

## 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).

**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.