

FLAHIVE, OGDEN & LATSON

ADVISORY NO. 48

TOPIC:           MAXIMUM MEDICAL IMPROVEMENT

In Appeals Panel decision No. 92176, the Texas Workers' Compensation Commission has reaffirmed its intention to rely upon a strict interpretation of the statute and the rules regarding determination of temporary income benefits.

In this case, the claimant was declared to have reached maximum medical improvement by an RME (Requested Medical Examination - the old IME) physician. The carrier requested a BRC to obtain permission to terminate benefits. Permission to terminate benefits was denied and the carrier appealed.

The Appeals Panel ruled that there was no evidence that the RME report had been forwarded to the treating doctor for concurrence, pursuant to Rule 130.2. Because the report was not sent to the treating doctor, the issue "was just not ripe for determination." The Hearing Officer's decision refusing permission to terminate TIBs was accordingly affirmed.

Although the rule requires that the RME doctors send a copy of the report to the treating doctor, we recommend that the carrier send the copy of the report so that you will have documentation of compliance with Rule 130.2. Document your compliance by a notation on the report which is signed by the adjuster or by a copy of the transmittal letter properly addressed to the doctor, referencing the RME report and the fact that it is directed to the doctor pursuant to Rule 130.2 for the doctor's concurrence.

We still do not have an unequivocal answer from the Commission to the question of whether a carrier can terminate TIBs upon a finding of MMI by the RME physician. It still depends on which Commission officer is supervising. We recommend that you call the DDO and document a favorable response to termination in the TWCC 21 form. (The Appeals Panel is definitely going in the direction of requiring a hearing before cessation of benefits on an RME finding of MMI.)

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