

STATE OF WISCONSIN



Department of Workforce Development

IMEs and Denying Claims

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IME and MRR

- A non-treating medical provider of the insurance company's (IC's) or employer's choice opines on a number of possible issues in the claim.
- Independent Medical Exam (IME) – A non-treating provider examines the injured worker (IW).
- Medical Records Review (MRR) – A non-treating provider reviews the injured worker's medical records.



Section 102.13

Legal framework providing the injured worker's employer or the worker's compensation insurer with the right to send injured workers to independent medical exams.



Who Is Qualified to Examine an Injured Worker?

According to Section 102.13

- Physicians
- Chiropractors
- Psychologists
- Podiatrists
- Dentists*
- Physician assistants*
- Advanced practice registered nurses*



IME Timing

- You may arrange for an IME at ANY time during the life of the claim.
- Natural points:
 - Denying the claim
 - Questioning the length or type of treatment
 - Challenging the treating doctor's PPD rating



What the IME Letter Must Include

- **Proposed** date, time, place of exam, and area of specialty of the IME provider.
- Procedure for **changing** the proposed date, time, and place of exam.
- IW's right to receive the IME report as soon as the insurance carrier receives it.



What the IME Letter Must Include

- IW's right to have their provider present
- IW's right to have a translator present
- IW's right to have an observer of their choice present
 - The observer may not interfere with the exam or ask questions.
 - The IW does not have to notify anyone ahead of time if an observer is coming to the exam.



Expenses

All expenses for the IME must be paid to the IW ***ahead*** of time.

- Transportation
- Wage loss (full wage amount, not the TTD rate)
- Meals or hotel rooms at state rate if necessary



What If the IW Won't Go?

The Insurance Carrier CANNOT simply stop benefits.

Contact DWD and send copies of IME letters and proof of pre-payment of expenses.

An Administrative Law Judge (ALJ) will review and, if appropriate, write a letter to compel the IW to attend.

- More than 100 miles away?
- Was the excuse reasonable?



Common Misconception

An IME or MRR showing end of healing or maximum medical improvement will automatically **close** the claim.

FALSE



Definitions

- A **treating** provider must opine end of healing and address Permanent Partial Disability (PPD) to close a claim.
- An IME doctor cannot, by definition, be a treating provider.
- Therefore, the IME doctor's opinion cannot close a claim.



Can an IME Close a Claim?

If the IME doctor opines that no work injury occurred **or** if an FMR is not necessary, per 80.02(2)(e)(4) Wis. Admin. Code

and

Insurance company (IC) submits a position letter adopting IME's position,

then

DWC can close the claim in our database.



Common Misunderstanding

EOH (End of Healing)/No PPD **in IME** = Claim Denied

Entire claim is not denied: it is **only** denied after the date of end of healing.

If three (3) weeks or less of temporary disability was paid, it may be possible to close without a final medical report from the treating doctor.



Common Misunderstanding

EOH/No PPD **in IME** = Mistake of Fact

Example: DOI 1/1/21

TTD paid from 1/2/21 to 4/1/21

IME sets EOH for 3/15/21

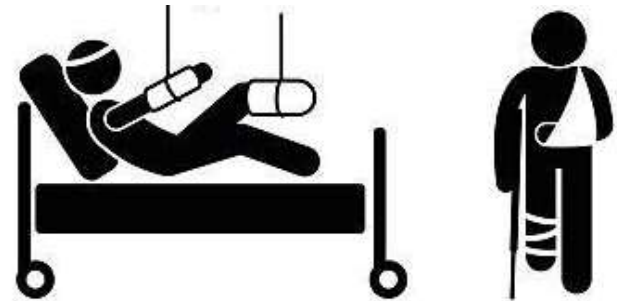
Only TTD from 3/15/21 to 4/1/21 is mistake of fact.



Common Misunderstanding

IME addresses **all** body parts injured in the work accident that occurred on the date of injury (DOI).

(Please read first report of injury.)



Common Surprise

IME says No PPD.

You get a worksheet for PPD.

Examination evidence:

If the doctor's opinion doesn't meet requirements in the state statutes, we will revise the rating.



Repeat IME

Expectation based on long practice that subsequent exams of the same injury/condition will be by the same IME provider.

If the original IME provider can't do the second exam, please provide us with your rationale for the change.



Timing: The 30/90 Rule

- To challenge a treating provider's rating **without needing to pay** until you get the IME report, within 30 days of receiving the treating provider's rating, you must arrange the IME appointment and send the injured worker the **letter** about the IME.
- The report from the IME doctor must be in your hands and you must provide a position letter **within 90 days** of making the appointment (not the day the appointment happens).
- If both these deadlines are met, you can wait to pay PPD.



IME Outside the 30/90 Rule

- If either of these deadlines is missed, you must pay the due and accrued PPD based upon the treating doctor's rating until you have the IME in hand to tell you something different.
- PPD begins to accrue during all periods when the injured worker is not receiving temporary disability.
- The 30 days start when you owe PPD. If there is a statutory minimum (stat min) for a surgery, the 30 days start on the day of the surgery.



Example 1

Bob

- DOI 2/14/24 – broken humerus
- TTD from 2/15/24 to 3/15/24 – then back to light duty at full pay
- FMR 8/15/24 – rating 85% at the shoulder
- IC receives rating 8/17/24

If an IME is set up and a letter is in the mail to Bob by 9/12/24, **and** you get and act on the IME report before 11/14, you do not have to pay before receiving the IME report, even if the IME agrees with the 85%.



Example 1

If the letter telling Bob about the IME exam goes out 9/16/24, Bob is immediately owed all the PPD from the treating doctor's final medical report that has accrued from 3/16/24 (when TTD stopped) to the present. The payments must then continue until there is an IME in hand with a different opinion.



Example 2

Linda

- DOI 2/14/24 – torn ACL
- TTD 2/15/24 to 2/29/24
- RTW on light duty at same pay from 3/1/24 to 3/14/24.
- Surgery 3/15/24 – ACL repair
- TTD 3/15/24 to 3/30/24 – then return to light duty at full pay.
- IC receives the FMR 3/15/25 with a rating of 25%
- IC arranges for IME and sends notice to Linda by **4/1/25**.
- How much does the IC owe?



Example 2

- IC did not challenge the ACL repair, which carries a 10% stat min rating, in time. To challenge the stat min, the IME would need to be set up within 30 days of surgery.
- The IC **did** challenge the additional 15% in time.
- Stat min for ACL is 42.5 weeks.
- Benefits accrued from 3/1/24 to 3/14/24 and from 3/31/24 to 3/15/25. Total of 52 weeks.



Example 2

- If the stat min 42.5 weeks has been paid and you are within the 30/90 rule deadlines, you don't have to pay on the additional 15% until you receive the **IME** report.
- If IC missed the deadlines and notified Linda more than 30 days after receiving the FMR or received the report more than 90 days after the **IME** appointment was set, the IC owes any PPD that has accrued and must continue paying PPD until they have the IME opinion in hand.
- Not following the rules risks delay penalties and bad faith claims.



Position Letters

- We will ***not assume*** you are choosing to follow the IME's opinion.
- If there is no position letter, we will average the ratings given by the IME and the treating provider.
- Send us ALL reports and addenda by the IME doctor.



Denial Letters

You must send a **formal, mailed letter to the injured worker.**

- Denials should never be made by phone, email, or text message.
- The denial letter is the tool the injured worker uses to access other insurance benefits.

Send a letter to the claimant and a copy to us.

- Be clear about what is being denied.
- Be clear about why it is being denied.
- Be clear about the date the denial starts.



Denials

- Be sure **the denial letter** includes information about the injured worker's appeal rights and the department's contact information.

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Questions?

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