

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1409

6
7 H.P. 1070

House of Representatives, April 5, 1983

8 Referred to the Committee on Labor. Sent up for concurrence and
9 ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Joseph of Waterville.

Cosponsor: Representative McGowan of Pittsfield.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT Relating to Rehabilitation under
18 the Workers' Compensation Law.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 39 MRSA §54, 2nd ¶, as amended by PL
23 1977, c. 278, §3, is repealed.

24 Sec. 2. 39 MRSA §73 is enacted to read:

25 §73. Rehabilitation

26 1. Scope. Rehabilitation is intended to restore
27 the injured employee through physical and other re-
28 habilitation services so he may return to suitable
29 gainful employment. Suitable gainful employment for
30 the purpose of this section is that employment which
31 is reasonably obtainable and which offers an oppor-
32 tunity to restore the injured employee as soon as

1 possible and as nearly as possible to a job related
2 to his former employment or to a job in another work
3 field in which he could produce earnings as close as
4 possible to those he received at the time of the
5 injury.

6 Rehabilitation for employment which may produce earn-
7 ings greater than those the employee received at the
8 time of the injury may be required only if it can be
9 demonstrated that this rehabilitation is necessary
10 for reemployment.

11 2. Rehabilitation services. Rehabilitation ser-
12 vices include evaluation, counseling, physical reha-
13 bilitation, training, vocational rehabilitation and
14 placement.

15 3. Rehabilitation priorities. The following
16 priorities are established for use in exploring
17 alternative rehabilitation plans.

18 A. The priorities shall be as follows:

19 (1) Return to the employee's previous job
20 with the same employer;

21 (2) Modification of the employee's previous
22 job with the same employer, including a
23 transitional return to work;

24 (3) A new job with the same employer in
25 keeping with any limitation or restrictions
26 of the employee;

27 (4) A new job with a new employer as a
28 result of direct job placement based upon
29 transferable skills;

30 (5) A new job with a new employer, includ-
31 ing, on the job training; and

32 (6) Retraining and job placement consistent
33 with the purpose of rehabilitation.

34 B. No higher numbered priority may be utilized
35 unless all lower numbered priorities have been
36 determined by the rehabilitation consultant to be

1 unlikely to result in returning the employee to
2 suitable gainful employment.

3 4. Rehabilitation plan. Whenever the condition
4 of an injured employee is such that it will preclude
5 the employee from earning wages substantially close
6 to the wages he earned prior to the injury, and he
7 has experienced more than 90 days of lost time, the
8 employer shall refer the employee to a qualified re-
9 habilitation consultant for a determination of
10 whether rehabilitation is necessary to return the
11 employee to suitable gainful employment.

12 If the employer and employee reach an agreement in
13 regard to a rehabilitation plan, a memorandum of that
14 plan, signed by the parties, shall be filed with the
15 Workers' Compensation Commission. The commission
16 shall approve or reject all such voluntary plans.

17 If a rehabilitation plan is not voluntarily offered
18 or accepted, or if a voluntary plan is rejected by
19 the commission, the employee, employer or insurer or
20 the commission may request an informal conference
21 before the commission. At the informal conference,
22 neither the Maine Rules of Civil Procedure nor the
23 Maine Rules of Evidence apply and parties shall be
24 permitted to appear without counsel. If the employee
25 is represented by counsel at the conference, the
26 employer may be assessed fees under section 110 only
27 if the employer is also represented by counsel at the
28 hearing.

29 At the request of either party or upon its own
30 motion, the commission may order a consultation with
31 a qualified rehabilitation consultant. If the con-
32 sultant determines that rehabilitation is necessary
33 to return the employee to suitable gainful employ-
34 ment, he shall submit a written rehabilitation plan
35 and recommendation to the commission, employee,
36 employer and insurer. In developing any plan, con-
37 sideration shall be given to the employee's qualifi-
38 cations, including, but not limited to, age, educa-
39 tion, work history, interests, aptitude and skills.
40 Consideration shall also be given to the employee's
41 work-life expectancy, the locality of employment and
42 the likelihood of reemployment.

1 The commission, after consideration of the consult-
2 ant's rehabilitation plan and recommendations, may
3 order the employer or insurer to provide the recom-
4 ended plan of services, or such other plan of ser-
5 vices as will accomplish the purposes of this
6 section. The rehabilitation consultant's report
7 shall be admissible in evidence. Any party aggrieved
8 by the order of the commission may appeal that deci-
9 sion to the Appellate Division pursuant to section
10 103-B.

11 5. Rehabilitation Division. There is estab-
12 lished a Rehabilitation Division within the Workers'
13 Compensation Commission, to carry out the purposes of
14 this section under the direction of the chairman.
15 The chairman shall appoint a Director of the Rehabil-
16 itation Division, subject to the Personnel Law.

17 6. Plan review or modification. Upon request of
18 the employee, the employer or insurer or the commis-
19 sion, reports of an employee's progress under the
20 plan shall be made by the provider of rehabilitation
21 services to all the parties and the commission. The
22 commission, upon request of any party, shall order
23 the suspension, termination or modification of the
24 plan upon a showing of good cause therefor, includ-
25 ing, but not limited to:

26 A. A physical condition which does not allow the
27 employee to continue pursuing the rehabilitation
28 plan;

29 B. The employee's performance level indicates he
30 cannot complete the plan successfully; or

31 C. An employee does not cooperate with a plan.

32 7. Plan costs. The employee shall be entitled
33 to:

34 A. Reasonable and proper rehabilitation service
35 for a period not exceeding 52 weeks, which period
36 may be extended for a further period, not to
37 exceed another 52 weeks, if that extended period
38 is found to be necessary and proper by any member
39 of the commission;

1 B. Reasonable rehabilitation diagnosis and plan
2 preparation;

3 C. Physical rehabilitation, counseling and other
4 services and supplies necessary for the imple-
5 mentation of the plan;

6 D. Tuition, books and fees, and a sum not to
7 exceed \$35 each week for sustenance and travel,
8 as may be determined by the commission during the
9 period of rehabilitation; and

10 E. Reasonable relocation expense, if necessary
11 to accept new employment, not to exceed \$3,000.

12 8. Compensation during rehabilitation. During
13 the course of a rehabilitation plan, an employee
14 shall be entitled to compensation under section 54 or
15 55, whichever is appropriate.

16 9. Employee refusal; sanctions. The commission
17 shall, after notice and hearing, order a suspension
18 of the employee's compensation if it finds that:

19 A. The employee, without good cause, refused to
20 submit to any examinations or evaluative proce-
21 dures to determine the need for and the details
22 of a rehabilitation plan;

23 B. The employee refused to undertake or cooper-
24 ate with a rehabilitation plan approved or
25 ordered by the commission; or

26 C. The employee, without good cause, refused to
27 accept suitable gainful employment following com-
28 pletion of the plan. Geographical location of
29 the employment, if within the State, shall not be
30 considered good cause for refusing to accept
31 employment.

32 A suspension of compensation under this section shall
33 remain in effect only as long as the period of
34 refusal. If the commission orders a suspension, any
35 benefits paid between the time of the refusal and the
36 commission's suspension shall be considered an over-
37 payment. The amount of the overpayment shall be re-
38 coverable by the employer or insurer by making deduc-

1 tions from future benefit payments in such amounts as
2 the commission may determine. If no benefits are
3 payable, the employer or insurer may recover the
4 amount of the overpayment by civil action.

5 10. Effort on collective bargaining agreements.
6 No provision of a collective bargaining agreement may
7 operate to prevent an employer from offering or an
8 employee from accepting reemployment under a rehabil-
9 itation plan described in subsection 3, paragraph A,
10 subparagraph (2) or (3).

11 Sec. 3. 39 MRSA §94, as amended by PL 1977, c.
12 709, §3 is repealed and the following enacted in its
13 place:

14 §94. Approval of compensation agreement; petition
15 for award

16 If, following an injury, the employer and the
17 employee reach an agreement in regard to compensation
18 under this Act, a memorandum of the agreement signed
19 by the parties shall be filed in the office of the
20 commission. If the commission finds that the agree-
21 ment is in conformity with the Act, it shall approve
22 it. If the commission finds that the agreement is
23 not in conformity therewith and refuses to approve
24 it, or if the employer and the employee fail to reach
25 an agreement in regard to compensation, either the
26 employer or the employee, or if death has resulted
27 from the injury, the dependents of the employee may
28 file in the office of the commission a petition for
29 award of compensation. The petition shall set forth
30 the names and residences of the parties, the facts
31 relating to the employment at the time of the injury,
32 the time, place and cause of the injury, the knowl-
33 edge of the employer or notice of the occurrence
34 thereof, the character and extent of the injury and
35 the claims of the petitioner with reference thereto,
36 together with such other facts as may be necessary
37 and proper for the determination of the rights of the
38 petitioner relative to the claims.

39 If, following an injury which causes no incapac-
40 ity for work, the employer and employee reach an
41 agreement that the employee has received a personal
42 injury arising out of and in the course of employ-

1 ment, a memorandum of the agreement signed by the
2 parties may be filed in the office of the commission.
3 The memorandum shall set forth the names and resi-
4 dences of the parties, the facts relating to the
5 employment at the time of the injury, the time, place
6 and cause of injury and the nature and extent of the
7 injury. Any member of the commission may, without
8 the necessity of the filing of a petition for award,
9 render a protective decree based upon that memo-
10 randum.

11 Sec. 4. 39 MRSA §106, first ¶, as amended by PL
12 1975, c. 293, §4 is further amended to read:

13 Whenever any employee has reported to an employer
14 under the Act any injury arising out of and in the
15 course of his employment which has caused the
16 employee to lose a day's work or has required the
17 services of a physician, or whenever the employer has
18 knowledge of any such injury, every such employer
19 shall within 7 days after said the notice or knowl-
20 edge make report thereof to the commission, with the
21 average weekly wages or earnings of such that
22 employee, together with such other particulars as the
23 commission may require; and shall report whenever the
24 injured employee shall resume his employment, and the
25 amount of his wages or earnings at such that time. If
26 at the end of a period of 6 months following the date
27 of injury or the date of amputation of any member, or
28 the date of loss of one or both eyes or the loss of
29 hearing in one or both ears, the employee is still
30 incapacitated, every such employer shall make a
31 report thereof to the commission, on such form as the
32 commission shall prescribe, giving full information
33 as to the date and nature of the original injury and
34 a description of the physical handicap resulting from
35 such injury. Upon receipt of such notice from the
36 employer, or upon any knowledge or notice received
37 prior to such notice, the commission shall forthwith
38 refer such case to the Division of Vocational Reha-
39 bilitation of the Department of Human Services, or in
40 cases of blindness to the Division of Eye Care and
41 Special Services of the Department of Human Services,
42 and may thereafter cooperate and work with those
43 divisions in the matter of rehabilitation of the
44 injured employee. Any employer who willfully
45 neglects or refuses to make any report required by

1 this section shall be subject to a penalty of not
2 more than \$100 for each such neglect or refusal, to
3 be enforced by the commission in a civil action in
4 the name of the State. In the event the employer has
5 sent the report to the insurance carrier for trans-
6 mission by ~~such~~ the insurance carrier to the commis-
7 sion, the insurance carrier willfully neglecting or
8 refusing to transmit the report shall be liable for
9 the said penalty.

10

STATEMENT OF FACT

11 This bill substantially expands the scope of re-
12 habilitation services under the Workers' Compensation
13 Act.

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