

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



A [REDACTED] M [REDACTED],
Petitioner,

v.

DHS, GEORGIA VOCATIONAL
REHABILITATION AGENCY,
Respondent.

Docket No.: [REDACTED]
[REDACTED]-OSAH-GVRA-VR-88-Woodard

Agency Reference No.: [REDACTED]

FINAL DECISION AND ORDER OF REMAND

Petitioner A [REDACTED] M [REDACTED] requested a hearing in response to an informal administrative review determination by Respondent, the Georgia Vocational Rehabilitation Agency (GVRA). An evidentiary hearing was held on January 29, 2024, via telephone, before the undersigned Administrative Law Judge. Joseph Jones, Esq., represented Petitioner. Gregory Bagley, Esq., represented Respondent.

For the reasons stated below, this matter is **REMANDED** to Respondent to reconsider Petitioner's application in light of the evidence presented at the hearing.

I. FINDINGS OF FACT

1. Petitioner is twenty years old. He began studying business management at Fort Valley State University in the fall of 2023. Before that, he studied at Albany State University. Outside of school, Petitioner works part time at a Pizza Hut in Albany, Georgia. Petitioner has suffered from asthma and severe allergies since he was eight. (Testimony of Petitioner; Testimony of Scott Dekowski; Testimony of C [REDACTED] J [REDACTED]).
2. Petitioner applied for services with GVRA because of the "uncontrollable flareups" he experiences due to asthma and allergies, as well as issues stemming from his obesity. Scott Dekowski, a certified rehabilitation counselor for GVRA, performed an initial intake with Petitioner by phone. During the interview, Petitioner told Mr. Dekowski that he was attending college full time and had been working at Pizza Hut for 35 hours a week since December 2022. Petitioner also reported that he had played high

school football without being affected by his asthma. (Testimony of Scott Dekowski; Testimony of Petitioner).

3. In addition to interviewing Petitioner, Mr. Dekowski conducted a review of Petitioner's medical records, which consisted of documents from the Allergy & Asthma Clinic of Georgia of ten different appointments from 2018 up to May 9, 2023. Mr. Dekowski observed that Petitioner had been diagnosed with "moderate persistent asthma without complications," and "allergic rhinitis due to dust mite, pollen, mold, and animal hair and dander." At each of the ten visits that took place during this five-year period, Petitioner reported suffering from no allergic reactions and that he had not had to use his rescue inhaler in the six months preceding each visit. At his last visit (May 9, 2023), Petitioner filled out an "Asthma Control Test." Petitioner gave the answer "none of the time" to the following questions. (1) In the past 4 weeks, how much of the time did your asthma keep you from getting as much done at work, school or at home?"; (2) "During the past 4 weeks, how often have you had shortness of breath?"; (3) During the past 4 weeks, how often did your asthma symptoms (wheezing, coughing, shortness of breath, chest tightness or pain) wake you up at night or earlier than usual in the morning?"; (4) During the past 4 weeks, how often have you used your rescue inhaler or nebulizer medication (such as Albuterol, Ventolin, Proventil, or Maxair)?" For the question, "How would you rate your asthma control during the past 4 weeks," Petitioner answered "completely controlled." (Petitioner's Exhibit 4, Respondent's Exhibit 4B; Testimony of Scott Dekowski).
4. Petitioner meets the qualifications for morbid obesity according to the GVRA manual, which defines morbid obesity as having a BMI greater than 40. There are multiple points in the medical records reviewed by Mr. Dekowski where a BMI greater than 40 is reported: in 2020, his BMI was reported as 43.5; in 2022 it was 46.19; and in 2023 it was 46.8. The terms "obesity" or "morbid obesity," however, are never used in the narrative submitted by his health care providers, but are merely data entries in his patient information profile. (Testimony of Scott Dekowski; Petitioner's Exhibit 7; Respondent's Exhibit 4A).

5. Mr. Dekowski testified that he did not consider whether obesity could be a potential impediment to employment for Petitioner that would qualify him for GVRA services because obesity was never reported as a potential limitation either by Petitioner's providers or by Petitioner himself in his application; he acknowledged, however, that a potential impairment does not need to be reported for a GVRA counselor to identify and consider it. Mr. Dekowski also said he would need to see an actual diagnosis of obesity to consider it as a qualifying condition, rather than simply inferring the diagnosis from Petitioner's listed BMI. (Testimony of Scott Dekowski; Petitioner's Exhibit 7; Respondent's Exhibit 4A).
6. The basic eligibility criteria for vocational rehabilitation services are that (a) the applicant has a physical or mental impairment; (b) the impairment constitutes or results in a substantial impediment to employment; and (c) the individual with a disability requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain competitive integrated employment. (Testimony of Scott Dekowski; Respondent's Exhibit 1).
7. Based on his initial assessment of Petitioner's application, Mr. Dekowski determined that Petitioner was ineligible for vocational rehabilitation services. He prepared a Notice of Change, which is a document prepared by GVRA updating an applicant on the status of their application at various points during the eligibility determination process. The notice, which was sent on July 31, 2023, explained that Petitioner was ineligible for services because he had no impairment or impediment to employment. Mr. Dekowski explained that Petitioner's medical records suggested that his allergies and asthma were well-controlled, and that he "reported no problems associated with your asthma or allergies while at work." (Testimony of Scott Dekowski; Petitioner's Exhibit 4; Respondent's Exhibit 7).
8. On August 29, 2023, Petitioner appealed Mr. Dekowski's initial decision. Rebecca Williamson, the Strategic Initiatives Manager for the GVRA, completed an Informal Administrative Review of Petitioner's case. She and Mr. Dekowski received and reviewed additional information, including more records from the Allergy & Asthma Clinic of Georgia, covering the dates between October 2014 through

May 2023, which included notes that Petitioner sometimes got nosebleeds when his symptoms flared up; a letter from his doctor at the Allergy Clinic, Dr. Robinson, stating that Petitioner’s asthma and allergies sometimes caused him to miss work; notes from an urgent care visit in May 2023 showing that Petitioner had strep throat; and a letter from a nurse practitioner saying that he was using his inhaler once a week. Nevertheless, Ms. Williamson determined that Mr. Dekowski’s initial determination of ineligibility was correct. (Petitioner’s Exhibit 1, 2, and 4; Testimony of Scott Dekowski; Testimony of Rebecca Williamson).

9. Petitioner filed a due process hearing request with this Court on or around October 10, 2023. On January 3, 2024, Mr. Dekowski spoke to Dr. Robinson on the phone and received more updated information about Petitioner’s health issues. Dr. Robinson reported that Petitioner would need to avoid jobs that would lead to chemical exposure, involve strenuous activity, or would involve exposure to pollen. He believed that working at Pizza Hut would be a perfect position for Petitioner because it is an indoor, air-conditioned job. He also provided a letter to Mr. Dekowski summarizing his position. (OSAH Form 1; Testimony of Scott Dekowski; Respondent’s Exhibit 5).
10. On January 12, 2024, Mr. Dekowski received a letter from an individual named Sheila Blount, who reported that Petitioner had been working at a Pizza Hut in Albany for three years, and that during his tenure he had experienced allergy and asthma related flare-ups while on the job, including headaches and nosebleeds. She said these flare-ups are unpredictable and interrupt his normal work schedule—he has either had to leave work early or not come into work for up to 3 days. Mr. Dekowski noted that the letter was not printed on any sort of official “Pizza Hut” letterhead, and that there was no indication of what Ms. Blount’s job title is. He therefore could not consider the letter for determining eligibility. At the hearing, Ms. Blount testified and revealed that she is the general manager at the Pizza Hut where Petitioner works. (Testimony of Scott Dekowski; Testimony of Sheila Blount; Respondent’s Exhibit 6).
11. Petitioner reports that he has struggled with allergies and asthma since childhood. When his allergies flare up, he often experiences nosebleeds. As a result, he carries a “nosebleed kit” with him, which

contains a spray to clean his nose and wipes to clean blood off his face. He reports that, in the last two years, he has gotten nosebleeds around three times a month and has experienced nosebleeds while working at Pizza Hut. When that happens, he typically has to take a 20-minute break to wait for the bleeding to stop and to clean himself up. If the nosebleeds are extreme enough, he might have to leave work early. (Testimony of Petitioner; Testimony of Sheila Blount; Testimony of C [REDACTED] J [REDACTED])

12. Petitioner testified that his asthma also flares up regularly, making it difficult for him to breathe. He uses his inhaler at least once or twice a day, or more often if he's working out. At Pizza Hut, he sometimes needs to take a break to handle these flare-ups. Ms. Blount said these breaks might be as long as an hour and a half to two hours. (Testimony of Petitioner; Testimony of Sheila Blount; Testimony of C [REDACTED] J [REDACTED]).
13. Due to Petitioner's obesity, he struggles with bending and squatting. He believes that a job that required repetitive bending would be problematic. (Testimony of Petitioner; Testimony of C [REDACTED] J [REDACTED]).
14. C [REDACTED] J [REDACTED], Petitioner's mother, testified that Petitioner has dealt with his health issues for so long that he has gotten used to the way they can interrupt his everyday life. She was not surprised that he apparently told his doctor that his asthma was completely controlled. (Testimony of C [REDACTED] J [REDACTED]).

II. CONCLUSIONS OF LAW

1. This appeal concerns Respondent's determination that Petitioner is ineligible for vocational rehabilitation services. Therefore, Petitioner bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1)(d). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4). The administrative hearing is *de novo*, and this Court must make an independent determination on the basis of the evidence presented at the hearing. "[T]he evidence on the issues in a hearing shall not be limited to the evidence presented to or considered by the agency prior to its decision." Ga. Comp. R. & Regs. 616-1-2-.21(1), (3).
2. In Georgia, the Vocational Rehabilitation ("VR") Program is administered by the Georgia Vocational Rehabilitation Agency ("GVRA"). O.C.G.A. § 49-9-1 et seq. In its administration of the Program,

GVRA is required to follow Federal Regulations provided in Title 34 of the Code of Federal Regulations. 34 C.F.R. Part 361. Pursuant to Federal Regulations, GVRA has issued policy for the VR Program in its Client Services Policy and Procedure Manual (“GVRA Manual”). See 34 C.F.R. § 361.50.

3. Pursuant to the GVRA Manual, an applicant may be found eligible for vocational rehabilitation services if
 - a. The applicant has a physical or mental impairment.
 - b. The impairment constitutes or results in a substantial impediment to employment.
 - c. The individual with a disability requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain competitive integrated employment.
 - d. It is presumed that an applicant who meets the eligibility criteria above can benefit from vocational rehabilitation services in terms of a competitive integrated employment outcome.

GVRA Manual § 241.1.03. See also 34 C.F.R. § 361.42.


4. Certain impairments require documentation from specific specialists in order for a GVRA counselor to determine eligibility based on that specific impairment. Asthma may be verified by documentation from an Allergist, among other enumerated medical providers. Obesity may be verified by either any physician or by “counselor observation.” GVRA Manual § 602.1.03. The GVRA Manual’s Glossary defines “Morbid Obesity” as a diagnosis based on an excess of body fat greater than a BMI of 40 or weighing 100 pounds over the ideal body weight resulting in co-morbidities or the increased risk of co-morbidities.
5. The GVRA Manual provides that “[i]f documentation is unclear, contradictory, or insufficient” the counselor may consult with either the physician who completed the original records or the applicant’s current treating physician. GVRA Policy Manual § 210.1.01.
6. Petitioner did not present a concern about his obesity being an impediment to employment when he initially applied for VR services. However, Petitioner did testify that his obesity affects his ability to obtain and maintain employment, and his medical records show indisputably that he has consistently maintained a BMI greater than 40, fulfilling the Respondent’s definition of morbid obesity. Mr.

Dekowski’s contention that he could not consider obesity as a potential impediment to employment because it was not explicitly listed as a diagnosis in Petitioner’s records is unsupported by the GVRA manual. Given that Petitioner did not bring his obesity to Mr. Dekowski’s attention while applying for VR services or during the administrative review process, it is understandable that it was initially not considered as a basis for eligibility. However, given the evidence presented at the hearing, it would be appropriate for Respondent to revisit Petitioner’s application and consider whether his obesity represents a “substantial impediment to employment” such that it would qualify Petitioner for VR services.

III. DECISION

Based on the foregoing findings of fact and conclusions of law, this matter is hereby **REMANDED** to Respondent to reconsider Petitioner’s eligibility determination and determine whether his obesity is an impairment that could qualify him for VR services. Respondent shall notify Petitioner in writing of its decision within twenty-one (21) days of the filing date of this Order of Remand.

SO ORDERED, this 29th day of February, 2024.


M. Patrick Woodard
Administrative Law Judge

