DEPARTMENT OF INDUSTRIAL RELATIONS

COUNTY OF LOS ANGELES

DECEMBER REGULATORY HEARINGS

RETURN-TO-WORK SUPPLEMENT PROGRAM

DECEMBER 9, 2014

DEPARTMENT OF INDUSTRIAL RELATIONS

320 WEST 4TH STREET, PUBLIC HEARING ROOM

LOS ANGELES, CALIFORNIA 90013

APPEARANCES:

SPECIAL ADVISOR FOR DIRECTOR: TESS GORMLEY

COUNSEL FROM OFFICE OF THE DIRECTOR: NATHAN D. SCHMIDT, ESQ

COURT REPORTER: CELINDA ALIGADA, CSR 13724

P R O C E E D I N G S

MS. GORMLEY: Good afternoon. Thank you for coming today. I am Tess Gormley, special advisor to the director of the Department of Industrial Relations, and this is a public hearing for the Return-to-Work Supplemental Program.

Please make sure you sign in the sign-in sheet and indicate if you want to testify. I would like to introduce the other DIR staff member here today, Nathan Schmidt, attorney from the office of the director, and Sylvia Cabrales Return-to-Work Supplemental manager, and our court reporter is Celinda Aligada.

When you come up to testify, please leave your business card with Celinda and also state your name. All testimony given today will be taken down by Celinda. If you have any written testimony you want to hand in, please give it to Sylvia or to me. I will check that they want to testify and we also check to see if anyone has decided to comment.

The hearing will continue as long as there are people present who wish to comment on the regulations, but it will close at 4:30 P.M.

Written comments can be given to Sylvia or to me if you have them with you or will be accepted by fax

or e-mail or delivery to the Oakland office up to 5:00 P.M. today.

The purpose of these hearings is to receive comments on the proposed Return-to-Work Supplemental Program Regulations, and we welcome any comments you have about that.

All your comments given here today enclosed in writing will be considered by the director in determining what revisions we may make to the regulations.

Please restrict the subject of your comments to the regulations and to any suggestions you have for changes to the proposed regulations. Also, please limit comments to ten minutes in length. We will not enter into any discussions this afternoon, although, we may ask for clarification or ask you to elaborate further on any points you understand.

Again, when you come up to give your testimony, please give your business card to Celinda so we can get your correct spelling of your name. And if you want, you can speak in the microphone and identify yourself before starting with your testimony.

So would the first speaker come to the microphone and introduce yourself.

MR. McLAUGHLIN: Good afternoon. My name is

Robert McLaughlin, and I'm an attorney representing injured workers in San Diego, and I'm also a member of the California Applicant Attorney's Association.

First I'd like to thank the administrator director and the department for the hard work they did on these regulations. It is clear that they have looked at the RAND study and have reviewed them. And there's much to like about the regulations. They're simple and they're efficient which means they'll be low cost for administrating this program which I think is an excellent idea.

I also like the fact that -- perhaps we can emphasize a little more that the $120 million needs to be paid out each year. It is clear from the legislative goal that the intent was to make sure that 120 million gets to the injured workers that need it the most.

And towards that there is a bit of an issue because we're going to have approximately three years of back-payments by the time these start getting paid out, and so I know that you said the $5,000 would be reviewed each year to see if it needs to be changed, but you need to take into account that there may be a, like, a mouse going through a snake effect.

I have some clients that were eligible for

this fund in 2013. I have done my best to keep track of them; however, some have left the state and some have left the country. So the amount that you're anticipating, assuming all the funds are there, you might find you have an excess that you might have to reevaluate and then after that go back to the 5,000 level, so ask that you take that into account.

With regards to what I'm mainly here about is assessability. First of all, I know that yesterday there were comments made that the notification this week put on page six about these funds, you really need to make that more up front for injured workers. Remember what I was telling you, I don't always know where all my injured workers were that were eligible, many have left the state so they may not be able to get ahold of me or they may not even want to. So you need to make sure they're notified of this right.

Secondly, I would also like to talk about the fact that the application ought to be filled on-line. In San Diego we not only represent San Diego County at our board but also Imperial County, and for some of my clients that is a two-and-a-half drive to get to the WCAB in San Diego unless you drive like my wife then it's two hours. But for most people who follow the speed limit, it's two-and-a-half-hours from certain

areas. And I was wondering if there was any way we could use the EDD offices because they have computer banks already there, especially looking for jobs. I know that there is the, I think the American's Job Center of California. They have four offices in Imperial County, two in El Centro, one in Brawley -- actually, one in Calexico and one in Winterhaven, and that would make it so accessible for them to use those computers at that location to access on-line, plus there would be people there to maybe assist them if them got stuck. So that would be very valuable because, what I'm afraid of is, that making it only available online, some of my clients don't have internet access, they just don't have the resource for the funds, now you throw in the fact that they're going to be eligible for this fund because they lost their job. Funds are going to be even harder for them to get internet access and driving two-and-a-half-hours up to the WCAB in San Diego may also not be financially viable for them.

For that reason I also think perhaps an application should be mailed to them so they can just sign it and mail it back in, that would be the cost of a stamp but that would be a little bit better. Also I noticed that the regulations indicate there's going to

be a web page set up for the DIR for this. I'm not sure what you're going to do about the language problems; however, I notice on the EDD website, when I was just there the other day looking up where all their offices are, they actually have a Google button, when you click it, and in 81 different languages you could have that page translated. It'd be nice if the DIR could do something like that to assist these injured workers. I don't have any other comments.

MS. GORMLEY: Thank you.

MS. SCHOENFELDER: I'm Christel Schoenfelder. I'm an applicant attorney, and I am also representative of the California Applicant Attorney's Association. So SB63 went into effect on January 1st of 2013. We had a prolonged period of time where it seemed like we could not get those regulations up for access to those injured workers, and so today I wanted to describe the situation as real as I possibly can.

So on March 5th of 2014, I was representing an injured worker who was in desperate financial straits. Due to the AME Work Restrictions she could not return back to her job as a night cook making $12 an hour. On top of dealing with the aftermath of her work injury, we were trying to get her a $1,000 permanent disability advance which was not granted.

So on May 29th, 2014, she settled her case. She did receive the supplemental job displacement voucher. She gave up her right to future medical because she needed the funds so badly, and based on the RAND study, we can presume she probably has not found another job or has some significant earnings lost. She has been waiting nearly seven months, and she's going to have to continue to wait for access to the funds.

Although the fund monies will not complete eradicate her pain or help her pay all of her bills, certainly it is something that would ease some very brief, quick financial hardship for her.

I do represent another injured worker as Robert McLaughlin had indicated who also settled her case. She has a stipulated award -- she has already received the voucher, as well. She's been waiting for nearly five months for her voucher funds, supplemental funds, and she's going to have to continue to wait for that.

I am certainly concerned when I read the regulations about notice to these clients. The Statute of Limitation begins to run for them one year from the effective date of the regulations, and my understanding is that notice is going to be via publication on the DIR website. Both of these ladies may not have

internet access, and so I am concerned that they will not know how they can actually access the fund monies.

One additional comment I'd like to make, it is not lost on me that both of these injured workers that I represent are females and they are both females over the age of 40. And so I would respectfully request that the Department of Industrial Relations track the gender of the applicants for this fund money because if it shows the disproportionate amount of female applicants is something that I believe the Commission on Health and Safety and Workers' Compensation should study. Thank you.

MR. GRAHAM: Good afternoon. Brent Graham on behalf of Latino Comp. I'm the past president of Latino Comp and the current legislative share. Latino Comp thanks the administration for allowing us to comment on the Return-to-Work fund regulations and related matters. Latino Comp's perspective is to consider how the regulations will impact the injured worker as they navigate their way through and out of this complicated system. We have a couple areas of concern about the proposed regulations.

First is the ability of Spanish speakers or other non-English speakers to even comprehend that they are entitled to participate in the Return-to-Work Fund.

I don't see in the regulations that they're going to be in Spanish or required, that the notices are going to be in Spanish, and for all of the hundreds of thousands or, frankly, millions of non-English speakers who speak a language other than English or Spanish, there needs to be a way for them to understand and apply for these funds.

Second, given the decreases in benefits for all the injured workers brought about SB863, the $120 million Return-to-Work fund was promised to be available to offset some of the benefits decrease. We're now two years down the line, presumedly 240 million should be in the Return-to-Work fund available for people to apply for. So I would hope that the administration airs on the side of given too much to the injured workers who are eligible and exhausting those 240 million dollars which should be sitting there rather than airing on the side of too little and then later on changing the amount that is provided.

The RAND study which is the basis for the proposed regulations basically gives a range of $4,950 to $11,662 for each eligible injured worker. Latino Comp would propose that the administration change the regulations so that the maximum $11,662 is provided to each eligible worker.

Based on the RAND study, obviously this is just a small fraction of the actual earning losses that each of these eligible injured workers has suffered and we think they should be entitled to the maximum.

Second issue or third concern that Latino Comp has is that under the RAND study, there's an assumption that the usage rate for the supplemental job displacement benefit, the vouchers, will double from its current level based on the fact there's additional funds available. That assumption is not backed up by any study, data or evidence, rather, it's based on the assumption that people would use the supplemental job displacement benefits similar to the usage rate under the old vocational rehabilitation system which went out of use ten years ago; however, there's two critical differences: One, is that under the old vocational rehabilitation system, injured workers were actually paid while they were going to school. Under the current voucher program there is no such payment.

Secondly, the old vocational rehabilitation program had 16,000 in funds available to the injured worker to use for retraining. Obviously, we only have 6,000 under the current voucher program for these injury 1113. So I think it's wrong and erroneous to assume that automatically the participation rate will

double because of the availability of the Return-to-Work fund. So I think that the numbers need to be looked at again which is basically giving the maximum 11,662 which is the amount from the RAND white paper, table five.

Lastly, there's a third, fourth barrier for injured workers to be able to obtain participation eligibility under the Return-to-Work fund, that is the current supplement job displacement benefit requirement, requiring Form 10133.36 which is the Return-to-Work form that has to be filled out by either the treating doctor, QME, AME, or anyone else from a medical standpoint that finds the injured worker permanent stationary. That form is required to obtain a supplemental job displacement benefit which is a requirement to obtain participation for Return-to-Work fund.

Unfortunately, because the newness of this form, it's been revised 1114, the vast majority of treating doctors, QME's, and AME's do not fill out this form, have no idea they're supposed to fill out this form which will have the effects of tens or hundreds of thousands of injured work who otherwise are not able to go back to their jobs and they're going to suffer 90% or higher loss of earnings according to the RAND study

from getting their share of the Return-to-Work fund. So I would hope there would be a way in these regulations to publicize and encourage the doctor to do what they're supposed to do, which is to fill out the WC Form 10133.36. Latino Comp thanks you for your time.

MS. GORMLEY: Next speaker.

MR. DELATORRE: Good afternoon. My name is Bernardo Delatorre. I'm here on behalf of Comp. I'm the president of Comp. And first of all, I'd like to thank the Department of Industrial Relations for allowing public input and allowing us to read and to comment on these regulations, proposed regulations.

I would also like to comment on how simple it is and how easy it can be for most workers to acquire this Return-to-Work Fund. However, I believe it needs a little bit more simplification, but the basic problem being is, unfortunately, even though we depend on our internet and we depend on our smart phones and we can get the latest information we want in an instance, not everyone can do that. And those are the people who need these forms, those are the people who need this money. Now in order to do that, we should be able to have a printed form to apply for this. And even more important than the printed form, it should also be in

the languages that the injured worker speak. To not have a printed form and to not have it in the languages the injured workers speak and in addition I'd like to thank the speaker from Latino Comp regarding the form 10133.36, the way the regulations are made up, it's really now one set of regulations.

And what I'm talking about is the supplemental job displacement benefit regulations are now intertwined with the Return-to-Work regulations, really making them one set. And the requirement of this form, which doctors are not filling out so carriers are not paying out, or not sending out the voucher, so those people will not be able to get the Return-to-Work Fund.

I believe it can be resolved very simply by saying that if any doctor finds a person PNS after 113 and does not fill out this form, that report is not substantial evidence. It is not valid until that form is filled out, for any purposes. Once that form is then acquired and the person can acquire this voucher, then they can apply for the Return-to-Work Fund which again should be in the language of the people speaking, should be simplified to require to have someone internet access as common as most of us, maybe all of us in this room have, not everyone has it. And to leave it as it is would seemingly require that only

those workers who have an attorney are going to be able to get this voucher, and I believe the Return-to-Work Fund and the voucher is now being set up so that they will not need an attorney.

So, therefore, these regulations are contradicting the intent of the Return-to-Work Fund. So I believe it can be fixed, either require this from the very beginning, require these doctors that their report will not be valid which may not be paid for until they fill out this form or also that this form not be necessary to get the voucher. Either way I believe that would be the simplification. Again, thank you for your time.

MS. GORMLEY: Thank you. Anybody else want to testify? So we're open until 4:30.

MR. RUEDAFLORES: Good afternoon, everybody. Tommy A. Ruedaflores, and I'm a consumer advocate, a member of Comp and Latino Comp and basically try to fight for the rights of injured workers. A lot of this stuff that has already been said by my state colleagues already. I won't try to reiterate, but I wanted to tell everyone here, and it's going to consider this right to work fund, you know, practicing as an applicant's lawyer over 30 years we seen the 80's where the old rehab benefits included a stipend so our

clients could live while they go through school, you know, that has been legislated out. We're now just left with a voucher which is only $6,000, and back in 2012 when these regulations were again getting rewritten, we got the right to Return-to-Work Fund of 120 million which was supposed to help our clients out that had a great loss of earning capacity based on the current AMA Guides and ratings that take place now.

So what I'd like to say, I don't know if I'm talking too close to this -- I would like to say that there shouldn't be a lot of restrictions for our injured workers in order to get what they're due. The form DWC 10133.36 says, my colleagues have already indicated to everybody here, is another barrier that is so new that most AME doctors, QME doctors or treating doctors, don't even fill them out. So when they're not filled out our clients cannot get a voucher. So it doesn't make sense to me or to my clients to say that form is a prerequisite to get what they deserve in that they have suffered a great earning loss capacity due to their work injury.

Also, many of my clients are illiterate. Now I could count the dozens and dozens and dozens and dozens of clients over the years that will make an appointment with me just for me to read a letter from

the insurance company, their daughter couldn't decipher it, their sons whose in our schools, their family, so they come to us, the lawyers or the representatives, to make sure they don't create an error.

So even if they get a form, oftentimes they don't understand it because of the comprehension problems, and if you look at current studies in this great state of ours -- I forget the two or three cities, one was El Centro, but we had the worse schooling and illiteracy rate in our country. So to put an additional burden on a worker to get what he deserves, we feel that isn't valid or correct or it shouldn't be done.

What's wrong with the representative or if they're in pro per with their family, just sending a simple notice or letter to the carrier that I would like to be entitled to my work to fund monies, please tell me what I need to do. That's what we think that should happen. No more for the barriers.

Also, it is come to our understanding some of the vouchers notwithstanding the fact that they are illegal to settle, get settled any way, a PR agreement, to what I call the "back door," at sometimes these are resolved by our own client's representatives so there won't be a voucher to implement, there won't be a

voucher to get, and oftentimes those clients don't understand when they settlement matters, that that could have been snuck in there in a 9 to 12, 13-page CNR agenda. So that's why we feel there shouldn't be a barrier or a notice requirement by a doctor to get these funds that were promised to us by our great California legislator back in 2012.

And if the terms of the fund being 120 million, now it should be 240 million, and it should climb yet again another fiscal year. So there is enough funding to provide that money whether they use a voucher or not, you know, the crux of the decision was to compensate injured workers for anticipated earning losses due to the AMA guides and the ratings which undercut a lot of the value of their claims that were based on the old schedules we used to use from 1913 up to 2004.

And that's why we feel that there shouldn't be more stringent controls like that notice. It should be we as their applicants or them as they represent themselves should ask for it through a simple letter through a carrier. And it shouldn't be dependant on a voucher because there are still a lot of in pro pers in the system, and oftentimes they don't understand procedural forms of what needs to be done by those

third parties such as a doctor to get what they deserve.

And recently in my practice, I haven't seen that form yet. And I stand corrected if it's not out yet, but we're fighting for vouchers that the board or at settling conferences with nothing from a doctor, just basically his report. And that's why myself being president of Latino Comp and a consumer advocate and a board of direct of Comp and us representing injured workers for many years, keep it simple. Don't put more burdensome requirements on people that are necessary and don't assume the representative or their doctor is going to follow all procedural requirements. It shouldn't be that stringent, that burdensome and that difficult.

We always get benefits through letters or notices on their cases or injuries and that's the way it should be done and there will be enough funds, 240 million and counting, to compensate those injured workers. Thank you.

MS. GORMLEY: Thank you.

It's 4:30 P.M. now. The hearing for the return to work supplemental program regulations is closed.

(Proceedings adjourned.)

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CERTIFICATION

I, CELINDA ALIGADA, CSR. No. 13724, Certified Shorthand Reporter for the State of California, do hereby certify;

That said proceedings were taken down by me in shorthand at the time and place therein named and were thereafter transcribed by means of computer-aided transcription; and the same is a true, correct and complete transcript of said proceedings.

I further certify that I am not of counsel nor attorney for any of the parties hereto or in any way interested in the events of this cause and that I am not related to any party hereto.

WITNESS my hand this_____day of_____, 2014.

_____
CELINDA ALIGADA C.S.R. No. 13724