



**May 5, 2004**

**TO: MLAC Vocational Subcommittee**

**FROM: Shirley L. Butcher MA, CDMS, CPDM  
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**RE: Thoughts & Comments on Models & Options for Vocational Assistance**

**Following are the thoughts and comments regarding the provision of vocational assistance to injured workers in Oregon. Included are comments on the options, models and cost estimates presented by WCD, as well as comments on the process in general and some recommendations for change.**

**The greatest hurdle in drafting this document was everything came back to inadequate or incomplete financial data and the analysis given didn't appear to take into consideration recent changes (basically since 2000) in such areas as PPD and fee schedules.**

**As the Subcommittee continues its work and the options are honed down a more in-depth review/discussion can be made.**

**In the meantime, the approach taken has been to try to identify a positive direction and be open to change while recognizing the current parameters and realistically what is politically reasonable (anything is possible).**

**Current statute states one purpose of worker' comp & the objectives of vocational assistance to be:**

**ORS 656.268 (1) One purpose of this chapter is to restore the injured worker as soon as possible and as near as possible to a condition of self-support and maintenance as an able-bodied worker.**

**ORS 656.340 (5) the objectives of vocational assistance are to return the worker to employment which is as close as possible to the worker's regular employment at a wage as close as possible to the weekly wage currently being paid for employment which was the worker's regular employment even though the wage available following employment may be less than the wage prescribed by subsection (6) of this section (80% level).**

**(14)(a) Determination of eligibility for vocational assistance does not entitle all workers to the same type or extent of assistance.**

**(14)(b) Training shall not be provided to an eligible worker solely because the worker cannot obtain employment, otherwise suitable, that will produce the wage prescribed in subsection (6) of this section unless such training will enable the worker to find employment which will produce a wage significantly closer to that prescribed in subsection (6) of this section.**

**(14)(c) Nothing in this section shall be interpreted to expand the availability of training under this section.**

**Basic considerations for the provision of vocational assistance should include:**

- **Be equitable for all parties**
- **Keep emphasis and incentive on return-to-work with employer-at-injury as this is in the best interest of everyone,**
- **Do nothing to create disincentives regarding return-to-work with employer-at-injury**
- **Balance benefits against the cost**
- **Look beyond the immediate at the cost (assessment & premium) as it affects all the parties**

**Decisions that need to be made:**

1. **Recognizing not all carriers/self-insured employers are as knowledgeable nor conscientious...does the system need to be changed or should we address those not complying?**

**WCD alludes to a problem with ‘hundreds’ of eligibility determinations... timeliness not being met and determinations not being done at all. Yet they also indicate that it’s likely only a few workers would have been eligible anyway. Is this a program problem, an industry problem or a more specific problem?**

**Changes should not be made if the programs are working, the industry in general is doing the job and the answer is in addressing the few abusing the system.**

**It’s a fallacy that somehow an insurer/self-insured employer benefits from delaying vocational services. If a worker is eligible it is in a carrier’s best interest to get the worker into a program to minimize time loss or to move forward with settlement. Delaying merely increases the cost.**

**In other words...does the system need changing or a few in the system?**

2. **Cost vs. service level...how much is tolerable? Need to choose one.**
  - a. **increase costs and services provided**
  - b. **remain about the same cost-wise but shift who receives services and at what level**
  - c. **remain essentially same cost and service-wise but streamline system**
  - d. **do nothing**
3. **If increase costs...premiums vs assessment...where should impact be?**
  - a. **WBF**
  - b. **Insurer/employer/self-insured employer**
  - c. **Worker**
  - d. **WCD...additional staff needed?**
4. **Reality of increased costs to employers without convincing argument of return on money...will it fly legislatively? At what level is there willingness to pursue legislative changes?**
  - a. **minor changes...such as allowing EAIP funds for skill building**
  - b. **major...eliminate Substantial Handicap or change terms for CDA’s**

5. Since workers' comp is not a social service program...how much 'greater good' cost shifting is okay?

#### CONSIDERATIONS FOR ANY PROGRAM

Worker needs to be able to benefit from services when provided...

- real or projected restrictions known
- must be able to determine if able to return-to-work regular or modified with the employer-at-injury

Major issues delaying vocational assistance:

- doctor giving real or projected restrictions
- worker deciding on a goal...may be due to any of several causes

Basic to any changes should be the following considerations.

- Any changes should enhance the employer-employee work relationship.
- Return-to-work with the employer-at-injury needs to be encouraged, not provide 'rewards' for not returning-to-work at the employer-at-injury.
- The new PPD structure may impact this, so vocational assistance should not become another incentive.
- If the Work Disability Award is based on return-to-work regular or modified with employer-at-injury...triggering vocational assistance too early could result in increased PPD. [Before EAI can be ruled out.]
- Statistics show that those participating in EAIP show higher percentage rates of return-to-work down the line than those not participating [*Oregon Workers' Compensation Return-to-Work Programs. 2003*, DCBS December 2003 by Mike Maier]. This could account for some of the decrease in vocational cases as well a PWP usage (general lack of knowledge that both programs can be used for the same worker).

## **SPECIFIC MODEL & OPTIONS COMMENTS**

Rather than try to address each model, each option and comment on the examples individually, an attempt has been made to extract the main concepts for comment. Hopefully this will encourage choosing the best ideas rather than eliminating them because of being part of a model or option that was not considered acceptable, thus creating a mix and match list.

Discussion of issues relating to cost follows in the next section.

## **COMPONENTS FROM MODELS 1, 2, & 3**

1. **EAIP for skill building**
  - No issues with the concept
  - Note that the increased usage costs to WBF have not been included in the cost estimates
2. **PWP to increase job search skills**
  - No problem with the concept
  - Believe costs underestimated
  - Unclear where number of potential workers to be served comes from
  - WCD should NOT get into the business of providing direct services to workers
3. **Allow employer-at-injury to activate PWP one time**
  - Support this
  - Again no cost estimate included
4. **All workers eligible for vocational assistance would be ATP eligible**
  - Would not support.
  - See cost section discussing ATP costs
  - Not allowed under current statute ORS 656.340(14)(c).
5. **Eliminate substantial handicap [SH](80% wage threshold). Make all workers unable to return-to-work at the employer-at-injury regular or modified eligible for vocational assistance. (Set criteria for DEP or ATP?)**
  - Would not support eliminating substantial handicap and returning to pre-7/1/88 days. While fewer injured workers with accepted disabling claims now so the numbers wouldn't be as high, this would substantially increase the costs to the system
  - Create disincentive to return-to-work employer-at-injury
6. **Eliminate SH, extending DEP to those currently not eligible due to SH**
  - Would not support
  - Cost factors
  - Not clear how this would work. Appears still need to determine some level to differentiate between DEP and ATP.

## TIMELINE REDUCTION OPTIONS

1. **Vocational eligibility & referral prior to claims closure**  
Delaying claim closure until EE/referral done...Consider possibilities
  - increased over-payment
  - delay PPD payment
  - increase amt of TTD paid
  
2. **All vocational services prior to claim closure (using Work Disability Award as offset?)**
  - Same as above
  - Reality of making worker contribute to vocational costs is not likely.
  
3. **Determine eligibility at 60 days time loss. If too early, revisit at med stat.**
  - Return to 1/1/86 standard.
  - While early identification of workers needing assistance is good, setting an arbitrary point appears to be more of a disincentive...set expectation that if worker does not return-to-work with employer-at-injury then they can get vocational assistance.
  - Current trigger points allow for more timely and appropriate determinations.
  
4. **Provide for self-employment options.**
  - Self employment was never a good option in the past and was eliminated from assistance available some years ago.
  - With the success rate of new businesses being what it is, not a good option to promote.
  - WC is not appropriate forum to promote/finance new business in light of the failure rate. Potential for success does not appear compatible with the objective of returning workers to self-support and maintenance in the long term.
  - Utilizing money from a CDA provides the worker with an avenue to pursue self-employment without WC involvement.

## CONTEMPLATING COSTS

Costs as presented on page 2 of the Addendum document presented to the MLAC Vocational Subcommittee on 4/7/04 appears to be underestimated and has several significant costs omitted.

Somewhere between the 3/3/04 Options for return-to-work Assistance presented to the MLAC Vocational Subcommittee and the 4/7/04 Principles and Goals presented, avoiding increases in claim costs got lost.

### CONSIDERATIONS NOT INCLUDED:

- Numbers (usable) available are from 2000 and do not include the impact of significant changes since then.
- Does not include impact of 7/30/01 increase in max. TTD to include post-1/1/02 injuries at 133% SAWW level.
- Does not include increase in fee schedules...esp. 4/1/04 increase of 10% ATP direct worker purchases [DWPs] (such items as tuition, books, fees, equipment, tools, mileage, etc.).
- Does not include impact of 6/1/00 change in exceptional disability to include exceptional loss of earning capacity and availability of 21 month programs (fee schedule for these set 30% higher).
- Not considering full impact of Work Disability Award in 2005
- Not considering impact on the employer-at-injury & return-to-work benefits...actually creating disincentives
- Not including all increases in insurer/self-insurer/employer/worker costs (premium & assessment)
- Likely inaccurately indicating no impact on WBF or assessment rates.
- Not including potential impact on CDA numbers

### COST DISCUSSION

Under OAR 436-120-0720, the vocational fee schedule for DEP is \$4896...which is intended to cover approximately 90% of cases. Experience indicates that most cases are at or near the amount allowed under all categories of services.

There is no indication of where the \$2000 amount used by WCD came from. Based on the fee schedule set by WCD for vocational assistance it appears to be too low an estimate of real cost to the system.

Based on the current fee schedule (\$4896) and using just straight percentages (other references such as a median number, etc. are not available) a more realistic range of numbers to use would be:

50% = \$2448

75% = \$3672

100% = \$4896

Based on the number of potential new vocational assistance cases in the same document (again, there is no indication where this number comes from although likely the # of no SH cases for an unknown year) the costs per year based on the 191 new cases would be:

50% = \$467,568

75% = \$701,352

100% = \$935,136

Each additional ATP, based on the 2000 average would be approximately \$31,000 (TTD included????) [Vocational Assistance in the Oregon Workers' Compensation System, 2000, DCBA, January 2002 by Mike Maier]

Based on year 2000 numbers found in the WCD data there would be 222 additional cases per year (number found ineligible due to no substantial handicap). [from the report cited above and Disputes in the Vocational Assistance Program, Oregon Workers' Compensation System, 2002, DCBS, May 2003 by Gary Helmer]

1704 ineligible workers; 13% due to no SH = 221.5

If all eligible workers were automatically ATP eligible this would cost \$6,882,000 (paid by insurers/employers) based on \$31,000/ATP case.

If all were found DEP eligible under another scenario:

50% = \$543,456

75% = \$815,184

100% = \$1,086,912

The current cost of an ATP is considerably higher. The following 3 charts give 3 different scenarios for costs based on the current fee schedule (effective 4/1/04).

- Chart 1 gives a comparison of maximum costs for TTD levels paid at 100% SAWW and at 133% of SAWW
- Chart 2 gives comparison of costs for ATP costing 50% & 75% of the fee schedule for a worker earning \$10/hr., working a 40 hr. week
- Chart 3 gives the same comparison for a worker earning \$15/hr., working a 40 hr. week.

**CHART 1  
POTENTIAL COST OF ATP  
based on current fee schedule & max. TTD rates**

	Pre-1/1/02 @ 100% SAWW max. \$665.10/wk			Post-1/1/02 @ 133% SAWW max. \$884.58/wk		
	12-months /52 wks	16 months /69 wks	21 months/91 wks	12 months/52 wks	16 months/69 wks	21 months/91 wks
<b>vendors</b>	<b>12,240</b>	<b>12,240</b>	<b>12,240</b>	<b>12,240</b>	<b>12,240</b>	<b>12,240</b>
<b>DWP's</b>	<b>16,157</b>	<b>16,157</b>		<b>16,157</b>	<b>16,157</b>	
<b>DWP's ExceptionalDisability*</b>			<b>21,004</b>			<b>21,004</b>
<b>TTD</b>	<b>34,585</b>	<b>45,892</b>	<b>60,524</b>	<b>45,998</b>	<b>61,036</b>	<b>80,497</b>
<b>TOTAL</b>	<b>62,982</b>	<b>74,289</b>	<b>93,768</b>	<b>74,395</b>	<b>89,433</b>	<b>113,741</b>

\* exceptional disability also includes an exceptional loss of earning capacity as defined in OAR 436-120- 0440(2)

Without TTD costs for vendors plus DWP's would be \$28,397 without exceptional disability and \$33,244 with an exceptional disability.

These are maximum numbers (although vendor & DWP's can exceed these with justification) and are anticipated to cover 90% of cases.

**CHART 2**  
**POTENTIAL COST OF ATP**  
 based on current fee schedule & a \$10/hr, 40 hr/wk job  
 AWW = \$400.00/wk  
 TTD = \$266.68/wk

	Costs based on 50% of fee schedule			Costs based on 75% of fee schedule		
	12-months /52 wks	16 months /69 wks	21 months/91 wks	12 months/52 wks	16 months/69 wks	21 months/91 wks
<b>vendors</b>	<b>6,120</b>	<b>6,120</b>	<b>6,120</b>	<b>9,180</b>	<b>9,180</b>	<b>9,180</b>
<b>DWP's</b>	<b>8079</b>	<b>8079</b>		<b>12,118</b>	<b>12,118</b>	
<b>DWP's ExceptionalDisability*</b>			<b>10,502</b>			<b>15,753</b>
<b>TTD</b>	<b>13,867</b>	<b>18,401</b>	<b>24,268</b>	<b>13,867</b>	<b>18,401</b>	<b>24,268</b>
<b>TOTAL</b>	<b>28,066</b>	<b>32,600</b>	<b>40,890</b>	<b>35,165</b>	<b>39,699</b>	<b>49,201</b>

\* exceptional disability also includes an exceptional loss of earning capacity as defined in OAR 436-120- 0440(2)

Without TTD costs for vendors plus DWP's at 50 % of the fee schedule would be \$14,199 without exceptional disability and \$16,622 with an exceptional disability.

Without TTD costs for vendors plus DWP's at 75 % of the fee schedule would be \$21,298 without exceptional disability and \$24,933 with an exceptional disability.

**CHART 3**  
**POTENTIAL COST OF ATP**  
 based on current fee schedule & a \$15/hr, 40 hr/wk job  
 AWW = \$ 600.00  
 TTD = \$400.02

	Costs based on 50% of fee schedule			Costs based on 75% of fee schedule		
	12-months /52 wks	16 months /69 wks	21 months/91 wks	12 months/52 wks	16 months/69 wks	21 months/91 wks
<b>vendors</b>	<b>6,120</b>	<b>6,120</b>	<b>6,120</b>	<b>9,180</b>	<b>9,180</b>	<b>9,180</b>
<b>DWP's</b>	<b>8,079</b>	<b>8,079</b>		<b>12,118</b>	<b>12,118</b>	
<b>DWP's ExceptionalDisability*</b>			<b>10,502</b>			<b>15,753</b>
<b>TTD</b>	<b>20,801</b>	<b>27,601</b>	<b>36,402</b>	<b>20,801</b>	<b>27,601</b>	<b>36,402</b>
<b>TOTAL</b>	<b>35,000</b>	<b>41,800</b>	<b>46,904</b>	<b>42,099</b>	<b>48,899</b>	<b>61,335</b>

\* exceptional disability also includes an exceptional loss of earning capacity as defined in OAR 436-120- 0440(2)

Without TTD costs for vendors plus DWP's at 50 % of the fee schedule would be \$14,199 without exceptional disability and \$16,622 with an exceptional disability.

Without TTD costs for vendors plus DWP's at 75 % of the fee schedule would be \$21,298 without exceptional disability and \$24,933 with an exceptional disability.

**We were unable to get the data necessary to calculate possible WBF numbers or possible assessment rate needs. But it's fair to say that if you increase the usage at the DEP cost levels by the numbers given there has to be an impact. To say lower levels of usage in other parts of the program over the last few years isn't a convincing argument...especially without numbers.**

**Since 1999 there has been an annual review of the assessment rate based on 12-months of program needs, so it must be assumed the declining numbers over the last few years has been considered in this review already.**

#### **WHERE DOES THIS LEAVE US?**

**Before making program changes there needs to be some agreement that the projected costs are realistic. Some increased costs to the system may well be justified and beneficial. In the COST vs. BENEFIT debate the benefit piece is easier to identify...but whatever the benefits the cost must be affordable.**

**Until more accurate numbers are presented it's impossible to say if the benefits are worth the cost. Or, even if the system can afford it.**

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**However, even without this information, we would make the following program suggestions, pending the numbers.**

## **PROGRAM COMPONENTS**

**So what might we suggest?**

- I. Use EAIP for Skill Building**
  - specific to a job (currently okay)
  - specific to a general group of jobs
  - specific to a goal...GED, PC skills, etc. planned knowing the skills will be necessary because the worker will likely need additional training
  
- II. Trigger points for vocational assistance...keep current**
  - **Current**
    - Notice of need...attending physician or other report
    - med stat
    - request from worker/attorney
    - granting of PPD
  
  - Using ## of days of consecutive time loss...would not favor because:
    - potential increase in PPD
    - increased cost from second elig eval
    - based on fallacy that insurer has reason to delay EE/referral/services
  
- III. Eligibility Evaluation [EE]**
  - **Current**
    - employer-at-injury regular
    - employer-at-injury other suitable
    - Substantial handicap
    - Decision is maybe DEP or ATP or Voc Eval
  
  - **Recommend**
    - employer-at-injury regular
    - employer-at-injury other suitable
    - SH
    - DEP or ATP
    - Eliminate Vocational Evaluation [VE] as stand alone category of service

Currently VE is listed as a stand alone category of service under OAR 436-120-0410. It is also listed as an activity under DEP and ATP [OAR 436-120-0430 & 0440].

In reality, in most cases once the SH is determined (which also includes components of VE) the DEP/ATP decision is made. Some of the other activities now under VE are better directed to a specific goal or job (testing, Work Evaluation, etc.). Some are appropriate under EE, DEP or ATP (labor market surveys, job analysis, etc.). These activities should occur as needed not as a category.

This would potentially eliminate the additional 45 day period allotted for this category.

Should the specific types of job evaluations be needed a specific request can be made with the reason and anticipated time frame to accomplish on a case-by-case basis since they are used only infrequently.

#### IV. DEP/ATP

With the advent of the SH criteria (80% wage issue) DEP has nearly disappeared. Low wage earners aren't eligible and generally anyone found eligible is ATP (hard to say training wouldn't result in a wage closer to the WAI).

- Put more emphasis on DEP.
- Would not support all eligible workers getting ATP
- Would not support eliminating SH
- Would consider increasing DEP availability...but need numbers.

We would be willing to entertain other ideas and options as they come up.

It's really the old adage: "If it's not broken, don't fix it."

But a few tweaks here and there wouldn't hurt!