

Self-Insurance Independent Medical Examination Q&A

June 8, 2022

Q: What is the Department of Labor & Industry's (L&I) timeframe to act on Independent Medical Examination (IME) disputes in self-insured claims?

A: Per [WAC 296-15-440 \(2\) \(b\)](#) L&I will consider postponing an IME if the dispute is received at least 15 calendar days prior to the examination. For disputes received less than 15 calendar days prior to the IME, or after the examination, L&I will resolve the dispute within 90 days of receiving the dispute.

Q: So, there are no more preponderance IMEs allowed?

A: IMEs must be scheduled in accordance with [RCW 51.36.070](#) and [WAC 296-23-309](#). As a result, preponderance defined as quantity (2 IMEs vs. the attending provider) will, in most circumstances, no longer be allowed.

The definition of preponderance; medical evidence of greater weight or more convincing than the evidence offered in opposition to it still applies. Preponderance is more than just "weight;" it denotes a "superiority of weight." It isn't just determined by the number of witnesses, but by the opportunity for knowledge, information possessed, and manner of testifying.

Q: If the attending provider disagrees with an approved IME report findings, what recourse does the employer have to obtain a preponderance of medical information if needed?

Preponderance is the superiority of weight of evidence, not just the number of exams. If the AP does not agree with the IME report findings, then the employer should evaluate the two opinions and determine which carries more weight and why. Note whether the conclusions are supported by the observations of the examiner and consider whether to send the attending provider's review of the IME report to the IME examiner for an addendum.

Q: What if there were two IMEs performed on a claim prior to April 23, 2022. Do those count towards the number of IMEs allowed?

A: No. Only IMEs scheduled after April 23, 2022 (the effective date of the rules) will count towards the number of IMEs allowed under [WAC 296-23-309](#).

Q: The IME assignment letter ([F207-238-000](#)) references that information about the IME is enclosed. What should be enclosed?

A: The publication, [F207-202-000 Your Independent Medical Exam: For Employees of Self-Insured Businesses \(wa.gov\)](#), should be sent to the worker along with the IME assignment letter.

Q: How many days' notice must be given for IMEs?

A: At least 28 days' notice is required, except for IMEs to address claim allowance, which is 14 days. The worker has the right to waive these notification requirements.

Q: What if an employer schedules a case progress IME for a contended (rather than accepted) condition and realizes that a case progress IME is not appropriate to address a newly contended condition. Can they issue a corrected IME assignment letter?

A: Yes. Per [WAC 296-23-302](#), case progress examinations can only be scheduled for accepted conditions. The employer could issue a corrected IME assignment letter explaining that the reason for the exam is for a new medical issue, instead of case progress. This change may cause new notification deadlines to apply if new questions are sent to the examiner.

Q: If there is an IME dispute, in addition to reviewing the IME assignment letter, will L&I review/consider additional information from the employer (such as letters) regarding the basis for the IME?

A: Resolution of IME disputes will not be delayed to allow for submission of employer letters but if a letter is in the file at the point the dispute is reviewed, then the letter(s) would be considered. However, a letter will not be considered in lieu of a complete IME assignment letter.

Q: If L&I directs the employer to schedule an IME, does that examination count towards the number of IMEs allowed per [WAC 296-23-309](#)?

A: It would depend upon the specific facts of the case. Per WAC 296-23-309, L&I has the authority to allow specific additional exams should those be necessary.

Q: [WAC 296-23-308](#) says that an employer must wait 120 days from the receipt of the claim or the last exam before a case progress IME can be scheduled. Can the examination be scheduled ahead of time for the 121st day?

A: No. The WAC states that unless a case progress exam has been requested by the attending provider, an exam cannot be scheduled until 120 days have passed.

Q: How does the worker waive their right to the 28- or 14-day notice?

A: The employer can accept the waiver in whatever format they prefer (verbal or written). However, it is advised that the file be thoroughly documented with this information.

Q: [WAC 296-15-440 \(2\) \(a\)](#) states that the worker or attending provider can dispute an IME at any time. Does this mean the exam can be disputed after it takes place?

A: Yes, an exam can be disputed after it takes place.

Q: If L&I department makes the determination that the IME doesn't comply with the rules a day before the IME is scheduled to occur, will the department reimburse the employer for the late cancellation fee?

A: No, the department will not reimburse the employer for the late cancellation fee.

Q: Does an addendum to an IME count as a second IME?

A: No, an addendum does not count as a second IME.

Q: What should be done if a case progress IME has been scheduled within the rules/law, but prior to the examination, a surgery request is received?

A: The department recommends that the surgery request and accompanying medical documentation be evaluated to determine if it resolves the reason why the IME was requested. Did the attending

provider omit information when they responded to the explanation regarding the status of the treatment plan? Did the attending provider fail to respond within 15 business days? If it's determined that an IME is still needed, the original request should be evaluated to determine if new/additional questions need to be asked of the panel, and if so, if there is sufficient time to communicate to the panel before the scheduled examination date.

Q: If the AP requests a case progress IME, do the other steps described in WAC 296-23-308, such as the 120-day requirement and a response from the attending provider, still apply?

A: They do not. [WAC 296-23-308 \(1\)](#) says, "Unless a case progress examination is requested by the attending provider..."

Q: If the assignment letter doesn't cite the RCW justifying the exam, can it be disputed?

A: Yes. [WAC 296-15-440 \(1\)](#) (a) states that when resolving a dispute to an IME, L&I will consider whether the assignment/notification letter included the need for the IME consistent with [RCW 51.36.070](#).

Q: If an IME was performed for a newly contended condition diagnosed a "temporary aggravation," and the employer approved the proposed short-term treatment plan, would another IME be appropriate once that treatment is complete?

A: If the worker's condition is fixed and stable, an impairment rating examination could be requested. Absent medical stability, a consultation or opinion from the attending provider could be requested. Any additional IMEs must be in accordance with [WAC 296-23-308](#) and/or [WAC 296-23-309](#).

Questions? Please contact the SI training team at: SITrainerQuestions@lni.wa.gov