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**TO: HOLDERS OF THE *REHABILITATION SERVICES & CLAIMS MANUAL*
– VOLUME I**

This update of the *Rehabilitation Services & Claims Manual* contains amendments to the *Manual* implemented since update 2007 – 4.

This amendment includes minor policy changes and CPI adjustments **effective January 1, 2008.**

- Policy item #40.00, *Projected Loss of Earnings Method*
- Policy item #45.20, *Criteria for Allowing or Disallowing a Commutation*
- Policy item #56.50, *Additional Payments*

A summary of the amendments is attached and the amended pages are included as part of the package.

If you have any questions regarding subscription information for updates to the *Rehabilitation Services & Claims Manual*, please call WorkSafeBC Customer Service at the following:

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Attachments

Rehabilitation Services & Claims Manual, Volume I

SUMMARY OF AMENDMENTS – Update 2008 – 1

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In the case of non-scheduled awards, the Disability Awards Officer or Adjudicator in Disability Awards use their own judgment to arrive at a percentage of disability appropriate to the particular claimant's impairment. Regard will be had to, inter alia, the permanent functional impairment evaluation, the circumstances of the claimant, medical opinions of Board or non-Board doctors, and to schedules of disability used in other jurisdictions.

Neither the age adaptability or enhancement factors nor devaluation are formally applied in respect of non-scheduled awards. (The exception is that an enhancement factor may be added with respect to spinal injuries as outlined in #39.12.) However, in making a judgment as to the correct percentage of disability, the Disability Awards Officer or Adjudicator will have regard to the age of the claimant, to existing disabilities in other parts of the claimant's body, or to the combined effect of more than one disability in the same part of the body.

#39.60 Minimum Pension

The minimum compensation for permanent partial disabilities is calculated in the same manner as for temporary total disability but only to the extent of the partial disability. (8) Thus, for example, if a worker is injured on January 2, 1986, and suffers a residual disability assessed at 10% of total disability, the minimum compensation will be the lesser of 10% of \$197.25 or 10% of his average earnings prior to the injury. (The formula for converting this weekly figure to the monthly equivalent is contained in #68.00.)

The minimum for permanent total disability does not apply simply because a worker is found to be totally unemployable under Section 23(3). (9)

#39.61 *Injury Prior to March 18, 1943*

Notwithstanding any other provision of the Act, all periodic payments awarded as compensation for permanent partial disability to workers injured prior to March 18, 1943, who, on January 1, 1955, or after that are in receipt of those periodical payments are calculated or recalculated at a rate of sixty-six and two-thirds per cent of average earnings of not less than two thousand dollars nor more than two thousand five hundred dollars per annum. Compensation is not payable under this provision for any period prior to January 1, 1955. (10)

#39.62 *Injury Prior to January 1, 1965*

In regard to payments made on or after January 1, 1965, permanent partial disability pensions awarded in respect of injuries occurring before that date were recalculated in accordance with the then minimum for permanent total disability but to the extent only of the partial disability. This minimum was an amount equal to \$30.00 per week (\$130.00 per month), unless the worker's average earnings were less, in which case compensation would be paid in an amount equal to the average earnings.

Any increase resulting from the above provisions did not apply to a commuted pension or the commuted portion of a pension.

In considering whether the worker's earnings were less than the minimum, the artificial wage created by the application of #39.61 was not taken into account. Only the worker's actual earnings were relevant.

#40.00 PROJECTED LOSS OF EARNINGS METHOD

Section 23(3) provides that "Where the board considers it more equitable, it may award compensation for permanent disability having regard to the difference between the average weekly earnings of the worker before the injury and the average amount which the worker is earning or is able to earn in some suitable occupation after the injury, and the compensation must be a periodic payment of 75% of the difference, and regard must be had to the worker's fitness to continue in the occupation in which the worker was injured or to adapt to some other suitable employment or business."

On October 2, 1973, the Board introduced a dual system for assessing permanent disability pensions involving the spinal column. Effective October 1, 1977, this system was extended to non-spinal injuries. This system implements Section 23(3) of the Act.

Under this system, awards are calculated as follows:

1. The degree of physical impairment is calculated using the method described in #39.00, and a possible pension is calculated in accordance with this.
2. A possible pension is calculated according to the projected loss of earnings method described in #40.10.
3. The higher of these two results is then used as the pension.

Where the claimant is aged 51 years or above, this system is modified in the manner set out in #40.20.

It is not the policy of the Board to grant an award under the dual system without regard to the nature of the condition or disability causing the unemployability or loss of earnings. The worker must not only have a disability accepted by the Board, but the disability accepted by the Board must be a significant factor in the reduced employability or loss of earnings potential. Therefore, the Board has declined to grant awards under the dual system when the unemployability of the worker is related directly to psychological problems which are not considered acceptable as part of the claim.

Where a Disability Awards Officer or Adjudicator in Disability Awards decides that no pension can be awarded on a physical impairment basis because the

impairment is unlikely to affect the worker's earning capacity, no pension can be awarded on a projected loss of earnings basis. While Section 23(3) is not expressed to be dependent on an award being made under Section 23(1), this must in practice be the case. The Board could not consistently decide at the same time both that a worker's impairment was too minimal to affect earning capacity and that it would cause a loss of earnings in the future.

The Board will not make a temporary award on a projected loss of earnings basis.

#40.10 Assessment Formula

The rules, set out in #40.10-#40.30 apply to assessments of new permanent disability awards carried out on or after April 18, 1985.

These rules do not apply to earlier projected loss of earnings awards unless those awards are reassessed on the basis of a change in the worker's physical impairment. Where, on such a reassessment, there is found to have been a deterioration in the worker's physical impairment and these rules produce a lower pension than the projected loss of earnings pension the worker is currently receiving, the current pension will remain unchanged. The pension will, however, continue to be adjusted in the normal way in accordance with changes in the Consumer Price Index.

Where a pension was calculated on the policies prior to April 18, 1985, and an appeal results in a reconsideration of the pension, the reconsideration will be carried out under the same rules that applied at the time the **original decision** was made.

The rules for assessing a projected loss of earnings pension under Section 23(3) adopted by the Board are:

1. Average earnings prior to the injury will be determined in accordance with established policies and procedures.
2. Having regard to the evidence, including the medical evidence, of the limitations imposed by the compensable disability and the fitness of the claimant for different types of work, and having regard to the evidence of the Rehabilitation Consultant about the suitability of the claimant for jobs that could reasonably become available, the Adjudicator in Disability Awards will arrive at a conclusion about suitable occupations that the claimant could be expected to undertake over the long-term future.
3. Earnings that maximize the claimant's long-term potential will be selected from the jobs that are suitable and reasonably available. Earnings in those occupations will be determined as at the time of the injury.

4. The possible pension will then be 75% of the amount by which the earnings level thus established is less than the average earnings prior to the injury.
5. Any increase that may be due to the claimant because of an increase in the Consumer Price Index will then be added.
6. Since the assessment on a projected loss of earnings basis aims to predict the worker's actual loss of earnings over the future, no award can be made when the worker is unemployed for reasons unrelated to the injury and it is determined that there will not be a potential loss of earnings.

It may be helpful to illustrate how the dual system works. Consider the example of a skilled tradesperson in a trade that involves manual labour earning an average of \$3,500 per month. Assume, in 1985, the worker suffered a back injury as a result of being crushed under a load dropped from an overhead crane and had spinal surgery, following which the worker was unfit to return to the former occupation. Having regard to age and educational background, the worker is not considered suitable for retraining; but is able to take an unskilled clerical job and can now earn \$2,150 per month. Average earnings in 1985 for that occupation would be approximately \$1,900 per month. The pension is now being assessed in 1986. The way it might work out is as follows:

Method 1

Medical assessment estimates the degree of physical impairment, measured according to the physical impairment method, at 10% of total disability	10%
Average actual earnings prior to injury	\$3,500.00 per month
Statutory ceiling applicable in 1985	\$2,700.00 per month
Amount that would be payable for total disability (75% x \$2,700.00)	\$2,025.00 per month
Compensation payable as partial disability pension (10% of total disability)	\$202.50 per month

Method 2

Actual average earnings in 1985	\$3,500.00 per month
Statutory ceiling in 1985	\$2,700.00 per month
Average earnings obtainable in unskilled clerical work in 1985	\$1,900.00 per month

Compensable loss of projected earnings
(\$2,700.00 less \$1,900.00) \$800.00 per month

75% thereof \$600.00 per month

Being entitled to the greater of the two amounts, the claimant will now receive a pension of \$600.00 per month plus applicable Consumer Price Index increases.

#40.11 *Average Earnings Prior to Injury*

Further comment is required on items 1 to 3 in #40.10.

Section 23(3) of the *Workers Compensation Act* requires the Board to have regard to the “average weekly earnings of the worker before the injury”. This is generally in line with the other sections of the Act which govern the payment of temporary or permanent disability benefits, namely Sections 22, 23(1), 29 and 30. All of these provisions base compensation on the worker’s earnings, but use the slightly different term “average earnings”.

It has been suggested that the use of the term “average weekly earnings” in Section 23(3), as opposed to the term “average earnings” is significant. This arises in relation to the provisions of Section 33(1) which give the Board a wide authority to determine the “average earnings and earning capacity of a worker”, but place a limit on the earnings that can be used in the form of the maximum wage rate. It is contended that since it specifically refers to “average earnings”, Section 33(1) is not relevant to determining “average weekly earnings” under Section 23(3) with the result that the maximum wage rate does not limit those earnings. Rather, the maximum limits only the ultimate pension that can be awarded under that section.

While noting the slight difference in terminology, Section 23(3) clearly requires the Board to determine a worker’s earnings prior to the injury and Section 33 is the only section in the Act which provides for how this is to be done. The Board has concluded that “average weekly earnings” prior to the injury must be determined under the projected loss of earnings method in the same manner as “average earnings” are determined for the purpose of pensions assessed under Section 23(1) and the maximum wage rate must apply to limit those earnings.

The average earnings prior to the injury are calculated according to the normal rules set out in #68.00.

In making this calculation, regard will not normally be had to promotions which might have been received if the worker had not been injured. This is so even though the worker returns to the pre-injury job following the injury, is promoted, but is unable to remain in the job because of the disability.

When calculating the pre-injury earnings of a person covered by personal optional protection, a departure is made from the normal rule of using the rate of earnings for which coverage has been purchased. (11) For the purpose of the projected loss of earnings assessment, actual pre-injury earnings are used, but the amount of the award can never exceed the amount of earnings for which the coverage was purchased.

#40.12 Suitable and Available Occupations for the Claimant

The purpose of direction 2 in the assessment formula set out in #40.10 is to arrive at a long-term projection of the earning capacity of the worker. The evidence of the Rehabilitation Consultant should relate to jobs that are suitable and reasonably available to the claimant in the long run and the conclusion of the Adjudicator in Disability Awards should be concerned with such of those jobs as will maximize the claimant's long-term earnings potential.

It is not satisfactory simply to take the wage rate in a job to which the claimant actually returns. For a variety of reasons, the long-term employment prospects of a claimant may be different from the most immediate job opportunities. On the other hand, the phrase "available jobs" does not mean any job position in which there are vacancies. An available job means one reasonably available to the claimant in the long run. For example, a city may have several theatres, and there may be occasional job vacancies for the position of theatre usher; but if there are always numerous better qualified applicants and the realities are that a worker with the particular disability is not likely to obtain such a job, that is not a reasonably available job.

In advising on the suitability of the claimant for reasonably available jobs, the Rehabilitation Consultant must have regard to the limitations imposed by the residual compensable disabilities of the claimant and assess the claimant's earnings potential in light of all possible rehabilitation measures that might be of assistance, including the possibility of retraining or other measures that may be appropriate to the particular worker.

The guidelines set out below are followed in determining suitable and reasonably available jobs for a claimant:

1. Where the worker is doing his or her best to maximize earnings, and is following the advice of the Rehabilitation Consultant, and is presenting himself or herself in good faith to obtain a job at the highest level of earnings among the jobs that the worker is fit to undertake, then the earnings level in the job that is actually obtained is generally the earnings level that should be taken, unless there is evidence that this position is transitory and that jobs at another level of earnings will be available to the worker in the near future.

2. Regard may be had to other jobs than the present one with the same employer to which the worker might in future progress and this is not limited to jobs which the claimant has a right to because of seniority. The fact that there is a formal or informal competition for a higher job is not a bar to its being considered. On the other hand, it would not be fair to assume that a claimant will receive all possible promotions that might theoretically be open. The Board is only concerned with jobs that are, in practice, reasonably available. Thus, the Board will, in general, only have regard to higher paying jobs which a person in the claimant's present job would ordinarily be expected to obtain.
3. A reasonably available job must be one that the worker is fit to undertake, and which would not involve adverse health consequences either immediately or in the long run compared with other jobs.
4. Where a suitable job is reasonably available over the long term, it is taken into consideration even though it is not reasonably available at the time of assessment because of general economic conditions.
5. In deciding whether it is reasonable for a worker to refuse a job, regard should be had to the long term as well as the immediate position. For example, job A may have an earnings rate of \$16.00 an hour, and job B may have an earnings rate of \$15.00 an hour; but if job A is subject to fluctuations in the economy and job B appears more stable in the long run, then job B may be the better-paying job in the long run. Therefore, the wage rate in job B should be used in the calculation of projected loss of earnings.
6. A reasonably available job must be one that is within a reasonable commuting distance of the worker's home. Where there is no available job within that commuting distance that the worker could reasonably be expected to undertake, the worker might be expected to relocate, depending on age, the availability of a suitable job elsewhere, and other factors; but relocation will not normally be expected unless the worker is offered the expenses of relocation, either by the Canada Employment and Immigration Commission or by the Board or by some other government agency.
7. If the worker declines the best-paying reasonably available job because of a personal preference for a lower-paying occupation or for an alternative life-style, the wage rate in the best-paying reasonably available job should be used in the formula.

For the distinction between the jobs which can be considered properly available for the purpose of the projected loss of earnings method and those which can be considered as available for the purpose of assessing temporary partial disability benefits, reference should be made to #35.21.

#40.13 Measurement of Earnings Loss

Section 23(3) requires the Board to compare the average weekly earnings of the worker before the injury with “the average amount which the worker is earning or is able to earn in some suitable occupation after the injury”. The latter figure is obtained by ascertaining the earnings in the occupations which have been found to be suitable and reasonably available according to the criteria set out in #40.12 and determining the earnings figure which will maximize the claimant’s long-term earnings potential.

The intention of the Act is to protect workers’ earnings only up to the maximum wage rate. This is shown by Section 33(1) which results in payments for total disability being limited to 75% of the maximum and by Section 31 which ensures that, where a worker is already receiving payments for a disability, additional payments can be made for any further disability only to the extent that they do not take the total payments above the maximum. No pension can be awarded on a projected loss of earnings basis where, following the injury, the claimant is earning or is able to earn at or above the maximum wage rate. Where a claimant was earning at or above the maximum prior to the injury and it is projected that because of the injury earnings will be less than the maximum, a projected loss of earnings pension can be awarded but only to the extent of the difference between the maximum and the projected earnings.

Although assessment of a pension will often be made some time after the original injury, it would not be fair to compare directly the actual pre-injury earnings with the earnings the worker might now earn in the jobs available. The effect of inflation upon earnings levels would mean that the real loss would not be properly determined in that way. The practice of the Board is to use the earnings in the jobs available after the injury as they stood at the date of the injury. It occasionally happens that earnings in jobs at the time of the injury are not available. If this occurs, it may be necessary to use the earnings in those jobs as they were at another date and bring the pre-injury earnings into line by applying Consumer Price Index adjustments.

#40.14 Provision of Employability Assessments

Workers are provided with a copy of a completed employability assessment before a pension decision is made. They have 30 days in which to provide a written submission. All such submissions received within this time frame will be considered before the final decision is made. Workers are also advised that, at their request, a copy will be made available to their treating physicians. If the details of the employability assessment and its impact on the pension are known and agreed to, the 30-day waiting period may be waived.

#40.20 Duration of Projected Loss of Earnings Pension

Pensions assessed on a physical impairment basis are, under the terms of section 23(1), payable for life. It was suggested that projected loss of earnings pensions should also be payable for life in every case, but the Board does not accept this. Section 23(3) does not specifically require this, but rather gives the Board a discretion in the matter. Compensation is only payable under section 23(3) "Where the board considers it more equitable". Since the section authorizes the Board to calculate a worker's actual loss of earnings resulting from the injury, it is reasonable for the Board to have authority to terminate benefits payable under the section at a time when, even if not disabled because of the compensable injury, the worker would not have been working.

The situation where this issue arises is when the worker reaches retirement age. The Board considers age 65 years to be the standard retirement age. Any direct loss of earnings the worker suffers because of the compensable disability will normally cease at that time. However, the Board does not, in practice, feel this is an automatic reason for terminating a projected loss of earnings pension. Rather, it is recognized because of the compensable disability, the worker may be less able to accumulate retirement benefits. The Board, therefore, allows the projected loss of earnings pension to continue in whole or part past the standard age of retirement where the worker was under 65 years of age at the time of the injury. The portion of the pension so continued depends on how close the worker was to the age of 65 years, the assumption being that the older the worker, the less the ability to build up retirement benefits would be affected by the injury.

The following principles apply:

1. Where, at the date of injury, the worker is at or below the age of 50 years, the pension is established based on the higher of the physical impairment and projected loss of earnings assessment, and the pension so established is payable for life.
2. Where, at the date of injury, the worker is at or above the age of 65 years, the pension will usually be established by the physical impairment method, and that pension is payable for life. No projected loss of earnings pension is awarded unless clear and objective evidence is presented that the worker would have continued to work past age 65 if the injury had not occurred. Where a projected loss of earnings pension is awarded, it will cease when the worker reaches retirement age, as determined by a Board officer, and compensation will thereafter be established by the physical impairment method.

3. Where, at the date of injury, the worker is in the age range of 51 to 64 years, and where a pension calculated by the projected loss of earnings method is payable, the pension so calculated, unless modified on a review, will usually continue until the age of 65 years. From the age of 65, the pension is at a rate calculated by the physical impairment method, plus a proportion of the difference between the two methods according to the following table.

Age at Date of Injury	Proportion of Difference Between Two Methods
51	14/15ths
52	13/15ths
53	12/15ths
54	11/15ths
55	10/15ths
56	9/15ths
57	8/15ths
58	7/15ths
59	6/15ths
60	5/15ths
61	4/15ths
62	3/15ths
63	2/15ths
64	1/15th

The revised pension commences on the first day of the month following the worker's 65th birthday.

Where the projected loss of earnings pension is assessed following a recurrence of disability, the age at the date of the recurrence is used for the purpose of the above principles.

In cases where the worker presents clear and objective evidence that he or she would have worked past age 65 if the injury had not occurred, the projected loss of earnings pension may continue in whole past that age. In these situations, the formula provided in the table above does not apply. From the age of retirement, as determined by a Board officer, compensation will be established by the physical impairment method.

4. Where an injury occurs in the age range 51-64 years, and full wage-loss payments are made from the date of injury up to or beyond the worker's 65th birthday, a pension will usually be established by the physical impairment method, and that pension will be payable for life.

A projected loss of earnings pension may be awarded if the worker presents clear and objective evidence that he or she would have worked past the standard retirement age had the injury not occurred. In these situations, the projected loss of earnings pension will cease when the worker reaches retirement age, as determined by a Board officer, and compensation will thereafter be established by the physical impairment method.

In calculating a worker's projected loss of earnings, no account is taken of any disability or retirement pensions received from the employer to which the worker has contributed or any other source than the Board. However, a Board officer may take into account the fact that the worker has retired or is about to retire in deciding whether there is a projected loss of earnings in the first place. The formula set out above only applies when it has been determined that there is such a loss and the pension is assessed on the basis of that loss.

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

#40.31 Existing Pension Assessed Prior to Establishment of Dual System

Differing rules apply to spinal and non-spinal disabilities.

Upon any application for reopening of entitlement to pension benefits in the case of an injury involving the spinal column, the dual method of assessment is applied if the worker is under the age of 64 years and a pension has not previously been calculated or considered under the dual method. This applies regardless of the date of injury, but the effective date for any readjustment is the date of the application for reopening. Where the claimant was in receipt of a term pension that has expired or the claimant has commuted a life pension, the pension so expired or commuted is recalculated as a notional life amount. If the projected loss of earnings method produces a pension in excess of that notional life amount, a new pension will be instituted, but only to the extent of the excess.

Any pension for a non-spinal disability which has been assessed since October 1, 1977, on the basis of functional impairment only, and where the application of the dual system was not considered, will be reconsidered on that basis should such a request be made. Should an application be made for reopening of a pension assessed before October 1, 1977, on the basis of changed medical circumstances, and it is concluded that the application has merit and the pension should be reassessed, that reassessment will include consideration of a loss of earnings award as of the date of the changed medical condition but not retroactive to the date the pension was first established. In the case of applications for reconsideration on the basis of significant new evidence or error in law in the original decision, even if the new evidence or submission results in a change in the

original decision, no consideration can be given to a loss of earnings award unless, of course, the original decision was made since October 1, 1977. In other words, a simple request to reopen the claim on the basis that a claimant wishes to have a pension reassessment under the new system must be rejected on the ground that the "new system" is effective only from October 1, 1977 for non-spinal disability.

#41.00 PAYMENT OF PENSIONS

Pensions are normally payable monthly and last for life. However, some are paid as lump sums. The cheques are mailed to the claimant's home address or, if she or he elects, direct to their bank by electronic direct bank deposit.

When a payment to a worker has been lost or stolen or otherwise not received or cashed by the worker, the worker may request a reissue of payment, but the Board will require a written and signed declaration of this from the worker before a reissue will take place.

#41.10 Commencement of Pension

The general rule is that the pension commences at the date when the claimant's temporary disability ceased and his condition stabilized or was first considered to be permanent.

Where a worker has been paid any temporary disability benefits under Section 29 or 30 of the Act, the pension will take effect from the date following the termination of these temporary benefits. For the majority of cases, this will adequately reflect the financial impact of the disability on the worker's earnings.

There may, however, be the unusual situation where a worker has or could have returned to a significant level of employment with a minimal loss of income. Wage-loss benefits under Section 30 would be 75% of this minimal figure.

Should the worker eventually be assessed at a pension rate which is higher than the rate paid for temporary benefits under Section 30, it would appear that the worker may have suffered a loss of compensation income. The Act, however, precludes the payment of both temporary and permanent benefits for the same condition at the same time.

A problem of pension retroactivity also occurs when, although the worker had a temporary partial disability, the worker had or could have returned to full employment and has not, therefore, actually been paid any benefits under Section 30. As previously stated, the Act requires that the Board recognize a disability as either temporary or permanent, but not both concurrently. When carrying out the final disability assessment, the Officer in Disability Awards will have the benefit of the earlier examination, or at least some other documentary evidence on file, on which the decision was made to delay the pension. If the findings on the latter

examination are the same as the initial findings, or only show a minimal degree of change, it is reasonable to consider the condition as having plateaued from the date of the first examination. In that event, the date of the first examination should be the starting date of the pension. If, on the other hand, the latest examination shows a measurable and significant change since the first examination, the worker will be considered as having been, in the interim, temporarily disabled. In that event, the date of the last examination will be the starting date of the pension.

When there was no examination by either a Board Medical Advisor or an External Service Provider when wage-loss benefits were terminated under Section 30, and there is no other measurable data on file with which to make a comparison with the final assessment of the Officer in Disability Awards, the pension will be backdated to the date benefits were terminated under Section 30.

#41.11 Commencement Following Medical Review Panel Certificate

Where a pension is being revised following an examination and certificate by a Medical Review Panel, it is not proper to automatically make the adjustment only from the date of the certificate. While this may be correct in some cases, it is not defensible as a general policy.

Where a certificate of a Medical Review Panel is received indicating results that differ from previous decisions of the Board or findings of the former Workers' Compensation Review Board, it must be considered what further decisions are required as a proper response to the certificate of the Panel.

Suppose, for example, there has been a dispute from the outset about whether a worker is suffering from disability "A" (which is compensable), or disability "B" (which is not compensable). The Board decided that it was "B", and that decision was maintained throughout the appeal system. Suppose the Medical Review Panel then decided that the worker is suffering from "A". It may be agreed by all concerned that the worker has not changed from "B" to "A", and that if suffering from "A" now, the worker must have been suffering from "A" at the outset. In that circumstance, there is obviously entitlement to compensation as from the date when first suffering from the disability.

There may be another case where it is agreed by all concerned that the degree of disability has not changed, and yet the Medical Review Panel has concluded that the worker is suffering from a disability more extensive than that which the Disability Awards Medical Advisor or External Service Provider found. In that case too, the pension adjustment must be retroactive.

In a third case, it may appear that a different condition diagnosed by the Medical Review Panel has resulted from a recent change and, in such a case, it would be proper to commence the disability award from the date of the certificate. In a fourth case, it might appear that there was some progressive deterioration and,

in that case, a sliding scale may be appropriate so that the revised disability award is partially retroactive, but not to the full amount.

In other words, there can be no standard rule that a revised disability award should or should not be retroactive. The previous decisions on the claim must be reconsidered in the light of the certificate of the Panel, and new conclusions must be reached to whatever extent is necessary to give full effect to the certificate of the Panel.

EFFECTIVE DATE: March 3, 2003 (as to reference to the former Review Board)

APPLICATION: Not applicable.

#41.12 Retroactive Awards

Where a pension is awarded retroactively, the payments due prior to the date of the award will be paid in the form of a lump sum.

In calculating that sum, entitlement in respect of a portion of a month is determined by reference to the actual calendar days in a particular month. For example, if a worker is entitled to an award of \$1,000 per month, for the period March 17 to 31 (15 calendar days), the calculation is as follows:

$$\frac{\$1,000}{31 \text{ days}} \times 15 \text{ days} = \$483.87$$

A reduction in the lump sum is made in respect of periods of time during the period following the commencement of the pension when the claimant received wage-loss or rehabilitation benefits. However, no such reduction is made when the pension is awarded in the form of a lump sum and the monthly equivalent is less than \$20.00 per month at the time of the commutation.

The payment of interest on the lump sum is dealt with in #50.00.

#41.20 Termination of Pension

Pensions are normally payable throughout the claimant's lifetime, but for various reasons may be terminated prior to that time. For example, the claimant's disability may disappear, (12) the rule set out in #40.20 may result in a loss of earnings pension being wholly or partially terminated at age 65, or the Board may exercise certain powers discussed in #48.00 and #49.00.

In situations where a claimant in receipt of a pension dies from causes unrelated to the disability, the pension will be paid for the full month in which the death occurred. The past Board policy which came into effect on November 12, 1982 and required an apportionment of the pension in situations where there was no surviving dependants is rescinded. The effect of this policy will be that no overpayments will be considered to have arisen for the period from the date of the claimant's death up to the end of the month covered by the last pension payment.

If the worker dies prior to the implementation of the pension, the award is calculated and paid to the date of death. The situation where such a worker would have received a lump sum award is dealt with in #45.00.

#41.30 Pension Adjustments

If a pension to a worker or a dependant is paid or increased on the basis of a Review Division decision, and the finding is later reversed by the Workers' Compensation Appeal Tribunal, the pension payments are terminated or adjusted as of the date of the Workers' Compensation Appeal Tribunal decision. In such cases, the capitalization is adjusted by the reversal of an amount equivalent to the unused portion of the capitalization or, in the case of a modification, the adjustment applies to the amount of the capitalization affected by the modification. The policy regarding relief of costs to employers in such circumstances is detailed in policy item #113.10.

EFFECTIVE DATE: March 3, 2003 (as to references to Review Division and Workers' Compensation Appeal Tribunal)
APPLICATION: Not applicable.

#42.10 P.P.D. with Review

Sections 22 and 23 of the *Act* are designed to provide income support for a worker who has suffered a permanent disability. These sections are intended to be used only where the recovery or change process has, to all intents and purposes, become medically constant and stable. Realistically, such a circumstance is not totally practical since ongoing change is a feature of human physiology; but, within reason, it is designed to come into play where healing is complete or where the deterioration in the condition of the claimant has ceased and no improvement can be reasonably foreseen. P.P.D.'s with review, i.e. permanent partial disability awards with a provision for review in the future have been used in the past where the change process was still underway and where, therefore, the medical condition of the claimant was still "temporary". That practice was not in accord with the *Act* and was discontinued.

A permanent partial disability award decision may, however, be reopened where a ground for reopening is met (see Chapter 14).

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

#42.20 Worsening or Improvement of Disability

If the disability on which an award is based worsens, the extent of the disability is reassessed and a new award is made based on the reassessment. Conversely, if a worker should unexpectedly recover from a disability classified as permanent, the pension would be subject to termination or downward adjustment.

#42.30 Review of Old Pensions under Section 24

Section 24(2) provides that “With respect to a claim for compensation to which this section applies, the board must, on application by the worker, reconsider the compensation benefits; and, if it decides that, in its opinion, the worker is not receiving adequate compensation having regard to the projected loss of income resulting from the disability, periodic payments must be established or raised accordingly.”

#42.31 Claims to Which Section 24 Applies

Section 24(1) provides that “This section applies to the claims for compensation that the board may by regulation determine, provided that

- (a) the worker is still suffering from a compensable disability sustained more than 10 years before the application under subsection (2); and
- (b) a permanent disability award was made by the board based on a percentage of total disability of 12% or greater, or the case is of a kind in which the board uses a projected loss of earnings method in calculating compensation.”

Regulations have been issued by the Board which are set out below:

- “1. The regulations come into effect on the 1st day of December, 1982.
- 2. The regulations with respect to the review of old disability pensions, promulgated by the Board on the 21st day of July, 1975, the 13th day of November, 1975, and the 19th day of August, 1976 (B.C. Regulations 524/75, 746/75 and 492/76) are hereby repealed.
- 3. Unless the Board otherwise determines, Section 24 of the *Workers Compensation Act* applies to claims in which all of the following conditions are present:
 - (1) The worker is still suffering from a compensable disability sustained more than ten years previous to the application under Section 24(2).

- (2) A permanent disability award was made by the Board based on a percentage of total disability of 12% or greater, a disability award was made for an injury involving the spinal column, or a disability award was made for an injury to a part of the body other than the spinal column on or after October 1, 1977. Where the worker is still suffering from two or more compensable disabilities, this condition is satisfied if permanent disability awards were made by the Board which in aggregate were based on a percentage of total disability of 12% or greater, provided that a minimum of 5% of total disability was attributed to an injury or injuries sustained more than ten years previous to the application under Section 24(2)."

Clause 3(1) of these regulations does not mean that it is a requirement that each claim considered under Section 24 must be more than 10 years old. Where a worker has suffered several injuries with permanent disability resulting in several claims, the whole of the compensable disabilities resulting from these claims may be considered, provided that at least one of the compensable disabilities was sustained more than 10 years previous to the application under S. 24(2), and that a minimum of 5% of total disability was attributed to an injury or injuries sustained more than 10 years previous to the application.

The requirement in Clause 3(2) that the percentage of disability exceed 12% is a separate and independent requirement from Clause 3(1). Thus, it is not necessary that the disability award should have been made more than 10 years previous to the application, or that it should have been calculated at 12% or greater at any particular time.

The requirement in Clause 3(2) that a non-spinal disability of less than 12% be one that was assessed on or after October 1, 1977, in conjunction with Clause 3(2), means that no application for such a disability can be made under Section 24 until October 1, 1987.

Notwithstanding that a worker suffering a permanent disability has received an award that has been wholly or partly commuted, or an award for a fixed term, the worker may apply under this section, but he shall be deemed to be still receiving the periodic payments that have been commuted, or the life equivalent of the periodic payments made for a fixed term. (13)

#42.32 *Calculation of Benefits under Section 24*

Where a worker is under the age of 65 years, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of earnings resulting from the disability. (14)

Section 24(4) provides that "Where a worker is 65 years of age or over, compensation is considered adequate for the purposes of this section if it equals 75% of the projected loss of retirement income resulting from the disability."

Where a worker is under the age of 65 years, periodical payments established or raised under this section are subject to readjustment by reference to Subsection (4) upon the worker attaining the age of 65 years. (15)

The calculation of benefits is made in the manner the Board determines. (16)

Where a worker is under the age of 65 years, the Board must determine the projected loss of earnings resulting from the disability. This involves three steps:

1. A forward projection of the earning capability of the worker as it existed prior to the disability.
2. A projection of the present earning capability of the worker.
3. A determination of the extent to which any difference between (1) and (2) is a result of the disability.

These calculations are made primarily by reference to evidence in the particular case, with two exceptions. A table of monthly average wage rates in B.C. (see Supplement No. 1, Appendix 5) is used to establish two of the variables; and an age factor is applied to those cases where the disability was suffered when the worker was under the age of 23. With regard to the former, a projection of the pre-disability earning capacity is made by comparing the claimant's actual pre-injury earnings, limited by the maximum in effect at the time of injury, with the monthly average wage rate in the table for that year and applying the same ratio to the average wage in the table for the year when the calculation is being made. In making this projection, no account is taken of promotions which the claimant might have obtained if he had not been injured.

Where a worker is 65 years of age or over, the Board must determine the projected loss of retirement income resulting from the disability. This involves a determination of:

1. The retirement income that the worker would have been likely to be receiving if he or she had not sustained the disability.
2. The retirement income the worker is receiving.
3. A determination of the extent to which any difference between (1) and (2) results from the disability.

Here again, the determinations are made to some extent by reference to evidence in the particular case; but two standard formulae are used with regard to two important items.

The first relates to retirement income from savings. Many workers save part of the earnings accrued during their working lives, and these savings, or income from the savings, become part of retirement income. The Board must consider,

therefore, the loss of this element of retirement income resulting from the disability. To determine loss of retirement income from savings, a standard formula is used, based on such evidence as the Board has been able to obtain from aggregated data relating to the savings habits of Canadian families.

The second item being considered by a standard formula is the loss of retirement income from earnings by people at and above the age of 65 years. The formula selected is to use a flat rate cash amount per month for each percentage of disability.

Where a worker's pension has been adjusted under Section 24 when under the age of 65 years and the worker has now reached that age, the readjustment is done in the following manner:

1. When an adjustment is made to a pension for a worker who is under the age of 65, that adjustment will be diarized for review three months prior to the worker attaining the age of 65.
2. When the matter comes up for review, the file will be considered in accordance with the procedures developed for calculating awards for workers aged 65 or over. For the purpose of this calculation, the original functional award in effect prior to any previous adjustment under Section 24, plus applicable Consumer Price Index increases, will be regarded as the pension in effect at age 65.
3. The term adjustment payable to age 65 will automatically terminate when the worker reaches age 65. The adjustment calculated as per item (2) above will then come into effect. This new pension will be the higher of the original pension award plus Consumer Price Index increases or the adjusted pension determined in reference to the calculation for workers aged 65 or over.

The detailed calculation formulae are set out in Appendix 5 to this manual.

#42.33 Maximum and Minimum Periodic Payments under Section 24

Section 31 applies to the calculation of compensation under Section 24, but the calculation is not limited by reference to average earnings at the time of injury. (17)

The periodic payments awarded to a worker following a review under this section shall not exceed the maximum that the Board would award to a worker in an occupational category similar to the occupation of the applicant worker before the injury if she or he had, at the effective date of the review under this section, suffered a compensable disability similar to the compensable disability being suffered by the applicant worker. (18)

No decision under this section shall result in periodical payments to any worker being lower than they would if no application had ever been made under this section. (19)

#42.34 *Date when New Periodic Payments Commence under Section 24*

Where a worker whose disability occurred before January 1, 1965 applies under this section within one year of the earliest date on which becoming eligible to do so, an increase or establishment of benefits under Section 24 is effective from September 1, 1975 and, in all other cases, the effective date for the commencement of an increase or establishment of benefits under the section is the date on which the application is received at the Board. (20)

The following table sets out when claimants whose disabilities occurred prior to January 1, 1965 became eligible to apply under Section 24.

Injury Occurred On or Before	Date of Commencement of Eligibility
December 31, 1925	August 1, 1975
December 31, 1928	September 1, 1975
December 31, 1932	October 1, 1975
December 31, 1936	December 1, 1975
December 31, 1940	January 1, 1976
December 31, 1944	February 1, 1976
December 31, 1948	April 1, 1976
December 31, 1952	May 1, 1976
December 31, 1956	June 1, 1976
December 31, 1960	July 1, 1976
December 31, 1964	August 1, 1976

#42.35 *Reapplication under Section 24*

A worker may reapply under this section for reconsideration of his compensation benefits after a further 10 years have elapsed since the last previous application under this section. (21)

#42.40 **Reinstatement of Commuted Pensions under Section 26**

Section 26(1) of the Act provides that “Where periodical payments for permanent disability were awarded by the board prior to January 1, 1966, and where

- (a) the award was for a percentage of total disability of 12% or greater, and the whole of the periodical payments was commuted prior to that date;

- (b) a portion of the periodical payments equivalent to 12% of total disability or greater was commuted prior to that date; or
- (c) the award was for a percentage of total disability of 12% or greater and was of periodical payments for a fixed term,

and where the worker to whom the award had been made is still suffering from the disability, the board may, on the application of the worker, establish new periodic payments, which are to commence for the month in which the application is received at the board.”

#42.41 *Computation of Twelve Per Cent Disability*

In determining the percentage of total disability represented by a commutation of periodical payments, the monthly dollar amount of the commutation should be compared with the monthly dollar amount of the periodical payments before the commutation, and multiplied by the percentage of total disability represented by the periodical payments before the commutation.

If the worker has had more than one commutation in respect of the same or different disabilities, the total value of the commutations and the disabilities is taken into account. In this case, all the commutations required to make the 12% must have occurred prior to January 1, 1966.

Consider the following example of a worker injured in 1936 who had two partial commutations, one in 1952 and one in 1955, who applied for reinstatement in September, 1974.

A. True percentage of total disability awarded (as varied by age and wage factors)	61.20
B. Monthly wage rate prior to injury	100.00
C. Life value of pension per month	38.25
D. Monthly amount of 1952 commutation	6.75
E. 1952 commutation as percentage of whole disability $\frac{D \times A}{C} = \frac{6.75 \times 61.20}{38.25}$	10.80
F. Remaining percentage of total disability (A-E)	50.40
G. Balance of monthly pension (C-D)	31.50
H. Recalculation of monthly pension following #39.61 $31.50 \times \frac{66-2/3}{62-1/2} \times \frac{2,000.00}{12 \times 100.00}$	56.00

I. Monthly amount of 1955 commutation	2.00
J. 1955 commutation as percentage of whole disability $\frac{(I \times F)}{H} = \frac{2.00}{56.00} \times 50.40$	1.80
K. Total percentage of disability commuted (E + J)	12.60

In past years, the Board varied the assessed percentage of disability according to the earnings and age of the worker. In calculating the percentage of disability commuted for the purposes of Section 26, the disability as varied by these factors is used.

#42.42 *Purpose of Section 26 Already Achieved*

Section 26(5) provides that “This section does not apply where the purpose of the section has been achieved as a result of an application under Section 24 or in some other way.”

Therefore, Section 26 has no application to a situation where, in the events that have occurred, a worker has not lost the future benefit of any cost of living increases by reason of the commutation. As under Section 26, however, such a worker receives future cost of living increases based on what the periodical payments would have been had they not been commuted.

To take an example, suppose a worker was receiving a pension for permanent total disability, and in 1964 arranged with the Board a partial commutation of that pension equivalent to \$10.00 a month. If the remaining pension was increased pursuant to subsequent increases in the statutory minimum, it would, in November 1974, be \$341.01 less \$10.00 per month, i.e. \$331.01. The increases in the minimum have exceeded the cost of living increases, and in the result, the worker has not lost any cost of living increases by reason of the commutation. As cost of living adjustments are now made, the worker will continue to receive the cost of living percentage applied to \$341.01 so that the pension will continue to be the same as it would have been without the commutation, less the commuted \$10.00 per month.

#42.43 *Term Pensions*

Where the award was for a fixed term that has not expired or been commuted, Section 26 applies upon the expiry of the term. (22) The worker must also wait the expiry of the term if he or she has to combine an expired or commuted pension with the term pension to satisfy the 12% requirement.

Occasionally, a term pension may be converted into a life pension if the worker is found to have an increased entitlement because of a deterioration in the pensionable condition. Section 26 is applicable as soon as the conversion takes place.

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 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.

EFFECTIVE DATE: March 1, 2007

APPLICATION: The amendments to this policy, that term commutations are no longer available, brought into effect by BOD Resolution No. 2007/01/23-02, apply to all applications for commutations made on or after March 1, 2007.

HISTORY: This policy was amended effective October 1, 2002. Changes were made to the threshold amounts for automatic commutations and the criteria for considering commutations were broadened. Please refer to BOD Resolution No. 2002/08/27-04 for details of the amendments. The policy as amended October 1, 2002 applies to all new claims received, all active claims that were awaiting an initial permanent disability award adjudication, and all active claims that were awaiting initial adjudication of periodic payments of compensation to a dependant of a deceased worker, on or after October 1, 2002. The policy as amended October 1, 2002 does not apply to workers in receipt of a permanent disability award or pension based on a projected loss of earnings that was initially adjudicated before October 1, 2002.

#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 two types of commutations that the Board may permit:

1. A partial commutation resulting in a reduced level of pension for life.
2. A full commutation of the whole pension for life.

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.

EFFECTIVE DATE: March 1, 2007

APPLICATION: This policy applies to all applications for commutations made on or after March 1, 2007.

#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 Vocational 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 *Calculation of Lump-sum Payment or Commutation*

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.

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

EFFECTIVE DATE: April 8, 2003
APPLICATION: To all decisions made on or after April 8, 2003.

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)

#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.

	Spouse	Child
January 1, 2007 — December 31, 2007	\$396.65	\$123.11
January 1, 2008 — December 31, 2008	\$406.11	\$126.05

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