

PRACTICE DIRECTIVE #62

RELIEF OF COSTS

Effective: July 1, 2003

BACKGROUND

Section 39(1)(e) of the *Workers Compensation Act* (the "Act") requires the Board to "provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition, or disability."

This Practice Directive does not replace Practice Directives #16, 29, or 43 but replaces the Adjudicative Guidelines outlined in Practice Directive #43 and reflects a change in business process.

Past practice encouraged decisions on cost relief to be made immediately after 10 weeks of wage loss. Ten weeks may be insufficient time to identify pre-existing problems or their impact. In the past, decisions could be reconsidered if new evidence necessitated such an action. Now, as a result of Bill 63, the decision cannot be reconsidered more than 75 days after the decision. However, if the employer disagrees with a cost relief decision, he/she may apply to the Review Division for review.

The Division is changing the timing of cost relief decisions from 10 weeks to the time of claim closure (10-week minimum) or 6 months, whichever comes first. Six months, for the small percentage of claims that go beyond that point, was selected as optimum because it allows sufficient time for medical information about a pre-existing condition to be assessed but still provides for timely relief to employers and minimizes the need for retroactive calculations for experience rated assessments.

POLICY

The *Rehabilitation Services & Claims Manual* ("RSCM") Volume II, Policy Item #114.40B, *Enhancement of Disability by Reason of Pre-existing Disease, Condition or Disability*, states, in part:

"...This section is applied most frequently in cases where a permanent disability award has been made. There are, however, claims where temporary total or temporary partial disability can be said to have been protracted by reason of a pre-existing disease, condition or disability. In such cases, no consideration will be given to the application of section 39(1)(e) until the worker has been temporarily disabled for a minimum period of 10 weeks following the injury...."

EFFECTIVE DATES

The new Adjudicative Guidelines outlined below apply to all cost relief decisions that are made on or after July 1, 2003.

ADJUDICATIVE GUIDELINES

A worker must have a permanent disability or have been temporarily disabled for a minimum period of 10 weeks before a cost relief decision can be made.

Entitlement Officers should not transfer short-term disability files to Case Managers at 10 weeks but rather, transfer files according to normal transfer guidelines once they have completed their work on the file. Where Entitlement Officers are using the new business process, and there is no evidence of a pre-existing disease, condition or disability, and a claim has more than 10 weeks but less than 13 weeks of wage loss, Entitlement Officers should make the decision that there is no basis for granting cost relief and conclude the claim.

All other decisions on cost relief are made by Case Managers, in accordance with existing policy and practice.

A decision to allow cost relief in full (100% at 10 weeks or later) should be made as soon as there is evidence that the compensable disability is enhanced (prolonged or greater in extent) as a result of a pre-existing disease, condition or disability. Relief is not applied for the first 10 weeks of wage loss benefits.

If a decision has not already been made, a decision to deny relief, allow partial relief or allow full relief must be made at claim closure or after 6 months of wage loss, whichever comes first.

The Case Manager may defer the cost relief decision beyond 6 months but should only do so if the impact of the underlying disease, condition or disability on the compensable injury is not yet clear or major diagnostic procedures have been scheduled which would clarify whether there is in fact an underlying disease, condition or disability.