

SCHEDULE 2 EMPLOYERS' GROUP

MINUTES

To: S2EG
From: Susan Postill
Subject: Minutes of meeting of April 13/16

Date: April 13/16
Copies: SBCI

The S2EG held a meeting at Mathews, Dinsdale & Clark LLP, Training Room, Toronto.

Attendees: As per sign in sheet and telephone introductions.

Guest Speakers from WSIB: Sal Cavaricci, Michelle Clark, Madeline Arrugo, Robert Dean, Adam Starkman, Sue Mamo and Sundeep Singh.

1. **Introductions**

2. **WSIB Updates: Sundeep Singh:**

a) **Re the Mild Traumatic Brain Injury Process:**

- The feedback from the WSIB Managers is that the new process is working very well;
- The external assessments are taking approx. 2.5 hours or longer due to the severity of injuries, the in depth assessment and the education component;
- The WSIB is auditing all of these claims and Daintry Davis will do an audit in Q2 re the results on RTW and duration statistics;
- Chris James has provided valuable feedback to the WSIB;
- If Employers have questions or issues re this process they should raise them to the Case Manager or to a Manager at the WSIB.

b) **Re Resource Changes at the WSIB:**

- Michelle Mraz has moved on;
- Manager Kimberly Kelly has moved from short term claims to long term claims;
- Joel Fattigati is now a short term Manager.

c) **Re the Value For Money Audit re S2:**

- The report has not been released yet;

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- However, due to the report recommendations, a working group has been struck re improving the WSIB's weekly invoices re the health care descriptors and Covered by Advance time periods;
 - The working group is composed of Chris James (SBCI, Schedule 2 Group Exec), Carole Cousineau (CN Railways, FETCO), Don Doran (PSA), and Shanna Walsh (Air Canada);
 - The working group has met 1x, they will meet monthly, Sundeep will be continually liaising with internal stakeholders, Sundeep will provide updates bi-monthly.

3. Guest Speakers:

a) PSHSA: Patricia Klassen:

- Patricia outlined products and services that the PSHSA can provide to Employers, such as their "own the program" safety training materials and their safety audit tools;
- In essence, the PSHSA can do training and auditing for Employers, or can provide the materials to Employers (cost?), and work with Employers so that qualified staff from the employer can deliver the training themselves;
- At the very least, Employers should consider using the pre-approved training materials, to save administration time re getting MOL approvals for training materials;
- Patricia will provide a Power Point of her presentation which will outline the details.

b) Return to Work for Psychological Cases – As Secondary Entitlement: Michelle Clark, Adam Starkman, WSIB:

- These claims are sent to a specialty team as soon as a mental health issue is noted;
- Short term and long term Case Managers are to look for flags for secondary psych issues;
- Up to 12 weeks psych treatment can be allowed to assist with the WSIB claim issues (not as a formal area of entitlement);
- Criteria for entitlement are:
 - The WSIB requires 5 years of prior chart notes (though if there is reason to request additional chart notes, the WSIB will do that too);
 - A DSM diagnosis (if it is lacking the WSIB will ask the worker to gather the information);
- The WSIB's process and approach with these claims is that:
 - The WSIB sees these psych issues as temporary (as per the applicable Policy), though over time, entitlement may be extended on a permanent basis;
 - The WSIB focuses on RTW and recovery;
 - The WSIB compensates for work related issues only, so the WSIB works to tease out prior and/or co-existing conditions, which is why 5 years of prior chart notes are requested;
- The applicable WSIB Operational Policies Psychotraumatic Disability (15-04-02), Chronic Pain Disability (15-04-03), Aggravation Basis (15-02-04) and Pre-existing Conditions (15-02-03);
- The specialty team's mandate is to:

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- Make entitlement decisions on these psych issues;
- Provide an opinion re the level of impairment (partial v. total);
- Provide functional limitations;
- Provide entitlement decisions re treatment;
- Provide directions for follow up (i.e., the Case Manager will be asked to obtain treatment reports at the start, at the mid-point and at the end point of the treatment therapy);
- Then send the file back to the regular Case Manager;
- If/ when such issues come up again (re extending entitlement, re extending treatment, etc), the regular Case Manager is to refer the case back to the specialty team;
- It is the specialty team who would make decisions re MMR, PI, etc.;
- For Specialty Assessments, the WSIB makes use of 2 facilities: CAMH in Toronto and TWIS in London;
- Specialty Assessments would provide information on the level of impairment and the recommended treatment, such as 10-12 sessions of Cognitive Behavioral Therapy;
- For Functional and Pain Programs, the WSIB makes use of various facilities such as ALTUM Health;
- Assessments arranged by the WSIB and information is shared with treating Drs.
- Q: If a worker is doing well in treatment, can RTW be considered mid-way through the treatment, for example?
- A: Yes, in fact RTW can be entertained from Day 1; the WSIB supports early RTW on these cases, where possible. The WSIB needs good information from the Employer: PDA/CDA information and information on what supports are available re RTW so that the WSIB can share that information with the treating psychologist or psychiatrist;
- For more challenging cases, the WSIB has implemented a new process whereby a worker may be referred to a Work Transition Specialist who will be able to provide additional support to the workplace parties
- Feedback to the WSIB: Equally, the WSIB should provide the Employer with clues re what type of accommodation would be helpful; there should be more and regular communications from the WSIB to the Employer; too often the Employer obtains the information too late.
- A: The WSIB responded that they provide the Employer with functional information.
- Feedback to the WSIB: Employers need the WSIB to tell Employers what makes the worker tick, as per the medical reports on file, so that Employers can build a motivating job offer based on that information (i.e., the worker may have an aversion to a certain supervisor, or the worker may find work with his hands stress relieving).
- Q: Some workers move a lot, and/or use walk-in clinics and or hospitals – does the WSIB obtain OHIP records to try to fill the gaps caused by such issues?
- A: No.
- c) **Return to Work for Psychological Cases – Without Organic Injury – Such as TMS: Sal Cavaricci, WSIB:**
 - The WSIB's process and approach with these claims is that:
 - A special, multidisciplinary team manages these claims from eligibility to lock in and beyond

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- WSIB makes immediate contact with both the worker and employer to obtain as much detail as possible, to educate both parties on the process and, to begin to develop a relationship;
- Workers are better at work – from as early as possible, including from Day 1, RTW is entertained;
- RTW referral are always to a WTS now, rather than a RTWS, as the RTW process is often a long duration process;
- For these cases, PDAs are not very helpful; the WSIB needs to know what soft things the Employer can do and offer;
- The WSIB uses the same clinics as noted above: CAMH in Toronto and TWIS in London;
- The WSIB can send a worker for a 1 day psychological assessment or 2 Day multidisciplinary assessment;
- Tips for Employers are:
 - Motivation is a key factor, and understanding what makes the worker tick is a key factor;
 - The relationship between the WSIB and the worker is a key factor;
 - The relationship between the Employer and the worker is a key factor (Employers need to be very careful to send the right message of caring, to use the right tone of caring, and to be coordinated in their messaging to the worker and in the timing of the communications to a worker, i.e., don't have the Disability Manager, the Supervisor, and the Benefits person calling the worker all on the same day);
 - The WSIB needs to know the options an Employer can put in place i.e., re uniforms, location, hours, can an OT come onto the property with the worker for exposure therapy, etc.);
 - Employers should bear in mind that the psychologist/ psychiatrist has the worker's best interests at heart – the WSIB and Employers need to communicate same intention with the psychologist/ psychiatrist to obtain their buy in for a RTW;
 - Treating psychologists/ psychiatrists are concerned that RTW steps may lead to a suicide attempt – because it does happen.
- Q: How long does it take to get a CAMH or TWIS appointment?
- A: If the family Dr is on top of the case, it is not needed; if the F8 does not show a real diagnosis and a real treatment plan, the WSIB would send a worker there.
- Q: What does the WSIB do if/ when there is treatment but no real progress?
- A: The WSIB sends the worker to CAMH or TWIS for recommendations or, the WSIB has a WSIB Dr call the treating provider to discuss the case. Sometimes the issue is that the treating Dr is under a misapprehension and the WSIB can clear it up, i.e., he/she may think that that Employer is not OK with allowing for exposure therapy. Note: Now the WSIB WTS participates in Discharge Conferences so that the WTS can link back to the WSIB.
- Q: Does the WSIB have a list of things that Employers can consider re accommodations?
- A: Employers should convey information to the WSIB re:
 - Do they have a peer support program?
 - Is there a safe place for the worker to go where he/she can manage triggers and practice techniques learned in his/ her CBT?
 - Can the worker access an EFAP at work?
 - Can the worker access a trauma counsellor at work?

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- Does the employer have a RTW person?
- Is there an option of integrated treatment?
- Is it OK with the Employer if an OT attends the worksite with the worker for exposure therapy?
- The WSIB does not have a list that the WSIB is able to share with Employers, though Employers can find Best Practices resources; there is a First Responder's Website which has an Employer's Guide which provides good information;
- There is no cookie cutter approach, that is why the WSIB does a WTS referral;
- The WSIB has a document on their website re job accommodations for physical injuries; they will probably do another one in the future re mental injuries.
- Feedback to the WSIB: the WSIB should share tips and suggestion for Employers on their website and share the information with Employers when dealing with individual cases.
- Feedback to the WSIB: exposure therapy has a place, but Employers need to be told about it; when a worker shows up with their OT unannounced it often does not go well and leads to a set-back; in addition, Employers should be provided with guidelines that need to be observed beforehand;
- Q: Does the WSIB have a roster of OTs who can do exposure therapy with a worker?
- A: No. If a treating Dr is recommending it, he/ she will arrange it.
- Q: What if a worker goes to walk in clinics and gets different diagnoses and restrictions each time?
- A: The WSIB needs clarity; they would send the worker for an Assessment.
- Q: An Employer stated that the Case Manager told them to not call the worker, yet the Employer feels it is their right to call their worker.
- A: If it is a TMS case, call Sal because such a direction would rarely be legitimate; however, Disability Managers should be aware of the message and tone their workplace is giving to the worker as it could be inappropriate and need to be curtailed.
- WSIB Tip: Employers should prepare their workers on what to expect, i.e., a call on Day 2 from their supervisor, etc. so that they can prepare themselves.
- Q: Laura Russell asked for suggestions from the S2EG:
- A: The OPP has a peer to peer support program, EAP and a referral list for psychological treatment.
- A: Algoma sees the first 24 hours as critical for communications with workers, and face to face communications are seen as best, i.e., re contact with the EAP, re contact with Senior Management and it helps the Employer be more compassionate throughout when they see the worker at the initial stage.
- A: SBCI agrees with the above, and has CDAs for all main school board jobs.
- A: Laura Russell said that text messaging is particularly dangerous and the short communications can come off as curt and uncaring – it better to fashion a well thought out email instead or to communicate in another way altogether.
- A: Sal stated that the WSIB can allow the worker to be with his/ her psychologist or psychiatrist when the WSIB communicates with the worker so that the treating Dr can see that the WSIB does not wear horns; the Employer could do the same.

4. Other Issue:

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a) **Bill 163 – Presumption for First Responders: Sal Cavaricci, WSIB:**

- This legislation received Royal Assent on April 6/16;
- The WSIB has implemented Operational Policy 15-03-13 "Posttraumatic Stress Disorder in First Responders and Other Designated Workers" and has assigned a dedicated team ;
- Note: the legislation only applies to a diagnosis of PTSD and 12 occupational categories (though the occupational definitions are broad); the presumption in favor of work-relatedness can be rebutted;
- Employer's job titles may not match the legislation so the WSIB will need to carefully examine whether a job title fits the legislation, in effect;
- A DSM 5 diagnosis is necessary, but there is a six month grace period for the DSM 4 to be used;
- The legislation is retro to April 6/14; what exactly this retroactive window means is somewhat unclear;
- Pending claims at the Operating level, the ARO level and the WSIAT level will automatically be reviewed (processes are in place); if the claim needs to go back into the appeal system, it will go to appeals in an expedited fashion;
- Where a worker leaves his/ her job at issue, the worker will have 24 months to realize that he/she is having ongoing psychological issues from the job and make a claim;
- To rebut the presumption, Employers would need to show that the situation complained of did not make a significant contribution to the psychological condition (the Policy states simply that);
- Case Manager initial enquiries with the workplace parties will focus mainly on details re the occupation, the diagnosis and the dates; the WSIB will send workers for Assessment if there are diagnosis issues impacting entitlement;
- WTS's will be involved very early;
- Sal Cavaricci is the relevant Director; for questions he can be reached at 416 344-2846.

5. **Employer Meeting:**

a) **S2 Conference: Chris James:**

- A Day 1 Keynote speaker will be Tom Teahan. The conference committee is working on the agenda for other keynote speakers and workshop speakers.
- Some workshops will be presented by speakers who have spoken at past conferences but we are on the lookout for other new and interesting speakers as well.
- Anyone interested in presenting a topic can submit a proposal through the S2 Group Conference website.

b) **S. 63 Agreements: Laura Russell:**

- The WSIB has issued guidelines and a template agreement parties can use for S. 63 agreements;
- The guidelines state that the WSIB's decision on the matter can't be appealed to the WSIAT;

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- The S2 Group disagrees with that pronouncement and has explained its position to the WSIB (to no avail); a WSIAT Decision (#1149/00) disagrees with the WSIB's approach; therefore, if an Employer has a good challenge case re this issue, the Employee should consider taking the matter further in spite of the WSIB's guideline pronouncement;
- Note: the Workplace Safety and Insurance Act does not appear to support the WSIB's position, as noted above and the guidelines are not WSIB policy of a nature that it would bind the WSIAT.
- Q: How long does it take for the WSIB to respond to a request for a S. 63 approval?
- A: It depends on the steps (non-template agreements must be reviewed by the WSIB's Legal Dept, for example), and it depends on the availability of the key WSIB staff (Daintry Davis and the Claims Manager).
- Q: When is it feasible to do a S. 63 Agreement?
- A: The criteria are: the claim must have been allowed, there must have been at least 4 weeks of LOE, finality must have been reached; Laura Russell suggests that the claim should have gone past an ARO decision and future benefits should be locked in or otherwise knowable in real numbers.
- Q: Can S. 63 Agreements come out of WSIAT mediations?
- A: The parties can take the opportunity to discuss the matter there, but the WSIAT can't sanction it or approve it as that is the WSIB's decision to make. Note: the parties should not close the WSIAT appeal unless/ until a S. 63 Agreement is finally signed by the WSIB.
- Things that have kyboshed S. 63 Agreements include: mental health issues or cognitive issues of the worker, and indications from a spouse with Power of Attorney that she plans to separate from the worker once the S. 63 Agreement is reached.

c) **Bill 109 – Survivor Benefits: Laura Russell:**

- Bill 109 has now passed;
- The issue here is where a worker was retired from the work force (zero earnings), and the worker dies: what should the WSIB pay in terms of survivor benefits: \$0, a statutory minimum of approx. \$20,000, or some other greater amount?
- The legislation states that the WSIB “may” award benefits to a survivor equal to what the worker would have earned in work that was comparable to his job which caused his / her injury;
- WSIB Policy 18-02-09 addresses the issue; this Policy came into effect April 1/16;
- While the Policy provides for varying responses, in the vast majority of cases, the survivor benefits will be an amount equal to what the worker would have earned in work that was comparable to his job which caused his / her injury;
- The effect is fully retroactive;
- WSIAT decisions which had mandated a reduced amount will be processed in accord with the new legislation and policy;
- There may be grounds to challenge the policy.

d) **Bill 163 – Presumptive Legislation re PTSD for First Responders: Laura Russell:**

- Bill 163 has passed;

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- The WSIB issued a news release which stated that S1 Employers would see the effects, gradually, on their premiums;
- The news release did not address the immediate and significant financial impact on S2 Employers, even though most of the affected Employers are S2 Employers;
- Policy 15-03-13 has been put in place re the Bill 163 change;
- The WSIB is acting on these cases quickly; Employers should submit their rebuttal of the presumption arguments to the WSIB as soon as possible for all pending claims (pending at the Operating level, the ARO level and the WSIAT level).
- Q: What about cases which were denied and never appealed?
- A: It is unclear what will happen with these cases as the WSIB will have difficulty identifying them; the WSIB would not apply time limits with these cases.

e) **New Engagement Process with the WSIB – Laura Russell:**

- The S2 Exec has met with Tom Teahan;
- The idea of a new engagement process that was fleshed out with David Marshall is not on the table; rather, Tom Teahan has his own ideas and put his own processes in motion; thus the S2 Exec may request to leave things status quo.

f) **S2G Meetings in Hamilton: Laura Russell:**

- The next S2G Meeting in Hamilton will be at the Chamber of Commerce (adjacent to the WSIB Office) on May 4/16;
- The topics on the agenda are: Psych-CPD issues, Secondary Psych cases, and ordinary Psych cases.

g) **Value for Money Audit: Laura Russell:**

- The Value for Money Audit report has not been released yet;
- Nevertheless, the WSIB has struck two working groups as a result of recommendations in the VFMA;
- The first group is re S2 invoicing for health care benefits and Covered By Advances and LOE benefits in weekly invoices;
- The second group is re E-services enhancements such as showing the status of a claim, exactly what periods of lost time have been allowed, etc.

6. **Other Business: Laura Russell:**

None.

Next meeting:

June 8/16