who have serious limitations in two (2) functional capacities;
 - (d) Priority Category IV - eligible individuals with a significant disability who have serious limitations in one (1) functional capacity; or
 - (e) Priority Category V - eligible individuals with a nonsignificant disability.
- (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; Certified to be amended, filing deadline 8-12-2021.)