

## Practice Directive # C9-2

### Provisional Rate – March 3, 2003

Effective Date: March 3, 2003

On March 3, 2003, the *Workers Compensation Act* was amended by Bill 63, the *Workers Compensation Amendment Act (No.2), 2002*. As a result further amendments were made to the RSCM and this practice directive was amended on March 3, 2003. The effective date for the amendments is March 3, 2003.

#### Background

On February 19, 2002 the Panel of Administrators approved amendments to *Rehabilitation Services and Claims Manual* (the "RSCM") policies on provisional rates. The Resolution of the Panel of Administrators is effective February 19, 2002 and applies to all adjudicative and appellate/review decisions made on or after that date.

This Practice Directive amends and replaces Practice Directive #30, which was issued on February 19, 2002.

#### Policy

RSCM Vol. I Policy item #66.12 and RSCM Vol. II Policy item # 65.04 "*Provisional Rate*", have been amended and now state, in part, as follows:

*Where payments based on a provisional rate have been commenced, and the where the average net earnings decision sets a rate lower than the provisional rate, no recovery of the payments will be made in the absence of an administrative error, fraud or misrepresentation by the worker. For a definition of administrative error, refer to policy item #48.41.*

RSCM Vol I & II Policy item #48.41, *When Does an Overpayment of Compensation Occur?* provides that the Board can only recover monies where an overpayment has resulted from an administrative error, fraud or misrepresentation on behalf of a worker, or where the Board has made a decision that was outside of its statutory authority.

#### Highlights and Adjudicative Guidelines

1. Prior to February 19, 2002, where a provisional rate was set, the worker would be advised in writing that in the event of a decrease in the rate and an overstatement of previously paid benefits, an overpayment would be declared.

2. RSCM Vol. I, Policy item #66.12 and RSCM Vol. II, Policy item #65.04 now provide that where payments have commenced under a provisional rate, and the final rate is lower than the provisional rate, no overpayment can be declared.
3. An overpayment can only be declared where there was an administrative error or fraud/misrepresentation or the decision was not within the Board's statutory authority. Please see RSCM Vols. I & II, Policy item #48.41.
4. The new policy on overpayments applies to all adjudicative decisions made by Board officers on or after February 19, 2002. This means that the new policy applies to all cases where a Board officer decided, on or after February 19, 2002, to lower the previously set provisional rate.
5. The new policy also applies to review/appellate decisions made on or after February 19, 2002. This means that appeal/review decision-makers must now apply the new policy to their findings/decisions, regardless whether the Board officer made the original decision prior to February 19, 2002.
6. Other than as noted in point number 5 above, the policy has no retrospective application.
7. Board officers are reminded that all provisional rate decision letters to workers and employers must reflect the new policy provisions.
8. *The Claims Overpayment Transfer Advice* ("COTA") has been amended to remove the reference to overpayment code 08.

Note that RSCM Vol. II Policy item #65.04 and RSCM Vol. I Policy item #66.12, "*Provisional Rate*" involve "preliminary determinations", as discussed in Practice Directive #C14-2. As provisional wage rates are a preliminary determination, they do not yet constitute a decision, the limitations on reconsideration described in Practice Directive #C14-2 are not applicable. However, those restrictions become applicable once a decision is ultimately made on the actual wage rate.

---

Joe Pinto  
Director, Central Services  
Rehabilitation and Compensation Services Division