

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1001

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1-12-84
DATE FOR REVIEW 1-23-84
DATE DUE 1-26-84

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 1-26-84 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 1/13/84
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 1.12.84 Date

✓ Notice of Intent to Solicit Outside Opinion SR. 10.31 83.

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency contains misprint in citation to general stat. authority

✓ Affidavit of Mailing Notice or rulemaking
12 1.83 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
12.12.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption
same misprint as above

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness includes small biz statement of "no direct effect"

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT Labor and Industry

Office Memorandum

TO: Larry Starns
Special Assistant Attorney General

DATE: 1/12/84

FROM: Leslie M. Altman LMA
Special Assistant Attorney General

PHONE: 7-2972

RECEIVED
JAN 12 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SUBJECT: **Rules for Reimbursement of Supplementary Benefits**

As we discussed earlier, the Minnesota Supreme Court's decision in McClish v. Pan O'Gold Baking Company necessitated the adoption by the Department of Labor and Industry of rules governing the reimbursement of supplementary benefits.

The Department opted to promulgate the rules without a public hearing. Having complied with the requirements for noncontroversial rulemaking specified in Minn. Stat. § 14.21 - 14.28 and in 1 MCAR § 1.203, the Department is now submitting the rules to the Attorney General for its approval.

Enclosed are the following documents, as required by Minn. Stat. § 14.21 - 14.28 and 1 MCAR § 1.203:

1. A Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Reimbursement of Supplementary Benefits, which was published in the State Register on October 31, 1983. As indicated in the Notice, data and views were accepted until November 14, 1983. However, none was received.

2. An Order for Notice of Intent to Adopt Rules Without Public Hearing was executed by Commissioner Steve Keefe on November 21, 1983. This directed that a Notice of Intent to Adopt Rules Without Public Hearing be published in the State Register and be mailed to all persons on the Department's mailing list, described in Number 3.

3. A Certificate verifying the accuracy and completeness of the Department's list of persons, groups, and associations requesting notice of proposed adoption of rules was prepared on December 1, 1983.

4. An Affidavit of Mailing the Notice of Intent to Adopt Rules Without Public Hearing on December 1, 1983 to the certified list described in Number 3 was produced.

5. The Rules as Proposed were approved as to form by the revisor of statutes on November 29, 1983.

6. The Notice of Intent to Adopt Rules Without Public Hearing was published in the State Register on December 12, 1983. In this Notice, the Commissioner cited the statutory authority for the proposed rules and stated that the Department determined that the adoption of the rules would not be controversial; that persons and groups would have 30 days in which to submit comments on the proposed rules; that the proposed rules may be modified if supported by comments submitted, provided that the modifications would not result in substantial change; that a hearing would not be held unless seven or more persons requested one, and directing such requests to the Commissioner; that a hearing, if required, would be held pursuant to Minn. Stat. § 14.13 -14.20 (1982); the manner in which persons could request to be informed of the submission of the proposed rules to the Attorney General; and that a copy of the proposed rules together with the statement of need and reasonableness would be available from the Commissioner on request.

7. A Statement of Need and Reasonableness, containing the reasons, arguments, and evidence supporting a finding of need for and reasonableness of each rule, was prepared and made available to the public on December 12, 1983.

8. The only comment that was received during the 30 day comment period.

9. Findings of Fact were issued on January 12, 1984, by Commissioner Steve Keefe concerning the proposed rules. These findings partly incorporated the only written or oral comment received regarding a clarification of the procedure for obtaining a finding of permanent total disability through litigation or for a revision of a finding. In addition, the findings reflect new rule numbers assigned by the revisor and the agency's conclusion that the rules will not affect small business.

10. An Order Adopting the Rules as Proposed was issued by Commissioner Steve Keefe on January 12, 1984.

11. A Certificate of Compliance with Rulemaking Procedures was signed on January 12, 1984 by Leslie M. Altman, Special Assistant Attorney General.

12. A Certificate verifying that the Department received no requests for Notice of Submission to the Attorney General was executed on January 12, 1984. Accordingly, the Department prepared neither a Notice of Submission to the Attorney General nor a Certificate of completeness and accuracy of the mailing list for this purpose, nor an Affidavit of Mailing Notice of Submission to the Attorney General.

In all respects, then, the Department has complied with the requirements for noncontroversial rulemaking contained in Minn. Stat. § 14.21 - 14.28 and in 8 MCAR § 1.203.

Thank you for your cooperation in this matter. I especially appreciate your comments during the rule-drafting process, many of which we integrated into the rules.

LMA:crm

Enclosures

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO STEVE KEEFE - DEPARTMENT OF LABOR & INDUSTRY DATE: 01/27/84
Attn: LESLIE M. ALTMAN
Special Assistant Attorney General

FROM MARTHA CASSERLY MJC/ap PHONE: 296-4692
Special Assistant
Attorney General

SUBJECT: IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE DEPARTMENT OF LABOR AND INDUSTRY, GOVERNING REIMBURSEMENT OF SUPPLEMENTARY BENEFITS

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

AG copy

Department of Labor and Industry

Workers' Compensation Division

Adopted Adoption of Rules of the State Department of Labor and Industry Governing Reimbursement of Supplementary Benefits

Rules as Adopted

RULES FOR REIMBURSEMENT OF SUPPLEMENTARY BENEFITS

8 MCAR S ~~1.9001~~ 1.9050 Definitions.

A. Generally. As used in 8 MCAR SS ~~1.9001-1.9010~~ 1.9050-1.9059, the following terms have the meanings given them.

B. Commissioner. "Commissioner" means commissioner of the Department of Labor and Industry.

C. Effective date. "Effective date" as used in 8 MCAR S ~~1.9004~~ 1.9053 means the date on which the employer began or will begin to apply the offset provision of Minnesota Statutes, section 176.101, subdivision 4.

D. Government disability benefits. "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101. It includes social security disability benefits, old age and survivor benefits, and police relief association benefits.

E. Party. "Party" means the employee, employer, insurer, or commissioner.

F. Rehabilitation plan. "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.

G. Supplementary benefits. "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.

H. Total disability benefits. "Total disability benefits" means all benefits paid or payable by the week pursuant to Minnesota Statutes, section 176.101. Included in these benefits are economic recovery and impairment compensation because the method of payment of economic recovery or impairment

I cannot understand this sentence! Joan will explain it - let's discuss

compensation is determined at the time the payments commence to the employee. Where impairment compensation is paid or payable instead of economic recovery compensation under Laws of Minnesota 1983, chapter 290, section 48, it is deemed to be paid or payable weekly.

8 MCAR S ~~1.9002~~ 1.9051 Authority and purpose.

Rules 8 MCAR SS ~~1.9001-1.9010~~ 1.9050-1.9059 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, sections 176.132, subdivision 4, and 175.17, clause (2); and by Laws of Minnesota 1983, chapter 290, section 165. The purpose of these rules is to specify the procedure by which employers may apply for an administrative finding of permanent total disability in order to obtain reimbursement for supplementary benefits pursuant to Minnesota Statutes, section 176.132. After an administrative finding is made, all past and future total disability benefits are deemed to be payments for permanent total disability pursuant to Minnesota Statutes, section 176.101, subdivision 4.

8 MCAR S ~~1.9003~~ 1.9052 Application.

Rules 8 MCAR SS ~~1.9001-1.9010~~ 1.9050-1.9059 apply only if all of the following prerequisites are met:

A. The employee is and has been receiving total disability benefits under Minnesota Statutes, section 176.101, subdivision 1 or 4 without interruption for the injury which gave rise to total disability. Benefits are deemed to be without interruption if the total length of all interruptions does not exceed 60 days during the three years prior to filing an application or, if less than three years, since the time of the injury which gave rise to the permanent total disability.

B. The employee is receiving government disability benefits.

C. The employee is receiving supplementary benefits pursuant to Minnesota Statutes, section 176.132, subdivision 1, or would be eligible for supplementary benefits after a finding of permanent total disability is made.

D. The employee has not been determined to be permanently

and totally disabled by application of Minnesota Statutes, section 176.101, subdivision 5, or by an order on stipulation, or by an order after a hearing.

E. The issue of whether the employee's total disability is permanent or temporary is not being and has never been raised in any judicial or quasi-judicial administrative proceeding, including administrative conferences under Minnesota Statutes, sections 176.242 and 176.243.

F. The total amount of weekly benefits to be received by the employee after a finding of permanent total disability has been made is equal to or greater than the amount of benefits that would be received by the employee in the absence of a finding of permanent total disability. The total amount of weekly benefits includes total disability benefits, government disability benefits, and supplementary benefits.

G. The employer or insurer has applied the offset provision of Minnesota Statutes, section 176.101, subdivision 4, from the time that $25,000 of total disability benefits was paid or from the time that the employee began to receive government disability benefits, whichever is later.

H. The employer or insurer concludes that the employee's total disability is permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

8 MCAR S ~~1.9004~~ 1.9053 Procedure.

A. Generally. The employer or insurer must comply with the procedures set forth in this rule in submitting an application to the commissioner for a finding of permanent total disability.

B. Contents of application. The application must state:

1. the name of the employee;

2. the social security number of the employee;

3. the name of the employer;

4. the insurer of the employer, or, if self-insured, that the employer is self-insured;

5. the date of the employee's injury that gave rise to permanent total disability;

6. the date on which the requested finding of permanent

total disability is to be effective.

7. the date on which the employee became eligible for government disability benefits;

8. the name of the medical provider submitting the medical report showing that the employee is permanently totally disabled at the time of application, and the date of the medical report; and

9. the status of the rehabilitation plan as active, inactive, or nonexistent.

C. Time of application. The application may not be filed more than 45 days prior to the effective date of the finding.

D. Filing of medical reports. Any medical reports which are identified pursuant to B.8., but have not been previously filed with the commissioner, must be attached to the application.

E. Filing of rehabilitation reports. Any reports of qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the application.

F. Benefit amounts. The application must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The application must also state the amount of each of these benefits which will be received by the employee if a finding of permanent total disability is made.

G. Signing of application. The application must be signed by an authorized representative of the employer or of the employer's insurer. It must also state the telephone number of the person signing the application.

H. Notice to employee. The employer or insurer must mail a copy of the application to the employee and to the employee's attorney by first class mail at the same time that the application is filed with the commissioner, and must so affirm on the application.

8 MCAR S ~~1.9005~~ 1.9054 Notice of decision.

Unless grounds for disapproval exist pursuant to 8 MCAR S ~~1.9006~~ 1.9055, the commissioner must approve an application for

a finding of permanent total disability. An application is deemed approved unless notice of disapproval and the grounds for disapproval are mailed by first class mail within 30 calendar days of the commissioner's receipt of the application.

8 MCAR S ~~1.9006~~ 1.9055 Disapproval by commissioner.

An application for a finding of permanent total disability shall be disapproved if any of the following grounds are present:

A. The application is incomplete, is inaccurate, or is not in conformity with any part of 8 MCAR SS ~~1.9001-1.9010~~ 1.9050-1.9059. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled at the time of application renders an application incomplete and inaccurate and not in conformity with the rules. Applications which are disapproved on any of these grounds may be resubmitted under the procedure authorized in 8 MCAR S ~~1.9004~~ 1.9053;

B. The employer or insurer has not complied with the provisions of Minnesota Statutes, section 176.102 regarding the provision of rehabilitation services to the employee. This shall apply only if the injury giving rise to total disability occurred on or after October 1, 1979;

C. The commissioner concludes that the employee's total disability is not permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

auth?

8 MCAR S ~~1.9007~~ 1.9056 Effect of finding.

Approval or disapproval of an application by the commissioner is without prejudice to a party's right to petition ~~a workers' compensation settlement judge or other workers' compensation judge~~ for a hearing pursuant to Minnesota Statutes, section 176.305 for a finding or for a revision of a finding of permanent total disability.

FBF

8 MCAR S ~~1.9008~~ 1.9057 Revision of finding.

A finding of permanent total disability pursuant to 8 MCAR SS ~~1.9001-1.9010~~ 1.9050-1.9059 is subject to revision based on judicial order pursuant to rules of the office of administrative

hearings or on future changes in the employee's employability, medical conditions, or other conditions which relate to permanent total disability under Minnesota Statutes, section 176.101 and applicable case law. A party seeking to revise a finding of permanent total disability may seek a judicial finding in the manner described in 8 MCAR S ~~1.9007~~ 1.9056.

8 MCAR S ~~1.9009~~ 1.9058 Severability.

If any provision of 8 MCAR SS ~~1.9001-1.9008~~ 1.9050-1.9057 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

8 MCAR S ~~1.9010~~ 1.9059 Effective date.

These rules shall apply to requests for reimbursement of supplementary benefits filed on or after the effective date of 8 MCAR SS ~~1.9001-1.9009~~ 1.9050-1.9058.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 27 1984
Joan Anderson Growe
Secretary of State
10:55AM

APPROVED AS TO FORM AND LEGALITY
January 26 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Martha J Cassard
SPECIAL ASSISTANT ATTORNEY GENERAL

Rules as Proposed (All new material)

RULES FOR REIMBURSEMENT OF SUPPLEMENTARY BENEFITS

8 MCAR S 1.9001 Definitions.

A. Generally. As used in 8 MCAR SS 1.9001-1.9010, the following terms have the meanings given them.

B. Commissioner. "Commissioner" means commissioner of the Department of Labor and Industry.

C. Effective date. "Effective date" as used in 8 MCAR S 1.9004 means the date on which the employer began or will begin to apply the offset provision of Minnesota Statutes, section 176.101, subdivision 4.

D. Government disability benefits. "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101. It includes social security disability benefits, old age and survivor benefits, and police relief association benefits.

E. Party. "Party" means the employee, employer, insurer, or commissioner.

F. Rehabilitation plan. "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.

G. Supplementary benefits. "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.

H. Total disability benefits. "Total disability benefits" means all benefits paid or payable by the week pursuant to Minnesota Statutes, section 176.101. Included in these benefits are economic recovery and impairment compensation because the method of payment of economic recovery or impairment compensation is determined at the time the payments commence to the employee. Where impairment compensation is paid or payable instead of economic recovery compensation under Laws of Minnesota 1983, chapter 290, section 48, it is deemed to be paid or payable weekly.

APPROVED IN THE
REVISOR OF STATUTES
O[illegible] BY:

8 MCAR S 1.9002 Authority and purpose.

8 MCAR SS 1.9001-1.9010 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, sections 176.132, subdivision 4, and 175.17, clause (2); and by Laws of Minnesota 1983, chapter 290, section 165. The purpose of these rules is to specify the procedure by which employers may apply for an administrative finding of permanent total disability in order to obtain reimbursement for supplementary benefits pursuant to Minnesota Statutes, section 176.132. After an administrative finding is made, all past and future total disability benefits are deemed to be payments for permanent total disability pursuant to Minnesota Statutes, section 176.101, subdivision 4.

8 MCAR S 1.9003 Application.

Rules 8 MCAR SS 1.9001-1.9010 apply only if all of the following prerequisites are met:

A. The employee is and has been receiving total disability benefits under Minnesota Statutes, section 176.101, subdivision 1 or 4 without interruption for the injury which gave rise to total disability. Benefits are deemed to be without interruption if the total length of all interruptions does not exceed 60 days during the three years prior to filing an application or, if less than three years, since the time of the injury which gave rise to the permanent total disability.

B. The employee is receiving government disability benefits.

C. The employee is receiving supplementary benefits pursuant to Minnesota Statutes, section 176.132, subdivision 1, or would be eligible for supplementary benefits after a finding of permanent total disability is made.

D. The employee has not been determined to be permanently and totally disabled by application of Minnesota Statutes, section 176.101, subdivision 5, or by an order on stipulation, or by an order after a hearing.

E. The issue of whether the employee's total disability is permanent or temporary is not being and has never been raised in any judicial or quasi-judicial administrative proceeding.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

including administrative conferences under Minnesota Statutes, sections 176.242 and 176.243.

F. The total amount of weekly benefits to be received by the employee after a finding of permanent total disability has been made is equal to or greater than the amount of benefits that would be received by the employee in the absence of a finding of permanent total disability. The total amount of weekly benefits includes total disability benefits, government disability benefits, and supplementary benefits.

G. The employer or insurer has applied the offset provision of Minnesota Statutes, section 176.101, subdivision 4, from the time that $25,000 of total disability benefits was paid or from the time that the employee began to receive government disability benefits, whichever is later.

H. The employer or insurer concludes that the employee's total disability is permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

8 MCAR S 1.9004 Procedure.

A. Generally. The employer or insurer must comply with the procedures set forth in this rule in submitting an application to the commissioner for a finding of permanent total disability.

B. Contents of application. The application must state:

1. the name of the employee;

2. the social security number of the employee;

3. the name of the employer;

4. the insurer of the employer, or, if self-insured, that the employer is self-insured;

5. the date of the employee's injury that gave rise to permanent total disability;

6. the date on which the requested finding of permanent total disability is to be effective;

7. the date on which the employee became eligible for government disability benefits;

8. the name of the medical provider submitting the medical report showing that the employee is permanently totally disabled at the time of application, and the date of the medical

APPROVED IN THE
OFFICE BY:

report; and

9. the status of the rehabilitation plan as active, inactive, or nonexistent.

C. Time of application. The application may not be filed more than 45 days prior to the effective date of the finding.

D. Filing of medical reports. Any medical reports which are identified pursuant to B.8., but have not been previously filed with the commissioner, must be attached to the application.

E. Filing of rehabilitation reports. Any reports of qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the application.

F. Benefit amounts. The application must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The application must also state the amount of each of these benefits which will be received by the employee if a finding of permanent total disability is made.

G. Signing of application. The application must be signed by an authorized representative of the employer or of the employer's insurer. It must also state the telephone number of the person signing the application.

H. Notice to employee. The employer or insurer must mail a copy of the application to the employee and to the employee's attorney by first class mail at the same time that the application is filed with the commissioner, and must so affirm on the application.

8 MCAR S 1.9005 Notice of decision.

Unless grounds for disapproval exist pursuant to 8 MCAR S 1.9006, the commissioner must approve an application for a finding of permanent total disability. An application is deemed approved unless notice of disapproval and the grounds for disapproval are mailed by first class mail within 30 calendar days of the commissioner's receipt of the application.

8 MCAR S 1.9006 Disapproval by commissioner.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

An application for a finding of permanent total disability shall be disapproved if any of the following grounds are present:

A. The application is incomplete, is inaccurate, or is not in conformity with any part of 8 MCAR SS 1.9001-1.9010. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled at the time of application renders an application incomplete and inaccurate and not in conformity with the rules. Applications which are disapproved on any of these grounds may be resubmitted under the procedure authorized in 8 MCAR S 1.9004;

B. The employer or insurer has not complied with the provisions of Minnesota Statutes, section 176.102 regarding the provision of rehabilitation services to the employee. This shall apply only if the injury giving rise to total disability occurred on or after October 1, 1979;

C. The commissioner concludes that the employee's total disability is not permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

8 MCAR S 1.9007 Effect of finding.

Approval or disapproval of an application by the commissioner is without prejudice to a party's right to petition a workers' compensation settlement judge or other workers' compensation judge for a finding or for a revision of a finding of permanent total disability.

8 MCAR S 1.9008 Revision of finding.

A finding of permanent total disability pursuant to 8 MCAR SS 1.9001-1.9010 is subject to revision based on judicial order pursuant to rules of the office of administrative hearings or on future changes in the employee's employability, medical conditions, or other conditions which relate to permanent total disability under Minnesota Statutes, section 176.101 and applicable case law. A party seeking to revise a finding of permanent total disability may seek a judicial finding in the manner described in 8 MCAR S 1.9007.

8 MCAR S 1.9009 Severability.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

If any provision of 8 MCAR SS 1.9001-1.9008 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

8 MCAR S 1.9010 Effective date.

These rules shall apply to requests for reimbursement of supplementary benefits filed on or after the effective date of 8 MCAR SS 1.9001-1.9009.

APPROVED IN THE
STATUTES
OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD451

Agency: Department of Labor and Industry

Division:

Agency Contact: Abby Struck

Rule Numbers: 8 MCAR SS 1.9001-1.9010

Title: Proposed Rules Relating to the Reimbursement of Supplementary Benefits

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

John C. Fuller
Assistant Deputy Revisor
Phone: 296-0955
Date: November 29, 1983

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry, Governing Reimbursement of Supplementary Benefits

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-captioned rules without a public hearing was published in the State Register on December 12, 1983, and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minn. Stat. § 14.22 (1982) on December 1, 1983. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules for Reimbursement of Supplementary Benefits are adopted this 12th day of January, 1984 pursuant to authority vested in me by Minn. Stat. § 176.132, subd. 4; § 175.17 (2); and by Laws of Minnesota 1983, ch. 290, section 165.

STATE OF MINNESOTA

Steve Keefe

Steve Keefe, Commissioner
of Labor and Industry

Current Members:

Kathy Koutsky, 6827 Kingston Cir., Golden Valley 55427; (612) 338-6250; (8/83-2/84); Hennepin; CD3; F; W.
Orville L. Freeman, One Dag Hammarskjold Plaza, New York City, New York 10017; (914) 591-9310; (8/83-2/84); Westchester; M; DFL; W.
James L. Rice, 2220 Vincent Ave. N., Mpls. 55411; (612) 296-4262; (8/83-2/84); Hennepin; CD5; LD57A; M; DFL; W.
Douglas L. Peterson, 13655 62nd Ave. N., Maple Grove 55369; (612) 341-2222; (8/83-2/84); Hennepin; CD6; M; I; W.
Richard M. Nolan, 370 Selby Ave., St. Paul 55102; (612) 293-0315; (8/83-2/84); Ramsey; CD4; LD65A; M; DFL; W.
William P. Luther, 6809 Shingle Creek Dr., Brooklyn Park 55445; (612) 296-8869; (8/83-2/84); Hennepin; CD6; LD47; M; DFL; W.
Gerald J. Isaacs, 1835 Mechanic Ave., St. Paul 55119; (612) 291-6452; (8/83-2/84); Ramsey; CD4; LD67A; M; DFL; W.
Gladys Brooks, 5056 Garfield Ave. S., Mpls. 55419; (612) 823-7672; (8/83-2/84); Hennepin; CD5; LD62A; F; IR; W.
Glen H. Anderson, Route 1, Box 9, Bellingham 56212; (612) 296-4228; (8/83-2/84); Lac qui Parle; CD2; LD20A; M; DFL; W.

ZOOLOGICAL BOARD: 12101 Johnny Cake Rd.; Apple Valley 55124; (612) 432-9010; (M.S.85A.01).

Operates and maintains the Minnesota Zoological Garden; 11 members; appointed by the Governor; must file with EPB. A resident of Dakota County who may be a member of the county board is an ex-officio member appointed by the county board in consultation with the Governor. Monthly meetings; members receive $35 per diem plus expenses.

Current Members:

Patricia Davies, chr., 3424 Edmund Blvd., Mpls. 55406; (612) 721-2347; (4/83-1/87); Hennepin; CD5; LD61; F; DFL; W.
Stephen D. Doyle, 302 Ridgeview Dr., Wayzata 55391; (612) 476-1245; (2/82-1/86); Hennepin; CD6; LD45A; M; W.
*Herbert R. Goldenberg, 4925 W. Coventry Rd., Minnetonka 55343; (612) 938-7151; (3/80-1/84); Hennepin; CD3; LD43B; M; W.
Toni L. Hengesteg, 15 Fenlea Circle, Dellwood 55110; (612) 426-1204; (2/82-1/86); Ramsey; CD4; LD55A; F; W.
James W. Kennedy, 848 Allen Ave., W. St. Paul 55118; (612) 227-1852; ex-officio member; (5/81-1/85); Dakota; CD1; LD39A; M.
*Harveydale Maruska, P.O. Box 7, 198 S. 5th St., Warren 56762; (218) 745-4919; (3/80-1/84); Marshall; CD7; LD1B; M; W.
*Hazel H. Reinhardt, 5116 Abercrombie Dr., Edina 55435; (612) 941-6640; (3/80-1/84); Hennepin; CD3; LD42A; F; W.
James L. Weaver, 4235 Dupont Ave. So., Mpls. 55407; (612) 822-9185; (5/81-1/85); Hennepin; CD5; LD62A; M; W.
James C. Stimson, 13627 Elkwood Dr., Apple Valley 55124; (612) 423-4769; (12/82-1/85); Dakota; CD3; LD37A; M; IR; W.
Jane Cooper, 11745 Runnel Circle, Eden Prairie 55344; (612) 944-0163; (4/83-1/87); Hennepin; CD3; LD42A; F; W.
Peter A. Jordan, 1506 Chelmsford, St. Paul 55108; (612) 373-1723; (4/83-1/86); Ramsey; CD4; LD62A; M; DFL; W.
Jack Jorgensen, Jr., 13112 Oakland Dr., Burnsville 55337; (612) 378-1650; (4/83-1/87); Dakota; CD3; LD38A; M; DFL; W.

Office of the Secretary of State

Notice of Unscheduled Vacancies in Multi-member State Agencies

Notice is hereby given to the public that unscheduled vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. 15.0497; subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is November 22, 1983.

INVESTMENT ADVISORY COUNCIL has 1 vacancy open for a member with experience in general investment matters. The council advises the Board of Investment on policy relating to investments of state funds. Members are appointed by the Board of Investment. Members must file with EPB, and receive no compensation. For specific information contact the Investment Advisory Council, MEA Bldg., Room 105, 55 Sherburne Ave., St. Paul 55155; (612) 296-3328.

WORKERS' COMPENSATION REINSURANCE ASSOCIATION has 4 vacancies open on the board of directors for 3 employer representatives and 1 employee representative. The board of directors determines the policies and operating expenses of the non-profit Minnesota organization created by the state legislature to reinsure all insurers and self-insurers for serious workers' compensation losses. Members are appointed by the Commissioner of Commerce. Members serve 2 year terms and receive no compensation, but are reimbursed for expenses. For specific information contact Steve Goff, Manager of Public Affairs, Dept. of Labor and Industry, Space Center, 444 Lafayette Rd., St. Paul 55101; (612) 296-2342.

Department of Labor and Industry Workers' Compensation Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Reimbursement of Supplementary Benefits

Notice is hereby given that the State Department of Labor and Industry is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the reimbursement of supplementary benefits in compliance

with *McClish v. Pan-O'Gold Baking Co.*, 336 N.W. 2d 538 (Minn. 1983). The promulgation of these rules is authorized by Minn. Stat. § 176.132, subd. 4; Minn. Stat. § 175.17; and by Laws of Minnesota 1983, Chapter 290, section 165, codified at Minn. Stat. § 176.83. These statutes permit the agency to specify the procedure by which employers may apply for an administrative finding of permanent total disability in order to obtain reimbursement for supplementary benefits they have paid to employees who are also receiving total disability benefits and government disability benefits.

The State Department of Labor and Industry requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Steve Keefe, Commissioner
Department of Labor and Industry
444 Lafayette Road, 5th Floor
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at 612-296-2342 and in person at the above address.

All statements of information and comment shall be accepted until November 14, 1983. Any written material received by the State Department of Labor and Industry shall become part of the record in the event that the rules are promulgated.

Steve Keefe
Commissioner
Department of Labor and Industry

Department of Public Safety
Driver and Vehicle Services

Notice of Appointment of Deputy Registrar

Notice is hereby given that a deputy motor vehicle registrar position is vacant in Crosby, Minnesota. This vacancy will remain open until November 11, 1983, after which time the Commissioner of Public Safety will appoint a deputy registrar. Inquiries may be directed to:

Department of Public Safety
Driver and Vehicle Services Division
Room 161 Transportation Building
St. Paul, Minnesota 55155

The person who is appointed to this position must show that the following criteria will be met:

1. Office space of at least 300 square feet for exclusive processing of applications.
2. A safe or vault, a secure storage area, outdoor sign, and accessibility to handicapped.
3. Must post a bond.
4. May not be operated in conjunction with motor vehicle insurance or sales of cars.

Paul J. Tschida
Commissioner of Public Safety

Department of Public Welfare
Income Maintenance Bureau

Notice of Intent to Solicit Outside Opinion Concerning Proposed Temporary Rules on Preadmission Certification and Concurrent Review for Medical Assistance Hospital Admissions

Notice is hereby given that the Minnesota Department of Public Welfare is considering draft Temporary Rule 12 MCAR § 2.048, Preadmission Certification and Concurrent Review for Medical Assistance Hospital Admissions. This rule will apply to hospitals and physicians participating in the Medical Assistance and General Assistance Medical Care Programs.

STATE OF MINNESOTA

DEPARTMENT OF LABOR & INDUSTRY
Workers' Compensation Division

In the Matter of the Proposed Adoption of Rules of the State Department of Labor & Industry, Workers' Compensation Division, Governing Reimbursement of Supplementary Benefits

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 21 day of November 1983 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Labor & Industry, Workers' Compensation Division for that purpose and be published in the State Register.

STATE OF MINNESOTA

Steve Keefe

COMMISSIONER
Department of Labor & Industry

AS:fm
11/18/83

Department of Labor and Industry,

Workers' Compensation Division

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry Governing Reimbursement of Supplementary Benefits.

Notice is hereby given that the State Department of Labor and Industry, Workers' Compensation Division proposes to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes 14.21 - 14.28 (1982).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes 14.13 - 14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Steve Keefe, Commissioner
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

Authority for the adoption of these rules is contained in Minnesota Statutes 176.132, Subd. 4; 175.12 (2); and 176.83 (f). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the office of the Commissioner upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General. or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Steve Keefe, Commissioner, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

A copy of the proposed rule immediately follows this notice in the State Register.

Copies of this Notice and the proposed rules are available and may be obtained by contacting the Office of the Commissioner at (612) 296-2342.

State of Minnesota

Steve Keefe

Steve Keefe
Commissioner of Labor and Industry

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry Governing Reimbursement of Supplementary Benefits.

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Abby Struck, being first duly sworn deposes and says:

That on the 1st day of December, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, properly enveloped, with postage prepaid, on all persons, and associations who have requested that their names be placed on file with the State Department of Labor and Industry, Workers' Compensation Division for the purpose of receiving notice of the proposed adoption of rules by this Department.

Abby Struck

Subscribed and sworn to before me this 1st day of December, 1983.

Irene Makuke

IRENE MAKUNKE
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCTOBER 3, 1988

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing Reimbursement of Supplementary Benefits

I hereby certify that no persons or groups have requested, pursuant to Minn. Stat. § 14.26 (1982), that their names be placed on a list maintained by the State Department of Labor and Industry for the purpose of receiving notice that the above-captioned rules have been submitted to the Attorney General.

Dated: Jan 12 1984

Ashley Struck

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the State of Minnesota
Governing Reimbursement of Supplementary
Benefits

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statute 14.14, Subd. 1 (1982), that their names be placed on file with and maintained by the State Department of Labor and Industry for the purpose of receiving notice of the proposed adoption of rules by this Department of Labor and Industry is accurate and complete as of 2:00 P.M., this 1st day of December, 1983.

Ally Stat

b. a signed withdrawal of the charge after indicating a lack of interest in pursuing the charge; or

c. information essential to a charge that requires amending.

B. Procedure. If informal means of obtaining the information fail, the commissioner shall notify the charging party by certified and first class mail of the need for the required information and the possibility of dismissal of the charge for failure to provide required information. If the information is not delivered within 30 days of the date of notice and no other information is available for the commissioner to make a determination on the merits, the commissioner may dismiss the charge.

12 MCAR § 1.077 [Temporary] Rules temporarily superseded.

During the period that 12 MCAR §§ 1.061-1.076 [Temporary] are effective, the following rules are superseded: Hum Rts 9, 52, 53, 54, 55, 56, 57, 58, 59, 102(c), 105(c)-(h), 111, 112, 113, 114, 115, 116, 117, and 118.

Department of Labor and Industry Workers' Compensation Division

Proposed Adoption of Rules of the State Department of Labor and Industry Governing Reimbursement of Supplementary Benefits

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Department of Labor and Industry, Workers' Compensation Division proposes to adopt the above-entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes 14.13-14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Steve Keefe, Commissioner
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

Authority for the adoption of these rules is contained in Minnesota Statutes 176.132, Subd. 4; 175.12 (2); and 176.83 (f). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the office of the Commissioner upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Steve Keefe, Commissioner, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101.

A copy of the proposed rule immediately follows this notice in the *State Register*.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Copies of this Notice and the proposed rules are available and may be obtained by contacting the Office of the Commissioner at (612) 296-2342.

Steve Keefe
Commissioner of Labor and Industry

Rules as Proposed (all new material)

Rules for Reimbursement of Supplementary Benefits

8 MCAR § 1.9001 Definitions.

A. Generally. As used in 8 MCAR §§ 1.9001-1.9010, the following terms have the meanings given them.

B. Commissioner. "Commissioner" means commissioner of the Department of Labor and Industry.

C. Effective date. "Effective date" as used in 8 MCAR § 1.9004 means the date on which the employer began or will begin to apply the offset provision of Minnesota Statutes, section 176.101, subdivision 4.

D. Government disability benefits. "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101. It includes social security disability benefits, old age and survivor benefits, and police relief association benefits.

E. Party. "Party" means the employee, employer, insurer, or commissioner.

F. Rehabilitation plan. "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.

G. Supplementary benefits. "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.

H. Total disability benefits. "Total disability benefits" means all benefits paid or payable by the week pursuant to Minnesota Statutes, section 176.101. Included in these benefits are economic recovery and impairment compensation because the method of payment of economic recovery or impairment compensation is determined at the time the payments commence to the employee. Where impairment compensation is paid or payable instead of economic recovery compensation under Laws of Minnesota 1983, chapter 290, section 48, it is deemed to be paid or payable weekly.

8 MCAR § 1.9002 Authority and purpose.

8 MCAR §§ 1.9001-1.9010 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, section 176.132, subdivision 4, and 175.17, clause (2); and by Laws of Minnesota 1983, chapter 290, section 165. The purpose of these rules is to specify the procedure by which employers may apply for an administrative finding of permanent total disability in order to obtain reimbursement for supplementary benefits pursuant to Minnesota Statutes, section 176.132. After an administrative finding is made, all past and future total disability benefits are deemed to be payments for permanent total disability pursuant to Minnesota Statutes, section 176.101, subdivision 4.

8 MCAR § 1.9003 Application.

Rules 8 MCAR §§ 1.9001-1.9010 apply only if all of the following prerequisites are met:

A. The employee is and has been receiving total disability benefits under Minnesota Statutes, section 176.101, subdivision 1 or 4 without interruption for the injury which gave rise to total disability. Benefits are deemed to be without interruption if the total length of all interruptions does not exceed 60 days during the three years prior to filing an application or, if less than three years, since the time of the injury which gave rise to the permanent total disability.

B. The employee is receiving government disability benefits.

C. The employee is receiving supplementary benefits pursuant to Minnesota Statutes, section 176.132, subdivision 1, or would be eligible for supplementary benefits after a finding of permanent total disability is made.

D. The employee has not been determined to be permanently and totally disabled by application of Minnesota Statutes, section 176.101, subdivision 5, or by an order on stipulation, or by an order after a hearing.

E. The issue of whether the employee's total disability is permanent or temporary is not being and has never been raised in any judicial or quasi-judicial administrative proceeding, including administrative conferences under Minnesota Statutes, sections 176.242 and 176.243.

F. The total amount of weekly benefits to be received by the employee after a finding of permanent total disability has been made is equal to or greater than the amount of benefits that would be received by the employee in the absence of a finding of permanent total disability. The total amount of weekly benefits includes total disability benefits, government disability benefits, and supplementary benefits.

G. The employer or insurer has applied the offset provision of Minnesota Statutes, section 176.101, subdivision 4, from the time that $25,000 of total disability benefits was paid or from the time that the employee began to receive government disability benefits, whichever is later.

H. The employer or insurer concludes that the employee's total disability is permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

8 MCAR § 1.9004 Procedure.

A. Generally. The employer or insurer must comply with the procedures set forth in this rule in submitting an application to the commissioner for a finding of permanent total disability.

B. Contents of application. The application must state:

1. the name of the employee;

2. the social security number of the employee;

3. the name of the employer;

4. the insurer of the employer, or, if self-insured, that the employer is self-insured;

5. the date of the employee's injury that gave rise to permanent total disability;

6. the date on which the requested finding of permanent total disability is to be effective;

7. the date on which the employee became eligible for government disability benefits;

8. the name of the medical provider submitting the medical report showing that the employee is permanently totally disabled at the time of application, and the date of the medical report; and

9. the status of the rehabilitation plan as active, inactive, or nonexistent.

C. Time of application. The application may not be filed more than 45 days prior to the effective date of the finding.

D. Filing of medical reports. Any medical reports which are identified pursuant to B.8., but have not been previously filed with the commissioner, must be attached to the application.

E. Filing of rehabilitation reports. Any reports of qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the application.

F. Benefit amounts. The application must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The application must also state the amount of each of these benefits which will be received by the employee if a finding of permanent total disability is made.

G. Signing of application. The application must be signed by an authorized representative of the employer or of the employer's insurer. It must also state the telephone number of the person signing the application.

H. Notice to employee. The employer or insurer must mail a copy of the application to the employee and to the employee's attorney by first class mail at the same time that the application is filed with the commissioner, and must so affirm on the application.

8 MCAR § 1.9005 Notice of decision.

Unless grounds for disapproval exist pursuant to 8 MCAR § 1.9006, the commissioner must approve an application for a finding of permanent total disability. An application is deemed approved unless notice of disapproval and the grounds for disapproval are mailed by first class mail within 30 calendar days of the commissioner's receipt of the application.

8 MCAR § 1.9006 Disapproval by commissioner.

An application for a finding of permanent total disability shall be disapproved if any of the following grounds are present:

A. The application is incomplete, is inaccurate, or is not in conformity with any part of 8 MCAR §§ 1.9001-1.9010. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled at the time of application renders an application incomplete and inaccurate and not in conformity with the rules. Applications which are disapproved on any of these grounds may be resubmitted under the procedure authorized in 8 MCAR § 1.9004;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

B. The employer or insurer has not complied with the provisions of Minnesota Statutes, section 176.102 regarding the provision of rehabilitation services to the employee. This shall apply only if the injury giving rise to total disability occurred on or after October 1, 1979;

C. The commissioner concludes that the employee's total disability is not permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

8 MCAR § 1.9007 Effect of finding.

Approval or disapproval of an application by the commissioner is without prejudice to a party's right to petition a workers' compensation settlement judge or other workers' compensation judge for a finding or for a revision of a finding of permanent total disability.

8 MCAR § 1.9008 Revision of finding.

A finding of permanent total disability pursuant to 8 MCAR §§ 1.9001-1.9010 is subject to revision based on judicial order pursuant to rules of the office of administrative hearings or on future changes in the employee's employability, medical conditions, or other conditions which relate to permanent total disability under Minnesota Statutes, section 176.101 and applicable case law. A party seeking to revise a finding of permanent total disability may seek a judicial finding in the manner described in 8 MCAR § 1.9007.

8 MCAR § 1.9009 Severability.

If any provision of 8 MCAR §§ 1.9001-1.9008 is held to conflict with a governing statute, applicable provisions of the Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

8 MCAR § 1.9010 Effective date.

These rules shall apply to requests for reimbursement of supplementary benefits filed on or after the effective date of 8 MCAR §§ 1.9001-1.9009.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Minnesota Housing Finance Agency

Adopted Rules Relating to Income Limits for the Medium Density Housing Program

The rule proposed and published at *State Register*, Volume 8, Number 11, pages 434-435, September 12, 1983 (8 S.R. 434) is adopted as proposed.

Minnesota Housing Finance Agency

Adopted Rules Relating to the Innovative Housing Loan Program

The rule proposed and published at *State Register*, Volume 8, Number 11, pages 432-434, September 12, 1983 (8 S.R. 432) is adopted as proposed.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry, Governing Reimbursement of Supplementary Benefits

FINDINGS OF FACT AND CONCLUSIONS

The above-captioned rules were published in the State Register on the 12th of December, 1983, after proper notice required by Minn. Stat. § 14.22 (1982) was served upon all interested persons and groups registered with the State Department of Labor and Industry, Workers' Compensation Division for that purpose.

After affording interested persons and groups an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced upon the records, files, and proceedings herein, I find the following:

1. New rule numbers were assigned by the revisor because the original numbers had previously been assigned to existing rules. This change was needed and reasonable to avoid confusion in the citation of the rules.
2. Language at 8 MCAR § 1.9056, lines 29-30 was deleted and added in order to clarify the procedure for obtaining a finding through litigation or for obtaining a revision of a finding of permanent total disability. This was done in response to a written comment and oral inquiry from Judge Karen Shimon of the Workers' Compensation Court as to whether the rule created

a new procedure in these cases. It was not the department's intent to create a new procedure. The modification is needed and reasonable to clarify that parties who wish to obtain a finding through litigation or to obtain a revision of a finding must follow the same procedure that applies to the litigation of any claim. The new language in the rule cites to the applicable statute and removes a possible conflict with the language in the statute. Therefore, this modification is permissible under Minn. Stat. § 14.24 (1982).

3. The rules governing the reimbursement of supplementary benefits fully comply with the requirements of Minn. Stat. § 14.115. First, the rules have no impact on small business as defined by Minn. Stat. § 14.115, subd. 1 (Supp. 1983). Instead the rules affect only insurers and self-insurers, which are large corporations. Second, the effect of the rules on small business, if any, is only indirect under Minn. Stat. § 14.115, subd. 7(b) because only insurers and self-insurers are directly affected. Third, the rules will impose no new impact on any party. As described in the Statement of Need and Reasonableness, the rules are designed to reinstate the practice of reimbursement of supplementary benefits to insurers that predated McClish v. Pan O'Gold Baking Company. Because the rules will have no effect on small business, the Department did not need to consider the methods for reducing any impact on small business described in Minn. Stat. § 14.115, subd. 2 (Supp. 1983).

THEREFORE, based on all of the evidence on the record, files and proceedings, these are my findings of fact and conclusions In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry Governing Reimbursement of Supplementary Benefits.

STATE OF MINNESOTA

Steve Keefe

Steve Keefe, Commissioner
of Labor and Industry

Dated: January 12, 1984

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION DIVISION
SAINT PAUL, MINN. 55101

Phone: _____

12/05/83

STATEMENT OF NEED AND REASONABLENESS
FOR RULES FOR REIMBURSEMENT OF SUPPLEMENTARY BENEFITS

The Minnesota Supreme Court's decision in McClish v. Pan-O-Gold Baking Co., et al, 336 N.W. 2d 538 (Minn. 1983) compels the workers' compensation division of the department of labor and industry to alter its procedures for the reimbursement of supplementary benefits paid for total disability. The payment of $25,000 of total disability benefits entitles the employer to reduce subsequent weekly total disability payments by the amount of any governmental disability benefits the employee receives. Minn. Stat. § 176.101, subd. 4. Any reduction in workers' compensation total disability benefits due to the offset is replaced by the payment of supplementary benefits, for which the employer is reimbursed by the special compensation fund. Minn. Stat. § 176.132, subd. 3.

Before the McClish decision, it was unnecessary to distinguish benefits paid for temporary total disability from those paid for permanent total disability. In Souden v. Hopkins Motor Sales, Inc., 289 Minn. 138, 182 N.W. 2d 668 (1971), the supreme court concluded that payments for temporary total disability could be applied toward the $25,000 offset threshold of Minn. Stat. § 176.101, subd. 4. As a result, the distinction between temporary total disability and permanent total disability had little practical effect on the reimbursement of supplementary benefits.

Under the McClish decision, however, a "finding" of permanent total disability must be made before the offset provision of Minn. Stat. § 176.101, subd. 4 can be activated. After an employee's total disability is found to be permanent, all total disability benefits, including those paid for temporary total disability, are includible toward the $25,000 offset threshold. The finding of permanent total disability thus triggers the payment and subsequent reimbursement of supplementary benefits by the special compensation fund.

These rules prescribe the procedure for applying for an administrative finding of permanent total disability. The special compensation fund reimburses approximately 2000 requests for supplementary benefits annually. Most of the cases involve permanent total disability, despite the absence of a formal determination of permanency. Invariably requiring a judicial finding of permanent total disability by the commissioner would impose considerable economic and administrative costs on employers without conferring any discernible benefit on employees. Instead, these rules are intended to minimize the administrative burdens on employers who seek reimbursement of supplementary benefits, while ensuring the uninterrupted flow of the benefits to which employees are entitled by law.

8 MCAR § 1.9001 Definitions. The effective date of the finding is defined as the time from which the employer included or will include the offset in the calculation of the employee's total disability benefits. The definition of government disability benefits includes old age and survivor insurance benefits as specified in Minn. Stat. § 176.101. This provision also encompasses disability benefits paid by the federal social security administration. See Gauthier v. McCourtney Plastics, Inc., 34 W.C.D. 8 (1981). Benefits paid by police relief associations are also included. See Kramer v. City of St. Paul, 33 W.C.D. 425 (1981).

The definition of total disability benefits comports with the statutory application of the offset to "weekly compensation." Minn. Stat. § 176.101, subd. 4. The method of payment of workers' compensation benefits to the employee is dispositive of their characterization as "weekly compensation." Benefits that are "paid or payable weekly" thus constitute weekly compensation. See Gauthier v. McCourtney Plastics, Inc., 34 W.C.D. 8 (1981). The method of payment is fixed at the onset of the disbursement of economic recovery and impairment benefits in order to facilitate their classification, while furthering the statute's purpose of encouraging the employment of impaired persons. Impairment compensation is sometimes substituted for economic recovery compensation. Laws of Minnesota 1983, Chapter 290, section 48. Because the legislature intended the benefits to be interchangeable in those cases, the method of payment is also assumed to be interchangeable. Consequently, impairment compensation, like economic recovery compensation, is deemed to be paid or payable weekly.

8 MCAR § 1.9002 Authority and Purpose. The commissioner's authority to promulgate these rules appears in the directive to prescribe procedures for the administration of supplementary benefits at Minn. Stat. § 176.132, subd. 4; in the plenary rulemaking authority of Minnesota Laws of 1983, chapter 290, section 165; and in the workers' compensation rulemaking authority of Minn. Stat. § 175.17 (2).

8 MCAR § 1.9003 Application. This rule delimits the scope of cases for which a finding of permanent total disability is available. In fashioning the parameters of the rules, two objectives were paramount. First, the rules are intended to make an administrative finding available only where it is warranted in the particular case. The offset provision of Minn. Stat. § 176.101, subd. 4, is activated when the conditions of Sections A, B, C, and H are satisfied. Accordingly, administrative consideration is limited to those applicants who meet the statutory preconditions for the offset so that findings are not rendered prematurely. In Section H, no attempt is made to define "permanent", as permanency is presently subject to case law development. See, e.g., Fredenburg v. Control Data Corp., 311 N.W. 2d 860 (Minn. 1981), and cases cited therein. A precise definition is unnecessary because cases in which permanency may be contested are expressly excluded from their scope.

The second purpose underlying the rules is to preclude administrative screening of applications if the determination of permanency is more appropriately made at the judicial than at the administrative level. A judicial determination is preferable where any prior judicial ruling concerning an employee's permanent total disability would supersede an administrative finding. Since an administrative finding in this instance would thus be superfluous, it is prohibited by Sections D and E.

A full judicial hearing is also desirable when the question of an employee's permanent total disability may be disputed. The provision in Section A relating to benefit interruptions requires judicial consideration where a protracted benefit interruption may precipitate a challenge to a finding of permanent total disability. In addition, a judicial determination is essential where a finding of permanency would result in diminished benefits and a subsequent challenge by the employee. Section F thus requires a judicial finding in these cases. Section G excludes from administrative consideration cases in which an employer or insurer seeks to recapture excessive payments to employees through the remedy provided by Minn. Stat. § 176.179. The reimbursement of overpayments to the employer or insurer may cause a decrease in benefits to the employee. This potential decrease entitles the employee to judicial consideration of the application for a finding.

Immediately channeling the cases described in sections A and D-G toward the judicial system will provide the opportunity for a full hearing in the few instances where permanency may be contested. With most cases resolved through routine administrative procedures, however, the burden which these rules place on the judicial branch of the workers' compensation system is expected to be minimal.

8 MCAR § 1.9004 Procedure. The procedural requirements for submitting the application to the commissioner are intended to expedite the administrative handling of applications. Sections B.1 - B.5 identify the department's file on the employee.

Under B.6, the administrative finding governs the payment of benefits from the time that the employer applied the offset provision in Minn. Stat. § 176.101, subd. 4. This ensures that employers and insurers are fully reimbursed, as required by Minn. Stat. § 176.132, subd. 3, for their payments of supplementary benefits to an employee who is found to be permanently totally disabled.

The date of eligibility for government disability benefits at paragraph B.7 is the date on which another administrative agency (usually the social security administration) finds the employee to be permanently totally disabled. This information is necessary to enable the commissioner to compute the proper supplementary benefit reimbursement rate. The name of the medical provider is required at paragraph B.8 so that the commissioner may identify the medical reports containing the necessary evidence of the employee's permanency. At paragraph B.9, the status of the rehabilitation plan indicates whether efforts are being made to return the employee to the job market. This is relevant because employability is integral to a determination of permanency.

Under Section C, the employer is permitted to apply for a finding shortly before its effective date in order to preserve an uninterrupted stream of benefits to the employee while the application is screened.

Sections D and E require the filing of only those reports which have not been previously filed with the department. The attachment of reports is not routinely required because they should already be in the employee's file at the department.

The benefits analysis required by section F illustrates for the employee the expected effect of a finding of permanent total disability on the amount of weekly benefits. This analysis permits the employee to verify that benefits will not be reduced by a finding of permanent total disability, and to challenge a finding which does reduce benefits. Where a finding of permanent total disability may jeopardize

employee benefits, the finding of permanency should be judicial and not administrative. The inclusion of a benefits analysis thus defuses due process challenges to the finding.

In Section G, the party filing the application must be identified to facilitate the handling of the file. Section H requires the mailing of the application to the employee and to the employee's attorney. This notifies the employee of the proposed change and permits the employee to challenge it if desired.

8 MCAR § 1.9005 Notice of decision. The 30-day waiting period is intended to give the commissioner an opportunity to review the file and the employee an opportunity to object. The ultimate result of acceptance by the commissioner will be a reimbursement check to the employer or insurer for those supplementary benefits which replaced the total disability benefits that were reduced by the offset. Because the transaction is routine, no other notice from the commissioner is warranted. This simplified notice mechanism also reduces the administrative burdens on all parties.

8 MCAR § 1.9006 Disapproval by commissioner. The grounds for disapproval specified in this rule are designed to expedite the handling of routine cases while preserving close scrutiny for controversial cases. Section A requires disapproval for errors or omissions in information or noncompliance with the requirements of the rules. Medical reports, and other documents which are necessary to justify a finding of permanent total disability, will be rejected if they are incomplete or inaccurate. However, since these deficiencies do not warrant judicial scrutiny of applications, employers or insurers may resubmit applications for administrative processing after the errors or omissions are rectified.

Rehabilitation is a basis for disapproval in section B for two reasons. First, employability, which is generally evaluated by rehabilitation specialists, is a significant factor in determinations of permanency. See, e.g., Scott v. Southview Chevrolet Co., 267 N.W. 2d 185 (Minn. 1978). Second, rehabilitation is required for all injuries occurring after October 1, 1979, the effective date of Minn. Stat. § 176.102. (1980). Employers who have not provided rehabilitation for these injuries are thus in violation of the law.

Section C provides the necessary counterbalance to the self-interested judgment of the employer or insurer made at 8 MCAR § 1.9003 H. This will permit the channeling of contestable claims to formal dispute resolution procedures.

8 MCAR § 1.9007 Effect of finding. This rule is necessary to protect the due process rights of the parties. It recognizes that any party has recourse to a full hearing with the production of all relevant evidence even after an administrative finding is made. However, a party does not compromise its position in a possible later hearing by first pursuing an administrative finding. Consequently, a party will likely proceed administratively in most instances.

8 MCAR § 1.9008 Revision of finding. Under the Souden and McClish decisions, a finding of permanency results in the recharacterization of temporary total disability benefits as permanent total disability benefits. A judicial finding may be subsequently overturned or vacated where, for example, the employee's medical condition unexpectedly changes or opportunities in the labor market increase. See Petter v.

K. W. McKee, Inc., 270 Minn. 302, 133 N.W. 2d 638 (1965). Similarly, an administrative finding should be subject to revision if it is no longer justified. To prevent the reconsideration by the commissioner of his own administrative findings, however, revisions must be made judicially.

8 MCAR § 1.9009 Severability. This section preserves the legal viability of the remaining rules in the event that a portion of the rules is found to lack legal force and effect.

8 MCAR § 1.9010 Effective date. This section activates these rules in the manner required by Minn. Stat. § 14.27.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of Rules of the State Department of Labor and Industry, Governing Reimbursement of Supplementary Benefits

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Leslie M. Altman, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Leslie M. Altman

Special Assistant Attorney General

Dated: January 12, 1984