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VDOL'S RESPONSE TO QUESTIONS POSED BY LCAR'S STAFF ON OCTOBER 24, 2024 IN PREPARATION FOR THE OCTOBER 31, 2024 MEETING

#1 - First, we noticed that the work search requirements contained in Rule 9.000, Temporary Total and Temporary Partial Disability Benefits, do not seem to be referenced in the Topical Index at the beginning of the rules. We thought this might have been an oversight and are wondering if the Department would like to add a reference to the work search requirements in the index of the final version of the rule.

VDOL Response: This was an oversight. We would like to add a reference to the work search requirements to the index.

Please consider this addition to the end of the Topical Index, after the entry for "Workers' compensation law, purpose and construction":

Work Search Requirements 9

#2 - Our second question relates to the parenthetical at the end of Rule 8.1720. We noticed that the first two sentences of the Rule 8.1720 parenthetical are identical to the parenthetical at the end of Rule 8.1630, but that the Rule 8.1720 parenthetical does not include the third sentence of the Rule 8.1630 parenthetical regarding the dependent benefit amount reverting to $10.00 on July 1, 2028 if additional legislative action is not taken. Was the omission of that third sentence intentional and, if not, would you consider adding it to the final version of the rule?

VDOL Response:

These two rules are similar, but they have different histories. Prior to 2023, there was a weekly dependent benefit for claimants receiving temporary total disability benefits, but no dependent benefit for claimants receiving temporary partial disability benefits.

Rule 8.1630 applies to temporary total disability benefits. Before the statutory amendments in 2023, claimants getting temporary total received $10 per week for each dependent child. The 2023 amendments increased that amount to $20 per child per week on a trial basis, until 2028. If the legislature does not extend the $20 benefit in 2028, then the benefit will revert to $10 per child per week in 2028 by operation of law.

Rule 8.1720 applies to temporary partial disability benefits. Before the statutory amendments in 2023, claimants getting temporary partial benefits did not receive any weekly allowance for each dependent child. The 2023 amendments created a new weekly allowance per child for claimants on temporary partial disability benefits, in the amount of $20. This, too, was enacted on a trial basis until 2028. If the legislature does not extend the benefit for claimants on temporary partial disability in 2028, then the benefit is repealed entirely, and claimants on temporary partial disability will not get weekly allowance for dependent children.

We have revised the parenthetical portion of Rule 8.1720 to improve clarity and to add a third sentence to more closely parallel the similar language in Rule 8.1630 as follows:

[The dependency benefit set forth in 21 V.S.A. § 646(b) is effective through June 30, 2028, after which it is repealed unless the Legislature acts to extend it. Accordingly, this Rule 8.1720 is effective during all time periods when the statutory dependency benefit for temporary partial disability benefits is in effect, including during any extension of the dependency benefit beyond June 30, 2028. If the dependency benefit is not extended, then there will be no dependency benefit for claimants receiving temporary partial disability benefits beginning July 1, 2028.]

#3 - Our final question relates to a potential inconsistency in the provisions for denying payments for opioid medications in Rules 11.1400 and 12.1730. In both rules, the first sentence provides "The Vermont Department of Health requires a medical provider who prescribes opioid medications for **acute or chronic** pain to comply with the Rule Governing the Prescribing of Opioids for Pain…." In both rules, the next sentence begins "If credible evidence establishes that the medical provider failed to comply with that Rule in prescribing opioid medications to an injured worker for **chronic** pain…." Is the omission of acute pain from the second sentence intentional? If so, could you provide us with some background on why the Department felt that a rebuttable presumption that a prescription is not reasonable medical treatment was only appropriate in instances related to chronic pain?

VDOL Response: We first adopted these two rules in November 2016, to implement the Vermont Department of Health's Rule Governing the Prescribing of Opioids for Chronic Pain. Afterward, the Health Department expanded its rule to encompass acute pain, as well as chronic pain. In so doing, they changed the name of their rule and the citation to it. Accordingly, our rule change proposal is to update the cross reference in our rule to the updated Health Department rule. When we went through the ICAR process, one of the ICAR members (who works at the Health Department) asked us to re-word part of our existing rule, and we have done that too, with her input and agreement.

We considered whether we should amend our rules to expand their scope to encompass acute pain but decided that it was not necessary. First, we have not received any hearing requests to resolve disputes about the prescribing of opioids for acute pain , although we have conducted hearings where the prescribing of opioids for chronic pain was the issue. Second, by the time an issue is contested in a workers' compensation claim and the matter comes to the Department's attention for a hearing, enough time has passed so that the injured worker is typically no longer in the acute phase of his or her injury. Thus, we did not see a need to amend our rule to create a presumption in the evaluation of claims involving the prescribing of opioids for acute pain. In a typical dispute, the injured worker has been taking opioid medications for more than a decade, and the insurance carrier seeks to discontinue payment for those medications as no longer being reasonable. If the prescribing doctor did not follow the Health Department's guidelines, then the burden of proof on the reasonableness of the prescription shifts from the insurance carrier to the injured worker to establish that ongoing treatment is still reasonable.

SUBMITTED BY:
Vermont Department of Labor, October 25, 2024
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