Chapter 23:

Closure

Vermont Division for the Blind and Visually Impaired
Policy and Procedures Manual

Revision Date: February 2022

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# Definitions

* 1. "Employment outcome" means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment 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 for a minimum of ninety (90) calendar days.
	2. “Trial Work Experiences” means supported employment, on-the-job training, progressive employment training placements, and other experiences conducted in competitive, integrated work settings. Trial work experiences are designed to explore the individual’s abilities, capabilities, and capacity to perform in real work settings and to determine ability to benefit from DBVI services.
	3. “Clear and Convincing Evidence” means for DBVI purposes that there is evidence to a high degree of certainty that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term clear means unequivocal.
	4. “Reasonable number of attempts" means that the DBVI counselor has attempted to contact the individual or their representative at least three times by any combination of the following methods of communication: by mail, email, text, telephone, video conference, in person, and/or by another mode of communication available to the individual. At least one attempt must be by letter.

### Guidance — Reasonable number of attempts.

"Reasonable number of attempts" and type of communication may depend somewhat on the individual's disability. For example, an individual who experiences chronic depression may need additional encouragement, perhaps in person, to participate in rehabilitative activities. The case record must include a description of the attempts to encourage participation.

*End Guidance.*

# Closure Without Eligibility Determination

* 1. An individual's case record may not be closed prior to making an eligibility determination unless:
		1. The individual declines to participate in or is unavailable to complete an assessment for determining eligibility and priority for services; and
		2. A reasonable number of attempts have been made to contact the individual or, as appropriate, their representative to encourage participation. The case record must include a description of the attempts to encourage participation.

# Closure — Ineligible for DBVI Services

* 1. An individual can be determined ineligible for DBVI services at application or after receiving services under an IPE for the following reasons:
		1. The individual has no verifiable disability;
		2. The individual’s impairment does not result in a substantial impediment to employment;
			1. For example, this might be the case when an individual has bipolar disorder but is in long term recovery and has been successfully employed for many years;
		3. The individual does not need DBVI services to achieve an employment outcome;
			1. For example, this might be the case when an employer is willing to accommodate the individual even though they have a substantial impediment to employment;
		4. The individual is unable to benefit from DBVI services in terms of an employment outcome due to the severity of their disability.
	2. An individual is presumed to be able to benefit in terms of an employment outcome, unless DBVI can demonstrate by clear and convincing evidence, as defined in Section I, that the individual is incapable of benefiting from DBVI services due to the severity of the individual’s disability. Before this determination can be made, DBVI must follow the procedures in Section IV of this Chapter.

# Required Procedures for Determination of Ineligibility Based on Inability to Benefit

* 1. Prior to any determination that an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of the individual’s disability, DBVI counselors must follow the procedures set forth in this section. This applies whether the determination follows an initial application or after a finding of eligibility and development of an Individualized Plan for Employment (IPE). DBVI must demonstrate by “clear and convincing evidence” as defined in Section I that the individual is unable to benefit from DBVI services. DBVI must make the determination of inability to benefit on a case-by-case basis.
	2. To meet the “clear and convincing” standard, DBVI must develop and implement a plan to assess the individual’s abilities, capabilities and capacity to perform in competitive, integrated work settings. The plan shall include two or more trial work experiences, provided in competitive integrated employment settings to the maximum extent appropriate. The trial work experiences must be consistent with the informed choice and rehabilitation needs of the individual. The trial work experiences must be of sufficient variety and over a sufficient period of time to conclude that the individual is unable to benefit from DBVI services. The plan might also include other sources of information, including:
		1. A description of assessments, including situational assessments and supported employment assessments, from providers who have concluded that they would be unable to meet the individual’s needs due to the severity of their disability; and
		2. A functional assessment of skill development activities, with any necessary supports (including assistive technology) in real life settings, if appropriate.
	3. The DBVI counselor must document the results of the trial work experiences in the case record and note how they provide clear and convincing evidence that the individual is incapable of benefiting from DBVI services due to the severity of their disability. The DBVI counselor shall have a high degree of certainty before they conclude that the individual is incapable of benefiting from services in terms of an employment outcome. The DBVI counselor must consult with the DBVI Director when considering the determination that an applicant or consumer receiving services is incapable of benefiting from DBVI services due to the severity of their disability.
	4. If an individual is determined to be ineligible for vocational rehabilitation services or an individual receiving DBVI services under an Individualized Plan for Employment (IPE) is no longer eligible for services based on the determination that they are unable to benefit, the DBVI counselor shall follow the procedures in Section VII of this chapter.

### Guidance — Use of trial work experiences.

Before considering if an individual is unable to benefit from DBVI services due to the severity of their disability, the DBVI counselor is encouraged to use a medical and psychological consultation to review the case. The clinician may provide insights and strategies on how to serve the individual.

The following are case examples of situations where a DBVI counselor may want to use trial work experiences to determine if an individual can benefit from VR services:

#### In Application Status:

The applicant has received DBVI services on three separate occasions. On each occasion their case was closed without achieving an employment outcome. The individual self-reports being legally blind due to Retinitis Pigmentosa. However, the DBVI counselor is aware that they also have a diagnosis of borderline personality disorder. Prior attempts to place the individual in various jobs or work experiences have quickly ended because the individual has great difficulty getting along with supervisors and co-workers. On multiple occasions the individual has left the job or work experience or been fired within a week. The individual has never acknowledged any kind of psychiatric disability and has consequently not been open to any treatment. In this situation, a DBVI counselor may decide to require the individual participate in trial work experiences before determining eligibility for services. The trial work experiences will provide the information necessary to document if anything has changed for for the individual and if they can benefit from DBVI services upon reapplication.

#### In Plan Status:

The applicant has an IPE goal of working in retail, but has a dual diagnosis of visual impairment due to glaucoma and an opioid dependence disorder. The individual is currently not engaged in any treatment and insists they are ready to work and do not need treatment. However, based on their observations and the case history, the DBVI counselor believes, that untreated, the individual is too severely impaired to benefit from DBVI services. Before making this determination, the DBVI counselor must arrange for two or more trial work experiences to determine if the individual is currently too impaired to benefit.

End Guidance.

# Closure without Achievement of an Employment Goal after Eligibility Determination

* 1. DBVI can close an individual’s case after an eligibility determination and development of an IPE for the following reasons:
		1. Unable to Benefit: A DBVI counselor may close a case if an individual receiving services under an Individualized Plan for Employment (IPE), is no longer eligible for DBVI services based on the determination that they are no longer able to benefit from such services due to the severity of their disability.
		2. Unable to Contact: A DBVI counselor may close a case if a reasonable number of attempts have been made to contact the individual or as appropriate, the individual's representative without any response. The case record must include a description of the attempts to encourage participation.
		3. Declined Services: A DBVI counselor may close a case if the individual communicates that they no longer wish to receive services. The case record must document how and when the individual declined services.
		4. Medical Condition is Rapidly Progressive or Terminal: A DBVI counselor may close a case if the individual is unable to engage in DBVI services due to a medical condition that is rapidly deteriorating or terminal.
		5. Institutional Placement: A DBVI counselor may close a case if the individual is unable to engage in DBVI services due to institutionalization for six months or greater. The record of service must document that institutionalization was the reason for case closure.

### Guidance — Use of “Service Interrupted” suspense status.

If an individual is institutionalized for a period of less than six months, the DBVI counselor may put the case in a hold status until the individual is available to engage in services.

End Guidance.

* + 1. Illegal or Fraudulent Behavior: A DBVI counselor may close a case if DBVI has determined that an individual has participated in illegal or fraudulent behavior in the course of their participation in DBVI services. If a DBVI counselor has reason to suspect an individual of illegal or fraudulent acts, they must immediately inform the DBVI Director.
		2. Failure to Cooperate: A DBVI counselor may close a case if the individual is unwilling to cooperate in the implementation of the IPE services.
			1. In order to determine that the individual is not cooperating in their IPE, the DBVI counselor must document a consistent pattern of uncooperative behavior. Examples of uncooperative behavior may include but are not limited to:
				1. The individual consistently fails to follow through on agreed upon tasks or activities;
				2. The individual repeatedly misses or cancels scheduled appointments;
				3. The individual is unwilling to agree to participate in activities that may lead to an employment outcome;
				4. The individual has used DBVI funds for an unauthorized purpose; or
				5. The individual is engaging in aggressive behavior and/or use of abusive language with DBVI staff and contractors that becomes a barrier to achieving an employment outcome.
			2. The DBVI counselor is responsible for documenting uncooperative behavior in the case record over time.
			3. The DBVI counselor must consult with the DBVI Director when considering closing an individual’s case on the basis of non-cooperation. The DBVI Director will provide additional guidance and support in determining if the individual’s pattern of behavior rises to the level of non-cooperation.
			4. A DBVI counselor must consider the individual’s disability when determining if any specific behavior demonstrates non-cooperation or is in fact a result of their disabling condition. For example, an individual with a developmental disability may miss appointments because of lack of organizational skills. Or another with a severe anxiety disorder may struggle to participate in job search activities. In both cases it may be inappropriate to characterize the behavior as non-cooperation.
	1. A DBVI counselor must follow the procedures outlined in Section VII of this chapter before closing a case for non-cooperation.

# Closure with the Achievement of an Employment Outcome

* 1. An individual may be determined to have achieved an employment outcome only if the following requirements are met:
		1. The individual has achieved the employment outcome that is described in their Individualized Plan for Employment (IPE);
		2. The employment outcome is consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
		3. The individual has maintained the employment outcome for a period of at least 90 days;
		4. At the end of the appropriate period under 3 of this section, the individual and the DBVI counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job; and
	2. The DBVI counselor must follow the case closure procedures outlined in Section VII of this chapter.

# Procedures for Case Closure

* 1. DBVI cannot close a case without providing an opportunity for full consultation with the individual, or the individual’s representative, if appropriate.
	2. When DBVI decides to close a case, it must provide the individual, or their representative, with written notice of the decision. DBVI counselors must only use the letter templates provided in Appendix A when providing notice of closure. The written notice may be supplemented as necessary by other appropriate modes of communication, consistent with the informed choice of the individual. The written notice must also include:
		1. The reasons for the decision;
		2. The means by which the individual may express and seek remedy for any dissatisfaction with the decision, including the appeals procedures set forth in Chapter 20 of DBVI’s Policies and Procedures Manual;
		3. A description of services available from the Client Assistance Program (CAP), including information on how to contact that program.
	3. For closures due to a determination that the individual is ineligible for DBVI services, DBVI must also provide the individual, or their representative, with additional information relevant to the reason for the ineligibility decision:
		1. For any ineligibility determination, DBVI must provide information on:
			1. Programs within the One-Stop service delivery system under the Rehabilitation Act, as amended that can address the individual’s training or employment-related needs.
		2. If the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is incapable of achieving, an employment outcome, DBVI must provide information on:
			1. Federal, state, or local programs and services best suited to meet the individual’s rehabilitation needs, including independent living and extended employment providers.

If the reason for closure is that the individual has been determined unable to benefit from vocational rehabilitation services in terms of an employment outcome due to the severity of their disability, as outlined in Section IV of this chapter, DBVI must also provide the individual, or their representative, with written notice of:

* + - 1. The right of the individual or their representative to request a review of the decision within 12 months and annually, thereafter.
				1. This review need not be conducted in situations in which the individual has refused the review, the individual is no longer living in Vermont, the individual’s whereabouts are unknown, or the individual’s medical condition is rapidly progressive or terminal.

# Appendix A. Required Letters

The following required letters are available in template form in AWARE.

### Closure — Employment.

Dear {participant first name},

This letter is to confirm our recent communication/discussion. Since the DBVI plan of service developed with you has been completed and you have successfully achieved your employment goal, I will be closing your case. If I do not hear from you by {date}, I will assume you agree with the decision to close your DBVI case.

{paragraph for personalization if desired.}

If, in the future, you would like DBVI services to help you progress in your current employment or move into a different career, you can reapply for services.

Please take a moment to complete the enclosed Employment Summary form and return it to me in the stamped and addressed envelope provided.

If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). They can advise you on your rights within the DBVI process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me. Thank you in advance for completing the Employment Summary form. I enjoyed working with you and wish you continued success with your employment.

Sincerely,

{counselor signature block}

### Closure — No contact.

Dear {participant first name},

Our last contact was on {date}. I have tried to reach you multiple times since then, without success. I am writing to let you know that I plan to close your case if I do not hear from you by {date}.

Closing your case does not prevent you from receiving DBVI services in the future. You can reapply for DBVI services at any time that you are available to actively participate in the process.

If you are ready to participate in an employment activity now and would like to keep your case open, please contact me by {date (must be a minimum of 10 calendar days from the date of the letter)} to schedule a meeting to review your employment goals and plans.

If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

{paragraph for personalization if desired.}

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number}.

Sincerely,

{counselor signature block}

### Closure — Declined services.

Dear {participant first name},

You have informed me that you do not want services from DBVI at this time. Based on your decision, I am closing your case as of today.

Closing your case does not prevent you from receiving VocRehab services in the future. You can reapply for DBVI services at any time that you are available to actively participate in the process.

If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number}..

Sincerely,

{counselor signature block}

### Closure — Ineligible for services.

Dear {participant first name},

I am writing to inform you that you are ineligible for DBVI services. Therefore, I plan to close your case. As we discussed, a person must meet multiple requirements to meet DBVI eligibility requirements. You do not meet the following requirement(s):

{space for text outlining the specific reason.}

If you feel that this decision was made in error, or you have additional information that would support your need for services, please contact me before {date}.

I would encourage you to explore employment and training resources available through the Department of Labor at [www.vermontjoblink.com](http://www.vermontjoblink.com) or call 211 (a local call throughout Vermont). You may also want to contact the Vermont Center for Independent Living at [www.vcil.org](http://www.vcil.org) or toll-free at 800-639-1522. They offer support and independent living resources to individuals with disabilities.

Closing your case does not prevent you from receiving DBVI services in the future. You can reapply for DBVI services at any time that you feel you meet the criteria for services and are available to actively participate in the process.

If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number}.

Sincerely,

{counselor signature block}

### Closure — Unable to benefit from VR services.

Dear {participant first name},

I am writing to inform you that I plan to close your case. DBVI has determined that you are not able to benefit from our services at this time due to the severity of your disability. In making this decision we considered your Trial Work Experiences and other sources of information, which demonstrated the following:

{space for text outlining the Trial Work Experiences and findings from other sources of information.}

You have the right to request that DBVI review this decision in 12 months, and annually thereafter.

I would also encourage you to explore employment and training resources available through the Department of Labor at [www.vermontjoblink.com](http://www.vermontjoblink.com) or call 211 (a local call throughout Vermont). You may also want to contact the Vermont Center for Independent Living at [www.vcil.org](http://www.vcil.org) or toll-free at 800-639-1522. They offer support and independent living resources to individuals with disabilities.

If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number}.

Sincerely,

{counselor signature block}

### Closure — Individual is in an institution.

Dear {participant first name},

I am writing to inform you that I plan to close your case based on your inability to engage in DBVI services at this time. If you feel that this decision was made in error, or your circumstances have changed, please contact me before {date}.

Closing your case does not prevent you from receiving DBVI services in the future. You can reapply for DBVI services at any time that you are available to participate in the process.

If you disagree with the decision to close your case, you may appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number}.

Sincerely,

{counselor signature block}

### Closure — Illegal or fraudulent behavior.

There is no specific letter for this situation. Please consult the DBVI Director as to how to proceed.

### Closure — Failure to cooperate, missed or cancelled appointments.

Dear {participant first name},

DBVI tries to have at least monthly contact with those receiving our services in order to provide them with the best services possible. I have tried to schedule a number of meetings with you. You have missed all of these appointments. DBVI cannot deliver services under these circumstances. Therefore, I am writing to let you know that I plan to close your case if I do not hear from you by {date}.

Closing your case does not prevent you from receiving DBVI services in the future. You can reapply for DBVI services at any time that you are available to actively participate in the process.

If you disagree with the decision to close your case, you may also appeal that decision. I have enclosed information about the appeals process. I have also enclosed information about the Client Assistance Program (CAP). They can advise you on your rights within the VocRehab process. CAP may also help you with the appeals process.

If you have any questions about this letter or your appeal rights, please contact me at {counselor phone number} or my regional manager at {manager phone number}.

Sincerely,

{counselor signature block}