
GUERNSEY STATUTORY INSTRUMENT

1990 No. 43

The Health Service (Determination of Claims) Regulations, 1990

Made 18th December, 1990

Laid before the States

Coming into operation 1st January, 1991

THE STATES INSURANCE AUTHORITY, in exercise of the powers conferred upon it by sections 26, 32 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990 (a) and in exercise of all other powers enabling it in that behalf, hereby orders:-

Interpretation

1.(1) In these regulations, except where the context otherwise requires, the following expressions having the meanings hereby respectively assigned to them, that is to say:-

"claim" includes any claim for benefit under the Law, and includes any question arising in connection with a claim for or award of benefit;

"determining authority" means the Administrator or the Tribunal;

"hearing" means oral hearing;

"the Law" means the Health Service (Benefit) (Guernsey) Law, 1990.

(2) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations shall be deemed to have been given or sent if it was sent by post to that person at his ordinary or last known address.

(3) Except where the context otherwise requires, any reference in these regulations to any enactment or regulations shall be construed as a reference to that enactment or those regulations as amended, extended, repealed, replaced or revoked by or under any other enactment or by any other regulations.

(4) The Interpretation (Guernsey) Law, 1948, (b), shall apply to the interpretation of these regulations as it applies to the interpretation of a Guernsey enactment.

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- (a) Ordres en Conseil No. XLVIII of 1990.
(b) Ordres en Conseil Vol. XIII, p. 355.

Procedure at hearings and in connection with determinations; and right to representation

2.(1) Subject to the provisions of the Law and of these regulations -

- (a) the procedure in connection with the consideration and determination of any claim shall be such as the determining authority shall determine; so however that in the case of the Tribunal the procedure shall be such as the chairman or deputy chairman of the Tribunal shall determine;
- (b) any person who by virtue of the provisions of these regulations has the right to be heard at a hearing may be represented by another person, whether having professional qualifications or not, and, for the purposes of the proceedings at any such hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Law and these regulations.

(2) For the purpose of arriving at its decision or discussing any question of procedure, the Tribunal shall, notwithstanding anything contained in these regulations, order all persons not being members of the Tribunal, other than the person acting as an assessor or as a clerk to the Tribunal, to withdraw from the sitting of the Tribunal.

(3) Any person having the right to be heard who appears at a hearing before the Tribunal may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing and of addressing the Tribunal.

Non-disclosure of evidence by the Tribunal

3. Where, in connection with the consideration and determination of any claim there is before the Tribunal medical advice or medical evidence relating to the claimant which has not been disclosed to him and in the opinion of the chairman of the Tribunal the disclosure to the claimant of that advice or evidence would be harmful to the claimant's health, such advice or evidence shall not be required to be disclosed to the claimant, but the Tribunal shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of the said determination.

Reference by the determining authority to medical practitioner for report

4. The determining authority may refer to a medical practitioner for examination and report any question arising in relation to a claim.

Time and place of hearing before the Tribunal

5.(1) Reasonable notice of the time and place of any hearing before the Tribunal shall be given to the claimant, and to any other person who may appear to the chairman of the Tribunal to be interested, and, except with the consent of the claimant, the Tribunal shall not proceed with the hearing of any case unless such notice has been given.

(2) If a claimant or other person to whom notice of hearing has been duly given in accordance with these regulations should fail to appear at the hearing, the Tribunal may proceed to determine the case notwithstanding his absence, or may give such directions with a view to the determination of the case as it may think proper having regard to all the circumstances including any explanation offered for his absence:

Provided that, if a reasonable explanation for his absence has been given by him or on his behalf, the Tribunal shall not, without his consent, determine the case in his absence, unless the hearing has first been adjourned for at least one month and reasonable notice of the time and place of the adjourned hearing has been given to him.

Hearings before the Tribunal

6.(1) The following persons shall be entitled to be present and be heard at the hearing of any case by the Tribunal:-

- (a) the claimant;
- (b) the Administrator;
- (c) the President of the Authority;

and any person appearing to the Tribunal to be interested shall have the right to be present at the hearing of the case.

(2) In such cases as the chairman of the Tribunal may determine, a medical practitioner may sit with the Tribunal as an assessor.

(3) An assessor sitting with the Tribunal as aforesaid shall not take any part in the determination or decision of the Tribunal except in an advisory capacity.

Decisions of the Tribunal

7.(1) The decision of the majority of the Tribunal shall be the decision of the Tribunal.

(2) The Tribunal shall -

- (a) record in writing all its decisions (whether on an appeal or on a reference from the Administrator); and
- (b) include in the record of every decision a statement of the grounds of such decision and of its findings on questions of fact material thereto; and
- (c) if a decision is not unanimous, record a statement that one of the members dissented and the reason given by him for so dissenting.

(3) As soon as may be practicable after a case has been decided by the Tribunal, a copy of the record of its decision made in accordance with this regulation shall be sent to the claimant, to the Administrator and to any other person who appears to the Tribunal to be interested, and if the decision of the Tribunal is in whole or in part adverse to the claimant, he shall be informed of the conditions governing appeals to the Ordinary Court.

Extent

8. These Regulations shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Citation

9. These Regulations may be cited as the Health Service (Determination of Claims) Regulations, 1990.

Commencement

10. These Regulations shall come into operation on the 1st day of January, 1991.

Dated this 18th day of December, 1990.



(R M Chilcott)
President of the States Insurance Authority
for and on behalf of the Authority

EXPLANATORY NOTE

(This Note is not part of the Regulations but is intended to indicate their general purport)

These Regulations prescribe the arrangements for the adjudication of claims, under the Health Service (Benefit) (Guernsey) Law, 1990, by the Administrator and the Tribunal.