

Chapter 24

Order of Selection (Plan Only: Not In Effect)

24.1 Authority: 34 CFR 361.36

24.2 Policy

In the event that USOR lacks the resources to provide all eligible individuals VR services necessary to obtain, retain, or engage in employment, USOR must show and provide the justification for the order to be followed in selecting individuals to whom VR services will be provided. The order of selection for the provision of VR services shall be determined on the basis of significance of disability. First priority will be given to eligible individuals with the **most significant** disabilities, followed by eligible individuals with **significant** disabilities, and finally eligible individuals with **not-significant** disabilities. Significance of disability is determined by the VR Counselor at the time of eligibility determination in accordance with criteria established by USOR.

24.3 Description of the Order of Selection

Priority 1 - Eligible individuals with the **most significant** disabilities.

Priority 2 - Eligible individuals with **significant** disabilities.

Priority 3 - All other eligible individuals with disabilities which are **not significant**.

24.4 Definitions

A. Most Significant

1. An individual with the most significant disability means the impairment causes serious limitations in **two or more** functional categories. Functional categories include mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills. In addition, the individual must require multiple VR services over an extended period of time in order to engage in employment. Examples of serious limitations under functional categories include but are not limited to:
 - a. Mobility
 - i. Requires assistive devices (cane, canes for the blind, crutches, prosthesis, walker, wheelchair) to be mobile.
 - ii. Is unable to climb one flight of stairs without pause.
 - iii. Is unable to walk 100 meters without pause.
 - iv. Cannot evacuate from a building in less than three minutes without assistance.
 - v. Unable to travel to and from worksite (including accessing public transportation) without assistance.
 - vi. Other similar mobility deficits.
 - b. Communication
 - i. Expressive and receptive primary mode of communication is unintelligible to non-family members.

- ii. Does not demonstrate understanding of simple requests or is unable to understand one-to-two step instructions including instructions given through an interpreter.
 - iii. Is unable to read or understand any written material or instructions due to disabling condition
 - iv. Other similar communication deficits.
 - c. Self-care
Is unable to perform activities of daily living without assistance (ie loss of manual dexterity or coordination sufficient that he/she cannot perform personal hygiene tasks, dress self, prepare own meals etc. without assistance)
 - d. Self direction
 - i. Is unable to provide informed consent for life issues without the assistance of a court appointed legal representative or guardian; or has been declared legally incompetent.
 - ii. Is unable to understand rights or responsibilities in judicial or other proceedings even with utilization of an interpreter.
 - iii. Is unable to perform work in an integrated setting without support because is unable to tell time, manage time, and/or stay on task without assistance.
 - iv. Is unable to perform work outside sheltered environment.
 - v. Other similar deficits in self-direction.
 - e. Interpersonal Skills
 - i. Has disfigurement or deformity so pronounced as to cause social rejection.
 - ii. Has demonstrated behavior such that the individual is a danger to self and others without supervision.
 - iii. Is unable to respond appropriately to supervision or to respond appropriately to co-workers or the public.
 - iv. Consistently demonstrates behavior toward others which is considered offensive, unpredictable or explosive.
 - v. Other similar interpersonal skill deficits.
 - f. Work Tolerance
Is unable to perform sustained work for more than 4 hours per day.
 - g. Work Skills
 - i. Is unable to perform work tasks outside sheltered environment.
 - ii. Is unable to perform several types of work tasks (regardless of training) due to disabling condition.
 - iii. Other similar work skill deficits.
- 2. Determinations Made by Other Agencies.
While Federal Regulations prohibit assigning Order of Selection categories by disability type or automatically assigning categories, determinations made by other agencies may be utilized to assist the VR Counselor in documenting the priority category as they provide information about functional limitations. For example, the VR Counselor may receive documentation that the individual is:
 - a. Eligible for services from the Division of Services for People with Disabilities; or

- b. Determined Seriously and Persistently Mentally Ill (SPMI) by the Mental Health System, a duly licensed physician, licensed psychologist, other qualified provider under the Mental Health Professional Practice Act, the Judicial System in accordance with DSM-IV-TR; or
- c. Found to be permanently and totally disabled by the State Labor Commission.

In such cases the VR Counselor can be assured that the individual has demonstrated limitations in some functional areas. Regardless of the client's eligibility for other programs, however, the VR Counselor must still document the specific functional deficits.

NOTE: Individuals who are allowed SSI/SSDI disability benefits from the Social Security Administration MAY or MAY NOT be considered Most Significantly Disabled. To be considered Most Significant there must be two or more functional limitations or a determination from another agency as described under 24.3(A)(2)(a-c)

B. Significant

An individual with a significant disability can be classified in any one of the following three categories at any time while he or she is in the VR process:

Category 1. An individual who:

- a. Has a significant physical or mental impairment which seriously limits **one or more** functional capacities (such as mobility, communication, self care, self direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; **and**
- b. Whose vocational rehabilitation is expected to require multiple services over an extended period of time; **and**
- c. Who has one or more physical or mental impairments resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined to cause comparable substantial functional limitation.

Category 2. A recipient of a Social Security Disability Insurance benefits (SSDI) who requires multiple vocational rehabilitation services over an extended period of time.

Category 3. A recipient of a Supplemental Security Income (SSI) payment by reason of blindness or disability who requires multiple vocational rehabilitation services over an extended period of time.

NOTE: Individuals who are allowed SSI/SSDI disability benefits from the Social Security Administration are considered to be **at least** Significantly Disabled.

C. Not-Significant

An individual with a disability means an individual who:

- 1. Has a physical or mental impairment which for that individual constitutes or results in a substantial impediment to employment;

2. Can benefit in terms of an employment outcome after receiving vocational rehabilitation services; and
 3. Requires vocational rehabilitation services to prepare for, enter, engage in or retain gainful employment.
- D. Multiple Services
Multiple VR services means - three or more services as listed under Section 103 of the Act.
- E. Extended Period of Time
Extended Period of time means - the life span of the case is projected to be six months or more.

24.5 Restrictions on Establishing Priorities

The following factors must **not** be used as criteria for establishing selection priorities:

- A. Type of disability
- B. Age, sex, race, color, creed, or national origin.
- C. Vocational expectation
- D. Income level
- E. Duration of residency requirement
- F. Source of referral or cooperative agreements with other agencies/programs
- G. Cost of services or availability of comparable services and benefits

24.6 Continuity of Service Provision under Order of Selection

During the implementation of an order of selection, USOR must:

- A. Continue to accept applications and make determinations of eligibility.
- B. Reserve sufficient resources to meet these obligations, and
- C. Continue providing needed services to eligible individuals with IPEs implemented prior to the effective date of the Order of Selection.

NOTE: Continuity of Service in all areas is subject to the availability of funding.

24.7 General Administrative Requirements

- A. When setting up the Order of Selection, USOR must take into consideration all eligible individuals and prioritize each one of them.
- B. The Order of Selection must be implemented statewide with the same priority levels in all areas of the state.
- C. USOR in consultation with the State Rehabilitation Council (SRC) must describe and explain its order of selection and this decision must be disseminated to the public for review and comment prior to implementation.

24.8 Order of Selection Procedures

- A. When the Executive Director of USOR invokes an order of selection to prioritize the provision of VR services each eligible individual will be classified into one of the three priority categories listed above based on the determination of the significance/severity of

their disability. If necessary, further prioritization within a category will be done by application date.

- B. The priority classification shall be determined solely on the significance/severity of the disability.
- C. All applicants, including individuals in trial work exploration status (06) and eligible without IPE status (10), shall be notified in writing of the Order of Selection and their subsequent priority classification. Included in the written notification will be their right to appeal the determination of their priority classification and the availability of the Client Assistance Program (CAP).
- D. Diagnostic services necessary to determine eligibility, including services in extended evaluation, shall not be impacted by the Order of Selection.
- E. An individual who is found to be eligible but whose priority category is closed at the time of eligibility determination shall be placed in Order of Selection Deferred Status (04).
- F. No services, including non-paid IPE services, shall be provided to individuals in status (04).

EXCEPTION: If the individual appeals the determination and there is justification, additional diagnostic services necessary to reassess the **significance/severity** of the individual's disability and subsequent priority category may be provided.

24.9 Change in Priority Levels

- A. If the Executive Director of USOR determines that resources are further limited to where the Order of Selection must be restricted to a higher priority, the field will be notified in writing of the level and the implementation date. All other procedures such as applicant/client notification of the new priority level, continuity of services of those with IPEs, diagnostics, etc. shall continue as they did with the initial implementation of the Order of Selection.
- B. If the Executive Director of USOR determines that additional resources are available but are not sufficient to serve an entire category, individuals will be pulled out of Status (04) in the category that was opened, in the order of application date.

24.10 Client Service Checklist

- A. The VR Counselor must have sufficient data, either through existing information or purchased diagnostics, to establish a priority category for each individual determined to be eligible.
- B. The VR Counselor must determine the eligible individual's priority level before the development of an IPE. (Current USOR policy requires Most Significant, Significant and Non-Significant classification at eligibility determination).
- C. The client record must contain the documentation and rationale which would support the priority level given.
- D. Each eligible individual shall be classified in the highest priority level for which he/she is qualified.
- E. Once classified, that individual shall remain in the highest priority achieved regardless of improvement through restoration, therapy, or spontaneous recovery.

- F. In instances where it is felt that the severity of the disability has increased to the point that a VR Counselor or client believes a change in priority categories is justified, a reassessment may be implemented.
- G. The priority level and the justification for that determination shall be communicated to each eligible individual with documentation in the client record. This would include:
 - 1. Original notification of priority level.
 - 2. Notification of reclassification as a result of changes in client circumstances.

or

 - 3. Notification of non-reclassification following a requested review.

Each notification shall include the right to appeal and the availability of the CAP.

NOTE: ALL INFORMATION REGARDING NOTIFICATION OF ORDER OF SELECTION PRIORITY LEVELS SHALL BE AVAILABLE IN ALTERNATIVE FORMATS.

24.11 Monitoring

Individuals in Order of Selection Deferred Status (04) shall be contacted at least once in the first 90 days after being placed in deferred status and periodically monitored as long as they remain in that status if they request follow up. Contact and monitoring lists will be computer generated with minimal efforts required of staff.

24.12 Closure

Individuals not wanting to be in deferred status after being informed that their priority category is currently not open, or individuals no longer interested in remaining in deferred status after the first 90 day or a subsequent contact, will be closed in status 38.

SAMPLE APPLICANT LETTER

Dear [Applicant name],

Federal law requires the Utah State Office of Rehabilitation's Vocational Rehabilitation Program to implement an Order of Selection if sufficient resources are not available to serve all individuals who are determined to be eligible. The order must assure that the individuals with the most significant disabilities are served first. Utah has currently implemented an Order of Selection.

If you are found eligible for Vocational Rehabilitation services, you will be assigned to one of the following categories:

1. Individuals with the most significant disabilities
2. Individuals with significant disabilities.
3. All other individuals with disabilities that are not significant.

Services are currently being provided to individuals assigned to categories _____.

If you are assigned to a category not being served at this time, your name will be placed on a waiting list based on the date of application for that priority classification.

If you have any questions regarding the Order of Selection or the categories identified, please call me at _____ voice/TDD.

I will continue to work with you to determine your eligibility for vocational rehabilitation services and, if eligible, the appropriate priority classification. If you disagree with your classification, you have the right to review or appeal the decision. You are entitled to assistance with your appeal from an independent advocate. The Client Assistance Program (CAP) can provide this help. CAP can be reached statewide, toll-free at 1-800-662-9080 or 1-800-550-4182 TTY.

Sincerely,

VR Counselor

Appendix 24-B

SAMPLE ELIGIBILITY LETTER

Dear [Applicant name],

This is to inform you that you have been found eligible for Vocational Rehabilitation services. This decision was based on three factors: (1) there exists a physical or mental impairment which constitutes or results in a substantial impediment to employment; and (2) you can benefit from Vocational Rehabilitation services in terms of an employment outcome; and (3) you require Vocational Rehabilitation services to prepare for, enter, engage in, or retain gainful employment.

As explained to you when you applied for services, this agency has instituted an Order of Selection for Vocational Rehabilitation services. At this time you are being placed in the category indicated by an "X" below:

- 1. Individuals with the most significant disabilities
- 2. Individuals with significant disabilities.
- 3. All other individuals with disabilities that are not significant.

Services are currently being provided to individuals assigned to categories _____.

Your name will be placed on a waiting list for the category indicated according to the date of your application. If you are assigned to categories not currently being served, there will be an **indefinite delay in services.**

If you have any questions or disagree with your category assigned above, please feel free to contact me. You may file a request for a review of this decision. Contact

_____.

An independent Client Assistance Program (CAP) representative is available to act as your advisor and advocate at any time. CAP can be reached statewide, toll-free, at 1-800-662-9080 or 1-800-550-4182 TTY.

Sincerely,

VR Counselor
