



California's Protection & Advocacy System

Department of Rehabilitation Services

November 2015, Pub #5401.01

1. Who is eligible for Department of Rehabilitation services and how does the Department make that determination?

The Department of Rehabilitation's (DOR) determination of an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements:

- (1) A determination by qualified personnel, who need not be Department employees, that the applicant has a physical or mental impairment. The term "individual with a disability" means that the applicant has a physical or mental impairment that constitutes a substantial impediment to employment and the applicant would benefit from vocational rehabilitation services. 29 U.S.C. § 705(20)(A)(i)-(ii); Cal. Welf. & Inst. Code § 19151(a)(1)-(2); and tit. 9 CCR § 7017(a)(1)-(3);
- (2) A determination by qualified personnel, who need not be Department employees, that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;
- (3) A determination by a Rehabilitation Counselor that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and
- (4) A presumption that the applicant can benefit from the provision of vocational rehabilitation services in terms of an employment outcome in an integrated setting.

9 C.C.R. § 7062(a). If you are a recipient or a beneficiary of Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI), you are presumed eligible for services. 29 U.S.C. § 722(a)(3)(A)(i)-(ii); 34 C.F.R. § 361.42(a)(3)(i)(A)-(B). However, if your disability is so severe that DOR services would not help you obtain employment, you may be denied services.

In order to deny services, DOR must “demonstrate by clear and convincing evidence that such individual is incapable of benefiting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.” 29 U.S.C. § 722(a)(2)(A); 34 C.F.R. § 361.42(a)(2); W.I.C. § 19103(b) and 9 C.C.R. § 7062(c).

For more information regarding eligibility, see Eligibility for Department of Rehabilitation Services Fact Sheet, pub # F06601:
<http://www.disabilityrightsca.org/pubs/F06601.pdf>

2. How does DOR determine if I’m eligible if I don’t have anything from the Social Security Administration?

During the eligibility determination process, the Rehabilitation Counselor may take into consideration records prepared by other agencies, including assessments, to determine whether you are eligible for services from those agencies. The Counselor may also look at statements by qualified professionals who have diagnosed or treated you.

If you have these types of documents, you can share them with your counselor.

3. What kind of impairment is considered a substantial impediment to employment?

“Substantial Impediment to Employment” means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities. 9 C.C.R. § 7027.

Temporary impairments will not be considered a substantial impediment to employment. See *Paegle v. DOI*, 813 F. Supp. 61 (D.D.C. 1993).

4. What kinds of assessments can DOR do to determine my eligibility?

In order to determine eligibility and vocational rehabilitation needs of an individual, a counselor may review existing records, request you participate in comprehensive assessments, including trail work assessments, and make referrals. 29 U.S.C. § 705(2)(A)-(D). To the extent that it is necessary to determine your employment outcome and the nature and extent of vocational rehabilitation services DOR will provide, the counselor may assess the following:

personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities . . . , and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs . . .

29 U.S.C. § 705(2)(B)(iii).

This is not an exhaustive list. The law gives DOR a wide range of latitude to conduct assessments. This latitude should translate into an adequate assessment of your vocational rehabilitation needs. However, the assessments must be limited to information that is necessary to identify your rehabilitation needs and to develop your Individualized Plan for Employment (IPE). The DOR should use existing information and information provided by you, to the maximum extent possible. 9 C.C.R. § 7001.5 (c).

5. What if I need accommodations or services in order to participate in an assessment?

The DOR must conduct an assessment in the most integrated setting possible, consistent with your needs and informed choice. 9 C.C.R. § 7062. The assessment must include appropriate supports provided by the Department, including assistive technology devices and services and personal assistance services to accommodate your rehabilitation needs. 9 C.C.R. §§ 7014(c) and 7029.1(b)(4).

Additionally, you have the right to reasonable accommodations throughout the vocational rehabilitation process. Under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, public entities or recipients of federal financial assistance, such as the DOR, are required to make reasonable modifications in policies, practices and procedures necessary to allow applicants and clients with disabilities access to DOR services.

If you are requesting services for assessments and/or accommodations from the DOR, we suggest you make your request in writing and keep a copy for your records.

6. How can I apply for DOR services?

Apply by:

- Going to your local DOR office;
- Applying online at <https://www.dor.ca.gov/Apply-4-Services.html>
- Calling in to a DOR office and asking for an application; or
- Writing your local DOR office and asking for services.

You can find out the phone number and location of your local DOR office at <https://www.dor.ca.gov/dor-locations/index.asp>

We suggest that you keep a copy of your signed application or otherwise document your request for services including the date.

7. How long does DOR take to process my application?

Generally, DOR must determine your eligibility for services within 60 days of the date of your application. 29 U.S.C. § 722(a)(6); 34 C.F.R. § 361.41(b)(1); 9 C.C.R. § 7060(a). DOR may take longer than 60 days if:

- There are exceptional and unforeseen circumstances beyond the DOR's control;
- If you submit a written request for an extension;
- Information must be obtained through trial work experience in order to make an eligibility determination; or
- Extended evaluation is necessary and cannot be obtained within 60 days.

34 C.F.R. § 361.41(b)(1)(i) and (ii); 9 C.C.R. § 7060(a)(1)-(2).

If you disagree with the DOR's decision to extend the eligibility determination timeline, the DOR must make a decision based on the information it currently has available. 9 C.C.R. § 7060(b).

8. How long must I have been living in California to receive services?

Federal law states that DOR may not use the length of your residence in a state as a requirement for eligibility. 34 C.F.R. § 361.42(c). California regulations clarify that there is no residence requirement that excludes any person who is present in the state from receiving services. 9 C.C.R. § 7060(c)(1).

9. Can I be refused services because of my age, race, sex, religion or disability?

No. The DOR is prohibited from using your age, race, sex, religious creed, color, ancestry, national origin, sexual orientation, marital status, medical condition, or physical or mental disability as eligibility requirements for services. 34 C.F.R. § 361.42(c)(2); 9 C.C.R. § 7060(c)(2).

10. What types of services can I get?

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's informed choice, the following services may be available, including but not limited to:

- a) Assessment for determining eligibility and priority for services;
- b) Assessment for determining vocational rehabilitation needs;
- c) Vocational rehabilitation counseling and guidance, including information and support services;
- d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies;
- e) Physical and mental restoration services, to the extent that financial support is not readily available from a source other than the Department;
- f) Vocational and other training services;
- g) Transportation provided to enable participation in any vocational rehabilitation service;
- h) Interpreter services;
- i) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind;
- j) Job-related services;
- k) Supported employment services;
- l) Post-employment services;
- m) Occupational licenses, tools, and equipment;
- n) Rehabilitation technology;
- o) Transition services;
- p) Technical assistance and other consultation services to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

- q) Other goods and services that are determined necessary for the individual with a disability to achieve an employment outcome.

9 C.C.R. § 7149.

11. Do I have to pay for these services?

If you have income, you may have to pay for some of the services. 34 C.F.R. § 361.54(b)(1). In order to determine whether you have to participate in the cost, DOR will need information from you regarding your monthly income, liquid assets and medical expenses. 9 C.C.R. § 7192(b).

If you refuse to participate in sharing the costs of a service, the DOR can refuse to provide you those services. 9 C.C.R. § 7190(b).

12. If I receive Social Security, do I have to financially participate in paying for my services?

If you receive SSI, SSDI, State Supplemental Payment (SSP), or Public Assistance, you are exempt from having to pay for services. 9 C.C.R. § 7191(a).

13. What if I cannot afford to participate?

According to the federal regulations, the cost of your participation in paying for DOR services cannot be so high that it effectively denies you a necessary service. 34 C.F.R. § 361.54(b)(2)(iv)(C).

14. What is an Individualized Plan for Employment (IPE)?

An Individualized Plan for Employment (IPE) is an agreement jointly written by the client and his or her counselor from DOR. The IPE is a plan of action designed to achieve a vocational goal or to perform an extended evaluation to determine your employment potential. See generally 9 C.C.R. § 7131.

For more information about IPEs, see The Individualized Plan for Employment Fact Sheet, pub # F06801:

<http://www.disabilityrightsca.org/pubs/F06801.pdf>

15. What should be written into an IPE?

The IPE should set out your employment outcome, the specific vocational rehabilitation services that DOR will provide, and how DOR will get those services for you. The law requires your IPE to have certain provisions. For instance, the IPE must contain:

- The basis for DOR's determination of your eligibility for services;
- Your intermediate goals;
- Your long-term goals;
- A time-frame for when the intermediate goals might be achieved;
- The specific services DOR will provide;
- When each service is supposed to begin and how long it will be provided;
- A schedule of when and how your progress will be reviewed; and
- Your views about your objectives.

See generally 34 C.F.R. § 361.46; C.C.R. 9 § 7131.

The IPE should also have a description of your responsibilities, for example, responsibilities in relationship to achieving the employment outcome, the extent of your participation in paying for the cost of services, and your responsibility to apply for and utilize comparable benefits. 34 C.F.R. § 361.46(a)(6)(ii). The IPE should also contain a statement regarding the responsibilities of the Department of Rehabilitation and other agencies assisting you. 34 C.F.R. § 361.46(a)(6)(i) and (iii).

16. Do you have a right to participate in writing the IPE?

Yes, an IPE should be jointly developed by the counselor *and* the client. W.I.C. § 19104(b)(2). You should actively participate in writing your IPE, because you get to choose your employment outcome. 34 C.F.R. §§ 361.45(b)(2) & 361.46(a)(1). If you are not happy with your IPE, you may

express your dissatisfaction and may seek administrative or legal review. See generally 29 U.S.C. § 722(c); 9 C.C.R. §§ 7350-7361.

17. Can DOR refuse to provide a service available from another source?

Yes. Under federal law, the Department is supposed to provide assurance that it has looked for comparable services from other programs before it provides vocational rehabilitation. This means that DOR will not pay for a service if the same or a comparable service is available through another provider.

The DOR counselor should assist the client in determining which similar benefits are available from another source through a similar benefit review. W.I.C. § 19150(a)(13). If similar benefits are available, the counselor shall deny the benefits that the client requests be supplied by DOR. 9 C.C.R. § 7196(c)(1).

When a client is denied eligibility for a similar benefit, the DOR counselor needs to complete the following:

- Verify the ineligibility by contacting the agency denying the individual;
- Document the verification; and
- Authorize the service from DOR.

9 C.C.R. § 7196 (d)(1)(A)-(C).

If the client has the similar benefit reduced or terminated by the other agency, the counselor needs to:

- Verify the ineligibility;
- Document the ineligibility;
- Assess the circumstances with the client;
- Authorize services from DOR for the service that is reduced or terminated; and

- Amend the Individualized Plan for Employment.

9 C.C.R. § 7196 (d)(2)(A)-(C).

18. Are there other reasons the DOR can deny me a service?

Yes. The DOR determines what services you need based on assessments of vocational rehabilitation needs and your employment outcome. 9 C.C.R. §7128. If the DOR determined that you do not need a service based on your disability and/or the service is not necessary for you to achieve your employment goal, the DOR may deny you the service.

If you disagree with the DOR's decision, you have the right to appeal. (See questions, 32-38).

19. I want to be self-employed. Can DOR still provide me services?

DOR will support an eligible individual's choice to create a self-employment plan only when it determines that the proposed self-employment setting is appropriate. 9 C.C.R. § 7136.6(a). In order for a self-employment setting to be appropriate, the following elements must be met:

- Self-employment setting is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual;
- It is reasonably likely that the business, in which the individual is self-employed, will produce sufficient income within 12 months; and
- The individual is able to get all the resources necessary to establish and support the business.

9 C.C.R. § 7136.6(b)(1)-(3).

20. How often should my IPE be reviewed?

You have a right to have your IPE formally reviewed with your counselor once every year. 29 U.S.C. § 722(b)(2)(E)(i); 34 C.F.R. § 361.45(d)(5); 9

C.C.R. § 7133(a). This is your opportunity to take into account any changes that have occurred in the past year. During this review process, document your progress and take into account any other factors that impact the outcome of your IPE. For example, you might change intermediate goals or the time frame for completing a goal, if your medical condition has changed. See generally 9 C.C.R. § 7133.

21. What if I don't agree with how the IPE is being amended?

You can work with your DOR counselor to amend your IPE. 29 U.S.C. § 722(b)(2)(E)(ii); 34 C.F.R. § 361.45(d)(6); 9 C.C.R. § 7130(a)(6). Amendments to your IPE do not take effect until you agree to them and sign the new agreement. 34 C.F.R. § 361.45(d)(7).

22. I received a Ticket to Work form Social Security Administration. What is it?

A Ticket, issued by the Social Security Administration (SSA), can be used to obtain employment services, vocational rehabilitation services, and other supportive services from the DOR or another employment network of your choice in order to become employed.

23. What is an Employment Network?

An Employment Network is an approved public or private employment service provider that will be authorized to accept your Ticket and provide the services necessary for you to become employed. These services could include, but are not limited to training, employment counseling, job seeking skills preparation and job placement.

For a list of local approved Employment Networks in your area, call 1-866-968-7842, or 1866-8332968 (TTY/TDD) or go to <http://www.yourtickettowork.com>

24. What if I am currently working with the Department of Rehabilitation?

You can continue without interruption. When you and your counselor have developed an Individualized Plan for Employment, you will be encouraged to assign your Ticket to the Department. However, you are *not* required to assign your ticket to DOR.

25. Will I be penalized if I choose not to use the Ticket?

No, assignment of your Ticket to the DOR is voluntary and you will not be penalized.

26. How can I get a copy of my records?

According to federal law, the Department must release information to an applicant or eligible individual when there is a **written** request by that applicant or individual. 34 C.F.R. § 361.38(c)(1). Under the California regulations, an applicant or client can obtain his or her records from the Department upon request. 9 C.C.R. § 7141(a). There is no writing requirement in California; however, it is probably best if you request your records in writing. See generally 9 C.C.R. § 7141.

You have the right to a full and unabridged copy of your IPE. 29 U.S.C. § 722(b)(2)(D). In fact, you have a right to your entire case record with few exceptions, see Question 27 below. 9 C.C.R. § 7141(a).

For more information about obtaining records from the DOR, see Request for Department of Rehabilitation (DOR) Records Fact Sheet, pub# 553301: <http://www.disabilityrightsca.org/pubs/553301.pdf>

27. DOR is saying that I cannot have my records. Can they keep them from me?

DOR may refuse to release information under some circumstances. For example, if DOR determines that the information “may be harmful to the individual,” it can refuse to disclose. Even under this circumstance, however, the information needs to be made available to the applicant or

individual through a third party. 34 C.F.R. § 361.38(c)(2); 9 C.C.R. § 7141(c).

28. Can I get my records in a language other than English?

Yes. Let your DOR counselor know that you want your records translated. The counselor will help you get those records translated into a language that you understand. 9 C.C.R. § 7141(b).

29. Can I amend my record of services?

If you believe that the information in your record is inaccurate, you may request for it to be amended. 9 C.C.R. § 7141.5 (c). If DOR decides not to amend your records, according to your request, it must document your request for an amendment. 34 C.F.R. § 361.38(c)(4); 9 C.C.R. § 7141.5(e).

30. What can I do if I am having problems with my DOR counselor?

Try to resolve the issue with the counselor. Perhaps the counselor's supervisor or team manager can be of assistance in working out any problems. Ask for a meeting with the counselor's supervisor. If you are unable to resolve the problem with the supervisor, you may request the District Administrator conduct an Administrative Review. Administrative Review is an optional step in the appeals process and should be requested within one year of the decision with which you disagree. If you wait too long to make your request for Administrative Review, you may lose your chance to appeal the decision.

If you are not satisfied with the Administrative Review, you may request mediation and/or a Fair Hearing. You must make this request in **writing** by completing a DR107 Request for Mediation and/or Fair Hearing form **within 30-days** of the Administrative Review decision. 9 C.C.R. § 7353(f).

For more information regarding your appeal rights, see California Department of Rehabilitation Appeals Options & Process Fact Sheet, pub# 553001 <http://www.disabilityrightsca.org/pubs/553001.pdf>

You may contact your CAP advocate for assistance. (See questions 36 and 37, below, for more information about CAP). The CAP advocate may be able to help you in resolving your issues with DOR.

31. What if I don't speak English, or I need a sign language interpreter?

You can have notices sent to you in your primary language or your preferred mode of communication. Once you make a specific request, DOR is supposed to provide you its notices and its decisions in your primary language or mode of communication. W.I.C. § 19013.5(a)-(b) and 9 C.C.R. § 7352(a).

32. How do I ask for an Administrative Review?

You must ask for an Administrative Review within one year of the decision with which you disagree. Your request can be made orally or in writing and must include the following information:

- The reason why you think the decision should be changed; and
- What action you propose be taken.

9 C.C.R. §§ 7353(a)(2) and (3).

The DOR must provide you with a written decision regarding the issues in your request within 15 days of the date of your request for Administrative Review. 9 C.C.R § 7353(f).

33. If I don't speak English, will the Department assist me during the Administrative Review?

Yes. Interpreter and reader services must be provided to you for the Administrative Review. It is up to you to request these services. C.C.R. 9 § 7353(c). When you request language assistance, you should be clear as to what you want. If you would like an interpreter, be clear about that. If you also want to receive notices and decisions in a language other than English, make sure to be clear about this as well.

34. Can I request transportation to and from the Administrative Review?

Yes. You may request DOR to provide transportation for you to and from the Administrative Review. 9 C.C.R. § 7353(d).

35. Is the Administrative review mandatory?

No. The Administrative Review process is optional. You can ask immediately for mediation and/or a fair hearing. 9 C.C.R. § 7351(c).

36. Is mediation mandatory?

No. Mediation is also optional. 34 C.F.R. § 361.57(d)(2)(i). It is a confidential process that may assist you in resolving your dispute with DOR. Like the Administrative Review process, mediations do not delay the right to a fair hearing. 9 C.C.R. § 7353.6(b) 34 C.F.R. § 361.57(d)(2)(ii).

You may request mediation for a decision by the Department with which you disagree within one year of the date of the decision, or if you have participated in an Administrative Review within 30 days of the Administrative review decision. The request for mediation must be made in writing, using a DR107 Request for Mediation and/or Fair Hearing form that you may obtain from your local DOR office. 9 C.C.R. §§ 7353(f) and 7353.6(a)(1)-(2).

If the Department agrees to mediate, the mediation will be held at a convenient time and location for all of the parties within 25 calendar days from when the request is received. 9 C.C.R. § 7353.6(b)-(c); 34 C.F.R. § 361.57(d).

For your convenience, a sample DOR mediation request form can be found at: <http://www.dor.ca.gov/Executive/Mediation.html>

37. What about the Fair Hearing process?

You can request a fair hearing to review an action or inaction by the Department. You must make your request for a fair hearing in writing and within one year of the day of the action or inaction with which you disagree. 9 C.C.R. § 7354(a). If you have participated in an Administrative Review,

you must make your request within 30 days of the Administrative Review decision. 9 C.C.R. § 7353(f). A hearing will be held within 60-calendar days from when your request is received. 9 C.C.R. § 7354(b).

For your convenience, a sample DOR fair hearing request form can be found at: <http://www.dor.ca.gov/Appeals/index.html>

For more information about how to prepare for your fair hearing, see: *How to Prepare for a Vocational Rehabilitation Hearing*, pub# 553201: <http://www.disabilityrightsca.org/pubs/553201.pdf>

38. Can the Department cut services that I am receiving until there is a decision?

No. Until the Administrative Review decision or until the Office of Administrative Hearings has given a decision, the Department may not suspend, reduce, or terminate any services that are already being provided under an IPE. 29 U.S.C. § 722(c)(7); 34 C.F.R. § 361.57(b)(4); 9 C.C.R. § 7351(e).

39. What is the Clients Assistance Program (CAP)?

The Clients Assistance Program (CAP) is a federally mandated program under the Rehabilitation Act of 1973. 29 U.S.C. 701, *et seq.* CAP is available to help you understand your rights and responsibilities involving your right to services from DOR. CAP advocates may be able to help you resolve problems with your DOR counselor or assist and advocate on your behalf regarding vocational services while pursuing legal, administrative, or other appropriate remedies to ensure the protection of your rights. See generally, 29 U.S.C. § 732.

More information about CAP is available at: <http://www.disabilityrightsca.org/about/cap.html>

To contact the Client Assistance Program (CAP) at Disability Rights California, you can call 1-800-776-5746.

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to <http://www.disabilityrightsca.org/Documents/ListofGrantsAndContracts.html>.