

PRACTICE DIRECTIVE # C11-1

**VOCATIONAL REHABILITATION
INCOME CONTINUITY (CODE R) BENEFITS**

Effective Date: March 3, 2003

A. BACKGROUND

On October 16, 2002, the Panel of Administrators approved amendments to the Board's policies concerning vocational rehabilitation entitlement and services.

B. EFFECTIVE DATES AND TRANSITION RULES

This Practice Directive rescinds and replaces Practice Directive #18 issued on July 16, 1998.

The policy changes are effective November 1, 2002 and apply to all decisions made on or after November 1, 2002, on claims occurring on or after June 30, 2002. For recurrences, please refer to Practice Directive #C1-1, *Effective Dates and Transition Rules*, and Practice Directive #C14-3, *Reopenings*.

C. PURPOSE

This Practice Directive discusses how Income Continuity benefits (Code R) will be administered.

D. LAW

Section 16 of the *Act* provides the rules under which vocational rehabilitation services may be provided to an injured worker.

E. POLICY

Policy item C11-89.10, *Vocational Rehabilitation – Income Continuity*, in Volume II of the *Rehabilitation and Claims Manual* ("RSCM") has been amended. The policy specifies "consideration will be given to the payment of a rehabilitation allowance between the end of wage-loss or other wage replacement payments and the commencement of the permanent disability award under section 23(3)". It specifies:

- when and for which workers Code R benefits will be considered, and
- the amount to be paid and the provisions for adjustment to the rate of payment.

Policy also allows for consideration of Code R benefits for workers already in receipt of a section 23(3) award on the claim, “where the Board has reopened the award decision and it is likely that the worker will receive a significant increase in the award”.

F. INCOME CONTINUITY (CODE R) BENEFITS RATE

The Board officer in Vocational Rehabilitation Services will consider payment of Code R benefits between the end of wage-loss or other wage replacement payments and the start of the permanent disability award under section 23(3). Policy specifies that before considering and implementing Code R benefits “the Board officer ... must have considered and offered ... all rehabilitation measures which are reasonable and might be of assistance to the worker.”

Payment of Code R Benefits

Policy specifies that Code R benefits are based on the same rate as the long-term wage-loss benefit rate at the outset and will continue at that rate until the permanent disability award is granted. Exceptions are outlined for specific circumstances:

1. The worker has retired.
2. The worker is experiencing non-compensable problems which preclude active participation in the rehabilitation process.
3. The worker refuses to actively participate in the rehabilitation process.

In the above circumstances the Board officer completes an employability assessment, as specified in section 23(3) and provides a copy of that assessment to the worker. The worker has thirty (30) days to review and respond to the employability assessment. If the worker does not provide any new information or evidence for the Board officer to investigate and consider, the Board officer will adjust the rate being paid to the rate which best reflects the conclusions contained in the employability assessment. The adjusted rate will be based on the worker’s projected long-term earning capacity. If, however, the worker provides new information or evidence the rate will not be adjusted. The Board officer will investigate the new information and determine whether the employability assessment requires revision.

If the worker has returned to work but at a reduced earnings level compared to the established wage-loss rate on the claim the Board officer may pay Code R benefits as a “top-up” until the section 23(3) award is implemented.

Prior to establishing “top-up” benefits the Board officer would determine, having regard to Policy item #40.12, *Suitable Occupation*, Vol. II, *RSCM* if the worker’s new job maximizes their long-term earnings potential. As a part of that assessment the Board officer would consider whether relocation, as detailed in Policy item #88.90, *Relocation*, Vol. II, *RSCM* would assist in maximizing the worker’s long-term earnings potential. Relocation assistance can be provided to a worker or the employment options that would be available to the worker as the result of relocation can be detailed. An employability assessment based on suitable occupations and the earning potential is then used to calculate the rate for Code R benefits.

If the worker has returned to work in a job which is not considered by the Board officer to maximize their long-term earnings potential the Board officer may pay Code R benefits as “top-up” using the occupations and earnings cited in the employability assessment. In this instance the Code R “top-up” benefits will not make up the full difference between the worker’s earnings and the wage-loss rate set on the claim.

If the worker has returned to work in a job where they are maximizing their long-term earnings potential the Board officer can then pay Code R “top-up” benefits that make up the difference between the worker’s earnings and the wage-loss rate set on the claim.

If the worker has not returned to work, and as a result of the employability assessment the Board officer has concluded that the worker is unemployable as a result of their compensable disability, Code R benefits will be paid at the wage-loss rate set on the claim. Code R benefits will continue until the permanent disability award is established.

G. INCOME CONTINUITY (CODE R) ELIGIBILITY FOR DISABILITY AWARD REOPENINGS

Policy specifies that Code R benefits may be considered for workers who are in receipt of a section 23(3) award “where the Board has reopened the award decision and it is likely the worker will receive a **significant increase** in the award” [emphasis added]. Policy further specifies that “there must be a deterioration in the worker’s medical condition which is likely to be permanent” and that the worker “must be experiencing a reduction in income...which is related to the reasons for the reopening”.

If the Board officer in Disability Awards is considering an increase in the section 23(3) award they may refer the claim to the Board officer in Vocational Rehabilitation Services to consider payment of Code R benefits. If the Board officer determines that Code R benefits are payable the rate paid will be in accordance with the policy and practice outlined above.

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