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4123-18-03 Guidelines for referral to and acceptance into vocational rehabilitation.

(A) Scope of vocational rehabilitation.

- (1) Vocational rehabilitation is the process of restoring the vocational functioning of a worker who experiences ~~an industrial~~ a work related injury ~~or occupational disease~~ and who voluntarily agrees to participate in vocational rehabilitation. Vocational rehabilitation services are focused on return to work and are not reimbursable from the surplus fund if solely directed toward the medical management of a claim.
- (2) The vocational rehabilitation rules of Chapter 4123-18 of the Administrative Code shall aid in the development of procedures for providing reimbursable vocational rehabilitation services.

(B) ~~Referrals for vocational rehabilitation services~~ Participation in vocational rehabilitation services.

- (1) Anyone can refer an injured worker for vocational rehabilitation services.

(2) The bureau shall determine the injured worker's eligibility under paragraph (C) of this rule for vocational rehabilitation services.

~~(2) (3) The bureau shall determine the eligibility of an injured worker referred for vocational rehabilitation services. MCO shall make a recommendation to the bureau regarding the injured worker's feasibility under paragraph (G) of this rule for vocational rehabilitation services.~~

~~(3) (3) Once eligibility has been determined, the MCO shall contact the injured worker referred for vocational rehabilitation services within three working days.~~

~~(4) (4) After the MCO contacts the injured worker, the MCO, with bureau oversight, shall determine the feasibility of the injured worker referred for vocational rehabilitation services.~~

~~(5) (4) An injured worker shall not be able to participate in a vocational rehabilitation plan or receive vocational rehabilitation services until the injured worker has been determined to be both eligible and feasible for vocational rehabilitation services. The bureau shall issue an order approving or denying the injured worker's participation in vocational rehabilitation services.~~

~~(6) (5) Referrals for vocational rehabilitation in inactive claims shall be processed in accordance with rule 4123-3-15 of the Administrative Code.~~

(C) Eligibility for vocational rehabilitation services.

To be eligible for rehabilitation services the injured worker must meet the following criteria:

- (1) ~~Referred~~ The injured worker must have a claim that is:

- (a) ~~A claim allowed~~ Allowed by an order of the bureau of workers' compensation or the industrial commission or of its hearing officers with eight or more days of lost time due to a work related injury; or

- ~~(b) (b) A claim certified by a state university or state agency; or~~

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~~(e)~~ ~~(b)~~ ~~A claim certified~~ Certified by a self-insuring employer.

(2) The injured worker must have a significant impediment to employment or the maintenance of employment as a direct result of the allowed conditions in the referred claim.

(3) The injured worker must have at least one of the following present in the referred claim:

(a) The injured worker is receiving or has been awarded temporary total, non-working wage loss, or permanent total compensation for a period of time that must include the date of referral. For purposes of this section, payments made in lieu of temporary total compensation (e.g. salary continuation) shall be treated the same as temporary total compensation; or

(b) ~~Granted~~ The injured worker was granted a scheduled loss award under division (B) of section 4123.57 of the Revised Code; or

(c) ~~Received or awarded a permanent partial award under division (A) of section 4123.57 of the Revised Code and has job restrictions as a result of that award documented by the physician of record and dated not more than one hundred eighty days prior to the date of referral; or~~ The injured worker is not currently receiving compensation and has job restrictions in the claim documented by the physician of record and dated not more than one hundred eighty days prior to the date of referral; or

~~(d) (d) Determined to have reached maximum medical improvement in the claim (with eight or more days of lost time due to a work related injury) by an order of the bureau or the industrial commission, or the injured worker's physician of record has documented in writing that the injured worker has reached maximum medical improvement in the claim, and the injured worker is not currently receiving compensation and has job restrictions in the claim documented by the physician of record and dated not more than one hundred eighty days prior to the date of referral; or~~

~~(e)~~ (d) Is The injured worker is receiving job retention services to maintain employment or satisfies the criteria set forth in paragraph (E) of this rule on the date of referral; or

~~(f)~~ (e) Sustained The injured worker sustained a catastrophic injury claim and a vocational goal can be established; ~~or~~

~~(g) (g) Was receiving living maintenance wage loss not more than ninety days prior to the date of referral, has continuing job restrictions documented by the physician of record as a result of the allowed conditions in the claim, and has lost his or her job through no fault of his or her own.~~

(4) The injured worker must not be working on the date of referral, with the exception of referral for job retention services.

(D) Eligibility for rehabilitation services for an employee of a state agency or state university employer.

Notwithstanding that an employee of a state agency or state university may not meet the eligibility criteria of paragraph (C)(3) of this rule, the employee shall be eligible for rehabilitation services where the ~~employee meets the eligibility criteria of paragraph (C)(1)(b) of this rule~~ state agency or state university has certified the claim and the employee and employer agree upon a program of rehabilitation services.

(E) Job retention services.

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- (1) Job retention may be furnished when an injured worker is working and experiences a significant work related problem as a direct result of the allowed conditions in the claim.
- (2) Job retention services may be provided if:
 - (a) The injured worker has received temporary total compensation or salary continuation from an allowed claim with eight or more days of lost time due to a work related injury; and
 - (b) The physician of record provides a written statement in office notes or correspondence indicating that the injured worker has work limitations related to the allowed conditions in the claim that negatively impact the injured workers' ability to maintain the injured worker's employment; and
 - (c) The injured worker's employer describes the specific job task problems the injured worker is experiencing to the MCO and the MCO documents these problems in the claim. The MCO shall include a statement describing why the injured worker needs job retention services to maintain employment.

(F) Non-eligibility for vocational rehabilitation services.

The injured worker is not eligible for vocational rehabilitation services and such services shall be terminated:

- (1) After the effective date of a lump sum settlement (medical and/or indemnity); or
- (2) If the claim is subsequently disallowed by an order of the industrial commission, its district or staff hearing officers, or by an order of the court; or
- (3) When the injured worker, after successfully completing a comprehensive vocational rehabilitation plan, subsequently resigns from employment or is terminated for cause and the resignation or termination is not due to the allowed conditions in the claim.

~~(G)~~ (G) Diagnostic evaluations:

~~Prior to comprehensive rehabilitation plan implementation, diagnostic evaluations may be used in determining feasibility for vocational rehabilitation services. Payment for such examination(s) and the vocational rehabilitation case management occurring during this period may be charged to the surplus fund.~~

~~(H)~~ (G) Determination of feasibility for vocational rehabilitation services.

- (1) Feasibility for vocational rehabilitation services means ~~there is a reasonable probability that the injured worker will benefit from services at this time and return to work as a result of the services. Feasibility is initially determined at the time of referral and is assessed throughout the rehabilitation process.,~~ based upon all available information:
 - (a) ~~An injured worker is feasible for vocational rehabilitation services when a review of all available information demonstrates that it is likely the provision of such services will result in the injured worker returning to work.~~ The injured worker is willing to participate in vocational rehabilitation services;
 - (b) ~~An injured worker is not feasible for vocational rehabilitation services when a review of all available~~

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~~information demonstrates that, in spite of the provision of such services, it is likely the injured worker will not return to work. The injured worker is able to participate in vocational rehabilitation services; and~~

(c) There is a reasonable probability that the injured worker will benefit from vocational rehabilitation services and return to work as a result of the services.

~~(e)(2) "All available information" means records, documents, written and oral statements, and any and all medical, psychological, vocational, social, and historical data, of any kind whatsoever, developed in the claim through which vocational rehabilitation is sought or otherwise, that is relevant to the determination of an injured worker's feasibility for vocational rehabilitation services.~~

~~(2)(2) A determination of feasibility shall be written and shall enumerate all available information utilized in making the determination.~~

~~(H)(H) Appeal process for vocational rehabilitation eligibility and feasibility determinations.~~

Facts supporting a decision concerning either the acceptance or denial of an injured worker into vocational rehabilitation shall be documented in the bureau's order approving or denying the injured worker's participation in vocational rehabilitation services. The bureau's order approving or denying participation in vocational rehabilitation services may be appealed to the industrial commission pursuant to section 4123.511 of the Revised Code.

~~(1)(1) Facts supporting a decision concerning either the acceptance or denial of an injured worker into vocational rehabilitation due to eligibility shall be documented in the bureau's decision. Appeals of eligibility determinations shall be filed with the bureau within fourteen days of receipt of the bureau's determination.~~

~~(2)(2) Facts supporting a decision concerning either the acceptance or denial of an injured worker into vocational rehabilitation due to feasibility shall be documented in the MCO's decision. Appeals of feasibility determinations shall be governed by the alternative dispute resolution process provided for in rule 4123-6-16 of the Administrative Code.~~

~~(I)(I) Injured worker's right to compensation or benefits.~~

(1) Approval of an injured worker to participate in vocational rehabilitation services shall make the injured worker eligible to receive living maintenance payments in accordance with section 4121.63 of the Revised Code and rule 4123-18-04 of the Administrative Code.

(2) Denial of an injured worker to participate in vocational rehabilitation services will shall not affect an injured worker's right to compensation or benefits under Chapters 4123., 4127., and 4131. of the Revised Code for which the injured worker otherwise qualifies.

~~Denial of rehabilitation services will not affect an injured worker's right to compensation or benefits under Chapters 4123., 4127., and 4131. of the Revised Code for which the injured worker otherwise qualifies.~~

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4123-18-04 Living maintenance allowance.

The bureau shall ~~order make~~ living maintenance ~~to be paid payments~~ from the surplus fund, ~~established by section 4123.34 of the Revised Code~~, to ~~each an~~ injured worker approved to participate in vocational rehabilitation pursuant to rule 4123-18-03 of the Administrative Code, in accordance with the ~~guidelines listed below~~ criteria set forth in this rule. Living maintenance payments are compensation under Chapters 4121. and 4123. of the Revised Code.

~~An injured worker is eligible for living maintenance payments in accordance with the guidelines of this rule.~~

- (A) Living maintenance payments shall begin on the date that the injured worker actually begins to participate in an approved vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan as defined in rule 4123-18-05 of the Administrative Code. Living maintenance is not payable on the date of referral for vocational rehabilitation services, nor the date the injured worker signed the rehabilitation agreement. Activities performed prior to the injured worker's active participation in the approved vocational rehabilitation assessment plan and/or comprehensive vocational rehabilitation plan are considered pre-plan activities for which living maintenance is not paid.

If salary continuation is offered by the employer of record, an injured worker maintains the right to choose to receive either salary continuation or living maintenance during vocational rehabilitation. However, if temporary total or living maintenance has been paid in the claim, the injured worker shall be paid living maintenance when participating in an approved vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan. Whenever salary continuation is paid by the employer, it must be paid at the injured worker's regular (full) salary level.

- (B) The bureau shall order suspension of living maintenance payments at such time as it becomes evident that the injured worker will not be able to participate actively in their vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan for a period of thirty days or more due to the medical instability of the injured worker. The suspension of living maintenance shall not affect an injured worker's right to compensation or benefits under the Revised Code for which the injured worker otherwise qualifies.

- (1) The bureau shall assist the injured worker in obtaining the payment of other workers' compensation benefits to which the injured worker would normally be entitled absent involvement in a vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan upon the cessation of living maintenance payments.

- (2) Medical hold and eligibility.

~~Upon~~ The injured worker, the employer, or their representatives may make a request from the MCO, for a medical hold. The MCO shall forward the request, along with any necessary information, to the bureau. The bureau shall determine whether, based on adequate medical documentation, the injured worker's vocational rehabilitation plan should be closed with a medical hold.

- (a) A medical hold will retain the injured worker's eligibility for vocational rehabilitation services for up to a maximum of two years from the date of vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan file closure. The bureau and the MCO shall thereafter monitor the injured worker's medical status with the attending physician.

- (b) When the bureau becomes aware of the re-stabilization of the injured worker's medical condition, the

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injured worker's vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan shall be reactivated and, absent any extenuating circumstances, appropriate rehabilitation services shall begin as soon as possible.

(C) The bureau shall not pay living maintenance benefits for any period during which an injured worker has returned to work while the injured worker's vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan remains open, other than as part of a gradual return to work plan.

However, the bureau may resume living maintenance payments if the injured worker subsequently stops working while the vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan is still open and the injured worker resumes services in said plan.

~~(C)~~ (D) The bureau shall ~~order termination of~~ terminate living maintenance payments upon the ~~earlier of: closure~~ of the injured worker's vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan pursuant to paragraph (E) of rule 4123-18-05 of the Administrative Code.

The termination of living maintenance shall not affect an injured worker's right to compensation or benefits under the Revised Code for which the injured worker otherwise qualifies.

~~(1) (1) The injured worker's return to work other than as part of a gradual return to work plan; or~~

~~(2) (2) Closure of the injured worker's vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan pursuant to paragraph (E) of rule 4123-18-05 of the Administrative Code.~~

~~The termination of living maintenance shall not affect an injured worker's right to compensation or benefits under the Revised Code for which the injured worker otherwise qualifies.~~

~~(D)~~ (E) The bureau may order deduction from any living maintenance payment an amount equal to:

(1) One-seventh of the weekly payment to which an injured worker is entitled for each full day during which the injured worker fails, without good cause, to participate in their approved vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan.

(2) Any wages or other remuneration received by the injured worker while participating in an approved vocational rehabilitation assessment plan or comprehensive vocational rehabilitation plan and receiving living maintenance must either be endorsed over to the bureau, or will be deducted from the injured worker's living maintenance payments or from future awards of compensation.

~~(E)~~ (F) Living maintenance payments shall not be ~~ordered~~ paid by the bureau for a period or periods exceeding six months in the aggregate, unless the bureau determines that the injured worker will benefit from an extension of vocational rehabilitation services.

~~(F)~~ (G) Appeals-Bureau order regarding ~~determination of~~ suspension of, or deduction from an injured worker's eligibility for living maintenance payments shall be filed with the bureau within fourteen days of receipt of the bureau's determination may be appealed to the industrial commission pursuant to section 4123.511 of the Revised Code.

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4123-18-14 Injured workers suffering compensable injuries, occupational diseases or death while in an approved vocational rehabilitation plan.

- (A) Claims for injury, occupational disease or death incurred in the course of and arising out of participation in an approved vocational rehabilitation plan may be filed for compensation and benefits ~~as if the injured worker's employer were the bureau of workers' compensation.~~
- (B) The full or average weekly wage for the rehabilitation injury, occupational disease, or death claim shall be calculated using the full or average weekly wage information in the original claim pursuant to which the injured worker undertook participation in the prescribed rehabilitation program; provided, that if the statewide average weekly wage in the year of the rehabilitation injury, occupational disease or death is different from that applicable to the original claim, the injured worker's full or average weekly wage shall be calculated using the original wage information but subject to the maximum compensation rate in such subsequent year.
- (C) All compensation and benefit awards arising out of such a claim shall be charged to the surplus fund account established by section 4123.34 of the Revised Code, and not charged through the state insurance fund to the employer against which the claim was allowed so long as the employer pays assessments into the surplus fund account for the payment of such compensation and benefits. If an employer is a self-insuring employer, the self-insuring employer shall pay these compensation and benefits directly as a part of a claim.