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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 2006 - 2.

This amendment includes policy changes to policy item #50.00, *Interest*, to provide for interest payments on section 17 benefits to the surviving dependants of deceased workers in cases of blatant Board error. This amendment becomes effective on **March 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 numbers:

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Attachments

March 2006

**Rehabilitation Services & Claims Manual, Volume II
SUMMARY OF AMENDMENTS – Update 2006 – 3**

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Suspend: to temporarily terminate compensation payments - the payments are not accumulated by the Board for the worker but may be redirected during the temporary stop in accordance with section 98(3).

Withhold: to temporarily hold back compensation payments - the payments may be accumulated by the Board and paid to the worker upon release from prison, or may be redirected during the temporary hold back in accordance with section 98(3).

The general rule is that vocational rehabilitation benefits will be cancelled during the period of incarceration while the worker is unable to participate in the rehabilitation program. One exception, however, applies to a worker who is entitled to a permanent total disability award under section 22(1) who requires rehabilitation services and supports due to the nature of the disability.

Health care benefits will generally continue to be paid during incarceration.

Wage loss benefits (sections 29 and 30) will be suspended during the period of incarceration as there is considered to be no loss of earnings during incarceration. These benefits may be paid, in whole or in part, to the worker's wife, husband or children, or to a trustee appointed by the Board to expend for the benefit of the worker, the worker's wife, husband, or children. If not redirected, these benefits are permanently lost during the period of incarceration.

Permanent disability periodic payments based on the loss of function method of assessment (sections 22 and 23(1)) will either continue to be paid or be withheld during the period of incarceration. If withheld, these payments may be paid, in whole or in part, to the worker's wife, husband or children, or to a trustee appointed by the Board to expend for the payments of the worker, the worker's wife, husband, or children. Payments neither paid to the worker nor redirected will be paid to the worker on release.

Permanent disability periodic payments based on the projected loss of earnings method of assessment (section 23(3)) will be suspended during the period of incarceration. These payments may be paid, in whole or in part, to the worker's wife, husband or children, or to a trustee appointed by the Board to expend for the payment of the worker, the worker's wife, husband or children. If not redirected, these payments are permanently lost during the period of incarceration; however, the worker will be entitled, during the period of confinement, to the section 23(1) award the worker would have been granted had there been no section 23(3) consideration.

Confinement under section 98(3) only includes those circumstances where the worker is prevented from seeking or obtaining employment for regular wages under an employee/employer relationship. Thus, ongoing entitlement to benefits

will be determined once the worker is released on day parole and is no longer considered to be "confined" to jail or prison.

When an incarcerated worker whose benefits have been cancelled, suspended or withheld becomes eligible to participate in a work release program, but is unable to do so because of the effects of a work caused disability accepted under the claim, compensation benefits may be reinstated from that point.

The power to redirect payments to dependants is exercised if the worker was supporting the worker's wife, husband or children prior to the imprisonment. All, or a portion of the compensation, is paid to them or a trustee, the amount depending on the number of dependants and their needs. If the worker was not supporting them, the power is not exercised unless there is a court order against the worker, in which case the amount provided for in the order will be paid. The power to pay the compensation to a trustee for the benefit of the worker depends on the reasonable needs of the worker while incarcerated.

#49.30 Payment of Public Trustee and Committee Fees

The Board pays the fees charged to a worker by the Public Trustee or Committee for managing the worker's entire estate when the following conditions are met:

1. The worker is incapable of managing his or her own affairs and the Public Trustee or Committee administers the worker's estate;
2. The worker's incapacity to manage his or her own affairs results from a compensable injury or disease; and
3. The Public Trustee or Committee is appointed to manage the worker's affairs under the *Patients Property Act* or the *Public Trustee Act*, or equivalent statute.

The Board will pay the Public Trustee and Committee fees in accordance with the fee schedule established by the Public Trustee. Fees may include the account review fee paid to the Public Trustee by Committees and the accountant's fees for preparing the account summaries.

The Board will pay the Committee fees after the Public Trustee has approved the accounts.

#50.00 INTEREST

With respect to compensation matters, the *Act* provides express entitlement to interest only in the situations covered by sections 19(2)(c) and 258. In these situations, the Board will pay interest as provided for in the *Act* (see Item C8-61.10 and policy item #100.83).

The Board has discretion to pay interest in situations other than those expressly provided for in the *Act*. In these situations, interest may be paid subject to the following conditions:

- The retroactive payment is:
 - To a worker or employer in respect of a wage loss payment provided under sections 29 and 30 of the *Act*.
 - To a worker or employer in respect of a permanent disability lump sum payment provided under sections 22 and 23 of the *Act*.
 - To a dependant of a deceased worker in respect of a payment provided under section 17 of the *Act*.
- It has been determined that there was a blatant Board error that necessitated the retroactive payment. For an error to be “blatant” it must be an obvious and overriding error. For example, the error must be one that had the Board officer known that he or she was making the error at the time, it would have caused the officer to change the course of reasoning and the outcome. A “blatant” error cannot be characterized as an understandable error based on misjudgment. Rather, it describes a glaring error that no reasonable person should make.
- Interest will be calculated from the first day of the month following the commencement date of the retroactive benefit and up to the end of the month preceding the decision date. Notwithstanding, in no case will interest accrue for a period greater than twenty years.

In all cases where a decision to award interest is made, the Board will pay simple interest at a rate equal to the prime lending rate of the banker to the government (i.e., the CIBC). During the first 6 months of a year interest must be calculated at the interest rate as at January 1. During the last 6 months of a year interest must be calculated at the interest rate as at July 1.

For practical reasons, certain mathematical approximations may be used in the calculations.

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 1, 2006

APPLICATION: Applies to all decisions, including appellate decisions, made on or after March 1, 2006.

#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:

Date	Percentage
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:

Date	Percentage
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*.

NOTES

- (1) S.98(4)
- (2) Item AP1-15-1 of the *Assessment Manual*
- (3) S.35(4)
- (4) S.35(6)
- (5) Policy item #49.20
- (6) Policy item #48.30