

PRACTICE DIRECTIVE #65

IMPLEMENTATION OF REVIEW DIVISION &
WORKERS' COMPENSATION APPEAL TRIBUNAL DECISIONS

Effective Date: May 1, 2004

A. BACKGROUND

Sections 99(2) and 250(2) of the *Workers Compensation Act* (the "Act") provide that the policies of the Board of Directors are binding on the Board and on the Workers' Compensation Appeal Tribunal ("WCAT"). The *Rehabilitation Services and Claims Manual* ("RSCM") Vol. II, Policy item #100.83 provides for the timely implementation of Review Division ("RD") and WCAT decisions.

B. PURPOSE

This Practice Directive provides specific direction regarding the implementation of RD/WCAT decisions. In particular, it expresses the Board's commitment to ensuring timely implementation of RD/WCAT decisions.

C. EFFECTIVE DATE

This Practice Directive is effective May 1, 2004 and applies to all decisions made by the RD and WCAT on or after May 1, 2004.

D. LAW

Section 96.4(9) of the *Act* compels the Board to comply with decisions issued by Review Officers. It also states that such decisions are final, subject to the decision being reconsidered on the direction of the Chief Review Officer, or the decision being appealed to WCAT.

Section 258(3) of the *Act* provides that the payment of compensation in respect of the period prior to the RD decision is deferred:

- for a period of 40 days following the date of the decision, and
- if the decision is appealed to WCAT, for a further period until WCAT has made a final decision or the appeal has been withdrawn.

Section 255 of the *Act* provides that WCAT decisions are final and conclusive and requires compliance by the Board with such decisions.

E. POLICY

RSCM Vol. II, Policy item #100.83, *Implementation of Review Division Decisions*, provides that:

- “Any benefits payable from the date of the Review Division decision forward will be paid without delay.” (emphasis added)
- “Any benefits payable for the period of time prior to the date of the Review Division decision (retroactive benefits) will be paid after 40 days have elapsed following the date of the Review Division decision unless an appeal has been filed with the Workers’ Compensation Appeal Tribunal.”
- “The decision of the Workers’ Compensation Appeal Tribunal will be implemented upon its receipt by the Board officer.”

F. ADJUDICATIVE GUIDELINES

1. Determining Implementation

Upon receipt of the RD/WCAT decision, the claim owner will assess the decision and determine the appropriate course of action necessary to implement the decision. This involves:

- determining whether implementation can be completed with the existing information on file;
- identifying missing information required, the sources of such information and timeframes in order to obtain that information;
- making referrals to other departments (such as medical services or vocational rehabilitation); and/or
- obtaining further clarification of the decision.

2. Communicating Implementation

Once the claim owner has determined the appropriate course of action, he or she will send either a:

- (a) **decision letter** explaining the implementation, where the decision can be implemented immediately (or within a very short time); or
- (b) **plan of action letter** detailing the claim owner’s implementation plan, where the decision cannot be implemented immediately (or within a very short time).

At least one of the above letters must be sent out:

- **in the case of all RD decisions within 45 days of the date of the RD decision; and**
- **in the case of all WCAT decisions within 60 days of the date of the WCAT decision.**

Where there are multiple determinations in the decision and further information is only required to implement some portions of the decision, implementation of all other decisions should be undertaken immediately.* In these cases, a “combination” decision/plan of action letter may be sent.

In all cases where any letter concerning entitlement is sent, it must be sent to all parties (see RSCM Vol. II, Policy item #99.20, *Notification of Decisions*). The letter will contain notification of any rights of review/appeal related to the implementation entitlement decision (see RSCM Vol. II, Policy item #99.21, *Notification of Rights of Review and Appeal*). The decision letter will make it clear that a RD review may be made of the Board's implementation of a RD or WCAT decision.

3. Insufficient Information on File

- Under section 57.1 of the *Act*, a worker has an obligation to provide the Board with information the Board considers necessary to administer the claim (see RSCM Vol. II, Policy item #93.26, *Obligation to Provide Information*, and Practice Directive #40, *Obligation to Provide Information*).
- The Board officer will make reasonable efforts to obtain missing information from the employer and may ask the worker to discuss the matter with the employer. However, if the employer fails to provide the requested information within a reasonable time period, the Board may rely on information provided by the worker.
- Section 56 of the *Act* obligates physicians/qualified practitioners to provide the Board with reports in respect of a worker's condition (see RSCM Vol. II, Policy item #74.10, *General Position of Physicians and Qualified Practitioners*, and RSCM Vol. II, Policy item #95.00, *Responsibilities of Physicians/Qualified Practitioners*).
- Notwithstanding the Board's statutory authority to obtain information from physicians/qualified practitioners, some healthcare providers require a current authorization form. Thus, if there is no current authorization on file, it is

* Subject to the provisions of section 258.

obtained immediately, in order to expedite attainment of missing medical information.

4. Payment Process - Wage-Loss and Permanent Disability Awards

(a) RD – Prospective amounts representing wage loss entitlement for a period from the date of the RD decision, and any monthly permanent disability entitlement, should be paid immediately following the decision.

(b) RD - Retroactive amounts which are in respect of the period prior to the RD decision must be deferred:

- for a period of 40 days following the date of the decision, and
- if the decision is appealed to WCAT, for a further period until WCAT has made a final decision or the appeal has been withdrawn.

This deferral period is a mandatory requirement under the *Act* and cannot be waived. If any portion of the RD decision is appealed, payment of all retroactive benefits is deferred until WCAT issues a decision, regardless of whether the matter being appealed is related to the retroactive benefits matter. However, there is no statutory authority to withhold or defer retroactive vocational rehabilitation benefits; hence, these should be paid without delay.

(c) WCAT

Any compensation payable following a WCAT decision is paid immediately. See RSCM Vol. II, Policy item #100.83.

(d) Interest

See section 258(5) and (6) of the *Act*, RSCM Vol. II, Policy item #100.83, RSCM Vol. II, Policy item #50.00, *Interest* and Practice Directive #28, *Interest on Retroactive Wage Loss and Permanent Disability Lump-Sum Benefits*.

5. Clarification of Decisions

Where the Board officer requires typographical clarification or believes that the decision contains an error of law and/or policy, assistance should be sought from his/her CSM.

Where the CSM believes that the decision is ambiguous and therefore cannot be implemented, he or she will advise the Regulatory Practice Department which may then formally contact the RD/WCAT in writing, requesting clarification of the decision.

6. Quality Assurance

The Workers & Employers Services Division, the RD and WCAT are all committed to a high standard of decision-making and as such, welcome feedback on decisions. Therefore, where a Board officer identifies a quality concern in a RD/WCAT decision, he/she should raise the issue with his/her CSM.