

The following is a response prepared by Jeannette Shell from RSA to a question posed by the Wisconsin Client Assistance Program (CAP) regarding the inclusion of household income by DVR and FAO when determining the financial participation of the individual in the costs of an educational program as part of the IPE.

Response:

Thank you for your email of August 15, 2007, posing two questions regarding the consideration of household income, particularly the SSDI income of one parent, in the state VR agency's determination of the amount of an individual's financial participation in their VR services.

You indicate that five individuals have requested assistance from the Client Assistance Program regarding this consideration, only one of which involves SSDI income of a parent. In all cases, you state that Wisconsin Division of Vocational Rehabilitation (WDVR) has a policy that it will not replace the expected family contribution amount as established by the university financial aid office and/or the Student Aid Report generated by filing the Free Application for Federal Student Aid (FAFSA).

1. Can DVR "require" a household to contribute toward the services listed on the consumer's IPE if one of the household members is receiving social security benefits?

The Rehabilitation Act of 1973, as amended, and its implementing regulations neither prohibit nor require that the designated state unit (DSU) include household income, whatever its source, in determining an individual's amount of financial participation in their VR services. However, 34 CFR 361.54(b)(2)(iv) does provide some guidance applicable to your questions. It states that the DSU, if it requires the financial participation of the individual, must have written policies governing this financial participation and that:

- (iv) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—
 - (A) Reasonable;
 - (B) Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and
 - (C) Not so high as to effectively deny the individual a necessary service.

Regarding the DSU's payment for services, the agency must have written policies to govern the rates of payment for all purchased VR services (34 CFR 361.50(c)(1)). The DSU may establish a fee schedule designed to ensure a reasonable cost for purchased VR services if the schedule is-

- (i) Not so low as to effectively deny an individual a necessary service; and
- (ii) Not absolute and permits exceptions so that individual needs can be addressed.

Clearly, the regulations describe a balance between reasonable costs for services and individual VR needs. As such, each individual's circumstance would have to be evaluated on its own merits. However, it is important to note that any written policies on the individual's financial participation must be applied uniformly to all individuals in similar circumstances (34 CFR 361.54(2)(b)(i)).

The consideration of an individual's Social Security benefits in establishing their financial participation in the cost of services is addressed at 34 CFR 361.54(b)(3)(ii), which states that the designated state unit may not require the financial participation of the individual as a condition of receiving any service if the individual in need of the service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act. This regulation applies, however, only to the individual applying for or receiving VR services. It does not apply to another individual's income in the household.

A designated state unit may require a household to contribute to the individual's cost of services under an IPE if it has written policies, consistent with 34 CFR 54(b)(2)(iv) and §361.54(2)(b)(i). That income may only include social security benefits of household members other than the individual applying for or receiving services (34 CFR 361.54(b)(3)(ii)).

2. Can DVR defer to another entity to determine a contribution from a household?

The situation you describe involves the inclusion of household income by both a university financial aid office and the state VR agency when determining the consumer's financial participation in the costs of the educational program needed to obtain the employment outcome listed on the Individual Plan for Employment (IPE). The state VR agency is required to seek out and apply comparable benefits and services available to the individual to obtain the services listed on the IPE to achieve the employment outcome (34 CFR 361.53). In this situation, the financial aid available, not including merit based awards or scholarships, are comparable services and benefits that must be applied to the costs of the IPE.

The state VR agency is the entity required under the VR regulations to determine the amount of the individual's financial participation in their VR services. The DSU must have written policies that identify the services that require the individual's financial participation and the process used to determine that participation. ***A DSU may use the determination of a university financial aid office for part or all of the process of determining an individual's financial participation if they have written policies that clearly describe the process used and the role of the university financial aid office in that process.***

The assistance of the university financial aid office is often necessary to identify and apply financial aid and to establish both unmet need and the expected family contribution. ***The DSU must also evaluate how its support will, or will not, impact the financial aid available to the individual when determining the amount and type of financial assistance it contributes. The amount and type of assistance provided by the DSU may adversely impact the financial aid package offered by the university. It would be difficult, in the case of financial aid determinations, to assess needs and financial participation as well as maximize the use of comparable benefits and services without communication and cooperation between the individual, the DSU and the financial aid office.***

While WDVR's policy on post-secondary education services includes the use of a university financial aid office determination of unmet need and expected family contribution, WDVR's policy on financial contribution states that they will not apply or require a financial needs test as a condition for providing any VR service (page 17, "Financial Contribution"). However, if WDVR accepts the determination of the financial aid office of a university as to unmet need, expected family contribution and consumer financial participation, it is, in effect, applying a financial needs test as applied by the FAFSA and the university financial aid office. ***We recommend that WDVR amend its financial contribution policy to indicate that there is a financial needs test for post-secondary education services and to align that policy with WDVR policies on post-secondary education assistance. This amendment would also include a clear description of the financial needs test used (the Student Aid Report) and the role of the university financial aid office in that process.***

If the individual feels that their financial aid determination by the university financial aid office is not accurate or is not reasonable for their circumstances, they must contact that office to request a review or reconsideration of the decision or an exception based on their circumstances. If the individual feels that the financial participation amount determined by the DSU is not accurate or is not reasonable for their circumstances, they must contact their VR counselor to request an exception based on their circumstances.

The individual may request an exception to the DSU's fee schedule under the provisions of 34 CFR 361.50(c)(2)(ii) and/or a review of the DSU's determinations under 34 CFR 361.57 and under WDVR policies.