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Testimony of

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On

Encouraging Work Through the Social Security Disability Insurance Program

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My name is Kevin Ufier and I am the National Director, Disability Services for GENEX Services. I have worked in the disability and rehabilitation industry for 27 years. I have been with GENEX Services for over 17 years and work primarily with disability carriers and employers serving their Short term and Long term disability medical and vocational case management needs.

For 35 years, GENEX has provided insurers, employers and Third Party Administrators with a broad array of managed care solutions and information management capabilities through its 2,700 employees and more than 60 service locations throughout North America. The company has a demonstrated ability to help clients manage and control the medical, wage loss, and productivity costs associated with claims in the workers' compensation, disability, automobile, and health care systems. GENEX services include utilization management, case management, medical bill review, preferred provider organizations, specialty networks, Social Security representation, information management, Medicare Set-Aside and related capabilities. All of these services are designed to assist employers and insurers with the escalating costs associated with an injured or disabled employee.

I am here to discuss how employers and insurers work with their disabled employees to return them to work. My discussion relates to short term and long term disability eligible employees. I appreciate the opportunity to discuss the best practices for return to work.

What is Disability and How does it Impact Employers?

Disability is not purely a medical determination. A medical diagnosis alone does not render a person "disabled." Disability exists when a person has a medical condition, whether the condition results in physical or mental impairments and the degree of impairment interferes with that person's ability to perform the essential duties of their "own occupation." In most Long Term Disability cases, if a person can prove they cannot perform their own occupation, they are paid disability benefits. After a designated period, usually defined at two years in the Long Term Disability industry, individuals may be tested on their ability to perform the essential duties of "any occupation" based upon their education, training and or other experience. This is called the change in definition period and at this time, in order to continue to be paid benefits; the disabled individual must prove they are unable to perform any occupation. This is similar to the Social Security standard. The private sector sees disability as a medical/legal contract determination which takes into consideration a person's medical impairment, restrictions and limitations, vocational and educational background and perhaps most importantly, the employer's disability benefit plan language defining the meaning of "disability" and when benefits are payable.

Employers may provide Short Term disability and Long Term disability benefits as part of incentives to retain employees. It is estimated that approximately 30% of workers in the United States are covered by employer sponsored disability plans. In most cases the employer and employee contribute to the plan. The disability coverage is meant to protect employees financially in the event a disabling event prevents the employee from working and continuing to earn an income. This benefit is expensive and can impact company's earnings with costs that can approach 15% of payroll. [1]. Thus, the reason not all employers offer the benefit. Based upon individual employer policy, employees while on disability may continue to

receive pension credits, retain medical coverage, life insurance and other benefits. Because of the expense of disability plans and an emphasis on the value of employees in terms of human capital, many employers contract with companies such as GENEX to help reduce the cost of disability within the workplace, by keeping people at work or returning them to work as soon as possible after a disabling event.

Employers Strategies to Reduce the Cost of Disability in the Work Place

Employers develop strategies to retain their workplace talent and to keep them working with programs and processes designed to bring employees back to work as early as possible. Companies spend thousands of “man hours” to develop knowledgeable and efficient workers. The goal of most disability management programs within the employer is to keep their most valuable assets, their employees, in production. Countless employer groups have been able to build stay at work and return to work programs for the disabled that effectively create the right working environment for the disabled employee. Return on investment with these types of programs has been estimated to be between 2:1 to 10:1 [2].

These savings are accomplished through Early Intervention programs, where as soon as a disabling event occurs, the employee enters into the process which will be the road map for return to work. Early intervention includes claims management which requires benefit plan language to be met from a clinical and vocational perspective. Clinically, the employee needs to submit medical documentation that objectively supports the diagnosis and also demonstrates impairment. This impairment needs to be quantified to the degree an individual diagnosis creates restrictions or limitations. The next step in evaluation requires comparison of the requirements of the employee’s job with the restrictions and limitations provided by the treating physician. This is a critical element in claims determination. Often when engaging in this step, with an eye toward assisting the employee to return to work, the claim administrator or case manager will directly contact the treating physician to discuss the employee’s job description and the requirements of the specific job. This step ensures the physician knows the employee’s job, sets an expectation that the employee will eventually return to work and also increases the validity of the initial claim decision.

The consequence of early intervention provides for appropriate claim decisions that have sufficient weight of evidence as well as set the expectation for return to work (RTW). Employers and claim administrators alike provide resources to facilitate return to work as the expectation. Most disability events for employees are not ones that are permanent; they are mostly episodic in nature with generally short durations. Those individuals with short durations, or easily accommodated work opportunities, never make it to the SSDI rolls. Those that go on to Long Term Disability have a higher likelihood of applying for and receiving SSDI benefits. These are cases where the disabling condition(s) are severe enough that the individual is unable to perform work at most occupations. However, even in the Long Term disability scenario, employers are having success in retraining and returning people to work. When an employee is receiving Long Term disability benefits, the claim is repeatedly evaluated medically and vocationally to set a plan for future return to work. Reviews of Long Term disability claims occur regularly for return to work potential; Private sector disability contracts require that the medical

impairment is being treated and regular updates are received for review. It is critical for success to have the return to work plan developed in the early stages of disability and then followed and adjusted appropriately as time goes on to ensure the employee remains engaged and interested in eventual return to work.

Return to Work Programs

Employers will often offer a variety of safety and targeted wellness programs to eliminate the impact of medical conditions and their impairments on their employees' ability to be productive at the work site. National statistics indicate "disabled" workers who are off work more than 12 consecutive weeks have only a 50% likelihood of returning to work. Employers who don't have transitional work programs, or the flexibility to provide sedentary or light duty alternative jobs, risk lengthy claims and poor outcomes. The three main options to promote return to work are:

1) Transitional work programs, 2) Ergonomic programs and 3) Stay at work programs.

Transitional Work

When an employer is paying their employees a disability benefit they are always looking to assist them to return to work. When an employee is out of work due to a disabling condition, employers will often utilize a Transitional Work program meant to assist employees in returning the impaired employee to work. The cornerstone of the Transitional Work concept is employers have a defined program that creates a pathway for the disabled employee to safely return to work. The program for Transitional Work presumes the employee who experiences a disability event is expected to return to work. This philosophy is understood by the employer and the employees and is a part of the culture of the organization.

Transitional work program includes the following elements:

- Pathway for transitional work. If the employee cannot return to work at full capacity, they can return to work at a reduced rate of hours or responsibilities and over time return to full capacity
- Allows for limited duration of "light duty" work assignments that permit the employee to safely return to a work routine during the period of impairment, not at their normal work duties
- Specific Human Resource Return to Work policies that include responsibilities and expectations for all roles involved in the process and expected durations of each program
- Financial incentives that encourage timely and early return to work
- Include an internal advocate or champion to promote the program from within the corporation
- Include specific employees who are directly involved in the process on daily basis. These staff directly work with operations managers, HR, payroll, claims
- Medical staff as well as vocational or nurse case managers working with the claim organization
- Education for supervisory staff supporting the program intent and process

- Ergonomic intervention-modification of the worksite, work schedule. In a successful scenario, an employee has a disability event, the claims organization objectively confirms the claim as valid, payment is made, and the employee understands they will eventually return to work at their job or another job.
- Vocational or Nurse staff evaluate the potential for return to work based upon updated and current medical
- Contact is made to the employee concerning RTW planning
- Dialogue with the employer supervisor concerning confirmation of the job requirements
- Discussion of what are the essential job requirements and what job duties can be re- assigned to other team members or consideration to devices that permit the employee to perform their normal duties
- Maximum duration of transitional duty would be planned at initiation of the transitional work process with schedule periods of mandatory reassessment

Not all attempts at transitional work are successful. Many times the individual cannot return to work at their own job but may be better suited for other employment within or outside the employer. If the employee moves to Long Term Disability, the claim administrator may utilize vocational rehabilitation resources to identify alternative employment opportunities at the employer. If that is not possible the vocational staff will look at other employment opportunities for alternate occupations the worker can perform with their transferrable skills despite their limitations related to their disabling condition.

ERGONOMIC PROGRAMS

Ergonomic intervention may be a part of transitional work programs. Ergonomics is concerned with human anatomical and biomechanical elements as they relate to physical requirements of work. Ergonomists will assess workplace postures, materials handling, how movements are accomplished, how this impacts the musculoskeletal system, workplace design, and perhaps most importantly, safety. Ergonomic assessments offer recommendations to reduce risk factors, the need for special equipment, suggestions for equipment providers, and equipment costs. A key element in ergonomics is the use of assistive technology that can assist in bridging the gap between a person's physical abilities and the requirements of the job.

An ergonomic intervention will begin with a physical demands analysis. A physical demand analysis provides a biomechanical description of the essential functions of a job and the physical demands required to perform them. This analysis is used to determine the cause of physical problems related to improper mechanics in the workplace, assisting in identifying medical treatment plans, return to work planning and accommodation.

The Physical Demands Analysis will:

- Define the physical abilities necessary to perform the essential functions
- Define the essential functions in an ADA-compliant fashion
- Match the physical abilities of employees with job demands

- Enhance Independent Medical Examinations and Functional Capacity Evaluation outcomes-utilized frequently by private sector claims organizations
- Facilitate consistency of treatment

STAY AT WORK

A third program that employers may provide is Stay at Work. This approach is specifically geared toward assisting employees who are claiming restrictions to work functioning due to physical or mental impairments, but are not out of work or receiving disability benefits. Employers are taking note of this proactive approach to return to work in part due to the recently enhanced requirements of the Americans with Disability Act. Progressive employers do not debate whether a specific employee is a qualified employee with a qualified disability in order to provide accommodations; instead they engage in a conversation with the employee as soon as they are given notice of a medically supported diagnosis and impairment. At this time they will begin to provide assistance to keep the employee at work. Stay at Work Programs include:

- Modification of work tasks-for a pre-determined period of time. If employee cannot continue to work at full capacity, they work at a reduced rate of hours or responsibilities and over time return to full capacity.
- Specific Human Resource Stay at Work policies that describe responsibilities for all parties involved in the process and offers expected durations of the plan.
- Financial incentives that encourage timely and early return to work
- Internal advocate to promote the program from within the corporation
- Employee participants who are involved in the process on daily basis with the corporation
- Education for supervisory staff concerning the program intent and process
- Ergonomic interventions, modifications of the worksite, work schedule or providing of assisting devices.

Advantages to the Employer

- Communication and relationships between employees and management are enhanced based on the commitment by all parties.
- The company's interest and concern for employees are reinforced.
- Allows an impaired employee to continue to be productive and to contribute to the company.
- Company retains the production of skilled and experienced workers.
- No expenses are incurred for recruiting, hiring, training or salary of replacement workers.
- No overtime is required to make up for lost production.
- Work delays and business interruptions are eliminated when an experienced employee returns to work.
- Increased productivity by returning workers to their jobs as quickly as possible.
- Increased worker morale and motivation at work.

- Complying with applicable labor and employment laws such as the Americans with Disabilities Act.
- Reduced injury/illness related costs may help preserve benefits and jobs as well as contribute to improved work environment.

Advantages to Employees

- Employees and their families experience less disruption to lives.
- Employees maintain contact with and support from co-workers and friends.
- Employees remain active and productive.
- Employees maintain job skills.
- Full or partial wages are earned bringing the employee's income closer to pre-injury wages.
- Stress, boredom and depression from the injury or illness and from being unproductive are reduced or eliminated.
- Loss of physical fitness and muscle tone due to inactivity is prevented.
- Overall wellness is promoted.
- Maintains communications between employees and management.
- Reinforces the company's interest and concern for employee's.
- Improves communications between company, the employee and the treating physician.
- Discourages malingering.

Assessing and Identifying Return to Work Candidates

Who is the best candidate to receive the benefits of Ergonomic, Stay at Work and Transitional Return to Work programs? Without question, individual workers who are motivated to return to work are the best candidates [3].

Many times we see individual workers who are impaired by crippling spinal cord injuries that require mechanical devices to assist them with simple movements, return to work. At the same time we see individuals significantly less impaired unable to work. What is the difference with these two individuals? Motivation, or desire to work, appears to be an essential personality component of the successful return to work candidate. A successful RTW employee desires to earn money, contribute to a group, and be productive. Other predictors for return to work include the medical diagnosis itself. For instance, muscular-skeletal diagnoses appear to be most amenable to return to work programs and are usually the greatest single diagnosis category that causes an employee to be disabled and out of work. Individuals with higher levels of education and more sophisticated work skills are also most likely to return to work. Employers who develop and maintain return to work programs are committed to maintaining employees at work.

Does SSDI become an Obstacle to Return to Work?

In the general workforce, individuals may apply for SSDI when they believe they can no longer work. Many times they apply long after their disabling condition has prevented work, missing the opportunity for appropriate RTW intervention. Evidence suggests that individuals who are out of work for more than 26 weeks are less likely to ever return to work. The time that it takes for an individual to go through the Social Security determination process, sometimes one to two years or more, with no interventions regarding RTW opportunity, may become an insurmountable barrier to return to work. Though the Ticket to Work program is tasked with returning SSDI recipients to work, the process of returning the recipient to work often begins too late to be effective compared to private return to work interventions that begin with early intervention. Therefore it is suggested that if the Social Security process included early intervention or return to work assessment at the time of application, there may be possible successes that would reduce the amount of time on SSDI and eventually return individuals to productive work.

Recommendations -What needs to be done to help Employees Return to Work?

- Engage the disabled workers as soon as possible about transitional work or eventual return to work.
- Prevent disabilities through safety and wellness programs, ergonomics and Stay at Work programs
- Set expectations that it may be possible to return to work even if they have had a disabling event Monetary incentives for return to work: Pay for equipment, assistive devices, day and eldercare issues
- Dedicated professional promoting return to work at worksite
- Enhance claims processes that continually evaluate for appropriateness of disability payments
- Develop strategies for employers to have “skin in the game” in terms of disability expenses

Conclusion

Sigmund Freud comments that “love and work are the cornerstone of our humanness.” Many researchers have commented on the importance of work in our society and to the individual [5]. Medical conditions can affect a large portion of the population for short periods of time to the degree individuals cannot work. A smaller percentage of people are permanently impacted by medical infirmities.

There are programs that provide assistance in both the federal and private systems. What is needed is a more systematic approach to encourage early intervention for return to work and stay at work by employers and at the federal level to reduce the increasing numbers of applicants for Social Security Disability benefits.

In closing I wish to thank you for the opportunity to testify. I am willing to answer any questions you may have.

1-The Total Cost of Employee Absences- Mercer Survey Highlights, 2008

2-Corporate Return to Work Policies and Practices: A National Study; Burton Blatt Institute Syracuse University, June 2012

3-US Department of Labor BLS

4- Kenneth Mitchell .The Dance of the Invisible Impairment: Chronic Pain Syndrome & the Disability Insurer; American Society of Chronic Pain Newsletter, October 2000

5- Zedeck, S. (1997) Commentary on Diversity and Work Family Values. New Perspective on International Industrial/Organizational Psychology. 319-332, New Lexington Press, San Francisco.