# Item 9 Attachment: Fair Hearing and Mediation Decision Summaries

**Item Type: Information and Discussion**

**Background**

Title 34 CFR 361.16 “Establishment of an independent commission or a State Rehabilitation Council” requires that the designed State unit [DOR] transmit to the SRC “Copies of due process hearing decisions issued under this part and transmitted in a manner to ensure that the identity of the participants in the hearings is kept confidential.”

On March 8, 2023, during the SRC’s quarterly meeting, Cruz Fresquez, Associate Governmental Program Analyst, DOR Office of Legal Affairs, will review consumer fair hearing and mediation decision summaries from April 2021 – September 2022. The trends from the fair hearing and mediation decisions may inform future SRC policy recommendations.

**Policy Question**

* *Are there trends from the recent consumer fair hearing and mediation decisions that should be considered as the SRC develops policy recommendations regarding the effectiveness of VR services?*

**Attachments:**

[Summary of Fair Hearing Decisions for Federal Fiscal Year 2020-2021](#_Summary_of_Fair)

(April 1, 2021 through September 30, 2021)

[Summary of Fair Hearing Decisions for Federal Fiscal Year 2021-2022](#_Summary_of_Fair_1)

(October 1, 2021, through September 30, 2022)

**California Department of Rehabilitation**

# Summary of Fair Hearing Decisions for Federal Fiscal Year 2020-2021

**(April 1, 2021 through September 30, 2021)**

# 1. OAH Number 2020060467 & 2021020665 (Santa Barbara District)

**Impartial Hearing Officer: David B. Rosenman**

**Decision Date: July 19, 2021**

**Applicable Regulations: California Code of Regulations, title 9, sections 7024.7, 7029, 7029.6, 7029.7, 7029.9, 7131, 7149, 7174**

This appeal was granted in part. Appellant is a DOR consumer who used a two-wheel power scooter for mobility. Appellant’s April 9, 2021 Individualized Plan for Employment (“IPE”) indicated that DOR would fund for assistive technology devices and durable medical equipment. DOR submitted information on two-wheel scooters available on Amazon, which is a DOR vendor, and three-wheel scooters. DOR recommended a three-wheel scooter that it asserted was easier to balance, safely use, and could be taken apart for easier transport. However, appellant did not like the idea of a three-wheel scooter, was not satisfied, and was interested in two two-wheel scooters that were not DOR vendors. Appellant also wanted DOR to provide a laptop computer with at least 8 GB RAM, as DOR’s previously provided computer of 4 RAM was not suitable to achieve her employment outcome. Appellant proceeded to fair hearing.

The Impartial Hearing Officer determined that while DOR recommends a three-wheel scooter based on its observations of appellant’s limitations while operating a two-wheel scooter, appellant provided sufficient evidence from properly qualified and knowledgeable professionals, such as her physicians and physical therapist, recommending a two-wheel scooter. DOR was therefore ordered to provide appellant with a two-wheel scooter, although it was determined that appellant’s objections to the scooters available from Amazon were insufficient. It was determined that DOR could select a scooter from a DOR vendor. In addition, appellant established that the laptop with 4 GB of RAM was inadequate, and DOR was ordered to purchase appellant a lightweight laptop computer with 8 GB of RAM.

# 2. OAH Number 2021070524 (San Diego District)

**Impartial Hearing Officer: Kimberly J. Belvedere**

**Decision Date: August 10, 2021**

**Applicable Regulations: California Code of Regulations, title 9, sections 7029.7, 7029.9, 7142, 7143, 7179, 7355, 7356**

Appellant has been a client of DOR since September 2019. Appellant expressed interest in a program at a local community college, and between October 2019 and April 2020 e-mail communications and other documents show that DOR was working with appellant on appellant’s goals. Regular virtual meetings occurred between DOR and appellant between September 2020 and February 2021. In February 2021 appellant claimed to be recovering from a surgery and could not complete the vocational assessment, and by May 24, 2021, DOR sent an e-mail to appellant expressing intent to close the case. This was due to both a lack of appellant’s availability to complete the vocational assessment as well as COVID-19 closures. Appellant then agreed to participate in a vocational assessment. On June 21, 2021, through June 25, 2021, appellant participated in a vocational assessment, and the case was not closed. However, appellant requested a fair hearing asserting, among other things, that DOR’s closure policy lacked due process.

The Impartial Hearing Officer determined that appellant’s fair hearing request was difficult to comprehend and that only case closure was appropriate to address at the fair hearing process. Although DOR was going to close appellant’s case several months ago due to non-participation by appellant and delay issues connected to the COVID-19 pandemic, it did not, and appellant has a vocational rehabilitative services case currently open with DOR. It was determined that the reason why DOR chose not to close the case is irrelevant for purposes of the hearing; the purpose of the hearing was to determine if the case was improperly closed. As it was not, there was nothing in the hearing with respect to this issue that needed to be resolved. The appeal was denied.

**California Department of Rehabilitation**

# Summary of Fair Hearing Decisions for Federal Fiscal Year 2021-2022

**(October 1, 2021, through September 30, 2022)**

# 1. OAH Number 2021070947

**Impartial Hearing Officer: Jennifer M. Russell**

**Decision Date: October 11, 2021**

**Applicable Regulations:** **California Code of Regulations, title 9, sections 7160.5(c), 7311, and 7312**

This appeal was denied. Appellant is a consumer with an Individualized Plan for Employment (IPE) since July 2019. Appellant’s IPE required prior approval for all purchases, which is required in all IPEs of DOR consumers. In the winter of 2020-2021, Appellant followed prior approval procedures and purchased two items. In March 2021, Appellant’s IPE was revised by Appellant’s Qualified Rehabilitation Professional (QRP) to include language that did not require prior approval before purchasing certain services and items. In June 2021, Appellant purchased software without obtaining prior approval. The DOR initially denied the request, but Appellant cited the language of the revised IPE. The purchase was approved by DOR, as the Appellant had not made the mistake in drafting the IPE’s revised language. After informing Appellant that the IPE must be corrected, DOR sent an amendment to the IPE with standard prior approval language. Appellant refused to sign and on July 12, 2021, requested a fair hearing.

At the fair hearing, the Impartial Hearing Officer concluded that regulations prohibit DOR from reimbursing purchases of vocational goods without prior approval. Prior approval can only be waived in limited circumstances which did not apply to Appellant’s case. Therefore, the appeal was denied.

# 2. OAH Number 2021080678

**Impartial Hearing Officer: Jami A. Teagle-Burgos**

**Decision Date: November 8, 2021**

**Applicable Regulations: California Code of Regulations, title 9, sections 7128, 7131(a), 7154(a), 7155, and 7156**

This appeal was granted. Appellant is a consumer seeking tuition to attend a private university in another country. In June 2021, Appellant and his case worker created a draft Individualized Plan for Employment (IPE), which laid out the goal of working for a multinational company to oversee commerce between the United States and Italy. To facilitate this goal, Appellant and his caseworker decided on a major of international business and a minor of Italian studies. Appellant reviewed community colleges, in-state universities, and out-of-state programs. No program had the exact curriculum desired except a university in another country. He was accepted into the private university, as well as other private schools in other states but they lacked his specific curriculum. Appellant made an informed choice to attend the university in another country. In July 2021, Appellant received a denial letter for his draft IPE, stating that comparable programs existed in public colleges and universities in California. On July 22, 2021, Appellant requested Administrative Review of the IPE denial. In the Administrative Review, DOR upheld its decision on August 13, 2021. On August 16, 2021, Appellant filed a fair hearing request.

At the fair hearing, the Impartial Hearing Officer held that DOR must provide tuition to Appellant because the international private school’s curriculum was essential to the success of Appellant’s IPE because the school offered courses not available at an in-state university or community college. Further, since Appellant was taking classes in his major in the first year, and not just general education courses, DOR could not limit the funding to the community college rate during the first two years. The Impartial Hearing Officer held that DOR must pay for or reimburse tuition at the University of California rate for all four years. Therefore, the appeal was granted.

# 3. OAH Number 2021080258

**Impartial Hearing Officer: Debra D. Nye-Perkins**

**Decision Date: November 23, 2021**

**Applicable Regulations: California Code of Regulations, title 9, sections 7029(2)(B), 7128, 7129(a)(2), 7130(a)(3)(A)(B), and 7179.3**

This appeal was denied. Appellant was a consumer of DOR services and appealed the closure of his case. Appellant’s Individualized Plan for Employment (IPE) expired in December 2020. In 2021, DOR began updating Appellant’s IPE and reached out to him to participate in the drafting of the IPE. Appellant expressed an interest in self-employment to operate an automotive alternative transportation dealership. This substantial change required DOR to assess Appellant’s ability to work successfully in this self-employment setting. Appellant’s counselor reached out numerous times between December 2020 and May 2021 to participate in drafting and signing the new IPE. In May 2021, Appellant’s counselor informed Appellant that if he wanted to continue receiving DOR services that he needed to sign an updated IPE. Appellant refused and accused DOR of “false promises” and lying to him. On July 2, 2021, DOR sent a Closure Report advising Appellant that DOR was closing his case because Appellant had not signed his IPE or cooperated with updating it. On July 22, 2021, Appellant sent an email to DOR’s Appeal Unit accusing DOR of discrimination and unspecified federal and state crimes. An initial hearing was held on September 27, 2021, but was continued due to Appellant needing to seek medical attention. Appellant did not appear at the continued hearing on October 25, 2021, despite receiving advanced notice of the hearing.

At the fair hearing, the Impartial Hearing Officer held that DOR had complied with case closure requirements because Appellant failed to cooperate with DOR in the IPE drafting process and his original IPE had expired. Impartial Hearing Officer concluded that because Appellant’s original IPE had expired and he failed to cooperate with DOR to draft a new IPE that DOR had good cause to close his case. Therefore, the appeal was denied.

# 4. OAH Number 2021100224

**Impartial Hearing Officer: Debra D. Nye-Perkins**

**Decision Date: December 7, 2021**

**Applicable Regulations: California Code of Regulations, title 9, sections 7029.6, 7029.7, 7029.9, 7128, 7130(a)(3)(A)(B)**

This appeal was denied. Appellant is a consumer and appealed the decision to transfer her case to a different district office. Appellant is a Spanish-speaker and required a Spanish-speaking counselor. On March 3, 2020, Appellant requested to be assigned to a different Spanish-speaking counselor because she alleged that her assigned counselor was not qualified and was disrespectful to her. On April 8, 2020, DOR assigned another Spanish-speaking counselor from a different location because no other Spanish-speaking counselors were at the original district office. The new counselor attempted to complete an Individualized Plan for Employment (IPE) and secure childcare services for Appellant. Appellant’s chosen childcare service provided incorrect information on the form for approval and was never approved, despite repeated attempts by DOR to correct the issue. Appellant became frustrated with DOR. In August 2021, DOR reached out by sending job links and requesting information on Appellant’s current situation to assess her vocational needs. Appellant’s counselor requested to be removed from her case after Appellant insulted her, used “vulgar comments” and had a negative attitude. The counselor was the only Spanish-speaking counselor in the new location, so DOR informed Appellant that they would transfer her case to a third location. On September 7, 2021, Appellant was informed that she would not have to travel to the third location and the original district office would be used for in-person visits. On September 15, 2021, Appellant agreed to the transfer during a video conference call with several DOR staff. On September 21, 2021, Appellant informed DOR that she was voluntarily closing her case. Appellant then appealed the transfer decision.

At the fair hearing, the Impartial Hearing Officer concluded that Appellant failed to establish that DOR improperly transferred her case. The Impartial Hearing Officer reasoned that DOR had attempted to provide her services at the first two offices, but Appellant was not cooperative with those efforts as she had engaged in name calling and did not answer necessary questions. Moreover, the evidence showed that Appellant agreed to the transfer and then voluntarily chose to close her case. Therefore, the appeal was denied.

# 5. OAH Number 2021100473

**Impartial Hearing Officer: Alan R. Alvord**

**Decision Date: December 9, 2021**

**Applicable Regulations: California Code of Regulations, title 9, sections 7128, 7154(a), 7154, 7155, 7156, 7161, 7191(c)(8), 7303, and 7311**

This appeal was denied. Appellant is a consumer who sought funding for tuition at a vocation program and the full cost of Uber/Lyft rides to and from the vocational school. Appellant’s Individualized Plan for Employment (IPE) is to become a visual effects artist and enrolled in a private vocational program that specializes in training individuals with Appellant’s disability in visual effects. The program Appellant wanted to attend was not approved by the Bureau for Private Postsecondary Education (BPPE), so DOR could not fund the tuition as a matter of law. Instead, DOR suggested that Appellant attend a nearby community college program in film production. Appellant declined because the public program lacked training in visual effects. Due to his disability, Appellant cannot take public transit and Appellant’s school of choice is over 70 miles from his home. Appellant requested the funding of a ride-share to and from campus. The cost was estimated at roughly $343 per day or $21,266 per semester. DOR determined that this was too high to fund. Appellant also requested a computer and software related to the program he had elected to attend. Initially, DOR also declined the computer and software requests. Appellant requested Administrative Review, which took place on November 10, 2020. The decision not to fund the visual artist program at the private institution was affirmed and DOR stated they gave the institute the information to apply to become a BPPE approved vendor. After review, DOR approved the purchase of a laptop, monitor, equipment, software, and assistive technology as well as a reimbursement for broadband internet. In August 2021, Appellant’s parents informed DOR that Appellant had chosen to go to the unapproved program and asked for transportation guidance. On September 13, 2021, DOR and Appellant’s parents had a conversation about transportation wherein DOR agreed to a flat rate of $1,660 for every month Appellant attended school. On October 11, 2021, Appellant requested a fair hearing and mediation after DOR denied Appellant’s request for tuition and Uber/Lyft transportation costs.

At the fair hearing, the Impartial Hearing Officer concluded that Appellant failed to establish that DOR should provide tuition costs because the program is not approved by BPPE so DOR cannot provide any funding by law. The Impartial Hearing Officer further concluded that DOR is only required to fund transportation at a per mile basis at a rate established by DOR. Therefore, the appeal was denied.

# 6. OAH Number 2021020546

**Impartial Hearing Officer: Eric Sawyer**

**Decision Date: December 28, 2021**

**Applicable Regulations: California Code of Regulations, title 9,**  **sections 7141, 7161, 7162(a), 7162.3, and 7197(c)**

This appeal was granted in part and denied in part. Appellant is a consumer who attended university in accordance with his Individualized Plan of Employment (IPE). Appellant began enrolling in classes in August 2019 and requested to know how much DOR would fund before he enrolled in classes. The DOR responded that it could not estimate until it knew how much Appellant would receive in grant funding. From June to August 2019, DOR staff sent Appellant emails and had telephone conversations requesting information about his financial aid and parking permit. On August 29, 2019, DOR informed Appellant that his grant funding should cover all tuition costs including transportation and thus DOR was not required to fund the parking permit. Moreover, the university had a shuttle available which was covered by tuition. On September 3, 2019, Appellant sent an email to DOR requesting a copy of his complete case file and to examine the documents in person within 30 calendar days. Appellant filed a request for a fair hearing in February 2021.

At the fair hearing, the Impartial Hearing Officer concluded that DOR was required to provide Appellant his case file at no cost because Appellant testified that he never received his case file and DOR provided no proof of delivery of his file. The Impartial Hearing Officer further concluded that Appellant’s request for retroactive transportation payments was denied as testimony showed there was grant money which could have been used to pay for transportation costs and DOR is not obligated to pay transportation costs when grant money can be used.

# 7. OAH Number 2021060703

**Impartial Hearing Officer: Deena R. Ghaly**

**Decision Date: December 30, 2021**

**Applicable Regulations: California Code of Regulations, title 9, sections 7029.6, 7130, 7155, and 7311**

This appeal was denied. Appellant is a consumer who attends an out-of-state private university for which DOR provides partial tuition at a public-school rate, per the terms of an Individualized Plan for Employment (IPE). Appellant claimed that a DOR employee assured him that DOR would pay for full tuition. Appellant requested a fair hearing to determine whether DOR should fund his tuition in full. A hearing was held on this issue on October 15, 2021, and the Impartial Hearing Officer allowed both parties to submit post-hearing submissions. Neither party served proofs of service with their submissions. The Impartial Hearing Officer re-opened the record on November 30, 2021, and ordered DOR to file proofs of service of their submissions and the Appellant was directed to file all submissions with the Office of Administrative Hearings (OAH) and provide proofs of services to DOR. Neither party complied with the order and thus no submissions were considered. Appellant had based his case upon a purported letter sent to him by a DOR employee, but never produced such a letter to OAH.

At the fair hearing, the Impartial Hearing Officer concluded that Appellant failed to demonstrate that no public graduate program could meet the needs stated in his IPE, or that the private institution was cheaper overall, or that no public institution was available, or that attending a public institution would cause significant delay. Therefore, the appeal was denied.

# 8. OAH Number 2021100710

**Impartial Hearing Officer: Jessica Wall**

**Decision Date: February 3, 2022**

**Applicable Regulations: California Code of Regulations, title 9, sections 7006(a), 7029.6(c)(10), 7128, 7130(a)(2), 7131, 7136.5(c), 7137(a), 7155, and 7196**

This appeal was denied. In May 2020, DOR determined Appellant was eligible for services. Appellant was sent a Notice of Eligibility which informed her about the steps to develop an Individualized Plan for Employment (IPE). On May 26, 2020, DOR staff and Appellant discussed her goal and IPE. Appellant reviewed her IPE and signed it. The IPE provided for employment services and clothing through a local vendor. Further, the IPE also specified that DOR would not fund personal expenses. The IPE also stated that no reimbursement is available for purchases which are not pre-approved by a DOR counselor. Appellant requested a laptop in November 2020, and DOR informed her that laptops are supplied if consumers are in training programs. Appellant then expressed interest in a training program but did not enroll in the training program suggested by her counselor because she believed she was overqualified. Her counselor then made an appointment for her to use a computer at a DOR facility. Appellant missed that appointment. Appellant then inquired about self-employment assistance, and her counselor supplied her with information and explained the requirements for assistance. One of the requirements was to submit a small business summary. Appellant never submitted a summary, nor did she seek assistance in creating one. On December 29, 2020, Appellant told her counselor that she no longer wanted to work with the district. The counselor then closed her case on December 31, 2020. Appellant filed a request for fair hearing on October 7, 2021. Appellant alleged that DOR improperly denied her informed choice in her IPE, denied her self-employment assistance, and denied her resources to achieve her employment goal or informed choice in her training program placement.

At the fair hearing, the Impartial Hearing Officer concluded that Appellant failed to prove that DOR improperly denied her informed choice because Appellant both read and signed her IPE and had all necessary information on her rights prior to signing. The Impartial Hearing Officer also concluded that Appellant failed to prove that DOR improperly denied self-employment assistance because she never submitted the required small business summary. Last, the Impartial Hearing Officer concluded that Appellant failed to prove that DOR improperly denied resources or informed choice in her training program placement because Appellant never enrolled in a training program to receive a laptop. Therefore, the appeal was denied.

# 9. OAH Number 2021110639

**Impartial Hearing Officer: Carmen D. Snuggs-Spraggins**

**Decision Date: February 16, 2022**

**Applicable Regulations: California Code of Regulations, title 9, sections 7149, 7154, 7155, and 7156**

This appeal was denied. Appellant is a consumer who sought full funding for tuition at a private university in California. Appellant’s Individualized Plan for Employment (IPE) is to become a social worker, which requires a Master’s in Social Work (MSW). On September 24, 2021, Appellant requested funding for an MSW program at a private school which is far more expensive than a University of California (UC) or California State University (CSU) program. The DOR denied funding at the private school rate and informed Appellant that she would be responsible for the overages between the UC rate and the private university rate. On November 2, 2021, Appellant and DOR had a conference call concerning the funding request and on November 5, 2021, DOR sent a letter to Appellant containing its findings. The findings were that Appellant applied for the private program without prior approval, that there are public institutions with an MSW program, and that DOR is not obligated to pay full tuition because private school tuition costs more than public school tuition. On December 17, 2021, Appellant’s counselor sent her a letter via email with an updated IPE, which included DOR’s agreement to fund Appellant’s private university tuition at the UC rate. Appellant did not sign and requested a fair hearing on December 26, 2021. On December 29, 2021, Appellant’s counselor sent another letter via email with links to available scholarships to help fund the difference between the UC rate and the private school tuition.

At the fair hearing, the Impartial Hearing Officer found that the program descriptions and the course descriptions for the California program and private school programs were comparable. The Impartial Hearing Officer found that Appellant provided compelling evidence that her needs could be better met at a small school like the private program, but she did not prove that a state school could not accommodate her needs. Moreover, the Impartial Hearing Officer found that Appellant did not receive prior approval to apply to the private school and thus was not entitled to full tuition funding. The Impartial Hearing Officer concluded that appellant failed to prove by a preponderance of the evidence that DOR was required to fund appellant’s tuition at the private school rate instead of the UC rate. Therefore, the appeal was denied.

# 10. OAH Number 2021120046

**Impartial Hearing Officer: Laurie R. Pearlman**

**Decision Date: February 22, 2022**

**Applicable Regulations: California Code of Regulations, title 9, sections 7029.6, 7029.9, 7131, and 7174**

This appeal was denied. Appellant is a consumer and is dissatisfied with DOR’s compliance with an Office of Administrative Hearings (OAH) order. Appellant’s Individualized Plan for Employment (IPE) was signed on April 9, 2021, and provides that DOR will fund assistive technology and durable medical equipment. In its previous order, OAH ordered DOR to purchase a scooter of DOR’s choice, a trailer for Appellant’s car to transport the scooter, and a lightweight laptop with 8 GB of RAM. For the laptop, Appellant wanted an HDMI port on the laptop and for the laptop to weigh less than two pounds. The DOR required Appellant to return her previous laptop which was provided by DOR. Appellant retained the original laptop and sent the new laptop back to DOR. As for the trailer, Appellant had purchased a newer vehicle which could not accommodate the installation of a hitch to hold the transporter for the scooter. A suggested option to secure the transport system for the scooter to the trunk of Appellant’s car was rejected by Appellant because she feared it would damage her car. No contracted vendors would install a transport or carrier option that Appellant desired due to her vehicle being unable to tow anything. Appellant located retail vendors who would install her preferred options, but those vendors cannot be used by DOR due to regulatory requirements.

At the fair hearing, the Impartial Hearing Officer concluded that DOR’s safety concerns with the scooter transport system was supported by evidence and DOR is not required to purchase equipment which it deems will pose safety hazards. The Impartial Hearing Officer further concluded that DOR’s 8 GB laptop is adequate for the intended purpose of assisting Appellant in finding a job. Therefore, the appeal was denied. However, the Impartial Hearing Officer ordered DOR to fund the purchase and installation of a scooter transport system that it deems safe, if requested to do so by Appellant. Further, if Appellant requests the 8 GB laptop back from DOR and returns her original laptop, then DOR shall provide her with the laptop and an HDMI adaptor.

# 11. SHD Number 104795905

**Impartial Hearing Officer: I. Shad**

**Decision Date: May 9, 2022**

**Applicable Regulations: California Code of Regulations, title 9 sections 7128, 7029, 7130, 7131, 7133, 7536, 7149, 7154, 7156, 7353.6, 7062, and 7179**

This appeal was granted in part and denied in part. Appellant requested review regarding DOR’s decision not to grant her request to change her vocational goal and authorize training, academic study, and supplies towards the new vocation. Appellant made a number of purchases that were not authorized by her DOR counselor. Appellant also sought to amend her vocation, and Individualized Plan for Employment (IPE), from an administrative focused-one to one in which she would train individuals to become counselors. This new position would require additional training, study, and materials.

On February 16, 2022, Appellant filed the request for mediation and a hearing to challenge DOR’s decision not to amend her IPE to reflect the new goal. Appellant also challenged DOR’s decision not to reimburse her for these purchases and not to authorize the future purchase of a number of additional items meant to assist with the new vocation. The DOR’s decision was not disturbed because Appellant could not prove these purchases were necessary to achieve her original employment goal. Appellant testified the IPE was the one she signed, and the most current, but that it was not her primary plan and her goal had always been furthering her education. The Impartial Hearing Officer found the IPE stated the goal of administrative employment and therefore DOR did not breach the IPE. The Impartial Hearing Officer also ordered DOR to conduct an assessment pursuant to established regulations to determine if the Appellant’s IPE ought to be amended.

# 12. SHD Number 104799518

**Impartial Hearing Officer: Roland Aganon**

**Decision Date: May 10, 2022**

**Applicable Regulations: California Code of Regulations, title 9 sections 7004.6, 7060, 7062, and 7179**

This appeal was denied. Appellant suffers from a major psychiatric disability and admitted to driving problems. After being previously found eligible for services, Appellant requested DOR support for a training program to become a truck driver. As DOR attempted to evaluate Appellant, based on medical records, it recommended evaluation by a psychologist, and Appellant refused this and became agitated regarding DOR’s concerns relating to his ability to perform the functions of a truck driver. Due to Appellant’s untreated and severe mental health condition, DOR closed Appellant’s case. The DOR encouraged Appellant to reapply for services once Appellant and his physician could make a determination that Appellant is stable enough to participate in employment services.

The Impartial Hearing Officer held the Appellant had declined to participate in DOR’s eligibility determination process. Appellant had not demonstrated he established and was participating in treatment to address and stabilize his mental health condition. While Appellant testified he was receiving care he could not provide significant details include medicines and the names of his psychiatrists or psychologists. Meanwhile, DOR had demonstrated, by a preponderance of the evidence, that Appellant’s mental condition was not stable and truck-driving would not be suitable, and DOR appropriately closed the case.

# 13. SHD Number 104803881

**Impartial Hearing Officer: T. Jensen**

**Decision Date: June 2, 2022**

**Applicable Regulations: California Code of Regulations, title 9 sections 7130 and 7154**

This appeal was denied. Appellant challenged DOR’s denial of his proposed Individual Plan for Employment (IPE) which involved doctorate level education. Appellant already has a master’s degree in counseling and returned to school to achieve a doctoral degree in Educational Leadership. Subsequently, Appellant applied for DOR vocational rehabilitation services and was deemed eligible based on a physical disability. Appellant also claimed his current position was an impediment to the employment he is seeking. He is currently employed with a state agency and provides counseling services to individuals with disabilities.

At the hearing, the DOR decision was upheld because Appellant had not presented sufficient evidence to show he was eligible for these services and the degree would substantially further his employment. The Impartial Hearing Officer also noted he failed to engage in the interactive process with the current employer to discuss reasonable accommodations and the potential opportunity for remote quality service delivery. Therefore, he was not experiencing a substantial impediment to employment such that DOR services were warranted. The DOR also found the two positions were substantially similar and offered the benefit of being able to be performed remotely and being sedentary, thus accommodating Appellant’s disability. The Impartial Hearing Officer found DOR presented sufficient evidence to sustain that point. Appellant’s current position and qualifications also provided for upward mobility and an advanced degree was not necessary.

# 14. SHD Number 104807775

**Impartial Hearing Officer: E. Ammann**

**Decision Date: June 13, 2022**

**Applicable Regulations: California Code of Regulations, title 9 sections** **7019**, **7131**, **7149**, **7154**, **7174**, **and 7351**

This appeal was denied. Appellant alleged that DOR had a conflict of interest, improperly called the CHP to have Appellant falsely arrested, improperly contacted his employer without his consent, and caused a delay in services due to short staffing. The Appellant requested a state hearing.

At the hearing, the Impartial Hearing Officer concluded that although Appellant may be dissatisfied with the services provided, there was no evidence of a conflict of interest. It was determined that a preponderance of the evidence established that DOR did not act improperly when DOR called the CHP, because Appellant arrived at the DOR location without an appointment and became irate, belligerent and verbally abusive to DOR staff when his demands were not immediately met. The documentary evidence produced by DOR established that Appellant gave DOR written consent to contact his employer, and that no evidence was produced to support Appellant’s position that he rescinded his consent. The Impartial Hearing Officer also determined that a preponderance of the evidence, including documentary and testimonial evidence, established that DOR had not caused a delay in services.

# 15. SHD Number 104809015

**Impartial Hearing Officer: Mark Hammon**

**Decision Date: June 28, 2022**

**Applicable Regulations: California Code of Regulations, title 9 sections 7170, 7301.5, 7310, 7311, 7321, and 7322**

This appeal was denied. Appellant challenged DOR’s denial of his request for payment to a doctor who assisted him with an application. Appellant alleged he received authorization from his DOR counselor to work with a private tutor because she was having difficulty locating one for the program Appellant was interested in. This authorization was not written, and Appellant never sought to have it memorialized in writing. His Individual Plan for Employment (IPE) stated tutoring services would be provided by a DOR vendor and he acknowledged understanding the need to obtain prior written approval before obtaining services that were to be reimbursed by DOR.

The Impartial Hearing Officer determined it was bound by DOR’s governing regulations and did not have the authority to dispose of legal requirements they imposed. The regulations called for written authorization to be provided and that the provider be vendorized with DOR prior to be able to provide services and be paid by DOR. None of these requirements were met and therefore the claim for payment was properly denied. The Appellant could not rely on equitable estoppel to prevent DOR from reneging the verbal authorization because he was knowledgeable as to the authorization process and evidence demonstrated he was fully informed of this rule.

# 16. SHD Number 104817621

**Impartial Hearing Officer: Mary Riley**

**Decision Date: July 19, 2022**

**Applicable Regulations: California Code of Regulations, title 9 sections 7128, 7029.7, 7029.9, 7130, 7131, 7133, 7149, 7154, 7156, 7353.60, and 7536(e)**

This appeal was granted by stipulation. The dispute was resolved through an agreement between DOR and the Appellant. The DOR was ordered to refer the Appellant for an adaptive technology/assistive technology assessment specifically to address whether a PC or a Mac computer is more appropriate for the Appellant’s needs. Appellant filed the hearing request to review DOR’s denial of a laptop to assist with educational goals, and Appellant requested a Mac laptop. The DOR requested additional information as to the specific services and functionality Appellant required and Appellant stated he believed Mac was better but provided no other information. The DOR agreed to refer Appellant to a more specialized DOR office, in order to be more responsive, and conduct the assistive technology assessment.

# 17. SHD Number 104821340

**Impartial Hearing Officer: Mary Riley**

**Decision Date: August 8, 2022**

**Applicable Regulations: California Code of Regulations, title 9 sections 7354(a)(1) and (a)(3)**

This appeal was denied. Appellant requested a hearing based on dissatisfaction with the state hearing process and the Impartial Hearing Officer’s decision in case number 10480775. In his original complaint, Appellant alleged that DOR breached its contract, failed to provide education, had staffing issues, and failed to provide a job coach within jurisdiction.

Prior to the decision in case number 10480775 being rendered, Appellant filed the request for mediation and a fair hearing in the present matter, alleging many of the same claims as the prior hearing, as well as new, but similar, allegations regarding DOR and its staff. At the outset of the hearing, Appellant stated his primary issue on appeal was the prior decision in case number 10480775. The Impartial Hearing Officer denied this petition because the exclusive remedy available to Appellant was to petition the superior court.

# 18. OAH Number 2022010521

**Impartial Hearing Officer: Joseph D. Montoya**

**Decision Date: August 24, 2022**

**Applicable Regulations: California Code of Regulations**, **title 9**  **sections 7129, 7142, 7143, 7311, 7312, and 7351**

This appeal was granted in part. Appellant alleged that DOR improperly failed to provide him with reimbursement for approved laptop accessories. Appellant also wanted a different Individual Plan of Employment (IPE), one appropriate to his goal of a professional stack developer. In addition, Appellant demanded that DOR provide equipment, software, services, and support needed to perform the desired IPE. Appellant also demanded mentorship and guidance with a professional software developer, and that DOR needed to retrieve a non-functioning laptop by a method that would leave a receipt in his hands. Appellant also demanded a case transfer. Appellant requested a fair hearing.

The Impartial Hearing Officer concluded that the confusion Appellant engendered in his case did not support his claim that he had a well-articulated employment goal. Appellant had not established that the reimbursement was improperly denied, because Appellant made expenditures before obtaining DOR’s consent. It was determined that a binding IPE was created on September 13, 2021, and that even though it was not amended, DOR was amenable to placing Appellant with a new IPE. Therefore, Appellant’s request for a transfer and new IPE was granted and the parties were ordered to undertake the development of a new IPE with DOR’s information technology team. It was concluded that the documentary evidence did not support Appellant’s claim that DOR improperly denied him with equipment, software, services, and support he demanded for his efforts to train as a vertical stack developer. This was because DOR tied purchases to the current IPE requirements, and if Appellant wanted them for something else, it could not be found he enunciated that in a clear manner. Appellant did not establish that DOR must retrieve the laptop computer by a method that leaves a receipt in his hands in exchange for the equipment, because no regulation had been cited that would require this demand to be met.

# 19. SHD Number 104827493

**Impartial Hearing Officer: K. Turner**

**Decision Date: September 8, 2022**

**Applicable Regulations: California Code of Regulations, title 9 sections 7019(a)(2), 7174, and 7177**

This appeal was denied. Appellant is a consumer who demanded payment of rent for his apartment for three years while he attends law school in accordance with his Individual Plan of Employment (“IPE”). DOR denied payment of rent and asserted that DOR does not pay for housing for college students because housing is considered a “long term” or “ongoing” everyday expense. Appellant requested a hearing.

At the hearing, the Impartial Hearing Officer concluded that California Code of Regulations, title 9, section 7019, subdivision (a)(2) provides that DOR may fund, “the cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual’s home.” However, section 7019, subdivision (c), then states “nothing in this section shall be construed to mean that the Department will provide maintenance on a long-term basis to support an individual’s everyday living expenses or take the place of, provide services of, or become a payment program similar to, welfare and other social service agencies.” California Code of Regulations, title 9, section 7177, subdivision (b), is also clear that DOR “may not provide maintenance to support an individual’s basic living expenses.” Section 7177, subdivision (d) further states “maintenance payments to an individual are limited to actual expenses in excess of normal living expenses.” The Impartial Hearing Officer held that the regulations regarding “maintenance” do not permit DOR to pay Appellant’s rent for an apartment he resides in during law school. Appellant’s apartment rental is not temporary, short-term, or a one-time payment, but is instead a long-term normal living expense, which DOR may not fund.