WEST VIRGINIA CODE: §23-4-9

§23-4-9. Physical and vocational rehabilitation.

(a) The Legislature hereby finds that it is a goal of the workers' compensation program to assist employees to return to suitable gainful employment after an injury. In order to encourage workers to return to employment and to encourage and assist employers in providing suitable employment to injured employees, it is a priority of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, to achieve early identification of individuals likely to need rehabilitation services and to assess the rehabilitation needs of these injured employees. It is the goal of rehabilitation to return injured employees to employment which is comparable in work and pay to that which the individual performed prior to the injury. If a return to comparable work is not possible, the goal of rehabilitation is to return the individual to alternative suitable employment, using all possible alternatives of job modification, restructuring, reassignment, and training, so that the individual will return to productivity with his or her employer or, if necessary, with another employer. The Legislature further finds that it is the shared responsibility of the employer, the employee, the physician, and the Insurance Commissioner or private carrier to cooperate in the development of a rehabilitation process designed to promote reemployment for the injured employee.

(b) In cases where an employee has sustained a permanent disability, or has sustained an injury likely to result in temporary disability as determined by the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, the Insurance Commissioner, private carrier, or self-insured employer shall at the earliest possible time determine whether the employee would be assisted in returning to remunerative employment with the provision of rehabilitation services and if it is determined that the employee can be physically and vocationally rehabilitated and returned to remunerative employment by the provision of rehabilitation services including, but not limited to, vocational or on-the-job training, counseling, assistance in obtaining appropriate temporary or permanent work site, work duties, or work hours modification, by the provision of crutches, artificial limbs, or other approved mechanical appliances, or medicines, medical, surgical, dental, or hospital treatment or other services which the Insurance Commissioner, private carrier, or self-insured employer in its sole discretion determines will directly assist the employee's return to employment, the Insurance Commissioner, private carrier, or self-insured employer shall immediately develop a rehabilitation plan for the employee and, after due notice to the employer, expend an amount necessary for that purpose: *Provided*, That the expenditure for vocational rehabilitation shall not exceed $20,000 for any one injured employee: *Provided, however*, That no payment shall be made for such vocational rehabilitation purposes as provided in this section unless authorized by the Insurance Commissioner, private carrier, or self-insured employer prior to the rendering of the physical or vocational rehabilitation, except that payments shall be made for reasonable medical expenses without prior authorization if sufficient evidence exists which would relate

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the treatment to the injury and the attending physician or physicians have requested authorization prior to the rendering of the treatment: *Provided further*, That payment for physical rehabilitation, including the purchase of prosthetic devices and other equipment and training in use of the devices and equipment, are considered expenses within the meaning of §23-4-3 of this code and are subject to the provisions of §23-4-3 of this code. The provision of any rehabilitation services may be pursuant to a rehabilitation plan to be developed and monitored by a rehabilitation professional for each injured employee or by such other provider as determined by the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable. Notwithstanding any other provision of this section to the contrary, the Insurance Commissioner may determine by rule that a rehabilitation plan or any component thereof is not appropriate for an injured employee.

(c) In every case in which the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, orders physical or vocational rehabilitation of a claimant as provided in this section, the claimant shall, during the time he or she is receiving any vocational rehabilitation or rehabilitative treatment that renders him or her totally disabled during the period of rehabilitation, be compensated on a temporary total disability basis for that period.

(d) In every case in which the claimant returns to gainful employment as part of a rehabilitation plan, and the employee's average weekly wage earnings are less than the average weekly wage earnings earned by the injured employee at the time of the injury, he or she shall receive temporary partial rehabilitation benefits calculated as follows: The temporary partial rehabilitation benefit shall be 70 percent of the difference between the average weekly wage earnings earned at the time of the injury and the average weekly wage earnings earned at the new employment, both to be calculated as provided in §23-4-6, §23-4-6d, and §23-4-14 of this code as the calculation is performed for temporary total disability benefits, subject to the following limitations: In no event are the benefits subject to the minimum benefit amounts required by the provisions of §23-4-6(b) of this code, nor may the benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to §23-4-6, §23-4-6d, and §23-4-14 of this code during any period of temporary total disability resulting from the injury in the claim: *Provided*, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid: *Provided, however*, That the aggregate award of temporary total rehabilitation or temporary partial rehabilitation benefits for a single injury for which an award of temporary total rehabilitation or temporary partial rehabilitation benefits is made on or after the effective date of the amendment and reenactment of this section in the year 2003 shall be for a period not exceeding 52 weeks unless the payment of temporary total rehabilitation disability benefits is in conjunction with an approved vocational rehabilitation plan for retraining, in which event the payment period of temporary total rehabilitation disability benefits may be extended for a period not to exceed a total of 104 weeks. The amount of temporary partial rehabilitation benefits payable under this subsection shall be reviewed every 90 days to determine whether the injured employee's average weekly wage in the new employment has changed and, if the change has occurred,

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the amount of benefits payable under this subsection shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section and no payment of temporary partial rehabilitation benefits shall be made after the claimant has received the vocational training provided under the rehabilitation plan.

(e) The Insurance Commissioner shall propose for promulgation rules for the purpose of developing a comprehensive rehabilitation program which will assist injured workers to return to suitable gainful employment after an injury in a manner consistent with the provisions and findings of this section. The rules shall provide definitions for rehabilitation facilities and rehabilitation services pursuant to this section. Notwithstanding any other provision of this chapter to the contrary, and in addition to the provisions of §23-4-3 of this code authorizing an employer or the employer's representative to participate in a managed health care plan, including a managed health care plan that provides physical and vocational rehabilitation services, an employer or the employer's representative may contract directly with one or more providers of vocational rehabilitation services to be the employer's preferred provider of vocational rehabilitation services for its employees who receive injuries compensable under the provisions of this chapter and the rules promulgated under this section may require those employees to use the preferred providers.

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