

CHAPTER 18
TEMPORARY DISABILITY BENEFITS

Authority

N.J.S.A. 43:21-25 et seq.

Source and Effective Date

R.2008 d.310, effective September 18, 2008.
See: 40 N.J.R. 2655(a), 40 N.J.R. 6209(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 18, Temporary Disability Benefits, expires on September 18, 2015. See: 43 N.J.R. 1203(a).

Chapter Historical Note

The provisions of Chapter 18, Temporary Disability Benefits, were filed and became effective prior to September 1, 1969. Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.1993 d.141. See: 25 N.J.R. 262(a), 25 N.J.R. 1515(c). Added Appendix by R.1994 d.406, effective August 1, 1994. See: 26 N.J.R. 2174(a), 26 N.J.R. 3154(a).

Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.1998 d.157. See: 30 N.J.R. 12(a), 30 N.J.R. 1288(a).

Pursuant to Executive No. 66(1978), Chapter 18, Temporary Disability Benefits, was readopted as R.2003 d.214, effective April 28, 2003. See: 35 N.J.R. 1039(a), 35 N.J.R. 2226(a).

Chapter 18, Temporary Disability Benefits, was readopted as R.2008 d.310, effective September 18, 2008. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

12:18-1.1 Definitions

The following words and terms, when 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.).

“Base year” with respect to a period of disability means the 52 consecutive calendar weeks immediately preceding the calendar week in which the period of disability commenced.

“Benefits” means the disability benefits provided by the Temporary Disability Benefits Law.

“Claimant” means an individual who has filed a claim for disability benefits or who has notified the Division or the

employer, nominee, designee, trustee, union, association of employees, insurer or organization paying benefits under a private plan that he or she expects to file such a claim.

“Claimant’s authorized representative” means an individual who represents or acts in behalf of a claimant who is incapable of fulfilling the requirements of filing claims for disability benefits, and who is so authorized by a power of attorney or other authorization satisfactory to the Division. Such authorized representative must file with the Division, on a form prescribed by the Director, a duly sworn affidavit that the claimant is incapable of making a claim for disability benefits and that he or she assumes the responsibility of acting in behalf of such claimant in accordance with the Act and this chapter. Such filing must be supported by medical documentation of incapacity by a licensed medical practitioner.

“Commissioner” means the Commissioner of Labor and Workforce Development.

“Director” means the Director of the Division of Temporary Disability Insurance in the Department of Labor and Workforce Development.

“Disability” or “disabled” means both mental or physical illness and mental or physical injury.

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

“Employee” means a covered individual as defined in N.J.S.A. 43:21-27(b). With respect to any one employer the term shall mean such a covered individual who is in employment, as defined by the Unemployment Compensation Law and Regulations promulgated thereunder, for which he or she is entitled to remuneration from such employer or who has been out of such employment for less than two weeks and has not become employed by another employer, during such period.

“Employer” means a covered employer as defined in N.J.S.A. 43:21-27(a).

“Fund” means the State Disability Benefits Fund, as set forth in N.J.S.A. 43:21-46.

“Insurer” means any insurance company duly authorized to do business in the State of New Jersey, employer acting as a self-insurer, nominee, designee, trustee, union, association of employees or organization which has undertaken to pay benefits under a private plan.

“Licensed medical practitioner” means a legally licensed physician, dentist, optometrist, podiatrist, practicing psychologist, advanced practice nurse or chiropractor.

“Private plan” means a private plan approved by the Division as defined in N.J.S.A. 43:21-32.

“Proof and claim for disability benefits” means the proof of disability and claim for benefits initially filed with respect to a period of disability on a form prescribed by the Director.

“Supplemental proof and claim for disability benefits” means the proof and claim certifying to the continuance of disability on a form prescribed by the Director.

“Week” means a period of seven consecutive days starting with the day of disability.

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 “Base year”, deleted “commencing on or after January 1, 1953” following “disability”, and decreased the base year from 53 consecutive calendar weeks to 52 consecutive calendar weeks; in “Claimant”, added “by a licensed medical practitioner” at the end; inserted “Division” and “Licensed medical practitioner”; and in “Private plan”, added a reference to N.J.S.A. 43:21-32.

Amended by R.2008 d.310, effective October 20, 2008.

See: 40 N.J.R. 2655(a), 40 N.J.R. 6209(a).

In definitions “Commissioner” and “Director”, inserted “and Workforce Development”; in definition “Division”, substituted “and Workforce Development” for “Program”; and in definition “Licensed medical practitioner”, inserted “advanced practice nurse”.

Case Notes

Musicians hired by band were employees rather than independent contractors, and thus band was required to pay unemployment and disability taxes on wages paid to musicians. *Kiely v. Department of Labor*, 96 N.J.A.R.2d (LBR) 5.

12:18-1.2 Application for exemptions

Any employee desiring to secure exemption from the provisions of the Act shall make application therefor on a form and in a manner prescribed by the Director.

12:18-1.3 Service of papers

(a) Any and all written communications issued by the Division may be served personally or by registered or certified mail or by telegram. A copy of the notice may be left at the principal office or place of business in New Jersey of the person required to be served.

(b) Such service shall constitute due notice.

(c) The verification by the individual who served the notice, or the return post office receipt of the registered or certified mail, or telegram receipt shall be proof that notice was served.

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 (c).

12:18-1.4 Reimbursement of funds

If benefits have been paid in error to a claimant by one program (either the State plan, Disability During Unemployment, or a private plan) for a period of disability and the

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.2005 d.107, effective April 4, 2005.
 See: 36 N.J.R. 3957(a), 37 N.J.R. 1015(b).

Chapter Expiration Date

Chapter 12A, Private Plan Temporary Disability Insurance Cases, expires on April 4, 2010.

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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 and Workforce Development 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 and Workforce Development.

“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

A party may represent himself or herself or may be represented by an attorney or a non-lawyer representative pursuant to R. 1:21-1(f)(11). Representation by an attorney shall be at the party's expense. Representation by a non-lawyer representative shall comply with N.J.A.C. 1:1-5.4.

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.

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.

(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.

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.

Administrative correction.
See: 40 N.J.R. 2477(a).

Cross Reference

For full chapter history of and section annotations to text incorporated as N.J.A.C. 12:18 Appendix, see N.J.A.C. 1:12A.