

Rehabilitation: an adjunct to litigation in workers' compensation claims

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An occupational therapist with 18 years experience in personal injury cases looks at rehabilitation and how law and rehab professionals can work together to effect worthwhile changes to the life of an injured client, restoring a sense of usefulness and satisfaction.

Over the past decade, Australia has seen radical changes to workers' compensation legislation in most states. In NSW for example, these changes brought promises of 'real' rehabilitation for injured workers. Gone were the days of employers divesting themselves of responsibility for workplace injuries. At last, it seemed that injured clients would be given a fair go, with real incentives and structured assistance so that return to work was a viable option. From this point, employers would be obliged to look after their injured workers and in return benefit from reduced insurance premiums, improved worker morale and greater productivity. The 'new system' called for 'collaboration' between all parties (including workers, employers, unions, insurers, the medical and legal professions) and the process was intended to facilitate the best possible outcomes for the injured worker and the employer.

Existing problems

If we are to believe the researchers and academics, the past ten years has seen some major improvements to the workers' compensation system in NSW. Employers now have a greater responsibility to their workers (in terms of safety and return to work), insurance premiums have reduced and the return to work rate after injury has improved considerably¹. Why then is there so much dissatisfaction with rehabilitation in almost all factions of the workers' compensation industry? Why is there often such animosity between the professionals involved? Why is it that the approach taken by lawyers, doctors and rehabilitation professionals is fragmented and oppositional rather than unified and cohesive, where all parties work together for the benefit of the client?

Rehabilitation is often criticised as an expensive, ineffectual exercise which continues indefinitely and promises outcomes that never seem to eventuate. Employers and insurers complain about directionless, unproductive rehabilitation providers. Rehabilitation providers in turn complain that lawyers are preoccupied with money and that doctors have no understanding of the day-to-day needs of the average worker. Not sur-

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prisingly, lawyers and doctors often dismiss rehabilitation providers as irrelevant or counterproductive, seeing them as extensions of the insurer or the WorkCover Authority in NSW. It seems that the only faction to espouse the virtues of rehabilitation is the WorkCover Authority itself which continues to provide statistical evidence of the benefits of engaging a rehabilitation provider in workers' compensation cases!

In truth, rehabilitation should be the panacea for all personal injury cases (not just workers' compensation). According to American rehabilitation guru, George Wright (active since the 1960's) rehabili-

tation is 'a facilitative process enabling a person with a handicap to attain usefulness and satisfaction in life'². Wright's interpretation stems from an earlier definition of rehabilitation proposed in 1942 by the US National Council on Rehabilitation: "the restoration of handicapped persons to the fullest physical, mental, social, vocational and economic usefulness of which they are capable"³. This is very much like the definition used by WorkCover in 1987.

Rehabilitation: whose responsibility?

No one would disagree with the principles underlying these definitions and the fact that 'restoration of usefulness' is of the utmost importance to the injured client. Naturally, how each professional body classifies 'restoration of usefulness' will vary with professional focus and intent but we cannot deny that these definitions of rehabilitation are fundamental to our duty as service providers in this field. Whether our background is in law or medicine, our duty to our client in a personal injury case must be to help them adjust to their disability so that they can achieve a level of usefulness and satisfaction in life. By definition, this is rehabilitation. Surely then, rehabilitation is not only the role of the rehabilitation provider but is in fact the joint responsibility of all professionals involved. We could avoid some of the litigation side-effects so common to injured clients and achieve better results if rehabilitation was approached as a collaborative exercise between all parties including lawyers.

Determining future employment options

We are all familiar with the typical scenario of the injured client who is off work and awaiting settlement. Within a short space of time he has gone from full time paid employment to sitting at home with little purpose and no normal routine. He runs a gauntlet of emotions including anger, frustration, fear, para-

noia and depression to the point where he even contemplates suicide. As he loses personal resources, confidence and physical condition, his motivation dwindles. Valuable employment networks are severed and by now, he has not only joined the ranks of the long term unemployed but also presents with physical constraints and a work history that is severely tainted by a workers' compensation claim. At this stage, any chance of securing employment in the future is minimal. When the case is eventually heard, the court is presented with evidence of exaggerated symptoms, videos depicting water skiing and gardening and expert witnesses who swear that our client is fit to work as a console operator or fun park attendant. The judge will determine that he is fit to earn \$300 a week without understanding the effects that the years of exaggerated inactivity have had on his life. What benefit does this outcome provide for our client?

Would it not be better for our client to attempt a rehabilitation programme which will provide documented evidence of the fact that either (a) he is not able to work at all, (b) he is now only able to work part time with a reduced wage of \$150 per week, (c) he is coping with work at present but will have a shortened working life as a result of the injuries sustained, or (d) he is able to work and has made every effort to mitigate his losses?

Centrality of involved professionals

Rehabilitation should be used as a fundamental tool in personal injury claims not only to maximise eventual benefits but also to minimise the trauma of litigation. It is important for lawyers and rehabilitation professionals to share common goals and work together. Brigham et al⁴ use the term 'centrality' to describe this type of collaboration. Centrality requires cooperation, communication, an attempt to understand the motives and methods of each profession and a clear focus on client-driven goals.

All parties must understand the catastrophic effects of injury and subsequent unemployment on the client and his/her family. They must also understand how a person who is normally active and productive, faces huge chunks of 'dead time' in their lives where they do nothing but dwell on their misfortune. Rehabilitation, if used correctly, can offer the injured client steady, incremental gains - small achievements and suc-

nario described above. It takes more than an injection of funds (no matter how large or small) to effect worthwhile changes to the life of an injured client. It takes a planned process designed to assist the client to adjust to their new circumstances. A unified effort between the lawyer and rehabilitation professionals can produce this type of plan and help the client regain a sense of usefulness and satisfaction in life. ■

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cesses to hold onto while they wait for their case to be heard. It can help reduce the downward spiral many clients seem to experience. When working in this field we are confronted constantly by clients who have experienced months or even years of inactivity, financial pressures, relationship breakdowns, psychological disorders and substance abuse. Though common to the litigation scenario, these traumatic consequences need not be inevitable.

For most people, the ultimate reward of a lump sum, while helpful, is not enough to 'kick start' a life, particularly if they've been through the type of sce-

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1 Whelan, D. (1993) *The World At Work: The Australian Perspective* Proceedings of the Second National Rehabilitation Conference, Sydney, pp 86 - 87.

2 Wright, G.N. (1980). *Total Rehabilitation*. Boston: Little, Brown & Co.

3 Ibid.

4 Brigham, C.R., Engelberg, A.L. & Richling, D.E. (1996). The changing role of rehab: focus on function. *Patient Care*, 30 (3), 144-148.