

August 2002

Update 2002-4

**TO HOLDERS OF THE *REHABILITATION SERVICES AND CLAIMS MANUAL* -  
VOLUME I**

This update of the *Rehabilitation Services and Claims Manual* contains changes to the *Manual* approved by the Panel of Administrators in August 2002.

Changes have been made to policies regarding commutation of permanent disability awards. A summary of the amendments has been included as part of the package.

The *Workers Compensation Act* has been changed by the *Workers Compensation Amendment Act, 2002*. This volume will remain in effect after June 30, 2002 as noted below.

To better enable workers, employers and Board officers to identify the policies that will apply to a particular situation, the *Manual* now comprises two volumes. Volume I reflects the law and policy in effect immediately before June 30, 2002. Volume II reflects the law and policy in effect on or after June 30, 2002. To determine which volume applies, holders of the *Manual* are referred to Chapter 1 of each volume.

If you have any questions regarding this update, or the *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

**LIST OF AMENDMENTS**  
***Rehabilitation Services and Claims Manual***  
***Volume I***

**SUMMARY OF AMENDMENTS – UPDATE 2002-4**

- #45.10 Amendments to incorporate the new threshold amount for determining a worker's eligibility for a commutation of a permanent disability award. This policy clarifies that where a worker or dependant has more than one disability pension or dependant benefit on one or more claims, the threshold applies to the combined total. The policy also provides that where a worker or dependant has had previous commutations or lump sum awards, these previous awards are not applied to the combined total.
- #45.20 Amendment to remove the prohibition from granting a commutation of a permanent disability award calculated on a projected loss of earnings basis. Consequential policy changes as a result of the new threshold amount.
- #45.43 Consequential policy change to update the reference to the Business Development Bank of Canada.
- #45.50 Consequential policy changes as a result of the new threshold amount.
- #45.60 Consequential policy change to clarify current procedure for pensions that are commuted by the Board at the dependant's request.
- #45.61 Consequential policy changes as a result of the new threshold amount.

**HOUSEKEEPING AMENDMENTS**

The following housekeeping amendments have resulted from grammatical changes:

- #45.00
- #45.21
- #45.41
- #45.44
- #45.45

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## **#45.00 LUMP SUMS AND COMMUTATIONS**

Section 35(2) of the *Act* provides:

The board may in its discretion

- (a) commute all or part of the periodic payments due or payable to the worker to one or more lump sum payments, to be applied as directed by the board; and
- (b) divide into periodic payments compensation payable in a lump sum.

In case of death or permanent total disability or in case of permanent partial disability where the impairment of earning capacity exceeds 10% of the worker's earning capacity at the time of the injury, no commutation of periodic payments can be made under subsection (2) except upon the application of and at an amount agreed to by the dependant or worker entitled to such payments. (28)

### **#45.10 Pension Categories/Lump Sum Awards**

#### **Category A:**

Where

1. a compensable disability has been assessed at not more than 10% of total disability, and
2. the pension is not more than \$200.00 per month,

a lump sum will be awarded in lieu of a monthly pension.

#### **Category B:**

In any case not within Category A, where the pension is more than \$200.00 per month, the award will consist of a monthly pension and commutation will only be considered under the circumstances outlined below.

Where a worker or dependant has more than one disability pension or dependant benefit on one or more claims, the above figures apply to the combined total. Where the worker or dependant has had previous commutations or lump sum awards, these previous awards are not applied to the combined total.

Where a commutation request is made after the award of a pension or dependant benefit, the monetary level at the date of the request is used rather than the level at the date of the award.

A review of the monetary level in Categories A and B will be undertaken annually. Any changes to the amount will normally take place on the first day of the month following the month of the review.

The amount set out above is effective October 1, 2002. If required, earlier figures may be obtained by contacting the Board.

#### **#45.20 Criteria for Allowing or Disallowing a Commutation**

The same criteria apply, whether or not the Board has recovered all or part of the capital reserve in a third party action.

Workers granted awards that fall within Category A will automatically be given a lump sum award.

The general rule is that no commutation will be granted for cases in Category B.

There are, however, certain situations where a commutation may be desirable. The purpose of the guidelines set out below is to define those situations where it is in the worker's long term interests to receive a commutation and to state the terms and conditions on which such commutations are granted.

In considering a commutation, the following will apply:

1. A commutation must be for a specific purpose.
2. A commutation will, in general, only be allowed for purposes that are calculated to enhance the income position of the worker.
3. The applicant must have a stable source of income other than the disability pension.
4. A commutation will not be allowed where the applicant is a person whom the Board considers incapable of managing his or her own affairs or who has a demonstrated incapacity for money management.
5. Where there is an application by a widow or widower to commute a pension which is paid in whole or part for the children regard may have to be had to the separate interests of the children.

6. If the other requirements are met, a commutation may be in the worker's long term interests notwithstanding the worker's medical condition may not have settled or involves a significant risk of deterioration. However, while a potential deterioration in the worker's condition will not automatically bar a request, it is a relevant factor to be considered. It might, for instance, lead to a conclusion that the worker's existing income from other sources would not be stable from a long-term point of view.

Similarly, the fact that a disability may improve in the future will not automatically bar a request for a commutation, even though the commutation will prevent the Board from reducing the pension when the improvement occurs. The possibility of such an improvement may, however, be taken into account if it is significant. It may influence the term and amount of commutation granted.

7. A short expectation of life or a worker's wish to benefit the dependants following his or her death is not a ground on which the Board can permit a commutation.

#### *#45.21 Death of Worker Prior to Award under Category A in Policy Item #45.10*

Under the terms of the *Act*, disability awards are payable to a worker. There is no provision for a disability award to be payable in respect of a deceased worker.

The *Act* distinguishes between two different categories of benefits:

1. Benefits payable to a disabled worker.
2. Benefits payable to dependants and others in respect of the death of a worker.

No compensation under the first heading can validly be awarded in respect of future disability after the death of a worker. Where future benefits have been issued after the death of a worker, the benefit will be cancelled and recalculated up to the date of the worker's death.

### **#45.30 Types of Commutations Permitted**

There are basically four types of commutations that the Board may permit:

1. A partial commutation by way of a term of years resulting in a total suspension of pension payments for a fixed period, after which the pension resumes with full payments.
2. A partial commutation by way of a reduced level of pension payments for a term of years, after which the full payments resume.
3. A partial commutation resulting in a reduced level of pension for life.
4. A total commutation of the whole pension.

A commutation for a term of years will be made only for units of whole years.

To ensure that a commutation is used for the purpose for which it is sought, the Board may make a commutation cheque payable to a worker and to another.

### **#45.40 Purpose of Commutations**

Certain purposes for which commutations are commonly requested are discussed below. The list is not intended to cover every purpose for which a commutation may be requested but rather is designed to provide guidelines to ensure the consistent handling of certain common types of application.

#### *#45.41 Paying Off Debts*

The Board is concerned that lenders might be encouraged to grant excessive extensions of credit to pensioners if they became aware that commutations could easily be obtained to pay off debts. Section 15 of the *Act* seeks to protect workers from creditors by making pension payments non-assignable. The Board will not undermine this intention by freely allowing commutations for the purpose of debt reduction. Therefore, a commutation is more likely to be allowed for paying off debts that were incurred prior to the injury.

A person incurring heavy debt may have serious long-term problems which will not be resolved simply by a commutation to pay debts. These problems may lead to incurring further debt even if the existing debt is paid. The person will then be in an even more serious position than before because there will now be no pension. It may, in such cases, be more appropriate to refer the pensioner for financial counselling rather than to attempt to resolve the situation by a commutation of pension payments. Nevertheless, a commutation to pay off debts may be advisable and in the best interests of the worker if it will avoid high

interest obligations. Commutation applications for this purpose will be carefully scrutinized for other alternatives before being allowed.

#### *#45.42 Investments*

A commutation will not be allowed for investment purposes.

#### *#45.43 Starting a Business*

From a purely financial standpoint, it may be difficult to distinguish between investing in one's own business and other forms of investment. It is, moreover, often difficult for officers of the Board to determine with any degree of certainty whether what the worker wishes to undertake is a sound business venture. Investing in one's own business, however, may be in the worker's best interests where there is a strong element of rehabilitation involved and the worker will be an active participant in operating the business. Any application for a commutation for the purpose of starting a business will be thoroughly investigated with these considerations in mind.

In each case where a business start-up is contemplated for which a commutation has been requested, or as a vocational rehabilitation measure, the Board officers undertaking the assessment of the matter will obtain, with the worker's written consent, an appraisal of the viability of the proposed business from the Business Development Bank of Canada or some similar organization before a final decision on the commutation request, or rehabilitation measure, is made.

#### *#45.44 Education*

Unless the proposed educational program will promote the worker's career, a commutation for this purpose would not normally enhance the worker's income position and consequently would not satisfy the above general guidelines. There may, however, be some therapeutic benefit in allowing pensioners to improve their education when the improvement cannot be provided through normal rehabilitation programs. The requirement for the applicant to have a stable source of income may be waived where the Board is satisfied that the training or educational program will increase the prospects of employment and therefore enhance the income position over the long term. Where the program will not increase the employment prospects, but will have a significant therapeutic benefit, the Board may waive the requirement that the commutation be for a purpose that enhances the worker's income position. In such a case, it will not waive the requirement that the applicant have a stable source of income.

#### *#45.45 Buying a Home*

Commutations for purchasing a home will be allowed under the following conditions:

1. The home is purchased as a personal residence.
2. The worker will obtain clear title to the property subject only to any mortgage.
3. Any mortgage payments are well within the worker's ability to pay from other income.
4. The size, value and upkeep costs of the home are in line with other income.

The discharge or reduction of an existing mortgage will be dealt with under the criteria for paying off debts in policy item #45.41, rather than under the criteria for buying a home. In administering this feature, however, a request for a commutation to discharge or reduce an existing mortgage should primarily be considered in the same general vein as a commutation to purchase a home, with the added insurance that consideration should be given to the safeguards built into the debt payment provisions. The expectation of this approach is that, in general, given similar circumstances, there should be little difference in the result following a decision made under either category.

A commutation for the purpose of extending an existing home may be allowed if the above requirements are satisfied.

A commutation will not normally be allowed for the purpose of purchasing a second home to be used for vacations, or retirement, or to be rented out. The home must be for the purpose of providing the claimant with current accommodation.

#### **#45.50 Decision-Making Procedures**

The Board officer in Disability Awards is responsible for investigating an application for a commutation and making a decision on the application. The Board officer may obtain a report from the Board officer in Rehabilitation Services involved in the claim before making a decision.

Where a commutation application is under consideration, the value of the proposed commutation can be made available so that the claimant may properly evaluate the options open.

If the value of a commutation under Category B in policy item #45.10 exceeds the limit set in Category A, the Board officer must obtain approval of the Vice-President, Compensation Services Division before granting the request. Where an application is received that does not fall within the guidelines and it is thought

that there should be some departure, the application must also be referred to the Vice-President for consideration.

An employer is not normally advised of the granting of a commutation. An exception is made where the employer is the Federal Government. It is advised of the amount and type of the commutation.

#### **#45.60 Amount Paid on Commutations**

When a pension reserve is established or a liability is calculated for a pension, the monthly pension amount is converted to a lump sum by applying an actuarial net discount rate. This actuarial net discount rate is set by the Board and represents the anticipated difference between long term future investment returns and long term future inflation.

Similarly, when a pension commutation is granted, the monthly pension amount is converted to a lump sum by applying a commutation net discount rate. For pensions that are automatically commuted by the Board without a request from the worker, the commutation net discount rate used will be equal to the actuarial net discount rate. For pensions that are commuted by the Board at the worker's or dependant's request, the commutation net discount rate used will be equal to the actuarial net discount rate increased by .5 percentage points.

#### **#45.61 *Implementation of Decision***

Where, as a result of the application of the policies outlined in policy items #45.10 to #45.60, the Board officer in Disability Awards decides on a lump sum or commutation, it is paid forthwith.

If a review board finding results in a lump-sum payment (Category A of policy item #45.10) or they find that a commutation (Category B of policy item #45.10) should be paid, the lump sum or commutation will not be processed unless, and until, the 30-day period for appealing the finding to the Appeal Division has expired. If an appeal is submitted within this time period, or a referral of the review board finding is made to the Appeal Division under section 96(4) of the *Act*, no lump sum or commutation will be processed until the proceedings before the Appeal Division have been concluded. Any finding of the review board which would normally result in a lump-sum payment will be paid as a periodic payment pending the decision of the Appeal Division.

The lump sum or commutation may be paid during the 30-day period for appealing the finding to the Appeal Division, if:

1. the worker has requested it, **and**
2. the employer confirms in writing that they do not intend to appeal to the Appeal Division, **and**
3. no referral under section 96(4) will be made.

The same procedures apply, in the case of medical decisions, to the 90-day period between an Appeal Division decision and a Medical Review Panel appeal.

Whenever a lump-sum payment or commutation is calculated following the expiration of the appeal time and/or the appeal process, the calculation will be based on the date on which it is processed.

## NOTES

- (1) See #66.12
- (2) See #51.13
- (3) See #40.00
- (4) S.23(2)
- (5) Permanent Disability Evaluation Schedule Appendix 4
- (6) See #25.10
- (7) Decision No. 157
- (8) S.23(4); See #34.20
- (9) See #37.21
- (10) S.33(4)
- (11) See #66.20
- (12) See #42.20
- (13) S.24(7)
- (14) S.24(3)
- (15) S.24(5)
- (16) S.24(6)
- (17) S.24(8)
- (18) S.24(9)
- (19) S.24(12)
- (20) S.24(11)
- (21) S.24(10)
- (22) S.26(2)
- (23) S.26(4)
- (24) The 62-1/2% shown in the equation is the percentage of average earnings used in 1938 for calculating compensation, the equivalent of the present 75%
- (25) S.26(4)
- (27) S.5(5)
- (28) S.35(3)