

1 Hazardous Substance Injury Compensation Board

2

3 Adopted Permanent Rules Relating to Death Benefits

4

5 Rules as Adopted

6

DEATH BENEFITS

7 7190.1000 DEFINITIONS.

8 Subpart 1. Board. "Board" means the Hazardous Substance
9 Injury Compensation Board established by Minnesota Statutes,
10 section 115B.26.

11 Subp. 2. Claimant. "Claimant" means a person who suffered
12 an eligible personal injury as defined in Minnesota Statutes,
13 section 115B.30, subdivision 1.

14 Subp. 3. Value of household labor. "Value of household
15 labor" means the value determined by parts 7190.0100 to
16 7190.0108.

17 Subp. 4. Wage. "Wage" means the average gross weekly wage
18 received by the claimant for the highest three of the five years
19 immediately preceding death or the date of diagnosis of the
20 injury causing the death, whichever is greater. If the claimant
21 was self-employed, wage means the income of the claimant from
22 the business for the highest three of the five years immediately
23 preceding death or the date of diagnosis of the injury causing
24 the death, whichever is greater. The claimant's dependents may
25 request the board use the date of the exposure to the hazardous
26 substance to calculate the wage, if the dependents document the
27 date of exposure.

28 7190.1005 PAYMENT OF CLAIMS WHEN CLAIMANT DIES.

29 Subpart 1. Death occurring during investigation. If a
30 claimant dies from an eligible injury during the investigation
31 of the claim, the board shall amend the claim so that it seeks
32 compensation for the claimant's estate for medical expenses and
33 death benefits for the claimant's dependents. If the death of
34 the claimant during the investigation is unrelated to the
35 eligible injury, the board shall amend the claim to compensate

1 so that it seeks compensation for the claimant's dependents for
2 eligible losses due to the injury up to the date of death.

3 Subp. 2. **Death occurring during payout.** If a claimant who
4 is receiving compensation from the board dies, the board shall
5 pay the remaining compensation due the claimant to the
6 dependents in the order of the subparts in part 7190.1015. If
7 there are no dependents, the board shall pay the remaining
8 compensation to the claimant's estate.

9 Subp. 3. **Death after award.** If a claimant has received
10 compensation from the board for future loss of wages and
11 household labor due to the injury that caused the death, the
12 board shall not accept a claim for death benefits.

13 7190.1010 PRIORITY FOR DEATH BENEFITS.

14 The board shall pay death benefits to eligible dependents
15 of a claimant in the following order:

16 A. allowances to presumed dependents;

17 B. allowances to wholly supported established
18 dependents in the order in part 7190.1015; and

19 C. allowances to partially supported established
20 dependents in the order in part 7190.1015.

21 7190.1015 ELIGIBLE DEPENDENTS.

22 Subpart 1. **Presumed dependents.** The board shall presume
23 that the following persons are wholly supported dependents of
24 the claimant:

25 A. the spouse, unless it is shown that the spouse and
26 claimant were voluntarily living apart at the time of the injury
27 or death;

28 B. a child under 18 years old;

29 C. a child under 25 years old if regularly attending
30 an accredited educational institution on a full-time basis; and

31 D. a child 18 years old or older if physically or
32 mentally incapacitated from earning.

33 Subp. 2. **Established dependents.** The board shall
34 consider, in the following order, these persons as dependents of
35 the claimant if the persons establish that the claimant

- 1 contributed regularly to their support:
- 2 A. a child 18 years old or older;
 - 3 B. a parent;
 - 4 C. a grandparent;
 - 5 D. a grandchild;
 - 6 E. a sibling; and
 - 7 F. a parent-in-law.

8 7190.1020 FACTORS GOVERNING AWARD OF DEATH BENEFITS.

9 Subpart 1. **Limitations.** The board shall award death
10 benefits to presumed and established dependents until two-thirds
11 of the claimant's wage is allocated. The board shall adjust any
12 award of death benefits according to the limitations of
13 Minnesota Statutes, sections 115B.34, subdivision 1, clause (d)
14 and 115B.36. The benefit paid to established dependents shall
15 not exceed the actual contribution by the claimant to their
16 support.

17 Subp. 2. **Initiation.** The board shall calculate death
18 benefits from the onset of disability leading to the death of
19 the claimant or from the date of death, taking into
20 consideration when the claimant's financial capability to
21 provide reasonable support for the dependents diminished.

22 Subp. 3. **Determination of dependents.** The board shall
23 determine the eligibility of a dependent based on the facts
24 existing on the date of the board's decision.

25 Subp. 4. **Lump sum payment.** When the board chooses to pay
26 death benefits in a lump sum, it shall discount benefits awarded
27 for future years to current value ~~according to Minnesota~~
28 ~~Statutes, section 604.07, subdivision 4, clauses (1) and~~
29 ~~(2)~~ based on real rates of return obtainable through
30 conservative investment.

31 Subp. 5. **Installment payment.** When the board chooses to
32 pay death benefits in installments, it shall adjust future
33 payments by the cost of living rate for the current year
34 ~~according to Minnesota Statutes, section 604.07, subdivision 4,~~
35 ~~clause (2).~~

1 Subp. 6. **Collateral sources.** In calculating the total
2 award of death benefits, the board shall subtract from the award
3 losses recouped by the dependents from any government survivor
4 program to the extent that the combined total of government
5 survivor benefits and death benefits paid under this chapter
6 exceeds 100 percent of the wage earned by the claimant.

7 Subp. 7. Cessation of compensation. The board shall cease
8 compensation upon the death of any dependent or upon marriage of
9 any dependent other than the spouse. The cessation of
10 compensation to any dependent does not affect the compensation
11 paid to any other dependent.

12 7190.1025 ELIGIBLE ALLOWANCES FOR PRESUMED DEPENDENTS.

13 Subpart 1. **Spouse, no dependent children.** If the claimant
14 leaves a spouse and no dependent children, the board shall pay
15 to the spouse for ten years one-half of the claimant's wage and
16 one-half the value of the claimant's household labor.

17 Subp. 2. **Spouse, one dependent child.** If the claimant
18 leaves a spouse and one dependent child, the board shall pay to
19 the spouse for ten years, for the benefit of the spouse and
20 child, three-fifths of the claimant's wage and three-fifths the
21 value of the claimant's household labor. If the child is not
22 dependent for ten years, the board shall pay to the spouse
23 one-half the claimant's wage and one-half the value of the
24 claimant's household labor in the years remaining after the
25 child is no longer dependent. If the child is dependent for
26 more than ten years, the board shall pay to the spouse for the
27 child one-half of the claimant's wage and one-half the value of
28 the claimant's household labor until the child is no longer
29 dependent.

30 Subp. 3. **Spouse, two or more dependent children.** If the
31 claimant leaves a spouse and two or more dependent children, the
32 board shall pay to the spouse for ten years, for the benefit of
33 the spouse and children, two-thirds of the claimant's wage and
34 two-thirds the value of the claimant's household labor. If no
35 child remains dependent for ten years, the board shall pay to

1 the spouse one-half the claimant's wage and one-half the value
2 of the claimant's household labor in the years remaining after
3 the last child is no longer dependent. If a child is dependent
4 for more than ten years, the board shall pay to the spouse, for
5 the benefit of the child, one-half of the claimant's wage and
6 one-half the value of the claimant's household labor.

7 Subp. 4. **Dependent children, no spouse.** If the claimant
8 leaves a dependent child and no spouse, the board shall pay to
9 the guardian of the child 55 percent of the claimant's wage and
10 55 percent of the value of the claimant's household labor; and
11 for two or more children, the board shall pay to the guardian of
12 the children two-thirds of the claimant's wage and two-thirds
13 the value of the claimant's household labor until the last child
14 is no longer dependent.

15 7190.1026 ELIGIBLE ALLOWANCES FOR ESTABLISHED DEPENDENTS.

16 Subpart 1. **Parents.** If the claimant leaves both parents
17 wholly dependent on the deceased, the board shall pay to both
18 parents jointly for ten years, 45 percent of the claimant's
19 wage. If only one parent survives, the board shall pay to that
20 parent for ten years 35 percent of the claimant's wage. If the
21 claimant lived in the same household as both parents immediately
22 before death, the board shall pay for ten years, 45 percent of
23 the value of the claimant's household labor to both parents
24 jointly. If the claimant lived in the household of one parent
25 immediately before death, the board shall pay 35 percent of the
26 value of the claimant's household labor to that parent for ten
27 years.

28 Subp. 2. **Other established dependents.** If the claimant
29 leaves a child, grandparent, grandchild, sibling, or
30 parent-in-law wholly dependent, the board shall pay to that
31 dependent for ten years, 30 percent of the claimant's wage. If
32 the claimant leaves more than one of them, the board shall pay
33 35 percent of the claimant's wage divided among them in equal
34 shares.

35 Subp. 3. **Partial support.** If an established dependent

1 regularly received only partial financial support from the
2 claimant, the board shall adjust the eligible allowance in
3 subparts 5 and 6 according to the following formula:

4 $b = A \times c/w$

5 where: b is the benefit to be awarded;

6 A is the eligible allowance to the dependent;

7 c is the amount of weekly contribution to the
8 dependent by the claimant; and

9 w is the wage of the claimant.

10 ~~Subp. 4.---Cessation-of-compensation.---The-board-shall-cessate~~
11 ~~compensation-upon-the-death-of-any-dependent-or-upon-marriage-of~~
12 ~~any-dependent-other-than-the-spouse.---The-cessation-of~~
13 ~~compensation-to-any-dependent-does-not-affect-the-compensation~~
14 ~~paid-to-any-other-dependent.~~