

**Oregon Administrative Rule Revision
Chapter 436, Division 035**

Transcript

Stakeholder Rulemaking Advisory Committee Meeting
Aug. 9, 2022

Attending – stakeholders:

Amber McMurry	Multnomah County
Dan Schmelling	SAIF Corporation
Dave Barenberg	SAIF Corporation
Dave Boyd	Associated Oregon Loggers
Diana Johnson	Gallagher Bassett
Elaine Schooler	SAIF Corporation
Jodie Phillips Polich	Attorney
Julie Riddle	The Hartford
Kevin Anderson	SBH Legal
Linh Vu	City of Portland
Paloma Sparks	OBI
Sheri Sundstrom	Hoffman Construction
Thais Lomax	Sedgwick CMS
Virginia Jones	Strategic Comp

Attending – Department of Consumer and Business Services:

Cathy Ostrand-Ponsioen
Daneka Karma
Don Gallogly
Fred Bruyns
Jennifer Millemann
Kirsten Schrock
Matt West
Steve Passantino
Yesenia Gonzalez

Note: Numbers at the left in the format 00:00 refer to time locations on the audio recording.

- 00:00 [Fred] Okay, welcome everyone. Thank you for joining – for joining us. My name is Fred Bruyns. I coordinate rulemaking for the Workers' Compensation Division. We really appreciate your sharing of your time and knowledge today. We rely on that.
- 00:21 [Fred] So, for today's meeting you should have an agenda. The agenda is posted to the Workers' Compensation Division's website. It's also available at - on a table in the back of this room, if you're joining us in

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person. And, if you are looking on our website, it's under WCD.Oregon.gov, under "Laws and rules" and then "Rule hearings and meetings."

00:43 [Fred] Just a word about advisory committees. They're very informal, and they're not like a public hearing, where people formally testimony. This is really a discussion. We have some department staff here today, and we're here primarily to listen to you, so we can take the information away with us. But, we are also here to answer your questions, if we can. We will do our best to answer the questions, and if we can't, we will get back to you. The one ground rule I'd like us to observe is to describe problems or obstacles in a way that doesn't identify any individuals or organizations, because those wouldn't be problems that we could solve here today, and it will just improve the overall tenor of things.

01:24 [Fred] As we go along, please let us know about any about any fiscal impacts – costs or benefits - that might affect you or the people you represent, so that we can provide our best estimate of those when we file proposed rules later with the Secretary of State. Similarly, we're now required to, when we file proposed rules, to make our best estimate of any impacts on – how our rules affect racial equity in Oregon, again, positively or negatively. Sometimes we go in with the assumption that there can't be any impact, but that's just an assumption, and so we need to hear from you folks if you think any of the issues or potential rule changes that we'll discuss could have a disparate impact on any group.

02:10 [Fred] We will hear background noises in your workplace, even keyboarding. Please consider muting your PC or your phone as needed. But, we do want to hear from you. Use the hands up feature any time you have something for us, but don't hesitate to speak up during any pause in the conversation regardless – especially - especially if you joined us by telephone.

02:33 [Fred] Introductions can be awkward, as no one on the Zoom connection or telephone will know when to speak, so I will call your names, and then if I miss you, you can let me know if you are in fact here.

Elaine Schooler, SAIF Corporation – are you with us?

Yes, good morning.

[Fred] Good morning Elaine.

Liza McKeen, Balance Staffing

[no response]

Paloma Sparks, Oregon Business & Industry?

Hi.

[Fred] Welcome.

Kirsten Adams, Associated General Contractors?

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[no response]

Dave Boyd, Associated – Associated Oregon Loggers?

I'm here.

[Fred] Welcome Dave.

Thais Lomax, Sedgwick CMS?

Good morning.

[Fred] Good morning.

Amber McMurry, Multnomah County?

I'm here.

[Fred] Welcome

Julie Riddle, The Hartford?

I'm here.

[Fred] Welcome.

Rose Etta Venetucci, of the International Alliance of Theatrical Stage Employees Local 28. Or is there anyone else here representing IATSE?

[no response]

Jennifer Flood, Ombuds for Oregon Workers? [no response]

Dave Waki, Small Business Ombudsman? [no response]

[Fred] Did I miss anyone from our stakeholders this morning, who are with us? I know there are a few additional folks on with us.

Dan Schmelling – you're here, right?

Yes, good morning, Fred.

[Fred] Okay, anyone else, and you're all welcome.

Sheri Sundstrom with Hoffman Construction.

[Fred] Welcome Sheri. Anyone else?

Diana Johnson from Gallagher Bassett.

[Fred] Welcome Diana. Anyone else?

Virginia Jones, Strategic Comp.

[Fred] Welcome Virginia

Kevin Anderson, SBH Legal

[Fred] Welcome Kevin.

Linh Vu, City of Portland.

[Fred] Welcome Linh. Additional folks?

[Fred] Okay, then I'm going to run down the list of the people that I know are here from the Workers' Compensation Division or the larger Department of Consumer and Business Services. And, then if I miss anyone, we'll just ask you to introduce yourselves.

Matt West, Workers' Compensation Division?

Morning.

[Fred] Welcome.

Kirsten Schrock, Workers' Compensation Division, Appellate Review Unit manager? [correction – Resolution Section Manager]

Good morning.

[Fred] Good morning.

Steve Passantino, again, Appellate Review Unit.

Good morning.

[Fred] Good morning Steve.

Jennifer Millemann, Appellate Review Unit?

Good morning.

[Fred] Welcome Jennifer.

Yesenia Gonzalez of the Appellate Review Unit?

Good morning.

[Fred] Welcome.

Troy Painter of the Workers' Compensation Division? [no response]

Kathryn Hanel, Workers' Compensation Division? [no response]

Cathy Ostrand-Ponsioen, again, WCD?

Good morning.

[Fred] Good morning Cathy.

Daneka Karma, to my left, and she will not be visible on the laptop throughout our meeting, because she's connected to our camera, but welcome, Daneka.

Don Gallogly of Research?

Here, thank you.

[Fred] Welcome Don.

06:13 [Fred] And , now who did I miss? Okay, apparently no one.

06:23 [Fred] Okay, I'm going to go ahead and share my agenda in just a moment here. And, again, I'll try to read enough about each issue so if for any reason you don't have a copy of the agenda, I think we'll be just fine.

07:01 [Yesenia Gonzalez] Someone has asked if you can speak up a little bit.

07:07 [Fred] Okay, Yah, Okay – I will try to do that. I'll bring the little microphone closer to me – thank you so much. Okay, can everyone see the agenda now? Very good.

07:24 [Fred] Any questions before we begin the process? Otherwise I'm just going to start with issue number one, but, any questions about the process or anything at all before we start?

07:35 [Fred] Okay, again this is very informal. Just interrupt at any time, and we'll do our best to see who might have their hand up, but the most important thing is that we hear from you, so please speak up.

07:46 [Fred] So, our first issue – it's a – it looks fairly lengthy, but it's basically one theme. And, that is we have temporary rules in place right now that you are aware of that are responsive to the *Johnson v. SAIF* Supreme Court decision. And, those rules are scheduled to expire on the third of December. Temporary rules last 180 days maximum, and they need to be

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replaced by permanent replacement rules. We call them permanent - they are never really permanent, but they're actually promulgated through processes that involve public input, whereas a temporary rule is almost an emergency measure. But those will expire and the rules will revert to their former wording if we do not adopt replacement rules by Dec. 3.

08:37 [Fred] So the rules, prior to temporary rulemaking, provide for apportionment of permanent impairment and reduction of a work disability award, by adjusting the worker's residual functional capacity, when an outright denied condition (not a major contributing cause denied condition) and the accepted condition or sequela contribute to the impairment. This is inconsistent with *Johnson* which requires a statutory exception allowing apportionment of impairment or reduction in work disability only in certain circumstances when the compensable injury materially contributes to the impairment.

09:10 [Fred] Also, rule language did not address entitlement to an award for permanent disability due entirely to – due to a combined condition denied in its entirety, nor due in part to the accepted condition and sequela in combination with a combined condition denied in its entirety. Combined conditions can be denied in their entirety or as part of an accepted combined condition with major contributing cause denial. The rules must allow for both as apportionment is appropriate for both types.

09:42 [Fred] A little background: On April 21, the Oregon Supreme Court published its decision in *Johnson v. SAIF*. The facts of *Johnson* involved entitlement for a worker's permanent partial disability award when deemed to be due to a combination of factors, including contribution from the accepted condition, as well as an outright unrelated denied condition. The denied condition was not a major contributing cause denial, as described in statute. The Supreme Court first determined the worker's accepted condition was a material contributing cause to the worker's permanent impairment. Further, the court determined that the Court of Appeals, which overturned the Appellate Review Unit's order and Oregon Workers' Compensation Board hearings and board level decisions, had correctly disallowed apportionment (a reduction in the worker's permanent disability benefits) deemed to be due to the worker's unrelated denied condition. The court determined that when a worker's accepted condition materially contributes to permanent disability, no apportionment of disability is allowed, regardless of an outright denied condition contribution to the disability, unless the insurer follows the statutory major contributing cause denial process involving claims with a pre-existing condition identified in the Workers' Compensation Statutes, sections 005 and 266.

10:58 [Fred] Following the issuance of this decision, the Workers' Compensation Division issued temporary rules, effective on June 7. The purpose of the

temporary rules was to align the Disability Rating Standards with the Oregon Supreme Court's decision. Again, these will expire on Dec. 3.

- 11:16 [Fred] Temporary rules provide that once the accepted condition or sequela materially contribute to an impairment finding or reduction in the worker's work capacity, apportionment of impairment or adjustment in work disability, in this case residual functional capacity, for contribution from a denied condition is no longer allowed unless the denied condition is a combined condition denied for a major contributing cause (or "ceases" denial) or a combined condition denied in its entirety. Refer to the options listed under rules 0007, 0012, and 0013 below, which we're going to come to in just a moment.
- 11:51 [Fred] Temporary rule language also allows for reduction of disability benefits for a combined condition denied in its entirety. If a worker has a combined condition denied in its entirety, the worker is not eligible for an award for permanent disability that is not due in any part to the accepted conditions and direct medical sequelae; and, if the permanent disability is due in part to the accepted conditions and direct medical sequelae, then the worker is not eligible for an award for the portion of the permanent disability due to the denied combined condition. And, refer to the options under rule 0014 below.
- 12:25 [Fred] So, the division needs to adopt permanent rules before they expire on Dec. 3, or rule language will be inconsistent with *Johnson*, because it will revert to the former rule. So, we are interested in hearing from stakeholders if temporary rule language should be adopted permanently, or if there is a better way to incorporate the *Johnson* decision into the rules.
- 12:47 [Fred] So, the options that we have listed – in each case, one of the options for each of the four rules that were temporary – that are temporary right now – is to adopt the temporary rule language as permanent. And, we have shown the temporary rule amendments in each case, in terms of marked up language. And we've listed them out.
- 13:13 [Fred] However, I want to point out something just a little different about the options under rule 0014, which again include adopting the temporary rule language as permanent. An alternative would be to delete sections (2) and (3) of rule 0014 as redundant, as these are now addressed in the temporary and proposed final rules under rule 0007. This would require changing the header title to delete "combined conditions." And, section (3) is shown below for reference. So, section (3) is right here, and it would be deleted in this – if we went with this option. And, section (2) is right here, because it's part of the temporary rule wording.

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- 13:57 [Fred] And again, one of the options that we'd like feedback upon, would be to update the rules to better incorporate the *Johnson* decision in any ways that the temporary rule wording fell short. We have an "Other" category here to collect any of your other thoughts that may be pertinent to this particular discussion.
- 14:17 [Fred] Fiscal impacts. Again, we don't have data that would allow us to estimate the dollar impact of these changes, but we would welcome your input, especially in terms of any impacts on small businesses, because that's a priority. And again, we invite your input on any unequal impacts on – based on race or ethnicity.
- 14:40 [Fred] So, with that, I'm going to turn it over to all of you and ask if you have direction for us, advice on, you know, the accuracy, the effectiveness in terms of reflecting the Supreme Court decision, in terms of the rules that we adopted that are in place now, or if there is a better way to do it, and so, that's what we'd like to hear from you.
- 15:34 [Fred] Feel free to speak up or raise your electronic hand – and again, nothing too formal. Maybe you could speak to – do you think the temporary rules that are in place now, I guess are an appropriate reflection of the Supreme Court decision – an appropriate response to it. Or, again, if there's a better way.
- 16:16 [Paloma] This is Paloma Sparks with OBI. I guess I just have a question for what the division's thought process was of why an alternative to the temporary rule was needed. So, rather than just adopting the temporary rules as permanent, we've provided some other options. Can you explain the reasoning for the other options?
- 16:44 [Fred] Well, the reason we provide a placeholder for "Other" – there was one possible variation for rule 0014 in terms of eliminating some redundancy – but otherwise the status quo is the temporary rule. And, the point, in terms of asking stakeholders to gather and give us feedback is to kind of let us know if that's where they want us to go. We don't want to assume that we should just adopt the temporary rule language. We want to know if in fact someone maybe would read the Supreme Court decision differently than we did and have a different interpretation on what it truly required an agency to do with its temporary rulemaking, and ultimately its permanent rulemaking. So, again, we're just interested in hearing feedback, and then we can decide to possibly to change what we have now. Good question though.
- 17:48 [Fred] Oh – Dan Schmelling?

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- 17:52 [Dan] Thanks, Fred. This is Dan Schelling with SAIF Corporation. SAIF Corporation is comfortable with the temporary rules as written and is okay with adopting those as permanent.
- 18:04 [Fred] Okay, thank you for your input, Dan. Anyone else? Okay, well with that I'm going to move on, but again, if you have any afterthoughts, you want us to go back, just let me know if I ever move along too quickly.
- 18:28 [Fred] Because we do have some new ground, beginning with issue number two, and that involves the apportionment of irreversible findings. Examples of irreversible findings would be a laminectomy or a carpal bone fusion, but there are many. And that's reflected in some of the rules that are affected, for instance rule 0005, the definition rule, has a definition of irreversible findings. And, it's quite a long list. Many of them are surgical, but it's quite a long list of irreversible findings, sometimes called hard findings. And, also affected would be rules 0013, where we have a section on "Irreversible findings of impairment or surgical value," and also rule 0015, where we discuss offsets from a prior claim.
- 19:16 [Fred] So, under the current rules, a worker with an irreversible finding of impairment due in material part to the accepted condition and sequela receives the full value awarded in the rules for the finding, and this may conflict with *Johnson*.
- 19:29 [Fred] For background, the rules currently do not allow apportionment of irreversible findings of permanent impairment, regardless of contribution from any other factors, including a denied combined condition.
- 19:42 [Fred] Per the Supreme Court's decision in *Johnson*, if the compensable injury has a material contribution to impairment, the only available apportionment allowance is through a statutory exception, a combined condition denied for a major contributing cause or "ceases" denial, or a combined condition denied in its entirety. This implies that any impairment value, including irreversible findings, can be apportioned if it falls under a combined condition denial exception. This puts irreversible findings in possible direct conflict with *Johnson*.
- 20:13 [Fred] The division is interested in hearing from stakeholders if irreversible findings, which are considered a permanent loss of use or function of a body part or system, should be subject to apportionment as any other permanent impairment finding.
- 20:26 [Fred] And the options that we've presented are to allow for apportionment for all permanent impairment described in the rules, including irreversible findings, by removing the following from the rule. And then we've listed out four places that would involve basically deletion, not really any

amendment to the existing language except just straight up deletion of those references to irreversible findings and how they are actually processed differently. And then we have an “Other” as well to capture any additional information that you may – you may have for us. So with that I’ll ask for your advice on irreversible findings and whether those could be – should be apportioned, to reflect the *Johnson* decision. Oh, Thais, Thais Lomax?

- 21:25 [Thais] Good morning. I would agree that if the apportionment for the irreversible finding or the condition itself that led to that surgical intervention or the other irreversible findings is part of those combined condition processes, it shouldn’t apply ...
- 21:48 [Fred] Thank you Thais.
- 21:50 [Thais] If we’ve denied the carpal condition that resulted in the fusion as part of that combined condition denial we should not be paying for the impairment under that condition.
- 22:03 [Fred] Thank you. Additional thoughts, advice, from anyone. Okay, please go ahead if there is anything you have for us. Go ahead. Oh, I thought someone wanted to speak. Jodie, did you - did you?
- 22:54 [Jodie] This is Jodie. I was trying to raise my hand, but I’m failing miserably at that, so, but I was just going to comment that at least in terms of Ms. Lomax’s comment, you know if they haven’t paid for a surgery or that – I don’t know that payment necessarily should be what dictates that - the same - I guess the same. Because it doesn't indicate – paying for it doesn't indicate compensability either. But I'm not. I hadn't really thought about that and as most of you probably know I was pretty involved in the *Johnson* case. But I hadn’t thought about how that impacted surgical findings or other permanent findings. So, I just hadn't thought about that so I would just like an opportunity to think about that more but it certainly seems that if the injury itself was the material cause of the surgery, I'm not sure that we ever break that chain under the *Johnson* rationale.
- 23:58 [Fred] Okay.
- 23:59 [Thais] So can I clarify Just a little. As an example, if we're going to look at like a carpal fusion, if we've processed the combined condition where we've accepted maybe a wrist sprain; that sprain combined with the person’s pre-existing osteoarthritis – while all of that processing is going on they end up having a fusion, because of the arthritis, but there was, at some point, material cause for the combined condition; we’ve now issued our current condition denial. Under the current rules or the rules of the recent past, we more than likely would be compelled to pay for the

irreversible findings of that carpal fusion while the claim was being processed prior to the current condition denial and combined condition processing. But with *Johnson's* findings, at least my reading of it, would say that that should be looked at and and that those irreversible findings due to the combined condition denial / current condition denial. Because they were a result of the arthritis, not the work injury in major part should not be a PPD rating under the claim.

25:12 [Jodie] So you're saying that while you pay for the surgery it's paid for as part of the combined condition that the surgery - that the impairment. So, that –

25:28 [Thais] That the impairment from the carpal fusion that is an irreversible finding. But that condition that led to that fusion was a combined condition which we have now issued a major contributing cause denial for, because the original sprain is no longer major cause at the time of closure, that those findings that are result from the denied arthritis, and the surgery to treat that arthritis and to fuse the thing. It will still not be part of the claim.

26:05 [Jodie] Well, I think that you misunderstand. So, when you deny a combined condition, you're not denying - in your example - you haven't denied the osteoarthritis - you've only denied that they've stopped combining. And so,

26:22 [Audio unclear.]

26:26 [Jodie] Well, I'm going to let you - I've litigated that case - it's at the board, the name of the case is *Fred D Harris*. And so, that case has been litigated, and even under the [audio unclear] *Johnson*, that concept of irreversible finding - your analysis doesn't work because you are actually denying the osteoarthritis, and that's a major contributing cause standard and the standard under *Johnson* is material cause, so just because you've issued a major contributing cause of the combined condition, that hasn't defeated the material relationship between the surgery that was performed and that resulting impairment from the fusion. That is one of the challenges, one of the large challenges of the *Johnson*, and what I'll say, *Robinette* decisions, is that, that, that there's one burden of proof for the combined condition ceases denial and then there's another burden of proof for impairment, and which is much lesser. So, a ceases denial does not then establish that there's no material relationship.

27:41 [Jennifer] If I could, this is Jennifer Millemann from the Workers Compensation Division. I just want to clarify, as I'm hearing it, there are two issues I believe the parties are discussing. One is whether the surgery is - is payable. This particular rule does not address or hope to speak in any way to whether or not the surgical procedure is payable. It would just

be that if there is resulting permanent loss of use or function resulting from the surgical procedure itself, such as a laminectomy, valued normally at 9% of the lumbar spine. If the injury was a material contributing cause of that the worker would be entitled to the full value of 9%, unless the insurer had issued a combined condition denial, and the information, the preponderance of evidence establishes that that now denied combined condition is contributing to a portion of the surgical value. So the material standard would still be met for *Robinette* and *Johnson*. In the current rules, regardless of whether or not the attending physician was saying that the combined condition was a component towards that permanent loss of use or function. The worker would have received the full 9%. In a *Robinette-Johnson* world, the department is - is questioning whether or not the rule would be conflicting with *Johnson* if there is a material component from the injury, but also a contribution from a now combined condition denial.

29:35 [Fred] And, I don't – I see Elaine Schooler has her hand up. Thank you. Thank you very much, Jennifer. Elaine?

29:40 [Elaine] Yes – Hi, thank you, Fred. Elaine Schooler, speaking on behalf of SAIF Corporation. We would agree with Ms. Lomax and Ms. Millemann's analysis of the issue here in that *Johnson* did say, as long as the injury was a material cause of that impairment, was materially related, the worker gets the full value unless there's a combined condition denial, and then *Robinette* discussed that each individual impairment finding is looked at for that material relationship to determine whether it's related to the injury or not. And, that seems to put at issue all impairment findings, including what we treated as non-apportioned findings pre-*Johnson* and *Robinette*, which are the irreversible findings. So now we need to look at each finding and is there a combined condition and the court, what the court has said in *Johnson* is even if an underlying condition has been denied, which was the case in *Johnson*, if it's materially related the impairment, and there's no combined condition worker gets the full value in - in our now post-*Johnson* and *Robinette* world - when that combined condition denial has in fact issued, apportionment of any impairment finding would be appropriate. The court did not put any limitations on that. And prior board decisions wouldn't be relevant. We would take the position on that piece because the court's language when taken together applies to all impairment findings in a combined condition situation and that would include irreversible findings, surgical values.

31:48 [Fred] Thank you Elaine.

31:50 [Elaine] Thank you.

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- 31:51 [Fred] Additional input on - I would like to say, Jodie, you mentioned maybe needing a little more time to have a look at the issues. We typically provide a window of opportunity after this, these kinds of meetings, so if people have additional thoughts they can send them in either in writing or just by calling them in, just – you can contact me either by email or by telephone and we'll make sure, I'll make sure to kind of disseminate the information to staff here who are actually working on preparing proposed rules, so we will provide you know about a week or so after this for folks to give us additional – their additional thoughts.
- 32:32 [Jodie] Great, I appreciate that and I just, I, I really want to attend further in this meeting, but I have a Social Security hearing, in-person hearing for my first in-person hearing today, that I need to head out for so I will come back later and listen to this recording, and I just didn't want you all to think I just spoke and hung up so.
- 32:52 [Fred] Okay, well thank you for being here Jody. Additional input?
- 33:01 [Jodie] Thank you.
- 33:02 [Fred] Thank you. Okay – okay, I'm going to actually move on to our next issue, but again, we can go back and discuss anything you want at any time.
- 33:17 [Fred] Issue number three involves presbycusis, or age-related hearing loss, reduction – and also reduction of a worker's hearing loss benefit due to age. This is rule 0250 in division 035. So, the current rule allows for a reduction of hearing loss award for the portion of the loss due to a worker's age, and may conflict with *Johnson*. Presbycusis – for background -presbycusis is the loss of hearing that gradually occurs in most people as they age. The rule allows for a reduction of the worker's award for hearing loss when the accepted condition and sequela materially contributes to the loss, as well as the worker's age. Per the Supreme Court's decision in *Johnson*, if the compensable injury has a material contribution to impairment, the only available apportionment is available through a statutory exception, a combined condition denied for a major contributing cause ("ceases" denial) or a combined condition denied in its entirety. This implies that any impairment value, inclusive of hearing loss, can only be apportioned if it falls under a combined condition denied exception - denial exception. And, current rule language that allows for a reduction of the hearing loss findings if a portion of the loss is due to the worker's age (presbycusis) is possibly in conflict with *Johnson* and other cases. So, the division is interested in hearing from you if a reduction for presbycusis is allowed. So, one of the options is to disallow a reduction of the hearing loss findings if a portion of the loss is due to the worker's age by removing subsection (b) that provides for a reduction of hearing loss

benefits due to a worker's age - and there's a related age table that goes along with that. And, as, you know, as we age the amount of deduction, so to speak, increases over time.

35:09 [Fred] And, in terms of fiscal impact, we don't have enough data to produce a reliable estimate of the possible impacts. However, we do know that very few cases are affected, just because one would need to be a fairly advanced age before it starts to come into effect. But, there will be undoubtedly a small fiscal impact. We invite, you know we invite your input, again, about the fiscal impact, and then any disparate on people due to race or ethnicity.

35:45 [Fred] Your thoughts about presbycusis and kind of removing the provision for that deduction from the division 035 rules?

36:04 [Fred] Any concerns about doing that?

36:32 [Fred] Okay, well, hearing, nothing I'm going to actually move along to our housekeeping issues, although housekeeping but important, because we did adopt these, these kinds of changes elsewhere throughout chapter 436. We held off on division 035 just because we had rulemaking in progress and we didn't want to overly complicate the number of administrative orders that we had out there, but you can see four rules listed, basically rule 0230, 0380, 0385, and 0390, and in each case, we have changed out the existing "he or she," or in one case we had an "s/he" – we just changed those to either "the worker" or "the person" or "their" in one case where it seemed to fit. So basically just removing the gender-specific pronouns from division 035, as we did for, I think, eight other divisions in the chapter, effective July 1, but again we held up on this. But, interested if you have any thoughts on that or concerns, just let me know – let us know.

37:52 [Fred] Okay – make sure that's all I have. That's all we have on our agenda. But our agenda is, is what it is and we sometimes don't know what else – what else entirely, of course related to the disability rating standards, and hopefully related somewhat to the temporary rules and the *Johnson* decision. But, do you have anything at all for us while we still have the opportunity to talk with you?

38:32 [Fred] Okay. I don't see any hands up, but – so what I'd like to do is if you could, if you have additional thoughts about the agenda items that we talked about today - afterthoughts or thoughts that you weren't able to provide today - or you didn't think you were quite ready to provide them, please send us your input, I guess by the end of next week would be good, really good. That'll give you more than about a week and a half to get back to us. And we'd provided even a longer window accept that we're

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trying to get rules filed fairly timely. December 3 sounds like it's a long way off, but it's not so terribly far since we still have a public hearing that we will schedule in the future, too. And, there's some time frames that go along with that, so we're trying to actually move the rulemaking along fairly quickly but we have, we have a window of time where we can, we would want to hear from you if you have any advice. So, if you can get to us by the end of next week, Friday, and I guess, what day would that be – 9, 10, 11 – the 19th - on the 19th - by the 19th - that would be wonderful. And, you can just send it by email or just pick up the telephone.

39:48 [Fred] Anything at all before we before we close the meeting? Last thoughts? Okay. Thank you all again. Appreciate your time. It certainly went a lot faster than we allowed for - we allowed for three-hour slot of time. So, we'll give you back all of that time, but we appreciate the time that you gave to us this morning. It's, it's not always easy, it's certainly not easy, and it's - but it's much appreciated. We always appreciate your time. With that, good day, and have a good week. Goodbye.

40:29 [Speaker unknown] Thank you.