To the Members of the Board

Re: New York Workers Compensation
Reimbursement from the Special Disability Fund

The Chair of the New York State Workers’ Compensation Board (WCB) has issued Subject Number Letter 046-223, dated February 6, 2008, that expresses the WCB’s interpretation of the application of the Workers’ Compensation Law Section 15 (8) (b) (2) (B) in situations in which a claim for reimbursement was timely filed, but the WCB has not made its decision within the timeframes set forth in the law for the carrier reimbursement.

The full text of 046-223 is attached for your reference.

Questions regarding this matter should be referred to the WCB’s Office of the General Counsel at 518-486-9564.

Very truly yours,

Monte Almer

President

MH/ab
Encl.
Reimbursement From the Special Disability Fund When the Claim for Reimbursement is Timely Filed and the Claim is not Established Until March 13, 2008, or Later

Date: February 6, 2008

Workers' Compensation Law §§15(8)(d), 15(8)(e), 15(8)(ee), and 14(6) permit eligible carriers to receive reimbursement from the Special Disability Fund for workers' compensation benefits paid in certain cases. Until recently, there was no statutory time limitation on a carrier's right to reimbursement, so long as the claim for reimbursement was timely filed.

Workers' Compensation Law §2(19) defines the term "claim for reimbursement" as a carrier's application to the Workers' Compensation Board for a determination that the Special Disability Fund is liable to reimburse the carrier for qualifying expenses paid by the carrier. After the Workers' Compensation Board has determined that the Special Disability Fund is liable to reimburse the carrier for the payment of qualifying expenses in a particular case, the carrier may file a "request for reimbursement" in that case. Workers' Compensation Law §2(20) defines the term "request for reimbursement" as the carrier's application to the Special Disability Fund for actual repayment of the qualifying expenses that the carrier has paid.

Section 76 of Chapter 6 of the Laws of 2007 added Workers' Compensation Law §15(8)(h)(2) to limit a carrier's right to receive reimbursement from the Special Disability Fund.¹ The new legislation states:

A. No carrier or employer, or the state insurance fund, may file a claim for reimbursement from the special disability fund, for an injury or illness with a date of accident or date of disablement on or after July first, two thousand seven. No carrier or employer, or the state insurance fund, may file a claim for reimbursement from the special disability fund after July first, two thousand ten, and no written submissions or evidence in support of such a claim may be submitted after that date.

B. All requests for reimbursement from the special disability fund with a date of injury or date of disablement prior to July first, two thousand seven as to which the board has determined that the special disability fund is liable must be submitted to the special disability fund by the later of (i) one year after the expense has been paid, or (ii) one year from the effective date of this paragraph.

C. All claims for reimbursement from the special disability fund must be accompanied by a filing fee of two hundred fifty dollars, to be deposited in the special disability fund. Upon any final ruling that a claim is eligible for reimbursement from the fund, the fund will return two hundred dollars of this fee to the claimant.²

In other words, even when the Special Disability Fund's liability has been established by the Board, qualifying expenses will be reimbursed only if the carrier requests reimbursement from the Special Disability Fund either within one year of the date that the qualifying expense was paid or within one year after the legislation was enacted, March 13, 2008. As a carrier is permitted until June 30, 2010, to file a claim for reimbursement, a strained and unintended interpretation of the language in the statute of limitations provided for by the newly created Workers' Compensation Law §15(8)(h)(2)(B) could result in a denial of a carrier's right to reimbursement due to no fault of the carrier.

This situation can arise when a carrier timely files a claim for reimbursement, but, due to the inherent limitations of the administrative process that are outside of a carrier's control, the Board cannot establish the carrier's claim until after March 13, 2008. In this circumstance, the legislation might be interpreted as cutting off the carrier's right to request reimbursement for any qualifying expenses that it paid more than one year before the date the Special Disability Fund's liability was established.

This Subject Number is being issued to express the Board's interpretation of the application of Workers' Compensation Law §15(8)(h)(2)(B) in situations in which the claim for reimbursement was timely filed, but the Board does not establish the claim until after March 13, 2008, and the carrier paid qualifying expenses more than one year prior to the date that the Special Disability Fund's liability is established by the Board.
The Board has concluded that in this narrowly defined situation in which the carrier has timely filed its claim for reimbursement by March 13, 2008, and the claim for reimbursement is not established by the Board until March 13, 2008, or later, the doctrine of equitable tolling would apply. In this situation, the carrier should be permitted to receive reimbursement for the qualifying expenses that were paid by the carrier more than one year before March 13, 2008, provided that the carrier’s request for reimbursement is made within one year after the date on which Special Disability Fund's liability is established.

For example, if the date of accident is February 1, 1999, and the carrier timely files a claim for reimbursement on March 12, 2008, and the Special Disability Fund's liability is not established by the Board until April 1, 2009, and the carrier has been paying qualifying expenses every week since the date of accident, then the carrier has one year from April 1, 2009, to request reimbursement for the qualifying expenses that were paid prior to April 1, 2009. For all other qualifying expenses that are paid, the carrier must request reimbursement within one year after the date that the expense was paid.

Any questions regarding this matter should be referred to the Office of General Counsel at 518-486-9564.

Zachary S. Weiss  
Chair

---

1 §§75 and 77 of Chapter 6 of the laws of 2007 amended Workers' Compensation Law §§15(8)(d), 15(8)(e), 15(8)(ee), 15(8)(f), and 14(6) to restrict reimbursement from the Special Disability Fund for payments pursuant to these sections in accordance with the newly added Workers' Compensation Law §15(8)(h)(2).

2 In Workers' Compensation Law §§15(8)(d), 15(8)(e), 15(8)(ee), 15(8)(f), and 14(6), the term claimant refers to the carrier seeking reimbursement from the Special Disability Fund, not to the injured worker.