

Chapter DWD 65

ORDER OF SELECTION FOR VOCATIONAL REHABILITATION SERVICES

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Note: Chapter HSS 255 as it existed on December 31, 1996 was renumbered chapter DWD 65 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., *Register*, December, 1996, No. 492.

DWD 65.01 Authority and purpose. Section 47.02, Stats., requires the department to implement an order of selection when there are insufficient resources to serve all eligible individuals who apply for vocational rehabilitation services. An order of selection shall provide services to individuals with the most significant disabilities first.

History: Cr. *Register*, October, 1994, No. 466, 12-1-94; CR 18-013: r. and recr. *Register* July 2018 No. 751, eff. 8-1-18.

DWD 65.02 Applicability. This chapter applies to the department and to consumers who have applied for vocational rehabilitation services, but do not have an approved IPE. This chapter does not apply to consumers currently receiving services under an approved IPE.

History: Cr. *Register*, October, 1994, No. 466, 12-1-94; CR 18-013: r. and recr. *Register* July 2018 No. 751, eff. 8-1-18.

DWD 65.03 Definitions. In this chapter:

(3) “Category” means the classification assigned to eligible individuals based on an assessment in each of the seven functional areas if an order of selection is imposed. Eligible individuals are assessed according to the significance of their disability as defined in the Rehabilitation Act of 1973, as amended, 29 USC 701.

(5m) “Consumer” means an individual determined by the department as eligible for vocational rehabilitation services.

(6) “Department” means the Wisconsin department of workforce development.

(9) “Employment outcome” means entering or retaining full or part-time competitive employment in the integrated labor market consistent with the definition in 29 USC 705 (11).

(12) “Individual with a significant disability” means a consumer with a severe physical or mental impairment which seriously limits one or more functional capacities who will need multiple vocational rehabilitation services over an extended period of time as prescribed under 29 USC 705 (21).

(12m) “IPE” means an individualized plan for employment.

(17) “Order of selection” means the establishment of a waiting list to determine which consumers will receive vocational rehabilitation services when resources are not available to all eligible individuals.

(18) “Primary services” means evaluation, counseling and guidance, physical or mental restoration, training, and placement services which are necessary to reach an IPE goal. “Primary services” does not include support services such as maintenance, transportation, personal assistance services or services to family members which are provided only to allow an individual to participate in one or more approved primary services.

(18m) “Student with a disability” means an individual with a disability in a secondary, postsecondary, or other recognized education program, who is not younger than 14 years of age and not older than 21 years of age, who is eligible for, or who is receiving, pre-employment transition services.

(25) “Vocational rehabilitation counselor” means a department employee who determines an individual’s eligibility for vocational rehabilitation services, and approves a consumer’s IPE.

(25m) “Wisconsin Rehabilitation Council” means a council composed of members who review, analyze, and advise the division regarding the performance of its responsibilities in providing quality services to people with disabilities as prescribed under 34 CFR 361.16.

History: Cr. *Register*, October, 1994, No. 466, 12-1-94; CR 18-013: r. (1), (2), r. and recr. (3), r. (4), (5), cr. (5m), r. (7), (8), am. (9), (10), r. (11), am. (12), cr. (12m), r. (13) to (15), am. (16), r. and recr. (17), am. (18), cr. (18m), r. (19) to (24), am. (25), cr. (25m), r. (26), (27) *Register* July 2018 No. 751, eff. 8-1-18; CR 22-008: am. (5m), r. (10), (16) *Register* June 2022 No. 798, eff. 7-1-22.

DWD 65.04 Imposing an order of selection.

(1) DETERMINING WHEN AN ORDER OF SELECTION IS REQUIRED. The department shall determine prior to the beginning of every federal fiscal year, if adequate resources are available to provide all needed vocational rehabilitation services to all eligible consumers. The department shall consult with the Wisconsin Rehabilitation Council to determine if fiscal and personnel resources are available to meet the needs of all consumers. If the department determines there are insufficient resources to serve all eligible consumers, an order of selection shall be imposed.

(2) CONTINUATION OR TERMINATION OF AN ORDER OF SELECTION. If an order of selection is imposed under sub. (1), the department shall consult with the Wisconsin Rehabilitation Council to determine prior to the beginning of every federal fiscal year, if a continuation or termination of an order of selection is necessary.

(3) PROVIDING SERVICES UNDER AN ORDER OF SELECTION. If an order of selection is imposed under sub. (1), the department shall provide services to consumers with the most significant disabilities and consumers who require specific services or equipment to maintain employment before serving consumers with less significant disabilities as prescribed under s. DWD 65.07.

History: Cr. *Register*, October, 1994, No. 466, 12-1-94; CR 18-013: r. and recr. *Register* July 2018 No. 751, eff. 8-1-18; correction in (3) made under s. 35.17, Stats., *Register* July 2018 No. 751; CR 22-008: am. (3) *Register* June 2022 No. 798, eff. 7-1-22.

DWD 65.06 Prohibited practices. The department shall determine the relative position of an individual in the order of selection without regard to duration 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, or income level.

History: Cr. *Register*, October, 1994, No. 466, 12-1-94; CR 22-008: am. *Register* June 2022 No. 798, eff. 7-1-22.

DWD 65.07 Determining the order of selection.

(1) EVALUATION PROCESS. A vocational rehabilitation counselor shall evaluate each consumer’s case record using the functional assessment rating to determine the appropriate category for the consumer in an order of selection.

(3) WAITLIST ACTIVATION. When an order of selection is continued or imposed, services provided will be prioritized based on

the date the application was received by the department for consumers assigned to the same category under an order of selection.

(4) STUDENT WITH A DISABILITY. If a student with a disability has received pre-employment transition services prior to submitting an application, the department shall continue to provide pre-employment transition services to a student with a disability during the evaluation process under sub. (1) and prior to being determined eligible for vocational rehabilitation services. Pre-employment transition services shall continue if the student with a disability is placed in a category in an order of selection.

History: Cr. Register, October, 1994, No. 466, 12-1-94; CR 18-013: am. (1), r. (2), r. and recr. (3), cr. (4) Register July 2018 No. 751, eff. 8-1-18.

DWD 65.08 Notice to affected consumers. The department shall provide written notification to all consumers who may not receive services due to an order of selection. The notice shall include all of the following:

(1) The reason for the decision to impose, continue, or terminate an order of selection and the priority in which services will be provided.

(2) Identify the consumer's category placement and information on how to file an appeal related to a consumer's category placement.

(3) Information on how to request a reevaluation of category placement based on new information not previously considered during the evaluation process under s. DWD 65.07 (1).

History: Cr. Register, October, 1994, No. 466, 12-1-94; CR 18-013: am. (title), renum. DWD 68.05 to (intro.) and (1) to (3) and am., Register July 2018 No. 751, eff. 8-1-18; correction in (1) made under s. 35.17, Stats., Register July 2018 No. 751; CR 22-008: am. (intro.), (3) Register June 2022 No. 798, eff. 7-1-22.

DWD 65.09 Request for review of category placement. A consumer may request a review of their category placement within an order of selection when new information not previously considered during the evaluation process under s. DWD

65.07 (1) is available upon request by the consumer or the consumer's designated representative.

Note: Information on how to file a request for reevaluation of category placement will be included in the notice issued under s. DWD 65.08.

History: Cr. Register, October, 1994, No. 466, 12-1-94; CR 18-013: am. Register July 2018 No. 751, eff. 8-1-18; CR 22-008: am. Register June 2022 No. 798, eff. 7-1-22.

DWD 65.10 Review initiated by department. The department shall contact each consumer in a category that will not receive services due to the imposition or continuation of an order of selection on an annual basis to determine if the consumer would like to continue to maintain category placement. The department shall make multiple attempts, through multiple methods of contact, including the consumer's preferred mode of contact, prior to closing any case. If there is no response within 30 days, the department may close the case. Prior to closing any case, the department shall document the dates and methods of contact.

History: Cr. Register, October, 1994, No. 466, 12-1-94; CR 18-013: am. Register July 2018 No. 751, eff. 8-1-18; correction in (1) made under s. 35.17, Stats., Register July 2018 No. 751.

DWD 65.11 Appeal of assigned position under an order of selection. A consumer may appeal their category placement by submitting a request for a hearing to the department within 180 days of the date of the notice provided under s. DWD 65.08. Appeals are heard by impartial hearing officers under procedures established by the department in ch. DWD 75. A consumer may appeal the decision issued by an impartial hearing officer as prescribed under s. 227.53, Stats.

Note: To obtain a hearing request form, or for questions relating to filing a hearing request, contact the Hearing Coordinator, Division of Vocational Rehabilitation, P.O. Box 7852, Madison, Wisconsin 53707, telephone (800) 442-3477 or access the form online at <http://dwd.wisconsin.gov/dvr/>.

History: Cr. Register, October, 1994, No. 466, 12-1-94; CR 18-013: am. Register July 2018 No. 751, eff. 8-1-18; CR 22-008: am. Register June 2022 No. 798, eff. 7-1-22.