

3300 RIGHTS AND RESPONSIBILITIES.

3301 General. This section sets forth and explains the rights guaranteed to the individual by law, and the responsibilities of the individual in obtaining services under those rights. It is the policy of the Division that the program will be carried out in a manner consistent with the principles of respect for individual dignity, personal responsibility, self-determination and pursuit of meaningful careers, based on informed choice; respect for the privacy, right and equal access (including the use of accessible formats) of the individuals; inclusion, integration and full participation; and support for the involvement of an individual's representative if an individual with a disability requests, desires or needs such support. Individuals who are applicants for services or eligible to participate in vocational rehabilitation (VR) services must be active and full partners in the VR process, making meaningful and informed choices.

3302 Client's Rights.

3302.1 Right to Complete Statement of Rights. The individual is entitled to a complete written statement of rights (*Rights and Responsibilities*), which will be available in accessible formats as requested.

3302.2 Right to Apply for Services. Any individual, except one who is incarcerated without a firm release or parole date, has the right to apply for VR or independent living (IL) services, even if it appears at the time of application that s/he does not meet eligibility criteria. The individual may make application initially in any written form. However, as soon as possible and preferably during the initial contact, the Rehabilitation Counselor will obtain the applicant's signature on the *Application for Rehabilitation Services*.

3302.3 Right to Eligibility Decision within a Reasonable Time. The individual has the right to a decision by the Rehabilitation Counselor of the eligibility decision within a reasonable time, normally not more than 60 days from the date of signing the application, unless:

A. Due to unforeseen and exceptional circumstances beyond the control of the Rehabilitation Counselor, eligibility determination cannot be made within 60 days. The Rehabilitation Counselor and individual will agree to a specific extension of time; or;

B. The Rehabilitation Counselor and individual are exploring the individual's abilities, capabilities, and capacity to perform work in trial work experiences.

1. *Right to Preliminary Assessment.* The preliminary assessment is required in every case to determine whether the individual is eligible or ineligible for rehabilitation services. Therefore, the Division requirement for the individual to be provided a preliminary diagnostic study becomes a right of the individual to receive it.

2. *Right to Eligibility Criteria Applied without Discrimination.* The individual has the right for eligibility criteria to be applied to his/her application without regard

to sex, race, age, creed, color, national origin, residence, or type of disability. The only consideration with respect to the above is that the individual must be of employable age at the time rehabilitation services are completed.

3302.4 Right to Participate in Formulation of Individualized Plan for Employment/Independent Living Plan. Upon being found eligible for rehabilitation services, the individual has the right to develop the initial Individualized Plan for Employment (IPE) or Independent Living Plan (ILP) independently or jointly with the Rehabilitation Counselor. S/he also has the right to develop independently or jointly with the Rehabilitation Counselor any in-process amendment(s) to the IPE or ILP. The following rights are directly related:

A. *Right to Express Dissatisfaction.* The individual has the right to express his/her dissatisfaction with any provision proposed for inclusion in the IPE or ILP. If an IPE or ILP cannot be agreed upon and developed, the individual has the right to a review, mediation, and/or fair hearing. See also Section 3400.

B. *Right to Receive Copies of IPE or ILP.* The individual has the right to receive a copy of the initial IPE or ILP and each in-process amendment. At the time of case closure or termination of post employment services, the individual has the right to receive a copy of the *Closure Statement*.

C. *Right to Thorough Assessment.* As the basis for formulation of the IPE or ILP, the individual has the right to receive a thorough diagnostic study to the extent required for rehabilitation purposes in his/her particular case.

3302.5 Right to Participate in Determination of Ineligibility. If an individual has applied for services and, based on the review of existing information and assessments, is determined ineligible for services; or if an eligible individual receiving services under an IPE or ILP is determined to be no longer eligible for services, the ineligibility determination can be made only after providing an opportunity for full consultation with the individual, or as appropriate, the individual's representative. The individual or, as appropriate, the individual's representative, shall be informed in writing (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual) of the ineligibility determination, including the reason for the determination, and a description of the means by which the individual may express and seek a remedy for any dissatisfaction with the decision.

3302.6 Right to Annual Review. Whenever the individual's case is closed non-rehabilitated from any status, the individual has the right to an annual review of the ineligibility decision or any time thereafter, if such a review is requested by the individual, or if appropriate, by the individual's representative. Exceptions to annual reviews will occur when:

A. The case was closed because the individual's condition was terminal, or closed from Status 02 because the individual did not meet eligibility criteria;

B. The case was closed because of the individual's lack of cooperation or interest;

C. The individual has given written notice that s/he does not wish to be considered further; or,

D. The individual's whereabouts are unknown or s/he has relocated out of state.

3302.7 Right to Discontinue Program. The individual has the right to discontinue his/her program at any time, upon notice to the Rehabilitation Counselor. Verbal notice is acceptable. Upon receiving the verbal notice, the Rehabilitation Counselor will initiate closure into the proper status and attempt to obtain the individual's participation in the non-rehabilitated closure.

3302.8 Right to Discuss Case with Counselor. The individual has the right to discuss his/her case with the Rehabilitation Counselor at any time in the rehabilitation process.

3302.9 Right to Confidential Treatment of Case Information. The individual has the right to confidential treatment by the Division of all case information.

3302.10 Right to Administrative Review. When dissatisfied with the provision or denial of rehabilitation services, the individual has the right to express his/her dissatisfaction to the Rehabilitation Counselor and to seek a remedy from the Counselor. If dissatisfied with the remedy offered, the individual has the right to request and receive a review, mediation, and/or fair hearing. See also Section 3400.

3302.11 Right to Pursue Mediation. Should the individual or, if appropriate, the individual's representative, be dissatisfied with determinations made by the Rehabilitation Counselor, the mediation process will allow parties to address and resolve disputes as requested. The individual will be provided written notification (supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual) of these rights to mediation:

A. At the time an individual applies for rehabilitation services;

B. At the time the IPE or ILP is developed; and,

C. Upon change, suspension, or termination of rehabilitation services.

3302.12 Right to Client Assistance Program. The individual has the right to avail him/herself of the services of the Client Assistance Program (CAP) currently operated by the West Virginia Advocates (WVA). The purposes of CAP are to provide the individual detailed information on services available from the Division, to assist the individual in working out problems that may be preventing him/her from receiving services and to help the individual understand his/her legal right to rehabilitation services. Upon the individual's request, the Rehabilitation Counselor will advise him/her how to contact CAP.

3303 Individual Responsibilities.

3303.1 General. Central to the rehabilitation process is the interaction between the Rehabilitation Counselor and the individual. Just as the Rehabilitation Counselor has specific responsibilities to fulfill in serving the individual, so has the individual specific responsibilities to discharge in receiving rehabilitation services. The individual's major responsibilities are set forth in this paragraph. Early in the rehabilitation process, the Rehabilitation Counselor should make the individual aware of his/her responsibilities and counsel him/her to carry them out fully.

3303.2 Provide Requested Information. The individual is responsible for providing reasonable information requested by the Rehabilitation Counselor and other individual-serving personnel.

3303.3 Volunteer Pertinent Information. The individual is responsible for taking the initiative to provide the Rehabilitation Counselor and other individual-serving personnel new information having a bearing on his/her case. Among such information are reports of problems encountered and new developments in the individual's personal financial condition.

3303.4 Communicate. The individual is responsible for informing the Rehabilitation Counselor promptly of any change in address and/or phone number, and for answering promptly all correspondence from the Counselor and other individual-serving personnel.

3303.5 Participate in Formulating the IPE or ILP. The individual is responsible for active participation in development of the initial IPE or ILP and its in-process amendment(s), freely offering his/her aspirations, ideas and reactions.

3303.6 Cooperate in Receiving Services. The individual is responsible for full cooperation with the Rehabilitation Counselor and other individual-serving personnel in receiving rehabilitation services. S/he is expected to keep all appointments or give advance notice when s/he cannot, attend training promptly and regularly, and follow closely the instructions of professionals providing services.

3303.7 Meet Acceptable Standards. The individual is responsible for meeting the prescribed standards of training and other services.

3303.8 Participate in Placement. The individual has the responsibility to participate actively in placement. S/he is expected to register with the public employment services of the Bureau of Employment Services, learn the necessary job-seeking skills which may be taught by the Rehabilitation Counselor or other individual-serving personnel, check into job openings on his/her own initiative, and otherwise actively seek employment.