Litigation procedures at DLI

DLI Alternative Dispute Resolution
Resources for injured workers
www.dli.mn.gov/workers/workers-compensation-workers

**WORKERS' COMPENSATION -- WORKERS**

The Workers' Compensation Division oversees and administers the workers’ compensation system in Minnesota. We strive to create an environment where injured workers promptly receive benefits and services and where the system operates efficiently and effectively. **Injured workers:** Click on the red Work Comp Campus button below (far right) for information about how to access your claim online.

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General assistance

Workers' Compensation Division Help Desk

• Contact the help desk at helpdesk.dli@state.mn.us, 651-284-5005 (press 3) or 800-342-5354 (press 3).

• The translation service Language Line is available at no cost for non-English-speaking individuals.

Office of Workers' Compensation Ombudsman

• The ombudsman assists injured workers and small businesses to resolve workers' compensation issues.

• Contact DLI Ombudsman Pam Carlson at 651-284-5478, 800-342-5354 or dli.ombudsman@state.mn.us.
Alternative dispute-resolution is an alternative to formal litigation in resolving workers' compensation disputes. Parties may be represented by an attorney or participate without one.

- There are four primary functions of DLI's Alternative Dispute Resolution (ADR) unit: customer assistance; administrative conferences; dispute certification; and mediation.

- ADR services are provided at the following offices:
  - St. Paul: 651-284-5030 or 800-342-5354; and
  - Duluth: 218-733-7810 or 800-342-5354.

- **Note:** Hearings and trials are before a workers' compensation judge.
Legal advice and data privacy issues

DLI *does not* have attorneys on staff to represent injured workers.

- An injured worker must contact a private attorney if they want 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, partners, parents, future employers* and *rehabilitation providers* (see Minnesota Statutes sections 13.43, 176.138, 176.231 and 176.39).
Who may file a request for assistance (RFA) – Dispute

**Employee:** Disputes about recommended medical treatment and rehabilitation benefits and services.

**Employer:** Rarely seen; insurers file on their behalf.

**Insurer:** About medical treatment and rehabilitation benefits or services.

**Rehabilitation provider:** To seek direction of plan or plan amendments, or for nonpayment of provider invoices.

**Health care provider:** Regarding payment or the amount.

**Attorney:** About medical treatment and rehabilitation benefits.
Initiating an RFA in Work Comp Campus

• Click on "Submit a Filing" in the top blue bar in your Work Comp Campus dashboard.

• Select "Initiate a Dispute," which opens the "Locate a Claim" section.

• Enter the injured employee's information. You can choose which of the three boxes in which to list the information.

• Click the "Next" button.
Initiating an RFA in Campus, continued

Initiate Dispute
Please complete all sections to Initiate a Dispute.

Locate a Claim Identify Claim

Identify Parties Request a Dispute Resolution Service

Identify the Party You Represent
Identify which party you represent. After you complete this form, this party will be listed as the Requesting Party on the dispute.

Select Party

Associated Claims
Select any additional claims to include in this dispute.

You can only link to this employee’s claims that you have access to view.

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<tr>
<th>Campus File Number</th>
<th>Date of Injury</th>
<th>Claim</th>
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</thead>
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<tr>
<td>CL-02-5715-618</td>
<td>7/1/2020</td>
<td></td>
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Related Claims
There are no related claims that you have access to with the same employee.

Next Back Save as Draft Preview Cancel

Select Party
Which Rehab Provider are you filing on behalf of?
Amnd Rehab Firm LLC

Select an address to display on the dispute
PO Box 123 Saint Paul, 55101

My party is not in this list
Initiating an RFA in Campus, continued
Initiating an RFA in Campus, continued
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Initiating an RFA in Campus, continued
Initiating an RFA in Campus, continued

Electronic Signature

I declare under penalty of perjury that everything that has been stated in this document by me or my agents is true and correct.

Declaration

Full Name of Signatory

I declare under penalty of perjury that everything that has been stated in this document by me or my agents is true and correct.

Full Name of Signatory

Initiate Dispute Successfully Submitted!

Confirmation Number: 6340
Associated ID: DS-02-883-162

Click the link to view your new document:

DO-02-883-162

Initiate Dispute Successfully Submitted!

Please wait while we process your Initiate Dispute Form. Please remain on this page, your Initiate Dispute Form will not be processed.

To serve party by mail you must print a copy of this document and your Affidavit of Service. Send an email to all parties who receive service via Campus.
Dispute certification process for rehabilitation issues – Minn. Stat. 176.106

• ADR hears medical and rehabilitation disputes. Rehabilitation disputes may include retraining plans, rehabilitation provider bills, change of qualified rehabilitation consultant (QRC), and seeking direction or termination of the rehabilitation plan.

• First, a request for certification of a dispute is received from a stakeholder.

• An ADR mediator then contacts the opposing party to determine whether a dispute exists and will attempt to resolve the dispute. A Dispute Certification Notice is sent to the parties advising them whether the dispute has been certified and, if so, whether a conference is to be scheduled.

• Note: Before the conference, parties can amend their RFA and upload exhibits in support of their position.
Dispute certification process for rehabilitation issues – Minn. Stat. 176.106, continued

• If there is a certified dispute, an administrative conference will be scheduled within 21 days (Minn. Stat. section 176.106, subdivision 3), unless the issue involves only fees for rehabilitation services already provided or there is good cause for holding the conference later than 21 days).
Dispute certification process for medical issues

Can a QRC file a Medical Request form on behalf of an employee (even if they do not charge for it) when the employee does not have an attorney or sufficient understanding of the process to file a request on their own?

• No, a QRC may not file a Medical Request for an employee. This is a benefit issue (see Minnesota Rules 5220.1801, subpart 8B). The employee should contact the DLI help desk at helpdesk.dli@state.mn, 651-284-5005 (press 3) or 800-342-5354 (press 3) to request assistance.

• For frequent questions and answers about rehabilitation practice, visit www.dli.mn.gov/business/workers-compensation/faqs-rehabilitation-providers.
Administrative conferences

• Currently, all administrative conferences are by telephone, due to COVID-19 restrictions, and set to one hour. They are semi-formal with no sworn testimony or recordings.

• QRCs are to be notified of rehabilitation conferences via Campus (see Minn. R. 1415.3700, subp. 2).

• **Conference procedure:** The party filing the RFA presents their position and the opposing party provides their response. **Note:** If the rehabilitation provider does not understand a question, they should ask for clarification before responding. If the parties do not reach an agreement, a written Decision and Order will be issued by DLI within 30 days. It is appealable to the Office of Administrative Hearings (OAH).

• ADR cannot contact one of the parties without providing notice to the other parties. Also, unless the parties have agreed to hold the conference open to receive additional documents or arguments, no further information or documents will be accepted.
Suggested preparation for administrative conference

• Review the RFA and response plus any attachments filed by the parties.

• The dispute issues help determine what type of documents may be needed.

  – **Bill disputes**: Bring your invoices 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 direction of the plan, costs and the employee's participation in the plan.

  – **Qualified employee**: You should be able to discuss specific points that your opinion is based on, including information received and documents. For instance, just because a person would benefit from rehabilitation services is not enough of a reason.
Common issues and disputes

The insurer fails to respond to the QRC regarding the proposed rehabilitation plan.

• The QRC may: go ahead with the rehabilitation plan; follow-up with the insurer to determine if it agrees; or file an RFA to "seek direction of the rehabilitation plan."

The provider filed an RFA and, when contacted by ADR, the insurer agreed to pay outstanding bills, but no payment was received.

• You, as the QRC or vendor, might consider requesting ADR draw-up an "Order on Agreement" to insure receipt of payment on the outstanding invoices within 14 days.

• Or, you can wait a reasonable amount of time for payment, such as two weeks.

• If there is still no payment, as the QRC or vendor, you do not have to file another RFA, but should call the mediator to schedule an administrative conference.
Common issues and disputes, continued

Requesting additional job-development and job-placement services

• Job development is limited to a total of 26 weeks (see Minn. Stat. section 176.102, subd. 5). There is no limit on job-placement services.

• DLI suggests using job-development and job-placement descriptions from the R-2 Rehabilitation Plan form and R-3 Rehabilitation Plan Amendment form instruction sections for the service categories in those R-forms.

Retraining plans should include the following:

• Retraining plans should adequately address each of the Poole factors.

• Retraining plans should provide supporting documentation based on facts. Do not assume someone with an IQ of 100 is smart enough to be a biomedical scientist.
QRC and vendor attendance

• QRCs and vendors do not need to attend conferences related to medical treatment or discontinuance of benefits, especially if the parties see no reason.

• If the attorney or adjuster wants a rehabilitation provider to attend a conference or hearing, **and is willing to pay** the provider's hourly fee, then the provider should attend.

• If possible, the rehabilitation provider should be available by phone during the conference in case an issue arises. Time during the actual phone call is billable.

• **If the dispute involves a rehabilitation issue**, the rules indicate the QRC should attend the conference.
Decision and Order

What should a QRC do when a Decision and Order states rehabilitation services should be discontinued and the rehabilitation file be closed?

• If the employee appealed the decision, 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 appeal period continued services may not be compensable.

• If there is no appeal within 30 days, the file is to be closed. It is suggested you contact the parties one to two weeks after the Decision and Order to see if they will appeal.
QRC billing case law

- **Ewing vs. Print Craft, Inc.,** SCA19-0534: The QRC provided services for injuries not related to the admitted claim. Due to this case, an RFA no is longer required to terminate rehabilitation services, if notice is provided to the QRC.

- **Winstead vs. Martin Luther Manor/Fairview Health Services,** WC18-6191: The QRC declined to file a motion to intervene during settlement, so was not entitled to a Parker-Lindberg hearing after settlement occurred.

- **Dilley vs. Carver Cnty Sherriff,** WC18-6205: The employee's attorney represented the employee's interests in a dispute about the need for rehabilitation services (for Heaton fees) when the primary dispute was payment of the QRC's past invoices and the QRC represented herself.
Interventions: Motion to intervene

- When another party has filed an RFA, a QRC with outstanding invoices can intervene in the existing dispute to get paid, especially if settlement of the claim is being considered. You need to file a Motion to Intervene.

- Build the Motion to Intervene by clicking on the "Submit a Filing" drop-down menu and selecting "Access a Case or Claim," then following the prompts to generate the motion.
Office of Administrative Hearings

• OAH conducts administrative conferences about a proposed discontinuance of the employee's wage-loss benefits (see Minn. Stat. 176.239) and medical disputes greater than $7,500, including requests for surgery.

• OAH resources: https://mn.gov/oah/lawyers-and-litigants

• Docket calendar: https://mn.gov/oah/lawyers-and-litigants/docket-calendar.jsp

• The appeal period is 60 days after a Findings and Order is issued.

• It is suggested you contact the parties two to three weeks after the Findings and Order to see if they will appeal.
Questions?