

Peer Reviews, IME's and Labor Market Surveys

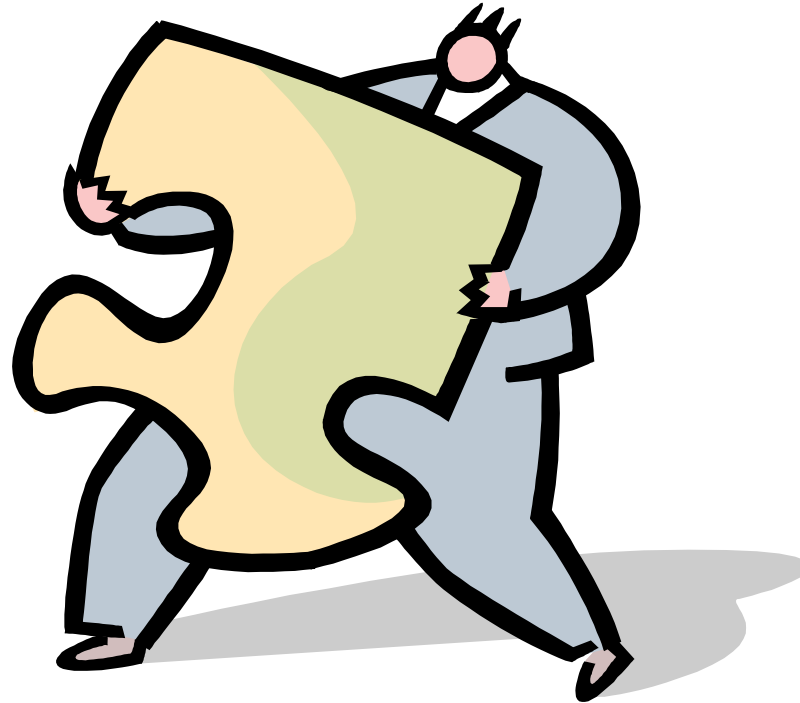
All Pieces to the Same Cost
Containment Puzzle

By

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Peer Reviews



- How does a peer review fit?

Peer Reviews

Some value:

Leverage

Platform

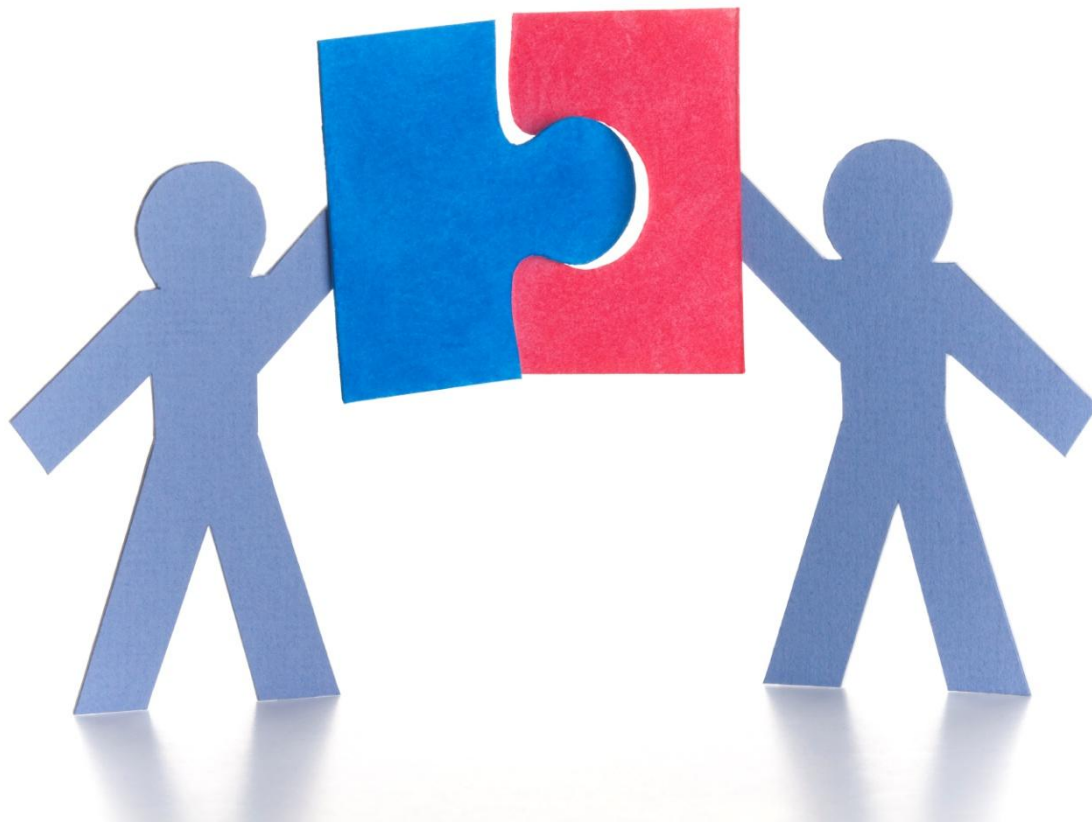
Drawbacks:

Sheltered



- How to use a Peer Review?
 - Doctor's conference
 - IME

IME's



IME's

- Governed by Section 7(d) and 20 C.F.R. 702.410(c)
- “Special Examination”
- No specific guidelines
- “reasonable intervals”

IME Advantages

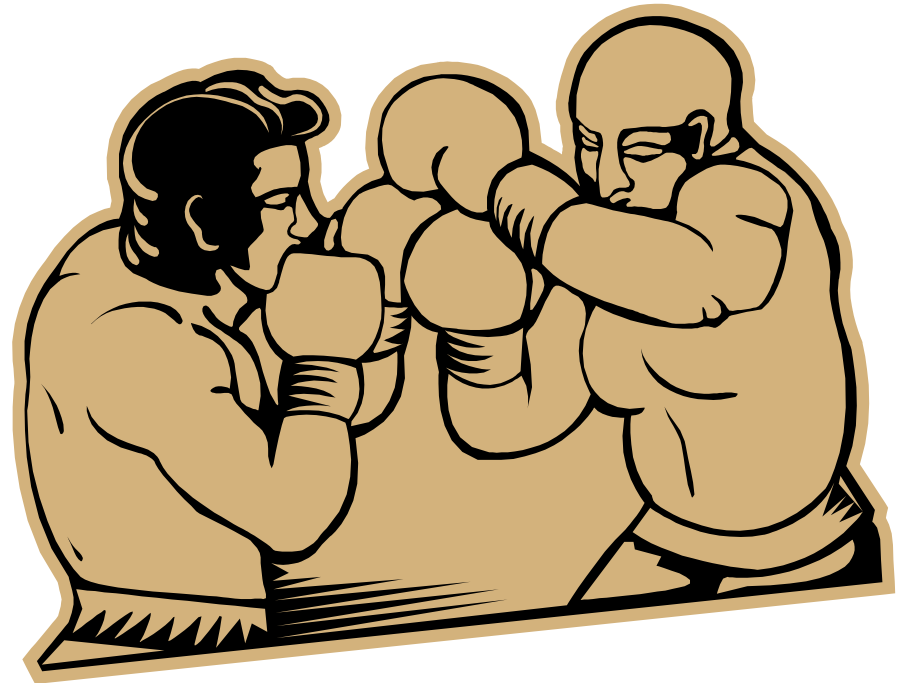
1) Your Expert

2) Strength of Opinions

3) Attendance by Claimant is compelled

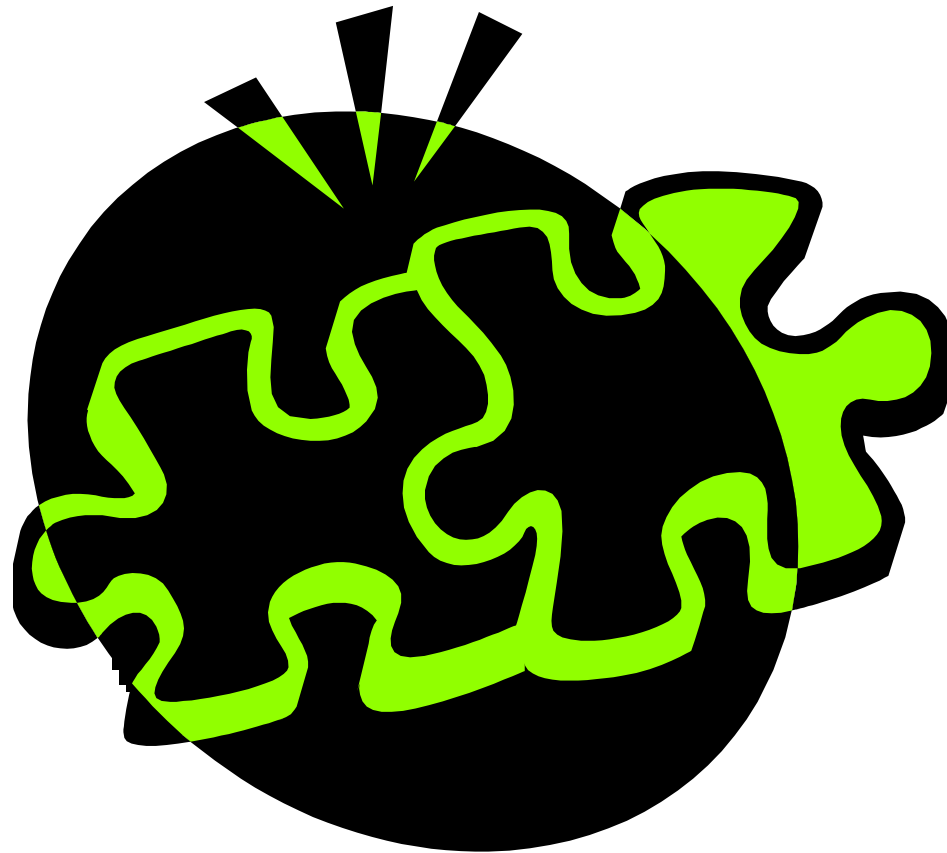
- *Dodd v. Crown Central Petroleum*, 36 BRBS
85 (2002)

Peer Review v IME



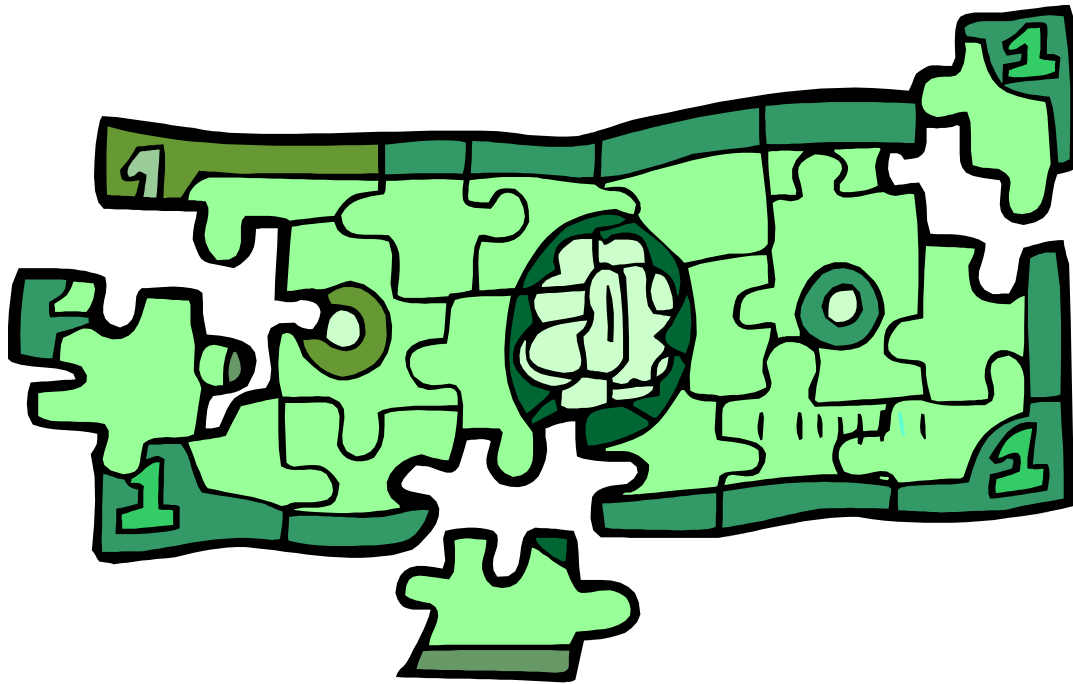
The Gold Standard:

Peer Review and an IME



Labor Market Surveys

- The Final Piece



Purpose:

To establish suitable alternative employment

general availability of realistic job opportunities within the geographical area where claimant resides, which by virtue of age, education and work experience, claimant has capability of performing, or for which he could be retrained within a reasonable period of time (*Pilkington v Sun Ship*, 9 BRBS 473 (1978))

To establish a wage earning capacity

To deem earnings

When to Do An LMS

Where to Do An LMS

When to Do an LMS



1) At MMI

2) Pre-MMI

Hogan v. Schiavone Terminal, 23 BRBS
290 (1990)

Prior to MMI, TTD can be converted to
TPD at any time work is shown to be
available after “medically cleared to
perform the job”

- 1) Work restrictions
- 2) FCE
- 3) Vocational Assessment
- 4) Labor Market Survey
- 5) Doctor Approval

Where to Do An LMS



Domestic v Overseas

General Rule: show suitable alternative employment within area where injury occurred

But, what if claimant moves, or where he is injured is not his permanent residence?

If claimant relocates for personal reasons, can show suitable alternative employment by demonstrating jobs are available where claimant resided at time of injury (*McCullough v Marathon Letourneau Co.*, 22 BRBS 357 (1989))

Need not show jobs available in area claimant relocated to if relocated for personal reasons, only where injury occurred (*Vasquez v Continental Maritime*, 23 BRBS 428 (1990))

Relevant Labor Market

- 1) Residence at time claim filed
- 2) Motivation for relocating after accident
- 3) Legitimacy of the motivation
- 4) Duration of stay in new community
- 5) Ties to new community

Holder v Texas Eastern Products Pipeline, 35 BRBS 23 (2001) (relevant labor market is where claimant moved after injury)

“On the Facts” Approach

*See v Washington Metro. Area
Transit Auth.*, 36 F.3d 375 (4th Cir.
1994)

Wood v U.S. Dept. of Labor, 112 F.3d
592 (1st Cir. 1997)

Relevant Labor Market is Overseas

Patterson v Omniplex World Services,
36 BRBS 149 (2003)

- 1) Claimant's work history
- 2) Claimant accustomed to working in locales away from permanent residence

*** Claimant had less than 10-year overseas work experience, but had 7 years when accident occurred



Best Practices:

Complete labor market surveys both domestic and overseas

But, how establish relevancy of overseas LMS?

- Consider AWW analysis

Conclusion

- Peer Reviews
- IME's
- Labor Market Surveys

