

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MJC

RULE REVIEW CHECKLIST

File No. 1779
DATE RECEIVED 1-7-90
REVIEW DATE 1/16/91
DUE DATE 1/21/91
(DIS)APPROVED ~~1-16-91~~ 1-22-91
WITHDRAWN _____

Docket No. 05.0009.0609
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 1/8/91
REVISOR (DIS)APPROVED 1/11/91
FILED W/SEC. OF STATE 1-16-91
RETURNED TO AGENCY _____

_____ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
June 12, 1989 Date published in State Register
✓ Comments

_____ ~~Petition for Adoption of a Rule~~

_____ ~~Board's Authorizing Resolution~~
_____ Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

_____ Notice of Intent to Adopt Rule
175.17 176.132 Statutory Authority 176.83
_____ Small Business Statement
_____ Expenditure of public money statement
11-9-90 Signature

✓ Statement of Need and Reasonableness (if applicable)
N/A
N/A Small Business Statement
N/A Fees - § 16A.128

_____ Affidavit of Mailing Notice of Intent to Adopt Rule
November 27, 1990 Dated 30/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
November 26, 1990 Date 30/25 days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply not new matter
✓ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

_____ ~~Resolution Adopting~~
_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
January 2 1991 Date

_____ Written Requests, Submissions or Comments

_____ Declaration of Attorney
Jon Murphy Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of Mailing Notice to Attorney General (if

Department of Labor and Industry

Adopted Permanent Rules Relating to Reimbursement of Supplementary Benefits

Rules as Adopted

5222.0100 DEFINITIONS.

Subpart 1. **Generally.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 3. **Proposed effective date of permanent total disability.** "Proposed effective date of permanent total disability" is the date, supported by documented medical reports and/or rehabilitation reports, on which the employer or insurer and employee agree that permanent total disability began.

Subp. 3a. **Proposed effective date of offset.** "Proposed effective date of offset" is the date when the statutory requirements have been met and the insurer proposes to take the offset~~.~~, the employee has been paid $25,000 in permanent total disability benefits after the date of permanent total disability, and the employee is simultaneously receiving a government benefit as defined in subpart 5 4.

Subp. 4. **Government disability benefits.** "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101, subdivision 4. It includes, but is not limited to, social security disability benefits, old age and survivor benefits, fire relief association benefits, police relief association benefits, and public employee's retirement benefits.

Subp. 5. [See Repealer.]

Subp. 6. **Rehabilitation plan.** "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.

Approved by Revisor

Subp. 7. **Supplementary benefits.** "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.

Subp. 8. [See Repealer.]

5222.0200 AUTHORITY AND PURPOSE.

Parts 5222.0100 to 5222.1000 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, sections 176.132, subdivision 4, 175.17, clause (2), and 176.83. The purpose of these parts is to specify the procedure by which an employer 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.

5222.0300 SCOPE.

Parts 5222.0100 to ~~5222.1100~~ 5222.1000 apply only if all of the following prerequisites are met:

A. The employee is and has been receiving disability benefits under Minnesota Statutes, section 176.101, subdivision 1, 3a, or 4, without substantial interruption by suitable gainful employment after the proposed effective date of permanent total disability.

B. The employee is receiving government disability benefits.

C. The employee will be eligible for supplementary benefits after a finding of permanent total disability is made and the waiting period requirements of Minnesota Statutes, section 176.132, subdivision 1, are met.

D. The issue of whether the employee's total disability is permanent for the period on or after the proposed effective date of permanent total disability is not pending and has not been decided in any judicial or quasi-judicial administrative proceeding, including administrative conferences under Minnesota Statutes, section 176.239.

E. The employer or insurer and employee agree that the employee's total disability is permanent within the meaning

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of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

F. The employer or insurer and employee agree to the date on which the employee's permanent total disability began.

5222.0400 PROCEDURE.

Subpart 1. **Generally.** The employer or insurer must comply with the procedures set forth in this part by submitting a signed agreement to the commissioner for a finding of permanent total disability.

Subp. 2. **Contents of agreement.** This agreement must state:

A. the name of the employee;

B. the social security number of the employee;

C. the name of the employer;

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

E. the date of the injury which gave rise to permanent total disability;

F. the date on which the employee became permanently totally disabled;

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

H. the date on which the employer or insurer will apply the offset;

I. the names of the medical and vocational providers submitting the reports showing the employee is permanently totally disabled as of the date stated in item F and the dates of those reports;

J. the status of the rehabilitation plan as active, inactive, or nonexistent; and

K. the signatures of the employer or insurer and the employee.

Subp. 3. [See Repealer.]

Subp. 4. **Filing of medical reports.** Any medical reports which are identified pursuant to subpart 2, item I, but have not been previously filed with the commissioner, must be attached to

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by Revisor _____

the agreement.

Subp. 5. **Filing of rehabilitation reports.** Any reports of qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the agreement.

Subp. 6. **Benefit amounts.** The agreement must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The agreement must also state the amount of each of these benefits which will be received by the employee if the agreement is approved.

Subp. 7. **Signing of agreement.** The agreement must be signed by an authorized representative of the employer or of the employer's insurer. It must also state the telephone number of each person signing the agreement.

Subp. 8. **Instructions to employee.** The employer or insurer must mail two copies of the agreement with instructions to the employee and, if represented, a copy to the employee's attorney by first class mail, and must so affirm.

Subp. 9. **Filing with commissioner.** A copy signed by the employee must be filed with the commissioner before action will be taken on the request.

5222.0500 APPROVAL BY COMMISSIONER.

An agreement is deemed approved upon the signature of the commissioner. Approval by the commissioner constitutes a finding of the employee's permanent total disability as of the proposed effective date of permanent total disability. The commissioner must approve an agreement unless grounds for disapproval exist pursuant to part 5222.0600.

5222.0600 DISAPPROVAL BY COMMISSIONER.

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

A. The agreement is incomplete, is inaccurate, or is not in conformity with any provision of parts 5222.0100 to ~~5222.0110~~ 5222.1000. For example, the submission of medical

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reports which fail to show that the employee is permanently totally disabled on and after the proposed date of the permanent total disability renders an agreement incomplete and inaccurate and not in conformity with the rules. Agreements which are disapproved on any of these grounds may be resubmitted under the procedure authorized in part 5222.0400.

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 medical and rehabilitation reports do not support the assertion that the employee's total disability is permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5, and applicable case law.

D. The commissioner concludes that the available information does not support the proposed effective date of the employee's permanent total disability.

5222.0650 NOTICE OF DECISION.

A copy of the decision approving or disapproving the agreement will be mailed to each party within 30 days of the receipt by the Special Compensation Fund of a complete agreement under 5222.0400.

5222.0700 EFFECT OF DISAPPROVAL.

Disapproval of an agreement by the commissioner is without prejudice to a party's right to petition for a hearing pursuant to Minnesota Statutes, section 176.305 for a finding or revision of a finding of permanent total disability.

5222.0750 EFFECT OF APPROVAL.

Approval of an agreement by the commissioner constitutes a final order determining permanent total disability.

5222.0900 SEVERABILITY.

If any provision of this chapter is held to conflict with a

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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 chapter shall in no manner be affected.

REPEALER. Minnesota Rules, parts 5222.0100, subparts 5 and 8; ~~and~~ 5222.0400, subpart 3; and 5222.0800, are repealed.

Approved
by Revisor

APPROVED AS TO FORM AND LEGALITY

January 22 19 91

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 30 1991

Joan Anderson Growe
Secretary of State

3:30 P.M.

M

Department of Labor and Industry

Adopted Permanent Rules Relating to Reimbursement of Supplementary Benefits

Rules as Adopted

5222.0100 DEFINITIONS.

Subpart 1. **Generally.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 3. **Proposed effective date of permanent total disability.** "Proposed effective date of permanent total disability" is the date, supported by documented medical reports and/or rehabilitation reports, on which the employer or insurer and employee agree that permanent total disability began.

Subp. 3a. **Proposed effective date of offset.** "Proposed effective date of offset" is the date when the statutory requirements have been met and the insurer proposes to take the offset~~.~~, the employee has been paid $25,000 in permanent total disability benefits after the date of permanent total disability, and the employee is simultaneously receiving a government benefit as defined in subpart 5 4.

Subp. 4. **Government disability benefits.** "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101, subdivision 4. It includes, but is not limited to, social security disability benefits, old age and survivor benefits, fire relief association benefits, police relief association benefits, and public employee's retirement benefits.

Subp. 5. [See Repealer.]

Subp. 6. **Rehabilitation plan.** "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.

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Subp. 7. **Supplementary benefits.** "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.

Subp. 8. [See Repealer.]

5222.0200 AUTHORITY AND PURPOSE.

Parts 5222.0100 to 5222.1000 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, sections 176.132, subdivision 4, 175.17, clause (2), and 176.83. The purpose of these parts is to specify the procedure by which an employer 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.

5222.0300 SCOPE.

Parts 5222.0100 to ~~5222.1100~~ 5222.1000 apply only if all of the following prerequisites are met:

A. The employee is and has been receiving disability benefits under Minnesota Statutes, section 176.101, subdivision 1, 3a, or 4, without substantial interruption by suitable gainful employment after the proposed effective date of permanent total disability.

B. The employee is receiving government disability benefits.

C. The employee will be eligible for supplementary benefits after a finding of permanent total disability is made and the waiting period requirements of Minnesota Statutes, section 176.132, subdivision 1, are met.

D. The issue of whether the employee's total disability is permanent for the period on or after the proposed effective date of permanent total disability is not pending and has not been decided in any judicial or quasi-judicial administrative proceeding, including administrative conferences under Minnesota Statutes, section 176.239.

E. The employer or insurer and employee agree that the employee's total disability is permanent within the meaning

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of Minnesota Statutes, section 176.101, subdivision 5 and applicable case law.

F. The employer or insurer and employee agree to the date on which the employee's permanent total disability began.

5222.0400 PROCEDURE.

Subpart 1. **Generally.** The employer or insurer must comply with the procedures set forth in this part by submitting a signed agreement to the commissioner for a finding of permanent total disability.

Subp. 2. **Contents of agreement.** This agreement must state:

A. the name of the employee;

B. the social security number of the employee;

C. the name of the employer;

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

E. the date of the injury which gave rise to permanent total disability;

F. the date on which the employee became permanently totally disabled;

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

H. the date on which the employer or insurer will apply the offset;

I. the names of the medical and vocational providers submitting the reports showing the employee is permanently totally disabled as of the date stated in item F and the dates of those reports;

J. the status of the rehabilitation plan as active, inactive, or nonexistent; and

K. the signatures of the employer or insurer and the employee.

Subp. 3. [See Repealer.]

Subp. 4. **Filing of medical reports.** Any medical reports which are identified pursuant to subpart 2, item I, but have not been previously filed with the commissioner, must be attached to

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the agreement.

Subp. 5. **Filing of rehabilitation reports.** Any reports of qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the agreement.

Subp. 6. **Benefit amounts.** The agreement must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The agreement must also state the amount of each of these benefits which will be received by the employee if the agreement is approved.

Subp. 7. **Signing of agreement.** The agreement must be signed by an authorized representative of the employer or of the employer's insurer. It must also state the telephone number of each person signing the agreement.

Subp. 8. **Instructions to employee.** The employer or insurer must mail two copies of the agreement with instructions to the employee and, if represented, a copy to the employee's attorney by first class mail, and must so affirm.

Subp. 9. **Filing with commissioner.** A copy signed by the employee must be filed with the commissioner before action will be taken on the request.

5222.0500 APPROVAL BY COMMISSIONER.

An agreement is deemed approved upon the signature of the commissioner. Approval by the commissioner constitutes a finding of the employee's permanent total disability as of the proposed effective date of permanent total disability. The commissioner must approve an agreement unless grounds for disapproval exist pursuant to part 5222.0600.

5222.0600 DISAPPROVAL BY COMMISSIONER.

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

A. The agreement is incomplete, is inaccurate, or is not in conformity with any provision of parts 5222.0100 to 5222.0110. For example, the submission of medical reports which

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fail to show that the employee is permanently totally disabled on and after the proposed date of the permanent total disability renders an agreement incomplete and inaccurate and not in conformity with the rules. Agreements which are disapproved on any of these grounds may be resubmitted under the procedure authorized in part 5222.0400.

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 medical and rehabilitation reports do not support the assertion that the employee's total disability is permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5, and applicable case law.

D. The commissioner concludes that the available information does not support the proposed effective date of the employee's permanent total disability.

5222.0650 NOTICE OF DECISION.

A copy of the decision approving or disapproving the agreement will be mailed to each party within 30 days of the receipt by the Special Compensation Fund of a complete agreement under 5222.0400.

5222.0700 EFFECT OF DISAPPROVAL.

Disapproval of an agreement by the commissioner is without prejudice to a party's right to petition for a hearing pursuant to Minnesota Statutes, section 176.305 for a finding or revision of a finding of permanent total disability.

5222.0750 EFFECT OF APPROVAL.

Approval of an agreement by the commissioner constitutes a final order determining permanent total disability.

5222.0900 SEVERABILITY.

If any provision of this chapter is held to conflict with a

Approved
by Revisor _____

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 chapter shall in no manner be affected.

REPEALER. Minnesota Rules, parts 5222.0100, subparts 5 and 8; ~~and~~ 5222.0400, subpart 3; and 5222.0800, are repealed.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY
January 16 19 91
HUBERT H. HUMPHREY III
ATTORNEY GENERAL
BY M T Cassidy
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 17 1991
Joan Anderson Growe
Secretary of State
3:54 P.M.

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: January 31, 1991

TO: GARY HALL
Labor & Industry

FROM: MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE: 296-6839

SUBJECT: In the Matter of the Adopted Rule Relating to Reimbursement of Supplementary Benefits

The above-referenced rule has been approved as to its legality by the Attorney General on January 22, 1991.

Enclosed is your 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 along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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:sc

cc: Jon Murphy
William Brown, Chief Judge
MaryAnn Hruby

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Rule of the State Department of Labor and Industry, Workers' Compensation Division, Governing Permanent Total Disability and Reimbursement of Supplementary Benefits

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on November 26, 1990 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 November 26, 1990. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register 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. No requests for a public hearing on the rule were received by the agency.

No submissions or comments on this proposed rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

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

1. That the Department has complied with all procedural requirements of law or rule adopting the proposed amendments.

2. That the Department has acted within its statutory authority in adopting these proposed amendments.

3. That the above captioned amendments are needed and reasonable.

Several changes were made between the rules as proposed and the rules as adopted.

First, Part 5222.0100, subpart 3a was changed by making the subpart one sentence rather than two. As proposed, the second sentence was not a grammatically complete sentence. The meaning of the language was not changed.

Second, Part 5222.0100, subpart 3a was also changed by correcting a reference to subpart 5 which should have been to subpart 4. The correct reference is obvious from the context of the reference (the language refers to a definition of "government benefits" which is actually defined in subpart 4).

Third, Part 5222.0300 was corrected by changing a rule citation from 5222.1100 to 5222.1000. There is no rule numbered 5222.1100, it was a clerical error carried over from an earlier version of the proposed rules.

Finally, Part 5222.0800 was added to the repealer. This part was replaced by Part 5222.0750 but was inadvertently omitted from the repealer. Part 5222.0800 was not published with the proposed rules and any reaction to its repeal would have been invited by Part 5222.0750 which has essentially the opposite effect of Part 5222.0800.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules Parts 5222.0100 to 5222.1000 as modified is adopted this 29 day of January, 1991, pursuant to authority vested in me by Minnesota Statutes, sections 175.17, 176.132, and 176.83.

David J. Adams

Commissioner

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Rule of the State Department of Labor and Industry, Workers' Compensation Division, Governing Permanent Total Disability and Reimbursement of Supplementary Benefits

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on November 26, 1990 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 November 26, 1990. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register 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. No requests for a public hearing on the rule were received by the agency.

No submissions or comments on this proposed rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.

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

1. That the Department has complied with all procedural requirements of law or rule adopting the proposed amendments.

2. That the Department has acted within its statutory authority in adopting these proposed amendments.

3. That the above captioned amendments are needed and reasonable.

Several changes were made between the rules as proposed and the rules as adopted.

First, Part 5222.0100, subpart 3a was changed by making the subpart one sentence rather than two. As proposed, the second sentence was not a grammatically complete sentence. The meaning of the language was not changed.

Second, Part 5222.0100, subpart 3a was also changed by correcting a reference to subpart 5 which should have been to subpart 4. The correct reference is obvious from the context of the reference (the language refers to a definition of "government benefits" which is actually defined in subpart 4).

Third, Part 5222.0300 was corrected by changing a rule citation from 5222.1100 to 5222.1000. There is no rule numbered 5222.1100, it was a clerical error carried over from an earlier version of the proposed rules.

Fourth, Part 5222.0600 was corrected by changing a rule citation from 5222.0110 to 5222.1000. There is no rule numbered 5222.0110, it was a clerical error carried over from an earlier version of the proposed rules.

Finally, Part 5222.0800 was added to the repealer. This part was replaced by Part 5222.0750 but was inadvertently omitted from the repealer. Part 5222.0800 was not published with the proposed rules and any reaction to its repeal would have been invited by Part 5222.0750 which has essentially the opposite effect of Part 5222.0800.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules Parts 5222.0100 to 5222.1000 as modified is adopted this 18th day of January, 1991, pursuant to authority vested in me by Minnesota Statutes, sections 175.17, 176.132, and 176.83.

Ann Clayton

Commissioner

RECEIVED

RECEIVED

JAN 23 1991

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

175.17 (2)

The commissioner shall adopt reasonable and proper rules governing rules of practice.

176.132 Supplementary Benefits

176.83 Rules

In addition to any other section under this chapter giving the commissioner the authority to adopt rules, the commissioner may adopt, amend or repeal rules to implement the provisions of this chapter. The rules include but are not limited to the rules listed in this section.

Department of Labor and Industry

Proposed Permanent Rules Relating to Reimbursement of Supplementary Benefits

Rules as Proposed

5222.0100 DEFINITIONS.

Subpart 1. **Generally.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 3. Proposed **effective date** of permanent total **disability.** "Proposed effective date of permanent total disability" ~~as used in part 5222.0400 means~~ is the date, supported by documented medical reports and/or rehabilitation reports, on which the employer or insurer and employee agree that permanent total disability began ~~or will begin to apply the offset provision of Minnesota Statutes, section 176.101, subdivision 4~~.

Subp. 3a. **Proposed effective date of offset.** "Proposed effective date of offset" is the date when the statutory requirements have been met and the insurer proposes to take the offset. The employee has been paid $25,000 in permanent total disability benefits after the date of permanent total disability and the employee is simultaneously receiving a government benefit as defined in subpart 5.

Subp. 4. **Government disability benefits.** "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101, subdivision 4. It includes, but is not limited to, social security disability benefits, old age and survivor benefits, ~~and~~ fire relief association benefits, police relief association benefits, and public employee's retirement benefits.

Subp. 5. [See Repealer.]

Approved by Revisor

Subp. 6. **Rehabilitation plan.** "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.

Subp. 7. **Supplementary benefits.** "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.

Subp. 8. [See Repealer.]

5222.0200 AUTHORITY AND PURPOSE.

Parts 5222.0100 to 5222.1000 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~~, and 176.83. The purpose of these parts is to specify the procedure by which ~~employers~~ an employer 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.~~

5222.0300 ~~APPLICATION~~ SCOPE.

~~This-chapter-applies~~ Parts 5222.0100 to 5222.1100 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, 3a, or 4, without substantial interruption ~~for the-injury-which-gave-rise-to~~ by suitable gainful employment after the proposed effective date of permanent 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.

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by Revisor _____

C. The employee ~~is-receiving-supplementary-benefits pursuant-to-Minnesota-Statutes,-section-176.132,-subdivision-1, or-would~~ will be eligible for supplementary benefits after a finding of permanent total disability is made and the waiting period requirements of Minnesota Statutes, section 176.132, subdivision 1, are met.

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~~ for the period on or after the proposed effective date of permanent total disability is not ~~being~~ pending and has ~~never~~ not been ~~raised~~ decided in any judicial or quasi-judicial administrative proceeding, including administrative conferences under Minnesota Statutes, ~~sections 176.242-and-176.243~~ section 176.239.

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

F. The employer or insurer and employee agree to the date on which the employee's permanent total disability began.

Approved
by Revisor _____

5222.0400 PROCEDURE.

Subpart 1. **Generally.** The employer or insurer must comply with the procedures set forth in this part ~~in~~ by submitting ~~an application~~ a signed agreement to the commissioner for a finding of permanent total disability.

Subp. 2. **Contents of ~~application~~ agreement.** ~~The application~~ This agreement must state:

A. the name of the employee;

B. the social security number of the employee;

C. the name of the employer;

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

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

F. the date on which the ~~requested-finding-of permanent-total-disability-is-to-be-effective~~ employee became permanently totally disabled;

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

H. the date on which the employer or insurer will apply the offset;

I. the ~~name~~ names of the medical ~~provider~~ and vocational providers submitting the ~~medical-report~~ reports showing ~~that~~ the employee is permanently totally disabled ~~at-the time-of-application,-and~~ as of the date stated in item F and the dates of ~~the-medical-report~~ those reports; ~~and~~

~~I.~~ J. the status of the rehabilitation plan as active, inactive, or nonexistent; and

K. the signatures of the employer or insurer and the employee.

Subp. 3. [See Repealer.]

Subp. 4. **Filing of medical reports.** Any medical reports which are identified pursuant to subpart 2, item ~~8~~ I, but have not been previously filed with the commissioner, must be attached to the ~~application~~ agreement.

Subp. 5. **Filing of rehabilitation reports.** Any reports of

Approved by Revisor _____

qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the ~~application~~ agreement.

Subp. 6. **Benefit amounts.** The ~~application~~ agreement must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The ~~application~~ agreement 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~~ the agreement is approved.

Subp. 7. **Signing of ~~application~~ agreement.** The ~~application~~ agreement 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~~ each person signing the ~~application~~ agreement.

Subp. 8. **~~Notice~~ Instructions to employee.** The employer or insurer must mail ~~a-copy~~ two copies of the ~~application~~ agreement with instructions to the employee and, if represented, a copy 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~~.

Subp. 9. **Filing with commissioner.** A copy signed by the employee must be filed with the commissioner before action will be taken on the request.

5222.0500 ~~NOTICE-OF-DECISION~~ APPROVAL BY COMMISSIONER.

An agreement is deemed approved upon the signature of the commissioner. Approval by the commissioner constitutes a finding of the employee's permanent total disability as of the proposed effective date of permanent total disability. The commissioner must approve an agreement unless grounds for disapproval exist pursuant to part 5222.0600~~,-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~~

Approved
by Revisor _____

~~of the application.~~

5222.0600 DISAPPROVAL BY COMMISSIONER.

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

A. The ~~application~~ agreement is incomplete, is inaccurate, or is not in conformity with any ~~part of this chapter~~ provision of parts 5222.0100 to 5222.0110. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled ~~at the time of application~~ on and after the proposed date of the permanent total disability renders an ~~application~~ agreement incomplete and inaccurate and not in conformity with the rules. ~~Applications~~ Agreements which are disapproved on any of these grounds may be resubmitted under the procedure authorized in part 5222.0400.

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 medical and rehabilitation reports do not support the assertion that the employee's total disability is ~~not~~ permanent within the meaning of Minnesota Statutes, section 176.101, subdivision 5, and applicable case law.

D. The commissioner concludes that the available information does not support the proposed effective date of the employee's permanent total disability.

5222.0650 NOTICE OF DECISION.

A copy of the decision approving or disapproving the agreement will be mailed to each party within 30 days of the receipt by the Special Compensation Fund of a complete agreement under 5222.0400.

5222.0700 EFFECT OF ~~FINDING~~ DISAPPROVAL.

Approved
by Revisor _____

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

5222.0750 EFFECT OF APPROVAL.

Approval of an agreement by the commissioner constitutes a final order determining permanent total disability.

5222.0900 SEVERABILITY.

If any provision of this chapter 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 chapter shall in no manner be affected.

REPEALER. Minnesota Rules, parts 5222.0100, subparts 5 and 8; and 5222.0400, subpart 3, are repealed.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Reimbursement of Supplementary Benefits

AGENCY: Department of Labor and Industry

MINNESOTA RULES: Chapter 5222

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

STATE OF MINNESOTA
Department of Labor and Industry
Workers' Compensation Division
443 Lafayette Road
St. Paul, Minnesota 55155-4319

In the Matter of the Proposed Amendment of Rules of the Minnesota Department of Labor and Industry, Workers' Compensation Division, Governing Findings of Permanent Total Disability and Reimbursement of Supplementary Benefits

STATEMENT OF NEED AND REASONABLENESS

The proposed rules concern determinations, following work-related injuries of whether an employee is permanently and totally disabled from employment. It provides an informal administrative procedure for obtaining a finding of permanent total disability (PTD) based upon an agreement between the employer/insurer and the employee subject to approval by the Commissioner. The proposed rule amends the existing rules which currently provide for an administrative finding of PTD under limited conditions and do not require agreement between the employer/insurer and employee.

An official determination or finding that an employee is permanently and totally disabled is especially important to employers and insurers for a number of reasons. First, The Minnesota Supreme Court decision in McClish v. Pan-O-Gold Banking Co., et al, 336 N.W.2d 538 (Minn. 1983) requires a finding of PTD before an employer or insurer may apply the offset provision in M. S. § 176.101, subd 4. The offset allows a reduction of workers' compensation benefits after receipt of $25,000 in PTD benefits when the employee is receiving government disability or retirement benefits. Second, Christensen v. Whirlpool, 41 W.C.D. 1047 (1989), requires that only benefits determined to be PTD benefits be counted in the calculation of the $25,000 necessary to be paid before the offset may be taken. Third, the Social Security Administration will not recognize the workers' compensation offset until there has been an official finding of PTD by the Commissioner or a compensation judge.

In a typical case an employee receiving Temporary Total Disability benefits (TTD) and Social Security Disability Income benefits (SSDI) will have SSDI reduced because of the TTD being received. After an official finding of PTD, and after $25,000 in PTD benefits are paid, M. S. § 176.101, subd. 4 allows PTD benefits to be offset based on SSDI being paid. At the same time, federal law provides that when the PTD offset beings, the SSDI offset will end. Additionally, as a result of the reduction in PTD benefits due to the offset, the employee may be entitled to supplementary benefits under M. S. § 176.132. Supplementary benefits are paid by the employer or insurer and reimbursed by the Special Compensation Fund (SCF).

The proposed rule provides a quick and informal process to obtain a finding of PTD where there is agreement between the employer/insurer and the employee, and approval of the agreement by the Commissioner. It gives employers and insurers a less burdensome method of obtaining a PTD determination and obtaining reimbursement for supplementary benefits paid as a result of the offset. Also, it avoids disruption of weekly benefits to those employees who are permanently and totally disabled.

Currently, a finding of PTD can be obtained by the employer, insurer, or employee, by petition to a compensation judge or by stipulated agreement approved by the commissioner or compensation judge. In addition to these formal procedures, an insurer or employer may apply for an informal administrative finding of PTD under Minn. Rules, Parts 5222.0100 through 5222.1000. Under those rules, the Commissioner may, in cases which satisfy the requirements provided therein, make a finding of PTD without an administrative conference or hearing.

Among the requirements provided in the existing rules is that the total amount of weekly benefits, from both workers' compensation and other government disability programs, will not be reduced as a result of the finding. In cases where the finding would result in an overall reduction in benefits, the employer or insurer is forced to proceed by way of a formal petition or stipulated agreement. This is true even where there is no dispute over the issue of PTD. The purpose of this requirement is to avoid reducing monetary benefits without the opportunity for a due process hearing. The proposed rule, while leaving the formal procedures intact, would modify the existing rules to allow a finding of PTD even where there is an overall reduction in benefits so long as there is no dispute over the issue of PTD.

Minn. Rules Part 5222.0100 Definitions. Subpart 3 is amended, and subpart 3a added, to reflect the changes resulting from the Christensen case and the change to an agreement-based process for PTD determinations. Prior to Christensen it was only important to know the effective date of the offset because Part 5222.0200 provided that all past total disability benefits would be counted toward the $25,000 statutory requirement. After Christensen it is necessary to distinguish between the effective date of PTD and the effective date of the offset because only PTD benefits paid after the effective date of PTD are includable in the $25,000. The addition of the word "proposed" simply reflects the necessity for approval by the Commissioner.

Subpart 4 is amended to add some specificity to the language consistent with current practice and law.

Subpart 5 is repealed because as a result of the amendments, it is not necessary to have a special definition of "party".

Subpart 8 is repealed because since Christensen "total disability benefits" are no longer the basis for the $25,000 payment requirement for an offset.

Minn. Rules Part 5222.0200 Authority and Purpose. The Laws of Minnesota citation in this provision is changed to the parallel citation in Minnesota Statutes. The word "employers" is changed to "an employer" for clarity. The last sentence is deleted because it conflicts with the decision in Christensen.

Minn. Rules Part 5222.0300 Scope. The title of this rule is changed from "Application" to "Scope" to avoid confusion. This Part sets out the limits or scope of the rule's applicability rather than instructions on how to "apply" for a finding of PTD. Minn. Rules Chapter 5222 includes other sets of rules in addition to Parts 5222.0100 to 5222.1100. This part is corrected to reflect it's limited applicability.

Requirement "A" is amended to change the test for "without interruption" to a more flexible test which will allow a case-by-case determination.

Requirement "C" is amended, as a result of Christensen, to allow for situations where the employer/insurer will want to request a finding of PTD, before the employee is eligible for supplementary benefits, in order to reach the $25,000 level by the time the employee is eligible for supplementary benefits.

Requirement "D" is amended to eliminate the exclusion of cases where PTD was raised in a proceeding but not decided. Other changes are for clarification.

Requirement "E" is eliminated and incorporated into "D".

Requirement "F" and "G" are eliminated because of the agreement nature of the new rule and a desire to make the rule less restrictive.

Requirement "H" is redesignated as "E" and amended to reflect the agreement nature of the rule changes.

A new requirement "F" is added to require agreement between the employer/insurer and the employee as a precondition for the application of these rules.

Minn. Rules Part 5222.0400 Procedure. The changes to this Part provide that a signed agreement must be submitted to the Commissioner rather than an application. Most of the changes are from "application" to "agreement". This Part also requires that the employer/insurer provide instructions to the employee with the agreement. The instructions are provided on the agreement form prescribed by the Commissioner.

Minn. Rules Part 5222.0500 Approval By Commissioner. The title of this Part is changed from "Notice of Decision" to "Approval by Commissioner" in order to improve the structure of the rule. Amendments to this part eliminate the possibility of an approval by default due to lack of action by the Commissioner. Approval of an agreement occurs upon the Commissioner's signature.

Minn. Rules Part 5222.0600 Disapproval By Commissioner. The changes to this Part make the language consistent with the agreement process and Christensen. Item "C" is clarified to show that the Commissioner's determination, under that item, should be based upon medical or rehabilitation reports. Item "D" allows the Commissioner to disapprove an agreement if the proposed effective date of PTD is not supported by the available information.

Minn. Rules Part 5222.0650 Notice of Decision. This Part is new but incorporates some of the language eliminated in Part 5222.0500. Requires the Commissioner to send a copy of the decision, approving or disapproving an agreement, to each party within 30 days of receipt, of a completed agreement, by the Special Compensation Fund.

Minn. Rules Part 5222.0700 Effect of Disapproval. The effect of disapproval by the Commissioner is not changed by the rule but because the effect of approval is different, that effect is set out separately in the next Part.

Minn. Rules Part 5222.0750 Effect of Approval. This Part provides that the Commissioner's Order constitutes a final Order. Because the Finding of PTD is based on agreement among the parties, the Commissioner's Order is given some finality.

Minn. Rules Part 5222.0800 Revision of Finding. This Part is repealed for two reasons. First, because the Finding of PTD is based on agreement, there is less need to revise a Finding. Second, limiting revision of PTD determinations to the existing mechanisms (i.e. Vacation of Order) gives more finality to the decision.

Minn. Rules Part 5222.0900 Severability. This Part is unchanged.

Minn. Rules Part 5222.1000 Effective Date. This Part is unchanged.

Impact on Small Business

The adoption of the proposed rules has no impact on small business. The rules affect only insurers and self-insured employers, none of which are small businesses as defined by M. S. § 14.115, subd. 2 (1988) for reducing the impact of the rule on small business.

Fiscal Impact on Local Public Bodies

The Commissioner has considered the fiscal impact of the adoption of these rules on local public bodies pursuant to M. S. § 14.11, subd. 1 (1988), and has found none. No additional financial burdens are placed on local public bodies as the proposed changes will not affect the expenditure of public monies by local public bodies.

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

January 7, 1991

Patti Nolte, Legal Assistant
Public Finance Division
Office of the Attorney General
525 Park Street, Suite 500
St. Paul, Minnesota 55103

Dear Ms. Nolte:

I have enclosed the rulemaking documents relating to our proposed permanent total disability rule for your review. If there are any questions, please let me know.

Sincerely,

Gary Hall

Gary Hall
Compensation Attorney

GH/cm

Enclosure

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STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

Department of Labor and Industry
Workers' Compensation Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Permanent Total Disability and Reimbursement of Supplementary Benefits

(1) 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 propose the amendment of the rules governing permanent total disability and reimbursement of supplementary benefits. The adoption of the rules is authorized by Minnesota Statutes, sections 175.17 (1988), 176.132 (1988) and 176.83 (1988).

The State Department of Labor and Industry requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Gary Hall, Compensation Attorney
Department of Labor and Industry
Workers' Compensation Division
2nd Floor, 443 Lafayette Road
St. Paul, Minnesota 55155-4301

Oral statements will be received during regular business hours over the telephone at (612) 296-6588 and in person at the above address.

All statements of information and opinions shall be accepted until July 12, 1988. Any written material received by State Department of Labor and Industry shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

6-5-88
Date

Ken Peterson, Commissioner
Department of Labor and Industry

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Rule of the State Department of Labor and Industry, Workers' Compensation Division, Governing Permanent Total Disability and Reimbursement of Supplemental Benefits

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

(1) Notice is hereby given that the State Department of Labor and Industry intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota statutes Sections 175.17(1988), 176.132 (1988), and 176.83 (1988).

(2) 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. Public comment is encouraged. (3) 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. (4) 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 in writing. (6) 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. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

Gary Hall, Compensation Attorney
Department of Labor and Industry
Workers' Compensation Division
Third Floor, 443 Lafayette Road
St. Paul, Minnesota 55155-4301

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

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

(11) A free copy of the rule is available upon request from Gary Hall at the above address.

(12) **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 from Gary Hall at the above address.

(14) The option of the proposed rule has no impact on small business. The rules affect only insurers and self-insurers, none of which is a small business as defined by Minnesota Statutes, section 14.115, subd. 1 (1988).

(13) Additionally, the rules do not require the expenditure of public monies by local public bodies and thus have no fiscal impact.

(9) 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 Gary Hall at the above address.

11-9-90
Date

Ken Peterson, Commissioner
Department of Labor and Industry

The application form will request the specific data needed to determine the eligibility of the individual or organization and to review the application according to the review standards.

All applications must be ~~postmarked~~ received by the deadlines set forth by the board in the current program information.

1900.1700 COMPLETED APPLICATIONS.

The applicant is responsible for the quality and the nature of the responses in the application form and the supporting materials.

A complete application includes the following:

A. the appropriate application form with all spaces completed;

B. authorizing signature(s) on the application form;

C. a complete data summary form;

D. all required resumes attached;

E. applications from organizations have named a project director;

F. applications from individual artists must have included required supporting materials;

G. where applicable, a copy of the contract with the fiscal agent; and

H. ~~postmark or delivery~~ receipt by the stated deadline(s) in program information.

Department of Labor and Industry

Proposed Permanent Rules Relating to Reimbursement of Supplementary Benefits

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Labor and Industry intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* Sections 175.17 (1988), 176.132 (1988), and 176.83 (1988).

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. Public 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 in writing. 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:

Gary Hall, Compensation Attorney
Department of Labor and Industry
Workers' Compensation Division
Third Floor, 443 Lafayette Road
St. Paul, Minnesota 55155-4301

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency 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 free copy of the rule is available upon request from Gary Hall at the above address.

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 from Gary Hall at the above address.

The option of the proposed rule has no impact on small business. The rules affect only insurers and self-insurers, none of which is a small business as defined by *Minnesota Statutes*, section 14.115, subd. 1 (1988).

Additionally, the rules do not require the expenditure of public monies by local public bodies and thus have no fiscal impact.

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 Gary Hall at the above address.

Dated: 9 November 1990

Ken Peterson, Commissioner
Department of Labor and Industry

Rules as Proposed

5222.0100 DEFINITIONS.

Subpart 1. **Generally.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 3. **Proposed effective date of permanent total disability.** "Proposed effective date of permanent total disability" ~~as used in part 5222.0400 means~~ is the date, supported by documented medical reports and/or rehabilitation reports, on which the employer or insurer and employee agree that permanent total disability began ~~or will begin to apply the offset provision of *Minnesota Statutes*, section 176.101, subdivision~~ 4.

Subp. 3a. **Proposed effective date of offset.** "Proposed effective date of offset" is the date when the statutory requirements have been met and the insurer proposes to take the offset. The employee has been paid $25,000 in permanent total disability benefits after the date of permanent total disability and the employee is simultaneously receiving a government benefit as defined in subpart 5.

Subp. 4. **Government disability benefits.** "Government disability benefits" means disability benefits paid by any government disability program within the meaning of *Minnesota Statutes*, section 176.101, subdivision 4. It includes, but is not limited to, social security disability benefits, old age and survivor benefits, ~~and~~ fire relief association benefits, police relief association benefits, and public employee's retirement benefits.

Subp. 5. [See Repealer.]

Subp. 6. **Rehabilitation plan.** "Rehabilitation plan" means the plan established for the employee pursuant to *Minnesota Statutes*, section 176.102.

Subp. 7. **Supplementary benefits.** "Supplementary benefits" means benefits paid pursuant to *Minnesota Statutes*, section 176.132.

Subp. 8. [See Repealer.]

5222.0200 AUTHORITY AND PURPOSE.

Parts 5222.0100 to 5222.1000 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,~~ and 176.83. The purpose of these parts is to specify the procedure by which ~~employers~~ an employer 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.~~

5222.0300 ~~APPLICATION~~ SCOPE.

~~This chapter applies~~ Parts 5222.0100 to 5222.1100 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, 3a, or 4, without substantial interruption ~~for the injury which gave rise to~~ by suitable gainful employment after the proposed effective date of permanent 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.

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.

C. The employee ~~is receiving supplementary benefits pursuant to *Minnesota Statutes,* section 176.132, subdivision 1, or would~~ will be eligible for supplementary benefits after a finding of permanent total disability is made and the waiting period requirements of *Minnesota Statutes,* section 176.132, subdivision 1, are met.

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~~ for the period on or after the proposed effective date of permanent total disability is not ~~being~~ pending and has ~~never~~ not been ~~raised~~ decided in any judicial or quasi-judicial administrative proceeding, including administrative conferences under *Minnesota Statutes,* ~~sections 176.242 and 176.243~~ section 176.239.

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

F. The employer or insurer and employee agree to the date on which the employee's permanent total disability began.

5222.0400 PROCEDURE.

Subpart 1. **Generally.** The employer or insurer must comply with the procedures set forth in this part ~~in~~ by submitting ~~an application~~ a signed agreement to the commissioner for a finding of permanent total disability.

Subp. 2. **Contents of ~~application~~ agreement.** ~~The application~~ This agreement must state:

A. the name of the employee;

B. the social security number of the employee;

C. the name of the employer;

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

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

F. the date on which the ~~requested finding of permanent total disability is to be effective~~ employee became permanently totally disabled;

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

H. the date on which the employer or insurer will apply the offset;

I. the ~~name~~ names of the medical ~~provider~~ and vocational providers submitting the ~~medical report~~ reports showing ~~that~~ the employee is permanently totally disabled ~~at the time of application, and~~ as of the date stated in item F and the dates of ~~the medical report~~ those reports; ~~and~~

~~I.~~ J. the status of the rehabilitation plan as active, inactive, or nonexistent; and

K. the signatures of the employer or insurer and the employee.

Subp. 3. [See Repealer.]

Subp. 4. **Filing of medical reports.** Any medical reports which are identified pursuant to subpart 2, item 8 I, but have not been previously filed with the commissioner, must be attached to the ~~application~~ agreement.

Subp. 5. **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~~ agreement.

Subp. 6. **Benefit amounts.** The ~~application~~ agreement must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The ~~application~~ agreement 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~~ the agreement is approved.

Subp. 7. **Signing of ~~application~~ agreement.** The ~~application~~ agreement 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~~ each person signing the ~~application~~ agreement.

Subp. 8. ~~Notice~~ **Instructions to employee.** The employer or insurer must mail ~~a copy~~ two copies of the ~~application~~ agreement with instructions to the employee and, if represented, a copy 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~~.

Subp. 9. **Filing with commissioner.** A copy signed by the employee must be filed with the commissioner before action will be taken on the request.

5222.0500 ~~NOTICE OF DECISION~~ APPROVAL BY COMMISSIONER.

An agreement is deemed approved upon the signature of the commissioner. Approval by the commissioner constitutes a finding of the employee's permanent total disability as of the proposed effective date of permanent total disability. The commissioner must approve an agreement unless grounds for disapproval exist pursuant to part 5222.0600~~, 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~~.

5222.0600 DISAPPROVAL BY COMMISSIONER.

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

A. The ~~application~~ agreement is incomplete, is inaccurate, or is not in conformity with any ~~part of this chapter~~ provision of parts 5222.0100 to 5222.0110. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled ~~at the time of application~~ on and after the proposed date of the permanent total disability renders an ~~application~~ agreement incomplete and inaccurate and not in conformity with the rules. ~~Applications~~ Agreements which are disapproved on any of these grounds may be resubmitted under the procedure authorized in part 5222.0400.

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 medical and rehabilitation reports do not support the assertion that the employee's total disability is ~~not~~ permanent within the meaning of *Minnesota Statutes*, section 176.101, subdivision 5, and applicable case law.

D. The commissioner concludes that the available information does not support the proposed effective date of the employee's permanent total disability.

5222.0650 NOTICE OF DECISION.

A copy of the decision approving or disapproving the agreement will be mailed to each party within 30 days of the receipt by the Special Compensation Fund of a complete agreement under 5222.0400.

5222.0700 EFFECT OF ~~FINDING~~ DISAPPROVAL.

~~Approval or~~ Disapproval of an ~~application~~ agreement by the commissioner is without prejudice to a party's right to petition for a hearing pursuant to *Minnesota Statutes*, section 176.305 for a finding or ~~for a~~ revision of a finding of permanent total disability.

5222.0750 EFFECT OF APPROVAL.

Approval of an agreement by the commissioner constitutes a final order determining permanent total disability.

5222.0900 SEVERABILITY.

If any provision of this chapter 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 chapter shall in no manner be affected.

REPEALER. *Minnesota Rules*, parts 5222.0100, subparts 5 and 8; and 5222.0400, subpart 3, are repealed.

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.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. §14.14-14.28 have been met and five working days after the rule is published in *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 strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after 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 emergency rule will be published in the manner provided for adopted rules under §14.18.

Department of Commerce

Adopted Permanent Rules Relating to Appeal of Denial of Health Claims

The rules proposed and published at *State Register*, Volume 14, Number 25, pages 1408-1410, December 18, 1989 (14 SR 1408) and Volume 14, Number 38, pages 2224-2228, March 19, 1990 (14 SR 2224) are adopted as proposed.

Withdrawn Rules

Department of Labor and Industry

Notice of Withdrawal of Proposed Permanent Rules Relating to Permanent Total Disability Conferences

NOTICE IS HEREBY GIVEN that, pursuant to *Minnesota Statutes*, Section 14.05, subdivision 3, the State Department of Labor and Industry withdraws the above-entitled rules proposed and published at *State Register*, Volume 14, Number 44, pages 2531-2532, April 30, 1990 (145.R.2531).

Dated: 9 November 1990

Ken Peterson, Commissioner
Department of Labor and Industry

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, 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 Finance

Notice of Maximum Interest Rate for Municipal Obligations in November, 1990

Pursuant to *Minnesota Statutes*, Section 475.55, Subdivision 4, Commissioner of Finance, Peter Hutchinson, announced today that the maximum interest rate for municipal obligations in the month of November, 1990 would be nine (9) percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by General Obligations of the municipality may bear an interest rate of up to ten (10) percent per annum.

Peter Sausen
Assistant Commissioner
Cash & Debt Management
(612) 296-8372

David Sherwood-Gabrielson
Director, Rehabilitation and Medical Affairs
Department of Labor and Industry
3rd Floor, 443 Lafayette Road
St. Paul, Minnesota 55155-4316

Oral statements will be received during regular business hours over the telephone at (612) 296-8213 and in person at the above address.

All statements of information and opinions shall be accepted until July 12, 1989. Any written material received by State Department of Labor and Industry shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 5 June 1989

Ken Peterson, Commissioner
Department of Labor and Industry

Department of Labor and Industry

Workers' Compensation Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing Permanent Total Disability and 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 propose the amendment of the rules governing permanent total disability and reimbursement of supplementary benefits. The adoption of the rules is authorized by *Minnesota Statutes*, sections 175.17 (1988), 176.132 (1988) and 176.83 (1988).

The State Department of Labor and Industry requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Gary Hall, Compensation Attorney
Department of Labor and Industry
Workers' Compensation Division
2nd Floor, 443 Lafayette Road
St. Paul, Minnesota 55155-4301

Oral statements will be received during regular business hours over the telephone at (612) 296-6588 and in person at the above address.

All statements of information and opinions shall be accepted until July 12, 1989. Any written material received by State Department of Labor and Industry shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Dated: 5 June 1989

Ken Peterson, Commissioner
Department of Labor and Industry

Minnesota State Retirement System

Board of Directors, Regular Meeting

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, June 16, 1988 at 8:30 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the matter of the Proposed Adoption of the Rule of the State Department of Labor and Industry Workers' Compensation Division Governing, Permanent Total Disability and Reimbursement of Supplemental Benefits

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Gary Hall, being sworn 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 Department of Labor and Industry, Workers' Compensation Division rulemaking mailing list is accurate, complete, and current as of this 27th day of November, 1990.

That on the 27th day of November, 1990, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt 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.

Gary Hall
[Name]

Compensation Attorney
[Title]

Subscribed and sworn to before me
this 7 day of Dec, 1990

Rosemary L. LaRue

ROSEMARY LARUE
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES 11-11-96

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of the Proposed Adoption of the Rule of the State Department of Labor and Industry, Workers' Compensation Division, Governing Permanent Total Disability and Reimbursement of Supplemental Benefits

DECLARATION OF COUNSEL

I, Jon K. Murphy, 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. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 60 0018. 0609

Special Assistant Attorney General

Dated: 1/3/91