

FLAHIVE, OGDEN & LATSON

ADVISORY NO. 55

TOPIC: NO RIGHT TO REIMBURSEMENT

We have received a lot of questions concerning the carrier's right to reimbursement in the event of a mistaken overpayment. Overpayments frequently occur because of an incorrect wage statement, incorrect method of calculating the compensation rate, or payment of compensation beyond a claimant's return to work, release to return to work, or MMI. Many carriers have been reducing future benefits to recoup these overpayments. These have been done from time to time pursuant to commission authority, either formal or informal, and some reductions have been done unilaterally.

In Appeals Pane decision 92291, the Panel has specifically disapproved this practice. Appeals Judge Joe Sebesta, in reviewing the statute, approves "certain limited areas for reimbursement or recoupment based on fraud, employer payments, and erroneous order of the commission, or upon application of the employee followed by order of the commission." A carrier may not reduce benefits, recoup overpayments, or reimburse overpayments for any other reason.

Accordingly, until this is overturned by further Appeals Panel decisions, a ruling of the Court of Appeals, or Commission rule, **DO NOT REDUCE A CLAIMANT'S BENEFITS TO RECOUP OVERPAYMENTS EXCEPT IN THOSE VERY LIMITED INSTANCES WHERE THE STATUTE SPECIFICALLY PERMITS REIMBURSEMENT** (Sec. 4.06: Payment of Benefits by an Employer; Sec. 4.32: Advance of Income Benefits Paid Pursuant to TWCC Order; Sec. 4.321: Reimbursement of Accelerated Benefits Pursuant to TWCC Order; Sec. 6.15 and 6.42: Reversal of Interlocutory Order and Appeals Panel Decision; Sec. 10.04: Employee Fraud.) Do not reduce your impairment benefit obligation by the temporary income benefits you have overpaid.

The statute needs amending, in our opinion, to overcome this decision. We are hopeful that this will be appealed, either in this case or in another fact situation, in the further hope that an Appellant Court will overturn this very damaging ruling. It seems

to us that inadvertent overpayments, or overpayments based on lack of timely medical information, should have a remedy. This matter should be brought to the attention of the Legislative Oversight Committee and we ask that you send us examples of this injustice.

REMINDER NOTICE

PLEASE REFER TO ADVISORY NO. 42 - New TIB rates in effect as of 9-01-92. **MAKE SURE ALL PAYMENTS COMPLY.** As you know, TIB rates are not retroactive, but apply to accidents which arise 9/01/92 and thereafter.

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September 18, 1992