

SAIF Corporation comments on proposals before the MLAC Subcommittee on vocational assistance

We applaud the work of the subcommittee and the Workers Compensation Division in attempting to find better ways to return injured workers to productive employment. We share the committee's interest in early intervention and we will provide more information on SAIF's activities at the next subcommittee meeting.

We have reviewed the proposals before the subcommittee and we believe there are a number of excellent ideas that are worthy of further consideration. However, we are concerned that WCD has seriously underestimated the system and financial impact of the major recommendations.

Early Vocational Assistance

Providing early vocational assistance provides benefits to both the injured worker and the employer in many ways. The problem lies in determining the right time to provide services. We advocate for appropriate placement of the injured worker with the employer at injury, whenever possible. This allows the worker to retain employment, seniority, benefits, etc. Changes in vocational assistance eligibility should focus on preserving this existing relationship.

That being said, many times the injury is significant enough that the employer simply cannot accommodate a worker with a significant handicap to employment. The employer is usually at the mercy of the attending physician, waiting to see if they can accommodate a permanent limitation. Physicians are reluctant to speculate about a worker's ultimate physical capacities and the employer, insurer and the worker play a waiting game before providing services when it appears the employer may be able to develop work within the worker's physical capacities.

Arbitrary referral deadlines are ineffective because too many resources are directed to workers who do not need assistance. The truly deserving worker may not get the necessary attention, because all workers are essentially treated equally.

Eligibility should continue to hinge on permanent partial disability rather than release to regular work. There are many technical reasons why a worker may not have a release for regular work, but not need vocational assistance. For example, workers who never return to their physician for a release are considered fully recovered and do not need vocational assistance.

Model 1

- 1. Provides job search assistance to Preferred Workers who do not receive vocational assistance, paid by WBF.**

This would be a good use of the Worker Benefit Fund monies. It should exclude workers who do not receive vocational assistance because they are not authorized to work in the US, incarcerated, or other established reasons for ineligibility due to worker non-cooperation. Workers who are not employed at the time of a CDA might best benefit from this proposal.

- 2. Makes all workers eligible for vocational assistance eligible for training, eliminating 75 day vocational evaluation status and selection of category status, speeding up plan development.**

This proposal makes the assumption that the 75 day vocational evaluation is only used to determine the level of service. The vocational evaluation phase is actually used for more than that purpose. This time is also used to do some preliminary vocational exploration and research on goal selection. This would also have to be done with workers even if they were immediately determined eligible for training. The two principal causes for delay in the provision of vocational assistance are:

- Permanent physical capacities — physicians are reluctant to commit to physical capacity information until the worker is close to being medically stationary

- Realistic goal selection by the injured worker - selecting a change in occupation can be extremely difficult, especially when faced with wages that are not equal to or better than the wage at time of injury.

Changing the rules to only provide training services does nothing to overcome these two barriers to the provision of vocational assistance.

Model 2

- 1. Eliminates the substantial handicap requirement for vocational assistance. All workers who cannot return to regular work or other suitable employment with the EAI because of the limitations caused by the accepted conditions are eligible for vocational assistance.**

This proposal would reinstate one of the eligibility requirements in effect before 1987 when the high cost of vocational assistance was a factor in the high cost / low benefit condition that led to Mahonia Hall. According to DCBS data there were 8,506 workers eligible in 1987, compared to 730 in 2001.

The current substantial handicap standard means that workers are not eligible if they have the physical capacity, knowledge, skills or abilities to return to a job that pays up to 80% of their pre-injury wage. This serves at least two purposes. First, it recognizes the trade-off between the high cost of a vocational program and the benefit the worker might receive. Secondly, it recognizes that many workers are qualified for higher paid jobs than the job at which they are injured. If a worker cannot return to a job that pays \$40,000 per year, but the worker could return to another job that pays \$50,000 per year, does the worker need vocational assistance?

This model, combined with the changes in PPD rating that become effective in 2005 could result in a significant increase in claim costs. The focus on the magic regular work release will put a great deal of pressure on the attending physician. Any limitation, however slight, will qualify the worker who has not returned to regular work for a higher PPD rating and eventual vocational eligibility. Many of these workers will eventually return to their regular work anyway, despite vocational intervention.

We suggest that the focus should be on the goal of returning a worker to suitable employment. Often this will require vocational assistance, but vocational assistance should not be considered as an end in itself.

- 2. Most workers who do not currently receive assistance would be eligible for job placement assistance only.**

We agree with providing a worker with job placement assistance if the worker wants it. This should not be provided by the insurer, but should be provided directly through the Employment Department and paid by the WBF. By providing it through the Employment Department, workers will always have a connection to ongoing resources to assist with return to work, even when faced with employment layoffs or cessations not tied to a WC claim.

Model 3

- 1. Eliminates substantial handicap to employment, as provided in Model 2, extending DEP (usually) services to workers who currently are ineligible because they do not have a substantial handicap to employment.**

See comments above.

- 2. Provides return-to-work assistance to other Preferred Workers not receiving vocational assistance, as provided in Model 1.**

We agree, with certain conditions described under Model 1.

EAIP Options

1. **Allow use of the program for skill building for workers who are unlikely to be able to return to their regular work.**

We agree with this proposal.

2. **Allow brief periods of transitional work to be strung together up to the maximum allowable 90 days.**

The relationship with the employer at injury should be preserved at all cost. Why limit the time period to 90 days? Would it be possible to dovetail EAIP and PWP better to preserve the worker's employment with the employer at injury? Can we expand the job site modification monies available to the employer at injury so that vocational assistance is unnecessary? The wage at time of injury is the goal for vocational assistance and yet the worker seldom reaches that wage after training. It would be preferable to incentivize the EAI to return the worker to productive employment through use of EAIP/PWP benefits.

If we have continued medical information showing a progressive increase of physical capacities to a level the employer indicates they can accommodate, we should be able to utilize EAIP/PWP, rather than vocational assistance. The focus should be on retaining the employee.

PWP Options

1. **Allow employer-at-injury or aggravation to activate PWP one time without prejudicing the worker's entitlement to future program benefits.**

We agree with this concept.

2. **Provide assistance in finding a job for Preferred Workers not receiving vocational assistance.**

We agree with this concept.

CDA options

1. **Require that workers meet with a vocational counselor (or Ombudsman, or both) prior to signing a claims disposition agreement. This would be to allow a worker an opportunity to understand what benefits might be available, and to help the worker decide how the CDA proceeds can be used to assist the worker in return-to-work.**

This has many practical problems. Who picks the counselor? Who pays the bill? How does this apply to represented workers? Etc.

Vocational Assistance - timeline reduction options

Chart 2 — It would still be necessary to engage in vocational exploration in order to determine physically and economically suitable vocational goals. This process cannot be shortened by the change in a timeframe. It is more realistic to ensure vocational assistance eligibility begins when a worker has permanent physical capacities and the employer at injury cannot accommodate them. Unfortunately, the physicians generally delay this recommendation until the worker is medically stationary. I suspect that workers could access vocational assistance services earlier if physicians would agree on fairly standard physical capacities for certain types of injuries or if Physical Capacity Evaluators would be willing to standardize physical capacities for certain types of injuries. This would allow the employer to determine if they have anything physically suitable for the worker and if no work is available, proceed with vocational assistance based on a PCE.

Chart 3 — This chart also assumes that vocational exploration and approval of a suitable RTW job is something that can be accomplished in 60 days. It cannot, unless the worker is extremely motivated and is realistic in vocational goal selection.

Chart 4 — If the worker is unable to decide on goal selection and the plan development stretches on for months, the insurer could not close the claim and the worker would have no incentive to expedite the process.

Chart 5 — There would be no incentive for the worker to actively participate in the process, because benefits would continue until closure. The worker could be held accountable for goal selection and plan development to be completed within 60 days.

Chart 6 — Tying eligibility to a standard number of days will not work without cooperation of the worker and the physician. SAIF would proceed with providing vocational assistance before closure if we had permanent physical capacities and knowledge the employer would not be able to accommodate the worker in a permanent and suitable position.

Vocational assistance, other options

- 1. Eliminate stay of benefits on appeal of order granting benefits. If the insurer ultimately prevails, all vocational costs will be reimbursed from the Worker Benefit Fund.**

We agree.

- 2. Modify substantial handicap criteria. For example, the inability to recapture 90-100% of a wage below a living wage or the poverty line might constitute a substantial handicap to employment.**

This needs further research and a more concrete proposal.

- 3. Define the Work Disability Benefit as a benefit that can be used to offset living costs for workers receiving vocational assistance. Insurer would be required to provide TTD to workers in training once the Work Disability Benefit is exhausted. This would moderate the costs of providing vocational assistance while significantly incentivizing insurers to facilitate plan development and implementation as quickly as possible.**

This appears to be a reduction in benefits to the worker.

- 4. Self-employment plan: Allow use of vocational assistance to develop a self-employment plan which could be partially financed by settlement of unused benefits.**

This can be done today by a CDA for vocational assistance.

Other considerations

If vocational assistance eligibility is expanded, physical capacities should be determined through a more objective and measurable method than the attending physician's statement based on the worker's perception of their physical abilities. This is only one component used to evaluate a worker's physical capacities in a testing environment. Workers who appear to be unable to return to regular or other suitable work should have:

- A physical capacity evaluation to objectively assess their ability to work
- A strong likelihood of permanent disability based on the type of injury or surgery performed

Cost estimates

There are at least two concerns about the cost estimate summary provided by WCD.

First, the estimates do not include all costs. Although the estimates include insurer costs for additional eligibility determinations, etc., they fail to include any costs for the services that an eligible worker would receive. The cost of a 16 month training plan for one worker earning the Oregon Average Weekly Wage is at least \$50,000.

Second, SAIF has conducted its own analysis of the number of workers affected by this proposal. Our computer records show that 513 additional workers would become eligible over a two year period. We made some manual adjustments and believe that a defensible conservative estimate is at least 200 cases per year. This would translate to a system impact of 500-600 additional cases per year rather than the 191 estimated by WCD.