

DEPARTMENT OF STATE POLICE

MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS

PUBLIC SAFETY OFFICERS BENEFIT PROGRAM

Filed with the Secretary of State on October 15, 2013

These rules become effective immediately upon filing with the Secretary of State unless adopted under section 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the Michigan Commission on Law Enforcement Standards by section 3 of 2004 PA 46 and by section 9 of 1965 PA 380, MCL 28.633 and 16.109)

R 28.14965 is rescinded from the Code as follows:

R 28.14965 Rescinded.

November 1, 2012

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R 28.14951, R 28.14952, R 28.14953, R 28.14954, R 28.14955, R 28.14956, R 28.14957, R 28.14958, R 28.14959, R 28.14960, R 28.14961, R 28.14962, R 28.14963, R 28.14964, R 28.14965, and R 28.14966 are added to the Michigan Administrative Code as follows:

R 28.14951 Definitions.

Rule 1. (1) As used in these rules:

- (a) "Act" means the public safety officers benefit act, 2004 PA 46, MCL 28.631 et seq.
- (b) "Catastrophic injury" means consequences of an injury that permanently prevent an individual from performing any gainful work.
- (c) "Child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer, who at the time of the public safety officer's death was any of the following:
 - (i) Eighteen years of age or under.
 - (ii) Over 18 years of age and a student.
 - (iii) Over 18 years of age and incapable of self-support because of physical or mental disability.
- (d) "Dependent" means a child of the deceased public safety officer or other individual who was substantially reliant for support upon the income of the deceased public safety officer.
- (e) "Gainful work" means work activity that is both substantial work activity and gainful work activity
- (f) "Gainful work activity" means work activity that is done for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized or pay is received.
- (g) "Incapable of self-support because of physical or mental disability" means the individual was receiving supplemental security income benefits from the United States social security administration at the time of the public safety officer's death.
- (h) "Occupational disease" means a disease which routinely constitutes a special hazard in,

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or is commonly regarded as, a concomitant of the officer's occupation.

(i) "Personal injury" or "injury" means any traumatic injury, as well as diseases which are caused by or result from such an injury, heart attack, or stroke, but not an occupational disease.

(j) "Student" means an individual under 23 years of age, who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at school or college or university accredited by a Michigan recognized or nationally recognized accrediting agency or body.

(k) "Substantial work activity" means work activity that involves doing significant physical or mental activities. Work may be substantial even if it is done on a part-time basis or if the public safety officer does less, gets paid less, or has less responsibility than when he or she was a member of the former employing public safety agency.

(l) "Substantially reliant" means the dependent was reliant on the income of the deceased officer for over 1/3 of his or her support.

(m) "Traumatic injury" means a wound or a condition of the body caused by external force, including injuries inflicted by bullets, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain.

(2) Terms defined in the act have the same meanings when used in these rules.

R 28.14952 Claim; forms; deadline.

Rule 2. (1) Claims for benefits under the act shall be submitted on the form or in the manner prescribed by the commission. A claim for a benefit resulting from the death of a public safety officer shall be filed within 1 year after the date of death. A death benefit may be denied for inactivity on the claim, if requested documentation is not provided to the commission by the claimant within a period of 1 year following the initial request. For good cause, the executive director may grant 1 3-month extension of this deadline.

(2) A claim by a permanently and totally disabled public safety officer or on behalf of a survivor of a deceased public safety officer shall be filed within 1 year after the date of death or prerequisite disability certification, unless the time for filing is extended by the executive director for good cause. The withdrawal of a claim, the cancellation of a request for withdrawal, or any notice provided for in these rules, shall be in writing and shall be signed by the claimant or the person legally designated to execute a claim.

(3) A prerequisite certification means either of the following:

(i) The employing agency's official, certified award to the claimant public safety officer of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury in the line of duty.

(ii) If the employing agency does not itself make such disability awards, then an official certified award to the claimant public safety officer by the cognizant judicial, political, or administrative agency or body of its maximum disability finding and compensation, including the officer's permanent and complete separation from the employing public safety agency as the direct result of an injury sustained in the line of duty.

(4) The acceptability of the declaration of an award in subrule (3) of this rule shall be the determination of the commission. The commission may require any of the following before making a final determination on a claim by a permanently and totally disabled public safety

officer:

- (i) Further investigation of the claim.
- (ii) Additional documentation.
- (iii) Additional opinions.

R 28.14953 Persons executing claims.

Rule 3 (1) The commission shall determine who is the proper party to execute a claim as follows:

(a) The claim shall be executed by the claimant or the claimant's legally designated representative if the claimant is mentally competent and physically able to execute the claim.

(b) If the claimant is mentally incompetent or physically unable to execute the claim and is either of the following:

(i) Has a legally appointed guardian, committee, or other representative, then the claim may be executed by such guardian, committee, or other representative.

(ii) Is in the care of an institution, then the claim may be executed by the manager or principal officer of such institution.

(2) For good cause, such as the age or prolonged absence of the claimant, the commission may accept a claim executed by a person other than 1 described in subrule (1) of this rule.

(3) Where the claim is executed by a person other than the claimant, the person shall, at the time of filing the claim or within a reasonable time thereafter, file evidence of the person's authority to execute the claim on behalf of the claimant in accordance with the following:

(a) If the person executing the claim is the legally-appointed guardian, committee, or other legally-designated representative of the claimant, the evidence shall be a certificate executed by the proper official of the court of appointment.

(b) If the person executing the claim is not a legally designated representative, then the evidence shall be a statement describing the person's relationship to the claimant or the extent to which the person has the care of the claimant or the person's position as an officer of the institution of which the claimant is an inmate or patient. The commission may, at any time, require additional evidence to establish the authority of the person to file or withdraw a claim.

R 28.14954 Reasonable doubt of coverage.

Rule 4 (1) The commission shall resolve any reasonable doubt arising from the circumstances of the officer's death or permanent and total disability in favor of payment of the death or disability benefit.

(2) At all times practicable, the commission shall promptly pay the claimant an interim benefit of \$3,000, upon a request demonstrating need.

R 28.14955 Evidence.

Rule 5 (1) A claimant for a benefit under the act shall submit evidence of eligibility or other material facts as specified in these rules. The commission may require at any time additional evidence to be submitted with regard to entitlement, the right to receive payment, the amount to be paid, or any other material issue.

(2) If a claimant for a benefit under the act and these rules has not submitted evidence or has submitted insufficient evidence of any material issue or fact, then the commission shall inform the claimant what evidence is necessary for a determination and shall request the

claimant to submit evidence within a specified reasonable amount of time. The claimant's failure to submit evidence on a material issue or fact as requested by the commission shall be a basis for determining that the claimant fails to satisfy the conditions required to award a benefit.

(3) If a copy of a record, document, or other evidence, or an excerpt of information, is acceptable as evidence in lieu of the original, then the copy or excerpt shall be certified as a true and exact copy or excerpt by the official custodian of the record, or other public official authorized to certify the copy.

R 28.14956 Findings of state, local, and federal agencies; determination.

Rule 6 (1) The commission shall give substantial weight to the evidence and findings of fact from state, local, and federal administrative and investigative agencies. The commission shall request additional assistance or conduct its own investigation when it believes that the existing evidence does not provide the commission with a rational basis for a decision on a material element of eligibility.

(2) If an investigation of a claim does not result in a conclusive eligibility determination, then the commission may wait for and rely upon the eligibility determination of the United States department of justice on the claimant's federal application under 42 U.S.C. § 3796 and 28 C.F.R. § 32.1 to §32.24

R 28.14957 Heart attack or stroke.

Rule 7 (1) If a public safety officer dies as the direct and proximate result of a heart attack or stroke, the officer shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty, if the following apply:

(a) The officer, while on duty, did either of the following:

(i) Engaged in a situation involving nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity.

(ii) Participated in a training exercise that involved nonroutine stressful or strenuous physical activity.

(b) The officer died as a result of a heart attack or stroke suffered in 1 of the following time frames related to an activity described in subrule (1)(a) of this rule:

(i) While engaging or participating in the activity.

(ii) While still on duty after engaging or participating in the activity.

(iii) Not more than 24 hours after engaging or participating in the activity.

(2) For purposes of this rule, nonroutine stressful or strenuous physical activity excludes actions of a clerical, administrative, or nonmanual nature.

(3) The presumption in subrule (1) of this rule shall be overcome by competent medical evidence to the contrary.

R 28.14958 Death or permanent and total disability; intent.

Rule 8. The commission shall consider at least all of the following factors in determining whether the officer intended to bring about the officer's own death or injury:

(a) Whether the death or permanent and total disability was caused by insanity, through an uncontrollable impulse or without conscious volition to produce death or injury.

(b) Whether the officer had a prior history of attempted suicide or attempts to cause physical incapacitation.

(c) Whether the officer's intent to bring about his or her death or injury was a substantial factor in the officer's death or permanent and total disability.

(d) The existence of an intervening force or action which would have independently caused the officer's death or permanent and total disability and which would not otherwise prohibit payment of a benefit under the act.

R 28.14959 Voluntary intoxication.

Rule 9 The commission shall apply the following evidentiary factors in cases in which voluntary intoxication is at issue in an officer's death or permanent and total disability.

(a) The primary factor in determining intoxication at the time the injury occurred, from which death or permanent and total disability resulted, is the blood alcohol level, including a postmortem blood alcohol level in the case of a death.

(b) A benefit shall be denied if a deceased or permanently and totally disabled public safety officer had a blood alcohol level of 0.04 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine while on duty, unless the commission receives convincing evidence that the provisions of subrule (c) of this rule apply.

(c) If the intoxicant was taken as a requirement of the duty assignment, benefits shall be denied if the deceased or permanently and totally disabled public safety officer had a blood alcohol level of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(d) If a public safety officer with a blood alcohol level dies as a result of heart attack or a stroke suffered after going off duty, as provided in Rule 28.14957, then the commission may award a benefit if the following apply:

(i) Clear and convincing evidence is presented that the intoxicant was consumed after going off duty.

(ii) Medical evidence indicates that the intoxicant did not contribute to the heart attack or stroke.

R 28.14960 Relationship of spouse; determination.

Rule 10. (1) Marriage shall be established by 1 or more of the following types of evidence in the following order of preference:

(a) A copy of the public record of marriage, certified or attested, or by an abstract of the public record, containing sufficient data to identify the parties, the date and place of the marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage.

(b) An official report from a public agency as to a marriage which occurred while the officer was employed with the agency.

(c) An affidavit of the clergyman or magistrate who officiated.

(d) An original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage.

(e) Affidavits or sworn statements of 2 or more eyewitnesses to the ceremony.

(f) In the case of the death of a Michigan public safety officer who had a "common law" marriage from a state where "common law" marriages are recognized, the spouse may submit

an affidavit or certified statement setting forth all of the facts and circumstances concerning the alleged marriage, the as the agreement between the parties at the beginning of their cohabitation, the period of cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence may be supplemented by affidavits or certified statements from 2 or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife, and whether they were generally accepted as the in the communities in which they lived.

(g) Any other evidence which would reasonably support a belief by the commission that a valid marriage actually existed.

(2) The commission shall not recognize a claimant as a “common law” spouse under R 28.14960(1)(f) unless the previous state of domicile recognized him or her as the spouse of the deceased or permanently and totally disabled officer.

(3) If applicable, certified copies of divorce decrees of previous marriages or death certificates of the former spouses of either party shall be submitted.

R 28.14961 Relationship of child; determination.

Rule 11. (1) In general, a claimant is the child of a public safety officer if the individual's birth certificate shows the officer as the individual's parent.

(2) If the birth certificate does not show the public safety officer as the claimant's parent, then the sufficiency of the evidence shall be determined in accordance with the facts of a particular case. Proof of the relationship may consist of the following:

(a) An acknowledgement in writing signed by the public safety officer.

(b) Evidence that the officer has been identified as the child's parent by a judicial decree ordering the officer to contribute to the child's support or for other purposes.

(c) Any other evidence which reasonably supports a finding of a parent-child relationship, such as any of the following:

(i) A certified copy of the public record of birth or a religious record showing that the officer was the informant and was named as the parent of the child.

(ii) Affidavits or sworn statements of persons who know that the officer accepted the child as his or her own.

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the officer's knowledge the officer was named as the parent of the child.

(3) Except as may be provided in subrule (2) of this rule, evidence of the relationship shall be shown by a certified copy of the decree of adoption and other evidence as may be necessary. In jurisdictions where a petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate shall be sufficient to establish the fact of adoption.

(4) The relationship of a stepchild to the deceased officer shall be demonstrated by all of the following:

(a) Evidence of the existence of a parent-child relationship between the child and the spouse, which may be evidenced by any of the following:

(i) Evidence of birth to the spouse of the officer as required by subrules (1) and (2) of this rule.

- (ii) If adopted by the spouse, evidence of adoption as required by subrule (3) of this rule.
- (iii) Other evidence, such as that specified in subrule (2) of this rule, which reasonably supports the existence of a parent-child relationship between the child and the spouse.
- (b) Evidence that the stepchild was any of the following:
 - (i) Living with the officer at the time of the officer's death.
 - (ii) Dependent for support on the officer at the time of the officer's death, as set forth in R 28.14962.
 - (iii) In a parent-child relationship, as specified in subrule (2) of this rule, with the officer at the time of the officer's death. and
- (c) Evidence of the marriage of the officer and the spouse, as required by R 28.14960.

R 28.14962 Determination of dependency.

Rule 12. (1) To be eligible for a death benefit under the act, a stepchild not living with the deceased officer at the time of the officer's death shall demonstrate that he or she was substantially reliant for support upon the income of the officer.

(2) The claimant stepchild shall demonstrate that he or she was dependent upon the decedent at either the time of the officer's death or at the time of the personal injury that was the substantial factor in the officer's death.

(3) The claimant stepchild shall demonstrate dependency by submitting a signed statement of dependency within a year of the officer's death. This statement shall include all of the following information:

- (a) A list of all sources of income or support for the 12 months preceding the officer's injury or death;
- (b) The amount of income or value of support derived from each source listed.
- (c) The nature of support provided by each source.
- (4) Generally, the commission shall consider a stepchild to be "dependent" if he or she was reliant on the income of the deceased officer for over 1/3 of his or her support.

R 28.14963 Representation.

Rule 13. A claimant may be represented in any proceeding before the commission by an attorney or other person authorized to act on behalf of the claimant pursuant to R 28.14953. A contract for a stipulated fee or for a fee on a contingent basis shall not be recognized. An agreement between a representative and a claimant in violation of this rule is void.

R 28.14964 Finding of eligibility or ineligibility; notice to legislature.

Rule 14. (1) Upon making a finding of eligibility, the commission shall notify each claimant of its disposition of his or her claim. In those cases where the commission has found the claimant to be ineligible for a benefit, the commission shall specify the reasons for the finding. The finding shall set forth the findings of fact and conclusions of law supporting the decision. A copy of the decision, together with information as to the right to a hearing and review, shall be mailed to the claimant at his or her last known address.

(2) The commission shall pay eligible claimants in the order in which all necessary documentation is received and the investigation of the claim is concluded.

(3) The commission shall notify the legislature of an unfunded claim or claims, if during a fiscal year, there is 1 or more eligible claimant to whom the commission is unable to pay a benefit because of an insufficient appropriation.

R 28.14965 Request for a hearing.

Rule 15. (1) A claimant may, within 30 days after notification of ineligibility by the commission, request the commission to reconsider its finding of ineligibility. The commission shall provide the claimant the opportunity for a hearing which shall be held within 60 days after the request for reconsideration.

(2) The claimant may waive the hearing and present written evidence to the commission within 60 days after the request. The request for hearing shall be made to the Executive Director, Michigan Commission on Law Enforcement Standards, 7426 North Canal Road, Lansing, Michigan 48913.

(3) If requested, the hearing shall be conducted in a manner consistent with the provisions of the administrative procedures act and commission rules, R 28.14702 to R 28.14704.

(4) A claimant may withdraw his or her request for a hearing at any time before the mailing of the decision by written notice to the hearing officer, or orally by so stating at the hearing. A claimant shall be considered to have abandoned his or her request for a hearing if he or she fails to appear at the time and place set for the hearing, and does not, within 10 days after the time set for the hearing, show good cause for failure to appear.

(5) Payment of any portion of a death or permanent and total disability benefit, except an interim death benefit, shall not be made until all hearings and reviews which may affect that payment have been completed.

R 28.14966 Payment of benefits; limitations.

Rule 16. (1) As provided in the act, payment of benefits is subject to appropriation by the legislature of money necessary to make the payment.

(2) Claims for benefits shall be paid in the order in which the commission determines the eligibility of the claims.

(3) If the number of eligible claims exceeds the appropriated funds, then the unpaid eligible claims shall be paid when funds are appropriated by the legislature.