



STATE OF MICHIGAN
JOCELYN BENSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

March 13, 2024

NOTICE OF FILING

ADMINISTRATIVE RULES

To: Secretary of the Senate
Clerk of the House of Representatives
Joint Committee on Administrative Rules
Michigan Office of Administrative Hearings and Rules (Administrative Rule #23-034-LE)
Legislative Service Bureau (Secretary of State Filing #24-03-03)
Department of Labor and Economic Opportunity

In accordance with the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6, this is to advise you that the Michigan Office of Administrative Hearings and Rules filed Administrative Rule #2023-034-LE (Secretary of State Filing #24-03-03) on this date at 12:22 P.M. for the Department of Labor and Economic Opportunity entitled, "Vocational Rehabilitation".

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

Sincerely,

Jocelyn Benson
Secretary of State

A handwritten signature in black ink that reads "Lashana Threlkeld/ck".

Lashana Threlkeld, Departmental Supervisor
Office of the Great Seal

Enclosure



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

March 13, 2024

The Honorable Jocelyn Benson
Secretary of State
Office of the Great Seal
Richard H. Austin Building – 1st Floor
430 W. Allegan
Lansing, MI 48909

Dear Secretary Benson:

Re: Administrative Rules – Michigan Office of Administrative Hearings and Rules
Administrative Rules #: 2023-34 LE

The Michigan Office of Administrative Hearings and Rules received administrative rules, dated November 29, 2023 for the Department of Labor and Economic Opportunity “**Vocational Rehabilitation**”. We are transmitting these rules to you pursuant to the requirements of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6.

Sincerely,

Michigan Office of Administrative Hearings and Rules



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY
LANSING

SUSAN CORBIN
DIRECTOR

CERTIFICATE OF ADOPTION

MICHIGAN REHABILITATION SERVICES RULES

By authority conferred on the director of the department of labor and economic opportunity by sections 2a and 2b of the proprietary schools act, 1943 PA 148, MCL 395.102a and 395.102b, and sections 3, 4, and 6 of the rehabilitation act of 1964, 1964 PA 232, MCL 395.83, 395.84, and 395.86; Executive Reorganization Order Nos. 1999-1, 2003-1, 2012-5, and 2019-3, MCL 408.40, 445.2011, 445.2033, and 125.1998; and in accord with the workforce innovation and opportunity act, Public Law 113-128.

R 395.51, R 395.53, R 395.54, R 395.76, and R 395.79 of the Michigan Administrative Code are amended, and R 395.65 and R 395.83 are rescinded.

Date: 12/12/2023

Adopted by: *Susan R. Corbin*

Susan Corbin
Director
Department of Labor and Economic Opportunity



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

LEGAL CERTIFICATION OF RULES

I certify that I have examined the attached administrative rules, dated November 29, 2023, in which the Department of Labor and Economic Opportunity proposes to modify a portion of the Michigan Administrative Code entitled “**Vocational Rehabilitation Part 1. Eligibility for Rehabilitation Services**” by:

- ◆ Amending R 395.51, R 395.53, R 395.54, R 395.76, and R 395.79.
- ◆ Rescinding R 395.65 and R 395.83.

The Legislative Service Bureau has approved the proposed rules as to form, classification, and arrangement.

I approve the rules as to legality pursuant to the Administrative Procedures Act, MCL 24.201 *et seq.* and Executive Order No. 2019-6. In certifying the rules as to legality, I have determined that they are within the scope of the authority of the agency, do not violate constitutional rights, and are in conformity with the requirements of the Administrative Procedures Act.

Dated: November 30, 2023

Michigan Office of Administrative Hearings and Rules

By: 


Emily Leik,
Attorney

CERTIFICATE OF APPROVAL

On behalf of the Legislative Service Bureau, and as required by section 45 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.245, I have examined the proposed rules of the Department of Labor and Economic Opportunity dated November 29, 2023, amending R 395.51, R 395.53, R 395.54, R 395.76, and R 395.79, and rescinding R 395.65 and R 395.83 of the Department's rules entitled "Vocational Rehabilitation Part 1. Eligibility for Rehabilitation Service." I approve the rules as to form, classification, and arrangement.

Dated: November 30, 2023

LEGISLATIVE SERVICE BUREAU

By 
Rachel M. Hughart,
Legal Counsel

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY

MICHIGAN REHABILITATION SERVICES

VOCATIONAL REHABILITATION

Filed with the secretary of state on March 13, 2024

These rules become effective immediately after filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of labor and economic opportunity by sections 2a and 2b of the proprietary schools act, 1943 PA 148, MCL 395.102a and 395.102b, and sections 3, 4, and 6 of the rehabilitation act of 1964, 1964 PA 232, MCL 395.83, 395.84, and 395.86; Executive Reorganization Order Nos. 1999-1, 2003-1, 2012-5, and 2019-3, MCL 408.40, 445.2011, 445.2033, and 125.1998; and in accord with the workforce innovation and opportunity act, Public Law 113-128)

R 395.51, R 395.53, R 395.54, R 395.76, and R 395.79 of the Michigan Administrative Code are amended, and R 395.65 and R 395.83 is rescinded, as follows:

PART 1. ELIGIBILITY FOR REHABILITATION SERVICE

R 395.51 Definitions.

Rule 1. As used in these rules:

(a) "Clear and convincing evidence" means there is a high degree of certainty that the individual is incapable of benefiting from services in terms of an employment outcome.

(b) The "Client Assistance Program" or the "CAP" means the program under the rehabilitation act of 1973, 29 USC 732. The CAP provides assistance in informing and advising all applicants and individuals eligible for vocational rehabilitation services of all available benefits under the rehabilitation act of 1973, 29 USC 701 to 7961. Upon request of such applicants or eligible individuals, the CAP assists and advocates for such applicants or eligible individuals in their relationships with projects, programs, and services provided under the rehabilitation act of 1973, 29 USC 701 to 7961, including assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure the protection of the rights of such individuals under the rehabilitation act of 1973, 29 USC 701 to 7961 and to facilitate access to the services funded under the rehabilitation act of 1973, 29 USC 701 to 7961 through individual and systemic advocacy.

(c) "Comparable services and benefits" means services and benefits, not including awards and scholarships based on merit, that are provided or paid for, in whole, or in part, by other federal, state, or local public agencies, by health insurance, or by employee benefits that are available to the individual at the time needed to ensure the progress of the

individual toward achieving the employment outcome in the individual's IPE and that are commensurate to the services the individual would otherwise receive from MRS.

(d) "Competitive integrated employment" means work that complies with the following:

(i) Is performed on a full-time or part-time basis, including self-employment, and for which an individual is compensated at a rate that includes all of the following:

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the fair labor standards act of 1938, 29 USC 206 or the rate required under the applicable state or local minimum wage law for the place of employment.

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.

(C) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills.

(D) Is eligible for the level of benefits provided to other employees.

(ii) Is at a location where the employee with a disability interacts for the purpose of performing the duties of the position with other individuals, for example, other employees, customers and vendors, who are not individuals with disabilities, not including supervisory personnel or individuals who are providing services to such employee, to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these individuals.

(iii) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(e) "Cost of attendance" means the total amount it will cost a student to attend school in a year.

(f) "Employment outcome" means, with respect to the individual, entering, advancing in, or retaining full-time, or, if appropriate, part-time competitive integrated employment, including customized employment, self-employment, telecommuting, or business ownership, or supported employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(g) "Individualized plan for employment" or "IPE" means an individualized plan for employment as described in R 395.67 to R 395.71.

(h) "Michigan Rehabilitation Services or "MRS" means the part of a network of vocational rehabilitation programs across the United States authorized by the rehabilitation act of 1973, 29 USC 701 to 7961.

(i) "Part-time employment" means employment that is permanently assigned to an employee that is less than 30 hours of work per week.

(j) "Post-employment services" means one or more vocational rehabilitation services that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice."

(k) "Pre-employment transition services" or "Pre-ETS" means the required activities and authorized activities specified in 34 CFR 361.48(a)(2) and (3).

(l) “Rehabilitation technology” means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities.

(m) “Substantial impediment to employment” means that a physical or mental impairment hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual’s abilities and capabilities.

(n) “Vocational rehabilitation services” or “VRS” means those services, if provided to an individual, listed in 34 CFR 361.48, and, if provided for the benefit of groups of individuals, those services listed in 34 CFR 361.49.

R 395.53 Purpose.

Rule 3. (1) MRS shall assess, plan, develop, and provide vocational rehabilitation services for eligible individuals with disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, to prepare for and engage in competitive integrated employment and achieve economic self-sufficiency.

(2) MRS shall make available Pre-ETS statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

(3) MRS shall engage with employers to increase job opportunities for individuals with disabilities.

(4) MRS provides services in accordance with the provisions of an IPE. Each IPE must be designed to achieve a specific employment outcome that is selected by the customer consistent with the customer’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Each IPE must include a description of the specific vocational rehabilitation services needed to achieve the employment outcome. Services provided must be needed to achieve the customer’s employment outcome and must be provided at the least cost, and of sufficient quality, to meet the individual’s rehabilitation needs.

R 395.54 General requirements.

Rule 4. (1) MRS shall not discriminate on the basis of race, religion, age, national origin, color, height, weight, marital status, sex, sexual orientation, gender identity or expression, political beliefs, disability, participant status in a workforce innovation and opportunity act-funded program, or discriminate against certain non-citizens as defined by section 188 of the workforce innovation and opportunity act, 29 USC 3248.

(2) MRS shall not impose, as part of determining an individual’s eligibility for vocational rehabilitation services, a duration of residence requirement that excludes any applicant who is legally present in this state.

(3) Throughout the individual’s rehabilitation program, every opportunity must be provided to the individual to make informed choices regarding the rehabilitation process. MRS shall maintain documentation of opportunities for making informed choices in the individual’s case record.

(4) MRS shall establish and maintain a case record for each individual and recipient of vocational rehabilitation services, which includes data necessary to comply with MRS and federal Rehabilitation Services Administration requirements.

(5) MRS shall make administrative decisions about the district and office boundaries in which individuals are served. Individuals do not have a right to select the office or district in which they are served or the counselor who will serve them.

(6) Individuals are served in geographic MRS districts and offices according to their residence. Individuals who change their residence may have the option to have their cases transferred, with supervisory approval, to the district or office to which they have moved.

(7) Individuals have the right to appeal the denial of a request to change counselors within an office.

(8) Case service expenditures, whether assessment or IPE services, require written authorization by MRS before or simultaneously with the initiation of the service. Retroactive authorizations are allowed if the MRS customer made reasonable efforts to ensure MRS was able to provide the service and failure to authorize payment for services is due to MRS error or delay.

(9) Goods and services must be provided subject to the statewide availability of funds. Each IPE must be developed and implemented in a manner that gives the individual the opportunity to exercise informed choice in selecting the vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided, and the entity or entities that will provide the vocational rehabilitation services.

(10) When appropriate, MRS counselor shall provide the referral necessary to support the individual with disabilities in securing needed services from other agencies and organizations.

(11) The MRS counselor shall inform each individual of the right to obtain review of determinations made by MRS that affect the provision of vocational rehabilitation services, including the right to pursue mediation and provide applicants and eligible individuals with notice of the availability of the CAP to assist the applicant or recipient during mediation sessions or impartial due process hearings.

R 395.65 Rescinded

R 395.76 Rates of payment.

Rule 26. (1) MRS shall maintain a fee schedule for select vocational rehabilitation services. The fee schedule is a complete list of established rates of payment used to authorize and pay for specified services.

(2) The MRS fee schedule for vocational rehabilitation services is not absolute and MRS shall allow exceptions to the fee schedule so that individual needs can be addressed. The MRS fee schedule for vocational rehabilitation services must not be so low as to effectively deny an individual a necessary service.

(3) MRS shall authorize for services not listed on the fee schedule at the least cost to MRS that will ensure sufficient quality of services to meet the individual's vocational rehabilitation need.

(4) MRS shall not place an absolute dollar limit on specific service categories or on the total services provided to an individual.

(5) MRS is not responsible for the cost of out-of-state services in excess of the cost of in-state services if either service would meet the individual's vocational rehabilitation needs.

R 395.79 Requirements for closing the record of services of an individual who has achieved an employment outcome.

Rule 29. The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

(a) The individual has achieved the employment outcome that is described in the individual's IPE.

(b) The employment outcome is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(c) The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(d) The individual and MRS counselor consider the employment to be satisfactory and agree the individual is performing well on the job.

(e) The individual is informed through appropriate modes of communication of the availability of post-employment services.

R 395.83 Rescinded.

FILED WITH SECRETARY OF STATE

ON 3/13/24 AT 12:22 P.M.