



Disability Rights Center of Kansas

635 SW Harrison, Ste 100 ♦ Topeka, Kansas 66603
785.273.9661 ♦ 877.776.7541 (Voice)
877.335.3725 (TDD) ♦ 785.273.9414 FAX
info@drckansas.org ♦ Telephone Ext. #100

COMMON QUESTIONS AND ANSWERS ABOUT EMPLOYMENT AND YOUR SOCIAL SECURITY BENEFITS.

As part of the enactment of the Ticket to Work Incentives Improvement Act of 1999 (“TWWIA”), PL 106-170, Congress identified the need for a legally-based advocacy resource to address the many obstacles persons with disabilities may encounter in their desire to re-enter the community workforce. As a result of this concern and the issues presented by many consumer advocacy groups, Congress authorized the Commissioner of Social Security to “make payments in each State to the protection and advocacy system....for the purpose of providing services to disabled beneficiaries (sic). 42 U.S.C § 1320b-21(a)(emphasis added). In Kansas that agency is the Disability Rights Center (DRC) of Kansas and the program is the grant identified as Protection and Advocacy for Beneficiaries of Social Security (PABSS). DRC would like to offer the following fact sheet as a preliminary resource as individuals with disabilities who receive Social Security benefits consider entering or returning to the community workforce.

Question #1 – “I am worried that I will not be able to work because I have been told that I will lose my check if I make over \$85/month.”

The truth is that in Kansas in 2007, if you are an **SSI recipient only**, you can usually earn over \$1200/month before you will get no SSI check at all. Although your check may be **gradually reduced**, you will still have more income than you had before you started working.

If you are on **SSDI** you can usually earn nearly \$900/month before it affects your SSDI check at all. If you are receiving your **SSDI** check due to blindness, the earning limit will be even higher.

Question #2 – “I would like to go to work but I can’t afford to lose my Medicaid or Medicare benefit.”

The truth is that even if you earn too much in wages to continue to receive an SSI check, in most situations you will be eligible to keep your full Medicaid coverage under section **1619(b)** of the Social Security Act. You also may be eligible for the **Working Healthy program** if 1619(b) is not available to you.

If you are on **SSDI**, you will be eligible for **Extended Medicare** coverage if you lost your SSDI check due to the amount of wages you are earning. This extended coverage will usually last for as much as five years if you continue to be determined to have a disability under Social Security rules.

Question #3 – “I have concerns that with my disability, I will go to work and lose my benefits and then get sick again and have a hard time getting back on benefits for the assistance I will need.”

The truth is that if you lose your benefits because of employment and then are unable to work because of your disability, the legislation provides for very fast processing of your request to start benefits again and most likely will be able to offer support while you are waiting for the re-determination of your disability status. This quick processing is known as Expedited Reinstatement and Provisional Payments while you are waiting for Social Security to make that determination.

Question #4 – “How would I get help or advice if I don’t want to go back on benefits but feel my employer has violated the Americans with Disabilities Act? I won’t be able to afford legal advice or help.”

The truth is that the legislation created funding, (the PABSS Grant referred to above) that will allow you to contact the Disability Rights Center of Kansas (DRC) for advice at no charge and possible additional legal support in situations like this.

If you are considering work or experiencing difficulty in the workplace related to your disability, please consider contacting DRC for Information/Referral, Technical Assistance in Self-Advocacy, Advocacy Representation or possible Legal Representation.

The contact information is:

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635 SW Harrison St, Ste 100
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1-877-3353725 (TDD)
Fax: (785) 273-9414**

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***As part of DRC’s 30th Anniversary Celebration we are
acknowledging and celebrating
October as National Disability Employment Awareness Month!***



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VOCATIONAL REHABILITATION & AT FACT SHEET

SUMMARY: *Consumers with disabilities who are receiving Vocational Rehabilitation (VR) services have a right to any Assistive Technology (AT) device or service clearly necessary to achieve their employment goal listed on their Individual Plan for Employment (IPE). DRC Kansas operated the Client Assistance Program (CAP) to provide legally-based advocacy for applicants and clients of VR services.*

Eligibility: To receive services from Vocational Rehabilitation (VR), including Assistive Technology devices or services, you must:

1. Have a physical or mental impairment
2. The impairment must be a substantial impediment to employment
3. Be able to benefit from VR services by getting and keeping a job

Presumed Eligibility – If you are eligible for Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) you are presumed eligible for VR services.

Financial Eligibility – You can receive VR services regardless of your financial status. Whether VR will fully pay for certain services or expect you to pay a portion of the cost will depend what the guidelines indicate you should pay. This rule does not apply to persons who are eligible for SSI or SSDI.

Your Basic Rights A consumer may choose:

1. A Vocational Rehabilitation goal – the job you want.
2. A device or service clearly necessary to prepare for, obtain or keep the job.
3. The vendors or providers to deliver the device or service.

Frequently Asked Questions:

Q: What Assistive Technology benefits does the VR program provide?

A: *If you need them for a job, these items or services may include:*

- *Assistive or adaptive devices to change a work site, or reduce barriers to employment.*
- *Technological aids and devices, such as hearing and optical aids*
- *Examples: communication devices, artificial limbs, braces, computers and adaptive software, eyeglasses, hearing aids, home or work modifications, low vision devices, TDDs, vehicle modifications, wheelchairs, any other device needed to attain or maintain employment.*

How to Apply & More information: Log onto www.srskansas.org/rehab or call VR Toll-free 1-888-369-4777 (Relay Center for people with hearing or speech impairments: Toll-free 1-800-766-3777)

What is the CAP? How can it help with my VR case?

The CAP stands for the Client Assistance Program. It is created and funded under the Rehabilitation Act to provide legally-based advocacy for clients and applicants of Vocational Rehabilitation services, consumers of Independent Living Centers, Projects With Industries (PWI) consumers and individuals served by other programs funded under the Rehabilitation Act. The CAP is operated by the Disability Rights Center of Kansas. DRC is the official Protection and Advocacy System for Kansans with disabilities, and has attorneys and advocates on staff to conduct disability rights advocacy. DRC provides information & referral, self-advocacy support, advocacy and legal representation.

The Disability Rights Center of Kansas (DRC) is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. This independence allows DRC to focus on the needs of Kansans with disabilities, including providing legally-based disability rights advocacy and protecting the rights of Kansans with disabilities under state or federal laws.

TIPS FOR INCLUDING ASSISTIVE TECHNOLOGY IN YOUR IPE¹

- Request an assistive technology assessment through your vocational rehabilitation counselor (e.g., low vision examination or computer laboratory assessment at a state or community rehabilitation program or an Assistive Technology Regional Access Site). The more you know about yourself and your options, the better your decisions in choosing appropriate assistive technology.
- Be informed about assistive technology options by meeting with self-help groups, independent living centers, AT access sites and other consumers who use assistive technology.
- Know and understand the possibilities, and limitations, of the assistive technology to assure the job needed to be completed is possible (i.e., will the assistive technology really perform what you intend it to do? Is there more than one way to complete a task?).
- Collect brochures about assistive technology that interests you to help facilitate the purchase.
- Meet with vendors in your area to try out technology. Demonstrations are usually free.
- Consider each technological need: can the task be completed with low technology which costs less, does not require as much expertise, however, still promotes self-reliance?

How do I contact DRC Kansas?

If you are a person with a disability, parent of minor child with a disability or a legal guardian, and you have questions about your rights under Vocational Rehabilitation or other disability rights issues, you can call DRC. DRC offers a variety of levels of help from information and referral to advocacy to litigation. DRC can be reached at: Toll Free Voice 877-776-1541, Topeka Voice – 273-9661, Toll Free TTD 877-335-3725, via fax 785-273-9414, or email us at info@drckansas.org

THIS FACT SHEET IS FOR INFORMATIONAL PURPOSES ONLY. THIS FACT SHEET DOES NOT CONSTITUTE LEGAL ADVICE. If you believe you have a legal question or need legal advice, you are urged to contact DRC or a licensed attorney of your choosing.

¹ This list about Individual Plans for Employment (IPEs) is borrowed from the AT Manual 2000 published by Assistive Technology for Kansans, 2601 Gabriel, Parsons, KS 67357, September 1, 2000



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KANSAS A.T. LEMON LAW FACT SHEET – K.S.A. 50-696

SUMMARY: *Consumers with disabilities have a right to Assistive Technology (AT) devices that work as advertised. If a device is defective and does not work the consumer has a right to demand that the seller repair or replace the device for free. If that does not remedy the problem, the consumer is entitled to a full or partial refund.*

Coverage: The Kansas AT Lemon Law covers any “assistive device,” which means any device, including a demonstration model, that a consumer purchases or accepts transfer of in this state which is used for a major life activity. Examples of devices include: manual wheelchairs, motorized wheelchairs, motorized scooters and other aides that enhance the mobility of an individual; hearing aide, telephone communication devices for the deaf (TTD), assistive listening devices and other aides that enhance an individual's ability to hear; voice synthesized computer modules, optical scanners, talking software, Braille printers and other devices that enhance a sight impaired individual's ability to communicate; and any other assistive device that enables a person with a disability to communicate, see, hear or maneuver.

Warranty: The law imposes, for a period not less than one year after first delivery:

- An express warranty for the assistive device, that the assistive device will be free from any condition or defect which substantially impairs the use or value, or both, of the assistive device to the consumer.
- The law states that an assistive device having a defect or “nonconformity” that occurs four times during the warranty period, or that is out of commission for 30 consecutive days, must be replaced or a refund offered. A “nonconformity” is defined as a “condition or defect that substantially impairs the use, value or safety of an assistive device, and that is covered by an express warranty.” This does not cover problems caused by abuse, neglect, or unauthorized modification.

Remedies:

- 1) Repair the defect
- 2) Replace the device
- 3) Refund the purchase price upon return of the device. The law allows for a seller to retain part of the purchase price as an allowance for use.
- 4) Terminate any lease and refund the consumer the amount paid less a reasonable allowance for use.

Consumer's Obligations: Notify the manufacturer and return the device for replacement or refund if repair is not possible.

Resale: Resale of any returned device is prohibited without full written disclosure of the problems leading to the return and the repair made is provided to the prospective consumer before the sale.

Arbitration: A consumer with a defective assistive technology device is entitled to insist on arbitration of their complaint under the Kansas Arbitration act.

Waiver: None of the rights given to consumers by this act may be waived or taken away by language in any contract between a consumer and seller or manufacturer of any AT device.

Enforcement: A consumer may recover any damages caused by a violation of this act. The court shall award a consumer who prevails in such an action double the amount of any money lost, together with costs, disbursements and reasonable attorney fees and any equitable relief that the court determines is appropriate. The Kansas Attorney General has jurisdiction to enforce this section in the event the consumer elects not to pursue violations of this act through arbitration or private action

How do I contact DRC Kansas? How can DRC Kansas help?

If you are a person with a disability, parent of minor child with a disability or a legal guardian, and you have questions about your rights under the AT Lemon Law or other disability rights issues, you can call Disability Rights Center of Kansas (DRC) for help. DRC has attorneys and advocates on staff and offers a variety of levels of help from information and referral to advocacy to litigation. DRC can be reached at: Toll Free Voice 877-776-1541, Topeka Voice – 273-9661, Toll Free TTD 877-335-3725, via fax 785-273-9414, or email us at info@drckansas.org

DRC Kansas is a private, 501(c)(3) nonprofit corporation, independent of both state government and disability service providers. This independence allows DRC to focus on the needs of Kansans with disabilities, including providing legally-based disability rights advocacy and protecting the rights of Kansans with disabilities under state or federal laws.

DRC is the official protection and advocacy system for Kansas, granted special powers under federal law, including access authority to conduct comprehensive investigations of abuse and neglect committed against Kansans with disabilities. DRC is the only entity in Kansas with both the authority to investigate abuse and neglect while also possessing the corresponding legal and advocacy services to support the victim to obtain justice through civil legal representation.

Simply put, DRC obtains justice for people with disabilities, for all disability rights issues – including abuse & neglect, ADA, HCBS Waivers, Rehabilitation Act, Medicaid Act, Assistive Technology, etc.

DRC's Core Services:

1. Legally-based disability rights advocacy (litigation, advocacy and self advocacy advice)
2. Educate policymakers and public policy advocacy
3. Training, education and outreach activities

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STUDENTS WITH DISABILITIES RIGHT TO A.T. UNDER IDEA

SUMMARY: *Students with disabilities have a right to any Assistive Technology (AT) device or service necessary for the child to receive a free appropriate public education (FAPE). The school district must provide the AT at no cost to the student or parents. All AT needs must be addressed in the student's Individualized Education Program (IEP). It is a good idea to finalize the IEP and obtain the AT device or service before school starts for the year. A student may take an AT device home to help with homework, use it at extra-curricular activities, etc. The key is that its use in these settings must be spelled out in the IEP. AT devices purchased by the school remains property of the school. AT devices purchased by the parent or with Medicaid dollars are the property of the student.*

Eligibility: to receive an AT device or service the student must meet be:

1. Between ages of 3 and 21 years old.
2. Qualify in one of the disability categories: Mental retardation, Deaf/Hard of Hearing, Speech impairment, Blind/VI, Severe Emotional Disturbance, Orthopedic Impairment, Autism, TBI, Learning disability, other health impairment, or multiple disabilities.
3. Qualifies for special education or related services.
4. Need the AT to receive a Free Appropriate Public Education.

Evaluation: A parent may request and receive an evaluation of a student for special education services (including the possible use of assistive technology devices or services) based on a suspicion the student may be eligible. If the student qualifies, a team is assembled (including the parent) and an Individualized Education Program (IEP) is prepared for the student. The IEP team must consider any AT devices or services necessary for the student to receive a Free Adequate Public Education (FAPE) in the Least Restrictive Environment (LRE). The evaluation should be done within 60 days of the request.

Q&A on AT Device Ownership:

Q: When the device is paid for under Medicaid, who owns the device? A: *The student.*

Q: When the device is paid for by the school under IDEA, who owns the device? A: *The school.*

Q: When the device is paid for by a combination of funds from Medicaid and the School who owns the device? A: *The student.*

Frequently Asked Questions:

Q: May a child receive an AT device paid for by the school under the IDEA? A: *Yes, when the device is necessary for the child to receive a free appropriate public education.*

Q: May the child take the device home? A: *Yes, when the IEP provides for the use of the AT at home if necessary to receive FAPE.*

Q: Who is responsible for wear and tear and maintenance? A: *The school is responsible for those devices which the school owns and purchased for the student's use pursuant to the IEP. The school may be responsible for other AT devices owned by the student, if the IEP team determines that the AT is needed at home in order for the child to receive FAPE.*

Q: Does this requirement cover transportation needs? A: Yes.

Q: May the child take the device with them to a new school in the same district? A: Yes, as determined by the IEP team in order for the child to receive FAPE.

Q: May the child take the device with them to a new district? A: If the child owns the device, yes; if the district owns the device, no. However, the new district must provide any AT device determined to be necessary by the IEP team.

Q: May the child obtain a device if they are in a private school? A: If the student is placed there by the public school district, and the device is required by the child's IEP.

Q: May the child take the device with them to a private tutor? A: Yes, if that use is permitted in the IEP.

Q: May the child use the device for extracurricular activities? A: Yes, if that use is permitted in the IEP. Ancillary use is permitted. For instance, if a child has a device that makes it possible to see the print to read and the device goes home from school pursuant to the IEP, then the child could also use that device for general reading at home.

Q: May the school charge for special education or related services? A: No.

A child is entitled to an AT device or service when the IEP team has determined that it is necessary for the child to receive FAPE in the Least Restrictive Environment. AT under the IDEA does *not* include medical devices. This means that for funding of an AT device under the IDEA the device must have a direct connection to the education of the student.

A Note About Timing & Documentation: The IEP should describe in detail the provision for the Assistive Technology devices the student needs and should be completed in the late spring or summer so the AT device can be available at the beginning of the school year. Request an evaluation for Section 504 eligibility at the same time of the IEP assessment.

Infants and Toddlers may be eligible for AT under Part C of the IDEA if the child meets the criteria for early intervention services and the Individual Family Services Program team decides the services are needed. Parents are part of the team.

Medicaid: If the child/family is of limited income additional sources of funding for AT can be found under Medicaid's Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program or also the S-CHIP program. In Kansas these are called KanBe Healthy or HealthWave.

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