

## Section 4

# Rehabilitation Benefits

Under the Minnesota workers' compensation law, vocational rehabilitation services can be provided to employees and surviving spouses. The intent of rehabilitation is set out in Minnesota Statutes §176.102, Subd. 1(b) as follows:

“Rehabilitation is intended to restore the injured employee so the employee may return to a job related to the employee’s former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability. Rehabilitation to a job with a higher economic status than would have occurred without disability is permitted if it can be demonstrated that this rehabilitation is necessary to increase the likelihood of reemployment. Economic status is to be measured not only by opportunity for immediate income but also by opportunity for future income.”

The law gives employers the opportunity to bring employees back to work with the date-of-injury employer **without** formal rehabilitation. For example, employers can engage the services of a disability case manager as an agent of the insurer to assist the employee in returning to work.

If the employee requires assistance in returning to work with the date-of-injury employer or will not be able to return to work with the date-of-injury employer, a rehabilitation consultation becomes necessary to determine whether formal rehabilitation services are needed. Any party may request a rehabilitation consultation at any time. In addition, a consultation must be provided under certain conditions which are described later in this chapter.

## Disability Case Manager (DCM)

There are cases where statutory rehabilitation services are not required to be provided. These situations occur when a rehabilitation consultation is not yet required to be provided or a rehabilitation consultation has been provided and a QRC has determined the worker not to be a qualified employee. In these situations the insurer may assign a DCM to the file.

DCMs are used for medical management and return to work situations with date-of-injury employers only. There are no qualifications, educational requirements, nor professional certifications required to function as a DCM.

QRCs are sometimes asked to function as a DCM due to their medical management and return to work training. DCMs can not represent themselves to employees, medical providers, or other parties as a QRC. DCMs are required to inform the employee and the employee’s attorney (if applicable) that they are “working as an agent of the insurer”. However while considered an agent of the insurer, the QRC, working as a DCM, can not function in the role of an insurer and shall engage only in activities allowed under Minnesota statutes and rules.

If a QRC is working as a DCM and knows or has reason to believe an employee meets the requirements to be a qualified employee for statutory rehabilitation services, then a rehabilitation consultation is to be performed. Additionally, if the insurer is aware that a rehabilitation consultation is required to be provided, the insurer must refer the case for a consultation. (See Disability Status Report in this section for more information.)

A QRC is not allowed to close a statutory rehabilitation file in order to reopen it under disability case management. Such a situation would prevent the department from tracking the true rehabilitation costs, would place the QRC in a potential professional conduct violation, and may compromise the employee's rehabilitation benefits under the workers' compensation system.

## Selection and Choice of Qualified Rehabilitation Consultant (QRC)

An employee who is eligible to receive rehabilitation services has the right to choose their own QRC. The employee may do this once during the period beginning before the consultation and ending 60 days after the plan is filed. The employee's right to choose a QRC ends 60 days after the rehabilitation plan has been filed with the department. After this time period, the parties may agree to additional QRC changes. However, if the parties disagree and the employee's right to choose the QRC has expired, the department will make the decision according to the best interest of the parties.

## Disability Status Report (DSR)

To ensure that a rehabilitation consultation is provided when necessary, Minnesota Rules Part 5220.0110, Subp. 7 requires that the insurer send the employee a DSR and file a copy with the department, when any of the following occur:

- within 14 calendar days of knowledge that the employee's TTD is likely to exceed 13 cumulative weeks; or
- within 90 calendar days of the date of injury when the employee has not returned to work following a work injury; or
- within 14 calendar days after receiving a request for a rehabilitation consultation, whichever is earlier.

An insurer who files a DSR must refer the employee for a rehabilitation consultation or request a waiver of rehabilitation services. A waiver is used to defer the initiation of rehabilitation services including a rehab consultation. A rehabilitation waiver is granted when the employer documents that the otherwise qualified employee will return to suitable gainful employment with the date-of-injury employer within 90 calendar days after the request for the waiver is filed. The waiver shall not be effective more than 90 calendar days after the waiver is granted. If the insurer is requesting a waiver, please note the *Instructions to Insurer* on the back of the prescribed DSR form. Documentation that the employee will return to suitable gainful

employment is satisfied by submitting a written offer of suitable gainful employment, signed by the employer, that is within the treating doctor's restrictions and to which the employee will return within 90 calendar days after the waiver is filed.

"Suitable gainful employment" means employment which is reasonably attainable and which offers an opportunity to restore the injured employee as soon as possible and as nearly as possible to employment which produces an economic status as close as possible to that which the employee would have enjoyed without disability. Consideration shall be given to the employee's former employment and the employee's qualifications, including, but not limited to, the employee's age, education, previous work history, interests, and skills (Minnesota Rules Part 5220.0100, Subp. 34).

**Note:** A waiver is not allowed on cases where the DSR is sent in response to a request for a consultation. The insurer must arrange for a rehabilitation consultation, by a QRC, to take place within 15 calendar days of the receipt of a request from the employee, the employer, or the commissioner.

The department reviews all requests for waivers and notifies the insurer whether a waiver is granted or denied. If the department grants a waiver, it is only effective until 90 calendar days after the waiver is granted. A waiver of consultation and rehabilitation services may not be renewed.

When a waiver is granted, another DSR must be filed within 14 calendar days of expiration of the waiver.

If a waiver is not granted, the insurer must provide a rehabilitation consultation.

If the insurer does not refer the employee for a consultation when it is required, the department may issue an order for a consultation by the department's Vocational Rehabilitation unit or by the employee's choice of QRC

**Example 1:**

*Tom broke his leg while working as a roofer. The treating physician said he would release Tom to work within 85 days of the date of injury and that he will be able to resume work within certain restrictions. He can return to his job, starting at two hours a day for the first week, then four hours the 2nd week, six hours a day the 3rd week, and full time the 4th week. The roofing company offered Tom his date-of-injury job as a roofer. The offer was in writing, described the physical demands of the job, and was effective when Tom was released to return to work. The insurer filed a DSR requesting a waiver and documenting the medical information and job offer.*

*The department would grant the **waiver** because the roofing company documented that Tom will be able to return to suitable employment with the company within the treating physician's restrictions and within 90 days of the date of injury.*

**Example 2:**

*As an educational assistant for K-4 graders, it was Ned's job to serve meals to children at low tables and to lift children frequently. He sustained a low back injury and needed surgery. The treating physician said that Ned would have lifting and bending restrictions after surgery, but was not able to specify what they would be. The school district did not have employment available to accommodate lifting and bending restrictions. Because of the above, the insurer filed a DSR stating that a rehabilitation consultation would be provided. The QRC met with Ned and determined that he was qualified for rehabilitation services because he wasn't likely to ever return to his date-of-injury position or another suitable job with the employer, within the projected restrictions of the treating physician.*

## Rehabilitation Consultation and Eligibility

The rehabilitation consultation is a meeting between the injured employee and a QRC to determine whether the employee is eligible to receive rehabilitation services. According to Minnesota Rules Part 5220.0100, Subp. 22, an employee is eligible if, because of the effects of an injury or disease, whether or not combined with the effects of a prior injury or disability, the employee:

- is permanently precluded or is likely to be permanently precluded from engaging in the employee's usual and customary occupation or from engaging in the job the employee held at the time of injury; and
- cannot reasonably be expected to return to suitable gainful employment with the date-of-injury employer; and
- can reasonably be expected to return to suitable gainful employment through the provision of rehabilitation services, considering the treating physician's opinion of the employee's work ability.

The consultation should be held within 15 days of the request for consultation, referral by the insurer, or denial of a waiver by the department. It should be conducted in-person within 50 miles of the employee's residence. If the employee doesn't live within 50 miles of Minnesota it may be done by telephone.

The insurer shall send the QRC a copy of the First Report of Injury, the DSR, and the current health care provider's report of work ability prior to the consultation (see Minnesota Rules Part 5220.0130, Subp. 3A).

During the consultation, the QRC must disclose to the employee any affiliations the QRC has with the employer or insurer and must discuss the information on the "Rehabilitation Rights and Responsibilities of the Injured Worker" form.

To determine the employee's eligibility for rehabilitation services, the QRC talks not only with the employee, but also the employer and the treating doctor, when necessary. The QRC completes the Rehabilitation Consultation Report (RCR) which spells out the likelihood that the employee will return to the date-of-injury employer

or date-of-injury job, and gives an assessment of whether or not the employee is a qualified employee for rehabilitation services. This form, including the narrative report, must be filed with the department within 14 days of the first in-person meeting with the employee. The QRC is required to provide copies of the RCR, a signed *Rehabilitation Rights and Responsibilities of the Injured Worker* form, and a narrative report explaining the basis for the determination to the employer, the employee, any attorney for the employee, and the insurer (see Minnesota Rules Parts 5220.0130, Subp. 3C(4) and 5220.0100, Subp. 31).

## **R-2 Rehabilitation Plan**

If the employee is eligible for rehabilitation services, the QRC must develop a rehabilitation plan, circulate the R-2, along with the initial evaluation narrative report, to all the parties for signatures, and then file it with the department. The QRC provides or coordinates all services necessary to carry out the plan. These services may consist of (but are not limited to) any of the following; medical management to facilitate the employee's return to work, vocational evaluation, counseling, job analysis, job modification, job development, job placement, labor market survey, vocational testing, transferable skills analysis, work adjustment, job seeking skills training, on the job training, and retraining.

The purpose of the plan is to communicate to all parties the vocational goals, the rehabilitation services to be provided, and the projected amount of time and money needed to achieve the vocational goals. The QRC must complete the R-2, including the narrative report, and send it to the parties within 30 days of the consultation. Upon receipt of the R-2, each party must, within 15 days, either sign and return the R-2 to the QRC or promptly notify the QRC of any objection to the plan and work with the QRC to overcome this objection. If the objection is not resolved, the objecting party must file a Rehabilitation Request form with the department within the 15 days of receipt of the proposed plan.

An R-2 signed by all parties is considered approved upon filing with the department. If a party fails to sign the R-2 or file a Rehabilitation Request within 15 days, it shall be assumed that the party is in substantial agreement with the plan's vocational goals and proposed rehabilitation services.

See Minnesota Rules Part 5220.0410 for further details.

## **Plan Progress Report (PPR)**

The PPR is used to inform parties of the current status of the plan and provide a current estimate of the plan cost and duration. The PPR must be filed with the department (with copies to parties) within 15 days after six months has passed from the date the R-2 was filed. If the QRC has filed an R-3, which included the information contained on the PPR, within 15 days prior to or after the six month time period, it is not necessary to also file the PPR.

See Minnesota Rules Part 5220.0450 for further details.

## R-3 Rehabilitation Plan Amendment

The QRC submits an R-3 whenever circumstances indicate that the plan's objectives are not likely to be achieved. Some of the reasons to amend the plan include:

- the projected end date or cost will be exceeded
- there has been a change of QRC
- the employee's new or existing physical limitations significantly interfere with the implementation of the plan
- there is a need to change a vocational goal
- the employee feels ill-suited for the type of work for which rehabilitation is being provided or is not able to effectively participate in the implementation of the plan

The procedure for filing, approval, and requirements follow the same pattern for the R-3 as with the R-2.

See Minnesota Rules Part 5220.0510 for further details.

## Kinds of Rehabilitation Services

Rehabilitation services refers to a program of vocational rehabilitation that is designed to return a person to work consistent with Minnesota Statutes §176.102, Subd. 1(b). The program consists of the delivery and coordination of services (some of which are discussed below) by rehabilitation providers under a plan.

### Vocational Evaluation

Vocational evaluation is the comprehensive assessment of vocational aptitudes and potential. This brings together a qualified employee's past history, medical and psychological status, and vocational interest and aptitude test results.

### Medical Management

Medical management by a QRC is the provision of rehabilitation services that assist communication of information among parties about the employee's medical condition and treatment. Medical management also consists of rehabilitation services that coordinate the employee's medical treatment with the employee's vocational rehabilitation services. Medical management refers only to those rehabilitation services necessary to facilitate the employee's return to work.

## Vocational Counseling

Vocational counseling by a QRC is used to assist the parties in the medical management and return to work processes. A QRC may utilize many different techniques including providing guidance, advocating change, facilitating modification of environmental and attitudinal barriers, and utilization of rehabilitation technology, among others.

## Job Analysis

Job analysis is a systematic study that reports work activity as follows:

- What the employee does in the job is analyzed in relation to data, people, and things.
- What methods and techniques are employed by the employee?
- What machines, tools, equipment, and work aids are used?
- What materials, products, subject matter, or services are the result?
- What traits are required of the employee?

## Job Modification

Job modification is altering the work environment to accommodate physical or mental limitations by making changes in equipment, in the methods of completing tasks, or in job duties.

## Job Development

Job development is systematic contact with prospective employers resulting in opportunities for interviews and employment that might not otherwise have existed. Job development facilitates a prospective employer's consideration of a qualified employee for employment.

## Job Placement

Job placement is activity that supports a qualified employee's search for work, including the identification of job leads, arranging for job interviews, the preparation of an employee to conduct an effective job search, and communication of information about the labor market, programs, or laws offering employment incentives, and the qualified employee's physical limitations and capabilities as permitted by data privacy laws, among others.

## Vocational Testing

Vocational testing is the measurement of vocational interests, aptitudes, and abilities using standardized, professionally accepted psychometric procedures.

## **Transferable Skills Analysis**

Transferable skills analysis is the identification and comparison of skills learned in previous vocational or a vocational activities with those required by occupations which are within the qualified employee's physical and mental capabilities.

## **Job Seeking Skills Training**

Job seeking skills training is the formal teaching of independent work search skills including the completion of applications, preparation of resumes, effectiveness in job interviews, and techniques for obtaining job leads, among others.

## **Work Adjustment**

Work adjustment is the use of real or simulated work activity under close supervision at a rehabilitation facility or other work setting to develop appropriate work behaviors, attitudes, or personal characteristics.

## **Labor Market Survey**

Labor market survey is contacting employers in a given locale regarding the availability of employment opportunities for a graduate of a specific training program, job responsibilities, employers' past and anticipated future hiring, physical requirements and salary.

## **On the Job Training**

On the job training means training while employed at a workplace where the employee receives instruction from an experienced worker and which is likely to result in employment with the on the job training employer upon its completion.

When an on the job training plan is submitted to the department, the department reviews the proposed plan within 30 days of its submission and notifies the parties of plan approval or rejection. The plan approval process is subject to the procedures under Minnesota Rules Part 5220.0410, Subp. 6. The commissioner may make a determination or pursue resolution of disputes regarding the plan consistent with Minnesota Rules Part 5220.0950, Subp. 3.

## **Retraining**

Retraining is training for a new occupation and obtaining the necessary skills to obtain work which produces an economic status as close as possible to what the employee would have enjoyed without disability. Retraining is to be given equal consideration with other rehabilitation services and may be proposed for approval if other considered services are not likely to lead to suitable gainful employment. When the QRC determines retraining to be appropriate, the QRC completes a Retraining Plan describing the recommended course of study and circulates it to the employee, employer, and insurer for their signatures.



When the QRC submits a Retraining Plan to the department with all three signatures, the department reviews the plan within a day or two of its submission, notifies the parties of its approval or denial and mails the Proof of Service to all parties with a signed copy of the Retraining Plan. The department may request additional information from the parties, confer with the parties, recommend modifications, and otherwise seek agreement about the plan.

Retraining plan means an individualized written plan describing the formal course of study through which the goal of the rehabilitation plan may be accomplished. Adult basic education or remedial programs may be a component of a retraining plan but do not constitute retraining in and of themselves (Minnesota Rules Part 5220.0100, Subp. 32).

For injuries occurring from October 1, 1995 through September 30, 2000, a request for retraining of an employee must be filed with the department before the insurer has paid 104 weeks of temporary total and/or temporary partial disability benefits.

For injuries occurring from October 1, 2000 through September 30, 2008, a request for retraining of an employee must be filed with the department before the insurer has paid 156 weeks of temporary total and/or temporary partial disability benefits.

For injuries occurring on or after October 1, 2008, a request for retraining of an employee must be filed with the department before the insurer has paid 208 weeks of temporary total and/or temporary partial disability benefits.

**The insurer must notify the employee in writing of this requirement, and this notice must be given before 80 weeks of temporary total and/or temporary partial benefits have been paid. If notice to the employee is not given within 80 weeks, the period of time to file for retraining is extended by the number of days the notice is late.**

See Minnesota Rules Part 5220.0750 for further details.

## R-8 Notice of Rehabilitation Plan Closure

When an employee's rehabilitation plan is completed and closure of rehabilitation services is not disputed, the QRC must file a Notice of Rehabilitation Plan Closure along with a Closure Report summarizing all services provided. When the reason for the closure is a return to work, the QRC may not complete and file the closure report until the employee has continued working for at least 30 calendar days following the return to work. This form must be filed with the department, with copies sent to the employee, insurer, attorneys, if any.

At any time, the insurer or employee may request the closure or suspension of rehabilitation services by filing a "Rehabilitation Request" form. The commissioner or a compensation judge may close rehabilitation services for good cause. Some of the reasons for requesting closure of rehabilitation services include:

- denial of primary liability

- lack of medical causation
- employee is not cooperating with the plan
- employee is not likely to benefit from further rehabilitation services

**Note:** An insurer intending to discontinue rehabilitation benefits as well as TTD or TPD benefits must file a “Rehabilitation Request” form in addition to the NOID form.

## Disputes about Rehabilitation

Rehabilitation disputes may happen at any point during a claim. Some of the more common issues include:

- eligibility for rehabilitation services
- the rehabilitation plan
- proposed retraining or on the job training
- a change of QRC
- rehabilitation plan closure
- QRC services and associated fees

According to Minnesota Rules Part 5220.0950, Subp. 1, where issues exist about an employee’s entitlement to rehabilitation services, the appropriateness of a proposed plan, or any other dispute about rehabilitation, a party may request assistance to resolve the dispute by filing a Rehabilitation Request form with the department. A Rehabilitation Response form is filed in response to this request, and the department decides how best to handle the dispute. The department may issue a Decision and Order resolving a rehabilitation dispute based on the written submissions of the parties.

Alternatively, the department may order all parties to attend an administrative conference. This is a meeting during which a department representative listens to all parties’ perspectives regarding the dispute and attempts to assist them in reaching an agreement. If no agreement is reached, a Decision and Order will be issued. All rehabilitation administrative conferences are expedited according to the needs and availability of the parties. A party that disagrees with a decision may request a formal hearing at the Office of Administrative Hearings (OAH).

An Independent Vocational Evaluation (IVE) may occur when a dispute exists. The disputes may involve many issues including the employee’s entitlement to services, appropriateness of a plan, retraining, determination of permanent total disability, and return to work, among others. Minnesota Rules Part 5220.1801, Subp. 5 permits an IVE to be performed by a registered rehabilitation provider other than the assigned QRC when litigation is pending at OAH or when retraining has been recommended.

In rare circumstances, a request for an IVE is sent to the department by a party on a Rehabilitation Request form. When requesting an IVE, the requesting party should be specific as to the nature of the request, why the IVE is necessary, and how it relates to the rehabilitation plan.

## Roles of Registered Rehabilitation Providers

The department registers individuals to provide rehabilitation services, either as a registered rehabilitation vendor or as a QRC. The roles of vendor and QRC are distinct. A registered vendor provides job development and job placement under an approved rehabilitation plan. They must submit progress reports and records to all parties every 30 days. A QRC provides rehabilitation consultations and develops and implements rehabilitation plans for employees who are entitled to rehabilitation services.

A QRC firm, and its employees, may provide job development and job placement services only in cases for which a QRC or QRC intern employed by that firm is the assigned QRC (see Minnesota Rules Part 5220.1250).

A QRC is committed to moving the rehabilitation plan forward. The effective QRC is skilled in getting employees back to work as soon as possible while keeping the employee's safety in mind. Good communication is at the heart of what a QRC does.

## What to Expect from a QRC

A QRC determines whether or not an employee is a qualified employee (therefore entitled to rehabilitation services), develops a rehabilitation plan with the goal of returning the employee to suitable gainful employment, coordinates and monitors back to work efforts, and effectively communicates with the parties to keep them informed regarding the progress of the rehabilitation plan.

## Forbidden Conduct by a QRC

Minnesota Rules Part 5220.1801, Subp. 8 and 9 specify prohibited conduct by a QRC. For example, a QRC may not:

- engage in claims adjustment, claims investigation, or related activities
- make recommendations regarding workers' compensation monetary benefits
- speak to or determine the reasonableness of medical charges
- arrange for independent medical examinations
- do surveillance
- provide opinions on settlement
- give recommendations regarding retirement

- engage in conduct likely to deceive, defraud or harm the public

No party should ask a QRC to do any of the above activities. The rules require a QRC to be objective, and the department disciplines those who do not remain professionally objective in their conduct and recommendations made on cases. Therefore, insurers should not pressure a QRC to do anything that suggests bias on a QRC's part.

## Professional Conduct and Accountability

Anyone may register a complaint with the department about a rehabilitation provider. Complaints about activities or services of rehabilitation providers relating to noncompliance with laws, rules, or orders should be made in writing to the department. Each complaint is investigated. The rules require cooperation by the rehabilitation provider who is the subject of the complaint. Disciplinary action can consist of a fine as provided by statute, or suspension and/or revocation of registration. These outcomes are considered public information.

Following the investigation of a complaint, if discipline is not warranted the department may issue a letter of instruction, or possibly dismiss the complaint as unsubstantiated. The department notifies the complainant as to the final disposition of the case.