

Rehabilitation Review Panel
July 11, 2013
Meeting minutes

RRP members present

Carl Crimmins
Dr. Russell Gelfman
Steven Hollander
Laura Jerde
Alissa O'Hara
Bobbi Pearson
Dr. Joseph Sweere
May Vang

Alternates present

Don Ostenson
Anthony Sikich
Mary Wells

Nonvoting member excused

William Martin

Voting members excused

Duane Butorac
Michael Hawthorne
Meg Kasting
Dr. Calandra Theisen

Visitors/DLI staff members present

Sandy Barnes
Kate Berger, General Counsel
Kris Eiden, Deputy Commissioner
Sonya Herr
Mike Hill, Staff Liaison
Joyce Leipold
Ken Peterson, Commissioner
John Rajkowski
Martha Steinhart
Jessica Stimac

Call to order

Chairman Dr. Joseph Sweere called the meeting to order at 1:12 p.m.
Introductions were made. A quorum was met.

Approval of minutes

Don Ostenson moved to approve the April 4, 2013, meeting minutes as presented and Carl Crimmins seconded. All voted in favor. Motion carried.

Approval of agenda

The chairman commented that elections included on the agenda would be postponed until October 2013, as required by the rules governing the panel. A unanimous decision was made by the panel to approve the agenda as modified.

Deputy commissioner's update

- The Workers' Compensation Summit will be Sept. 12, 2013, at Crowne Plaza Hotel – St. Paul. Online registration is available on DLI's website. Still seeking sponsors and vendors. Deputy Commissioner Eiden provided a handout of the tentative speaker schedule.
- A summary of the 2013 Workers' Compensation Session Law was provided to the panel by Eiden. Contact her with any questions regarding the law.
- Welcome Mary Wells, new alternate member.
- Introduced Martha Steinhart, the department's new rehabilitation registration specialist.

General

- *5217 rule revision status:* Kate Berger, DLI Office of General Counsel, gave an update about the rules of practice and provided a complete copy of the proposed rules and the rules as amended that went into effect June 24, 2013. The chairman called the panel's attention to page two of the amended rule, 5217.0500 states officers will be elected at the first meeting held after the last day of July of each year.
- *5220 rule review:* Mike Hill gave a brief review of the reasoning behind the 5220 rule review. There were concerns expressed about the ability to determine a qualified rehabilitation consultant (QRC) from a disability case manager (DCM) and the role of the department. Hill provided the panel with a handout showing Office of Administrative Hearings (OAH) recommendations compared to the panel's decision-and-order in a recent contested case. In that case, the department brought a complaint against a QRC, but the Workers' Compensation Court of Appeals (WCCA) determined no violation of law occurred because it could not be determined the defendant was acting as a QRC. Therefore, the panel was looking at possible suggestions regarding modifying the language in Minnesota Rules 5220 to help clarify the roles of QRCs and DCMs.
- Dr. Russell Gelfman: This issue comes up more often than we think. We need to know when a QRC is acting as a QRC. As a physician, he asks the QRC about the role they are playing (DCM or QRC) when they come to appointments. One of the reasons to determine the role is possible disciplinary actions, such as if a DCM is representing herself as a QRC.
- Eiden: Article 2, Section 7 of the bill that was passed prohibits a QRC from acting as a QRC and a DCM on the same claim. It does not address the definitions of QRC and DCM. The department could look at expanding the language to include aspects of defining the two roles.
- Crimmins: Determination of QRC and DCM roles should be decided by the work performed, not by what they call themselves.
- Gelfman: A paper trail of documents should be established when the QRC/DCM takes on a claim. The documents should identify that individual's role and the services they will be providing on behalf of the patient, etc.
- Steven Hollander: Questioned if it would be better to modify the definition of qualified employee. He stated one of the reasons the role of DCM came about is because people aren't qualified to receive services of a QRC for the first 90 days.
- Joyce Liepold: From a carrier's perspective, the injured worker comes first and carriers will assign a DCM if a need exists before the 90 days. QRCs and DCMs provide the same services, but one is regulated statutorily and the other

is not. As a carrier, they choose the best role for the claim. Liepold felt it was appropriate to require vendors to state which role they are performing.

- Crimmins: Why does the state regulate QRCs and not DCMs? Eiden indicated this is because injured workers have a right to a QRC if they are a qualified employee; because the system requires this service, the state gets involved to ensure the service is properly regulated.
- Sweere suggested crafting language individually or collectively for acceptance to all parties or assigning an ad hoc committee to review options for how to proceed. The following options were summarized:
 - definition of qualified employee;
 - definition of QRC;
 - requiring DCM to file documents with the Department of Labor and Industry (DLI);
 - putting responsibility on insurance carrier to make determination; and
 - regulating DCMs.

Members of the RRP reviewed the PAR case conclusions in detail and other DCM issues raised in a previous meeting. Following the discussion, the RRP decided not to make recommendations to the department regarding expanding or clarifying rules about disability case management.

MARP – proposed 5220 rule revisions

MARP approached the DLI commissioner earlier in the year about suggested rule changes. The commissioner requested MARP present the proposed changes to the panel and that the panel provide feedback regarding their thoughts about the proposals. Hollander provided the panel with a handout of the proposed changes, as well as a letter from MARP to the commissioner. Hollander indicated there would not be a vote, because only comments were requested by the commissioner. Hollander also handed out a QRC informational sheet describing what a QRC is and what they do, as well as excerpts from previous statements of need and reasonableness (SONARs) that were relevant to the discussion.

MARP proposals (panel comments in blue)

1. Change the limit on QRC services when job placement is being provided (by someone other than the QRC) from two hours to eight hours a month. Minn. R. 5220.1900, subp. 6a. (Is eight hours a month the best determination? How was that number determined?)
2. Eliminate the reduction of QRC fees by \$10 an hour if the case lasts longer than 39 weeks or costs more than \$3,500. Minn. R. 5220.1900, subp. 1f. (The current average cost per file is \$8,500; use of previous year's median cost would be a better practice to ensure QRC willingness to continue work on a claim. MARP reiterated they are more interested in elimination of the reduction.)

3. Adjust the maximum fee for job-placement providers, which has not kept pace with increases for QRCs because of the 2 percent cap on annual increases. Minn. R. 5220.1900, subp's. 1b and 1e. (Seems reasonable; perhaps consider payment based on performance; show research about how Minnesota compares to other states in this area.)
4. Eliminate the \$10 hourly reduction for QRC intern services when the QRC hourly fee is reduced by \$10 for cases lasting more than 39 weeks or costing more than \$3,500. Minn. R. 5220.1900, subp. 1d. (Discussed that businesses run a negative profit when hiring interns; there are approximately 20 QRC interns registered in Minnesota; comment that it seemed reasonable for interns to be paid less than QRCs.)
5. Require a vocational set-aside program that puts a certain percentage of settlement fees into an escrow account to be paid to the employee if he has returned to work or collects SSDI, or used for job training or vocational services if there has not been a return to work. It was noted this proposal would require a statutory change.

Other business

- The panel welcomed new alternate employer/insurer representative Wells, who informed the panel about her background history, education and career.
- May Vang, who was attending her first meeting since being appointed to the panel also informed the panel about her background history and career.

Adjournment

Ostenson moved to adjourn, Alissa O'Hara seconded. All approved. Motion carried. Meeting adjourned.

Next tentative meeting dates: Oct. 3, 2013 from 1 to 3p.m.;
Jan. 2, 2014;
April 3, 2014;
July 3, 2014; and
Oct. 2, 2014.