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CHAPTER 5222 DEPARTMENT OF LABOR AND INDUSTRY REIMBURSEMENT OF BENEFITS

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5222.0100 DEFINITIONS.

Subpart 1. **Generally.** As used in this chapter, the following terms have the meanings given them.

Subp. 2. **Commissioner.** "Commissioner" means commissioner of the Department of Labor and Industry.

Subp. 3. **Effective date.** "Effective date" as used in part 5222.0400 means the date on which the employer began or will begin to apply the offset provision of Minnesota Statutes, section 176.101, subdivision 4.

Subp. 4. **Government disability benefits.** "Government disability benefits" means disability benefits paid by any government disability program within the meaning of Minnesota Statutes, section 176.101. It includes social security disability benefits, old age and survivor benefits, and police relief association benefits.

Subp. 5. **Party.** "Party" means the employee, employer, insurer, or commissioner.

Subp. 6. **Rehabilitation plan.** "Rehabilitation plan" means the plan established for the employee pursuant to Minnesota Statutes, section 176.102.

Subp. 7. **Supplementary benefits.** "Supplementary benefits" means benefits paid pursuant to Minnesota Statutes, section 176.132.

Subp. 8. **Total disability benefits.** "Total disability benefits" means all benefits paid or payable by the week pursuant to Minnesota Statutes, section 176.101. Included in these benefits are economic recovery and impairment compensation because the method of payment of economic recovery or impairment compensation is determined at the time the payments commence to the employee. Where impairment compensation is paid or payable instead of economic recovery compensation under Laws of Minnesota 1983, chapter 290, section 48, it is deemed to be paid or payable weekly.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0200 AUTHORITY AND PURPOSE.

Parts 5222.0100 to 5222.1000 are promulgated pursuant to the authority granted to the commissioner by Minnesota Statutes, sections 176.132, subdivision 4, and 175.17, clause (2); and by Laws of Minnesota 1983, chapter 290, section 165. The purpose of these parts is to specify the procedure by which employers may apply for an administrative finding of permanent total disability in order to obtain reimbursement for supplementary benefits pursuant to Minnesota Statutes, section 176.132. After an administrative finding is made, all past and future total disability benefits are deemed to be payments for permanent total disability pursuant to Minnesota Statutes, section 176.101, subdivision 4.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0300 APPLICATION.

This chapter applies only if all of the following prerequisites are met:

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

B. The employee is receiving government disability benefits.

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

D. The employee has not been determined to be permanently and totally disabled by application of Minnesota Statutes, section 176.101, subdivision 5, or by an order on stipulation, or by an order after a hearing.

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

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

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

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

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0400 PROCEDURE.

Subpart 1. **Generally.** The employer or insurer must comply with the procedures set forth in this part in submitting an application to the commissioner for a finding of permanent total disability.

Subp. 2. **Contents of application.** The application must state:

A. the name of the employee;

B. the social security number of the employee;

C. the name of the employer;

D. the insurer of the employer, or, if self-insured, that the employer is self-insured;

E. the date of the employee's injury that gave rise to permanent total disability;

F. the date on which the requested finding of permanent total disability is to be effective;

G. the date on which the employee became eligible for government disability benefits;

H. the name of the medical provider submitting the medical report showing that the employee is permanently totally disabled at the time of application, and the date of the medical report; and

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

Subp. 3. **Time of application.** The application may not be filed more than 45 days prior to the effective date of the finding.

Subp. 4. **Filing of medical reports.** Any medical reports which are identified pursuant to subpart 2, item 8, but have not been previously filed with the commissioner, must be attached to the application.

Subp. 5. **Filing of rehabilitation reports.** Any reports of qualified rehabilitation consultants which have not been previously filed with the commissioner must be attached to the application.

Subp. 6. **Benefit amounts.** The application must state the amount of weekly benefits currently received by the employee for government disability, total disability, and supplementary benefits. The application must also state the amount of each of these benefits which will be received by the employee if a finding of permanent total disability is made.

Subp. 7. **Signing of application.** The application must be signed by an authorized representative of the employer or of the employer's insurer. It must also state the telephone number of the person signing the application.

Subp. 8. **Notice to employee.** The employer or insurer must mail a copy of the application to the employee and to the employee's attorney by first class mail at the same time that the application is filed with the commissioner, and must so affirm on the application.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0500 NOTICE OF DECISION.

Unless grounds for disapproval exist pursuant to part 5222.0600, the commissioner must approve an application for a finding of permanent total disability. An application is deemed approved unless notice of disapproval and the grounds for disapproval are mailed by first class mail within 30 calendar days of the commissioner's receipt of the application.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0600 DISAPPROVAL BY COMMISSIONER.

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

A. The application is incomplete, is inaccurate, or is not in conformity with any part of this chapter. For example, the submission of medical reports which fail to show that the employee is permanently totally disabled at the time of application renders an application incomplete and inaccurate and not in conformity with the rules. Applications which are disapproved on any of these grounds may be resubmitted under the procedure authorized in part 5222.0400.

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

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

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

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5222.0700 EFFECT OF FINDING.

Approval or disapproval of an application by the commissioner is without prejudice to a party's right to petition for a hearing pursuant to Minnesota Statutes, section 176.305 for a finding or for a revision of a finding of permanent total disability.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0800 REVISION OF FINDING.

A finding of permanent total disability pursuant to this chapter is subject to revision based on judicial order pursuant to rules of the office of administrative hearings or on future changes in the employee's employability, medical conditions, or other conditions which relate to permanent total disability under Minnesota Statutes, section 176.101 and applicable case law. A party seeking to revise a finding of permanent total disability may seek a judicial finding in the manner described in part 5222.0700.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.0900 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 chapter shall in no manner be affected.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*

5222.1000 EFFECTIVE DATE.

Parts 5222.0100 to 5222.0900 shall apply to requests for reimbursement of supplementary benefits filed on or after February 27, 1984.

Statutory Authority: *MS s 176.132 subd 4; 176.83 subd 7*

History: *8 SR 1898*