



*California's Protection & Advocacy System*

# Eligibility for Department of Rehabilitation Services Fact Sheet

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## **Who determines eligibility for Vocational Rehabilitation Services from the Department of Rehabilitation?**

The state agency designated by the Rehabilitation Service Administration (RSA) to determine whether an individual is eligible to receive vocational rehabilitation (VR) services in California is the Department of Rehabilitation (DOR).

## **How do I apply?**

1. Apply online via the California Department of Rehabilitation website [www.dor.ca.gov](http://www.dor.ca.gov);
2. Mail the attached application form to your local DOR
3. Call your local DOR and request that an application be mailed to you.
4. Visit your local DOR in person and completing an application in person;
5. Or give the information needed to start the assessment process in another reasonable format.

Other information must include a request for services from the DOR where you have provided information necessary to initiate an assessment to determine your eligibility and the significance of your disability and you must be available to complete the assessment process. 34 C.F.R. 361.41(b)(2); 9 C.C.R. § 7141(b)(1)(C).

We recommend that you submit a signed and dated Application for Vocational Rehabilitation Services form and keep a copy for your records.

If you are sending your application by mail, you may send it certified mail so that you can confirm it was received. If you deliver your application to a local DOR office, you may request a receipt or stamp verifying the date it was received. If you apply online, you will not be able to sign the application on the date that it is submitted.

## **Who is eligible for VR services?**

In order to be eligible to receive VR services, you must meet the eligibility criteria defined in §102(a)(1) of the Rehabilitation Act of 1973 (also see, 29 U.S.C. §722(a)(1); 34 C.F.R. § 361.42(a) and 9 C.C.R. § 7062(a)).

The Department of Rehabilitation's (DOR) determination of an applicant's eligibility for VR 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;
- (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 VR 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 VR services in terms of an employment outcome in an integrated setting.

9 C.C.R. § 7062(a).

## **What is a physical or mental impairment?**

“Physical or Mental Impairment” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular,

reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 9 C.C.R. § 7021.

### **Can the DOR ask me to participate in assessments to determine my eligibility for services?**

In order to determine eligibility for VR services, DOR must conduct an assessment in the most INTEGRATED setting possible, consistent with the individual's needs and INFORMED CHOICE. 9 C.C.R. § 7062. The assessment should include a review and assessment of existing data, including your counselor's observations including, but not limited to, observation of an obvious impairment, medical records, education records, information provided by you or your family and determinations made by officials of other agencies. 9 CCR § 7062(g)(1)(A). Only to the extent that existing data does not describe your level current functioning or is unavailable, insufficient, or inappropriate to make an eligibility determination, may the DOR request you participate in a formal assessment to determine your eligibility for services and vocational needs. 9 C.C.R. §7062(g)(1)(B).

These assessment may include, but are not limited to 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).

### **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 VR process. Under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, public entities or a recipient 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.

### **What is “clear and convincing” evidence?**

Clear and convincing evidence is the legal standard DOR must prove to determine that an individual is incapable of benefiting from VR services. 29 U.S.C. §722(a)(3)(ii).

In order for the DOR to determine an individual is incapable of benefiting from VR services in terms of an employment outcome in an integrated setting, the DOR must have conducted or obtained multiple assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability and if appropriate, functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. 9 C.C.R. §7004.6.

### **What is a Trial Work Experience (TWE)?**

A trial work experience is an assessment which includes supported employment, on-the-job training, and other experiences using realistic work settings to “explore the individual’s abilities, capabilities and capacity to perform in a work situation.” 34 C.F.R. 361.42(e)(1) and (2)(ii); 9 C.C.R. § 7029.1(a) and (b)). DOR must conduct a TWE with a sufficient period of time by providing an applicant with various job-placement assessments in

accordance with a written plan that includes appropriate supports during the TWE, including on-the-job supports, assistive technology and necessary accommodations before DOR can determine an individual cannot benefit from VR services because of the severity of his/her disability. 34 C.F.R. 361.42(e)(2); 9 C.C.R. § 7029.1(b).

The DOR may not base its decision that an individual is incapable of benefiting from VR services solely on a TWE or any one assessment. 9 C.C.R. § 7004.6(b).

### **Do I have to participate in a TWE?**

If you decline to participate in or are unavailable to complete a TWE or other assessments which are needed in order to determine your eligibility, the DOR may close your case without an eligibility determination. 9 C.C.R. § 7179. If you choose to appeal the DOR's closure of your case, the DOR would only need to show a preponderance of evidence that you declined to participate, which is a lesser standard of proof than clear and convincing evidence.

### **Who is presumed eligible?**

- **SSDI/SSI** - Beneficiaries of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) are presumed eligible to receive VR services. 29 U.S.C. § 722(a)(3)(A)(i)-(ii); 34 C.F.R. § 361.42(a)(3)(i)(A)-(B); 9 C.C.R. § 7062(d).
- **Special Education Students** – DOR may use the determinations of education officials regarding whether an individual meets the definition of an “individual with a disability” and shall coordinate with educational agencies to facilitate the transition of the students with disabilities from special education to VR services. 9 C.C.R. §§ 7028.6 and 7062(g)(a)(1)(A)(3-5).

NOTE: These individuals may be found ineligible if DOR determines that the individual cannot benefit from VR services due to the severity of his/her disability. Again, DOR would have to provide clear and convincing evidence to make such a determination, which is a very high standard to meet.

## **Are there factors the DOR may not consider in determining if I am eligible?**

Yes. The DOR is prohibited from considering the following when determining eligibility for VR services:

- Duration of residence in the State of California;
- Type of disability;
- Age;
- Gender;
- Race;
- Color;
- National origin;
- Type of expected employment outcome;
- Source of referral for VR services;
- Particular service needs or anticipated cost of services;
- Income level of an applicant or applicant's family.

34 C.F.R. § 361.42(c); 9 C.C.R. § 7060(c).

## **When will I know if I am eligible for VR services?**

The DOR will make a determination regarding eligibility within a reasonable period of time, not to exceed 60 days, after receiving the application for services. This timeframe may be extended in order to conduct TWE or due to “exceptional and unforeseen circumstances beyond the control” of the DOR. In this unique situation, the DOR and the individual will agree to a specific extension of time. 29 U.S.C. § 722(a)(6); 34 C.F.R. § 361.41(b)(1); 9 C.C.R. § 7060(a).

## **What if I am found ineligible?**

If you are found to be ineligible for VR services the DOR must:

1. Make its determination only after meeting with you and/or your representative;
2. Notify you in writing, or by other preferred and appropriate modes of communication, of the reason for their determination, your right to seek a remedy including procedures for administrative review

and hearing, and provide you with information regarding the services available throughout the Client Assistance Program (CAP).

3. Review your application within 12 months and thereafter upon your request.

Rehab Act §102(a)(5) and 9 C.C.R. § 7098.

**If you have questions or problems regarding eligibility, you can contact the Client Assistance Program (CAP) at Disability Rights California at 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>.*