

Chapter 55. Fishermen's Fund.

8 AAC 55.010 is repealed and readopted to read:

8 AAC 55.010. Benefits.

(a) To be eligible for benefits from the fund, a person must be a fisherman who, at the time an injury is sustained is licensed in that person's own name by the state to engage in commercial fishing under AS 16.05.480 or AS 16.43, and who is actually so engaged in Alaska water or is occupied in the state preparing or dismantling boats or gear used in commercial fishing.

(b) Unless required as a result of accidental bodily injury caused by the fishing endeavor, benefits may not be awarded for the following items:

- (1) the services of a dentist;
- (2) dental prosthetic appliances or the fitting of them;
- (3) eye refractions and hearing examinations; or
- (4) eye glasses and hearing aids or the fitting of them.

(c) Benefits shall not be awarded for an injury

- (1) when the injury does not arise out of an accident directly connected with commercial fishing;
- (2) proximately caused by the fisherman's willful intent to injure or kill oneself;
- (3) proximately caused by the fisherman's intoxication, or proximately caused by the fisherman being under the influence of drugs unless the drugs were taken as prescribed by a treating physician; or
- (4) when the fisherman has knowingly falsified a material fact directly connected with the fisherman's claim against the fund.

(d) Benefits may not be awarded unless the following conditions are either met or excused by the council for just cause:

(1) the fisherman receives initial treatment within 60 days after the date of injury or disability or onset of occupational disease;

(2) the claim is submitted within one year after the date of initial treatment;

(3) the fisherman responds within 90 days to an inquiry seeking clarification of any item on a claim, or of any item on a billing for services performed or goods supplied;

(4) there is no unexplained gap in treatment of more than three months; or

(5) the provider submits price lists and fee determinations to the administrator within 30 days of a request.

(e) Transportation to return a fisherman to the fisherman's home may be allowed to the extent that the costs are in addition to those which the fisherman would normally have encountered had the fisherman not been injured.

(f) The fund may require information regarding insurance coverage, including an insurance benefits statement, and may hold a claim in abeyance pending the receipt of required information.

(g) A vessel owner may not recover reimbursement for a protection and indemnity insurance policy deductible payment unless the administrator receives

(1) proof of direct payment of medical benefits to or on behalf of the fisherman by the vessel owner, together with a copy of the declaration page of the policy setting out the policy coverage and limits; or

(2) proof of direct payment of medical benefits to or on behalf of the fisherman by the vessel owner's protection and indemnity insurance company, together with proof of

payment of the policy deductible to the protection and indemnity insurance company by the vessel owner, together with a copy of the declaration page of the policy setting out the policy coverage and limits.

(h) Unless waived by the fund, provider bills must be submitted to the fund in a format approved by the Centers for Medicaid and Medicare Services (CMS).

(i) Provider bills must be accompanied by signed and dated chart notes.

(j) If an injury requires continuing and multiple treatments of a similar nature, the standards for payment for frequency of outpatient treatment for the injury will be as follows. Payment for a course of treatment may not exceed more than three treatments per week for the first month, two treatments per week for the second and third months, one treatment per week for the fourth and fifth months, and one treatment per month for the sixth through twelfth months. A provider shall furnish a written treatment plan if the course of treatment will require more frequent outpatient visits than allowed by this sub-section. The treatment plan shall be furnished to the fund no later than 14 days after treatment begins. The treatment plan must include objectives, modalities, frequency of treatments, and reasons for the frequency of treatments.

(k) In this section, “provider” means any person or facility licensed under AS 08 to furnish medical or dental services, and includes an out-of-state person or facility that meets the requirements of this section and is otherwise qualified to be licensed under AS 08. (Eff. 3/28/74, Register 49; am 4/11/81, Register 78; am 7/28/93, Register 127; am 3/22/2003, Register 165; am ____/____/_____, Register _____)

Authority: AS 23.35.050 AS 23.35.100 AS 23.35.150
AS 23.35.070 AS 23.25.145

8 AAC 55 is amended by adding a new section to read:

8 AAC 55.015. Compelling reasons for extension of duration of care and for additional benefits.

(a) If a fisherman suffers a compensable injury, the fisherman may request compensation for treatment that continues beyond one year from the date of initial allowance for compelling reasons. A request for an extension of duration of care must be submitted on the form prescribed by the fund explaining why treatment cannot be completed within one year from the date of initial allowance, and must include

- (1) the fisherman's name and contact information;
- (2) name and contact information of the primary care physician; and
- (3) a written treatment plan from the primary care physician, citing medical

evidence which supports the extended course of treatment.

(b) If a fisherman suffers a compensable injury, the fisherman may request additional benefits for compelling reasons. A request for additional benefits must be submitted on the form prescribed by the fund explaining financial need, why remedy cannot be obtained from the vessel owner, additional benefits needed, and a statement of financial assets and liabilities. The form must be accompanied by copies of the fisherman's tax returns for the previous two years, including W-2 forms and supporting schedules.

(c) When considering a request for an extension of duration of care or additional benefits for compelling reasons under this section, the council shall consider

- (1) the severity of the injury;
- (2) the percentage of income derived from commercial fishing;
- (3) the longevity in the industry in the state;

- (4) the availability of relief from other sources;
- (5) the chronic nature of the medical condition; and
- (6) other relevant facts presented to the council.

(d) In addition to the factors listed under (c)(A)-(F) of this section, the council may consider the financial condition of the fund if the total fund expenditures in the current fiscal year are expected to reduce the fund balance to less than 500 percent of the average total fund expenditures in the preceding three fiscal years. (Eff. ____/____/_____, Register _____)

Authority: AS 23.35.050 AS 23.35.140
AS 23.35.130

8 AAC 55.020 is repealed and readopted to read:

8 AAC 55.020. Claim proceedings.

(a) A claim against the fund is commenced by filing an application with the fund, on a form prescribed by the fund.

(b) A separate claim must be filed for each separate and independent injury for which benefits are claimed.

(c) The administrator shall send a written notice no later than 45 days after receipt of a completed claim to each fisherman whose claim is denied based on criteria set out in the law and regulations that states the reason why the payment cannot be made.

(d) The council shall review the administrator's denial of benefits no later than 180 days after the denial.

(e) Each claimant is required to promptly inform the administrator of any changes to the claimant's address. (Eff. 3/28/74, Register 49; am 4/11/81, Register 78; am 9/10/98, Register 147; am 12/30/99, Register 152; am ____/____/_____, Register _____)

Authority: AS 23.35.040 AS 23.35.070
AS 23.35.050

8 AAC 55 is amended by adding a new section to read:

8 AAC 55.025. Petitions.

(a) A petition is a request for an extension of duration of care, additional benefits, assistance after discharge from a hospital, or additional transportation allowances. A petition for extension of duration of care or additional benefits must cite those reasons the petitioner believes justify granting the relief sought. The council shall consider compelling reasons set out in 8 AAC 55.015(c) and 8 AAC 55.015(d) in determining whether to grant a petition for extension of duration of care or additional benefits. A petition for assistance after discharge from the hospital must include the dates during which hospitalization occurred. A petition for additional transportation allowances may be considered only for the purpose of providing specialized medical skills which are unavailable at the nearest approved medical facility. The petition must include a written statement from the treating physician which clearly defines the specialized medical skill required for the petitioner and the nearest place where it is available.

(b) A petition under (a) of this section must be submitted to the council for review and recommendations on a form prescribed by the fund.

(c) The council shall make a determination regarding a petition no later than 180 days after receipt of a petition submitted under this section.

(d) No later than 45 days after the council's determination under (c) of this section, the administrator shall notify, in writing, each petitioner or other party of the council's determination.

(e) Each petitioner is required to promptly inform the administrator of any changes to the petitioner's address. (Eff. ____/____/_____, Register _____)

Authority: AS 23.35.040 AS 23.35.090 AS 23.35.140
AS 23.35.050 AS 23.35.100
AS 23.35.070 AS 23.35.130

8 AAC 55.030(a) is amended to read:

(a) The administrator shall **send to the council for review all claims for benefits that** [SUBMIT A WRITTEN NOTICE TO EACH] [APPLICATION] **are not** [CANNOT BE] accepted **by the administrator under 8 AAC 55.020(c)** [BASED ON CRITERIA SET OUT IN THE LAW AND REGULATIONS STATING THE REASON WHY THE PAYMENT CANNOT BE MADE].

8 AAC 55.030(b) is amended to read:

(b)[THE COUNCIL SHALL REVIEW EACH APPLICATION WHICH HAS NOT BEEN APPROVED FOR PAYMENT BY THE ADMINISTRATOR.] **A** [EACH] fisherman who has **a claim** [APPLICATION] pending before the council shall be notified in writing by the administrator of the time and place of a council session at least 10 days before the session. **A** [EACH] fisherman may submit additional evidence **and witnesses** to the council in support of **the fisherman's** [HIS] claim. The evidence may be presented in writing, by personal appearance, or by both methods.

8 AAC 55.030(c) is amended to read:

(c) The administrator shall notify, in writing, a [EACH] fisherman [AND PARTY] with a[N] claim [APPLICATION] before the council, along with the vessel owner and all providers as defined in 8 AAC 55.010(k), of the council's decision [ON THE APPLICATION].

8 AAC 55.030(d) is amended to read:

(d) A fisherman may appeal the decision of the council. The council's decision is final unless appealed to the Commissioner of Labor and Workforce Development [COMMISSIONER] within 30 [WITHIN 45] days after mailing of the notice of the council's decision. The appeal must be in writing and must include a description of the relief sought. The commissioner's decision shall be based on a consideration of the whole record and shall state the facts relied on [UPON]. The decision of the commissioner may be appealed as provided under AS 44.62 (Administrative Procedure Act) [is final]. (Eff. 3/28/74, Register 49; am 4/11/81, Register 78; am 9/10/98, Register 147; am ____/____/_____, Register _____)

Authority: AS 23.35.040 AS 23.35.050

8 AAC 55.035 is amended by adding a new subsection to read:

(b) If the fund asserts a claim of subrogation against a fisherman, the fund may hold future claims in abeyance pending resolution of the subrogated claim. (Eff. 12/26/86, Register 100; am ____/____/_____, Register _____)

Authority: AS 23.35.050

8 AAC 55.040 is amended by adding a new subsection to read:

(4) “injury” means an injury or disability under AS 23.35.070, or an occupational disease under AS 23.35.070 and AS 23.35.150(5). (Eff. 03/28/74, Register 49; am ____/____/_____, Register _____)

Authority: AS 23.35.050