M. P. v. Hancor Holdings, LLC
A. E. v. Harvey Industries (July 18, 2005)

STATE OF VERMONT
DEPARTMENT OF LABOR

M. P., Sr,	)	Opinion No. 43-05WC
	)	
v.	)	
	)	State File No. U-53396
Hancor Holdings, LLC	)	
	)	For: Patricia A. McDonald
	)	Commissioner
	)	
A. E.	)	By: Margaret A. Mangan
	)	Hearing Officer
v.	)	
	)	
Harvey Industries	)	State File No. U-52497
	)	

RULING ON DISCOVERABILITY OF MEDICAL CASE MANAGER NOTES

ISSUE:

Are the Defendants obligated to provide Claimants with copies of the medical case managers'notes?

Analysis

A preliminary issue to be addressed is whether V.R.C.P. 26(h) has been satisfied. Workers' Compensation Rule 7.1000 provides that The Vermont Rules of Civil Procedure…. shall, in general, apply to all hearings…. only insofar as they do not defeat the informal nature of the hearing." V.R.C.P. Rule 26(h) states that a counsel making a discovery motion shall file with the court an affidavit, or a certificate of the party's attorney subject to the obligations of Rule 11, certifying that she has conferred or attempted to confer with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion without the intervention of the court. V.R.C.P. 26(h). The Vermont Legislature added Rule 26(h) to provide procedure for avoiding discovery disputes and for resolving them in a more efficient manner. The goal of 26(h) is to make sure there was a good faith effort made by the parties in attempting to resolve the dispute before having the court decide it. The letters filed by the parties and the communications with the hearing officer are sufficient evidence that they attempted in good faith to resolve the issue before submitting it to the Department. The goal of 26(h) has been satisfied through the good faith effort of the parties to resolve the issue. A strict adherence of 26(h) would only frustrate the informal process of the workers' compensation system. Therefore, the purpose underlying Rule 26(h) has been satisfied.

The main issue to be addressed is the discoverability of a medical case manager's (also referred to as nurse case manager, or case manager) notes. The issue becomes murky because of the lack of guidance from the Vermont State Legislature. Medical case management is neither insurance nor medicine, but an area of practice within one's profession. Workers' Compensation Rule 2.1295 defines medical case management as, "the planning and coordination of health care services appropriate to achieve the goal of medical rehabilitation." WC Rule 2.1295 goes on to state, "the goal of medical case management should be to avail the disabled individual of all available treatment options to ensure that the client can make an informed choice."[1] When addressing the discoverability of the medical case manager's notes it is important to take into consideration the case manager's role and duties to both the payor and claimant.

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. V.R.C.P. 26(b)(1).[2] Likewise, Workers' Compensation Rule 3.1400 provides, "all parties have an ongoing duty to disclose all information relevant to a pending workers' compensation claim with reasonable promptness." Information regarding the medical condition and treatment of the claimant is relevant to the workers' compensation claim. A claimant forms a personal relationship with the medical case manager by allowing the case manager to accompany him or her to examinations, communicate with medical care providers, analyze treatment results, and forecast future routes of relief. The medical case manager's notes analyzing the claimant's information are relevant information to the workers' compensation claim.

Defendants argue that the medical case managers' notes are attorney's work-product privilege. Pursuant to V.R.C.P. 26(b)(3), documents prepared in anticipation of litigation by the party's attorney or by the party's representative (including the party's attorney, consultant, surety, idemnitor, insurer, or agent) are protected as a work-product exception to V.R.C.P. 26(b)(1). Defendant argues that the medical case manager fits into the category of a representative. However, the defendants' argument is flawed because it mistakes the role of the medical case manager. The insurer or employer hires the medical case manager, but the case manager's duty is not solely to the insurer or employer. A medical case manager is guided by principles such as, placing the public interest above their own at all times, and maintaining objectivity in their manager/client relationship. WC Rule 2.1295 states that medical rehabilitation is the goal of medical case management. The language of WC Rule 2.1295 is clearly written with the interests of the claimant in mind, and never mentions the medical case manager's duty to the payor. The sole consideration of the interests of the payor is in complete opposition of the principles of a medical case manager and WC Rule 2.1295. Since the medical case manager maintains a duty toward the claimant, the case manager does not fit into the definition of the party's representative, and therefore is not afforded the protection of the work-product privilege.

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[1] *See also* http://www.cmsa.org; and http://www.ccmcertification.org (Case management is a collaborative process of assessment, planning, facilitation and advocacy for options and services to meet an individual's health needs through communication and available resources to promote quality cost-effective outcomes.).

[2] As noted above, Workers' Compensation Rule 7.1000 adopts the Vermont Rules of Civil Procedure.

Furthermore, from a pure policy perspective, it does not benefit any party by applying the work-product privilege exception to medical case managers. Besides trying to guide the claimant, the payor hires a medical case manager to provide the most cost-effective road to relief. Since there is no regulation involving a medical case manager, the claimant *voluntarily* listens to and cooperates with the case manager. The success of the medical case manager, and therefore the payor, is dependant on the cooperation and trust of the claimant. If the medical case manager is concerned solely with the interests of the payor, then the trust, as well as the cooperation, of the claimant will be lost and the case manager will not be able to successfully benefit the payor or the claimant. The insurers, the employers, the medical case managers, and the claimants would all be hurt by setting a precedent of shielding case managers' notes from discovery.

For the foregoing reasons, the medical case managers' notes are subject to discovery and must be disclosed to the claimants.

Dated at Montpelier, Vermont this 18th day of July 2005.

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Patricia A. McDonald
Commissioner