

ADVISORY NO. 53

TOPIC: **Presumption of MMI (Rule 130.4)**

NOTE: File requests for settings through Flahive, Ogden & Latson and we will monitor compliance.

Many requests for a BRC are being denied by the commission when presumption of MMI has been reached and MMI has not been certified. After analyzing many TWCC-45s that have been denied or not responded to by the Field Office, we have the following to offer when citing Rule 130.4.

The three major situations which this rule governs are:

1. No Medical Improvement,
2. Missed Medical Appointments, or
3. Abandoned Medical Treatment

Details for use in each situation are:

1. NO MEDICAL IMPROVEMENT

Five conditions necessary for presumed MMI are:

- a) Injury is not an occupational disease;
- b) Treating doctor has examined the claimant at least two times;
- c) The number of days between examinations is greater than 60 days;
- d) The second exam was after TIB began to accrue; and
- e) The treating doctor's reports after the first exam indicate lack of medical
improvement.

The rule is written such that **all** five conditions must be met to presume MMI in the absence of MMI certification.

2. MISSED MEDICAL APPOINTMENTS

The second situation is when the claimant fails to attend two or more consecutively scheduled health care provider appointments.

If No. 1 or No. 2 is met, then the following steps must be taken to obtain a BRC.

FIRST, if the condition is:

a) Lack of medical improvement under situation No.1

OR

b) Two or more missed health care provider appointments under situation No.2

The carrier must ask TWCC in writing to send the treating doctor a letter requesting a "Medical Status Request". (By Rule 130.4(f), TWCC will respond in 5 days to the carrier's request and the treating doctor is to provide form TWCC-69 to TWCC in 7 days after receipt of the request from the Commission.)

If the treating doctor fails to respond in 17 days **OR** certifies that the claimant has not reached MMI, **THEN** the carrier should assume there is a dispute and may request a BRC on grounds of:

1. "MMI: Apparent lack of medical improvement in medical condition" **OR**
2. "MMI: Failure to attend health care provider appointments"

Along with the TWCC-45 request for a BRC include:

1. A request for RME (Required Medical Exam) under §4.16, Rule 126.5 on form TWCC-22

OR

2. Request a designated doctor to be appointed by TWCC if the claimant will not agree to an exam (Rule 130.6)

Either request No.1 or No.2 must indicate whether or not the claimant agreed or disagreed with the selection of the doctor.

Rule 130.4(k) states that the Commission shall order an expedited BRC, if appropriate, concurrent with the order for the RME.

The BRC may be canceled by TWCC, without prejudice (which means you may later insist on a hearing where facts justify) if:

1. The examining doctor certifies claimant has not reached MMI

OR

2. By agreement of the parties, when the Designated Doctor certifies that the claimant has reached MMI and has assigned an impairment rating, if any, on form TWCC-69, the carrier pays benefits based on the report of the designated doctor.

3. ABANDONED MEDICAL TREATMENT

IF NEITHER SITUATION 1 OR 2 APPLY AND CLAIMANT HAS ABANDONED MEDICAL CARE, REQUEST SHOULD BE MADE BASED ON "MMI: ABANDONMENT OF MEDICAL CARE." More specific facts of medical abandonment, including relevant dates, will be necessary. We recommend this approach in any case where claimant has not had any health care for 60 days or longer.

Rule 130.4 is interpreted differently by some TWCC Field Offices but the above is a sound basis for invoking the presumption of MMI. Remember to use the terms "MMI: apparent lack of medical improvement," "MMI missed appointment," or "MMI: apparent abandonment of medical treatment without good cause."

We will continue to track your request with our computer system. We are now following up with personal contact when the requested hearing is not set in 28 days as per Rule 141.1.

The attached checksheet will allow quick determination if Rule 130.4 can be applied and provide the steps necessary to use the rule in requesting a BRC.

FO&L PRESUMPTION OF MMI CHECKSHEET

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RULE 130.4 PRESUMPTION THAT MMI HAS BEEN REACHED and PROCEDURE FOR RESOLUTION WHEN MMI HAS NOT BEEN CERTIFIED

A. THREE MAJOR CATEGORIES FOR USE OF THIS RULE:

1. NO IMPROVEMENT

Five conditions for presumed MMI (130.4(b):

Yes No

- a) Injury is not occupational disease
- b) Treating doctor has examined claimant at least **2 times**
- c) Number of days between exams **greater than 60 days**
- d) Second exam was **after TIBs began** to accrue
- e) Treating doctor reports **after** first exam **indicate lack of**

OR **improvement**

2. MISSED APPOINTMENTS

Yes No

- Claimant fails to attend two or more consecutively scheduled HCP **OR**

appoint

3. OTHERWISE ABANDONED MEDICAL TREATMENT

Yes No

- Claimant fails to attend health care appointments for at least 60

NOTE: Any "NO" answer disqualifies the use of this category for presumed MMI

B. TO REQUEST BRC BASED ON (1.) NO IMPROVEMENT; OR

(2.) MISSED APPOINTMENTS

CONDITION NO. 1 (130.4(e)):

Yes No

- a) Lack of medical improvement

OR

- b) 2 missed doctors appointments

ACTION BY CARRIER PRIOR TO BRC REQUEST

Carrier must request "Medical Status Request" letter to be sent **by** TWCC to treating doctor. (TWCC will respond within 5 days of carrier's request (134.4(f); treating doctor to provide TWCC-69 to TWCC within 7 days)

CONDITION NO. 2 (130.4(h)):

Yes No

- a) If Treating doctor fails to respond

OR

- b) Treating doctor certifies claimant has **not** reached MMI

ACTION BY CARRIER

Carrier should request **BRC** on TWCC-45 and forward to FO&L. Must state 1 or 2 as basis, in Box 6

- 1) "MMI: apparent lack of improvement in medical conditions"

OR

- 2) "MMI: failure to attend health care appointments"

CARRIER MUST INCLUDE WITH BRC REQUEST (130.4(i)):

Yes No

- 1) A request for RME under §4.16, Rule 126.5 on Form TWCC-22

OR

- 2) Request a designated doctor appointed by TWCC **if claimant would not agree to exam.** (Rule 130.6)

C. TO REQUEST BRC BASED ON ABANDONMENT OF HEALTHCARE

Yes No

- Request BRC on TWCC-45 stating "MMI: Abandonment of

NOTE: Forward to FO&L for Review & Filing with TWCC.