# PART B, CHAPTER 4: ELIGIBILITY DETERMINATION

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| **Policy Number** | **Authority** | **Scope** | **Effective Date** |
| Part B, Chapter 4 | 34 CFR [§361.42](https://www.ecfr.gov/current/title-34/section-361.42), [§361.43](https://www.ecfr.gov/current/title-34/section-361.43), [§361.44](https://www.ecfr.gov/current/title-34/section-361.44), TWC Rule [§856.20](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=20&ch=856&rl=20), and [§856.23](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=20&ch=856&rl=23) | All TWC-VR staff, particularly VR Counselors | 9/3/2024 |

## PURPOSE

In accordance with the authority (Federal and State) listed above, this policy is issued by the Texas Workforce Commission Vocational Rehabilitation Division (TWC-VR). Adherence to these rules and regulations issued under the Rehabilitation Act of 1973, as amended by Title IV of the Workforce Innovation and Opportunity Act (WIOA), supports Texans with disabilities in gaining, maintaining, and advancing in competitive integrated employment (CIE).

Specifically, the purpose of this policy and these procedures is to ensure adherence to conducting a timely eligibility determination for TWC-VR services by executing the eligibility requirements and process.

## DEFINITIONS

Eligible Individual: An applicant for TWC-VR services who meets the eligibility requirements outlined in this policy.

Employment Outcome: With respect to an individual entering, advancing in, or retaining full-time or, if appropriate, part-time CIE, (including customized employment, self-employment, telecommuting, or business ownership) or supported employment, that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Good Faith Effort: When TWC-VR staff make three or more attempts to contact the customer, on more than one date, and using more than one method of contact (e.g., phone, email, SARA).

Informed Choice: The means by which a customer chooses their rehabilitation path, from options based on their needs and circumstances and the TWC-VR rules.

Social Security Disability Insurance (SSDI): Financial assistance to individuals who are unable to work due to a significant disability. Designed as a safety net for workers who have paid into the Social Security system through payroll taxes, SSDI benefits are based on an individual's work history and earnings record.

Supplemental Security Income (SSI): Needs-based disability benefits paid to disabled individuals who have limited income and resources. Disability benefits under SSI include 1) Childhood SSI (for those under age 18) and 2) SSI Adult Disabled/Blind (for those age 18 to 65).

Trial Work Experience (TWE): Provided in CIE settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual.

## POLICY

### General Overview

TWC-VR is an eligibility-based program and, therefore, the determination of eligibility is a cornerstone of the VR process. TWC-VR will make a determination of eligibility as soon as possible but no later than 60 days after the individual has applied for the program (i.e., applicant). All determinations of eligibility must be made by qualified VR Counselors, Supervisors, or Managers who are employed by TWC-VR.

The only exceptions to a determination of eligibility being completed within 60 days of application are—

* In the event of extenuating circumstances beyond the control of TWC-VR and where the customer has agreed to an extension for a specific period of time; or
* An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out through a TWE.

When an individual completes the application process, this is sufficient evidence of the individual’s intent to achieve an employment outcome. No further demonstration is necessary.

### Eligibility Requirements

The eligibility for TWC-VR services is based on the following requirements:

* A determination by qualified personnel that the applicant has a physical or mental impairment;
* A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment; and
* A determination by a VR Counselor that the applicant requires TWC-VR services to prepare for, 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.
* TWC-VR must presume that an applicant who meets the eligibility requirements can benefit from TWC-VR services in terms of an employment outcome.

### Individuals Who are Blind or Visually Impaired

Individuals with visual impairments that create a substantial impediment to employment may be eligible for TWC-VR services. TWC-VR recognizes the following three categories of visual impairments:

1. Blindness: Visual acuity with best correction of 20/200 or less in the better eye; a visual field of 20 degrees or less; or a combination of both.
2. Low Vision: Visual acuity with best correction of 20/70 or less in the better eye; a visual field of 30 degrees or less in the better eye; or a combination of both.
3. Significant Visual Impairment: A disease or condition of the eye that does not meet the definitions of blind or low vision but does create a significant impediment to employment and cannot be corrected with glasses or contact lenses.

### Presumption of Eligibility for SSI/SSDI Recipients

When the customer is receiving Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI), due to their own disability, the VR Counselor must make a determination of eligibility on the same business day that SSI/SSDI verification is received, unless there is a question about the customer’s ability to benefit from TWC-VR services in terms of achieving an employment outcome due to the severity of their disability. Presumptive eligibility must be clearly documented in the case record (e.g., case notes, SSI/SSDI verification).

If there is a question about the customer’s ability to achieve an employment outcome due to the severity of their disability, completing a Trial Work Plan (TWP) and moving the case into Trial Work Services meets the requirement of making a determination of eligibility within 60 days even if that decision is that TWEs are required prior to determining eligibility. If the customer is not available, an appointment must be scheduled with the customer to complete the TWP as soon as possible.

Presumption of eligibility does not create an entitlement to any TWC-VR service. Recipients of SSI/SSDI benefits must also provide proof of identity and current, unexpired authorization for employment prior to determination of eligibility for TWC-VR services.

### Trial Work Experience (TWE)

Prior to any determination that an individual with a disability is unable to benefit from TWC-VR services in terms of an employment outcome because of the severity of their disability or that they are ineligible for TWC-VR services based on the severity of their disability, the VR Counselor must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations.

### Level of Significance

After determination of eligibility, the customer is placed in a disability significance category, based upon the limitations in functional capacities presented by the disability. The disability categories are as follows:

1. Individual with a Disability
   * Has a physical or mental impairment that results in a substantial impediment to employment; and
   * Can benefit in terms of an employment outcome from TWC-VR services.
2. Individual with a Significant Disability
   * Has a severe physical or mental impairment which seriously limits one or more functional capacities (e.g., mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
   * Is expected to require multiple TWC-VR services over an extended period of time; and
   * Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, intellectual disability, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.
3. Individual with a Most Significant Disability
   * Meets the definition above for Significant Disability but requires the individual to have three or more impairments limiting functional capacities.

### Ineligibility Determination

When an applicant does not meet the eligibility requirements, TWC-VR will make a determination of ineligibility and close the case.

### Prohibited Factors

A determination of eligibility is not based on duration of residency in the State of Texas, nor is an applicant or group of applicants excluded or found ineligible solely because of the type of disability.

The TWC-VR eligibility requirements are applied without regard to the following:

* Age, sex, race, color, national origin;
* Type of expected employment outcome;
* Source of referral for TWC-VR services;
* Particular service needs or anticipated costs of services required by an applicant or the income level of the individual or their family;
* Employment history or current employment status; and
* Educational status or current educational credential.

## PROCEDURES

### Assessment for Determining Eligibility

To the maximum extent possible, the assessment for determining eligibility will be based on a review of existing information, including the VR Counselor's observations, documentation from other programs and providers (e.g., SSA, Developmental Disability Agency), education records, medical records, previous TWC-VR cases, and information provided by the applicant or members of their family.

When existing information is unavailable or insufficient to make an eligibility determination, additional information must be obtained. This information can be obtained through the provision of TWC-VR services, including TWEs. The VR counselor can authorize the purchase of additional examinations or evaluations to determine if the customer is eligible for VR services. assistive technology devices and services, personal assistance services, and any other support services necessary to determine whether a customer is eligible.

1. Qualified Personnel: Records must include impairments (i.e., diagnoses) by the appropriate licensed professional in that field.

The only exception is for recipients of SSI/SSDI who are presumed eligible, and individuals who have an observable impairment (e.g., amputation, required use of a wheelchair, deafness, observable blindness). Additional documentation may be required to assess the level of significance.

1. Requesting Records: When the VR Counselor needs to request existing records to assist in the eligibility process, a request for records must be completed within five business days of the individual’s application.
2. Current Records: There are many disability types that do not require updated records as the circumstances around that disability are unlikely to change (e.g., congenital disorder). The VR Counselor evaluates all available records and, if the records are sufficient and accurately reflect the individual's current functioning level and impediments to employment, they are considered current and may be used in the eligibility process.
3. Purchasing Assessments: When additional assessments are required to determine eligibility, either at the time of application or when existing records are reviewed, the VR Counselor documents the need for these assessments in a case note.

TWC-VR staff contact the provider within five business days to coordinate the appointment and complete a service authorization (if needed) for the assessment. The assessment should be provided as soon as possible to ensure timely movement of the case through the VR process.

1. Unable to Benefit: When there is significant concern by the VR Counselor that the individual’s disability or disabilities is/are of such severity that there are no jobs in which the individual may be reasonably expected to be successful, even with appropriate supports, the VR Counselor must conduct a TWE.
2. Acute Medical Services: If circumstances directly related to the assessment process result in or contribute to the need for acute medical services and comparable benefits are not readily available, the VR Counselor may approve the use of TWC-VR funds for the necessary care when clearly documented in RHW and approved by the VR Supervisor.
3. VR Counselor Observation: If a VR Counselor observes a customer's impairment and can determine that they have an impairment-related impediment to employment, the first two eligibility criteria have been satisfied; medical reports are not required. Examples of impairments that can be observed and documented in a case note by the VR Counselor include amputation, required use of a wheelchair, deafness, or observable blindness.

Existing medical records and/or assessments may be necessary to assess the level of significance, complete a comprehensive assessment and to develop the customer's IPE.

### Eligibility Extension of Time (EOT)

When the VR Counselor cannot determine eligibility within the 60-day timeframe, they must do the following:

* Inform the applicant of the exceptional and unforeseen circumstances (beyond TWC-VR control) that are delaying determination of eligibility;
* Obtain agreement from the applicant that an EOT is necessary;
* Give the reasons an EOT is required;
* Ensure the applicant agrees with the EOT; and
* Complete the EOT for Eligibility Page in RHW.

If the applicant does not agree to an EOT, the VR Counselor—

* Documents their decision in a case note;
* Explains to the applicant that eligibility for TWC-VR services cannot be determined with the information available;
* Informs the applicant that the case will be closed;
* Informs the applicant of the right to appeal the decision;
* Provides the "Can We Talk?" brochure; and
* Closes the case using the RHW Closed After Application Phase.

TWC-VR staff must document in RHW the date and method the brochure was provided to the applicant.

If the VR Counselor cannot make contact with the applicant to obtain agreement with the EOT by the 60th day, the VR Counselor must document a good faith effort was made and may close the case, as appropriate. As needed, the VR Counselor may consult with the VR Supervisor for guidance on how to proceed with the case.

Extensions are limited to 30 days at a time. The VR Counselor must create a new EOT, in agreement with the customer, every 30 days. This ensures that extensions are being used only when appropriate and necessary and reassessed regularly to ensure that a determination of eligibility is made as soon as possible, and within the extended timeframe.

### Eligibility Determination

The VR Counselor must consider all factors that apply to make a determination of eligibility. However, this decision must not be delayed in order to document all circumstances related to the disability of the applicant and the implications for employment. Rather, an eligibility determination must be determined as soon as enough information is gathered and clearly documented in the case record (e.g., case notes, disability records).

1. Eligible: The VR Counselor may determine that the applicant is eligible for TWC-VR services if, after reviewing all records and considering all diagnostic data, the VR Counselor concludes that they—
   * Have a physical or mental impairment (evidence of an impairment);
   * Have a disability that constitutes or results in a substantial impediment to employment (functional capacities). Examples include, but are not limited to, the following:
     + Prevents the individual from obtaining a job consistent with their abilities;
     + Significantly interferes with preparing for employment consistent with their abilities;
     + Causes the individual to need assistance to perform job duties that results in employers being reluctant to hire the individual; or
     + Interferes with job retention or job advancement;
   * Require VR services to prepare for, secure, retain, advance in, or regain employment and one or more TWC-VR services are expected to—
     + Have a substantial impact on the individual's disability and limitations of functional capacities; and/or
     + Reduce the impediment to employment, thus allowing the individual to prepare for, obtain, retain, regain, or advance in CIE consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice; and
     + Cannot access these services elsewhere without TWC-VR intervention; and
   * After completing TWEs, it is determined through clear and convincing evidence that the applicant can benefit from TWC-VR services in terms of an employment outcome, and they are determined eligible as soon as possible.
2. Presumed Eligible: If the customer is a recipient of Social Security disability benefits (SSI/SSDI), the VR Counselor must determine that the applicant is presumed eligible for TWC-VR services, unless there is a question about the customer's ability to achieve an employment outcome. In these circumstances, the applicant is assumed to have at least one functional limitation and must be documented as having a significant disability. This excludes individuals under age 18 receiving a cash-only benefit from a parent’s work record or SSA retirement benefits because these are not benefits based on disability.

The VR Counselor—

* + Documents the self-reported disability of the customer (unless medical records are available to document the actual disability);
  + Verifies receipt of SSI and/or SSDI due to the applicant’s disability and files a copy in the case file;
  + Gathers additional information to determine if the disability is most significant, and necessary to complete the IPE;
  + Follows any additional eligibility requirements, including obtaining proof of identity and employment authorization.

1. Ineligible: The VR Counselor may determine that the applicant is ineligible for VR services if, after reviewing all records and considering all diagnostic data, the VR Counselor concludes that the applicant—
   * Does not have a physical or mental impairment;
   * Does not have a disability that constitutes or results in a substantial impediment to employment;
   * Does not require TWC-VR services to prepare for, secure, retain, advance in, or regain employment; or
   * Cannot benefit from TWC-VR services in terms of an employment outcome as determined by TWEs resulting in clear and convincing evidence.

When this occurs, the VR Counselor must provide the individual with information and referrals to other programs that may be more appropriate to meet their needs, as well as their right to appeal the decision by offering the "Can We Talk" brochure. VR staff must document in RHW the date and method the information was provided to the customer.

When needed, use the [Texas 211: Information and Referral Network (Finding Help in Texas)](https://www.211texas.org/) to assist in identifying available resources.

1. Unable to Determine: The VR Counselor may close an applicant’s case when the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services (when under an Order of Selection), and TWC-VR has made a good faith effort to contact the applicant or, if appropriate, the applicant's representative, to encourage the applicant's participation.

Once the determination or decision to close the case is made, including all documentation included in the case record (e.g., records, case notes), the VR Counselor follows the requirements for case closure.

### Primary, Secondary and Tertiary Disabilities

Once the VR Counselor has determined that an applicant is eligible for TWC-VR services, they must document the cause or source of those disabilities. There may be more than three disabilities; however, the VR Counselor, in partnership with the customer, determines which is the primary, secondary, and tertiary disabilities causing impediments to employment.

The disability categories are as follows:

* Blind Sensory/Communicative Impairments;
* Mental Impairments;
* Physical Impairments; and
* Sensory/Communicative Impairments

On the RHW Disability Information Page, the VR Counselor selects the following for the primary, secondary and tertiary disabilities:

* Impairment category that best identifies the disability;
* Impairment subcategory that best identifies the disability; and
* Specific cause or source of the disabling condition.

### Establishing Level of Significance

Once the VR Counselor has determined that an applicant is eligible for TWC-VR services, they must document the level of significance on the RHW “Level Of Significance Page" under the Eligibility tab prior to entering yes or no on the Eligibility Page. The level of significance refers to the combination of the limitations in functional capacity threshold of the individual combined with the level of TWC-VR services needed to help a customer reach a CIE outcome. The VR Counselor must follow the definitions in this policy regarding Individual with a Disability, Significant Disability, and Most Significant Disability. If the customer is a recipient of SSI/SSDI benefits, they are considered to be, at a minimum, an individual with a significant disability.

The VR Counselor must document the decision in a case note or in the VR1390, Checklist for Determining Significance of Disability, and include all relevant information in the case file. Using the table below, the VR Counselor determines the level of significance, based on individual circumstances of the customer.

***Level of Significance Table***

| Customer Scenario | SSI/ SSDI Recipient | Limited Functional Capacities (Threshold=3) | Anticipated Need for Multiple Services over Extended Period | Level of Significance |
| --- | --- | --- | --- | --- |
| 1 | No | 0 | Yes | Individual with a Disability |
| 2 | No | 1 or 2 | Yes | Significant Disability |
| 3 | Yes | 0, 1, or 2 | Yes or No | Significant Disability |
| 4 | No | 0, 1, or 2 | No | Individual with a Disability |
| 5 | Yes | 3, 4, 5, 6, or 7 | Yes or No | Most Significant Disability |
| 6 | No | 3, 4, 5, 6, or 7 | No | Individual with a Disability |
| 7 | No | 3, 4, 5, 6, or 7 | Yes | Most Significant Disability |

The level of significance can be changed in RHW if based on additional information gathered during the comprehensive assessment of needs or any time later in the VR process.

### Determination Notification

Once a determination of eligibility is made, the VR Counselor notifies the customer using the Eligibility Letter in RHW.

## APPROVALS & CONSULTATIONS

TWC-VR staff must follow the following approvals and consultations:

* *VR Supervisor approval is required for the provision of acute medical services.*
* *VR Supervisor approval is required for the provision of technology devices and services (except for eyeglasses) prior to determining an applicant eligible for TWC-VR services.*
* *State Medical Director consultation is required before determining eligibility for customers with fractures, including malunion or nonunion fractures to confirm the type of fracture and stability. VR Manager must be copied on email with the consultation packet.*

**REVIEW**

The Policy Planning and Statewide Initiatives Team, or designee, is responsible for reviewing this policy and these procedures and will update the Document History log if necessary.

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| **Date** | **Type** | **Change Description** |
| 9/3/2024 | New | VRSM Policy and Procedure Rewrite |