

§ 725.497

Black Lung Benefits Reform Act of 1977, that is, before March 1, 1978, following a formal hearing before an administrative law judge or administrative review before the Benefits Review Board or review before a United States Court of Appeals.

(c) Where more than one claim was filed with the Social Security Administration and/or the Department of Labor prior to March 1, 1978, by or on behalf of a miner or a surviving dependent of a miner, unless such claims were required to be merged by the agency's regulations, the procedural history of each such claim must be considered separately to determine whether the claim is subject to the transfer of liability provisions.

(d) For a claim filed with and denied by the Social Security Administration prior to March 1, 1978, to come within the transfer provisions, such claim must have been or must be approved under the provisions of section 435 of the Act. No claim filed with and denied by the Social Security Administration is subject to the transfer of liability provisions unless a request was made by or on behalf of the claimant for review of such denied claim under section 435. Such review must have been requested by the filing of a valid election card or other equivalent document with the Social Security Administration in accordance with section 435(a) and its implementing regulations at 20 CFR 410.700 through 410.707.

(e) Where a claim filed with the Department of Labor prior to March 1, 1977, was subjected to repeated administrative or informal denials, the last such denial issued during the pendency of the claim determines whether the claim is subject to the transfer of liability provisions.

(f) Where a miner's claim comes within the transfer of liability provisions of the 1981 amendments the fund is also liable for the payment of any benefits to which the miner's dependent survivors are entitled after the miner's death. However, if the survivor's entitlement was established on a separate claim not subject to the transfer of liability provisions prior to approval of the miner's claim under section 435, the party responsible for the payment of such survivors' benefits

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shall not be relieved of that responsibility because the miner's claim was ultimately approved and found subject to the transfer of liability provisions.

§ 725.497 Procedures in special claims transferred to the fund.

(a) *General.* It is the purpose of this section to define procedures to expedite the handling and disposition of claims affected by the benefit liability transfer provisions of Section 205 of the Black Lung Benefits Amendments of 1981.

(b) *Action by the Department.* The OWCP shall, in accordance with the criteria contained in § 725.496, review each claim which is or may be affected by the provisions of Section 205 of the Black Lung Benefits Amendments of 1981. Any party to a claim, adjudication officer, or adjudicative body may request that such a review be conducted and that the record be supplemented with any additional documentation necessary for an informed consideration of the transferability of the claim. Where the issue of the transferability of the claim can not be resolved by agreement of the parties and the evidence of record is not sufficient for a resolution of the issue, the hearing record may be reopened or the case remanded for the development of the additional evidence concerning the procedural history of the claim necessary to such resolution. Such determinations shall be made on an expedited basis.

(c) *Dismissal of operators.* If it is determined that a coal mine operator or insurance carrier which previously participated in the consideration or adjudication of any claim, may no longer be found liable for the payment of benefits to the claimant by reason of section 205 of the Black Lung Benefits Amendments of 1981, such operator or carrier shall be promptly dismissed as a party to the claim. The dismissal of an operator or carrier shall be concluded at the earliest possible time and in no event shall an operator or carrier participate as a necessary party in any claim for which only the fund may be liable.

(d) *Procedure following dismissal of an operator.* After it has been determined

that an operator or carrier must be dismissed as a party in any claim in accordance with this section, the Director shall take such action as is authorized by the Act to bring about the proper and expeditious resolution of the claim in light of all relevant medical and other evidence. Action to be taken in this regard by the Director may include, but is not limited to, the assignment of the claim to the Black Lung Disability Trust Fund for the payment of benefits, the reimbursement of benefits previously paid by an operator or carrier if appropriate, the defense of the claim on behalf of the fund, or proceedings authorized by § 725.310.

(e) Any claimant whose claim has been subsequently denied in a modification proceeding will be entitled to expedited review of the modification decision. Where a formal hearing was previously held, the claimant may waive his right to a further hearing and ask that a decision be made on the record of the prior hearing, as supplemented by any additional documentary evidence which the parties wish to introduce and briefs of the parties, if desired. In any case in which the claimant waives his right to a second hearing, a decision and order must be issued within 30 days of the date upon which the parties agree the record has been completed.

Subpart H—Payment of Benefits

GENERAL PROVISIONS

§ 725.501 Payment provisions generally.

The provisions of this subpart govern the payment of benefits to claimants whose claims are approved for payment under section 415 and part C of title IV of the Act or approved after review under section 435 of the Act and part 727 of this subchapter (see § 725.4(d)).

§ 725.502 When benefit payments are due; manner of payment.

(a)(1) Except with respect to benefits paid by the fund pursuant to an initial determination issued in accordance with § 725.418 (see § 725.522), benefits under the Act shall be paid when they become due. Benefits shall be consid-

ered due after the issuance of an effective order requiring the payment of benefits by a district director, administrative law judge, Benefits Review Board, or court, notwithstanding the pendency of a motion for reconsideration before an administrative law judge or an appeal to the Board or court, except that benefits shall not be considered due where the payment of such benefits has been stayed by the Benefits Review Board or appropriate court. An effective order shall remain in effect unless it is vacated by an administrative law judge on reconsideration, or, upon review under section 21 of the LHWCA, by the Benefits Review Board or an appropriate court, or is superseded by an effective order issued pursuant to § 725.310.

(2) A proposed order issued by a district director pursuant to § 725.418 becomes effective at the expiration of the thirtieth day thereafter if no party timely requests revision of the proposed decision and order or a hearing (see § 725.419). An order issued by an administrative law judge becomes effective when it is filed in the office of the district director (see § 725.479). An order issued by the Benefits Review Board shall become effective when it is issued. An order issued by a court shall become effective in accordance with the rules of the court.

(b)(1) While an effective order requiring the payment of benefits remains in effect, monthly benefits, at the rates set forth in § 725.520, shall be due on the fifteenth day of the month following the month for which the benefits are payable. For example, benefits payable for the month of January shall be due on the fifteenth day of February.

(2) Within 30 days after the issuance of an effective order requiring the payment of benefits, the district director shall compute the amount of benefits payable for periods prior to the effective date of the order, in addition to any interest payable for such periods (see § 725.608), and shall so notify the parties. Any computation made by the district director under this paragraph shall strictly observe the terms of the order. Benefits and interest payable for such periods shall be due on the thirtieth day following issuance of the district director's computation. A copy of