DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION
VOCATIONAL ASSISTANCE TO INJURED WORKERS

REVISION-MARKED COPY

[Bracketed 8 point text is deleted]; **bold/underlined text is added**

EFFECTIVE MAY 15, 2001

OREGON ADMINISTRATIVE RULES
CHAPTER 436, DIVISION 120

TABLE OF CONTENTS

NOTE: Only revised (adopted, amended, or repealed) rules are included in this document:

436-120-0001 Authority for Rules

The director has adopted OAR 436-120 by the director's authority under ORS 656.283(2), [ORS] 656.340, [ORS] **and** 656.726 [(3)]**(4)** [and section 15, chapter 600, Oregon Laws 1985].

Stat. Auth.: ORS 656.340(9), 656.726(4)
Stat. Impltd.: ORS 656.262(6), 656.268, 656.283(2), 656.313, 656.331(1)(b), 656.340, 656.447, 656.740, 656.745, ORS Ch. 183, and section 15, chapter 600, Oregon Laws 1985
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Amended 10/31/94 as WCD Admin. Order 94-058, eff. 1/1/95
Amended 4/13/01 as WCD Admin. Order 01-053, eff. 5/15/01

436-120-0003 Applicability of Rules

(1) These rules govern vocational assistance pursuant to the Workers' Compensation Law on or after the effective date of these rules except as OAR 436-120 otherwise provides.

(2) The director's decisions under OAR 436-120-0008 regarding eligibility will be based on the rules in effect on the date the insurer issued the notice. The director's decisions regarding the nature and extent of assistance will be based on the rules in effect at the time the assistance was provided. If the director orders future assistance, such assistance shall be provided in accordance with the rules in effect at the time assistance is provided.

(3) Under these rules a claim for aggravation or reopening a claim to process a newly accepted condition will be considered a new claim for purposes of vocational assistance eligibility and vocational assistance, except as otherwise provided in these rules.

(4) The renewal period of a certified vocational counselor certified [on the effective date of these rules] **as of June 1, 2000** is extended for three years, at which time the vocational counselor must meet the continuing education requirements set by these rules. Individuals currently certified as either a vocational rehabilitation counselor intern or a return to work specialist will have five years from [the effective date of these rules] **June 1, 2000** to renew their certification pursuant to OAR 436-120-0820 by meeting the continuing education requirements.

(5) The requirement for the director's advance approval of services eligible for claims cost reimbursement pursuant to OAR 436-120-0720(9) shall apply to any actions taken after the effective date of these rules.

(6) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive procedural rules as justice so requires.

Stat. Auth.: ORS 656.340(9), 656.726(4)
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Amended 4/13/01 as WCD Admin. Order 01-053, eff. 5/15/01

436-120-0005 Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Administrative approval" means approval of the director.

(2) "Cost-of-living matrix" is a chart issued annually by the director which establishes conversion factors used to adjust for changes in the cost-of-living rate. These factors are based on the percentage increase or decrease in the maximum temporary total disability rate from the date of injury to the date of calculation.

(3) "Division" refers to the Workers' Compensation Division of the Department of Consumer and Business Services.

(4) "Employer at injury" means an employer in whose employ the worker sustained the compensable injury, or occupational disease.

(5) "Insurer" means the State Accident Insurance Fund, an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon, or a self-insured employer. A vocational assistance provider acting as the insurer's delegate may provide notices and warnings required by OAR 436-120.

(6) "Permanent job" means a job which at the time of hire was, or is currently expected to continue indefinitely. A permanent job may be year-round or seasonal.

(7) "Regular employment" means the employment the worker held at the time of the injury or **at the time of the** claim for aggravation, whichever gave rise to the potential eligibility for vocational assistance; or, for a worker not employed at the time of aggravation, the employment the worker held on the last day of work prior to the aggravation claim. If the basis for potential eligibility is a reopening to process a newly accepted condition, "regular employment" is the employment the worker held at the time of the injury; when the condition arose after claim closure, "regular employment" is determined as if it were an aggravation claim.

(8) "Substantial handicap to employment" means the worker, because of the injury or aggravation, lacks the necessary physical capacities, knowledge, skills and abilities to be employed in suitable employment. "Knowledge," "skills," and "abilities" have meanings as follows:

(a) "Knowledge" means an organized body of factual or procedural information derived from the worker's education, training and experience.

(b) "Skills" means the demonstrated mental and physical proficiency to apply knowledge.

(c) "Abilities" means the mental and physical capability to apply the worker's knowledge and skills.

(9) "Suitable employment" or "suitable job" means employment or a job:

(a) For which the worker has the necessary physical capacities, knowledge, skills and abilities;

(b) Located where the worker customarily worked, or within reasonable commuting distance of the worker's residence. A reasonable commuting distance is no more than 50 miles **one-way** modified by other factors including, but not limited to:

(A) Wage of the job. A low wage may justify a shorter commute;

(B) The pre-injury commute;

(C) The worker's physical capacities, if they restrict the worker's ability to sit or drive for 50 miles;

(D) Commuting practices of other workers who live in the same geographic area; and

(E) The distance from the worker's residence to the nearest cities or towns which offer employment opportunities;

(c) Which pays or would average on a year-round basis a suitable wage as defined in section (10) of this rule; and

(d) Which is permanent. Temporary work is suitable if the worker's job at injury was temporary; and the worker has transferable skills to earn, on a year-round basis, a suitable wage as defined in section (10) of this rule.

(10) "Suitable wage" means:

(a) For the purpose of determining eligibility for vocational assistance, a wage at least 80 percent of the adjusted weekly wage.

(b) For the purpose of providing and/or ending vocational assistance, a wage as close as possible to 100 percent of the adjusted weekly wage. This wage may be considered suitable if less than 80 percent of the adjusted weekly wage, if the wage is as close as possible to the adjusted weekly wage.

(11) "Transferable skills" means the knowledge and skills demonstrated in past training

or employment which make a worker employable in suitable new employment. More general characteristics such as aptitudes or interests do not, by themselves, constitute transferable skills.

(12) "Vocational assistance" means any of the services, goods, allowances and temporary disability compensation under these rules to assist an eligible worker return to work. This does not include activities for determining a worker's eligibility for vocational assistance.

(13) "Vocational assistance provider" means an insurer or other public or private organization, authorized under these rules to provide vocational assistance to injured workers.

Stat. Auth.: ORS 656.340(9), 656.726(4)
Sta. Impltd.: ORS 656.340
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436-120-0007 Establishing the Adjusted Weekly Wage to Determine Suitable Wage

To determine a suitable wage as defined in OAR 436-120-0005 [(12)(a) and (b)] **(10)**, the insurer shall first establish the adjusted weekly wage as described in this rule. The insurer must calculate the "adjusted weekly wage" whenever determining or redetermining a worker's eligibility.

(1) For the purposes of this rule, the following definitions apply:

(a) "Adjusted weekly wage" is the wage currently paid as calculated under this rule.

(b) "Cost-of-living adjustments" or "collective bargaining adjustments" are increases or decreases in the wages of all workers performing the same or similar jobs for a specific employer. These adjustments are not variations in wages based on skills, merit, seniority, length of employment, or number of hours worked.

(c) "Earned income" means gross wages, salary, tips, commissions, incentive pay, bonuses and the reasonable value of other consideration (housing, utilities, food, etc.) received from an employer for services performed. Earned income also means gross earnings from self-employment after deductions of business expenses excluding depreciation. Earned income does

not include fringe benefits such as medical, life or disability insurance, employer contributions to pension plans, or reimbursement of the worker's employment expenses such as mileage or equipment rental.

(d) "Job at aggravation" means the job or jobs the worker held on the date of the aggravation claim; or, for a worker not employed at time of aggravation, the last job or concurrent jobs held prior to the aggravation. Volunteer work does not constitute a job for purposes of this subsection.

(e) "Job at injury" is the job on which the worker originally sustained the compensable injury.

(f) "Permanent, year-round employment" is a job with no projected end date or a job which had no projected end date at time of hire; and on which the worker worked or was scheduled or projected to work in 48 or more calendar weeks a year. Paid leave shall be counted as work time. Permanent year-round employment includes trial service. It does not include employment with an annual salary set by contract or self-employment.

(g) "Trial service" is employment designed to lead automatically to permanent, year-round employment subject only to the employee's satisfactory performance during the trial service period.

(2) The insurer shall determine the nature of the job at injury or the job or jobs at aggravation by contacting the employer or employers to verify the worker's employment status. All figures used in determining a weekly wage by this method shall be supported by verifiable documentation such as the worker's state or federal tax returns, payroll records, or reports of earnings or unemployment insurance payments from the Employment Department. The insurer shall calculate the worker's adjusted weekly wage as described by this rule.

(3) When the job at injury or the job at aggravation was temporary or seasonal, and the worker received unemployment insurance payments during the 52 weeks prior to injury or aggravation, calculate the weekly wage as follows, then convert to the adjusted weekly wage as described in section (7) of this rule:

(a) Combine the worker's earned income and unemployment insurance payments from the 52 weeks prior to the injury or aggravation. Divide the total by 52; or

(b) Upon written verification of medical incapacity from a licensed physician that the worker was medically unable to work for any period during the 52 weeks prior to the injury or aggravation, calculate the weekly wage by dividing the worker's earned income and unemployment insurance payments for the 52 weeks by the number of weeks the worker was medically able to work. Any weeks worked and income earned from modified light duty at reduced wages shall also be excluded from these calculations.

(4) When the job at injury was other than as described in section (3) of this rule, use the weekly wage upon which temporary total disability was based, and then convert the weekly

wage to the adjusted weekly wage as described in section (7) of this rule.

(5) When the job at aggravation was other than as described in section (3) of this rule, calculate the worker's weekly wage using the methods described for determining temporary total disability in [ORS] **OAR** 436-060, and then convert to the adjusted weekly wage as described in section (7) of this rule.

(6) When the worker held two or more jobs at aggravation, calculate the weekly wage for each job as described in section (5) and for all jobs as described in section (3). The worker's weekly wage shall be the higher of the calculations. Then convert the weekly wage to the adjusted weekly wage as described in section (7) of this rule.

(7) Adjusted weekly wage: After arriving at the weekly wage pursuant to this rule, establish the adjusted weekly wage by determining the percentage increase or decrease from the date of injury or aggravation, or last day worked prior to aggravation, to the date of calculation, as follows:

(a) Contact the employer at injury or aggravation regarding any cost-of-living or collective bargaining adjustments for workers performing the same job. When the worker held two or more jobs at aggravation, contact the employer for whom the worker worked the most hours. Adjust the worker's weekly wage by any percentage increase or decrease;

(b) If the employer at injury or aggravation is no longer in business and the worker's job was covered by a union contract, contact the applicable union for any cost-of-living or collective bargaining adjustments. Adjust the worker's weekly wage by the percentage increase or decrease; or

(c) If the employer at injury or aggravation is no longer in business or does not currently employ workers in the same job category, adjust the worker's weekly wage by the appropriate factor from the cost-of-living matrix.

Stat. Auth.: ORS 656.340(9), 656.726(4)
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436-120-0008 Administrative Review and Contested Cases

(1) **Administrative review of vocational assistance matters**: Under ORS 656.283(2) and [ORS] 656.340(4), a worker wanting review of any vocational assistance matter must apply to the director for administrative review. Also, under ORS 656.340(11) and OAR 436-120-0320(9) when the worker and insurer are unable to agree on a vocational assistance provider, the insurer shall apply to the director for administrative review. Because effective vocational assistance is best realized in a nonadversarial environment, the first objective of the administrative review is to bring the parties to resolution through alternative dispute resolution procedures**, including**

mediation conferences, whenever possible and appropriate. When a dispute is not resolved through mutual agreement or dismissal, the director shall close the record and issue a Director's Review and Order as described in subsections (f) and (g). A worker need not be represented to request or to participate in the administrative review process, which is as follows:

(a) The worker's request for review must be mailed or otherwise communicated to the department no later than the 60th day after the date the worker received written notice of the insurer's action; or, if the worker was represented at the time of the notice, within 60 days of the date the worker's representative received actual notice. Issues raised by the worker where written notice was not provided may be reviewed at the director's discretion.

(b) The worker, insurer, employer at injury, and vocational assistance provider shall supply needed information, attend [mediation] conferences and meetings, and participate in the administrative review process as required by the director. Upon the director's request, any party to the dispute shall provide available information within 14 days of the request. The insurer shall promptly schedule, pay for, and submit to the director any medical or vocational tests, consultations, or reports required by the director. The worker, insurer, employer at injury, or vocational assistance provider shall simultaneously send copies to the other parties to the dispute when sending material to the director. If necessary, the director will assist an unrepresented worker in sending copies to the appropriate parties. Failure to comply with this subsection may result in the following:

(A) If the worker fails to comply without good cause, the director may dismiss the administrative review as described in subsection (d); or, the director may decide the issue on the basis of available information.

(B) If the insurer, vocational assistance provider, or employer at injury fails to comply without good cause, the director may decide the issue on the basis of available information.

(c) At the director's discretion, the director may issue an order of deferral to temporarily suspend administrative review. The order of deferral will specify the conditions under which the review will be resumed.

(d) The director may issue an order of dismissal under appropriate conditions.

(e) The director shall issue a letter of agreement when the parties resolve a dispute within the scope of these rules. The agreement will become final on the [tenth] 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may reconsider approval of the agreement upon the director's own motion or upon a motion by a party. The director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) One or both parties fail to honor the agreement;

(B) The agreement was based on misrepresentation; or

(C) Implementation of the agreement is not feasible because of unforeseen circumstances.

(f) After the parties have had the opportunity to present evidence, and any meetings or conferences deemed necessary by the director have been held, the director shall issue a final order, including the notice of record contents. The parties will have 60 days from the issuance of the order to request a contested case hearing before the director.

(g) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request for reconsideration must be mailed before the administrative order becomes final, or if appealed, before the contested case order is issued.

(h) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this subsection and may respond to such evidence submitted by others.

(i) Any party requesting reconsideration or responding to a reconsideration request shall simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.

(j) A request for reconsideration does not stay the 60-day time period within which the parties must request a contested case hearing.

(2) **Contested cases regarding the director's administrative review**: Under ORS 656.283, orders issued under subsection (1)(g) of this rule and dismissals issued under [paragraphs] **subsection** (1)(d) [(A) and (B)] of this rule may be appealed to the director for a contested case hearing as follows:

(a) The party must send the request for hearing in writing to the administrator of the Workers' Compensation Division and shall simultaneously send a copy of the request to the other party(ies). The request must specify the grounds upon which the order is contested.

(b) The party must mail the request to the division within 60 days of the date of the order.

(c) The division will conduct the hearing in accordance with the rules governing contested case hearings in OAR 436-001.

(3) **Contested cases regarding jurisdiction or reimbursement of costs:** Under ORS 183.310 through 183.550 and ORS 656.704(2), a worker may appeal an order of dismissal based on lack of jurisdiction under [paragraph] **subsection** (1)(d) [(D)] of this rule; or, under ORS 183.310

through 183.550 and ORS 656.704(2), an insurer may appeal department denial of reimbursement for vocational assistance costs under OAR 436-120-0730 as follows:

(a) The party must send the request for hearing to the administrator of the Workers' Compensation Division. The party must also simultaneously send a copy of the request to the other party(ies). The request must specify the grounds upon which the denial is contested.

(b) The party must mail the request to the division no later than the 30th day after the party received the dismissal or written denial.

(c) The division will conduct the hearing in accordance with the rules governing contested case hearings in OAR 436-001.

(4) **Contested case hearings of civil penalties**: Under ORS 656.740 an insurer or an employer may appeal a proposed order or proposed assessment of civil penalty pursuant to ORS 656.745 and OAR 436-120-0900 as follows:

(a) The insurer or employer must send the request for hearing in writing to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The party must mail the request to the division no later than the 60th day after the insurer or employer received notice of the proposed order or assessment.

(c) The division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(d) The Hearings Division shall conduct the hearing in accordance with ORS 656.740 and ORS Chapter 183.

(5) **Contested case hearings of sanctions and denials of certification or authorization by the director**: Under ORS 183.310 through 183.550, an insurer sanctioned pursuant to ORS 656.447 and OAR 436-120-0900(4), a vocational assistance provider or certified individual sanctioned pursuant to ORS 656.340(9)(b) and OAR 436-120-0915, a vocational assistance provider denied authorization pursuant to ORS 656.340(9)(a) and OAR 436-120-0800, or an individual denied certification pursuant to ORS 656.340(9)(a) and OAR 436-120-0810 may appeal as follows:

(a) The party must send the request for administrative review in writing to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the action is contested.

(b) The party must mail the request to the division no later than the 60th day after the party received notification of the action, unless the director determines there was good cause for delay or that substantial injustice may otherwise result.

(c) The division will conduct the hearing in accordance with the rules governing contested case hearings in OAR 436-001.

Stat. Auth.: ORS 656.704(2), 656.726(4)
Stat. Impltd.: ORS 183.310 through 183.555, 656.283(2), 656.340, 656.447, 656.740, 656.745
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Amended 4/13/01 as WCD Admin. Order 01-053, eff. 5/15/01

436-120-0320 Determining Eligibility for Vocational Assistance and Selection of Vocational Assistance Provider

(1) **Unless one of the provisions in section (2) below applies,** [T]**t**he insurer shall contact a worker with an accepted disabling claim or claim for aggravation to begin the eligibility determination within five days of the following:

(a) The insurer's receipt of a request for vocational assistance from the worker. If the insurer does not know the worker's permanent limitations, the insurer shall contact the attending physician within 14 days of receiving the request for vocational assistance. The insurer shall notify the worker if the eligibility determination is postponed until permanent restrictions are known or can be projected.

(b) The insurer's receipt of a medical or investigative report sufficient to document a need for vocational assistance, including medical verification of projected or actual permanent limitations due to the injury.

(c) The insurer's knowledge that the claim qualifies for closure because the worker is medically stationary. If the claim qualifies for closure under ORS 656.268(1), the insurer may postpone the determination until the worker is medically stationary or until permanent restrictions are known or can be projected, whichever occurs first.

(d) The worker is granted a permanent disability award.

(2) The insurer is not required to determine eligibility if:

(a) Eligibility has previously been determined under the current opening of the claim **and there are no newly accepted conditions**;

(b) The worker has returned to regular or other suitable employment with the employer at injury or aggravation; or

(c) The worker's claim was closed with no permanent disability award. The following do not, of themselves, preclude a worker's eligibility for vocational assistance:

(A) A finding that a worker is not entitled to an additional award of permanent disability on aggravation, or

(B) A finding that a worker is not entitled to a permanent disability award because of an offset of permanent disability from a prior claim, or

(C) The disposition of permanent disability through a claim disposition agreement (CDA).

(3) If the insurer receives a request for vocational assistance from the worker or the worker's representative and the insurer is not required to determine eligibility under section (2), the insurer shall notify the worker and provide:

(a) The reasons the insurer is not required to determine eligibility,

(b) The circumstance which would require the insurer to determine eligibility, and

(c) The appropriate telephone number of the division, with instructions to contact the division with questions about vocational assistance eligibility requirements and procedures.

[(3)] **(4)** Nothing in these rules prevents the insurer from finding a worker eligible and providing vocational assistance at any time.

[(4)] **(5)** The insurer shall complete the eligibility determination within 30 days of the contact required in section (1) or if the eligibility determination was postponed within 30 days of receipt of verification of projected or actual permanent limitations.

[(5)] **(6)** A vocational counselor certified under OAR 436-120 shall determine if a worker meets eligibility criteria.

[(6)] **(7)** The insurer shall provide the vocational counselor with all existing relevant medical information regarding the worker's physical capacities and limitations.

[(7)] **(8)** After the worker's permanent limitations are known or can be projected, the worker shall, upon written request from the insurer, provide vocationally relevant information needed to determine eligibility within a reasonable time set by the insurer.

[(8)] **(9)** A worker entitled to a**n** [vocational] eligibility evaluation is eligible for vocational services if all the following additional conditions are met:

(a) The worker is authorized to work in the United States.

(b) The worker is available in Oregon for vocational assistance. [This requirement is waived if the worker resided outside the state of Oregon at the time of injury.] The insurer shall consider the worker available in Oregon if the worker lives within commuting distance of Oregon or documents, in writing, willingness to relocate to or within commuting distance of Oregon within 30 days of being found eligible. The worker is responsible for costs associated with being available in Oregon. **The requirement that the worker be available in Oregon for vocational assistance does not apply if the Oregon subject worker neither worked nor lived in Oregon at the time of the injury.**

(c) As a result of the limitations caused by the injury or aggravation, the worker:

(A) Is not able to return to regular employment;

(B) Is not able to return to any other suitable and available work with the employer at injury or aggravation; and

(C) Has a substantial handicap to employment and requires assistance to overcome that handicap.

(d) None of the reasons for ineligibility under OAR 436-120-0350 applies under the current opening of the claim.

[(9)] **(10)** Upon determining the worker eligible, the insurer and worker shall jointly select a vocational assistance provider. No later than 20 days from the date the insurer determined the worker eligible, the insurer shall either notify the worker of the selection of vocational assistance provider, or if the parties are unable to agree, refer the dispute to the director. The worker and insurer shall follow the same procedure to select a new vocational assistance provider.

[(10)] **(11)** Unless all parties otherwise agree in writing, vocational assistance will be due at any given time with respect only to one claim of the worker. If the worker is eligible for vocational assistance under two or more claims, and there is a dispute about which claim gives rise to the need for vocational assistance pursuant to these rules, the director will select the claim for the injury which results in the most severe vocational impact. If services are provided under more than one claim at a time pursuant to a written agreement of all parties, time and fee limits may extend beyond the limits otherwise imposed in these rules.

Stat. Auth.: ORS 656.726(4), 656.340(9)
Stat. Impltd.: ORS 656.340
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436-120-0340 Determining Substantial Handicap

(1) A certified vocational counselor shall perform a substantial handicap evaluation as part of the eligibility determination unless the insurer agrees that the worker has a substantial handicap to employment.

(2) To complete the substantial handicap evaluation the vocational counselor shall submit a report documenting the following information:

(a) Relevant work history for at least the preceding five years;

(b) Level of education, proficiency in spoken and written English or other languages, where relevant, and achievement or aptitude test data if it exists;

(c) Adjusted weekly wage as determined under OAR 436-120-0007 and suitable wage as defined by OAR 436-120-0005 [(12)(a)] **(10)**;

(d) Permanent limitations due to the injury;

(e) An analysis of the worker's transferable skills, if any;

(f) A list of jobs for which the worker has transferable skills;

(g) An analysis of the worker's labor market utilizing standard labor market reference materials including but not limited to Employment Department (OED) information such as the Occupational Program Planning System (OPPS) and Oregon Automated Reporting System (OARS) wages-offered data, and material developed by the division. When using OARS wages-offered data, the vocational counselor shall use the median wage (Q2) unless there is sufficient evidence that a higher or lower wage is more appropriate. When such data is not sufficient to make a decision about substantial handicap, the vocational counselor shall perform individual labor market surveys as described in OAR 436-120-0410(6); and

(h) Consideration of the vocational impact of any limitations which existed prior to the injury.

(3) The vocational counselor who determines whether the worker is eligible for vocational assistance based on a substantial handicap assessment shall sign the following statement:

> **My signature certifies I have reviewed and analyzed the material referenced in this evaluation report in making my decision regarding whether this worker is eligible for vocational assistance.**

Stat. Auth.: ORS 656.726(4)
Stat. Impltd.: ORS 656.340(5) and (6)
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436-120-0350 Ineligibility and End of Eligibility for Vocational Assistance

A worker is ineligible or the worker's eligibility ends when any of the following conditions apply:

(1) The worker does not or no longer meets the eligibility requirements as defined in OAR 436-120-0320. The insurer must have obtained new information which did not exist or which the insurer could not have discovered with reasonable effort at the time the insurer determined eligibility.

(2) **The worker is determined not to have permanent disability after a finding of eligibility.**

(3) The worker's lack of suitable employment is not due to the limitations caused by the injury or which existed before the injury.

[(3)] **(4)** The worker has been employed at least for 60 days in suitable employment after the injury or aggravation and any necessary worksite modification is in place.

[(4)] **(5)** The worker, prior to beginning an authorized return-to-work plan, refused an offer of suitable employment, or left suitable employment after the injury or aggravation for a reason unrelated to the limitations due to the compensable injury. If the employer-at-injury offers employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

[(5)] **(6)** The worker, prior to beginning an authorized return-to-work plan, refused or failed to make a reasonable effort in available light-duty work intended to result in suitable employment. Prior to finding the worker ineligible or ending eligibility, the insurer shall document the existence of one or more suitable jobs which would have been available for the worker upon successful completion of the light-duty work. If the employer-at-injury offers such employment to a non-medically stationary worker, the offer must be made in accordance with OAR 436-060.

(7) The worker, after completing an authorized training plan, refused an offer of suitable employment.

[(6)] **(8)** The worker has declined or has become unavailable for vocational assistance. If the insurer does not consider the reason for declining services or unavailability to be for good cause, the insurer shall warn the worker prior to finding the worker ineligible or ending the worker's eligibility under this section. Good cause shall include, but is not limited to, medically documented worker illness, the documented serious illness or death of an immediate family

member.

[(7)] **(9)** The worker has failed, after written warning, to participate in the vocational assistance process, or to provide relevant information. No written warning is required if the worker refuses a suitable training site after the vocational counselor and worker have agreed in writing upon a return-to-work goal.

[(8)] **(10)** The worker has failed, after written warning, to comply with the return-to-work plan. No written warning is required if the worker stops attending training without good cause, or without notifying the vocational counselor or the insurer.

[(9)] **(11)** The worker's lack of suitable employment cannot be resolved by providing vocational assistance. **This includes circumstances in which the worker cannot benefit from, or participate in, vocational assistance because of medical conditions unrelated to the injury.**

[(10)] **(12)** The worker has misrepresented a matter material to evaluating eligibility or providing vocational assistance.

[(11)] **(13)** The worker has refused, after written warning, to return property provided by the insurer or reimburse the insurer after the insurer has notified the worker of the repossession; or the worker has misused funds provided for the purchase of property or services. No vocational assistance shall be provided under the current or subsequent openings of the claim until the worker has returned the property or reimbursed the funds.

[(12)] **(14)** The worker physically abused any party to the vocational process, or after written warning, has continued to sexually harass or threaten to physically abuse any party to the vocational process. This section does not apply if such behavior is the result of a documented medical or mental condition. In such a situation, eligibility should be ended under section [(9)] **(11)** of this rule.

[(13)] **(15)** The worker has entered into a claim disposition agreement (CDA) which disposes of vocational assistance eligibility. The parties may agree in writing to suspend vocational services pending approval by the Workers' Compensation Board (Board). The insurer shall end eligibility when the Board approves the CDA. No notice regarding the end of eligibility is required.

[(14)] **(16)** The worker has received maximum direct employment services and is not entitled to other categories of vocational assistance.

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Stat. Impltd.: ORS 656.340
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436-120-0360 Redetermining Eligibility for Vocational Assistance

If a worker was previously found ineligible or the worker's eligibility ended for any of the reasons specified below, upon notification of a change of circumstances the insurer shall redetermine eligibility. The insurer shall complete the eligibility evaluation within 35 days of one of the following:

(1) The worker, for good cause, declined or was not available for vocational assistance, or the barrier causing the worker's lack of suitable employment could not be resolved by providing vocational assistance, and those circumstances have changed. The insurer may require the worker to provide documentation the barrier no longer exists, including medical or psychological reports relating to noncompensable conditions.

(2) The worker was not available in Oregon, and the worker becomes available. The worker must request redetermination within six months of the worker's receipt of the insurer's notice.

(3) The worker's claim was denied, and the claim is later accepted and all appeals exhausted.

(4) The worker was not awarded permanent disability and the worker is later awarded permanent disability.

(5) The worker was not authorized to work in the United States, and the worker is now authorized to work in the United States. The time limit set in this section applies to any worker found ineligible or whose eligibility ended because the worker was not authorized to work in the United States regardless of the date the notice of ineligibility or end of eligibility was issued. Within six months of the date of the worker's receipt of the insurer's notice of ineligibility or end of eligibility, the worker must:

(a) Request redetermination; [or] **and**

(b) Submit evidence to the insurer that the worker has applied for authorization to work in the United States and is awaiting a decision by the United States Immigration and Naturalization Service (INS). The worker shall promptly provide the insurer with a copy of any decision by the INS. The insurer shall redetermine eligibility upon receipt of documentation of the worker's authorization to work in the United States.

(6) The worker was unavailable for vocational assistance due to short-term incarceration for a matter unrelated to the worker's claim and is now available. Within six months of the date of the worker's receipt of the insurer's notice of ineligibility or end of eligibility, the worker

must:

(a) Request redetermination; and

(b) Submit evidence to the insurer that the worker is now available to participate in vocational assistance.

(7) Prior to claim closure a worker's limitations due to the injury became more restrictive.

(8) Prior to claim closure the insurer accepts a new condition which was not considered in the original determination of the worker's eligibility.

(9) The worker returned to work prior to the worker becoming medically stationary, and the physician later rescinds the release.

(10) The worker returned to work prior to becoming medically stationary, and the worker requests a redetermination within 60 days of the mailing date of the Notice of Closure or Determination Order.

Stat. Auth.: ORS 656.340(9), 656.726(4)
Stat. Impltd.: ORS 656.340
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Amended 4/13/01 as WCD Admin. Order 01-053, eff. 5/15/01

436-120-0410 Vocational Evaluation

(1) When the insurer selects this category of vocational assistance, a certified vocational counselor shall complete the evaluation and report within 45 days, and provide a copy to all parties.

(a) **Vocational testing** shall be administered by an individual certified to administer the test.

(b) A work evaluation shall be performed by a Certified Vocational Evaluation Specialist (CVE) or Certified Work Adjustment Specialist (CWA), certified by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(2) **On-the-job evaluations** shall evaluate a worker's work traits, aptitudes, limitations, potentials and habits in an actual job environment.

(a) First, the vocational counselor shall perform a job analysis to determine if the job is within the worker's capacities. The insurer shall submit the job analysis to the attending physician if there is any question about the appropriateness of the job.

(b) The evaluation should normally be no less than five hours daily for four consecutive days and should normally last no longer than 30 days.

(c) The evaluation does not establish any employer-employee relationship.

(d) A written report shall evaluate the worker's performance in the areas originally identified for assessment.

(3) **Situational assessment** is a procedure that evaluates a worker's aptitude or work behavior in a particular learning or work setting. It may focus on a worker's overall vocational functioning or answer specific questions about certain types of work behaviors.

(a) The situational assessment requires these steps: planning and scheduling observations; observing, describing and recording work behaviors; organizing, analyzing and interpreting data; and synthesizing data including behavioral data from other pertinent sources.

(b) The assessment should normally be no less than five hours daily for four consecutive days and should normally last no longer than 30 days.

(4) **Work adjustment** is work-related activities that assist workers in understanding the meaning, value, and demands of work. It may include the assistance of a job coach.

(5) **Job analysis** is a detailed description of the physical and other demands of a job or job goal based on direct observation of the job.

(6) **Labor market surveys** are obtained from direct contact with employers, other actual labor market information, or from other surveys completed within 90 days of the report date.

(a) A labor market survey is needed when standard labor market reference materials do not have adequate information upon which to base a decision, or there are questions about a worker's specific limitations, training and skills, which must be addressed with employers to determine if a reasonable labor market exists.

(b) The person giving the information must have hiring responsibility or direct knowledge of the job's requirements; and the job must exist at the firm contacted.

(c) The labor market survey report shall include, but is not limited to, the date of contact; firm name, address and telephone number; name and title of person contacted; the qualifications of persons recently hired; physical requirements; wages paid; condition of hire (full-time, part-time, seasonal, temporary); date and number of last hire(s); and available and anticipated openings.

(d) Specific openings found in the course of a labor market survey are not, in themselves, proof a reasonable labor market exists.

(7) **The vocational evaluation report** shall include an analysis of all vocational information, and a recommendation of the category of vocational assistance needed for the worker to obtain suitable employment. The report must include the worker's signature indicating the worker has read and received a copy of the report. Certain information may be excluded from the report, as allowed by ORS 192.525. The signature does not imply the worker's agreement with the conclusions of the evaluation. The worker may attach written comments to the evaluation report.

(8) Upon receipt of the vocational evaluation report, the insurer shall notify the worker within [ten] **10** days whether the worker will receive direct employment services or training, or that the worker is unable to benefit from vocational assistance.

Stat. Auth.: ORS 656.340(9), 656.726(4)
Stat. Impltd.: ORS 656.340(7)
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436-120-0440 Training

(1) Training services include a vocational evaluation if needed, plan development, training, monthly monitoring of training progress, and job placement services as necessary.

(2) Training is limited to an aggregate of 16 months, subject to extension to 21 months by the director for a worker with an exceptional disability resulting from the compensable condition(s) and any limitations which existed prior to the injury or an exceptional loss of earning capacity.

(a) "Exceptional disability" is defined as disability equal to or greater than the complete loss, or loss of use, of both legs. Exceptional disability also includes brain injury which results in impairment equal to or greater than Class III as defined in OAR 436-035.

(b) An "exceptional loss of earning capacity" exists when no suitable training plan of 16 months or less is likely to eliminate the worker's substantial handicap to employment. The extension must allow the worker to obtain a wage "significantly closer," as described in OAR 436-120-0400(2)(c), to the worker's adjusted weekly wage and at least [ten] **10** percent greater than could be expected with a shorter training program.

(3) A worker enrolled and actively engaged in training shall receive temporary disability compensation subject to OAR 436-060, and payment of awards of permanent disability are suspended. At the insurer's discretion, training costs may be paid for periods longer than 21 months, but in no event shall temporary disability compensation be paid for a period longer than 21 months.

(4) The selection of plan objectives and kind of training shall attempt to minimize the length and cost of training necessary to prepare the worker for suitable employment.

Notwithstanding OAR 436-120-0320(8)(b), the director may order the insurer, or the insurer may elect, to provide training outside Oregon if such training would be more timely, appropriate or cost effective than other alternatives. The plan must be developed and monitored by a vocational assistance provider certified pursuant to these rules.

(5) Training status continues during the following breaks:

(a) A regularly scheduled break of not more than six weeks between fixed school terms;

(b) A break of not more than two weeks between the end of one kind of training and the start of another for which the starting date is flexible; and

(c) A period of illness or recuperation which does not prevent completion of the training by the planned date.

(6) On-the-job training prepares the worker for permanent, suitable employment with the training employer and for employment in the labor market at large. On-the-job training shall be the considered first in developing a training plan. The following conditions apply:

(a) Training time is limited to a duration of 12 months.

(b) The on-the-job training contract between the training employer, the insurer, and the worker shall include, but is not limited to, the worker's name; the employer's legal business name, Workers' Compensation Division Employer Registration number, and the name of the individual providing the training; the training plan start and end dates; the job title, the job duties, and the skills to be taught; the base wage and the terms of wage reimbursement; and an agreement that the employer will pay all taxes normally paid on the entire wage and will maintain workers' compensation insurance for the trainee. If the training prepares a worker for a job unique to the training site, the contract must acknowledge that the training may not prepare the worker for jobs elsewhere.

(c) The insurer shall not reimburse the training employer 100 percent of the wages for the entire contract period.

(d) The insurer shall pay temporary disability compensation as provided in ORS 656.212.

(e) The worker's schedule shall be the same as for a regular full-time employee. The schedule may be modified to accommodate the worker's documented medical condition or class schedule.

(7) Skills training is offered through a community college, based on predetermined curriculum, at the training employer's location. Skills training is subject to the following conditions:

(a) Training is limited to 12 months.

(b) Training does not establish any employer-employee relationship with the training employer. The activity is primarily for the worker's benefit. The worker does not receive wages. The training employer makes no guarantee of employing the worker when the training is completed.

(c) The training employer has a sufficient number of employees to accomplish its regular work and the training of the worker, and the worker does not displace an employee.

(d) The worker's schedule shall be the same as for a regular full-time employee. The schedule may be modified to accommodate the worker's documented medical condition or class schedule.

(8) Rehabilitation facilities training provides evaluation, training and employment for severely disabled individuals.

(9) Basic education may be offered, with or without other training components, to raise the worker's education to a level to enable the worker to obtain suitable employment. It is limited to six months.

(10) Formal training may be offered through a vocational school licensed by an appropriate licensing body, or community college or other post-secondary educational facility which is part of a state system of higher education. Courseload shall be consistent with the worker's abilities, limitations and length of time since the worker last attended school. Courses shall relate to the vocational goal.

(11) The worker is entitled to job placement assistance after completion of training.

(12) When the worker returns to work following training, the insurer shall monitor the worker's progress for at least 60 days to assure the suitability of employment before ending eligibility.

(13) Training ends and the plan shall be re-evaluated when any of the following occurs:

(a) A change in the worker's limitations which render the training inappropriate.

(b) The worker's training performance is unsatisfactory and training is not likely to result in employment in that field. In an academic program, the worker fails to maintain at least a 2.00 grade point average for at least two grading periods or to complete the minimum credit hours required under the training plan. The vocational counselor shall report any unsatisfactory performance and the insurer shall give the worker a written warning of the possible end of training at the first indication of unsatisfactory performance.

(14) The insurer shall not provide any further training to a worker who has completed one training plan unless the worker has sustained a compensable aggravation or newly accepted

condition which renders the worker incapable of obtaining suitable employment, or the previous plan was inadequate to prepare the worker for suitable employment because of an error or omission by the insurer.

(15) Training shall end if any of the following applies:

(a) The worker has successfully completed training; or

(b) The worker is not enrolled and actively engaged in the training. However, none of the following will be considered as ending the worker's training status:

(A) A regularly scheduled break of not more than six weeks between fixed school terms;

(B) A break of not more than two weeks between the end of one kind of training and the start of another for which the starting date is flexible; or

(C) A period of illness or recuperation which does not prevent completion of the training by the planned date.

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436-120-0500 Return-to-Work Plans: Development and Implementation

(1) A return-to-work plan should be a collaborative effort between the vocational counselor and the injured worker, and should include all the rights and responsibilities of the worker, the insurer, and the vocational counselor. Prior to submitting the plan to the insurer, the vocational counselor shall review the plan and plan support with the worker. Certain information may be excluded, as allowed by ORS 192.525. The injured worker must be given the opportunity to review the plan with the worker's representative prior to signing it. The vocational assistance provider shall confirm the worker's understanding of and agreement with the plan by obtaining the worker's signature. The counselor shall submit copies signed by the vocational counselor and the worker to all parties no later than [thirty] **30** days after the selection of direct employment or [two months] **60 days** after the selection of training. Circumstances beyond the insurer's and worker's control may necessitate an extension of this time frame.

(2) Within 14 days of receipt of the signed return-to-work plan, the insurer shall approve or reject the plan and notify the parties. If the insurer lacks sufficient information to make a decision, the insurer shall advise the parties what information is needed and when it expects to make a decision.

(3) If, during development of a return-to-work plan, an employer offers the worker a job, the insurer shall perform a job analysis, obtain approval from the attending physician, verify the suitability of the wage, and confirm the offer is for a bona fide, suitable job as defined in OAR 436-120-0005(9). If the job is suitable, the insurer shall help the worker return to work with the employer. The insurer shall provide return-to-work follow-up during the first 60 days after the worker returns to work. If return to work with the employer is unfeasible or, during the 60-day follow-up the job proves unsuitable, the insurer shall immediately resume development of the return-to-work plan.

(4) If the vocational goal or category of assistance is later changed, the insurer shall amend the plan. All amendments to the plan shall be initialed by the insurer, vocational assistance provider, and the worker.

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436-120-0510 Return-to-Work Plan Support

(1) Return-to-work plans shall be in the form and format prescribed by the director [by] **in** [b]**B**ulletin **124**.

(2) The injured worker and vocational counselor shall work together to develop a return-to-work plan that includes consideration of the following:

(a) the injured worker's transferable skills;

(b) the injured worker's physical and mental capacities and limitations;

(c) the injured worker's vocational interests;

(d) the injured worker's educational background and academic skill level;

(e) the injured worker's pre-injury wage; and

(f) the injured worker's place of residence and that labor market.

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436-120-0710 Direct Worker Purchases: Kinds

The insurer shall provide the direct worker purchases described in sections (1) through (12) of this rule without regard to the worker's pre- or post-injury income except as specifically stated. In determining the necessity of direct worker purchases described in sections (13) through (18), the insurer shall consider, among all factors, the worker's pre-injury net income as compared with the worker's post-injury net income. Permanent partial disability award payments shall not be considered as income. For the insurer to find the purchase necessary, the worker's pre-injury net income, as adjusted by the cost-of-living matrix, must be greater than the worker's post-injury net income, unless the worker can establish financial hardship. The insurer may require the worker to provide information about expenditures or family income when the worker claims a financial hardship.

(1) **Tuition, fees, books and supplies for training or studies**. Payment is limited to those items identified as mandatory by the instructional facility, trainer or employer. The insurer shall pay the cost in full, and shall not require the worker to apply for grants to pay for tuition, books or other expenses associated with training.

(2) **Wage reimbursement for on-the-job training**. The amount shall be stipulated in a contract between the training employer and the insurer.

(3) **Travel expenses for transportation, meals and lodging required for participation in vocational assistance**. For the purposes of this section, "participation in vocational assistance" includes, but is not limited to job search, required meetings with the vocational assistance provider, and meetings with employers or at training sites as required by the plan or plan development. The conditions and rates for payment of travel expenses are as follows:

(a) Transportation. Costs shall be paid at public transportation rates when public transportation is available; otherwise, mileage shall be paid at the rate of reimbursement for State of Oregon [Workers' Compensation Division] classified employees [covered under the collective bargaining agreement] **as published in Bulletin 112**. Costs incidental to mileage, such as parking fees, also shall be paid. For workers receiving temporary total disability or equivalent income, private car mileage shall be paid only for mileage in excess of the miles the worker traveled to and from work at the time of injury. Mileage payment in conjunction with moving expenses shall be allowed only for one vehicle and for a single one-way trip. To receive reimbursement for private car mileage, the worker must provide the insurer with a copy of the driver's valid driver's license and proof of insurance coverage.

(b) Meals and lodging, overnight travel. For overnight travel, meal and lodging expense shall be reimbursed at the rate of reimbursement for State of Oregon [Workers' Compensation Division] classified employees [covered under the collective bargaining agreement] **as published in Bulletin 112**.

(c) Special travel costs. Payment shall be made in excess of the amounts specified in this

[sub]section when special transportation or lodging is necessary because of the physical needs of the worker, or when the insurer finds prevailing costs in the travel area are substantially higher than average.

(4) **Tools and equipment for training or employment.** Payment is limited to items identified as mandatory for the training or initial employment, such as starter sets. Purchases shall not include what the trainer or employer ordinarily would provide to all employees or trainees in the training or employment, or what the worker possesses.

(5) **Moving expenses.** Payment is limited to workers with employment or training outside reasonable commuting distance. In determining the necessity of paying moving expenses, the insurer may consider the availability of employment or training which does not require moving, or which requires less than the proposed moving distance. Payment is limited to moving household goods weighing not more than 10,000 pounds. If necessary, payment includes reasonable costs of meals and lodging for the worker's family and mileage pursuant to subsection (3)(a) of this rule.

(6) **Second residence allowance**. The purpose of the second residence is to enable the worker to participate in training outside reasonable commuting distance. The allowance shall equal the rental expense reasonably necessary, plus not more than $200 a month toward all other expenses of the second residence, excluding refundable deposits. In order to qualify for second residence allowance, the worker must maintain a permanent residence.

(7) **Primary residence allowance**. This allowance is applicable when the worker must change residence for training or employment. Payment includes the first month's rent and the last month's rent only if required prior to moving in.

(8) **Medical examinations and psychological examinations for conditions not related to the compensable injury when necessary for determining the worker's ability to participate in vocational assistance**.

(9) **Physical or work capacities evaluations.**

(10) **Living expense allowance during vocational evaluation**. Payment is limited to workers involved in a vocational evaluation at least five hours daily for four or more consecutive days, and not receiving temporary disability payments. The worker shall not be barred from receiving a living expense allowance if the worker is unable to participate five hours daily because of limitations caused by the injury. Payment shall be based on the worker's temporary total disability rate if the worker's claim were reopened.

(11) **Work adjustment, on-the-job evaluation, or situational assessment cost(s).**

(12) **Membership fees and occupational certifications, licenses, and related testing costs**. Payment under this category is limited to $500.

(13) **Clothing required for participation in vocational assistance or for employment.** Allowable purchases do not include items the trainer or employer would provide or the worker possesses.

(14) **Child or disabled adult care services.** These services are payable when required to enable the worker to participate in vocational assistance at rates prescribed by the State of Oregon's Department of Human Services. For workers receiving temporary total disability compensation or equivalent income, these costs shall be paid only when in excess of what the worker paid for such services at the time of injury, adjusted using the cost-of-living matrix.

(15) **Dental work, eyeglasses, hearing aids and prosthetic devices.** These are not related to the compensable injury and enable the worker to obtain suitable employment or participate in training.

(16) **Dues and fees of a labor union.** Payment shall be limited to initiation fees, or back dues and one month's current dues.

(17) **Vehicle rental or lease.** There is no reasonable alternative enabling the worker to participate in vocational assistance or accept an available job. The worker shall provide the insurer with proof of a valid driver's license and insurance coverage. Payment under this category is limited to $1,000.

(18) **Any other direct worker purchase the insurer considers necessary for the worker's participation as described in the introductory paragraph of this rule.** Payment under this category is limited to $1000.

Stat. Auth.: ORS 656.340(9), 656.726(4)
Stat. Impltd.: ORS 656.340
Hist: Filed 12/17/87 as WCD Admin. Order 11-1987, eff. 1/1/88
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Amended 4/27/00 as WCD Admin. Order 00-055, eff. 6/1/00
Amended 4/13/01 as WCD Admin. Order 01-053, eff. 5/15/01

436-120-0720 Fee Schedule and Conditions for Payment of Vocational Assistance Costs

(1) This fee schedule specifies the maximum amounts the insurer may spend during one claim opening for each category of assistance, except where the insurer determines the case warrants exceeding the limit. The department will adjust these figures annually using the cost-of-living matrix defined in OAR 436-120-0005(2). **The annual adjustment will be in an Addendum to Bulletin 124, effective July 1 of the current year through June 30 of the following year.**

(2) Charges to determine whether the worker is eligible for vocational assistance including professional costs, including travel/wait and other travel expenses:

(a) Eligibility determination except a substantial handicap analysis:.....[$328] **$344**

(b) Substantial handicap analysis:.....[$656] **$689**

(3) Charges for the following categories of assistance including professional costs, including travel/wait and other travel expenses:

(a) Vocational evaluation:.....[$1230] **$1280**

(b) Direct employment:.....[$4428] **$4608**

(c) Training:.....[$11,070] **$11,520**

(d) A combination of direct employment and training:.....[$12,300] **$12,800**

(4) Limits on professional costs for participation, as required by the insurer or the division, in the dispute resolution process:.....[$369] **$384**

(5) Direct worker purchases as necessary for:

(a) Vocational evaluation:.....[$984] **$1,024**

(b) Direct employment:.....[$2,214] **$2,304**

(c) Training:.....[$13,284] **$13,824**

(6) Wage reimbursement for on-the-job training contracts, and the living expense allowance during vocational evaluation, are not covered by the fee schedule.

(7) Services and direct worker purchases provided after eligibility ends to complete a plan or employment is subject to the maximum amounts in effect at the time of closure.

(8) The insurer shall pay, within 60 days of receipt, the vocational assistance provider's billing for services provided under the insurer-vocational assistance provider agreement. The insurer shall not deny payment on the grounds the worker was not eligible for the assistance if the vocational assistance provider performed the services in good faith without knowledge of the ineligibility.

(9) An insurer entitled to claims cost reimbursement pursuant to OAR 436-110 for services provided pursuant to OAR 436-120 is subject to the following limitations:

(a) Optional services are not reimbursable.

(b) The director must approve eligibility before any services are provided.

(c) The insurer must obtain the director's approval in advance of the following actions:

(A) Notifying the worker of eligibility for vocational services;

(B) Any waiver of the provisions of OAR 436-120; or

(C) Exceeding the fee schedule.

Stat. Auth.: ORS 656.340(9), 656.726(4)
Stat. Impltd.: ORS 656.340, 656.258
Hist: Filed 5/22/80 as WCD Admin. Order 6-1980, eff. 6/1/80
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Amended 6/30/83 as WCD Admin. Order 2-1983, eff. 6/30/83
Amended 12/14/83 as WCD Admin. Order 5-1983, eff. 1/1/84
Renumbered from OAR 436-61-120, 5/1/85
Amended 12/12/85 as WCD Admin. Order 7-1985, eff. 1/1/86
Amended 12/17/87 as WCD Admin. Order 11-1987, eff. 1/1/88
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Amended 4/27/00 as WCD Admin. Order 00-055, eff. 6/1/00
Amended 4/13/01 as WCD Admin. Order 01-053, eff. 5/15/01

436-120-0820 Renewal of Certification

(1) A certified individual shall renew their certification every five years by submitting the following documentation to the director no later than 30 days prior to the end of their certification period:

(a) Current certification by the Commission on Rehabilitation Counselor Certification (CRCC) or the Commission for Case Managers Certification (CCMC) or the Certification of Disability Management Specialists Commission (CDMSC); or

(b) Verification of a minimum of 60 hours of continuing education units pursuant to this rule within the five years prior to renewal. At least seven and one-half hours must be for training in ethical practices **in rehabilitation counseling**.

(2) The department will accept continuing education units for training approved by the CRCC, CCMC or the CDMSC; courses in or related to psychology, sociology, counseling, and vocational rehabilitation, if given by an accredited institution of higher learning; training presented by the department pertaining to OAR 436-120 and OAR 436-110; and any continuing education program certified by the department for vocational rehabilitation providers. Sixty minutes of continuing education will count as one unit, except as noted in section (3) of this rule.

(3) In the case of college course work, the department will grant credit only for grades of C or above and will multiply the number of credit hours by six to establish the number of continuing education units.

(4) Failure to meet the requirements of this section shall cause an individual's certification to expire. Such an individual may reapply for certification upon completion of the

required 60 hours of continuing education.

Stat. Auth.: ORS 656.340(9), 656.726(4)
Stat. Impltd.: ORS 656.340
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Amended 4/13/01 as WCD Admin. Order 01-053, eff. 5/15/01

436-120-0915 Sanctions of Authorized Vocational Assistance Providers and Certified Individuals

(1) Vocational assistance providers and certified individuals shall fully participate in any department audit, periodic program review, investigation or review, and provide records and other information as requested.

(2) If the director finds any authorized vocational assistance provider or certified individual failed to comply with OAR 436-120, the director may impose one or more of the following sanctions:

(a) Denial of authorization or certification.

(b) Reprimand by the director.

(c) Probation, in which the department systematically monitors the vocational assistance provider's or individual's compliance with the OAR 436-120 for a specified length of time. Probation may include the requirement an individual receive supervision, or successfully complete specified training, personal counseling or drug or alcohol treatment.

(d) Suspension, which is the termination of authorization or certification to determine eligibility and provide vocational assistance to Oregon injured workers for a specified period of time. The vocational assistance provider or individual may reapply for authorization or certification at the end of the suspension period. If granted, the vocational assistance provider or individual will be placed on probation as described in subsection (c) of this rule.

(e) Revocation, which is a permanent termination of authorization or certification to determine eligibility and provide vocational assistance to Oregon injured workers.

(3) The director shall investigate violations of OAR 436-120 and may impose a sanction under these rules. Before imposing a sanction, the director shall send a notice of the proposed action and provide the opportunity for a show-cause hearing. The process is as follows:

(a) The director shall send by certified mail a written notice of intended sanction and the grounds for such action. The notice shall advise of the right to participate in a show-cause hearing.

(b) The vocational assistance provider or individual has [ten] **10** days from the date of receipt of the notification of proposed action in which to request a show-cause hearing.

(c) If the vocational assistance provider or individual does not request a show-cause hearing, the proposed sanction shall become final.

(d) If the vocational assistance provider or individual requests a show-cause hearing, the director shall send a notification of the date, time and place of the hearing.

(e) After the show-cause hearing, the director shall issue a final order which may be appealed as described in OAR 436-120-0008(5).

(4) The director may bar a vocational assistance provider or individual sanctioned under this rule from sponsoring or teaching continuing education programs.

Stat. Auth.: ORS 656.340(9), 656.726(4)
Stat. Impltd.: ORS 656.340
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