

COMPLIANCE AUDIT REPORT

**STATE OF MAINE
WORKERS' COMPENSATION BOARD**



**Claims Management, Inc.
Engagement Date: September 6, 2017
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Office of Monitoring, Audit & Enforcement

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SUMMARY

Claims Management, Inc. (CMI) is the wholly-owned third-party adjusting company that handles workers' compensation and other claims exclusively for Wal-Mart Associates, Inc.

The Audit Division of the Maine Workers' Compensation Board (Board) examined twenty-eight (28) claim files where indemnity benefits were paid for the period under examination (2015-2016) as well as sixty (60) medical payments for the period under examination (2015-2016) to determine compliance with statutory and regulatory requirements in the following areas:

- Timeliness of benefit payments
- Accuracy of benefit payments

The claim sample was drawn from a listing of all of CMI's 2015-2016 Maine workers' compensation claims. The medical payment sample was drawn from a listing of all of CMI's 2015-2016 medical payments for those claims in the sample. This sample also included one (1) claim contained in the original claim sample that was subsequently omitted during the final stages of the audit review.

CMI handles its Maine workers' compensation claims solely in Rogers, Arkansas.

The audit work was conducted as a desk audit.

The compliance tables found on pages 9 through 11 of this report are representative of Board findings as of September 6, 2017. Since that time, the Audit Division has received additional information, missing form filings, form corrections, indemnity payments and adjustments.

Following is a discussion of the aforementioned compliance tables and of the steps taken since September 6, 2017 to rectify identified noncompliance issues. This discussion also includes other significant issues identified by the audit.

◆ **Timeliness of benefit payments**

- Title 39-A M.R.S.A. Section 205(2) provides the time requirements for indemnity payments.
- When there is not an ongoing dispute, failure to pay weekly compensation benefits or accrued weekly benefits within 30 days after becoming due and payable is a violation of Title 39-A M.R.S.A. Section 205(2) and subject to penalty under Section 205(3).
- Initial Indemnity Payments:
 - Twenty-eight (28) initial indemnity payments were made timely and one (1) claim received “salary continuation” from the employer.
 - CMI’s compliance rate for initial indemnity payments (timely payments and “salary continuation” collectively) is 97%, which is above the Board’s performance benchmark of 87%.
 - One (1) initial indemnity payment was made late.
- Subsequent Indemnity Payments:
 - Three hundred twenty-two (322) subsequent indemnity payments were made timely.
 - Thirty-one (31) subsequent indemnity payments were made late.
 - One (1) late subsequent indemnity payment was made later than 30 days after it became due and payable in violation of Section 205(2) and subject to penalty under Section 205(3).
- Board Rules and Regulations Chapter 5 states in part, “The employer/insurer shall pay the health care provider's charge or the maximum allowable payment under this fee schedule, whichever is less, within 30 days of receipt of a bill unless the bill or previous bills from the same provider or the underlying injury has been controverted or denied. If an employer/insurer controverts whether a health care provider’s bill is reasonable and proper under § 206 of the Act, the employer/insurer shall send a copy of the notice of controversy to the health care provider.”
 - Sixty (60) medical payments were made timely.
- Title 39-A M.R.S.A. Section 324(1) provides the requirements for compensation payments per an approved agreement, order or decision. Board Rules and Regulations Chapter 8, Section 18.2 provides the requirements for compensation payments per a Consent Between Employer and Employee (WCB-4A).
 - One (1) Lump Sum Settlement, one (1) provisional order and one (1) mediation agreement were paid timely.
 - One (1) mediation agreement, one (1) Consent Between Employer and Employee and one (1) decision were paid late in violation of Section 324(1) and subject to penalty under Section 324(2).

◆ **Accuracy of indemnity payments**

- Title 39-A M.R.S.A. Section 102(4) and Board Rules and Regulations Chapter 1, Section 5 provide the requirements for calculating average weekly wages (AWWs). Title 39-A M.R.S.A. Section 102(1) and Board Rules and Regulations Chapter 8, Section 9 provides the requirements for determining weekly compensation rates (WCRs). Title 39-A M.R.S.A. Sections 212, 213, and 215 provide the requirements for compensation for total incapacity, partial incapacity, and death benefits.
- The accuracy of indemnity payments was reviewed for twenty-eight (28) claims.
- Average Weekly Wage:
 - Twenty-five (25) AWWs were correct.
 - Three (3) AWWs were incorrect.
- Weekly Compensation Rate:
 - Twenty-four (24) WCRs were correct.
 - Four (4) WCRs were incorrect.
- Partial Benefits Calculation Method:
 - The method used to calculate partial benefits was correct for zero (0) claims.
 - The method used to calculate partial benefits was incorrect for fourteen (14) claims.
- Amount Paid:
 - Five (5) claims were compensated correctly.
 - Eight (8) claims were underpaid (\$4,787.65 aggregately).
 - Since September 6, 2017, CMI paid the amounts due.
 - Fifteen (15) claims were overpaid (\$4,148.83 aggregately).
 - Collectively, the aforementioned errors resulted in a net underpayment of \$638.82 to injured workers.

◆ **Accuracy of medical payments**

- Title 39-A M.R.S.A. Section 209-A and Board Rules and Regulations Chapter 5, provide the fee setting requirements for medical and ancillary services and products rendered by individual health care practitioners and health care facilities.
- The accuracy of medical payments was reviewed for twenty-three (23) claims.
- Amount Paid:
 - Medical payments sampled for twenty-two (22) claims were correct.
 - Medical payments sampled for one (1) claim were incorrect.

◆ **Other significant issues**

- Box 22 (First Day Of Compensability After Waiting Period Is Met) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of the first compensable day that follows the completion of the 7-day waiting period. See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 22 of the MOPs that were filed for three (3) claims.
- Boxes 23a (Date of Incapacity) and 23b (Date Employer Notified) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date of incapacity and date that the employer was notified of the incapacity. Note: the Date of Incapacity reported in Box 23a and the Date Employer Notified in Box 23b must equal the Date of Incapacity (DN56) and Date Employer Notified (DN281) reported in box 43 of the WCB-1, Employer's First Report of Occupational Injury or Disease (First Report). See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Boxes 23a and/or 23b of the MOPs and/or 43a and/or 43b of the FROIs that were filed for seven (7) claims.
- Box 24 (Date Check Mailed) of the WCB-3, Memorandum of Payment (MOP) must accurately reflect the date that the initial indemnity payment (for the incapacity addressed by the MOP) is sent to the employee. See the Board's Forms and Petitions Manual.
 - Incorrect dates were reported in Box 24 of the MOPs that were filed for sixteen (16) claims.
- Section 213 provides the requirements for partial incapacity benefits. Partial benefits must be calculated at a rate of 2/3 of the difference between the employee's pre-injury (after-tax) AWW and their post-injury (after-tax) weekly (based on payroll, i.e. Saturday through Friday) actual wages (not based on M-1). See Board Rules and Regulations Chapter 8, Section 8.
 - Post-injury hours worked times hourly rates were utilized to determine partial benefits due and/or were not subsequently adjusted to actual wages for fourteen (14) claims.

PENALTIES

◆ Penalties payable to providers and/or injured employees

Title 39-A M.R.S.A. Section 205(3)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within thirty (30) days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over thirty (30) days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

A delay of a subsequent indemnity payment, subject to penalty under Section 205(3), was found on the following claim:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Darren Carleton vs. Wal-Mart Associates, Inc. Date of Injury: 5/19/16 Date ER Notified of Incapacity: 5/22/16 Claim #7778334 Board #16010228	A subsequent indemnity payment was made 7/14/16, which was 42 days after the previous indemnity payment (6/2/16).	\$250.00
Total Penalties to Injured Employees for Delays of Subsequent Indemnity Payments		\$250.00

Delays of “other” indemnity payments, subject to penalty under Section 205(3), were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Victoria Cain vs. Wal-Mart Associates, Inc. Date of Injury: 1/30/16 Date ER Notified of Incapacity: 1/31/16 Claim #7696322 Board #16001798	Payment for six (6) days of the 7-day waiting period was made 9/6/18, which was 930 days after compensation became due and payable (2/19/16).	\$1,500.00
Craig Carver vs. Wal-Mart Associates, Inc. Date of Injury: 5/27/15 Date ER Notified of Incapacity: 4/27/17 Claim #7490625 Board #15010250	The claimant was totally incapacitated from 12/8/15 through 5/4/17. Payment for two (2) days of that incapacity was made 9/6/18, which was 476 days after compensation became due and payable (5/18/17).	\$1,500.00
Pamela Leighton vs. Wal-Mart Associates, Inc. Date of Injury: 10/13/16 Date ER Notified of Incapacity: 2/2/17 Claim #7902310 Board #16022704	The claimant’s benefits were improperly discontinued on 7/11/17. Payment of accrued benefits was made 10/12/17, which was 79 days after compensation became due and payable (7/25/17).	\$1,500.00
Mary Thomas vs. Wal-Mart Associates, Inc. Date of Injury: 10/29/15 Date ER Notified of Incapacity: 12/18/15 Claim #7637099 Board #15024288	The claimant’s benefits were improperly discontinued on 1/16/16. Payment of accrued benefits was made 8/3/18, which was 916 days after compensation became due and payable (1/30/16).	\$1,500.00

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Paul Wood vs. Wal-Mart Associates, Inc. Date of Injury: 12/10/15 Date ER Notified of Incapacity: 4/29/16 Claim #7662590 Board #15026621	The claimant was totally incapacitated from 6/30/16 through 7/9/16. Payment for two (2) days of that incapacity was made 8/2/18, which was 740 days after compensation became due and payable (7/23/16).	\$1,500.00
Total Penalties to Injured Employees for Delays of "Other" Indemnity Payments		\$7,500.00

◆ **Penalties payable to injured employees and the Workers' Compensation Board Administrative Fund**

Title 39-A M.R.S.A. Section 324(2)(A)

"Except as otherwise provided by Section 205, if an employer or insurance carrier fails to pay compensation as provided in this section, the Board may assess against the employer or insurance carrier a forfeiture of up to \$200 for each day of noncompliance."

Violations subject to penalty under Section 324(2) were found on the following claims:

CLAIM	PENALTY JUSTIFICATION	PENALTY EXPOSURE
Craig Carver vs. Wal-Mart Associates, Inc. Date of Injury: 5/27/15 Date ER Notified of Incapacity: 4/27/17 Claim #7490625 Board #15010250	CMI has not yet produced proof of payment for one (1) medical bill and one (1) mileage payment pursuant to the decision mailed 4/27/17.	\$24,400.00*
Joshua Hackett vs. Wal-Mart Associates, Inc. Date of Injury: 7/8/16 Date ER Notified of Incapacity: 5/18/17 Claim #7879868 Board #16020311	Incapacity benefits were paid 6/9/17, which was 22 days after the date of the corresponding mediation agreement signed 5/18/17.	\$2,400.00
Michelle Lister vs. Wal-Mart Associates, Inc. Date of Injury: 3/13/15 Date ER Notified of Incapacity: 6/6/16 Claim #7432075 Board #15004814	One or more medical bills were paid 8/3/16, which was 55 days after receipt of medical bills pursuant to the Consent Between Employer and Employee signed 6/6/16.	\$5,000.00
Total		\$31,800.00

* Penalty capped at amount accrued through September 6, 2017

◆ **Penalties payable to the State General Fund**

Title 39-A M.R.S.A. Section 359(2)

“In addition to any other penalty assessment permitted under this Act, the Board may assess civil penalties not to exceed \$25,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The Board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the Board is exempt from the provisions of the Maine Administrative Procedure Act. The amount of any penalty assessed pursuant to this subsection must be directly related to the severity of the pattern of questionable claims-handling techniques or repeated unreasonably contested claims. All penalties collected pursuant to this subsection shall inure to the benefit of the General Fund. An insurance carrier’s payment of any penalty assessed under this section may not be considered an element of loss for the purpose of establishing rates for workers' compensation insurance.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 359(2) and/or 360(2), CMI must take corrective measures to address the following inadequacies:

- Failure to pay or timely pay benefits
- Failure to pay benefits accurately
- Failure to utilize and/or subsequently adjust to actual weekly post-injury wages when paying partial benefits
- Failure to implement procedures to ensure FROI modifications may be processed electronically, as required by the Board

Title 39-A M.R.S.A. Section 360(2)

“The Board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The Board may also require that person to repay any compensation received through a violation of this Act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.”

- No action will be taken at this time.

To avoid future penalty referral(s) under Section 360(2) and/or 359(2), CMI must take corrective measures to address the following inadequacies:

- Failure to pay or timely pay benefits
- Failure to pay benefits accurately
- Failure to utilize and/or subsequently adjust to actual weekly post-injury wages when paying partial benefits
- Failure to implement procedures to ensure FROI modifications may be processed electronically, as required by the Board

COMPLIANCE TABLES

◆ Timeliness of Benefit Payments

A. Initial Payment of Indemnity Benefits

			2015-2016	
			Number	Percent
Check Issued Within:				
0-14	Days	Compliant	29	97%
15-44	Days		1	3%
Total			30	100%

B. Subsequent Payment of Indemnity Benefits

			2015-2016	
			Number	Percent
Check Issued Within:				
0-7	Days	Compliant	322	91%
8-37	Days		30	8%
38+	Days		1	1%
Total			353	100%

C. Medical Payments

			2015-2016	
			Number	Percent
Check Issued Within:				
0-30	Days	Compliant	60	100%
Total			60	100%

D. Payment of Approved Agreements, Orders, Decisions

			2015-2016	
			Number	Percent
Check Issued Within:				
0-10	Days	Compliant	3	50%
10 +	Days		3	50%
Total			6	100%

◆ Accuracy of Indemnity Payments

E. Average Weekly Wage

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	25	89%
Incorrect		3	11%
Total		28	100%

F. Weekly Compensation Rate

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	24	86%
Incorrect		4	14%
Total		28	100%

G. Partial Benefits

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	0	0%
Incorrect		14	100%
Total		14	100%

H. Amount Paid

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	5	18%
Underpaid		8	28%
Overpaid		15	54%
Total		28	100%

◆ **Accuracy of Medical Payments**

I. Amount Paid

		2015-2016	
		Number	Percent
Calculated:			
Correct	Compliant	22	96%
Incorrect		1	4%
Total		23	100%