



WORKING TO MAKE A DIFFERENCE

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Update 2005 – 4

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

This update of the *Rehabilitation Services & Claims Manual* contains amendments to the *Manual* implemented since update 2005 – 3.

This amendment includes;

- Policy Item #55.40, *Spouse Separated from Deceased Worker* – to remove a reference to section 17(9) of the *Workers Compensation Act* applying where there is no spouse eligible to claim benefits but a claim is made by children of the deceased who were living separate and apart from the worker.
- Policy Item #56.50, *Additional Payments* – Consumer Price Index adjustment

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:

Local phone: 604-232-9704
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Roberta Ellis
Vice-President
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Attachments

Rehabilitation Services & Claims Manual, Volume I

SUMMARY OF AMENDMENTS – Update 2005 – 4

Chapter 8	Pages 9 – 14	Policy #55.40, effective December 13, 2005 and retroactive to January 1, 1984
	Pages 15 – 16	CPI amendment to policy item #56.50, effective January 1, 2006

Rehabilitation Consultant may consider whether it should be sent earlier or later and make a recommendation on this to the Adjudicator. In no case must payment in full be delayed more than six months after the date of death.

#55.33 Non-Invalid Widow or Widower between 40 and 49 Years

Where the dependant is a widow or widower who is not an invalid and who, at the date of death of the worker, has reached the age of 40 years but not the age of 50 years, and there are no dependent children, a monthly sum calculated under Schedule C of the Act is paid. (14)

Schedule C provides for a monthly payment of the minimum amount set out in #55.31 plus the following proportion of the difference between that amount and the monthly payment that would be payable using the general formula set out in #55.31.

Schedule C

Age of Widow or Widower at Date of Death of Worker	Proportion of Difference
40	1/11
41	2/11
42	3/11
43	4/11
44	5/11
45	6/11
46	7/11
47	8/11
48	9/11
49	10/11

Consider the example of a worker who dies on January 1, 1986, leaving a dependent widow or widower aged 45 years and no children. The worker's average earnings are \$40,000 per annum and the wife or husband is entitled to Federal benefits.

A. Federal benefits

C.P.P. pension for widow or widower = 273.35

B. Monthly permanent total disability pension rate at date of death $75\% \times \frac{40,000}{12} = 2,500.00$

C.	60% of permanent total disability rate (Total monthly benefits under #55.31)	$60\% \times 2,500.00 =$	1,500.00
	Maximum benefit entitlement (W.C.B. and C.P.P.) =		1,500.00
D.	Maximum monthly payment under #55.31 (C less A) =		1,226.65
E.	Minimum monthly payment set out in #55.31 =		552.28
F.	Difference between D and E (1,226.65 less 552.28) =		674.37
G.	Plus Schedule C = 6/11ths of F (6/11 x 674.37) =		<u>367.86</u>
H.	Total W.C.B. benefits (E plus G) =		920.14

The minimum amount set out in #55.31 is regarded as a floor-level for pension benefits. Where the “proportion” referred to in the second column of Schedule C is a positive figure it will be added, and where it is a negative figure it will be ignored.

#55.40 Spouse Separated from Deceased Worker

Where, at the date of death, the claimant and the deceased worker were divorced, the claimant is not eligible for compensation as the deceased’s widow or widower. A divorce does not, however, affect the claim of any children of the marriage.

Section 17(9) contains special provisions which apply where, though still married, the worker and dependent spouse were at the date of death living separate and apart. Section 17(9)(a) provides that, where there was in force a court-order or separation agreement providing periodic payments for support of the dependent spouse, or children living with that spouse, compensation is paid as follows:

- “(i) where the payments under the order or agreement were being substantially met by the worker, monthly payments must be made in respect of that spouse and children equal to the periodic payments due under the order or agreement; or

- (ii) where the payments under the order or agreement were not being substantially met by the worker, monthly payments must be made up to the level of support that the board believes the spouse and those children would have been likely to receive from the worker if the death had not occurred."

Section 17(9)(b) provides that, where there was no court order or separation agreement in force at the date of death providing periodic payments for support of the dependent spouse, or children living with that spouse, and:

- "(i) the worker and dependent spouse were living separate and apart for a period of less than 3 months preceding the date of death of the worker, compensation is payable as if they had not been separated; or
- (ii) the worker and dependent spouse were separated with the intention of living separate and apart for a period of 3 months or longer preceding the death of the worker, monthly payments must be made up to the level of support which the board believes the spouse and those children would have been likely to receive from the worker if the death had not occurred."

In circumstances where the spouses were living separately for a period of three months or longer preceding the death of the worker, and there was no court order or separation agreement in force at the date of death providing periodic payments for support of the dependent spouse, or children living with that spouse, the following guidelines are provided to assist in the interpretation of Section 17(9)(b)(ii):

1. Intention to Live Separate and Apart Absent

If it is concluded that the spouses, although living separately, did not have the "intention" of living separate and apart, Section 17(9)(b)(ii) does not apply. In these circumstances, the dependants' entitlement would be determined under the other provisions of Section 17.

2. Intention to Live Separate and Apart Present

If it is concluded that the spouses were living separately, with the "intention" of living separate and apart, Section 17(9)(b)(ii) is applicable. The benefits payable in these circumstances would be based on the level of support, which the Board believes the dependent

spouse and children would have been likely to receive from the worker, if the death had not occurred.

3. Determination of Intention to Live Separate and Apart

Whether the worker and dependent spouse were separated with the “intention” of living separate and apart requires an examination of all the circumstances to determine whether the geographical separation is consistent with the normal continuation of the marriage, or whether these circumstances bring into question the continued existence of the marriage. The presence or absence of this mental element concerning the status of the relationship should be assessed both on an objective and subjective basis, rather than being solely based on the subjective views of the spouses.

The question is whether, on the basis of all the evidence, the spouses either treated the marriage as being at an end or, alternatively, whether it may be concluded on an objective or “de facto” basis that the marriage had no continuing existence.

It would be sufficient to support a conclusion that the spouses were living separate and apart if one spouse (not necessarily both) treated the marriage as being at an end. Also, it could be concluded on an objective basis that the spouses were living separate and apart, notwithstanding the subjective belief of both spouses that the marriage was continuing. This might be the case if the separation was for an indefinite period and there was no reasonable prospect of their being reunited in the foreseeable future. It might be considered that they had at least reconciled themselves to this situation, notwithstanding the subjective continuance of the marriage relationship. On the other hand, if the spouses viewed themselves as continuing in their marriage and intended to reunite, and it was considered that this would occur in the reasonably foreseeable future, then it might be concluded that they were not living separate and apart.

It would not normally be considered that the spouses were living separate and apart in circumstances where a period of temporary separation was necessitated by the worker’s employment.

To be eligible to claim under Section 17(9), a spouse must first be found by the Board to have been an actual dependant of the deceased as discussed in #54.00. It is not sufficient that the claimant, though not actually dependent, had a reasonable expectation of pecuniary benefit from the continuation of the life of the deceased.

In no case can the compensation payable under Section 17(9) exceed the amount that would have been payable if there had been no separation. (15)

The full amount of the lump sum provided for in #55.10 is payable to a dependent widow or widower whose entitlement is governed by Section 17(9).

EFFECTIVE DATE: January 1, 1984

APPLICATION: Applies to claims adjudicated on or after January 1, 1984.

#55.50 Recalculation of Benefits on Change of Circumstances

Where an invalid spouse ceases to be an invalid, or a widow or widower with dependent children no longer has dependent children, or there is a reduction in the number of dependent children, the spouse, widow, widower or children shall then be entitled to the same category of benefits as would have been payable if the death of the worker had occurred on the date the invalid spouse ceases to be an invalid or the widow or widower no longer has dependent children, or the number of dependent children is reduced, as the case may be. (16)

In applying this provision, it will in most cases be necessary to determine the amount of compensation which would have been payable to the deceased worker for permanent total disability. That amount is calculated by reference to the date of injury or the date of disablement from occupational disease and not by reference to the date of death (unless it is the same) or to the date of the change of circumstances. However, Consumer Price Index adjustments to the resulting figure will be made.

Where the change which leads to the recalculation is a change in a child's school attendance or a child's birthday, the Board uses the exact date when the change occurs as the date of commencement of the new benefits. For example where a child who is no longer attending school has an 18th birthday on December 15, the old pension remains in effect until December 14 and the new pension will become effective December 15.

Widows or widowers are advised at the outset of the claim of the various provisions which may result in a change in the benefits payable to them. They are also advised one year in advance of a potential change in their pension resulting from an age change in a dependent child.

#55.60 Termination of Benefits

Except as outlined in #55.61, monthly payments to a widow, widower, common law wife or common law husband continue as long as they live.

#55.61 Remarriage of Widow or Widower or Establishment of Common-Law Relationship Prior to April 17, 1985

If a remarriage of a widow or widower occurred prior to April 17, 1985 or a common law relationship was established prior to April 17, 1985, the former Section 19(1) provided that "Where a widow, widower, common law wife or common law husband of a deceased worker marries, or without marrying, lives with a man or woman in the relationship of a man and wife, the monthly payments attributable to that person as a widow, widower, common law wife or common law husband shall cease, but that person shall be entitled in lieu of them to a sum equal to the monthly payments attributable to that person as widow, widower or common law wife or common law husband for 2 years; but that person shall not receive less in total compensation than ..." the total of:

- (a) the funeral and death expenses referred to in #53.00;
- (b) the capital sum referred to in #53.32; and
- (c) the lump sum referred to in #55.10.

To calculate the remarriage allowance, the Board took the rate of monthly payment attributable to the widow, widower or common-law wife or common law husband as at the date of remarriage, and paid 24 times that amount. The sums referred to in #53.00, #55.32 and #55.10 were the dollar amounts applicable at the date of death.

Notwithstanding the application of the former Section 19(1), payments attributable to children as dependent children continued. (17) In attributing the monthly allowances to a widow or widower or to children, the apportionment provision in #63.10 applied.

#55.62 Interest Payment Arising from the Application of Section 19(2)

Where interest is payable as a result of the application of Section 19(2) it is calculated at the rates and in the manner set out in #50.00.

#56.00 WIDOWS AND WIDOWERS DEATH PRIOR TO JULY 1, 1974

#56.10 Lump Sum Payable to Dependent Widows

In addition to any other compensation provided, a dependent widow or foster-mother in Canada to whom compensation is payable is entitled to a lump sum of five hundred dollars. (18)

#56.20 Dependent Widows and Invalid Widowers with Dependent Children

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

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

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

#56.30 Dependent Widows and Invalid Widowers with No Dependent Children

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

#56.40 Widow or Widower Separated from Deceased

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

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

#56.50 Additional Payments

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

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

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

	Spouse	Child
January 1, 2005 — December 31, 2005	\$382.89	\$118.84
January 1, 2006 — December 31, 2006	392.98	121.97

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

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

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

#56.60 Termination of Benefits

#56.61 *Remarriage*

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