

\*\*\* DRAFT - NOT YET FILED \*\*\*

4123-3-35

**Employer handicap reimbursement.**

(A) For the purposes of handicap reimbursement under section 4123.343 of the Revised Code, a "handicapped employee" means an employee who is defined as having one or more of the conditions listed in division (A) of section 4123.343 of the Revised Code.

(1) With respect to the handicap condition defined in division (A)(4) of section 4123.343 of the Revised Code, degenerative disc disease, spondylosis, spondylolysis, and spondylolistheses do not constitute evidence of arthritis for purposes of satisfying the statute.

(2) With respect to the handicap condition defined in division (A)(14) of section 4123.343 of the Revised Code, the employee must have in-patient treatment and admission for the psycho-neurotic disability in a recognized medical or mental institution. Out-patient treatment does not satisfy the statutory definition.

(3) With respect to the handicap condition defined in division (A)(25) of section 4123.343 of the Revised Code, an employer is not eligible for handicap reimbursement in the same claim in which the employee participated in a rehabilitation program. The employee must suffer a subsequent compensable injury or occupational disease claim, and any reimbursement rights would be in the subsequent claim.

(B) Under division (B) of section 4123.343 of the Revised Code, the administrator specifies the following grounds upon which the administrator may charge claims costs to the statutory surplus fund.

(1) The administrator will consider handicap reimbursement relief under section 4123.343 of the Revised Code only in claims satisfying all of the following prerequisites:

(a) The claimant is a handicapped employee as defined in division (A) of section 4123.343 of the Revised Code and paragraph (A) of this rule.

(b) The employer has filed an application for handicapped reimbursement while the claim is within the employer's claim experience period, as referred to in division (B) of section 4123.34 of the Revised Code.

(i) For a claim involving a private state fund employer with a date of

injury on or before December 31, 2009, the application shall be filed by June thirtieth of the year no more than six years from the year of the date of the injury or occupational disease.

(ii) ~~For~~ For a claim involving a private state fund employer with a date of injury on or after January 1, 2010:

(a) If the date of injury is between January first and June thirtieth, the application shall be filed by June thirtieth of the year no more than six years from the year of the date of the injury or occupational disease.

(b) If the date of injury is between July first and December thirty-first, the application shall be filed by June thirtieth of the year no more than seven years from the year of the date of the injury or occupational disease.

(iii) For a claim involving a public employer taxing district employer with a date of injury on or before December 31, 2009, the application shall be filed by December thirty-first of the year no more than five years from the year of the date of the injury or occupational disease.

(iv) For a claim involving a public employer taxing district employer with a date of injury on or after January 1, 2010, the application shall be filed by December thirty-first of the year no more than six years from the year of the date of the injury or occupational disease.

~~(iii)~~(v) For a claim involving a private state fund employer or a public employer taxing district employer participating in a retrospective rating plan, the application shall be filed within the time provided in paragraph paragraphs (B)(1)(b)(i) or (B)(1)(b)(ii) to (B)(1)(b)(iv) of this rule, as applicable.

~~(iv) For a claim involving a self-insuring employer that has elected to continue to participate in the handicap reimbursement program, the application shall be filed within the time provided in paragraph (G)(1) of this rule.~~

(c) The bureau has awarded compensation to the claimant for temporary total disability, disabilities described under division (B) of section 4123.57 of the Revised Code, permanent total disability, or death benefits, or the claimant has received wages from the employer in lieu of compensation.

- (2) For an employer granted relief, all or such portion as the administrator determines of the amount that otherwise would be charged to the employer's experience will be deducted from each claim arising from injury or occupational disease to a handicapped employee for the purpose of premium or assessment adjustment, in accordance with the following principles and paragraphs (E), (F), and (G) of this rule:
- (a) All amounts deducted from the experience of the employer will be charged to the statutory surplus fund.
  - (b) The bureau will calculate the amount of the cost of the claim to remain in the employer's experience by applying the complement of the handicap percentage to the reducible costs contained within the claim cost as limited by the maximum value of a claim chargeable to the employer's experience, as determined by the employer's credibility group under rule 4123-17-05.1 of the Administrative Code.
  - (c) The bureau will apply the handicap reimbursement in a claim to only the following claims awards and reserves:
    - (i) Temporary total disability;
    - (ii) Disabilities described under division (B) of section 4123.57 of the Revised Code;
    - (iii) Permanent total disability;
    - (iv) Death benefits;
    - (v) Medical payments; and
    - (vi) Claims reserves.
  - (d) If the actual cost of a claim exceeds the maximum value of the claim chargeable to a particular employer's experience, the ratio of the nonreducible costs of the claim to the total cost of the claim shall be maintained in the maximum value chargeable to the particular employer's experience, so that when the handicap percentage is applied, it will be applied only to that portion of the maximum value that is reducible in accordance with division (B) of section 4123.343 of the Revised Code.

- (e) Any agreement between an employer and the claimant as to the merits of a claim or the amount of the charge to the statutory surplus fund shall forfeit any rights of the employer to any handicap reimbursement under this rule. This provision does not apply to the employer's certification of the claim.
- (C) The administrator of workers' compensation may delegate the authority granted to the administrator under Chapters 4121. and 4123. of the Revised Code for determining the amount an employer may be reimbursed from the statutory surplus fund in connection with the employer's handicapped employees under this rule. The decision of the administrator's designee shall be the decision of the administrator.
- (1) An employer which seeks a handicap reimbursement award must file a complete and timely application and attach copies of all relevant medical evidence which the employer believes the administrator should consider when determining the appropriate award.
    - (a) The administrator may dismiss without prejudice an incomplete application. The administrator may dismiss without prejudice an application at the employer's request. Within the time limits and provisions of this rule the employer may refile an application that was dismissed without prejudice.
    - (b) The administrator may deny an application not file within the employer's experience as provided in division (B) of section 4123.34 of the Revised Code and paragraph (B)(1)(b) of this rule.
    - (c) The administrator may dismiss an application which fails to meet the jurisdictional requirements of paragraphs (A) and (B) of this rule.
    - (d) The administrator may dismiss an application if the initial allowance of the claim is being contested before the bureau, industrial commission, or a court of competent jurisdiction at the time the application is filed. Upon a final administrative or judicial determination allowing the claim, the employer may refile an application dismissed under this provision.
  - (2) The administrator may issue a handicap reimbursement order based on a review of the application and any information contained in any relevant claim file or any other relevant bureau or industrial commission records.
  - (3) The administrator shall afford an employer the opportunity for an informal

conference if the application meets the jurisdictional requirements of this rule.

- (a) If the administrator conducts an informal conference, the administrator shall mail a notice of conference to the employer and its representative by regular mail, setting forth the date, time, and place of the conference.
    - (b) The administrator shall notify the employer by mail not less than fourteen days before the date of such conference, unless the employer waives this requirement.
    - (c) At the request of the employer or another party, the administrator may conduct an expedited or an informal telephone conference.
  - (4) The administrator's decision shall be reduced to writing and mailed to all interested parties. The order shall state the evidence upon which the administrator based the decision.
  - (5) The administrator shall keep a record of handicap applications received, conferences scheduled, orders issued with publication dates and any waiver of appeals, and appeals to the industrial commission.
- (D) The burden of proof is upon the employer to establish entitlement to the relief under section 4123.343 of the Revised Code by appropriate medical evidence or other evidence as may be indicated
- (1) With respect to any credit under division (D)(1) of section 4123.343 of the Revised Code, the administrator shall grant full handicap credit if the employer establishes that the injury or occupational disease would not have occurred but for the employee's pre-existing handicap condition.
  - (2) With respect to any credit under division (D)(2) of section 4123.343 of the Revised Code, the administrator shall determine the degree of relief to be granted based upon the following:
    - (a) The degree to which medical evidence or other evidence indicates the pre-existing handicap has affected the cost of the claim.
    - (b) The employer shall establish the relationship between the pre-existing condition and subsequent injury by way of aggravation or delayed recovery by proof on file but the condition need not be recognized by an order of allowance for such condition or aggravation of the

condition.

(c) In determining the appropriate per cent of relief in the claim, the administrator shall consider the effect of the handicap condition on the past claims costs and shall also account for the effect of the handicap condition on the anticipated future costs of the claim.

(E) A non-complying employer shall not be entitled to relief under section 4123.343 of the Revised Code. If the employer had active coverage on the date of the injury but was a non-complying employer on the date of the application for handicap reimbursement relief, the administrator may dismiss the application.

(F) No employer shall in any rating year receive credit under section 4123.343 of the Revised Code in an amount greater than the premium it paid ~~if a state fund employer or greater than its handicap assessment if a self-insuring employer.~~

~~(G) The administrator shall reimburse a self-insuring employer in the same manner as a state fund employer, except that reimbursement shall be made by direct payment to the selfinsurer from the statutory surplus fund.~~

~~(1) The self-insuring employer shall file an application for handicap reimbursement within five years from the date of injury or within five years from the beginning of disability in an occupational disease claim.~~

~~(2) A self-insuring employer may, for all claims filed after January 1, 1987, elect to pay compensation and benefits directly under this rule and shall receive no money or credit from the surplus fund for the payments under this rule, nor shall the employer be required to pay any amounts into the surplus fund that otherwise would be assessed for handicap reimbursement for claims filed after January 1, 1987. A self-insuring employer which makes such election also shall assume responsibility for compensation and benefits paid directly under this rule for all claims filed prior to January 1, 1987, and shall not be required to pay any amounts into the surplus fund by reason of this rule and may not receive any money or credit from that fund on account of this rule.~~

~~(3) A self-insured employer that has elected to remain in the handicap reimbursement program and has been granted handicap relief shall submit a request for direct reimbursement to the bureau's self-insured department on the form designated for reimbursement.~~

~~(H)~~(G) An order issued by the administrator is appealable under section 4123.511 of the Revised Code.

(1) If the administrator holds an informal conference, the employer and the

administrator may agree upon the amount of the handicap reimbursement in a claim, and the employer may waive its right to appeal.

- (2) Upon waiver of the employer's right to an appeal or the expiration of the appeal period, the administrator's order is final, and the bureau will immediately process the award.
- (3) If no agreement is reached at the informal conference and the employer files a written appeal within fourteen days of the employer's receipt of the administrator's decision, the administrator shall forward the claim file to the industrial commission within seven days of the administrator's receipt of the notice of appeal for a hearing before a district hearing officer.
- (4) The employer and the administrator are parties at any hearing conducted by the industrial commission or its hearing officers.
- (5) Upon a final industrial commission order which grants handicap relief, the bureau will immediately process the award.

~~(H)~~(H) Since pursuant to paragraph (D)(2)(c) of this rule the administrator shall consider the effect of the handicap condition on the past and future costs of the claim in determining the handicap relief, the employer is not entitled to consideration of a subsequent application for handicap relief for a condition in a claim in which the administrator has made a previous determination on the condition, regardless of whether there has been a change in circumstances such as allowance of the condition or payment of compensation. A subsequent application shall not substitute for an appeal of the administrator's order. The administrator shall dismiss or deny any subsequent application for an increase in handicap relief in a previously determined claim.

Effective:

Five Year Review (FYR) Dates: 04/01/2019

---

Certification

---

Date

Promulgated Under: 119.03  
Statutory Authority: 4121.12, 4121.121, 4121.30, 4121.31, 4123.05  
Rule Amplifies: 4121.12, 4121.121, 4123.511  
Prior Effective Dates: 1/10/78, 12/11/78, 2/16/87, 7/1/99, 10/4/04, 2/15/09,  
12/17/01, 2/10/09, 4/1/14