



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Hearings (MS-35)

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To: System Participants

From: Kerry Sullivan, Deputy Commissioner for Hearings

Date: May 7, 2015

RE: Pilot Project for Cases Involving MMI/IR and EOI

As system participants are aware, disputes involving Maximum Medical Improvement, Impairment Rating, and Extent of Injury (MMI/IR/EOI) frequently arise together and present especially complex and time-consuming challenges to the parties and the Division. One challenge, in particular, is the fact that EOI is a threshold determination for the assessment of MMI and IR but is typically determined at the same time as these issues. As a consequence, the parties do not know what EOI determination the Hearing Officer will make when they are presenting their evidence on MMI/IR. Accordingly, the parties must either present a variety of alternate certifications based on different potential outcomes of EOI or run the risk that they will have presented no MMI/IR certification that matches the Hearing Officer's EOI determination.

In light of these challenges, the Division has implemented a limited and voluntary pilot project to assess a two-step ("bifurcated") approach to resolving disputes involving MMI/IR/EOI. In carefully chosen situations involving these three issues, the hearing session on EOI will be scheduled ahead of the hearing session on MMI and IR. This determination will be made at the benefit review conference (BRC), and only at the request of the parties. **The pilot program is voluntary and will not be imposed over the objection of any party.** If the parties agree during the BRC that either the EOI determination will likely lead to an agreement on MMI and IR or that the EOI dispute has so many variables that deciding it first will lead to a better outcome and a more efficient hearing, they will sign an "Election" to bifurcate the hearing, and the EOI issue will be tried first.

Following the hearing session on EOI, the Hearing Officer will issue an Interlocutory Order including findings of fact on EOI. The parties will then have a reasonable period of time to reach agreement. If no agreement is reached, a second hearing session will be convened to consider the issues of MMI and IR in light of the Hearing Officer's EOI determination. Following the MMI/IR hearing session, the Hearing Officer will issue a final, appealable Decision and Order incorporating the earlier interlocutory EOI findings and making determinations on MMI and IR.

The potential benefits of this approach include: (1) more agreements (the Division anticipates that parties will sometimes reach agreement on MMI/IR once they have the Hearing Officer's EOI determination); (2) establishing correct medical benefits sooner based on the interlocutory order (currently the EOI decision is delayed as the Hearing Officer awaits the revised MMI/IR certification from the DD and then issues a single decision on MMI/IR/EOI); (3) the parties have more control over developing their evidence on MMI and IR in that they will have the benefit of the Hearing Officer's EOI determination<sup>1</sup>; and (4) better, more

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<sup>1</sup> In cases included in the pilot project, the parties will not be asked at the BRC to obtain alternate certifications or RME reports prior to the resolution of the EOI issue since this evidence can be more efficiently obtained after that determination. For this reason, the Division anticipates that most cases in the pilot project will be ready for the CCH on EOI after only one BRC.

accurate decisions will result in that the Hearing Officer will have a better range of adoptable options matching the EOI determination from which to choose.

For now, the pilot project is limited to BRCs and hearings conducted in the Division's Weslaco field office. We are starting small so that the Division can closely track the success of the project and make adjustments to improve it and correct any problems. We invite feedback from the parties in the pilot project and from system participants across the state regarding ideas and suggestions to improve the process for managing cases involving MMI/IR/EOI. Please call me at 512.804.4015 or email me at [Kerry.Sullivan@tdi.texas.gov](mailto:Kerry.Sullivan@tdi.texas.gov).