

information necessary to initiate an assessment to determine eligibility and priority for services.

(3) The designated State unit shall ensure that its application forms are widely available throughout the State.

(Authority: Sections 101(a)(6)(A) and 102(a)(5)(A) of the Act; 29 U.S.C. 721(a)(6)(A) and 722(a)(5)(A))

**§ 361.42 Assessment for determining eligibility and priority for services.**

The State plan must assure that, in order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit will conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements.* (1) *Basic requirements.* The State plan must assure that the State unit's determination of an applicant's eligibility for vocational rehabilitation services is based only on the following requirements:

(i) A determination that the applicant has a physical or mental impairment, as determined by qualified personnel licensed or certified in accordance with State law or regulation.

(ii) A determination that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant.

(iii) A determination, in accordance with paragraph (a)(2) of this section, that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(iv) A determination that the applicant requires vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with the applicant's strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.

(2) *Presumption of benefit.* The State plan must assure that the designated State unit will presume that an applicant who meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section can benefit in terms of an employment outcome unless it determines, based on clear and convincing evidence, that the applicant is incapable of benefitting in terms of an

employment outcome from vocational rehabilitation services.

(3) *Limited presumption for Social Security beneficiaries.* The State plan must assure that, if an applicant has appropriate evidence, such as an award letter, that establishes the applicant's eligibility for Social Security benefits under Title II or Title XVI of the Social Security Act, the designated State unit will presume that the applicant—

(i) Meets the eligibility requirements in paragraphs (a)(1) (i) and (ii) of this section; and

(ii) Has a severe physical or mental impairment that seriously limits one or more functional capacities in terms of an employment outcome.

(b) *Prohibited factors.* The State plan must assure that—

(1) No duration of residence requirement is imposed that excludes from services any applicant who is present in the State;

(2) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability;

(3) The eligibility requirements are applied without regard to the age, gender, race, color, creed, or national origin of the applicant; and

(4) The eligibility requirements are applied without regard to the particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family.

(c) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (d) of this section, the designated State unit shall base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(1) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, information used by the Social Security Administration, and determinations made by officials of other agencies; and

(2) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including assistive technology devices and services and worksite assessments, that are necessary to determine whether an individual is eligible.

(d) *Extended evaluation for individuals with severe disabilities.* (1) Prior to any determination that an individual with a severe disability is

incapable of benefitting from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability, the State unit shall conduct an extended evaluation to determine whether or not there is clear and convincing evidence to support such a determination.

(2) During the extended evaluation period, which may not exceed 18 months, vocational rehabilitation services must be provided in the most integrated setting possible, consistent with the informed choice of the individual.

(3) During the extended evaluation period, the State unit shall develop a written plan for determining eligibility and for determining the nature and scope of services required to achieve an employment outcome. The State unit may provide during this period only those services that are necessary to make these two determinations.

(4) The State unit shall assess the individual's progress as frequently as necessary, but at least once every 90 days, during the extended evaluation period.

(5) The State unit shall terminate extended evaluation services at any point during the 18-month extended evaluation period if the State unit determines that—

(i) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(ii) There is clear and convincing evidence that the individual is incapable of benefitting from vocational rehabilitation services in terms of an employment outcome.

(e) *Data for determination of priority for services under an order of selection.* If the State unit is operating under an order of selection for services, as provided in § 361.36, the State unit shall base its priority assignments on—

(1) A review of the data that was developed under paragraphs (c) and (d) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Sections 7(22)(A)(ii), 7(22)(C)(iii), 101(a)(9)(A), 101(a)(14), 101(a)(31), 102(a)(1), 102(a)(2), 102(a)(3), and 102(a)(4) of the Act; 29 U.S.C. 706(22)(A)(ii), 706(22)(C)(iii), 721(a)(9)(a), 721(a)(14), 721(a)(31), 722(a)(1), 722(a)(2), 722(a)(3), and 722(a)(4))

Note: "Clear and convincing evidence" means that the designated State unit must have a high degree of certainty before it can conclude that an individual is incapable of benefitting from services in terms of an employment outcome. The "clear and convincing" standard constitutes the highest standard used in our civil system of law and