

1993 Assembly Bill 1082

Date of enactment: April 19, 1994

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1993 WISCONSIN ACT 370

AN ACT *to renumber* 102.61 (1) (a) and 102.61 (1) (b); *to renumber and amend* 102.61 (1) (intro.) and 102.61 (1) (c); *to amend* 102.03 (4), 102.43 (5), 102.61 (2) and 102.61 (3); and *to create* 102.43 (7) (c) 3, 102.61 (1m) and 102.61 (1r) (intro.) of the statutes, **relating to:** vocational rehabilitation services for injured employes, granting rule-making authority and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 102.03 (4) of the statutes is amended to read:

102.03 (4) The right to compensation and the amount of the compensation shall in all cases be determined in accordance with the provisions of law in effect as of the date of the injury except as to employes whose rate of compensation is changed as provided in ss. 102.43 (7) and 102.44 (1) and (5) and employes who are eligible to receive private rehabilitative counseling and rehabilitative training under s. 102.61 (1m).

SECTION 2. 102.43 (5) of the statutes is amended to read:

102.43 (5) Temporary disability, during which compensation shall be payable for loss of earnings, shall include such period as may be reasonably required for training in the use of artificial members and appliances, and shall include such period as the employe may be receiving instruction pursuant to s. 102.61 (1) or (1m). Temporary disability on account of receiving instruction of the latter nature, and not otherwise resulting from the injury, shall not be in excess of 40 80 weeks. Such 40-week 80-week limitation does not apply to temporary disability or benefits under this section, travel or maintenance expense under s. 102.61 (1) or private rehabilitation counseling or rehabilitative training costs under s. 101.61 (1m) if the department determines that additional training is warranted. The necessity for addi-

tional training as authorized by the department for any employe shall be subject to periodic review and reevaluation.

SECTION 3. 102.43 (7) (c) 3. of the statutes is created to read:

102.43 (7) (c) 3. For an employe who is receiving rehabilitative training, a holiday break, semester break or other, similar scheduled interruption in a course of instruction does not commence a new period of rehabilitative training under this paragraph.

SECTION 4. 102.61 (1) (intro.) of the statutes is renumbered 102.61 (1) and amended to read:

102.61 (1) An Subject to sub. (1m), an employe who is entitled to receive and has received compensation under this chapter, and who is entitled to and is receiving instructions under the vocational rehabilitation act, and amendments thereto, P.L. 78-113 29 USC 701 to 797b, as administered by the state in which the employe resides or in which the employe resided at the time of becoming physically handicapped, shall, in addition to other indemnity, be paid the actual and necessary expenses of travel and, if the employe receives instructions elsewhere than at the place of residence, the actual and necessary costs of maintenance, during rehabilitation, subject to the following conditions and limitations: specified in sub. (1r).

SECTION 5. 102.61 (1) (a) of the statutes is renumbered 102.61 (1r) (a).

SECTION 6. 102.61 (1) (b) of the statutes is renumbered 102.61 (1r) (b).

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SECTION 7. 102.61 (1) (c) of the statutes is renumbered 102.61 (1r) (c) and amended to read:

102.61 (1r) (c) The employe may not have expenses of travel and costs of maintenance under sub. (1) or costs of private rehabilitation counseling and rehabilitative training under sub. (1m) on account of training for a period in excess of 40 80 weeks in all, except as provided in s. 102.43 (5).

SECTION 8. 102.61 (1m) of the statutes is created to read:

102.61 (1m) (a) If the department of health and social services has determined under sub. (1) that an employe is eligible for vocational rehabilitation 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 counselor certified by the department of industry, labor and human relations to determine whether the employe can return to suitable employment without rehabilitative training and, if that counselor determines that rehabilitative training is necessary, to develop a rehabilitative training program to restore as nearly as possible the employe to his or her preinjury earning capacity and potential.

(b) Notwithstanding s. 102.03 (4), an employe whose date of injury is before the effective date of this paragraph ... [revisor inserts date], may receive private rehabilitative counseling and rehabilitative training under par. (a).

(c) The employer or insurance carrier shall pay the reasonable cost of any services provided for an employe by a private rehabilitation counselor under par. (a) and, subject to the conditions and limitations specified in sub. (1r) (a) to (c) and by rule, if the private rehabilitation counselor determines that rehabilitative training is necessary, the reasonable cost of the rehabilitative training program recommended by that counselor, including tuition, fees, books and maintenance and travel expenses. Notwithstanding that the department of industry, labor and human relations may authorize under s. 102.43 (5) a rehabilitative training program that lasts longer than 80 weeks, a rehabilitative training program that lasts 80 weeks or less is presumed to be reasonable.

(d) If an employe receives services from a private rehabilitation counselor under par. (a) and later receives similar services from the department of health and social services under sub. (1) without the prior approval of the employer or insurance carrier, the employer or insurance carrier is not liable for temporary disability benefits under s. 102.43 (5) or for travel and maintenance expenses under sub. (1) that exceed what the employer or insurance carrier would have been liable for under the rehabilitative training program developed by the private rehabilitation counselor.

(e) Nothing in this subsection prevents an employer or insurance carrier from providing an employe with the services of a private rehabilitation counselor or with rehabilitative training under sub. (3) before the department of health and social services makes its determination under par. (a).

(f) The department of industry, labor and human relations shall promulgate rules establishing procedures and requirements for the private rehabilitation counseling and rehabilitative training process under this subsection. Those rules shall include rules specifying the procedure and requirements for certification of private rehabilitation counselors.

SECTION 9. 102.61 (1r) (intro.) of the statutes is created to read:

102.61 (1r) (intro.) An employe who receives a course of instruction or other rehabilitative training under sub. (1) or (1m) is subject to the following conditions and limitations:

SECTION 10. 102.61 (2) of the statutes is amended to read:

102.61 (2) The department of industry, labor and human relations, the commission and the courts shall determine the rights and liabilities of the parties under this section in like manner and with like effect as ~~it does that department, the commission and the courts do~~ other issues under compensation. A determination under this subsection may include a determination based on the evidence regarding the cost or scope of the services provided by a private rehabilitation counselor under sub. (1m) (a) or the cost or reasonableness of a rehabilitative training program developed under sub. (1m) (a).

SECTION 11. 102.61 (3) of the statutes is amended to read:

102.61 (3) Nothing in this section prevents an employer or insurance carrier from providing an employe with the services of a private rehabilitation ~~provider~~ counselor or with rehabilitative training if the employe voluntarily accepts those services or that training.

SECTION 12. Appropriation changes; industry, labor and human relations. (1) VOCATIONAL REHABILITATION. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of industry, labor and human relations under section 20.445 (1) (ha) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$126,500 for fiscal year 1994-95 to increase the authorized FTE positions for the department by 2.0 PR positions on July 1, 1994, for the performance of services relating to the vocational rehabilitation of injured employes.