

## CHAPTER 169

AN ACT concerning motorized wheelchairs and amending P.L.1995, c.233.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

1. Section 9 of P.L.1995, c.233 (C.56:12-83) is amended to read as follows:

C.56:12-83 Dispute resolution; application, hearing, procedure.

9. a. After a reasonable attempt to repair, a consumer shall have the option of submitting any dispute arising under section 4 of this act to the director for resolution. The director may establish a filing fee, to be paid by the consumer, fixed at a level not to exceed the cost for the proper administration and enforcement of this act. Upon application by the consumer and payment of any filing fee, the manufacturer shall submit to the hearing procedure established in this section.

b. The director shall review a consumer's application for dispute resolution and accept eligible disputes for referral to the Office of Administrative Law for a summary hearing to be conducted in accordance with special rules adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), by the Office of Administrative Law in consultation with the director. Immediately upon acceptance of a consumer's application for dispute resolution, the director shall contact the parties and arrange for a hearing date with the Office of Administrative Law. The hearing date shall, to the greatest extent possible, be convenient to all parties, but shall be no later than 20 days from the date the consumer's application is accepted, unless a later date is agreed upon by the consumer. The Office of Administrative Law shall render a decision, in writing, to the director within 20 days of the conclusion of the summary hearing. The decision shall provide a brief summary of the findings of fact, appropriate remedies pursuant to this act, and a specific date for completion of all awarded remedies. The director, upon a review of the proposed decision submitted by the administrative law judge, shall adopt, reject, or modify the decision no later than 15 days after receipt of the decision. Unless the director modifies or rejects the decision within the 15-day period, the decision of the administrative law judge shall be deemed adopted as the final decision of the director. If a final decision from the Office of Administrative Law results in a refund to the consumer, recovery by the consumer shall include attorney's fees, fees for expert witnesses and costs of suit, and reimbursement for actual expenses incurred by the consumer for the rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair and limited to the period of time after which the consumer's motorized wheelchair was offered to the manufacturer for return under P.L.1995, c.233 (C.56:12-75 et seq.) except in those cases in which the manufacturer made a comparable motorized wheelchair available to the consumer free of charge during that period. If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of \$5,000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

c. The Office of Administrative Law is authorized to issue subpoenas to compel the attendance of witnesses and the production of documents, papers and records relevant to the dispute.

d. A manufacturer or consumer may appeal a final decision to the Appellate Division of the Superior Court. An appeal by a manufacturer shall not be heard unless the petition for the appeal is accompanied by a bond in a principal sum equal to the money award made by the administrative law judge plus \$2,500 for anticipated attorney's fees and other costs, secured by cash or its equivalent, payable to the consumer. The liability of the surety of any bond filed pursuant to this section shall be limited to the indemnification of the consumer in the action. The bond shall not limit or impair any right of recovery otherwise available pursuant to law, nor shall the amount of the bond be relevant in determining the amount of recovery to which the consumer shall be entitled. If a final decision resulting in a refund to the consumer is upheld by the court, recovery by the consumer shall include attorney's fees, fees for expert witnesses and costs of suit, and reimbursement for actual expenses incurred by the consumer for the rental of a motorized wheelchair equivalent to the consumer's motorized wheelchair and limited to the period of time after which the consumer's motorized wheelchair was offered to the manufacturer for return under this act, except in those cases in which the manufacturer made a comparable

motorized wheelchair available to the consumer free of charge during that period. If the court finds that the manufacturer had no reasonable basis for its appeal or that the appeal was frivolous, the court shall award treble damages to the consumer. Failure of the Office of Administrative Law to render a written decision within 20 days of the conclusion of the summary hearing as required by subsection b. of this section shall not be a basis for appeal.

e. The Attorney General shall monitor the implementation and effectiveness of this act and report to the Legislature after three years of operation, at which time a recommendation shall be made either to continue under the procedures set forth in this act or to make such modifications as may be necessary to effectuate the purposes of this act.

2. This act shall take effect immediately.

Approved July 25, 1997.