

**#48.20 Money Owing in Respect of Benefits Paid by Other Agencies**

Claimant's **Workers** frequently receive benefits from other governmental or non-governmental agencies while awaiting the adjudication or a **review or** appeal of their compensation claim. If they eventually receive compensation benefits for the same period, the agency may have a claim against them for reimbursement of the funds advanced by it, but can only claim reimbursement from the Board if it is a Provincial Government agency or a municipality. In the case of health and welfare plans or similar insurance plans, while the ~~Act~~**Act** in ~~S~~**Section** 15 does not permit direct refunds to such agencies, the Board may, on receipt of a worker's signed authorization, mail cheques payable to the worker in care of the agency.

In those cases where an inquiry is received from an insurance company or other health and welfare plan, the Board officer may provide the requested information as long as a signed consent from the worker is on file identifying both the Workers' Compensation Board and the insurance company. See also **policy item #99.80**.

**EFFECTIVE DATE:**           **March 3, 2003 (as to reference to review)**  
**APPLICATION:**           **Not applicable.**

**#48.41**      *When Does an Overpayment of Compensation Occur?*

An overpayment is any money paid out by the Board to a payee as a result of an administrative error, fraud or misrepresentation by the worker, or where the decision ~~under review~~ was not one within the statutory authority of the Board. Administrative errors are computer, mechanical, mathematical, or an error in implementing a decision on a claim, and similar types of errors. They do not include decisions made regarding entitlement. An overpayment may also be incurred by a doctor, qualified practitioner, or an institution following the incorrect payment of a health care benefit account by the Board.

A decision regarding entitlement which is modified or reversed by a later decision does not result in an overpayment. These are referred to as "Decisional Errors" and include errors of policy. They include situations where new information is later received which initiates a judgment change in the original decision. They can also include situations where information was available but overlooked, or a missed wage rate change.

Decisional errors involving actions outside the statutory authority of the Board or due to fraud or misrepresentation are corrected retroactively to the date of the original decision, and result in an overpayment.

Board policy also does not require the initiation of recovery procedures for overpayments under \$50.00 as long as there is no evidence of fraud or misrepresentation. All overpayments, irrespective of the amount, are referred to the Board's Legal Services Division where fraud or misrepresentation is indicated.

~~Other parts of the manual contain policy relating to particular situations as follows:~~

- ~~1. — payments to children on fatal claims (#59.14);~~
- ~~2. — interim adjudications (#96.21);~~
- ~~3. — appeals (#105.10 to #105.30).~~

**EFFECTIVE DATE:**      **March 3, 2003 (as to deletion of cross-references to payments to children on fatal claims, interim adjudications and appeals)**

**APPLICATION:**      **Not applicable.**

#### #48.42 *Recovery Procedures for Overpayments*

If, at the time of the discovery of the overpayment, payments are still being made on the claim, the amount of any overpayment will be recovered from those payments. The Board officer will as far as possible do this in a manner which causes the least hardship to the worker. Normally, the Board officer will recover the amount owing by instalments. If payments of the claim are terminated by the time the overpayment is discovered or before full recovery can be obtained, the procedures outlined below are followed. **However, if a request for a review by the Review Division or an appeal to the Workers' Compensation Appeal Tribunal** against the overpayment is lodged ~~however~~, re-collection procedures are as outlined in **policy item #48.46**.

1. The Vocational Rehabilitation Services and Claims Departments will conduct the initial collection procedure which will include the Board officer making personal contact with the claimant in addition to sending two letters, one immediately and one 30 days later. For overpayments in excess of \$500, the second letter advises that unpaid accounts will be turned over to the Board's Collections Section.
2. When the overpayment is 70 days overdue it will be sent to the Board's Collections Section. Unless there is evidence of fraud or misrepresentation, claims for overpayments under \$500 are not sent to Collections.
3. A letter will be sent to the claimant by a Collections Officer at the 70-day overdue date indicating that the overpayment has been transferred to the Board's Collections Section and suggesting that payment be made within a month in order to avoid possible legal action. This letter will make it clear that the Board is serious about collecting the overpayment.
4. If payment is not received within 30 days, or a reasonable payment plan arranged, the Collections Officer will attempt to make telephone contact with the claimant or pay a personal visit.
5. If this does not result in positive arrangements for payment, a final, more strongly worded letter will be sent. An asset search will be conducted and if there is a reasonable expectation that money is collectible, the account will be turned over to the Board's Legal Services Division for attention and action. The result of this action could be the seizing of assets or garnisheeing wages.

**Policy item #50.00** sets out the procedures regarding the crediting of interest to retroactive wage-loss and pension payments. In the case of claims overpayments, interest charges only apply to amounts due where the

overpayment is the result of fraud, misrepresentation or the withholding of information by the worker. Interest is not charged on overpayments that result from the correction of an error. The charging of interest on an overpayment must be approved by a Manager or a Director.

In the case of doctors and other health care benefit payees, overpayments are handled by the Board by making a deletion from future payments. There is no attempt by the Board to obtain the recovery of such an overpayment from a worker who received the health care benefits unless the costs of the health care benefits were paid directly to the worker.

**EFFECTIVE DATE:**           **March 3, 2003 (as to references to review, the Review Division and the Workers' Compensation Appeal Tribunal)**

**APPLICATION:**           **Not applicable.**

#48.46      *Reviews and Appeals on Overpayments*

~~An request for a review by the Review Division may be made appeal lies to a review board on the question of whether the claimant owes money to the Board and, if so, the amount owing. However, no such request may be made appeal lies on the question of whether the Board should recover the overpayment or not, and on the manner of any recovery. Board policy requires that if an overpayment is being appealed reviewed or appealed, procedures to recover the overpayment from the worker will be suspended pending the decision on the appeal by the Review Division or the Workers' Compensation Appeal Tribunal. However, if a new claim however is submitted, or a claim other than the one on which the appeal request for review by the Review Division or the appeal to the Workers' Compensation Appeal Tribunal is recorded is reopened, recoveries of the overpayment may be made from any benefit entitlements that accrue. The Adjudicator Board officer will of course still be permitted to exercise discretion as to the amount and the periodic nature of the recovery.~~

**EFFECTIVE DATE:**            **March 3, 2003 (as to references to the Review Division and the Workers' Compensation Appeal Tribunal)**

**APPLICATION:**                **Not applicable.**

## **#50.00 INTEREST**

With respect to compensation matters, the *Act* provides express entitlement to interest only in the situations covered by sections 19(2)(c) ~~and 92(3)~~ **and 258**. In these situations, the Board will pay interest as provided for in the *Act* (see policy items #55.62 and ~~#105.30~~**100.83**).

The Board has discretion to pay interest in situations other than those expressly provided for in the *Act*. In these situations, interest may be paid subject to the following conditions:

- The retroactive payment is to a worker or employer in respect of a wage-loss payment (provided under sections 29 and 30 of the *Act*) or a pension lump-sum payment (provided under sections 22 and 23 of the *Act*).
- It has been determined that there was a blatant Board error that necessitated the retroactive payment. For an error to be “blatant” it must be an obvious and overriding error. For example, the error must be one that had the Board officer known that he or she was making the error at the time, it would have caused the officer to change the course of reasoning and the outcome. A “blatant” error cannot be characterized as an understandable error based on misjudgment. Rather, it describes a glaring error that no reasonable person should make.
- Interest will be calculated from the first day of the month following the commencement date of the retroactive benefit and up to the end of the month preceding the decision date. Notwithstanding, in no case will interest accrue for a period greater than twenty years.

In all cases where a decision to award interest is made, the Board will pay simple interest at a rate equal to the prime lending rate of the banker to the government (i.e., the CIBC). During the first 6 months of a year interest must be calculated at the interest rate as at January 1. During the last 6 months of a year interest must be calculated at the interest rate as at July 1.

For practical reasons, certain mathematical approximations may be used in the calculations.

The rate of interest provided in this policy will also be used in the calculation of overpayments as outlined in **policy item #48.42**.

**EFFECTIVE DATE:**            **March 3, 2003 (as to reference to section 258)**  
**APPLICATION:**            **Not applicable.**