

BENNINGTON SARCOIDOSIS CLAIMS -- RULES

Rule 1 PURPOSE AND CONSTRUCTION; INTERPRETATION AND APPLICATION

(a) The purpose of these rules is to implement the provisions of Act 53 (2007) which created a trust fund to provide benefits in lieu of workers' compensation to state employees working in the Bennington state office building who are diagnosed with sarcoidosis. Act 53 is remedial legislation intended to provide specific benefits to past and present state workers' diagnosed with sarcoidosis who might not be able to prove that the disease was compensable under the workers' compensation statutes (i.e. that it arose out of and in the course of their work in the Bennington state office building). Act 53 shall be liberally construed to effectuate this purpose.

See Act 53, Sec. 1(b).

(b) All process and procedures under the provisions of Act 53 shall be summary and simple. The Rules of Civil Procedure shall not apply.

(c) Except where a conflict with the remedial purpose of Act 53 or these rules would be created, Workers' Compensation Rules 1 – 46 shall be considered as instructive guidance.

Rule 2 DEFINITIONS

(a) For the purposes of these rules:

(1) "Bennington state office building" or "state office building", means for the purpose of these rules the state office building located at 200 Veterans Memorial Drive, Bennington Vermont.

(2) "Commissioner" means the Commissioner of Labor or designee.

(3) "Conclusive evidence" means evidence which is more than preponderance; it is evidence that is convincing, and determinative of the issue, even if not beyond contradiction.

(4) "Five months of continuous employment" shall mean 5 consecutive calendar months of employment by the state of Vermont as a state employee (*see Rule 2(a)(10)* below). The employment shall involve regular performance of work (i.e. not sporadic or occasional) in the Bennington state office building.

(5) "Department" means the Department of Labor.

(6) "Division" means the Workers' Compensation & Safety Division of the Vermont Department of Labor.

(7) "Employer" means the State of Vermont.

(8) "End Medical Result" or "Medical End Result" means the point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected, regardless of treatment.

(9) "Sarcoidosis" – the proper diagnosis of sarcoidosis requires the exercise of professional medical judgment in accord with accepted medical practices. If disputes arise over the diagnosis, claims shall be evaluated on an individual basis.

(10) "State employee" means for the purpose of these rules, a current or former state employee as defined in 3 V.S.A. §1101(b) who has at least five months of continuous employment in the Bennington state office building located at 200 Veterans Memorial Drive, and who has been or is diagnosed with sarcoidosis after working in the Bennington state office building those five months. The employee shall either have the Bennington state office building as his or her designated worksite, or had to regularly visit there as part of his or her job duties.

Rule 3 FILING A SARCOIDOSIS CLAIM; WAIVER OF WORKERS' COMPENSATION AND CIVIL CLAIMS; ADJUSTMENT OF CLAIMS

(a) A state employee shall give the state notice of a sarcoidosis claim as soon as practicable, but no later than one year after the effective date of Act 53, or within two years after the claim is reasonably discoverable and apparent. The notice and claim may be given or made by any person claiming entitlement to compensation or acting on the employee's behalf.

(b) For the purpose of the statute of limitations, a claim must be filed by July 1, 2008 for persons diagnosed with sarcoidosis prior to Act 53 or within two years after the claim is reasonably discoverable and apparent. For the purpose of calculating wage benefits the date of injury shall be the point in time when sarcoidosis is diagnosed, and the employee is unable to work some or all of his or her regular hours because of the disease. If the employee ceased working prior to his or her sarcoidosis diagnosis, wage benefits shall be based on the 12 weeks wages prior to ceasing work.

(c) The Notice and Claim to the state shall be in writing and shall identify the date the employee was hired, the name and address of the diagnosing physician or physicians and the date sarcoidosis was diagnosed. **See Sarcoidosis Notice and Claim Form X.** It shall be provided to the unit of state government employing the employee, the State of Vermont Risk Management Division and to the Vermont Department of Labor.

(d) The employee or his or her legal representative shall provide a medical release authorization form. **See Sarcoidosis Medical Record Release Authorization Form XX.** Failure to provide a release may result in the suspension of eligibility for any benefits under Act 53.

(e) The employee or his or her legal representative shall provide a release authorizing the Risk Management Division of the State of Vermont to obtain the employee's wage and benefit information, including status of any leave balances, and federal or state provided disability benefits. **See Sarcoidosis Wage and Benefit Information Release Form XXX.** Failure to provide a release may result in the suspension of eligibility for any benefits under Act 53.

(f) The employee or his or her legal representative shall provide an executed release waiving his or her right to any civil action against the state for damages relating to sarcoidosis and to workers' compensation benefits relating to sarcoidosis pursuant to chapter 9 of Title 21. **See Sarcoidosis Waiver and Release Form XXXX.** The waiver shall be effective the date the Risk Management Division acknowledges the worker's eligibility for benefits under Act 53.

Rule 4 RESPONSIBILITIES OF THE RISK MANAGEMENT DIVISION AFTER RECEIPT OF THE NOTICE AND CLAIM

(a) Within three business days of receiving the notice and claim, the Risk Management Division shall promptly investigate the claim by requesting copies of claimant's medical records from the identified physicians, and requesting the claimant's wage and benefit information from the appropriate agencies of state government. Risk Management shall also contact the claimant and request documentation of all out of pocket medical expenses the claimant has incurred in the diagnoses and treatment of sarcoidosis if such documentation has not already been provided. The Risk Management Division shall make good faith effort to notify the claimant that it accepts or denies the claim within 21 days of receiving the notice and claim. In the event it can not accept or deny the claim within 21 days, it shall begin advancing benefits until such time as it is able to provide notice of accepting or denying the claim.

Rule 5 DISPUTES; INFORMAL RESOLUTION PROCEDURE

(a) All parties to proceedings under Act 53 shall make good faith efforts to resolve all disputes informally.

(b) Each party shall promptly and fully disclose all evidence in its possession to the department and the opposing party.

(c) Formal pretrial depositions shall be prohibited, unless agreed to by both parties; but all parties shall make their witnesses available for informal mutual questioning prior to any formal hearing.

(d) If the parties have been unable to resolve a dispute without the department's assistance, either or both may request an informal conference with the department. After conducting an informal conference, the department may issue an interim order if it finds that the party seeking any benefit has made out a prima facie case of entitlement to the requested benefit and the department finds that the opposing party's position is not supported by relevant evidence that a reasonable mind might accept as adequate to support a conclusion based on the record as a whole. See 21 V.S.A. §601(24).

(e) Prior to referring any dispute for formal hearing, the commissioner may order the parties to submit the dispute to mediation. The commissioner may order that the cost of a mediator be borne by the Risk Management Division, if claimant demonstrates an inability to pay for a portion of the mediation. In the absence of such an order, the cost of a mediator shall be shared by the parties.

Rule 6 FORMAL HEARING PROCEDURES

It is anticipated that formal hearings will be rare. In the event a formal hearing is necessary to resolve a dispute, the formal hearing shall be subject to the same rules as formal workers' compensation hearings. If the commissioner has ordered mediation, no formal hearing shall be conducted unless the parties have engaged in mediation, and despite good faith efforts have failed to resolve the disputes.

Rule 7 CALCULATING AVERAGE WEEKLY WAGE; CALCULATING TEMPORARY TOTAL, TEMPORARY PARTIAL, AND PERMANENT PARTIAL COMPENSATION RATE

(a) An employee's average weekly wage shall be calculated as provided in 21 V.S.A. §650 and Workers' Compensation Rule 15.000. For the purpose of Act 53, the 12 week period used to calculate the average weekly wage shall be the 12 weeks prior to the last week in which any wages were paid to the employee.

(b) The temporary total compensation rate shall be limited to the difference between any federal or state provided disability benefits received by the eligible state employee, or to which the eligible state employee is entitled, and two-thirds of the employee's average weekly wage. (See Act 53 §2(c)(3)). The temporary total compensation rate shall be calculated as follows:

- (1) Determine 2/3rds of the workers' average weekly wage;
- (2) Subtract from 2/3rds the average weekly wage the weekly amount of any state or federal disability benefits;
- (3) The amount remaining shall be the temporary total compensation rate.

(c) The temporary partial compensation rate shall be paid when a worker with sarcoidosis remains or returns to work, but at fewer hours than regularly worked prior to the onset of sarcoidosis, because of the illness. Payment shall be the difference between the gross wages earned and the employee's average weekly wage computed pursuant to section 7(a) less any federal or state provided disabilities benefits paid.

(d) Temporary total compensation shall cease when the worker returns to full or part-time work; or reaches medical end result. Temporary partial compensation shall cease when the worker returns to full-time employment or reaches medical end result.

(e) If, after a worker reaches medical end result, he or she is determined to have any permanent impairment of function resulting from sarcoidosis, the worker shall receive permanent partial payments as calculated in Rule 7(b) for the period determined by Rule 8.

(f) Except where the worker has returned to full-time work, Temporary Total or Temporary Partial payments shall only be discontinued after written notice to the worker and the department, as provided in 21 V.S.A. §643a and Workers' Compensation Rule 18.000.

(g) All compensation paid under Act 53 shall be subject to the same maximum and minimum compensation provisions provided for in the Workers' Compensation Statutes and Workers' Compensation Rule 16.000. Annually on July 1st the compensation rate shall be adjusted by the same percentage workers' compensation benefits are adjusted.

(h) Act 53 §2(d) provides:
"Eligible state employees shall provide documentation for reimbursement for out-of-pocket medical treatment and lost wages **incurred prior to the effective date of this act** no later than one year after the effective date of the act"

This provision indicates that the legislature intended that a worker entitled to benefits under Act 53 may be compensated for lost wages and medical expenses that occurred prior to the passage of Act 53 if the lost wages and medical expenses are due to his or her sarcoidosis. Therefore, if a worker demonstrates that he or she was diagnosed with sarcoidosis prior to the passage of Act 53, and, as a result of that sarcoidosis, was unable to work all or a portion of his or her regular hours, the worker shall be entitled to compensation as provided in Rules 7, 8 or 9 of these Rules. The worker shall also be entitled to reimbursement of demonstrated actual, out-

of-pocket medical expenses he or she incurred relating to the diagnosis and treatment of sarcoidosis prior to the passage of Act 53.

Rule 8 COMPENSATION FOR PERMANENT PARTIAL IMPAIRMENT TO A BODY PART, SYSTEM, OR FUNCTIONS DUE TO SARCOIDOSIS/ USE OF THE A.M.A. GUIDES

Any permanent partial impairment shall be determined as provided in 21 V.S.A. §648 and Workers' Compensation Rule 11.000.

Rule 9 PERMANENT TOTAL DISABILITY

If a state employee entitled to benefits under Act 53 has reached a medical end result and is determined to be permanently and totally disabled from performing any work, he or she shall be entitled to permanent total disability payments. The payment shall be calculated in the same manner as provided for in Rule 7 above, and shall continue for a minimum of 330 weeks and thereafter until the worker either returns to work or dies. For the purposes of this section permanent total disability shall mean the same as permanent total disability under the Vermont Workers' Compensation Statutes and Workers' Compensation Rules (21 V.S.A. §644 and Rule 11.3100).

Rule 10 TRAVEL, MEALS AND OTHER EXPENSE REIMBURSEMENT

Reasonable and necessary travel, meal and other expenses shall be reimbursed to the same extent and in the same manner as expense reimbursement provided under Workers' Compensation Rule 12.000.

Rule 11 CHOICE OF PHYSICIAN; MEDICAL EXAMS REQUESTED BY THE STATE

(a) The choice of treating medical provider shall be governed by 21 V.S.A. §640 and Workers' Compensation Rule 12.000.

(b) The State shall be entitled to have a worker seeking benefits under Act 53 examined by a medical provider of the state's choosing at reasonable times and places, as provided by 21 V.S.A. §655 and Workers' Compensation Rule 13.000.

Rule 12 MEDICAL FEE SCHEDULE; DIRECT BILLING OF PRESCRIPTION DRUGS & MEDICAL SUPPLIES

Act 53 §2(c)(1) provides:

“Reimbursement for medical expenses incurred for treatment of sarcoidosis prior to the effective date of this act not covered by other medical insurance.

Treatment of sarcoidosis after the effective date of this act shall be paid by the fund in accordance with the fee schedule established by the department of labor.”

(a) Workers' shall be reimbursed for all documented out-of-pocket reasonable and necessary medical expenses related to the diagnosis and treatment of sarcoidosis which were incurred prior to adoption of these rules.

(b) All reasonable and necessary medical expenses for the diagnoses and treatment of sarcoidosis incurred after the effective date of these rules shall be subject to the fee schedule adopted in Workers' Compensation Rule 40.

Rule 13 VOCATIONAL REHABILITATION

Except where such rules conflict with the express provisions of Act 53, a state employee entitled to benefits under Act 53 shall be entitled to vocational rehabilitation benefits under the same conditions and to the same extent as provided under the Workers' Compensation Statutes. Vocational rehabilitation services shall only be provided by persons employed or under contract to the Vocational Rehabilitation Division of the Vermont Department of Aging and Independent Living. The provisions of 21 V.S.A. §641 and Workers' Compensation Rule 50.000 shall govern any request for such services.

Rule 14 COMPENSATION AGREEMENTS

Whenever possible the state and the employee entitled to benefits under Act 53 shall enter into a written agreement that:

- (1) establishes the date employee was diagnosed with sarcoidosis;
- (2) Acknowledges that the employee is entitled to benefits under Act 53, and identifies the benefits that have been agreed to; and
- (3) Establishes the agreed upon average weekly wage and appropriate compensation rate.

Rule 15 ATTORNEY'S FEES AND COSTS

Attorney's fees shall be governed by 21 V.S.A. §678 and Workers' Compensation Rule 10.