

December 2001

Update 2001-4

**TO HOLDERS OF THE *REHABILITATION SERVICES AND CLAIMS MANUAL***

This update of the *Rehabilitation Services and Claims Manual* contains changes to the *Manual* approved by the Panel of Administrators since November 2001.

These changes include:

- Consumer Price Index adjustments

A summary of the changes has been included as part of the package.

If you have any questions regarding this update, or the *Rehabilitation Services and Claims Manual*, please call the Publications and Videos Section of the WCB at (604) 276-3068, or toll free within BC at 1-800-661-2112, Local 3068.

MAUREEN NICHOLLS  
Chair, Panel of Administrators

Attachment

## SUMMARY OF AMENDMENTS - Update 2001-4

### C.P.I. ADJUSTMENTS

#34.20	#55.26	#81.00
#37.20	#55.31	#82.20
#43.20	#55.32	#83.20
#49.10	#56.50	#114.11
#51.00	#60.00	Appendix 5 - Supplement No. 5
#53.00	#66.20	Appendix 6 - Part 1
#55.10	#66.31	
#55.21	#80.20	

December 2001

		<b>\$ Per Week (Net)</b>	
July 1, 2000	—	December 31, 2000	292.90
January 1, 2001	—	June 30, 2001	298.63
July 1, 2001	—	December 31, 2001	303.32
January 1, 2002	—	June 30, 2002	304.36

If required, earlier figures may be obtained by contacting the Board.

Consider, for example, the case of an injury occurring on July 2, 1986, when the minimum amount of wage-loss compensation was \$201.40 (net) per week.

<b>Worker's Actual Weekly Earnings</b>	<b>Weekly Compensation (Net)</b>
\$268.53	\$201.40
220.00	201.40
199.00	199.00 (100%)

The minimum is subject to Consumer Price Index increases. However, these increases only apply to injuries or disablements occurring after they come into force. Existing payments are not automatically increased to a new minimum, although they may be the subject of Consumer Price Index increases in their own right.

#### **#34.30 Commencement of Payment**

Section 5(2) provides that "Where an injury disables a worker from earning full wages at the work at which the worker was employed, compensation is payable . . . from the first working day following the day of the injury; but a health care benefit only is payable . . . in respect of the day of the injury."

While the plain wording of the section would seem clearly to indicate that "day of the injury" means calendar day, the Board finds that the intention of the legislation is not to provide payment for the "shift" on which the worker is injured but to provide payment for any subsequent "shift" on which the worker is disabled. Payment of compensation, therefore, will commence effective the shift next following the shift on which the worker is injured.

#### **#34.31 *Worker Continues to Work After Injury***

If a worker continues to work beyond the day of the injury, no compensation is payable until it actually causes a lay-off from work. If the worker works or is paid for part of the day on which the lay-off occurs, the amount of compensation paid for that day is as follows:

- (a) if he or she works or is paid for one quarter of the day or less, compensation is paid for the full day;
- (b) if he or she works or is paid for more than one quarter but less than three quarters of the day, compensation is paid for half the day;
- (c) if he or she works or is paid for three quarters of the day or more, compensation is not paid for the day.

Except where Section 34 is being applied, (3) the employer is not refunded any money paid to the worker for time not worked on the day when he or she lays off work.

The above rules apply equally where the claimant becomes disabled from working following a recurrence of a compensable condition.

#### **#34.32**      *Strike or Other Lay-Off on Day Following Injury*

In cases where a worker's job would not have been available during a period of disability, or for some reason the worker cannot or will not be returning to the prior job upon recovery, the following general guidelines will apply.

1. Where the injury disables the worker beyond the day of the injury and this results in an actual loss of earnings or a potential loss of earnings, the requirement of Section 5(2) will be met and wage-loss compensation will be paid.
2. Where the disability beyond the day of injury does not result in any actual or potential loss of earnings, the requirements of Section 5(2) will be deemed to have not been met.

In interpreting "potential loss" no rigid rules can be established since every case will have to be determined on the information received. In situations where there is a lay-off due to lack of work, a worker would normally be considered as having suffered a potential loss. The position would be similar where a partially disabled worker has continued work on light work and has been laid off due to a lack of work, but payments on such a claim would be considered under Section 30 of the *Act*. The general expectation in those situations is that the claimant would, if not injured, have immediately sought new employment and the Board should not speculate as to if and when it would have been found. If, however, there is evidence to rebut this general expectation, the Board may conclude in a particular situation that there was no actual or potential loss. For example, suppose a homemaker has been injured in the course of a single day's work at a polling station during an election and has no other attachment to the labour force whatsoever. The homemaker would not normally be available on the general labour market beyond the one day of work at the polling station.

## CHAPTER 6

### PERMANENT DISABILITY AWARDS

#### **#36.00 INTRODUCTION**

Permanent disability awards are made when a worker fails to completely recover from an industrial injury or disease, but is left with a permanent residual disability. They commence at the point when the worker's temporary disability under the claim ceases and the condition stabilizes. They may be total (Section 22) or partial (Section 23).

Permanent disability awards are calculated on the basis of a worker's "average earnings". The computation of average earnings is dealt with in Chapter 9.

#### **#37.00 PERMANENT TOTAL DISABILITY**

Section 22(1) provides that "Where permanent total disability results from the injury, the compensation must be a periodic payment to the injured worker equal in amount to 75% of the worker's average earnings, and must be payable during the lifetime of the worker."

A pension is awarded to a worker which continues for life. Some examples of permanent total disability are paraplegia, quadriplegia, hemiplegia, total blindness, and severe loss of cerebral powers. Combinations of permanent partial physical impairments can also become permanent total disabilities, such as bilateral amputations of arms and legs.

#### **#37.10 Commencement of Pension/Wage-Loss Payments Prior to Award**

Permanently totally disabled workers are awarded pensions as soon as it is clear to the Board that they will survive their injuries.

From the date of the injury up to the date of the award, wage-loss payments are made at the same rate as the eventual pension. (Reference should be made to #66.20 regarding minimum policy in personal optional protection cases.) However, it may be necessary to make these payments at a provisional rate pending clarification of the worker's pre-injury earnings. (1)

### **#37.20 Minimum Amount of Compensation**

Section 22(2) provides that the compensation awarded for permanent total disability cannot be less per month than the minimum set out below. This minimum is subject to Consumer Price Index increases.

<b>Date</b>			<b>\$ Minimum</b>
July 1, 2000	—	December 31, 2000	1,269.36
January 1, 2001	—	June 30, 2001	1,294.21
July 1, 2001	—	December 31, 2001	1,314.54
January 1, 2002	—	June 30, 2002	1,319.06

If required, earlier figures may be obtained by contacting the Board.

Section 33(5) provides that the compensation payable to workers who, on July 1, 1974, were in receipt of compensation for permanent total disability cannot be less than the amount set out above. This amount is subject to Consumer Price Index adjustments.

Where workers partially commuted their pensions prior to July 1, 1974, and are eligible for the increased minimum provided by Section 33(5), they do not simply receive a percentage increase on the benefits currently being received. The full amount of the increased minimum is paid, less the actual dollar amount that has been commuted. (2)

### **#37.21 Dual System of Measuring Disability**

The statutory minimum only applies in cases where a worker is found to be 100% disabled on a physical impairment basis. It does not apply when the percentage of disability on a physical impairment basis is less than 100% but the worker is found to be totally unemployable under the dual system of measuring disability. (3)

### **#37.30 Manner of Payment**

A monthly pension is awarded which is paid by cheque or, if the worker elects, by electronic direct bank deposit, at the end of each month. The same procedures apply as in the case of permanent partial disability awards. These are set out in #41.00.

### **#37.40 Reopening Claims**

Where a claim involving a permanent total disability is reopened, no payments of wage loss can be made. Wage loss may, however, be payable where a claimant

2. An average is taken of the points assigned by dividing the total points by five and the disfigurement is placed in one of four classes as follows:

Class 1	0 to 24 points
Class 2	25 to 49 points
Class 3	50 to 74 points
Class 4	75 to 99 points

3. The area of the body affected is determined. Five areas are recognized. A minimum and maximum award exists for each of the four classes for each area of the body as shown in the following table:

**January 1, 2002 – December 31, 2002**

	<b>Minimum</b>	<b>Maximum</b>
Head and Neck		
1.	\$ 0.	\$ 4,656.80
2.	4,656.80	9,313.59
3.	9,313.59	28,289.97
4.	28,289.97	47,149.97
Each Hand		
1.	\$ 0.	\$ 1,513.46
2.	1,513.46	3,143.33
3.	3,143.33	9,313.59
4.	9,313.59	15,716.64
Each Arm		
1.	\$ 0.	\$ 1,164.18
2.	1,164.18	2,328.39
3.	2,328.39	7,101.59
4.	7,101.59	11,758.40
Each Leg (including the foot)		
1.	\$ 0.	\$ 814.93
2.	814.93	1,513.46
3.	1,513.46	4,656.80
4.	4,656.80	7,800.12

Torso

1.	\$ 0.	\$ 814.93
2.	814.93	1,513.46
3.	1,513.46	4,656.80
4.	4,656.80	7,800.12

The above figures are adjusted on January 1 of each year. The Consumer Price Index ratio determined under Section 25 of the *Workers Compensation Act* for January 1 and the previous July 1 will be used (see #51.00).

- The amount of the award is (subject to the minimum) the percentage of the maximum dollar amount for the class that the average points for the disfigurement bears to the maximum points assigned to the class. For example, if the average points for a hand disfigurement is 6, it is assigned to Class 1 of the hands area of the body and the amount of the award is \$325  $((6/24) \times \$1,300)$ . If a burn to the chest is assigned an average of 34 points, it is in Class 2 of the torso area of the body and the amount of the award is \$897  $((34/49) \times \$1,300)$ .

Detailed examples of the application of the above guidelines are set out below:

**Example 1**

The worker has a loss of the fingernail and nailbed, slight shortening of the right mid finger, a small curved raised nail growing through the graft at the injury site. Assuming that the disfigurement were found capable of impairing earning capacity, the award would be calculated as follows:

Factors	Description	Points
Surface area	Less than 25%	2
Texture / keloid	Minimal alteration; no keloid	2
Colour	No contrast	0
Visibility	Less than 25%	20
Structure	Mild evidence of depression	5

#### **#48.50 Payment to Widow or Widower Free from Debts of Deceased**

Any compensation owing or accrued to a worker or pensioner for a period not exceeding three months before death may, at the discretion of the Board, be paid to a widow, widower, or a person who takes charge of the funeral arrangements, free from debts of the deceased. (3)

#### **#49.00 INCAPACITY OF A CLAIMANT**

Under Section 12 of the *Act*, "A worker under the age of 19 years is sui juris for the purpose of this Part, and no other person has a cause of action or right to compensation for the personal injury or disablement except as expressly provided in this Part."

An exception is made by Section 35(1) of the *Act* which provides in part that ". . . in the case of minors or persons of unsound mind who the board considers are incapable of managing their own affairs, . . ." payments of compensation ". . . may be made to the persons that the board thinks are best qualified in all the circumstances to administer the payments, whether or not the person to whom the payment is made is the legal guardian of the person in respect of whom the payment is being made."

Compensation benefits due to a worker, where a public trustee has been appointed, will be issued in the name of the worker but sent to the public trustee.

#### **#49.10 Worker Receiving Custodial Care in Hospital**

Section 35(5) provides that "Where a worker is receiving custodial care in a hospital or elsewhere, periodical payments of compensation due to the worker ... may be paid to or for the benefit of

- (a) the worker to the extent the worker is able to make use of the money for his or her personal needs or is able to manage his or her own affairs; or
- (b) any person who is dependent on the worker for support, or in a case of temporary disability of the worker may be
- (c) applied to the maintenance of a home to which the worker is likely to return on his or her recovery; or
- (d) accumulated by the board for payment to the worker on his or her recovery,

or in a case of permanent disability may be applied toward the cost of the worker's maintenance, but, in that case and where the worker is conscious, there

must be paid to, or for the use of, the worker a comfort allowance of at least . . .”  
the amount set out below out of each periodic payment.

July 1, 2000	—	December 31, 2000	\$175.01
January 1, 2001	—	June 30, 2001	178.44
July 1, 2001	—	December 31, 2001	181.24
January 1, 2002	—	June 30, 2002	181.86

If required, earlier figures may be obtained by contacting the Board.

“Subsection (5) applies, regardless of the date of the injury.” (4)

*#49.11 Meaning of Custodial Care in Hospital or Elsewhere in Section 35(5)*

Section 35(5) applies where a worker is receiving “custodial care in a hospital or elsewhere”.

“Custodial care” requires that the worker be undergoing a voluntary or involuntary stay in, and be receiving care from, a hospital or other similar institution. Only long-term or permanent residence in a hospital or similar institution could amount to “custodial care”. It does not cover periodic stays in hospital which a worker might have to undergo for the purpose of surgery or other treatment.

A worker is not considered to be receiving “custodial care” when confined to prison or other corrective institution. While the worker might be said to be in involuntary custody, it is not felt that the worker is undergoing “care” for the purpose of the section. The case would be different if the prison or corrective institution were also a hospital. The Board has authority under Section 98(3) of the Act to discontinue the compensation of workers confined to prison. (5)

*#49.12 Nature of the Board's Authority under Section 35(5)*

Section 35(5) clearly confers a discretionary power on the Board. In exercising this discretion, the Board is free to choose any of the applicable alternatives listed in Section 35(5) without regard to the order in which they are set out. There is no obligation on the Board to give any priority to any of the alternative choices set out in the section.

This does not mean that, in exercising its discretion under Section 35(5), the Board cannot set its own priorities for the application of the various alternatives. The necessity to set guidelines for Board staff in their administration of this section, as a matter of practice, may require that the Board lay down some order of priority. This will appear from the guidelines set out below in relation to the sub-paragraphs of Section 35(5).

<b>Date</b>	<b>Ratio</b>
July 1, 2000	1.00807175
January 1, 2001	1.01957295
July 1, 2001	1.01570681
January 1, 2002	1.00343643

If required, earlier figures may be obtained by contacting the Board.

“Consumer Price Index” means the Consumer Price Index for Canada published by Statistics Canada under the *Statistics Act* (Canada).

Prior to July 1, 1974, the *Act* provided a different method of making Consumer Price Index adjustments. (7)

Authority to approve adjustments under Section 25 has been assigned to the President.

Authority has also been assigned to the President to adjust the following amounts to reflect changes in the Consumer Price Index, using the formula set out in the applicable item of the manual:

Maximum and Minimum Disfigurement Amount	#43.20
Clothing Allowances	#79.00
Personal Care Allowances	#80.20
Independence and Home Maintenance Allowance	#81.00
Transportation Allowance	#82.20
Subsistence Allowances: (a) Meals	#83.20
(b) Non-Residence Accommodation	#83.20
Transfer of Costs	#114.11

### **#51.10 Existing Periodical Payments**

As of July 1 and January 1 in each year, the Board must, by applying the ratio determined under #51.00, adjust all periodic payments then being paid or payable in respect of every injury or death occurring, and every disablement from occupational disease sustained, prior to six months before the date the adjustment is being made. (8)

Where periodic payments of compensation are commenced or recommenced in respect of an injury, death, or disablement from occupational disease sustained more than six months prior to the commencement or recommencement, the level of compensation is determined as if the payments had been continuously made

from the date of injury, death, or disablement from occupational disease. (9) This means that if payments on a claim are commenced or recommenced more than six months after the injury, the claimant will receive the benefit of any Consumer Price Index increases occurring in the intermediary period which he or she would have received if continuously paid since the date of injury.

Where a worker in receipt of a pension dies as a result of the pensionable disability and dependant's benefits are payable, no Consumer Price Index adjustment is computed in the six-month period following the date of death.

#### *#51.11 Reopening Claims*

Where a claim is reopened on the basis of the claimant's earnings at the time of the original injury, the claimant will receive the benefit of any Consumer Price Index adjustments occurring between the injury and the reopening which would have been received if continuously paid since the date of injury. However, where the claim is reopened after three years on the basis of the claimant's earnings at the time of the reopening, the date of the reopening is treated as the date of the injury. No Consumer Price Index adjustments are applied in such a case until after six months has elapsed since the reopening. The Consumer Price Index adjustment will then apply to the next change that occurs in the ensuing six-month period. (10)

#### *#51.12 Injury, Death or Disablement Occurring Prior to July 1, 1974*

Section 25 applies regardless of the date of the injury, death, or disablement from occupational disease.

However, the requirement that six months elapse between the date of a death and the first Consumer Price Index adjustment has been limited to deaths occurring on or after July 1, 1974. The adjustment which took place on July 1, 1974, was applied in the case of deaths occurring on or after January 1, 1974, and before July 1, 1974, as well as to deaths occurring prior to January 1, 1974.

In the case of deaths prior to July 1, 1974, the Act prior to that date had since January 1, 1966 made provision for Consumer Price Index adjustment of pensions payable to dependent spouses and children. No such adjustments were applicable to pensions payable to other dependants of the deceased worker, for example, parents. (11) This meant that the pension base to which Consumer Price Index adjustments were applied on and after July 1, 1974, was smaller for such dependants than for spouses and children. This situation is remedied by Section 27 which provides that:

“Where dependants are receiving or are eligible to receive periodic payments in respect of the death of a worker occurring prior to July 1, 1974, and in respect of which payments there was no provision prior to

## CHAPTER 8

### COMPENSATION ON THE DEATH OF A WORKER

#### #52.00 INTRODUCTION

Compensation is payable as the result of a death where “. . . death arising out of and in the course of the employment is caused to a worker . . .” (1) or death is caused by an occupational disease which is due to the nature of any employment in which the worker was employed. (2) The compensation is payable to surviving dependants of the deceased or in some cases to non-dependent relatives having a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased.

The compensation is normally based on the worker’s average earnings prior to the death. However, adjustments are made to payments and to the dollar amounts in the *Act* according to changes in the Consumer Price Index. Where a worker in receipt of a pension dies as a result of the pensionable disability and dependant’s benefits are payable, no Consumer Price Index adjustment is computed in the six-month period following the date of death. The meaning of “average earnings” is discussed in Chapter 9. Consumer Price Index adjustments are dealt with in Chapter 7.

#### #53.00 FUNERAL AND OTHER DEATH EXPENSES

Where compensation is payable as the result of the death of a worker or as the result of injury resulting in the death, an amount in respect of funeral and related expenses is paid in addition to any other compensation payable. The amount payable is set out below.

The employer of the worker is required to bear the cost of transporting the body to the nearest business premises where funeral services are provided, and if burial does not take place there any additional transportation may, up to the sum set out below, be paid by the Board.

	<b>Funeral And Related Expenses</b>	<b>Transportation of Body</b>
July 1, 2000 - December 31, 2000	\$6,611.76	\$1,044.60
January 1, 2001 - June 30, 2001	\$6,741.17	\$1,065.05
July 1, 2001 - December 31, 2001	\$6,847.05	\$1,081.78
January 1, 2002 - June 30, 2002	\$6,870.58	\$1,085.50

If required, earlier figures may be obtained by contacting the Board.

No action for an amount larger than that established by the above provisions lies in respect of the funeral, burial, or cremation of the worker or cemetery charges in connection with it. (3)

#### **#53.10 Person to Whom Expenses are Paid**

Payment is made to whoever appears to be the most eligible having regard to who has incurred the cost of funeral and other expenses, or who has undertaken to meet those payments. For example, if an employer, a union, or a distant relative has, perhaps by arrangement with the widow or widower, paid the undertaker before the claim has been adjudicated at the Board, the person who paid the bill may be reimbursed by paying the monies referred to in #53.00. If that person has paid a lesser sum than the figures there mentioned, there should be a reimbursement to the extent of the payment, and the balance paid to the widow or widower, or whoever else appears to be the most eligible person.

However, once the Board has paid out the monies referred to in #53.00, there can be no question thereafter of the Board considering claims by any other person for funeral expenses. For example, if an employer, a union, or a relative has paid the undertaker, but has not presented any claim to the Board until after the monies have been paid out to the widow or widower, such a person cannot subsequently be reimbursed directly by the Board by a deduction out of compensation benefits. If the other person wishes to be reimbursed out of compensation benefits, that person must make the request to the widow, widower or other person receiving those benefits.

#### **#54.00 MEANING OF "DEPENDANT"**

The term "dependant" is defined in Section 1 of the Act to mean ". . . a member of the family of a worker who was wholly or partly dependent on the worker's earnings at the time of the worker's death, or who but for the incapacity due to the accident would have been so dependent, . . ."

The members of a worker's family means ". . . wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother and half-sister and a person who stood in loco parentis to the worker or to whom the worker stood in loco parentis, whether related to the worker by consanguinity or not;". (4) A former husband or wife cannot be a member of the worker's family and therefore cannot be the worker's dependant.

Dependency does not exist simply because the claimant had the legal status of husband, wife, child, parent, etc. There must be evidence that, at the time of the

worker's death, the claimant was actually dependent on the deceased's earnings. Normally, this means that there must be evidence of sufficient actual support having been provided by the deceased to the claimant. This is so even though the deceased was, at the time of death, subject to a court order to maintain the claimant and the claimant was in need of support. Except in respect of the provision discussed in #61.00, a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased is not itself sufficient to constitute dependency.

The above principles also apply where the claimant is a child. In the case of a child who was unborn at the date of the worker's death, once paternity is established, the fact that the deceased worker would have been under an obligation to support the child is evidence to warrant an inference that that person would have supported the child, and should be accepted as proof of dependency unless it is controverted by evidence to the contrary. If it is found that the deceased worker was supporting the mother at the time of death, that is also evidence from which an inference may be drawn that that person would have supported the child.

Dependency is determined at the date of death. Changes of circumstances after the death, for instance, the marriage of a child, do not affect the status of a person as a dependant.

#### **#54.10 Presumptions of Dependency**

For deaths occurring on or after July 1, 1974, Section 17(7) of the Act provides that "Where 2 workers are married to each other and both are contributing to the support of a common household, each is deemed to be a dependant of the other." Section 17(8) provides that "Where 2 parents contribute to the support of a common household at which their children also reside, the children are deemed to be dependants of the parent whose death is compensable under this Part." The latter provision applies to children of the two parents, not to children of a former marriage of either parent living with them, but the two parents need not be married to each other.

An argument was made in one claim that Section 17(7) applied because, though the claimant and her husband had been living in separate residences at the date of his death, the claimant was contributing to the support of a common household, namely the household where her husband and children resided. Her contribution included visits to the premises, assistance with housework and financial contributions. This argument was not accepted.

It was concluded that there was no common household. For a common household to exist it is not necessary that there be a constant 24-hour-a-day presence by both parties in the house. There are obviously many reasons why

one party to a marriage would leave the house for different periods which would not affect the existence of the common household. However, this only applies when the absences are consistent with the normal continuation of the marriage. The common household will come to an end when there is some kind of separation of the parties which brings into question the continued existence of the marriage, for example, if one party deserts the other or, because of difficulties in the marital relationship, a separation agreement or court order comes into being. Nor could it be concluded that a prospect of reconciliation would make a difference. This might indicate a possibility of the common household again coming into existence at a future time, but did not alter the fact that there was no such household currently in existence.

**#55.00 WIDOWS AND WIDOWERS DEATH ON OR AFTER JULY 1, 1974**

Widows or widowers who were not dependent on the earnings of the deceased at the time of death are not entitled to compensation under the provisions set out below. They may, however, be entitled under the provisions set out in #61.00.

**#55.10 Lump Sum Payment to Dependent Widows or Widowers**

In addition to any other compensation provided, a dependent widow or widower in Canada to whom compensation is payable is entitled to a lump sum equal to the amount set out below. (5)

July 1, 2000	—	December 31, 2000	\$1,952.80
January 1, 2001	—	June 30, 2001	1,991.02
July 1, 2001	—	December 31, 2001	2,022.29
January 1, 2002	—	June 30, 2002	2,029.24

If required, earlier figures may be obtained by contacting the Board. Payment of this amount is made as soon as the claim is accepted.

**#55.20 Dependent Spouse with Dependent Children**

*#55.21 Widow or Widower with Two or More Children*

Where the dependants are a widow or widower and two or more children, a monthly payment is made of such sum as, when combined with Federal benefits payable to or for those dependants, equals the total of:

- (a) the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, (6) subject to the minimum set out in #55.26, and
- (b) the amount set out below per month for each child beyond two in number. (7)

July 1, 2000	—	December 31, 2000	\$253.77
January 1, 2001	—	June 30, 2001	258.74
July 1, 2001	—	December 31, 2001	262.80
January 1, 2002	—	June 30, 2002	263.70

If required, earlier figures may be obtained by contacting the Board.

For example, consider the case of a worker whose death occurred on January 1, 1986, and whose average earnings were \$40,000 per annum. He leaves a dependent widow and three dependent children, who were entitled to Federal benefits.

A.	Federal benefits		
	C.P.P. pension for widow	=	273.35
	C.P.P. pension for children (3 x 91.06)	=	<u>273.18</u>
			546.53
	Total Federal benefits	=	546.53
B.	Monthly permanent total disability pension rate at date of death	75% x <u>40,000</u>	= 2,500.00
		12	
C.	Additional child allowance under Section 17	=	<u>170.92</u>
D.	Total monthly benefits (B plus C)	=	2,670.92
	Total benefit entitlement (W.C.B. and C.P.P.)	=	2,670.92
E.	Total W.C.B. benefits (D less A)	=	2,124.39

*#55.22 A Widow or Widower with One Child*

Where the dependants are a widow or widower and one child, a monthly payment is made of such sum as, when combined with Federal benefits payable to or for those dependants, equals 85% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum set out in #55.26. (8)

In regard to the example given in #55.21, assume the deceased left only one dependent child.

A.	Federal benefits		
	C.P.P. pension for widow	=	273.35
	C.P.P. pension for child	=	<u>91.06</u>
			364.41
	Total Federal benefits	=	364.41
B.	Monthly permanent total disability pension rate at date of death	$75\% \times \frac{40,000}{12}$	= 2,500.00
C.	85% of permanent total disability pension rate (total monthly benefits)	$85\% \times 2,500.00$	= 2,125.00
	Total benefit entitlement (W.C.B. and C.P.P.)	=	2,125.00
D.	Total W.C.B. benefits (C less A)	=	1,760.59

#### #55.23 *A Meaning of "Invalid"*

"Invalid" is defined in Section 1 of the Act to mean ". . . physically or mentally incapable of earning". This excludes a person who is disabled, but capable of earning. However, it is provided in Section 17(6) that "Where at the date of death a spouse is not an invalid, but is suffering from a disability that results in a substantial impairment of earning capacity, the board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had been an invalid." A temporary invalidism or disability is not covered by these provisions.

#### #55.24 *Meaning of "Federal Benefits"*

"Federal benefits" means the benefits payable under the Canada Pension Plan and to which any dependants are entitled as a result of the death, together with any benefits to which the dependent spouse is or becomes entitled under the Canada Pension Plan as a result of having retired or reached retirement age. (9)

#### #55.25 *Meaning of "Child" or "Children"*

This is discussed in #59.10.

**#55.26**      *A Minimum Amount of Average Earnings*

The minimum allowances payable under #55.21-#55.22 are such allowances as would be payable if the allowances were calculated in respect of a deceased worker with average earnings equal to the amount set out below. (10)

July 1, 2000	—	December 31, 2000	\$27,338.14
January 1, 2001	—	June 30, 2001	27,873.23
July 1, 2001	—	December 31, 2001	28,311.03
January 1, 2002	—	June 30, 2002	28,408.32

If required, earlier figures may be obtained by contacting the Board.

The minimum average earnings applicable to deaths occurring on or after January 1, 1986, and before July 1, 1986, is \$18,411.71. If the average earnings of the worker referred to in the example in #55.21 were only \$15,000.00 the monthly amount payable to his widow and three children would be as follows:

A.	Total Federal benefits (as in #55.21)	=	546.53
B.	Monthly permanent total disability pension rate at date of death	$75\% \times \frac{18,411.71}{12}$	= 1,150.73
C.	Additional child allowance under Section 17	=	<u>170.92</u>
D.	Total monthly benefits (B plus C)	=	1,321.65
	Total benefit entitlement (W.C.B. and C.P.P.)	=	1,321.65
E.	Total W.C.B. benefits (D less A)	=	775.12

**#55.30**      **Dependent Spouse with No Children**

**#55.31**      *Widow or Widower 50 Years of Age or Over or Invalid*

Where the dependant is a widow or widower who, at the date of death of the worker, is 50 years of age or over, or is an invalid spouse, a monthly payment of a sum that, when combined with Federal benefits payable to or for that dependant, equals 60% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, but such monthly payments shall not be less than the minimum set out below. (11)

July 1, 2000	—	December 31, 2000	\$820.02
January 1, 2001	—	June 30, 2001	836.07
July 1, 2001	—	December 31, 2001	849.20
January 1, 2002	—	June 30, 2002	852.12

If required, earlier figures may be obtained by contacting the Board.

For the definition of “invalid”, see #55.23.

The minimum monthly payment is the actual minimum paid by the Board. It is not a minimum total benefits which incorporates Federal benefits. In the case of deaths occurring prior to June 26, 1975, the minimum set out above does not apply. However, the minimum average earnings referred to in #55.26 is applicable. (12)

The computation formula is the same as was described in #55.22, however, 60%, rather than 85%, of the deceased’s projected permanent total disability pension is taken. “Federal benefits” has the meaning set out in #55.24.

**#55.32**      *Non-Invalid Widow or Widower under 40 Years*

Where the dependant at the date of the worker’s death is a widow or widower who is not an invalid and is under the age of 40 years, and there are no dependent children, a capital sum equal to the amount set out below is payable. Of this, a first installment is payable immediately. The balance is payable at a time the Board determines; but the payment cannot, except at the request of the dependant, be delayed beyond six months after the date of death of the worker. (13) The amount of the first installment and the balance is also set out below.

			<b>First Installment</b>	<b>Balance</b>	<b>Total Amount</b>
July 1, 2000	—	December 31, 2000	\$3,905.51	\$35,148.88	\$39,054.39
January 1, 2001	—	June 30, 2001	3,981.95	35,836.89	39,818.80
July 1, 2001	—	December 31, 2001	4,044.49	36,399.74	40,444.23
January 1, 2002	—	June 30, 2002	4,058.39	36,524.82	40,583.21

If required, earlier figures may be obtained by contacting the Board.

In exercising its discretion when to pay the balance, the Board does not seek to regulate the use of the money. But it does try to ensure that the surviving spouse has a good opportunity to make rational choices about its use.

The letter of decision accepting the claim will provide for the immediate payment of the first installment. Ordinarily, payment of the balance will be processed one month after this letter. That should normally provide a reasonable period for the spouse to consider how the money should be used before it arrives. But the

**#56.20 Dependent Widows and Invalid Widowers with Dependent Children**

Where the dependants are a widow or an invalid widower and one or more children, a monthly payment of one hundred and seventy-five dollars and fifty-two cents is made, together with

- (a) an additional monthly payment of fifty-seven dollars and fourteen cents for each child under the age of 16 years and for each invalid child of any age for whom no payment is made under paragraph (b) or (c); and
- (b) an additional monthly payment of sixty-four dollars and twenty-nine cents for each child while regularly attending an academic, technical or vocational school at any time between the child's 16th and 18th birthdays; and
- (c) an additional monthly payment of seventy-one dollars and forty-two cents for each child while regularly attending an academic, technical, or vocational school at any time between the child's 18th and 21st birthdays. (19)

The dollar amounts set out above apply in respect of deaths occurring on or after January 1, 1974. Different amounts applied to prior periods. "Invalid child" is defined in #59.13.

**#56.30 Dependent Widows and Invalid Widowers with No Dependent Children**

Where the dependant is a widow or an invalid widower without any dependent children, a monthly payment of one hundred and seventy-five dollars and fifty-two cents is made during the life of the surviving spouse. (20) Different dollar amounts applied in respect of deaths occurring prior to January 1, 1974.

**#56.40 Widow or Widower Separated from Deceased**

There are no special rules for widows or widowers living separate from the deceased in the case of deaths occurring prior to July 1, 1974.

Spouses who are not residing in Canada at the date of death are discussed in #62.00.

## #56.50 Additional Payments

Section 18(1) of the *Act* provides that “Where, on July 1, 1974,

- (a) compensation is being paid to dependants in respect of deaths occurring prior to that date;
- (b) those dependants are not receiving or entitled to receive benefits under the Canada Pension Plan; and
- (c) the dependant is a widow who is 50 years of age or over, or is an invalid spouse, or the dependants are children, or a widow and children,

there must be added to the monthly payments . . .” the sums set out below for each such dependent spouse and each dependent child. These dollar amounts are subject to Consumer Price Index adjustments.

		<b>Spouse</b>	<b>Child</b>
July 1, 2000	— December 31, 2000	\$339.80	\$105.47
January 1, 2001	— June 30, 2001	346.45	107.53
July 1, 2001	— December 31, 2001	351.89	109.22
January 1, 2002	— June 30, 2002	353.10	109.60

If required, earlier figures may be obtained by contacting the Board.

Where dependants would qualify for the increases set out in Section 18(1) but for the fact that they are receiving or entitled to receive benefits under the Canada Pension Plan, and where the amount of benefits under the Canada Pension Plan is less than the amounts set out in Section 18(1), the monthly payments payable to those dependants are increased by the amount by which the benefits under the Canada Pension Plan are less. (21)

The phrase “benefits under the Canada Pension Plan” in Section 18(1)(b) means benefits payable under the Canada Pension Plan and to which the dependants or any of them are entitled as a result of the death, together with any benefits to which the widow is entitled as a result of having retired or reached retirement age. But it does not include any disability benefit payable to a dependant.

## #56.60 Termination of Benefits

### #56.61 *Remarriage*

If a dependent widow or common-law wife of the deceased married before July 1, 1974, the monthly payments to her ceased, but she was entitled in lieu of them to a sum equal to the monthly payments for two years, but not to exceed

have been payable if the deceased worker had, at the date of death, sustained a permanent total disability;

- (b) the dependants are two children, a monthly payment is made of a sum that, when combined with Federal benefits payable to or for those children, would equal 50% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; or
- (c) the dependants are three or more children, a monthly payment is made of a sum that, when combined with Federal benefits payable to or for those children, would equal the total of
  - (i) 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and
  - (ii) the amount set out in #55.21 per month for each child beyond three in number. (37)

The computation formula is similar to the one used for computing widows' or widowers' pensions described in #55.21-#55.22. Only the percentages taken of the projected permanent total disability pension are different. "Federal benefits" has the meaning set out in #55.24 and the minimum average earnings referred to in #55.26 is applicable.

### **#59.30      Death Prior to July 1, 1974**

Where there was a surviving widow or invalid widower, one pension was paid for that person and the children in accordance with the rules set out in #56.20.

Where the dependants are children, there being no dependent widow or dependent invalid widower

- (a) a monthly payment of sixty-four dollars and twenty-nine cents is made to each child under the age of sixteen years and to each invalid child of any age for whom no payment is made under paragraph (b); and
- (b) a monthly payment of seventy-eight dollars and fifty-six cents is made to each child while regularly attending an academic, technical, or vocational school between the child's 16th and 21st birthdays. (38)

The above dollar amounts apply to deaths occurring on or after January 1, 1974. Different amounts apply in respect of prior periods.

The meaning of “invalid child” is as set out in #59.13. The provision set out in #56.63 dealing with the cessation of children’s benefits also applies here.

**#60.00 OTHER RELATIVES**

Where there is no dependent spouse or child entitled to compensation, but a worker leaves other dependants, payment is made of a sum reasonable and proportionate to the pecuniary loss suffered by those dependants by reason of the death, to be determined by the Board, but not exceeding in the whole the maximum set out below per month. (39)

July 1, 2000	—	December 31, 2000	\$449.12
January 1, 2001	—	June 30, 2001	457.91
July 1, 2001	—	December 31, 2001	465.10
January 1, 2002	—	June 30, 2002	466.70

If required, earlier figures may be obtained by contacting the Board.

Except in the case of parents, no compensation is payable to other relatives who were not dependants of the deceased worker in accordance with the principles set out in #54.00.

**#60.10 Dependent Parents**

Where there is a dependent spouse, or a dependent child or children, entitled to compensation, but not a spouse and child or children, and, in addition, the worker leaves a dependent parent or parents, then, in addition to the compensation payable to the spouse or children, payment is made of a sum, reasonable and proportionate to the pecuniary loss suffered by the dependent parent or parents by the death, to be determined by the Board, but not exceeding the maximum set out in #60.00 per month. (40)

The provision in #60.00 also applies to dependent parents.

Parents who were not dependent on the earnings of the deceased in the manner set out in #54.00 are not entitled under the above provisions. They may, however, be entitled under the provisions set out in #61.00.

**#60.20 Death Prior to July 1, 1974**

The rules set out in #60.00-60.10 also apply to deaths occurring prior to July 1, 1974, although the wording of the Act is slightly different. (41)

The maximum and minimum amount of earnings for which coverage can be purchased are set out below.

	<b>Monthly Amount</b>		
	<b>Maximum</b>	<b>Minimum</b>	<b>With Proof of Earnings (Effective January 1/87)</b>
January 1, 1999 - December 31, 1999	\$2,500.00	\$1,000.00	\$4,792.00
January 1, 2000 - December 31, 2000	2,500.00	1,000.00	4,833.00
January 1, 2001 - December 31, 2001	2,500.00	1,000.00	4,875.00
January 1, 2002 - December 31, 2002	2,500.00	1,000.00	4,967.00

If required, earlier figures may be obtained by contacting the Board.

Effective January 1, 1987, where an applicant is applying for an amount which exceeds the maximum per month, proof of earnings must be provided. If verification of earnings is not provided, the Board automatically reduces coverage to the maximum per month. Proof of earnings must be in the form of a certified copy of the applicant's previous year's tax return or a declaration must be completed by a professional accountant (C.A., C.G.A., or C.M.A.), lawyer or notary public. This declaration must certify that the self-employed earnings of the applicant for the previous year were equal to or exceeded the coverage requested.

Because of frequent changes in the maximum wage rate, where coverage at the maximum has been granted, the Board permits an application for personal optional protection at the "maximum wage rate" with coverage and assessment to be adjusted automatically from time to time.

Where a claim is made in respect of an injury, a disablement from an occupational disease, or a death from either cause occurring on or after January 1, 1978, the minimum amounts of compensation provided for in Sections 22(2), 23(4), 29(2) and 30(2) have no application to persons who have purchased personal optional protection. (7) Compensation payments to such persons shall be based on a rate of 75% of the amount of earnings for which coverage has been purchased. However, the minimum average earnings provided for in Section 17(3)(g) does apply. (8)

Where personal optional protection has been obtained for members of an employer's family under 19 years of age, the wage rate set is based upon the actual earnings of the family member in the same manner as for other workers without regard to the rate of personal optional protection purchased by the employer for the employer or his or her spouse.

If a worker is injured on the job for which personal optional protection has been purchased, and also claims a loss from some other employment, the actual loss of earnings from both jobs (up to the statutory maximum) is used for computing average earnings. The same rule applies if a worker injured in the course of an employment covered by the Act also loses earnings from an occupation for which personal optional protection has been purchased. When a worker is injured on a job for which she or he has purchased personal optional protection and we are combining actual income earned in a second job, with the actual income earned in the job for which personal optional protection coverage has been purchased, the compensation rate on the claim cannot be less than the personal optional protection rate purchased.

When assessing a permanent partial disability on a projected loss of earnings basis, the actual pre-injury earnings of persons who have purchased personal optional protection are compared with the actual earnings they might obtain after the injury in jobs which they are able to do. However, the maximum loss of earnings for which an award will be made will be the earnings figure for which coverage has been purchased. (9) In determining temporary partial disability entitlement under Section 30 of the *Workers Compensation Act*, no earnings losses incurred are considered where such losses are in excess of the amount of personal optional protection purchased.

In the case of a reopening of a claim over three years from the date of injury and the claimant had personal optional protection when initially injured:

1. Where the worker has maintained personal optional protection coverage at the time of reopening, the Board will pay the claim on the basis of the current rate of optional coverage.
2. Where the worker is still employed in a capacity requiring optional protection and has no active personal optional protection coverage at the time of reopening, the Adjudicator will use the initial personal optional protection rate plus the appropriate Consumer Price Index increases.
3. Where the claimant is now employed in circumstances where there is compulsory coverage for workers, the rate on reopening will normally be the claimant's current earnings rate subject to an evaluation of the question of any impact of the original injury on these current earnings should they be lower than that ACTUALLY EARNED (not the personal optional protection rate) at the time of the injury. (10)

Compensation payable to persons entitled to personal optional protection is subject to the same Consumer Price Index adjustments as compensation payable to other persons.

### #66.30 Workers with No Earnings

Persons working without pay are not generally considered as “workers” under the *Act*. However, there are some exceptional situations of this type which are covered and for which the *Act* or the Board has specified the earnings on which compensation is to be based

#### #66.31 *Volunteer Workers Admitted by the Board under Section 3(5)*

Where a person who is deemed to be a worker under Section 3(5) of the *Act* is not regularly employed, and having regard to all the circumstances, including income, the Board may fix the worker’s average earnings at not less than the amount set out below per week nor more than the maximum wage rate provided under Section 33 of the *Act*.

July 1, 2000	—	December 31, 2000	\$97.65
January 1, 2001	—	June 30, 2001	99.56
July 1, 2001	—	December 31, 2001	101.12
January 1, 2002	—	June 30, 2002	101.47

If required, earlier figures may be obtained by contacting the Board.

The minimum wage set out above is subject to Consumer Price Index adjustments.

#### #66.32 *Volunteer Firefighters and Ambulance Drivers and Attendants*

The average earnings of volunteer ambulance drivers and attendants and members of fire brigades working without remuneration is deemed to be the same in amount as the average earnings in their regular employment or employments, not, however, to be less than the amount on which the employer has been assessed. (11)

In order to provide a minimum level of coverage to volunteers who have no attachment to the labour force, the employer is assessed \$75.00 per month (\$17.30 per week) for each person, unless the municipality concerned has arranged with the Board for, or pays the claimant, a higher amount. Compensation is based on this rate unless or until wages are confirmed as being lost at another job. In the latter case, the rate can be increased to the rate on the job, but the \$17.30 cannot be combined with it. If the volunteer is unemployed, but has an attachment to the labour force in the sense that the volunteer is seeking employment, wage-loss benefits are determined on the average earnings from the last regular employment. The fact that the volunteer is collecting Employment Insurance benefits confirms for our purposes an

attachment to the labour force. In most cases, one year's earnings prior to the date the worker was last employed should be used to determine the level of benefits. If a firefighter is paid wages by the fire brigade these can be combined with earnings from another job, but not to exceed the maximum wage rate.

Volunteer firefighters who have no attachment to the labour force such as a retired person or someone in receipt of welfare payments would not generally have a loss of wages as a result of an injury. Claims for these individuals are paid on the basis of a \$75.00 per month assessment figure or greater where the municipality arranges a higher valuation on the volunteer services.

There will be circumstances which do not fall squarely within these guidelines. When that occurs, the decision on what best represents the loss of earnings must be decided upon by the Claims Officer or Claims Adjudicator according to the merits and justice of the particular case.

Firefighters, other than those referred to in 20:10:30 of the *Assessment Policy Manual* or firefighters whose employers are not covered by Part 1 of the *Act*, but to whom personal optional protection has been given, are to be assessed and paid on the same basis as above.

#### **#66.33**      *Sisters in Catholic Institutions*

Claims are occasionally received for teaching or nursing sisters of Catholic institutions. If they are being paid wages they are treated as normal workers and compensated on the basis of their actual earnings. If no wages are being paid, their earnings are deemed to equal the amount on which their employers are assessed. This amount is \$75.00 per month (\$17.30 per week) for each person.

#### **#66.34**      *Emergency Services Workers*

Average earnings used in claims by Emergency Services Workers are the earnings in the worker's ordinary employment but where the worker has no regular employment are fixed by the Board at a figure not less than \$25.00 per week nor more than the maximum under the *Act*. (12)

#### **#67.00**      **WAGE-LOSS RATE CHANGES**

The change from a provisional wage-loss rate to a rate based on the claimant's actual earnings was dealt with in #66.12. In addition, the rate changes referred to below may be applicable.

Personal care allowances may be adjusted up or down in the event that the circumstances following the original application substantially change.

### **#80.20 Amounts Payable at Each Level**

The amounts of personal care allowances are set out below.

	<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>	<b>Level 4</b>	<b>Level 5</b>
January 1, 1999–December 31, 1999					
Daily Amount	12.38	21.09	31.37	40.62	50.09
Monthly Amount	372.64	651.96	941.68	1,221.00	1,500.62
January 1, 2000–December 31, 2000					
Daily Amount	12.66	21.57	32.09	41.55	51.24
Monthly Amount	381.19	666.91	963.27	1,249.00	1,535.03
January 1, 2001–December 31, 2001					
Daily Amount	13.01	22.17	32.98	42.71	52.66
Monthly Amount	391.79	685.45	990.06	1,283.72	1,577.71
January 1, 2002–December 31, 2002					
Daily Amount	13.26	22.60	33.62	43.53	53.67
Monthly Amount	399.31	698.61	1,009.07	1,308.36	1,608.00

If required, earlier figures may be obtained by contacting the Board.

After January 1, 1993, the amounts of the personal care allowances will be adjusted on January 1 of each year. The Consumer Price Index ratio determined under Section 25 of the *Workers Compensation Act* for January 1 and the previous July 1 will be used (see #51.00).

### **#80.30 Payment Procedure**

Where the Board is paying the worker's actual expenses, it may pay directly the account of a company registered to provide the required assistance. The Board does not pay a personal care allowance directly to an individual attendant.

In a case where the worker is receiving a flat rate allowance or has hired an individual attendant, the amount is paid directly to the worker if he or she is capable of money management.

Once approved, personal care allowances are normally paid monthly. The worker, or the person providing the care, is required to complete and sign the prescribed form and return it to the Board each month, or at such other intervals as may be determined by the Board.

#### **#80.40 Claimant Requires Institutional Care**

The payment of personal care expenses or allowances will be suspended if the claimant is institutionalized for more than fourteen calendar days, but may be reinstated upon returning home.

If a claimant is totally disabled and requires ongoing institutional care as a result, a flat rate personal care allowance will not be paid. The Board provides the cost of institutional care as part of the health care benefit program. If it appears that such a claimant can be provided the same kind of nursing or custodial care outside an institution, the Board may, as an alternative to paying personal care allowance, pay an amount calculated, at least in part, by reference to the cost of institutional care.

#### **#81.00 INDEPENDENCE AND HOME MAINTENANCE ALLOWANCE**

Normally, most workers who are homeowners have the physical capacity to maintain their property in order to protect their investment in home and property. Such things as painting, repairing, landscaping, appliance repairs, renovations and the many other activities required to maintain the home are difficult or impossible for the disabled. The severely disabled claimant is usually required to hire tradespersons or others to carry out these activities, thereby incurring additional costs for maintaining home and property.

Similarly, the disabled claimant may not have the physical capacity to maintain and/or drive a car or to use public transportation, and is consequently required to hire taxis or other forms of transportation to enjoy a reasonable degree of independence.

In order to assist in these and similar kinds of expenses, the Board has established a category of assistance separate and distinct from personal care allowances, called the independence and home maintenance allowance. This allowance may be paid over and above any level of personal care allowance and is in addition to any wage-loss or pension benefits.

Effective September 1, 1992, the criteria for paying the independence and home maintenance allowance are as follows:

1. The worker must have sustained a permanent compensable disability which meets one of the following criteria:
  - (a) The disability measured using the physical-impairment method of assessment is equal to 75% of total or greater.

- (b) The disability measured using the projected-loss-of-earnings method of assessment is equal to an equivalent of 75% of total or greater and it is concluded, after obtaining the advice of the Vocational Rehabilitation Consultant, that the disability will prevent the worker from carrying out the activities covered by the allowance.
  - (c) The compensable disability is superimposed on another permanently disabling medical condition, whether compensable or not, and the combined disability meets (a) above or the Board grants a projected-loss-of-earnings award which meets (b) above. Where the pre-existing disability is non-compensable, the compensable disability must be at least half the combined disability measured using the physical-impairment method of assessment and be a significant factor in the worker's inability to do the activities covered by the allowance.
2. The worker must maintain a home or live in rented accommodation. A worker who lives in a nursing hospital or extended care facility will not be eligible. Other accommodation may be approved if it can be concluded that the worker would have contributed to its maintenance had the disability not occurred.
  3. If the worker is institutionalized in a hospital, nursing care facility or extended care facility, but the spouse and children continue to maintain the family home, the allowance may be paid to the spouse.
  4. The allowance commences as of the date when the worker meets the criteria set out above and will be terminated upon the death of the worker or if the worker ceases to meet the above criteria. The allowance may be paid retroactively if time elapses between the date of the worker becoming eligible for the allowance and the date eligibility is determined. With regard to any period prior to September 1, 1992, no payment can be made unless the worker meets the criteria which existed prior to that date. (22)

The independence and home maintenance allowance is payable at the discretion of the Board. The circumstances surrounding each case will be reviewed by the Rehabilitation Consultant who will provide a report and recommendations.

Once the allowance is approved, the worker or spouse is required to complete and sign the appropriate form and submit it each month, or at such other intervals as may be determined by the Board.

The amount of the independence and home maintenance allowance is set out below.

<b>Date</b>	<b>Monthly Amount</b>
January 1, 1999 – December 31, 1999	\$196.99
January 1, 2000 – December 31, 2000	201.51
January 1, 2001 – December 31, 2001	207.12
January 1, 2002 – December 31, 2002	211.09

If required, earlier figures may be obtained by contacting the Board.

After January 1, 1993, the amount of the independence and home maintenance allowance will be adjusted on January 1 of each year. The Consumer Price Index ratio determined under Section 25 of the *Workers Compensation Act* for January 1 and the previous July 1 will be used (see #51.00).

The independence and home maintenance allowance is not retroactive to before June 13, 1980, but, subject to the claimant's qualifying as above described, the allowance is paid regardless of date of injury or permanent disability due to occupational disease.

## **#82.00 TRANSPORTATION ALLOWANCES**

Section 21(1) authorizes the Board to furnish or provide the injured worker with transportation it may deem reasonably necessary.

### **#82.10 Eligibility for Transportation**

Subject to the exceptions set out at the end of this item, return transportation expenses are normally reimbursed when:

1. A worker travels to a place of medical examination or treatment where the appointment has been previously approved by the Board or is subsequently paid for by the Board; or
2. A worker travels in connection with a vocational rehabilitation program where the travel is requested or approved as part of the program by the Vocational Rehabilitation Consultant; or
3. A worker is at the time of injury working at a place other than his or her place of residence and wishes to transfer to the place of residence and the disability from the injury prevents the worker from using the mode of transportation which he or she ordinarily would have used to do this; or
4. A worker meets the criteria set out in #100.12 or #100.13 in connection with attendance at a claims or appeal inquiry.

Date	Amount Per Kilometre
January 1, 1999 - December 31, 1999	28¢
January 1, 2000 - December 31, 2000	29¢
January 1, 2001 - December 31, 2001	30¢
January 1, 2002 - December 31, 2002	30¢

If required, earlier figures may be obtained by contacting the Board.

It may, for example, be considered reasonable for a worker to drive his or her own vehicle where there is available public transport if the bus journey would involve multi bus transfers or coming by automobile would be acceptable where it permits the worker to put in half a day at work and still keep an appointment. Parking fees are payable if parking charges are levied by the hospital or medical building where the worker is attending for treatment, but are only paid where approval has been given to pay a kilometre allowance.

After January 1, 1993, the kilometre rate will be adjusted on January 1 of each year. The Consumer Price Index ratio determined under Section 25 of the *Workers Compensation Act* for January 1 and the previous July 1 will be used (see #51.00). The result is rounded to the nearest cent.

Where a worker has voluntarily moved out of the province, eligible expenses are normally limited to what would be paid if the expenses were incurred in British Columbia. Where travel costs are being paid, the cost of travel back to British Columbia (usually the air fare) is prorated on a kilometre basis and the payment covers only the percentage of the travel occurring in British Columbia.

Parking fees may be payable where approval has been given to pay a kilometre/mileage allowance.

Where a worker has to buy meals while engaged in a journey for which the Board is paying expenses, the Board will pay the rates set out in #83.20.

Flat rate travel allowances to cover the cost of different forms of transportation from different starting points to different destinations may be established. This includes situations where part of the journey takes place outside the province. These allowances should cover the normal cost of the journey in question including incidental costs such as parking, taxi, airporters, and meals which will usually be incurred in the journey. The amount of the allowance may be paid to the worker in place of actual expenses.

The worker in receipt of a flat rate payment may request reimbursement of actual expenses if, because of exceptional circumstances, expenses are incurred which are significantly higher than the amount of the flat rate. These expenses would have to meet the normal criteria for payment set out in this part of the manual.

### **#82.30 Manner of Payment**

Air travel is normally arranged through a travel agency used by the Board.

Travel arrangements may also be made by forwarding a cheque to the worker in advance of the scheduled trip. Normally, such advance payments will only be paid at the rate of the bus fare. In any exceptional situation where the cheque forwarded to the worker is to cover an air fare, but the worker elects to use other transportation that is less expensive, the Board will not ask for a refund of the difference in cost.

Where an advance payment has been made and the worker does not keep her or his appointment and another appointment cannot be arranged, the worker will be asked to return any transportation expenses that have been advanced. They will be treated as an overpayment. (24)

### **#82.40 Transportation Provided by the Employer**

Every employer shall, at its own expense, furnish to a worker injured in its employment, when necessary, immediate conveyance and transportation to a hospital, physician or qualified practitioner for initial treatment. (25) After such initial treatment, the Board provides any necessary transportation.

In the event a doctor is called to the scene of the accident, the employer shall be responsible for any charge made by the doctor with respect to mileage or travelling time. Where air transportation is utilized, stretchers suitable for use in planes shall be provided.

The transportation of an injured fisher to a hospital or physician or qualified practitioner is discussed in Fishing Industry Regulation 13 (found in Workers' Compensation Reporter Decision 223).

### **#82.50 Flight Changes**

Because of advance bookings, flight reservations made by the Board are normally at a preferred rate.

A worker may change a flight reservation or elect to fly after having previously advised that he or she will use some other means of transportation. This may result in increased flight cost. The Adjudicator will investigate the reasons for

reach an agreement with the worker regarding the accommodation to be selected and the amount the Board is prepared to approve as a reimbursement.

In addition to accommodation costs, the worker will be paid a full or partial per diem meal allowance as follows:

<b>Date</b>	<b>Breakfast</b>	<b>Lunch</b>	<b>Dinner</b>	<b>Per Day</b>
January 1, 1999 - December 31, 1999	\$9.23	\$11.38	\$19.57	\$40.20
January 1, 2000 - December 31, 2000	9.44	11.64	20.02	41.13
January 1, 2001 - December 31, 2001	9.71	11.96	20.57	42.27
January 1, 2002 - December 31, 2002	9.89	12.19	20.96	43.04

If required, earlier figures may be obtained by contacting the Board.

The above meal rates also apply where a worker has to buy meals while engaged on a journey for which the Board is paying expenses.

Where board and/or room is included in a treatment or vocational rehabilitation program, it will be paid at cost.

The rate of subsistence in Richmond when claimants or other persons eligible for admission to the Board's Rehabilitation Residence choose not to stay there is as follows:

<b>Date</b>	<b>Amount Per Day</b>
January 1, 1999 - December 31, 1999	\$16.31
January 1, 2000 - December 31, 2000	16.68
January 1, 2001 - December 31, 2001	17.14
January 1, 2002 - December 31, 2002	17.47

If required, earlier figures may be obtained by contacting the Board.

After January 1, 1993, the meal allowance, and the subsistence rate paid to workers who choose not to stay at the Residence, will be adjusted on January 1 of each year. The Consumer Price Index ratio determined under Section 25 of the *Workers Compensation Act* for January 1 and the previous July 1 will be used (see #51.00).

The rules set out above apply equally to family members or other persons travelling with or visiting an injured worker. The Board may, however, pay the cost of hotel accommodation for such a person close to the hospital where the worker is located even though there is accommodation available at the Residence. This would normally be limited to situations where the worker's condition is considered to be life threatening.

### #83.21 *Position Prior to August 10, 1992*

The Board's policy formerly contained two alternative systems of paying subsistence.

The first alternative applied where a worker was required to attend for a medical examination at the Board's request or with the Board's approval, or was requested to attend for an inquiry, and this would require the worker to stay away from home for one or more nights. In these cases, the Board paid actual accommodation costs plus the standard per diem meal allowance set out in #83.20.

The second alternative covered other longer term absences. The Board paid one daily rate to cover meals and accommodation. For the first two weeks, the Board paid an additional daily amount. The rates that were paid are set out in the table below. This alternative was abolished by a Governors' decision on August 10, 1992. From that date, all situations are covered by the first alternative discussed above.

#### **Subsistence Rates**

<b>Date</b>	<b>Basic Rate</b>	<b>Additional Rate for First Two Weeks</b>
July 1, 1983 – December 31, 1983	\$25.22	\$ 9.36
January 1, 1984 – September 30, 1989	25.96	9.63
October 1, 1989 – February 28, 1991	32.45	12.04
March 1, 1991 – August 9, 1992	34.96	12.97

If required, earlier figures may be obtained by contacting the Board.

### **#84.00 REHABILITATION RESIDENCE**

The Board's Rehabilitation Residence is located at 6951 Westminster Highway, Richmond, British Columbia.

#### **#84.10 Eligibility For Admittance**

As the Rehabilitation Residence is a self-care unit, the residents must normally be able to function by themselves, handle their own hygiene and keep their rooms tidy. Six rooms have however been modified for claimants who are paraplegics or suffer severe walking disabilities. These persons must be self-sufficient to the degree that, with or without the assistance of an authorized travelling companion, they could stay in an hotel.

- (b) administrative co-operation and assistance between jurisdictions in all matters under this Act and corresponding legislation in other jurisdictions, or
- (c) avoidance of duplication of assessments on workers' earnings."

The agreement entered into contains provisions to deal with situations where an injury, or exposure to the causes of an occupational disease occurs in another province or territory. In addition, it contains a system to permit the Board to help another Board's workers or dependants and a method of resolving disputes between Boards.

An employer who carries on business in this province may be required to register with this Board as an employer even though carrying on business and is registered as an employer with the Board in another province or territory. (2)

Where an employee of such an employer suffers from an injury or occupational disease and is eligible to claim compensation in this and another province or territory, the employer's class will be charged with the costs of the claim subject to adjustment resulting from any reimbursements received or made under the terms of the Interjurisdictional Agreement.

#### **#113.40      *Blind Workmen's Compensation Act***

The *Blind Workmen's Compensation Act* was repealed June 26, 1975. Its provisions, however, remain applicable to injuries to blind workers where the injuries occurred prior to June 26, 1975.

Under these provisions, the consolidated revenue fund of the Province pays for all but the first \$50 of the cost of an industrial injury to a blind worker.

### **#114.00 PROVISIONS RELIEVING CLASS OF COSTS OF CLAIM**

#### **#114.10      *Transfer of Costs from One Class to Another***

Section 10(8) provides as follows:

"The provisions of this Part are in lieu of any right of action that the employer of the injured or deceased worker is or may, in respect of the personal injury or death of the worker, be entitled to maintain against another employer within the scope of this Part, or an independent operator to whom this Part applies by direction under section 2(2)(a); but where the board considers that

- (a) a substantial amount of compensation has been awarded as a result of the injury or death of the worker; and
- (b) the injury or death was caused or substantially contributed to by a serious breach of duty of care of an employer or an independent operator to whom this Part applies by direction under section 2(2)(a) in another class or subclass,

the board may order that the compensation be charged, in whole or in part, to the other class or subclass; but the provisions of this subsection do not affect any right which an employer may have against another employer, or an independent operator to whom this Part applies by direction under section 2(2)(a), arising out of their indemnity agreement or contract. "

This provision permits the Board to transfer the costs of a claim from the class of the claimant's employer to the class of another employer in certain circumstances. The requirements of such a transfer are discussed below.

*#114.11 The Amount of Compensation Awarded Must Be Substantial*

The Board has interpreted the word "substantial" as referring to a specific dollar amount. The amounts in question are set out below:

January 1, 1999 – December 31, 1999	\$34,499.05
January 1, 2000 – December 31, 2000	35,290.32
January 1, 2001 – December 31, 2001	36,271.48
January 1, 2002 – December 31, 2002	36,967.79

If required, earlier figures may be obtained by contacting the Board.

After January 1, 1993, the dollar amount will be adjusted on January 1 of each year. The Consumer Price Index ratio determined under Section 25 of the *Workers Compensation Act* for January 1 and the previous July 1 will be used (see #51.00).

*#114.12 Serious Breach of Duty of Care of Another Employer Must Have Caused or Substantially Contributed to Injury*

"Duty of care" has the same meaning as it does in the law of tort. It is therefore relevant to consider what conclusions a court of common law would come to if a claim for damages for personal injury were brought by the claimant against the other employer. The basic question considered is whether there was a failure to take reasonable care. The mere fact that the employer may have violated the Occupational Safety and Health Regulations is not sufficient since they often impose strict liability.

- (16) Net lifetime lost income,  
i.e., (14) – (15). \_\_\_\_\_ 16)
- (17) Projected monthly loss of retirement  
income from reduced savings,  
i.e., 0.0005 x (16). \_\_\_\_\_ 17)

THE FIGURE SHOWN AS ITEM (17) IS TRANSFERRED TO ITEM (d)  
ON THE CALCULATION SHEET FOR WORKERS 65 AND OVER.

### SUPPLEMENT NO. 5

#### MONTHLY REDUCTION OF POST-RETIREMENT EARNING CAPACITY

- (1) Percentage of total disability that  
would be awarded at the date of  
the adjustment for the disability sustained  
by the applicant. % \_\_\_\_\_ 1)
- (2) Monthly allowance for loss of earning  
capacity from the disability.  
\$0.80 for each 1% of total disability,  
i.e., \$0.80/per 1% x (1). \$ \_\_\_\_\_ 2)

THIS FIGURE SHOWN AS ITEM (2) IS TRANSFERRED TO ITEM (e)  
ON THE CALCULATION SHEET FOR WORKERS AGED 65 AND OVER.

The cash figure in Item (2) will be adjusted with the Consumer Price Index,  
the first such adjustment being made on July 1, 1976.

#### Rates

July 1, 2000	–	\$2.57 for each 1%
January 1, 2001	–	\$2.62 for each 1%
July 1, 2001	–	\$2.67 for each 1%
January 1, 2002	–	\$2.68 for each 1%

If required, earlier figures may be obtained by contacting the Board.

**SUPPLEMENT NO. 6**

**PROJECTED MONTHLY LOSS OF  
OTHER RETIREMENT INCOME**

ACTUAL INCOME PER MONTH (apart from earnings)

- |  |       |    |
|--|-------|----|
| (1) Canada Pension benefits.   | _____ | 1) |
| (2) Pension benefits from employment<br>(employer-operated or occupational<br>pension plan). | _____ | 2) |
| (3) Other government benefits (but not<br>Mincome or similar guarantees).                    | _____ | 3) |
| (4) Total actual retirement income; total<br>of (1) through (3).                             | _____ | 4) |

PROJECTED INCOME BENEFIT PER MONTH (estimated retirement income the worker would be receiving if the compensable injury had not occurred. The projected benefits are based on the assumption that if the disability had not occurred, the worker would have remained in the pre-injury occupation until the age of 65 years).

- |  |       |    |
|--|-------|----|
| (5) Canada Pension Plan benefits.  | _____ | 5) |
| (6) Pension benefits from employment<br>(employer-operated or occupational<br>pension plan). | _____ | 6) |
| (7) Other government benefits (but not<br>Mincome or similar guarantees).                    | _____ | 7) |
| (8) Total projected retirement income,<br>i.e., total of Items (5) through (7).              | _____ | 8) |
| (9) Retirement income loss (8) – (4).  | _____ | 9) |

THE FIGURE FOR ITEM (9) IS TRANSFERRED TO ITEM (f) ON THE WORKSHEET.

## APPENDIX 6

### MAXIMUM FINES FOR COMMITTING OFFENCES UNDER THE ACT

**Part 1 – Offences for which No Other Punishment is Provided –  
#47.20, #74.10, #94.15, #95.30, #98.12, #99.00**

Section 77(2) provides that “Every person who commits an offence under this Act for which no other punishment has been provided is liable on conviction to a fine not exceeding . . .” the amount set out below.

	<b>Date</b>	<b>Amount</b>
July 1, 2000	– December 31, 2000	\$3,905.51
January 1, 2001	– June 30, 2001	3,981.95
July 1, 2001	– December 31, 2001	4,044.49
January 1, 2002	– June 30, 2002	4,058.39

If required, earlier figures may be obtained by contacting the Board.

**Part 2 – Maximum Fine for Discouraging Worker from  
Reporting to Board – Section 13(2) – #94.20**

	<b>Date</b>	<b>Employer</b>	<b>Supervisor</b>
January 1, 1998	– June 30, 1998	\$18,745.52	\$3,749.15
July 1, 1998	– December 31, 1998	18,815.01	3,763.05
January 1, 1999	– June 30, 1999	18,936.62	3,787.37
July 1, 1999	– December 31, 1999	19,127.72	3,825.59

If required, earlier figures may be obtained by contacting the Board.

**Part 3 – Maximum Fine for Obstructing Board in Investigation – Section 71(8) – #98.11**

<b>Date</b>		<b>Maximum Amount</b>
July 1, 1998	– December 31, 1998	\$18,815.01
January 1, 1999	– June 30, 1999	18,936.62
July 1, 1999	– December 31, 1999	19,127.72

If required, earlier figures may be obtained by contacting the Board.