

January 31, 2020

Cindy Zimmerman
Employment Relations Division
P.O. Box 8011
Helena, MT 59604
Submitted by email to: Cindy.Zimmerman@mt.gov

RE: MAR Notice No. 24-29-352
Proposed amendment of ARM 24.29.1407

Dear Ms. Zimmerman:

The labor representatives of the Labor Management Advisory Council (LMAC) support the proposed amendment of ARM 24.29.1407 to clarify the definition of prosthetic devices. We believe this proposed rule will be a small step to assure that some injured workers get the medical benefits to which they are entitled without subjecting them to what currently is a lengthy administrative and legal process, that may likely end in the denial of medical benefits.

The LMAC heard presentations from Dr. Maggie Cook-Shimanek, MD, MPH on the issues with the current definition of prosthesis. We found her presentations and the information provided to be compelling reasons to support the changes set forth in this proposed Rule. In particular we were persuaded by the following points that were made.

The ongoing need for maintenance/repair of a prosthetic device is well-accepted in the medical community A narrow definition of prosthesis may result in inappropriate termination of medical benefits.

Return to and maintenance of function are cornerstones of the Montana Utilization and Treatment Guidelines.

Adopting a broader definition of prosthesis is consistent with Montana's approach to medical care for injured and ill workers and is also consistent with the legislative intent.

The proposed prosthesis definition is coherent with other Montana and regional definitions.

We think these points make it clear that the proposed rule is appropriate from a medical perspective, and that the proposed Rule is consistent with the purpose of the workers' compensation system as set forth by the Legislature. On the LMAC we discuss and talk about the workers' compensation system, but we are acutely aware that within that "system" our paramount concern is for the effect upon individual injured workers. This proposed rule is a small change in the system, but for the individuals who would be affected by this Rule it is a big change.

Using the first of Dr. Cook-Shimanek's points above to illustrate, there are injured workers today needing a prosthetic device as a result of a work related injury that will continually face the need for maintenance or repair of those prosthetic devices for more than five years beyond the date of their injury, and under the current definition the medical benefit of maintenance or repair will be denied for many of those workers. A denial of the medical benefit of maintenance or repair of a prosthetic device that a worker needs as a substitute to replace a body part or organ, or to augment the functioning of a body part or organ, is often a denial of the ability to fully participate in family and community activities.

The proposed rule would change that reality for individual injured workers. Workers will know that the maintenance or repair of their prosthetic devices will be a medical benefit they will receive beyond five years after the date of their injury. Workers will know that they will be able to have their prosthetic devices maintained or repaired so they can continue to fully participate in family and community activities. That is a big, positive change for the individual workers who only need the prosthetic devices because they were injured on the job.

We have also listened to or read the concerns of the management representatives of the LMAC. As usual the paramount concern is money, but we have seen no factual information from opponents of the Rule, or from NCCI, with which to weigh the extent or validity of that concern.

We also disagree with the contention that the proposed Rule is beyond the intent of the Legislature. The Montana Workers' Compensation Court recently noted that "the WCA provides that an 'injury' includes 'damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids,' thereby indicating that the Legislature intended a broader definition in the WCA." *Mellinger v. State Fund*, 2018 MTWCC 13, ¶ 23. We support the contention that this proposed Rule is consistent with the intent, purpose and spirit of the Legislature.

Respectfully,



Al Smith

and on behalf of Doug Buman, Adam Haight, Don Judge and Jim Larson

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