

CHAPTER 1415
OFFICE OF ADMINISTRATIVE HEARINGS AND
DEPARTMENT OF LABOR AND INDUSTRY
JOINT WORKERS' COMPENSATION LITIGATION PROCEDURES

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1415.0100 SCOPE AND PURPOSE.

This chapter governs all workers' compensation matters in litigation before compensation judges in the Office of Administrative Hearings and administrative conferences conducted at the Workers' Compensation Division of the Department of Labor and Industry and the Office of Administrative Hearings under Minnesota Statutes, sections 176.102, 176.106, 176.135, 176.136, 176.137, and 176.239. Additional rules of the office regarding workers' compensation litigation procedures are contained in chapter 1420. The two chapters together contain the litigation rules in workers' compensation cases. Rules regarding appeals to the Workers' Compensation Court of Appeals are contained in chapter 9800.

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; 29 SR 1448*

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1415.0200 [Repealed, 29 SR 1448]

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1415.0300 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given them.

Subp. 2. **Act.** "Act" means the Workers' Compensation Act, Minnesota Statutes, chapter 176.

Subp. 3. [Repealed, 29 SR 1448]

Subp. 4. [Repealed, 29 SR 1448]

Subp. 5. **Chief judge.** "Chief judge" means the chief administrative law judge of the Office of Administrative Hearings.

Subp. 6. **Commissioner.** "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 7. [Repealed, 29 SR 1448]

Subp. 8. **Court of appeals.** "Court of appeals" means the Workers' Compensation Court of Appeals.

Subp. 8a. **Days.** "Days" means calendar days unless specifically provided otherwise. Days are computed as provided in Minnesota Statutes, section 645.15.

Subp. 9. **Division.** "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

Subp. 10. [Repealed, 29 SR 1448]

Subp. 10a. **Imaging.** "Imaging" means the technology and process by which paper documents are scanned and stored digitally for subsequent retrieval and processing. The documents are indexed according to type of document, employee name, Social Security number, and date of injury. Once indexing is complete, the document is automatically routed to staff at the division or office as needed and it is a part of the permanent division file. The paper is confidentially recycled.

Subp. 10b. **Insurer.** "Insurer" means the workers' compensation insurer for the employer and includes self-insured employers. For the purposes of these rules only, "insurer" also includes the special compensation fund where the employer was uninsured on the date of injury.

Subp. 11. [Repealed, 29 SR 1448]

Subp. 11a. **Intervenor.** "Intervenor" means a party under Minnesota Statutes, section 176.361, who has an interest in a pending workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has filed a motion or application to intervene under part 1415.1250 and Minnesota Statutes, section 176.361.

Subp. 12. **Judge.** "Judge" means a workers' compensation judge from the Office of Administrative Hearings.

Subp. 13. **Office.** "Office" means the Office of Administrative Hearings.

Subp. 14. [Repealed, 29 SR 1448]

Subp. 15. **Petition.** "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer, insurer, special compensation fund, or any other person or entity authorized by law to file a petition which initiates a contested workers' compensation case requiring assignment for hearing.

Subp. 16. **Petitioner.** "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf, an employer or insurer, the special compensation fund, or any other person or entity authorized by law to file a petition.

Subp. 17. [Repealed, 29 SR 1448]

Subp. 18. **Potential intervenor.** "Potential intervenor" means a person or entity under Minnesota Statutes, section 176.361, who has an interest in a workers' compensation proceeding such that the person or entity may either gain or lose by an order or decision in the case, and the person or entity has not filed a motion or application to intervene under part 1415.1250 and Minnesota Statutes, section 176.361.

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; L 1985 1Sp14 art 9 s 75; L 1994 c 483 s 1; 29 SR 1448*

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1415.0400 [Repealed, 29 SR 1448]

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1415.0500 LEGAL DOCUMENTS.

Forms and documents used or filed in all workers' compensation proceedings before the division or the office must be on white standard size 8-1/2 by 11 inch paper, and must contain the case identifying information required by Minnesota Statutes, section 176.275, and must also indicate the type of action requested. Pleadings and motions must also include the full caption of the case listing all parties.

All legal documents filed by an attorney must include the attorney's Minnesota Supreme Court license number.

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; 29 SR 1448*

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1415.0600 EXAMINATION OF WORKERS' COMPENSATION FILES.

Persons desiring to examine a file maintained by the division or office shall present a written authorization to inspect the file to designated personnel of the division or office. Files are generally

reviewed at the division, except when the file is in paper form only and located at the office. Files examined at the division are subject to the requirements of part 5220.2880. The authorization must be signed and dated by a party to the claim who is either the employee, the employer, the insurer, a dependent in death cases, or a legal guardian in cases of mental or physical incapacity. The authorization must specify the person or party authorized to review the file. The authorization is placed in and becomes part of the file.

This part does not grant greater access to the files than that given by the Minnesota Data Privacy Act or the Workers' Compensation Act.

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

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1415.0700 SERVICE AND FILING.

Subpart 1. **Service by state.** The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties by first class mail at their addresses of record, by personal service, or, if authorized by the recipient, by facsimile or electronic mail.

If the division or office has received notice that a party is represented by an attorney, the attorney must be served with all documents. Service on the attorney is considered service on that party, except that all final orders, decisions, awards, orders striking a case from the calendar, continuance orders, and notices of proceedings must also be served directly on the party.

Subp. 1a. **Digitized signatures.** All orders, decisions, awards, or other documents issued by an employee of the office or the division authorized to sign the document may be signed by digitized signature pursuant to Minnesota Statutes, section 176.281. Digitized signatures must be affixed as follows:

A. The signatory must either personally affix, or instruct another office or division employee to affix, a digitized signature to a document or group of documents.

B. The person affixing a digitized signature must ensure that all information required by item C is completed and accurate.

C. A digitized signature must include the typed name and title of the signatory, the date of issuance, and immediately below the typed name and title, a certificate in lieu of original signature. The certificate in lieu of original signature must include certification that the document was approved and issued by the signatory on the date indicated and explain how to confirm the authenticity of the document.

Subp. 2. **Service by parties.** A party may serve documents by first class mail, by personal service, or, if authorized by the recipient, by facsimile or electronic mail. All documents filed in connection with a proceeding at the division or office must be served on all parties and filed, together with an affidavit of service, with the division. If a party is represented by an attorney in the matter,

the attorney must be served with all documents. Service on the attorney is considered service on that party, except where Minnesota Statutes, chapter 176, requires otherwise.

Subp. 3. **Computation of time.** Computation of time for service is governed by Minnesota Statutes, section 645.15.

Subp. 4. **Filing with state.**

A. Except as provided in item B, all documents must be filed with the division. Filed documents must be accompanied by an affidavit of service in a form acceptable to the district courts. A document is filed upon its receipt by the division or the office by 4:30 p.m. on a state business day. Documents received after 4:30 p.m. on a state business day are considered filed on the next open state business day.

B. If the document requires attention by the office within two business days, it must be filed with the office. Stipulations for settlement require attention by the office within two business days. Exhibits for video hearings are filed with the office as provided in part 1415.2900, subpart 6. Exhibits submitted while a hearing record is open are filed with the office.

C. Because documents are destroyed after imaging, a party shall retain an original document and file a copy with the division except when filing a notice of appeal, or where the division has notified the party that an original must be filed because the quality or authenticity of a document is at issue. The original notice of appeal under Minnesota Statutes, section 176.421, must be filed with the office and copied to the division. This filing must be by mail or in person. A filing by facsimile or electronic transmission is not effective.

Subp. 5. **Electronic or fax filing.** A party is authorized to file a document with the office or the division by facsimile if the document is 15 pages or less in length. A party may file a document by electronic transmission only as authorized by the division or office. A notice of appeal, as provided in subpart 4, may not be filed by facsimile or electronic transmission. The filed facsimile or transmitted information has the same force and effect as the original. Where the quality or authenticity of a document is at issue, the division or the office shall require the original document to be filed. Where the division or office has not identified quality or authenticity as an issue and the document is filed by facsimile or electronic transmission, the party shall not also file the original document.

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

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1415.0800 NOTICE OF REPRESENTATION.

Subpart 1. **Filing.** When a party is represented by an attorney, written notice of representation must be filed with the division. A notice of representation is not necessary when the attorney files a signed pleading as the attorney for the party or a copy of a fully executed retainer agreement.

A. The notice of representation of an employee, dependent, or heir must be signed by the attorney, signed by the employee, dependent, or heir, and include the address and telephone number of the attorney, and the attorney's Minnesota Supreme Court license number.

B. Copies of the notice or retainer agreement must be served pursuant to part 1415.0700.

Subp. 2. **Substitution of attorney.** If a party is represented by an attorney and the party subsequently desires to change attorneys, the attorney assuming representation shall file a notice of representation and a copy of the new retainer agreement. The new notice of representation and new retainer agreement must be filed and served on all parties and the previous attorney within 20 days of the signing of a retainer agreement.

Subp. 3. [Repealed, 29 SR 1448]

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

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1415.0900 [Repealed, 29 SR 1448]

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1415.1000 COMMENCEMENT OF PROCEEDINGS.

Subpart 1. **Commencement of proceedings.** Except for a potential intervenor claim under part 1420.1850, subpart 4, or a request for an administrative conference, or where otherwise provided by law, a proceeding for adjudication of a claim by a party under Minnesota Statutes, chapter 176, is commenced by petition and must be in the form prescribed by the division, containing:

- A. the name, address, and social security number of the employee;
- B. the name and address of each employer at the time an injury or disease is alleged to have occurred;
- C. the name of each employer's workers' compensation insurer;
- D. the date of each injury or occupational disease claimed;
- E. the weekly wage at the time of injury or disease;
- F. the nature of the injury or disease;
- G. a statement that the injury or disease arose out of and in the course of the employment and that the employer had knowledge or notice of the injury or disease;
- H. an itemization of all benefits claimed, including the type of disability and the time period for which coverage is claimed;
- I. an itemization of medical benefits claimed;

J. the name, address, and claim or policy number of any potential intervenor;

K. the name, address, telephone number, and Minnesota Supreme Court license number of the petitioner's attorney; and

L. whether an interpreter or reasonable accommodation of disability is needed.

Subp. 2. **Service of petition, filing.** The petitioner shall serve a copy of the petition, together with all attachments, on all other parties named in the caption. The petition and medical, vocational, or other reports supporting each claim, must be filed with the division with an affidavit of service.

Subp. 3. [Repealed, 29 SR 1448]

Subp. 4. **Amended petitions and requests.** When an amendment to a petition or to a medical or rehabilitation request seeks to add, subtract, or change a party to the claim or injury date, the petitioner must file an amended petition or medical or rehabilitation request on the form or in the format prescribed by the division. The judge or the commissioner shall disallow an amended petition or medical or rehabilitation request or continue the proceeding if the adverse party has insufficient time to prepare for a proceeding regarding the new issues or parties. Service of amended petitions is governed by part 1420.1300, subpart 2. A motion for joinder under part 1420.1300 rather than an amended petition must be filed to add a party when there are fewer than 120 days before a scheduled hearing.

Subp. 5. **Letter amendment to petition or request.** If a petitioner seeks to add an additional claim, withdraw a claim, or otherwise change the claimed benefits or other assertions that do not change the identified parties, the petitioner may amend the claim by filing an amendment to the petition or request in the form of a letter setting forth the amendment; however, a judge or the commissioner shall disallow an amendment or continue the proceeding if the adverse party has insufficient time to prepare for a proceeding regarding the new issues.

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 1997 c 66 s 80; L 1999 c 107 s 66; L 2000 c 343 s 4; 29 SR 1448*

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1415.1100 NOTICE TO POTENTIAL INTERVENORS.

Subpart 1. **Responsibilities of attorneys.** All attorneys, whether representing employees, employers, or any other parties to a workers' compensation proceeding, shall ask their clients whether a third party, other than the workers' compensation insurer, has paid or provided benefits or services to the employee or on the employee's behalf, or whether there is an outstanding order under Minnesota Statutes, chapter 518, for an employer to withhold sums for the payment of support or maintenance that may entitle the person or entity to intervene as a party under Minnesota Statutes, section 176.361.

Subp. 2. **Notice to potential intervenors.** If inquiry discloses the existence of a potential intervenor, the attorney must promptly serve the potential intervenor with written notice of its right

to petition for intervention and reimbursement pursuant to subpart 3. Notice to potential intervenors under Minnesota Statutes, section 176.361, may not be given before a proceeding at the office or division has been commenced. The attorney shall attach to the notice a copy of all pleadings in the case, and a copy of all notices and orders served in the case to date. The notice need not be filed with the division except as required by part 1420.1850. If a party files the notice to potential intervenors, the party shall omit the attachments in the copy filed with the division unless directly relevant to a dispute. The notice must specifically advise:

A. that the petitioner has commenced a proceeding to recover workers' compensation benefits, and that under part 1415.1250 and Minnesota Statutes, section 176.361, the potential intervenor has the right to petition for intervention and reimbursement of payments of monetary benefits, treatment expenses, or vocational rehabilitation services;

B. the name and address of parties to the proceeding and the name and address of their attorney;

C. the name of a potential intervenor's insured, if applicable, the nature of the payments made or services provided, and any identifying claim and policy number;

D. that the failure of a potential intervenor to file a motion for intervention within 60 days of service of the notice or within 30 days of notice of an administrative conference or expedited hearing shall result in a denial of the claim for reimbursement unless otherwise provided by law;

E. that, unless an intervenor's right to reimbursement is established by stipulation or otherwise, failure to personally attend scheduled administrative conferences and hearings when required by Minnesota Statutes, section 176.361, subdivision 4, or appear by an alternative method approved by the commissioner or a judge, will result in a denial of the claim for reimbursement; and

F. how the potential intervenor may obtain a copy of the intervention statute, rule, and sample form.

Subp. 3. Time to notify. Attorneys shall comply with this part within 30 days after the service of an answer; or within 60 days of service of a petition if no answer has been filed; and when a medical or rehabilitation request or response is filed. Attorneys shall promptly notify a potential intervenor whose interest arises upon payment made or services rendered after the petition, answer, rehabilitation request, or medical request was filed, but not before a proceeding at the office or division has been commenced.

Subp. 4. Failure to notify potential intervenors. Failure to comply with the notice requirements of this part may result in the matter being stricken from the hearing or conference calendar, or other sanction under part 1420.3700, if the judge or commissioner finds the noncompliance materially prejudices the rights and liabilities of the other parties or the potential intervenor.

Further proceedings may be ordered under part 1420.1850 if an intervenor or potential intervenor claims to have been effectively excluded from a binding determination or from settlement

negotiations or has been unable to reach a resolution of its claim at the time the other parties have resolved their claims.

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; 29 SR 1448*

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1415.1200 [Repealed, 29 SR 1448]

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1415.1250 INTERVENTION.

Subpart 1. **Motion.** A person desiring to intervene in a workers' compensation case under this chapter must serve and file a motion or application to intervene within 60 days of notice under part 1415.1100 or, for an expedited hearing, within 30 days of notice under part 1420.2150, subpart 5, or within 30 days of notice of an administrative conference under part 1415.3700.

Subp. 2. **Personal appearance by intervenor.** Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall personally attend all scheduled administrative conferences and hearings where required by Minnesota Statutes, section 176.361, unless an alternative to personal appearance is allowed by the commissioner or the judge.

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

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1415.3000 [Repealed, 29 SR 1448]

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1415.3100 [Repealed, 29 SR 1448]

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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*

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1415.3300 TAXATION OF COSTS AND DISBURSEMENTS.

Subpart 1. **When allowed.** This part applies to costs in disputed cases. Costs associated with cases settled before hearing may be recovered by agreement in a stipulation or retainer agreement.

Subp. 2. **Informal request.** Before submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party on the party from whom reimbursement is sought. If agreement cannot be reached on all items, the taxing party

may then proceed formally, including in the formal request an indication of those costs agreed upon.

Subp. 3. **Service of formal request.** The taxing party shall serve the request for taxation of costs and disbursements upon the parties.

Subp. 4. **Service of objection.** An opposing party has ten working days from the date of service upon him or her to serve and file a formal objection to taxation or allowance.

Subp. 5. **Hearing.** If a party requests a hearing on costs, the office shall schedule a hearing and give notice of the hearing to the parties.

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

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1415.3500 EXHIBITS.

Subpart 1. **Retention and retrieval of exhibits.** For purposes of this part, an exhibit is a document or other evidence that is introduced at a hearing and is marked, offered, and accepted into the record by a judge as an exhibit. Exhibits do not become a permanent part of the division file; however, the judge's lists of exhibits must be retained in the division file. Exhibits must be retained by the division or the office for 60 days after a final decision is served and filed in the case. During this 60-day period, exhibits may be retrieved by the submitting party upon request to the division. If no party has retrieved the exhibits after 60 days, the exhibits will be destroyed.

Subp. 2. [Repealed, 29 SR 1448]

Subp. 3. [Repealed, 29 SR 1448]

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; 29 SR 1448*

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1415.3600 [Repealed, 29 SR 1448]

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1415.3700 ADMINISTRATIVE CONFERENCES.

Subpart 1. **Scope.** This part governs administrative conferences conducted under Minnesota Statutes, sections 176.106 and 176.239. Rehabilitation disputes are also governed by part 5220.0950.

Subp. 2. **Notice.** Unless the issue will be decided on the basis of written submissions, or unless the parties agree on a shorter notice period, the division or office must notify the parties and intervenors or potential intervenors under Minnesota Statutes, section 176.361, of the date, time, and place of the conference at least 14 days before the conference under Minnesota Statutes, section 176.106, and at least ten days before the conference under Minnesota Statutes, section 176.239. The qualified rehabilitation consultant, if one is assigned, must be notified of a rehabilitation conference. The special compensation fund must be notified of all administrative conferences where the fund is reimbursing benefits to an insurer or self-insurer under Minnesota Statutes 1990, section 176.131, or Minnesota Statutes 1994, section 176.132, or a claim has been made under the above referenced statutes against the fund for benefits by any of the parties, or the fund is paying benefits under Minnesota Statutes, section 176.191. The notice must include the statutory authority to hold the conference and indicate whether issues from another petition or request form have been joined for consideration at the conference.

Subp. 3. **Appearances.** All parties, and the qualified rehabilitation consultant if the conference is conducted under Minnesota Statutes, section 176.106, concerning rehabilitation services, must be given notice and the opportunity to attend administrative conferences or, at their option, to present documents on their behalf. A potential intervenor may attend the conference. Intervenors are required to appear as provided in part 1415.1250, subpart 2, and Minnesota Statutes, section 176.361, subdivision 4. A party may be represented by an attorney. The employee and insurer, or designated person having authority to act on behalf of the party regarding the matter in dispute, is required to attend an administrative conference under Minnesota Statutes, section 176.239, unless health reasons, distances, or other good cause prevents attendance. If absent because of distance, the employee and insurer or authorized designee of the employee and insurer must be available by telephone at the scheduled conference time.

Subp. 4. **Information considered.** The presiding official shall permit the parties to present their positions and reports or other documents or information relevant to the issues involved. Reasonable opportunity for parties to refute statements or other information submitted must be allowed. Copies of documents submitted must be simultaneously supplied to the other parties.

Subp. 5. **Concurrent litigation.** When the same or a nearly identical issue in the same case is pending with the office, the Workers' Compensation Court of Appeals, or another court, the division must decline to issue a decision and defer to the office or court if issuing a decision will result in an inconsistent determination.

Subp. 6. **Continuance.** Continuances are disfavored and will be granted only upon a showing of good cause for the inability or failure to appear at a conference. Good cause generally means that circumstances beyond the control of the party or party's representative prevent attendance at the scheduled time.

Subp. 7. **Intervenors.** If, at the time of the conference, the division or office determines that a potential intervenor has not been notified of the conference, the conference must be canceled or continued, the parties may enter into an agreement which does not compromise the rights of the potential intervenor, or the division or office must issue a decision which does not compromise the rights of the potential intervenor.

Subp. 8. **Testimony cost.** The division shall not order reimbursement of costs for testimony at an administrative conference.

Subp. 9. **Administrative conference documents.**

A. Documents submitted to the office during an administrative conference are not maintained in the permanent division file. A party desiring to file an administrative conference document in the permanent division file must file the document with the division.

B. A party submitting a document to be considered at a conference scheduled to be conducted at the office by video technology must prefile the document with the office at the location of the judge at least one full business day before the conference date. Mailed or delivered documents to be considered at the video conference must be placed in a separate, sealed envelope and marked with the name and date of the case and the employee's file number, and must be identified as conference documents of the submitting party. Faxed documents may not exceed 15 pages and must be clearly marked as video conference documents for immediate hand delivery to the judge; must include the name and file number of the employee and the date of the conference; and must identify the submitting party. An adverse party must also receive the documents for a video conference at least one full business day before the conference date.

Subp. 10. **Resolution forum.** Administrative conferences concerning rehabilitation issues are conducted by the division unless the division refers the matter to the office. Administrative conferences concerning the discontinuance of benefits under Minnesota Statutes, section 176.239, are conducted by the office. Administrative conferences concerning medical disputes are conducted by the division under this part and part 1415.3800 unless the division refers the matter to the office. Administrative conferences concerning medical disputes referred by the division to the office are conducted informally by the office under this part and part 1415.3800, or more formally in a hearing pursuant to part 1420.2900. Except where the insurer is disputing that the injury arose out of and in the course of employment, a claim petition containing only medical or rehabilitation issues shall be resolved by the division unless the division refers the matter to the office.

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: *29 SR 1448*

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1415.3800 MEDICAL DISPUTES.

Subpart 1. **Definition.** For purposes of this part, "medical disputes" means any dispute arising under Minnesota Statutes, sections 176.135, 176.1351, and 176.136, as determined by the division or office under Minnesota Statutes, sections 176.103 and 176.106.

Subp. 2. **Medical claim, request.** To request an administrative conference under Minnesota Statutes, section 176.106, on a medical dispute, an employee, insurer, or health care provider as defined by Minnesota Statutes, section 176.011, subdivision 24, must file a medical request form with the division. A medical request form may be filed by a health care provider only where the

insurer has denied payment on the basis that a charge is excessive under Minnesota Statutes, section 176.136, subdivision 2. For purposes of filing by a health care provider, a claim is not considered denied based on excessiveness where the insurer asserts that the injury did not arise out of and in the course of employment or where the disputed treatment is for a condition which the insurer asserts is not wholly or partly casually related to the work injury. The requesting party shall serve the medical request form and attachments pursuant to part 1415.0700 and shall serve potential intervenors. The requesting party shall specify the medical disputes and attach supporting documents. A health care provider filing a medical request form must attach evidence of the insurer's denial of payment based on excessiveness, an itemized statement of charges, and the appropriate record as defined in part 5221.0100, subpart 1a. The requesting party must also specify the name and address of any potential intervenor, and the claim or policy number, if known.

Subp. 3. Medical claims response. If the employee or health care provider has filed a medical request form, the insurer must file a medical response form with the division and serve copies on the other parties no later than 20 days after service of the medical request form or within the time period provided by part 5221.6050, subpart 7. Failure to file a required form will be considered in the determination of disputed issues, penalties, and interest charges, and may result in a determination based solely on the written submissions of the requester when an administrative conference is not scheduled.

Subp. 4. Medical claim; denial of liability. If a medical request form has been mistakenly filed in a case in which initial issues of liability exist, the matter may be set for a settlement conference before a judge under Minnesota Statutes, section 176.305, or the requester will be instructed to file a claim petition, intervene in another proceeding, or other procedure as the division or office directs.

Subp. 5. Penalties. Where payment of medical charges is not made in compliance with part 5221.0600 and Minnesota Statutes, section 176.135, a penalty may be assessed under part 5220.2740.

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: *29 SR 1448*

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1415.3900 DISCONTINUANCE CONFERENCES.

Subpart 1. Purpose. The purpose of an administrative conference under Minnesota Statutes, section 176.239, is to determine whether reasonable grounds exist for a discontinuance of weekly benefits. If the parties do not reach an agreement on the issues, they will be resolved by a decision of the judge. When the division has referred a medical or rehabilitation issue to the office under part 1415.3700, subpart 10, the medical or rehabilitation issue may also be discussed and clarified at the conference, and a decision issued under Minnesota Statutes, section 176.102 or 176.106, if:

- A. all affected parties consent; or
- B. a notice that the issues will be joined is issued under part 1415.3700, subpart 2.

Subp. 2. **Request.** The employee may request that the office schedule an administrative conference to discuss a proposed discontinuance of benefits. If the proposed discontinuance is based on a reason other than a return to work, the employee's request for a conference must be personally delivered or received by the division or office no later than 12 days from the date a notice of intention to discontinue benefits, which was served on the employee and the employee's attorney, was filed. The employee shall direct a written request for a discontinuance conference to the division or a telephone request to the office. If the proposed discontinuance is based on a return to work, the employee's request must be received by the division or office within 30 days of the reported date of the employee's return to work. Allowance will be made, if appropriate, for nonreceipt or delay under Minnesota Statutes, section 176.285.

If the insurer discontinues, reduces, or suspends benefits without properly serving and filing a notice of intention to discontinue benefits and with the required attachments in a situation in which a notice of intention to discontinue benefits was required under part 5220.2630 and Minnesota Statutes, section 176.238, the employee may request an administrative conference within 40 days after the employee received the last payment but no later than 12 days after a notice of intention to discontinue benefits is properly served and filed, or 30 days after the employee returned to work if the notice is properly served and filed within 14 days after the insurer has notice of the employee's return to work.

Subp. 3. **Continuation of benefits.**

A. If an employee requests an administrative conference within the time set out in this part, benefits must be paid through the date of the conference unless:

- (1) the employee has withdrawn the request for a conference;
- (2) the employee fails to appear at the conference without good cause;
- (3) the employee has returned to work in which case benefits are due through the date of the employee's return to work;
- (4) the employee is receiving temporary partial benefits and the employee is no longer employed;
- (5) the employee dies;
- (6) no plausible information is presented by the employee to dispute the proposed discontinuance of the benefits;
- (7) notice of maximum medical improvement was served more than 90 days before the administrative conference;
- (8) an approved retraining plan ended more than 90 days before the administrative conference;
- (9) the employee has failed to make a good faith effort to participate in the rehabilitation plan before the administrative conference, but is making a good faith effort at the time of the

conference, in which case benefits may be discontinued between the date the notice of intention to discontinue benefits was served and filed and the administrative conference date;

(10) the workers' compensation claim was mistakenly accepted by the insurer and primary liability for the entire injury is now denied;

(11) the employee has received temporary partial benefits for the maximum period allowed under Minnesota Statutes, section 176.101, subdivision 2;

(12) the effects of the injury have totally resolved without residual disability or restrictions; or

(13) the employee has voluntarily retired from the labor market.

B. If the employee requests a continuance of the conference date that is granted and the employee is awarded ongoing benefits, benefits must be paid through the date of the conference and continuing. If the employee's request for a continuance is granted and the employee is not awarded benefits, benefits need not be paid during the period of continuance. If the employer or insurer requested the continuance, benefits must be paid during the period of continuance. If the employee and insurer's joint request for a continuance is granted, benefits must be paid during the period of continuance unless the employee agrees in writing to waive the interim payment and await a decision regarding payment under subpart 5 following the administrative conference.

Subp. 4. **Scheduling.** Subject to part 1415.3700, subpart 6, a discontinuance conference must be set within the time limits set by this subpart. Following a notice of intention to discontinue benefits, the office shall schedule an administrative conference no later than ten days after receipt of a timely request for a conference. If no notice of intention to discontinue benefits was filed as required by part 5220.2630 and the employee requests a conference, the office shall schedule a conference no later than ten days after the division's receipt of the employee's request if the conference request is received within 40 days from the date the employee's last benefit payment was received.

Subp. 5. **The decision.** The decision must be based on information presented at the conference and information from the division file relating to authority to decide the issue, and information contained in the notice of intention to discontinue benefits and any attachments. The office shall mail a copy of the decision to the parties no later than five working days from the date of the conference.

Subp. 6. **Penalties.** Penalties may be imposed for an improper discontinuance of compensation under part 5220.2720 and Minnesota Statutes, section 176.238, subdivision 10, and for unreasonable or inexcusable delay or other grounds under parts 5220.2760 and 5220.2790 and Minnesota Statutes, section 176.225, subdivisions 1 and 5. If the employee seeks a penalty in a discontinuance proceeding, the employee must provide reasonable prior written notice of the claim for penalties.

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

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1415.4000 SUBROGATION INTEREST IN THIRD-PARTY RECOVERY.

Subpart 1. **Determination of subrogation interest by division.** Where there is no dispute about the facts or the calculation of the subrogation interest, credit, or sum payable to the employee under Minnesota Statutes, section 176.061, subdivision 5, the insurer and employee may submit a petition based on stipulated facts under Minnesota Statutes, section 176.322, to the Workers' Compensation Division for an order determining subrogation interest and credit.

A. The petition must contain substantially the following:

(1) information identifying both the district court action if any and the workers' compensation claim involved;

(2) the total proceeds of the third-party settlement or award;

(3) the amount of legal fees and costs of the third-party claim;

(4) the subrogation interest of the employer itemized by type of benefits paid such as but not limited to:

(a) temporary total disability;

(b) temporary partial disability;

(c) permanent total disability;

(d) permanent partial disability; and

(e) medical expenses where Minnesota Statutes, section 176.061, subdivision 7, claim was not made;

(5) the name, address, and telephone number of the attorney for each party if any; and

(6) the signatures of all parties indicating agreement with the information in subitems (1) to (5).

B. The parties may also, but are not required to, submit a proposed calculation of the subrogation interest, including the future credit amount and the sum payable to the employee.

C. The petitioners must file one clean copy of the petitions and attachments, suitable for imaging. The petition must be served on the special compensation fund where it has a subrogation interest based on payments made pursuant to Minnesota Statutes, section 176.183, or a known potential interest under Minnesota Statutes 1990, section 176.131, or Minnesota Statutes 1994, section 176.132.

D. The division may refer a petition based on stipulated facts submitted under this subpart to the office for further proceedings where the parties disagree how the subrogation interest, credit, or sum payable to the parties should be calculated.

E. Except as provided in item D, after receipt of the petition, the division shall serve on the petitioners, and special compensation fund if appropriate, an order containing the following:

- (1) the information upon which the subrogation order is based;
- (2) the calculation of the subrogation interest, including the future credit amount and the sum payable to the employee;
- (3) an explanation of the effect of the credit upon future benefit entitlement; and
- (4) notice of the parties' right to appeal the order within 30 days of its service pursuant to Minnesota Statutes, section 176.322.

Subp. 2. **Alternative petitions and orders.** Instead of petitioning the division for an order under subpart 1, parties may request an award from a judge by submitting a stipulated agreement under Minnesota Statutes, section 176.521, or by filing a petition under Minnesota Statutes, section 176.291, for a determination of subrogation interest and credit.

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

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1415.4100 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 rule shall in no manner be affected.

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

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