



GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF RISK MANAGEMENT



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Chief Risk Officer

Notice Number: PSWCP 2023-02

Subject: Maximum Medical Improvement (MMI) as a predicate for directing vocational rehabilitation services pursuant to Section 2304 of the Comprehensive Merit Personnel Act (CMPA)

Purpose: Pursuant to authority provided under Section 2302a of Subchapter 23 of the Comprehensive Merit Personnel Act, the Office of Risk Management (ORM), through this issuance, provides guidance for directing vocational rehabilitation services to claimants only after achieving MMI for a work-related disability.

Effective Date: July 23, 2023

Citation: D.C. Code §§ 1-623.02a and 1-623.04

Background: On April 12, 2010, Mayor Adrian Fenty introduced Bill 18-0731 to the Council of the District of Columbia (“Council”) regarding the Fiscal Year 2011 Budget Support Act of 2010 (“BSA 2010”). B18-0731 amended Section 2304 of Chapter 23 of the Comprehensive Merit Personnel Act (CMPA) for “Vocational rehabilitation” to include subsections (c) and (d). Subsection (c) limited initial vocational rehabilitation services to a period not to exceed 90 days after a claimant reaches maximum medical improvement (“MMI”). Subsection (d) granted the Mayor, through the Public Sector Workers’ Compensation Program (“PSWCP”), the discretion to extend vocational rehabilitation services after the initial 90-day period for incremental 90-day periods not to exceed 1 year from the initiation of vocational rehabilitation services.

Bill 18-0731 included a Fiscal Impact Statement that explained subsections (c) and (d) were added to Section 2304 of the CMPA to “[l]imit vocational rehabilitation services” as the law prior to the bill allowed for vocational rehabilitation services to “continue indefinitely.”¹ A public hearing on Bill

¹ D.C. Council, Report on Bill 18-731, the Fiscal Year 2011 Budget Support Act of 2010, Attachment B, at 10 (May 26, 2010).

18-0731 was held on May 7, 2010, after which no changes were made to the proposed subsections (c) and (d). On September 24, 2010, Bill 18-0731 was passed and subsequently made law. The law remains in effect through the present.

This issuance seeks to resolve whether MMI is a predicate to directing rehabilitation services to claimants pursuant to Section 2304. The CMPA requires the PSWCP to provide vocational rehabilitation for a claimant who is employable, but who cannot return to a pre-injury employment position because of a compensable work-related disability.² The Mayor, through delegation to ORM, has been assigned with administering and deciding all questions arising under Chapter 23 of the CMPA.³

Interpretation: ***Legislative History for Section 2304 of the CMPA***

The CMPA was first adopted on March 3, 1979. At that time, Section 2304 of the CMPA included the following two (2) provisions:

- (a) The Mayor may direct a permanently disabled individual whose disability is compensable under this title to undergo vocational rehabilitation. The Mayor shall provide for furnishing the vocational rehabilitation services. In providing for these services, the Mayor, insofar as practicable, shall use the services or facilities of the District of Columbia government. The cost of providing these services to individuals undergoing vocational rehabilitation under this section shall be paid from the Employees' Compensation Fund.
- (b) Notwithstanding section 2306 of this title, individuals directed to undergo vocational rehabilitation by the Mayor, while undergoing such rehabilitation, shall receive compensation at the rate provided in sections 2305 and 2310 of this title, less the amount of any earnings received from remunerative employment other than employment undertaken pursuant to such rehabilitation.⁴

Effective October 3, 2001, Council amended subsection (a) of Section 2304 of the CMPA by striking the phrase “may direct a permanently” and inserting the phrase “shall direct a permanently or temporarily” in its place.⁵ Effective April 24, 2007, Council again amended Section 2304 of the CMPA by striking the phrase “a permanently or temporarily disabled

² See *Warbington v. Off. of Risk Mgmt. and D.C. Dep't of Corrs.*, Case No. 2019-PSWC-00036, 2020 D.C. Off. Adj. Hear. LEXIS 20 (February 18, 2020).

³ D.C. Code § 1-623.02a.

⁴ D.C. law 2-139, § 2304, 25 DCR 5740 (Mar. 3, 1979).

⁵ D.C. law 14-28, § 1203(c), 48 DCR 6981 (Oct. 3, 2001).

individual” and inserting the phrase “an individual with a permanent or temporary disability” in its place.⁶

Effective September 24, 2010, Council added subsections (c) and (d) to Section 2304 of the CMPA as follows:

- (c) The initial vocational rehabilitation services provided pursuant to this section shall be for a period not to exceed 90 days after the claimant reaches maximum medical improvement and vocational rehabilitation is initiated.
- (d) After the initial 90-day period has expired, the vocational rehabilitation services may be extended, at the discretion of the Mayor, for good cause shown, for incremental periods of 90 days, not to exceed one year from the initiation of the initial vocational rehabilitation plan.⁷

When adopting the above amendments, Council did not reconcile the statutory requirement to provide vocational rehabilitation services to a claimant with either a temporary or permanent disability, with the limitation that set a ceiling for vocational rehabilitation services based upon a claimant having achieved MMI. Council did not pass any legislation after September 24, 2010, as it relates to Section 2304 of the CMPA.

Principles of Statutory Construction

ORM administers Chapter 23 of the CMPA. The D.C. Court of Appeals has recognized agency expertise and has given “great weight to any reasonable construction of a statute by the agency charged with its administration.”⁸ ORM’s interpretation of Section 2304 of the CMPA begins with a general and primary rule of statutory construction that “the intent of the lawmaker is to be found in the language that he has used.”⁹ A “cardinal rule [of statutory construction is also] that a statute is to be read as a whole.”¹⁰ Each provision of the statute should be construed to “give effect to all of the statute’s provisions, not rendering any provision superfluous.”¹¹ Thus, “statutory provisions are to be construed not in isolation, but together with other related provisions.”¹²

⁶ D.C. law 16-305, § 3(g), 53 DCR 6198 (Apr. 24, 2007).

⁷ D.C. law 18-223, § 1062(b)(4), 57 DCR 6242 (Sept. 24, 2010).

⁸ See e.g. *Fluellyn v. D.C. Dep’t of Empl. Servs.*, 54 A.3d 1156, 1160 (D.C. 2012); see also *Frazier v. D.C. Dep’t of Empl. Servs.* 229 A.3d 131 (D.C. 2020) (citing *Kelly v. D.C. Dep’t of Empl. Servs.*, 214 A.3d 996, 1000 (D.C. 2019)).

⁹ *Stevens v. D.C. Dep’t of Health*, 150 A.3d 307, 315 (D.C. 2011) (quoting *Peoples Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (en banc)).

¹⁰ *Stevens v. D.C. Dep’t of Health*, 150 A.3d 307, 315 (D.C. 2011) (citing *Corley v. United States*, 556 U.S. 303, 314 n.5, 129 S. Ct. 1558, 173 L. Ed. 2d 443 (2009)).

¹¹ *Thomas v. D.C. Dep’t of Emp’t Servs.*, 547 A.2d 1034, 1037 (D.C. 1988).

¹² *Id.* (citing *Carey v. Crane Serv. Co.*, 457 A.2d 1102, 1108 (D.C. 1983)).

When reading Section 2304 of the CMPA as a whole, it requires the Mayor, through the PSWCP, to provide vocational rehabilitation to a claimant with a permanent or a temporary disability; and vocational rehabilitation is limited to a defined period *after* a claimant reaches MMI for the work-related disability. While Council has not defined the terms “permanent disability” or “temporary disability” and whether MMI impacts a claimant’s disability status, these parameters need not be defined to understand the purpose and intent behind the amendments to Section 2304 through Bill 18-0731. The language of Bill 18-0731, as originally introduced, is the most significant indication of Council’s intent for the purpose of adding Section 2306a to the CMPA.¹³ As recited above, the Fiscal Impact Statement for Bill 18-0731 states subsections (c) and (d) of Section 2304 of the CMPA were added to “[l]imit vocational rehabilitation services” as no limitation previously existed. To this end, the statutory limitation established by Bill 18-0731 included a condition precedent that vocational rehabilitation services were to be provided only after a claimant reached MMI, and then only for 90-day periods up to a year, thereby demarcating both beginning and end points for the provision of rehabilitation services. To find that vocational rehabilitation can be provided to a claimant before reaching MMI would, in effect, create a situation where there would be no prescriptive period that limits vocational rehabilitation – a situation that is clearly contrary to Council’s intent in adding subsections (c) and (d) to Section 2304 of the CMPA.

Given Council’s stated purpose for the addition of subsections (c) and (d) to section 2304 of the CMPA, it follows that vocational rehabilitation can only be initiated and provided to a claimant who has achieved MMI for a work-related disability. For any claimant who has not achieved MMI but remains unable to return to a pre-injury position with or without accommodations, other tools remain available to help a claimant return to gainful employment – such as returning a claimant to work in a modified duty assignment for a period not to exceed 180 days in a 12-month period.¹⁴

¹³ *D.C. Public Schs. D.C. Dep’t of Empl. Servs.*, 95 A.3d 1284, 1288 (D.C. 2014) (The legislative history for Bill 18-0731 manifested a “clear and unmistakable intent on the part of Council to accord equal weight to the testimonies of both treating and non-treating physicians in public-sector cases brought under the CMPA ...[and] [t]he most significant indication of Council’s intent lies in the language of the bill as originally introduced.”).

¹⁴ D.C. Code § 1-623.45.