



GOBIERNO DE PUERTO RICO
CORPORACIÓN DEL FONDO DEL SEGURO DEL ESTADO

**REGULATION FOR THE STUDY AND ADJUDICATION OF TOTAL AND
PERMANENT DISABILITY DUE TO SOCIOECONOMIC FACTORS**

STATE INSURANCE FUND CORPORATION

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ARTICLE I - INTRODUCTION

Act No. 45 of April 18, 1935, as amended, known as the Compensation System for Work-Related Accidents Act, 11 L.P.R.A. sec. 1 et seq., establishes compulsory insurance to compensate employees who suffer injuries, become disabled or die due to a work-related accident or an illness induced by their occupation. The insurance coverage acknowledges a range of rights and protections to workers and employees sheltered under its provisions, among which is economic compensation for cases of total and permanent disability.

Article 3 of Act No. 45 defines this benefit as follows:

"Total disability is the total and permanent loss of the industrial vision of both eyes; the loss of both feet from the ankle or higher; the loss of both hands from the wrist or higher; the loss of a hand or a foot; total mental disturbances that are incurable; and injuries that result in the total and permanent inability of the worker or employee to do all kinds of paid work or occupations."

According to the statutory text and interpretation of the Supreme Court of Puerto Rico, "the analysis to determine whether a worker or employee is totally and permanently disabled is limited to two fundamental considerations, namely (1) the physical or mental impairment of the worker and its extension, measured and expressed from a medical point of view in terms of the loss of general physiological function and (2) the effect of that physical or mental impairment on the ability of the worker or employee to perform paid employment, which constitutes a legal concept measured and expressed by the degree of industrial purchasing capacity

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of the worker, or his/her capacity to earn the livelihood" Rodríguez v. Comisión Industrial, 90 DPR 764, 772 (1984).

Throughout the years, the case law on the subject has acknowledged by way of exception, that there are factors of a social or economic nature, which, considered in union with the limitations of a medical nature resulting from a work-related accident or an occupational illness, nullify the ability of the employee or worker to perform paid tasks, in a sustained and stable manner.

A worker or employee can be considered totally disabled if he/she cannot perform those substantial and basic aspects of work, that is, if his/her services are so limited that there is no market or demand for him/her.

To deal with these cases uniformly, a Socioeconomic Factors Committee was established within State Insurance Fund Corporation as an administrative structure whose responsibility is to implement the previously mentioned case-law doctrine. Operationally, its guiding function is to advise the Administrator and provide him/her with well-founded elements of judgment that allow informed and reasonable decision making regarding the potential of an injured worker to be reinserted into the workforce.

ARTICLE II - LEGAL BASIS

This Regulation is adopted in accordance with the powers conferred on the Governing Board and the Administrator of the State Security Fund Corporation, through Articles 1B (11 L.P.R.A. § 1b-3) and (11 L.P.R.A. § 1B-4) in Act 45 of April 18, 1935, as amended, known as the "Compensation System for Work-Related Accidents Act". These provisions empower the Administrator to adopt the rules and procedures necessary to regulate efficient operation. In addition, Act 38 of June 30, 2017, as amended, known as the "Uniform Administrative Procedures Act of the Government of Puerto Rico".



ARTICLE III - PURPOSE

This Regulation has the purpose of laying down the rules for governing the study and adjudication of total and permanent disability due to socioeconomic factors in a uniform manner.

ARTICLE IV - APPLICABILITY

This regulation shall apply to any claim of total and permanent disability due to socioeconomic factors.

ARTICLE V - DEFINITIONS

For the purposes of this Regulation, the terms mentioned herein shall have the following meaning:

1. **Administrator** – Administrator of the State Insurance Fund Corporation.
2. **ARV** – acronym in Spanish for Vocational Rehabilitation Administration.
3. **Act** – It refers to the Act No. 45 of April 18, 1935, as amended, known as the Compensation System for Work-Related Accidents Act.
4. **Physical or mental disability** – The extension of the loss of physical or mental functions, measured and expressed from a medical point of view in terms of loss of general physiological functions.
5. **Industrial acquisition capacity** – Ability of the worker to earn the livelihood in an ordinary and stable manner in the industry in general.
6. **Corporation (CFSE, acronym in English)** – State Insurance Fund Corporation
7. **Socioeconomic factors** - Those factors that affect the worker, facilitating or hindering him/her in being able to carry out paid work in a stable and ordinary manner. The following factors shall be considered: the worker's physical and/or mental disability; its extension, measured and expressed from a medical point of view in terms of the loss of general physiological functions and the effect of such disability on the worker's ability to pursue paid employment in an ordinary and stable



manner; age, gender, education level, acquired skills, economic situation, occupational history, residual functional capacity in reference to amendments to the Vocational Rehabilitation Act of 1973, in terms of severe limitation when there is a restriction or limitation in one or more of the functional capacities such as mobility, self-direction, communication, self-care, tolerance to work, or work skills in terms of employability.

8. **Necessary expenses** – It refers to reasonable disbursements incurred by the injured person or beneficiary to cover his/her livelihood, housing, clothing, utilities, transportation, medical assistance, recreation, and obligations imposed by law, for example, pension payment.
9. **Income** – It includes any monetary gain, benefit, yield, or fruits derived from salaries, daily wages, or compensation for professional services, or remuneration for services rendered, or obtained from industry, trade, sales, or property operations, whether movable or immovable property arising out of the possession or benefit of such property, also those derived from interest, income, dividends generated from partnerships or corporations, securities, or the exploitation of any business; and profits, yields, emoluments, or compensation from any source, unemployment compensation, disability compensation, retirement benefits, and pensions of any kind, as well as any other payments received by the injured person or beneficiary. It also includes income from activities that are not recorded by the Government, be it because of the nature of the activity or because the person does not report to the relevant agencies the pursuit or the product of those activities.
10. **Imputed income** – Income attributed to the worker or employee by the Committee as an indirect benefit when a third party or private person makes payments on his/her behalf in an ordinary or consecutive manner.

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ARTICLE VI - GENERAL PROVISIONS

A. EVERY INJURED WORKER REFERRED TO THE SOCIOECONOMIC FACTORS COMMITTEE MUST UNDERGO THE FOLLOWING EVALUATIONS:

1. MEDICAL EVALUATION

The Regional Medical Director or the physician appointed by the CFSE to substitute him/her assesses the claims that the employee/injured person has filed with the CFSE in order to determine whether medically, from the perspective of his/her physical or mental disability, he/she is totally disabled to perform paid work. In such a case, he/she shall proceed to prepare a report acknowledging the total and permanent disability of the injured person and forward the case to the Compensation Officer to continue with the established procedure.

If the medical evaluation leads to the conclusion that the employee/injured person is not 100% disabled, the Regional Medical Director shall prepare a disability report, in which he/she shall include the diagnoses and disabilities acknowledged to the injured person in each one of his/her cases, a disability that he/she shall express in terms of loss of general physiological functions, in accordance with the provisions of the American Medical Association's Guides for the Evaluation of Permanent Disability.

2. SOCIAL WORK EVALUATION

The Social Work Office shall visit the applicant's home and conduct an interview that allows him/her to collect the social history of the worker or employee, including the worker's demographic and identification data, academic preparation, the components of his family nucleus, health and treatment information, economic situation with details of income and expenses of the family nucleus. When possible, other members of the family group and neighbors shall be interviewed.

The report shall pay special attention to the presence of social and economic factors that influence the ability of the employee to obtain or retain a job and shall contain those expert observations on the living conditions of the worker or employee.

In addition, the social worker shall require the necessary documentation to support the income and expenses reported by the worker and any other documents that are relevant for the Committee to carry out its function.

3. INTEGRAL REHABILITATION EVALUATION

The Regional Rehabilitation Specialist shall receive the referral and determine whether the injured employee needs to be visited. This professional shall conduct a vocational/occupational interview, that includes demographic data, household composition, health conditions, academic preparation, occupational history, income, mobility, self-direction, communication, self-care, tolerance to work, and skills for work in terms of employability, among other aspects.

This specialist's intervention should focus on determining the applicant's potential to pursue paid work in an ordinary manner. The report shall capture the employability competences or the knowledge, the skills, and the aptitudes that favor his/her performance in the phase of obtaining or retaining a job or the requirements to carry out an economic activity. In addition, it shall contain a projection of the jobs, occupations, or professions that the worker could perform according to his/her residual functional capacities, for which he/she shall use as a reference the Dictionary of Occupational Titles created by the Employment and Training Administration.

After his/her intervention, the Rehabilitation Specialist may refer the employee/injured who might be interested to the Vocational Rehabilitation Administration, within the framework of the existing Interagency Agreement between the CFSE and the ARV, to channel the rehabilitation alternatives available in his/her case.

4. FUNCTIONAL CAPACITY EVALUATION

In cases in which there is a reasonable expectation that the applicant has residual functional capacity to rejoin the labor market or to pursue another profitable endeavor that generates income and in which he/she expresses that he/she does not plan to carry out or cannot carry out paid activities, he/she shall be referred by the Rehabilitation Specialist to Occupational Therapy, to carry out an evaluation of functional capacity.

The functional capacity evaluation report shall identify the physical capacity and the occupational residual capacity presented by the worker.

B. ELIGIBILITY CRITERIA

1. WORKER'S PHYSICAL AND/OR MENTAL DISABILITY

a. Any injured worker who applies for the benefits of total and permanent disability due to socio-economic factors shall have a significant permanent partial disability. In cases that start under the jurisdiction of the CFSE, as a general rule, the injured worker shall be required to have an acknowledged, permanent partial disability equal to or greater than sixty percent (60%) of the general physiological functions. The CFSE recognizes the general principle that, the greater is the residual disability, the greater is the likelihood that the worker qualifies for a total and permanent disability. However, this does not constitute a fool proof, or uncompromising, standard, so, where appropriate, the Committee may understand in cases where the worker does not reach the indicated per cent of disability, that, if it is shown prima facie, he/she is totally and permanently disabled.

b. The evaluation conducted by the Socioeconomic Factors Committee shall consider the importance and extent of the physical or mental disability presented by the worker or employee, expressed as a loss of the general physiological functions and their impact on his/her ability to perform throughout the industry.



- c. The disabilities acknowledged to the injured worker in terms of loss of physiological functions shall be converted and expressed to general physiological functions for the purpose of the evaluation, in accordance with the provisions of the Tables of the American Medical Association.
- d. The disabilities adjudicated to the injured employee that would have been declared academic shall not be considered for the purposes of the assessment of the medical disability presented by the applicant. The medical conditions presented by the injured worker that would not have been related by the CFSE or the Honorable Industrial Commission shall also not be considered either.

C. WORKER'S EMPLOYABILITY SKILLS

The residual skills and competences possessed by the worker or beneficiary to carry out paid activities shall be considered one of the most important criteria in the evaluation for the determination of a total disability due to socioeconomic factors.

D. APPLICANT'S GENDER AND AGE

The Committee shall consider the effect that the applicant's gender may have on the process of insertion or reintegration into the workforce.

E. SOCIOECONOMIC SITUATION (INCOME AND EXPENSES)

1. Each applicant shall submit evidence of the income received, as defined in this regulation at the time of evaluation. The obligation to produce supporting documents relevant to his/her application is continuous in nature. He/she shall also provide evidence of the salary he/she received at the time of separation from his/her job by means of a certification by his/her employer, an income tax return, check stubs, an affidavit in cases in which this evidence is not available.



2. The income of the worker shall be considered jointly with those earned by his/her spouse, as well as those of any other member of the family nucleus, if these directly or indirectly benefit the injured worker.
3. The Committee shall impute as income those economic aids or benefits from the Government or any other source, such as the Section 8 Subsidized Income Program, the Nutrition Assistance Program, and the Temporal Assistance for Needy Families (TANF).
4. For the purposes of the economic reality evaluation of the applicant, the following necessary expenses that are reasonable for his/her support are considered: food, housing, clothing, health, utilities, transport, recreation, and the payment of any obligation imposed by law.
5. Contributions by the applicant at free will to family members or third parties shall not be considered expenses.
6. Debts acquired through credit cards or loans shall be directly related to the expenses needed for the applicant's support and they thus shall be evidenced to the Commission by means of reliable documents, such as payments made and the loan or credit card application.
7. No disbursements for the following concepts shall be considered necessary expenses: alarms, water purifiers, travel, luxury cars, original drugs; if his/her health insurance covers bioequivalents, gardening costs, domestic service, and any other expenses that are not intended to meet the basic needs of the worker.

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F. ELIGIBILITY EXCLUSION

The applicant shall not be eligible to a total and permanent disability due to socioeconomic factors if he/she:

1. At the moment of the application, is performing an activity in a sustained and stable manner.
2. Has sufficient residual capacity to pursue a job and refuses to receive vocational rehabilitation program services.
3. Receives a retirement pension due to age or service years.

4. Receives income greater than the salary or the income received at the time of separation from his/her job, which allows him/her to meet his/her basic and ordinary needs.
5. Has not returned to the labor force because of hi/hers own free will.
6. The limitations presented by the worker to perform productive tasks are due to illnesses, injuries, or disabilities that are not related to the accident or illnesses recognized by the State Insurance Fund Corporation.
7. The applicant who has been eligible to receive Vocational Rehabilitation Administration services and is receiving active services in order to return to the labor market. These services include, but are not limited to, training subsidy services, personal and vocational adjustment, coordination to acquire occupational licenses, tools, equipment, occupational equipment, initial capital, assistance in employment search and placement, regular employment, economic self-management, commercial enterprises and wage incentives where the injured worker earns profit in a sustained and stable manner.

G. POST-MORTEM EVALUATION

The death of the injured worker shall not impede the issuance of a Decision on Total Disability Due to Socioeconomic Factors, provided that the referral of the person to the Committee had been carried out prior to the death and the evaluation of the functional capacity and the evaluation of the residual working capacity by the Rehabilitation Specialist has been carried out.

The evaluation of a referral made through Resolution of the Honorable Industrial Commission or through any other means shall not proceed after the death of the injured worker.

H. SOCIOECONOMIC FACTORS COMMITTEE

The Administrator of the State Insurance Fund Corporation shall establish a Committee in each Regional Office for the evaluation, study, and adjudication of applications for total and permanent disability from the perspective of the



different disciplines affecting this type of determination, in accordance with the provisions of this Regulation.

1. CONSTITUTION

The Socioeconomic Factors Committee shall consist of the Regional Executive Director, or the person appointed by him/her in representation of the CFSE Administrator, who will be its Chairman, the Regional Medical Director, the Regional Legal Adviser, and Integral Rehabilitation Specialist. The Occupational Social Worker who evaluated each case to be discussed, shall be available to join the discussion, if deemed necessary.

2. COMMITTEE'S FUNCTION

The Committee is responsible for assessing the cases of workers or employees who have been acknowledged a partial disability of sixty per cent (60%) or more in the general physiological functions, to determine whether, in considering a physical or mental disability in conjunction to socioeconomic factors, the worker or employee is fully disabled to perform any kind of work.

In addition, it shall intervene in cases to which it is referred through Resolution by the Honorable Industrial Commission or by the Regional Medical Area, even if the worker/injured person is under sixty per cent (60%) of permanent partial disability, but he/she has been shown prima facie that he/she is totally and permanently disabled.

3. ORDINARY MEETINGS

The Committee shall hold an ordinary meeting monthly, which will take place on the first Friday of each month. If there were no cases referred or completed and ready to be reviewed and discussed by the Committee for any month, the Chairman shall issue minutes, stating such situation, having it signed by all the members of the Committee.

4. EXTRAORDINARY MEETINGS

The Committee shall have the power to convene and celebrate the extraordinary meetings when the volume of cases justifies it.

5. CASE REGISTRY

The Committee shall keep a chronological record of all case referrals it receives, specifying the name of the injured person, the case number, the date on which the case was referred to the Committee, the date when it was discussed, and the determination taken.

6. REFERRALS FOR EVALUATIONS

Any injured worker referred to the Committee on Socioeconomic Factors shall submit to the professional evaluations deemed necessary by the Committee to have the application considered.

7. AGENDA

Upon receipt of the reports from the evaluations carried out to the applicant injured worker, the Committee's Chairman shall prepare an agenda identifying the cases to be discussed in each work session of the Committee.

8. PROCEDURE

Once all members of the Committee are present, the merits of the application shall be discussed and compliance with this Regulation shall be analyzed.

9. MINUTES

The Chairman of the Committee shall be responsible for taking minutes of all meetings held by the Committee.

10. DECISIONS

The recommendation of the Committee shall be captured in an Institutional Decision that will be prepared and signed by the Regional Legal Adviser and the Regional Executive Director, representing the Administrator.

ARTICLE VII - SEPARABILITY

If any word, sentence, item, article, or part of this Regulation is declared unconstitutional or void by a competent court, such a declaration shall not affect, undermine, or invalidate its remaining provisions, as its effect shall be limited to the word, sentence, item, article, or part whose unconstitutionality is declared.

ARTICLE VIII - REPEAL

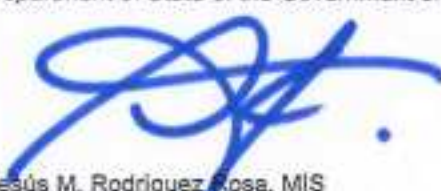
With the approval of this document, the regulation No. 3470, Regulation on Socioeconomic Factors, of June 12, 1987, is repealed.

ARTICLE IX - APPROVAL

This document was approved by the Governing Board of the State Insurance Fund Corporation, through Resolution Number A-05-2021 of February 10, 2021, and amendments through Resolution Number A-14-2021 of March 11, 2021.

ARTICLE X - TERM

This document shall be effective after it is approved, signed, and filed at the Department of State of the Government of Puerto Rico.



Jesús M. Rodríguez Rosa, MIS
Administrator