

November 2002

Update 2002-5

**TO HOLDERS OF THE *REHABILITATION SERVICES & CLAIMS MANUAL* -
VOLUME II**

This update of the *Rehabilitation Services & Claims Manual* contains changes to the *Manual* approved by the Panel of Administrators since October 2002.

The following changes have been made:

1. Amendments to the policies contained in Chapter 11, Vocational Rehabilitation Services, to address the following:
 - Vocational rehabilitation principles and goals
 - Eligibility criteria
 - Nature and extent of programs and services
2. Amendments to the Board's policy on the employability assessment process. A summary of these amendments has been included as part of the package.

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

MAUREEN NICHOLLS
Chair, Panel Of Administrators

Attachments

SUMMARY OF AMENDMENTS - Update 2002-5

Chapter 5, Temporary Disability Benefits:

- **#35.20**, “Amount of Payment”

This policy clarifies the calculation of post-injury wage loss using estimated earnings. The policy also sets out when the Board will use estimated rather than actual earnings.

- **#35.21**, “Suitable Occupation”

This policy clarifies the definition of suitable occupation with respect to section 30 employability assessments.

Chapter 6, Permanent Disability Benefits:

- **#40.12**, “Suitable Occupation”

This policy clarifies the definition of suitable occupation with respect to section 23(3) employability assessments.

- **#40.13**, “Measurement of Earning Loss”

This policy sets out when the Board will use estimated rather than actual earnings for the purposes of calculating a worker’s section 23(3) entitlement.

Chapter 11, Vocational Rehabilitation Services:

- **Policy C11-88.90**, “Relocation”

The policy sets out the factors to be considered before relocation is offered. The policy also provides that where the Board determines that relocation is reasonable, the worker’s benefits may be calculated as if the worker relocated.

- **Policy C11-89.00**, “Employability Assessments – Temporary Partial Disability and Permanent Partial Disability”

This policy sets out the goals of employability assessments for temporary and permanent partial disability.

- **Policy C11-89.10, “Income Continuity”**

This policy was amended to remove the provision of income continuity benefits for workers waiting for a section 23(1) award.

Consequential Amendments were made to policy items -

- #34.52
- #35.11 and
- #40.10.

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#34.50 Duration of Wage-Loss Payments

See policy item #35.30 for the rules related to the duration of temporary disability benefits.

#34.51 *Other Factors Prevent Return to Employment*

Where a worker has not attained the age at which compensation payments are terminated under section 23.1 of the *Act* and the temporary total disability remains, wage-loss payments continue to be paid even though some event occurs after their commencement which would in any event have meant that the worker would not be working. Therefore such benefits are not terminated just because there is a strike, vacation, or lay-off. On the other hand, as pointed out in policy item #34.32, on a recurrence of a compensable condition occurring more than three years after the injury, wage loss will not be paid for any temporary total disability where there is at that time no actual or potential loss of earnings.

Where a worker in receipt of wage-loss benefits wishes to travel to another place as part of a vacation or for other reasons, the worker should notify the Board. The Board officer will then consider the following matters:

- (a) If travelling outside the province, the worker should be advised that the Board will not pay in excess of the rates paid for medical treatment in this province.
- (b) If there is to be a period with no treatment which may protract recovery, the worker will be advised not to discontinue treatment and that if the worker does so, it may affect entitlement to benefits. The Board officer will normally seek medical advice before doing this.
- (c) The activities planned for the vacation may suggest that the worker is not disabled or may protract recovery. The Board officer will seek medical advice on this and advise the worker accordingly.

There is in general no objection to wage-loss benefits being continued while a worker is travelling on vacation where that vacation will not hinder or protract recovery. (4)

If a worker's physical impairment has disappeared or stabilized, wage loss must be terminated even though the worker, to prevent further occurrences of his or her condition, remains off work. Compensation is not payable for preventive measures. Alternatively, if the worker's continuing unemployment is due to factors such as fire hazard, seasonal closure, strike or lock-out, benefits are also not payable. Where,

however, there is a delay in return to work due to the travelling required back to the place of employment, such as a previously injured worker returning to the home community from a treatment centre elsewhere or a few days until a company doctor clears the worker to return to work, the Board officer may extend full wage-loss benefits for a few days beyond the time when the disability ceased. This extension will not be granted if it is concluded that the worker is unnecessarily delaying the return to work.

#34.52 Workers Undergoing Educational or Training Program

Where a worker who has been receiving payments for temporary total or partial disability commences an educational or training program, the question arises as to the continuation of payments by the Board during the course of the program.

There appear to be three different situations:

1. Retraining or Educational Program Covered by policy C11-88.50

In certain cases, as outlined in policy C11-88.50, the Board supports retraining or educational programs needed wholly or partly as rehabilitation for a worker's compensable injury. This applies when a worker is no longer disabled from working and temporary disability payments have terminated, but before she or he can return to work some retraining or educational program is required. Policy item #34.52, however, is intended to deal with a worker who undertakes a course of training while receiving compensation for temporary disability under section 29 or 30 of the *Act* and does not affect the operation of policy C11-88.50.

2. Retraining or Educational Program Arranged Prior to Injury

Prior to injury, a worker may have arranged to undertake a retraining or educational course as part of career development or to become established in some new career. Where the course involves time off work, the worker could be anticipating a period when there will be no earnings save for training allowances payable by Human Resources Development Canada or a similar agency. Since this training allowance will continue to be paid whether or not there is a compensable injury, the worker's financial position while taking the course is no worse because of the injury than if there had been no injury. Therefore, the Board considers that a worker is not disabled as a result of the compensable injury and no wage-loss compensation is payable while undertaking a training or educational program arranged prior to the injury.

Under the terms of some collective agreements, a worker continues to receive full wages while undertaking a training program. In such

cases, an arrangement is normally made with Human Resources Development Canada for any training allowance to be paid to the employer. The Board would expect that an employer would continue a worker's salary while taking the course, regardless of the fact that the worker had previously received a compensable injury. In this case, the worker suffers no financial loss because of the injury while taking the course and no wage-loss compensation is payable. Nor is the employer refunded the continuation of salary paid to the worker during the course.

In some circumstances, Human Resources Development Canada will "top up" a training allowance to bring it up to the amount of a normal Employment Insurance payment. If the Board makes no payment of wage loss to a worker while taking a training course, it is understood that any entitlement of the worker to have the training allowances "topped up" by Human Resources Development Canada will be unaffected by the occurrence of the compensable injury. There is, therefore, no justification for the payment of wage-loss benefits during the course.

It is not necessary for all the details of the course as to time, place, subject matter, etc. to have been settled prior to the injury for it to be considered as "pre-arranged". For example, an apprentice may be required to spend some part of each year of the apprenticeship in school. While the exact dates may not be known at the date of injury, the worker must, at that time, clearly anticipate a period at school to be undergone in the near future. It is, therefore, reasonable to apply the rules set out above.

3. Retraining or Education Program Arranged After the Injury

A worker may decide after the injury to utilize the time in which he or she is disabled from work to improve education or work skills by undertaking a retraining or educational program. The worker is losing time from work because of the injury and is "disabled" for the purposes of section 29 or 30. It cannot be said that even if the worker had not been injured he or she would have been taking the program at that particular time and, as a result, suffering a loss of income. The worker is only taking the program at that particular time because of the injury. Therefore, wage-loss payments will be continued in full in addition to any training allowances which the worker is entitled to receive from another government agency.

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#34.53 *Termination at a Future Date*

A worker is not entitled to place absolute reliance on a doctor's probable return to work date. Wage-loss benefits are only payable when the worker actually has a temporary disability. They cannot be paid because, although the worker has no such disability, the doctor some time previously predicted that he or she would be disabled at that time. A doctor's prediction is of assistance to the worker, the employer and the Board to plan their future actions, but there is no guarantee that the prediction will be accurate. A worker who has been told by the doctor that he or she can probably return to work on some future date has a responsibility to monitor the improvement in his or her condition and to return to work before the predicted date if the condition allows it. If the worker is in any doubt, an earlier appointment can always be arranged with the doctor.

If a doctor's prediction of the duration of a worker's disability were accepted as conclusive, it would mean that if a worker continued to be disabled after a predicted return to work date, he or she should nevertheless return to work. Regardless of a doctor's prediction of the length of a disability, wage-loss benefits are paid for as long as a worker continues to be disabled because of the injury or until the worker has attained the age at which compensation is terminated under section 23.1 of the *Act*. A doctor's prediction of a worker's return to work can be in error by setting a date either too early or too late. It cannot therefore be regarded as the sole criterion for the payment of benefits and is only one factor to be considered.

As a general rule, decisions relating to compensation should relate to the past and the present, and to continuing situations. A termination date should not normally be set for the future. But there are exceptional cases in which a decision of this kind is justified. The responsibilities of the Board relate not only to claims decisions, but also to rehabilitation. Effective rehabilitation requires that different people should be treated in different ways. All people are not motivated by the same approach. It is possible to conceive of cases in which the Board might feel that a worker has reached a point of recovery at which he or she is very close to returning to work. The worker may have a psychological impairment that persuades the Board to continue a convalescent period to enable the worker to adapt. But a judgment might rationally be made that the worker is more likely to adapt his or her thinking to a return to work if told of a specified date at which compensation benefits will terminate. But if, at or after that date, there is evidence that the worker is still unfit, then of course the decision can be reconsidered on appeal, or on an application for reopening.

#34.54 *When is the Worker's Condition Stabilized*

When a worker is medically examined to assess the degree of impairment, the examining doctor must first determine whether the worker's condition has stabilized. The examining doctor will decide whether:

- (a) the condition has definitely stabilized;
- (b) the condition has definitely not yet stabilized;
- (c) he or she is unable to state whether or not the condition has definitely stabilized and
 - (i) there is a likelihood of minimal change; or
 - (ii) there is a likelihood of significant change.

Having regard to the examining doctor's report and any other relevant medical evidence, the Board officer will then decide whether or not the worker's condition is permanent to the extent that a permanent disability award should be assessed.

In the case of (a), the condition is considered permanent and the permanent disability award is immediately assessed. A condition will be deemed to have plateaued or become stable where there is little potential for improvement or where any potential changes are in keeping with the normal fluctuations in the condition which can be expected with that kind of disability. In the case of (b), the condition is still temporary and the worker will be maintained on temporary wage-loss benefits under section 29 or 30 of the *Act*.

In the situations where the examining doctor in (c)(i) above feels there is only a potential for minimal change, the condition will usually be considered as permanent and the permanent disability award established immediately on the basis of the prognosis. This approach will be particularly helpful where the disability is itself minor. Permanent disability awards established in this way will not be subject to automatic review.

The following guidelines operate in (c)(ii) above where there is a potential for significant change in the condition.

1. If the potential change is likely to resolve relatively quickly (generally within 12 months), the condition will be considered temporary and the worker maintained on temporary wage-loss benefits under section 29 or section 30 of the *Act*, and a further examination will be scheduled.

2. If the potential change is likely to be protracted (generally over 12 months), the condition will be considered permanent and the permanent disability award assessed and paid immediately on the worker's present degree of disability and the claim scheduled for future review.

The examining doctor may be unable to fit the worker's condition exactly into one of the categories discussed above. In such a case, the doctor should simply state the findings in terms of the categories as well as possible and the question whether the condition is temporary or permanent will have to be dealt with by the Board officer on the merits of the case.

#34.60 Payment Procedures

The decision whether wage-loss benefits are payable, the duration of those payments, and their amount, is made in the first instance by the Board officer. The procedures followed in making this decision, including the rules of evidence followed, are dealt with in Chapter 12. The right to appeal the decision of the Board officer is described in Chapter 13.

Payments of wage-loss benefits are usually made every two weeks by cheque. The cheques are normally mailed to the worker. When a payment has been lost or stolen, or otherwise not received or cashed by the worker, the worker may request a reissue of the payment, but the Board will require a written and signed declaration of this from the worker before a reissue will take place.

Where a worker disagrees with the amount of wage-loss or permanent disability award and returns the cheque, or refuses to accept the cheque, the Board will not negotiate regarding the acceptance of the cheque. In such circumstances the worker is notified of the rights of appeal with regard to the matter on the claim to which there is an objection. This policy also applies to those cases where a worker has elected to receive his or her permanent disability award cheque by electronic direct bank deposit.

Where, following a medical examination at the Board or the receipt of other reports, it is concluded that the worker is capable of resuming employment immediately, she or he will be notified as soon as possible. The Board recognizes that it would not be fair to delay the notification when the worker might be looking for employment in the meantime.

Where the Board officer intends to rely for his or her decision upon a report from the worker's attending physician or consulting specialist, these same general questions should be clarified through contact with that physician before any further action is taken. Again, such contact should be by the Board Medical Advisor or by the Board officer after consultation with the Board Medical Advisor.

Where a worker is medically judged to be only partially disabled and the condition remains temporary, any further wage-loss payments should then be processed under section 30 of the *Act*. In cases where the Board is able to arrange a return to work in a suitable occupation, a referral to Vocational Rehabilitation Services may not be required. However, if the Board officer requires any assistance in this regard, or needs to have a comprehensive employability assessment completed, the claim shall be referred immediately to Vocational Rehabilitation Services.

The Board officer must send a letter to the worker, with a copy to the employer and doctor, advising:

- (a) that the worker is considered to be only partially disabled;
- (b) that further wage-loss benefits will be paid on the basis of the difference between the earnings before the injury and what the worker is then earning, or will be able to earn, whichever is considered appropriate;
- (c) in cases where vocational rehabilitation assistance is required, that the worker will be contacted and interviewed by a Board officer in Vocational Rehabilitation Services who will assist in efforts to return to work;
- (d) the proposed date of the next examination and therefore the length of time for that phase of payments under section 30.

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#35.20 Amount of Payment

Section 30 provides for payment of partial or total wage-loss benefits where a worker is only partially disabled. Once the determination is made, on medical grounds, that a worker is no longer totally disabled but in fact has reached a point in the recovery process where he or she is deemed to be only partially disabled, section 30 requires that compensation be paid at 90% of the difference between:

- (a) the worker's average net earnings before the injury, and
- (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

Compensation paid under section 30, represents a worker's post-injury wage loss over the short-term and is based on the worker's post-injury earning capacity. Accordingly, in making this determination, the Board considers what a worker is estimated to be capable of earning in a suitable occupation. This requires an employability assessment. (See policy C11-89.00, "Employability Assessments – Temporary Partial Disability and Permanent Partial Disability").

Post-injury earning capacity may be equal to the worker's actual earnings unless the Board officer determines that the worker is capable of earning more than what is actually being earned. In these cases, what the worker is estimated to be capable of earning is deducted from the pre-injury earnings to arrive at the worker's post-injury wage loss.

A worker's post-injury wage loss will be based on estimated earnings rather than on actual earnings in the following cases:

- The worker is employable but does not have a job; or
- The worker has a job but is not maximizing his or her earning capacity up to the pre-injury wage rate; or
- The worker has, for personal reasons, withdrawn from the workforce; or
- The worker fails to co-operate with the rehabilitation process.

The compensation rate established under section 30 is subject to periodic review. To assist in this review, the Board officer in Compensation Services may request a report from Vocational Rehabilitation Services. The report will indicate what the worker actually earned in the intervening period, if anything, and will estimate what the worker could have earned in the opinion of the Board officer in Vocational Rehabilitation Services. Payments by the Board officer in Compensation Services will be based upon this information and on any other evidence considered significant.

In determining temporary partial disability entitlement under section 30 of the *Act*, no earnings losses incurred are considered where such losses are in excess of the amount of personal optional protection purchased.

The Board officer shall, in all cases, make the worker aware of the reasons for the payments being made under section 30 and more particularly, when only partial payments are made.

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#35.21 Suitable Occupation

A suitable occupation is one that:

- does not endanger a worker's recovery or the health and safety of the worker and/or others;
- the worker has the skills, education and functional abilities that the occupation requires;
- is reasonably available over the short-term in the worker's community or, where appropriate, in the Province at large; and
- a worker is medically capable of performing.

Once a suitable occupation is identified, the Board will estimate what the worker is capable of earning in that occupation. In calculating what the worker is capable of earning in the suitable occupation, there may be situations where the Board should also consider other factors. These factors include:

- any personal limitations upon re-employment, such as age or language;
- any external limitations upon re-employment, such as the possibility of loss of pension entitlement or seniority;
- limitations through the worker's own efforts and cooperation in becoming re-employed;
- general or local depressed economic conditions which limits the worker's re-employment irrespective of the occurrence of the injury.

There must be objective evidence that these factors either alone or in combination would make it unreasonable for the Board to consider that occupation as suitable for the purpose of establishing what the worker is estimated capable of earning. These factors must be balanced against the goal of minimizing post-injury wage-loss.

With regard to economic conditions, the Board has to determine whether the worker's employment problem is primarily due to a residual temporary disability or is more likely to be due to the lack of suitable employment occasioned by economic circumstances.

Where the economy is the major factor in a worker's post-injury wage loss, compensation under section 30 is based on the difference between the worker's pre-injury wage rate and the wage rate of the jobs that would otherwise have been available were it not for the economic down-turn. However, where the worker's remaining disability makes him or her less viable as a potential candidate for employment in the labour force in competition with other non-disabled workers, the worker may be paid full benefits on the basis that the work is not reasonably available.

If economic conditions are such that had the worker not been injured, he or she also would have continued to be employed, then, even though alternative jobs are not available due to economic factors, the primary cause of the worker's loss is considered to stem from the injury. The worker is entitled to section 30 benefits up to and including full wage-loss benefits if there are no jobs reasonably available in the period being considered.

If a worker is working towards an employment objective under a rehabilitation plan, the worker is not expected to accept a lower paying alternative job in the interim, if the worker is cooperating in good faith and taking the job would negatively compromise the rehabilitation plan.

In all cases, the employment opportunity or opportunities should be available immediately or within the period under review (two weeks, one month) and there should be some certainty that workers would have these opportunities open to them should they choose to apply.

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#35.22 Calculation of Earnings for Workers with Two Jobs

Where, prior to the injury, the worker was engaged in two occupations, but the injury only disables the worker from one, the pre-injury earnings are calculated by adding the earnings in both, subject to the statutory maximum. The post-injury earnings are calculated by combining the earnings in the job the worker continues to carry on, with the earnings (if any) which the worker is able to earn in some other suitable and available job in the time that would have otherwise been spent in performing the other pre-injury job.

#35.23 Minimum Amount of Compensation

The minimum amount of compensation is calculated in the manner set out in policy item #34.20 for temporary total disability but to the extent only of the partial disability. (5)

Where a worker's average earnings are less than the minimum, he or she will receive compensation equal in amount to his or her loss of earnings in any case where section 30 applies. Compensation in these situations will not be based upon 90% of average net earnings. Consequently, there will be no deductions from the worker's average earnings to produce average net earnings.

#35.24 Workers Engaged in Own Business

Where the worker is self-employed, the worker will often continue to work following a compensable injury. Though unable to perform the former heavier work, the worker can still perform administrative and other light work. Full wage-loss benefits will not be paid by the Board just because the worker cannot perform the heavier work. As the worker is doing some remunerative work, section 30 requires that it be taken into account, and that only partial wage-loss benefits be paid.

In compensating the principal of a small limited company, the Board's obligations extend only to the losses suffered in the capacity of employee. Wage-loss compensation cannot be paid to reflect any detrimental effect that the injury may have on the company's business.

Where the worker was not engaged in his or her own business prior to the injury, and the worker commences a business after the injury, the following applies. Being in control of the business, the worker determines what personal salary is paid. The worker can, and will commonly, take no earnings at all, or very low earnings, out of the business when it is starting up in the expectation that he or she will reap the benefit later. Yet, the worker may be doing a substantial amount of work that, under normal circumstances, would command a significant

wage. In such a situation, the only way the Board can determine the worker's real earnings is to estimate the value of the work the worker does.

#35.30 Duration of Temporary Disability Benefits

Section 31.1 of the *Act* provides that:

Despite section 23.1, the Board may not make a periodic payment to a worker under section 22(1), 23(1) or (3), 29(1) or 30(1) if the worker ceases to have the disability for which the periodic payment is to be made.

As a result, the Board will terminate temporary total or temporary partial wage loss benefits under section 29(1) or 30(1) once the worker's temporary disability ceases. A temporary disability ceases when it either resolves entirely or stabilizes as a permanent impairment, entitling the worker to be assessed for a permanent disability award under section 22 or 23 of the *Act*.

The nature of a temporary disability may also change, affecting a worker's entitlement under the *Act*. Benefits payable under section 29(1), will be terminated if the worker's medical condition has resolved to the point where he or she is no longer considered temporarily totally disabled and becomes temporarily partially disabled. In these situations, the worker may be entitled to compensation under section 30(1) of the *Act*.

Similarly, benefits payable under section 30(1) will be terminated if the worker's compensable medical condition ceases to be "temporary partial" and becomes "temporary total". The worker in such circumstances may be entitled to compensation under section 29(1) of the *Act*.

In all cases, benefits will be terminated under sections 29(1) and 30(1) where, notwithstanding the existence of a temporary total or temporary partial impairment, the worker is suffering no loss of earnings as a result of the work injury.

Finally, the duration of temporary benefits may be affected by the worker's age at the date of injury.

Section 23.1 of the *Act* provides that compensation under section 22(1), 23(1) or (3), 29(1) or 30(1) may be paid to a worker, only:

- (a) if the worker is less than 63 years of age on the date of the injury, until the later of the following:
 - (i) the date the worker reaches 65 years of age; or

- (ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board.
- (b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:
 - (i) two years after the date of the injury; or
 - (ii) if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.

Section 23.1 of the *Act* recognizes age 65 as the standard retirement age for workers. Confirmation of age 65 as the standard retirement age may also be found in the contractual terms of some employer sponsored pension plans and collective agreements. As well, Statistics Canada information lends weight to the general view that, on average, workers retire at or before 65 years of age. (6)

Section 23.1 also permits the Board to continue to pay benefits where the Board is satisfied that the worker would retire after the age of 65 if the worker had not been injured.

The standard of proof under the *Act* is on a balance of probabilities as described in policy item #97.00, Evidence. However, as age 65 is considered to be the standard retirement age, the Board requires evidence that is verified by an independent source to confirm the worker's subjective statement regarding his or her intent to work past age 65. Evidence is also required so that a Board officer can establish the worker's new retirement date for the purposes of concluding wage loss benefits. If the worker's statement is not independently verifiable, the Board officer will make a determination based on the evidence available, including information provided by the worker.

Examples of the kinds of independent verifiable evidence that may support a worker's statement that he or she intended to work past age 65, and to establish the date of retirement, include the following:

- names of the employer or employers the worker intended to work for after age 65, a description of the type of employment the worker was going to perform, and the expected duration of employment
- information from the identified employer or employers to confirm that he or she intended to employ the worker after the worker reached age 65 and that employment was available
- information provided from the worker's pre-injury employer, union or professional association to confirm the normal retirement age for workers in the same pre-injury occupation

- information from the pre-injury employer about whether the worker was covered under a pension plan provided by the employer, and the terms of that plan information from the pre-injury employer or union on whether there was a collective agreement in place setting out the normal retirement age

This is not a conclusive list of the types of evidence that may be considered. A Board officer will consider any other relevant information in determining whether a worker would have worked past age 65 and at what date the worker would have retired.

Where the Board is satisfied that a worker would have continued to work past age 65 if the injury had not occurred, wage loss payments may continue past that age until the date a Board officer has established as the worker's retirement date. At the worker's age of retirement, as determined by a Board officer, wage loss payments will conclude even if the worker's temporary disability remains.

#35.40 Manner of Payment

Temporary partial disability payments are made in the same manner as temporary total disability payments. (7)

NOTES

- (1) See policy item #34.54
- (2) s.29(2)
- (3) See policy item #34.40
- (4) See policy items #73.50; #78.00
- (5) s.30(2)
- (6) Earnings and Employment Trends, Jan/Feb 2001, BC Statistics, Ministry of Finance and Corporate Relations, Province of British Columbia.
- (7) See policy item #34.60

The Disability Awards Committee is ultimately responsible for the conclusion on permanent partial disability awards assessed under 23(3) of the *Act*. The Board officer in Disability Awards is required to conduct the necessary investigations and make a specific recommendation to the committee regarding a worker's eligibility for a section 23(3) assessment and, in cases where an assessment is undertaken, the worker's entitlement to an award.

It is the function of the Committee, following any further investigation it considers necessary, to agree or disagree with the Board officer's recommendation. If the committee agrees, the Board officer will implement the initial recommendation. If the committee disagrees with the Board officer's recommendation, it will either implement its findings or return the file for further investigation. The Disability Awards Committee consists of one senior representative from the Disability Awards, Medical, and Vocational Rehabilitation Services Departments.

The rules of evidence followed by Board officers in Disability Awards and the Disability Awards Committee are discussed in policy item #97.40.

Appeals from the decisions of Board officers in Disability Awards or the Disability Awards Committee are discussed in Chapter 13.

#40.10 Section 23(3) Assessment Formula

This assessment is undertaken in exceptional cases where the Board determines that a worker is eligible for an assessment under section 23(3) of the *Act*. The following guidelines apply in considering a worker under section 23(3):

1. Long term average net earnings that the worker is earning after the injury will be determined in accordance with established policies in Chapter 9.
2. In considering the amount that better represents the worker's loss of earnings after the injury, the Board officer will compare the average net earnings that the worker is actually earning after the injury, with the average net earnings the Board estimates the worker is capable of earning in a suitable occupation after the injury. This comparison requires an employability assessment.
3. In estimating what a worker is capable of earning after the injury, a Board officer gives regard to the evidence, including the medical evidence, of the limitations imposed by the compensable disability and the fitness of the worker for different occupations. The Board also gives regard to the evidence of the Board officer in Vocational Rehabilitation Services about the suitability of the worker for occupations that could reasonably become available. Following these considerations, the Board officer will arrive at a conclusion

about suitable occupations that the worker could be expected to undertake over the long-term future.

4. Average net earnings that maximize the worker's long-term potential up to the worker's pre-injury wage rate, will be selected from the occupations that are suitable and reasonably available over the long-term. Earnings in those occupations will be determined as at the time of the injury.
5. The possible award will then be 90% of the average net amount by which the earnings level thus established is less than the average net earnings prior to the injury.
6. Any increase that may be due to the worker because of a cost of living adjustment will then be added.
7. Since the assessment under section 23(3) 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.

These guidelines are discussed further in policy items #40.12 to #40.14.

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#40.12 *Suitable Occupation*

An occupation differs from a "job" which is defined as a specific position with a particular employer. Occupation is a collection of jobs or employments that are characterized by a similarity of skills.

In estimating what a worker is capable of earning in a suitable occupation after the injury, the Board officer gives regard to the evidence, including the medical evidence of the limitations imposed by the compensable disability, and the ability of the worker to perform different occupations. Regard is also given to the suitability of the worker for occupations that could reasonably become available over the long run that will maximize the worker's long-term earnings potential, up to the pre-injury wage rate. In most cases, "long-term" refers to three to five years.

The Board officer assesses the worker's earning potential in light of transferable skills and all possible rehabilitation measures that may be of assistance,

including the possibility of retraining or other measures that may be appropriate to the worker.

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

- If the worker has made all reasonable efforts to maximize his or her earnings, the job that the worker has actually obtained is generally accepted as being suitable, unless there is evidence that the job is transitory and jobs at another level of earnings within that occupation will be available to the worker in the near future.
- The occupation must, in practice, be reasonably available. The Board will, generally, only have regard to higher paying occupations which a person in the worker's present job would ordinarily be expected to obtain. It would not be fair to assume that a worker will receive all possible promotions that might theoretically be made available.
- The worker has the skills, education and functional abilities that the occupation requires.
- A reasonably available occupation must be one that the worker is medically fit to undertake, and that does not endanger the worker's recovery or the health and safety of the worker and/or others.
- Where a suitable occupation 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.
- 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 job. If jobs in an occupation are subject to fluctuations in the economy but a lower-paying job in another suitable occupation appears more stable in the long run, then the other job may be considered the best-paying job in the long run.
- A reasonably available job is usually within a reasonable commuting distance of the worker's home. (See policy C11-88.90, "Relocation".)
- If the worker declines the best-paying reasonably available job because of a personal preference for a lower-paying job or for an alternative life-style, the wage rate in the best-paying reasonably available job will be used in the formula.

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#40.13 Measurement of Earnings Loss

Sections 23(3)(c) and (d) set out the process for determining a worker's entitlement to a permanent partial disability award under this method. These subsections provide that the Board may pay a worker compensation that is a periodic payment that equals 90% of the difference between the average net earnings before the injury, and either the average net earnings that the worker is earning, or that the Board estimates the worker is capable of earning, after the injury.

The latter figures are 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 policy item #40.12 and determining the earnings figure which will maximize the worker's long-term earnings potential.

A worker's post-injury wage loss will be based on estimated earnings rather than on actual earnings in the following cases:

- The worker is employable but does not have a job; or
- The worker has a job but is not maximizing his or her earning capacity up to the pre-injury rate; or
- The worker has, for personal reasons, withdrawn from the workforce; or
- The worker fails to co-operate with the rehabilitation process.

The intention of the *Act* is to protect workers' earnings only up to the maximum wage rate. This is shown by section 33(3) which results in payments for total disability being limited to 90% 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 award can be made under section 23(3) where, following the injury, the worker is earning or is able to earn at or above the maximum wage rate. Where a worker 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 award can be made but only to the extent of the difference between the maximum and the projected earnings.

Although assessment of a permanent partial disability award will often be made some time after the original injury, it would not be fair to compare directly the actual pre-injury average earnings with the earnings the worker might now earn in the occupations 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 occupations available after the injury as they stood at the date of the injury. It occasionally happens that earnings in occupations at the time of the injury are not available. If this occurs, it may be necessary to use the earnings in those occupations as they were at another date and bring the pre-injury earnings into line by applying cost of living adjustments as described in policy item #51.00.

When calculating a worker's average net earnings for the purposes of the section 23(3) assessment, the Board will also consider the formulas used to determine the CPP contributions, EI premiums and income taxes applicable to the level of average earnings. The formulas used are those in effect on the earlier of the first day after the date temporary disability benefits have been payable to the worker for a cumulative period of 10 weeks; or on the effective date of a worker's permanent disability award.

EFFECTIVE DATE: November 1, 2002
APPLICATION: To decisions made on or after November 1, 2002 on claims adjudicated under the *Act*, as amended by the *Workers Compensation Amendment Act, 2002*.

#40.14 *Provision of Employability Assessments*

Workers are provided with a copy of a completed employability assessment before a decision is made on entitlement to a section 23(3) award. 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 section 23(3) award are known and agreed to, the 30-day waiting period may be waived.

#40.30 **Reviews of Permanent Partial Disability Awards under Section 23(3)**

The Board considers that reviews should be allowed for reasons other than a change in the worker's physical condition. Reviews can be carried out in a way that would increase the accuracy of section 23(3) assessments and without unduly interfering with the worker's privacy or rehabilitation.

The Board has decided that there should be an automatic review of a section 23(3) award at two years from the date of assessment or, if there is an appeal, two years from the date of the last decision resulting from the appeal process. Following that review, there will be no further automatic reviews, but the Board officer in Disability Awards has the discretion to set up a claim for reviews at future dates which he or she determines. If, for example, where a worker has not changed occupation, but there has been a change in the salary range of that occupation, usually because of a shift in market conditions, if the change is temporary, the file will be set up for further review. If the change is permanent, an adjustment will be made immediately. Neither a worker nor an employer will have the right to apply for a review of a section 23(3) award at any time unless there has been a change in the worker's physical condition.

In exercising discretion whether to set up an award for later review, an important factor considered by the Board officer is whether the review just conducted resulted in any change. The Board officer will normally set up a later review if there was a change in the award. If a review results in no alteration in the award, it may be reasonable to conclude that the long-term projection made at the time of the initial assessment was correct and that there is no need for further review. On the other hand, the Board officer may feel that at least one further review is required to ensure that the correct result is obtained. If a further review is set up and that review again results in no change, then the Board officer would not likely set up a further review. The Board officer should not continue to set up a claim for future reviews where such reviews are not likely to result in any change in the award.

To provide further encouragement to a worker's rehabilitation, the Board feels that it is reasonable to allow a worker to earn a certain amount above the amount projected without the award being affected. Allowance also should be made for the fact that in serious cases a disabled worker may work for small amounts for therapeutic reasons. The Board feels this concession is consistent with the overall concept of a projected loss of earnings system. Since the object of that system is to predict a worker's long-term earning capacity, it would not, in any event, be reasonable to alter the award simply because earnings are marginally different from the predicted amount. There is likely to be a certain degree of fluctuation in a worker's earnings which does not alter the long-term picture. The Board has concluded that if at the time of a review a worker's earnings or projected earnings are 5% or less over the earnings previously projected, the excess amount will be ignored. Conversely, if it turns out that earnings or projected earnings are 5% or less below what was previously projected, there will be no increase in the section 23(3) award.

In carrying out the reviews and determining whether a worker's current earnings are 5% or less above the amount projected, allowance will be made for the effect of inflation.



**RE: Vocational Rehabilitation
Principles and Goals**

ITEM: C11-85.00

BACKGROUND

1. Explanatory Notes

This policy sets out the principles and goals of vocational rehabilitation.

2. The Act

Section 16:

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

POLICY

Quality Rehabilitation

The mission of Vocational Rehabilitation Services is to provide quality interventions and services to assist workers in achieving early and safe return to work and other appropriate rehabilitation outcomes. Quality rehabilitation requires individualized vocational assessment, planning, and support provided through timely intervention and collaborative relationships to maximize the effectiveness of rehabilitation resources and worker-employer outcomes.



Principles of Vocational Rehabilitation

The guiding principles of quality vocational rehabilitation are:

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



9. Vocational rehabilitation services should be provided in a cost-effective manner.

Goals

The goals of Vocational Rehabilitation Services are:

1. For workers with temporary total disability, the goal is to assist injured workers in expediting recovery and return to work with the pre-injury employer. As these workers are considered unable to perform their pre-injury employment due to the disability, the goal is to return a worker to work with the pre-injury employer in a selective/light employment, a graduated return to work or a modified return to work arrangement.
2. For workers with temporary partial disability, the goal is to assist injured workers in their efforts to return to work in a suitable occupation and maximize short-term earning capacity up to the pre-injury wage rate. This goal reflects the wording of section 30 of the *Act*, which refers to an assessment of what a worker is earning or is capable of earning in a suitable occupation.
3. For workers entitled to a section 23(1) award, the goal is to assist injured workers in their efforts to return to work. In these cases, the Board has determined that a worker is capable of returning to either the pre-injury occupation or another suitable occupation.
4. For workers entitled to a section 23(3) assessment, the goal is to assist injured workers in their efforts to return to work in a suitable occupation and maximize long-term earning capacity up to the pre-injury wage rate. This goal reflects the wording of section 23(3) of the *Act*, which refers to an assessment of what a worker is earning or is capable of earning in a suitable occupation.
5. For workers entitled to a section 22 award, the goal is to assist in improving quality of life and minimizing the impact of the disability.
6. For surviving spouses and dependants of deceased workers, the goal is to provide counselling and vocational assistance to overcome the impact of the fatality.

In all cases, the goal is to provide reassurances, encouragement and counselling to help those entitled to compensation to maintain a positive outlook and remain motivated toward future economic and social capability.



Services Provided

These goals are met by providing the following services to its clients:

- counselling;
- vocational assessment and planning;
- job readiness/skill development;
- placement assistance;
- residual employability assessment.
- assessment of a worker's need or continued need for rehabilitation and health care services and supports, where a worker's permanent total disability will continue past retirement age.

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Sections 22, 23, 29 and 30 of the <i>Act</i> ; Vocational Rehabilitation – Vocational Assistance for Surviving Spouses and Dependents of Deceased Workers (policy C11-91.00) and Retirement Benefits - Retirement Services and Personal Supports (policy C18-116.30) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #85.00 to #85.60 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Eligibility Criteria**

ITEM: C11-86.00

BACKGROUND

1. Explanatory Notes

This policy sets out eligibility criteria for vocational rehabilitation services.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 22:

- (1) ... if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the worker's average net earnings.
....

Section 29:

- (1) ... if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the worker's average net earnings.

Section 30:

- (1) ... if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the difference between
 - (a) the worker's average net earnings before the injury, and



- (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

Section 23:

- (1) Subject to subsections (3) to (3.2) ..., if a permanent partial disability results from a worker's injury, the Board must
 - (a) estimate the impairment of earning capacity from the nature and degree of the injury, and
 - (b) pay the worker compensation that is a periodic payment that equals 90% of the Board's estimate of the loss of average net earnings resulting from the impairment. ...
- (3) ... if
 - (a) a permanent partial disability results from the a worker's injury, and
 - (b) the Board makes a determination under subsection (3.1) with respect to the worker,

the Board may pay the worker compensation that is a periodic payment that equals 90% of the difference between

- (c) the average net earnings of the worker before the injury, and
- (d) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.



- (3.1) A payment may be made under subsection (3) only if the Board determines that the combined effect of the worker's occupation at the time of the injury and the worker's disability resulting from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.
- (3.2) In making a determination under subsection (3.1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation.

POLICY

Eligibility

Rehabilitation assistance may be provided in cases where it appears to the Board officer in Vocational Rehabilitation Services that such assistance may be of value, and where a decision has been made that the injury, occupational disease or death is compensable.

Eligibility for vocational rehabilitation services will be determined in relation to the entitlement provisions of the *Act* as follows:

Temporary total disability

Vocational rehabilitation services are usually not provided to a worker with a temporary total disability, as the worker's medical condition often precludes the necessity of vocational rehabilitation initiatives. Limited vocational rehabilitation services may be considered where the Board officer in Compensation Services determines that such services will assist in the worker's recovery or in making selective/light employment arrangements.

Temporary partial disability

Vocational rehabilitation services may be made available to a worker who is no longer considered to be "totally" disabled from working in the pre-injury occupation. The worker is considered capable of returning to a



suitable occupation but may require vocational rehabilitation assistance to maximize short-term earning capacity up to the pre-injury wage rate.

Eligibility arises where:

- the compensable condition necessitates vocational rehabilitation assistance in early and safe return to work in the pre-injury occupation or a suitable occupation available over the short term;
- the compensable condition is complicated by non-compensable factors, the combination of which creates an impediment to return to work over the short term, necessitating assistance in an early and safe return to the pre-injury occupation or a suitable occupation;
- the pre-injury job is no longer available due to the injury and the worker requires assistance to return to work in a suitable occupation.

Permanent partial disability (section 23(1))

Vocational rehabilitation services may be provided where a worker's temporary disability has ceased and his or her medical condition has stabilized. Workers with a section 23(1) award are generally able to return to their pre-injury occupation or another suitable occupation but may need assistance in their return to the workforce.

Eligibility arises where:

- the compensable condition necessitates vocational rehabilitation to assist the worker in his or her efforts to return to the pre-injury occupation;
- the compensable condition is complicated by non-compensable factors, the combination of which creates an impediment to return to work, necessitating assistance in his or her efforts to return to the pre-injury occupation or another suitable occupation;
- the pre-injury job is no longer available due to the injury and the worker requires assistance to return to another suitable occupation.

Permanent partial disability (section 23(3))

Vocational rehabilitation services may be provided to a worker who is entitled to a section 23(3) assessment for permanent partial disability and



the worker requires assistance in his or her efforts to return to the workforce in another suitable occupation and maximize long-term earning capacity up to the pre-injury wage rate.

Permanent Total Disability

Vocational rehabilitation services will be provided to a worker with a permanent total disability where the worker needs assistance in improving his or her quality of life. It may include assessment of a worker's need or continued need for rehabilitation and health care services and supports, where a worker's permanent total disability will continue past retirement age.

Non-compensable Problems

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

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

Third-Party Claims

In the case of third-party claims, where a worker has a right of election, a worker is not eligible for rehabilitation assistance until the worker has elected to claim compensation with the Board.

Continuation of Assistance

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

Once a decision has been made that an injury or disease is compensable, there is no requirement that vocational rehabilitation assistance end at the same time



wage-loss compensation is concluded. The worker may no longer be eligible for temporary disability benefits, but vocational assistance may still be required and, where necessary, should be provided.

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Sections 16, 22, 23, 29 and 30 of the <i>Act</i> .
CROSS REFERENCES:	Selective/Light Employment (policy item #34.11), Vocational Rehabilitation - Referral Guidelines (policy C11-86.10), Injury Not Caused by Worker or Employer (policy item #111.20), and Retirement Benefits - Retirement Services and Personal Supports (Policy C18-116.30) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #86.00, #86.20, #86.40 and #86.70 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Referral Guidelines**

ITEM: C11-86.10

BACKGROUND

1. Explanatory Notes

This policy sets out referral guidelines for vocational rehabilitation services.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Referral Guidelines

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

Workers may also be referred directly by physicians, hospitals, union representatives, employers and other agencies, or may seek assistance themselves.

Immediate Referrals

The following require immediate referral:

1. Spinal cord injuries resulting in paraplegia or quadriplegia.
2. Major extremity amputations or severe crush injuries.



3. Severe brain or brain stem injuries.
4. Significant burns (e.g. 20% of the body surface, or third-degree burns of 10% or more of the body surface).
5. Significant loss of vision.
6. Fatalities.

General Referrals

1. Claims meeting the eligibility criteria.
2. Employability assessments for the consideration of temporary partial disability benefits under section 30 of the *Act*.
3. Employability assessments for the consideration of permanent partial disability under section 23(3).
4. Consideration for continuity of income benefits.
5. Commutation investigations.
6. Reviews under sections 23(3) or 24.
7. Consideration of a permanently totally disabled worker's need or continued need for rehabilitation and health care services and personal supports in the three month period prior to the receipt of a retirement benefit.
8. Consideration for Homemakers' Services.
9. Consideration for Personal Care Allowances.
10. Consideration for Independence and Home Maintenance Allowances.
11. Claims where recovery or re-employment is affected by:
 - (a) psychological/social problems;
 - (b) emotional problems;
 - (c) financial stress;



- (d) substance abuse;
- (e) vision/hearing problems.

Out of Province Referrals

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

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Sections 21, 22, 23, 24 and 30 of the <i>Act</i> ; and Procedure for Determining Whether Worker is Temporary Partially Disabled (policy item #35.11), Section 23(3) Assessment Formula (policy item #40.10), Suitable Occupation (policy item #40.12), Reviews of Permanent Partial Disability Awards under Section 23(3) (policy item #40.30), Decision-Making Procedures (policy item #45.50), Review of Old Pensions under Section 24 (policy item #46.00), Personal Care Expenses or Allowances (policy item #80.00), Independence and Home Maintenance Allowance (policy item #81.00), Homemakers Services (policy item #84A.00), Vocational Rehabilitation - Eligibility Criteria (policy C11-86.00), Vocational Rehabilitation - Employability Assessments – Temporary Partial Disability and Permanent Partial Disability (policy C11-89.00), and Retirement Benefits - Retirement Services and Personal Supports (policy C18-116.30) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items, #86.10, #86.11, #86.12, #86.50, #86.60, and #86.80 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Process**

ITEM: C11-87.00

BACKGROUND

1. Explanatory Notes

This policy sets out the vocational rehabilitation process.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

The vocational rehabilitation process addresses the individual needs and circumstances of each worker.

Consultative Process

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

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



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

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

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

Operational Process

The rehabilitation process involves five sequential phases of vocational exploration. The Board officer in Vocational Rehabilitation Services expedites this process in accordance with the vocational rehabilitation principles and goals.

PHASE I

Principle:

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

Rationale:

The worker returns to a known environment, maintains seniority and company benefits and, where applicable, remains in the same union. The employer benefits by virtue of retaining a trained and experienced employee.

Method:

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

PHASE II

Principle:

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



Rationale:

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

Method:

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

PHASE III

Principle:

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

Rationale:

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

Method:

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

PHASE IV

Principle:

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

Rationale:

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



Method:

All programs relevant to the preceding phases may apply.

PHASE V

Principle:

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

Rationale:

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

Method:

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

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Vocational Rehabilitation - Principles and Goals (policy C11-85.00), Vocational Rehabilitation - Nature and Extent of Programs and Services (policy C11-88.00), Vocational Rehabilitation - Work Assessments (policy C11-88.10), Vocational Rehabilitation - Work Site and Job Modification (policy C11-88.20), Vocational Rehabilitation - Job Search Assistance (Policy C11-88.30), Vocational Rehabilitation - Training-on-the-Job (Policy C11-88.40), Vocational Rehabilitation - Formal Training (Policy C11-88.50), Vocational Rehabilitation - Business Start-ups (Policy C11-88.60), Vocational Rehabilitation - Legal Services (Policy C11-88.70), Vocational Rehabilitation - Preventative Rehabilitation (Policy C11-88.80), and Vocational Rehabilitation - Relocation (Policy



HISTORY:

C11-88.90) of the *Rehabilitation Services & Claims Manual*, Volume II.

APPLICATION:

Replaces policy items #87.10 and #87.20 of the *Rehabilitation Services & Claims Manual*, Volume II.

To decisions made on or after November 1, 2002 on claims adjudicated under the *Act*, as amended by the *Workers Compensation Amendment Act, 2002*.



**RE: Vocational Rehabilitation
Nature and Extent of Programs and Services**

ITEM: C11-88.00

BACKGROUND

1. Explanatory Notes

This policy sets out the nature and extent of vocational rehabilitation programs and services available for injured workers.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

PROGRAMS AND SERVICES

General

Programs and services in support of the vocational rehabilitation process may be implemented individually or in combination, as part of a rehabilitation plan.

Early Intervention

Vocational rehabilitation assistance should be provided as soon as a worker is medically able to participate in his or her own vocational future.

Application of the Vocational Rehabilitation Process

The vocational rehabilitation process is generally applicable as follows:



Temporary total disability under section 29 of the *Act* – Phases I and II of the vocational rehabilitation process apply. Vocational rehabilitation services are limited to work assessments, work site/job modifications and to an advisory role regarding the worker's recovery or selective light duties with pre-injury employer.

Temporary partial disability under section 30 of the *Act* – Phases I and II of the vocational rehabilitation process apply. Vocational rehabilitation services are limited to counselling, work assessments, graduated return to work ("GRTW"), placement assistance, mediation between worker and employer, and work site/job modifications.

Permanent partial disability under section 23(1) of the *Act* – Phases I through IV of the vocational rehabilitation process apply. Vocational rehabilitation services may include counselling, work assessments (GRTW), placement assistance, mediation between worker and employer, work site/job modifications, and in limited cases, job search, training-on-the-job and formal training, may also be considered.

Permanent partial disability under section 23(3) of the *Act* – Phases 1 through V of the vocational rehabilitation process apply. Vocational rehabilitation services may include counselling, work assessments (GRTW), placement assistance, mediation between worker and employer, work site/job modifications, job search, training-on-the-job and formal training.

Permanent total disability under section 22 of the *Act* – Quality of life assistance may include vehicle modifications, home modifications, personal care allowances, independence and home maintenance allowances and homemakers' services.

Rehabilitation Plan

A rehabilitation plan is developed for each eligible worker. Ongoing medical opinion and a variety of Board and community resources assist the Board officer in Vocational Rehabilitation Services and the worker in developing the plan. The principles regarding medical opinion apply equally to the rehabilitation process.

A Board officer in Vocational Rehabilitation Services develops the plan in collaboration with the worker, the employer and appropriate health care providers. To demonstrate understanding of the plan, the plan should be signed by the worker, the Board officer and where appropriate, the employer.



The written plan:

- Defines the overall vocational goal. The plan is considered appropriate if the worker has a reasonable probability of successfully achieving the vocational goal.
- Outlines the supporting rationale, which makes the vocational goal attainable. The plan will clearly document how the worker's vocational profile matches the targeted suitable occupation. A description of the worker's vocational profile will include objective functional capacity, education, existing transitional skills or projected skills, aptitudes, training, interests and personal and occupationally significant characteristics.
- Describes a suitable occupation in which the worker can competitively pursue employment upon achievement of the vocational goal. This will be based on recognized methods of occupational classification. Where applicable, the description will include community-specific features of the occupation as determined through job analysis.
- Details the specific programs and services for the vocational goal to be attained and outlines the obligations of the participants.
- Details the methods, techniques and supports, which will be utilized to assist the worker in attaining the vocational goal. The sponsorship opportunities of other agencies are considered in providing integrated service delivery. Their availability does not limit the Board's provision of additional services in accordance with its policies.
- Outlines the wage-loss equivalency benefits and/or allowances (such as transportation and subsistence allowances) which will accompany the plan.
- Indicates the timeframes associated with the overall plan and its component steps.

A worker is entitled to one rehabilitation plan. The Board will monitor the plan to determine if the plan is progressing as anticipated. A plan may be modified or a new plan substituted where:

- The worker's medical condition deteriorates or improves, making the initial plan inappropriate in relation to the goal; or
- There are significant and unanticipated developments in the vocational rehabilitation process, impacting the expected outcome of the plan; and
- Either the Vice-President of Compensation and Rehabilitation Services or the Director of Vocational Rehabilitation Services approves the modification(s) to the new plan.



All involved parties will acknowledge the modified or new plan. The requirements for developing the initial plan apply to the modified or new plan.

Financial Implications/Cost Effectiveness

Each plan must set out the financial implications of implementing the plan and/or its cost effectiveness. The analysis should include a comparison of the estimated cost of the necessary vocational services, the remaining compensation benefits that the worker is entitled to, the estimated cost of alternative rehabilitation plans, and the estimated benefit costs if no return to work services are provided. The analysis must also set out when it is expected that specific costs will be experienced.

Discontinuation of Vocational Rehabilitation Services

Vocational rehabilitation services may be discontinued where:

- the worker refuses available employment that is considered suitable in relation to the applicable phase of benefit entitlement;
- the worker fails to cooperate with vocational rehabilitation process;
- the worker has for personal reasons, withdrawn from the labour force;
- non-compensable medical, psycho-social or financial problems alone preclude active participation in the rehabilitation process;
- the worker retires or is deemed to have retired; or
- the plan is completed and it is neither necessary nor cost effective to provide further vocational rehabilitation assistance.

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

Transportation and subsistence allowances may also be considered in support of vocational programs.

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



PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Sections 22, 23 and 29 and 30 of the <i>Act</i> ; Chapter 9 Average Earnings; Selective/Light Employment (policy item #34.11), Deduction of Permanent Disability Periodic Payments from Wage Loss (policy item #69.10), Permanent Disability Awards (policy item #70.30), Transportation Allowances (policy item #82.00), Rates of Subsistence (policy item #83.20), Vocational Rehabilitation - Principles and Goals (policy C11-85.00), Vocational Rehabilitation - Process (policy C11-87.00), Vocational Rehabilitation - Spinal Cord and Other Severe Injuries (policy C11- 90.00), and Medical Evidence (policy item #97.30) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #87.00 and #88.00 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Work Assessments**

ITEM: C11-88.10

BACKGROUND

1. Explanatory Notes

This policy describes work assessment programs.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Work Assessments

A work assessment program is a method of determining or enhancing a worker's employment capabilities and potential in an actual work environment with an employer, or in a simulated setting using functional evaluation methodology.

Guidelines

Subject to policy C11-88.00, "Nature and Extent of Programs and Services", the following guidelines on work assessments apply.

1. When a work assessment with an employer takes place prior to full medical recovery and is intended primarily as a therapeutic measure to assist increasing levels of work activity, the program is normally referred to as a "Graduated Return to Work". This program is commonly a first step in a worker's successful reinstatement with the pre-injury employer.



2. Work assessments also allow employers and workers to assess the viability of employment in a particular job and are frequently used together with training-on-the-job programs.

Expenditures

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

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002.
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Sections 29 and 30 of the <i>Act</i> ; Vocational Rehabilitation - Process (policy C11-87.00) and Vocational Rehabilitation - Nature and Extent of Programs and Services (policy C11-88.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #88.10 - #88.12 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Work Site and Job Modification**

ITEM: C11-88.20

BACKGROUND

1. Explanatory Notes

This policy describes work site and job modification programs.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Work Site and Job Modification

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

Guidelines

Subject to policy C11-88.00, "Nature and Extent of Programs and Services", the following guidelines on work site and job modification apply.

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



Expenditures

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

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Vocational Rehabilitation - Process (policy C11-87.00) and Vocational Rehabilitation - Nature and Extent of Programs and Services (C11-88.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #88.20, #88.21, and #88.22 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Job Search Assistance**

ITEM: C11-88.30

BACKGROUND

1. Explanatory Notes

This policy describes the Board's job search assistance program.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Job Search Assistance

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

Guidelines

Subject to policy C11-88.00, "Nature and Extent of Programs and Services", the following guidelines on job search assistance apply.

1. Job search assistance would normally be introduced to help equip workers with the knowledge and skills to conduct a successful search for employment. Assistance may include:
 - (a) vocational assessment and goal-setting through individual and/or group counselling;
 - (b) referral to internal and external employment resources;



- (c) marketing to prospective employers;
 - (d) financial assistance.
2. Eligibility for job search assistance and its continuance is conditional upon the active cooperation of the worker with the Board officer in Vocational Rehabilitation Services. Workers may be required to provide proof that they are earnestly seeking employment, or awaiting a definite job opportunity.
 3. Job search may be provided for up to 12 cumulative weeks. Extensions beyond 12 weeks must be approved by the Vice-President of Compensation and Rehabilitation Services or the Director of Vocational Rehabilitation Services.

The following criteria apply in considering whether or not an extension is approved:

- Labour market data supports a greater average number of weeks of job search for the worker's home geographic area and/or the worker's occupation;
- The severity of the injury and resulting disability are such that 12 weeks to locate suitable employment will be inadequate; or
- The worker has actively participated in job search and there is objective evidence that a period greater than 12 weeks is required to locate suitable employment that will allow the worker to return to an occupational category comparable in terms of earning capacity to the pre-injury occupation.

Expenditures

The Board may provide financial assistance in the form of a job search allowance. This is a discretionary benefit which applies if the worker is actively seeking or returning to appropriate employment, attending a designated job search program, or awaiting a confirmed job opportunity. The amount of the allowance will not exceed wage-loss equivalency.



PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Vocational Rehabilitation - Process (policy C11-87.00), Vocational Rehabilitation - Nature and Extent of Programs and Services (policy C11-88.00) and Vocational Rehabilitation - Relocation (policy C11-88.90) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #88.30 - #88.32 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Training-on-the-Job**

ITEM: C11-88.40

BACKGROUND

1. Explanatory Notes

This policy describes the Board's training-on-the-job program.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Training-on-the-Job

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

Guidelines

Subject to the policy C11-88.00, "Nature and Extent of Programs and Services", the following guidelines apply for training-on-the-job programs.

1. Training-on-the-job assistance may be provided to enhance or develop new occupational skills.
2. While the worker is undertaking a training-on-the-job program, absences are usually treated according to the training employer's policy on absenteeism. That is, if the employer deducts the worker's pay for an absence, so will the Board. If the employer pays for the absence, the Board will pay as well.



3. Training-on-the-job assistance may be provided for up to 26 weeks. Extensions must be approved by the Vice-President of Compensation and Rehabilitation Services or the Director of Vocational Rehabilitation Services.

The following criteria apply in considering whether or not an extension is approved:

- A program greater than 26 weeks will result in no loss of earnings for a worker who is being assessed for a section 23(3) award;
- A program greater than 26 weeks will result in permanent long-term employment;
- A program greater than 26 weeks is necessary to develop/demonstrate the required occupational skill levels; or
- A program greater than 26 weeks is required for ticketing and/or certification in the identified occupation.

The timeframe for training-on-the-job will be part of the rehabilitation plan and determined before the plan is implemented.

Expenditures

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

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



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

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

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

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

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

All costs resulting from the aggravation of the injury are excluded from experience rating, whatever the nature of the injury.
2. The employer is paying a partial wage to the worker who is also receiving payments from the Board; or the Board is reimbursing the employer part of the worker's salary.

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

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



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

In addition to relief for the individual employer for experience rating, the employer's sector or rate group may be eligible for relief under section 39(1)(e).

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Vocational Rehabilitation - Process (policy C11-87.00), Vocational Rehabilitation - Nature and Extent of Programs and Services (policy C11-88.00), Vocational Rehabilitation - Formal Training (policy C11-88.50), Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability (policy item #114.40A) and Experience Rating (policy item #115.30) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #88.40 - #88.43 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Formal Training**

ITEM: C11-88.50

BACKGROUND

1. Explanatory Notes

This policy sets out the Board's formal training program.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Formal Training

Subject to the policy C11-88.00, "Nature and Extent of Programs and Services", the following guidelines apply to formal training.

Formal training refers to a range of courses or programs which:

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

These may include full-time or part-time trades, technical or academic programs offered through recognized training or educational institutions. These programs are of short duration of less than 26 weeks and should be identified as having an immediate positive impact on the worker's employability. Programs of more than 26 weeks duration must be approved by the Vice-President of Compensation and Rehabilitation Services or the Director of Vocational Rehabilitation Services.



The following criteria apply in considering whether a program of more than 26 weeks is approved:

- A program greater than 26 weeks is required to assist a worker who is assessed under section 23(3) in mitigating his or her loss of earnings;
- A program of less than 26 weeks is not adequate to provide new occupational skills; or
- The rehabilitation plan that is developed identifies and provides supporting documentation for a lengthier formal training program based on the worker's objective functional capacity, existing transitional skills, aptitudes, education and training or labour market demands.

Levels of Support

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

1. Training Related Directly to the Disability

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

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

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



2. Training Related Partly to the Disability

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

For example, a worker is injured in a heavy manual occupation and is unable to return to heavy manual work. In discussion with the Board officer in Vocational Rehabilitation Services, it appears that there is a 26-week program that would provide occupational skills for a position with earning capacity and prospects at least as good as the pre-injury occupation; but rather than pursue this option the worker prefers a more extensive one-year program.

The Board should not deny the rehabilitation assistance that would have been provided if the worker had chosen the 26-week training program, but neither should it generally finance an educational advancement that goes beyond what is reasonably necessary as rehabilitation for the injury.

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

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

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



3. Training Unrelated to the Disability

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

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

Guidelines

1. Formal training programs are normally undertaken for the purpose of improving a worker's long-term employment and earnings potential.
2. Before deciding on a formal training program, it is important that the worker's desires, abilities, aptitudes, interests and educational readiness are assessed in order to ensure a probability of success. The program must also be compatible with the worker's physical capabilities and any ongoing medical treatment.
3. Decision-making regarding the type and appropriateness of formal training programs is a collaborative process which takes into consideration the desire and intent of the worker and all relevant assessment and labour market information. The Board officer in Vocational Rehabilitation Services determines the feasibility of the program(s) under consideration and decides whether to recommend sponsorship.
4. Ongoing support and sponsorship of formal training programs are contingent upon the worker's active cooperation and participation in the process. If the worker does not meet the attendance and progress requirements of the program, financial sponsorship may be suspended or withdrawn. Discussion with the worker will determine whether further or alternate assistance is appropriate.



Expenditures

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

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

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

Injury in the Course of Training

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

1. The trainee may be attending a school of training specifically operated as such and for which course of training the Board pays a fee to the school, while at the same time paying the trainee the allowance prescribed by Board regulations.
2. A trainee may, by arrangement, be receiving training in an industrial or business establishment, receiving no remuneration from the employer in the establishment, but only receiving the allowance prescribed by Board regulations. At the same time, the Board may be paying something by way of a training fee to the employer in the establishment.

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



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

In case of an aggravation or new injury to a trainee, the Board will normally exclude the costs from the employer's experience rating. In addition, the employer's sector or rate group may be eligible for relief under section 39(1)(e).

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

Joint Sponsorship

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

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

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

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Education (policy item #45.44), Transportation Allowances (policy item #82.00), Subsistence Allowances (policy item #83.00), Vocational Rehabilitation - Process (policy C11-87.00), Vocational Rehabilitation - Nature and Extent of Programs and Services (policy C11-88.00), Vocational Rehabilitation - Preventative Rehabilitation (policy C11-88.80), Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability (policy item #114.40A), and Experience Rating (policy



HISTORY:

item #115.30) of the *Rehabilitation Services & Claims Manual*, Volume II.

APPLICATION:

Replaces policy items #88.50 - #88.55 of the *Rehabilitation Services & Claims Manual*, Volume II.

To decisions made on or after November 1, 2002 on claims adjudicated under the *Act*, as amended by the *Workers Compensation Amendment Act, 2002*.



**RE: Vocational Rehabilitation
Business Start-ups**

ITEM: C11-88.60

BACKGROUND

1. Explanatory Notes

This policy sets out the Board's business start-up program.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Business Start-ups

The Board may contribute to the cost of starting or enhancing a viable business for a worker in lieu of other rehabilitation measures.

Business start-ups will only be approved in limited situations where the Board is satisfied that the worker has demonstrated previous business experience and presents a viable business plan. Before consideration can be given to a business-start-up plan, the Director, Vocational Rehabilitation Services must approve a business feasibility study. The Director, Vocational Rehabilitation Services, must also approve all business start-ups.

The amount of financial assistance will normally not exceed the amount that would have been paid if the worker had undertaken a vocational rehabilitation program considered reasonable and necessary to overcome the effects of the compensable injury.

When considering vocational rehabilitation expenditures for business start-ups, the basic guidelines for starting a business apply.

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Starting a Business (policy item #45.43), and Vocational Rehabilitation - Nature and Extent of Programs and Services (policy C11-88.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy item #88.60 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Legal Services**

ITEM: C11-88.70

BACKGROUND

1. Explanatory Notes

This policy sets out the legal assistance that may be provided in relation to vocational rehabilitation services.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Legal Services

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

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

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

1. Indebtedness or Insolvency

Where claims are being made against a worker which are an impediment to recovery from an industrial injury or disease, the



provision of legal advice by the Board might be considered as part of the worker's rehabilitation.

2. Matrimonial Problems

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

3. Conveyancing

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

4. Workers' Estates

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

5. Advice to a Surviving Spouse

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

6. Other Situations

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



PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	
HISTORY:	Replaces policy item #88.70 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Preventative Rehabilitation**

ITEM: C11-88.80

BACKGROUND

1. Explanatory Notes

This policy sets out preventative rehabilitation assistance that may be provided to workers.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Preventative Rehabilitation

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

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

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

Once eligibility for preventative assistance has been established, the rehabilitation process applies.



PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Vocational Rehabilitation - Process (policy C11-87.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy item #86.30 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .

**RE: Vocational Rehabilitation
Relocation**

ITEM: C11-88.90

BACKGROUND

1. Explanatory Notes

This policy sets out the Board's guidelines on relocation.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 30 provides, in part:

- (1) ... if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the difference between
 - (a) the worker's average net earnings before the injury, and
 - (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

Section 23 provides, in part:

- (3) ... if
- (a) a permanent partial disability results from the a worker's injury, and
 - (b) the Board makes a determination under subsection (3.1) with respect to the worker,

the Board may pay the worker compensation that is a periodic payment that equals 90% of the difference between

- (c) the average net earnings of the worker before the injury, and
 - (d) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.
- (3.1) A payment may be made under subsection (3) only if the Board determines that the combined effect of the worker's occupation at the time of the injury and the worker's disability resulting from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.
- (3.2) In making a determination under subsection (3.1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation.

POLICY

Relocation is considered to be a reasonable option for a worker after all other return-to-work options have been considered. Where no suitable occupations that will maximize the worker's post-injury earning capacity are available within a reasonable commuting distance of the worker's home community, the Board may recommend that the worker relocate to an area where there are greater prospects for employment opportunities in a suitable occupation.

An offer by the Board to relocate a worker will be made on the basis of the worker's individual circumstances. The primary factor to be considered is mitigation of the worker's long-term loss of earning capacity. A determination must be made that employment opportunities, on relocation, would substantially reduce the worker's post-injury wage loss.

Other factors that may be considered in determining whether it would be reasonable for a worker to relocate include age, family situation and/or connection to the community. The connection to the community must be significant and refer to the worker's obligations and responsibilities to the community separate from the worker's family situation. There must be objective evidence that these other factors, either alone or in combination, would make it unreasonable for the Board to consider relocation. The primary factor will be the deciding factor unless the other factors considered either separately or in combination clearly outweigh the mitigation of the worker's loss of earning capacity.

The Board will pay reasonable expenses of relocation. Expenses paid by any other agency, may be deducted from the amount to be paid by the Board.

If the Board determines that relocation is reasonable and relocation expenses have been offered, the worker's benefits may be calculated as if the worker relocated.

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Sections 30 and 23(3) of the <i>Act</i> , Suitable Occupation (policy item #35.21), Suitable Occupation (policy item #40.12), and Vocational Rehabilitation - Employability Assessments – Temporary Partial Disability and Permanent Partial Disability (policy C11-89.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces, in part, policy item #40.12.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Employability Assessments -
Temporary Partial Disability and
Permanent Partial Disability**

ITEM: C11-89.00

BACKGROUND

1. Explanatory Notes

This policy sets out the employability assessment process for temporary partial disability and permanent partial disability.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 30 provides, in part:

- (1) ... if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the difference between
 - (a) the worker's average net earnings before the injury, and
 - (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net *earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.* (emphasis added)



Section 23 provides, in part:

- (3) ... if
 - (a) a permanent partial disability results from the a worker's injury, and
 - (b) the Board makes a determination under subsection (3.1) with respect to the worker,

the Board may pay the worker compensation that is a periodic payment that equals 90% of the difference between

- (c) the average net earnings of the worker before the injury, and
 - (d) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net *earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.* (emphasis added)
- (3.1) A payment may be made under subsection (3) only if the Board determines that the combined effect of the worker's occupation at the time of the injury and the worker's disability resulting from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.
- (3.2) In making a determination under subsection (3.1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation.



POLICY

Employability Assessments

Sections 30 and 23(3) of the *Act* enable the Board to estimate what a worker is capable of earning in a suitable occupation. This requires an employability assessment.

One of the major functions of the Board officer in Vocational Rehabilitation Services is to assist in the assessment of employability for temporary partial disability and permanent partial disability under sections 30(1) and 23(3) of the *Act*.

Temporary Partial Disability

Where a worker is medically judged to be only partially disabled and the condition remains temporary, any further wage-loss payments may be processed under section 30 of the *Act*. In most cases, a Board officer in Compensation Services conducts the assessment under section 30. The goal is to identify suitable occupations, along with estimated earnings, that maximize the worker's short-term earning capacity up to the pre-injury wage rate. In most cases, the focus of the assessment is a return to work with the pre-injury employer.

A referral to Vocational Rehabilitation Services may be made if the Board officer needs assistance in this regard or a more comprehensive employability assessment is required. For example, if there is no attachment to the pre-injury employer, suitable and available occupations in the labour market will be considered.

Documented objective evidence of what the worker is earning or is capable of earning is provided to the Board officer in Compensation Services, who makes the decision on a worker's entitlement under section 30.

In determining section 30 benefits, the employment opportunity or opportunities should be available immediately or within the period under review (two weeks, one month) and there should be some certainty that workers would have these opportunities open to them should they choose to apply.



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

Permanent Partial Disability

In exceptional cases, a worker's entitlement to a permanent partial disability award may be assessed under the method set out in section 23(3) of the *Act*. This method requires an employability assessment.

A Board officer in Vocational Rehabilitation Services conducts the assessment under section 23(3). The goal is to identify suitable occupations, along with estimated earnings, that maximize the worker's long-term earning capacity up to the pre-injury wage rate. In most cases, "long-term" refers to three to five years.

The employability assessment process is conducted in light of all possible rehabilitation measures that may be of assistance and appropriate to the circumstances of each worker.

The rehabilitation plan may form the basis for the employability assessment. A functional capacity evaluation may be used to assess the worker's capacity for work. This provides information on the worker's residual maximum functional capabilities, confirmation of identified alternative job options and plans for vocational reintegration.

Labour market data in conjunction with the objective functional capacity information is used to create a residual vocational profile. A list of suitable occupations based on the profile is then produced. Consideration is then given to whether these occupations are reasonably available.

The worker is given a copy of the assessment and allowed 30 days in which to respond. Unless this timeframe is waived by the worker, submissions received within this time frame are considered before the Board officer in Disability Awards makes a final decision on section 23(3) entitlement.



PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Sections 16, 23 and 30 of the <i>Act</i> .
CROSS REFERENCES:	Procedure for Determining Whether Worker is Temporarily Partially Disabled (policy item #35.11), Amount of Payment (policy item #35.20), Suitable Occupation (policy item #35.21), Section 23(3) Assessment Formula (policy item #40.10), Suitable Occupation (policy item #40.12), Measurement of Earnings Loss (policy item #40.13), Provision of Employability Assessments (policy item #40.14), and Vocational Rehabilitation - Income Continuity (policy C11-89.10), of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #89.00, #89.10, and #89.20 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .

**RE: Vocational Rehabilitation
Income Continuity**

ITEM: C11-89.10

BACKGROUND

1. Explanatory Notes

This policy deals with the payment of a rehabilitation allowance pending the assessment of a permanent disability award under section 23(3).

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 23 provides, in part:

- (3) ... if
 - (a) a permanent partial disability results from the a worker's injury, and
 - (b) the Board makes a determination under subsection (3.1) with respect to the worker,

the Board may pay the worker compensation that is a periodic payment that equals 90% of the difference between

- (c) the average net earnings of the worker before the injury, and
- (d) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;

- (ii) the average net *earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.* (emphasis added)
- (3.1) A payment may be made under subsection (3) only if the Board determines that the combined effect of the worker's occupation at the time of the injury and the worker's disability resulting from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.
- (3.2) In making a determination under subsection (3.1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation.

POLICY

Continuity of Income Pending Assessment of Permanent Disability Award

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

- whose disability has stabilized,
- who are unemployed, or employed at a reduced income level due to their compensable disability,
- who are not entitled to temporary wage-loss benefits,
- who are not receiving other wage-loss equivalency benefits from the Board, and
- who are likely to receive a permanent partial disability award under section 23(3) of the *Act*

Consideration will be given to the payment of a rehabilitation allowance between the end of wage-loss or other wage replacement payments and the commencement of the permanent disability award under section 23(3). These income continuity payments will be considered by the Board officer in Vocational Rehabilitation Services following discussions with appropriate Board officers.

Prior to implementing an income continuity payment, the Board officer in Vocational Rehabilitation Services must have considered and offered to the

worker all rehabilitation measures which are reasonable and might be of assistance to the worker.

Amount of Payment

Continuity of income payments are based initially on the same rate as the wage-loss benefit rate and will continue at that level until the permanent disability award is granted, except in any of the following circumstances:

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

In the above circumstances, the Board officer in Vocational Rehabilitation Services will complete the employability assessment required under section 23(3), and will provide a copy of that assessment to the worker. Thirty (30) days after the worker has been provided with a copy of the employability assessment, the Board officer will adjust the income continuity rate to the rate which best reflects the conclusions contained in the employability assessment regarding the worker's projected long-term earning capacity. However, the Board officer will not adjust the rate at this point if, during the 30-day period based on new evidence, the Board officer decides the employability assessment requires revision.

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

Permanent Disability Award Reassessments

Continuity of income payments will also be considered for workers who are already receiving a permanent disability award on the claim, where the Board is reviewing that award and it is likely that the worker will receive a significant increase in the award. As well, there must be evidence of a deterioration in the worker's medical condition which is likely to be permanent, and the worker must be experiencing a reduction in income during the review period which is related to the reasons for the review. Benefit levels will be established in accordance with this policy.

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Sections 16 and 23(3) of the <i>Act</i> .
CROSS REFERENCES:	Suitable Occupation (policy item #40.12), and Vocational Rehabilitation - Employability Assessments – Temporary Partial Disability and Permanent Partial Disability (policy C11-89.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #89.11 and #89.13 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Spinal Cord and Other Severe Injuries**

ITEM: C11-90.00

BACKGROUND

1. Explanatory Notes

This policy sets out the vocational rehabilitation services that may be provided to workers who suffer serious injuries.

2. The Act

Section 16:

- (1) To aid in getting injured workers back to work or to assist in lessening or removing a resulting handicap, the Board may take the measures and make the expenditures from the accident fund that it considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Spinal Cord And Other Severe Injuries

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

The assistance provided by the Board may include vehicle modifications, house renovations, Personal Care Allowances, Independence and Home Maintenance Allowances and Homemakers' Services. Service requirements are assessed and recommended by the Board officer in Vocational Rehabilitation Services.

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



Head Injuries

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

PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16 of the <i>Act</i> .
CROSS REFERENCES:	Medical Assistance (Chapter 10) and Vocational Rehabilitation - Nature and Extent of Programs and Services (policy C11-88.00) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces policy items #90.00 and #90.10 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .



**RE: Vocational Rehabilitation
Vocational Assistance for Surviving Spouses
and Dependants of Deceased Workers**

ITEM: C11-91.00

BACKGROUND

1. Explanatory Notes

This policy sets out vocational assistance that may be provided to surviving spouses and dependants of deceased workers.

2. The Act

Section 16 provides:

- (1) ...
- (2) Where compensation is payable under this Part as the result of the death of a worker, the Board may make provisions and expenditures for the training or retraining of a surviving dependent spouse, regardless of the date of death.
- (3) The Board may, where it considers it advisable, provide counselling and placement services to dependants.

POLICY

Vocational Assistance For Surviving Spouses And Dependants Of Deceased Workers

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

Sponsorship of Training for Surviving Dependent Spouses

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



Eligibility

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

Guidelines

1. Before agreeing to sponsor a specific training program, the Board officer in Vocational Rehabilitation Services should determine that the spouse meets the entry requirements for the training program and has a reasonable prospect of completing the program successfully.
2. Assistance under section 16(2) of the *Act* is not limited to any particular kind of training, except that, to be consistent with the general policy and objectives of the *Act*, the program should be one



that helps to improve the earning capacity of the spouse. Thus, in one case, it may be a vocational training program for a particular occupation; in another case, it may be a training course designed to improve the effectiveness of the spouse in the labour market generally.

3. With regard to a university or higher educational program, the Board may include this for support under section 16(2) where it appears to be needed to overcome the effect of the worker's death; but this would not involve support of a university program on an indefinite basis. Normally, the support would not extend further than one educational level beyond the qualifications that the spouse has when the matter is considered.
4. For assistance to be rendered, it is not necessary that there should be any application. Assistance under section 16(2) may result from an application by the surviving spouse, or it may result from an initiative and proposal by the Board officer in Vocational Rehabilitation Services, or others concerned with the claim, with which the surviving spouse may agree.
5. The sponsorship opportunities of other agencies are considered in providing integrated service delivery, but their availability does not diminish the Board's primary service and funding responsibilities.

Expenditures

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

1. Tuition fees and necessary books, materials or equipment.
2. Travel and subsistence expenses and homemaker allowances, including child care, where appropriate.
3. An additional living allowance may be paid as follows:
 - (a) A surviving dependent non-invalid spouse who is eligible for a capital sum should not be expected to use that sum for maintenance while undertaking a program of training needed as a result of the worker's death. Similarly, the spouse should not be expected to draw on savings or other capital sums.



- (b) The dependent spouse should be expected to use funds provided through a monthly Board pension, Canada Pension Plan benefits, allowances from Human Resources Development Canada, etc., to meet ordinary living expenses while completing a training program. If the spouse's income from such sources falls below the minimum weekly level determined by the Board, the Board officer in Vocational Rehabilitation Services will normally authorize the payment of a training allowance sufficient to raise the spouse's income to the minimum. The allowance is payable to the spouse during the period required to complete the training program.
- (c) The minimum is equal to the weekly equivalent of 60% of 90% of the minimum average earnings prescribed by section 17(3)(c) for calculating pensions payable to spouses of deceased workers. This formula is essentially the same as is set out in section 17(3)(c) for calculating the total pension (including Canada Pension benefits) payable to an invalid spouse or spouse over 50 without children.
- (d) Whether or not a spouse's income falls below the minimum, the Board officer in Vocational Rehabilitation Services may supplement the income of the spouse when the actual expenses incurred during the course of the program exceed what is covered by the above items.

Vocational Services to Dependants of Deceased Workers

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



PRACTICE

For any relevant PRACTICE information, readers should consult the Rehabilitation and Compensation Services Division's Practice Directives available on the WCB website.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 16.
CROSS REFERENCES:	Section 17 of the <i>Act</i> and Non-Invalid Widow or Widower under 40 Years (policy item #55.32), A Minimum Amount of Average Earnings (policy item #55.26), Widow or Widower 50 Years of Age or Over or Invalid (policy item #55.31), Non-Invalid Widow or Widower under 40 Years (policy item #55.32), Transportation Allowances (policy item #82.00), Rates of Subsistence (policy item #83.20), Homemakers Services (policy item #84A.00), of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	Replaces Vocational Rehabilitation – Vocational Assistance for Surviving Spouses and Dependants of Deceased Workers (policy item #91.00) and Vocational Services to Dependants of Deceased Workers (policy item #91.20) of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Act</i> , as amended by the <i>Workers Compensation Amendment Act, 2002</i> .