ON-THE-JOB INJURY

Policy and Administrative Procedures

PM-74-02

Section: 74-00, Safety

PURPOSE AND SCOPE

To advise and coordinate City-wide programs and administer payment of medical expenses and lost-time compensation for employees who suffer injury, death, and exposure to blood or other potentially infectious materials or to occupational illness/disease "arising out of" and "in the course and scope of" employees performing their job duties.

This policy covers all employees occupying regular, full-time positions with City of Memphis Government, including those in their initial probationary period with the exception of Police and Fire recruits who are eligible for OJI medical expense benefits only.

Temporary employees (temporary, seasonal-temporary, and per-event temporary) are eligible for On-the-Job-Injury (OJI) medical expense benefits only. Only the City Attorney or designee may grant an exception.

Should a conflict exist between any of the provisions contained herein and any provisions of a governing memorandum of understanding, the provisions contained in the memorandum of understanding shall control.

TYPES OF CLAIMS

The OJI claims for the City of Memphis are classified into four categories: Exposure, a Regular On-the-Job Injury, Occupational Illness/Disease (HHL) and Death. Each claim will be classified as either a Notice Only, Medical Only or Lost Time.

POLICY

The On-the-Job Injury Program is administered by the Health and Safety Office under the Law Division. The City Attorney promulgates the rules, procedures, and guidelines of the On-the-Job Injury Program.

A. General Requirements

1. It is the employee's responsibility to notify his/her supervisor when an injury or exposure has occurred. The claim must be reported to the employee's supervisor within the same shift and/or no later than 24 hours from the incident.

The supervisor must complete the OJI report once the claim has been reported. If an injury or exposure on duty results in an occupational disease/illness or if the employee is diagnosed with an occupational disease/illness in the absence of an injury or exposure on duty, then the employee must immediately notify the supervisor once the diagnosis has been determined no later than thirty (30) calendar days from the original diagnosis. The supervisor shall report the claim to the applicable OSHA Coordinator within the Division. The supervisor/OSHA Coordinator must immediately report the claim to the City's Third Party Administrator.

Failure to report an injury, exposure or occupational illness/disease to the immediate supervisor within the aforementioned time period shall be grounds for denial. An exception to the injury or exposure reporting requirement shall be made if the circumstances of the injury or exposure are such that the employee does not have reason to know of the injury or exposure at the time it occurs and if there is independent evidence regarding the injury or exposure that supports making such an exception. However, in no event will such exception be made if the injury or exposure is not reported within five (5) calendar days from the time period allowed for the initial claim. Any request for consideration of an exception shall be made in writing to the TPA with all supporting documentation attached. The exception may be granted upon recommendation of the TPA and approval of the Health and Safety Office. In no event shall anyone deem any claim compensable without a complete investigation performed by the OJI Administration.

2. OJI coverage is limited to a one (1) year statute of limitations from the date of last treatment. No additional OJI benefits will be made once the one year term has expired.

3. An employee receiving OJI benefits will be compensated only for lost time authorized by the recognized OJI treating physician. The employee is expected and required to follow the treating physician's orders. Failure to comply with the treating physician's orders shall be grounds for denial. In the event an employee desires a second opinion regarding a surgery recommendation from the treating physician, the employee may seek a second opinion at the employee's expense.

OJI lost time must be associated with a condition medically documented as being a direct result of a job injury or illness "arising out of" and "in the course and scope of" an employee performing his/her job duties that was reported in a timely manner and approved by the OJI Administration. In order to validate lost days as OJI leave time, medical documentation must clearly establish a direct relationship between the injury sustained and the time lost. OJI leave shall run concurrently with FMLA.

The treating OJI physician must certify that the employee is totally disabled from performing full job duties. It is the employee's responsibility to provide the employer with such certification. The treating physician may permit light duty/transitional duty, but must specifically identify capabilities and physical limitations. It is the responsibility of the employee to immediately notify the TPA and the supervisor and/or the Division OSHA Coordinator when released back to work in a Light duty/Transitional duty or Restricted duty capacity. It is the responsibility of the TPA to communicate to the Division's OSHA Coordinator the employee's capabilities and physical limitations. It is the responsibility of the Division's OSHA Coordinator to advise the TPA in writing whether the respective Division can accommodate any Light duty/Transitional duty assignments. If the employee is released back to work with permanent restrictions, it is the responsibility of the OSHA Coordinator to advise the applicable in-house officials and the Health and Safety Office. Light duty/Transitional duty assignments, when available, are at the discretion of the employee's Division Director and are limited to no longer than 180 aggregate days from the date of injury and/or occurrence. While an employee is being compensated for OJI lost-time, no other paid leave (vacation, sick, bonus, etc.) may be taken until the employee has been released to full duty. An employee may NOT, directly or indirectly, engage in other gainful employment activities of any kind while being compensated for OJI lost-time.

4. An employee who is receiving OJI benefits is required to report his/her condition and convalescent location to his/her designated supervisor in accordance with the employee's Division rules and regulations. Required reporting will continue unless alternate instructions are given by the employee's designated supervisor. The convalescent location will be the employee's residence or other location approved by the employee's designated supervisor in accordance with the employee's Division rules and regulations.

5. The City may elect, at any time, to require the employee to be examined by a physician of the City's choice. Such examination will be at the City's expense. Results of the examination by the City-appointed physician shall be a determining factor in decisions related to medical treatment and return-to-duty status. It is the responsibility of the TPA to ensure that the physician conducting the examination has all required records.

6. Dental care is provided only if it is necessary as a direct result of an on-the-job physical injury "arising out of" and "in the course and scope of" an employee performing his/her job duties and not stress/anxiety and/or TMJ.

7. Necessary hospitalization will be provided in semi-private facilities unless the physician listed on the OJI Panel, for medical reasons, has directed otherwise.

8. An employee injured on the job will be required to submit to drug/alcohol testing in accordance with the City's Drug Testing Policy.

9. Mental injury claims are not covered unless the mental injury results solely from OJI-approved physical bodily injury "arising out of" and "in the course and scope of" an employee performing his/her job duties that occurred during the OJI accident.

10. In compliance with the Public Records Act, State of Tennessee, T.C.A. Sec. 10-7-504, medical records of individuals receiving medical treatment, in whole or in part, at the expense of the City of Memphis, are confidential (reference PM-70-05). These records shall not be made available for inspection by members of the public. However, medical records related to an OJI will continue to be available as follows:

    a. To management and supervisory personnel above the employee in the chain of authority as needed for management decisions, and to the affected Division's OSHA Coordinator.
    b. To the employee's Division Director or designee, Director of the Human Resources Division or designee, and/or the City Attorney or designee involved in decisions, administrative proceedings, questions, or complaints regarding the employee's rights, benefits, or litigation.
    c. To the employee, the employee's attorney, or to an individual who holds the employee's written, signed consent.
    d. In response to a subpoena by submitting medical records under seal to the court.

All requests for medical records must be made in writing to the TPA for processing. It is the responsibility of the TPA to ensure that the request is completed within ten (10) calendar days.

B. Pre-Employment Injury

The OJI Program covers aggravation of pre-employment injuries provided the aggravation occurs as a result of the performance of the employee's job duties. However, pre-employment medical or mental conditions, including but not limited to heart disease, hypertension, and/or lung disease are excluded from this provision. Causal relationships must be medically documented.

C. FMLA Leave

Time off as OJI leave with pay and OJI leave without pay shall concurrently be counted as part of an employee's entitlement to leave under the provisions of the FAMILY MEDICAL LEAVE ACT (FMLA) in accordance with PM-66-06.

D. Heart, Hypertension, and Lung Program

The OJI Program also covers Police Officers and Fire Fighters as required by state statute T.C.A. 7-51-201 (as amended). Police Officers diagnosed with diseases of the heart and hypertension, and Fire Fighters diagnosed with diseases of the heart, lungs, and hypertension are presumed (unless the contrary is shown by competent medical evidence) to have contracted such diseases or conditions in the course of their employment by the City of Memphis government. (Refer to Heart, Hypertension, and Lung Program Procedures).

E. Subrogation

1. When OJI benefits have been partially or fully paid and the injury or death was due to the actions of a third party, the City has the right of subrogation against the third party to the extent of the OJI benefits paid. The City shall have a subrogation lien against any recovery by the employee or those to whom such employee's right of action survives; and, the City may initiate or intervene in any action to protect and enforce such lien.

2. The injured employee, or those to whom such employee's right of action survives, is required to sign a subrogation agreement before receiving any OJI payments and is required to notify the City's Health and Safety Office, Third Party Administrator or the City Attorney's Office that a claim or lawsuit has been filed against the third party and/or the third party's insurance company within thirty days of the filing of said action. Should either the employee

or those to whom such employee's right of action survives, refuse to sign a subrogation agreement, benefits shall be withheld or the claim will be denied until such agreement has been signed and received by the City's Third Party Administrator or Health and Safety Office.

3. In the event either the employee or those to whom such employee's right of action survives fails to file an action against the third party within one (1) year, the City, within its discretion, may exercise its right of subrogation and file an action against the third party on behalf of the employee.

   Notwithstanding the provision herein to the contrary, for actions against a third party that have a one-year statute of limitation, the employee, or those to whom such employee's right of action survives, must file an action within nine (9) months of the underlying injury. If the employee, or those to whom such employee's right of action survives, fails to file an action within nine (9) months, the City, within its discretion, may exercise its right of subrogation and file an action against the third party on behalf of the employee.

4. In the event an employee files suit, the employee or employee's attorney shall notify the City Attorney's Office immediately, but in no instance later than thirty (30) days following the filing of said action.

5. In the event the employee's net recovery from the third party, either by judgment, settlement, or otherwise, exceeds the amount paid by the City, the City shall have the right of full recovery of amounts paid on the employee's behalf. If at the time of judgment, settlement or otherwise, the City has not paid and discharged the City's full maximum liability for OJI benefits and the employee yet requires OJI medical treatment, the City shall be entitled to a credit or setoff on the City's future liability, as it accrues, to the extent of the employee's net recovery. In the event the employee, or those to whom such employee's right of action survives, obtains a recovery by judgment, settlement, or otherwise, without intervention by the City, the City shall, nevertheless, be entitled to a credit on the City's future liability under OJI, as it accrues, to the extent of the net recovery.

F. Panel of Physicians / Choice of Physician

The City of Memphis hereby establishes a panel of physicians to treat qualified On-the-Job Injury claims. It is the responsibility of the Health and Safety Office, through its affiliates, to maintain a Panel of Physicians that is competent in the medical field to assess and treat compensable OJI claims. At any time, the Health and Safety Office can add or delete any emergency / non-emergency facility or physician(s) and/or specialty group from the OJI Panel with the ability to alter the operating procedures that governs the OJI Panel.

Authorization and/or payment for an initial visit with a health care provider does not deem an on the job injury compensable until a final determination is made by the Third Party Administrator (TPA). In the event the OJI is not deemed compensable, the employee will be personally responsible for any and all treatment.

1. For initial treatment, the injured employee may go to any emergency/non-emergency facility listed on the OJI Panel for appropriate immediate treatment. It is the responsibility of the supervisor / OSHA Coordinator to ensure that the employee initially treats with an emergency / non-emergency facility listed on the OJI Panel.

   a. For **EMERGENCY** care, the supervisor must complete the Notification of Emergency Treatment form and immediately send to the Health and Safety office. Upon discharge, the employee must immediately contact his supervisor/OSHA coordinator and the TPA for follow-up instructions.

   b. For **MINOR** emergency care, the supervisor/OSHA Coordinator will provide assistance to the employee on selecting the appropriate medical facility for treatment from the OJI panel.

   A Choice of Medical Provider form shall be given to the employee by the supervisor / OSHA Coordinator to take to the initial visit. It is the employee's responsibility to complete all forms presented by the medical facility and to provide a copy of these forms to his/her supervisor after the initial visit. Failure to comply may be grounds for denying OJI benefits. The supervisor/OSHA Coordinator should note on the OJI Report the emergency/non-emergency facility at which the employee elected to treat.

2. If follow-up care is necessary after the initial visit, the employee must contact the TPA for authorization. The TPA must present the appropriate specialty panel of physicians from the City's OJI Panel to enable the employee to select a physician. The employee must complete the Choice of Physician Form prior to treatment. An IOD form must be completed by the treating physician after the doctor visit. It is the employee's responsibility to ensure that the treating physician signs and sends a copy of the IOD form to the TPA. The employee must also provide a copy of the IOD form to his or her supervisor.

3. Employees may only change physicians upon written referral from the treating physician and approval of the Health and Safety Office or designee. Any referrals or consults from the treating physician shall be submitted to the Health and Safety Office or designee for approval. The Health and Safety Office and designee must ensure that all referrals are made to physicians listed on the OJI Panel. Once approved, the new physician to whom the employee was referred becomes the employee's recognized treating OJI physician and further treatment by the original treating physician will not be approved. When a change of physician occurs, a Choice of Physician form must be completed.

4. Only the City's Health and Safety Office can authorize treatment with a physician or medical facility outside the City's panel of physicians; however, such authorization is at the discretion of the Health and Safety Office.

5. If the employee changes a treating physician without following the appropriate guidelines, payment of benefits to the new treating physician will be denied.

6. In the event of a catastrophic incident, the employee shall be referred by the supervisor/OSHA Coordinator to treat at the nearest emergency facility. The OSHA Coordinator shall immediately give notice of the catastrophic event to the TPA and Health and Safety Office and identify the location of the emergency medical facility to which the employee was transported. The Choice of Medical Provider form shall be completed by the supervisor/OSHA Coordinator and immediately sent to the TPA. At the discretion of the TPA and Health and Safety Office, a Nurse Case Manager will be assigned for ongoing case management services. Upon release from the emergency facility, the employee shall be governed by the applicable guidelines.

7. Treating physicians at hospital emergency rooms are not authorized to relieve any employee from duty for more than 48 hours without referral for follow up medical care.

8. All medications prescribed by the treating physician shall be dispensed through the City's Health and Safety Pharmacy vendor after compensability has been determined. It is the responsibility of the employee to contact the TPA for all medication needs.

PROCEDURES

A. Payments

1. Medical Expense

a. The City will pay necessary medical expenses, including physician fees, hospital bills, and certain other ancillary expenses when an OJI claim is accepted by the City. This is subject to an overall maximum of $150,000 per injury or illness. Amounts can be increased based upon medical necessity and only by the recommendation of the OJI Benefit Review Committee and approval by the City Attorney. However, under no circumstance will medical benefits be paid beyond twelve (12) cumulative months from the date the employee is unable to work due to disability from injury and/or illness

b. The TPA shall notify an employee when his/her medical bills and expense total reaches $120,000.00. All requests for an extension of benefits shall be made in writing to the TPA. The TPA shall notify the Health and Safety Office of the request for approval. In the event of a catastrophic event, the TPA shall request an extension of medical benefits on behalf of the employee with necessary supporting documentation.

c. Medical expense payments only are continued for a period of up to three (3) years in cases of line-of-duty disability retirement. After this three-year period has expired, all medical bills are to be submitted to the employee's insurance carriers, as in all other type pensions. The medical expense payments apply only to the treatment of the injury or illness for which the Line-of-Duty Disability Retirement was granted.

d. Payments cease upon release by the treating physician, when the employee reaches MMI, upon termination of employment, upon resignation, upon retirement, or at the time the employee receives benefits under the Long Term Disability Income Plan or Social Security Disability Benefits. Failure to follow medical advice from the treating OJI Physician and/or OJI instructions will result in termination of OJI benefits.

e. Medical expense benefits only may be continued upon termination of employment, except terminations due to discipline, if there is independent evidence regarding the occurrence of the injury to support continuance of medical treatment for an injury "arising out of" and "in the course and scope of" an employee performing his/her job for the City of Memphis. Any medical expense benefits to be paid beyond the date of termination of employment will be limited in nature, and in no event shall such medical expense benefits be paid beyond the date of maximum medical improvement. Any request for extension of medical expense benefits beyond the date of termination should be made in writing to the City's Third Party Administrator with all supporting documentation attached. The extension may be granted upon the recommendation of the Benefits Review Committee and approval of the City Attorney.

2. Lost Time

a. Full salary will be paid, for a maximum period of six months (180 calendar days), to any regular full-time employee, with the exception of Police and Fire recruits, covered by the OJI Program as long as there is medical documentation from the physician of record that it is medically necessary for the employee to remain off work due to the on-the-job injury or illness. It is the joint responsibility of the employee and the employee's supervisor to ensure that the employee's time is recorded accurately.

b. Lost work days charged as OJI lost-time are counted from the first full date of absence due to the on-the-job injury or illness until the employee returns to full duty and run concurrently with any FMLA leave for which the employee is eligible. If the employee is placed into transitional or limited duty status, lost-work days cease to accumulate. If the employee leaves his/her transitional or limited duty

status due to medical documentation from the physician of record that it is medically necessary for the employee to remain off work due to the on-the-job injury or illness, the lost-work day accumulation resumes from the last lost-work day prior to reporting to transitional or limited duty. If the employee is returned to full duty, but is absent again due to recurrence of the same injury and the OJI absence is due to medical documentation from the physician of record that it is medically necessary for the employee to remain off work due to the on-the-job injury or illness, then the prior number of lost-work days will be added to the current number of lost-work days due to the on-the-job injury or illness.

c. No employee may be off a City job longer than 12 consecutive months from the date the employee is unable to work due to disability from illness and/or injury unless otherwise required by law. Included in the 12-month period of time for disability from illness and/or injury is any combination of paid and/or unpaid leaves of absence.

d. Employees receiving OJI lost time benefits are forbidden to participate in any type of activity that may be compared to a Transitional or Limited Duty position. Activities that could possibly aggravate the condition or slow the recuperation process are not allowed. If evidence is produced that indicates the employee is engaging in activities (including recreational or educational activities) that may aggravate the condition or extend recovery time, the job-related injury claim is subject to rejection from that date forward.

   Lost work time and medical bills incurred due to unauthorized activities aggravating the on-the-job injury and/or extending the recovery time will not be considered as job-related. This includes job-related injuries that have healed, but are re-injured while off duty due to activities that are not occupationally related.

e. At the conclusion of an aggregate six months (180 calendar days) of on-the-job injury or illness, employees who have been determined to be medically unable to perform the full scope of their job duties and unable to return to full duty, must consider and exercise one or more of the following options:

1. Request use of accrued leave benefits and/or a leave of absence without pay. The total period of time for such leave shall not exceed six months (180 calendar days). A leave of absence without pay will be granted only after all accumulated vacation, bonus days, sick leave, and any other paid time off due the employee has been exhausted.

2. Apply for Long Term Disability Income Plan Benefits and/or Social Security Disability Benefits, if eligible. (The employee must meet the requirements of the benefits as set forth in the Plan document.)

3. Apply for a Line-of-Duty Disability Retirement, subject to the rules and regulations of the City of Memphis Retirement System. The employee must meet the requirements of the benefits sought as set forth in the plan document.

   If an employee has been injured "arising out of" and "in the course and scope of" the employee performing his/her job duties (OJI) and the attending physician of record indicates that the employee is permanently and totally disabled to perform the duties for which the employee is assigned, the employee may apply for "Line of Duty Disability Pension". This pension application must be made in accordance with the City of Memphis Retirement Ordinances. The application for pension should be made within thirty (30) days of the employee being advised by the attending physician that return to full duty will be impossible. Employees may apply for this pension by contacting the Human Resources Division's Benefits Department.

4. Apply for an accommodation under the Americans with Disabilities Act (ADA).

5. This subsection 5 provision specifically applies to bargaining unit officers (rank of Sergeant and below) of the Memphis Police Services Division only: As such, a member will receive full salary so long as there is medical documentation from the physician of record that it is medically necessary for the employee to remain off work due to the on-the-job injury or illness for a maximum period of six (6)

calendar months, plus up to six (6) additional calendar months at the Division Director's sole discretion and written authorization, coupled with medical documentation as submitted by the employee's attending physician and/or a physician selected by the City. Leave runs concurrently with any FMLA leave for which the employee is eligible. At the conclusion of the twelve (12) calendar months of OJI at full pay, the injured employee, who has been determined to be medically unable to perform the full scope of his/her job and unable to return to full duty, may request use of accrued leave benefits and/or a leave of absence without pay. The total period of accrued leave taken will not exceed six (6) calendar months beyond the above described twelve (12) months, which is also subject to the Division Director's sole discretion and authorization. Request for a leave of absence without pay may be granted although the employee has remaining unused accrued leave benefits. It is understood that the use of any accrued sick time in conjunction with this option will not be construed as an occurrence under the Sick Leave Abuse Policy and all benefits will continue to accrue as if OJI time was being utilized (i.e., Bonus leave reference point, sick leave accrual, etc.).

6. This subsection 6 provision specifically applies to members of the bargaining unit identified within the Memorandum of Agreement between the City of Memphis and the International Association of Fire Fighters only: As such, a member will receive full salary so long as there is medical documentation from the physician of record that it is medically necessary for the employee to remain off work due to the on-the-job injury or illness for a maximum period of six (6) calendar months, plus up to six (6) additional calendar months at the Division Director's sole discretion and written authorization, coupled with medical documentation as submitted by the employee's attending physician and/or a physician selected by the City. Such leave runs concurrently with any FMLA leave for which the employee is eligible.

At the conclusion of the twelve (12) calendar months of OJI at full pay, the injured employee who has been determined to be medically unable to perform the full scope of his/her job and unable to return to full duty may request use of accrued leave benefits and/or a leave of absence without pay. The total period of accrued leave taken will not exceed six (6) additional calendar months beyond the above described twelve (12) months, which is also subject to the Division Director's sole discretion and authorization.

Request for a leave of absence without pay may be granted although the employee has remaining unused accrued leave benefits. It is understood that under this option, all benefits will continue to accrue as if OJI time was being utilized.

f. OJI Payments cease when any one of the following conditions are met: release by the treating physician to return to full duty or employee has reached MMI; termination of employment, resignation, or retirement; upon receipt of Line-of-Duty Disability Retirement Benefits; upon receipt of Long Term Disability Income Plan Benefits (ordinary disability); upon receipt of Social Security Disability Benefits; at end of maximum period for payment of OJI; or employee fails to follow medical advice by the treating OJI physician and/or OJI instructions.

3. Death Benefits

The legal dependents of any City of Memphis employee who is killed in the line of duty, whereas the death is shown **not** to have resulted from the negligence of the employee or the employee's intentional violation of applicable local, state or federal regulations or laws, will be paid the amount of One Hundred Thousand Dollars ($100,000.00), in addition to the death benefits as provided for in PM-42-04. Authorization for such death benefits and the method of payment shall be determined following an investigation by the TPA and recommendations from the Health and Safety Office to the City Attorney. No death claim will be considered without an autopsy report.

4. Set-off for Benefits Paid Under OJI

a. In the event any person, including, but not limited to, the employee, his or her personal representative, dependents, spouse or next of kin, is awarded damages against the City in any legal proceeding through settlement or judgment arising out of any claim or lawsuit for damages stemming from or arising out of, or on account of death, occupational disease or personal injury suffered by an employee, including a minor, whether lawfully or unlawfully employed, during the performance of the employee's job duties, that amount shall be set-off by the amount of benefits paid under OJI to the employee, his or her personal representative, dependents, spouse or next of kin on account of death, occupational disease or personal injury suffered by an employee.

b. The City of Memphis shall receive full credit for the total amount of benefits paid under OJI, including, but not limited to, payments for medical expenses, lost wages, and death benefits. In no event shall the aggregate amount paid to the employee, his or her personal representative, dependents, spouse or next of kin, by the City of Memphis on account of death, occupational disease or personal injury suffered by an employee for an action or claim sounding in tort exceed the maximum limits of liability applicable to municipalities under Tennessee law.

A. Heart, Hypertension, and Lung Disease

In order to be eligible for benefits under the HHL Program, the following procedures will be followed by Police Officers diagnosed with diseases of the heart and hypertension, and Fire Fighters diagnosed with diseases of the heart, hypertension, and lungs in order for a determination to be made related to medical eligibility.

1. Upon receipt of an HHL claim, the City's Third Party Administrator will forward to the employee a Health History Form to be completed and submitted by the employee. The employee will also be required to submit a list of all physicians and medical providers who have treated the employee for any reason within the past ten (10) years, and a signed Medical Authorization Form.

2. Copies of all medical records during the past ten (10) years, health history, pre-employment physical exam, and a copy of the official job description for the employee's position, which is on file with the Human Resources Division, will be sent to a panel of two (2) physicians, approved by the City, to determine within a

reasonable degree of medical certainty the primary cause of the illness. One of the two (2) panel physicians will also perform a physical examination of the employee, including all testing recommended by that examining physician; and, the results of such examination will be made available to the other panel physicians for review and determination. In the event of conflicting medical opinions, a third panel physician shall be contacted.

3. Upon receipt of the panel physicians' opinions as to the cause of the employee's illness or disease, the Health and Safety Office will make a determination, based upon the opinions of the panel physicians, as to whether the employee is medically eligible for HHL benefits.

4. Those employees who are accepted under the HHL Program will be subject to all of the policies and procedures of the OJI Policy, PM-74-02.

5. Those employees who are not accepted under the HHL Program may appeal the denial of their claim under the appeals process of this OJI policy if they so choose.

B. Appeals Process (Uniform Administrative Procedures Act)

An employee dissatisfied with a decision denying, in whole or in part, OJI benefits for medical expenses, pay for lost-time, or HHL Program eligibility may elect to appeal the matter via the procedures that follow. However, if any of the provisions of this policy are deemed to be in conflict with any of the contested case provisions of the Tennessee Uniform Administrative Procedures Act (T.C.A. 4-5-301 et. seq.), the provisions of the TUAPA shall control.

1. Any request for reconsideration of an OJI or HHL claim for benefits shall be made in writing to the Appeals Coordinator within twenty (20) calendar days of the employee's receipt of written notice of denial regarding the matter being appealed.

2. Upon receipt of the reconsideration request, the Appeals Coordinator will forward written notice of the date that an administrative hearing is to be held before an Administrative Law Judge. The notice shall be sent within sixty (60) days of the reconsideration request. The City Attorney or designee will designate the Administrative Law Judge. The employee may have his/her attorney and union representative present at the administrative hearing.

3. After the administrative hearing, a decision regarding the employee's appeal will be made within ninety (90) calendar days pursuant to T.C.A. 4-5-314. The employee will be notified in writing of the Administrative Law Judge's decision.

4. Time limitations for the filing of an action for review of the Administrative Law Judge's decision shall run from the date of the decision of the Administrative Law Judge and must comply with the dictates of the Tennessee Uniform Administrative Procedures Act. The appeal process must be exhausted prior to filing an action in any court of law.

OJI POLICY EXCLUSIONS

Payments are **not** allowed for injury or death stemming from, but not limited to:

A. Improper use of drugs and/or the use of alcohol.

B. Misconduct, including horseplay.

C. Intentional self-inflicted injury.

D. Failure or refusal to use safety devices and/or personal protective equipment, or failure to perform or comply with a duty required by law.

E. Aggravation of an earlier on-the-job injury or illness while off duty.

F. Injuries suffered while en route to and from work, except when such travel was in the performance of the employee's assigned job duties.

G. Voluntary participation in physical fitness or recreational activities, unless the activity is part of an organized program approved by the appropriate Division Director and the employee's participation is made mandatory by the employee's Division Director. Voluntary participation in such activities is not covered either during working hours or during off-duty hours.

H. Non-compliance with treating physician's and OJI instructions, which includes, but is not limited to, withholding information that is needed to complete an investigation and refusing to follow the recognized treating physician's plan to treat the injury.

I. Activities not directly related to, "arising out of" or "in the course and scope of" the performance of job duties.

J. Fraud, which includes, but is not limited to, falsification of documents, and/ or giving false statements.

Definitions:

"Administrative Hearing" shall mean a contested case proceeding pursuant to the Uniform Administrative Procedure Act, as amended. See, T.C.A 4-5-301.

"Administrative Law Judge" or "ALJ" shall mean a hearing officer appointed or retained by the City Attorney to oversee an administrative hearing.

"Arising Out of" shall mean the origin of the injury in which there is a connection between the work that is required to be done and the injury.

"Catastrophic" shall mean any multi-trauma (i.e., head injury, gunshot, internal injury, severe burn, heart attack) sustained while performing duties as a city employee that leads into immediate emergency medical attention and/or death.

"Choice of Medical Provider Form" shall mean a form used by the City for injured employees to select a medical provider from the City's OJI panel.

"Compensability" shall mean the determination of whether payment should be administered for an injury, exposure, death, or occupational disease suffered by a city employee.

"Expense Payments" shall mean payments incurred to process any claim which includes, but is not limited to, bill review, surveillance, and copies of medical records.

"Exposure" shall mean the condition of being exposed to infectious agents "arising out of" and "in the course and scope of" an employee performing his/her job duties, which may have a harmful effect on the body.

"Injury" shall mean an injury by accident arising out of and in the course of employment that causes either disablement or death of the employee and shall include occupational diseases arising out of and in the course and scope of employment that cause either disablement or death of the employee and shall include a mental injury arising out of and in the course and scope of employment. (See definition of Mental Injury.)

"Injury on Duty" or "IOD" Report shall mean a medical form that outlines medical treatment and return to work status for completion by the treating physician after each employee visit.

"In the Course and Scope" refers to the time and place, meaning the employee was injured during the time the employee is scheduled to work and at the place the employee is designated to perform and while performing his/her assigned duties.

"Lost Time Claims" shall mean a qualified On-the-Job-Injury that involves medical treatment and expenses, lost time from work, disability or death.

"Medical Only Claims" shall mean a qualified On-the-Job-Injury that involves medical treatment only and expenses without lost time and disability.

"Medical Payments" shall mean the actual bills or expenses incurred to treat the injured worker, which includes, but is not limited to, hospital care, prescriptions, physical therapy/rehab, diagnostic test/lab work, medical case management or physician fees.

"Mental Injury" shall mean a loss of mental faculties or a mental or behavioral disorder where the proximate cause is a compensable physical injury resulting in a permanent disability.

"Nurse Case Manager" or "NCM" shall mean a dedicated nurse hired by the City to provide ongoing case management services.

"Notice Only" shall mean a qualified On-The-Job-Injury that does not involve medical treatment and expenses, lost time and disability.

"Occupational Disease/Illness" shall mean all diseases arising out of and in the course and scope of employment. A disease shall be deemed to arise out of the employment only if:

(1) It can be determined to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
(2) It can be fairly traced to the employment as a proximate cause;
(3) It has not originated from a hazard to which workers have been equally exposed outside of the employment;
(4) It is incidental to the character of the employment and not independent of the relation of employer and employee;
(5) It originated from a risk connected with the employment and flowed from the source as a natural consequence, though it need not have been foreseen or expected prior to its contraction;
(6) There is a direct casual connection between the conditions under which the work is performed and the occupational disease. Diseases of the heart, lungs and hypertension arising out of and in the course and scope of any type of employment shall be deemed to be occupational diseases.

"OJI Report" shall mean a report the supervisor/OSHA Coordinator is required to complete when giving notice of an injury, exposure or occupational disease/illness.

"Panel of Physicians" shall mean a panel of doctors selected by the City to review employee history and render opinions, as well as process and treat qualified On-the-Job Injury claims.

"Third Party Administrator" or "TPA," shall mean the company or entity designated by the City to process qualified On-the-Job Injury claims.