



WORKING TO MAKE A DIFFERENCE

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Update 2005 - 5

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

This update of the *Rehabilitation Services & Claims Manual* contains amendments to the *Manual* implemented since update 2005 - 4.

This amendment includes:

- CPI Adjustments effective January 1, 2006

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

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

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Roberta Ellis  
Vice President  
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Attachments

## ***Rehabilitation Services & Claims Manual, Volume II***

### **SUMMARY OF AMENDMENTS – Update 2005 – 5**

Chapter 5	Pages 5 - 6	Policy item #34.20
Chapter 6	Pages 5 - 6 and 39 - 40	Policy items #37.20 and #43.20
Chapter 7	Pages 11 - 12, 21 - 24	Policy items #49.10, #51.00 and #51.20
Chapter 8	All pages of affected policies	Items C8-54.00, C8-55.00, C8-56.00, C8-56.10, C8-56.40, C8-56.60 and C8-56.70
Chapter 9	Pages 7 - 8, 23 - 24	Policy items #67.31 and #69.00
Chapter 10	Pages 35 - 38, 41 - 42 and 47 - 48	Policy items #80.20, #81.00, #82.20 and #83.20
Chapter 17	Pages 7 - 8	Policy item #114.11
Appendix 5	Pages A5-9 to A5-10	
Appendix 6	All pages	

worker to stay off work from time to time. The question then arises whether wage-loss benefits should be paid for these periods. If the fluctuations causing the disability are within the range normally to be expected from the condition for which the worker has been granted a permanent disability award, no wage loss is payable. The permanent disability award is intended to cover such fluctuations. Wage loss is only payable in cases where there is medical evidence of a significant deterioration in the worker's condition which not only goes beyond what is normally to be expected, but is also a change of a temporary nature. If the change is a permanent one, the worker's permanent disability award will simply be reassessed.

### **#34.20 Minimum Amount of Compensation**

Wage-loss compensation cannot be less per week than the minimum set out below, unless the worker's average earnings are less than that sum per week, in which case compensation is paid in an amount equal to average earnings. (2)

			\$ Per Week
January 1, 2005	—	December 31, 2005	326.25
January 1, 2006	—	December 31, 2006	334.85

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

The minimum is subject to cost of living adjustments as described in policy item #51.20. However, these adjustments only apply to injuries or disablements occurring after they come into force. Existing payments are not automatically increased to a new minimum, although they may be the subject of cost of living adjustments in their own right.

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

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

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

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

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

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

Except where section 34(1) is being applied, (3) the employer is not refunded any money paid to the worker for time not worked on the day when he or she lays off work.

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

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

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

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

In interpreting "potential loss" no rigid rules can be established since every case will have to be determined on the information received. In situations where there is a lay-off due to lack of work, a worker would normally be considered as having suffered a potential loss. The position would be similar where a partially disabled worker has continued work on light work and has been laid off due to a lack of work, but payments on such a claim would be considered under section 30 of the Act. The general expectation in those situations is that the worker would, if not injured, have immediately sought new employment and the Board should not speculate as to if and when it would have been found. If, however, there is

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

Section 22(2) provides that the compensation awarded for permanent total disability cannot be less per month than the minimum set out below. This minimum is subject to cost of living adjustments as described (policy item #51.20).

Date			\$ Minimum
January 1, 2005	—	December 31, 2005	1,413.93
January 1, 2006	—	December 31, 2006	1,451.20

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

## **#37.21 Statutory Minimum Application**

The statutory minimum only applies in cases where a worker is found to be 100% disabled under the section 23(1) method of permanent disability assessment. It does not apply when the percentage of disability is less than 100% but the worker is found to be totally unemployable under the section 23(3) method of permanent disability assessment. (2)

## **#37.30 Reopening Claims**

Where a claim involving a permanent total disability is reopened, no payments of wage loss can be made. Wage loss may, however, be payable where a worker receiving a permanent total disability award of less than the current maximum suffers a new injury at work. The amount payable would be the difference between the periodic payment being paid on the old claim and 90% of the long term average net earnings on the new claim, limited by the current maximum.

## **#38.00      COMPENSATION FOR PERMANENT PARTIAL DISABILITY**

Section 23 of the *Act* pertains to the determination of a worker's entitlement to compensation for a permanent partial disability award. An award granted under section 23 compensates a worker for permanent partial disability that results from a work injury. Section 23(1) is the mandatory provision that must be applied in the assessment of permanent partial disabilities. Only in exceptional circumstances will an assessment be done under section 23(3).

In all cases where a permanent partial disability results from a work injury, a worker's entitlement to a permanent partial disability award must be calculated using the method set out in section 23(1) of the *Act*. In determining the compensation payable under 23(1), the Board may be guided by section 23(2), which permits the use of a schedule of percentages of impairment of earning capacity for specified injuries or mutilations.

In all but exceptional cases, the effect of the disability on a worker will be appropriately compensated under section 23(1).

Only in exceptional cases will section 23(1) not be the method of assessment used to determine a worker's entitlement to a permanent partial disability award. In these cases the Board considers whether the combined effect of a worker's occupation at the time of injury and the disability resulting from the injury is so exceptional, that the section 23(1) method does not appropriately compensate the worker for the injury. In these exceptional cases, the Board has the discretion to assess a worker's entitlement to a permanent partial disability award under section 23(3) of the *Act*.

## **#39.00      SECTION 23(1) ASSESSMENT**

Section 23(1) of the *Act* provides:

Subject to subsections (3) to (3.2) and sections 34 and 35, 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.

(emphasis added)

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

**January 1, 2006 – December 31, 2006**

	<b>Minimum</b>	<b>Maximum</b>
<b>Head and Neck</b>		
1.	\$ 0	\$ 5,123.28
2.	5,123.28	10,246.54
3.	10,246.54	31,123.81
4.	31,123.81	51,873.04
<b>Each Hand</b>		
1.	\$ 0	\$ 1,665.06
2.	1,665.06	3,458.20
3.	3,458.20	10,246.54
4.	10,246.54	17,291.00
<b>Each Arm</b>		
1.	\$ 0	\$ 1,280.80
2.	1,280.80	2,561.64
3.	2,561.64	7,812.95
4.	7,812.95	12,936.26
<b>Each Leg (including the foot)</b>		
1.	\$ 0	\$ 896.56
2.	896.56	1,665.06
3.	1,665.06	5,123.28
4.	5,123.28	8,553.12

Torso		
1.	\$ 0	\$ 896.56
2.	896.56	1,665.06
3.	1,665.06	5,123.28
4.	5,123.28	8,553.12

The above figures are adjusted on January 1 of each year. Effective June 30, 2002, the percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20 will be used.

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

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

#### Example 1

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

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

2. it is considered unreasonable or inadvisable to proceed with recovery.

In no case will recovery be waived if there was fraud or misrepresentation. Approval to waive recovery, when granted, does not constitute forgiveness of the debt. In some instances, at the discretion of the Vice-President (or Director for waivers under \$1,000), a recovery waiver may be granted even though a permanent disability award is being paid or will be paid. Should a further claim be recorded or a later reopening accepted where a prior waiver has been approved, the question of initiating recoveries must first be discussed with the Vice-President or Director who approved the waiver.

#### **#48.48      *Unpaid Assessments***

Unpaid and overdue assessments are treated in the same manner as overpayments if a claim is later received from an employer or principal of the limited company responsible for the debt or an independent operator who has purchased but not fully paid for personal optional protection coverage. If, at the time of the claim, the worker is working for another company or organization, the decision whether or not to recover the overdue assessment from benefit entitlements can only be made by the Board officer in the Finance Division who has been assigned that authority by the President, or a Compensation Services Director or a delegate. Recoveries will not be made from widows, widowers or dependants where the claim is the result of a fatality and the worker was employed with an employer other than the employer owing the assessments.

**EFFECTIVE DATE:**            March 18, 2003 (as to the removal of the title Manager, Collections, and the substitution of the Board officer in the Finance Division who has been assigned that authority by the President)

**APPLICATION:**             Not applicable.

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

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

#### **#49.00      **INCAPACITY OF A WORKER****

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

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

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

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

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

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

or in a case of permanent disability may be applied toward the cost of the worker's maintenance, but, in that case and where the worker is conscious, there must be paid to, or for the use of, the worker a comfort allowance of at least . . .” the amount set out below out of each periodic payment.

January 1, 2005	—	December 31, 2005	\$194.94
January 1, 2006	—	December 31, 2006	\$200.08

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

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

The rate of interest provided in this policy will also be used in the calculation of overpayments as outlined in policy item #48.42.

**EFFECTIVE DATE:** March 3, 2003 (as to reference to section 258)  
**APPLICATION:** Not applicable.

## **#51.00 COST OF LIVING ADJUSTMENTS TO PERIODIC PAYMENTS**

Sections 25(1) and (2) of the *Act* provide the method for indexing periodic payments of compensation to a worker. The sections provide:

- (1) For the purposes of this section, the Board must, as of January 1 of each year,
  - (a) determine the percentage change in the consumer price index for Canada, for all items, for the 12 month period ending on October 31 of the previous year, as published by Statistics Canada, and
  - (b) subtract 1% from the percentage change determined under paragraph (a).
- (2) The percentage resulting from calculations made under subsection (1) must not be greater than 4% or less than 0%.

The Board determines the indexing factor to be applied to periodic payments of compensation to a worker or a dependant in the following manner:

- The Board compares the consumer price index for October of the previous year with the consumer price index for October of the year prior to the previous year.
- One percentage point is subtracted from the percentage change between these two consumer price indexes.
- If the percentage that results from this subtraction is greater than 4%, it is reduced to 4%. If the percentage that results from this subtraction is less than 0%, no adjustment to periodic payments of compensation is made.

The resulting percentage changes determined annually are set out below:

<b>Date</b>	<b>Percentage</b>
January 1, 2006	1.635783

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

The resulting percentage change is applied on January 1 of each year to periodic payments of compensation made continuously in respect of an injury or a death occurring more than 12 months before the date of the adjustment.

If the Board starts or restarts periodic payments of compensation on a date more than 12 months after the date of the worker's injury or death, the Board adjusts all periodic payments as if payments were made continuously from the date of injury or death. This means that if payments on a claim are started or restarted more than 12 months after the injury or death, the worker or dependant receives the benefit of any cost of living adjustments occurring in the interim period as if he or she had been continuously paid since the date of injury or death.

Compensation paid to a worker on or after June 30, 2002 will be indexed according to section 25 of the *Act*, irrespective of the date the worker was injured. However, if the Board pays to a worker, who was injured before June 30, 2002, compensation as a result of a retroactive adjustment, the indexing rules in section 25 of the *Act*, as it read immediately before June 30, 2002, apply to the compensation benefits that should have been paid to the worker before June 30, 2002. Compensation due to the worker on or after June 30, 2002 will be indexed according to section 25 of the *Act*.

Effective December 31, 2003, compensation paid to a dependant of a deceased worker is indexed under section 25 of the *Act* regardless of the date that the worker died. However, if the Board retroactively adjusts compensation in respect of a death that occurred before December 31, 2003, the indexing rules in section 25.1 of the *Act*, as it read immediately before December 31, 2003, apply to the compensation that should have been paid to the dependant before that date. Compensation owing to the dependant on or after December 31, 2003 is indexed under section 25 of the *Act*.

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

**Effective Date:** December 31, 2003 (as to references to benefits paid to surviving dependents).

**Application:** This policy item applies to all periodic payments made to workers and surviving dependants.

## **#51.20 Dollar Amounts in the Act**

Section 25.2 (1) of the *Act* provides:

Subject to subsection (3), the Board must adjust every dollar amount referred to in this Act on January 1 of each year by applying the percentage change in the consumer price index for Canada,

for all items, for the 12 month period ending on October 31 of the previous year, as published by Statistics Canada.

The Board determines the percentage change to be applied each January 1 to dollar amounts in the *Act* by comparing the consumer price index for October of the previous year with the consumer price index for October of the year prior to the previous year.

The resulting percentage changes determined annually are set out below:

<b>Date</b>	<b>Percentage</b>
January 1, 2006	2.635783

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

When the Board makes the adjustments, those dollar amounts referred to in the *Act* are deemed to be amended.

These provisions do not apply to the figures referred to in policy item #39.61, the maximum wage rate and other figures referred to in policy item #69.00.

Authority to approve adjustments under section 25.2 has been assigned to the President.

Authority has also been assigned to the President to adjust the following amounts to reflect changes based upon the consumer price index, using the formula set out in the applicable item of the *Manual*:

Maximum and Minimum Disfigurement Amount	#43.20
Clothing Allowances	#79.00
Personal Care Allowances	#80.20
Independence and Home Maintenance Allowance	#81.00
Transportation Allowance	#82.20
Subsistence Allowances: Meals	#83.20
Transfer of Costs	#114.11
Funeral and Other Death Expenses	C8-54.00

The Board adjusts dollar amounts referred to in sections 17 and 18 of the *Act* in accordance with section 25.2 of the *Act*. In addition, effective December 31, 2003, the Board adjusts the dollar amounts referred to in sections 17 and 18 and Schedule C of the *Act*, as it read immediately before June 30, 2002, in accordance with section 25.2 of the *Act*.

**Effective Date:** December 31, 2003 (as to references to sections 17 and 18 of the *Act* as well as dollar amounts in sections 17 and 18 and Schedule C of the *Act* as it read immediately before June 30, 2002).

**Application:** This policy item applies to all dollar amounts in the *Act*.

**RE: Compensation on the Death of a Worker-  
Funeral and Other Death Expenses****ITEM: C8-54.00**

## **BACKGROUND**

### **1. Explanatory Notes**

This policy establishes the amount the Board will pay for funeral and other death expenses following the death of a worker. It also describes who is eligible to receive payments for these expenses.

### **2. The Act**

Section 17(2):

Where compensation is payable as the result of the death of a worker or as the result of injury resulting in death,

- (a) in addition to any other compensation payable under this section, an amount in respect of funeral and related expenses, as determined in accordance with the policies of the board of directors, must be paid out of the accident fund,
- (b) the employer of the worker must bear the cost of transporting the body to the nearest business premises where funeral services are provided, and
- (c) if burial does not take place there, the costs of any additional transportation, up to a maximum determined in accordance with the policies of the board of directors, may be paid out of the accident fund.

Section 17(2.1):

No action for an amount larger than that established by subsection (2) lies in respect of the funeral, burial or cremation of the worker or cemetery charges in connection with it.

## **POLICY**

### **1. Funeral and Other Death Expenses**

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

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

	<b>Funeral And Related Expenses</b>	<b>Transportation of Body</b>
January 1, 2005 – December 31, 2005	\$7,450.26	\$1,177.08
January 1, 2006 – December 31, 2006	\$7,646.63	\$1,208.11

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

Effective December 31, 2003, the above figures are adjusted annually on January 1 of each year. The percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, is used.

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

### **2. Person to Whom Expenses are Paid**

Payment of funeral and related expenses is made to the most eligible person or persons, as determined by the Board. In determining whom to pay, the Board considers who has incurred the cost of funeral and related expenses, or who has undertaken to meet those payments.

Where the funeral and related expenses are less than the maximum provided in this Item, the Board pays only the actual amount of funeral and related expenses.

Once the Board has paid out the maximum amount provided in this Item to one or more persons, the Board does not consider any other claims for funeral and related expenses.

**PRACTICE**

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

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<b>EFFECTIVE DATE:</b>	December 31, 2003
<b>AUTHORITY:</b>	Section 17(2) of the <i>Act</i>
<b>CROSS REFERENCES:</b>	Dollar Amounts in the <i>Act</i> (policy item #51.20) of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>HISTORY:</b>	Replaces policy items #53.00 and #53.10 of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>APPLICATION:</b>	This Item applies to the death of a worker on or after December 31, 2003.



**RE: Compensation on the Death of a Worker-  
Lump Sum Payment****ITEM: C8-55.00**

## **BACKGROUND**

### **1. Explanatory Notes**

This policy describes the provision of a lump sum payment to eligible widows, widowers, common-law wives, common-law husbands or foster parents.

### **2. The Act**

Section 17(13):

In addition to any other compensation provided, a dependent widow or widower, common law wife or common law husband or foster parent in Canada to whom compensation is payable is entitled to a lump sum of \$2,151.23.

## **POLICY**

### **Lump Sum Payment**

A dependent widow or widower, common-law wife or common-law husband, or foster parent in Canada to whom compensation is payable as a result of a worker's death is also entitled to a lump sum payment as follows:

January 1, 2005	—	December 31, 2005	\$2,200.44
January 1, 2006	—	December 31, 2006	\$2,258.44

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

Payment of this amount is made as soon as the claim is accepted.

## **PRACTICE**

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

**EFFECTIVE DATE:** December 31, 2003  
**AUTHORITY:** Section 17(13) of the *Act*.  
**CROSS REFERENCES:** Dollar Amounts in the *Act* (policy item #51.20) of the *Rehabilitation Services & Claims Manual*, Volume II.  
**HISTORY:** Replaces policy item #55.10 of the *Rehabilitation Services & Claims Manual*, Volume II.  
**APPLICATION:** This Item applies to the death of a worker on or after December 31, 2003.

**RE: Compensation on the Death of a Worker  
Calculation of Compensation –  
Widow or Widower with Children**

**ITEM: C8-56.00**

## **BACKGROUND**

### **1. Explanatory Notes**

This policy describes how compensation as a result of a worker's death is calculated for a dependent widow or widower with dependent children.

### **2. The Act**

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
- (a) where the dependants are a widow or widower and 2 or more children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those dependants, would equal the total of
    - (i) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum set out in paragraph (g); and
    - (ii) \$293.48 per month for each child beyond 2 in number.
  - (b) where the dependants are a widow or widower and one child, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those dependants, would equal 85% of the monthly rate compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum set out in paragraph (g).
  - (g) the minimum allowances payable under paragraphs (a), (b) and (f) must be the allowances that would be payable if the allowances were calculated under those paragraphs in respect of a deceased worker with average earnings of \$31,617.14 per annum.

**POLICY**

This Item applies to a widow or widower and children who were wholly or partly dependent on a worker's earnings at the time of the worker's death. A widow or widower and children who were not dependent upon the worker's earnings may be entitled to compensation under Item C8-56.70.

**1. Calculation of Compensation – Widow or Widower with Two or More Children**

The monthly payment for a dependent widow or widower and two or more dependent children is calculated as follows:

- (I) The Board adds:
- (a) the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum provided in section 4 of this Item, and
  - (b) the following amount per month for each child beyond two in number.

January 1, 2005	—	December 31, 2005	\$285.94
January 1, 2006	—	December 31, 2006	\$293.48

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

- (II) The Board then deducts 50% of the federal benefits payable to or for the dependants from the sum determined above.

The example below describes the monthly benefits that would be payable for a dependent widow or widower and three dependent children following the death of a worker on June 30, 2002. The worker's average net earnings were \$40,000 per year.

**A. 50% of total federal benefits**

Federal benefits for widow or widower		=	437.99
Federal benefits for children	(3 x 183.77)	=	551.31
Total federal benefits (widow or widower and children)		=	989.30
50% of total federal benefits	50% x 989.30	=	494.65

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B.	Monthly permanent total disability award rate at date of death	$90\% \times \frac{40,000}{12}$	=	3,000
C.	Additional child allowance under section 17		=	263.70
D.	Total monthly benefits (B plus C)		=	3,263.70
	Total benefit entitlement (W.C.B. and federal benefits)		=	3,263.70
E.	Total W.C.B. monthly benefits payable (D less A)		=	2,769.05

**2. Calculation of Compensation – Widow or Widower with One Child**

The monthly payment for a dependent widow or widower with one dependent child is calculated as the difference between:

- (a) 85% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, subject to the minimum provided in section 4 of this Item, and
- (b) 50% of the federal benefits payable to or for the dependants.

In the example described in section (1) above, monthly benefits would be payable to a dependent widow or widower and one dependent child as follows:

A.	50% of total federal benefits			
	Federal benefits for widow or widower		=	437.99
	Federal benefits for child		=	183.77
	Total federal benefits		=	621.76
	50% of total federal benefits	$50\% \times 621.76$	=	310.88
B.	Monthly permanent total disability award rate at date of death	$90\% \times \frac{40,000}{12}$	=	3,000

C.	85% of permanent total disability award rate	$85\% \times 3,000$	=	2,550
	Total benefit entitlement (W.C.B. and federal benefits)		=	2,550
D.	Total W.C.B. monthly benefits payable (C less A)		=	2,239.12

**3. Change in Federal Benefits**

If the Board receives evidence of a change in a dependant's entitlement to federal benefits, the amount of federal benefits deducted from the compensation for that dependant is adjusted accordingly. For instance, if the Board receives evidence that children's benefits under the Canada Pension Plan have been terminated, the amount of federal benefits deducted from the compensation for that child will be adjusted. The adjustment takes effect as of the date of the change in federal benefits.

**4. Minimum Monthly Benefits**

The minimum monthly payment under this Item must not be less than the amount that would be payable if, at the date of death, the deceased worker had the following average earnings:

January 1, 2005	—	December 31, 2005	\$30,805.18
January 1, 2006	—	December 31, 2006	\$31,617.14

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

**5. Commencement of Benefits**

Benefits under this Item commence on the day after the date of the worker's death.

**6. Duration and Recalculation of Benefits**

Compensation for a dependent widow or widower is payable for life.

Benefits for a dependent widow or widower with children are recalculated in accordance with Item C8-57.00 as each child ceases to meet the requirements, described in Item C8-53.10, to be eligible for compensation as a "child" of the deceased worker.

Benefits for dependent children are recalculated under Item C8-57.00 if the widow or widower dies before the children cease to meet the requirements, as described in Item C8-53.10, to be eligible for compensation as "children" of the deceased worker.

## **PRACTICE**

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

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<b>EFFECTIVE DATE:</b>	June 30, 2002
<b>AUTHORITY:</b>	Sections (17)(3)(a), (b) and (g) of the <i>Act</i> .
<b>CROSS REFERENCES:</b>	Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00), Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10), Compensation on the Death of a Worker – Definitions – Meaning of “Federal Benefits” (Item C8-53.20), Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit (Item C8-56.70) and Compensation on the Death of a Worker – Recalculation of Compensation on a Change in Circumstances (Item C8-57.00) of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>HISTORY:</b>	Replaces policy items #55.00, #55.20, #55.21, #55.22, #55.26, #55.60 and #61.60 of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>APPLICATION:</b>	This Item applies to the death of a worker on or after June 30, 2002.



**RE: Compensation on the Death of a Worker  
Calculation of Compensation –  
Widow or Widower with No Children**

**ITEM: C8-56.10**

## **BACKGROUND**

### **1. Explanatory Notes**

This policy describes how compensation as a result of a worker's death is calculated for a dependent widow or widower with no dependent children.

### **2. The Act**

Section 1:

“invalid” means physically or mentally incapable of earning.

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
- (c) where the dependant is a widow or widower who, at the date of death of the worker, is 50 years of age or over, or is an invalid spouse, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for that dependant, would equal 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, but the monthly payments must not be less than \$948.35.
  - (d) where the dependant, at the date of death of the worker, is a widow or widower who is not an invalid and is under the age of 50 years, and there are no dependent children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for that dependant, would equal the product of
    - (i) the percentage determined by subtracting 1% from 60% for each year that the age of that dependant, at the date of the death of the worker, is under 50 years, and
    - (ii) the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability,

but the percentage determined under subparagraph (i) must not be less than 30% and the monthly payments must not be less than \$948.35.

- (6) Where at the date of death a spouse is not an invalid, but is suffering from a disability that results in a substantial impairment of earning capacity, the Board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had been an invalid.

## **POLICY**

This Item applies where there are no dependent children, but there is a widow or widower who was wholly or partly dependent upon a worker's earnings at the time of the worker's death. A widow or widower who was not dependent upon the worker's earnings may be entitled under Item C8-56.70.

### **1. Meaning of "Invalid"**

The term "invalid" is defined in the *Act* as "physically or mentally incapable of earning". This means the person is not capable of independently supporting himself or herself financially. A person who has a physical or mental disability, but is capable of independently supporting himself or herself financially is not an "invalid". A temporary physical or mental incapacity to earn is not sufficient to determine that a person is an "invalid".

Where at the date of death a spouse is not an invalid, but is suffering from a disability that results in a substantial impairment of earning capacity, the Board may, having regard to the degree of disability or the extent of impairment of earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had been an invalid.

### **2. Calculation of Compensation – Widow or Widower 50 Years or Older or Invalid**

The monthly payment for a widow or widower who, at the date of the worker's death, is either:

- 50 years of age or over, or
- an invalid,

is calculated as the difference between:

- (a) 60% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability, and
- (b) 50% of the federal benefits payable to or for the widow or widower.

The monthly payment is subject to the minimum amount provided in section 5 of this Item.

### **3. Calculation of Compensation – Widow or Widower under 50 Years**

The monthly payment for a widow or widower who, at the date of the worker's death, is not an invalid and is under the age of 50 years is calculated as follows:

- (I) The Board multiplies:
  - (a) the percentage determined by subtracting one percentage point from 60%, to a minimum of 30%, for each year that the age of the widow or widower, at the date of the worker's death, is under 50 years, and
  - (b) the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability.
- (II) The Board then deducts 50% of the federal benefits payable to or for the widow or widower from the product determined above.

The monthly payment is subject to the minimum amount provided in section 5 of this Item.

When determining the percentage under (I)(a) above, the Board does not round up the age of the widow or widower to the nearest whole number. For instance, a widow or widower who is 35 years and 11 months is considered 35, not 36, for the purpose of determining the percentage to use in establishing benefits.

The example below describes the monthly benefits that would be payable for a dependent widow or widower who, at the date of the worker's death, has no children and is 35 years old. The worker, whose death occurred on June 30, 2002, had average net earnings of \$40,000 per year.

**A. 50% of federal benefits**

Federal benefits for widow or widower	=	437.99
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	50% of federal benefits	$50\% \times 437.99$	=	219
B.	Determination of percentage based on widow's age	$50 - 35$	=	15%
	Relevant percentage	$60\% - 15\%$	=	45%
C.	Monthly permanent total disability award rate at date of death	$90\% \times \frac{40,000}{12}$	=	3,000
D.	45% of permanent total disability award rate	$45\% \times 3,000$	=	1,350
	Total benefit entitlement (W.C.B. and federal benefits)		=	1,350
E.	Total W.C.B. monthly benefits payable (D less A)		=	1,131

**4. Change in Federal Benefits**

If the Board receives evidence of a change in the entitlement of a dependent widow or widower to federal benefits, the amount of federal benefits deducted from the compensation for that dependant is adjusted accordingly. The adjustment takes effect as of the date of the change in federal benefits.

**5. Minimum Monthly Benefits**

The minimum monthly payment for a dependent widow or widower under this Item is as follows:

January 1, 2005	—	December 31, 2005	\$924.00
January 1, 2006	—	December 31, 2006	\$948.35

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

The minimum monthly payment is the actual minimum paid by the Board. Federal benefits are not deducted from this minimum amount.

**6. Commencement of Benefits**

Benefits under this Item commence on the day after the date of the worker's death.

**7. Duration and Recalculation of Benefits**

Compensation for a dependent widow or widower is payable for life.

The amount of compensation payable for a dependent widow or widower who is an invalid is recalculated in accordance with Item C8-57.00 if the widow or widower ceases to be an invalid.

**PRACTICE**

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

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<b>EFFECTIVE DATE:</b>	June 30, 2002
<b>AUTHORITY:</b>	Section 1 and sections 17(3)(c) and (d) of the <i>Act</i> .
<b>CROSS REFERENCES:</b>	Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00), Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10), Compensation on the Death of a Worker – Definitions – Meaning of “Federal Benefits” (Item C8-53.20), Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit (Item C8-56.70) and Compensation on the Death of a Worker – Recalculation of Compensation on a Change in Circumstances (Item C8-57.00) of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>HISTORY:</b>	Replaces policy items #55.23, #55.30, #55.31, #55.32 and #55.33 of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>APPLICATION:</b>	This Item applies to the death of a worker on or after June 30, 2002.



**RE: Compensation on the Death of a Worker  
Calculation of Compensation - Children****ITEM: C8-56.40**

## **BACKGROUND**

### **1. Explanatory Notes**

This policy describes how compensation as a result of a worker's death is calculated for dependent children.

### **2. The Act**

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
- (f) where there is no surviving spouse or common law spouse eligible for monthly payments under this section, and
    - (i) the dependant is a child, a monthly payment of a sum that, when combined with 50% of the federal benefits to or for that child, would equal 40% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability;
    - (ii) the dependants are 2 children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those children, would equal 50% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; or
    - (iii) the dependants are 3 or more children, a monthly payment of a sum that, when combined with 50% of the federal benefits payable to or for those children, would equal the total of
      - (A) 60% of the monthly rate of compensation under this Part that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and

- (B) \$293.48 per month for each child beyond 3 in number,

subject, in all cases, to the minimum set out in paragraph (g).

- (g) the minimum allowances payable under paragraphs (a), (b) and (f) must be the allowances that would be payable if the allowances were calculated under those paragraphs in respect of a deceased worker with average earnings of \$31,617.14 per annum.

## **POLICY**

Children who were not wholly or partly dependent on the worker's earnings at the time of the worker's death are not entitled to compensation under this Item. They may, however, be entitled under Item C8-56.70.

### **1. Calculation of Compensation – Surviving Spouse or Common-Law Wife/Husband**

Where there is a surviving spouse, common-law wife or common-law husband eligible for periodic benefits, the children's benefits are calculated in conjunction with those of the spouse, common-law wife or common-law husband under Items C8-56.00, C8-56.20 or C8-56.30. With one exception, this is so whether the children live with the spouse, common-law wife or common-law husband or not. Where they live apart, the apportionment provisions described in Item C8-58.00 may be applied to the benefits. The exception involves item C8-56.20, which applies to children only when they are living with the separated spouse at the date of the worker's death.

Where there is a widow or widower and a child or children, and the widow or widower subsequently dies, benefits for the dependent children are recalculated under Item C8-57.00.

### **2. Calculation of Compensation - No Surviving Spouse or Common-Law Wife/Husband**

Where there is no surviving spouse or, common-law wife or common-law husband eligible for monthly payments under section 17 of the *Act*, benefits for any dependent children are calculated as described below.

#### **2.1 One Dependent Child**

The monthly payment for one dependent child is calculated as the difference between:

- (a) 40% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and
- (b) 50% of the federal benefits payable to or for that child.

## **2.2 Two Dependent Children**

The monthly payment for two dependent children is calculated as the difference between:

- (a) 50% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and
- (b) 50% of the federal benefits payable to or for those children.

## **2.3 Three or More Dependent Children**

The monthly payment for three or more dependent children is calculated as follows:

- (I) The Board adds:
  - (a) 60% of the monthly rate of compensation that would have been payable if the deceased worker had, at the date of death, sustained a permanent total disability; and
  - (b) the following amount per month for each child beyond three in number:

January 1, 2005	—	December 31, 2005	\$285.94
January 1, 2006	—	December 31, 2006	\$293.48

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

- (II) The Board then deducts 50% of the federal benefits payable to or for those children from the sum determined above.

## **3. Change in Federal Benefits**

If the Board receives evidence of a change in a dependant child's entitlement to federal benefits, the amount of federal benefits deducted from the compensation for that child is adjusted accordingly. For instance, if the Board receives evidence that a child's benefits under the Canada Pension Plan have been terminated, the amount of federal benefits deducted from the compensation for that child will be adjusted. The adjustment takes effect as of the date of the change in federal benefits.

**4. Minimum Monthly Benefits**

The minimum monthly payment under this Item must not be less than the amount that would be payable if, at the date of death, the deceased worker had the following average earnings:

January 1, 2005	—	December 31, 2005	\$30,805.18
January 1, 2006	—	December 31, 2006	\$31,617.14

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

**5. Recalculation**

Benefits for dependent children are recalculated in accordance with Item C8-57.00 as each child ceases to meet the requirements, described in Item C8-53.10, to be eligible for compensation as a “child” of the deceased worker.

**6. Foster Parents**

Where a foster parent assumes responsibility for the care and maintenance of a deceased worker’s dependent child or children, the Board may pay compensation to the foster parent and children under Item C8-56.50. If the Board pays compensation under Item C8-56.50, no compensation is provided for the child or children under this Item.

**7. Commencement of Benefits**

Benefits under this Item commence on the day after the date of the worker’s death.

**PRACTICE**

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

**EFFECTIVE DATE:**

June 30, 2002

**AUTHORITY:**

Sections 17(3)(f) and (g) of the *Act*.

**CROSS REFERENCES:**

Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00), Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10), Compensation on the Death of a Worker – Definitions – Meaning of “Federal Benefits” (Item C8-53.20), Compensation on the Death of a Worker – Calculation of Compensation – Widow or Widower with Children (Item C8-56.00), Compensation on the Death of a Worker – Calculation of Compensation – Spouse Separated from Deceased Worker (Item C8-56.20), Compensation on the Death of a Worker –

**REHABILITATION SERVICES &  
CLAIMS MANUAL**

Calculation of Compensation – Common-Law Relationships (Item C8-56.30), Compensation on the Death of a Worker – Calculation of Compensation – Foster Parents (Item C8-56.50), Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit (Item C8-56.70), Compensation on the Death of a Worker – Recalculation of Compensation on a Change in Circumstances (Item C8-57.00) and Compensation on the Death of a Worker – Apportionment of Compensation (Item C8-58.00) of the *Rehabilitation Services & Claims Manual*, Volume II.

**HISTORY:**

Replaces policy items #58.00, #58.21 and #58.22 of the *Rehabilitation Services & Claims Manual*, Volume II.

**APPLICATION:**

This Item applies to the death of a worker on or after June 30, 2002.



**RE: Compensation on the Death of a Worker  
Calculation of Compensation –  
Other Dependants and Dependent Parents**

**ITEM: C8-56.60**

## **BACKGROUND**

### **1. Explanatory Notes**

This policy describes the calculation of compensation for “other dependants” and dependent parents of a deceased worker.

### **2. The Act**

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
- (h) where there is
    - (i) no dependent spouse or child entitled to compensation under this section, but a worker leaves other dependants, a sum reasonable and proportionate to the pecuniary loss suffered by those dependants by reason of the death, to be determined by the Board, but not exceeding in the whole \$519.41 per month for life or a lesser period as determined by the Board; or
    - (ii) a dependent spouse, or a dependent child or children, entitled to compensation under this section, but not a spouse and child or children, and, in addition, the worker leaves a dependent parent or parents, then, in addition to the compensation payable to the spouse or children, a sum, reasonable and proportionate to the pecuniary loss suffered by the dependent parent or parents by the death, to be determined by the Board, but not exceeding \$519.41 per month for life or a lesser period as determined by the Board.

## **POLICY**

In this Item, the term “spouse” means a “widow”, “widower”, “common-law wife” or “common-law husband”.

## **1. Dependent Spouse and Children**

If both a dependent spouse and children of the deceased worker are eligible for benefits as a result of the worker's death, no other person is entitled to compensation for the death, other than funeral and transportation expenses under Item C8-54.00.

## **2. Other Dependants**

Where there is neither a dependent spouse nor children entitled to benefits as a result of a worker's death, compensation is payable to "other dependants" of the deceased worker.

The term "other dependants" means any of the following members of the worker's family who were wholly or partly dependent on the worker's earnings at the time of the worker's death:

- father, mother, stepfather, stepmother;
- person who stood in loco parentis to the worker, whether or not the person is related to the worker;
- grandfather, grandmother;
- son, daughter who does not meet the requirements under Item C8-53.10 to be eligible for compensation as a "child" of the deceased worker;
- grandson, granddaughter;
- stepson, stepdaughter who does not meet the requirements under Item C8-53.10 to be eligible for compensation as a "child" of the deceased worker;
- brother, sister, half-brother, half-sister; and
- person to whom the worker stood in loco parentis, whether or not the person is related to the worker, and who does not meet the requirements under Item C8-53.10 to be eligible for compensation as a "child" of the deceased worker.

Except in the case of parents, a member of the worker's family who is described in the above list and who was not wholly or partly dependent on the worker's earnings at the time of the worker's death is not entitled to compensation under the *Act*. A parent who was not wholly or partly dependent upon the worker's earnings may still be entitled to compensation under Item C8-56.70.

**3. Dependent Parents**

Where there is either a dependent spouse or a dependent child or children entitled to benefits as a result of a worker's death, but not a spouse and child or children, compensation is payable for the dependent parent or parents of the deceased worker.

The compensation payable to a dependent parent is in addition to the compensation payable to a dependent spouse or to a dependent child or children as a result of the worker's death.

A parent who was not wholly or partly dependent upon the worker's earnings at the time of the worker's death is not entitled to compensation under this Item. The parent may, however, be entitled to compensation under Item C8-56.70.

**4. Calculation of Compensation**

Compensation for a dependant under this Item is a sum determined by the Board to be reasonable and proportionate to the pecuniary loss suffered by the dependant as a result of the worker's death.

In determining the appropriate amount of compensation, the Board considers the amount of financial support that the dependant had been receiving from the worker at the date of the worker's death, or at the date of the injury resulting in death. The Board also considers the number of dependants eligible for compensation under this Item, as well as the maximum amount of compensation payable, as set out below.

The total amount of compensation payable for all dependants under this Item, taken together, must not exceed the following amount:

January 1, 2005	—	December 31, 2005	\$506.07
January 1, 2006	—	December 31, 2006	\$519.41

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

**5. Commencement of Benefits**

Benefits under this Item commence on the day after the date of the worker's death.

**6. Duration of Benefits**

Compensation under this Item may be for life or for a lesser period as determined by the Board. For instance, the worker's grandchild might have been dependent upon the worker's earnings for payment of tuition fees. In such a case, the Board may determine that benefits should be terminated when the grandchild ceases to attend school.

**PRACTICE**

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

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<b>EFFECTIVE DATE:</b>	June 30, 2002
<b>AUTHORITY:</b>	Section 17(3)(h) of the <i>Act</i> .
<b>CROSS REFERENCES:</b>	Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00), Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10), Compensation on the Death of a Worker – Funeral and other Death Expenses (Item C8-54.00) and Compensation on the Death of a Worker – Calculation of Compensation – Persons with a Reasonable Expectation of Pecuniary Benefit (Item C8-56.70) of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>HISTORY:</b>	Replaces policy items #59.00 and #59.10 of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>APPLICATION:</b>	This Item applies to the death of a worker on or after June 30, 2002.

**RE: Compensation on the Death of a Worker  
Calculation of Compensation –  
Persons with a Reasonable Expectation  
of Pecuniary Benefit**

**ITEM: C8-56.70**

## **BACKGROUND**

### **1. Explanatory Notes**

This policy describes how compensation as a result of a worker's death is calculated for a person who, though not dependent upon the worker's earnings, had a reasonable expectation of pecuniary benefit from the worker.

### **2. The Act**

Section 17:

- (3) Where compensation is payable as the result of the death of a worker or of injury resulting in such death, compensation must be paid to the dependants of the deceased worker as follows:
- (i) where
    - (i) no compensation is payable under the foregoing provisions of this subsection; or
    - (ii) the compensation is payable only to a spouse, a child or children or a parent or parents,

but the worker leaves a spouse, child or parent who, though not dependent on the worker's earnings at the time of the worker's death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker, payments, at the discretion of the Board, to that spouse, child or children, parent or parents, but not to more than one of those categories, not exceeding \$519.41 per month for life or a lesser period determined by the Board.

## **POLICY**

### **1. Persons with a Reasonable Expectation of Pecuniary Benefit**

This Item applies where

- (a) no compensation is payable to a dependant of the deceased, or
- (b) the compensation is payable only to a spouse, a child or children, or a parent or parents,

but the worker leaves a spouse, child or children, or parent or parents who, though not dependent upon the worker's earnings at the time of death, had a reasonable expectation of pecuniary benefit from the continuation of the life of the worker.

A reasonable expectation of pecuniary benefit requires more than an assumption that the person would have received a financial benefit from the worker if the worker had not died. There must be objective evidence that the worker would have provided an actual monetary benefit to the spouse, child or parent if he or she had not died.

Compensation may be payable to persons with a reasonable expectation of pecuniary benefit in only one of the following categories:

- (a) spouse of the deceased worker;
- (b) child or children of the deceased worker; or
- (c) parent or parents of the deceased worker.

An application for compensation from a spouse, child or parent, on the grounds that he or she is a dependant of the deceased worker will automatically be considered under this Item if it is concluded that the person was not wholly or partly dependent upon the worker's earnings at the time of the worker's death.

### **2. Calculation of Compensation**

Compensation under this Item is determined at the Board's discretion. However, monthly payments must not exceed the following amount:

January 1, 2005	—	December 31, 2005	\$506.07
January 1, 2006	—	December 31, 2006	\$519.41

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

**3. Commencement of Benefits**

Benefits under this Item commence on the day after the date of the worker's death.

**4. Duration of Benefits**

Compensation under this Item may be for life or for a lesser period as determined by the Board. For instance, before death the worker may have given a promissory note to a parent, undertaking to repay a loan with interest. In such a situation, the Board would not provide benefits for life because the parent's expectation of pecuniary benefit was not a lifelong expectation.

**PRACTICE**

For any relevant PRACTICE information, readers should consult the Practice Directives available on the WCB website.

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<b>EFFECTIVE DATE:</b>	December 31, 2003
<b>AUTHORITY:</b>	Section 17(3)(i) of the <i>Act</i> .
<b>CROSS REFERENCES:</b>	Compensation on the Death of a Worker – Definitions – Meaning of “Dependant” and Presumptions of Dependency (Item C8-53.00) and Compensation on the Death of a Worker – Definitions – Meaning of “Child” or “Children” (Item C8-53.10) of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>HISTORY:</b>	Replaces policy item #60.00 of the <i>Rehabilitation Services &amp; Claims Manual</i> , Volume II.
<b>APPLICATION:</b>	This Item applies to the death of a worker on or after December 31, 2003.



If an independent operator or employer, to whom the Board directs that this Part applies under section 2(2), has purchased coverage under this Act, the Board must determine the amount of average earnings under section 33.1 from the date of injury based on the gross earnings for which coverage is purchased.

This is an exception to both general rules for determining average earnings. The average earnings of a person entitled to personal optional protection under section 2(2) of the Act (4) are the earnings for which coverage has been purchased. There is no 10-week average earnings review.

The maximum and minimum amount of earnings for which coverage can be purchased may be obtained by contacting the Board.

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

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

Where a claim is made in respect of an injury, a disablement from an occupational disease, or a death from either cause occurring on or after January 1, 1978, the minimum amounts of compensation provided for in sections 22(2), 23(4), 29(2) and 30(2) have no application to persons who have purchased personal optional protection. (5) However, the minimum average earnings provided for in section 17(3)(g) does apply. (6)

The amount of personal optional protection purchased will be used to calculate a person's average net earnings. Compensation will be based on 90% of the person's average net earnings calculated as set out in policy item #71.00.

Compensation payable to persons entitled to personal optional protection is subject to the same cost of living adjustments as compensation payable to other persons.

**EFFECTIVE DATE:** March 18, 2003 (as to where the maximum and minimum wage rate figures may be obtained)

**APPLICATION:** Not applicable.

## **#67.30 Workers with No Earnings**

Section 33.7 of the *Act* provides:

If a worker had no earnings at the time of injury, the Board must determine the amount of average earnings of a worker under section 33.1 from the date of injury in a manner that the Board considers appropriate.

This is an exception to both general rules for determining average earnings. There is no 10-week average earnings review.

Persons working without pay are not generally considered as “workers” under the *Act*. However, there are some exceptional situations of this type which are covered and for which the *Act* or the Board has specified the earnings on which compensation is to be based. These situations are described in policy items #67.31 - #67.34.

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

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

January 1, 2005	—	December 31, 2005	\$108.76
January 1, 2006	—	December 31, 2006	\$111.63

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

The minimum wage set out above is subject to cost of living adjustments as described in policy item #51.20.

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

The average earnings of volunteer ambulance drivers and attendants and members of fire brigades working without remuneration is deemed to be the same in amount as the average earnings in their regular employment or employments, not, however, to be less than the amount on which the employer has been assessed. (7)

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.

## **#69.00      MAXIMUM AMOUNT OF AVERAGE EARNINGS**

Section 33(3) provides that a worker's average earnings cannot exceed the "maximum wage rate".

The *Act* contains a special procedure for determining the maximum wage rate in force in any year. Section 33(7) provides that "Prior to the end of each calendar year, the board must determine the maximum wage rate to be applicable for the following calendar year." The maximum wage rate to be determined under subsection (7) is an amount that the Board thinks represents the same relationship to the sum of \$40,000 as the annual average of wages and salaries in the province for the year preceding that in which the determination is made bears to the annual average of wages and salaries for the year 1984; and the resulting figure is rounded to the nearest \$100. (10) For the purpose of determining annual average of wages and salaries under subsection (8), the Board may use data published or supplied by Statistics Canada. (11) Prior to 1986, the *Act* referred to \$11,200 and 1972 as the factors in the formula for calculating the maximum.

For the maximum wage rates in force used to calculate temporary and permanent disability payments, see below.

	<b>Yearly Applicable</b>
January 1, 2005 – December 31, 2005	\$61,300.00
January 1, 2006 – December 31, 2006	\$62,400.00

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

The maximum wage rate is not subject to consumer price index adjustments. Nor can a worker who is in receipt of the current maximum compensation benefits receive the benefit of such adjustments. However, if the maximum wage rate is increased in any year, workers injured in a prior year who were limited by

the maximum compensation for that year can receive the benefit of any applicable cost of living adjustments occurring after the increase. Such adjustments are calculated using the previous maximum as a base and cannot at any time increase the worker's compensation above the current maximum. Increases in the maximum wage rate do not have the effect of increasing the existing compensation being paid to workers whose payments have been limited by the lower maximum existing in a previous year. An exception to this rule may occur when, on a reopening occurring more than three years after the injury, the Board exercises its authority under section 32 to base compensation payments on the worker's earnings at the time of the reopening. (12)

Authority to approve increases in the maximum wage rate under section 33 has been assigned to the President.

## **#69.10 Deduction of Permanent Disability Periodic Payments from Wage Loss**

Section 31(1) provides as follows:

Where a worker is receiving compensation for a permanent or temporary disability, the worker must not receive compensation for a further or other disability in an amount that would result in the worker receiving in the aggregate compensation in excess of the maximum payable for total disability.

Where a worker is entitled to wage-loss payments at the current maximum, and is in receipt of a permanent disability award under a previous claim, the permanent disability award is deducted from the wage-loss payments. If the wage-loss payments are less than the current maximum only the amount in excess of the maximum when the permanent disability award and wage loss are added together is deducted.

For calculating the amount of a deduction, the daily rate of the permanent disability award must be determined and then deducted from the daily rate of wage-loss compensation in the manner set out in policy item #70.10.

The deduction made under section 31 must be reviewed on each January 1 following the injury. This is to allow for possible cost of living adjustments to the amount of the permanent disability award and the wage loss and, with regard to January 1, changes in the maximum wage rate. For the purpose of section 31, the relevant maximum is the one applying in the year in which the wage-loss payment is being made.

For the deduction from wage loss of permanent disability awards under the same claim, reference should be made to policy items #70.00, #70.10, and #70.20.

**Level 3:** Restricted mobility. Worker needs ongoing assistance in washing, shaving, dressing, feeding, precautionary attention to skin care and ongoing assistance in daily living.

Examples are:

1. Severe head injury resulting in brain damage to the extent that the worker is not bedridden, but is dependent upon assistance and ongoing care.
2. Quadriplegia with impairment of bowel and bladder functions.

**Level 4:** Worker is almost totally immobile and requires extensive assistance in maintaining personal hygiene, precautionary attention to skin care and ongoing assistance in all phases of daily living.

Examples are:

High lesion quadriplegia or severe head injuries.

**Level 5:** The worker is totally immobile for all practical purposes and essentially requires assistance in all phases of personal hygiene, body functions and acts of daily living (quadriplegic, decerebrate and bedridden).

The determination of whether a personal care allowance is applicable and the appropriate level may include consideration of factors such as home and family situation, geographic location and other difficulties that may be encountered in relating to the worker's environment. Other medical conditions that may not be a direct result of the personal injury sustained may also be considered in the determination.

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

## #80.20 Amounts Payable at Each Level

The amounts of personal care allowances are set out below:

	Level 1	Level 2	Level 3	Level 4	Level 5
January 1, 2005 – December 31, 2005					
Daily Amount	\$14.22	\$24.23	\$36.04	\$46.66	\$57.54
Monthly Amount	\$428.03	\$748.85	\$1,081.63	\$1,402.44	\$1,723.65
January 1, 2006 – December 31, 2006					
Daily Amount	\$14.59	\$24.87	\$36.99	\$47.89	\$59.06
Monthly Amount	\$439.31	\$768.59	\$1,110.14	\$1,439.41	\$1,769.08

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

Effective June 30, 2002, the amounts of the personal care allowances will be adjusted on January 1 of each year. The percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used.

### **#80.30 Payment Procedure**

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

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

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

### **#80.40 Worker Requires Institutional Care**

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

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

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

Normally, most workers who are homeowners have the physical capacity to maintain their property in order to protect their investment in home and property. Such things as painting, repairing, landscaping, appliance repairs, renovations and the many other activities required to maintain the home are difficult or impossible for the disabled. The severely disabled worker is usually required to

hire tradespersons or others to carry out these activities, thereby incurring additional costs for maintaining home and property.

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

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

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

1. The worker must have sustained a permanent compensable disability which meets one of the following criteria:
  - (a) The disability measured using the physical-impairment method of assessment is equal to 75% of total or greater.
  - (b) The disability measured using the projected-loss-of-earnings method of assessment is equal to an equivalent of 75% of total or greater and it is concluded, after obtaining the advice of the Board officer in Vocational Rehabilitation Services, that the disability will prevent the worker from carrying out the activities covered by the allowance.
  - (c) The compensable disability is superimposed on another permanently disabling medical condition, whether compensable or not, and the combined disability meets (a) above or the Board grants a projected-loss-of-earnings award which meets (b) above. Where the pre-existing disability is non-compensable, the compensable disability must be at least half the combined disability measured using the physical-impairment method of assessment and be a significant factor in the worker's inability to do the activities covered by the allowance.
2. The worker must maintain a home or live in rented accommodation. A worker who lives in a nursing hospital or extended care facility will not be eligible. Other accommodation may be approved if it can be concluded that the worker would have contributed to its maintenance had the disability not occurred.

3. If the worker is institutionalized in a hospital, nursing care facility or extended care facility, but the spouse and children continue to maintain the family home, the allowance may be paid to the spouse.
4. The allowance commences as of the date when the worker meets the criteria set out above and will be terminated upon the death of the worker or if the worker ceases to meet the above criteria. The allowance may be paid retroactively if time elapses between the date of the worker becoming eligible for the allowance and the date eligibility is determined. With regard to any period prior to September 1, 1992, no payment can be made unless the worker meets the criteria which existed prior to that date. (22)

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

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

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

<b>Date</b>	<b>Monthly Amount</b>
January 1, 2005 – December 31, 2005	\$226.27
January 1, 2006 – December 31, 2006	\$232.23

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

Effective June 30, 2002, the amount of the independence and home maintenance allowance will be adjusted on January 1 of each year. The percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used.

The independence and home maintenance allowance is not retroactive to before June 13, 1980. However, if the worker meets the criteria for the allowance, the allowance is paid regardless of date of injury or permanent disability due to occupational disease.

If, however, necessary medical care is only available in a given centre, or the Board, acting on the advice of the health professional, refers a worker to another centre for medical care, the costs of transportation will be chargeable to the Accident Fund.

If a worker, by choice, bypasses adequate local treatment facilities, transportation costs will not be paid. Adequate treatment facilities in this case are defined as physicians or hospitals in all cases. Since all other “qualified practitioners” are limited in the types and extent of care they can offer, it would not be reasonable to prohibit a worker from bypassing one of those practitioners to get to the nearest hospital or doctor. On the other hand, it would be unreasonable to allow a worker to bypass a hospital or a doctor to go to a “qualified practitioner”. (23)

A worker may, following the injury, move his or her place of residence to another location and thereby incur increased transportation costs. This may or may not be because the worker was injured while working away from home. The Board will not normally pay the cost of the move from one place of residence to another. It will, however, pay normal transportation costs for travel from the place where the worker resides to a place of treatment or examination in the worker’s area of residence even though the worker’s choice of place of residence results in greater transportation costs. The Board will not pay for travel from the place of residence to a doctor in the worker’s former residence unless the worker’s condition requires treatment by that particular doctor.

## **#82.20 Amount of Reimbursement**

The principles set out below also apply with regard to expenses incurred in connection with a claims or Review Division inquiry.

The Board will pay the cost of public transportation where this is available and is a reasonable and normal means of travel for the journey to be made by the worker. Where the Board considers it advisable, a worker will be encouraged to travel by air and the Board will assume the cost of the air fare, together with the cost of transportation to and from airports. In situations where air travel is acceptable and the worker elects to use some alternative means, such as the use of a private car, only the most reasonable and economical public transportation cost, which is usually the bus fare, will be reimbursed. Where air travel is not practical, and not approved, only the bus fare will normally be reimbursed irrespective of the method of travel utilized by the worker. The “bus fare” rate includes necessary meal costs and taxi costs to and from bus terminals.

Where public transportation is not reasonably available, the most economical method of transport that is reasonably available will be considered.

Taxi fares will be paid when medical reports indicate that the worker's condition does not permit travel by public transportation. The worker must first obtain prior Board approval and will be required, if no voucher is provided, to obtain receipts from the taxi driver and submit the receipts for a refund.

Where there is no public transportation available, or it is deemed otherwise reasonable and acceptable for the worker to drive his or her own vehicle, an allowance of 28 cents per kilometre is paid, effective January 1, 1997, for journeys meeting the minimum kilometre limit set out in policy item #82.10.

It may, for example, be considered reasonable for a worker to drive his or her own vehicle where there is available public transport if the bus journey would involve multi bus transfers or coming by automobile would be acceptable where it permits the worker to put in half a day at work and still keep an appointment.

Parking fees are payable if parking charges are levied by the hospital or medical building where the worker is attending for treatment, but are only paid where approval has been given to pay a kilometre allowance.

The amount of the kilometre rate is set out below:

<b>Date</b>	<b>Amount Per Kilometre</b>
January 1, 2005 – December 31, 2005	33¢
January 1, 2006 – December 31, 2006	34¢

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

Effective June 30, 2002, the kilometre rate will be adjusted on January 1 of each year. The percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used. The result is rounded to the nearest cent.

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

Parking fees may be payable where approval has been given to pay a kilometre/mileage allowance. Where a worker has to buy meals while engaged in a journey for which the Board is paying expenses, the Board will pay the rates set out in policy item #83.20.

### **#83.13**      *Income Loss*

In situations where a worker who is not deemed disabled from working loses time from work to attend treatment or examination by a physician or qualified practitioner or for other authorized treatment, a payment through health care benefit funds can be made. These situations will either involve a worker who has never been declared disabled as the result of the injury or occupational disease, or has returned to work following a period of disability, but is still undergoing treatment. The payment is normally equal to 90% of the worker's actual current loss. However, it is subject to the same rules as to the maximum and minimum as are applicable to temporary total disability benefits. (See policy item #34.20 and policy item #69.00.)

Such payments are made where it is deemed unreasonable for the worker to attend for the examination(s) or treatment(s) outside of working hours. Generally, there will be no reimbursement if the loss incurred is under two hours, however, multiple losses, which in the aggregate accumulate to a significant loss, may qualify for payment. While these payments are not wage-loss compensation, the provisions of section 5(2) of the *Act* will be followed.

As such, no income-loss subsistence will be paid for losses incurred on the day of the injury.

If a loss is due either to the worker's personal selection of a physician or qualified practitioner which involves bypassing closer treatment facilities, this will be taken into account when evaluating an entitlement to income-loss subsistence.

In situations where the worker is maintained on full salary by the employer and an entitlement to income-loss subsistence has accrued, the payment will be made to the employer under the terms of section 34 of the *Act*.

### **#83.20**      **Rates of Subsistence**

"Subsistence" means the costs of accommodation and meals.

The Board will normally reimburse actual accommodation costs. When contacting the worker prior to departing from home, the Board officer will reach an agreement with the worker regarding the accommodation to be selected and the amount the Board is prepared to approve as a reimbursement.

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

<b>Date</b>	<b>Breakfast</b>	<b>Lunch</b>	<b>Dinner</b>	<b>Per Day</b>
January 1, 2005 – December 31, 2005	\$10.60	\$13.07	\$22.46	\$46.13
January 1, 2006 – December 31, 2006	\$10.88	\$13.41	\$23.05	\$47.35

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

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

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

The meal allowance will be adjusted on January 1 of each year.

Effective June 30, 2002, the percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used.

The rules set out above apply equally to family members or other persons travelling with or visiting an injured worker.

## **#84.20 Right of Eligible Workers to Choose Own Accommodation**

Patients are allowed a free choice as to whether they wish to stay at accommodations paid for by the Board or stay elsewhere. Where it is the opinion of the treating doctor that residence elsewhere would be detrimental to the health of the patient, the patient will be advised to stay at the accommodations paid for by the Board and be informed of the medical opinion. But the patient will still be allowed the choice.

Patients who live outside the Lower Mainland area, but within the Fraser Valley, who come to the Rehabilitation Centre for treatment daily, will be offered accommodation. If they elect not to accept that accommodation, they will be offered their actual travel expenses up to a maximum equal to the rate of subsistence payable under policy item #83.20 to a worker who is eligible for paid accommodation but chooses not to do so. The use of automobiles will be permitted where it is unreasonable to expect the patient to use public transport.

Patients are not allowed to park campers or trailers on the Board's premises while attending the Rehabilitation Centre for the purpose of accommodating themselves or their families. The vehicle should be parked at a recognized trailer park and the worker will receive the appropriate subsistence allowance if he or she chooses to live there.

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

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

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

January 1, 2005 – December 31, 2005	\$39,626.43
January 1, 2006 – December 31, 2006	\$40,670.90

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

Effective June 30, 2002, the dollar amount will be adjusted on January 1 of each year. The percentage change in the consumer price index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used.

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

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

The doctrine of vicarious liability has no application to section 10(8), and a transfer of costs is only available where the breach of duty of care consisted of acts or omissions by management personnel who can be identified as the employer, and not to cases where the breach of duty consists only of the act or omissions of other workers.

If there has been a breach of duty of care by the employer, the next question to be considered is whether it was a "serious" one. The word "serious" refers to the culpability of the employer's behaviour rather than the consequences of that behaviour. Regard will be had to the probability of injury resulting from the breach and the predictable gravity of the likely consequences of such an injury.

The fact that the worker was negligent does not necessarily mean that the employer's breach of duty did not cause or substantially contribute to the injury. Lapses of attention are a normal part of ordinary human behaviour that should be foreseen and guarded against.

### **#114.13**     *Discretion of the Board*

The Board has a discretion where the requirements set out in policy items #114.10 – 12 are satisfied to transfer all or part of the cost of a claim. In exercising this discretion, the Board takes no account of any contributory negligence by the worker.

### **#114.20**     **Depletion or Extinction of Industries or Classes**

Section 39(1)(b) requires the Board to “provide a reserve in aid of industries or classes which may become depleted or extinguished; ...”

Employers may apply to have the costs of a claim transferred from their class to that fund. This provision is very rarely used.

### **#114.30**     **Disasters or Other Circumstances which Unfairly Burden a Rate Group**

Section 39(1)(d) requires the Board to “provide a reserve ... to meet the loss arising from a disaster or other circumstances which the Board considers would unfairly burden the employers in a class.”

Costs will not be charged to the fund created by section 39(1)(d) because there is an unfair burden on an individual employer. The unfair burden must be on a rate group or industry group of employers.

Each deposit account employer forms a classification unit, which is treated as a self-funded rate group by itself. This does not automatically mean that a burden on the deposit account employer is a burden on the rate group. The relief available to deposit accounts under section 39(1)(d) is limited to the same sorts of situations as for other employers.

The Federal Government does not contribute to the Accident Fund, therefore no relief of costs under this section can be made where the Federal Government is recorded as the injury employer.

- (10) Ratio of the estimated difference in earnings to the B.C. average wage in the year age 65 was attained, i.e. (9)/(6). \_\_\_\_\_ 10)  
(4 decimals)
- (11) Estimated average monthly wage for B.C. in the year of adjustment (see Supplement No. 1). \_\_\_\_\_ 11)
- (12) Projection of estimated monthly wage loss in the year age 65 was attained to the date of adjustment, i.e., (10) x (11). \_\_\_\_\_ 12)
- (13) Total work months disabled due to compensable disability, i.e., 12 months/year x (2). \_\_\_\_\_ 13)
- (14) Lifetime lost earnings to age 65 expressed in terms of most recent dollars, i.e., (12) x (13). \_\_\_\_\_ 14)
- (15) Deemed total disability pension payments to age 65 = deemed current pension (including term pensions expiring at age 65) x (13). \_\_\_\_\_ 15)
- (16) Net lifetime lost income, i.e., (14) – (15). \_\_\_\_\_ 16)
- (17) Projected monthly loss of retirement income from reduced savings, i.e., 0.0005 x (16). \_\_\_\_\_ 17)

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

## SUPPLEMENT NO. 5

### MONTHLY REDUCTION OF POST-RETIREMENT EARNING CAPACITY

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

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

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

Effective June 30, 2002, the percentage change in the Consumer Price Index determined under section 25.2 of the *Act*, as described in policy item #51.20, will be used.

#### Rates

January 1, 2005	–	\$2.86 for each 1%
January 1, 2006	–	\$2.94 for each 1%

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

## APPENDIX 6

### MAXIMUM FINES FOR COMMITTING OFFENCES UNDER THE ACT

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

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

Date		Amount
January 1, 2005	– December 31, 2005	\$4,350.26
January 1, 2006	– December 31, 2006	\$4,464.92

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

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

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

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

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

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

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