

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,561

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Appeal of)

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INTRODUCTION

The petitioner appeals the alleged failure of the Department of Vocational Rehabilitation hereafter, the Department, to implement the Board's order dated March 26, 1992, in a prior appeal by the petitioner (Fair Hearing No. 10,711).⁽¹⁾

FINDINGS OF FACT

1. On March 23, 1992, following appeal by the petitioner and a hearing on the matter, the Board determined that the Individualized Written Rehabilitation Program prepared by the Department with regard to the petitioner was inadequate and remanded the case to the Department to modify the I.W.R.P. as directed in the decision. A copy of that decision is attached hereto as Exhibit One and incorporated herein by reference.
2. Pursuant to that decision, the petitioner's case was assigned to an experienced vocational rehabilitation counselor who has a bachelor's degree in human development and advanced degrees, certifications or specializations in vocational development, rehabilitation counseling and special education.
3. The counselor working with the petitioner and an "accommodation team" composed of an expert in computer technology, an expert in learning disabilities and an expert in accounting, developed a new I.W.R.P. which included an overview of existing medical and psychological reports and concluded that the petitioner's learning disability manifested itself in four areas which would impact on his employment: auditory language processing, visual learning, cognitive process and expressive language. The counselor also concluded that the petitioner had emotional difficulties--dysthymia and an obsessive-compulsive personality disorder--which would also impact on his ability to obtain employment, and medical problems including hypertension, obesity and diabetes.
4. The Department amended the prior I.W.R.P. by adding the following services:

(a) 10 counseling sessions to deal with vocational

stress;

(b) 10 neurolinguistic sessions, to be extended to ten more sessions if needed;

(c) assignment of a person to help with job placement, interview training, and job follow-up;

(d) the preparation of letters needed to defer the petitioner's student loan repayments.

5. The petitioner signed the revised I.W.R.P. "with reservations" on June 30, 1992. Among his reservations were the fact that the I.W.R.P. did not specifically discuss his functional limitations and the strategies necessary to manage them; failed to discuss the kinds of services which the agency is offering to help manage his disability; failed to discuss his "salability"; and failed to discuss the equipment he felt he needed.

6. The petitioner started neurolinguistic training in July of 1992, and had ten sessions by November of 1992. He also had ten sessions of psychological counseling from September 1992 through April of 1993. In addition, he had about forty-five hours of interview training and resume writing counseling by a private firm specializing in this area from August of 1992 through April of 1993. All of these sessions, plus the fees of the consultants, were arranged and paid for pursuant to the I.W.R.P. by the Department. The Department has, to date, spent over \$6,000.00 to purchase services and goods under the 1992 revised I.W.R.P., and has waived its usual limits, at times, when necessary.

7. The Department also hired a computer expert to prepare a report regarding the petitioner's need for compensatory computer software and hardware in the performance of his duties. That expert concluded that the petitioner needed training and practice in thoroughly utilizing the equipment he already has, warned against buying some kinds of sophisticated and complicated equipment which he felt could actually hamper the petitioner, and concluded that the actual equipment to be purchased had to be tailored to fit the individual job site where he would work. His opinion is not contradicted in the evidence and is accepted as fact herein.

8. On July 22, 1992, the Department sent letters to two student loan organizations confirming that the petitioner is a current Vocational Rehabilitation client with a written plan in effect. Letters were sent to the same organizations on September 16, 1993 confirming his continuation in the V.R. program. The Department does not have the authority itself to defer the loans. Its role is to supply information in support of the petitioner's efforts to have his loan deferred.

9. On February 25, 1993, the petitioner began to do volunteer work as an accountant with a small business hoping to eventually obtain a paying position. At that time, the Department purchased a vision exam, eyeglasses, work clothing and shoes for him as an immediate need. In early April of 1993, the petitioner obtained a three month probationary contract to work as a paid accountant and financial manager of the small business.

10. When his job was formalized, the Department assigned an experienced vocational evaluator to go to the job site for the purpose of evaluating the petitioner's needs and to help obtain services or equipment that he might need in order to maintain employment. That evaluator initially visited the job site and interviewed the petitioner's supervisor and co-workers about two weeks after the contract began.

Thereafter, she visited the job site approximately twenty-five to thirty times and made numerous telephone contacts to and about the petitioner. She prepared weekly memos detailing the petitioner's progress and needs which were forwarded to his vocational counselor. 11. The evaluator initially determined that the petitioner had difficulty with interpersonal relations and recommended further nerolinguistic training with an emphasis on that problem. Ten more sessions were authorized in April and those sessions were provided over the next two months. She also contacted the learning disabilities expert in an attempt to understand better what the petitioner's functional limitations are and got the computer expert involved with assessing the work situation and formulating a list of hardware and software to be purchased.

12. On April 29, 1993, the computer expert met with the petitioner, his boss and the site evaluator to go over his equipment needs. Because the small business was using obsolete or inadequate accounting equipment, it was developing a plan to purchase its own equipment during the first few weeks of the petitioner's employment. After the expert felt he understood what equipment the employer was to provide and did some research into equipment which would compensate for problems identified by all the parties, he sent a recommendation to the Department for equipment which he felt should be purchased. That recommendation was mailed on May 25, 1993. On June 16, after speaking with the petitioner, who had some objections to the report, and with the learning disability expert, a second letter was sent reassessing and refining some of the recommendations. That letter gave the Department some choices in providing equipment but confirmed that most of the compensation the petitioner was asking for was warranted. The petitioner generally agreed with the purchase recommendations in this final report. The computer expert also told the Department that the petitioner was under a good deal of strain working without the equipment and purchase should not be delayed. That concern was echoed in a letter from the learning disability expert on June 22, 1993 who urged that the compensatory equipment be provided immediately because the petitioner was working extra hours to keep up.

13. The Department thereafter initiated purchase of the equipment by contacting the purchasing Department. A concern was raised that the equipment purchased be compatible with that to be purchased by the employer. The Department attempted to set up a meeting with the employer in mid June to alleviate their concern. However, the petitioner objected to the meeting because he felt his employer knew nothing about computers. Because of his objections, the meeting was delayed until July 8th.

14. During those first three months, the petitioner, who is acknowledged by all to have put forth a sincere and prodigious effort in this employment attempt, had several problems with his employment. First, and foremost, was the difficulty the petitioner was having in working with his supervisor and co-workers. That problem was aggressively attacked through the counseling sessions and had improved somewhat by the end of the probationary contract. The second problem appears to be the business' lack of hardware and software adequate to the tasks that the petitioner was being asked to perform. The third problem was a lack of data needed to prepare financial reports and the owner's muddled and inconsistent vision of his own business plan and the petitioner's role in it. The final problem was the petitioner's lack of compensatory equipment which caused him to have to work overtime to complete tasks.

15. In early July, the petitioner told the evaluator that he thought he might be let go. He mentioned all of the above problems and said that he and the owner were to meet with a certified public accountant to go over his work. After meeting with the C.P.A., the petitioner told the evaluator that the C.P.A. had "backed him up". However, when the evaluator spoke with the employer, she was told that the C.P.A. had not backed him up but had rather criticized the work done by the petitioner. At that point, the employer was still willing to work with the petitioner and the evaluator asked him to give the petitioner

some leeway. She assured him of the Department's commitment to continue support, and assured him that compensatory equipment was in the process of being provided.

16. On July 22, 1993, after returning from a brief absence from work, the petitioner called the evaluator to ask about his equipment. At that point, it had been ordered and was expected by the end of the week. A few hours later, the petitioner called back to report that he had been dismissed from his position.

17. The evaluator called the employer that same day to see if the problem could be worked out and to assure him that the compensatory equipment was forthcoming. The employer said there were other problems that he did not think could be overcome. He felt that the petitioner's financial vision was "too high powered for a small business", that the kind of financial analysis the petitioner wanted to do required equipment which was too expensive to purchase and was not necessary for the financial success of his business. He felt the petitioner was philosophically unable to give him the kind of general, simple information he wanted. The petitioner's view of the failure of their relationship is the employer's inability to understand his own accounting needs and to provide equipment and data needed to get the information he needed.

18. When the petitioner's employment ceased, the equipment order was cancelled. The Department maintains that it would consider equipment purchases again if the petitioner were to become re-employed. It also stated that it would expect the employer to provide considerable assistance with equipment by virtue of the mandates of the Americans with Disabilities Act. Because the petitioner has no work history in his profession, the vocational counselor does not feel that self-employment is a viable alternative for him and will not consider the equipment purchase until it is evaluated in the context of the next job he obtains. As no evidence has been offered that this assessment is incorrect, it will be found as fact herein.

19. To date, the petitioner has not found another job. No evidence was offered by either party as to what actions the Department has taken since late July to assist him with regard to the Board's order, other than the fact that the Department reviewed the I.W.R.P. in August of 1992, which review was not attended by the petitioner who informed the Department only that he would not be involved because he intended to appeal.

20. The petitioner's principal grounds for grievance appear to be three: that the Department failed to give him compensatory computer hardware and software in a timely manner which he needed to maintain employment, that the Department has failed to give him the therapy he needs to rehabilitate his learning disabilities, and that the Department has failed to assist him in obtaining the deferral of his student loans. The petitioner offered no evidence (expert or otherwise) as to what learning disability services he has not gotten which he feels he needs. The petitioner has not presented any testimony as to what he feels the Department should do, that it has not already, to help him get his loan deferred.

21. The petitioner also has several other complaints regarding the quality of his eye exam, eyeglasses, and the limitations put on his clothing purchases (\$300.00). However, the petitioner has offered no specific evidence (expert or otherwise) as to what he feels the Department should have provided in these latter areas. The primary relief that the petitioner seems to be seeking is the immediate provision of the compensatory computer materials, the provision of more services to rehabilitate his learning disabilities and the procurement of a loan deferral.

ORDER

The petitioner's grievance is dismissed as being unfounded. The Department should continue to carry out the Board's order of March 1992.

REASONS

Since the Board's order of March 1992, the Department of Vocational Rehabilitation has put a good deal of effort into implementing that order (sometimes less than perfectly) and the petitioner has put a good deal of effort into trying to obtain and maintain employment as an accountant. For a number of reasons, some of which were completely beyond the control of either party, the petitioner's first attempt at employment failed. Although that failure was no doubt in part due to the petitioner's inability to obtain computer equipment sooner, the delay was not entirely the fault of the Department. The employer's confused position as to his plans to purchase equipment as well as the petitioner's own obstructions contributed in no small part to the delay. Given the employer's reasons for terminating the relationship, it is not at all clear that a speedier provision of compensatory equipment would have saved the petitioner's job.

What is clear, and has been from the start of this relationship, is that the petitioner has a unique set of vocational problems and a sophisticated and complicated profession which present a real challenge to the Department in terms of rehabilitation and compensation. Although this last failure was most unfortunate for the petitioner, it can hardly be attributed to the actions of the Department. This experience was not a total loss, however, because it provided very valuable information to the Department in terms of what kinds of supports the petitioner actually needs on the job. With this new information, the Department will presumably be in a position to respond more quickly in the future to assistive technology needed by the petitioner.

The petitioner has exhibited a good deal of frustration with regard to the kind of therapy he has been receiving to deal with his learning disabilities. It appears that the focus of the neurolinguistic training and psychological counseling the petitioner obtained was shifted, after he obtained employment, to deal specifically with problems he was having on the job. There is no reason to think that the same kind of assistance would not be provided, as needed, to the petitioner with regard to any job he might obtain in the future. The petitioner presented no evidence from his therapists or any other experts that the therapy being provided to him is inappropriate or inadequate. In fact, the evidence indicated that as time went on, the petitioner's main problems shifted from dealing and communicating with his supervisor and co-workers to philosophical differences he had with his employer. That shift demonstrates to some degree that the Department's strategy was working.

The major disagreement between the petitioner and the Department can be fairly characterized as the provision of assistive computer technology. The Department continues to insist that such technology can be provided only in the context of specific employment. The petitioner continues to insist that he should obtain the equipment now as it is generally useful for persons in his profession. The Board previously upheld the Department's position in the prior decision and there appears to be no reason to reverse that position now. If anything, the facts as they evolved in this case, underscore the variability of equipment at work-sites and the need to coordinate and to assure compatibility of equipment purchased by the

Department with equipment purchased or already owned by the employer. Given the wide variety and considerable cost of computer equipment combined with the rapid pace of technological change, it only makes sense to fit the equipment to the job site.

This having been said, it is also necessary to emphasize the critical importance of providing supportive technology in an expeditious manner. In an uncomplicated situation, necessary equipment provided almost four months after the inception of the job is clearly unacceptable. If the equipment is the difference between ability to do the job and not, even a four week delay would be overly long. The reasons for the delay in this case were unusual and will presumably not be repeated again. If the petitioner is to succeed at a job, he obviously needs the equipment at once. The failure on the part of the Department to take immediate action to procure compensatory equipment would undoubtedly form the basis for a grievance in the future.

Finally, it is not at all clear what the petitioner expects the Department to do about deferring his loans. The petitioner offered no testimony that he has requested a specific kind of support for his request for a deferral which has not been forthcoming. The evidence shows that the Department has provided confirmation of his program participation to his lenders. As it is not the holder of his loan note, the Department is certainly in no position to grant or deny the deferral of the loan.

The steps which the petitioner and the Department should be taking now are an analysis of the successes and failures of his last employment attempt; the formulation of a plan for overcoming the problems that may have contributed to his loss of employment; and an immediate goal of developing opportunities and skills needed for obtaining new employment. It is to be hoped that the parties can get beyond this appeal and back to the business of vocationally rehabilitating this well-educated and highly motivated individual.

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1. This appeal was originally styled as a request to re-open the prior matter. At hearing, the parties agreed that the appeal was not an attempt to revise the former decision but rather a complaint that the former decision had not been carried out. However, the petitioner later indicated that he still had some problems with the adequacy of the I.W.R.P. ordered under the Board's prior decision which he did not appeal to the Supreme Court. The hearing officer advised the petitioner that as that decision was eighteen months old and as he had not alleged any legal grounds (i.e. new evidence not available at the prior hearing) for vacating that decision and reopening the matter, a reopening and relitigation of the issues already raised and decided in that matter was not appropriate. The sole issue for this hearing was whether the Board's order had in fact been carried out.