



STATE OF NEW YORK  
**OFFICE OF THE STATE COMPTROLLER**

May 4, 2012

Mr. Dennis J. Hayes  
Chief Executive Deputy Director  
New York State Insurance Fund  
199 Church Street  
New York, NY 10007

Re: Report 2011-0030

Dear Mr. Hayes:

Our Office has completed an examination<sup>1</sup> which matched a file of Workers' Compensation Board (Board) cases approved for benefits as of August 5, 2011 with the Department of Correction and Community Supervision's (DOCCS) file of inmates under custody as of April 30, 2011. The objectives of this examination were to determine (i) how many claimants may have received compensation or medical benefits in violation of Workers' Compensation Law because the claimants were incarcerated for felony convictions and (ii) how much money the Board and the New York State Insurance Fund (Fund) paid on behalf of those inmates between October 1, 2008 and September 30, 2011.

When we matched the Board and DOCCS files, we identified 268 claimants approved for workers' compensation benefits who were incarcerated as of April 30, 2011. Of the 268 claimants, 75 had cases with the Fund.

We reviewed all cases for the 75 Fund claimants and identified seven claimants who received \$36,061 in compensation benefits while incarcerated for felony convictions. The Board reimbursed the Fund \$1,024 on behalf of one of these claimants for a portion of the compensation paid. We did not find any inappropriate medical payments made by the Fund on behalf of these claimants.

We shared a draft report with Fund officials and considered their comments in preparing this report (see Appendix A). In their response, officials indicated they were aware of six of these inmates prior to our findings; have begun taking steps to recover these inappropriate payments,

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<sup>1</sup> We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section III of the State Finance Law.

including recovering \$12,674 of this amount prior to our examination; and, are looking into criminal charges against some of the claimants. In addition, the Fund is recommending staff check the DOCCS database in cases where claimants cannot be located. The Fund refunded the Board for the amount received on behalf of one of the incarcerated claimants. A State Comptroller comment on the response is attached as Appendix B.

**Recommendation**

- 1) *Continue efforts to recover the outstanding balance of the total \$36,061 in inappropriate payments.*

We thank the management and staff of the State Insurance Fund for the courtesies and cooperation extended to our auditors during this examination. Since your response to the draft report is in agreement with this report, there is no need for further response unless you feel otherwise.

Sincerely,

Bernard J. McHugh  
Director of State Expenditures

Enclosure: Appendix A  
Appendix B

cc: Kenneth Shulman



New York State Insurance Fund

January 3, 2012

Mr. Bernard J. McHugh
Director of State Expenditures
Office of the State Comptroller
110 State Street
Albany, New York 12236

Re: Draft Report 2011-0030

Dear Mr. McHugh,

I have received your letter of December 20, 2011 concerning the above captioned examination performed by your office.

As you know, our staff reviewed the seven claims identified in your report as instances of compensation payments being made to claimants during a period of incarceration. A copy of our report which outlines the specific findings from our review of each claim is attached for your records. This report also outlined the steps that we were taking to attempt to recover the payments to incarcerated claimants. You will note that in six of the seven cases that were cited, NYSIF was already aware of the issue of payments being issued to incarcerated claimants prior to the issuance of your preliminary report.

In your letter of December 20th, you have made the following recommendations:

1) Recover the \$36,061 in payments to incarcerated claimants

NYSIF response - You will note from the accompanying report that in each case, we are continuing our efforts to recover the inappropriate payments within the boundaries of the Workers' Compensation Law.

2) Refund the Board the \$1088 received for the incarcerated claimant

NYSIF response - A payment in the amount of \$1024.00 has been issued to the WCB Finance office on 12/29/11 to refund them for their prior reimbursement under Section 15-8 in NYSIF claim [redacted]. This payment represents the period 9/2/10 - 9/24/10, 3.2 weeks at \$320.00.

\*
Comment
1

Lastly, I am enclosing a copy of my e-mail dated 10/18/11 which instructed staff to utilize the NYS Department of Correctional Services database as a tool in cases where we are unable to locate a claimant.

I trust that this satisfactorily addresses your inquiry. Please advise if further information is required.

Very truly yours,

Edward L. Hiller

Cc: Mr. Gleason
Ms. Stark
Mr. Nolte
Ms. Carretta
Mr. Shulman

Edward L. Hiller, Director of Claims
199 Church Street • New York, New York 10007
(212) 312-7880 • Fax (212) 312-7984 • E-Mail ehiller@nysif.com

THOMAS P. DiNAPOLI  
COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

December 20, 2011

Mr. Edward Hiller  
State Insurance Fund  
Director of Claims  
199 Church Street  
New York, NY 10007

Re: Draft Report 2011-0030

Dear Mr. Hiller:

Our Office has completed an examination<sup>1</sup> which matched a file of Workers' Compensation Board (Board) cases approved for benefits as of August 5, 2011 with the Department of Correction and Community Supervision's (DOCCS) file of inmates under custody as of April 30, 2011. The objectives of this examination were to determine (i) how many claimants may have received compensation or medical benefits in violation of Workers' Compensation Law because the claimants were incarcerated for felony convictions and (ii) how much money the Board and the New York State Insurance Fund (Fund) paid on behalf of those inmates between October 1, 2008 and September 30, 2011.

When we matched the Board and DOCCS files, we identified 268 claimants approved for workers' compensation benefits who were incarcerated as of April 30, 2011. Of the 268 claimants, 75 had cases with the Fund.

We reviewed all cases for the 75 Fund claimants and identified seven claimants who received \$36,061 in compensation benefits while incarcerated for felony convictions. The Board reimbursed the Fund \$1,088 on behalf of one of these claimants for a portion of the compensation paid. We did not find any inappropriate medical payments made by the Fund on behalf of these claimants.

Based on the response to our preliminary findings, we understand the Fund has begun taking steps to recover these inappropriate payments and, in some cases, looking into criminal charges

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<sup>1</sup>We performed our examination in accordance with the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, as well as Article II, Section 8, and Article VII, Section 111 of the State Finance Law.

Mr. Hiller

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December 20, 2011

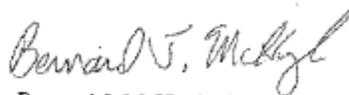
against the claimants. In addition, the Fund is recommending staff check the DOCCS database in cases where claimants cannot be located.

**Recommendations**

- 1) *Recover the \$36,061 in inappropriate payments.*
- 2) *Refund to the Board the \$1,088 received for the incarcerated claimant.*

We would appreciate your response to this letter by January 20, 2012, indicating any actions planned to address the recommendations in this letter. We thank the management and staff of the Fund for the courtesies and cooperation extended to our auditors.

Sincerely,



Bernard J. McHugh  
Director of State Expenditures

cc: Kenneth Shulman

**Review of OSC audit re: payments made to incarcerated claimants**

1. [REDACTED] - Claimant was classified permanently partially disabled on 6/4/10 with payments directed to continue at \$200.00 per week. Case Manager filed an RFA-2 on 4/5/11 requesting a hearing based upon the claimant's failure to respond to multiple WA-1's. In a decision filed 9/2/11, the Board Panel denied our request for re-opening, finding the claimant's non-response to not be sufficient evidence to warrant re-opening. NYSIF was subsequently notified by O.S.C. that claimant was incarcerated as of 7/5/10. He was released on 9/19/11, creating an overpayment of \$12,320.00. Recoupment is being negotiated with claimant's attorney.
2. [REDACTED] - Claimant was being paid at the rate of \$347.60 per week. Case Manager filed an RFA-2 on 6/17/11 requesting a hearing based upon the claimant's failure to respond to multiple WA-1's. Claims supervisor checked D.O.C.S. database on 10/19/11 and determined claimant had been incarcerated from 1/11/11 - 6/21/11, creating an overpayment of \$7994.80. Following negotiation with the claimant's attorney, the overpayment is being recouped at \$50 per week.
3. [REDACTED] - Claimant was being paid at the rate of \$160.00 per week. Case Manager filed an RFA-2 on 4/4/11 based upon a lack of medical evidence of disability. The NYSIF Hearing Representative checked the D.O.C.S. database prior to the hearing on 5/12/11 and obtained the information on the incarceration. Payments were suspended at the hearing. There is an overpayment of \$3008.00 representing payments made from 12/31/10 - 5/12/11.
4. [REDACTED] - Claimant was classified permanently partially disabled on 6/10/05. Payments were directed to continue at \$320.00 per week on this case and at \$80 per week on apportioned claim [REDACTED]. The incarceration was reported to NYSIF via WA-1 signed and dated by the claimant on 9/24/10. Payments were made to the claimant for the period 9/2/10 - 10/6/10 which created an overpayment of \$1920.00. A DCI referral was made and the claimant was arrested for comp fraud (while in jail on the drug charge).

5. [REDACTED] - Claimant was being paid at the rate of \$110.00 per week. Claimant's attorney contacted NYSIF on 1/3/11 to report that claimant was incarcerated. Case Manager confirmed incarceration and requested a hearing before the WCB. The WCB found the claimant was not entitled to benefits as of 11/8/10, the date of the incarceration. There is an overpayment of \$2200.00 representing payments from 11/8/10 - 3/26/11. It is anticipated that claimant will be released from prison in July, at which time it is anticipated that the claimant will re-apply for benefits and the overpayment can be recouped.
6. [REDACTED] - Claimant was classified permanently totally disabled on 8/19/08 with payments directed to continue at \$160.00 per week. On 6/2/11, we were advised by a prison employee that the claimant was incarcerated as of 4/21/11 and the claimant's family had forwarded his comp checks to the prison. Prison personnel returned the checks to NYSIF and a stop payment was put on the checks. There is a \$64.00 overpayment remaining. Claimant's earliest release is 11/16/15. Claimant is classified as PTD. Any recoupment of the overpayment will be addressed if claimant attempts to get his benefits reinstated.
7. [REDACTED] - Claimant was being paid at the rate of \$497.33 per week. The Case Manager filed an RFA-2 on 2/11/11 requesting suspension of benefits due to the claimant missing multiple IME appointments. At the hearing on 3/29/11, the claimant's attorney advised that the claimant had been incarcerated. There is an overpayment of \$8554.08 representing payments from 11/30/10 - 3/30/11. D.C.I. has been consulted on the issue of fraud and recoupment of the overpayment.

(Submitted by J. Nolte 12/27/11)

**Edward Hiller**

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**From:** Edward Hiller  
**Sent:** Tuesday, October 18, 2011 1:37 PM  
**To:**

**Cc:**

**Subject:** INCARCERATED CLAIMANTS

Reminder:

When a claimant is convicted of a felony and subsequently incarcerated, we are relieved of our obligation to pay compensation benefits while the claimant remains in custody.

A recent audit revealed one case in which we paid an incarcerated claimant to the tune of \$11,000. Fortunately (or not) claimant has been released and payments are continuing, so we will seek to recoup the overpayments.

Also, in a sign of the times, the Board refused to grant us a hearing on the issue of claimant's failure to return WA-1's because we did not copy the claimant's representative.

The unit did much right in requesting the hearings and ordering surveillance. One thing it could have done, and we should do, in a situation where we are unable to locate a claimant, is to check the Department of Correctional Services ("DOCS") database in the Search folder on the Claims Intranet page to see if the claimant is, in fact, incarcerated.

To recoup overpayments:

1. Get a copy of the incarceration details for the DOCS website.
2. Calculate the over payment.
3. Contact claimant's attorney to see if an agreement can be worked out to absorb the OP.
4. If an agreement can be worked out do a stipulated agreement and have the case put on a WISK calendar. Otherwise, file an RFA-2 requesting a hearing.

Claims Admin.: Please add to OCM.

Ed Hiller

**State Comptroller Comments on Auditee Response**

1. The State Insurance Fund reimbursed the Workers' Compensation Board \$1,024 for the amount received on behalf of one of the incarcerated claimants, therefore this recommendation was removed from the report. We agree with the Fund's calculation of the payment amount of \$1,024 instead of the \$1,088 included in the draft report.