

Chapter Ind 81

CRIME VICTIMS COMPENSATION RULES OF PRACTICE

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Ind 81.01 Bureau. (1) Chapter 949, Stats., shall be administered by a bureau to be known as the crime victim compensation bureau in the worker's compensation division, department of industry, labor and human relations.

(2) The bureau shall review and authenticate applications filed for payments provided by ch. 949, Stats.

(3) Following review and authentication, the bureau shall, in a proper case, order payments to be made by the bureau of finance, department of administration and the state treasurer, state of Wisconsin as provided by ss. 949.05, 949.06, 949.07, 949.08, 949.10, Stats.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.02 Forms. (1) Persons applying for payments provided by ch. 949, Stats., shall complete and sign the application form furnished by the bureau.

(2) Persons applying for payment as beneficiaries of persons fatally injured shall complete and sign a beneficiary form furnished by the department.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.03 Parties. Any person as defined by s. 949.05, Stats., filing claim for payments provided by ch. 949, Stats., shall be known as the applicant.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.04 Parties in interest. (1) Parties in interest who may appear at hearings held by the bureau, present testimony, cross examine witnesses, and petition for review the order of an examiner are designated as follows:

(a) Any person or a representative designated by that person who applied for benefits provided by ch. 949, Stats.

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(b) Any provider of medical or hospital services; suppliers of medicines; medical and surgical supplies, crutches, artificial members and appliances; providers of funeral services to a party defined in the rule entitled "Parties".

(c) The state of Wisconsin as represented by the department of justice.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.05 Service. All service of papers, unless otherwise directed by the bureau or by law, may be made by mail and proof of such mailing shall be prima facie proof of such service. Time within which service shall be made shall be the same as in courts of record unless specified by rule or order of the department.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.06 Amendments. Amendments may be made to any application upon cause shown. The bureau may, on its own motion, modify or change its order, finding or award at any time within 20 days from the date thereof if it shall discover a mistake therein.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.07 Extension of time and postponement. The bureau may grant extension of time in which to comply with any rule when it deems such extension of time reasonable and it may likewise grant adjournments of hearings.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.08 Depositions. At the discretion of the department depositions may be taken and used upon any hearing where the convenience of the witness or parties may so require. Such deposition shall be taken in the same manner as in courts of record.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.09 Transcripts. (1) Transcripts of testimony taken on proceedings brought before the bureau will be furnished to the applicant or the applicant's attorney in accordance with the following provisions:

(a) After the commencement of an action in the circuit court of Dane county to review an order of the bureau, a copy of such testimony will be furnished to the applicant or applicant's attorney or other party in interest upon payment of the sum of 40 cents per folio and 10 cents per folio for each additional copy thereof and all other parties will be furnished copies upon payment of 10 cents per folio.

(b) In other cases transcript may be provided under such conditions and terms as are mutually agreed upon.

(c) Upon proper showing of financial inability to pay for copies of such testimony or proceedings, the bureau in its discretion will furnish copies of the same to the applicant on such terms as agreed upon.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.10 Hearing procedures. (1) If, after investigation, the bureau determines that it cannot issue an order for payment of a claim, it shall notify the applicant in writing of this determination stating the reason

or reasons for not so doing. Following receipt of this determination, the applicant may request a hearing before an examiner of the department. The hearing shall then be scheduled by the bureau in due course.

(2) If the bureau determines that additional information is required before it can reach a proper decision in a particular case, it may schedule a hearing on its own motion.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.11 Place of hearing. The bureau at its discretion may from time to time hold hearings other than in Madison, Wisconsin.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.12 Procedures on review by commission. (1) The following shall govern proceedings on petition for review by the commission from an order of the examiner:

(a) The party in interest shall file his petition with the department setting forth separately the particular finding or findings as to which it is claimed error has been made.

(b) If the commission affirms or modifies the original decision, or directs the taking of further testimony, notice to that effect will be served upon all parties in interest.

(c) Brief may be filed by any party in interest with its petition or answer for a petition but not thereafter unless permitted by the commission. Oral argument shall not be permitted except upon request of the commission.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.13 Permanent disabilities. (1) The standards established by Wis. Adm. Code s. Ind 80.25 shall be applied by the bureau to determine the amount of permanent hearing loss sustained by an applicant.

(2) The standards established by Wis. Adm. Code s. Ind 80.26 shall be applied by the bureau to determine the amount of permanent vision loss sustained by an applicant.

(3) The standards established by Wis. Adm. Code s. Ind 80.32 shall be used by the bureau to determine the amount of permanent disability an applicant sustained for those injuries scheduled under s. 102.52, Stats.

(4) The standards established by Wis. Adm. Code s. Ind 80.33 shall be used by the bureau to determine the amount of permanent disability an applicant sustains as the result of a fingertip amputation.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.14 Use of physicians' or surgeons' reports as evidence. (1) The contents of a verified or certified medical and surgical report by physician or surgeon licensed in and practicing in this state presented by a party for compensation or a party in interest shall constitute prima facie evidence as to matters contained therein.

(2) Verified or certified report of physician or surgeon wherever licensed or practicing, who has examined or treated the claimant if such

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practitioner consents to be subject to cross examination shall also constitute prima facie evidence as to matters contained therein.

(3) Matters stated in such reports which would not be competent or material evidence if given as oral testimony shall not be competent or material as prima facie evidence if objection is made, except as corroborated by material oral testimony.

(4) An applicant shall be informed of the provisions of the rule and also that forms for reporting will be supplied to him on request.

(5) Report shall be submitted to the bureau upon a form prescribed by the bureau and shall be verified or certified. The bureau may require additional or supplementary reports. Upon failure of the applicant to submit such report within the time specified, all reports previously filed which are deficient may, in the discretion of the bureau, be excluded as evidence.

(6) Reports shall be filed with the application or as soon thereafter as possible. Reports not filed 15 days prior to the date of hearing shall not be acceptable as evidence except upon good cause for failure so to file, established to the satisfaction of the bureau.

(7) Upon receipt of the report the bureau shall promptly serve copy upon all parties in interest.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.15 Hospital and sanatorium records. The record of a hospital or sanatorium in this state operated by any department or agency of the federal or state government or by any municipality, or of any other hospital or sanatorium in this state which is satisfactory to the bureau, established by certificate, affidavit or testimony of the supervisory officer or other person having charge of such records, or of a physician or surgeon, to see such record of a patient in question, and made in the regular course of examination or treatment of such patient, shall constitute prima facie evidence in any proceeding before the bureau as to matters contained therein, insofar as it is otherwise competent and relevant.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.16 Appointment of medical or surgical examiner by the bureau. (1) If following investigation or hearing the bureau determines that there is doubt as to the cause or nature and extent of disability or as to the cause of death, the bureau may direct the injured applicant be examined or autopsy be performed, or an opinion of a physician or surgeon be obtained without examination or autopsy by an impartial competent physician appointed from a reasonable panel of physicians designated by the bureau. The report of such examination shall be transmitted in writing to the bureau and a copy thereof shall be furnished by the bureau to each party, who shall have an opportunity to rebut such report at further hearing.

(2) The applicant shall upon written request of the bureau submit to a reasonable examination by a physician or surgeon appointed by the bureau from a panel of physicians designated by the bureau. So long as the applicant after such written request of the bureau refuses to submit to such examination or in any way obstructs the same, the applicant's

right to begin or maintain any proceedings for the collection of compensation shall be suspended and if the applicant refuses to submit to such examination or in any way obstructs such examination after direction by the bureau, the applicant's right to any indemnity which accrues or becomes payable during the period of such refusal or obstruction shall be barred.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.17 Wages. (1) In addition to monies actually paid to applicant, things of value can be considered as part of the applicant's wage in determining amount of compensation due.

(2) For the purpose of determining the value of lodging and meals for wage purposes, the allowance provided under Wis. Adm. Code ch. Ind 72 shall apply.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.18 Emergency. An examiner of the bureau shall make an emergency award as provided by s. 949.10, Stats., when the examiner determines that because of disability or lack of support resulting from a death, an applicant will be deprived of food, lodging, or medical treatment.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.19 Attorney's fees. Attorney fee as provided by s. 949.14, Stats., shall be not more than 20% of that sum which the attorney assists the applicant in obtaining as compensation. Amounts previously paid or conceded by the bureau shall not be subject to an attorney fee.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

Ind 81.20 Financial hardship. (1) If a person filing a claim for compensation, medical or funeral expense as provided by ch. 949, Stats., sustains a wage loss or diminution of other sources of income or savings and which would adversely affect the applicant's standard of living not fully reimbursed by any of the of the following:

- (a) Worker's Compensation
- (b) Unemployment Compensation
- (c) Non-industrial group insurance
- (d) Individual health and accident insurance
- (e) Other public funds
- (f) Recovery from the offender
- (g) Life insurance
- (h) Sick pay or salary continuation

(2) It shall be presumed that the applicant has sustained a financial hardship except a specific showing may be made in an individual case that such presumption is not proper.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.

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Ind 81.21 Recovery from offender. (1) (a) It shall not be necessary that an applicant, in order to obtain payment under ch. 949, Stats., first bring action against an offender.

(b) In the event the applicant does bring action against an offender and does obtain collection, the applicant shall pay the department out of the proceeds of such collection the amount awarded to the applicant for compensation, medical expense or funeral expense.

History: Cr. Register, January, 1977, No. 253, eff. 2-1-77.