

Cornell University
School of Industrial and Labor Relations
Employment and Disability Institute

Work Incentives Support Center

Policy & Practice Brief #6

The Ticket To Work and Self-Sufficiency Program

The Changing Landscape of Vocational Rehabilitation for
Beneficiaries of Social Security Administration Disability
Benefit Programs

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This is one of a series of articles written for benefits specialists employed by Benefits Planning, Assistance and Outreach projects and attorneys and advocates employed by Protection and Advocacy for Beneficiaries of Social Security programs. Materials contained within this policy brief have been reviewed for accuracy by the Social Security Administration (SSA), Office of Employment Support Programs. However, the thoughts and opinions expressed in these materials are those of the authors and do not necessarily reflect the viewpoints or official policy positions of the SSA. The information, materials and technical assistance are intended solely as information guidance and are neither a determination of legal rights or responsibilities, nor binding on any agency with implementation and/or administrative responsibilities.



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I.

Ticket to Work and Self-Sufficiency Program

Congress has made provisions for the SSA to provide work incentives for beneficiaries of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI).¹ In addition to the disability programs and work incentive provisions that the SSA oversees, they also administer a vocational rehabilitation (VR) program for providers of VR services that serve SSDI and SSI beneficiaries.

Prior to 1981, when Congress established the existing program, SSA awarded State VR agencies block grants to work with beneficiaries. Unfortunately, the State VR agencies did not report use of these funds on a “per case” basis and SSA was unable to document the success of the VR program utilizing the original block grant formula. Inadvertently, this resulted in SSA not knowing if beneficiaries were in fact going to work and decreasing reliance on monthly cash benefits. To remedy this situation, Congress modified the program to a reimbursement-based, outcome-oriented formula.

The VR Reimbursement Program was intended to help beneficiaries go to work. Under this program, SSA pays State VR agencies and alternate participants for the costs of VR services and supports provided to beneficiaries that result in the beneficiary achieving sustained employment at substantial gainful activity levels. Legislative authority for SSA’s VR Reimbursement Program is outlined in section 222(d) of the Social Security Act for beneficiaries under the SSDI program and section 1615 of the Social Security Act for recipients of the SSI program.² Initial regulations to implement the VR Reimbursement Program and allow payments to State VR agencies were published in 1981. These regulations were amended on March 15, 1994, to allow SSA to pay alternative participants for the costs of their services under the same criteria governing payments to State VR agencies and to improve the administration and cost-effectiveness of the program.³

State VR agencies (or alternative participants) offering VR services and supports contributing to beneficiaries working for a period of not less than nine months at the substantial gainful activity (SGA) level are reimbursed the costs for those services and supports if they meet the conditions for reimbursement. Keep in mind that for a case to be considered a successful rehabilitation under the VR Reimbursement Program, a beneficiary or recipient must be employed for a continuous period at the SGA level. This is defined as at least nine months within a consecutive 12-month window. This includes: nine consecutive months; nine of 10 consecutive months regardless of the reason for the one-month break; or, at least nine months within 12 consecutive months, if the break in SGA was due to circumstances beyond the beneficiary’s or recipient’s control and unrelated to the person’s impairment.⁴

Prior to the implementation of the Ticket to Work and Work Incentives Improvement Act of December 1999,⁵ SSA referred beneficiaries for VR services through either State VR agencies established under the Rehabilitation Act of 1973 or through alternative participants who had signed contracts with SSA to provide VR services to beneficiaries. The regulations in March 1994 expanded the reimbursement program by allowing SSA to refer beneficiaries to alternative public or non-public VR providers (called alternate participants) for VR services on a case-by-case basis if the State VR agency did not serve a referred individual. Prior to these changes, SSA could only refer beneficiaries to alternative partici-

¹ This article will use the term “beneficiary” to describe all individuals who receive either title II disability or title XVI (SSI) disability or blindness benefits. To the extent that the term “recipient” might also be used, that term is encompassed within the term beneficiary.

² 42 U.S.C. §§ 422(d), 1382d.

³ 20 C.F.R. § 404.2101 et seq.

⁴ *Id.* § 404.2110.

⁵ Public Law 106-170.

pants if a State VR agency opted to not participate in the VR Reimbursement Program (all State VR agencies chose to participate) or if they stopped, or limited, their participation to select groups. While these amendments to the VR program provided SSA with much more flexibility in selecting service providers, it still reserved right of first selection to State VR agencies, making alternative participants a secondary service delivery option.

SSA enhanced the availability of VR services and supports to beneficiaries through the infrastructure of the VR Reimbursement Program. This brought a new revenue stream to State VR agencies, for example, over and above the allocation provided under Title I of the Rehabilitation Act. Savings to the Social Security trust funds and general revenues for SSI are realized when beneficiaries go back to work and decrease their reliance on monthly cash benefits.

Over the next few years, as the SSA rolls out and implements the Ticket to Work program in states selected by the Commissioner of the SSA under Public Law 106-170, the provisions of the Social Security Act for referring beneficiaries to State VR agencies will cease to be in effect in those states. Additionally, the use of alternative participants under the VR reimbursement programs will be phased out in the states as the Ticket program is implemented. Further, sections 222(b) and 1615(c) of the Social Security Act were also repealed in section 101(b) of the Ticket to Work Act under which the Commissioner of the SSA was authorized to impose sanctions (i.e., make deductions from SSDI benefits or suspend SSI benefits) with respect to any beneficiary who refused, without good cause, to accept and participate in VR services made available under the reimbursement program.

II.

What is the Ticket to Work and Self-Sufficiency Program?

The Ticket to Work and Work Incentives Improvement Act (Public Law 106-170) was signed into law on December 17, 1999. Its purpose is fourfold:

1. To provide health care and employment preparation and placement services to individuals with disabilities that will enable those individuals to reduce their dependence on cash benefit programs;
2. To encourage states to adopt the option of a Medicaid Buy-In, allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable them to maintain employment;
3. To provide enhanced options to individuals with disabilities for maintaining Medicare coverage while working; and
4. To establish a “Ticket to Work and Self-Sufficiency Program” that allows SSDI and SSI beneficiaries to seek employment services, VR services and other support needed to obtain, retain, or maintain employment and reduce their dependence on cash benefit programs.

Public Law 106-170 directed the Commissioner of Social Security to establish a Ticket to Work and Self-Sufficiency program.⁶ The law's purpose was to expand the universe of service providers available to SSDI and SSI disability beneficiaries and provide them with a Ticket they may use to obtain VR services, employment services, and other support services from an Employment Network (EN) of their choice. The final regulations to implement the Ticket program were published in the Federal Register on December 28, 2001⁷ and became effective on January 28, 2002. In February 2002, SSA issued new Ticket to Work procedures in its Program Operations Manual Systems (POMS), which will be used by SSA staff to implement the Ticket provisions.⁸

Under the Ticket to Work program, a beneficiary will have the option of deciding when and whether to use his or her Ticket to obtain services from an EN, or from the State VR agency. A beneficiary with a Ticket may assign it to any EN they choose, or the State VR agency, as long as that EN or State VR agency is willing to accept their Ticket. Beneficiaries may discuss their employment and rehabilitation plan with as many ENs in their areas as they wish, or the State VR agency, and a list of available providers can be obtained from the Program Manager, MAXIMUS, Inc. However, a beneficiary cannot assign his or her Ticket to more than one EN, or an EN and the State VR agency at a time.

The EN or State VR agency will provide employment services, VR services and other support services to assist the beneficiary in obtaining, regaining and maintaining self-supporting employment as specified in the beneficiary's Individualized Work Plan (IWP), if developed with an EN, or Individualized Plan for Employment (IPE), if developed with the State VR agency. As outlined below, the EN or State VR agency will only receive payment for its services if the beneficiary achieves certain work-related outcomes. At any time, a beneficiary can retrieve his or her Ticket from an EN or State VR agency and reassign it to another, as long as Ticket eligibility requirements continue to be met.

III. Who is Eligible for a Ticket?

A. An Individual Must Reside in a Ticket State

To be eligible to receive a Ticket, an SSDI and/or SSI beneficiary must reside in a Ticket state. The Ticket to Work program will be implemented in three phases. The table below outlines the three phases, with a schedule for when beneficiaries should expect to get Tickets in each of the States and territories.

Phase I – January 2002

Arizona, Colorado, Delaware, Florida, Illinois, Iowa, Massachusetts, New York, Oklahoma, Oregon, South Carolina, Vermont and Wisconsin

Phase II – Calendar Year 2002

Alaska, Arkansas, Connecticut, Georgia, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, South Dakota, Tennessee, Virginia and the District of Columbia

⁶ 42 U.S.C. § 1320b-19.

⁷ 20 C.F.R. Part 411, published as final regulations at 66 Fed. Reg. 67370 - 67442 (Dec. 28, 2001).

⁸ POMS DI 55001.000 et seq.

Phase III – Calendar Year 2003

Alabama, California, Hawaii, Idaho, Maine, Maryland, Minnesota, Nebraska, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Washington, West Virginia, Wyoming, American Samoa, Guam, North Mariana Islands, Puerto Rico and the Virgin Islands

B. Most Beneficiaries, Ages 18 to 64, Will be Eligible for a Ticket

In addition to residing in a Ticket State, an individual who is entitled to title II disability benefits or title XVI (SSI) disability or blindness benefits must also meet several criteria to be eligible for a Ticket:

- be 18 through 64 years of age;
- if an SSI recipient, be eligible for benefits under the adult disability standard;
- be receiving a Federal cash benefit from Social Security;
- have a disabling impairment which is classified by SSA as either medical improvement not expected or medical improvement possible, or, if the impairment is classified as medical improvement expected, have undergone at least one Continuing Disability Review (CDR) and been found to have a continuing disability.⁹

A person is not eligible to participate in the Ticket program if they are receiving: “section 301” payments, i.e., continued SSDI or SSI benefits following a determination of medical improvement, because they are participating in an approved VR program;¹⁰ continued benefits while appealing a cessation of benefits based on a finding of medical improvement; provisional cash benefits while SSA is considering a request for expedited reinstatement of SSDI or SSI; or presumptive disability payments.

For beneficiaries classified as medical improvement expected (MIE), SSA will issue a Ticket once they go through one continuing disability review and are found still disabled. An individual who was classified as MIE and has been on the disability rolls for at least three years, will be presumed to have had a medical CDR and will be eligible for a Ticket.¹¹ SSI beneficiaries who are 18 years old and received SSI as children will not automatically be provided a Ticket upon turning age 18. However, they will qualify for a Ticket later if SSA finds them disabled based on the adult standard after conducting an age 18 redetermination.¹²

C. Eligibility for a Second Ticket

The individual is eligible for only one Ticket during a period of entitlement to SSDI or SSI based on disability. However, if entitlement to SSDI or SSI ends or is terminated, and is later reinstated, a new Ticket will be issued.¹³ There is no limit to the number of new Tickets an individual could receive.

⁹ 20 C.F.R. § 411.125(a).

¹⁰ See 20 C.F.R. §§ 404.316(c), 416.1338; POMS DI 13515.001 et seq.


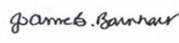
¹¹ POMS DI 55002.005 C.4.b.

¹² POMS DI 55002.005 C.5.

¹³ 20 C.F.R. §§ 411.125(b) and (c).

IV. What is the Ticket? What does it Look Like?¹⁴

A Ticket provides evidence of SSA's agreement to pay an EN or State VR agency to which a beneficiary's Ticket is assigned for providing services and supports to the beneficiary under the Ticket to Work program if certain conditions are met. The Ticket is a red, white and blue document approximately 6" by 9" in size. The left side of the document includes the beneficiary's name, ticket number, claim account number, and the date SSA issued the Ticket. The Ticket number is 12 characters and comprises the beneficiary's own Social Security number, the letters "TW" and a number 1, 2, etc. A number 1 in the last position would signify that this is the first Ticket the beneficiary has received. The right side of the Ticket includes the signature of the Commissioner of SSA and the language below:

Social Security Administration		
Ticket to Work and Self-Sufficiency		
JOHN DOE	Ticket Number 123-45-6789TW	<p>This ticket is issued to you by the Social Security Administration under the Ticket to Work and Self-Sufficiency Program. If you want help in returning to work or going to work for the first time, you may offer this ticket to an Employment Network of your choosing or take it to your State vocational rehabilitation agency for services. If you choose an Employment Network and it agrees to take your ticket, or if you choose your State agency and you qualify for services, these providers can offer you services to help you go to work.</p> <p>An Employment Network provides the services at no cost to you. The Social Security Administration will pay the Employment Network if you assign your ticket to it, and the Employment Network helps you go to work and complies with other requirements of the Program. An Employment Network serving under the Program has agreed to abide by the rules and regulations of the Program under the terms of its agreement with the Social Security Administration for providing services under the Program. Your State agency can tell you about its rules for getting services.</p>
Claim Account Number	987-65-4321 W	
Issue Date:		
		 Commissioner of Social Security

V. The Program Manager¹⁵

On September 29, 2001, after a competitive bid, SSA awarded a five-year contract to MAXIMUS, Inc. of McLean, Virginia to provide Program Manager (PM) services to assist SSA in the administration of the Ticket to Work program. The responsibilities of the PM include:

- recruiting, recommending, and monitoring of ENs;
- facilitating access by beneficiaries to ENs;
- facilitating payments to ENs;
- performing administrative duties such as reviewing IWPs;
- reviewing amendments to IWPs;
- ensuring that ENs only refer beneficiaries to a State VR agency for services pursuant to an agreement regarding the conditions under which such services will be provided;
- resolving disputes between ENs and State VR agencies with respect to agreements;
- resolving disputes between a beneficiary and an EN which cannot be resolved by the EN's internal grievance procedures; and
- referring disputes between beneficiaries and ENs to SSA for a final decision if this is requested by either of the parties.

¹⁴ *Id.* § 411.120.

¹⁵ *Id.* §§ 411.230 - 411.245.

SSA will periodically evaluate the PM. This evaluation will include, but not be limited to, an assessment examining the following areas:

1. Quality of services;
2. Cost control;
3. Timeliness of performance;
4. Business relations; and
5. Customer satisfaction.

MAXIMUS, Inc. can be reached at:

Ticket to Work Program

Toll-free line: 1-866-968-7842

Toll-free TDD line for Hearing and Speech Impaired: 1-866-833-2967

Web Site: www.yourtickettowork.com

VI. The Role of Employment Networks¹⁶

A. An EN Can be Any Public or Private Entity

An EN is any qualified entity that has entered into an agreement with the SSA to function as an EN under the Ticket to Work program. To serve as an EN, an entity must meet and maintain compliance with both general and specific selection criteria. General criteria include:

- having systems in place to protect the confidentiality of personal information about beneficiaries seeking or receiving services;
- being both physically and programmatically accessible;
- not discriminating in the provision of services based on a beneficiary's age, gender, race, color, creed, or national origin;
- having adequate resources to perform the activities required under the agreement with SSA or the ability to obtain them; and,
- implementing accounting procedures and control operations necessary to carry out the Ticket program.

The specific criteria that an entity must meet to qualify as an EN include:

- using staff who are qualified under applicable certification, licensing or registration standards that apply to their profession including certification or accreditation by national accrediting or certifying organizations;
- using staff that are otherwise qualified based on education or experience, such as by using staff with experience or a college degree in a field related to the services the EN wants to provide such as vocational counseling, human relations, teaching, or psychology; and
- taking reasonable steps to assure that if any medical and related health services are provided, such medical and health-related services are provided under the formal supervision of persons licensed to prescribe or supervise the provision of these services in the State in which the services are performed.

¹⁶ 20 C.F.R. §§ 411.300 - 411.330.

Any entity must have applicable certificates, licenses, or other credentials if such documentation is required by State law to provide VR services, employment services or other support services.

B. An EN's Role in the Ticket Program is Voluntary

This is true of all ENs, other than a State VR agency serving as an EN. An EN is not required to serve any particular beneficiary. An EN is not required to provide or offer any specified list of services. After beginning to serve a beneficiary, the EN may choose, by following certain procedures outlined in the final Ticket regulations and subject to any dispute resolution procedures, to sever the relationship and stop serving the beneficiary. We expect most ENs will limit their work to those areas which are within their expertise.

Readers should take note, that in the case of a state VR agency serving as an EN, all of the requirements of Title I of the Rehabilitation Act, which govern State VR agencies, will continue to apply to services provided through the Ticket program. As a practical matter, this may mean that some beneficiaries will have a better guarantee of available services through the State VR agency than through an EN. It is up to the beneficiary, with or without help from third parties, to evaluate the contrasting services available and work with the entity of his or her choice.

C. How to Become an EN

An entity, other than a State VR agency, applies to SSA to become an EN by responding to SSA's request for proposals (RFP). This RFP is available through SSA's website at: www.ssa.gov/work. The applicant must certify that it is qualified to provide employment services, VR services, or other support services to beneficiaries either directly or through contract or other arrangement.

D. EN Responsibilities, Including the Obligation to Report to MAXIMUS

The EN assumes responsibility for the coordination and delivery of employment services, VR services, or other support services to beneficiaries who have assigned their Ticket to that EN. An EN may consist of either a single provider of such services or a group of providers organized to combine their resources into a single entity. A one-stop delivery system established under the Workforce Investment Act of 1998 can serve as an EN. An EN provides services either directly or by entering into agreements with other providers, which can furnish appropriate services and serve prescribed service areas and take measures to ensure that services provided under the Program meet the requirements of individual work plans (IWPs). An EN must develop and implement IWPs in partnership with each beneficiary whom they agree to serve in a manner that affords the beneficiary the opportunity to exercise informed choice in selecting an employment goal and specific services needed to achieve that goal. Each IWP must meet the requirements detailed in the section below.

Finally, the EN must report to the Program Manager (i.e., MAXIMUS) each time it accepts a Ticket for assignment; submit a copy of each signed IWP to the PM; submit to the PM copies of amendments to a beneficiary's IWP; submit to the PM a copy of any agreement the EN has established with a State VR agency; submit information to assist the PM conducting the reviews necessary to assess a beneficiary's timely progress; report to the PM the specific outcomes achieved with respect to specific services the EN provided or secured on behalf of the beneficiary; provide a copy of its most recent annual report on outcomes to each beneficiary considering assigning a Ticket to it; meet all financial reporting requirements; collect and record such data as SSA requires; and, adhere to all requirements specified in the agreement with SSA.

SSA will periodically evaluate the EN's performance to ensure effective quality assurance in the provision of services by ENs. SSA will solicit and consider the views of the individuals the EN serves and the PM monitoring the EN. ENs must make the results of these periodic reviews available to beneficiaries to assist them in choosing among available ENs.

E. An EN Cannot Charge a Beneficiary for Services

The only way that an EN can be paid is through one of the two payment options, discussed in section XI, below. A State VR agency, which can also be paid through a cost reimbursement system, is also precluded from charging for its services when it serves a beneficiary under the Ticket program.

VII. The Role of State Vocational Rehabilitation Agencies¹⁷

Every State agency administering or supervising the administration of the State plan approved under Title I of the Rehabilitation Act of 1973, as amended, must participate in the Ticket to Work program if it wishes to receive payments from SSA for serving beneficiaries who are issued a Ticket. The Ticket program provides the State VR agency with an additional payment option, the cost reimbursement system, that is not available to private ENs. A State VR agency will provide services pursuant to the requirements of Title I of the Rehabilitation Act. All services will be delivered pursuant to a written individualized plan of employment (IPE).

A State VR agency participates in the program in one of two ways when providing services to a particular beneficiary. On a case-by-case basis, the State agency may participate either as 1) an EN or 2) under the cost reimbursement payment system. When the State agency serves a beneficiary with a Ticket as an EN, the agency will use the EN payment system it has elected for this purpose, either the outcome or outcome-milestone payment system. The State VR agency will have periodic opportunities to change the payment system it uses when serving as an EN. When serving a beneficiary who does not have a Ticket, the State VR agency may seek payment only under the cost reimbursement payment system. A State VR agency can choose to function as an EN or to receive payment under the cost reimbursement payment system each time that a Ticket is assigned or reassigned to it if payment has not previously been made with respect to that Ticket. If payment has previ-

¹⁷ 20 C.F.R. §§ 411.350 - 411.435.

ously been made with respect to that Ticket, the State agency can receive payment only through the payment system under which the earlier payment was made.

An EN may refer a beneficiary it is serving to a State VR agency for services if the State agency and EN have an agreement that specifies the conditions under which services will be provided by the State agency. This agreement must be in writing and signed by both parties prior to the EN referring any beneficiary to the State agency for services.

VIII. The Individual Work Plan¹⁸ and Specific Services Available

A. The IWP is a Written Document

An IWP is a required written document signed by an EN and a beneficiary, or a representative of a beneficiary. It is developed and implemented in partnership when a beneficiary and EN have come to a mutual understanding to work together to pursue the beneficiary's employment goal. The IWP outlines the specific employment services, vocational services, and other support services that the EN and beneficiary have determined are necessary to achieve the stated employment goal. The beneficiary and EN share responsibility for determining the employment goal and the specific services needed to achieve it.

B. What Services are Available through an IWP?

The Ticket legislation provides a representative list of services available through the Ticket program. It includes “case management, work incentives planning, supported employment, career planning, career plan development, vocational assessment, job training, placement, follow-up services, and such other services as may be specified by [SSA] under the Program.”¹⁹ Although the law and regulations authorize a fairly open-ended array of potential services, there is no criteria or test governing which services a beneficiary will get with a Ticket. Since the program is voluntary, there is no mandate for an EN (other than a state VR agency) to provide any specific service or serve any specific beneficiary.

For individuals served in the Ticket program by a State VR agency, services must be provided through the traditional IPE. In contrast to the private EN, the State VR agency is required to serve all eligible individuals (subject to any limitations imposed in many states to serve only the most severely disabled under an Order of Selection) and, in general, provide any and all services as necessary to achieve a work goal. A more comprehensive discussion of an individual's right to services through the State VR agency appears in Policy and Practice Brief #1, *State and Federal Vocational Rehabilitation Programs*,²⁰ published by the Work Incentives Support Center at Cornell University.

C. What Statements Must Appear in the Written IWP?

The EN is responsible for ensuring that, at a minimum, the written IWP includes statements about the following:

¹⁸ 20 C.F.R. §§ 411.450 - 411.470.

¹⁹ 42 U.S.C. § 1320b-19(e)(5).

²⁰ www.ilr.cornell.edu/edi/PPBriefs.cfm

- the vocational goal developed with the beneficiary, including, as appropriate, goals for earnings and job advancement;
- the services and supports necessary for the beneficiary to accomplish that goal;
- any terms and conditions related to the provision of these services and supports;
- a statement that the EN may not request or receive any compensation for the costs of services and supports from the beneficiary;
- a statement of the conditions under which an EN may amend the IWP or terminate the relationship;
- the beneficiary’s rights under the Ticket to Work program, including the right to retrieve a Ticket at any time if the beneficiary is dissatisfied with the services being provided by the EN;
- the remedies available to the beneficiary, including information on the availability of advocacy services and assistance in resolving disputes through the State Protection and Advocacy system;
- the beneficiary’s right to privacy and confidentiality regarding personal information, including information about the beneficiary’s disability;
- the beneficiary’s right to seek amendments to the IWP (the IWP can be amended if both the beneficiary and the EN agree to the change); and
- the beneficiary’s right to have a copy of the IWP made available to the beneficiary, including in an accessible format chosen by the beneficiary.

IX. Assigning and Re-Assigning Ticket; Extension Periods

A. Initial Assignment to the EN or State VR Agency²¹

In general, a beneficiary can assign a Ticket as long as he or she continues to be eligible for participation in the program. To assign a Ticket, a beneficiary must first find an EN or State VR agency that is willing to take the Ticket. Once both parties have agreed, the beneficiary and a representative of the EN must develop and sign an IWP. If the beneficiary elects to work with his or her State VR agency, the beneficiary and representative of the State VR agency must agree to, and sign, an Individualized Plan for Employment (IPE) and an additional form. The EN or State VR agency will then submit a copy of the signed IWP or IPE along with appropriate forms to the Program Manager. The effective date of the Ticket assignment will be the first day on which these requirements for Ticket eligibility are met and the IWP or IPE has been signed.

B. When Can the Ticket be Taken out of Assignment?

A beneficiary may “retrieve” a Ticket or take it out of assignment for any reason. The beneficiary must notify the Program Manager (i.e., MAXIMUS) in writing. The Ticket will no longer be assigned to that EN or State VR agency, effective the first day of the month following the month in which the beneficiary notifies the PM. For example, if the beneficiary notifies the PM on February 8th that they are taking the Ticket out of assignment, the Ticket is no longer assigned effective March 1st. If an EN goes out of business or is no longer

²¹ 20 C.F.R. § 411.140.

approved to participate as an EN in the Ticket program, the PM will take the beneficiary's Ticket out of assignment. In addition, if the beneficiary's EN is no longer able to provide services, or if the State VR agency stops providing services because the beneficiary is deemed ineligible for services, the EN or State VR agency may ask the PM to take the beneficiary's Ticket out of assignment. In both of these latter situations, a notice will be sent to the beneficiary informing him or her of this decision.²²

C. When Can a Ticket be Reassigned?

A beneficiary may reassign their Ticket as he or she deems appropriate and as long as he or she continues to be eligible for participation in the program. For example, a beneficiary who was being served by an EN may choose to reassign the Ticket to a different EN or to the State VR agency.²³ To re-assign a Ticket, all of the following requirements must be met:

- a. He or she meets the criteria for assigning a Ticket described in POMS DI 55025.001 B.1 and 2.
- b. If the beneficiary does not meet the criteria, he or she may reassign his or her Ticket only if he or she:
 - Continues to meet the Ticket eligibility requirements;
 - Has an unassigned Ticket; and
 - Has an EN/State VR Agency who is willing to work with him or her and sign a new IWP or IPE.
 - If the Ticket is not in use, the IWP or IPE must be completed and signed within 30 days of being taken out of assignment.
 - If the Ticket is in use, the employment plan must be completed and signed before the end of the extension period described below.

The reassignment is effective on the first day these requirements are met. If the beneficiary reassigns the Ticket to the same EN or State VR Agency that the beneficiary was previously working with, SSA resumes counting the months in the initial 24-month period or the 12-month progress review period. If the beneficiary reassigns the Ticket to a new EN or State VR Agency, the 24-month period starts over. However, if the reassignment occurs within a 12-month progress review period, SSA resumes counting the months rather than starting over.

D. Reassignments and the Protection Against CDRs: The Three-Month Extension Period and Inactive Status

As stated above, the beneficiary or EN/State VR agency may take a Ticket out of assignment. The "extension period" is the three-month time frame that the beneficiary who is using a Ticket has to select an EN or State VR Agency, after a Ticket is taken out of assignment.

²² *Id.* § 411.145.

²³ *Id.* §411.150(a).

During the three-month extension period, the Ticket is still considered to be in use. This means that the beneficiary will not be subject to medical continuing disability reviews (CDRs) during this period, as described in **Section X**. The extension period begins on the first day on which the Ticket is no longer assigned and ends three months after it begins or when the beneficiary assigns the Ticket to a new EN or State VR agency, whichever occurs first.²⁴ If the beneficiary does not reassign the Ticket during the extension period, it is considered not in use at the end of the extension period and the beneficiary will once again be subject to medical CDRs.²⁵ The extension period does not count in determining whether the beneficiary is making timely progress toward his or her work goals.

During the initial 24-month period after Ticket assignment, the beneficiary can make a written request to the PM to place his or her Ticket in inactive status due to possible relapses in health condition or emergency situations. Months in inactive status do not count in deciding whether the beneficiary is making timely progress toward work goals, as discussed later. The Ticket is not in use when inactive. In general, the beneficiary can make another written request to the PM to reinstate Ticket use. While the Ticket is in inactive status, SSA may initiate a medical CDR.²⁶

X. Elimination of Medical Continuing Disability Review While Beneficiary is “Using a Ticket”²⁷

A medical CDR is the review conducted by SSA to determine whether or not a beneficiary continues to meet SSA’s disability standard. SSA will not conduct a medical CDR when the beneficiary is using the Ticket. However, this protection does not apply to work reviews that SSA may conduct to determine whether or not a beneficiary is engaging in substantial gainful activity.

A. How Does SSA Define “Using a Ticket?”

For a beneficiary who has assigned his or her Ticket to an EN or State VR agency, SSA defines “using a Ticket” as a specified period of time during which the beneficiary is actively following the approved plan to become self-supporting. The EN monitors the beneficiary’s progress with the plan, but the PM actually decides if the beneficiary is “using” the Ticket. SSA cannot initiate a medical CDR while the beneficiary is using the Ticket. If a Ticket has been assigned after a medical CDR has been initiated, SSA will complete that CDR. If, during that CDR, SSA decides that the beneficiary has medically recovered, usually benefits will be terminated. However, in some circumstances, SSA may continue benefits if the Ticket assignment was made prior to the medical CDR decision.²⁸

B. Using a Ticket: The Initial 24-Month Period

The initial 24-month period begins the month following the month in which a beneficiary’s Ticket is considered to be assigned. During the initial 24-month period, a beneficiary must be actively participating in his or her employment plan. This means that the beneficiary is engaging in activities outlined in the employment plan on a regular basis and within the

²⁴ *Id.* §§ 411.220(b), (c) and (d).

²⁵ *Id.* § 411.220(f).

²⁶ *Id.* § 411.190(a)(2).

²⁷ 20 C.F.R. §§ 411.160 - 411.225.

²⁸ See 20 C.F.R. §§ 404.316(c), 416.1338; POMS DI 13515.001 et seq., allowing benefits to continue following a medical recovery if the beneficiary is involved in an approved VR program that started before the disability ceased.

appropriate time frames.²⁹ During the initial 24-month period, SSA does not count any month in which the Ticket is in an extension period or in inactive status in deciding whether the beneficiary is making timely progress toward self supporting employment.³⁰ The EN will notify the PM if the beneficiary is not following the plan.

At the completion of the first 24 months during which a beneficiary used his or her Ticket, the Program Manager (i.e., MAXIMUS) will conduct a Progress Review. During this review the PM will answer three questions as required by the Ticket regulations:

1. Is the beneficiary actively participating in their employment plan? Simply, is the beneficiary engaging in activities outlined in their employment plan on a regular basis and in the approximate time frames specified in the plan. These activities may include employment, if agreed to in the employment plan.
2. Does the beneficiary's employment plan have a goal of at least three months of work by the time of the beneficiary's first 12-month progress review?
3. Given the beneficiary's current progress in the employment plan, can the individual be expected to reach this goal of at least three months of work at the time of their first 12-month progress review?³¹

The regulations specify that active participation in the beneficiary's employment plan is presumed unless the EN or State VR agency tells the PM that the beneficiary is not actively participating.³²

It is important to note that if a beneficiary engages in one or more months of employment during the initial 24-month period, these months can count toward the three months of employment required as part of the criteria for the first 12-month progress review that follows the 24-month review. If during the 24-month progress review the PM is able to answer yes to all three questions, then the beneficiary will be found to be making timely progress toward self-supporting employment until the first 12-month progress review. If the answer to any of these questions is no, then the PM will find that the beneficiary is not making timely progress and the Ticket is no longer in use. The PM will send a written notice of the decision to the beneficiary at his or her last known address. The notice will explain the PM's reasoning and inform the beneficiary of the right to ask SSA for a review of the decision. The decision will be effective 30 days after the date on which the PM sends the notice of the decision to the beneficiary unless a request for review is made.³³

C. Using a Ticket: The 12-Month Progress Reviews

The PM will conduct additional progress reviews at 12-month intervals. If the PM determines that the beneficiary fails to successfully complete the review, he or she has the choice of either having SSA review the PM's decision or taking steps to re-enter "in-use"

²⁹ 20 C.F.R. § 411.180(c)(1).

³⁰ *Id.* § 411.180(b)(1).

³¹ *Id.* § 411.195(a).

³² *Id.* § 411.190(a)(1).

³³ *Id.* § 411.195(c).

status. Even if it has been determined by the PM that a beneficiary is not making timely progress toward self-supporting employment, the beneficiary may continue to participate in the Ticket to Work program. However, he or she will no longer be provided medical CDR protection. NOTE: For each of the progress review periods summarized below, a beneficiary can re-enter in-use status by meeting the timely progress guidelines. The beneficiary would then need to submit a written request to the PM asking that he or she be reinstated to in-use status.³⁴

I. The First 12-Month Progress Review

After the initial 24-month period, to be considered as using a Ticket, the beneficiary will be required to work at least three months at the non-blind SGA level (without considering any SSA work incentives) within the next 12 months. For example, in 2005 the person would be required to earn \$830 during these three months, prior to any income exclusions. These three months do not need to be consecutive. If a beneficiary engages in one or more months of employment during their initial 24-month period, these months can count toward the three months required for the first 12-month review.³⁵

The 12-month review is a two-step process:

- During step one, MAXIMUS will determine if the beneficiary completed the work requirements in the just completed 12-month period. If they have, then MAXIMUS will go to step two. If not, MAXIMUS will find that the beneficiary is not making timely progress toward self-supporting employment (i.e., not using a Ticket).
- During step two, MAXIMUS must determine whether both the beneficiary and the EN or State VR agency expect the person to work at the required level during the next 12 months. If yes, the beneficiary is using a Ticket. If the answer is no, the beneficiary will not be considered using the Ticket.

MAXIMUS will go through the same two-step process during each of the 12-month reviews.

2 The Second and Subsequent 12-Month Progress Reviews

During the second 12-month review period, the beneficiary must work at least six of 12 months at the gross non-blind SGA level prior to income exclusions. During the third and any subsequent 12-month review periods, the beneficiary must work for at least six of 12 months with earnings substantial enough to eliminate SSI and SSDI cash payments for those six months worked.³⁶

³⁴ *Id.* § 411.21.

³⁵ *Id.* § 411.180(b)(2) and 411.185(a)(1).

³⁶ *Id.* §§ 411.185(a) and (b).

The following chart is based on one that appears in the final regulations³⁷ showing the guidelines that the PM uses when conducting a progress review:

Review Period	Participation Criteria
Initial 24-months	Beneficiary following signed employment plan
First 12-months (25 – 36 ticket months)	Work at least 3 months at gross non-blind SGA level with ticket in use (may include work months in initial 24-month period)
Second 12-months (37 – 48 ticket months)	Work at least 6 months at gross non-blind SGA level with ticket in use
Third and subsequent (49 and + ticket months)	Worked 6 of 12 months and SSDI and/or Federal SSI benefits not payable because earnings or net income from self-employment too high (after work incentives applied)

NOTE: The non-blind SGA amount is the annual SGA amount for disability beneficiaries who are not blind, i.e., \$830 in 2005. The gross non-blind SGA amount represents the SGA earnings amount before any work incentive exclusions are applied.

D. Appealing Timely Progress Review Decisions

If a beneficiary disagrees with a decision made at the conclusion of a Timely Progress Review, that beneficiary can request a review of the decision made before the 30th day after the date on which the PM sends the notice of decision. SSA will consider the beneficiary to be making timely progress until they make a decision. SSA will send a written notice of their final decision to the beneficiary at their last known address. If they decide that the beneficiary is no longer making timely progress, their decision will be effective on the date on which they send the notice of decision to the beneficiary.³⁸

E. When Will the Status of “Using a Ticket” End?

A beneficiary will not be considered “using a Ticket” with the earliest of the following:

- The month in which the Ticket terminates;
- The 60th month for which an outcome payment is made to an EN or State VR agency;
- For State VR agencies that chose the cost reimbursement method, the 60th month for which an outcome payment would be due if the agency had chosen to serve the beneficiary as an EN;
- The month in which the beneficiary no longer meets timely progress requirements;
- When the beneficiary fails to reassign the Ticket by the end of a three-month extension period.

³⁷ *Id.* § 411.191.

³⁸ *Id.* § 411.205.

F. Ticket Termination³⁹

A beneficiary's Ticket will terminate if and when he or she is no longer eligible to participate in the Ticket to Work program. If a Ticket is terminated, a beneficiary will no longer be able to assign it and an EN or State VR agency will not receive milestone or outcome payments achieved in or after the month in which the Ticket was terminated. A beneficiary's eligibility to participate in the Ticket to Work program will end, and the Ticket will terminate, in the earliest of the following months:

1. The month in which entitlement to SSDI benefits based on disability ends for reasons other than work activity or earnings, or the month in which eligibility for SSI benefits based on disability or blindness terminates for reasons other than work activity or earnings, whichever is later; or
2. If the beneficiary is entitled to SSDI widow's or widower's benefits based on disability, the month in which the beneficiary turns age 65; or
3. If the beneficiary is eligible for SSI based on disability or blindness, the month following the month in which they turn age 65.

XI. The Two Employment Network Payment Systems⁴⁰

A. ENs, Including State VR Agencies Serving as ENs, may Elect to be Paid Under One of Two Systems

The underlying premise of the Ticket to Work program is to pay ENs based on the satisfactory employment (or self-employment) outcomes of the SSDI or SSI beneficiary. With the exception of four milestone payments available under the Outcome-Milestone Payment System, and the separate option for State VR Agencies to be paid under the longstanding cost reimbursement payment system, all payments to an EN occur based on work activity that results in the beneficiary's loss of SSDI benefits and disability-based federal cash SSI benefits.

ENs may elect to be paid under one of two EN payment systems – the Outcome Payment System or the Outcome-Milestone Payment System. Payments under the new EN payment systems differ, depending on the option chosen and the types of benefits received by the beneficiary. The pace of payments to an EN will also depend on how quickly the beneficiary achieves the required work outcomes.

An EN elects one of the two payment systems when it enters into an agreement with SSA to serve as an EN. After first electing a payment system, the EN can then make one change in its chosen payment system at any time during the first 12 months after the month it becomes an EN, or within 12 months after the month the Ticket program starts in its State, whichever occurs later. Additionally, at least every 18 months SSA will offer each EN the opportunity to change its elected payment system.⁴¹

³⁹ *Id.* § 411.155.

⁴⁰ 20 C.F.R. §§ 411.500 - 411.597.

⁴¹ *Id.* § 411.515.

B. The Payment Calculation Base

Each calendar year, SSA bases the payments for both EN payment systems, described below, on something called the Payment Calculation Base. One of two Payment Calculation Bases is used, depending on whether the individual served is an SSDI or SSI beneficiary. For SSDI beneficiaries (including concurrent SSDI/SSI beneficiaries), the Payment Calculation Base will be the average monthly disability insurance benefit payable for the months during the preceding calendar year to all disabled worker beneficiaries who are in current pay status for the month in which the benefit is payable. For SSI beneficiaries (who are not concurrently SSDI beneficiaries), the Payment Calculation Base will be the average monthly federal SSI payment based on disability payable for the months during the preceding calendar year to all beneficiaries who: i) have attained age 18 but not age 65; ii) are not concurrent SSDI/SSI beneficiaries; and iii) are in current pay status for the month in which the payment is made.⁴²

C. Payments Under the “Outcome Payment System”

SSA can pay the EN for up to 60 outcome payment months that a beneficiary attains during his or her outcome payment period. A beneficiary attains an outcome payment month when no SSDI or disability-based federal cash SSI payments are payable because of work or earnings. An EN can be paid for an outcome month only if it is attained after a beneficiary has assigned his or her Ticket to the EN and before the individual’s Ticket terminates. An outcome payment under this payment system will be equal to 40 percent of the Payment Calculation Base for the calendar year in which the outcome payment month occurs, rounded to the nearest whole dollar.⁴³

D. Payments Under the “Outcome Milestone Payment System”

SSA can pay the EN for up to four milestones achieved by the beneficiary after the Ticket is first assigned and the beneficiary begins to work. In addition, SSA can pay the EN for up to 60 outcome payment months that the beneficiary attains for each month that no SSDI or disability-based federal cash SSI payments are payable because of work or earnings.⁴⁴

The **Four Milestones** are based on the earnings levels that SSA uses when it considers whether a beneficiary’s work activity is SGA. The requirements for meeting the four milestones are as follows:

1. The first milestone is met when the beneficiary has worked for one calendar month and has gross earnings from employment (or net earnings from self employment) for that month that are above the SGA threshold amount.
2. The second milestone is met when the beneficiary has worked for three calendar months within a 12-month period and has gross earnings from employment (or net earnings from self employment) for each of the three months that are above the SGA threshold amount. The month used to meet the first milestone can be included in the three months used to meet the second milestone.

⁴² *Id.* § 411.500(a).

⁴³ *Id.* § 411.525(a).

⁴⁴ *Id.* §§ 411.525(b) and 411.535.

3. The third milestone is met when the beneficiary has worked for seven calendar months within a 12-month period and has gross earnings from employment (or net earnings from self employment) for each of the seven months that are above the SGA threshold amount. Any months used to meet the first two milestones can be included in the seven months used to meet the third milestone.
4. The fourth milestone is met when the beneficiary has worked for 12 calendar months within a 15-month period and has gross earnings from employment (or net earnings from self employment) for each of the 12 months that are above the SGA threshold. Any months used to meet the first three milestones can be included in the 12 months used to meet the fourth milestone.⁴⁵

An EN can be paid for a milestone only if the milestone is attained:

- after a beneficiary has assigned his or her Ticket to the EN;
- before the individual attains the first outcome payment month; and
- before the individual’s Ticket terminates.

The payment amounts for the four milestones are each tied to a percentage of the Payment Calculation Base for the calendar year in which the month of attainment of the milestone occurs, rounded to the nearest dollar.

Each of the **60 Outcome Payments** under the Outcome–Milestone Payment System is equal to 34 percent of the Payment Calculation Base for the calendar year in which the outcome payment month occurs, rounded to the nearest whole dollar.⁴⁶ If the EN received one or more milestone payments with respect to an individual, each outcome payment made to the EN with respect to the same individual will be reduced by an amount equal to 1/60th of the milestone payments made.⁴⁷ For example, if an EN received a total of \$900 in milestone payments, each of the 60 outcome payments would be reduced by \$15.

Keep in mind that some ENs may not receive all four milestones under the outcome-milestone payment system. Once a beneficiary’s earnings meet the criteria for receiving an outcome payment, the EN will begin receiving outcome payments and no further milestone payments will be made. In such a case, the EN does not actually “lose” the milestone amounts. They are part of the outcome payment base and will be paid out over the 60-month outcome payment period.

E. Payment Rates for Specific Calendar Years

During specific calendar years, the following payment calculation bases (PCB) apply:

SSDI – PCB	SSI – PCB
\$791.68 (2002)	\$476.80 (2002)
\$819.19 (2003)	\$491.05 (2003)
\$840.61 (2004)	\$498.34 (2004)
\$868.20 (2005)	\$510.23 (2005)

⁴⁵ Id. § 411.535(a).
⁴⁶ Id. § 411.545.
⁴⁷ Id. § 411.530.

The following chart summarizes the payment rates under the two EN payment systems for calendar year 2005, based on the type of benefit received. It also provides the percentage of the PCB each payment rate equals.

Payment System	Type of Payment	Payment Rate (% of PCB)	SSDI Rate (SSDI and Concurrent)	SSI Rate (SSI Only)
Outcome Payment System	Outcome Payment	40%	\$ 347.00	\$204.00
Outcome-Milestone Payment System	Milestone #1	34%	\$ 295.00	\$173.00
	Milestone #2	68%	\$ 590.00	\$347.00
	Milestone #3	136%	\$1,181.00	\$694.00
	Milestone #4	170%	\$1,476.00	\$867.00
	Outcome-Milestone Payment*	34%	\$ 295.00	\$173.00

* Under the outcome-milestone payment system, each outcome payment will be reduced by an amount equal to 1/60th of the milestone payments received by an EN with respect to an individual.

F. Payments to State Vocational Rehabilitation Agencies

A State VR Agency participates in the Ticket program in one of two ways: as an EN, or under the longstanding cost reimbursement payment system that is spelled out in the SSDI and SSI regulations.⁴⁸ The State VR Agency, on a beneficiary-by-beneficiary basis, may choose whether it will serve a beneficiary as an EN or under the cost reimbursement program. The choice of payment systems is generally made when the State VR agency first notifies the PM of its decision to serve the beneficiary. If the beneficiary was already a consumer of the State VR agency prior to receiving a ticket, the agency notifies the PM of its payment system election at the time the beneficiary decides to assign the Ticket to the State VR agency.

For those beneficiaries it serves under the EN payment system, the State VR agency has the same option as other ENs to elect either the Outcome Payment System or the Outcome-Milestone Payment System. When the VR agency elects to serve an individual beneficiary as an EN, it will be bound by the EN payment system it elected. Like other ENs, the State VR Agency will periodically have opportunities to change the payment system it uses when serving as an EN.

The cost reimbursement option for payment is described in **Section I** of this article. When it is used, the State VR agency is paid by SSA for all of its qualified rehabilitation expenses with respect to a particular beneficiary. The total payment to the agency under this traditional reimbursement system may, on a case-by-case basis, be more or less than what it would receive for the same beneficiary using one of the EN payment systems.

⁴⁸ See id. § 404.2101 et seq.

G. Limitations on Payments to Employment Networks

SSA will pay an EN only for milestones or outcomes achieved after the beneficiary's Ticket was assigned to the EN and before the Ticket terminates. In no event, can the EN charge the beneficiary for any services provided by the EN.

Beneficiaries may meet some, but not all of the goals needed for 60 outcome payment months. Can the EN keep the milestone and outcome payments in such a case? The answer is yes, provided SSA does not subsequently determine that one or more of the payments was made in error. Each milestone or outcome payment to an EN will be paid based on whether the criteria for that payment is met. So, for example, an SSDI-only beneficiary who exhausts his or her trial work period, works for 27 months at the SGA level immediately following the trial work period, and then has to quit working, will not achieve all 60 outcome months. In that example, the person would have probably achieved 24 outcome months following the nine-month trial work period and a three-month grace period with continued benefits. In that case, even though the beneficiary can return to SSDI payment status since he or she stopped performing SGA and is within the 36-month extended period of eligibility, the EN can keep the 24 outcome payments due as the result of the 24 months in which the beneficiary was not eligible for an SSDI payment.

There will be some cases in which two or more ENs qualify for payment on the same Ticket. This may occur because the beneficiary assigned the Ticket to more than one EN at different times and now more than one EN is claiming that their services contributed to the achievement of a milestone or outcome. When that happens, payment will still be limited based on the payment formulas discussed above (i.e., the total payments are not increased because more than one EN is involved) and the milestone or outcome payments will have to be split up. The PM must make an "allocation" recommendation with regard to what percentage of a particular payment will go to each EN. If the beneficiary is served by two ENs that have each selected a different payment option, the PM must recommend a payment allocation and each EN's payment will be based on the payment option in effect for each EN when the Ticket was assigned to each.⁴⁹

This splitting of payments could involve an EN and a State VR agency that serves the beneficiary as an EN. In that case, the allocation of payments would be made as described above. However, if the State VR agency is paid by SSA under the cost reimbursement system with respect to a Ticket, such a payment precludes any later payment to an EN, or State VR agency serving the beneficiary as an EN, under either the Outcome Payment or Outcome-Milestone Payment Systems. Similarly, if either an EN, or a State VR agency, is paid under one of the EN payment systems, that payment would preclude any subsequent payment to a State VR agency under the cost reimbursement system, with respect to a Ticket.⁵⁰

What if SSA receives a request for payment, with respect to the same Ticket, from an EN or State VR agency that elected payment under an EN payment system, and also receives a request for payment from a State VR agency that elected payment under the cost reim-

⁴⁹ *Id.* §§ 411.560 and 411.565.

⁵⁰ *Id.* § 411.585.

bursement system? The final regulations provide that: SSA will pay the provider that first meets the requirements for payment under its elected payment system; or, if both providers first meet those requirements in the same month, SSA will pay the claim of the provider to which the beneficiary's Ticket is currently assigned. If the Ticket is not currently assigned to either, SSA will pay the claim of the provider to which the Ticket was most recently assigned.⁵¹

XII. Dispute Resolution Under the Ticket Program?⁵²

The Ticket program offers a dispute resolution system for three types of disputes: those between beneficiaries and State VR agencies acting as ENs; those between beneficiaries and ENs that are not State VR agencies; and those between ENs that are not State VR agencies and PMs.

A. Disputes Between Beneficiaries and State VR Agencies

When a State VR agency serves a beneficiary, the agency is required to comply with all of the provisions under Title I of the Rehabilitation Act of 1973⁵³ and its implementing regulations.⁵⁴ One of those requirements is the opportunity to resolve disputes through formal mediation services or an impartial hearing process.

Any individual who is seeking or receiving VR agency services, who is dissatisfied with a determination made by personnel of the agency, has the right to a timely review of that determination. Each State VR agency must develop and implement procedures to ensure that an individual may request a timely review, which 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 right to mediation, an impartial hearing, and the availability of the Client Assistance Program (CAP) to assist them with disputes. This notice must be provided at the following times: at the time the individual applies for VR services; at the time the individual is assigned to a category in the State's order of selection, if the State VR agency has established an order of selection;⁵⁵ at the time the Individualized Plan for Employment (IPE) is developed; and upon the reduction, suspension, or cessation of VR services. At an impartial hearing, the individual has the right to be represented by an attorney or other advocate. Both the individual and the agency can present evidence and cross-examine witnesses. The hearing decision is final and must be implemented, unless appealed.

The 1998 amendments to the Rehabilitation Act provide that a State VR agency may establish a procedure for a second level of administrative review. The review officer must be the chief official of the designated State VR agency or an official from the office of the Governor. If the state does establish a second level of administrative review, either party may appeal within 20 days of the hearing officer's 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 state VR Plan, federal law, federal VR regulations, or state regulations or policies that are consistent with federal regulations. The

⁵¹ *Id.* § 411.587.

⁵² 20 C.F.R. §§ 411.600 - 411.730.

⁵³ 29 U.S.C. § 720 *et seq*

⁵⁴ 34 C.F.R. Part 361.

⁵⁵ See 34 C.F.R. § 361.36.

1998 amendments also add the right for either party (i.e., the consumer or the VR agency) to appeal a final administrative decision to federal court (or to state court if your state provides for court review of administrative decisions).

The administrative hearing required to be offered by State VR agencies is very similar to the hearing available to SSI and SSDI beneficiaries who are dissatisfied with decisions by SSA affecting their benefits. Unlike the very informal dispute resolution procedures governing ENs that are not State VR agencies, described below, the VR agency hearing provides an extensive opportunity to present live testimony and cross examine adverse witnesses. The hearing officer is then required to render a written decision, which must determine if the services in dispute are mandated under the very intricate provisions of Title I and its implementing regulations.

B. Disputes Between Beneficiaries and ENs

For disputes between beneficiaries and ENs that are not State VR Agencies, the Ticket program offers a three-step dispute resolution process:

1. The beneficiary can file a complaint through the EN's internal grievance procedures.
2. If the EN's internal grievance procedures do not result in an agreeable resolution, either the beneficiary or the EN may seek a resolution from the PM.
3. If either the beneficiary or the EN is dissatisfied with the resolution proposed by the PM, either party may request a decision by SSA.⁵⁶

All ENs that are not State VR agencies must establish written grievance procedures that a beneficiary can use to seek a resolution to a dispute under the Ticket program. The EN must give each beneficiary seeking services a copy of its internal grievance procedures and inform him or her of the right to refer a dispute first to the PM for review, and then to SSA for a decision. The EN is also required to inform each beneficiary of the availability of assistance from the State Protection and Advocacy system.

At a minimum, the EN is required to inform each beneficiary seeking services under the Ticket program of the procedures for resolving disputes when:

- the EN and the beneficiary complete and sign the IWP;
- services in the beneficiary's IWP are reduced, suspended or terminated; and
- a dispute arises related to the services spelled out in the beneficiary's IWP or to the beneficiary's participation in the program.⁵⁷

When the EN's grievance procedures do not result in a satisfactory resolution, either the beneficiary or the EN may ask the PM to review a disputed issue.⁵⁸ The final regulations do not spell out any time limit for requesting this review, but do require the PM to contact the EN to submit all relevant information within 10 working days. The information to be submitted should include:

⁵⁶ 20 C.F.R. § 411.600.

⁵⁷ *Id.* § 411.610.

⁵⁸ *Id.* § 411.615.

- a description of the disputed issue(s);
- a summary of the beneficiary’s position, prepared by the beneficiary or a representative of the beneficiary, related to each disputed issue;
- a summary of the EN’s position related to each disputed issue; and
- a description of any solutions proposed by the EN when the beneficiary sought resolution through the EN’s grievance procedures, including the reasons the beneficiary rejected each proposed solution.

The PM has 20 working days to develop a “written recommendation,” that should explain the reasoning for the “proposed resolution.”⁵⁹ Upon receiving the PM’s recommendation, either the beneficiary or the EN may request, in writing, a review by SSA. That request for review must be received by the PM within 15 working days of the receipt of the PM’s recommendation. The PM has 10 more working days to refer this request to SSA. The request for SSA review must include: a copy of the beneficiary’s IWP; information and evidence related to the disputed issue(s); and the PM’s conclusion(s) and recommendation(s). SSA’s decision in response to this request is final. No further appeal within SSA is available and the regulations do not provide for any court appeal.⁶⁰

C. Representation of Beneficiaries in Ticket Disputes

If a beneficiary is using either the appeals system for resolving disputes with State VR agencies, pursuant to Title I of the Rehabilitation Act, or using the more informal procedures for resolving disputes with ENs, pursuant to the final Ticket regulations, the beneficiary can be represented by an attorney, advocate, or any other person. The two advocacy programs, available in every state and territory to assist beneficiaries with these disputes, are the Client Assistance Program (CAP) and the Protection and Advocacy for Beneficiaries of Social Security (PABSS) program. The CAP was created in the mid 1980s, largely to assist individuals with disabilities in connection with State VR agency disputes, and may also be available to assist with EN disputes. The PABSS was created as part of the Ticket to Work and Work Incentives Improvement Act of 1999 and is available to assist beneficiaries with EN disputes, including disputes with State VR agencies serving as ENs. Some state Protection and Advocacy agencies will provide services under both the CAP and PABSS programs.

⁵⁹ *Id.* § 411.620.

⁶⁰ *Id.* § 411.625 and 411.630.

D. Disputes Between ENs and Program Managers

For disputes between ENs that are not State VR agencies and the PM, that do not involve an EN's payment request, there is a two-step dispute resolution process:

1. The EN can seek a resolution through the PM's internal grievance procedures; and
2. If the PM's internal grievance procedures do not result in a mutually agreeable solution, the PM must refer the dispute to SSA for a decision.

Whenever there is no mutually agreeable solution to the EN's dispute, the PM has 20 working days to refer the dispute to SSA with all the relevant information. The information should include:

- A description of the disputed issue(s);
- A summary of the EN's and the PM's position related to each disputed issue; and
- A description of any solutions proposed by the EN and PM when the EN sought resolution through the PM's grievance procedures, including the reasons each party rejected each proposed solution.

SSA's decision in response to this dispute is final. No further appeal within SSA is available and the regulations do not provide for any court appeal.

XIII. Questions and Answers on the Ticket to Work and Self-Sufficiency Program

For more information on frequently asked questions pertaining to the Ticket to Work and Work Incentives Improvement Act of 1999, visit SSA's Office of Employment Support Program's web site at www.ssa.gov/work. Link to "Legislation" for up-to-date information on legislation and regulations pertaining to the employment supports of individuals with disabilities. Additional information is available on the MAXIMUS website at www.yourtickettowork.com.

MY NOTES ON TRANSLATING THIS TO PRACTICE:

MY STATE CONTACTS:



Contact Information

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