

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1439 — Docket No. 05.0009, 0488

DATE RECEIVED 1/13/88 — ADOPTED W/O HEARING X

REVIEW DATE 1/22/88 — EMERGENCY RULE

DUE DATE 1/27/88

REVISOR APPROVED

APPROVED 1.22.88 — REVISOR DISAPPROVED

DISAPPROVED — FIELD W/SEC.STATE

WITHDRAWN — RETURNED TO AGENCY

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion

12.20.85 Date published in State Register

1 3 nonresubmitted Comments

~~Petition for Adoption of a Rule~~

✓ Board's Authorizing Resolution

✓ Proposed rule

✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule

115-B.34, sub 1(d) Statutory Authority - OK

says no impact Small Business Statement

says no impact Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness

Small Business Statement

Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

10.29.87 Date (30)/25 days before adoption

✓ Publication in State Register

11-2-87 Date (30)/25 days before adoption

✓ Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting

1-11-88 Date

✓ Written requests, submissions or comments

Declaration of attorney

Steve Shakman Name of SAAG representing agency

~~N/A~~ Notice of Submission to Attorney General

Affidavit of Mailing Notice to Attorney General

25 rqsted hearing
2 withdrew
23 rqsted hearing

ATTORNEY GENERAL

January 27, 1988

VIRGINIA L. REINER
Executive Director
Hazardous Substance Injury Board

MARTHA J. CASSERLY
Special Assistant
Attorney General

6-6839

In the Matter of the Adopted Rule Relating to
Attorney Fees for Property Damage Claims

The above-referenced rule has been approved as to its legality by the Attorney General on January 22, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must establish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:nah
Enclosures

cc: Maryanne Hruby
Duane Harves

Hazardous Substance Injury Compensation Board

Adopted Permanent Rules Relating to Attorney Fees for Property Damage Claims

Rules as Adopted

7190.0020 ATTORNEY FEES.

Subpart 1. **Entitlement.** An attorney is entitled to a fee for representing a claimant in a property damage claim before the board if the claimant accepts an award from the board. Representation includes preparation involved in filing an application, monitoring the claim progress, communication with the board and appearances before the board.

Subp. 2. **Maximum fee.** The fee must not exceed 15 percent of the amount the board awards the claimant for the property damage.

Subp. 3. **Variance not binding.** An agreement between the attorney and client that attempts to vary or change the provisions of this part is not binding upon the attorney and the client.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 25 1988
Joan Anderson Growe
Secretary of State
8:29AM

APPROVED AS TO FORM AND LEGALITY
January 22 1988
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Carsenby
SPECIAL ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF THE
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD
AUTHORIZING RESOLUTION

I, Byron E. Starns, do hereby certify that I am a member and the chairperson of the Hazardous Substance Injury Compensation Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Hazardous Substance Injury Compensation Board duly and properly called and held on the 12th day of October, 1987, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that Virginia L. Reiner, the executive director of the Hazardous Substance Injury Compensation Board, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to Adopt a rule without a public hearing governing death benefits to all persons who have registered their names with the Board for that purpose and publish the Notice and rule in the State Register, and to perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of October, 1987.

Byron E. Starns

BYRON E. STARNS
Chairperson

Board Member

Hazardous Substance Injury Compensation Board

Proposed Permanent Rules Relating to Death Benefits

Rules as Proposed (all new material)

DEATH BENEFITS

7190.1000 DEFINITIONS.

Subpart 1. **Board.** "Board" means the Hazardous Substance Injury Compensation Board established by Minnesota Statutes, section 115B.26.

Subp. 2. **Claimant.** "Claimant" means a person who suffered an eligible personal injury as defined in Minnesota Statutes, section 115B.30, subdivision 1.

Subp. 3. **Value of household labor.** "Value of household labor" means the value determined by parts 7190.0100 to 7190.0108.

Subp. 4. **Wage.** "Wage" means the average gross weekly wage received by the claimant for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. If the claimant was self-employed, wage means the income of the claimant from the business for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. The claimant's dependents may request the board use the date of the exposure to the hazardous substance to calculate the wage, if the dependents document the date of exposure.

7190.1005 PAYMENT OF CLAIMS WHEN CLAIMANT DIES.

Subpart 1. **Death occurring during investigation.** If a claimant dies from an eligible injury during the investigation of the claim, the board shall amend the claim so that it seeks compensation for the claimant's estate for medical expenses and death benefits for the claimant's dependents. If the death of the claimant during the investigation is unrelated to the eligible injury, the board shall amend the claim to compensate

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the claimant's dependents for eligible losses due to the injury up to the date of death.

Subp. 2. **Death occurring during payout.** If a claimant who is receiving compensation from the board dies, the board shall pay the remaining compensation due the claimant to the dependents in the order of the subparts in part 7190.1015. If there are no dependents, the board shall pay the remaining compensation to the claimant's estate.

Subp. 3. **Death after award.** If a claimant has received compensation from the board for future loss of wages and household labor due to the injury that caused the death, the board shall not accept a claim for death benefits.

7190.1010 PRIORITY FOR DEATH BENEFITS.

The board shall pay death benefits to eligible dependents of a claimant in the following order:

A. allowances to presumed dependents;

B. allowances to wholly supported established dependents in the order in part 7190.1015; and

C. allowances to partially supported established dependents in the order in part 7190.1015.

7190.1015 ELIGIBLE DEPENDENTS.

Supbart 1. **Presumed dependents.** The board shall presume that the following persons are wholly supported dependents of the claimant:

A. the spouse, unless it is shown that the spouse and claimant were voluntarily living apart at the time of the injury or death;

B. a child under 18 years old;

C. a child under 25 years old if regularly attending an accredited educational institution on a full-time basis; and

D. a child 18 years old or older if physically or mentally incapacitated from earning.

Subp. 2. **Established dependents.** The board shall consider, in the following order, these persons as dependents of the claimant if the persons establish that the claimant

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contributed regularly to their support:

A. a child 18 years old or older;

B. a parent;

C. a grandparent;

D. a grandchild;

E. a sibling; and

F. a parent-in-law.

7190.1020 FACTORS GOVERNING AWARD OF DEATH BENEFITS.

Subpart 1. **Limitations.** The board shall award death benefits to presumed and established dependents until two-thirds of the claimant's wage is allocated. The board shall adjust any award of death benefits according to the limitations of Minnesota Statutes, sections 115B.34, subdivision 1, clause (d) and 115B.36. The benefit paid to established dependents shall not exceed the actual contribution by the claimant to their support.

Subp. 2. **Initiation.** The board shall calculate death benefits from the onset of disability leading to the death of the claimant or from the date of death, taking into consideration when the claimant's financial capability to provide reasonable support for the dependents diminished.

Subp. 3. **Determination of dependents.** The board shall determine the eligibility of a dependent based on the facts existing on the date of the board's decision.

Subp. 4. **Lump sum payment.** When the board chooses to pay death benefits in a lump sum, it shall discount benefits awarded for future years to current value according to Minnesota Statutes, section 604.07, subdivision 4, clauses (1) and (2).

Subp. 5. **Installment payment.** When the board chooses to pay death benefits in installments, it shall adjust future payments by the cost of living rate for the current year according to Minnesota Statutes, section 604.07, subdivision 4, clause (2).

Subp. 6. **Collateral sources.** In calculating the total award of death benefits, the board shall subtract from the award

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losses recouped by the dependents from any government survivor program.

7190.1025 ELIGIBLE ALLOWANCES FOR PRESUMED DEPENDENTS.

Subpart 1. **Spouse, no dependent children.** If the claimant leaves a spouse and no dependent children, the board shall pay to the spouse for ten years one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 2. **Spouse, one dependent child.** If the claimant leaves a spouse and one dependent child, the board shall pay to the spouse for ten years, for the benefit of the spouse and child, three-fifths of the claimant's wage and three-fifths the value of the claimant's household labor. If the child is not dependent for ten years, the board shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the child is no longer dependent. If the child is dependent for more than ten years, the board shall pay to the spouse for the child one-half of the claimant's wage and one-half the value of the claimant's household labor until the child is no longer dependent.

Subp. 3. **Spouse, two or more dependent children.** If the claimant leaves a spouse and two or more dependent children, the board shall pay to the spouse for ten years, for the benefit of the spouse and children, two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor. If no child remains dependent for ten years, the board shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the last child is no longer dependent. If a child is dependent for more than ten years, the board shall pay to the spouse, for the benefit of the child, one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 4. **Dependent children, no spouse.** If the claimant leaves a dependent child and no spouse, the board shall pay to the guardian of the child 55 percent of the claimant's wage and

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by Revisor _____

55 percent of the value of the claimant's household labor; and for two or more children, the board shall pay to the guardian of the children two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor until the last child is no longer dependent.

7190.1026 ELIGIBLE ALLOWANCES FOR ESTABLISHED DEPENDENTS.

Subpart 1. **Parents.** If the claimant leaves both parents wholly dependent on the deceased, the board shall pay to both parents jointly for ten years, 45 percent of the claimant's wage. If only one parent survives, the board shall pay to that parent for ten years 35 percent of the claimant's wage. If the claimant lived in the same household as both parents immediately before death, the board shall pay for ten years, 45 percent of the value of the claimant's household labor to both parents jointly. If the claimant lived in the household of one parent immediately before death, the board shall pay 35 percent of the value of the claimant's household labor to that parent for ten years.

Subp. 2. **Other established dependents.** If the claimant leaves a child, grandparent, grandchild, sibling, or parent-in-law wholly dependent, the board shall pay to that dependent for ten years, 30 percent of the claimant's wage. If the claimant leaves more than one of them, the board shall pay 35 percent of the claimant's wage divided among them in equal shares.

Subp. 3. **Partial support.** If an established dependent regularly received only partial financial support from the claimant, the board shall adjust the eligible allowance in subparts 5 and 6 according to the following formula:

$b = A \times c/w$

where: b is the benefit to be awarded;
A is the eligible allowance to the dependent;
c is the amount of weekly contribution to the dependent by the claimant; and
w is the wage of the claimant.

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Subp. 4. **Cessation of compensation.** The board shall cease compensation upon the death of any dependent or upon marriage of any dependent other than the spouse. The cessation of compensation to any dependent does not affect the compensation paid to any other dependent.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Death Benefits

AGENCY: Hazardous Substance Injury Compensation Board

MINNESOTA RULES: Chapter 7190

The attached rules are approved for publication
in the State Register

David S. Niss
Assistant Revisor

CERTIFICATE OF THE
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD
RESOLUTION ADOPTING THE RULE

I, Byron E. Starns, do hereby certify that I am a member and the chairperson of the Hazardous Substance Injury Compensation Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the board, duly and properly called and held on the 11th day of January, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that the rule relating to death benefits is approved and adopted, pursuant to authority vested in the Hazardous Substance Injury Compensation Board by Minnesota Statutes, section 115B.28. Virginia L. Reiner, the executive director of the board, is authorized to sign the findings of fact, conclusions and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general when such modification does not raise significant new legal issues and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of January, 1988.

Byron E. Starns

BYRON E. STARNS
Chairperson

Board Member

Hazardous Substance Injury Compensation Board

Proposed Permanent Rules Relating to Death Benefits

Notice of Proposed Adoption of a Rule Without a Public Hearing

Notice is hereby given that the State Hazardous Substance Injury Compensation Board proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes Section 115B.34, subdivision 1(d) (1986).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Virginia L. Reiner
Hazardous Substance Injury Compensation Board
2700 University Avenue West, #115
St. Paul, Minnesota 55114
612/642-0455

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request by writing or telephoning the Board's office at the address or telephone number listed above.

Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, have an impact on agricultural land or an impact on small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General.

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 adopted rule, must submit the written request to the executive director at the address listed above.

Virginia L. Reiner
Executive Director
Hazardous Substance Injury Compensation Board

STATE OF MINNESOTA
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

In the Matter of the proposed permanent rules relating to death benefits

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Hazardous Substance Injury Compensation Board (Board) was created by the 1985 Legislature (Laws 1985, 1st special session, chapter 8) as part of revisions to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B. These revisions were codified as Minnesota Statutes Sections 115B.25-115B.37. The Board was established as a new state agency to administer a $2 million Hazardous Substance Injury Compensation Fund (Fund). The Board's primary responsibility is to investigate claims of certain types of property damage or personal injury caused by the release of hazardous substances into the environment, and to compensate eligible persons from the Fund for certain types of losses.

One of the losses that is compensable from the fund is death benefits to dependents of a claimant who has suffered an eligible personal injury.

To seek opinion on what these benefits might encompass, the Board published a Notice of Solicitation of Outside Opinion Regarding Proposed Rules on compensable Death Benefits in the State Register on January 6, 1986 (10 S.R. 1509). The Board received no comment letters on death benefits in response to its notice.

The proposed rule establishes the priority for the payment of death benefits, the dependents eligible to receive death benefits, the amount of benefit each dependent is entitled to receive and factors which the board must consider in the award of death benefits.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt a rule relating to death benefits is set forth in Minnesota Statutes Section 115B.34, which provides in relevant part:

Losses compensable by the fund for personal injury are limited to:

...(d) death benefits to dependents which the board shall define by rule subject to the following conditions:

(1) the rule adopted by the board must establish a schedule of benefits similar to that established by section 176.111 and must not provide for the payment of benefits to dependents other than those dependents defined in section 176.111;

(2) the total benefits paid to all dependents of a claimant must not exceed $2,000 per month;

(3) benefits paid to a spouse and all dependents other than children must not continue for a period longer than ten years;

(4) payment of benefits is subject to the limitations of section 115B.36.

Additionally, the Board's statutory authority to adopt "rules governing practice and procedure before the board" is set forth in Minnesota Statutes, Section 115B.28, subdivision 1(1).

III. STATEMENT OF NEED

The need to adopt the proposed Minnesota Rules Parts 7190.1000 to 7190.1026 arises from the need of the dependents to know how the Board determines what benefits are payable to them and what dependents may receive them. The Board and staff need to clarify by rule the process of determining benefits so that fairness and consistency can be maintained among awards and the award of benefits can proceed quickly and efficiently regardless of changes in the Board and staff.

IV. STATEMENT OF REASONABLENESS.

The proposed rule is reasonable because while it closely parallels death benefits described in Minnesota Statutes, Section 176.111, it adapts the workers' compensation structure to meet the specific situations and responsibilities encompassed by the Board. Although similar to workers' compensation in defining eligible dependents and allowances, the rule reflects the Board's unique responsibility to compensate for the value of household labor, and to address the problems likely to arise because the Board's claimants have chronic or progressive diseases, illnesses

or disabilities such as cancer and nervous system disorders. Such diseases are often fatal, frequently disabling their victims for some time prior to death.

Part 7190.1000 Definitions.

The proposed rule reasonably sets forth four definitions to both clarify and shorten the rule. The definitions of "board", "claimant" and "value of household labor" are consistent with existing statutory or rule language. The definition of wage is reasonable because it assures that the Board will choose a point in time from which to calculate wage benefits that is most beneficial to the claimant's dependents. Because claimants likely possess health conditions that deteriorate over a period of time, a claimant's ability to be employed at certain jobs may diminish over time. By requiring the Board to choose a date which would be least likely to reflect this diminished earning capacity, the claimant is not penalized if the disease caused by the hazardous substance results in an inability to work or the need to work in a different capacity. While the Board may be able to determine when the hazardous substances were discovered in the environment, determining the date the release began usually is impossible. However, where it can be done, and where it may benefit the dependents, the rule reasonably also allows this option.

Part 7190.1005 Payment of Claims When a Claimant Dies.

Minnesota Statutes, Section 115B.32, subd. 3 describes a situation where the claimant's death results in a claim for death benefits.

> In any case in which death is claimed as a compensable injury, the claim may be brought on behalf of the claimant by the claimant's estate for compensable medical expenses and by the claimant's trustee for death benefits for the claimant's dependents as defined in section 176.111.

However, in practice this situation is likely not the only one the Board will deal with involving the death of a claimant and raising the question of eligibility for death benefits. This part of the proposed rules describes other situations which involve the death of a claimant and establishes the Board's practice and procedure for addressing the issues raised by the claimant's death, including when the Board will consider death benefits and when it will not. It is reasonable to address this in rule so that dependents are aware of the Board's practice and consistency is maintained in the handling of these situations despite changes in Board members and staff.

Subpart 1 clarifies that the death of a claimant from an eligible injury during the Board's investigation converts the claim into a death claim as described in Minnesota Statutes, Section 115B.32, subd. 3. If the death is not related to the eligible injury, e.g. an accidental death, the claim investigation continues but any award is to dependents and losses are calculated only up to the date of death.

The continuance of the claim investigation after the death of a claimant is reasonable because it is analogous to the situation described in Minnesota Statutes, Section 573.02, subd. 2.

> When injury is caused to a person by the wrongful act or omission of any person or corporation and the person thereafter dies from a cause unrelated to those injuries, the trustee...may maintain an action for special damages arising out of such injury if the decedent might have maintained an action therefor had the decedent lived.

The Board's administrative process to compensate for personal injuries caused by releases of hazardous substances from a facility into the environment is an alternative to a court action sounding in tort. Tort law also provides an analogy for the reasonableness of the Board rule. Section 926 of the Second Restatement of Torts provides for the survival of Tort Actions:

> Under statutes providing for the survival or revival or tort actions, the damages for a tort not involving death for which the tortfeasor is responsible are not affected by the death of either party before or during the trial, except that:
>
> (a) the death of the injured person limits recovery for damages for loss or impairment of earning capacity, emotional distress and all other harms, to harms suffered before the death...

Subpart 3 allows no further claims on behalf of a claimant if the Board has already compensated the claimant for future losses. This is reasonable because Minnesota Statutes, Section 115B.31, subdivision 1 states, "A person who has filed a claim with the board may not file another claim with the board for the same eligible injury or damage..." Death resulting from a terminal disease is the same injury.

Additionally, since the Board compensates for wages and household labor losses over the life expectancy of the claimant, the claimant's recovery of these losses from the Board provides the source of support to the claimant's dependents. To allow a claim for death benefits after a claimant had recovered future losses from the Board would be to permit a double recovery.

Part 7190.1010 Priority for Death Benefits.

Part 3 of the proposed rule clarifies the order in which dependents shall receive benefits: the spouse and children first, wholly supported dependents before partially supported dependents. Since the Board is limited in the amount of compensation it can award, and the decedent may have supported more dependents than the Board can provide support to with the award, it is reasonable to establish a priority for distribution of the Board's award. The priority as listed is reasonable because it is based on the impact loss of support from the claimant would likely have on dependents, with those most likely to be affected receiving compensation ahead of those where the loss may have a lesser impact on their support.

Part 7190.1015 Eligible Dependents.

Minnesota Statutes, Sections 115B.32, subd. 3, and 115B.34, subd. 1(d)(1) both require the Board to consider eligible dependents to be those defined in Minnesota Statutes, Section

176.111. Part 7190.1015 of the proposed rule is reasonable because it does define as eligible the same dependents as the workers' compensation law.

Part 7190.1020 Factors Governing Award of Death Benefits

This part of the proposed rule lists six factors which the Board must consider in calculating the award of benefits.

Subpart 1 lists three limits the benefits are subject to:

1) the Board will award death benefits until two-thirds the claimant's wage is allocated. This is reasonable because the maximum award the claimant could receive for lost wages is two-thirds the lost wage, and the dependents should not receive more than the claimant would have received had the claimant lived. Additionally, Minnesota Statutes, Section 176.111, subd. 20 also limits dependents to two-thirds of the decedent's wage.

2) the award must be adjusted to meet the limits set in the law.

3) The benefit shall not exceed the actual contribution received from the claimant. This is reasonable because the Board's compensation scheme is designed only to reimburse for actual losses.

Subpart 2 of the proposed rule clarifies the date from which death benefits are calculated, giving the Board the choice of the date of death or the date of disability, using the test of diminished financial capability to decide. To allow the Board a choice is reasonable because of the likelihood that claimants

with chronic or progressive diseases will be unable to work for a significant period of time prior to death. A loss of wages due to the inability to work will impact the dependents financially. However, if sick benefits or disability benefits received by the claimant substitute for the wage loss, the financial support of the dependents may not be affected until the date of death.

Subpart 3 of the proposed rule clarifies when the Board shall determine who are eligible dependents. It is reasonable to set this date at the date of the decision because those dependents that remain dependent on that date have the greatest need for the Board's award. To compensate as of the date of injury or the date of death may result in paying compensation to persons who were dependent at that time but are no longer, i.e. they married, finished school, turned 18, etc.

When the Board reaches a final decision to award compensation, it can choose the form of payment, lump sum or installment. Either form requires adjustment to prevent over or under compensating the claimant. Subparts 4 and 5 of the proposed rule explain how the Board will adjust the award. In subpart 4, the proposed rule provides that the same discount rate stipulated in the 1986 Minnesota Tort Reform Act be used by the Board. This is reasonable because it is consistent with tort damages treatment, and the calculation of household labor value in the Board's rules. It is also reasonable because the rates are readily available and updated yearly.

Subpart 5 of the proposed rule provides that the award for future years will be adjusted by the cost of living factor as provided in the Tort Reform Act. To require this adjustment is reasonable to prevent undercompensation for the losses, and to maintain consistency with the Board's household labor rules.

Subpart 6 of the proposed rule requires the Board to subtract from its award losses recouped by dependents from any government survivor program. This is reasonable because Minnesota Statutes, Section 176.111, subd. 21 allows an offset for government survivor benefits. Minnesota States, Section 115B.36 requires that the Board "determine the net uncompensated loss payable to the claimant by computing the total amount of compensable losses payable to the claimant and subtracting the total amount of any compensation received by the claimant for the same injury or damage from other sources including, but not limited to, all forms of insurance and social security..." Since the claimant's award is subject to these reductions, it is reasonable to also allow reductions in the award to dependents. It is reasonable to reduce death benefits as provided by other government programs to prevent double recovery and a profit at government expense. It is reasonable to limit the reduction to government program payments to dependents since life insurance, which would be the most common insurance benefit received by

dependents, is not a consideration in awarding payment in a wrongful death action, workers' compensation or crime victims compensation.

Parts 7190.1025 and 7190.1026 Eligible Allowances.

Parts 7190.1025 and 7190.1026 of the proposed rule lists the allowances provided to all dependents. The allowances provided are reasonable because they are the same as those allowed under Minnesota Statutes, Section 176.111 with two exceptions:

1) the payments end to the spouse after 10 years regardless of remaining dependent children. This is reasonable because it is required by Minn. Stat., Section 115B.34, subd. 1(d)(3).

2) the allowances include payment for household labor in addition to wages if the claimant lived in the same household, i.e. with a spouse and/or children or with parents. This is reasonable because to exclude the value of household labor would be to deny the dependents compensation that was available to the claimant. If the claimant was not employed outside the home, then the dependents could receive no compensation from the Board for the claimant's death while suffering significant economic losses to replace the claimant's services. Thus it is reasonable to provide an allowance for the value of household labor that is consistent with the wage loss allowance to assure that the total loss of support for the dependents is recognized and addressed.

IV. CONCLUSION

Based on the foregoing, the proposed rules for death benefits are both needed and reasonable.

Oct 19, 1987
Date

Virginia L. Reiner
Virginia L. Reiner
Executive Director

In the Matter of the Proposed Adoption of the Rule of the State Hazardous Substance Injury Compensation Board Relating to Death Benefits

AFFIDAVIT OF MAILING THE NOTICE OF PROPOSED ADOPTION OF A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA
COUNTY OF RAMSEY

Janice Wiehle, being first duly sworn deposes and says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Hazardous Substance Injury Compensation Board rulemaking mailing list, is accurate, complete, and current as of this 29th day of October, 1987.

That on the 29th day of October, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Proposed Adoption of a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Janice Wiehle
Signature

Subscribed and sworn to before me
this 29th day of October, 1987.

Arlayne Nelson
(Notary Public)

ARLAYNE J. NELSON
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES APRIL 13, 1993

Hazardous Substance Injury Compensation Board

Proposed Permanent Rules Relating to Death Benefits

Notice of Proposed Adoption of a Rule Without a Public Hearing

Notice is hereby given that the State Hazardous Substance Injury Compensation Board proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes Section 115B.34, subdivision 1(d) (1986).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Virginia L. Reiner

Hazardous Substance Injury Compensation Board

2700 University Avenue West, #115

St. Paul, Minnesota 55114

612/642-0455

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request by writing or telephoning the Board's office at the address or telephone number listed above.

Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, have an impact on agricultural land or an impact on small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General.

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 adopted rule, must submit the written request to the executive director at the address listed above.

Virginia L. Reiner
Executive Director
Hazardous Substance Injury Compensation Board

Hazardous Substance Injury Compensation Board

Proposed Permanent Rules Relating to Death Benefits

Rules as Proposed (all new material)

DEATH BENEFITS

7190.1000 DEFINITIONS.

Subpart 1. **Board.** "Board" means the Hazardous Substance Injury Compensation Board established by Minnesota Statutes, section 115B.26.

Subp. 2. **Claimant.** "Claimant" means a person who suffered an eligible personal injury as defined in Minnesota Statutes, section 115B.30, subdivision 1.

Subp. 3. **Value of household labor.** "Value of household labor" means the value determined by parts 7190.0100 to 7190.0108.

Subp. 4. **Wage.** "Wage" means the average gross weekly wage received by the claimant for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. If the claimant was self-employed, wage means the income of the claimant from the business for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. The claimant's dependents may request the board use the date of the exposure to the hazardous substance to calculate the wage, if the dependents document the date of exposure.

7190.1005 PAYMENT OF CLAIMS WHEN CLAIMANT DIES.

Subpart 1. **Death occurring during investigation.** If a claimant dies from an eligible injury during the investigation of the claim, the board shall amend the claim so that it seeks compensation for the claimant's estate for medical expenses and death benefits for the claimant's dependents. If the death of the claimant during the investigation is unrelated to the eligible injury, the board shall amend the claim to compensate

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the claimant's dependents for eligible losses due to the injury up to the date of death.

Subp. 2. **Death occurring during payout.** If a claimant who is receiving compensation from the board dies, the board shall pay the remaining compensation due the claimant to the dependents in the order of the subparts in part 7190.1015. If there are no dependents, the board shall pay the remaining compensation to the claimant's estate.

Subp. 3. **Death after award.** If a claimant has received compensation from the board for future loss of wages and household labor due to the injury that caused the death, the board shall not accept a claim for death benefits.

7190.1010 PRIORITY FOR DEATH BENEFITS.

The board shall pay death benefits to eligible dependents of a claimant in the following order:

A. allowances to presumed dependents;

B. allowances to wholly supported established dependents in the order in part 7190.1015; and

C. allowances to partially supported established dependents in the order in part 7190.1015.

7190.1015 ELIGIBLE DEPENDENTS.

Supbart 1. **Presumed dependents.** The board shall presume that the following persons are wholly supported dependents of the claimant:

A. the spouse, unless it is shown that the spouse and claimant were voluntarily living apart at the time of the injury or death;

B. a child under 18 years old;

C. a child under 25 years old if regularly attending an accredited educational institution on a full-time basis; and

D. a child 18 years old or older if physically or mentally incapacitated from earning.

Subp. 2. **Established dependents.** The board shall consider, in the following order, these persons as dependents of the claimant if the persons establish that the claimant

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contributed regularly to their support:

A. a child 18 years old or older;

B. a parent;

C. a grandparent;

D. a grandchild;

E. a sibling; and

F. a parent-in-law.

7190.1020 FACTORS GOVERNING AWARD OF DEATH BENEFITS.

Subpart 1. **Limitations.** The board shall award death benefits to presumed and established dependents until two-thirds of the claimant's wage is allocated. The board shall adjust any award of death benefits according to the limitations of Minnesota Statutes, sections 115B.34, subdivision 1, clause (d) and 115B.36. The benefit paid to established dependents shall not exceed the actual contribution by the claimant to their support.

Subp. 2. **Initiation.** The board shall calculate death benefits from the onset of disability leading to the death of the claimant or from the date of death, taking into consideration when the claimant's financial capability to provide reasonable support for the dependents diminished.

Subp. 3. **Determination of dependents.** The board shall determine the eligibility of a dependent based on the facts existing on the date of the board's decision.

Subp. 4. **Lump sum payment.** When the board chooses to pay death benefits in a lump sum, it shall discount benefits awarded for future years to current value according to Minnesota Statutes, section 604.07, subdivision 4, clauses (1) and (2).

Subp. 5. **Installment payment.** When the board chooses to pay death benefits in installments, it shall adjust future payments by the cost of living rate for the current year according to Minnesota Statutes, section 604.07, subdivision 4, clause (2).

Subp. 6. **Collateral sources.** In calculating the total award of death benefits, the board shall subtract from the award

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losses recouped by the dependents from any government survivor program.

7190.1025 ELIGIBLE ALLOWANCES FOR PRESUMED DEPENDENTS.

Subpart 1. **Spouse, no dependent children.** If the claimant leaves a spouse and no dependent children, the board shall pay to the spouse for ten years one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 2. **Spouse, one dependent child.** If the claimant leaves a spouse and one dependent child, the board shall pay to the spouse for ten years, for the benefit of the spouse and child, three-fifths of the claimant's wage and three-fifths the value of the claimant's household labor. If the child is not dependent for ten years, the board shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the child is no longer dependent. If the child is dependent for more than ten years, the board shall pay to the spouse for the child one-half of the claimant's wage and one-half the value of the claimant's household labor until the child is no longer dependent.

Subp. 3. **Spouse, two or more dependent children.** If the claimant leaves a spouse and two or more dependent children, the board shall pay to the spouse for ten years, for the benefit of the spouse and children, two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor. If no child remains dependent for ten years, the board shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the last child is no longer dependent. If a child is dependent for more than ten years, the board shall pay to the spouse, for the benefit of the child, one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 4. **Dependent children, no spouse.** If the claimant leaves a dependent child and no spouse, the board shall pay to the guardian of the child 55 percent of the claimant's wage and

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by Revisor _____

55 percent of the value of the claimant's household labor; and for two or more children, the board shall pay to the guardian of the children two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor until the last child is no longer dependent.

7190.1026 ELIGIBLE ALLOWANCES FOR ESTABLISHED DEPENDENTS.

Subpart 1. **Parents.** If the claimant leaves both parents wholly dependent on the deceased, the board shall pay to both parents jointly for ten years, 45 percent of the claimant's wage. If only one parent survives, the board shall pay to that parent for ten years 35 percent of the claimant's wage. If the claimant lived in the same household as both parents immediately before death, the board shall pay for ten years, 45 percent of the value of the claimant's household labor to both parents jointly. If the claimant lived in the household of one parent immediately before death, the board shall pay 35 percent of the value of the claimant's household labor to that parent for ten years.

Subp. 2. **Other established dependents.** If the claimant leaves a child, grandparent, grandchild, sibling, or parent-in-law wholly dependent, the board shall pay to that dependent for ten years, 30 percent of the claimant's wage. If the claimant leaves more than one of them, the board shall pay 35 percent of the claimant's wage divided among them in equal shares.

Subp. 3. **Partial support.** If an established dependent regularly received only partial financial support from the claimant, the board shall adjust the eligible allowance in subparts 5 and 6 according to the following formula:

$b = A \times c/w$

where: b is the benefit to be awarded;
A is the eligible allowance to the dependent;
c is the amount of weekly contribution to the dependent by the claimant; and
w is the wage of the claimant.

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Subp. 4. **Cessation of compensation.** The board shall cease compensation upon the death of any dependent or upon marriage of any dependent other than the spouse. The cessation of compensation to any dependent does not affect the compensation paid to any other dependent.

Approved
by Revisor _____

RULES MAILING LIST

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MACI
300 Hanover Blvd.
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St. Paul, MN 55101

Ms. Carla M. Riehle
1277 Fremont Ave.
St. Paul, MN 55106

B. Dealing with banks:

(1) initial balance sheet on new firm;

(2) personal financial statements;

(3) two to three years previous federal tax returns; and

(4) market or business plan.

C. Financial terminology:

(1) revenue;

(2) costs;

(3) income and profits;

(4) fixed and variable costs;

(5) cash flow;

(6) company dollar;

(7) cash accounting; and

(8) accrual accounting.

D. Government regulations:

(1) IRS:

(a) reporting and deposits; and

(b) FICA; and

(2) Minnesota Department of Revenue: reporting and deposits.

Subp. 6. **Legal liabilities.** The legal liabilities course must be five hours and include in the area of external public liabilities:

(A) principles of agency;

(B) common liability areas:

(1) contract;

(2) negligence;

(3) fraud; and

(4) securities/investment advice; and

(C) insurance.

REPEALER. Minnesota Rules, part 2800.2175, is repealed.

Hazardous Substance Injury Compensation Board

Proposed Permanent Rules Relating to Death Benefits

Notice of Proposed Adoption of a Rule Without a Public Hearing

Notice is hereby given that the State Hazardous Substance Injury Compensation Board proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* Section 115B.34, subdivision 1(d) (1986).

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Comments or written requests for a public hearing must be submitted to:

Virginia L. Reiner
Hazardous Substance Injury Compensation Board
2700 University Avenue West, #115
St. Paul, Minnesota 55114
612/642-0455

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request by writing or telephoning the Board's office at the address or telephone number listed above.

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Virginia L. Reiner
Executive Director
Hazardous Substance Injury Compensation Board

Rules as Proposed (all new material)

DEATH BENEFITS

7190.1000 DEFINITIONS.

Subpart 1. **Board.** "Board" means the Hazardous Substance Injury Compensation Board established by Minnesota Statutes, section 115B.26.

Subp. 2. **Claimant.** "Claimant" means a person who suffered an eligible personal injury as defined in Minnesota Statutes, section 115B.30, subdivision 1.

Subp. 3. **Value of household labor.** "Value of household labor" means the value determined by parts 7190.0100 to 7190.0108.

Subp. 4. **Wage.** "Wage" means the average gross weekly wage received by the claimant for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. If the claimant was self-employed, wage means the income of the claimant from the business for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. The claimant's dependents may request the board use the date of the exposure to the hazardous substance to calculate the wage, if the dependents document the date of exposure.

7190.1005 PAYMENT OF CLAIMS WHEN CLAIMANT DIES.

Subpart 1. **Death occurring during investigation.** If a claimant dies from an eligible injury during the investigation of the claim, the board shall amend the claim so that it seeks compensation for the claimant's estate for medical expenses and death benefits for the claimant's dependents. If the death of the claimant during the investigation is unrelated to the eligible injury, the board shall amend the claim to compensate the claimant's dependents for eligible losses due to the injury up to the date of death.

Subp. 2. **Death occurring during payout.** If a claimant who is receiving compensation from the board dies, the board shall pay the remaining compensation due the claimant to the dependents in the order of the subparts in part 7190.1015. If there are no dependents, the board shall pay the remaining compensation to the claimant's estate.

Subp. 3. **Death after award.** If a claimant has received compensation from the board for future loss of wages and household labor due to the injury that caused the death, the board shall not accept a claim for death benefits.

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.

7190.1010 PRIORITY FOR DEATH BENEFITS.

The board shall pay death benefits to eligible dependents of a claimant in the following order:

A. allowances to presumed dependents;

B. allowances to wholly supported established dependents in the order in part 7190.1015; and

C. allowances to partially supported established dependents in the order in part 7190.1015.

7190.1015 ELIGIBLE DEPENDENTS.

Supbart 1. **Presumed dependents.** The board shall presume that the following persons are wholly supported dependents of the claimant:

A. the spouse, unless it is shown that the spouse and claimant were voluntarily living apart at the time of the injury or death;

B. a child under 18 years old;

C. a child under 25 years old if regularly attending an accredited educational institution on a full-time basis; and

D. a child 18 years old or older if physically or mentally incapacitated from earning.

Subp. 2. **Established dependents.** The board shall consider, in the following order, these persons as dependents of the claimant if the persons establish that the claimant contributed regularly to their support:

A. a child 18 years old or older;

B. a parent;

C. a grandparent;

D. a grandchild;

E. a sibling; and

F. a parent-in-law.

7190.1020 FACTORS GOVERNING AWARD OF DEATH BENEFITS.

Subpart 1. **Limitations.** The board shall award death benefits to presumed and established dependents until two-thirds of the claimant's wage is allocated. The board shall adjust any award of death benefits according to the limitations of Minnesota Statutes, sections 115B.34, subdivision 1, clause (d) and 115B.36. The benefit paid to established dependents shall not exceed the actual contribution by the claimant to their support.

Subp. 2. **Initiation.** The board shall calculate death benefits from the onset of disability leading to the death of the claimant or from the date of death, taking into consideration when the claimant's financial capability to provide reasonable support for the dependents diminished.

Subp. 3. **Determination of dependents.** The board shall determine the eligibility of a dependent based on the facts existing on the date of the board's decision.

Subp. 4. **Lump sum payment.** When the board chooses to pay death benefits in a lump sum, it shall discount benefits awarded for future years to current value according to Minnesota Statutes, section 604.07, subdivision 4, clauses (1) and (2).

Subp. 5. **Installment payment.** When the board chooses to pay death benefits in installments, it shall adjust future payments by the cost of living rate for the current year according to Minnesota Statutes, section 604.07, subdivision 4, clause (2).

Subp. 6. **Collateral sources.** In calculating the total award of death benefits, the board shall subtract from the award losses recouped by the dependents from any government survivor program.

7190.1025 ELIGIBLE ALLOWANCES FOR PRESUMED DEPENDENTS.

Subpart 1. **Spouse, no dependent children.** If the claimant leaves a spouse and no dependent children, the board shall pay to the spouse for ten years one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 2. **Spouse, one dependent child.** If the claimant leaves a spouse and one dependent child, the board shall pay to the spouse for ten years, for the benefit of the spouse and child, three-fifths of the claimant's wage and three-fifths the value of the claimant's household labor. If the child is not dependent for ten years, the board shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the child is no longer dependent. If the child is dependent for more than ten years, the board shall pay to the spouse for the child one-half of the claimant's wage and one-half the value of the claimant's household labor until the child is no longer dependent.

Subp. 3. **Spouse, two or more dependent children.** If the claimant leaves a spouse and two or more dependent children, the

board shall pay to the spouse for ten years, for the benefit of the spouse and children, two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor. If no child remains dependent for ten years, the board shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the last child is no longer dependent. If a child is dependent for more than ten years, the board shall pay to the spouse, for the benefit of the child, one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 4. **Dependent children, no spouse.** If the claimant leaves a dependent child and no spouse, the board shall pay to the guardian of the child 55 percent of the claimant's wage and 55 percent of the value of the claimant's household labor; and for two or more children, the board shall pay to the guardian of the children two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor until the last child is no longer dependent.

7190.1026 ELIGIBLE ALLOWANCES FOR ESTABLISHED DEPENDENTS.

Subpart 1. **Parents.** If the claimant leaves both parents wholly dependent on the deceased, the board shall pay to both parents jointly for ten years, 45 percent of the claimant's wage. If only one parent survives, the board shall pay to that parent for ten years 35 percent of the claimant's wage. If the claimant lived in the same household as both parents immediately before death, the board shall pay for ten years, 45 percent of the value of the claimant's household labor to both parents jointly. If the claimant lived in the household of one parent immediately before death, the board shall pay 35 percent of the value of the claimant's household labor to that parent for ten years.

Subp. 2. **Other established dependents.** If the claimant leaves a child, grandparent, grandchild, sibling, or parent-in-law wholly dependent, the board shall pay to that dependent for ten years, 30 percent of the claimant's wage. If the claimant leaves more than one of them, the board shall pay 35 percent of the claimant's wage divided among them in equal shares.

Subp. 3. **Partial support.** If an established dependent regularly received only partial financial support from the claimant, the board shall adjust the eligible allowance in subparts 5 and 6 according to the following formula:

$b = A \times c/w$

where: b is the benefit to be awarded;
A is the eligible allowance to the dependent;
c is the amount of weekly contribution to the dependent by the claimant; and
w is the wage of the claimant.

Subp. 4. **Cessation of compensation.** The board shall cease compensation upon the death of any dependent or upon marriage of any dependent other than the spouse. The cessation of compensation to any dependent does not affect the compensation paid to any other dependent.

Department of Public Safety

Driver and Vehicle Services Division

Withdrawal of Previously Proposed Permanent Rules Relating to Driver License Revocation

Notice of Withdrawal of Rules

Notice is hereby given that the proposed rules relating to driver license revocation as published in the *State Register* on September 7, 1987 at pages 409 and 410 (CITE 125.R.409) are withdrawn.

Secretary of State

Proposed Permanent Rules Relating to Bonding of Vendors

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Secretary of State proposes to adopt the above-entitled rules without a public hearing. The Secretary

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.

STATE OF MINNESOTA
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

In the Matter of the Proposed Adoption of the Rule of the State Hazardous Substance Injury Compensation Board Governing Death Benefits	FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Board's proposed adoption of the above-entitled rule was published in the State Register on November 2, 1987 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on October 29, 1987. The statement of need and reasonableness was prepared before the date of the notice of proposed adoption of a rule without a public hearing and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. Twenty-six requests for a public hearing on the rule were received by the board, two of which were subsequently withdrawn. Therefore, the Board did not receive requests for a public hearing from 25 or more persons which were not withdrawn.

No requests for notice of submission to the attorney general were received by the board.

Based on the comments and evidence in the record before the board, I find the following:

Changes made in the rule are supported by Findings of Fact and Conclusions dated January 11, 1988, and herein incorporated, and do not constitute a substantial change.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Relating to Death Benefits is adopted this 11th day of January 1988, pursuant to authority vested in the Board by Minnesota Statutes, section 115B.28.

Virginia L. Reiner

VIRGINIA L. REINER
Executive Director

STATE OF MINNESOTA
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

In the Matter of the Proposed
Permanent Rules Relating to
Death Benefits

FINDINGS OF FACT
AND CONCLUSIONS

The above-entitled matter came for decision before the Hazardous Substance Injury Compensation Board (Board) on the 11th day of January, 1988. After affording all interested persons the opportunity to present comments to the Board, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness and the written comments submitted to the Board, after considering all of the evidence adduced upon the records, files and proceedings herein, the Board, being fully advised in the premises, hereby adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Board published its notice of intent to adopt the above-captioned rules, together with the proposed rules, in the State Register on November 2, 1987 (12 S.R. 936).

2. On October 29, 1987, the Board gave the same notice by United States mail to all persons who registered their names with the Board pursuant to Minn. Stat. § 14.14 (1986) and to interested persons.

3. The notice of the Board's intent to amend the rules afforded all interested persons 30 days to submit data and views on the proposed rules. The notice was in all respects in compliance with the requirements of Minn. Stat. § 14.22 (1986).

4. The Board prepared a Statement of Need and Reasonableness and made it available to the public upon the date of mailing of the notice of intent to adopt the rules.

5. The 30 day comment period, as set out in the notice, expired on December 2, 1987.

6. During the comment period, the Board received written comments from the Minnesota Trial Lawyers Association. In addition, the Board staff prepared written comments on modifications to the proposed rule and these comments are part of the record.

7. The Board finds that the comments received support five changes in the rules as proposed. Two of these changes relate to how the Board will calculate future payments; one change relates to how the Board shall modify benefits when collateral sources of support are available; two changes relate to eliminating language ambiguity in the rule.

Calculation of Future Payments

8. The proposed language in Part 7190.1020, subparts 4 and 5 of the proposed rule, provides that the Board shall use the formula in Minn. Stat. §604.07 to adjust payments it makes for future losses, whether in a lump sum or installments. The formula was established as part of the 1986 Tort Reform Act to alleviate uncertainty occasioned by prior judicial practice related to discounting. The use of the formula by the Board was

proposed to eliminate the need in each award for costly expert testimony on economic projections, provide consistency among decisions, and inform claimants as to what recovery might be available to them.

The Minnesota Trial Lawyers Association objected to the use of the statutory formula, citing defects in it which lead to an artificially high discount rate, thus resulting in undercompensation to dependents. The Trial Lawyers strongly opposed discounting according to this formula. They did not object to the concept of discounting per se, recognizing it as a standard judicial and economic practice.

9. The constitutionality of the statutory formula has been the subject of several recent court decisions. On October 20,1987, the Court of Appeals issued two decisions upholding Minn. Stat.§ 604.07 but expressing reservations about its appropriateness in certain circumstances : Kleeman v. Cadwell, C4-87-686 and Johnson v. Farmers Union Central Exchange, Inc. , C7-87-813. On November 17, 1987, the Ramsey County District Court held the discount statute unconstitutional as applied to lifetime medical needs of an injured infant in Ashton v. Group Health Plan, Inc., Court File No. 473431. These decisions are included as part of the record.

10. Modification of the rule is needed given the flaws which have become evident in the application of the new formula. The proposed modification is reasonable because it deletes reference to the formula while maintaining accepted judicial and economic practices of discounting future payments to present value and adjusting installment payments for costs of living increases. The new language still provides the needed criteria the Board must use in determining the discount rate. The criteria of a "conservative investment" reflects the widespread court practice of fixing a rate at which an ordinary person can invest safely

without any special skill. Additionally, the criteria of "real rates of return" follows the same objective as the Minnesota discount statute, which considers both interest rates and inflation rates in its calculation.

11. The proposed modifications are as follows:

Subp. 4. Lump sum payment. When the board chooses to pay death benefits in a lump sum, it shall discount benefits awarded for future years to current value ~~according to Minnesota Statutes, section 604.07, subdivision 4, clauses (1) and (2).~~ based on real rates of return obtainable through conservative investment.

Subp. 5. Installment payment. When the board chooses to pay death benefits in installments, it shall adjust future payments by the cost of living rate for the current year ~~according to Minnesota Statutes, section 604.07, subdivision 4, clause (2)~~.

These modifications are not substantially different from the rules as proposed.

Collateral Sources

12. The proposed language in Part 7190.1020, subpart 6 provides that in calculating the award of death benefits, the board will subtract from the award losses recouped from other government survivor programs. This calculation was proposed to be consistent with the statutory treatment of awards to claimants, in which the board must subtract from its award any compensation received by the claimant from other sources. (Minn. Stat. § 115B.36). An offset for government survivor benefits is also required under Minn. Stat. § 176.111, and the Board is required by Minn. Stat. § 115B. 34 to "establish a schedule of benefits similar to that established by section 176.111..."

The Minnesota Trial Lawyers Association objected to the proposed treatment of collateral sources, saying it was reasonable to treat dependents differently from claimants and to provide full compensation.

13. The modification of the proposed rule set forth below to treat collateral sources as they are treated under workers' compensation in Minn. Stat. §176.111, subdivision 21, is reasonable. It is consistent with the legislative directive to establish benefits similar to those under Minn. Stat.§ 176.111. The modification is not a substantial change in the rules as proposed because it is a change that makes the rules more similar to workers' compensation benefits, as required by statute.

14. The proposed modification is as follows:

Subp. 6. Collateral sources. In calculating the total award of death benefits, the board shall subtract from the award losses recouped by the dependents from any government survivor program <u>to the extent that the combined total of government survivor benefits and death benefits paid under this chapter exceeds 100 percent of the wage earned by the claimant</u>.

Clarification of Language Ambiguity.

15. The proposed language in the second sentence of Part 7190.1005 could be misconstrued to interpret that compensation is automatic. For consistency and clarity, it is reasonable to modify the language to be parallel in construction to the first sentence. This modification is not substantially different from the rules as proposed.

16. The proposed modification is as follows:

Subpart 1. Death occurring during investigtion. If a claimant dies from an eligible injury during the investigation of the claim, the board shall amend the claim so that it seeks compensation for the claimant's dependents. If the death of the calimant during the investigation is unrelated to the eligible injury, the board shall amend the claim ~~to compensate~~ so that it seeks compensation for the claimant's dependents for eligible losses due to the injury up to the date of death.

17. Part 7190.1026, subpart 4, applies to all dependents, including presumed dependents, as is evident by the reference to the spouse. It is improperly located in a Part which speaks to allowances of established dependents. Therefore it is reasonable to modify the rule by relocating subpart 4 as a new subpart in Part 7190.1020, a Part which speaks to factors governing award of death benefits. The modification is not a substantial change but an improvement in clarity and ease of use of the rules.

18. The proposed modification is as follows: Delete subpart 4 of Part 7190.1026. Add subpart 7 to Part 7190.1020.

Subp. 7. Cessation of compensation. The board shall cease compensation upon the death of any dependent or upon marriage of any dependent other than the spouse. The cessation of compensation to any dependent does not affect the compensation paid to any other dependent.

Other Comments

19. The Minnesota Trial Lawyers Association objected to the Board's ability to decide as to whether death benefits should be paid in lump sum or installments. They requested that this discretion remain with the claimant.

Minnesota Statutes § 115B.36 states: "Compensation from the fund may be awarded in a lump sum or in installments at the discretion of the board." The proposed language in the rule is consistent with this statutory authority.

20. Except as modified herein, the Board adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the amendments to the rules. The Board hereby incorporates the Statement of Need and Reasonableness into these findings.

CONCLUSIONS

1. The Board published and served due, timely and adequate notice of the intent to adopt the proposed rules without a public hearing.

2. The Hazardous Substance Injury Compensation Board has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive and procedural requirements of statute and rule.

3. The changes that are being made in the rules do not result in rules that are substantially different from what was proposed in the State Register.

4. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

Dated this 11th day of January, 1988

HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

Byron E. Starns, Chair

Virginia L. Reiner
Executive Director

In the Matter of the Adoption of the Rule of the State Hazardous Substance Injury Compensation Board Governing Death Benefits

DECLARATION OF COUNSEL

I, Stephen Shakman, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0488.

Stephen Shakman

STEPHEN SHAKMAN
Special Assistant Attorney General

1/13/88
Dated

Department: HA[illegible] DOUS SUBSTANCE INJURY COM[illegible]SATION BOARD

To: Board Members

From: Virginia L. Reiner VR
Executive Director

Phone: 642-0456

Subject: Modifications of Death Benefit Rules

Since your resolution at the December 14, 1987 meeting to amend language in the proposed death benefits rule means that the rules will need to be republished, I would like to take the opportunity to make two modifications to the rule which are of a "housekeeping " nature. These ambiguities in the rule came to light after publication on November 2, and I feel they should be corrected on the republication of the rules as adopted.

The first change I propose is in part 7190.1005, subpart 1. The second sentance of that subpart should be modified to be parallel in construction with the first. This change was to have been made in the original publication but got lost in the transfer from working copy to approved revisor's copy.

Subpart 1. Death occurring during investigation. If a claimant dies from an eligible injury during the investigation of the claim, the board shall amend the calim so that it seeks compensation for the claimant's dependents. If the death of the claimant during the investigation is unrelated to the eligible injury, the board shall amend the claim ~~to compensate~~ so that it seeks compensation for the claimant's dependents for eligible losses due to the injury up to the date of death.

Without this change, someone might wrongly construe that compensation is automatic upon the death of the claimant. This interpretation is obviously contrary to the operation of the board. The change eliminates ambiguity by correctly implying that a claim is only a claim until the board renders a decision.

The second change I would propose is relocating subpart 4 of part 7190.1026. This subpart deals with cessation of compensation. As originally drafted, it was the final provision of that part of the rule which dealt with allowances for dependents. You will recall that the final change made in the rule prior to publication was to separate the eligible allowance part into two parts, one covering presumed dependents (spouse and children) and the other established dependents. When this was done, the cessation of compensation provision mistakenly remained in the part dealing with established dependents, even though it was intended to and clearly does apply to all dependents.

To eliminate this confusion, this subpart should be moved to the part entitled "Factors Governing Award of Death Benefits."

HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

2700 University Avenue W. #115 • St. Paul, MN 55114 • 612/642-0455

January 13, 1988

RECEIVED

JAN 13 1988

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

Rita Desmond
Office of the Attorney General
515 Transportation Building
John Ireland Blvd.
St. Paul, Minnesota 55155

Dear Ms. Desmond

RE: In the Matter of Proposed Rules Governing Death Benefits

On January 11, 1988, the Hazardous Substance Injury Compensation Board adopted the above-captioned rules governing death benefits. Enclosed for your review are the following:

1. Certificate of Authorizing Resolution
2. Rules as Proposed
3. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed
4. Statement of Need and Reasonableness
5. Affidavit of Mailing the Notice of Intent to Adopt Rule Without a Public Hearing and Certificate of Mailing List
6. Notice of Intent to Adopt Rules Without a Public Hearing and Rules as Proposed (12 S.R. 936)
7. Rules as Adopted (four copies)
8. Findings of Fact and Conclusions for Modifications to Proposed rules

9. Certificate of Resolution Adopting Rules

10. Findings of Fact, Conclusions, and Order Adopting Rules

11. Declaration of Attorney

Sincerely,

Virginia L. Reiner

Virginia L. Reiner
Executive Director

VLR/jw

Enclosures

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Health
Hazardous Substance Injury Compensation Board

Outside Opinion Sought Regarding Proposed Rules Governing Board Practices and Procedures for All Claims and Proposed Rules on Compensable Death Benefits

Minnesota Statutes Sections 115B.25-115B.37 (1985 Supp.) establish a Hazardous Substance Injury Compensation Fund ("Fund") to be administered by the Hazardous Substance Injury Compensation Board ("Board"). The Fund will provide compensation for certain personal injuries and damage to property which may result from the release of hazardous substances into the environment.

Notice is hereby given that the Board is seeking information or opinions from sources outside the agency in preparing to propose the adoption of the rules governing (a) practice and procedure before the Board, the form and procedure for applications for compensation, and procedures for claims investigations, and (b) death benefits to dependents which are compensable by the Fund. The adoption of the rules is authorized by Minnesota Statutes section 115B.28 and 115B.34, which require the Board to promulgate rules on its operating procedures and on death benefits.

The State Hazardous Substance Injury Compensation Board requests information concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing. Written statements should be addressed to:

Dr. Valentine O'Malley
Deputy Commissioner
Minnesota Department of Health
717 S.E. Delaware Street
Minneapolis, Minnesota 55440

All statements of information and opinions shall be accepted until 30 days after the day this notice appears in the *State Register*. Any written material received by the State Hazardous Substance Injury Compensation Board shall become part of the rulemaking record to be submitted to the Attorney General's Office or Administrative Law Judge in the event that the rules are adopted.

December 20, 1985

Byron E. Starns, Chairperson
Hazardous Substance Injury
Compensation Board

Department of Human Services
Income Maintenance Bureau
Health Care Programs Division

Outside Opinion Sought Concerning Third-Party Liability for Health Services to Medical Assistance Recipients

Notice is hereby given that the Minnesota Department of Human Services is seeking information or opinions from sources outside the agency in preparing an emergency rule to replace Minnesota Rules, Part 9500.0940, Third-Party Liability.

This rule is authorized by Minnesota Statutes, section 256B.04, Subd. 2 in regard to the Medical Assistance Program and by Minnesota Statutes, secton 14.29, Subd. 1 in regard to the amendment of a rule to comply with a federal law, 42 CFR 433.139. The emergency rule governs liability for collection of benefits available to medical assistance recipients, for reimbursement of medical expenses. The proposed changes under the emergency rule will require health service providers to bill third-party payers before submitting claims to the Medical Assistance Program. Third-party coverage shall be primary and shall be exhausted before payment is made by medical assistance.