

## **SCHEDULE OF ATTORNEY'S FEES FOR CLAIMS FILED PRIOR TO 3 APRIL 2023**

### **COMAR 14.09.03 Schedule of Attorney's Fees.**

A. The Commission shall approve attorney's fees in accordance with the schedule of fees established by the Commission and set forth in § B of this regulation.

B. Schedule of Fees.

(1) Definitions.

(a) In this section, the following terms have the meanings indicated.

(b) Terms Defined.

(i) "Final award" means the award of compensation determined by the Commission after exhaustion of all applicable appeals, regardless of whether the award is increased or decreased as a result of any appeal.

(ii) "Formal set-aside allocation" means a document reflecting a comprehensive analysis and projection of future injury-related medical needs and associated costs.

(iii) "State average weekly wage" means the State average weekly wage in effect on the date of the accident or date of disablement.

(2) Fee in Excess of Limits — Exceptional Circumstances. The Commission may approve an attorney's fee in excess of the limits set forth in this section only if exceptional circumstances are shown under Regulation .02B of this chapter.

(3) Permanent Partial Disability.

(a) General. Except as otherwise provided in § B(3)(b) of this regulation, in a case in which a final award of compensation is made for permanent partial disability, the Commission may approve an attorney's fee in a total amount not exceeding 20 times the State average weekly wage and computed as follows:

(i) Up to 20 percent of the amount due for the first 75 weeks of an award of compensation awarded;

(ii) Up to 15 percent of the amount due for the next 120 weeks of an award of compensation; and

(iii) Up to 10 percent of the amount due for an award of compensation in excess of 195 weeks.

(b) Disability Due to Amputation or Loss of Vision. In a case in which a final award of compensation is made for permanent partial disability due to the amputation of an arm, leg, hand, or foot, or total loss of vision in one eye, and the sole issue before the Commission is the nature and extent of disability, the Commission may approve an attorney's fee in an amount up to 5 percent of the compensation awarded, but not exceeding 6 times the State average weekly wage.

(4) Permanent Total Disability.

(a) General. Except as otherwise provided in § B(4)(b) of this regulation, in a case in which a final award of compensation is made for permanent total disability, the Commission may approve an attorney's fee in an amount not exceeding 20 times the State average weekly wage.

(b) Special Cases. The Commission may approve an attorney's fee in an amount not exceeding 13 times the State average weekly wage in a case in which compensability is not an issue and an award of compensation is made for permanent total disability established either pursuant to:

(i) Labor and Employment Article, § 9-636(b), Annotated Code of Maryland, for the loss of two or more scheduled members; or

(ii) The stipulation on the extent of disability.

(5) Temporary Total and Temporary Partial Disability. The Commission may not approve an attorney's fee in a case in which final award of compensation is made for temporary total or temporary partial disability or temporary total disability paid while a claimant is receiving vocational rehabilitation services unless the claimant's right to the compensation is contested and the issue is resolved by evidentiary hearing or by stipulation. In such a contested case, the fee may be in an amount not exceeding 10 percent of the compensation that has accrued as of the date of the award.

(6) Dependency Claims.

(a) In a case involving a claim of dependency where compensability is not contested, but the extent of dependency, partial or total, or the identity of a dependent, or both is contested, the Commission may approve a total attorney's fee for attorneys representing all dependents:

(i) In an amount not exceeding five times the State average weekly wage in a case of partial dependency under Labor and Employment Article, § 9-682, Annotated Code of Maryland; or

(ii) In an amount not exceeding 12 times the State average weekly wage in a case of total dependency under Labor and Employment Article, § 9-681 or 9-683.3, Annotated Code of Maryland.

(b) In a case involving a claim of dependency where neither compensability nor dependency is contested and a record is being made solely to determine to whom payments of compensation shall be made, the Commission may approve an attorney's fee in an amount not exceeding two times the State average weekly wage.

(c) In a case involving a claim of dependency where compensability and dependency are contested, the Commission may approve an attorney's fee:

(i) In an amount calculated under § B(3)(a) of this regulation in a case involving a claim of partial dependency under Labor and Employment Article, § 9-682 or 9-683.3, Annotated Code of Maryland; or

(ii) In an amount calculated under § B(4)(a) of this regulation in a case of total dependency under Labor and Employment Article, § 9-681, Annotated Code of Maryland.

(7) Settlement Agreements.

(a) In a case in which an agreement of final compromise and settlement is approved, and upon the filing of an application or petition for an attorney's fee in accordance with Regulation .02 of this chapter, the Commission may approve an attorney's fee in accordance with this regulation.

(b) For a settlement amount that is less than or equal to 14 times the State average weekly wage, the attorney's fee shall be 20 percent of the amount of the settlement.

(c) For a settlement amount that is greater than 14 times the State average weekly wage but less than or equal to 35 times the State average weekly wage, the attorney's fee shall be:

(i) 20 percent of 14 times the State average weekly wage; plus

(ii) 15 percent of the difference between the settlement amount, and 14 times the State average weekly wage.

(d) For a settlement amount that is greater than 35 times the State average weekly wage, the attorney's fee shall be:

(i) 20 percent of 14 times the State average weekly wage; plus

(ii) 15 percent of 21 times the State average weekly wage; plus

(iii) 10 percent of the difference between the settlement amount and 35 times the State average weekly wage.

(e) The total amount of an attorney's fee in a case in which an agreement of final compromise and settlement is approved may not exceed 25 times the State average weekly wage.

(f) In calculating the attorney's fee, an attorney may not include as part of the settlement any amounts paid or payable in the case for medical services and prescription drugs including but not limited to:

(i) Any monies allocated to future medical expenses through a formal set-aside allocation;

(ii) Any monies apportioned to future medical benefits; and (iii) Any monies already paid or owing for medical services and prescription drugs.

(g) The Commission may not regulate the attorney's fees charged for the administration of the formal set-aside allocation once a case is resolved by an agreement of final compromise and settlement.

(8) Increase in Last Award of Compensation for Permanent Partial Disability.

(a) Except as otherwise provided in § B(8)(b)—(d) of this regulation, if the claimant is entitled to additional compensation as a result of an increase in a permanent partial disability award, the Commission may approve an additional attorney's fee in an amount not exceeding the difference between the fee approved for all prior awards and the fee computed under § B(3) or (4)(a) of this regulation on the increased award.

(b) If the claimant is entitled to additional compensation as a result of a final compromise and settlement, and was previously awarded permanent partial disability, the Commission may approve an attorney's fee calculated using the methodology set forth in § B(7) of this regulation.

(c) If the claimant is entitled to additional compensation as a result of an increase in a permanent partial disability award or a final compromise and settlement, and the attorney previously was awarded the maximum fee authorized under § B(3) of this regulation, the Commission may approve an additional attorney's fee in an amount up to 5 percent of the difference between the prior awards of compensation and the increased award of compensation, but not to exceed five times the State average weekly wage.

(d) If the claimant is entitled to additional compensation as a result of an increase in a permanent partial disability award or a final compromise and settlement, and the attorney previously was not awarded the maximum fee authorized under § B(3) of this regulation but an award of an additional attorney's fee under this regulation would result in an award of the maximum fee authorized under § B(3) of this regulation, the Commission may approve an additional attorney's fee in an amount up to the difference between the previously awarded fee and the maximum fee authorized under § B(3) of this regulation, or five times the State average weekly wage, whichever is greater.

#### (9) Additional Fees for Appeals of Compensation Awards.

(a) When a compensation award of the Commission is appealed to a circuit court and the case is tried on appeal, the Commission may approve an additional attorney's fee in an amount up to 5 percent of the first final indemnity award issued following the circuit court action, but not exceeding six times the State average weekly wage.

(b) When a decision of a circuit court on an appeal from a compensation award of the Commission is appealed to a higher appellate court and the appeal is briefed and decided on its merits, the Commission may approve an additional attorney's fee for each appeal in an amount up to 5 percent of the first final indemnity award issued following the appellate action, but not exceeding six times the State average weekly wage.

(c) When an appeal from a compensation award of the Commission to a circuit court is not tried, or an appeal to a higher appellate court is not briefed and decided on its merits, the Commission may approve an additional attorney's fee in an amount up to 2.5 percent of the first final indemnity award issued following the appellate action or circuit court action, but not exceeding three times the State average weekly wage.

(d) When a decision of the Commission on the issue of compensability of a claim is appealed to a circuit court, if the claim is determined on appeal to be compensable, the Commission, upon remand, may approve an additional attorney's fee in an amount up to 5 percent of the first final indemnity award issued following the remand, but not exceeding six times the State average weekly wage.

(e) An attorney may be awarded an appeal fee under only one subparagraph of this subsection for a circuit court action or appellate court action.

(f) Once an appeal fee has been awarded for a circuit court action or appellate action, the Commission may not award an additional appeal fee based on the same circuit court action or appellate action.

#### C. Attorney's Fee Allowed — Exceptional Circumstances.

(1) In exceptional circumstances, as shown under Regulation .02B of this chapter, the Commission may approve an attorney's fee in a case in which it is determined that the claimant is not entitled to any compensation or benefits. Nothing in this regulation prohibits the Commission from awarding an attorney's fee under Regulation .02C of this chapter.

(2) In exceptional circumstances, as shown under Regulation .02B of this chapter, the Commission may approve an attorney's fee in a case involving issues such as medical care and treatment, or vocational rehabilitation, in which the claimant does not receive any monetary award. Nothing in this regulation prohibits the Commission from awarding an attorney's fee under Regulation .02C of this chapter.