

CHAPTER 2-1301, INITIAL DETERMINATION

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1. Purpose and Scope.

This Procedure Manual (PM) chapter defines an "initial determination" and describes the procedures for issuance of such a determination by the Division of Coal Mine Workers' Compensation (DCMWC). This chapter also discusses interim benefit procedures when a responsible operator (RO) declines to initiate benefits while it contests an award of benefits. The 1981 Amendments to the Black Lung Benefits Act limit interim benefit payments from the Black Lung Disability Trust Fund (TF) to benefits accruing from the date of the initial determination.

2. Legislative Authority.

Section 424(a)(1)(A)(i) of the Black Lung Benefits Act (BLBA), 20 CFR 725.420, 20 CFR 725.478, and 20 CFR 725.1(g).

3. Policy.

It is DCMWC policy to issue an initial determination letter (IDL) signed by the District Director (DD) or his/her designee when (1) the DD issues a Proposed Decision and Order (PDO) Award of Benefits (as described in PM 2-1105) and (2) the RO thereafter files a timely request for a hearing. An initial determination is issued prior to referring the claim to the Office of Administrative Law Judges (OALJ) for a formal hearing.

4. References. (Reserved)5. Definitions.

An Initial Determination is a document issued and signed by the DD or his/her designee that (1) acknowledges the RO's hearing request; (2) requests the RO to commence the payment of benefits pursuant to the PDO; (3) establishes the date from which interest may be assessed against an RO that declines to pay benefits; and (4) determines the date from which interim benefits may be paid to eligible claimants from the Black Lung Disability Trust Fund (TF). The DD makes an initial determination only after the RO has timely requested a hearing following issuance of a PDO Award of Benefits.

- a. An initial determination will be issued on any approved claim with RO liability before the claim is referred for a formal hearing. The date of initial determination is the date the initial determination letter (IDL) is mailed to all parties. If the RO agrees to make benefit payments after issuance of the initial determination, payments must be initiated within 30 days of the initial determination. If the RO declines to begin benefit payments within 30 days after issuance of the initial determination, interim payments are initiated from the TF pending final resolution of the case.

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b. Interim Benefit Payments are benefits paid to the claimant from the TF when the RO declines to pay benefits following the issuance of a PDO Award of Benefits and an IDL. In that case, the TF pays all benefits that accrue after the date of the initial determination. These benefits provide miners and their survivors with monthly income, and miners with medical treatment coverage, while the claim is litigated.

6. Responsibilities.

a. The DD or his/her designee is responsible for issuing an initial determination when (1) the DD issues a PDO Award of Benefits and (2) the RO thereafter files a timely request for a hearing.

b. Following the issuance of a PDO Award of Benefits with RO liability, the claim staff sets the record for follow up action in 21 days. If the RO does not respond in 21 days, the claims staff contacts the RO to determine if it will accept liability and pay benefits. Contacting the RO before the response time expires may accelerate the resolution of the claim. If the RO agrees to pay benefits, the claims staff requests that the RO complete and submit Forms CM-906 (Certification of First Payment of Benefits) and CM-941 (Agreement to Pay Benefits). If the RO indicates that it will request a hearing, the claims staff asks if the RO will pay benefits while the claim is in litigation. The claims staff documents this RO contact for the claim record by memorializing the conversation and bronzing it into the imaging system.

7. Issuance.

If the RO timely requests a hearing after a PDO Award of Benefits, the DD prepares an IDL along with Forms CM-906 (Notice of First Payment of Benefits) and CM-941 (Agreement to Pay Benefits) for the RO's use. Copies are sent to all parties by regular mail. The standard letters may be accessed through the correspondence system. Because the TF is authorized to pay interim benefits only from the date of the initial determination, the IDL should be issued, whenever possible, in the month in which the hearing request is received.

The claims staff ensures that the IDL contains an accurate accounting of benefits awarded but not paid to the claimant, i.e., benefits accruing from the entitlement date to the IDL date. If this period is greater than two months, the claims staff generates a payment calculation through the automated system covering the unpaid benefits and bronzes the report into the claim record.

The claims staff determines whether the RO will initiate benefit payments while the claim is in litigation. If the RO declines, the claims staff

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initiates interim payments from the TF. (See PM 2-1400).

The time period for requesting a hearing after a PDO is issued cannot be extended. See 20 CFR 725.423. Thus, if no request for hearing or revision is timely made, the PDO will become final and represent an enforceable order (See PM 2-1101 for actions related to an enforceable order).

If the RO provides verbal notification that a request for hearing has been sent, but the response has not been received, the claims staff requests a copy of the hearing request and initiates the IDL process. The IDL should not be issued, however, until the hearing request is received.

(See PM 2-302 for required system updates and PM 2-1101 and 2-1106 for actions related to effective awards when the RO does not timely appeal a PDO Award of Benefits.)

NOTE: When the IDL is issued, and the automated system is updated, the processing timeframe for referring the claim for formal hearing will begin. The "hearing request date" will be the date the IDL is issued. Refer to PM Chapters 2-302, 2-303 and 2-1500 and the System User Manual (SUM) for related guidance.

8. Initiating Interim Benefits.

When the claims staff receives notice that the RO will not pay benefits while the claim is in the appeal process, a benefit record is set up to pay interim benefits from the TF.

The claims staff sends standard letters describing interim benefits procedures to the claimant with copies to all parties. The correspondence system contains the standard letters and forms necessary to initiate interim benefits. A benefit record is established in the automated system. See PM Chapters 2-1400 and 2-1402 and the SUM for guidance in establishing a benefit record.

The claims staff ensures that the initial benefit notice contains an accurate accounting of benefits awarded but not paid to the claimant, i.e., benefits accruing from the entitlement date to the IDL date. If this period is greater than two months, the claims staff generates a payment calculation through the automated system covering the unpaid benefits and bronzes the report into the claim record.

If the payment of interim benefits is delayed for more than two months after the IDL is issued, resulting in the claimant being owed a lump sum for that period, the claims staff generates the payment calculation through the automated system and bronzes the report into the claim record.

Retroactive payments to interim beneficiaries may be paid only in the

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following circumstances and for specific time periods:

- a. For the period of time between the date of the DD's IDL and the initiation of interim benefits;
- b. For the period of time from the *effective date* of an appellate decision to the date interim benefits are initiated. (OALJ decisions are effective on the date the decision is received in DCMWC's office in Washington, DC; BRB and COA decisions are effective on the date of issuance.)