

1 **176.081 LEGAL SERVICES OR DISBURSEMENTS; LIEN; REVIEW.**

2 Subdivision 1. **Limitation of fees...**

3 (c) If the employer or the insurer or the defendant is given written notice of claims for
4 legal services or disbursements, the claim shall be a lien against the amount paid or payable as
5 compensation. Subject to the foregoing maximum amount for attorney fees, up to 20 percent of
6 the first \$130,000 of periodic compensation awarded to the employee may be withheld from the
7 periodic payments for attorney fees or disbursements if the payor of the funds clearly indicates
8 on the check or draft issued to the employee for payment the purpose of the withholding, the
9 name of the attorney, the amount withheld, and the gross amount of the compensation payment
10 before withholding. In no case shall fees be calculated on the basis of any undisputed portion of
11 compensation awards. Allowable fees under this chapter shall be available to an attorney who
12 procures a benefit on behalf of the employee and be based solely upon genuinely disputed claims
13 or portions of claims, including disputes related to the payment of rehabilitation benefits or to
14 other aspects of a rehabilitation plan. The existence of a dispute is dependent upon a
15 disagreement after the employer or insurer has had adequate time and information to take a
16 position on liability. Neither the holding of a hearing nor the filing of an application for a hearing
17 alone may determine the existence of a dispute. Except where the employee is represented by an
18 attorney in other litigation pending at the department or at the Office of Administrative Hearings,
19 a fee may not be charged ~~after June 1, 1996,~~ for services with respect to a medical or
20 rehabilitation issue arising under section 176.102, 176.135, or 176.136 performed before the
21 employee has consulted with the department attorney has filed with the commissioner and served
22 on the employer or insurer, and the attorney representing the employer or insurer, if any, a
23 request for certification of dispute containing the name of the employer and its insurer, the date
24 of the injury, and describing the benefits claimed, and the department certifies that there is a
25 dispute and that it has tried to resolve the dispute. If within 30 days of the filing of the request
26 the department has not issued a determination of whether a dispute exists, the dispute shall be
27 certified if all of the following apply:
28 1) the insurer has not approved the requested benefit;
29 2) the employee, their attorney, or their treating provider has submitted any and all
30 additional information requested by the insurer necessary to determine whether the
31 requested benefit is disputed or approved; and

32 3) the insurer has had at least seven calendar days to review any such additional
33 information.

34 In cases of non-emergency inpatient surgery, if the employer or insurer have requested a second
35 opinion pursuant to section 176.135, subd. 1a, or an examination pursuant to section 176.155,
36 subd. 1, a dispute shall not be certified until after 45 days following a written request for an
37 examination or second opinion.

38 (d) An attorney who is claiming legal fees for representing an employee in a workers'
39 compensation matter shall file a statement of attorney fees with the commissioner or
40 compensation judge before whom the matter was heard. A copy of the signed retainer agreement
41 shall also be filed. The employee, employer or insurer, and the attorney representing the
42 employer or insurer, if any, shall receive a copy of the statement of attorney fees. The statement
43 shall be on a form prescribed by the commissioner and shall report the number of hours spent on
44 the case.

46 **176.135 TREATMENT; APPLIANCES; SUPPLIES.**

47 **Subd. 1. Medical, psychological, chiropractic, podiatric, surgical, hospital.**

48 [For paragraphs (a) to (c) see M.S.]

49 (d) The employer shall furnish replacement or repair for artificial members, glasses or spectacles,
50 artificial eyes, podiatric orthotics, dental bridge work, dentures or artificial teeth, hearing aids,
51 canes, crutches, or wheel chairs damaged by reason of an injury arising out of and in the course
52 of the employment. For the purpose of this paragraph, "injury" includes damage wholly or in part
53 to an artificial member. In case of the employer's inability or refusal ~~seasonably~~ to timely
54 provide the items required to be provided under this paragraph, the employer is liable for the
55 reasonable expense incurred by or on behalf of the employee in providing the same, including
56 costs of copies of any medical records or medical reports that are in existence, obtained from
57 health care providers, and that directly relate to the items for which payment is sought under this
58 chapter, limited to the charges allowed by subdivision 7, and attorney fees incurred by the
59 employee. If an item under this paragraph is customized specifically for the injured worker, then
60 it is the property of the injured worker.

61 [For paragraphs (e) to (h) see M.S.]

62 Subd. 1a. **Nonemergency surgery; second surgical opinion.** (a) The employer is required to
63 furnish surgical treatment pursuant to subdivision 1 when the surgery is reasonably required to
64 cure and relieve the effects of the personal injury or occupational disease. An employee may not
65 be compelled to undergo surgery. If an employee desires a second opinion on the necessity of the
66 surgery, the employer shall pay the costs of obtaining the second opinion. Except in cases of
67 emergency surgery, the employer or insurer may require the employee to obtain a second opinion
68 on the necessity of the surgery, at the expense of the employer, before the employee undergoes
69 surgery. ~~Failure to obtain a second surgical opinion shall not be reason for nonpayment of the~~
70 ~~charges for the surgery. The employer is required to pay the reasonable value of the surgery~~
71 ~~unless the commissioner or compensation judge determines that the surgery is not reasonably~~
72 ~~required. If an employer or insurer receives a request for nonemergency surgery, it must respond~~
73 ~~orally or in writing no later than seven calendar days after receiving the request from the health~~
74 ~~care provider or employee by approving the request, denying authorization, requesting additional~~
75 ~~information, requesting a second opinion under this section, or requesting an examination by the~~
76 ~~employer's physician under section 176.155.~~

77 (b) An employer or insurer requesting a second opinion must notify the employee and the health
78 care provider of the request for a second opinion within seven calendar days of the request for
79 non-emergency surgery. If the employer or insurer denies authorization within seven working
80 days of receiving the second opinion, the health care provider may elect to perform the surgery,
81 subject to a determination of compensability by the commissioner or compensation judge.

82 (c) Failure to obtain a second surgical opinion shall not be reason for nonpayment of the charges
83 for the surgery. The employer is required to pay the reasonable value of the surgery unless the
84 commissioner or compensation judge determines that the surgery is not reasonably required.

85

86 Subdivision 7. **Medical bills and records.**

87 [For paragraphs (a) to (c) see M.S.]

88 (d) The requirements in this paragraph and paragraph and (e) apply to requests for copies of
89 existing medical records that are required to be maintained in electronic format by state or
90 federal law and that are requested in connection with any workers' compensation claim.

91 (1) If an authorized requestor of copies of medical records submits a written request for
92 advance notice of the cost of the copies requested, the health care provider must notify

93 the requestor of the estimated cost before sending the copies. If the requestor approves
94 the cost, and copies of the records are provided, then the payment shall be the applicable
95 fee under paragraph (e). If the requestor opts not to pay for the records, the health care
96 provider may charge a fee which must not exceed \$10.

97 (2) A health care provider shall not require prepayment for the cost of copies of medical
98 records under this paragraph or Minn. Rules, chapter 5219.

99 (3) A health care provider shall provide copies of medical records in electronic format.

100 (e) For copies of electronic medical records requested under paragraph (d), the health care
101 provider may charge a reasonable fee, which includes any fee for retrieval, download, or other
102 delivery of records, which must not exceed the total of:

103 (1) \$10 if there are no records available; or

104 (2) \$30 for copies of records of up to 25 pages; or

105 (3) \$50 for copies of records of up to 100 pages; or

106 (4) \$50, plus an additional 10 cents per page for pages 101 and above, for copies of
107 records that total over 100 pages; or

108 (5) a total charge of \$500.

109 **176.155 EXAMINATIONS.**

110 Subdivision 1. **Employer's physician.** (a) The injured employee must submit to examination by
111 the employer's physician, if requested by the employer, and at reasonable times thereafter upon
112 the employer's request. Examinations shall not be conducted in hotel or motel facilities. The
113 examination must be scheduled at a location within 150 miles of the employee's residence unless
114 the employer can show cause to the department to order an examination at a location further
115 from the employee's residence. The employee is entitled upon request to have a personal
116 physician or witness present at any such examination. Each party shall defray the cost of that
117 party's physician.

118 (b) Any report or written statement made by the employer's physician as a result of an
119 examination of the employee, regardless of whether the examination preceded the injury or was
120 made subsequent to the injury, or whether litigation is pending, shall be made available, upon
121 request and without charge, to the injured employee or representative of the employee and must
122 be served upon the employee and the attorney representing the employee, if any, no later than 14
123 calendar days within the issuance of the report or written statement.

124 (c) The employer shall pay reasonable travel expenses incurred by the employee in attending the
125 examination including mileage, parking, and, if necessary, lodging and meals. The employer
126 shall also pay the employee for any lost wages resulting from attendance at the examination.

127 (d) A self-insured employer or insurer who is served with a claim petition pursuant to section
128 176.271, subdivision 1, or 176.291, shall schedule any necessary examinations of the employee,
129 if an examination by the employer's physician or health care provider is necessary to evaluate
130 benefits claimed. The examination shall be completed and the report of the examination shall be
131 served on the employee and filed with the commissioner within 120 days of service of the claim
132 petition. Any request for an extension pursuant to paragraph (e) of this subdivision must be made
133 within 120 days of service of the claim petition, except that a request may be made after 120
134 days of service of a claim petition in the following circumstances:

135 (1) a change to the employee's claim regarding the nature and extent of the injury;

136 (2) a change to the permanency benefits claimed by the employee, including a change in
137 permanent partial disability percentage; or

138 (3) the employment relationship is not admitted by the uninsured employer.

139 (e) No evidence relating to the examination or report of the employer's physician shall be
140 received or considered by the commissioner, a compensation judge, or the court of appeals in
141 determining any issues unless the report has been served and filed as required by this section,
142 unless a written extension has been granted by the commissioner or compensation judge. The
143 commissioner or a compensation judge shall extend the time for completing the adverse
144 examination and filing the report upon good cause shown. The extension must not be for the
145 purpose of delay and the insurer must make a good faith effort to comply with this subdivision.
146 Good cause shall include but is not limited to:

147 (1) that the extension is necessary because of the limited number of physicians or health
148 care providers available with expertise in the particular injury or disease, or that the
149 extension is necessary due to the complexity of the medical issues, or

150 (2) that the extension is necessary to gather additional information which was not
151 included on the petition as required by section 176.291.

152

153 **176.239 ADMINISTRATIVE DECISION CONCERNING DISCONTINUANCE OF**
154 **COMPENSATION.**

155 Subd. 6. **Scope of the administrative decision.** If benefits have been discontinued due to the
156 employee's return to work, the commissioner shall determine whether, as a result of occurrences
157 arising during the initial 14 calendar days after the return to work, the employee is entitled to
158 additional payment of temporary total, temporary partial, or permanent total compensation.
159

160 If periodic payment of temporary total, temporary partial, or permanent total
161 compensation has been discontinued for reasons other than a return to work, the commissioner
162 shall determine whether the employer has reasonable grounds to support the discontinuance.
163 Only ~~information or~~ reasons specified on the notice of discontinuance shall provide a basis for a
164 discontinuance, unless the parties agree otherwise.
165

166 Subd. 7. **Interim administrative decision.** After considering the information provided by the
167 parties at the administrative conference, including exhibits submitted by any party, the
168 commissioner shall issue to all interested parties a written decision on payment of compensation.
169 Administrative decisions under this section shall be issued within five working days from the
170 close of the conference. Disputed issues of fact shall be determined by a preponderance of the
171 evidence.
172

173 **176.291 DISPUTES; PETITIONS; PROCEDURE.**

174 (a) Where there is a dispute as to a question of law or fact in connection with a claim for
175 compensation, a party may serve on all other parties and file a petition with the commissioner
176 stating the matter in dispute. The petition shall be on a form prescribed by the commissioner and
177 shall be signed by the petitioner.

178 (b) The petition shall also state and include, where applicable:

- 179 (1) names and residence or business address of parties;
- 180 (2) facts relating to the employment at the time of injury, including amount of wages
181 received;
- 182 (3) extent and character of each injury;
- 183 (4) notice to or knowledge by employer of injury;
- 184 (5) copies of written medical reports or other information in support of the claim;
- 185 (6) names and addresses of all known witnesses intended to be called in support of each
186 injury and claim;
- 187 (7) the desired location of any hearing and estimated time needed to present evidence at
188 the hearing;
- 189 (8) any requests for a prehearing or settlement conference;
- 190 (9) a list of all known third parties, including the Departments of Human Services and
191 Employment and Economic Development, who may have paid any medical bills or other
192 benefits to the employee for the injuries or disease alleged in the petition or for the time
193 the employee was unable to work due to the injuries or disease, together with a listing of
194 the amounts paid by each;
- 195 (10) the nature and extent of ~~the each~~ claim; and

196 (c) Incomplete petitions may be stricken or dismissed from the calendar as provided by section
197 176.305, subdivision 4. Within 30 days of a request by a party, an employee who has filed a
198 claim petition pursuant to section 176.271 or this section shall furnish a list of physicians and
199 health care providers from whom the employee has received treatment for the same or a similar
200 condition as well as authorizations to release relevant information, data, and records to the

201 requester. The petition may be stricken from the calendar upon motion of a party for failure to
202 timely provide the required list of health care providers or authorizations.

203

204 **176.305 PETITIONS FILED WITH WORKERS' COMPENSATION DIVISION.**

205 Subd. 4. **Striking from calendar.** A compensation judge, after receiving a properly served
206 motion, may strike a case from the active trial calendar after the employee has been given 30
207 days to correct ~~the deficiency a deficient petition~~ if it is shown that the information on the
208 petition or included with the petition is incomplete. Once a case is stricken, it may not be
209 reinstated until the missing information is provided to the adverse parties and filed with the
210 compensation judge. If a case has been stricken from the calendar for ~~one year~~ 180 days or more
211 and no corrective action has been taken, the compensation judge may, upon the judge's own
212 motion or a motion of a party which is properly served on all parties, dismiss the case. The
213 petitioner must be given at least 30 days' advance notice of the proposed dismissal before the
214 dismissal is effective.

215

216 **176.331 PROCEEDINGS WHEN ANSWER NOT FILED.**

217 Except in cases involving multiple employers or multiple insurers, if an adverse party fails to file
218 and serve an answer or obtain an extension from the office or the petitioner as required by
219 section 176.321, subdivision 3, the office shall set the matter for an immediate pretrial
220 conference and hearing ~~and for~~ prompt award or other order. The adverse party that failed to file
221 an answer or appear at a pretrial conference may appear at the hearing, present evidence and
222 question witnesses, but shall not be granted a continuance except upon a showing of good cause.

223

224 If an adverse party who fails to serve and file an answer is neither insured for workers'
225 compensation liability nor a licensed self-insured as required by section 176.181 and the special
226 compensation fund is a party to the proceeding, the compensation judge may enter an order
227 awarding benefits to the petitioning party without a hearing if so requested by the special
228 compensation fund.