



NVLSP

NATIONAL VETERANS LEGAL SERVICES PROGRAM

VA Vocational Rehabilitation & Employment Benefits Claims: A Guide for Advocates

Presented by: Christopher Murray, Senior Appellate Attorney

Tech Tips: Audio Issues During the Live Webinar

- ▶ **Issue:** I can't hear audio through my speakers and/or audio is cutting in and out.
- ▶ **Tips:**
 - ▶ Refresh your web browser and increase the volume
 - ▶ Use a different web browser
 - ▶ If the audio is choppy, your internet connection may be weak. The audio runs over the public internet and if your connection is not strong, the quality of audio will be affected.

Tech Tips: Audio Issues During the Live Webinar

- ▶ **Backup Plan:** Listen to the audio through your telephone. The GlobalMeet email with the subject line “Reminder for the Presentation . . .” includes the phone number.

(The phone number and passcode listed on this slide are just **examples**)

- ▶ If all else fails, **type your question to the moderator or call the GlobalMeet Trouble Shoot line: 1-888-860-6813**

Title: Test Webinar
Date: 11/08/2019
Time: 11:30 AM EST
Duration: 1 hour 30 minutes

To view the webcast please visit

<https://globalmeetwebinar.webcasts.com/start1>

Audience Listen By Phone
+1 706-418-5005(United States)
Passcode: 47056084#

Intro Notes: Questions

- ▶ Everyone is muted for this presentation. Please direct all questions to the “Ask a Question” box, located on the left side of your screen. We will be answering them throughout the presentation.



A screenshot of a digital interface for asking questions. It features a blue header bar with a downward-pointing triangle and the text "Ask a Question". Below the header is a white text input field containing the placeholder text "Ask a Question". At the bottom left of the input field is a dark grey button with the text "Send".

Intro Notes: PPT Slides

- ▶ ***NEW*** At 1:15pm today, you should have received an email from GlobalMeet with a Sharefile link. You may download these slides through the Sharefile link.

To view the webcast please visit

https://globalmeetwebinar.webcasts.com/starthere.jsp?ei=1271313&tp_key=dd3e79b859

Audience Listen By Phone
+1 706-418-5005(United States)
Passcode: 92172240#

Download Slides: <https://nvlsp.sharefile.com/d-s3f860a5475f4351a>

Certificate of Attendance

- ▶ Registered participants will receive a Certificate of Attendance within one week after the webinar via email
- ▶ If a week has passed and you have not received your certificate, please provide the following information to webinarseries@nvlsp.org:
 1. the date you attended the webinar
 2. your order number and/or the organization with which you are affiliated

Christopher Murray



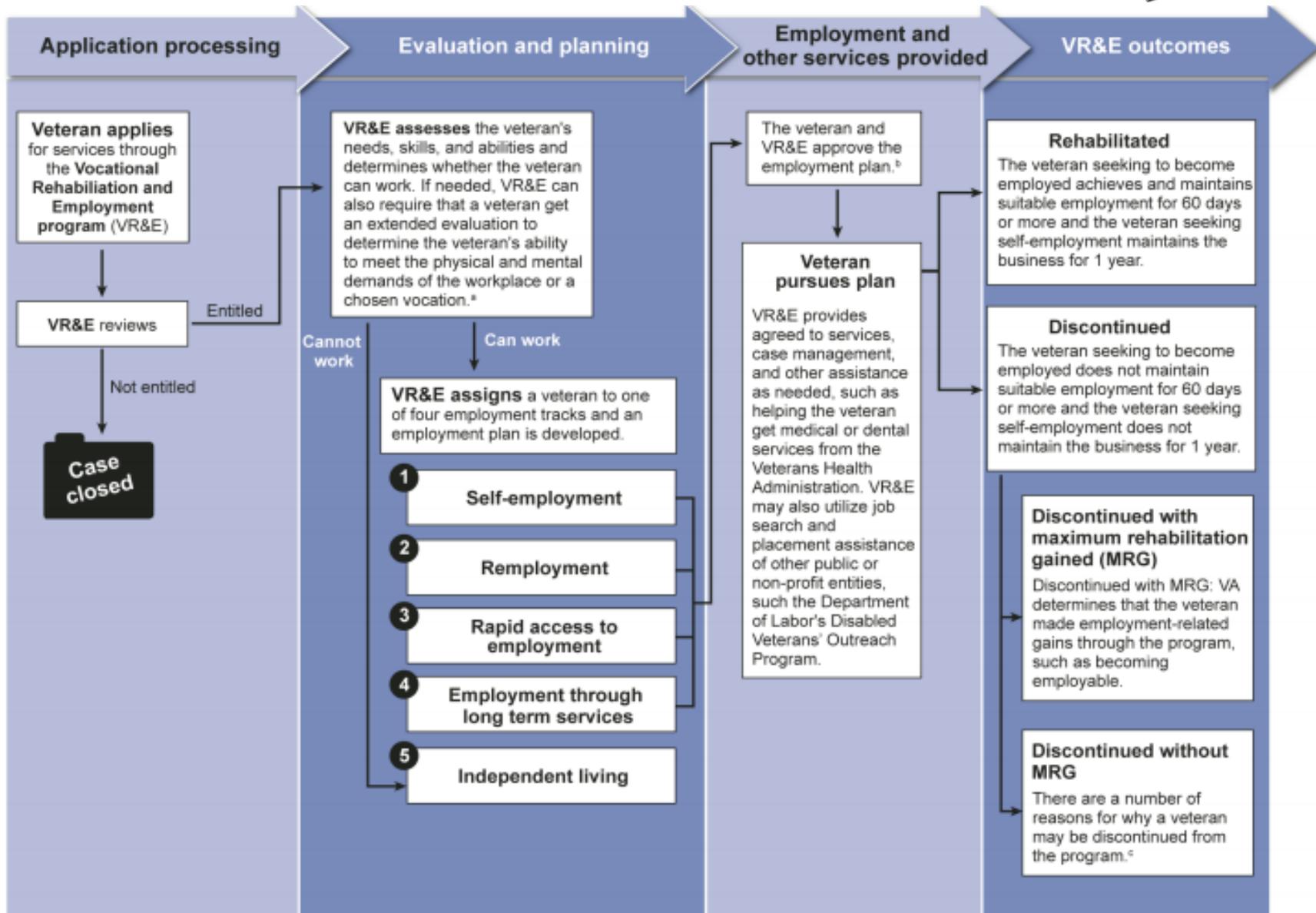
- ▶ Senior Appellate Attorney, NVLSP
- ▶ Previously served at the Board of Veterans' Appeals as Counsel and Acting Veterans Law Judge
 - ▶ Focused on VR&E appeals as a member of the Specialty Case Team
 - ▶ Actively participated in the Board's training programs

Outline

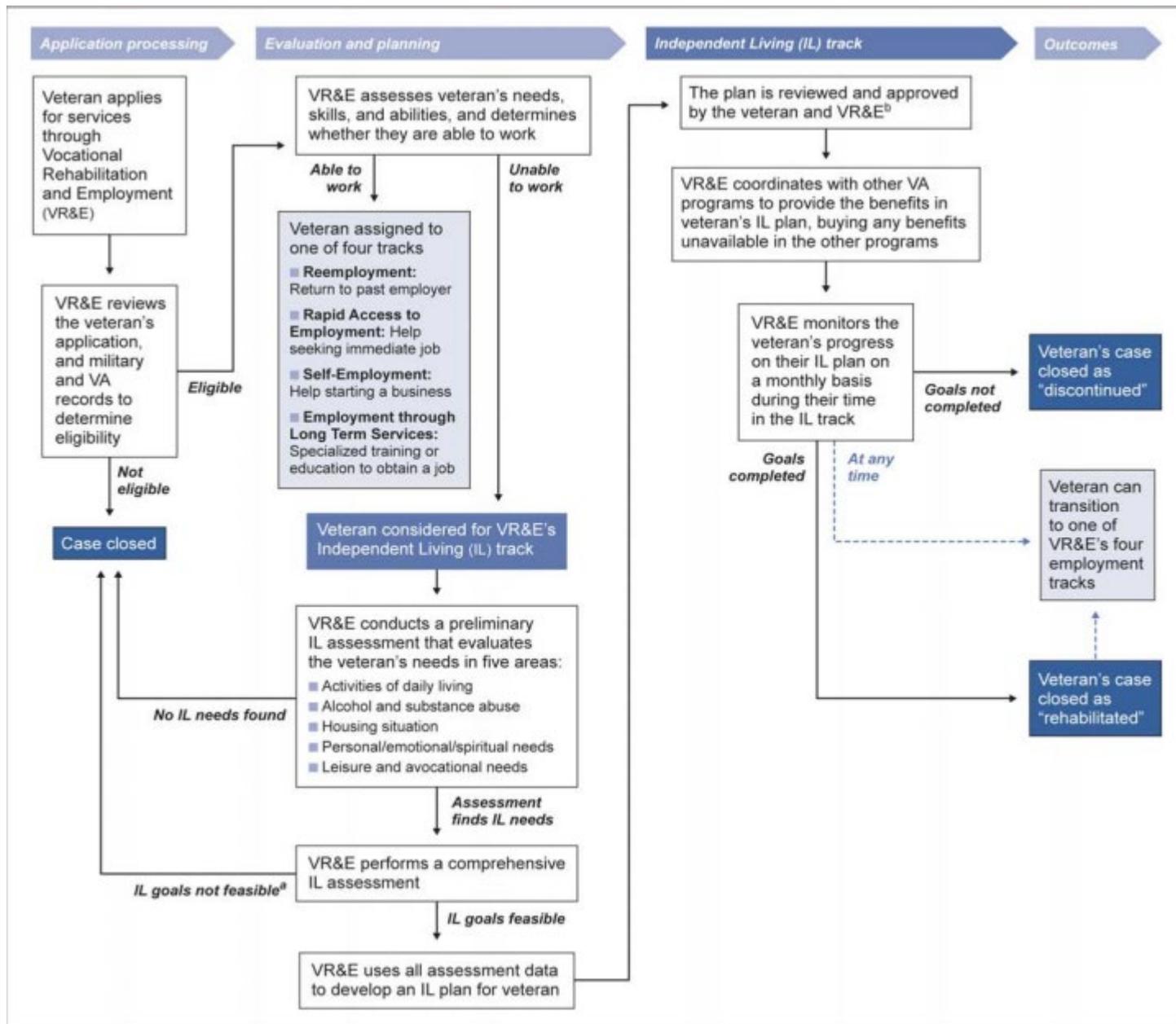
- ▶ Purpose of VR&E Services
- ▶ Evolution of a VR&E claim
- ▶ Application and Basic Entitlement
- ▶ Evaluation and Planning Processes
- ▶ Educational and Vocational Training
- ▶ Employment Services
- ▶ Monetary Assistance
- ▶ Independent Living Services
- ▶ VR&E Outcomes & Closure
- ▶ Advocacy Tips

Purpose of VR&E Services

- ▶ Evaluate and improve Vet's ability to achieve a vocational goal
- ▶ Provide services needed to qualify for suitable employment
- ▶ Enable Vet to achieve maximum independence in daily living
- ▶ To the maximum extent feasible, to become employable and to obtain and maintain suitable employment



Source: GAO analysis of VR&E documents.



Source: GAO's analysis of VR&E's needs assessment and IL track benefits delivery process.

Application for VR&E Benefits



- ▶ File a formal application: VA Form 23-1900, *Disabled Veterans Application for Vocational Rehabilitation*
- ▶ Informal Claim:
 - ▶ Any communication or action indicating intent to apply for VR&E services from a Vet, representative, or Member of Congress
 - ▶ Upon receipt, VA must send formal application
 - ▶ If formal application received by VA w/in 1 year from the date it was sent to the Vet, the claim will be considered filed on date of receipt of informal claim

Application for VR&E Benefits



OMB Approved No. 2900-0009
 Respondent Burden: 15 minutes
 Expiration Date: 11/30/2022

Department of Veterans Affairs			DO NOT WRITE IN THIS SPACE (VA DATE STAMP)	
APPLICATION FOR VOCATIONAL REHABILITATION FOR CLAIMANTS WITH SERVICE-CONNECTED DISABILITIES <i>(Chapter 31, Title 38, U.S.C.)</i>				
PURPOSE OF VOCATIONAL REHABILITATION: Vocational Rehabilitation and Employment provides services that will assist certain claimants with disabilities in obtaining and maintaining suitable employment. If employment is not an option because of the severity of the claimants' disability conditions, services to assist them to achieve maximum independence in their daily living activities may also be provided. IMPORTANT: To decide if you should fill out this form, please read the information on page 2 of this form.				
1. FIRST, MIDDLE, LAST NAME OF CLAIMANT		2. SOCIAL SECURITY NO.	3. VA FILE NO. <i>(If different from Item 2)</i>	4. DATE OF BIRTH <i>(Month, Day, Year)</i>
5. MAILING ADDRESS <i>(No. and street or rural route, City, State and ZIP Code, OR write "None," if no mailing address.)</i>			6. MAIN TELEPHONE NUMBER <i>(Include Area Code, or write "None" if no available telephone number.)</i>	
7. E-MAIL ADDRESS OF CLAIMANT			8. CELL PHONE NUMBER <i>(Include Area Code or write "None" if no available cell phone number.)</i>	
9. IF YOU ARE MOVING WITHIN THE NEXT 30 DAYS , PROVIDE US YOUR NEW ADDRESS			10. NUMBER OF YEARS OF EDUCATION	
I HEREBY CERTIFY THAT the information I have entered on this form is true and complete to the best of my knowledge and belief. I realize that making willful false statements concerning a material fact in a claim of vocational rehabilitation benefits is a punishable offense that may result in a fine or imprisonment, or both. <i>(Reference: 38 U.S.C. 3802(a))</i>				
11A. SIGNATURE OF CLAIMANT <i>(Do not print) (Sign in ink)</i>			11B. DATE SIGNED	

VA FORM
 NOV 2019 **28-1900**

SUPERSEDES VA FORM 28-1900, SEP 2014,
 WHICH WILL NOT BE USED.

Page 1

BASIC ELIGIBILITY & ENTITLEMENT

Basic Entitlement

- ▶ Service-connected disabilities totaling at least 20 percent disabling & in need of rehabilitation due to an employment handicap
- ▶ Service-connected disabilities totaling 10 percent disabling & in need of rehabilitation due to a serious employment handicap

Basic Entitlement: Basic Period of Eligibility

- ▶ **Limited to a 12-year period**
 - ▶ Begins on date of discharge from active service
- ▶ **Deferral:**
 - ▶ Eligibility cannot be established until Vet is notified of a rating decision for a compensable SC disability → Date of rating decision
 - ▶ Character of Discharge is a bar to VA benefits → Date character of discharge has been upgraded or date VA determines character of discharge is no longer a bar
 - ▶ Participation prevented by medical conditions → Date VR&E notifies Vet that participation is feasible

Basic Entitlement: Basic Period of Eligibility

▶ Extension:

- ▶ Severe medical condition: A severe physical or psychological condition that prevents Vet from beginning or continuing in a VR&E program
 - ▶ Includes disabling effects of chronic alcoholism if diagnosed as alcohol dependence or continual alcohol abuse
- ▶ Vet has a Serious Employment Handicap and requires additional time and extensive services to overcome the significant impairment to employability
 - ▶ Vocational Rehabilitation Counselor determines the length of eligibility extension

EVALUATION

Initial Evaluation

Vocational Rehabilitation Counselor (VRC) determines:

- ▶ Whether Vet has an employment handicap;
- ▶ Whether Vet has a serious employment handicap; and
- ▶ Whether the achievement of a vocational goal is reasonably feasible

Initial Evaluation

Factors considered:

- ▶ Handicapping effects of SC and NSC disabilities on employability and independence in daily living
- ▶ Physical and mental capabilities that may affect employability and ability to function independently in daily living activities
- ▶ Impact of identified vocational impairments on the ability to prepare for, obtain, and keep suitable employment
- ▶ Vet's abilities, aptitudes, and interests
- ▶ Personal history and current circumstances (including educational and training achievements, employment record, developmental and related vocationally significant factors, and family and community adjustment)
- ▶ Other factors that may affect employability

Initial Evaluation

Sources of Information:

- ▶ Vocational/psychological assessments
- ▶ Evaluations/reevaluations by a medical consultant
- ▶ VHA medical records
- ▶ Private medical records
- ▶ State vocational rehabilitation counselors
- ▶ Previous evaluation(s) of abilities, aptitudes, and interests



Initial Evaluation



Satisfactory Conduct and Cooperation

- ▶ It is essential that the Vet cooperates and maintains satisfactory conduct during the evaluation process
- ▶ VRC must apply sound counseling principles to secure and sustain Vet's cooperation and consider underlying issues that may be affecting Vet's ability or desire to cooperate in the initial evaluation
- ▶ VRC should review Vet's medical records and info garnered at the initial evaluation appointment if available to help understand the source of noncooperation



Initial Evaluation



Satisfactory Conduct and Cooperation

- ▶ If VRC not able to ascertain why Vet is not cooperating after reviewing the records and discussing it with the Vet, the VRC must inform the Vet in writing of a possible discontinuance of services due to non-cooperation and unsatisfactory conduct
 - ▶ Letter must provide a period of at least 30 days due process for Vet to respond to discuss any barriers to participation and to re-engage in evaluation and planning activities
- ▶ If after the written notification, Vet's non-cooperation continues, the initial evaluation will be discontinued and the VRC must inform the Vet in writing

Initial Evaluation

Medical Marijuana

- ▶ Vet's use of medical marijuana may not bar access to a VR&E program; if Vet otherwise meets the basic entitlement criteria, Vet will be allowed entrance into VR&E program
- ▶ HOWEVER, VRC must consider the impact of the use of medical marijuana on the feasibility of certain vocational goals
- ▶ Employment in the medical marijuana field will not be approved as a feasible vocational goal or as a basis for rehabilitation, as its use violates federal law

Initial Evaluation

VRC determines:

- ▶ Whether Vet has an employment handicap;
- ▶ Whether Vet has a serious employment handicap; and
- ▶ Whether the achievement of a vocational goal is reasonably feasible

Initial Evaluation

Employment Handicap

▶ Vocational Impairment

- ▶ Impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with Vet's abilities, aptitudes, and interests

▶ Effects of Impairment not overcome

- ▶ Is not employed, or does not qualify for employment, in an occupation consistent with abilities, aptitudes, and interests
- ▶ Includes Vet who qualifies for a suitable job, but does not obtain or keep the job for reasons beyond Vet's control

▶ SC disabilities contributes in substantial part to the overall impairment

- ▶ SC disability(ies) have an identifiable, measurable, or observable causative effect on the overall vocational impairment, but need not be the sole or primary cause of the employment handicap

Initial Evaluation

Employment Handicap

▶ Vocational Impairment

- ▶ Physical limitations
- ▶ Psychosocial limitations
- ▶ Cognitive limitations
- ▶ Mobility limitations
- ▶ Chronic pain
- ▶ Deficiencies in education/training
- ▶ History of unstable work
- ▶ History of incarceration(s)
- ▶ Stigmas associated with employees who suffer from mental illness

Initial Evaluation

Employment Handicap

▶ Vocational Impairment

- ▶ Does Vet have any deficiencies in education/training?
- ▶ Is there any potential impact of employers' negative perceptions about Vet's disability(ies)?
- ▶ Does Vet lack job-seeking skills?
- ▶ Are there any possible restrictions on employment that would result in the absence of stable, continuing, and suitable employment?

Initial Evaluation

Employment Handicap

- ▶ **Effects of Impairment not overcome**
 - ▶ Employment, or qualifying for employment, in an occupation consistent with Vet's abilities, aptitudes, and interests, including a Vet who qualifies for suitable employment, but does not obtain/maintain the job for reasons within Vet's control
 - ▶ Suitable Employment: consistent with Vet's expressed interests, aptitudes, and abilities that can be measured and/or demonstrated, does not aggravate Vet's disabilities, is stable and continuing, and requires reasonably developed skills

Initial Evaluation

Employment Handicap

- ▶ SC disabilities contribute in substantial part to the overall impairment
 - ▶ SC disability(ies) need not be the sole cause of the vocational impairment, but must contribute in more than a trivial or technical manner
 - ▶ NSC disabilities may compound the effects of SC disabilities, but may not be the sole basis of entitlement to VR&E services

Initial Evaluation

VRC determines:

- ▶ Whether Vet has an employment handicap;
- ▶ Whether Vet has a serious employment handicap; and
- ▶ Whether the achievement of a vocational goal is reasonably feasible

Initial Evaluation

Serious Employment Handicap

- ▶ Significant Vocational Impairment
 - ▶ Significant impairment of the ability to prepare for, obtain, or keep employment in an occupation consistent with abilities, aptitudes, and interests

- ▶ Effects of Significant Impairment not overcome
 - ▶ Is not employed, or does not qualify for employment, in an occupation consistent with abilities, aptitudes, and interests
 - ▶ Includes Vet who qualifies for a suitable job, but who does not obtain or keep the job for reasons beyond Vet's control

- ▶ SC disabilities contribute in substantial part to the overall impairment
 - ▶ SC disability(ies) have an identifiable, measurable, or observable causative effect on the overall vocational impairment, but need not be the sole or primary cause of the employment handicap

Initial Evaluation

Serious Employment Handicap

- ▶ **Significant Vocational Impairment**
 - ▶ Number/severity of disabling conditions
 - ▶ Existence of a neuropsychiatric condition
 - ▶ Deficiencies in education and training for suitable employment
 - ▶ Number, length, and frequency of periods of unemployment or underemployment
 - ▶ A pattern of reliance on gov't support programs, including welfare, VA comp, worker's comp, or Social Security disability
 - ▶ Extent/complexity of services and assistance needed to achieve rehabilitation
 - ▶ Withdrawal from society
 - ▶ Other factors relating to preparing for or obtaining/maintaining employment

Initial Evaluation

Serious Employment Handicap

▶ Additional Benefits

- ▶ Possible extension of 12-year period of basic eligibility
- ▶ Possible extension of duration of a rehabilitation program beyond 48 months, if required to complete the program
- ▶ Extended evaluation services
- ▶ Possible independent living services
- ▶ More extensive supplies and services if approved to pursue self-employment

Initial Evaluation

VRC determines:

- ▶ Whether Vet has an employment handicap;
- ▶ Whether Vet has a serious employment handicap; and
- ▶ Whether the achievement of a vocational goal is reasonably feasible

Initial Evaluation

Feasibility of a Vocational Goal

- ▶ Achievement of a vocational goal is reasonably feasible if:
 - ▶ One or more vocational goals have been identified;
 - ▶ Vet's physical and mental conditions permit training for the goal(s) to begin within a reasonable period;
and
 - ▶ Vet either has the educational skills and background to pursue the goal(s) or will receive services through VA to develop these skills as part of a rehabilitation program

Initial Evaluation

Feasibility of a Vocational Goal

- ▶ Vocational exploration assists Vet in selecting a suitable vocational objective that is consistent with Vet's abilities, aptitudes, and interests, and does not aggravate Vet's disability(ies)
 - ▶ Identifies transferable skills, previous training, or experience
 - ▶ Goal is to help the Vet make an informed choice

Initial Evaluation

Feasibility of a Vocational Goal

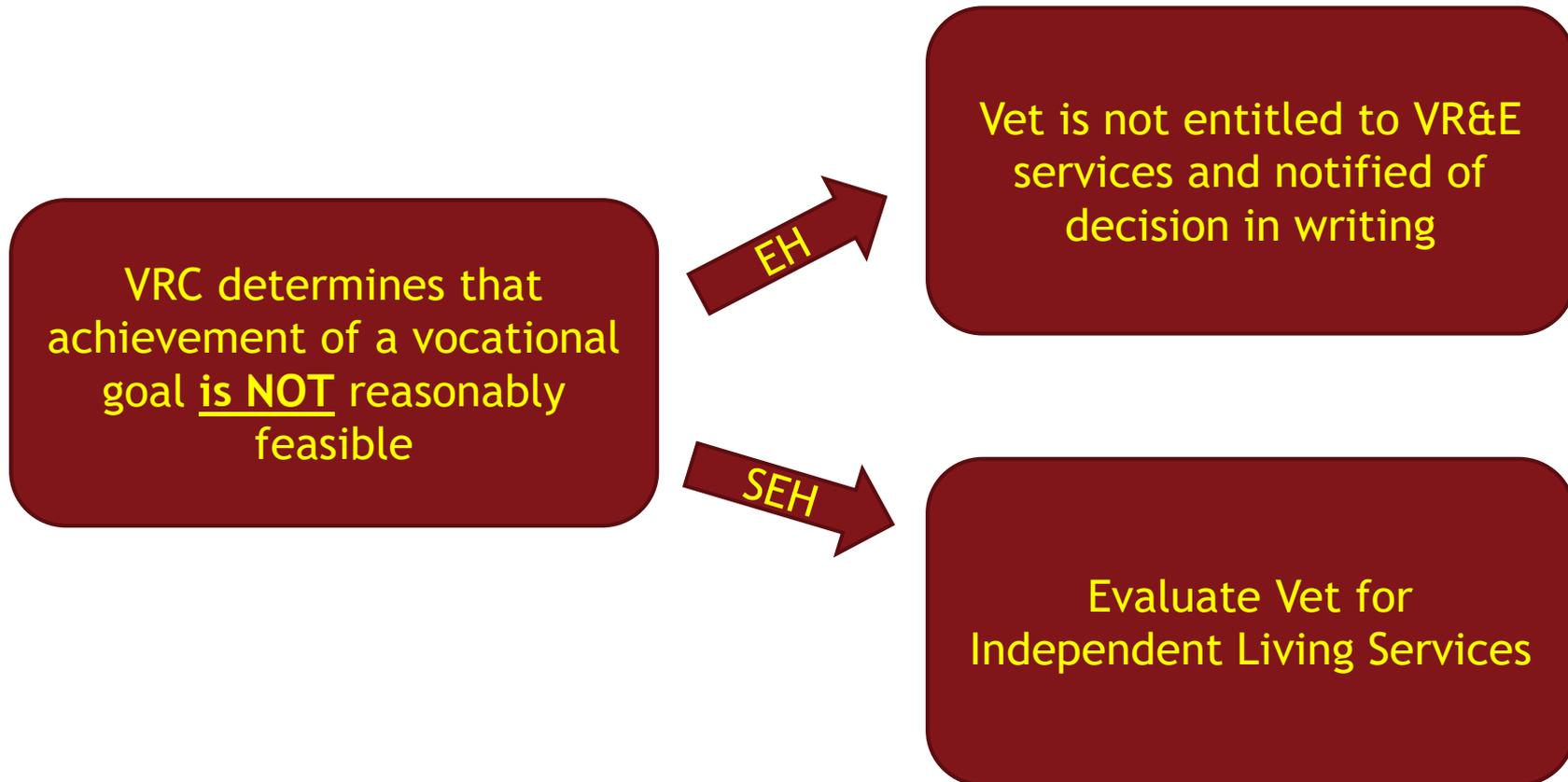
VRC determines that achievement of a vocational goal is reasonably feasible



Proceed to planning/development of a viable vocational goal

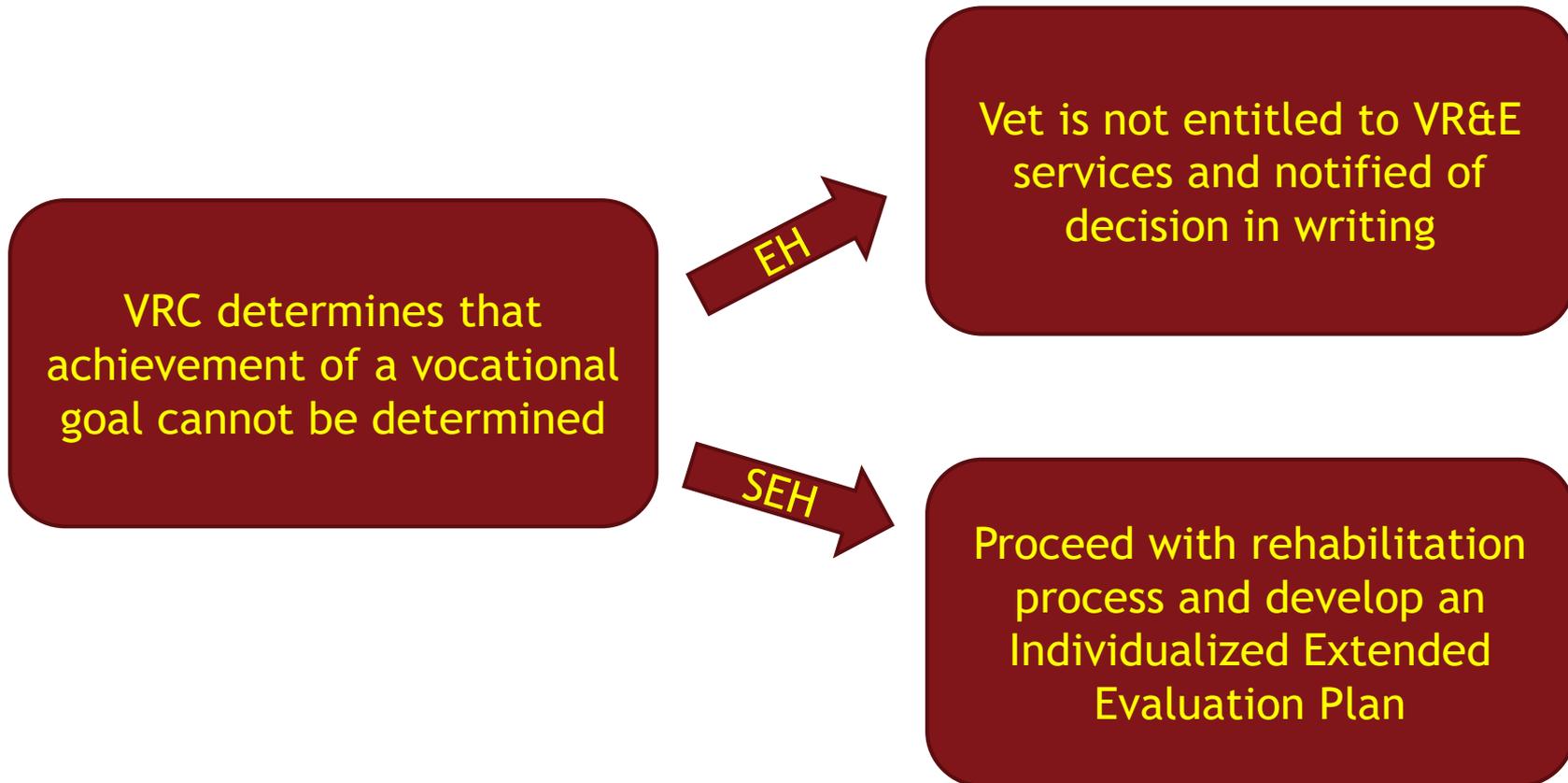
Initial Evaluation

Feasibility of a Vocational Goal



Initial Evaluation

Feasibility of a Vocational Goal



Extended Evaluation

- ▶ Goal is to determine the feasibility of Vet achieving a vocational goal when decision cannot be made on the basis of information developed during initial evaluation
- ▶ Services may include:
 - ▶ Diagnostic and evaluative services
 - ▶ Services to improve ability to attain a vocational goal
 - ▶ Services to improve ability to live and function independently in the community
 - ▶ Monthly subsistence allowance during period of extended evaluation
- ▶ Determination of the reasonable feasibility of achieving a vocational goal will be made at the earliest time possible during an extended evaluation
 - ▶ Reasonable doubt will be resolved in Vet's favor

PLANNING

Rehabilitation Plan Development



- ▶ Structures individualized services that will enable Vet to obtain and maintain suitable employment
- ▶ Plan development includes outlining services needed to accomplish the goal of the rehabilitation plan
- ▶ Counseling services must be included in every plan
- ▶ Additional services may include medical, social, independent living, economic, educational, vocational, and employment services

Roles and Responsibilities

- ▶ Vet must actively participate in the development of the plan and agree to the plan before services can be provided
- ▶ VRC guides Vet in the selection of an appropriate rehabilitation goal
 - ▶ Assist Vet in making informed decisions on an appropriate goal based on Vet's functional abilities, interests, and aptitudes
 - ▶ Outline steps needed to achieve the program goal
 - ▶ Assist Vet in understanding the labor market to ensure that the chosen goal is suitable and viable

Duration of Vocational Rehabilitation

A V&RE program may not exceed 48 months (or its equivalent when pursued on a part-time basis)

Duration of Vocational Rehabilitation

- ▶ **Exceptions (Employment Handicap):**
 - ▶ Vet previously completed VR&E program, but SC disability has worsened to the point that Vet is unable to perform the duties of the occupation and a period of training in the same or a different field is required
 - ▶ The occupation in which Vet previously completed training is found to be unsuitable because of the Vet's abilities and employment handicap
 - ▶ The assistance to be provided in excess of 48 months consists only of a period of employment assistance

Duration of Vocational Rehabilitation

- ▶ **Exceptions (Serious Employment Handicap):**
 - ▶ To enable Vet to complete a period of rehabilitation to the point of employability
 - ▶ To provide an extended evaluation in cases in which the total period needed for an extended evaluation and for rehabilitation to the point of employability would exceed 48 months
 - ▶ To provide a program of independent living services, including cases in which achievement of a vocational goal becomes feasible during or following a program of independent living services

Duration of Vocational Rehabilitation

- ▶ **Exceptions (Serious Employment Handicap):**
 - ▶ **Following rehabilitation to the point of employability:**
 - ▶ Vet has been unable to secure employment in the occupation for which training has been provided, despite intensive efforts on the part of VA and Vet, and a period of retraining or additional training is needed
 - ▶ The skills which Vet developed in training for an occupation in which Vet was employed are no longer adequate to maintain employment in that field and a period of retraining is needed
 - ▶ Vet's SC disability has worsened to the point that Vet is unable to perform the duties of the occupation and a period of training in the same or different field is required
 - ▶ Occupation in which Vet previously completed training is found to be unsuitable due to Vet's abilities and employment handicap

Five Tracks to Employment

- ▶ Emphasizes exploring employment options early in the rehabilitation planning process
- ▶ Leads to greater informed choice for Vet regarding occupational and employment options
- ▶ Provides faster access to employment for Vets who have identifiable and transferable skills for direct placement into suitable employment
- ▶ Provides an option for Vets who are not able to work, but need assistance to lead a more independent life

Five Tracks to Employment

1. Re-Employment
2. Rapid Access to Employment
3. Employment Through Long-Term Services
4. Self-Employment
5. Independent Living

Re-Employment

- ▶ Targeted to Vets separating from active duty and returning to previous employer
- ▶ Services include:
 - ▶ Job abilities or special needs/accommodation assessment
 - ▶ Short-term training/certification
 - ▶ Recommendation and provision of assistive technologies
 - ▶ Medical/psychological treatment referrals
 - ▶ Work adjustment assistance
 - ▶ Consultation with employer

Rapid Access to Employment

- ▶ Targeted to Vets seeking employment as soon as possible and who possess the necessary skills to qualify for employment in a suitable career
- ▶ Services include:
 - ▶ Job skills assessment
 - ▶ Short-term training/certification
 - ▶ Employment readiness preparation (resume writing, interview skills training)
 - ▶ Assisted job search, use of specialized career centers
 - ▶ Career counseling
 - ▶ Medical/psychological treatment referrals

Rehabilitation Plan Development



Employment Through Long-Term Services

- ▶ Targeted to Vets needing remedial/refresher courses, specialized training, post-secondary education
- ▶ Services include:
 - ▶ Vocational assessment, specialized testing/evaluation
 - ▶ Career guidance, labor market analysis
 - ▶ Medical/psychological treatment referrals
 - ▶ Training/education (tuition, fees, books, tools, supplies)
 - ▶ Employment assistance
 - ▶ Post-employment follow-up and evaluation
 - ▶ Apprenticeships
 - ▶ On-the-job training
 - ▶ Non-paid work experience
 - ▶ Subsistence allowance

Self-Employment

- ▶ Targeted to Vets who have limited access to traditional employment, need flexible work schedules, or need a more accommodating work environment due to their disabling conditions or other life circumstances
- ▶ Vets must have the interest, financial resources, and aptitude to pursue self-employment
- ▶ Services are determined by the severity of the disability and limitations to employability

Independent Living

- ▶ Targeted to Vets where pursuit of a vocational goal is not reasonably feasible due to the effects of disability, and services are needed to improve independence in daily living
- ▶ Services include:
 - ▶ Independent living needs assessment
 - ▶ Housing referral assistance
 - ▶ Home health aide
 - ▶ Transportation
 - ▶ Assistive technology
 - ▶ Independent living skills training
 - ▶ Follow-up to consider employment services and/or redevelopment of a vocational goal

Individualized Written Rehabilitation Plan (IWRP)

Purposes

- ▶ Identify program goals and objectives to be achieved by Vet during the period of rehabilitation services that will lead to the point of employability
- ▶ Plan for placement of Vet in the field for which training and other services will be provided
- ▶ Specify the key services needed by Vet to achieve the goals and objectives of the plan

Individualized Written Rehabilitation Plan (IWRP)

Elements of the IWRP

- ▶ A statement of long-range rehabilitation goals, including, at a minimum:
 - ▶ One vocational goal for a Vet with an employment handicap; or
 - ▶ One vocational goal and, if applicable, one independent living goal for a Vet with a serious employment handicap

Individualized Written Rehabilitation Plan (IWRP)

Elements of the IWRP

- ▶ **Intermediate objectives: statements of achievement expected of Vet to attain long-range goal**
 - ▶ Activity relates to achievement of the goal
 - ▶ Activity is definable in terms of observable behavior (e.g., pursuing a B.A. degree)
 - ▶ Activity has a projected completion date
 - ▶ Outcome desired upon completion is measurable (e.g., receiving a B.A. degree)

Individualized Written Rehabilitation Plan (IWRP)



Elements of the IWRP

- ▶ The specific services to be provided by VA, including counseling services.
- ▶ The projected starting and completion dates of the planned services and the duration of each service.
- ▶ Objective criteria and an evaluation procedure and schedule for determining whether the objectives and goals are being achieved

EDUCATION AND VOCATIONAL TRAINING

Educational and Vocational Training

- ▶ VA will generally select courses of study and training, completion of which usually results in a diploma, certificate, degree, qualification for licensure, or employment
- ▶ If such courses are not available in the area in which Vet resides, or if they are available but not accessible to Vet, other arrangements may be made, including:
 - ▶ Relocation of Vet to another area in which necessary services are available, or
 - ▶ Use of an individual instructor to provide necessary training

Educational and Vocational Training

- ▶ Only schools and courses approved by VA may be utilized to provide training and rehabilitation services
- ▶ Most approved post-secondary schools have a VA liaison to assist Vet in completing reporting requirements
- ▶ Generally, the school must:
 - ▶ Agree to cooperate with VA; *and*
 - ▶ Provide timely and accurate info covering the Vet's attendance, performance, and progress in training

Educational and Vocational Training

On-the-Job Training

- ▶ Pursued toward a specified vocational objective, provided by a training establishment
- ▶ Trainee learns, in the course of work performed under supervision, primarily by receiving formal instruction, observing practical demonstration of work tasks, and assisting in those tasks
- ▶ Productive work should gradually increase with greater independence from formal instruction as the course progresses

Educational and Vocational Training

Tutorial Assistance

- ▶ Vet may be provided individualized tutorial assistance if VA determines that special assistance beyond that ordinarily given by the facility to students pursuing the same or a similar subject is needed to correct a deficiency in a subject

EMPLOYMENT SERVICES

Employment services

Vet may be entitled to employment services if Vet:

- ▶ Completed a program of VR&E services and declared rehabilitated to the point of employability
- ▶ Not completed a rehabilitation period to the point of employability, but elected to secure employment without completing the period of rehabilitation to the point of employability and is employable
- ▶ Never received services for rehabilitation and:
 - ▶ Is employable or employed in a suitable occupation;
 - ▶ Has an employment handicap or serious employment handicap; and
 - ▶ Needs employment services to secure and/or maintain suitable employment

Employment Services

Individualized Employment Assistance Plan (IEAP)

- ▶ Assures that a comprehensive, thoughtful approach is taken to enable Vets to secure suitable employment
- ▶ Prepared either as part of an IWRP or when Vet is eligible for employment services only
- ▶ Follows the same structure as the IWRP and includes utilization of community resources to enable Vet to secure and maintain employment

Employment Services

Job Development and Placement Services

- ▶ Direct placement assistance by VA w/in a network that involves employers, employees, and service providers
- ▶ Utilization of job development and placement services of Federal, state, local, and/or non-profit organizations
- ▶ Services include:
 - ▶ Interview training/mock interviews
 - ▶ Resume development
 - ▶ Supplies, training, and payment of licensing fees to increase Vet's marketability
 - ▶ Special hiring programs

Employment Services

Self-Employment

- ▶ Provides services to Vets who have the necessary job skills to start a business
- ▶ May also be the right track for Vets who have limited access to traditional employment or require a more accommodating work environment due to the effects of a disability
- ▶ Includes:
 - ▶ Vocational & incidental business management training
 - ▶ License or other fees
 - ▶ Necessary tools and supplies required for the occupation

Employment Services

Self-Employment

- ▶ VA will conduct a comprehensive review and analysis of the feasibility of a proposed business plan as submitted by Vet or developed with VA's assistance, which must include:
 - ▶ Analysis of the economic viability of the proposed business
 - ▶ Cost analysis specifying the amount and types of assistance VA will provide
 - ▶ Market analysis for the Vet's proposed services or products
 - ▶ Availability of financing from non-VA sources, including Vet's personal resources, local banks, and other sources
 - ▶ Evidence of coordination with the Small Business Administration to secure special consideration under section 8 of the Small Business Act
 - ▶ Location of the site for the proposed business and the cost of the site, if any
 - ▶ A training plan to operate a successful business

MONETARY ASSISTANCE

Monetary Assistance

Subsistence Allowance

- ▶ Generally, a Vet participating in a VR&E program will receive a monthly subsistence allowance
- ▶ A subsistence allowance is not warranted if the only services provided are:
 - ▶ Initial evaluation
 - ▶ Placement and post-placement services
 - ▶ Counseling

Monetary Assistance

Supplies & Equipment

- ▶ Supplies that VA determines are necessary for Vet's rehabilitation program are provided to enable Vet to pursue rehabilitation and achieve the goals of the program
- ▶ May include:
 - ▶ Books
 - ▶ Office supplies (e.g., paper, ink/toner, pens/pencils)
 - ▶ Tools
 - ▶ Internet installation/usage
 - ▶ Computer equipment

Monetary Assistance

Supplies & Equipment

VA may authorize supplies which are required by a facility only under the following conditions:

- ▶ They are to be used by similarly circumstanced individuals who do not have a disability in the same training or employment
- ▶ They are to be used to mitigate or compensate for the effects of the Vet's disability while Vet is being evaluated, trained, or assisted in gaining employment. This includes supplies to lessen a competitive disadvantage with other students or job seekers.
- ▶ They are to be used to allow Vet to function more independently and lessen Vet's dependence on others

Monetary Assistance

Employment Adjustment Allowance

Vet who completes a period of rehabilitation and reaches the point of employability will be paid an employment adjustment allowance for a period of two months if:

- ▶ Vet has completed the objectives outlined in IWRP
- ▶ VRC declares Vet job-ready
- ▶ Vet has entered into an IEAP
- ▶ Vet's eligibility (12 years) and/or entitlement (48 months) has not expired
- ▶ Vet satisfactorily participates in employment services

INDEPENDENT LIVING SERVICES

Independent Living Services

- ▶ Assists eligible Vets whose ability to function independently in family, community, or employment is so limited by the severity of disability (SC and NSC) that vocational or rehabilitation services need to be appreciably more extensive than for less-disabled Vets
- ▶ Goal is to return to Vet the ability to live and function within the family and community without the services of others or with a reduced level of services of others

Independent Living Services

May be furnished:

- ▶ As part of a program to achieve rehabilitation to the point of employability
- ▶ As part of an extended evaluation to determine the current reasonable feasibility of achieving a vocational goal
- ▶ Incidental to a program of employment services
- ▶ As a program of rehabilitation services for eligible Vets for whom achievement of a vocational goal is not currently reasonably feasible to help the Vet:
 - ▶ Function more independently in the family and community w/out the assistance of others or with a reduced level of assistance;
 - ▶ Become reasonably feasible for a vocational rehabilitation program; or
 - ▶ Become reasonably feasible for extended evaluation

Independent Living Services

Independent living services may include:

- ▶ Evaluation of independent living potential
- ▶ Training in independent living skills
- ▶ Attendant care
- ▶ Health maintenance programs
- ▶ Identifying appropriate housing accommodations or modifications
- ▶ Equipment to increase independence in activities of daily living (e.g., prosthetics, Home Improvement and Structural Alterations (HISA) grants)

Independent Living Services

A program of independent living services cannot exceed 24 months unless one the following criteria are met:

- ▶ VRC determines that a longer period is necessary and likely to result in a substantial increase in the Vet's level of independence in daily living.
 - ▶ Extension of up to six months possible
- ▶ If Vet served on active duty post-9/11, has a severe disability incurred or aggravated during that service, and additional period(s) will result in a substantial increase in Vet's level of independence in daily living
 - ▶ Extension of up to two six-month periods

Independent Living Services

Individualized Independent Living Plan (IILP)

- ▶ Identifies steps through which Vet can become more independent in daily living w/in family and community
- ▶ Follows same structure as the IWRP and includes:
 - ▶ Services which may be provided to achieve independence in daily living
 - ▶ Programs to be utilized with a demonstrated capacity to provide independent living services for severely handicapped persons
 - ▶ Services provided under other VA and non-VA programs needed to achieve the goals of the plan
 - ▶ Arrangements for maintaining the improved level of independence following completion of the plan

INDUCTION, RETROACTIVE INDUCTION, CHANGING VR&E PLAN

Induction

Generally, the induction date (effective date) of a VR&E program is the day the Vet signs the plan and begins to receive the agreed-upon services

Retroactive Induction

- ▶ Vet may be inducted into a rehabilitation program on a retroactive basis
- ▶ If Vet is retroactively inducted, VA may authorize payment pursuant for tuition, fees, and other verifiable expenses that Vet paid or incurred consistent with the approved rehabilitation program
- ▶ VA may also authorize payment of subsistence allowance for the period of retroactive induction, except for any period Vet was on active duty

Retroactive Induction

All of the following conditions must be met:

- ▶ Past period is within a basic period of eligibility
- ▶ Vet was entitled to disability comp during the period or would likely have been entitled to comp but for active-duty service
- ▶ Vet met the criteria for vocational rehabilitation benefits and services in effect during the period
- ▶ VA determines Vet's training and other rehabilitation services received during the period were reasonably needed to achieve the goals and objectives identified for the Vet and may be included in the plan developed for Vet
- ▶ VA has recouped any benefits it paid Vet for education or training pursued under any VA education program during any portion of the period
- ▶ An initial evaluation was completed under 38 C.F.R. § 21.50
- ▶ A period of extended evaluation is not needed to be able to determine the reasonable feasibility of the achievement of a vocational goal

Retroactive Induction

Vet must complete the following when requesting retroactive induction:

- ▶ Submit a written request that outlines the period for which reimbursement is requested
- ▶ Submit a written justification and a completed VA Form 28-1905m, *Request for and Receipt of Supplies*, for all supplies and equipment for which reimbursement is requested
- ▶ Provide an itemized receipt with proof of purchase, or an itemized list of items with bank or credit card statements to substantiate cost and proof of purchase
 - ▶ Bank/credit card account number must be redacted

Retroactive Induction

The effective date for retroactive induction is the date when all the entitlement conditions are met, but in no event before the effective date of a VA rating establishing a qualifying level of SC disability

Changing a VR&E Plan

- ▶ Vet or VRC may request a change in the plan any time
- ▶ A change in long-range program goal may only be made following a reevaluation of Vet's rehabilitation program by VRC. A change may be made when:
 - ▶ Achievement of the current goal(s) is no longer reasonably feasible; or
 - ▶ Vet's circumstances have changed or new info has been developed which makes rehabilitation more likely if a different long-range goal is established; and
 - ▶ Vet fully participates and concurs in the change

Changing a VR&E Plan

- ▶ A change in intermediate objectives or services provided under the plan may be made by the case manager when such change is necessary to carry out the statement of long-range goals, if Vet concurs with change
- ▶ Minor changes in the plan (*e.g.*, changing the date of a scheduled evaluation) by the case manager may be made without the participation and concurrence of Vet
- ▶ Any change in the total duration of Vet's rehabilitation plan is subject to the provisions on the duration of a rehabilitation program

V&RE OUTCOMES AND CLOSURE

VR&E Program Outcomes

Rehabilitated to the Point of Employability

1. Employed in the occupational objective for which a program of services was provided or in a closely related occupation for at least 60 continuous days;

OR

VR&E Program Outcomes

Rehabilitated to the Point of Employability

2. Employed in an occupation unrelated to the occupational objective of Vet's rehabilitation plan for at least 60 continuous days, if Vet concurs in the change and such employment:
 - ▶ Follows intensive, yet unsuccessful, efforts to secure employment for Vet in the occupation objective of a rehabilitation plan for a closely related occupation contained in Vet's rehabilitation plan;
 - ▶ Is consistent with Vet's aptitudes, interests, and abilities; and
 - ▶ Utilizes some of the academic, technical, or professional knowledge and skills obtained under the rehabilitation plan

OR

VR&E Program Outcomes

Rehabilitated to the Point of Employability

3. Vet pursues additional education or training, in lieu of obtaining employment, after completing the prescribed program of training and rehabilitation services, if:
 - ▶ The additional education or training is not approvable as part of Vet's rehabilitation program; and
 - ▶ Achievement of employment consistent with Vet's aptitudes, interests, and abilities will be enhanced by the completion of the additional education or training

VR&E Program Outcomes

Rehabilitated to the Point of Employability NOT Completed

1. Vet obtains and retains employment substantially using the services and assistance provided under the plan for rehabilitation; AND
2. Employment obtained is consistent with Vet's abilities, aptitudes and interests; AND
3. Maximum services feasible to assist Vet to retain the employment have been provided; AND
4. Vet has maintained the employment for at least 60 continuous days

VR&E Program Outcomes

Rehabilitated to the Point of Employability NOT Completed

- ▶ VRC must explain the rehabilitation decision in terms of wages and benefits, as well as the Vet's abilities, limitations, and interests
- ▶ If Vet chooses to maintain such employment the VRC determines to be unsuitable, Vet may not be declared rehabilitated; however, VRC must reevaluate the VR&E program for other potential services that may lead to successful rehabilitation (*e.g.*, employment services)

VR&E Program Outcomes

Interrupted Status

- ▶ Situations may arise in the course of a rehabilitation program in which a temporary suspension of the program is warranted
- ▶ VA first must determine that Vet will be able to return to a rehabilitation program or a program of employment services following the resolution of the situation causing the interruption

VR&E Program Outcomes

Interrupted Status

- ▶ Vet's case will be assigned to *interrupted* status when:
 - ▶ VA determines that a suspension of services being provided is necessary; and
 - ▶ Either:
 - ▶ A definite date for resumption of the program is established; or
 - ▶ Evidence indicates the Vet will be able to resume the program at some future date, which can be approximately established

VR&E Program Outcomes

Interrupted Status

Reasons for *interrupted* status:

- ▶ Prior to placing the Vet's case in *Discontinued* to ensure that all appropriate actions are taken to assist Vet in continuing program and provide Vet with due process
- ▶ Vet's conduct and cooperation has become unsatisfactory
- ▶ Vet cannot continue rehabilitation program because the necessary training and rehabilitation services are unavailable
- ▶ Vet is unable to initiate or continue a rehabilitation plan due to medical reasons, family emergencies, etc.
- ▶ Vet is recalled to active duty
- ▶ Vet becomes a fugitive felon or is incarcerated
- ▶ Vet's rehabilitation plan is redeveloped to an IILP

VR&E Program Outcomes

Interrupted Status

- ▶ Vet may request, and VRC agree, to enter *interrupted* status for issues expected to resolve w/in 6 months (e.g., health, legal, financial, and/or family issues)
- ▶ Vet may reenter VR&E program if Vet reports for entrance or reentrance into the prescribed program at the time and place scheduled for the resumption of the rehabilitation program

VR&E Program Outcomes

Interrupted Status

- ▶ If Vet in *interrupted* status fails to report for entrance or reentrance into the program at the appointed time and place, Vet's case will remain in *interrupted* status
- ▶ Case manager will then determine if there is a satisfactory reason for Vet's failure to enter new program or reenter prior program
- ▶ If evidence of record does not establish a satisfactory reason, Vet's case will be discontinued and assigned to *discontinued* status

VR&E Program Outcomes

Interrupted Status

VRC must maintain contact with Vet during *interruption* and arrange for appropriate medical or other services Vet needs to be able to enter or reenter a rehabilitation program or a program of employment services

VR&E Program Outcomes

Interrupted Status

- ▶ If entering *interrupted* status is not a mutual decision, VA must inform Vet of the:
 - ▶ Intent to discontinue services
 - ▶ Reasons for interruption
 - ▶ Expected outcome
 - ▶ Actions required of the Vet to avoid discontinuance
 - ▶ Allowance of at least 30 days for response

VR&E Program Outcomes

Discontinued Status

- ▶ Termination of all VR&E services is warranted
- ▶ Reasons can include:
 - ▶ Vet declines to initiate or continue rehabilitation
 - ▶ Unsatisfactory conduct or cooperation
 - ▶ Vet's eligibility (12-years) or entitlement (48 months) expires
 - ▶ Medical and related problems
 - ▶ Vet is unable to participate in a rehabilitation program because of a serious physical or emotional problem for an extended period; and
 - ▶ VA medical staff are unable to estimate an approximate date by which Vet will be able to begin or return to the program.
 - ▶ Failure to progress

VR&E Program Outcomes

Discontinued Status

- ▶ **Maximum Rehabilitation Gain (MRG)**
 - ▶ VR&E is able to measure substantial improvement in the Vet's circumstances that is directly attributable to the VR&E program
 - ▶ Services contributed to Vet obtaining employment or maintaining employment that does not meet the criteria for rehabilitation; or
 - ▶ Services substantially improved the circumstances of a Vet who is not currently employable in a suitable job

VR&E Program Outcomes

Discontinued Status

- ▶ MRG is appropriate when:
 - ▶ Vet received services under an IWRP or IEAP;
 - ▶ Vet is unable or unwilling to continue services toward completion of the program goal despite efforts to motivate or provide further services;
 - ▶ Vet was provided notification of interruption and pending discontinuance; AND
 - ▶ Direct contact has been established with the Vet within 90 days prior to closure or current circumstances have been verified through a third party within 120 days prior to closure

Reentrance into VR&E Program After Discontinuance

Vet may reenter VR&E program from which Vet was discontinued or to a different program if:

- ▶ The reason for the discontinuance has been removed; and
- ▶ VA has redetermined eligibility and entitlement

Reentrance into VR&E Program After Discontinuance

If VR&E program was discontinued due to unsatisfactory conduct or cooperation, Vet may reenter the program only if a VRC determines:

- ▶ The previous unsatisfactory conduct or cooperation is not likely to recur; and
- ▶ The rehabilitation program the Vet proposes to pursue (whether the same or revised) is suitable to Vet's abilities, aptitudes, and interests



ADVOCACY TIPS

Advocacy Tips

- ▶ **Every decision with adverse affects is appealable**
 - ▶ Basic entitlement
 - ▶ Employment Handicap/Serious Employment Handicap
 - ▶ Overcoming vocational impairment
 - ▶ Feasibility of a vocational goal
 - ▶ Changing a program goal
 - ▶ Specific equipment purchases

Advocacy Tips

- ▶ **Every decision with adverse affects is appealable**
 - ▶ Interrupted Status
 - ▶ Discontinued Status
 - ▶ Rehabilitated (unless achieved scheduled program goals)
 - ▶ Maximum Rehabilitative Gain
 - ▶ Induction Date/Retroactive Induction

Advocacy Tips

- ▶ **Procedure, procedure, procedure**
 - ▶ The devil is in the details
 - ▶ If a vocational goal was determined not reasonably feasible, did the VRC consider Independent Living Services?
 - ▶ If Vet submitted NOD as to interruption, ensure the SOC (legacy)/BVA decision addresses interruption and doesn't skip straight to discontinuance
 - ▶ If no additional development is needed, appeal the earliest decision for which the evidence is sufficient
 - ▶ Multiple decisions can be issued w/in a year (e.g., changing a program goal, interruption, discontinuance)
 - ▶ Under AMA, if additional evidence is necessary (e.g., EH/SEH, feasibility), submit the evidence with a supplemental appeal

Advocacy Tips

- ▶ **Ensure the entire record was considered**
 - ▶ Did VRC review all medical/vocational evidence of record?
 - ▶ Does VRC's decision accurately reflect Vet's functional impairment?
 - ▶ Was the medical evidence reviewed by the VRC stale?
 - ▶ VRC can request medical/psychological exams
 - ▶ Potential duty-to-assist error to raise under AMA

Advocacy Tips

LEGACY APPEALS

- ▶ **Have the Vet's circumstances changed?**
 - ▶ New SC disabilities?
 - ▶ Increased ratings/functional impairment?
- ▶ **Supplement the record**
 - ▶ Particularly useful in the initial evaluation phase
 - ▶ Additional medical records to establish EH/SHE
 - ▶ Additional educational/labor market data to establish feasibility or change of a program goal

Advocacy Tips

PREPARATION & COOPERATION



Advocacy Tips

Preparation & Cooperation

- ▶ The absolute keys to any successful VR&E claim
- ▶ Encourage Vet to work with the VRC
 - ▶ Communicate any concerns ASAP
- ▶ Document all communication with VRC
 - ▶ Establish cooperation
 - ▶ Especially useful if requesting a change in the program goal or responding to an interruption notification or decision

QUESTIONS?



Upcoming VSO Webinars

Dates	Topic	Presenter
April 28 or 29	Identifying Duty to Assist Errors: Reasons Why a VA Medical Examination May Be Inadequate	Alexis Ivory
May 19 or 20	The New Wave of Veterans: Helping Post 9/11 Combat Veterans with TBI and PTSD	Helen Chong

Library of Past Webinars

Recorded Webinars are available here (can be viewed for only 72 hours after purchase):

<https://productsbynvlsp.org/webinars/>

Recorded Webinar topics include:

- ▶ The New VA Appeals System (Appeals Modernization)
- ▶ Modernized Claims and Appeals: Supplemental Claims and Recent Developments
- ▶ New Changes to VA's Non-Service-Connected Disability Compensation Program

NVLSP VA Benefit Identifier

- ▶ **Questionnaire/App:** Helps Vets and VSOs figure out what VA service-connected disability benefits or non-service-connected pension benefits they might be entitled to.
- ▶ **3 WAYS to Access:**

[NVLSP Website](#)



NVLSP Training Opportunities

- ▶ NVLSP offers private in-person and webinar training tailored to the needs of various groups.
- ▶ If you are interested in finding out more information, please contact our Director of Training and Publications, Rick Spataro at richard@nvlsp.org