

Memorandum

TO: Vocational Rehabilitation Counselors
CC: Vocational Rehabilitation Specialists, Kris Peterson
FROM: Glenn Morton
DATE: March 6, 2006
SUBJECT: Meeting Announcement & Results of December 16, 2005 Meeting

The next informal meeting between court staff and certified vocational rehabilitation counselors is scheduled for Friday, March 17, 2006, at 2:00 pm. The meeting will be held at the court's administrative offices at 1221 "N" Street, Suite 402, in Lincoln (TierOne Center). Meetings are held on a quarterly basis, with future meetings tentatively scheduled for September 22, 2006, and December 15, 2006. The date of the June meeting will be announced following the March meeting.

1. **Trust Fund Representation.** Assistant Attorney General Lorra Taitague has been designated by the Attorney General's office to represent the Workers' Compensation Trust Fund. Ms. Taitague will be representing the fund in litigation before the compensation court and in other matters relating to services and costs under section 48-162.01.
2. **Meeting Dates for 2006.** Quarterly meeting dates for the remainder of 2006 were tentatively scheduled for March 17, 2006, June 16, 2006, September 22, 2006, and December 15, 2006. However, the June 16, 2006 date conflicts with an IAIABC conference and will need to be rescheduled.
3. **Court Specialist Case Assignments.** It was announced that effective December 1, 2005 changes were made to the specialist's "coverage areas", or the manner in which cases are distributed among the specialists. For details see the court's website.
4. **Vendors.** It was announced that there are NO court approved or court endorsed vocational rehabilitation vendors. This was in response to reports that at least one vendor may have been holding itself out as being approved or endorsed by the court, and counselors are asked to report any such instances to the court.
5. **Mileage Rates.** It was announced that effective January 1, 2006 the mileage rate is 44.5 cents per mile. This is compared to the previous rate of 48.5 cents per mile which remains effective for mileage incurred from September 1, 2005 through December 31, 2005.
6. **Amended plans.** There was discussion at the September 23, 2005 meeting regarding when an amended plan is needed for a formal retraining plan, the procedural differences between a new and amended plan, and when an amended plan must be forwarded on to the employer/insurer for its agreement. It was suggested by court staff that attempting to distinguish

between new and amended plans may be overly confusing and even counter productive, and that a better approach might be to focus on which proposed changes to a plan must be forwarded on to the employer/insurer for its agreement after approval by the court specialist, and which changes can go into effect immediately upon approval by the specialist.

Discussion continued at the December 16, 2005 meeting, and it was agreed that any change to a previously approved plan, other than general directory type information as reported on page one of the plan form, and other than billing information as shown in Section IV of the plan form, will require submission of a new plan document. The new document will then be forwarded on to the employer/insurer for its agreement. It should be noted, however, that changes in the proposed starting date and estimated completion date are not billing information and will require a new plan document, even though those items are currently listed in Section IV of the form.

7. Courtesy copies of plans and LB 13 implementation.

Concern was expressed by the court specialists at the September 23, 2005 meeting that the practice of providing draft or courtesy copies of plans to the parties is causing confusion in that the parties sometimes rely upon these copies rather than waiting for the plan as approved by the court specialist. Some counselors said they do not share draft or courtesy copies with anyone other than the client. Others said that they do share draft or courtesy copies, in order to expedite employer/insurer approval of the plan and/or in the belief that this is required by Rule 42,C.

Consideration of this issue continued at the December 16, 2005 meeting, along with discussions regarding the implementation of LB 13 from the last legislative session. It was recognized that the difficulties described by the court specialists have largely resulted from attempts by some parties to evade the administrative review process provided for in section 48-162.01 by filing a motion directly with the court seeking approval of the plan as reflected in the draft or courtesy copy. However, as a result of LB 13, section 48-162.01(3) now requires that any vocational rehabilitation plan must be evaluated by a specialist of the court prior to implementation, and that the specialist must make an independent determination as to the appropriateness of a proposed plan. Given this requirement, the court administration has now taken the position that absent compliance with section 48-162.03(3) the fund is not obligated to pay for expenses related to a vocational rehabilitation plan. Hopefully this will discourage the practice of filing motions for plan approval directly with the court, prior to evaluation by a court specialist.

8. Courtesy copies of plans and Rule 42,C.

During the September 23, 2005 meeting it was also argued by some counselors that Rule 42,C requires the sharing of draft or courtesy copies of plans with the parties. While there was no resolution at that meeting, the court administration has subsequently taken the position, after consultation with the Attorney General's office, that Rule 42,C does in fact require that any draft or courtesy copy of a plan that is available to any party, other than solely to the employee, must be shared with all other parties. If the employee is represented by an attorney, then any draft or courtesy copy of a plan provided to the employee or the employee's attorney must also be provided to all other parties. While Rule 42,C is silent as to the application of the rule to the

employee's attorney, we believe that the spirit of the rule requires that any draft or courtesy copy of a plan which is available to the employee's attorney must also be made available to all other parties.

9. Plan Signatures. A question has been raised by an attorney as to whether the plan form must be signed by the employee before the proposed plan is submitted for evaluation by a court specialist. After reviewing the matter, it is the position of the court administration that no such requirement exists in the statutes or rules. However, as a result of LB 13, section 48-162.02(8) now establishes the circumstances under which the court administrator can authorize payments from the trust fund in connection with a voluntary vocational rehabilitation plan (i.e., a plan in which the vocational rehabilitation is voluntarily offered by the employer and accepted by the employee, as opposed to a plan which is specifically ordered by a judge of the court). This requires acceptance by the employee as well as an agreement by the employer to pay temporary disability benefits while the employee is engaged in the plan. Therefore, evidence of such acceptance and agreement must be received by the court before payments can be authorized from the trust fund in connection with a voluntary plan. Most often such acceptance and agreement will be evidenced by the signatures of the parties on the plan form, although in rare cases other documentation may be sufficient. As a practical matter, and to avoid delay in the processing of the plan, it is also recommended that the signature of the employee, or the employee's legal representative, be included on the plan form when it is submitted for evaluation by a court specialist.

10. Next meeting agenda items. At the next meeting on March 17, 2006 we will address the following items as time permits:

- a. Meeting Date for the June Meeting. The meeting tentatively planned for June 16, 2006 conflicts with an IAIABC conference and will need to be rescheduled. It is suggested that the meeting be held on either June 9, 2006 or June 23, 2006, both of which are Fridays.
- b. Purchases Outside the Plan Dates. In a recent case a counselor advised the employee to purchase a computer in advance of the plan beginning date. However, under Nebraska Supreme Court cases employees are entitled to vocational rehabilitation benefits only while engaged in an approved plan. In this case the purchase of the computer before the beginning date of the plan could have resulted in the employee's being responsible for the cost of the computer.
- c. Transferable Skills Analysis. This will be a continuation of discussions begun during the September 23, 2005 meeting regarding transferable skills analysis and what should be included in the plan justification regarding transferable skills. There was a suggestion that an explanation should be included if the employee appears to have transferable skills that are not being utilized in the proposed plan. However, concerns were also expressed as to whether work history is being sufficiently addressed in plan preparation, especially with regard to the 4th and 5th return to work priorities, and it was felt that further discussion is needed on such an important topic

11. Future meeting agenda items. The following topics will be addressed at future meetings, not necessarily in this order. Any suggestions for additional agenda items are welcome.

- a. Counselor/job placement specialist certification process.
- b. Case Closure Form. The legislature is increasingly requesting information regarding the vocational rehabilitation program and the success of vocational rehabilitation plans. However, existing data is insufficient to allow the court to respond fully to these requests. Could the Case Closure Form be amended to provide the necessary data, and if so, what data should be collected?
- c. Job Placement Plans. What is the counselor's role and what are the counselor's obligations in a job placement plan?