

**Rehabilitation Review Panel**  
**July 26, 2012**

**Voting members present**

Carl Crimins  
Russell Gelfman  
Michael Hawthorne  
Steven Hollander  
Alissa O'Hara  
Dawn Soleta  
Joseph Sweere  
Cally Theisen

**Alternates present**

Don Ostenson

**Voting members excused**

Meg Kasting  
Sue Mauren  
Scott VanBinsbergen

**Alternates excused**

Nellie Munn

**Nonvoting members excused**

William Martin

**Department staff members present**

Sandy Barnes  
Kate Berger  
Kris Eiden  
Mike Hill  
JoAnn Jacobson  
Chris Leifeld  
Charlie McKinstry-Luepke  
Pamela McLaughlin  
Jessica Stimac  
Laura Zajac  
Brian Zaidman

**Visitors present**

Joyce Leipold, SFM

**Call to order**

Dr. Joseph Sweere called the Rehabilitation Review Panel (RRP) meeting to order at 1:15 p.m. A quorum was declared.

Staff changes have taken place that impact the RRP. DLI Liaison Mike Hill introduced staff members who will be assisting with the RRP duties.

- JoAnn Jacobson is a rehabilitation registration specialist in the Compliance, Research and Training unit (CRT) who registers qualified rehabilitation consultants (QRCs), QRC interns, and QRC and vendor firms. Additionally, she is involved with QRC intern and vendor orientation classes.
- Sandy Barnes is the new CRT supervisor. She will oversee the workers' compensation rehabilitation policy, medical policy specialist and rehabilitation provider registration areas.
- Pamela McLaughlin is the new RRP executive secretary. Thank you to Lisa Smith, who is now working in a different capacity.
- Labor panel member Shirley Muelken has retired.

### **Approval of the minutes**

Don Ostenson moved to approve the April 5, 2012 meeting minutes, Dawn Soleta seconded and the April 5, 2012 meeting minutes were unanimously approved.

### **Approval of the agenda**

The agenda was approved as presented.

### **Deputy commissioner's update – Kris Eiden**

#### ***Outcome of the 2012 Workers' Compensation Summit***

There were 220 attendees at the 2012 Workers' Compensation Summit, June 12 and 13, at Cragun's Conference Center, in Brainerd, Minn. DLI would like to keep it as an annual event. The commissioner has asked for feedback from the RRP about whether to alternate between urban and rural locations. Panel feedback included the following.

- Metro meetings commonly impact room costs (no quantity discounts) because locals stay home. Attendance may be better during the day, but routine daily distractions prevent after-hour networking opportunities. There is real value in networking opportunities when events take place outside of the city; it allows for informal visiting with the commissioner and speakers, and discussion with insurers, staff members and others in the industry, during session breaks, mealtimes and afterward.
- Dates that conflict with MSIA, RIM or other risk groups will affect attendance.
- Look for a venue that can accommodate attendees to avoid room sharing.
- It was mentioned the 2012 summit had a good variety of speakers and panels, but the facility's layout was too spread out.

Surveys were available for attendees to complete, with an approximate 20 percent response received. Survey feedback is important to the agency, because it is used in future event planning.

### **Rehabilitation-related**

#### ***2008 through 2010 vocational rehabilitation outcomes by industry – Brian Zaidman***

A request was made during the April meeting for vocational rehabilitation utilization and plan outcomes analyzed by industry. The 2010 system report is now available on DLI's website at [www.dli.mn.gov](http://www.dli.mn.gov). If anyone has questions or would like statistics for hospitals, nursing homes and other industries in more detail, email Brian Zaidman at [brian.zaidman@state.mn.us](mailto:brian.zaidman@state.mn.us).

- It was asked whether statistics are available for construction industry, union versus nonunion employees, but Brian stated there is no marker to identify those employees. A change in the form to capture that data would be needed.
- What is included in the vocational rehabilitation costs? Money goes to the vocational rehabilitation service providers – QRC firms, vendors, any placement personnel – not to the injured worker.
- It was asked whether there is a way to see the cost ratio with what the injured worker receives. Brian stated the overall average workers' compensation cost is available in the 2010 workers' compensation system report. He can prepare data showing the average costs of vocational rehabilitation claimants and average QRC costs.
- The graph showing distribution of costs/claims in retail is quite high then shrinks away.

Brian explained this is the average cost of vocational rehabilitation for people in the retail industry, not the total paid in the whole system (retail trade is 10 percent of the cost and about 9 percent of the claims). Only one out of 10 injured workers in vocational rehabilitation are in the retail trade, but their average vocational rehabilitation costs are higher than most other industries. We have not performed the research to understand why retail costs are higher compared to other industries. Back problems from lifting and limitations in standing might affect return to work options for workers in the retail field.

### **5217 rule revision with the MSRB – Laura Zajac**

Comments were sought and/or decisions made on updating procedural rules with the MSRB.

- The 5217 rule revision – A few minor changes, based on comments received from the panel in April, were incorporated into the draft and the MSRB had no changes at its July 19, 2012 meeting. No comments about the rules have been received from the public, but two requests were made for copies of the draft rules. Dr. Joseph Sweere asked for a motion to approve the proposed amendments to the 5217 rule. A motion was made by Carl Crimmins and seconded by Alissa O’Hara. With no further discussion, the motion was unanimously approved.
- The Statement of Need and Reasonableness (SONAR) – This is a public document that explains the purpose of the rules and the rationale for the changes being made. This document will be submitted to an administrative law judge for approval, as part of the official rulemaking record. It was presented to the MSRB on July 26, 2012, and there were no changes. The panel is asked to review the document and forward comments to Dr. Sweere or to Laura at [laura.zajac@state.mn.us](mailto:laura.zajac@state.mn.us).
- Minnesota Rehabilitation Review Panel and Medical Services Review Board Notice of Intent to Adopt Rules without a Public Hearing – The panel was asked to review this document, which will be published in the *State Register*, and to approach Dr. Sweere or Laura with any concerns. No comments were received from the panel. No hearing requests are expected as a result of the notice, but a resolution was passed authorizing the rules liaison (see below) to discuss the rules with anyone requesting a hearing and to address their concerns.
- Certificate of the Rehabilitation Review Panel authorizing resolution – A proposed resolution to designate a rule liaison and provide authority for the liaison to proceed with the rulemaking was distributed. The liaison would work with a member of the MSRB and DLI staff members to follow rulemaking procedures for the 5217 rule revision described above. Don Ostenson moved to approve the resolution and Carl seconded; all approved. Dr. Sweere, as RRP chairman, will sign the designation of authority.
  - Carl asked whether the liaison could be assigned to a position rather than a specific individual. Carl moved to change the language to assign the rule liaison to the RRP chairman position, rather than a specific individual. Dawn Soleta seconded the motion. The motion was unanimously approved.

### **2012 workers’ compensation settlement study – Brian Zaidman**

A handout was provided as a supplement to the study. A survey was conducted about settlements

and hearings and the preliminary results were shared with the panel. No detailed analysis has yet been conducted on the data. The survey was initiated at the recommendation of the legislative auditor's report, "To ensure that voluntary settlements are in the workers' best interests, the Department of Labor and Industry should track settlement terms and outcomes for the workers, and, as needed, adjust the criteria for approving such awards." Claims durations were slightly less than three years. The survey response rate was close to 40 percent. Injured workers were surveyed six months to two-and-a-half years after settlement.

- An overview of the main points: many workers are unhappy with the outcomes of their disputes, especially those with settlements; workers don't understand settlements and their implications; workers feel the dispute-resolution system puts workers at a disadvantage.
- The most common points in dispute are: primary liability and causation; job or labor market issues; reasonableness and necessity of medical services; and permanent partial disability (PPD) rating.
- A significant amount of claims took 10 to 20 months and were in the dispute process for years.
- Forty percent of the workers felt their medical condition related to their claim was worse after the hearing and/or settlement.
- Fifty percent of the workers with a hearing felt the judge's ruling as fair and more than 50 percent of those with a settlement felt the settlement compromise was unfair.
- Many commented about how the system favors employers and insurance companies, and a few complimented the department's assistance.
- A number of responders described how difficult or lengthy the process was.
- Workers with both hearings and settlements commented that independent medical examination (IME) doctors do not spend enough time examining the injured worker.

Brian prepared a handout showing vocational rehabilitation statistics of injured workers involved in the study, comparing respondents and nonrespondents, and those who chose a hearing and those who chose settlement. (A revised handout has been prepared that identifies significantly more workers receiving vocational rehabilitation services. The following bullets reflect the revised numbers.)

- Forty-six percent of the survey respondents had vocational rehabilitation services. Of these 245 respondents, 98 had a hearing and 147 had a settlement.
- Among all respondents, 56 percent of those without vocational rehabilitation were employed, compared to 42 percent of workers who received vocational rehabilitation services.
- Only 28 percent of those without vocational rehabilitation received temporary total disability benefits, compared with 77 percent of those with vocational rehabilitation services.
- Vocational rehabilitation employment status on the R-8: 77 percent of the workers who used vocational rehabilitation and found a job with a new employer, remained employed.
- Only 54 percent of workers who returned to their pre-injury employer remained employed at the time of the survey.

- Twenty-two percent of workers who had no return-to-work indicated on their R-8 form were employed at the time of the survey.

Brian stated that based on survey responses it appears more information about the dispute-resolution system is needed to educate injured workers. The focus has been more on providing information about the benefit system, rather than on the dispute system.

Dr. Sweere asked whether there was an indication of the total payout comparison between cases with settlement and cases with a hearing. Brian stated that nothing jumped out as unusual, but there are differences in the amounts of benefits received.

Carl inquired whether the length of time a case goes through the trial process until resolution is reached has been tracked. Brian stated data was captured from DLI's dispute-resolution studies conducted on 2003 claims and is available on DLI's website. DLI researchers are looking at the survey claims to understand what the durations were from injury and the claim petition was filed to resolution, and everything in between, similar to our claim petition, vocational rehabilitation and medical request studies. The case length of time has decreased from claims made in 2007 compared to those in 2003.

Dawn questioned whether the RRP should form a focus group to help design educational materials to represent all parties to understand the system better.

Dr. Sweere stated that approximately 10 years ago, the panel assisted in the development of a booklet that was sent to the injured worker. There is history of the panel on this issue; it would be important and relevant for the panel to work on.

Carl asked whether we should survey lawyers and administrative law judges to get ideas for DLI system improvement. Brian stated that yes, DLI could do that. A large employee survey hasn't been conducted in years. One reason is that type of information-gathering is very expensive, with the most recent study of injured workers costing \$20,000. The Office of the Legislative Auditor (OLA) interviewed lawyers and judges and put that information in their report. We hear from judges and attorneys at the Workers' Compensation Advisory Council, the Workers' Compensation Insurers' Task Force and the Office of Administrative Hearings. A focus group or task force should involve all of these parties.

Dr. Sweere asked what the percentage of workers' compensation claims with a primary denial of liability is. Brian stated 12 percent of filed indemnity claims for injuries in 2010 received a denial of liability; of paid indemnity claims, 6 percent were ever denied liability. Only 43 percent of filed claims receive payment after a denial and 57 percent of the denials "stick." The trend has been relatively flat since 2007.

Dr. Sweere inquired whether there is a consequence to employers/insurers with a pattern shown of inappropriate denial at hearing. Brian's response was yes, and denials have dropped because,

as of 2005, the department implemented and enforces against “frivolous denial.” Notice was given in *COMPACT*.

***Further detailed analysis of the study may be ready by the time the RRP meets in October.***

#### **Other business**

Steve Hollander asked what can be done about the number of injured workers, those with a rehabilitation plan, who are **not** able return to work? The panel agreed the high number of injured workers unable to return to work is alarming. ***The panel agreed to look at the number again at the October meeting.***

The panel would like Brian to provide more details at the next RRP meeting and this topic will be added to the agenda.

#### **Adjournment**

Carl moved to adjourn, O’Hara seconded and all voted in favor. The Rehabilitation Review Panel adjourned at 3:09 p.m.

Respectfully submitted,

***Pamela McLaughlin***

Executive Secretary