



Advocate

Newsletter of the National Assistive Technology Advocacy Project

A Project of Neighborhood Legal Services, Inc.

237 Main Street, Suite 400, Buffalo, New York 14203 – (716) 847-0650

Fax: (716) 847-0227 – TDD: (716) 847-1322 – Website: www.nls.org

The AT Advocate Newsletter is funded through a grant received from the Rehabilitation Service Administration, U.S. Department of Education, to the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA) (with a subcontract to Neighborhood Legal Services, Inc.) under contract number H224B100001. The opinions expressed herein do not necessarily reflect the position of the U.S. Department of Education, and no official endorsement by the U.S. Department of Education of the opinions expressed herein should be inferred.

Volume XV Issue 2

Fall 2013

***AT Advocate is now an electronic only newsletter.** We will make our Internet-only newsletter available to regular readers through email alerts with links to the latest newsletter on our website. AT Advocate continues to have the same front-page look it has had since 1995 but we will no longer be constrained by the eight-page format we used for most issues. Some issues will now be shorter, some longer. We will continue to view AT Advocate as an ongoing curriculum on funding of assistive technology (AT) and include resource links to our publications and other online resources. Finally, we will also use our new email readers list to provide you with other news related to our common goal of getting AT and specialized equipment into the hands of children and adults with disabilities.*

If you would like to be added to the AT Advocate email list, contact Lynn Urquhart at lurquhart@nls.org. Otherwise, look for the newsletter on our website at least three times per year.

In This Issue . . .

STATE VOCATIONAL REHABILITATION AGENCIES AS ASSISTIVE TECHNOLOGY FUNDING SOURCES

VR Agencies Remain an Important Source of AT Funding for Individuals with Disabilities Preparing for Work

Introduction	2
Eligibility for VR Services	3
The Individualized Plan for Employment	4
Informed Choice	4
Developing the IPE	5
Available Services	6

Assistive Technology	8
Financial Need Criteria	8
Assistive Technology is Covered.....	8
“Maximization” of Employment	9
Statutory Requirements.....	9
Rehabilitation Services Administration Policy Directive.....	9
Comparable Services Requirements	10
Hearing and Appeal Rights	11
Conclusion	12

Special Features:

Using Blended Funding to Obtain AT to Support a Vocational Goal	12
Using State VR Agency and Medicaid (or Insurance)	
to Pay for A Power Standing Wheelchair	12
Using VR Agency and SSI’s Plan for Achieving Self Support (PASS)	
to Fund a Modified Van	13
Using VR Agency, PASS, and AT Loan Program	
to Fund Modified Van	13
Independent Living Services – A Potential Funding Source	
For AT to Support Work/Independent Living	14
Other (Non-Core) Independent Living Services	14
Examples of Non-Core IL Services Categories that Could Fund AT	14
Why Non-Core IL Services May be Important for	
Persons Seeking State VR Agency Services	15

Announcements:

AT-Related Training Sessions for June 2014	
National Disability Rights Network Conference	13

Our National AT Resource Library

Our Court Documents Library	15
Our Hearing Decisions Library	15

**STATE VOCATIONAL REHABILITATION AGENCIES
AS ASSISTIVE TECHNOLOGY FUNDING SOURCES**

**VR Agencies Remain an Important Source of AT Funding
for Individuals with Disabilities Preparing for Work**

INTRODUCTION

Many individuals with severe disabilities could succeed in employment (or benefit from education/training to prepare them for employment) so long as they can access one or more items of assistive technology (AT). For example, an individual with paralysis might need a ramp at his or her residence to allow him or her to leave the home to go to work or

attend college; an individual with blindness may need screen-reading software to allow them to use a computer for work or training; or an individual who is deaf may need computer-assisted real time captioning (CART) to benefit from college lectures or a work-related meeting. These and other AT interventions can be costly. Fortunately, state vocational rehabilitation (VR) agencies may be able to cover these costs in many cases.

A state VR agency can play a critical role in assisting people with disabilities to enter the work force and can be an important source of funding for AT. Since our first VR newsletter in November 1996 there have been changes to the federal law and regulations. The Workforce Investment Act of 1998 (WIA) included the Rehabilitation Act Amendments of 1998 (Rehab '98), reauthorizing the Rehabilitation Act through 2003. To implement Rehab '98 proposed regulations were published on February 28, 2000. 65 Fed. Reg. 10620. Final regulations were published on January 17, 2001. 66 Fed. Reg. 4380. Additional final regulations were published on January 22, 2001, and went into effect on October 1, 2001, concerning appropriate employment outcomes, for VR consumers. 66 Fed. Reg. 7250. All of these changes are incorporated into this newsletter.

Pursuant to Title I of the Rehabilitation Act, states are given money to provide VR services to persons with disabilities. See 29 USC 701 et seq.; 34 CFR Part 361. Every state must designate a single state VR agency to administer the VR program unless it designates a second agency to serve individuals who are legally blind. 29 USC 722(a)(2).

VR agencies can fund a wide range of goods and services that are connected to a person's vocational goal. Congress has stated that VR services are to empower individuals to maximize employability, economic self-sufficiency, independence and integration into the work place and the community through "comprehensive and coordinated state-of-the-art programs." 29 USC 701(b)(1)(emphasis added).

This article reviews VR eligibility criteria, the services available from state VR agencies (including a range of AT devices and services), and the appeal options available to challenge a denial of VR services. It is not intended to be a comprehensive analysis of VR requirements. For a thorough review of the VR system see, *Work, Assistive Technology and State Vocational Rehabilitation Agencies: The Vocational Rehabilitation Agency's Obligation to Fund AT to Support Employment Preparation* (Second Edition, February 2013), a 50-page AT funding manual published by the National AT Advocacy Project and available at <http://www.nls.org/files/Disability%20Law%20Hotlines/National%20AT%20Advocacy/VRFundingofAT2013.pdf>.

Eligibility for VR Services

To receive services an individual must be disabled and require VR services "to prepare for, secure, retain or regain employment." 29 USC 722(a)(1). Therefore any service must be connected to an ultimate employment goal.

Employment outcomes include full or part-time competitive employment in an integrated setting, supported employment, or other employment in an integrated setting such as self-employment, telecommuting, and business ownership, that is consistent with the individual's strengths, abilities, interests, and informed choice. 34 CFR 361.5(b)(16). The

comments note that “homemaker” and “unpaid family worker” are acceptable employment outcomes under this definition because individuals with disabilities should be “able to pursue the same type of outcomes that are available to the general public.” 66 Fed. Reg. 7255.

Persons must show a mental, physical or learning disability that interferes with the ability to work. The disability need not be so severe as to qualify for Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. The disability must only be a substantial impediment to employment. 29 USC 705(20)(A). Recipients of SSDI or SSI are presumed eligible for VR services as individuals with a significant disability, provided they intend to achieve an employment outcome. 29 USC 722(a)(3).

Although VR services may be denied to those who cannot benefit from them, applicants are presumed capable of employment, despite the severity of a disability, unless the VR agency shows by “clear and convincing” evidence they cannot benefit. 29 USC 722(a)(2); 34 CFR 361.42(a)(2). Prior to determining inability to benefit the VR agency must explore work potential through a variety of trial work experiences with appropriate supports. These trial work experiences must “be of sufficient variety and over a sufficient length of time to determine” whether the individual is eligible. 29 USC 722(a)(2)(B). Individuals determined to be incapable of benefitting under this standard must be referred to local extended employment providers (i.e., sheltered workshops). 34 CFR 361.43.

With limited exceptions the VR agency must determine eligibility within a reasonable time, not to exceed 60 days, after the individual submits an application. 29 USC 722(a)(6). Information used to determine eligibility includes: existing data, such as medical reports, Social Security records and education records; and to the extent existing data is insufficient, an assessment done by or obtained by the VR agency. 29 USC 722(a)(4)(c).

The Individualized Plan for Employment

After eligibility is established, the next step is to develop a written Individualized Plan for Employment (IPE). The plan must be set forth on a form provided by the VR agency. 29 USC 722(b)(2)(A). Prior to developing the IPE there must be a comprehensive assessment, to the extent necessary to determine the employment outcome, objectives, and nature and scope of VR services. The assessment is to evaluate the unique strengths, resources, priorities, abilities, and interests of the individual. 29 USC 705(2)(B). It may also include a referral for the provision of rehabilitation technology (i.e., AT) services, “to assess and develop the capacities of the individual to perform in a work environment.” 29 USC 705(2)(c).

Informed Choice

VR agencies must ensure that all activities are implemented consistent with the principles of “respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities.” 29 USC 701(c)(1)(emphasis added). VR agencies must assist individuals in their exercise of informed choice throughout the VR process, including the assessment, selection of an employment outcome, the specific services to be provided, the entity which will provide the services, the method for procuring services, and the setting in which the services will be

provided. 29 USC 720(a)(3)(C), 722(d)(1)-(5). The VR agency must approve the IPE, but the individual decides the level of involvement, if any, of the VR counselor in developing it. 29 USC 722(b)(1)(A), (b)(2)(C). The reason for such an expanded role for the consumer was Congress' belief "that a consumer-driven program is most effective in getting people jobs." Congressional Record–House, H6693, July 29, 1998.

"Extended employment" (or sheltered workshops) has been eliminated as a final employment outcome. However, consistent with the principle of informed choice, extended employment remains an alternative. First, extended employment continues to be a VR service as an interim step toward achieving integrated employment. Second, for those choosing extended employment as a long term option, it remains available "outside the VR program." 66 Fed. Reg. 7254. In such cases, the VR agency must inform the individual that extended employment can be provided to prepare for employment in an integrated setting and that they may later return for VR services to prepare for integrated employment. Additionally, the VR program must refer SSI and SSDI recipients seeking long term extended employment to the Social Security Administration (SSA) for information about available work incentives. 34 CFR 361.37(b).

The purpose of the referral to SSA is to ensure they are "informed of recent reforms that are designed to reduce a key work disincentive by enabling individuals with disabilities to work and continue receiving Social Security benefits." The Rehabilitation Services Administration (RSA), the federal agency that funds state VR agencies, believes "the need for this critical information, and its potential effect on an individual's interest in pursuing integrated work in the community, justifies" this requirement. In this way, individuals will be able to "make truly informed choices among the wide scope of employment options—both integrated and non-integrated—available to persons with disabilities." 66 Fed. Reg. 7257. (Free work incentives counseling services are available through Social Security-funded Work Incentives Planning and Assistance (WIPA) projects. See www.socialsecurity.gov/work for information about SSI and SSDI work incentives. Soon this site will also include links to WIPA projects in each state.)

Developing the IPE

All services to meet the employment goal must be specified on the Individualized Plan for Employment (IPE). It must include:

- The specific employment outcome, chosen by the individual, consistent with the individual's unique abilities and interests;
- The specific VR services to be provided, in the most integrated setting appropriate, including AT and personal assistance services, as appropriate;
- The timeline for starting services and achieving the employment outcome;
- The specific entity, chosen by the individual, to provide services;
- The criteria for evaluating progress;
- The responsibilities of the VR agency, the individual and any other agencies;

- In states which have a financial needs test, any costs for which the individual will be responsible;
- For individuals with the most significant disabilities that are expected to need supported employment, the extended services to be provided; and
- The projected need for any post employment services.

29 USC 722(b)(3).

The IPE must be reviewed at least annually and, if necessary, amended if there are changes in the employment outcome, the VR services to be provided, or the service providers. Any changes will not take effect until agreed to by the individual and the VR counselor. 29 USC 722(b)(2)(E).

Before the VR agency can close a case, the individual would have to achieve the employment objective in the IPE and maintain it for no less than 90 days. Also, the individual and VR counselor must agree that the employment outcome is satisfactory and the individual is “performing well.” 34 CFR 361.56. Prior to closing a case the individual must also be informed of the availability of post-employment services. 34 CFR 361.56(d).

Available Services

Any services necessary to assist an individual with a disability in “preparing for, securing, retaining, or regaining an employment outcome” may be covered. 29 USC 723(a). The VR agency is to ensure that all necessary services are provided. It cannot choose to provide only some services to save costs. In fact, the “severity of an individual’s disability or the cost of services [including expensive AT] can have no bearing on the scope of services the individual receives.” 66 Fed. Reg. 4426.

If there are insufficient resources to fully meet the needs of all individuals, a state must go to an “Order of Selection.” However, the state must ensure that individuals with the most significant disabilities are selected first to receive services. 29 USC 721(a)(5). Those who are not served are entitled to an appropriate referral to other state and federal programs, including other providers within the state workforce investment system. 29 USC 721(a)(5)(D), (a)(20).

The services available from state VR agencies are incredibly broad, and AT is frequently referred to as an available service. Services must include, but are not limited to, the following:

- The assessment to determine eligibility and needs, including, if appropriate, by someone skilled in rehabilitation technology.
- Counseling, guidance and job placement services and, if appropriate, referrals to the services of Workforce Investment Act providers.

- Vocational and other training, including higher education and the purchase of tools, materials, and books.
- Diagnosis and treatment of physical or mental impairments to reduce or eliminate impediments to employment, to the extent not funded by other sources.
- Maintenance for additional costs incurred during rehabilitation.
- Transportation, including adequate training, provided in connection with any other service and needed to achieve an employment outcome. Transportation may include vehicle purchase. See 34 CFR 361.5(b)(57)(i), Ex.2.
- Personal assistance services while receiving VR services.
- Interpreter services, readers, rehabilitation teaching, and orientation and mobility services.
- Occupational licenses, tools, equipment, initial stocks, and supplies.
- Technical assistance for those pursuing telecommuting, self-employment or small business operation.
- Rehabilitation technology, including vehicular modification, telecommunications, sensory, and other technological aids and devices.
- Transition services for students with disabilities.
- Supported employment.
- Services to the family to assist an individual with a disability to achieve an employment outcome.
- Other goods and services necessary to achieve an employment outcome.
- Post-employment services which are necessary for the individual “to maintain, regain or advance in employment.”

34 CFR 361.48 (emphasis added).

A state may establish reasonable time limits for providing services, but they must not be so short as to effectively deny a service and they must “permit exceptions so individual needs can be addressed.” 34 CFR 361.50(d). Similarly, a state’s policies on payment rates must not be so low as to effectively deny an individual a necessary service and may not be absolute. 34 CFR 361.50(c). Finally, the policies must ensure timely authorization of services, “including any conditions under which verbal authorization can be given.” 34 CFR 361.50(e).

Assistive Technology

The Rehabilitation Act uses the definitions of AT devices and services, 29 USC 705(3) and (4), contained in the Assistive Technology for Individuals with Disabilities Act (AT Act). 29 USC 3001 *et seq.* The availability of AT devices and services are expressly included in the definition of “rehabilitation technology” in Title I of the Rehabilitation Act. Rehabilitation technology is defined as:

[T]he systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services. 29 USC 705(30).

The rehabilitation technology services envisioned by Title I of the Rehabilitation Act can take many forms and are in no way limited by the Act. The state VR Plan must describe the “manner in which the broad range of rehabilitation technology services will be provided,” including training and the provision of AT. 34 CFR 361.48(b) (emphasis added). The use of AT to assist in preparing individuals with disabilities for employment permeates the VR process. As noted above, even the assessments to determine eligibility and rehabilitation needs may include an assessment by someone skilled in rehabilitation technology. 29 USC 705(2)(C) and 723(a)(1).

Financial Need Criteria

A state is not required to consider financial need. However, if it establishes a needs test, it must develop written policies governing the determination of financial need and identifying the services subject to the test. Any financial needs test must take into account the individual’s disability-related expenses. The level of participation (or cost sharing) must not be so high as to “effectively deny the individual a necessary service.” The following services must be provided without regard to financial need: diagnostic services; counseling, guidance and referral services; job placement; personal assistance services; and “any auxiliary aid or service,” such as interpreter or reader services, that the individual needs to participate in the VR program and which would be mandated under section 504 of the Rehabilitation Act of 1973 (section 504) or the Americans with Disabilities Act (ADA). 34 CFR 361.54.

Additionally, individuals “determined eligible for Social Security benefits under Titles II [SSDI] and XVI [SSI] of the Social Security Act” must be exempt. 34 CFR 361.54(b)(3)(ii). It is clear that this definition not only applies to cash beneficiaries of SSI and SSDI but also to former SSI cash beneficiaries who continue to receive Medicaid under section 1619(b). Section 1619(b) is located within Title XVI of the Social Security Act and states that for the purposes of Medicaid eligibility, a 1619(b) recipient “shall be considered to be receiving [SSI] benefits under” Title XVI. 42 USC 1382h.

“Maximization” of Employment

Statutory Requirements

The requirement that VR services are to maximize employment was first added in 1986. The legislative history emphasized Congressional intent:

[T]he overall purpose of the Act is to develop and implement comprehensive and coordinated programs of rehabilitation for handicapped individuals which will maximize their employability, independence and integration into the work place and the community ... designed to meet the broad range of needs of individuals with handicaps in becoming integrated into the community and in reaching their highest level of achievement. S. Rep. No. 388, 99th Cong., 2d Sess. 5 (1986)(emphasis added), as quoted in *Polkaba v. Commission for the Blind*, 183 A.D.2d 575, 576, 583 N.Y.S.2d 464, 465 (N.Y. App. Div.1st Dept. 1992).

As currently stated, the purpose of the Rehabilitation Act is to:

[E]mpower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society, through ... comprehensive and coordinated state-of-the-art programs of [VR]. 29 USC 701(b)(1)(A)(emphasis added).

This language was added in 1992. It seems to strengthen the standard first set out in 1986, as it requires the VR agency to maximize an individual's economic self-sufficiency. Presumably, this means that if an individual has the requisite ability, and has the option of either obtaining a bachelor's degree and becoming a paralegal or going to law school to become an attorney, the VR agency should approve the goal of becoming an attorney, because the attorney position would more likely “maximize economic self-sufficiency.”

However, to date, the courts which have addressed the issue have not picked up on this requirement to maximize economic self-sufficiency. Instead, the courts have focused on the word “empower” to find that the VR agency is not required to guarantee an “optimal level of employment.” Many of these court decisions are discussed in our much longer funding manual, available at <http://www.nls.org/files/Disability%20Law%20Hotlines/National%20AT%20Advocacy/VRFundingofAT2013.pdf>.

Rehabilitation Services Administration Policy Directive

Consistent with the increased statutory obligations placed on VR agencies, in 1997, the RSA issued a Policy Directive, RSA-PD-97-04, available at <http://www2.ed.gov/offices/OSERS/RSA/guidance/PD-97-04.pdf>. It requires VR agencies to approve vocational goals and services to enable persons with disabilities to maximize their employment potential. It represented a dramatic shift in RSA policy. RSA's change is best expressed in the following quote:

The guidance provided through this Policy Directive is intended to correct the misperception that achievement of an employment goal under Title I of the Act can be equated with becoming employed at any job. As indicated above, the State VR

Services program is not intended solely to place individuals with disabilities in entry-level jobs, but rather to assist eligible individuals to obtain employment that is appropriate given their unique strengths, resources, priorities, concerns, abilities, and capabilities. The extent to which State units should assist eligible individuals to advance in their careers through the provision of VR services depends upon whether the individual has achieved employment that is consistent with this standard (emphasis added).

This directive clarifies that cost or the extent of VR services an individual may need should not be considered in identifying the goal in the IPE. The directive also clarifies that a person who is currently employed will, in appropriate cases, be eligible for VR services to allow for “career advancement” or “upward mobility.”

It emphasizes that the VR agency must still determine whether the individual’s career choice is consistent with his or her vocational aptitude. In an effort to meet the maximization requirements, however, VR agencies are encouraged to make these determinations through a comprehensive assessment (such as a trial placement in a real work setting) or by establishing short-term objectives in the IPE (such as a trial semester in college).

The comments to the 2001 regulations reaffirm this policy directive. They note that states must “look beyond options in entry-level employment for VR program participants who are capable of more challenging work.” Additionally, “individuals with disabilities who are currently employed should be able to advance in their careers.” 66 Fed. Reg. 4419.

How do we deal with the reluctance of the courts to embrace the maximization language in the Rehabilitation Act? None of the decisions declining additional services discuss the 1997 RSA Policy Directive or the comments in the 2001 regulations. Additionally they have not really considered the revolution in informed choice created by Rehab ‘98. A fair reading of these two requirements is that the individual’s choice of an employment goal, while not without any review by the VR agency, should be approved if it is within the client’s capability and it is likely to lead to a successful employment outcome. In other words, the VR agency should approve the goal if it is one which the individual is capable of achieving and is one which is likely to lead to employment. The availability of resources should not be part of the analysis. Finally, the employment goal should not be limited to entry level positions for those capable of more challenging work. Advocates would be wise to avoid referring to the “maximization” standard and use the 1997 RSA Policy Directive and the comments to the 2001 regulations.

Comparable Services Requirement

VR agencies are considered the payer of last resort for many services. This means they will not pay for a service if a similar or comparable benefit is available through another provider. 29 USC 721(a)(8). For example, if an applicant qualifies for personal assistance services through Medicaid, the VR agency will not provide them. But, the VR agency cannot deny payment for college tuition because an individual could obtain student loans. Loans, which must be repaid, are not similar benefits. RSA-PD-92-02 (11/21/91), available at <http://www2.ed.gov/policy/speced/guid/rsa/pd-92-02.pdf>. Comparable benefits also do not include awards and scholarships based on merit. 29 USC 721(a)(8)(A)(ii).

The comments to the 2001 regulations also make it clear that SSI's Plan for Achieving Self-Support (PASS) is not a comparable benefit. 66 Fed. Reg. 4419. On the other hand, the comments note that services an individual receives from a "ticket" under the Ticket to Work and Work Incentives Improvement Act would be a comparable benefit. 66 Fed. Reg. 4418. Additionally, diagnostic services, counseling, referral services, job placement, and rehabilitation technology (i.e., AT) are totally exempt from the comparable benefit requirement. 34 CFR 361.53(b).

A person does not have to exhaust similar benefits if it would interrupt or delay: progress toward achieving the employment outcome; an immediate job placement; or services to an individual at extreme medical risk. 34 CFR 361.53(a). States must develop a comprehensive plan involving all of the public agencies providing what could be considered VR services, including the state's Medicaid agency, public colleges and the workforce investment system, to identify who will be responsible for providing what services. 29 USC 721(a)(8)(B). The plan must ensure the coordination and timely delivery of services. All public agencies remain responsible for providing services mandated by other state laws or policy, or federal laws, including the ADA and section 504. 34 CFR 361.53 (e).

The IPE must list all services to be provided to meet the employment goal, whether or not they are the responsibility of the VR agency. It must identify the services the VR agency is responsible for providing, any comparable benefits the individual is responsible to apply for or secure, and the responsibilities of any agencies to provide comparable benefits. 29 USC 722(b)(3)(E). If another agency refuses to fulfill its obligations, the VR agency must provide the services, but may seek reimbursement from that agency. 34 CFR 721(a)(8)(C)(ii). Therefore, if another agency refuses to provide a service within its area of responsibility, the individual does not have to wait until that dispute is resolved before obtaining the service. See 34 CFR 361.53(c).

Hearing and Appeal Rights [29 USC 722(c); 34 CFR 361.57]

Anyone dissatisfied with a VR agency's decision has a right to appeal. Each state's procedures must include the right to mediation and an administrative hearing before an impartial hearing officer. The VR agency must notify individuals, in writing, of their appeal rights and the availability of the Client Assistance Program (CAP) at the following times: at the application; when the IPE is developed; and upon the reduction, suspension, or cessation of VR services.

There is a CAP office in every state. See 29 USC 732(a). The CAP can provide information to individuals concerning their rights and provide advocacy in resolving disputes, including representation at impartial hearings. Individuals who do not understand the proposed IPE, have questions about their VR rights, or receive an adverse decision, should consider contacting the appropriate CAP office for assistance.

Mediation is also available to resolve disputes. It must be offered, at a minimum, whenever an impartial hearing is requested. However, participation must be voluntary for both the individual and the state. In addition, involvement in mediation cannot be used to deny or delay the right to an impartial hearing. The state bears the costs of mediation. All

discussions that occur during mediation are confidential and cannot be used at any subsequent hearing.

At an impartial hearing, the individual has the right to be represented by an attorney or other advocate. The individual can present evidence and cross examine witnesses. The hearing decision is final and must be implemented, unless appealed.

A state may establish a procedure for a second level of administrative review. The review officer must be the chief official of the designated VR agency or an official from the governor's office. If the state establishes a second level of review, either party may appeal within 20 days of the hearing decision. The review officer cannot overturn a hearing decision unless, based on clear and convincing evidence, the decision is "clearly erroneous" based on an approved VR Plan, federal law, or state law or policy that is consistent with federal law.

Either party may appeal a final administrative decision to state or federal court. However, pending review in court, the final administrative decision shall be implemented.

Conclusion

VR agencies can be a crucial resource for people with disabilities who are planning to enter the workforce. They provide a very comprehensive set of services to prepare people for work. The VR system can be a crucial resource for AT for people with disabilities who are planning to enter the workforce. Over the years, Congress has continued to strengthen the role of people with disabilities in the VR process and enhance the availability of AT.

If you have questions about any of the issues discussed in this newsletter, you can contact the lead author, Ronald M. Hager of the National Disability Rights Network (ron.hager@ndrn.org). Through a partnership with our National AT Advocacy Project, Mr. Hager provides technical assistance related to education issues (primarily special education) and vocational rehabilitation issues. Question you may have about other AT funding sources, such as Medicaid or Medicare, should be directed to either Diana Straube (716-847-0650 ext. 220 or dstraube@nls.org) or Jim Sheldon (716-847-0650 ext 262 or jsheldon@nls.org) at the National AT Advocacy Project.

Using Blended Funding to Obtain AT to Support a Vocational Goal

A state VR agency may be reluctant to pay for expensive AT in some cases. In those cases the availability of "blended funding" may get an individual the needed AT without time-consuming mediation or appeals. The following are three examples where blended funding has been used to get AT into the hands of an individual. In our experience the role of an advocate in these cases can be critical.

Using State VR Agency and Medicaid (or Insurance) to Pay for a Power Standing Wheelchair. We know that Medicaid agencies regularly pay for power wheelchairs, but

we may need to go to a hearing or litigation to get the standing feature. We also know the VR agency can pay for wheelchairs, as "rehabilitation technology," but will want the individual to go to Medicaid first

Solution: Medicaid agrees to fund basic power wheelchair. VR agency agrees to pay extra cost for standing to support a vocational goal. (While rehabilitation technology is exempt from the "comparable benefit" requirement, getting Medicaid to pay for part of an expensive item will facilitate resolution of the case.)

Using VR Agency and SSI's Plan for Achieving Self Support (PASS) to Fund Modified Van. Most VR agencies will pay for modifications but not for the van purchase (even though purchase of a van is an authorized expense under federal regulations). Assume a wheelchair user receives \$420 in Social Security Disability Insurance (SSDI) and \$310 in SSI. With an approved PASS he or she can use \$400 of SSDI to save for the van. The \$400 is excluded by SSI and the SSI payment goes up by \$400. If the individual saves throughout college for example, 48 months or more, he or she can save most if not all of the cost for the van purchase. We can then expect the VR agency to pay for the van modifications to support use by a wheelchair user, if needed to achieve the occupational objective.

See AT Advocate newsletter for more information on PASS:

<http://www.nls.org/Disability/NationalAssistiveTechnologyProject/ATAdvocateNewsletters/ATAdvocateSpringSummer2006>.

Using VR Agency, PASS, and AT Loan Program to Fund Modified Van. Assume the individual, in the preceding example, will attend five years of college to obtain teaching credentials. Saving at the rate of \$400 per month for 60 months, the \$24,000 saved may be enough to purchase a van. However, the individual wants to get the van much sooner, through a down payment and loan, to travel to internships and student teaching sites. He has a low credit score and no co-signer for a loan.

Solution: The individual obtains a low-interest loan through an "alternative financing program" in his state. He can then use money deposited into the PASS account to pay off the loan. See <http://www.resnaprojects.org/allcontacts/allafpcontacts.html> for links to alternative financing programs in more than 40 states.

AT-Related Training Sessions for June 2014 National Disability Rights Network Conference

(After delivering a multi-day "Bridges to Better Advocacy" conference in Austin, Texas for 16 straight years we did not deliver a 2013 conference and do not have one planned for 2014. Shrinking attendance numbers at recent "Bridges" conferences have lead to these decisions. A training goal for 2014 will be to have a greater presence at NDRN's annual conference.)

NDRN's annual meeting/conference is scheduled for June 2-5, 2014 at the Baltimore Waterfront Marriott Hotel in Baltimore, Maryland (detailed information and online registration will be available at www.ndrn.org in the near future). We will deliver or

facilitate delivery of the sessions listed below. Speakers are not listed as we are still finalizing those details. Also, other than the Monday institute, most of the time slots are tentative.

Confirmed sessions include (full session descriptions available in future):

- Monday, June 2, 2014 (a full-day institute) - "Preparation of a Medicaid Assistive Technology Case: From Fair Hearing to State Court Judicial Review" (similar to 2013 institute, using standing wheelchair as item sought; expect to have equipment demos during session)
- Tuesday, June 3, 2014 - "What Equipment Does for the Individual and How We Get It Funded" (plan is to have equipment demos during session)
- Wednesday, June 4, 2014 - "Legal Issues Related to Equipment Requests through Medicaid Waivers and Medicaid Managed Care Organizations"
- Thursday, June 5, 2014 - "Using Smart Phones and PDAs to Promote Integrated Employment"
- Thursday, June 5, 2014 - "Using Centers for Medicare and Medicaid Services (CMS) Guidance in Medicaid Equipment Cases"

Independent Living Services – a Potential Funding Source for AT to Support Work/Independent Living

The Rehabilitation Services Administration provides funding to establish a State Independent Living Council (SILC) and Centers for Independent Living (CILs). 34 CFR Part 364. Funding passes through the State VR agency to the SILC and the CILs. The CILs are required to provide "core IL services" to individuals with significant disabilities – information and referral, IL skills training, peer counseling, and individual and systems advocacy.

Other (Non-Core) Independent Living Services. Pursuant to the Rehabilitation Act the CIL "shall provide independent living core services." Additionally, the CIL may provide "as appropriate, a combination of any other independent living services." 29 USC 796f-4(5). Potentially, any individual with a "significant disability" will qualify for the non-core, non-mandated services.

Examples of Non-Core IL Services Categories that Could Fund AT include: adaptive housing services, including home modifications; needed prostheses and other appliances or devices; rehabilitation technology services; accessible transportation services; and "any other services" to improve ability to function, continue functioning, or move toward functioning independently. 34 CFR 364.4(b). Keep in mind the law and regulations provide considerable leeway on how to allocate the limited dollars available for these non-core services.

Why Non-Core IL Services May be Important for Person Seeking State VR Agency Services. There may be any number of reasons why the person cannot easily obtain the needed AT through their state VR agency. This may include one of the following reasons:

- The VR agency is not serving the person because of an "Order of Selection" policy.
- The VR agency may believe the person does not meet the criteria for "post employment services."
- The VR agency may claim the item is not needed to support a vocational goal.

In all of these cases, getting the item funded as non-core IL services will allow the individual to move forward with his or her vocational goal.

Our National AT Resource Libraries

Our National AT Advocacy Project maintains two resource libraries to support the work of AT advocates, nationwide.

Our Court Documents Library is best described as a brief and pleadings bank, containing complaints, briefs, discovery papers, unreported decisions, and other court papers to support AT and related litigation in the state and federal courts. Nearly all of the more recent documents are available in electronic format. Although we have many of the complaints and briefs that supported cases like the *Lankford, Fred C., Esteban, and T.L.*, cases regularly cited in our Medicaid materials, we also have collected documents from many cases that never resulted in a reported decision. Copies of relevant documents can be emailed (or in some cases mailed) to support your work. If we do not have documents from a particular case we may be able to help you track them down.

Our Hearing Decisions Library contains primarily Medicaid hearing decisions, any supporting briefs, memoranda of law, and other written arguments supplied to us by attorneys and advocates. We also have a few miscellaneous policy documents (such as policy letters from the Centers for Medicare and Medicaid Services or CMS). Many of these are documents that are not published anywhere (or are not easily found).

If you want to see if we have documents to support your work, you can contact either Diana Straube (dstraube@nls.org; 716-847-0655 ext. 220) or Jim Sheldon (jsheldon@nls.org; ext. 262).

NOTE: Our resource libraries are only as good as the materials we get to put into them. Please get us your materials so that everyone can benefit from them.