

Commutation: To Do or Not to Do

What is commutation? This is a request by either party (usually the petitioner) in a worker's compensation matter to accelerate the partial permanency payments of the petitioner to pay out all or a portion of these benefits ahead of time.

NJSA 34:15-25 provides in short that commutation is to be allowed only when it clearly appears that an unusual circumstance warrants a departure from the normal manner of payment. This request can be made by either party and must be approved by the court. The court will look at multiple factors, but the statute specifically provides that the basis of commutation of any award cannot be to allow the petitioner to satisfy a debt, pay a physician, lawyer or others. There must be some unusual or unique situation before the Court will allow commutation, even if both parties agree. The Court has allowed commutation to pay for a life-saving surgery and has denied commutation to start a business or pay utility bills.

In New Jersey, partial total disability awards are paid out in accrual fashion, meaning from the date of injury if no temporary disability was paid or from the first day after the last payment of temporary disability, a petitioner's partial total disability benefit begins to run. In many instances at the time of resolution of a claim, only a part of the overall award payments have accrued and the petitioner will then receive additional weekly benefits into the future. Sometimes these payments will go on for a significant time into the future.

What does an adjuster do when they get a call from the petitioner asking for an advance or a request for acceleration of his or her payments? Careful consideration should always be given when deciding to allow for acceleration of payments under this provision of the statute. Permanency payments as noted in the statute are supposed to be paid similar to receipt of a petitioner's wages, weekly, biweekly or monthly. Agreeing for a commutation of an award, gives a petitioner money that at the time of payment he or she is not entitled to receive. If the carrier is going to agree for a commutation, it should always be submitted to the Court for approval. Failure to obtain Court approval of a commutation of an award could result in the carrier being required to pay the benefits twice.