

ADVISORY NO. 186

TOPIC: NEW SIBS PROBLEM

We have a new problem on supplemental income benefits. The problem arises in the instance of a subsequent quarter of entitlement, in which the amount of benefits payable to the claimant is reduced.

Some of the more aggressive benefit review officers and ombudsmen are contending that whenever a carrier reduces the payment of supplemental income benefits, as a predicate to the reduction, the carrier must request a benefit review conference. The rules do appear to create that kind of requirement. Rule 130.104(f)(2) requires that the carrier file for a benefit review conference if the claimant “continues to be entitled at an amount less than that paid during the prior compensable quarter.” Of course, where a contest is required, the failure to file the contest (specifically a TWCC-45, Request for BRC), waives the carrier’s defenses to that quarter.

Several staff members at the Texas Workers’ Compensation Commission, and specifically those located in some of the smaller East Texas Field Offices, contend that this notice is supposed to be filed even if the reduction is a result of the claimant’s increase in earnings during the qualifying period. It is thus contended that where we pay the claimant everything that the claimant is entitled under the TWCC-52 filled out in the claimant’s own handwriting, we must request a benefit review conference in order to permit the reduction. FO&L contends that this is absurd and we advise against a voluntary increase in the amount of benefits, until there is specific direction from Austin. Even in the event of a specific edict from Austin, we would recommend dispute resolution and that we challenge this before the Appeals Panel.

This firm would contend that the waiver of the right to reduce SIBs occurs only in the event of a “contest” of the claimant’s “continuing entitlement.” If we base the amount of the supplemental income benefit on the facts supplied by the claimant, we are not contesting the entitlement - we are simply paying the claim according to the terms of the Act. For that reason, we contend that there is no obligation to request a benefit review conference because there is no fact dispute to resolve.

We are further informed that these same Commission personnel, for apparent want of anything better to do, are auditing SIBs claims to identify instances in which their interpretation of the rule might apply to estop carriers from the reduction. If contacted by the Commission, we

recommend that you decline to retroactively reinstate SIBs at the higher rate because of this “waiver” argument.

You should be advised of this interpretation of the Commission. We have requested, but have not yet received, an interpretation from the Austin Central Office on this point. There is no Appeals Panel decision interpreting this obligation. We believe that the current interpretation of a few staff people in the field is overreaching and will not be adopted. And yet, this is an interpretation you should be aware of, and if you wish to avoid the very unlikely possibility of having this interpreted adversely (in the event of a reduction of supplemental income benefits), you may wish to request a BRC before you apply the reduction. Again, our firm does NOT recommend this and will not recommend it until instructed otherwise by Austin.

Whenever you dispute a factual representation of the claimant, and you contend that the claimant is entitled to no SIBs, or SIBs at a rate of less than that claimed on the TWCC-52, you should ALWAYS request a BRC to preserve your dispute. Otherwise, the dispute is clearly waived under Rule 130.108(c).