

Faye Vlieger  
8943 W. Canyon Place  
Kennewick, WA 99336  
C: 509-961-1095  
F: 509-736-9529

May 17, 2023

U.S. Department of Labor, Office of Workers' Compensation Programs  
Advisory Board on Toxic Substances and Worker Health  
Room S-3522, 200 Constitution Ave. NW  
Washington, DC 20210.  
EnergyAdvisoryBoard@dol.gov

RE: Public Comments for ABTSWH Meeting May 17 - 18, 2023

Dr. Markowitz:

Attached are my public comments for this meeting. I am unable to read these due to laryngitis but would ask that they be read out loud in addition to being put into the record.

If you have any questions regarding these comments, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Faye Vlieger". The signature is written in black ink and is positioned below the word "Sincerely,".

Faye Vlieger  
Former Member ABTSWH, Claimant & Authorized Representative

Attached: Public Comments, 1 page

Dr. Markowitz & Advisory Board Members:

I provide these comments today to make the Board aware of recent actions by the Division of Energy Employees Occupational Illness Compensation Program (DEEOICP), which are not defined in the Procedure Manual (PM). I would like the ABTSWH to review and comment on the issues I will raise. This is not a simple issue, and I would like to ensure that no other claimant must endure this situation.

I represent a claimant that has pulmonary fibrosis. He was accepted under the program, but initially was denied an Impairment Rating (IR). The CE decided without outside consultation with their supervisor, or policy branch, that because the claimant could receive a lung transplant, they were not at Maximum Medical Improvement (MMI). Per the PM only a physician can make this determination on MMI. The PM also consistently states that a possible treatment that is not used will not prevent an IR. The CE was insistent that they could and did make the decision to withhold the IR. No other reference was provided for the decision.

For background this claimant is being followed for a transplant, but is not on a “list”, for various transplant process requirements.

In advance of the decision to accept I had been in contact with the Medical Benefits Unit (MBU), and John Vance of the policy branch. I did this to ensure this claimant could receive the IR as quickly as possible to offset previous state labor and industry payments, and to receive the medical benefit card. I contacted the MBU and John Vance after the decision to withhold the IR was written and was told they would investigate. The temporary fix offered by the department was that the claimant provides a letter that they were not seeking a transplant at this time. This “fix” was excruciating for the claimant.

I am happy to report that a month after I contacted the department, they decided that the CE’s decision was not correct. I was told that a notice would go out to the regional offices and a change would be made to the PM. I have asked at the regional office level if they have received the notice, and none has been issued to date. I ask that the ABTSWH review this issue to:

1. Ensure that CEs cannot make these critical decisions unilaterally.
2. Follow this issue to ensure that the PM is adequately corrected so that this is prevented in the future.
3. Review the guidance in the PM for issues that would prevent an IR being allowed despite there being treatment options.

For background this program does not require claimants to take all possible treatments available in order to receive an IR. For example, a COPD patient is not required use all treatment options in order to qualify for an IR. While this example is on a much smaller scale than for a lung transplant it does show the disparity of the CE’s decision.

The decision by the CE to withhold the IR caused unnecessary delay and anguish for the claimant. For this to have happened to someone so critically ill is egregious, and I hope will not happen again. I thank you for your attention to this matter.

Faye Vlieger  
Former Member ABTSWH, Claimant & Authorized Representative