

Part 30. Eugenics Asexualization and Sterilization Compensation Program.

§ 143B-426.50. (For expiration date, see note) Definitions.

As used in this Part, the following definitions apply:

- (1) Claimant. - An individual on whose behalf a claim is made for compensation as a qualified recipient under this Part. An individual must be alive on June 30, 2013, in order to be a claimant.
- (2) Commission. - The North Carolina Industrial Commission.
- (3) Involuntarily. - In the case of:
 - a. A minor child, either with or without the consent of the minor child's parent, guardian, or other person standing in loco parentis.
 - b. An incompetent adult, with or without the consent of the incompetent adult's guardian or pursuant to a valid court order.
 - c. A competent adult, without the adult's informed consent, with the presumption being that the adult gave informed consent.
- (4) Office. - The Office of Justice for Sterilization Victims.
- (5) Qualified recipient. - An individual who was asexualized involuntarily or sterilized involuntarily under the authority of the Eugenics Board of North Carolina in accordance with Chapter 224 of the Public Laws of 1933 or Chapter 221 of the Public Laws of 1937. (2013-360, s. 6.18(a); 2014-100, s. 6.13(e).)

§ 143B-426.51. Compensation payments.

(a) A claimant determined to be a qualified recipient under this Part shall receive compensation in the amount determined by this subsection from funds appropriated for these purposes. A qualified recipient shall receive compensation in the form of two payments. By October 31, 2014, claimants determined by the Commission to be qualified recipients shall receive an initial payment as provided by this section. Claimants determined to be qualified recipients after that date shall receive an initial payment within 60 days of the Commission's determination. A second and final payment shall be made after the exhaustion of all appeals arising from the denial of eligibility for compensation under this Part.

The initial payment to each qualified recipient will be calculated by adding together the number of qualified recipients as of October 1, 2014, and the number of claims outstanding that are pending, then dividing that total number into the sum of ten million dollars (\$10,000,000). The initial payment checks shall be remitted by October 31, 2014.

The final payment calculation will be made by taking the balance of compensation funds remaining after the exhaustion of appeals and dividing that sum equally between the number of qualified recipients determined finally to be eligible to receive compensation. The final payment checks shall be remitted within 90 days of the exhaustion of the last appeal. Any qualified claimant who was successful on appeal and who did not receive an initial payment shall be paid an amount equal to the initial payment amount, plus the amount from the final payment calculation.

The Office and the State Controller shall collaborate to facilitate the administration of this section so as to effectuate the compensation of qualified recipients as soon as practicable.

(b) If any claimant shall die during the pendency of a claim, or after being determined to be a qualified recipient, any payment shall be made to the estate of the decedent.

(c) A qualified recipient may assign compensation received pursuant to subsection (a) of this section to a trust established for the benefit of the qualified recipient.

(d) It is the public policy of this State that funds awarded for the compensation of sterilization victims under this Part may be used only for the purpose of benefiting victims and shall not be used to pay attorneys' fees arising from representation at the Office, before the Commission, or on appeal. The

General Assembly finds that qualified recipients have suffered a unique harm that calls for a unique remedy and that there are sufficient sources of assistance and pro bono legal representation available to protect their interests. Therefore, any agreement for the acceptance of attorneys' fees is null and void unless counsel has sought and received an opinion from the North Carolina State Bar that the fee arrangement is reasonable under the Rules of Professional Conduct.

(e) All missing claim information must be postmarked to, or received by, the Office by September 23, 2014, in order to be considered.

(f) By September 30, 2014, the Office shall submit all remaining claim forms to the Commission for appropriate disposition in accordance with this Part. (2013-360, s. 6.18(a); 2014-100, ss. 6.13(a), (e).)

§ 143B-426.52. Claims for compensation for asexualization or sterilization.

(a) An individual shall be entitled to compensation as provided for in this Part if a claim is submitted on behalf of that individual in accordance with this Part, or is mailed and postmarked, on or before June 30, 2014, and that individual is subsequently determined by a preponderance of the evidence to be a qualified recipient, except that any competent adult who gave consent is not a qualified recipient unless that individual can show by a preponderance of the evidence that the consent was not informed.

(b) A claim under this section shall be submitted to the Office. The claim shall be in a form and supported by appropriate documentation and information, as required by the Commission. A claim may be submitted on behalf of a claimant by a person lawfully authorized to act on the individual's or the individual's estate's behalf.

(c) The Commission shall determine the eligibility of a claimant to receive the compensation authorized by this Part in accordance with G.S. 143B-426.53. The Commission shall notify the claimant in writing of the Commission's determination regarding the claimant's eligibility.

(d) The Commission shall adopt rules for the determination of eligibility and the processing of claims in accordance with G.S. 150B-21.1. Notwithstanding G.S. 150B-21.1(d), the rules adopted pursuant to this section shall expire on the earlier of the date all claims made under this section are finally adjudicated or June 30, 2018. (2013-360, s. 6.18(a); 2013-410, s. 40; 2014-100, ss. 6.13(b), (e).)

§ 143B-426.53. Industrial Commission determination.

(a) The Commission shall determine whether a claimant is eligible for compensation as a qualified recipient under this Part. The Commission shall have all powers and authority granted under Article 31 of Chapter 143 of the General Statutes with regard to claims filed pursuant to this Part.

(b) A deputy commissioner shall be assigned by the Commission to make initial determinations of eligibility for compensation under this Part. The deputy commissioner shall review the claim and supporting documentation submitted on behalf of a claimant and shall make a determination of eligibility. In any case where the claimant was a competent adult when asexualized or sterilized, the burden is on the claimant to rebut the presumption that the claimant gave informed consent. If the claim is not approved, the deputy commissioner shall set forth in writing the reasons for the disapproval and notify the claimant.

(c) A claimant whose claim is not approved under subsection (b) of this section may submit to the Commission additional documentation in support of the individual's claim and request a redetermination by the deputy commissioner.

(d) A claimant whose claim is not approved under subsection (b) or (c) of this section shall have the right to request a hearing before the deputy commissioner. The hearing shall be conducted in accordance with rules of the Commission. For claimants who are residents of this State, at the request of the claimant, the hearing shall be held in the county of residence of the claimant. For claimants who are not residents of this State, the hearing shall be held in Wake County or at a location of mutual convenience as determined by the deputy commissioner. The claimant shall have the right to be represented, including

the right to be represented by counsel, present evidence, and call witnesses. The deputy commissioner who hears the claim shall issue a written decision of eligibility which shall be sent to the claimant.

(e) Upon the issuance of a decision by the deputy commissioner under subsection (d) of this section, the claimant may file notice of appeal with the Commission within 30 days of the date notice of the deputy commissioner's decision is given. Such appeal shall be heard by the Commission, sitting as the full Commission, on the basis of the record in the matter and upon oral argument. The full Commission may amend, set aside, or strike out the decision of the deputy commissioner and may issue its own findings of fact, conclusions of law, and decision. The Commission shall notify all parties concerned in writing of its decision.

(f) A claimant may appeal the decision of the full Commission to the Court of Appeals within 30 days of the date notice of the decision of the full Commission is given. Appeals under this section shall be in accordance with the procedures set forth in G.S. 143-293 and G.S. 143-294.

(g) If at any stage of the proceedings the claimant is determined to be a qualified recipient, the Commission shall give notice to the claimant and to the Office of Justice for Sterilization Victims and to the Office of State Controller. The Office of State Controller shall make payment of compensation to the qualified recipient or a trust specified under G.S. 143B-426.51(b).

(h) Decisions and determinations by the Commission favorable to the claimant shall be final and not subject to appeal by the State.

(i) Costs under this section shall be taxed to the State. (2013-360, s. 6.18(a); 2014-100, ss. 6.13(c), (e).)

§ 143B-426.54. Office of Justice for Sterilization Victims.

(a) There is created in the Department of Administration the Office of Justice for Sterilization Victims.

(b) At the request of a claimant or a claimant's legal representative, the Office shall assist an individual who may be a qualified recipient to determine whether the individual qualifies for compensation under this Part. The Office may assist an individual filing a claim under this Part and collect documentation in support of the claim. With the claimant's consent, the Office may represent and advocate for the claimant before the Commission and may assist the claimant with any good-faith further appeal of an adverse decision on a claim.

(c) The Office shall plan and implement an outreach program to attempt to notify individuals who may be possible qualified recipients. (2013-360, s. 6.18(a); 2014-100, s. 6.13(e).)

§ 143B-426.55. Confidentiality.

Records of all inquiries of eligibility, claims, and payments under this Part shall be confidential and not public records under Chapter 132 of the General Statutes. (2013-360, s. 6.18(a); 2014-100, s. 6.13(e).)

§ 143B-426.56. Compensation excluded as income, resources, or assets.

(a) Any payment made under this section shall not be considered income or assets for purposes of determining the eligibility for, or the amount of, any benefits or assistance under any State or local program financed in whole or in part with State funds.

(b) Pursuant to G.S. 108A-26.1, the Department of Health and Human Services shall do the following:

- (1) Provide income, resource, and asset disregard to an applicant for, or recipient of, public assistance who receives compensation under this Part. The amount of the income, resource, and asset disregard shall be equal to the total compensation paid to the individual from the Eugenics Sterilization Compensation Fund.

- (2) Provide resource protection by reducing any subsequent recovery by the State under G.S. 108A-70.5 from a deceased recipient's estate for payment of Medicaid-paid services by the amount of resource disregard given under subdivision (1) of this subsection.
- (3) Adopt rules to implement the provisions of subdivisions (1) and (2) of this subsection. (2013-360, s. 6.18(a); 2014-100, s. 6.13(e).)

§ 143B-426.57. Limitation of liability.

Nothing in this Part shall revive or extend any statute of limitations that may otherwise have expired prior to July 1, 2013. The State's liability arising from any cause of action related to any asexualization or sterilization performed pursuant to an order of the Eugenics Board of North Carolina shall be limited to the compensation authorized by this Part. (2013-360, s. 6.18(a); 2014-100, s. 6.13(e).)