

CHAPTER 11

VOCATIONAL REHABILITATION SERVICES

85.00 INTRODUCTION

Section 16 of the *Workers Compensation Act* is the guiding legislation of Vocational Rehabilitation Services.

The Vocational Rehabilitation Consultant is the service coordinator.

The Vocational Rehabilitation Services Advisory Council facilitates consultation with members of the community served by the Board.

#85.10 Legislative Mandate

Section 16 of the *Workers Compensation Act* states:

- “(1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.
- (2) Where compensation is payable under this Part as the result of the death of a worker, the board may make provisions and expenditures for the training or retraining of a surviving dependent spouse, regardless of the date of death.
- (3) The board may, where it considers it advisable, provide counselling and placement services to dependants.”

#85.20 Quality Rehabilitation

Quality rehabilitation requires individualized vocational assessment, planning, and support provided through timely intervention and collaborative relationships to maximize the effectiveness of rehabilitation resources and worker-employer outcomes.

#85.30 Principles of Vocational Rehabilitation

The guiding principles of quality vocational rehabilitation are:

1. Vocational rehabilitation should be initiated without delay and proceed in conjunction with medical treatment and physical rehabilitation to restore the worker's capabilities as soon as possible.
2. Successful vocational rehabilitation requires that workers be motivated to take an active interest and initiative in their own rehabilitation. Vocational programs and services should, therefore, be offered and sustained in direct response to the commitment and determination of workers to re-establish themselves.
3. Maximum success in vocational rehabilitation requires that different approaches be used in response to the unique needs of each individual.
4. Vocational rehabilitation is a collaborative process which requires the involvement and commitment of all concerned participants.
5. Effective vocational rehabilitation recognizes workers' personal preferences and their accountability for independent vocational choices and outcomes.
6. The gravity of the injury and residual disability is a relevant factor in determining the nature and extent of the vocational rehabilitation assistance provided. The Board should go to greater lengths in cases where the disability is serious than in cases where it is minor, including measures to assist workers to maintain useful and satisfying lives.
7. Where the worker is suffering from a compensable injury or disease together with some other impediment to a return to work, rehabilitation assistance may sometimes be needed and provided to address the combined problems. Rehabilitation assistance should not be initiated or continued when the primary obstacle to a return to work is non-compensable.

#85.40 Service Objectives

The objectives of Vocational Rehabilitation Services are:

1. To assist workers in their efforts to return to their pre-injury employment or to an occupational category comparable in terms of earning capacity to the pre-injury occupation.

2. To provide the assistance considered reasonably necessary to overcome the immediate and long-term vocational impact of the compensable injury, occupational disease or fatality.
3. To provide reassurance, encouragement and counselling to help the worker maintain a positive outlook and remain motivated toward future economic and social capability.

#85.50 Services Provided

The objectives of Vocational Rehabilitation Services are met by providing the following services to its clients:

- counselling;
- vocational assessment and planning;
- job readiness/skill development;
- placement assistance;
- residual employability assessment.

#85.60 Departmental Mandate

In accordance with the principles of vocational rehabilitation, the department achieves its legislative mandate by providing quality rehabilitation to its clients.

#86.00 ELIGIBILITY

Rehabilitation assistance may be provided in cases where it appears to the Vocational Rehabilitation Consultant that such assistance may be of value, and where a decision has been made that the injury, occupational disease or death is compensable. Where an adjudication decision is pending, the guidelines set forth in #86.70 apply.

The majority of referrals for rehabilitation services are initiated by the Claims and Disability Awards Departments. Workers may also be referred directly by physicians, hospitals, union representatives, employers and other agencies, or may seek assistance themselves.

The Vocational Rehabilitation Consultant determines the nature and the extent of the rehabilitation services to be provided.

#86.10 Referral Guidelines

The following guidelines are used by Board officers in making referrals to the Vocational Rehabilitation Consultant. Internal referrals clearly identify what has been accepted under the claim and specify reasons for the referral, including new information warranting repeat referral.

#86.11 *Immediate Referrals*

1. Spinal cord injuries resulting in paraplegia or quadriplegia.
2. Major extremity amputations or severe crush injuries.
3. Severe brain or brain stem injuries.
4. Significant burns (e.g. 20% of the body surface, or third-degree burns of 10% or more of the body surface).
5. Significant loss of vision.
6. Fatalities.

#86.12 *General Referrals*

1. Claims where medical evidence indicates that the worker will experience difficulty in returning to the pre-injury employment. This would include vocational concerns arising from an uncertain medical prognosis or lengthy period of convalescence.
2. Claims in which an occupational disease affects the worker's ability to return to prior employment.
3. Claims where the pre-injury employment is no longer available because of the length of time the worker has been on compensation.
4. Claims where a return to the pre-injury occupation with the disability would put the worker at a long-term disadvantage compared with others in that occupation.
5. Requests made by the Board officer in Disability Awards for employability assessments under policy item #40.10 and policy item #40.12 and commutation investigations under policy item #45.50.
6. Investigations for the consideration of temporary partial disability benefits under section 30 of the *Act*, as set forth in policy item #35.11.

7. Consideration for continuity of income benefits under policy item #89.11 pending assessment of a permanent disability pension.
8. Consideration for Homemakers' Services under policy item #84A.00.
9. Consideration for Personal Care Allowances under policy item #80.00.
10. Consideration for Independence and Home Maintenance Allowances under policy item #81.00.
11. Claims where recovery or re-employment is affected by:
 - (a) psychological/social problems;
 - (b) emotional problems;
 - (c) financial stress;
 - (d) substance abuse; and
 - (e) vision/hearing problems.

EFFECTIVE DATE: March 3, 2003 (as to deletion of reference to pension review)
APPLICATION: Not applicable.

#86.20 Non-compensable Problems

Where the worker is suffering from a compensable injury or disease together with some other impediment to a return to work (e.g. substance abuse), rehabilitation assistance may sometimes be needed and provided to address the combined problems.

Rehabilitation assistance should not be provided when the primary obstacle to a return to work is non-compensable.

#86.30 Preventative Rehabilitation

Preventative rehabilitation is intended to provide assistance to workers who can return to their old jobs, but have been medically deemed to be at undue risk of:

1. permanent disability due to vulnerability, or
2. increased permanent disability.

Cases involving occupational disease or prior claims for the same injury (mainly joints and backs) are the primary focus of preventative rehabilitation.

Once eligibility for preventative assistance has been established, the rehabilitation process set forth in #87.00 applies.

#86.40 Injuries Caused by Third Parties

In the case of third-party claims, where workers have a right of election, they are not eligible for rehabilitation assistance until they have elected to claim compensation with the Board. (See #111.20.)

#86.50 Out of Province

Rehabilitation services requested of, or by, other Canadian Boards and Commissions are coordinated through reciprocal inter-jurisdictional agreement.

#86.60 Other Acts Administered

Rehabilitation services are provided under the terms of the provincial *Criminal Injury Compensation Act* and the federal *Government Employees Compensation Act*.

#86.70 Continuation of Assistance

In cases where the severity of an injury warrants immediate referral, intervention may precede the formal acceptance of the claim. Where this occurs, no substantial expenditures are initiated prior to acceptance of the claim. Should the claim be denied, any vocational rehabilitation assistance already being provided will terminate within 15 days unless a request for a review by the Review Division has been filed. In such cases, assistance may be continued pending disposition of the review.

Once a decision has been made that an injury or disease is compensable, there is no requirement that vocational rehabilitation assistance end at the same time wage-loss compensation is concluded. The worker may no longer be eligible for temporary disability benefits, but vocational assistance may still be required and, where necessary, should be provided.

EFFECTIVE DATE: March 3, 2003 (as to reference to Review Division)
APPLICATION: Not applicable.

#87.00 REHABILITATION PROCESS

The vocational rehabilitation process addresses the individual needs and circumstances of each worker. Ongoing medical opinion and a variety of Board and community resources assist the Vocational Rehabilitation Consultant and

the worker in developing a rehabilitation plan. The principles regarding medical opinion set forth in #97.30 apply equally to the rehabilitation process.

#87.10 Consultative Process

The Vocational Rehabilitation Consultant functions as a catalyst, coordinator, initiator and expeditor of all the disciplines involved in helping a worker to overcome the effects of a compensable injury/occupational disease. This demands a team approach which involves the injured worker, other Board officers, medical practitioners, employers, union representatives, other agencies and members of the worker's family.

The rehabilitation process emphasizes ongoing consultation with the worker, the employer and, where applicable, the union, in order to maximize and maintain all opportunities for suitable re-employment.

The consultative process is guided by the Vocational Rehabilitation Consultant in response to the worker's determination for vocational success.

While it is up to the Consultant to assess workers' needs and appropriate levels of rehabilitation assistance, it is ultimately the responsibility of workers to decide their own vocational future.

In order to carry out the disclosure of information necessary to administer this consultative process, a consent from the worker will normally be requested in advance.

#87.20 Operational Process

The rehabilitation process involves five sequential phases of vocational exploration. The Vocational Rehabilitation Consultant expedites this process in accordance with the principles and service objectives set forth in #85.30 and #85.40 respectively.

PHASE I

Principle:

All efforts will be made to help the worker return to the same job with the same employer.

Rationale:

The worker returns to a known environment, maintains seniority and company benefits and, where applicable, remains in the same union.

The employer benefits by virtue of retaining a trained and experienced employee.

Method:

Programs of physical conditioning, work assessment, refresher training or skill upgrading may be appropriate.

PHASE II

Principle:

Where the worker cannot return to the same job, the employer will be encouraged to accommodate job modification or alternate in-service placement.

Rationale:

As in Phase I, the worker and the employer mutually benefit from the continuation of the employment relationship.

Method:

Programs relevant to Phase I may be appropriate. In addition, work site/job modification and/or supplementary skill development involving training-on-the-job and/or formal training may be required.

PHASE III

Principle:

Where the employer is unable to accommodate the worker in any capacity, vocational exploration will progress to suitable occupational options in the same or in a related industrial sector, capitalizing on the worker's directly transferable skills.

Rationale:

The worker returns to a known or related industry which best utilizes existing skills to optimize occupational potential. This may also allow the worker to retain union status where applicable.

Method:

The programs relevant to the preceding phases may be applicable. In addition, job search assistance may be indicated.

PHASE IV

Principle:

Where the worker is unable to return to alternate employment in the same or related industry, vocational exploration will progress to suitable occupational opportunities in all industries, recognizing the worker's inventory of transferable skills, aptitudes and interests.

Rationale:

The worker returns to suitable employment in a different industry which best utilizes existing skills to optimize occupational potential.

Method:

All programs relevant to the preceding phases may apply.

PHASE V

Principle:

Where existing skills are insufficient to restore the worker to suitable employment, the development of new occupational skills will be considered.

Rationale:

The worker is equipped with new marketable skills with a view to optimizing occupational potential.

Method:

Training programs will be considered for the development of new occupational skills. Programs relevant to the preceding phases may apply to help the worker secure employment once trained.

#88.00 PROGRAMS AND SERVICES

The programs and services offered by the Board in support of vocational rehabilitation can be implemented individually or in combination as part of an overall rehabilitation plan. The nature and extent of program sponsorship is decided in accordance with the principles set forth in #88.51.

The vocational plan is agreed to and summarized in a letter of understanding which is normally signed by the Vocational Rehabilitation Consultant, the worker,

and where appropriate the employer, to acknowledge the commitments and expectations of all parties.

Wage-loss equivalency benefits provided by Vocational Rehabilitation Services are payable only when wage-loss benefits have concluded and follow the same rules with regard to the deduction of pensions. (See #69.10 to #70.30.) These benefits may apply while workers are either awaiting or undertaking specific vocational programs.

Transportation and subsistence allowances and accommodation at the Board's Rehabilitation Residence, as discussed in #82.00 to #84.00, may also be considered in support of vocational programs.

The sponsorship opportunities of other agencies are considered in providing integrated service delivery, but their availability does not diminish the Board's primary service and funding responsibilities.

#88.10 Work Assessments

A work assessment program is a method of determining or enhancing a worker's employment capabilities and potential in an actual work environment with an employer, or in the simulated setting of the Board's Functional Evaluation Unit.

#88.11 Guidelines

1. Work assessments may be utilized at any phase of the rehabilitation process.
2. While involved in a work assessment with an employer, the worker is not being paid wages. Therefore, participating employers are not required to make deductions for Income Tax, Employment Insurance benefits or Canada Pension Plan contributions.
3. When a work assessment with an employer takes place prior to full medical recovery and is intended primarily as a therapeutic measure to assist increasing levels of work activity, the program is normally referred to as a "Graduated Return to Work". This program is commonly a first step in a worker's successful reinstatement with the pre-injury employer.
4. Work assessments also allow employers and workers to assess the viability of employment in a particular job and are frequently used together with training-on-the-job programs.

#88.12 Expenditures

1. The Board provides financial assistance to workers who are participating in work assessment programs, either through a continuation of wage-loss benefits under Section 29 or 30 of the Act, or payment of rehabilitation allowances under Section 16 when wage-loss benefits are no longer payable.
2. Costs arising from injuries or aggravations that occur during the course of Board-sponsored work assessments with an employer are not charged to the participating employer.

#88.20 Work Site and Job Modification

The Board may provide assistance to alter work sites or modify jobs to facilitate re-employment in physically appropriate working conditions.

#88.21 Guidelines

1. Assistance of this nature may occur at any phase in the rehabilitation process where it is advantageous in returning workers to employment.
2. Modifications are considered and undertaken in consultation with workers, employers, unions and treating professionals.

#88.22 Expenditures

1. The Board may provide financial assistance for the modification of jobs and work sites, including expenditures for special equipment and/or tools, if appropriate and necessary in facilitating the worker's return to employment.
2. In some instances, it may be appropriate to share the costs of these expenditures with employers.

#88.30 Job Search Assistance

Job search assistance may be provided to workers who require help in securing appropriate employment.

#88.31 Guidelines

1. Job search assistance would normally be introduced at Phase III of the rehabilitation process (see #87.20) to help equip workers with the

knowledge and skills to conduct a successful search for employment.
Assistance may include:

- (a) vocational assessment and goal-setting through individual and/or group counselling;
 - (b) referral to internal and external employment resources;
 - (c) marketing to prospective employers;
 - (d) financial assistance.
2. Eligibility for job search assistance and its continuance is conditional upon the active cooperation of the worker with the Vocational Rehabilitation Consultant. Workers may be required to provide proof that they are earnestly seeking employment, or awaiting a definite job opportunity.

#88.32 Expenditures

1. The Board may provide financial assistance in the form of a job search allowance. This is a discretionary benefit which applies if the worker is actively seeking or returning to appropriate employment, attending a designated job search program, or awaiting a confirmed job opportunity. The amount of the allowance will not exceed wage-loss equivalency.
2. When employment is not available locally, but is secured in another locale, the Board may pay the cost of moving household effects.

#88.40 Training-on-the-Job

Training-on-the-job is a shared-cost program which is undertaken at an employer's work site to provide the worker with specific skills leading directly to employment.

#88.41 Guidelines

1. Training-on-the-job assistance may be provided at any phase of the rehabilitation process. It may enhance or develop new occupational skills.
2. While the worker is undertaking a training-on-the-job program, absences are usually treated according to the training employer's policy on absenteeism. That is, if the employer deducts the worker's

pay for an absence, so will the Board. If the employer pays for the absence, the Board will pay as well.

#88.42 Expenditures

1. Financial assistance for a training-on-the-job program will normally be provided on a shared-cost basis with the training employer. The Board's contribution will usually decrease, on a sliding scale, as the program proceeds and the worker's productivity increases. The portion of the worker's wages paid by the Board will normally not exceed the worker's wage-loss rate.

Training-on-the-job allowances will be calculated in a manner similar to the calculation of temporary disability benefits. In general the sum of the wages from the training employer and the gross payments from the Board to the worker will be equal to the worker's pre-injury wage rate. Where the worker's pre-injury wage rate exceeds the maximum wage rate as set under Section 33(10) of the Act, the Board's contribution will be calculated by substituting the maximum wage rate for the pre-injury wage rate. In that case the sum of the wages from the training employer and the gross payments from Board to the worker will be equal to the maximum wage rate.

2. Expenditures under this program will usually be paid directly to the employer, so that the worker will be covered by Employment Insurance, Canada Pension Plan and any other company benefits.
3. Disability pensions are not deducted from training allowances for training-on-the-job programs when paying the employer.
4. Nothing in this item should be interpreted to prohibit the Board from negotiating a wage with the training employer which exceeds either the maximum wage rate or the worker's pre-injury wage. The Board will seek to maximize the wages paid to the worker by the training employer while recognizing that it is necessary and desirable to provide some incentive to employers to choose injured workers for training-on-the-job positions.

#88.43 Injury in the Course of Training-on-the-Job

The Board considers it essential to encourage employers to provide training and employment opportunities for injured workers. One way of doing this is to exclude from the employer's experience rating (see #115.30) the costs of certain employment injuries and aggravations occurring in the course of a training-on-the-job program.

There are two different training-on-the-job situations to be considered:

1. The employer is not paying the worker; the Board is paying full benefits.

The position is as in #88.54. This means that all costs resulting from the aggravation of the injury are excluded from experience rating, whatever the nature of the injury.

2. The employer is paying a partial wage to the worker who is also receiving payments from the Board; or the Board is reimbursing the employer part of the worker's salary.

If there is an aggravation of the old injury, or the old injury contributes significantly to the occurrence of the new injury, all the resulting costs are excluded from experience rating, whatever the nature of the injury.

If the old injury made no significant contribution to the new injury, the Board will exclude from experience rating a proportion of the costs of the new claim equal to the percentage of the worker's wages being paid or reimbursed by the Board.

The above policy applies whether the employer at the time is a new employer or the worker's original employer.

In addition to relief for the individual employer for experience rating, the employer's sector or rate group may be eligible for relief under Section 39(1)(e) (see #114.40) where the disability lasts more than 13 weeks.

#88.50 Formal Training

Formal training refers to courses or programs which:

1. add to, or upgrade a worker's existing skills or qualifications;
2. provide new occupational skills.

These may include full-time or part-time trades, technical or academic programs offered through recognized training or educational institutions.

#88.51 *Levels of Support*

Where a worker, who has sustained a compensable injury or occupational disease, wishes to undertake a formal training program and seeks assistance from the Board, the proposed program must be classified in one of the following three categories:

1. Training Related Directly to the Disability

The Board should provide the cost of any formal training program considered reasonably necessary to overcome the effects of any residual disability. This can also apply to preventative rehabilitation under #86.30.

- (a) The primary guideline is that the Board should, where practical, support a program sufficient to restore the worker to an occupational category comparable in terms of earning capacity to the pre-injury occupation.
- (b) A secondary guideline is that the gravity of the residual disability is a relevant factor. The Board should go to greater lengths in cases where the residual disability is serious than in cases where it is minor.

Where a worker is eligible for a formal training program under this heading, the support provided under Section 16(1) of the Act should be sufficient to enable the worker to complete the program. Workers should not be expected to use their own resources or to commute their pension for this purpose.

2. Training Related Partly to the Disability

Workers may sometimes want to blend their rehabilitation into a general advancement of their education, or pursue a vocational ambition which exceeds what would otherwise be provided under Section 16(1) of the Act.

For example, a worker is injured in a heavy manual occupation and is unable to return to heavy manual work. In discussion with the Vocational Rehabilitation Consultant, it appears that there is a two-year technical training program that would provide occupational skills for a position with earning capacity and prospects at least as good as the pre-injury occupation; but rather than pursue this option the worker prefers a more extensive four-year university program.

The Board should not deny the rehabilitation assistance that would have been provided if the worker had chosen the two-year technical training program, but neither should it generally finance an educational advancement that goes beyond what is reasonably necessary as rehabilitation for the injury.

In cases of this kind, the Board will estimate the total expenditure that would have been incurred under Section 16(1) of the Act if the worker had taken a program considered reasonably necessary to overcome the effects of the compensable injury. The worker will then be offered that amount as a contribution to the cost of the preferred vocational plan.

If the injury is very severe, the Board might treat the case under Category 1 and support the whole program. Rehabilitation is not limited to restoring earning capacity and, in cases of catastrophic or very serious injury, the Board should do all that is reasonably possible and appropriate to facilitate the functional restoration and development of the worker. In these cases, a formal training program may be wholly supported by the Board notwithstanding:

- (a) that it goes beyond what is necessary to restore the pre-injury earning capacity of the worker, or
- (b) that it may not improve earning capacity at all.

3. Training Unrelated to the Disability

Sometimes, recovery from an injury coincides with a desire for a change of occupation, or for some formal training program which the worker might well have undertaken regardless of the injury. The jurisdiction of the Board under Section 16(1) of the Act is to provide assistance reasonably necessary as rehabilitation for a compensable injury. Thus, it is not a function of the Board to finance training that is part of an ordinary career pattern or that is desired by the worker for reasons unrelated to the injury.

Such training would, therefore, not be supported under Section 16(1). If the worker wished to meet the cost of the program by a commutation of a pension, that is something the Board might consider under #45.44.

#88.52 *Guidelines*

- 1. Formal training may be considered at any phase of the vocational rehabilitation process.
- 2. Formal training programs are normally undertaken for the purpose of improving a worker's long-term employment and earnings potential.
- 3. Before deciding on a formal training program, it is important that the worker's desires, abilities, aptitudes, interests and educational

readiness are assessed in order to ensure a probability of success. The program must also be compatible with the worker's physical capabilities and any ongoing medical treatment.

4. Decision-making regarding the type and appropriateness of formal training programs is a collaborative process which takes into consideration the desire and intent of the worker and all relevant assessment and labour market information. The Vocational Rehabilitation Consultant determines the feasibility of the program(s) under consideration and decides whether to recommend sponsorship.
5. Ongoing support and sponsorship of formal training programs are contingent upon the worker's active cooperation and participation in the process. If the worker does not meet the attendance and progress requirements of the program, financial sponsorship may be suspended or withdrawn. Discussion with the worker will determine whether further or alternate assistance is appropriate.

#88.53 Expenditures

When it is decided to support a formal training program related directly to the disability, the assistance provided under Section 16(1) of the Act will normally include:

1. Training allowances at wage-loss equivalency when enrolled in a full-time program.
2. Tuition fees and any necessary books, materials or equipment.
3. Travel and subsistence where appropriate under #82.00 to #84.00.

When it is decided to support a formal training program related partly to the disability, the Board will estimate the total expenditure that would otherwise have been incurred under Section 16(1) of the Act. The worker will then be offered that amount as a contribution to the cost of the preferred program. This contribution will normally be paid by installments for the duration of the program. The installments will be subject to cost-of-living adjustments using the formula provided in Section 25 of the Act.

#88.54 Injury in the Course of Training

A worker undergoing a course of rehabilitation training sponsored by the Board does so in the circumstances described below:

1. The trainee may be attending a school of training specifically operated as such and for which course of training the Board pays a fee to the school, while at the same time paying the trainee the allowance prescribed by Board regulations.

2. A trainee may, by arrangement, be receiving training in an industrial or business establishment, receiving no remuneration from the employer in the establishment, but only receiving the allowance prescribed by Board regulations. At the same time, the Board may be paying something by way of a training fee to the employer in the establishment.

In the above circumstances, the Board takes the position that the trainee is not a “worker” employed by the participating employer in the course of rehabilitation training. Should the trainee receive further injury in the course of training, the Board regards such further injury as a continuation of the original disability. The two main objectives are:

1. that the injured trainee shall receive compensation benefits under the Act, and
2. that an employer who cooperates and assists the Board in rehabilitating an injured worker shall not be penalized for so doing.

In case of an aggravation or new injury to a trainee, the Board will normally exclude the costs from the employer’s experience rating (see #115.30). In addition, the employer’s sector or rate group may be eligible for relief under Section 39(1)(e) (see #114.40) where the disability lasts more than 13 weeks.

The above policy applies whether the employer at the time is a new employer or the worker’s original employer.

#88.55 *Joint Sponsorship*

Where a worker is undertaking a training program sponsored by another agency, and:

1. the circumstances are such that a similar program would have been supported by the Board, and
2. the level of support provided by the other agency is less than would have been provided by the Board,

the Board will provide support to the extent of the difference.

#88.60 *Business Start-ups*

The Board may contribute to the cost of starting or enhancing a viable business for a worker in lieu of other rehabilitation measures. The amount of financial assistance will normally not exceed the amount that would have been paid if the claimant had undertaken a vocational program considered reasonable and necessary to overcome the effects of the compensable injury.

When considering vocational rehabilitation expenditures for business start-ups, the basic guidelines set forth in #45.43 apply.

#88.70 Legal Services

While legal assistance is not normally required as a rehabilitation measure, the provision of legal assistance might be considered, where appropriate, as part of the worker's rehabilitation offered under Section 16 of the Act, either at the request of the worker or at the initiative of an officer of the Board.

Legal advice is not provided in respect of any matter that the Board is or may be adjudicating.

The following examples illustrate some of the circumstances in which legal assistance by the Board may be considered.

1. **Indebtedness or Insolvency**

Where claims are being made against a worker which are an impediment to recovery from an industrial injury or disease, the provision of legal advice by the Board might be considered as part of the worker's rehabilitation.

2. **Matrimonial Problems**

Cases sometimes arise in which the threat of wage garnishment for the enforcement of a maintenance order is a cause of anxiety, or in other respects an impediment to a return to work. Legal assistance by the Board in these circumstances is a possibility that might be considered.

3. **Conveyancing**

A worker who owns a home may be required by the nature of the injury to move (e.g. paraplegia). In such a case, conveyancing services might be considered as part of the rehabilitation assistance and this may be done within the Legal Services Division of the Board or in the form of paying the fees and disbursements for a lawyer in private practice.

4. **Workers' Estates**

Where workers suffer serious injuries that render them unable to administer their own affairs, their family may need legal advice and assistance to make alternative arrangements.

5. **Advice to a Surviving Spouse**

The Board cannot provide any legal assistance that may be required in relation to the administration of an estate of a deceased worker. Nor can the Board provide legal assistance in relation to any other problems resulting directly from a death; but if any legal problems should arise in relation to the employment of dependants, legal advice

in respect of such problems might be considered as one aspect of counselling.

6. Other Situations

The examples set out in this item are mentioned only by way of illustration. They are not an exhaustive list of the circumstances in which legal assistance might be provided.

#89.00 EMPLOYABILITY ASSESSMENTS

One of the major functions of the Vocational Rehabilitation Consultant is to assist in the assessment of employability for permanent disability and for temporary partial disability under Sections 23(3) and 30(1) of the *Workers Compensation Act*.

#89.10 Permanent Partial Disability

The Board applies a dual system in assessing permanent partial disability pensions. One of the systems involves a projected-loss-of-earnings method. This method is governed by the principles set forth in #40.00 and requires an employability assessment.

Requests for employability assessments are made by the Adjudicator in Disability Awards in those cases where it is felt that because of a compensable disability the worker may sustain a loss of earnings which is greater than that compensated for by the physical impairment method of pension assessment. (See #39.00.)

The evidence of the Vocational Rehabilitation Consultant should relate to occupations that are suitable and reasonably available to the worker over the long-term future. The conclusion of the Adjudicator should be concerned with those occupations which will maximize the worker's long-term earnings potential. The occupations that are recommended as being suitable for the worker in calculating a loss-of-earnings pension need not be available at the time the recommendation is prepared, but should be reasonably available to the worker in the long run. The guidelines for determining suitable and reasonably available occupations are set forth in #40.12. Future employment and earning potential is assessed in light of all possible rehabilitation measures under #87.00 that may be of assistance and appropriate to the circumstances of each worker.

#89.11 Continuity of Income Pending Assessment of Permanent Disability Pension.

The Board may pay a rehabilitation allowance to assist workers who are not actively engaged in the rehabilitation process but who are awaiting assessment of their disability pension. This allowance will be considered for workers

- whose disability has stabilized,
- who are unemployed or, effective July 16, 1998, employed at a reduced income level due to their compensable disability,
- who are not entitled to temporary wage-loss benefits,
- who are not receiving other wage-loss equivalency benefits from the Board, and
- who are likely to receive either a significant permanent partial disability pension award based upon the Permanent Disability Evaluation Schedule or a pension calculated on the worker's potential loss of earnings under Section 23(3).

In view of their obvious need, these cases will be given priority handling in the assessment of their pension entitlement. Consideration will be given to the payment of a rehabilitation allowance between the end of wage-loss or other wage replacement payments and the commencement of the permanent disability pension. These income continuity payments will be considered by the Vocational Rehabilitation Consultant following discussions with the Case Manager and other appropriate Board officers.

Prior to implementing an income continuity payment, the Vocational Rehabilitation Consultant must have considered and offered to the worker all rehabilitation measures which are reasonable and might be of assistance to the worker.

#89.12 Amount of payment

Effective September 1, 1996, continuity of income payments will be based initially on the same rate as the wage-loss benefit rate and will continue at that level until the pension is awarded, except in any of the following circumstances:

1. The worker has retired.
2. The worker is experiencing non-compensable medical, psycho-social or financial problems which preclude active participation in the rehabilitation process.
3. The worker refuses to actively participate in the rehabilitation process.

In the above circumstances, the Vocational Rehabilitation Consultant will complete the employability assessment required under the Board's dual system for assessing permanent disability pensions, and will provide a copy of that assessment to the worker. Thirty (30) days after the worker has been provided with a copy of the employability assessment, the Vocational Rehabilitation Consultant will adjust the income continuity rate to the rate which best reflects the conclusions contained in the employability assessment regarding the worker's projected long-term earning capacity. However, the Vocational Rehabilitation Consultant will not adjust the rate at this point if, during the 30-day period based on new evidence, the Vocational Rehabilitation Consultant decides the employability assessment requires revision.

As part of the completion of the employability assessment and prior to adjusting the income continuity rate, the Vocation Rehabilitation Consultant must investigate the worker's circumstances and must consider the impact of the compensable disability on the worker's decision to retire or not to participate in the rehabilitation process.

In all cases where the income continuity rate is adjusted as provided for above, the Vocational Rehabilitation Consultant will have regard to the guidelines set out in #40.12 in determining the appropriate rate.

#89.13 *Continuity of Income Payments*

Effective July 16, 1998, continuity of income payments will also be considered for workers who are already receiving a permanent disability pension on the claim, where the Board has reopened the pension decision and it is likely that the worker will receive a significant increase in the existing pension. As well, there must be evidence of a deterioration in the worker's medical condition which is likely to be permanent, and the worker must be experiencing a reduction in income during the period which is related to the reasons for the pension reopening. Benefit levels will be established in accordance with the guidelines set out in policy items #89.11 and #89.12.

EFFECTIVE DATE: March 3, 2003 (as to reference to reopening)

APPLICATION: Not applicable.

#89.20 **Temporary Partial Disability**

Where a worker is medically judged to be only partially disabled and the condition remains temporary, any further wage-loss payments may be processed under Section 30 of the Act. In such cases the claim is referred immediately to a Vocational Rehabilitation Consultant for assessment in accordance with the guidelines set forth in #35.20 and #35.21.

The wording of the Act makes a distinction between Sections 30 and 23(3) in determining what jobs are available to a worker. Section 30, in reference to short-term temporary disability, uses the words "in some suitable employment",

whereas Section 23(3), in reference to permanent disability, states “in some suitable occupation”. The word “employment” has a connotation of immediacy while “occupation” suggests a long-term concept. Therefore, in determining Section 30 benefits, the employment opportunity or opportunities should be available immediately or within the period under review (two weeks, one month) and there should be some certainty that workers would have these opportunities open to them should they choose to apply.

Where the Vocational Rehabilitation Consultant and the worker are engaged in carrying out a rehabilitation plan, and all parties are cooperating in good faith, the Consultant is not required to recommend that temporary partial disability benefits be based on short-term, temporary or lesser paying jobs that the worker could do, but which would be incompatible with the demands and commitment required to meet the overall vocational objective.

#90.00 SPINAL CORD AND OTHER SEVERE INJURIES

The rehabilitation program for workers with spinal cord, and other injuries of similar severity, has the same objective as any other rehabilitation program, namely to assist the worker in achieving physical, psychological, economic, social and vocational rehabilitation. Because of the severity of these disabilities, greater assistance is required than for most other disabilities.

The assistance provided by the Board may include vehicle modifications, house renovations, Personal Care Allowances, Independence and Home Maintenance Allowances and Homemakers’ Services. (See Chapter 10.) Service requirements are assessed and recommended by the Vocational Rehabilitation Consultant.

In cases where quadriplegics or paraplegics with upper limb involvement are faced with additional expenses to purchase special vehicles for transportation, the Board may approve a lump-sum payment on a “one time only” basis according to the needs of the individual.

#90.10 Head Injuries

One of the Board’s objectives is to assist workers who have sustained serious head injuries to successfully reintegrate into the workplace, community or family environment. Quite often these workers have significant deficits or behavioural problems which need to be overcome or controlled to avoid family conflict or institutional care. The main focus of vocational rehabilitation involvement in such cases is to help maximize the functional restoration and development of the worker.

#91.00 VOCATIONAL ASSISTANCE FOR SURVIVING SPOUSES AND DEPENDANTS OF DECEASED WORKERS

Where a worker's death is compensable, the Board has statutory authority to provide counselling and placement services to the surviving spouse and dependants. In addition, the Board has authority to make expenditures for the training of the dependent spouse. The Board takes the initiative in determining the need and extent of these services.

#91.10 Sponsorship of Training for Surviving Dependent Spouses

The Board may offer training assistance to a dependent spouse where the training is designed to improve the spouse's earning capacity or effectiveness in the labour market generally.

#91.11 Eligibility

1. Spouses who receive periodic pension awards and those who receive capital sum awards are eligible for training assistance.
2. Sponsorship of training will be considered for spouses who were not employed at the time of the worker's death, or were employed in occupations with limited financial prospects. Spouses employed in occupations with established career patterns at the time of the worker's death will not generally be considered for training assistance. Where the spouse was in a career pattern prior to the marriage, and has the qualifications to return to that career pattern, the Board would not normally support training except where the qualifications required updating or upgrading to permit a return to that career pattern.
3. The spouse's need for training will be a prime consideration in making a decision to sponsor a training program. This need will be assessed according to such factors as the length of time that the spouse has been out of the labour force, the impact of new technology on the spouse's former occupation, and the financial impact of the worker's death on the household. If the spouse has job-ready skills in an occupation that has reasonable prospects, training assistance will not normally be provided.
4. The spouse's eligibility for training sponsorship may be considered regardless of the date of the worker's death. The Board would normally expect decisions under Section 16(2) of the Act to be made within a year of the death. Any request received after that time would

not necessarily be denied, but the Board would be less likely to conclude that the training was needed as a result of the death.

#91.12 *Guidelines*

1. Before agreeing to sponsor a specific training program, the Vocational Rehabilitation Consultant should determine that the spouse meets the entry requirements for the training program and has a reasonable prospect of completing the program successfully.
2. Assistance under Section 16(2) of the Act is not limited to any particular kind of training, except that, to be consistent with the general policy and objectives of the Act, the program should be one which helps to improve the earning capacity of the spouse. Thus, in one case, it may be a vocational training program for a particular occupation; in another case, it may be a training course designed to improve the effectiveness of the spouse in the labour market generally.
3. With regard to a university or higher educational program, the Board may include this for support under Section 16(2) where it appears to be needed to overcome the effect of the worker's death; but this would not involve support of a university program on an indefinite basis. Normally, the support would not extend further than one educational level beyond the qualifications that the spouse has when the matter is considered.
4. For assistance to be rendered, it is not necessary that there should be any application. Assistance under Section 16(2) may result from an application by the surviving spouse, or it may result from an initiative and proposal by the Rehabilitation Consultant, or others concerned with the claim, with which the surviving spouse may agree.
5. The sponsorship opportunities of other agencies are considered in providing integrated service delivery, but their availability does not diminish the Board's primary service and funding responsibilities.

#91.13 *Expenditures*

Sponsorship of formal training programs under Section 16(2) of the Act will normally include payment of:

1. Tuition fees and necessary books, materials or equipment.

2. Travel and subsistence expenses and homemaker allowances, including child care, where appropriate under #82.00 to #83.20 and #84A.00.
3. An additional living allowance may be paid as follows:
 - (a) A surviving dependent spouse who is eligible for a capital sum under #55.32 should not be expected to use that sum for maintenance while undertaking a program of training needed as a result of the worker's death. Similarly, the spouse should not be expected to draw on savings or other capital sums.
 - (b) The dependent spouse should be expected to use funds provided through a monthly Board pension, Canada Pension Plan benefits, allowances from the Canada Employment and Immigration Commission, etc. to meet ordinary living expenses while completing a training program. If the spouse's income from such sources falls below the minimum weekly level determined by the Board, the Vocational Rehabilitation Consultant will normally authorize the payment of a training allowance sufficient to raise the spouse's income to the minimum. The allowance is payable to the spouse during the period required to complete the training program.
 - (c) The minimum is equal to the weekly equivalent of 60% of 75% of the minimum average earnings prescribed by Section 17(3)(c) for calculating pensions payable to spouses of deceased workers. This formula is essentially the same as is set out in Section 17(3)(c) for calculating the total pension (including Canada Pension benefits) payable to an invalid spouse or spouse over 50 without children (see #55.26 and #55.31).
 - (d) Whether or not a spouse's income falls below the minimum, the Vocational Rehabilitation Consultant may supplement the income of the spouse when the actual expenses incurred during the course of the program exceed what is covered by the above items.

#91.20 Vocational Services to Dependants of Deceased Workers

As long as no expenditures are involved, Section 16(3) permits the Board to provide counselling and placement services to other dependants of deceased workers when the Board considers it advisable to make these services available.