

2005/12/13-04

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA**RESOLUTION OF THE BOARD OF DIRECTORS****RE: Honouring Requirements to Pay****WHEREAS:**

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

Section 15 of the *Act* provides that compensation payments cannot be assigned, charged or attached, except in certain specific situations;

AND WHEREAS:

Section 15 of the *Act* does not bind the federal government;

AND WHEREAS:

The Workers' Compensation Board ("WCB") must honour Requirements to Pay ("RTPs") issued by the Canada Revenue Agency ("CRA") under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th supp.) or the *Excise Tax Act*, R.S.C. 1985, c. E-15, redirecting all or part of a worker's compensation payments to the federal government;

AND WHEREAS:

Effective July 13, 2005, the WCB and the CRA entered into a memorandum of understanding ("MOU"), outlining the procedure for handling RTPs and including a commitment on the part of the CRA to make every effort to collect unpaid amounts through all other reasonable

means before issuing a RTP to the WCB and to investigate the financial affairs of the tax debtor to satisfy itself that the attachment of compensation will not, in its opinion, create undue hardship on the tax debtor or the individual's immediate family;

AND WHEREAS:

Policies in the *Rehabilitation Services & Claims Manual* ("RS&CM"), Volumes I and II, do not reflect the WCB's obligation to honour RTPs;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Consistent with the MOU, amendments to policy items #48.20 and #48.21 and the addition of policy item #48.23 in the *RS&CM*, Volume I, attached as Appendix A, are approved and apply to all benefits, including retroactive awards of benefits, payable under the *Act* on or after July 13, 2005.
2. Consistent with the MOU, amendments to policy items #48.20 and #48.21 and the addition of policy item #48.23 in the *RS&CM*, Volume II, attached as Appendix B, are approved and apply to all benefits, including retroactive awards of benefits, payable under the *Act* on or after July 13, 2005.
3. Minor amendments to policy items #48.10, #48.22 and #48.30 in the *RS&CM*, Volume II, attached as Appendix C, are approved and take effect on February 1, 2006.
4. This resolution is effective February 1, 2006.

DATED at Richmond, British Columbia, December 13, 2005

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**

APPENDIX A

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME I

#48.20 MONEY OWING IN RESPECT OF BENEFITS PAID BY WORKER TO OTHER AGENCIES

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.~~ **A Provincial Government agency or a municipality can claim reimbursement for money advanced to the worker as financial or other social welfare assistance.**

The restrictions on the attachment and assignment of compensation created by section 15 of the Act do not generally apply to the Federal Government. As a result, in some instances, the Federal Government could also claim reimbursement for payments made under federal programs.

In the case of health and welfare plans or similar insurance plans, while the Act in 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)~~ **July 13, 2005**

APPLICATION: ~~Not applicable.~~ **Benefits, including retroactive awards of benefits, payable under the *Workers Compensation Act* on or after July 13, 2005.**

#48.21 Employment Insurance

The essence of the arrangement between the Canada Employment and Immigration Commission and the Board, as reflected in the respective statutes, is that where a person is eligible for workers' compensation, the Board is in the position of first payer. If a worker receives Employment Insurance benefits and subsequently receives workers' compensation benefits in respect of the same period, under the *Unemployment Insurance Act* the worker is under an obligation to reimburse the Canada Employment and Immigration Commission; but that is a matter between the worker and the Commission. There is no provision under the

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Workers Compensation Act for the obligation to be enforced by the Board, or for compensation benefits to be withheld because of the receipt of Employment Insurance benefits.

EFFECTIVE DATE: July 13, 2005
APPLICATION: Benefits, including retroactive awards of benefits, payable under the *Workers Compensation Act* on or after July 13, 2005.

#48.23 Requirements to Pay

The Board may receive written notice requiring that benefits owing to a worker be redirected, in whole or in part, to the Federal Receiver General on account of the worker's debt under the *Income Tax Act* or the *Excise Tax Act*. Such a notice is referred to as a "Requirement to Pay". The Board will comply with Requirements to Pay.

EFFECTIVE DATE: July 13, 2005
APPLICATION: Benefits, including retroactive awards of benefits, payable under the *Workers Compensation Act* on or after July 13, 2005.

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REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#48.20 ~~MONEY OWING IN RESPECT OF BENEFITS PAID BY WORKER TO OTHER AGENCIES~~

A worker may receive benefits from other governmental or non-governmental agencies while awaiting the adjudication or a review or appeal of his or her compensation claim. If the worker eventually receives compensation benefits for the same period, the agency may have a claim against the worker 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.~~ **A Provincial Government agency or a municipality can claim reimbursement for money advanced to the worker as financial or other social welfare assistance.**

The restrictions on the attachment and assignment of compensation created by section 15 of the Act do not generally apply to the Federal Government. As a result, in some instances, the Federal Government could also claim reimbursement for payments made under federal programs.

In the case of health and welfare plans or similar insurance plans, while the Act in 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)~~ **July 13, 2005**

APPLICATION: ~~Not applicable.~~ **Benefits, including retroactive awards of benefits, payable under the *Workers Compensation Act* on or after July 13, 2005.**

#48.21 *Employment Insurance*

The essence of the arrangement between the Human Resources Development Canada and the Board, as reflected in the respective statutes, is that where a person is eligible for workers' compensation, the Board is in the position of first payer. If a worker receives Employment Insurance benefits and subsequently receives workers' compensation benefits in respect of the same period, under the *Unemployment Insurance Act* the worker is under an obligation to reimburse the

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Human Resources Development Canada; but that is a matter between the worker and the Commission. There is no provision under the *Workers Compensation Act* for the obligation to be enforced by the Board, or for compensation benefits to be withheld because of the receipt of Employment Insurance benefits.

EFFECTIVE DATE: July 13, 2005
APPLICATION: Benefits, including retroactive awards of benefits, payable under the *Workers Compensation Act* on or after July 13, 2005.

#48.23 Requirements to Pay

The Board may receive written notice requiring that benefits owing to a worker be redirected, in whole or in part, to the Federal Receiver General on account of the worker's debt under the *Income Tax Act* or the *Excise Tax Act*. Such a notice is referred to as a "Requirement to Pay". The Board will comply with Requirements to Pay.

EFFECTIVE DATE: July 13, 2005
APPLICATION: Benefits, including retroactive awards of benefits, payable under the *Workers Compensation Act* on or after July 13, 2005.

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#48.10 SOLICITORS' LIENS

The statutory lien provided for solicitors under section 79 of the *Legal Profession Act* is not applicable to workers' compensation. If the solicitor ~~would have had~~ any right to a lien at common law or in equity, that right is abrogated by the terms of section 15 of the *Act*. Compensation funds cannot, therefore, be paid to a solicitor acting for a worker. Nor would it ~~be right for the Board to induce the same result in a more devious way~~ by making the cheque payable to the worker and sending it in care of the solicitor.

EFFECTIVE DATE: February 1, 2006 (minor editorial amendments)

APPLICATION: Minor editorial amendments made on February 1, 2006 do not affect the application of this policy.

#48.22 *Social Assistance Payments*

Deductions from compensation may be made in respect of social assistance payments made to the worker by the ~~Ministry of Human Resources~~ **Province** or by city or municipal Social Welfare Departments.

At one time, social assistance was provided by individual municipalities, but it is now provided exclusively by the ~~Provincial Ministry of Human Resources~~ **Province**. The practice is that when a person who may be entitled to compensation is awarded social assistance, the ~~Ministry~~ **Province** may require the person to execute an assignment to ~~the Ministry~~ **it** of any benefits received from the Board. The assignment is then passed on to the Board to notify it to deduct from the worker's compensation benefits the amount owed to the ~~Ministry~~ **Province**.

The rules set out below are followed in respect of assignments of compensation made by a worker to the ~~Ministry of Human Resources~~ **Province**.

1. No overpayment of compensation is declared and sought to be recovered in respect of payments of compensation made prior to the receipt of an assignment of benefits made by a worker to the ~~Ministry~~ **Province**.
2. In respect of payments of compensation made after receipt of the assignment:
 - (a) Wage Loss

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Refunds will only be made to the ~~Ministry~~ **Province** for wage-loss periods which are concurrent with periods where assistance has been paid and only up to the amount of the assistance paid for that period.

(b) Monthly Permanent Disability Award Payments

The ~~Ministry~~ **Province** will be refunded up to the monthly value of the permanent disability award payment for concurrent periods. This will usually apply only to retroactive payments. Ongoing assistance, if being paid, will be adjusted by the ~~Ministry~~ **Province** beyond the implementation date of the award.

(c) Permanent Disability Awards: Cash Awards or Commutations

Where a cash award or commutation is granted, the ~~Ministry~~ **Province** will be reimbursed the equivalent amount of the monthly permanent disability award value of the commutation or lump sum payment that would otherwise have been payable to the worker. This will be for the same period of time covered by the assistance payment. This will only apply up to the amount of assistance paid by the ~~Ministry~~ **Province** for that period. This will generally only occur where the cash award or commutation is being paid on a retroactive basis.

(d) Rehabilitation Allowances

The ~~Ministry~~ **Province** has agreed not to request an Assignment of Benefits from rehabilitation allowances paid under section 16 of the *Act*.

3. Where no payments of compensation on the claim are due after receipt of the assignment or the payments cease before the full amount owed to the ~~Ministry~~ **Province** is paid off, the ~~Ministry~~ **Province** is advised that it will have to collect the amount outstanding through other means.

The worker is advised when social assistance payments are being deducted from workers' compensation benefits.

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EFFECTIVE DATE: February 1, 2006 (minor editorial amendments)

APPLICATION: Minor editorial amendments made on February 1, 2006 do not affect the application of this policy.

#48.30 WORKER NOT SUPPORTING DEPENDANTS

Where a worker is not supporting the worker's wife or husband and the worker's children and they are likely to be a charge upon the municipality where they reside, or where an order has been made against the worker by a court of competent jurisdiction for the support or maintenance of the worker's wife, husband or family, the Board may divert ~~such~~ **the** compensation in whole or in part from the worker for the benefit of the worker's wife, husband or children. (1)

As the administration and payment of social assistance allowances is now a responsibility of the Provincial Government, a spouse or children not being supported by a worker are unlikely to become a charge on the municipality where they reside. Where, however, a request is received to divert compensation payments under the authority of section 98(4), it must be supported by a Court Order. An exception might occur where, due to some unusual, unforeseen circumstances, the worker's spouse or children are in fact likely to become a charge on a municipality where they reside.

Where compensation is being diverted under this provision, any cost of living adjustments are apportioned between the payment made to the worker and the diverted payment.

The Board will comply with Notices of Attachment issued under ~~sections 8 and 9~~ of the *Family Maintenance Enforcement Act*.

EFFECTIVE DATE: February 1, 2006 (minor editorial amendments)

APPLICATION: Minor editorial amendments made on February 1, 2006 do not affect the application of this policy.