

Adjudicative Advice

Pre-bill 99 VR Plans And Commitments - Clarification

We would like to take this opportunity to clarify the Board's position with regard to pre-Bill 99 vocational rehabilitation services. We understand that interpretations of the Board's policy position on this issue have been varied, and this has resulted in confusion and inconsistent service delivery. Please take the time to review this memo and take the appropriate action.

Transitional Provisions – Claims Active with VR on January 1, 1998

Section 108 of the *Workplace Safety and Insurance Act* (WSIA) provides that vocational rehabilitation assessments and/or services provided to workers under the *Workers' Compensation Act* (WCA) on or before January 1, 1998, will be deemed to be either, "Early and Safe Return to Work" (ESRTW) programs or "Labour Market Re-entry" (LMR) plans. This means that all claims active with vocational rehabilitation on January 1, 1998, must be converted to ESRTW or LMR, and services must be continued in accordance with s.40 and s.42 of the WSIA and related policies.

1. Applying the transitional provisions

Our customers have advised us that the transitional provisions are being applied in a manner that results in reducing the benefits and services to which a worker is entitled.

The transitional provisions of the WSIA do not alter a worker's entitlement to benefits and services under the Act as of

January 1, 1998. Essentially, the transitional provisions of Bill 99 are designed to continue the vocational rehabilitation services and benefits that the worker was entitled to under the WCA.

2. Job Search – Claims with accident dates pre-Jan. 1, 1998

Section 53(12) – (13) of the WCA provided that a worker's VR program could include up to 6 months of job search assistance, with an optional extension of a further 6 months at the request of the worker, the employer, or on the Board's own initiative.

During this period, workers continued to receive full compensation benefits while actively looking for employment.

We understand that during Bill 99 training, staff were directed to apply the transitional policies to convert workers' VR plans to LMR plans, and continue providing service, honouring all commitments on file, e.g., sponsorship for job search.

We have reviewed this direction, and note that in transition files, the worker is entitled to benefits and services according to the WCA and the policies in effect prior to Bill 99. We recognize that although a job search period may not have been specifically documented on file, all pre-1998 VR programs could reasonably have included a job search phase, and a job search phase was a reasonable expectation upon completion of a pre-1998 VR program.

Therefore, the Board will honour all pre-Bill 99 commitments to sponsor

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workers during a job search phase. The Board will also sponsor workers during a job search phase if a verbal commitment was made, but not documented on file, or where no explicit commitment was made but a job search phase is necessary and reasonable.

Based on this, the issue becomes, “how much job search to provide”? There is no uniform answer to this question. The WCA provides for up to a 6 month job search period followed by up to another 6 months. Depending on the specifics of any given claim and the worker’s needs and entitlement, the length of job search sponsorship must be determined by the decision-maker in consultation with the worker. In other words, a worker may or may not require the full initial 6 months, or an extension of up to another 6 months as provided for in the legislation.

Appeals Decisions

When an appeal of a pre-1998 decision is resolved in favour of the worker, resulting in entitlement to VR assistance before January 1, 1998, the worker has entitlement under the WCA and the policies in effect prior to January 1, 1998, service under s.53 of the WCA is continued by s.40 and s.45 of the WSIA and related policies.

1. No previous VR Service and appeal decision prior to January 1, 1998

A worker who had no previous VR services could become entitled to VR through an appeal of a pre-1998 decision. VR services would be provided in accordance with the WCA and the policies in effect pre-Bill 99.

- a) The decision-maker contacts the workplace parties to facilitate a return to work.
- b) If successful, no further assistance is required.

If a return to work is not achieved, one of two outcomes is possible.

- i. If the Board conducts a vocational rehabilitation assessment and determines a VR objective before January 1, 1998, and the worker continues to co-operate with VR, the transitional policies are applied January 1, 1998. The VR objective is converted to a SEB. If the worker has transferable skills that enable a return to the labour market in the SEB, LMR consists of CJST and up to 12 months of job search. If the worker does not have transferable skills, the LMR plan provides skill training followed by CJST and up to 12 months of job search assistance.
- ii. If the assessment is conducted after January 1, 1998, the same activities occur but new terminology is used. An LMR assessment is conducted (formerly a VR assessment) to identify a SEB (formerly a VR objective). Service continues as an LMR plan under s.45 of the WSIA, and may include CJST and up to 12 months of job search if required to locate employment in the SEB.

2. No previous VR and appeal decision made after January 1, 1998

A worker who had no previous VR becomes entitled to service through an appeal heard after January 1, 1998. The decision-maker contacts the workplace parties and tries to achieve ESRTW.

- a) If ESRTW is successful, the worker returns to work and no further action is necessary.
- b) If ESRTW is not successful, the Board conducts an LRM assessment to identify a SEB.
 - i. If the worker has transferable skills, LMR consists of CJST and up to 12 months of job search assistance.
 - ii. If the worker does not have transferable skills, the LMR plan consists of skill training followed by CJST and up to 12 months of job search if required to locate employment in the SEB.

3. Previous VR and appeal decision before January 1, 1998

A worker who had previous VR service could become entitled to further VR through an appeal of a pre-1998 decision, even though the file may not be re-opened for service until after January 1, 1998. Since the worker had previous VR, and has entitlement through January 1, 1998, the transitional rules must be applied. The worker's past VR service is converted to ESRTW or LMR and the VR objective is converted to a SEB.

- a) The decision-maker contacts the workplace parties to determine if ESRTW is possible. If so, worker returns to work and no further action is necessary.
- b) If ESRTW does not result in the worker returning to work, an LMR assessment may be conducted depending on whether or not the previous VR objective (converted to a SEB) is still appropriate.
 - i. If the SEB is appropriate and the worker has transferable skills, the LMR plan consists of CJST followed by up to 12 months of job search assistance.
 - ii. If the SEB is no longer appropriate, an LMR assessment is conducted to identify a new SEB. If the worker does not have transferable skills in the SEB, the LMR plan consists of skill training, followed by CJST and up to 12 months of job search assistance.

4. Previous VR and appeal decision after January 1, 1998

A worker who had previous VR could have further entitlement to service following an appeal of a pre-1998 decision, even though the appeal may not be heard until 1998. Since the

appeal was of a pre-1998 decision, technically, the worker has entitlement bridging January 1, 1998, so the transitional rules apply. The worker's past VR service is converted to ESRTW or LMR and the VR objective is converted to a SEB.

Further management is the same as 3.a) and b).

Pre-1998 Claim, Post-1998 request for VR/LMR service

If a worker, whose date of accident is pre-1998, requests VR/LMR service on or after January 1, 1998, the following case management principles apply.

- a) At the time of the request, any previous VR service provided to the worker would be converted to ESRTW or LMR according to the transitional policies. If there is entitlement to an LMR plan, this plan may include a period of up to 12 months of job search assistance.
- b) If the worker had no previous VR service, ESRTW or LMR could be provided according to the new rules. If an LMR plan is provided, it may include up to 12 months of job search assistance.

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