

STATE OF MINNESOTA
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

In the Matter of the proposed
permanent rules relating to
death benefits

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The Hazardous Substance Injury Compensation Board (Board) was created by the 1985 Legislature (Laws 1985, 1st special session, chapter 8) as part of revisions to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B. These revisions were codified as Minnesota Statutes Sections 115B.25-115B.37. The Board was established as a new state agency to administer a \$2 million Hazardous Substance Injury Compensation Fund (Fund). The Board's primary responsibility is to investigate claims of certain types of property damage or personal injury caused by the release of hazardous substances into the environment, and to compensate eligible persons from the Fund for certain types of losses.

One of the losses that is compensable from the fund is death benefits to dependents of a claimant who has suffered an eligible personal injury.

To seek opinion on what these benefits might encompass, the Board published a Notice of Solicitation of Outside Opinion Regarding Proposed Rules on compensable Death Benefits in the State Register on January 6, 1986 (10 S.R. 1509). The Board received no comment letters on death benefits in response to its notice.

The proposed rule establishes the priority for the payment of death benefits, the dependents eligible to receive death benefits, the amount of benefit each dependent is entitled to receive and factors which the board must consider in the award of death benefits.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt a rule relating to death benefits is set forth in Minnesota Statutes Section 115B.34, which provides in relevant part:

Losses compensable by the fund for personal injury are limited to:

...(d) death benefits to dependents which the board shall define by rule subject to the following conditions:

(1) the rule adopted by the board must establish a schedule of benefits similar to that established by section 176.111 and must not provide for the payment of benefits to dependents other than those dependents defined in section 176.111;

(2) the total benefits paid to all dependents of a claimant must not exceed \$2,000 per month;

(3) benefits paid to a spouse and all dependents other than children must not continue for a period longer than ten years;

(4) payment of benefits is subject to the limitations of section 115B.36.

Additionally, the Board's statutory authority to adopt "rules governing practice and procedure before the board" is set forth in Minnesota Statutes, Section 115B.28, subdivision 1(1).

III. STATEMENT OF NEED

The need to adopt the proposed Minnesota Rules Parts 7190.1000 to 7190.1026 arises from the need of the dependents to know how the Board determines what benefits are payable to them and what dependents may receive them. The Board and staff need to clarify by rule the process of determining benefits so that fairness and consistency can be maintained among awards and the award of benefits can proceed quickly and efficiently regardless of changes in the Board and staff.

IV. STATEMENT OF REASONABLENESS.

The proposed rule is reasonable because while it closely parallels death benefits described in Minnesota Statutes, Section 176.111, it adapts the workers' compensation structure to meet the specific situations and responsibilities encompassed by the Board. Although similar to workers' compensation in defining eligible dependents and allowances, the rule reflects the Board's unique responsibility to compensate for the value of household labor, and to address the problems likely to arise because the Board's claimants have chronic or progressive diseases, illnesses

or disabilities such as cancer and nervous system disorders. Such diseases are often fatal, frequently disabling their victims for some time prior to death.

Part 7190.1000 Definitions.

The proposed rule reasonably sets forth four definitions to both clarify and shorten the rule. The definitions of "board", "claimant" and "value of household labor" are consistent with existing statutory or rule language. The definition of wage is reasonable because it assures that the Board will choose a point in time from which to calculate wage benefits that is most beneficial to the claimant's dependents. Because claimants likely possess health conditions that deteriorate over a period of time, a claimant's ability to be employed at certain jobs may diminish over time. By requiring the Board to choose a date which would be least likely to reflect this diminished earning capacity, the claimant is not penalized if the disease caused by the hazardous substance results in an inability to work or the need to work in a different capacity. While the Board may be able to determine when the hazardous substances were discovered in the environment, determining the date the release began usually is impossible. However, where it can be done, and where it may benefit the dependents, the rule reasonably also allows this option.

Part 7190.1005 Payment of Claims When a Claimant Dies.

Minnesota Statutes, Section 115B.32, subd. 3 describes a situation where the claimant's death results in a claim for death benefits.

In any case in which death is claimed as a compensable injury, the claim may be brought on behalf of the claimant by the claimant's estate for compensable medical expenses and by the claimant's trustee for death benefits for the claimant's dependents as defined in section 176.111.

However, in practice this situation is likely not the only one the Board will deal with involving the death of a claimant and raising the question of eligibility for death benefits. This part of the proposed rules describes other situations which involve the death of a claimant and establishes the Board's practice and procedure for addressing the issues raised by the claimant's death, including when the Board will consider death benefits and when it will not. It is reasonable to address this in rule so that dependents are aware of the Board's practice and consistency is maintained in the handling of these situations despite changes in Board members and staff.

Subpart 1 clarifies that the death of a claimant from an eligible injury during the Board's investigation converts the claim into a death claim as described in Minnesota Statutes, Section 115B.32, subd. 3. If the death is not related to the eligible injury, e.g. an accidental death, the claim investigation continues but any award is to dependents and losses are calculated only up to the date of death.

The continuance of the claim investigation after the death of a claimant is reasonable because it is analogous to the situation described in Minnesota Statutes, Section 573.02, subd. 2.

When injury is caused to a person by the wrongful act or omission of any person or corporation and the person thereafter dies from a cause unrelated to those injuries, the trustee...may maintain an action for special damages arising out of such injury if the decedent might have maintained an action therefor had the decedent lived.

The Board's administrative process to compensate for personal injuries caused by releases of hazardous substances from a facility into the environment is an alternative to a court action sounding in tort. Tort law also provides an analogy for the reasonableness of the Board rule. Section 926 of the Second Restatement of Torts provides for the survival of Tort Actions:

Under statutes providing for the survival or revival or tort actions, the damages for a tort not involving death for which the tortfeasor is responsible are not affected by the death of either party before or during the trial, except that:

(a) the death of the injured person limits recovery for damages for loss or impairment of earning capacity, emotional distress and all other harms, to harms suffered before the death...

Subpart 3 allows no further claims on behalf of a claimant if the Board has already compensated the claimant for future losses. This is reasonable because Minnesota Statutes, Section 115B.31, subdivision 1 states, "A person who has filed a claim with the board may not file another claim with the board for the same eligible injury or damage..." Death resulting from a terminal disease is the same injury.

Additionally, since the Board compensates for wages and household labor losses over the life expectancy of the claimant, the claimant's recovery of these losses from the Board provides the source of support to the claimant's dependents. To allow a claim for death benefits after a claimant had recovered future losses from the Board would be to permit a double recovery.

Part 7190.1010 Priority for Death Benefits.

Part 3 of the proposed rule clarifies the order in which dependents shall receive benefits: the spouse and children first, wholly supported dependents before partially supported dependents. Since the Board is limited in the amount of compensation it can award, and the decedent may have supported more dependents than the Board can provide support to with the award, it is reasonable to establish a priority for distribution of the Board's award. The priority as listed is reasonable because it is based on the impact loss of support from the claimant would likely have on dependents, with those most likely to be affected receiving compensation ahead of those where the loss may have a lesser impact on their support.

Part 7190.1015 Eligible Dependents.

Minnesota Statutes, Sections 115B.32, subd. 3, and 115B.34, subd. 1(d)(1) both require the Board to consider eligible dependents to be those defined in Minnesota Statutes, Section

176.111. Part 7190.1015 of the proposed rule is reasonable because it does define as eligible the same dependents as the workers' compensation law.

Part 7190.1020 Factors Governing Award of Death Benefits

This part of the proposed rule lists six factors which the Board must consider in calculating the award of benefits.

Subpart 1 lists three limits the benefits are subject to:

1) the Board will award death benefits until two-thirds the claimant's wage is allocated. This is reasonable because the maximum award the claimant could receive for lost wages is two-thirds the lost wage, and the dependents should not receive more than the claimant would have received had the claimant lived. Additionally, Minnesota Statutes, Section 176.111, subd. 20 also limits dependents to two-thirds of the decedent's wage.

2) the award must be adjusted to meet the limits set in the law.

3) The benefit shall not exceed the actual contribution received from the claimant. This is reasonable because the Board's compensation scheme is designed only to reimburse for actual losses.

Subpart 2 of the proposed rule clarifies the date from which death benefits are calculated, giving the Board the choice of the date of death or the date of disability, using the test of diminished financial capability to decide. To allow the Board a choice is reasonable because of the likelihood that claimants

with chronic or progressive diseases will be unable to work for a significant period of time prior to death. A loss of wages due to the inability to work will impact the dependents financially. However, if sick benefits or disability benefits received by the claimant substitute for the wage loss, the financial support of the dependents may not be affected until the date of death.

Subpart 3 of the proposed rule clarifies when the Board shall determine who are eligible dependents. It is reasonable to set this date at the date of the decision because those dependents that remain dependent on that date have the greatest need for the Board's award. To compensate as of the date of injury or the date of death may result in paying compensation to persons who were dependent at that time but are no longer, i.e. they married, finished school, turned 18, etc.

When the Board reaches a final decision to award compensation, it can choose the form of payment, lump sum or installment. Either form requires adjustment to prevent over or under compensating the claimant. Subparts 4 and 5 of the proposed rule explain how the Board will adjust the award. In subpart 4, the proposed rule provides that the same discount rate stipulated in the 1986 Minnesota Tort Reform Act be used by the Board. This is reasonable because it is consistent with tort damages treatment, and the calculation of household labor value in the Board's rules. It is also reasonable because the rates are readily available and updated yearly.

Subpart 5 of the proposed rule provides that the award for future years will be adjusted by the cost of living factor as provided in the Tort Reform Act. To require this adjustment is reasonable to prevent undercompensation for the losses, and to maintain consistency with the Board's household labor rules.

Subpart 6 of the proposed rule requires the Board to subtract from its award losses recouped by dependents from any government survivor program. This is reasonable because Minnesota Statutes, Section 176.111, subd. 21 allows an offset for government survivor benefits. Minnesota Statutes, Section 115B.36 requires that the Board "determine the net uncompensated loss payable to the claimant by computing the total amount of compensable losses payable to the claimant and subtracting the total amount of any compensation received by the claimant for the same injury or damage from other sources including, but not limited to, all forms of insurance and social security..." Since the claimant's award is subject to these reductions, it is reasonable to also allow reductions in the award to dependents. It is reasonable to reduce death benefits as provided by other government programs to prevent double recovery and a profit at government expense. It is reasonable to limit the reduction to government program payments to dependents since life insurance, which would be the most common insurance benefit received by

dependents, is not a consideration in awarding payment in a wrongful death action, workers' compensation or crime victims compensation.

Parts 7190.1025 and 7190.1026 Eligible Allowances.

Parts 7190.1025 and 7190.1026 of the proposed rule lists the allowances provided to all dependents. The allowances provided are reasonable because they are the same as those allowed under Minnesota Statutes, Section 176.111 with two exceptions:

1) the payments end to the spouse after 10 years regardless of remaining dependent children. This is reasonable because it is required by Minn. Stat., Section 115B.34, subd. 1(d)(3).

2) the allowances include payment for household labor in addition to wages if the claimant lived in the same household, i.e. with a spouse and/or children or with parents. This is reasonable because to exclude the value of household labor would be to deny the dependents compensation that was available to the claimant. If the claimant was not employed outside the home, then the dependents could receive no compensation from the Board for the claimant's death while suffering significant economic losses to replace the claimant's services. Thus it is reasonable to provide an allowance for the value of household labor that is consistent with the wage loss allowance to assure that the total loss of support for the dependents is recognized and addressed.

IV. CONCLUSION

Based on the foregoing, the proposed rules for death benefits are both needed and reasonable.

Date

Oct 19, 1987

Virginia L. Reiner
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Executive Director