

# **Funding of Assistive Technology Through State Vocational Rehabilitation Agencies**

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# Today's Co-Sponsors

**National Assistive Technology (AT)**

**Advocacy Project**

Neighborhood Legal Services, Buffalo, New York

**The Advocacy Center**

New Orleans, La.

(sponsoring continuing legal education credits)

# National AT Advocacy Project Services

- Technical assistance
- Training
- Written materials (newsletters, longer articles, “Did You Know” series)
- Resource library (hearing decisions, court briefs)
- List service

All services geared to help obtain funding for AT.

# Logistics for Training

- Will go for through 3:45 EST (1.5 CLE credits)
- Seeking CLE, Certificate of Attendance (CEUs)
  - Must complete evaluation form
  - Secret phrase given twice during presentation
- Questions
  - By email only to Lynn ([lurquhart@nls.org](mailto:lurquhart@nls.org))
  - At least 2 Q&A segments
  - After session, send VR questions to Ron ([Ron.Hager@ndrn.org](mailto:Ron.Hager@ndrn.org)), other AT funding questions to Jim ([jsheldon@nls.org](mailto:jsheldon@nls.org))

Hypothetical

# The Case of Mario

**Mario is 17 years old and a high school senior.**

- He has cerebral palsy, uses a 7-year old power wheelchair for all mobility, and relies on accessible transportation to go to school.
- He will turn 18 in February 2014.
- He will graduate from high school in June 2014.
- He plans to go to college and study to become an English teacher at the high school or college level.

# Mario's Current Education

## **Mainstreamed with some special education services:**

- Physical therapy, occupational therapy
- Use of standing frame in physical therapy (allows medical benefits of standing program)
- Laptop with adapted keyboard, voice dictation software

# Mario's Income

## Social Security, SSI

- Currently, Social Security dependent's benefits - \$420 per month (Dad gets Social Security Retirement, Mom works).
- In February 2014, at age 18, dependent's benefits will convert to SSDI as disabled adult child (same monthly amount).
- Currently, no SSI as parental income too high.
- In February 2014, will qualify for \$310 SSI check (parental income no longer counts).

# Mario's Health Insurance

## Private insurance

- Covered as dependent on Mom's insurance.
- Will continue through age 26.

## Medicaid

- Not currently eligible.
- In February 2014, automatically eligible for Medicaid.

## Medicare

- Eligible in February 2016 after 24 months of SSDI eligibility.

# Mario's VR Eligibility

**Mario has recently applied to State VR agency.**

- During a May 2013 “transition planning” meeting the special education chair handed him a VR agency brochure and stated something about them helping with college expenses.
- He seeks sponsorship to attain his English teacher goal.
- He and his parents will meet with an assigned VR counselor in early February 2014 to proceed with his application.

# AT Needed by Mario

- **A ramp** at the home, to come and go in his wheelchair
- **Accessible van transportation**, to attend college (until he gets a modified van)
- **A modified van**, with hydraulic lift, hand controls, etc.
- **A power standing wheelchair**, to replace old wheelchair, allow him to benefit from standing therapy throughout the day, to do work-related activities best done in standing position.
- **A new laptop**, with modified keyboard, voice input software

# Introduction

## Rehabilitation Act first passed in 1973

- Under Title I, states given money to provide VR services to persons with disabilities
- Rehabilitation Services Administration (RSA), the U.S. Department of Education responsible for administration and oversight
- Every state has a state VR agency
- Some states have second agency that serves only individuals who are legally blind

# Introduction

- VR can fund wide range of goods and services, including “rehabilitation technology” (i.e., AT), connected to person’s vocational goal
- Congress has stated 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.”

# Eligibility

# Basic Eligibility Criteria

- To receive services, an individual must
  - have a disability which results in a “substantial impediment” to employment and
  - require VR services “to prepare for, secure, retain or regain employment”
- Any service an individual is to receive from the VR system must be connected to employment goal

# Employment Outcomes

- 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
- “Homemaker” and “unpaid family worker” are acceptable
- Must be consistent with person’s strengths, abilities and informed choice
- Not a sheltered workshop

# Disability Criteria

**Must have mental, physical or learning disability that interferes with the ability to work**

- Need not be so severe as to qualify for SSDI or SSI
- Must only be a substantial impediment to employment.
- Recipients of SSDI or SSI are presumed eligible, as individuals with a significant disability

# Presumption of Eligibility

- VR services may be denied if person cannot benefit
- But presumed capable of employment, despite the severity of a disability, unless VR shows by “clear and convincing” evidence that he or she cannot benefit
- Clear and convincing means state VR program must have a “high degree of certainty before it can conclude that an individual is incapable of benefitting”

# Presumption of Eligibility

- VR agency must explore individual's work potential through variety of trial work experiences, with appropriate supports
- Must be of sufficient variety and over sufficient length of time to determine eligibility
- Only exception "limited circumstances" in which individual cannot take advantage of such experiences, even with support
- For individuals denied services, decision must be reviewed within 12 months and thereafter, if requested
- Individuals determined incapable of benefitting must be referred to local extended employment providers (*i.e.*, sheltered workshops)

# Order of Selection

## **If state lacks resources to serve all eligible individuals who apply**

- Must specify order for selecting who will receive services
- Must ensure that individuals with “most significant disabilities” are selected first
- Cost of services cannot be a criteria
- If state goes to Order of Selection, must continue to provide all necessary services to anyone who started receiving services prior to effective date, regardless of severity of individual’s disability

# Evaluation of Eligibility

- Eligibility determination generally must be within 60 days of application
- Determination based on existing records
- And, if needed, additional assessments

# **The Individualized Plan for Employment (IPE)**

# IPE - Introduction

- Written IPE includes individual's employment goal and specific services to reach goal
- Comprehensive assessment as necessary to determine employment outcome, objectives, nature and scope of VR services
  - To evaluate unique strengths, resources, priorities, abilities and interests of individual
  - May include referral for rehabilitation technology services (AT), “to assess and develop the capacities of the individual to perform in a work environment”

# Informed Choice

- All activities implemented consistent with principles of “respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on *informed choice*, of individuals with disabilities”
- Reason: Congress’ belief “that a consumer-driven program is most effective in getting people jobs”

# Informed Choice

- VR agencies must assist in exercise of informed choice throughout process
  - Assessment
  - Employment outcome
  - Services
  - Entities providing services
  - Setting where services are to be provided
  - Procurement policies must ensure individuals have meaningful choices

# IPE Requirements

- Employment outcome
- Services to be provided
- Timeline
- Entity to provide services
- Criteria for evaluating progress
- Responsibilities of VR, individual or other agencies, if applicable

# IPE Requirements

- Costs for which individual is responsible, if any
- Projected need for supported employment for those with most significant disabilities
- Projected need for post-employment services, if necessary

# IPE Review

- Must be reviewed at least annually
- Must be amended if necessary due to changes in
  - Employment outcome
  - VR services
  - VR service providers
- Changes will not take place until agreed to by individual and VR counselor

# Closing Record of Services

- Achieve and maintain employment outcome for at least 90 days
- Agreement by individual and VR that the outcome is satisfactory and individual is performing well
- VR must notify individual of possibility of post-employment services even after record is closed

# Available Services

# Intro – Available Services

- Any services to assist in preparing for, securing, retaining, or regaining an employment outcome
- All necessary services to equip the individual for employment
- Severity of disability or cost of services can have no bearing on scope of services individual receives
- Available services are incredibly broad and varied

# Required Service Options

- The assessment to determine eligibility and needs, including, if appropriate, by someone skilled in rehabilitation technology (i.e., AT)
- Counseling, guidance and job placement services and, if appropriate, referrals to the services of WIA providers
- Vocational and other training, including higher education and the purchase of tools, materials and books

# Required Service Options

- Diagnosis and treatment of physical or mental impairments to reduce or eliminate impediments to employment, to extent support is not available from other sources
- Maintenance for additional costs incurred during rehabilitation
- Personal assistance services while receiving VR services

# Required Service Options

- Transportation, including adequate training in use of public transportation vehicles and systems, provided in connection with the provision of any other service described in this section and needed by the individual to achieve an employment outcome
- Transportation may include vehicle purchase

# Required Service Options

- Interpreter services for individuals who are deaf, and readers, rehabilitation teaching and orientation and mobility services for individuals who are blind
- Occupational licenses, tools, equipment, initial stocks and supplies
- Technical assistance for those who are pursuing telecommuting, self-employment or small business operation

# Required Service Options

- Rehabilitation technology (i.e., AT), including vehicular modification, telecommunications, sensory, and other technological aids and devices
- Transition services for *students* with disabilities to facilitate the achievement of the employment outcome identified in the IPE
- Supported employment

# Required Service Options

- Services to the family to assist an individual with a disability to achieve an employment outcome
- Other goods or services necessary to achieve employment outcome
- Post-employment services to assist to retain, regain, or *advance* in employment
  - Not intended to be complex or comprehensive

# VR Services Policies

- States must develop policies concerning provision of VR services
- Must ensure services are provided based on each person's individual needs
- May not place “any arbitrary limits on the nature and scope of” VR services to be provided to achieve an employment outcome”

# VR Services Policies

- May have reasonable time periods to provide services
  - But not so short as to effectively deny a service and must “permit exceptions so individual needs can be addressed”
- Payment rates must not be so low as to effectively deny a necessary service, may not be absolute
- Must include provisions for the timely authorization of services, “including any conditions under which verbal authorization can be given”

# AT Device

- Uses definitions from AT Act
- Any item, piece of equipment, or product system
- Whether acquired commercially off the shelf, modified, or customized
- Used to increase, maintain, or improve functional capabilities

# AT Service

- Selection, acquisition or use of AT device
- Evaluation
- Purchasing, leasing or otherwise acquiring
- Selecting, designing, customizing, adapting
- Maintaining, repairing or replacing
- Coordinating and using other services
- Training to child, family and those working with child

# AT Requirements

## Included in definition of rehabilitation technology:

- “Systematic application of technologies, engineering methodologies, or scientific principles
- to meet needs of and address barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation”

# AT Requirements

- State VR Plan must describe “manner in which the *broad range* of rehabilitation technology services will be provided,” including training and provision of AT.
- Use of AT permeates VR process
  - Assessments to determine eligibility
  - Assessments to determine needs
  - Available as VR services to meet goal

# AT Examples

- Prosthetics and orthotics
- Eyeglasses
- Orientation and mobility
- AT itself, including vehicle modifications
- Telecommunications
- Sensory devices
- Other technological aids and devices

# AT Needed by Mario – What Can be Funded by VR Agency?

- **A ramp** at the home, to come and go in his wheelchair
- **Accessible van transportation**, to attend college (until he gets a modified van)
- **A modified van**, with hydraulic lift, hand controls, etc.
- **A power standing wheelchair** – to replace old wheelchair, allow him to benefit from standing therapy throughout the day, to do work-related activities best done in standing position
- **A new laptop**, with modified keyboard, voice input software

# Financial Need Criteria

- Need not have a financial need, or financial contribution, requirement
- Must specify which services will be subject to financial need
- Must take into account disability-related expenses
- Must not be so high as to effectively deny an individual a necessary service
- May be a better alternative than Order of Selection

# Financial Need Criteria

- Exempt services
  - Diagnostic services
  - Counseling, guidance and referral services
  - Job placement
  - Personal assistance services
  - Auxiliary aids and services such as interpreters and readers
- SSDI and SSI recipients, including 1619(b) Medicaid are exempt

# “Maximization”

## Purpose of the Rehab 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 vocational rehabilitation.”

# “Maximization”

- Presumably means if individual has requisite ability, and has option of either bachelor’s degree and becoming a paralegal or law school to become an attorney VR should approve attorney
- But courts have focused on the word “empower” to find that the VR agency is not required to guarantee an “optimal level of employment”

# “Maximization” Alternative

## 1997 RSA Policy Directive

- VR must approve goals and services to enable persons with disabilities to maximize their employment potential
- VR not intended solely to place individuals in entry-level jobs
  - Rather to assist individuals to obtain employment that is appropriate given their unique strengths, resources, priorities, concerns, abilities, and capabilities
- Person currently employed will, in appropriate cases, be eligible for VR services to allow for “career advancement” or “upward mobility”

# “Maximization” Alternative

## 1997 RSA Policy Directive

- VR must still determine whether individual’s career choice is consistent with aptitude
- Encouraged to make determinations through comprehensive assessment (e.g., trial placement in real work setting) or through short-term objectives in the IPE (e.g., trial collegger semester)
- Consider use of AT in these efforts

# “Maximization” Alternative

## Comments to 2001 Regulations

- 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”

# Comparable Benefits

- VR agencies are considered payer of last resort for many services
- Will not pay for a service if similar or comparable benefit available through another provider
- For example, if person qualifies for services through Medicaid, VR will not provide them

# Resources that are not Comparable Benefits

- Student loans, which must be repaid
- Scholarships and awards based on merit
- SSI's Plan for Achieving Self-Support (PASS)

# Exceptions – When Comparable Benefits Need Not be Considered

- **If consideration would interrupt or delay**
  - Progress toward achieving employment outcome
  - Immediate job placement
  - Services to individual in extreme medical risk
- **If the following services involved**
  - Diagnostic services
  - Counseling, referral, job placement services
  - Rehabilitation technology (AT)

# Comparable Benefits

- State must coordinate with other public funding sources, including schools, Medicaid and public colleges
- Plan must ensure coordination and timely delivery of services
- All services are listed on the IPE, even if not provided by VR
- If an agency fails to provide, VR must provide

# Blended Funding to Pay for AT

## Using State VR Agency and Medicaid (or Insurance) to Pay for Mario's Standing Wheelchair

- Medicaid will pay for standing wheelchair. Must go to a hearing or litigation to get standing feature.
- VR agency can pay for wheelchairs, as “rehabilitation technology,” but will want Mario to go to Medicaid first.
- Solution: Medicaid agrees to fund basic power wheelchair. VR agency agrees to pay extra cost for standing.
- Advocate role may be crucial.

# Blended Funding to Pay for AT

## Using VR Agency and SSI Plan for Achieving Self Support (PASS) to Fund Modified Van

- Most VR agencies will pay for modifications but not van purchase.
- With approved PASS Mario can use \$400 of SSDI to save for van. The \$400 is excluded by SSI and SSI payment goes up by \$400.
- If Mario saves throughout college, 48 months or more, can save most of cost for van purchase.

See *AT Advocate* newsletter for more information on PASS:

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

# Using VR Agency, PASS, and AT Loan Program\* to Fund Accessible Van

- Over five years of college to obtain teaching credentials, Mario can save enough to purchase a van.
- Wants to get 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.
- Mario obtains a low-interest loan through a “alternative financing program” in his state.
- He can then use money deposited into PASS to pay off loan.

\*See <http://www.resnaprojects.org/allcontacts/allafpcontacts.html> for links to alternative financing programs in more than 40 states.

# **AT for Students in Transition**

# Special Education (IDEA) Requirements

- Transition planning begins no later than school year student turns 16
- Services are to be coordinated, results orientated and to prepare student for post-school life—live, learn, work and play
- Services are to be individualized and based on student's needs, preferences and interests

# Special Education Requirements

- Anticipates involvement of VR agency in transition planning process
- VR may provide services to students while still in secondary school program
- VR should be included in state plan for coordinating services to students

# VR Agency Requirements

- Also requires coordination with special education system
  - Consultation with schools to assist in preparing students and in developing IEP
  - Relative roles and financial responsibilities
  - Outreach to students needing transition services
- VR is to be active throughout transition planning, not just as student nearing graduation

# VR Agency Requirements

- Students make the decision of whether to apply for VR while still in school
- VR expected to provide services to at least some students
  - Needs to be tied to an employment goal
  - Will need an IPE and coordination with IEP
- For those not receiving services while in school, VR must ensure eligibility and IPE before leaving school to ensure no gap in services

# Reading Special Education and VR Requirements Together

- VR must be involved in transition planning with school districts (no later than 16)
- Options for students who will need AT upon exiting school
  - VR purchases outright while still in school
  - VR purchases from district when student leaves
  - VR purchases new AT for student to use
- IEP and IPE both developed for student

# AT Needed by Mario – Who Pays During Transition Period?

- **A ramp** at the home, to come and go in his wheelchair
- **Accessible van transportation**, to attend college (until he gets a modified van)
- **A modified van**, with hydraulic lift, hand controls, etc.
- **A power standing wheelchair** – to replace old wheelchair, allow him to benefit from standing therapy throughout the day, to do work-related activities best done in standing position.
- **A new laptop**, with modified keyboard, voice input software

# **AT for the College Student**

# Obligations of Colleges (under ADA or section 504)

- **Must provide** auxiliary aids and services
  - Taped texts, interpreters, readers, adapted classroom equipment
  - Electronic readers, open and closed captioning, assistive listening systems, specialized gym equipment
- **Must ensure** e-readers are accessible
- **Not required** to provide personal devices or services for personal study

# Obligations of VR Agency to College Student

- Anticipated VR agency will provide auxiliary aids for college students
  - Courts have held VR responsible
- Relative roles for public colleges and VR should be in state plan
- Even if college provides, should go in IPE as a needed service and if college does not provide, VR must

# Looking at the VR and College Obligations Together – Who Pays?

- Real-time captioning for classes
  - An obligation for both, but AT is exempt from comparable benefits
  - Could do shared costs
- Use of modified computer to access library card catalogue—most likely college
- What about Mario's laptop with adapted keyboard, voice dictation software?

# Hearing and Appeal Rights

# Hearing and Appeal Rights

- Individual entitled to impartial due process hearing
- Possible second level of administrative review
- Appeal to state or federal court, very similar to IDEA
- Availability of Client Assistance Program (CAP)
  - If AT involved could also be an AT case for PAAT program

# **Independent Living Services**

# Independent Living Services – a Potential Funding Source for AT

## Background

- RSA 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).

# Examples of Non-Core IL Services that Could Fund AT [ 34 CFR 364.4(b)]

- Adaptive housing services, including home modifications
- Needed prostheses and other appliances or devices
- Rehabilitation technology services
- Accessible transportation services
- “Any other services” to improve ability to function, continue functioning, or move toward functioning independently

# Who Qualifies for Non-Core IL Services?

**Potentially any individual with a “significant disability”**

- The reality, however, is that these are not mandated services.
- Based on communications with independent living providers the funding available for this category of services is limited.
- There is no guarantee that a particular SILC/CIL will make funding of AT a priority for the use of these limited dollars.

# **Non-Core IL Services May be Important for Person Seeking VR Agency Services**

**Not served because of “Order of Selection” policy.**

- Maybe needed items can be funded as IL Services.

**May not meet criteria for “post employment services”**

- If IL Services available to fund item, could avoid need for time consuming mediation/appeals.

**May be hard to show item needed to support vocational goal.**