

ADVISORY NO. 52

TOPIC: **Benefit Review Request For Settings -- Complications**

There is a pilot program instituted by the commission which is going to further complicate your requests for benefit review conferences. The pilot program will be expanded statewide by November 1, 1992. It is officially named "Customer Service Enhancement Program" and seems to help only claimants.

If you have not already noticed, it is extremely difficult to obtain a hearing at your request, even though disputes are present. The commission is becoming hypertechnical over the wording of your requests and stressing form over substance.

We thought we could remedy the situation by computer tracking your request through our office. This has not worked and ten or more requests for settings on the same case are either ignored or the commission staff states "we worked that out with the adjuster" (which information is often not correct).

It is critical that when you decide a dispute exists, you use certain "magic words". For example, Advisory No. 53 goes into great detail regarding the necessity for strict compliance with Rule 130.4.

1. You must follow all parts of Rule 130.4, in order to secure a setting.
2. A challenge that the claimant has no continuing disability, may also be effective wording, particularly where claimant has failed to attend MEO appointment.

POLICY CHANGE:

In order to offset some of our costs, we will process all your routine completed requests for benefit review conference for a charge of \$55.00 per case. We will prescreen to determine if the form is complete and complies with all rules (this was our usual charge until we eliminated the charge, hoping the commission would set on your request alone). This is a very time-consuming process, but essential. We know you are going to meet with unusual resistance to your requests and personal re-enforcement by us will be necessary. The alternative of paying questionable benefits is unacceptable. File reviews are time and expense.

Remember for each week of temporary income benefits paid unnecessarily, the average wasted payment is \$300.00 per week, plus attendant medical costs.

The TWCC central office officials in Austin are very concerned about problems raised by our complaint in the area of settings, and will be responsive. The local field offices have become the problem. The pilot program seemingly has defined success as how few cases are set. This is

true regardless of whether you have a reason for a hearing to suspend payment of temporary income benefits on the grounds that the claimant has abandoned medical treatment or refuses to go to a commission-ordered examination by a doctor of your choice. We want a hearing to insist that claimant go to the examination or be subject to a penalty.

Please send us specific examples (past and current) of commission abuse in this area. Address these examples to:

Todd Brown, Executive Director

We will screen first and file the complaints for you. This is the only way you will be able to moderate the harshness of interpretation. It is best to try to work these problems out, but a mandamus action in court may be necessary.

If the commission calls you and tries to talk you out of a setting you have requested, don't give in. The staff is under orders to resolve the issues or set a case and the staff has three days to make a final decision (not three months as some are doing).

If the commission calls you and refuses to set, ask them to place their objection to the setting in writing. You should make note of objection and try to correct and advise us of any communication. Send your complaints to us and we will appeal to a higher level. Maintain your own diary system to monitor.

Also in special cases, involve the employer by asking him to write a letter of complaint to Todd Brown for refused settings.

If only the claimant has access to the commission, the new law will be seriously flawed. **Remember that preliminary policies which are being followed today will be set in concrete tomorrow.**

Let's work together to make the policies fair to all sides.