**Item 9 – Redacted Decisions from Federal Fiscal Year 2022-2023**

**(October 1, 2022 – September 30, 2023)**

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# Hearing No. 104839366-751SUMMARY

The denial of the Department of Rehabilitation (the DOR and/or the Department) of Appellant’s request for transportation supportive services in the form of a rental vehicle for travel to and from Appellant’s law school classes is sustained. The DOR shall redetermine Appellant’s need for transportation to and from law school classes by considering whether a publicly owned or contracted mode of transportation was not readily available or would cause undue hardship to Appellant pursuant to applicable laws, including California Code of Regulations., tit. 9, section 7162 (b)(2).

The DOR’s denial of Appellant’s request that DOR pay his housing ongoing utility expenses while he attended law school is sustained.

The DOR’s denial of Appellant’s request for 2 made-to-measure business suits, 5

made-to-measure dress shirts, and 2 dress shoes is sustained. As agreed at hearing by the DOR District Administrator and the DOR Team Manager at hearing, the DOR shall provide Appellant with 2 made-to-measure business suits, 2 made-to-measure dress shirts, and 2 dress shoes by making reasonable efforts pursuant to applicable informed choice requirements to assist Appellant in exercising an informed choice of the least expensive alternatives– which meet Appellant’s made-to-measure needs.

The appeal is, otherwise, denied. [1960-3][1950-2]

## FACTS

On August 25, 2022, the Appellant requested a mediation and a hearing with the State Hearings Division (SHD) to dispute denials by the Department of Rehabilitation (the DOR and/or the Department) of Appellant’s request for:

1. Transportation expenses in the form of a rental vehicle for travel to and from the Appellant’s classes at law school;
2. Ongoing assistance with paying the Appellant’s residential utilities; and
3. Expenses for clothing to include a tailor-made suit, shirts, and dress shoes.

The Appellant and the DOR representative failed to resolve the above issues in dispute at a mediation hearing.

On September 29, 2022, a state hearing was held on this matter. At this hearing, the Appellant, a DOR hearing representative, DOR Senior Vocational Rehabilitation Counselor-Qualified Rehabilitation Professional (SVRC-QRP) [T {first initial only}], and Department District Administrator [J {first initial only}] appeared by telephone. The Administrative Law Judge admitted the documents submitted by the parties into the record of the hearing, including: (1) the DOR Statement of Position (SOP); and (2) a copy of a September 26, 2022 letter from [B {first initial only}] physician assistant (PA-C) at provider PNS [full name omitted] Specialists.

The Department SOP stated, in pertinent part, that:

[1](#_bookmark0) “ISSUE:

1 Spelling and grammar errors, if any, in this quotation are not corrected.

The Appellant disagrees with the decision of the Department of Rehabilitation (DOR) to deny Appellant’s request for a transportation service of a rental car five days a week to attend their training program, ongoing maintenance payments to cover the living expense of utilities, and not receiving clothing that was previously agreed upon.

FACTS:

Re: Clothing- On November 22, 2021, Appellant sent an email to Senior Vocational Rehabilitation Counselor-Qualified Rehabilitation Professional (SVRC-QRP) [B {first initial only}] listing vendors of his choosing. In a response on the same date SVRC-QRP [B {first initial only}] let Appellant know he had mentioned the vendors before, and the department would […] make reasonable efforts to vendor the clothing provider of his choice. (Attachment 1)

Re: Clothing- On November 22, 2021, SVRC-QRP [B {first initial only}] sent a request to Service Coordinator [J {first initial only}] to reach out to Appellant’s chosen vendors to make a reasonable effort to vendor them. SC [J {first initial only}] provided a summary note on 12/28/21 with a list of dates and her efforts to vendor the businesses. She was not able get responses from the businesses. (Attachment 2)

Re: Clothing- On December 28, 2021, SC [J {first initial only}] sent an email to SVRC-QRP [B {first initial only}] explaining her efforts to reach the businesses on the Appellant’s list, and stating none of them have shown any interest in doing business with DOR. (Attachment 3)

Re: Clothing- On February 10, 2022, Appellant and Senior Vocational Rehabilitation Counselor-Qualified Rehabilitation Professional (SVRC- QRP) [T {first initial only}] had a phone meeting to cover various topics. One topic was clothing. SVRC-QRP [T {first initial only}] asked Appellant if he had been notified that DOR attempted to vendor the businesses on his list. He stated he didn’t know. **SVRC-QRP [T {first initial only}] let him know that he could use the Men’s Warehouse if his other choices are not able to vendor with DOR.** (Attachment 4)

Re: Clothing- On February 14, 2022, SVRC-QRP [T {first initial only}] sent Appellant an email updating him on the status of the attempts to vendor a business of his choice and stating an alternative business that will vendor with DOR. (Attachment 5)

Re: Utilities- On June 15, 2022, Appellant sent an email asking about funding for initial utility charges, among other things. On June 23 SVRC- QRP [T {first initial only}] sent an email confirming that DOR can assist with initial utility charges and instructions about sending quotes on initial set-up charges for utilities. (Attachment 6)

Re: Clothing and Transportation- On July 26, 2022, SVRC-QRP [T {first initial only}] sent an email to Staff Services Manager I [S {first initial only}] [S {first initial only}] to case note a virtual meeting with the Appellant two days prior. SVRC-QRP [T {first initial only}] informed SSMI [S {first initial

only}] of several topics that were discussed. The Appellant requested assistance with relocation/transportation costs to his college apartment in [city of residence]. Additionally, the Appellant brought up transportation when he moves to college. **In the meeting the Appellant had stated that his apartment was in walking distance of the college. He mentioned he might need transportation for such things as doctors’ visits and a school related ceremony**. SVRC-QRP [T {first initial only}] mentioned to Appellant that SVRC-QRP could check into a **vendor who could provide bus training** in the area. Appellant said he’s not very comfortable with buses. SVRCQRP thought perhaps with training he could be more comfortable. Appellant stated he will wait until he gets there to see.

## Additionally, clothing was a topic discussed. Appellant stated he would like to pursue getting clothing from Men’s Warehouse or perhaps another vendor near the college. The question was brought up about whether the clothing was meant to be for the Appellant’s internship which is now over. The Appellant stated that was originally the case, but he wants to get the clothing to be prepared. (Attachment 7)

Re: Transportation- August 2, 2022, the DOR sent the Appellant a check for the price of a U-Haul, gas and food for the day to move his belongings to his apartment at college. (Attachment 8 and 9)

Re: Transportation- On August 3, 2022, the Appellant sent an email to SVRC-QRP [T {first initial only}] forwarding an email from the school stating **some of his classes would be held at a campus further from his apartment.** The Appellant requested to “start the process for a mobility evaluation” because he was concerned that having to go to campus farther away may cause issues with using the bus. (Attachment 10)

Re: Transportation- On August 5, 2022, the Appellant and SVRC-QRP [T

{first initial only}] had a phone meeting. SVRC-QRP [T {first initial only}] enquired as to why the Appellant was requesting a mobility evaluation and if he has a physical disability. The Appellant explained he does not have a physical disability but has a mental disability that would make it difficult for him to take public transportation. SVRC-QRP explained that as far as she is aware the mobility evaluation is for individuals with physical disabilities and the focus of DOR is mainly for providing adaptations to a vehicle.

## Other possible options were discussed, including the Appellant checking with the school to switch his class section to classes that are only held at the closer campus. The Appellant planned to do this. (Attachment 11)

Re: Transportation- On August 8, 2022, SVRC-QRP [T {first initial only}] sent an email enquiring as whether the Appellant had been able to change his class section. He responded that he was waiting to hear back. The Appellant also asked for assistance on several points related to transportation. He asked for documents from DOR’s manual pertaining to mobility evaluations and asked for the District Administrator to send a decision, stating he would have to appeal the decision. The Appellant

asked for an alternative in the interim, stating it should be a vehicle rental. **Lastly the Appellant provided an explanation as to why other modes of transportation are not suitable. He [ci]ted sensory issues, the need for routines, risk of anxiety, depression, and social isolation. (Attachment 12)**

Re: Transportation- On August 9, 2022, SVRC-QRP [T {first initial only}] received an email from Appellant that **his class section was switched, and he would not have to take any classes at the distant campus**. SVRC-QRP [T {first initial only}] called and spoke to Appellant on the phone. SVRC-QRP [T {first initial only}] stated she would think he would not be pursuing a mobility evaluation now. **He agreed but stated he may need transportation to doctor's appointments. He mentioned the idea of a rental vehicle. QRP suggested we can check into paratransit which is a door-to-door bus transport**. (Attachment 13)

Re: Transportation- On August 10, 2022, SVRC-QRP [T {first initial only}] sent an email to Appellant with information regarding the paratransit service in his area and information about sending him a check equivalent to the amount of a bus pass for him to use for transportation costs. (Attachment 14)

## Re: Transportation- On August 11, 2022, SVRC-QRP [T {first initial only}] sent an email confirming sending Appellant a check for

**$70/mo. until he can get set up with paratransit services. He responded asking if the monthly check can continue if the paratransit services don’t work out**. He asked for a copy of the DOR manual sections related to transportation. (Attachment 15)

Re: Transportation- On August 15, 2022, SVRC-QRP [T {first initial only}] sent the Appellant an email to explain DOR policies. SVRC-QRP [T {first initial only}] stated that DOR is required to look at least costly options and comparable benefits. QRP [T {first initial only}] let him know to proceed with applying for paratransit services and provide SVRC-QRP [T {first initial only}] with updates and to send documentation if there is a denial of services. QRP [T {first initial only}] acknowledged she will get back him regarding sending items from the manual. (Attachment 16)

Re: Utilities- On August 22, 2022, the Appellant sent an email to Service Coordinator [J {first initial only}], copying SVRC-QRP [T {first initial only}], sending utility bills and requesting payment. QRP [T {first initial only}] responded explaining that DOR can only assist with initial set-up of utilities, not ongoing bills. QRP [T {first initial only}] sited the Rehabilitation Administration Manuel Chapter 12 (RAM 12) regarding Maintenance services. (Attachment 17)

Re: Transportation- On August 24, 2022, SVRC-QRP [T {first initial only}] emailed the Appellant RAM 15 Exhibit B Checklist for Proposed Vehicle Purchase, per his request. The checklist sites multiple California Code of Regulations (CCR) sections to follow when determining the need for a mobility evaluation. (Attachments 18 and 19)

Re: Utilities- On August 24, 2022, SVRC-QRP [T {first initial only}] sent the Appellant an email quoting the CCR’s related to not paying for ongoing utilities. (Attachment 20)

Re: Utilities, Transportation and Clothing- On August 24, 2022, the Appellant and SVRC-QRP [T {first initial only}] held a phone meeting. On the topic of utilities, the Appellant had requested to have his utility bills paid ongoing while in law school. QRP [T {first initial only}] explained that utilities are not paid by DOR because they are long-term [and] considered everyday living expenses. On the topic of transportation, the Appellant requested a rental vehicle. QRP [T {first initial only}] explained that DOR is required to consider the least costly options first and we are still looking at public transportation. QRP [T {first initial only}] reviewed with the Appellant information she gathered from calling the local bus company**. Regarding the topic of clothing, the Appellant explained there was an issue with the Men’s Warehouse because the business was asking DOR to pay up front, which is not acceptable for the state. The Appellant asked about other potential vendors in [location omitted] and whether DOR could send a check up front to the Appellant.** (Attachment 21)

On August 25, 2022, the Appellant sent an email to SVRC-QRP [T {first initial only}] requesting assistance with masks, in the exchange, the [A]ppellant said “I am really getting frustrated with the push back I keep getting for everything. Something so simple as masks. I am very tempted to file discrimination complaint and file an emergency action against the Department in the superior court.” The Appellant went on to ask, “Should I just file an administrative action for every request I make?” **The Appellant also listed various reasons why the buses don’t work and requested a meeting with the person making decisions. (Attachment 22)**

Re: Transportation, Utilities and Clothing- On August 25, 2022, the Appellant sent an email to SVRC-QRP [T {first initial only}], SSMI [S {first initial only}] and SSMII [J {first initial only}] requesting an administrative review for transportation, utilities and clothing. (Attachment 23)

Re: Transportation and Utilities- On August 26, 2022, the Appellant, SSMI [S {first initial only}] and QRP [T {first initial only}] met virtually. The Appellant stated he doesn’t understand why he would be denied utilities and compared it to internet, which DOR does support. SSMI [S {first initial only}] explained **that internet is directly related to his training and DOR does not pay ongoing utilities because they are a long-term everyday living expense**. Regarding transportation, the Appellant argued that transportation must be least costly AND reasonable. **He argued that the bus is not an accessible and reasonable option for him. He [c]ited issues of heat, time, an undiagnosed condition where he sweats more than most, and that there is no bus available for traveling back to his apartment rather only a walking option. The Appellant stated he believes the most reasonable option would be for DOR to provide him a rental vehicle. He stated he has an**

## appointment set with the paratransit services for an evaluation on 9/15. (Attachment 24)

Re: Clothing- On August 26, 2022, SVRC-QRP [T {first initial only}] requested Service Coordinator [J {first initial only}] to begin researching clothing vendors in […]. (Attachment 25)

## Re: Transportation- On August 29, 2022, the Appellant sent an email to SSMII [J {first initial only}], SSMI [S {first initial only}] and QRP [T

**{first initial only}] stating there is an upcoming heat wave and that he was almost hit by a car. (Attachment 26)**

Re: Transportation, Utilities and Clothing- On August 30, 2022, The Appellant’s fair hearing request posted.

## Re: Transportation- On August 30, 2022, SVRC-QRP [T {first initial only}] sent the Appellant an email informing him DOR will send him a check for the estimated amount of the cost of Uber or Lyft rides for the next several weeks due to the excessive heat warning from the national weather service. The Appellant responded asking for a rental vehicle instead and stating ride share services aren’t a viable option for him. QRP [T {first initial only}] explained ride share is the next least costly after public transportation and asked why it’s not a viable option. The Appellant stated the primary reason is the need to interact with the driver. He acknowledged it is a more reasonable option than the bus but not as good as a rental vehicle. The DOR proceeded to send the Appellant a check to cover the cost of 14 days of rideshare transportation. (Attachment 27)

Re: Clothing- On August 30, 2022, SVRC-QRP [T {first initial only}] sent an email to the Appellant regarding clothing businesses in his area that are a vendor business. On September 6, QRP [T {first initial only}] and Appellant had further email communication on the matter. **The Appellant explained that due to his measurements he is not able to purchase a suit off the rack and has pushed for made to measure companies. He listed another potential company for DOR to check into.** On September 6, QRP [T {first initial only}] also requested that SC [J {first initial only}] check into the new potential business along with follow up on the Appellant’s prior list. (Attachment 28)

Re: Transportation, Clothing and Utilities- On September 8, 2022, SSMII [J {first initial only}] sent the Appellant the Administrative Review Decision. (Attachment 29)

Re: Transportation- On September 9, 2022, the Appellant sent an email to SSMII [J {first initial only}] asking about a decision regarding a mobility evaluation. SSMII [J {first initial only}] responded and asked QRP [T {first initial only}] to set up a time for conversation regarding the mobility evaluation question. The Appellant set up a time but stated he is not sure what would be discussed as he believes SSMII [J {first initial only}] should be issuing a decision at this time whether to approve or not. The Appellant

lists points from the mobility evaluation requirements including that the counselor must determine the consumer’s transportation needs, which in his view is done. (Attachment 30)

Re: Clothing- On September 12, 2022, SVRC-QRP [T {first initial only}] sent an email to the Appellant with an update on DOR’s progress regarding making a vendor businesses of his choice and proposed Nordstrom in a mall relatively close to him which offers custom suit tailoring. (Attachment 31)

Re: Transportation, Utilities and Clothing- On September 12, 2022, SVRC- QRP [T {first initial only}] and the Appellant had a phone meeting. Among other things in discussing the Appellant’s request for a mobility evaluation he is of the opinion that the counselor has already determined the consumer’s transportation needs. SVRC-QRP [T {first initial only}] is of the opinion that we are still in process of determination. **QRP [T {first initial only}] has stated in the past that DOR does not have any documentation from a medical provider stating he cannot take public transportation**. The Appellant stated in this meeting that he found a new health care provider and they will be writing a letter in response to the administrative review which the Appellant shared with them. Regarding utilities the Appellant asked about getting the first month’s bills paid. QRP [T {first initial only}] again stated DOR could pay for initial set up and suggested he could send the bill for the initial set-up cost. Regarding clothing, QRP [T {first initial only}] asked what the Appellant thinks of Nordstrom working for him. He will look into it more. He also asked what prevents DOR from going outside a vendor business; he would like a policy or code. QRP’s case note and the Appellant’s email summary are attached. (Attachment 32 and 33)

## Re: Utilities- On September 12, 2022, the Appellant sent his initial utility bills/set-up costs. QRP [T {first initial only}] processed them, and a check was sent on September 20, 2022. Re: Transportation- On September 21, 2022, SVRC-QRP [T {first initial only}] sent the Appellant an email enquiring about his meeting for the paratransit services on September 15.

Relevant Law

…

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CONCLUSION

Transportation

In accordance with the California Code of Regulations (CCR) Title 9 section 7161(c), “the mode of transportation provided shall be the least costly mode which meets the special needs of the client.” The Rehabilitation Counselor, in collaboration with the consumer, will determine the transportation needs of the consumer. If there is more than one mode of transportation that will meet the consumer’s special needs, then the Rehabilitation Counselor will authorize the least costly mode. The Appellant has mentioned in their communications with SVRC-QRP [T {first initial only}] and SSMI [S {first initial only}] that accessing public transportation (bus) causes pain and anxiety, walking and riding the bus in 80-plus degree heat makes the Appellant sweat more than the average person due to their undiagnosed condition, and walking and riding the bus takes a considerable amount of time from the Appellant’s studies which is detrimental to success in a post-secondary education training program in law school. DOR can agree that walking or riding public transportation (bus) may be inconvenient and unpleasant dealing with variable weather, but DOR does not have any documentation in the Appellant’s file that would show the Appellant’s special need to access a more costly mode of transportation. Also, from the Appellant’s calculation of the time it takes to walk to school one way, twenty-five plus minutes is a reasonable commute time. The commute is even shorter, should the Appellant choose to access public transportation (bus). Recently the DOR acknowledged the National Weather Service’s “excessive heat warning” and provided funding to provide uber fares to cover one round-trip per day. Another option to pursue in lieu of the public bus is the OC ACCESS Service, designed specifically for persons who are physically and/or mentally disabled and cannot use the regular fixed-route [location omitted] County Bus service.

Utilities

The Appellant’s request for DOR to pay for his utilities while participating in a law school training program was correctly denied as DOR is only able to support short-term, onetime costs in excess of normal living expenses. DOR has done this by providing move in costs associated with Appellant relocating to the city in which the training program is located. DOR has provided the security deposit, utilities deposits, and costs associated with transporting Appellants belongings. Appellant has made an informed choice to attend a training program that is not within a commuting distance of his home and will be responsible for the long-term on-going cost of living expenses while participating in the training program. Federal and state regulations only allow for short-term utility deposits to be provided as maintenance.

In accordance with 34 Code of Federal Regulations (CFR) section 361.5(34) and California Code of Regulations (CCR) title 9 section 7019,

maintenance is defined as “monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual’s participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual’s receipt of vocational rehabilitation services under an Individualized Plan for Employment (IPE).” For example, this may include short-term shelter that is required for an individual to participate in vocational training at a site that is not within commuting distance of an individual’s home.

College student utility payments are part of an individual’s normal expenses to attend college. Therefore, supporting utilities for a three-year college program would not be considered a maintenance service.

Furthermore, DOR does not consider three years of housing to be “short term.”

DOR supports an eligible individual’s informed choice throughout the VR process, including the selection of an institution of higher education for the completion of training necessary to achieve the employment objective of the IPE. DOR has the responsibility to assist the individual or the individual’s representative to acquire information necessary to make an informed choice about the options in pursuing training at an institution of higher education. Among others, this includes an exploration of the maintenance appropriate to support expenses incurred in excess of normal living expenses in order for the individual to participate in training at an institution of higher education. The DOR Rehabilitation Counselor has actively participated with Appellant throughout the process of making an informed choice to attend [law school] in [location omitted]. Appellant decided to attend [law school] in [location omitted] when he was also accepted to [law school] in [location omitted] which is only 36.3 miles from his [previous] residence.

While short-term and long-term maintenance is not explicitly defined in federal or state regulations in terms of a specific length of time, CCR title 9, sections 7019 and 7177 do prohibit using maintenance to support an individual’s everyday living expenses. Additionally, maintenance should not be used in place of, provide the services of, or become a payment program similar to welfare and other social service agencies. The [law school] in [location omitted], where Appellant has made an informed choice to relocate to attend, may take a full-time student three years to complete. Three years does not constitute a “short-term one-time expense”. Three years of utility payments for an apartment is the equivalent of 36 months, which is a long-term everyday living expense.

Clothing

In accordance with CCR 7019 (a) Maintenance the DOR can provide monetary support for clothing expenses that are in excess of an individual’s normal expenses based on the needs of the vocational rehabilitation plan. CCR 7019(a)(1) goes on further to state, “The cost of a

uniform or other suitable clothing that is required for an individual’s job placement or job-seeking activities.” **The appellant is not currently seeking a job nor engaged in a training program that requires a specific uniform to participate.** Even if you consider a suit as the uniform in this case which the Appellant has made know to his SVRC- QRP [T {first initial only}] DOR has not been made aware of any requirement from the school. The DOR does see the value in having a suit for activities associated with being enrolled in a law school program.

In conclusion,

1. The DOR has agreed to support the Appellant with transportation to participate in a post-secondary training program at the lowest cost, **which is the public transportation bus system**. At this point, DOR is not able to provide assistance with a rental car for the Appellant to travel to his training program five days per week. If the [A]ppellant’s situation changes or there is sufficient documentation identifying the special needs that require access to a more costly transportation service, it may be brought to the attention of SVRC-QRP [T {first initial only}] to reassess. **DOR requires the Appellant to seek comparable benefits and currently awaits the assessment from the OC ACCESS Service, deferring to that program for a transportation service that is more accommodating for the Appellant**.
2. Utilities for a college student are long-term ongoing expenses that are considered normal expenses to attend college, which would not fit the definition of a maintenance service. DOR is not able to support paying the Appellant’s long-term ongoing expenses of utilities. However, DOR may assist the eligible individual with initial one-time costs when appropriate, such as a security deposit or charges for the initiation of utilities which DOR has agreed to support.
3. **The DOR considers that the Appellant would benefit from having a suit while attending their training program, preparing the Appellant for any activities if they arrive. DOR will provide a clothing allowance of up to $950 and alterations of up to $150. The department will make reasonable efforts to vendor whichever clothing provider Appellant chooses.** The DOR has shown a reasonable effort has been made and will continue until the Appellant receives his requested clothing while maintaining the DOR vendor process.”

(Emphasis added.)

In an August 8, 2022 email to SVRC-QRP [B {first initial only}], Appellant stated, in pertinent part, that:

“I wasn’t able to reach Ms. [E {last name initial available only}] by phone so I sent her an email on Friday and I’m waiting to hear back from her.

For transportation, can you please help me with the following:

First, in the chapter 15 of DOR’s manual, in mentions there is an exhibit titled “Checklist for Proposed Vehicle Purchase.” Also, the forms used for

vehicle purchase are in the AWARE Letters catalog. Can you please send these to me?

Second, to begin the mobility evaluation, Mr. [W {last name initial available only}] needs to provide approval. Mr. [W {last name initial available only}] will need to determine if “the conditions in section 7164(a)(1)(A) and (C) and (2) are met.” (Cal. Code Regs., tit. 9, § 7164.4, subd. (b)(1).) **Of course, he will not. I will have to appeal his decision. So, please have him send me his decision as soon as possible.**

## Third, given that I am required to go through the fair hearing process, it will take time before I can file a petition for a writ in the superior court. Therefore, it would be a good idea to start an alternative in the interim. The alternative here would be a vehicle rental.

Lastly, I want to make sure that I have provided a reasonable explanation, that can be easily understood, as to why other mode of transportation are not suitable for my needs**. Sensory issues [sic] is the first, and probably the most obvious, issue with modes of transportation such as public or private busses, bicycles, and walking. Sensory issues include light, temperature, smell, and sound. Second, law school already presents a huge issue with my established routines. It becomes even worse with a mode of transportation that does not provide immediate and prompt conveyance from point A to point B. Last, I am not familiar with any other mode of transportation other than driving a vehicle. Using a mode of transportation that I am unfamiliar with poses the risk of compounding issues such as anxiety, depression, and social isolation. Law school already puts a lot of strain on these issues**.”

(Emphasis added.)

In an August 25, 2022 email sent to SVRC-QRP [T {first initial only}], the Appellant stated, in pertinent part, that:

“Let me just give you another example of why busses don’t work. Class just finished at 2:30 and now I have to wait an entire hour before my next class begins. I don’t have enough time to walk back to the apartments and then back again before my next class begins at 3:30. I am still soaked in my sweat and smell. I don’t have anything to eat or drink while I sit here for an entire hour. You yourself admitted that there is no option for busses going from school to the apartment.”

In an August 29, 2022 email sent to SSMII [J {first initial only}], SSMI [S {first initial only}] and QRP [T {first initial only}], the Appellant stated, in pertinent part, that:

“Some more information re transportation. **At the end of this week and the beginning of next week, the temperature will be over 100 degrees**. **Also, today I was almost hit by a car. Someone wasn’t**

## paying attention when pulling into a parking lot as I was crossing the entrance on the sidewalk.

Please share the above and the following with whoever will be conducting the administrative review:

August 25, 2022 2:33 PM

Let me just give you another example of why busses don’t work. … [See quotation above.]

August 21, 2022 9:55 PM

There are a few updates on transportation services. For the access service, I have an evaluation scheduled for September 15. **I’ve also further researched the regular buses and have determined that the schedule does not fit with my class schedules. Namely, the frequency and the earliest pickup time near the apartment create an issue**. As we discussed before, there are other reasons why regular busses would not be a viable option; this is just in addition. I’ve also had the opportunity to experience walking between the apartment and the campus. These are my takeaways thus far:

1. **The walk was longer than I had expected**. Although Google Maps said that it would be a 15-minute walk, I couldn’t even walk the distance in less than 25 minutes. Of course, this time was achieved when walking at a fast pace and crossing the street immediately outside of the apartment community without using the crosswalk (please don’t tell on me). Given the amount of time that it would take walking, about one hour in total, there would be issues with my current schedule, especially on Tuesdays and Wednesdays. Plus, this doesn’t even take into account the significant extra time I get for certain things as an accommodation.
2. To make matters worse, the weather down here is nowhere near that of [location omitted] County. The temperature is always at or above 80 degrees. As a consequence, when I finally made it to the campus, my clothes were soaked with my sweat.
3. Related to the above, if the professional clothing is finally figured out (fingers crossed), I would imagine that walking to class in professional clothing would make the issue even worse.

**Turning towards other alternatives. The only other alternative available at this very moment is a rental vehicle.** A bike wouldn’t be an alternative that is permitted under the manual or regulation. Assuming arguendo that a bike was allowed, I then wouldn’t be able to bring a computer, charger, class materials, books, and various other items to class. Even if it was an alternative, I don’t want to end up like former DOR client [J {first initial only}]. If you aren’t familiar with Mr. [J {first initial only}], he is a former DOR client that was killed while he was riding his electric bike home from his job at [name of Department store omitted]. [Website citation omitted.]

If Mr. [J {first initial only}] had an advocate while he was a DOR client, it’s very likely that he would still be alive today. It’s an unfortunate situation that he was put in.

## Given the above, a rental vehicle would be the best fit for my situation while we wait for the access service evaluation. Of course, even if I am approved for the access service, I still need to make sure that the service will be able to meet my special needs, particularly the need to have a mode of transportation that is on demand and won’t interfere with my class schedules. At this point, a rental vehicle is the least costly mode of transportation that meets my special needs. If possible, an electric vehicle would be the best fit. I just learned that there are chargers both here and at the school.

August 8, 2022 10:50 AM

Lastly, I want to make sure that I have provided a reasonable explanation, that can be easily understood, as to why other mode of transportation are not suitable for my needs. … [See quotation above.]”

(Emphasis added.)

In a copy of a September 26, 2022 letter from PNS [full name omitted] Specialists, [B

{first initial only}] PA-C, stated, in pertinent part, that: “To Whom it May Concern:

This letter attests that [Appellant] was evaluated by [sic] myself today. [Appellant] is now a patient under my care and receiving treatment for Major Depressive Disorder (F33.1), Generalized Anxiety Disorder (F41.1), and Autistic Disorder (F84.0).

During the evaluation today [Appellant] relayed concerns to me regarding the use of public transportation to get to and from law school. [Appellant] notes the amount of time it takes to get to and from the bus, as well as transit time, significantly worsens his anxiety due to the extensive time commitment required to succeed in law school.

If there are any additional reasonable accommodations that could be made to help minimize [Appellant’s] commute time, it would be greatly beneficial for improving his mental state, as well as maintaining mental stability.

We appreciate your attention to this matter.”

At the hearing, the Appellant testified, in pertinent part, that: (1) in regards to utilities, Appellant’s move to the city where Appellant began attending law school for a three- year period was temporary; (2) Section 1255 of the DOR Rehabilitation Administrative Manual lists “utilities” as an enumerated subcategory of “Other Goods and Services Not Coded Elsewhere”, which Title 9, Section 7174 of the California Code of Regulations includes as a short-term emergency financial assistance which may be provided under limited conditions to be necessary for the individual with a disability to achieve an employment outcome; (3) prior to moving to attend law school, Appellant did not pay for utilities, which Appellant’s mother paid as he lived at her home; (4) in regards to

clothing, Appellant requests a minimum of 2 suits, 5 dress shirts, and 2 dress shoes for now; (5) Appellant’s law school dean sent an email to students on June 27, 2022, stating to get your suits ready; (7) Appellant was not participating in moot court or trial team; (8) Appellant was not asking for the above clothes for work or to seek work; (9) the DOR has arbitrarily determined a budget for Appellant, which has fluctuated from

$250, to $400 to $950 plus $150 for alterations; (10) the former DOR District Administrator agreed with Appellant that made to measure clothing was reasonable for him given Appellant’s sleeve length and jacket size; (11) 2 suits, 5 dress shirts and 2 dress shoes was a reasonable need to accommodate a future 5-day schedule; (12) Appellant suffered from anxiety, depression, social isolation and Keratoconus, as well as excessive sweating; (13) due to Appellant’s above conditions, he cannot commute to class by walking about 30 minutes to and 30 minutes back from class; (14) given Appellant’s conditions, it was reasonable for the DOR to pay the cost of Appellant to have a rental car during the 5 days Appellant commuted to and from school; (15) recently, Appellant was nearly struck by a car as Appellant was walking home from school, while he was on the sidewalk near the entrance to the parking lot of Appellant’s law school; (16) because Appellant was five feet and seven inches tall, drivers do not see Appellant when he is walking; (17) because of his above conditions, Appellant’s law school provided him with reasonable accommodations, including seating in the back away from others, not being called to answer questions, and not taking tests along with other students; (18) because of his above conditions, Appellant planned to minimize social interactions when he begins working as an attorney by focusing on appellate work; (19) in regards to transportation, the DOR must first consider what is reasonable in light of Appellant’s conditions before focusing on what is least expensive; (20) Appellant cannot take public transportation as he is severely disabled due to the anxiety doing so would cause Appellant, as well as exposing Appellant to temperatures, sounds, and lights Appellant cannot tolerate – while effecting Appellant’s routine; and

(21) in regards to utility payments, the DOR pays for vocational rehabilitation participant’s ongoing internet services which is almost a utility, and as a result the DOR should also pay for Appellant’s ongoing residential utility expenses.

At the hearing, the DOR hearing representative Team Manager [S {first initial only}] testified, in pertinent part, that: (1) Appellant lived .08 miles away from his law school;

(2) Appellant refused a bicycle to commute to law school, stating it was too dangerous;

(3) Appellant never reported whether he completed an evaluation to use a paratransit service, which provided curb to curb transportation services; (4) when Appellant reported to the DOR that temperatures were forecasted to be very high in the past months, the DOR provided Appellant with money for Appellant to use Uber services to commute to and from law school; (5) Appellant kept this money, but did not use it; (6) Appellant has not provided medical documentation of an impairment that prevented Appellant from using public transportation, which is typically a bus; (7) while the DOR paid the initial set-up costs for Appellant’s residential utilities, the DOR is prohibited from paying for Appellant’s ongoing necessary every day expenses, such as regular utility payments; (8) the DOR may pay for internet services as a training expense, not as a necessary every day expense; (9) at times when a vocational rehabilitation client pays for an emergency expense by using money regularly budgeted for utilities, the DOR may pay for one to two months of the client’s residential utilities due to that emergency;

(10) the DOR agreed that Appellant should have some made to tailor clothing as a law

student, which the DOR has been making reasonable efforts to provide; (11) “Proper Cloth” was a DOR vendor; and (12) the hearing representative could not cite any legal authority prohibiting the DOR to use non-state vendors (namely suppliers that do not agree to the DOR vendor contract terms).

At the hearing, the DOR District Administrator {J {first initial only}] testified, in pertinent part, that: (1) while the DOR Rehabilitation Administrative Manual, the DOR’s decisions are controlled by the applicable California Code of Regulations (CCR); (2) pursuant to policy, the DOR can purchase from non-vendors after exhausting all efforts to make purchases from DOR vendors; (3) he cannot presently cite a law, rule or regulation that controls this DOR policy requirement; (4) in regards to the DOR decision to approve clothing for Appellant, he believed that 2 suits, 2 dress shirts and 2 dress shoes was reasonable for multiple day use; (5) in regards to transportation, Appellant reported that he would comply with an evaluation for Access Service, which provides door to door transportation services at a cost that is probably less than Uber; and (6) however, there were no special needs for Appellant to use anything beyond public transportation, with the exception of the DOR’s payments of the cost for Appellant to use Uber during the heat warning events in the summer.

At the hearing, the DOR Counselor [T {first initial only}] testified, in pertinent part, that:

(1) she has been Appellant’s Counselor for less than a year; (2) she did not know how the DOR determined a budget of $950 for clothing and $150 for alterations for Appellant; (3) the DOR was in the process of making Appellant’s choice of “Proper Cloth” as a DOR vendor; (4) the reason the DOR has to use a supplier who agrees to the DOR vendor contract is so that the State can confirm that the vendor is not a tax delinquent per section 10295.1 of the Public Contract Code; and (5) Appellant reported that he would comply with an evaluation for Access Service, which the DOR has yet to receive.

In response to the above testimony by the DOR representatives, Appellant testified further, in pertinent part, that: (1) on September 15, 2022, Appellant was evaluated by Access Services and is awaiting a decision; (2) Access Service was not a viable option due to their vehicle’s large window effect on Appellant’s sensory issues, as well as the effect on Appellant’s anxiety for having to wait during a large pickup and return window, namely 30 minutes; (3) in regards to the DOR payment that Appellant received to use Uber for transportation to and from law school during the heat warning events, Appellant acknowledged that he received payment for this purpose on September 6, 2022, which he deposited in his account and never used for Uber transportation services; and (4) despite not having used the DOR payment to use Uber for transportation to and from law school during the heat warning events, Appellant has “no plan to return it.”

At the hearing, the Administrative Law Judge held the record open for the parties to submit additional documents. The judge held the record open for Appellant to submit:

(1) any medical records which fully document the Appellant’s health conditions, which the Appellant argues reasonably prevent him from using public transportation, as well as services such as Access Service, Uber and/or Lyft, to commute to and from school; and (2) a copy of Section 1255 of the Department of Rehabilitation (DOR) manual cited by the Appellant at hearing. The judge held the record open for the DOR to submit an Addendum Statement of Position (SOP) which: (1) describes the DOR’s determination of what amount is reasonable to pay for the Appellant to receive 2 made-to-measure

business suits, 5 made-to-measure dress shirts, and 2 dress shoes – including the basis and methodology of the same; (2) the DOR’s position about whether it requires the Appellant to use a DOR vendor for this purpose, including citation of any controlling law, rule or regulation requiring the DOR to use a vendor who agrees to the DOR vendor written agreement to receive payment; and (3) the DOR’s response, if any to documents submitted by the Appellant during the above-described open record period. In addition, the judge held open the record further for Appellant to submit a response in writing, if any, to the DOR Addendum SOP above.

During the open record period, Appellant submitted: (1) a 9/29/22 letter with attachments, including forms submitted to Appellant’s law school for accommodations, a letter approving the request for accommodations, and a 12/27/2020 report from HBH [provider initials only] titled Diagnostic and Clinical Assessment written by [C {first initial only}] M.A., LMFT, BCBA the results of which were reviewed by Dr. [R {first initial only}]; and (2) a 10/6/22 letter in response to a DOR Addendum SOP, with attachments regarding clothing, as well as a [2](#_bookmark1)2016 article entitled “Transportation Issues of Adults on the Autism Spectrum, Findings from Focus Group Discussions.”

During the open record period, the DOR submitted an Addendum SOP dated October 4, 2022.

In Appellant’s 9/29/22 letter, he stated, in pertinent part, that:

Your Honor granted the undersigned’s request to hold the record open today to allow the submission of additional medical records and the Department’s Rehabilitation Administration Manual (RAM). I’ve attached the forms submitted to the law school for accommodations and the letter approving the request for accommodations. The request includes the diagnostic and clinical assessment from Dr. [R {first initial only}]. The report from Dr. [R {first initial only}] confirms the issues created from my disabilities. As for the RAM, I’ve attached chapter twelve and have highlighted the relevant parts of section 1255.”

In a report dated 12/27/2020 from HBH [provider initials only] titled Diagnostic and Clinical Assessment written by [C {first initial only}] M.A., LMFT (Licensed Marriage & Family Therapist), BCBA (Board Certified Behavior Analyst) the results of which were reviewed by Dr. [R {first initial only}], a Psychologist and BCBA – Doctoral, indicating that Dr. [R {first initial only}] concurred with the conclusions of the assessment, C {first initial only}] M.A., LMFT stated, in pertinent part, that:

“REASON FOR REFERRAL

[Appellant] was referred for this evaluation due to concerns regarding autistic-like behavior and for diagnostic clarification. Information in this assessment **was obtained from [Appellant]'s parents, as well as [Appellant], and through review of records and observation of [Appellant].**

ASSESSMENT PROCESS

2 See [Transportation Issues of Adults on the Autism Spectrum: Findings from Focus](https://vtc.rutgers.edu/publication/transportation-issues-of-adults-on-the-autism-spectrum-findings-from-focus-group-discussions/) [Group Discussions | Alan M. Voorhees Transportation Center | VTC (rutgers.edu)](https://vtc.rutgers.edu/publication/transportation-issues-of-adults-on-the-autism-spectrum-findings-from-focus-group-discussions/)

In order to evaluate and determine [Appellant]'s current condition, his history was reviewed, and the following assessments were administered:

Review of Diagnostic Criteria for Autism Spectrum Disorder DSM-S Autism Diagnostic Interview, Revised (ADI-R)

Parent and client interview Direct observation of interaction Review of records

Medical History

[Appellant] was born full term at 40 weeks gestation following a normal pregnancy and weighed 7 pounds 10 ounces. **[Appellant] does not currently have any medical issues and no history of any major illnesses or injuries. [Appellant] is not on any medications or special diets currently, nor does he have any known allergies**. **His vision and hearing are within normal limits based on parent report as well.**

## According to his parents, [Appellant] has been previously diagnosed with a Major Depressive Disorder (MOD), an unspecified Anxiety Disorder, and an unspecified Mood Disorder in 2017 by a psychiatrist in […] (although the name of doctor could not be recalled), as well as an Adjustment Disorder by Dr. [F {last initial only}], psychiatrist, in 2020. I requested those reports, but they did not retain them and could not recall the name of the Psychiatrist in […].

…

CURRENT ASSESSMENT RESULTS

Parent Interview

[Appellant’s Mother] shared that she became concerned with [Appellant]'s development when he was an infant and would hold his breath to the point of passing out when he was upset. Mom shared that she had concerns regarding [Appellant]'s social behavior when he became distant following elementary school and lacked peer friendships. [Appellant’s Mother] shared that [Appellant] avoids eye contact during interactions and often becomes ‘embarrassed’ when others smile at him or approach him.

Client Interview & Observation

**[Appellant] was observed, evaluated, and interviewed over the course of 1.5 hours while in his home via video as well as briefly in- person.** He presented as well-groomed and appropriately dressed for the weather and for his age, and independently manipulated the video sharing features needed to interact during the interview and observation. [Appellant] was articulate in his verbal communication however only made fleeting eye contact twice during the entire observation/interview and appeared embarrassed when he did so. When asked about hobbies or interests [Appellant] stated that he could not think of any but then recalled that he does like requesting various public records from the government

for his own personal use/interest but does not have any other hobbies. Throughout the interview he engaged in brief facial referencing twice, did not use any gestures in his communication, and displayed a relatively flat affect with the exception of smiling twice at the evaluator when a joke was made but continued to look down and did not look at the evaluator while smiling. [Appellant] answered questions when asked but did not elaborate on any answers nor did he ask any follow-up questions or add additional comments. [Appellant] expressed interest in getting help with his social skills and stated that he wants to get a job and is aware that he will need to interact with co-workers. Results of the assessment are considered an accurate estimate of his current functioning in a structured setting.

…

1. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties in transitions, rigid thinking patterns, greeting rituals, need to take same route *or* eat same food every day). Yes

*Per self-report, [Appellant] is fairly flexible with his daily routine and changes that may occur, however experiences distress at minor inconveniences like his cat not coming in at night. He does display rigid thinking patterns when it comes to social interactions and how to interact and communicate with others, often not responding to context appropriately.*

1. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to *or* preoccupation with unusual objects, excessively circumscribed or perseverative interests). No

Per report [Appellant] has few interests but does engage in high rates of perusing and ordering government files and researching on his computer, often staying up late at night to do so.

1. **Hyper or hypo reactivity to sensory input** or unusual interest in sensory aspects of the environment (e.g., apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement). Yes

*[Appellant] displays sensitivity to same noises that would not bother others, like the sound of people's voices (normal conversational level) or the sound of his hard drive whirring. He will put on his headphones or cover his ears if these things occur and he is irritated by them.*

…

IMPRESSIONS AND SUMMARY

[Appellant] is a [age omitted] -year-old male referred for an evaluation for possible autism based on concerns from the psychiatrist and a desire for diagnostic clarification. Throughout the evaluation, [Appellant] exhibited limited reciprocal conversation and no initiations for social purposes,

limited eye contact and displayed a relatively flat affect. He engaged in smiling twice to the evaluator but otherwise did not display any response to the evaluators social smiling and he reported a lack of peer friendships as well as lack of desire to develop any friendships with peers.

**[Appellant]'s ADI-R scores indicate a (moderate-to-severe) level of autism spectrum related symptoms.** By history and observation, he has a qualitative impairment in his social interactions as manifested by his impaired use of non-verbal behaviors, a failure to develop age-appropriate peer relationships, and lack of social and emotional reciprocity. He demonstrates a qualitative impairment in communication as manifested by a delay in his language acquisition and profound impairments in his ability to initiate and sustain reciprocal conversation.

DSM-5 CLINICAL DIAGNOSES

Results of the current assessment indicate that [Appellant] meets the DSM-S criteria for: 299.0 Autism Spectrum Disorder (F84.0)

## [Appellant] requires very substantial support in addressing his social communication and support in addressing his restricted interests and repetitive patterns of behavior.

CLINICAL RECOMMENDATIONS

**[Appellant] would benefit from a focused behavior treatment program with foundations in ABA to address his symptoms of Autism Spectrum Disorder and address deficits in his social communication and social behavior**. Applied Behavior Analysis is covered under health insurance in California except in specific circumstances (e.g., employer is self-insured). The intensity and duration of such interventions should be based upon a thorough functional analysis conducted by a person who is **a Board Certified Behavior Analyst (BCBA).** Further, insurance companies, the regional center, or a pediatrician's office can assist in the decision and referral to an appropriate agency.”

(Emphasis in bold added.)

In an unsigned and undated Request for Accommodations form from Appellant’s law school, Appellant reported, in pertinent part, that: (1) the disabilities for which he requested accommodations included permanent visual impairment, ADD/ADHD, and psychological disability acquired at birth and first diagnosed by Psychiatrist [F {last initial}] in October 2020; (2) the treatment and/or medications Appellant was currently prescribed included Desvenlafaxine and Lamotrigine; (3) in response to a question whether Appellant’s treatment and/or medications were effective in addressing and/or controlling his symptoms, Appellant marked not applicable (N/A); (4) accommodations listed as having been received in the past included 100% additional time, additional breaks, test over multiple days, sit/stand, and permission to speak aloud; (5) accommodations requested by Appellant included supplemental class notes, class recording, large print (18 font), permission to use laptop with e-reader, 100% additional time testing for essays in multiple-choice, a private room, and stopped the clock breaks;

and (6) in response to questions regarding whether Appellant’s received accommodations while attending elementary, middle school, junior high school, high school, or college, Appellant’s reported that he had not.

In a supporting segment of the Request for Accommodations form from Appellant’s law school signed on July 5, 2022 by Nurse Practioner [J {first initial only}], J stated, in pertinent part, that: (1) Appellant established care with her on “11/21;” (2) she referred Appellant to psychiatry in her office, as the provider who treated Appellant was on a leave of absence; (3) she attached Appellant’s providers last note with instructions for accommodations and reviewed last notes from Appellant’s psychologist and his “autism diagnostic” interview; (4) the last date of an evaluation/assessment of Appellant was completed by J on **6/6/22 and by a “psych” on 3/16/22;** (5) Appellant’s specific diagnoses included autism spectrum disorder, ADHD, mood disorder, anxiety, and depression; (6) Appellant’s symptoms of his psychological disability included inflexibility with organization and planning; (7) Appellant was compliance with medications; and (8) Appellant needs to establish care with a new psychiatrist as he is relocating for law school. Nurse Practioner [J {first initial only}] made no reference to a sensory disability or condition referred to by Appellant.

Appellant’s last medical notes from his psychiatrist with instructions for accommodations and the last medical notes from Appellant’s psychologist referred to as attached and reviewed by Nurse Practioner [J {first initial only}] were not submitted by Appellant.

Appellant also did not submit Appellant’s last evaluations performed by a “psych” on 3/16/22 and Nurse Practioner [J {first initial only}] on 6/6/22.

A copy of Section 1255 of the Department of Rehabilitation (DOR) manual submitted by Appellant stated:

“1255 Other Goods and Services not Coded Elsewhere (12/17)

Other Goods and Services not Coded Elsewhere include a broad spectrum of goods and services that do not fit into another service category but are necessary to determine VR potential or to assist an individual with a disability to become employed.

The Rehabilitation Counselor and designated district staff will refer to the following regulations for Other Goods and Services not Coded Elsewhere requirements:

* Other Goods and Services – General Provisions (CCR 7174)

Other Goods and Services not Coded Elsewhere includes, but is not limited to, the following services:

* + Advertising
  + Printing/Photocopying
  + Typing/Secretarial Services
  + Rental of Premises
  + Weight Control Program
  + Internet Services
  + Utilities
  + Memberships, Subscriptions, or Professional Activity Costs District staff are responsible for reviewing the list of service categories and their definitions before selecting the code that best describes the service(s) provided. Service categories must reflect the actual service or purchase provided to the consumer. When the Rehabilitation Counselor uses the generic term ‘other goods and services’ in record of services documentation, it does not mean the service being discussed is to be coded to ‘Other Goods and Services not Coded Elsewhere.’

Refer to Section 1271 for additional information on Self-Employment Services.”

A copy of Section 1244 of the Department of Rehabilitation (DOR) manual submitted by Appellant stated:

“1244 Maintenance (12/17)

Maintenance is monetary support for short-term or one-time costs, *in excess of the individual’s normal expenses*, that are necessitated by participation in an assessment for eligibility, an assessment for VR needs, or VR services under an IPE.

Maintenance payments are limited to actual expenses in excess of normal living expenses and are subject to financial participation and comparable benefits.

## The Rehabilitation Counselor and designated district staff will refer to the following regulations for Maintenance:

* + Maintenance (CCR 7019)
  + Other Vocational Rehabilitation Services—Maintenance (CCR 7177)
  + Self-Employment; Scope of Services Provided for a Self- Employment Setting (CCR 7137)

Short-term expenses which are within the scope of maintenance include the cost of food and temporary lodging for consumers participating in training or other VR services, when these services are outside of a reasonable commute distance from their homes.

The DOR may also make one-time maintenance payments when appropriate. For students, this can include fees for enrichment activities related to a training program, such as student trips, when those activities are essential components of the training. **For consumers who relocate for job training or job placement, maintenance may provide the funds required for initial one-time costs, such as security deposits or the initiation of utilities**. Security deposits and the initiation of utilities may also be provided for consumers pursuing an employment goal in a self- employment setting.

When the DOR pays in advance for security or other deposits, any unused portion must be returned to the DOR. To ensure that the consumer will do

so, the DR 254 DEPOSIT AGREEMENT form must be used. Consumers will be advanced funds necessary to pay landlords the required deposits for security, cleaning, and first and/or last month rent, if required, on the first day of the rental period. This payment will be made through a Participant Authorization, made payable to the consumer. By signing the DR 254 form, the consumer agrees to return to the DOR the remainder of any deposits received from the landlord.

Refer to Section 1271—Self-Employment Services—for additional information on self-employment.

Refer to Section 1287—Transportation Services—and Section 1288 — Travel—for additional information on permanent relocation.”

A copy of Section 1231 of the Department of Rehabilitation (DOR) manual submitted by Appellant stated:

“1231 Clothing (12/17)

The Clothing service category includes clothing or uniform purchases that relate to job seeking or placement, or that are required for a training program (i.e., the training program requires the participant to have a particular uniform, shoes, or safety equipment). Clothing purchases must be necessitated by the individual’s participation in the VR program.

The purchase of clothing is not considered as maintenance. Refer to Section 1244 for more information about Maintenance.”

A copy of Section 1200 of the Department of Rehabilitation (DOR) manual submitted by Appellant stated, in pertinent part, that “The DOR shall use this chapter in conjunction with applicable regulations, and other key procedural resources, including but not limited to …”

In the DOR submitted an Addendum SOP dated October 4, 2022, the DOR stated, in pertinent part, that:

“Clothing

In accordance with CCR 7019 (a) Maintenance the DOR can provide monetary support for clothing expenses that are in excess of an individual’s normal expenses based on the needs of the vocational rehabilitation plan. CCR 7019(a)(1) goes on further to state, ‘The cost of a uniform or other suitable clothing that is required for an individual’s job placement or job-seeking activities.’ The appellant is not currently seeking a job nor engaged in a training program that requires a specific uniform to participate. Even if you consider a suit as the uniform in this case which the Appellant has made it known to his SVRC-QRP Dennett, DOR has not been made aware of any requirement from the school. The DOR does see the value in having a suit for activates associated with being enrolled in a law school program.

[*The remainder of this page is intentionally blank.*]

In conclusion,

1. The DOR considers that the Appellant would benefit from having a suit while attending their training program, preparing the Appellant for any activities if they arrive. DOR will provide a clothing allowance of up to

$958.43 and alterations of up to $158. The department will make reasonable efforts to vendor whichever clothing provider Appellant chooses. The DOR has shown a reasonable effort has been made and will continue until the Appellant receives his requested clothing while maintaining the DOR vendor process. The Department of Rehabilitations position and the method used to arrive at this position includes working with the Appellant to identify vendors that will do business with the DOR. When obtaining quotes, the DOR will look at comparable benefits and choose the more cost-effective good or service when alternatives are not available. The following was used to calculate a clothing allowance of

$958.43 and alterations of $158.

1. The appellant’s previous counselor contacted the Men’s Wearhouse in [location omitted] to get quotes for suites, shoes, ties, and shirts. (Attachment 1)
2. Based on the information provided by Men’s Wearhouse, and Kohl’s, DOR arrived at the amount of $958.43 for clothing and $158 for alterations. (Attachment 2, 3, 4, 5, 6)

… Attachments:

A. Quotes and Case Note

* 1. Cost Breakdown Case Note
  2. Calculations Using New Clothing Quotes
  3. Men’s Wearhouse Suit Quotes
  4. Kohl’s Dress Shoes Quotes
  5. Kohl’s Dress Shirts Quotes
  6. Macy’s Suits Quotes to compare”

Attachment 2 to the Addendum SOP dated October 4, 2022, provided in pertinent part, that

“Calculations using new clothing quotes: Suits- Starting at $199 x2 = $398

Dress Shirts starting at $45 x 5 = $225 Dress Shoes starting at $60 x 2 = $120

\*Alterations approx. $79 x 2 = $158 Subtotal = $901

Approx. tax = $57.43

Total = $958.43

Alterations Quote

\*Verbal quote from Men’s Warehouse on alterations:

hemming $13, waist $16, jacket length $25, body $25 = $79 x2 = 158”

In a 10/6/22 letter in response to a DOR Addendum SOP, Appellant made legal arguments, as well as the following pertinent factual assertions: (1) the DOR conceded that made to measure clothing is reasonable for Appellant: (2) the least expensive made to measure option is not set out by the DOR Addendum SOP, which instead included prices for off-the rack clothing with alterations to rationalize it’s earlier allowance above;

(3) the lowest cost per suit at a made to measure store is approximately $950 per suit, namely at the Oliver Wicks store; (4) at the store Senszio, the lowest cost for a suit is

$1045 in total; (5) at the store Proper Cloth, the lowest cost for a suit is $862 without a second pair of trousers: (6) when purchasing a suit, two pairs of trousers are purchased;

(7) an order requiring the DOR to allow at least $950 per suit is appropriate; (8) further, the cost of a shirt from Proper Cloth is generally $110 or $125, with a few different shirts costing upwards of $150; (9) an order requiring the DOR to allow at least $110 is appropriate for the price of each shirt; (10) one of the largest and most well-known brands for dress shoes is Allen Edmonds, which start at $395 and can be as high as

$695; (11) an order requiring the DOR to allow at least $395 per shoes is appropriate;

(12) the DOR Addendum SOP failed to address whether the Department is required to use one of its vendors for the purchase of clothing; (13) the medical records submitted in support of Appellant’s claims confirm the reasonableness of a rental vehicle; (14) the medical records support the “obvious,” namely public transportation is not a reasonable mode of transportation for Appellant; (15) in an article entitled “Transportation Issues of Adults on the Autism Spectrum, Findings from Focus Group Discussions, the authors stated that – the authors of another article reported that – “for persons with developmental disabilities, ‘transit buses also present a unique set of barriers due to route complexity, transfer requirements, unfamiliar destinations, schedule complexity, and other cognitively loaded requirements needed for successful transit system navigation;’ ” (16) in the event the judge disagrees with Appellant, and decides that Uber and Lyft are reasonable, the DOR should pay for each trip and not limit the trips to two a day, as it wouldn’t be reasonable for Appellant to stay at law school all day instead of returning when there is a gap in between classes; (17) while it is true that keratoconus can have effects on my driving, the real problem is with being outside in the sunlight, not sitting in a vehicle with cover from direct sunlight; and (18) Appellant’s keratoconus is a concern when being exposed to direct sunlight for long periods of time and a short drive with the sun directly overhead does not create any issues.

In the above referenced article entitled “Transportation Issues of Adults on the Autism Spectrum, Findings from Focus Group Discussions, the authors further stated”

“Driving an automobile requires a variety of abilities that may pose difficulties for persons on the autism spectrum, including those pertaining to motor skills, perception issues, executive functioning capability, the ability to generalize skills to different environments, and the ability to

anticipate actions of other drivers (*19, 27, 28*). Sheppard et al. found that persons with ASD had difficulty identifying potential driving hazards and demonstrated slower reaction times to all hazards presented when compared with a group of persons without ASD (*29*). In a recent survey of parents of adults on the autism spectrum who were seeking to secure a driver’s license, it was found that learning to drive presented numerous difficulties for the ASD population (*30*).”

## LAW

Department of Rehabilitation

The Department of Rehabilitation (DOR and/or the Department) is empowered to adopt rules and regulations reasonably necessary to enable it to carry out its duties and powers. DOR regulations are found in Title 9 California Code of Regulations (CCR).

The DOR’s power to do so applies to the provision of vocational rehabilitation services. (Welf. & Inst. Code, §§ 19006; 19016.) The DOR is responsible for making all decisions affecting eligibility for, and the nature and scope of, vocational rehabilitation services. (Welf. & Inst. Code, § 19005.1.)

Right to State Hearing

Any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing.

Any applicant or client of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(Calif. Code Regulations., tit. 9, § 7351, subd. (a)(c)) Confidentiality of Mediation Discussions

Discussions that occur during the mediation process are confidential and may not be disclosed to anyone outside the mediation process or used as evidence in any subsequent due process hearings or civil proceedings. The mediator may require the parties to the mediation process to sign a confidentiality pledge prior to the commencement of the process. The parties have a right to submit evidence and information to support their positions at the mediation. Evidence that is otherwise available outside of mediation is not inadmissible in a subsequent proceeding or protected from disclosure solely by reason of its introduction or use in mediation.

(Cal. Code Regs. Tit. 9, § 7353.6 (d).) Burden of Proof

The appellant has the burden of introducing evidence at the hearing sufficient to prove their case by a preponderance of the evidence. A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567; Cal. Code Regs., tit. 9, § 7536, subd. (e).)

In other words, the Appellant needs to prove it is more likely than not that the Department violated Title 9, California Code of Regulations, or other applicable law by the Department action or inaction that is the subject of the Appellant’s complaint. (See *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

In determining the credibility of a witness, the Administrative Law Judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of the testimony at the hearing, including: 1) the demeanor of the witness while testifying and the manner in which the witness testifies; 2) the extent of the capacity of the witness to perceive, to recollect, or to communicate any matter about which the witness testifies; 3) the extent of the opportunity of the witness to perceive any matter about which the witness testifies; 4)the existence or nonexistence of bias, interest, or other motive; 5) a statement previously made by the witness that is consistent with the witness’s testimony at the hearing; 6) a statement by the witness that is inconsistent with any part of the witness’s testimony at the hearing; 7) the existence or nonexistence of any fact testified to by the witness; 8) the attitude of the witness toward the proceeding in which the witness testifies; and 9)the witness’s admission of untruthfulness. (Evidence Code

§780.)

If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. (Evidence Code §412.)

Code of Federal Regulations:

Services for individuals who have applied for or been determined eligible for vocational rehabilitation services.

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual’s individualized plan for employment, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

…

(7) Maintenance, in accordance with the definition of that term in § 361.5(c)(34).

(8) Transportation in connection with the provision of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(c)(57).

…

1. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(34 C.F.R. § 361.48 (b).)

Maintenance

Maintenance means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual’s participation in an assessment for

determining eligibility and vocational rehabilitation needs or the individual’s receipt of vocational rehabilitation services under an individualized plan for employment.

* 1. Examples: The following are examples of expenses that would meet the definition of maintenance. The examples are illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

Example 1:

The cost of a uniform or other suitable clothing that is required for an individual’s job placement or job-seeking activities.

Example 2:

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.

Example 3:

The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

* 1. [Reserved]

(34 C.F.R. § 361.5(c)(34).)

Vocational rehabilitation services —

1. If provided to an individual, means those services listed in § 361.48; and
2. If provided for the benefit of groups of individuals, means those services listed in

§ 361.49.

34 C.F.R. § 361.5 (c)(57).)

Written policies governing the provision of services for individuals with disabilities.

1. Policies. The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in 34 CFR § 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual’s individualized plan for employment and is consistent with the individual’s informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:
2. Out-of-State services.
   1. The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual’s rehabilitation needs, the

designated State unit is not responsible for those costs in excess of the cost of the in-State service.

* 1. The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

1. Payment for services.
   1. The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.
   2. The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—
      1. Not so low as to effectively deny an individual a necessary service; and
      2. Not absolute and permits exceptions so that individual needs can be addressed.
   3. The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.
2. Duration of services.
   1. The State unit may establish reasonable time periods for the provision of services provided that the time periods are—
      1. Not so short as to effectively deny an individual a necessary service; and
      2. Not absolute and permit exceptions so that individual needs can be addressed.
   2. The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual’s individualized plan for employment.
3. Authorization of services. The State unit must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(34 C.F.R. § 361.50.)

California Code of Regulations:

Assessment for Determining Eligibility

It is presumed that an applicant who has a physical or mental impairment which results in a substantial impediment to employment can benefit from vocational rehabilitation services unless, there is clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability. (Cal. Code Regs. Tit. 9, §§ 7062 & 7179)

Individualized Plan for Employment (IPE)

The Individualized Plan for Employment (IPE) must be developed within 90 days from the date of the eligibility determination.

* 1. If exceptional and unforeseen circumstances beyond the control of the Department arise, and the individual and the Department agree to a specific extension of time for IPE development, a rationale and date for the extension, signed by the individual and the Senior Vocational Rehabilitation Counselor (SVRC) must be entered into the record of services for that individual.
  2. Only one extension may be agreed to by the SVRC and, in such case, the IPE must be developed by the agreed upon date, unless an additional extension is approved by the appropriate District Administrator.

(Cal. Code Regs. Tit. 9, § 7128)

The purpose of an IPE is to provide a written plan of action and a statement of understanding regarding the rights and responsibilities of both the client and the Department. An IPE is developed jointly by the client and the rehabilitation counselor. An IPE may include educational training to achieve a client’s vocational goals. (Calif. Code Regs., tit. 9, §§ 7128, 7130, 7131.)

The IPE must be: 1) in writing; 2) developed and implemented in a manner that allows the disabled person to exercise informed choice in creating an employment outcome, determining the specific services needed to achieve the outcome, selecting the entity or entities who will provide services, and choosing the methods by which services will be obtained; and 3) agreed to and signed by the person to receive services, or his representative, and his rehabilitation counselor at the Department. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(1)-(3).)

Prior to approving the IPE, the rehabilitation counselor with the Department must confirm that the identified employment goal, the services to be provided, the provider of services, and the manner in which services will be provided are “appropriate and necessary” in light of the person’s circumstances, and are consistent with applicable laws. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(3)(B)(1).)

An IPE must include the following components: 1) the employment outcome agreed upon by the parties; 2) the vocational rehabilitation services to be provided; 3) the timeline for achieving the identified employment outcome and starting the necessary services; 4) the entity or entities who will provide the services and the manner in which services will be obtained; 5) the criteria used to evaluate progress toward achieving the identified outcome; and 6) the respective duties of the person receiving services, the Department, and anyone responsible for obtaining comparable services and benefits. (Cal. Code Regs., tit. 9, § 7131, subd. (a).)

A person who is eligible for vocational rehabilitation services is entitled to be an active participant in determining the specific services he will receive, how he will receive them, and from whom he will receive them. (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(1).) Such a person has the right to receive services “without undue delay.” (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(6).)

A person who is eligible for vocational rehabilitation services also has certain responsibilities, such as providing the Department information necessary to determining what services are necessary and appropriate. (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(1).) Such person is required to “be an active and full partner in the vocational rehabilitation process.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(2).) Such person

must “report any changes in circumstances that may affect” his eligibility or priority for services, the services provided, or the Department’s ability to contact him. (Cal. Code Regs., tit. 9, § 7029.9, subdivision. (b)(3).) Such person is required to cooperate in developing and meeting objectives identified in his IPE, which includes “active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(4).) The failure to do so may result in the loss of services and closure of his case. (Ibid.)

Maintenance

1. “Maintenance” means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual’s participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual’s receipt of vocational rehabilitation services under an Individualized Plan for Employment (IPE).
2. Examples of expenses that meet the definition of maintenance include, but are not limited to:
   1. The cost of a uniform or other suitable clothing that is required for an individual’s job placement or job-seeking activities.
   2. 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.
   3. **The initial one-time costs, such as a security deposit or charges for the initiation of utilities**, that are required in order for an individual to relocate for a job placement or participate in training.
   4. The costs of an individual’s participation in enrichment activities related to that individual’s training program. For students this includes, but is not limited to, student trips, visits to museums, and supplemental lectures, when such activities are essential components of the training.

## Nothing in this section shall be construed to mean that the Department will provide maintenance on a long-term or ongoing basis to support an individual’s everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies.

Cal. Code Regs. Tit. 9, § 7019, (emphasis added).)

Other Goods and Services

1. Other goods and services may be provided to an eligible individual under an Individualized Plan for Employment (IPE) only if the goods and services are necessary for the individual to achieve the employment outcome specified in his or her IPE.
2. Other goods and services include, but are not limited to:
   1. Short-term or emergency financial assistance to an individual, except that financial assistance **shall not be provided to support an individual's everyday living expenses** or take the place of, provide the services of, or become a payment program similar to, welfare and other social services agencies.
   2. Occasional or emergency purchases of haircuts, handbags, or toiletries for an individual.
3. Before providing any vocational rehabilitation services to an individual as other goods and services, the Rehabilitation Counselor shall determine all of the following:
   1. Whether the goods and services to be provided are available from other sources as a comparable service and benefit, including, but not limited to, health or disability insurance, employee benefits, social security programs, welfare and social service programs, and other programs sponsored by federal, state, city, and county government agencies that serve individuals with disabilities.
   2. The extent of the individual's financial participation in the cost of goods and services to be provided.
   3. That other, more cost-effective, alternatives are not available. (California Code of Regulations., tit.9, § 7174.)

Transportation Supportive Service

Transportation Services shall be provided as a supportive service when necessary to provide for those travel expenses resulting from:

1. A determination of rehabilitation potential.
2. The provision of counseling and placement services.
3. The client's participation in a completion of an approved program of vocational rehabilitation services.
4. The provision of post-employment services. (Cal. Code Regs., tit. 9, § 7161 (a)(1)

Prior to provision of any transportation services the Counselor shall determine both of the following:

* 1. Whether the client is eligible for similar benefits in accordance with Sections 7196 through 7198. If eligibility exists, the Counselor shall follow the procedures specified in those regulations.
  2. The ability of the client to financially participate in accordance with sections 7190 through 7194. If the client is able to financially participate, the procedures for payment specified in those regulations shall be followed.

(Cal. Code Regs. tit. 9, § 7161(b).) Least Costly Mode of Transportation

The mode of transportation provided shall be the least costly mode which meets the special needs of the client. Modes of transportation include, but are not limited to:

1. Publicly owned or contracted transportation such as buses, dial-a-ride and rapid transit.
2. Transportation available through community resources.
3. Client-owned vehicles.
4. Privately owned transportation such as taxicab, limousine or paratransit companies and charter buses.
5. Carpools and payment to co-workers.
6. Car rental agencies.

(Cal. Code Regs., tit. 9, § 7161(c))

Additional authorization criteria and rates of payment for specific modes of transportation shall be set by the Department pursuant to sections 7162 through 7163.5[3](#_bookmark2).

(Cal. Code Regs. tit. 9, § 7161 (d).)

The transportation allowance shall be calculated on an average monthly basis and paid to the client at the beginning of each month.

(Cal. Code Regs., tit. 9, § 7162 (e))

Privately Owned and Operated Modes of Transportation - Taxis/Uber etc.

* 1. Privately-owned and operated modes of transportation shall be authorized only when both of the following conditions exist:
     1. The Counselor has made a determination in accordance with section 7162(b)(2) that a publicly-owned or contracted mode of transportation is not readily available or would cause undue hardship to the client.
     2. The privately-owned mode of transportation can meet the client's special needs.
  2. The rate of payment shall be the transportation provider's usual and customary charge for the service.
  3. Payment shall be made to the transportation provider. (Cal. Code Regs. tit. 9, § 7163.

A publicly owned or contracted mode of transportation is not readily available or would cause undue hardship to the client.

Readily available and undue hardship shall be determined by considering such factors as:

1. The special needs of the client.

3 California Code of Regulations., tit. 9, §§ 7162 through 7163.5 address Client-Owned Vehicle Use, Client-Owned Vehicle Insurance, Client-Owned Vehicle Repairs, Privately Owned and Operated Modes of Transportation, and Transportation Expenses for Permanent Relocation.

1. The proximity of public transportation to the client's home and to his/her destination.
2. The frequency of public transportation at the times of day during which the client will be traveling.

(Cal. Code Regs. tit. 9, § 7162 (b)(2).)

Informed Choice

(a) Applicants and eligible individuals or, as appropriate, their representatives shall be provided information and support services to assist them in exercising informed choice throughout the rehabilitation process consistent with the requirements of this section.

…

(c) The availability and scope of informed choice shall be consistent with the Department's obligations under the Act and federal regulations and with the Department's responsibilities for the; administration of the vocational rehabilitation program. Statutory and regulatory requirements that affect the exercise of informed choice include all of the following:

…

* 1. 34 CFR 361.50, which authorizes the Department to develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in Section 7149 of these regulations and the criteria under which each service is provided.

…

(8) 34 CFR 361.12, which requires, in part, that the Department ensure financial accountability in administering the vocational rehabilitation program.

(Cal. Code Regs. tit. 9, § 7029.6.) Authorization of Services

General Provisions

1. This Subchapter sets forth the policies and standards for authorizing the purchase of vocational rehabilitation goods and services.
2. Definitions:
   1. "Authorization" is defined as an obligating document which authorizes the delivery of specified goods or rendering of certain services by a vendor (provider) at a fixed or ascertainable fee within a stated period of time.
3. Authorizations of goods and services shall be accomplished by the use of the following obligating documents:
   1. Department forms designated for purchase of goods and services, or
   2. State of California forms designated for the purchase of goods and services. (Cal. Code Regs. tit. 9, § 7310.)

Requirements

1. A written authorization shall be made prior to the purchase of goods and services as documented in the client's case record.
2. Designated case carriers may, with supervisory approval, be permitted to make emergency verbal authorizations. Such emergency verbal authorizations will be confirmed with a written authorization to the provider of the goods or services.
3. The Department is not required to provide payment for goods and services that are not authorized by a Departmental employee.

(Cal. Code Regs. tit. 9, § 7311.)

Compliance

1. Authorizations issued for the purchase of goods and services shall be prepared in accordance with the following guidelines:
   1. Department policies
   2. State Board of Control Regulations
   3. State Administrative Manual Rules
   4. Other related State agency policies and regulations

(Cal. Code Regs. tit. 9, § 7312; see Welfare & Institutions Code §§ 19006 and 19016; see also 34 C.F.R. § 361.50.)

Rates of Payment General Provisions

1. The purpose of this Subchapter is to promulgate the policies and standards that govern the rates of payment authorized by the Department for the purchase of goods and services.
2. For the purpose of this Subchapter, the following definitions shall apply:
   1. "Goods and Services" means services in compliance with the rehabilitation service provisions of sections 7150 through 7179 of this Chapter.
   2. "Vendor" means an individual, company, corporation, or other entity who sells goods and/or provides those services required for the rehabilitation process.
   3. "Personal Services" means supportive services, such as, readers for the blind, interpreters, attendants, drivers, notetakers, and others providing a personal service.
   4. "Competitive Employment" means employment as set forth in the provisions of section 7184 of this Chapter.
   5. "Sheltered Workshop" means a workshop as set forth in the provisions of section 7183 of this Chapter.

(Cal. Code Regs. tit. 9, § 7320.)

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Requirements

1. The Department shall establish, maintain in writing, and make available, maximum rates of payment.
2. Maximum rates of payment for authorized goods and services are regulated by any one or more of the following:
   1. Those rates established by the Department for goods and services.
   2. The California Relative Value Studies published by the California Medical Association governing maximum unit values for medical procedures.
   3. The California State Schedule of Maximum Allowances published by the Department of Health Care Services regulating maximum amounts payable for medical and related services.
   4. The California State Administrative Manual guidelines.
   5. Those rates paid by other agencies or charged the general public for comparable goods and services.

(Cal. Code Regs. tit. 9, § 7321.)

Additional Charges

1. Vendors providing goods and services to clients under authorization from the Department shall accept the payment made by the Department as the full reimbursement. Vendors shall not make any additional charges or accept payment from the individual with a disability or any other source for such service.

(Cal. Code Regs. tit. 9, § 7322.)

Responsibilities of Individuals with Disabilities; Applicants; Eligible Individuals

1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:

(1) Participate and cooperate in obtaining and providing the information needed by the Department to:

* 1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
  2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
  3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
  4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
  5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.

…

* 1. Report any changes in circumstances that may affect:
     1. Eligibility for vocational rehabilitation services;
     2. Priority category under an Order of Selection;
     3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
     4. The Department's ability to contact the individual. (Cal. Code Regs. tit. 9, § 7029.9.)

State department or agency not to contract for purchase of tangible personal property from vendors, contractors or affiliates that are not holders of seller’s permit or certificate of registration; Exemptions

1. A state department or agency shall not contract for the purchase of tangible personal property from a vendor, contractor, or an affiliate of a vendor or contractor, **unless that vendor, contractor, and all of its affiliates that make sales for delivery into California are holders of a California seller’s permit issued pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, or are holders of a certificate of registration issued pursuant to Section 6226 of the Revenue and Taxation Code**. A vendor or contractor that sells tangible personal property to a state department or agency, and each affiliate of that vendor or contractor that makes sales for delivery into California, **shall be regarded as a “retailer engaged in business in this state,” and shall be required to collect the California sales or use tax on all its sales into the state** in accordance with Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.
2. Beginning on and after January 1, 2004, each vendor, contractor, or affiliate of a vendor or contractor that is offered a contract to do business with a state department or state agency shall submit to that state department or agency a copy, as applicable, of that retailer’s seller’s permit or certificate of registration, and a copy of each of the retailer’s applicable affiliate’s seller’s permit or certificate of registration, as described in subdivision (a). This subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.

## A state department or state agency is exempted from the provisions of subdivision (a) if the executive director of that state department or agency, or his or her designee, makes a written finding that the contract is necessary to meet a compelling state interest.

1. For the purposes of this section:
   1. “Affiliate of the vendor or contractor” means any person or entity that is controlled by, or is under common control of, a vendor or contractor through stock ownership or any other affiliation.
   2. “Compelling state interest” includes, but is not necessarily limited to, the following:
      1. Ensuring the provision of essential services.
      2. Ensuring the public health, safety, and welfare.
      3. Responding to an emergency, as defined in Section 1102.
   3. “State department or agency” means every state office, department, division, bureau, board, and commission, but does not include the University of California, the California State University, the Legislature, the courts, and any agency in the judicial branch of government.

(Cal. Pub. Cont. Code § 10295.1 (emphasis added).)

## CONCLUSION

As discussed above, while any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal hearing, such an Appellant has the burden of introducing evidence sufficient at hearing to demonstrate Appellant’s case by a preponderance of the evidence. (See Calif. Code Regs., tit. 9, §§ 7531(a) & 7536(e).)

Credibility Finding

In determining the credibility of a witness, the Administrative Law Judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of the testimony at the hearing. (See Evidence Code §780.)

In this case, a tendency in reason exists to disprove the truthfulness of Appellant’s testimony at the hearing, namely Appellant’s admission that: (1) Appellant received DOR money to pay for Appellant’s cost to commute to and from law school by using an Uber service driver during a heat wave that Appellant complained about; (2) Appellant did not use these DOR funds for this purpose; (3) Appellant kept these DOR funds; and

* 1. Appellant did not plan to return these funds to the DOR.

After Appellant complained of a heat wave’s effect on his ability to commute to and from law school to participate in his DOR approved program of vocational rehabilitation services, the DOR provided him with money to necessarily use an Uber service driver, as a transportation supportive service during the heat wave. However, Appellant did not spend these funds to use an Uber service driver. Appellant knowingly kept these funds, and he admittedly did not plan to return these funds back to the DOR.

But for their approved purpose, Appellant is not entitled to use the funds the DOR provides to him. DOR clients are responsible to provide information needed by the DOR to determine their eligibility for services and report any changes – so that DOR

clients do not receive assistance for purposes for which they are not entitled. (See Cal. Code Regs. tit. 9, § 7029.9.) To determine that Appellant did not have to return the DOR funds that he received – but did not use for the purpose that Appellant was found eligible to receive them – is not only unreasonable, but arguably unlawful.

While, the DOR failed to comply with the requirement to make payment to the transportation provider instead of to Appellant as required by regulations in the case of privately owned and operated modes of transportation, this failure did not reasonably absolve the impermissible conversion of the DOR funds Appellant received specifically for transportation during a heat wave. (See Cal. Code Regs. tit. 9, § 7163.)

Transportation Expenses in the form of a Rental Vehicle for Travel to and from Appellant’s Classes at Law School

As discussed above, Transportation Services shall be provided as a supportive service when necessary to provide for those travel expenses resulting from: (A) A determination of rehabilitation potential. (B) The provision of counseling and placement services. (C) The client's participation in a completion of an approved program of vocational rehabilitation services. (D) The provision of post-employment services. (See Cal. Code Regs., tit. 9, § 7161 (a)(1).)

The mode of transportation provided shall be the least costly mode which meets the special needs of the client. Modes of transportation include but are not limited to: (1) Publicly owned or contracted transportation such as buses, dial-a-ride and rapid transit.

(2) Transportation available through community resources. (3) Client-owned vehicles.

(4) Privately owned transportation such as taxicab, limousine or paratransit companies and charter buses. (5) Carpools and payment to co-workers. (6) Car rental agencies. (See Cal. Code Regs., tit. 9, § 7161(c).)

The DOR can determine that a publicly owned or contracted mode of transportation is not readily available or would cause undue hardship to a client by considering such factors as: (A) The special needs of the client. (B) The proximity of public transportation to the client's home and to his/her destination. (C) The frequency of public transportation at the times of day during which the client will be traveling. (See Cal.

Code Regs. tit. 9, § 7162 (b)(2).)

The DOR must provide clients information and support services to assist them in exercising informed choice throughout the rehabilitation process. (See Cal. Code Regs. tit. 9, § 7029.6.)

DOR clients are responsible to participate and cooperate in providing the information needed by the DOR to determine their eligibility for services and report any changes in circumstances that make Appellant eligible for vocational rehabilitation services. (See Cal. Code Regs. tit. 9, § 7029.9.)

Appellant Failed to Bear the Burden of Proof Regarding Transportation.

In his testimony, submitted written statements, and his documented DOR correspondence record, Appellant variously asserted that:

* Sensory issues, including light, temperature, smell, and sound, are the first issues that affect Appellant’s ability to use modes of transportation such as public or private busses, bicycles, and walking. Appellant cannot

take public transportation as he is severely disabled due to the anxiety doing so would cause Appellant, as well as exposing Appellant to temperatures, sounds, and lights Appellant cannot tolerate – while effecting Appellant’s routine.

* Second, law school presents a huge issue with Appellant’s established routines, which becomes even worse with a mode of transportation that does not provide immediate and prompt conveyance from point A to point B.
* Using a mode of transportation that Appellant was unfamiliar with, namely anything other than driving, posed the risk of compounding his anxiety, depression, and social isolation, which law school already strained.
* Because Appellant suffered from anxiety, depression, social isolation Keratoconus, sensory issues and excessive sweating, Appellant cannot commute to class by walking about 30 minutes to and 30 minutes back from class. The walk was longer than Appellant had originally expected, namely at least 25 minutes when walking at a fast pace or one hour in total, compounded by the weather, which always at or above 80 degrees. As a consequence, when Appellant reaches school, his clothes are soaked with sweat. Because Appellant was five feet and seven inches tall, drivers do not see Appellant when he is walking. Recently, Appellant was nearly struck by a car as Appellant was walking home from school, while he was on the sidewalk near the entrance to the parking lot of Appellant’s law school.
* A bus was not a reasonable option for Appellant due to Appellant’s issues with heat, time, an undiagnosed condition where he sweats more than most, and the unavailability of a bus for traveling back to his apartment rather only a walking option. The schedule of regular buses does not fit Appellant’s class schedules, given the earliest pickup time near the apartment and the frequency of service.
* On September 15, 2022, Appellant was evaluated by Access Services and is awaiting a decision. However, Access Service was also not a viable option due to their vehicle’s large window’s effect on Appellant’s sensory issues, as well as the effect on Appellant’s anxiety for having to wait during a large pickup and return window, namely 30 minutes.
* Assuming arguendo that a bike was allowed, Appellant then wouldn’t be able to bring a computer, charger, class materials, books, and various other items to class. A former DOR client was killed while he was riding his electric bike home from his job.
* Although a more reasonable option than the bus. Appellant could not use an Uber service primarily due to the need to interact with the driver.
* The most reasonable option would be for DOR to provide him a rental vehicle. A rental vehicle is only other alternative available to Appellant to meet his need to have a mode of transportation that was on demand and didn’t interfere with Appellant’s class schedules. At this point, a rental vehicle is the least costly mode of transportation that meets Appellant’s special needs. If possible, an electric vehicle would be the best fit.

This case must be decided on the evidence that was presented at the state hearing and under the preponderance of the evidence or “more likely than not” standard. On this record, Appellant has not presented sufficient credible evidence to meet Appellant’s burden to establish by a preponderance of the evidence that the DOR incorrectly denied Appellant’s request for transportation supportive services in the form of a rental vehicle for travel to and from Appellant’s law school classes. This is so for the following reasons.

First, for the reasons discussed in the credibility finding above, Appellant’s above testimony is a tendency in reason exists to disprove the truthfulness of Appellant’s testimony, which is viewed with distrust absent corroboration by Appellant’s medical records.

Second, Appellant failed to submit any medical records from his treating providers to fully document Appellant’s asserted inability to use public transportation.

Appellant reported that he suffered from mental disability that would make it difficult for him to take public transportation, namely Major Depressive Disorder (F33.1), Generalized Anxiety Disorder (F41.1), and Autistic Disorder (F84.0), social isolation, excessive sweating, and Keratoconus (a condition which causes blurred vision and sensitivity to light and glare).

In support of Appellant’s testimony, he submitted a report dated 12/27/2020 from HBH [provider initials only] titled Diagnostic and Clinical Assessment written by [C {first initial only}] M.A., LMFT (Licensed Marriage & Family Therapist), BCBA (Board Certified Behavior Analyst) the results of which were reviewed by Dr. [R {first initial only}], a Psychologist and BCBA – Doctoral, indicating that Dr. [R {first initial only}] concurred with the conclusions of the assessment, C {first initial only}] M.A., LMFT.

This report did not “confirm the issues created from Appellant disabilities,” as asserted by Appellant’s September 29, 2022 letter. [C {first initial only}] M.A., LMFT obtained the information used in this assessment directly from Appellant's parents, Appellant, observation of Appellant, and a review of Appellant’s available records. [C {first initial only}] M.A., LMFT observed, evaluated, and interviewed Appellant over the course of a total of 1.5 hours while in his home via video, as well as briefly in-person for an unknown period of time.

In regards to Appellant’s vision, [C {first initial only}] M.A., LMFT reported that Appellant’s vision was within normal limits based on his parent’s report.

In regards to hyper or hypo reactivity to sensory input, [C {first initial only}] M.A., LMFT reported that Appellant displayed sensitivity to same noises that would not bother others, like the sound of people's voices (normal conversational level) or the sound of his hard drive whirring. He will put on his headphones or cover his ears if these things occur and he is irritated by them.

In regards to Appellant’s reported mental disorders, [C {first initial only}] M.A., LMFT did not receive any medical reports from Appellant’s psychiatrists who Appellant’s parents reported diagnosed Appellant with Major Depressive Disorder (MOD), an unspecified Anxiety Disorder, an unspecified Mood Disorder, and an Adjustment Disorder.

Appellant’s parents reported this information, stating that in 2017 a psychiatrist whose names they could not recall diagnosed Appellant with all the above conditions except for

an Adjustment Disorder. They further reported that in 2020 a psychiatrist whose name began with the letter F diagnosed Appellant with an Adjustment Disorder. [C {first initial only}] M.A., LMFT reported that C did not receive any medical reports from Appellant’s psychiatrists, because Appellant’s parents reported that they did not retain them and could no recall the name of the providers.

[C {first initial only}] M.A., LMFT determined that Appellant suffered from a moderate-to- severe level of autism spectrum (F84.0) related symptoms, and her report was reviewed and concurred by Dr. [R {first initial only}], a Psychologist and BCBA – Doctoral. In regards to Appellant’s needs, [C {first initial only}] M.A., LMFT reported that Appellant required very substantial support in addressing his social communication and support in addressing his restricted interests and repetitive patterns of behavior. Appellant would benefit from a focused behavior treatment program with foundations in Applied Behavior Analysis (ABA) to address his symptoms of Autism Spectrum Disorder and address deficits in his social communication and social behavior.

In regards to Appellant’s reported social isolation, excessive sweating, sensory disorder, and Keratoconus, [C {first initial only}] M.A., LMFT made no mention of these issues in her report.

In support of Appellant’s testimony regarding the effect of his disabilities on his inability to use public transportation and his ability to use a rental car for transportation to and from law school, Appellant also submitted a supporting segment of the Request for Accommodations form from Appellant’s law school signed on July 5, 2022 by Nurse Practioner [J {first initial only}], which was based on a partial review of Appellant’s medical records.

Nurse Practioner [J {first initial only}], J stated, in pertinent part, that: (1) Appellant established care with her on “11/21;” (2) she referred Appellant to psychiatry in her office, as the provider who treated Appellant was on a leave of absence; (3) she attached Appellant’s providers last note with instructions for accommodations and reviewed last notes from Appellant’s psychologist and his “autism diagnostic” interview;

(4) the last date of an evaluation/assessment of Appellant was completed by J on 6/6/22 and by a “psych” on 3/16/22**;** (5) Appellant’s specific diagnoses included autism spectrum disorder, ADHD, mood disorder, anxiety, and depression; (6) Appellant’s symptoms of his psychological disability included inflexibility with organization and planning; (7) Appellant was in compliance with medications; and (8) Appellant needed to establish care with a new psychiatrist as he is relocating for law school.

In regards to Appellant’s reported social isolation, excessive sweating, Keratoconus, or a sensory disorder, Nurse Practioner [J {first initial only}] also made no mention of the same.

Appellant’s last medical notes from his psychiatrist with instructions for accommodations and the last medical notes from Appellant’s psychologist referred to as attached and reviewed by Nurse Practioner [J {first initial only}] were not submitted by Appellant.

Appellant also did not submit Appellant’s last evaluations performed by a “psych” on 3/16/22 and Nurse Practioner [J {first initial only}] on 6/6/22.

In support of Appellant’s testimony regarding the effect of his disabilities on his inability to use public transportation and his ability to use a rental car for transportation to and

from law school, Appellant also submitted a copy of a September 26, 2022 letter from PNS [full name omitted]Specialists by Physician’s Assistant [B {first initial only}] PA-C which was based upon an evaluation by Physician’s Assistant [B {first initial only}] of Appellant on the same date, indicating Appellant was now under the care of Physician’s Assistant [B {first initial only}] and receiving treatment for Major Depressive Disorder (F33.1), Generalized Anxiety Disorder (F41.1), and Autistic Disorder (F84.0).

Physician’s Assistant [B {first initial only}] did not indicate what, if anything, Physician’s Assistant [B {first initial only}] did to evaluate Appellant other than state that Appellant reported to Physician’s Assistant [B {first initial only}] Appellant’s assertions that using public transportation to get to and from law school and the amount of time it took to use a bus significantly worsened Appellant’s anxiety considering Appellant’s time commitment required to succeed in law school. Physician’s Assistant [B {first initial only}] provided no reasoning for this conclusion, before opining that any additional reasonable accommodations that could be made to help minimize Appellant’s commute time would be greatly beneficial for improving his mental state, as well as maintaining mental stability.

Physician’s Assistant [B {first initial only}] also did not refer to any history of failure to treat Appellant’s diagnosed conditions with medication to control frequency and/or severity of symptoms; provided no explanation why with training Appellant’s symptoms would not be reduced in frequency and/or severity; and made no mention of whether Appellant is competent to drive a motor vehicle given his diagnoses, as well as his reported Keratoconus or sensory disability.

Notably, Physician’s Assistant [B {first initial only}] also did not opine that given Appellant’s disorder(s), it was unreasonable to expect Appellant to use public transportation.

Because – absent evidence to the contrary – it is reasonable to infer that it was within the power of Appellant to produce stronger and more satisfactory evidence in the form of Appellant’s medical records from his prior Psychiatrists, the weaker and less satisfactory evidence above offered by Appellant must also be viewed with distrust.

Such missing medical history could reasonably be expected to establish whether it was or was not reasonable to expect Appellant to use public transportation, walk or drive safely by considering the impact, severity, frequency of Appellant’s reported conditions on the same (See Evidence Code §412.)

Third, Appellant submitted an article entitled “Transportation Issues of Adults on the Autism Spectrum, Findings from Focus Group Discussions, the authors stated that – the authors of another article reported that – “for persons with developmental disabilities, ‘transit buses also present a unique set of barriers due to route complexity, transfer requirements, unfamiliar destinations, schedule complexity, and other cognitively loaded requirements needed for successful transit system navigation.’ The probative value of this article is limited in that it reports the findings of another article – especially in light of the absence of Appellant’s medical records to substantiate his assertions that as a result of his conditions, Appellant impliedly suffered similarly. In addition, there is no evidence that Appellant could not overcome any such barriers. SVRC-QRP [T {first initial only}] mentioned to Appellant that SVRC-QRP could check into a vendor who could provide bus training in the area to help Appellant be more comfortable.

Moreover, in the same article cited above by Appellant, the authors state:

“Driving an automobile requires a variety of abilities that may pose difficulties for persons on the autism spectrum, including those pertaining to motor skills, perception issues, executive functioning capability, the ability to generalize skills to different environments, and the ability to anticipate actions of other drivers (*19, 27, 28*). Sheppard et al. found that persons with ASD had difficulty identifying potential driving hazards and demonstrated slower reaction times to all hazards presented when compared with a group of persons without ASD (*29*). In a recent survey of parents of adults on the autism spectrum who were seeking to secure a driver’s license, it was found that learning to drive presented numerous difficulties for the ASD population (*30*).”

Also, absent a reasoned documented record from a treating physician and/or medical provider that the Appellant can safely operate a vehicle given his diagnoses, it is not reasonable to infer that he can safely operate a motor vehicle.

Appellant failed to submit medical records, wherein a qualified treating medical professional fully documents the Appellant’s inability to use alternative modes of transportation due to his documented diagnosed mental and physical conditions – which is not a conclusory statement, but which is reasoned in reference to Appellant’s medical history and subject to verification. The DOR must not only consider the nature, but also the severity of Appellant’s disability in making determinations of service needs. (See California Code of Regulations., tit. 9, § 7154)

Accordingly, the DOR’s denial of Appellant’s request for transportation supportive services in the form of a rental vehicle for travel to and from Appellant’s law school classes is sustained. Pursuant to California Code of Regulations., tit. 9, section § 7162 (b)(2), and applicable informed choice requirements, the DOR shall redetermine whether a publicly owned or contracted mode of transportation was not readily available or would cause undue hardship to Appellant by considering such factors as: (A) Appellant’s special needs as documented by Appellant’s medical records; (B) the proximity of public transportation to Appellant’s home and to his law school classes; and (C) the frequency of such public transportation at the times of day during which Appellant will be traveling, including during breaks between Appellant’s law school classes during any calendar day. (See Cal. Code Regs. tit. 9, § 7162 (b)(2).)

Appellant is Not Entitled to Ongoing Assistance with Appellant’s Utilities

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual’s individualized plan for employment, the designated State unit must ensure, among other things, Maintenance, in accordance with the definition of that term in § 361.5(c)(34). (See 34 C.F.R. § 361.48 (b).)

Maintenance is monetary support provided to an individual for expenses that are in *excess of the normal expenses* of the individual and that are necessitated by the individual’s receipt of vocational rehabilitation services under an individualized plan for employment, such as *the initial one-time costs*, such as a security deposit or charges for

*the initiation of utilities*, that are required in order for an individual to relocate for a job placement. (See 34 C.F.R. § 361.5(c)(34), (emphasis added).)

California Code of Regulations., tit. 9, section 7019(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(c), then states, “Nothing in this section shall be construed to mean that the Department will provide maintenance on a long-term or ongoing basis to support an individual’s everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies.” Section 7177(b), is also clear that DOR “may not provide maintenance to support an individual’s basic living expenses.” Section 7177(d), further states, “[m]aintenance payments to an individual are limited to actual expenses in excess of normal living expenses.”

In his testimony, submitted written statements, and his documented DOR correspondence record, Appellant variously asserted that:

* Appellant requested to have his utility bills paid ongoing while in law school.
* Appellant’s move to the city where Appellant began attending law school for a three-year period was temporary.
* Section 1255 of the DOR Rehabilitation Administrative Manual lists “utilities” as an enumerated subcategory of “Other Goods and Services Not Coded Elsewhere”, which Title 9, Section 7174 of the California Code of Regulations includes as a short-term emergency financial assistance which may be provided under limited conditions to be necessary for the individual with a disability to achieve an employment outcome.
* Prior to moving to attend law school, Appellant did not pay for utilities, which Appellant’s mother paid as he lived at her home.
* Because the DOR pays ongoing internet services which is almost a utility, the DOR should also pay for Appellant’s housing ongoing utility expenses

As discussed above, applicable federal and state regulations regarding “maintenance” do not permit DOR to pay Appellant’s ongoing utilities, while he attends law school. The regulations clearly prohibit the payment of expenses in excess of an individual’s “normal,” “every day,” or “basic” living expenses.

Appellant’s assertion that internet services constitute a utility which the DOR pays is without merit, because the DOR pays for internet services when they are directly related to a DOR client’s training. Internet services are not long-term everyday living expenses.

While Appellant argued that before he went to law school he lived with his mother free from paying utilities, that does not mean it did not cost Appellant’s mother anything for Appellant to use utilities when he lived with his mother or that the cost of utilities while Appellant lived near law school to attending classes does not amount to a “normal,” “basic,” or “everyday” living expense. To interpret the regulation in the manner Appellant argued would mean that any time someone changed his or her living arrangements while receiving vocational rehabilitation services, the new living expenses would no longer be considered “normal,” “basic,” or “every day.” Additionally, relocating to live in a new residence during law school is not a “short-term” arrangement.

California Code of Regulations., tit. Sections 7019 and 7177 are similarly interpreted by DOR in RAM section 1244 to mean that only short-term expenses may be funded as “maintenance.” Section 1244 explains that “[f]or consumers who relocate for job training or job placement, maintenance may provide the funds required for initial one-time costs, such as security deposits or the initiation of utilities. . . ” Appellant’s housing ongoing utility expenses are not temporary, short-term, or one-time payments, but are instead long-term normal living expenses, which DOR may not fund.

Accordingly, the DOR’s denial of Appellant’s request that DOR pay his housing ongoing utility expenses while he attended law school is sustained.

The DOR Shall Pay Appellant’s Expenses for Clothing to Include Two Tailor-Made Suits, Two Dress Shirts, and Two Dress shoes, as Agreed to By the DOR Representative at Hearing.

As discussed above, a state department or agency shall not contract for the purchase of tangible personal property from a vendor, contractor, or an affiliate of a vendor or contractor, **unless that vendor, contractor, and all of its affiliates that make sales for delivery into California are holders of a California seller’s permit issued pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, or are holders of a certificate of registration issued pursuant to Section 6226 of the Revenue and Taxation Code**.

A vendor or contractor that sells tangible personal property to a state department or agency, and each affiliate of that vendor or contractor that makes sales for delivery into California, **shall be regarded as a “retailer engaged in business in this state,” and shall be required to collect the California sales or use tax on all its sales into the state** in accordance with Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code. (See Cal. Pub. Cont. Code § 10295.1.)

A state department or state agency is exempted from the provisions of subdivision (a) if the executive director of that state department or agency, or his or her designee, makes a written finding that the contract is necessary to meet a compelling state interest. (Cal. Pub. Cont. Code § 10295.1(c).)

Pursuant to California Code of Regulations., tit. 9, section 7019 (a), the DOR can provide monetary support for clothing expenses that are in excess of an individual’s normal expenses based on the needs of the vocational rehabilitation plan, including the cost of a uniform or other suitable clothing that is required for an individual’s job placement or job-seeking activities. Cal. Code Regs. Tit. 9, §§ 7019(a)(1), 7019(b)(1); see also 34 C.F.R. § 361.5(c)(34).)

Authorization" is defined as an obligating document which authorizes the delivery of specified goods or rendering of certain services by a vendor (provider) at a fixed or ascertainable fee within a stated period of time. (Cal. Code Regs. tit. 9, § 7310(b)(1).)

Authorizations of goods and services shall be accomplished by the use of the following obligating documents: (1) Department forms designated for purchase of goods and services, or (2) State of California forms designated for the purchase of goods and services. (Cal. Code Regs. tit. 9, § 7310(c).)

Authorizations issued for the purchase of goods and services shall be prepared in accordance with the following guidelines: (1) Department policies (2) State Board of

Control Regulations (3) State Administrative Manual Rules (4) Other related State agency policies and regulations. (Cal. Code Regs. tit. 9, § 7312; see Welfare & Institutions Code §§ 19006 and 19016; see also 34 C.F.R. § 361.50.)

In his testimony, submitted written statements, and his documented DOR correspondence record, Appellant variously asserted that:

* Appellant’s law school dean sent an email to students on June 27, 2022, stating to get your suits ready.
* Appellant was not participating in moot court or trial team.
* Appellant was not asking for the above clothes for work or to seek work.
* A prior DOR District Administrator agreed with Appellant that made to measure clothing was reasonable for him given Appellant’s sleeve length and jacket size.
* Appellant requested a minimum of 2 suits, 5 dress shirts, and 2 dress shoes for now.
* The DOR has arbitrarily determined a budget for Appellant, which has fluctuated from $250, to $400 to $950 plus $150 for alterations.
* The DOR Addendum SOP did not provide the least expensive made to measure option. Instead, it included prices for off-the rack clothing with alterations.
* The lowest cost per suit at a made to measure store is approximately $950 per suit, namely at the Oliver Wicks store.
* At the store Senszio, the lowest cost for a suit is $1045.
* At the store Proper Cloth, the lowest cost for a suit is $862 without a second pair of trousers: When purchasing a suit, two pairs of trousers are purchased.
* An order requiring the DOR to allow at least $950 per suit is appropriate.
* The cost of a shirt from Proper Cloth is generally $110 or $125, with a few different shirts costing upwards of $150.
* An order requiring the DOR to allow at least $110 is appropriate for the price of each shirt.
* One of the largest and most well-known brands for dress shoes is Allen Edmonds, which start at $395 and can be as high as $695.
* An order requiring the DOR to allow at least $395 per shoes is appropriate.

Appellant has not presented sufficient evidence to meet Appellant’s burden to establish by a preponderance of the evidence that the DOR incorrectly denied Appellant’s request for funds from the DOR to receive a minimum of 2 suits, 5 dress shirts, and 2 dress shoes, because Appellant admittedly is not participating in moot court or trial team and Appellant is not asking for clothes for work or to seek work.

In addition, Appellant failed to prove that the above estimates for clothing prices were the lowest cost available for made-to-measure business suits and shirts, as well as dress shoes. Notably, Appellant submits that at least $395 for Allen Edmonds dress shoes is the lowest appropriate cost. It is common knowledge that far less expensive dress shoe alternatives exist. Given Appellant’s assertion that $395 for Allen Edmonds dress shoes is the lowest appropriate cost, it is reasonable to infer that Appellant applied similar logic in quoting the above prices from the vendors of his choice – and less expensive suitable alternative made-to-measure business suits and shirts exist.

Although Appellant is not currently seeking a job nor engaged in a training program that requires a specific uniform to participate, the DOR District Administrator {J {first initial only}] testified at hearing, and the DOR provided in its Statement of Position and Addendum, that the DOR determined the value in Appellant having a business suit for activities associated with being enrolled in his law school program. Specifically, the DOR District Administrator {J {first initial only}] testified that in regards to the DOR decision to approve clothing for Appellant, he believed that 2 suits, 2 dress shirts and 2 dress shoes was reasonable for multiple day use. In addition, the DOR hearing representative Team Manager [S {first initial only}] testified, the DOR agreed that Appellant should have some made to tailor clothing as a law student, which the DOR has been making reasonable efforts to provide. The DOR shall abide by this above agreement.

The DOR Addendum SOP did not describe the DOR’s determination of what amount is reasonable to pay for the Appellant to receive 2 made-to-measure business suits, 5 made-to-measure dress shirts, and 2 dress shoes, as it only described estimates from vendors for off-the-rack clothing and included a budget for alterations.

Accordingly, the DOR’s denial of Appellant’s request for 2 made-to-measure business suits, 5 made-to-measure dress shirts, and 2 dress shoes is sustained. The DOR shall provide Appellant with 2 made-to-measure business suits, 2 made-to-measure dress shirts, and 2 dress shoes by making reasonable efforts pursuant to applicable informed choice requirements to assist Appellant in exercising an informed choice of the least expensive alternatives– which meet Appellant’s made-to-measure needs.

In doing so, the DOR is required to use one of its vendors for the purchase of Appellant’s clothing. Absent an exemption granted by the executive director of the DOR to meet a compelling state interest, the DOR is required to comply with applicable statutes and regulations when entering into a contract for the purchase of goods, such as Appellant’s clothing at issue. Pursuant to Contract Code, section 10295.1, the DOR is prohibited from contracting with a vendor without ensuring that pursuant to the Revenue and Taxation Code the vendor is a holder of a California seller’s permit, a holder of a certificate of registration, and collects the California sales or use tax on all its sales into the state. (See Cal. Pub. Cont. Code § 10295.1.) To provide authorization for the purchase of clothes for Appellant from a vendor, the DOR must use obligating documents, namely Department forms designated for purchase of goods and services, or State of California forms designated for the purchase of goods and services. (See Cal. Code Regs. tit. 9, § 7310(c).) These documents must be prepared in accordance with: (1) Department policies (2) State Board of Control Regulations (3) State Administrative Manual Rules and (4) Other related State agency policies and regulations. (See Cal. Code Regs. tit. 9, § 7312; see Welfare & Institutions Code §§ 19006 and 19016; see also 34 C.F.R. § 361.50.)

[*The remainder of this page is intentionally blank.*]

## ORDER

The appeal is denied in part and granted in part.

It is, therefore, ordered that the Department of Rehabilitation (DOR) shall take the necessary action to:

1. Redetermine Appellant’s need for transportation to and from law school classes by considering whether a publicly owned or contracted mode of transportation was not readily available or would cause undue hardship to Appellant pursuant to applicable laws, including California Code of Regulations., tit. 9, section 7162 (b)(2); and
2. Provide Appellant with 2 made-to-measure business suits, 2 made-to-measure dress shirts, and 2 dress shoes by making reasonable efforts pursuant to applicable informed choice requirements to assist Appellant in exercising an informed choice of the least expensive alternatives available from a DOR vendor – which meet Appellant’s made-to-measure needs.

The appeal is, otherwise, denied.

## NOTICE

Pursuant to California Code of Regulations., tit. 9, section 7358, the Appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if Appellant is dissatisfied with the decision. The Client Assistance Program is available to the Appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance. A copy of this decision shall be filed in the Appellant's record of services. (Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Calif. Code Regs., tit. 9, § 7358, subd. (b).)

# Hearing No. 104844198-751 SUMMARY

The denial of the Department of Rehabilitation (the DOR and/or the Department) of Appellant’s request for an amendment to Appellant’s Individualized Plan for Employment (IPE) to require the DOR to pay Appellant directly the total cost of tuition and fees for Appellant to complete a program of public higher education, which currently includes completion of Appellant’s bachelor’s degree at a California state university is sustained.

The DOR is not permitted to pay Appellant’s maintenance on a long-term or ongoing basis, to support Appellant’s everyday living expenses, or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies.

Appellant’s assertion that internet services, as well as the telephone services required for internet services, constitute ongoing maintenance which the DOR pays is without merit, because the DOR pays for internet and the required attendant telephone services, because they are directly related to Appellant’s training and attendance of virtual classes. As such, internet services and telephone services required for internet services are not long-term everyday living expenses for Appellant.

The appeal is denied. [1960-3] [1950-2]

## FACTS

On September 16, 2022, the Appellant requested a mediation and a hearing with the State Hearings Division (SHD) to dispute denials by the Department of Rehabilitation (the DOR and/or the Department) of Appellant’s request for an amendment to Appellant’s Individualized Plan for Employment (IPE) to require the DOR to pay Appellant directly the total cost of tuition and fees for Appellant to complete a program of public higher education, which currently includes completion of Appellant’s bachelor’s degree at a California state university.

The Appellant and the DOR representative failed to resolve the above issues in dispute at a mediation hearing.

On November 15, 2022, a state hearing was held on this matter. At this hearing, the Appellant, a DOR hearing representative, DOR Counselor [B {first initial only}], and DOR District Administrator [J {first initial only}] appeared by telephone.

The Administrative Law Judge admitted the documents submitted by the parties into the record of the hearing, including: (1) the DOR Statement of Position (SOP) with attachments; (2) various emails from Appellant attaching email correspondence with the DOR; (3) various emails from Appellant attaching records related to Appellant’s allegations of harassment, threats, intimidation and/or discrimination by students and staff at his California state university, a private insurance company, a private commercial real estate firm, an attorney, as well as the city and county wherein Appellant resides, (4) Appellant’s typed statement; and (5) snapshots of Appellant’s California state university financial aid offer for 2022-2023, an October 2022 calendar, and a partial copy of an unidentified overdrawn bank account.

The Department SOP stated, in pertinent part, that:

[1](#_bookmark3) “Pre Mediation Contact

DA and Rehabilitation Counselor were unsuccessful in their communication with the consumer to resolve the issue of the tuition payment to […] State University for Fall Semester 2022.

Issue

Consumer requesting DOR to pay his undergraduate tuition at […] State University each semester directly to him, rather than the Bursur's Office at […] state university (CSU). He received a Federal Pell Grant of $5862 and a State University Grant of $5742. He stated he needs these 2 grants to cover his living expenses of housing and food while attending [Appellant’s CSU]. He will receive less grant money i[f] we pay the university directly.

Consumer shared that if DOR pays his tuition directly to [Appellant’s CSU], [Appellant’s CSU] will take away one of his grants. Without both grants the consumer will not be able to cover his rent and basic needs. Therefore, consumer asked that DOR pay [Appellant’s CSU] tuition directly to him.

Facts

There are federal regulations, RAM. and State regulations, Barclays California Code of Regulations, in which the Department of Rehabilitation is held responsible to adhere to following the guidelines. State employees are to follow both Federal and State guidelines when providing rehabilitation services to persons with disabilities.

Consumer met with his counselor, [B {first initial only}], on 7/13/22 requesting tuition payment made lo him directly. Counselor understood his financial issues and said he would discuss it with the District Administrator, [J {first initial only}]. She stated to counselor we cannot pay consumer directly as we are required to adhere to Federal and State regulations. The student is responsible to use their grants and scholarships first towards payment for tuition and books at the university. This is a comparable benefit. After comparable benefits are utilized, DOR will pay any remaining costs toward tuition and books.

On 7/15/22, [J {first initial only}] had a phone meeting with the consumer. She stated the same to him as she did with the counselor [B {first initial only}]. She said we are unable to make any exceptions. We need to abide by the Federal and State Regulations. She offered financial assistance with his internet and phone to help with his living expenses. Consumer was not satisfied with the response and said he wished to appeal.”

An unsigned copy of Appellant’s Individualized Plan for Employment (IPE) stated, in pertinent part, that:

[2](#_bookmark4)“My employment goal is: Social Workers, Except Medical And Psychiatric (211092) Social Workers

My expected completion date is: 06/2023

1. Why did we choose this employment goal?
   * I explored options and feel this is a good choice.
   * I have successfully completed related training.
   * It matches my interests, abilities and strengths.
   * The job outlook for this type of work is good.

Your IPE is being written to help you obtain employment in a nonprofit with a passion to fight for social justice.

You will soon complete an A.A. degree in LGBT Studies and will transfer to Four-Year Public University to pursue a B.A degree in social work. You are applying now to universities in the […]. Upon graduating with a B.A. degree in Social Work DOR will provide employment services to assist you in obtaining a position related to your degree.

Using informed choice, you selected the employment goal of Social Worker. Your undergraduate studies and employment services will help you prepare for, secure and maintain community employment. You and your DOR counselor are writing your IPE to reflect this employment goal.

You receive SSDI, so your DOR counselor will refer you for benefits counseling.

1. These are the steps I need to accomplish to reach my employment goal:
2. Complete your A.A**.** degree in LGBT Studies at [CC…] in Fall 2020
3. Complete your prerequisite courses at [CC…] in Fall 2020 for a high-level transfer to Four-Year Public University.
4. Begin your B.A. program during the Spring 2021 semester and complete it during the Fall 2022 semester.

## Apply for financial aid each academic year using the FAFSA and use any grants to pay for tuition, fees and required books and supplies before DOR covers any of these costs.

1. Take only the courses required by your program
2. Keep your DOR counselor informed of progress during your employment search
3. Maintain contact with your health care providers, participate in all recommended treatment, and follow all recommended therapist and physician instructions
4. Learn interview techniques and start developing employer contacts with the assistance of employment services provided by a DOR vendor
5. Accept employment in your desired field of interest

2 Spelling and grammar errors, if any, in this quotation are not corrected.

1. Let your DOR counselor know of the name, address, phone number and salary upon the start of employment
2. Your DOR case file will be closed after 90 days of successful employment
3. These are the services we agreed are necessary to reach my employment goal:

|  |  |  |  |
| --- | --- | --- | --- |
| **Service** | **Service Provider** | **Funded By** | **Start Date** |
| Counseling/Guidance | DOR | Agency | 01/2020 |
| Benefits Counseling | DOR, DOR  Vendor | Agency | 01/2020 |
| Community College - Public | CC[…] | Agency, Other | 01/2020 |
| Four-Year College/University – Public (UC or CSU) | DOR  Vendor | Agency, Other | 01/2021 |
| Books | DOR  Vendor | Agency, Other | 01/2020 |
| Transportation – DOR Consumer | Public Transport Agencies | Agency, Other | 01/2020 |
| Employment Services | DOR  Vendor | Agency | 01/2020 |
| Clothing | DOR  Vendors | Agency | 01/2020 |
| Assistive Technology Assessments | […SU] RET | Agency | 01/2020 |
| Assistive Technology Devices | DOR  Vendors | Agency | 02/2020 |
| Assistive Technology Computer Software/Peripherals | DOR  Vendors | Agency | 02/2020 |
| Assistive Technology Training | DOR  Vendors | Agency | 02/2020 |
| Tutor Services | Tutor Me Education | Agency | 04/2022 |
| **Other Goods and Services not Coded Elsewhere** | **DOR**  **Vendors –** | Agency | 07/2022 |

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Internet and Phone Services** |  |  |
| Other Goods and Services not Coded Elsewhere | […SU], DOR  Vendor | Agency | 07/2022 |

1. How did we choose or arrange these services?

Discussion between client and rehabilitation counselor. Client used informed choice in selecting his services.

1. How and when will progress toward my employment goal be evaluated?

Grade reports and updates from service providers. Employment search progress will be evaluated by monthly reports from employment services provider and through discussions between client and rehabilitation counselor.

1. Ongoing communication between the client and his DOR counselor
2. Monthly progress reports from the employment specialist
3. Grade reports each semester
4. Annual review of progress as per IPE goals and time frames
5. These are my responsibilities toward the cost of my Plan:

## Apply for financial aid using the FAFSA and use any grants to pay for tuition, fees and required books and supplies before DOR covers any of these costs. DOR pays at the public school rate.

1. What additional services will I need after I reach my employment goal, if any?

Currently, there is not a projected need for Post Employment Services.”

(Emphasis added.)

In an undated and unsigned typed statement, the Appellant stated, in pertinent part, that:

[3](#_bookmark5)“I am a client of the Department of Rehabilitation. In the hearing dated 14 November 2022 at 8:30 AM. I will demonstrate California State agency intention in the matter of [Appellant]. **In doing so I request an amendment placed in the education plan provided by the Department of Rehabilitation equivalent to the cost of tuition & fees threw the completion of public higher education.**

3 Spelling and grammar errors in this quotation are not corrected.

If not supported with an amendment equivalent to the cost of tuition & fees. I will be unable to successfully complete the education contract between the Department of Rehabilitation and [Appellant].

On 7 November 2022 I submitted documentation to the State hearings Division via DSS Scope of Benefits electronic communication. Included demonstrates coordinated actions of California State Agencies & Contractors. Due diligence of the State Hearings division will substantiate the actions of State Agencies, Contractors, & the Department of Rehabilitation.

I submit the actions of the [county of residence] office of the Department of Education. [R {first initial only}] obstructed justice in the matter of [Appellant] vs. City College of […]. The actions of City College of […] are under State jurisdiction. I submitted a complaint to The State Bar of California. Case number […] is under investigation.

I am a resident of a building acquired by the City & County of […]. The City & County of […] declined to provide relocation after said acquisition. The management company […] was hired to manage the building after said acquisition. The hired management utilized what may be viewed as unethical business practices in removing [Appellant] from the residence. I Contacted the […] City Attorney. I requested relocation provided. This case is under review.

I submitted a claim to […] Insurance Company under California Civil Code 8558. […] employees stated they will not follow California State law & denied coverage. On 8 November 2022 I submitted a voicemail provided by […] claiming intention.

**I am experiencing coordinated actions of intimidation.** The Department of Rehabilitation utilized said actions. State employees demonstrated such acts. I view said acts as a form of intimidation due to not being sponsored by a Federal program in public higher education.

Said actions may be viewed as ethics violations & unethical practice as a cost saving measure as demonstrated by the City & County of […]. **Such actions were a staple of my experiences at City College of …] as a gay male LGBT Studies major.** I was not born into Federal generational privilege. I was not raised with internalized homophobia justifying the existence of Queer students in public higher education. **Staff and students at City College of […] and […] State University demonstrated the actions experienced at the Department of Rehabilitation. Thus, leading to the […] office of the Department of Education via Mr. [R {first initial only}] obstructing justice**. I cannot change being born a gay male. My field of study is Gender & Sexuality as an LGBT Studies / Women & Gender Studies major. My goal is Federal sponsorship & placement. Due to conflicts of interests based on birth, sexuality, field of study, etcetera. I cannot speculate intention, but such a sponsorship has not been presented. Nevertheless, my goal is to graduate

and serve the United States. To do so I require an amendment of my education contract with the Department of Rehabilitation.

[**4**](#_bookmark6)**I request a thorough and complete investigation of my claims by the State Hearings Division**. After I wrote this statement my computer froze. I turned off the internet connection. I was then able to save the file. During the writing of my official statement. People gathered outside of my residence door. They proceeded to make a lot of noise as a form of intimidation.

Official Statement, Digital Signature, [Appellant]” (Emphasis added.)

In a typed statement undated and unsigned statement attached to a November 9, 2022 email sent to the State Hearings Division (SHD), Appellant stated, in pertinent part, that:

[5](#_bookmark7)“Judgeship […] State University is playing a part in my experiences. A fellow gay male classmate stood in class by what I am told his name is […]. He proclaimed his right to rape as a gay male […] student. I am a survivor of child / human sex trafficking. The following class said student sat in a chair in front of students. He displayed signing his signature. At the end of class […] verbally assaulted me in a loud manner ordering me to leave the classroom. Proceeding classes Professor […] was viewed consoling the student. Dean […] instructed me to speak to Professor […] & ask for accountability of the events. Professor […] preceded to blame me in said meeting while condoning the actions of […]. I am being harassed at […]. This may be linked to my experiences at City College of […], California State Agencies, Contractors, & specifically the Department of Rehabilitation.

Official Statement, Digital Signature, [Appellant]”

Other copies of email correspondence submitted by Appellant between Appellant and DOR staff generally reiterated some of the above described bare allegations by the Appellant to the DOR.

At the hearing, the Appellant testified generally to reiterate the above described allegations and requests. At the outset, the Appellant testified by reading a statement

4 At the hearing, the Administrative Law Judge explained to Appellant, and the Appellant acknowledged and agreed, that these allegations and Appellant’s requests regarding the same are not within the jurisdiction of the State Hearings Division – and shall not be issues to be decided at this hearing.

into the record, and subsequently submitting a written copy of the same before the end of the day. In this statement, the Appellant stated, in pertinent part, that:

[6](#_bookmark8)“My goal is to demonstrate coordinated intention of the State of California in the matter of [Appellant].

According to the website of the FBI. Survivors of child/human sex trafficking have a pathway to education.

On 2 August 2017 I sought resources offered by […]. As self-described the coalition to abolish slavery & trafficking. The ‘trusted contacts’ as stated at the FBI refused to take the case of a gay male child survivor of sex trafficking. The FBI was officially made aware I am a child survivor at this time.

I did not give up on reclaiming my life. I worked with the […] Center. Under the advice of medical care. I sought education as a form of therapy after a lifetime of sexual trauma.

In this time of reflection, I contacted […] as a form of closure. […] is one of the men responsible for providing my body as a child to men for sexual gratification. I let slip my location in […].

Out of fear for my safety. I moved to […]. I contacted the victim compensation fund threw the office of the prosecutor. I completed all necessary paperwork for much needed assistance.

Although I qualified for assistance. The State of California said no. This took place approximately 16 July 2018.

During this time, I registered with the Department of Rehabilitation for financial support in public higher education. I enrolled at City College of […].

**During my time as a client with the DOR. I experienced State coordinated actions of intimidation from the DOR.** This was via timing of phone calls and interactions in the […] office.

When attending City College of […]. The FBI claimed responsibility for targeting a gay male LGBT Studies major. This was after I reported to the FBI threw […] I am a survivor of child sex trafficking.

The […] office of the Department of Education threw Mr. [R {first initial only}] obstructed justice in the matter of [Appellant] vs. City College of […].

The actions of City College of […] fall under the default judgement in the […] case awarding $725,000.00.

[…] claim to have ties to the City & County. The company after what I experienced refused to provide relocation.

During my time at […] managed by […]. Conditions took place that fall under Civil Code 8558 of my [insurance] policy for additional living

6 Spelling and grammar errors in this statement are not corrected.

expenses. [Insurance company] threw the voicemail recording provided to the court acknowledged the Civil Code & refused to provide bound coverage.

In seeking documentation, the […] Department of Emergency Management did not provide requested documentation. I was provided a CAD report of Grand Theft Auto. After many attempts the […] Department of Emergency Management provided the proper requested paperwork.

12 November 2022 the office of the […] City Attorney provided a case number of […] in reference to being harassed out of my home by […] due to the City & County of […] purchasing my building and declining relocation. I was provided a verbal eviction. As demonstrated by the documents presented. I am being harassed by California State Agencies. Once again, I am reminded of […] with reference to education.

[**7**](#_bookmark9)**Judgeship, I request the following from the State hearing:**

**A federal order overturning & preventing any further action, in any way, against [Appellant].**

**Relocation provided by the City & County of […] in the amount of**

**$16,700.00 as a disabled resident.**

**Compensation from the district governing City College of […] in the amount of the […] default judgement due to obstruction of justice by [R {first initial only}] in the amount of $725,000.00 in the matter of [Appellant] vs. City College of […].**

**Federal sponsorship in higher education followed by placement.**

**An order for [… insurance company] to pay additional living expenses threw the bound coverage purchased**.

The Department of Rehabilitation add an amendment to my education plan/contract granting funds equivalent of tuition & fees in financial support while attending higher education.

[Appellant]” (Emphasis added.)

At the hearing, Appellant further testified, in pertinent part, that: (1) Appellant’s issue with the DOR is not about the amount of funds he was receiving to complete his DOR supported educational program, but it was with the manner in which the DOR paid these funds directly to Appellant’s university; (2) because of the DOR requirement to have Appellant’s grants first paid directly to his state university in satisfaction of the costs of university tuition and fees, Appellant was not able to use Cal Grant B funds for living

7 At the hearing, the Administrative Law Judge explained to Appellant, and the Appellant acknowledged and agreed, that except for his request for an amendment to Appellant’s IPE, these allegations and Appellant’s requests regarding the same are not within the jurisdiction of the State Hearings Division – and shall not be issues to be decided at this hearing.

expenses, rent and utilities; (3) Appellant exhausted his Cal Grant B eligibility at community college, prior to beginning his present state university bachelor program: (4) Appellant was soon to exhaust his Pell Grant; (5) Appellant was experiencing financial hardship and struggling to pay for his living expenses; (6) if the DOR agrees to the requested amendment to Appellant’s IPE to directly pay Appellant funds in an amount equivalent to the cost of Appellant’s university tuition and fees, Appellant will use these DOR funds to pay Appellant’s rent and other living expenses; and (7) the DOR demonstrated that it can bend and break DOR rules which the DOR selectively enforces, because the DOR agreed to pay the cost of Appellant’s internet service and telephone utility.

At the hearing, DOR Counselor [B {first initial only}], testified, in pertinent part, that: (1) when Appellant exhausts all eligibility for grants to continue his state university education program, the DOR shall pay for the cost of all the Appellant’s school fees, tuition, books and supplies; (2) he has served as Appellant’s counselor since 2018; (3) Appellant has worked very hard to complete his DOR program; (4) because the Appellant fell behind in paying his rent in July 2022, he asked for the direct payment of his grants to Appellant so he can pay for his living expenses; (5) pursuant to applicable regulations and rules, the DOR is required to first apply Appellant’s grants to his university tuition, fees, books and supplies; (6) the DOR pays the cost of Appellant’s internet service as a necessity for Appellant to complete the online portion of his education program; and (7) the DOR pays the cost of Appellant’s telephone utility as it is necessary for Appellant to access the internet.

At the hearing, DOR District Administrator [J {first initial only}] testified, in pertinent part, that: (1) records indicate that Appellant has a remaining balance of about $3,430 in school grants; (2) the DOR is not permitted to pay the ongoing cost of Appellant’s rent;

(3) the DOR provided the Appellant with a one-time payment of $450 for Appellant to meet his basic needs due to the financial hardship he reported, which is the maximum that the DOR is permitted to provide to the Appellant; and (4) the DOR has suggested that Appellant engage in work-study at his university and/or obtain low income housing assistance.

Pursuant to Evidence Code, section 452, the Administrative Law Judge takes official notice of the California Student Aid Commission information regarding a Cal Grant B. (See also Man. Pol. & Pro. § 22-050.4.)

“A Cal Grant is money for college you don’t have to pay back. To qualify, you must apply for the Free Application for Federal Student Aid (FAFSA) or CA Dream Act Application (CADAA) by the deadline and meet the eligibility and financial requirements as well as any minimum GPA requirements. Cal Grants can be used at any University of California, California State University or California Community College, as well as qualifying independent and career colleges or technical schools in California.

There are three kinds of Cal Grants — A, B and C — but you don’t have to figure out which one to apply for. Your eligibility will be based on your FAFSA or CA Dream Act Application responses, your verified Cal Grant

GPA, the type of California colleges you list on your FAFSA or CA Dream Act Application and whether you’re a recent high school graduate.

Cal Grant B provides: (1) a living allowance of up to $1,648, in addition to tuition and fee assistance after the first year, at a two- or four-year college;

(2) pays most first-year students a living allowance only, which may be used to pay living expenses, books, supplies and transportation, as well as tuition and fees; (3) when renewed or awarded beyond a student’s first year, the student will receive the living allowance as well as a tuition and fee award (up to $12,570 at a UC campus, up to $5,742 at a CSU campus and up to $9,220 at independent colleges for 2018-2019); and (3) requires at least a 2.0 GPA.+

(California Student Aid Commission, What is a Cal Grant Award, (<https://www.csac.ca.gov/post/what-cal-grant-award> ).)

## LAW

Department of Rehabilitation

The Department of Rehabilitation (DOR and/or the Department) is empowered to adopt rules and regulations reasonably necessary to enable it to carry out its duties and powers. DOR regulations are found in Title 9 California Code of Regulations (CCR).

The DOR’s power to do so applies to the provision of vocational rehabilitation services. (Welf. & Inst. Code, §§ 19006; 19016.) The DOR is responsible for making all decisions affecting eligibility for, and the nature and scope of, vocational rehabilitation services. (Welf. & Inst. Code, § 19005.1.)

Right to State Hearing

Any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing.

Any applicant or client of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(Calif. Code Regulations., tit. 9, § 7351, subd. (a)(c)) Confidentiality of Mediation Discussions

Discussions that occur during the mediation process are confidential and may not be disclosed to anyone outside the mediation process or used as evidence in any subsequent due process hearings or civil proceedings. The mediator may require the parties to the mediation process to sign a confidentiality pledge prior to the commencement of the process. The parties have a right to submit evidence and information to support their positions at the mediation. Evidence that is otherwise available outside of mediation is not inadmissible in a subsequent proceeding or protected from disclosure solely by reason of its introduction or use in mediation.

(Cal. Code Regs. Tit. 9, § 7353.6 (d).) Burden of Proof

The appellant has the burden of introducing evidence at the hearing sufficient to prove their case by a preponderance of the evidence. A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567; Cal. Code Regs., tit. 9, § 7536, subd. (e).)

In other words, the Appellant needs to prove it is more likely than not that the Department violated Title 9, California Code of Regulations, or other applicable law by the Department action or inaction that is the subject of the Appellant’s complaint. (See *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

In determining the credibility of a witness, the Administrative Law Judge may consider any matter that has any tendency in reason to prove or disprove the truthfulness of the testimony at the hearing, including: 1) the demeanor of the witness while testifying and the manner in which the witness testifies; 2) the extent of the capacity of the witness to perceive, to recollect, or to communicate any matter about which the witness testifies; 3) the extent of the opportunity of the witness to perceive any matter about which the witness testifies; 4)the existence or nonexistence of bias, interest, or other motive; 5) a statement previously made by the witness that is consistent with the witness’s testimony at the hearing; 6) a statement by the witness that is inconsistent with any part of the witness’s testimony at the hearing; 7) the existence or nonexistence of any fact testified to by the witness; 8) the attitude of the witness toward the proceeding in which the witness testifies; and 9)the witness’s admission of untruthfulness. (Evidence Code

§780.)

If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust. (Evidence Code §412.)

Official Notice

"Official Notice" describes the manner in which an Administrative Law Judge or the Director will recognize the existence and truth of certain facts which have a bearing on the issue in the case, without requiring the actual production of evidence to prove such facts. Official notice may be taken of either a proposition of law or a proposition of fact.

The Administrative Law Judge or Director shall take official notice of those matters which must be judicially noticed by a court under Section 451 of the Evidence Code. Those matters are laws, statutes, regulations, official records, and facts and propositions which are of such universal knowledge that they are not reasonably subject to dispute.

The Administrative Law Judge also may take official notice of those matters set forth in Section 452 of the Evidence Code. Those matters are facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

The Administrative Law Judge also may take official notice of any generally accepted technical fact relating to the administration of public social service.

When taking notice of any generally accepted technical fact relating to the administration of public social service, or to acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy, and those facts are of substantial consequence to the determination of the action, each party shall be given reasonable opportunity, before the decision is submitted, to respond to the propriety of the Administrative Law Judge taking official notice of some facts.

(Man. Pol. & Pro. § 22-050.4.)

CODE OF FEDERAL REGULATIONS:

Services for individuals who have applied for or been determined eligible for vocational rehabilitation services.

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual’s individualized plan for employment, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

…

1. Maintenance, in accordance with the definition of that term in § 361.5(c)(34).
2. Transportation in connection with the provision of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(c)(57).

…

1. Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(34 C.F.R. § 361.48 (b).)

Maintenance

Maintenance means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual’s participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual’s receipt of vocational rehabilitation services under an individualized plan for employment.

* 1. Examples: The following are examples of expenses that would meet the definition of maintenance. The examples are illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

Example 1:

The cost of a uniform or other suitable clothing that is required for an individual’s job placement or job-seeking activities.

Example 2:

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.

Example 3:

The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

* 1. [Reserved]

(34 C.F.R. § 361.5(c)(34).)

Vocational rehabilitation services —

1. If provided to an individual, means those services listed in § 361.48; and
2. If provided for the benefit of groups of individuals, means those services listed in

§ 361.49.

34 C.F.R. § 361.5 (c)(57).)

Written policies governing the provision of services for individuals with disabilities.

1. Policies. The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in 34 CFR § 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual’s individualized plan for employment and is consistent with the individual’s informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:
2. Out-of-State services.
   1. The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual’s rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.
   2. The State unit may not establish policies that effectively prohibit the provision of out-of-State services.
3. Payment for services.
   1. The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.
   2. The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—
      1. Not so low as to effectively deny an individual a necessary service; and
      2. Not absolute and permits exceptions so that individual needs can be addressed.
   3. The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.
4. Duration of services.
   1. The State unit may establish reasonable time periods for the provision of services provided that the time periods are—
      1. Not so short as to effectively deny an individual a necessary service; and
      2. Not absolute and permit exceptions so that individual needs can be addressed.
   2. The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual’s individualized plan for employment.
5. Authorization of services. The State unit must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(34 C.F.R. § 361.50.)

CALIFORNIA CODE OF REGULATIONS:

Assessment for Determining Eligibility

It is presumed that an applicant who has a physical or mental impairment which results in a substantial impediment to employment can benefit from vocational rehabilitation services unless, there is clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability. (Cal. Code Regs. Tit. 9, §§ 7062 & 7179)

Individualized Plan for Employment (IPE)

The Individualized Plan for Employment (IPE) must be developed within 90 days from the date of the eligibility determination.

* 1. If exceptional and unforeseen circumstances beyond the control of the Department arise, and the individual and the Department agree to a specific extension of time for IPE development, a rationale and date for the extension, signed by the individual and the Senior Vocational Rehabilitation Counselor (SVRC) must be entered into the record of services for that individual.
  2. Only one extension may be agreed to by the SVRC and, in such case, the IPE must be developed by the agreed upon date, unless an additional extension is approved by the appropriate District Administrator.

(Cal. Code Regs. Tit. 9, § 7128)

The purpose of an IPE is to provide a written plan of action and a statement of understanding regarding the rights and responsibilities of both the client and the Department. An IPE is developed jointly by the client and the rehabilitation counselor.

An IPE may include educational training to achieve a client’s vocational goals. (Calif. Code Regs., tit. 9, §§ 7128, 7130, 7131.)

The IPE must be: 1) in writing; 2) developed and implemented in a manner that allows the disabled person to exercise informed choice in creating an employment outcome, determining the specific services needed to achieve the outcome, selecting the entity or entities who will provide services, and choosing the methods by which services will be obtained; and 3) agreed to and signed by the person to receive services, or his representative, and his rehabilitation counselor at the Department. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(1)-(3).)

Prior to approving the IPE, the rehabilitation counselor with the Department must confirm that the identified employment goal, the services to be provided, the provider of services, and the manner in which services will be provided are “appropriate and necessary” in light of the person’s circumstances, and are consistent with applicable laws. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(3)(B)(1).)

An IPE must include the following components: 1) the employment outcome agreed upon by the parties; 2) the vocational rehabilitation services to be provided; 3) the timeline for achieving the identified employment outcome and starting the necessary services; 4) the entity or entities who will provide the services and the manner in which services will be obtained; 5) the criteria used to evaluate progress toward achieving the identified outcome; and 6) the respective duties of the person receiving services, the Department, and anyone responsible for obtaining comparable services and benefits. (Cal. Code Regs., tit. 9, § 7131, subd. (a).)

A person who is eligible for vocational rehabilitation services is entitled to be an active participant in determining the specific services he will receive, how he will receive them, and from whom he will receive them. (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(1).) Such a person has the right to receive services “without undue delay.” (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(6).)

A person who is eligible for vocational rehabilitation services also has certain responsibilities, such as providing the Department information necessary to determining what services are necessary and appropriate. (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(1).) Such person is required to “be an active and full partner in the vocational rehabilitation process.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(2).) Such person must “report any changes in circumstances that may affect” his eligibility or priority for services, the services provided, or the Department’s ability to contact him. (Cal. Code Regs., tit. 9, § 7029.9, subdivision. (b)(3).) Such person is required to cooperate in developing and meeting objectives identified in his IPE, which includes “active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(4).) The failure to do so may result in the loss of services and closure of his case. (Ibid.)

Informed Choice

(a) Applicants and eligible individuals or, as appropriate, their representatives shall be provided information and support services to assist them in exercising

informed choice throughout the rehabilitation process consistent with the requirements of this section.

…

(c) The availability and scope of informed choice shall be consistent with the Department's obligations under the Act and federal regulations and with the Department's responsibilities for the; administration of the vocational rehabilitation program. Statutory and regulatory requirements that affect the exercise of informed choice include all of the following:

…

(4) 34 CFR 361.50, which authorizes the Department to develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in Section 7149 of these regulations and the criteria under which each service is provided.

…

(8) 34 CFR 361.12, which requires, in part, that the Department ensure financial accountability in administering the vocational rehabilitation program.

(Cal. Code Regs. tit. 9, § 7029.6.)

Maintenance

1. “Maintenance” means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual’s participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual’s receipt of vocational rehabilitation services under an Individualized Plan for Employment (IPE).
2. Examples of expenses that meet the definition of maintenance include, but are not limited to:
   1. The cost of a uniform or other suitable clothing that is required for an individual’s job placement or job-seeking activities.
   2. 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.
   3. The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement or participate in training.
   4. The costs of an individual’s participation in enrichment activities related to that individual’s training program. For students this includes, but is not limited to, student trips, visits to museums, and supplemental lectures, when such activities are essential components of the training.

## Nothing in this section shall be construed to mean that the Department will provide maintenance on a long-term or ongoing basis to support an individual’s everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies.

Cal. Code Regs. Tit. 9, § 7019, (emphasis added).)

Other Goods and Services

1. Other goods and services may be provided to an eligible individual under an Individualized Plan for Employment (IPE) only if the goods and services are necessary for the individual to achieve the employment outcome specified in his or her IPE.
2. Other goods and services include, but are not limited to:
   1. Short-term or emergency financial assistance to an individual, except that financial assistance **shall not be provided to support an individual's everyday living expenses** or take the place of, provide the services of, or become a payment program similar to, welfare and other social services agencies.
   2. Occasional or emergency purchases of haircuts, handbags, or toiletries for an individual.
3. Before providing any vocational rehabilitation services to an individual as other goods and services, the Rehabilitation Counselor shall determine all of the following:
   1. Whether the goods and services to be provided are available from other sources as a comparable service and benefit, including, but not limited to, health or disability insurance, employee benefits, social security programs, welfare and social service programs, and other programs sponsored by federal, state, city, and county government agencies that serve individuals with disabilities.
   2. The extent of the individual's financial participation in the cost of goods and services to be provided.
   3. That other, more cost-effective, alternatives are not available. (California Code of Regulations., tit.9, § 7174.)

College Level Training

Clients receiving college level training shall use the least expensive educational institutions in the following order of preference:

1. For the first two years, a community college or other equivalent resource.
2. For the first two years, a state college or university if the overall cost to the Department will be equal to or less than a community college.
3. After the first two years, a state college or university.
4. A private school when:
   1. The private school is essential to the success of the Individualized Plan for Employment (IPE); or
   2. The overall cost to the Department will be equal to or less than the costs of a public school; or
   3. The client agrees to pay all additional costs for training in a private school when the Department has determined that a public institution is sufficient to meet the needs of the client.

(Cal. Code Regs. tit. 9, § 7156)

General Requirements

1. Clients eligible for similar benefits shall apply for and fully utilize those similar benefits to the extent required by these regulations.
2. The utilization of similar benefits shall not apply to the following services, including when those services are received as post-employment services:
   1. Evaluation of rehabilitation potential.
   2. Counseling, guidance and referral.
   3. Vocational and other training services including, personal and vocational adjustment training, books, tools and other training materials provided by a resource other than an institution of higher education.
   4. Placement.
   5. Rehabilitation engineering services.
   6. Job Coaching Services.
3. Unless the conditions specified in Section 7198 exist, the completion of a similar benefit review shall be required prior to the authorization of any service not specified in (b). Upon a determination by the Counselor that a similar benefit is available, the Counselor shall advise the client that he or she is required to apply for and use such benefit. If the client refuses to apply for or use the similar benefit, the Counselor shall:
   1. Deny provision of the service(s) for which the similar benefit is available.
   2. Continue the provision of other services for which there is no similar benefit, providing the IPE remains viable and will most likely succeed without the provision of the service(s) that was denied.
4. When a client:
   1. Is denied eligibility to a similar benefit, the Counselor shall:
      1. Verify the ineligibility through telephone contacts with the appropriate agency representatives or by viewing a copy of the denial notice.
      2. Document the verification in the case record.
      3. Authorize the service.
   2. Has a similar benefit reduced or terminated, the Counselor shall:
      1. Verify the reduction or termination by one of the methods specified in (1)(A).
      2. Document the verification in the case record.
      3. Assess the circumstances with the client and take one of the following actions, as appropriate:
         1. Authorize a supplement to the reduced benefit.
         2. Authorize the service that has been terminated by the other source.
         3. Amend the IPE in accordance with the provisions in Chapter 2, Article 5 (commencing with Section 7130).

(Cal. Code Regs. tit. 9, § 7196)

Additional Requirements--Institutions of Higher Education

1. For the purposes of this section, the following definitions shall apply:
   1. "Institution of higher education" means a university, college, community college, or private proprietary school which provides academic or vocational education and/or training above the California secondary school level.
   2. "Maximum effort" means a client's specific actions which are necessary to establish eligibility and secure any similar benefits necessary to vocational rehabilitation.
      1. The Department shall not authorize training or training services provided by an institution of higher education unless a maximum effort has been made by the client to secure grant assistance from other sources to pay in whole or in part the cost of such services. The Counselor shall assist the client as necessary in identifying and applying for any grant assistance for which the client may be eligible.
      2. The amount of services, if any, to be authorized by the Department for educational purposes shall be determined by subtracting the total amount of the client's educational grants and/or awards as reported by the financial aid office from the costs of the client's tuition, books and supplies, maintenance and transportation. The remainder is the amount of services to be authorized by the Department.

(Cal. Code Regs. tit. 9, § 7197)

Rehabilitation Administrative Manual: 1284.3 College or University – Public

The DOR may assist a consumer whose IPE includes undergraduate level training at a public college or university with tuition costs, after consideration of available financial aid and comparable benefits, as follows:

* Consumers attending a CSU institution may receive up to the California resident “undergraduate full-time” tuition rate for the CSU.
* Consumers attending a UC institution may receive up to the California resident “undergraduate full-time” tuition rate for the UC.

(Rehabilitation Administrative Manual Chapter 12 VOCATIONAL REHABILITATION GOODS AND SERVICES, VR Goods and Services: T, § 1284.3, p. 116)

Authorization General Provisions

1. This Subchapter sets forth the policies and standards for authorizing the purchase of vocational rehabilitation goods and services.
2. Definitions:
   1. "Authorization" is defined as an obligating document which authorizes the delivery of specified goods or rendering of certain services by a vendor (provider) at a fixed or ascertainable fee within a stated period of time.
3. Authorizations of goods and services shall be accomplished by the use of the following obligating documents:
   1. Department forms designated for purchase of goods and services, or
   2. State of California forms designated for the purchase of goods and services.

(Cal. Code Regs. tit. 9, § 7310.)

Requirements

1. A written authorization shall be made prior to the purchase of goods and services as documented in the client's case record.
2. Designated case carriers may, with supervisory approval, be permitted to make emergency verbal authorizations. Such emergency verbal authorizations will be confirmed with a written authorization to the provider of the goods or services.
3. The Department is not required to provide payment for goods and services that are not authorized by a Departmental employee.

(Cal. Code Regs. tit. 9, § 7311.)

Compliance: Other Goods and Services

1. Authorizations issued for the purchase of goods and services shall be prepared in accordance with the following guidelines:
   1. Department policies
   2. State Board of Control Regulations
   3. State Administrative Manual Rules
   4. Other related State agency policies and regulations

(Cal. Code Regs. tit. 9, § 7312; see Welfare & Institutions Code §§ 19006 and 19016; see also 34 C.F.R. § 361.50.)

Rates of Payment General Provisions

1. The purpose of this Subchapter is to promulgate the policies and standards that govern the rates of payment authorized by the Department for the purchase of goods and services.
2. For the purpose of this Subchapter, the following definitions shall apply:
   1. "Goods and Services" means services in compliance with the rehabilitation service provisions of sections 7150 through 7179 of this Chapter.
   2. "Vendor" means an individual, company, corporation, or other entity who sells goods and/or provides those services required for the rehabilitation process.
   3. "Personal Services" means supportive services, such as, readers for the blind, interpreters, attendants, drivers, notetakers, and others providing a personal service.
   4. "Competitive Employment" means employment as set forth in the provisions of section 7184 of this Chapter.
   5. "Sheltered Workshop" means a workshop as set forth in the provisions of section 7183 of this Chapter.

(Cal. Code Regs. tit. 9, § 7320.)

Requirements

1. The Department shall establish, maintain in writing, and make available, maximum rates of payment.
2. Maximum rates of payment for authorized goods and services are regulated by any one or more of the following:
   1. Those rates established by the Department for goods and services.
   2. The California Relative Value Studies published by the California Medical Association governing maximum unit values for medical procedures.
   3. The California State Schedule of Maximum Allowances published by the Department of Health Care Services regulating maximum amounts payable for medical and related services.
   4. The California State Administrative Manual guidelines.
   5. Those rates paid by other agencies or charged the general public for comparable goods and services.

(Cal. Code Regs. tit. 9, § 7321.)

Additional Charges

1. Vendors providing goods and services to clients under authorization from the Department shall accept the payment made by the Department as the full reimbursement. Vendors shall not make any additional charges or accept payment from the individual with a disability or any other source for such service.

(Cal. Code Regs. tit. 9, § 7322.)

Responsibilities of Individuals with Disabilities; Applicants; Eligible Individuals

1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:

(1) Participate and cooperate in obtaining and providing the information needed by the Department to:

* 1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
  2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
  3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
  4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
  5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.

…

* 1. Report any changes in circumstances that may affect:
     1. Eligibility for vocational rehabilitation services;
     2. Priority category under an Order of Selection;
     3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
     4. The Department's ability to contact the individual. (Cal. Code Regs. tit. 9, § 7029.9.)

State department or agency not to contract for purchase of tangible personal property from vendors, contractors or affiliates that are not holders of seller’s permit or certificate of registration; Exemptions

1. A state department or agency shall not contract for the purchase of tangible personal property from a vendor, contractor, or an affiliate of a vendor or contractor, unless that vendor, contractor, and all of its affiliates that make sales for delivery into California are holders of a California seller’s permit issued pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, or are holders of a certificate of registration issued pursuant to Section 6226 of the Revenue and Taxation Code. A vendor or contractor that sells tangible personal property to a state department or agency, and each affiliate of that vendor or contractor that makes sales for delivery into California, shall be regarded as a “retailer engaged in business in this state,” and shall be required to collect the California sales or use tax on all its sales into the state in accordance with Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.
2. Beginning on and after January 1, 2004, each vendor, contractor, or affiliate of a vendor or contractor that is offered a contract to do business with a state department or state agency shall submit to that state department or agency a copy, as applicable, of that retailer’s seller’s permit or certificate of registration, and a copy of each of the retailer’s applicable affiliate’s seller’s permit or certificate of registration, as described in subdivision (a). This subdivision does not apply to a credit card purchase of goods of two thousand five hundred dollars ($2,500) or less. The total amount of exemption authorized herein shall not exceed seven thousand five hundred dollars ($7,500) per year for each company from which a state agency is purchasing goods by credit card. It shall be the responsibility of each state agency to monitor the use of this exemption and adhere to these restrictions on these purchases.
3. A state department or state agency is exempted from the provisions of subdivision

(a) if the executive director of that state department or agency, or his or her designee, makes a written finding that the contract is necessary to meet a compelling state interest.

1. For the purposes of this section:
   1. “Affiliate of the vendor or contractor” means any person or entity that is controlled by, or is under common control of, a vendor or contractor through stock ownership or any other affiliation.
   2. “Compelling state interest” includes, but is not necessarily limited to, the following:
      1. Ensuring the provision of essential services.
      2. Ensuring the public health, safety, and welfare.
      3. Responding to an emergency, as defined in Section 1102.
   3. “State department or agency” means every state office, department, division, bureau, board, and commission, but does not include the University of California, the California State University, the Legislature, the courts, and any agency in the judicial branch of government.

(Cal. Pub. Cont. Code § 10295.1 (emphasis added).)

## CONCLUSION

This case must be decided on the evidence that was presented at the state hearing and under the preponderance of the evidence or “more likely than not” standard. On this record, Appellant has not presented sufficient evidence to meet Appellant’s burden to establish by a preponderance of the evidence that the DOR incorrectly denied Appellant’s request for an amendment to Appellant’s Individualized Plan for Employment (IPE) to require the DOR to pay Appellant directly the total cost of tuition and fees for Appellant to complete a program of public higher education, which currently includes completion of Appellant’s bachelor’s degree at a California state university (CSU).

Appellant made the above-described request, in part, because he was experiencing financial hardship and struggling to pay for his living expenses, including his rent.

Appellant testified that if the DOR agreed to the requested amendment to Appellant’s IPE to directly pay Appellant funds in an amount equivalent to the cost of Appellant’s university tuition and fees, Appellant would use these DOR funds to pay Appellant’s rent and other living e expenses.

Despite the sympathetic nature of Appellant’s appeal due to financial hardship, the DOR correctly denied Appellant’s request for the following reasons.

First, pursuant to Cal. Code Regs., Title 9, § 7197(c), the amount of services authorized by the DOR for educational purposes shall be the remainder determined by subtracting the total amount of Appellant’s educational grants and/or awards from the costs of the Appellant’s tuition, books and supplies, maintenance[8](#_bookmark10) and transportation. This is a legal

8 “Maintenance” means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are *in excess of the normal expenses* of the individual and that are necessitated by the individual’s participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual’s receipt of

requirement which the DOR cannot chose to ignore. This requirement was memorialized by Appellant’s Individualized Plan for Employment (IPE). Appellant’s IPE required him to “apply for financial aid each academic year using the FAFSA and use *any grants* (this would include Cal Grant B) to pay for tuition, fees and required books and supplies *before* the DOR covers any of these costs.” (Emphasis added.)

Second, Rehabilitation Administrative Manual, section 1284.3 also instructs that the DOR may assist a consumer, such as Appellant, whose IPE includes undergraduate level training at a public college or university with tuition costs, *after* consideration of available financial aid and comparable benefits. (See Rehabilitation Administrative Manual Chapter 12 VOCATIONAL REHABILITATION GOODS AND SERVICES, VR

Goods and Services: T, §1284.3, p. 116.) Relevant regulations and rules require the DOR to reduce assistance the DOR provides to Appellant by Appellant’s contribution to achieving Appellant’s rehabilitation goal through available financial aid and comparable benefits, such as grants (including Cal Grant B).

Third, because tuition and fees for college level training are “other goods and services” within the meaning of Title 9, California Code of Regulations, section 7320, the DOR is required to comply with applicable statutes and regulations when entering into a contract for the purchase of the same from a state vendor, absent an exemption granted by the executive director of the DOR to meet a compelling state interest.[9](#_bookmark11) (See Contract Code, § 10295.1) To provide authorization for the purchase of goods and services for Appellant from a vendor, the DOR must use obligating documents, namely Department forms designated for purchase of goods and services, or State of California forms designated for the purchase of goods and services. (See Cal. Code Regs. tit. 9, § 7310(c).) These documents must be prepared in accordance with: (1) Department policies (2) State Board of Control Regulations (3) State Administrative Manual Rules and (4) Other related State agency policies and regulations. (See Cal. Code Regs. tit. 9,

§ 7312; see Welfare & Institutions Code §§ 19006 and 19016; see also 34 C.F.R. § 361.50.) The DOR simply cannot pay Appellant directly the equivalent of the total cost of tuition and fees for Appellant to complete Appellant’s program of education – in disregard of the above-described regulations.

Fourth, Appellant cannot require the DOR to pay Appellant directly the total cost of tuition and fees authorized for Appellant to complete a program of public higher education, so that Appellant can pay his ongoing living expenses, including rent.

In his testimony, submitted written statements, and his documented DOR correspondence record, Appellant variously asserted, in pertinent part, that:

* Appellant requested to directly receive scholastic grants afforded to the Appellant to complete Appellant’s program of bachelor studies at a state university.

vocational rehabilitation services under an Individualized Plan for Employment (IPE). (California Code of Regulations., tit. § 7019, see 34 C.F.R. § 361.5(c)(34).)

9 Pursuant to Contract Code, section 10295.1, the DOR is prohibited from contracting with a vendor without ensuring that pursuant to the Revenue and Taxation Code the vendor is a holder of a California seller’s permit, a holder of a certificate of registration, and collects the California sales or use tax on all its sales into the state. (See Cal. Pub. Cont. Code § 10295.1.)

* Appellant would use the requested DOR payments he would receive in amounts equivalent to the cost of Appellant’s school tuition and fees to pay for his living expenses, such as rent.
* Before he exhausted his Cal Grant B funds, the Appellant’s state community college paid those funds directly to Appellant, which he could use to pay for his living expenses.
* Because the DOR pays ongoing internet service, as well as the cost of Appellant’s telephone utility required for internet service, the DOR should also pay for Appellant’s housing expenses while Appellant completed a program of public education, which currently included bachelor studies at a state university.

As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual’s individualized plan for employment, the designated State unit must ensure, among other things, Maintenance, in accordance with the definition of that term in section 361.5(c)(34) of the Code of Federal Regulations. (See 34 C.F.R. §

361.48 (b).)

Maintenance is monetary support provided to an individual for expenses that are in *excess of the normal expenses* of the individual and that are necessitated by the individual’s receipt of vocational rehabilitation services under an individualized plan for employment, such as *the initial one-time costs*, such as a security deposit or charges for *the initiation of utilities*, that are required in order for an individual to relocate for a job placement. (See 34 C.F.R. § 361.5(c)(34), (emphasis added).)

California Code of Regulations., tit. 9, section 7019(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(c), then states, “Nothing in this section shall be construed to mean that the Department will provide maintenance on a long-term or ongoing basis to support an individual’s everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies.” Section 7177(b), is also clear that DOR “may not provide maintenance to support an individual’s basic living expenses.” Section 7177(d), further states, “[m]aintenance payments to an individual are limited to actual expenses in excess of normal living expenses.”

In this case, Appellant’s assertion that internet services and the telephone services required for the same constitute ongoing living expenses which the DOR paid for the Appellant is without merit. The DOR has paid for Appellant’s internet ant the telephone services, because they are directly related to Appellant’s training and attendance of virtual online classes. As such, internet services, as well as the telephone services required for Appellant to receive internet services, are not long-term everyday living expenses for Appellant. Instead, they constitute “maintenance” necessitated by the Appellant’s receipt of vocational rehabilitation services under his IPE.

The DOR is not permitted to pay Appellant’s for his maintenance on a long-term or ongoing basis, to support Appellant’s everyday living expenses, or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies.

Finally, Appellant’s allegations of coordinated actions of intimidation of Appellant as a gay male LGBT Studies major and child/human sex trafficking victim by the DOR as detailed in the summary of the testimony and record of this hearing above lacked substantiation in logic or corroborating evidence. It is reasonable to characterize Appellant’s above allegations as conclusory, as Appellant did not articulate any specific action by the DOR alone, or in concert with other alleged state actors, that can be reasonably described as intimidating or coercive. Moreover, the Appellant failed to provide any proof that other acts of alleged intimidation by others could be attributed to the DOR. As such, for the purpose of determining the relevance of Appellant’s above allegations to the issue at this hearing, the Appellant’s allegations against the Appellant’s allegations the DOR are rejected.

Appellant’s additional various allegations are not relevant to the issue at this hearing, namely Appellant’s request for an amendment to his IPE. Additionally, Appellant alleged that, as a gay male LGBT Studies major and child/human sex trafficking victim, Appellant was also victim of various coordinated actions of intimidation by: (1) other state and city agencies, including the Department of Education and city college and state university professors and students; (2) the city and county of Appellant’s residence; (3) a private commercial real estate company, (4) a private insurance company; and (5) the Federal Bureau of Investigation (FBI). These are also detailed in the summary of the testimony and record of this hearing above. Appellant failed to substantiate these allegations or articulate how these alleged acts were made in concert or in a manner that has any bearing on why the DOR is legally required to pay Appellant directly the total cost of tuition and fees for Appellant to complete a program of public higher education, which currently includes completion of Appellant’s bachelor’s degree at a California state university.

Pursuant to Title 9, California Code of Regulations., section 7363, Appellant may file a complaint regarding all of Appellant’s allegations of discrimination to the DOR Office of Civil Rights, which can be reached by telephone at 916-558-5850 or by email at [OCR@dor.ca.gov](mailto:OCR@dor.ca.gov). Such a complaint must generally be filed within 180 days of the alleged discrimination.

Accordingly, the denial of the DOR of Appellant’s request for an amendment to Appellant’s IPE to require the DOR to pay Appellant directly the total cost of tuition and fees for Appellant to complete a program of public higher education, which currently includes completion of Appellant’s bachelor’s degree at a California state university is sustained.

The appeal is denied

## ORDER

**NOTICE**

Pursuant to California Code of Regulations., tit. 9, section 7358, the Appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if Appellant is dissatisfied with the decision. The Client Assistance Program is available to the Appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's

assistance. A copy of this decision shall be filed in the Appellant's record of services. (Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Calif. Code Regs., tit. 9, § 7358, subd. (b).)

# Hearing No. 104854198-523 SUMMARY

State hearing jurisdiction exists when the Department of Rehabilitation (DOR) has issued a written decision to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. An issue raised at the state hearing that is not within the jurisdiction of the Administrative Law Judge (ALJ) shall be dismissed.

Since the DOR has not denied a requested service, the state hearing request must be denied for lack of jurisdiction. [1970-2]

## FACTS

Appellant requested a state hearing on October 27, 2022, regarding grievances against the DOR, including delays in receiving services, communication breakdowns, and concerns that the DOR will delay Appellant’s ability to complete her academic goals on time. A state hearing was held on December 14, 2022. Appellant appeared at the hearing by telephone. Three DOR representatives also appeared at the hearing by telephone, Representative-1, Representative-2, and Representative-3.

Both parties submitted documentary evidence prior to the hearing. The pertinent portions of the documentary evidence submitted are as follows:

*Appellant’s Documents*

DR 107 – Hearing Request:

I have made several attempts to get services approved and my counselor has not been answering my emails or calls. I did submit multiple complaints and I would like a hearing.

The problem was never solved. Appellant’s Statement of Position:

My reason for requesting this hearing is the inconsistent replies and interaction I have had with my Department of Rehabilitation [Representative-3]. I […] felt the need to proceed with this hearing to have on record that I have been having gaps in authorization of services, as well as appointments, to discuss my academic plan. It has caused me a great deal of stress doing most of the Representative-3’s work for her at times. Whether it is signing Adobe forms, researching my own email contacts for the counselor, or submitting client paperwork to her assistants for authorization. There has been paperwork and service duplicated, I have caught many errors as well in regards to authorized services. When these errors occur, the blame falls on me.

On 5/30/2022, I sent an email to N-1 [first initial only], Representative-3’s assistant that is in charge of authorizations. It was communicated to me that Representative-3 would be leaving for vacation, I was redirected to several employees during this process. I will note that our monthly academic check-ins stopped abruptly while she was on vacation. This may be where miscommunication started again. I am taking remote classes, and the pandemic makes the course schedule variable. To give more context, the classes are self-paced at [university name omitted], some courses are not posted as cancelled until last minute. A couple of my courses were stopped, and then re-start at a date in the future. An exact date is not provided to the students, so substitute classes are recommended, to make sure I stay on my educational timeline.

On 6/6/2022, I emailed N-1 and requested an update about a submitted school supplies submission, not response was given until 6/13/2022.

On 6/15/2022, C [first initial only] took over the authorization of my courses at Department of Rehabilitation while representative-3 was out on leave. I had to submit multiple emails to the school and the department to get authorization. I must note, there is a timeline to begin some of these courses, even though they are self-paced. Some of the courses do have live zoom sessions, and there is a strict registration date before the course closes.

On 6/22/2022, C emailed that the course I was enrolling in wasn’t in my educational plan, I stated that the classes in the original plan were cancelled, and that I sent a course that was a substitute, or next on my educational timeline schedule. I apologized for any misunderstanding. C needed to check with the supervisor for approval.

On 6/24/202, I did receive an email from representative-3 stating she would be away on vacation, from Wednesday June 15 through July 1, 2022; I still don’t understand why we didn’t have our appointment check- ins after she was back. There was just a large gap in communication between us from here.

On 6/24/2022, M [first initial only] […] started assisting in my course and academic authorizations, he approved a book reimbursement for me.

On 6/24/2022, C stated the reimbursement needs higher approval, the accounting department would then mail me out a check to my address […].

On 8/1/2022, I emailed C about my supplies and a desk chair I requested months earlier from Representative-3. I discussed needing an ergonomic chair and it was the height of the pandemic. Representative-3 wanted to discuss with me a third party vendor and service, that the department works with to order the ergonomic chair. I was concerned about being

around people during the pandemic in a small space or my home. I also had concerns that the appointment might be months away due to staff shortages or supply shortages. There wasn’t any further discussion form representative-3 about the chair after I voiced my concerns.

I am concerned that this keeps happening and would like a clear plan for services, classes and counselor appointments from here on out. I must say I have had to do well above and beyond, what I feel is appropriate for the client to do.

[…] I don’t feel there is much consistency and clear communication between my counselor and I.

*DOR’s Documents*

DOR’s Statement of Position:

October 28, 2022, Appellant emailed [representative-3] online books needed for school. Books requested were the PSYCH X 403 and PSYCH X 41. Appellant stated that both classes were online. Classes start January 18, 2023 through May 3, 2023. Appellant also stated that she would provide supplies and Amazon information in a separate email. In a separate email Appellant provided a supply list.

November 1, 2022, Appellant emailed [representative-1] and [representative-3] requesting an ergonomic chair.

November 8, 2022, Appellant emailed N-2 [first initial only] regarding reimbursement. Appellant questioned if a check sent to her was for reimbursement for books.

November 16, 2022, Appellant emailed N-2 of a chair she found on Amazon based on her needs.

December 5, 2022, Appellant emailed N-2 explaining that a duplicate check was mailed to her address and that she sent it back. Appellant questioned [whether there was] an update on her supplies.

Authorization and Invoice for Direct Service Fees: November 2, 2022

Tuition – PSYCH X 403 and PSYCH X 410 at University B Total Amount: $1,600

November 21, 2022

Assistive Technology Device – Purchase Serta Ergonomic Executive Office Motion Technology Mid-Back Desk Chair with Lumbar Support Unit Price: $399.79

December 2, 2022

Personal Community System Integration/Configure/Installation Ergonomic Office Chair Assembly Unit Price: $95.00

December 7, 2022

Four Year College/University – Public Supplies HP Printer Paper - $48.85

2023 Planner - $21.95

Complete Adult Psych Treatment Planner $43.15 Sharpies $36.75

Sharpie Highlighters $11.39

Total with Shipping and Tax: $182.79 Unit Price: $182.79

Phone Call Communications Summary:

November 10, 2022

N-2 call with Appellant

Received phone call from [Appellant] after sending an email to this SC of “rental delivered” screenshot picture for the reimbursement of the Handbook for Clinical Psychopharmacology for Therapists.

SC asked consumer to print the Amazon receipt based on the steps (how to print an Amazon receipt) I emailed her yesterday – in response to her call/voicemail and email. She insists that these screenshots are all she can get. SC told her, I will send the screenshots and if accounting rejects them then she will have to re-send a receipt from Amazon.

SC also informed her/reminded her that I am still waiting for the supplies list which consumer said she will be sending. Consumer indicated she is still working on those Amazon supplies list.

Email Communications:

October 28, 2022, from Appellant My 2 Fall courses are as follows:

PSYCH X403 Clinical Psychopharmacology Course Cost: $805.00 PSYCH X410 Neuropsychology Course Cost $805.00 Amazon supplies are the same: HP Printer paper, Sharpie gel pens, highlighters.

I will send a separate email with the Amazon links.

October 31, 2022, from N-2

Thank you for your email. Please include begin and end dates of these 2 courses. I will wait for the Amazon links/or screenshots of the supplies.

October 31, 2022, from Appellant to N-2

This is the link requested for the Ergonomic Chair. […]

October 31, 2022, from Appellant to N-2

I spoke with [representative-2] and [representative-3] and they both told me [N-2] to forward this to you. I’m not sure why you are asking [representative-3] for review. I already had a phone appointment with them both. My requests keep getting pushed to the side, and I’ve been waiting patiently for months while [representative-3] was on vacation. I would appreciate my chair ordered asap. Thanks for understanding.

November 1, 2022, from N-2 to Appellant

[Our] system is down since yesterday so I am not able to see at the moment what has been sent to me to process. Once the system is up, I will look into this and work on it and all the other items that your counselor is authorizing. I appreciate your patience.

November 1, 2022, from Appellant Ok, thank you.

November 1, 2022, from Representative-1 to Appellant

DOR has not been able to access our AWARE (participant’s electronic system) this week so far; therefore no services has been able to be reviewed or processed. The system is expected to be fixed by noon today; hopefully will be soon. [To] clarify why QRP is included, is because your Counselor of Record, [representative-3] needs to be included in all correspondence send to DOR by participants in her caseload.

November 8, 2022, from Appellant

Are my reimbursement funds for my books being processed? I will send the Amazon receipts soon.

November 9, 2022, from N-2 to Appellant

This is to acknowledge your email and voicemail received. The reimbursement of $92.69 (material for Psycho X403) is in process. For the Amazon purchase, I am waiting to receive from you the complete receipt of the attached (Handbook of Clinical Psychopharmacology for Therapists). The receipt should show “shipped on ---date---.” I will be on the lookout for your email with receipt. Below is the step to get an Amazon receipt, for hand guide.

November 16, 2022, from Appellant

Amazon.com: Serta Ergonomic Executive Office Motion Technology, Adjustable Mid Back Desk Chair with Lumbar Support, Black Bonded Leather

November 17, 2022, from N-2 to Appellant

I have uploaded the information (below) onto your electronic record and request to purchase is in process.

November 28, 2022, from Appellant

Hello, I was wondering if my chair from Amazon was ordered?

November 28, 2022, from N-2

Case record shows that the chair was ordered. I will follow-up with procurement unit/staff for the status and I will get back to you.

November 28, 2022, from Appellant to N-2

No problem, sorry to disturb you with this. Hope you’re having a good day so far.

November 28, 2022, from N-2 to M

Consumer emailed to follow-up status of chair order. I will get back to her as soon as I receive word from you. Thank you.

November 28, 2022, from M to N-2

I’ve requested a delivery ETA from the vendor. R [first initial only] from [vendor] did confirm the chair has been ordered. He also mentioned the client is interested in having someone assemble the chair.

Counselor would need to create an AD for chair assembly and then we could search for a tech to assemble it.

November 28, 2022, from M to N-2 Chair should arrive 12/5/22.

November 28, 2022, from N-2 to Appellant

Procurement Unit indicated that the chair should arrive 12/5/22.

December 5, 2022, from Appellant

Somehow a duplicate check came to my address. I sent it back to you. Is there an update on my supplies?

*Testimony*

At the hearing, Appellant testified she wants to ensure the DOR communicates with her timely and provides the classes and supplies she needs to complete her educational achievement plan. Appellant explained her concern, explaining that requests for supplies and tuition not addressed timely may cause a delay in her ability to achieve the goals set forth in the Individual Plan for Employment (IPE).

Appellant explained that her concerns started before June 2022, and that despite multiple attempts, she does not feel her concerns about the DOR communications and timeliness in providing services have been adequately addressed.

Appellant gave an example of registering for classes. Appellant stated that she enrolled in two classes through University [name omitted], which had been approved by the DOR. Appellant stated the two classes were cancelled by University [name omitted], forcing her to enroll in different classes last minute.

Claimant expressed concern that the DOR did not immediately pay for the alternative classes and her ability to take the classes was nearly delayed by the non-payment. AS explained by claimant, if the courses are not paid for timely, she is automatically disenrolled. Claimant stated that there should be more flexibility in her IPE and the approval of classes as she cannot control whether University [name omitted] will cancel an approved class.

Representative-1 testified that the DOR did not delay in the payment for the alternative classes. Representative-1 explained that the DOR must specify which classes the payment is for, and in this case, the DOR had sent payment to University [name omitted] for those classes claimant had initially registered. When the classes were cancelled, instead of applying the payment towards the alternative classes, University [name omitted] returned the payment to the DOR. This caused a delay in payment as the DOR then had to issue a new payment for the approved alternative classes.

According to Representative-1, any payment for services, including tuition must be pre- approved, which means that the DOR must approve each class Appellant wishes to be paid.

Representative-1 recommended claimant immediately reach out to her counselor if a class is canceled in the future so that the DOR can begin processing the approval and payment for the alternative class. Representative-1 also recommended that claimant always copy the DOR team, such as Representative-1 and her counselor, on communications to help ensure a timely response. Representative-1 explained that if the counselor is out of the office or unable to process a request, the other DOR team members assist. Representative-1 explained that copying all assigned DOR team members on communications helps ensure that Appellant’s requests or need for services are processed timely.

Appellant said she understood Representative-1’s position, however, she had hoped to develop a better rapport with her assigned counselor, Representative-3. Claimant indicated that she would appreciate monthly check-ins from Representative-3, such as a telephone call to make sure that Appellant is on track and able to complete her IPE goals.

Appellant and Representative-3 began working together in late 2021 or early 2022. Appellant stated that she understood Representative-3 had a large case load, but also indicated her disappointment at the lack of Representative-3’s overall responsiveness or ability to develop a more personal connection. Appellant testified that moving forward she would like the chance to develop a better rapport with Representative-3.

Representative-1 stated that some changes are being made to the DOR team in 2023 (transfers to other offices, etc.) and that Appellant would likely see a change her in assigned counselor in 2023. Representative-1 did not offer further details but indicated that the opportunity for Appellant to build a rapport with the new counselor.

Appellant also mentioned numerous other examples in support of her concern that there is a lack of communication with the DOR and that the lack of communication has or will result in a delay in services.

Appellant noted the example of obtaining an ergonomic chair. DOR Representative-1 and Representative-2 acknowledged that Appellant requested an ergonomic chair in early 2022 and that a chair was not purchased until November 2022.

Both Appellant and the DOR Representatives explained that the DOR initially wanted to send an Applied Technology vendor to Appellant’s home for an assessment as to what type of ergonomic chair would be best as well as to evaluate whether other specific items should be ordered to assist Appellant. Both parties acknowledged that Appellant did not want a vendor in her home conducting an assessment due to the pandemic.

The DOR Representatives also acknowledged that Appellant was not wrong for her refusal due to pandemic concerns.

According to Appellant, many months went by before the DOR agreed that it would purchase an ergonomic chair without the Applied Technology assessment. Appellant indicated that the request for the ergonomic chair was lost in the shuffle.

Representaitve-2 explained that the DOR is required under the regulations to have an Applied Technology assessment performed before it is allowed to approve the purchase of equipment. Representative-2 stated that due to Appellant’s particular circumstance, it was eventually able to make a one-time exception to the rule and purchase a chair from Amazon. Both parties acknowledged that the DOR did ultimately purchase Appellant the ergonomic chair of her choice.

Overall, Appellant’s testimony painted a picture of frustration with the DOR regarding lack of communication, which Appellant is concerned may delay services in the future. Appellant stated that she has been able to stay on track with her IPE goals but feels that is only because she is constantly putting her time and energy into following up with the DOR to ensure that services are timely received. Appellant expressed frustration with the process and stated that the lack of communication from the DOR has caused unnecessary stress.

The DOR Representive-1 and Representative-2 both stated that all services requested have been processed. However, both Representatives did acknowledge that the processing times may not have been as fast as Appellant had hoped.

Representative-2 provided some background on the process for ordering supplies or paying for services. Representative-2 stated that the DOR is required to conduct a comparable benefit search before authorizing a requested item or service. Often the DOR utilizes vendors to conduct the comparable benefit search, which can slow down the processing time. Representative-2 indicated that the regulations require the DOR to jump through hoops that slow down the process of providing services, such as the utilization of vendors, sending approvals to accounting, requiring an authorization for each specific service requested, etc.

Representative-1 stated that she and the other team members want to see Appellant succeed. Representative-2 testified that she believes Appellant is going to be successful in not only her educational plan but also in her future career.

Representative-1 and Representative-2 both indicated their desire to start fresh and work closely with Appellant to help her achieve her academic goals as set forth in the IPE. Appellant also indicated her desire to start fresh.

According to Representative-1 and Representative-2, no service has been denied. Appellant agreed that she has not been denied a service. Both parties agreed that there are no outstanding requests for services.

## LAW

State Hearings

Appellant has the burden of introducing evidence at the hearing sufficient to demonstrate his/her case by a preponderance of the evidence. (9 C.C.R. § 7356(e).)

A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafood, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (W&IC § 19704 (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (9 C.C.R. § 7354(a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (9 C.C.R. § 7354(a)(3).)

Individual Plan of Employment (IPE)

Once a consumer is found to be eligible for DOR services, DOR is required to develop an IPE based on an assessment of the consumer’s needs and abilities. (9 C.C.R. § 7128.)

A consumer’s employment goals and the service funding necessary to achieve the goals are to be specified in the IPE. (W&IC § 19103 (b)(3).)

The IPE shall be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individuals, and, to the maximum extent appropriate, to include placement in integrated settings. (W&IC § 19103(B)(1).)

The IPE shall be jointly developed and agreed upon by both the eligible individual and the DOR. (W&IC § 19103(b)(2).)

DOR’s Responsibilities

The DOR is responsible for providing services necessary to achieve the consumer’s employment goal and maintaining the employment. (9 C.C.R. § 7131.)

Once an individual is eligible for services, the DOR is required to make vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (9 C.C.R. § 7149.)

Services shall be provided only to the extent necessary either to facilitate achievement of the vocational objective or prepare a consumer with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. (9 C.C.R. § 7154(a).)

The DOR is not required to provide maintenance services such as food, shelter, and clothing, unless these services are in excess of the normal expenses of an individual or necessitated by participation in an assessment for eligibility or service or receipt of service under the IPE. (9 C.C.R. § 7019.)

Consumer Responsibilities

1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:
   1. Participate and cooperate in obtaining and providing the information needed by the Department to:
      1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
      2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
      3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
      4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
      5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.
   2. Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process, with assistance from the Rehabilitation Counselor as appropriate, by engaging in the following activities to the extent possible:
      1. Gathering and evaluating information and participating in planning and problem solving and decisions related to the assessment process, selection of the employment outcome and settings in which employment occurs, vocational rehabilitation services, service providers, settings in which services will be provided, and methods for procuring services;
      2. Seeking or identifying needed resources;
      3. Evaluating the consequences of the various options;
      4. Making decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests; and
      5. Taking personal responsibility for implementing the chosen options and achievement of the employment outcome the individual selected.
   3. Report any changes in circumstances that may affect:
      1. Eligibility for vocational rehabilitation services;
      2. Priority category under an Order of Selection;
      3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
      4. The Department's ability to contact the individual.
   4. Cooperate in the assessment process and in developing and meeting the objectives identified in the IPE including, but not limited to, active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome. Failure to cooperate, make reasonable effort, lack of regular attendance, or failure to maintain regular communication may result in loss of further services and closure of the record of services.
   5. Participate in the cost of services under conditions specified in Chapter 5, Article 1 of these regulations.
   6. Apply for, secure and use comparable services and benefits to the extent to which the individual is eligible for such benefits in accordance with Chapter 5, Article 3 of these regulations. (9 C.C.R. § 7029.9.)

College Level Training

Clients receiving college level training shall use the least expensive educational institutions in the following order of preference:

1. For the first two years, a community college or other equivalent resource.
2. For the first two years, a state college or university if the overall cost to the Department will be equal to or less than a community college.
3. After the first two years, a state college or university.
4. A private school when:
   1. The private school is essential to the success of the Individualized Plan for Employment (IPE); or
   2. The overall cost to the Department will be equal to or less than the costs of a public school; or
   3. The client agrees to pay all additional costs for training in a private school when the Department has determined that a public institution is sufficient to meet the needs of the client. (9 C.C.R. § 7156.)

Reimbursement

* + 1. A written authorization shall be made prior to the purchase of goods and services as documented in the client's case record.
    2. Designated case carriers may, with supervisory approval, be permitted to make emergency verbal authorizations. Such emergency verbal authorizations will be confirmed with a written authorization to the provider of the goods or services.
    3. The Department is not required to provide payment for goods and services that are not authorized by a Departmental employee. (9 C.C.R. § 7311.)

## CONCLUSION

State hearing jurisdiction exists when the DOR has issued a written decision to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. An issue raised at the state hearing that is not within the jurisdiction of the Administrative Law Judge (ALJ) shall be dismissed.

At the hearing, the parties agreed that the DOR has not denied a requested service. The preponderance of the evidence also establishes that the DOR has not taken any form of an adverse action regarding a requested service. Since the DOR has not taken an adverse action regarding a requested service, the state hearing request must be dismissed for lack of jurisdiction.

It is noted, Appellant credibility testified as to an overall lack of communication from the DOR and the concern that the lack of communication will cause a delay in services and her ability to timely achieve the goals set forth in her IPE. The DOR Representatives also credibility testified as to their desire to develop and keep a good rapport with Appellant and provide requested services timely. All parties genuinely agreed to a fresh start and to work together to help ensure Appellant is successful in her achieving her goals.

Appellant may request a new state hearing if a requested DOR service is denied or the DOR takes another form of adverse action (deferral, modification, etc.) regarding a requested service. Appellant also has the option to request a mediation along with any new state hearing request.

## ORDER

Appellant’s appeal is dismissed for lack of jurisdiction.

# Hearing No. 104827508-721 SUMMARY

The Department of Rehabilitation (DOR) properly denied the appellant’s request to fund her third application for the California State Bar’s Moral Character Determination examination, and to change her vocational goal to Attorney from All Other Legal Assistants and Technicians, Except Clerical.

[1902-2]

## FACTS

On July 5, 2022, the appellant submitted a written Request for Mediation and/or Fair Hearing. In her request the appellant stated that she was disputing the DOR’s refusal to change her employment goal to attorney, that she needed services for her pursuit to become an attorney, and that she needed to reapply for the State Bar Moral Character Determination examination in 2023.

On September 28, 2022, the appellant and representatives from the DOR participated in a mediation. As there was no resolution of the dispute, the case was set for a fair hearing on October 6, 2022.

At the hearing on October 6, 2022, the appellant and two DOR hearing representatives, a DOR witness, and four sign language interpreters for one of the DOR’s hearing representatives appeared via video. It was determined that the issues were whether the DOR acted in accordance with regulations in denying the appellant’s requests (1) to fund another application for the California State Bar’s Moral Character Determination examination following the February 17, 2022, denial of her 2020 application and April 25, 2022, denial after an administrative review, and (2) change her employment goal from legal assistant to attorney.

The claimant is a 57-year-old female. She graduated from [name omitted] Law School in 2001 with the assistance of the DOR. While the evidence was that the appellant had passed the General Bar, because of the passage of time, she would be required to take that portion of the examination again before being allowed to practice as an attorney.

The appellant failed the Moral Character Determination examination she took in 2001 after her graduation from law school.

On July 25, 2018, the appellant signed an Individualized Plan for Employment (IPE) that stated that her employment goal was All Other Legal Assistants and Technicians, Except Clerical. The IPE that the claimant signed states, in pertinent part at page 7:

“I understand my right to make informed choices in the development of my individualized plan for employment, and I have exercised my right of informed choice in the development of my plan.

I understand my right to make I informed choices and have exercised informed choice in the selection of the specific employment goal, services, service providers, settings and methods for arranging my services.

My employment goal reflects my strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.”

On August 28, 2019, the appellant participated in a DOR Administrative Review of her request to change her employment goal from legal assistant to attorney. Present at the review were a DOR district administrator, the appellant’s DOR counselor, two DOR team managers, and a DOR Claimant Assistant Program (CAP) advocate.

By letter dated September 4, 2019, to the appellant, the district administrator confirmed that, at the August 28, 2019, Administrative Review, the appellant had requested that her IPE goal be changed to attorney and that the DOR assist with the cost of a second application with the State Bar for the Moral Character Determination examination. The letter stated that, as a result of the August 28, 2019, Administrative Review, it had been decided that the DOR would fund an another application for moral character and authorize transportation and, that the appellant would complete volunteer work in a law office. The letter also stated that it had been decided that her IPE goal would remain as All Other Legal Assistants and Technicians and that the DOR would need updated medical records for the appellant. Finally, the letter stated that, once the matter of her application for a moral character determination was resolved, they would reconvene to discuss the possibility of changing her IPE goal.

On October 10, 2019, the appellant signed a Revised IPE with her employment goal remaining All Other Legal Assistants and Technicians, Except Clerical. The Revised IPE also stated that the DOR would fund her application for the moral character examination and transportation and, that the appellant would complete volunteer work experience in a law office and provide a release for updated medical records. Finally, the Revised IPE stated that, once her application for the moral character examination was resolved, the administrative review would reconvene to discuss the possibility of the appellant changing her IPE goal.

The DOR contended that, on October 24, 2019, the $564.78 fee for the appellant’s Moral Character Determination examination was submitted to the State Bar.

The DOR also contended that, on January 31, 2020, a DOR office technician mailed 706 pages of documents to the State Bar and telephoned the appellant to let her know that the documents were mailed. It contended that the office technician also stated that copies were available for the appellant to pick up.

By email dated January 28, 2021, an investigator for the State Bar Moral Character Determinations notified the claimant that an initial review of her application for Determination of Moral Character had been completed. The email stated that the processing of her application could not be completed within the 180-day period of the State Bar Rules because further inquiry and analysis were needed. It asked that the appellant provide further information about 31 items for which it contended the claimant had not provided complete information or had omitted information. The email asked that the claimant provide the requested information by March 29, 2021.

By an email dated February 2, 2021, the appellant stated that she had received the investigator’s January 28, 2021, email requesting additional information. In her email, the appellant went on to address the items in the investigator’s email.[1](#_bookmark12)

* “In your 2020 Character Application, you disclosed a 2002 lawsuit identified as [plaintiff name omitted] v. (the Appellant) filed in [location omitted] County, wherein you were asked to pay an outstanding balance of $11,896.93. However, you did not complete a Form 1 or provide the final disposition. Please complete a Form 1 and state whether a judgment was filed against you and if you paid it.

[plaintiff name omitted] *vs. (the Appellant). I submitted the complaint but not form*

*1. Sorry. I will send in the form 1. The complaint on the top left-hand corner clearly says NOT ME. This is not my case I have never lived in (Name of County) County and do not know anyone named (M( first initial only)).*

* You disclosed a 2011 lawsuit identified as (the Appellant) v. State of [location omitted], [location omitted] State Plan, et al. However, you did not complete a Form 1, and it is unclear as to the nature of the lawsuit. Please complete Form 1 explain the nature of the lawsuit, and provide the final disposition.

*This was an employment law case against my former employer the State of* [location omitted] *case number () for which I completed and submitted a form 1 and available Court documents with my moral character application. Please double check the file. If you cannot find the Court documents, I will resend. The form 1 indicates Employment Law Case in the elaborate on circumstances of the case question.*

* You disclosed a 2001-2003 child support case filed in [location omitted] County identified as [location omitted] County Superior Court v. (L). You also revealed a child support case filed in [location omitted] County Superior Court, but did not complete a Form 1. Please explain the difference or relevance between the 2 cases and complete a Form 1 for the [location omitted] case.

*I completed a form 1 for (Appellant) vs* [name omitted] *Dissolution of marriage for which the transport case is included. I went to the Court house before I completed the form 1 and attached what relevant information they had in the file. The* [location omitted] *County case involved* [name omitted] *for which I submitted a form 1 and providing documents. The* [location omitted] *Superior Court case involves* [name omitted] *For which I also completed a form 1.*

* You disclosed the 2000 breach of contract lawsuit identified as (the Appellant) vs. Verizon Wireless filed in [location omitted] County. However, you did not provide the disposition of the case. Please do so in response to this inquiry.

1 Following are the requests of the investigator, followed by the responses of the appellant in italics.

*The disposition of this case was dropped I did not pursue it. I submitted what the court had in file. I have requested more documents because the see court is closed due to Covid. If they find anything else, I will submit it.*

* You disclosed a 2008 lawsuit identified as (the Appellant) v. [name omitted] Apartments, et al. filed in [location omitted] County. Please explain the nature of this lawsuit; identify the property address in which it was related; and provide evidence that the judgment was satisfied.

*The nature of the lawsuit was I applied for low-income housing and was denied. I filed a lawsuit to appeal the decision. I submitted form 1. Property address is (). I did not further pursue the case.*

* You disclosed a 2008 breach of contract lawsuit identified as [name omitted], LLC v. (the Appellant) filed in [location omitted] County wherein you owed

$6575.15 on a credit card. You reported that the judgment against you was satisfied, but you did not provide evidence of such. Please submit evidence that you satisfy the judgment amount listed above.

*I completed a form 1 and submitted the documents the Court had on file. There was no Judgment to submit. I submitted proof the case was dismissed but I will send it again if you do not have a copy of the Court documents, I was in debt to Cash Call. I do not remember this case but it was dismissed.*

* You disclosed a 2004-2005 breach of contract lawsuit identified as Ford Motor Credit Company v. (the Appellant) filed in [location omitted] County wherein you owed $9582.96 in missed car payments. You reported that this settled by a Compromise and Release. Please provide a copy of the Compromise and Release or evidence that you satisfy the terms of the agreement. Additionally, please state the disposition and disposition date of the cross-complaint you filed against Ford.

*I submitted a form 1 and documents in Court file. It was a breach of contract case involving the 2001 Ford Mustang I purchased. We had a disagreement regarding payment and Ford filed lawsuit. I filed cross-complaint because I believe the debt was not owed. The case was settled and dismissed as I still on the Mustang to this day and it still runs! I again went back to the closed Court house and requested any additional documentation may have. I will send whatever they send me if you require.*

* You disclosed a 2008-2009 Chapter 7 Bankruptcy filed in United States Bankruptcy Court Eastern District of California. However, you do not complete a Form 3 or provide required documents. Please submit a Form 3 and the documents listed at the bottom of the form.

*I have gone through all the records I submitted and the bankruptcy form 3 (although it looks different from the one you attached your email) was completed and the entire bankruptcy petition was attached. The documents are voluminous*

*so please double check your records for the petition and schedule attachments before I incur further cost to resend. There were not any adversary proceedings instituted. There were no allegations of fraud. There were no debts that were not discharged.*

* You disclosed a 2011-2012 misdemeanor traffic citation issued in [location omitted]. It appears you failed to appear in court a warrant was issued. Provide a detailed explanation of the reason you failed to appear in court.

*Traffic citation State of* [location omitted] *and failure to appear. I failed to appear because I did not remember the Court date. With the documents I submitted to you, is a letter from my doctor to the Court that, I was at the time on medication for which forgetfulness is a side effect. I paid the citation and the FTA was dismissed.*

* You disclosed a 1992 misdemeanor conviction for passing a non-sufficient funds check, which was prosecuted in [location omitted] County. Provide a detailed narrative of the events leading up to and through the incident and arrest. Please list all initial charges filed against you and if you were found guilty, if you pleaded guilty, or if you pleaded no contest to the charge of section 476 A (B) of the Penal Code.

*I do not recall the specific events of the case, but it appears I wrote a check with insufficient funds to cover it. That was the initial charge. I pled no contest and case was resolved. I completed form 1 and provided documents the court had on file which consisted of the complaint and 1203.4 dismissal. Please let me know if you want me to resend.*

* The record you submitted, and appears that you are charged with misdemeanor section 650 3M (a) of the Penal Code for allegedly making harassing phone calls on November 1, 1987. It is unclear if this charge is related to one of the convictions you disclosed. Please provide a detailed narrative of the events leading up to and through the incident and charges being filed against you and [location omitted] County. The discharge lead to a plea agreement, conviction, or probationary period? If discharge did result in a conviction and you did not disclose it on your 2020 Moral Character Application, please explain the reason for the omission.

*Making harassing phone calls* [location omitted] *County. I believe this is one of the cases for which I provided see court documents indicating 1203.4 dismissal and no other documents in file. It was a 1987 case of the Court had no other records. I do not recall any other facts other than it probably involved* [name omitted]*. I disclosed the conviction and completed a form 1. Please double check your records. If you cannot locate, I will resend.*

* Based on record you submitted, it appears that you are charged with misdemeanor section 242 of the Penal Code for allegedly inflicting force of violence upon someone named [name omitted] on October 26, 1987. It is unclear

if discharge is related to one of the convictions you disclosed. Please provide a detailed narrative of the events leading up to and through the incident and charges being filed against you in [location omitted] County.

*Yes, the 242 Penal Code charge involved (J) that I disclosed and completed a form 1 and provided you a copy of the 1203.4 dismissal of case. The disposition of the case resulted in no contest plea to assault not inflicting force and violence. Please double check your records. If you cannot find the form 1 and Court dismissal, I will resend.*

* You submitted a partial copy of the criminal complaint dated December 16, 1987 [location omitted] County Superior Court case number ()), which listed several charges filed against you derived from incidents that occurred on different dates. It appears that you are charged with Code section 2424 allegedly inflicting force of violence upon someone named [name omitted] is on October 26, 1987. It also appears that you are charged with Penal Code sections 653 m(a) for allegedly making harassing phone calls on November 1, 1987. You are also charged with Penal Code section 415, which was listed as 6. Please provide a complete copy of this charging document and a detailed narrative of the events leading up to and through each incident and the charges filed against you in [location omitted] County. Did these charges lead to plea agreements, convictions, or probationary periods? If these charges did result in convictions and you did not disclose them in your 2020 Moral Character Application, please explain the reasons for the omissions. We are aware of your disclosure of a conviction or Penal Code section 415, but it is unclear if it is related to aforementioned charges.

*Answer is the same as 12. The 415 PC is another of the charges involving* [name omitted]*. Even though they may be on different dates, the Court cases are the same. I did my due diligence at the Court and submitted all documents on file which was the 1203.4. I also completed a form 1 and provided 1203.4 and complaint.*

* You disclosed a 1986 misdemeanor conviction for Penal Code section 484 G (A) (theft by forged or invalid credit card) in [location omitted] County. Although you were initially charged with a felony, you were convicted of this crime as a misdemeanor. Provide a detailed narrative of the events leading up to and through the incident and arrest or charges filed. Please list all initial charges filed against you and stated if you were found guilty, if you pleaded guilty, or if you pleaded no contest to the charges.

*I did disclose the 1986 conviction for 484 PC in* [location omitted] *County. I attempted to use a stolen credit card. I pled no contest to the charges and received 2 or 5 days in jail (I forget how long) and probation. I do not recall of the details as it has been over 30 years. I did my due diligence and went to the Court to obtain any records. The Court had no such case on file for which I submitted a letter from* [location omitted] *County indicating they find no record of*

*defendant/case in their office. Please double check your records. If you cannot find it, I will resend.*

* Our investigation revealed that you may have been convicted of an unspecified misdemeanor event in [location omitted] County on April 23, 1984. Provide a detailed narrative of the events leading up to and through the incident and arrest or charges being filed. Please list all initial charges filed against you, list the associated charges you are convicted up, and state if you were found guilty, if you pleaded guilty, or if you pleaded no contest to the charges. Submit a Form 2.

*You indicated your investigation reveals the* [location omitted] *County conviction. It is the same case as 14 for which I disclosed and there were no Court records on file. I pled no contest to attempting to use stolen credit card.*

* Our investigation revealed that you may have been convicted of misdemeanor Penal Code section 4463 (c) (display of a fraudulent disabled placard) in [location omitted] County in 1989. However, you did not disclose this in your 2020 Moral Character Application. If this is accurate information, please provide a detailed narrative of the events leading up to and through the incident and the arrest or charges filed. Please list all initial charges filed against you and state if you were found guilty, if you pleaded guilty, or if you pleaded no contest to the charges. Submit a Form 2.

*(No response from claimant to this item)*

* Our investigation revealed you may have been convicted of misdemeanor Penal Code section 602.5 (unlawfully entering a commercial dwelling) in [location omitted] County in 1990. However, you did not disclose this in your 2020 Moral Character Application. If this is accurate information, please provide a detailed narrative of the events leading up to and through the incident and the arrest or charges filed. Please list all initial charges filed against you and state if you were found guilty, if you pleaded guilty, or if you pleaded no contest to the charges. Submit a Form 2 and provide copies of any and all court and police records available.

*A 1990 conviction unlawfully entering a commercial dwelling. I do not recall this case as it is over 30 years old and my due diligence did not yield any Court documents. It is most likely one of the* [location omitted] *County cases I submitted a 1203.4 dismissal which was the only documents the Court had. I did disclose and provided copy of 1203.4.*

* Our investigation revealed that you may have been convicted of felony Welfare & Institutions Code section 10980 (c)(fraud to obtain aid) in [location omitted] County in 1996. However, you did not disclose this in your 2020 Moral Character Application. If this is accurate information, please provide a detailed narrative of the events leading up to and through the incident and the arrest or charges filed. Please list all initial charges filed against you and state if you were found guilty, if you pleaded guilty, or if you pleaded no contest to the charges. Submit a Form 2.

*A 1996 conviction for welfare fraud. I did disclose and completed the form 1 indicating AFDC and Food Stamp fraud. Please double check your records and if you cannot find it, I will resend. I also sent in copy of Complaint. I pled no contest to misdemeanor, received 2 days jail time, and probation. This case is over 25 years old and I have shown rehabilitation.*

* Our investigation revealed that you were issued a traffic citation on September 5, 2018, in [location omitted] County, you failed to appear in court on December 12, 2018, and you pleaded guilty to a civil assessment pursuant to Penal Code section 1214.1. However, you did not disclose this in your Moral Character Application. If this is accurate information, please provide a detailed narrative of the events leading up to and through the incident and your failure to appear. Please explain the reason you failed to appear.

*2018 Traffic citation. To the best of my knowledge and after research, the State Bar Moral Character Application does not have to disclose traffic citations that again not disclose it. I do not recall any FTA on that traffic ticket as I paid the fine. I do not believe the FTA is accurate.*

* Our investigation also revealed that you were cited for Penal Code section 640 (c)(1) (fare evasion) in [location omitted] County on February 6, 2020. You failed to appear in court on August 11, 2020, pleaded guilty, and your civil assessment (1214.1 PC) was dismissed. If this is accurate information, please provide a detailed narrative of the events leading up to and through the incident and your failure to appear. Please explain the reason you failed to appear.

*February 6, 2020, fare evasion. Again, this citation was in traffic Court thus it did not have to be disclosed. I incorrectly swiped my Metro card for which I had money on it but it did not take so I received a fare evasion violation. I showed the Judge I had money on my card so we lowered the fine. I paid the fine. The FTA was because the Court was closed due to Covid. I am submitting an email from the Court indicating the fine was paid and they showed no FTA on my record.*

* With your 2020 Moral Character Application, you disclosed three criminal actions that were dismissed in [location omitted] County pursuant to Penal Code section 1203.4 (case numbers (), (), and ()), but you were unable to recall which cases or charges they related to. Please review your records or perform further research to determine for which criminal cases these dismissals were related.

[location omitted] *County criminal cases disclosed with 1203.4 documents from the Court that I submitted a letter indicating there were no records on file. As previously stated in my application, I do not recall what cases they were and my due diligence of research revealed the Court had no records. The 3 cases could and probably are for cases found in your investigation.*

* Our investigation further revealed civil actions to which you may have been a party and that were not disclosed in your 2020 Moral Character Application. If the

information is accurate, for each of the following, please complete a Form 1 and explain the reason you did not disclose the action to the State Bar:

Small claims and judgment filed in [location omitted] Municipal Court – [location omitted]; case number blank; Use Credit Union; debtor: (the appellant); file: 12/9/1993; $71

*I have written the Court requesting copies of documents. I did not disclose because I do not recall the case and my search of* [location omitted] *County Court records did not reveal the case. I have requested any documents the Court has and will send whatever they include in their response. I did my diligence to search Court records and did not find any file. The case is over 28 years old.*

Judgment filed in [location omitted] County Municipal Court [location omitted]; case number (); filed 8/22/1994; amount $1607; creditor: [name omitted]; debtor: (the Appellant); eviction

*This case involved housing where I used to live. I do not recall the specifics of the case except* [name omitted] *(for which I file the TRO against I did complete a form 1 and submitted any documents provided by the Court with my Moral Character Application). Ms.* [name omitted] *and I lived in the same* [location omitted] *Apartments so our relationship obviously affected my housing. I do not owe* [location omitted] *Apartments any money and I have requested any documents that Court has. I will send whatever they provide.*

*Case number ().*

Judgment filed in [location omitted] County Municipal Court; case number: (); filed: 7/14/1995; $674; creditor: Retailers Credit Association; debtor’s: (M/Appellant); address listed as ()

*I did not disclose this case because I do not recall the case and my search did not yield the case. I have requested the Court to provide any documents they still have on file. The case is over 26 years old apparently involve credit debt which is possibly in the Bankruptcy documents I provided with my Moral Character Application.*

Judgment filed in [location omitted] County Superior Court; case number (); filed: 5/14/2002; eviction; one thousand $95; creditor: The [name omitted] Group, Inc.; debtors: (the Appellant, and other names listed): ()

*I have never lived at that address. Apparently, I co-signed for my daughter* [name omitted] *and* [name omitted] *for which they were evicted so my name appears on the case. I do not recall ever being served or the specifics of the case. My records search did not reveal the case. I have requested the documents from the Court and will forward whatever they send. The case is almost years old.*

Notice of default recorded in [location omitted] County; address (); recorded on 1/09/2006; debtors: (the Appellant and another) Notice of trustee sale recorded in [location omitted] County; address: (); recorded on 12/19/2006; (the Appellant and another)

*I owned a home located at* [location omitted]*. Due to loss of income, we were not able to pay our mortgage and our home foreclosed. Apparently, there was also notice of trustee sale recorded in* [location omitted] *County. I did not disclose because I was not aware you had to disclose foreclosures. The cases also did not come up in that Court name search.*

* After submitting your Moral Character Application, you reported that you were no longer employed with Walmart and that you had begun working for [name omitted] Law Corp. It appears as though you later advised that your employment with [name omitted] Law Corp. had also ended. Please provide your dates of employment for both positions, your reason for leaving, and your current employment status.

*I did advise when I started work for* [name omitted] *Law Corp. I do not recall the exact dates but I only worked for 1 month. I started Walmart on 5/18/2018. I am still working at Walmart. I never quit. I only took the leave when I started working at the law office. When that job ended, I went back to Walmart. My current employer is Walmart.*

* In your Moral Character Application, you disclosed that you are not admitted to practice law in [location omitted] because you did not meet their moral character qualifications. Please provide a detailed explanation of which qualifications you did not meet. Did you appeal the decision?

*I was not admitted to practice in* [location omitted] *because they said I had to resolve my State of California Moral Character Application denial. I did not meet the moral character qualifications because* [location omitted] *denied me. I did appeal the decision, but they said* [location omitted] *application has to be resolved.*

* Besides [location omitted] and [location omitted], have you applied to practice law in any other jurisdictions? If so, what were the outcomes of those applications?

*I have not applied to practice law in any other jurisdictions other than the State of*

[location omitted] *and the State of* [location omitted]*.*

* With your 2020 Moral Character Application, you uploaded a copy of the summary credit report. Please resubmit an updated credit report depicting balances on each account and dates of any missed payments. Additionally, the report you submitted revealed an account in collections [name omitted]; balance:

$3666). Please submit proof of payment if you have brought this account out of collections. If this account is still in collections, please submit a copy of your agreed-upon claimant plan.

*I will resend an updated copy of my credit report.* [name omitted] *balance has been paid and shows $0.00.*

* In your Moral Character Application, you disclosed one divorce [name omitted]. There is evidence in your prior Moral Character Applications that you were involved in at least one other divorce [name omitted]. Please complete a Form 1 for any and all other divorce is filed, including from [name omitted].

*I did complete and submit a form 1 from* [name omitted] *Please double check the file for the Court documents. If you can’t find the dissolution document, I will resend it. I only have the 2 divorces from* [name omitted] *and* [name omitted].

In your 2001 Moral Character Application, you disclosed temporary restraining orders filed against a former partner and former friends. However, these cases were not disclosed in your 2020 Moral Character Application. Please complete a Form 1 and a detailed narrative regarding these cases, including the final dispositions.

*I did complete a form 1 and submitted Court documents involving the restraining order that clearly states Restraining Order in the elaborate circumstances question on form 1. It states* [name omitted] *on the form. Please double check the record sent. If you cannot find the foreman documents, I will resend. The other defendant was* [name omitted]*. The final disposition is the Court did not grant the restraining order.*

* Please explain the reason for omitting any and all information listed above that was not disclosed on your 2020 Moral Character application.

*As previously stated on the applicable cases, I did disclose many of the cases you indicated were not disclosed. The records I sent were voluminous and must have been overlooked. Again upon further search of the form 1 and documents I did submit with my moral character application, you are still not able to locate I will resend.*

*Again, it cost to get copies of these documents and send certified mail to you so please do your due diligence to find the documents I already submitted before I incur further cost to resend them. I will also send any documents my continued search yields by the March 29, 2021 day as requested.”*

By email dated March 4, 2021, the appellant wrote to the State Bar investigator. Her email stated:

“I am ready to respond with missing information but I need to know if you found what I already submitted so I’m not duplicating my documentation. Please review our prior emails and my file and let me know what you still need.”

By an email of March 5, 2021, the State Bar investigator wrote to the appellant. Her email stated:

“I am in receipt of your emails and voicemail message. It appears as though you sent the same email twice yesterday, or did you revise the second one?

Thank you for bringing it to our attention that you already submitted many of the records that I have asked for. In early 2019, our system went paperless, so all mailed records are scanned and uploaded. At this time, I have asked staff in our file room to check for the remaining records you mailed, so they can be uploaded to your feed for this application.

Once I review the additional information, I will let you know if there are any further questions.”

By email dated March 15, 2021, to the State Bar investigator, the appellant stated:

“I am following up on my previous emails about my moral character application. The investigator was supposed to review scanned documents to see what documents I submitted that were requested. I have not heard anything back yet. I need to know what she has so that I know what documents still need to be provided.

Please respond asap as the requested by date is approaching.”

By letter dated February 17, 2022, the Program Manager of the Moral Character Determinations of the State Bar notified the appellant that, following a February 9, 2022, consideration of her application for Determination of Moral Character, it had been determined that she had not met the burden of establishing good moral character. The letter stated that the decision had been reached after consideration of factors including her lack of candor, as evidenced by omissions on the moral character application, and, generally, her failure to establish that she is of good moral character. The letter stated that the appellant could request a review by the Committee of Bar Examiners by March 24, 2022, and that, if not, she was eligible to file another application on February 9, 2023.

By letter dated April 25, 2022, the State Bar of [name omitted] notified the appellant that, at its April 22, 2022, meeting, the Committee of Bar Examiners considered her request for administrative review of the denial of her application to the State Bar for a determination of good moral character. The letter stated that it had been determined that the appellant had not met her burden of establishing good moral character. Finally, the letter stated that she could appeal the decision to the State Bar Court by filing an application and filing fee of $500 within 60 days.

By letter dated May 17, 2022, a DOR Team Manager who was present at the August 28, 2019, Administrative Review notified the appellant that the DOR had decided to deny her request to fund an attorney to appeal the State Bar’s February 17, 2022 denial of her application for a determination of moral character and its April 25, 2022 denial of her March 22, 2022, request for reconsideration. The letter stated that the DOR had determined that the barriers to her securing employment as an attorney were

too great because she was not able to pass the moral character component of the State Bar after multiple attempts. Finally, the letter stated that, as to the appellant’s request

that the DOR assist her with another application for the moral character examination, it was a matter for the claimant to pursue on her own.

At the October 6, 2022, hearing, the DOR contended in its Statement of Position and in the testimony of its hearing representative that it had properly denied the appellant’s request to change her employment goal from legal assistant to attorney and to fund a third application for the State Bar Moral Character Determination examination. The DOR contended that it had fulfilled its obligations under the appellant’s amended October 10, 2019 IPE as the barriers to her being able to secure employment were too great because she was unable to pass the moral character component of the State Bar.

The DOR did not dispute that the appellant had completed volunteer work as a legal assistant and had provided updated medical records that were also a condition of her amended October 10, 2019, IPE.

It was the position of the appellant in her Statement of Position and in her testimony that her Moral Character Determination examination was denied because she had failed to disclose civil cases that she was not aware of, such as cosigning for an apartment for her daughter and, her own home foreclosure. She contended that, now that she was aware of the cases missing from her application, she could include them in her next application. She contended that an attorney had informed her that it was a good sign that the State Bar would allow her to apply again within a year. She testified that she had been advised that an attorney could represent her in another application with fees up to $30,000.

The appellant also contended that she was making the request to change her employment goal to attorney based upon her rights as a DOR client. She contended that, under federal and state laws designed to assist disabled individuals with vocational rehabilitation, she had a right to make choices over where she worked.

In her Statement of Position and in her testimony, the appellant contended that her current vocational goal as legal assistant is not consistent with her aptitude, abilities, interests, and education. She contended that over the last two years she has worked with several job developers at the DOR and that, despite having applied for upwards of 30 jobs in the legal administrative field, she has been unable to secure employment.

She contended that she believes she is having difficulty securing employment because she is overqualified. The appellant submitted an email dated October 6, 2022, that states, in pertinent part:

“I replied to your message and now see it was in my drafts. Hiring decisions are not made by one person they are decided by a Hiring Team. In communicating with the hiring team they collectively made the decision to pass on your application. Generally candidates that have a JD degree are usually determined as over qualified for a Legal Support role.

Are you interested in a Staff Attorney role?”

The appellant contended that, in support of her moral character, she has shown respect and obedience to the law because all of her convictions are 26 years old and she had successfully completed probation and paid any restitution and civil judgements. She contended that she had successfully completed an in-patient drug rehabilitation program in the 1980s, consistently attended Narcotics Anonymous for over 20 years, and participated in counseling for the last 25 years.

The appellant also noted that her accomplishments include significant volunteer work with a host of legal services and serving as a volunteer coach for several youth organizations. She also noted that she has been a foster parent for a minor child with physical and developmental disabilities.

## LAW

Department of Rehabilitation

The Department of Rehabilitation (DOR and/or the Department) is empowered to adopt rules and regulations reasonably necessary to enable it to carry out its duties and powers. DOR regulations are found in Title 9 of the California Code of Regulations (CCR). The DOR’s power to do so applies to the provision of vocational rehabilitation services. (Welf. & Inst. Code, §§ 19006; 19016.) The DOR is responsible for making all decisions affecting eligibility for, and the nature and scope of, vocational rehabilitation services. (Welf. & Inst. Code, § 19005.1.)

Right to State Hearing

Any applicant or client of the Vocational Rehabilitation or Independent Living Services programs, who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing.

Any applicant or client of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(Calif. Code Regulations., tit. 9, § 7351, subd. (a)(c)) Confidentiality of Mediation Discussions

Discussions that occur during the mediation process are confidential and may not be disclosed to anyone outside the mediation process or used as evidence in any subsequent due process hearings or civil proceedings. The mediator may require the parties to the mediation process to sign a confidentiality pledge prior to the commencement of the process. The parties have a right to submit evidence and information to support their positions at the mediation. Evidence that is otherwise available outside of mediation is not inadmissible in a subsequent proceeding or protected from disclosure solely by reason of its introduction or use in mediation.

(Cal. Code Regs. Tit. 9, § 7353.6 (d).) Burden of Proof

The appellant has the burden of introducing evidence at the hearing sufficient to prove their case by a preponderance of the evidence. A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567; Cal. Code Regs., tit. 9, § 7536, subd. (e).)

In other words, the appellant needs to prove it is more likely than not that the Department violated Title 9, California Code of Regulations, or other applicable law by the Department action or inaction that is the subject of the appellant’s complaint. (See *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Individualized Plan for Employment (IPE)

The purpose of an IPE is to provide a written plan of action and a statement of understanding regarding the rights and responsibilities of both the client and the Department. An IPE is developed jointly by the client and the rehabilitation counselor. An IPE may include educational training to achieve a client’s vocational goals. (Calif. Code Regs., tit. 9, §§ 7128, 7130, 7131.)

The IPE must be: 1) in writing; 2) developed and implemented in a manner that allows the disabled person to exercise informed choice in creating an employment outcome, determining the specific services needed to achieve the outcome, selecting the entity or entities who will provide services, and choosing the methods by which services will be obtained; and 3) agreed to and signed by the person to receive services, or his representative, and his rehabilitation counselor at the Department. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(1)-(3).)

Prior to approving the IPE, the rehabilitation counselor with the Department must confirm that the identified employment goal, the services to be provided, the provider of services, and the manner in which services will be provided are “appropriate and necessary” in light of the person’s circumstances and are consistent with applicable laws. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(3)(B)(1).)

An IPE must include the following components: 1) the employment outcome agreed upon by the parties; 2) the vocational rehabilitation services to be provided; 3) the timeline for achieving the identified employment outcome and starting the necessary services; 4) the entity or entities who will provide the services and the manner in which services will be obtained; 5) the criteria used to evaluate progress toward achieving the identified outcome; and 6) the respective duties of the person receiving services, the Department, and anyone responsible for obtaining comparable services and benefits. (Cal. Code Regs., tit. 9, § 7131, subd. (a).)

Employment Outcome

“Employment Outcome” means, with respect to an individual, entering or retaining full- time or, if appropriate, part-time competitive employment as defined in Section 7006.3 of these regulations in the integrated labor market, supported employment, or any other type of employment in an integrated setting (including self-employment, telecommuting, or business ownership) that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Employment outcomes of homemaker and unpaid family worker are available in the community, are considered to occur in integrated settings as defined in Section 7018.4 of these regulations, and meet the definition of employment outcome. (Cal. Code Regs., tit. 9, § 7011)

A person who is eligible for vocational rehabilitation services is entitled to be an active participant in determining the specific services he will receive, how he will receive them, and from whom he will receive them. (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(1).) Such a person has the right to receive services “without undue delay.” (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(6).)

A person who is eligible for vocational rehabilitation services also has certain responsibilities, such as providing the Department information necessary to determining what services are necessary and appropriate. (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(1).) Such person is required to “be an active and full partner in the vocational rehabilitation process.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(2).) Such person must “report any changes in circumstances that may affect” his eligibility or priority for services, the services provided, or the Department’s ability to contact him. (Cal. Code Regs., tit. 9, § 7029.9, subdivision. (b)(3).) Such person is required to cooperate in developing and meeting objectives identified in his IPE, which includes “active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(4).) The failure to do so may result in the loss of services and closure of his case. (Ibid.)

Amendments to the IPE

An IPE may be amended by the parties “if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services.” (Cal. Code Regs., tit. 9, § 7130, subd. (a)(6).)

## CONCLUSION

Request to Fund Another Moral Character Determination Application

The evidence was that the appellant graduated from law school with the assistance of the DOR. The evidence also was that, while the claimant passed the General Bar

shortly after her graduation, she failed the Moral Character Determination examination that she took in 2001.

On July 26, 2018, the appellant signed an IPE with an employment goal of All Other Legal Assistants and Technicians, Except Clerical. The IPE the appellant signed states that she understood her right to informed choice in the development of the plan and that she exercised her informed choice in the selection of her specific employment goal.

Following a DOR administrative review that was held as a result of the appellant’s desire to change her employment goal from legal assistant to attorney, the appellant signed an amended IPE on October 10, 2019. While retaining an employment goal of legal assistant, the amended IPE included funding for another Moral Character Determination examination with the State Bar, provisions for the completion of volunteer work experience in a law office, and, following the resolution of the moral character examination, an agreement that the DOR would reconvene to discuss the possibility of changing the appellant’s IPE employment goal.

In January 2020, the appellant submitted another application to the State Bar for a Moral Character Determination examination. The application was funded by the DOR as had been agreed upon by the appellant and the DOR in the October 10, 2019, amended IPE the parties signed.

In a January 28, 2021, email, a State Bar investigator notified the appellant that additional information was needed for her application. The appellant contended in her Statement of Position and in her testimony that the information the State Bar sought consisted of a few civil actions that she had not been aware of because they arose out of documents she had signed for her daughter and the foreclosure of her home.

However, the January 28, 2021 from the State Bar investigator requested additional information about some 31 items, that the investigator contended were omitted or needed clarification that included civil actions, criminal charges and convictions, and actions the appellant had disclosed in her 2001 application but did not disclose in her 2020 application.

In the February 2, 2021, email the appellant wrote in response to the investigator’s request, she stated that items, such as the State Bar Form 1, Record of Civil Actions and Administrative Proceedings, that were missing had been included and asked that the investigator check the records that had been submitted. The appellant stated that if the investigator did not find them in the records she has already submitted, she would send them again. The appellant also stated her opinion information about traffic citations did not need to be disclosed in Moral Character Determination applications.

She also stated that she had requested information from various courts and would forward what she received. However she did not provide any evidence or testify that she had sent any additional information or documents to the State Bar investigator as she had stated she would.

By letter dated February 17, 2022, the State Bar notified the appellant that her application for Moral Character Determination had been denied.

By letter dated April 25, 2022, the State Bar notified the appellant that the result of its administrative review of the denial of her application, it had concluded that she had not met her burden of establishing good moral character.

It is found that the DOR met its obligation as contained in the October 10, 2019 amended IPE to fund another application by the appellant’s for a State Bar Moral Character Determination examination.

Request to Change Employment Goal From Legal Assistant to Attorney

The appellant contended in her Statement of Position and in her testimony at the hearing that, as a client of the DOR, she has the right to exercise her informed choice in making her employment goal and that her current employment goal as a legal assistant is not consistent with her aptitude, abilities, interests, and education. She did not, however, testify that, or, offer any evidence that she was prevented from exercising her informed choice when she signed the IPE in July 2018 or the amended IPE in October 2019 that stated her employment goal was legal assistant. Both the July 2018 IPE and the October 2019 amended IPE that the appellant signed included statements that she understood that she was exercising her informed choice in selecting her employment goal.

“Employment Outcome” means employment, including self-employment, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.” (Cal. Code Regs., tit. 9, § 7011)

The appellant does not dispute that passing the Moral Character Determination examination is necessary in order to obtain a license to practice law from the California State Bar.

In this case, the evidence was that the claimant’s employment goal with the DOR of legal assistant was the result, at least in part, of consideration that she had not passed the State Bar’s Moral Character Determination examination in 2001 following her graduation from law school. The appellant contended that her 2020 application was denied because she had failed to disclose a handful of civil actions arising out of documents she had signed for her daughter and the foreclosure of her home. However, the information requested by the State Bar investigator in her January 28, 2021 email about significant omissions went far beyond the limited items the appellant contended she did not disclose.

In this case the evidence was that the appellant made an informed choice that her employment goal be as a legal assistant. The evidence was also that because the claimant was unable to pass the Moral Character Determination examination she did not have the resources and abilities consistent with an employment goal of attorney.

It is found that the appellant did not carry her burden of establishing that the DOR improperly denied her request to change her employment goal from legal assistant to attorney.

The appellant is not precluded from submitting another application for a Moral Character Determination by the State Bar. The appellant contended that the documents submitted to the State Bar for her 2020 application establish that she has the good moral character necessary to pass the examination. The evidence was that the DOR notified the claimant that it had made copies of all the documents that had been submitted to the State Bar in support of her application and were available for her.

## ORDER

The claim is denied.

## NOTICE

Pursuant to California Code of Regulations., tit. 9, section 7358, the appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code, if the appellant is dissatisfied with the decision. The Client Assistance Program is available to the appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program’s assistance. A copy of this decision shall be filed in the appellant’s record of services. (Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Calif. Code Regs., tit. 9, § 7358, subd. (b).)

# Hearing No. 104870585-751 SUMMARY

The Department of Rehabilitation (the DOR and/or the Department) shall abide by its stipulation and agreement to promptly conduct an assessment pursuant to established and codified procedures, in collaboration with the Appellant, for determining whether the Appellant’s Individualized Plan for Employment (IPE), which is dated December 27, 2020, should be amended and/or revised to a Self-Employment IPE and reflect relevant vocational rehabilitation services to be provided to the Appellant, as otherwise eligible.

The Appellant stipulated and agreed to the above, and the Appellant requested no further relief.

[1902-4, 1931-4]

## FACTS

On January 9, 2023, the Appellant requested a hearing with the State Hearings Division (SHD) to dispute denials by the Department of Rehabilitation (the DOR and/or the Department) of Appellant’s request for amendments to her Individualized Plan for Employment (IPE) dated December 27, 2020, in order to pursue Self-Employment.

A mediation hearing was not requested by the Appellant.

On February 27, 2023, a hearing was held on this matter at which the Appellant, a DOR hearing representative (and Staff Services Team Manager), Appellant’s DOR Qualified Rehabilitation Professional Counselor, and a DOR District Administrator appeared by telephone or video conference.

The Administrative Law Judge admitted the documents submitted by the parties into the record of the hearing, including: (1) a DOR Statement of Position (SOP); (2) a copy of the DOR Self-Employment Checklist Part 2: Proposed Small Business; (3) a partial snapshot of Appellant’s hearing request document; (4) a partial snapshot of Appellant’s educational degrees; (5) a copy of Appellant’s unsigned undated IPE; and (6) a copy of a business plan by Appellant for self-employment.

At the hearing, the Appellant testified, in pertinent part, that: (1) because she was aware that her IPE would end by December 2022, Appellant attempted to contact her DOR Qualified Rehabilitation Professional Counselor to speak with her about changing her IPE to reflect Appellant’s new goal to pursue self-employment; (2) after several failed attempts, Appellant received a phone call from her DOR Qualified Rehabilitation Professional Counselor, who told Appellant that she would not qualify to amend her IPE, without ever meeting with the Appellant or providing Appellant with instructions on how to pursue an amendment to her IPE to pursue self-employment; and (3) the DOR never provided Appellant with any written notice of denial or accept Appellant’s written business plan.

At the hearing, the DOR hearing representative testified, in pertinent part, that: (1) although the Appellant has requested an amendment to her IPE to pursue self- employment, the DOR has not denied this request; and (2) the DOR hearing representative unsuccessfully attempted to contact Appellant about the same after the Appellant filed the request for this state hearing.

Both the DOR hearing representative and the Appellant further testified that they stipulated and agreed that the DOR will promptly conduct an assessment in

collaboration with the Appellant, for determining whether the Appellant’s IPE, which is dated December 27, 2020, should be amended and/or revised to a Self-Employment IPE and reflect relevant vocational rehabilitation services to be provided to the Appellant. Appellant requested no further relief.

## LAW

Department of Rehabilitation

The Department of Rehabilitation (DOR and/or the Department) is empowered to adopt rules and regulations reasonably necessary to enable it to carry out its duties and powers. DOR regulations are found in Title 9 California Code of Regulations (CCR).

The DOR’s power to do so applies to the provision of vocational rehabilitation services. (Welf. & Inst. Code, §§ 19006; 19016.) The DOR is responsible for making all decisions affecting eligibility for, and the nature and scope of, vocational rehabilitation services. (Welf. & Inst. Code, § 19005.1.)

Right to State Hearing

Any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing.

Any applicant or client of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(Calif. Code Regulations., tit. 9, § 7351, subd. (a)(c)) Burden of Proof

The appellant has the burden of introducing evidence at the hearing sufficient to prove their case by a preponderance of the evidence. A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567; Cal. Code Regs., tit. 9, § 7536, subd. (e).)

In other words, the Appellant needs to prove it is more likely than not that the Department violated Title 9, California Code of Regulations, or other applicable law by the Department action or inaction that is the subject of the Appellant’s complaint. (See *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Assessment for Determining Eligibility

It is presumed that an applicant who has a physical or mental impairment which results in a substantial impediment to employment can benefit from vocational rehabilitation services unless, there is clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability. (Cal. Code Regs. Tit. 9, §§ 7062 & 7179)

Individualized Plan for Employment (IPE)

The Individualized Plan for Employment (IPE) must be developed within 90 days from the date of the eligibility determination.

1. If exceptional and unforeseen circumstances beyond the control of the Department arise, and the individual and the Department agree to a specific extension of time for IPE development, a rationale and date for the extension, signed by the individual and the Senior Vocational Rehabilitation Counselor (SVRC) must be entered into the record of services for that individual.
2. Only one extension may be agreed to by the SVRC and, in such case, the IPE must be developed by the agreed upon date, unless an additional extension is approved by the appropriate District Administrator.

(Cal. Code Regs. Tit. 9, § 7128)

The purpose of an IPE is to provide a written plan of action and a statement of understanding regarding the rights and responsibilities of both the client and the Department. An IPE is developed jointly by the client and the rehabilitation counselor. An IPE may include educational training to achieve a client’s vocational goals. (Calif. Code Regs., tit. 9, §§ 7128, 7130, 7131.)

The IPE must be: 1) in writing; 2) developed and implemented in a manner that allows the disabled person to exercise informed choice in creating an employment outcome, determining the specific services needed to achieve the outcome, selecting the entity or entities who will provide services, and choosing the methods by which services will be obtained; and 3) agreed to and signed by the person to receive services, or his representative, and his rehabilitation counselor at the Department. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(1)-(3).)

Prior to approving the IPE, the rehabilitation counselor with the Department must confirm that the identified employment goal, the services to be provided, the provider of services, and the manner in which services will be provided are “appropriate and necessary” in light of the person’s circumstances and are consistent with applicable laws. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(3)(B)(1).)

An IPE must include the following components: 1) the employment outcome agreed upon by the parties; 2) the vocational rehabilitation services to be provided; 3) the timeline for achieving the identified employment outcome and starting the necessary services; 4) the entity or entities who will provide the services and the manner in which services will be obtained; 5) the criteria used to evaluate progress toward achieving the identified outcome; and 6) the respective duties of the person receiving services, the Department, and anyone responsible for obtaining comparable services and benefits. (Cal. Code Regs., tit. 9, § 7131, subd. (a).)

A person who is eligible for vocational rehabilitation services is entitled to be an active participant in determining the specific services he will receive, how he will receive them, and from whom he will receive them. (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(1).) Such a person has the right to receive services “without undue delay.” (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(6).)

A person who is eligible for vocational rehabilitation services also has certain responsibilities, such as providing the Department information necessary to determining what services are necessary and appropriate. (Cal. Code Regs., tit. 9, § 7029.9, subd.

(b)(1).) Such person is required to “be an active and full partner in the vocational rehabilitation process.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(2).) Such person must “report any changes in circumstances that may affect” his eligibility or priority for services, the services provided, or the Department’s ability to contact him. (Cal. Code Regs., tit. 9, § 7029.9, subdivision. (b)(3).) Such person is required to cooperate in developing and meeting objectives identified in his IPE, which includes “active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(4).) The failure to do so may result in the loss of services and closure of his case. (Ibid.)

Amendments to the IPE

An IPE may be amended by the parties “if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services.” (Cal. Code Regs., tit. 9, § 7130, subd. (a)(6).)

Additionally, the IPE must be reviewed “at least annually” by the person receiving services and his rehabilitation counselor with the Department or another qualified vocational rehabilitation counselor not employed by the Department. (Cal. Code Regs., tit. 9, § 7133, subd. (a).) An annual review must include the following:

* A summary of the services provided by the Department and the results or outcome of the provision of these services.
* An evaluation of progress made by the eligible individual toward achievement of the employment outcome identified in the IPE.
* A summary of any changes in the eligible individual’s circumstances that may affect the individual’s participation in vocational rehabilitation services or progress toward achievement of the employment outcome identified in the IPE.
* Statements that the eligible individual or, as appropriate, the individual’s representative was informed about options for preparing the annual review specified in (a) of this section and was given the opportunity to participate in the annual review.

IPE Self-employment: Pre-plan discussion

§ 7136.4. Self-Employment; Informed Choice.

To assure informed choice, prior to development of an Individualized Plan for Employment (IPE) for an eligible individual who is interested in working in a self- employment setting, the Rehabilitation Counselor (RC) shall discuss with the individual:

1. The criteria and process for assessing whether the proposed self-employment setting is appropriate, as specified in Sections 7136.6, 7136.7, and 7136.8 of these regulations.
2. The scope of vocational rehabilitation services that may be provided by the Department to assist an eligible individual to achieve employment in a self- employment setting, as specified in Section 7137 of these regulations; and
3. The eligible individual's responsibility to identify and obtain resources that may be necessary to establish and operate the proposed small business, as specified in Sections 7136.6 and 7136.9 of these regulations.

(Cal. Code Regs., tit. 9, § 7136.4)

Self-employment Assessment

1. The Department shall support an eligible individual's choice to work in a self- employment setting only when it determines that the proposed self-employment setting is appropriate.
2. A proposed self-employment setting is appropriate when:
   1. Working in the proposed self-employment setting is consistent with the individual's personal attributes, including the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
   2. The proposed small business in which the individual will be self-employed is reasonably likely to produce sufficient income, within a reasonable period after the individual begins operating the business, not to exceed 12 months, to:
      1. Pay the necessary ongoing operating expenses of the small business, as specified in Section 7136.8 of these regulations; and
      2. Provide income for the individual at or above minimum wage, but not less than the customary wage and benefit level received by individuals engaged in the same or similar self-employment, consistent with Section 7006.3 of these regulations; and
   3. The individual is able to obtain all resources necessary to establish and operate the proposed small business, including any resources necessary to fund the ongoing operating expenses of the business and to support the individual's basic living expenses during the period until the small business produces the income specified in subsection (b)(2) of this section.
3. To determine whether a proposed self-employment setting is appropriate, the Department shall consider any existing information; the summary of the proposed small business specified in Section 7136.5(c) of these regulations; and, to the extent additional information is necessary, information obtained through assessments (including, if appropriate, development and review of a Small Business Plan) consistent with Sections 7001.5(c), 7128(b), 7130.5(b), 7136.7, 7136.8, 7136.9, and 7149(b) of these regulations.

(Cal. Code Regs., tit. 9, § 7136.6)

Contents of the IPE for Self-Employment

1. An Individualized Plan for Employment (IPE) for an eligible individual who is interested in working in a self-employment setting shall be developed and implemented as soon as an appropriate employment outcome and the services necessary to assist the individual to achieve it are identified, in accordance with

the requirements specified in Sections 7128-7131 of these regulations and with the requirements in this section.

1. The employment outcome in an IPE for an eligible individual interested in working in a self-employment setting shall include:
   1. The occupation in which the individual seeks to be employed (e.g., cosmetologist, accountant, etc.); and
   2. A description of the proposed self-employment setting.
2. As part of the IPE development, the eligible individual shall prepare, with the assistance of the Rehabilitation Counselor (RC), a summary of the proposed small business, as specified in Section 7136.8(a) of these regulations. This summary shall be used, together with other available information, to assess whether the proposed self-employment setting is appropriate, as specified in Section 7136.6 of these regulations, and to identify the nature and scope of vocational rehabilitation services to be provided to assist the individual to be employed in the self-employment setting. If more detailed information is required for these purposes, the individual may be required to prepare a Small Business Plan, as specified in Section 7136.8 of these regulations.
3. The IPE shall identify the vocational rehabilitation services, consistent with Section 7149 of these regulations, to be provided to assist the eligible individual to achieve employment in the chosen occupation that is identified in the employment outcome.
4. The IPE shall also include the following information regarding the proposed self- employment setting:
   1. If at the time the IPE is developed it can be determined, based on existing information and the summary of the proposed small business or Small Business Plan, as specified in 7136.8 of these regulations, that the self- employment setting is appropriate, as specified in Section 7136.6 of these regulations, the IPE shall identify the vocational rehabilitation services to be provided to assist the individual to achieve employment in the proposed self-employment setting, consistent with Section 7137 of these regulations.
   2. If at the time the IPE is developed additional information is required to assess whether the proposed self-employment setting is appropriate, as specified in Section 7136.6 of these regulations, the IPE shall identify the additional assessment activities and services that will be provided to obtain such additional information.
   3. If it is determined after the IPE is developed, based on additional information and/or assessment(s), that the self-employment setting is appropriate, as specified in Section 7136.6 of these regulations, the IPE shall be amended to identify the vocational rehabilitation services to be provided to assist the individual to achieve employment in the proposed self-employment setting, consistent with Section 7137 of these regulations.
5. When it has been determined, during or after development of the IPE, that the proposed self-employment setting is appropriate, as specified in Section 7136.6

of these regulations, the IPE shall identify, or shall be amended to identify, the following information regarding the self-employment setting:

* 1. Any one-time, initial costs of establishing the proposed small business in which the individual will be self-employed to be provided by the Department, consistent with Section 7137 of these regulations;
  2. The responsibilities of the individual to actively participate in applying for and obtaining any additional resources that are necessary to establish and operate the business, consistent with Section 7136.9 of these regulations, and to obtain such resources prior to the Department's provision or expenditure of vocational rehabilitation funds or services to assist the individual to achieve employment in the self-employment setting;
  3. The estimated date upon which the individual is to begin working in the self- employment setting and operating the small business;
  4. The methods to be used in monitoring the business to determine whether the individual is able to maintain employment in the self-employment setting, and the criteria that will be used to evaluate the individual's progress, including but not limited to regular meetings with the RC, preparation of monthly income and expense reports by the individual, review of such reports by the RC or a Small Business Consultant, and comparison of such reports with the projected income and expenses contained in the summary of the proposed small business or the Small Business Plan, as specified in Section 7136.8 of these regulations; and
  5. The expected need for post-employment services, consistent with Section 7021.5 of these regulations, if any, subject to comparable services and benefits and financial participation of the eligible individual, including any income produced by the small business.

1. If it is determined during or after development of an eligible individual's IPE with a proposed self-employment setting, based upon additional information and/or assessment(s), that the self-employment setting is not appropriate, as specified in Section 7136.6 of these regulations, the RC and the individual shall discuss alternative employment settings, and the IPE shall be developed, or amended, consistent with informed choice, to include an alternative employment setting and to identify any vocational rehabilitation services to be provided to assist the individual to achieve employment in the individual's chosen occupation in the alternative setting.

(Cal. Code Regs., tit. 9, § 7136.5) Requirements of a Small Business Plan

Self-employment Services Include One-Time, Initial Costs

1. The services provided by the Department to assist the eligible individual to achieve employment in an appropriate self-employment setting include assessment, technical assistance, and training to assist the individual in preparing for work in a self-employment setting, and certain initial one-time costs to establish the proposed small business.
2. The one-time, initial costs of establishing the small business are limited to such costs that are consistent with Section 7149 of these regulations, are appropriate and necessary to assist the individual to achieve employment in a self- employment setting, and are consistent with the usual and customary initial costs typically required for establishing similar small businesses, including:
   1. Payment of occupational license fees, pursuant to Section 7149(p);
   2. Purchase or lease of tools or other equipment, in quantities consistent with the initial cost of establishing similar small businesses, pursuant to Section 7149(p).
   3. Purchase of initial stock and supplies necessary for a period not to exceed six months, pursuant to Section 7149(p); and
   4. Payment of initial deposits required for rental agreements or utility service, consistent with Section 7149(g).
3. The Department shall consider and utilize the most cost-effective means appropriate to provide the initial costs, including use of leased rather than purchased equipment, for a lease period not to exceed six months, and acquiring initial stock on a consignment basis.
4. Initial costs, for purposes of a self-employment setting, do not include the following costs:
   1. Costs associated with expansion of a small business;
   2. Lease or purchase of real property;
   3. Construction or remodeling of real property;
   4. Payment of taxes or tax liens;
   5. Payment of patent fees or for product development;
   6. Refinancing or repayment of debt;
   7. Reimbursement or payment of any losses incurred in connection with the small business;
   8. Purchase of an existing business or of a business franchise;
   9. Purchase or lease of a vehicle for use in operating a small business;
   10. Employee wages and benefits; and
   11. Funding for ongoing operating expenses, as specified in Section 7136.8(g) of these regulations.

(Cal. Code Regs., tit. 9, § 7136.7)

Assessment of the Proposed Small Business

1. The summary of the proposed small business, prepared by the eligible individual as part of the Individualized Plan for Employment (IPE) development, as specified in Section 7136.5(c) of these regulations, shall include:
   1. The proposed products or services of the small business;
   2. The projected monthly income and expenses of the small business for the first 12 months of operation;
   3. The number of hours the individual will work in the small business on a monthly basis;
   4. The initial costs necessary to establish the proposed small business;
   5. The individual's resources;
   6. The market analysis and marketing strategy for the small business; and
   7. The staffing requirements of the small business.
2. The eligible individual shall be required to prepare a Small Business Plan when:
   1. More detailed information regarding the proposed small business, beyond the information in the summary, is necessary to assess whether the proposed small business to be operated by the individual is reasonably likely to produce sufficient income, as specified in Section 7136.6(b)(2) of these regulations; or
   2. Preparation of such a plan will provide additional information that is necessary to identify the nature and scope of vocational rehabilitation services to be provided to assist the individual to be employed in the proposed self-employment setting.
3. An eligible individual may elect to prepare a Small Business Plan, when not required to do so by the Department pursuant to subsection (b) of this section, when such a plan would assist the individual in obtaining resources necessary to establish or operate the business or in managing the business.
4. The Department shall provide consultation and technical assistance necessary to assist the eligible individual in preparing or revising a Small Business Plan, through its staff or by referral to other sources such as the U.S. Small Business Administration, a small business development center at a local community college, Service Corps of Retired Executives (SCORE) or a Small Business Consultant.
5. A Small Business Plan shall include:
   1. A description of the proposed small business and the products or services to be provided;
   2. The form of business organization;
   3. A detailed market analysis, including identification of potential customers, the geographic area in which the business will provide products or services, and potential competition within the area;
   4. A plan that describes how the products or services will be distributed and advertised;
   5. A projected timetable for starting business operations and an estimate of anticipated work hours before operations begin;
   6. A financial plan that includes a projection of estimated sales, monthly income and operating expenses for the first year of operation, an itemization of the costs necessary to establish the business, and an estimate of when the business will produce income that exceeds operating expenses;
   7. A description of required licenses, permits, or zoning variances and insurance;
   8. A description of the vocational rehabilitation services the individual is requesting from the Department, consistent with these regulations; the resources that will be obtained from other sources to establish and operate the small business; how the ongoing operating expenses of the small business will be funded, whether through the projected business income, loans, or other sources; and how the individual will provide for basic living expenses until the small business produces sufficient income, as specified in Section 7136.6(b)(2) of these regulations; and
   9. A description of the tasks to be performed by the individual in operating the business and anticipated hours that the individual will be required to work to obtain projected income.
6. The Small Business Plan and any other available information shall be reviewed by the Rehabilitation Counselor (RC), with the assistance of other Department staff with expertise in self-employment, and/or a Small Business Consultant, as appropriate, to assess whether the proposed small business is reasonably likely to provide sufficient income to meet the ongoing operating costs of the business and generate income for the individual as specified in Section 7136.6(b)(2) of these regulations, including review of the following criteria:
   1. Whether the small business is reasonably likely to produce the projected income, including whether the products or services can be produced, marketed and/or distributed, whether a market exists for the product or services, whether the small business will be able to produce the product or services in the projected quantities, and whether the projected income of the proposed small business is consistent with industry standards (i.e., prevailing income of comparable small businesses within the same industry);
   2. Whether the projected ongoing operating expenses are necessary for the operation of the business, whether they are usual and customary for similar businesses, and whether they are sufficient in amount to generate the projected products or services;
   3. Whether the proposed income of the small business is sufficient to pay for the projected ongoing operational expenses;
   4. Whether the small business is subject to potential liability, risks or insurance requirements that will negatively affect the projected income;
   5. Whether the projected initial costs are necessary and are usual and customary for similar small businesses;
   6. Whether all resources necessary to establish and operate the small business have been identified, including funding sources for the ongoing operating expenses of the small business and the individual's basic living expenses; and
   7. Any other factors that would affect the projected income or expenses associated with the small business, or the individual's ability to establish and operate the business.
7. For the purpose of a self-employment setting, ongoing operating expenses of a small business include but are not limited to: rent; utilities; insurance; professional services; payroll and payroll taxes; inventory; stock or supplies (above and beyond initial stock and supplies provided for a period of six months as initial costs); advertising; depreciation; repair and maintenance of property; replacement of tools and equipment; dues and subscriptions; assistive services, such as attendants, readers, and interpreters that will be used in operating the business; and transportation that will be used in operating the business.
8. If it is determined, after assessment of the proposed small business, that the self- employment setting is not appropriate because it will not generate sufficient income, as specified in Section 7136.6(b)(2) of these regulations, the RC and the individual shall discuss alternative employment settings, and the IPE shall be developed, or amended, consistent with Section 7136.5(g) of these regulations.

(Cal. Code Regs., tit. 9, § 7136.8)

Self-employment Small Business: Assessment of Necessary and Available Resources

1. To assess whether the eligible individual is able to obtain all resources necessary to establish and operate the proposed small business, as specified in Section 7136.6(b)(3) of these regulations, the Department and the eligible individual shall, as appropriate:
   1. Identify resources necessary to establish and operate the proposed small business, using a summary of the proposed small business or a Small Business Plan, as specified in Section 7136.8 of these regulations;
   2. Identify sources from which necessary resources can be obtained, including from the individual or family members; use of comparable services and benefits; funding from grants, loans, loan guarantee programs, and economic development funds; or a Social Security Administration (SSA) Plan for Achieving Self Support (PASS);
   3. Identify technical assistance to be provided to the individual to assist in applying for or obtaining funding from other sources; and
   4. Identify when the resources will be obtained by the individual.
2. In identifying and assessing available resources, the eligible individual may, but is not required to, obtain a loan or utilize a Plan for Achieving Self-Support (PASS) issued by the Social Security Administration (SSA) to fund the proposed small business; however, if resources in addition to the initial costs provided by the Department are required to establish and operate the proposed small business, the individual is responsible for obtaining such resources, and must

decide, based on informed choice, whether to obtain funding through a loan, a PASS or other sources, or to seek employment in an alternative setting.

1. If funding for the operation of the proposed small business is denied by a source outside the Department, the Department shall consider the decision and the reasons for such decision in assessing whether the self-employment setting is appropriate, as specified in Section 7136.6 of these regulations.
2. If it is determined that the individual is unable to obtain resources necessary to establish and operate the small business, the Rehabilitation Counselor (RC) and the individual shall discuss alternative employment settings, and the Individualized Plan for Employment (IPE) shall be developed, or amended, consistent with Section 7136.5(g) of these regulations.

(Cal. Code Regs., tit. 9, § 7136.9)

Determination that a Self-Employment is Not Appropriate: Assessment of Personal Attributes

1. To assess whether working in the proposed self-employment setting is consistent with the eligible individual's personal attributes, including the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice as specified in Section 7136.6(b)(1) of these regulations, the Department and the individual shall, as appropriate:
   1. Conduct an exploration of the individual's personal skills and abilities that are necessary for success in a self-employment setting, including decision- making and planning skills, initiative and entrepreneurial abilities, organizational skills, interpersonal skills, ability to communicate, ability to follow through, and ability to work independently;
   2. Review the individual's technical knowledge, experience and education that are necessary for success in a self-employment setting, including training or experience in areas necessary for the operation of the small business, such as marketing, office management, time management, inventory control, and bookkeeping; and
   3. Review the individual's financial history and credit record to assure the individual has appropriate money management skills, is able to obtain credit necessary for the proposed small business and is able to protect assets of the business from claims of existing creditors.
2. The assessment of the individual's skills, aptitudes, and interests in relation to the proposed self-employment setting shall include the use of at least one of the following: self-assessment tests, web resources such as those available through the Small Business Administration, and participation in self-employment workshops or seminars.
3. The individual's participation in and completion of his or her responsibilities in the vocational rehabilitation process shall also be considered in assessing whether working in a self-employment setting is consistent with the individual's personal attributes.
4. To the extent that the assessment identifies that the eligible individual needs additional training or experience to be employed in the proposed self- employment setting, the Rehabilitation Counselor (RC) and the individual shall consider whether vocational rehabilitation services can assist the individual to obtain the necessary training or experience. If such services are available, the Individualized Plan for Employment (IPE) shall identify, or shall be amended to identify, such services.
5. If it is determined after assessment that working in the proposed self-employment setting is not consistent with the individual's personal attributes, including the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice, the RC and the individual shall discuss alternative employment settings, and the IPE shall be developed, or amended, consistent with Section 7136.5(g) of these regulations.

(Cal. Code Regs., tit. 9, § 7136.7, subd. (e).)

## CONCLUSION

As discussed above, while any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal hearing, such an Appellant has the burden of introducing evidence sufficient at hearing to demonstrate Appellant’s case by a preponderance of the evidence. (See Calif. Code Regs., tit. 9, §§ 7531, subd. (a) & 7536, subd. (e).)

In this case, the Department of Rehabilitation (the DOR and/or the Department) and the Appellant stipulated and agreed that the DOR will promptly conduct an assessment pursuant to established and codified procedures, in collaboration with the Appellant, for determining whether the Appellant’s Individualized Plan for Employment (IPE), which is dated December 27, 2020, should be amended and/or revised to a Self-Employment IPE and reflect relevant vocational rehabilitation services to be provided to the Appellant, as otherwise eligible.

Accordingly, the appeal is granted in accordance with the above stipulation and agreement between the parties.

## ORDER

The appeal is granted in accordance with the agreement of the Department of Rehabilitation (the DOR and/or the Department) and the Appellant.

It is, therefore, ordered that the DOR shall take the necessary action as soon as administratively feasible to:

1. Conduct an assessment pursuant to established and codified procedures, in collaboration with the Appellant, for determining whether the Appellant’s Individualized Plan for Employment (IPE), which is dated December 27, 2020, should be amended and/or revised to a Self-Employment IPE and reflect relevant vocational rehabilitation services to be provided to the Appellant, as otherwise eligible; and
2. Provide written notice of the DOR determination based on the assessment above to the Appellant, which the Appellant may appeal at a state hearing.

## NOTICE

Pursuant to California Code of Regulations., tit. 9, section 7358, the Appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if Appellant is dissatisfied with the decision. The Client Assistance Program is available to the Appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance. A copy of this decision shall be filed in the Appellant's record of services. (Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Calif. Code Regs., tit. 9, § 7358, subd. (b).)

# *Hearing No. 104872312-468* SUMMARY

The appellant’s state fair hearing request regarding the Department of Rehabilitation (DOR) misusing authorizations, the appellant’s request for reimbursement for previous and future purchases, and allegations that the DOR has engaged in rehabilitation abuse is dismissed for lack of jurisdiction because there is insufficient evidence that the DOR has issued a written denial related to the receipt of services. [1931-2]

## FACTS

On January 17, 2023, the appellant filed a state fair hearing request via a DR 107 form in which the appellant stated the following:

1. Twice they have misused the issues of Authorizations not services to me the client as to date January 17, 2023. Reimbursement for previous purchases and future purchases.
2. Rehabilitation abuse

No written denial or action relating to an application for, or receipt of services was submitted into the record by either party.

The state fair hearing was held on February 23, 2023. The appellant and the DOR hearing representative appeared at the hearing telephonically. Both parties submitted documentary evidence in support of their respective positions.

Testimony of the DOR Hearing Representative

The DOR hearing representative stated that the appellant signed the appellant’s Individualized Plan for Employment (IPE) for a self-employment on December 12, 2022. The DOR hearing representative noted that the appellant had another IPE that was the subject of another state fair hearing and that this new IPE replaces the previous one.

The DOR hearing representative attached to the statement of position the appellant’s current IPE, which states that the appellant’s employment goal is: “Health Educators (211091) self employment – Instructor for Dental Assistant”. She stated that DOR regulations indicate that for self-employment plans, the DOR is only able to authorize initial start-up costs. She also stated that the appellant submitted to the DOR a list of 13 requests and that the DOR needs some documentation for clarification to ensure that the DOR is authorizing what the appellant needs for her plan.

The DOR hearing representative stated that the DOR has authorized services for the appellant via a check in the amount of $371.88 for initial CPR/First Aid items. She further stated that the appellant has an additional extensive list of CPR/First Aid items for which the appellant is requesting authorization. She explained that it is taking the DOR longer than typical to work on that list as the total cost of the requested items is over $5,000. She also stated that the DOR can work on about five requests at a time.

She also stated that the DOR loaded $1,902.98 on the appellant’s consumer payment card, which included $1,043.98 for AAPC training, $730 for a Better Business Bureau license, and $129 for ACCSC Online Training Center. She noted that the items are coded on the consumer payment card as clothing allowance, but they are not for that purpose and that the DOR sent the appellant email notification explaining that the amounts correspond to the specific items the appellant requested.

The DOR hearing representative stated that the DOR denied some of the items the appellant requested, such as the purchase of a vehicle, because they are not appropriate under the regulations for supported employment. She further stated that the request for authorization in the amount of $1,850 from pens.com was denied because the request was not supported for a self-employment plan as the cost of over

$1,000 for pens does not represent an essential initial start-up cost for the appellant’s plan and the appellant did not request prior approval. She noted that all reimbursement requests must be discussed with the rehabilitation counselor to obtain prior approval to determine if it is an appropriate part of the appellant’s plan. She also stated that the appellant’s invoice for an Amazon purchase does not have an itemized list of what was purchased, except for what appears to be a jewelry purchase, which would not be an appropriate item to authorize for a self-employment plan. She further noted that the appellant’s reimbursement request for the HSI bag mask has not been denied, but there is no indication how much the item costs in an invoice.

The DOR hearing representative stated that the appellant has requested several items and the DOR can only approve the requested items a little bit at a time to show that the authorizations are appropriate. She further stated that the DOR has corresponded with the appellant via email to inform the appellant of the status of the appellant’s requests and what is needed from the appellant. She also stated that the DOR provided the appellant with a computer and printer and offered to provide the appellant with transportation via Lyft or Uber to pick the approved items from the DOR, but the appellant has declined the offer.

The DOR hearing representative attached to the statement of position the information emailed to the appellant on February 14 and 15, 2023, regarding the status of the appellant’s requests, which indicates the following:

* 1. AAPC-in process-$1,043.98 loaded onto the CPC
  2. BBB- in process-One time only check will be mailed to you by next week
  3. National Pens.com for $1,850.00-denied, no prior approval and not required for self-employment plan
  4. ACCSC ONLINE TRAINING CENTER-in process-$129.00 loaded onto the CPC
  5. Teach:able- $1428.00-need invoice to add to the CPC
  6. Zoom $1200.00-need invoice to review
  7. BPPE -need invoice and cost to review
  8. CADAT-need invoice and cost to review
  9. Walmart.com-please clarify what you need at Walmart.com
  10. Amazon-current order was not authorized by DOR and DOR does not pay for jewelry. Please see above
  11. Pens.com-denied. Not a requirement for self-employment and no prior approval given
  12. CPR training Equipment- The other items CPR items are in process of either being ordered or funds added to the CPC. A check was mailed to you for $371.88 on 1/4/2023 for your HSI First Aid CPR AED Guides. [J] [first initial only] has requested the receipt for these items. Please provide the receipts so we can verify the goods and services have been completed. Please see attachment. This is the receipt DOR needs for the purchase of these items.
  13. A car purchase- denied. Not in IPE nor is this request a requirement of a self-employment plan
  14. DOR CARD funds loaded-in process and each item needs to be reviewed and determined if it is appropriate for this type of payment method.
  15. The HSI bag mask reimbursement and attachment you provided does not have the amount of purchase.

It says bill to: Please clarify who this is and why is it being billed to this person/address

[Addresses and names redacted]

All reimbursements need prior approval. This is per the DOR regulations and stated in your signed IPE. DOR cannot reimburse you for items you purchase without prior approval. Please work with your counselor before purchasing any items to ensure you receive the appropriate approval to be reimbursed.

Appellant’s Testimony

The appellant submitted into the record her Start-Up Business Summary Plan, which in pertinent states the following:

Embedded Virtuosity is classified as a private post-secondary, educational small business firm. The Core of my business is completely and totally focused on Dental Continuing Education (CDE). It is my obligation and a privilege to occupational licensing boards, and as a mandated requirement towards licensure renewal for the dental board of California, the Health, and Safety Institution (HSI) for emergency care and rescue training.

The appellant testified that she paid out of pocket $120 to renew her teacher’s license because it was going to expire in December 2022 and the DOR did not reimburse her because she did not request prior approval. The appellant further testified that she has a consumer payment card but there is no money on the card. She also testified that the DOR has authorized items she did not request. She did not dispute that prior approval is required for reimbursement so that the DOR can monitor what she is spending but noted that the consumer payment card indicates that she can be reimbursed for the purchase of personal items.

The appellant testified that she cashed the $371.88 check for the CPR/First Aid items, but she has not spent the money because she does not have the CPR mannequins, which she needs first. She further testified that she has asked the DOR for the mannequins, but the DOR only sent her what they wanted. She also testified that the DOR received information on how much she paid out of pocket for the HSI bag mask and argued that she should be reimbursed for this item. She additionally testified that the DOR has seen the items she purchased from Amazon in 2022 and that the jewelry on the invoice is simply an advertisement. She acknowledged that she sent her proof for the items she purchased out of pocket before signing a new IPE on December 12, 2022. She stated she would upload to the Appeals Case Management System (ACMS) the evidence she submitted to the DOR before signing the new IPE.

The appellant testified that she needs a vehicle to run her business and that the DOR offers the purchase of a vehicle. She further testified that she does not have a vehicle to pick up the computer the DOR approved, and that the DOR never sent her a check for Uber. She noted that she does not want to step into the office where the computer was sent because she has had many problems with that office. She also testified that she requested prior approval for the pens.com order but it was not approved. She additionally testified that she needs a Cannon camera and webcam and sent the DOR the specifications. She maintained that she has complied with everything she has to do as a consumer and that the DOR is not doing everything it can for her to support her self-employment plan. She argued that the DOR has not assisted her with her IPE and needs to improve the quality of services.

DOR Hearing Representative Response

In response, the DOR hearing representative stated that the appellant signed a new IPE on December 12, 2022, and therefore any requests for items submitted before the signing of the new IPE were part of the previous plan and must be resubmitted. She further stated that if the appellant uploads to ACMS the additional information regarding the requested items, the DOR will review the items for approval. She argued that the

issue of the denial of the vehicle is not at issue in this hearing as the appellant did not mention the issue in the DR 107 form, did not request a vehicle as part of the self- employment plan before signing the new IPE, and initial start-up costs do not include a vehicle. She noted that the appellant is receiving a $100 transportation allowance. She also stated that the consumer payment card is for goods and services and that the DOR does not provide reimbursement for basic needs.

## LAW

All references cited refer to Title 9 of California Code of Regulations, unless otherwise noted.

State Hearings

Appellant has the burden of introducing evidence at the hearing sufficient to demonstrate his/her case by a preponderance of the evidence. (§ 7356 subd. (e).)

A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafood, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (Welfare and Institutions Code (Welf. & Inst. Code), § 19704 subd. (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (§ 7354 subd. (a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (§ 7354 subd. (a)(3).)

The impartial hearing officer shall dismiss an appeal if any condition specified below exists. The appellant or authorized representative has failed to:

1. Respond within the time period specified in (e) to request a rescheduled hearing.
2. Show good cause for the failure to appear at a hearing.
3. File a timely request for fair hearing as specified in Sections 7353(f) and 7354(a).
4. Raise an issue within the jurisdiction of the impartial hearing officer. (§ 7355.)

Individual Plan of Employment (IPE)

Once a consumer is found to be eligible for DOR services, DOR is required to develop an IPE based on an assessment of the consumer’s needs and abilities. (§ 7128.)

A consumer’s employment goals and the service funding necessary to achieve the goals are to be specified in the IPE. (Welf. & Inst. Code, § 19103 subd. (b)(3).)

The IPE shall be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individuals, and, to the maximum extent appropriate, to include placement in integrated settings. (§ 19103 subd. (B)(1).)

The IPE shall be jointly developed and agreed upon by both the eligible individual and the DOR. (Welf. & Inst. Code, § 19103 subd. (b)(2).)

Self-Employment

An Individualized Plan for Employment (IPE) for an eligible individual who is interested in working in a self-employment setting shall be developed and implemented as soon as an appropriate employment outcome and the services necessary to assist the individual to achieve it are identified, in accordance with the requirements specified in Sections 7128-7131 of these regulations and with the requirements in this section. (§ 7136.5 subd. (a).)

* 1. The services provided by the Department to assist the eligible individual to achieve employment in an appropriate self-employment setting include assessment, technical assistance, and training to assist the individual in preparing for work in a self- employment setting, and certain initial one-time costs to establish the proposed small business.
  2. The one-time, initial costs of establishing the small business are limited to such costs that are consistent with Section 7149 of these regulations, are appropriate and necessary to assist the individual to achieve employment in a self-employment setting, and are consistent with the usual and customary initial costs typically required for establishing similar small businesses, including:
     1. Payment of occupational license fees, pursuant to Section 7149(p);
     2. Purchase or lease of tools or other equipment, in quantities consistent with the initial cost of establishing similar small businesses, pursuant to Section 7149(p);
     3. Purchase of initial stock and supplies necessary for a period not to exceed six months, pursuant to Section 7149(p); and
     4. Payment of initial deposits required for rental agreements or utility service, consistent with Section 7149(g).
  3. The Department shall consider and utilize the most cost-effective means appropriate to provide the initial costs, including use of leased rather than purchased equipment, for a lease period not to exceed six months, and acquiring initial stock on a consignment basis.
  4. Initial costs, for purposes of a self-employment setting, do not include the following costs:
     1. Costs associated with expansion of a small business;
     2. Lease or purchase of real property;
     3. Construction or remodeling of real property;
     4. Payment of taxes or tax liens;
     5. Payment of patent fees or for product development;
     6. Refinancing or repayment of debt;
     7. Reimbursement or payment of any losses incurred in connection with the small business;
     8. Purchase of an existing business or of a business franchise;
     9. Purchase or lease of a vehicle for use in operating a small business;
     10. Employee wages and benefits; and
     11. Funding for ongoing operating expenses, as specified in Section 7136.8(g) of these regulations.

(§ 7137.)

Reimbursement

1. A written authorization shall be made prior to the purchase of goods and services as documented in the client's case record.
2. Designated case carriers may, with supervisory approval, be permitted to make emergency verbal authorizations. Such emergency verbal authorizations will be confirmed with a written authorization to the provider of the goods or services.
3. The Department is not required to provide payment for goods and services that are not authorized by a Departmental employee.

(§ 7311.)

Other Goods and Services

1. Other goods and services may be provided to an eligible individual under an Individualized Plan for Employment (IPE) only if the goods and services are necessary for the individual to achieve the employment outcome specified in his or her IPE.
2. Other goods and services include, but are not limited to:
   1. Short-term or emergency financial assistance to an individual, except that financial assistance shall not be provided to support an individual's everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social services agencies.
   2. Occasional or emergency purchases of haircuts, handbags, or toiletries for an individual.
3. Before providing any vocational rehabilitation services to an individual as other goods and services, the Rehabilitation Counselor shall determine all of the following:
   1. Whether the goods and services to be provided are available from other sources as a comparable service and benefit, including, but not limited to, health or disability insurance, employee benefits, social security programs, welfare and social service programs, and other programs sponsored by federal, state, city, and county government agencies that serve individuals with disabilities.
   2. The extent of the individual's financial participation in the cost of goods and services to be provided.
   3. That other, more cost-effective, alternatives are not available. (§ 7174.)

DOR’s Responsibilities

The DOR is responsible for providing services necessary to achieve the consumer’s employment goal and maintaining the employment. (§ 7131.)

Once an individual is eligible for services, the DOR is required to make vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (§ 7149.)

Services shall be provided only to the extent necessary either to facilitate achievement of the vocational objective or prepare a consumer with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. (§ 7154 subd. (a).)

The DOR is not required to provide maintenance services such as food, shelter, and clothing, unless these services are in excess of the normal expenses of an individual or necessitated by participation in an assessment for eligibility or service or receipt of service under the IPE. (§ 7019.)

Consumer Responsibilities

* + 1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
    2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:
       1. Participate and cooperate in obtaining and providing the information needed by the Department to:
          1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
          2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
          3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
          4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
          5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.
       2. Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process, with assistance from the Rehabilitation Counselor as appropriate, by engaging in the following activities to the extent possible:
          1. Gathering and evaluating information and participating in planning and problem solving and decisions related to the assessment process, selection of the employment outcome and settings in which employment occurs, vocational rehabilitation services, service providers, settings in which services will be provided, and methods for procuring services;
          2. Seeking or identifying needed resources;
          3. Evaluating the consequences of the various options;
          4. Making decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests; and
          5. Taking personal responsibility for implementing the chosen options and achievement of the employment outcome the individual selected.
       3. Report any changes in circumstances that may affect:
          1. Eligibility for vocational rehabilitation services;
          2. Priority category under an Order of Selection;
          3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
          4. The Department's ability to contact the individual.
       4. Cooperate in the assessment process and in developing and meeting the objectives identified in the IPE including, but not limited to, active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome. Failure to cooperate, make reasonable effort, lack of regular attendance, or failure to maintain regular communication may result in loss of further services and closure of the record of services.
       5. Participate in the cost of services under conditions specified in Chapter 5, Article 1 of these regulations.
       6. Apply for, secure and use comparable services and benefits to the extent to which the individual is eligible for such benefits in accordance with Chapter 5, Article 3 of these regulations.

(§ 7029.9.)

## CONCLUSION

State hearing jurisdiction exists when the DOR has issued a written denial to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. The impartial hearing officer must dismiss an appeal if the appellant has failed to raise an issue within the jurisdiction of the impartial hearing officer.

In this case, the appellant signed a self-employment plan IPE on December 12, 2022, with the core of the appellant’s business being completely and totally focused on Dental Continuing Education. The appellant has submitted to the DOR an extensive list of items with a total cost of over $5,000 for which the appellant is requesting authorization in support of her self-employment plan. In the appellant’s state fair hearing request, as stated in the DR 107 form, the appellant indicated that twice the DOR has misused the

issue of authorizations as of the date the appellant filed this hearing request, requested reimbursement for previous purchases and future purchases, and alleged that the DOR has engaged in rehabilitation abuse.

Misuse of Authorizations

The appellant testified that she has a consumer payment card but there is no money on the card. She further testified that the DOR has authorized items she did not request.

The DOR hearing representative stated that the DOR has authorized services for the appellant via a check in the amount of $371.88 for initial CPR/First Aid items. She further stated that the DOR has loaded $1,902.98 on the appellant’s consumer payment card, which included $1,043.98 for AAPC training, $730 for a Better Business Bureau license, and $129 for ACCSC Online Training Center. She noted that the items are coded on the consumer payment card as clothing allowance, but they are not for that purpose and that the DOR sent the appellant email notification explaining that the amounts correspond to specific items. Under these circumstances, there is insufficient evidence that the DOR has misused any authorizations. Accordingly, the appellant’s grievance against the DOR regarding this claim is dismissed for lack of jurisdiction.

Reimbursement Requests

The appellant testified that she paid out of pocket $120 to renew her teacher’s license because it was going to expire in December 2022 and that the DOR did not reimburse her because she did not request prior approval. She further testified that the DOR received information on how much she paid out of pocket for the HSI bag mask and argued that she should be reimbursed for this item. She also testified that the DOR has seen the items she purchased from Amazon in 2022 and that the jewelry on the invoice is an advertisement. She acknowledged that she sent the DOR proof for the items she purchased out of pocket before signing a new IPE on December 12, 2022. The evidence establishes that the DOR has requested additional information from the appellant to reimburse the appellant and that the appellant has not submitted the requested information after signing the new IPE on December 12, 2022. The appellant did not indicate a specific reimbursement denial in the DR 107 and no written reimbursement denials were submitted into the record by either party. The appellant’s request for future reimbursements would also not include any denials as the appellant has not yet submitted those requests. Under these circumstances, the appellant has not raised a reimbursement issue within the jurisdiction of the administrative law judge. Accordingly, the claim regarding reimbursements is dismissed for lack of jurisdiction.

It is noted that the appellant raised the issue of a denial of a request to purchase a vehicle and the request for authorization in the amount of $1,850 from pens.com. The appellant did not indicate that she was disputing these issues in her DR 107. No written denials were submitted into the record by either party regarding these issues.

Therefore, the administrative law judge does not have the authority resolve these issues. If the appellant receives a denial, she may file a fair hearing request to dispute the denial.

Rehabilitation Abuse

The appellant maintained that she has complied with everything she has to do as a consumer and that the DOR is not doing everything it can for her to support her self- employment plan. She argued that the DOR has not assisted her with her IPE and needs to improve the quality of services. There is no state hearing jurisdiction regarding grievances against the DOR where an action relating to the receipt of services has not been taken. It is noted that the administrative law judge heard almost two hours of testimony from the appellant at this state hearing. The appellant was respectful, articulate, sincere, credible, and highly knowledgeable about her claim and her concerns. However, the administrative law judge does not have the power or authority to resolve her concerns regarding rehabilitation abuse in this administrative process.

Accordingly, the claim regarding rehabilitation abuse is dismissed for lack of jurisdiction.

## ORDER

The claim is dismissed.

## NOTICE

Pursuant to California Code of Regulations., tit. 9, section 7358, the appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if appellant is dissatisfied with the decision. The Client Assistance Program is available to the appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance. A copy of this decision shall be filed in the appellant's record of services.

Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Code Regs., tit. 9, § 7358, subd. (b).)

# Hearing No. 104872094-765 SUMMARY

Pursuant to an agreement between the parties, the California Department of Rehabilitation (DOR) is hereby ordered to (1) procure for the appellant a desktop computer and repair or replace appellant’s laptop computer according to the applicable procurement rules governing such purchases; (2) authorize and pay for the appellant’s classes for the Summer 2023 term; and (3) collaborate with the appellant to ensure the classes she needs for the Spring 2023 term are authorized and payment has been or will be made. [1920-4]

## FACTS

On January 13, 2023, the appellant requested a hearing with the State Hearings Division (SHD). The appellant’s appeal states in pertinent part:

I am requesting another hearing with the Department of Rehabilitation due to the fact that the services already pending approval were not provided, these services ex: Stanford continuing education as well as reimbursement for school supplies weren't approved because the counselor [omitted] lacked to update my educational plan to include these items. The interim counselor: administrator [omitted] assured me that those services would be included in my draft plan due to a change in staff.

…

I disagree with the decision to last minute change the agreement from my prior court hearing, I also disagree with a last-minute change in office locations for [location omitted] to [location omitted] office causing a substantial delay in my academic schedule and progress. I have submitted all required documentation in a timely manner allowing the department time to process authorizations.

A hearing in this matter was held on April 18, 2023. Present at the hearing were the appellant, a DOR hearing representative, and a DOR counselor. The appellant’s hearing request and position statement and a DOR Statement of Position (SOP) with attachments were admitted into evidence.

The issues on appeal were determined to be the appellant’s dissatisfaction with the DOR’s communication and actions regarding procurement of a desktop computer and repair or replacement of a laptop computer, payment for classes for her Summer 2023 term, and payment for classes for her Spring 2023 term. The appellant did not dispute change in office locations at the hearing as the appellant’s case had been transferred back to the prior office location prior to the hearing.

The DOR’s position statement noted in relevant part as follows regarding the appellant’s requests:

## Facts

March 24th School supplies were authorized and sent for Spring Term CE.

January 23rd Case transfer to [location omitted] North office as requested by Consumer to remain with current Counselor [omitted].

January 18th Course Fees and application fees completed for Stanford CE.

January 18th Books purchased through Cal Card for Spring Term at Stanford CE

January 17th, We approved private school training with [name omitted] CE for 6 additional training courses to allow Consumer to meet her long-term goal of a Community and Heath Advocate. This program allows her entry into the Master’s Program at [name omitted].

…

## Additional Information

April 6th authorized and completed tuition and school fees completed for Summer 2023

April 6th authorized and completed consumer fees for Summer 2023

April 5th Desktop computer authorized and completed for training purposes.

April 3rd laptop screen repair submitted for repair, but vendor changed due to location, and we purchased a desktop. Consumer is aware and once we locate a new vendor for repair of laptop screen it will be reauthorized.

The appellant testified that the delay in the approval process and payment for her classes is causing issues for her because of the concern that the university will drop her from classes if the tuition is not paid in full by the first day of the term. The appellant further testified that there is an outstanding balance for her Spring 2023 tuition and that there are two additional classes she needs to complete to complete her certificate program. The appellant testified that she has submitted the information regarding these classes and needed payments to the DOR but there is still a balance on the account.

The DOR representative testified that she had the authority to make binding agreements on behalf of DOR during the hearing. The DOR representative agreed to

(1) procure for the appellant a desktop computer (which the DOR representative testified had been purchased and was shipping) and repair or replace appellant’s laptop computer according to the applicable procurement rules governing such purchases; (2) authorize and pay for the appellant’s classes for the Summer 2023 term (which the DOR representative testified had been completed); and (3) collaborate with the appellant to ensure the classes she needs for the Spring 2023 term are authorized and payment has been or will be made.

The appellant confirmed that she was accepting the DORs offers as full resolution of the issues on appeal and that there were no other issues on appeal.

## LAW

Department of Rehabilitation

The Department of Rehabilitation (DOR and/or the Department) is empowered to adopt rules and regulations reasonably necessary to enable it to carry out its duties and

powers. DOR regulations are found in Title 9 California Code of Regulations (CCR). The DOR’s power to do so applies to the provision of vocational rehabilitation services. (Welf. & Inst. Code, §§ 19006; 19016.) The DOR is responsible for making all decisions affecting eligibility for, and the nature and scope of, vocational rehabilitation services. (Welf. & Inst. Code, § 19005.1.)

Right to State Hearing

Any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing.

Any applicant or client of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(Calif. Code Regulations., tit. 9, § 7351, subd. (a)(c)) Burden of Proof

The appellant has the burden of introducing evidence at the hearing sufficient to prove their case by a preponderance of the evidence. A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567; Cal. Code Regs., tit. 9, § 7536, subd. (e).)

In other words, the Appellant needs to prove it is more likely than not that the Department violated Title 9, California Code of Regulations, or other applicable law by the Department action or inaction that is the subject of the Appellant’s complaint. (See *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Individualized Plan for Employment (IPE)

The Individualized Plan for Employment (IPE) must be developed within 90 days from the date of the eligibility determination.

1. If exceptional and unforeseen circumstances beyond the control of the Department arise, and the individual and the Department agree to a specific extension of time for IPE development, a rationale and date for the extension, signed by the individual and the Senior Vocational Rehabilitation Counselor (SVRC) must be entered into the record of services for that individual.
2. Only one extension may be agreed to by the SVRC and, in such case, the IPE must be developed by the agreed upon date, unless an additional extension is approved by the appropriate District Administrator.

(Cal. Code Regs. Tit. 9, § 7128)

The purpose of an IPE is to provide a written plan of action and a statement of understanding regarding the rights and responsibilities of both the client and the Department. An IPE is developed jointly by the client and the rehabilitation counselor. An IPE may include educational training to achieve a client’s vocational goals. (Calif. Code Regs., tit. 9, §§ 7128, 7130, 7131.)

The IPE must be: 1) in writing; 2) developed and implemented in a manner that allows the disabled person to exercise informed choice in creating an employment outcome, determining the specific services needed to achieve the outcome, selecting the entity or entities who will provide services, and choosing the methods by which services will be obtained; and 3) agreed to and signed by the person to receive services, or his representative, and his rehabilitation counselor at the Department. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(1)-(3).)

Prior to approving the IPE, the rehabilitation counselor with the Department must confirm that the identified employment goal, the services to be provided, the provider of services, and the manner in which services will be provided are “appropriate and necessary” in light of the person’s circumstances, and are consistent with applicable laws. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(3)(B)(1).)

An IPE must include the following components: 1) the employment outcome agreed upon by the parties; 2) the vocational rehabilitation services to be provided; 3) the timeline for achieving the identified employment outcome and starting the necessary services; 4) the entity or entities who will provide the services and the manner in which services will be obtained; 5) the criteria used to evaluate progress toward achieving the identified outcome; and 6) the respective duties of the person receiving services, the Department, and anyone responsible for obtaining comparable services and benefits. (Cal. Code Regs., tit. 9, § 7131, subd. (a).)

A person who is eligible for vocational rehabilitation services is entitled to be an active participant in determining the specific services he will receive, how he will receive them, and from whom he will receive them. (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(1).) Such a person has the right to receive services “without undue delay.” (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(6).)

A person who is eligible for vocational rehabilitation services also has certain responsibilities, such as providing the Department information necessary to determining what services are necessary and appropriate. (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(1).) Such person is required to “be an active and full partner in the vocational rehabilitation process.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(2).) Such person must “report any changes in circumstances that may affect” his eligibility or priority for services, the services provided, or the Department’s ability to contact him. (Cal. Code Regs., tit. 9, § 7029.9, subdivision. (b)(3).) Such person is required to cooperate in developing and meeting objectives identified in his IPE, which includes “active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(4).) The failure to do so may result in the loss of services and closure of his case. (Ibid.)

Amendments to the IPE

An IPE may be amended by the parties “if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services.” (Cal. Code Regs., tit. 9, § 7130, subd. (a)(6).)

Additionally, the IPE must be reviewed “at least annually” by the person receiving services and his rehabilitation counselor with the Department or another qualified vocational rehabilitation counselor not employed by the Department. (Cal. Code Regs., tit. 9, § 7133, subd. (a).) An annual review must include the following:

* A summary of the services provided by the Department and the results or outcome of the provision of these services.
* An evaluation of progress made by the eligible individual toward achievement of the employment outcome identified in the IPE.
* A summary of any changes in the eligible individual’s circumstances that may affect the individual’s participation in vocational rehabilitation services or progress toward achievement of the employment outcome identified in the IPE.
* Statements that the eligible individual or, as appropriate, the individual’s representative was informed about options for preparing the annual review specified in (a) of this section and was given the opportunity to participate in the annual review.

(Cal. Code Regs., tit. 9, § 7133, subd. (c).) Vocational Rehabilitation Services

Vocational rehabilitation services the Department is required to provide a person eligible for services include: “Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials ” (Cal.

Code Regs., tit. 9, § 7149, subd. (f).)

Training services may be provided only if necessary, to “facilitate achievement of the vocational objective.” (Cal. Code Regs., tit. 9, § 7154, subd. (a)(1).)

Clients receiving college level training shall use the least expensive educational institutions in the following order of preference:

* For the first two years, a community college or other equivalent resource.
* For the first two years, a state college or university if the overall cost to the Department will be equal to or less than a community college.
* After the first two years, a state college or university. (Cal. Code Regs. Tit. 9, § 7156)

Authority to Stipulate

The District Administrator or his or her designee with authority to resolve the dispute shall attend the mediation on the Department’s behalf.

(Cal. Code Regs. Tit. 9,§ 7353.60

## CONCLUSION

The DOR representative offered to resolve the issues for hearing. The DOR agreed to

(1) procure for the appellant a desktop computer and repair or replace appellant’s laptop computer according to the applicable procurement rules governing such purchases; (2) authorize and pay for the appellant’s classes for the Summer 2023 term; and (3) collaborate with the appellant to ensure the classes she needs for the Spring 2023 term are authorized and payment has been or will be made.

The appellant accepted the DORs offers as full resolution of the issues on appeal and stated there were no other issues on appeal.

As the DOR representative testified that she had the authority to make binding agreements on behalf of DOR during the hearing, DOR shall be bound by these agreements.

## ORDER

The appeal is granted by stipulation.

Pursuant to an agreement between the parties, the California Department of Rehabilitation (DOR) is hereby ordered (1) to procure for the appellant a desktop computer and repair or replace appellant’s laptop computer according to the applicable procurement rules governing such purchases; (2) to authorize and pay for the appellant’s classes for the Summer 2023 term; and (3) to collaborate with the appellant to ensure the classes she needs for the Spring 2023 term are authorized and payment has been made.

## NOTICE

Pursuant to California Code of Regulations., tit. 9, section 7358, the Appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if Appellant is dissatisfied with the decision. The Client Assistance Program is available to the Appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance. A copy of this decision shall be filed in the Appellant's record of services. (Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Calif. Code Regs., tit. 9, § 7358, subd. (b).)

# Hearing No. 104875844-751 SUMMARY

The Department of Rehabilitation (the DOR and/or the Department) correctly denied the Appellant’s request for reimbursement for repairs made to Appellant’s personal computer on December 31, 2021 for the total amount of $619.83, as the Appellant admittedly paid for the same without her DOR counselor’s approval for the same as part of her IPE or required prior approval. [1902-2]

## FACTS

On January 27, 2023, the Appellant requested a mediation and a hearing with the State Hearings Division (SHD) to dispute denials by the Department of Rehabilitation (the DOR and/or the Department) of Appellant’s various requests

On April 19, 2023, a mediation hearing was held on this matter, where the Appellant and the DOR representative failed to resolve certain issues in dispute.

On May 25, 2023, a hearing was held on this matter. At this hearing, the Appellant, a DOR hearing representative, DOR District Administrator, and DOR Rehabilitation Counselor appeared by telephone.

The Department submitted a February 21, 2023 Statement of Position (SOP) with Exhibits. The Appellant submitted: (1) a December 30, 2021 receipt from Apple Computers for repairs to a laptop in the total amount of $619.83; (2) a copy of a

January 5, 2023 Administrative Review Request from the Appellant to the Department; and

(3) an April 24, 2023 email to the State Hearings Division (SHD) with attachments. These attachments included: (1) an email trail with Department representatives; (2) a January 19, 2023 Department letter to Appellant regarding her January 5, 2023 Administrative Review Request; (3) an August 23, 2021 letter from the United States Department of Education Office for Civil Rights (hereafter referred to as the OCR) to the Appellant acknowledging receipt of the Appellant’s August 23, 2021 complaint against the DOR; (4) a typed statement and legal argument in support of her claim of discrimination; and (5) a September 10, 2021 OCR letter to the Appellant dismissing the Appellant’s discrimination allegations against the DOR.

The Administrative Law Judge admitted all the above documents submitted by the parties into the record of the hearing.

In regards to the issues for the hearing, the Appellant and the DOR hearing representative agreed that the issue which remained in dispute was whether the DOR correctly denied Appellant’s reimbursement for repairs made to Appellant’s personal computer on December 30, 2021 for the total amount of $619.83, without the prior approval of the DOR.

While the Appellant also sought to include her allegations of discrimination against the Department at this hearing, the Administrative Law Judge denied the request, because these allegations were properly referred by the Appellant to the OCR, which investigated and dismissed them on September 10, 2021. Moreover, the OCR September 10, 2021

letter to the Appellant provided her with her rights to appeal the OCR’s dismissal of her allegations of discrimination within 60 calendar days of the date of that letter.

In the February 21, 2023 SOP, the Department provided the following pertinent information about the Appellant’s request for reimbursement for the December 30, 2021 repairs made to Appellant’s personal computer.

The chronicle of events pertinent to the request for reimbursement started on

October 29, 2021. During this time, the Appellant's Individualized Plan for Employment (IPE) was developed with an employment goal of becoming a Nurse Practitioner. In this meeting, the Team Manager furnished the Appellant with guidance on the reimbursement policy, making her aware of the procedures necessary for seeking reimbursements for any future expenses.

Then on November 1, 2021, the Team Manager formalized the instructions and provided them to the Appellant via email. This email laid out the Department’s policy and procedure for reimbursements, making clear the protocol that needed to be followed.

The Appellant's apparent first encounter with this reimbursement policy in a practical setting occurred on December 30, 2021. Her laptop began malfunctioning, and she sent an email at 3:09 PM to Rehabilitation Counselor. In her email, the Appellant requested pre- approval for her laptop's repair. However, due to the Rehabilitation Counselor's meetings, she didn't immediately respond. Approximately five hours later, the Appellant, without having secured pre-approval, proceeded to pay $619.83 for the laptop repairs at 7:55 PM. This act contravened the reimbursement policy she'd been made aware of.

Notwithstanding the lack of a response from the Rehabilitation Counselor, the Appellant sent a follow-up email on January 4, 2022, repeating her question about pre-approval for the laptop repair. On January 5, 2022, Service Coordinator reiterated to the Appellant that there had been no prior approval for the laptop repair, referencing the letter dated October 29, 2021, about reimbursement policies. The Appellant, however, was unsatisfied with this informal refusal for reimbursement and requested a more formal denial on January 14, 2022.

Attempting to resolve the laptop issue, a meeting was convened on January 24, 2022, where the Appellant, the Rehabilitation Counselor, and the Service Coordinator were present. During this meeting, two options were presented to the Appellant: 1) have the malfunctioning laptop undergo diagnostic testing and repairs by an approved vendor, a process that might take several weeks to complete, or 2) purchase a new laptop, which would be delivered within 7-10 days.

In February, the Appellant agreed to receive a new laptop. The request for this laptop purchase was officially sent to the District Office on February 15, 2022. The Appellant was informed of the order for the new laptop on February 16, 2022, and she confirmed receipt of the same on March 18, 2022.

However, the issue of reimbursement for the initial laptop repair persisted. The Appellant did not raise this issue again until the Administrative Review meeting, where she requested reimbursement for the repair cost. The Reviewer, however, stood by DOR's initial decision to deny reimbursement for the laptop repairs. This decision was based on the policy that the Appellant had not secured written authorization prior to the laptop repair, a clear violation of the outlined reimbursement procedure.

At the hearing, the Department hearing representative and witnesses generally testified in support of the above summary of the pertinent portions of the SOP.

In a January 5, 2023 request to the DOR for an Administrative Review, the Appellant stated, in pertinent part, that:

[1](#_bookmark13)“DOR refused to approve reimbursing me when I fixed my laptop in because it would not turn on. I believe I was formally informed during a meeting 3/24/2022 which a letter was never provided for.

- My personal computer stopped working before my online class started in January at [school]. I informed DOR several times and there was no timely response or exception to sending the computer in to be sent out to vendors. I chose to pay for the computer to be workable to ensure my success in the class at [school].

-DOR did not provide me the necessary supplies to be successful for my Anatomy Class at [school] defined in my IPE, and the subsequent classes enrolled in there after provided above.

…

I request that DOR do the following to resolve my concerns:

-Approve the reimbursement for me fixing my computer as an emergency expense to complete my IPE goal and meaningfully participate. I would not be able to pass the Anatomy class without the necessary materials, like my laptop. This course was approved in October 2021 in my IPE. Discussions and materials for successful completion were not addressed until several months into my class, over 8 weeks or longer because of availability.

UNDER the exception of:

Administrative Review Request

- Title 9 CCR §7311(b). The services DOR can be provided are listed in Title 9 California Code of Regulations (CCR) §7149.

- 34 CFR 361.50 a

- 34 CFR 361.50 c1-3”

In a January 19, 2023 letter in response to Appellant’s January 5, 2023 request for an Administrative Review, DOR Staff Services Manager stated, in pertinent part, that:

[2](#_bookmark14)“In December 2021 DOR took the following action(s) which I disagree with:

To not reimburse me for the repair of my computer or to repair it in a timely manner to meaningfully participate in my class of Anatomy at [school] as part of my IPE.

1126.1 Reimbursement (03/16)

A participant check can be issued to reimburse a consumer for a purchase made. Prior to the purchase, the Rehabilitation Counselor must have entered a case note giving the approval to the consumer to make the purchase. This is known as a "prior approval case note". The consumer must supply an original receipt before issuance of the participant check.

Reimbursement to the consumer is not allowed for medical services / devices consistent with CCR, title 9, section 7311 and 34 CFR section 361.50.

Additional approvals may be required as listed in RAM Chapter 12 Exhibit C prior to authorization.

Findings

Reviewer findings are in favor of DOR for not giving reimbursement as requested for this item. As stated in RAM 1126.1, there must be “a prior approval case note” issued by the Rehabilitation Counselor before date of purchase or transaction. In reviewing the case file along with the Rehabilitation Counselor (QRP) and Team Manager (TM) interviews, this reimbursement was not authorized nor was there a prior approval case note.”

At the hearing, the Appellant testified, in pertinent part, that: (1) she knowingly failed to obtain preapproval before paying out-of-pocket for the December 30, 2021 repairs to her personal computer; (2) she did so because she had classes starting

January 4, 2022 in which she could not participate meaningfully without her computer; (3) while she learned that her computer stopped working during the week beginning December 27, 2021, the Appellant did not recall whether she called the Apple Store to get an appointment for repair before December 30, 2021; (4) the Department routinely took a long time to provide the Appellant with the things she needed; (5) the Appellant first told the Department that she had paid for the repairs to her computer herself in March or April 2022; and (6) the Department never gave her an option to obtain a loaned computer.

## LAW

**Department of Rehabilitation**

The Department of Rehabilitation (DOR and/or the Department) is empowered to adopt rules and regulations reasonably necessary to enable it to carry out its duties and powers. DOR regulations are found in Title 9 California Code of Regulations (CCR). The DOR’s power to do so applies to the provision of vocational rehabilitation services. (Welf. & Inst. Code, §§ 19006; 19016.) The DOR is responsible for making all decisions affecting

2 Spelling and grammar errors, if any, are not corrected in this quote.

eligibility for, and the nature and scope of, vocational rehabilitation services. (Welf. & Inst. Code, § 19005.1.)

**Right to State Hearing**

Any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing.

Any applicant or client of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(Calif. Code Regulations., tit. 9, § 7351, subd. (a)(c))

**Confidentiality of Mediation Discussions**

Discussions that occur during the mediation process are confidential and may not be disclosed to anyone outside the mediation process or used as evidence in any subsequent due process hearings or civil proceedings. The mediator may require the parties to the mediation process to sign a confidentiality pledge prior to the commencement of the process. The parties have a right to submit evidence and information to support their positions at the mediation. Evidence that is otherwise available outside of mediation is not inadmissible in a subsequent proceeding or protected from disclosure solely by reason of its introduction or use in mediation.

(Cal. Code Regs. Tit. 9, § 7353.6 (d).)

**Burden of Proof**

The appellant has the burden of introducing evidence at the hearing sufficient to prove their case by a preponderance of the evidence. A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567; Cal. Code Regs., tit. 9, §

7536, subd. (e).)

In other words, the Appellant needs to prove it is more likely than not that the Department violated Title 9, California Code of Regulations, or other applicable law by the Department action or inaction that is the subject of the Appellant’s complaint. (See *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

**Assessment for Determining Eligibility**

It is presumed that an applicant who has a physical or mental impairment which results in a substantial impediment to employment can benefit from vocational rehabilitation services unless, there is clear and convincing evidence that the individual cannot benefit from

vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability. (Cal. Code Regs. Tit. 9, §§ 7062 & 7179)

**Individualized Plan for Employment (IPE)**

The Individualized Plan for Employment (IPE) must be developed within 90 days from the date of the eligibility determination.

1. If exceptional and unforeseen circumstances beyond the control of the Department arise, and the individual and the Department agree to a specific extension of time for IPE development, a rationale and date for the extension, signed by the individual and the Senior Vocational Rehabilitation Counselor (SVRC) must be entered into the record of services for that individual.
2. Only one extension may be agreed to by the SVRC and, in such case, the IPE must be developed by the agreed upon date, unless an additional extension is approved by the appropriate District Administrator.

(Cal. Code Regs. Tit. 9, § 7128)

The purpose of an IPE is to provide a written plan of action and a statement of understanding regarding the rights and responsibilities of both the client and the Department. An IPE is developed jointly by the client and the rehabilitation counselor. An IPE may include educational training to achieve a client’s vocational goals. (Calif. Code Regs., tit. 9, §§ 7128, 7130, 7131.)

The IPE must be: 1) in writing; 2) developed and implemented in a manner that allows the disabled person to exercise informed choice in creating an employment outcome, determining the specific services needed to achieve the outcome, selecting the entity or entities who will provide services, and choosing the methods by which services will be obtained; and 3) agreed to and signed by the person to receive services, or his representative, and his rehabilitation counselor at the Department. (Cal. Code Regs., tit. 9,

§ 7130, subd. (a)(1)-(3).)

Prior to approving the IPE, the rehabilitation counselor with the Department must confirm that the identified employment goal, the services to be provided, the provider of services, and the manner in which services will be provided are “appropriate and necessary” in light of the person’s circumstances, and are consistent with applicable laws. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(3)(B)(1).)

An IPE must include the following components: 1) the employment outcome agreed upon by the parties; 2) the vocational rehabilitation services to be provided; 3) the timeline for achieving the identified employment outcome and starting the necessary services; 4) the entity or entities who will provide the services and the manner in which services will be obtained; 5) the criteria used to evaluate progress toward achieving the identified outcome; and 6) the respective duties of the person receiving services, the Department, and anyone responsible for obtaining comparable services and benefits. (Cal. Code Regs., tit. 9, § 7131, subd. (a).)

A person who is eligible for vocational rehabilitation services is entitled to be an active participant in determining the specific services he will receive, how he will receive them, and from whom he will receive them. (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(1).) Such a person has the right to receive services “without undue delay.” (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(6).)

A person who is eligible for vocational rehabilitation services also has certain responsibilities, such as providing the Department information necessary to determining what services are necessary and appropriate. (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(1).) Such person is required to “be an active and full partner in the vocational rehabilitation process.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(2).) Such person must “report any changes in circumstances that may affect” his eligibility or priority for services, the services provided, or the Department’s ability to contact him. (Cal. Code Regs., tit. 9, § 7029.9, subdivision. (b)(3).) Such person is required to cooperate in developing and meeting objectives identified in his IPE, which includes “active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(4).) The failure to do so may result in the loss of services and closure of his case. (Ibid.)

**Amendments to the IPE**

An IPE may be amended by the parties “if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services.” (Cal. Code Regs., tit. 9, § 7130, subd. (a)(6).)

Additionally, the IPE must be reviewed “at least annually” by the person receiving services and his rehabilitation counselor with the Department or another qualified vocational rehabilitation counselor not employed by the Department. (Cal. Code Regs., tit. 9, § 7133, subd. (a).) An annual review must include the following:

* A summary of the services provided by the Department and the results or outcome of the provision of these services.
* An evaluation of progress made by the eligible individual toward achievement of the employment outcome identified in the IPE.
* A summary of any changes in the eligible individual’s circumstances that may affect the individual’s participation in vocational rehabilitation services or progress toward achievement of the employment outcome identified in the IPE.
* Statements that the eligible individual or, as appropriate, the individual’s representative was informed about options for preparing the annual review specified in (a) of this section and was given the opportunity to participate in the annual review.

(Cal. Code Regs., tit. 9, § 7133, subd. (c).)

**///**

**Vocational Rehabilitation Services**

Vocational rehabilitation services the Department is required to provide a person eligible for services include: “Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials ” (Cal. Code

Regs., tit. 9, § 7149, subd. (f).)

Training services may be provided only if necessary, to “facilitate achievement of the vocational objective.” (Cal. Code Regs., tit. 9, § 7154, subd. (a)(1).)

Clients receiving college level training shall use the least expensive educational institutions in the following order of preference:

* For the first two years, a community college or other equivalent resource.
* For the first two years, a state college or university if the overall cost to the Department will be equal to or less than a community college.
* After the first two years, a state college or university. (Cal. Code Regs. Tit. 9, § 7156)

When college-level training is provided, a private college may be used only if:

* The private school is essential to the success of the Individualized Plan for Employment (IPE); or
* The overall cost to the Department will be equal to or less than the costs of a public school; or
* The client agrees to pay all additional costs for training in a private school when the Department has determined that a public institution is sufficient to meet the needs of the client.

(Cal. Code Regs., tit. 9, § 7156, subd. (d).)

## CONCLUSION

As discussed above, while any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal hearing, such an Appellant has the burden of introducing evidence sufficient at hearing to demonstrate Appellant’s case by a preponderance of the evidence. (See Calif. Code Regs., tit. 9, §§ 7531, subd. (a) & 7536, subd. (e).)

Section 7311 states that no financial commitment shall be made by or on behalf of the DOR except through issuance of a Purchase Order or other written authorization by a designated staff member of the Department. This written authorization must precede the rendering of services or the delivery of goods, except in cases of emergency services.

In this case, the Appellant failed to demonstrate by a preponderance of the evidence that the DOR did not correctly deny the Appellant's request for reimbursement for laptop computer repairs pursuant to section 7311 of Title 9, Division 3, Chapter 9 of the California Code of Regulations, which pertains to the Authorization of Services by the DOR. Here, the weight of the evidence supports the reasonable inference that the DOR acted correctly to deny the appellant's request for the following reasons:

First, the Appellant clearly violated the requirement of section 7311, as she did not secure a Purchase Order or other written authorization from the DOR before getting her laptop repaired and paying for the service. It is undisputed that the Appellant did not follow the legally required reimbursement procedure for repairs. The Appellant paid for the repairs on December 30, 2021, without first obtaining written approval from the Rehabilitation Counselor, the Team Manager, or the District Administrator.

Second, the Appellant chose to pay for these repairs knowing that she had not received the DOR’s prior approval required if she expected to be reimbursed. The Appellant did so despite having received guidance from the Team Manager on reimbursement policy during the IPE development meeting on October 29, 2021, and in an email dated November 1, 2021. The DOR repeatedly informed the Appellant about the need for prior approval for any costs that she expected to be reimbursed. Despite this, she acted without waiting for approval and later sought reimbursement. The DOR provided the Appellant with ample information regarding DOR’s policies on reimbursement.

The fact that the Appellant was aware of the requirement for prior approval is further supported by the Appellant’s email request for “prior approval” on December 30, 2021, only hours before she paid out-of-pocket for repairs that were never approved by the DOR. While the Appellant argued that she paid out of pocket because approval for necessary support services from the DOR was routinely late and she could not afford to

wait as she required her laptop to participate in class -- the Appellant provided no evidence to support this allegation.

Third, after the Appellant reached out to the Rehabilitation Counselor about her laptop issues on December 30, 2021, the DOR addressed the problem when a representative was next able. Because the Appellant did not inform the DOR that she had already paid for repairs out-of-pocket, the DOR offered the Appellant a chance to have her laptop diagnosed and repaired, or to receive a new laptop altogether. The Appellant eventually selected the latter option, without telling the DOR that she did not need a new laptop because she had already paid for repairs to her own laptop. The DOR ordered a new laptop, which the Appellant received,

Accordingly, the DOR’s denial of the Appellant’s request for reimbursement for laptop repairs is sustained, as the Appellant admittedly paid for the same without her DOR counselor’s approval for the same as part of her IPE or required prior approval. Moreover, no discernible legal exceptions exist to provide reimbursement to the Appellant for laptop repairs without prior approval, nor any exception would be warranted under the above describe facts had an exception existed.

## ORDER

The appeal is denied.

## NOTICE

Pursuant to California Code of Regulations., tit. 9, section 7358, the Appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if Appellant is dissatisfied with the decision. The Client Assistance Program is available to the Appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance. A copy of this decision shall be filed in the Appellant's record of services. (Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Calif. Code Regs., tit. 9, § 7358, subd. (b).)

# *Hearing No. 104896347-523* SUMMARY

The appeal for the Department of Rehabilitation (DOR) to pay more than $60,000 in student loans and $30,000 in unpaid rent is denied as appellant did not meet his burden of proof to establish that DOR is required to provide such services. [1940-2, 1950-2]

## FACTS

Appellant requested a state hearing on April 14, 2023. A state hearing was held on June 12, 2023. Appellant and a DOR representative appeared at the hearing by telephone.

Both parties confirmed at the hearing that the following items were at issue: (1) the DOR’s denial to pay appellant’s student loans of approximately $60,000; and (2) the DOR’s denial to pay appellant’s outstanding unpaid rent of approximately $30,000.

Both parties submitted documentary evidence prior to the hearing. The following is a summary of the pertinent portions of the documentary evidence submitted.

## Appellant’s Documentary Evidence

Written Hearing Request

I owe approximately $60,000 in student loans and have communicated this matter with [the DOR] multiple times.

Moreover, I would like to bring to your attention that I currently owe approximately $30,000 in unpaid rent because I used my finances to pay for my tuition.

Appellant’s Statement of Position

While I understand that the Department of Rehabilitation cannot pay [my] student loan and rental debt, I would like to respectfully rebut a few points made in the statement using the California Code of Regulations (CCR) as a reference.

Firstly, the Department of Rehabilitation states that [I] was required to apply for Pell Grants, EOPS, BOGW, FAFSA, and/or any other scholarships every year, and provide DOR with an award or a denial notice. By signing the IPE, [I] agreed to apply for and utilize comparable benefits towards [me] training costs. However, CCR 7006 also specifies that these comparable services and benefits must be “commensurate to the services that the individual would otherwise receive from the Department.” In other words, if [I] did not receive enough financial assistance from these sources to cover [my] training costs, it would be

reasonable for [me] to request additional support from the Department of Rehabilitation.

Secondly, the Department of Rehabilitation states that [I] received over

$337,000.00 in financial assistance over a 5-year period from various grants and scholarships, and therefore was required to use these comparable services and benefits to fund [my] training. However, CCR 7197 specifies that the amount of services to be authorized by the Department for educational purposes shall be determined by subtracting the total amount of the client’s educational grants and/or awards as reported by the financial aid office from the costs of the client’s tuition, books and supplies, maintenance and transportation.

The remainder is the amount of services to be authorized by the Department. Therefore, it is possible that [I] did not receive enough comparable services and benefits to cover all of his training costs, and it would be reasonable for [me] to request additional support from the Department of Rehabilitation.

Lastly, while the Department of Rehabilitation cannot pay [my] student loan and rental debt, it is important to note that CCR 7197 also specifies that the Department shall not authorize training or training services provided by an institution of higher education unless a maximum effort has been made by the client to secure grant assistance from other sources to pay in whole or in part the cost of such services. Therefore, it is reasonable to assume that [I] made a maximum effort to secure grant assistance to cover his training costs, but may still be struggling with debt due to unforeseen circumstances.

In conclusion, while I understand the Department of Rehabilitation’s limitations in paying [my] student loan and rental debt, it is important to consider the regulations outlined in the California Code of Regulations, specifically CCR 7006 and CCR 7197, when evaluating [my] request for additional support from the Department of Rehabilitation.

March 9, 2023, Letter from Appellant’s Housing Supervisor

This letter is being provided at the request of [appellant] to confirm the amount owed for past due rent.

[Appellant] has two [name omitted] housing accounts as he has a live-in attendant as a disability accommodation. [Appellant] is responsible for the rent for both accounts.

The outstanding balance owed for [the first account] is $9,460.05. This covers the period from May 2022 – May 2023.

The outstanding balance owed for [the second account] is $14,891.50. This covers the period from January 2022 – May 2023.

Student Loan Date: 05/09/2023

Payoff amount for the loans listed is $61,610.82.

Loans listed included both subsidized and unsubsidized federal student loans from March 2014 through October 2020.

## DOR’s Documentary Evidence

DOR’s Statement of Position

DOR has supported [appellant] since 05/16/2018 when his case was opened. DOR has provided [appellant] with vocational services including school application fees, tuition assistance, a computer, a laptop, books, and supplies.

Since 2018 The Department of Rehabilitation has been assisting [appellant] to reach his vocational goal, per his approved Individualized Plan for Employment. An Individualized Plan for Employment (IPE) is defined as a written plan designed to achieve a specific employment outcome in competitive integrated employment. [Appellant’s] IPE goal is to obtain a BA in Biology and secure employment as a Biological Technician, attending [university].

The Department of Rehabilitation has provided [appellant] with tuition funding according to the regulations. Evidence presented will show that DOR sent tuition to [university] however because [appellant] received a Pell grants the university returned the DOR payment.

When [appellant] signed his Individualized Plan for Employment (IPE) he understood that the IPE had specific rules, regulations, policies, and procedures that must be followed. The IPE clearly states: “Client shall need to apply for Pell Grants, EOPS, BOGW, FAFSA and/or any other scholarships every year, and provide DOR with award or denial notice. (Client shall apply for and utilize comparable benefits as required by Title 9 CCR 7006 & 7156 and RAM 12212-12216).”

According to the California Code of Regulations 7197: Additional Requirements--Institutions of Higher Education – “The Department shall not authorize training or training services provided by an institution of higher education unless a maximum effort has been made by the client to secure grant assistance from other sources to pay in whole or in part the cost of such services.” In addition, CCR 7197 states: (c) The amount of services, if any, to be authorized by the Department for educational purposes shall be determined by subtracting the total amount of the client's educational grants and/or awards as reported by the financial aid office from the costs of the client's tuition, books and supplies, maintenance and transportation. The remainder is the amount of services to be authorized by the Department.”

As noted above, due to CCR 7197, while [appellant] participated in his individualized plan for employment, he was required to apply for Pell Grants, EOPS, BOGW, FAFSA and/or any other scholarships every year, and provide DOR with an award or a denial notice. By signing the IPE, [appellant] agreed to apply for and utilize comparable benefits towards his training costs. While attending school, [appellant] received Federal Financial Aid, Scholarships, [and Grants].

In addition, California Code of Regulations (CCR) 7006 “Comparable Services and Benefits” means services and benefits, including accommodations or auxiliary aids and services, are: (1) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits; (2) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's Individualized Plan for Employment (IPE); and (3) Commensurate to the services that the individual would otherwise receive from the Department.

As a consumer of DOR, [appellant] was required to use comparable services and benefits to fund his training, as defined in CCR 7006.

[Appellant] is aware that DOR provided tuition authorizations to [the University] on several occasions. However, because he was receiving financial aid directly from the University, the DOR authorizations to pay the tuition were returned to DOR. This was due to the fact that funds were already available at the school earmarked for [appellant’s] tuition. As stated, [appellant] was receiving other financial support from different sources including Federal Financial Aid, grants, awards, and scholarships and the University’s billing protocol paid tuition fees first from similar and or comparable benefits already received. The following shows the description what DOR paid.

Although, the DOR does not require clients to apply for student loans, [appellant] did take out loans even though he was receiving DOR services, financial aid and many grants from different sources. [Appellant] voluntarily took out student loans and has incurred student loan debt.

DOR cannot pay student loan debt per the Rehabilitation Administrative Manual (RAM) Chapter 12 - 1203.4 “Maximum Efforts” to Obtain Comparable Benefits in Institutions of Higher Educations indicates the following: “DOR funds cannot be used to repay any portion of the loan or default.”

[Appellant] received grants, scholarships, FASFA and DOR assistance to cover his vocational training needs. However, he took out student loans on his own recognizance. Because [appellant] took out student

loans for personal use the DOR is unable to pay for student loan debt. Paying [appellant’s] debt go against the DOR rules, policies, and regulations according RAM CH 12.

In total [appellant] received over $337,000.00 in financial assistance over a 5-year period.

On April 11, 2023, [appellant] shared that he was being evicted to the job developer. The job developer then informed DOR. [Appellant] disclosed that he was renting out his [University housing] instead of residing there himself. Consequently, [the University] housing department charged [appellant] for violating the housing agreement. Evidence shows that [appellant] would have never owed back rent if he would have abided by the housing agreement.

While [appellant] was training at [the University], he received over

$350,000 in grants and scholarships in less than 4 years (and he still took out student loans for personal use).

[Appellant] indicated that he has $30,000 in unpaid rent. As already noted, DOR does not pay consumer debt. Per RAM CH 12 and CCR 7174. Other Goods and Services--General Provisions states the following: “Short-term or emergency financial assistance to an individual, except that financial assistance shall not be provided to support an individual's everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social services agencies.” Another regulation prohibiting DOR rent. CCR 7177 Maintenance indicates: “The Department may not provide maintenance to support an individual's basic living expenses.” Rent is a basic living expense and therefore DOR is unable to pay.

Individualized Plan for Employment (IPE)

Employment Goal: Biological, Agricultural, And Food Technicians And Technologists, Except Health.

Per informed choice, it has been determined that Biological Technicians (19-4021.00) is an appropriate vocational goal so that [appellant] can secure and maintain employment in this vocational field.

Per informed choice Client has selected to attend SAC and attempt to transfer to [a university].

Client shall need to apply for Pell Grants, EOPS, BOGW, FAFSA and/or any other scholarships every year, and provide DOR with award or denial notice. (Client shall apply for and utilize comparable benefits as required by Title 9 CCR 7006 & 7156 and RAM 12212-12216.)

These are my responsibilities toward the cost of my Plan: Comparable Services and Benefits Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits; Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual’s Individualized Plan for Employment (IPE).

Student Loan Breakdown from University

Shows that appellant has direct subsidized, direct unsubsidized, and institutional loans.

**Testimony**

At the hearing, the DOR representative’s testimony affirmed the statements made in the DOR’s statement of position and other documentary evidence. Notably, the representative referenced the IPE and regulations which state that appellant must utilize other financial resources, such as grants and scholarships, before the DOR can contribute towards appellant’s tuition. The representative also noted the DOR cannot authorize payments for daily living expenses, such as recurrent rent payments.

Appellant’s testimony also affirmed the statements made in his statement of position and other documentary evidence. Appellant explained that he took out student loans to help pay for expenses. Appellant stated that had the DOR paid the University for tuition on time (i.e., before the start of the semester), then the extra money from the grants, scholarships, and other financial sources would have been given to him for other expenses (rent, groceries, etc.) rather than applied to tuition payments.

Appellant believes that the DOR’s delay in paying tuition caused him the need to take out student loans.

The DOR’s representative confirmed that the DOR pays tuition in arrears, meaning that the university is not paid tuition until all the grants, awards, and scholarships are first applied toward the tuition cost. The DOR representative stated that because the financial aid appellant received from other sources covered the entire tuition amount, the DOR’s payment to the university for tuition was returned to the DOR by the university.

Appellant also explained his $30,000 in unpaid rent. While appellant affirmed that he had rented out his university housing on Airbnb, he stated that the $30,000 in unpaid rent was unrelated to the Airbnb rental. According to appellant, he stopped paying rent as he needed the money for other expenses. Appellant did not get into details but alluded that he needed the money to help provide financial support to his family.

Appellant said he understands that the DOR doesn’t pay for recurring personal expenses, like recurrent rent payments. However, appellant contends that he is asking for a one-time maintenance fee of $30,000 to cover the amount of unpaid rent due. Appellant believes that the one-time payment of $30,000 should not be considered a recurrent living expense.

Lastly, appellant stated that the IPE submitted by the DOR is unsigned, and thus, invalid. The DOR representative testified that the submitted IPE is an electronic copy and that the original hardcopy is signed by appellant. Appellant confirmed that he did sign the IPE but believes that the IPE is old and ineffective as the IPE should have been updated when he received a new DOR counselor.

## LAW

**State Hearings**

Appellant has the burden of introducing evidence at the hearing sufficient to demonstrate his/her case by a preponderance of the evidence. (9 C.C.R. § 7356(e).)

A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafood, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (W&IC § 19704 (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (9 C.C.R. § 7354(a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (9 C.C.R. § 7354(a)(3).)

**Individual Plan of Employment (IPE)**

Once a consumer is found to be eligible for DOR services, DOR is required to develop an IPE based on an assessment of the consumer’s needs and abilities. (9 C.C.R. § 7128.)

A consumer’s employment goals and the service funding necessary to achieve the goals are to be specified in the IPE. (W&IC § 19103 (b)(3).)

The IPE shall be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individuals, and, to the maximum extent appropriate, to include placement in integrated settings. (W&IC § 19103(B)(1).)

The IPE shall be jointly developed and agreed upon by both the eligible individual and the DOR. (W&IC § 19103(b)(2).)

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**Consumer Responsibilities**

1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:
   1. Participate and cooperate in obtaining and providing the information needed by the Department to:
      1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
      2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
      3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
      4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
      5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.
   2. Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process, with assistance from the Rehabilitation Counselor as appropriate, by engaging in the following activities to the extent possible:
      1. Gathering and evaluating information and participating in planning and problem solving and decisions related to the assessment process, selection of the employment outcome and settings in which employment occurs, vocational rehabilitation services, service providers, settings in which services will be provided, and methods for procuring services;
      2. Seeking or identifying needed resources;
      3. Evaluating the consequences of the various options;
      4. Making decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests; and
      5. Taking personal responsibility for implementing the chosen options and achievement of the employment outcome the individual selected.
   3. Report any changes in circumstances that may affect:
      1. Eligibility for vocational rehabilitation services;
      2. Priority category under an Order of Selection;
      3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
      4. The Department's ability to contact the individual.
   4. Cooperate in the assessment process and in developing and meeting the objectives identified in the IPE including, but not limited to, active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome. Failure to cooperate, make reasonable effort, lack of regular attendance, or failure to maintain regular communication may result in loss of further services and closure of the record of services.
   5. Participate in the cost of services under conditions specified in Chapter 5, Article 1 of these regulations.
   6. Apply for, secure and use comparable services and benefits to the extent to which the individual is eligible for such benefits in accordance with Chapter 5, Article 3 of these regulations. (9 C.C.R. § 7029.9.)

**DOR’s Responsibilities**

The DOR is responsible for providing services necessary to achieve the consumer’s employment goal and maintaining the employment. (9 C.C.R. § 7131.)

Once an individual is eligible for services, the DOR is required to make vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (9 C.C.R. § 7149.)

**Services Provided**

Services shall be provided only to the extent necessary either to facilitate achievement of the vocational objective or prepare a consumer with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. (9 C.C.R. § 7154(a).)

**Maintenance Services**

1. “Maintenance” means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an Individualized Plan for Employment (IPE).
2. Examples of expenses that meet the definition of maintenance include, but are not limited to:
   1. The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.
   2. 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.
   3. The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement or participate in training.
   4. The costs of an individual's participation in enrichment activities related to that individual's training program. For students this includes, but is not limited to, student trips, visits to museums, and supplemental lectures, when such activities are essential components of the training.
3. Nothing in this section shall be construed to mean that the Department will provide maintenance on a long-term or ongoing basis to support an individual's

everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies. (9 C.C.R. § 7019.)

**Comparable Services and Benefits - General**

1. “Comparable Services and Benefits” means services and benefits, including accommodations or auxiliary aids and services, that are:
   1. Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;
   2. Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's Individualized Plan for Employment (IPE); and
   3. Commensurate to the services that the individual would otherwise receive from the Department.
2. For the purposes of this definition--
   1. Comparable services and benefits do not include awards and scholarships based on merit. (9 C.C.R. § 7006.)

**Comparable Services – Higher Education**

* + 1. For the purposes of this section, the following definitions shall apply:
       1. “Institution of higher education” means a university, college, community college, or private proprietary school which provides academic or vocational education and/or training above the California secondary school level.
       2. “Maximum effort” means a client's specific actions which are necessary to establish eligibility and secure any similar benefits necessary to vocational rehabilitation.
    2. The Department shall not authorize training or training services provided by an institution of higher education unless a maximum effort has been made by the client to secure grant assistance from other sources to pay in whole or in part the cost of such services. The Counselor shall assist the client as necessary in identifying and applying for any grant assistance for which the client may be eligible.
    3. The amount of services, if any, to be authorized by the Department for educational purposes shall be determined by subtracting the total amount of the client's educational grants and/or awards as reported by the financial aid office from the costs of the client's tuition, books and supplies, maintenance and transportation. The remainder is the amount of services to be authorized by the Department. ( 9 C.C.R. § 7197.)

## CONCLUSION

The DOR administers vocational rehabilitation services for Californians with disabilities seeking employment, independence, and equality. DOR services are limited to only those services necessary to either facilitate the achievement of a vocational objective or to prepare a consumer with the skills and abilities necessary to be a competitive entry level employment candidate.

Once a consumer is found to be eligible for DOR services, an IPE is jointly developed and agreed upon by both the consumer and DOR. The consumer’s employment goals and services necessary to achieve those goals are specified in the IPE.

In this case, appellant’s IPE identifies the employment goal of a biological technologist. The IPE sets forth appellant’s educational needs to achieve the goal, including attending a university to obtain a bachelor’s degree.

The facts set forth by the parties demonstrate the appellant has been enrolled and attending a university to achieve his employment goal. While at university, appellant has received grants, awards, and scholarships. Claimant has also taken out student loans. The total amount currently owed on the student loans, including interest and fees, is over $60,000. Appellant requests that the DOR pay the balance of the student loans.

Appellant also seeks a one-time payment of $30,000 for past due rent.

Appellant has the burden of proof to establish that the requested student loan payments and unpaid rent payments are a DOR service.

**Student Loan Payments**

As stated in the LAW section above, the regulations do not allow for the DOR to pay student loans. Funds allocated by the DOR for tuition are paid in arrears and are paid directly to the university. The amount paid is determined by subtracting the total amount of the consumer’s educational grants and awards from the cost of the tuition. In other words, the DOR may only pay for the tuition amount that remains after all other educational grants, awards, and scholarships have been applied toward the cost of the tuition.

The DOR in this case correctly denied the appellant’s request for more than $60,000 in student loan payments because the preponderance of the evidence does not establish that the requested payment is a DOR service.

It is noted, by appellant’s own admission, he signed an IPE which sets forth his obligation to apply for educational grants, awards, and scholarships, which are to be applied towards the cost of tuition. However, even if appellant hadn’t signed an IPE, the regulations still provide that student loan payments are not a DOR service. Thus, regardless of whether appellant signed an IPE, the regulations do not allow for the DOR to pay for student loans in this case.

**Unpaid Rent**

Rent for housing accommodations is an everyday living expense, regardless of whether the rent is owed in one lump sum or in monthly installments. As stated in the LAW section above, the regulations do not allow for the DOR to pay for everyday living expenses, such as monthly rent.

The DOR correctly denied the request for $30,000 in unpaid rent because the preponderance of the evidence does not establish that the requested payment is a DOR service.

## ORDER

Appellant’s appeal is denied

# *Hearing No. 104891073-747* SUMMARY

State hearing jurisdiction exists when the Department of Rehabilitation (DOR) has issued a written decision to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. An issue raised at the state hearing that is not within the jurisdiction of the Administrative Law Judge (ALJ) shall be dismissed.

Since the DOR has not denied a requested service, the state hearing request must be denied for lack of jurisdiction. [1970-2]

## FACTS

Appellant requested a state hearing on March 24, 2023 regarding grievances against the DOR to obtain wheelchair accessible driving equipment. A state hearing was held on June 20, 2023. Appellant appeared at the hearing by telephone. A DOR representative also appeared at the hearing by telephone.

Both parties submitted documentary evidence prior to the hearing. The pertinent portions of the documentary evidence submitted are as follows:

*Appellant’s Documents*

DR 107 – Hearing Request:

Appellant alleges that DOR has not assisted with the need to obtain wheelchair accessible driving equipment. Appellant alleges that DOR has failed to provide support and assistance with his needs. It is alleged that DOR has failed to monitor vendors and enforce deadlines, has misrepresented same, has shown a lack of diligence, and has caused Appellant great distress and failed in its obligation to serve Appellant.

Appellant’s Evidence:

*Issue 1: DOR/MEP’s Misstatements and Hostilities During this Process*

*1. MEP and Vendor Collude to Attack and Disparage Consumer*

*DOR’s Documents*

DOR’s Statement of Position:

## PRE-HEARING CONTACT:

DOR Counselor H (first initial only) is in contact with participant and aware of concerns. DOR Counselor has attempted to communicate with MEP to understand and resolve issues.

## ISSUE:

Participant seeks review of Department of Rehabilitation’s Mobility Evaluation Program (MEP) due to length of process and failure to monitor vendors and enforce deadlines. Participant claims misrepresentations regarding vendors, lack of diligence, selective enforcement of policy, breaches of fiduciary duty, waste, and negligent/intentional infliction of emotional distress.

## Facts:

9/25/2019: DOR case opened with Counselor S. Intake case note states participant is looking to replace his modified vehicle due to it being unable to be serviced due to age (12 years old).

September 2019 – March 2020: DOR Counselor S. met with participant on a regular basis to obtain additional information. Contact with MEP is not documented.

12/20/2019 Plan Development Extension. Reason stated: Additional time is required to complete IPE related to vehicle and vehicle modification purchase requests. IPE due date extended to 3/30/2020.

3/30/2020: Case note, in part, states: Due to the COVID-19 pandemic, and additional steps needed to determine if the DOR is able to support with the consumer's request, it does not appear to reasonable to complete a second extension on the plan development deadline. The consumer is not requesting any additional services outside of the mobility evaluation, vehicle purchase, and required modifications.

4/30/2020: Case Closure. Closure Report states: SVRC consulted with T regarding current case status on 3/27.

SVRC and the consumer have agreed as of today, 3/30/2020 to case closure/deactivation to allow additional time for processing and approval determinations, in line with the state and federal guidelines.

The consumer is open to completing the evaluation and providing any information that is required of him to determine if the DOR is able to support with his request, and to activate the case once again when appropriate.

This case is being closed/inactivated to allow additional time for working with MEP. Once it has been determined appropriate, the case will be opened/activated again. At that time, a plan will be developed to move forward with approved services in support of the consumers needs to sustain independence and employment. SVRC will continue working with the consumer to gather necessary information and collaborating with MEP to set-up the necessary services.

3/30/2020 – 12/14/2020: Case notes reflect DOR Counselor S. continued communication with participant, despite case closure. There is a mention SSMI D contacted MEP. No MEP information was documented.

12/15/2020: A new case was opened, and intake completed. Intake case note, in part, states: the consumer is requesting DOR services to receive support with the purchase of a van and modifications required to commute to and from work to continue to maintain his employment.

1/7/2021: Case note summary: T met with MEP. Case note: T spoke with MEP personnel to discuss the referral. These are the suggestions to move forward:

Does his assist need to be with him at all times

# 2 explored further – need more info whole story

More clarification and documentation to substantiate answers Personal attendant – how often

Clarification on monthly expenses – some are one time expenses Income – is it just his or does it include his wife’s (need clarification) Need to be setting aside money to replace vehicle

Money management classes – to budget for future expenses – setting aside money for irwe

Need to justify services – needs to be more than 1 service to write a plan Advancement – assistance with AT at home (need another service) Medical insurance – what does it cover

Stay with employer – partner or other options (does he need training or help with work) Case needs more documentation

Once report is received from them, DOR will work to things together to present to DA.

3/15/2021: DOR Counselor S. staffed case with new SSMI, K, and sought assistance with referral to MEP. SSMI K. contacted C, MEP SSMI, for guidance on the referral process.

3/17/2021: Referral to MEP for driver evaluation.

4/5/2021: Individual Plan for Employment (IPE) extension. Reason: Additional time needed to complete driver evaluation.

4/7/2021: MEP reached out to Participant to inform him the evaluation van with the equipment needed for the evaluation was not operable. The evaluation was to be rescheduled until the equipment needed for the evaluation was available. MEP estimated that to be February 2022.

5/17/2021: Driver evaluation.

6/7/2021: Driving Evaluation Report provided to DOR Counselor S. Per report, Participant showed potential to be a safe and independent driver.

6/28/21: IPE extension. Reason: Additional time needed to review MEP report with Participant.

8/17/2021: Individual Plan for Employment signed.

8/17/2021: District Administrator approval of vehicle modification.

8/17/2021 – 8/2022: MEP worked directly with Participant for the vehicle purchase, selecting a vendor for the modification, and discussion of steps. SSMI K. was cc’d in some email communication,

12/2021: Case transfer to DOR Counselor H.

8/17/2022: Participant states there are inventory issues and requests to wait for the 2023 vehicles which will be available in November/December.

8/25/2022: DOR Counselor approved delay of vehicle purchase to ensure Participant purchases a vehicle of his choice.

9/2022 (exact date unknown): Vehicle purchase completed. 9/26/2022: DOR creates authorization to DSI for vehicle modifications.

11/28/2022 – present: Email communication between MEP, Participant, and vendor show discussion of second transfer seat, requests for dates to meet, concerns with delays, etc. SSMI K. was cc’d in some email communication,

3/22/2023: SSMI K. informed District Administrator (DA) J of communication concerns between MEP and Participant. In a follow up conversation, the two agreed DA J. would reach out to MEP’s SSMI Ms. C.

3/25/2023: DA J. communicated via email to SSMI K. of Participant’s request for mediation.

4/4/2023: SSMI K. elevated MEP concerns to Program Chief.

4/30/2023: Vendor emailed DOR staff, MEP, and Participant that vehicle had been successfully delivered to Participant on 4/28/2023.

5/1/2023: Participant emailed DOR staff, MEP, and vendor that driver training had started this day and a number of issues with the modified equipment were caught and prevented them from continuing training this day. MEP and vendor did not reply to email.

5/3/2023: MEP emailed Participant congratulating him on completing the driver training, stating he showed proficiency in the safe use of the installed equipment and are releasing him. The email stated MEP does not have pending inspections or buy-offs to perform. Participant was instructed to communicate directly with vendor moving forward. 5/8/2023: Participant emailed DOR, MEP, and vendor with a list of 25 issues with the modified equipment.

## Relevant Law:

**§ 7130. Mandatory Procedures for Development of the Individualized Plan for Employment (IPE); Review; Amendment.**

1. The following mandatory procedures shall be used to develop an Individualized Plan for Employment (IPE).
   1. The IPE shall be a written document prepared on the form DR 215 (Rev. 03/04) provided by the Department.
   2. The IPE shall be developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice consistent with 7029.6 of these regulations, in selecting---
      1. The employment outcome, including the employment setting;
      2. The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;
      3. The entity or entities that will provide the vocational rehabilitation services;

and

* + 1. The methods available for procuring the services, consistent with

applicable State procurement laws and regulations and federal policy directives issued by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration.

* 1. The IPE must be---
     1. Agreed to and signed by the eligible individual or, as appropriate, the individual’s representative; and
     2. Approved, signed, and dated by a Rehabilitation Counselor employed by the Department.
        1. Before approving the IPE, the Rehabilitation Counselor shall determine that the employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the employment setting and settings in which services will be provided, the entities that will provide the services, and the methods available for procuring the services are appropriate and necessary in consideration of:
           1. The individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, and interests; and
           2. The scope of applicable laws and regulations specified in Section 7029.6(c) of these regulations.
  2. A copy of the IPE and a copy of any amendments to the IPE shall be provided to the eligible individual or, as appropriate, to the individual’s representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual’s representative.
  3. The IPE shall be reviewed at least annually in accordance with Section 7133 of these regulations by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual’s representative to assess the eligible individual’s progress in achieving the identified employment outcome.
  4. The IPE may be amended, as necessary, by the individual or, as appropriate, the individual’s representative, in collaboration with a representative of the Department or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services.
  5. Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual’s representative and by a Rehabilitation Counselor employed by the Department. Before approving and signing any amendment to the IPE, the Rehabilitation Counselor shall review the amendment consistent with applicable requirements established in (a)(3)(B)1. of this section.

## § 7164.4. Mobility Evaluations.

1. Mobility evaluations shall be accepted only if completed by a Department- approved Mobility Evaluation program which complies with the standards specified in section 7302.
2. Prior to the authorization of a mobility evaluation, the approval of the District Administrator shall be obtained. The District Administrator's decision shall be based upon such criteria as verification that:
   1. All of the conditions in section 7164(a)(1)(A) and (C) and (2) are met.
   2. There is compliance with section 7161(b) and all of the requirements therein are met. For the purposes of client financial participation, the amount shall be calculated for the month in which the vehicle will be received by the client and payment shall be made to the Department at the time the client receives the vehicle.
   3. There is evidence that the client has completed or will successfully complete his or her IPE.
3. A mobility evaluation for clients who wish to be drivers shall include an assessment of all of the following:
   1. Physical functional abilities, including but not limited to, medical condition, strength and range of motion.
   2. Perceptual and cognitive abilities, including but not limited to, visual abilities, judgment skills and emotional stability.
   3. A behind-the-wheel assessment using the type of vehicle and equipment recommended pursuant to (f) which shall include both of the following:
      1. Stationary vehicle testing to determine the client's specific positioning needs, initial equipment needs and functional potential to operate the vehicle.
      2. A moving vehicle assessment which shall include an assessment of all of the following. The client's:
         1. Physical performance in the driving set-up.
         2. Integration of physical, visual and cognitive skills in varied driving environments.
         3. Endurance and fatigue threshold.
   4. Potential for obtaining a driver's license.
4. If the client has the potential to obtain a driver's license, the mobility evaluation, in addition to the items specified in (c), shall include both of the following:
   1. Specifications for adaptive driving equipment and vehicle modifications as specified in (f).
   2. An estimate of the amount and type of driver instruction needed.
5. A mobility evaluation for clients who will be passengers shall include both of the following:
   1. An assessment of the client's:
      1. Functional abilities.
      2. Equipment needs for safety as a passenger.
   2. The appropriate recommendations specified in (f).
6. Recommendations for the least expensive and complicated type of vehicle and assistive device which will meet the client's functional capabilities and vocational and safety needs. A van shall be the last alternative considered. Recommended vehicle modifications and assistive devices shall meet the standards specified in section 7165(d).

## § 7165. Purchase of Vehicle Modifications.

1. The provisions of this section shall apply to the purchase of all vehicle modifications and repairs to existing modifications. In addition, except as specified in (b), the provisions of sections 7164 through 7164.6 shall apply to all vehicle modifications.
2. Vehicle modifications or repairs to existing modifications costing under $750, unless being purchased in conjunction with the purchase of a vehicle, shall not be subject to the provisions of either of the following:
   1. Sections 7164(a)(1)(B) and 7164(b), providing the purchase is necessary for the completion of the IWRP.
   2. Sections 7164(a)(1)(C) and section 7164.2.
3. Prior approval of the Program Supervisor shall be obtained for vehicle modifications costing less than $2,000. Prior approval of the District Administrator shall be obtained for vehicle modifications costing $2,000 or more. The Program Supervisor's or District Administrator's decision shall be based upon consideration as to whether:
   1. The requirements of section 7161(b) have been met.
   2. The provisions of sections 7164 through 7164.6, if applicable, have been met.
4. All modifications and repairs to existing modifications shall be inspected and approved by the Fleet Administration Division of the Department of General Services. All modifications shall meet the standards specified in all of the following which are incorporated by reference herein:
   1. “Requirements for Adaptive Driving Equipment" prepared by the Department and the Department of General Services, 1989 Revision.
   2. Standards of the Society of Automotive Engineers, Inc. (SAE), sections J258, dated June, 1971, J514, dated April, 1980, J516, dated June, 1987, J517, dated March, 1988, J518, dated December 1987, J537, dated June, 1986, J538, dated August, 1983, J541, dated July, 1983, J553, dated June, 1988, J575, dated July, 1983, J858a, dated August, 1969, J928, dated June, 1980, and J1292, dated October, 1981.
   3. Veteran's Administration (VA) Standard Design and Test Criteria for Safety and Quality of Automatic Wheelchair Lift Systems for Passenger Motor Vehicles, dated May 17, 1978.
   4. VA Program Guide, Prosthetic and Sensory Aids Services, Add-on Automotive Adaptive Equipment for Passenger Automobiles, dated March 31, 1978.
   5. Title 49 CFR sections 571.3, 571.101, 571.105, 571.107, 571.124, 571.201,

571.203, 571.207 through 571.210 and 571.302, October 1, 1988 edition.

## CONCLUSION

Per the regulations stated above, the Department is in compliance with the provision of services.

While we understand the frustration experienced by [Appellant], supply chain and vendor timeline challenges are out of the control of the Department.

The Department remains in support of providing the authorized services to [Appellant] and will continue to work with our Vendor and [Appellant] to ensure that his needs are met in compliance with our regulations.

*Testimony*

At hearing, the DOR representative reiterated the salient facts set forth above. He noted there has been no denial or refusal of services as DOR has authorized services and remains in support of providing the authorized services to [Appellant] and will continue to work with our Vendor and [Appellant] to ensure that his needs are met in compliance with our regulations.

Appellant testified regarding the Issues identified in his 24 page Consumer Demonstratives, (admitted as Exhibit A-5) including Issue 1: DOR/MEP’s Misstatements and Hostilities During this Process, Bidding Process Issue 2: Issues and Overcharges, Issue 3: MEP’s Refusal to Enforce Deadlines Leads to Lack of Compliance, Issue 4: MEP’s Lack of Diligence Still Delays This Process, Issue 5: DOR and MEP Knew the Delay Caused Significant Harm to Consumer and Issue 6: MEP Creates Antagonistic Relationship Between Consumer and Vendor.

The Appellant testified regarding a complete breakdown in trust stating he is beyond skeptical. He stated DSI bought the van in August and told him it would be a 1-month process. In May 2023, the van is still not right as it broke down within 3 blocks during a test drive. The Appellant stated the Vendor has engaged in name calling, referring to him, as “Senor Problematico”, made retaliatory Demands, accused him of lying, and attempted to extort money from him. Appellant stated the process has become hostile, unsafe, and scary. Appellant said he just wants the van to be done. He suggested using another local vendor who would be able to get the job done.

In rebuttal, the DOR representative acknowledged there have been communication issues and frustration on both sides. He stated the idea of using another vendor is not practical as the current Vendor has already been paid to do the work. The DOR representative further explained DOR can’t enforce timelines on vendors.

## LAW

State Hearings

Appellant has the burden of introducing evidence at the hearing sufficient to demonstrate his/her case by a preponderance of the evidence. (9 C.C.R. § 7356(e).)

A preponderance of the evidence means evidence that h as more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafood, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (W&IC § 19704 (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (9 C.C.R. § 7354(a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (9 C.C.R. § 7354(a)(3).)

Individual Plan of Employment (IPE)

Once a consumer is found to be eligible for DOR services, DOR is required to develop an IPE based on an assessment of the consumer’s needs and abilities. (9 C.C.R. § 7128.)

A consumer’s employment goals and the service funding necessary to achieve the goals are to be specified in the IPE. (W&IC § 19103 (b)(3).)

The IPE shall be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and

capabilities of the individuals, and, to the maximum extent appropriate, to include placement in integrated settings. (W&IC § 19103(B)(1).)

The IPE shall be jointly developed and agreed upon by both the eligible individual and the DOR. (W&IC § 19103(b)(2).)

DOR’s Responsibilities

The DOR is responsible for providing services necessary to achieve the consumer’s employment goal and maintaining the employment. (9 C.C.R. § 7131.)

Once an individual is eligible for services, the DOR is required to make vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (9 C.C.R. § 7149.)

Services shall be provided only to the extent necessary either to facilitate achievement of the vocational objective or prepare a consumer with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. (9 C.C.R. § 7154(a).)

The DOR is not required to provide maintenance services such as food, shelter, and clothing, unless these services are in excess of the normal expenses of an individual or necessitated by participation in an assessment for eligibility or service or receipt of service under the IPE. (9 C.C.R. § 7019.)

Consumer Responsibilities

1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:
   1. Participate and cooperate in obtaining and providing the information needed by the Department to:
      1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
      2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
      3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
      4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
      5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.
   2. Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process, with assistance from the Rehabilitation Counselor as appropriate, by engaging in the following activities to the extent possible:
      1. Gathering and evaluating information and participating in planning and problem solving and decisions related to the assessment process, selection of the employment outcome and settings in which employment occurs, vocational rehabilitation services, service providers, settings in which services will be provided, and methods for procuring services;
      2. Seeking or identifying needed resources;
      3. Evaluating the consequences of the various options;
      4. Making decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests; and
      5. Taking personal responsibility for implementing the chosen options and achievement of the employment outcome the individual selected.
   3. Report any changes in circumstances that may affect:
      1. Eligibility for vocational rehabilitation services;
      2. Priority category under an Order of Selection;
      3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
      4. The Department's ability to contact the individual.
   4. Cooperate in the assessment process and in developing and meeting the objectives identified in the IPE including, but not limited to, active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome. Failure to cooperate, make reasonable effort, lack of regular attendance, or failure to maintain regular communication may result in loss of further services and closure of the record of services.
   5. Participate in the cost of services under conditions specified in Chapter 5, Article 1 of these regulations.
   6. Apply for, secure and use comparable services and benefits to the extent to which the individual is eligible for such benefits in accordance with Chapter 5, Article 3 of these regulations. (9 C.C.R. § 7029.9.)

§ 7164.4. Mobility Evaluations.

1. Mobility evaluations shall be accepted only if completed by a Department- approved Mobility Evaluation program which complies with the standards specified in section 7302.
2. Prior to the authorization of a mobility evaluation, the approval of the District Administrator shall be obtained. The District Administrator's decision shall be based upon such criteria as verification that:
   1. All of the conditions in section 7164(a)(1)(A) and (C) and (2) are met.
   2. There is compliance with section 7161(b) and all of the requirements therein are met. For the purposes of client financial participation, the amount shall be calculated for the month in which the vehicle will be received by the client and payment shall be made to the Department at the time the client receives the vehicle.
   3. There is evidence that the client has completed or will successfully complete his or her IPE.
3. A mobility evaluation for clients who wish to be drivers shall include an assessment of all of the following:
   1. Physical functional abilities, including but not limited to, medical condition, strength and range of motion.
   2. Perceptual and cognitive abilities, including but not limited to, visual abilities, judgment skills and emotional stability.
   3. A behind-the-wheel assessment using the type of vehicle and equipment recommended pursuant to (f) which shall include both of the following:
      1. Stationary vehicle testing to determine the client's specific positioning needs, initial equipment needs and functional potential to operate the vehicle.
      2. A moving vehicle assessment which shall include an assessment of all of the following. The client's:
         1. Physical performance in the driving set-up.
         2. Integration of physical, visual and cognitive skills in varied driving environments.
         3. Endurance and fatigue threshold.
   4. Potential for obtaining a driver's license.
4. If the client has the potential to obtain a driver's license, the mobility evaluation, in addition to the items specified in (c), shall include both of the following:
   1. Specifications for adaptive driving equipment and vehicle modifications as specified in (f).
   2. An estimate of the amount and type of driver instruction needed.
5. A mobility evaluation for clients who will be passengers shall include both of the following:
   1. An assessment of the client's:
      1. Functional abilities.
      2. Equipment needs for safety as a passenger.
   2. The appropriate recommendations specified in (f).
6. Recommendations for the least expensive and complicated type of vehicle and assistive device which will meet the client's functional capabilities and vocational and safety needs. A van shall be the last alternative considered. Recommended vehicle modifications and assistive devices shall meet the standards specified in section 7165(d).

§ 7165. Purchase of Vehicle Modifications.

1. The provisions of this section shall apply to the purchase of all vehicle modifications and repairs to existing modifications. In addition, except as specified in (b), the provisions of sections 7164 through 7164.6 shall apply to all vehicle modifications.
2. Vehicle modifications or repairs to existing modifications costing under $750, unless being purchased in conjunction with the purchase of a vehicle, shall not be subject to the provisions of either of the following:
   1. Sections 7164(a)(1)(B) and 7164(b), providing the purchase is necessary for the completion of the IWRP.
   2. Sections 7164(a)(1)(C) and section 7164.2.
3. Prior approval of the Program Supervisor shall be obtained for vehicle modifications costing less than $2,000. Prior approval of the District Administrator shall be obtained for vehicle modifications costing $2,000 or more. The Program Supervisor's or District Administrator's decision shall be based upon consideration as to whether:
   1. The requirements of section 7161(b) have been met.
   2. The provisions of sections 7164 through 7164.6, if applicable, have been met.
4. All modifications and repairs to existing modifications shall be inspected and approved by the Fleet Administration Division of the Department of General Services. All modifications shall meet the standards specified in all of the following which are incorporated by reference herein:
   1. “Requirements for Adaptive Driving Equipment" prepared by the Department and the Department of General Services, 1989 Revision.
   2. Standards of the Society of Automotive Engineers, Inc. (SAE), sections J258, dated June, 1971, J514, dated April, 1980, J516, dated June, 1987, J517, dated March, 1988, J518, dated December 1987, J537, dated June, 1986, J538, dated August, 1983, J541, dated July, 1983, J553, dated June, 1988, J575, dated July, 1983, J858a, dated August, 1969, J928, dated June, 1980, and J1292, dated October, 1981.
   3. Veteran's Administration (VA) Standard Design and Test Criteria for Safety and Quality of Automatic Wheelchair Lift Systems for Passenger Motor Vehicles, dated May 17, 1978.
   4. VA Program Guide, Prosthetic and Sensory Aids Services, Add-on Automotive Adaptive Equipment for Passenger Automobiles, dated March 31, 1978.
   5. Title 49 CFR sections 571.3, 571.101, 571.105, 571.107, 571.124, 571.201,

571.203, 571.207 through 571.210 and 571.302, October 1, 1988 edition.

## CONCLUSION

State hearing jurisdiction exists when the DOR has issued a written decision to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. An issue raised at the state hearing that is not within the jurisdiction of the Administrative Law Judge (ALJ) shall be dismissed.

At the hearing, a preponderance of the evidence established that the DOR has not denied a requested service. The preponderance of the evidence also establishes that the DOR has not taken any form of an adverse action regarding a requested service. Since the DOR has not taken an adverse action regarding a requested service, the state hearing request must be dismissed for lack of jurisdiction.

It is noted, Appellant credibility testified as to an overall lack of communication from the DOR and the concern that the lack of communication has caused a delay in services and his ability to timely achieve the goal of getting a fully operable vehicle as authorized by DOR. The DOR Representative also credibility testified as to the Department’s desire to continue working with Appellant and provide the requested services timely.

Appellant may request a new state hearing if a requested DOR service is denied or the DOR takes another form of adverse action (deferral, modification, etc.) regarding a requested service. Appellant also has the option to request a mediation along with any new state hearing request.

## ORDER

Appellant’s appeal is dismissed for lack of jurisdiction.

# Hearing No. 104898611-468 SUMMARY

The appellant’s state fair hearing request seeking review of her business plan and a determination of whether her business plan is in alignment with the Department of Rehabilitation’s (DOR) self-employment program is dismissed for lack of jurisdiction because the DOR has not conducted an initial review and determination and there is insufficient evidence that the DOR has issued a written denial related to the receipt of services. [1931-2]

## FACTS

On April 24, 2023, the appellant filed a state fair hearing request via a DR 107 form in which the appellant stated the following:

My business plan is in compliance with the DOR self-employment purpose and regulations. I ask that you review my business plan, and all other documents I submit for your review. Due to the DOR[’]s mishandling of my case for nearly a year, I asked that based off of these documents that you make a written decision as to whether you find my business plan to be in alignment with the DOR[‘]s stated self-employment program: <https://www.dor.ca.gov/Home/SelfEmploymentProgram>

“Must involve sole proprietorship and control and responsibility for decisions affecting the conduct of the business by the individual.

Must enable the individual to meet ongoing living expenses and be intended to become a majority source of income for the individual.

Must comply with relevant state, federal, and local laws and regulations (this eliminates illegal ventures).”

Should you agree that my business plan is in alignment with the DOR[’]s statements and regulations, I ask that you make the judgement that [E] [first initial only shown here and for all other individuals identified in this decision], my Rehabilitation Counselor create an [Individualized Employment Plan (IPE)] moving forward with my approved business plan within four weeks of your judgement.

I ask that you mandate [E], or any other DOR representative, to provide me with clear, honest, fair, client-focused supportive communication within three business days of my communication to said DOR representative.

I disagree with the DOR[’]s handling of me as a disabled client, my business plan, my DOR approved business consultants, the March 2023 mediation judge and the mediation agreement.

No written denial or action relating to an application for, or receipt of services was submitted into the record by either party.

The state fair hearing by written record was held on June 23, 2023. The parties were informed that any written statement or other documentary evidence from both parties was due by the close of business on June 23, 2023. The DOR hearing representative submitted a statement of position, and the appellant did not submit any additional evidence. The parties were informed that they each had the opportunity to respond to the evidence submitted by the close of business July 7, 2023.

On July 7, 2023, the appellant requested additional time to respond to the DOR’s statement of position. On July 10, 2023, the administrative law judge granted the appellant’s request for an extension to respond to the DOR’s statement of position and allowed the appellant to submit a written response by close of business July 17, 2023. The appellant did not submit a written response by the July 17, 2023 due date.

In pertinent part, the DOR statement of position states the following:

Appellant disagrees with the way the counselor has handled the development of her Individualized Plan for Employment (IPE). The Appellant agreed to be referred to [Center] in March of 2023, but has since restricted DOR[’]s ability to communicate with [the Center] such to the extent that DOR cannot clarify key aspects of the Appellant’s IPE. The Appellant has made multiple requests for DOR to rescind several questions posed to [the Center], making it not possible for DOR to clarify critical information about the Appellant’s proposed plan for self- employment, and therefore DOR is unable to approve this IPE for self- employment.

Facts

The DOR recommended a referral to [the Center], as agreed in the IPE signed 11/29/2022, to help the consumer bring the self-employment plan into alignment with DOR policies. At that time, the DOR could not approve the Appellant’s request for self-employment proposal. In order to move forward in collaboration, DOR offered the consulting services of [the Center] to work with the Appellant in clarifying the logistics of the business proposal prepared by the Appellant. At present, the consumer’s small business proposal is undeveloped according to DOR self-employment regulations.

On 3/6/2023 Counselor [E] sent the release to the Appellant via email to request the Appellant review and sign them. (Attachment E.)

On 3/7 The Appellant sent an email to the Counselor [E] stating she wanted clarification on the release before signing it. (Attachment F.)

On 3/8 The Appellant sent a second email to the Counselor [E] stating she wanted the release to not include information regarding the Appellant[’]s "Individualized Plan for Employment and also want the Progress Reports

to not be released to the DOR, which would essentially not allow DOR to communicate with [the Center]. (Attachment G., H.)

On 3/10, the Appellant sent another email to the Counselor [E] stating she did not want the counselor communicating with [the Center] without including her in communications. (Attachment I.)

On 4/7 the Counselor [E] sent an email to [the Center] to provide the release of information, and to notify [the Center] the reason for DOR’s referral. (Attachment J.)

On 4/12 The Appellant sent an email to Counselor [E] and [the Center] representative [P] to state she objected to two of the questions asked by [E], and wanted those questions to be rescinded and not be answered by [the Center]. (Attachment K.). The two questions, which remain unanswered by [the Center], are fundamental to DOR understanding the feasibility of the Appellant’s plan for self-employment. Without the ability to have [the Center] answer, specifically the question of “if [the appellant’s] business proposal were presented to a bank or lender in asking for startup funds, is it likely to be funded? If not, what adjustments would be needed to merit approval?” Without being able to have [the Center] answer the questions posed by Counselor [E], DOR cannot determine a critical aspect of the Appellant[’]s IPE for self-employment, and is therefore unable to move forward with approving the IPE for self-employment.

CONCLUSION

The DOR is in the process of encouraging more collaboration between the Appellant, DOR, and [the Center], a DOR funded business consultant.

The DOR has requested a release for [the Center] be signed by the Appellant to move forward with plan development and approval. Without a signed release, DOR has no way to move forward with collaborating with [the Center] and the Appellant toward development and approval of the requested self-employment IPE.

The request of the Appellant to change the business consulting provider in the proposed amendments to the current IPE, from [the Center] to [K]/ SBDC is denied. The DOR needs the Appellant to sign a release to [the Center] and to receive assistance from [the Center] to develop her small business proposal.

The DOR hearing representative attached to the statement of position the appellant’s IPE, which in pertinent part states the following:

With the support of a Small Business Development Corporation [SBDC] advisor, I created a business plan that clearly demonstrates economic viability. A second SBDC advisor reviewed and endorsed my business

proposal. I agree to submit my business plan to [the Center] for support in modifying my proposal to include services that DOR is likely to support.

My understanding is that [the Center] has a solid understanding of DOR regulations and can work with me to develop a plan satisfactory to DOR.

The DOR hearing representative attached to the statement of position the Consent to Release and Obtain Information (DR 260) form, which would allow the DOR to release and obtain information to/from [the Center] relevant to the appellant’s self-employment business plan. A review of this form shows that it is unsigned by the appellant.

## LAW

All references cited refer to Title 9 of California Code of Regulations, unless otherwise noted.

**State Hearings**

Appellant has the burden of introducing evidence at the hearing sufficient to demonstrate his/her case by a preponderance of the evidence. (§ 7356 subd. (e).)

A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafood, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (Welfare and Institutions Code (Welf. & Inst. Code), § 19704 subd. (a).)

Any applicant, client, former client, or student with a disability of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing. (§ 7354 subd. (a)(1).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (§ 7351 subd. (a).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (§ 7354 subd. (a)(3).)

The impartial hearing officer shall dismiss an appeal if any condition specified below exists. The appellant or authorized representative has failed to:

1. Respond within the time period specified in (e) to request a rescheduled hearing.
2. Show good cause for the failure to appear at a hearing.
3. File a timely request for fair hearing as specified in Sections 7353(f) and 7354(a).
4. Raise an issue within the jurisdiction of the impartial hearing officer. (§ 7355.)

**Individual Plan of Employment (IPE)**

Once a consumer is found to be eligible for DOR services, DOR is required to develop an IPE based on an assessment of the consumer’s needs and abilities. (§ 7128.)

A consumer’s employment goals and the service funding necessary to achieve the goals are to be specified in the IPE. (Welf. & Inst. Code, § 19103 subd. (b)(3).)

The IPE shall be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individuals, and, to the maximum extent appropriate, to include placement in integrated settings. (§ 19103 subd. (B)(1).)

The IPE shall be jointly developed and agreed upon by both the eligible individual and the DOR. (Welf. & Inst. Code, § 19103 subd. (b)(2).)

The terms and conditions of the IPE, including, as appropriate, information describing -

* 1. The responsibilities of the Department.
  2. The responsibilities of the eligible individual, including -
     1. The responsibilities the individual will assume in relation to achieving the employment outcome;
     2. If applicable, the extent of the individual's participation in paying for the cost of services in accordance with Chapter 5, Article 1 of these regulations; and
     3. The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in Chapter 5, Article 3 of these regulations.

(§ 7131 (a)(6).)

**Self-Employment**

An Individualized Plan for Employment (IPE) for an eligible individual who is interested in working in a self-employment setting shall be developed and implemented as soon as an appropriate employment outcome and the services necessary to assist the individual

to achieve it are identified, in accordance with the requirements specified in Sections 7128-7131 of these regulations and with the requirements in this section. (§ 7136.5 subd. (a).)

The services provided by the Department to assist the eligible individual to achieve employment in an appropriate self-employment setting include assessment, technical assistance, and training to assist the individual in preparing for work in a self- employment setting, and certain initial one-time costs to establish the proposed small business. (§ 7137.)

## CONCLUSION

State hearing jurisdiction exists when the DOR has issued a written denial to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. The impartial hearing officer must dismiss an appeal if the appellant has failed to raise an issue within the jurisdiction of the impartial hearing officer. The content of the IPE includes as appropriate, information describing the responsibilities of the Department and the responsibilities of the eligible individual, including the responsibilities the individual will assume in relation to achieving the employment outcome.

In this case, the appellant requested this state hearing seeking review of her business plan and a determination of whether her business plan is in alignment with the DOR’s self-employment program. The appellant’s IPE states in pertinent part the following:

With the support of a Small Business Development Corporation [SBDC] advisor, I created a business plan that clearly demonstrates economic viability. A second SBDC advisor reviewed and endorsed my business proposal. I agree to submit my business plan to [the Center] for support in modifying my proposal to include services that DOR is likely to support.

My understanding is that [the Center] has a solid understanding of DOR regulations and can work with me to develop a plan satisfactory to DOR.

The DOR’s statement of position, in pertinent part, states the following:

The DOR recommended a referral to [the Center], as agreed in the IPE signed November 29, 2022, to help the consumer bring the self- employment plan into alignment with DOR policies. At that time, the DOR could not approve the Appellant’s request for self-employment proposal. In order to move forward in collaboration, DOR offered the consulting services of [the Center] to work with the Appellant in clarifying the logistics of the business proposal prepared by the Appellant. At present, the consumer’s small business proposal is undeveloped according to DOR self-employment regulations.

[¶…¶]

The DOR has requested a release for [the Center] be signed by the Appellant to move forward with plan development and approval. Without a signed release, DOR has no way to move forward with collaborating with [the Center] and the Appellant toward development and approval of the requested self-employment IPE.

Based on this evidence, the DOR has been unable to collaborate with [the Center] to develop and approve the appellant’s requested self-employment IPE because the release remains unsigned. Under these circumstances, the DOR cannot adequately review the appellant’s business plan or determine whether her business plan is in alignment with the DOR’s self-employment program. Without the DOR’s initial review and determination, the administrative law judge has no authority to conduct this review and determination on the appellant’s behalf. Moreover, there is no written denial or action in the record relating to an application for, or receipt of services. Accordingly, the claim is dismissed for lack of jurisdiction.

## ORDER

The claim is dismissed.

# Hearing No. 104917090-468 SUMMARY

The appellant’s state fair hearing request regarding the Department of Rehabilitation’s (DOR) denial of his request for additional custom suits that meet his made-to-measure needs is dismissed for lack of jurisdiction because the claim is unripe. The appellant does not have an amended Individualized Plan for Employment (IPE) that would indicate the need for custom suits for his desire to pursue work as a paralegal.

[1620-2] [1930-2]

## FACTS

On July 5, 2023, the appellant filed a state fair hearing request via a DR 107 form in which the appellant stated the following:

On March 24, 2023, DOR denied my request for additional custom suits. Furthermore, DOR refused to provide clothing that meets my made-to-measure needs. On March 30, 2023, the Department reiterated the denial in an administrative review decision.

The state fair hearing was held on August 9, 2023. The appellant, the DOR hearing representative, and the DOR counselor appeared at the hearing by video conference. A transcriber was also present transcribing the proceeding in real time. The DOR hearing representative submitted into the record a statement of position in support of the DOR’s position.

*Appellant’s Testimony*

The appellant stated that the issue in this hearing is his request that the DOR pay for additional custom suits that meet his made-to-measure needs. He further testified that at a prior hearing the administrative law judge ordered that the DOR provide him with two custom suits. He also stated that the issue at the prior hearing was, in part, whether the DOR would be required to provide made-to-measure custom suits, not necessarily the number of suits.

The appellant testified that after the prior hearing, he was able to purchase one custom suit and noted that the DOR provided him with $450 per suit for two suits. He maintained that the vendor the DOR selected to provide him with the approved custom clothing did not meet his made-to-measure needs. He explained that a suit that meets his made-to-measure needs would cost at least $900.

The appellant testified that he needs a total of five custom suits that meet his made-to- measure needs because he plans on working as a paralegal. He further testified that although he does not currently have a job as a paralegal, he would like to have the suits before he has the job because custom made suits take time to make. He noted that he would need the suits when appearing in court or meeting with clients. He confirmed that his current IPE still has as a goal that he will complete law school and become a lawyer.

He also testified that he was not in law school at the time he filed this state fair hearing request as he has dropped out, and that the DOR has informally agreed to amend his IPE to reflect that he intends to work as a paralegal for two years. He noted that he intends to go back to law school and would need the suits for law school.

*Testimony of the DOR Hearing Representative*

The DOR hearing representative stated that the DOR complied with the order in the prior hearing decision requiring the DOR to provide the appellant with the funds to purchase two made-to-measure business suits, two made-to-measure dress shirts, and two dress shoes. She further stated that the appellant only purchased one suit. She also stated that the purpose of the suits was for the appellant to wear for moot court while he was attending law school.

The DOR hearing representative submitted into the record the administrative law judge’s order from State Hearings Division Decision Number 104839366, which states in pertinent part the following:

It is, therefore, ordered that the Department of Rehabilitation (DOR) shall take the necessary action to:

1. [¶…¶]
2. Provide Appellant with 2 made-to-measure business suits, 2 made-to-measure dress shirts, and 2 dress shoes by making reasonable efforts pursuant to applicable informed choice requirements to assist Appellant in exercising an informed choice of the least expensive alternatives available from a DOR vendor – which meet Appellant’s made-to-measure needs.

The DOR hearing representative submitted into the record the administrative review decision dated April 7, 2023, which in pertinent part states the following:

On March 24th you sent a letter to [T] [first initial only shown here], the [] office Staff Services Manager I, requesting a written decision concerning the denial of your request for custom clothing. Shortly after submitting this letter, you requested an Administrative Review.

In the letter to Mrs. [T], you state, “the Department was previously ordered to provide clothing which meet[s] [my] made-to-measure needs. You’ve thus far failed to articulate how the proposed vendor meets my made-to- measure needs.” Your letter also states “you’ve simply asserted that the vendor, Indochino, is a made-to-measure company and is the least expensive. As I’ve explained to you in detail, Indochino does not meet my made-to-measure needs.”

According to the Final Decision (Hearing No. 104839366) adopted on October 31, 2022, “The Department of Rehabilitation (DOR) shall provide

Appellant with 2 made-to-measure business suits, 2 made-to-measure dress shirts, and 2 dress shoes by making reasonable efforts pursuant to applicable informed choice requirements to assist Appellant in exercising an informed choice of the least expensive alternatives– which meet Appellant’s made-to-measure needs.” Based on this final decision, the DOR staff found a vendor that would provide made-to-measure shirts and business suites at the least expensive alternative.

The DOR staff followed the California Code of Regulations (CCR) Section 9, §7174(c)(3) Other Goods and Services – Other Provisions when providing this service to you. They considered made to measure clothing and least expensive alternatives. In this section, the regulation states:

1. Before providing any vocational rehabilitation services to an individual as other goods and services, the Rehabilitation Counselor shall determine all of the following:
   1. Whether the goods and services to be provided are available from other sources as a comparable service and benefit, including, but not limited to, health or disability insurance, employee benefits, social security programs, welfare and social service programs, and other programs sponsored by federal, state, city, and county government agencies that serve individuals with disabilities.
   2. The extent of the individual's financial participation in the cost of goods and services to be provided.
   3. That other, more cost-effective, alternatives are not available.

Per these regulations, you were referred to INDOCHINO to purchase the following items consistent with made to measure standards. An email was sent to you on January 11, 2023 at 8:43 AM, noting the items and the total amount for these items would be added to your CalDOR Payment Card (CPC).

“Here is a list of the amounts that will be authorized for each item. Below is the reasoning for each.

* + - Suits – 2 @ $450 each = $900
    - Shirts – 2 @ $89 each = $178
    - Shoes – 2 @ $73.04 each = $146.08
    - Ties - $22.99
    - Braces – 2 @ $26.49 each = $52.98
    - Socks - $19.99
    - Total = $1,320.04 Reasoning/Quotes:
    - Suit and Shirt quote- [www.indochino.com](http://www.indochino.com/)

Indochino states they are made to measure suits and made to measure shirts.

The customer service representative stated:

* + - “Our suits range from $329 - $599 on average about $400-

$500

For shirts, the average is around $89”

* + - Men’s shoes:

Based on an average of 4.5 star from 1,374 reviews: Florsheim Men's Medfield Plain Toe Oxford, 2 @ $73.04 each

Moreover, according to INDOCHINO, “INDOCHINO is a true Made to Measure experience. Your suit is made just for you based on your measurements, choice of fabrics and customizations. Every INDOCHINO purchase is backed by our Fit Promise. If you order does not meet expectations, let us know and we will make it right.”

In conclusion, you were provided the opportunity to purchase two made- to-measure suits, two made-to-measure shirts, two shoes, ties, two braces, and socks. You decided to utilize another store that was not cost- effective that only allowed you to purchase one suit. The DOR staff followed policy and procedure to provide you the made-to-measure clothing needed to pursue employment. Additionally, they followed the final decision that was adopted on October 31, 2022, by providing a vendor who has made-to-measure suits.

*Testimony of the DOR Counselor*

The DOR counselor testified that the purpose of providing the appellant with suits was for the appellant to have suits while in law school to participate in moot court. She indicated that the appellant is no longer in law school and is now pursuing a job as a paralegal. She further testified that the appellant’s IPE has not been amended from the goal of pursuing a law school training program to the goal of pursing employment as a

paralegal. She also testified that the DOR intends to amend the appellant’s IPE so that it is consistent with his desire to become a paralegal.

*DOR Hearing Representative Rebuttal*

In response, the DOR hearing representative argued that given that the appellant’s IPE has not been amended from pursing a law school training program to pursing a job as a paralegal, and as the appellant is not currently employed as a paralegal, it would be premature to authorize the appellant’s request for additional custom suits.

*Request for Postponement*

During the hearing, the appellant requested to postpone this hearing to a future date because there were two DOR witnesses, the district administrator and service coordinator, who were not present at this hearing. He explained that these witnesses are the most knowledgeable of the relevant events and that he wanted to question these witnesses as part of the presentation of his case. He testified that he did not have enough time to review his case file, which was over 1,000 pages, and he did not receive the file in a timely manner. He further testified that he needed case notes from a

March 23, 2023 telephone meeting.

The administrative law judge conducted the hearing to take testimony from the parties and informed the parties that a continued hearing could be held if necessary.

## LAW

All references cited refer to Title 9 of California Code of Regulations, unless otherwise noted.

State Hearings

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (Welfare and Institutions Code (Welf. & Inst. Code), § 19704 subd. (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (§ 7354 subd. (a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (§ 7354 subd. (a)(3).)

The impartial hearing officer shall dismiss an appeal if any condition specified below exists. The appellant or authorized representative has failed to:

1. Respond within the time period specified in (e) to request a rescheduled hearing.
2. Show good cause for the failure to appear at a hearing.
3. File a timely request for fair hearing as specified in Sections 7353(f) and 7354(a).
4. Raise an issue within the jurisdiction of the impartial hearing officer. (§ 7355.)

Individualized Plan for Employment (IPE)

The IPE shall be a written document prepared on the form DR 215 provided by the Department. (§7130 (a)(1).)

The IPE shall be developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice consistent with 7029.6 of these regulations, in selecting--

1. The employment outcome, including the employment setting;
2. The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;
3. The entity or entities that will provide the vocational rehabilitation services; and
4. The methods available for procuring the services, consistent with applicable State procurement laws and regulations and federal policy directives issued by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Rehabilitation Services Administration.

(§7130 (a)(2).)

The IPE may be amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the Department or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services. (§7130 (a)(6).)

Amendments to the IPE do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a Rehabilitation Counselor employed by the Department. (§7130 (a)(7).)

Ripeness

A controversy is “ripe” when it has reached, but has not passed, the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made. The ripeness element of the doctrine of justiciability is intended to prevent courts from issuing purely advisory opinions. [Citations omitted].) It is "primarily bottomed on the

recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559 at 1573.)

## CONCLUSION

State hearing jurisdiction exists when the DOR has issued a written denial to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. The impartial hearing officer must dismiss an appeal if the appellant has failed to raise an issue within the jurisdiction of the impartial hearing officer. A case is ripe if it is to the point that there are enough facts to issue an intelligent and useful decision.

On July 5, 2023, the appellant filed a state fair hearing request via a DR 107 form requesting additional custom suits that meet his made-to-measure needs. In State Hearings Division Decision Number 104839366, the administrative law judge ordered the DOR to, among other things:

Provide Appellant with 2 made-to-measure business suits, 2 made-to- measure dress shirts, and 2 dress shoes by making reasonable efforts pursuant to applicable informed choice requirements to assist Appellant in exercising an informed choice of the least expensive alternatives available from a DOR vendor – which meet Appellant’s made-to-measure needs.

At the time of the administrative law judge’s order, the appellant was in law school. The DOR hearing representative and counselor both testified that the purpose of the approved suits was for the appellant to wear for moot court while he was attending law school. It is undisputed that the appellant was no longer in law school at the time of the July 5, 2023 state fair hearing request and that the appellant is now pursuing a job as a paralegal. It is also undisputed that the appellant’s IPE has not been amended from pursuing a law school training program to pursuing employment as a paralegal.

The appellant testified that he needs a total of five custom suits that meet his made-to- measure needs because he plans on working as a paralegal. He further testified that although he does not currently have a job as a paralegal, he would like to have the suits before he has the job because custom made suits take time to make. He noted that he would need the suits when appearing in court or meeting with clients.

Based on this evidence, the claim is based upon future events that may or may not occur as predicted or at all. As there are not enough facts to issue an intelligent and useful decision, it is determined that the claim is not ripe. Accordingly, the claim is dismissed.

While the administrative law judge did not continue the hearing for a future date to allow the appellant to question two DOR witnesses or respond to his case file and March 23,

2023 case notes, this evidence was not necessary to reach the determination that the appellant’s claim is unripe and must be dismissed at this time.

The DOR has informally agreed to amend his IPE to reflect that the appellant intends to pursue work as a paralegal. The appellant may wish to renew his request for custom suits after his IPE is amended.

The claim is dismissed.

## ORDER

**NOTICE**

Pursuant to California Code of Regulations., tit. 9, section 7358, the appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if appellant is dissatisfied with the decision. The Client Assistance Program is available to the appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance. A copy of this decision shall be filed in the appellant's record of services.

Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Code Regs., tit. 9, § 7358, subd. (b).)

# Hearing No. 104864653-468 SUMMARY

The appellant’s state fair hearing request regarding the Department of Rehabilitation’s (DOR) denial of his request that the DOR pay for food and a replacement apartment key is dismissed as moot because these issues are no longer in dispute. Additionally, the claim regarding the DOR’s denial of the appellant’s request that the DOR pay for his utilities is dismissed for lack of jurisdiction as this issue was not indicated on the appellant’s state fair hearing request and was previously litigated in Case No 104839366.

[1626-2] [1950-2]

## FACTS

On December 19, 2022, the appellant filed a state fair hearing request via a DR 107 form in which the appellant stated the following:

On December 13, 2022, respondent denied appellant's request for "the cost of food and lodging expenses while [appellant] is participating in four-year or graduate college or university." Namely, respondent refused to provide payment for food and a replacement apartment key.

The state fair hearing was held on August 9, 2023. The appellant and the DOR hearing representative appeared at the hearing by video conference. A transcriber was also present transcribing the proceeding in real time. The DOR hearing representative submitted into the record a statement of position in support of the DOR’s position.

The appellant clarified that the issues raised in the original hearing request (DR 107 form) regarding the request for payment for food and a replacement apartment key are now moot and indicated that there is no longer a dispute regarding these issues. He further stated that he was requesting to add an issue to this hearing regarding the DOR’s denial of his request for the DOR to pay for his utilities. He also stated that the DOR had not processed his state fair hearing request regarding the utilities issue.

Appellant previously filed a hearing request concerning payment of his utilities. Case No. 104839366 was heard on September 22, 2022, and the issue concerning the payment of utilities was addressed. The decision was issued on October 31, 2022.

The DOR hearing representative stated she was not prepared to address the utilities issue at this hearing and noted that this issue was decided in a prior hearing.[1](#_bookmark15)

1 During the hearing the right to a new hearing on this matter was discussed with the parties. After the hearing, follow-up clarified that the appellant has the right to request a new hearing, but a new case will not be opened with State Hearings Division if it is determined that there is no jurisdiction to revisit this issue.

## LAW

All references cited refer to Title 9 of California Code of Regulations, unless otherwise noted.

State Hearings

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (Welfare and Institutions Code (Welf. & Inst. Code), § 19704 subd. (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (§ 7354 subd. (a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (§ 7354 subd. (a)(3).)

The impartial hearing officer shall dismiss an appeal if any condition specified below exists. The appellant or authorized representative has failed to:

1. Respond within the time period specified in (e) to request a rescheduled hearing.
2. Show good cause for the failure to appear at a hearing.
3. File a timely request for fair hearing as specified in Sections 7353(f) and 7354(a).
4. Raise an issue within the jurisdiction of the impartial hearing officer. (§ 7355.)

“The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief…. If events have made such relief impracticable, the controversy has become ‘overripe’ and is therefore moot.” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559 at 1574.)

## CONCLUSION

Food and Replacement Key

State hearing jurisdiction exists when the DOR has issued a written denial to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. The impartial hearing officer must dismiss an appeal if the appellant has failed to raise an issue within the jurisdiction of the impartial hearing officer. A case is moot if events have made any effective relief impracticable or impossible.

In this case, the appellant filed a state fair hearing request via a DR 107 form disputing the DOR’s denial of payment for food and a replacement apartment key. During the hearing, the appellant clarified that the issues raised in the original hearing request regarding the request for payment for food and a replacement apartment key are now moot and indicated that there is no longer a dispute regarding these issues. Under these circumstances, events have made any effective relief impracticable or impossible. Therefore, the case is moot. Accordingly, the claim is dismissed for lack of jurisdiction.

Utilities

Based on the above-cited regulations, a fair hearing request must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken.

Here, the appellant requested to add an issue to this hearing regarding the DOR’s denial of a request that the DOR pay for his utilities. The fair hearing request in this case did not raise this issue. The DOR hearing representative stated she was not prepared to address the utilities issue at this hearing and noted that this issue was decided in a prior hearing. Under these circumstances, there is no jurisdiction to hear this claim at this hearing. It is noted that even assuming the appellant’s issue regarding the utilities issue was subject to a prior hearing, the appellant has the right to request a new a state fair hearing regarding this issue to determine if new issues have been asserted where jurisdiction may exist. Accordingly, the claim regarding this issue is dismissed.

The claim is dismissed.

## ORDER

**NOTICE**

Pursuant to California Code of Regulations., tit. 9, section 7358, the appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if appellant is dissatisfied with the decision. The Client Assistance Program is available to the appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance. A copy of this decision shall be filed in the appellant's record of services.

Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Code Regs., tit. 9, § 7358, subd. (b).)

# Hearing No. 104894957-765 SUMMARY

The Department of Rehabilitation (DOR) correctly closed the Appellant’s record of services without an eligibility determination because the Appellant declined to participate in the assessment to determine eligibility and the DOR made at least three attempts over a 30-day period to contact the Appellant to encourage his participation.

Moreover, while DOR correctly closed the appellant’s case, this claim regarding the closure of his record of services without an eligibility determination is dismissed as moot as the DOR reopened the Appellant’s application as he requested and determined his eligibility for DOR services.

The remainder or the Appellant’s claims are dismissed for lack of state fair hearing jurisdiction. [1970-2]

## FACTS

Appellant requested a mediation and state hearing on April 10, 2023, regarding his concern about a statement a DOR employee made to him through electronic mail (email) in conjunction with his request to conduct the entire DOR eligibility evaluation process entirely by email.

To accommodate the Appellant’s similar request here, the state fair hearing was held entirely by email. On July 3, 2023, all parties were notified in writing that the state hearing record would be opened July 6, 2023. The parties were further instructed that all written statements or documentary evidence was due from the parties by July 20, 2023, and that both parties would have an opportunity to respond to such statements or documentary evidence until August 3, 2023. The parties were informed that if no request to extend the open record period was received, the record would close on August 3, 2023, and a decision would be issued.

Both parties submitted documentary evidence. The Appellant’s hearing request (DR 107) states as follows:

[Omitted], wrote in an email last March 1st, 2023, at 4:54 p., ‘I am concerned that the email platform is only option that you presented to the Rehabilitation Counselor for the intake and in the future. We have employers and service providers that require communication outside of email platform.’

Email is accessible like the phone or fax in almost every job, office, or home. It is inappropriate that DOR prioritized hearing communication, a dominant platform, outside the email platform requiring the deaf to expose themselves. DOR is supposedly a rehabilitative agency to assist me as a deaf client in advancing text-based communication accessibility that they have found to be less discriminating, more independent, and more competitive employment [sic]. Hearing and deaf individuals have learned how to use text from educational institutions to communicate with each other independently.

The DOR submitted a Statement of Position noting in relevant part as follows: Pre-Hearing Contact:

The issue is DORs denial of support for using email communication to participate in the intake interview and closure of his application for services. Efforts to resolve this matter including mediation, have been unsuccessful despite the Department of Rehabilitation (DOR) accommodating the Appellants request to communicate with him by email and by reopening his application for services on 5/31/2023.

Issue:

Did DOR act in accordance with regulations when closing the Appellant’s application for services and denying the use of an email session to participate in the intake interview?

DOR acted in accordance with regulations because all communication between the Appellant, the counselor, the Team Manager (TM), and the District Administrator (DA) has occurred exclusively by email to accommodate his request (attachment 3). He requested a fair hearing based upon the TMs statement that employers and employment service providers would expect communication beyond the email and text platform. Even though many jobs today are remote in nature and communication may be conducted by email, the TM is correct in informing the Appellant that employers and providers may require communication outside of his preferred platforms.

The Appellant’s application for services was closed after repeated attempts to engage him in the intake process using email, his preferred mode of communication. The intake gathers information necessary to open a record of service, determine eligibility and priority for services. He provided insufficient information to proceed at the time. His referral was closed with the option to reopen once he provided necessary information.

Background:

The Appellant submitted a request for vocational rehabilitation services on 12/15/2022 but did not disclose a disability (Attachment 2). Since DOR exists solely to serve individuals with disabilities, TM [omitted] sought clarification about his disability and preference for email communication only. She offered the Appellant options to complete the intake in person, using pen and pencil or by zoom platform using the chat features as alternatives. He agreed to utilize Zoom chat features. To ensure efficient use of time when meeting with the counselor by Zoom, intake questions were sent to the Appellant in advance to complete and return. The information requested included typical questions asked during an intake as well as demographic data elements that must be gathered to open a case in DORs case management database (AWARE). The intake questions help the counselor understand the impacts of the Appellant’s disability, his barriers to employment, past work history including any job loss related to disability, other challenges, priorities, available resources including financial and emotional supports, and vocational interests so they may be considered

when assessing for eligibility, establishing priority for service and developing an IPE (see attachment 4). However, rather than checking appropriate boxes, he instead chose to mark each section “confidential” (Attachment 3).

The assigned Rehabilitation Counselor sent the Appellant a copy of questions typically asked during intake rather than type each one out and submit for a response during a one hour meeting The Appellant returned the questionnaire partially completed but did not provide sufficient information to open his case or determine eligibility for services. He repeatedly stated that the information DOR is requesting is not required by other agencies such as Job Centers. In particular, he argued about the term disability and did not identify his functional limitations posed by disability. He was informed that DOR’s services are only offered to individuals with disabilities. Therefore, the counselor must obtain information specifically about disability and barriers to employment, to know how to support him. His focus has been to argue about the intake process and providing information necessary to open his DOR case instead of engaging in a productive manner to move toward eligibility, plan development and employment.

Counseling is the primary service offered by DOR. To be eligible for vocational rehabilitation services, there must be a disability that serves as an impediment to employment, a counselor determines that vocational rehabilitation services are necessary to prepare for, attain, retain or advance in employment and there is a presumption that the individual can benefit from services in terms of an employment outcome in an integrated setting-California Code of Regulations, title 9; chapter 3; section §7062. The Appellant is responsible for providing the counselor information and failure to do so may result in case closure-California Code of Regulations, title 9; chapter 3; section § 7029.9

The Appellant’s perseveration on the term disability and arguing with DOR staff about the necessity of the intake has resulted in his referral being closed multiple times. His referral was reopened 5/31/2023 following mediation as he provided additional information related to the intake and was subsequently determined eligible for services 7/12/2023.

Facts of the case:

12/15/2022: Appellant submitted a request for services with Department of Rehabilitation. TM enquired whether or not he uses American Sign Language for communication as his application did not clearly describe a disability (attachment 3)

1/27/23: An intake questionnaire and documents were sent to the Appellant to be completed and returned prior to the intake interview scheduled to occur on 2/1/2023, at 3PM.

1/29/23: Appellant returned the documents without providing any information. Instead, he marked most pages “confidential” (attachment 3).

2/1/23: The counselor sent two forms for completion entitled “Barriers to Employment” and “Intake Info Sheet” the morning of the scheduled intake appointment. The Appellant did not submit the completed questionnaires and his referral was closed. (attachment 3)

2/22/23: The Rehabilitation Counselor reopened the referral.

3/3/23: TM asked the Appellant about his disability information. He did not respond.

3/8/23: Referral was closed for a second time due to non-cooperation. Appellant emailed District Administrator (DA) [omitted] stating “I request that the district administrator consider me as a current client of DOR for employment services”.

3/9/2023: The DA responded informing him that she reviewed his application, noted his reference to speech and hearing and asked him to confirm whether he had a speech or hearing-related disability. The Appellant responded to the DA’s email stating “The manufactured term disability grants the ablists the power to either grant or deny minorities access to employment benefits and rights especially EEO and health & safety. Was that the reason that DOR wanted me to believe that I have a disability and to learn disability rights?” DA explained in email that DOR requires specific information about disability to determine eligibility for services.

3/17/23: Appellant emailed DA about his eligibility for services. He was informed his referral had been closed because he refused to respond to questions about disability and barriers to employment. He was informed that the existence of a disability is required in order to receive vocational rehabilitation services. In the absence of this information, it is assumed he does not have a disability and is therefore, ineligible for services. The DA asked him to provide additional information and offered to meet to discuss further. Appellant asked how his personal information is being used by other entities and mentioned being eligible in the past (attachment 3)

3/19/23: DA responded that there is no record of the Appellant’s case at DOR because the record retention period is five years. The DA explained that information is needed to meet the criteria for VR services. Appellant then questioned how the information will be used. (attachment 3).

3/19/2023: Appellant emailed the DA again (Sunday) questioning why DOR needed information and stated, “Do they plan to share it outside the agency boundary or share it with other employers, training, or employment services?”

3/21/2023: The DA responded reassuring him that specific tracking data is reported to the Rehabilitation Services Administration which funds

Department of Rehabilitation’s vocational rehabilitation services grant. He was assured that numerical identifiers are used instead of names. The DA also provided regulations about redisclosure of his personal information and the very limited circumstances in which that would occur without his consent per California Code of regulations, title 9; chapter 3; section § 7142. Disclosure to Other Persons or Entities. (attachment 3).

3/22/23: Appellant stated in an email to the DA that he is deaf (attachment 3)

3/29/23: DA responded indicating that the referral will be reopened and that the intake will be scheduled. DA requested the Appellant work collaboratively with DOR and the counselor in gathering information necessary to open his record of service in the AWARE case management database and determine eligibility for services. Appellant responded that DOR’s database and intake are irrelevant for a referral to an agency and should not prevent him from getting access to employment (attachment 3). On the same day, the counselor set the intake appointment for April 7, 2023.

3/30/23: The counselor received a partially completed form with no information on disability, communication needs, limitation, barriers to employment, or prior challenges in past work experiences (attachment 3).

4/5/23: Appellant emailed the counselor stating “I am not required to provide you with information that includes those I do not need assistance with and that are irrelevant to the referral or job.” Appellant also said that he sent something via USPS mail and then said “We are finished with unnecessary intake. I believe that DOR wants the unnecessary information for purposes other than to assist or rehab. So please stop discussing it with me about the intake as we are finished with it.” (attachment 3).

4/6/2023: The counselor closed the referral due to Appellant’s refusal to participate in the intake process.

4/7/2023: Appellant submitted Audiogram and his social security number by mail so the counselor may provide LEAP certification which can be provided without opening a case or conducting an intake (attachment 3).

4/10/2023: Appellant filed for mediation and fair hearing (attachment 2). Conclusion:

For five months, the Appellant demonstrated argumentative and uncooperative behavior by refusing to provide intake information needed to open his case in the AWARE case management database. At the time the Appellant filed a request for mediation and fair hearing, his referral was closed due to his uncooperative behavior, specifically his refusal to provide information needed to open his case, assess his eligibility and priority for services. Since then, the Appellant has provided proof of disability by submitting an audiogram and answered some of the intake questions on 5/31/2023. This was sufficient to reopen his record and draft an eligibility

determination. However, in order to actually issue the eligibility determination, specific data screens must be completed prior to doing so. Typically, consumers provide such information in the first meeting. DOR had to make assumptions regarding his barriers to employment and source of income which he has not provided.

To date, the Appellant continues to argue with DOR employees and is suspicious of requests for information. The original DR107 listed his dissatisfaction with the TMs statement that employers and service vendors may require communication modes other than email. His complaints expanded to include dissatisfaction with the intake and now he appears to be trying to hold DOR accountable for actions taken by his former employer and breaching his confidentiality with multiple unknown entities. DOR will not address any of these claims because they are neither relevant to the DR 107 filed on 4/10/2023 nor are they within the scope of the vocational rehabilitation service program.

DOR has accommodated the Appellant’s request to communicate by email and has continued to try to assist him by repeatedly opening his referral despite his overall lack of cooperation. His case is currently open and he has been determined eligible for services. However, the expectation is that he will fully cooperate in services going forward, meaning he will provide information requested by the counselor necessary to develop an IPE per California Code of regulations, title 9; chapter 3; section § 7130.5. Failure to do so will lead to case closure due to lack of cooperation.

Through the state hearing process, Appellant submitted emails stating his claims that

(1) DOR is exploiting him by using an intake referral system that prevents individuals with perceived disabilities from accessing local employment services and coerces them into submitting sensitive information; (2) DOR is harassing him; (3) DOR provides assistance to state workers for promotion or transfer but required an intake process before offering him assistance yet non-disabled employees have access to promotion and transfer opportunities within the organization; and (4) demands default judgment that includes compensation for lost wages, payments to my CalPERS account, appointment to a non-probationary IT position within a state department, effective immediately, and an injunctive order to prevent DOR staff from interfering in his employment matters.

Specifically, the Appellant submitted the following emails regarding his claims during the open record period:

July 6, 2023

It has recently been discovered that the Department of Rehabilitation (DOR) has engaged in exploitative behavior. By using the intake and referral system, they have prevented individuals with perceived disabilities from accessing local employment services. This was done in a coercive manner, forcing these individuals to provide sensitive information. The intake form contains sensitive information that employers and local employment

services are prohibited from asking for. As a result, these services rely on the DOR to exclude certain individuals with perceived disabilities from being considered for opportunities. This puts disabled individuals at a disadvantage, as they have to complete intrusive intake forms and rely on the DOR for assistance. In contrast, non-disabled individuals receive the necessary support and opportunities from employers and educational institutions without any involvement from the DOR or invasive intake forms. FACTS: During my time as an employee, I tried to access my employment benefits at my employer for promotion or transfer opportunities. Unfortunately, my union and colleagues at work recommended that I reach out to DOR to get the necessary assistance. However, the process involved completing an invasive intake form. As a jobless student, I tried to enroll in employment programs at my local community college and other places. However, I faced a roadblock when DOR went beyond their referral and denied me access unless I filled out an intrusive intake form.

Questions for the Department of Vocational Rehabilitation. Please respond within 24 hours.

Do clients need to answer all the questions on the intake form in order to receive referrals to external employment services?

Is it the responsibility of the DOR staff to decide whether or not to issue referrals for clients based on the information provided during intake?

Does DOR offer consultation, disability awareness, or training to employers’ supervisors and/or managers?

Does DOR provide a forum for employers to discuss employment strategic plans regarding workers or applicants who may have perceived disabilities? If so, are these discussions held during board meetings?’

Can you provide me with a detailed overview of the AWARE system that was used in a recent career fair?

July 11, 2023

As of today, I have not received any response or requested information from the opposing party. Consequently, I respectfully request a default judgment that includes compensation for my lost wages and payments to my CalPERS account. Moreover, I would like to be appointed to a non- probationary IT position within a state department, effective immediately. Additionally, I would like to request an injunctive order on DOR to prevent the staff from interfering in my employment matters with my employer. Thank you for your time and consideration.

July 12, 2023

Judge, I am writing to follow-up on my previous email, which I sent on July 6th at 11:21 AM. Unfortunately, I have not yet received a response from the DOR. As a result, I took it upon myself to conduct some research and was able to obtain a copy of the AWARE Status Descriptions and Case Type

Definitions, which I have attached for your reference. After reviewing the document, I discovered that the AWARE system is utilized as a control panel to manage clients' employment in the services. I came across a referral note from the DOR that mentioned AWARE. This has led me to believe that my job applications for federal and state positions may be invalidated without my knowledge. To provide further context, I have attached a copy of the referral note written by counselor [omitted], which I received from the opposing party. I am writing to request an update on the default judgment that I previously requested. I would greatly appreciate any assistance you can provide in this matter. Thank you for taking the time to review this information.

July 18, 2023

I have included a copy of back and forth communication email below and I want to highlight [omitted] statement she emailed to me dated last February 1st, 2023 at 6:04am, "Good morning. Rehabilitation Counselor [omitted] will send you a list of questions to gather information. Once you receive it, please complete and send it back to him. Please be advised that an employer is not going to interview or supervise via email or will our service providers provide services via email. The expectation of you is to fully participate in services, including completing assignments and providing information need by the counselor. Failure to do so may result in loss of services and case closure pursuant CCR (a)(1)(2)(4). I have attached the regulation for your review. Thank you, [omitted] Team Manager"

It's unfortunate that DOR does not offer email support for individuals who are hearing impaired and rely on text communication. However, they do provide immediate phone support for clients who are able to hear or speak and do not require an in-person physical evaluation. It's crucial to note that DOR prioritizes auditory platforms, ranking them as the top tier for employment above inclusive options and deprioritizing others for their interests. They asked me to choose one of their options - phone, in-person, or Zoom - and complete their intake process, which limits my career prospects and independence. They've even closed my cases twice, preventing me from being employed or accessing services from local employment offices or my college's employment services. I demand DOR compensate for past lost wages and payments to my CalPERS account until I am employed in an IT position permanently and full-time in one of the state's departments. Additionally, I demand that DOR re-evaluate its services.

July 18, 2023

This email is evidence of an attempt to prevent me from accessing employment services at my local college employment centers. The reasoning behind this appears to be a desire for more information from me than is normally required and an attempt to train me as a traditional second- class deaf individual.

I strongly feel that I should have equal access to employment services as non-disabled individuals so that I achieve financial stability in a timely manner.

[The Appellant’s email was followed by an email from a DOR representative answering the questions Appellant posed through his July 6, 2023 email.]

July 18, 2023

I disagree with the summaries that were recently added to ACMS by [omitted]. I opted for a text-based platform because it's inclusive for all, regardless of their disabilities. However, the department is not in favor of this approach.

The Department of Rehabilitation's services are not voluntary because they have a referral system in place with external employment services. This system denies me access to their services until I complete the intake process. Many employers turned their attention and relied on this department because their intake form includes questions not allowed during an interview. However, the department's intake form doesn't focus on my qualifications for employment and instead dwells on negative aspects. As someone in search of employment services, I was hoping for a simple, secure, and speedy path toward financial stability, much like any other individual without disabilities. However, after reviewing their intake form and training process, I have some concerns.

July 19, 2023

I am submitting an email that I received from a counselor at DOR. I contacted DOR in December to find a service that could help me pursue a career in IT. As you can see from the email, copy below, the counselor mentions that email and text support are part of their service, which is different from what [omitted] had stated in a previous email. [Omitted] has not referred me to this particular counselor for IT career services.

It has now been approximately 8 months since I contacted DOR, and I have not received any services yet. This waiting period is longer than what EDD typically takes.

July 19, 2023

I am writing to inform you that [omitted] has not responded to my previous communication. After reviewing a note from DOR, I noticed that an email was sent by AWARE to [omitted]. The email contained a paragraph on page 57 which stated, "Please log into Aware to access the interested person's referral information. You can find the DOR Request for Services under Referral Attachment page. We anticipate that the interested person's responses to the questions serves as an enrollment for DOR services."

I am concerned that AWARE may ask me questions about my medical and non-employment-related information as an interested person, and then

share this information with others without my consent. I have been questioning why DOR has been pressuring me for my private information.

Thank you for your attention to this matter. July 19, 2023

I am submitting an email that I received from a counselor at DOR. I contacted DOR in December to find a service that could help me pursue a career in IT. As you can see from the email, copy below, the counselor mentions that email and text support are part of their service, which is different from what [omitted] had stated in a previous email. [Omitted] has not referred me to this particular counselor for IT career services.

It has now been approximately 8 months since I contacted DOR, and I have not received any services yet. This waiting period is longer than what EDD typically takes.

July 20, 2023

I have reviewed the updated SOP provided by [omitted]. I want to clarify that they were aware of my employment status, as I became unemployed in November 2022. I had not received any income since November 2022 until last month during the mediation period. I recently received a letter from Social Security stating that I will start receiving monthly payments from June onwards, but this will not cover the past months of no income.

I want to draw attention to the fact that some employers conduct phone interviews to hire candidates, which they believe is considered an inclusive approach. However, this method excludes individuals like myself who are deaf. Email is considered the most inclusive and accessible option, as it is widely used in most workplaces, homes, wireless services, shelters, and public places like libraries. [Omitted] sent me an email on 7/18/2023 at 12:00 PM containing a link https://[www.dor.ca.gov/home/DAS](http://www.dor.ca.gov/home/DAS) that offers services to employers, including public information, consultation, training, and technical assistance to prevent accessibility issues for state and local government, consumers, employers, and businesses. The Department of Rehabilitation (DOR) has expressed that they do not favor a text-based platform approach, which would be more inclusive for deaf individuals. Instead, they train us to use auditory-based platforms, which limits our employment opportunities and places us in a second-class category. This approach is unacceptable, and we should be given equal respect and opportunities as everyone else.

Some of my former colleagues and union staff advised me to use DOR services for career advancement instead of my employer's services for non- disabled individuals. However, I have concerns about mandatory intake before application and how my private information, including medical history, might be used and stored. I think it's unfair that only disabled job seekers have to disclose personal information while non-disabled individuals receive job opportunities without having to do so. It appears that

DOR's intake form can influence employment status steer career paths at their discretion. I think that DOR should be accountable for any harm their intake, referral programs may cause, which has affected my employment and finances.

July 20, 2023

I am writing to bring an important matter to your attention. As formerly employed with a state department, I believe that I should not have been subjected to any form of influence or harassment by DOR. I have learned that DOR provides assistance to state workers for promotions or transfers, but they require an intake form before giving any help. Meanwhile, non- disabled employees have immediate access to promotion and transfer opportunities within the organization.

Thank you for your attention to this matter.

July 25, 2023

[Omitted],

I would like to know if the AWARE program shares information from my intake form with others and if it includes observations made by [omitted]. Also, does AWARE give recommendations or provide a control panel for determining my employability?

I re-attached a copy of "RAM30\_Exhibit B Aware Status Descriptions.pdf," please explain why it is part of the AWARE program and why it is utilized at the career fair.

July 26, 2023

[Omitted], AWARE is a case management database utilized by many state VR programs. You applied for vocational rehabilitation services. Similarly, if you applied for medical, dental or educational services, a database is utilized to enter your information in order proceed with providing services.

July 31, 2023

I recently received an email from the job center that I had registered with. The job center suggested that I meet with a DOR counselor to explore potential job opportunities. It seems that the job center is partnered with DOR for convenience, as they have a location in the building where they can meet and communicate with each other.

However, I had some concerns about the confidentiality of the intake information that DOR requires. I asked the job center's employment training specialist if it was true that DOR only provides a few job leads in exchange for this information, and she confirmed that DOR's intake is confidential. I then asked for more information on how using DOR differs from traditional job center services and what benefits it offers. Her response was, I’m aware DOR provides a multitude of services and unaware of the specific details of the multitude of service provided.

Lastly, I asked if some employers have started offering job opportunities exclusively to DOR clients instead of utilizing the services provided by the job center. However, I have yet to receive a response from her.

I attached a copy of the emails for your reference. Thank you for your time and consideration.

August 1, 2023

I have noticed [omitted] name listed as a board member on a website that I received, copy is attached. Can you kindly verify if you are also a member of the board at Sacramento Employment and Training Agency (SETA)? If so, could you please provide some insight into your role as a board member? Lastly, I wanted to confirm if not being registered as a DOR client or completing the invasive intake with DOR at this job center could have impacted my chances of being considered for a job opportunity.

August 1, 2023

I am writing to express my concern about employment opportunities for individuals with disabilities. Some employers are offering direct hire opportunities to non-disabled individuals without involving DOR's intake services. I received an email from a job center specialist who informed me about these direct hire options. DOR is now recognized as an employment and hiring agency that provides intake and screening services to employers, including direct hire options for individuals with disabilities. Unfortunately, individuals with disabilities who are not registered with DOR may not have access to employment services at the job center, which puts me at financial risk due to prolonged unemployment. As a result, I am requesting appropriate compensation for my situation as determined by the law.

For your reference, I have attached a copy of the email I received. I would appreciate it if you could take the time to consider this matter.

Thank you for your attention to this issue.

August 4, 2023 [Omitted],

Your email was addressed directly to me. So I want to clarify some things because I have noticed inaccuracies.

I didn't ask for a LEAP certificate since I had one from my previous counselor, [omitted]. [Omitted] demanded my information, which I provided, but he later realized that I already had LEAP. On my DOR application, I mentioned that I already had LEAP and didn't have Schedule A. I wasn't aware of Schedule A at the time, but I learned later that it's similar to LEAP, except for federal jobs.

I've applied for a few federal jobs and was told I need Schedule A. I remembered seeing it on my DOR application and wanted to discuss it [omitted].

It's important to note that registering with DOR is not a voluntary process, as the referral and intake system makes it a requirement for some employers and local services. This essentially makes DOR a mandatory service.

Unfortunately, DOR has denied me access to employment services at my college and other employment centers. Additionally, my case has been closed a few times by DOR staff due to intake issues before referrals could discussed. The referrals were provided to me at a later time after I filed a complaint against DOR, and I have some unfortunate experiences as I learned more about DOR's services.

DOR counselors should prioritize understanding disability programs and their impact on clients, rather than manipulating them into the program. It's important to listen to clients' needs and concerns to improve DOR services. However, the intake process can be overwhelming for clients, making them feel powerless and unheard. After reviewing the intake form, I have a negative impression of it. I am concerned about how the information is translated, shared, and stored, which could negatively affect my employment and the services I receive. As I believe my opinion, perspectives, and experiences should be considered to receive quality service. Sadly, it appears that DOR has placed a higher priority on biased intake and screening processes, which has resulted in attracting employers and local employment services. This poses a significant threat to the disability community and implies a lack of value for their clients.

In summary, DOR should reexamine its services and refrain from influencing employers. This would promote inclusivity and independence for individuals with disabilities, instead of subjecting them to harassment or mandatory participation in DOR services again.

In accordance with the scheduled open record and reply period, the record was closed on August 3, 2023. While the Appellant continued to submit additional information after the close of the record, the correspondence did not include a request to extend the open record period and did not include any information that would change the outcome of this decision.

## LAW

For purposes of this decision, “Welf. & Inst. Code” is the abbreviation for the Welfare & Institutions Code.

State Hearings

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (W&IC § 19704 (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (9 C.C.R. § 7354(a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (9 C.C.R. § 7354(a)(3).)

“Appellant” means an applicant or client of the Vocational Rehabilitation or Independent Living Services programs who has filed an oral or written request for an administrative review or a written request for a fair hearing.

(Calif. Code Regulations., tit. 9, § 7350 (a)(1).

Appellant has the burden of introducing evidence at the hearing sufficient to demonstrate his/her case by a preponderance of the evidence. (9 C.C.R. § 7356(e).)

A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafood, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

In other words, the Appellant needs to prove it is more likely than not that the Department violated Title 9, California Code of Regulations, or other applicable law by the Department action or inaction that is the subject of the Appellant’s complaint. (See *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

In Paul v. Milk Depots, Inc., 41 Cal.Rptr. 468, 62 Cal.2d 129, 132 (1964), the Supreme Court of California stated, "It is settled that 'the duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending appeal from the judgment of a lower court ... an event occurs which renders it impossible for this court, if it should decide the case ..., to grant any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal."

“Mootness, however it may have come about, simply deprives us of our power to act; there is nothing for us to remedy, even if we were disposed to do so. We are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong." Spencer v. Kemna, 523 U.S. 1, 18 (1998).

Department of Rehabilitation

The Department of Rehabilitation (DOR and/or the Department) is empowered to adopt rules and regulations reasonably necessary to enable it to carry out its duties and powers. DOR regulations are found in Title 9 of the California Code of Regulations (Cal. Code Regs.). The DOR’s power to do so applies to the provision of vocational rehabilitation services. (Welf. & Inst. Code §§ 19006; 19016.) The DOR is responsible for making all decisions affecting eligibility for, and the nature and scope of, vocational rehabilitation services. (Welf. & Inst. Code § 19005.1.)

Eligibility Determinations

An eligibility determination must be made within 60 days of an individual submitting an application by meeting the requirements of 7041(b)(1)-(3) unless:

* Exceptional and unforeseen circumstances beyond the control of the Department preclude making an eligibility determination within 60 days and the Department and the individual agree to a specific extension of time; or
* Information required to make an eligibility determination must be obtained through trial work experience in accordance with Section 7062(h) or extended evaluation in accordance with Section 7062(i) of these regulations and cannot be obtained within 60 days.
* If the applicant does not agree to specific extension of time as specified in (a)(1) of this section, an eligibility determination shall be made based on the information available.

(Cal. Code Regs. tit. 9, §7060 (a) and (b).) Assessment for Determining Eligibility

It is presumed that an applicant who has a physical or mental impairment which results in a substantial impediment to employment can benefit from vocational rehabilitation services unless, there is clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.

(Cal. Code Regs. tit. 9, §§ 7062 & 7179.) Clear and Convincing Evidence

With respect to the determination of eligibility, “Clear and Convincing Evidence” means a high degree of certainty before it can be concluded that, due to the severity of the individual's disability, the individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome in an integrated setting.

Clear and convincing evidence may include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability.

The demonstration of clear and convincing evidence must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings.

(Cal. Code Regs. tit. 9, § 7004.6.)

Closing the Record of Services Without an Eligibility Determination

The Department may not close an applicant's record of services prior to making an eligibility determination unless:

* The applicant declines to participate in, or is unavailable to complete, the assessment for which includes any trial work experience or extended evaluation necessary to determine eligibility; and
* The Department has made at least three attempts over a 30-day period to contact the applicant/representative to encourage the applicant's participation.
* The first attempt shall be made in writing to the last known address of the applicant or his or her representative.

(Cal. Code Regs. tit. 9, § 7179 (a).) Declined to Participate-Defined

An individual is considered to have declined to participate in the assessment to determine eligibility and priority for services when the individual chooses not to participate in vocational rehabilitation services; or when the individual prevents the completion of the assessment by failing to cooperate in such assessment or any part thereof, including repeated failure to keep appointments, maintain contact, or carry out the individual's responsibilities with respect to the assessment, making threats or engaging in violent conduct, or engaging in abusive language or behavior directed at a Department employee, vendor, or other applicant or eligible individual, when such language or behavior continues after notice is given that the language or behavior is inappropriate.

(Cal. Code Regs. tit. 9, § 7179 (b)(1).)

Closing the Record of Services with a Determination of Ineligibility

The Department shall close the record of services when it determines that an applicant is ineligible for vocational rehabilitation services or determines that an eligible individual is no longer eligible for services.

An individual is not eligible for services when any of the following conditions exists:

1. There is clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability.
2. The individual does not have a physical or mental impairment.
3. The individual's impairment does not constitute a substantial impediment to employment.
4. The individual does not require vocational rehabilitation services provided by the Department to prepare for, secure, retain, or regain an employment outcome consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including circumstances in which the individual has obtained an employment outcome without benefit from Department services.

(Cal. Code Regs. tit. 9, § 7179.1(a) and (c).)

Individual Plan of Employment (IPE)

Once a consumer is found to be eligible for DOR services, DOR is required to develop an IPE based on an assessment of the consumer’s needs and abilities. (9 C.C.R. § 7128.)

A consumer’s employment goals and the service funding necessary to achieve the goals are to be specified in the IPE. (W&IC § 19103 (b)(3).)

The IPE shall be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individuals, and, to the maximum extent appropriate, to include placement in integrated settings. (W&IC § 19103(B)(1).)

The IPE shall be jointly developed and agreed upon by both the eligible individual and the DOR. (W&IC § 19103(b)(2).)

DOR’s Responsibilities

The DOR is responsible for providing services necessary to achieve the consumer’s employment goal and maintaining the employment. (9 C.C.R. § 7131.)

Once an individual is eligible for services, the DOR is required to make vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (9 C.C.R. § 7149.)

Services shall be provided only to the extent necessary either to facilitate achievement of the vocational objective or prepare a consumer with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. (9 C.C.R. § 7154(a).)

The DOR is not required to provide maintenance services such as food, shelter, and clothing, unless these services are in excess of the normal expenses of an individual or necessitated by participation in an assessment for eligibility or service or receipt of service under the IPE. (9 C.C.R. § 7019.)

Consumer Responsibilities

1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:
   1. Participate and cooperate in obtaining and providing the information needed by the Department to:
      1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
      2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
      3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
      4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
      5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.
   2. Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process, with assistance from the Rehabilitation Counselor as appropriate, by engaging in the following activities to the extent possible:
      1. Gathering and evaluating information and participating in planning and problem solving and decisions related to the assessment process, selection of the employment outcome and settings in which employment occurs, vocational rehabilitation services, service providers, settings in which services will be provided, and methods for procuring services;
      2. Seeking or identifying needed resources;
      3. Evaluating the consequences of the various options;
      4. Making decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests; and

(F) Taking personal responsibility for implementing the chosen options and achievement of the employment outcome the individual selected.

* 1. Report any changes in circumstances that may affect:
     1. Eligibility for vocational rehabilitation services;
     2. Priority category under an Order of Selection;
     3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
     4. The Department's ability to contact the individual.
  2. Cooperate in the assessment process and in developing and meeting the objectives identified in the IPE including, but not limited to, active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome. Failure to cooperate, make reasonable effort, lack of regular attendance, or failure to maintain regular communication may result in loss of further services and closure of the record of services.
  3. Participate in the cost of services under conditions specified in Chapter 5, Article 1 of these regulations.
  4. Apply for, secure and use comparable services and benefits to the extent to which the individual is eligible for such benefits in accordance with Chapter 5, Article 3 of these regulations. (9 C.C.R. § 7029.9.)

## CONCLUSION

The DOR is a State of California department charged with the administration of vocational rehabilitation services for disabled individuals seeking employment, independence, and equality. To carry out this charge, the DOR accepts applications for vocational rehabilitation services from applicants. In doing so, the DOR is required to obtain applicant-specific information regarding an applicant’s disability and how that disability impedes the applicant’s employment so as to determine the applicant’s eligibility for services and to develop a plan for employment.

Any individual who wishes to receive vocational rehabilitation services from the DOR has the responsibility to participate and cooperate in obtaining and providing the information needed by the DOR so that it may determine the nature and scope of the applicant’s disability and what vocational rehabilitation services are needed to achieve an employment outcome for the applicant.

The DOR’s services are voluntary. No person is required to use the DOR’s services to obtain employment through the State of California or elsewhere. If the applicant does not wish to disclose to DOR information necessary to determine his disability and needs or provide him with employment training, he may at any time choose not to provide that information and discontinue his relationship with the DOR. Likewise, if the applicant refuses to cooperate with the DOR and provide information needed by the DOR to assist the applicant, the DOR may terminate the provision of services.

The DOR program rules state that the DOR may close an applicant's record of services prior to making an eligibility determination when the applicant declines to participate in the assessment necessary to determine eligibility and the DOR has made at least three attempts over a 30-day period to contact the applicant/representative to encourage the applicant's participation.

An applicant is considered to have declined to participate in the assessment to determine eligibility and priority for services when the individual chooses not to participate in vocational rehabilitation services, when the individual prevents the completion of the assessment by failing to cooperate in such assessment or any part thereof, including repeated failure to keep appointments, maintain contact, or carry out the individual's responsibilities with respect to the assessment, the applicant makes threats or engages in violent conduct, or engages in abusive language or behavior directed at a Department employee, vendor, or other applicant or eligible individual, when such language or behavior continues after notice is given that the language or behavior is inappropriate.

Here, the Appellant submitted this appeal based on a DOR employee expressing her concern regarding Appellant’s request for email as the only method of communication for intake and future service because he may have difficulty finding employers who are

able to conduct business solely by email and that the DOR closed his application for services.

Appellant’s arguments during the open record period reflect a fundamental misunderstanding of the DOR’s function. The DOR is not an employment agency to assist State of California employees with promotions and transfers within state employment or elsewhere. The DOR is charged with providing vocational rehabilitation services to individuals with disabilities to assist them with securing employment.

Although Appellant has characterized DOR’s intake process alternatively as mandatory and yet “manipulating him into the program,” DOR is required by law to engage with an applicant to determine eligibility for the program within 60 days. This includes determining whether an applicant has a disability and how that disability impedes the applicant’s employment goals. The Appellant apparently did not wish to disclose information about his disability to the DOR so that it could determine his eligibility for the program and yet has insisted that the DOR is required to provide him access to job opportunities and assist him in securing employment.

Based on the preponderance of the evidence, the DOR properly closed the Appellant’s record of services prior to making an eligibility determination as the Appellant repeatedly declined to cooperate with the DOR and provide information to it required by the governing regulations despite many DOR representative’s best efforts on several occasions and over several months to explain the purpose of the program (which is to assist disabled individuals to become employed) and the need for information regarding the Appellant’s disability.

It is therefore concluded that the DOR properly closed the Appellant’s record of services prior to making an eligibility determination. Additionally, the Appellant’s claim is now moot as the DOR has, during the appeal on this claim, reopened the Appellant’s application and apparently was able to garner enough information from the Appellant to determine him eligible for the program.

The Appellant raised other issues in the course of the open record period primarily arising from complaints about DOR’s intake system, relationships with community partners, and that the DOR is harassing him. The Appellant at various times demanded default judgment that includes compensation for lost wages, payments to his CalPERS account, appointment to a non-probationary IT position within a state department, effective immediately, and an injunctive order to prevent DOR staff from interfering in his employment matters. There is no state hearing jurisdiction for these types of claims and no legal authority here for the requested remedies.

State hearing jurisdiction exists when the DOR has issued a written decision to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. An issue raised at the state hearing that is not within the jurisdiction of the Administrative Law Judge (ALJ) shall be dismissed.

The preponderance of the evidence establishes that the DOR has not taken any form of adverse action against the Appellant regarding its intake system, relationships with community partners, or that the DOR is harassing the Appellant by requesting information to process his application and assist him in becoming employed. In fact, the

preponderance of the evidence establishes that the DOR has worked diligently to answer Appellant’s questions, provide him with the ability to submit necessary information, and has since processed his application to the best of its ability based on the limited information provided. Since the DOR has not taken an adverse action regarding the remainder of the Appellant’s complaints raised during the open record period are dismissed for lack of jurisdiction.

## ORDER

The Appellant’s claim is dismissed.

## NOTICE

Pursuant to California Code of Regulations., tit. 9, section 7358, the Appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if Appellant is dissatisfied with the decision. The Client Assistance Program is available to the Appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance. A copy of this decision shall be filed in the Appellant's record of services. (Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Calif. Code Regs., tit. 9, § 7358, subd. (b).)

# Hearing No. 104841689-751 SUMMARY

The Department of Rehabilitation (the DOR and/or the Department) correctly denied the Appellant’s request for: (1) a psychological evaluation conducted by Dr. [W {first initial only}], Psy.D on April 18, 2022 be deleted form Appellant’s case record; (2) various records of communication with the Appellant by telephone and in writing be amended in Appellant’s case record; (3) and a transfer for DOR services to another DOR branch office. [1902-2]

## FACTS

On September 6, 2022, the Appellant requested a mediation and a hearing with the State Hearings Division (SHD) to dispute denials by the Department of Rehabilitation (the DOR and/or the Department) of Appellant’s various requests.

On December 1, 2022, a mediation hearing was held on this matter, where the Appellant and the DOR representative failed to resolve some and/or all the issues in dispute.

Subsequently, Appellant’s eight requests for postponement of the hearing were granted for, among other reasons, to provide Appellant additional time to prepare and seek assistance in preparing for the hearing.

On August 1, 2023, a hearing was held on this matter. At this hearing, the Appellant appeared by telephone along with Ms. [P {first initial only}], the Appellant’s residential home program director. Appellant elected to act as her own representative at the hearing and Ms. [P {first initial only}] to act as a witness, as necessary. On behalf of the DOR, a DOR hearing representative, DOR Team Manager [K {first initial only}], and DOR Counselor [L {first initial only}] appeared by telephone.

The DOR and Appellant submitted the following documents:

1. A copy of the Appellant’s DOR Request for Mediation and/or Fair Hearing;
2. A 10/25/22 facsimile of various letters, including a 9/26/22 Sacramento County denial of Specialty Mental Health Services, a 10/10/22 denial of a Social Security Administration SSI Disability Benefit Appeal, various Sacramento State Student Health & Counseling Services letters, and Primary Care Video Visit records for 2/4/21 and 3/16/21;
3. A 10/26/22 facsimile of medical records, including Sacramento Native American Health Center Records re 2/22/22 Laboratory Exams;
4. A 11/30/22 letter Sacramento Native American Health Center, Dr. [D {first initial only}];
5. A 9/25/22 Statement of Position (SOP) by the DOR;
6. A April 12, 2021 Vocational Rehabilitation Services Application from the Appellant;
7. Authorization for Vocational Rehabilitation Services issued 6/30/22;
8. Various Email Trails with Attachments from Appellant’s case record; and
9. An August 2017 Psychoeducational Evaluation by Dr. [L {first initial only}], a 1/18/23 DOR Case Note; and a 6/24/22 DOR letter by Dr. [T {first initial only}] to Appellant about a psychological evaluation of the Appellant conducted by Dr. [W

{first initial only}] on April 18, 2022.

In regards to the issues for the hearing, the Appellant and the DOR hearing representative agreed that the issue which remained in dispute included: (1) a psychological evaluation conducted by Dr. [W {first initial only}] on April 18, 2022 to be deleted form Appellant’s case record; (2) various records of communication with the Appellant by telephone and in writing be amended in Appellant’s case record; (3) and Appellant be transferred for DOR services to another DOR branch office.

In a SOP dated September 25, 2022, the DOR stated, in pertinent part, that:

“Appellant applied for Department of Rehabilitation (DOR) services on 04/12/2021 and was determined eligible on 04/28/2021.

An Individualized Plan for Employment (IPE) was developed on 08/20/2021 with a goal of Special Education Teacher. School-related expenses such as tuition and books were authorized.

Due to dissatisfaction with her first counselor, the Appellant sought transfer to a second counselor, [DOR Team Manager [K {first initial only}]] on 09/19/2021 within the same branch (name of branch). Services were authorized to provide reasonable accommodation and educational support including the following: Two Rehabilitation Engineering evaluations; Assistive Technology including an iPad, software, sit to stand desk, ergonomic chair, footrest; Technical support from an Assistive Technology Technician; Over 300 hours of 1:1 Tutoring services; Personal Vocational and Social Adjustment services to develop strategies for time management, organization, planning, professional communication, and reinforce how to use the iPad and it’s features. She was also provided mental health resources to pursue treatment. Despite these supports, the Appellant continued to struggle with coursework, computers, online learning, planning and organizing**. Prior psycho-educational testing performed independently of DOR in 2017, diagnosed the following:**

## Severe Attention Deficit Hyperactivity Disorder (ADHD), a mild reading disorder and anxiety disorder.

**A new psychological evaluation was authorized to determine whether there were any new/additional diagnoses that may be impacting the Appellant’s functioning and if other treatment for her ADHD or for another disorder, would be recommended. The evaluation was scheduled on 2/25/2022. The Appellant missed the appointment, and it was rescheduled to 4/18/2022.**

**The psychological testing conducted by Dr. [W {first initial only}], Psy.D concluded that the Appellant’s struggles are related to a psychiatric disability. She recommended treatment for stabilization of mental health symptoms before participating in a program of study**. All attempts to engage the Appellant in a meeting to review this new information were unsuccessful. Dates offered were 05/11 and 05/23; 06/14 and 06/22; 07/6 and 07/20/2022 to discuss the testing results. The Appellant stated that Dr. [W {first initial only}] did not accommodate her when participating in psychological testing. The tests are diagnostic and designed to identify limitations so reasonable accommodations may be identified.

In a follow up call to Dr. [W {first initial only}] on 5/5/2022 to relay the Appellant’s concern about testing being too short, the psychologist reported that the Appellant was unable to provide clear answers. For that reason, the psychologist was unable to perform some of the tests. She reported that the Appellant’s responses to questions were unclear and tangential. These behaviors have also been noted by DOR staff throughout the course of her services. Dr. [W {first initial only}] also reported that the Appellant displayed poor boundaries and inappropriate behavior in the waiting area, such as singing loudly in front of others**. Dr. [W {first initial only}] is a licensed psychologist and her report will not be deleted from the record of service. However, the Appellant may file a request to amend the report directly with Dr. [W {first initial only}] per California Code of Regulations, CCR section § 7141.5(c).**

## Repeat psychological testing may be considered in the future with the approval of the DOR Consulting Psychologist after mental health symptom stabilization has been achieved.

Case transfer**:** The Appellant spoke with the team manager on 7/22/2022 by telephone and requested a case transfer to another branch so she wouldn’t be “a bother” to the [name omitted] counseling team. She disclosed a recent involuntary hospital admission for mental health crisis. She additionally requested a copy of Dr. [W {first initial only}]’s psychological evaluation report**. The team manager responded in writing on 07/24/2022 reassuring her she was not bothering the team, denied the transfer request and reiterated the need to meet to discuss the psychological evaluation report findings. It was determined that Dr. [W {first initial only}]’s report may be perceived as potentially harmful to the Appellant and a discussion and summary of the findings would be provided instead per California Code of Regulations, CCR, section 7141(c)(2) Her case was placed in Service Interrupted status until further notice so she may seek treatment for her mental health disability.**

The Appellant has been provided many supportive and counseling services. A recurring meeting was scheduled to proactively address her

concerns and develop a weekly action plan. Written summaries were provided following each meeting so she may refer to the discussion after the fact to ensure she did not misinterpret information. DOR’s Psychological Consultant recommended psychiatric treatment to improve clarity of thinking, ability to communicate with others, as well as to effectively focus on her schoolwork. **The Appellant’s case is currently on hold in Service Interrupted status therefore, the case transfer cannot be considered until it is established that the Appellant is managing her psychiatric symptoms and can re-engage in services.**

Amending the record of Service: Weekly meetings initiated on 11/08/2021 and recurred every Friday. Agenda items were sent in advance of the meeting and an email issued summarizing the discussion and next steps following each meeting.

The Appellant sent an email on 04/5/2022 stating information emailed by her counselor summarizing a meeting that occurred on 3/25/2022 was inaccurate. The counselor noted that she raised her voice and interrupted the counselor repeatedly. Her behavior during the 03/25/2022 meeting was discussed in a second meeting held on 04/01/2022. **She disagreed that she was yelling or interrupting.**

On 04/07/2022 the Appellant sent an email stating she was cancelling the weekly meeting scheduled the next day, as none of her advocates were available.

04/8/2022 she sent an email inserting the word “miscommunication “under each paragraph of the meeting summary issued by Ms.[sic].

On 04/12/2022, the Appellant refused to participate in any future meetings unless an advocate was present. The counselor invited the Appellant’s two advocates to subsequent meetings.

On 4/19/2022, the Appellant again stated there was inaccuracy in the summary email sent following a weekly meeting on 04/15/2022. **To avoid misinterpreting information, the Team Manager replied to the Appellant’s voice mail messages by forwarding the transcription as part of her response. This was an attempt ensure clarity of communication. Although there may be some inaccuracies in these transcribed voicemails secondary to the quality of the call, the audio message is available to the recipient.**

On 04/27/2022, the Appellant stated there would be “no more meetings until the miscommunication cycle is able to be resolved.” On 04/28/2022, she emailed again referring to miscommunication and confusion in DOR’s email to her. **Her counselor reminded her that the Team Manager and**

## District Administrator had offered several dates to meet to discuss these concerns, but she was not making herself available to meet.

06/22/2022, the Team manager sent a letter acknowledging that the **Appellant declined a meeting with her and the District Administrator that day to discuss her concerns about miscommunication, and psychological testing results**. Additional dates were offered to meet on 07/06 and 07/20/2022.

07/12/2022, the Team manager sent another letter summarizing the multiple dates and times DOR made themselves available to hear her concerns with no response.

The Appellant disagreed with a statements in the record about her behavior. However, she has been unwilling to meet and discuss her concerns despite multiple attempts to engage her. DOR has an obligation to provide feedback about inappropriate behavior so consumers implement change prior to moving into the workforce where such behavior may not be tolerated by an employer. Therefore, the record will not be changed, however, **the Appellant may submit a letter noting her objections to specific documentation in her case file per California Code of Regulations, CCR Section § 7141.5(b).**

The Appellant filed for an administrative review on August 30, 2022, but was not available to meet until 09/14/2022. Multiple dates were offered and finally, the Administrative Review occurred on 09/19/2022. The decision was issued on 09/25/2022. The Appellant requested and was scheduled for both Mediation and Fair Hearing prior to the Administrative Review occurring.

Conclusion:

The Appellant has received much attention from the DOR counseling team, CSUS counselors, the DOR Team Manager, two District Administrators, multiple advocates, support service providers such as tutors, the Hi-Tech center staff at CSUS, a program director, Assistive Technology technicians and engineers. However, her concerns remain unresolved, and she attributes blame for her struggles to her DOR counseling team at the Capitol Mall Branch office. **A psychological evaluation conducted on 04/18/2022 found that the Appellant has an affective disorder and in the absence of psychiatric treatment, she will not be able to participate in a program of study. She will continue to struggle with her studies, with clarity of thought and communication with others.** DOR has provided her resources for mental health services and her case is currently in Service Interrupted status. In the absence of symptom management, it is unlikely a change of office will result in a different outcome. The request for a second psychological

evaluation was denied but may be considered in the future. The evaluation will not be deleted from the record. The Appellant considers the record of services to be inaccurate and requested inaccurate information be deleted, however, the record appears to accurately summarize the Appellant’s behavior during meetings. In addition to the DOR counselor’s statements about her inappropriate behavior, other partners have noted behavioral concerns. The Appellant may submit a letter noting her objection to specific communication be placed in the record.

(Bold emphasis added.)

In a 6/24/22 DOR letter to Appellant about a psychological evaluation of the Appellant conducted by Dr. [W {first initial only}] on April 18, 2022, Dr. [T {first initial only}], Ph.D. stated, in pertinent part, that:

“A report from [Dr. W {first initial only}], dated April 18, 2022, evaluated the cognitive and emotional functioning of [Appellant]. This report was consistent with the complaint mentioned by those who work with [Appellant]. She had a Full-Scale IQ which was at the lower limit of the Low Average range. The index and subtest scores were well matched on the WAIS IV, except for slow speed of processing. She scored in the Impaired range in auditory and delayed memory on the Wechsler Memory Scale IV. Her reading and spelling abilities were all in the Average range and her math computation ability in the Low Average range. She scored in the Severe range of anxiety on the Beck Anxiety Inventory. **What is most significant in this evaluation, and most relevant to the types of difficulty that [Appellant] has been having, is not to be found in the test results, but in the presentation of [Appellant]. While her speech was intelligible ‘it was difficult for her to provide her personal history in a linear manner.’ Her speech was described as tangential, which means that she often veered off topic, was not aware that she did so, and would not go back on the topic without redirection. She was noted to have labile affect ‘she was easily upset, off task and felt victimized by others in her life.’** Dr. [W {first initial only}] diagnosed her with an unspecified mood disorder and a provisional diagnosis of auditory learning disorder with auditory processing deficits. It should be noted that the latter is provisional because these learning disorders cannot be determined in the presence of such a mental disorder that causes problems with thought process and attention. **This report reveals the source of her difficulties and of the problems that others have had in dealing with [Appellant]. She has a mental disorder that causes deficits in attending, communicating with others and thinking clearly. The symptoms are not due to Attention Deficit Disorder, as she had previously been diagnosed, but due to an affective disorder.** It is notable that many individuals with bipolar types of affective disorders are identified with Attention Deficit Disorder in childhood.

## It is notable that her Low Average cognitive abilities, auditory processing problems and memory problems may be the result of her mental problems rather than deficits in themselves. Thus, they should be reassessed after she receives treatment.

It is important that [Appellant] get treatment for her mental illness. She should have an evaluation with a psychiatrist, as medication for her disorder may well greatly increase the clarity of her thinking and ability to communicate with others, as well as to effectively focus on her schoolwork. It would also be helpful for her to have weekly supportive individual psychotherapy.

**She is not presently capable of completing coursework to meet her goal as a special education teacher, as has been well demonstrated by her recent difficulties in school. She is also not currently capable of working as a special education teacher because of her difficulties with attention, communication, and the disturbed form of her thinking. It is possible that medication could address these problems to the extent that she would be able to complete her course of study and work in this profession, but this can only be demonstrated if she takes such medication and has an optimal response.** Any cognitive issues she may have been masked by her mental health problems and may be more clearly manifested when she gets this treatment. These will need to be addressed if they present themselves but cannot be discerned at present.

## Communicating with her, her employment goal and support in moving forward all depend on her getting treatment for her mental disorder.

Functional Limitations include difficulty in communication, especially hearing and focusing on what others say. Problems with attention and concentration. Deficits in the form of her thinking as is manifested by her tangential speech. Deficits in impulse control and emotional regulation. The latter are likely to add to her issues with communication and in cooperating with others.

## To summarize: in order for her to be able to be a special education teacher she will need to get treatment and respond well and to address her cognitive issues as well, if they are in fact separate from her mental disorder.

[T {first initial only}] Ph. D. June 24, 2022”

(Bold emphasis added.)

In a November 30, 2022 letter addressed to whom it may concern, psychiatrist Dr. [D

{first initial only}], MD, stated, in pertinent part, that:

“[Appellant] has been my patient since 5/9/22. She has ADHD and a learning disability. She has a possible mood cycling disorder. She is on medication. To the best of my knowledge, she is able to attend college.” Sincerely, Provider [D {first initial only}], MD”

At the hearing, the Department hearing representative and witnesses generally testified in support of the above summary of the pertinent portions of the SOP.

At the hearing, the Appellant testified, in pertinent part, that: (1) she experienced chronic issues with receiving assistance from the DOR representatives due to a lack of communication; (2) that DOR provided the Appellant’s with defective equipment and ineffective technical support, including IT support for problems experienced by Appellant’s Apple products; (3) DOR representatives failed to provide necessary services to Appellant in a timely manner due to their lack of communication and support;

(4) the DOR representatives erroneously relied on false alleged failures by Appellant to correctly use technology equipment as a justification for requiring Appellant’s April 18, 2022 psychological evaluation; and (5) the DOR failed to include Appellant in meetings with those who allegedly reported concerns to the DOR representatives to justify a requirement for Appellant to have the April 18, 2022 psychological evaluation.

In regards to Appellant’s request that a psychological evaluation conducted by Dr. [W

{first initial only}], Psy.D on April 18, 2022 be deleted form Appellant’s case record, she testified, in pertinent part, that: (1) when administering the April 18, 2022 psychological evaluation, Dr. [W {first initial only}] acted with apparent bias against Appellant; (2) for example, although Dr. [W {first initial only}] acknowledged having not received records from Appellant’s DOR counselor {L {first initial only}] which were necessary to permit an accurate evaluation of Appellant, Dr. [W {first initial only}] administered the psychological evaluation without them; (3) during the evaluation, Dr. [W {first initial only}] failed to account for Appellant’s processing delay challenges and reading disability; (4) Dr. [W {first initial only}] decided to shorten the test for an unknown reason; (5) when asked to slow down when speaking, Dr. [W {first initial only}] responded by asking Appellant whether she thought that her instructors at university slowed down; (6) after Appellant’s April 18, 2022 psychological evaluation, another psychiatrist, namely Dr. [D {first initial only}], MD, has opined that Appellant is able to attend college with possible necessary accommodations for her disabilities; and (7) for these reasons, Appellant’s psychological evaluation by Dr. [W {first initial only}] should be stricken from Appellant’s case record.

In regards to Appellant’s request that various records of communication with the Appellant by telephone and in writing be amended in Appellant’s case record, the Appellant testified, in pertinent part, that: (1) because DOR Team Manager [K {first initial only}] did not compassionately listen to Appellant when Appellant reported her mental health hospitalization, Appellant’s records regarding the same is inaccurate; (2)

the incident was “about violence and human trafficking, of which Appellant was a victim; and (3) Appellant was presently living at a residential home for related reasons.

In regards to Appellant’s request that and Appellant be transferred for DOR services to another DOR branch office, the Appellant testified, in pertinent part, that: (1) because Appellant’s April 18, 2022 psychological evaluation should be stricken from Appellant’s case record, Appellant’s request for a transfer to a different DOR branch should be granted; (2) the history of the DOR representatives’ failures and erroneous requirement that Appellant submitted to a psychological evaluation that was erroneously administered to Appellant demonstrated that the representatives at the current DOR Branch disregarded Appellant’s “voice,” and failed to keep their promises to timely provide Appellant with necessary support services; (3) representatives at the current DOR Branch also erroneously reported that Appellant received 300 hours of tutoring services by relying upon falsified reported hours by Appellant’s tutors; and (4) the culmination of the poor service by representatives at the current DOR Branch caused Appellant undue stress.

## LAW

**Department of Rehabilitation**

The Department of Rehabilitation (DOR and/or the Department) is empowered to adopt rules and regulations reasonably necessary to enable it to carry out its duties and powers. DOR regulations are found in Title 9 California Code of Regulations (CCR).

The DOR’s power to do so applies to the provision of vocational rehabilitation services. (Welf. & Inst. Code, §§ 19006; 19016.) The DOR is responsible for making all decisions affecting eligibility for, and the nature and scope of, vocational rehabilitation services. (Welf. & Inst. Code, § 19005.1.)

**Right to State Hearing**

Any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for or receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal fair hearing.

Any applicant or client of the Vocational Rehabilitation program may also request mediation by a qualified impartial mediator to resolve disputes involving any action or inaction of the Department that affects the provision of vocational rehabilitation services.

(Cal. Code Regulations., tit. 9, § 7351, subd. (a)(c))

**Confidentiality of Mediation Discussions**

Discussions that occur during the mediation process are confidential and may not be disclosed to anyone outside the mediation process or used as evidence in any

subsequent due process hearings or civil proceedings. The mediator may require the parties to the mediation process to sign a confidentiality pledge prior to the commencement of the process. The parties have a right to submit evidence and information to support their positions at the mediation. Evidence that is otherwise available outside of mediation is not inadmissible in a subsequent proceeding or protected from disclosure solely by reason of its introduction or use in mediation.

(Cal. Code Regs. Tit. 9, § 7353.6 (d).)

**Burden of Proof**

The Appellant has the burden of introducing evidence at the hearing sufficient to prove their case by a preponderance of the evidence. A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567; Cal. Code Regs., tit. 9, § 7536, subd. (e).)

In other words, the Appellant needs to prove it is more likely than not that the Department violated Title 9, California Code of Regulations, or other applicable law by the Department action or inaction that is the subject of the Appellant’s complaint. (See *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

**Assessment for Determining Eligibility**

It is presumed that an applicant who has a physical or mental impairment which results in a substantial impediment to employment can benefit from vocational rehabilitation services unless, there is clear and convincing evidence that the individual cannot benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual's disability. (Cal. Code Regs. Tit. 9, §§ 7062 & 7179)

**Individualized Plan for Employment (IPE)**

The Individualized Plan for Employment (IPE) must be developed within 90 days from the date of the eligibility determination.

1. If exceptional and unforeseen circumstances beyond the control of the Department arise, and the individual and the Department agree to a specific extension of time for IPE development, a rationale and date for the extension, signed by the individual and the Senior Vocational Rehabilitation Counselor (SVRC) must be entered into the record of services for that individual.
2. Only one extension may be agreed to by the SVRC and, in such case, the IPE must be developed by the agreed upon date, unless an additional extension is approved by the appropriate District Administrator.

(Cal. Code Regs. Tit. 9, § 7128)

The purpose of an IPE is to provide a written plan of action and a statement of understanding regarding the rights and responsibilities of both the client and the Department. An IPE is developed jointly by the client and the rehabilitation counselor. An IPE may include educational training to achieve a client’s vocational goals. (Cal.

Code Regs., tit. 9, §§ 7128, 7130, 7131.)

The IPE must be: 1) in writing; 2) developed and implemented in a manner that allows the disabled person to exercise informed choice in creating an employment outcome, determining the specific services needed to achieve the outcome, selecting the entity or entities who will provide services, and choosing the methods by which services will be obtained; and 3) agreed to and signed by the person to receive services, or his representative, and his rehabilitation counselor at the Department. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(1)-(3).)

Prior to approving the IPE, the rehabilitation counselor with the Department must confirm that the identified employment goal, the services to be provided, the provider of services, and the manner in which services will be provided are “appropriate and necessary” in light of the person’s circumstances, and are consistent with applicable laws. (Cal. Code Regs., tit. 9, § 7130, subd. (a)(3)(B)(1).)

An IPE must include the following components: 1) the employment outcome agreed upon by the parties; 2) the vocational rehabilitation services to be provided; 3) the timeline for achieving the identified employment outcome and starting the necessary services; 4) the entity or entities who will provide the services and the manner in which services will be obtained; 5) the criteria used to evaluate progress toward achieving the identified outcome; and 6) the respective duties of the person receiving services, the Department, and anyone responsible for obtaining comparable services and benefits. (Cal. Code Regs., tit. 9, § 7131, subd. (a).)

A person who is eligible for vocational rehabilitation services is entitled to be an active participant in determining the specific services he will receive, how he will receive them, and from whom he will receive them. (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(1).) Such a person has the right to receive services “without undue delay.” (Cal. Code Regs., tit. 9, § 7029.7, subd. (b)(6).)

A person who is eligible for vocational rehabilitation services also has certain responsibilities, such as providing the Department information necessary to determining what services are necessary and appropriate. (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(1).) Such person is required to “be an active and full partner in the vocational rehabilitation process.” (Cal. Code Regs., tit. 9, § 7029.9, subd. (b)(2).) Such person must “report any changes in circumstances that may affect” his eligibility or priority for services, the services provided, or the Department’s ability to contact him. (Cal. Code Regs., tit. 9, § 7029.9, subdivision. (b)(3).) Such person is required to cooperate in developing and meeting objectives identified in his IPE, which includes “active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome.” (Cal. Code Regs., tit. 9, §

7029.9, subd. (b)(4).) The failure to do so may result in the loss of services and closure of his case. (Ibid.)

**Amendments to the IPE**

An IPE may be amended by the parties “if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services.” (Cal. Code Regs., tit. 9, § 7130, subd. (a)(6).)

Additionally, the IPE must be reviewed “at least annually” by the person receiving services and his rehabilitation counselor with the Department or another qualified vocational rehabilitation counselor not employed by the Department. (Cal. Code Regs., tit. 9, § 7133, subd. (a).) An annual review must include the following:

* A summary of the services provided by the Department and the results or outcome of the provision of these services.
* An evaluation of progress made by the eligible individual toward achievement of the employment outcome identified in the IPE.
* A summary of any changes in the eligible individual’s circumstances that may affect the individual’s participation in vocational rehabilitation services or progress toward achievement of the employment outcome identified in the IPE.
* Statements that the eligible individual or, as appropriate, the individual’s representative was informed about options for preparing the annual review specified in (a) of this section and was given the opportunity to participate in the annual review.

(Cal. Code Regs., tit. 9, § 7133, subd. (c).)

**Vocational Rehabilitation Services**

Vocational rehabilitation services the Department is required to provide a person eligible for services include: “Vocational and other training services, including personal and vocational adjustment training, books, tools, and other training materials ” (Cal.

Code Regs., tit. 9, § 7149, subd. (f).)

Training services may be provided only if necessary, to “facilitate achievement of the vocational objective.” (Cal. Code Regs., tit. 9, § 7154, subd. (a)(1).)

Clients receiving college level training shall use the least expensive educational institutions in the following order of preference:

* For the first two years, a community college or other equivalent resource.
* For the first two years, a state college or university if the overall cost to the Department will be equal to or less than a community college.
* After the first two years, a state college or university. (Cal. Code Regs. Tit. 9, § 7156)

When college-level training is provided, a private college may be used only if:

* The private school is essential to the success of the Individualized Plan for Employment (IPE); or
* The overall cost to the Department will be equal to or less than the costs of a public school; or
* The client agrees to pay all additional costs for training in a private school when the Department has determined that a public institution is sufficient to meet the needs of the client.

(Cal. Code Regs., tit. 9, § 7156, subd. (d).)

**Case Record**

“Case Record” means any information about an applicant or client that is maintained or otherwise possessed by the Department, including but not limited to information regarding medical history, diagnostic studies, employment history, financial status, and education. Information on computer tape, computer cards, microfilm, or any other memory system, which is strictly derivative in nature and is otherwise maintained in the case record is not included. Both active and closed records or files are included.

Information gathered during the course of an investigation conducted by or on behalf of the Department, and separately maintained or supervised by the Legal Office of the Department, when such information is compiled in reasonable anticipation of a civil or criminal action or an administrative adjudication, is not included. (Cal. Code Regs., tit. 9, § 7140(d)(2).)

**Disclosure to the Applicant or Client.**

Except as limited by (c), all information in the case record shall, upon request and proper identification, be disclosed to the applicant or client.

1. The Counselor shall translate or arrange for translation of documents in the case record when requested, in a language that is understood by the client. It is not required that the case record be translated into other languages.
2. In cases where the applicant or client requests access to the case record and where the Department has reason to believe that the disclosure of some portion of the case record may be harmful to the applicant or client, the Department shall notify the applicant or client in writing that direct disclosure is not authorized by law. The notification shall include the way in which the Department will release the information using the following options.
   1. Disclose, and if requested or needed, interpret the information directly to the authorized representative, guardian or conservator of the applicant or client.
   2. Disclose and interpret the information to the applicant or client through the District Medical Consultant, the District Psychologist, a panel physician, or panel psychiatrist.
   3. Upon written authorization, disclose such information to a physician, psychiatrist, or licensed or certified psychologist or other representative designated by the applicant or client.
3. Information in the case record shall upon request be disclosed to a duly appointed guardian or conservator of the applicant or client provided that it can be proved, with reasonable certainty, that such person is the duly appointed guardian or
4. A request by an applicant or client to examine his/her case record shall be processed as expeditiously as possible and shall not take longer than 30 days for an active case record or 60 days for a closed case record.
5. Examination of the case record shall be permitted only in a departmental office. During the examination, the Counselor or other designated employee shall be present while the case is being reviewed. Case records may not be removed from a departmental office except by an employee of the Department for official business.
6. The Department shall provide copies of any document or item of information which the applicant or client is entitled to obtain at a charge not to exceed 10 cents per page. If fewer than ten pages are requested, no charge shall be made. The Department may waive the charge at its discretion.
7. The Counselor shall record in the case record the pertinent details of each disclosure including the date disclosed.

(Cal. Code Regs., tit. 9, § 7141.)

**Amending the Case Record**

1. When a Counselor determines that information that he/she originated for the case record is inaccurate or incomplete, the Counselor shall correct that portion of the case record. Copies of the corrected information shall be provided to all individuals who obtained incorrect information.
2. An applicant or client may submit a written request to add, delete, or amend information contained in the case record. The Department, within 30 days of the receipt of such request, shall make a decision whether to amend the record.
3. If the client requests a change to information that was originated by a source outside the Department, the client shall be informed that departmental staff cannot change information in the case record not originated by departmental staff and that the request should be made to the source of the information.
4. If the record is to be amended, the Department shall:
   1. Amend any portion of the record which is not accurate, relevant, timely, or complete.
   2. Destroy the original material.
   3. Provide the individual with a copy of the amended material.
5. If the record is not to be amended, the Department shall inform the applicant or client in writing of the decision not to amend the record, the reason for such decision, and the procedures for requesting an administrative review and fair hearing of such decision.
6. If the applicant or client disagrees with the decision of the Department not to amend the case record, the individual may appeal that decision through the administrative review and fair hearing process.
   1. If, after administrative review, the decision of the Department not to amend the case record is upheld, the applicant or client may submit a written statement of reasonable length setting forth the reasons for the individual's disagreement with the disputed information. This statement shall be placed in the case record. The Department shall clearly identify any portion of the record which is disputed and make available a copy of such individual's statement and a copy of a concise statement of the reasons for the decision not to amend to any person or agency to whom the disputed portion of the record is disclosed.
   2. If, after administrative review, the applicant or client remains dissatisfied with the decision of the Department, the applicant or client may request a fair hearing as provided in Section 7354 of these regulations. The applicant or client may also contact the Office of Information Practices for assistance in solving problems relating to information in the case record.
7. All details of a request to amend a case record including pertinent dates shall be recorded in the case record.

(Cal. Code Regs., tit. 9, § 7141.5.)

## CONCLUSION

As discussed above, while any applicant or client of the Vocational Rehabilitation or Independent Living Services programs who is dissatisfied with any action or inaction of the Department relating to the application for receipt of services, shall have an opportunity for a prompt administrative review by the supervisory staff of the Department and/or a formal hearing, such an Appellant has the burden of introducing evidence sufficient at hearing to demonstrate Appellant’s case by a preponderance of the evidence. (See Cal. Code Regs., tit. 9, §§ 7531, subd. (a) & 7536, subd. (e).)

In cases where the applicant or client requests access to the case record and where the Department has reason to believe that the disclosure of some portion of the case record may be harmful to the applicant or client, the Department shall notify the applicant or client in writing that direct disclosure is not authorized by law. The notification shall include the way in which the Department will release the information using the following options. (1) Disclose, and if requested or needed, interpret the information directly to the authorized representative, guardian or conservator of the applicant or client. (2) Disclose and interpret the information to the applicant or client through the District Medical Consultant, the District Psychologist, a panel physician, or panel psychiatrist.

1. Upon written authorization, disclose such information to a physician, psychiatrist, or licensed or certified psychologist or other representative designated by the applicant or client. (See Cal. Code Regs., tit. 9, § 7141.)

An applicant or client may submit a written request to add, delete, or amend information contained in the case record. If the client requests a change to information that was originated by a source outside the Department, the client shall be informed that departmental staff cannot change information in the case record not originated by

departmental staff and that the request should be made to the source of the information. (See Cal. Code Regs., tit. 9, § 7141.5.)

**Deletion of Appellant’s April 18, 2022 Psychological Evaluation by Dr. [W {first initial only}], Psy.D**

In this case, the Appellant failed to demonstrate by a preponderance of the evidence that the DOR did not correctly deny the Appellant's request to delete a psychological evaluation conducted by Dr. [W {first initial only}], Psy.D on April 18, 2022 form Appellant’s case record. The weight of the evidence supports the reasonable inference that; (1) the DOR correctly determined that the disclosure of some portion of this report would be harmful to Appellant; (2) the DOR notified the Appellant of this determination in writing; and (3) subsequently, DOR Psychologist [T {first initial only}] Ph. D disclosed and interpreted the evaluation information to the Appellant pursuant to section 7141.

Moreover, because Appellant’s request to delete the April 18, 2022 psychological evaluation conducted by Dr. [W {first initial only}] is a request to change to information that was originated by a source outside the Department, and as such the DOR is not permitted to change this information in Appellant’s case record pursuant to 7141.5.

Accordingly, the DOR’s denial of Appellant’s request that the psychological evaluation of the Appellant conducted by Dr. [W {first initial only}], Psy.D on April 18, 2022 be deleted form Appellant’s case record is sustained.

**Amendments to Various Records of Communication with the Appellant**

The Appellant failed to demonstrate by a preponderance of the evidence that the DOR did not correctly deny the Appellant's request for amendments to various records of communication with the Appellant by telephone and in writing in Appellant’s case record. The Appellant testified, in pertinent part, that: (1) because DOR Team Manager [K {first initial only}] did not compassionately listen to Appellant when Appellant reported her mental health hospitalization, Appellant’s records regarding the same is inaccurate;

(2) the incident was “about violence and human trafficking, of which Appellant was a victim; and (3) Appellant was presently living at a residential home for related reasons. Despite the sympathetic nature of this testimony, Appellant failed to identify and/or specify in any detail what specific communication about the above subject matter, or any other, made to the Appellant was to be changed. Absent such detailed specification, Appellant’s contentions are not subject to evaluation.

Accordingly, the DOR’s denial of Appellant’s request for amendments to various records of communication with the Appellant by telephone and in writing in Appellant’s case record is sustained.

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**Transfer to Another DOR Branch Office**

In this case, the Appellant also failed to demonstrate by a preponderance of the evidence that the DOR did not correctly deny the Appellant's request to be transferred for DOR services to another DOR branch office.

The Appellant testified, in pertinent part, that: (1) because Appellant’s April 18, 2022 psychological evaluation should be stricken from Appellant’s case record, Appellant’s request for a transfer to a different DOR branch should be granted; (2) the history of the DOR representatives’ failures and erroneous requirement that Appellant submitted to a psychological evaluation that was erroneously administered to Appellant demonstrated that the representatives at the current DOR Branch disregarded Appellant’s “voice,” and failed to keep their promises to timely provide Appellant with necessary support services; (3) representatives at the current DOR Branch also erroneously reported that Appellant received 300 hours of tutoring services by relying upon falsified reported hours by Appellant’s tutors; and (4) the culmination of the poor service by representatives at the current DOR Branch caused Appellant undue stress.

However, the weight of the evidence in the record does not corroborate Appellant’s above assertions as they are lacking in substantial corroboration. The only such discernible corroboration is a November 30, 2022 letter, psychiatrist Dr. [D {first initial only}], MD, which stated, in pertinent part, that:

“[Appellant] has been my patient since 5/9/22. She has ADHD and a learning disability. She has a possible mood cycling disorder. She is on medication. To the best of my knowledge, she is able to attend college.” Sincerely, Provider [D {first initial only}], MD”

However, the weight of this evidence is marginal and unpersuasive support of a contention that Appellant’s April 18, 2022 evaluation was either unnecessary, or that Appellant is fit to return to the DOR program absent the mental health therapy suggested by the psychological evaluation of the Appellant conducted by Dr. [W {first initial only}], Psy.D on April 18, 2022. This is so because the above letter by psychiatrist Dr. [D {first initial only}], MD lacks any reference to testing or evaluation of the Appellant or otherwise provide necessary specificity and context to give meaning to Dr. D’s conclusory qualified opinion that to the best of Dr. D’s opinion the Appellant is able to attend college.

Appellant’s other allegations specified in her testimony are similarly unsupported by the preponderance of the evidence --- and do not demonstrate that a transfer of her case to another DOR Branch office is warranted.

In contrast, the DOR records documented by various DOR representatives in the case record support a corroborated reasonable inference that DOR representatives have not failed to provide Appellant with necessary support, services, and communication.

Accordingly, the DOR’s denial of Appellant’s request to be transferred for DOR services to another DOR branch office is sustained.

## ORDER

The appeal is denied.

## NOTICE

Pursuant to California Code of Regulations., tit. 9, section 7358, the Appellant has the right to a review by the Superior Court within six (6) months after receipt of the Decision, as specified in Section 19709 of the Welfare and Institutions Code if Appellant is dissatisfied with the decision. The Client Assistance Program is available to the Appellant to assist with the review pursuant to subsection (b)(1), if that program determines the case to have merit, and instructions on how to request the program's assistance. A copy of this decision shall be filed in the Appellant's record of

services. (Welf. & Inst. Code, § 19709; Code Civ. Proc., § 1094.5; Cal. Code Regs., tit. 9, § 7358, subd. (b).)

# Hearing No. 104904452-768 SUMMARY

The following claims against the Department of Rehabilitation (DOR) are dismissed as moot because these issues are no longer in dispute: (1) the rolling backpack/bag replacement was authorized; (2) IPAD stand was authorized and received; (3) Appellant was reimbursed for the hotel expenses for the Mobility Evaluation Program (MEP) from March 13, 2023 through March 14, 2023; and Appellant was reimbursed for

transportation services from February 2022 through December 31, 2022.

The claim for the DOR to provide funding for transportation services beginning January 2023, is denied as the Appellant did not meet her burden of proof that DOR is required to provide such services.

It should be noted that DOR and the Appellant produced email communications between its employee and the Appellant, which show that the Appellant signed the new IPE and the Appellant’s request for lighter laptop and vehicle inspection for the hand control technology/modification is being processed.

[1626-2] [1960-2]

## FACTS

On May 17, 2023, the Appellant requested a hearing to dispute denials by DOR of Appellant’s request for funding for transportation and services. A state hearing was held on June 26, 2023. Appellant participated in the hearing by telephone. DOR submitted a written statement and had a representative participate in the hearing. In pertinent part, DOR representative stated the following in the statement of position:

The Appellant is requesting a hearing based on concerns listed on the DR 107, regarding transportation receipts being questioned, paid hotel for the assessment, file was edited, and expenses are not being paid, computer, IPAD stand, and a replacement bag. DOR’s case notes provide the following course of events:

On February 9, 2022, DOR was informed that the Appellant accepted a new job with EAH as a Property Manager, allowing transportation with LYFT.

On February 24, 2022, the Service Coordinator informed the Appellant about providing transportation during the 90 days of employment and was advised that after the last 30 days of employment DOR will no longer be able to assist with LYFT. Appellant also came to DOR for hand control assistance for her car and is in the process of obtaining a letter from [facility] confirming her leg weakness due to her Lupus condition. Appellant was told that once she obtains this letter hand controls will be looked into. Appellant has been explained that getting hand control is a long process.

On March 14, 2022, the Team Manager spoke with the Appellant regarding transportation funds. It was agreed that DOR would temporarily provide transportation funds via LYFT or Uber. DOR will start the process of obtaining assistive technology in order for consumer to be able to utilize her vehicle.

On March 16, 2022, the rolling backpack/bag was authorized for purchase.

On March 17, 2022, Appellant received an email from the Team Manager about transportation funds that were authorized for the months of April and May 2022, requiring the transportation receipts, and that transportation service is not provided long term when employed.

On March 21, 2022, Appellant received an email from the Team Manager informing the Appellant that DOR does not provide long-term funding for transportation and may need to inquire from the employer about travel accommodations. DOR will need to set up a mobility evaluation with a vendor in Southern California. DOR will support travel and lodging there for the mobility evaluation to work towards the technology in order for the Appellant to drive.

On April 06, 2022, Appellant received an email from the Service Coordinator reminding Appellant to provide receipts for using LYFT.

On April 18, 2022, DOR received the Job Development/Retention report from the vendor (Dreamcatchers) noting that the Appellant will meet the 90 days of employment on May 16, 2022.

On May 16, 2022, Appellant received an email from the Service Coordinator reminding the Appellant to submit the receipts for transportation.

On June 02, 2022, Appellant requested a replacement for the rolling backpack.

On June 15, 2022, Appellant had a phone meeting with the Counselor and was reminded about providing transportation receipts. It was noted that the Appellant admitted not having the receipts since some rides were provided by her friends and family. The rolling backpack was also discussed, and the Appellant was informed that the old backpack needed to be returned in order to replace it via warranty.

On November 16, 2022, LYFT receipt was still not received. Appellant stated that they are still working on it. Appellant was hired in September 2022, at FPI Management as a full-time Regional Portfolio Manager.

On December 13, 2022, Appellant received an email from DOR verifying the spreadsheet that the Appellant claims as the receipts for LYFT.

On February 21, 2023, lodging to Embassy Suites, per diem, and mileage were authorized for the upcoming trip to the Mobility Evaluation Program (MEP).

On February 28, 2023, Reimbursement for LYFT (June -August 2022) was processed.

On March 06, 2023, Appellant received an email from DOR informing about the hotel confirmation and was provided with the schedule and location.

On March 13, 2023, Appellant emailed the Counselor about issues with the hotel not having reservations. The Counselor assured the Appellant that reimbursement will be made for the hotel expenses.

On April 03, 2023, Appellant was reimbursed for the hotel expenses.

On May 05, 2023, Appellant was informed that the additional transportation request was no longer approved due to being employed for more than 90 days.

On June 02, 2023, Appellant received an email from the covering Team Manager responding to an inquiry about requesting a new laptop but was not recommended by DOR's vendor (RET Project) and the laptop that DOR had provided was not being used.

On June 09, 2023, Appellant was contacted by the Team Manager and a discussion was made about the rolling bag replacement not being picked up and a request for a new laptop. Appellant was informed that her current Individualized Plan for Employment (IPE) has expired and it needs to be updated in order to provide services moving forward. Appellant refused to update it unless the transportation reimbursement is included.

On June 14, 2023, Appellant confirmed and received the IPAD stand.

Transportation services was not initially included on Appellant's Individualized Plan for Employment (IPE). However, due to circumstances at the time Appellant was employed, DOR assisted and provided transportation services to assist with maintaining her employment with the District Administrator's approval. Appellant was informed about the provision of transportation services and that it is temporary.

Appellant has been employed since September 2022 and it is evident that the Appellant has the financial capability of assuming the cost of transportation after receiving one full month or wages of employment. Appellant has not utilized any public mode of transportation. DOR has assisted and provided services and continues to provide vehicle modification services to the Appellant. Appellant was informed that the current IPE has expired and updating it is needed. However, Appellant refused to do so.

CA Code of Regulations (CCR)

§ 7161.5. Transportation Services---Employed Clients.

(a) For the purposes of section 7161 (a)(4)(A), a client shall be deemed to be financially capable of assuming the cost of transportation after the client has received one full month of salary or wages unless there is evidence that undue financial hardship exists.

(d) Except as specified in section 7161 (e), transportation services shall not be authorized after the client has received one full month of wages or salary, without the approval of the District Administrator. The District Administrator's decision shall be based upon such criteria as verification that:

1. The conditions specified in section 7161(b) and (c) have been met.
2. Undue financial hardship pursuant to subsection (b) of this section exists.

(e) In no instance shall a case, which would otherwise be closed in accordance with section 7184, remain open solely because a client is not financially capable of assuming the cost of transportation.

At the hearing, the Appellant stated she worked as a property manager for EAH from February 2022 through September 2022. Appellant stated she has been working as a full time regional portfolio manager for FPI since September 2022. Appellant stated her job involves travel to properties in different locations and she needs at least two rides a day to go to UPS or get food for staff. Appellant stated she was reimbursed for transportation services through the end of December 2022, and that she needs transportation reimbursement from January 2023 until the hand control technology for her car is completed. Appellant raised concerns about the difficulties with her hotel reservations and stated she was eventually reimbursed for the trip to complete the mobility evaluation in March 2023. Appellant stated she was told that the acting director authorized transportation reimbursement as long as she provided receipts until the hand control technology for her car is completed, but her file was audited without notice which resulted in delay of the reimbursement. Appellant stated she received the IPAD stand and she will pick up the new rolling backpack/bag and return the old one. Appellant stated she requested a new laptop from the vendor because the laptop that DOR provided is heavy and she is unable to use it due to her hand disability. Appellant stated she has been using the employer’s computer for DOR business and she could get fired. Appellant stated she is aware that her IPE expired but she has not signed a new one due to contradictions by DOR staff and she doesn’t know what provisions are included in the new IPE. Appellant stated her job requires travel as noted in her offer of employment and it costs $20 for each ride by Lyft. Appellant stated even though she has been in her current position since September 2022, she continues to need transportation funds due to financial hardship.

DOR representative explained the findings in the position statement and stated the issues related to reimbursement of March 2023 trip for the Mobility Evaluation Program and transportation through December 31, 2022, has been resolved and paid. DOR representative stated there was delay in receiving the receipts for the transportation services and the Appellant did not have all of the receipts since some rides were given

to her by friends and/or family. DOR representative testified the IPAD stand and the rolling backpack/bag replacement were authorized but the Appellant has not picked up the rolling backpack/bag.

DOR representative stated DOR provided the Appellant temporary transportation expenses in accordance with the regulations and the District Administrator authorized reimbursement for transportation services 90 days through the end of December 2022, as the Appellant accepted a new employment in September 2022. DOR representative stated the Appellant was told that transportation services were temporary arrangement and that she reiterated and explained the provision of transportation services to the Appellant. DOR representative indicated that the Appellant is aware that DOR does not provide assistance for transportation after the first 30-days of employment absent exceptional circumstances. DOR representative explained when a consumer becomes employed, DOR supports that employment usually until the consumer obtains the first or second paycheck and that the Appellant has been employed more than 90 days and she can assume the cost of her transportation. DOR representative stated DOR continues to move forward with the process of obtaining technology (hand control) for the Appellant’s vehicle in order for her to drive to and from work. DOR representative stated the Appellant was informed that her current Individualized Plan for Employment (IPE) had expired and needed to be updated in order to continue to explore the Appellant’s needs, but the Appellant refused to update it.

It was agreed that the record would be left open for the Appellant to complete and submit a completed Statement of Financial Status (DR233) form and her offer of employment to establish undue financial hardship to pay for the cost of transportation in order to perform her job-related functions and duties. DOR representative stated she would send the Appellant a Statement of Financial Status (DR233) form to complete.

According to the records, the Appellant submitted a blank Statement of Financial Status (DR233) form, a May 17, 2023 letter from A [first initial], MD and Ride reports. A completed Statement of Financial Status (DR233) form and offer of employment indicating that the Appellant’s job requires travel was not received from the Appellant.

DOR submitted its addendum statement dated July 20, 2023, and noted the following:

Transportation is provided to eligible individuals as a supportive service. It is provided to eligible individuals who are participating in a completion of an approved program of vocational rehabilitation services. It is not provided as a sole service.

Once the eligible individual has completed the program and employed, DOR can still provide transportation for at least 30 days until they receive their first paycheck after that, it is the eligible individual's responsibility to assume the cost of transportation.

Appellant has displayed the ability to maintain employment and has been employed for more than 90 days thus ending the transportation service. Once an eligible individual has achieved their vocational goal and employed for at least 90 days, the case will be closed. DOR has not closed Appellant’s case because there is still one service that is pending to be completed which is the vehicle modification.

Appellant’s current Individualized Plan for Employment (IPE) has expired. It expired on 5/31/23. Appellant refused to move forward in updating the IPE. The Department cannot provide or pay for any services unless the IPE (including the employment goal) is approved and signed by the appropriate Department representative. Without an approved IPE, it will also affect the completion of the vehicle modification service.

Appellant has not completed the DR233 (Financial Statement) form and has not provided information to demonstrate and support her claim for financial hardship. Appellant has the responsibility for demonstrating financial hardship and she has not done so.

In response, Appellant submitted email communications between the Appellant and DOR regarding new IPE, picking up the rolling backpack/bag, receiving the financial hardship form and her request for lighter laptop and hand control in her vehicle.

Additional documentary evidence were presented, including email communications between the Appellant and DOR representative from August 2, 2023 through August 25, 2023, indicating that the new IPE was signed and DOR is still processing both the lighter laptop and vehicle inspection.

DOR was granted an extension to submit an addendum and address the additional information provided in the chain of emails with the Appellant, related to the Appellant’s new IPE and request for transportation and new laptop. DOR submitted additional email communications between the Appellant and DOR representative and provided the following on August 31, 2023:

1. Vehicle inspection: we had some problems with a vendor as they did not complete our form. We are looking for another one and will coordinate with you as soon as it is finalized.
2. Laptop: It’s still in the process with a vendor. We will contact you as soon as it arrives.

## LAW

The California Department of Rehabilitation is responsible for making all decisions affecting eligibility for, and the nature and scope of, vocational rehabilitation services. (Welfare & Institutions Code, § 19005.1.)

The Department or Rehabilitation is empowered to adopt rules and regulations reasonably necessary to enable it to carry out its duties and powers. The Department’s

power to do so applies to the provision of vocational rehabilitation services. (Welfare & Institutions Code, §§ 19006; 19016.)

The Rehabilitation Administrative Manual (RAM) provides information and instruction regarding operations within the Department of Rehabilitation. It sets forth official administrative rules and policies in accordance with laws, rules, and regulations governing the operations of California State Government. (RAM, Chapter 0, § 0.)

State Hearings

Appellant has the burden of introducing evidence at the hearing sufficient to demonstrate his/her case by a preponderance of the evidence. (California Code of Regulations, Title 9, § 7356 subd. (e).)

A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafood, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (Welfare & Institutions Code, § 19704 subd. (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (§ 7354 subd. (a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (§ 7354 subd. (a)(3).)

The impartial hearing officer shall dismiss an appeal if any condition specified below exists. The appellant or authorized representative has failed to:

1. Respond within the time period specified in (e) to request a rescheduled hearing.
2. Show good cause for the failure to appear at a hearing.
3. File a timely request for fair hearing as specified in Sections 7353(f) and 7354(a).
4. Raise an issue within the jurisdiction of the impartial hearing officer. (§ 7355.)

“The pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief…. If events have made such relief impracticable, the controversy has become ‘overripe’ and is therefore moot.” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559 at 1574.)

Individual Plan of Employment (IPE)

Once a consumer is found to be eligible for DOR services, DOR is required to develop an IPE based on an assessment of the consumer’s needs and abilities. (§ 7128.)

A consumer’s employment goals and the service funding necessary to achieve the goals are to be specified in the IPE. (Welfare & Institutions Code, § 19103 subd. (b)(3).)

The IPE shall be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individuals, and, to the maximum extent appropriate, to include placement in integrated settings. (Welfare & Institutions Code, § 19103 subd. (B)(1).)

The IPE shall be jointly developed and agreed upon by both the eligible individual and the DOR. (Welfare & Institutions Code, § 19103 subd. (b)(2).)

Reimbursement

* 1. A written authorization shall be made prior to the purchase of goods and services as documented in the client's case record.
  2. Designated case carriers may, with supervisory approval, be permitted to make emergency verbal authorizations. Such emergency verbal authorizations will be confirmed with a written authorization to the provider of the goods or services.
  3. The Department is not required to provide payment for goods and services that are not authorized by a Departmental employee.

(§ 7311.)

Other Goods and Services

1. Other goods and services may be provided to an eligible individual under an Individualized Plan for Employment (IPE) only if the goods and services are necessary for the individual to achieve the employment outcome specified in his or her IPE.
2. Other goods and services include, but are not limited to:
   1. Short-term or emergency financial assistance to an individual, except that financial assistance shall not be provided to support an individual's everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social services agencies.
   2. Occasional or emergency purchases of haircuts, handbags, or toiletries for an individual.
3. Before providing any vocational rehabilitation services to an individual as other goods and services, the Rehabilitation Counselor shall determine all of the following:
   1. Whether the goods and services to be provided are available from other sources as a comparable service and benefit, including, but not limited to, health or disability

insurance, employee benefits, social security programs, welfare and social service programs, and other programs sponsored by federal, state, city, and county government agencies that serve individuals with disabilities.

* 1. The extent of the individual's financial participation in the cost of goods and services to be provided.
  2. That other, more cost-effective, alternatives are not available. (§ 7174.)

DOR’s Responsibilities

The DOR is responsible for providing services necessary to achieve the consumer’s employment goal and maintaining the employment. (§ 7131.)

Once an individual is eligible for services, the DOR is required to make vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (§ 7149.)

Services shall be provided only to the extent necessary either to facilitate achievement of the vocational objective or prepare a consumer with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. (§ 7154(a).)

Consumer Responsibilities

* + 1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
    2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:
       1. Participate and cooperate in obtaining and providing the information needed by the Department to:
          1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
          2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
          3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
          4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
          5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.
       2. Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process, with assistance from the Rehabilitation Counselor as appropriate, by engaging in the following activities to the extent possible:
          1. Gathering and evaluating information and participating in planning and problem solving and decisions related to the assessment process, selection of the employment outcome and settings in which employment occurs, vocational rehabilitation services, service providers, settings in which services will be provided, and methods for procuring services;
          2. Seeking or identifying needed resources;
          3. Evaluating the consequences of the various options;
          4. Making decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests; and
          5. Taking personal responsibility for implementing the chosen options and achievement of the employment outcome the individual selected.
       3. Report any changes in circumstances that may affect:
          1. Eligibility for vocational rehabilitation services;
          2. Priority category under an Order of Selection;
          3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
          4. The Department's ability to contact the individual.
       4. Cooperate in the assessment process and in developing and meeting the objectives identified in the IPE including, but not limited to, active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome. Failure to cooperate, make reasonable effort, lack of regular attendance, or failure to maintain regular communication may result in loss of further services and closure of the record of services.
       5. Participate in the cost of services under conditions specified in Chapter 5, Article 1 of these regulations.
       6. Apply for, secure and use comparable services and benefits to the extent to which the individual is eligible for such benefits in accordance with Chapter 5, Article 3 of these regulations. (§ 7029.9.)

“Prior approval” is required for the provision of particular goods or services. There are a number of services and situations that require prior approvals from Team Managers, District Administrators, or other approving officials. The Rehabilitation Counselor and designated district staff must obtain all required approvals for these services or situations prior to making a commitment to the consumer and prior to authorizing goods or services. (RAM, Chapter 12, § 1202.)

Authorization” is defined as an obligating document which authorizes the delivery of specified goods or rendering of certain services by a vendor (provider) at a fixed or ascertainable fee within a stated period of time. Authorizations of goods and services shall be accomplished by the use of the following obligating documents:

1. Department forms designated for purchase of goods and services, or
2. State of California forms designated for the purchase of goods and services. (§ 7310.)

A written authorization shall be made prior to the purchase of goods and services as documented in the client's case record. The Department is not required to provide payment for goods and services that are not authorized by a Departmental employee.

(§ 7311.)

The Department shall establish, maintain in writing, and make available, maximum rates of payment. Maximum rates of payment for authorized goods and services are regulated by any one or more of the following:

1. Those rates established by the Department for goods and services.
2. The California Relative Value Studies published by the California Medical Association governing maximum unit values for medical procedures.
3. The California State Schedule of Maximum Allowances published by the Department of Health Care Services regulating maximum amounts payable for medical and related services.
4. The California State Administrative Manual guidelines.
5. Those rates paid by other agencies or charged the general public for comparable goods and services.

(§ 7321.)

Vendors providing goods and services to clients under authorization from the Department shall accept the payment made by the Department as the full reimbursement. Vendors shall not make any additional charges or accept payment from the individual with a disability or any other source for such service. (§ 7322.)

It is the policy of the Department of Rehabilitation (DOR) to use Community Rehabilitation Programs (CRPs) and existing community resources to meet the service needs of our consumers, with CRPs being the primary and preferred providers. This rule is in place based on the stringent accreditation, certification, and documentation that CRPs undergo before providing quality services to DOR consumers in a timely and cost-effective manner.

Transportation

1. “Transportation” means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service.
2. The following are examples of expenses that meet the definition of transportation:
   1. Actual cost of public transportation such as buses, light rail, rapid transit, or paratransit, including passes for bus, light rail, or rapid transit, and expenses for training in the use of public transportation vehicles and systems.
   2. Necessary bridge tolls, parking, gasoline or oil upon a determination that an applicant’s or eligible individual’s vehicle must be used.
   3. Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.
   4. Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual’s current residence.
   5. The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as vehicle modification is considered a rehabilitation technology service. (§ 7029.)
3. Transportation as defined in section 7029:
   1. Shall be provided as a supportive service when necessary to provide for those travel expenses resulting from:
      1. A determination of rehabilitation potential.
      2. The provision of counseling and placement services.
      3. The individual's participation in a completion of an approved program of vocational rehabilitation services.
      4. The provision of post-employment services.
   2. Shall not be provided as a sole service because a supportive service is one which only contributes to the individual's ability to receive the benefit of other vocational rehabilitation services. Alone, it is not a vocational rehabilitation service.
   3. Shall not be provided for travel expenses caused by or required solely for personal, social, recreational or other non-vocational reasons.
   4. Shall be provided only to an individual who is engaged in suitable employment as defined in section 7011 under either of the following circumstances:
      1. Until the individual is financially capable of assuming the cost as determined in accordance with section 7161.5 or until the case is closed in accordance with section 7179.2, whichever occurs first.
      2. In accordance with (e).
4. Prior to provision of any transportation services the Counselor shall determine both of the following:
   1. Whether the individual is eligible for similar benefits in accordance with Sections 7196 through 7198. If eligibility exists, the Counselor shall follow the procedures specified in those regulations.
   2. The ability of the individual to financially participate in accordance with sections 7190 through 7194. If the client is able to financially participate, the procedures for payment specified in those regulations shall be followed.
5. The mode of transportation provided shall be the least costly mode which meets the special needs of the individual. Modes of transportation include, but are not limited to:
   1. Publicly owned or contracted transportation such as buses, dial-a-ride and rapid transit.
   2. Transportation available through community resources.
   3. Client-owned vehicles.
   4. Privately owned transportation such as taxi cab, limousine or paratransit companies and charter buses.
   5. Car pools and payment to co-workers.
   6. Car rental agencies.
6. Additional authorization criteria and rates of payment for specific modes of transportation shall be set by the Department pursuant to sections 7162 through 7163.5.
7. Once a case is closed because the individual is rehabilitated, transportation services shall be provided only upon written approval of the Rehabilitation Supervisor. The Rehabilitation Supervisor's approval shall be based upon such criteria as verification that:
   1. The services are necessary to support an over-all program of post-employment services as defined in section 7176.
   2. The services are requested within 12 months of the individual's case closure.
   3. The requirements of (b) have been met. (§ 7161)
8. For the purposes of section 7161(a)(4)(A), a client shall be deemed to be financially capable of assuming the cost of transportation after the client has received one full month of salary or wages unless there is evidence that undue financial hardship exists.
9. Undue financial hardship means that the client's income, minus mandatory payroll deductions, and liquid assets for the month are insufficient to meet the current costs of transportation to and from employment in addition to all of the following:
   1. The average monthly costs, established in accordance with (c), of:
      1. Housing.
      2. Utilities, including basic rate for phone.
      3. Clothing required for employment.
      4. Food.
      5. Monthly medical and dental services.
      6. Child care necessary for employment.
      7. Court ordered child or spousal support.
   2. Unusual or unforeseen necessary expenses including such occurrences as:
      1. Deposits required for a client to move into more suitable housing.
      2. Repair or replacement of personal belongings damaged due to fire, earthquake or other natural disaster.
      3. Other similar occurrences.
10. Except as specified in section 7161(e), transportation services shall not be authorized after the client has received one full month of wages or salary, without the approval of the District Administrator. The District Administrator's decision shall be based upon such criteria as verification that:
    1. The conditions specified in section 7161(b) and (c) have been met.
    2. Undue financial hardship pursuant to subsection (b) of this section exists.
11. In no instance shall a case, which would otherwise be closed in accordance with section 7184, remain open solely because a client is not financially capable of assuming the cost of transportation.

Employed consumers are presumed to be financially capable of assuming the cost of transportation after receipt of one full month of salary, unless there is evidence of undue financial hardship which is determined by consideration of such items as housing, utilities, clothing, food, medical and dental bills, childcare, unusual or unforeseen necessary expenses including deposits for a move to a suitable location.

(§ 7161.5.)

## CONCLUSION

State hearing jurisdiction exists when DOR has issued a written denial to a consumer concerning a denied request for service or taken some action involving the consumer’s receipt of services. The impartial hearing officer must dismiss an appeal if the appellant has failed to raise an issue within the jurisdiction of the impartial hearing officer. A case is moot if events have made any effective relief impracticable or impossible.

In this case, the Appellant filed a state fair hearing request via a DR 107 form disputing DOR’s denial of payment for transportation services and lodging for the mobility assessment, lighter laptop, IPAD stand and replacement of rolling backpack/bag.

During the hearing, the Appellant clarified that the rolling backpack/bag replacement was authorized and would be picked up, IPAD stand was authorized and received; the Appellant was reimbursed for the hotel expenses for the mobility assessment and transportation services through December 31, 2022. Under these circumstances, events have made any effective relief impracticable or impossible and those claims are moot and dismissed for lack of jurisdiction.

DOR provides employment services for disabled Californians to obtain, retain, or advance in employment. Under the DOR program, to qualify for services, the individual must have a “substantial impediment to employment,” which means that a physical or mental impairment hinders an individual from preparing for, entering, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities. As specified in state regulations, DOR is not required to provide payment for services that have not received the written authorization.

In this case, the Appellant stated her job requires travel according to her offer of employment and she continues to need transportation funds due to financial hardship until the hand control technology for her car is completed. As stated in the Law section, employed consumers are presumed to be financially capable of assuming the cost of transportation after receipt of one full month of salary, unless there is evidence of undue financial hardship. Here, the evidence established that the Appellant has been gainfully employed since September 2022, and has been financially capable of assuming the cost of transportation. Additionally, the Appellant failed to meet her burden of proof and submit additional evidence to establish financial hardship and the requirement of travel for her employment.

Based on a preponderance of the evidence, the Appellant has not met her burden to establish that DOR is obligated to provide transportation services. As such the claim for DOR to provide funding for transportation beginning January 2023, is denied.

The Administrative Law Judge is bound by DOR’s governing rules and regulations and has no authority to disregard these legal requirements.

Additional documentary evidence, including email communications between the Appellant and DOR representative indicates that the new IPE was signed and DOR is still processing both the lighter laptop and vehicle inspection for the modification.

## ORDER

Appellant’s appeal is denied in part and dismissed in part.

Appellant’s claims for DOR to provide a rolling backpack/bag replacement, an IPAD stand, reimbursement for the hotel expenses for the mobility evaluation, and transportation services from February 2022 through December 31, 2022, are dismissed as moot because these issues are no longer in dispute.

The remainder of the Appellant’s claims are denied.

# Hearing No. 104919371-523 SUMMARY

The appeal contesting the Department of Rehabilitation’s (DOR) denial of sponsorship for appellant’s on-campus room and board at the Academy for the 2023-2024 academic year is denied as the DOR is not required to sponsor the services requested. [1940-2, 1950-2]

## FACTS

Appellant requested a state hearing on July 14, 2023, to contest the DOR’s April 6, 2023, denial of sponsorship for room and board at the Academy for the 2023-2024 academic year.

A state hearing was held on September 7, 2023. Appellant appeared at the hearing by telephone. DOR representative-1 and DOR representative-2 also appeared at the hearing by telephone.

## Appellant’s Documentary Evidence

The following is a summary of the pertinent portion of appellant’s state hearing request (DR 107):

On April 6, 2023, the DOR terminated the food and housing segment of my academic sponsorship at [the Academy], citing the department’s “comparable services” policy and its prohibition of on-campus room and board coverage. […] I would like to have the DOR cover my room and board in addition to the tuition and fees.

## DOR’s Documentary Evidence

The following is a summary of the pertinent portions of the DOR’s written statement of position and enclosures:

DOR has already paid participant’s housing and meals for the spring 2022 semester and 2022-2023 academic school year (fall 2022 & spring 2023) due to participant missing the deadline for applying for Off-Campus Housing petition which is a comparable benefit. If the participant would like to reside on campus and have a meal plan for the 2023-2023 academic year, they should look for other ways to pay for that service, such as comparable services and benefits or financing from other programs.

DOR Plan Review Date: 11/29/2021

Expected Plan Completion Date: 09/2024 Higher Education Completion Date: 09/2023

Participant has an employment goal of Information Security Analyst. Participant was attending [computer program] where they completed the two week boot camp course and then exceled to the four month Computer Technician Training level.

Participant received counseling and guidance, SDI vocational evaluation, laptop & printer from [the computer program], Computer Essentials training, internet funds, [computer program] Bootcamp, and [computer program] employment services.

Participant was doing well during the first couple of months of participating in the Computer Technician training until they experienced some personal hardships that interfered with completing the program.

Participant has shared interests with changing their employment goal to public administration and would like to finish their training at the [Academy] for their degree or apply for a public administration graduate program to be more competitive in the job market. Participant is currently conducting their own research and speaking with school representative. Plan may need to be changed to reflect new employment goal. Participant will follow-up with counselor about their progress.

Email Communications From Counselor to Appellant

Date: 12/28/2021 at 3:27 p.m.

I have created a new Individualized Plan for Employment (IPE) that now reflects your desire to attend school. I just need for you to review the IPE that is attached to this email and then reply back to this message stating that you “agree with the changes.” Once I receive your reply I will add an electronic signature on your IPE and then I will mail you a hard copy to your address.

From Appellant to Counselor Date: 12/28/2021 at 9:22 p.m.

I agree with the document attached.

From Counselor to Appellant Date: 12/29/2021 at 1:20 p.m.

Thank you for approving your new Individualized Plan for Employment (IPE). I have went ahead and edited your electronic signature to the plan and have attached a copy to this email for your records.

From Appellant to Counselor Date: 12/29/2021 at 12:24 p.m.

I have read the Individualized Plan for Employment (IPE) and I’m especially grateful that you went ahead and edited my electronic signature to the plan. I accept and honor the attached edited version in its totality.

From Counselor to Appellant Date: 2/3/2023 at 1:28 p.m.

I am following up with you regarding our last phone conversation about your housing/meal plan fees. As I explained on the phone, back in December when we were creating your new Individualized Plan for Employment (IPE) we did not discuss housing/meal plan cost being a part of your services. As of now your plan does offer school sponsorship for tuition, books/supplies, and transportation. Since you have already moved on campus and started using your meal plan, I will try to see if this service could possibly be covered by the DOR department for this spring 2022 semester.

From Counselor to Appellant Date: 2/8/2022 at 10:45 a.m.

As of this moment your housing and meal plan fees are working on being approved by the DOR department for spring 2022 only. The DOR department still need for you to apply for the off-campus housing petition to see if you qualify based on you being over 26 years old. Please let me know when you have submitted this petition and then we can discuss further about this matter. Also, a check for your spring semester parking fee should be arriving to your student housing address soon.

From Counselor to Appellant Date: 2/14/2022 at 3:15 p.m.

The check that should be on its way to your residence is for the $81 semester parking fee. The DOR department did not issue you a monthly transportation stipend because you are stationed on campus for the spring 2022 semester. I have addressed all 4 of your questions and concerns below:

1. Does the DOR want me to seek an off-campus accommodation this semester or does the DOR want me to consider seeking off-campus accommodation for the next semester (Summer Semester 2022) and beyond?

As I mentioned in my last email the DOR department is still working on processing the housing and meal plan fees for the spring 2022 semester this time around. However, since this is not a requirement for cadets that met the off-campus petition requirements the DOR department would like for you to apply for all semesters after the Spring 2022 and that includes Summer 2022. Please also note that you need to apply for it once per year per the school’s requirement.

1. Since I’m currently unemployed and disabled, will the DOR be responsible for the rent payments as well as the exorbitant transportation costs? A monthly stipend of $81.00 will most likely buy me half a tank of gas, and that’s hardly enough to last for more than 10 days of daily commute. Who’ll pay the $7.00 (toll fees) required to cross the bridge

daily? Who will pay the monthly insurance costs? And, what if my car breaks down?

You bring up important points about some of the transportation and housing concerns you may face if you were granted permission to live off- campus. Nevertheless, for the DOR department to have a better understanding of what they can and cannot support you with for the next academic school year which starts in summer 2022 it is recommended that you apply for the off-campus petition and to also schedule a meeting with your academic advisor to determine how many semesters/courses you have left until graduation.

1. Petition for off-campus living: According to the campus housing department, petitions for off-campus living are currently closed, but will soon open. If approved and absent lingering health issues, persons aged 26 and above need no documentation. Those approved for off-campus living must reapply each year. The purpose of staying on campus housing is for your academic studying and the school has required that especially for cadets under 26 years old.

The petition for spring 2022 is closed however, the petition for summer 2022 should be open. I just spoke to a staff member over at the housing department last week to confirm this information. Yes, this petition would require cadets to apply every year to see if they qualify to live off-campus based on one of the eligibility categories (age, some hardship, medical, etc.). The DOR department suggested that you fill out the petition under the age category because you are over 26 years and would not have to provide any documentation. Overall, whichever category you choose to file under just know that each one represents a reason on why a cadet cannot stay on campus and would need to petition to live off campus.

1. I have lingering medical issues and will most likely not qualify. Besides, in my case, on-campus housing is the best, and most cost-effective option.

Again, for DOR to inform you what they can support you with at this time please complete the following items that have been assigned to you listed below. Once this has been completed then we can further discuss as alternated plan that is more suitable for your living and health conditions.

List of DOR Requirements.

1. Submit the 2022-2023 Off-Campus Petition.
2. Schedule a meeting with your academic advisor to determine how many classes/semesters you have left to complete your Global Studies & Maritime Affairs Bachelor or Arts degree.

From Appellant to Counselor Date: 2/28/2022 at 7:01 a.m.

Regarding the off-campus housing application, I have no compelling reason at this time to warrant an approval for off-campus living in my Upperclassman (Senior) year.

From Counselor to Appellant Date: 2/18/2022 at 3:57 p.m.

The DOR department has approved and processed your spring 2022 tuition cost and other school fees and will be sending an authorization to your university shortly. I had to amend your Individualized Plan for Employment (IPE) to align with the updated services that were requested this semester. I just need for you to review the IPE that is attached to this email and then reply back to this message stating that you “agree with the changes.” Once I receive your reply I will add an electronic signature on your IPE and then mail you a hard copy of your records.

From Appellant to Counselor Date: 3/1/2022 at 1:12 p.m.

I agree with the changes.

From Counselor to Appellant Date: 3/4/2022 at 4:22 p.m.

Moving on to the off-campus living petition. Sadly, I am not able to view the website link you provided in your last email due to not having a university log-in to access it. Nevertheless, what I understood from your last email is that you have no compelling reason to apply for the off- campus petition at this time. Just know that the DOR Department has added that petition as a “to-do” item for you to complete for the department to determine your housing and meal plan sponsorship for the next academic school year which starts with the summer 2022 semester. Your housing and meal plan fees were granted permission by the department last month to be covered for the spring 2022 semester only.

From Counselor to Appellant Date: 3/23/2022 at 11:31 a.m.

I am confirming that I received your letter but it is not the off-campus petition that the DOR department requested for you to fill out by 3/1/2022 to help determine if it is required for you to live on campus or not. I did speak to the Housing and Residential Life Office Coordinator and they stated that cadets had from 2/24/22 to 3/14/22 to submit this form online. DOR needed a copy of the off-campus petition acceptance or denial letter. However, since the off-campus petition deadline has already passed we will need to discuss an alternated plan for your training such as looking into another school to complete your degree for the 2022-2023 academic school year.

From Academy Director of Residence Life to Appellant Date: 4/5/2022 at 5:33 p.m.

It is the policy of [the Academy] that all cadets live-on campus. No cadet

with be “forced” to live-off campus as per our policy regardless of age. The only reason a petition should be submitted is if there was an external need to have someone reside off-campus for documentable reasons.

From Counselor to Appellant Date: 4/6/2022 at 12:59 p.m.

As of now our department still needs an off-campus petition acceptance or denial letter (that’s similar to the one you sent regarding your status with financial aid) or something saying that you missed the deadline to apply for the petition.

From Counselor to Appellant Date: 4/19/2022 at 9:48 a.m.

After reviewing the forwarded email you sent from your university’s housing director I want to make it clear with you that DOR does not force you out of your on-campus housing. It is DOR policy that all consumers need to apply for comparable benefits whenever available, and on/off campus housing is comparable benefit. Since you started the spring 2022 semester late and missed the deadline for the off-campus petition we will consider sponsoring your on-campus housing and meal plan fees until the next time the petition is made available again online to students which should be in February 2023. Please make sure to not miss the deadline next year or we may not be able to continue supporting your housing and meal plan fees for the academic semesters 2023-2024.

From Appellant to Counselor Date: 4/19/2022 at 11:01 a.m.

I’ve just seen and read your email, whose contents I am in agreement with. As instructed, I will do my best to submit a petition for off-campus housing when the application reopens in February 2023.

From Campus Housing to Appellant Date: 3/30/2023

Your petition for off-campus housing has been approved effective Fall 2023 semester through Spring 2024. This permission has been approved based on Age.

From Counsel to Appellant Date: 4/6/2023 at 2:29 p.m.

The results of the off-campus housing petition shows that you have been approved to live off campus for the Fall 2023 semester through Spring 2023 school semester. At this time we the DOR department would like for you to accept your off-campus status by completing the Off-Campus Acceptance Form.

From Appellant to Counselor Date: 4/7/2023 at 9:29 a.m.

Finals are around the corner, but I’m unable to concentrate on anything

right now because the academy has categorically stated that an acceptance of off-campus housing status would automatically result in my removal from the school’s bed/room assignment list. Without money and being currently unemployed, I cannot see myself completing the GSMA degree program in either Fall 2023 or the Spring 2024 semester. It is as if the resources –time, energy, and money invested are all about to go down the drain.

Although [the Academy] is vehemently opposed to the idea of cadets living off-campus, exceptions could be made for anyone based on individual circumstances. However, only a handful of cadets receive such approvals and more than 90% live on campus because the way the school’s academics are structured, it is in the student’s best interest to avoid commuting. Aside from employers frequently showing up here to conduct recruitment exercises for seniors, important seminars and conferences are held. But if a cadet is not around because he or she lives off-campus, crucial opportunities are missed.

Remember, it is a semi-military environment, unlike traditional college campuses of your familiarity. The disciple and professionalism developed at [the Academy] are some of the core values that attract large corporations, governmental agencies, the Navy, Coast Guard, port authorities, and marine transportation giants to the campus. One thing they don’t tolerate here is tardiness, and disability or illness is not excuse. So, most of those approved for off-campus living are married or older cadets from the […] area. I am a disabled older cadet, but not from [the area], however. As you already know, I carried over four Incompletes from the Fall semester 2022 due to illness associated with my disability. Right now, I’m currently enrolled in four classes, and simultaneously working on finishing the four Incompletes from last year. It is a daunting task made more complicated by my health challenges (pain and inflammation flare- ups).

Letters

Date: March 16, 2022

From Registrar at the Academy

[The Academy] requires students to reside on-campus and participate in a meal plan each year until graduation. Cadet [Appellant] is required to live on-campus for the 2022-2023 academic year.

Date: 2/14/2023

From DOR to Appellant

This is a reminder that every academic school you are required to apply for the 2023-2024 off-campus […] housing petition to see if you are eligible to live off campus since this is not a requirement for cadets who are over 26 years old. […] Again, it is DOR’s policy that all consumers

apply for comparable benefit whenever available, and on/off campus housing is a comparable benefit.

Date: 6/14/2023

From DOR to Appellant

The results of the off-campus housing petition shows that you have been approved to live off campus for the 2023-2024 school semester at the [the Academy]. As discussed at our last meeting on 4/19/23, the Department of Rehabilitation is unable to help with your on-campus housing accommodations for the upcoming academic semester.

IPE

Signed and Dated by both Appellant and Counselor on 12/28/2021

Employment Goal: All other clerical and administrative support workers. Administrative specialist/logistics analyst.

Expected Completion Date 12/2024

Higher Education Completion Date 12/2023

We are creating a new Individualized Plan for Employment (IPE) for participant because they have discussed their Department of Rehabilitation (DOR) counselor that they are no longer interested in working on a career path towards cyber security. Instead participant has expressed a desire to complete their Bachelor of Arts in Global Studies and Maritime Affairs at the [the Academy] to obtain and Administrative Specialist/Logistics Analyst position with the [the Port] or other related employer that highlights their background knowledge and experiences of working in this field.

|  |  |  |  |
| --- | --- | --- | --- |
| Service Provided | Service Provider | Funded By | Start Date |
| Counseling/Guidance | DOR |  | 12/2021 |
| Four-Year College/University – Public (UC or CSU( | [the Academy] |  | 12/2021 |
| Books | DOR vendor |  | 12/2021 |
| School Supplies | DOR vendor |  | 12/2021 |
| Transportation – DOR Consumer | Public transportation or other DOR vendor |  | 12/2021 |

|  |  |  |  |
| --- | --- | --- | --- |
| Employment Services | DOR vendor |  | 12/2021 |
| Clothing | DOR vendor |  | 12/2021 |
| Other goods and services not coded elsewhere | DOR vendor |  | 12/2021 |

Consumer responsibilities towards the cost of the plan: Participant will actively apply for comparable benefits of financial assistance available to them from a program other than DOR which meets, in whole or part, the cost of the services to be provided whenever available.

Consumer’s Responsibilities:

I agree to, and will comply with the following:

Apply for and use any comparable services or benefits from other programs, to the extent I am eligible for such services or benefits.

Apply for financial aid each school year and provide my counselor with my financial aid award letter if I am enrolled in an educational training program.

IPE – Amendment

Signed and dated by both Appellant and Counselor on 3/1/2022

|  |  |  |  |
| --- | --- | --- | --- |
| Services Provided | Service Provider | Funded By | Start Date |
| Counseling/Guidance | DOR |  | 12/2021 |
| Four-Year College/University – Public (UC or CSU) | [the Academy] |  | 12/2021 |
| Books | DOR vendor |  | 12/2021 |
| School Supplies | DOR vendor |  | 12/2021 |
| Transportation – DOR Consumer | Public transportation or other DOR vendor |  | 12/2021 |
| Employment Services | DOR vendor |  | 12/2021 |

|  |  |  |  |
| --- | --- | --- | --- |
| Clothing | DOR vendor |  | 12/2021 |
| Other goods and services not coded elsewhere | DOR vendor |  | 12/2021 |
| Maintenance – DOR consumer | [the Academy] |  | 2/2022 |

## Testimony

Appellant testified he has been a DOR client for many years. According to Appellant, he was enrolled in the Academy in approximately Fall 2017 – Spring 2018. Appellant stated that the DOR sponsored both his tuition and room and board at the Academy during that time.

Appellant said he attended a conference in the summer of 2018, where he was offered an internship. Appellant indicated that the internship required him to work and be an apprentice for so many years, at the conclusion of which he would be given a job.

Appellant accepted the internship and moved out of state, dropping out of the Academy.

Appellant described how after only a few months his degenerative disc disease prevented him from continuing with the internship. Appellant moved back to California and moved in with a friend.

According to appellant, the DOR assigned him a new counselor in 2018, when he returned to California. Appellant stated that the new counselor was unhelpful and did not agree that he should return to the Academy. Appellant stated that the counselor offered junior college as an option, but appellant felt that was inappropriate since he already has a bachelor’s in legal studies.

Appellant stated that he was offered online courses in cybersecurity. Appellant took some of the offered courses but felt that the courses were too rudimentary.

Appellant then received a call from his current DOR counselor near the end of 2021. The counselor introduced herself as the newly assigned counselor and offered to assist appellant in returning to the Academy.

Both parties testified that a new IPE was created in December 2021 to align with the new education and employment goal.

Representative-2 stated that the new IPE was emailed to appellant on December 28, 2021. According to representative-2, the new IPE only supported school tuition, books, supplies, and other employment services. Appellant acknowledged agreement with the new IPE and a signed copy of the new IPE was sent to appellant on December 29, 2021.

Representative-2 further stated that she communicated with appellant about registration for courses and documentation needed by the DOR to complete sponsorship of tuition fees, textbooks, and supplies.

Representative-2 testified as to her phone conversation with appellant on January 24, 2022. According to representative-2, appellant stated that he was in the process of enrolling in three classes late due to not completing everything until the third week of the semester. During that conversation, appellant indicated that he planned to live on campus for the spring semester.

Representative-2 also stated that on January 28, 2023, the school’s cashier’s office sent a copy of appellant’s school tuition which included the housing and meal plan.

According to representative-2, appellant was contacted on February 1, 2022, regarding the fee situation. Representative-2 stated she explained to appellant that the IPE covers tuition, books, and supplies, but not housing or food. According to representative-2, appellant said that the DOR sponsored his housing and food previously and that he would be homeless and unable to attend school unless the DOR agreed to pay for his housing and food.

Appellant stated that the Academy requires its cadets to live on campus. Appellant provided several reasons for the Academy’s requirements, including that the Academy is quasi-military and expects its cadets to fully participate in school functions.

Both parties testified that the Academy allows cadets who are over 26 to live off- campus. Both parties also testified that a petition to live off-campus must be submitted and authorized before a cadet can move off-campus.

Both parties testified that appellant did not timely submit an off-campus housing petition for the Spring 2022 semester. The DOR’s representative-2 testified that appellant had already moved into on-campus housing before the issue of room and board sponsorship was raised.

The DOR’s representative-2 stated that the DOR agreed to pay appellant’s on-campus room and board for the Spring 2022 semester as a maintenance fee because the time for appellant to apply for off-campus housing permission was lapsed. Additionally, representative-2 indicated that the DOR’s maintenance fee for room and board was also granted because appellant had already moved on campus and classes had started.

The DOR’s representative-2, however, also indicated that the DOR made appellant aware that the sponsorship of room and board was limited to the Spring 2022 semester and that appellant would need to utilize comparable benefits for the remaining semesters, including applying for permission to live off-campus. The DOR’s representative-2 testified as to the multiple communications between the DOR and appellant regarding the payment of room and board and requirement that appellant utilize comparable benefits.

On February 18, 2022, the IPE was amended to include maintenance services for housing, meal plan, and other school fees for Spring 2022.

Representative-2 presented evidence that appellant had from February 24, 2022 to March 14, 2022, to apply for an off-campus housing exemption from the Academy. Representative-2 also presented evidence that appellant was advised that he needed to complete the off-campus housing petition on March 4, 2022. Representative-2 presented further evidence that appellant did not submit the off-campus housing petition. Instead, appellant sent representative-2 a letter from the Academy on March 16, 2022, stating that cadets are expected to live on campus.

According to the DOR representatives, because appellant missed the March 14, 2022, deadline to submit an off-campus housing petition, the DOR agreed to continue to sponsor the on-campus room and board through the Spring 2023 semester.

DOR’s representative-2 indicated that DOR’s agreement to sponsor room and board during this time was because the Academy only allows for the off-campus housing petition to be submitted once a year, starting in February. Due to the timing of events, the appellant’s next opportunity to submit a petition to live off-campus was February 2023. Therefore, the DOR agreed to sponsor appellant’s on-campus room and board through Spring 2023 as a maintenance fee.

Appellant contends that the DOR should continue to pay for his on-campus room and board as he is almost finished with the degree program, and it would be a waste of resources if he were to drop out of the program due to the inability to provide housing and room for himself.

Appellant stated that he has no income and does not qualify for public benefits such as SSI/SSDI. Appellant also testified that he applied for financial aid but was declined.

Appellant explained that he took out large sums of financial aid to obtain his first bachelor’s degree at an expensive private university. Appellant explained that the financial aid he received for his first bachelor's degree was discharged because of his disability. Appellant indicated that it is for this reason that he does not qualify for further financial aid.

Appellant also indicated that because he does not qualify for financial aid or public benefits, he is unable to afford his living expenses. Appellant indicated that he has been relying on the DOR to pay for his living expenses, such as room and board.

The DOR’s representative-1 stated that the DOR does not pay for living expenses and that appellant is required to utilize other comparable benefits for his room and board. Representative-1 stated that appellant was provided with a list of community resources.

Representative-2 provided testimony regarding further conversations between herself and appellant about his need to apply for comparable benefits, which included the off- campus housing petition.

Both representative-2 and representative-1 testified that appellant submitted the off- campus housing petition Spring 2023 in accordance with the DOR requirement that he apply for comparable benefits. All parties testified that the off-campus housing petition was granted based on appellant’s age. Appellant confirmed that he is over 50 years old.

Both representative-2 and representative-1 testified that the DOR notified appellant that the DOR would not sponsor the on-campus room and board for the 2023-2024 academic year as appellant qualifies to reside off-campus.

Representative-1 was asked about whether the DOR would continue to pay for appellant’s on-campus housing had he been denied the off-campus housing petition. Representative-1 stated that whether room and board is sponsored by the DOR in such situations would be on a case-by-case basis. Nevertheless, since appellant qualified for off-campus housing, the DOR would not sponsor his room and board.

According to representative-1, daily living expenses are not in the scope of services provided by the DOR. Representative-1 indicated that DOR clients are required to use comparable benefits, whether that be attending a school closer to home or commuting to school.

Appellant contends that his case is different than many other DOR clients because the Academy wants its cadets to reside on campus. Appellant also cited to not having a place to live, the exorbitant cost of housing near the academy, his inability to commute due to his degenerative disc disease, lack of stable transportation, and inability to pay for living expenses since he is unemployed and does not qualify for financial aid or public benefits.

## LAW

State Hearings

Appellant has the burden of introducing evidence at the hearing sufficient to demonstrate his/her case by a preponderance of the evidence. (9 C.C.R. § 7356(e).)

A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafood, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (W&IC § 19704 (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (9 C.C.R. § 7354(a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (9 C.C.R. § 7354(a)(3).)

Individual Plan of Employment (IPE)

Once a consumer is found to be eligible for DOR services, DOR is required to develop an IPE based on an assessment of the consumer’s needs and abilities. (9 C.C.R. § 7128.)

A consumer’s employment goals and the service funding necessary to achieve the goals are to be specified in the IPE. (W&IC § 19103 (b)(3).)

The IPE shall be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individuals, and, to the maximum extent appropriate, to include placement in integrated settings. (W&IC § 19103(B)(1).)

The IPE shall be jointly developed and agreed upon by both the eligible individual and the DOR. (W&IC § 19103(b)(2).)

Consumer Responsibilities

1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:
   1. Participate and cooperate in obtaining and providing the information needed by the Department to:
      1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
      2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
      3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
      4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
      5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.
   2. Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process, with assistance from the Rehabilitation Counselor as appropriate, by engaging in the following activities to the extent possible:
      1. Gathering and evaluating information and participating in planning and problem solving and decisions related to the assessment process, selection of the employment outcome and settings in which employment occurs, vocational rehabilitation services, service providers, settings in which services will be provided, and methods for procuring services;
      2. Seeking or identifying needed resources;
      3. Evaluating the consequences of the various options;
      4. Making decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests; and
      5. Taking personal responsibility for implementing the chosen options and achievement of the employment outcome the individual selected.
   3. Report any changes in circumstances that may affect:
      1. Eligibility for vocational rehabilitation services;
      2. Priority category under an Order of Selection;
      3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
      4. The Department's ability to contact the individual.
   4. Cooperate in the assessment process and in developing and meeting the objectives identified in the IPE including, but not limited to, active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome. Failure to cooperate, make reasonable effort, lack of regular attendance, or failure to maintain regular communication may result in loss of further services and closure of the record of services.
   5. Participate in the cost of services under conditions specified in Chapter 5, Article 1 of these regulations.
   6. Apply for, secure and use comparable services and benefits to the extent to which the individual is eligible for such benefits in accordance with Chapter 5, Article 3 of these regulations. (9 C.C.R. § 7029.9.)

DOR’s Responsibilities

The DOR is responsible for providing services necessary to achieve the consumer’s employment goal and maintaining employment. (9 C.C.R. § 7131.)

Once an individual is eligible for services, the DOR is required to make vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (9 C.C.R. § 7149.)

Services Provided

Services shall be provided only to the extent necessary either to facilitate achievement of the vocational objective or prepare a consumer with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. (9 C.C.R. § 7154(a).)

Maintenance Services

1. “Maintenance” means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an Individualized Plan for Employment (IPE).
2. Examples of expenses that meet the definition of maintenance include, but are not limited to:
   1. The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.
   2. 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.
   3. The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement or participate in training.
   4. The costs of an individual's participation in enrichment activities related to that individual's training program. For students this includes, but is not limited to, student trips, visits to museums, and supplemental lectures, when such activities are essential components of the training.
3. Nothing in this section shall be construed to mean that the Department will provide maintenance on a long-term or ongoing basis to support an individual's everyday living expenses or take the place of, provide the services of, or become a payment program similar to, welfare and other social service agencies. (9 C.C.R. § 7019.)

Comparable Services and Benefits - General

1. “Comparable Services and Benefits” means services and benefits, including accommodations or auxiliary aids and services, that are:
   1. Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;
   2. Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's Individualized Plan for Employment (IPE); and
   3. Commensurate to the services that the individual would otherwise receive from the Department.
2. For the purposes of this definition--
   1. Comparable services and benefits do not include awards and scholarships based on merit. (9 C.C.R. § 7006.)

Comparable Services – Higher Education

* + 1. For the purposes of this section, the following definitions shall apply:
       1. “Institution of higher education” means a university, college, community college, or private proprietary school which provides academic or vocational education and/or training above the California secondary school level.
       2. “Maximum effort” means a client's specific actions which are necessary to establish eligibility and secure any similar benefits necessary to vocational rehabilitation.
    2. The Department shall not authorize training or training services provided by an institution of higher education unless a maximum effort has been made by the client to secure grant assistance from other sources to pay in whole or in part the cost of such services. The Counselor shall assist the client as necessary in identifying and applying for any grant assistance for which the client may be eligible.
    3. The amount of services, if any, to be authorized by the Department for educational purposes shall be determined by subtracting the total amount of the client's educational grants and/or awards as reported by the financial aid office from the costs of the client's

tuition, books and supplies, maintenance and transportation. The remainder is the amount of services to be authorized by the Department. ( 9 C.C.R. § 7197.)

Equitable Estoppel

In *Canfield* v. *Prod* (1977) 67 Cal.App.3d 722, the Director of the Department of Social Services was precluded by the doctrine of equitable estoppel from denying retroactive benefits to a recipient of attendant care.

The *Canfield* case contains a thorough discussion of the doctrine of equitable estoppel and its application to government agencies. The decision notes that four basic elements must be present in order to apply the doctrine of equitable estoppel:

1. The party to be estopped must be apprised of the facts;
2. The party must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended;
3. The other party must be ignorant of the true state of facts; and
4. The other party must rely on the conduct to his injury.

Additionally, in regard to the estoppel of government agencies, the case held that application of estoppel will be applied only when justice and right require it. Otherwise, estoppel will not be applied when to do so would effectively nullify a strong rule of policy adopted for the benefit of the public. Further, in determining whether estoppel is applicable to a government agency, the more culpable or negligent the agency or its representatives have been, and the more serious the effect of the advice on the claimant, the more likely the doctrine is to be applied. (*Canfield* v. *Prod*, *supra*; see also *City of Long Beach* v. *Mansell* (1970) 3 Cal.3d 462.)

In discussing whether equitable estoppel could be applied against public agencies, the Court of Appeal has offered the following guidelines:

"The courts of this state have been careful to apply the rules of estoppel against a public agency only in those special cases where the interests of justice clearly require it.

However, if such exceptional case does arise and if the ends of justice clearly demand it, estoppel can and will be applied even against a public agency. Of course, the facts upon which such an estoppel must rest go beyond the ordinary principles of estoppel and each case must be examined carefully and rigidly to be sure that a precedent is not established through which, by favoritism or otherwise, the public interest may be mulcted [defrauded, swindled] or public policy defeated." (*City of Imperial Beach* v.

*Algert* (1962) 200 Cal.App.2d 48, 52, internal citations omitted.)

“Factors to be considered in a claim of estoppel against a public agency include consideration of the degree of negligence or culpability of the public agency (*Driscoll* v*. City of Los Angeles* (1967) 67 Cal.2d 297, 307), whether and to what extent the agency is certain of the knowledge or information it dispenses (see *Phillis* v. *City of Santa Barbara* (1967) 229 Cal.App.2d 45, 60), whether it purports to advise and direct or

merely to inform and respond to inquiries (see *Tyra* v. *Board of Police etc. Commrs*. (1948) 32 Cal.2d 666, 670), and whether it acts in bad faith. (See *Lorenson* v. *City of Los Angeles* (1953) 41 Cal.2d 334, 340)." (*Lee* v. *Board of Administration* (1982) 130

Cal.App.3d 122, 134.)

## CONCLUSION

The disputed issue in this case is whether the DOR is required to sponsor (pay) for appellant’s on-campus room and board for the 2023-2024 academic year at the Academy.

Room and board include shelter, utilities, and meals. In the realm of on-campus housing, room and board includes on-campus housing such as a dormitory room, toilet and bathing facilities, and an on-campus meal plan.

Living Expenses

Title 9 of the California Code of Regulations, section 7149 states that the DOR’s scope of services include vocational rehabilitation services to assist eligible individuals to prepare for, secure, retain, or regain employment. Vocational rehabilitation services include higher education, such as tuition, books, and educational supplies. Vocational rehabilitation services do not include ongoing living expenses.

Maintenance Services

The regulations define maintenance as monetary support provided for expenses such as food, shelter, and clothing that are more than the normal expenses of the individual, and which are necessitated by the person’s participation in the receipt of vocational rehabilitation services under an IPE.

The regulations further stated that maintenance is not long-term or ongoing living expenses and does not take the place of or become a payment public benefit program like welfare. (9 C.C.R. § 7019.)

The evidence shows that the cost of on-campus housing does not exceed the normal living expenses appellant would incur off-campus. This is supported by evidence presented by appellant. Appellant testified during the hearing that on-campus housing is preferrable as housing costs near the Academy are exorbitant.

The evidence further shows that even if on-campus housing costs exceeded the normal cost of living off-campus, appellant is not required to live on-campus. While the Academy requires some cadets to live on campus, appellant is not subject to this requirement because he is over the age of 26.

Additionally, the evidence does not show that appellant is required to live a certain distance from the Academy or that appellant cannot commute to campus. While appellant contends that he cannot commute because his degenerative disc disease can suddenly bring on pain and dizziness, the possibility of pain or dizziness alone is

insufficient to establish the inability to live off campus and commute. If true, it would then bring into question how appellant intends to get to and from future employment, or how appellant currently gets to and from his medical appointments.

Nor does the evidence establish that there are no housing options available off-campus within commuting distance. A blanket statement that off-campus housing is exorbitant does not demonstrate that no off-campus housing options are available.

Therefore, the DOR is not required to sponsor room and board at the Academy as a maintenance service because: (1) appellant is not required to reside on campus, and (2) on-campus room and board does not exceed the normal living expenses appellant would incur off-campus.

Equitable Estoppel

Equitable Estoppel is a legal principle which provides that in limited circumstances a party must be stopped from taking an adverse action. Equitable estoppel may be applied against a public agency only in exceptional cases where the interests of justice and public policy clearly require it.

There are four basic elements that must be met before the more rigorous elements specific to a public agency will be applied. In this case, the four basis elements of equitable estoppel are: (1) the DOR must be apprised of the facts; (2) the DOR must have intended that its conduct be acted upon, or must have acted in a manner for the appellant to have had a right to believe the DOR intended its conducted to be acted on;

(3) appellant must be ignorant of the true state of facts; and (4) appellant must have relied on the conduct to his determent.

Appellant contends that the DOR should be required to continue sponsorship of his room and board at the Academy because: (1) the DOR previously sponsored his room and board at the Academy in approximately 2017-2018; (2) the DOR sponsored his room and board at the Academy for the Spring 2022, Fall 2022, and Spring 2023 semesters; and (3) appellant believed the DOR would continue to sponsor his room and board for the 2023-2024 academic year based on its prior sponsorship.

The evidence does not show that the DOR intended for appellant to believe that it would sponsor room and board for the 2023-2024 academic year or that appellant could have reasonably believed the DOR intended to continue to sponsor his room and board. The evidence further establishes that appellant was aware that the DOR did not intend to sponsor all of appellant’s on-campus room and board.

The IPE appellant signed in December 2021 did not include room and board. Nevertheless, appellant moved into on-campus housing for the Spring 2022 semester with the expectation that the DOR would pay for his room and board, even though he knew the IPE did not include room and board as sponsored services.

The DOR communicated to appellant on more than one occasion that its services did not include room and board. For example, the DOR advised appellant on February 3, 2022, that its sponsorship included tuition, books/supplies, and transportation only. The DOR further communicated that appellant was obligated to apply for comparable benefits, including off-campus housing.

The evidence also shows that the Academy has a limited timeframe for cadets to submit the off-campus housing petition. The evidence further shows that appellant was not able to submit a petition for off-campus housing for the Spring 2022 semester because the deadline to submit the petition closed before the IPE was even created in December 2021.

Based on the appellant’s inability to submit the off-campus housing petition, appellant was required to live on campus during the Spring 2022 semester. Given the circumstances regarding the Academy’s on-campus housing rules, the evidence shows that the DOR agreed to sponsor appellant’s on-campus room and board for the Spring 2022 semester.

However, the DOR communicated to appellant in writing on multiple occasions that the sponsorship of room and board was limited to the Spring 2022 semester and that appellant was required to submit the off-campus housing petition at the next opportunity.

Appellant acknowledged during his testimony that he had previously attended the Academy and was familiar with the Academy’s policies. Therefore, appellant knew or reasonably should have known that the Academy required cadets to live on-campus unless an off-campus housing petition was approved. Appellant either knew or should have reasonably known that the Academy would approve off-campus housing petitions for cadets who were over the age of 26.

The evidence presented establishes that the next opportunity to submit an off-campus housing petition began on February 24, 2022. The DOR requested that appellant submit the off-campus housing petition no later than March 1, 2022. The deadline for appellant to submit the off-campus housing petition was March 14, 2022.

Appellant was advised by the DOR on March 4, 2022, that he was required to submit the off-campus housing petition as off-campus housing is considered a comparable benefit. Appellant is required to apply for comparable benefits under his IPE.

Instead of submitting the off-campus housing petition, appellant chose to obtain a letter from the Academy regarding the Academy’s expectation that cadets live on-campus.

Appellant submitted the letter he obtained from the Academy to the DOR on March 16, 2022, after the deadline to submit the off-campus housing petition.

Because appellant missed the deadline to submit an off-campus housing petition for the 2022-2023 academic year, he was required by the Academy to live on campus. The DOR, therefore, sponsored appellant’s on-campus room and board through Spring 2023.

The DOR told appellant in writing on April 19, 2022, that the DOR would consider sponsoring on-campus housing and meal plan fees because appellant started the Spring 2022 late and missed the deadline for the off-campus housing petition.

However, the DOR also communicated to appellant that the off-campus housing petition must be submitted for the 2023-2024 academic year.

The documentary and testimonial evidence shows that the DOR continuously advised appellant that the DOR does not pay for living expenses, but that the DOR was willing to pay appellant’s on-campus room and board as a maintenance expense through the Spring 2023 because he was required to live on-campus by the Academy through the 2022-2023 academic year. Appellant was, however, required to live on campus during the 2022-2023 academic year because he missed the deadline to submit an off-campus housing petition. Under the Academy’s rules, appellant’s age qualifies him from the Academy’s rule that cadets live on-campus.

The DOR’s multiple communications to appellant about his room and board sponsorship demonstrates that the DOR did not intend for appellant to believe that the DOR would continue to pay for room and board. The multiple communications to appellant regarding the issue also demonstrate that appellant could not have reasonably believed that the DOR intended to continue to pay for his room and board during the 2023-2024 academic year.

Further, the DOR’s multiple communications to appellant that room and board are not DOR services demonstrates that appellant was not ignorant to the true state of facts. Additionally, the multiple communications between the parties show that appellant was not ignorant of the fact that the DOR did not intend to continue to pay for his on-campus room and board through the 2023-2024 academic year.

Based on the evidence, the principle of equitable estoppel does not apply to this case and the DOR is not required to sponsor appellant’s room and board through the 2023- 2024 academic year.

## ORDER

The appeal is denied.

# Hearing No. 104915057-747 SUMMARY

The Department of Rehabilitation (DOR)denied the Appellant’s request that a new Individualized Plan for Employment (IPE) be drafted, to include tuition in the amount of

$60,280, instead of the $15,070 that DOR has agreed to pay. That denial must be sustained where the evidence established the yearly tuition for [Law School] is

$60,280 and the amount of the scholarship is $45,210, which leaves a remaining balance of $15,070. The scholarship is not a cash award but a discount off of the tuition. DOR only pays for training costs. The remaining cost of tuition is $15,070 and DOR cannot fund over and above what is required toward the cost of tuition.

[1940-2]

## FACTS

Appellant receives rehabilitation services through the Department of Rehabilitation (DOR).

On June 28, 2023, Appellant requested a mediation and a state hearing stating:

On Thursday, June 22, 2023, I was informed that in determining the amount of tuition they’ll cover, the DOR is factoring in my merit scholarship as a comparable benefit which is clearly against 9 C.C.R. § 7006.

I disagree because 9 C.C.R. § 7006 (b)(1) states: “Comparable services and benefits do not include awards and scholarships based on merit.”

I would like the problem solved by a new IPE drafted stating that the DOR will pay the full cost of tuition without factoring in my merit scholarship.

The Mediation was held on July 20, 2023, and the issue was not resolved.

The state hearing was held on August 22, 2023. Appellant appeared at the hearing by telephone. A DOR representative also appeared at the hearing by telephone.

Both parties submitted documentary evidence prior to the hearing. The DOR Statement of Position set forth the following in pertinent part:

Issue: You are requesting that a new Individualized Plan for Employment (IPE) be drafted, to include tuition in the amount of $60,280, instead of the $15,070 that DOR has agreed to pay.

You applied for DOR services on August 21, 2018 and were determined eligible for services on August 27, 2018 based on (redacted). Your current vocational goal for employment is Lawyer.

The yearly tuition for [Law School] is $60,280 and the amount of the scholarship is $45,210, which leaves a remaining balance of $15,070. Per M from [Law School] Student Accounts office, the scholarship is a discount off of the tuition.

Prehearing Contact: DOR Counselor originally discussed DOR’s tuition assistance less the client’s scholarship once he provided a copy of the scholarship award letter on June 21, 2023. Staff Services Manager I, C, spoke with client about his request and asked that he provide additional information from the school about the scholarship to verify that it is not specifically to be used toward tuition. Staff Services Manager I, S (Acting District Administrator at that time) spoke with client on June 23, 2023 and June 29, 2023 to discuss Administrative Review request. Client provided school refund policy to S on June 24, 2023.

Staff Services Manager I, C, contacted the [Law School] on June 26, 2023 and spoke with M who shared that the scholarship is a discount off of the tuition.

Administrative review completed by District Administrator, J, on July 6, 2023.

Facts: [Appellant], has had multiple IPEs with DOR since his case was opened in 2018 to include vocational goals of Paralegals and Legal Assistants, and his current goal of Lawyer. Since he has been a client of Department of Rehabilitation he has been provided with the following services: Transportation, refurbished computer, [Community College] District fees, books and school supplies, printer and ink, Notary Public Certification training and registration, training at [University] toward his Bachelor’s Degree, new computer, LSAT testing fees, Kaplan LSAT prep class, dental evaluation, dental implants, Post Office Box, and [Law School] deposit. Total paid to date $37,132.72

The service being appealed is the amount DOR will pay to school toward tuition at [Law School].

On June 9, 2023, a new IPE was requested when accepted to [Law School].

On June 21, 2023, client provided the scholarship letter to his counselor and discussion occurred on what DOR can pay to the school for his cost of tuition.

On June 22, 2023, client provided a rebuttal letter to his counselor.

On June 23, 2023, Staff Services Manager I, C, spoke with client about his request and asked that he provide additional information from the school about the scholarship to verify that it is not specifically to be used toward tuition.

On June 23 and June 29, 2023, Staff Services Manager I, S (Acting District Administrator at that time) spoke with client to discuss Administrative Review request.

On June 24, 2023, client provided school refund policy.

On June 26, 2023, Staff Services Manager I, C, contacted the [Law School] and spoke with M who shared that the scholarship is a discount off of the tuition.

On July 6, 2023, Administrative review completed by District Administrator, J. On July 20, 2023, Mediation was conducted.

On August 4, 2023, staff Services Manager I, C, contacted M at [Law School] requesting a letter related to the scholarships provided by the school.

On August 16, 2023, staff Services Manager I, C, received invoice dated For August 7, 2023, for [Appellant] [Law School] Fall 2023 tuition.

On August 8, 2023, Staff Services Manager I, C received a letter from [Law School].

Conclusion: In conclusion, based on the facts and regulations included in this document, DOR properly denied the client’s request because DOR cannot fund over and above what is required toward the cost of tuition. Since the scholarship is a discount off of the tuition, DOR is required to subtract that from the amount owed to the school when authorizing tuition.

Letter from Ms. M ([Law School] Student Accounts Manager) regarding scholarship

Per our phone conversation 8/4/2023, tuition discount scholarships for [Law School] students are percentage-based discounts off the tuition charged per trimester and do not have any cash value. As they are discounts, they are only applied toward tuition.

Should a student also borrow Federal student loans, these funds are applied toward the balance due after scholarship. Any remaining credit relating to the application of Federal student loans on a student’s account after the balance of tuition and fees are paid in full is issued to the student as an excess funds refund to put toward education related expenses (ex: rent, food, etc).

When a student is receiving third party funds with cash value (ex: private scholarship), we apply the funds to the student account and issue any credit as a refund to the student.

For a student receiving DOR funds, if the amount covers tuition and fees less scholarship, the student would be at $0 balance with no excess funds refund issued unless they had an additional source of funding (ex. Federal student loans). If DOR sends an amount not reduced by scholarship, [Law School] would send this excess as a refund back to DOR, not to the student.

The only exception to this would be if DOR specifically authorized funds for other education related expenses beyond the normal tuition and fees.

This would need to be in writing and accompany the payment received with a calculation of the amount DOR intends for the student to receive for living expenses or other education related expenses. Should you need any additional information or clarification, please let me know. Thank you,

**DOR Testimony**

At hearing, the DOR representative reiterated the salient facts set forth above. He noted there is no dispute or debate that the scholarship is merit based, however as the scholarship is a discount off of the tuition, DOR is required to subtract that from the amount owed to the school when authorizing tuition.

**Appellant’s Evidence**

The Appellants Statement of Position set forth the following in pertinent and relevant part:

ISSUE: Did the DOR err in its denial of tuition coverage for a private institution?

RULE Summarizing the regulations provided by the DOR in their Statement we have:

1. 9 CCR §7154 states that whatever the minimum amount it takes in training for the client to reach their goal is what the DOR will pay.
2. 9 CCR §7155 states that the DOR does not pay for private institutions (CWSL is a private college) unless it is clear that the training needs of the individual can be better met by a private training institution or method or the training is not available in a public institution.
3. In Hoitt v. Department of Rehabilitation, 207 Cal. App. 4th 513, 525 the court clarified the meaning of section 7155 by stating that the “...key inquiry is not whether the private institution is better. Instead, it is whether training at a private institution is necessary or essential to achieve a sufficient level of training that is otherwise unavailable at a public institution.”
4. 9 CCR §7006 states that scholarships based upon merit are not comparable benefits.
5. 9 CCR §7197 provides additional rules for the DOR when paying “institutions of higher learning”. It states that maximum effort must be given to obtain grant assistance. The amount the DOR is liable for is the total amount of client’s tuition, books and supplies, maintenance and transportation minus educational grants and/or awards.
6. RAM 1284.8 echoes 9 CCR §7156 which states in relevance that a private school is to be used in training only when it is essential to the client’s Individual Plan of Employment (IPE). Therefore, RAM 1284.8 allows the DOR to apply training costs to the least expensive form of education necessary to achieve the IPE goals. If the client attends a private school when needs can be met at a public school, then the DOR will pay the amount of the public school and the client is responsible for the difference.

Other Applicable Rules

1. RAM 1203.4 states the cost of training includes, but is not limited to, tuition, fees, and books and supplies.
2. 20 CFR § 663.310 defines “grant assistance” as sources such as Welfare-to- Work, Statefunded training funds, Trade Adjustment Assistance and Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require WIA assistance in addition to other sources of grant assistance, including Federal Pell Grants
3. 20 CFR § 404.2117 states “...for this purpose, State VR agencies will be required to seek payment or services from other sources in accordance with the “similar benefit” provisions under 34 CFR part 361, including making maximum efforts to secure grant assistance in whole or part from other sources for training or training services in institutions of higher education.”
4. 34 CFR § 361.5 (8) Comparable services and benefits — a. (i) Comparable services and benefits means services and benefits, including accommodations and auxiliary aids and services, that are— i. (A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits; ii. (B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with §

361.53; and iii. (C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency. b.

(ii) For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

ANALYSIS 1. Section 7154 is what governs what the DOR claims to be the correct amount of tuition coverage. This section provides the client with the minimum amount needed in order to actually begin their training. Based upon this regulation, that would be the remaining cost of tuition which is $15,070.

1. Applying Section 7155 to my request asks whether training at a private institution is necessary or essential to achieve a sufficient level of training that is otherwise unavailable at a public institution. In other words, “Is it necessary for me to attend [Law School] in order to get my Juris Doctorate which I cannot attain at one of the University of California schools?”

There are 5 public law schools in California. Is there a sufficient level of training at these schools? Yes. A Juris Doctorate can be earned at any one of these schools. The other part of this question is, if it’s available to me? Each J.D. program has certain requirements for acceptance and if a prospective student doesn’t meet these standards their application will be rejected and the education at that public institution will not be available to him or her. Most law schools have rolling admissions and will factor LSAT scores as well as GPA. I applied in late May/early June to law schools due to me taking a late LSAT test. My LSAT score was 154 and my undergrad GPA was 3.65.

The main deciding factor in law school admissions is the LSAT. My score was 6 points lower than the lowest average LSAT score at a public university.

Additionally, UC Law School programs filled their seats by June, if not May. The availability of attending a public institution was nearly nonexistent to me, therefore. I was unable to achieve any level of training at a public institution. It made it necessary to attend a private institution.

It would seem that sometime in the future Section 7155 will need further judicial interpretation. As it stands, Section 7155 presupposes that one would want to choose to attend a private college under the assumption that they would receive a higher quality of education. As far as law schools go, the UC law schools are of a higher quality than many of the private ones. So it isn’t that I believe that the quality of education I seek isn’t available to me at a public institution, it’s that any legal education I seek isn’t available to me at a public institution as I lack the LSAT score and a timelier submission of my application to be admitted.

1. Applying Section 7156 we find that it is, in fact, essential to use private training to complete my IPE (see application of 7155). Since a private institution is the least expensive option to reach my IPE goals, RAM 1284.8 allows the DOR to pay for these training costs. Since it is not my choice to attend a private university over a public one, I am not required to pay the difference in costs.
2. Applying RAM 1203.4 is applicable to the DOR’s position stating that the training costs are not limited to just the tuition as factored by the DOR. My actual training costs would equal $62,160. The amount the DOR should be offering, at minimum, is $16,950 not $15,070.
3. When we apply the definitions found in CCR 7006, CFR § 663.310 and 404.2117 to CCR 7197 we find that grant assistance (Federal Pell Grants (§663.310) and comparable benefits and services (§404.2117) that would be used to assist offset tuition costs – with the exception of merit scholarships and awards (§7006) is subtracted from the training costs plus transportation and maintenance (§7197) which totals $68,640.

CONCLUSION Yes, by overlooking the caveats involved with exceptions in providing tuition assistance for private institutions, the DOR has wrongly denied

me the full assistance to obtain my vocational goal as an attorney. Read together the regulations state:

In order for the DOR to pay the full amount of training costs plus transportation and maintenance at [Law School] for me:

1. Sufficient training must be unavailable to me at a UC Law School; and
2. Maximum effort must have been made to secure comparable benefits to be deducted from the total paid by the DOR (not including any merit-based awards)

There is no legal training available to me at any of the UC Law schools and I have filled out and submitted FAFSA and the benefits I have received are merit based and thus not counted as any comparable benefits. Therefore, the DOR is allowed to pay the cost of tuition, fees, books, supplies, transportation, and maintenance.

Additionally, the DOR has stated that if I maintain a GPA over 3.0, they will only pay the $15,070. If my grades slip, they will pay the full tuition of $60,280. It seems preposterous that the legislation would seek to penalize me for attaining good grades and reward me with more money if I slip.

At hearing, the Appellant argued the points set forth above. Appellant stated that all he is doing is following what the Legislature says. Appellant argued the DOR’s willingness to consider the scholarship as a discount is not a surprise but is not legally sound.

## LAW

**State Hearings**

Appellant has the burden of introducing evidence at the hearing sufficient to demonstrate his/her case by a preponderance of the evidence. (9 C.C.R. § 7356(e).)

A preponderance of the evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafood, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

When dissatisfied with any action of the DOR relating to receipt of services, a consumer has a right to an administrative review and fair hearing, if a written request is submitted to the DOR within one year of the decision or action. (W&IC § 19704 (a).)

A request for a fair hearing must be preceded by a written denial or action relating to an application for or receipt of services. (9 C.C.R. § 7354(a)(1).)

A request for a fair hearing must include the information necessary for an administrative review, including a statement of the reason for appeal, why the consumer thinks the decision should be changed, and the action the consumer wishes the DOR to have taken. (9 C.C.R. § 7354(a)(3).)

**Individual Plan of Employment (IPE)**

Once a consumer is found to be eligible for DOR services, DOR is required to develop an IPE based on an assessment of the consumer’s needs and abilities. (9 C.C.R. § 7128.)

A consumer’s employment goals and the service funding necessary to achieve the goals are to be specified in the IPE. (W&IC § 19103 (b)(3).)

The IPE shall be designed to achieve the employment objective of the individual, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individuals, and, to the maximum extent appropriate, to include placement in integrated settings. (W&IC § 19103(B)(1).)

The IPE shall be jointly developed and agreed upon by both the eligible individual and the DOR. (W&IC § 19103(b)(2).)

**DOR’s Responsibilities**

The DOR is responsible for providing services necessary to achieve the consumer’s employment goal and maintaining the employment. (9 C.C.R. § 7131.)

Once an individual is eligible for services, the DOR is required to make vocational rehabilitation services available to assist the individual with a disability to prepare for, secure, retain, or regain an employment outcome that is consistent with the individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. (9 C.C.R. § 7149.)

Services shall be provided only to the extent necessary either to facilitate achievement of the vocational objective or prepare a consumer with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. (9 C.C.R. § 7154(a).)

The DOR is not required to provide maintenance services such as food, shelter, and clothing, unless these services are in excess of the normal expenses of an individual or necessitated by participation in an assessment for eligibility or service or receipt of service under the IPE. (9 C.C.R. § 7019.)

**Consumer Responsibilities**

1. Any individual with a disability who wishes to receive vocational rehabilitation services from the Department is responsible for completing the application process in accordance with the requirements of Section 7041 of these regulations.
2. Any applicant or eligible individual, as appropriate, shall have the responsibility to:
   1. Participate and cooperate in obtaining and providing the information needed by the Department to:
      1. Determine eligibility and priority for services in accordance with Section 7062 of these regulations;
      2. Determine priority category for the purposes of an Order of Selection in accordance with Section 7062.3 of these regulations;
      3. Determine whether the individual's chosen employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests;
      4. Determine the nature and scope of vocational rehabilitation services to be included in the Individualized Plan for Employment (IPE) in accordance with Section 7130.5 of these regulations; and
      5. Make any other determinations that are required by or consistent with federal or state statutes and regulations.
   2. Be an active and full partner in the vocational rehabilitation process and exercise informed choice throughout the vocational rehabilitation process, with assistance from the Rehabilitation Counselor as appropriate, by engaging in the following activities to the extent possible:
      1. Gathering and evaluating information and participating in planning and problem solving and decisions related to the assessment process, selection of the employment outcome and settings in which employment occurs, vocational rehabilitation services, service providers, settings in which services will be provided, and methods for procuring services;
      2. Seeking or identifying needed resources;
      3. Evaluating the consequences of the various options;
      4. Making decisions in ways that reflect the individual's strengths, resources, priorities, concerns, abilities, capabilities, and interests; and
      5. Taking personal responsibility for implementing the chosen options and achievement of the employment outcome the individual selected.
   3. Report any changes in circumstances that may affect:
      1. Eligibility for vocational rehabilitation services;
      2. Priority category under an Order of Selection;
      3. The services and/or the employment outcome specified in the Individualized Plan for Employment (IPE); and
      4. The Department's ability to contact the individual.
   4. Cooperate in the assessment process and in developing and meeting the objectives identified in the IPE including, but not limited to, active participation, reasonable effort, regular attendance at scheduled appointments and training, and regular communication with the Rehabilitation Counselor regarding progress toward achievement of the employment outcome. Failure to cooperate, make reasonable effort, lack of regular attendance, or failure to maintain regular communication may result in loss of further services and closure of the record of services.
   5. Participate in the cost of services under conditions specified in Chapter 5, Article 1 of these regulations.
   6. Apply for, secure and use comparable services and benefits to the extent to which the individual is eligible for such benefits in accordance with Chapter 5, Article 3 of these regulations. (9 C.C.R. § 7029.9.)

**Section 7154. Training Services**

1. Training services shall be provided only to the extent necessary to accomplish either or both of the following:
   1. Facilitate achievement of the vocational objective.
   2. Except as specified in (b), prepare a client with the skills and abilities necessary to be a competitive candidate for suitable employment at the entry level. For example, if the vocational goal is educator, the training would consist of a Bachelor's Degree and a teaching credential, not a Master's Degree.
2. The provisions specified in (a)(2) shall be waived in writing by the Rehabilitation Supervisor upon a determination by the Supervisor, Counselor and client that such an action is necessary for the client to achieve a goal of suitable employment. Factors to be considered in making the determination shall include:
   1. The nature and severity of the client's disability.
   2. The client's age.
   3. The client's past employment experience, or lack thereof.
   4. The financial needs of the client.
3. The selection of training services shall be based on the needs of the client and the timeliness, availability, and cost of training.
4. Any training facility which is equipped to meet the special training needs of a client and meets the standards set forth in chapter 3, subchapter 7 of these regulations may be used.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Sections 19150 and 19152, Welfare and Institutions Code; 34 CFR 361.42.

**Section 7155. Use of Public or Private Institutions**

1. Training in a private institution shall not be provided except when:
   1. It is clear that the training needs of the client can be better met by a private, correspondence, on-the-job, tutorial, or other training institution or method; or
   2. Overall cost to the Department will be less; or
   3. The training is not available in a public institution; or
   4. Attendance in a public training program would cause a significant delay in the client's preparation for suitable employment.
2. Prior written approval of the Rehabilitation Supervisor shall be required before a Counselor may send a client to a private school for training or to a college or university for graduate level training. The Rehabilitation Supervisor's decision shall be

based upon documentation that the requirements of (a) as well as of Section 7154 and Sections 7196 through 7198 have been met.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; and 34 CFR Sections 361.42, 361.47(b) and 361.56.

**Section 7006. Comparable Services and Benefits**

1. “Comparable Services and Benefits” means services and benefits that are:
   1. Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;
   2. Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual’s Individualized Plan for Employment (IPE); and
   3. Commensurate to the services that the individual would otherwise receive from the Department.
2. For the purposes of this definition---
   1. Comparable services and benefits do not include awards and scholarships based on merit.
   2. A Plan for Achieving Self-Support (PASS) issued to an individual with a disability by the Social Security Administration (SSA) does not constitute a comparable service and benefit.
   3. A “ticket” issued to an individual with a disability under the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) (42 USC 1320b-19) is considered a comparable service and benefit under the vocational rehabilitation program to the extent that a ticket holder is receiving services from another entity that is serving as that individual’s employment network.
   4. If the individual initially chooses the Department as its employment network under TWWIIA or otherwise transfers his or her ticket to the Department, the ticket would not be considered a comparable service and benefit.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: 29 USC 721(a)(8); 34 CFR Sections 361.5(b)(10) and 361.53; and Sections 19011 and 19150(b), Welfare and Institutions Code.

**Section 7197. Additional Requirements---Institutions of Higher Education**

* + 1. For the purposes of this section, the following definitions shall apply:
       1. “Institution of higher education” means a university, college, community college, or private proprietary school which provides academic or vocational education and/or training above the California secondary school level.
       2. “Maximum effort” means a client's specific actions which are necessary to establish eligibility and secure any similar benefits necessary to vocational rehabilitation.
    2. The Department shall not authorize training or training services provided by an institution of higher education unless a maximum effort has been made by the client to secure grant assistance from other sources to pay in whole or in part the cost of

such services. The Counselor shall assist the client as necessary in identifying and applying for any grant assistance for which the client may be eligible.

* + 1. The amount of services, if any, to be authorized by the Department for educational purposes shall be determined by subtracting the total amount of the client's educational grants and/or awards as reported by the financial aid office from the costs of the client's tuition, books and supplies, maintenance and transportation. The remainder is the amount of services to be authorized by the Department.

NOTE: Authority cited: Sections 19006 and 19016, Welfare and Institutions Code. Reference: Section 19150, Welfare and Institutions Code; and 34 CFR 361.42(a)(4) and 361.47(b).

**Rehabilitation Administrative Manual Chapter 12**

**VOCATIONAL REHABILITATION GOODS AND SERVICES**

1284.8 Tuition, Registration, and Training Fees for Private and Out-of-State

In accordance with CCR 7156, DOR's level of support for training costs is limited to the cost of the least expensive educational program that will meet the training requirements necessary to achieve the goal of the consumer's IPE.

If appropriate training is available at a public institution but the consumer chooses a private institution, DOR may fund the cost up to the limits set forth above, and the consumer is responsible for any costs above that level.

DOR will pay for the cost of training at private and out-of-state institutions only when the training required for successful completion of the IPE is not available at a public institution. DOR support for private or out-of-state training must be appropriately justified, in accordance with CCR, sections 7156 and 7158.8, respectively, and with the requirement for informed choice.

If the consumer chooses to attend training at a private institution despite the fact that the training needs can be met at an available public institution, the Rehabilitation Counselor shall determine whether the total cost of the private institution is equal to or less than an available public institution.

If it is determined that the private institution will cost more than the available public institution, the consumer must agree to pay the additional costs for training at the private institution.

Private educational institutions and business, technical, or trade schools, whether providing in-person or online training programs, must be approved by the Bureau of Private Postsecondary Education (BPPE); this includes out-of-state educational institutions providing online courses to individuals residing in California.

All BPPE approved private educational institutions or schools shall complete the following actions prior to becoming a provider of services:

* Provide the DOR with all of the following:
* Copies of approval documents from the BPPE.
* All school literature, including enrollment agreements and prices, tool lists, and other relevant material.
* Sufficient additional information for the DOR to complete the DR 720 SCHOOL SURVEY form.
* Agree to complete and submit each month, along with its billing, a DR 226 REPORT OF PROGRESS IN TRAINING form. A current report card may be substituted for the DR 226 form.

Tuition shall be paid to private and out-of-state schools only for work completed. For correspondence (online) courses, this means on a per-lesson basis at a rate pro-rated over the number of lessons in the course. For other private training, the pro-rating may be on a lesson, hourly, or monthly basis.

The Rehabilitation Counselor will perform the following actions prior to authorization:

* Verify that BPPE requirements have been met for the institution for which services are to be authorized.
* Verify that an approved DR 720 form is on file in the district office.
* Obtain Team Manager approval for the authorizing of private school registration and enrollment

Refer to Section 1284.7 for criteria for out-of-state training.

Refer to the EDD WIA Eligible Training Provider List database, at

<[http://etpl.edd.ca.gov](http://etpl.edd.ca.gov/)>, or query the BPPE, at <[www.bppe.ca.gov](http://www.bppe.ca.gov/)>, for the list of approved training providers.

## CONCLUSION

The Appellant seeks an order requiring DOR to draft a new Individualized Plan for Employment (IPE), to include tuition in the amount of $60,280, instead of the $15,070 that DOR has agreed to pay to fund his tuition at [Law School] in pursuit of his employment goal of a Lawyer.

It is undisputed that the Appellant was awarded a merit-based scholarship to attend [Law School].

After a full and fair review of the evidence, it must be determined the Department correctly denied Appellant’s request for a new IPE to include tuition in the amount of

$60,280, instead of the $15,070 that DOR has agreed to pay to fund his tuition at [Law School].

Here, a preponderance of the evidence established firstly, the yearly tuition for [Law School] is $60,280 and the amount of the Appellant’s scholarship is $45,210, which leaves a remaining balance of $15,070.

Secondly, the scholarship is not a cash award but a discount off of the tuition. DOR only pays for training costs.

Finally, the remaining cost of tuition is $15,070 and DOR cannot fund over and above what is required toward the cost of tuition.

Accordingly, the DOR’s denial of the Appellant’s request that a new Individualized Plan for Employment (IPE) be drafted, to include tuition in the amount of $60,280, instead of the $15,070 that DOR has agreed to pay, is sustained.

## ORDER

The claim is denied.