

Pay During Appeal FAQs for Self Insured Employers

June 18, 2008

WHEN ARE BENEFITS DUE?

Prior to the passage of E2SHB 3139, self-insurers would sometimes delay the payment of benefits until they decided whether or not to protest or appeal a department order. RCW 51.52.050(2)(b) now states "An order by the department awarding benefits shall become effective and benefits due on the date issued." Based on this language, benefits must be paid without delay, and are due on the date of the order (and not, for example, on the date the order is communicated or the date the order becomes final).

WAC 296-15-450(6)(b)(iii)(B) still applies. When you close a claim with PPD, you must make the first payment within five days of claim closure. For department-closed PPD claims, you must make the first payment without delay as required in WAC 296-15-450(9).

WHEN WILL L&I CONSIDER PENALTIES?

The department will consider a penalty for any unreasonable delay. Payments mailed more than ten calendar days after the date of the department order will be considered unreasonably delayed. This is consistent with penalty determinations prior to the recent legislative changes.

WHAT ARE "BENEFITS"?

Examples of benefits include time-loss compensation, PPD awards, vocational services, LEP, and medical treatment. In addition, a claim allowance order is considered an order awarding benefits. An allowance order requires the self-insurer to begin appropriate benefits such as time-loss compensation and medical treatment.

Examples of orders that do not award benefits include penalties, claim rejection, or orders segregating medical conditions.

DO I HAVE TO PAY BENEFITS WHEN I PROTEST AN ORDER?

You must pay any benefits ordered up through the date you send your protest to the department (either the date mailed or the date faxed).

EXAMPLE #1

L&I issues an order dated July 1, 2008. The order directs the self-insurer to pay timeloss effective July 1st and ongoing. You disagree with the order and mail your protest on July 5th. You must pay timeloss for July 1st through July 5th. You do not have to pay any other "ongoing" payments unless/until the department issues a further responsive order.

EXAMPLE #2

L&I issues an order dated July 1, 2008. The order directs the self-insurer to pay timeloss from March 1, 2008 to the date of the order and ongoing. You disagree with the order and mail your protest on July 5. You must pay timeloss for March 1st through July 5th. You do not have to pay any other "ongoing" payments unless/until the department issues a further responsive order.

EXAMPLE #3

L&I issues an order dated July 1, 2008. The order directs the self-insurer to authorize and pay for physical therapy. You disagree with the order and mail your protest on July 5, 2008. You must pay for any physical therapy bills related to the claim that have dates of service up to July 5, 2008. You do not

have to pay for any physical therapy treatment received after July 5th until/unless the department issues a further responsive order.

EXAMPLE #4

L&I issues an order dated July 1, 2008. The order awards PPD in the amount of \$15,000. The employer disagrees and mails their protest on July 5, 2008. The down payment is due immediately, but ongoing payments will not be due until/unless the department affirms the order. Interest will accrue as usual.

HOW WILL PROTESTS TO ORDERS THAT ONLY CONTAIN APPEAL LANGUAGE BE HANDLED?

A protest to an "appealable only" order will be treated as an appeal, and immediately forwarded to the Board of Industrial Insurance Appeals (BIIA). The department will take any further action within 30 days (the "re-assumption" period). Benefits must continue to be paid by the employer until an order is issued that returns jurisdiction of the case to the department (a "reassumption" order). If no such order is issued, benefits must continue unless a stay decision stopping benefits is made by the BIIA.

CAN I MOVE FOR A STAY OF BENEFITS WHEN THE WORKER APPEALS A WAGE ORDER?

No. A wage order is not subject to the stay provisions as it does not award benefits, but provides the elements needed to establish the benefit rate (wages, dependent and marital status). RCW 51.52.050(2)(b)(ii)(A) provides language to address the wages to be used pending the appeal of a wage order at the BIIA.

WHEN IS THE PAYMENT OF A PPD AWARD AUTOMATICALLY STAYED?

If a worker or medical provider protests a PPD order, and the department issues a further order increasing the award, the amount of the increase is automatically stayed until the order is final and binding, or the increase is determined by a decision of the BIIA. If the employer agrees with the increase and does not appeal, the PPD payment can be made immediately to avoid interest accruing until the order becomes final. Otherwise, interest must be paid on the additional PPD award delayed beyond the date of the order.

IF THE WORKER HAS REQUESTED THAT BENEFITS CEASE DURING THE APPEAL, CAN THEY CANCEL THAT REQUEST AT A LATER DATE?

No. Once the worker submits a written request to cease benefits pending the appeal, they cannot request to have them reinstated.

WHEN A WORKER REQUESTS A CEASE OF BENEFITS, WILL I OWE INTEREST ON THE BENEFITS IF THE WORKER PREVAILS AT THE BIIA?

Yes. The statute still requires interest on any unpaid benefits (see RCW 51.52.135).

WHEN -- AND HOW MUCH -- DO I NEED TO START DEDUCTING FROM MY WORKERS FOR THE OVERPAYMENT REIMBURSEMENT FUND?

While the rate is still being determined, you will receive notice of how much to deduct for this new fund in the annual Supplemental Pension and Asbestos Funds rate notice to be mailed in December, 2008. Deductions from workers should begin for hours worked on or after January 1, 2009, with the first payment due in May, 2009.