



Dear Industry Colleagues and Friends,

It is a pleasure to bring this first issue of the year of our newsletter First Source to you.

Here at FRR, we strive to keep abreast of changes within the industry and are always looking for ways to pass this information along to you. Our newsletter, First Source, is one way and another is through our informational seminars. Already this year we have presented on numerous topics to include Trauma Related Injuries versus Pre-Existing Conditions, Medicare Set-Aside Updates, Job Development in the 21st Century and Advances in Medical Case Management of Complex Claims. We regularly present to industry claims associations, attorney firms and insurance carriers; CEU credit to attendees is possible. We welcome invitations to present at your location!

This issue of First Source includes methods on improving vocational outcomes, an update regarding the MSA submission process and ideas for reducing potential delays and confusion that may arise without an accurate description of a worker's job duties. Many thanks to Attorney Nancy Courson of Dirska and Levin for her excellent contribution: Science-Based Challenges to Expert Opinions.

Please do read on - we hope you find First Source informational and beneficial!!



-The FRR Team

In This Issue

[CMS Opens Web Portal for MSA Submissions](#)

[Work It! A Job Placement Success Story](#)

[Ask the Attorney: Science Based Challenges to Expert Opinions](#)

[FRR Employee Spotlight](#)

[Video Job Analysis](#)

[Are You D-ficient?](#)

CMS Opens Web Portal for MSA Submissions

Kajja Blalock, BSN, RN, JD, MSCC

Field Medical Case Management Supervisor/Medicare Set-Aside Coordinator



CMS recently announced the opening of its Workers' Compensation Medicare Set-Aside (WCMSA) Web Portal to all submitters. The Web Portal not only allows submitters to upload WCMSA proposals and supporting documentation directly to the CMS Case Control system, it also provides submitters with direct access to the system. Benefits of access include the ability to append documents to a case, to receive notifications immediately and to quickly respond to development requests from CMS. Submitters will also be able to track the status of a case. Instructions on registration were provided in CMS's 11/21/2012 teleconference and can also be accessed through CMS's WCMSA website: <http://www.cms.gov/WorkersCompAgencyServices>.

The November teleconference highlighted one requirement, that Web Portal submitters only submit WCMSAs for cases that meet CMS's review thresholds. CMS warned it will track the threshold status of cases submitted by each submitter. A submitter's Web portal ID will be revoked at the third below-threshold submittal. This requirement is interesting for several reasons. First, submitters need to be absolutely sure of whether their claim meets the review thresholds in order to prevent the revocation. Second, though there is still no penalty for under-threshold "paper" submittals sent to the Coordination of Benefits Contractor (COBC), CMS may be sending a message discouraging submission of below threshold cases. Accordingly, response to Web Portal submissions in the next several months will be watched closely.

Work It! A Job Placement Success Story

Samantha Kieley, MA, CRC, CDMS, CCM
Vice President/Director of Vocational Case Management

FRR has recently emphasized to its clients the heightened importance of creative approaches to job development. This has been a particularly effective strategy of late, and in direct response to today's highly competitive labor market. A recent FRR success story is representative of how this non-traditional way of thinking can result in a favorable outcome for all.



Through flexibility of both the Injured Worker (IW) and Insurance Representative, a scenario was created where the IW was able to accept a part-time job (16 hours per week), where he bridged the growing gap in his work history, established new relationships with co-workers/supervisors, earned positive letters of recommendation, re-engaged in the daily rigors of work and, essentially, created a no-cost work conditioning scenario. Although reducing temporary total disability benefits (TTD) to temporary partial disability benefits (TPD), based upon the IW's part-time earnings, all parties agreed that this 16 hour per week position did not, ultimately, represent suitable gainful employment. Rather, it was acknowledged that the part-time job was a step-in-the-right-direction toward this end goal. Continued TPD and vocational rehabilitation assistance was offered to the IW while he worked in the part-time job, and kept seeking a higher paying, full-time job elsewhere. This incentive created a no-risk scenario for the IW, and he continued to put forth full effort toward his job search.

Following one month of part-time employment, during which time the IW interviewed with several other employers, he ultimately decided to accept a full-time position when it was offered to him by the original part-time employer. The employer recognized the IW's hard work, but also benefitted by the no-risk approach of "trying out" the IW prior to determining his "fit" for the job. Likewise, the Insurance Carrier took no risks either, as exposure was limited to TPD during the continued period of uninterrupted vocational rehabilitation and the IW was incentivized to perform well in his part-time job and/or make diligent efforts toward securing a more suitable job elsewhere.

The Vocational Case Manager's creative insight, and the willingness of case-involved parties to work together to consider the long-term placement options, ultimately resulted in this IW's return to what was, ultimately, defined by all parties as suitable, gainful employment.

Ask the Attorney: Science-Based Challenges to Expert Opinions

Nancy J. Courson, Esquire
Law Offices of Dirska and Levin

We all know that an expert opinion can be challenged with a competing causal relationship opinion through an Independent Medical Evaluation; but did you know that it can also be challenged before it is presented for consideration as evidence?



The Court of Appeals held in Montgomery Mutual v. Chesson, et al., that a medical opinion based on science which is not generally accepted by the relevant medical or scientific community, is subject to challenge through use of the Frye-Reed test. Practically speaking, this means that even before the party is permitted to rely on the opinion, the expert must prove that the opinion is based on reliable scientific studies.

If a claim is filed for a condition or injury the experienced claims professional does not recognize as a usual result of accident or disease, the claim may be one to challenge and an IME should be obtained. For example: Guillain-Barre syndrome from an employer-administered flu vaccine, cognitive problems from exposure to mold, Tumor Necrosis Factor Alpha as the source for chronic pain. It is especially important in these types of claims to identify an expert who is experienced and knowledgeable in the correct area of medicine.

Frye-Reed challenges are difficult to raise at the WCC level. Following Chesson, the WCC has taken the position that they do not conduct Frye-Reed hearings. The challenge, therefore, must be adequately presented on the record so that the challenge can be renewed on appeal. Even though formal Frye-Reed hearings are not conducted, some Commissioners are willing to accept scientific articles in addition to IME reports, more readily if they are referenced within the IME.

On appeal to the Circuit Court, a formal Frye-Reed challenge is made through a Pre Trial Motion. If the motion is granted, a Frye-Reed hearing is conducted. This consists of videotaped or live testimony of the parties' expert witnesses. The challenged expert must prove to the judge, through the presentation of scientific evidence and articles, that the scientific data on which his or her opinion is based is generally accepted as true by experts in the particular area of medicine. If the expert cannot overcome the challenge, the opinion is excluded from evidence, never being offered for consideration by the jury. No expert opinion - no ability to prove the claim!

Nancy J. Courson is a partner with the Law Offices of Dirksa & Levin in Columbia, Maryland. Nancy has been defending employer and insurer interests in Maryland since 1997. After successfully arguing that medical opinions are subject to Frye-Reed challenges in the Chesson case, she continues to make science-based challenges to questionable expert opinions. She may be reached at 410-995-6688 or at n.courson@dirksaandlevin.com.

FRR Employee Spotlight on ...

Nicole M. Crawford, MA, CRC



A 2006 Master's-Degree graduate from the University of Iowa's Vocational Rehabilitation Counseling program, Nicole currently services the Northern Virginia, Washington, DC, Prince George's County and Southern Maryland territories for FRR. Her professional counseling background started with an Employee Assistance practicum, followed by rehabilitation counseling with Goodwill Industries of Southeast Iowa. Prior to joining FRR's Vocational Case Management Department in the Spring of 2011, Nicole specialized in vocational evaluation with the Virginia Department of Rehabilitative Services. Nicole's seven years experience in vocational counseling includes specialties in job development/placement, labor market analysis, vocational assessment and earning capacity determination, ergonomic assessment/video job analysis and expert testimony in workers' compensation, long/short term disability and family law matters. She is a nationally recognized Certified Rehabilitation Counselor (CRC).

In her time with FRR, Nicole has already developed the reputation for being a "go-to" for objective, insightful and creative approaches to challenging case assignments. A good part of Nicole's work is through repeat requests for her assistance; customers and clients recognize that Nicole strives to ensure that all work she completes is of the very highest quality.

Outside of enhancing our Vocational Case Management Department, Nicole enjoys running long distance road races and spending quality time with her husband, dog and new puppy, Duke!

Video Job Analysis - A Cost Effective Approach

Samantha Kieley, MA, CRC, CDMS, CCM

Vice President/Director of Vocational Case Management

Traditional Job Analysis (the process of methodically identifying and detailing particular job duties and physical demands) can be effective; however, more people are turning to VIDEO analysis to accurately portray an occupation and to provide a visual representation of exactly how a job is performed. The concept is simple: video footage visually captures job duties and work environments in a way that words often lack.



The Video Job Analysis includes a visit to the Employer to determine the essential functions of a job, define each physical task, and identify the physical demands of the tasks. A Video Job Analysis should always include an accompanying written Job Analysis.

Just a few minutes of video footage can provide a Physician with enough information to easily comprehend how the tasks are performed and what physical demands are encountered. This specialized approach to Job Analysis can make a huge difference when physician participation is necessary to substantiate the appropriateness of the job to the worker's medical restrictions/limitations. It can also serve to provide objective information on any other potential job opportunities being considered for match with the worker's abilities.

Consider the delays and errors that can arise when there is confusion or dispute surrounding a worker's position. The slight added cost of video footage is easily recaptured through reduced delays and confusion that can often occur without an accurate description of the worker's job.

Our Vocational Case Management Specialists at FRR are experienced in Video Job Analysis and look forward to assisting you and your case-involved Medical Providers in making objective and early return-to-work decisions.

Are you D-ficient? Shedding Light on the Sunshine Vitamin

Adapted from Runner's World, February 2012/Liz Applegate, PhD

Vitamin D is essential for maintaining bone health, but Experts agree, it's difficult for most people to get enough vitamin D from their diets alone. The sun's UV rays are our next best-bet, but even during the summer months, the sun is only strong enough for vitamin D production if it hits our hands and faces between the hours of 10 A.M. and 3 P.M. (when we are, most likely, at work in our offices). And sunscreen, which we need to prevent skin cancer (and are hopefully using regularly), cuts production by 99%. That's obviously not such great news, so...where's the D?



To sustain optimal amounts of the nutrient in our bodies, the current recommended daily allowance is 600 international units (IU) per day for everyone through age 70 (800 IU if you're older). Still, many Specialists don't believe that's even enough to reap the full benefits, and advocate daily doses of 1,000 to 3,00 IU.

FRR encourages you to discuss your individual needs, and the possible benefits of supplement use, with your Physician or Nutritionist, but in the meantime, be sure to keep these items on your weekly grocery list:

- Egg yolks (80 IU for two) - in addition to scrambled eggs for breakfast, have a hard-boiled egg for a midmorning snack or enjoy a cup of egg drop soup on a cold evening
- Fatty fish (400-800 IU for four ounces) - salmon, mackerel, and sardines are ideal. Grill or bake for fish tacos or top a flat-bread pizza with sardines
- Mushrooms (380 IU for one cup) - all varieties have D, but growers have raised IU levels by exposing to UV light during growing cycles
- Fortified dairy products, cereal and juices (40-125 IU per serving)

Oven-Roasted Fish and Mushrooms

MarthaStewart.Com; Martha Stewart

Prepares 4 servings in 40 minutes

Eat Smart: Flavorful mushrooms, fresh herbs, and olive oil are healthy ways to enhance lean fish.

Ingredients:

- * 2 lbs shitake mushrooms, trimmed and halved if large
- * 4 T plus 1 t extra virgin olive oil
- * 2 t fresh thyme leaves, plus 4 whole sprigs
- * Coarse salt and ground pepper
- * 4 firm white-fleshed fish fillets, such as striped bass or cod (6 oz each)
- * 1/2 c packed fresh parsley leaves
- * 1 T fresh lemon juice, plus lemon wedges for serving

Preparation

1. Preheat oven to 450 degrees. On a rimmed baking sheet, toss mushrooms with 3 T oil and thyme leaves. Season with salt and pepper. Roast until mushrooms are lightly browned, 15 minutes.
2. Rub fish with 1 T oil, season with salt and pepper.
3. Arrange fish over mushrooms, top with thyme sprigs.
4. Roast until fish is opaque throughout, 10 to 12 minutes.
5. Toss parsley with lemon juice and 1 t oil; season with salt and pepper.
6. Serve fish and mushrooms with parsley salad and lemon wedges.



Enjoy!



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