

**2002/02/19-01**

**THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA**

**RESOLUTION OF THE PANEL OF ADMINISTRATORS**

**Re: Overpayments**

**WHEREAS:**

Pursuant to Section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Panel of Administrators ("Panel") must approve and superintend the policies and direction of the Workers' Compensation Board ("Board"), including policies respecting compensation, assessment, rehabilitation and occupational safety and health, and must review and approve the operating policies of the Board;

**AND WHEREAS:**

The Board's policy regarding provisional wage loss rates is provided in policy item #66.12 of the *Rehabilitation Services and Claims Manual* ("*RS&CM*");

**AND WHEREAS:**

Board policy provides that where actual earnings information later received causes an adjustment of the wage loss rate to a figure below the selected provisional rate, an overpayment is declared with respect to the difference between the true entitlement and the amount actually paid;

**AND WHEREAS:**

Concern has been raised that the declaration of an overpayment in relation to provisional rates conflicts with the Board's general policy on overpayments provided for in policy item #48.41 of the *RS&CM*.

**THE PANEL OF ADMINISTRATORS RESOLVES THAT:**

1. Policy item #66.12 of the *RS&CM* is amended to delete any reference to an overpayment occurring.
2. The amendments to policy item #66.12 of the *RS&CM*, as attached, are approved.
3. The amended policy is effective February 19, 2002, and will apply to all adjudicative and appellate decisions made on or after that date.

**DATED at Richmond, British Columbia, February 19, 2002.**

**By the Workers' Compensation Board**

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**MAUREEN NICHOLLS, CHAIR  
PANEL OF ADMINISTRATORS**

## APPENDIX 1

### REHABILITATION SERVICES & CLAIMS MANUAL PROPOSED AMENDMENTS *[Deletions Struck Through, Additions in Bold]*

#### #66.12 *Provisional Rate*

Wage-loss compensation may be based on a provisional rate if there is a delay in obtaining information as to the ~~worker's~~ ~~claimant's~~ actual earnings. The ~~worker~~ ~~claimant~~ must be informed that this has been done.

The amount of the provisional rate depends on the information available to the ~~Board Officer~~ ~~Claims Adjudicator~~. While being careful not to set a rate which is higher than the worker's actual earnings, the **Board Officer** ~~Adjudicator~~ should, as far as is possible, take into consideration the actual circumstances of the worker, for instance, age, occupation, seniority and union status. The **Board Officer** ~~Adjudicator~~ should also have regard to statements of earnings already on file or on other recent compensation claims.

Where an ~~Adjudicator~~ **Board Officer** has made a decision to set a provisional rate, this is an interim ~~decision~~ **rate**. If, after payments have been made on a provisional basis, sufficient earnings information is received, the rate may be changed **to reflect the additional earnings information received** and an ~~adjustment made in respect of prior payments~~. If ~~no, or~~ insufficient earnings information **or no information** is received after a reasonable time, the **Board Officer** ~~Claims Adjudicator~~ will review the rate at least every four weeks until a decision is made to fix the rate. The **Board Officer** ~~Adjudicator~~ may, on any of these occasions, reduce the rate to the statutory minimum or below if it is felt that the evidence does not support the existing rate. (5) **Where payments have been commenced on an interim basis, and the final wage loss rate is lower than the provisional rate previously set, no recovery of the payments will be made in the absence of an administrative error, fraud or misrepresentation by the worker, or where the decision under review was one not within the statutory authority of the Board. For a definition of an administrative error, refer to policy item #48.41.**

~~Even where a provisional rate is set at minimum (or lower), but the actual earnings later received cause an adjustment of the rate of benefits to a figure below the selected rate, an overpayment is declared with respect to the difference between the true entitlement and the amount actually paid.~~

#### **Note:**

(5) See #34.20