

**Rehabilitation Review Panel
April 4, 2013 meeting minutes**

RRP members present

Duane Butorac
Dr. Russell Gelfman
Steven Hollander
Laura Jerde
Joyce Leipold for Meg Kasting
Alissa O'Hara
Bobbi Pearson
Dr. Joseph Sweere
Dr. Cally Theisen

Alternate present

Don Ostenson

Nonvoting member excused

William Martin

Voting members excused

Carl Crimmins
Michael Hawthorne
Sue Mauren (Vice Chairperson) - *Resigned*
May Vang

Vistors, DLI staff members present

Sandy Barnes
Kate Berger, General Counsel
Kris Eiden, Deputy Commissioner
Mike Hill
Chris Leifeld
Charlie McKinstry-Luepke
Mark McCrea
Phil Moosbrugger
Donna Olson
Ken Peterson, Commissioner
Carrie Rohling
Brian Zaidman
Laura Zajac, General Counsel

Call to order

Dr. Joseph Sweere called the meeting to order at 1 p.m. Announcements were read. A quorum was declared.

Approval of minutes

Alissa O'Hara moved to approve the Jan. 24, 2013, meeting minutes as presented and Duane Butorac seconded. All voted in favor. Motion carried.

Approval of agenda

A unanimous decision was made by the panel to approve the agenda as presented.

Deputy commissioner's update

A copy of the department's housekeeping bill was provided to the panel and Deputy Commissioner Kris Eiden gave a brief review about the following sections.

- **Section 1:** Deals specifically with qualified rehabilitation consultants (QRCs), which gives the commissioner the discretion whether to investigate a complaint against a rehabilitation provider. Right now the commissioner has to investigate every complaint. This gives the commissioner discretion when frivolous complaints are made.
- **Section 2:** This section deals with the department's authority to have administrative conferences. Right now the department has conferences involving medical disputes if the amount in dispute is less than \$7,500. The amendment would remove that limit, since medical costs have gone up. This would be particularly beneficial to parties because it would give the commissioner the discretion to address all requested disputes between providers and payers.

- **Section 3:** This amendment arises out of a lawsuit the department was involved in with Home Insurance Company, which went bankrupt and then applied to be reimbursed from the Special Compensation Fund (SCF) for supplemental and second-injury benefits it claimed it had paid. The department had not previously reimbursed bankrupt companies. The court ruled in favor of Home Insurance Company, stating the company was able to collect from SCF. This amendment would prevent an insolvent insurer from collecting from SCF.
- **Section 4:** This provision would exempt data the department maintains about injured workers from the definition of genetic information. That term is contained in the Genetic Privacy Act that prohibits state agencies from collecting, disseminating or storing genetic information. The department has 50 years of workers' compensation files in its custody. Because of questions that treating physicians ask injured workers about their family history, there is a chance that files contain genetic information. Based on the number of files the department has it would be an unmanageable task to go through each one. Therefore, DLI files should be excluded from that definition, which is the purpose of Section 4.
- **Section 5:** This section pertains to SCF's payments, benefits and the medical costs for uninsured workers. Right now when a worker's employer is not insured, SCF steps in and makes payments. SCF will subsequently pursue the employer for reimbursement. SCF notifies the employer before it makes any payment to the worker and it stays in touch with the employer throughout the process. What has been found is that some employers do not communicate with SCF and do not object to what SCF is doing (i.e. making a settlement with the injured worker). The employer "sits on the sidelines" through the process. It is not until SCF seeks reimbursement from the employer that the employer will raise defenses such as, "the injured worker was an independent contractor" or "this injury didn't occur during the course and scope of employment." This amendment requires employers to raise those issues before SCF enters in to a settlement with the injured worker. These defenses are critical for SCF to know before it settles as well.
- **Section 6:** This section is merely a housekeeping item to remove the term "Six Sigma." The commissioner has the authority to audit insurers to make sure they are making payments as required under the law. DLI can use a sample of records to do that sort of analysis, but the current law limits the department to use Six Sigma. There are a number of methodologies that DLI could use to do that kind of sampling and shouldn't be restricted to one methodology.
- **Section 7:** This section of the bill was included at the request of the Workers' Compensation Court of Appeals (WCCA). Under the current law, workers' compensation cases can settle at any point of the process, even after an administrative law judge has rendered a decision and the case is pending before the WCCA. The WCCA would like to send the case back to the Office of Administrative Hearings (OAH) and have an administrative law judge approve that settlement. So, this change would authorize the sending of the case back to OAH.

Rehabilitation related

- **Settlement study finalized, report and DLI steps – Brian Zaidman, DLI Research and Statistics:** Brian Zaidman presented findings from the DLI survey about workers with settlements and hearings. This study was made in an effort to collect and understand workers' perspectives about the resolution of their disputes and to produce a report, which is available at www.dli.mn.gov/RS/Pdf/settlement_study.pdf.

Commissioner Ken Peterson reported the settlement study was done because more and more cases are ending in settlements. The legislative auditor looked at the department in 2009 and recommended DLI take a look at settlements. The commissioner discussed the findings that revealed people didn't realize they would lose their jobs by taking a settlement. Workers also indicated one of the biggest influences on their decision was pressure from their attorney. The following questions arose. Is DLI focusing on the proper goals and incentives, specifically regarding attorney's fees? Is DLI achieving system goals?

There are a lot of settlements that specifically close rehabilitation services as part of the settlement. Is that the right thing to be doing? DLI is concerned about this and the fact this happens much more often than medical benefits being closed out. Other issues arose concerning the following.

- Providing information to the injured worker: DLI provides extensive information to the injured worker when the first report of injury form is filed. However, a settlement may not occur for years from that point. When they receive the information, the worker may feel they will be going back to work in a couple of weeks and wonder why they need the information or why they should even read it and then they just throw it away or set it aside. It may be helpful to provide additional information about the litigation process to workers when a claim petition is filed, explaining what their options are and giving them answers to frequently asked questions about the litigation process.
 - Educating workers: More information should be provided to workers about what discovery is, what a deposition is, what happens during a hearing, what a settlement is, what impact it will have – will the worker continue to receive benefits, payment of medical bills, rehabilitation benefits and will the injured worker be able to find a job?
 - After you lose a job, you tend to think the day after that you'll be able to find a job next week and then a year later, you find out it's still pretty tough. So an injured worker may think, "I'll take this settlement and then I will be OK," only to find out things are a little different. DLI wants to provide injured workers more information and explain potential consequences, having something available for them to look at and refer to.
 - Medical benefits are rarely closed out in settlements in Minnesota. A proposal that merits discussion is whenever rehabilitation or medical benefits are closed out in a settlement, the injured worker must have conference with an administrative law judge to review the settlement and its impact with the worker.
 - One of the questions raised by the study is whether the cap on attorneys' fees is adversely affecting workers. DLI is concerned about a case being settled mainly because it's not cost effective for an attorney to take it to a hearing. Some attorneys say they do not settle cases except in the most extreme situations. Other attorneys settle a lot of them. Some attorneys just don't like to go to hearings.
 - As a result of this study, the department will be putting together an expert adversary panel to take a look at settlements and determine how DLI can do it better and how DLI can ensure confidence to those people who are settling cases.
 - Recommendations regarding a fast track in certain claims also need further review and discussion.
- **5217 rule revision update – Laura Zajac, DLI Office of General Counsel:** Laura Zajac discussed the ongoing joint rules and procedures in Chapter 5217 to move the RRP meetings to a quarterly basis and change the month in which officer elections take place.

Currently, the rules are with the governor's office and DLI is waiting for a response. As soon as that happens, DLI will have the rules record ready. It will go to the Office of Administrative Hearings for approval by an administrative law judge. At that point, the rules will be filed with the Secretary of State and published in the *State Register*; shortly after they are published in the *State Register*, they will be final. These rules should be done by the July meeting and members will be provided a copy.

- **Ongoing RRP member discussion related to possible Minnesota Rules 5220 rule revisions – Dr. Sweere and panel:** Concerns about the role of a disability case manager versus a qualified rehabilitation consultant (QRC) and switching hats were discussed. Discussion also included determining if the injured worker needed a QRC or a case manager at the beginning of services.

Deputy Commissioner Eiden indicated the department is looking into changes to the 5220 rules touching on some of the issues brought up today. One of the things the department is looking at is whether there should be a duty to refer an employee who is likely a “qualified employee” for rehabilitation consultation. The department hopes to have something for the panel to discuss at the next meeting.

- **2012 PCA outcomes – Mike Hill, DLI:** Mike Hill gave an update about professional conduct complaints, in conjunction with the handout provided to panel members.
- **2012 retraining plan outcomes (disputed/nondisputed) – Mike Hill, DLI:** Hill reviewed retraining plans that were submitted during the past four years.
 - Eighty-six retraining plans were submitted to the department for approval. Seventy-four percent of those were disputed from the start; 26 percent were agreed-upon plans.
 - The outcomes are 17 percent were denied, resettlement of 42 cases and withdrawal of two cases.
 - Sixty-four out the 86 plans happen to be at the Office of Administrative Hearings.
 - During 2009, 22 plans were filed, 21 were approved and one was settled.
 - In 2010, there were 55 plans that were submitted to the department. Sixty-five percent were disputed, 35 percent were agreed-upon plans. Of the plans that were disputed, 81 percent settled and while I was looking at plans 11 percent of those were also settled.
 - Also in 2010, there were three denied plans that came over as agreed retraining plans. The department will review the retraining plan to determine if it makes sense and is well supported. This to determine if the plan is viable and stakeholder time and money well spent.
 - In 2011, 62 plans were submitted to the department. Seventy-one percent were disputed and 29 percent were agreed-upon plans. For the disputed plans, 73 percent ended up in settlement and six were ordered for the agreed-upon plans. Again, for the ones that were denied that involved QRCs not submitting the request and supplemental information so we make a determination in a plan, should be approved.
 - In 2012, 45 plans were submitted to the department. Sixty-two percent were disputed, with 50 percent ending up in settlement. Of the agreed-upon plans, which was 38 percent, there were three that were denied.

Other business

- Sue Mauren has elected to leave the panel. A notification of this labor member vacancy will be published in the *State Register*.
- At the July meeting there will be an election of officers (chairperson and vice chairperson) for the coming year.
- The panel welcomed new employer representative Bobbi Pearson. She informed the panel about her background history, education and career.

Adjournment

Dr. Sweere moved to adjourn, seconded. All approved. Motion carried. Meeting adjourned.

Next meeting date, tentative: July 11, 2013, from 1 to 3 p.m.

Future meeting dates, tentative: Oct. 3, 2013; and Jan. 2, April 3, July 3 and Oct. 2, 2014