

**MANAGEMENT LABOR ADVISORY COMMITTEE
VOCATIONAL REHABILITATION SUBCOMMITTEE**

Thursday, May 26, 2004

Conference Room 260, Labor and Industries Building, Salem, OR

Subcommittee Members Present:

Sheri Sundstrom, Hoffman Construction Company, Portland, OR
Diane Janzen, NorPac Foods, Lake Oswego, OR (Present by phone conference)
Bob Shiprack, Oregon Building Trades Council, Tualatin, OR
John Kirkpatrick, IUPAT District Council #5, Portland, OR
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin, OR

Subcommittee Member Absent:

Ken Hector, CNF Service Company, Portland, OR

Staff Present:

Lou Savage, Director's Office
Myrna Curzon, Director's Office
John Shilts, Workers' Compensation Division
Jerry Managhan, Workers' Compensation Division
Nancy Bieber, Workers' Compensation Division
Mike Manley, Information Management Division
Travis Wall, Ombudsman for Injured Workers
Edith Hayden, Assistant Ombudsman for Injured Workers

REVIEW MINUTES FROM MAY 11 SUBCOMMITTEE MEETING

A motion was made by John Kirkpatrick to approve the minutes as submitted for the May 11, 2004 meeting of the Vocational Rehabilitation Subcommittee. The motion was seconded by Bob Shiprack. The minutes were approved with an aye vote from the committee members present: Sheri Sundstrom, Diane Janzen, Bob Shiprack, John Kirkpatrick, and Mike O'Rourke.

VOC REHAB PROPOSALS, Nancy Bieber, WCD

Nancy Bieber summarized the document submitted by WCD titled "Vocational Assistance Modifications." The document is a summary of the input received from the various stakeholders and is being submitting to the subcommittee with a request for a response from the stakeholders to verify that the summary is an accurate reflection of the comments received. The issues are divided into three categories: Those on which there is general agreement, those on which there is limited agreement and those which have not generally been endorsed by the majority of the stakeholders who submitted comments.

From the section where there is limited agreement, Nancy explained the second bullet on option 1. Under current rules the worker and the voc provider have a certain number of days to select a category of assistance, either training or direct employment services, but there is a third option that would give them an extra 45 days to make that decision. This would eliminate that 45 day option.

Options where there is not agreement

#2 From the original list of options there was one option that would have reduced the work disability benefit if the worker had returned to other modified work-- some suitable modified work, but not their regular work.. The thought behind that was that it would encourage the EAI to provide suitable modified work; or if vocational assistance was provided prior to claim closure and the worker became suitably employed as a result of that, it would reduce the insurer's burden in paying the work disability benefit. A second half of that was an idea that the insurer would not have to start paying time loss for a worker who is in a training plan until the work disability had been paid out. The purpose was so that the sooner the worker got in training the more the work disability benefit

could be used to offset the cost, thus providing an incentive to the insurer to get the worker in a training plan as soon as possible.

#3 The proposal was that there are currently up to 75 days to determine the category of assistance that the worker should be provided. In the last 5 years there have only been one or two a year that have qualified for the placement assistance. This proposal would make the assumption that the worker is eligible for training if they have a substantial handicap and therefore eliminate the 75 day waiting period. One of the reasons given for not supporting the proposal is that 75 days is used for a lot of other things besides determining the category of assistance including starting to look at goals and ways to achieve the goals. The stakeholders are actually doing the work of vocational assistance during that period of time and not just deciding the category of assistance.

To be eligible for vocational assistance under current law you have to not be able to return to any suitable work paying at least 80% of your wage at injury. For those who meet this eligibility requirement, there are only a very few people who can do just as well without training as they can with training. It would either be people whose wages were so high and have good skills that additional training is not going to significantly improve their wage earning capacity or whose preparation is so low that you are not going to appreciably improve their situation with 16 months of training. There are not very many people in either of those categories.

Committee Discussion

Committee members identified a desire to shorten the time that it takes from claim closure to when people actually enter vocational training. Under the concepts with limited agreement the top 3 bullets of option number one were identified as options that would shorten the time.

- Under current statute and rule once an insurer knows that a claim qualifies for closure the determination of eligibility should begin and be complete in 35 days. That is not typically happening. Often they are waiting until the claim closes to begin eligibility determination.
- Eliminating the 45 days as a stand alone category would reduce the time line to move a worker into a training plan.
- The third bullet would put a box on the form that the physician fills out to prompt the physician to identify at an earlier point that the worker would most likely not be able to return to his previous job. The rules provide that if the doctor says that there will be permanent restrictions then the worker is entitled to a vocational evaluation to determine eligibility for vocational assistance.

Sheri Sundstrom, Subcommittee chair requested that Jennifer Frank, Vocational Counselor, address the committee.

Jennifer Frank, Vocational Counselor

I have been in the business for 24 years. The most difficult files are those who are medically stationary and not receiving time loss. The pressure on me is to hurry and put them into plan. I think putting them into the system at 60 days after their injury is too soon but waiting until they are medically stationary is too late. Ideally it would happen some time when they are receiving time loss benefits. During that time we do plan development, testing, looking at possible goals. I agree with the trigger of when the physician says it is likely that there will be permanent restrictions to take an action at that point. I like to see that people have a plan of action. I discuss with them their options even if they are going to settle--work on plan development settlement or no. The fear factor of "I can't do all these things" immobilizes them a bit to the point where they don't really know what their options are. They are getting a lot of feedback from a lot of different people and they are confused. We give them resources, do some interest analysis, really pushing them to think about it.

Committee Discussion

A hypothetical example of when a worker has a back injury and it takes time to evaluate whether or not it is a major contributing cause and they are not authorizing it as a workers comp claim was mentioned. The proposals being discussed by the subcommittee will not address those situations.

Sheri Sundstrom asked that the Injured Worker Ombudsman address the committee.

Travis Wall-Injured Worker Ombudsman

We track a number of inquiries about issues. An inquiry represents one or more contacts we have with a worker about a specific issue. From 1999 to the present we had 2417 vocational assistance inquiries. Over that period of time from 1999 to 2003 we have seen a 13% increase in those complaints. If you take that number into this year we have seen a 20% increase. Based on our experience it is fair to say that a lot of workers are having problems because of the time period when they are determined to be eligible and when the vocational assistance actually begins. The Workers' Comp Board refers to us any worker who is contemplating a CDA who is not represented by an attorney. An ongoing issue is that workers do not understand what they have entered into when they sign a CDA. They do not understand that they have negotiated away certain rights as well as vocational assistance rights. If they have entered into a CDA as well as a DCS they may have negotiated away their rights to medical benefits for their injury without knowing.

I have concerns like Bob that workers get to a point that we call a "starve out" point.

The more that you can do to shorten the period of time when the worker is determined to be medically stationary and when the training begins the better. The option you are talking about now certainly would be preferable to what we have now. I would be concerned about language about what constitutes anticipation of permanent restrictions.

That would have to be crafted carefully to avoid the situation where the worker might not have the means to support themselves between the time when they are determined to be eligible and when voc services actually begin.

Regarding the second item on concepts with some limited agreement. What had been suggested previously is that workers meeting with a voc counselor and/or our office. That is an idea that we talked with the division staff about and we remain very supportive of that idea. We believe that the more information workers have about CDAs and DCSs the better.

Committee Discussion

Committee members discussed with Travis Wall the option of requiring a worker to receive guidance before entering into a CDA. The Injured Worker Ombudsman Office currently talks to about 300 workers each year who are contemplating a CDA. The total number of workers who enter into a CDA annually is about 3,000. Under this proposal workers would either talk to someone at the Injured Worker Ombudsman's Office or to a voc counselor

The committee discussed the proposal to require an eligibility evaluation following 60 days of time loss or prior to claim closure. There was general agreement that 60 days is too soon; and this proposal is no longer being considered.

Sheri Sundstrom asked for further input regarding bullet four on item one under concepts with limited agreement.

Shirley Butcher, SAFECO: The idea was that when the worker has already been referred into the system, a Voc counselor, the worker, his attorney, and maybe the insurer get together and review why it is not moving forward. That would be done at some point in time that would cover 90-95% of the cases. That time period is not yet identified.

Bob Malone, Liberty NW: There could be a mechanism to have a meeting at 60-90 days and discuss eliminating obstacles and putting something in writing specifically about what is holding it up and what is going to be done to move it forward. Medical issues don't end just because a claim closes.

Committee Discussion:

Top 10 reasons that cause a delay

- Labor market is an issue when the goal is to get to 100% of the wage at injury
- Worker's non commitment
- Worker wanting to do specific job but they cannot meet the minimum requirement to enter that field

- Difficult to give them their dream. There is danger with a voc counselor presenting goals then the worker says the counselor made me do it. The voc counselor needs to give time frames for the worker to make decisions.
- Worker having difficulty with the fact that they can't return to their regular job.
- Worker not having a goal.

The committee once again reviewed some of the items on the document prepared by WCD titled "Vocational Assistance Modifications."

Preferred Worker Program--There was some stakeholder input requesting that the committee place more importance on expanding the preferred worker program to the employer so that the employer can explore more opportunities. One idea presented was to add an avenue for some skills testing into the preferred worker program. Another option would be to focus on training that they could get while they are off the job so that the worker could get back to work with their EAI. Nancy Bieber mentioned that under the current PWP there is a small stipend for tuition. The committee may want to consider expanding that to a little more.

Reducing time for an eligible worker to begin an authorized training plan

- Utilize current time frames more effectively--currently there is no systematic review or enforcement when there are problems in compliance with the existing time frames. WCD is working on an audit process and looking at whether or not eligibility evaluations are done within 35 days of claim closure.
- Committee members were in agreement that the 45 day option should be eliminated.
- Having a check box on a form for the doctor would serve to give the worker a real concrete message that there is a good chance that the worker will not be able to return to their job at injury. There was some concern expressed by stakeholders that having the doctor say early on that the worker is not going to get better may adversely affect the psychological state of the worker. Respondents felt that early intervention is important and that the physician would only need to indicate that the worker is unlikely to ever be able to return to regular work. A suggestion was made to discuss adding a check box to the physical capacity form with the Medical Advisory Committee.
- Committee members suggested that a component be added that a meeting of the parties with a consultant from WCD would be held after x number of days following determination of eligibility to determine the cause of delay if an authorized training plan has not begun.

Sheri Sundstrom summarized the committee discussion. All of the limited agreement concepts will be edited and moved up with the ones with general agreement. These will be presented to the full committee for discussion at the meeting today.

John Kirkpatrick asked that discussion remain open for additional concepts to be discussed at future meetings.

Next meeting: June 17 at 9:00 am Local 290 in Tualatin Mike O'Rourke will arrange for the room.

The meeting adjourned at 11:55 a.m.