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Employment First IN MICHIGAN

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Developmental Disabilities Institute - Wayne State University
Michigan Developmental Disabilities Council

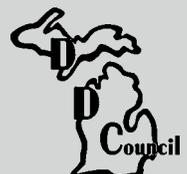


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Employment First

IN MICHIGAN

Issue:

In Michigan, 81 percent of people with intellectual and developmental disabilities (I/DD) are unemployed compared to 9 percent of individuals without disabilities (page 11). This is despite many individuals with disabilities having marketable skills and a true desire to work. In fact, the National Core Indicators Adult Consumer Survey (NCI) shows that 60 percent of individuals with disabilities in Michigan want a job in their community; however, only 17 percent of them have one (page 16).

Many vocational rehabilitation service providers fail to provide adequate training that results in meaningful community-based employment. As a result, many Michiganders with disabilities who are “employed” are perpetually limited to work in sheltered workshops that segregate individuals with disabilities from individuals without disabilities. Moreover, the options of the type of employment are predominately limited to piece work and/or contract work, often paying wages below the minimum and/or prevailing wage.¹ Currently, there are over 70 non-profit Community Rehabilitation Programs operating sheltered workshops (located in 39 Michigan counties) paying their workers with disabilities significantly less than minimum wage. These sheltered workshops account for over 8,000 individuals with disabilities being compensated an average wage of \$2.75/hour. This is a practice allowed through a 14(c) waiver to the Fair Labor Standards Act (FLSA).

Individuals with disabilities are maintained in these positions for years without the proper supports and job matching techniques which would facilitate advancement and community employment. Therefore, many individuals with disabilities are working in segregated work environments earning far below their real potential.

Proposed Solution:

This report calls for the State of Michigan to enact Employment First legislation implementing policies mirroring the language developed by the Michigan Developmental Disabilities Council (Appendix 1), the Michigan Autism Council (Appendix 2), and inspired by the Office of Disability Employment Policy within the U.S. Department of Labor (ODEP).

¹“MICHIGAN FAIR CONTRACTING CENTER (MFCC).” . N.p., n.d. Web. 5 Aug. 2014. <<http://www.mifcc.org/documents/UnderstandingPrevailingWageLawsBooklet2011web.pdf>>. “MICHIGAN PREVAILING WAGE RATES: Contractors are required to pay rates and fringes established by the state government as the minimum rate. A schedule of wage rates must be posted on the construction site where it may be easily seen by all employees.”

The aim of this report is to educate policymakers and stakeholders on the status of employment for individuals with developmental disabilities in Michigan. The report provides a historical perspective and analyzes national and state statistics. It is our hope that at the conclusion of this report it will be evident as to why it is necessary for Employment First policies to be implemented in Michigan.

Employment First is based on the expectation that individuals with disabilities can, with proper training, job matching techniques, assistive technology and reasonable accommodations, earn a fair and prevailing wage alongside individuals without disabilities in fully integrated settings. This philosophy lays the foundation upon which a productive, valued workforce of individuals with disabilities can be built.

Components and Examples:

Examples of appropriate policies supporting Employment First include, but are not limited to, the following:

- All service providers and employers will presume employability of individuals with disabilities. No public dollars should be spent asking if someone is employable but rather should be invested in up-front services that are focused on determining how an individual can be successfully employed.
- All Person-Centered Planning is required to include employment objectives for individuals with disabilities who wish to be employed.
- All transition-age youth with disabilities will have an integrated employment outcome identified in their Individualized Transition Plan (ITP) and a coordinated set of supports and services to help achieve the desired employment outcome.
- All transition-age youth with disabilities will have community-based training and job exploration opportunities as part of their secondary education program.
- Funding will be allocated to assist Community Rehabilitation Programs as they restructure from sheltered employment to community-based employment settings.

Conclusion:

Michigan has a proud history of leading the country with respect to expanding community-based opportunities for individuals with disabilities. However, in terms of competitive integrated employment, there is very little evidence to suggest that Michigan is performing anywhere near its historical potential.

Putting forth state legislation which acts to raise expectations and enable individuals with disabilities to enhance their productivity and earn a fair and prevailing wage alongside individuals without disabilities will allow them to become an integral part of the American workforce. This step forward will ultimately increase the quality of life for Michiganders with disabilities while reducing dependence on traditional government supports.

Introduction

Nationally, 82.4 percent of people with disabilities are unemployed² compared to 6.1 percent nationally for those without a disability.³ The low employment rate has forced people who could live independently to depend heavily on others to define and support their choices. Additionally, a separate 2011 report issued by The Administration for Community Living stated that “Integrated non-facility based employment for working age adults with intellectual disabilities is at only 14.1 percent.”⁴ The remainder who are considered “working” are in segregated work environments, commonly known as sheltered workshops, separated from individuals without disabilities. These types of non-integrated “employment” often act to perpetuate false stereotypes related to the potential of individuals with disabilities in the workplace.

Although employment for individuals with I/DD has been a focus of many disability-related state agencies across the country, including many here in Michigan, policymakers and advocacy groups have noticed a significant lack of community-based employment outcomes. In fact, the percentage of individuals with I/DD that have community based integrated employment has fallen nationally over the past decade.⁵ The state and federal funds appropriated to agencies and entities charged with helping individuals with disabilities find integrated competitive employment are too often resulting in increased instances of placement in segregated day activity programs and sheltered workshops. These segregated day activity programs and sheltered workshops, typically operated by Community Rehabilitation Organizations (CROs), often do not result in participants obtaining employment in a truly integrated community setting.

²“Persons with a Disability: Labor Force Characteristics Summary.” *U.S. Bureau of Labor Statistics*. U.S. Bureau of Labor Statistics, 11 June 2014. Web. 1 Aug. 2014.

³ *U.S. Bureau of Labor Statistics*. U.S. Bureau of Labor Statistics, Web. 8, Sept. 2014.
<http://data.bls.gov/timeseries/LNS14000000>

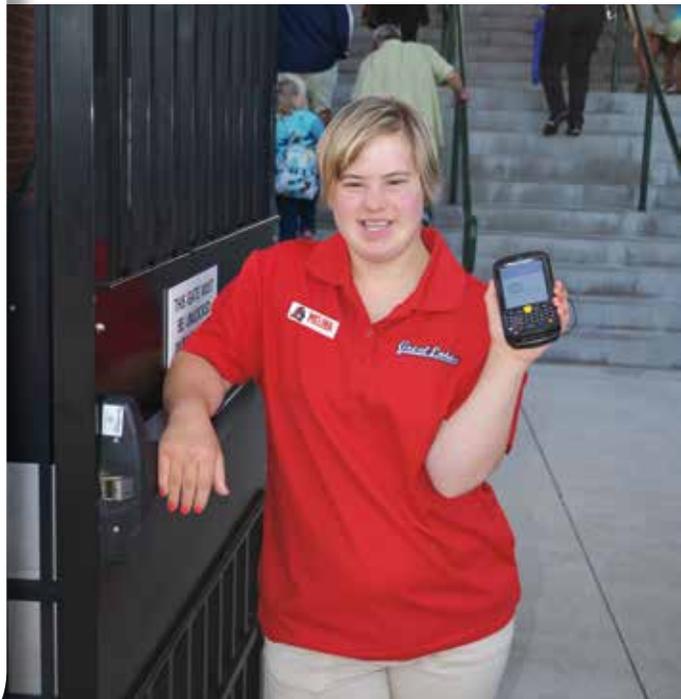
⁴ Administration on Intellectual and Developmental Disabilities (AIDD). Web. 4 Aug. 2014.
<http://www.statedata.info/statepages/Michigan>

⁵ Butterworth, J., Smith, F. A., Hall, A.C., Migliore, A., Winsor, J., & Domin, D. (2014). *StateData: The national report on employment services and outcomes*. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

In an effort to reverse this trend, various states have started implementing “Employment First” policies. These policies act to focus state and federally funded employment-related services away from segregated work and toward competitive, integrated employment for individuals with I/DD who have expressed a desire to work. Over the past decade, the concept of Employment First - the idea that employment in integrated settings within the community should be the priority employment outcome - has emerged in the disability field (Employment First Resource List, Revised September 2013).⁶ Recognizing the importance of addressing this issue, a number of states have already passed policies supporting Employment First concepts by

means of issuing executive orders and/or passing legislation.

Employment First strategies consist of a clear set of guiding principles and practices promulgated through state statute, regulation, and operational procedures that target employment in typical work settings as the priority for state funding and the purpose of supports furnished to individuals with developmental disabilities during the day. Employment First policies anchor the service delivery system, focusing funding, resource allocation, training, daily assistance, and even the provision of residential supports on the overall objective of employment, strengthening the capacity of all individuals receiving publicly financed supports to enter the workforce and become contributing members of society.⁷



Melina Bucci holds her ticket scanner while at work for the Great Lakes Loons at Dow Diamond Stadium in Midland

⁶ Hoff, David. “Employment First Resource List.” Institute of Community Inclusion: University of Massachusetts Boston, 1 Sept. 2013. Web. 18 July 2014. <http://www.selnmembers.org/components/com_wordpress/wp-content/uploads/2013/10/seln-ef-2013-09.pdf>.

⁷ Butterworth, J., Smith, F. A., Hall, A.C., Migliore, A., Winsor, J., & Domin, D. (2014). StateData: The national report on employment services and outcomes. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion.

The Michigan Employment First initiative is the vision of making competitive employment the first priority and preferred outcome for individuals with disabilities who want to work. The central value of any Employment First initiative is a belief that integrated, competitive employment should be at the forefront for service providers, funding sources, and policies related to employment services for individuals with disabilities. Additionally, the Employment First concept commonly means expecting, encouraging, providing, creating, and rewarding integrated competitive employment. These employment outcomes within the Employment First concept are expected to pay at least minimum and/or the prevailing wage, including benefits when appropriate, and be pursued as the first and preferred outcome for working-age youth and adults with disabilities. Many states have already pursued Employment First initiatives by means of clear public policy, using legislation as the primary vehicle. Michigan should follow suit.

In Michigan, the Department of Community Health's (DCH) Medicaid Infrastructure Grant (MIG), which ran from June 2005 through December 2010, conducted preliminary work on promotion of an Employment First policy. In 2013, the Michigan Developmental Disabilities Council's Economic Justice Workgroup began collecting and reporting on various Employment First initiatives nationally. In April 2013, the Parents Raising Taxpayers group (a parent group from the autism community) also showed interest in Employment First. Both groups researched language and eventually recommended the same language to their respective groups.

On August 8, 2013, the Michigan Developmental Disabilities Council adopted principles and guidelines on Employment First (Appendix 1). On November 20, 2013, DCH pulled together a group of stakeholders to discuss Employment First policies in Michigan. On February 28, 2014, the Michigan Autism Council adopted a very similar policy on Employment First (Appendix 2). Included in DCH's 2014 Strategic Priorities is the objective of supporting Michigan in becoming an Employment First state. To date, no formal action has been taken in Michigan with regard to endorsing or adopting any Employment First policies. Michigan is lagging behind other states in this initiative.

I. Historical Perspective

The historic signing of the Americans with Disabilities Act (ADA) in 1990 was a response to the fact that “individuals with disabilities continually encounter various forms of discrimination,” including “overprotective rules and policies,” “segregation,” and “relegation to lesser services, programs, activities, benefits, jobs, and other opportunities.” This discrimination, Congress found, results “from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.”⁸ The ADA established a clear and comprehensive prohibition of discrimination on the basis of disability and afforded similar protections against discrimination to individuals with disabilities as the Civil Rights Act did by outlawing discrimination based on race, color, religion, sex, or national origin. Most applicable is Title I of the ADA of 1990, which specifically prohibits private employers, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

In addition to pillars established in the ADA, in 1999, the U.S. Supreme Court Decision in *Olmstead v. L.C.* upheld the inherent right of an individual to be free from unnecessary segregation from the general public. Although, at the time, the case focused on the rights of individuals with disabilities against institutionalization, *Olmstead* specified employment as one of the rights of individuals with disabilities. The Supreme Court explained that its holding “reflects two evident judgments.” First, “institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable of or unworthy of participating in community life.” Second, “confinement in an institution severely diminishes the everyday life activities of individuals,

⁸ 42 U.S.C. § 12101(a)(7).

including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”⁹

Despite the landmark passage of the ADA and the Olmstead decision, which are now widely being applied to situations concerning employment for individuals with disabilities, there remains a significant lack of integration with respect to this segment of the population. This is true in Michigan, where 69 percent of persons with developmental disabilities who are “working” and served by Community Mental Health Services Programs (CMHSPs) are doing so in segregated, non-competitive employment settings (sheltered workshops or enclaves/ mobile crews) (Figure 3, page 15)



⁹ OLMSTEAD V. L. C. (98-536) 527 U.S. 581 (1999) 138 F.3d 893

II. National and State Data on Employment

National Data

Individuals with disabilities continue to be underemployed and unemployed when compared to individuals without disabilities.

Nationally, 82.4 percent of people with disabilities are unemployed compared to 6.1 percent nationally for those without a disability.^{10 11} In Michigan, 81 percent of persons with disabilities are unemployed compared to 9 percent of those without disabilities.¹²

Instead of being employed in competitive, integrated community-based employment, the majority of individuals with disabilities are either unemployed or working in segregated work environments known as “sheltered workshops.”

These sheltered workshops offer very little significant interaction between individuals with and without disabilities. Moreover, the individuals with disabilities who are working in these environments are predominantly being compensated well below the minimum wage.

The Department of Labor defines a sheltered workshop as “centers that have historically provided rehabilitation services, day treatment, training, and/or employment opportunities to individuals with disabilities”. Work centers no longer refer to themselves as “sheltered workshops” nor do they perceive themselves as offering “sheltered” employment.”¹³ These sheltered workshops, typically operated by Community Rehabilitation Organizations (CROs), are allowed to pay individuals with disabilities below the minimum wage or below the prevailing wage by using what is known as a 14(c) certificate. “The Section 14(c) provisions of the Fair

¹⁰ Persons with a Disability: Labor Force Characteristics Summary.” *U.S. Bureau of Labor Statistics*. U.S. Bureau of Labor Statistics, 11 June 2014. Web. 1 Aug. 2014

¹¹ *U.S. Bureau of Labor Statistics*. U.S. Bureau of Labor Statistics, Web. 8, Sept. 2014.
<http://data.bls.gov/timeseries/LNS1400000>

¹² http://www.michigan.gov/documents/mdch/October_2013_438075_7.pdf

¹³ Dept. of Labor Wage and Hour Division: <http://www.dol.gov/whd/FOH/ch64/64k00.htm>

Labor Standards Act of 1938 (FLSA) establishes a program that allows employers to pay less than minimum wage and/or prevailing wage to individuals with physical or mental disabilities whose productivity capacity is below the level considered appropriate for a particular work task.” Nationally, 95 percent of 14(c) workers are in sheltered workshops.¹⁴ “The funding for these centers comes from two principle sources: state and county grants or reimbursement for services (on average, 46 percent of funding base), and production contracts with government agencies or private companies (about 35 percent of funding base).”¹⁵ Across the country more than 2,500 entities are certified to pay approximately 350,000 employees subminimum wages.¹⁶ In 2000, the General Accounting Office (GAO) surveyed 506 sheltered workshops and 284 businesses utilizing 14(c) waivers. The results of the survey showed that 86 percent of individuals being paid through a 14(c) waiver work less than full-time (defined as 32 hours per week) and more than half earn less than \$2.50 an hour – well below the federal minimum wage.¹⁷ The GAO estimated that 74 percent of workers paid subminimum wage by sheltered workshops have a diagnosis of what was previously known as “mental retardation” or another developmental disability as their primary impairment, with 46 percent having multiple disabilities.¹⁸

State Data

Recognizing that the 2000 GAO national study could potentially be outdated or not representative of the situation in Michigan, current data regarding the use of subminimum wage

¹⁴ Morris, Michael, and Heather Ritchie. *Policy Report: Section 14C of the Fair Labor Standards Act: Framing Policy Issues*. Iowa: Law, Health Policy & Disability center University of Iowa College of Law, 2002. 3-5. Print.

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

was collected for this report. Michigan's 14(c) data was requested from the U.S Department of Labor, Wage and Hour Division, and obtained as of June 30, 2013. This data has provided the only comprehensive overview of Michigan's utilization of the 14(c) program. Our analysis of the data shows that, in Michigan, 97.7 percent of individuals employed under 14(c) certificates worked for a Community Rehabilitation Organization (CRO), the primary operators of sheltered workshops. The remainder of workers served under a 14(c) certificate work for School-Work Experience Programs, business establishments, and at hospital/residential care facilities (Appendix 3). Additionally, 83 14(c) certificates exist statewide, covering nearly half of all the counties in the state (Appendix 4 and Appendix 5). These 83 certificates account for

The average 14(c) employee in Michigan earned \$2.75/hour (SD \$2.17; range = \$0.01-\$16.44) with median earnings at \$2.14/hour.¹⁹

8,226 individuals receiving deviated or subminimum wages.

Approximately, 23 percent of employees earned under \$1/hour, while 47 percent, or nearly half, of all employees earned below \$2 per hour (Appendix 6).

A total of 63 percent of workers earned less than \$3 per hour.

“Mental retardation”²⁰ was listed as the primary disability group served by the 14(c) certificate holders (Appendix 7). The mean number of employees in sheltered workshops of 14(c) certificate holders was 416, with a standard deviation of 218 and a range from 1 employee to 1044 employees. This indicates that, while subminimum wage is prevalent across the entire state, there do exist significantly larger pockets in some areas as compared to others.²¹ The predominant type of work among certificate holders include piecework (68 percent),

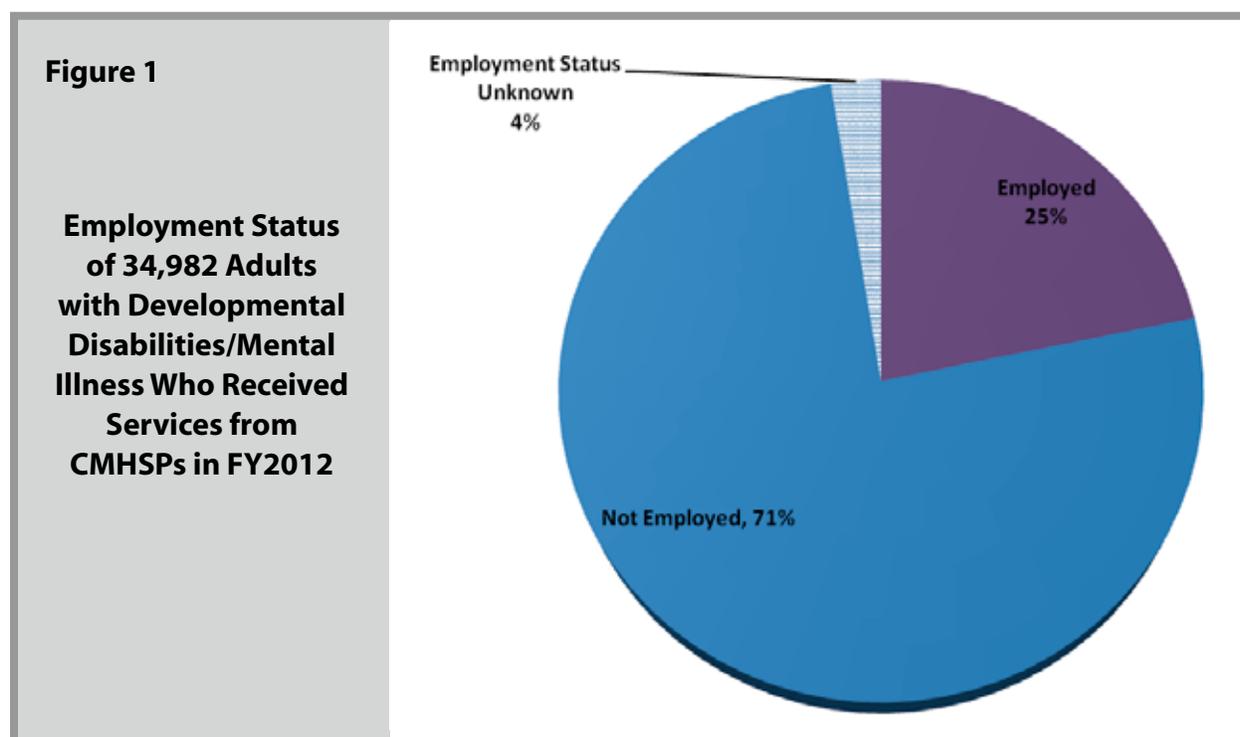
¹⁹ As of June 30, 2013, provided by U.S. Department of Labor, Wage and Hour Division

²⁰ The term “mental retardation” has been replaced with “intellectual and/or developmental disability”

²¹ As of June 30, 2013, provided by U.S. Department of Labor, Wage and Hour Division

janitorial (11.5 percent), customer service (4 percent), and grounds maintenance (3.2 percent). (Appendix 8).

In addition to the information gathered from the U.S Department of Labor, Wage and Hour Division, records were also obtained from the Department of Community Health (DCH) on the 34,982 adults with developmental disabilities, including those dually diagnosed with mental illness (DD/MI) who received services in FY 2012. Of those, only 25 percent (8,810 individuals) had any type of employment (Figure 1) ²².



Of the 34,982 adults with DD/MI who received services from Community Mental Health Services Programs (CMHSPs) in FY 2012, half of the individuals (17,340 persons) were not considered to be eligible for the competitive labor force (defined as homemakers, students age 18 and over not working, retired from work, resident of an institution [including a nursing home], or incarcerated). The large majority of those working in non-competitive employment

²² See Appendix 12 for references and definitions

were working in sheltered workshops. Perhaps most disturbing, 26 percent of individuals deemed to be eligible for the competitive labor force were placed in facility-based activity programs, lacking any type of significant vocational supports or services from CMHSPs. These facility-based activity programs provide an array of specialty supports and services to assist individuals in achieving their non-work related goals. (Figure 2)²³

Of the 8,810 individuals who had any type of employment, 69 percent worked in noncompetitive employment (sheltered workshops or enclaves or mobile crews) (Figure 3)²⁴.

Figure 2 Employment Status of 34,982 Adults with Developmental Disabilities/Mental Illness Who Received Services from CMHSPs in FY2012

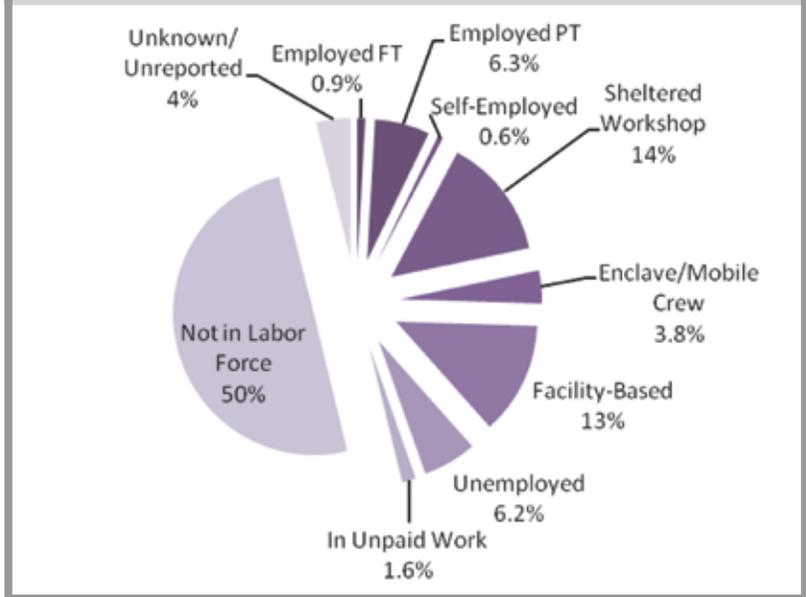
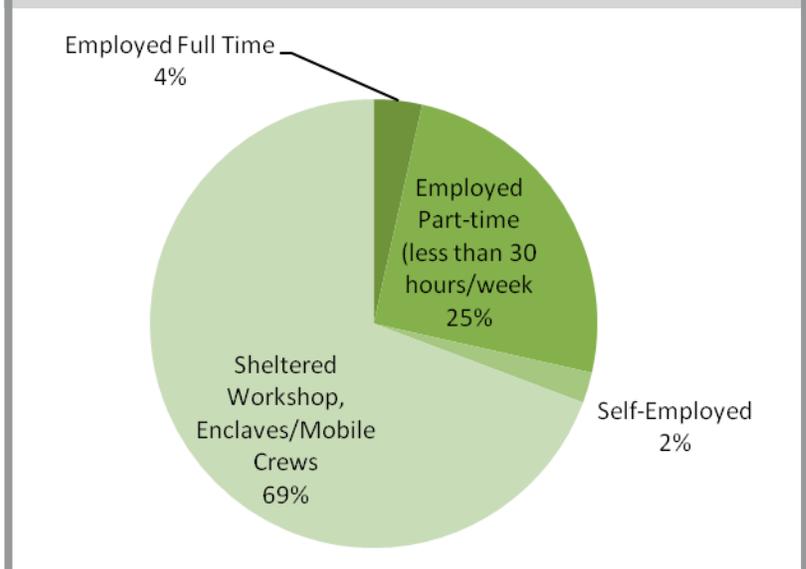


Figure 3 Employment Status of 8,810 Employed Adults with Developmental Disabilities/Mental Illness Who Received Services from CMHSPs in FY2012



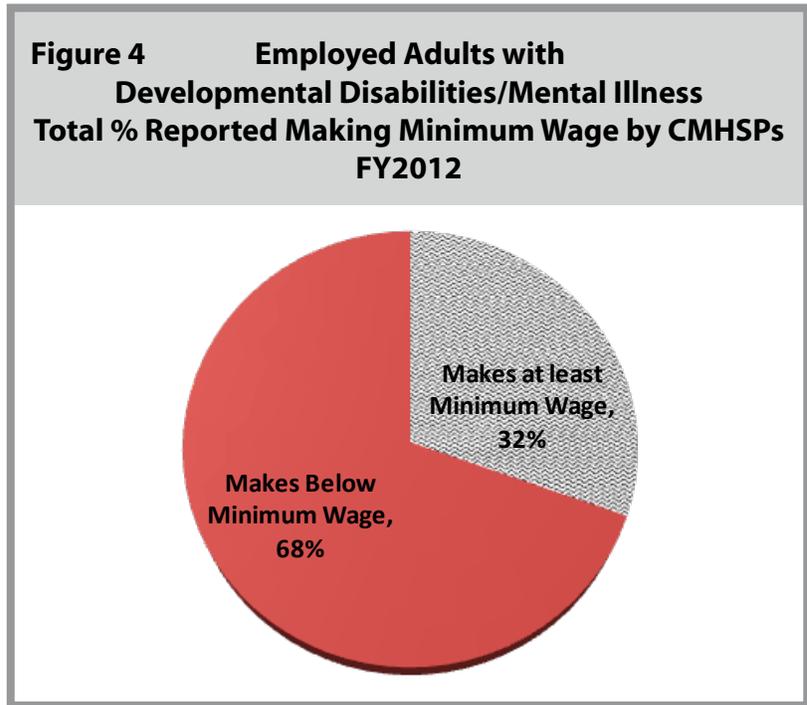
²³ See Appendix 9 for references and definitions

²⁴ See Appendix 10 for references and definitions

Finally, 68 percent of employed adults with DD/MI were earning below the minimum wage (Figure 4).²⁵

In 2012 Michigan conducted consumer interviews as part of the National Core Indicator (NCI) Program. The NCI, utilized in over 35 states, provides a standardized way to measure and track different characteristics related to persons with I/DD served by the public mental health system. These

characteristics, which are measured and tracked, concern key areas of life including employment. Overall, 60 percent of Michigan NCI respondents (N=400) who were interviewed in the 2011-2012 study indicated that they would like a job compared to the national average of 47 percent. It is interesting to note that even though 60 percent reported the desire to work, only 17 percent of all respondents reported having a community job. Moreover, only 22 percent of respondents indicated that employment was even listed as a goal in their person-centered plan (PCP)²⁶ (Appendix 10). This valuable information gathered by the NCI clearly indicates that, despite people with disabilities in Michigan, by and large, having the desire to work, we are not providing them with the tools and supports needed to reach their goals.



²⁵ See appendix 11 for reference and definitions.

²⁶ www.nationalcoreindicators.org

III. Implications and Assumptions

The data clearly show that in Michigan, opportunities for competitive integrated employment for individuals with disabilities, especially those with developmental disabilities, is severely lagging. Furthermore, Michigan is the only state in the country that mandates the availability of free and appropriate public education to individuals with developmental disabilities through the age of 26. One of the fundamental purposes of our public education system is to provide young adults with the tools to obtain gainful employment; this should remain true regardless of whether a student happens to have a disability. Despite these individuals garnering extra time in the education system, there still remains a lack of transitional services, vocational supports, and work experiences resulting in competitive integrated employment. In addition, significant reliance on subminimum wage for Michiganders with disabilities, combined with the inherent discriminatory nature of segregated sheltered work environments, amounts to nothing short of failure. Other arguments against sheltered workshops

A 2001 study of workshop participation in seven states found that a substantial number of individuals in sheltered employment did not progress to integrated work settings over time. The GAO estimates that only 5 percent of individuals in sheltered work environments were ever transitioned into integrated work settings.²⁷

and the use of subminimum wage are well documented.

While the report is dated, no significant changes have occurred that would indicate that the situation has improved or produced more positive outcomes. The purpose of community rehabilitation programs

is to equip individuals with disabilities with the tools to be able to find competitive integrated employment in an area of their interest. Unfortunately, in the majority of cases, these community

²⁷ “Special Minimum Wage Program: Centers Offer Employment and Support Services to Workers With Disabilities, But Labor Should Improve Oversight.” . GAO, 1 Sept. 2001. Web. 1 Aug. 2014. <<http://www.gao.gov/new.items/d01886.pdf>>.

rehabilitation programs (taking place in sheltered workshops) become long-term “employment” for people perceived to be unlikely to qualify for integrated community-based employment.²⁸ It is this perception and lack of expectation that sound Employment First legislation will challenge.

Proponents of sheltered workshops and subminimum wage often voice concern over whether paying individuals with disabilities at least the minimum wage would jeopardize the individual’s eligibility to receive essential means tested supports and services. Anticipating this concern, state and federal legislation has been passed to address this potential issue. The Freedom to Work/Medicaid Buy-In law allows for individuals with disabilities currently enrolled in Medicaid to maintain their coverage through a buy-in program based on their income. As of 2008, 42 states, including Michigan, have passed this type of legislation with a nationwide program enrollment of 90,000.²⁹ The Ticket to Work Program, signed into law in 1999, is also available to individuals with disabilities who are between the ages of 18 and 65 and receive Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI) benefits. As a result, individuals will not automatically lose their disability benefits and will be able to obtain vocational rehabilitation, training, job referrals, and other ongoing support and services to help them reach their employment goals.³⁰



²⁸ GAO Report supra note 5, 24

²⁹ Mathematica Policy Research, “Extending Medicaid to Workers with Disabilities.”

<http://www.mathematica-mpr.com/disability/medicaidbuy-in.asp>

³⁰ Social Security Online, “Ticket to Work Program Overview”.

<http://www.ssa.gov/work/overview.html#a0=0>

IV. Employment First

In August 2013, the Michigan Developmental Disabilities Council adopted a declaration of philosophy and policy based on the National Employment First model outlined by the Office of Disability Employment Policy (ODEP) housed in the United States Department of Labor. This policy articulates that community-based, integrated employment should be the first and preferred option for employment services for youth and adults with significant disabilities.³¹ The mission of the Employment First initiative in Michigan is to establish new expectations by promoting opportunities for all working-age individuals with disabilities in the state. These new expectations are focused on individuals with disabilities gaining integrated employment alongside individuals without disabilities. In pursuing these expectations, it is imperative that we engage and educate the business community regarding the valuable contributions that employees with disabilities can bring to their organizations. Individuals with disabilities in the workforce promote diversity, increase talent in the field, expand the tax base, and lower poverty rates. Many employees with disabilities consistently demonstrate excellent work behaviors including reliability, retention, and quality work. Examples of the value lent to various aspects of business can be seen by the hiring practices of businesses such as the Meijer Corporation, Walgreens, and Ernst & Young.

Additionally, the principles of Employment First, which should be established by means of state legislation, echo the gold standard set by ODEP and the Department of Labor. These principles establish that individual integrated employment should be the first and preferred outcome for individuals with disabilities, regardless of type or level of disability.

³¹ United States Department of Labor, “Employment First”.
<http://www.dol.gov/odep/topics/EmploymentFirst.htm>



- “Integrated” meaning alongside individuals without disabilities and;
- “Employment” meaning a job available in the general workforce and in which the employee is included on the payroll of the business or industry or is a self-employed business owner.

Furthermore, Employment First believes that individuals with disabilities should be compensated at or above the minimum wage, but not less than the prevailing wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.³² If implemented responsibly, and with a significant degree of accountability, over time the state of Michigan should observe the following:

- a substantial decrease in the number of individuals with disabilities in sheltered workshops;
- a higher percentage of individuals with disabilities moving from sheltered workshops into community-based, integrated employment;
- an overall increase in the number of individuals with disabilities employed in the state of Michigan;
- a significant decrease in the number of individuals being paid under a 14(c) waiver; and
- increased wages and taxes paid.

³² Meeting Minutes, Michigan Developmental Disabilities Council, 8-13-2013

Lessons from other initiatives

Many states have already adopted Employment First policies. However, simply adopting language or a philosophical stance does not necessarily ensure systemic change with regard to the problem of people being paid below the prevailing wage. The following are examples of ways states are encouraging or establishing practices to create integrated community-based employment for individuals with disabilities; this includes compensation at or above the federal minimum wage.

Rhode Island

The Department of Justice (DOJ) launched an ADA investigation in January 2013 into Rhode Island's day activity service system for people with I/DD. The department's initial investigation found that the majority of people receiving publicly funded employment and day habilitation services in segregated programs can work and want to work.

Additionally they would prefer to receive their services in more integrated community-based settings, something that was previously not taking place. Under the ADA, individuals with disabilities have the right to receive services in the most integrated settings appropriate for them.

Since this investigation and subsequent lawsuit, the state of Rhode Island has entered into a settlement agreement with the DOJ. This is the first statewide settlement of its kind and will allow over 3,200 individuals with I/DD in Rhode Island to transition out of segregated work environments and into more community-based programs and jobs. The key components of the settlement require Rhode Island to provide the following:

- Supported employment placements that are individual, typical jobs in the community, that pay at least minimum wage, and that offer employment for the maximum number of hours consistent with the person's abilities and preferences, amounting to an average of at least 20 hours per week across the target population;

- Supports for integrated non-work activities for times when people are not at work including mainstream educational, leisure, or volunteer activities that use the same community centers, libraries, recreational, sports and educational facilities that are available to everyone;
- Transition services for students with I/DD, to start at age 14, and to include internships, job site visits and mentoring, enabling students to leave school prepared for jobs in the community at competitive wages; and
- Significant funding sustained over a 10-year period that redirects funds currently used to support services in segregated settings to those that incentivize services in integrated settings.

Massachusetts

Massachusetts' approach to Employment First focuses on individuals with developmental disabilities and aims to end sheltered workshops. Individuals and groups will be transitioned to either community work at minimum wage or higher or to integrated day programs. The state plans to continue to move people from day services to community employment at minimum wage or higher over the next few years and to gradually phase out group employment. The state, overall, is eliminating sheltered work as an option and moving people from sheltered work to individualized community work, at minimum wage or higher, while making employment the first rule for individuals entering the developmental disabilities support system. This was achieved through a developmental services statute, policy #2010-2, effective August 1, 2010.

New York

New York used the Olmstead decision to organize its approach to policy in the pursuit of community employment options for all individuals with disabilities who receive supports from the state. The state created an Olmstead cabinet and went through an extensive stakeholder

participation process to assure support for moving individuals with I/DD into integrated settings. In addition, New York changed the way Olmstead compliance is measured, increased overall integration of people with disabilities into the community, and is working to assure accountability for the provision of supports. The new change to the state's Olmstead plan includes:

- Closing of developmental disability centers;
- Community-based integration for some individuals residing in psychiatric hospitals; and
- Transition services for people in nursing homes, as well as employment initiatives.

Oregon

Through an executive order (No. 13-04) effective July 1, 2013, the Oregon Department of Human Services and the Oregon Department of Education vowed to improve the state's system of designing and delivering employment services to individuals with intellectual and developmental disabilities. This was in accordance with Oregon's Employment First policy, including a significant reduction over time of state supported sheltered work and an increased investment in integrated employment services. On the day that the executive order was signed, the governor sent an email to all Department of Human Services staff, partners, and stakeholders announcing the appointment of an Employment First coordinator and outlined steps to be implemented, which included::

- Developing stronger interagency coordination between the Department of Education, the Department of Human Services, and the Oregon Council on Developmental Disabilities. These agencies are charged with working together to promote the development of coordinated policies and practices that are grounded in the expectations of Employment First.

- Developing strong coordination with the disability and workforce systems to ensure they leverage their efforts to benefit employers and job seekers with I/DD. They will work with these systems to create more opportunities for individuals with developmental disabilities.
- Strengthening training to assist providers in developing the skills to make the shift from sheltered to competitive employment. Focusing on efforts to build needed capacity, they will work to assist providers of sheltered workshops to transform operations toward integrated employment and develop local Employment First leadership teams in Oregon communities.
- Providing local communities with the resources and tools to make Employment First successful, through training and other technical assistance activities.
- Improving key infrastructure systems such as data collection, service rate structures, and quality assurance activities.

Maryland

The Arc of Maryland called on the state to end the use of subminimum wages by 2017.

The Arc calls for the plan to include:

- An accurate picture of current employment, underemployment, and subminimum wage statistics for the state and also identifying measureable target goals;
- Technical assistance, supports, and fiscal incentives to organizations currently using 14(c) employment programs to move to community-based and fairly compensated employment programs;
- Model Employment First policies for adoption by the community rehabilitation organizations;

- The planned movement of individuals into employment programs embracing promising and evidence-based practices available today (e.g. Employment First and Project Search);
- Ongoing plans for baseline and trend data collection, analysis, and interpretation for purposes of continual improvement. Progress should be transparent and visible and reported in an employment dashboard;
- Addressing differences found in Maryland including urban, suburban, and rural settings as well as cultural and language differences found throughout the state of Maryland;
- Imposing a mandated moratorium for transitioning youth in Maryland entering 14(c) programs;
- Assuring the work group disproportionately includes representative individuals and families such as transitioning youth looking for employment, individuals with I/DD currently in subminimum wage jobs, and employers.

V. Adopting Policies that Support Employment First

Dr. Lisa Mills, a subject matter expert with the ODEP Employment First State Leadership Mentoring Program, has identified policies that support Employment First, which can be adopted by states. These policies include general concepts and policies for various departments and programs.

General Policies:

- All employers **presume employability** with right job match and supports
- Public dollars are not spent asking **if** someone is employable
- Invest in up-front services that are focused on determining **how** – not whether – an individual can be successful in integrated employment

- Change from asking to expecting
From: “Do you want to work?”
To: “How much income do you need?”
“What kind of work do you want to do?”
“In what kind of business do you want to work?”
“How many hours would you like to work?”
“What work schedule would suit you best?”

Special Education Policy:

All transition-age youth will have an integrated, post-secondary employment outcome, or outcomes identified in their Individualized Education Plan (IEP) and a coordinated set of services to help achieve that outcome.

Medicaid Home and Community-Based Waiver Services Policies:

- All adults with disabilities (18-64) are eligible for services that support integrated employment;
- Every state waiver offers these services with no time limit on the services;
- The amount of service authorized is based on individual need and reviewed regularly;
- *Integrated Employment* is presented first with a rigorous, meaningful and informed choice process;
- Rigorous requirements for determining each service is being delivered in the most integrated setting possible for the individual;
- Appropriate policies are in place to address provider conflict of interest in the individual service planning process.

Vocational Rehabilitation (VR) Policies:

- Individuals eligible for or enrolled in a Medicaid waiver (that includes supports to maintain employment) are *presumed eligible* for VR services and are *presumed to have a most significant disability*;
- Trial Work and Extended Evaluation to determine “ability to benefit” shall not be used for individuals eligible for or enrolled in a Medicaid waiver;
- No extension for eligibility determination shall be permitted for individuals eligible for or enrolled in Medicaid waiver;
- If an individual has long-term support available through a Medicaid waiver, an Individual Plan for Employment (IPE) should be developed expeditiously.

Funding Structures that Support Employment First:

- Pay on a milestone for services to get people jobs – incentivize outcomes, not service delivery;
- Establish tiered milestone payments to account for different level of acuity/ challenge and to prevent “creaming”;
- Build expectation of fading on-the-job supports into all systems’ reimbursement models;
- Pay for on-the-job supports based on outcomes (e.g. hours worked);
- Factor length of time on job and acuity/challenge level into payment per hour worked;
- Adjust payments for services to reflect staffing ratios;
- Design reimbursements to support integrated service delivery models;
- Develop targeted reimbursement rates for community-based wrap-around supports.

VI. Policies That Work Against Employment First

Dr. Mills has also identified policies which work against Employment First.

State Medicaid Waiver:

- Making sheltered work a day service (to avoid time limit and outcome expectations now in place for prevocational services)
- Failing to identify and address over-payments for facility-based services (rates that are too high)
- Revising policy but failing to ensure effective implementation through effective oversight

Other State Practices Working Against Employment First:

- Operating State Use programs that require segregation and congregation as a condition of participation
- Providing tax credits to businesses that give contract work to sheltered workshops
- Inadequate oversight of state-level subminimum wage certificates
- Federal and state contracts using sheltered workshops for goods and services



VII. Conclusion

Given the contents of this report, significant changes are on the horizon. Nationwide, states are passing employment policies that will forever alter how individuals with disabilities enter, contribute to, and are compensated in the workforce. The Michigan Developmental Disabilities Network - comprised of Michigan Protection & Advocacy Service, Inc., the Developmental Disabilities Institute at Wayne State University, and the Michigan Developmental Disabilities Council - look forward to working with legislators, agency representatives, advocates, individuals with disabilities and their families, and community rehabilitation organizations (CROs) in order to successfully adopt policies that support the employment of people with disabilities in integrated, community-based settings. Implementation of Employment First must be based on clear public policies and practices that ensure employment opportunities for individuals with disabilities within the general workforce; and it must be the priority for public funding and service delivery. It is our recommendation that the most productive way to take a substantial step in the right direction is to adopt Employment First language by means of a legislative remedy. By taking this initial action, Michigan will be creating accountability and establishing a significant commitment to becoming a leader in maximizing opportunities for individuals with disabilities to obtain and maintain community-based employment, earning fair wages alongside individuals without disabilities.

Appendices





Mission & Principles

Adopted by the Michigan Developmental Disabilities Council 08-13-2013

Employment First in Michigan is a declaration of both philosophy and policy stating that ***individual integrated employment is the first priority and preferred outcome of people with disabilities.***

Principles of Employment First in Michigan:

1. Individual integrated employment is the first and preferred outcome for individuals with disabilities, regardless of level or type of disability:
 - a. Individual means individual, not a group as in an enclave
 - b. Integrated means alongside individuals without disabilities
 - c. Employment means a job available in the general workforce and in which the employee is included on the payroll of the business or industry or is a self-employed business owner.
2. Employees with disabilities are compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.
3. Employees with disabilities have the right to accommodations as necessary to achieve and maintain employment with a focus on the use of natural occurring supports.
4. Employment services:
 - a. are developed using processes that align with the principles of person-centered planning, selfdetermination, and informed choice based on the individual's talents, skills and interests;
 - b. are provided in the amount, duration, and intensity that allow persons with I/DD to work the maximum number of hours consistent with their abilities in an integrated employment setting;
 - c. may include career exploration, job discovery and development, job carving, job coaching, job training, benefits counseling, personal care services, and job customization.
5. Implementation of Employment First must be based on clear public policies and practices that ensure employment opportunities of individuals with disabilities within the general workforce and is the priority for public funding and service delivery.

Mission: The mission of Employment First in Michigan is to establish the expectation and promote opportunities for *all* working-age citizens with disabilities in Michigan to gain individual integrated employment and to engage businesses to value the contributions that employees with disabilities bring to their organizations. Individuals with disabilities in the workforce promote diversity, increase talent in the field, expand the tax base, and lower poverty rates. As such, achieving this mission will enhance the employment landscape to enable Michigan to compete with other states to bring in highdemand businesses and jobs.



Mission: The mission of Employment First in Michigan is to establish the expectation and promote opportunities for all working-age individuals with disabilities in Michigan to gain individual integrated employment, with or without supports, and to engage businesses and organizations that value the contributions of employees with disabilities.

Mission & Principles

Adopted by the Michigan Autism Council 02/28/2014

Employment First in Michigan is a declaration of both philosophy and policy stating that ***individual integrated employment is the first priority and optimal outcome for people with disabilities.***

Preamble: Work is a valued activity for both the individual and society.

- For the individual, work results in tangible benefits (pay to enhance independence and economic self-sufficiency) and intangible benefits (provides purpose, dignity, self-esteem, and a sense of accomplishment and pride) and promotes inclusion in other community activities.
- For society, a diverse workforce enriches local communities and enhances economic development.

Purpose: To promote the dignity, self-esteem and economic self-sufficiency of working-age individuals with disabilities by providing access to meaningful and productive paid employment

Principles of Employment First in Michigan:

1. Individual integrated employment is the first and preferred outcome for individuals with disabilities, regardless of level or type of disability:
 - a. Individual means an individual person
 - b. Integrated means alongside individuals without disabilities
 - c. Employment means a job available in the general workforce and in which the employee is included on the payroll of the business, industry or staffing agency or is a self-employed business owner.
 - d. Employees with disabilities are compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.
2. Employment services:
 - a. are developed using processes that align with the principles of person-centered planning, self-determination, and informed choice based on the individual's interests, skills, abilities, and talents.
 - b. are provided in the amount, duration, and intensity that allow persons with disabilities to work the maximum number of hours consistent with their abilities in an integrated employment setting;
 - c. may include career exploration, job discovery and development, job carving, job coaching, job training, benefits counseling, personal care services, and job customization.
 - d. may include an array of employment services and outcomes tailored to the individual's interests, strengths, abilities, and needs.
3. Implementation of Employment First must be based on clear public policies and practices that ensure employment opportunities of individuals with disabilities within the general workforce and is the priority for public funding and service delivery.

Appendix 3

Michigan Utilization of 14(c) certificates

June 30, 2013

Number of Deviated Wage Requests by Type of Business

| Type of Business | Number of Requests (#) | Percent (%) |
|--|------------------------|-------------|
| Community Rehabilitation Program (Work Center) | 8036 | 97.7 |
| Hospital/Residential Care Facility | 12 | .1 |
| Business Establishment | 36 | .4 |
| School-Work Experience Program | 67 | .8 |
| Missing Data | 2 | |

Note: This information was obtained as the result of a request from the U.S. Department of Labor, Wage and Hour Division, as of June 30, 2013.

Appendix 5

June 30, 2013

Michigan: Number of Deviated Wage Requests by County

| COUNTY | NUMBER OF REQUESTS (#) | PERCENT (%) |
|----------------|------------------------|-------------|
| Arenac | 54 | .7 |
| Barry | 39 | .5 |
| Bay | 133 | 1.6 |
| Berrien | 3 | .0 |
| Branch | 99 | 1.2 |
| Calhoun | 64 | .8 |
| Charlevoix | 40 | .5 |
| Cheboygan | 27 | .3 |
| Chippewa | 46 | .6 |
| Delta | 286 | 3.5 |
| Dickinson | 47 | .6 |
| Genesee | 340 | 4.1 |
| Grand Traverse | 204 | 2.5 |
| Hillsdale | 154 | 1.9 |
| Huron | 102 | 1.2 |
| Ingham | 340 | 4.1 |
| Isabella | 258 | 3.1 |
| Kalamazoo | 139 | 1.7 |
| Kent | 1102 | 13.4 |
| Lapeer | 189 | 2.3 |
| Lenawee | 97 | 1.2 |
| Livingston | 124 | 1.5 |
| Macomb | 532 | 6.5 |
| Marquette | 19 | .2 |
| Midland | 322 | 3.9 |
| Monroe | 112 | 1.4 |
| Muskegon | 77 | .9 |
| Oakland | 1142 | 13.9 |
| Ontonagon | 9 | .1 |
| Otsego | 43 | .5 |
| Ottawa | 304 | 3.7 |
| Saginaw | 221 | 2.7 |
| St. Clair | 280 | 3.4 |
| St. Joseph | 82 | .6 |
| Tuscola | 46 | .6 |
| Van Buren | 68 | .8 |
| Washtenaw | 6 | .1 |
| Wayne | 1104 | 13.4 |
| Wexford | 1 | .0 |
| Total | 8226 | 100 |

Note: This information was obtained as the result of a request from the U.S. Department of Labor, Wage and Hour Division, as of June 30, 2013.

June 30, 2013

Michigan: Percentage of Deviated Wage Population by Hourly Earnings

N= 8,143
(83 were missing data)

| Wage | Number | Percentage | Cumulative Percentage |
|------------------|--------|------------|-----------------------|
| Less than \$1.00 | 1857 | 22.8 | 22.8 |
| \$1.00 to \$1.99 | 1971 | 24.2 | 47.0 |
| \$2.00 to \$2.99 | 1360 | 16.7 | 63.7 |
| \$3.00 to \$3.99 | 961 | 11.8 | 75.5 |
| \$4.00 to \$4.99 | 700 | 8.6 | 84.1 |
| \$5.00 to \$5.99 | 472 | 5.8 | 89.9 |
| \$6.00 to \$6.99 | 318 | 3.9 | 93.8 |
| \$7.00 to \$7.99 | 383 | 4.7 | 98.5 |
| \$8.00 or more | 114 | 1.4 | 99.9 |

Note: This information was obtained as the result of a request from the U.S. Department of Labor, Wage and Hour Division, as of June 30, 2013.

June 30, 2013

Michigan: Employee Disability by Average Wage

| Disability | N | Mean | SD | Minimum | Maximum |
|------------|------|--------|--------|---------|---------|
| MR | 5700 | \$2.37 | \$1.99 | \$0.00 | \$14.57 |
| MI | 604 | \$3.93 | \$2.55 | \$0.05 | \$15.62 |
| Sensory | 47 | \$3.99 | \$1.89 | \$0.84 | \$ 7.38 |
| DD | 1058 | \$3.20 | \$1.85 | \$0.00 | \$11.46 |
| TBI | 299 | \$4.50 | \$2.38 | \$0.05 | \$12.21 |
| LD | 71 | \$5.04 | \$2.08 | \$0.74 | \$ 7.49 |

MR – Mental Retardation

MI – Mental Illness

DD – Developmental Disability

TBI – Traumatic Brain Injury

LD – Learning Disability

Note: This information was obtained as the result of a request from the U.S. Department of Labor, Wage and Hour Division, as of June 30, 2013.

June 30, 2013

Michigan: Type of Work for Individuals
with Developmental Disabilities*

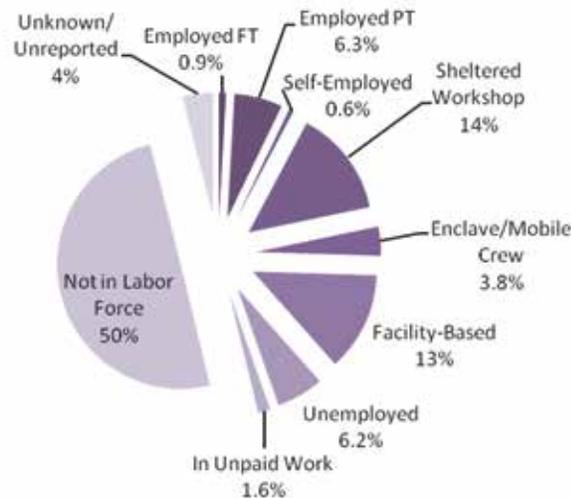
(N = 6,929)

| Type of Work | N | % |
|---------------------|-------|------|
| Piece Work/Assembly | 4,716 | 68.0 |
| Food Service | 87 | 1.2 |
| Janitorial | 795 | 11.5 |
| Office | 127 | 1.8 |
| Grounds Maintenance | 223 | 3.2 |
| Customer Service | 275 | 4.0 |

***Note: Developmental Disabilities in this table refers to people who have mental retardation (5733); sensory impairment (47); neuromuscular (17); dd (1059) and learning disability (73)**

Note: This information was obtained as the result of a request from the U.S. Department of Labor, Wage and Hour Division, as of June 30, 2013.

Michigan: Employment Status of 34,982 Adults with Developmental Disabilities/Mental Illness Who Received Services from CMHSPs FY 2012



Definitions

- *Employed Adults* include: Full time, part time, sheltered workshop, self-employed, and enclaves/mobile crews.
- *Competitively Employed Adults* include: full time, part time and self-employed (individual is working in a job that was open for anyone to apply, not just persons with disabilities) as defined by the *Report for Section 404*.
- *Not in the Competitive Labor Force* includes: homemaker, child, student age 18 and over not working, retired from work, resident of an institution (including nursing home), or incarcerated per the *Report for Section 404*.
- *Facility-based Activity Program*: where an array of specialty supports and services are provided to assist an individual in achieving his/her non-work related goals. This does not include facilitybased work.
- *Sheltered Workshop*: Sheltered workshop is the same as the term “facility-based work.” The term “sheltered workshop” has been retired from our system and won’t show up in the 404 for 2012. Facility-based work is when an individual with a disability works in an agency-run (whether it’s a CMH or a Community-Based Organization) setting with other people with disabilities. They are often compensated at a subminimum or deviated wage when the agency has a 14C certificate.
- *Enclave/Mobile Crews*: are group/congregate settings in the community. Typically, a group is defined as between 2 and 8 people with a supervisor (employee of the CMH/CBO) - they complete work for a host employer in that employer’s workplace. Some of these “enclaves” are mobile crews going from site to site to complete their work-these are often janitorial or lawn care.
- Source: 404 reports; CMHSP Demographic Summary Numbers & Percentages of Persons with Mental Illness & Developmental Disabilities Who Received Services from CMHSPs, FY 2012 *Division of Mental Health Quality Management and Planning – May 2013*, MI Department of Community Health/Community Health

Michigan DD Network Collaborative Summary on Employment of People with Developmental Disabilities

Total Number of DD/MI people, age 18+, who received services from CMHSPs*, FY12

| Competitive Employment | Number | % |
|--|---------------|-------------|
| Employed Full Time | 306 | 1.7 |
| Employed Part-time (less than 30 hours/week) | 2,207 | 12.5 |
| Self-Employed | 195 | 1.1 |
| Sub-total | 2,708 | 15.3 |
| Non-Competitive Employment | | |
| Sheltered Workshop | 4,767 | 27 |
| Enclaves/Mobile Crews | 1,335 | 7.5 |
| Sub-total | 6,102 | 34.6 |
| Unemployed-Looking for Work | 2,200 | 12.5 |
| Not in Labor Force | | |
| In Unpaid Work | 550 | 3.1 |
| Facility-based Activity Program | 4,689 | 26.5 |
| Sub-total | 5,239 | 29.7 |
| Unknown/Unreported | 1,393 | 7.9 |
| TOTAL | 17,642 | 100 |

404 Report, FY12 CMHSP Demographic Summary-Numbers and Percentages Persons with MI/DD

***NOTE This total does not include the 17,340 individuals not included in the Competitive Labor Force (homemakers, student age 18 and over not working, retired from work, resident of an institution (including a nursing home), or incarcerated).**

National Core Indicators (NCI) Adult Consumer Survey,
Michigan, 2011-2012

- 60% want a community job
- 17% have a community paid job
- 22% have it in their Person-centered Plan (PCP)

Appendix 10 - Continued

Wages

In FY12, 46 CMHSPs reported 8,131 employed adults with DD/MI

| | Number | % |
|-----------------------------|--------------|------------|
| Makes at least minimum wage | 2,637 | 32 |
| Makes below minimum wage | 5,494 | 68 |
| TOTAL | 8,131 | 100 |

404 Report Employed Adult Consumers with a Developmental Disability, FY12 Indicator 9b

MDCH, April 10, 2013

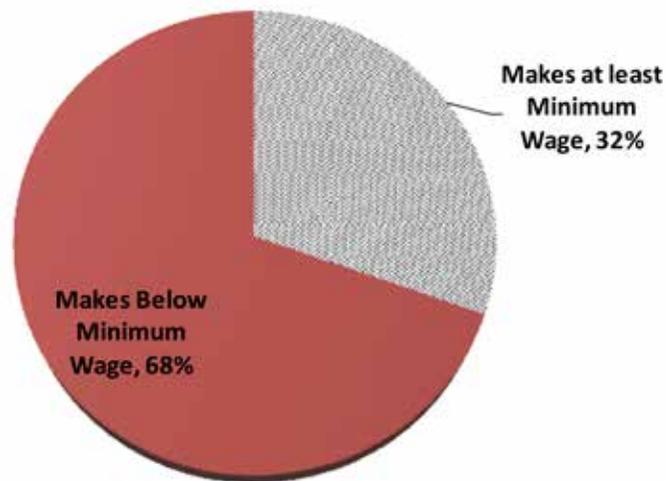
Deviated Wage Certificate Study - Michigan

As of June 30, 2013, provided by U.S. Department of Labor, Wage and Hour Division

- 97.7% of persons employed under 14 (c) certificates worked for Community Rehabilitation Organizations
- 83 certificates located in 39 Michigan counties
- 8,224 individuals served
- Median earnings: \$2.14/hour

Michigan: Employed Adults with
Developmental Disabilities/Mental Illness
Total % Reported Making Minimum Wage by CMHSPs
Indicator #9b & #9c
FY 2012

Data was reported on 8,131 individuals with Developmental Disabilities/Mental Illness

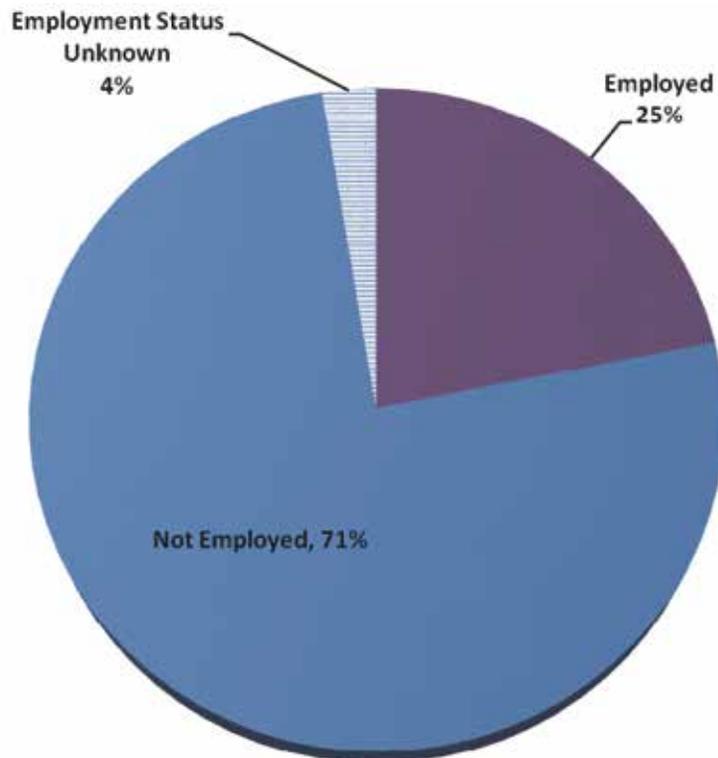


Note: Employed Adults include: full-time, part-time, sheltered workshop, self-employed, and enclaves/mobile crews. In FY 2012, 46 CMHSPs reported 8,131 employed adults with developmental disabilities/mental illness. Not applicable: 506 individuals. Not reported: 23 individuals.

Source: 404 Report, FY12 CMHSP Annual Employment Indicators Employed Adult Consumers with a Developmental Disability, FY 2012 Division of Quality Management and Planning – April 10, 2013 Michigan Department of Community Health

Michigan: Employment Status of Adults with Developmental Disabilities/Mental Illness Who Received Services from CMHSPs FY 2012

Data was reported on 34,982 Adults with Developmental Disabilities/Mental Illness



Employed: 8,810 (full-time, part-time, sheltered workshop, self-employed, enclave/mobile crew).

Not Employed: 24,779 (Unemployed, In Unpaid Work, Facility-based Activity Program, Not in the Competitive Labor Force)

Employment Status Unknown: 1,393

Source: 404 Report, CMHSP Demographic Summary Numbers & Percentages of Persons with Mental Illness & Developmental Disabilities Who Received Services from CMHSPs

Fiscal Year 2011

Division of Mental Health Quality Management and Planning – May 2012

Michigan Department of Community Health



Michigan Protection & Advocacy
Service, Inc.

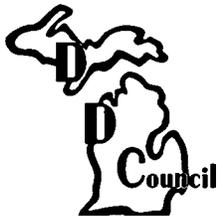
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