

1 Department of Labor and Industry

2 Workers' Compensation Division

3

4 Adopted Adoption of Rules of the State Department of Labor and

5 Industry Governing Reimbursement of Supplementary Benefits

6

7 Rules as Adopted

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9 RULES FOR REIMBURSEMENT OF SUPPLEMENTARY BENEFITS

10 8 MCAR S ~~1-9001~~ 1.9050 Definitions.

11 A. Generally. As used in 8 MCAR SS ~~1-9001-1-9010~~
12 1.9050-1.9059, the following terms have the meanings given them.

13 B. Commissioner. "Commissioner" means commissioner of the
14 Department of Labor and Industry.

15 C. Effective date. "Effective date" as used in 8 MCAR S
16 ~~1-9004~~ 1.9053 means the date on which the employer began or will
17 begin to apply the offset provision of Minnesota Statutes,
18 section 176.101, subdivision 4.

19 D. Government disability benefits. "Government disability
20 benefits" means disability benefits paid by any government
21 disability program within the meaning of Minnesota Statutes,
22 section 176.101. It includes social security disability
23 benefits, old age and survivor benefits, and police relief
24 association benefits.

25 E. Party. "Party" means the employee, employer, insurer, or
26 commissioner.

27 F. Rehabilitation plan. "Rehabilitation plan" means the
28 plan established for the employee pursuant to Minnesota
29 Statutes, section 176.102.

30 G. Supplementary benefits. "Supplementary benefits" means
31 benefits paid pursuant to Minnesota Statutes, section 176.132.

32 H. Total disability benefits. "Total disability benefits"
33 means all benefits paid or payable by the week pursuant to
34 Minnesota Statutes, section 176.101. Included in these benefits
35 are economic recovery and impairment compensation because the
36 method of payment of economic recovery or impairment

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1 compensation is determined at the time the payments commence to
2 the employee. Where impairment compensation is paid or payable
3 instead of economic recovery compensation under Laws of
4 Minnesota 1983, chapter 290, section 48, it is deemed to be paid
5 or payable weekly.

6 8 MCAR S ~~1-9002~~ 1.9051 Authority and purpose.

7 Rules 8 MCAR SS ~~1-9001-1-9010~~ 1.9050-1.9059 are promulgated
8 pursuant to the authority granted to the commissioner by
9 Minnesota Statutes, sections 176.132, subdivision 4, and 175.17,
10 clause (2); and by Laws of Minnesota 1983, chapter 290, section
11 165. The purpose of these rules is to specify the procedure by
12 which employers may apply for an administrative finding of
13 permanent total disability in order to obtain reimbursement for
14 supplementary benefits pursuant to Minnesota Statutes, section
15 176.132. After an administrative finding is made, all past and
16 future total disability benefits are deemed to be payments for
17 permanent total disability pursuant to Minnesota Statutes,
18 section 176.101, subdivision 4.

19 8 MCAR S ~~1-9003~~ 1.9052 Application.

20 Rules 8 MCAR SS ~~1-9001-1-9010~~ 1.9050-1.9059 apply only if
21 all of the following prerequisites are met:

22 A. The employee is and has been receiving total disability
23 benefits under Minnesota Statutes, section 176.101, subdivision
24 1 or 4 without interruption for the injury which gave rise to
25 total disability. Benefits are deemed to be without
26 interruption if the total length of all interruptions does not
27 exceed 60 days during the three years prior to filing an
28 application or, if less than three years, since the time of the
29 injury which gave rise to the permanent total disability.

30 B. The employee is receiving government disability benefits.

31 C. The employee is receiving supplementary benefits pursuant
32 to Minnesota Statutes, section 176.132, subdivision 1, or would
33 be eligible for supplementary benefits after a finding of
34 permanent total disability is made.

35 D. The employee has not been determined to be permanently

1 and totally disabled by application of Minnesota Statutes,
2 section 176.101, subdivision 5, or by an order on stipulation,
3 or by an order after a hearing.

4 E. The issue of whether the employee's total disability is
5 permanent or temporary is not being and has never been raised in
6 any judicial or quasi-judicial administrative proceeding,
7 including administrative conferences under Minnesota Statutes,
8 sections 176.242 and 176.243.

9 F. The total amount of weekly benefits to be received by the
10 employee after a finding of permanent total disability has been
11 made is equal to or greater than the amount of benefits that
12 would be received by the employee in the absence of a finding of
13 permanent total disability. The total amount of weekly benefits
14 includes total disability benefits, government disability
15 benefits, and supplementary benefits.

16 G. The employer or insurer has applied the offset provision
17 of Minnesota Statutes, section 176.101, subdivision 4, from the
18 time that \$25,000 of total disability benefits was paid or from
19 the time that the employee began to receive government
20 disability benefits, whichever is later.

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

24 8 MCAR S ~~1-9004~~ 1.9053 Procedure.

25 A. Generally. The employer or insurer must comply with the
26 procedures set forth in this rule in submitting an application
27 to the commissioner for a finding of permanent total disability.

28 B. Contents of application. The application must state:

- 29 1. the name of the employee;
- 30 2. the social security number of the employee;
- 31 3. the name of the employer;
- 32 4. the insurer of the employer, or, if self-insured, that
33 the employer is self-insured;
- 34 5. the date of the employee's injury that gave rise to
35 permanent total disability;
- 36 6. the date on which the requested finding of permanent

1 total disability is to be effective.

2 7. the date on which the employee became eligible for
3 government disability benefits;

4 8. the name of the medical provider submitting the
5 medical report showing that the employee is permanently totally
6 disabled at the time of application, and the date of the medical
7 report; and

8 9. the status of the rehabilitation plan as active,
9 inactive, or nonexistent.

10 C. Time of application. The application may not be filed
11 more than 45 days prior to the effective date of the finding.

12 D. Filing of medical reports. Any medical reports which are
13 identified pursuant to B.8., but have not been previously filed
14 with the commissioner, must be attached to the application.

15 E. Filing of rehabilitation reports. Any reports of
16 qualified rehabilitation consultants which have not been
17 previously filed with the commissioner must be attached to the
18 application.

19 F. Benefit amounts. The application must state the amount
20 of weekly benefits currently received by the employee for
21 government disability, total disability, and supplementary
22 benefits. The application must also state the amount of each of
23 these benefits which will be received by the employee if a
24 finding of permanent total disability is made.

25 G. Signing of application. The application must be signed
26 by an authorized representative of the employer or of the
27 employer's insurer. It must also state the telephone number of
28 the person signing the application.

29 H. Notice to employee. The employer or insurer must mail a
30 copy of the application to the employee and to the employee's
31 attorney by first class mail at the same time that the
32 application is filed with the commissioner, and must so affirm
33 on the application.

34 8 MCAR S ~~1-9005~~ 1.9054 Notice of decision.

35 Unless grounds for disapproval exist pursuant to 8 MCAR S
36 ~~1-9006~~ 1.9055, the commissioner must approve an application for

1 a finding of permanent total disability. An application is
 2 deemed approved unless notice of disapproval and the grounds for
 3 disapproval are mailed by first class mail within 30 calendar
 4 days of the commissioner's receipt of the application.

5 8 MCAR S ~~1-9006~~ 1.9055 Disapproval by commissioner.

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

8 A. The application is incomplete, is inaccurate, or is not
 9 in conformity with any part of 8 MCAR SS ~~1-9001-1-9010~~
 10 1.9050-1.9059. For example, the submission of medical reports
 11 which fail to show that the employee is permanently totally
 12 disabled at the time of application renders an application
 13 incomplete and inaccurate and not in conformity with the rules.
 14 Applications which are disapproved on any of these grounds may
 15 be resubmitted under the procedure authorized in 8 MCAR S ~~1-9004~~
 16 1.9053;

17 B. The employer or insurer has not complied with the
 18 provisions of Minnesota Statutes, section 176.102 regarding the
 19 provision of rehabilitation services to the employee. This
 20 shall apply only if the injury giving rise to total disability
 21 occurred on or after October 1, 1979;

22 C. The commissioner concludes that the employee's total
 23 disability is not permanent within the meaning of Minnesota
 24 Statutes, section 176.101, subdivision 5 and applicable case law.

25 8 MCAR S ~~1-9007~~ 1.9056 Effect of finding.

26 Approval or disapproval of an application by the
 27 commissioner is without prejudice to a party's right to petition
 28 ~~a-workers'-compensation-settlement-judge-or-other-workers'~~
 29 ~~compensation-judge~~ for a hearing pursuant to Minnesota Statutes,
 30 section 176.305 for a finding or for a revision of a finding of
 31 permanent total disability.

32 8 MCAR S ~~1-9008~~ 1.9057 Revision of finding.

33 A finding of permanent total disability pursuant to 8 MCAR
 34 SS ~~1-9001-1-9010~~ 1.9050-1.9059 is subject to revision based on
 35 judicial order pursuant to rules of the office of administrative

1 hearings or on future changes in the employee's employability,
2 medical conditions, or other conditions which relate to
3 permanent total disability under Minnesota Statutes, section
4 176.101 and applicable case law. A party seeking to revise a
5 finding of permanent total disability may seek a judicial
6 finding in the manner described in 8 MCAR S ~~1-9007~~ 1.9056.

7 8 MCAR S ~~1-9009~~ 1.9058 Severability.

8 If any provision of 8 MCAR SS ~~1-9001-1-9008~~ 1.9050-1.9057
9 is held to conflict with a governing statute, applicable
10 provisions of the Minnesota Administrative Procedure Act, or
11 other relevant law; to exceed the statutory authority conferred;
12 to lack a reasonable relationship to statutory purposes or to be
13 unconstitutional, arbitrary, or unreasonable; or to be invalid
14 or unenforceable for any other reason; the validity and
15 enforceability of the remaining provisions of the rule shall in
16 no manner be affected.

17 8 MCAR S ~~1-9010~~ 1.9059 Effective date.

18 These rules shall apply to requests for reimbursement of
19 supplementary benefits filed on or after the effective date of 8
20 MCAR SS ~~1-9001-1-9009~~ 1.9050-1.9058.