WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In This Box

FILED

2004 OCT 19 P 3:13

OFFICE WEST VIRGINIA SECRETARY OF STATE

NOTICE OF A PUBLIC HEARING ON A PROPOSED RULE

AGENCY: Workers' Compensation Commission TITLE NUMBER: 85

RULE TYPE: Exempt Legislative CITE AUTHORITY: W. Va. Code §§23-1-1a(j)(3), 23-4-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: *

TITLE OF RULE BEING AMENDED: *Repeals and replaces 85CSR1, "Administration of the Workers' Compensation Fund"

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 1

TITLE OF RULE BEING PROPOSED: "Claims Management and Administration"

DATE OF PUBLIC HEARING: November 19, 2004 TIME: 1:00 p.m.

LOCATION OF PUBLIC HEARING: Rooms 207-209
Charleston Civic Center
Charleston, West Virginia
**Comments will close at the end of the public hearing on this rule.

COMMENTS LIMITED TO: ORAL ___, WRITTEN ___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS:

T. J. Obrokta
Executive Offices
Workers' Compensation Commission
4700 MacCorkle Avenue, S.E.
Charleston, WV 25304
Fax # (304) 926-5372

The Department requests that persons wishing to make comments at the hearing make an effort to submit written comments in order to facilitate the review of these comments.

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Authorized Signature

$5.60

WCC Insuring a Working West Virginia
Workers' Compensation Commission
Gregory A. Burton, Executive Director

Office of General Counsel
4700 MacCorkle Avenue, S. E.
Charleston, West Virginia 25304
Phone Number (304) 926-3423
Fax Number (304) 926-5441

October 19, 2004

The Honorable Joe Manchin III
Secretary of State
State Capitol Complex
Building 1, Room W-157
Charleston, West Virginia 25305

Re: Proposed Rule
Title 85, Series 1
"Claims Management and Administration"

Dear Secretary Manchin:

Please consider this letter to be my written approval for the filing of the above-noted proposed Rule.

Pursuant to Senate Bill 2013, Second Extraordinary Session, 2003, the Workers' Compensation Commission is established as a government entity separate from the Bureau of Employment Programs. Pursuant to that same bill, the Board of Managers of the Workers' Compensation Commission have approved the enclosed 85 C.S.R. 1 entitled, "Claims Management and Administration," for filing as a proposed rule of the Workers' Compensation Commission.

Thank you very much for your assistance in this matter.

Very truly yours,

Gregory A. Burton
Executive Director

Enclosure

FISCAL NOTE FOR PROPOSED LEGISLATIVE RULES

Rule Title: Title 85 Series 1: Claims Management and Administration

Type of Rule: X Legislative Exempt ___Interpretive ___Procedural

Agency: Workers' Compensation Commission

Address: 4700 MacCorkle Ave. S.E.

Charleston, WV 25304

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1. Effect of Proposed Rule

	Annual		Fiscal Year		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	$0	Unknown	Unknown Decrease	Unknown Decrease	Unknown Decrease
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER:					
Benefit payments	0	Unknown	Unknown Decrease	Unknown Decrease	Unknown Decrease
Benefit related payments	0	Unknown	Unknown Decrease	Unknown Decrease	Unknown Decrease

2. Explanation of above estimates:

Implementation of this rule should result in a net reduction in benefit payments due to the guidance it provides in the integration and coordination of the various types of disability benefits and the time standards established for claims filings, rulings and petitions. Special rules regarding owner and officer claims, temporary total claims, permanent partial disability claims and non-awarded partial benefits should promote more effective claims management. As well, time standards established including those for injury and occupational disease claims, occupational pneumoconiosis claims, medical treatment and evaluations, and petitions for reopening claims, should help to expedite treatment and promote more timely benefit payments. The rule also establishes guidelines for the recovery of benefit overpayments, reimbursement of reasonable travel expenses and the criteria for determining if a period of non-compensability exists. The rules guidance in all of the aforementioned areas should reduce the amount of improper benefit and benefit related payments made and also assist in recovering any improper payments that have been made. However, there is no historical data readily available to estimate the potential net reduction in benefit and benefit related payments. Therefore, no reasonable estimate can be determined for the amount of annual savings in claims expense that will be realized as a result of the proposed rule.

Rule Title: Title 85 Series 1: Claims Management and Administration

3. Objectives of this rule:

This rule establishes and defines the policy and procedure for the administration and management of Workers' Compensation claims, including specific criteria and requirements related to coordination and suspension of various claims benefits and recovery of overpayments in certain defined situations.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

It is expected that this rule will contribute toward more efficient and thorough claims management by the Workers' Compensation Commission, and will result in savings in claims and claim related costs.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

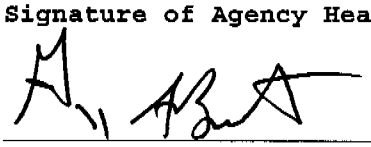
It is expected that, with lower claims costs, employers will incur lower premium rates. Also, it is expected that the rules guidelines will contribute toward more timely and effective treatment of injured workers.

C. Economic Impact on Citizens/Public at Large.

This proposed rule would not have a direct economic impact on the citizens of West Virginia.

Date: October 19, 2004

Signature of Agency Head or Authorized Representative



Gregory A. Burton
Executive Director, Workers' Compensation Commission

SUMMARY OF PROPOSED RULE
STATEMENT OF CIRCUMSTANCES
TITLE 85, SERIES 1

The Claims Management and Administration rule is a comprehensive rule addressing numerous claims processing issues. This Rule set forth processes regarding how an employee provides notice of a work-related injury to his or her employer, how an employer reports the injury to the Commission, and the joint employee/employer responsibility to ensure accurate wage data is provided to the Commission.

This Rule sets forth specific guidance on the denial of claims filed by owners and officers of employers that are in default. This Rule provides specific provisions to be applied in the payment of temporary total disability, permanent partial disability, permanent total disability, and non-awarded partial disability benefits. This Rule establishes certain time standards to be applied in the processing of claims.

This Rule addresses the issue of deductions from benefit awards in satisfaction of existing child support orders. This Rule addresses procedures for the collection of overpayments by the Commission and procedures for the suspension of benefits to claimants engaged in abuse. This rule also provides guidance in occupational pneumoconiosis claims, the closure of certain claims and the impact that litigation has on the Commission's obligation to pay claims.

TITLE 85
EXEMPT LEGISLATIVE RULE
WORKERS' COMPENSATION COMMISSION

SERIES 1
CLAIMS MANAGEMENT AND ADMINISTRATION

§85-1-1. General.

1.1. Scope. –This exempt legislative rule establishes the requirements and procedures to be followed by the West Virginia Workers' Compensation Commission, parties to claims pending before the Commission, health care providers, vocational professionals, and others involved in the administration of claims.

1.2. Authority. -- Pursuant to W.Va. Code Section 23-1-a(j)(3), rules adopted by the Workers' Compensation Board of Managers are not subject to legislative approval as would otherwise be required under W.Va. Code Section 29A-3-1 *et seq.* Public notice requirements of that chapter and article, however, must be followed.

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Repeal of former rule. -- WV 85 CSR 1, "Administration Of The Workers' Compensation Fund," filed April 5, 2004, and effective May 5, 2004 is hereby repealed and replaced by the provisions of this exempt legislative rule. WV 85 CSR 6, "Time Limits for the Administrative Processing of Adjudications and Awards," filed May 23, 1985 and effective May 23, 1985 is hereby repealed and replaced by the provisions of this exempt legislative rule.

§85-1-2. Definitions.

As used in this exempt legislative rule, the following terms have the stated meanings unless the context of a specific use clearly indicates another meaning is intended.

2.1. "Executive Director" means the executive director of the West Virginia Workers' Compensation Commission pursuant to W.Va. Code §23-1-1b.

2.2. "Commission" means the West Virginia Workers' Compensation Commission as provided for by W. Va. Code §23-1-1.

2.3. "Injury" and derivative words have the meaning ascribed to the term "injury" by W. Va. Code §23-4-1.

2.4. "Injured worker" means an employee entitled to workers' compensation benefits as the result of a work-related injury, as provided under W. Va. Code §23-4-1.

2.5. "Injured worker's employer" or "employer" means an employer within the meaning of West Virginia Code Section 23-2-1, *et seq.*

2.6. "Filing" shall mean actual receipt by the Commission.

2.7. "Paid" shall mean the time the check is deposited in the mail or presented in person to the claimant, claimant's attorney or anyone acting in his behalf.

2.8 "Receipt by the Commission" shall mean the day the document is scanned or otherwise entered into the Commission's computer system.

2.9 "Acted upon" shall mean, but shall not be limited to, any one of the following: 1) receipt and processing by Commission personnel; 2) contacting an injured worker, employer, or medical provider in any fashion requesting more information; 3) review and examination by the Commission's medical personnel; 4) conducting a potential overpayment analysis; 5) cross checking with other state agencies for relevant information; and 6) and other similar administrative steps which must be taken before a request can be ruled upon.

§85-1-3. Injured Worker's Report of Injury and Application for Compensation.

3.1. General.

Immediately after a work-place injury, an injured worker 1) should seek necessary medical care; 2) shall immediately on the occurrence of the injury or as soon as practicable give or cause to be given to the employer or any of the employer's agents a written notice of the occurrence of the injury; and 3) should file a workers' compensation claim or request that one be filed on his or her behalf. Failure to immediately give notice to the employer of the injury shall weigh against a finding of compensability in the weighing of the evidence mandated by West Virginia Code Section 23-4-1g and will dilute the credibility and reliability of the injured workers' claim. Notice provided to the employer within forty-eight (48) hours of the injury shall be deemed immediate notice. Enforcement of an employer's personnel policy requiring that an injured worker report an injury immediately shall not be deemed a discriminatory practice under Chapter 23 of the West Virginia Code.

3.2 Benefit rate calculation; wage information

It is the joint responsibility of the injured worker and the employer to ensure that the correct wage information is provided to the Commission so that the correct benefit rate can be paid the injured worker. If inaccurate wage information is received by the Commission, the Commission will, upon receipt of accurate wage information, adjusted prospectively the benefit rate. There shall be no retroactive adjustments to previous underpayments beyond two (2) years. The submission of inaccurate wage information submitted by the employer or the receipt of benefits based on inaccurate wage information by the injured worker may serve as evidence of abuse or fraud under the applicable provisions of the West Virginia Code.

§85-1-4. Employer's Report of Injuries.

4.1 General

The injured worker's employer shall report to the Commission every injury sustained by any person in its employ within five (5) days of the employer's receipt of the employee's notice of a desire to file a claim for injury or within five (5) days after the employer has been notified by the Commission that a claim for benefits has been filed, whichever is sooner. Failure to comply with this reporting requirement may result in the employer being fined up to $250 per occurrence. Any employer that has five (5) or more occurrences within a rolling three hundred sixty-five (365) day period shall be fined up to $500 per occurrence as determined in the sole discretion of the Commission.

4.2. Benefit rate calculation; wage information

It is the joint responsibility of the injured worker and the employer to ensure that the correct wage information is provided to the Commission so that the correct benefit rate can be paid the injured worker. If inaccurate wage information is received by the Commission, the Commission will, upon receipt of accurate wage information, adjusted prospectively the benefit rate. There shall be no retroactive adjustments to previous underpayments beyond two (2) years. The submission of inaccurate wage information submitted by the employer or the receipt of benefits based on inaccurate wage information by the injured worker may serve as evidence of abuse or fraud under the applicable provisions of the West Virginia Code.

4.3. The Commission may require employers to file forms and reports electronically or telephonically through written policy.

§85-1-5. Special Rules for Owner and Officer Claims

5.1 Owners and officers; Coverage denials when the employer is delinquent or in default.

5.1.a. Employers who fail to subscribe for workers' compensation coverage shall not be afforded coverage for its partners, the proprietor or its corporate or executive officers, nor shall coverage be afforded to any "employee" for whom the employer may elect to forego coverage under the provisions of W. Va. Code §23-2-1(g) including, but not limited to, members of corporate boards of directors or certain members of a limited liability company.

5.1.b. Employers who are delinquent or in default of their workers' compensation obligations shall not be afforded workers' compensation coverage for its partners, the proprietor or its corporate or executive officers, nor shall coverage be afforded to any "employee" for whom the employer may elect to forego coverage under the provisions of W. Va. Code §23-2-1(g) including, but not limited to, members of corporate boards of directors or members of a limited liability company.

1. Coverage for the "employees" specified in this provision shall not be afforded if the employer is delinquent or in default on the date of injury, and this exclusion will continue

for the life of that injury. For example, if, at some time after the date of injury, the employer cures its default or delinquency status, the "employee" nevertheless will not be covered for the injury that occurred during the period of default or delinquency and benefits will never be payable for that injury.

2. In those cases where the employer is in good standing at the time of the injury and the "employee's" injury is therefore covered, but the employer then becomes delinquent or in default, then coverage shall terminate for the "employees" specified in this policy for the time period of the delinquency or default. No indemnity or medical benefits shall be paid for lost wages or medical treatment provided during this period of default or delinquency. If the employer fails to cure the delinquency or default within thirty (30) days notice thereof, then the claim shall be closed, coverage for the injury shall be barred for the life of that injury, and benefits paid to date shall be deemed an overpayment collectable from any future benefit awarded to the "employee."

3. In those cases where the employer appears to be in good standing at the time of the injury and the employer appears to have workers' compensation coverage, but the employer then becomes delinquent or goes into default retroactively (for example, as a result of underreporting payroll for a time period) so as to include the date of injury, then coverage shall not be afforded for the "employee" and this exclusion will continue for the life of that injury.

A. Provided: If the total delinquency or default is less than two hundred dollars ($200.00) of premium tax, then the commission will afford the employer an opportunity to cure its retroactive delinquency status by the issuance of a thirty (30)day notice to cure to the employer. If the employer cures its default or delinquency in accordance with this provision, the "employee" will be covered for the injury that occurred during the period of default or delinquency and benefits will be payable for that injury.

4. Benefits paid during periods of delinquency or default for "employees" denied coverage under this provision shall be considered overpayments.

5. When coverage for an injury is denied to an "employee" as a result of the employer's delinquency or default, the injured "employee" may only contest the commission's order through the provisions of 85 C.S.R. 7, "Rules for Selected Hearings," and the provisions of W. Va. Code §23-2-17. Until the conclusion of the W. Va. Code §23-2-17 process and the determination of whether the "employee" is afforded coverage, action in the claim will be held in abeyance.

§85-1-6. Special Rules for Temporary Total Disability Claims.

6.1. To qualify for temporary total disability benefits, the injured worker must have missed more than three (3) consecutive, regularly scheduled work days due to the compensable injury before benefits become payable. To receive temporary total disability benefits for the first three (3) days of regularly scheduled work days missed, the injured worker must have missed more than seven (7) consecutive, regularly scheduled days of work due to the compensable injury.

6.2. If an individual retires, he or she is disqualified from receiving temporary total disability indemnity benefits as a result of an injury received from the place of employment from which he or she retired. Individuals who have retired also shall be barred from reopening for indemnity benefits an earlier claim filed in connection with an injury received at the place of employment from which he or she retired.

6.3. If a period of disability includes a reasonably ascertainable period of time during which the injured worker would not have been compensated from his or her employer, then temporary total disability indemnity benefits shall not be paid during that period.

§85-1-7. Special Rules for Permanent Partial Disability Claims.

7.1. Notice.

Upon the making of or refusing to make an award of benefits, the Commission shall send to each interested party a written notice setting forth its decision and the terms thereof and informing the parties of their right to protest its decision by filing objection thereto in writing at any time within thirty (30) days after receipt of notice.

7.2. Computation of awards.

When an injured worker is found to be entitled to a permanent partial disability award, the award shall be computed in accordance with the law in effect when the award is payable.

7.3. Payment of permanent partial disability award.

Permanent partial disability awards shall be paid in monthly installments equal to the impairment awarded. For instance, a 10% permanent partial disability award would be paid over a ten (10) month period with the first payment being made the month following the award.

§85-1-8. Special Rules for Permanent Total Disability Claims.

[RESERVED]

§85-1-9. Special Rules for Non-Awarded Partial Benefits.

9.1. Non-awarded partial disability benefits will only be payable if the weight of the evidence indicates that a permanent impairment exists.

9.2. If an injured worker's temporary total disability benefits have been exhausted in terms of reaching the 104 week maximum, or any other maximum set by the Legislature, he or she will only be eligible to receive non-awarded partial benefits if the authorized treating physician has recommended a fifteen percent (15%) or more permanent partial disability award and the recommendation is consistent with the extent of the injured worker's injuries and guidelines for impairment utilized by the Commission.

9.3 Non-awarded partial disability benefits shall not be payable in a claim that has been re-opened for temporary total disability benefits if a permanent partial disability award was previously made in the claim.

9.4 Non-awarded partial disability benefits paid prior to entry of the permanent disability award are to be deducted from the permanent partial disability award when it is granted. If the non-awarded partial disability benefits exceed the amount of the award, the injured worker will not be entitled to any further benefits from the award. The excess is considered to be an overpayment and shall be collected from any future disability award in the same or any future claim, including, but not limited to, an award for temporary total disability benefits, permanent partial disability benefits, permanent total disability benefits, non-awarded partial disability benefits.

9.5 The Commission may cease paying non-awarded partial disability benefits if the Commission concludes that the amount of non-awarded partial disability benefits already paid will likely exceed the expected partial disability award.

9.6. If the injured worker begins to receive rehabilitation benefits, non-awarded partial disability benefits shall not be paid until the rehabilitation process is completed.

9.7. Non-awarded partial disability benefits shall be immediately suspended if the injured worker fails, without good cause, to present for an examination or rating. Benefits can be reinstated, without back pay, once the injured worker presents for the examination or rating.

9.8. Non-awarded partial disability benefits are paid at the same rate as the permanent partial disability rate.

§85-1-10. Time Standards

10.1. Injury and occupational disease claims. -- Those claims based upon injuries and occupational diseases other than occupational pneumoconiosis that are filed with the Commission upon properly executed, prescribed forms shall be ruled on within fifteen (15) working days from the date of receipt of all required information by the Commission. The Commission shall consider all information and proof properly submitted in connection with each claim. Whenever it is of the opinion that a claim has not been adequately or properly developed for consideration, it may require the parties to produce additional evidence. The fifteen (15) working days to rule on the claim shall be tolled during this evidence gathering process.

10.2. Occupational Pneumoconiosis claims. -- Non-medical rulings shall be entered in occupational pneumoconiosis claims within fifteen (15) working days from the date of receipt by the Commission of properly executed, prescribed forms from all parties involved. The Commission shall consider all information and proof properly submitted in connection with each claim. Whenever the Commission is of the opinion that a claim has not been adequately or properly developed for consideration, it may require the parties to produce additional evidence. The fifteen (15) working days shall be tolled during this evidence gathering process.

10.3. Medical Treatment. -- Requests for authorization of medical treatment shall be acted upon within fifteen (15) working days from the date of receipt by the Commission.

10.4. Appliances, Devices, and Supplies. -- Requests for authorization of purchase of prosthetic or other appliances, devices or medical supplies shall be acted upon within fifteen (15) working days from the date of receipt by the Commission.

10.5. Medical evaluations.

a. Referral of claimants to physicians for examinations and evaluations as required by West Virginia Code Section 23-4-7(a)(d), shall be made within twenty (20) working days of the end of the one hundred twenty (120) day period of temporary total disability.

b. Examinations and evaluations to be performed by the Occupational Pneumoconiosis Board shall be scheduled and notice of the scheduling shall be transmitted to the parties within sixty (60) days from the date of non-medical rulings directing referral to the Board.

10.6. Permanent disability rulings.

a. Permanent disability evaluation reports received from physicians to whom claimants have been referred by the Commissioner in claims based upon injuries and occupational diseases other than occupational pneumoconiosis shall be acted upon in a timely manner.

b. Findings of the Occupational Pneumoconiosis Board shall be transmitted to the parties within ten (10) working days from the date of examination by the Board.

10.7 Petitions for reopening.

a. Petitions for reopening of claims for temporary total disability benefits and/or medical benefits shall be ruled upon within ten (10) working days from the date of receipt in the Commission. The Commission shall consider all information and proof properly submitted in connection with each claim. Whenever it is of the opinion that a claim has not been adequately or properly developed for consideration, it may require the parties to produce additional evidence. The ten (10) working days to rule on the claim shall be tolled during this evidence gathering process.

b. Petitions for reopening of claims upon a permanent disability basis shall be ruled upon within thirty (30) days from the date of receipt in the Fund.

10.8. Applications for modification of awards. -- Applications for modification of awards filed by employers shall be ruled upon within twenty (20) working days from the date of receipt in the Fund.

§85-1-11. Child Support and Spousal Support Orders

11.1. W. Va. Code § 23-4-18 allows child and/or spousal support payments to be withheld from an injured worker's compensation and sent to the Bureau for Child Support Enforcement. The term "compensation" refers to temporary total disability benefits, temporary partial rehabilitation benefits, non-awarded partial benefits, permanent partial disability benefits and permanent total disability benefits only.

11.2. The amounts to be withheld from an injured worker's compensation will be those which are set out in the withholding notice issued pursuant to the West Virginia Domestic Relations Act.

11.3. When an award of compensation is for permanent partial or non-awarded partial benefits, the Commission can withhold 100% of those benefits to collect payment of child and/or spousal support benefits.

11.4. When compensation is for temporary total, temporary partial, rehabilitation temporary total, permanent total, or dependent benefits, the Commission may only withhold the amount or amounts specified on the withholding notice, subject to the limitations set out in Table 1a.

§85-1-12. Overpayments

12.1. Overpayments include the receipt of any monies from the Commission to which it is subsequently determined the injured worker was not entitled to receive or have paid on his or her behalf and include, but shall not be limited to, the payment of temporary total disability benefits, permanent partial disability benefits, permanent total disability benefits, non-awarded partial disability benefits, temporary total rehabilitation benefits, temporary partial rehabilitation benefits, dependents benefits, fatal (104 week) benefits, travel reimbursement, and medical benefits.

12.2. Overpayments to injured workers may be collected by the Commission by withholding future disability benefits payable to the injured worker or the worker's dependents in the same or other claims. The overpayment specifically can be withheld from temporary total disability benefits, permanent partial disability benefits, permanent total disability benefits, non-awarded partial disability benefits, temporary total rehabilitation benefits, temporary partial rehabilitation benefits, dependents benefits, fatal (104 week) benefits, travel reimbursement, and any other monies awarded or paid by the Commission. Amounts due as a result of the Commission's subrogation rights or as a result of restitution or other related orders shall be deemed an overpayment for administrative purposes and subject to the provisions of this Rule.

12.3. Collection of overpayments from temporary total disability benefits, permanent total disability benefits, temporary total rehabilitation benefits, temporary partial rehabilitation benefits, dependents benefits, and fatal (104 week) benefits shall be limited to thirty percent (30%) of the periodic benefit amount (i.e. weekly, bi-weekly, monthly, etc.); Provided that if the

overpayment was based upon fraud, abuse, or mistake, caused in whole or in part, by the injured worker or his or her agent, then the amount of the overpayment may be recovered in full by withholding 100% of the periodic benefit amount until the overpayment is recaptured.

12.4. Collection of overpayments from travel reimbursement, permanent partial disability benefits and non-awarded partial disability benefits shall not be limited and may be withheld in full until the overpayment is satisfied.

§85-1-13. Occupational Pneumoconiosis and Occupation Disease Claims.

13.1. Occupational disease claims that involve disability or death resulting from occupational pneumoconiosis must be filed, processed, and litigated in accordance with statutory provisions proscribing the administration of occupational pneumoconiosis claims. Claims involving cancers caused by inhalation of minute particles of dust over a period of time in the course of and resulting from employment are occupational pneumoconiosis claims and must be filed, processed and litigated as such. Statutes of limitation for occupational pneumoconiosis cancer claims will begin to run on the date when the cancer was made known to the claimant by a physician or on the date when the claimant should reasonably have known of the cancer, whichever shall last occur.

13.2. Carpal tunnel and all other nerve entrapment syndromes of the upper extremity shall be filed as occupational disease claims unless the syndrome is a secondary diagnosis to an otherwise compensable injury.

13.3. An occupational disease claim filed based on the opinion of a psychologist shall be denied. Psychologists are not treating physicians and are not permitted to certify occupational disease disability.

§85-1-14 Special Rules on Closure of Claims

14.1. Medical benefits in all no lost time claims and claims for temporary total disability benefits shall cease and the claim administratively closed six (6) months after the last date of service in the claim. A protestable order shall be issued by the Commission upon said administrative closure. Nothing in this provision shall be deemed to abridge an injured worker's right to attempt to reopen the claim at a later date under applicable law.

§85-1-15. Procedures for Suspension for Claimant Abuse

15.1. When evidence is obtained justifying a finding that an injured worker has engaged or is engaging in abuse, including, but not limited to, engaging in physical activities inconsistent with his or her compensable workers' compensation injury, or when evidence is obtained establishing a failure to undergo examinations or needed treatment, then the injured worker's temporary total disability benefits will be suspended.

15.2. Abuse may also include working at an unreported job while drawing temporary total disability benefits, making false or misleading statements to the Commission or a health

care provider for the purpose of securing any benefit, and altering, falsifying, destroying, or concealing workers' compensation related records.

15.3. Any claimant found to be engaging in abuse or who fails to undergo examinations or needed treatment shall receive a notice of benefit suspension. This notice will not be protestable. The injured worker will have thirty (30) days to submit evidence justifying the reinstatement of benefits. If justification is not established, then the injured worker will receive notice that the claim has been closed for temporary total disability payments and said notice shall be protestable. If justification is established, benefits will be reinstated with back benefits awarded.

§85-1-16. Travel Expenses - Medical Examination and Treatment.

16.1. General.

Claimants are entitled to reasonable travel, meals and lodging expenses actually incurred in connection with authorized medical examinations or treatment. In making a determination of the reasonableness of such expenses, the Commission shall utilize the travel regulations for State employees as a guide, unless specific provisions to the contrary are otherwise contained herein. Claimants may be reimbursed for mileage in connection with medical examination or treatment at a rate of 15 cents ($0.15) per mile. This rate shall not apply to mileage reimbursement requests involving treatment provided when the Commission requires the claimant to undergo the medical examination and has selected the physician, or when an employer is required to reimburse reasonable travel and other expenses, as provided for in the W. Va. Code §23-4-8. The rate provided for in the travel regulations for State employees shall apply to these latter reimbursement requests.

16.2. Physical limitations.

Where a medical vendor certifies that a claimant, because of the state of his health, requires special travel arrangements in order to report for an authorized examination, the claimant shall be reimbursed for the cost of such arrangements.

16.3. Claimant's residence.

It shall be the policy of the Commission to arrange for examination as near as practicable to the claimant's residence. If the claimant changes his residence after his or her date of injury to a location outside of West Virginia or to a location substantially further from the state than the residence on the date of injury, the following limitations shall be observed:

a. Where the change of residence is necessitated by reason of health or financial hardship, as determined in the sole discretion of the Commission, upon a proper showing of such reasons the Commission shall, in writing, endorse the change of residence and direct payment of meal and lodging expenses as follows:

1. Where the distance between the residence and the situs of the examination is less than four hundred (400) miles, meal and lodging expenses shall be payable as provided in Subsections 15.1 and 15.2 of these Rules;

2. Where the distance between the residence and the situs of the examination is greater than four hundred (400) miles, expenses actually incurred en route shall be payable, to a maximum amount of the round trip air fare, economy class, between the closest airports offering scheduled commercial passenger service, as of the date said examination was scheduled;

3. Where the claimant objects to any order or finding, and the employer does not object thereto, and the claimant is subsequently directed to report for examination upon request of the employer, the claimant will be entitled to reimbursement of expenses from point of entry into West Virginia;

b. Where the claimant's change of residence is not necessitated by reason of health or financial hardship, expenses shall be payable only from point of entry into West Virginia.

§85-1-17. Litigated Claims

17.1. A treating physician appearing at a hearing to give testimony regarding an examination of an injured worker will be paid a fee commensurate with the service rendered for such appearance and testimony: Provided, That the examination was made at the request of the Commission. If the treating physician or other medical vendor appears to give testimony on behalf of the injured worker or employer regarding an examination made at the instance of such injured worker or employer, except as provided in 93 C.S.R. 1, payments must be made by the party requesting the testimony.

17.2. A treating physician or other medical vendor appearing at a hearing or deposition will be paid a fee commensurate with the service rendered for such appearance and testimony as otherwise provided for in the Commission's fee schedule.

17.3. Stay Pending Appeal. Pursuant to West Virginia Code Section 23-5-9(g), the Commission shall not be required to implement an Order from the Office of Judges until either 1) the time period to appeal the Order has expired without appeal; or 2) the matter has been resolved by the Board of Review, whichever is later.

§85-1-18. Miscellaneous Administrative Matters

18.1. Incidents that do not result in material medical treatment, or that are not reasonably expected to result in medical treatment need not be reported to the Commission by the worker or the employer.

18.2 If mail sent by the Commission to an injured worker, an employer, a vendor or any other party to a claim is returned due to an incorrect address, a reasonable effort will be made to determine the correct address. If after reasonable effort and due diligence a correct address cannot be located, the Commission shall cease mailing correspondence to the party until such time as a correct address is provided.

§85-1-19. Severability

If any provision of these rules or the application thereof to any entity or circumstance shall be held invalid, such invalidity shall not affect the provisions or the applications of these rules which can be given effect without the invalid provisions or application and to this end the provisions of these rules are declared to be severable.

TABLE 1a

Family	Arrears	Percentage
Not supporting another family	Less than 12 weeks old	Maximum of 50%
Not supporting another family	Greater than 12 weeks old	Maximum of 55%
Supporting another family, even just a spouse	Less than 12 weeks old	Maximum of 40%
Supporting another family, even just a spouse	Greater than 12 weeks old	Maximum of 45%