

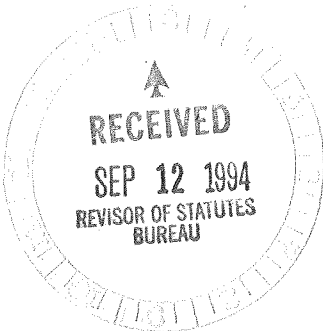
CR 94-77

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to an order of selection to receive vocational rehabilitation services were duly approved and adopted by this Department on September 12, 1994.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.



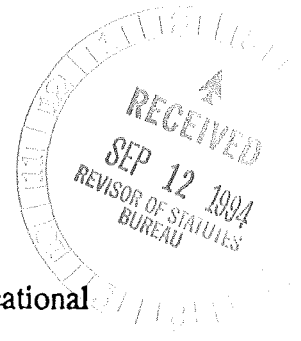
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 12th day of September, 1994.

Gerald Whitburn

SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

ORDER OF THE
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
CREATING RULES



To create chapter HSS 255, relating to an order of selection to receive vocational rehabilitation services.

Analysis Prepared by the Department of Health and Social Services

The Department receives federal funds to provide vocational rehabilitation (VR) services under the Rehabilitation Act of 1973, as amended, 29 USC 701 et seq. In Wisconsin, the VR program operates under ch. 47, Stats. A state plan, signed by the governor, is required as a condition for receiving federal VR funds. The current state plan includes a statement that the Wisconsin state agency has found it necessary to provide VR services under an order of selection which complies with 29 USC 721 (a) 5 (A). State VR agencies are required to impose an order of selection if staff and funds for provision of services are not sufficient to meet the needs of all individuals who apply for and are found eligible for VR services. This process requires that the Department create a statewide system for classifying VR clients as to the severity of their disabilities. The creation of two categories, severe and nonsevere, is within the Department's authority under federal law. The Department is developing additional classifications within the severe and nonsevere disability classifications.

An order of selection for receipt of VR services will be imposed if the Department concludes that it does not have the fiscal and staff resources within the Vocational Rehabilitation program to serve all persons eligible for services. If this happens, federal regulations for the Vocational Rehabilitation program require that the Department create an order of selection to ensure that persons with more severe disabilities are served before persons with less severe disabilities.

These rules allow the Department to create and maintain an order of selection for VR services if program resources are not sufficient to serve all persons eligible for services who apply for services. The Department must create a system which classifies individuals who are eligible for services under the Rehabilitation Act of 1973, as amended, according to severity of disability. If an order of selection is imposed, the Department must notify each affected individual of his or her relative position in the order of selection and provide an estimate of the likelihood that he or she will be served within the next 12 months. Being served means that an appropriate individualized written rehabilitation program (IWRP) would be developed and implemented. If a client's IWRP is being implemented, he or she will not be affected by imposition of the order of selection and will continue to be served until an appropriate vocational outcome is reached or is determined to be not possible.

The Department's authority to create these rules is found in ss. 47.02 and 227.11(2), Stats. The rules interpret s. 47.02, Stats.

SECTION 1. Chapter HSS 255 is created to read:

Chapter HSS 255
ORDER OF SELECTION FOR VOCATIONAL REHABILITATION SERVICES

- HSS 255.01 AUTHORITY AND PURPOSE
- HSS 255.02 APPLICABILITY
- HSS 255.03 DEFINITIONS
- HSS 255.04 DETERMINING WHEN AN ORDER OF SELECTION IS REQUIRED
- HSS 255.05 PUBLIC NOTICE OF ORDER OF SELECTION INTENTION
- HSS 255.06 PROHIBITED PRACTICES
- HSS 255.07 DETERMINING THE ORDER OF SELECTION
- HSS 255.08 NOTICE TO AFFECTED CLIENTS
- HSS 255.09 REVIEW REQUESTED BY CLIENT
- HSS 255.10 REVIEW INITIATED BY DEPARTMENT
- HSS 255.11 APPEAL OF ASSIGNED POSITION UNDER AN ORDER OF SELECTION

HSS 255.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss.47.02 and 227.11(2), Stats., to establish criteria and procedures for an order of selection for vocational rehabilitation services that conforms to the requirements of the Rehabilitation Act of 1973, as amended, 29 USC 701 et seq., and 34 CFR 361.36.

HSS 255.02 APPLICABILITY. This chapter applies to the department and to clients who do not have an approved individualized written rehabilitation program (IWRP) for their current application. If a client has signed his or her IWRP and the IWRP has been approved by the department, services relating to that IWRP are not affected by this chapter.

HSS 255.03 DEFINITIONS. In this chapter:

- (1) "Act" means the Rehabilitation Act of 1973, as amended, 29 USC 701 et seq.
- (2) "Application" means an application for vocational rehabilitation services.
- (3) "Category" means a subset of individuals affected by an order of selection. The subset of individuals with the greatest number of severe functional limitations who need multiple services over an extended period of time is served first. The other subsets of individuals with severe or non-severe disabilities are arranged in descending order based on a descending number of severe functional limitations and on the need for multiple services over an extended period of time.
- (4) "Client" means a person certified by the department as eligible for vocational rehabilitation services under the act.
- (5) "Communication" means the physical, cognitive and psychological ability to exchange information effectively.

(6) "Department" means the Wisconsin department of health and social services.

(7) "Division" means the department's division of vocational rehabilitation.

(8) "District director" means the supervisor of a division office which provides services under the act.

(9) "Employment outcome" means preparing for, obtaining or retaining full or part-time competitive or non-competitive employment consistent with the definition in 29 USC 706 (6).

(10) "Extended period of time" means a period of time lasting 12 or more months based on the expected implementation date of an IWRP to the ending date.

(11) "Functional limitation" means a measurable impediment in communication, interpersonal skills or acceptance, mobility, self-care, self-direction, work tolerance, or work skill or work history relative to an employment outcome.

(12) "Individual with a severe disability" means a client with a severe functional limitation who will need multiple services over an extended period of time within the definition of this term in 29 USC 706 (15).

(13) "Individualized written rehabilitation program" or "IWRP" means the individualized written rehabilitation program as described in 29 USC 721 (a) (9) and 722.

(14) "Interpersonal skills or acceptance" means the physical, cognitive and psychological ability to establish and maintain personal, family or community relationships.

(15) "Mobility" means the physical, cognitive and psychological ability to move from place to place inside and outside the home.

(16) "Multiple services" means more than one primary service purchased or provided with funding under the act as part of an approved IWRP to obtain an appropriate employment outcome.

(17) "Order of selection" means the order of priority for service, by category, required by 29 USC 721 (a)(5)(A) to ensure that clients with the most severe functional limitations who need multiple services over an extended period of time are served before clients who have less severe functional limitations and need fewer services over less extended periods of time.

(18) "Primary services" means evaluation, counseling and guidance provided by VR staff, physical or mental restoration and training and placement services which would be necessary to reach an approved IWRP goal, but not support services such as maintenance,

transportation, personal assistance services or services to family members which are provided only to allow a client to participate in one or more approved primary services.

(19) "Self-care" means the physical, cognitive and psychological ability to perform activities of daily living including eating, toileting, grooming, dressing, cooking, shopping, washing, housekeeping, money management and health and safety needs.

(20) "Self-direction" means the physical, cognitive and psychological ability to independently plan, initiate, organize, make decisions and carry out daily life activities after self-care needs have been met.

(21) "Served" means the development and implementation of a client's IWRP.

(22) "State plan for vocational rehabilitation" means the document required by the federal government as a condition for obtaining federal matching funds for vocational rehabilitation services.

(23) "State rehabilitation planning and advisory council" means the committee appointed by the governor under 29 USC 705.

(24) "Suspended case" means a client for whom the development and implementation of an IWRP has been delayed due to the imposition or continuation of an order of selection.

(25) "Vocational rehabilitation counselor" means the department employee who collects documentation regarding an applicant's disability, makes recommendations regarding eligibility for vocational rehabilitation services based on that record, and develops and implements a client's IWRP.

(26) "Work skills or work history" means the physical, cognitive and psychological ability to demonstrate work skills, work experience, necessary to obtain and maintain appropriate employment.

(27) "Work tolerance" means the physical, cognitive and psychological capacity to meet the demands of the workplace regardless of the work skills already possessed by an individual.

HSS 255.04 DETERMINING WHEN AN ORDER OF SELECTION IS REQUIRED. At least annually, the department shall determine if all clients can be served or if an order of selection must be imposed or continued to ensure that clients with the most severe disabilities are served before clients with less severe disabilities. The criteria for making this determination shall be whether the fiscal and personnel resources are available to meet the needs of the client population. The department shall consult with the state rehabilitation planning and advisory council in making this determination.

HSS 255.05 PUBLIC NOTICE TO ANNOUNCE ORDER OF SELECTION INTENTION. The imposition, continuation or termination of an order of selection shall be announced by publication of a class 1 legal notice in the official state newspaper. An order of selection shall be effective no sooner than 30 days after the date of publication of the notice.

HSS 255.06 PROHIBITED PRACTICES. The department shall determine the relative position of an individual in the order of selection without regard to length of residency, type of disability, age, sex, race, color, creed, national origin, source of referral, expected employment outcome, type of service needs, costs of services, length of time needed to complete service or income level.

HSS 255.07 DETERMINING THE ORDER OF SELECTION. (1)
EVALUATION PROCESS. For each client, a vocational rehabilitation counselor shall evaluate the client's case record using the functional assessment instrument included in the state plan and, on the basis of the client's existing record, shall recommend, in writing, the appropriate category for the client in the order of selection. except that a client may be assigned to a category or a position within a category by federal law. 29 USC 721(a)(5)(A)

(2) REVIEW OF VOCATIONAL REHABILITATION COUNSELOR RECOMMENDATION. A recommendation under sub.(1) shall be reviewed by the vocational rehabilitation counselor's supervisor and, if the recommendation is accepted, the supervisor shall countersign and date the recommendation.

(3) TIE BREAKER. For clients assigned to the same category under an order of selection for services, the date recorded on the application as the date the application was received by the department shall determine the order of selection within the category with the oldest date served first.

HSS 255.08 NOTICE TO AFFECTED CLIENTS. Within 20 working days following publication of the public notice under s. HSS 255.05 of the department's intention to impose or continue an order of selection, the department shall notify, in writing, each client who will not be served in the 12 month period beginning on the effective date of the order of selection. This notice shall include the reason for the decision, information regarding how and where to appeal this action under s.HSS 255.11 and information regarding how and where to submit new evidence for review by the department under s.HSS 255.09.

HSS 255.09 REVIEW REQUESTED BY CLIENT. A client may request a review of his or her category within the order of selection whenever new evidence is available by submitting a copy of the new evidence with a written request for a redetermination to the district director of the office which provided the notice of the order of selection category.

HSS 255.10 REVIEW INITIATED BY DEPARTMENT. The department shall contact each suspended case at least annually to determine if the client wants to continue as a


suspended case or if the case may be closed. If the client chooses to allow his or her case to be closed, the closure reason shall be reported as 'other' and this action shall not prejudice any future reconsideration of the individual for services. If this contact is by mail and there is no response within 30 days or if the client has moved and left no forwarding address, the case shall be closed without further notice.

HSS 255.11 APPEAL OF ASSIGNED POSITION UNDER AN ORDER OF SELECTION. A client may appeal the decision of the department about the basis for his or her category under an order of selection for services by sending a written request for a hearing with an explanation of his or her specific issues to the district director of the office which provided the notice of order of selection category within one year of the date of the notice under s.HSS 255.08. Order of selection appeals are heard by impartial hearing officers under procedures established by the department for client appeals.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and
Social Services

Dated: September 12, 1994

By: 
Gerald Whitburn
Secretary

SEAL:

