

- d. All cases where the only dispute is the extent of disability.
 - e. All cases involving liability disputes of alleged workers' compensation insurance carriers and alleged employers pursuant to Iowa Code section 85.21.
 - f. Equitable apportionment of compensation payments pursuant to Iowa Code section 85.43.
 - g. All cases where the workers' compensation commissioner determines that dispute resolution would be in the best interest of the parties.
- 4.40(2)** Voluntary proceedings. The parties may voluntarily agree to submit to dispute resolution.
- 4.40(3)** The parties must comply with the good faith requirements of rule 876—10.1(17A,85,86) before requesting a voluntary proceeding pursuant to subrule 4.40(2).
- 4.40(4)** See 876—subrule 10.1(5) regarding informal dispute resolution.
- 4.40(5)** Rescinded IAB 9/14/94, effective 10/19/94.
- This rule is intended to implement 1990 Iowa Acts, chapter 1261, section 3.

876—4.41(17A,86) Evidence. Rescinded IAB 1/29/97, effective 3/5/97.

876—4.42(17A,86) Binding arbitration. Rescinded IAB 1/29/97, effective 3/5/97.

876—4.43(17A,85,86) Summary trial. Rescinded IAB 9/14/94, effective 10/19/94.

876—4.44(17A,85,85A,85B,86,87) Expedited proceeding—criteria. Rescinded IAB 1/29/97, effective 3/5/97.

876—4.45(17A,86) Length of briefs. Except by permission of the presiding deputy workers' compensation commissioner or by permission of the workers' compensation commissioner when an appeal pursuant to rule 4.27(17A,86) has been filed, principal briefs shall not exceed 50 Arabic-numbered pages. Reply briefs shall not exceed 25 Arabic-numbered pages. Permission may be granted ex parte. In the event of a cross-appeal, appellant's (cross-appellee's) responsive reply brief shall be considered a principal brief. The type used shall not be smaller than pica type and each line shall contain an average of no more than 60 characters. If a brief is submitted in excess of the length allowed in this rule, the portion exceeding the allowable length will not be considered. This rule does not prohibit a presiding deputy workers' compensation commissioner or the workers' compensation commissioner from limiting the length of a brief. An exception to this rule is the length of briefs (three pages) in an application for alternate care. See subrule 4.48(11).

This rule is intended to implement Iowa Code sections 17A.12, 17A.15, 86.8, 86.18 and 86.24.

876—4.46(17A,85,86) Contested case proceedings—health service disputes.

4.46(1) See rule 876—10.3(17A,85,86) for informal resolution procedures and definitions. The following definition also applies to this rule:

"Petitioning party" means the person who requests or initiates a contested case proceeding.

4.46(2) If utilization of the procedures given in rule 876—10.3(17A,85,86) does not resolve the dispute and the parties have complied with the good faith requirements of rule 876—10.1(17A,85,86), a contested case may be initiated. The procedures given in rule 876—10.3 (17A,85,86) must be used prior to initiation of a contested case. The provider or the responsible party that is unwilling to accept the determination of the person making a determination after reviewing the dispute as provided in rule 876—10.3(17A,85,86) shall initiate the contested case proceeding. The proceeding shall be initiated as provided in this chapter and Iowa Code chapter 17A and shall follow the provisions of this rule. The proceeding must be initiated within 30 days of the date of the determination made pursuant to rule 876—10.3(17A,85,86). If a contested case proceeding is not initiated or is not initiated within the time provided in this rule, the allowed amount of the charge by the provider shall be the amount determined pursuant to rule 876—10.3(17A,85,86).

4.46(3) The evidence submitted in the contested case proceeding shall be limited to the evidence submitted pursuant to rule 876—10.3(17A,85,86) and a copy of the determination made pursuant to rule 876—10.3(17A,85,86). This evidence shall be filed by the party requesting the contested case proceeding at the time the contested case proceeding is initiated. However, the workers' compensation commissioner may request that additional evidence be submitted or may grant submission of additional evidence if the commissioner is satisfied that there exists additional material evidence, newly discovered, which could not with reasonable diligence be discovered and produced pursuant to rule 876—10.3(17A,85,86). The issues of the contested case proceeding shall be limited to the dispute considered in rule 876—10.3(17A,85,86).

4.46(4) The petitioning party has the burden of proof.

4.46(5) If the petitioning party wishes to file a brief, it must be filed with the request for contested case proceeding.

4.46(6) The opposing party must file a response within 30 days of the date of service of the request for contested case proceeding.

4.46(7) If the opposing party wishes to file a brief, it must be filed with the response.

4.46(8) Sixty days after the request for contested case is filed with the workers' compensation commissioner, the workers' compensation commissioner will review the matter. The notice of the review to the parties shall be the provisions of this rule and no other notice will be given.

4.46(9) The workers' compensation commissioner shall review the matter and make a decision as soon as practicable after the review. The decision shall be as provided in this chapter and Iowa Code chapter 17A.

This rule is intended to implement Iowa Code sections 17A.10, 17A.12, 17A.14, 85.27, 86.8 and 86.39.

876—4.47(17A,85,86) Second injury fund benefits contested cases. Rescinded IAB 6/22/94, effective 7/1/94.

876—4.48(17A,85,86) Application for alternate care.

4.48(1) *Effective date.* This rule is effective for applications for alternate care received on or after July 1, 1992.

4.48(2) *Purpose.* The purpose of this rule is to establish the procedures for issuing decisions on applications for alternate care within the time provided in Iowa Code section 85.27.

4.48(3) *Definitions.* The following definitions apply to this rule:

"*Application for alternate care,*" hereinafter referred to as "*application,*" shall mean a contested case proceeding filed with the workers' compensation commissioner which requests alternate care pursuant to Iowa Code section 85.27.

"*Employer*" means the person who is liable for payment of medical services provided pursuant to the Iowa workers' compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers' compensation insurance.

"*Proper application*" means an application for alternate care that complies with the requirements of this rule.

4.48(4) *Dissatisfaction—basis.* Prior to filing the application the employee must communicate the basis of dissatisfaction of the care to the employer.

4.48(5) *Application.* The application shall: be filed on the form provided by the workers' compensation commissioner; concern only the issue of alternate care; state the reasons for the employee's dissatisfaction with the care chosen by the employer; be served on the employer; contain proof of service on the employer; and specify whether a telephone or in-person hearing is requested.

4.48(6) *Fee.* No filing fee is due. See 4.8(2)"a."

4.48(7) Employer liability. Application cannot be filed under this rule if the liability of the employer is an issue. If an application is filed where the liability of the employer is an issue, the application will be dismissed without prejudice. (Petitions for alternate care where liability of the employer is an issue should be filed pursuant to rule 4.1(85,85A,85B,86,87,17A).)

4.48(8) Notice of hearing. The workers' compensation commissioner will notify the parties by ordinary mail or by facsimile transmission (fax) of the time, place and nature of hearing. No notice will be made until a proper application is received by the workers' compensation commissioner. The notice will specify whether the hearing will be by telephone or in person.

4.48(9) Discovery and evidence. All discovery must be completed prior to the contested case hearing. See subrule 4.48(10) on motions on discovery matters. Any written evidence to be used by the employer or the employee must be exchanged prior to the hearing. All written evidence must be filed with the agency before the date of the hearing. Written evidence shall be limited to ten pages per party.

4.48(10) Motions. All motions except as provided in this subrule will be considered at the hearing. A timely motion to change the type of hearing (telephone or in-person) may be considered prior to the hearing. The workers' compensation commissioner will make no rulings on discovery matters or motions.

4.48(11) Briefs. Hearing briefs, if any, must be filed with the agency before the date of the hearing and shall be limited to three pages.

4.48(12) Hearing. The hearing will be held either by telephone or in person in Des Moines, Iowa. The employer shall have the right to request an in-person hearing if the employee has requested a telephone hearing in the application. The employer shall on the record respond to the allegations contained in the application. The hearing will be electronically recorded. If there is an appeal of a proposed decision or judicial review of final agency action, the appealing party is responsible for filing a transcript of the hearing.

If the hearing was electronically recorded, copies of the tape will be provided to the parties. A transcript shall be provided by the appealing party pursuant to Iowa Code subsection 86.24(4) and a copy thereof shall be served on the opposing party at the time the transcript is filed with the workers' compensation commissioner unless the parties submit an agreed transcript. If a party disputes the accuracy of any transcript prepared by the opposing party, that party shall submit its contentions to the workers' compensation commissioner for resolution. Any transcription charges incurred by the workers' compensation commissioner in resolving the dispute shall be initially paid pursuant to Iowa Code subsection 86.19(1) by the party who disputes the accuracy of the transcript prepared by the appellant.

4.48(13) Represented party. A party may be represented as provided in Iowa Code section 631.14. The presiding deputy may permit a party who is a natural person to be assisted during a hearing by any person who does so without cost to that party if the assistance promotes full and fair disclosure of the facts or otherwise enhances the conduct of the hearing. The employer and its insurance carrier shall be treated as one party unless their interests appear to be in conflict and a representative of either the employer or its insurance carrier shall be deemed to be a representative of both unless notice to the contrary is given.

4.48(14) Decision. A decision will be issued within 10 working days of receipt of a proper application when a telephone hearing is held or within 14 working days of receipt of a proper application when an in-person hearing is held.

This rule is intended to implement Iowa Code sections 17A.12, 85.27, 86.8 and 86.17.

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