

STATE OF MINNESOTA
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

In the Matter of the proposed
permanent rules relating to
compensation for the value of
household labor lost due to injury .

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The Hazardous Substance Injury Compensation Board (Board) was created by the 1985 Legislature (Laws 1985, 1st special session, chapter 8) as part of revisions to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B. These revisions were codified as Minnesota Statutes Sections 115B.25-115B.37. The Board was established as a new state agency to administer a \$2 million Hazardous Substance Injury Compensation Fund (Fund). The Board's primary responsibility is to investigate claims of certain types of property damage or personal injury caused by the release of hazardous substances into the environment, and to compensate eligible persons from the Fund for certain types of losses.

One of the losses that is compensable from the fund is the value of household labor lost due to the claimant's injury or disease.

To seek opinion on what the value of this loss might be, the Board published a Notice of Solicitation of Outside Information or Opinion Regarding Proposed Rule Governing Compensation for the Value of Household Labor in the State Register on January 26, 1987 (11 S.R. 1369). The Board received one comment letter in response to its notice.

The proposed rule establishes the procedure the Board will use in determining compensation for the value of household labor lost as a result of an eligible personal injury. The rule uses a schedule of hours derived from time studies on household labor. The rule considers variation in the hours due to the living arrangement in the household, the kinds of houseworkers in the household, the employment status of the primary houseworker, and the number and ages of children in the household.

Additionally, the rule considers the impact of the injury on the claimant's ability to perform household labor by establishing a disability analysis. It ties hourly wage value for household labor to the market based pay scale in Minnesota for janitors.

The rule also sets forth how the compensation shall be adjusted for payment in lump sums or in installments.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt a rule relating to household labor is set forth in Minnesota Statutes Section 115B.34, subdivision 1(e), which provides in relevant part:

Losses compensable by the fund for personal injury are limited to:

...(e) the value of household labor lost due to the claimant's injury or disease, which must be determined in accordance with a schedule established by the board by rule, not to exceed \$2,000 per month or \$24,000 per year.

III. STATEMENT OF NEED

The need to adopt the proposed Minnesota Rules Parts 7190.0100 to 7190.0108 arises from the public's and claimant's right to know what information the Board will consider and how it will consider it in evaluating any award of compensation for the loss of household labor. The claimant needs to know how the Board determines compensation in order to make an informed decision about filing a claim with the Board and about accepting or rejecting an offer of compensation from the Board. The Board and staff need to clarify by rule the process of determining compensation so that fairness and consistency is maintained between claimant awards, and the award of payment can proceed quickly and efficiently, regardless of changes in the Board and staff.

IV. STATEMENT OF REASONABLENESS

The proposed rule is reasonable because it: 1) uses a recognized economic approach known as aggregate market replacement on an average basis, 2) eliminates difficulties with bias and lack of documentation by claimants, 3) promotes consistency and efficiency in handling claims, 4) recognizes the variety of houseworkers and households in Minnesota.

Part 7190.0100 Definitions

This proposed rule sets forth twelve definitions of words or phrases used in the rule. It is reasonable to define the terms in subparts 2 to 5, and subparts 8 to 12 to shorten the rule and clarify possible ambiguity.

The definition of household in subpart 6 is reasonable because it reflects demographic findings that 28% of households in Minnesota are non-family households, either one person living alone or two or more unrelated persons sharing living quarters.

Since the rule focuses on household labor, it is reasonable to define this term to establish the services for which compensation is eligible. The definition of household labor in subpart 7 is reasonable because it is specific enough to make household labor meaningful and measurable, yet general enough to apply across the spectrum of living arrangements.

Part 7190.0101 Household Labor Losses Eligible for Compensation

This proposed rule clarifies that the claimant is to receive compensation for losses that occurred in the past, are occurring presently and will occur in the future. This is reasonable because it is consistent with civil action remedies in court. It is reasonable to establish in the rule, the time frame for compensable losses. Subpart 2 initiates the time frame with the date of diagnosis of the injury by a physician. This is reasonable because this date is likely to be documented in records and therefore can be determined with reasonable

certainty, and medical verification of the disease is a requirement for an eligible injury. Subpart 3 establishes that the timeframe is defined by the life expectancy of the claimant as determined by the life tables in Minnesota Statutes Annotated. This is reasonable because it is consistent with damages law which assumes the period of loss is life expectancy. To define life expectancy in the tables in Minnesota Statutes Annotated is reasonable because this document is easily accessible in libraries in the state and this table, unlike many similar tables, considers the effect of gender on life expectancy.

7190.0102 Factors Affecting the Amount of Hours Spent on Household Labor

This proposed rule requires the Board to consider four factors about the claimant which can impact the number of hours spent on household labor. These factors are:

1) the claimant's living arrangement, i.e., the type of household in which the claimant resides. This is reasonable because the number and types of household members can affect the total amount of household labor necessary and the allocation of that labor.

2) the role of the claimant in that household, i.e., if the claimant is the primary person responsible for the household labor (primary houseworker), if the claimant assists with the household labor (secondary houseworker), or if the claimant is a teenage houseworker.

- 3) the employment status of the primary houseworker.
- 4) the number and ages of children in a household.

It is reasonable to include factors 2, 3, and 4 because time-use studies of 1400 families by William H. Gauger and Kathryn E. Walker of the Department of Consumer Economics and Housing, New York State College of Human Ecology, Cornell University, Ithaca, New York have shown that these three characteristics of the household make the most difference in the amount of time that all household members contribute to the household's operation. (The Dollar Value of Household Work, Information Bulletin 60 (revised 1980), Cornell Cooperative Extension Publication.)

Part 7190.0103 Calculation of the Amount of Hours Spent on Household Labor

This proposed rule describes how the Board will determine the number of hours of a claimant's contribution to household labor. The number of hours is determined from one of two schedules, distinguished by employment status of the primary houseworker.

The schedules are modified versions of the tables published by Gauger and Walker in The Dollar Value of Household Work. The number of base hours per month exhibited in each schedule is based on the actual average amount of time that was contributed to household labor in 1400 households studied by Gauger and Walker in upstate New York.

It is reasonable to use a schedule to determine the number of hours eligible for compensation because using the average, documented hours in the schedule eliminates bias by the claimant in estimating his/her contribution. Most frequently, no documentation will exist for the amount of time actually spent or likely to have been spent. Additionally, the claimant's injury may prevent an accurate estimate from being made of his/her contribution. Likewise the use of the schedule assures that claimants who are not able to articulate well or document their contribution or who lack the means to pay for replacement services for their labor are not undercompensated for the value of their loss.

The use of a schedule is also reasonable to increase administrative efficiency, assure consistency in awards, and avoid bias by the Board introduced by changes in staff or members.

It is reasonable to use the data from Gauger and Walker because, at present, it is the best available, most comprehensive study on the topic. Ideally, a Minnesota study should serve as the reference point; however, one of sufficient scope does not exist. The Gauger and Walker study analyzed time-use data from a 1967-68 survey of households. Originally published in 1973, the study was updated when data were spot-checked in 1977 to see what, if any, changes in time-use had occurred. The difference in total time spent in household labor by females was not statistically significant. A statistically significant increase

in time used by husbands in the area of non-physical care of children under school age detected in the 1977 data is reflected in the proposed rule schedules. The proposed rule thus reflects the best available, published data to date.

The proposed rule is also consistent with the comments provided by the Commission on the Economic Status of Women. The commission notes in its comments that "The number of hours vary by the age and number of children but 50 hours/week is about average for fulltime homemakers... If they are employed fulltime in the labor force, they spend 30-35 hours/week doing housework."

Assuming that the primary houseworker in the schedule is a woman (an assumption that is correct 98% of the time, according to the latest Lou Harris Study), schedule A for unemployed primary houseworker would estimate a range in hours of 38-90 hours per week and schedule B for employed primary houseworkers estimates 30-60 hours per week. Thus the schedule and the commission's estimates appear to be reasonably consistent.

A deficiency in the Gauger and Walker study is its focus on married couple families. Although the 1980 census still ranked married couple households as the most common living arrangement in Minnesota (62.1%), non-family households showed the greatest growth rate. Family households headed by one parent without a spouse account for 9.7% of all Minnesota households and one person households comprise 23.2% of all households. Persons

living with others constitute 5.0% of Minnesota households (Population Notes, January, 1983, Minnesota Department of Energy Planning and Development).

Given the reality of the census statistics on households in Minnesota, it is reasonable for the proposed rule to reflect Minnesota living arrangements. Subpart 4 describes how the Board will use the schedules in the four types of living arrangements prevalent in Minnesota.

For married couples or couples whose living arrangement provides the functional equivalent of marriage, the schedule value remains unchanged. This is reasonable because the Gauger and Walker study considered married couples.

For a claimant who is a single parent, the addition of the schedule hours for primary and secondary houseworker is reasonable because a single parent must perform all household labor tasks without assistance from another adult. There is no sharing of labor although the total number of hours that must be devoted to household labor remains the same.

For a claimant who lives alone it is reasonable to use the number of hours for a primary houseworker because a minimum number of hours is required for household labor regardless of the size of the household; however, no additional burden is posed by other members.

For a claimant that lives with other adults, it is reasonable to use the number of hours in schedule B for a secondary houseworker because where there is no familial, or emotional relationship, household labor is not likely to be a major responsibility for the claimant and more likely to be evenly distributed among household members.

Since not all claimants will be adults, it is reasonable to consider those children whose labor may be of sufficient duration and quality. These are teenage houseworkers. It is reasonable to value their labor at the minimum wage since teenagers cannot usually command as high wages as adults. It is also reasonable to provide how the Board will consider the hours once the teenage houseworker turns 18. It is reasonable to consider these hours as those of a secondary houseworker because adult status implies increased skill and competence. The inability to project the teenage houseworker's future living arrangement makes it unreasonable to assume other household roles.

It is reasonable not to consider contributions to household labor made by children under 12 since the quantity and quality of their work is erratic and difficult to evaluate. (W. Gauger, "Household Work: Can We Add It to the GNP?", Journal of Home Economics, vol 12, page 13, October, 1973.)

Subpart 5 of the proposed rule allows exceptions to using the schedules. It is reasonable to allow exceptions to address limitations in the schedules and to provide some flexibility.

The exceptions cover two basic situations: 1) where the Board must be able to go outside the schedules in order to compensate at all, and 2) where the Board must be able to go outside the schedules in order to adequately compensate.

The first exception, (A), illustrates the first category. When the claimant's situation is not covered at all, the Board may go outside the schedules. Examples include when schedules lack values for the claimant's household characteristics (e.g. married couple, primary houseworker employed, 4 children, youngest under 5) or when the living arrangement isn't covered (e.g. half-way house). It is reasonable to include this exception so that every claimant with compensable losses can have them assessed and receive compensation.

The second category of exceptions, (B) and (C), involves situations where the schedules and living arrangement rules cover the claimant's household characteristics but due to special circumstances the allocation of total hours is inadequate. When the claimant's household allocates the hours differently than the appropriate schedule, the claimant has the burden to prove that the household's division significantly deviates from the schedule's division. The Board, in its discretion, may adjust the allocation. An example of such a situation is a true equalitarian household in which the claimant can document all household labor is equally shared. It is reasonable to allow such an exception because the household is not average.

The exception in (C) allows special consideration of a claimant's household operating under special circumstances which significantly increase the household's total hours. If the claimant demonstrates that the special circumstances significantly increase the the household's total hours, the Board may, in its discretion, adjust the total hours. It is reasonable to allow this exception because the special circumstances invalidate the schedules' assumption of an average household.

Subpart 6 clarifies how the schedules will be used to calculate compensation for a year or partial year. It is reasonable to state this specifically since most claims involve both whole year and partial year awards.

Part 7190.0104 Calculation of Hourly Wage for Household Labor

Subpart 1 of this proposed rule requires the Board to use the monthly median salary of janitors in the state in determining an hourly wage for household labor. This is reasonable because under the aggregate replacement cost theory, the total amount of time spent on household labor is calculated and the hours are valued at a single wage rather than at different wage rates for different tasks. In theory, the wage is that of domestic worker because it reflects the "most likely mode of resorting to the market for the provision of the services in question." (Oli Hawrylyshyn, "The Value of Household Services: A Survey of Empirical Estimates," 22 Rev. of Income and Wealth, 101, 113 (1976).

In response to solicitation of outside opinion, the Legislative Commission on the Economic Status of Women provided comment that in 1986, housekeepers earned between \$7.50 - \$10.00/hour in the Minneapolis-St. Paul area. The figures were based on an informal sampling of private providers. Since this was an informal sampling, limited to the Twin Cities, the time period covered, the geographical range and the reproducibility of the data are inadequate for use by the Board in determining compensation. The wage range, however, was very helpful in choosing a substitute for the theoretical "domestic worker."

The Research and Statistics Office of the Department of Jobs and Training has conducted since the 1960's annual surveys of salaries paid to various classes of workers in the state. The results of the survey are published each year as the "Minnesota Salary Survey by Area." The salary survey describes a janitor as a person who "performs a variety of tasks in cleaning." Additionally, a janitor "may also provide minor maintenance services." The 1986 survey lists \$1280 as the median monthly salary for a janitor or an hourly wage of \$7.38. This falls at the lower end of the wage spectrum provided by the Legislative Commission on the Economic Status of Women.

Substituting a janitor's wage is reasonable because:

- 1) the salary survey has compiled many years of data on this job classification. The data reflect the actual rate paid for this labor in Minnesota because it is compiled by surveying

employers statewide. Thus the comprehensiveness of the survey, its statewide scope, and the long historical record make the classification reliable, easy to use, and reflective of changes in the market place.

2) The wage rate is easily available from the Department of Jobs and Training or through its annual publication which is given widespread distribution to libraries and employers in the state.

3) The salary range for janitors reflects the middle range of salaries paid to workers in other jobs with duties that encompass household labor. For example, compare a janitor's monthly median salary of \$1280 to that of a custodial worker who does routine light cleaning work - \$867, a bookkeeper who keeps records of financial transactions of an establishment - \$1276, a buyer/purchasing agent who locates sources and purchases supplies and equipment in volume - \$1960, a licensed practical nurse who performs practical nursing work and administers simple medication and treatment - \$1213, and a grounds person who does routine manual work in the maintenance of lawns and grounds - \$1732. Although the salary survey does not include child care workers, using the data from the Commission on the Economic Status of Women would estimate a monthly salary of \$832.

It thus appears that although the class of janitor does not encompass all the skills and knowledge required in household labor, the average median monthly salary paid to janitors

approximates a middle value in the range of wages paid for these services. Therefore, it is reasonable to use the reported monthly median salary for janitors in the state to calculate a wage for household labor.

Subpart 2 reasonably clarifies that the median monthly salary reported in the salary survey is divided by the number of hours in a work month.

Subpart 3 of the proposed rule considers the possibility that a claimant may be a teenager, or have been a teenager, for some of the years eligible for compensation. For each past year in which the claimant was a teenager, the household labor hours are valued at the minimum wage for that year. For the current year and each future year until the claimant reaches 18, the hours are valued at the minimum wage for the current year. It is reasonable to value teenage hours at a lesser wage because the quality and quantity are not expected to be the same as adults.

Part 7190.0105 Disability

This proposed rule is reasonable because it recognizes that the inability to perform household labor varies with the nature and progress of the disease or injury. Since the impairment may range from total (unable to perform any household tasks) to slight (unable to perform some tasks or decreased overall efficiency) the rule allows the Board to rate disability over a range of five values that may be realistically evaluated (100%, 75%, 50% 25% or 0%). It is reasonable to establish this range of

five values because it removes arbitrariness and individual bias in assigning small increments in percentage ratings. It is also reasonable to further limit arbitrariness and individual bias by explicitly listing the factors that must be considered in the assignment of a disability percentage. The three areas that must be considered provide reasonable guideposts for evaluating disability because they require both objective (quantity of services) and subjective (quality of service) evaluation.

The proposed rule treats past years differently from current and future years. It is reasonable to have each past year evaluated separately because actual records will exist on the claimant's injuries, physical condition, hospitalization in those years. Current and future years are assigned a disability percentage based on the degree of impairment in the current year. This is reasonable because projecting into the future is speculative and reevaluating yearly is administratively prohibitive.

Part 7190.0106 Calculation of Loss in Household Labor

This proposed rule sets out the formula to be applied o each year of loss. This is reasonable to clarify for claimants, the Board and the public how the separately determined factors are used to provide a value for the loss in each eligible year.

Part 7190.0107 Payment of Compensation

Subpart 1 of this proposed rule clarifies that the award of compensation determined by the rule is subject to the limitations in the statute. It is reasonable to clarify that the claimant's household labor losses are required to be adjusted to these limits so that the claimant and the public understand an award may be less than the amount indicated by the formula.

The Board has discretion in how it pays claimants (Minn. Stat. section 115B.36). Since choice of payment method directly affects the valuation of future losses, it is reasonable to set out in rule how the Board will determine payments of awards.

The rule sets out a formula to determine the value of a claimant's losses in current dollars. Losses incurred in past years are not discounted. This is reasonable because they were valued at wages of the past years. The losses for the current year are valued at current year wages and not discounted either. Future losses are discounted.

When Board chooses to make a lump sum award, the Board must discount future losses to avoid overcompensation. The goal of discounting is to "award a sum of money which can, as capital, produce [the appropriate payment] by using both the interest it draws and . . . the capital sum itself so that at the end of the loss period neither principle nor interest is left remaining." (D. Dobbs, Handbook on the Law of Remedies Section 8.7, 1973.)

It is thus reasonable to discount each future year of loss back to current dollars to avoid overcompensation. The proposed rule provides that the same discount rate used under the 1986 Minnesota Tort Reform Act be used by the Board. This is reasonable because it is consistent with tort damages treatment, and the rates are readily available and updated yearly.

When the Board chooses to make payment in installments, future losses are not discounted since the claimant is not earning the interest. Each year's loss must be calculated and, depending on when the money is paid out, adjusted. For each year into the future, the amount must be increased by a cost of living factor. This is reasonable because future hours are valued at the current year's wage. Not to adjust for cost of living increases would result in undercompensation when the money is finally paid out.

For consistency, availability, and currentness, it is reasonable again to cite the 1986 Minnesota Tort Reform act.

IV. CONCLUSION

Based on the foregoing, the proposed rules for compensation on the value of household labor lost due to injury are both needed and reasonable.

June 19, 1987
Date

Virginia L. Reiner
Virginia L. Reiner
Executive Director