

1415.3200 ATTORNEY FEES.

Subpart 1. **Controlling statute.** Fees for legal services are governed by Minnesota Statutes, sections 176.081 and 176.191.

Subp. 2. **Withholding of attorney fees.** Upon receipt of the notice of representation, the employer and insurer may withhold attorney fees on genuinely disputed portions of claims under Minnesota Statutes, section 176.081. Attorney fees must be withheld on genuinely disputed portions of claims if the employee's attorney so requests.

Subp. 3. **Statement of fees.**

A. An attorney claiming attorney fees must serve on the employee and the insurer, and file with the division, a statement of attorney's fees on a form prescribed by the commissioner, including:

(1) a list of benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement and any certification or noncertification of a dispute issued under Minnesota Statutes, section 176.081, subdivision 1, paragraph (c);

(2) the amount of attorney fees previously paid for the same injury;

(3) the amount the employer and insurer are currently withholding as attorney's fees, if known;

(4) the amount claimed for attorney's fees;

(5) a statement that the attorney is licensed to practice law in the state;

(6) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivision 7, and 176.191;

(7) a notice that the employee or insurer has ten calendar days to object to the attorney fees requested;

(8) the date the statement was served on the employee, employer, and insurer;

(9) the full address and phone number of the employee's attorney;

(10) the number of hours spent in representation of the employee and the attorney's hourly fee; and

(11) an itemization of costs incurred and by whom paid.

The statement must be accompanied by the retainer agreement, if not previously filed. Any party may object to the statement of fees in writing within ten days of the date the statement was served. If, at the hearing or in a stipulation for settlement or mediation agreement, all parties state on the record or include in the stipulation or mediation agreement

that they have no objection to the statement of attorney's fees, the judge or commissioner may issue an appropriate order without waiting ten days. Except where excess fees are requested in item B, an oral statement of attorney fees may be presented at the hearing on the record if the case has been tried to a conclusion, no objection is made at the hearing, and a retainer agreement is filed. An oral statement of attorney fees must contain the information in this item.

B. If a party claims fees in excess of the amounts listed in Minnesota Statutes, section 176.081, subdivision 1, paragraph (a) or (b), the party shall attach the following additional information to the statement of attorney fees prescribed in item A:

- (1) an exhibit showing specific legal services performed, the date performed, and the number of hours spent for each service in representation of the employee;
- (2) a statement of expertise and experience in workers' compensation matters;
- (3) a brief description of the factual, medical, and legal issues in dispute;
- (4) the nature of proof required in the case and the responsibility assumed by counsel; and
- (5) whether or not a hearing on attorney fees is requested.

Subp. 4. [Repealed, 29 SR 1448]

Subp. 5. [Repealed, 29 SR 1448]

Subp. 6. [Repealed, 29 SR 1448]

Subp. 7. **Genuinely disputed portions of claims.** This subpart provides the applicable principles for the commissioner, compensation judge, or Workers' Compensation Court of Appeals to determine whether the benefit paid or payable was genuinely disputed for the purpose of calculation of a contingent fee under Minnesota Statutes, section 176.081, subdivision 1.

The statement of attorney fees or petition for excess attorney fees must include, for each benefit paid or awarded for which an attorney fee is sought, sufficient information to allow the fee determiner to apply the principles contained in this subpart.

The principles applicable to determine whether a benefit was genuinely disputed are as follows:

A. If primary liability had been denied for the claim, all compensation paid or awarded to the employee or dependent other than payment of medical and rehabilitation expenses, is used to compute the attorney's fee.

B. If there was no dispute concerning the rate, amount, duration, or eligibility for a benefit and the benefit was timely paid, the benefit may not be used to compute the fee.

C. The fee may not be computed on the entire amount of a benefit where only a portion of the benefit is disputed. Only the disputed portion of the benefit may be used to compute the fee.

D. If eligibility for the benefit is disputed, the entire benefit during the period for which eligibility was disputed is used to compute the fee.

E. If the rate of the benefit is disputed, only the amount paid or awarded above the rate admitted and timely paid is used to compute the fee.

F. If the duration of the benefit is disputed, only the portion of the benefit not conceded and not timely paid is used to compute the fee.

G. Benefits allegedly admitted but not timely paid may be used to compute the fee.

H. Benefits timely paid may not be used to compute the fee except where primary liability for the entire claim or eligibility for the benefit had been generally denied.

I. The difference between the compensation eventually paid or awarded and the amount admitted and timely paid is used to compute the fee.

J. The following benefits may be used to compute the fee:

(1) remodeling compensation pursuant to Minnesota Statutes, section 176.137, which was in dispute under this subpart;

(2) a penalty sum awarded to the employee or dependent for a benefit which was in dispute under this subpart;

(3) interest on a benefit which was in dispute under this subpart; and

(4) a benefit which was in dispute under this subpart although reimbursable to an intervenor.

K. Generally, each benefit is evaluated separately, however, if the rate, duration, or eligibility for permanent partial disability is disputed, the difference between the permanent partial disability which was conceded and timely paid and the amount of disputed permanent partial disability eventually paid or awarded is used to compute the fee.

L. The principles of this subpart apply to settlement sums. Attorney fees for a portion of a lump sum award allocated to medical or rehabilitation expenses must comply with Minnesota Statutes, section 176.081, subdivision 1.

Subp. 8. **Determinations without a hearing.** The office shall assign an attorney fee statement to a judge when action by a judge is needed. The judge shall take action on the attorney fee statement within 30 days of the filing of the statement by issuing an order advising the parties of how the attorney fee statement will be addressed or scheduling a conference or hearing on attorney fees.

If an objection to the requested fee has been filed and the interested parties waive their right to a hearing, the fees may be determined under Minnesota Statutes, section 176.305 or 176.322, without a hearing. A hearing must be scheduled and heard on the record if an objection has been filed and all interested parties have not waived their right to a hearing. Where no objection to the requested fee has been filed, the judge or court before whom the matter is pending shall issue a summary decision under Minnesota Statutes, section 176.305, regarding the amount of attorney fees owing under this part and Minnesota Statutes, section 176.081 or 176.191.

Statutory Authority: *MS s 14.51; 175.17; 175.171; 176.081; 176.155; 176.231; 176.285; 176.312; 176.361; 176.83*

History: *9 SR 333; L 1984 c 640 s 32; 29 SR 1448*

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