

1 4 NCAC 10K .0101 is adopted under temporary procedures as follows:

2
3 **SUBCHAPTER 10K – RULES FOR THE EUGENICS ASEXUALIZATION AND STERILIZATION**
4 **COMPENSATION PROGRAM**

5
6 **SECTION .0100 – ADMINISTRATION**

7
8 **04 NCAC 10K .0101 LOCATION OF OFFICES AND HOURS OF BUSINESS**

9 (a) For purposes of this Subchapter, the offices of the North Carolina Office of Justice for Sterilization Victims are
10 located in the Archives and History State Library Building, 109 East Jones Street, Raleigh, North Carolina. The
11 hours of operation are Monday through Thursday, 10:00 a.m. until 4:00 pm. The mailing address is 1330 Mail
12 Service Center, Raleigh, North Carolina 27699-1330.

13 (b) For purposes of this Subchapter, the offices of the North Carolina Industrial Commission are located in the
14 Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. Documents that are not filed electronically
15 may be filed between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday. Documents permitted to be
16 filed electronically may be filed until 11:59 p.m. on the required filing date. The mailing address is 4336 Mail
17 Service Center, Raleigh, North Carolina 27699-4336.

18
19 *History Note: Authority G.S. §§143B-426.50 & 143B-426.52(d);*
20 *Temporary Adoption Eff. October 30, 2013.*

1 4 NCAC 10K .0102 is adopted under temporary procedures as follows:

2

3 **04 NCAC 10K .0102 OFFICIAL FORMS**

4 (a) Copies of the Commission's rules and forms regarding the Eugenics Asexualization and Sterilization
5 Compensation Program can be obtained by contacting the Commission in person, by written request mailed to 4340
6 Mail Service Center, Raleigh, NC 27699-4340, or from the Commission's website at www.ic.nc.gov.

7 (b) The following forms shall be used to process a claim for compensation at the Commission:

8 (1) *Claim for Compensation under the Eugenics Asexualization and Sterilization Compensation*
9 *Program;*

10 (2) *Motion to Reconsider Decision of the Deputy Commissioner under the Eugenics Asexualization*
11 *and Sterilization Compensation Program;*

12 (3) *Request for Evidentiary Hearing before a Deputy Commissioner under the Eugenics*
13 *Asexualization and Sterilization Compensation Program;*

14 (4) *Notice of Appeal to the Full Commission under the Eugenics Asexualization and Sterilization*
15 *Compensation Program; and*

16 (5) *Notice of Appeal to the Court of Appeals under the Eugenics Asexualization and Sterilization*
17 *Compensation Program.*

18 (c) Attorneys and other interested parties may reproduce forms for their own use, provided:

19 (1) no statement, question, or information blank contained on the Commission form is omitted from
20 the substituted form; and

21 (2) the substituted form is identical in size and format with the Commission form.

22

23 *History Note: Authority G.S. § 143B-426.52(b)&(d);*

24 *Temporary Adoption Eff. October 30, 2013.*

1 4 NCAC 10K .0103 is adopted under temporary procedures as follows:

2

3 **04 NCAC 10K .0103 AUTHORITY TO FILE ON BEHALF OF THIRD PARTY**

4 (a) If a claimant is living, an action may be brought under this Subchapter only by the claimant or a person lawfully
5 authorized to act on behalf of the claimant. A person is lawfully authorized to act on behalf of the claimant if such
6 person has a General Power of Attorney or a Letter of Appointment of Guardian for the claimant.

7 (b) If the claimant was living on June 30, 2013, but deceased at time of filing a claim, an action may be brought
8 under this Subchapter only by a person lawfully authorized to act on behalf of the claimant's estate. A person is
9 lawfully authorized to act on behalf of the claimant if such person has Letters Testamentary or Letters of
10 Administration for the claimant's estate.

11

12 *History Note: Authority G.S. §§143B-426.50 & 143B-426.52(d)*

13 *Temporary Adoption Eff. October 30, 2013.*

1 4 NCAC 10K .0101 is adopted under temporary procedures as follows:
2

3 **SECTION .0200 – REVIEW BY DEPUTY COMMISSIONER**
4

5 **04 NCAC 10K .0201 INITIAL DETERMINATION OF CLAIMS BY THE COMMISSION**

6 (a) A claimant, or a person lawfully authorized to act on a claimant’s or claimant’s estate’s behalf, shall file a claim
7 on or before June 30, 2014, by filing the *Claim for Compensation under the Eugenics Asexualization and*
8 *Sterilization Compensation Program* for with the Office of Justice for Sterilization Victims. This form requests:

- 9 (1) claimant’s current name, mailing address, county, email address, phone numbers;
- 10 (2) claimant’s maiden name;
- 11 (3) claimant’s birthdate;
- 12 (4) claimant’s full name at time of procedure;
- 13 (5) claimant’s nickname or alias at time of procedure;
- 14 (6) estimated date or year of procedure;
- 15 (7) county of residence at time of procedure;
- 16 (8) name of facility where procedure was performed;
- 17 (9) if applicable, name of facility where institutionalized at time of procedure; and
- 18 (10) if claim is filed by a person lawfully authorized to act on a claimant’s or claimant’s estate’s behalf,
19 then the following additional information is needed:
 - 20 (A) proof of authority under 04 NCAC 10K .0103;
 - 21 (B) applicant’s current name, mailing address, county, email address, phone numbers;
 - 22 (C) applicant’s birthdate; and
 - 23 (D) relationship to claimant.

24 A *Claim for Compensation under the Eugenics Asexualization and Sterilization Compensation Program* will not be
25 rejected for incomplete requested information.

26 (b) The Office of Justice for Sterilization Victims shall search the program records for the North Carolina Eugenics
27 Board and collect the following available documentation:

- 28 (1) Petition for Operation of Sterilization or Asexualization;
- 29 (2) Order for Operation of Sterilization;
- 30 (3) Certificate of Surgeon;
- 31 (4) Letter of Authorization to Surgeon;
- 32 (5) consent of parent, guardian, spouse, or next of kin;
- 33 (6) minutes of proceedings of the Eugenics Board;
- 34 (7) proof of any search efforts of the Justice for Sterilization Victims Foundation;
- 35 (8) other pertinent records; and
- 36 (9) any other evidence submitted by the claimant.

1 The Office of Justice for Sterilization Victims shall complete and transmit the *Claim for Compensation under the*
2 *Eugenics Asexualization and Sterilization Compensation Program* along with the available documentation to the
3 Industrial Commission. The Industrial Commission shall provide a copy for the *Claim for Compensation under the*
4 *Eugenics Asexualization and Sterilization Compensation Program* along with the available documentation to the
5 claimant upon receipt from the Office of Justice for Sterilization Victims.

6 (c) The Commission shall make an initial determination of eligibility for compensation by filing a written decision.

7

8 *History Note: Authority G.S. §§ 143B-426.52 & 143B-426.53(a);*

9 *Temporary Adoption Eff. October 30, 2013.*

1 4 NCAC 10K .0202 is adopted under temporary procedures as follows:

2
3 **04 NCAC 10K .0202 REQUESTS FOR ADDITIONAL REVIEW BY THE DEPUTY COMMISSIONER**

4 (a) A motion to reconsider or a request for a redetermination of the Deputy Commissioner's decision shall be filed
5 within 30 days of receipt of notice of the Deputy Commissioner's decision, and may be filed by using the form
6 *Motion to Reconsider Decision of the Deputy Commissioner under the Eugenics Asexualization and Sterilization*
7 *Compensation Program. If a motion to reconsider or a request for a redetermination is filed, the Deputy*
8 *Commissioner's decision is not final until the disposition is filed by the Deputy Commissioner on the pending*
9 *motion to reconsider or request for a redetermination.*

10 (b) A request for a full evidentiary hearing before the Deputy Commissioner shall be filed within 30 days of receipt
11 of notice of the Deputy Commission's final decision, and may be filed by using the form *Request for Evidentiary*
12 *Hearing before a Deputy Commissioner under the Eugenics Asexualization and Sterilization Compensation*
13 *Program. The Commission shall set a hearing location, date, and time.*

14
15 *History Note: Authority G.S. §§ 143B-426.52(d) & 143B-426.53(a),(c)&(d);*
16 *Temporary Adoption Eff. October 30, 2013.*

1 4 NCAC 10K .0203 is adopted under temporary procedures as follows:

2
3 **04 NCAC 10K .0203 HEARINGS BEFORE A DEPUTY COMMISSIONER**

4 (a) The Commission shall give no less than 30 days' notice of a hearing in every case. A motion for a continuance
5 shall be allowed by the Deputy Commissioner before whom the case is set only in the interests of justice or to
6 promote judicial economy. Where a claimant has not notified the Commission of the attorney representing the
7 claimant prior to the mailing of calendars for hearing, notice to that claimant constitutes notice to the claimant's
8 attorney.

9 (b) All subpoenas shall be issued in accordance with Rule 45 of the North Carolina Rules of Civil Procedure, with
10 the exception that production of public records or hospital records as provided in Rule 45(c)(2), shall be tendered or
11 delivered upon the Deputy Commissioner before whom the case is calendared, or upon the Docket Section of the
12 Commission should the case not be calendared.

13 (c) The Commission may issue writs of habeas corpus ad testificandum in cases arising under the Eugenics
14 Asexualization and Sterilization Compensation Program. Requests for issuance of a writ of habeas corpus ad
15 testificandum shall be served upon the Deputy Commissioner before whom the case is calendared, or upon the
16 Docket Section of the Commission should the case not be calendared.

17 (d) In the event of inclement weather or natural disaster, hearings set by the Commission shall be cancelled or
18 delayed when the proceedings before the General Court of Justice in the county of the scheduled hearings are
19 cancelled or delayed.

20
21 *History Note: Authority G.S. §§ 143B-426.52(d) & 143B-426.53(a)&(d);*
22 *Temporary Adoption Eff. October 30, 2013.*

1 4 NCAC 10K .0301 is adopted under temporary procedures as follows:
2

3 **SECTION .0300 – APPEALS TO THE FULL COMMISSION**
4

5 **04 NCAC 10K .0301 APPEAL TO THE FULL COMMISSION**

6 (a) A claimant may appeal a Deputy Commissioner’s final decision by filing a notice of appeal to the Full
7 Commission within 30 days of receipt of notice of the Deputy Commissioner’s decision, and may be filed by using
8 the form *Notice of Appeal to the Full Commission under the Eugenics Asexualization and Sterilization*
9 *Compensation Program*. The Deputy Commissioner’s decision is binding if not appealed.

10 (b) After receipt of notice of appeal, the Commission shall supply to the claimant a transcript of the record upon
11 which the Deputy Commissioner’s decision is based and from which an appeal is being taken to the Full
12 Commission. The claimant shall, within ten days of receipt of transcript of the record, file with the Commission a
13 written statement of the particular grounds for the appeal.

14 (c) When an appeal is made to the Full Commission, the claimant may file a written brief in support of his ground
15 for appeal. The brief shall be filed with the Commission no less than 15 days prior to the hearing. A brief to the
16 Full Commission shall not exceed 10 pages, excluding attachments.

17 (d) Upon the request of the claimant, the Commission may waive oral arguments in the interests of justice or to
18 promote judicial economy. In the event of such waiver, the Full Commission shall file a decision based on the
19 record and briefs.

20
21 *History Note: Authority G.S. §§ 143B-426.52(d) & 143B-426.53(e);*
22 *Temporary Adoption Eff. October 30, 2013.*

1 4 NCAC 10K .0302 is adopted under temporary procedures as follows:

2

3 **04 NCAC 10K .0302 MOTIONS FOR RECONSIDERATION BY THE FULL COMMISSION**

4 A motion to reconsider or to amend the Full Commission's decision shall be filed within 30 days of receipt of notice
5 of the Full Commission's decision. If a motion to reconsider or to amend is filed, the Full Commission's decision is
6 not final until the disposition is filed by the Commission on the pending motion to reconsider or to amend.

7

8 *History Note: Authority G.S. §§143B-426.52(d).*

9 *Temporary Adoption Eff. October 30, 2013.*

1 4 NCAC 10K .0401 is adopted under temporary procedures as follows:

2

3

SECTION .0400 - APPEALS TO THE COURT OF APPEALS

4

04 NCAC 10K .0401 STAYS

6 When a case is appealed to the Court of Appeals, all decisions of the Full Commission are stayed pending appeal.

7

8 *History Note: Authority G.S. §§143-294, 143B-426.50, 143B-426.52(d), & 143B-426.53(f)*

9

Temporary Adoption Eff. October 30, 2013.

1 4 NCAC 10K .0402 is adopted under temporary procedures as follows:

2

3 **04 NCAC 10K .0402 MOTIONS FOR COURT OF APPEALS CASES**

4 Prior to the docketing of the record on appeal to the Court of Appeals, all motions filed by the claimant regarding an
5 appeal to the Court of Appeals shall be addressed to and ruled upon by the Chair of the Commission, or the Chair's
6 designee.

7

8 *History Note: Authority G.S. §§143-294, 143B-426.50, 143B-426.52(d), & 143B-426.53(f)*

9 *Temporary Adoption Eff. October 30, 2013.*

1 4 NCAC 10K .0403 is adopted under temporary procedures as follows:

2

3 **04 NCAC 10K .0403 REMAND FROM APPELLATE COURTS**

4 When a case is remanded to the Commission from an appellate court, the claimant may file a statement, with or
5 without a brief to the Full Commission, setting forth his position on the actions or proceedings, including evidentiary
6 hearings or depositions, required to comply with the court's decision. This statement shall be filed within 30 days of
7 the issuance of the court's mandate and shall be filed with the Commissioner who authored the Full Commission
8 decision or the Commissioner designated by the Chairman of the Commission if the Commissioner who authored
9 the decision is no longer a member of the Commission.

10

11 *History Note:* Authority G.S. §§143B-426.50 & 143B-426.52(d)

12 *Temporary Adoption Eff.* October 30, 2013.

1 4 NCAC 10K .0501 is adopted under temporary procedures as follows:
2

3 **SECTION .0500 – RULES OF THE COMMISSION**
4

5 **04 NCAC 10A .0501 WAIVER OF RULES**

6 In the interests of justice or to promote judicial economy, the Commission may, except as otherwise provided by the rules
7 in this Subchapter, waive or vary the requirements or provisions of any of the rules in this Subchapter in a case pending
8 before the Commission upon written application of a claimant or upon its own initiative only if the claimant is not
9 represented by counsel. Factors the Commission shall use in determining whether to grant the waiver are:

- 10 (1) the necessity of a waiver;
11 (2) the claimant's responsibility for the conditions creating the need for a waiver;
12 (3) the claimant's prior requests for a waiver;
13 (4) the precedential value of such a waiver;
14 (5) notice to and opposition by any opposing parties; and
15 (6) the harm to the claimant if the waiver is not granted.
16

17 *History Note:* Authority G.S. §§143B-426.50 & 143B-426.52(d);
18 *Temporary Adoption Eff.* October 30, 2013.