

STATE OF VERMONT

HUMAN SERVICES BOARD

In re ) Fair Hearing No. 16,948  
 )  
Appeal of )

INTRODUCTION

The petitioner appeals the decisions by the Department of Aging and Disabilities, Division of Vocational Rehabilitation (hereinafter "VR") denying him approval for "private career counseling" with a particular counselor and requiring him to enter into an "Individualized Plan for Employment" (hereinafter "IPE") before any additional VR services are provided to him.

FINDINGS OF FACT

1. The petitioner first filed an appeal in this matter on February 23, 2001. The initial indication from the petitioner was that he wished to appeal VR's refusal of his request to be assigned a different counselor. On April 5, 2001, the Department filed a Motion to Dismiss for lack of subject matter jurisdiction. A hearing scheduled for April 13, 2001 was continued at the petitioner's request to allow him additional time to respond to the Department's motion.

2. The petitioner filed a written response on April 19, 2001, and another hearing was scheduled for May 29, 2001. That date was cancelled, however, due to a family emergency of the hearing officer and was not reset until August 21, 2001.

3. A hearing was held on that date, at which time the petitioner testified that he felt that his VR counselor was unable to deal with clients with mental disabilities, and that VR should contract with an outside professional to provide him with vocational counseling.

4. At the hearing the parties agreed that the petitioner is a full-time employee of the Department of Aging and Disabilities with at least 15 years of work experience. He has a mental disability that includes depression. The parties further agreed that the goal and focus of the petitioner's VR program is to train and prepare him for a better paying state job.

5. The petitioner's VR counselor testified that he had made many attempts to arrange meetings with the state's personnel office to preliminarily explore employment options but that the petitioner had refused to attend. The counselor also stated he was frustrated by the petitioner's insistence on communicating with him only by email. The counselor testified that he had sought advice from the petitioner's

medical providers as to how to best communicate with the petitioner, and had been told that there should be no inherent problem with face-to-face meetings. The counselor testified that despite his best attempts, the petitioner was essentially uncooperative in developing and implementing his VR program.

6. At the close of the hearing it was agreed that the Department would file a written statement of its position and that the petitioner would then have the opportunity to file a written response. The Department filed its statement on October 1, 2001. In it the Department reiterated the instances it felt the petitioner was being uncooperative with VR in the development and implementation of services.

7. Shortly thereafter, in an email communication with the Board the petitioner objected to the Department's statement having been furnished by the Department's attorney rather than by VR personnel. A telephone conference was held on October 5, 2001, at which time the hearing officer denied the petitioner's request for another hearing and the petitioner agreed to file a written response to the Department's statement. No time limit was set for him to do so.

8. The hearing officer then heard nothing further from either party until January 14, when he sent the petitioner a

memorandum giving him until February 1, 2002 to file his response. In a letter dated January 16, 2002, the Department advised the hearing officer that following the October phone conference the parties had met at the petitioner's request in an effort to resolve the matter. The Department represented that it had agreed to furnish the petitioner with private career counseling as part of his IPE, but that the petitioner was objecting to financial caps on this service.

9. On January 29, 2002 the petitioner sent an email to the Board that included a request to order VR to provide him with private career counseling without financial limitation.

10. The parties then provided the hearing officer with copies of correspondence between VR and a private counselor who had met once with the petitioner. In a letter dated February 15, 2002, the counselor indicated that he had already performed services totaling \$228 and estimated another \$498 to complete his services.

11. However, in a letter dated February 1, 2002, the Department had informed the private counselor that it could not pay his bill because the petitioner had refused to sign an IPE which would "validate" the provision of those services. On February 3, 2002 the counselor had written the Department

and the hearing officer pointedly indicating his displeasure with the Department's position.

12. Upon receiving this information the hearing officer scheduled the matter for another hearing on March 13, 2002, at which time the Department indicated that it had paid the private counselor in full for the services he had performed to date. The parties agreed that the present impasse was the petitioner's refusal to sign an IPE that contained any spending caps on future services. The parties further agreed that the private counselor had offered to develop an IPE and provide the petitioner with additional "counseling services" for an amount roughly within the spending cap in the Department's proposed IPE. The Department requested a brief extension of time to consider whether it would contract with the private counselor to provide these services.

13. By letter dated March 21, 2002 the Department informed the petitioner and the hearing officer that due to the "allegations and tone" of the private counselor's previous correspondence in the case it was not willing to enter into any contract with this counselor; but that it was "willing to offer some private employment counseling with a different provider". However, the Department also indicated that it considered the petitioner's signing an IPE to be an initial

prerequisite to the Department providing him with any further VR services.

14. The IPE proposed by the Department includes the following provision:

Current funding for item 3 (Private Counseling) is \$500. However, this may be increased with VR approval if a demonstrated need exists to continue beyond the \$500 limit. Some factors that would influence the continuance include further career assessments, counseling and guidance and consumer commitment to partake fully in all items as indicated above. Funding limits beyond the \$500 not to exceed an additional \$250.

15. The petitioner filed a written response on March 27, 2002 arguing that he should not have to sign an IPE as a condition of receiving services and requesting that the Board order VR to approve "private career counseling" with the counselor of his choice without funding limits.

ORDER

The Department's decision is affirmed.

REASONS

Federal regulations provide that once an individual is determined eligible for VR services, an "individualized written rehabilitation program" is jointly developed, agreed upon, and signed by the eligible individual and the

individual's vocational rehabilitation counselor. 34 C.F.R. § 361.45. Such plans must identify a long-term vocational goal, intermediate rehabilitation objectives, and the nature and scope of VR services to be provided, and they "must be designed to achieve an employment outcome that is consistent with the individual's unique strengths, priorities, concerns, abilities, capabilities, career interests, and informed choice." Id. § 361.45(a). In Vermont, the Individualized Plan for Employment (IPE) is the individualized written rehabilitation program referred to in the federal regulations.

The petitioner in this case has cited no law for his contention that the Department is required to provide specific VR services to an individual who refuses to sign an IPE. Of course, this begs the question of whether the IPE proffered by the Department is sufficient under the law to meet the petitioner's VR needs. In this regard the petitioner argues that the IPE's limitations on spending for private career counseling and the Department's refusal to contract with the counselor of his choosing violate the "informed choice" provisions of the regulations.

In affirming a previous decision by the Board in a VR appeal the Vermont Supreme Court noted that the statutes define essential VR services as those "necessary to render an

individual with a disability employable . . ." Zingher v. Dept. of Aging and Disabilities, 163 Vt. 566, 572 (citing 29 U.S.C. § 723[a], emphasis by the Court). In that case the Court disagreed with the appellant's argument that the law requires the Department to maximize the employability of an individual "without regard to financial considerations"; and it held that it is the petitioner's burden to demonstrate that any specific service, or scope of service, is "necessary for him to be employed". Id. at 573.

In this case, the petitioner makes only the unsupported assertion that his present VR counselor does not understand individuals with mental disabilities. He has presented no evidence whatsoever that private career counseling in excess of \$750 is necessary for him to obtain his vocational goals. And he has not demonstrated that only the counselor he has identified is capable of providing effective career counseling for him.

While it is true that the regulations contemplate a collaborative process between VR and its clients, nothing in the regulations provides that a client be able to define and dictate the nature and scope of every service being offered to him by the Department. It is unfortunate that the petitioner seems unwilling or unable to participate in VR services absent

preconditions regarding funding limits and particular service providers. However, unless and until he can demonstrate that such services are necessary for him to achieve his employment goals, it cannot be concluded that the Department's decisions are contrary to any of its regulations or to the general purposes of the program.

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