



ADVISORY NO. 494

TOPIC: DWC Adopts New LIBs Rule; Revises PLN 04

The Division has adopted new Rule 131.1, which relates to the eligibility determination and the initiation of Lifetime Income Benefits. The rule provides that an insurance carrier must either initiate or deny LIBs within 60 days from the receipt of the injured employee's written request. The rule has been adopted in conjunction with the agency's revision of the existing PLN 04 form. Both the rule and the new form take effect June 1, 2015.

Under the new rule a carrier must respond to an employee's request for LIBs within 60 days from the receipt of that request. However, a carrier's failure to respond to such a request within 60 days does not constitute a waiver of the carrier's right to dispute eligibility for LIBs. Instead, the Division determined that an administrative penalty should be the consequence for a carrier's failure to respond to a request within 60 days.

Deadline to Initiate LIBs

After the carrier has formed a reasonable belief that an employee is entitled to LIBs, Rule 131.1(c) requires it to make the first LIBs payment on or before the 15th day after its reasonable belief of entitlement was formed. The initiation of LIBs without a final decision, order, or other action of the Commissioner does not waive the carrier's right to contest the compensability of the claim under § 409.021.

Although a carrier has 60 days to respond to a request for LIBs, it is still required to initiate LIBs on or before the 15th day after it reasonably believes the employee is eligible for LIBs. This includes situations where a carrier reasonably believes the employee is eligible for LIBs, but the employee has not submitted a written request for these benefits. Similarly, if a carrier receives a written request for LIBs, then five days later forms a reasonable belief that the employee is entitled to LIBs, the carrier must initiate payment within 15 days, and the deadline is not extended to day 60 after receipt of the request.

If the carrier is converting to LIBs from some other form of income benefits, it should complete a PLN 07 in addition to the PLN 04 and both forms should be sent to the claimant and his attorney.

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Neither the PLN 07 nor the PLN 04 should be filed with the Division when they are being used to provide notice of the initiation of LIBs. Carriers should take care to be sure that they have transmitted the change of benefit type and change of benefit amount to the Division by EDI in connection with this conversion.

Carriers are required to increase LIBs annually, applying a 3% cost of living increase. At the time LIBs are initiated, carriers must determine the date that the claimant's LIBs entitlement accrued and note the date of the annual increase on the PLN 04. Carriers must be sure that their systems provide a means to annually increase LIBs in a timely manner.

Existing case law suggests that a carrier's voluntary payment of benefits does not constitute an admission of liability. However, Rule 131.1 does not address whether initiating LIBs without a final decision, order, or other action of the Commissioner waives the carrier's right to later contest eligibility for LIBs.

Deadline to Dispute LIBs

If the carrier receives a request for LIBs and it believes the employee is not eligible, it shall deny eligibility using a PLN 04. The PLN 04 must be sent to the employee and the employee's representative. In addition, the PLN 04 must be filed with the Division. This filing obligation is new. Carriers must be certain that this filing is accomplished in a timely manner. The PLN 04 should be completed, served and filed within 60 days of receipt of the employee's written request for LIBs.

The PLN 04 must include a full and complete statement describing the carrier's reasons for its denial of LIBs. The carrier's statement on the PLN 04 must contain sufficient claim-specific substantive information to enable the employee to understand the carrier's position or action taken under the claim. A generic statement that simply states the carrier's position with phrases such as "not part of compensable injury," "not meeting criteria," "liability is in question," "under investigation," "eligibility questioned," or other similar phrases with no further description of the factual basis for the denial do not satisfy these requirements. Because the reason for denial of payment of lifetime income benefits to the claimant must be written in plain language, it should not include the unnecessary use of technical terms, acronyms, and abbreviations.

The notice of denial of eligibility must also include contact information, including the adjuster's name, toll-free telephone and fax numbers, and email address, and a statement informing the injured employee of his or her right to request a BRC to resolve the dispute.

Carriers should familiarize themselves with new Rule 131.1 and the revised PLN 04. Should system modifications be required to implement the procedures described in the rule, or to adapt to the new form, carriers should begin that process now. Both the rule and the form take effect on June 1, 2015.