

PRACTICE DIRECTIVE #41

DURATION OF BENEFITS – AGE 65

Amended: October 21, 2002

Effective: October 21, 2002

1. BACKGROUND

On June 30, 2002, sections 23.1 and 31.1 of the *Workers Compensation Act* (the “Act”), relating to the duration of compensation benefits, were added by Bill 49, the *Workers Compensation Amendment Act, 2002*. As a result, the Panel of Administrators approved amendments to the Board's policies concerning the duration of benefits.

2. PURPOSE

This practice directive provides an overview of the legislative and policy changes relating to the duration of compensation benefits, in particular, as they relate to workers aged 63 and over.

3. EFFECTIVE DATES AND TRANSITION RULES

This Directive replaces Practice Directive #41 dated June 30, 2002. This Directive applies to all decisions made on or after October 21, 2002.

4. LAW

Section 23.1 of the *Act*, provides that compensation payable under sections 22(1), 23(1) or (3), 29(1) or 30(1) may only be paid until the worker is 65, unless the Board is satisfied that a worker would have retired at a later date, in which case a worker can be paid to that date. If a worker was 63 years or older at the time of injury, benefits may be paid to the later of 2 years past the date of injury, or the date the Board determines the worker would have retired.

Section 31.1 of the *Act* states that, notwithstanding section 23.1, the Board may not pay disability benefits [under sections 22(1), 23(1), 29(1) or 30(1)] once a worker ceases to have the disability.

5. POLICY

Rehabilitation Services and Claims Manual (“RSCM”) Vol. II, Policy item #35.30, *Duration of Temporary Disability Benefits* and Policy item #41.00, *Duration of Permanent Disability Periodic Payments*, provide guidance with respect to the duration and termination of compensation benefits. The provisions with respect to determining whether a worker continues to have a temporary disability and terminating benefits when the disability ends remain essentially unchanged.

ADJUDICATIVE GUIDELINES

Once a worker's temporary disability ceases, the temporary benefits must be terminated in all cases regardless of the age of the worker.

- A If a worker continues to be temporarily or permanently disabled at age 65, but was injured before age 63** compensation benefits may be paid until the later of:
- (i) the date of the worker's 65th birthday; or
 - (ii) the date after age 65 which the Board officer decides that, based on the evidence, the worker would have retired.
- B If a worker has ongoing temporary disability at age 65, but was injured after age 63,** compensation benefits may be paid until the later of:
- (i) two years after the date of the injury; or
 - (ii) the date, more than two years after the date of injury, which the Board officer decides that, based on the evidence, the worker would have retired.
- C** Board officers should continue to follow existing policy and practice in terminating benefits and communicating these decisions accordingly.
- D** In order to ensure fair and equitable treatment for all workers, Board officers should carefully consider whether the evidence actually supports a worker's contention that he or she would have been working after age 65. The circumstances under consideration must be those as they existed at the time of injury. Supportive evidence includes independently verifiable pre-injury indication of a worker's intent to work after age 65. Please see RSCM Vol. II, Policy item #35.30 and #41.00 for additional guidance.
- E** Furthermore, even if there is evidence that a worker intended to work after age 65, regard must be had to the ability/likelihood of the worker actually succeeding in continuation of employment. For example, consideration may be had whether there are employment opportunities available for those who are 65 years or older in the worker's occupation.
- F** Where the worker is under age 65 and may be permanently disabled, the claim should be referred to the Disability Awards Department, in conformance with existing policy, practice and process.
- G** If a worker contends that he or she would have continued working after age 65, and it appears that a worker will have a permanent disability, the Board officer and the Disability Awards Officer/Adjudicator should jointly review the worker's supporting evidence.
- H** If the Board officer is satisfied that the worker would have worked past age 65, the worker's temporary or permanent disability periodic benefits will be paid to the date the

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Board is satisfied that the worker would have retired. When the claim is referred to the Computation Clerk, the periodic benefit termination date will be specified. At that time, the worker's disability benefit will terminate, even though the disability remains.

- I If the worker is in receipt of periodic disability benefits and subsequently dies from causes unrelated to the compensable injury, the benefit will cease effective the end of the month in which the death occurred. For example, if a worker is in receipt of a monthly benefit of \$300.00, and dies on June 3, the worker's estate will be entitled to the full \$300.00 for the month of June. The benefit will be terminated as of July 1.

- J If the worker dies prior to the implementation of the permanent disability award, the award is calculated up to the date of death.