

would allow him to meet the above requirement) despite repeated attempts to seek employment in his field. In spite of assistance in the past from the Vocational Rehabilitation Division of the State of New York, the petitioner has only been able to obtain temporary jobs as an accountant, usually through an intermediary such as a temporary employment agency.

3. The evidence shows that the petitioner's job performance has been satisfactory during these short stints and that he possesses the necessary professional skills to work as an accountant. The petitioner did not need any special equipment to successfully complete his temporary placements.

4. The process of obtaining employment with an accounting firm or corporate accounting office is a highly competitive one which requires certain basic credentials (such as training and certification) and which takes into account qualifications such as academic performance and class rank as well as other more subjective criteria such as professional demeanor and the ability to communicate and work with others. The petitioner has sent his resume to many accounting firms seeking employment but only occasionally is even granted an interview. The petitioner believes that his failure to get interviews or to obtain employment is based on the fact that it took him longer than usual to obtain his degree, (five years full-time for the M.B.A.) that his performance was not outstanding (B average) and that he lacks professional recommendations. In

addition, the many years which have passed without meaningful employment in his field continues to exacerbate his ability to obtain employment. Finally, the petitioner believes that his inability to communicate well in a social context has put people off in interviews. He describes his inability to break into a job and prove that he can do it as his biggest obstacle to employment.

5. The petitioner has several learning and emotional problems which stem from early childhood. He has been medically evaluated on many occasions and the medical evidence clearly indicates that the petitioner suffers from a learning disability which affects his ability to take in and process auditory information and which interferes with his ability to organize and remember information. He also has a high degree of distractibility and an inability to communicate effectively in English as indicated by his frequent misuse of words, backwards writing, misspelling of common words and slowness in processing written work. Nevertheless, the petitioner is a bright person with many strong aptitudes, especially in mechanical and mathematic ability and organizing and perceiving visual material. These strengths are in large part credited as the reason he has achieved the level of success he has. In spite of his disabilities, he was able to complete his master's degree although it took him five years instead of the usual two, and although he needed a series of accommodations such as getting extra time for projects, the use of tape recorders, computers and calculators to avoid auditory input and extra

help with organization. He was able to pass his Board exam in a normal number of sittings through accommodations allowing for extra time and use of computers during testing.

6. The petitioner also suffers from long term depression and an obsessive compulsive personality disorder which is either the result of or at least intertwined with his learning disability. Professionals who have assessed him, including his current treating psychotherapist, have identified his characterological and emotional problems as being the primary, or at least initial, hurdle to his obtaining employment. That is because his personality disorder manifests itself in ways which directly interfere with his social and occupational success, such as his inability to initiate rapport, deal tactfully with people, and follow other's leads. He also is perceived to be excessive in terms of persistence and demands.

Psychotherapy to deal with these problems has been felt to be essential by nearly all professionals who have dealt with him in the past and he has made a good deal of progress in the last year with therapy. His current treating therapist believes that due to long term therapy his current psychological state is not now "so severe that it would keep him from holding a job if he could find one".

7. Even though the petitioner's personality disorders are the most obvious impediment to his employment, the most persuasive medical evidence indicates that the psychological

problems will not be alleviated until the underlying or accompanying learning disability is dealt with as well. Only then will the petitioner be able to fully engage in some sort of gainful activity which is commensurate with his skills and abilities. The treatment trend in the past has been toward compensatory techniques applied to his actual situation and some general remediation. A recent evaluating psychologist (Dr. Grudge) described compensatory techniques with regard to his communication ability as "more likely to be productive than attempting to improve general or global writing skills". He continued that the petitioner needs "support in the area of job placement which specific jobs can then be evaluated for the purpose of assisting the employer to understand and help with compensating for the petitioner's difficulties." The medical evidence developed by the Department offers no clear picture as to whether remediation is actually helpful to the petitioner with one evaluating psychologist even suggesting that it might be "too late" for that.

8. In April of 1990, the petitioner applied for services from the Vermont Division of Vocational Rehabilitation asking for assistance in getting an entry level professional job as an accountant. The petitioner was then evaluated by the Department over a period of about six months using both written assessments previously done by the New York Department of Vocational Rehabilitation and some

new ones purchased by them. The Department concluded from these evaluations that the petitioner met the criteria for eligibility on October 1, 1990 primarily because of an "obsessive-compulsive personality disorder" and secondarily because of "developmental receptive language disorder".

9. The petitioner was provided with a certificate of eligibility which detailed his handicaps, established the functional limitations, and generally laid out the services to be provided and the expectations for both parties. A copy of that document is attached hereto as Exhibit One and incorporated herein by reference. On October 10, 1990, the petitioner was presented with a proposed written rehabilitation plan which is attached hereto as Exhibit Two and incorporated herein by reference.

10. In essence, the Department determined that the petitioner had general difficulty in reading and writing English and language functioning; restricted mobility and capacity for exertion due to his obesity; special vocational barriers due to his brief work history, presentation to employers, need for employment accommodations; and finally, severe personality problems which would interfere with his ability to cooperate with rehabilitation efforts and to perform his job duties. With regard to his physical problems, the petitioner was found to need the services of a doctor to monitor his weight, and blood glucose monitoring after his employment. He was also referred to Overeaters

Anonymous. His psychological problems, including intrusive and demanding behavior, were identified as his greatest barrier and were to be addressed by individual and group psychotherapy. Some of these services were to be paid for by V.R. and some through the petitioner's wife's health insurance. With regard to vocational barriers, the petitioner was also offered job interviewing training and referral to agencies involved in job referrals, advocacy and mediation with or for him with an employer to clarify job performance, and assistance in deferring loans and cash assistance with paying for future professional testing and certification. The petitioner was not offered any remedial services with regard to his learning disabilities but was offered up to \$3,000.00 of support for goods or services needed to perform as an accountant including leased adaptive equipment to compensate for his deficits for a three month period to allow him to demonstrate his ability to retain employment with a possibility of future purchase. These latter services, however, would only be provided once the petitioner had obtained employment.

11. The petitioner rejected the plan because it did not offer remedial services for his learning disability, did not provide him with adaptive equipment which he feels he needs before getting a job, and did not provide for sufficient assistance with job placement. The petitioner requested an administrative review which was held in March

of 1991.

12. Specifically, the petitioner feels he needs equipment beyond that of an ordinary accountant which will present information in a visual and empirical way. He has asked for a large screen computer monitor (and a larger computer to drive it), a pocket tape recorder with low distortion for recording instructions, spell check, grammar check and a voice in/voice out feature for his computer. He feels that he will be able to do a better job and meet production norms if he has this equipment which is estimated to cost about \$30,000.00. (\$15,000.00 for the hardware, and \$15,000.00 for the software.) The petitioner also believes that he needs both remediation in communicating and extra help in obtaining a job because his interviewing skills and general communication abilities are so weak. He would like V.R. to find the jobs, knock on the door, present his resume, explain his situation and guarantee that he will be supported in his endeavor.

13. After an administrative review, the Department agreed to renegotiate and modify the plan with the petitioner by adding ten sessions in neurolinguistic training, although it still takes the position that the learning disabilities are a minor problem which do not seriously impair his ability to obtain employment. The Department points to his ability to finish a master's degree, a board test and perform in his field when employed

in support of its position. It also takes the position (after having the matter reviewed by a rehabilitation engineer) that the petitioner, who already has a computer, does not need further adaptive equipment to get a job although it agrees some equipment may be needed to retain employment if and when he succeeds in obtaining the same and the employer does not choose to provide it. The Department would review the request for equipment after employment with a \$3,000.00 limit in mind, (\$2,500.00 for equipment and \$500.00 for engineering services). The Department believes it is most appropriate to compensate for the problems which the petitioner finds at the workplace rather than focus on remediation in the abstract.

14. The petitioner rejected this "final offer" (which is attached as Exhibit Three and incorporated by reference herein) of the Department and refused to sign the plan. His rejection was taken as a refusal of services and prompted the Department to close his case. When he appealed that decision his case was reopened pending the outcome.

15. The petitioner is resistant to suggestions that he take lower level jobs such as bookkeeping or clerical jobs because he has skills which overqualify him for these jobs and because he needs meaningful accounting work to actually become certified as an accountant. He is also worried that he has large student loans to pay and that he is not currently getting a deferment because he is not actually

participating in a V.R. program. He blames the Department for not getting him a deferral pending the resolution of this matter but has not made it clear what request or refusals have been made along these lines.

16. In preparation for the appeal, the petitioner hired a consultant who is a psychologist and expert in the field of special education to evaluate his needs and to propose a plan for future "treatment of his disabilities". In addition to psychotherapy and physical health services, she recommended language therapy, cognitive training and neurolinguistic programming on a weekly basis for at least a year to remediate the petitioner's program. At approximately \$60.00 per session, the psychologist estimated that these services would cost something under \$10,000.00 for one year and may need to be extended beyond that. The psychologist did not testify, however, why these specific services might be necessary to the petitioner's obtaining employment as an accountant nor did she testify to the likelihood that they would successfully prepare the petitioner to take a job in accounting. Neither did she say why the Department's current proposals to provide neurolinguistic training were inadequate. She did not compare her plan to that of compensatory services matched to a specific job although she indicated in her report that clear delineation of a career should occur before "expenditure of a great deal of time and money in equipment

that is more specifically geared or oriented to one type of employment". It cannot be found, therefore, based upon the above testimony that the recommended remedial services are necessary to the petitioner's either obtaining or retaining employment.

17. Based on all the above evidence, it is found that the petitioner needs psychotherapy on an ongoing basis in order to minimize the serious impact of his personality disorder or his ability to obtain and retain employment.

18. It is also found that the Department has failed to identify the extent of the petitioner's learning disability and the impact it is likely to have on his employment. The evidence indicates that the petitioner may very well need compensation on remedial services to perform a specific job but his ability to perform such jobs in the past without such services makes it inappropriate to conclude at present that he does. Such assessment will have to be done by the Department after it fully identifies his disabilities and may ultimately only be accurately determined in the context of any actual job he may get.

19. The evidence clearly shows that in spite of years of trying and the assistance of V.R. in New York the petitioner has and will very likely continue to have a serious problem with obtaining employment. It is found that the petitioner cannot obtain employment without the Department's intervention in identifying and developing jobs

for him and persuading suitable employers to take a chance on him. All the parties agree that the petitioner's most obvious problem is obtaining an opportunity to show that he can, with or without further assistance, do the job. The petitioner has serious professional obstacles in his lack of a work history which will undoubtedly only be overcome with the direct assistance and backing of V.R. through its contacts with potential employers and networking ability. After all these years of attempt and failure, the petitioner can no longer be expected to obtain a job through his own efforts or even with the background support of the Department.

ORDER

The Individual Written Rehabilitation Program is found to be inadequate and is remanded to the Department to make modifications in accordance with the above findings. Specifically, in addition to the services already proposed (including the neurolinguistic training in the amended I.W.R.P.) the I.W.R.P. must:

1. More fully and accurately describe the petitioner's learning disability and the impact it will have on his employment as an accountant by incorporating information contained in existing medical and psychological reports.
2. Offer services to either remediate or compensate for any identified limitations caused by his learning

disorder, the specifics of which may need to be deferred until the petitioner actually obtains employment and faces particular problems.

3. Offer placement services which involve a greater level of counselor assistance including, but not limited to, direct contact with potential employers, job development and appearance at interviews with the client to overcome the substantial handicap presented by the petitioner's long term interview failure and lack of work experience. The counselor assigned to this case should be a person knowledgeable in both learning and emotional disorders.

4. The petitioner's request that he be granted specific computer equipment and remedial courses totaling about \$40,000.00 should be denied at the present time because the petitioner has yet to show that any of those services are necessary to his obtaining and retaining employment.

REASONS

The Department of Vocational Rehabilitation has adopted regulations for carrying out the mandates of 29 U.S.C. § 701 et. seq., the federal statute whose goal is "to develop and implement, through research, training services, and the guarantee of equal opportunity, comprehensive and coordinated programs of vocational rehabilitation and independent living". The Department's regulations require that as part of the certification of eligibility process,

disabilities be documented and functional limitations which present substantial handicaps to employment be identified. V.R. Manual 107.2. The regulations also explicitly recognize that substantial handicaps to employment may exist due to "related factors such as . . . educational or experience deficits, . . . and unstable work record". V.R. 107.1(2). Once eligibility is determined, a plan must be set up with services which can meet those needs. V.R. 110 and 112.

By regulation, each plan for regular services must contain a placement service as "placement in suitable employment is the goal toward which the entire rehabilitation effort is aimed". V.R. 120.2. The types of placement services range from guiding and referring clients to appropriate jobs all the way to the identification of potential employers and the development of specific jobs for clients. V.R. 120.3.

The regulations give the Department the authority to determine the appropriate service to meet the need and place ceilings on the duration and cost of medical services and equipment. See V.R. 116.8 (medical services) (\$65.00 per session and a maximum of 10 sessions, but no cap if extension is warranted) and V.R. 305.5 (equipment to be capped at \$2,500.00). Exceptions may be made to these ceilings if certain conditions are met which relate to their necessity to obtain or maintain employment and the

reasonableness of doing so. See V.R. 116.8(F) and V.R. 305.7(2).

In this case, the Department has not thoroughly identified the extent of the petitioner's learning disability and how it may impact upon his employability. While the Department may be correct in its assessment that the petitioner's personality disorder is the principal obstacle to his obtaining employment, his other disabling problems cannot be ignored, both because they may be causing his personality disorder and because they themselves may have some impact. The regulations cited above clearly require that the disabilities correctly and thoroughly identified and assessed in terms of their impact on employability.

Once the petitioner's functional deficits due to his learning disability have been identified, the Department will have to determine how they can be ameliorated. The evidence at present does not make it entirely clear how these deficits will impact on the petitioner's employment as an accountant. On the one hand it is clear that the petitioner had difficulty in school due to his learning disability. On the other hand it is very unclear whether these disabilities have posed significant problems for the petitioner in performing as an accountant for short periods in the past. The exact impact and remedy may not become clear until such time as the petitioner gets a specific

accounting job. Certainly his need for "state of the art" computer equipment cannot be determined until he gets a particular job and knows what equipment his employer might make available to him.

There is probably little doubt that the computer equipment and perhaps even the remedial services requested by the petitioner would make it easier to do his job. The petitioner, however, has presented no legal authority that V.R. is required to purchase services which makes a job easier for the petitioner. The provision of those services by V.R. hinges by law upon whether they are "necessary" to the petitioner's obtaining or retaining employment. 29 U.S.C. § 723. It cannot be said based on the evidence here that the services requested by the petitioner are "necessary" to that end.

It can be found, however, that the provision of some more intensive placement services is necessary for the petitioner to obtain employment. The evidence clearly shows that the petitioner has had no success in persuading anyone to employ him as an accountant on a permanent basis in spite of his qualifications and many attempts over a number of years. The Department has already identified his lack of experience and work history as a serious obstacle to the petitioner's employment, as well as his lack of interpersonal skills. As such, the Department's plan to provide interviewing training and referrals to him as a

placement tool falls woefully short of what he needs. The Department has the authority to and can provide job development and placement services to the petitioner and should do so. The counselor's belief that it is inappropriate to intervene with employers for persons with professional skills may be a good general proposition but it is not an idea which is viable in a case as extreme as this one. It is appropriate and essential for the Department to be extremely involved in finding and persuading an employer either in government, non-profit or private sectors, to employ the petitioner as an accountant. The Department clearly has the authority and the obligation to do so. V.R. 120.3

Finally, the petitioner has argued that the Department has failed to provide his creditors with verification of his involvement with V.R. for the purpose of the deferment of his loans. The I.W.R.P. shows that that Department has agreed, and presumably will still agree, to do this for the petitioner. However, the petitioner's refusal to agree to or sign the I.W.R.P. has essentially tied the Department's hands with regard to providing any service or verifying that he is a V.R. program participant. Certainly the petitioner could have requested that the Department verify that he had applied and been accepted for services and was involved in an appeal regarding his vocational program. However, there is no evidence that he ever made such a request of the

Department. Therefore, it cannot be concluded that the Department's actions were wrongful in this regard.

PROPOSED RULINGS ON DEPARTMENT'S
REQUEST FOR FINDINGS OF FACT

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Eligibility of individuals for services criteria are found in this section.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. This is a legal argument, not a finding of fact.
The hearing officer disagrees that job development is not part of services which V.R. can offer under its regulations. See V.R. 120.3
12. Granted.
13. Granted.
14. This is a legal argument, not a finding of fact.
However, it does appear to be supported by the regulations.
15. Granted as to all but the first sentence which is not entirely factually correct. Standards for waiving maximums are specifically set forth in the

V.R. regulations.

16. Granted.
17. Granted.
- 18a. Granted as to the first three sentences but denied as to the final sentence. This represents a legal argument rather than a factual finding. There is no \$1,300.00 CAP in Regulation 116.8E
- 18b. Granted.
19. Granted.
20. Granted.
21. Granted.
22. Granted.
23. Granted.
24. Granted.

PROPOSED RULINGS ON DEPARTMENT'S REQUEST FOR RULINGS OF LAW

1. Granted.
2. Denied - there is no dollar cap on such therapy in the regulations.
3. Denied in that it failed to fully identify the extent of petitioner's learning disability, its impact upon his employment and the services which may be needed to ameliorate the problems; and in that it failed to provide services necessary to assist the petitioner in obtaining employment.

4. Granted with the qualification that the petitioner has failed to show that he needs such services at present but may be able to do so when he obtains employment and his needs are better delineated.
5. Denied. The great weight of credible evidence indicates that the petitioner's personality disorder stems from the long term effects of his learning disability and that the underlying disability needs to be treated along with the personality disorder and may pose substantial problems as well.
6. Granted.

RULINGS ON THE PETITIONER'S PROPOSED FINDINGS OF FACT

1. Granted.
2. Granted.
3. Granted.
4. Granted.
5. Granted.
6. Granted.
7. Granted with the clarification that the therapist still feels that his emotional problems interfere with his social and occupational success.
8. Granted.
9. Granted.

10. Granted.
11. Granted.
12. Granted although he also made definite findings that certain of the petitioner's goals, such as a computer dictionary, could be met with less expensive hardware and software.
13. Granted.
14. Granted.
15. Granted.
16. Granted.
17. Denied. The first sentence reflects the petitioner's opinion but the hearing officer does not recall any testimony with regard to the Technology Act Loan.
18. Granted.
19. Granted.
20. Granted.

CONCLUSION OF LAW

- a. Granted.
- b. Granted.
- c. Denied.
- d. Granted as to the first and third sentence.
Denied as to the second sentence.
- e. Denied.
- f. Denied.

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