



The Brown & Carlson, P.A. Insight

The 12 + 12 Rule of Passive Care

After an Employee exhausts 12 calendar weeks of passive care as allowed under Minnesota Rule 5221.6200, 5221.6205, or 5221.6210, subpart 3, the Employee may be allowed an additional 12 visits over an additional 12 months if certain criteria are met. (12 weeks means 12 weeks from the date treatment first started.) After 12 weeks is exhausted, the following must be asked and satisfied before authorizing any additional treatment:

1. The employee is released to work or permanently and totally disabled and the additional treatment must result in progressive improvement in, or maintenance of, functional status during the initial 12 weeks of passive care.
2. The treatment must not be given on a regularly scheduled basis.
3. The health care provider must document in the record a plan to encourage the employee's independence and decreased reliance on health care providers;
4. Management of the employee's condition must include active treatment modalities during this period;
5. The additional 12 visits for passive treatment must not delay surgery or chronic pain evaluation.

If any treatment is requested beyond the 12/12 rule, serious consideration must be given about whether to approve or deny the request. Things to consider: Do you have an IME? Are there documented improvements of the Employee's condition? Is the treatment regularly scheduled? Is the Employee back to work or will this treatment allow them to return to work?

The Court has held that some cases are "rare cases in which departure is necessary to obtain proper treatment." *Asti v. Northwest Airlines*, 588 N.W.2d 737 (Minn. 1999) See also *Jacka v. Coca-Cola Bottling Co.*, (W.C.C.A. April 13, 1999).

The Court does not take the "rare exception" requirement lightly. In *Larsen v. Kraft Foods*, (W.C.C.A. August 29, 2007) the W.C.C.A. denied medical expenses related to additional physical therapy of 14 to 15 months for ongoing right shoulder, neck, and right upper extremity injuries. The compensation judge found at the hearing that the employee's subjective complaints remained, she did not increase her function significantly, and her objective findings remained unchanged. The W.C.C.A. affirmed.

In *Kozlak v. Minnegasco* (W.C.C.A. September 17, 2004), the W.C.C.A. actually reversed a compensation judge's order that allowed physical therapy and epidural injections beyond the treatment parameters. In analyzing the issue, the compensation judge made several findings that the record did not demonstrate long-standing relief, objective improvements, and functional status but nevertheless ordered payment of the physical therapy under the "rare case" exceptions in *Jacka* and *Asti*. The W.C.C.A. reversed and noted that if they affirmed the decision in this case, it would be "difficult to conceive of any proposed treatment that would not qualify, and the parameters would be rendered meaningless." [Editor's Note – I agree, whew!!]

Should you have any questions regarding passive care, please contact us.

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