

D. P. v. McDermott's, Inc.

(September 5, 2008)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

D. P.

Opinion No. 31C-08WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer

McDermott's Inc.

For: Patricia Moulton Powden
Commissioner

State File No. X-00980

DECISION REGARDING CLARIFICATION OF OPINION

The Claimant has filed a Motion for Clarification of the previous decision in this case regarding the Vocational Rehabilitation Plan and the attorney's fees awarded.

Mr. Langevin's plan for a return to work for the Claimant was not approved. If he can continue to work with the Claimant in collaboration with the insurer regarding a new plan, he should do so. What might affect any plan is whether or not the spinal cord stimulator allows the Claimant to regain function so that his increased function would allow him to pursue employment opportunities which were available to him before his injury. In other words, less vocational rehabilitation might be needed depending on the Claimant's abilities after the spinal cord stimulator is implanted. The Department is not aware at this time where the Claimant is in the process of having the spinal cord stimulator implanted and whether or not it was successful.

The Claimant's benefits as of the date of the opinion are to be classified as TTD since he has not reached medical end result until the results of the stimulator are evaluated. The carrier should be notified if benefits do not accurately reflect dependents. You can do this through the attorney for the insurance carrier.

As for attorney's fees, the Claimant did not prevail on the current return to work plan. The attorney's fees granted in the amount of 2/3 of those requested remain the ruling in this case.

Dated at Montpelier, Vermont this 5th day of September 2008.

Patricia Moulton Powden
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.