

and information to take a position on liability. Neither the holding of a hearing nor the filing of an application for a hearing alone may determine the existence of a dispute. However, a finding that a dispute exists shall not be precluded by an employer's or insurer's purposeful inactivity on the issue of liability.

(5) Where representation is the result of the representative's employment by an insurance carrier, an employer, a union, a social service agency or a public agency, the representative may not charge a fee on a contingency basis.

(6) Where there has been successive representation by various representatives, the division of fees by the department shall take into account the relative value of the services performed by each representative, any concessions of disability, offers of settlement and other matters.

(7) Where a claimant appears by an attorney of record any fee shall be payable to such attorney regardless of the cooperation or involvement of agents or other non-attorneys. The division of such fee with agents or other non-attorneys shall be at the discretion of the attorney of record. If there is disagreement among successive attorneys the department will make appropriate apportionment of any or all fees for services.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82; cr. (7), Register, September, 1986, No. 369, eff. 10-1-86.

Ind 80.44 Witness fees and travel reimbursement. The fees and travel reimbursement of witnesses and interpreters for attending a hearing before an examiner of the department, shall be the statewide rate currently paid under s. 885.05 (1) (bn), Stats., notwithstanding any local county variations.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.46 Contribution to support of unestranged surviving parent. In assessing support under s. 102.48, Stats., the payment of room and board by a child to his or her parent shall not be considered as contribution to support of the parent.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.47 Medical release of employe for restricted work in the healing period. Even though an employe could return to a restricted type of work during the healing period, unless suitable employment within the physical and mental limitations of the employe is furnished by the employer or some other employer, compensation for temporary disability shall continue during the healing period.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.48 Reassignment of death benefits. When a spouse who is entitled to death benefits remarries, the department shall reassign the death benefits to the children designated in ss. 102.51 (1) and 102.49, Stats., unless a showing is made that undue hardship would result for the spouse because of the reassignment.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.49 Vocational rehabilitation benefits. (1) **PURPOSE** The primary purpose of vocational rehabilitation benefits is to provide a method to restore an injured worker as nearly as possible to the worker's preinjury earning capacity and potential.

(2) **ELIGIBILITY.** The determination of eligibility for vocational rehabilitation training and whether a person is a suitable subject for training is the responsibility of the department of health and social services. If the department of health and social services determines that an employe is eligible to receive services under 29 USC 701 to 797b, but that the department of health and social services cannot provide those services for the employe, the employe may select a private rehabilitation specialist certified by the department of industry, labor and human relations to determine whether the employe can return to suitable employment without rehabilitative training and whether rehabilitative training is necessary to develop a retraining program to restore as nearly as possible the employe to his or her preinjury earning capacity and potential.

(3) **80 -WEEK RULE.** Extension of vocational rehabilitation benefits beyond 80 weeks may not be authorized pursuant to s. 102.61 (1) or (1m), Stats., if the primary purpose of further training is to improve upon preinjury earning capacity rather than restoring it.

(4) **DEFINITIONS.** In subs. (4) to (11):

(a) "IWRP" or "individualized written rehabilitation program" means a plan developed by a specialist which identifies the vocational goal of a retraining program, the intermediate objectives to reach that goal and the methods by which progress will be measured.

(b) "Retraining program" means a course of instruction on a regular basis which provides an employe with marketable job skills or enhances existing job skills to make them marketable.

(c) "Specialist" means a person certified by the department to provide vocational rehabilitation services to injured employes under s. 102.61 (1m), Stats.

(d) Except as provided in sub. (5), "suitable employment" means a job within the employe's permanent work restrictions for which the employe has the necessary physical capacity, knowledge, transferable skills and ability and which pays at least 85 percent of the employe's preinjury average weekly wage.

(5) **SUITABLE EMPLOYMENT EXCEPTIONS.** (a) A job offer at or above 85 percent of the average weekly wage shall not constitute suitable employment if:

1. An employe's education, training or employment experience demonstrates a career or vocational path; the average weekly wage on the date of injury does not reflect the earnings which the employe could reasonably have expected in the demonstrated career or vocational path; and the permanent work restrictions caused by the injury impede the employe's ability to pursue the demonstrated career or vocational path; or,

2. The employe's average weekly wage is calculated pursuant to the part-time wage rules in s. 102.11 (1) (f), Stats., or s. Ind 80.51 (5) and the employe's average weekly wage for compensation purposes exceeds the gross average weekly wages of the part-time employment.

(b) The average weekly wage for purposes of determining suitable employment under par. (a) 1 shall be determined by expert vocational evidence regarding the average weekly wage that the employe may have reasonably expected in the demonstrated career or vocational path.

(c) The average weekly wage for purposes of determining suitable employment under par. (a) 2 shall be determined by expert vocational evidence regarding the employe's age, educational potential, past job experience, aptitude, proven abilities, and ambitions on the date of injury.

(6) **SPECIALIST CERTIFICATION.** (a) A person may apply to the department for certification as a specialist at any time. The department may require applicants to submit, and certified specialists to regularly report, information describing their services, including the geographic areas served by the specialist and the nature, cost and outcome of services provided to employes under this section.

(b) After evaluating the information submitted under par. (a), the department shall certify a person as a specialist if the person has a license or certificate which is current, valid and otherwise in good standing as one of the following, or may certify the person as provided in par. (c):

1. Certified professional counselor with specialty in vocational rehabilitation from the department of regulation and licensing;
2. Certified insurance rehabilitation specialist from the certification of insurance rehabilitation specialists commission;
3. Certified rehabilitation counselor from the commission on rehabilitation counselor certification;
4. Certified vocational evaluator from the commission on certification of work adjustment and vocational evaluation specialists.

Note: The Certification of Insurance Rehabilitation Specialists Commission (CIRSC) and Commission on Rehabilitation Counselor Certification (CRC) are located at 1835 Rohlwing Road, Suite E, Rolling Meadows, Illinois 60008. The Commission on Certification of Work Adjustment and Vocational Evaluation Specialists is located at 7910 Woodmont Avenue, Suite 1430, Bethesda, Maryland 20814-3015.

(c) The department may certify a person as a specialist if the person has state or national certification, licensing or accreditation in vocational rehabilitation other than that required in par. (b) which is acceptable to the department. The department may require a specialist certified under this paragraph to serve a period of probation up to 3 years as a condition of certification. The department shall specify the conditions of the probationary certification. The department may revoke the probationary certification at any time without a hearing for conduct which violated the conditions of probation established by the department or conduct sufficient to decertify the specialist under par. (e).

(d) Unless certification is suspended or revoked under par. (e), certification by the department under par. (b) is valid for 3 years. If a specialist applies to the department to renew his or her certification before the expiration of the certification period, the certification shall remain in effect until the department renews or denies the application to renew. A renewal is valid for three years.

(e) Only the department may initiate a proceeding to suspend or revoke a specialist's certification under this section. The department may suspend or revoke a specialist's certification, after providing the specialist with a hearing, when the department determines that the specialist did not maintain a current, valid certificate or license specified in par. (b) or the specialist intentionally or repeatedly:

1. Fails to comply with the provisions of ch. 102, Stats., or ch. Ind 80;

2. Fails to comply with the orders, rulings, reporting requirements or other instructions of the department or its representatives;

3. Charges excessive fees compared to the value of the services performed or ordered to be performed; or,

4. Misrepresents the employe's work history, age, education, medical history or condition, diagnostic test results or other factors significantly related to an employe's retraining program.

(f) The department shall maintain a current listing of all specialists certified by the department, including the areas they serve, and shall provide the list at no charge to employes, employers, insurers, and others.

(7) **EMPLOYE CHOICE.** (a) At the end of the medical healing period, the self-insured employer or insurance carrier shall notify the employe, on a form provided by the department, of the employe's potential eligibility to receive rehabilitation services.

Note: Forms can be obtained from the Department of Industry, Labor and Human Relations, Worker's Compensation Division, 201 E. Washington Ave. P.O. Box 7901, Madison, Wisconsin 53707.

(b) The department shall arrange with the department of health and social services to receive timely notice whenever the department of health and social services determines under s. 102.61 (1m), Stats., that it cannot serve an eligible employe. When the department of health and social services notifies the department that it cannot serve an eligible employe, the department shall mail to the employe and the self-insured employer or insurance carrier a list of certified specialists serving the area where the employe resides.

(c) The employe may choose any certified specialist. The employe may choose a second certified specialist only by mutual agreement with the self-insured employer or insurance carrier or with the permission of the department. Partners are deemed to be one specialist.

(d) A specialist selected by an employe under par. (c) shall notify the department and the self-insured employer or insurance carrier within 7 days of that selection. The department may develop a form for this purpose.

Note: Forms can be obtained from the Department of Industry, Labor and Human Relations, Worker's Compensation Division, 201 E. Washington Ave., P.O. Box 7901, Madison, Wisconsin 53707.

(e) The self-insured employer or insurance carrier is liable for the reasonable and necessary cost of the specialist's services and the reasonable cost of the training program recommended by the specialist provided that the employe and the specialist substantially comply with the requirements in subs. (8) to (11). Except with the prior consent of the self-insured employer or insurance carrier, the reasonable cost of any specialist's services to the employe shall not exceed \$1,000 for each date of injury as defined in s. 102.01 (2) (g), Stats. Effective on the first day of January each year after 1995, the department shall adjust the \$1,000 limit by the same percentage change as the average annual percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the U.S. department of labor, for the 12 months ending on September 30 of the prior year. The department shall notify insurance carriers, self-insured employers and specialists likely to be affected by the annual change in the limit.

(8) **EMPLOYER'S DUTIES UPON RECEIPT OF PERMANENT RESTRICTIONS.** Upon receiving notice that the department of health and social services cannot serve the employe under s. 102.61 (1m), Stats. the employe or a person authorized to act on the employe's behalf shall provide the employer with a written report from a physician, podiatrist, psychologist or chiropractor stating the employe's permanent work restrictions. Within 60 days of receiving the practitioner's work restrictions, the employer shall provide to the employe or the employe's authorized representative, in writing:

- (a) An offer of suitable employment for the employe;
- (b) A statement that the employer has no suitable employment available for the employe; or,

(c) A medical report from a physician, podiatrist, psychologist or chiropractor showing that the permanent work restrictions provided by the employe's practitioner are in dispute, and medical or vocational documentation that the difference in work restrictions would materially affect either the employer's ability to provide suitable employment or a specialist's ability to recommend a retraining program. If after 30 days the employe and employer cannot resolve the dispute, either party may request a hearing before the department to determine the employe's work restrictions. Within 30 days after the department determines the restrictions, the employer shall provide the written notice required in par. (a) or (b).

(9) **90-DAY PLACEMENT EFFORT.** (a) If the employer fails to respond as required in sub. (8), it shall be conclusively presumed for the purposes of s. 102.61 (1m), Stats., that the employer has no suitable employment available and the employe is entitled to receive vocational rehabilitation services from a specialist.

(b) If the employer does not make a written offer of suitable employment under sub. (8), the specialist shall determine whether there is suitable employment available for the employe in the general labor market without retraining. If suitable employment is reasonably likely to be available, the specialist shall attempt to place the employe in alternative suitable employment for at least 90 days prior to developing a retraining program. The employe shall cooperate fully in the specialist's placement efforts and may not refuse an offer of suitable employment made within the 90-day period. In determining whether the offer is suitable the department shall consider age, education, training, previous work experience, previous earnings, present occupation and earnings, travel distance, goals of the employe, and the extent to which it would restore the employe's preinjury earning capacity and potential.

(c) If the employe is placed in or refuses to accept suitable employment, the self-insured employer or insurance carrier is not liable for any further costs of the specialist's services unless that suitable employment ends within the statute of limitations in s. 102.17 (4), Stats.

(10) **RETRAINING.** (a) If, after reasonably diligent effort by the employe and the specialist, the employe does not obtain suitable employment, then there is a rebuttable presumption that the employe needs retraining. The presumption is rebuttable by evidence that:

1. No retraining program can help restore as nearly as possible the employe's wage earning capacity;

2. The employe or the specialist did not make a reasonably diligent effort under sub. (9) (b) to obtain suitable employment for the employe; or

3. The employe or specialist withheld or misrepresented highly material facts.

(b) A retraining program of 80 weeks or less is presumed to be reasonable and the employer shall pay the cost of the program, mileage and maintenance benefits, and temporary total disability benefits.

(c) A retraining program more than 80 weeks may be reasonable, but there is no presumption that training over 80 weeks is required. Extension of vocational rehabilitation benefits beyond 80 weeks may not be authorized if the primary purpose of further training is to improve upon preinjury earning capacity rather than restoring it.

(d) If the retraining program developed by the specialist is for more than 80 weeks, the self-insured employer or the insurance carrier may offer an alternative retraining program which will restore the employe's preinjury earning capacity in less time than the retraining program developed by the specialist. An employe may not refuse a self-insured employer's or insurance carrier's timely, good-faith, written offer of an alternative retraining program without reasonable cause.

(11) SPECIALIST'S SERVICES. (a) A specialist shall develop an individualized written rehabilitation program for a retraining program for the employe, and may amend it to achieve suitable employment.

(b) A specialist shall make periodic written reports at reasonable intervals to the employe, employer and insurance carrier describing vocational rehabilitation activities which have occurred during that interval.

(c) Within a reasonable period of time after receiving a written request from an employe, employer, worker's compensation insurance carrier or department or their representatives, a specialist shall provide that person with any information or written material reasonably related to the specialist's services to the employe undertaken as a result of any injury for which the employe claims compensation.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82; emerg. am. (2), r. (3), renum. (4) to be (3), cr. (4) to (11), eff. 11-7-94, am. (2), r. (3), renum. (3) to be (4) and am., cr. (4) to (11), Register, April, 1995, No. 472, eff. 5-1-95.

Ind 80.50 Computation of permanent disabilities. (1) In computing permanent partial disabilities, the number of weeks attributable to more distal disabilities shall be deducted from the number of weeks in the schedule for more proximal disabilities before applying the percentage of disability for the more proximal injury, except that:

(a) Such a deduction shall not include multiple injury factors under s. 102.53, Stats.; and

(b) Such a deduction shall include preexisting disabilities.

(2) The number of weeks attributable to scheduled disabilities shall be deducted from 1,000 weeks before computing the number of weeks due for a non-scheduled disability resulting from the same injury. This deduction shall not include multiple injury factors under s. 102.53, Stats.

Register, April, 1995, No. 472

(3) Multiple injury factors under 102.53, Stats., do not apply to compensation for disfigurement under s. 102.56, Stats.

History: Cr. Register, August, 1981, No. 308, eff. 9-1-81; r. and recr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.51 Computation of weekly wage. Pursuant to s. 102.11, Stats. (1) In determining daily earnings, if the number of hours a full-time employe worked had been either decreased or increased for a period of at least 90 total days prior to the injury, then this revised schedule worked during those 90 days shall be considered to be normal full-time employment.

(2) When an employe furnishes his or her truck to the employer and is paid by the employer in gross to include operating expenses, one-third of

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