



IMPARTIAL HEARING OFFICER DECISION

HEARING DATE: 8-23-16

DECISION DATE: 9-14-16

IN THE HEARING BETWEEN:

LAWRENCIA SMALLS, AS REPRESENTED BY ALVENIA SMALLS (MOTHER),

Petitioner,

vs.

SOUTH CAROLINA VOCATIONAL REHABILITATION,

Respondent.

BEFORE: MICHAEL WALSH, Ph.D, LPC, CRC,
Hearing Officer

DATE: August 23rd, 2016

TIME: 10:10 AM

LOCATION: SCVRD
Berkeley-Dorchester Area Office is
2954 S. Live Oak Drive
Moncks Corner, SC 29461

STATEMENT OF ISSUE:

Quoting Petitioner's complaint and Fair Hearing request letter dated June 16, 2016, petitioner alleges:

1. "VR has denied Lawrence to continue to work inside of the Warehouse until employment can be found."
2. "VR has limited her scope of employment by not considering her strengths and interest through her IPE; Individual Plan of Employment."
3. "VR has not implemented, planned according to her strengths and interest. IPE was not and still not completed in a timely manner."
4. "VR have not and will not provide Lawrence with a full range of services under the TTW Program."
5. "VR has and would not provide Lawrence funded Transportation accommodations to and from their facility."

Quoting excerpts from SCVRD response letter dated July 15, 2016, SCVRD responds:

1. "VR did not deny Lawrence to continue to "work" inside the SCVRD WTC; she successfully completed the program and the services of the work training center were provided in full. In fact, her stay in the training center was extended more than once at your request."
2. "In November 2015, Lawrence participated in an extensive vocational assessment to assess her unique strengths, resources, priorities, concerns, abilities, capabilities, and interests to select an appropriate vocation... There was discussion with Lawrence regarding the final recommendation. She expressed interest in working as an orderly in a hospital and based on her abilities, capabilities and supported employment she should be successful in this field. In December 2015, Lawrence's IPE was amended to add training for certifications for the new vocational objective of "orderly". The IPE was signed by her and her counselor indicating agreement to the changes."
3. (Combined response-See above # 2)
4. "The IPE is the basis of specific services necessary for Lawrence to achieve employment. The appropriate services were included in the IPE and subsequent amendments... Lawrence has the skills and training she needs to become employed with the assistance of a job coach."
5. Lawrence was provided with two weeks of transportation assistance with bus passes via Tri-County Links in December 2015. This is our standard practice to ensure the client will be able to attend JRT. Once the client is receiving their stipend check, he/she is expected to use those funds for transportation to the training program. Having the client arrange for or secure his/her own reliable transportation is a critical step in becoming job-ready, so SCVRD's providing ongoing transportation would be ill-advised, as it would delay her independence."

Quoting an excerpt from SCVRD response letter dated July 15, 2016, SCVRD asserts:

“According to Title 34, of the Code of Federal Regulations, Part 361, a hearing may be conducted when there is a dispute concerning a *suspension, reduction or termination of services* being provided for the individual. Items one and five could fit this description and we will proceed with the hearing to address those items only in the event we are unable to resolve your concerns prior to that hearing.”

FINDING OF FACT/CONCLUSION OF LAW CONCERNING ISSUES AT HAND:

In this case, there is a dispute as to the issues to be considered by this Hearing Officer. I take notice of SCVRD’s assertion listed above and SCVRD’s corresponding desire to limit the scope of the hearing to the two issues (Numbers 1 and 5) that SCVRD identified as being consistent with its understanding of the Code of Federal Regulations.

In this case, and on this particular issue, I find that SCVRD’s position is not consistent with the spirit of applicable Federal Regulations, which appears to be designed to provide recourse for clients with regard to *any* decision made in the case.

To wit: per CFR 361.57 (a), under the heading: Hearing Procedures, “*an applicant or eligible individual who is dissatisfied with any determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination. The procedures must be in accordance with paragraphs (b) through (k) of this section.*”

Although Section 4 of this same section does reference the suspension, reduction or termination of services, the language above that passage clearly references “any decision”. This seems a clear indication of the spirit of impartial and fair hearing/mediation process described.

Therefore, each of the issues listed by the petitioners will be considered by this hearing officer with regard to this matter.

CASE HISTORY:

Lawrencia’s current case is opened on 9/21/2015. Eligibility for services is established 10/13/15. Lawrencia’s Individualized Plan for Employment is developed 11/19/15.

Lawrencia begins JRT services in the Work Training Center on 12/4/15. IPE notes two weeks of transportation assistance. Transportation assistance is provided through 1-8-16. Job Coach works with Lawrencia in WTC on development of job skills.

According to JRT team, Lawrencia achieves maximum benefit from JRT 2/16/16. Upon obtaining maximum benefit from JRT, Job Coach begins working with Lawrencia on job leads and requisite training.

Client returns to WTC, per client request on 3/21/16.

Job Coach and JRT staff have ongoing difficulty in connecting with Lawrencia and her Mother to schedule required classes and job leads follow up.

Client's Mother, Alvenia Smalls, requests case closure 5/17/16.

Client Advocacy and Protection (CAP) meeting held 6/3/16. Meeting ends abruptly after Alvenia Smalls requests to record hearing and request is denied.

Alvenia Smalls files complaint: "*1. Based on VR services and 2. Based on disability*" (Excerpted from complaint letter dated June 16, 2016) 6/16/16.

SUMMARY OF TESTIMONY:

It is noted that Lawrencia Smalls and her Mother, Alvenia Smalls, chose not to attend the Fair Hearing scheduled for August 23rd, 2016 per letter dated August 18, 2016 and received by SCVRD August 23, 2016. The letter did request a copy of this Hearing Officer's findings.

Both parties will be provided with a copy of this decision via electronic and regular mail.

Note: Italics are used in this Testimony section to denote testimony within the hearing. A minutes-style record of the hearing testimony was provided by SCVRD and does agree with the contemporaneous notes taken by the Hearing Officer within the hearing. That record is reproduced in its entirety below.

Opening Statement: Curtisha Mingo-SCVRD

Ms. Mingo stated that according to federal regulation, a fair hearing may be conducted when a recipient of services is requesting review of a determination made by the designated state unit. In the letter from Ms. Smalls dated June 16, 2016, only concerns #1 and #5 appeared to fall under this description. Therefore, VR requested that these two concerns be the focus of the hearing.

Ms. Mingo continued by stating that this case was opened in September of 2015. When the Individualized Plan for Employment (IPE) was created, informed choice was given and a goal of transporter/dietary aide in a medical facility was agreed upon by all parties. Client entered Job-Readiness Training (JRT) on December 7, 2015, for approximately two months. Ms. Mingo stated that the purpose of the Work Training Center is to provide job readiness training in a realistic work setting so clients can practice the skills

they learn in job preparedness classes and emphasized involvement in the Training Center is not a "job" for clients. Client received two

weeks of transportation assistance and the JRT team found that she achieved maximum benefit from JRT services and was redirected back to her counselor to discuss and coordinate supported employment services.

Ms. Mingo stated that due to efforts by VR to place and train Lawrencia, her time in the Training Center was intended to be brief, however, VR honored client's and her mother's request to have client re-enter Job-Readiness Training. On March 21, 2016, the client re-entered Job-Readiness Training Center, but did not engage in other VR services as recommended by the job coach. For example, the client did not participate in job search and job placement (rapid placement). The Smalls did not follow up on correspondence he sent to them regarding job leads. Ms. Mingo stated that it is VR's position that Lawrencia would benefit from the services of a job coach who can spend time with her on the job, but we need cooperation. Case closure may be the next step as we have been denied any access to Lawrencia to provide the final planned IPE service of job search and job placement (rapid placement).

There were no opening statements from the client or her authorized representative as they were not in attendance during the fair hearing. Dr. Walsh stated that VR could proceed with their testimony for the case.

KEVIN PATTERSON:

Mr. Patterson stated that in his initial meeting with Lawrencia she was bubbly and motivated to work with him, but when she was in the Work Training Center, she preferred to work alone and only wanted to work on the fishing lures. If she was asked to move to a different contract he would receive a call from the mother each time requesting for Lawrencia to be placed back on the fishing lures contract. He stated that the client took the Basic Life Support (BLS) course for Cardiopulmonary Resuscitation (CPR), but did not get the license, which is required for medical transport positions. During her second stay in the Work Training Center, Mr. Patterson sent and reviewed many job leads with the client, but she did not follow through with them.

Dr. Walsh asked if the job leads were directed to the client or mother. Mr. Patterson advised they were sent to both most often by email, phone call and even regular mail. He also read a statement where the client, Lawrencia Smalls, expressed that she did not want to work with the job coach and that her mother would be her job coach.

PAT GILLIARD:

Ms. Gilliard began by stating this was Ms. Smalls' third VR case and that at the time of IPE completion, the client was reluctant about being in the Work Training Center (WTC) . They decided on Lawrencía being in the WTC and Job Preparedness Instructional (JPI) classes for only thirty days. The IPE services were completed as outlined; the client took classes at Trident Technical College and received a certificate of completion; however she did not obtain the BLS certification. Having completed the services listed on the IPE, the client was found to be job ready and job placement activities were to be the next steps.

Ms. Mingo then brought forward the signed SCVR Form 236 form, which was marked as SCVRD 1. The SCVR Form 236, Assessment and Training Experience form which explains that the Work Training Center is a job readiness training program and the client is not an employee of SCVRD. It further explains that they are receiving a training stipend. Ms. Mingo also entered the two week transportation assistance documentation into evidence and it was marked as SCVRD 2. This document showed that Ms. Smalls received two transportation assistance checks in the month of December 2015.

Curtisha Mingo then asked Kelly Sieling to go over her interactions and policies.

KELLY SIELING:

Ms. Sieling stated she opened this third case and that the previous cases had been closed unsuccessfully. During this reopening meeting, the client spoke about her volunteering, her desires to be independent, and motivated for employment. The IPE was written by Pat Gilliard and based on the client's individual needs all agreed to thirty days in WTC, job coach services, and the vocational goal of transporter. She entered WTC to build work skills, work with the job coach, and participate in JPI classes. The Basic Life Support class with Trident Technical College was rescheduled due to a miscommunication on the date/time. The client was allowed to stay in the training center until the class could be taken. While she completed the course, the client was not able to pass the test after taking the class; therefore, she did not receive the BLS certification needed for transporter positions. Ms. Sieling reached out to the Continuing Education Department at Trident Technical College and they agreed to allow the client the opportunity to sit in the class again and retest. The client and mother did not move forward with this as the mother explained Lawrencía would need extended time to prepare for the BLS test and she would do this on her own.

A meeting was set up to discuss a new vocational goal and as a result of the meeting, dietary aide was the agreed upon vocational goal. Lawrencecia continued in the WTC and the job coach continued to provide job leads, but Lawrencecia did not show interest in any positions Mr. Patterson emailed to her.

At the request of the client, a CAP meeting was scheduled in June. However, the meeting ended abruptly when Ms. Alvenia Smalls asked to record the meeting. The SCVRD Ombudsman staffed this request with Legal Counsel, and the request was denied. In the absence of the Smalls, VR moved forward with the meeting and determined it would be best for the client to participate in rapid placement (place and train) as JPI & JRT services had been completed per the IPE. Ms. Sieling reached out to Oakbrook Rehabilitation Center who agreed to give the client an opportunity to job shadow/tour the facility to observe someone in the dietary aide position. When this was presented to the client and mother, they did not respond. Multiple job leads were shared with the client via phone messages, but no calls were returned.

Curtisha Mingo asked if VR normally lets their clients stay in the training center until employed. Ms. Sieling stated that we do not. The time in the training center is based on individual needs

and job readiness. Ms. Smalls had met all of the seven standards for JRT completion and she had completed all of the classes identified on her IPE.

Dr. Walsh asked Ms. Sieling to please expand on the transportation ending note. Number five in the client's complaint letter.

Mr. Brooks asked if he could answer and stated that the VR Client Services Policy is to give two weeks transportation assistance for JRT. She had been given two transportation checks in December 2015.

Ms. Sieling added that continuing to give transportation funds does not promote client independence and preparation for employment.

Ms. Gilliard added that it is stated on the IPE that two weeks assistance for JRT is provided.

Mr. Patterson added that the client was becoming comfortable in JRT to the point that she was having a hard time breaking away also hindering independence.

Mr. Clifford Brooks:

Mr. Brooks stated that on Friday, June 3, 2016, a meeting was scheduled for 11:00 am despite VR being unaware of the exact nature of the client's complaints. Introductions were made, but the meeting ended abruptly after the client's mother asked that the meeting be recorded and VR denied allowing this.

The meeting continued with the CAP Director, Denise Riley-Pensmith, representing the client after the client and her mother departed. The minutes in the form of a Plan of Action were provided to all parties outlining the plan for continued rapid placement activities as other services have been completed.

A second meeting was scheduled and Alvenia Smalls cancelled the day before.

During a June 16, 2016 conference call, Mr. Brooks and the CAP Director talked to Alvenia Smalls in an attempt to understand her concerns/complaints regarding VR services. However, Ms. Smalls used profanity towards Mr. Brooks when he expressed our need for access to the client to provide services. He was unable to identify her concerns.

Mr. Brooks stated that on June 8, 2016, Ms. Alvenia Smalls stated she did not want to move forward with VR services to Lawrencia and that we had kept the client in JRT too long. Mr. Brooks stated mixed messages were being given regarding JRT as at times they (Lawrencia and Alvenia) did not want to participate and other times Alvenia Smalls wanted Lawrencia to have extended time in JRT.

Dr. Walsh then asked if the June 3rd CAP meeting continued with CAP direction. Mr. Brooks advised that it had and that the CAP Director herself was confused as to the nature of the complaints.

CLOSING STATEMENT

Ms. Mingo stated SCVRD was diligent in their efforts to assist Lawrencia in becoming competitively employed, but due to the lack of engagement and access to the client, case closure may be needed as this process is a two way street.

CONCLUSION

Clifford Brooks requested that case closure be considered per Client Services Policy 42.3.

- **3 No longer interested in receiving services or further services.** Use this code for individuals who choose not to participate or continue in their VR program at this

time. Also use this code to indicate when an individual's actions or non-actions make it impossible to begin or continue a VR program. Examples would include repeated failures to keep appointments for assessment, counseling or other services.

FINDINGS OF FACT/CONCLUSIONS OF LAW

- I find that SCVRD's actions with regard to Lawrencia's time in the Work Training Center were consistent with Lawrencia's IPE as well as with SCVRD policy regarding the use of the Work Training Center in the Vocational Rehabilitation process. Specifically, according to Section 14.2 of the SCVRD Policy Manual, the policy calls for services to be clearly identified and SCVRD's financial participation limits clearly identified within the IPE. In this case, I find that SCVRD did effectively communicate those services and limits. I find that SCVRD expanded the transportation service limits at client request. I find this consistent with client choice and a reasonable one-time accommodation to the client's request.
- I find that the development of Lawrencia's vocational objective and IPE was consistent with Informed Choice as put forth in the 1998 Amendments of the Rehabilitation Act, Section 102(b)(3)(A), to wit: "the employment outcome must be chosen by the individual and must be consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice of the individual".
- I find that Lawrencia's IPE and the services within that IPE were developed and delivered in a timely manner consistent with federal regulations (34 CFR 361.45(d)), 34 CFR 361.46, and with the above-referenced Act.
- I find that Lawrencia's IPE was developed in accordance with Lawrencia's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. As such, I find that Lawrencia was provided a complete scope of services under the scope of the TTW program; specially, as outlined in 20 CFR 411.115 (j), which defines the services to be delivered by a state Vocational Rehabilitation agency. Under this section, the services to be provided are defined in the IPE, which must have been developed in accordance with 34 CFR 361.45 and 34 CFR 361.46.
- I find that SCRVD's policy of time-limited transportation assistance to be consistent with Rehabilitation Best Practices. Specifically, the shift from SCRVD-provided funds for transportation to the use of the client's stipend to fund transportation services is a developmental step appropriate to, and consistent with, a long term goal of independent employment. This is consistent with 34 CFR 361.48, which states that "vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice." I find SCVRD's policy (SCVRD Policy 20.7) and execution in this instance to be consistent with the preparation and development of

the independent skills needed to secure and, eventually maintain, such an employment outcome.

- I find that under the TTW program, SCVRD is required to monitor and report on Time-ly Progress Towards Self-Supporting Employment (20 CFR 411.166(b)). In addition, federal law provides discretion to state Vocational rehabilitation agencies to develop policies regarding the duration of services (34 CFR 361.50 (d)(1)) and policy regarding service provision (34 CFR 361.13 (c)(iii)). Current SCVRD policy states that cases may be closed if an individual's actions or non-actions make it impossible to continue a VR program or service (SCVRD Policy 42.3). In this case, I find that Lawrencia's ongoing reluctance to participate in services and to follow up on provided job leads may meet that criteria.

THE ORDER

Lawrencia and her Mother are to meet with Lawrencia's SCVRD counselor within 30 days to discuss whether she has interest in ongoing services, specifically, in following up on provided job leads.

If there is continued interest in services, Lawrencia and her Mother are to follow up on all provided job leads and to participate in IPE-driven services in Good Faith.

In the event that Lawrencia and her Mother fail to meet with SCVRD in the allotted time frame and/or if Lawrencia does not have interest in further services, SCVRD may, at its discretion, close her case pursuant to SCVRD policy on Case Closure (SCVRD Policy 42.3).

AND IT IS SO ORDERED.

SIGNED,

MICHAEL WALSH, Ph.D, LPC, CRC

On this day, the 14th of September, 2016