

## CHAPTER 116. GENERAL PROVISIONS--SUBSEQUENT INJURY FUND

### §116.11. Request for Reimbursement or Refund from the Subsequent Injury Fund.

(a) A carrier may request:

- (1) reimbursement from the Subsequent Injury Fund ("SIF"), pursuant to §403.006(b)(2), for an overpayment of income, death, or medical benefits when the carrier has made an unrecoverable overpayment pursuant to decision of a hearing officer or the appeals panel or an interlocutory order, and that decision or order is reversed or modified by final arbitration, order, or decision of the commission, the State Office of Administrative Hearings, or a court of last resort; or
- (2) a refund of death benefits pursuant to §403.007(d) for benefits paid to the SIF prior to a beneficiary being eligible to receive death benefits;
- (3) for a compensable injury that occurs on or after July 1, 2002: a reimbursement from the SIF for the amount of income benefits paid to a worker that is attributable to multiple employment and is paid pursuant to §408.042 relating to Multiple Employment; or
- (4) a reimbursement from the SIF made in accordance with rules adopted by the commission pursuant to §413.0141, Initial Pharmaceutical Coverage for injuries determined not to be compensable. For purposes of this subsection only, an injury is determined not to be compensable following:

(A) The final decision of the commission or the judgment of the court of last resort; or

(B) A claimant's failure to respond within one year of a timely dispute of compensability filed by an insurance carrier. In this instance only, the effective date of the determination of non compensability is one year from the date the dispute is filed with the commission by the carrier.

(i) A determination under this subsection does not constitute final adjudication. It does not preclude a party from pursuing their claim through the commission's dispute resolution process and it does not permit a health care provider to pursue a private claim against the claimant.

(ii) If the claim is later determined to be compensable, the carrier shall reimburse the subsequent injury fund for any initial pharmaceutical payment which the SIF refunded to the carrier. The carrier's reimbursement of the SIF shall be paid within the timeframe the carrier has to comply with the agreement, decision and order, or other judgment which found the claim to be compensable.

- (b) The amount of reimbursement that the carrier may be entitled to is equal to the amount of unrecoverable overpayments paid and does not include any amounts the carrier overpaid voluntarily or as a result of its own errors. An unrecoverable overpayment of income benefits for the purpose of reimbursement from the SIF only includes those benefits that were overpaid by the carrier pursuant to an interlocutory order or decision which were finally determined to be not owed and which, in the

case of an overpayment of income benefits to the employee, were not recoverable or convertible from other income benefits.

- (c) Requests for reimbursement attributable to subsection (a)(1), insurance carrier claims of benefit overpayments made under an interlocutory order or decision of the commission that is later reversed or modified by final arbitration, order, or decision of the commission, the State Office of Administrative Hearings, or court of last resort shall be filed with the SIF administrator in writing and include:
- (1) a claim-specific summary of the reason the carrier is seeking reimbursement or refund;
  - (2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, total amount of payment requested, the payees, and the periods of benefits paid, as well as documentation that shows that the overpayment was unrecoupable as described in subsection (b), if applicable;
  - (3) the name, address, and federal employer identification number of the payee for any reimbursement or refund that may be due;
  - (4) copies of all relevant orders and decisions (Benefit Review Conferences, Interlocutory Orders, Contested Case Hearing Decision & Orders, Appeal Panel Decisions, and Court orders) that relate to the payment for which reimbursement is being requested along with an indication of which is the final decision on the matter;
  - (5) copies of all reports by the employer including, but not limited to, the Employer's First Report of Injury, the Wage Statement, and all Supplemental Reports of Injury for overpayments of income benefits; and
  - (6) if an overpayment of medical benefits, copies of all medical bills and preauthorization request forms associated with the overpayment for overpayments of medical benefits.
- (d) Requests related to subsection (a)(2) of this section, related to a refund of death benefits paid to the SIF prior to a beneficiary being eligible to receive death benefits, shall be filed with the SIF administrator in writing and include:
- (1) a claim-specific summary of the reason the carrier is seeking reimbursement or refund;
  - (2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, total amount of payment requested, the payees, and the periods of benefits paid;
  - (3) the name, address, and federal employer identification number of the payee for any reimbursement or refund that may be due;
  - (4) the documentation the beneficiary provided with the claim for death benefits under §122.100 of this title (relating to Claim for Death Benefits); and

- (5) the agreement, the final award of the commission, or the final judgment of a court of competent jurisdiction determining that the beneficiary is entitled to the death benefits, if entitlement to benefits had been disputed.
- (e) Requests for reimbursement pursuant to subsection (a)(3) of this section shall be submitted on an annual basis for the payments made during the same or previous fiscal year. The fiscal year begins each September 1st and ends on August 31<sup>st</sup> of the next calendar year. For example, carrier payments made during the fiscal year from 9/1/02 through 8/31/03 must be submitted prior to 8/31/04. Any claims for carrier payments related to multiple employment that are not submitted within the required timeframe will not be reviewed for reimbursement. These requests shall be filed with the SIF administrator in writing and include:
- (1) a claim-specific summary of the reason the carrier is seeking reimbursement or refund;
  - (2) a detailed payment record showing the dates of payments, the amounts of the payments, purpose of payments, total amount of payment requested, the payees, and the periods of benefits paid, as well as documentation that shows that the overpayment was unrecoupable as described in subsection (b), if applicable;
  - (3) the name, address, and federal employer identification number of the payee for any reimbursement or refund that may be due;
  - (4) all information documenting wage amounts from all non claim employment held at the time of the work related injury pursuant to §122.5 of this title (relating to Employee's Multiple Employment Wage Statement.); and
  - (5) all information documenting the wage amounts paid based on employment with the claim employer.
- (f) Requests for reimbursement attributable to initial pharmaceutical coverage shall be submitted in the same or in the following fiscal year after a determination that the injury is not compensable in accordance with subsection (a)(4) of this section. The fiscal year begins each September 1st and ends on August 31st of the next calendar year. For example, if an injury is determined to be not compensable during the fiscal year from 9/1/02 through 8/31/03, the request for reimbursement pursuant to §413.0141 must be submitted prior to 8/31/04. Any claims for carrier payments related to initial pharmaceutical coverage that are not submitted within the required timeframe will not be reviewed for reimbursement. The requests shall be filed with the SIF administrator in writing and include:
- (1) a claim-specific summary of the reason the carrier is seeking reimbursement or refund;
  - (2) a detailed payment record showing the dates of payments, specifically including documentation of payment of Initial Pharmaceutical Coverage, (*i.e.*, first seven days following the date of injury); the amounts of the payments, the purpose of payments, total amount of payment requested, the payees, and the periods of benefits paid;
  - (3) the name, address, and federal employer identification number of the payee for any reimbursement or refund that may be due;

- (4) copies of any prescription filled and documentation that the pharmaceutical services were provided during the first seven days following the date of injury, not counting the actual date the injury occurred; and
- (5) documentation of the final resolution of any dispute which determines the injury is not compensable either from the commission or court of last resort.
- (g) Any other documentation reasonably required by the SIF administrator to determine entitlement to reimbursement or payment from the SIF and the amount of reimbursement to which the carrier is entitled.

*The provisions of this §116.11 adopted to be effective February 11, 1992, 17 TexReg 689; amended to be effective March 13, 2000, 25 TexReg 2090, amended to be effective August 15, amended to be effective August 15, 2002, 27 Tex. Reg. 7128.*

### **§116.12. Subsequent Injury Fund Payment/Reimbursement Schedule**

- (a) Claims against the Subsequent Injury Fund (SIF) shall be paid in the following priority:
  - (1) claims by carriers for reimbursement made pursuant to §403.007 of the Act and §132.10(g) of this title (relating to Payment of Death Benefits to the Subsequent Injury Fund);
  - (2) claims by injured workers for lifetime benefits, as provided by §408.162 of the Act;
  - (3) claims by carriers for reimbursement, made pursuant to §410.209 and §413.055 of the Act and §116.11 of this title (relating to Request for Reimbursement or Refund from the Subsequent Injury Fund).; and
  - (4) claims by carriers for reimbursement made pursuant to §408.042(g) of the Act relating to multiple employment and those in accordance with commission rule(s) adopted pursuant to §413.0141 of the Act relating to initial pharmaceutical coverage.
- (b) The SIF uses the fiscal year September 1 through August 31.
- (c) Claims described in subsections (a)(1), (a)(2) and (a)(3) of this section may be reviewed and ordered paid by the SIF administrator at any time during the fiscal year.
- (d) Following the end of the fiscal year, the administrator of the SIF shall review:
  - (1) the SIF available balance and projected revenues and liabilities;
  - (2) the current claims against the SIF, in the order of priorities set out in subsection (a) of this section; and
  - (3) all completed requests for reimbursement as described in §116.11 and §132.10 of this title, received during the prior fiscal year, except as provided in subsection (g) of this section.
- (e) In accordance with §403.006(d) of the Act, if the commission determines that partial payments of the claims described in subsection (a)(4) of this section is necessary, partial payments shall be calculated in the following manner:

- (1) The total amount of completed eligible requests for reimbursement submitted under subsection (a)(4) that are received during the previous fiscal year will be used to establish a baseline amount.
  - (2) The baseline amount will be divided by the total amount of SIF funding available as determined in accordance with the Act.
  - (3) The resulting fraction will be equally applied to all claims submitted under subsection (a)(4) to determine the partial reimbursement amount.
  - (4) If reimbursement requests are paid with partial payments, no further future recovery is available from the subsequent injury fund for the non-reimbursed portion of that particular request.
- (f) Following the end of each fiscal year, the SIF administrator shall, no later than October 30, enter appropriate orders for claims described in subsection (a)(3) of this section. The order shall specify the amount the SIF shall pay to the carrier.
  - (g) The SIF administrator shall submit orders to the state comptroller for payment and send a copy of the order to the requesting carrier.
  - (h) The SIF administrator will refrain from acting on a carrier's request for reimbursement or refund from the SIF until final resolution of the claim by a final decision of the commission, State Office of Administrative Hearings or the court of last resort except as provided in §116.11(a)(3) and (4).

*The provisions of this §116.11 adopted to be effective February 11, 1992, 17 TexReg 689; amended to be effective March 13, 2000, 25 TexReg 2090, amended to be effective August 15, amended to be effective August 15, 2002, 27 Tex. Reg. 7128.*