



Understanding Long COVID: Implications for Vocational Rehabilitation Professionals -

Session 3 - Legal and Service Delivery Dimensions

JOHN WALSH: So we're going to get started with part two. And in this session, we're going to look at three components related to post-COVID conditions. One is legal and service delivery dimensions. We're also going to look at accommodations in the workplace, as well as the stigma of long COVID, the ethical implications for VR professionals.

Our presenters for part two include our team members from the Center for Rehabilitation Counseling Research and Education at the George Washington University, who are also members of the Center for Innovative Training for VR, and also the VR technical Assistance Center for Quality Management. And they are RoseAnn Ashby, Nicole Tichy, and Linda Hedenblad, who is also the president and CEO of YesLMS. Also joining us in this presentation panel is Tracie DeFreitas from the Job Accommodation Network. So at this point, I'm going to turn it over to RoseAnn Ashby to kick off our next session entitled Legal and Service Delivery Dimensions, RoseAnn, it's all to you.

ROSEANN ASHBY: Thank you, John. So during this session, you're going to be hearing from two of us. My name is RoseAnn Ashby. I am a rehabilitation policy consultant with the Vocational Rehabilitation Technical Assistance Center on Quality Management, which is a grant funded by the Rehabilitation Services Administration. And Nicole, would you like to introduce yourself?

NICOLE TICHY: Sure thing. Thanks, RoseAnn. Hi, everyone. My name is Nicole Tichy. I am currently a doctoral candidate at the George Washington University and previously a vocational rehabilitation counselor. And so some of my previous experiences has helped inform some of the information being presented today.

ROSEANN ASHBY: Thanks, Nicole. Let's review briefly the learning objectives for this session. There are three-- to explore the impact of long COVID on employment and the workforce. The second is to describe the circumstances under which long COVID can be considered a disability under the Americans with Disabilities Act and the VR program. And the third is to discuss strategies that VR counselors can use during the assessment process, and actually during the service delivery process as well.

As of July 2021, long COVID can be considered a disability. This was a question that was posed at the end of the first session. It can be considered a disability under the following laws under

certain circumstances-- the Americans with Disabilities Act, ADA; Sections 101 and 504 of the Rehabilitation Act of 1973 as amended by the Workforce Innovation and Opportunity Act; Section 1557 of the Patient Protection and Affordable Care Act; and the Individuals with Disabilities Education Act, IDEA. Although the definitions of disability in these laws have some similarities, we must look at each law to understand the definition of disability that applies and to the implementing regulations for that law.

So how is long COVID defined as a disability under the ADA and Section 504 of the Rehabilitation Act? The definition of an individual with a disability under Section 504 and the ADA is fairly broad. In July of 2021, the Department of Justice and the Office for Civil Rights in and Department of Health and Human Services issued guidance that states that individuals with long COVID can be considered individuals with disabilities under Section 504 and the ADA.

This broader definition can also be found in the VR program regulations under 34 CFR 361.5c(28), but it is not the definition applicable to determining VR eligibility, which we'll speak about later. Under the ADA and Section 504, an individual with a disability is someone who has a physical or mental impairment that substantially limits one or more major life activities or who has a record of such an impairment or who is regarded as having such an impairment. So under Section 504 and the ADA, person with long COVID has a disability if they meet the first or second prongs of this definition, if they actually have an impairment that substantially limits major life activities or if they are regarded as having that.

Let's look for a minute about how physical or mental impairments are defined in this guidance. The guidance explains that long COVID is a physical or mental impairment. And of course, we heard this in the first half of our webinar today. A physical impairment includes any physiological disorder or condition affecting one or more body systems, including, among others, the neurological, respiratory, cardiovascular, and circulatory systems. And certainly long COVID can manifest in any of those systems.

A mental impairment includes any mental or psychological disorder, such as an emotional or mental illness. And certainly during the first half of the webinar we talked about how long COVID can produce anxiety and depression and brain fog. So long COVID is a physiological condition affecting one or more body systems. Again, to reiterate what we heard earlier, long COVID can cause lung damage, heart damage, damage to the circulatory system, neurological damage, lingering emotional illness, and other mental health conditions. So we conclude here that long COVID is a physical or mental impairment under the ADA and Section 504.

Now let's look at substantial limitations in major life activities. Major life activities include a wide range of activities, such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working. It also includes the operation of a major bodily functions, such as the functions of the immune system, cardiovascular system, neurological system, and circulatory system, or the operation of an organ.

It's important to understand that "substantially limits" is construed broadly under Section 504 and the ADA. The impairment does not need to prevent or significantly restrict an individual from performing a major life activity. The limitations do not need to be severe, permanent, or long term. And even if the impairment comes and goes, it is considered a disability if it would substantially limit a major life activity when the impairment is active. And this is particularly important when we're dealing with people with long COVID, because oftentimes symptoms and impairments come and go. People have good days and bad days. But we conclude here that long COVID may cause substantial limitations in major life activities, depending on the specific case and the circumstances.

Now I'm going to turn things over to Nicole, who's going to give us some examples to further illustrate the principles we just discussed.

NICOLE TICHY: Thanks, RoseAnn. So you have provided us with a great definition and kind of broken down what it looks like or what it means for somebody to have a physical or mental impairment under the ADA and Section 504, but also kind of outlining the substantial limitations that might present regarding long COVID. But for the VR counselors, I think a lot of this kind of looks at what does this look like together, right? So we've provided a few examples.

So the situations in which an individual with long COVID might be substantially limited in a major life activity are considered very diverse, right? So a few examples can include a person with long COVID who has lung damage that causes shortness of breath, fatigue, and related effects is substantially limited in respiratory function and may be substantially limited in terms of walking, standing, bending, or lifting. Another example is a person who has symptoms of intestinal pain, vomiting, and nausea that have lingered for months can be substantially limiting in gastrointestinal function and may limit in terms of eating, sleeping, and most certainly, working. And then finally, a person with long COVID who experiences memory lapses or brain fog is substantially limited in terms of brain function and can have difficulty concentrating, learning, and/or thinking.

And so when we're thinking about brain fog, our partners at The CDC kind of talked about this. And it is certainly one of the more common symptoms of long COVID. And so this inability to concentrate or think can significantly limit a person either at work when needing to complete long task list or need to concentrate for significant periods of time, or even at home. Following simple recipes can often be difficult for folks who are experiencing this kind of brain fog. RoseAnn, I'm going to turn it back over to you to talk some more about individual rights and potential accommodations.

ROSEANN ASHBY: OK. Thanks, Nicole. So people whose long COVID qualifies as a disability are entitled to the same protections from discrimination as any other person with a disability under the ADA and Section 504. Put simply, they are entitled to full and equal opportunities to participate in and enjoy all aspects of civic and commercial life. For example, this may mean that a business or a state and local government will sometimes need to make changes or modifications in the way that they operate to accommodate a person's long COVID-related limitations.

Now, this slide talks about reasonable accommodations. For people whose long COVID qualifies as a disability, there are many possible reasonable accommodations, depending on their particular needs and challenges. I'm not going to get into this much here because our next session is going to focus on accommodations.

So let's now turn to how long COVID is defined as a disability in the VR program for purposes of VR eligibility. Let's first start to review the three prongs of the definition of an individual with a disability for purposes of VR program eligibility. And this is found in 34 CFR 361.5c(27).

To be eligible, the individual must be someone who has a physical or mental impairment, whose impairment constitutes or results in a substantial impediment to employment, and who can benefit in terms of an employment outcome from the provision of VR services. So remember that if someone meets the first two prongs of the definition of an individual with a disability-- that is if they have a physical or mental impairment and if that impairment constitutes a substantial impediment to employment-- we presume that they can benefit from VR services. They do not have to justify it or jump through hoops. But we presume they can benefit.

The VR counselor must assess on a case-by-case basis whether an individual who presents with long COVID meets the three prongs of the definition of an individual with a disability for purposes of VR eligibility. Particularly relevant here and challenging is that second prong of the definition, whether the individual's physical or mental impairments caused by long COVID constitute or result in a substantial impediment to employment. The VR counselor will need to gather medical documentation to determine the nature of the individual's impairments caused by long COVID, how the individual's impairments affect their functioning, and the prognosis for the conditions, if known, how long the symptoms might last, and whether they might improve.

Now, we talked about in the first half of the conference how difficult it is to make these medical assessments. But the VR counselor would need to review any medical information provided by a qualified medical person. Some agencies have a medical consultant on staff who can help with this kind of analysis.

But in addition to looking at the medical information, the counselor needs to thoroughly interview the individual to determine how they feel about their impairments and how they feel they are limited in functioning in a job situation. And when we speak about employment, we're talking about impact for someone who needs to secure employment, retain employment, advance in employment, prepare for employment, or regain employment. Remember, people of all ages get long COVID.

So it could be a student or young person who has never worked and needs to prepare for employment. They need to become trained. It could be someone who has worked for years, and they have lost employment or find it difficult to maintain their employment. There could be all different situations at play here.

The other thing I want to emphasize is that as with any employment outcome in the VR program, the employment must be consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. I just want to make one other note here, and that is that if the individual has previous disabling conditions or underlying conditions, those conditions must be factored into the VR assessment process, along with the long COVID symptoms. So now I'm going to turn things back over to Nicole, who's going to, again, talk about some practical examples and to continue the discussion. Nicole?

NICOLE TICHY: Thanks, RoseAnn. So we throughout this conference have received a great deal of information. And quite honestly, it can certainly be a lot to digest and kind apply to individual situations. And so within this section, RoseAnn has provided us with some great regulatory guidance regarding eligibility determination for individuals who might seek services who have been experiencing symptoms of long COVID. But now what I want to do is I want to take some time and look at some practical examples to kind of help put some of these pieces together.

So an individual presenting with long COVID maybe experiencing respiratory symptoms that have continued past the end of their initial acute illness. They may be experiencing a level of brain fog that did not necessarily occur during their initial experience with COVID-19, but became apparent after some time and the initial COVID symptoms abated. To further complicate the specific situation, the individual may have some other preexisting conditions, such as a heart condition, diabetes, or a physical disability that taken together with the long COVID symptoms, makes their acquiring or retaining employment more challenging.

And so as the VR professional, or even other medical professionals or support professionals, it will be important to utilize your professional judgment when faced with similar situations. As we mentioned earlier, there is no medical test or diagnostic assessment to confirm Long COVID. And so this might be a great opportunity to speak directly with the person's medical provider in order to fully understand their presenting symptoms, and how these symptoms might substantially limit their ability to perform essential functions of their job.

And again, the determination of the individual's eligibility for VR service must take into consideration all of these and similar factors and must be considered on a case-by-case basis. Everybody is different. Everybody's preexisting conditions are going to be different. And therefore everybody's presentation of long COVID will likely be different.

Once an individual with long COVID is determined eligible for VR services, they may receive any service necessary to help them achieve an employment outcome. These individuals may be people who had not worked prior to contracting long COVID, or they may be people whose employment is jeopardized because they have become unable to perform the functions of their job due to their impairments, and therefore need VR services to retain employment, or alternatively, to receive training to enable them to acquire skills necessary for another type of job. As VR counselors, one of the most important services to provide to individuals is the ability to provide guidance and counseling.

A recent systematic review of literature revealed that individuals with disabilities were negatively impacted by the COVID-19 pandemic. Many individuals lost their jobs, thus creating financial hardship. Others noted the significance of social distancing and increased feelings of loneliness. VR counselors have the potential to provide support for clients in the form of training or group counseling methods to learn advocacy skills or adaptive coping skills. It is important for clients to know how to use social media and obtain accurate information about an event or to engage in such platforms in a positive manner. This can also be a really great opportunity for VR counselors to involve more members of that individual's community in order to provide additional support.

A quick note about students with disabilities. Although post-COVID conditions appear to be less common in children and adolescents than adults, long-term effects after COVID-19 do still occur in children and adolescents. And therefore it is essential that we also talk about the impact of long COVID on students with disabilities.

According to the guidance issued by the Department of Education in July 2021, a student experiencing long COVID may be eligible for special education and related services under IDEA and/or may be entitled to the protections and services under Section 504 of the Rehabilitation Act. Similar to adults, if these symptoms persist in the form of long COVID, then a student may need a medical evaluation or another type of assessment to determine if new supports or services are needed to ensure that this individual is able to succeed academically. In addition, it is possible that other students may be found eligible for services under IDEA or Section 504 because of the impact of long COVID and the adverse impact on a student's educational achievement and functioning.

In the end, it really comes down to advocacy. Being able to advocate for a student or a youth, whether you are a VR professional or in a different division or different field, it is important to support individuals who are experiencing long COVID and work together as a community to ensure that support and services are available to ensure an individual's best opportunities for success. RoseAnn, I'm going to turn it back over to you for some concluding remarks.

ROSEANN ASHBY: Thanks, Nicole. So I want to just make a note about the importance of coordination of services for individuals with long COVID. They may be experiencing many symptoms, many concerns. They have a multiplicity of needs that have to be addressed, not just their employment needs. And it's so important that VR agencies coordinate and become aware of various services that community partners can offer, services around to help people who have food insecurity or housing issues, because oftentimes someone with long COVID is experiencing a very scary time in their life and something that, of course, they weren't prepared for.

So with that, I do want to mention and remind you that there will be Q&A at the end of our third session in part two. And right now, I'm going to turn things over to our next presenter, Traie DeFreitas.