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Sequence Number: 09-27-09
Notice ID(s): 1001-1008
File Date: 01/30/09

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Department of Human Services
Division:	Rehabilitation Services
Contact Person:	Whitney Frazier
Address:	Office of General Counsel Citizens Plaza Building, 10th Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
Phone:	615-313-4731
Email:	Whitney.Frazier@state.tn.us

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Jeffrey Blackshear
Address:	Citizens Plaza Building, 10th Floor 400 Deaderick Street Nashville, Tennessee 37243-1403
Phone:	615-313-4731
Email:	Jeffrey.Blackshear@state.tn.us

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Citizens Plaza Building 2nd Floor Board Room 400 Deaderick Street		
Address 2:			
City:	Nashville, Tennessee		
Zip:	37243-1403		
Hearing Date :	03/18/09		
Hearing Time:	6:30 p.m.	X CST ___EST	

Address 1:	1st Floor Auditorium 540 McCallie Ave.		
Address 2:			
City:	Chattanooga, Tennessee		
Zip:	37402		
Hearing Date :	03/18/09		
Hearing Time:	6:30 p.m.	___CST X EST	

Address 1:	Division of Rehabilitation Services Multipurpose Room 955 East 20th Street

Address 2:			
City:	Cookeville, Tennessee		
Zip:	38501-2472		
Hearing Date :	03/19/09		
Hearing Time:	6:30 p.m.	X CST ___EST	

Address 1:	Tennessee Department of Human Services Conference Room 103 E. Walnut Street		
Address 2:			
City:	Johnson City, Tennessee		
Zip:	37601		
Hearing Date :	03/23/09		
Hearing Time:	6:30 p.m.	___CST X EST	

Address 1:	2nd Floor Auditorium Donnely J. Hill State Office Building 170 North Main Street		
Address 2:			
City:	Memphis, Tennessee		
Zip:	38103		
Hearing Date :	03/23/09		
Hearing Time:	6:30 p.m.	X CST ___EST	

Address 1:	Conference Room A, 7th Floor 531 Henley Street		
Address 2:			
City:	Knoxville, Tennessee		
Zip:	37902		
Hearing Date :	03/24/09		
Hearing Time:	6:30 p.m.	___CST X EST	

Address 1:	2nd Floor Conference Room B, Ste 210 Lowell Thomas State Office Building 225 Martin Luther King, Jr. Drive		
Address 2:			
City:	Jackson, Tennessee		
Zip:	38301		
Hearing Date :	03/24/09		
Hearing Time:	6:30 p.m.	X CST ___EST	

Address 1:	Department of Human Services Division of Rehabilitation Services Conference Room 6000 Trotwood Avenue		
Address 2:			
City:	Columbia, Tennessee		
Zip:	38401		
Hearing Date :	03/25/09		
Hearing Time:	6:30 p.m.	X CST ___EST	

Additional Hearing Information:

Revision Type (check all that apply):

X Amendment

___ New

X Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row.)

Chapter Number	**Chapter Title**
1240-08-02	General Rules
Rule Number	**Rule Title**
1240-08-02-.01	Purpose
1240-08-02-.02	Definitions
1240-08-02-.03	Scope of Services
1240-08-02-.04	Procedures
1240-08-02-.05	Legal Basis

Chapter Number	**Chapter Title**
1240-08-03	Administration
Rule Number	**Rule Title**
1240-08-03-.01	State and Local Organization and Administration
1240-08-03-.02	Economic Needs Tests
1240-08-03-.03	Staff Development and Training
1240-08-03-.04	Medical and Psychological Consultation in the Vocational Rehabilitation Process

Chapter Number	**Chapter Title**
1240-08-04	Services to Individuals
Rule Number	**Rule Title**
1240-08-04-.01	Intake: Referrals and Applications
1240-08-04-.02	Evaluation or Assessment for Determining Eligibility, and Priority for Services
1240-08-04-.03	Eligibility, Ineligibility, and Certification
1240-08-04-.04	Annual Reviews of Ineligibility Decisions
1240-08-04-.05	Individualized Plan for Employment
1240-08-04-.06	Counseling, Guidance, and Referral Services
1240-08-04-.07	Physical and Mental Restoration Services
1240-08-04-.08	Physicians' Services and Medical Diagnosis
1240-08-04-.09	Hospital and Clinic Services
1240-08-04-.10	Dental Diagnosis and Services
1240-08-04-.11	Eyeglasses and Visual Services
1240-08-04-.12	Medical Care for Acute Conditions
1240-08-04-.13	Training Services
1240-08-04-.14	Maintenance
1240-08-04-.15	Transportation
1240-08-04-.16	Interpreter Services for the Deaf
1240-08-04-.17	Reader, Teaching, Orientation and Mobility Services
1240-08-04-.18	Telecommunications, Sensory and Other Technological Aids and Devices
1240-08-04-.19	Services to Family Members
1240-08-04-.20	Placement in Suitable Employment
1240-08-04-.21	Post-Employment Services
1240-08-04-.22	Licenses, Tools, Equipment, Initial Stocks and Supplies
1240-08-04-.23	Other Goods and Services
1240-08-04-.24	Standards for Closing Cases

Chapter Number	**Chapter Title**
1240-08-05	Services to Individuals: Related Provisions
Rule Number	**Rule Title**
1240-08-05-.01	Order of Selection and Priority Categories
1240-08-05-.02	Participation in Costs
1240-08-05-.03	Consideration of Comparable Services or Benefits and Subrogation

1240-08-05-.04	Confidentiality
1240-08-05-.05	Review of Extended Employment in Rehabilitation Facilities
1240-08-05-.06	Tennessee Rehabilitation Center
1240-08-05-.07	Tennessee Vocational Training Center Program

Chapter Number	**Chapter Title**
1240-08-06	Services to Groups, Construction and Establishment Programs
Rule Number	**Rule Title**
1240-08-06-.01	Facilities and Services for Groups of Individuals with Disabilities
1240-08-06-.02	Construction of Rehabilitation Facilities
1240-08-06-.03	Establishment of Rehabilitation Facilities

Chapter Number	**Chapter Title**
1240-08-09	Conduct Policy
Rule Number	**Rule Title**
1240-08-09-.01	Scope
1240-08-09-.02	Misconduct Subject to Disciplinary Sanction
1240-08-09-.03	When Disciplinary Action May Be Taken
1240-08-09-.04	Personnel Responsibilities for Disciplinary Action
1240-08-09-.05	Disciplinary Sanctions
1240-08-09-.06	Entitlement to Administrative Review or Fair Hearing
1240-08-09-.07	Search and Inspection Policy

Chapter Number	**Chapter Title**
1240-08-10	Personal Care Assistance Program
Rule Number	**Rule Title**
1240-08-10-.01	Legal Basis
1240-08-10-.02	Definitions
1240-08-10-.03	Purpose and Scope
1240-08-10-.04	General Eligibility Requirements
1240-08-10-.05	Application; Eligibility Determination
1240-08-10-.06	Personal Care Assistance Re-Evaluations
1240-08-10-.07	Determination of Financial Need
1240-08-10-.08	Authorization and Billing Procedure
1240-08-10-.09	Rate of payment for PCA Services
1240-08-10-.10	Responsibilities of Individuals Receiving PCA Services
1240-08-10-.11	Annual Financial Review
1240-08-10-.12	Comparable Benefits
1240-08-10-.13	Termination of Services
1240-08-10-.14	Appeals Process

Chapter Number	**Chapter Title**
1240-08-11	Supported Employment Services Program
Rule Number	**Rule Title**
1240-08-11-.01	Purpose
1240-08-11-.02	Definitions
1240-08-11-.03	Eligibility Criteria
1240-08-11-.04	Provision of Services
1240-08-11-.05	Case Closure

Substance of Proposed Rules

Chapter 1240-08-02
General Rules

Amendments

Rule 1240-08-02-.01, Purpose, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-02-.01 shall read as follows:

1240-08-02-.01 Purpose.

The Department of Human Services, Division of Rehabilitation Services is the designated State unit that is primarily concerned with vocational and other rehabilitation of individuals with physical and mental disabilities. The Division of Rehabilitation Services (the Division) is responsible for the vocational rehabilitation program which includes the determination of eligibility, the determination of the nature and scope of services, and the provision of rehabilitation services for individuals consistent with their strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in employment.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. Part 361; Executive Order No. 43.

Rule 1240-08-02-.02, Definitions, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-02-.02 shall read as follows:

1240-08-02-.02 Definitions.

The words and terms as used herein have the following meanings.

(1) "Act" means the Rehabilitation Act of 1973, as amended. Words and terms defined in federal law and regulations are adopted by reference into these rules;

(2) "Applicant" means an individual who applies to the Division for vocational rehabilitation services;

(3) "Assistant Commissioner" means the chief administrative officer for the Division of Rehabilitation Services;

(4) "Blind" means a person who had been determined to have not more than 20/200 vision acuity in the better eye with best correction, or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees;

(5) "Commissioner" means the executive head of the Department of Human Services;

(6) "Competitive Employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled;

(7) "Counselor" means an employee of the Tennessee Division of Rehabilitation Services who is designated in the job description as a counselor;

(8) "Department" means the Tennessee Department of Human Services;

(9) "Designated State Unit" means the Division of Rehabilitation Services, which is primarily concerned with vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State's vocational rehabilitation program;

(10) "Division" means the Division of Rehabilitation Services (the Division or DRS);

(11) "Employment Outcome" means entering or retaining full-time or, if appropriate, part-time competitive employment in an integrated labor market to the greatest extent practicable; supported employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(12) "Individual" means a person who has been referred or has applied for services and/or determined eligible for and receives services from the Division;

(13) "Maximum Effort" means a specific method or action to achieve a particular benefit to pay for specified rehabilitation services. It may consist of a set policy or process which may be applied in appropriate cases. For example, the Division could have a cooperative agreement with State university officials for financial assistance officers to interview and evaluate the financial need of all Division of Rehabilitation Services sponsored students;

(14) "State Plan" means the plan for vocational rehabilitation services submitted by the Division to the Rehabilitation Services Administration in compliance with Title I, Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. Part 361.

Rule 1240-08-02-.03, Scope of Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-02-.03 shall read as follows:

1240-08-02-.03 Scope of Services.

The following vocational rehabilitation services are available to individuals if appropriate to the vocational rehabilitation needs of each individual:

(1) Evaluation or assessment, including diagnostic and related services incidental to the determination of eligibility, priority for services, and the nature and scope of services to be provided;

(2) Counseling, guidance and referral services necessary to help individuals secure needed services from other entities;

(3) Physical and mental restoration services necessary to correct or substantially modify a physical or mental condition which is stable or slowly progressive;

(4) Vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials except that no training or training services in institutions of higher education (universities, colleges, community junior colleges, vocational schools, technical institutes, or hospital schools of nursing) may be paid with funds under this part unless maximum efforts have been made by the Division and the individual to secure grant assistance in whole or in part from other sources. Awards and scholarships based on merit are excepted from this provision;

(5) Maintenance payments for subsistence that are in excess of the normal living

expense of the individual and may be provided at any time in support of other rehabilitation services being provided. Maintenance covers an individual's basic living expenses, such as food, shelter, clothing, and other subsistence expenses which are necessitated by the individual's participation in a program of vocational rehabilitation services;

(6) Transportation, including necessary travel and related expenses and subsistence during travel in connection with transporting individuals and their attendants or escorts for the purpose of supporting and deriving the full benefit of other vocational rehabilitation services. Transportation may include relocation and moving expenses necessary for achieving an employment outcome;

(7) Services for family members of an applicant or eligible individual if necessary to enable the individual to achieve an employment outcome;

(8) Interpreter services and note taking services for individuals who are deaf, including tactile interpreting for deaf-blind individuals;

(9) Reader services, rehabilitation services, note taking services and orientation and mobility services for individuals who are blind;

(10) Rehabilitation technology including telecommunications, sensory and other technological aids and devices;

(11) Recruitment and training services to provide new employment opportunities in the fields of rehabilitation, health, welfare, public safety, law enforcement and other appropriate public services employment;

(12) Personal assistance services designed to assist the individual to perform daily living activities that are necessary for the achievement of an employment outcome. This service may be provided only while the individual is actually receiving a major service as outlined in the Individualized Plan for Employment (IPE). Attendant service is not provided during vacation time from training, or while an individual is not actively participating in other rehabilitation services;

(13) Employment services;

(14) Supported employment services as appropriate for individuals with a most significant disability;

(15) Post-employment services necessary to maintain employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(16) Occupational licenses (including any license, permit or other written authority required by a state, city or other governmental unit to be obtained in order to enter an occupation or enter a small business), tools, equipment, initial stocks (including livestock) and supplies;

(17) Other goods and services determined necessary for an individual with a disability to achieve an employment outcome.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 29 U.S.C.A. § 720 et seq.; 34 C.F.R. §§ 361.48; 361.5.

Rule 1240-08-02-.04, Procedures, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-02-.04 shall read as follows:

1240-08-02-.04 Procedures.

Procedures governing the provision of services are developed by the Division of Rehabilitation Services in accordance with these rules and the Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§ 4-5-202; 71-1-105; 49-11-601 et seq.; 34 C.F.R. Part 361.

Rule 1240-08-02-.05, Legal Basis, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-02-.05 shall read as follows:

1240-08-02-.05 Legal Basis.

The Tennessee Department of Human Services, Division of Rehabilitation Services, is the sole state entity designated to administer the vocational rehabilitation program and is authorized to submit a plan as a condition for receipt of federal funds under Title I of the Rehabilitation Act of 1973, as amended, and agrees to administer the program in accordance with this State Plan, the Act, and all applicable regulations, policies, and procedures established by the Secretary.

Authority: T.C.A. §§ 4-5-202; 71-1-105; 49-11-601 et seq.; 29 U.S.C.A. § 720 et seq.; 34 C.F.R. § 361.13; Executive Order No. 43.

Chapter 1240-08-03
Administration

Amendments

Rule 1240-08-03-.01, State and Local Organization and Administration, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-03-.01 shall read as follows:

1240-08-03-.01 State and Local Organization and Administration.

(1) It is the responsibility of the Division of Rehabilitation Services to provide services necessary for the rehabilitation and habilitation of individuals with disabilities of Tennessee.

(2) The authority and responsibility for administration of the program affecting eligibility for, the nature and scope of available vocational rehabilitation services, and the provision of these services, is vested in the head of the designated State Division of Rehabilitation Services. This responsibility may not be delegated to any other entity or individual.

(3) Supervisors are assigned to supervise the work of rehabilitation counselors, Tennessee Business Enterprise counselors, and rehabilitation teachers.

(4) Any person who believes he or she may be eligible for vocational rehabilitation services may contact any Division office or employee for assistance. Also, individuals may seek assistance from the Client Assistance Program (CAP) established under 34 C.F.R. § 370.

(5) Counselors have the assigned responsibility to make the initial eligibility determination for vocational rehabilitation services and to provide such services in accordance with policies and procedures of the Division of Rehabilitation Services.

(6) Affirmative action for equal employment opportunity:

(a) Executive Order No. 8, an Order pertaining to Equal Employment Opportunity, is provided to all employees of the combined state entity of general and blind services. The Department of Human Services fully supports the policy of achieving equal employment opportunity for persons of every race, color, sex, religion, creed, or physical or mental impairment;

(b) Services of Tennessee's Division of Rehabilitation Services within the Department of Human Services are provided on a non-discriminatory basis without regard to disability, race, color, sex, religion, creed, or national origin in compliance with Title VI of the Civil Rights Act of 1964 and Title V of the Vocational Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§ 4-5-202; 71-1-105; 49-11-601 et seq.; 34 C.F.R. Part 361; Executive Order No. 43.

Rule 1240-08-03-.02, Economic Needs Tests, is amended by renaming the rule "Participation of Individuals in Cost of Services Based on Financial Need", amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-03-.02 shall read as follows:

1240-08-03-.02 Participation of Individuals in Cost of Services Based on Financial Need.

(1) The Division will consider the financial need of each individual in determining the extent of his or her participation in the cost of specific services. The resources of the individual's family unit will be reviewed and assessed each twelve (12) months. Prior to expenditure of agency funds, the eligible individual's financial circumstances must be reviewed and documented to determine the extent of the individual's participation in the cost of those services that require such participation.

(a) Participation in the cost of training services at a post-secondary institution participating in federal financial aid programs is based on the expected family contribution (EFC) as determined by that institution's financial aid office. The EFC is based on the individual's Free Application for Federal Student Aid (FAFSA) and reported to the college or university on the individual's Student Aid Report (SAR).

1. For academic terms beginning prior to October 1, 2009, clients are not required to participate in the cost of tuition and fees.

2. For academic terms beginning on or after October 1, 2009 but before August 1, 2010 clients who did not have the Division's sponsorship of tuition costs under an existing IPE as of October 1, 2009 must deduct the amount of EFC from the total of all costs eligible for the Division's sponsorship.

3. For academic terms beginning on or after August 1, 2010, all clients must deduct the amount of EFC from the total of all costs eligible for the Division's sponsorship.

(b) Participation in the cost of services required under this Rule, other than the cost of training services described in 1240-08-03-.02 (1)(a), is determined according to the following formula:

1. Determine individual's adjusted gross income based on the prior year Federal income tax return;

2. Subtract non-reimbursed medical and dental expenses paid during the prior calendar year; court-ordered payments other than alimony; and post-secondary educational loans being repaid by the client to obtain the available household resources;

3. Compare the Low Income Home Energy Assistance Program (LIHEAP) levels established by the Federal Department of Health and Human Services for the current Federal fiscal year with the available household resources. The resulting value is the client participation level;

4. If the client participation level is above zero, the client must participate in the cost of services at the amount of the client participation level;

5. If the client participation level is zero or below, the client is not required to participate in the cost of services.

(d) No requirement for financial participation of the individual may be applied as a condition for furnishing any vocational rehabilitation service if the individual has been determined eligible for Social Security disability benefits (SSDI) or Supplemental Security Income disability benefits (SSI).

(2) All expenditures for client services must be consistent with the vocational rehabilitation needs of the individual and directly connected to achievement of the employment outcome identified in the Individualized Plan for Employment (IPE).

(3) All expenditures for client services must be consistent with the purchasing procedures of the Division of Rehabilitation Services.

(4) Any vendor who accepts the authorization of the Division of Rehabilitation Services must agree not to charge an individual with a disability or his/her family for any balance after the Division of Rehabilitation Services has paid for those services.

(5) The Division does not require the financial participation of an individual as a condition for furnishing the following vocational rehabilitation services:

(a) Assessment for determining eligibility and priority for services, except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation.

(b) Assessment for determining vocational rehabilitation needs;

(c) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising an informed choice;

(d) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other entities, including other components of the statewide workforce investment system and to advise those individuals about client assistance programs;

(e) Job-related services including job search and placement assistance, job retention, follow-up, and follow-along services;

(f) Personal assistance services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that an individual would typically perform without assistance if the individual did not have a disability. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising and directing personal assistance services;

(g) Any auxiliary service such as an interpreter, reader, or orientation and mobility services, required under Section 504 of the Act or the Americans with Disabilities Act necessary to participate in vocational rehabilitation services;

(h) Training and related services provided through the Tennessee Rehabilitation Center in Smyrna, any of the community Tennessee Rehabilitation Centers, or equivalent services through community rehabilitation providers.

(6) The Division requires the financial participation of an individual as a condition for furnishing the following vocational rehabilitation services:

(a) Physical and mental restoration services, including medical care for acute conditions;

(b) Maintenance and transportation costs for all non-assessment services, including, without limitation, services provided under an IPE for trial work experiences or extended evaluation;

(c) Tuition and related fees for post-secondary training at universities, community and junior colleges, vocational/technical schools, trade or business schools, or any other type of school accredited by a nationally recognized accrediting association and/or registered with the State's Higher Education Commission to confer the degrees, certificates, or diplomas that are offered.

(d) Books, training supplies and tools including, without limitation, computers;

(e) Assistive technology services and devices;

(f) Rehabilitation technology services and devices, including rehabilitation engineering and vehicle modifications, except as necessary to determine eligibility for vocational rehabilitation services or the nature and scope of services;

(g) Initial stock, supplies, and all other goods approved for self-employment or vending stands;

(h) Wardrobes, professional licenses, tools, and incidental expenses;

(i) All other goods and services.

(7) Exceptions to the Financial Participation Requirements:

(a) Exceptions to the financial participation requirements may be granted only if, and to the extent necessary, to ensure that the level of an individual's participation in the cost of vocational rehabilitation services is:

1. Reasonable;

2. Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and

3. Not so high as to effectively deny the individual a necessary service.

(b) No financial participation shall be required if the individual in need of services has been determined eligible for Social Security benefits under Titles II or XVI of the Social Security Act.

Authority: T.C.A. §§ 4-5-202; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.54.

Rule 1240-08-03-.03, Staff Development and Training, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-03-.03 shall read as follows:

1240-08-03-.03 Staff Development and Training.

(1) The purpose of staff development, for all staff positions, is to ensure the availability of qualified rehabilitation personnel. The Division will, to the degree possible:

(a) Provide systematic training programs to improve staff effectiveness and qualifications;

(b) Orient new staff; and

(c) Provide appropriate training to all classes of personnel consistent with their needs.

(2) Training plans and curricula are developed by a DRS Program Manager with consultation from:

(a) The DRS State Office staff;

(b) The State Rehabilitation Council;

(c) Regional supervisory staff; and

(d) Individual employees.

Authority: T.C.A. §§ 4-5-202; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.16; 361.18.

Chapter 1240-08-03
Administration

Repeals

Rule 1240-08-03-.04 Medical and Psychological Consultation in the Vocational Rehabilitation Process, is repealed.

Authority: § 4-5-202.

Chapter 1240-08-04
Services to Individuals

Amendments

Rule 1240-08-04-.01, Intake: Referrals and Applications, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.01 shall read as follows:

1240-08-04-.01 Intake: Referrals and Applications.

(1) The Division of Rehabilitation Services (DRS) will receive referrals of individuals from any source by any means as long as the individual is present in the State and the following information is received:

(a) Name and address;

(b) Age and sex;

(c) Date of referral;

(d) Source of referral;

(e) Nature of disability.

(2) An individual who has been referred to the Division will be considered an applicant when the individual has completed and signed a DRS application form or has otherwise requested services from DRS.

Authority: T.C.A. §§ 4-5-202; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.30; 361.41; Executive Order No. 43.

Rule 1240-08-04-.02, Evaluation or Assessment for Determining Eligibility, and Priority for Services, is amended by renaming the rule “Evaluation or Assessment for Determining Eligibility and Priority for Services”, amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.02 shall read as follows:

1240-08-04-.02 Evaluation or Assessment for Determining Eligibility and Priority for Services.

(1) An evaluation or assessment will be conducted by DRS to determine whether an individual is eligible for services and to determine the individual’s priority category under an order of selection.

(2) The evaluation or assessment will be based on a review of existing data, including counselor observation and information provided by the individual. Additional data may be required to the extent that existing data does not describe current functioning or is deemed to be insufficient or inappropriate for determination of eligibility or priority for services.

(3) DRS will make a decision on eligibility as soon as possible, but not to exceed sixty (60) days after an individual has submitted an application for vocational rehabilitation services, unless exceptional and unforeseen circumstances beyond the control of DRS preclude a determination and the individual agrees to an extension of time, or unless a period of trial work experiences is deemed necessary.

(4) Prior to any determination that an individual with a disability is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome because of the severity of the individual's disability, DRS must explore, through a period of trial work experiences or, in limited circumstances, extended evaluation, the individual's abilities, capabilities, and capacity to perform in realistic work situations to determine whether or not there is clear and convincing evidence to support such a determination.

(a) DRS must develop a written plan to provide trial work experiences, which must be provided in the most integrated settings possible, consistent with the informed choice and rehabilitation needs of the individual.

(b) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic work settings.

(c) Trial work experiences must be of sufficient variety and over a sufficient period of time for DRS to determine that:

1. 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

2. There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

(d) DRS must provide appropriate support services, including assistive technology devices and services, and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(e) If, under limited circumstances, an individual with a significant disability cannot take advantage of trial work experiences or if options for trial work experiences have been exhausted before DRS is able to determine eligibility, DRS must conduct an extended evaluation to make these determinations.

1. During the extended evaluation period, vocational rehabilitation services must be provided in the most integrated settings possible, consistent with the informed choice and rehabilitation needs of the individual.

2. During the extended evaluation period, DRS must develop a written plan for providing services necessary to make a determination of eligibility.

3. During the extended evaluation period, DRS will provide only those services necessary to determine eligibility. DRS must terminate extended evaluation services when the eligibility determination is completed.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.41; 361.42; Executive Order No. 43.

Rule 1240-08-04-.03, Eligibility, Ineligibility, and Certification, is amended by renaming the rule “Eligibility”, amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.03 shall read as follows:

1240-08-04-.03 Eligibility.

(1) After evaluation of data or a period of trial work experiences or extended evaluation, eligibility for vocational rehabilitation services is determined by applying the following criteria:

(a) The presence of a physical or mental impairment which for the individual constitutes or results in a substantial impediment to employment;

(b) The individual can benefit from the provision of vocational rehabilitation services; and

(c) The individual requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) Any applicant who has been determined eligible for Social Security benefits under Title II or Title XVI of the Social Security Act is presumed eligible for vocational rehabilitation services, provided that he or she intends to achieve an employment outcome, unless there is clear and convincing evidence that the individual is incapable of benefiting due to the severity of the disability.

(3) Certification of eligibility will be completed, signed, and dated by the rehabilitation counselor when it is determined that the individual meets the criteria for eligibility. Even though an individual meets the eligibility criteria, services may not be available due to funding or priorities for services under an order of selection.

Authority: T.C.A. §§ 4-5-202, 71-1-104, 71-1-105, 49-11-601 et seq.; 34 C.F.R. §§ 361.41, 361.42; 361.43; Executive Order No. 43.

Rule 1240-08-04-.04, Annual Reviews of Ineligibility Decisions, is amended by renaming the rule "Procedures for Ineligibility Decision", amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.04 shall read as follows:

1240-08-04-.04 Procedures for Ineligibility Decision.

(1) If it is determined that an applicant is ineligible based on the conditions in Rule 1240-08-04-.03 or the individual, after receiving services, is determined no longer eligible for services, the case will be closed as ineligible provided that the following conditions are met:

(a) This decision is made only after providing an opportunity for consultation with the individual or, as appropriate, his or her parent or guardian or other representative;

(b) The individual is provided the basis of the decision in writing (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual); and

(c) The individual is provided with a description of the services available from the state's client assistance program and is referred to other training or employment-related programs that are part of the One-Stop service delivery system under the Workforce Investment Act.

(2) In cases in which the client is determined ineligible because the individual is incapable of achieving an employment outcome, there will be a review of the

ineligibility decision within twelve (12) months and annually thereafter if such a review is requested by the individual or the individual's representative. This review need not be conducted in situations in which the individual has refused a periodic review, has left the state, has unknown whereabouts, or has a medical condition that is rapidly progressive or terminal.

(3) The rationale for the ineligibility decision shall be recorded in the record certifying that the individual is not eligible or is no longer eligible for services.

(4) All applicants determined to be ineligible shall be notified of their right to appeal the decision through an administrative review or a fair hearing.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.43; 361.47; 361.5(b)(5); Executive Order No. 43.

Rule 1240-08-04-.05, Individualized Plan for Employment, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.05 shall read as follows:

1240-08-04-.05 Individualized Plan for Employment.

(1) An Individualized Plan for Employment (IPE) is initiated and periodically updated for each eligible individual. Vocational rehabilitation services are provided in accordance with the written plan.

(2) The IPE is developed by the eligible individual or, as appropriate, his or her representative, with assistance available, to the extent determined appropriate by the eligible individual, from the vocational rehabilitation counselor or through other technical assistance. A copy of the written plan will be provided to each individual.

(3) The IPE must be designed to achieve a specific employment outcome that is selected by the individual that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, and that will, to the maximum extent appropriate, result in employment in an integrated setting. As appropriate, it must include:

(a) The specific employment outcome chosen by the eligible individual, resulting, to the maximum extent appropriate, in employment in an integrated setting;

(b) A description of the specific vocational rehabilitation services that are needed to achieve the employment outcome, provided in the most integrated setting appropriate for the service involved and consistent with the informed choice of the individual;

(c) Timelines for the achievement of the employment outcome and for the initiation of services;

(d) A description of the entity chosen by the eligible individual to provide the services, and the methods used to procure such services;

(e) A description of criteria used to evaluate progress toward achievement of the employment outcome;

(f) The terms and conditions of the IPE, including: the responsibilities of DRS; the responsibilities of the eligible individual, including responsibilities of the eligible individual in relation to the employment outcome, financial participation in costs

of services if applicable, and applying for and securing comparable benefits; and the responsibilities of other entities through comparable benefits;

(g) For individuals with the most significant disabilities who need a supported employment setting, information regarding the extended services needed and the source of the services;

(h) As necessary, a statement of projected need for post-employment services;

(i) As appropriate, a statement of any need for personal care assistance or rehabilitation technology services;

(j) The rights of the individual and the means by which the individual may seek remedy for any dissatisfaction;

(k) The availability of a client assistance program.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.45; 361.46; 361.5; Executive Order No. 43.

Rule 1240-08-04-.06, Counseling, Guidance, and Referral Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.06 shall read as follows:

1240-08-04-.06 Counseling, Guidance, and Referral Services.

(1) The individual with a disability is provided counseling, guidance, and referral services that are necessary to develop or implement a rehabilitation program. Counseling is a process in which a vocational rehabilitation counselor works face-to-face with an individual with a disability to help clarify the best possible vocational, personal, and social adjustment, considering the functional limitations of the individual and the potentials for success. Referral means directing the individual to other entities for assistance not available from the Division of Rehabilitation Services.

(2) As a minimum, each applicant will receive counseling and guidance as an essential service while determining eligibility, while providing services in accordance with the IPE, and after job placement to provide follow-along counseling for at least ninety (90) days.

Authority: T.C.A. §§ 4-5-202, 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.37; 361.48; Executive Order No. 43.

Rule 1240-08-04-.07, Physical and Mental Restoration Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.07 shall read as follows:

1240-08-04-.07 Physical and Mental Restoration Services.

DRS provides physical or mental restoration services to individuals served when restoration services are expected to eliminate, reduce or contain the disabling condition within a reasonable length of time. “Restoration Services,” in this context, refers to a variety of corrective medical, surgical, psychiatric or other therapeutic treatment that aids the client to be restored to an improved physical or mental condition.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.48; 361.5; Executive Order No. 43.

Rule 1240-08-04-.08, Physicians' Services and Medical Diagnosis, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.08 shall read as follows:

1240-08-04-.08 Physicians' Services and Medical Diagnosis.

(1) These services are provided by duly-licensed physicians who provide diagnostic and/or treatment services under a DRS program.

(2) Medical assessment, as appropriate, will be obtained to assist in determining the extent of an individual's disability in order to make an eligibility determination.

(3) The disabling conditions for which restoration services are rendered must be stable or slowly progressive.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.09, Hospital and Clinic Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.09 shall read as follows:

1240-08-04-.09 Hospital and Clinic Services.

(1) Hospitals licensed by the State of Tennessee may be used for in-patient and out-patient services if they accept the rates specified in the Delegated Purchase Authority, through which the State Department of Finance and Administration gives approval to a state entity to purchase services for an individual program, within specified limits and guidelines.

(2) The attending physician has the right to choose the hospital or clinic of choice if the hospital or clinic accepts the rates specified in the Delegated Purchase Authority.

(3) All in-patient and out-patient hospitalization, whether for diagnostic or treatment purposes, must be approved by the DRS state office.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.10, Dental Diagnosis and Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.10 shall read as follows:

1240-08-04-.10 Dental Diagnosis and Services.

(1) Dental services may be provided under the following conditions:

(a) When eligibility has been established due to another disability and following provision of service for said disability, the individual cannot secure remunerative employment due to the condition of the teeth, gums, or jaws.

(b) When eligibility has been established due to another disability and there is medical evidence documenting that the condition of the teeth or gums is causing or contributing to the major disability.

(c) In certain cases involving dysfunction of the temperomandibular joint, in which there is evidence of severe pain, muscle spasm, and difficulty in opening the mouth.

(d) As medical care for acute conditions when the program of services for another disability is likely to be interrupted due to an acute dental problem.

(2) Dental diagnoses and services that are cosmetic in nature and do not cause sufficient functional limitation to be considered a substantial impediment to employment are not provided. Such diagnoses include, without limitation, smallness of the jaws, protrusion of the jaw, or crooked teeth in need of straightening.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.11, Eyeglasses and Visual Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.11 shall read as follows:

1240-08-04-.11 Eyeglasses and Visual Services.

(1) The range of visual services includes examinations and refractions, eye surgery and treatment, visual training, orthoptics and pleoptics, conventional lenses, telescopic and microscopic devices, other special aids and prosthetic devices.

(2) Glasses may be furnished when eligibility has been established on the basis of a visual limitation and glasses will help correct the visual loss. Glasses may also be furnished to individuals whose eligibility is based on another disability and glasses are necessary to achieve the rehabilitation plan.

(3) Artificial eyes may be furnished when the provision of such will result in improved appearance necessary for improving the individual's chances of finding employment.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.12, Medical Care for Acute Conditions, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.12 shall read as follows:

1240-08-04-.12 Medical Care for Acute Conditions.

Medical care for acute conditions, which are sudden in onset and may not be related to the disabling condition, may be provided if the individual with a disability is eligible on the basis of economic need, does not have comparable benefits to cover the cost of services, and the acute condition arose during the course of the IPE and is expected to interfere with evaluation of rehabilitation potential, or the achievement of the employment outcome.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.13, Training Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.13 shall read as follows:

1240-08-04-.13 Training Services.

(1) Training may be furnished to eligible individuals to the extent necessary to achieve a vocational rehabilitation goal. An applicant or eligible individual qualifies for training services when he or she has the necessary capacity and ability to directly benefit from the training that provides skills for suitable remunerative employment and may include: vocational, pre-vocational, and/or personal adjustment training.

(2) Training may be provided by public or private facilities or other vendors to meet minimum standards and:

(a) Financial participation criteria will be applied to all post-secondary training services at universities, community and junior colleges, vocational/technical schools, trade or business schools or any other type of school accredited by a nationally recognized accrediting association and/or registered with the State's Higher Education Commission to confer the degrees, certificates, or diplomas that are offered.

(b) DRS may limit the length of training or the rate of payment for tuition, maintenance, transportation, and other expenses associated with training.

(c) Eligible individuals in training will be expected to maintain progress toward achieving a vocational goal by taking a specified number of hours and maintaining passing grades. Failure to achieve progress may result in discontinuing the training program.

(d) Comparable benefits are to be utilized in all cases where training services are planned so that DRS expenditures are reduced. All eligible individuals must apply for grant funds when appropriate in post-secondary training, but are not required to apply for awards and scholarships based on merit.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.14, Maintenance, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.14 shall read as follows:

1240-08-04-.14 Maintenance.

(1) Maintenance, as defined in rule 1240-08-02-.03(5), is a support service and may be provided only to enable an eligible individual to participate in and be fully involved in the vocational rehabilitation program. Maintenance services may be provided at any time when the living expenses exceed the normal expenses of the individual that are necessitated by the individual's participation in the rehabilitation program.

(2) In accordance with 1240-08-03-.02, individuals must participate in the cost of maintenance, except in situations where maintenance services are needed to determine eligibility for rehabilitation services or to determine the nature and scope of services to be provided under the Individualized Plan for Employment (IPE).

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.48; 361.5; Executive Order No. 43.

Rule 1240-08-04-.15, Transportation, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.15 shall read as follows:

1240-08-04-.15 Transportation.

(1) Transportation is provided as necessary to applicants or eligible individuals in conjunction with other vocational rehabilitation services.

(2) Transportation includes necessary travel and related expenses including subsistence during travel in connection with transporting individuals with disabilities and their attendants and escorts for the purpose of providing the full benefit of the other vocational rehabilitation service.

(3) Transportation includes relocation and moving expenses necessary for achieving a vocational rehabilitation objective.

(4) In accordance with 1240-08-03-.02, individuals must participate in the cost of transportation services except in determining eligibility for rehabilitation services or the nature and scope of services to be provided under an IPE.

(5) Transportation assistance following placement will not exceed thirty (30) days beyond employment or after the individual with a disability receives the first paycheck, whichever comes first.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.16, Interpreter Services for the Deaf, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.16 shall read as follows:

1240-08-04-.16 Interpreter Services for the Deaf.

(1) Interpreter services are provided to deaf individuals when such services will assist in the attainment of the rehabilitation objective.

(2) The interpreter must abide by the "Interpreter Code of Ethics" promulgated by the National Registry of Interpreters for the Deaf, as revised. This Code represents standards of ethical practice, including an emphasis on confidentiality, impartiality, non-paternalism, and the continued development of skills.

(3) DRS will arrange to have staff or other individuals available to communicate with applicants for service and eligible individuals who rely on special modes of communication.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.17, Reader, Teaching, Orientation and Mobility Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.17 shall read as follows:

1240-08-04-.17 Reader, Teaching, Orientation and Mobility Services.

(1) Reader services, rehabilitation teaching services, note taking services, and orientation and mobility services for the blind are provided to the individual with a disability when such services are helpful in reaching the rehabilitation objective.

(2) Rehabilitation teaching services aid visually-impaired persons to manage their own lives and reach the vocational objective.

(3) Orientation and Mobility Services train visually-impaired individuals in the use of dog guides, canes, vision aids, and other aids that help individuals with disabilities reach optimum levels of independence.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.18, Telecommunications, Sensory, and other Technological Aids and Devices, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.18 shall read as follows:

1240-08-04-.18 Telecommunications, Sensory, and other Technological Aids and Devices.

DRS provides telecommunications systems to improve vocational rehabilitation service delivery methods and may develop appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.19, Services to Family Members, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.19 shall read as follows:

1240-08-04-.19 Services to Family Members.

(1) DRS provides services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(a) Services are provided only after a determination of eligibility, and must be provided under an Individualized Plan for Employment (IPE).

(b) Such services should be supportive of the vocational rehabilitation needs of the eligible individual and contribute toward achievement of the employment outcome.

(c) Such services are provided only to family members. “Family member” means any relative, by blood or marriage, of an eligible individual, and any other individual living in the same household for whom the eligible individual has responsibility for care.

(2) The counselor must fully consider comparable benefits and services available under other programs before providing services to family members.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.48; 361.5; Executive Order No. 43.

Rule 1240-08-04-.20, Placement in Suitable Employment, is amended by renaming the rule “Standards for Closing Cases”, amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.20 shall read as follows:

1240-08-04-.20 Standards for Closing Cases.

(1) DRS may close a case from applicant status prior to making an eligibility determination if the applicant declines to participate in, or is unavailable to complete,

an assessment for determining eligibility and priority for services, and DRS has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.

(2) DRS may close a case from trial work experiences or extended evaluation if:

(a) 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

(b) There is clear and convincing evidence that the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

(3) DRS may close a case because of a determination that applicant is ineligible for vocational rehabilitation services or that an eligible individual receiving services under an IPE is no longer eligible for services.

(4) To determine that an individual has achieved a successful employment outcome, all of the following conditions must be met:

(a) The individual has achieved the employment outcome described in the individual's IPE that is:

1. Consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

2. In the most integrated setting possible, consistent with the individual's informed choice.

(b) The employment outcome has been maintained for an appropriate period of time, but not less than ninety (90) days, to ensure the stability of the employment outcome; and the individual no longer needs vocational rehabilitation services;

(c) At the end of the appropriate period described in (b), the individual and the DRS counselor consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment; and

(d) The individual is informed through appropriate modes of communication of the availability of post-employment services.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.48; 361.54; Executive Order No. 43.

Rule 1240-08-04-.21, Post-Employment Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.21 shall read as follows:

1240-08-04-.21 Post-Employment Services.

(1) Post-employment services are one or more vocational rehabilitation services that are provided subsequent to the achievement of an employment outcome that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(2) Post-employment services must be provided under the terms of an Individualized Plan for Employment (IPE).

(3) Post-employment services are subject to the same requirements as services leading to employment, including the requirement to consider and seek comparable benefits and services available under other programs.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.48; 361.5; and Executive Order No. 43.

Rule 1240-08-04-.22, Licenses, Tools, Equipment, Initial Stocks and Supplies, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.22 shall read as follows:

1240-08-04-.22 Licenses, Tools, Equipment, Initial Stocks and Supplies.

Occupational licenses, tools, equipment, initial stocks and supplies are provided to eligible individuals if needed for achievement of a successful employment outcome.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.23, Other Goods and Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-04-.23 shall read as follows:

1240-08-04-.23 Other Goods and Services.

Other goods and services determined necessary for the eligible individual to achieve an employment outcome may be provided.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.48; Executive Order No. 43.

Rule 1240-08-04-.24 Standards for Closing Cases, is amended by deleting the rule in its entirety, amending the Table of Contents accordingly, and inserting the following language, so that, as amended, 1240-08-04-.24 shall read as follows:

1240-08-04-.24 Reserved for Future Use.

Authority: § 4-5-202.

Chapter 1240-08-05
Services to Individuals: Related Provisions

Amendments

Rule 1240-08-05-.01, Order of Selection and Priority Categories, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-05-.01 shall read as follows:

1240-08-05-.01 Order of Selection and Priority Categories.

(1) The purpose of the Order of Selection is to provide an organized method of serving selected groups of individuals if resources are not available to serve all eligible individuals who apply. The Division director shall determine when and if the Order of Selection will be implemented. Individuals previously declared eligible for vocational rehabilitation services and receiving services under an Individualized Plan for Employment (IPE) are not affected when the Order of Selection is implemented. The Order of Selection shall not regulate the provision or authorization of diagnostic evaluations or post-employment services.

(2) An eligible individual in a closed priority category must be referred to other federal and state programs, including other components of the Workforce Investment System.

(3) After implementation of an Order of Selection, each individual determined eligible for services must be placed into a priority category with consideration of the following:

(a) Each eligible individual will be placed into the highest category justified, according to the provisions in paragraph (3).

(b) A rationale for the priority will be documented in each individual's case record.

(c) An eligible individual may be placed into a higher priority category as circumstances justify the reclassification; however, individuals will not be reclassified into a lower priority category once services are developed in an IPE and agreed to by the individual by obtaining his or her signature.

(d) Each eligible individual who is assigned a priority category that is closed will be notified in writing.

(e) If the Division of Rehabilitation Services cannot continue to serve all new cases in Priority Category 1, services will be provided to new Priority Category 1 cases based upon date of application.

(f) If the Division is able to open a closed priority category but is unable to serve all eligible individuals on the waiting list, services will be provided based upon the date of application.

(4) The Order of Selection Priority Categories is as follows; the lowest numerical category is the highest priority:

(a) Category I:

Eligible individuals who have the most significant disabilities.

(b) Category II:

Eligible individuals who have significant disabilities.

(c) Category III:

Eligible individuals who do not have significant disabilities, but whose vocational rehabilitation is expected to require multiple vocational rehabilitation services.

(d) Category IV:

Eligible individuals who do not have significant disabilities who cannot be classified into a higher priority category.

(5) An individual who receives SSI or SSDI based on disability or blindness is presumed to be an individual with a significant disability.

(6) When an Order of Selection is implemented, those individuals who are placed into an open priority category may be served under an IPE. Those individuals who are placed in a closed priority category may not be served until the Order of Selection is lifted.

(7) Definitions of terms in an Order of Selection:

(a) "Order of Selection" means an organized equitable method for serving individuals when all eligible individuals who apply cannot be served due to limited funds.

(b) "Priority Category" means the classification of eligible individuals according to priority for receipt of vocational rehabilitation services under an Order of Selection.

(c) "Significant Disability" means an individual's disability meets the three (3) following criteria:

1. The individual has a severe physical or mental disability which seriously limits at least one functional capacity (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

2. The individual's vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

3. The individual has one or more physical or mental disabilities 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, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(d) "Most Significant Disability" means an individual's disability meets the criteria for significant disability in (c) but has a physical or mental disability that seriously limits two (2) or more functional capacities.

(e) "Non-Significant Disability" means an individual's disability does not meet the criteria for significant disability or the criteria for most significant disability.

(f) "Multiple Vocational Rehabilitation Services" means two (2) or more major vocational rehabilitation services, i.e. physical or mental restoration, training, counseling and guidance, or placement. Excluded are support services such as transportation, maintenance, and the routine counseling and guidance that should take place in every case.

(g) "Extended Period of Time" means six (6) months or more from the date services are initiated.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.5; 361.36; Executive Order No. 43.

Rule 1240-08-05-.02, Participation in Costs, is amended by deleting the rule in its entirety, amending the Table of Contents accordingly, and inserting the following language so that, as amended, 1240-08-05-.02 shall read as follows:

1240-08-05-.02 Reserved for Future Use.

Authority: § 4-5-202.

Rule 1240-08-05-.03, Consideration of Comparable Services or Benefits and Subrogation, is amended by deleting the rule in its entirety, and inserting the following language so that, as amended, 1240-08-05-.03 shall read as follows:

1240-08-05-.03 Consideration of Comparable Services or Benefits and Subrogation.

(1) In determining what services are provided to an individual and the scope of such services, the Division of Rehabilitation Services will consider the availability of comparable services from other sources. If comparable services exist, they must be used to meet, in whole or in part, the cost of rehabilitation services. Such services to be considered must be adequate, timely, and not delay services to an individual who is at extreme medical risk.

(2) Vocational and other training services in institutions of higher education may not be paid for with funds under this part unless maximum efforts have been made by the state entity and the individual to secure grant assistance in whole or in part from other sources to pay for the training. Institutions of higher education include universities, colleges, community/junior colleges, vocational schools, technical institutes, or hospital schools of nursing. Comparable benefits do not include awards and scholarships based on merit.

(3) When the eligible individual is entitled to money or benefits in compensation for an accident which caused or contributed to the vocational rehabilitation eligibility, the entity requires reimbursement for the cost of rehabilitation services, except as exempt by law.

(4) When DRS funds are expended on behalf of an individual for goods or services that a third party is or becomes legally obligated to pay, the Division is subrogated to the

rights of the individual to receive such payment. By accepting or receiving such DRS funds, the individual is deemed to have agreed to and authorized such subrogation.

(5) The following services are exempt from a determination of comparable services:

(a) Evaluation to determine eligibility, rehabilitation needs, or priority for services;

(b) Counseling, guidance, and referral services;

(c) Vocational and other training, including vocational adjustment training, books, tools, and other training materials not provided in institutions of higher education;

(d) Placement services;

(e) Rehabilitation engineering services;

(f) Post-employment services consisting of the services listed in (a) through (e) above.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 71-1-123; 49-11-601 et seq.; 34 C.F.R. § 361.53; Executive Order No.43.

Rule 1240-08-05-.04, Confidentiality, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-05-.04 shall read as follows:

1240-08-05-.04 Confidentiality.

(1) All information as to personal facts involving individuals applying for or receiving services given or made available to DRS employees, in the course of the administration of the vocational rehabilitation program, is confidential. Confidentiality extends to electronic information, photographs, and lists of names.

(2) The use of such information and records is limited to purposes directly connected with the administration of the vocational rehabilitation program.

(3) Information is not to be disclosed directly or indirectly, other than in the administration of the vocational rehabilitation program, unless the informed consent of the individual has been obtained in writing.

(4) The Division of Rehabilitation Services shall, upon the individual's written request, release all information in the individual's record to the individual or the individual's representative, except that medical, psychological or other information deemed harmful to the individual will only be released to the individual through a designated third party. If the information comes from a separate entity, the state must follow the conditions for release of such information established by that entity.

(5) DRS may release confidential information, including medical and psychological data, without the written consent of the individual when the person or entity receiving the information is providing a DRS-sponsored service to the individual and provides assurances that:

(a) The confidential nature of the information shall be preserved;

(b) The information is used for the purpose for which it was made available; and

(c) The use of the information is related to the purpose and functions of the entity to which it is given.

(6) DRS may release information to an individual or organization engaged in research when the purpose is directly connected with the administration of the state vocational rehabilitation program, and only after the individual or organization has furnished satisfactory assurances that the information shall be used only for the purpose it was provided and:

(a) It shall not be released to persons not connected with the study under consideration, and

(b) The final product of the research shall not reveal any information that may identify any person who did not provide written consent to release the information.

(7) Reports, surveys, case studies, research projects, and other information released to entities/organizations and individuals by counselors and other DRS personnel may contain statistical information and data essential to the advancement of the program, but no information identifiable with any individual shall be included without the written consent of that individual.

(8) Release of Personal Information.

(a) DRS may release personal information to an organization, state entity, or individual engaged in audit, evaluation, or research for purposes directly connected with the administration of the vocational rehabilitation program, or for purposes that would significantly improve the quality of life for applicants and eligible individuals, and only if the organization, entity, or individual assures that:

1. The information will be used only for the purposes for which it is being provided;

2. The information will be released only to individuals officially connected with the audit, evaluation, or research;

3. The information will not be released to the involved individual, but will be managed in a manner to safeguard confidentiality; and

4. The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(b) Personal information will be released in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by federal or state laws or regulations, or in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(c) Personal information may be released in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(9) All documents containing information about the individual and possessed by the Division are property of the Division of Rehabilitation Services.

(10) An individual who believes that information in the record is inaccurate or misleading may request that the record be amended. If the information is not amended, the request for amendment must be documented in the record.

(11) The Division may charge a reasonable fee for providing copies of records for purposed other than those of the rehabilitation program in accordance with the rules of the Department at Chapter 1240-09 and state law.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 71-1-104; 71-1-105; 34 C.F.R. §§ 361.38; 361.49; Executive Order No. 43.

Rule 1240-08-05-.05, Review of Extended Employment in Rehabilitation Facilities, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-05-.05 shall read as follows:

1240-08-05-.05 Review of Extended Employment in Rehabilitation Facilities.

DRS annually reviews and reevaluates the status of individuals with a disability served under the vocational rehabilitation program who have entered extended employment within a community rehabilitation program or in any other employment setting in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act codified at 29 U.S.C.A. § 214. These reviews are conducted for two (2) years after the individual achieves the employment outcome and thereafter, if requested by the individual or the individual's representative, to determine the interests, priorities and needs of the individual with respect to competitive employment or training for competitive employment.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.55; 29 U.S.C.A. § 214; 29 C.F.R. § 525 et seq.; Executive Order No. 43.

Rule 1240-08-05-.06, Tennessee Rehabilitation Center, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-05-.06 shall read as follows:

1240-08-05-.06 Tennessee Rehabilitation Center.

(1) The Tennessee Rehabilitation Center is a statewide comprehensive rehabilitation and training center for individuals receiving services from the Division of Rehabilitation Services. The residential facility provides services including, but not limited to, physical and occupational therapy, medical services, vocational evaluation, personal and social evaluation, personal adjustment training, work adjustment training, vocational training, and counseling.

(2) Generally, referrals to the Center will consist of applicants or eligible individuals from the Division of Rehabilitation Services. The DRS counselor is responsible for initiating referrals to the Center. The counselor will complete a TRC application form and send it with the referral information to the TRC Admissions Office. The Admissions Office staff reviews the referral information and makes a decision to accept or deny the application or to request further information.

(3) Eligibility Criteria.

Clients eligible for admission to programs of services at the Tennessee Rehabilitation Center must:

(a) Be medically and emotionally stable,

(b) Pose no threat to self or others,

(c) Not require one-to-one supervision,

(d) Be able to adjust to a group living experience, and

(e) Have needs for services that existing staff and facilities can meet.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. § 361.51; Executive Order No. 43.

Rule 1240-08-05-.07, Tennessee Vocational Training Center Program, is amended by renaming the rule "Community Tennessee Rehabilitation Centers", amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-05-.07 shall read as follows:

1240-08-05-.07 Community Tennessee Rehabilitation Centers.

(1) The Community Tennessee Rehabilitation Centers are comprised of centers in rural areas that provide an array of services including, but not limited to, comprehensive vocational evaluation, employee development services, and community employment service.

(2) Generally, referrals are made by the vocational rehabilitation counselor and consist of applicants or eligible individuals from the Division of Rehabilitation Services.

(3) (a) Be medically and emotionally stable,

(b) Pose no threat to self or others,

(c) Not require one-to-one supervision,

(d) Be able to adjust to a group training/work environment, and

(e) Have needs for services that existing staff and facilities can meet.

(4) The Community Tennessee Rehabilitation Centers offer services to employers including, but not limited to, market ability, recruitment, industry outsourcing, internships, and services to injured workers.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 49-11-701 et seq.; 34 C.F.R. § 361.51; Executive Order No. 43.

Chapter 1240-08-06
Services to Groups, Construction and Establishment Programs

Amendments

Rule 1240-08-06-.01, Facilities and Services for Groups of Individuals with Disabilities, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-06-.01 shall read as follows:

1240-08-06-.01 Facilities and Services for Groups of Individuals with Disabilities

(1) DRS provides facilities and services intended to contribute substantially to the rehabilitation of a group of individuals, but which are not related directly to the individualized rehabilitation program of any one individual. DRS establishes in writing and maintains policies for the provisions of such facilities and services.

(2) DRS provides broad-based vocationally oriented training activities to students with disabilities in cooperation with the school system. These activities and experiences would allow students with significant physical or mental disabilities an opportunity to evaluate their vocational potential for the following purposes:

(a) To bridge the gap between school and work;

(b) To provide vocational evaluation, counseling, and guidance;

(c) To make appropriate recommendations for the vocational future of students with disabilities;

(d) To provide on-the-job training leading to selective job placement;

(e) To provide work adjustment training within a simulated work environment to develop behaviors leading to successful job placement.

(3) The Tennessee Rehabilitation Center program coordinates with various local school systems operating regular and special education classes to assist students with disabilities in transitioning from school to work activities. Vocationally oriented activities are provided to identify and achieve vocational goals, as well as adapt the school experience to meet the particular needs of students with disabilities. For students in special education classes, services are coordinated to provide vocational development while remaining in the special classes until maximum academic training is achieved based upon student ability. Coordination of vocationally-oriented activities with local school systems focuses on students achieving maximum academic and vocational development.

Authority: T.C.A. §§ 4-5-202; 71-4-607(b)(2); 49-11-604(b); 34 C.F.R. §§ 361.22; 361.49; 361.53; Executive Order No. 43.

Rule 1240-08-06-.02, Construction of Rehabilitation Facilities, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-06-.02 shall read as follows:

1240-08-06-.02 Construction of Rehabilitation Facilities.

(1) DRS provides construction of public or other non-profit rehabilitation facilities in conformity with federal and state law and regulations.

(2) DRS maintains a State Rehabilitation Facilities Plan, which includes an inventory of rehabilitation facilities and services available within the State and a description of the utilization patterns of the facilities and their utilization potential. Any construction of rehabilitation facilities will be in conformity with this Facilities Plan.

Authority: T.C.A. §§ 4-5-202; 71-1-104; 71-1-105; 49-11-601 et seq.; 34 C.F.R. §§ 361.60; 361.61; Executive Order No. 43.

Rule 1240-08-06-.03, Establishment of Rehabilitation Facilities, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-06-.03 shall read as follows:

1240-08-06-.03 Establishment of Rehabilitation Facilities.

(1) DRS will determine that need for the establishment of any rehabilitation facility has been demonstrated in the inventory of rehabilitation facilities contained in the State Facility Plan.

(2) Facilities will meet any departmental standards, provide primarily vocational rehabilitation services to applicants or eligible individuals, and take affirmative action to employ or advance in employment qualified individuals with disabilities.

(3) Establishment grants to facilities (public or non-profit) may be used to provide initial or additional staffing, expansion, remodeling, or alteration of existing buildings and initial equipment.

Authority: T.C.A. §§4-5-202; 71-4-602(13); 71-4-607; 49-11-602(4); 49-11-607(b)(1); 34 C.F.R. §361.33; Executive Order No. 43.

Chapter 1240-08-09
Conduct Policy

Amendments

Chapter 1240-08-09, Conduct Policy is amended by renaming the chapter "Tennessee Rehabilitation Services – Conduct Policy", so that, as amended, the chapter title shall read as follows:

Chapter 1240-08-09
Tennessee Rehabilitation Services
Conduct Policy

Authority: § 4-5-202.

Rule 1240-08-09-.01, Scope, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-09-.01 shall read as follows:

1240-08-09-.01 Scope.

Generally, through appropriate due process procedures, facility disciplinary measures shall be imposed for conduct which adversely affects the facility's pursuit of its rehabilitation responsibilities, which violates or shows a disregard for the rights of other members of the Tennessee Rehabilitation Center, the Community Tennessee Rehabilitation Centers, or the facility community, or which endangers property or persons on facility or facility-controlled property.

Authority: T.C.A. §§ 4-5-202; 49-11-605; 49-11-608.

Rule 1240-08-09-.02, Misconduct Subject to Disciplinary Sanction, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-09-.02 shall read as follows:

1240-08-09-.02 Misconduct Subject to Disciplinary Sanction.

Individual or organizational misconduct which is subject to disciplinary sanction shall include, but not be limited to, the following examples:

(1) Conduct Dangerous to Others. Any act of violence or threat of violence to other persons or to oneself.

(2) Excessive Noise. Any excessive noise in the dormitories, infirmary area, administrative office area, or in the classroom area when classes are in session.

(3) Disorderly Conduct. Any individual or group behavior which constitutes criminal obscenity, lewdness, or other conduct intended to, or which could reasonably be expected to, disrupt the normal operation of a facility or the peaceful use of same by others.

(4) Obstruction of or Interference with Facility, Activities, or Buildings. Any intentional interference with or obstruction of any facility activity, program, event, or facilities, including the following:

(a) Any unauthorized occupancy of facility-controlled property and buildings or blockage of access to or from such facilities.

(b) Interference with the right of any facility member or other authorized person to gain access to any facility controlled activity, program, or event.

(c) Any obstruction or delay of a facility security officer or any facility official in the performance of his/her duty.

(5) Misuse of or Damage to Property. Any act of misuse, vandalism, malicious or unwarranted damage or destruction, defacing, disfiguring, or unauthorized use of property belonging to the facility including, but not limited to, fire alarms, fire equipment, elevators, telephones, facility keys, training materials, and/or safety devices; and any such act against a member of the facility community or guest of the facility.

(6) Theft, Misappropriation, or Unauthorized Sale. Any act of theft, misappropriation, or unauthorized possession or sale of facility property or any such act against a member of the facility community or a guest of the facility.

(7) Misuse of Documents or Identification Cards. Any forgery, alteration, or unauthorized use of facility documents, forms, records or identification cards, including the giving of any false information, or withholding of necessary information upon reasonable request.

(8) Firearms and Other Dangerous Weapons. Any unauthorized possession or use of any kind of firearm or dangerous weapon on facility property.

(9) Explosives, Fireworks, and Flammable Materials. The unauthorized possession, ignition, or detonation of any object or article which could cause damage by fire or other means to persons or property, or possession of any substance which could be considered or is used as fireworks.

(10) Alcoholic Beverages. The consumption or possession of alcoholic beverages on facility property.

(11) Drugs. The unlawful possession or use of any drug or controlled substance (including, without limitation, any stimulant, depressant, narcotic, or hallucinogenic drug or substance, or marijuana), or sale or distribution of any such drug or controlled substance on facility property.

(12) Gambling. Gambling in any form on facility property.

(13) Financial Irresponsibility. Failure to meet promptly financial responsibilities to the facility, including, but not limited to, passing a worthless check or money order in payment to the facility or to a member of the facility community acting in an official capacity.

(14) Unacceptable Conduct in Hearings. Any giving of false testimony or other evidence at any hearing.

(15) Failure to Cooperate with Facility Officials. Failure to comply with directions of facility officials acting in the proper performance of their duties.

(16) Smoking in Prohibited Areas. Smoking in dormitory rooms of the facility or in any other area on campus where smoking is prohibited.

(17) Unauthorized Dormitory Access. Any unauthorized presence of male students in female dormitories, or unauthorized presence of female students in male dormitories.

(18) Car Registration. Failure of students to register any vehicle brought on campus.

(19) Identification Cards. Failure of students to carry identification cards while on facility premises.

(20) Sexual Misconduct. Engaging in sexual acts on Center property.

(21) Violation of State or Federal Laws. Any violations of state or federal laws or regulations prescribing conduct or establishing offenses, which laws and regulations are incorporated herein by reference.

(22) Academic Dishonesty. Plagiarism, cheating, stealing, or any other form of academic dishonesty.

(23) Chronic Tardiness or Absenteeism.

(24) Attempts, Aiding and Abetting. Any attempt to break any of the foregoing rules of conduct, or helping or assisting in any way another person to break any of the foregoing rules.

Authority: T.C.A. §§ 4-5-202; 49-11-604(b).

Rule 1240-08-09-.03, When Disciplinary Action May Be Taken, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-09-.03 shall read as follows:

1240-08-09-.03 When Disciplinary Action May Be Taken.

Disciplinary Action may be taken against a student for violation of the foregoing regulations which occur on facility owned, leased or otherwise controlled property, or which occur off facility premises when the conduct impairs, interferes with, or obstructs any facility activity or the missions, processes, and functions of the facility. In addition, disciplinary action may be taken on the basis of any conduct on or off campus which poses a substantial threat to persons or property within the facility community.

Authority: T.C.A. §§ 4-5-202; 49-11-604.

Rule 1240-08-09-.04, Personnel Responsibilities for Disciplinary Action, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-09-.04 shall read as follows:

1240-08-09-.04 Personnel Responsibilities for Disciplinary Action.

Students that violate the foregoing rules are held accountable for their actions and appropriate disciplinary sanctions are coordinated by facility counselors according to facility rules and regulations. The facility counselor has the primary responsibility for coordination of a student's facility rehabilitation program.

Authority: T.C.A. §§ 4-5-202; 49-11-604.

Rule 1240-08-09-.05, Disciplinary Sanctions, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-09-.05 shall read as follows:

1240-08-09-.05 Disciplinary Sanctions.

(1) Upon a determination that a student has violated any of the rules, regulations, or disciplinary offenses set forth in the regulations, the following disciplinary sanctions may be imposed, either individually or in combination, by appropriate facility officials.

(a) Restitution. A student who has committed an offense against property may be required to reimburse the facility or other owner for damage to or misappropriation of such property. Any such payment in restitution shall be limited to the actual cost of repair or replacement.

(b) Warning. The appropriate facility official may notify the student that continuation or repetition of specified conduct may be cause for other disciplinary action.

(c) Reprimand. A written reprimand, or censure, may be given to any student whose conduct violates any part of these regulations. Such a reprimand does not restrict the student in any way, but does have important consequences. It signifies to the student that he or she is, in effect, being given another chance to conduct himself or herself as a proper member of the facility community, but that any further violation may result in more serious penalties.

(d) Restriction. A restriction upon a student's privilege for a period of time may be imposed. This restriction may include, for example, denial of the right to represent the institution in any way, denial of the right to use of facilities, denial of parking privileges, denial of the right to participate in extracurricular activities, or restriction to the facility grounds.

(e) Probation. Continued enrollment of a student on probation may be conditioned upon adherence to these regulations. Any student placed on probation will be notified of such in writing and will also be notified of the terms and length of the probation. Probation may include restrictions upon the extracurricular activities of a student. Any conduct in violation of these regulations while on probationary status may result in the imposition of a more serious disciplinary sanction.

(f) Suspension. If a student is suspended, he or she is separated from the facility for a stated period of time with conditions of readmission stated in the notice of suspension.

(g) Expulsion.

Expulsion with Option to Reapply. Expulsion entails separation from the facility for serious or continuous violations of Center rules and regulations. Students expelled with an option to reapply will be so informed at the time of expulsion. Students will be given a stated period of time, usually six (6) months, after which they may reapply for TRC services. An application for readmission will be considered by the Admissions Committee and judged against standard admission criteria used for all incoming students.

Permanent Expulsion. This sanction entails permanent separation from the facility. The imposition of this sanction is a permanent bar to the student's readmission to the Tennessee Rehabilitation Center. This is the most severe disciplinary action available to the Center and is used only when Center officials determine that the student cannot be rehabilitated in the setting of a comprehensive rehabilitation center. Permanent expulsion does not necessarily mean the student loses access to rehabilitation services. Services

can be provided through the sponsoring counselor or at other appropriate rehabilitation sites.

(h) Interim or Summary Suspension. Summary suspension may be imposed upon a finding by the appropriate institutional official that the continued presence of the accused on the facility premises poses continuing danger to persons or property or poses an ongoing threat of disrupting the academic or rehabilitative process. In any case of immediate suspension, the student shall be provided the opportunity for an administrative review/fair hearing on the suspension as soon as possible.

(2) The administrator of the facility is authorized, in his or her discretion, to subsequently convert any sanction imposed to a lesser sanction, or to rescind any previous sanction, in appropriate cases.

Authority: T.C.A. §§ 4-5-202; 49-11-605.

Rule 1240-08-09-.06, Entitlement to Administrative Review or Fair Hearing, is amended by renaming the rule "Entitlement to Administrative Review and/or Fair Hearing", amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-09-.06 shall read as follows:

1240-08-09-.06, Entitlement to Administrative Review and/or Fair Hearing.

Students may request due process review of a sanction imposed upon them and are to be offered all levels of appropriate review as set forth herein prior to the imposition of the sanction, except for those circumstances justifying temporary removal or exclusion.

(1) Supervisory Review. All students who have been notified that they will be sanctioned shall be afforded the opportunity to request and receive a supervisory review of the events leading to disciplinary action with the Regional Facilities Supervisor. The supervisory review is available in all cases of sanction less severe than suspension or expulsion.

(2) Administrative Review. Students may elect to have an administrative review in cases of suspension, expulsion, summary suspension, or in any other circumstances deemed appropriate by the administrative official. If the student elects to have an administrative review, he/she will be informed that the administrative review will be held within twenty-four (24) hours of the date of receipt of notice. Immediately, the student will be informed in writing of the following: date and time of review, that the review will consider the allegations of the statement of misconduct contained in the original notification, that the student will have a right to make a personal appearance to present evidence, call witnesses in his/her behalf, and to question staff. This is to be formally presented in writing to the student and attached to the notice of violation. The TRC Superintendent or designee will notify the student in writing of his or her decision. The sanction will be imposed after a determination by the administrative official. If it is determined through the administrative appeal that a reversal of the previous decision is imminent, the student shall be reinstated to his/her former status immediately. Further appeals are available under the fair hearing procedures.

(3) Fair Hearings. Any student who has been notified that he/she will be suspended, expelled, or directed to make restitution has the right to request and receive a fair hearing on the action, as provided in Chapter 1240-05-01. The student may proceed to a fair hearing request without first requesting or receiving an administrative review.

(4) Entitlement to Administrative Review and/or Fair Hearing. Entitlement to

Administrative Review and/or Fair Hearing policies also applies to the Tennessee Vocational Training Center facilities program and is identical to the statement above concerning the Tennessee Rehabilitation Center program, except that the supervisory review will be conducted by the Center Manager and the administrative review will be conducted by the Regional Facilities Supervisor.

Authority: T.C.A. §§4-5-202; 49-11-604.

Rule 1240-08-09-.07, Search and Inspection Policy, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-09-.07 shall read as follows:

1240-08-09-.07 Search and Inspection Policy.

(1) Search by Center Officials. The Center reserves the right to enter into facility-owned property or student property brought to the facility for the purpose of search and seizure if there is reasonable cause to believe that a student is using property for purposes which are illegal or contrary to the regulations of the facility.

(a) An "Authorization to Search" may be issued when there is reasonable cause to believe that persons, objects, or materials are illegally present or in violation of Center regulations. The search authorization may be made by the Night Administrator or by the Deputy Center Director. When there is apparent danger to persons or property or a situation involving serious misconduct, any of the above persons named or any executive level staff member of the Center may authorize a search.

(b) The persons authorizing a search will normally complete the Authorization to Search Form (Form A-33) before the search is conducted. When it is not feasible to obtain a letter of authorization, oral authorization will be obtained from the Center Director or designee. The Authorization to Search will be confirmed in writing at the earliest possible time. A completed copy of the Authorization to Search Form will be filed with the Security Office and with the Office of the Center Director as soon as possible after the search. A third copy will be presented to the individual whose premises were searched. Circumstances which would authorize a search by Center officials consist of the officials observing or otherwise determining through physical senses (sound, smell, etc.) that a violation is taking place at any given time. For example, if a Center official can see illegal contraband in a resident's room, he/she does not need the consent of the student to legally enter and confiscate the contraband.

(c) Except in apparently dangerous situations, a search will be conducted by at least two (2) persons, one of whom should be an administrative official. If feasible, the person or persons whose residence is being searched should be present during the search. A reasonable effort will be made by the Center official conducting the search to locate the student prior to conducting the search.

(d) All evidence found in such searches will be retained by the Center Security Office or by local law enforcement until disposition of the case. A statement will be given to the student listing all items seized during the search.

(e) The Center also has the option to obtain a warrant for a search by campus security or city police. In these instances, the student will be subject to the disciplinary regulations of the Center and whatever action local law enforcement deems necessary.

(2) Housing Facility Inspection. A Dormitory Supervisor will make periodic, scheduled inspections of housing facilities to see that no damage is occurring from improper cleaning, storage of food, or abuse of furnishings. As an integral part of a comprehensive rehabilitation program, room inspections will be made for students whose rehabilitation program includes vocational evaluation and work adjustment training. These inspections will be scheduled in advance. In addition, all non-honor students in vocational training will be scheduled for weekly room inspections. After thirty (30) days in honor status and evidence of proper room maintenance, room inspections may be discontinued by the student's Program Manager. These inspections are not deemed “searches.” Dormitory Supervisors will examine the facilities only for the purpose stated.

(3) Entry for Safety and Health Inspection. The facility reserves the right of entry to dormitory rooms on an announced scheduled basis if health hazards present at the facility should necessitate such inspections.

(4) Maintenance Inspection of Center Housing Facilities. Center maintenance personnel will enter Center-owned housing facilities for routine maintenance work and in response to requests for repairs.

(5) Emergency Entry. The facility reserves the right of entry to dormitory rooms for purposes of responding to health, safety or maintenance problems of an emergency nature.

(6) The "Search and Inspection Policy” of the Community Tennessee Rehabilitation Centers facilities program will follow the same policies outlined in the Search and Inspection Policy described above for the Tennessee Rehabilitation Center, except that the search authorization will be made by the Center Manager.

Authority: T.C.A. §§ 4-5-202; 49-11-604.

Chapter 1240-08-10
Personal Care Assistance Program

Amendments

Rule 1240-08-10-.01, Legal Basis, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.01 shall read as follows:

1240-08-10-.01 Legal Basis.

The legal basis for the Personal Care Assistance Program is found in Tennessee Code Annotated, Title 71, Chapter 4, Part 12; Rehabilitation Act of 1973, as amended, Sections 101(a)(6) and 103(a) 29 U.S.C. §§ 701(a)(6) and 723 (a); Code of Federal Regulations, Title 34, Sections 361.42; and Code of Federal Regulations, Title 20, Section 404.1576.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.02, Definitions, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.02 shall read as follows:

1240-08-10-.02 Definitions.

As used in this chapter, the following terms have the following meanings:

(1) "Division" means the Division of Rehabilitation Services of the Department of Human Services (also abbreviated "DRS").

(2) "Eligibility Evaluation Team" is a team of at least two (2) persons, one (1) of whom is a licensed medical professional and one (1) of whom is a licensed occupational or physical therapist. The team is designated by the director of the Division to carry out the duties specified in Rule 1240-08-10-.05.

(3) "Employed" means engaged in activity of thirty (30) or more hours per week for which the individual receives remuneration at a rate not less than the federal minimum wage. For self-employed individuals, the "net profit" from work activity must equate with this level of remuneration.

(4) "Family Member" means an individual's parent, grandparent, sibling, child, spouse, spouse's parent, spouse's grandparent, spouse's sibling or spouse's child.

(5) "Personal Care Assistant Services" (PCA) means services rendered at least five (5) days a week at the times of day, which are required by an individual with a significant physical disability, to become physically independent in connection with actual employment. These services include, but are not limited to:

(a) Routine bodily functions, personal hygiene, bowel or bladder care;

(b) Dressing;

(c) Preparation and consumption of food;

(d) Moving into, out of, or turning in bed;

(e) Bathing;

(f) Ambulation and/or mobility;

(g) Any other similar activity of daily living as determined appropriate by the Division.

(6) "Significant Physical Disability" means a functional loss of both arms and both legs when it is anticipated that the loss will be permanent.

(7) "Ready for Employment" means an individual, who is in or has been in the rehabilitation process, has completed the rehabilitation plan, has a legitimate job offer, and is within two (2) months of remunerative employment.

(8) "Impairment Related Work Expense" means those work expenses that are impairment-related and are not reimbursed by a third party, and which are defined and allowed by Social Security Regulations in 20 C.F.R. 404.1576.

(9) "Day Care Expense" means a work-related child care expense where the cost of child care is necessary to allow a recipient of PCA services to work.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.03 Purpose and Scope, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.03 shall read as follows:

1240-08-10-.03 Purpose and Scope.

(1) These rules describe policies and procedures for providing participant-directed Personal Care Assistance (PCA) services to eligible individuals through the Division's state-funding program. The Program provides participant-directed PCA services to significantly disabled persons to enable them to enter or maintain remunerative employment. The Program is designed for individuals who are employed or are ready for employment (i.e., have a legitimate job offer), but who need Personal Care Assistance in order to be successful in their employment efforts. An individual must be determined to need PCA services for not less than fourteen (14) hours per week. PCA services subsidy is limited to forty (40) hours per week.

(2) PCA Subsidies.

(a) The PCA program provides subsidies to eligible individuals who are in financial need, contingent upon the availability of funds. Eligible individuals are accepted into the Program so long as funds are available.

(b) When funds are exhausted, applications will continue to be taken, PCA evaluations performed, and the applications forwarded to the DRS State Office.

(c) A waiting list of eligible individuals will be established and maintained by a DRS staff member. Eligible individuals will be placed on the PCA program waiting list in order of the date and time their application was received. As funds become available, eligible individuals will receive services in the order they appear on the waiting list. Any individual who is not working or is otherwise ineligible or unable to participate in the PCA program must be removed from the waiting list. If he/she becomes eligible later, this individual must reapply and his/her name will be placed at the bottom of the waiting list based on date of re-application.

(3) If funds are not adequate to provide a full subsidy, a partial subsidy may be provided to the extent of available funds, except as prohibited by Rule 1240-08-10-.12. An individual receiving a partial subsidy will be the first individual on the waiting list to receive full funding when it becomes available.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.04, General Eligibility Requirements, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.04 shall read as follows:

1240-08-10-.04 General Eligibility Requirements.

Subject to availability of funds, a participant-directed PCA subsidy will be provided to an individual who:

(1) Is eighteen (18) years of age or older;

(2) Has a significant disability;

(3) Is receiving or has received vocational rehabilitation services;

(4) Is employed or ready for employment;

(5) Has a need documented by PCA evaluation for not less than fourteen (14) hours a week of Personal Care Assistance, provided by one other than a family member, to enable the individual to be employed or to maintain employment;

(6) Has insufficient personal income or other support from public sources or family members, as determined under 1240-08-10-.07 and is not eligible for Personal Care Assistance under other state/federal programs;

(7) Agrees to establish an employer-employee relationship by recruiting, hiring, firing (if necessary), and supervising the person who provides PCA services;

(8) Agrees to disclose financial records pertaining to PCA program expenditures upon request by authorized Department of Human Services staff; and

(9) Is able to demonstrate or establish a means to responsibly manage personal funds.

Authority: T.C.A. §§ 4-5-202; 71-4-1203.

Rule 1240-08-10-.05, Application; Eligibility Determination, is amended by renaming the rule "Application and Eligibility Determination", amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.05 shall read as follows:

1240-08-10-.05 Application and Eligibility Determination.

(1) Applications for PCA services may be filed at any DRS field office.

(2) A DRS staff member will meet with the applicant, and complete the application for PCA services (Form PCA-1) and the financial needs test (Form PCA-2). Verification of income is required (i.e., income tax records, paycheck stubs, Clearing House, etc.).

(3) If the applicant meets the financial needs test described in Rule 1240-08-10-.07**,** the DRS staff member will arrange for a PCA evaluation by the eligibility evaluation team, to determine if a need for the PCA service exists and, if so, the approximate number of hours per week. Based on the evaluation, the eligibility evaluation team establishes the number of hours of subsidy per week the individual is to receive, and a PCA Service Plan (Form PCA-3) is developed. The non-financial eligibility determination and the determination of the hours of subsidy per week are based upon the best professional judgment of the team members. Factors that will be considered include the individual's ability or inability to perform normal daily tasks (as enumerated in Form PCA-4) and the time required to perform each.

(4) The individual is notified in writing of his/her eligibility for a subsidy. The individual and the DRS staff member sign the service plan, and, to the extent that funds are available, subsidy authorizations are issued by the DRS staff member.

(5) If funds are not available, the individual is notified of same in writing by the DRS staff member and given a priority standing on the waiting list based upon the application date. If a subsequent contact discloses that the individual no longer meets program eligibility requirements, that individual's name must be removed from the waiting list. He/she would then be assigned a new priority standing based on date of application if he/she later meets eligibility requirements again.

(6) If the individual is determined ineligible to receive a PCA subsidy, he/she is notified in writing. The notice will specify the reason for ineligibility and the right to appeal, as provided in Rule 1240-08-10-.14.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.06, Personal Care Assistance Re-Evaluations, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.06 shall read as follows:

1240-08-10-.06 Personal Care Assistance Re-Evaluations.

(1) Each individual determined eligible for a Personal Care Assistance subsidy will have been evaluated by an evaluation team to determine the extent of need for Personal Care Assistance Services pursuant to Rule 1240-08-10-.05.

(2) Individuals who receive a Personal Care Assistance subsidy must be reevaluated at least annually, to determine the continuing need for PCA services and the extent of that need. If an individual is determined to be eligible for a reduced subsidy because of income changes or for fewer hours of subsidized services, the individual may receive a partial subsidy and will be notified in writing of the reduction.

(3) If an individual is determined to be ineligible following a reevaluation, he/she will be notified of such in writing as provided in Rule 1240-08-10-.05.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.07, Determination of Financial Need, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.07 shall read as follows:

1240-08-10-.07 Determination of Financial Need.

(1) Financial need and eligibility for PCA services will be determined according to the following formula:

(a) Determine the individual's annual income, before taxes, from all sources, including wages, net profit from self-employment, interest, dividends, pensions and disability benefits such as SSDI and SSI. Do not include the spouse's income;

(b) Subtract federal income taxes from annual gross income;

(c) Subtract standard federal income tax exemptions from the remainder in subparagraph (b). Do not include spouse as an exemption if spouse's income is over five thousand dollars ($5,000) per year;

(d) Subtract FICA and mandatory pension contributions from remainder in subparagraph (c);

(e) Subtract “impairment related” work expenses not reimbursed by a third party and which are defined and allowed by Social Security Regulations in 20 C.F.R. 404.1576. The cost of impairment related work expenses exceeding fifteen hundred dollars ($1,500) (e.g., home or vehicle modifications, durable medical equipment such as wheelchairs) must be spread out over a period of five (5) years in equal amounts;

(f) Divide the remainder in subparagraph (e) by two (2);

(g) Subtract forty-eight hundred dollars ($4,800) from the quotient in subparagraph (f).

(2) After applying the above formula:

(a) If there is no income remaining, the program shall subsidize PCA services at the maximum allowable rate subject to a maximum of three hundred twenty dollars ($320) per week;

(b) If there is income remaining, the cost of the subsidy for PCA services provided shall be reduced by the amount of that income;

(c) If there is income remaining in excess of the maximum allowable amount for a PCA subsidy (three hundred twenty dollars ($320) per week), the individual is not eligible for a subsidy.

(3) The PCA program may supplement any other private program for Personal Care Assistance for which the individual is eligible, subject to a maximum of three hundred twenty dollars ($320) per week. The PCA program may not supplement any state or federal personal care assistance program.

Authority: T.C.A. §§ 4-5-202; 71-4-1204.

Rule 1240-08-10-.08, Authorization and Billing Procedure, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.08 shall read as follows:

1240-08-10-.08 Authorization and Billing Procedure:

When PCA program eligibility has been established, along with the amount of service time needed and a plan has been developed, an Authorization and Invoice form will be issued to the individual by a DRS staff member on a monthly basis. The individual shall be provided with a sufficient quantity of "time logs" to be completed and submitted with the Authorization and Invoice form to the State Coordinator by the 15th of the following month. Any overpayment resulting from the advance payment system must be repaid by the individual.

Authority: T.C.A. §§4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.09, Rate of payment for PCA Services, is amended by capitalizing the lowercase "p" in "payment" in the catchline, amending the Table of Contents accordingly, and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.09 shall read as follows:

1240-08-10-.09 Rate of Payment for PCA Services.

(1) The maximum allowable subsidy for services of a personal care attendant is eight dollars ($8.00) per hour.

(2) If the eligible individual is responsible for a portion of the cost of PCA services, the amount of the subsidy will be determined by the State Coordinator.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.10, Responsibilities of Individuals Receiving PCA Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.10 shall read as follows:

1240-08-10-.10 Responsibilities of Individuals Receiving PCA Services.

As a condition of eligibility for receipt of the subsidy, individuals receiving PCA services are responsible for the following:

(1) Selecting, hiring, training, and supervising their own personal care attendants. A family member, as defined herein, may not be employed as a personal care attendant.

(2) Preparing and submitting time logs, authorizations, and other paperwork as directed by a DRS staff member.

(3) Paying the personal care attendant and accepting full responsibility for the necessary employee withholding of Social Security and Federal income tax (if the latter is applicable) from the PCA subsidy.

(4) Maintaining a financial record of payment.

(5) Promptly notifying DRS of any problems or change in the need for PCA services, or change in financial status.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.11, Annual Financial Review, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.11 shall read as follows:

1240-08-10-.11 Annual Financial Review.

Any significant changes in financial status must be reported by the individual throughout the year as provided in Rule 1240-08-10-.10(5). In addition, a Form PCA-2 will be sent to all individuals by DRS staff in February of each year. This form is designed to update the individual's financial status, and must be completed and returned by June 30th of that year. Failure by the individual to complete and return the form is grounds for termination of PCA services. Individuals applying after March 1st of a year will not be subject to the annual financial review until June 30th of the year following the first full year of service.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.12, Comparable Benefits, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.12 shall read as follows:

1240-08-10-.12 Comparable Benefits.

(1) If an individual is eligible for PCA services from any other program such as Medicaid, VA, Worker's Compensation, etc., such comparable benefits must be used. An individual eligible or potentially eligible for PCA services under any other state/federal program must apply and provide proof of denial before being determined eligible for PCA services under the DRS program.

(2) An individual may be able to receive benefits from the DRS PCA program if he or she is eligible to receive PCA services from another private source of funding, but not from another state or federal program.

(3) An individual may be eligible to receive benefits from the DRS PCA program if he or she is also receiving benefits from private, state, or federally funded programs that are not related to personal care assistance.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.13, Termination of Services, is amended by renaming the rule "Termination or Reduction of Subsidy", amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.13 shall read as follows:

1240-08-10-.13 Termination or Reduction of Subsidy.

A PCA subsidy may be terminated or reduced whenever a recipient fails to meet any of the eligibility requirements outlined in this chapter. If the subsidy is to be terminated or reduced, a DRS staff member will notify the individual in writing at least thirty (30) days prior to termination or reduction, giving the reasons for the action and the effective date.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 et seq.

Rule 1240-08-10-.14, Appeals Process, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-10-.14 shall read as follows:

1240-08-10-.14 Appeals Process.

(1) Any applicant/recipient of services pursuant to this chapter who is aggrieved by a decision as to his/her eligibility, the number of hours approved for PCA services, and/or the amount of the subsidy has the right to request and receive an administrative review and/or a fair hearing pursuant to Chapters 1240-05-01 through 1240-05-09, provided, however, that the maximum hourly rate of the subsidy, as provided in Rule 1240-08-10-.09(1) is not appealable.

(2) An applicant/recipient of services is not required to request or receive an administrative review as a prerequisite to requesting a fair hearing.

(3) No applicant/recipient of services pursuant to this chapter may request review by the Secretary of the Federal Department of Education pursuant to 34 C.F.R. § 361.48, unless he/she is being provided vocational rehabilitation services under an Individualized Plan for Employment (IPE) pursuant to Title I of the Vocational Rehabilitation Act of 1973, as amended.

Authority: T.C.A. §§ 4-5-202; 71-4-1201 through 71-4-1209; 34 C.F.R. § 361.48.

Chapter 1240-08-11
Supported Employment Services Program

Amendments

Rule 1240-08-11-.01, Purpose, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-11-.01 shall read as follows:

1240-08-11-.01 Purpose.

The Department of Human Services, Division of Rehabilitation Services (DRS), is the designated state entity for the administration of the Supported Employment Services Program. These rules are promulgated for the purpose of implementing this program in accordance with the Tennessee Uniform Administrative Procedures Act (UAPA). This chapter sets forth the guidelines of the Tennessee Division of Rehabilitation Services (DRS) to be used for administering the State's Supported Employment Services Program.

Authority: T.C.A. §§ 4-5-202, 71-1-105(12), PL 93-112, as amended by PL 99-506, 52 Federal Register No. 30546 (amending Title 34 of the Code of Federal Regulations); 34 C.F.R. §§ 361; 363.

Rule 1240-08-11-.02, Definitions, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-11-.02 shall read as follows:

1240-08-11-.02 Definitions.

(1) "Competitive Employment" means work that is performed on a full-time basis or part-time basis in an integrated setting and for which an individual is compensated at or above minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who do not have a disability.

(2) "Integrated Setting" means:

(a) A work setting typically found in the community in which an individual with a most significant disability interacts with individuals who do not have disabilities to the same extent that individuals without disabilities in comparable employment interact with other persons; or

(b) A work setting where a small work group of not more than eight (8) individuals with disabilities have regular contact with workers without disabilities (e.g., breaks and lunch time), other than staff providing support services, in the immediate work area.

(3) "Supported Employment" means competitive employment in an integrated work setting with ongoing support services for individuals determined by DRS to have the most significant disabilities.

These are individuals:

(a) For whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities; and

(b) Who, because of the nature and severity of their disabilities, need intensive supported employment and extended services after transitioning from DRS

services in order to perform this work; or

(c) Who require transitional employment for individuals with the most significant disabilities due to mental illness.

(4) Having a “Most Significant Disability” means an individual meets the following three (3) criteria:

(a) The individual has a severe physical or mental disability which seriously limits two (2) 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;

(b) The individual’s vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(c) The individual has one or more physical or mental disabilities 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, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or other disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause substantial functional limitation.

Authority: T.C.A. §§ 4-5-202, 71-1-105(12), PL 93-112, as amended by PL 99-506, 52 Federal Register No. 30546 (amending Title 34 of the Code of Federal Regulations), and 34 C.F.R. §§ 361; 361.5; 363.6.

Rule 1240-08-11-.03, Eligibility Criteria, is amended by renaming the rule “Eligibility for Supported Employment”, amending the Table of Contents accordingly and by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-11-.03 shall read as follows:

1240-08-11-.03 Eligibility for Supported Employment.

The rehabilitation counselor determines eligibility for supported employment based on an exploration, including a review of existing information, of the individual's abilities, capabilities, and capacity to perform in work situations.

(1) An individual who is eligible for supported employment must meet the eligibility criteria for vocational rehabilitation services:

(a) The individual has a physical or mental impairment that constitutes or results in a substantial impediment to employment;

(b) The individual 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

(c) The individual can benefit in terms of an employment outcome from the provision of vocational rehabilitation services; and

(2) Must be an individual with a most significant disability:

(a) For whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities; and

(b) Who, because of the nature and severity of their disabilities, needs intensive supported employment and extended services after transitioning from DRS services in order to perform this work; or

(c) Who requires transitional employment for individuals with the most significant disabilities due to mental illness.

Rule 1240-08-11-.04, Provision of Services, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-11-.04 shall read as follows:

1240-08-11-.04 Provision of Services.

(1) Supported employment services may be provided by DRS for a period of time not to exceed eighteen (18) months unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE.

(2) Supported employment services include:

(a) Evaluation to determine rehabilitation needs and to develop the Individualized Plan for Employment (IPE);

(b) Job placement, job training, stabilization, and other intensive services;

(c) Ongoing support services, defined as:

1. Services needed to support and maintain an individual with a most significant disability in supported employment;

2. Services based on a determination by DRS of the individual's needs;

3. Services identified in an Individualized Plan for Employment (IPE);

4. Services furnished by DRS from the time of job placement until transition from DRS services (transition occurs when ongoing support needs are minimal and job stability is maintained); and/or

5. Services that consist of:

(i) At a minimum, twice-monthly monitoring at the worksite, or under specific circumstances, off-site monitoring, of each individual in supported employment to assess employment stability and to provide for the coordination and provision of specific services at or away from the worksite that are needed to maintain employment stability;

(ii) Particularized assessments to determine rehabilitation needs;

(iii) Services provided by skilled job trainers and job developers;

(iv) Social skills training and regular observation or supervision of the

individual;

(v) Follow-up services to reinforce and stabilize the job placement;

(vi) Facilitation of natural supports at the worksite; and

(vii) Any other service within the scope of vocational rehabilitation services.

(3) Transitional employment, defined as a series of continuing sequential job placements, leading to job permanency, in competitive employment in an integrated work setting with ongoing supports for individuals with a most significant disability due to mental illness.

(4) Extended services, provided by another State entity, private nonprofit organization, employer, or any other appropriate resource other than DRS, needed to maintain an individual with a most significant disability in supported employment after transition from DRS services.

Authority: T.C.A. §§ 4-5-202; 71-1-105(12); PL 93-112, as amended by PL 99-506, 52 Federal Register No. 30546 (amending Title 34 of the Code of Federal Regulations); 34 C.F.R. §§ 361, 361.5; 363.

Rule 1240-08-11-.05, Case Closure, is amended by deleting the rule in its entirety and inserting the following language so that, as amended, 1240-08-11-.05 shall read as follows:

1240-08-11-.05 Case Closure.

(1) An individual who is receiving supported employment services is considered to be successfully rehabilitated if the individual maintains a supported employment placement for ninety (90) days after making the transition from DRS services.

(2) The decision for closing a case will be made on an individual client basis by DRS. DRS services shall end at case closure unless post-employment services are necessary and can be provided in accordance with DRS policy.

Authority: T.C.A. §§ 4-5-202; 71-1-105(12); PL 93-112, as amended by PL 99-506, 52 Federal Register No. 30546 (amending Title 34 of the Code of Federal Regulations); 34 C.F.R. §§ 361; 363.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the state entity.

Date: 1-30-09

Signature:

Name of Officer: Whitney Frazier

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: January 30, 2009

Notary Public Signature: Debra E. Batts

My commission expires on: May 22, 2010

Department of State Use Only

Filed with the Department of State on: 1/30/09

Tre Hargett

Tre Hargett
Secretary of State