

The Importance of Vocational Rehabilitation in Life Care Planning

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Background

Consideration of a variety of vocational rehabilitation issues in the development of a life care plan seems critical in most cases. In addition to the obvious complications and challenges evident in catastrophic cases, questions related to past and future employment, including income issues, are very germane to an adequate plan or program for a person who is disabled. A life care plan is neither adequate nor complete unless there is sufficient consideration given to employment issues. This paper discusses several of the major legislative programs in the field of vocational rehabilitation and the potential impact of these programs on the individual considerations in life care planning.

Federal Laws

Vocational Rehabilitation Act of 1973 (P.L. 93-112)

The Vocational Rehabilitation Act of 1973 was an extension of previous federal enactments by the same name. Subsequently, the 1973 Act was amended twice more in 1978 and 1986, both of which added new activities through increased federal funding. The Rehabilitation Act confirmed the continued support of services to people with disabilities, but with a greater emphasis on persons with severe disabilities and individual written rehabilitation plans. One of the Act's most significant additions, however, was the attention given to Affirmative Actions programs as defined and described by the following sections of the law.

Section 501: Hiring practices would be non-discriminatory, especially for persons with disabilities.

Section 502: Building and other structures which are constructed with federal funding shall be free of architectural and transportation barriers.

Section 503: Affirmative Action compliance is required by all business receiving contracts of \$2500.00 or more from the federal government.

Section 504: Persons with disabilities shall have equal opportunities for participation in any program or activity receiving federal funding.

Individuals with Disabilities Education Act of 1975 (P.L. 94-142)

With the intent to provide free and appropriate public education in the least restrictive environment and the guarantee of due process procedures, this law affirms the right of all children with disabilities to participate in and contribute to society. Improving educational opportunities and program results for children with disabilities is a major goal of this legislation. The law requires that a child will have an educational plan that will specify how a the child will be involved in the general curriculum, steps to insure accessibility to teachers and other service providers, and the identification of specific accommodations and modifications, if necessary.

Americans with Disabilities Act of 1990 (P.L. 101-336)

The ADA is clearly an extension of the Rehabilitation Act of 1973 and its amendments by broadening the intent to provide opportunities and services in our society for all people with disabilities. Five specific areas were identified as a means to achieve this national goal (Havranek, Field & Grimes, 2001).

Title I - Employment: The intent of this section of the law is to require the employer to make reasonable accommodations so that any qualified individual with a disability can demonstrate adequate performance of the essential functions of a job without undue hardship to the employer.

Title II - Public Services: No qualified individual with a disability shall be denied the benefits or excluded from participation in services, programs, or activities within the public sector.

Title III - Public Accommodations and Services: No individual shall be discriminated against on the basis of disability from the full and equal employment of goods, services, facilities, privileges, advantages or accommodations of any public place.

Title IV - Telecommunications: Making interstate and intrastate telecommunications available to hearing and speech impaired individuals.

Title V - Miscellaneous Provisions: Various elements for the application of the first four titles including construction, prohibition against retaliation, architectural barriers, technical assistance, illegal drug use, and amendments to the rehabilitation act.

Ticket to Work and Work Incentive Improvement Act of 1999

The Ticket to Work legislation provides for the opportunity for SSDI and SSI beneficiaries to return-to-work without losing critically needed medical support through Medicaid and Medicare. This program, by eliminating these disincentives to work (i.e., the loss of medical coverage), encourages people to move from support dependency to the world of work. Services are also available to assist the worker with the provision of services necessary to find and retain employment.

Disability Determination

Disability determination is the process by which a person with a disability is evaluated against specific criteria regarding their eligibility for each of the programs listed above. While the criteria will vary across programs, the basic premise is that a person possesses a disability that could serve as a barrier to participation into what our society has to offer. The intent of these laws is to assist, through regulations, programs and services, the means to increase the probability of a person to participate to the fullest extent possible. Each of the four laws (programs) shall be discussed separately.

Vocational Rehabilitation

In order to receive services through the state-federal vocational rehabilitation program, a person must need the following criteria: (1) the presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment and (2) a reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability (401.33).

Individuals with Disabilities Education Act

A child with a disability means a child (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services (Sec. 602.3.A).

Americans with Disabilities Act

A person is considered disabled under the ADA if a person has (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (b) a record of such an impairment, and (c) being regarded as having such an impairment (Sec. 3.2.a,b,c). *Major life activities* include such activities as caring for one's self, performing manual tasks, walking, seeing, hearing, breathing, learning, working, and speaking.

Ticket to Work

Persons eligible for this program are beneficiaries of the SSDI/SSI. Disability under SSA is as follows: the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months (404.1505.a).

Strategies for Rehabilitation Planning

In reviewing the laws that are relevant to vocational rehabilitation, it is evident that the different programs (laws) may require varied approaches and strategies when working with a person with a disability. However, there are some generic strategies that can be relied upon while addressing the issue of work potential and employability.

The Vocational Interview

Gathering all pertinent and relevant information about the client is an important first step. In Weed and Field (2001), Appendix K contains a number of worksheets that are useful in such an information gathering effort. One worksheet in particular is the *Interview Worksheet* which is structured to solicit information in such areas as personal and family information, education and training, military service, previous employment, knowledge, skills and abilities of previous jobs, information on disabilities, and functional capacity estimates. In developing an adequate rehabilitation plan, it is imperative that these kinds of data be obtained.

Worker Characteristics (Traits)

As a foundation for determining future employability, if any, it is very useful to ascertain the level of vocational functioning (prior to injury or disability) of the client. An estimate of functioning can be obtained by identifying the levels of a person's individual capacities on the worker trait factors such as physical demands, working conditions, general educational development, specific vocational preparation, aptitudes, interests and temperaments by utilizing such resources as the *Dictionary of Occupation Titles* (1991), and the *Classification of Jobs* (Field & Field, 1999).

Knowledge, Skills and Abilities

Unlike the worker traits which are measures of an individual's capacities, knowledge, skills and abilities are indicators of a person's capacity to perform work activities adequately within a particular job, or class of jobs (*O*Net '98 Database*). Furthermore, skill factors such as the use of machines, tools, equipment, work aides, materials, and specific work behaviors are identified by job clusters (*Revised Handbook for Analyzing Jobs*, 1991). For instance, a person may have the capacity to read and do math at the average level (GED), but this is an indication only of the person's capacity to read and do math. On the other hand, the job of draftsman requires the ability to read specifications, calculate certain dimensions, all the while using drafting equipment to create a product. The latter is an illustration of knowledge, skills and abilities of what it may take to be a draftsman. Most all jobs require a certain level of these three factors in order to meet the requirements for employment.

Evaluating Employment Potential

Through the process of vocational evaluation and assessment, it is generally possible to reasonably estimate the employment potential of a person with a disability. Transferable skills analysis (Field, Grimes, Havranek & Isom, 2001) is a commonly accepted approach to identifying skills that can be transferred from prior employment to new employment while taking into account restrictions that may be present from a disabling condition. While relying on employment history is an important first step, it is also important to utilize other information derived from vocational assessment, medical report, other specialists' report, and information about the labor market to achieve a satisfactory recommendation for future employment. The recommendation may also include such items as the identification of needed accommodations and/or modifications in the workplace, new training or education, and continuing support services.

Return-to-Work

With the development of the life care plan, consideration should be given to the following possibilities in terms of potential employment. The identification of services and related costs would be incorporated into the plan while taking into account the available resources and requirements inherent in one or more of the federal employment laws.

- 1. No Employment:** The disability may be so severe that there remains no future employment potential.
- 2. Limited Employment:** The disability may be moderately severe which may allow for employment in a supported or sheltered environment.
- 3. Modified Job:** In some instances, a person may be able to satisfactorily perform a job if a modification is made to the job (i.e., lowering a bench), or if there is some accommodation with the environment (i.e., a wheelchair ramp constructed).
- 4. Same or Similar Job:** Following medical recovery, it may be possible for the client to return to the same or similar job.
- 5. New Job:** If none of the options above are feasible, finding a new job is the only course remaining. This objective can be achieved through additional education or new training in a different occupational area – different, that is, from the client’s previous work history. Greater emphasis would be required for activities such as career exploration and guidance, job readiness, and job placement.

Suitable and Gainful Employment

Job recommendations by the vocational consultant are not always sufficient when jobs selected and recommended have not addressed the *suitability/gainfully employment* factor. This issue is particularly relevant in cases involving workers’ compensation and/or personal injury. Consider the following:

Employment or self-employment which is reasonably attainable in light of the individual’s age, education, previous occupation, and injury and which offers an opportunity to restore the individual as soon as practical and nearly as possible to [his] average weekly earnings at the time of injury” (440.49). Some clients have successfully challenged the assumption that because they are able to perform the physical functions and they possess the aptitude to perform an occupation that it constitutes suitable employment. One case demonstrates the issue. A licensed practical nurse was injured on the job. The employer offered her a clerical position which she turned down. Although the clerical job was within her physical limitations, it was not considered suitable employment because “Woods is a nurse, and she never expressed any interest in doing clerical work (Workers Compensation Law Bulletin, 1992, 15 [10A], p. 7).

Maryland similarly defines suitable, gainful employment as: "... employment, excluding self-employment, that restores the disabled covered employee, to the extent possible, to the level of support at the time that the disability occurred" (Workers Comp Law, LE, 9-670, p 212). The law further states that in determining whether employment is suitable, gainful employment, the following shall be considered: (1) the qualifications, interests, incentives, pre-disability earnings, and future earnings capacity of the covered employee; (2) the nature and extent of the disability of the covered employee; and (3) the current and future condition of the labor market. Other states including Oregon, California and Minnesota, have also adopted guidelines which include personality and interest factors which often are over looked by vocational evaluations (Oregon's code OAR 436-120-005 [6]; California Workers' Compensation Code L.C. 4635 [f]; Minnesota MS 176.102 [13]).

Job Related Cost Factors

As part of the life care plan, several activities may be needed in both the assessment and evaluation phase, and the return-to-work phase. The need for such activities will be identified on a individual case basis, ultimately depending on the client's potential for future employment. It is also important to keep in mind that the federal laws not only guarantee certain employment rights and financial support, but also provide services, depending on eligibility, that will assist a person in their return-to-work efforts. By way of illustration, refer to Chart 1 for a review of some of the activities that a client could need and the source for assistance in each activity.

In the area of compensation, such issues as reduced work capacities, the loss of earnings capacity and estimating both life and worklife are very important considerations. Each of these issues are directly related to the vocational factors and, in particular, the level of vocational functioning following an injury or disability. Traditionally the process of estimating economic factors has been in the domain of the economist, although many rehabilitation consultants have acquired expertise in this area if adequately trained.

The primary funding sources for eligible clients are available under the Vocational Rehabilitation Program, the IDEA Program, and private insurance (Chart 1). The ADA Program, along with the Rehabilitation Act, IDEA and Ticket to Work legislation, serve to establish support programs and the guarantee of individual rights for people with disabilities, but the ADA does not offer funding for individual client needs. The consultant (usually the vocational rehabilitation counselor, the rehabilitation nurse, the economist, and others) can provide a variety of services, either directly or through coordinated services. In most cases, however, the consultant is not a service provider, but rather, a professional who identifies client needs, develops a long range plan for services and support, and assists in the establishment of the costs for such services as identified in the plan.

Conclusion

The development of a life care plan requires consideration of several vocational factors. Employment is most usually an option, except in some cases involving children and/or catastrophic injury. The final recommendations of future lost earnings is directly related to a sequence of vocational factors including, but not limited to, prior employment, post-injury

vocational functioning, the labor market, and potential employability. The well-developed life care plan will address all relevant issues, including vocational rehabilitation.

Chart 1: Activities related to employment and potential sources for assistance.

<u>Activity</u>	<u>VR</u>	<u>IDEA</u>	<u>ADA</u>	<u>TTW</u>	<u>Consultant</u>
Client Interview	x	x		x	x
Medical Review	x	x		x	x
Specialists	x	x		x	x
Voc. Evaluation	x	x		x	x
Rehab Services	x	x		x	x
Counseling	x	x		x	x
Job Placement	x	x	x	x	x
Accommodations			x		x
Est Lost Employ.				x	x
Est Earnings				x	x
Est Life Expect.					x
Est Work Life Expect.				x	

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