



ADMINISTRATIVE RULES OF MONTANA



6.6.8202A INFORMAL ADVISORY HEARING PROCEDURE

- (1) The initial hearing conducted by the committee concerning objections filed by an employer or insurer in relation to classifications assigned to an employer shall be conducted informally, and in such manner as to ascertain the substantial rights of the parties. All issues relevant to an appeal shall be considered. The employer and the insurer, and such witness or witnesses as either may call, may present such evidence as may be pertinent, subject to examination by any member of the committee.
- (2) The parties may stipulate the facts involved orally or in writing. Contesting parties shall provide to the committee secretary, c/o NCCI, relevant information to be exchanged not less than 15 days prior to the date of the hearing to allow sufficient time to review background material prior to the hearing.
- (3) During the informal hearing the committee may receive and consider evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs but may not receive or consider evidence which is irrelevant, immaterial or unduly repetitious. Hearsay evidence may be received and considered to supplement or explain other evidence.
- (4) Telephonic hearings may be conducted during the course of informal proceedings.
- (5) The committee may in its discretion adjourn any hearing for a reasonable period of time, in order to secure all the evidence that is necessary and to be fair to the parties.
- (6) The committee shall issue a written advisory decision within 30 days of the conclusion of the hearing which shall not be binding on the parties. The committee shall send a written copy of its advisory decision by first class mail, postage pre-paid to each party. Each party to the informal hearing shall notify the committee and each other party in writing of the notifying party's intent to be bound or not bound by the committee's advisory decision and the notice must be made within 30 days of the date the committee mails the written copy of its advisory decision to the parties.
- (7) The party who is aggrieved by the advisory decision of the committee or by the refusal of a party to be bound by the committee's advisory decision rendered after a hearing conducted pursuant to this rule may within 30 days after the expiration of the 30 day notice deadline specified in (6) herein initiate an informal contested case proceeding pursuant to 2-4-604, MCA, before the committee and the committee shall hear the matter in a de novo administrative proceeding as provided in Title 2, chapter 4, part 6, MCA. This informal contested case proceeding shall be conducted pursuant to the provisions of ARM 6.6.8204 - 6.6.8206. If the party who is aggrieved by the advisory decision of the committee or by the refusal of a party to be bound by the committee's advisory decision does not initiate such informal contested case proceeding within the 30 day deadline, such advisory decision shall be binding upon the parties.

- (8) If either the employer or the insurer shall fail to appear at the committee hearing and no good cause for a continuance is shown, the committee shall render its decision on the basis of the best evidence available to it; provided, however, a hearing before the committee may be continued for good cause upon application to the committee orally or in writing before the hearing is concluded, and may be continued or reopened by the committee on application or on its own motion. Any party who fails to appear in person or by authorized representative at the hearing before the committee may within 10 days after the scheduled date of the hearing file an application for reopening, and such application for reopening shall be granted if good cause is shown for failing to appear. An application for reopening must be in writing; it must state the reason or reasons believed to constitute good cause for failing to appear at the hearing; and it must be delivered or mailed within such 10-day period to the committee. If an application for reopening is not allowed, a copy of such decision shall be given or mailed to each party to the hearing, and in the reopening proceedings the allowance of the application may be contested. Where it appears that the application for reopening or any other request or application may not have been filed within the period of time prescribed for filing, the applicant shall be notified and be given the opportunity to show that such appeal application or request was timely. If it is found that such application or request was not filed within the applicable time limit, it may be dismissed on such grounds. If it is found that such application or request was timely the matter shall be decided on the merits and an advisory ruling issued as provided by these rules. Copies of the decision under this provision shall be given or mailed to the policyholder and the insurer together with a clear statement of right of appeal or judicial review as may be appropriate.

Authorizing statute(s): Sec. 33-16-1012, MCA

Implementing statute(s): Sec. 2-4-201, 33-16-1011, 33-16-1012, MCA

History: NEW, 1995 MAR p. 2682, Eff. 10/13/95.