

Summary of Vocational Rehabilitation Rights: Eligibility for Services

A Self-Advocacy Guide

5025 E. Washington
Suite 202
Phoenix, AZ 85034-2005
602-274-6287 (voice or TTY)
800-927-2260 (toll free)
602-274-6779 (fax)

100 North Stone Avenue
Suite 305
Tucson, AZ 85701
520-327-9547 (voice)
800-327-7754 (TTY)
800-922-1447 (toll free)
520- 884-0992 (fax)

www.azdisabilitylaw.org
center@azdisabilitylaw.org

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Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

This guide is available in alternative formats upon request.

**Summary of Your Vocational Rehabilitation (VR) Rights:
Eligibility for Services**

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A. Introduction to CAP and this Guide

1. How the Arizona Center for Disability Law's Client Assistance Program Assists VR Clients/Applicants with Disabilities

Sometimes people don't agree with decisions made by agencies. It can often be difficult to solve disagreements without help. The Arizona Center for Disability Law has a program to assist you with your vocational rehabilitation problems. The Client Assistance Program (CAP) offers help to clients and those applying for services under the Rehabilitation Act of 1973, as amended by the Rehabilitation Amendments of 1998. CAP is able to assist you by:

- ✓ informing you of available benefits under the Rehabilitation Act;
- ✓ advising you about ways to solve problems with your vocational rehabilitation counselor;
- ✓ providing training on your rights under the Rehabilitation Act; and
- ✓ as appropriate, representing you in negotiations with RSA and RSA service providers, and at administrative reviews, mediation, fair hearings and lawsuits under the Rehabilitation Act.

Information about the eligibility requirements and priorities are available from the Center upon request. Assistance is provided according to program eligibility requirements, priorities and staff availability.

Eligibility: If you are an individual with a disability and are currently a client or applicant for services under the Rehabilitation Act (VR services, independent living services, or services through a VR service provider), contact CAP if:

- ✓ You are denied the right to apply for services;
- ✓ You are found ineligible for services and you believe that you should be provided the services;
- ✓ You have a disagreement about your Individual Plan for Employment (I.P.E.) or a service or decision affecting your I.P.E.;
- ✓ You disagree with the decision by VR to close your case;
- ✓ You disagree with the decision by VR not to provide a Post Employment Service

(P.E.S.); or

- ✓ You do not understand your rights or the services available to you under the Rehabilitation Act.

2. Glossary of Terms: The following is a list of the meaning of numerous words that relate to your VR services and appeal rights. Most of these terms are explained in more detail in this guide or in one of the Center's other guides on VR rights.

Administrative Review: An optional informal way to try and solve disagreements with your vocational rehabilitation counselor. The review is conducted by a supervisor that is not directly responsible for the work of your VR counselor or his supervisor. A written decision is issued. If you are not satisfied with that decision, you have the right to request a fair hearing. For more information about this way to resolve disputes, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Extended Evaluation: (See Trial Work Experience). There will be limited circumstances where an individual cannot participate in a trial work experience and in these cases, RSA must conduct an extended evaluation. This evaluation must be consistent with the rehabilitation needs of the individual and must be based on the informed choice of the individual.

Fair Hearing: A formal hearing conducted by an administrative law judge (or hearing officer) to hear and decide disputes between the Rehabilitation Services Administration (RSA) and clients and applicants. For more information about the fair hearing process, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Hearing Officer: An administrative law judge who will conduct the fair hearing and issue a written decision after the fair hearing. For more information about the qualifications and powers of a hearing officer, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Individual Plan for Employment (I.P.E.): A document that is agreed upon by the client and the vocational rehabilitation counselor which states the client's employment goal and the services necessary to reach that goal. For more information about the contents of an I.P.E., see

the Center's guide, *Summary of Your VR Rights: The Individual Plan for Employment*.

Mediation: An informal way to try and resolve a dispute about your I.P.E. with the Rehabilitation Services Administration. Mediation is conducted by an impartial and trained mediator who listens to both sides and tries to help the parties reach an agreement satisfying to both parties. The mediator is not a decision maker. If the mediation is successful, a written mediation agreement is prepared. For more information about mediation, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Personal Assistance Services: The term "personal assistance services" means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

Rehabilitation Act: A federal law that was passed in 1973 and updated several times, including in 1998, which gives rights to clients and applicants of VR services to reach an employment goal. The Rehabilitation Act outlines the rights of clients and the responsibility of the state in providing vocational rehabilitation services for people with disabilities.

Rehabilitation Services Administration (RSA): The state agency created to provide vocational rehabilitation services to qualified people with disabilities. Sometimes VR and RSA are used to describe the same state agency. (In this guide, RSA will be used to refer to the agency.)

Representative: A friend, family member, advocate, attorney, or person knowledgeable about your rights that assists you at any informal or formal hearing to appeal a dispute with RSA. For more information about your right to have a representative, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

State Reviewing Official: The Director of the Arizona Department of Economic Security who may, upon the request of either party who does not win the fair hearing, review and change the decision of the hearing officer. For more information about when and how a state reviewing official can change a hearing officer's decision, see the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Transition Services: The term "transition services" means a coordinated set of activities

for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. These services are primarily the responsibility of the school district, but RSA is a participant where appropriate. For more information about your rights as a student with a disability to receive transition planning and services, see the Center's guide, *Transition Services*.

Trial Work Experience: If there is a question about a client's ability to benefit from VR services, VR must develop a written plan for the purpose of exploring the client's abilities, capabilities, and capacity to perform in a realistic work situation called a trial work experience. This can include supported employment, on-the-job training, and experiences using realistic work settings. The experience must fit the client's abilities and accommodate his/her needs. The outcome of the experience is to either provide evidence that the person can or cannot benefit from VR services in terms of an employment outcome due to the severity of the person's disability.

Vocational Rehabilitation (VR) Services: Services that are available to a VR client who needs them to reach his/her employment goal on the I.P.E. including but not limited to assessment for eligibility, counseling and guidance, training, transportation, interpreters, readers, note takers, telecommunication aids and devices, job placement, job coaching, technology services, etc.

Vocational Rehabilitation (VR) Counselor: An individual assigned to assist you in developing your I.P.E. and obtaining the services necessary to reach the employment goal of your I.P.E, including vocational counseling.

Written Notice: A letter or other written document that must be provided to a client when RSA closes a VR case or suspends, stops, or reduces a VR service. This letter must also be provided to an applicant when RSA refuses to provide services. See the Center's guide, *Your*

3. List of Acronyms

| | |
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| AT: | Assistive Technology |
| ADA: | The Americans with Disabilities Act |
| CAP: | Client Assistance Program |
| IDEA: | Individuals with Disabilities Education Act |
| IPE: | Individualized Plan for Employment (formerly known as IWRP: Individualized Written Rehabilitation Plan) |
| RSA: | Rehabilitation Services Administration |
| SSDI: | Social Security Disability Insurance |
| SSI: | Supplemental Security Income |
| TWIA: | Ticket to Work Improvement & Incentive Act |
| VR: | Vocational Rehabilitation |
| WIA: | Workforce Investment Act |

B. Commonly Asked Questions about Eligibility for VR Services

This goal of the Vocational Rehabilitation (VR) Program is to help eligible individuals get jobs or become self-employed so that they can earn enough money to be financially independent or, at least, to decrease the need for public disability benefits. Anyone with a disability living in the State of Arizona may apply for VR services.

1. What are the basic requirements to be eligible for VR services?

Federal law requires that a determination be made by qualified personnel that:

- you have a physical or mental impairment;
- your physical or mental impairment is or results in a substantial barrier to employment;

- you need vocational rehabilitation services to prepare for, secure, retain or regain employment related to your unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice.

Because of a commitment by the federal government to provide VR services, the law presumes you can benefit from VR services and become employed. RSA must show by clear and convincing evidence (a heavy burden) that you cannot become employed before denying you VR services.

2. What is meant by “a substantial impediment to employment?”

This means that because of your disability you have limitations, either physical, mental, sensory or emotional, that currently prevent you from being employed. These are known as functional limitations and may include, but are not limited to:

- visual impairment that is less than 20/20 visual acuity with glasses;
- environmental sensitivity that is so severe you have difficulty working around fragrances, fumes, grass, or chemicals;
- a heart condition, that prevents you from standing longer than 15 minutes at a time;
- a seizure disorder, that causes you to have seizures three times a week and cannot work around heavy equipment as you used to do before seizures; or
- obsessive compulsive disorder which makes it difficult to finish your job on time each day.

3. What does physical or mental disability mean to RSA?

A physical disability or mental disability means any physical impairment or condition or mental health diagnosis that prevents someone from working. The physical condition, such as a missing limb, injured back, seizure disorder, would need to be documented by a licensed physician. A mental health diagnosis, such as bipolar disorder, anxiety disorder or depression requires certification by a licensed psychiatrist or psychologist. However, see Question #7 and

its answer regarding automatic eligibility for people who qualify for SSI or SSDI.

4. How do I apply for VR services?

The first step is to fill out an application. Many offices have group meetings for applicants to apply for services. At the meeting, your group will be shown how to fill out an application. There are some important things to remember about the application process. For your application to be considered:

- ✓ the application form needs to be completed and signed,
- ✓ you must provide information necessary to start an assessment to determine eligibility, and
- ✓ you are available to complete the assessment process.

If, because of your disability, you cannot fill out and sign an application, RSA must allow you to apply in a different way.

Application forms are available statewide. You can call any RSA office listed in the blue government pages of your telephone directory listed under Arizona Department of Economic Security - Rehabilitation Services Administration.

5. Where do I apply for VR services?

You can apply at any RSA office listed in the blue government pages of your telephone directory under Arizona Department of Economic Security – Rehabilitation Services Administration.

6. Am I required to apply at the office closest to my home?

No. You may apply at any RSA office in the state. However, for your convenience, you most likely will want to apply for RSA services at an office close to your home. One reason for applying at an office that is not as close to your home is to be assigned to a specialist counselor. In Arizona, RSA has some counselors who specialize in working with clients with specific conditions, such as those who are deaf, hard of hearing, blind, visually impaired, developmentally disabled, and have serious psychiatric disabilities.

7. If I am receiving social security benefits, am I automatically eligible for services?

Yes. Any applicant who has been determined eligible for Social Security benefits (SSI or SSDI) is automatically considered a person with a significant disability. If you receive or are eligible to receive SSI or SSDI, you should bring proof with you when you fill out your application for VR services, such as a determination letter or copy of a benefits check. If you are unable to, the VR counselor is responsible for checking with SSA to make sure you do receive SSI or SSDI benefits. Once eligibility for SSDI/SSI is proven, then RSA must make you automatically eligible for services. You may still need an evaluation about the type and amount of services RSA should provide. See the Center's guide, *A Summary of your VR Rights: Evaluations*.

8. How long does my VR counselor have to determine whether I am eligible for VR services?

Federal Law requires the VR counselor find you eligible or ineligible for VR services within **60 days from the date you applied**. RSA may take longer if there are circumstances beyond their control that delay the decision. If this is the case, your VR counselor must discuss the delay with you and get your permission to take a longer time. If your eligibility is not decided within sixty days, you can appeal. See the Center's Guide: *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

Greg applied for VR services on January 5, 2000. On March 10, 2000 Greg called his VR Counselor wanting to discuss his employment goals. His counselor told him that he was still determining Greg's eligibility for VR services. Greg had cooperated all along in the application process. At this point, Greg can ask for mediation or use other steps in the appeals process to appeal the delay.

9. Do I have to be a resident of the state for any specific length of time to be eligible for VR services?

No. RSA cannot impose any duration of residency requirement. This simply means that RSA cannot refuse to serve you because you have not lived in Arizona for a specific time, such as six months or one year. These restrictions would violate federal law. For example, if you move to Arizona on December 1, 2000, you can apply for VR services on December 2, 2000.

10. Are there age limits to receive VR services?

Generally speaking, no. You need to have an employment outcome as your goal and meet the other eligibility requirements, but there is no minimum or maximum age for eligibility. Schools are primarily responsible for special education transition services, vocational education and career counseling of all eligible students with disabilities. However, RSA is a partner in transition services for youth in special education who also qualify for VR services. Under federal law, RSA and schools must develop agreements to determine each agency's responsibilities to youth in transition. For more information about transition services in school, see the Center's guide: *Transition Services*.

11. What documentation does my VR counselor need to see to decide whether I am eligible for VR services?

The VR counselor should review and consider:

- medical records,
- counselor observations,
- education records,

- information about your condition provided by you or your family, and
- any determinations made by officials of other agencies (i.e. social security disability determination, workers' compensation records of permanent injury, high school special education records, etc.)

If the information does not describe your current functioning or is unavailable, the counselor may also consider:

- evaluations paid for by RSA
- trial work experiences (e.g. supported employment or on-the-job training)
- assessments for use of assistive technology devices and services
- personal assistance services
- other support services necessary to determine whether you are eligible

12. If I am considered severely disabled by the Social Security Administration, will VR be able to help me?

To be eligible you must also be able to benefit from VR services to reach an employment outcome. VR must assume you are disabled and able to benefit from VR services. If RSA suspects that you cannot reach an employment goal after VR services, RSA must explore your abilities, capabilities and capacity to perform in a realistic work situation.

To do this, RSA must:

- develop a written plan to assess your abilities, capabilities and capacity to perform in work situations through the use of trial experiences;
- provide trial experiences in the most integrated setting possible (which means working with people who are not disabled to the greatest extent possible); or
- provide trial experiences related to your needs and interests.

If after a trial work experience it appears you can reach an employment goal, RSA must provide you with services.

When trial work experiences have failed or are not an option for you, you will be placed in an extended evaluation period. During an extended evaluation period, the following will happen:

- VR services must be provided in the most integrated setting possible.
- VR must develop a written plan for providing services necessary to make a determination of eligibility.
- VR need only provide those services necessary to make an eligibility determination and will terminate the extended evaluation services when they are able to make the determination.

13. If I am significantly disabled, will I automatically be put in an extended evaluation?

No, not if VR determines you can reach an employment goal without their services. RSA cannot legally put you in an extended work evaluation unless you are unable to take advantage of trial work experiences or have exhausted all options for trial work experiences. Your VR counselor must first attempt trial work experiences with you before putting you in an extended evaluation period. If you believe you have been put in an extended evaluation before you were offered appropriate trial work experiences, you can appeal the decision. See the Center's Guide: *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

14. On what basis can RSA find me ineligible for services?

You must meet three requirements to be eligible: (1) you must have a disability, (2) the disability must be a barrier to finding employment, and (3) you must be able to benefit from VR services to reach an employment goal. So if you do not have a disability or if your disability is not a barrier to employment, you will be found ineligible. The definition of disability is a physical or mental impairment that limits a major life activity.

However, RSA has a heavy burden if they want to deny you eligibility because you would be unable to benefit from VR services. RSA must be able to provide clear and convincing evidence that you are unable to benefit from VR services to reach an employment outcome. This means VR must do the following before finding you ineligible:

- provide appropriate assessments, including assistive technology;
- provide trial work experiences as previously described; and

- provide an extended evaluation period.

If after that RSA believes that you cannot benefit from services to reach a goal, RSA can find you ineligible.

15. What can I do to make the application process go smoother?

You can make the process go better if you:

- bring your application to the initial interview with everything completed as best you can;
- bring documentation of your disability when you go in for your initial interview;
- (if you do not have documentation of your disability), bring your physician's/psychiatrist's name, address and phone number with you;
- (if you are receiving SSI or SSDI), bring along a letter from the Social Security Administration (you will be automatically eligible if you currently receive or have been awarded SSI or SSDI);
- bring your social security card, driver's license or other identification with you to the interview;
- ask questions, if you do not understand something; and
- if you need an accommodation (such as an ASL interpreter), let the counselor know **before** you arrive for the interview.

16. What should I do if RSA refuses to accept my application for VR services?

You have the right to apply for services. Even if RSA decides you are not eligible for services, you will get information about how to appeal the decision. So it is important that you not give up your right to apply. You may use all of the appeal procedures available and file an appeal with RSA if you are denied an opportunity to apply. You can also call the Center to see if CAP staff can be of assistance. Before asking for a formal appeal, you have many different informal options. See the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*.

17. What happens if I am found ineligible for VR services?

Your VR counselor needs to:

- meet with you and fully explain why you have been found ineligible;
- inform you in writing about the decision and, if necessary, also use other means of communication to provide you with the decision;
- the written notice must include:
 - the ineligibility determination, including reasons for the decision,
 - your appeal rights,
 - the means by which you may appeal the decision, and
 - a description of services provided by the Client Assistance Program
- refer you to other training or employment-related programs that are part of the One-Stop service delivery system; and
- review within 12 months any decision that is based on a finding that you are incapable of achieving an employment outcome. (If you want RSA to review the decision, it is best if you put that request in writing.)

If all of these steps are not followed in your case, you have the right to require RSA to take these steps. See the Center's guide, *Your Appeal Rights for Disputes about Vocational Rehabilitation Services*, for more information about your rights.

C. Protect Your Rights

For many VR applicants, the process goes smoothly without any problems. However, if any of the following happens to you, you should call CAP for advice or get other legal advice if:

- RSA refuses to take your application;
- RSA does not provide you with a necessary accommodation to apply (i.e., reader, interpreter, large print application)
- RSA does not make you automatically eligible when you prove SSI/SSDI eligibility;
- RSA takes longer than 60 days to process your application;
- RSA ignores important medical information you have about your disability;
- RSA finds you ineligible;

- RSA find you ineligible because of a severe disability without giving you a trial work period or if that is unsuccessful, an extended evaluation;
- RSA places you in an extended evaluation before attempting to use the trial work experiences;
- RSA fails to provide you written notice regarding ineligibility; or
- RSA provides you written notice but does not include all the necessary information.

D. Other Legal Services Offered by the Center

The Arizona Center for Disability Law also helps people with disabilities in these other types of problems:

- Preventing and remedying abuse and neglect of individuals in mental health facilities, nursing homes, community provider residences and schools;
- Ensuring appropriate discharge planning from mental health facilities and access to appropriate mental health services;
- Enforcing the right to a free appropriate public education for children with developmental disabilities;
- Advocating for the right to appropriate health care, assistive technology and other services for individuals with disabilities;
- Remedying housing discrimination against individuals with disabilities under the Fair Housing Act; or
- Remedying discrimination by enforcing the Americans with Disabilities Act including:
 - advocating for a greater accessibility to public places, businesses and governmental offices and services;
 - promoting integration and equality in public services and programs; and
 - employment rights for individuals with disabilities.

The Center provides the following types of services:

- Information on legal rights;
- Representation of individuals in selected cases for negotiations, administrative

proceedings and court;

- Investigate incidents of abuse and neglect;
- Brings impact litigation to remedy systemic problems; or
- Provides technical assistance to groups and individuals on disability-related legal issues.