

**5220.2930 DEPENDENT'S BENEFITS.****Subpart 1. Allocation of compensation by judge.**

A. A party may petition for an allocation of benefits under Minnesota Statutes, section 176.111, subdivision 10. The petition may contain a proposed allocation. The petition must be served on all parties and filed with the division within one year after the date of death. If a petition for allocation is not filed in a timely manner and the death occurred after June 30, 1981, the allocation will be as provided in subpart 2.

B. A party may object to a proposed allocation by serving on all parties and filing an objection with the division within 20 days after service of the petition. The objection must contain a clear and concise statement of the specific grounds for the objection and must be accompanied by any documentary evidence supporting the objection.

C. A settlement judge shall rule on the petition without a hearing. If a party objects to the judge's decision, the party may request a hearing by filing with the division a written request for hearing within 30 days after the decision was filed. Upon receipt of a timely request for hearing, the matter will be referred to the office for hearing.

**Subp. 2. Allocation of compensation in other cases.** In all cases where there has been no allocation of benefits by a judge under subpart 1, and the death occurs after June 30, 1981, compensation to which dependents are entitled under Minnesota Statutes, section 176.111, shall be allocated as follows:

A. If the deceased employee leaves a surviving spouse and one dependent child, 84 percent of the compensation due under Minnesota Statutes, section 176.111, shall be paid to the surviving spouse and the remaining 16 percent of the compensation shall be paid for the benefit of the dependent child.

B. If the deceased employee leaves a surviving spouse and two or more dependent children, 75 percent of the compensation due under Minnesota Statutes, section 176.111, shall be paid to the surviving spouse and the remaining 25 percent shall be paid for the benefit of the dependent children.

This allocation shall apply from the date of death until a court-determined allocation is made, if any.

**Subp. 3. [Repealed, 18 SR 2546]**

**Subp. 4. Factors in allocating.** Factors which may justify a different allocation from that provided in subpart 2 include special circumstances which necessitate greater income to one or more of the dependents and the existence of other adequate means of support, other than workers' compensation benefits, for certain dependents but not for others.

**Subp. 5. Offset for government survivor benefits.** An offset for government survivor benefits is allowed under Minnesota Statutes, section 176.111, subdivision 21,

only to the extent that the government survivor benefits, when combined with the weekly workers' compensation benefits, exceed the weekly wage of the deceased employee at the time of death or exceeds the dependents allocated portion of the weekly wage for deaths occurring prior to July 1, 1981. For purposes of this offset, the weekly wage must be increased by the adjustments provided by Minnesota Statutes, section 176.645.

A. Deaths prior to July 1, 1981. If there is a surviving spouse and one or more dependent children in a single household, the offset must be computed twice, once separately for the spouse and once separately for the children, the children being taken as a group. For purposes of this computation, the weekly wage, as adjusted pursuant to Minnesota Statutes, section 176.645, is allocated between the spouse and children in the same proportion as benefits are allocated pursuant to this rule. Mother's and father's insurance benefits under United States Code, title 42, section 402(g), must be allocated to the children.

B. Deaths after June 30, 1981.

(1) Surviving spouse responsible for support of all dependents. If the support of all dependent children is the responsibility of the surviving spouse, the offset shall be computed only once, taking the spouse and dependent children together as one group. All government survivor benefits, including mother's and father's insurance benefits, received by any member of the group shall be lumped together for purposes of computing the offset.

(2) Surviving spouse not responsible for support of all dependents. If support of one or more of the dependent children is not the responsibility of the surviving spouse, the offset shall be computed twice, once for the surviving spouse and the children dependent on the surviving spouse, all taken as a group, and once for the children whose support is not the responsibility of the surviving spouse. For purposes of the offset, the weekly wage, as adjusted under Minnesota Statutes, section 176.645, must be allocated between the spouse and children in the same proportion as benefits are allocated pursuant to this part. Mother's and father's insurance benefits must be allocated to the group comprised of the dependent children for whose benefit the mother's and father's insurance benefits are being paid.

**Statutory Authority:** *MS s 14.388; 175.17; 175.171; 176.83*

**History:** *11 SR 1530; 18 SR 2546; 35 SR 2015*

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