



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-083

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

The Department of Workforce Development (DWD) cites s. 57.02 (1) and (1m), Stats., which sets forth that the state agrees to adopt certain provisions of federal law relating to vocational rehabilitation and to “adopt methods of administering the vocational rehabilitation program which will maximize federal participation”, and that DWD “may cooperate with the federal government in carrying out federal acts concerning vocational rehabilitation”. This statute does not grant explicit rulemaking authority, but the general rulemaking authority granted pursuant to s. 227.11 (2), Stats., allows DWD to promulgate a rule interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute. While the analysis sets forth the connection between enforcement or administration of s. 57.02 (1) and (1m), Stats., the agency may consider adding a sentence in this section to explain that the current rule no longer mirrors the federal provisions and it is necessary to exercise its authority under s. 227.11 (2), Stats., in order to maximize federal participation pursuant to s. 57.02 (1m), Stats.

3. Conflict With or Duplication of Existing Rules

a. Under the proposed rule, when the department employs an “order of selection” to determine which consumers receive services when resources are not available for every eligible consumer, the department may provide services to consumers who are at immediate risk of losing employment and who require specific services or equipment to maintain employment before serving customers with less significant disabilities, as prescribed under s. DWD 65.07.

Section DWD 65.07 establishes how the department determines the order of selection. Under s. DWD 65.07, the department generally utilizes the functional assessment rating to determine the appropriate category for each consumer in an order of selection. The functional assessment rating does not determine whether, and to what degree, a consumer may be at risk of losing employment and the proposed rule does not address how the department determines which consumers are at immediate risk of losing employment in order to qualify to receive services before consumers with

less significant disabilities. Should the department consider amending its rules to provide a means by which the department determines which consumers meet the “immediate risk of losing employment” criterion for receiving services?

b. The category of consumers who are at immediate risk of losing employment and who require specific services or equipment to maintain employment seems to be wholly separate from the prior order of selection that determined which consumers would receive services on the basis of the significance of the consumers’ disabilities. Before Clearinghouse Rule 22-008 was adopted, the general concept that consumers with more severe disabilities receive services before consumers with less severe disabilities was clear. The priority of consumers at risk of losing employment appears to be without regard to the significance of disability; therefore, the language that allows those consumers to receive services before those with “less significant disabilities” is confusing.

Should the department consider separating the criterion of being at immediate risk of losing employment and needing specific services or equipment to maintain employment from the criteria based on the significance of disability and indicate that “notwithstanding” the significance of a consumer’s disability, a consumer may receive services before other consumers if the consumer is at significant risk of losing employment? Absent such clarification, how will the department prioritize receipt of services between consumers at immediate risk of losing employment and consumers with the most significant disabilities?