

CHAPTER 176

WORKERS' COMPENSATION

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176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN; REVIEW.

Subdivision 1. (a) A fee for legal services of 25 percent of the first \$4,000 of compensation awarded to the employee and 20 percent of the next \$27,500 of compensation awarded to the employee is permissible and does not require approval by the commissioner, compensation judge, or any other party except as provided in clause (b). If the employer or the insurer or the defendant is given written notice of claims for legal services or disbursements, the claim shall be a lien against the amount paid or payable as compensation. In no case shall fees be calculated on the basis of any undisputed portion of compensation awards. Allowable fees under this chapter shall be based solely upon genuinely disputed portions of claims, including disputes related to the payment of rehabilitation benefits or to other aspects of a rehabilitation plan. Fees for administrative conferences under section 176.239 shall be determined on an hourly basis, according to the criteria in subdivision 5.

(b) An attorney who is claiming legal fees under this section shall file a statement of attorney's fees with the commissioner, compensation judge before whom the matter was heard, or workers' compensation court of appeals on cases before the court. A copy of the signed retainer agreement shall also be filed. The employee and insurer shall receive a copy of the statement. The statement shall be on a form prescribed by the commissioner and shall clearly and conspicuously state that the employee or insurer has ten calendar days to object to the attorney fees requested. If no objection is timely made by the employee or insurer, the amount requested shall be conclusively presumed reasonable providing the amount does not exceed the limitation in subdivision 1. The commissioner, compensation judge, or court of appeals shall issue an order granting the fees and the amount requested shall be awarded to the party requesting the fee.

If a timely objection is filed, or the fee is determined on an hourly basis, the commissioner, compensation judge, or court of appeals shall review the matter and make a determination based on the criteria in subdivision 5.

If no timely objection is made by an employer or insurer, reimbursement under subdivision 7 shall be made if the statement of fees requested this reimbursement.

[For text of subds 2 to 11, see M.S.1988]

History: 1989 c 209 art 2 s 23

176.101 COMPENSATION SCHEDULE.

[For text of subds 1 to 3d, see M.S.1988]

Subd. 3e. **End of temporary total compensation; suitable job.** (a) Ninety days after an employee has reached maximum medical improvement and the medical report described in clause (c) has been served on the employee, or 90 days after the end of an approved retraining program, whichever is later, the employee's temporary total compensation shall cease. This cessation shall occur at an earlier date if otherwise provided by this chapter.

(b) If at any time prior to the end of the 90-day period described in clause (a) the employee retires or the employer furnishes work to the employee that is consistent with

an approved plan of rehabilitation and meets the requirements of section 176.102, subdivision 1, or, if no plan has been approved, that the employee can do in the employee's physical condition and that job produces an economic status as close as possible to that the employee would have enjoyed without the disability, or the employer procures this employment with another employer or the employee accepts this job with another employer, temporary total compensation shall cease and the employee shall, if appropriate, receive impairment compensation pursuant to subdivision 3b. This impairment compensation is in lieu of economic recovery compensation under subdivision 3a, and the employee shall not receive both economic recovery compensation and impairment compensation. Temporary total compensation and impairment compensation shall not be paid concurrently. Once temporary total compensation ceases, no further temporary total compensation is payable except as specifically provided by this section.

(c) Upon receipt of a written medical report indicating that the employee has reached maximum medical improvement, the employer or insurer shall serve a copy of the report upon the employee and shall file a copy with the division. The beginning of the 90-day period described in clause (a) shall commence on the day this report is served on the employee for the purpose of determining whether a job offer consistent with the requirements of this subdivision is made. A job offer may be made before the employee reaches maximum medical improvement.

(d) The job which is offered or procured by the employer or accepted by the employee under clause (b) does not necessarily have to commence immediately but shall commence within a reasonable period after the end of the 90-day period described in clause (a). Temporary total compensation shall not cease under this subdivision until the job commences.

(e) If the job offered under clause (a) is offered or procured by the employer and is not the job the employee had at the time of injury it shall be offered and described in writing. The written description shall state the nature of the job, the rate of pay, the physical requirements of the job, and any other information necessary to fully and completely inform the employee of the job duties and responsibilities. The written description and the written offer need not be contained in the same document.

The employee has 14 calendar days after receipt of the written description and offer to accept or reject the job offer. If the employee does not respond within this period it is deemed a refusal of the offer. Where there is an administrative conference to determine suitability under section 176.239, the period begins to run on the date of the commissioner's decision.

(f) Self-employment may be an appropriate job under this subdivision.

The commissioner shall monitor application of this subdivision and may adopt rules to assure its proper application.

[For text of subds 3f to 8, see M.S.1988]

History: 1989 c 209 art 2 s 24

176.131 SUBSEQUENT DISABILITY, SPECIAL FUND.

Subdivision 1. If an employee incurs personal injury and suffers disability from that injury alone that is substantially greater, because of a preexisting physical impairment, than what would have resulted from the personal injury alone, the employer or insurer shall pay all compensation provided by this chapter, but the employer shall be reimbursed from the special compensation fund for all compensation paid in excess of 52 weeks of monetary benefits and \$2,000 in medical expenses, subject to the exceptions in paragraphs (a) and (b):

(a) If the disability caused by the subsequent injury is made substantially greater by the employee's registered preexisting physical impairment, there shall be apportionment of liability among all injuries. The special compensation fund shall only reimburse for that portion of the compensation, medical expenses, and rehabilitation

expenses attributed to the subsequent injury after the applicable deductible has been met.

(b) If the subsequent personal injury alone results in permanent partial disability to a scheduled member under the schedule adopted by the commissioner pursuant to section 176.105, the special compensation fund shall not reimburse permanent partial disability, medical expenses, or rehabilitation expenses.

[For text of subs 1a to 8, see M.S.1988]

History: 1989 c 209 art 1 s 18

176.132 SUPPLEMENTARY BENEFITS.

[For text of subd 1, see M.S.1988]

Subd. 2. **Amount.** (a) The supplementary benefit payable under this section shall be the difference between the amount the employee receives on or after January 1, 1976, under section 176.101, subdivision 1 or 4, and 65 percent of the statewide average weekly wage as computed annually.

(b) In the event an eligible recipient is currently receiving no compensation or is receiving a reduced level of compensation because of a credit being applied as the result of a third party liability or damages, the employer or insurer shall compute the offset credit as if the individual were entitled to the actual benefit or 65 percent of the statewide average weekly wage as computed annually, whichever is greater. If this results in the use of a higher credit than otherwise would have been applied and the employer or insurer becomes liable for compensation benefits which would otherwise not have been paid, the additional benefits resulting shall be handled according to this section.

(c) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of a valid agreement in settlement of a claim, no supplementary benefit shall be payable under this section. Attorney's fees shall be allowed in settlements of claims for supplementary benefits in accordance with this chapter.

(d) In the event an eligible recipient is receiving no compensation or is receiving a reduced level of compensation because of prior limitations in the maximum amount payable for permanent total disability or because of reductions resulting from the simultaneous receipt of old age or disability benefits, the supplementary benefit shall be payable for the difference between the actual amount of compensation currently being paid and 65 percent of the statewide average weekly wage as computed annually.

(e) In the event that an eligible recipient is receiving simultaneous benefits from any government disability program, the amount of supplementary benefits payable under this section shall be reduced by five percent. If the individual does not receive the maximum benefits for which the individual is eligible under other governmental disability programs due to the provisions of United States Code, title 42, section 424a(d), this reduction shall not apply.

(f) Notwithstanding any other provision in this subdivision to the contrary, if the individual does not receive the maximum benefits for which the individual is eligible under other governmental disability programs due to the provision of United States Code, title 42, section 424a(d), the calculation of supplementary benefits payable to the individual shall be as provided under this section in Minnesota Statutes 1988.

[For text of subs 2a to 5, see M.S.1988]

History: 1989 c 356 s 22

176.135 TREATMENT; APPLIANCES; SUPPLIES.

Subdivision 1. **Medical, psychological, chiropractic, podiatric, surgical, hospital.** (a) The employer shall furnish any medical, psychological, chiropractic, podiatric, surgical

and hospital treatment, including nursing, medicines, medical, chiropractic, podiatric, and surgical supplies, crutches and apparatus, including artificial members, or, at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, chiropractic medicine and medical supplies, as may reasonably be required at the time of the injury and any time thereafter to cure and relieve from the effects of the injury. This treatment shall include treatments necessary to physical rehabilitation. The employer shall furnish replacement or repair for artificial members, glasses, or spectacles, artificial eyes, podiatric orthotics, dental bridge work, dentures or artificial teeth, hearing aids, canes, crutches, or wheel chairs damaged by reason of an injury arising out of and in the course of the employment. In case of the employer's inability or refusal seasonably to do so the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing the same, including costs of copies of any medical records or medical reports that are in existence, obtained from health care providers, and that directly relate to the items for which payment is sought under this chapter, limited to the charges allowed by subdivision 7, and attorney fees incurred by the employee. No action to recover the cost of copies may be brought until the commissioner adopts a schedule of reasonable charges under subdivision 7. Attorney's fees shall be determined on an hourly basis according to the criteria in section 176.081, subdivision 5. The employer shall pay for the reasonable value of nursing services by a member of the employee's family in cases of permanent total disability.

(b) Both the commissioner and the compensation judges have authority to make determinations under this section in accordance with sections 176.106 and 176.305.

[For text of subds 1a to 7, see M.S.1988]

History: 1989 c 335 art 1 s 180

176.136 MEDICAL FEE REVIEW.

Subdivision 1. **Schedule.** The commissioner shall by rule establish procedures for determining whether or not the charge for a health service is excessive. In order to accomplish this purpose, the commissioner shall consult with insurers, associations and organizations representing the medical and other providers of treatment services and other appropriate groups. The procedures established by the commissioner shall limit the charges allowable for medical, chiropractic, podiatric, surgical, hospital and other health care provider treatment or services, as defined and compensable under section 176.135, based upon billings for each class of health care provider during all of the calendar year preceding the year in which the determination is made of the amount to be paid the health care provider for the billing. The procedures established by the commissioner for determining whether or not the charge for a health service is excessive shall be structured to encourage providers to develop and deliver services for rehabilitation of injured workers. The procedures shall incorporate the provisions of sections 144.701, 144.702, and 144.703 to the extent that the commissioner finds that these provisions effectively accomplish the intent of this section or are otherwise necessary to insure that quality hospital care is available to injured employees.

[For text of subds 2 and 3, see M.S.1988]

Subd. 5. **Permanent rules.** Where permanent rules have been adopted to implement this section, the commissioner shall annually give notice in the State Register of the reimbursement allowance to meet the requirements of subdivision 1. The notice shall be in lieu of the requirements of chapter 14 and shall be set at the 75th percentile of the billings for each service in the data base; provided that the requirements of paragraphs (a) to (e) are met.

(a) The data base includes at least three different providers of the service.

(b) The data base contains at least 20 billings for the service.

(c) The data is taken from the data base of Blue Cross and Blue Shield of Minnesota where available; if not available from Blue Cross and Blue Shield of

Minnesota, the data will be taken directly from the health care providers, professional associations, or other available sources.

(d) The standard deviation is less than or equal to 50 percent of the mean of the billings for each service in the data base or the value of the 75th percentile is not greater than or equal to three times the value of the 25th percentile of the billings for each service in the data base.

(e) The 75th percentile logically reflects the usual and customary charges for the service.

History: 1989 c 282 art 2 s 51,52

176.186 RECORDS FROM OTHER STATE AGENCIES.

Notwithstanding any other state law to the contrary except chapter 270B, the commissioner may obtain from the department of jobs and training, and office of the secretary of state, or any other state agency, upon request, names or lists of employers doing business in the state. This information shall be treated by the commissioner in the manner provided by chapter 13 and shall be used only for insurance verification by the commissioner.

History: 1989 c 184 art 2 s 8

176.231 REPORT OF DEATH OR INJURY TO COMMISSIONER OF THE DEPARTMENT OF LABOR AND INDUSTRY.

[For text of subds 1 to 8, see M.S.1988]

Subd. 9. Uses which may be made of reports. Reports filed with the commissioner under this section may be used in hearings held under this chapter, and for the purpose of state investigations and for statistics. These reports are available to the department of revenue for use in enforcing Minnesota income tax and property tax refund laws, and the information shall be protected as provided in chapter 270B.

The division or office of administrative hearings or workers' compensation court of appeals may permit the examination of its file by the employer, insurer, employee, or dependent of a deceased employee or any person who furnishes written authorization to do so from the employer, insurer, employee, or dependent of a deceased employee. Reports filed under this section and other information the commissioner has regarding injuries or deaths shall be made available to the workers' compensation reinsurance association for use by the association in carrying out its responsibilities under chapter 79.

[For text of subds 10 and 11, see M.S.1988]

History: 1989 c 184 art 2 s 9

176.421 APPEALS TO WORKERS' COMPENSATION COURT OF APPEALS.

[For text of subds 1 to 6, see M.S.1988]

Subd. 7. Record of proceedings. At the division's own expense, the commissioner shall make a complete record of all proceedings before the commissioner and shall provide a stenographer or an audio magnetic recording device to make the record of the proceedings.

The commissioner shall furnish a transcript of these proceedings to any person who requests it and who pays a reasonable charge which shall be set by the commissioner. Upon a showing of cause, the commissioner may direct that a transcript be prepared without expense to the person requesting the transcript, in which case the cost of the transcript shall be paid by the division. Transcript fees received under this subdivision shall be paid to the workers' compensation division account in the state treasury and shall be annually appropriated to the division for the sole purpose of providing a record and transcripts as provided in this subdivision. This subdivision does not apply to any

administrative conference or other proceeding before the commissioner which may be heard de novo in another proceeding including but not limited to proceedings under section 176.101 or 176.239.

History: 1989 c 209 art 2 s 25