



The Commonwealth of Massachusetts

Division of Industrial Accidents

Leverett Saltonstall Building, Government Center

100 Cambridge Street, Boston 02202

I.A.B. FILE NO.
ATTENTION OF:

March 7, 1986

CIRCULAR LETTER NO. 221

TO: ALL INSURANCE COMPANIES, ALL SELF-INSURERS AND WORKMEN'S COMPENSATION AGENTS OF DEPARTMENTS OF THE COMMONWEALTH AND COUNTIES, CITIES, TOWNS AND DISTRICTS SUBJECT TO THE WORKMEN'S COMPENSATION LAW (GENERAL LAWS, CHAPTER 152, AS AMENDED).

RE: THE INDUSTRIAL ACCIDENT BOARD VOTED AT ITS MEETING OF MARCH 3, 1986, TO ADOPT THE FOLLOWING INTERIM RULES FOR VOCATIONAL PROCEDURES BETWEEN APRIL 1, 1986 AND NOVEMBER 1, 1986, WHICH ARE ATTACHED.

Very truly yours,

Francis J. Joyce
Francis J. Joyce
Secretary

FJJ/mpv

INTERIM RULE FOR VOCATIONAL PROCEDURES BETWEEN

APRIL 1, 1986 AND NOVEMBER 1, 1986

1. The office of Education and Vocational Rehabilitation ("Office") shall contact each workers' compensation recipient within 14 days of the date such recipient has first received uninterrupted benefits under Section 34, Section 35 or both for a period of 120 days, provided that such 120 period shall have begun on or after April 1, 1986. The office shall inform such recipient of the nature of the vocational rehabilitation services available under Chapter 152 and of his/her potential right to such services. The office shall also receive requests for vocational rehabilitation from any employee eligible for benefits under Chapter 152 pursuant to an agreement, order, decision or accepted claim who has not already received vocational rehabilitation for the injury in question. The office shall, within 14 days of receipt of a request, inform such employees of their rights under Chapter 152.

2. Any recipient contacted by the office or requesting vocational rehabilitation services pursuant to Rule 1 who desires to be evaluated for eligibility shall be referred to the Massachusetts Rehabilitation Commission ("MRC") for an evaluation. The insurer shall send all relevant medical information to the office promptly upon request. A copy of the recipient's medical file, the name and address of the insurer, the name and business phone number of any individual managing the case for the insurer and, if available, the Social Security number of the employee shall be forwarded to MRC by the office.

3. Upon a finding by MRC that the compensation recipient is fit and eligible for vocational rehabilitation services, the office shall notify the employee and insurer of such finding. Any insurer who is in compliance with any office request for medical information within 10 business days of such request shall have 14 days from receipt of notice of a finding of eligibility to develop a rehabilitation program that is acceptable to the employee. If an agreement is reached, the office shall be notified and the program implemented. The office shall monitor the progress of the rehabilitation by periodic contact with the employee and the rehabilitation provider and in such other manner as it deems appropriate. The insurer shall pay all the costs of such rehabilitation, including necessary related expenses. Any expenses for transportation, books or supplies shall be paid in advance by the insurer. In any instance in which an insurer does not make timely submission of requested medical information, any medical examinations ordered by MRC or the office for the purpose of making eligibility determinations shall be reimbursed by the insurer.

4. If an agreement between the employee and the insurer is not reached within 14 days, or if the insurer has not made timely submission of information in its possession upon request, MRC may develop a plan for the employee and provide rehabilitation services in accordance with the plan. The insurer shall have 10 days in which to review such plan and to submit to the office an alternate plan it believes to be more reasonable, together with its reasons therefor.

The office shall review any such seasonably submitted alternate plan and, within 14 days, submit to the Division of Dispute Resolution the MRC plan and a recommendation concerning which plan is more consistent with the definition of "vocational rehabilitation" under G. L. 152 Section 1(12) and with current rehabilitation practices. The office shall also make a copy of the insurer's alternate plan available to MRC. The Deputy Director of Dispute Resolution shall schedule the matter for a conference under G. L. Section 7 and, if necessary, a hearing under G.L. 152 Section 8. The Administrative Judge shall determine which plan is more consistent with the aforementioned definition of "vocational rehabilitation" and current rehabilitation practices, and shall order the insurer to pay the costs associated with such plan. The relative costs of the plans along with the other evidence bearing on the issue may be introduced in evidence, but if the MRC plan is or has been implemented, such fact shall not be admissible. The employee shall not be a party to such proceedings.

5. The office shall receive requests for insurer reimbursement from MRC in instances of disputes between MRC and an insurer over liability or payments for any vocational rehabilitation not initiated pursuant to Rule 1. The office shall review the case when it finds that the employee is, or has been eligible for benefits under Chapter 152 for the injury in question and there has been no lump sum settlement of the case prior to the initiation of rehabilitation services. Whenever a case is being reviewed, the insurer will be notified and will be given 10 days to submit an alternate vocational rehabilitation plan that it believes to be more reasonable

together with its reasons therefor. The office shall review the insurers' plan and within 14 days, submit to the Division of Dispute Resolution the MRC plan, the insurer plan and a recommendation concerning which plan is more consistent with the definition of "vocational rehabilitation" under G. L. 152 Section 1(12) and with current rehabilitation practices. The office shall also make a copy of the insurer's alternate plan available to MRC. The Deputy Director of Dispute Resolution shall schedule the matter for a conference under G. L. 152 Section 7 and, if necessary, a hearing under G. L. 152 Section 8. The Administrative Judge shall determine which plan is more consistent with the aforementioned definition of "vocational rehabilitation" and with current rehabilitation practices and shall order the insurer to pay all the costs associated with such plan. The relative costs of the plans along with the other evidence bearing on the issue may be introduced in evidence, but the fact that the MRC plan is being or has been implemented shall not be admissible. The employee shall not be a party to such proceedings. The office shall not review any requests from employees for rehabilitation or from MRC for reimbursement involving cases in which liability for benefits under Chapter 152 has neither been accepted nor determined by the Department.

6. Any workers' compensation recipient who is aggrieved by an MRC finding of ineligibility for vocational rehabilitation shall have the right within 30 days to request an administrative review of the MRC determination.

In his sole discretion, the Commissioner may order such medical or vocational evaluations as deemed necessary. After considering the reports of such evaluations as well as the MRC finding of ineligibility, the Commissioner shall either adopt the MRC finding or make a finding of suitability for vocational rehabilitation. In the event of a finding of suitability, the Commissioner shall direct the office to contract with a private provider of vocational rehabilitation services to develop a plan for the employee and, if appropriate, provide services after insurer liability for the costs of implementing such plan are agreed to or determined. Insurer liability for payments shall be determined as prescribed in rules 3, 4 and 5 above, provided that the insurer shall also be liable for the costs of any evaluations ordered by the Commissioner.

7. Any workers' compensation recipient who, after being determined by MRC to be fit and eligible for vocational rehabilitation, is unsatisfied with every vocational rehabilitation plan offered by MRC shall have the right within 30 days request an administrative review of such finding by the Commissioner. In his sole discretion, the Commissioner may order a referral to a private provider of vocational rehabilitation services after insurer liability for the costs of implementing such plan are agreed to or determined. Insurer liability for payments shall be determined as prescribed in rules 3, 4 and 5 above, provided that the insurer shall also be liable for the costs of any plan development ordered by the Commissioner.