

**Chapter 202:  
Eligibility**

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Vermont Division of Vocational Rehabilitation  
Policy and Procedures Manual

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Style Definition: TOC 2

Style Definition: TOC 1

Style Definition: TOC 3

**Chapter 202: Eligibility**

Revised: July 2017

## Section I. Definitions

- A. **“Family member”**, for purposes of receiving vocational rehabilitation services, means an individual:
1. Who either—
    - a) Is a relative or guardian of an applicant or eligible individual; or
    - b) Lives in the same household as an applicant or eligible individual;
  2. Who has a substantial interest in the well-being of that individual; and
  3. Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.
- B. **“Individual’s representative”**, for purposes of receiving vocational rehabilitation services, means a representative chosen by the applicant or eligible individual to act on their behalf, including a parent or other family member, guardian, or advocate, unless a representative has been appointed by a court to represent the individual.
- C. **“Individual with a disability”** means an individual who:
1. Has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
  2. Can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.
- D. **“Individual with a significant disability”** means an individual:
1. Who has a significant physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
  2. Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
  3. Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, ~~mental retardation~~, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, intellectual or developmental disability, specific learning disability, end-stage renal disease, substance use disorder or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.
- E. **“Individual with a most significant disability”** means an individual who:

has been determined by DVR to have a physical or mental impairment that constitutes or results in a substantial impediment to employment and that seriously limits function in four or more areas of functional capacity (mobility, communication, work tolerance, work skills, self-care, self-direction, interpersonal skills, dexterity/coordination), requiring multiple services over a period of six months or more.

- F. **“Requires services”** means that, without provision of vocational rehabilitation services, the individual would not be able to prepare for, obtain, retain, regain, or advance in ~~engag in, reain~~ employment consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.
- G. **“Trial Work Experience”** means supported employment, on the job training, progressive employment training placements and other experiences using realistic integrated work settings.
- H. **“Substantial impediment to employment”** means that a physical or mental impairment (in light of medical, psychological, vocational, educational, and other associated factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with their abilities and capabilities.

## Section II. Prohibited Factors

When determining eligibility for vocational rehabilitation services, the following factors apply or are prohibited:

A. No duration of residence requirement shall be imposed that excludes from services any individual who is present in the state unless they are the is in the United States illegally. DVR may not require an individual to provide documentation of presence in the State that under State or local law, or practical circumstances, results in a de facto duration of residence requirement.

Commented [SB1]: 361.42 (c)(1)

A.B. ~~In addition, DVR cannot prohibit services for an eligible individual present in the state, but whose legal residence is out of state.~~ out of state services for an eligible individual.

### Guidance —

- If a DVR counselor receives an enquiry about DVR services from an individual who lives in another state, it is recommended they ask the individual to contact their State's DVR agency for services. In most circumstances, their local State DVR agency will be best positioned to serve them over Vermont DVR. There may be some exceptions to this general guideline when an individual has connections to the state. For example, if an individual lives in a bordering community and is employed or goes to high school or college in Vermont, it may be more favorable for the individual to receive services serve them through Vermont DVR.

- If the individual is a college student in Vermont but has permanent residence in another state, it is recommended the DVR counselor ~~outconsult with contact~~ the Regional Manager or Field Services Manager. In these circumstances, DVR may develop an agreement with the student's home state DVR agency to open concurrent cases. Under such an agreement, each state may develop an IPE for complementary services. For example, DVR may provide assistive technology and work-based learning services while the student is in Vermont. The home state may provide job placement services once the student returns to that community.

**End Guidance.**

B.C. No individual or group of individuals shall be excluded or found ineligible solely based on the type of disability; and the eligibility requirements must be applied without regard to the:

1. Employment history or current employment status of the individual;
2. Expected employment outcome of the individual;
3. Educational status or current educational credential of the individual;
4. Source of referral for vocational rehabilitation services;
5. Service needs or anticipated cost of services required by the individual;
- 4-6. Income level of the individual or their family; or
- 5-7. Age, gender, gender identity, sexual orientation, race, color, creed, or national origin of the applicant.

**Commented [SB2]:** Not in regulation, but still relevant to include  
34 CFR 361.36 (d)(1)(2)

**Commented [SB3]:** Gender, gender identity, sexual orientation are not found in the Rehab Act. I believe they are still appropriate to include.

**Guidance – Age exception.**

DVR generally will not normally serve individuals persons under age 18 without permission of the parent, guardian, or legal representative (see Chapter 307 306, "Pre-Employment Transition Services (Pre-ETS)" "School to Work Transition" for more information).

**End Guidance.**

**Commented [SB4]:** I moved text related to SUD to Section IC because this section discusses prohibited factors. If you disagree, you can easily move it back.

**Substance Use Disorders**

C. Eligibility requirements shall be applied without regard to the particular service needs or anticipated cost of services required by an applicant or applicant's family.

**Commented [SB5]:** I think this text belongs under the Section IV as it pertains to eligibility not prohibited factors.

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1. Referral of persons with disclosed substance abuse issues will be processed in the usual fashion; there will be no arbitrary waiting period and each case will be evaluated individually. may be eligible for vocational rehabilitation services based on a substance diagnosis made by a psychiatrist, psychologist, medical doctor or certified substance counselor. The usual "Certification of Eligibility/Ineligibility" form will be used in accordance with all of its instructions, including those for determining the significance of the disability. Some possible characteristics for consideration in the eligibility and significance of disability (SD) determinations which may be related

**Commented [SB6]:** I think there should be a header for this section.

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**Commented [SB7]:** Is this still accurate?

~~to substance abuse and which may interfere with employment may fall under: Mobility (slowed reflexes, organic brain damage, gait problems); Interpersonal Skills (mood swings, attitude changes, continued association with active substance abusers, inability to sustain positive personal relationships, having stigma of being a substance abuser); Communication (withdrawal, short attention span, difficulty assimilating information); Self-Care (problems with personal appearance or hygiene, insomnia, oversleeping, memory loss); Self-Direction (poor task completion, difficulty working independently). A review of the information on Substance in the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) may be helpful in making these determinations.~~

- ~~2. has abstained from substance for several years applies for DVR services. Although the person may have a disability present (Eligibility Criterion #1), counselor should determine if a substantial impediment to employment still exists (Eligibility Criterion #2). The counselor should assess if there has been cognitive or physical damage caused by the substance use or if psychological issues are present. This would then lead to a determination of the need for vocational rehabilitation services (Eligibility Criterion #3.)~~

~~In general, who presents with a substance is eligible for VR services based on , provided that the other two criteria of eligibility are met. This is true whether the person is actively using substances or is in recovery. There is no requirement to be in treatment to be eligible for VR services.~~

#### ~~Guidance—Case practice for substance-~~

##### ~~Counseling Issues and Case Practices for individuals with substance disorders:~~

~~Therefore, in 2007 DVR revised policy and guidance around this issue to reflect a more individualized approach. In general, DVR counselors should not treat with substance different or special way than we do for with other disabilities. As with any disability group, DVR services for with substance must be individualized according to needs, goals, challenges and circumstances.~~

~~The above approach does not preclude a DVR counselor from taking into account substance abuse or treatment issues in the rehabilitation counseling process. For example, a counselor may require a consumer enter treatment or demonstrate a period of abstinence before providing paid services, if he/she presents a history of repeated job loss related to substance. This would be no different from the VR counselor a history of job loss that was related to an untreated mental illness or physical illness. However, the VR counselor must assess each person's needs and circumstances. The DVR counselor document in the case record why said conditions are necessary for the teemployment.~~

##### ~~End Guidance.~~

**Commented [SB8]:** The deleted 1st paragraph is outdated. I revised to reflect current policy and expectations.

**Commented [SB9]:** Not sure this belongs here. The focus is eligibility not IPE development.

### Section III. Basic Conditions of Eligibility

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#### Requirements for Eligibility

- A. An individual's eligibility for ~~DVR vocational rehabilitation~~ services shall be based on **all** of the following requirements:
- (1) The ~~applicant must be individual must have with~~ a disability as defined in Section I of this chapter;
  - (2) The individual's disability must:
    - a) Constitute or result in a substantial impediment to employment ~~for the applicant,~~
    - b) Be chronic and persistent, ~~and~~
    - a)c) Ethe benefit of services ~~expected to last at least 6 months,~~ and
  - (3) The individual must require ~~DVR vocational rehabilitation~~ services to prepare for, obtain, retain, regain, or ~~advance in, or regain~~ employment.
- B. There is no entitlement to ~~DVR vocational rehabilitation~~ services even if the individual meets all the requirements for services.
- C. Individuals who meet the basic conditions of eligibility can only start receiving services if they meet the Order of Selection criteria. The Rehabilitation Act requires DVR to prioritize services for individuals with the most severe disabilities when vocational rehabilitation services cannot be provided promptly to all individuals eligible for services. The Order of Selection mechanism assures that those with severe disabilities with more complex needs, and a probable higher cost of services, will not be deferred but rather given priority for services. For more information see Chapter 106, "Order of Selection for Services."

Commented [SB10]: The provisions a) and b) are not in the eligibility requirements in the regulations. Why are they added here? See 34 CFR 361.42 (a)

#### Guidance — Requirements for service.

*Conditions resolvable with treatment such as a short-term injury with a good prognosis for recovery — i.e., a broken bone that will heal without permanent disability resulting, staph infection with hospitalization resulting, knee or hip replacement with no complications, etc. — do not meet the eligibility criteria.*

*An individual who is an "individual with a disability," as defined in Section 1, may still be ineligible for services if they do not require services to ~~achieve~~ an employment outcome. In this case the individual has adequate supports, work experience, and skills to achieve their employment goals and there is no substantial impediment to employment, and they do not require services to prepare for, obtain, retain, regain, or advance in employment.*

#### End Guidance.

### Ability to Benefit from DVR Services and Trial Work Experiences

D. It shall be presumed that an individual can benefit from vocational rehabilitation services unless clear and convincing evidence demonstrates that the individual is incapable of benefiting from such services in terms of an employment outcome ~~and be successful~~ without long-term supports. This does not change the requirement that an individual must require vocational rehabilitation services.

E. Before making an ineligibility determination due to the ~~severity significant nature~~ of the individual's disability, the DVR counselor must:

(1) ~~first~~ Explore the individual's abilities, capabilities, and capacity to perform in realistic work situations ~~through the use of trial work experiences with appropriate supports. The must~~

(2) Develop a written plan to periodically assess the individual's abilities, capabilities, and capacity to perform in typical competitive integrated work situations through the use of Trial Work Experiences (TWE).

F. Trial Work Experiences must be:

(1) In competitive, integrated employment settings to the maximum extent possible;

(2) Consistent with the informed choice and rehabilitation needs of the individual; and

(3) ~~Of Such experiences shall be of~~ sufficient variety and over a sufficient period ~~of time~~ to determine the eligibility of the individual or to determine the existence of clear and convincing evidence that ~~they~~ the is indeed are incapable of benefiting in terms of an employment outcome.

E.G. "Clear and convincing evidence" means the DVR shall have a high degree of certainty before it can conclude that an individual ~~person~~ is incapable of benefiting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in our civil system of law and is to be applied on a case-by-case basis. The term "clear" means unequivocal. Clear and convincing evidence must be based on a functional assessment of the individual's ability to benefit from vocational rehabilitation services through realistic employment settings.

D.H. Although there is no required time limit for this determination, ~~the DVR~~ feels that such ~~an~~ exploration ~~can should be able to~~ be completed within one hundred eighty (180) calendar days of the end of the ~~usual sixty (60) calendar~~ day limit for eligibility – in other words, within two hundred forty (240) calendar days from the date of application. However, more time may be used if needed. It is suggested that local job developers and supported employment programs, if appropriate, be used to locate suitable work settings.

E-I. The case record must contain the rationale for believing the individual may not be able to benefit in terms of an employment outcome, the need for more than the usual sixty (60) calendar days to determine eligibility, and how, using integrated work settings, the determination of eligibility may be made.

F-J. If the trial work experience necessitates going past the sixty (60) calendar day limit from application to eligibility determination/certification, the case status in the DVR case management/data system must ~~should~~ be adjusted to "06" extended evaluation to indicate that a TWE evaluation is in progress. No formal individualized plan ~~must be~~ signed by the individual is required. However, the DVR counselor must develop a written plan noting questions or concerns to be resolved during TWE. They also must -and evaluate and document the information received on each TWE site and compare that against the stated needs.

K. In any instance when a DVR counselor is considering utilizing and extended evaluation/status 06, they must shall consult with their Senior Counselor and/or Regional Manager for guidance around this decision and resulting processes. Extended evaluation. This status may be used when working with an individual who has been consistently unsuccessful in multiple prior employment efforts with DVR. A TWE/trial work experience evaluation will help demonstrate what has or has not changed in their situation before determining eligibility and moving to a status 10/development of an IPE. In other cases, a DVR counselor may choose not to use extended evaluation. Instead this status and instead, they may decide to use -advance a medically eligible to status 10 and use assessments similar to like the TWE/trial work experience as a means of empowering the individual and providing them an opportunity to determine their own ability to move into an Individualized Plan for Employment.

### Individuals with Substance Use Disorder

L. The application for an individual with a disclosed substance use disorder will be processed in the same fashion as that for other disabilities.

1. The individual must meet all basic eligibility criteria set forth in this chapter;
2. There will be no arbitrary waiting period; and
3. Each case will be evaluated individually.

M. An individual may be eligible for vocational rehabilitation services based on a substance use disorder diagnosis made by a psychiatrist, psychologist, medical doctor, or certified substance use disorder counselor.

N. When determining an individual's eligibility for services, including determining the significance of the disability, the DVR counselor needs to consider substance use related characteristics which may interfere with employment. These include, but are not limited to:

1. Mobility (slowed reflexes, organic brain damage, gait problems);

**Commented [SB11]:** Still correct term?

**Commented [SJ12R11]:** yes

**Commented [SB13]:** Should this be mandatory?

**Commented [SJ14R13]:** yes

**Commented [SB15]:** Isn't this duplicative of what you've already stated above?

**Commented [SJ16R15]:** agreed

**Commented [SB17]:** With the removal of the numerical status references, I'm not clear what this paragraph should actually say. I suggest that it may be helpful to consult with Amanda or someone else to make sure the description of the process is consistent with AWARE>

2. Interpersonal Skills (mood swings, attitude changes, continued association with individuals actively engaged in misuse of substances, inability to sustain positive personal relationships, having the stigma of being an individual who misuses substance);
  3. Communication (withdrawal, short attention span, difficulty assimilating information);
  4. Self-Care (problems with personal appearance or hygiene, insomnia, oversleeping, memory loss);
  5. Self-Direction (poor task completion, difficulty working independently).
  6. A review of the information on substance use disorder in the current edition of the DSM (Diagnostic and Statistical Manual of Mental Disorders) may be helpful in making these determinations.
  7. When an individual discloses a substance use disorder but has abstained from misuse of substances for several years, the DVR counselor shall consider the impacts of past substance misuse, including but not limited to, whether there has been cognitive or physical damage caused by the substance misuse or if psychological issues are present.
0. In general, an individual who presents with a substance use disorder is eligible for DVR services based on that diagnosis, provided that all eligibility criteria are met. This is true whether the applicant is actively misusing substances or is in recovery. **There is no requirement to be in treatment to be eligible for DVR services.**

**Guidance – Case practice for substance use disorders.**

DVR counselors cannot treat an individual with a substance use disorder differently than an applicant with another disability. As with any disability group, DVR services for individuals with substance use disorders must be individualized according to their specific needs, goals, challenges, and circumstances.

The above approach does not preclude a DVR counselor from talking with an individual about participating in treatment as part of their IPE. This is part of the rehabilitation counseling process. However, if the consumer declines, the DVR counselor shall consider whether the individual is ineligible for services following the procedures set forth in Section IX of this chapter.

**Example**

An applicant presents with a history of repeated job loss due to substance misuse. At the time of application, they acknowledge current substance misuse. They express no interest in treatment as part of their DVR services. In this instance, the DVR counselor may require the individual to participate in Trial Work Experiences before determining their eligibility for DVR services. This situation is no

*different from the DVR counselor considering a history of job loss that was related to an untreated mental illness or physical illness.*

*However, the DVR counselor must conduct the assessments and determine eligibility based on the individual's needs and circumstances. The DVR counselor must document in the case record why said conditions are necessary for the individual to prepare for, obtain, retain, regain, or advance in employment.*

**End Guidance.**

**Presumptive Eligibility for SSDI and SSI Recipients**

**G.P.** A recipient of Social Security Disability Insurance (SSDI, aka Title II) or Supplemental Security Income (SSI, aka Title XVI) ~~is shall be considered to be an individual~~ with a significant disability and ~~is shall be presumed to be able to benefit from DVR services to be eligible for services.~~ ~~Signing services. Signing~~ an application for services shall be considered as the ~~individual's intent intent~~ to achieve an employment outcome. Trial work experiences (TWE) cannot be used for an eligibility determination for ~~anyone~~ receiving SSI/SSDI benefits. ~~as they are automatically considered medically eligible by meeting presumptive eligibility.~~

**Commented [SB18]:** Is this correct? Or is the SSI/SSDI factor demonstrate that they meet the first prong of disability i.e., person with a significant disability?

**Commented [SJ19R18]:** It should say presumed to benefit from VR services. We might still need medical documentation

**Q.** If a DVR counselor can verify the receipt of SSA benefits via an award letter, copy of deposits from SSA, a Benefit Query or other forms, no additional medical information is needed to find the individual eligible.

**Need for Further Medical Documentation or Functional Data**

**H.R.** From a counseling perspective, further medical documentation will almost always be needed to better understand the individual's strengths, limitations, accommodation needs and to develop a strong plan for employment. In some cases, a DVR counselor may not be able to proceed with development of an IPE if medical information is not obtained.

**Example:** There are serious health consequences that could result from DVR supporting a work goal that is unknowingly in direct opposition to medical recommendations.

**+S.** If the DVR counselor needs further functional assessment data to make an eligibility determination, they may use a Trial Work Experience, ~~excluding SSI/SSDI beneficiaries.~~

**Commented [SB20]:** Aren't TWEs only one type of assessment? DVR counselors can also seek functional assessments from other sources, correct? If so, this paragraph needs further revision.

**Section IV. Using Existing Information**

A. Existing data, including DVR counselor observation, shall be used whenever possible to expedite the determination of eligibility. Existing information may include medical and psychological records, education records, information provided by the individual or their family members, information used by the Social Security Administration, and determinations made by officials of other agencies involved with individuals with disabilities.

### Guidance — Examples of counselor observation.

Examples of DVR counselor observation might include:

- An individual who is clearly deaf and uses an ASL interpreter.
- An individual who presents with a significant and observable physical disability.

### Guidance — How to solicit and interpret existing information.

Information furnished by the individual or their family may be very useful in determining eligibility. Such information need not be in writing but may be responses to pertinent questions such as: "How does your disability affect your ability to work?" and "What types of services do you think you need to get past the disability and get to work?" Information furnished by the individual also may include their physical presence and/or behaviors as observed by the DVR counselor.

Determination ~~Certification~~ of eligibility may be made immediately based on information furnished by the individual or a family member if the DVR counselor feels that a disability exists which is a substantial impediment to employment and that the individual requires services for work. The DVR counselor must then obtain medical information supporting the information used to ~~determine~~ certify the individual eligible for services. Additional information to develop a good plan of services may be gathered after eligibility has been determined if both the individual seeking services and the DVR counselor ~~agree~~ feel it may be helpful.

The rationale for using existing data is to streamline the eligibility process and to expedite access to services. Decisions regarding whether and how specific data are to be used must be made on a case-by-case basis, and while the accuracy and timeliness of existing data are important factors in determining their usefulness, older data can be used if still pertinent.

Information from sources other than education and Social Security officials may be used to expedite the eligibility determination process. Examples are the individual's personal physician, a previous or current employer, an insurance company, an advocate or representative of the individual, and any organization or individual suggested by the individual seeking services. Other sources may include mental health and developmental disabilities agencies, Medicaid and Medicare agencies, Workers' Compensation, and other programs that require that a "disability" be established as a condition for receiving services.

### End Guidance.

B. ~~If to the extent~~ existing information does not describe the current functioning of the individual or it is unavailable, insufficient, or inappropriate to make an eligibility determination, the DVR counselor ~~must~~ will obtain additional information to determine eligibility. This includes, but is not limited to, ~~procure and assess whatever~~ examinations,

Commented [SB21]: Still, correct? Does AWARE Change this in some way?

Commented [SJ22R21]: No

tests, assessments, etc. (including assistive technology devices/services, trial work experiences, personal assistance services and any other support services) that are necessary to determine whether a person is eligible. ~~assistive technology devices/services, trial work experiences, personal assistance services, and other support services.~~

~~B. When determining eligibility, the DVR counselor should assess if there has been cognitive or physical damage caused by the substance use or if psychological issues are present~~

**Commented [SB23]:** Not sure why this is needed here since the factors are addressed in the paragraph above.  
**Commented [SJ24R23]:** Agree I think it can be deleted

### Section V. ~~may~~ Factors and Decisions in Determining Eligibility

#### Determining Primary vs. Secondary Disability

A. The primary disability impedes function significantly and the secondary disability impedes function to a lesser degree. Function in this case is related to work tasks and work tolerance. This determination is often derived from the ~~individual's~~ stated experience, but in some cases the ~~DVR~~ counselor may determine the primary disability based on intensity of related service need.

#### Guidance — Need for primary and secondary disability determination.

Is a Secondary Disability required?

*No, the disabling conditions that impact the ~~individual's~~ ability to work should be reflected but there is no requirement to have two conditions listed.*

If the medical diagnosis changes, should the ~~Certification Determination of Eligibility/Ineligibility form~~ be amended?

*No. The ~~determination of eligibility certification~~ represents ~~the information used to determine the individual's initial eligibility for DVR services. That decision -what the person was found eligible for at the time of certification~~ and does not need to be amended ~~if a medical diagnosis changes~~. Changes in the ~~individual's~~ circumstances and medical condition ~~must should~~ be documented in ~~the case record notes~~ and updated medical documents.*

**Commented [SB25]:** Must be documented?  
**Commented [SJ26R25]:** yes

Can a diagnosis related to substance ~~use disorder abuse or dependence~~ be used as a source for a primary or secondary disability?

- Substance ~~use abuse or dependence disorder~~ can be used as either a primary or secondary disability depending on how much it impacts ~~the individual's functioning~~.
- When ~~determining eligibility certifying for~~ someone ~~with using a~~ substance ~~use disorder abuse~~ diagnosis, consider whether this

diagnosis is presenting a current and significant barrier to employment.

- In the instance when someone is in recovery and there are no current barriers to employment, the individual may still meet eligibility criteria. This may be an example of a priority IVH case and could be discussed with a Senior Counselor or Regional Manager.

**End Guidance.**

**Determining Type ~~and Source Based on Impact~~ of Disability**

B. DVR counselors should use their discretion in determining the disability category and specific disability within in DVR's case management system. These determinations must be based on observations, medical information, and the individual's report, including symptoms that most impair their ability to work. Differentiation based on the individual's experience is encouraged.

~~should use their own discretion to determine the type and source based on information they have from observations, medical information, and report. First, consider how the disabling condition impacts the and then make an educated determination of which type code is most appropriate. Differentiation based on the person's experience is encouraged.~~

The type and source may be different from one to the next even when the medical diagnosis is the same. Multiple sclerosis could be considered type 10 (mobility orthopedic), type 11 (manipulation/dexterity orthopedic), or type 12 (mobility/manipulation/dexterity orthopedic) depending on the experience of the neurological disorder. If the primarily suffers from lack of coordination and muscle stiffness that impairs dexterity, then type 11 is appropriate. If the experiences numbness and weakness in limbs, unsteady gait, and muscle stiffness which impairs mobility then type 10 is appropriate. Also consider which symptoms most impair the ability to work to help determine the most applicable type code.

**Determining Functional Capacity**

B.C. It is important for DVR counselors to consider how the individual interprets their functional strengths and limitations in relation to their disability/disabling condition. Determination of eligibility or ineligibility. Completing this section of the Certification of Eligibility/Ineligibility Form by establishing/determining functional loss based on the individual's experience is more helpful/accurate than only referring to what is typical of a particular medical diagnosis.

**Guidance**

*One individual experiences suffers from depression and states they have difficulty with irritability and bouts of crying but are managing self-care and*

**Commented [SB27]:** Deleted guidance because could not effectively convert language so that it is consistent with what AWARE seeks for data. If someone has specific guidance or examples that illustrates what AWARE requires, we can add that. Perhaps one of the DVR counselors on the P&P can provide guidance.

**Commented [SB28]:** These revisions based on consultation with Amanda A and Alice P.

**Commented [SB29]:** What does type and source mean? Is it type of disability and source of information?

**Commented [AA(30R29)]:** See screen shot in my email. Type and source used to be the language on our old eligibility forms but that is not the language used in Aware. The screen shot shows the language used on the Eligibility determination page in Aware.

direction just fine. ~~Another second person experiences suffers from~~ depression and is having difficulty getting out of bed, paying bills, and initiating action. The Functional Capacity section should be completed differently for these two individuals even though the diagnosis is the same.

**End Guidance**

D. When considering the individual's mobility as part of the eligibility determination process~~section of the Certification form~~, DVR counselors ~~need to will~~ determine if mobility limitations are present ~~as a result~~ because of the disabling condition(s).

**Guidance**

This section is not intended to capture limited mobility because of a criminal suspension or legal limitations. If criminal involvement does impact an individual's~~their~~ access to transportation, this would not be used as an eligibility criterion, but rather an aspect of their plan for employment to assist with this barrier if possible.

**End Guidance**

**Identifying Potential Services on the Certification Form**

G.E. DVR counselors must~~will~~ consider whether:

- (1) ~~These are services that a counselor believes~~ Services will be required to support the individual in moving toward employment in addition to counseling and guidance.
- (2) ~~The services checked off are should be~~ reflected in~~within an individual's IPE and to~~ demonstrate the support being offered by DVR or in collaboration with a partner agency, or community partner.
- (3) ~~Extended~~The period of time (6 months or more): If a individual requires need multiple services ~~and the benefit from the provision of services will not extend for over a period of fewer than six (6) months, or more~~ This would be considered a Priority IV case under Order of Selection. When an individual is placed in Priority IV, they are not able to receive paid services, including counseling and guidance, which include counseling and guidance, until permission is provided by the State Rehabilitation Council (SRC) and DVR management on an annual basis.

**Section VI. Timeframe for Determining Eligibility**

A. The eligibility determination shall be made as soon as possible but no later than sixty (60) calendar days after the individual has applied for services. Exceptions to this 60-day timeframe may occur only if:

- (1) Exceptional and unforeseen circumstances beyond the control of the DVR preclude a determination within sixty (60) days and the individual and the DVR agree to a specific extension of time. In this circumstance, the reason for the delay and the

**Commented [SB31]:** Is there actually a form? What would the appropriate reference be given AWARE?

**Commented [SJ32R31]:** There is a page in AWARE no form

**Commented [AA(33R31):** Agreed. I think leaving it as "Identifying Potential Services" makes most sense given the structure in Aware

specific date the eligibility determination certification will be made/completed **must** be documented in the case record; or

(2) The DVR counselor believes/feels that, that DVR may not be able to make an eligibility determination within the sixty (60) day timeline due to the severity/significance of the individual's disability and the need to:

- a) Determine whether the individual can benefit in terms of an employment outcome and implementation of an IPE; and plan
- a) Explore the individual's abilities, capabilities, and capacity to perform in competitive integrated work settings, including trial work experiences, will exceed the 60 day timeframe.
- b)

***Guidance – Timeframes for determining eligibility.***

The need to use sixty (60) calendar days to determine eligibility should be rare. In some cases, written information from other sources to determine existence of a disability and ultimate eligibility may not be needed. In the absence of newly written materials from other sources, a DVR counselor may determine that an individual's disability makes them eligible for services as soon as the initial meeting. This determination may be made in many situations such as the following:

- The individual has received services on a prior occasion and information in -their case record of services remains pertinent, is available, and will become part of the new record; or
- Information from another source adequate to fulfill the eligibility criteria is known to exist, is attainable, and has been requested from that source; or
- The disability is obvious to the DVR counselor (as well as to any other reasonable person).

If medical/psychological data from another source is not in the record, the DVR counselor must describe the functional limitations posed by the disability and how they interfere with gainful work.

***End Guidance***

(3) If more than sixty (60) days are/is needed, the case record of services must/should document/indicate;

- a) The reason(s),
- b) The specific date by which the eligibility determination certification will be made/completed, and
- c) The person agrees to the delay.

***Guidance***

~~Determination Certification~~ of eligibility means that an IPE can be developed and that services can begin. Each case may fall into one of three types:

#### Fast Track

In some situations, the IPE may be written at the same time as ~~eligibility is determined~~~~certification~~. Those situations are:

- ~~The individual~~ is known to ~~DVR~~~~the Division~~, disability-related data are present or easily attainable, and the ~~employment~~~~vocational~~ goal, services needed, and resources are known and attainable.
- The ~~individual~~ is new to the ~~DVR~~, but other features in the example above are the same, and the ~~DVR~~ counselor and individual feel comfortable with proceeding.

#### Plan Development and Implementation

In some situations, more time is needed for gathering information and for planning. ~~For example:~~

- The ~~individual~~ has acquired a disability and must change jobs but doesn't know how, to what type of job, etc. Aptitude testing, counseling and guidance, and referral to pertinent resources may be the only services needed to identify a suitable direction and write an IPE.
- The ~~individual~~ receives Workers' Compensation and must work through the Workers' Compensation "protocol" for returning to work. An IPE may be written with counseling and guidance re: Workers' Compensation rules and working through the protocol in collaboration with a private rehabilitation worker as the initial service. The IPE may be amended later if necessary.

#### Information and Extensive Support

In other situations, more time is needed for planning as well as service delivery. ~~For example:~~

- The ~~individual~~ has no work history and very significant disabilities. A series of evaluations and trial ~~work experiences~~ will be needed to identify ~~an employment~~~~vocational~~ goal. It is known from the start that long-term involvement may be needed.
- The ~~individual~~ has excellent work and educational histories but has recently ~~acquired a disability~~~~become disabled~~. Although the ~~individual~~ may be able to resume ~~their~~ former job with accommodations and assistive technology, ~~they~~ will likely need multiple services over an extended period of time.

#### End Guidance.

## Section VII. Citizenship

DVR services are available to individuals who are U.S. citizens or are eligible non-citizens. Eligible non-citizens are those who are authorized to work in the United States. DVR cannot provide services to an individual who+ does not meet these requirements.

## Section VIII. Data for Service Priority under Order of Selection for Services (OSS)

- A. If operating under an order of selection for services (See Chapter 106, “Order of Selection for Services”), the DVR shall base its priority assignments on:
1. A review of the data developed to make the eligibility determination; and
  2. An assessment of additional data to the extent necessary.
- B. **An applicant cannot move to plan status or receive any paid services including counseling and guidance if they are determined eligible in an OSS Priority Category that is not open** (see Chapter 106, “Order of Selection for Services”).

## Section IX. Ineligibility Determinations

If ~~the DVR~~ determines that an applicant is ineligible for services ~~or determines that a person receiving services under an IPE is no longer eligible~~, ~~the DVR~~ shall:

**Commented [SB34]:** Does this clause belong in this chapter. It is covered in Chapter 204.

**Commented [SJ35R34]:** I think it is ok to have both places

- A. Make the determination only after providing an opportunity for full consultation with the ~~or individual or~~, as appropriate, the individual's representative;
- B. Inform the individual of their ineligibility. The decision shall be in writing and supplemented as needed by other appropriate modes of communication consistent with the needs and informed choice of the individual. The written notice of ineligibility must include: determination, including
1. The reasons for the that determination,
  2. The requirements under this section, and
  3. How the individual can may express and seek remedy for any dissatisfaction. This includes, including the procedures for review of a determination by the DVR counselor, throughby way of mediation, administrative review, and/or fair hearing. (See, set forth in Chapter 105, “Appeals Process”).
- C. Provide the individual with a description of services available from the Client Assistance Program (CAP) and information on how to contact that program; ~~and~~
- D. Refer the individual to:
1. Other programs that can address the individual's training or employment-related needs; or

2. ~~Independent living programs and extended employment providers best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue or is incapable of achieving an employment outcome.~~

Commented [SB36]: See 34 CFR 361.43 (d)

E. Review the individual's eligibility within twelve (12) months and annually thereafter ~~if~~:

1. Requested by the individual or, if appropriate, by the individual's representative; ~~and~~

2. ~~The~~ any ineligibility determination ~~was hat is~~ based on a finding that the individual is incapable of achieving an employment outcome.

This review need not be conducted in situations in which the individual has refused it, is no longer present in the state, whose whereabouts is unknown, or whose medical condition is rapidly progressive or terminal.

#### Section X. Closure without Eligibility Determination

A. The DVR may not close an individual's case record ~~of services~~ prior to making an eligibility determination unless:

(1) ~~the~~ The individual declines to participate in vocational rehabilitation services, or

(2) The individual is unavailable to complete an assessment for determining eligibility and priority for services, and

(3) ~~The~~ DVR has made a reasonable number of attempts to contact the individual (or, if appropriate, their ~~applicant's~~ representative) to encourage the individual's participation.

The term "reasonable number of attempts" is defined as at least three (3) attempts. Contact may be made by any combination of communication methods, including by mail, email, telephone, and/or another mode of communication available to the individual. At least one contact must be in writing (text, email, or mail).

Commented [SB37]: This is the text from the definition of reasonable attempts from Chapter 204 case closure.