

INTER-OFFICE MEMORANDUM

TO: ALL ATTORNEYS/ALL OFFICES
FROM: W. Joseph Truce
DATE: June 20, 2002
RE: CHILD SUPPORT/SPOUSAL SUPPORT LIENS

In our everyday practice we are seeing more and more liens filed against applicant's temporary disability benefits/for child support or even now spousal support.

The Board determined in McClain v. WCAB (Writ Denied) 59 Cal. Comp Cases 639 that the Superior Court, not the WCAB, has exclusive jurisdiction to determine the amount of temporary disability indemnity to be withheld by a workers' compensation insurance carrier or administrator "to satisfy a wage assignment issued by the Superior Court in connection with a judgement of child or spousal support . . . "

Moreover, it would appear that there is no reason for the district attorney's office to file a lien unless temporary disability is in dispute (please find attached a January 11, 1993 memorandum from A.D. Casey Young). According to the A.D. as soon as a valid wage assignment order for child and/or spousal support is served directly on the insurance carrier or claims administrator "such entity must withhold monies pursuant to the assignment order and pay such monies to the district attorney or the judgement creditor as provided in the order . . . "

WJT:wf

Enclosure - January 11, 1993 memorandum from A.D. Casey Young

Fgt,
NKC

d u m

January 11, 1993

To: All Workers' Compensation Judges

From: CASEY YOUNG
Administrative Director
Division of Workers Compensation

[Handwritten signature]
(415) 557-0680
(415) 575-0700

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RECORDS
SEP 22 11:55
STATE OF CALIFORNIA
DIVISION OF WORKERS COMPENSATION

Subject: Wage assignment orders incidental to enforcement of a judgement for child or spousal support from Superior Court may include temporary disability indemnity. S.B. 1616 (Ch 848, Stats. 1992)

The above urgency legislation relating to family law became effective on September 22, 1992, the date signed by the Governor. This legislation amends Civil Code section 4390 and Code of Civil Procedure section 704.160 to provide that temporary disability benefits are included in earnings subject to a wage assignment order from the Superior Court issued incidental to a judgement for child or spousal support. This bill provides procedures whereby a support judgment creditor may directly or through the district attorney seek to apply the worker's compensation temporary disability benefits of a support judgment debtor to satisfy the support judgment directly or by an assignment of earnings.

In the case of a wage assignment order, the judgment creditor or District Attorney may obtain a wage assignment order from the Superior Court and serve it directly on the insurance carrier, self-insured or third party administrator and such entity must withhold monies pursuant to the assignment order and pay such monies to the District Attorney or the judgment creditor as provided in the order.

The above procedures are the jurisdiction and responsibility of the Family Law Court (Superior Court) not the Workers' Compensation Appeals Board. There is no necessity for workers' compensation judges to issue any further order or conduct any proceedings related to these procedures. Any questions or concerns by employers and insurance carriers about the validity of orders and procedures emanating from the Family Law Court should be addressed in an appropriate fashion to the Family Law Court.

While the questions of whether and how the above procedures and orders have been complied with may become relevant to the issue of 10% penalty for unreasonable delay in paying temporary disability properly raised in WCAB proceedings, the WCAB has no jurisdiction to issue, modify or change any support order or wage assignment order issued from the Family Law Court.

There is no reason for the District Attorney or judgment creditor to file a lien with the WCAB or seek an order from the WCAB unless the case is being litigated and temporary disability is in dispute. In these disputed cases, the District Attorney or judgment creditor may file a lien

against any temporary disability benefits to be awarded. If in any litigated case, an order of wage assignment has issued or issuance is being sought from the Family Law Court, the WCI and the all the parties should be advised.