

PRACTICE DIRECTIVE # 29
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**Section 39(1)(e) – Relief of Costs - December 21, 2001**

**Background**

Practice Directive #16, issued on August 4, 1998, provides guidance for the administration of the Resolution of the Panel of Administrators, dated April 23, 1998. The Resolution had the effect of creating a one-time opportunity for employers to apply for cost relief on claims where wage loss concluded and/or a pension was awarded between March 15, 1978 and December 31, 1993.

Over 40,000 requests were received and the Historical Project for Relief of Costs was expanded. As the Historical Project has completed all requests and concludes on December 31, 2001, a follow-up Practice Directive is necessary to guide Board Officers on future requests. Practice Directive #29 does not replace Practice Directive #16.

**Law and Policy**

Section 39(1)(e) of the *Workers Compensation 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”. Rehabilitation Services & Claims Manual Policy item #114.40, *Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability*, Workers’ Compensation Reporter Decision #271, (issued March 14, 1978) and the Panel Resolution of April 23, 1998 contain policy direction on the application of section 39(1)(e).

**Procedure Effective January 1, 2002**

In brief, Board officers should only issue new decisions on post 1993 claims where a section 39(1)(e) decision was not previously issued. More specifically:

**1. Requests for application of section 39(1)(e) on claims where wage loss finalled or a pension awarded prior to March 15, 1978**

By Resolution dated April 23, 1998, the Panel of Administrators resolved that the Board would not apply section 39(1)(e) to wage loss payments which concluded prior to March 15, 1978 and to pensions which were awarded prior to March 15, 1978, *unless it was established that, prior to that date, the employer made a request to the Board to consider the application of section 39(1)(e) to those specific claims and the Board had not made a decision on that request.* Therefore, if a request is received on a pre-1978 claim:

- Where there is a record of a request for consideration of section 39(1)(e) prior to March 15, 1978, and no prior decision has been rendered, the claim is to be considered for relief of costs and a decision provided.

- Where there is no record of a request prior to March 15, 1978, an application for cost relief should be denied on the basis the application is unreasonably delayed. The attached template letter (A) can be used for this purpose.

**2. Application of section 39(1)(e) on claims where wage loss finalled or a pension awarded between March 15, 1978 and December 31, 1993**

The Resolution of the Panel of Administrators, dated April 23, 1998, stipulates that consideration of section 39(1)(e) would only be provided on those claims where section 39 (1)(e) had not previously been considered and *where applications were received within a specified timeframe*. The application period ended in December 1998.

Employers were advised of their right to apply in notices dated June 15, 1998 and August 17, 1998. Over 40,000 applications were received and Board officers have rendered decisions on all applications received within the timeframe. Therefore:

- Requests made after December 1998 for cost relief on claims where wage loss or a pension was paid between March 15, 1978 and December 31, 1993 should be denied. The application is outside the time frame specified by the April 23, 1998 Resolution of the Panel. The attached template letter (B) can be used for this purpose.
- If an employer advises that they did send an application but did not receive a response or if an employer is disputing the previous decision, the employer's letter should be sent to the Employer Cost Relief Officers, Central Services for response.

**3. Application of section 39(1)(e) on claims where wage loss paid or a pension awarded after January 1, 1994**

Claims with wage loss after December 31, 1993 do not fall within the Panel Resolution.

- No application is necessary on these claims. If there is no decision on file, the Board Officer responsible for the claim should consider relief of costs and provide a decision.
- Since the spring of 2000, e-file has been enhanced to require letters on all claims after 13 weeks of wage loss. The system also facilitates sending of cost relief decision letters.

**(A) Wage Loss Finalled Prior to March 15, 1978**

Dear :

Re: Worker's name, claim number  
Employer's name, firm number

This is in response to your letter of (date) in which you request relief of costs under section 39(1)(e) of the *Workers Compensation Act* (the "Act").  
I must first decide whether I can consider your request for relief of costs on this claim.

The policy that applies to your request is the Resolution of the Panel of Administrators dated April 23, 1978. The Resolution states in part, that:

The Board will not apply Section 39(1)(e) to wage loss payments which concluded prior to March 15, 1978 and to pensions which were awarded prior to March 15, 1978, unless it is established that, prior to that date, the employer made a request to the Board to consider the application of Section 39(1)(e) to those specific claims, and the Board has not made a decision on that request.

Benefits on this claim concluded prior to March 15, 1978 and there is no record of a request for cost relief prior to March 15, 1978. Therefore, in accordance with Board policy, I am unable to consider your request for relief of costs.

Please call me if the information in this letter is unclear or you wish to discuss this. If you have other information that may affect my decision, please call me at 604 (direct line) or toll free at 1-888- xxxx.

My decision may be appealed to the Appeal Division of the Workers Compensation Board within 30 days of the date of this letter.

Yours truly,

**(B) Wage Loss Finalled Between March 15, 1978 and December 31, 1993**

Dear:

Re: Worker's name, claim number  
Employer's name, firm number

This is in response to your letter of (date) in which you request relief of costs under section 39(1)(e) of the *Workers Compensation Act* (the "Act").  
I must first decide whether I can consider your request for relief of costs on this claim.

The policy that applies to your request is the Resolution of the Panel of Administrators dated April 23, 1998. The Panel directed the Board to notify employers of their right to request consideration of relief of costs under section 39(1)(e) of the Act. The Panel Resolution states in part that:

- (c) employers so notified will **have not less than 90 days and not more than 180 days** from the date the notice is mailed to them to make a request in writing for the Board to consider the application of Section 39(1)(e) to specific claims;
- (d) the Board will not apply Section 39(1)(e) to a claim unless an employer makes a request in writing to the Board for "relief" in respect of that claim **within the time specified above**, or unless the Board fails to mail a notice to the employer as specified above;
- (e) the administration will have satisfied the requirement, set out in this resolution, to provide notice to an employer if a notice is mailed to the employer at the address on file with the Assessment Department, regardless of whether the employer actually receives the notice.

Employers were advised of their right to apply in a notice dated June 15, 1998 and a reminder letter was sent August 17, 1998. Your request was received at the Board on (date) and you have not provided any reasons why you were unable to respond to the Board letters. As your request was not made within the time specified by the Panel resolution, I cannot consider your request for cost relief on this claim.

Please call me if the information in this letter is unclear or you wish to discuss this. If you have other information that may affect my decision, please call me at 604 (direct line) or toll free at 1-888- xxxx.

My decision may be appealed to the Appeal Division of the Workers Compensation Board within 30 days of the date of this letter.

Yours truly,