

Memorandum

TO: Vocational Rehabilitation Counselors and Job Placement Specialists
CC: Vocational Rehabilitation Specialists, Nancy Sedlacek
FROM: Glenn Morton
DATE: July 11, 2014
SUBJECT: Meeting Announcement & Results of April 18, 2014 Meeting

The next informal meeting between court staff and certified vocational rehabilitation service providers is scheduled for Friday, July 25, 2014, at 2:00 pm. The meeting will be held at the court's administrative offices at 1221 "N" Street, Suite 402, in Lincoln. Regular meetings are typically held on a quarterly basis, with the final meeting for this year tentatively scheduled for October 24, 2014.

The following are the results from the April 18, 2014 meeting. Please bring any questions or concerns regarding the discussions or decisions to the attention of court's Vocational Rehabilitation Section and they will be considered at the next meeting.

1. Counselor Designation Form (VR-42): A question was raised regarding whether a counselor must submit a VR-42 form to the court when the parties have agreed to the counselor for a loss-of-earning-power (LOEP) evaluation only. The answer is "yes."

It was noted that the court's Rule 37,A provides that "reports" relating to a LOEP evaluation shall be sent to the court only if the counselor is also agreed to or appointed to provide VR services. However, Rule 42,A specifically applies to notice to the court when agreement of the parties is obtained, using a form developed by the court (i.e., the VR-42). That rule applies to LOEP evaluations as well as vocational rehabilitation (VR) services.

Therefore, the VR-42 must be submitted whenever the counselor is agreed to by the parties, whether for VR services, a LOEP evaluation, or both. However, reports produced by the counselor in connection with a LOEP evaluation shall be sent to the court only if the counselor is also providing VR services.

See also the outcomes memos from the July 25, 2008 meeting (item 3), the October 28, 2011 meeting (item 2), and the May 10, 2013 meeting (item 3) for previous discussions on this issue. Outcomes memos for previous meetings are available on the court's website.

2. Supportive Services Instruction Forms: The draft Supportive Services Student Information and Instruction forms prepared by the court staff were reviewed and approved. Separate forms are available for supportive services which involve classes (e.g., GED, ELL, ABE) and those which do not (e.g., Tutor, OJT, Volunteer). Copies of both forms in English and Spanish are now available on the court's web site.

It had previously been noted that the current Job Placement Information and Instructions sheet is insufficient in that it addresses only job search activities and not supplemental services (such as

English language learning or GED training) which may occur as part of a job placement plan. Likewise, the Formal Training Student Information and Instructions sheet is insufficient in that it largely addresses coursework in a formal program of study rather than supplemental services.

The court staff will forward the appropriate supportive services instruction form to the counselor for sharing with the employee at the appropriate stage of the plan.

3. LOEP Training: It was reported that NE IARP is continuing development of a Power Point presentation on LOEP evaluations which could be made available online by the association and which could be considered by the court for CEU credit. It was agreed at previous meetings that a short term training program for LOEP evaluations would be beneficial, especially for educating counselors on the requirements of Nebraska law. The court's Vocational Rehabilitation Section has also begun sending an email "blast" to all certified counselors notifying them of any new appellate court cases substantially impacting LOEP evaluations.

4. LOEP Appointments: There was continuing discussion of possible revisions to the Vocational Rehabilitation Section's counselor appointment procedures for LOEP evaluations. There is no guidance in the statute as to the qualifications required for appointing a counselor for a LOEP evaluation. Section 48-162.01(3) simply says that any loss-of-earning-power evaluation performed by a counselor must be performed by a counselor certified pursuant to that section to provide vocational rehabilitation services. The court's rules also include no such qualifications.

Nevertheless, it was agreed that a counselor qualified to provide vocational rehabilitation services is not necessarily qualified to provide a LOEP evaluation and that some screening must occur. The difficulty is in determining what that screening should entail. Options under consideration by the section include whether the counselor has experience in doing LOEP evaluations, whether the counselor knows or is willing to learn Nebraska law on LOEP evaluations, and, of course, whether the counselor is interested in receiving such appointments. Consideration is also being given to amending the Application for Certification form (VR-39) and/or the Application for Renewal of Certification form (VR-39A) to gather information regarding the counselor's qualifications for and interest in performing LOEP evaluations. In the absence of any resolution on this issue at this or previous quarterly meetings, the decision as to whether a particular counselor is qualified for appointment to perform a LOEP evaluation will likely remain a case by case decision by court management.

On a related issue, the section's current position of not appointing an out-of-state counselor for LOEP evaluations will likely be reconsidered if such a counselor is deemed qualified. Counselors are frequently responsible for handling claims in multiple states, and it cannot automatically be assumed that an out-of-state counselor does not know, or cannot learn, Nebraska law on LOEP evaluations. Benefits may also accrue from appointing an out-of-state counselor in that the counselor may have better knowledge of the hub community and the labor market in relevant area. The client could also benefit in having only one counselor when both vocational rehabilitation services and a LOEP evaluation are being provided.

5. Late Submission of VR Plans: There was discussion of late submission of vocational rehabilitation plans and possible solutions.

Court records show that during the previous fiscal year (ending June 30, 2014) approximately 50% of the plans were submitted for review by a court specialist within 14 days of the proposed plan start date. Rule 36,B,2 allows the employer or its insurer 14 days to respond regarding whether it will accept the plan and agree to pay temporary disability benefits during the plan. Plans submitted for specialist review within 14 days of the start date do not allow the requisite 14 days for employer/insurer review. In a few instances plans have been submitted after the plan start date, which obviously does not allow sufficient time for the specialist to review and approve the plan prior to the start date. This all potentially puts the client at risk if he or she should incur expenses for carrying out the plan prior to approval by a court specialist and acceptance by the employer/insurer.

Questions were raised at this meeting regarding (1) whether the court's specialists can or should decline to review/approve plans submitted less than 14 days prior to the start date, and (2) whether payments from the Workers' Compensation Trust Fund for carrying out such a plan can or should be denied in such circumstances.

The counselors in attendance expressed concerns about the specialists not reviewing plans given the central role such reviews play in the system. They noted that counselors often receive referrals late in the process and may feel an obligation to at least "give it a try" when the alternative could be delaying the client's program for several months. In these instances, the counselors recognize that the plan dates may need to be amended if the review and approval process cannot be completed in time. The importance of good and timely communication between the counselor and specialist in such instances was also stressed.

No resolution on either of the above questions was reached at this meeting. However, after careful consideration following the meeting it has been decided that the court's specialists will continue to review all proposed plans regardless of when they are submitted. The specialist will take whatever time is needed to adequately evaluate the plan, communicate with the counselor if and as necessary, and make a decision regarding approval or denial. Should the specialist's approval occur on or after the start date reflected in the plan then no payments will be made from the Workers' Compensation Trust Fund for carrying out the plan absent an order from a judge of the court approving the plan. This is based on statute section 48-162.01(3) which provides that a plan must be evaluated by a court specialist and approved by the specialist or a judge of the court prior to implementation. If the plan is approved by a judge, then the trust fund will pay for reasonable expenses incurred in carrying out the plan regardless of when the expenses were incurred. Absent approval from a judge, and at the discretion of the counselor and client, a new plan with amended plan dates and other necessary changes could be submitted for specialist review. For formal training, the start date of any such new plan would have to coincide with a new school term.

For situations in which a plan is approved by the specialist prior to the start date reflected in the plan, payments will be made from the trust fund only after the plan has been accepted by the employer or its insurer or ordered by a judge of the court. Absent an order from a judge, the insurer must also agree to pay temporary disability benefits to the employee during the plan. This is based on statute section 48-162.02(8) which provides that the court administrator may

order payments from the trust fund if (1) vocational rehabilitation is voluntarily offered by the employer, (2) there is an approved plan pursuant to section 48-162.01 (i.e., approved by a court specialist), and (3) the employer agrees to pay temporary disability benefits to the employee during the plan. Once again, if acceptance by the employer or approval by a judge should occur after the start date of the plan, then the trust fund will pay for reasonable expenses incurred in carrying out the plan regardless of when the expenses were incurred.

Concern was expressed that the client could be responsible for expenses incurred in carrying out a late submitted plan if the plan is not ultimately accepted by the employer or ordered by a judge. The counselors in attendance stressed that they inform clients of this risk and strongly discourage them from prematurely incurring any such expenses. To further address this concern, it was agreed that clauses will be added to the signature page of the plan form requiring that the counselor and client both certify that the client has been advised of this risk. A revised signature page showing the recommended changes is attached.

6. Next meeting agenda items: At the next meeting on July 25, 2014 the following will be addressed as time permits:

- a. Late Submission of VR Plans: Discussion of the above decisions regarding late submission of vocational rehabilitation plans and related process and form letter changes.
- b. Plan Terminations: Discussion of policies regard administrative termination of vocational rehabilitation plans by court specialists and possible changes.
- c. General Issues: Discussion of any other issues of concern or interest to the counselors or court specialists.

7. Future meeting agenda items: No additional agenda items are currently identified for future meetings. Suggestions are welcome.

SIGNATURES AND CERTIFICATIONS
(Read carefully before signing)

Vocational Rehabilitation Counselor: I hereby certify that: (1) this plan is reasonably necessary to restore the injured employee to suitable employment; and that all lower priorities as listed in section 48-162.01(3) of the Nebraska Workers' Compensation Act are unlikely to result in suitable employment for the injured employee; and (2) I have advised the injured employee that he or she may be responsible for any expenses incurred in carrying out this plan (a) without receiving approval of the plan by a vocational rehabilitation specialist of the compensation court and acceptance of the plan by the employer or the employer's workers' compensation insurer or risk management pool, or (b) without receiving approval of the plan by a judge of the compensation court.

Counselor's Signature	Date
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Employee: I hereby certify that: (1) I have reviewed this ~~proposed vocational rehabilitation~~ plan and the justification attached; and ~~that~~ I agree with the goal(s) of the plan and the means to attain the goal(s); (2) I will make a good faith effort to successfully complete this ~~proposed~~ plan within the specified time frame; and I understand that failure to participate or make satisfactory progress may result in cancellation of or termination of funding for this the plan; and (3), I have been advised by my counselor that I may be responsible for any expenses incurred in carrying out this plan (a) without receiving approval of the plan by a vocational rehabilitation specialist of the compensation court and acceptance of the plan by the employer or the employer's workers' compensation insurer or risk management pool, or (b) without receiving approval of the plan by a judge of the compensation court. If the projected wage after rehabilitation is significantly less than the time-of-injury wage, I further certify ~~confirm~~ that my counselor has discussed this ~~this has been discussed~~ with me and I understand and voluntarily accept this the difference with this signature.

Employee's Signature	Date
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Employer/Insurer/Risk Management Pool: I hereby certify that the **Insurer**, **Self-Insured Employer**, **Risk Management Pool** accepts this plan and agrees to pay to the employee weekly compensation benefits for temporary disability while he or she is engaged in this plan.

Employer/Insurer/Risk Management Pool's Signature	Date
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Workers' Compensation Court Vocational Rehabilitation Specialist: I certify that I have evaluated this plan in accordance with section 48-162.01(3) of the Nebraska Workers' Compensation Act and that this vocational rehabilitation plan is hereby

APPROVED **DENIED**

Vocational Rehabilitation Specialist's Signature	Date
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