

Case Notes

Earlier determinations of claimant's qualification for unemployment compensation benefits precluded reimbursement action when claimant was subsequently disqualified. In the Matter of P.V.C., 96 N.J.A.R.2d (UCC) 12.

Appeal Tribunal's reference to N.J.A.C. 12:17-10.2 in denying temporary disability benefits and demanding refund of payments made was misplaced, as that rule applies only to unemployment benefits refunds; no comparable provision deals with temporary disability benefits; claimant who was under care of psychologist was not entitled to temporary disability benefits, but was not required to repay benefits received absent an allegation of false statement or representation by claimant. *Ross v. Bd. of Review Dep't of Labor*, 212 N.J.Super. 467, 515 A.2d 794 (App.Div.1984).

SUBCHAPTER 2. PRIVATE PLANS

12:18-2.1 Extent of coverage

(a) All employees of the employer shall be covered by one or more private plans, without restrictions or exclusions, except that, subject to the approval of the Division, any private plan may exclude employees of a separate unit, craft, organization, plant, department or establishment, or other class or classes of employees. Application for such exclusion shall be submitted on a form and in a manner prescribed by the Director. The Division may not approve the exclusion of a class or classes of employees determined by the age, sex or race of the employees or by the wages paid such employees, if, in the opinion of the Division, such exclusion would result in a substantial selection of risk adverse to the State plan. For the purposes of this regulation, the employees of an employing unit (not a subject employer) performing services for an employer, as defined in N.J.S.A. 43:21-19(g) shall be considered a class of employees which may be excluded.

(b) Employees excluded from a private plan shall be covered under the State plan and the employer shall be liable for the deduction and payment of workers' contributions and employer's contributions, as required by N.J.S.A. 43:21-7.

(c) All proposed private plans shall be submitted for review and approval by the Division. An employer failing to secure the approval of a private plan shall be deemed to be covered under the State plan and the employer shall be liable for the deduction of workers' contributions and payments of workers' and employer's contributions to the Fund as required by N.J.S.A. 43:21-7 until such date as a private plan is effective.

(d) An employee who ceases to be covered by a private plan, whether by termination of the plan, changing employers or for any other reason, shall, if otherwise eligible, become entitled to disability benefits from the Fund.

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Employer must participate in either state plan or qualified private plan of disability benefits. *O'Boyle v. Prudential Ins. Co. of America*, 241 N.J.Super. 503, 575 A.2d 515 (A.D.1990).

Financial corporation liable for unemployment and temporary disability insurance assessments for computer expert hired to debug system since expert did not qualify as independent contractor. *Jonassen and Associates, Inc. v. Department of Labor*, 97 N.J.A.R.2d (LBR) 9.

Pharmaceutical consulting firm liable for unemployment and temporary disability insurance assessments for consultants since these experts failed to qualify as independent contractors. *Kessler v. Department of Labor*, 97 N.J.A.R.2d (LBR) 7.

12:18-2.2 Benefits

(a) An employee shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) An employee shall not be paid any benefits for disability during unemployment (N.J.S.A. 43:21-3, 4) for any period of disability commencing while he or she is a "covered individual" as defined in N.J.S.A. 43:21-27(b).

(c) The benefits provided by a private plan shall be set forth in the plan both as to eligibility requirements and amounts payable.

(d) If application for benefits is made under the State plan or Disability During Unemployment and it is determined that the claim should have been made under a private plan, an employee shall not be deprived of benefits under the private plan for failure to give timely notice and proof of disability provided that:

1. The application to the State plan would have been timely notice to the private plan if it had been then made; and

2. Proof of disability is furnished under such private plan within the period required therein or within 30 days after the employee has notice that the claim should have been made thereunder.

(e) If an employee is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under the State plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant, for a subsequent period of disability. If an employee is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled under a private plan, or under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 as an unemployed claimant for a subsequent period of disability.

(f) If the benefits claimed by an employee or his or her authorized representative under a private plan are denied, such denial shall be by a written notice to the employee or his or her authorized representative, giving the reason therefor and stating the employee's appeal rights as provided under N.J.A.C. 12:18-2.6 and N.J.A.C. 1:12A. Upon the

issuance of such notice, the Division shall be immediately furnished with a copy of the claim and the notice of denial, or facsimiles thereof.

(g) The private plan shall provide for payment of benefits to employees weekly, biweekly, or at such intervals as the employee is customarily paid wages, unless otherwise approved by the Director.

(h) No reduction in the amount or duration of benefits or increase in the rate of employee contributions shall be made without prior approval of the Division. Approval shall be given if the Division finds that the plan, after such modification, continues to meet the requirements of the Act and this Chapter and, if the employees are to contribute toward the cost of such modified plan, that a majority of the employees covered by the plan have agreed to the modification by written election (by ballot or otherwise) in accordance with this Chapter. The Division shall be given prompt notice of any modification of a private plan, which modification does not require approval under this Section.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (f), substituted "appeal rights as provided under N.J.A.C. 12:18-2.6 and N.J.A.C. 1:12A" for "rights to a hearing in accordance with the Act" at the end of the first sentence.

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Under no fault insurance law, carrier was entitled to deduct amount equal to benefits collectible under private temporary disability benefit plan, in making income continuation payments. *Puzio v. New Jersey Manufacturers Insurance Co.*, 165 N.J.Super. 585, 398 A.2d 934 (Ct. Ct.1979).

12:18-2.3 Proof of coverage

Notice, in a form approved by the Director, of the benefits provided by the private plan shall be furnished to the covered employees either by individual certificates or other direct notification at the time of coverage, or by conspicuous and continuing posting at the place of employment. This notice shall reflect current rates, eligibility requirements, benefit entitlements, and appeal rights to the Division as specified in N.J.A.C. 12:18-2.6. This notice shall be available for inspection at the work site. A copy of the notice shall be submitted annually to the Division.

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Added the second and third sentences.

12:18-2.4 Choice of doctor

An employee covered under a private plan shall have the right to choose his or her own attending licensed medical practitioner, but he or she may be required to submit, not more often than once a week, to an examination by a licensed medical practitioner designated by the employer, insurer or organization paying benefits.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Substituted references to medical practitioners for references to physicians, dentists, chiropractors, podiatrists, practicing psychologists, and optometrists throughout.

12:18-2.5 Nonprofit provision

No employer, union or association representing employees and no person acting in behalf of any of the foregoing shall so administer or apply the provisions of a private plan as to derive any profit therefrom.

12:18-2.6 Appeals

(a) The appeal procedures for private plan temporary disability cases are found at N.J.A.C. 1:12A and are appended at the end of this chapter.

(b) If an employee covered under a private plan is denied benefits by the insurer for any period of disability or he or she disagrees with a determination of benefits made by the insurer, he or she has the right to appeal the determination or denial.

(c) The appeal or complaint shall be filed with the Division within one year after the beginning of the period for which benefits are claimed. Such appeal or complaint shall be filed, either personally or by mail, by the employee or his or her representative. A late appeal shall be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause exists in circumstances where it is shown that:

1. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or
2. The appellant delayed filing the appeal for circumstances which could not have been reasonably foreseen or prevented.

(d) Any appeal or complaint by an employee claiming benefits under an approved private plan shall be filed on a form and in a manner prescribed by the Director. The employee must include the reasons for the appeal or complaint and explain why he or she disagrees with the denial of benefits on the form.

(e) Upon receipt of such appeal or complaint, the Division shall conduct an investigation and such informal conferences as it may deem necessary to determine the facts and settle the issues.

(f) Any appeal or complaint shall be deemed filed on the day it is delivered to the office of the Division of Temporary Disability Insurance, Labor Building, PO Box 957, John Fitch Plaza, Trenton, New Jersey 08625-0957, or if mailed, the complaint shall be deemed filed on the postmarked date appearing on the envelope in which the complaint is mailed; provided, postage is prepaid and the envelope is properly addressed.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1994 d.407, effective August 1, 1994.
See: 26 N.J.R. 2195(b), 26 N.J.R. 3178(b).

Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).
Rewrote the section.

12:18-2.33 Unemployment disability account deficit

(a) The term “unemployment disability account deficit” means any negative balance between the credits and debits of the account as determined by the Act.

(b) If the accumulated deficit at the end of any calendar year after interest and other earnings have been credited in accordance with the Act exceeds \$200,000, such deficit shall be assessed and shall be collected under the provisions of N.J.S.A. 43:21-14, except that interest shall not accrue on any such assessment until 30 days after the date of notice of such assessment.

12:18-2.34 Assessment of costs of administration

Any assessment under the provisions of N.J.S.A. 43:21-48 shall be collected under the provisions of N.J.S.A. 43:21-14, except that interest shall not accrue on any such assessment until 30 days after the date of notice of such assessment.

12:18-2.35 Assessment of amount of refund of workers' contributions applicable to private plans

(a) The portion of the aggregate amount of refunds to workers during any calendar year pursuant to N.J.S.A. 43:21-7(d)(3) to be assessed against private plans shall be determined by multiplying the aggregate amount of such refunds by the ratio of taxable wages involved in such refunds and paid by employers to employees covered under private plans to the total taxable wages involved in such refunds and paid by all employers.

(b) Such amount shall be prorated among the applicable private plans in the proportion that the wages covered by each plan bears to the total private plan wages in such refunds.

(c) The amount so prorated to a private plan shall be assessed against the employer, or the insurer if the insurer has indemnified the employer with respect thereto, and shall be collected under the provisions of N.J.S.A. 43:21-14 except that interest shall not accrue on such assessment until 30 days after the date of notice of such assessment.

(d) The amounts so recovered by the Division shall be paid into the State Disability Benefits Fund. (See N.J.A.C. 12:16-15, Application for workers' refunds.)

12:18-2.36 Liability of successor employer

Any employer who acquires the organization, trade, assets or business, in whole or in part, whether by merger, consolidation, sale, transfer, descent or otherwise, from an employer liable for any assessment made under N.J.S.A. 43:21-7(d)(3), N.J.S.A. 43:21-46 and N.J.S.A. 43:21-48 shall likewise be liable for such assessment.

12:18-2.37 Continuation of plan on successor employer

(a) If there is a change in the employer and the successor employer assumes the obligations and liability of the prede-

cessor under the plan, the plan shall be transferred to the successor, if:

1. The workers to be covered by the plan immediately after the succession are not required to contribute to the cost of the plan; or

2. The class or classes of workers covered by the plan immediately prior to the succession constitute a majority of the workers in the same class or classes employed by the successor immediately after the succession; or

3. A majority of the workers in the class or classes covered by the plan in the employ of the successor immediately after the succession give their written consent to the plan; or

4. The plan is limited to the separate unit, plant, department or establishment operated by the predecessor and the provisions of paragraphs 1, 2 or 3 of this Section are met with respect to such separate unit, plant, department or establishment.

SUBCHAPTER 3. STATE PLAN**12:18-3.1 Extent of coverage**

(a) A claimant shall not be entitled to any benefits from the Fund with respect to any period of disability commencing while he or she is covered under a private plan.

(b) A claimant shall not be paid any benefits under N.J.S.A. 43:21-3 and N.J.S.A. 43:21-4 for any period of disability commencing while he or she is a “covered individual” as defined in N.J.S.A. 43:21-27(b).

(c) An individual who is covered by a private plan or is separated from his or her employment for a period of two weeks or more immediately prior to the disability shall not be entitled to any benefits under the State plan.

(d) If application for benefits is made under a private plan or for disability during unemployment (N.J.S.A. 43:21-4) and it is determined that the claim should have been made under the State plan, a claimant shall not be deprived of benefits under the State plan for failure to give timely notice and proof of disability provided that:

1. The application to the private plan or for disability during unemployment (N.J.S.A. 43:21-4) would have been timely noticed to the State plan if it had been then made; and

2. Proof of disability is made under the State plan not later than the time prescribed by the Act.

(e) If a claimant is paid benefits under the State plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a

subsequent period of disability under a private plan, or for disability during unemployment (N.J.S.A. 43:21-4). If a claimant is paid benefits under a private plan, the amount of such benefits shall not be deducted from the amount of benefits to which he or she may be entitled for a subsequent period of disability under the State plan, or for disability during unemployment (N.J.S.A. 43:21-4).

(f) If a claimant refuses to submit to a physical examination by a licensed medical practitioner designated by the Commissioner of Labor or his or her designee, the claimant shall be disqualified from receiving all benefits for the period of disability in question, except as to benefits already paid.

(g) If a physical examination of a claimant is required, the Commissioner of Labor or his or her designee shall authorize such examination to be made by a licensed medical practitioner. Upon submission of a written report of the examination to the Department of Labor, a fee not exceeding \$75.00 for each such examination shall be paid to the examining medical practitioner, which fee shall be charged to the administration account. Upon recommendation of the Director and upon a finding that an increase or decrease in this fee is necessary or appropriate to be cost effective and supply a sufficient pool of examiners, the Commissioner may increase or decrease the fee pursuant to a schedule issued by the Commissioner on a Statewide or county basis for one or more of these groups of examiners. In cases requiring the services of a specialist, or in cases requiring clinical tests supporting a diagnosis, the Commissioner or his or her designee shall, in his or her discretion, authorize such services or tests, the fees to be fixed in advance, not to exceed the fees professionally established for such services or tests by the appropriate state or county organization, whichever is the lesser.

As amended, R.1974 d.284, effective October 17, 1974.

See: 6 N.J.R. 68(e), 6 N.J.R. 437(b).

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (d) and (c), deleted references to N.J.S.A. 43:21-3 throughout; and in (f) and (g), substituted references to medical practitioners for references to physicians, dentists, podiatrists, chiropractors, practicing psychologists, public health nurses, and optometrists throughout.

12:18-3.2 Notice and proof of disability

(a) Within 30 days after the commencement of a period of disability, a written notice of disability, on which a claim for State plan benefits is based, shall be furnished to the Division by or on behalf of the person claiming benefits. The notice need not be on any prescribed form but shall state the claimant's full name, address and valid social security number, as well as the date on which claimant was too sick (or disabled) to work. The filing of Form DS-1 (Proof and Claim for Disability Benefits) shall constitute notice of disability.

(b) Proof of disability on which a claim for benefits under the State plan is based shall be furnished by any claimant who expects to be or has been totally unable to perform the duties of his or her employment for a period of eight or more consecutive days and is under the care of a licensed medical practitioner. A claimant's authorized representative may furnish the proof of disability and file a claim for benefits on behalf of the claimant. The proof and claim accompanied by a certification of the attending licensed medical practitioner, shall be furnished to the Division, on Form DS-1 (Proof and Claim for Disability Benefits) not later than 30 days after the commencement of the period of disability for which benefits are claimed. A continued claim form on which the claimant must provide additional medical information in order to continue receiving benefits shall be filed as proof of continued disability when requested by the Division.

(c) A "period of disability" is payable from the first day of disability if the claimant receives medical care by a licensed medical practitioner within 10 days of the first day of disability. If the claimant fails to furnish such proof, benefits shall be payable from the first day of medical care.

(d) The failure to furnish a written notice or proof of disability within the time or manner required by the Act and this Subchapter shall not invalidate or reduce any claim, if it shall be shown to the satisfaction of the Division not to have been reasonably possible to furnish notice or proof and that such notice or proof was furnished as soon as reasonably possible. If such notice or proof is not furnished, the claim shall be reduced and limited to the period commencing 30 days prior to the receipt of the notice or proof of disability.

(e) The Division shall require each claimant to have a valid Social Security Number when filing a claim for benefits. The claimant, upon request of the Division, shall provide proper identification, including proof of a valid Social Security Number, verification of the Social Security Number if there is a discrepancy, and documentation showing his or her legal name and address.

1. If unable to present proof of a valid Social Security Number, proper verification, or other appropriate documentation, the individual shall be determined ineligible for benefits until such time that he or she is able to present the required identification.

2. Any person who refuses or fails to cooperate with the Division in any effort to verify the validity of a Social Security Number, may be held ineligible for benefits from the date of claim and liable to refund any benefits previously paid.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1997 d.143, effective March 17, 1997.

See: 29 N.J.R. 91(a), 29 N.J.R. 898(a).

Added (d).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Rewrote (a) and (b); inserted a new (c); recodified former (c) as (d), and rewrote the last sentence; and recodified former (d) as (e).

12:18-3.3 Filing of claims for benefits

(a) All claims and other required documents relating thereto may be filed by mail except in those cases where the claimant is notified by the Division that a personal appearance or examination will be required. Filing by mail shall be deemed complete based on the postmark date, or in its absence, the date received by the Division.

(b) Disability benefits shall be payable to any claimant while outside of this State, provided he or she complies with the Act and this Subchapter. In such case, the attending medical practitioner shall be licensed under the laws applicable to the place where the claimant is receiving treatment.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (a), rewrote the second sentence; and in (b), substituted references to medical practitioners for references to physicians, dentists, podiatrists, chiropractors, practicing psychologists, and optometrists throughout.

12:18-3.4 Reduction of benefits

(a) The amount of benefits otherwise payable to a claimant under the State plan for any week of disability, or part thereof, shall be reduced by the amount paid concurrently under any governmental or private retirement, pension or permanent disability benefit or allowance program to which his or her most recent employing unit contributed on his or her behalf. If such latter benefits are being paid on a monthly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/30 of such monthly amount, multiplied by seven, and the amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate. If such latter benefits are being paid on a weekly basis, the amount thereof to be deducted for each day of disability shall be determined as 1/7 of the weekly amount multiplied by the number of days of disability during that week and that amount (disregarding any fractional part of a dollar) shall be subtracted from the weekly benefit rate.

(b) The amount of benefits payable to a claimant under the State plan for any week of disability, or part thereof, shall not be reduced by the amount of benefits payable under any program as mentioned above, unless one or more payments thereunder have been received by the claimant prior to the date on which the check in payment of benefits under the State plan is issued.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-3.5 Concurrent coverage

(a) A covered individual is deemed to be in "concurrent employment" if he or she is in employment with two or

more employers the last calendar day of employment preceding the commencement of a period of disability. The term "concurrent employers" means the covered employers with whom the individual was employed on such last day of employment.

(b) The concurrent employers contributing to the State Disability Benefits Fund on behalf of a covered individual in concurrent employment shall be deemed to be his or her "most recent covered employer" for the purpose of computing his or her average weekly wage as defined in the Temporary Disability Benefits Law (N.J.S.A. 43:21-27(j)). An individual shall have his or her weekly benefit amount under the State plan computed on the basis of his or her total wages with all such employers during the base weeks in the eight calendar weeks immediately preceding the calendar week in which the disability commenced.

(c) State plan benefits paid to a covered individual in concurrent employment shall be charged to the accounts of the individual's concurrent employers in the same proportion that the individual earned wages from his or her concurrent employers during the 52 calendar weeks immediately preceding the week in which the disability commenced.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

Amended by R.1998 d.157, effective April 6, 1998.

See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Rewrote the section.

12:18-3.6 Notice to claimant and employer

(a) A claimant shall be given written notice of any decision on his or her claim and of the reason for any denial of his or her claim.

(b) If the "Employer's Statement" on Form DS-1 has not been completed by an employer or his or her representative, a request for information shall be mailed or delivered to the employer or employers by whom the claimant was employed at the commencement of the disability or by whom he or she was last employed if out of employment less than two weeks.

(c) A copy of the decision of eligibility of the claimant stating his or her weekly benefit rate and the probable duration for which benefits will be paid, shall be mailed or delivered to the employer or employers by whom such claimant was employed at the commencement of the disability or by whom he or she was last employed if out of employment less than two weeks. A notice of each payment of benefits shall be given to such employer or employers.

Amended by R.1994 d.241, effective May 16, 1994.

See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).

12:18-3.7 Notice required from employers

(a) Within 10 days after the mailing of a request for information with respect to a period of disability, an employer shall furnish the Division with any information re-

quested or known to him or her which may bear upon the eligibility of the claimant.

(b) If any employer or employing unit fails to respond to the request for information within 10 days after the mailing of such request, the Division shall rely entirely on information from other sources, including an affidavit completed by the claimant to the best of his or her knowledge and belief with respect to his or her wages and time worked. If it is determined that any information in such affidavit is erroneous, no penalty shall be imposed on the claimant except in the event of fraud.

(c) Any employer failing to respond to a request for information within the prescribed time period shall be subject to the penalties provided under N.J.S.A. 43:21-55(b).

(d) The employer, within two working days after receipt of the decision of eligibility, shall furnish the Division with any information known to him or her bearing upon the eligibility of the claimant or duration of payments to be made.

(e) If after receipt of a decision of eligibility an employer acquires information which may render the claimant ineligible for benefits or reduce the rate or amount of benefits, such employer shall immediately forward the information to the Division.

(f) Whenever a decision of eligibility with respect to a period of disability is based upon information other than that supplied by an employer because such employer failed to respond to a request for information, such decision of eligibility and any subsequent determination thereunder shall be incontestable by the non-complying employer, as to any charges to his or her employer's account under N.J.S.A. 43:21-7(e) for benefits paid prior to the close of the calendar week following the receipt of his or her reply. Such decision of eligibility shall be altered if necessary upon receipt of information from the employer, and any benefits paid or payable with respect to weeks or parts thereof occurring subsequent to the close of the calendar week following the receipt of the employer's reply shall be paid in accordance with such altered decision of eligibility.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

In (a), substituted "10 days" for "seven days" following "Within", and deleted "commencing on or after January 1, 1953" following "disability"; rewrote (b); inserted a new (c); recodified former (c) and (d) as (d) and (e); and recodified former (e) as (f), and deleted "commencing after December 31, 1952" following "disability".

12:18-3.8 Filing of appeals by claimants or employers

Unless the claimant or the employer, within seven calendar days after the delivery of a determination or notification thereof, or within 10 calendar days after such notification was mailed to his or her last-known address, files an appeal from such determination, it shall be final and benefits shall be paid or denied in accordance therewith, except for such determinations as may be altered as provided in N.J.A.C. 12:18-3.7.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

12:18-3.9 Rules on appeal

The rules of the Board of Review shall govern appeals in disability benefit cases under the State plan. See appeal rules at N.J.A.C. 12:20.

Amended by R.1994 d.241, effective May 16, 1994.
See: 26 N.J.R. 1326(a), 26 N.J.R. 2131(a).
Amended by R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Substituted a reference to N.J.A.C. 12:20 for a reference to N.J.A.C. 12:20-4 at the end.

12:18-3.10 (Reserved)

12:18-3.11 Reduced work week

(a) Benefits shall be compensable under N.J.S.A. 43:21-29 for any period of disability "resulting in the individual's total inability to perform the duties of employment." Benefits shall also be compensable at a fractional part of the week as provided in N.J.S.A. 43:21-40 in such cases where the claimant was in employment with a full-time employer and a part-time employer immediately preceding the period of disability if the claimant is unable to perform the duties of his or her regular full-time employment, but he or she is able to perform totally different duties with his or her part-time employer.

(b) Benefits shall not be compensable in situations where the individual returns to work for the full-time employer on a reduced work schedule since the individual is no longer totally unable to perform the duties of his or her employment.

New Rule, R.1998 d.157, effective April 6, 1998.
See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

APPENDIX

CHAPTER 12A

PRIVATE PLAN TEMPORARY DISABILITY INSURANCE CASES

Authority

N.J.S.A. 52:14F-5(e), (f) and (g), 34:1A-3(e), 43:21-6(d) through (f), 43:21-10 and 17, and 43:21-25 et seq.

Source and Effective Date

R.1994 d.406, effective August 1, 1994.
See: 26 N.J.R. 2174(a), 26 N.J.R. 3154(a).

Executive Order No. 66(1978) Expiration Date

Chapter 12A, Private Plan Temporary Disability Insurance Cases, expires on August 1, 1999.

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SUBCHAPTER 1. HEARING APPLICABILITY

1:12A-1.1 Applicability

The rules in this chapter shall apply to private plan temporary disability insurance cases heard by hearing officers of the Department of Labor pursuant to N.J.S.A. 43:21-50(a) (see also N.J.A.C. 12:18). State plan temporary disability cases shall be heard by the Board of Review pursuant to N.J.S.A. 43:21-50(b), in accordance with N.J.A.C. 1:12.

SUBCHAPTER 2. DEFINITIONS

1:12A-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Act” means the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq.

“Division” means the Division of Unemployment and Temporary Disability Insurance in the Department of Labor.

“Hearing officer” means the individual assigned to hear and decide appeals concerning private plan temporary disability benefits. In so doing, the hearing officer acts as agency head.

SUBCHAPTERS 3 AND 4. (RESERVED)

SUBCHAPTER 5. REPRESENTATION

1:12A-5.1 Representation

Any claimant or employer may represent himself or herself or be represented by an attorney or non-attorney pursuant to N.J.S.A. 43:21-17.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:12A-9.1 Informal hearing

After the filing of a complaint, the Division shall conduct such investigations and informal hearings as may be necessary to determine the facts and settle the issues and, pending a disposition, a formal hearing shall not be scheduled.

1:12A-9.2 Notice of formal hearing

(a) If the issues raised by the complaint are not otherwise settled, they shall be referred to a hearing officer, who shall afford the interested parties thereto a reasonable opportunity for a full, fair and impartial hearing, in accordance with the procedure required under this chapter.

(b) Written notices of the time and place of any hearing shall be given to the claimant and employer, or their authorized representatives, insurer or organization paying benefits, and all other parties in interest at least five days before the date of hearing, but a shorter notice may be given if not prejudicial to the parties.

(c) A party to whom a notice of appeal has been sent shall be ready and present with all evidence and necessary witnesses at the time and place specified and shall be prepared to dispose of all issues and questions involved in the proceeding.

(d) A notice of hearing may be served personally or by certified or registered mail or by telegram upon a party or his or her duly authorized representative.

SUBCHAPTER 10. DISCOVERY

1:12A-10.1 Inspection of records

(a) Orders for the production or inspection of records of the Division may be issued in any proceeding before the hearing officer, but only to the extent necessary for the purpose of the proceeding and to enable any party to the proceeding to fully discharge his or her obligation or safeguard his or her rights under the Act.

(b) A request for the production or inspection of records shall be addressed to the hearing officer, and shall state clearly the nature of the information desired and the reason therefor. The hearing officer may determine whether or not the request shall be granted and, if granted, inspection of the records may be allowed or a copy of the records furnished.

SUBCHAPTER 11. SUBPOENAS

1:12A-11.1 Issuance of subpoenas

(a) The hearing officer shall have the power to administer oaths, take depositions, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records.

(b) Subpoenas to compel the attendance of witnesses or production of records shall be issued by the hearing officer only upon the showing of the necessity therefor by the party applying for the issuance of such subpoena.

1:12A-11.2 Witness fees

(a) Witness fees at the rate of \$1.00 for each day of attendance upon a hearing in response to a subpoena to testify and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon presentation of a voucher signed by the individual entitled thereto and properly certified by a member of the hearing officer before whom the individual appeared as a witness.

(b) Witness fees at the rate of \$2.00 for each day of attendance upon a hearing in response to a subpoena duces tecum and mileage at the rate of \$0.25 per mile from the residence of the witness to the place of hearing and return, shall be paid upon the presentation of a voucher signed by the individual entitled thereto and properly certified by the hearing officer before whom the individual appeared as a witness.

(g) The hearing officer may take additional evidence as he or she deems necessary, provided the parties shall be given proper notice of the time and place of hearing.

(h) The parties may stipulate the facts and issues involved and based thereon the hearing officer may make a determination and an order disposing of the issues which shall be final and binding.

SUBCHAPTERS 12 AND 13. (RESERVED)

SUBCHAPTER 14. CONDUCT OF CASES

1:12A-14.1 Conduct of hearings

(a) The hearing before the hearing officer shall be conducted in such order and manner as may provide a fair and impartial hearing to ascertain the facts and determine the rights of parties.

(b) At such hearing, evidence exclusive of ex parte affidavits may be produced by any party, but the hearing officer shall not be bound by the rules of evidence.

(c) The hearing officer shall open the hearing by ascertaining the facts and summarizing the issues involved on the record.

(d) Any individual who is a party, or an attorney or non-attorney representing a party, may examine or cross-examine witnesses, inspect documents and explain or rebut any evidence. The hearing officer may examine each party or witness to such extent as he or she deems necessary.

(e) Any number of proceedings before the hearing officer may be consolidated for the purpose of hearing when the facts and circumstances are similar in nature and the rights of any party will not be prejudiced thereby. Notice of such consolidation shall be given to the parties or their representatives.

(f) All testimony at a hearing shall be under oath or affirmation and recorded, but need not be transcribed unless the order on the disputed claim is to be reviewed.

1:12A-14.2 Dismissal of complaint

(a) After due notice of the time and place of hearing or an adjourned hearing, if any party fails or neglects to appear, the issues may be decided upon the basis of the evidence available, the complaint may be dismissed or evidence may be taken from the parties and witnesses appearing and the case disposed of in accordance with such evidence. A complaint may be dismissed for failure to prosecute without good cause within a reasonable time. All parties shall be notified of the dismissal and the reasons therefor.

(b) Any complaint dismissed by reason of the failure to appear at a scheduled hearing or failure to prosecute may be reconsidered by the hearing officer provided good cause is shown for such failure and an application for reopening the proceeding is made within 10 days after mailing or notification of the order of dismissal.

(c) A pending complaint, with the approval of the hearing officer, may be withdrawn by the complainant, in writing, or orally at the time of hearing. All parties to the proceeding shall be notified of the withdrawal.

SUBCHAPTER 15. DECISIONS

1:12A-15.1 Rendition of decision

(a) Upon the completion of any hearing, the hearing officer shall promptly make a determination of facts, and a signed written order disposing of the issues presented, which shall be final and binding on the claimant, the employer, the insurer, the organization paying benefits and all other parties. The decision shall set forth a statement of the facts involved, the reasons and the order.

(b) A copy of such order shall be served upon each of the parties or their duly authorized representatives by registered mail, addressed to his or her last known address.

(c) The order of the hearing officer shall be final and benefits paid or denied in accordance with the order.

(d) Any appeal of the order shall be in accordance with the Rules of Court.

1:12A-15.2 Correction of determination

On application duly made or on his or her own motion, the hearing officer may revise a determination of facts and the order, for the purpose of correcting clerical or typographic errors.
