

PETITIONER BACKGROUND

The EE program was established to provide the “ongoing services necessary to maintain and advance the employment of persons with severe disabilities.”¹ These services are provided by a state-wide network of non-profit organizations (“EE providers”) operating under contract with the Minnesota Department of Employment and Economic Development (DEED). Nearly all the EE providers are members of MACRO, a non-profit umbrella organization and the Petitioner before the Special Master on behalf of the severely disabled worker population.

EXTENDED EMPLOYMENT BACKGROUND

1. **Vulnerable population served:** Only individuals with a “most severe disability” are served through the EE program.² To qualify, individuals must have a severe physical or mental impairment that results in serious limitations in three or more functional areas so as to require “ongoing employment support services over an extended period of time” in order to maintain employment.³ In State fiscal year 2010, 5,378 individuals with severe disabilities were employed through the EE program either at the employer’s place of business or in an EE provider’s facility. Employment through the EE program is for the stated purpose of “promoting an individual’s self-sufficiency and financial independence.”⁴

2. **Funding sources:** The EE program is funded through a combination of State funds and funds raised privately by each EE provider. No federal funding is involved. In fiscal year 2010, the EE program received \$7,153,000 from the State general fund and \$6,911,000 from the State workforce development fund. Without State funding, the EE program cannot operate.

¹ Minn. Stat. § 268A.15 subd. 2 (2010).

² Minn. R. § 3300.2015 subp.2 (2010).

³ Minn. R. §§ 3300.2005 subp. 22; 3300.2005 subp.18 (2010).

⁴ Minn. R. § 3330.2005 subp. 15 (2010).

3. **Unique service model:** The EE program operates on a unique pay-for-performance model. The amount of the reimbursement received by each EE provider is tied directly to the number of hours worked by the severely disabled workers who receive employment support services from that provider. EE providers do not receive any payment through the EE program that is not tied to hours worked by a severely disabled individual. Moreover, the wages paid to the severely disabled workers are entirely paid by the employers—mostly private businesses. No EE funding is used to pay the wages of the disabled workers.

EXTENDED EMPLOYMENT IS A CRITICAL SERVICE UNDER CATEGORY 2.2

4. Priority 2 Critical Services applies to those State services which “can be disrupted temporarily...but must be re-established within a few days.” Within Priority 2, Category 2.2 applies to “[a]ctivities having a severe and permanent negative financial impact to business or vulnerable populations or groups of individuals within Minnesota.” Pursuant to Judge Gearin’s order, if a service falls within this description, it is a critical service of State government and funding must continue for the service during the State government shutdown.

5. By law, only individuals who have serious disabilities requiring ongoing employment support services are eligible for the EE program. But as of July 1st, State funding for the EE program is no longer available. The result is that EE providers are laying-off or furloughing their employees who provided the ongoing employment support services to severely disabled workers. Without those services, 5,000-plus workers with severe disabilities will not be able to maintain their jobs. They, too, are being furloughed. See the attached Affidavit of Brian Benshoof.⁵

6. Loss of employment has a *severe* negative financial impact on any person. But it is particularly *severe* for vulnerable populations such as those served through the EE program.

⁵ An unsigned copy of the Affidavit of Brian Benshoof is attached to this Petition. A signed and notarized copy will be provided prior to the hearing on July 5, 2011.

In fact, the Minnesota Rules implementing the EE program explicitly recognize that a job is what is needed to bring financial security and self-sufficiency to persons with severe disabilities.

7. The job-loss will also have a *permanent* financial impact for at least a portion of the seriously disabled worker population. When a seriously disabled worker doesn't show up for her or his job—because s/he doesn't have the necessary support services—the employer will need to find a replacement worker. This may not occur immediately, but it will certainly begin to occur within the two-to-five day disruption period set for Priority 2 Critical Services. Once the disabled worker's former employer hires a replacement worker, that job may not and, in most cases, will not be available to the disabled worker once the budget impasse is resolved and funding for the EE program is restored. A temporary job loss soon becomes *permanent*.

CONCLUSION AND PRAYER FOR RELIEF

8. For the reasons stated in this Petition and the supporting Affidavit of Brian Benshoof, the loss of supportive employment services for seriously disabled workers through the unique EE service delivery model will have a severe and permanent impact on a vulnerable population. Accordingly, the EE program must be considered a critical service pursuant to Category 2.2 of Judge Gearin's Order, and restoration of State funding for the EE program is appropriate and required. Such Relief is hereby requested.

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DATED: July 3, 2011

**GRAY, PLANT, MOOTY, MOOTY
& BENNETT, P.A.**

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