

## DETERMINATION OF ELIGIBILITY-OVERVIEW

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### Introduction

The eligibility process identifies those individuals who are legally blind that can be served through the VR program.

### Determination of Eligibility

An individual is eligible for VR services if the following two criteria are met:

**Criterion I:** The individual has a disability, defined as any individual who has a physical or mental impairment (which must include legal blindness) that results in a substantial impediment to employment; and who can benefit in terms of an employment outcome from VR services.

**Criterion II:** The individual requires VR services to prepare for, secure, retain, advance in or regain employment.

### Presumption of Eligibility

An individual who has a disability, as determined by the Social Security Administration, is presumed to be eligible for VR services, provided that the individual intends to achieve an employment outcome consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These individuals will be determined eligible unless there is clear and convincing evidence that the individual cannot achieve employment due to the severity of their disability.

If an applicant meets the criteria for presumed eligibility, documentation to support the determination must be included in the case record.

### Prohibited Factors

In considering the eligibility of an applicant, eligibility requirements must be applied without regard to the following:

1. Age, sex, race, color or national origin of the applicant
2. Type of expected employment outcome

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3. Source of referral
4. Service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family
5. Applicant's employment history or current employment status
6. Applicant's educational status or current educational credential

While there is no duration of residency requirement or requirement to provide documentation of presence in the state the applicant must be present in the state to participate in VR services and achieve a vocational goal.

### Who Determines Eligibility

The VR counselor is responsible for determining an individual's eligibility or ineligibility for VR services, including the need for trial work. This responsibility cannot be delegated.

### Assessment for Determining Eligibility

The VR counselor should use existing information to assess eligibility or the need for trial work. This may include information from education programs, Social Security, and/or information provided by the individual or from the family of the individual. Only those assessments needed to determine eligibility should be provided at this time.

### Time Frame for Eligibility

An eligibility determination must be made within 60 days from the date that an application is received by NYSCB unless: the individual agrees that an extension is warranted because of unforeseen circumstances beyond the control of NYSCB, or a trial work period is needed.

The agreement between the applicant and the VR counselor to extend the time frame for eligibility must be documented by completing the VR Extension of Eligibility Determination Form in the applicant's case record and documented in a case note. When an extension is necessary, a new agreed upon time frame for determining eligibility must be entered in the VR Extension of Eligibility Determination form.

### Economic Need

Services necessary to determine eligibility are provided without regard to economic

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need status. See Chapter 5.00, Determination of Economic Need, for additional information.

### Contents of this Chapter

This chapter includes the following sections:

1. Determination of Eligibility - Overview
2. Eligibility for VR Services
3. Trial Work
4. Ineligibility for VR Services
5. Review of the Ineligibility Decision
6. Documentation of Eligibility

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### Statement of Criterion I

The individual has a disability, defined as a physical or mental impairment (which must include legal blindness) that results in a substantial impediment to employment; and can benefit in terms of an employment outcome from VR services.

### Definition of Legal Blindness

Legal blindness is a visual acuity of 20/200 or less in the better eye with best correction, or a visual field of no greater than 20 degrees in the better eye.

Additionally, an individual that functions at the definition of legal blindness due to a vision condition such as cortical visual impairment may also be eligible for services. If acuity testing is impossible or unreliable based on medical opinion and the functional vision meets the definition of legal blindness, documentation must be provided by medical professionals to support an eligibility determination.

### Primary Disability

For applicants with multiple disabilities, the primary disability is generally considered to be the disability which presents the most severe impediment. For NYSCB, legal blindness is considered to be the primary disability even in situations where another disability may result in greater impediments to independent functioning. NYSCB has primary responsibility for providing services to individuals who are legally blind and eligible for VR services regardless of other documented secondary disability.

For individuals who are legally blind and deaf, deaf-blindness must be entered as the primary disability on the Eligibility Determination Worksheet and VR Intake form. For individuals who are legally blind and severely hearing-impaired, blindness is their primary disability and deaf-blindness is their secondary disability, even if other disabilities are present.

### Referral to NYS Adult Career and Continuing Education Services – VR (ACCES-VR)

NYSCB provides services to individuals with multiple disabilities, when the primary disability is legal blindness. Individuals with a primary disability other than legal blindness should be referred to the local ACCES-VR District Office.

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### Job Save Services for Individuals Not Currently Legally Blind

In accordance with an agreement with ACCES-VR, NYSCB can provide Job Save Services to an individual who is not yet legally blind if the following four criteria are met:

1. The individual has a severe visual impairment (20/70 in the best eye with correction or field restrictions of 40/21 degrees) that is progressive (as documented by an ophthalmologist or optometrist)
2. The individual has a prognosis of becoming legally blind within one year as determined by an ophthalmologist or optometrist
3. The individual is currently employed and at risk of losing their job due to difficulties related to their visual impairment
4. The individual is not currently receiving services from ACCES-VR, has not previously received services from ACCES-VR and is not applying for services from ACCES-VR.

### Substantial Impediment to Employment

Substantial impediments to employment exist when functional limitations associated with legal blindness and/or another disability(ies) prevent an individual from preparing for, securing, retaining, advancing in or regaining employment consistent with the individual's abilities, capabilities and interests.

### Factors Contributing to an Impediment to Employment

Certain medical, psychological, vocational, educational, cultural and social factors can combine with legal blindness to create an impediment to employment. Examples of such factors include: lack of marketable skills; limited educational level; community attitudes concerning legal blindness; long-term unemployment or limited work experience; socio-economic circumstances; lack of independent living skills; and the individual's attitudes toward work, family and community.

### Exception to Substantial Impediment to Employment - Business Enterprise Program

Under the Rehabilitation Act, members of the Business Enterprise Program may be considered eligible for further education and additional training or retraining for improved work opportunities within the program even though they may not have a substantial impediment to their current employment.

### Secondary Disability

A disability which may be either associated with or unrelated to the visual condition is considered a secondary disability. Examples may include: diabetes; intellectual or developmental disability; deafness; orthopedic impairment; and epilepsy.

Information on secondary disabilities should be obtained during the intake process.

### Presumption of Benefit

For the purposes of determining eligibility, it is presumed that an individual can benefit in terms of an employment outcome from VR services. To determine that an individual is incapable of benefitting from VR services in terms of an employment outcome, a counselor must demonstrate with clear and convincing evidence that no employment outcome is possible, including supported employment, even with the provision of VR services.

### Clear and Convincing Evidence

To meet the standard of "clear and convincing" evidence, the VR counselor must have evidence that demonstrates with a high degree of certainty that an individual is incapable of benefiting from services in terms of an employment outcome.

Clear and convincing evidence may include a description of assessments, including situational assessments during trial work, supported employment assessments where the service provider has concluded that they would be unable to meet the individual's needs due to severity of 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. Medical examinations and intelligence or psychometric tests alone would not constitute evidence for a determination of ineligibility.

### Conditions that May Affect Ability to Benefit

The presence of a rapidly progressive or terminal illness may affect an individual's ability to benefit or participate in VR services. In such situations, the VR counselor should obtain medical information to better determine the applicant's anticipated ability to work.

Verification of Legal Blindness

Any information that verifies that an individual is legally blind is acceptable for determining eligibility, including: validation that a person is on the Eye Registry; the Mandatory Eye Report, the Medical Eye Report or a narrative letter from an ophthalmologist or optometrist; and existing information from sources such as schools, the Social Security Administration, low vision clinics or community health clinics.

Determining Eligibility Based on Immigration Status

In certain circumstances, individuals residing in New York State may not be eligible to receive VR services due to their immigration status or if they reside in an institutional setting. The definitions/descriptions below provide general information about immigration statuses. There are many immigration related forms, documents and rules in addition to changes in laws and regulations that cannot be addressed in this Manual. Therefore, when an applicant presents information regarding their immigration status, the district manager will contact OCFS Counsel to assist with determining whether the applicant can receive VR services from NYSCB.

**Definitions/Descriptions**

Immigrant Aliens - Immigrant aliens can be determined eligible for VR services if they have a Permanent Resident Card (I-551) issued by the United States Citizenship and Immigration Services (USCIS) and meet all other criteria for eligibility. A copy of the Permanent Resident Card must be entered into the applicant's case record.

Exception, Randolph-Sheppard - To be a member of the Randolph Sheppard Business Enterprise Program (BEP), an individual must be a citizen of the United States. An immigrant alien interested in becoming a vending stand operator may participate in training toward that goal only if they are expected to take an oath of citizenship within six months.

Non-Immigrant Aliens - Non-immigrant aliens are individuals admitted to the United States for a specific purpose and time-period who are expected to return to their home country upon completion of the specific purpose or time-period. Non-immigrant aliens are usually not permitted to work in the U.S. Examples include: visitors for business or pleasure; crew of vessels or aircraft; students pursuing a course of study; representatives to international organizations; ambassadors, public ministers and career diplomatic or consular officers. Applicants who have a student visa (such as F1 and J1) are admitted to the U.S. for the sole purpose of education with no authority to work except in relation to an academic program and are not eligible for VR services.

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Illegal Aliens (Undocumented Residents): - Individuals present in the U.S. without legal status are not eligible for VR services. Individuals applying for legal status may possess a Temporary Residence Card (I-688).

Individuals Residing in Institutional Settings - Any individual who resides in an institutional setting such as a nursing home, prison or a developmental center must be within six months of release to meet the eligibility criteria of being able to benefit from services. VR services cannot be provided if the applicant is not within six months of release.

### **Exception for Individuals Residing in Institutional Settings:**

Individuals residing in a nursing home, a prison or a developmental disability residence or program may be eligible for VR services if they have the opportunity to work in the community while continuing to reside in the institutional setting.

Examples: a nursing home resident whose medical status would allow for community employment; a prisoner participating in a work release program; or an individual with developmental disabilities who can participate in supported employment.

The VR counselor, in consultation with the senior counselor, will determine when an exception is appropriate.

### Pre-Employment Transition Services for Potentially Eligible Students

Students between the ages of 14 and 21 (up to the 22<sup>nd</sup> birthday) can receive Pre-ETS services without a determination of eligibility. These students are considered potentially eligible. The students are only able to participate in the specific Pre-ETS services (See Section 7.01, Pre-Employment Transition Services.) If additional VR services are necessary, an application for services will need to be completed and eligibility determined.

### Statement of Criterion II

The individual requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment.

### Employment Outcome

The term "employment outcome" means that an individual can enter, advance in or retain full-time or part-time competitive integrated employment, self-employment, or supported employment, that is consistent with their abilities, capabilities, interests, strengths, resources, priorities, concerns and informed choice as supported by an assessment for determining vocational rehabilitation needs.

### When are VR Services Required?

VR services are required when an individual needs the specialized services offered by the VR program to secure, retain, advance in or regain employment that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice. When determining eligibility and the need for VR services, an individual is presumed to have a vocational goal of an employment outcome.

### Assessing the Requirement for VR Services

An individual's need for VR services is assessed by considering the impact VR services will have on: reducing the individual's functional limitations as well as the environmental barriers that prevent independent, integrated activities; overcoming the impediments to employment; and, providing opportunities to obtain employment in integrated settings.

The purpose of the assessment is to determine how VR services will support an individual with a disability to prepare for, secure, advance in or retain employment that is consistent with her/his strengths, resources, priorities, concerns, interests, abilities, capabilities and informed choice.

### Advancement in Employment

Applicants who meet eligibility Criterion I and want to advance in employment may be eligible for VR services. If determined eligible for services, any services needed to achieve the advancement in employment can be provided in accordance with an agreed upon IPE. Advancement in employment can include advancement within an individual's current employment or advancement into new employment.

**Factors and Indicators for Advancement in Employment**

There are numerous factors that may assist in determining eligibility for an individual seeking to advance in employment. These include: the current job market conditions, work experience and training of the individual, the individual's current abilities and capabilities, the need for assistive technology and the employer's responsibilities under ADA, the individual's values, goals and interests, if the current job title and site allow for advancement, and other potential personal issues that may impact employment. Other things to consider are whether the applicant will move from part-time to full-time employment, wages, greater job stability, whether the current employment is consistent with the applicant's education and/or training, will the applicant achieve a higher level of employment after participating in further education and/or training, has technology advanced to enable the applicant to obtain a higher level of employment with greater opportunities for salary increases, more responsibility, more advancement opportunities.

**Certification of Eligibility for Vocational Rehabilitation Services**

When the VR counselor determines an individual is eligible for VR services, the decision should be documented on the Eligibility Determination Worksheet and the rationale for the determination should be clearly substantiated in a case note.

When it is determined that an individual is ineligible, the decision must be documented in a case note and the VR Ineligibility Closure letter along with the Rights Regarding Case Closure and Information Regarding Appealing NYSCB Decisions must be sent to the applicant.

### General Information

In accordance with the eligibility criteria for VR services, NYSCB will presume an applicant is able to benefit from VR services if that applicant has a physical or mental impairment (which must include legal blindness) that results in a substantial impediment to employment, unless there is clear and convincing evidence that the applicant cannot benefit from VR services due to the severity of their disability.

When the VR counselor is unable to determine that the applicant can benefit from VR services due to the severity of their disability, the applicant's case will be moved to Status 06. While in Status 06, the applicant will first be given the opportunity to perform in realistic work situations to determine whether there is clear and convincing evidence to support the determination that they are too severely disabled to benefit from VR services. These real work situations are called trial work.

Trial work will be used to explore the applicant's abilities, capabilities and capacity to perform in realistic work situations to determine if the applicant is capable or incapable (due to the severity of their disability) of benefiting from VR services in terms of an employment outcome. The applicant's interests should be considered when arranging trial work to maximize the potential success of the trial work.

Trial work differs from work experiences arranged during VR services in preparation for employment. Unlike in work experiences provided in accordance with an IPE, applicants are not paid to participate in trial work. Trial work is only used while an applicant is in Status 06 and is used solely for determining whether an applicant can benefit from VR services.

### When to Use Trial Work

Trial work must be used before making a determination that the applicant is incapable of benefiting from VR services in terms of an employment outcome due to the severity of their disability. The counselor should discuss the need for trial work with the applicant.

### Trial Work Guidelines

Trial work must be

1. provided in the most integrated setting possible, consistent with the informed choice and the rehabilitation needs of the individual. It can be set up for an individual in a venue used for supported employment, with an employer in a competitive integrated employment setting, with a private agency for the blind, a

generic private not-for-profit or for-profit agency or an independent living center that can provide a realistic work setting. Other possibilities can be explored as well if they meet the criteria in this section; and

2. of sufficient variety and over a sufficient period of time to enable the VR counselor to determine whether there is sufficient evidence to conclude that the individual can benefit from VR services in terms of an employment outcome or there is clear and convincing evidence that the individual is not able to benefit from VR services due to the severity of their disability.

### Trial Work Plan

The Trial Work Plan in CIS will be used to

1. document the questions to be answered during trial work,
2. identify each trial work opportunity set up for the applicant,
3. identify the support services needed by the applicant to participate in the trial work opportunity, and
4. document how and when the applicant's progress will be evaluated.

Only those trial work and support services identified on the Trial Work Plan will be able to be authorized.

### Arranging for and Purchasing Trial Work

Trial work will be arranged and provided using the service "Situational Assessment I: Trial Work". Counselors will work with the Situational Assessment I: Trial Work service provider to identify the most appropriate settings and types of trial work for the applicant.

### What Can/Cannot Be Provided During Trial Work

Assessments and appropriate supports may be provided, in accordance with the policies associated with these assessments and support services, during trial work when necessary to enable the applicant to participate in the trial work opportunity. These assessments and appropriate supports could include the following:

1. Low vision exam and devices
2. Job coaching services
3. Interpreter services
4. Transportation to get to and from the trial work site

5. Limited orientation and mobility
6. Limited vision rehabilitation therapy
7. Social casework services
8. Personal assistance services
9. Audiological aids if the applicant meets the definition in policy for the provision of audiological aids and cannot demonstrate their ability to benefit from VR services without them
10. Assistive technology devices and training, as needed to participate in trial work

In circumstances where assistive technology is needed for the applicant to perform the functions required during a trial work, assistive technology devices may be loaned to the applicant with supervisory approval. Any loaned device(s) must be returned to NYSCB at the end of the trial work opportunity. Hourly assistive technology training may be provided to enable the applicant to use the loaned device.

College and vocational school training and related services, job placement, occupational tools, occupational licenses, vocational training (when not done for assessment purposes), long term training programs, and self-employment services cannot be provided during the trial work period.

#### Documenting the Individual's Progress During Trial Work

As identified in the Trial Work Plan, the VR counselor must periodically assess the applicant's abilities, capabilities and capacity to perform in realistic work situations during each trial work opportunity (situational assessment). The outcome of the VR counselor's assessment should be documented in a case note at the end of each trial work opportunity or during the trial work if necessary. The documentation should note whether additional time is needed to make the determination of eligibility or ineligibility. If additional time is needed, the VR counselor should indicate whether a new trial work opportunity is being planned to gather additional information or if the individual will continue with the current trial work opportunity. The Trial Work Plan must be amended as necessary and should include information about the purpose and goal(s) of the new or continuing trial work. Progress during trial work should be reviewed with the applicant on a regular basis.

The Action Alert PDQ in CIS can assist VR counselors and supervisors with monitoring the length of time an applicant is in Status 06.

#### Exiting Status 06 from Trial Work

As soon as the VR counselor has sufficient information from the trial work

opportunity(s) to determine that an applicant can or cannot benefit from VR services, the applicant should be moved to either Status 10 – Eligible for VR Services or Status 08 – Closed from Referral, Applicant or Trial Work. If the individual has been determined too significantly disabled to benefit from VR services due to the severity of their disability, the case record must contain clear and convincing evidence to support this determination.

### CIS Procedures Related to Trial Work

The following steps should be used to initiate trial work in CIS:

1. Open the VR Eligibility Determination Worksheet.
2. Enter the reason for trial work in the “reason” field.
3. If the applicant will be participating in trial work, enter the “start date of trial work” and open the Trial Work Plan using the “Open TW Plan” button.
4. Complete the Trial Work Plan.
5. Once trial work has ended, enter the date in the “end date of trial work”. You will no longer be able to issue authorizations from the Trial Work plan.
6. When you have made a determination of eligibility/ineligibility, enter a “Y” in the “Presumed Eligible for Services” field if the applicant receives SSI or SSDI or in the “Eligible for Services” field if the applicant does not receive SSI or SSDI and enter the date or enter a “N” in one of these fields and enter the date. If the applicant is not eligible, select the appropriate closure reason in the “reason for closure” field.

If the applicant’s case is being closed, the supervisor will receive an email notification alerting them that they need to review the case and approve the closure. Once this is done, the VR counselor will receive an email notification alerting them that the supervisor has approved the closure.

### Introduction

An individual who applies for NYSCB services may not be eligible for VR services. Likewise, during the time that someone is receiving services during trial work or active VR status, they may be found ineligible for further services.

### Reasons for Ineligibility

There are three reasons why an individual may be found ineligible for VR services.

1. Individual is not legally blind or is found to be no longer legally blind.
2. The individual cannot benefit from VR services in terms of an employment outcome due to severity of their disability (or the impediments resulting from the disability). Clear and convincing evidence must be documented in the case record before an ineligibility determination based on an inability to benefit from VR services due to the severity of disability is made.
3. The individual does not require VR services to achieve employment. For example: a person who is employed and possesses adequate education and training to pursue another career opportunity, might not require VR services to achieve an employment outcome.

### Procedure for Ineligibility Determination

To make an ineligibility determination, the VR counselor will follow this procedure:

1. Review and assess all information regarding the applicant including but not limited to: medical and/or psychological information; work and social history; educational and vocational information.
2. If the basis of the ineligibility decision is that the severity of disability precludes the applicant's ability to benefit from services, trial work, using a situational assessment, must be arranged prior to finalizing a decision of ineligibility. See Section 4.02, Trial Work for information on setting up trial work and for additional trial work guidelines.
3. Provide the applicant (and/or their representative) an opportunity for full consultation regarding the decision. The opportunity to discuss their case in person or on the phone should be offered whenever possible. When an

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applicant chooses to not meet in person or via phone, notification will be made by mail in the individual's preferred format. The written notification must include the reason(s) for the determination and information about appealing the decision, including information about the availability of the Client Assistance Program (CAP).

4. If the VR counselor's assessment remains unchanged after consultation with the applicant, the VR counselor can proceed with the closing the applicant's case. (See Chapter 2.00, The Vocational Rehabilitation Process.)
5. The applicant should be referred to other workforce system programs that can address the applicant's training or employment needs and to other federal, state or local programs or service providers, including as appropriate, independent living programs. If the applicant has chosen not to pursue or is incapable of achieving competitive integrated employment, refer the applicant to extended employment providers that can meet their needs.

## REVIEW OF THE INELIGIBILITY DECISION

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### Introduction

All individuals who have had their cases closed in Statuses 08, 28, or 30 due to ineligibility will have a review of the ineligibility decision within one year of the determination and annually thereafter if requested by the individual or their representative when the ineligibility decision was based on a finding that the individual is incapable of achieving an employment outcome.

### Purpose

The purpose of the review is to reevaluate the determination of ineligibility, consider new information and changes in the individual's situation which may have an impact upon their potential to achieve an employment goal.

### Exceptions to the Requirement for a Review

The review does not need to be conducted when the individual

1. has refused the review,
2. is no longer present in the state,
3. is not able to be located, or
4. has a medical condition that is rapidly progressive or terminal.

### Initiating the Review

Individuals will be informed in writing of the date scheduled for their ineligibility review.

In all situations, the individual must be afforded a clear opportunity for full consultation in the reconsideration of the ineligibility decision. The individual should be invited to present any new information concerning their situation. If an individual reapplies for services on their own, prior to the review date, the reapplication will be considered to take the place of the review.

### Who Does the Review?

Review of ineligibility decisions will be done by the VR counselor or an appropriate staff member designated by the senior counselor.

### Conducting the Review

Individuals will be informed in writing of the date scheduled for their ineligibility review. The individual should be invited to present any new information concerning their situation including their employment status and interest in vocational rehabilitation; and their medical condition, including examination reports and the individual's self-report.

### Exception

At times, an individual who is interested in having their case reviewed may not be available for a face-to-face meeting with the VR counselor. In lieu of the meeting, the VR counselor can review documentation submitted by the individual.

### Purchasing Assessments

Medical assessments or other assessment services can be authorized when such information is necessary to conduct the review.

### Review Outcomes

Review outcomes will be determined using the following guidelines.

1. If during the review no new information is presented to warrant reopening the case, the VR counselor will uphold the ineligibility decision.
2. If during the review new information is presented which could provide the basis for a redetermination of ineligibility the VR counselor will inform the individual that their case can be reopened to explore new information and advise the individual to reapply for VR services.

### Documenting the Review

The content of the review or, where appropriate, the reason(s) for not conducting the review will be documented in a case note.

### Obtaining Information to Document Eligibility

The VR counselor should use existing information to assess eligibility or the need for trial work. This may include information from education programs, the Social Security Administration, and/or information provided by the individual with a disability or from the family of the individual.

If information is not available, or is not adequate for determining eligibility, only those assessments required to determine eligibility will be provided.

### Verifying Legal Blindness

Any information that verifies that an individual is legally blind is acceptable for determining eligibility, including: printed validation that a person is on the Eye Registry; the Mandatory Eye Report, the Medical Eye Report or a narrative letter from an ophthalmologist or optometrist; and any existing information from reliable sources such as schools, the Social Security Administration, low vision clinics or community health clinics.

This information must be entered into the individual's case record.

### Completing the Eligibility Determination Worksheet

The VR counselor will complete the Eligibility Determination Worksheet and provide the rationale for the determination in a case note.

If an applicant receives Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) and requires VR services, complete the "Presumption of Eligibility" section of the Eligibility Determination Worksheet. Documentation to support the presumption of eligibility must be included in the case record.

When it is determined that an individual is ineligible, the decision must be documented on the Eligibility Determination Worksheet and in a case note. In addition, the VR Ineligibility Closure letter, including the applicant's rights to appeal the decision must be sent in the applicant's preferred format.