

Litigation Procedures at DLI

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- Overview of the types of customer assistance available at DLI
- Overview of the administrative conference process
- Common issues and disputes

General assistance

Customer assistance hotline



- 651-284-5032 or 800-342-5354
- Staff members are available 8 a.m. to 4:30 p.m., Monday through Friday.
- Phones are staffed by dispute prevention resolution specialists, also referred to as mediators/arbitrators, who make up the Alternative Dispute Resolution (ADR) unit.



- **DLI does not have attorneys on staff to assist injured workers.**
 - The employee must contact a private attorney for legal advice.
- **Data privacy laws** prevent DLI staff members from revealing any information to a nonparty to a claim, without the expressed or written permission of the involved employee.
 - This includes **spouses, girlfriends, fiancés, parents, future employers** and **rehabilitation providers**. (See Minnesota Statutes § 13.43, 176.138, 176.231 and 176.39 for more information.)



- **Walk-ins are welcomed.** Anyone with a workers' compensation question or concern may visit the DLI offices in St. Paul or Duluth from 8 a.m. to 4:30 p.m.
- Services offered at the St. Paul and Duluth offices include administrative conferences, hearings or trials before a workers' compensation judge. Duluth's telephone numbers are **218-733-7810 and 800-342-5354.**
- **Email address: dli.workcomp@state.mn.us**
- **Letters can be sent to the department at:**
Department of Labor and Industry
Workers' Compensation Division
443 Lafayette Road N., St. Paul, MN 55155

Office of Workers' Compensation Ombudsman

- The current ombudsman is Pam Carlson.
- The Office of Workers' Compensation Ombudsman assists injured workers and small businesses in navigating the workers' compensation system to resolve problems encountered in the system.
- For assistance, contact the ombudsman at 651-284-5478, 800-342-5354 or dli.ombudsman@state.mn.us.



Interpreting services for non-English-speaking individuals



- ADR mediator Chris Raymond is available to assist Spanish-speaking individuals. He can be reached at 651-284-5485.
- **Customer assistance hotline:** The mediators can request someone that speaks the caller's language through the Language Line.

Early dispute-resolution



- ADR attempts to resolve disputes before they become litigated issues.
- DLI's early dispute-resolution services are provided by the mediators/arbitrators, who also staff the customer assistance line.
- The mediators provide information about the workers' compensation system, facilitate communication between the parties and will intervene to resolve situations before they become larger disputes.

Dispute certification process for medical and rehabilitation issues

- DLI must certify a dispute exists before an employee's attorney can charge a fee, on most litigated medical or rehabilitation issues.
- DLI receives a request for certification of a dispute from a stakeholder.
- A mediator contacts the opposing party to determine whether a dispute exists and will attempt to resolve the dispute. A Dispute Certification Notice letter is sent to the parties advising them whether the dispute has been certified.
- If the dispute cannot be resolved and it is certified as a dispute, it will then be scheduled for an administrative conference.

Who may file a request for assistance?

- **Employee** – Disputes about medical treatment or rehabilitation benefits
- **Employer** – Rarely seen
- **Insurer** – Disputes about medical treatment or rehabilitation benefits
- **Rehabilitation provider** – Direction of plan (Minnesota Rules 5220.0950), plan amendments or nonpayment of bills
- **Health care provider** – Disputes about payment or about the amount

Rehabilitation requests filed by rehabilitation providers

- Rehabilitation requests filed by a rehabilitation provider are treated like a request for assistance filed by other parties.
- A mediator contacts the opposing party to determine if a dispute exists and will attempt to resolve the dispute.
- A Dispute Certification Notice letter is sent to the parties advising them whether the dispute has been certified.
- If the dispute cannot be resolved, it will then be scheduled for an administrative conference.

Scheduling administrative conferences

- An administrative conference on a **rehabilitation issue must be held within 21 days of receipt of the request for a conference** under Minn. Stat. § 176.106, subd. 3, unless the issue involves only fees for rehabilitation services that have already been provided or there is good cause for holding the conference later than 21 days.
- According to Minn. Stat. 176.106, subd. 3, if there is a rehabilitation plan in effect, the qualified rehabilitation consultant (QRC) must continue to provide reasonable services under the plan until the date the conference was initially scheduled to be held.

Administrative conferences – Minn. Stat. § 176.106

- DLI handles only rehabilitation and medical disputes where the amount in controversy is \$7,500 or less.
- The Office of Administrative Hearings (OAH) conducts administrative conferences for disputes about a proposed discontinuance of the employee's wage-loss benefits (Minn. Stat. §176.239) and medical disputes greater than \$7,500, including requests for surgery.
- The rules require QRCs be notified of a rehabilitation conference. (See Minn. Rules 1415.3700, subp. 2.)

Preparing for the administrative conference

- Review the rehabilitation request and response and any attachments filed by the parties.
- The issues in dispute will assist in determining what type of documents may be needed at the conference.
 - Bill dispute? Bring your billing records and reports that substantiate the disputed bills, including other documents, as appropriate.
 - Direction of the plan? Review your reports and be prepared to respond to questions regarding the plan and concerns from the parties about the direction of the plan.
 - Is the employee a qualified employee? Review the basis for that determination and the information and documents relied upon in making that determination.



- Administrative conferences are one-hour informal conferences. No sworn testimony is taken or recorded.
- The requesting party presents their position and then the opposing party is given an opportunity to present their response.
- If the provider does not understand a question, they should ask for clarification before responding.
- Unless the parties have agreed to hold the conference open to receive additional documents or arguments, no further information or documents will be accepted after the conference is concluded.

- Mediators cannot engage in ex parte communications with the parties after the conference is concluded.
- Mediators are required to issue a written Decision and Order within 30 days of the conference.
- Decision and Orders issued by ADR may be appealed to OAH within 30 days of the date the decision was served and filed.
- Appeals are heard by workers' compensation judges at OAH.

Common issues and disputes

- Insurer fails to respond to QRC regarding the proposed plan.
 - Follow up with the insurer.
 - File a Rehabilitation Request form seeking direction with the plan.
- Provider files a Rehabilitation Request form and, when contacted by ADR, insurer agrees to pay outstanding bills but no payment is received.
 - What is a reasonable amount of time to wait for payment?
 - Does the provider have to file another request?
 - What are the next steps?

- Disputes about additional job-development and job-placement services.
 - Is this job-development or job-placement services?
 - Difference between the definitions in Minn. Stat. 176.102, subd. 5, and the rehabilitation rules.
 - Importance of accurately identifying the type of services provided on rehabilitation forms and in reports.
- Disputes about retraining plans.
 - Adequately address each of the Poole factors.
 - Supporting documentation.

availability

- **Are rehabilitation providers expected to physically attend rehabilitation conferences at DLI or can they attend by telephone?**
 - The QRC is expected to be available in person or by telephone for rehabilitation conferences addressing eligibility and rehabilitation plan disputes. Attendance in person is preferred.
 - Generally, the name of the mediator handling the conference is located on the second page of the conference notice, below the names of the parties that have been served.
 - You can call the mediator to ask about attending the conference and, if you wish, to request to attend by telephone.

- **When a QRC is sent a notice for a nonrehabilitation conference at DLI or OAH, such as a dispute about medical treatment or a discontinuance conference, must the QRC attend?**
 - No, the QRC does not need to attend.
 - If an attorney or adjuster wants a rehabilitation provider to attend a hearing of any type **and is willing to pay** the provider's hourly fee, the provider should plan to attend.
 - If the parties see no reason for a rehabilitation provider to attend, then there is probably no reason to do so.
 - If possible, a rehabilitation provider should be available by phone during the conference, in case an issue arises for which the provider would have valuable input.

QRC Fees

- **The insurer says it won't pay the QRC to attend the administrative conference. Now what?**
 - If the dispute involves a rehabilitation issue, then the rules indicate the QRC should attend the either in person or by telephone.
 - If the dispute is about medical treatment, it may be difficult to show it was reasonable or necessary for the QRC to attend the conference.
 - If a dispute arises about payment of the QRC's fees for attending a conference, a Rehabilitation Request form may be filed to address the issue.
 - Were the services provided reasonable and necessary?

- **What should the QRC do when a Decision and Order states that rehabilitation services should be discontinued and the insurer is requesting the QRC close their file?**
 - If the employee has appealed the decision, then the QRC would not be obligated to stop services, because the appeal places the matter on hold. (See Minn. R. 5220.0510, subp. 7.) Discontinuance of services because it is on appeal is not a reason set forth under this subpart.
 - During the pendency of the appeal, the QRC may not be able to pursue payment of any unpaid bills, depending upon what issues are on appeal.
 - **Note:** Subpart F states the file should be closed if the commissioner or a compensation judge has ordered the rehabilitation plan be closed and there has been no timely appeal of that order.

- **Can a QRC file a Medical Request form on behalf of an employee (even if they don't charge for it) when the employee does not have an attorney or sufficient understanding of the process to file the request on their own? If not, what should the QRC do?**
 - Under Minnesota Rules 5220.1801, subp. 8B, governing professional conduct, a **QRC may not file a Medical Request form** on behalf of an employee because this involves a benefit issue that the QRC is prohibited from becoming involved in.
 - The QRC should direct the employee to call DLI's customer assistance at 800-342-5354 for assistance.



Frequently asked questions about rehabilitation disputes

- See DLI's webpage at www.dli.mn.gov/workers-compensation/faqs-rehabilitation-providers.

Thank you