

PRACTICE DIRECTIVE #40

OBLIGATION TO PROVIDE INFORMATION

BACKGROUND

On June 30, 2002, section 57.1 was added to the *Workers Compensation Act* (the “Act”) by Bill 49, the *Workers Compensation Amendment Act, 2002*. Section 57.1 creates an ongoing obligation for a worker to provide information to the Board if the Board considers it necessary to administer the worker’s claim.

As a result, the Panel of Administrators approved new policy regarding a worker’s obligation to provide information.

EFFECTIVE DATE

The new provisions apply to all requests for information made on or after June 30, 2002, regardless of the date of injury or disablement.

LAW

Section 57.1 of the *Act* provides that:

- A worker who applies for, or is receiving compensation, must provide the Board with the information that it considers necessary to administer the worker’s claim.
- If the worker fails to comply with the obligation to provide information, the Board may reduce or suspend payments to the worker until the worker complies.

POLICY

Highlights of new Rehabilitation Services and Claims Manual (“RSCM”) Vol. II, Policy item #93.26, *Obligation to Provide Information*, include:

- Where the Board requires information from a worker, notification must be provided in writing, and it must address the following four elements:
 - what information is required;
 - the obligation to provide information;
 - the timeframe for compliance; and
 - the consequences for failing to comply.

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- Before benefits are reduced or suspended:
 - the Board officer must determine whether there is a valid reason for the worker's failure to comply.
 - In the case where the information must be obtained from a third-party, the Board officer must be satisfied that the worker failed to take all reasonable steps to acquire that information.
- Benefits reduced or suspended due to failure to provide information will not be restored until the worker has fulfilled his or her obligation to provide information.

The following related policies are also affected:

- Policy item #71.30, *Insufficient Information*, has been added.
- Policy item #96.23, *Withholding Wage-loss Benefits Pending Investigation*, has been deleted.
- Policy items #65.04, *Provisional Rate*, #96.22, *Suspension of Claim*, and #100.50, *Expenses Incurred in Producing Evidence*, remain substantially the same and continue to apply to all claims.

ADJUDICATE GUIDELINES

A. Gathering Information

- Section 57.1 should not be relied upon to gather evidence in every situation. Reasonable efforts should be made to obtain the required information directly from the source. Therefore, Board officers should continue to contact and communicate with the worker, accident employer and medical practitioner(s).
- However, other claims-related information such as: secondary employment earnings; income tax forms (e.g. T4s and tax status information); Canada Disability Pension Plan benefits; and Employment Insurance benefits should be gathered by the worker and submitted to the Board for consideration.
- The Board officer may reimburse necessary and reasonable costs incurred by the worker in obtaining the requested information from third parties. This may include administrative fees such as: costs charged by the 3rd party to produce documents; photocopying fees; retrieval fees; and form fees.
- If a letter is sent to a worker requesting that they provide or obtain information and submit it to the Board, Board officers should ensure that the letter has addressed the 4 elements required in RSCM Vol. II, Policy item #93.26. As well, the letter should cite section 57.1 of the *Act* as its authority.

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B. Reducing Payments

- Board officers may consider reducing payments where:
 - In the case of gross average earnings, the requested information is not received. In such a case, a provisional wage rate may be set on the information available, even if it results in a lower rate. The worker and employer should be notified in writing that this has been done. The letter should also advise that payments will continue to be paid on the provisional rate until the requested information has been received.
 - In the case of the 10-week rate review:
 - if the requested tax status information is not received, the net calculation should be set at the least favourable tax position.
 - if there is insufficient information about whether a worker is required to pay CPP contributions or EI premiums, the Board officer will assume that the worker is required to pay them.

(see RSCM Vol. II, Policy item #71.30).

The worker and employer should be notified in writing that this has been done. The letter should also advise that payments will continue to be paid on this basis until the requested information has been received.

- Once the requested information is received from the worker, the average net earnings wage rate should be recalculated and set in accordance with that information. If the receipt of the requested information results in a higher rate, the Board officer should make a retroactive payment representing the difference between the provisional rate and the wage rate ultimately set. The worker and employer should be provided with a letter indicating this has been done.

C. Suspending Payments

- Where medical information provides proof of disability or continuing disability, the Board officer should make reasonable efforts to obtain the information. Occasionally, this information can only be obtained from a provider, by the worker. For example, the medical information requested may be in the possession of a medical practitioner in another province who, for protection of privacy reasons, does not disclose the information to the Board. In these cases, the worker may be requested to obtain that information and submit it to the Board. If the worker ignores or refuses the request, payments may be suspended under section 57.1 of the *Act*.

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- In some situations involving self-employed persons, earnings and tax information is not readily available – i.e., there is no independent employer for the Board officer to call. In these cases, if the worker fails to provide the requested information, it may result in an absence of any earnings information on which to set or review a wage rate. If the Board officer is unable to set or review a rate without this information, benefits may be suspended under section 57.1 of the *Act*.
- If benefits are suspended under section 57.1 of the *Act*, the worker and employer should be notified in writing that this has been done. The letter should also advise that payments will remain suspended until the requested information has been received.
- Once the requested information has been received, the payments to the worker should be reinstated. The Board officer should also restore payments for the period in which the payments were suspended. The worker and employer should be provided with a letter indicating this has been done.