

PRACTICE DIRECTIVE #41

DURATION OF BENEFITS – AGE 65

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

Please see Practice Directive #38, *Effective Dates, Recurrences and Transition Rules*.

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) must be terminated at age 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*, provides guidance with respect to the duration and termination of benefits where a worker is older than 63 years at the time of injury or reaches age 65. The provisions with respect to determining whether a worker continues to have a temporary disability and for terminating benefits when the disability ends remain essentially unchanged.

6. ADJUDICATIVE GUIDELINES

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

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- B. If a worker continues to be temporarily 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.
- C. 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.
- D.** Board officers should continue to follow existing policy and practice in terminating benefits and communicating these decisions accordingly.
- E.** 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. 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 for additional guidance.
- F.** 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.
- G.** 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.
- H.** 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.