

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES  
REHABILITATION SERVICES ADMINISTRATION  
WASHINGTON, DC 20202

TECHNICAL ASSISTANCE CIRCULAR  
RSA-TAC-00-01  
Date: February 8, 2000

- ADDRESSEES : STATE VOCATIONAL REHABILITATION AGENCIES (GENERAL)  
STATE VOCATIONAL REHABILITATION AGENCIES (BLIND)  
CLIENT ASSISTANCE PROGRAMS  
REGIONAL REHABILITATION CONTINUING EDUCATION PROGRAMS  
PROJECTS WITH INDUSTRY GRANT RECIPIENTS  
CENTERS FOR INDEPENDENT LIVING  
AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICE  
PROGRAMS  
RSA SENIOR MANAGEMENT TEAM
- SUBJECT : Guidance on Determining Eligibility Under the Projects With Industry Program
- CITATIONS : Section 611(a)(3) of the Rehabilitation Act of 1973, as amended
- CONTENT : Section 611(a)(3)(A) and 611(a)(3)(B) of the Rehabilitation Act of 1973 (Act), as amended by the Rehabilitation Act Amendments of 1998 (1998 Amendments), modified the authority for determining the eligibility of an individual for services under the Projects With Industry (PWI) program and set forth requirements for making such determinations. A recipient of a PWI grant may now elect to make determinations of eligibility without requesting a determination from the State vocational rehabilitation (VR) agency, if its eligibility determinations are appropriate and consistent with the requirements of section 102(a) of the Act.

The Rehabilitation Services Administration (RSA) strongly recommends that, in developing eligibility-related policies and procedures, a PWI grantee consult with its State VR agency and seek the technical assistance of its RSA Regional Office.

Since the determination of eligibility by a PWI grant recipient is a permissive and optional statutory authority, a PWI grantee may elect not to make such determinations and continue to accept individuals who have been determined eligible by the State VR agency. If, however, a PWI grantee determines an individual to be eligible for PWI services, it does not mean that the State VR agency is obligated to recognize that eligibility determination for purposes of the Title I program. If a PWI grantee assesses that an individual may benefit from VR services (which cannot be provided by the PWI project), the PWI grantee is encouraged to refer the individual to the State VR agency for those additional services.

This Technical Assistance Circular provides guidance on how a PWI grantee that elects to make determinations of eligibility can make those determinations consistent with the requirements of both section 102(a) of the Act and the statutory and regulatory requirements governing the PWI program.

### **Eligibility Criteria**

Section 102(a)(1) of the Act identifies the following eligibility criteria for the Title I VR program:

The individual must be an "individual with a disability," as that term is defined in section 7(20)(A) of the Act; and

The individual must require VR services to prepare for, secure, retain, or regain employment.

Section 7(20)(A) of the Act defines the term "individual with a disability" to mean any individual who:

Has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and

Can benefit in terms of an employment outcome from VR services.

The regulations implementing the VR program clarify the terms "physical or mental impairment" and "substantial impediment to employment," which are used in the statutory definition of the term "individual with a disability." These terms are defined in the VR regulations as follows:

**"Physical or mental impairment"** means an injury, disease, or other condition that materially limits, or if not treated is expected to limit mental or physical function. See 34 CFR 361.5(b)(36).

**"Substantial impediment to employment"** means a physical or mental impairment, in light of attendant medical, psychological, vocational, educational, and other related factors, hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities. See 34 CFR 361.5(b)(44).

A PWI grantee that elects to make eligibility determinations must use the statutory criteria identified in section 102(a)(1) of the Act in making such determinations.

### **Presumption of Benefit**

In making the determination of eligibility, a PWI grantee must, consistent with the provisions of section 102(a)(2), presume that an individual with a disability, particularly an individual with a significant disability, is able to benefit from VR services in terms of an employment outcome. This presumption of benefit

extends to all individuals with disabilities and applies to PWI services if the PWI grantee makes the eligibility determination.

The presumption of benefit is a statutory presumption and reflects the intent of the Act that all individuals with disabilities, including individuals with the most significant disabilities, can achieve employment outcomes if adequate and appropriate supports are provided. This statutory presumption of benefit can be overcome only by clear and convincing evidence that unequivocally demonstrates that an individual, is incapable of benefiting from services in terms of an employment outcome because of the significance of the disability. Before the presumption can be rebutted, however, the individual must be provided trial work experiences in realistic work settings (e.g., supported employment or on-the-job settings with appropriate supports) to explore the individual's abilities, capabilities, and capacity to perform in work situations. To generate the necessary information to either support the eligibility criterion that the individual can benefit from services in terms of an employment outcome or rebut the presumption of benefit, the trial work experiences must be sufficiently varied and last an appropriate period of time. PWI grantees must be aware that if they are determining eligibility, all individuals who have a documentable disability, and a substantial impediment to employment, must be presumed to be able to benefit from PWI services. If a PWI grantee feels that an individual cannot benefit from PWI services in terms of an employment outcome, this determination must be documented by evidence from a trial work experience as described above, before that individual can be denied PWI services.

### **Presumption of Eligibility for Social Security Beneficiaries**

If an individual has been determined eligible for Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits, the individual, consistent with section 102(a)(3) of the Act, is presumed eligible for VR services and is also considered to be an "individual with a significant disability," as that term is defined in section 7(21) of the Act. Since the presumption of benefit discussed above also applies to all SSI recipients and SSDI beneficiaries who apply for PWI services, a PWI grantee can, based on evidence that the individual is an eligible SSDI beneficiary or SSI recipient, determine the individual eligible for PWI services without any additional steps or evidence. As with other individuals, however, the presumption of benefit for an SSDI beneficiary or SSI recipient can be rebutted by clear and convincing evidence that such individual, due to the severity of the disability, is incapable of benefiting in terms of an employment outcome from PWI services.

### **Use of Existing Information and Determinations Made by Other Agencies**

Consistent with section 102(a)(4) of the Act, a PWI grantee should, to the maximum extent possible, use existing information that is both current and appropriate in making eligibility determinations. Providers of such information can be other programs, agencies, the individual, the individual's family and other sources. Whether information is current and accurately and adequately describes the present functioning of the individual is a determination that a PWI grantee must make on a case by case basis. Within this context, what is "current" may

differ based on the type of impairment. For example, evidence of a paralyzing spinal cord injury several years old will differ from evidence needed regarding the status of a mental illness. To the extent that the existing information does not describe the current functioning of the individual, or is inadequate or inappropriate to make the eligibility determination, the PWI grantee must either carry out its own assessments or procure the necessary information from other sources.

In making eligibility determinations, a PWI grantee must also use appropriate determinations made by other agencies as evidence of the existence of a mental or physical impairment, a substantial impediment to employment, and the person's ability to benefit from services. When a PWI grantee uses determinations made by other agencies with respect to the various elements of the eligibility criteria identified in section 102(a)(1) of the Act, the grantee must ensure that such determinations were made by appropriately qualified individuals. For example, if a qualified person or team of professionals within a school system has determined that an individual has a diagnosed learning disability, the PWI grantee can accept that determination as evidence that the individual has an impairment.

Although PWI personnel who carry out eligibility determinations are not required to have any specific qualifications, RSA believes that appropriately qualified PWI staff should make determinations of eligibility. Each State VR agency is required to establish and maintain standards for qualified staff that are consistent with the highest requirements in the State application to the specific profession or discipline or the national standards, e.g., a Certified Rehabilitation Counselor. RSA encourages projects to assign personnel who have comparable qualifications to those required by the State VR agency to determine the eligibility of applicants. RSA believes that the assignment to the project of appropriately qualified individuals is in the best interest of not only the individuals to be served but also the PWI grantees.

In support of making an eligibility determination, a PWI grantee must ensure that there is appropriate documentation, such as a medical or psychological report, in an individual's case record to support the existence of the impairment. The case record must also demonstrate how the impairment creates a substantial impediment to employment in terms of the nature and extent of the functional limitations created by the impairment and the impact on the individual's ability to work and the individual's need for services. Suitable information can come from a variety of sources, including the individual, the individual's family, employers or other programs in which the individual has participated. Since the PWI grantee will be collecting personal information about individuals for whom they are determining eligibility for services, strict standards of confidentiality should be maintained for all service records. PWI grantees should be aware that sharing personal information with employers regarding the disability of an individual whom they are serving might be a violation of the Americans with Disabilities Act.

### **Timeframe for Making an Eligibility Determination**

A PWI grantee must make eligibility determinations within a reasonable period of time, not to exceed 60 days, after the individual has applied for services, unless exceptional and unforeseen circumstances beyond the control of the grantee preclude making the determination within that timeframe and the PWI grantee and the individual agree to a specific extension of time. The timeframe for making the eligibility determination can also be exceeded if the PWI grant recipient is exploring an individual's abilities, capabilities, and capacity to perform in work situations.

### **Ineligibility Determinations**

When a PWI grantee makes a determination that an applicant for services is ineligible or an eligible individual receiving services is no longer eligible for services, the individual or, as appropriate, the individual's representative, must be provided an opportunity for consultation in the determination. In addition, the individual or, as appropriate, the individual's representative, must be provided in writing (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual) the reasons for the determination and a description of the services available from the Client Assistance Program and information on how to contact that program.

INQUIRIES: RSA Regional Offices

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Fredric K. Schroeder, Ph.D.  
Commissioner

cc: CSAVR  
NAPAS  
NCIL