

**.BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

<p>_____, Petitioner,</p> <p>Teate</p> <p>v.</p> <p>GEORGIA VOCATIONAL REHABILITATION AGENCY, Respondent.</p>	<p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p> <p>*</p>	<p>DOCKET NO: OSAH-GGVRAA-GVRA-1328925-107-</p>
---	--	---

FINAL DECISION

I. Introduction

Petitioner _____ requested a hearing in response to an Informal Administrative Review decision issued by the Georgia Vocational Rehabilitation Agency (“GVRA”) on December 3, 2012. At a hearing on March 22, 2013, Kristal S. Ramirez, Esq. represented _____ and Terri A. Rushing, Esq. represented GVRA. For reasons indicated, GVRA’s denial of _____ request for start-up expenses is **AFFIRMED**.

II. Findings of Fact

1. _____ is a client of the GVRA Program who applied for GVRA services in July 2011 and was determined eligible for services two (2) weeks later.¹ She applied with a stated goal to become self-employed by operating a boutique gallery that sells

¹ The process by which clients successfully proceed in the GVRA program is described as follows:

- An individual applies for GVRA services;
- GVRA gathers information and/or obtains necessary assessments in order to determine eligibility;
- GVRA makes eligibility decision and priority category placement;
- GVRA and the client begin development of the Work Plan, conducting assessments as necessary to determine, *inter alia*, an appropriate work goal and appropriate services needed to reach that goal;
- the client participates in GVRA services identified in the Work Plan;
- GVRA and the client work together to obtain employment that meets the client’s work goal;
- GVRA provides follow-up services to ensure the client is stable on the job; and
- the client’s GVRA case is closed with the client successfully employed.

(Testimony of Rose Demakos).

women's clothing and accessories (Testimony of _____; Testimony of Rose Demakos).

2. Rose Demakos, a Rehabilitation Unit Manager with the GGVRRA Program, is acting as _____ interim GGVRRA Counselor. (Testimony of Rose Demakos).

3. GVRA has conducted assessments with _____, as necessary to determine whether operating a boutique gallery is an appropriate work goal. Two initial assessments, conducted in 2011, indicated _____ met the minimum requirements to be self-employed. GVRA also sought financial information from _____, to determine whether she met the financial needs criteria. (Testimony of Rose Demakos).

4. On August 25, 2011, _____ was provided a Business Feasibility Worksheet and a Monthly Living Expense Worksheet; and was asked to track her living expenses for four (4) months, and then to contact GVRA when she completed the worksheets. (Testimony of Rose Demakos).

5. GVRA scheduled a follow-up appointment with _____ on December 13, 2011, at which point _____ returned the completed Business Feasibility Worksheet. In preparing the Worksheet, _____ omitted any information regarding her monthly living expenses. (Testimony of Rose Demakos).

6. GVRA conducted a review of household financial information that _____ provided. That review indicated that her household income exceeded the criteria for many paid GVRA services such as the start-up self-employment financial assistance that she was seeking. (Testimony of Rose Demakos).

7. GVRA scheduled an appointment with _____ on March 15, 2012, to discuss the review determination. At that meeting, _____ announced that her husband had been unemployed. (Testimony of Rose Demakos).

8. Because of conflicts in financial information, GVRA requested _____' tax return for 2010. _____ subsequently forwarded copies of both her 2010 and 2011 federal income tax returns. (Testimony of Rose Demakos; Respondent Exhibit 5 and 6).

9. _____'s 2010 tax return includes a Schedule C, which reports Profit or Loss for a Business. On this Schedule C, _____ is identified as the proprietor of XX business and she affirms that she "materially participated" in the business during 2010. There is no income reported in Part I and \$10,230 in expenses reported in Part II such that a net loss of \$10,230.00 is claimed. The net loss reduced gross income on her joint return with her spouse from \$49,551.00 to \$39,321.00 with the tax savings inherent in such a reduction. (Respondent Exhibit 5).

10. Also on the 2010 tax return, _____ included an Earned Income Credit Due Diligence form that affirms she owned her business for two years. In support of that claim, she reported having obtained a business license, as well as business cards and stationery during 2010, and, presumably, 2009. (Respondent Exhibit 5).

11. On the 2011 tax return, _____ is again listed as the proprietor of XX business on the 2011 Schedule C. _____ was again identified as the proprietor of XX business. Again, _____ affirmed that she materially participated in the business. She further states that she started or acquired XX business in 2011 even though she left the same question blank on her 2010 Schedule C. There is a negative \$1,781.00 reported in Part I and \$10,816 in expenses reported in Part II such that a net loss of \$12,597.00 is claimed. The net loss reduced gross income on her joint return with her spouse from \$52,718.00 to \$40,121.00 with the tax savings inherent in such a reduction. (Respondent Exhibits 5 and 6).

12. When GGVRAA notified _____ that policy does not support funding an existing business, _____ asserted that all she had done was buy some clothes and other things she planned to sell. _____ offered no information in contravention of her signed tax returns. (Testimony of Rose Demakos).

13. _____ considers her activities with XX business as preparatory in trying to start a business contingent on assistance from GGVRAA for start-up costs and other available assistance. However, the Earned Income Credit Due Diligence form on _____'s 2010 tax return indicates that she owned her business at least two years prior to filing her joint tax return on or about March 15, 2011. (Testimony of _____; Respondent Exhibit 5).

14. Although _____ has never sold anything through XX business, she has spent: \$10,230.00 in 2010 for advertising, car and truck expenses, insurance, supplies, taxes and licenses, deductible meals and entertainment, utilities, cell phone, internet, computer, personal upkeep, dry cleaning and donations; and \$12,597.00 in 2011 for goods that were not sold, advertising, car and truck expenses, supplies, taxes and licenses, deductible meals and entertainment, and telephone. (Testimony of _____; Respondent Exhibits 5 and 6).

15. _____ presented no evidence, such as tax returns, for the two prior years of business operation referenced in her tax returns. (Testimony of _____; Respondent Exhibits 5 and 6).

16. Although a work plan has not been completed and is a prerequisite to any authorization for a supply of expendable stock and/or supplies for the attainment of self-employment business, the policy issue arose after the review of _____'s tax returns and _____ request for such assistance. GVRA issued a notice of change concerning rehabilitation services on October 12, 2012 denying self-employment assistance for XX business citing GVRA Policies 414.1.03 and 414.1.04 and 140.2.02. (Respondent Exhibit 1; Testimony of Rose Demakos).

17. _____ appealed the October 12 notice of change and requested the current due process hearing after an Informal Agency Review on December 3, 2012, that upheld the notice of change. (Respondent Exhibits 2, 3 and 4).

III. Conclusions of Law

1. The Vocational Rehabilitation Program, which is administered by GVRA, is authorized pursuant to federal law by the Rehabilitation Act of 1973, as amended, at 29

USC §720 *et seq.* (the Act), along with implementing regulations at 34 CFR Part 361. Pursuant to 29 USC §721(a)(1)(A), GVRA must submit to the Commissioner of the Rehabilitation Services Administration of the U.S. Department of Education, a State plan for GVRA services that meets the requirements of the Act. The State plan must contain a “description of the State’s vocational rehabilitation services...[and]...the plans and policies to be followed in carrying out the program...” See 34 CFR §361.10(a). Accordingly, the GGVRRA Vocational Rehabilitation Program operates in accordance with the Client Services Policy and Procedure Manual ("CSPM"), which is promulgated in compliance with federal and state law.

2. To assist a client to meet a self-employment goal, GVRA may authorize a supply of expendable stock(s) and/or supplies necessary to the attainment of that goal. CSPM 414.1.03. If such an authorization occurs, the client is responsible for contributing a minimum of 25% of the start-up cost of the business either in-kind or financial through actual funding. CSPM 414-1-.11.

3. Authorization to supply initial stocks and supplies is limited as follows:

- Initial stocks and supplies include those items necessary to the establishment of the new business enterprise during the initial establishment period, which may not extend beyond six months.
- No authorization for any operation costs of the business shall extend beyond six months.
- Completion of projected start-up expenses and budget for the initial six months of operation shall be done before expenditures on the business are made.

CSPM 414-1-.04. (Reformatted for emphasis). _____’s counsel argues that the term “during the initial establishment period” in the first sentence of the regulation read in context with the second two sentences of the regulation that use the word “operation” refer only to times after GVRA initially has approved such an endeavor pursuant to a work plan and has authorized such expenditure. Such an argument is semantically less compelling than the term “necessary to the establishment of the new business enterprise” that is further qualified by “during the initial establishment period.” It is implicit in the first sentence that the business enterprise be newly established.

4. GVRA was authorized to request the tax information _____ supplied to review financial need assessment upon becoming aware of a change in _____’s economic circumstances. CSPM 206.1.08. Contrary to _____’s testimony that she has never operated her business, the weight of the evidence presented indicates that she has. GVRA reasonably relied on the information _____ supplied to make a determination that _____’s business had already been in operation for at least two years prior to her application for GVRA

services. _____ formed XX business and claimed expenses for its operation even before she applied for GVRA services.

5. _____'s arguments regarding the deductibility of start-up business expenses referenced in the Internal Revenue Service's Publication 535 without business operation is also unpersuasive. Although there is insufficient evidence to determine if _____ began claiming expenses for XX business the two years prior to 2010, she did so in 2010 and again in 2011. Further, in 2011, she claimed an income loss on cost of goods purchased in addition to expenses. Her activities in 2010 and up until July 2011 all occurred prior to her application for GVRA services. Likewise, her argument that she was accruing the 25% or more client contribution that would be required if a work plan was ever developed and approved is undermined by the fact that she began such an accrual before her GVRA application.

6. Although the application of CSPM 414.1.03 is contingent on the development and approval of a work plan that has not yet occurred, clients are authorized to request a review and redetermination of any notice of change. CSPM 104.1.01.

7. Any potential or actual recipient of a public assistance benefit has the burden of proof unless the agency party is reducing, suspending, or terminating a benefit. Ga. Comp. R. & Regs. 616-1-2-.07 (1) (d). GVRA has not reduced, suspended, or terminated a benefit. Accordingly, _____ had the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07 (1) (e). That burden has not been met.

V. Decision

IT IS ORDERED that GVRA's notice of change issued on October 12, 2012 is **AFFIRMED**.

SO ORDERED, this 28th day of May 2013.

Steven W. Teate
Administrative Law Judge