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State of New Hampshire

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DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
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JOHN J. BARTHELMES
COMMISSIONER

May 4, 2017

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301


Requested Action

Pursuant to RSA 21-I:29-a, II, the Department of Safety, Office of the Commissioner, requests authorization to disburse to Ms. Whitney Banker of Canaan, New Hampshire, as the surviving adult child of deceased Firefighter/Engineer Charles Waterbury, death benefits in the amount of \$100,000.00 as a result of Firefighter/Engineer Waterbury's line-of-duty death on July 24, 2016. Effective upon Governor and Council approval. Funding source: 100% General Funds.

Explanation

This request is to disburse benefits to the daughter, as defined by RSA 21-I:29-a, I, of Firefighter/Engineer Charles Waterbury, who died in the line of duty. On July 24, 2016, Firefighter/Engineer Waterbury, a 10-year veteran of the Orford Fire Department, responded with members of the fire department to a fire in Lyme, NH. Waterbury was manning the engine assigned as the water supply unit when, without warning, he collapsed. He received immediate medical assistance and was transported to a local hospital where he was pronounced dead on arrival. Pursuant to RSA 21-I:29-a II, in addition to any other benefits provided under this chapter, the State Treasurer shall pay a \$100,000.00 death benefit to the family of a police officer or firefighter killed in the line of duty. The Governor, with the consent of the Executive Council, is authorized to draw a warrant for said sum out of any money in the Treasury not otherwise appropriated.

Respectfully submitted,


John J. Barthelmes
Commissioner of Safety

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 21-I

DEPARTMENT OF ADMINISTRATIVE SERVICES

State Employees Group Insurance

Section 21-I:29-a

21-I:29-a Death Benefit for Police Officer or Firefighter Killed in Line of Duty. –

I. In this section:

- (a) "Adult child" means a child, whether by blood or adoption, of the police officer or firefighter, age 18 or older at the time of death of such police officer or firefighter and who does not meet the definition of a dependent child.
- (b) "Dependent child" means a child, whether by blood or adoption, of the police officer or firefighter who:
- (1) Is under the age of 25 and was dependent on the earnings of the police officer or firefighter at the time of death. For the purposes of this subparagraph, a child is not considered dependent if the child provides more than half of his or her own support, is married, or is legally adopted by another; or
 - (2) Is any age and is physically or mentally incapacitated and was dependent on the earnings of the police officer or firefighter at the time of death.
- (c) "Family" means the surviving spouse of the police officer or firefighter who was wholly or partially dependent, in fact, upon the earnings of the police officer or firefighter; or, if there is no surviving spouse, the surviving dependent child or dependent children, of such police officer or firefighter or, if there is no surviving dependent child, a surviving person qualifying as a common-law spouse pursuant to RSA 457:39, or if there is no surviving common-law spouse, the surviving adult child or adult children, or if there is no surviving adult child or adult children, the surviving parent or parents of such police officer or firefighter.
- (d) "Firefighter" means any firefighter, including auxiliary, intermittent, special, part-time, volunteer, call, or reserve firefighters who are employed by a city, town, village district, or precinct within the state of New Hampshire, any firefighter employed by the state of New Hampshire, or any firefighter who is a volunteer for or employed by a non-profit corporation which is the primary provider of fire protection for all or part of a New Hampshire municipality.
- (e) "Killed in the line of duty" means a death of a police officer or firefighter while in the performance of his or her duties as a result of incident, accident, or violence causing death or injuries which are the direct or proximate cause of death. "Incident" shall include any death that is determined to be occupationally related by the worker's compensation insurance carrier, a self-insured worker's compensation plan, or by the labor commissioner for workers' compensation purposes pursuant to RSA 281-A.
- (f) "Police officer" means any law enforcement officer with the power of arrest, including auxiliary, intermittent, special, part-time, or reserve police officers, or sheriffs and their deputies who are employed by a city, town, village district, county, or precinct within the state of New Hampshire, police officers employed by the university system of New Hampshire, and any state law enforcement officer employed by the state of New Hampshire who has power of arrest as determined by state law.

II. In addition to any other benefits provided under this chapter, the state treasurer shall pay a \$100,000 death benefit to the family of a police officer or firefighter killed in the line of duty. Payment to a dependent child under the age of 18 shall be made to the child's trustee for the benefit of the child. The governor, with the consent of the executive council, is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

III. The commissioner of safety, upon notice from the family or chief of department of any firefighter or police officer who may be entitled to a line-of-duty death benefit or upon the commissioner's own initiative, shall obtain the available records related to the circumstances, cause, and manner of such death and the decedent's status as a firefighter or police officer, may cause further inquiry to be made, and shall make a determination of whether the death qualifies as a line-of-duty death and who is entitled to the death benefit. The determination shall be made within 180 days of the determination of the cause and manner of death by the office of the chief medical examiner, or within 180 days from the date the commissioner received notice from the family or chief of department of the firefighter or police officer, whichever is later. For deaths that are not reviewed by the office of the chief medical examiner, the determination shall be made within 180 days of a determination that the decedent qualifies for a workers' compensation death benefit by a worker's compensation carrier, self-insured worker's compensation plan, or the labor commissioner pursuant to RSA 281-A, or within 180 days from the date the commissioner received notice from the family or chief of department of the firefighter or police officer, whichever is later.

(a) Solely for the purposes of making this determination and notwithstanding any other law to the contrary, the commissioner of safety may obtain any records held by any state or municipal official regarding the circumstances, cause, or manner of the death and who is entitled to the death benefit.

(b) The commissioner of safety may consult with the office of the chief medical examiner and the labor commissioner, and may disclose to either any information or records obtained in the course of his or her inquiry.

(c) Any records held by the commissioner of safety pursuant to this section shall not be subject to the right-to-know law, RSA 91-A and shall not be subject to disclosure in any civil action. Upon request of the decedent's family any medical records or other records which otherwise are non-public may be destroyed following the vote by the governor and executive council to authorize payment of a line-of-duty death benefit or, in the case of a denial, following the expiration of the appeal period.

(d) If the commissioner of safety determines that the death is not a qualified line-of-duty death, he or she shall cause the decedent's family to be notified. The family may appeal the determination within 180 days of the date of the notification by notifying the commissioner of safety in writing. In the event of an appeal for a firefighter, the attorney general shall appoint an appeal hearing panel consisting of one medical doctor, one member appointed by the New Hampshire Association of Fire Chiefs, one member appointed by the professional association that the decedent belonged to, and 2 citizens who are not associated with the professions of police officer or firefighter, at least one of whom is a attorney admitted to practice in New Hampshire. In the event of an appeal for a law enforcement officer, the attorney general shall appoint an appeal hearing panel consisting of one medical doctor, one member appointed by the appropriate professional association for management of the decedent's branch of law enforcement, one member appointed by the appropriate professional association for the decedent's branch of law enforcement, and 2 citizens who are not associated with the professions of law enforcement or firefighter, at least one of whom is an attorney admitted to practice in New Hampshire. Where no professional association exists for the branch for which the decedent worked, the attorney general shall select the panel member from among the management or members of the branch for which the decedent worked as is necessary to fill either the professional association management or member position on the panel. The commissioner of safety shall forward to the appeal panel all the information that he or she considered in reaching the determination. Upon request of the family, the appeal hearing shall be exempt from the right-to-know law, RSA 91-A.

Hearings shall be conducted in conformance with RSA 541-A and the department of justice Jus 800 administrative procedural rules. The appeal hearing panel shall review the evidence de novo, may receive additional evidence from the family or others, and shall determine by a preponderance of the evidence whether the decedent's death was a qualified line-of-duty death.

(e) If the commissioner of safety or the appeal hearing panel determines by a preponderance of the evidence that the death is a qualified line-of-duty death, the commissioner shall submit an item to the governor seeking approval of payment of the benefit.

III-a. Neither the state nor its agencies or employees shall be civilly liable for any improper payment of the line-of-duty death benefit as provided in this section.

IV. This section shall be known as "Michael's Law" in honor of Manchester Police Officer Michael Briggs who was shot while on duty.

Source. 2007, 243:2; 291:1. 2008, 382:1, eff. July 11, 2008. 2012, 195:1-3, eff. June 11, 2012. 2016, 298:1, 2, eff. June 21, 2016.