

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

DANIEL SANDLER,  
Petitioner,

v.

GEORGIA VOCATIONAL  
REHABILITATION AGENCY,  
Respondent.

:  
:  
: Docket No.:  
: OSAH-GVRA-VR-1448717-67-Teate



OCT 14 2014

**FINAL DECISION**

**I. INTRODUCTION**

*K. Westray*  
Kevin Westray, Legal Assistant

Daniel Sandler (“DS”) requested a hearing in response to an Informal Administrative Review decision issued by the Georgia Vocational Rehabilitation Agency (“GVRA”) on April 3, 2014. At a hearing on August 19, 2014, Joseph Jones, Esq. represented Petitioner and Rachel King, Esq. represented GVRA. For reasons indicated, GVRA’s determination that Petitioner exceeds the VR Program Allowance is hereby **AFFIRMED**; however, it is **MODIFIED** to reflect the appropriate calculation of the Petitioner’s cost share.

**II. FINDINGS OF FACT**

1. GVRA’s Client Services Policy Manual (hereinafter “CSPM”) provides that where funds are to be utilized in obtaining services for a client, the VR Counselor must conduct an assessment of the client’s financial need for such services (“Financial Need Assessment”), unless the services are specifically exempted by GVRA policy or the client has been determined eligible to receive Social Security benefits or TANF. The VR Counselor completes the Financial Need Assessment at the Eligibility Determination phase of the VR Application process using a Financial Need Assessment Form, taking into account all of the client’s financial resources, including income.<sup>1</sup> (Testimony of Julie O’Connor; Exhibit R-5).

2. Subsequently, the Financial Need Assessment is reviewed “annually and at any time the VR Counselor becomes aware of a change in the client’s financial circumstances which might affect the individual’s financial need.” If the client does not meet financial need criteria for the services in his or her Work Plan, the client’s liability for the cost of those services is determined in accordance with a Cost Share Chart. If the client’s services include an academic or vocational training program that is already in progress at the time the client is determined to not meet financial criteria, services will continue through the end of the current semester or quarter. (Testimony of Julie O’Connor; Exhibit R-5).

<sup>1</sup> The PELL Grant and scholarships, such as HOPE, are not considered income for purposes of a financial need determination. (Exhibit R-5).

3. Prior to the 2012 CSPM, DS met the financial eligibility criteria. Then, GVRA initiated a change in its Financial Need Assessment Policy in 2012 in its CSPM (hereinafter “the 2012 CSPM”) that required an assessment of total household income with inclusion of parental income into the calculation, GVRA ultimately did not implement that change in policy and took no adverse action. Incident to a notice of change, DS provided copies of 2012 tax returns for his parents that included him as a dependent and indicated adjusted gross income that resulted in a proposed reduction in the tuition costs and fees previously covered by VR. DS filed an appeal that was ultimately dismissed inasmuch as the matter was moot when GVRA did not implement the changes after Rehabilitation Services Administration of the United States Department of Education (“RSA”) indicated that public notice and comment on the proposed change was necessary before RSA would approve the change. (Testimony of Julie O’Connor; See Sandler v GVRA, Docket No. OSAH-GVRA-VR-1344707-67-Teate).

4. Pursuant to a policymaking procedure that included public notice and comment GVRA changed the Financial Need Assessment Policy via amendments to the CSPM in October 2013. (hereinafter “the 2013 CSPM”). The 2013 CSPM was then approved by RSA. (Testimony of Julie O’Connor; Testimony of Cecelia Hockett).

5. As amended, GVRA’s Financial Need Assessment Policy provides that, until the client is twenty-four years old, the income and resources of a client’s parents or guardians must be included in the financial need assessment unless the client meets one or more expressly delineated exceptions. One such exception is if the client “is not claimed as a dependent by his/her parent(s).” (Testimony of Julie O’Connor; Exhibit R-5).

6. Prior to the October 2013 amendments to the CSPM, a client was financially eligible for paid services only if the client’s household income was less than a maximum income limit derived from Federal Poverty Guidelines (the “VR Program Allowance”). As an alternative, the 2013 CSPM implemented a cost-sharing scale, a change that was approved by RSA. According to the new methodology, the percentage of the cost of a service covered by VR is dependent upon the amount by which the client’s household income exceeds the VR Program Allowance. (Testimony of Julie O’Connor; Exhibits R-5, R-7, R-8).

7. DS was attending his second year of post-secondary training at Georgia State University when the 2012 CSPM was initiated, but not ultimately implemented, and when the 2013 CSPM amendment to GVRA’s Financial Need Assessment Policy went into effect. GVRA again requested copies of DS’s parents’s federal income tax returns. The copies for 2012 were supplied; however, DS did not produce copies of his parents’s 2013 federal income tax returns. In the absence of a 2013 federal income tax return as requested, GVRA reassessed DS’s continued eligibility for paid services according to the amended Financial Need Assessment Policy using DS’s parents’s 2012 federal income tax returns that DS had previously supplied. (Testimony of Julie O’Connor; Testimony of Daniel Sandler; Exhibit R-6)

8. On the 2012 tax return, DS’s parents listed their total income as \$87,567.00 and claimed two dependents, including Petitioner. Because Petitioner was under twenty-four years of age, was listed as a dependent on his parents’ tax return, and did not otherwise meet an exception prescribed in the Financial Need Assessment Policy, his parents’ income was included in the

assessment of his financial eligibility. Based upon the information in the 2012 tax return, Petitioner's VR Counselor determined that Petitioner's household income did not meet financial eligibility criteria. The VR Counselor further determined that Petitioner's household income exceeded the VR Program Allowance by an amount that, per the VR Program Cost Sharing Chart, required Petitioner to pay 100% of the cost of his services. (Exhibits R-1, R-6).

9. In a Notice of Change dated February 24, 2014, DS's VR Counselor notified DS that he no longer met financial need criteria and that GVRA's support for his post-secondary training would end after the Spring Semester of 2014. The Notice of Change further provided that GVRA's determination was based upon CSPM § 402.1.04, which provides:

If services which require that financial need criteria be met are being provided and the client's economic circumstances change causing him/her to no longer meet the financial need criteria, the client shall be notified and the services discontinued in accordance with policy.

CSPM § 402.1.04. (Exhibit R-1).

10. DS appealed the proposed termination of his paid services on March 7, 2014 and the matter was referred to Henrietta Archie, Rehabilitation Unit Manager with GVRA, who conducted an Informal Administrative Review and issued a decision to Petitioner on or about April 3, 2014. In the Informal Administrative Review decision, Ms. Archie concurred with the VR Counselor's determination that DS no longer met the financial eligibility criteria necessary for continuation of his paid services, citing sections 206.1.03 through .06 of the CSPM. According to the Informal Administrative Review decision, the income of DS's family<sup>2</sup> exceeded the VR Program Allowance "for a family of five (5)" by an amount that rendered Petitioner responsible for 100% of the cost of his post-secondary training. (Testimony of Julie O'Connor; Exhibits R-3, R-4).

11. DS appealed GVRA's Informal Administrative Review decision on or about April 8, 2014 and the matter was referred to the Office of State Administrative Hearings. GVRA has continued to support DS's post-secondary training pending the outcome of his appeal. (Testimony of Julie O'Connor; Exhibit R-4).

12. At the hearing of this matter, DS challenged the validity of the 2013 CSPM, asserting that it was not promulgated in accordance with state and federal law. DS disputed GVRA's use of his parents' income in the determination of his financial eligibility, contending that such a determination should be based solely on his income. DS further disputed GVRA's reliance on his parents' 2012 tax return when the determination of his ineligibility was made in 2014. DS testified that he had been unable to obtain his parents' 2013 tax return, but acknowledged that his parents' still included him as a dependent on their tax returns. (Testimony of DS).

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<sup>2</sup> Ms. Archie listed "\$86,474" as Petitioner's family's income in the Informal Administrative Review decision. This reflects the amount listed as "adjusted gross income" on the 2012 tax return, taking into account an "IRA deduction" (\$1,000.00) and the "[d]eductible part of self-employment tax" (\$93.00). Julie O'Connor, Policy Appeals Adviser for GVRA, testified that the appropriate amount of income to be used in the financial eligibility calculation is "total income," which is included on line 22 of the 2012 tax return. (Exhibit R-3; Testimony of Julie O'Connor).

13. DS testified that his parents have expenses associated with caring for his twenty-five-year-old brother, who resides in their household. According to DS, his parents help his older brother with his credit card and car payments. Petitioner's older brother is not claimed as a dependent on the 2012 tax return. (Testimony of DS).

### III. CONCLUSIONS OF LAW

1. As the present case concerns the termination of benefits Petitioner received through the Vocational Rehabilitation Program, Respondent bears the burden of proof. GA. COMP. R. & REGS. 616-1-2-.07. The standard of proof is by a preponderance of the evidence. GA. COMP. R. & REGS. 616-1-2-.21.

2. The Vocational Rehabilitation Program, which is administered by GVRA, is authorized pursuant to federal law by the Rehabilitation Act of 1973, as amended, at 29 U.S.C. § 720 et seq. (the Act), along with implementing regulations at 34 C.F.R. Part 361. Pursuant to 29 U.S.C. § 721(a)(1)(A), GVRA must submit to the Commissioner of the Rehabilitation Services Administration of the U.S. Department of Education a State plan for GVRA services that meets the requirements of the Act. The state plan must contain a "description of the State's vocational rehabilitation services . . . [and] . . . the plans and policies to be followed in carrying out the program . . . ." 34 C.F.R. § 361.10(a). Accordingly, the Vocational Rehabilitation Program operates in accordance with the Client Services Policy Manual ("CSPM"), which is promulgated in compliance with federal and state law.

3. Section 206.1.05 of the CSPM provides that "[u]ntil a client reaches the age of 24, the income and/or resources of the client's parents or guardians shall be included in the financial need assessment unless the individual meets one of the following criteria:

- A) is married,
- B) is a graduate or professional student,
- C) is a veteran, or a member of the armed forces,
- D) is an orphan,
- E) is a ward of the court,
- F) is someone with legal dependents other than a spouse,
- G) is an emancipated minor, or
- H) someone who is homeless or at risk of becoming homeless[,]
- I) is exiting a transitional center or correctional facility,
- J) *is not claimed as a dependent by his/her parent(s), or*

K) has been determined to be an “independent” student by the financial administrator of a post[-]secondary institution

CSPM § 206.1.05 (emphasis added). In the present matter, GVRA appropriately determined that the income of DS’s parents should be included in the calculation of financial need. GVRA demonstrated, by a preponderance of the evidence that (1) DS is under the age of 24, (2) DS is claimed as a dependent on his parents’ tax return, and (3) DS meets no other exception prescribed under Section 206.1.05.

3. GVRA introduced insufficient evidence to support its calculation of the VR Program Allowance. The family members that count in determination of the VR Program Allowance are those “who are financially dependent on one another.” CSPM § 206.1.07. Although the CSPM provides that “[t]ax returns *may be used to verify* dependent relationships,” the fact that Petitioner’s older brother is not claimed as a dependent on the 2012 tax return does not mandate the conclusion that he is not a member of the family unit. *Id.* (emphasis added). Petitioner testified that his brother lives in his parents’s household and that he receives financial assistance from them. GVRA introduced no evidence to support calculation of Petitioner’s financial eligibility based upon a family of four. Indeed, in the Informal Administrative Review, Ms. Archie calculated Petitioner’s cost share based on the VR Program Allowance “for a family of five (5).” Therefore, Petitioner’s financial eligibility and cost share should be calculated based upon a VR Program Allowance for a family of five which, pursuant to Table A in Appendix C of the CSPM (“the VR Program Allowance Table”), is \$41,355.00. CSPM, App’x C, Table A.

4. The percentage of Petitioner’s liability for the cost of his post-secondary training is dependent upon the amount by which his household income exceeds the VR Program Allowance. CSPM § 206.1.07. The CSPM defines income to include “money, wages and salaries before any deductions.” CSPM § 206.2.01. On the 2012 tax return, Petitioner’s parents listed their total income, before any deductions, as \$87,567.00. Accordingly, the appropriate income amount for purposes of calculating cost share is \$87,567.00.

5. Petitioner’s income exceeds the VR Program Allowance by \$46,212.00:

\$ 87,567.00 (Petitioner’s Income)
<u>- \$ 41,355.00 (VR Program Allowance for a family of five)</u>
\$ 46,212.00 (Amount of Income Over the VR Program Allowance)


6. Per Table B in Appendix C of the CSPM, Petitioner’s liability for the cost of his paid services is 84%. GVRA remains liable for 16% of the costs of Petitioner’s paid services. Accordingly, GVRA failed to establish that Petitioner’s paid services should be entirely discontinued as provided in the Notice of Change and Informal Administrative Review decision.

#### IV. DECISION

**IT IS HEREBY ORDERED** that GVRA’s adverse action is **AFFIRMED**. However, inasmuch as GVRA failed to appropriately calculate Petitioner’s cost share pursuant to the 2013 Client

Services Policy Manual, its decision is hereby **MODIFIED** to reflect a VR cost share of 16%, with Petitioner liable for 86% of the costs of paid services.

**SO ORDERED**, this 8<sup>th</sup> day of October, 2014.

  
**STEVEN W. TEATE**  
**Administrative Law Judge**