

2020/11/18-05**WORKERS' COMPENSATION BOARD****RESOLUTION OF THE BOARD OF DIRECTORS****RE: Policy Amendments to Implement the
Workers Compensation Amendment Act, 2020 (Bill 23) Amendments
Regarding Permanent Partial Disability Benefits****WHEREAS:**

Pursuant to section 319 of the *Workers Compensation Act*, R.S.B.C. 2019, c. 1 (*Act*), the Board of Directors of the Workers' Compensation Board (WorkSafeBC) must set and revise as necessary the policies of the Board of Directors, including policies respecting occupational health and safety, compensation, rehabilitation, and assessment;

AND WHEREAS:

Pursuant to Resolution No. 2003/02/11-04, dated February 11, 2003, the policies of the Board of Directors include the policies in the *Rehabilitation Services & Claims Manual*, Volume II (*RS&CM*), and the *Assessment Manual*;

AND WHEREAS:

Pursuant to Resolution No. 2016/07/13-04, dated July 13, 2016, the Board of Directors authorized the Senior Executive member responsible for policy development to make housekeeping changes to the Board of Directors' policies;

AND WHEREAS:

On August 14, 2020, the *Workers Compensation Amendment Act, 2020*, S.B.C. 2020, c. 20 (Bill 23) received Royal Assent;

AND WHEREAS:

Sections 17 and 35 of Bill 23 concern permanent partial disability benefits, and will come into effect on January 1, 2021;

AND WHEREAS:

To reflect the Bill 23 amendments regarding permanent partial disability benefits, WorkSafeBC's Policy, Regulation and Research Division (PRRD) has developed changes to policies in the *RS&CM*;

AND WHEREAS:

The PRRD has also developed changes to Chapter 6, *Permanent Disability Benefits*, of the *RS&CM* to bring the Chapter 6 policies into the new policy format, and consequential changes to policies in the *RS&CM* and *Assessment Manual* to update cross-references to the Chapter 6 policies;

AND WHEREAS:

The formatting changes to the Chapter 6 policies and cross-references are housekeeping changes that do not change the substance of the policies;

AND WHEREAS:

The PRRD will consult with stakeholders on these policy amendments in 2021 and advise the Board of Directors on the results of the consultation, and the Board of Directors will decide whether further policy changes are warranted;

THE BOARD OF DIRECTORS RESOLVES THAT:

1. The changes to policies in the *RS&CM* and *Assessment Manual*, as set out in Appendix 1 attached to this resolution, are approved.
2. The changes to the policies approved herein that are referred to in column 1 of the table set out in Appendix 2 attached to this resolution (the Table) apply as set out in column 2 of the Table.
3. The changes to the policies approved herein that are not included in column 1 of the Table are housekeeping changes that do not change the application of the policies.
4. This resolution is effective January 1, 2021.

5. This resolution constitutes a policy decision of the Board of Directors.

I, Jeff Parr, hereby certify for and on behalf of the Board of Directors of WorkSafeBC that the above resolutions were duly passed at a meeting of the Board of Directors held in Richmond, British Columbia, on November 18, 2020.

JEFF PARR
Chair, Board of Directors
Workers' Compensation Board

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

**RE: Compensable Consequences –
Pain and Chronic Pain**

ITEM: C3-22.20

BACKGROUND

1. Explanatory Notes

This policy provides guidance for determining a worker's entitlement to compensation for pain or chronic pain as a compensable consequence of a worker's personal injury.

2. The Act

Section 134(1):

If, in an industry within the scope of the compensation provisions, personal injury or death arising out of and in the course of a worker's employment is caused to the worker, compensation as provided under this Part must be paid by the Board out of the accident fund.

POLICY

A worker's pain symptoms may be accepted as compensable where the evidence indicates that the pain results as a consequence of an employment-related injury or occupational disease. This policy discusses the scope of coverage in cases where pain is accepted as compensable. Pain is not assessed as a psychological impairment.

A. Definitions

Pain is an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. It includes cognitive, affective, behavioural and physiological components.

The Board recognizes three main stages of pain:

- Acute pain is pain that coincides with a traumatic injury or disease and the early stages of recovery. In the vast majority of cases acute pain eventually resolves, either spontaneously or with some form of treatment.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- Subacute pain is pain that an injured worker continues to experience four to six weeks after a traumatic injury or disease.
- Chronic pain is pain that persists six months after an injury or occupational disease and beyond the usual recovery time for that injury or disease. Chronic pain is further distinguished as either specific or non-specific as set out in policy item #39.02 **Item C6-39.10**.

Usual recovery times for injuries or diseases are based on medical protocols and procedures adopted by the Board. These medical protocols set out the points in time, after an injury, when a worker should regain pre-accident functional ability, or reach maximum medical recovery.

In determining the appropriate recovery time for an injury, the Board may, in consultation with a Board Medical Advisor, consider the medical protocols as well as other factors such as the worker's pre-injury health status and any treatments received that would likely impact the recovery time of the compensable injury.

B. Early Intervention – Acute and Subacute Pain

Early intervention involves the provision of early return to work assistance and/or focused multidisciplinary treatment and rehabilitation, to expedite the worker's medical recovery and return to work. Early intervention at the acute or subacute stages of pain is essential as both rehabilitation and prevention measures in deterring the development of chronic pain. Studies indicate that even with some residual or recurrent pain symptoms, workers do not have to wait until they are completely pain free to return to work. Early intervention should be incorporated into the worker's rehabilitation plan.

i. Early Return to Work Assistance

In the majority of cases following an injury, a worker is able to return to work shortly after an injury without Board assistance. The provision of early return to work assistance for a worker experiencing acute or subacute pain that is affecting the worker's return to work efforts will be considered as soon as the worker is medically able to participate. The Board will coordinate the worker's early return to work plan in collaboration with the worker, the attending physician, a Board Medical Advisor, the employer and treating clinicians as needed.

In developing an early return to work plan, the Board may consider the worker's entitlement to vocational rehabilitation programs and services such as graduated return

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

to work assistance, placement assistance and work site/job modifications where the Board concludes that they will assist in a worker's return to work.

ii. Multidisciplinary Treatment and Rehabilitation

In certain cases, the Board may consider it appropriate to refer the worker for focused multidisciplinary treatment and/or rehabilitation intervention. These interventions are preferred in cases where the Board concludes that they will assist in the worker's early return to work. The Board may also consider these interventions where they will assist in preventing the onset of chronic pain.

In making this determination, the Board may consult with a Board Medical Advisor and/or a Board Psychologist. The worker's attending physician may also be consulted to confirm his or her agreement with the proposed intervention.

A multidisciplinary approach may include one or more of the following: medical management, physical conditioning, work conditioning, pain and stress management, ergonomic consultation, and vocational counseling and placement.

In determining what specific treatment or rehabilitation intervention is appropriate for a worker, the Board may refer the worker for a multidisciplinary assessment. A multidisciplinary assessment is an evaluation of the worker by a physician, a psychologist, a physiotherapist, an occupational therapist, or other provider as the Board determines appropriate.

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, physical limitations, psychological state, behaviour, and workplace issues. The evaluation will provide an opinion on the treatment or rehabilitation intervention, or combination of interventions that would be appropriate to aid in the worker's recovery and return to work.

iii. Early Intervention – Chronic Pain

In all cases where the Board considers that a worker may be experiencing chronic pain symptoms, a multidisciplinary assessment must be undertaken. This evaluation will provide an opinion on whether a worker is experiencing chronic pain as a consequence of a compensable injury. The evaluation will also provide an opinion on the appropriate course of treatment and rehabilitation for the worker.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

C. Compensation

Where a worker is participating in treatment and/or rehabilitation for temporarily disabling pain, a worker's entitlement to temporary wage-loss benefits may be considered under section 191 or 192 of the *Act*.

Where chronic pain is considered by the Board to become permanent, entitlement to permanent partial disability benefits may be considered under sections 195 and 196 of the *Act*.

EFFECTIVE DATE:	February 1, 2020 January 1, 2021
AUTHORITY:	Section 134(1) of the <i>Act</i> .
CROSS REFERENCES:	Item C3-14.00, <i>Arising Out of and In the Course of a Worker's Employment</i> ; Item C3-22.00, <i>Compensable Consequences</i> ; Item C3-22.30, <i>Compensable Consequences – Psychological Impairment</i> ; Chapter 5 – Wage-Loss Benefits; Chapter 6 – Permanent Disability Benefits; Policy item #39.02 Item C6-39.10 , <i>Chronic Pain</i> ; Chapter 11 – Vocational Rehabilitation; Item C11-88.00, <i>Vocational Rehabilitation – Nature and Extent of Programs and Services</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act, 2020 (Bill 23)</i>. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof, evidence, and causation. July 1, 2010 – This policy replaced former policy item #22.35 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. January 1, 2003 – Former policy item #22.35 was created to set out the scope of coverage in cases where pain is accepted as compensable; applied to all new claims received and all active claims awaiting an initial adjudication of chronic pain on a claim.
APPLICATION:	Applies to all decisions, including appellate decisions , made on or after February 1, 2020 January 1, 2021 , respecting claims for injuries occurring on or after July 1, 2010.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Respiratory Diseases

ITEM: C4-29.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance in adjudicating respiratory diseases, other than pneumoconiosis.

2. The Act

Section 136:

- (1) Compensation is payable under this Part [Part 4 – Compensation to Injured Workers and Their Dependants] in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker's employment, if
 - (a) as applicable,
 - (i) the worker has an occupational disease that disables the worker from earning full wages at the work at which the worker was employed, or
 - (ii) the death of the worker is caused by an occupational disease, and
 - (b) the occupational disease is due to the nature of any employment in which the worker was employed, whether under one or more employments.
- (2) For the purposes of subsection (1), the date of disablement must be treated as the occurrence of the injury.
- (3) A health care benefit may be provided for a worker who has an occupational disease referred to in subsection (1)(b) even though the worker is not disabled from earning full wages at the work at which the worker was employed.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Section 137:

- (1) This section applies to a worker who is disabled as referred to in section 136(1)(a)(i) as a result of an occupational disease described in column 1 of Schedule 1 of this Act.
- (2) If, on or immediately before the date of the disablement, the worker was employed in a process or industry described in column 2 of Schedule 1 opposite the occupational disease that has resulted in the disablement, the occupational disease must be presumed to have been due to the nature of the worker's employment unless the contrary is proved.

Section 138(2):

The Board may, by regulation of general application, designate or recognize a disease as an occupational disease.

Schedule 1:

See Appendix 2.

POLICY

A. ASTHMA

Item 7 of Schedule 1 lists "Asthma" as an occupational disease. The process or industry described in column 2 opposite to it is "Where there is exposure to any of the following:

- (a) western red cedar dust;
- (b) isocyanate vapours or gases;
- (c) the dusts, fumes or vapours of other chemicals or organic material known to cause asthma."

i. Evidence of Exposure

There are many substances which are either known to cause asthma in a previously healthy individual, or to aggravate or activate an asthmatic reaction in an individual with

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

a pre-existing asthma condition. The significance of occupational exposures to these substances may be complicated by evidence that the worker is exposed to such substances in both employment and non-employment settings. In the investigation of the claim, the Board seeks evidence of whether the worker is exposed to any sensitizing or irritating substances (obtaining where available any material safety data sheets), the nature and extent of employment and non-employment exposure to such substances, and whether there is any correlation between apparent changes in airflow obstruction/responsiveness and exposure to such substances. Additional medical evidence may be available in the form of airflow monitoring, expiratory spirometry, inhalation challenge tests, and skin testing for sensitization.

ii. Pre-Existing Asthma Condition

A pre-existing asthma condition is not compensable unless such underlying condition has been significantly aggravated, activated, or accelerated by an occupational exposure. A worker is not entitled to compensation where the worker's pre-existing asthma condition is triggered or aggravated by substances which are present in both occupational and non-occupational settings unless the workplace exposure can be shown to have been of causative significance in aggravation of the condition. A speculative possibility that a workplace exposure to such a substance has caused an aggravation of the pre-existing asthma is not enough for the acceptance of a claim.

iii. Temporary Disability

In the case of a compensable asthma or a respiratory tract reaction to a substance with irritating or inflammatory properties, wage-loss benefits are payable until the worker's acute symptoms resolve or stabilize or the worker reaches retirement age as determined by the Board.

iv. Permanent Disability

(a) Work-Caused Asthma

Where workplace exposures have caused the worker to develop asthma (either allergic or irritant-induced) and the worker's acute symptoms do not entirely resolve, so that the worker is left with a permanent impairment of the respiratory system, permanent disability benefits **under section 195** may be made **assessed** with reference to the asthma tables in the *Permanent Disability Evaluation Schedule* (See Appendix 3).

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

(b) Permanent Aggravation of Pre-Existing Asthma

Where workplace exposures have caused a permanent aggravation of the worker's pre-existing asthma, so that the worker is unlikely to return to the worker's pre-exposure state, the Board may ~~grant~~ **provide** permanent disability benefits **under section 195** after considering the asthma tables in the *Permanent Disability Evaluation Schedule*. In these cases, the Board considers whether proportionate entitlement under section 146 of the *Act* is appropriate. (See ~~policy items #44.00 to #44.31~~ **Item C6-44.00**.)

In the situation described above, no permanent disability benefits are granted to a worker with a pre-existing asthma condition when the worker has returned to the worker's pre-exposure state.

(c) Asthma Due to Sensitization

Where workplace exposures to a sensitizing agent have caused the worker to develop asthma and the worker's acute symptoms resolve following removal from the workplace, the Board may consider the worker to have a permanent impairment where:

- the worker is left with a significant underlying allergy or sensitivity; and as a result
- the worker must avoid workplaces containing the sensitizing agent.

A significant underlying allergy or sensitivity is one where the worker reacts with asthmatic symptoms when exposed to a workplace sensitizing agent. This is indicated by increased bronchial reactivity and/or a significant change in peak flow when the worker returns to the workplace under conditions that do not expose the worker to excessive (i.e. irritant) levels of the sensitizing agent or other known respiratory irritants.

In determining whether there is a need to avoid certain workplaces, the Board considers the medical evidence, including the nature of the sensitization and the likelihood of an asthmatic reaction should the worker return to a work environment containing the sensitizing agent. In making this assessment, the Board considers medical advice from the attending physician and/or Board Medical Advisor.

Where it is found that the worker has a permanent impairment due to a significant underlying allergy or sensitivity, the Board considers the asthma tables

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

found in the *Permanent Disability Evaluation Schedule* to assess the disability rating.

B. ACUTE RESPIRATORY REACTIONS TO SUBSTANCES WITH IRRITATING OR INFLAMMATORY PROPERTIES

Item 9 of Schedule 1 lists “Acute upper respiratory inflammation, acute pharyngitis, acute laryngitis, acute tracheitis, acute bronchitis, acute pneumonitis or acute pulmonary edema, excluding any allergic reaction, reaction to environmental tobacco smoke or effect of an infection”, as an occupational disease. The process or industry described in column 2 opposite to it is “Where (a) there is exposure to a high concentration of fumes, vapours, gases, mists or dusts of substances that have irritating or inflammatory properties, and (b) the respiratory symptoms occur within 48 hours of the exposure or, if there is exposure to nitrogen dioxide or phosgene within 72 hours of the exposure”.

There are many agents used in industry and commerce in British Columbia that have irritating or inflammatory properties, and which in sufficient concentrations can produce respiratory symptoms if inhaled. Symptoms associated with the inhalation of such substances can vary from mild transient symptoms (such as a mild burning sensation affecting the eyes, nose and throat) to significant symptoms throughout the respiratory tract (such as dyspnea and respiratory distress). Significant exposure to some substances may result in persistent respiratory symptoms.

Onset of symptoms can occur within a few minutes or several hours of the exposure, depending on the substance. For the presumption in section 137 of the *Act* to apply, the symptoms must appear within 48 hours of the exposure, unless the exposure is to nitrogen dioxide or phosgene, in which case the onset of symptoms must occur within 72 hours.

A claim for compensation made by a worker who has developed persistent or chronic respiratory symptoms considered to be due to exposure to a substance with irritating or inflammatory properties, must be considered on its own individual merits without the benefit of a presumption in favour of work causation (unless the claim meets the requirements of one of the other items of Schedule 1). This includes claims for chronic bronchitis, emphysema, chronic obstructive pulmonary disease, obliterative bronchiolitis, reactive airways dysfunction syndrome (RADS), chronic rhinitis, and conditions considered to be due to exposure to tobacco smoke. The same is true of a claim made by a worker with acute respiratory symptoms where the requirements of section 137 of the *Act* are not met (see policy in Section C. of Item C4-25.20). Where a

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

worker who develops an acute reaction to a substance with irritating or inflammatory properties subsequently develops a persistent or chronic respiratory condition, a decision will be made based on the merits and justice of that claim on whether the chronic condition is a compensable consequence of the acute reaction.

A claim made by a worker who has inhaled a vapour or gas which was at a temperature high enough to cause thermal injury (such as inhaling steam) will be treated as a claim for a personal injury and will be adjudicated in accordance with the policies set out in Chapter 3.

In item 9 of Schedule 1, the words “high concentration” is a recognition that the amount of the particular substance in the air must be significant for the presumption to apply. The manner in which an exposed individual will react will depend on the properties of the substance inhaled (e.g., acidity/alkalinity, chemical reactivity, water solubility, asphyxiating potential) and the amount inhaled. Individual judgment must be exercised in each case to determine whether there was a “high concentration” of the particular substance having regard to the medical and scientific evidence available, including evidence as to the irritating and/or inflammatory properties of that substance.

C. BRONCHITIS AND EMPHYSEMA

Bronchitis and emphysema are recognized as occupational diseases by regulation under section 138(2) of the *Act*.

Bronchitis and emphysema were recognized by regulation as occupational diseases on July 11, 1975. Medical evidence indicates that it would be an extremely rare case where a worker’s employment environment could be shown to be the cause of the bronchitis or emphysema.

Where a person claims compensation in respect of bronchitis or emphysema, the Board considers that a history of heavy or significant cigarette smoking raises a strong inference that the worker’s condition is due to the smoking and not to the nature of the employment. Against this inference must be weighed any evidence which supports the claim, but the inference will not be rebutted where the opposing evidence is weak or conflicting.

The principles set out above do not mean that a worker who has never smoked cigarettes or has smoked an insignificant amount will automatically be compensated for any bronchitis and emphysema. Evidence will still have to be produced that the disease is due to the nature of the employment. The advantage such a worker will have is that a major non-occupational cause of these diseases will have been eliminated.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

EFFECTIVE DATE:	April 6, 2020 January 1, 2021
AUTHORITY:	Sections 136, 137, 138, and Schedule 1 of the <i>Act</i> .
CROSS REFERENCES:	Item C4-25.10, <i>Has a Designated or Recognized Occupational Disease</i> ; Item C4-25.20, <i>Establishing Work Causation</i> ; Policy item #44.00, <i>Proportionate Entitlement</i>; Policy item #44.10, <i>Meaning of Already Existing Disability</i>; Policy item #44.20, <i>Wage-Loss Benefits and Health Care Benefits</i>; Policy item #44.30, <i>Permanent Disability Benefits</i>; Policy item #44.31, <i>Application of Proportionate Entitlement</i>; C6-44.00, <i>Proportionate Entitlement</i>; Appendix 2, Schedule 1; Appendix 3, <i>Permanent Disability Evaluation Schedule</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act, 2020 (Bill 23)</i>. September 1, 2020 – Housekeeping change to add the title of Appendix 3 to the Cross Reference section. April 6, 2020 – This policy resulted from the consolidation of former policy items #29.00, #29.10, #29.20 and #29.30, consequential to the implementation of the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. The principles set out in Section C. were derived from <i>Workers Compensation Reporter</i> series Decision No. 207 (1976), 3 W.C.R. 21. February 1, 2020 – Former policy item #29.20 was amended to provide guidance on legal issues of evidence and causation. March 1, 2018 – Former policy item #29.20 was consequentially amended as a result of correcting a typographical error in then Schedule B. May 1, 2017 – Former policy item #29.10 was consequentially amended to reflect the renumbering of former policy item #26.23 (previously #26.22). January 1, 2007 – Former policy item #29.20 was revised, including to provide that a worker may be considered to have a permanent impairment where the worker is left with a significant underlying allergy or sensitivity and as a result, the worker must avoid workplaces containing the sensitizing agent. July 16, 2002 – Former policy item #29.20 had a housekeeping change to update terminology.
APPLICATION:	Section A. of this Item applies to all decisions, including appellate decisions, made on or after April 6, 2020 January 1, 2021 , on claims where the worker was first disabled from earning full wages in accordance with section 6(1) of the <i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492 or section 136(1) of the <i>Act</i> , as applicable, on or after January 1, 2007.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Sections B. and C. of this Item apply to all decisions, including appellate decisions, made on or after April 6, 2020 **January 1, 2021**.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Hearing Loss

ITEM: C4-31.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance in adjudicating non-traumatic hearing loss.

2. The Act

Section 145:

- (1) A worker is entitled to compensation under this Part if
 - (a) the worker has a hearing loss of non-traumatic origin that arose out of and in the course of employment to which the compensation provisions apply, and
 - (b) the hearing loss
 - (i) was sustained by exposure to causes of hearing loss in British Columbia, and
 - (ii) is a greater loss than the minimum set out in Schedule 2 *[Non-Traumatic Hearing Loss]* of this Act.
- (2) An application for compensation under this section must be accompanied or supported by a specialist's report and audiogram or by other evidence of hearing loss that the Board prescribes.
- (3) The Board may, by regulation, amend Schedule 2 in respect of the following:
 - (a) the ranges of hearing loss;
 - (b) the percentages of disability;
 - (c) the methods or frequencies to be used to measure hearing loss.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Section 195:

- (1) Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must
 - (a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and
 - (b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.
- (2) The minimum compensation to be paid under this section must be calculated in accordance with section 191(2) *[compensation for temporary total disability]* but to the extent only of the permanent partial disability.
- (3) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

Section 196:

- (1) This section applies in relation to a permanent partial disability if an amount required under section 195 is less than an amount required under this section.
- (2) *Repealed.*
- (3) The Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
 - (a) the average net earnings of the worker before the injury, and
 - (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

Section 198:

- (1) This section applies in relation to compensation payable to a worker under section 145 [*non-traumatic hearing loss*].
- (2) If
 - (a) the worker's hearing loss amounts to total deafness measured in the manner described in Schedule 2 [*Non-Traumatic Hearing Loss*] of this Act, and
 - (b) there is no loss of earnings resulting from the hearing loss, compensation must be calculated as for a disability equivalent to 15% of total disability.
- (3) If
 - (a) the worker's hearing loss does not amount to total deafness measured in the manner referred to in subsection (2), and
 - (b) there is no loss of earnings resulting from the hearing loss, compensation must be calculated as for a lower percentage of total disability than that specified in subsection (2) and, unless otherwise ordered by the Board, must be based on the percentages set out in Schedule 2 of this Act.
- (4) If a loss or reduction of earnings results from the hearing loss, the worker is entitled to compensation for a total or partial disability as provided under this Division.
- (5) Compensation paid for a worker's hearing loss under subsection (4) must not be less than the amount determined under subsection (2) or (3).

Section 201:

- (1) Subject to subsection (2), periodic payment of compensation under this Division may be paid to an injured worker only as follows:

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (a) if the worker is under 63 years of age on the date of the injury, until the later of the following:
 - (i) the date the worker reaches 65 years of age;
 - (ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board;
- (b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:
 - (i) 2 years after the date of the injury;
 - (ii) if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.
- (2) As a restriction on subsection (1), the Board may not make a periodic payment to a worker under this Division if the worker ceases to have the disability for which the periodic payment is to be made.
- (3) A determination made under subsection (1) (a) (ii) as to a date on which a worker would retire after reaching age 65 may be made after a worker has reached age 63, and the Board may, when making the determination, consider the worker's circumstances at the time of that determination.**

Section 226:

Compensation is not payable to a worker under section 145 *[non-traumatic hearing loss]*

- (a) in respect of a period before September 1, 1975, or
- (b) if the worker's exposure to causes of hearing loss in British Columbia ended before that date.

Section 250(2):

If compensation is paid under section 145 *[non-traumatic hearing loss]* in relation to a worker's hearing loss caused by exposure to causes of hearing loss in 2 or

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

more classes or subclasses of industry in British Columbia, the Board may apportion the cost of compensation among the funds provided by those classes or subclasses on the basis of the duration or severity of the exposure in each.

Schedule 1, Item 12:

See Appendix 2.

Schedule 2:

SCHEDULE 2

Non-Traumatic Hearing Loss

Complete loss of hearing in both ears equals 15% of total disability. Complete loss of hearing in one ear with no loss in the other equals 3% of total disability.

Loss of Hearing in Decibels Measured in Each Ear in Turn	Percentage of Total Disability	
	Ear Most Affected	<i>PLUS</i> Ear Least Affected
0-27	0	0
28-32	0.3	1.2
33-37	0.5	2.0
38-42	0.7	2.8
43-47	1.0	4.0
48-52	1.3	5.2
53-57	1.7	6.8
58-62	2.1	8.4
63-67	2.6	10.4
68 or more	3.0	12.0

The loss of hearing in decibels in the first column is the arithmetic average of thresholds of hearing measured in each ear in turn by pure tone, air conduction audiometry at frequencies of 500, 1000 and 2000 Hertzian waves, the measurements being made with an audiometer calibrated according to standards prescribed by the Board.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

POLICY

A. GENERAL

There are two bases on which compensation can be paid for hearing loss:

- (a) If the hearing loss is traumatic and work-related, compensation is paid as with any other injury under section 134(1) and, if a permanent disability results, permanent disability benefits **under section 195 are may be** paid in accordance with the scale provided for in Appendix 3, the Permanent Disability Evaluation Schedule (for hearing loss that is secondary to an injury see Item C3-22.00).
- (b) If the hearing loss has developed gradually over time as a result of exposure to occupational noise, it is treated as an occupational disease. As set out in section 226 of the *Act*, claims for workers whose exposure to causes of hearing loss in British Columbia ended before September 1, 1975 are adjudicated under section 136 of the *Act*. In all other cases, section 145 of the *Act* applies. If the provisions of section 136 of the *Act* apply to the claim, the worker may be entitled to health care benefits in the form of hearing aids even if they were not disabled from earning full wages at the work at which they were employed (see Item C4-25.30).

Section 145 provides that a worker is entitled to compensation if “the worker has a hearing loss of non-traumatic origin that arose out of and in the course of employment . . .,” and the hearing loss “is a greater loss than the minimum set out in Schedule 2” of the *Act*.

Item 12 of Schedule 1 lists “Neurosensory hearing loss” as an occupational disease. Medical research indicates that it is only hearing loss of a neurosensory nature which is caused by exposure to noise over time (although this type of hearing loss may also result from other causes unrelated to exposure to noise). As a result, the Board’s responsibility is limited to compensating workers for occupationally-induced neurosensory hearing loss. This is further emphasized in section 145 of the *Act* which requires that the hearing loss be of non-traumatic origin and that it arise out of and in the course of employment.

In situations where a hearing loss is partly due to causes other than occupational noise exposure, the total hearing impairment is initially measured using pure tone air conduction pursuant to Schedule 2. Having done this, in order to comply with the *Act*,

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

other measures, such as bone conduction tests, are carried out to assess the portion of the total loss which is neurosensory and the portion which is due to other causes.

Having made this determination, the factual evidence on the claim is then assessed to determine whether all, or only part of, the neurosensory loss is due to occupational exposure to causes of hearing loss in British Columbia as required by the *Act*. The hearing loss is due to exposure to occupational noise in British Columbia if the worker's employment in British Columbia was of causative significance in the worker's hearing loss. Causative significance means more than a trivial or insignificant aspect.

The resulting portion of the worker's total impairment is then assessed for permanent disability benefits **under section 198 of the *Act*. When there is no loss of earnings resulting from the hearing loss, disability benefits under section 198 must be made with reference to** using the percentage ranges listed in Schedule 2.

Tinnitus is a symptom that is commonly associated with noise-induced hearing loss. Tinnitus is not a personal injury or occupational disease in and of itself. Tinnitus may be compensable where it is:

- a compensable consequence of an accepted claim for noise-induced hearing loss (see Item C3-22.00); and
- confirmed based on evaluation by a qualified person, such as an audiologist.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

The Board assesses any permanent disability from tinnitus using a Board-approved subjective reporting scale that has been validated in the evidence-based literature, such as the Tinnitus Handicap Inventory. The Board uses the worker's score on the scale to assess the worker's disability under section 195 of the *Act* with reference to the following table:

Score (%)	Disability (%)
0	0
1 – 20	1
21 – 40	2
41 – 60	3
61 – 80	4
81 – 100	5

B. DATE OF COMMENCEMENT OF SECTION 145

Section 145 expressly applies only to hearing loss of non-traumatic origin which can only mean loss of hearing over some period of time as a cumulative effect. Therefore, “ended” as used in section 226 means the end once and for all of a course of exposure to causes of hearing loss. Exposure is not ended as long as the worker continues to undergo exposure arising out of and in the course of the worker's employment in British Columbia, no matter how intermittent or how far apart periods of exposure might be. Only retirement or other cessation from employment in industries which expose the worker to causes of hearing loss qualify as “ended”. Subsequent exposure for any period of time in bona fide employment allows for consideration of compensation under section 145.

Only exposure to noise in industries under the compensation provisions of the *Act* after September 1, 1975 should be considered to determine whether or not a worker qualifies for compensation under section 145.

If a worker's exposure to causes of hearing loss ended prior to September 1, 1975, no compensation is payable under section 145 whatever may be the reasons for the ending of the worker's exposure. No exception can be made if, for instance, the end came about because a previous compensable injury forced the worker to leave the

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

worker's employment. A worker whose exposure ceased prior to September 1, 1975 may be entitled to health care (hearing aids) under section 136 of the *Act*.

C. AMOUNT AND DURATION OF NOISE EXPOSURE REQUIRED BY SECTION 145

A claim is acceptable where, as a minimum, evidence is provided of continuous work exposure in British Columbia for two years or more at eight hours per day at 85 dBA or more, and the Board determines the worker's hearing loss is due to exposure to occupational noise. The Board considers it reasonable to set the 85 dBA minimum standard for compensation purposes and then to allow a restricted measure of discretion for the acceptance of claims where the evidence is abundantly clear that the worker is extraordinarily susceptible and has been affected by exposure to noise at a lesser level.

The Board does not accept evidence of the wearing of individual hearing protection as a bar to compensation. However, in the case of soundproof booths, where evidence shows that the booth was used regularly, was sealed and was generally effective, it may be difficult to accept that the work environment in question contributed to the hearing loss demonstrated.

Where the exposure to occupational noise in British Columbia is less than 5% of the overall exposure experienced by the worker, the claim is disallowed. Such a minimal degree of exposure is insufficient to warrant acceptance of the claim. Where the exposure to occupational noise in British Columbia is 90% or greater of the total exposure, a claim is allowed for the total hearing loss suffered by the worker. For percentages between 5 and 90, the claim is allowed for only that percentage of the hearing loss which is attributable to occupational noise in British Columbia, and the Board will accept responsibility for all health care benefit costs related to the total hearing loss including the provision of hearing aids.

It has been suggested that after 10 years of exposure further hearing loss is negligible. Generally speaking, the evidence is that the first 10 years has a significant effect at higher frequencies. However, where lower frequencies are concerned (up to 2,000 Hz.) hearing loss continues after that time and may, in fact, accelerate in those later years. Therefore, since the disability assessment under Schedule 2 of the *Act* relies on frequencies of 500, 1,000 and 2,000 Hz., no adjustments for duration of exposure are made.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

D. APPLICATION FOR COMPENSATION UNDER SECTION 145

Section 145(2) provides that “An application for compensation under this section must be accompanied or supported by a specialist’s report and audiogram or by other evidence of hearing loss that the Board prescribes”.

Where a worker has already applied for compensation for hearing loss under section 136, a separate application under section 145 may sometimes be required. However, it will not be insisted upon if it serves no useful purpose. Therefore, no separate application need be made where all the evidence necessary to make a reasonable decision is available without it.

The original application need not be accompanied by a report and audiogram by a physician outside the Board. The Board will obtain the necessary medical evidence.

E. AMOUNT OF COMPENSATION UNDER SECTION 198

No wage-loss benefits are paid to workers who have non-traumatic hearing loss.

Workers who develop non-traumatic noise induced hearing loss are, subject to the time periods referred to in section 201(1) of the *Act*, assessed for permanent disability benefits under section 195~~195~~**198** of the *Act*.

Hearing loss permanent disability benefits are determined on the basis of audiometric tests conducted at the Audiology Unit of the Board or on the basis of prior audiometric tests conducted closer in time to when the worker was last exposed to hazardous occupational noise if in the Board’s opinion the results of such earlier tests best represent the true measure of the worker’s hearing loss which is due to exposure to occupational noise.

Section 145(3) of the *Act* provides:

The Board may, by regulation, amend Schedule 2 in respect of the following:

- (a) the ranges of hearing loss;
- (b) the percentages of disability;
- (c) the methods or frequencies to be used to measure hearing loss.

If the worker’s hearing loss amounts to total deafness measured in the manner described in Schedule 2 of the *Act*, and there is no loss of earnings resulting from the hearing loss, section 198(2) provides that compensation must be calculated as for a disability equivalent to 15% of total disability.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

If the worker's hearing loss does not amount to total deafness, and there is no loss of earnings resulting from the hearing loss, section 198(3) provides that compensation must be calculated as for a lower percentage of total disability than that specified in section 198(2), and, unless otherwise ordered by the Board, must be based on the percentages set out in Schedule 2 of the *Act*.

In assessing permanent disability benefits under section 198, there is no automatic allowance for presbycusis. In some cases, however, the existence of presbycusis may be relevant in deciding whether the worker has a hearing loss due to the worker's employment. The age adaptability factor is not applied to non-traumatic hearing loss compensation made under section 198.

Where a worker has an established history of exposure to noise at work, and where there are other non-occupational causes or components in the worker's hearing loss, and where this non-occupational component cannot be accurately measured using audiometric tests, then "Robinson's Tables" will apply. "Robinson's Tables" will only be applied where there is some evidence of non-occupational causes or components in the worker's hearing loss (for example, some underlying disease) and will not be applied when the measured hearing loss is greater than expected and there is only a speculative possibility without evidential support that this additional loss is attributable to non-occupational factors.

"Robinson's Tables" were statistically formulated to calculate the expected hearing loss following a given exposure to noise. In applying these tables, the cumulative period of noise exposure is calculated. A factor for aging is then added. For permanent disability purposes, the resulting calculation is then compared on "Robinson's Tables" to the worst 10% of the population (i.e., at the same levels and extent of noise exposure, 90% of individuals will have better hearing than the worker).

In some cases, it will be found that a worker already has conductive hearing loss in one ear, unrelated to their work, which might well have afforded some protection against work-related noise-induced hearing loss in that ear. The normal practice in this situation would be to allocate the higher measure in Schedule 2 (the "ear least affected" column) to the other ear which has the purely noise-induced hearing loss.

A difficulty occurs where the worker is not employed at the time when the worker's disability commenced. If there are no current earnings on which to base the permanent disability benefits, the Board should generally refer back to the employments in which the worker was most recently engaged and base the amount on the worker's previous earnings thus discovered.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Based on the principles set out in section 201 of the *Act*, if the worker is retired and under the age of 63 years as of the commencement of the non-traumatic hearing loss permanent disability benefits, periodic payments are made until the date the worker reaches 65 years of age. If the worker is retired and is 63 years of age or older as of the commencement of the non-traumatic hearing loss benefits, periodic payments are made for two years following such date. See policy item #41.00 **Item C6-41.00**.

F. CALCULATING COMPENSATION FOR NON-TRAUMATIC HEARING LOSS

Compensation under section 198 of the *Act* is not payable simply because a worker changes employment in order to preclude the development of hearing loss. As with any other occupational disease, there must be functional impairment from the disease before there can be compensation. In other words, compensation is payable for a disability that has been incurred, not for the prevention of one that might occur.

If a noise-induced hearing loss has been incurred, and a worker then changes employment to a lower paid but quieter job, that may trigger consideration by the Board of a permanent disability assessment notwithstanding that it may seem reasonable that with hearing protection, the worker may have stayed at the former employment. There is no obligation to stay in the employment with hearing protection rather than take lower paying work and claim compensation. ~~Compensation in such cases is, as in all other cases, based on the section 195(1) method of permanent disability assessment.~~ The drop in earnings may be the triggering device that renders the worker eligible for compensation, but it is **may** not **be** part of the formula for calculating the amount.

The duration of entitlement to permanent disability periodic payments is established under section 201(1) of the *Act* and discussed in policy item #41.00 **Item C6-41.00**.

G. REOPENINGS OF SECTION 198 PERMANENT DISABILITY COMPENSATION DECISIONS

Where the hearing loss is retested for a worker in receipt of permanent disability benefits under section 198 on or after June 30, 2002 and there is a significant change in the worker's hearing, the following applies:

1. If the retest records a deterioration in the worker's hearing and the new findings warrant an increase under Schedule 2 of the *Act*, the permanent disability decision is reopened and the amount is increased.
2. If the retest shows an improvement in the worker's hearing of a degree greater than 10 decibels, the worker's permanent disability decision is reopened. Where this occurs, two further considerations would apply.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (a) If the worker has been paid the permanent disability benefits in the form of a lump-sum payment, the worker is advised in writing that the worker's hearing has improved to the point where such a payment would no longer appear justified or appropriate. However, in those cases, no attempt is made by the Board to seek a refund.
- (b) If the worker's permanent disability benefits are being paid in the form of a monthly periodic payment, the payments are reduced or terminated, whichever is applicable, and the worker is informed in writing of the reasons and of the right to request a review of the decision by the Review Division.

If the retest suggests there is an improved level of hearing than that upon which the original permanent disability benefit amount was set, but the improvement is within a range up to and including 10 decibels, the permanent disability decision is not reopened.

A worker who has ceased to have entitlement to permanent disability benefits in accordance with the provisions of section 201(1) of the *Act* (see ~~policy item #41.00~~ **Item C6-41.00**) will not be retested by the Board.

H. COMPENSATION FOR NON-TRAUMATIC HEARING LOSS UNDER SECTION 136

A worker will only be entitled to compensation for non-traumatic hearing loss under section 136(1) if the worker's exposure to causes of hearing loss ended prior to September 1, 1975.

Item 12 of Schedule 1 lists "Neurosensory hearing loss" as an occupational disease. The process or industry described in column 2 opposite to it is "Where there is prolonged exposure to excessive noise levels".

Sections 151 and 152 of the *Act* set out the time limits within which an application for compensation must be filed.

If a worker's exposure to causes of hearing loss ended prior to January 1, 1974, the one-year time period to file an application for compensation does not begin to run until the worker becomes disabled from earning full wages within the meaning of section 136(1). If a case exists where a worker's exposure to causes of hearing loss ended prior to January 1, 1974, and no disablement within the meaning of section 136(1) has yet occurred, health care benefits can always be provided, whether or not an application for compensation has been received from the worker and

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

regardless of the length of time which has elapsed since the worker's exposure ended. Once the disablement from earning full wages occurs, the worker then has one year to submit an application for compensation (if the worker has not already done so) or proof of disablement. If no application for compensation or proof of disablement has been received by the end of this period, the worker's claim becomes completely barred even though the worker may previously have received compensation in the form of health care. If the worker submits proof of disablement, but no application for compensation, by the end of this period only compensation in the form of health care is payable.

I. COMMENCEMENT OF PERMANENT DISABILITY PERIODIC PAYMENTS UNDER SECTIONS 136 AND 145

The following applies to claims for hearing loss of non-traumatic origin.

1. If compensation is being paid under section 136, then, subject to sections 151 and 152, permanent disability benefits are calculated to commence as of the date on which the worker first became disabled from earning full wages at the work at which the worker was employed.
2. If compensation is being paid under section 198(4) in respect of a loss or reduction of earnings that results from the worker's hearing loss, then, subject to sections 151 and 152, permanent disability benefits are calculated to commence as of the date when the worker first experiences such loss or reduction of earnings, or as of September 1, 1975, whichever is the later.
3. If compensation is being paid under section 198(2) or (3) where there is no loss of earnings or impairment of earning capacity, then, subject to sections 151 and 152, permanent disability benefits shall be calculated to commence as of the earlier of either the date of application or the date of first medical evidence that is sufficiently valid and reliable for the Board to establish a compensable degree of hearing loss under Schedule 2 of the *Act*. If the date of application is used as the commencement date, subsequent testing must support a compensable degree of hearing loss as of the date of application. Section 226 provides that in no case will compensation for non-traumatic hearing loss commence prior to September 1, 1975.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

EFFECTIVE DATE:	October 21, 2020, January 1, 2021
AUTHORITY:	Sections 145, 195, 196 , 198, and 226 of the <i>Act</i> .
CROSS REFERENCES:	Item C3-22.00, <i>Compensable Consequences</i> ; Item C4-25.30, <i>Disabled from Earning Full Wages at Work</i> ; Policy item #41.00 Item C6-41.00 , <i>Duration of Permanent Disability Periodic Payments</i> ; Appendix 3, <i>Permanent Disability Evaluation Schedule</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act, 2020 (Bill 23)</i>. October 21, 2020 – Amended to reflect amendment to health care provisions of the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020 (Bill 23 of 2020)</i> , in effect August 14, 2020. April 6, 2020 – This policy resulted from the consolidation of former policy items #31.00, #31.10, #31.20, #31.30, #31.40, #31.50, #31.60, #31.70, and #31.80, consequential to the implementation of the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. Former policy item #31.70 was substantively amended as it had been based on section 55(4) of the <i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492, which was deemed spent. February 1, 2020 – Former policy items #31.00, #31.20 and #31.40 were amended to provide guidance on the legal issues of evidence and causation. June 1, 2012 – Former policy item #31.00 was amended to provide that permanent disability compensation for tinnitus is available where tinnitus is a compensable consequence of noise-induced hearing loss, in the range of 0% to 5% of total disability when assessed under the loss of function method. June 1, 2009 – Former policy item #31.40 was amended to delete references to Board officers. December 1, 2004 – Former policy item #31.20 was amended to update and clarify policy and to remove an ambiguity regarding the jurisdictional requirement for the minimum occupational noise exposure duration threshold. August 1, 2003, Former policy item #31.40 was amended to change disability rating for complete loss of hearing in one ear with no loss in the other; revisions also made to the frequencies at which hearing loss is to be measured. March 3, 2003 – Former policy item #31.30 was consequentially amended to implement the <i>Workers Compensation Amendment Act (No. 2), 2002 (Bill 63 of 2002)</i> by deleting references to appeal and reconsideration. Former policy item #31.60 was similarly consequentially amended regarding references to reopening, review, and the Review Division.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

APPLICATION:

July 16, 2002 – Former policy item #31.40 amended to add reference to duration of permanent disability periodic payments, then section 23.1 of the *Act*, and policy item #41.00.

Applies to all decisions, **including appellate decisions**, made on or after ~~October 21, 2020~~ **January 1, 2021**.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Other Matters

ITEM: C4-32.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance in other matters relating to occupational disease.

2. The Act

Section 136, in part:

- (1) Compensation is payable under this Part [Part 4 – Compensation to Injured Workers and Their Dependants] in relation to an occupational disease, as if the disease were a personal injury arising out of and in the course of a worker's employment, if
 - (a) as applicable,
 - (i) the worker has an occupational disease that disables the worker from earning full wages at the work at which the worker was employed, or
 - (ii) the death of the worker is caused by an occupational disease, and
 - (b) the occupational disease is due to the nature of any employment in which the worker was employed, whether under one or more employments.

...

Section 137:

- (1) This section applies to a worker who is disabled as referred to in section 136(1)(a)(i) as a result of an occupational disease described in column 1 of Schedule 1 of this Act.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (2) If, on or immediately before the date of the disablement, the worker was employed in a process or industry described in column 2 of Schedule 1 opposite the occupational disease that has resulted in the disablement, the occupational disease must be presumed to have been due to the nature of the worker's employment unless the contrary is proved.

Schedule 1:

See Appendix 2.

POLICY

A. CONTACT DERMATITIS

Item 16 of Schedule 1 lists "Contact dermatitis" as an occupational disease. The process or industry described in column 2 opposite to it is "Where there is excessive exposure to irritants, allergens or sensitizers ordinarily causative of dermatitis".

1. Evidence of Exposure

There are many substances that may either cause contact dermatitis in a previously healthy individual or aggravate or activate a dermatological reaction in an individual with a pre-existing dermatitis condition. The significance of occupational exposures to these substances may be complicated by evidence that the worker is exposed to them in both occupational and non-occupational settings.

When investigating these claims, the Board seeks evidence on whether the worker is exposed to any sensitizing or irritating substances, obtaining where available any material safety data sheets. The Board gathers evidence on the nature and extent of occupational and non-occupational exposure to such substances, and whether there is any correlation between dermatological reactions and exposure. The Board also seeks medical evidence, for instance skin patch testing for sensitization.

2. Pre-existing Contact Dermatitis Condition

A pre-existing contact dermatitis condition is not compensable unless such underlying condition has been significantly aggravated, activated, or accelerated by an occupational exposure. A worker is not entitled to compensation where the pre-existing condition is triggered or aggravated by substances which are present in both occupational and non-occupational settings unless the workplace exposure can be

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

shown to have been of causative significance in aggravation of the condition. A speculative possibility that a workplace exposure to such a substance has caused an aggravation of the pre-existing contact dermatitis is not enough for the acceptance of a claim.

3. Temporary Disability

Wage-loss benefits are payable while the disability is a temporary one, but cease when the worker's acute symptoms resolve or stabilize, or the worker reaches retirement age as determined by the Board.

4. Permanent Disability

(i) Work-Caused Contact Dermatitis

If workplace exposures have caused the worker to develop contact dermatitis (either allergic or irritant-induced) and the worker's acute symptoms do not entirely resolve so that the worker is left with a permanent impairment of the skin, the Board may ~~pay~~ **assess** permanent disability benefits **under section 195** after considering the contact dermatitis table in the *Permanent Disability Evaluation Schedule* (see Appendix 3).

(ii) Permanent Aggravation of Pre-Existing Dermatitis

If workplace exposures have caused a permanent aggravation of the worker's pre-existing dermatitis condition, so that the worker is unlikely to return to the worker's pre-exposure state, the Board may ~~pay~~ **assess** permanent disability benefits **under section 195** after considering the contact dermatitis table in the *Permanent Disability Evaluation Schedule* (see Appendix 3). In these cases, the Board considers whether proportionate entitlement under section 146 of the Act is appropriate. (See policy items #44.00 to #44.34 **Item C6-44.00**.)

In the situation described above, no permanent disability benefits are paid to a worker with a pre-existing condition when the worker has returned to the worker's pre-exposure state.

(iii) Contact Dermatitis due to Sensitization

If workplace exposures to a sensitizing agent have caused the worker to develop allergic contact dermatitis and the worker's acute symptoms resolve following removal from the workplace, the Board may consider the worker to have a permanent impairment if:

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- the worker is left with a significant underlying allergy or sensitivity; and as a result
- the worker must avoid workplaces containing the sensitizing agent.

A significant underlying allergy or sensitivity is one where the worker reacts with recurrent signs and symptoms of marked extent and severity when exposed to a workplace sensitizing agent. The worker experiences these signs and symptoms when the worker returns to the workplace under conditions that do not expose the worker to excessive (i.e. irritant) levels of the sensitizing agent or other known dermal irritants.

In determining whether there is a need to avoid certain workplaces, the Board considers the medical evidence, including the nature of the sensitization and the likelihood of a dermatological reaction should the worker return to a work environment containing the sensitizing agent. In making this assessment, the Board considers medical advice from the attending physician and/or Board Medical Advisor.

Where it is found that the worker has a permanent impairment due to a significant underlying allergy or sensitivity, the Board considers the contact dermatitis table found in the *Permanent Disability Evaluation Schedule* to assess the disability rating (see Appendix 3).

B. HEART CONDITIONS

Heart-related conditions which arise out of and in the course of a worker's employment and which are attributed to a specific event or cause or to a series of specific events or causes are generally treated as personal injuries. They are therefore adjudicated in accordance with the policies set out in Chapter 3. If the heart-related condition of a worker is one involving a gradual onset and is not attributed to a specific event or cause or to a series of events or causes, the claim will be adjudicated under section 136 of the *Act*. (See Item C3-16.00).

C. PSYCHOLOGICAL/EMOTIONAL CONDITIONS

The Board does accept claims where the psychological condition is a consequence of a compensable personal injury or occupational disease. (See Items C3-12.00, C3-22.30, and C3-22.40). However, the Board has not recognized any psychological or emotional conditions as occupational diseases related to employment.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

i Alcoholism

Alcoholism and alcohol-related cirrhosis of the liver have not been recognized by the Board as occupational diseases.

Research indicates that many factors may be operative in causing alcoholism. While employment is one of the suggested factors, the evidence does not clearly support a conclusion that employment does have causative significance or that, if it does, it has particular significance over and above the others. It appears rather as just one factor, along with the alcoholic's individual physiology and psychology, their family, social and cultural surroundings and their own personal inability to control consumption.

D. FEDERAL GOVERNMENT EMPLOYEES

i. General

The rights of employees of the Federal Government to compensation for occupational disease are set out in section 4 of the *Government Employees Compensation Act*. This provides that an employee who . . . is disabled by reason of an industrial disease due to the nature of the employment; and . . . the dependants of an employee whose death results from such . . . industrial disease . . . are, notwithstanding the nature or class of such employment, entitled to receive compensation at the same rate and under the same conditions as are provided under the law of the province where the employee is usually employed.

The meaning of "employee" is discussed in policy item #8.10. The place where an employee is usually employed is discussed in Item C3-12.10.

ii. Meaning of "Industrial Disease" under Government Employees Compensation Act

"Industrial Disease" is defined in section 2 of the *Government Employees Compensation Act* to mean "any disease in respect of which compensation is payable under the law of the province where the employee is usually employed respecting compensation for workmen and the dependants of deceased workmen".

The *Government Employees Compensation Regulations* created under section 8(1)(a) of that act provides that any employee who is disabled by reason of a disease that is not an occupational disease but is due to the nature of the employment and peculiar to or characteristic of the particular process, trade or occupation in which the employee is employed at the time the disease was

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

contracted and the dependants of a deceased employee whose death is caused by reason of such a disease, are entitled to receive compensation at the same rate as they would be entitled to receive under the *Government Employees Compensation Act* if the disease were an occupational disease, and the right to and the amount of such compensation is determined by the same board, officers or authorities and in the same manner as if the disease were an occupational disease.

EFFECTIVE DATE:	April 6, 2020 January 1, 2021
AUTHORITY:	Section 136 of the <i>Act</i> .
CROSS REFERENCES:	Policy item #8.10, <i>Federal Government Employees</i> ; Item C3-12.00, <i>Personal Injury</i> ; Item C3-12.10, <i>Federal Government Employees</i> ; Item C3-16.00, <i>Pre-Existing Conditions or Diseases</i> ; Item C3-22.00, <i>Compensable Consequences</i> ; Item C3-22.30, <i>Compensable Consequences – Psychological Impairment</i> ; Item C3-22.40, <i>Compensable Consequences – Certain Diseases and Conditions</i> ; Policy item #44.00, <i>Proportionate Entitlement</i>; Policy item #44.10, <i>Meaning of Already Existing Disability</i>; Policy item #44.20, <i>Wage Loss Benefits and Health Care Benefits</i>; Policy item #44.30, <i>Permanent Disability Benefits</i>; Policy item #44.31, <i>Application of Proportionate Entitlement</i>; Item C6-44.00, <i>Proportionate Entitlement</i>; Appendix 2, Schedule 1; Appendix 3, <i>Permanent Disability Evaluation Schedule</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act, 2020 (Bill 23)</i>. April 6, 2020 – This policy resulted from the consolidation of former policy items #30.50, #30.70, #32.00, #32.10, #32.15, and #32.85. The principles set out in Section C. i. were derived from <i>Workers Compensation Reporter</i> series Decision No. 348 (1982), 5 W.C.R. 127. February 1, 2020 – Former policy item #30.50 was amended to provide guidance on legal issues of evidence and causation. May 29, 2014 – Former policy item #30.70 was consequentially amended as a result of <i>Miscellaneous Statutes Amendment Act, 2014 (Bill 17 of 2014)</i> . January 1, 2007 – Former policy item #30.50 was revised, including to provide that a worker may be considered to have a permanent impairment where the worker is left with a significant underlying allergy

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

or sensitivity and as a result the worker must avoid workplaces containing the sensitizing agent.

July 16, 2002 – Housekeeping change was made to former policy item #30.50.

APPLICATION:

~~This Item applies to all decisions including appellate decisions, made on or after April 6, 2020.~~ Section A. applies to all decisions, including appellate decisions, made on or after April 6, 2020 **January 1, 2021**, respecting claims where the worker is **was** first disabled from earning full wages, in accordance with section 6(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 or section 136 of the *Act*, on or after January 1, 2007.

Sections B, C, and D apply to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#34.12 Worker in Receipt of Permanent Disability Benefits

Wage-loss benefits are terminated when the worker's condition becomes permanent and prior to the assessment of any permanent disability benefits. However, they may again become payable because a further work injury or a natural relapse in the condition for which the permanent disability benefits are being paid causes a further period of temporary disability.

With regard to the latter situation, it is recognized that no condition is ever absolutely stable or permanent; there will commonly be some degree of fluctuation. Nevertheless, permanent disability benefits will be granted when, though there may be some changes, the condition will, in the reasonably foreseeable future, remain essentially the same. The fluctuations in the condition of a worker receiving permanent disability benefits may be such as to require the worker to stay off work from time to time. The question then arises whether wage-loss benefits should be paid for these periods. If the fluctuations are within the range normally to be expected from the condition for which the worker has been granted permanent disability benefits, no wage-loss benefits are payable. The permanent disability benefits are intended to cover such fluctuations. Wage-loss benefits are only payable in cases where there is medical evidence of a significant deterioration in the worker's condition which not only goes beyond what is normally to be expected, but is also a change of a temporary nature. If the change is a permanent one, the amount of the worker's permanent disability benefits will simply be reassessed.

CROSS REFERENCES: ~~Policy item #37.30, Reopening Claims~~ **Item C6-37.00, Permanent Total Disability Benefits**, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: **January 1, 2021 – Housekeeping change made to cross-reference consequential to reformatting and renumbering policies in Chapter 6, Permanent Disability Benefits.**

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#35.30 Duration of Wage-Loss Benefits for Temporary Partial Disability Compensation

Section 201(2) of the *Act* provides that the Board may not pay compensation to a worker under Division 6 of Part 4 of the *Act* – Compensation for Worker Disability – (temporary, permanent, recurrence, non-traumatic hearing loss, disfigurement, and retirement benefit contribution), if the worker ceases to have the disability for which the periodic payment is to be made.

As a result, the Board terminates temporary total or temporary partial wage-loss benefits under section 191(1) or 192(1) once the worker's temporary disability ceases. A temporary disability ceases when it either resolves entirely or stabilizes as a permanent impairment, entitling the worker to be assessed for permanent disability benefits under section ~~s~~ 194, ~~or~~ 195 **and 196** of the *Act*.

The nature of a temporary disability may also change, affecting a worker's entitlement under the *Act*. Temporary total wage-loss benefits payable under section 191(1), will be terminated if the worker's medical condition has resolved to the point where the worker is no longer considered temporarily totally disabled and becomes temporarily partially disabled. In these situations, the worker may be entitled to temporary partial disability wage-loss benefits under section 192(1) of the *Act*.

Similarly, wage-loss benefits payable under section 192(1) will be terminated if the worker's compensable medical condition ceases to be "temporary partial" and becomes "temporary total". The worker in such circumstances may be entitled to temporary total disability wage-loss benefits under section 191(1) of the *Act*.

In all cases, payment of wage-loss benefits will be terminated under sections 191(1) and 192(1) where, notwithstanding the existence of a temporary total or temporary partial impairment, the worker is incurring no loss of earnings as a result of the work injury.

Finally, the duration of wage-loss benefits may be affected by the worker's age at the date of injury.

Section 201(4) of the *Act* provides ~~that compensation under Division 6 of Part 4 of the Act – Compensation for Worker Disability – may be paid to an injured worker, only as follows:~~

- (1) Subject to subsection (2), periodic payment of compensation under this Division may be paid to an injured worker only as follows:**

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

- (a) if the worker is under 63 years of age on the date of the injury, until the later of the following:
 - (i) the date the worker reaches 65 years of age;
 - (ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board;
- (b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:
 - (i) 2 years after the date of the injury;
 - (ii) if the Board is satisfied that the worker would retire after the date of the injury, the date the worker would retire, as determined by the Board.

(2) As a restriction on subsection (1), the Board may not make a periodic payment to a worker under this Division if the worker ceases to have the disability for which the periodic payment is to be made.

(3) A determination made under subsection (1) (a) (ii) as to a date on which a worker would retire after reaching age 65 may be made after a worker has reached age 63, and the Board may, when making the determination, consider the worker's circumstances at the time of that determination.

Section 201(3) was added to the *Act* effective January 1, 2021, by the *Workers Compensation Amendment Act, 2020*. Section 36 of the *Workers Compensation Amendment Act, 2020* provides:

A determination may be made under section 201 (3) of the *Workers Compensation Act*, as added by section 18 of this Act, whether or not a determination has been made under section 201 (1) of that Act before the date section 18 of this Act comes into force [January 1, 2021].

For the purposes of temporary disabilities, section 201(1) of the *Act* provides for the payment of wage-loss benefits until a worker reaches 65 years of age.

If the Board is satisfied a worker would retire after reaching 65 years of age, section 201(1) permits the Board to continue to pay wage-loss benefits to the age the worker would retire after the age of 65 if the worker had not been injured.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

For the purpose of this policy, a worker is generally considered to be retired when the worker substantially withdraws from the workforce and receives retirement income from one or more retirement-like sources (eg., CPP, OAS, employer pension plan, RRSP or other personal savings).

When determining whether a temporarily disabled worker would retire after age 65, the circumstances under consideration are those of the individual worker as they existed at the time of injury.

As age 65 is the established retirement age under the *Act*, to continue to pay benefits after the age of 65, the evidence must support a finding that the worker would work past age 65. Evidence is also required so that the Board can establish the worker's new retirement date for the purposes of concluding wage-loss benefits. The standard of proof under section 339(3) of the *Act* is "at least as likely as not" as described in policy item #97.00.

The issue for the Board to determine is whether it is "at least as likely as not" that the worker would have retired after age 65. The Board considers the worker's statement of intention to retire after age 65, but must determine whether it is "at least as likely as not" that the worker would actually have retired later than age 65.

Examples of the kinds of evidence that may support a finding that a worker would retire after reaching 65 years of age, and to establish the date of retirement, include the following:

- names of the employer or employers the worker intended to work for after age 65, a description of the type of employment the worker was going to perform, the expected duration of employment, and information from the identified employer or employers to confirm that the employer intended to employ the worker after the worker reached age 65 and that employment was available;
- a statement from a bank or financial institution outlining a financial plan and post-age 65 retirement date, established prior to the date of the injury; and
- an accountant's statement verifying a long-term business plan (for self-employed workers) established prior to the date of the injury, indicating continuation of work beyond age 65.

Where the above type of evidence is available, this would be evidence in support of a determination that a worker would have worked until after age 65.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

The following are examples of other kinds of evidence that alone may not support a finding that a worker would retire after reaching 65 years of age:

- information provided from the worker's pre-injury employer, union or professional association regarding the normal retirement age for workers in the same pre-injury occupation and whether there are incentive plans for workers working beyond age 65;
- information from the pre-injury employer about whether the worker was covered under a pension plan provided by the employer, and the terms of that plan;
- information from the pre-injury employer or union on whether there was a collective agreement in place setting out the normal retirement age;
- information regarding whether the worker would have the physical capacity to perform the work;
- financial obligations of the worker, such as a mortgage or other debts;
- family commitments of the worker; and
- an outstanding lease on a commercial vehicle (for self-employed workers).

These are not conclusive lists of the types of evidence that may be considered. The Board will consider any other relevant information in determining whether a worker would have worked past age 65 and at what date the worker would have retired.

Generally, the decision as to a worker's retirement date is made as part of the determination of a worker's entitlement to permanent disability benefits.

In some circumstances, the decision as to a worker's retirement date may be made prior to the determination of a worker's entitlement to permanent disability benefits. For example, when a worker's retirement date impacts a worker's entitlement to wage-loss benefits or vocational rehabilitation benefits. In these cases, the retirement date on the wage-loss benefits or vocational rehabilitation benefit will also apply to the resulting permanent disability benefit, if granted.

If the Board is satisfied that a worker would have continued to work past age 65 if the injury had not occurred, wage-loss benefit payments may continue past that age until the date the Board has established as the worker's retirement date. At the worker's age of retirement, as determined by the Board, wage-loss benefits will conclude even if the worker's temporary disability remains.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

EFFECTIVE DATE: February 1, 2020 January 1, 2021

HISTORY: January 1, 2021 – Policy changes made to update references to the Act, consequential to implementing the retirement age determination and permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020 (Bill 23)*.
April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
February 1, 2020 – Policy amended to provide guidance on legal issues of standard of proof, evidence, and causation.

APPLICATION: Applies to all decisions made on or after February 1, 2020 January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Permanent Disability Benefits – General

ITEM: C6-36.00

BACKGROUND

1. Explanatory Notes

This policy provides an overview of the statutory provisions related to permanent disability benefits.

2. The Act

Section 190:

Compensation under this Division is subject to the following provisions:

- (a) section 230 [*manner of compensation payment: periodic or lump sum*];
- (b) section 231 [*payment of compensation in specific circumstances*];
- (c) section 232 [*Board authority to discontinue or suspend payments*];
- (d) section 233 [*deduction in relation to payments from employer*].

Section 194:

- (1) Subject to subsection (2), if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.
- (2) Compensation to be paid under this section must not be less than \$1 835.64 per month. [*Note: See Note on page 1 of the Act concerning dollar amount.*]

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Section 195:

- (1) Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must
 - (a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and
 - (b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.
- (2) The minimum compensation to be paid under this section must be calculated in accordance with section 191(2) *[compensation for temporary total disability]* but to the extent only of the permanent partial disability.
- (3) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

Section 196:

- (1) This section applies in relation to a permanent partial disability if an amount required under section 195 is less than an amount required under this section.
- (2) *Repealed.*
- (3) The Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
 - (a) the average net earnings of the worker before the injury, and
 - (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

POLICY

A. #36.00-INTRODUCTION

The Board pays permanent disability benefits if a worker fails to completely recover from a work-related injury or occupational disease, and is left with a permanent residual disability. The entitlement to permanent disability benefits commences at the point when the worker's temporary disability under the claim ceases and the condition stabilizes. The permanent disability may be total (section 194) or partial (sections 195 and 196).

Permanent disability benefits are calculated on the basis of a worker's long term "average net earnings". The computation of long term average net earnings is dealt with in Chapter 9.

Section 190 states that all compensation under Division 6 of Part 4 of the Act – Compensation for Worker Disability – is subject to sections 230, 231, 232, and 233.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

B. ~~#36.10~~ TRANSITIONAL PROVISIONS FOR PERMANENT DISABILITY BENEFITS (see Chapter 1, policy item #1.03)

The rules for determining whether the law and policy in effect immediately prior to June 30, 2002 (subject to subsequent amendments) apply, or those in effect on or after that date, in relation to permanent disability benefits for injured workers, are set out in policy item #1.03.

EFFECTIVE DATE: January 30, 2002

AUTHORITY: Section 229 of the *Act*.

CROSS REFERENCES: Policy item #1.03, *Scope of Volume I and II in Relation to Compensation for Injured Workers*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

EFFECTIVE DATE:	January 1, 2021
AUTHORITY:	Sections 190, 194, 195, 196, and 229 of the <i>Act</i> .
CROSS REFERENCES:	Policy item #1.03, <i>Scope of Volume I and II in Relation to Compensation for Injured Workers</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	<p>January 1, 2021 – This policy resulted from the consolidation of former policy items #36.00 and #36.10, consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i>.</p> <p>April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i>, R.S.B.C. 2019, c. 1.</p>
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Canada Pension Plan Disability Benefits

ITEM: C6-36.10

BACKGROUND

1. Explanatory Notes

This policy provides guidance on how Canada Pension Plan ("CPP") disability benefits are deducted from permanent disability benefits.

2. The Act

Section 202:

- (1) This section applies to a worker who receives**
 - (a) a periodic payment of compensation under section 194(1), 195(1) or 196(1) [compensation for permanent disability] in respect of an injury, and**
 - (b) a disability benefit under the *Canada Pension Plan* in respect of the injury.**
- (2) Subject to sections 194(2), 195(2) and 198(5) [minimum compensation payments], the Board must deduct from a periodic payment referred to in subsection (1)(a), an amount that equals 50% of any disability benefit paid as referred to in subsection (1)(b).**

Sections 194, 195, and 196:

See Item C6-36.00.

POLICY

A. ~~#36.20 CANADA PENSION PLAN DISABILITY BENEFITS~~INTRODUCTION

Section 202 of the ~~Act~~ provides:

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (1) — ~~This section applies to a worker who receives~~
- (a) — ~~a periodic payment of compensation under section 194(1), 195(1) or 196(1) [compensation for permanent disability] in respect of an injury, and~~
 - (b) — ~~a disability benefit under the *Canada Pension Plan* in respect of the injury.~~
- (2) — ~~Subject to sections 194(2), 195(2) and 198(5) [minimum compensation payments], the Board must deduct from a periodic payment referred to in subsection (1)(a), an amount that equals 50% of any disability benefit paid as referred to in subsection (1)(b).~~

The Board deducts applicable ~~Canada Pension Plan~~ (“CPP”) disability benefits from the worker’s permanent disability benefits where the injury occurs on or after June 30, 2002. Where a worker was injured before June 30, 2002 and the permanent disability first occurred on or after June 30, 2002, CPP disability benefits paid to the worker for the same injury will not be deducted from the worker’s permanent disability benefits.

If a worker is paid CPP disability benefits for dependent children, the Board does not deduct CPP disability child benefits from the worker’s permanent disability benefits.

HISTORY: — April 6, 2020 – Housekeeping changes consequential to implementing the ~~Workers Compensation Act~~, R.S.B.C. 2019, c. 1.

B. #36.21 CONFIRMATION OF CPP DISABILITY PAYMENTS BENEFITS

The Board will advise a worker of the legislative requirement that CPP disability benefits be deducted from the worker’s permanent disability benefits. To ensure that only the portion of CPP disability benefits related to the injury is deducted from the amount the Board pays for a worker’s permanent disability, the Board needs information from the department continued under the *Department of Employment and Social Development Act* (Employment and Social Development Canada – “ESDC”) confirming that the worker is receiving CPP disability benefits, the effective dates (start and end dates), the medical condition(s) for which CPP disability benefits are being paid, and the benefit amount. Workers are responsible for providing CPP information to the Board.

The worker’s obligation to provide information to the Board to administer the claim is discussed in policy item #93.26.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

The Board will also advise a worker of the obligation to provide necessary CPP information and the consequences of failing to comply. If a worker fails to provide the necessary CPP information, the Board may reduce or suspend the worker's permanent disability periodic payments as discussed in policy item #93.26.

EFFECTIVE DATE: June 1, 2009

CROSS REFERENCES: Policy item #93.26, *Obligation to Provide Information*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

June 1, 2009 – Updated references to Human Resources and Skills Development Canada.

APPLICATION: Applies on or after June 1, 2009.

C. #36.22 DETERMINATION OF THE AMOUNT OF A CPP DISABILITY BENEFIT THAT IS ATTRIBUTED TO THE COMPENSABLE WORK INJURY

CPP disability benefit entitlement is based on total disablement which may encompass a work injury, other disabling conditions or a combination of both.

If a worker is disabled because of the work injury and there is evidence that leads the Board to determine that the disability benefits being issued under CPP are only related to the work injury, 50% of the entire CPP disability benefits paid to the worker will be deducted from the worker's permanent disability benefits payable by the Board.

If a worker is disabled because of the work injury and it is unclear what amount of CPP disability benefits is attributable to the compensable work injury, the amount of the CPP disability benefits attributable to the compensable work injury is determined as follows:

- If the permanent disability benefits are calculated under the section 195(1) method of assessment, the amount of the CPP disability benefits attributable to the injury is determined by using the same proportion to the total CPP disability benefits as the worker's assessed percentage of disability using the section 195(1) method. The Board deducts 50% of the calculated amount from the worker's permanent disability benefits payment.
- If the permanent disability benefits are calculated under the section 196(3) method of assessment, the amount of the CPP disability benefits attributable to the injury is determined by using the same proportion to the total CPP disability benefits as the worker's estimated loss of earnings bears to the worker's average net earnings. The Board deducts 50% of the calculated amount from the worker's permanent disability benefits payment.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

If a worker is disabled because of the work injury and there is evidence that leads the Board to determine that the disability benefits being issued under CPP are not related to the injury, the Board will not deduct CPP disability benefits from the worker's permanent disability benefits.

EFFECTIVE DATE: August 1, 2003

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPLICATION: To all section 195(1) assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* (see Appendix 3) on or after August 1, 2003.

D. #36.23 DEDUCTION OF LUMP SUM PAYMENTS OF CPP DISABILITY BENEFITS

If the Board determines a worker's permanent disability benefit entitlement and the worker is later advised that the worker is entitled to CPP disability benefits and is paid a lump sum amount under the CPP, the Board will deduct 50% of the applicable CPP disability benefits paid to the worker from future benefit payment. The Board will, as far as possible, do this in a manner which causes the least hardship to the worker. Normally, the Board will recover the amount owing by installments.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

E. #36.24 DEDUCTION OF CPP DISABILITY BENEFITS IN CASES OF MINIMUM COMPENSATION

Benefits paid to a worker for a permanent disability are subject to a statutory minimum amount. CPP disability benefits will be deducted until the resulting permanent disability compensation amount falls to the statutory minimum.

If the amount to be paid for permanent disability is at or below the statutory minimum, the Board will not deduct CPP disability benefits.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

EFFECTIVE DATE: January 1, 2021
AUTHORITY: Section 202 of the Act.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

CROSS REFERENCES:	Policy item #93.26, <i>Obligation to Provide Information</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – This policy resulted from the consolidation of former policy items #36.20, #36.21, #36.22, #36.23, and #36.24, consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i> . April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. June 1, 2009 – Updated references to Human Resources and Skills Development Canada.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Permanent Total Disability Benefits

ITEM: C6-37.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance on a worker's entitlement to permanent total disability benefits.

2. The Act

Section 194:

- (1) Subject to subsection (2), if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.
- (2) Compensation to be paid under this section must not be less than \$1 835.64 per month. *[Note: See Note on page 1 of the Act concerning dollar amount.]*

POLICY

A. ~~#37.00 PERMANENT TOTAL DISABILITY BENEFITS~~ INTRODUCTION

~~Section 190 states that all compensation under Division 6 of Part 4 of the Act – Compensation for Worker Disability – is subject to sections 230, 231, 232, and 233.~~

Section 194(1) of the Act provides:

~~Subject to subsection (2), if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Section 194 of the Act pertains to the determination of a worker's entitlement to compensation for a permanent total disability that results from a work injury.

Some examples of permanent total disability are paraplegia, quadriplegia, hemiplegia, and total or near total blindness. Combinations of permanent partial disabilities can also become permanent total disabilities, such as bilateral amputations of arms and legs.

Permanent total disability periodic payments continue until a worker reaches age 65, or later if the Board is satisfied that the worker would have worked past age 65. (See Policy item #41.00 **Item C6-41.00**.)

On reaching retirement age, a worker who has received permanent disability benefits is entitled to a retirement benefit (see policy item # **Item C18-116.00**). Permanently totally disabled workers are also entitled to rehabilitation benefits, health care benefits and personal supports after reaching retirement age (Item C18-116.30). Board policies on the retirement benefit are contained in Chapter 18 of the *RS&CM*.

EFFECTIVE DATE: August 1, 2003

CROSS REFERENCES: Chapter 18, Retirement Benefits, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPLICATION: To all assessments and reassessments undertaken with reference to the *Permanent Disability Evaluation Schedule* in accordance with section 23(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or section 195(1) of the *Act*, as applicable on or after August 1, 2003.

B. #37.10 COMMENCEMENT OF PERMANENT TOTAL DISABILITY BENEFIT PAYMENTS

Permanent total disability benefits are granted as soon as the medical evidence confirms that the worker is permanently totally disabled as a result of the work injury or occupational disease.

However, it may be necessary to make this type of payment at a provisional rate under policy item #65.04 pending clarification of the worker's pre-injury earnings.

After determining the amount of a worker's permanent total disability benefits, the Board must deduct from a worker's periodic payment, an amount that equals 50% of any Canada Pension Plan (CPP) disability benefit that the worker is paid in respect of the work injury. The required CPP disability benefit deduction is subject to the Board's statutory minimum (see policy items #36.20 to #36.24 **Item C6-36.10**).

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

AUTHORITY: Sections 194 and 202 of the Act.

CROSS REFERENCES: Policy item #36.20, *Canada Pension Plan Disability Benefits*;
Policy item #36.21, *Confirmation of CPP Disability Payments*;
Policy item #36.22, *Determination of the Amount of a CPP Disability Benefit that is Attributed to the Compensable Work Injury*;
Policy item #36.23, *Deduction of Lump Sum Payments of CPP Disability Benefits*;
Policy item #36.24, *Deduction of CPP Disability Benefits in Cases of Minimum Compensation*;
Policy item #65.04, *Provisional Rate, of the Rehabilitation Services & Claims Manual, Volume II.*

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

C. #37.20 MINIMUM AMOUNT OF COMPENSATION FOR PERMANENT TOTAL DISABILITY

Section 194(2) provides that the compensation to be paid for permanent total disability must not be less per month than the minimum set out below. This minimum is subject to cost of living adjustments as described in policy item #51.20.

			\$ Minimum
January 1, 2019	—	December 31, 2019	1,802.04
January 1, 2020	—	December 31, 2020	1,835.64

If required, earlier figures may be obtained by contacting the Board.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

i. #37.21 Statutory Minimum Application

The statutory minimum only applies in cases where the Board rates a worker's permanent disability at 100% under the section 195 method of permanent disability assessment. It does not apply when the percentage of permanent partial disability is less than 100% but the worker is found to be totally unemployable under the section 196 method of permanent disability assessment. (See policy item #40.00 **Item C6-40.00**.)

CROSS REFERENCES: Policy item #40.00, *Section 196 Assessment, of the Rehabilitation Services & Claims Manual, Volume II.*

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

D. #37.30 REOPENING CLAIMS FOR A FURTHER PERIOD OF TEMPORARY DISABILITY

If a claim involving a permanent total disability is reopened, no payments of wage-loss benefits can be made. Wage-loss benefits may, however, be payable where a worker who is receiving permanent total disability benefits of less than the current maximum, incurs a new injury at work. The amount payable would be the difference between the permanent disability benefits periodic payment being paid on the old claim, and 90% of the long term average net earnings on the new claim, limited by the current maximum.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

EFFECTIVE DATE: January 1, 2021
AUTHORITY: Sections 194 and 202 of the *Act*.
CROSS REFERENCES: Item C6-36.10, *Canada Pension Plan Disability Benefits*;
Item C6-40.00, *Section 196 Permanent Partial Disability Benefits*;
Policy item #65.04, *Provisional Rate*;
Chapter 18, *Retirement Benefits*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: January 1, 2021 – This policy resulted from the consolidation of former policy items #37.00, #37.10, #37.20, #37.21, and #37.30, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.
April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Permanent Partial Disability Benefits

ITEM: C6-38.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance on a worker's entitlement to permanent partial disability benefits.

2. The Act

Section 195:

- (1)** Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must
 - (a)** estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and
 - (b)** pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.
- (2)** The minimum compensation to be paid under this section must be calculated in accordance with section 191(2) [*compensation for temporary total disability*] but to the extent only of the permanent partial disability.
- (3)** The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

Section 196:

- (1)** This section applies in relation to a permanent partial disability if an amount required under section 195 is less than an amount required under this section.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (2) *Repealed.*
- (3) The Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
 - (a) the average net earnings of the worker before the injury, and
 - (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

POLICY

~~#38.00 PERMANENT PARTIAL DISABILITY BENEFITS~~

Sections 195 and 196 of the *Act* pertain to the determination of a worker's entitlement to compensation for a permanent partial disability that results from a work injury.

~~Section 195(1) is the mandatory provision that must be applied in the assessment of permanent partial disabilities. Only in exceptional circumstances will an assessment be done under section 196.~~

In all cases where a permanent partial disability results from a work injury, a worker's entitlement to permanent partial disability benefits must be ~~calculated~~ **assessed** using the methods ~~s~~ set out in section ~~s~~ 195(1) **and 196(3)** of the *Act*. ~~In determining the compensation payable under section 195(1), the Board may be guided by section 195(3), which permits the use of a schedule of percentages of impairment of earning capacity for specified injuries or mutilations.~~

If the amount assessed under section 195(1) is less than the amount assessed under section 196(3), the worker's permanent partial disability benefits will be determined under section 196(3).

Determination of a worker's entitlement to compensation under sections 195(1) and 196(3) is undertaken once a worker's condition has stabilized as permanent.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

In all but exceptional cases, the effect of the disability on a worker will be appropriately compensated under section 195.

Only in exceptional cases will section 195(1) not be the method of assessment used to determine a worker's entitlement to permanent partial disability benefits. In these cases the Board considers whether the combined effect of a worker's occupation at the time of the injury and the disability resulting from the injury is so exceptional, that the section 195(1) method does not appropriately compensate the worker for the injury. In these exceptional cases, the Board has the discretion to assess a worker's entitlement to permanent partial disability benefits under section 196(3) of the Act.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

B. #40.32 WORSENING OR IMPROVEMENT OF DISABILITY

If the disability on which the permanent disability benefits are based worsens, the extent of the disability is reassessed and a new amount is established based on the reassessment. Conversely, if a worker should unexpectedly recover from a disability classified as permanent, the permanent disability benefits would be subject to termination or downward adjustment.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

EFFECTIVE DATE: January 1, 2021

AUTHORITY: Sections 195 and 196 of the Act.

CROSS REFERENCES: Item C6-39.00, *Section 195 Permanent Partial Disability Benefits*; Item C6-40.00, *Section 196 Permanent Partial Disability Benefits*; Chapter 14, *Changing Previous Decisions*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: January 1, 2021 – This policy resulted from the consolidation of former policy items #38.00 and #40.32, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*. Policy changes consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23). The principles set out in former policy item #40.32 are set out in Chapter 14, *Changing Previous Decisions*, of the *Rehabilitation Services & Claims Manual*, Volume II.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Section 195 Permanent Partial Disability Benefits	ITEM: C6-39.00
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BACKGROUND

1. Explanatory Notes

This policy provides guidance on assessing a worker's entitlement to permanent partial disability benefits under section 195 of the *Act*.

2. The Act

Section 195:

- (1)** Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must
 - (a)** estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and
 - (b)** pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.
- (2)** The minimum compensation to be paid under this section must be calculated in accordance with section 191(2) [*compensation for temporary total disability*] but to the extent only of the permanent partial disability.
- (3)** The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

POLICY

A. ~~#39.00 SECTION 195(1) ASSESSMENT~~ INTRODUCTION

~~Section 190 states that all compensation under Division 6 of Part 4 of the Act – Compensation for Worker Disability – is subject to sections 230, 231, 232, and 233.~~

~~Section 195(1) of the Act provides, in part:~~

~~Subject to section 196, if a permanent partial disability results from a worker's injury, the Board *must*~~

- ~~(a) — estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and~~
- ~~(b) — pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.~~

~~...~~

~~(Emphasis added.)~~

~~In all cases where a permanent partial disability results from a worker's injury, the Board must assess the worker's entitlement to permanent partial disability benefits under section 195(1) of the Act. Section 195(1) is a mandatory legislative provision which sets out the rule the Board follows in determining a worker's impairment of earnings capacity resulting from a work injury.~~

The **Permanent partial disability benefits assessed** ~~percentage of disability determined for the worker's condition under section 195(1)(a), reflects the extent to which a particular injury is likely to impair a worker's ability to earn in the future.~~

Permanent partial disability benefits calculated **assessed** under section 195(1) also reflect such factors as:

- short term fluctuations in the compensable condition;
- reduced prospects of promotion;
- restrictions in future employment;
- reduced capacity to compete in the labour market; and
- variations in the labour market.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

In assessing a worker's entitlement to permanent partial disability benefits under section 195(1), the Board may make reference to section 195(3) of the *Act*. Section 195(3) of the *Act* provides:

The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

Once the percentage of disability is determined, it is applied to the worker's long term average net earnings, and the permanent partial disability benefits are 90% of the amount so determined. ~~The permanent partial disability benefits are granted following the determination of a worker's entitlement under section 195(1) of the *Act*.~~

Under the section 195(1) method of permanent partial disability assessment, a worker's percentage of disability is expressed as a percentage of total disability, with one hundred percent (100%) being the maximum possible rating for a totally disabled worker. A worker's percentage of permanent partial disability is based on the whole person. A worker, therefore, cannot be more than 100% disabled as a result of a work injury or combination of injuries.

HISTORY: ————— September 1, 2020 — Housekeeping change was made to correct a grammatical error.
April 6, 2020 — Housekeeping changes consequential to implementing the ~~Workers Compensation Act, R.S.B.C. 2019, c. 1.~~

B. ~~#39.01~~ DECISION-MAKING PROCEDURE UNDER SECTION 195(1)

Section 195(1) assessments are undertaken once a worker's **s** reaches medical plateau **condition has stabilized as permanent.**

The Board is responsible for ensuring that the necessary examinations and other investigations are carried out with respect to the assessment and making a decision on a worker's entitlement to permanent partial disability benefits.

Section 195(1) evaluations may be conducted by the Board or a Board-authorized External Service Provider. The Board sets protocols and procedures for these evaluations. The Board determines whether the evaluation will be referred to an External Service Provider based on the nature of the condition and other relevant criteria as set out in the protocols. The Board may determine **proceed to assess the permanent disability benefits** ~~the worker's section 195(1) entitlement without a~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

medical examination **section 195(1) evaluation**, if there is sufficient medical information **evidence already available** on file to complete the assessment.

The determination of whether there is a permanent psychological impairment, and the severity of the impairment for a section 195(1) evaluation, is made by either the Board or a Board-authorized External Service Provider. Once this evaluation is completed, the claim is referred to the Psychological Disability Committee to assess the percentage of disability resulting from the permanent psychological impairment.

The Board assesses the worker's percentage of disability for physical impairment and, in conjunction with the Psychological Disability Committee's percentage of psychological disability, determines the worker's permanent disability benefits under the section 195(1) method.

EFFECTIVE DATE: June 1, 2009

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Removed references to Board officer, Rehabilitation and Compensation Services Division, Disability Awards Medical Advisor and Board authorized External Service Provider.

August 1, 2003 – housekeeping changes.
APPLICATION: Applies on or after June 1, 2009.

C. #39.10 PERMANENT DISABILITY EVALUATION SCHEDULE

Section 195(1) permanent disability benefits may be made with reference to the *Permanent Disability Evaluation Schedule* (“*Schedule*”), which is set out in Appendix 3. This is a rating schedule of percentages of disability for specific injuries or mutilations created under section 195(3).

The *Schedule* is a set of guide-rules, not a set of fixed rules. The Board is free to apply other variables in arriving at a final rating; but the “other variables” referred to means other variables relating to the degree of physical or psychological impairment, not other variables relating to social or economic factors, nor rules (including schedules and guide-rules) established in other jurisdictions. In particular, the actual or projected loss of earnings of a worker because of the disability is not a variable which can be considered. The Board’s discretion to consider other variables is generally applied to address new and emerging conditions that are not already covered in the *Schedule*.

In cases where the specific impairment is not covered by the *Schedule*, but the part of the body in question is covered, the Board must first determine the percentage of loss of function in the damaged area. This determination is based on the findings of the

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

section 195(1) evaluation and other medical and non-medical evidence available. The final rating is arrived at by taking this percentage of the percentage allocated in the *Schedule* to the disabled part of the body. Because the *Schedule* is used in the calculation, this type of permanent disability benefit is still considered as a Scheduled one. For example, the amputation of an arm down to the proximal third of the humerus or its disarticulation at the shoulder is given a 70% of total disability rating in the *Schedule*. Suppose a worker has a severe crush injury to the arm which culminates in a permanent loss of half its function. The final outcome would be 50% of 70%, i.e. a 35% of total disability rating.

EFFECTIVE DATE: June 1, 2009
AUTHORITY: Section 195(3) of the *Act*.
CROSS REFERENCES: Appendix 3, *Permanent Disability Evaluation Schedule*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: September 1, 2020 – Housekeeping change to add the title of Appendix 3 to the Cross Reference section.
April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
January 1, 2015 – Consequential amendments were made arising from changes to the *Permanent Disability Evaluation Schedule*.
June 1, 2009 – Deleted references to Board officers.
August 1, 2003 – Deletion of statements regarding revisions to the *Schedule* and housekeeping changes.
APPLICATION: Applies on or after June 1, 2009.

D. #39.20 NON-SCHEDULED RATING FOR PERMANENT DISABILITY BENEFITS

Any permanent disability benefits under section 195 where the *Schedule* is not directly or indirectly used in the assessment are non-Scheduled permanent disability benefits. This covers impairments in all parts of the body not listed in the *Schedule*. Disabilities resulting from multiple injuries or occupational diseases may also involve non-Scheduled permanent disability ratings. The rules governing respiratory and skin diseases are set out in the policy of Item C4-29.00 and Section A. of Item C4-32.00 respectively.

In the case of permanent disability benefits for non-Scheduled permanent disability ratings, judgment is used to arrive at a percentage of disability appropriate to the particular worker's impairment. Regard will be had to, among other things, the section 195(1)(a) evaluation, the circumstances of the worker, medical opinions of Board or non-Board doctors, and to schedules used in other jurisdictions.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Neither the age adaptability or enhancement factors nor devaluation are formally applied in respect of non-Scheduled ratings for permanent disability benefits. However, in making a judgment as to the correct percentage of disability, the Board will have regard to the age of the worker, to existing disabilities in other parts of the worker's body, or to the combined effect of more than one disability in the same part of the body.

EFFECTIVE DATE: June 1, 2009
HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officer.
August 1, 2003 – housekeeping changes.
APPLICATION: Applies on or after June 1, 2009.

E. #39.30 MINIMUM AMOUNT OF COMPENSATION FOR PERMANENT PARTIAL DISABILITY UNDER SECTION 195

Section 195(2) provides that the minimum compensation to be paid for permanent partial disabilities is calculated in the same manner as for temporary total disability but only to the extent of the permanent partial disability (see policy item #34.20). Thus, for example, if a worker is injured on January 2, 1986, resulting in a residual disability assessed at 10% of total disability, the minimum compensation will be the lesser of 10% of \$197.25 or 10% of the worker's average earnings prior to the injury.

The statutory minimum for permanent total disability under section 194 does not apply to permanent partial disability simply because a worker is found to be totally unemployable under section 196. (See policy item #37.21 **Item C6-37.00**.)

AUTHORITY: Section 195(2) of the *Act*.
CROSS REFERENCES: Policy item #34.20, *Minimum Amount of Compensation for Temporary Total Disability*;
Policy item #37.21, *Statutory Minimum Application*;
Policy item #40.00, *Section 196 Assessment*, of the *Rehabilitation Services & Claims Manual*, Volume II.
HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

i. #39.31 Injury Prior to January 1, 1965

Permanent partial disability benefits provided for injuries that occurred before January 1, 1965 are recalculated in accordance with the then minimum for permanent total disability but to the extent only of the partial disability. This minimum was an amount equal to \$30.00 per week (\$130.00 per month), unless the worker's average earnings were less, in which case compensation is paid in an amount equal to the average earnings.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Any increase resulting from the above provisions does not apply to commuted permanent disability benefits or the commuted portion of a worker's permanent disability benefits.

In considering whether the worker's earnings are less than the minimum, only the worker's actual earnings are relevant.

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

EFFECTIVE DATE:	January 1, 2021
AUTHORITY:	Section 195 of the Act.
CROSS REFERENCES:	Policy item #34.20, <i>Minimum Amount of Compensation for Temporary Total Disability</i> ; C6-37.00, <i>Permanent Total Disability Benefits</i> ; C6-40.00, <i>Section 196 Permanent Partial Disability Benefits</i> ; Appendix 3, <i>Permanent Disability Evaluation Schedule</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	<p>January 1, 2021 – This policy resulted from the consolidation of former policy items #39.00, #39.01, #39.10, #39.20, #39.30, and #39.31, consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i>. Policy changes consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act</i>, 2020 (Bill 23).</p> <p>September 1, 2020 – Housekeeping change was made to correct a grammatical error and to add the title of Appendix 3 to the Cross Reference section.</p> <p>April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i>, R.S.B.C. 2019, c. 1.</p> <p>January 1, 2015 – Consequential amendments were made arising from changes to the <i>Permanent Disability Evaluation Schedule</i>.</p> <p>June 1, 2009 – Removed references to Board officer, Rehabilitation and Compensation Services Division, Disability Awards Medical Advisor and Board authorized External Service Provider.</p> <p>August 1, 2003 – Deletion of statements regarding revisions to the <i>Schedule</i> and housekeeping changes.</p>
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Chronic Pain

ITEM: C6-39.10

BACKGROUND

1. Explanatory Notes

This policy provides guidance on assessing a worker's entitlement to permanent partial disability benefits for chronic pain.

2. The Act

Sections 195 and 196:

See Item C6-38.00.

POLICY

~~#39.02~~ ~~Chronic Pain~~

A worker's entitlement to permanent partial disability benefits for chronic pain is considered under sections 195(1) and 196(3) of the Act.

~~This policy sets out~~ **below are** guidelines for the assessment of section 195(1) permanent **partial** disability benefits for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury.

4. ~~A.~~ DEFINITIONS:

Chronic pain is defined as pain that persists six months after an injury and beyond the usual recovery time of a comparable injury.

The Board distinguishes between two types of chronic pain symptoms:

Specific chronic pain - pain with clear medical causation or reason, such as pain that is associated with a permanent partial or total physical or psychological disability.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Non-specific chronic pain - pain that exists without clear medical causation or reason. Non-specific pain is pain that continues following the recovery of a work injury.

2.B. MULTIDISCIPLINARY ASSESSMENT:

If a worker has been referred for a permanent partial disability assessment under section 195(1) for chronic pain, the Board may refer the worker for a multidisciplinary assessment. (See Item C3-22.20.)

A multidisciplinary assessment may involve consideration of the worker's medical history, health status, the impact of the pain on the worker's physical functioning, psychological state, behaviour, ability to perform the pre-injury occupation and ability to perform activities of daily living. (See Item C3-22.20.)

Based on the various assessments, the evaluation will provide the Board with information on whether the worker is experiencing persistent chronic pain as a result of a work injury or disease and the extent of the chronic pain. The evaluation will also provide information on the consistency of the worker's pain presentations.

3.C. EVIDENCE CONSIDERED IN A CHRONIC PAIN SECTION 195(1) ASSESSMENT:

In making a determination under section 195(1), the Board will enquire carefully into all of the circumstances of a worker's chronic pain resulting from a compensable injury or disease.

The evidence that the Board may consider in a section 195(1) assessment for chronic pain includes the following:

- i) ● The findings of any multidisciplinary assessments.
- ii) ● Information provided by the worker's attending physician as well as any other relevant medical information on the claim.
- iii) ● The worker's own statements regarding the nature and extent of the pain.
- iv) ● The worker's conduct and activities and whether they are consistent with the pain complaints.
- v) ● In cases of specific chronic pain, the Board will consider the extent

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

of the associated physical or psychological permanent impairment and whether the specific chronic pain is in keeping with the particular permanent impairment.

The evidence that is relied upon to support the assessment of section 195(1) permanent disability benefits must be fully documented.

4.D. ENTITLEMENT TO PERMANENT DISABILITY BENEFITS UNDER A SECTION 195(1) ASSESSMENT:

Entitlement to permanent disability benefits under section 195(1) for chronic pain may only be considered after all appropriate medical treatment and rehabilitation interventions have been concluded.

(a)i. Specific Chronic Pain – Consistent with the Impairment

~~If a worker has specific chronic pain that is consistent with the associated compensable physical or psychological permanent impairment, the section 195(1) permanent disability benefits will be considered to appropriately compensate the worker for the impact of the chronic pain. Pain is considered to be consistent with the associated compensable impairment where the pain is limited to the area of the impairment, or medical evidence indicates that the pain is an anticipated consequence of the physical or psychological impairment. In these cases, additional permanent disability benefits for the specific chronic pain will not be provided under section 195(1), as it would result in the worker being compensated twice for the impact of the pain.~~

(b)ii. Specific and Non-Specific Chronic Pain – Disproportionate to the Impairment

A worker's entitlement to permanent disability benefits paid under section 195(1) for chronic pain will be considered in the following cases:

- i)
 - If a worker experiences specific chronic pain that is disproportionate to the associated objective physical or psychological impairment.

Pain is considered to be disproportionate if it is generalized rather than limited to the area of the impairment, or the extent of the pain is greater than that expected from the impairment.

In these cases, permanent disability benefits for chronic pain under section 195(1) may be considered in addition to the permanent disability benefits paid for objective permanent impairment.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- ii) ● If a worker experiences disproportionate non-specific chronic pain as a compensable consequence of a work injury or disease.

Disproportionate pain, for the purposes of non-specific chronic pain, is pain that is significantly greater than what would be reasonably expected given the type and nature of injury or disease.

If the Board determines that a worker is entitled to permanent disability benefits for chronic pain under section 195(1) in the above noted situations, permanent disability benefits equal to **are assessed at** 2.5% of total disability ~~will be provided to the worker.~~

EFFECTIVE DATE: June 1, 2009

CROSS REFERENCES: ~~Item C3-22.20, *Compensable Consequences – Pain and Chronic Pain*; Policy item #39.01, *Decision-Making Procedure under Section 195(1)*, of the *Rehabilitation Services & Claims Manual*, Volume II.~~

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

June 1, 2009 – Deleted references to Board officers.
January 1, 2003 – Amended to set out guidelines for the assessment of then section 23(1) awards for workers who experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury. Amendments applied to new claims received and all active claims that were awaiting an initial adjudication on or after January 1, 2003.

APPLICATION: Applies on or after June 1, 2009.

EFFECTIVE DATE: January 1, 2021

AUTHORITY: Sections 195 and 196 of the *Act*.

CROSS REFERENCES: Item C3-22.20, *Compensable Consequences – Pain and Chronic Pain*;

C6-39.00, *Section 195 Permanent Partial Disability Benefits*; C6-40.00, *Section 196 Permanent Partial Disability Benefits*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: January 1, 2021 – This policy replaces former policy item #39.02, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*. Policy changes consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23).

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

June 1, 2009 – Deleted references to Board officers.

January 1, 2003 – Amended to set out guidelines for the assessment of then section 23(1) awards for workers who

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

experience disproportionate disabling chronic pain as a compensable consequence of a physical or psychological work injury. Amendments applied to new claims received and all active claims that were awaiting an initial adjudication on or after January 1, 2003.

APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Section 196 Permanent Partial Disability Benefits	ITEM: C6-40.00
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BACKGROUND

1. Explanatory Notes

This policy provides guidance on assessing a worker's entitlement to permanent partial disability benefits under section 196 of the *Act*.

2. The Act

Section 196:

- (1)** This section applies in relation to a permanent partial disability if an amount required under section 195 is less than an amount required under this section.
- (2)** *Repealed.*
- (3)** The Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
 - (a)** the average net earnings of the worker before the injury, and
 - (b)** whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i)** the average net earnings that the worker is earning after the injury;
 - (ii)** the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

POLICY

A. ~~#40.00 SECTION 196(3) ASSESSMENT~~ INTRODUCTION

~~Section 190 states that all compensation under Division 6 of Part 4 of the Act – Compensation for Worker Disability – is subject to sections 230, 231, 232, and 233.~~

~~Section 196 of the Act provides:~~

- ~~(1) — This section applies in relation to a permanent partial disability if the Board determines that the combined effect of
 - ~~(a) — the worker's occupation at the time of the injury, and~~
 - ~~(b) — the worker's disability resulting from the injury~~is so exceptional that an amount determined under section 195 does not appropriately compensate the worker for the injury.~~
- ~~(2) — In making a determination under subsection (1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation.~~
- ~~(3) — If the Board makes a determination under subsection (1), the Board may pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
 - ~~(a) — the average net earnings of the worker before the injury, and~~
 - ~~(b) — whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - ~~(i) — the average net earnings that the worker is earning after the injury;~~
 - ~~(ii) — the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.~~~~~~

Permanent partial disability benefits assessed under section 196(3) reflect the worker's projected loss of earnings capacity, as determined by the Board.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Section 196(3) is a discretionary provision that establishes rules for compensating a worker for a permanent partial disability in exceptional circumstances. Section 196(3) is only applied where the test set out under section 196(1) is met.

Section 196(1) requires that the Board determine whether the combined effect of a worker's occupation at the time of the injury and a worker's disability resulting from the injury is so exceptional that an amount determined under section 195(1) does not appropriately compensate the worker for the injury.

For the purposes of this determination, the Board must consider the combined effect of a worker's occupation at the time of injury and the resulting disability. While a worker may experience a loss of earnings as a result of a work injury, that fact alone is not sufficient to meet the test set out under section 196(1).

In all cases, the Board must determine if, following recovery from a work injury, a worker is either able to continue in the occupation at the time of the injury or to adapt to another suitable occupation. This determination includes consideration of both the worker's transferable skills and the worker's post-injury functional abilities. In the vast majority of cases a worker's entitlement to permanent partial disability benefits is determined under section 195(1), and this estimate of impairment of earning capacity is considered to be appropriate compensation.

However, in exceptional cases, the amount determined under section 195(1) may not appropriately compensate a worker. In these cases, the disability resulting from the work injury makes it unlikely that a worker can continue in the occupation at the time of the injury or adapt to another suitable occupation, without incurring a significant loss of earnings.

For the purposes of this policy, a significant loss of earnings means the Board may conclude in these exceptional cases, that the loss of earnings a worker will experience as a result of the combined effect of the worker's occupation at the time of the injury and the worker's disability resulting from the injury could not have been anticipated under the section 195(1) method of estimating a worker's long term loss of earning capacity.

In determining whether a worker is experiencing a significant loss of earnings, the Board takes into consideration the difference between the worker's pre-injury earnings and the combined total of the worker's post-injury earnings and the amount determined under the section 195(1) method of assessment.

An example of when the combined effect may be considered so exceptional is one where a work injury results in a significant disability of two digits on the dominant hand

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

~~of a worker whose occupation requires fine motor skills. As a result of the disability, the worker is no longer able to perform fine motor skills, and consequently, is unable to continue in the pre-injury occupation without incurring a significant loss of earnings. In addition, due to the disability, the worker is unable to adapt to another suitable occupation without incurring a significant loss of earnings.~~

~~As a result, the amount of compensation determined under section 195(1) may not be considered to appropriately compensate the worker for the impact of the combined effect, and the worker therefore may be eligible to be considered for compensation under section 196(3).~~

EFFECTIVE DATE: _____ April 26, 2012

HISTORY: _____ April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPLICATION: _____ Applies to all decisions, including appellate decisions, made on or after April 26, 2012.

~~#40.01 DECISION-MAKING PROCEDURE UNDER SECTION 196(3)~~

Section 196(3) assessments are undertaken if a permanent partial disability results from a worker's injury, and **when** the Board makes a determination **s** under section 196(1) with respect to the worker.

~~The Loss of Earnings Committee is ultimately responsible for the conclusion on permanent partial disability benefits assessed under section 196(3) of the Act. The Board conducts the necessary investigations and makes a specific recommendation to the Committee regarding a worker's eligibility for a section 196(3) assessment and, in cases where an assessment is undertaken, the worker's entitlement to permanent partial disability benefits.~~

~~It is the function of the Committee, following any further investigation it considers necessary, to agree or disagree with the recommendation. If the Committee agrees, the initial recommendation will be implemented. If the Committee disagrees with the recommendation, it will either implement its findings or direct further investigation.~~

~~The rules of evidence followed by the Board and the Loss of Earnings Committee are discussed in policy item #97.40.~~

~~A review by the Review Division may be requested regarding a worker's section 196 entitlement.~~

EFFECTIVE DATE: _____ June 1, 2009

AUTHORITY: _____ Section 196 of the Act.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

CROSS REFERENCES:	Policy item #97.40, <i>Permanent Disability Benefits</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to Board officer, Medical Services and the former Disability Awards Committee. March 3, 2003 – Inclusion of reference to review.
APPLICATION:	Applies on or after June 1, 2009.

B. #40.10 SECTION 196(3) ASSESSMENT FORMULA

An assessment is undertaken in exceptional cases where the Board determines that a worker is eligible for an assessment under section 196(3) of the Act. The following guidelines apply in **when** considering **assessing** a worker under section 196(3):

1. Long term average net earnings that the worker is earning after the injury will be determined in accordance with established policies in Chapter 9.
- 2. Average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury will be determined.**
- ~~2. In considering the amount that better represents the worker's loss of earnings after the injury, the Board will compare the average net earnings that the worker is actually earning after the injury, with the average net earnings the Board estimates the worker is capable of earning in a suitable occupation after the injury. This comparison requires an employability assessment.~~
3. In estimating what a worker is capable of earning after the injury, the Board gives regard to **considers** the evidence, including the medical evidence, of the limitations imposed by the compensable disability and the fitness of the worker for different occupations. The Board also ~~gives regard to~~ **considers** the evidence about the suitability of the worker for occupations that could reasonably become available. Following these considerations, the Board will arrive at a conclusion about suitable occupations that the worker could be expected to undertake over the long-term future.
4. Average net earnings that maximize the worker's long-term potential up to the worker's pre-injury wage rate, will be selected from the occupations that are suitable and reasonably available over the long-term. Earnings in those occupations will be determined as at the time of the injury.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- 5.** In considering the amount that better represents the worker's loss of earnings after the injury, the Board will compare the average net earnings that the worker is actually earning after the injury, with the average net earnings the Board estimates the worker is capable of earning in a suitable occupation after the injury.
- 56.** The possible section 196 compensation amount will then be 90% of the average net amount by which the earnings level thus established is less than the average net earnings prior to the injury.
- 67.** Any increase that may be due to the worker because of a cost of living adjustment will then be added.
- 78.** Since the assessment under section 196(3) aims to predict the worker's actual loss of earnings over the future, no section 196 compensation can be paid when the worker is unemployed for reasons unrelated to the injury and it is determined that there will not be a potential loss of earnings.

These guidelines are discussed further in ~~policy items #40.12 to #40.14~~ **below**.

EFFECTIVE DATE: June 1, 2009

CROSS REFERENCES: ~~Policy item #40.12, *Suitable Occupation*;
Policy item #40.13, *Measurement of Earnings Loss*;
Policy item #40.14, *Provision of Employability Assessments*;
Chapter 9, of the *Rehabilitation Services & Claims Manual*, Volume II.~~

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

~~June 1, 2009 – Deleted references to Board officer.
November 1, 2002 – Amendments included the requirement of an employability assessment, and the limitation of “up to the worker’s pre-injury wage rate”.~~

APPLICATION: Applies on or after June 1, 2009.

C. #40.12-SUITABLE OCCUPATION

An occupation differs from a “job”, which is defined as a specific position with a particular employer. Occupation is a collection of jobs or employments that are characterized by a similarity of skills.

In estimating what a worker is capable of earning in a suitable occupation after the injury, the Board considers the evidence, including the medical evidence of the limitations imposed by the compensable disability, and the ability of the worker to perform different occupations. Consideration is also given to the suitability of the worker for occupations that could reasonably become available over the long run that will

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

maximize the worker's long-term earnings potential, up to the pre-injury wage rate. In most cases, "long-term" refers to three to five years.

The Board assesses the worker's earning potential in light of transferable skills and all possible rehabilitation measures that may be of assistance, including the possibility of retraining or other measures that may be appropriate to the worker.

The guidelines set out below are followed in determining suitable and reasonably available occupations for a worker:

- If the worker has made all reasonable efforts to maximize the worker's earnings, the job that the worker has actually obtained is generally accepted as being suitable, unless there is evidence that the job is transitory and jobs at another level of earnings within that occupation will be available to the worker in the near future.
- The occupation must, in practice, be reasonably available. The Board will, generally, only have regard to higher paying occupations which a person in the worker's present job would ordinarily be expected to obtain. It would not be fair to assume that a worker will receive all possible promotions that might theoretically be made available.
- The worker has the skills, education and functional abilities that the occupation requires.
- A reasonably available occupation must be one that the worker is medically fit to undertake, and that does not endanger the worker's recovery or the health and safety of the worker and/or others.
- If a suitable occupation is reasonably available over the long term, it is taken into consideration even though it is not reasonably available at the time of assessment because of general economic conditions.
- In deciding whether it is reasonable for a worker to refuse a job, consideration should be given to the long term as well as the immediate job. If jobs in an occupation are subject to fluctuations in the economy but a lower-paying job in another suitable occupation appears more stable in the long run, then the other job may be considered the best-paying job in the long run.
- A reasonably available job is usually within a reasonable commuting distance of the worker's home. (See ~~policy in~~ Item C11-88.90.)

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- If the worker declines the best-paying reasonably available job because of a personal preference for a lower-paying job or for an alternative life-style, the wage rate in the best-paying reasonably available job will be used in the formula.

EFFECTIVE DATE: June 1, 2009

CROSS REFERENCES: ~~Item C11-88.90, Relocation, of the Rehabilitation Services & Claims Manual, Volume II.~~

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted references to Board officer.
November 1, 2002 – Policy substantially revised. Clarified guidelines to be followed in determining suitable and reasonably available occupations for a worker.

APPLICATION: Applies on or after June 1, 2009.

D. #40.13 MEASUREMENT OF EARNINGS LOSS

Subsections 196(3)(a) and (b) set out the process for determining a worker's entitlement to permanent partial disability benefits under this method. ~~These subsections provide that~~ **If permanent partial disability benefits are being paid under section 196, subsections 196(3)(a) and (b) provide that** the Board ~~may~~ **must** pay a worker compensation that is a periodic payment of an amount that equals 90% of the difference between the average net earnings of the worker before the injury, and either the average net earnings that the worker is earning, or that the Board estimates the worker is capable of earning, after the injury.

The latter figures are obtained by ascertaining the earnings in the occupations which have been found to be suitable and reasonably available according to the criteria set out in ~~policy item #40.12~~ **Section C of this Item** and determining the earnings figure which will maximize the worker's long-term earnings potential.

A worker's post-injury ~~wage~~ **earnings** loss will be based on estimated earnings rather than on actual earnings in the following cases:

- The worker is employable but does not have a job; or
- The worker has a job but is not maximizing earning capacity up to the pre-injury rate; or
- The worker has, for personal reasons, withdrawn from the workforce; or
- The worker fails to co-operate with the rehabilitation process.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

The intention of the *Act* is to protect workers' earnings only up to the maximum wage rate. This is shown by section 208(2), which results in payments for total disability being limited to 90% of the maximum and by section 200, which ensures that, where a worker is already receiving payments for a disability, additional payments can be made for any further disability only to the extent that they do not take the total payments above the maximum. No permanent **partial** disability benefits can be paid under section 196(3) where, following the injury, the worker is earning or is able to earn at or above the maximum wage rate. If a worker was earning at or above the maximum prior to the injury and it is projected that because of the injury, earnings will be less than the maximum, permanent disability benefits based on a projected loss of earnings can be paid but only to the extent of the difference between the maximum and the projected earnings.

Although assessment of permanent partial disability benefits will often be made some time after the original injury, it would not be fair to compare directly the actual pre-injury average earnings with the earnings the worker might now earn in the occupations available. The effect of inflation upon earnings levels would mean that the real loss would not be properly determined in that way.

The practice of the Board is to use the earnings in the occupations after the injury, as they stood at the date of the injury, where these are available and are a reliable and accurate reflection of the worker's post-injury earning capacity. For example, the Board may use actual earnings in post-injury occupations where earnings are the provincial minimum wage.

When earnings in occupations at the time of the injury are not available or are not a reliable and accurate reflection of the worker's post-injury earning capacity, the Board will use current earnings in the occupations available after the injury, and adjust them back to the date of injury by the wage inflation adjustment factors applicable in those years. The wage inflation adjustment factor effective for a given year is the percentage change in that year's maximum wage rate from the year prior, but not less than zero.

When calculating a worker's average net earnings for the purposes of the section 196(3) assessment, the Board will also consider the formulas used to determine the CPP contributions, EI premiums and income taxes applicable to the level of average earnings. The formulas used are those in effect on the earlier of the first day after the date wage-loss benefits have been payable to the worker for a cumulative period of 10 weeks; or on the effective date of a worker's permanent disability benefits.

EFFECTIVE DATE: _____ April 1, 2018

CROSS REFERENCES: _____ Policy item #40.12, *Suitable Occupation*, of the *Rehabilitation Services & Claims Manual*, Volume II.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

HISTORY:	April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1.
	April 1, 2018 – Policy revised to clarify when earnings are adjusted for inflation and to revise the factor used to account for inflation. Under this approach, the factor would be determined using the process for changing the maximum wage rate as set out in then subsections 33(7) – (10) (now sections 209 and 227) of the <i>Act</i> .
APPLICATION:	Applies to all decisions made on or after April 1, 2018, including appellate decisions.

E. #40.14 PROVISION OF EMPLOYABILITY ASSESSMENTS

Where ~~Workers~~ are provided with a copy of a completed employability assessment before a decision is made on entitlement to permanent disability benefits under section 196(3), ~~they~~ have 30 days in which to provide a written submission. All such submissions received within this time frame will be considered before the final decision is made. ~~Workers are also advised that, at their request, a copy will be made available to their treating physicians.~~ If the details of the employability assessment and its impact on the permanent disability benefits under section 196(3) are known and agreed to, the 30-day waiting period may be waived.

HISTORY:	April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1.
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EFFECTIVE DATE:	January 1, 2021
AUTHORITY:	Section 196 of the <i>Act</i> .
CROSS REFERENCES:	Chapter 9, <i>Average Earnings</i> ; Item C11-88.90, <i>Vocational Rehabilitation – Relocation</i> ; Policy item #97.40, <i>Permanent Disability Benefits</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – This policy resulted from the consolidation of former policy items #40.00, #40.01, #40.10, #40.12, #40.13, and #40.14, consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i> . Policy changes consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act</i> , 2020 (Bill 23). April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. April 1, 2018 – Policy revised to clarify when earnings are adjusted for inflation and to revise the factor used to account for inflation. Under this approach, the factor would be determined using the process for changing the maximum wage rate as set out in then subsections 33(7) – (10) (now sections 209 and 227) of the <i>Act</i> .

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

June 1, 2009 – Deleted references to Board officer, Medical Services and the former Disability Awards Committee.

March 3, 2003 – Inclusion of reference to review.

November 1, 2002 – Policy substantially revised. Clarified guidelines to be followed in determining suitable and reasonably available occupations for a worker. Amendments included the requirement of an employability assessment, and the limitation of “up to the worker’s pre-injury wage rate”.

APPLICATION:

Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Duration of Permanent Disability Periodic Payments	ITEM: C6-41.00
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BACKGROUND

1. Explanatory Notes

This policy provides guidance on the determination of a worker's retirement date for the purposes of the duration of permanent disability benefits decision under section 201 of the Act.

2. The Act

Section 201:

- (1) Subject to subsection (2), periodic payment of compensation under this Division may be paid to an injured worker only as follows:**
 - (a) if the worker is under 63 years of age on the date of the injury, until the later of the following:**
 - (i) the date the worker reaches 65 years of age;**
 - (ii) if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board;**
 - (b) if the worker is 63 years of age or older on the date of the injury, until the later of the following:**
 - (i) 2 years after the date of the injury;**
 - (ii) if the Board is satisfied that the worker would retire after the date of the injury, the date the worker would retire, as determined by the Board.**
- (2) As a restriction on subsection (1), the Board may not make a periodic payment to a worker under this Division if the worker ceases to have the disability for which the periodic payment is to be made.**

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (3) A determination made under subsection (1) (a) (ii) as to a date on which a worker would retire after reaching age 65 may be made after a worker has reached age 63, and the Board may, when making the determination, consider the worker's circumstances at the time of that determination.

3. *Workers Compensation Amendment Act, 2020 (Bill 23)*

Section 36:

A determination may be made under section 201(3) of the *Workers Compensation Act*, as added by section 18 of this Act, whether or not a determination has been made under section 201(1) of that Act before the date section 18 of this Act comes into force [January 1, 2021].

POLICY

A. ~~#41.00 DURATION OF PERMANENT DISABILITY PERIODIC PAYMENTS~~ INTRODUCTION

~~Section 201(1) of the Act provides:~~

~~Subject to subsection (2), periodic payment of compensation under this Division [Division 6 of Part 4 of the Act — Compensation for Worker Disability] may be paid to an injured worker only as follows:~~

- ~~(a) — if the worker is under 63 years of age on the date of the injury, until the later of the following:
 - ~~(i) — the date the worker reaches 65 years of age;~~
 - ~~(ii) — if the Board is satisfied the worker would retire after reaching 65 years of age, the date the worker would retire, as determined by the Board;~~~~
- ~~(b) — if the worker is 63 years of age or older on the date of the injury, until the later of the following:
 - ~~(i) — 2 years after the date of the injury;~~~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (ii) ~~if the Board is satisfied that the worker would retire after the date referred to in subparagraph (i), the date the worker would retire, as determined by the Board.~~

For the purpose of permanent disabilities, section 201(1) of the *Act* provides for the payment of permanent disability benefits until a worker reaches 65 years of age.

If the Board is satisfied a worker would retire after reaching 65 years of age, section 201(1) permits the Board to continue to pay permanent disability benefits to the age the worker would retire after the age of 65 if the worker had not been injured.

For the purpose of this policy, a worker is generally considered to be retired when the worker substantially withdraws from the workforce and receives retirement income from one or more retirement-like sources (eg., CPP, OAS, employer pension plan, RRSP or other personal savings).

When determining whether a worker would retire after age 65, the circumstances under consideration are those of the individual worker as they existed at the time of the injury.

A. EVIDENCE

As age 65 is the established retirement age under the *Act*, to continue to pay benefits after the age of 65, the evidence must support a finding that the worker would work past age 65. Evidence is also required so that the Board can establish the worker's new retirement date for the purposes of concluding permanent disability benefits payments. The standard of proof under section 339(3) of the *Act* is "at least as likely as not" as described in policy item #97.00.

The issue for the Board to determine is whether it is "at least as likely as not" that the worker would have retired after age 65. The Board considers the worker's statement of intention to retire after age 65, but must determine whether it is "at least as likely as not" that the worker would actually have retired later than age 65.

Examples of the kinds of evidence that may support a finding that a worker would retire after reaching 65 years of age and to establish the date of retirement, include the following:

- names of the employer or employers the worker intended to work for after age 65, a description of the type of employment the worker was going to perform, the expected duration of employment, and information from the identified

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

employer or employers to confirm that the employer(s) intended to employ the worker after the worker reached age 65 and that employment was available;

- a statement from a bank or financial institution outlining a financial plan and post-age 65 retirement date, established prior to the date of the injury; and
- an accountant's statement verifying a long-term business plan (for self-employed workers) established prior to the date of the injury, indicating continuation of work beyond age 65.

Where the above type of evidence is available, this would be evidence in support of a determination that a worker would have worked until after age 65.

The following are examples of other kinds of evidence that alone may not support a finding that a worker would retire after reaching 65 years of age:

- information provided from the worker's pre-injury employer, union or professional association regarding the normal retirement age for workers in the same pre-injury occupation and whether there are incentive plans for workers working beyond age 65;
- information from the pre-injury employer about whether the worker was covered under a pension plan provided by the employer, and the terms of that plan;
- information from the pre-injury employer or union on whether there was a collective agreement in place setting out the normal retirement age;
- information regarding whether the worker would have the physical capacity to perform the work;
- financial obligations of the worker, such as a mortgage or other debts;
- family commitments of the worker; and
- an outstanding lease on a commercial vehicle (for self-employed workers).

These are not conclusive lists of the types of evidence that may be considered. The Board will consider any other relevant information in determining whether a worker would have worked past age 65 and at what date the worker would have retired.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

B. WHEN DETERMINATION IS MADE

Generally the decision as to a worker's retirement date is made as part of the determination of a worker's entitlement to permanent disability benefits.

In some circumstances, the decision as to a worker's retirement date may be made prior to the determination of a worker's entitlement to permanent disability benefits. For example, when a worker's retirement date impacts a worker's entitlement to wage-loss benefits or vocational rehabilitation benefits.

In these cases, the retirement date on the wage-loss benefits or vocational rehabilitation benefits will also apply to the resulting permanent disability benefits, if granted.

C. WHEN PAYMENTS CONCLUDE

If the Board is satisfied that a worker would have continued to work past age 65 if the injury had not occurred, permanent disability periodic payments may continue past that age until the date the Board has established as the worker's retirement date. At the worker's age of retirement, as determined by the Board, periodic payments will conclude even if the worker's permanent disability remains.

In situations where a worker in receipt of permanent disability periodic payments dies from causes unrelated to the disability, the periodic payments will continue for the full month in which the death occurred. The effect of this policy will be that no overpayments will be considered to have arisen for the period from the date of the worker's death up to the end of the month covered by the last periodic payment.

If the worker dies prior to the commencement of payments for the permanent disability benefits, the compensation is calculated and paid to the date of death. The situation where such a worker would have received the permanent disability benefit as a lump sum payment is dealt with in ~~policy item #45.00~~ **Item C6-45.00**.

EFFECTIVE DATE: September 1, 2020
AUTHORITY: Section 201 of the Act.
CROSS REFERENCES: Policy item #48.44, *Deduction of Overpayments from Permanent Disability Benefits*;
Policy item #45.00, *Lump Sums and Commutations, of the Rehabilitation Services & Claims Manual, Volume II*.
HISTORY: September 1, 2020 – Policy amended to clarify examples of evidence are parallel in policy item #41.00 and policy item #35.30 of the *Rehabilitation Services & Claims Manual, Volume II*.
April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act, R.S.B.C. 2019, c. 1*.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

February 1, 2020 – Policy amended to provide guidance on legal issues of standard of proof, evidence, and causation.

APPLICATION: Applies to all decisions made on or after September 1, 2020.

EFFECTIVE DATE: January 1, 2021

AUTHORITY: Section 201 of the Act.

CROSS REFERENCES: Policy item #48.44, *Deduction of Overpayments from Permanent Disability Benefits*; Item C6-45.00, *Lump Sums and Commutations, of the Rehabilitation Services & Claims Manual, Volume II.*

HISTORY: January 1, 2021 – This policy replaces former policy item #41.00, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*. Housekeeping changes to the Act portion of the Background section consequential to the retirement age determination provisions of the *Workers Compensation Amendment Act, 2020* (Bill 23).
September 1, 2020 – Policy amended to clarify examples of evidence are parallel in policy items #41.00 and #35.30, of the *Rehabilitation Services & Claims Manual, Volume II.*
April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act, R.S.B.C. 2019, c. 1.*
February 1, 2020 – Policy amended to provide guidance on legal issues of standard of proof, evidence, and causation.

APPLICATION: Applies to all decisions made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Payment of Permanent Disability Benefits

ITEM: C6-42.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance on how permanent disability benefits are paid.

2. The Act

Section 190:

Compensation under this Division is subject to the following provisions:

- (a) section 230 [*manner of compensation payment: periodic or lump sum*];
- (b) section 231 [*payment of compensation in specific circumstances*];
- (c) section 232 [*Board authority to discontinue or suspend payments*];
- (d) section 233 [*deduction in relation to payments from employer*].

Sections 194, 195, and 196:

See Item C6-36.00.

POLICY

A. #42.00 PAYMENT OF PERMANENT DISABILITY BENEFITS INTRODUCTION

Although section 190 of the *Act* provides that all compensation for worker disability is subject to sections 230, 231, 232, and 233, permanent disability benefits under sections 194, 195 and 196 **is** **are** normally payable monthly until the worker reaches retirement age as determined by the Board. However, some payments are made as

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

lump sums. The cheques are mailed to the worker's home address or, if the worker elects, directly to the worker's bank by electronic direct bank deposit.

When a payment to a worker has been lost or stolen or otherwise not received or cashed by the worker, the worker may request a reissue of payment, but the Board will require a written and signed declaration of this from the worker before a reissue will take place.

AUTHORITY: ~~Sections 190 and 230 of the Act.~~

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the Workers Compensation Act, R.S.B.C. 2019, c. 1.~~

B. #42.10 COMMENCEMENT OF PERIODIC PAYMENTS

The general rule is that the permanent disability periodic payments commence at the date when the worker's temporary disability ceased and the worker's condition stabilized or was first considered to be permanent.

If a worker has been paid any wage-loss benefits under section 191 or 192 of the Act, the permanent disability periodic payments will take effect from the date following the termination of these wage-loss benefits. For the majority of cases, this will adequately reflect the financial impact of the disability on the worker's earnings.

There may, however, be the unusual situation where a worker has or could have returned to a significant level of employment with a minimal loss of income. Temporary partial disability wage-loss benefits under section 192 would be 90% of the worker's average net earnings in this employment. Should the worker's permanent disability benefits eventually be assessed at a higher rate than the rate paid for temporary wage-loss benefits under section 192, it would appear that the worker may have been inadequately compensated. The Act, however, precludes the payment of both temporary and permanent disability compensation for the same condition at the same time.

A problem of permanent disability benefits retroactivity also occurs when, although the worker had a temporary partial disability, the worker had or could have returned to full employment and has not, therefore, actually been paid any wage-loss benefits under section 192. As previously stated, the Act requires that the Board recognize a disability as either temporary or permanent, but not both concurrently. When carrying out the final permanent disability assessment, the Board will have the benefit of the earlier examination, or at least some other documentary evidence on file, on which the decision was made to delay permanent disability compensation. If the findings on the latter examination are the same as the initial findings, or only show a minimal degree of

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

change, it is reasonable to consider the condition as having plateaued from the date of the first examination. In that event, the date of the first examination should be the starting date of the permanent disability periodic payments. If, on the other hand, the latest examination shows a measurable and significant change since the first examination, the worker will be considered as having been, in the interim, temporarily disabled. In that event, the date of the last examination will be the starting date of the periodic payments for permanent disability benefits.

If there was no examination by either a Board Medical Advisor or an External Service Provider when wage-loss benefits were terminated under section 192, and there is no other measurable data on file with which to make a comparison with the final assessment of the Board, the permanent disability benefits will be backdated to the date wage-loss benefits were terminated under section 192.

EFFECTIVE DATE: June 1, 2009

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

June 1, 2009 – Deleted references to Board officer.

APPLICATION: Applies on or after June 1, 2009.

C. #42.12 RETROACTIVE PERMANENT DISABILITY BENEFITS

If permanent disability benefits are granted retroactively, the payments due prior to the date of the first periodic payment will be paid in the form of a lump sum.

In calculating that sum, entitlement in respect of a portion of a month is determined by reference to the actual calendar days in a particular month. For example, if a worker is entitled to permanent disability benefits calculated at \$1,000 per month, for the period March 17 to 31 (15 calendar days), the calculation is as follows:

$$\frac{\$1,000}{31 \text{ days}} \times 15 \text{ days} = \$483.87$$

A reduction in the lump sum is made in respect of periods of time during the period following the commencement of the permanent disability benefits when the worker received wage-loss benefits under section 191 or 192 or vocational rehabilitation benefits under section 155. However, no such reduction is made when the permanent disability benefits are granted in the form of a lump sum and the monthly equivalent is less than \$20.00 per month at the time of the commutation.

The payment of interest on the lump sum is dealt with in policy item #50.00.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

D. #42.20-PERMANENT DISABILITY BENEFIT ADJUSTMENTS

If permanent disability benefits to a worker or a dependant are paid or increased on the basis of a Review Division decision, and the finding is later reversed by the Workers' Compensation Appeal Tribunal, the permanent disability payments are terminated or adjusted as of the date of the Workers' Compensation Appeal Tribunal decision. In such cases, the capitalization is adjusted by the reversal of an amount equivalent to the unused portion of the capitalization or, in the case of a modification, the adjustment applies to the amount of the capitalization affected by the modification. The policy regarding relief of costs to employers in such circumstances is detailed in policy item #113.10.

EFFECTIVE DATE: ~~March 3, 2003~~

CROSS REFERENCES: ~~Policy item #113.10, *Investigation Costs*, of the *Rehabilitation Services & Claims Manual*, Volume II.~~

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 3, 2003 – Amended regarding references to Review Division and Workers' Compensation Appeal Tribunal.~~

EFFECTIVE DATE: January 1, 2021

AUTHORITY: Sections 190 and 230 of the *Act*.

CROSS REFERENCES: Policy item #113.10, *Investigation Costs*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: January 1, 2021 – This policy resulted from the consolidation of former policy items #42.00, #42.10, #42.12, and #42.20, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

June 1, 2009 – Deleted references to Board officer.

March 3, 2003 – Amended regarding references to Review Division and Workers' Compensation Appeal Tribunal.

APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Disfigurement Compensation

ITEM: C6-43.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance on determining a worker's entitlement to compensation for permanent disfigurement under section 199 of the *Act*.

2. The Act

Section 199:

If a worker experiences a serious and permanent disfigurement that the Board considers capable of impairing the worker's earning capacity, the Board may pay a lump sum in compensation and may do so even if the amount the worker was earning before the injury has not been reduced.

POLICY

~~#43.00 DISFIGUREMENT~~

~~Section 190 of the *Act* provides that all compensation for worker disability is subject to sections 230, 231, 232, and 233.~~

~~Section 199 of the *Act* provides:~~

~~If a worker experiences a serious and permanent disfigurement that the Board considers capable of impairing the worker's earning capacity, the Board may pay a lump sum in compensation and may do so even if the amount the worker was earning before the injury has not been reduced.~~

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

A. #43-10 REQUIREMENTS FOR DISFIGUREMENT COMPENSATION

Section 199 establishes the following requirements:

1. The disfigurement must be “permanent”. A temporary disfigurement is not sufficient.
2. The disfigurement must be “serious”. No permanent disfigurement compensation will be made if the disfigurement is minimal.
3. The disfigurement must be one that the Board considers capable of impairing the worker’s earning capacity. This is normally assumed in cases of the head, neck and hands. In other cases, a decision must be made which considers the age and occupation of the worker, the visibility and extent of the disfigurement and any other relevant circumstances. Since section 199 states that the amount the worker is currently earning does not have to be reduced, this requirement is concerned with the worker’s long-term earning capacity.

If there is disfigurement as well as a permanent disability, the worker may receive compensation for both. Subject to the Board applying section 230(2) of the *Act* (see policy item #45.00 **Item C6-45.00**), the compensation for the permanent disability is a periodic payment, and the compensation for disfigurement a lump sum. These amounts must be assessed separately.

Disfigurement is concerned with the appearance of the body, not loss of bodily function. Therefore, compensation for a loss of skin function, for example, soreness or itchiness or unusual sensitivity to light, heat or humidity, will be considered as a permanent disability rather than a disfigurement. The granting of permanent disability benefits will depend on the normal criteria for assessing permanent disability.

The ultimate aim of disfigurement compensation and permanent disability benefits is to pay for loss of earning capacity. The worker should not receive double compensation for the same loss. Compensation under section 199 is not granted for something which is directly covered by permanent disability benefits, for example, the deformity caused by the normal appearance of an amputated limb. Disfigurement compensation may be considered, where the appearance of an impairment for which permanent partial disability benefits have been granted, is disfiguring to an exceptional degree.

If the worker receives permanent disability benefits of 100% under section 195(1), or for total unemployability under section 196(3), there is no additional loss of earning capacity which can form the basis for disfigurement compensation under section 199.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

If psychological disability results from disfigurement, consideration will be given to permanent disability benefits under section 195(1) or section 196(3) following the normal practices for such compensation (see Item C3-22.30).

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the ~~Workers Compensation Act, R.S.B.C. 2019, c. 1.~~

B. #43.20 AMOUNT OF DISFIGUREMENT COMPENSATION

In calculating the amount of compensation to pay for disfigurement, the guidelines set out below apply:

1. Points are assigned to each of five factors assessed individually according to the table set out below. The assessment will normally be based on photographs of the worker but there may also be a visual examination of the worker in exceptional cases. The Board will give reasons for the points assigned to each factor.

POINTS/FACTORS	0–24 POINTS	25–49 POINTS	50–74 POINTS	75–99 POINTS
Surface area of part of body (see guideline 3)	Less than 25%	25%–49%	50%–74%	75% or more
Texture and thickening- keloid scarring hardening-	Mild alteration of texture. Slight wrinkly, furrows or marks.	Moderate thickening. Moderate hardening. Mild dryness or scaling. Prone to pimples.	Major thickening. Major hardening. Moderate dryness or scaling. Frequent pimples. Prone to ulceration.	Severe. Severe. Major dryness or scaling. Frequent ulceration. Significant irregularity of scar.
Colour	Mild alteration of colour.	Moderate alteration of colour.	Major alteration of colour.	Severe alteration of colour.
Visibility	Less than 25% visible with work clothing.	25 to 49% visible with work clothing.	50 to 74% visible with work clothing.	75% visible or greater with work clothing.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Loss of bodily form	Mild depression or elevation.	Moderate depression or elevation.	Major depression or elevation. Moderate to major atrophy. Moderate to major irregularity of body.	Severe depression or elevation. Severe muscle or tissue loss.
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2. An average is taken of the points assigned by dividing the total points by five. The result is rounded up to the nearest whole number. The disfigurement is then placed in one of four classes as follows:

Class 1	0 to 24 points
Class 2	25 to 49 points
Class 3	50 to 74 points
Class 4	75 to 99 points

3. The area of the body affected is determined. Five areas are recognized. A minimum and maximum amount of compensation exists for each of the four classes for each area of the body including a dollar value per point within each class as shown in the following tables:

January 1, 2020 – December 31, 2020

Head and Neck

Class	Maximum Points	Minimum Compensation for Class (\$)	Maximum Compensation for Class (\$)	Dollar Value per point within Class (\$)
1	24	0	7,128.72	297.03
2	49	7,413.86	14,257.22	285.14
3	74	15,419.17	43,305.97	1,161.95
4	99	44,460.80	72,176.72	1,154.83

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Each Hand

Class	Maximum Points	Minimum Compensation for Class (\$)	Maximum Compensation for Class (\$)	Dollar Value per point within Class (\$)
1	24	0	2,316.96	96.54
2	49	2,416.75	4,811.71	99.79
3	74	5,189.52	14,256.96	377.81
4	99	14,649.03	24,058.71	392.07

Each Arm

Class	Maximum Points	Minimum Compensation for Class (\$)	Maximum Compensation for Class (\$)	Dollar Value per point within Class (\$)
1	24	0	1,782.24	74.26
2	49	1,853.52	3,564.24	71.28
3	74	3,856.49	10,870.49	292.25
4	99	11,155.63	17,998.99	285.14

Each Leg (including the foot)

Class	Maximum Points	Minimum Compensation for Class (\$)	Maximum Compensation for Class (\$)	Dollar Value per point within Class (\$)
1	24	0	1,247.04	51.96
2	49	1,289.82	2,316.54	42.78
3	74	2,509.03	7,128.79	192.49
4	99	7,319.69	11,901.29	190.90

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Torso

Class	Maximum Points	Minimum Compensation for Class (\$)	Maximum Compensation for Class (\$)	Dollar Value per point within Class (\$)
1	24	0	1,247.04	51.96
2	49	1,289.82	2,316.54	42.78
3	74	2,509.03	7,128.79	192.49
4	99	7,319.69	11,901.29	190.90

The dollar values per point within each class are adjusted on January 1 of each year. The minimum and maximum amount of compensation for each class is adjusted accordingly. Since June 30, 2002, the percentage change in the consumer price index determined under section 333 of the *Act*, as described in policy item #51.20 will be used.

4. The amount of the compensation in Class 1 is obtained by multiplying the average criterion score for disfigurement by the dollar value per point within the class. For example, if the average criterion score for a hand disfigurement is 6, it is assigned to Class 1 of the hands area of the body and the amount of the compensation is \$579.24 ($6 \times \96.54).
5. The amount of the compensation for a disfigurement in Classes 2, 3 or 4 is obtained by subtracting the maximum points in the previous class from the average criterion score for disfigurement. Next, the total is multiplied by the dollar value per point within the class, followed by adding to the total, the maximum amount of compensation in the previous class. For example, if a burn to the chest is assigned an average criterion score of 34, it is in Class 2 of the torso area of the body and the amount of the compensation is \$1,674.84 [$(34 - 24) \times \$42.78 + \$1,247.04$].

Detailed examples of the application of the above guidelines are set out below:

Example 1

The worker has a loss of the fingernail and nailbed, slight shortening of the right mid finger, a small curved raised nail growing through the graft at the injury site. Assuming

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

that the disfigurement was found capable of impairing earning capacity, the compensation amount would be calculated as follows:

Factors	Description	Points
Surface area	Less than 25%	2
Texture / keloid	Minimal alteration; no keloid	2
Colour	No contrast	0
Visibility	Less than 25%	20
Structure	Mild evidence of depression	5

- A. Total points are 29.
- B. Average criterion score is 6 (29/5). Disfigurement is in Class 1.
- C. Multiply the average criterion score for the hand disfigurement by the dollar value per point within Class 1 = \$579.24 (6 x \$96.54).

Compensation amount is \$579.24.

Example 2

The worker has healed burns that extend up the right side and front of the abdomen and chest. There is evidence of occasional ulceration and moderate irregularity of the scars. Scar colour is significantly different when compared to unaffected skin. Assuming that the disfigurement was found capable of impairing earning capacity, the compensation amount would be calculated as follows:

Factors	Description	Points
Surface area	Less than 25%	20
Texture / keloid	Some puckering and contraction moderate keloid, scars raised to 3 mm	70
Colour	Significant contrast	80

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Visibility	Nil	0
Structure	No evidence of depression or elevation other than keloid	0

- A. Total points are 170.
- B. Average criterion score is 34 (170/5). Disfigurement is in Class 2.
- C. The maximum points for a torso disfigurement in the previous class (Class 1) subtracted from the average criterion score for the torso disfigurement is 10 (34 – 24).
- D. The total from line C multiplied by the dollar value per point within Class 2 for a torso disfigurement, followed by adding to the total, the maximum compensation for a torso disfigurement in the previous Class (Class 1) is \$1,674.84 [(34 – 24) x \$42.78 + \$1,247.04].

Compensation amount is \$1,674.84.

EFFECTIVE DATE: June 1, 2009

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted reference to Board officer.
May 1, 2008 – Amendments to the formula for determining the amount of disfigurement compensation to ensure that disfigurement payments increase uniformly within each class for greater degrees of disfigurement. Applied to all decisions including appellate decisions made on or after May 1, 2008.

APPLICATION: Applies on or after June 1, 2009.

EFFECTIVE DATE: January 1, 2021

AUTHORITY: Section 199 of the *Act*.

HISTORY: January 1, 2021 – This policy resulted from the consolidation of former policy items #43.00, #43.10, and #43.20, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

June 1, 2009 – Deleted reference to Board officer.

May 1, 2008 – Amendments to the formula for determining the amount of disfigurement compensation to ensure that disfigurement payments increase uniformly within each class for greater degrees of disfigurement. Applied to all decisions including appellate decisions made on or after May 1, 2008.

APPLICATION:

Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Proportionate Entitlement

ITEM: C6-44.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance on when proportionate entitlement under section 146 of the Act applies.

2. The Act

Section 146:

The following apply to compensation under this Part in relation to personal injury or disease that is superimposed on an already existing disability:

- (a) the compensation is limited to the proportion of the disability following the injury or disease that may reasonably be attributed to that injury or disease;
- (b) the measure of the disability attributable to the injury or disease must, unless it is otherwise shown, be the difference between the extent of the worker's disability before and disability after the occurrence of the injury or disease.

POLICY

~~#44.00 PROPORTIONATE ENTITLEMENT~~

~~Section 146 of the Act provides:~~

~~The following apply to compensation under this Part [Part 4 of the Act – Compensation to Injured Workers and Their Dependents] in relation to personal injury or disease that is superimposed on an already existing disability:~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (a) ~~the compensation is limited to the proportion of the disability following the injury or disease that may reasonably be attributed to that injury or disease;~~
- (b) ~~the measure of the disability attributable to the injury or disease must, unless it is otherwise shown, be the difference between the extent of the worker's disability before and disability after the occurrence of the injury or disease.~~

This **Section 146** deals with cases where the compensability of the immediate injury and disability has been accepted by the Board. It does not concern itself with the initial adjudication as to the causation of the particular disability.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

A. #44.10-MEANING OF ALREADY EXISTING DISABILITY

The mere fact that the worker had some weakness, condition, disease, or vulnerability which partially caused the personal injury or disease is not sufficient to bring Proportionate Entitlement into operation. The pre-existing condition must have amounted to a disability prior to the occurrence of the injury or disease.

Three situations are distinguished:

1. In cases where it has been decided that the precipitating event or activity, and its immediate consequences, were so severe that the worker's present disability would have resulted in any event, regardless of any pre-existing disability, section 146 should not be applied.
2. In cases where the precipitating event or activity, and its immediate consequences, were of a moderate or minor significance, and where there is only x-ray evidence and nothing else showing a moderate or advanced pre-existing condition or disease, Proportionate Entitlement should not be applied. These cases should not be classified as a disability where there are no indications of a previously reduced capacity to work and/or where there are no indications that prior ongoing medical treatment had been requested and rendered for that apparent disability. In determining whether there has been ongoing treatment, the Board considers the frequency of past treatments and how long before the injury they occurred.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

3. Where the precipitating event or activity, and its immediate consequences, were of moderate or minor significance, but x-ray or other medical evidence shows a moderate to advanced pre-existing condition or disease, and there is also evidence of a previously reduced capacity to work and/or evidence of a request for and rendering of medical attention for that disability, section 146 should be applied.

Section 146 only applies where an injury is “superimposed” on an already existing disability. The injury and the existing disability must be in the same part of the body.

The fact that the worker has a payment from another agency for a pre-existing disability does not affect the Board’s practice. The Board makes its own assessment of the pre-existing disability and is not bound by the percentage determined by the other agency.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

B. #44.20 WAGE-LOSS BENEFITS AND HEALTH CARE BENEFITS

It is not the policy of the Board to apply the provisions of section 146 to health care benefits or wage-loss benefits. The Board pays wage-loss benefits on the simple presumption that the worker was fit and able to carry on regular duties prior to the injury and is, at the time of receiving wage-loss benefits, totally or partially unable. The only conclusion to be derived from these facts is that the injury itself is the sole cause of that immediate total or partial disability. Proportionate Entitlement is thus a concept applicable only to permanent disability benefits.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

C. #44.30 PERMANENT DISABILITY BENEFITS

If a worker already has a pre-existing disability, and a work injury results in an aggravation of the disability, wage-loss benefits are paid for the period of any temporary total disability. If the aggravation was temporary only and the worker recovers from the aggravation so that the worker is restored to the position of the pre-existing disability, there is then no residual permanent disability resulting from the work injury, and therefore no further compensation. However, if a pre-existing disability is permanently aggravated by the work injury, and the worker’s condition has stabilized, the Board must then consider how much of the condition is the compensable aggravation.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Assuming that a pre-existing impairment has been established, section 146 states that compensation is limited to the proportion of the “disability” following the injury or disease that may reasonably be attributed to that work-related injury or disease. “Disability” means loss of body function or physical impairment.

Under section 146, the measure of the permanent disability attributable to the-work injury or disease must, unless it is otherwise shown, be the difference between the extent of the worker’s disability before and disability after the occurrence of the injury or disease.

The Board’s practice in relation to section 146 has no relevance to conditions which arise after the injury. It is only concerned with pre-existing problems. The Board’s practice is that it will apportion its responsibility in respect of a permanent disability attributable to causes other than the work injury arising after the injury.

Consider the example of a worker whose average net earnings are \$1,000 per month and who, following a work injury, has a 10% permanent disability. If the whole of that disability is attributable to the injury, the monthly permanent disability benefits paid under section 195 is 90% of 10% of \$1,000, i.e. \$90.00 a month. If, however, 3% out of the total impairment existed prior to the injury, section 146 requires that permanent disability compensation only be paid in respect of the 7% caused by the injury. The worker would therefore receive 90% of 7% of \$1,000 per month, i.e. \$63.00.

CROSS REFERENCES: ~~Policy item #44.31, *Application of Proportionate Entitlement*, of the *Rehabilitation Services & Claims Manual*, Volume II.~~

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

D. #44.31 APPLICATION OF PROPORTIONATE ENTITLEMENT

In every case where there was a pre-existing disability, the Board has to decide whether the loss of earnings experienced by the worker after the injury is wholly the result of the compensable disability or partly the result of the pre-existing disability. If it decides that the whole loss is the result of the compensable disability, no reduction in the permanent disability benefits is made under section 146. If it decides that a portion of the loss is attributable to the pre-existing disability, the permanent disability benefits are only paid for the portion attributable to the compensable disability.

The Board feels that this is fair to workers in that it allows for the fact that their pre-injury earnings may already have been reduced by the pre-existing disability. On the other hand, it ensures that the Board does not become responsible for loss of earnings which are really attributable to the delayed or progressive effect of non-compensable pre-

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

existing disabilities. The Board recognizes that it is often difficult in practice to properly allocate the causes of a loss of earnings where there is pre-existing disability, but does not feel that it is any more difficult than other decisions that have to be made under the *Act*, or that this difficulty justifies a different interpretation of section 146.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

EFFECTIVE DATE: January 1, 2021
AUTHORITY: Section 146 of the *Act*.
HISTORY: January 1, 2021 – This policy resulted from the consolidation of former policy items #44.00, #44.10, #44.20, #44.30, and #44.31, consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.
April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
APPLICATION: Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Lump Sums and Commutations

ITEM: C6-45.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance on a worker's entitlement to lump sums and/or commutations of permanent disability benefits.

2. The Act

Section 120:

- (1) The following apply to an amount payable as compensation or by way of commutation of a periodic payment in respect of compensation:**
 - (a) the amount is not capable of being assigned, charged or attached;**
 - (b) the amount must not pass by operation of law except to a personal representative.**
- (2) A claim must not be set off against an amount referred to in subsection (1), except for money**
 - (a) advanced by way of financial or other social welfare assistance owing to the government, or**
 - (b) owing to the accident fund.**

Section 204:

- (1) This section applies to a worker who is receiving periodic payments under section 194(1), 195(1) or 196(3) [compensation for permanent disability].**
- (2) The Board must set aside, at the time a periodic payment is made to a worker, an amount that**

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (a) equals 5% of the periodic payment, and
- (b) is in addition to the periodic payment.
- (3) The Board must provide each worker with an annual statement containing all relevant information about the funds accumulated by the Board for payment of the worker's retirement benefit.

Section 230:

- (1) Subject to this section, payments of compensation under this Part must be made periodically at the times and in the manner and form the Board considers advisable.
- (2) The Board may, at the Board's discretion, do the following:
 - (a) commute all or part of
 - (i) the periodic payments due or payable to a worker or dependant, and
 - (ii) the future amounts that are to be set aside for payment of a retirement benefit,to one or more lump sum payments, to be applied as directed by the Board;
 - (b) divide into periodic payments compensation that is otherwise payable as a lump sum.
- (3) In the case of a worker's
 - (a) death,
 - (b) permanent total disability, or
 - (c) permanent partial disability where the impairment of the earning capacity of the worker is greater than 10% of the worker's earning capacity at the time of the injury,

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

commutation of periodic payments must not be made under subsection (2) except on the application of and at an amount agreed to by the worker or dependant entitled to the payments.

Sections 194, 195, and 196:

See Item C6-36.00.

POLICY

#45.00 LUMP SUMS AND COMMUTATIONS

Section 230 provides:

- (1) ~~Subject to this section, payments of compensation under this Part [Part 4 of the Act – Compensation to Injured Workers and Their Dependants] must be made periodically at the times and in the manner and form the Board considers advisable.~~
- (2) ~~The Board may, at the Board's discretion, do the following:~~
 - (a) ~~commute all or part of~~
 - (i) ~~the periodic payments due or payable to a worker or dependant, and~~
 - (ii) ~~the future amounts that are to be set aside for payment of a retirement benefit,~~
 - ~~to one or more lump sum payments, to be applied as directed by the Board;~~
 - (b) ~~divide into periodic payments compensation that is otherwise payable as a lump sum.~~
- (3) ~~In the case of a worker's~~
 - (a) ~~death,~~
 - (b) ~~permanent total disability, or~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

~~(c) — permanent partial disability where the impairment of the earning capacity of the worker is greater than 10% of the worker's earning capacity at the time of the injury,~~

~~commutation of periodic payments must not be made under subsection (2) except on the application of and at an amount agreed to by the worker or dependant entitled to the payments.~~

AUTHORITY: ~~Section 230 of the Act.~~

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the Workers Compensation Act, R.S.B.C. 2019, c. 1.~~

A. #45.10 PERMANENT DISABILITY PERIODIC PAYMENT CATEGORIES/LUMP SUM PAYMENTS

Category A:

In the case of a worker's permanent partial disability, where the worker's

1. compensable disability has been assessed under section 195(1) at not greater than 10% of total disability, and
2. the permanent disability periodic payment is not more than \$200.00 per month,

a lump sum will be paid in lieu of a monthly permanent disability periodic payment and the additional future amounts to be set aside by the Board for the payment of a retirement benefit under section 204 of the Act.

Category B:

In any case not within Category A, where the permanent disability periodic payment is more than \$200.00 per month, the compensation will consist of a monthly permanent disability periodic payment and the additional future amounts to be set aside by the Board for the payment of a retirement benefit. A commutation will only be considered under the circumstances outlined below.

With the exception of the retirement benefit provision, this policy applies similarly to periodic payments of compensation made to a dependant of a deceased worker.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

If a worker is receiving benefits for more than one permanent disability or a dependant is receiving compensation on more than one claim, the above figures apply to the combined total. If the worker or dependant has had previous commutations or lump sum payments, these previous payments are not applied to the combined total.

If a commutation request is made after the payment has begun on permanent disability benefits or a dependant benefit, the monetary level at the date of the request is used rather than the level at the effective date of the compensation.

A review of the monetary level in Categories A and B will be undertaken annually. Any changes to the amount will normally take place on the first day of the month following the month of the review.

AUTHORITY: _____ Section 230 of the Act.

HISTORY: _____ April 6, 2020 – Housekeeping changes consequential to implementing the ~~Workers Compensation Act~~, R.S.B.C. 2019, c. 1.

B. #45.20 CRITERIA FOR ALLOWING OR DISALLOWING A COMMUTATION

The same criteria apply, whether or not the Board has recovered all or part of the capital reserve in a third party action.

Workers provided compensation that falls within Category A will automatically be given a lump sum payment.

The general rule is that no commutation will be provided for cases in Category B.

There are, however, certain situations where a commutation may be desirable. The purpose of the guidelines set out below is to define those situations where it is in the worker's long term interests to receive a commutation and to state the terms and conditions on which such commutations are granted.

In considering a commutation, the following will apply:

1. A commutation must be for a specific purpose.
2. A commutation will, in general, only be allowed for purposes that are calculated to enhance the income position of the worker.
3. The applicant must have a stable source of income other than the permanent disability benefits.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

4. A commutation will not be allowed where the applicant is a person whom the Board considers incapable of managing the person's own affairs or who has a demonstrated incapacity for money management.
5. Where there is an application by a surviving spouse to commute compensation that is paid in whole or part for dependent children, the Board considers the separate interests of the dependent children.
6. If the other requirements are met, a commutation may be in the worker's long-term interests, notwithstanding the worker's medical condition may not have settled or involves a significant risk of deterioration. However, while a potential deterioration in the worker's condition will not automatically bar a request, it is a relevant factor to be considered. It might, for instance, lead to a conclusion that the worker's existing income from other sources would not be stable from a long-term point of view.

Similarly, the fact that a disability may improve in the future will not automatically bar a request for a commutation, even though the commutation will prevent the Board from reducing the amount of the permanent disability benefits when the improvement occurs. The possibility of such an improvement may, however, be taken into account if it is significant. It may influence the amount of commutation granted.

7. A short expectation of life or a worker's wish to benefit dependants following the worker's death is not a ground on which the Board can permit a commutation.

EFFECTIVE DATE: _____ March 1, 2007
AUTHORITY: _____ Section 230 of the Act.
HISTORY: _____ April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
_____ November 24, 2011 – Housekeeping amendments made in accordance with legislative amendments to the then Act.
_____ October 1, 2002 – Changes were made to the threshold amounts for automatic commutations and the criteria for considering commutations were broadened. Please refer to BOD Decision No. 2002/08/27-04 for details of the amendments. The policy as amended apply to all new claims received, all active claims that were awaiting an initial adjudication on permanent disability award adjudication, and all active claims that were awaiting initial adjudication of periodic payments of compensation to a dependant of a deceased worker, on or after October 1, 2002.
_____ July 16, 2002 – This policy was created to apply to all decisions made on or after July 16, 2002 in respect of injuries occurring on or after June 30, 2002, permanent disabilities where the permanent disability first

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

occurred on or after June 30, 2002, and recurrences where the recurrence occurs on or after June 30, 2002, irrespective of the date of injury.

APPLICATION: ~~The amendments to this policy, that term commutations are no longer available, brought into effect by BOD Decision No. 2007/01/23-02, apply to all applications for commutations made on or after March 1, 2007. Changes made pursuant to BOD Decision No. 2002/08/27-04 did not apply to workers in receipt of a permanent disability award based on a projected loss of earnings that was initially adjudicated before October 1, 2002.~~

C. #45.21 DEATH OF WORKER PRIOR TO PAYMENT UNDER CATEGORY A IN POLICY ITEM #45.10

The *Act* distinguishes between two different categories of benefits:

1. Benefits payable to a disabled worker.
2. Benefits payable to dependants and others in respect of the death of a worker.

Under the terms of the *Act*, permanent disability benefits are payable to a living worker. There is no provision for permanent disability benefits to be payable in respect of a deceased worker. This includes permanent disability compensation paid as a lump sum.

If a worker dies before a Category A lump sum payment has been issued, the lump sum payment will be cancelled and the permanent disability benefits will be recalculated up to the date of the worker's death.

EFFECTIVE DATE: June 1, 2009

HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
June 1, 2009 – Deleted reference to Disability Awards Officer.
October 1, 2002 – Reference to a 1975 claim decision deleted. Policy revised to provide that where future benefits have been issued after the death of a worker, the benefit will be cancelled and recalculated up to the date of the worker's death.

APPLICATION: Applies on or after June 1, 2009.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

D. #45.30-TYPES OF COMMUTATIONS PERMITTED

Where a partial or full commutation of permanent disability benefits is granted, the corresponding portion of the future amounts that are to be set aside for payment of a retirement benefit will also be commuted.

Any amounts that have already been set aside by the Board in the retirement reserve will be held in the reserve until the worker reaches retirement age. These amounts will not be commuted.

There are two types of commutations that the Board may permit:

1. A partial commutation resulting in a reduced level of both the permanent disability periodic payments, and corresponding retirement benefits set aside by the Board.
2. A full commutation of both the permanent disability benefits, and corresponding retirement benefits set aside by the Board.

With the exception of the retirement benefit provisions, the Board permits the same types of commutations of periodic payments of compensation made to a dependant of a deceased worker.

To ensure that a commutation is used for the purpose for which it is sought, the Board may make a commutation cheque payable to a worker and to another person.

EFFECTIVE DATE: _____ March 1, 2007

CROSS REFERENCES: _____ Chapter 18, *Retirement Benefits*, of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY: _____ April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPLICATION: _____ This policy applies to all applications for commutations made on or after March 1, 2007.

E. #45.40-PURPOSE OF COMMUTATIONS

Certain purposes for which commutations are commonly requested are discussed below. The list is not intended to cover every purpose for which a commutation may be requested but rather is designed to provide guidelines to ensure the consistent handling of certain common types of application.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

i. #45.41 Paying Off Debts

The Board is concerned that lenders might be encouraged to grant excessive extensions of credit to workers in receipt of permanent disability benefits if they became aware that commutations could easily be obtained to pay off debts. Section 120 of the *Act* seeks to protect workers from creditors by making permanent disability periodic payments non-assignable. The Board will not undermine this intention by freely allowing commutations for the purpose of debt reduction. Therefore, a commutation is more likely to be allowed for paying off debts that were incurred prior to the injury.

A person incurring heavy debt may have serious long-term problems which will not be resolved simply by a commutation to pay debts. These problems may lead to incurring further debt even if the existing debt is paid. The person will then be in an even more serious position than before because there will now be no permanent disability periodic payments. It may, in such cases, be more appropriate to refer the worker for financial counselling rather than to attempt to resolve the situation by a commutation of permanent disability periodic payments. Nevertheless, a commutation to pay off debts may be advisable and in the best interests of the worker if it will avoid high interest obligations. Commutation applications for this purpose will be carefully scrutinized for other alternatives before being allowed.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

ii. #45.42 Investments

A commutation will not be allowed for investment purposes.

iii. #45.43 Starting a Business

From a purely financial standpoint, it may be difficult to distinguish between investing in one's own business and other forms of investment. It is, moreover, often difficult for officers of the Board to determine with any degree of certainty whether what the worker wishes to undertake is a sound business venture.

Investing in one's own business, however, may be in the worker's best interests where there is a strong element of rehabilitation involved and the worker will be an active participant in operating the business. Any application for a commutation for the purpose of starting a business will be thoroughly investigated with these considerations in mind.

In each case where a business start-up is contemplated for which a commutation has been requested, or as a vocational rehabilitation measure, the Board will obtain, with

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

the worker's written consent, an appraisal of the viability of the proposed business from the Business Development Bank of Canada or some similar organization before a final decision on the commutation request, or rehabilitation measure, is made.

EFFECTIVE DATE: June 1, 2009

CROSS REFERENCES: Item C11-88.60, *Vocational Rehabilitation – Business Start-ups*, of the *Rehabilitation Services & Claims Manual*, Volume II.
June 1, 2009 – Deleted reference to Board officer.

APPLICATION: Applies on or after June 1, 2009.

iv. #45.44 Education

Unless the proposed educational program will promote the worker's career, a commutation for this purpose would not normally enhance the worker's income position and consequently would not satisfy the above general guidelines. There may, however, be some therapeutic benefit in allowing workers to improve their education when the improvement cannot be provided through normal rehabilitation programs. The requirement for the applicant to have a stable source of income may be waived where the Board is satisfied that the training or educational program will increase the prospects of employment and therefore enhance the income position over the long term. Where the program will not increase the employment prospects, but will have a significant therapeutic benefit, the Board may waive the requirement that the commutation be for a purpose that enhances the worker's income position. In such a case, it will not waive the requirement that the applicant have a stable source of income.

v. #45.45 Buying a Home

Commutations for purchasing a home will be allowed under the following conditions:

1. The home is purchased as a personal residence.
2. The worker will obtain clear title to the property subject only to any mortgage.
3. Any mortgage payments are well within the worker's ability to pay from other income.
4. The size, value and upkeep costs of the home are in line with other income.

The discharge or reduction of an existing mortgage will be dealt with under the criteria for paying off debts in policy item #45.41 **Section i**, rather than under the criteria for

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

buying a home. In administering this feature, however, a request for a commutation to discharge or reduce an existing mortgage should primarily be considered in the same general vein as a commutation to purchase a home, with the added insurance that consideration should be given to the safeguards built into the debt payment provisions. The expectation of this approach is that, in general, given similar circumstances, there should be little difference in the result following a decision made under either category. A commutation for the purpose of extending an existing home may be allowed if the above requirements are satisfied.

A commutation will not normally be allowed for the purpose of purchasing a second home to be used for vacations, or retirement, or to be rented out. The home must be for the purpose of providing the applicant with current accommodation.

G. ~~#45.50~~ DECISION-MAKING PROCEDURES

The Board is responsible for investigating an application for a commutation and making a decision on the application. Vocational rehabilitation input may be obtained before making a decision.

Where a commutation application is under consideration, the value of the proposed commutation can be made available so that the applicant may properly evaluate the options open.

If the value of a commutation under Category B ~~in policy item #45.10~~ exceeds the limit set in Category A, prior approval by a Vice-President is required before granting the request. If an application is received that does not fall within the guidelines and it is thought that there should be some departure, the application must also be referred to the Vice-President for consideration.

An employer is not normally advised of the granting of a commutation. An exception is made where the employer is the Federal Government. It is advised of the amount and type of the commutation.

EFFECTIVE DATE: _____ June 1, 2009

HISTORY: _____ April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
_____ June 1, 2009 – Deleted references to Board officers, Vocational Rehabilitation Services and Compensation Services Division.

APPLICATION: _____ Applies on or after June 1, 2009.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

H. #45.60 AMOUNT PAID ON COMMUTATIONS

When a permanent disability benefits reserve and retirement benefits reserve are established or a liability is calculated for permanent disability benefits and a retirement benefit, the monthly permanent disability benefits payment amount and the periodic future retirement benefits amounts to be set aside by the Board for the payment of a retirement benefit, are converted to a lump sum by applying an actuarial net discount rate. This provision also applies if a reserve is established or a liability is calculated for periodic payments of compensation made to a dependant of a deceased worker. The actuarial net discount rate is set by the Board and represents the anticipated difference between long term future investment returns and long term future inflation.

Similarly, when the Board commutes permanent disability benefits, the monthly permanent disability payment amount and the periodic amounts set aside by the Board for a retirement benefit are converted to a lump sum by applying a commutation net discount rate. For Category A benefits, ~~as defined in policy item #45.10:~~ permanent disability benefits and the future amounts to be set aside by the Board for the payment of a retirement benefit that are automatically commuted by the Board without a request from the worker; the commutation net discount rate used will be equal to the actuarial net discount rate. For all others: permanent disability benefits and the future amounts to be set aside by the Board for the payment of a retirement benefit that are commuted by the Board at the worker's request, the commutation net discount rate used will be equal to the actuarial net discount rate increased by .5 percentage points. The increased net discount rate also applies to a commutation granted by the Board for dependant benefits at the dependant's request.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the Workers Compensation Act, R.S.B.C. 2019, c. 1.~~

i. #45.61 Calculation of Lump-Sum Payment or Commutation

Where, as a result of the application of ~~the policies outlined in policy items #45.10 to #45.60~~ **this policy**, the Board decides on a lump sum or commutation, it is paid forthwith.

Whenever a lump-sum payment or commutation is calculated following the review or appeal process, the calculation will be based on the date on which it is processed.

EFFECTIVE DATE: ~~June 1, 2009~~

HISTORY: ~~April 8, 2003 – Amended to state that whenever a lump sum payment or commutation is calculated following the review or appeal process, the calculation will be based on the date on which it is processed.~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

APPLICATION: June 1, 2009 — Deleted reference to Board officer.
Applies on or after June 1, 2009.

EFFECTIVE DATE:	January 1, 2021
AUTHORITY:	Sections 120, 204, and 230 of the <i>Act</i> .
CROSS REFERENCES:	Item C11-88.60, <i>Vocational Rehabilitation – Business Start-ups</i> ; Chapter 18, <i>Retirement Benefits</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	<p>January 1, 2021 – This policy resulted from the consolidation of former policy items #45.00, #45.10, #45.20, #45.21, #45.30, #45.40, #45.41, #45.42, #45.43, #45.44, #45.45, #45.50, #45.60, and #45.61, consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i>.</p> <p>April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i>, R.S.B.C. 2019, c. 1.</p> <p>November 24, 2011 – Housekeeping amendments made in accordance with legislative amendments to the then <i>Act</i>.</p> <p>June 1, 2009 – Deleted references to Board officers, Vocational Rehabilitation Services and Compensation Services Division.</p> <p>April 8, 2003 – Amended to state that whenever a lump sum payment or commutation is calculated following the review or appeal process, the calculation will be based on the date on which it is processed.</p> <p>October 1, 2002 – Changes were made to the threshold amounts for automatic commutations and the criteria for considering commutations were broadened. Please refer to BOD Decision No. 2002/08/27-04 for details of the amendments. The policy as amended apply to all new claims received, all active claims that were awaiting an initial adjudication on permanent disability award adjudication, and all active claims that were awaiting initial adjudication of periodic payments of compensation to a dependant of a deceased worker, on or after October 1, 2002. Reference to a 1975 claim decision deleted. Policy revised to provide that where future benefits have been issued after the death of a worker, the benefit will be cancelled and recalculated up to the date of the worker's death. Changes made pursuant to BOD Decision No. 2002/08/27-04 did not apply to workers in receipt of a permanent disability award based on a projected loss of earnings that was initially adjudicated before October 1, 2002.</p> <p>July 16, 2002 – This policy was created to apply to all decisions made on or after July 16, 2002 in respect of injuries occurring on or after June 30, 2002, permanent disabilities where the permanent disability first occurred on or after June 30, 2002, and recurrences</p>

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

APPLICATION:

where the recurrence occurs on or after June 30, 2002, irrespective of the date of injury.

Sections A, C, E, F, G, and H apply to all decisions, including appellate decisions, made on or after January 1, 2021.

Sections B and D apply to all decisions, including appellate decisions, made on or after January 1, 2021, respecting applications for commutations made on or after March 1, 2007.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Reconsideration of Prescribed
Compensation Claims under Section 203

ITEM: C6-46.00

BACKGROUND

1. Explanatory Notes

This policy provides guidance on the reconsideration of prescribed compensation claims under section 203 of the *Act*.

2. The Act

Section 203:

- (1)** This section applies to claims for compensation that the Board may, by regulation, determine.
- (2)** A worker may apply for reconsideration of compensation payable to the worker if
 - (a)** the worker's claim is of a type prescribed under subsection (1),
 - (b)** the worker continues to have a compensable disability that was sustained more than 10 years before the worker's application under this section is made, and
 - (c)** either
 - (i)** the permanent disability compensation determined by the Board for the worker was based on a percentage of total disability of 12% or greater, or
 - (ii)** the worker's case is of a kind in which the Board uses a projected loss of earnings method in calculating the compensation.
- (3)** A worker may apply under this section even though the worker has received

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

(a) compensation for permanent disability that has been wholly or partly commuted under section 230 *[commutation of periodic payments to lump sum payment]*, or

(b) compensation for a fixed term,

but, for the purposes of this section, the worker is deemed to be still receiving the periodic payments that have been commuted or the life equivalent of the periodic payments made for a fixed term.

(4) Despite section 122(1) *[Board decisions are final]*, if a worker's application under this section is with respect to a claim for compensation to which this section applies,

(a) the Board must reconsider the compensation provided to the worker, and

(b) if, having regard to the projected loss of income resulting from the worker's disability, the Board considers that the worker is not receiving adequate compensation, the Board must increase or establish periodic payments accordingly.

(5) For the purposes of subsection (4), the Board must consider compensation to be adequate if,

(a) in the case of a worker who is under 65 years of age, the amount of compensation provided to the worker is at least 75% of the projected loss of earnings resulting from the worker's disability, and

(b) in the case of a worker who is 65 years of age or older, the amount of compensation provided to the worker is at least 75% of the projected loss of retirement income resulting from the worker's disability.

(6) Periodic payments increased or established under this section for a worker who is under 65 years of age are subject to readjustment, by reference to subsection (5)(b), on the worker reaching 65 years of age.

(7) The calculation of compensation under this section must be made in the manner the Board determines.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (8) Section 200 [*maximum compensation in the case of further disability*] applies to the calculation of compensation under this section, but the calculation must not be limited by reference to average earnings at the time of injury.
- (9) Periodic payments to an applicant worker that are increased or established under this section must not exceed the maximum the Board would establish, at the time of the reconsideration decision, for a worker in an occupational category similar to that of the applicant worker before the injury if that other worker had a compensable disability similar to the compensable disability of the applicant worker.
- (10) A reconsideration decision under this section must not result in periodic payments to a worker being less than they would have been if no application had ever been made under this section.
- (11) The effective date for the commencement of an increase or establishment of compensation under this section is the date the application for reconsideration is received by the Board.
- (12) A worker may reapply under this section for reconsideration of the worker's compensation 10 years after the worker's most recent application under this section.

Sections 194, 195, and 196:

See Item C6-36.00.

3. Reconsideration of Prescribed Compensation Claims Regulation

Section 1:

In this regulation, "Act" means the *Workers Compensation Act*.

Section 2:

Section 203 [*reconsideration of prescribed compensation claims*] of the Act applies to the following claims:

- (a) the worker continues to have a compensable disability sustained more than 10 years before the worker's application

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

under section 203(2) of the Act or section 24 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as applicable, and permanent disability compensation was determined by the Board based on a percentage of total disability of 12% or greater for that compensable disability;

- (b) the worker continues to have a compensable disability sustained more than 10 years before the worker's application under section 203(2) of the Act or section 24 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as applicable, and permanent disability compensation was determined by the Board for an injury involving the spinal column;
- (c) the worker continues to have a compensable disability sustained more than 10 years before the worker's application under section 203(2) of the Act or section 24 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as applicable, and permanent disability compensation was determined by the Board on or after October 1, 1977 for an injury to a part of the body other than the spinal column;
- (d) the worker
 - (i) continues to have one compensable disability with a percentage of total disability of 5% or greater sustained more than 10 years before the worker's application under section 203(2) of the Act, or section 24 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, and
 - (ii) also continues to have one or more compensable disabilities sustained at any time before the worker's application under section 203(2) of the Act or section 24 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as applicable, which, when combined with the compensable disability referred to in subparagraph (i), brings the worker's total permanent disability compensation determined by the Board to a percentage

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

of total disability of 12% or greater for the combined compensable disabilities.

Section 3:

For the purposes of section 2(d)(ii), the compensable disabilities may be the result of one or more injuries that were the subject of one or more claims under the Act, the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or both.

POLICY

A. ~~#46.00~~ RECONSIDERATION OF PRESCRIBED COMPENSATION CLAIMS UNDER SECTION 203

Workers may apply for reconsideration of certain compensation claims under section 203 of the Act.

Section 203 sets out various criteria, including:

- which claims this section applies to;
- how compensation is calculated;
- the maximum and minimum for periodic payments;
- the commencement date of new periodic payments; and
- when workers may reapply.

Section 203(4) of the Act provides:

Despite section 122(1) [*Board decisions are final*], if a worker's application under this section is with respect to a claim for compensation to which this section applies,

- (a) the Board must reconsider the compensation provided to the worker, and
- (b) if, having regard to the projected loss of income resulting from the worker's disability, the Board considers that the worker is not receiving adequate compensation, the Board must increase or establish periodic payments accordingly.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

EFFECTIVE DATE: August 1, 2013
HISTORY: April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
August 1, 2013 – title change and housekeeping amendment.
APPLICATION: This policy applies to all decisions made on or after August 1, 2013.

i. #46.01 Claims to Which Section 203 Applies

Section 203 provides, in part:

- (1) This section applies to the claims for compensation that the Board may, by regulation, determine.
- (2) A worker may apply for reconsideration of compensation payable to the worker if
 - (a) the worker's claim is of a type prescribed under subsection (1),
 - (b) the worker continues to have a compensable disability that was sustained more than 10 years before the worker's application under this section is made, and
 - (c) either
 - (i) the permanent disability compensation determined by the Board for the worker was based on a percentage of total disability of 12% or greater, or
 - (ii) the worker's case is of a kind in which the Board uses a projected loss of earnings method in calculating the compensation.

...

The Board's regulation issued under section 203 is set out below **above**:-

1. ~~In this regulation, "Act" means the *Workers Compensation Act*.~~
2. ~~Section 203 [reconsideration of prescribed compensation claims] of the *Act* applies to the following claims:~~
 - (a) ~~the worker continues to have a compensable disability sustained more than 10 years before the worker's application under~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

~~section 203(2) of the Act or section 24 of the Workers Compensation Act, R.S.B.C. 1996, c. 492, as applicable, and permanent disability compensation was determined by the Board based on a percentage of total disability of 12% or greater for that compensable disability;~~

~~(b) — the worker continues to have a compensable disability sustained more than 10 years before the worker's application under section 203(2) of the Act or section 24 of the Workers Compensation Act, R.S.B.C. 1996, c. 492, as applicable, and permanent disability compensation was determined by the Board for an injury involving the spinal column;~~

~~(c) — the worker continues to have a compensable disability sustained more than 10 years before the worker's application under section 203(2) of the Act or section 24 of the Workers Compensation Act, R.S.B.C. 1996, c. 492, as applicable, and permanent disability compensation was determined by the Board on or after October 1, 1977 for an injury to a part of the body other than the spinal column;~~

~~(d) — the worker~~

~~(i) — continues to have one compensable disability with a percentage of total disability of 5% or greater sustained more than 10 years before the worker's application under section 203(2) of the Act or section 24 of the Workers Compensation Act, R.S.B.C. 1996, c. 492, as applicable, and~~

~~(ii) — also continues to have one or more compensable disabilities sustained at any time before the worker's application under section 203(2) of the Act or section 24 of the Workers Compensation Act, R.S.B.C. 1996, c. 492, as applicable, which, when combined with the compensable disability referred to in subparagraph (i), brings the worker's total permanent disability compensation determined by the Board to a percentage of total disability of 12% or greater for the combined compensable disabilities.~~

~~3. — For the purposes of section 2(d)(ii), the compensable disabilities may be the result of one or more injuries that were the subject of one or more~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

~~claims under the Act, the Workers Compensation Act, R.S.B.C. 1996, c. 492, or both.~~

Section 203(3) provides that even though a worker with a permanent disability has received compensation that has been wholly or partly commuted, or compensation for a fixed term, the worker may apply under section 203; in which case the worker is deemed to be still receiving the periodic payments that have been commuted, or the life equivalent of the periodic payments made for a fixed term.

EFFECTIVE DATE: ~~August 1, 2013~~

AUTHORITY: ~~Section 203 of the Act;~~
~~Reconsideration of Prescribed Compensation Claims Regulation, B.C. Reg. 177/2013.~~

CROSS REFERENCES: ~~See section 223(1) of the Act.~~

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the Workers Compensation Act, R.S.B.C. 2019, c. 1.~~
~~August 1, 2013 – Policy updated to mirror then section 24 regulation change.~~

APPLICATION: ~~This policy applies to all decisions made on or after August 1, 2013.~~

ii. #46.02 — Calculation of Compensation under Section 203

Section 203 provides, in part:

- (5) For the purposes of subsection (4), the Board must consider compensation to be adequate if,
 - (a) in the case of a worker who is under 65 years of age, the amount of compensation provided to the worker is at least 75% of the projected loss of earnings resulting from the worker's disability, and
 - (b) in the case of a worker who is 65 years of age or older, the amount of compensation provided to the worker is at least 75% of the projected loss of retirement income resulting from the worker's disability.
- (6) Periodic payments increased or established under this section for a worker who is under 65 years of age are subject to readjustment, by reference to subsection (5)(b), on the worker reaching 65 years of age.
- (7) The calculation of compensation under this section must be made in the manner the Board determines.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

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AB. APPLICANTS UNDER 65 YEARS OF AGE

In applying section 203(5)(a), for a worker who is under 65 years of age, the Board must determine the projected loss of earnings resulting from the worker's disability. This involves three steps:

1. A forward projection of the earning capability of the worker as it existed prior to the disability.
2. A projection of the present earning capability of the worker.
3. A determination of the extent to which any difference between (1) and (2) is a result of the disability.

These calculations are made primarily by reference to evidence in the particular case, with two exceptions. A table of monthly average wage rates in British Columbia (see Appendix 4 – Supplement No. 1) is used to establish two of the variables; and an age factor is applied to those cases where the worker became permanently disabled when the worker was under the age of 23. With regard to the former, a projection of the pre-disability earning capacity is made by comparing the worker's actual pre-injury earnings, limited by the maximum in effect at the time of the injury, with the monthly average wage rate in the table for that year and applying the same ratio to the average wage in the table for the year when the calculation is being made. In making this projection, no account is taken of promotions which the worker might have obtained if the worker had not been injured.

BC. APPLICANTS 65 YEARS OF AGE OR OLDER

In order to apply section 203(6) when the worker reaches age 65, if the Board adjusts the worker's permanent disability benefits using section 203(5)(a), the adjustment is diarized for review three months prior to the worker attaining 65 years of age. This adjustment is referred to as a "term adjustment", because it is only paid for a period of time: from the time the Board adjusts the compensation under section 203, to the date the worker reaches 65 years of age.

In applying section 203(5)(b), for a worker who is 65 years of age or older, the Board must determine the projected loss of retirement income resulting from the worker's disability. This involves a determination of:

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

1. The retirement income that the worker would have been likely to be receiving if the worker had not sustained the disability.
2. The retirement income the worker is receiving.
3. A determination of the extent to which any difference between (1) and (2) results from the disability.

Here again, the determinations are made to some extent by reference to evidence in the particular case; but two standard formulae are used with regard to two important items.

The first relates to retirement income from savings. Many workers save part of the earnings accrued during their working lives, and these savings, or income from the savings, become part of retirement income. The Board must consider, therefore, the loss of this element of retirement income resulting from the disability. To determine loss of retirement income from savings, a standard formula is used, based on such evidence as the Board has been able to obtain from aggregated data relating to the savings habits of Canadian families.

The second item being considered by a standard formula is the loss of retirement income from earnings by people who are 65 years of age or older. The formula selected is to use a flat rate cash amount per month for each percentage of disability.

CD. READJUSTMENTS FOR WORKERS WHO WERE 65 YEARS OF AGE AT THE TIME OF APPLICATION

When a worker, whose permanent disability benefits were adjusted using section 24 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 or section 203(5)(a) of the *Act* reaches 65, the Board readjusts the permanent disability benefits under section 203(6) in the following manner:

1. When the diarized section 203 adjustment comes up for review three months prior to the worker attaining 65 years of age, the file will be considered in accordance with the procedures developed for calculating compensation for workers aged 65 or older set out above. For the purpose of this calculation, the original functional permanent disability benefits as determined under section 23(1) of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492 or section 195 of the *Act*, in effect prior to any previous adjustment under section 24 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or section 203 of the *Act*, plus applicable cost of listing adjustment as described in policy item #51.00, will be regarded as the permanent disability benefits in effect at age 65.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

2. The term adjustment payable to age 65 automatically terminates when the worker reaches age 65. The adjustment calculated as per item (2) above then comes into effect. These new permanent disability benefits will be the higher of the original permanent disability benefit amount plus cost of living adjustments as described in policy item #51.00 or the adjusted permanent disability benefit determined in reference to the calculation for workers aged 65 or older.

The detailed calculation formulae are set out in Appendix 4 to this manual.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.~~

i. #46.03 Maximum and Minimum Periodic Payments under Section 203

Section 203(8) provides, “Section 200 [*maximum compensation in the case of further disability*] applies to the calculation of compensation under this section [section 203], but the calculation must not be limited by reference to average earnings at the time of injury.”

Section 203(9) provides, “Periodic payments to an applicant worker that are increased or established under this section must not exceed the maximum the Board would establish, at the time of the reconsideration decision, for a worker in an occupational category similar to that of the applicant worker before the injury if that other worker had a compensable disability similar to the compensable disability of the applicant worker.”

Section 203(10) provides that a decision under this section must not result in periodic payments to a worker being less than they would have been if no application had ever been made under this section.

ii. #46.04 Date When New Periodic Payments Commence under Section 203

Section 203(11) provides that the effective date for the commencement of an increase or establishment of compensation under this section is the date the application for reconsideration is received by the Board.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including removing language that is out of date.~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

iii. ~~#46.05~~ Reapplication under Section 203

Section 203(12) provides:

A worker may reapply under this section for reconsideration of the worker's compensation 10 years after the worker's most recent application under this section.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including removing language that is out of date.~~

E. ~~#46.20~~ COMMUTATIONS OF NEW PERIODIC REINSTATED COMMUTATIONS

If the Board has reinstated periodic payments for permanent disability under section 26 of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, or reinstates periodic payments for permanent disability under section 223 of the *Act*, the Board will not generally allow a further commutation. However, the Board does have discretion to permit this in unusual cases.

HISTORY: ~~April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1, including updating the language, renaming the policy and renumbering from policy item #46.15 to policy item #46.20.~~

EFFECTIVE DATE:	January 1, 2021
AUTHORITY:	Section 203 of the <i>Act</i> ; and Reconsideration of Prescribed Compensation Claims Regulation, B.C. Reg. 177/2013.
CROSS REFERENCES:	Section 223(1) of the <i>Act</i> .
HISTORY:	January 1, 2021 – This policy resulted from the consolidation of former policy items #46.00, #46.01, #46.02, #46.03, #46.04, #46.05, and #46.20, consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i> . April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1, including updating the language, renaming of policy, renumbering from policy item #46.15 to policy item #46.20, and removing language that is out of date. August 1, 2013 – Policy updated to mirror then section 24 regulation change. Title change and housekeeping amendment.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#51.20 Dollar Amounts in the Act

Section 333(1) of the Act provides:

Subject to subsection (2), the Board must adjust every dollar amount referred to in this Act on January 1 of each year by applying the percentage change in the consumer price index for Canada, for all items, for the 12-month period ending on October 31 of the previous year.

The Board determines the percentage change to be applied each January 1 to dollar amounts in the Act by comparing the consumer price index for October of the previous year with the consumer price index for October of the year prior to the previous year.

The resulting percentage changes determined annually are set out below:

Date	Percentage
January 1, 2020	1.864280

If required, earlier figures may be obtained by contacting the Board.

When the Board makes the adjustments, those dollar amounts referred to in the Act are deemed to be amended.

These provisions do not apply to the figures referred to in the maximum wage rate, and other figures referred to in policy item #69.00.

Authority to approve adjustments under section 333 has been assigned to the President.

Authority has also been assigned to the President to adjust the following amounts to reflect changes based upon the consumer price index, using the formula set out in policy of the applicable Item of the Manual:

Amount of Disfigurement Compensation	#43.20 C6- 43.00
Clothing Allowances	C10-82.00
Transportation	C10-83.00
Subsistence Allowances	C10-83.10

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

Additional Benefits for Severely Disabled Workers	C10-84.00
Transfer of Costs	#114.11
Funeral and Other Death Expenses	C8-54.00

The Board adjusts dollar amounts referred to in Part 4, Division 5 – Compensation in Relation to Death of Worker, and section 225 of the *Act* in accordance with section 333 of the *Act*. In addition, effective December 31, 2003, the Board adjusts the dollar amounts referred to in Part 4, Division 5 – Compensation in Relation to Death of Worker, and section 225 and Schedule C of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as it read immediately before June 30, 2002, in accordance with section 333 of the *Act*.

EFFECTIVE DATE:

December 31, 2003

AUTHORITY:

Section 333 of the *Act*.

HISTORY:

January 1, 2021 – Housekeeping change made to cross-reference consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

January 1, 2015 – Consequential amendments were made arising from changes to Chapter 10, *Health Care, Rehabilitation Services & Claims Manual*, Volume II.

December 31, 2003 – Policy amended regarding references to then sections 17 and 18 of the then *Act*, as well as dollar amounts in then sections 17, 18, and then Schedule C of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as it read immediately before June 30, 2002.

APPLICATION:

~~This policy item applies~~ **Applies** to all dollar amounts in the *Act*.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#67.20 Personal Optional Protection

Section 215 of the *Act* provides:

If an employer or independent operator to whom the Board directs that the compensation provisions apply under section 4(2) [*coverage for independent operators and employers*] has purchased coverage under this Act, the Board must determine the amount of the employer's or independent operator's average earnings from the date of injury based on the gross earnings for which coverage is purchased.

This is an exception to both general rules for determining average earnings. The average earnings of a person entitled to personal optional protection under section 4(2) of the *Act* are the earnings for which coverage has been purchased. There is no 10-week average earnings review.

The maximum and minimum amount of earnings for which coverage can be purchased may be obtained by contacting the Board.

If an applicant is applying for personal optional protection in an amount which exceeds the maximum per month, proof of gross earnings must be provided. If verification of earnings is not provided, the Board automatically reduces coverage to the maximum per month. Proof of gross earnings must be in the form of a certified copy of the applicant's previous year's tax return or a declaration must be completed by a professional accountant (C.P.A.), lawyer or notary public. This declaration must certify that the self-employed earnings of the applicant for the previous year were equal to or exceeded the coverage requested.

Because of frequent changes in the maximum wage rate, where coverage at the maximum has been granted, the Board permits an application for personal optional protection at the "maximum wage rate" with coverage and assessment to be adjusted automatically from time to time.

If a claim is made in respect of an injury, a disablement from an occupational disease, or a death from either cause occurring on or after January 1, 1978, the minimum amounts of compensation provided for in sections 191(2), 192(2), 194(2) and 195(2) have no application to persons who have purchased personal optional protection (Item AP1-4-3 of the *Assessment Manual*). However, the minimum average earnings provided for in sections 171(4) and 172(5) do apply.

The amount of personal optional protection purchased will be used to calculate a person's average net earnings. Compensation will be based on 90% of the person's average net earnings calculated as set out in policy item #71.00.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

Compensation payable to persons entitled to personal optional protection is subject to the same cost of living adjustments as compensation payable to other persons.

EFFECTIVE DATE: March 18, 2003

CROSS REFERENCES: Policy item #34.20, *Minimum Amount of Compensation for Temporary Total Disability*;
Policy item #35.23, *Minimum Amount of Compensation for Temporary Partial Disability*;
~~Policy item #37.20, *Minimum Amount of Compensation for Permanent Total Disability*~~**Item C6-37.00, Permanent Total Disability Benefits**;
~~Policy item #39.30, *Minimum Amount of Compensation for Permanent Partial Disability under Section 195*~~**Item C6-39.00, Section 195 Permanent Partial Disability Benefits**;
Policy item #71.00, *Average Net Earnings*, of the *Rehabilitation Services & Claims Manual*, Volume II;
Item AP1-4-3, *Personal Optional Protection*, of the *Assessment Manual*.

HISTORY: **January 1, 2021 – Housekeeping changes made to cross-references consequential to reformatting and renumbering policies in Chapter 6, Permanent Disability Benefits.**
April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.
March 18, 2003 – Policy amended as to where the maximum and minimum wage rate figures may be obtained.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#69.11 *Permanent Disability Lump Sum Compensation*

Section 200(2) provides:

If a worker has received a lump sum in place of the periodic payments that otherwise would have been payable for a permanent disability, the worker is deemed, for the purposes of subsection (1), to still receive the periodic payments.

If a worker is entitled to receive wage-loss benefits on a new claim and has received a lump-sum payment on any prior claim (in place of a monthly permanent disability periodic payment), the permanent disability benefits will be deducted only to the extent that it is necessary to ensure that the worker does not receive more compensation in total than the current maximum payable for total disability.

In the case of a reopening of the same claim within three years, any previous lump-sum payment (in place of a permanent disability periodic payment) will be deducted from the current daily wage-loss benefit payments. The same position exists in respect of reopenings of the same claim after three years where the worker's pre-injury earnings are used to calculate benefits. If, however, in the case of a reopening after three years, wage-loss benefits for a recurrence of temporary disability are based on the worker's current earnings under the terms of sections 193(1) and 193(2), any previous lump-sum payment (in place of a permanent disability periodic payment) will not be deducted in accordance with section 193(3), except to the extent that the combined total exceeds the maximum wage rate in effect at the time of the recurrence.

While the question whether a lump-sum payment is deducted is determined by its monthly equivalent at the time of the commutation, the amount actually deducted, is the monthly equivalent at the time the deduction is made. The amount available for deduction includes cost of living adjustments which have occurred since the commutation was granted.

EFFECTIVE DATE:	September 1, 2020
CROSS REFERENCES:	Policy item #45.00, Item C6-45.00 , <i>Lump Sums and Commutations</i> ; Policy item #45.10, <i>Permanent Disability Periodic Payment Categories/Lump Sum Compensation</i> ; Policy item #70.20, <i>Reopenings Over Three Years</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Housekeeping changes made to cross-references consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i>. September 1, 2020 – Policy amended to remove a spent provision, and reverse a housekeeping change. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1.
APPLICATION:	Applies to all decisions made on or after September 1, 2020.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Vocational Rehabilitation –
Eligibility Criteria

ITEM: C11-86.00

BACKGROUND

1. Explanatory Notes

This policy sets out eligibility criteria for vocational rehabilitation services.

2. The Act

Section 155(1):

To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 190:

Compensation under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] is subject to the following provisions:

- (a) section 230 [*manner of compensation payment: periodic or lump sum*];
- (b) section 231 [*payment of compensation in specific circumstances*];
- (c) section 232 [*Board authority to discontinue or suspend payments*];
- (d) section 233 [*deduction in relation to payments from employer*].

Section 191(1), in part:

... if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Section 192(1), in part:

... if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

- (a) the worker's average net earnings before the injury, and
- (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

Section 194(1), in part:

... if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

Section 195(1):

Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must

- (a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and
- (b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.

Section 196:

- (1) This section applies in relation to a permanent partial disability if ~~the Board determines that the combined effect of~~
 - ~~(a) the worker's occupation at the time of the injury, and~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

~~(b) — the worker's disability resulting from the injury~~

~~is so exceptional that an amount determined under section 195 does not appropriately compensate the worker for the injury~~ **an amount required under section 195 is less than an amount required under this section.**

- ~~(2) In making a determination under subsection (1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation~~ **Repealed.**
- ~~(3) If t~~**The Board makes a determination under subsection (1), the Board**
~~may~~**must** pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
 - (a) the average net earnings of the worker before the injury, and
 - (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

POLICY

Eligibility

Rehabilitation assistance may be provided in cases where it appears to the Board that such assistance may be of value, and where a decision has been made that the injury, occupational disease or death is compensable.

Eligibility for vocational rehabilitation services will be determined in relation to the entitlement provisions of the *Act* as follows:

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Temporary total disability

Vocational rehabilitation services are usually not provided to a worker with a temporary total disability, as the worker's medical condition often precludes the necessity of vocational rehabilitation initiatives. Limited vocational rehabilitation services may be considered where the Board determines that such services will assist in the worker's recovery or in making selective/light employment arrangements.

Temporary partial disability

Vocational rehabilitation services may be made available to a worker who is no longer considered to be "totally" disabled from working in the pre-injury occupation. The worker is considered capable of returning to a suitable occupation but may require vocational rehabilitation assistance to maximize short-term earning capacity up to the pre-injury wage rate.

Eligibility arises where:

- the compensable condition necessitates vocational rehabilitation assistance in early and safe return to work in the pre-injury occupation or a suitable occupation available over the short term;
- the compensable condition is complicated by non-compensable factors, the combination of which creates an impediment to return to work over the short term, necessitating assistance in an early and safe return to the pre-injury occupation or a suitable occupation;
- the pre-injury job is no longer available due to the injury and the worker requires assistance to return to work in a suitable occupation.

Permanent partial disability (section 195)

Vocational rehabilitation services may be provided where a worker's temporary disability has ceased and the worker's medical condition has stabilized. Workers receiving permanent disability benefits under section 195 are generally able to return to their pre-injury occupation or another suitable occupation but may need assistance in their return to the workforce.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Eligibility arises where:

- the compensable condition necessitates vocational rehabilitation to assist the worker in the worker's efforts to return to the pre-injury occupation;
- the compensable condition is complicated by non-compensable factors, the combination of which creates an impediment to return to work, necessitating assistance in the worker's efforts to return to the pre-injury occupation or another suitable occupation;
- the pre-injury job is no longer available due to the injury and the worker requires assistance to return to another suitable occupation; **or**
- **the worker requires assistance in the worker's efforts to return to the workforce in another suitable occupation and maximize long-term earning capacity up to the pre-injury wage rate.**

Permanent partial disability (section 196)

~~Vocational rehabilitation services may be provided to a worker who is entitled to a section 196(3) assessment for permanent partial disability and the worker requires assistance in the worker's efforts to return to the workforce in another suitable occupation and maximize long-term earning capacity up to the pre-injury wage rate.~~

Permanent ~~Total~~ Disability

Vocational rehabilitation services will be provided to a worker with a permanent total disability where the worker needs assistance in improving the worker's quality of life. It may include evaluation of a worker's need or continued need for rehabilitation and health care services and supports, where a worker's permanent total disability will continue past retirement age.

Non-Compensable Problems

Where a worker has a compensable injury or disease together with some other impediment to a return to work (e.g. substance abuse), rehabilitation assistance may sometimes be needed and provided to address the combined problems.

Rehabilitation assistance should not be provided when the primary obstacle to a return to work is non-compensable.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Third-Party Claims

In the case of third-party claims, where a worker has a right of election, a worker is not eligible for rehabilitation assistance until the worker has elected to claim compensation with the Board.

Continuation of Assistance

In cases where the severity of an injury warrants immediate referral, intervention may precede the formal acceptance of the claim. Where this occurs, no substantial expenditures are initiated prior to acceptance of the claim. Should the claim be denied, any vocational rehabilitation assistance already being provided will terminate within 15 days unless a request for a review by the Review Division has been filed. In such cases, assistance may be continued pending disposition of the review.

Once a decision has been made that an injury or disease is compensable, there is no requirement that vocational rehabilitation assistance end at the same time payment of wage-loss benefits is concluded. The worker may no longer be eligible for wage-loss benefits, but vocational rehabilitation assistance may still be required and, where necessary, should be provided.

EFFECTIVE DATE:	June 1, 2009 January 1, 2021
AUTHORITY:	Sections 155, 190, 191, 192, 194, 195, 196, and 270(3) of the <i>Act</i> .
CROSS REFERENCES:	Policy item #34.11, <i>Selective/Light Employment</i> ; Item C11-86.10, <i>Vocational Rehabilitation – Referral Guidelines</i> ; Policy item #111.20, <i>Injury Not Caused by Worker or Employer</i> ; Item C18-116.30, <i>Retirement Benefits – Retirement Services and Personal Supports</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act, 2020 (Bill 23)</i>. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted reference to Board officer in Vocational Rehabilitation Services. March 3, 2003 – The policy in this Item was amended to remove the reference to appeal and include a reference to review, consequential to the <i>Workers Compensation Amendment Act (No.2)</i> , 2002. November 1, 2002 – Replaces policy items #86.00, #86.20, #86.40 and #86.70 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

APPLICATION:

Applies **to all decisions, including appellate decisions, made** on or
after ~~June 1, 2009~~ **January 1, 2021**.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

**RE: Vocational Rehabilitation –
Referral Guidelines**

ITEM: C11-86.10

BACKGROUND

1. Explanatory Notes

This policy sets out referral guidelines for vocational rehabilitation services.

2. The Act

Section 155(1):

To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Referral Guidelines

The following guidelines are used in making referrals for vocational rehabilitation services. Internal Board referrals should clearly identify what has been accepted under the claim and specify reasons for the referral, including new information warranting repeat referral.

Workers may also be referred directly by physicians, hospitals, union representatives, employers and other agencies, or may seek assistance themselves.

Immediate Referrals

The following require immediate referral:

1. Spinal cord injuries resulting in paraplegia or quadriplegia.
2. Major extremity amputations or severe crush injuries.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

3. Severe brain or brain stem injuries.
4. Significant burns (e.g. 20% of the body surface, or third-degree burns of 10% or more of the body surface).
5. Significant loss of vision.
6. Fatalities.

General Referrals

1. Claims meeting the eligibility criteria.
2. Employability assessments for the consideration of temporary partial disability benefits under section 192 of the *Act*.
3. Employability assessments for the consideration of permanent partial disability under section 196.
4. Consideration for continuity of income benefits.
5. Commutation investigations.
6. Reviews under section 203.
7. Evaluation of a permanently totally disabled worker's need or continued need for rehabilitation services, health care services, and personal supports in the three month period prior to the receipt of a retirement benefit.
8. Claims where recovery or re-employment is affected by:
 - (a) psychological/social problems;
 - (b) emotional problems;
 - (c) financial stress;
 - (d) substance abuse; and
 - (e) vision/hearing problems.

Out of Province Referrals

Rehabilitation services requested of, or by, other Canadian Boards and Commissions are coordinated through reciprocal inter-jurisdictional agreement.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

EFFECTIVE DATE:	September 1, 2015
AUTHORITY:	Section 155 of the Act.
CROSS REFERENCES:	Sections 156, 157, 162, 190, 192, 194, 195, 196, and 203 of the Act; and Policy item #35.11, <i>Procedure for Determining Whether Worker is Temporary Partially Disabled</i> ; Policy item #40.10, Section 196(3) Assessment Formula; Policy #40.12, Suitable Occupation Item C6-40.00, Section 196 Permanent Partial Disability Benefits; Policy item #45.50, Decision-Making Procedures Item C6-45.00, Lump Sums and Commutations; Policy item #46.00 Item C6-46.00, Reconsideration of Prescribed Compensation Claims under Section 203; Item C10-83.10, <i>Subsistence Allowances</i> (Section 6 Temporary Dependant Care During Period of Disability); Item C10-84.00, <i>Additional Benefits for Severely Disabled Workers</i> (Section 4.1 Personal Care Expenses or Allowances); Item C10-84.00, <i>Additional Benefits for Severely Disabled Workers</i> (Section 4.5 Independence and Home Maintenance Allowance); Item C11-86.00, <i>Vocational Rehabilitation – Eligibility Criteria</i> ; Item C11-89.00, <i>Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability</i> ; Item C18-116.30, <i>Retirement Benefits – Retirement Services and Personal Supports</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Housekeeping changes made to cross-references consequential to reformatting and renumbering policies in Chapter 6, Permanent Disability Benefits. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. September 1, 2015 – Policy revisions to remove referrals addressed elsewhere in policy. June 1, 2009 – Deleted references to Board officers. March 3, 2003 – Policy was amended to remove the reference to a review of then section 23(3) permanent partial disability award, consequential to the <i>Workers Compensation Amendment Act</i> (No. 2), 2002. November 1, 2002 – Clarification of guidelines for immediate and general vocational rehabilitation referrals. Replaced policy items, #86.10, #86.11, #86.12, #86.50, #86.60, and #86.80 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. Applied to decisions made on or after November 1, 2002 on claims adjudicated under the <i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492, as amended by the <i>Workers Compensation Amendment Act</i> , 2002.
APPLICATION:	This item applies Applies to all decisions made on or after September 1, 2015.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

**RE: Vocational Rehabilitation –
Training-on-the-Job**

ITEM: C11-88.40

BACKGROUND

1. Explanatory Notes

This policy describes the Board's training-on-the-job program.

2. The Act

Section 155(1):

To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Training-on-the-Job

Training-on-the-job is a shared-cost program which is undertaken at an employer's work site to provide the worker with specific skills leading directly to employment.

Guidelines

Subject to the policy in Item C11-88.00, the following guidelines apply for training-on-the-job programs.

1. Training-on-the-job assistance may be provided to enhance or develop new occupational skills.
2. While the worker is undertaking a training-on-the-job program, absences are usually treated according to the training employer's policy on absenteeism. That is, if the employer deducts the worker's pay for an absence, so will the Board. If the employer pays for the absence, the Board will pay as well.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

3. Training-on-the-job assistance may be provided for up to 26 weeks.

The Board may approve training-on-the-job assistance of more than 26 weeks based on the following criteria:

- A program greater than 26 weeks will **maximize long-term earning capacity up to the pre-injury wage rate** ~~result in no loss of earnings for a worker who is being assessed for section 196 compensation;~~
- A program greater than 26 weeks will result in permanent long-term employment;
- A program greater than 26 weeks is necessary to develop/demonstrate the required occupational skill levels; or
- A program greater than 26 weeks is required for ticketing and/or certification in the identified occupation.

The timeframe for training-on-the-job will be part of the rehabilitation plan. Extensions beyond 26 weeks must be approved by the Director of Vocational Rehabilitation Services.

Expenditures

1. Financial assistance for a training-on-the-job program will normally be provided on a shared-cost basis with the training employer. The Board's contribution will usually decrease, on a sliding scale, as the program proceeds and the worker's productivity increases. The portion of the worker's wages paid by the Board will normally not exceed the worker's wage-loss rate.

Training-on-the-job allowances will be calculated in a manner similar to the calculation of wage-loss benefits. In general the sum of the wages from the training employer and the gross payments from the Board to the worker will be equal to the worker's pre-injury wage rate. Where the worker's pre-injury wage rate exceeds the maximum wage rate as set under section 209 of the *Act*, the Board's contribution will be calculated by substituting the maximum wage rate for the pre-injury wage rate. In that case the sum of the wages from the training employer and the gross payments from the Board to the worker will be equal to the maximum wage rate.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

2. Expenditures under this program will usually be paid directly to the employer, so that the worker will be covered by Employment Insurance, Canada Pension Plan and any other company benefits.
3. Permanent disability benefits are not deducted from training allowances for training-on-the-job programs when paying the employer.
4. Nothing in this Item should be interpreted to prohibit the Board from negotiating a wage with the training employer that exceeds either the maximum wage rate or the worker's pre-injury wage. The Board will seek to maximize the wages paid to the worker by the training employer while recognizing that it is necessary and desirable to provide some incentive to employers to choose injured workers for training-on-the-job positions.

Injury in the Course of Training-on-the-Job

The Board considers it essential to encourage employers to provide training and employment opportunities for injured workers. One way of doing this is to exclude from the employer's experience rating, the costs of certain employment injuries and aggravations occurring in the course of a training-on-the-job program.

There are two different training-on-the-job situations to be considered:

1. The employer is not paying the worker; the Board is paying full benefits.

All costs resulting from the aggravation of the injury are excluded from experience rating, whatever the nature of the injury.
2. The employer is paying a partial wage to the worker who is also receiving payments from the Board; or the Board is reimbursing the employer part of the worker's salary.

If there is an aggravation of the old injury, or the old injury contributes significantly to the occurrence of the new injury, all the resulting costs are excluded from experience rating, whatever the nature of the injury.

If the old injury made no significant contribution to the new injury, the Board will exclude from experience rating a proportion of the costs of the new claim equal to the percentage of the worker's wages being paid or reimbursed by the Board.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

The above policy applies whether the employer at the time is a new employer or the worker's original employer.

In addition to relief for the individual employer for experience rating, the employer's sector or rate group may be eligible for relief under section 240(1)(d).

EFFECTIVE DATE:	October 21, 2020 January 1, 2021
AUTHORITY:	Section 155 of the <i>Act</i> .
CROSS REFERENCES:	Item C11-87.00, <i>Vocational Rehabilitation – Process</i> ; Item C11-88.00, <i>Vocational Rehabilitation – Nature and Extent of Programs and Services</i> ; Item C11-88.50, <i>Vocational Rehabilitation – Formal Training</i> ; Policy item #114.40, <i>Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability</i> ; Policy item #115.30, <i>Experience Rating</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act, 2020 (Bill 23)</i>. October 21, 2020 – Amended to reflect amendment to maximum wage rate provisions in the <i>Act</i> by the <i>Workers Compensation Amendment Act, 2020 (Bill 23 of 2020)</i> , in effect August 14, 2020. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. September 1, 2015 – Revised policy removes requirement for the timeframe for training-on-the-job to be determined before a VR plan is implemented. June 1, 2009 – Deleted reference to Compensation and Rehabilitation Services. November 1, 2002 – Reformatted and revised policy provides that training-on-the-job assistance may be provided for up to 26 weeks. Extensions beyond 26 weeks must be approved by the VP of Compensation and Rehabilitation Services or the Director of VR Services. Criteria are also provided for granting extensions. Replaced Items #88.40 - #88.43 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. Applied to decisions made on or after November 1, 2002 on claims adjudicated under the <i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492, as amended by the <i>Workers Compensation Amendment Act, 2002</i> .
APPLICATION:	Applies to all decisions, including appellate decisions , made on or after October 21, 2020 January 1, 2021 .

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

**RE: Vocational Rehabilitation –
Formal Training**

ITEM: C11-88.50

BACKGROUND

1. Explanatory Notes

This policy sets out the Board's formal training program.

2. The Act

Section 155(1):

To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Formal Training

Subject to the policy in Item C11-88.00, the following guidelines apply to formal training.

Formal training refers to a range of courses or programs which:

1. add to, or upgrade a worker's existing skills or qualifications;
2. provide new occupational skills.

These may include full-time or part-time trades, technical or academic programs offered through recognized training or educational institutions. These programs are of short duration of less than 26 weeks and should be identified as having an immediate positive impact on the worker's employability. Programs of more than 26 weeks duration must be approved by a Vice-President or the Director of Vocational Rehabilitation Services.

The following criteria apply in considering whether a program of more than 26 weeks is approved:

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- A program greater than 26 weeks is required to assist a worker who is assessed under section 196 in mitigating the **a** worker's loss of earnings;
- A program of less than 26 weeks is not adequate to provide new occupational skills; or
- The rehabilitation plan that is developed identifies and provides supporting documentation for a lengthier formal training program based on the worker's objective functional capacity, existing transitional skills, aptitudes, education and training or labour market demands.

Levels of Support

Where a worker, who has sustained a compensable injury or occupational disease, wishes to undertake a formal training program and seeks assistance from the Board, the proposed program must be classified in one of the following three categories:

1. Training Related Directly to the Disability

The Board should provide the cost of any formal training program considered reasonably necessary to overcome the effects of any residual disability. This can also apply to preventative rehabilitation.

- (a) The primary guideline is that the Board should, where practical, support a program sufficient to restore the worker to an occupational category comparable in terms of earning capacity to the pre-injury occupation.
- (b) A secondary guideline is that the gravity of the residual disability is a relevant factor. The Board should go to greater lengths in cases where the residual disability is serious than in cases where it is minor.

Where a worker is eligible for a formal training program under this heading, the support provided under section 155 of the *Act* should be sufficient to enable the worker to complete the program. Workers should not be expected to use their own resources or to commute their permanent disability benefits for this purpose.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

2. Training Related Partly to the Disability

Workers may sometimes want to blend their rehabilitation into a general advancement of their education, or pursue a vocational ambition that exceeds what would otherwise be provided under section 155 of the *Act*.

For example, a worker is injured in a heavy manual occupation and is unable to return to heavy manual work. In discussion with the Board, it appears that there is a 26-week program that would provide occupational skills for a position with earning capacity and prospects at least as good as the pre-injury occupation; but rather than pursue this option the worker prefers a more extensive one-year program.

The Board should not deny the rehabilitation assistance that would have been provided if the worker had chosen the 26-week training program, but neither should it generally finance an educational advancement that goes beyond what is reasonably necessary as rehabilitation for the injury.

In cases of this kind, the Board will estimate the total expenditure that would have been incurred under section 155 of the *Act* if the worker had taken a program considered reasonably necessary to overcome the effects of the compensable injury. The worker will then be offered that amount as a contribution to the cost of the preferred vocational plan.

If the injury is very severe, the Board might treat the case under Category 1 and support the whole program. Rehabilitation is not limited to restoring earning capacity and, in cases of catastrophic or very serious injury, the Board should do all that is reasonably possible and appropriate to facilitate the functional restoration and development of the worker. In these cases, a formal training program may be wholly supported by the Board notwithstanding:

- (a) that it goes beyond what is necessary to restore the pre-injury earning capacity of the worker, or
- (b) that it may not improve earning capacity at all.

3. Training Unrelated to the Disability

Sometimes, recovery from an injury coincides with a desire for a change of occupation, or for some formal training program that the worker might well have undertaken regardless of the injury. The jurisdiction of the

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Board under section 155 of the *Act* is to provide assistance reasonably necessary as rehabilitation for a compensable injury. Thus, it is not a function of the Board to finance training that is part of an ordinary career pattern or that is desired by the worker for reasons unrelated to the injury.

Such training would, therefore, not be supported under section 155. If the worker wished to meet the cost of the program by a commutation of permanent disability benefits, that is something the Board might consider.

Guidelines

1. Formal training programs are normally undertaken for the purpose of improving a worker's long-term employment and earnings potential.
2. Before deciding on a formal training program, it is important that the worker's desires, abilities, aptitudes, interests and educational readiness are assessed in order to ensure a probability of success. The program must also be compatible with the worker's physical capabilities and any ongoing medical treatment.
3. Decision-making regarding the type and appropriateness of formal training programs is a collaborative process which takes into consideration the desire and intent of the worker and all relevant assessment and labour market information. The Board determines the feasibility of the program(s) under consideration and decides whether to recommend sponsorship.
4. Ongoing support and sponsorship of formal training programs are contingent upon the worker's active cooperation and participation in the process. If the worker does not meet the attendance and progress requirements of the program, financial sponsorship may be suspended or withdrawn. Discussion with the worker will determine whether further or alternate assistance is appropriate.

Expenditures

When it is decided to support a formal training program related directly to the disability, the assistance provided under section 155 of the *Act* will normally include:

1. Training allowances at wage-loss equivalency, when the worker is enrolled in a full-time program.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

2. Tuition fees and any necessary books, materials or equipment.
3. Travel and subsistence where appropriate.

When it is decided to support a formal training program related partly to the disability, the Board will estimate the total expenditure that would otherwise have been incurred under section 155 of the *Act*. The worker will then be offered that amount as a contribution to the cost of the preferred program. This contribution will normally be paid by installment and will be subject to cost-of-living adjustments using the formula provided in section 334 of the *Act*.

Injury in the Course of Training

A worker undergoing a course of rehabilitation training sponsored by the Board does so in the circumstances described below:

1. The trainee may be attending a school of training specifically operated as such and for which course of training the Board pays a fee to the school, while at the same time paying the trainee the allowance prescribed by Board regulations.
2. A trainee may, by arrangement, be receiving training in an industrial or business establishment, receiving no remuneration from the employer in the establishment, but only receiving the allowance prescribed by Board regulations. At the same time, the Board may be paying something by way of a training fee to the employer in the establishment.

In the above circumstances, the Board takes the position that the trainee is not a “worker” employed by the participating employer in the course of rehabilitation training. Should the trainee receive further injury in the course of training, the Board regards such further injury as a continuation of the original disability. The two main objectives are:

1. that the injured trainee shall receive compensation under the *Act*, and
2. that an employer who cooperates and assists the Board in rehabilitating an injured worker shall not be penalized for so doing.

In the case of an aggravation or new injury to a trainee, the Board will normally exclude the costs from the employer’s experience rating. In addition, the employer’s sector or rate group may be eligible for relief under section 240(1)(d).

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

The above policy applies whether the employer at the time is a new employer or the worker's original employer.

Joint Sponsorship

Where a worker is undertaking a training program sponsored by another agency, and:

1. the circumstances are such that a similar program would have been supported by the Board, and
2. the level of support provided by the other agency is less than would have been provided by the Board,

the Board will provide support to the extent of the difference.

EFFECTIVE DATE:	September 1, 2015 January 1, 2021
AUTHORITY:	Section 155 of the Act.
CROSS REFERENCES:	Item C3-20.00, <i>Employer-Provided Facilities</i> ; Item C3-22.00, <i>Compensable Consequences</i> ; Policy item #45.44, <i>Education</i>; Item C6-45.00, <i>Lump Sums and Commutations</i>; Item C10-83.00, <i>Transportation</i> ; Item C10-83.10, <i>Subsistence Allowances</i> ; Item C11-87.00, <i>Vocational Rehabilitation – Process</i> ; Item C11-88.00, <i>Vocational Rehabilitation – Nature and Extent of Programs and Services</i> ; Item C11-88.80, <i>Vocational Rehabilitation – Preventative Rehabilitation</i> ; Policy item #114.40, <i>Enhancement of Disability by Reason of Pre-Existing Disease, Condition or Disability</i> ; Policy item #115.30, <i>Experience Rating</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the <i>Workers Compensation Amendment Act, 2020 (Bill 23)</i>. October 21, 2020 – Housekeeping amendments to ensure consistent terminology. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. September 1, 2015 – Revised policy for housekeeping changes. June 1, 2009 – Deleted reference to Compensation and Rehabilitation Services and Board officer. November 1, 2002 – Reformatted and revised policy to set out that formal training programs may be provided for up to 26 weeks. Programs

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

of more than 26 weeks must be approved by the VP of Compensation and Rehabilitation Services or the Director of VR Services. Criteria are also provided for considering whether a program of more than 26 weeks is approved. Replaced policy items #88.50 - #88.55 of the *Rehabilitation Services & Claims Manual*, Volume II. Applied to decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended by the *Workers Compensation Amendment Act, 2002*.

APPLICATION:

This Item ~~applies to all decisions, including appellate decisions,~~ made on or after September 1, 2015 **January 1, 2021**.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

**RE: Vocational Rehabilitation –
Business Start-ups**

ITEM: C11-88.60

BACKGROUND

1. Explanatory Notes

This policy sets out the Board's business start-up program.

2. The Act

Section 155(1):

To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

POLICY

Business Start-ups

The Board may contribute to the cost of starting or enhancing a viable business for a worker in lieu of other rehabilitation measures.

Business start-ups will only be approved in limited situations where the Board is satisfied that the worker has demonstrated previous business experience and presents a viable business plan. In each case where a business start-up is contemplated as a vocational rehabilitation measure, the Board will obtain, with the worker's written consent, an appraisal of the viability of the proposed business from the Business Development Bank of Canada or some similar organization before a final decision is made. Before consideration can be given to a business-start-up plan, the Director, Vocational Rehabilitation Services must approve a business feasibility study. The Director, Vocational Rehabilitation Services, must also approve all business start-ups.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

The amount of financial assistance will normally not exceed the amount that would have been paid if the worker had undertaken a vocational rehabilitation program considered reasonable and necessary to overcome the effects of the compensable injury.

When considering vocational rehabilitation expenditures for business start-ups, the basic guidelines for starting a business apply.

EFFECTIVE DATE:	November 1, 2002
AUTHORITY:	Section 155 of the Act.
CROSS REFERENCES:	Policy item #45.43, Starting a Business Item C6-45.00, Lump Sums and Commutations; Item C11-88.00, <i>Vocational Rehabilitation – Nature and Extent of Programs and Services</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Housekeeping change made to cross-reference consequential to reformatting and renumbering policies in Chapter 6, Permanent Disability Benefits. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. Replaced policy item #88.60 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
APPLICATION:	To decisions made on or after November 1, 2002 on claims adjudicated under the <i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492, or the Act.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Vocational Rehabilitation – Relocation

ITEM: C11-88.90

BACKGROUND

1. Explanatory Notes

This policy sets out the Board's guidelines on relocation.

2. The Act

Section 155(1):

To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 192(1), in part:

... if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

- (a) the worker's average net earnings before the injury, and
- (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Section 196:

- (1) This section applies in relation to a permanent partial disability if ~~the Board determines that the combined effect of~~
 - ~~(a) — the worker's occupation at the time of the injury, and~~
 - ~~(b) — the worker's disability resulting from the injury~~is so exceptional that an amount determined under section 195 does not appropriately compensate the worker for the injury **an amount required under section 195 is less than an amount required under this section.**
- (2) ~~In making a determination under subsection (1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation.~~ **Repealed.**
- (3) ~~If t~~**The Board makes a determination under subsection (1), the Board may** **must** pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
 - (a) the average net earnings of the worker before the injury, and
 - (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

POLICY

Relocation is considered to be a reasonable option for a worker after all other return-to-work options have been considered. Where no suitable occupations that will maximize the worker's post-injury earning capacity are available within a reasonable commuting distance of the worker's home community, the Board may recommend that the worker

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

relocate to an area where there are greater prospects for employment opportunities in a suitable occupation.

An offer by the Board to relocate a worker will be made on the basis of the worker's individual circumstances. The primary factor to be considered is mitigation of the worker's long-term loss of earning capacity. A determination must be made that employment opportunities, on relocation, would substantially reduce the worker's post-injury loss of earnings.

Other factors that may be considered in determining whether it would be reasonable for a worker to relocate include age, family situation and/or connection to the community. The connection to the community must be significant and refer to the worker's obligations and responsibilities to the community separate from the worker's family situation. The evidence must support a finding that these other factors, either alone or in combination, would make it unreasonable for the Board to consider relocation. The primary factor will be the deciding factor unless the other factors considered either separately or in combination clearly outweigh the mitigation of the worker's loss of earning capacity.

The Board will pay reasonable expenses of relocation. Expenses paid by any other agency, may be deducted from the amount to be paid by the Board.

If the Board determines that relocation is reasonable and relocation expenses have been offered, the worker's benefits may be calculated as if the worker relocated.

EFFECTIVE DATE:	February 1, 2020
AUTHORITY:	Sections 155, 192 and 196 of the Act.
CROSS REFERENCES:	Policy item #35.21, <i>Availability of Jobs</i> ; Policy item #40.12, <i>Suitable Occupation</i>; Item C6-40.00, Section 196 Permanent Partial Disability Benefits; Item C11-89.00, <i>Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Housekeeping changes made to the Act portion of the Background section to reflect amendments to the Act by the Workers Compensation Amendment Act, 2020 (Bill 23). April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. February 1, 2020 – Policy amended to provide guidance on the legal issues of standard of proof and evidence. Replaced, in part, policy item #40.12.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

APPLICATION: Applies to all decisions made on or after February 1, 2020.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

**RE: Vocational Rehabilitation –
Employability Assessments –
Temporary Partial Disability and
Permanent Partial Disability**

ITEM: C11-89.00

BACKGROUND

1. Explanatory Notes

This policy sets out the employability assessment process for temporary partial disability and permanent partial disability.

2. The Act

Section 155(1):

To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 192(1), in part:

... if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

- (a) the worker's average net earnings before the injury, and
- (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net *earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.* (emphasis added)

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Section 196:

- (1) This section applies in relation to a permanent partial disability if ~~the Board determines that the combined effect of~~
 - ~~(a) — the worker's occupation at the time of the injury, and~~
 - ~~(b) — the worker's disability resulting from the injury~~

is so exceptional that an amount determined under section 195 does not appropriately compensate the worker for the injury **an amount required under section 195 is less than an amount required under this section.**
- (2) ~~In making a determination under subsection (1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation~~ **Repealed.**
- (3) ~~If t~~**The Board makes a determination under subsection (1), the Board may** **must** pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
 - (a) the average net earnings of the worker before the injury, and
 - (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net *earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.* (emphasis added)

POLICY

Employability Assessments

Sections 192 and 196 of the *Act* direct the Board to estimate what a worker is capable of earning in a suitable occupation. This **may** requires an employability assessment.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

One of the functions of Vocational Rehabilitation Services is to assist in the assessment of employability for temporary partial disability and permanent partial disability under sections 192 and 196 of the *Act*.

Temporary Partial Disability

Where a worker is medically judged to be only partially disabled and the condition remains temporary, any further wage-loss benefits may be processed under section 192 of the *Act*. In most cases, this assessment under section 192 is conducted without a referral to Vocational Rehabilitation Services. The goal is to identify suitable occupations, along with estimated earnings, that maximize the worker's short-term earning capacity up to the pre-injury wage rate. In most cases, the focus of the assessment is a return to work with the pre-injury employer.

A referral to Vocational Rehabilitation Services may be made if assistance is needed in this regard or a more comprehensive employability assessment is required. For example, if there is no attachment to the pre-injury employer, suitable and available occupations in the labour market will be considered.

Vocational Rehabilitation Services provides the documented objective evidence of what the worker is earning or is capable of earning, not the decision on a worker's entitlement under section 192 itself.

In determining section 192 wage-loss benefits, the employment opportunity or opportunities should be available immediately or within the period under review (two weeks, one month) and there should be some certainty that workers would have these opportunities open to them should they choose to apply.

Where the Board and a worker are engaged in carrying out a rehabilitation plan, and all parties are cooperating in good faith, it is not required that temporary partial disability wage-loss benefits be based on short-term, temporary or lesser paying jobs that the worker could do, but which would be incompatible with the demands and commitment required to meet the overall vocational objective.

Permanent Partial Disability

~~In exceptional cases, a~~ A worker's entitlement to permanent partial disability benefits ~~may be is considered determined under the method set out in sections~~ **is considered determined under the method set out in sections 195 and 196 of the Act. Entitlement under section 196** ~~This method may requires an~~ employability assessment.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

The goal is to identify suitable occupations, along with estimated earnings, that maximize the worker's long-term earning capacity up to the pre-injury wage rate. In most cases, "long-term" refers to three to five years.

The employability assessment process is conducted in light of all possible rehabilitation measures that may be of assistance and appropriate to the circumstances of each worker.

The rehabilitation plan may form the basis for the employability assessment. A functional capacity evaluation may be used to assess the worker's capacity for work. This provides information on the worker's residual maximum functional capabilities, confirmation of identified alternative job options and plans for vocational reintegration.

Labour market data in conjunction with the objective functional capacity information is used to create a residual vocational profile. A list of suitable occupations based on the profile is then produced. Consideration is then given to whether these occupations are reasonably available.

Where The workers **s** **is** **are** given a copy of the assessment and, **they are** allowed 30 days in which to respond. Unless this timeframe is waived by the worker, submissions received within this time frame are considered before the Board makes a final decision on section 196 entitlement.

EFFECTIVE DATE:	June 1, 2009 January 1, 2021
AUTHORITY:	Sections 155, 192, and 196 of the Act.
CROSS REFERENCES:	Policy item #35.11, <i>Procedure for Determining Whether Worker is Temporarily Partially Disabled</i> ; Policy item #35.20, <i>Amount of Payment</i> ; Policy item #35.21, <i>Suitable Occupation</i> for Temporary Partial Disability Compensation ; Policy item #40.10, <i>Section 196 Assessment Formula</i>; Policy item #40.12, <i>Suitable Occupation</i>; Policy item #40.13, <i>Measurement of Earnings Loss</i>; Policy item #40.14, <i>Provision of Employability Assessments</i>; Item C6-40.00, Section 196 Permanent Partial Disability Benefits ; Item C11-89.10, <i>Vocational Rehabilitation – Income Continuity</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the Workers Compensation Amendment Act, 2020 (Bill 23).

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

June 1, 2009 – Policy updated to reflect the wording of the legislation and to remove outdated references to decision-makers, departments, appellate bodies and external agencies.

November 1, 2002 – Reformatted and revised policy to set out the employability assessment process for temporary partial disability and permanent partial disability. Replaced policy items #89.00, #89.10, and #89.20 of the *Rehabilitation Services & Claims Manual*, Volume II.

Applied to decisions made on or after November 1, 2002 on claims adjudicated under the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended by the *Workers Compensation Amendment Act*, 2002.

APPLICATION:

Applies **to all decisions, including appellate decisions, made** on or after ~~June 1, 2009~~ **January 1, 2021**.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

**RE: Vocational Rehabilitation –
Income Continuity**

ITEM: C11-89.10

BACKGROUND

1. Explanatory Notes

This policy deals with the payment of a rehabilitation allowance pending the assessment of permanent partial disability compensation.

2. The Act

Section 155(1):

To aid in getting an injured worker back to work or to assist in lessening or removing a resulting disability, the Board may take the measures and make the expenditures that the Board considers necessary or expedient, regardless of the date on which the worker first became entitled to compensation.

Section 195(1):

- (1) Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must
 - (a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and
 - (b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.

Section 196:

- (1) This section applies in relation to a permanent partial disability if ~~the Board determines that the combined effect of~~
 - ~~(a) the worker's occupation at the time of the injury, and~~
 - ~~(b) the worker's disability resulting from the injury~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

~~is so exceptional that an amount determined under section 195 does not appropriately compensate the worker for the injury~~ **an amount required under section 195 is less than an amount required under this section.**

- (2) ~~In making a determination under subsection (1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation~~ **Repealed.**
- (3) ~~If t~~**The Board makes a determination under subsection (1), the Board may** **must** pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between
 - (a) the average net earnings of the worker before the injury, and
 - (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
 - (i) the average net earnings that the worker is earning after the injury;
 - (ii) the average net *earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.* (emphasis added)

POLICY

Continuity of Income Pending Assessment of Permanent Partial Disability Benefits

The Board may pay a rehabilitation allowance to assist workers who are not actively engaged in the rehabilitation process but who are awaiting assessment of their permanent disability benefits **under section 196 of the Act**. These payments will be considered for workers

- whose disability has stabilized,
- who are unemployed, or employed at a reduced income level due to their compensable disability,

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- who are not entitled to wage-loss benefits,
- who are not receiving any other wage-loss equivalency benefits from the Board, and
- who are likely to receive permanent partial disability benefits under section 196 of the Act.

~~Consideration will be given to the payment of a rehabilitation allowance between the end of wage-loss benefits or other wage replacement payments, and the commencement of the permanent partial disability benefits.~~

Prior to implementing an income continuity payment, the Board must have considered and offered to the worker all rehabilitation measures which are reasonable and might be of assistance to the worker.

Amount of Payment

Continuity of income payments are based initially on the same rate as the wage-loss benefit rate and will continue at that level until the permanent partial disability benefits are **assessed under section 196 of the Act** granted, except in any of the following circumstances:

1. The worker has retired.
2. The worker is experiencing non-compensable medical, psycho-social or financial 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 **may** will complete the **an** employability assessment required under section 196, and **will may** provide a copy of that assessment to the worker. Thirty days after the worker has been provided with a copy of the employability assessment, the Board will adjust the income continuity rate to the rate which best reflects the conclusions contained in the employability assessment regarding the worker's projected long-term earning capacity. However, the Board will not adjust the rate at this point if, during the 30-day period based on new evidence, the Board decides the employability assessment requires revision.

As part of the completion of the employability assessment and prior to adjusting the income continuity rate, the Board must investigate the worker's circumstances and must

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

consider the impact of the compensable disability on the worker's decision to retire or not to participate in the rehabilitation process.

Permanent Disability Benefits Reopenings

Continuity of income payments will also be considered for workers who are already receiving permanent disability benefits on the claim, where the Board has reopened the permanent disability decision and it is likely that the worker will receive a significant increase in the worker's permanent disability rating. As well, there must be evidence of a deterioration in the worker's medical condition which is likely to be permanent, and the worker must be experiencing a reduction in income during the period which is related to the reasons for the reopening. Benefit levels will be established in accordance with this policy.

EFFECTIVE DATE:	February 1, 2020 January 1, 2021
AUTHORITY:	Sections 155 and 196 of the Act.
CROSS REFERENCES:	Policy item #40.12, Suitable Occupation; Item C6-40.00, Section 196 Permanent Partial Disability Benefits; Item C11-89.00, Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability, of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	January 1, 2021 – Policy changes made consequential to the permanent partial disability benefits provisions of implementing the Workers Compensation Amendment Act, 2020 (Bill 23). April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. February 1, 2020 – Revised policy to update terminology and to clarify when income continuity benefits are considered. June 1, 2009 – Deleted references to Board officers and Board officers in Vocational Rehabilitation Services. March 3, 2003 - Amendments to reference a reopening of a permanent disability award, consequential to the <i>Workers Compensation Amendment Act (No. 2), 2002</i> (Bill 63 of 2002). November 1, 2002 - Reformatted and revised policy to clarify that income continuity allowances will be considered for workers who are likely to receive a permanent partial disability award under then section 23(3) of the Act. Replaced policy items #89.11 and #89.13 of the <i>Rehabilitation Services & Claims Manual</i> , Volume II. Applied to decisions made on or after November 1, 2002 on claims adjudicated under the <i>Workers Compensation Act</i> , R.S.B.C. 1996, c. 492, as amended by the <i>Workers Compensation Amendment Act, 2002</i> . APPLICATION: Applies to all decisions, including appellate decisions, made on or after February 1, 2020 January 1, 2021 .

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#96.30 Permanent Disability Benefits Decision-Making Procedures

The Board determines whether an actual or potential permanent disability is accepted on a claim.

If the Board has accepted an actual or potential permanent disability, the Board then determines the extent of the disability, and calculates the worker's permanent disability benefit entitlement. **This requires a determination under section 194, or sections 195 and 196 of the Act.**

~~In cases of minor disabilities, the Board may calculate the permanent disability benefits entitlement without a section 195(1) evaluation medical examination if there is sufficient medical evidence already available information on file to complete the assessment. Except for those cases, the normal practice is for a section 195(1) evaluation assessment to be conducted for permanent disability benefits purposes by the Board or a Board-authorized External Service Provider (see policy item #39.01 Item C6-39.00).~~

Although the evaluation is not the only medical evidence that the Board may use, it will usually be the primary input.

The decision-making procedure for assessing entitlement to permanent disability benefits for psychological impairment **under section 195(1) of the Act** is discussed in ~~policy item #39.01~~ **Item C6-39.00**.

In those cases where the worker has a section 195(1) assessment, the Board is required to notify the worker indicating the results of the ~~evaluation~~ **assessment, which may include the results of a section 195(1) evaluation,** and the conclusions reached regarding the ~~entitlement to~~ **question of permanent partial** disability benefits entitlement.

~~The final decision on the assessment of permanent disability benefits under section 196 is made by the Loss of Earnings Committee.~~

When the Board adjudicates requests for the commutation of permanent disability benefits, it may obtain input from Vocational Rehabilitation Services before making a decision.

EFFECTIVE DATE: ~~June 1, 2009~~ **January 1, 2021**

AUTHORITY: **Sections 194, 195, 196, and 339 of the Act.**

CROSS REFERENCES: ~~Policy item #39.01, Decision-Making Procedure under Section 195(1),~~ **Item C6-39.00, Section 195 Permanent Partial Disability Benefits;**

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

HISTORY:

Item C11-89.00, *Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability*, of the *Rehabilitation Services & Claims Manual*, Volume II.
January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the *Workers Compensation Amendment Act, 2020 (Bill 23)*.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

June 1, 2009 – Inserted reference that a Board officer determines whether an actual or potential disability is accepted on the claim. Deleted references to Board officer in Disability Awards, Medical Services and Consultant.

October 1, 2007 – Revised to delete references to memos and memorandums.

July 2, 2004 – Revisions to the role of Board officers applied to all decisions, including appellate decisions, made on or after July 2, 2004.

APPLICATION:

Applies **to all decisions, including appellate decisions, made** on or after ~~June 1, 2009~~ **January 1, 2021**.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#97.40 Permanent Disability Benefits

~~In cases of very minor disabilities, the Board may proceed to calculate~~ **assess** permanent disability benefits without a section 195(1) evaluation, if **there is sufficient** ~~it is unnecessary having regard to the medical evidence already available.~~ Except for those cases, the normal practice is for a section 195(1) evaluation to be conducted for permanent disability purposes by the Board or an External Service Provider.

It is the responsibility of the Board to classify the disability as a percentage of total disability. In doing this, it is proper for the Board to consider other factual and medical evidence as well as the section 195(1) evaluation report prepared by the Board or the External Service Provider. However, although the report of the Board or the External Service Provider is not the only medical input that the Board may use, it will usually be the primary input, and caution will be used in referring to any other medical opinion.

The section 195(1) evaluation report takes the form of expert evidence which, in the absence of other expert evidence to the contrary, should not be disregarded. ~~This does not mean that the Board must adopt the percentage indicated by the section 195(1) evaluation.~~ It is always open to the Board to conclude that, although the **worker's functional impairment is greater or less than the section 195(1) evaluation report indicates** ~~of the worker is a certain percentage, the disability (i.e. the extent to which that impairment affects the worker's ability to earn a living) is greater or less than the percentage of impairment.~~

The decision-making procedure for assessing entitlement to permanent disability benefits for psychological impairment under section 195(1) of the *Act* is discussed in policy item #39.04 **Item C6-39.00**.

In making a determination under section 195(1), the Board will enquire carefully into all of the circumstances of a worker's condition resulting from a compensable injury.

EFFECTIVE DATE:	June 1, 2009 January 1, 2021
AUTHORITY:	Sections 195 and 339 of the <i>Act</i> .
HISTORY:	January 1, 2021 – Policy changes made consequential to implementing the permanent partial disability benefits provisions of the Workers Compensation Amendment Act, 2020 (Bill 23). April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. June 1, 2009 – Deleted references to officers in Disability Awards and officer. January 1, 2003 – References to prior Subjective Complaints policy removed. Applied to new claims received and all active claims that were then awaiting an initial adjudication.
APPLICATION:	Applies to all decisions, including appellate decisions, made on or after June 1, 2009 January 1, 2021 .

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

#114.41 Relationship Between Sections 146 and 240(1)(d)

It is important to distinguish between the provisions of section 146 and section 240(1)(d), as discussed in ~~policy items #44.00~~ **Item C6-44.00** and **policy item** #114.40. Section 146 deals with the situation where a disability resulting from a work injury is superimposed on a pre-existing disability in the same part of the body and increases that disability, or if entitlement to permanent disability benefits is being determined on a loss of earnings basis under section 196 of the *Act*, and the disability is deemed to be partly the result of a disability in another part of the body. The application of section 146 may result in a reduction in the amount of compensation paid to the worker.

Section 240(1)(d), on the other hand, is concerned only with the rate group to which the costs of the claim are to be charged and cannot affect the entitlement of the worker. It can apply in cases where section 146 does not apply and the whole of the worker's disability results from the injury or, if section 146 does apply, to the portion of disability for which the Board is responsible. It provides relief for the rate group of the worker's employer if the disability or portion of disability accepted under the claim is worse because of a pre-existing disease, condition or disability than it otherwise would be. That condition might well be in a different part of the worker's body.

EFFECTIVE DATE:

March 1, 2005

HISTORY:

January 1, 2021 – Housekeeping change made to cross-reference consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

March 1, 2005 – Updated language, consistent with rate-making system in *Assessment Manual*.

This policy continues the substantive requirements as they existed prior to the effective date.

APPLICATION:

Applies to all decisions on and after March 1, 2005.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

**RE: Retirement Benefits –
Establishment of Amounts Set Aside
and Contributed**

ITEM: C18-116.00

BACKGROUND

1. Explanatory Notes

The *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended by the *Amendment Act, 2002*, established the provision of a retirement benefit for an injured worker in receipt of permanent disability periodic payments. The retirement benefit is intended to compensate a worker for the impact of the worker's permanent disability on the worker's ability to accumulate retirement savings.

Under section 204 of the *Act*, the Board sets aside an amount toward the establishment of a retirement benefit. A worker may also apply to the Board under section 205 to contribute a portion of the worker's permanent disability periodic payments in addition to the amounts set aside by the Board.

2. The Act

Section 120:

- (1) The following apply to an amount payable as compensation or by way of commutation of a periodic payment in respect of compensation:
 - (a) the amount is not capable of being assigned, charged or attached;
 - (b) the amount must not pass by operation of law except to a personal representative.
- (2) A claim must not be set off against an amount referred to in subsection (1), except for money
 - (a) advanced by way of financial or other social welfare assistance owing to the government, or
 - (b) owing to the accident fund.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Section 190:

Compensation under this Division [Division 6 of Part 4 of the *Act* – Compensation for Worker Disability] is subject to the following provisions:

- (a) section 230 [*manner of compensation payment: periodic or lump sum*];
- (b) section 231 [*payment of compensation in specific circumstances*];
- (c) section 232 [*Board authority to discontinue or suspend payments*];
- (d) section 233 [*deduction in relation to payments from employer*].

Section 202:

- (1) This section applies to a worker who receives
 - (a) a periodic payment of compensation under section 194(1), 195(1) or 196(1) [*compensation for permanent disability*] in respect of an injury, and
 - (b) a disability benefit under the *Canada Pension Plan* in respect of the injury.
- (2) Subject to sections 194(2), 195(2) and 198(5) [*minimum compensation payments*], the Board must deduct from a periodic payment referred to in subsection (1)(a), an amount that equals 50% of any disability benefit paid as referred to in subsection (1)(b).

Section 204:

- (1) This section applies to a worker who is receiving periodic payments under section 194(1), 195(1) or 196(3) [*compensation for permanent disability*].
- (2) The Board must set aside, at the time a periodic payment is made to a worker, an amount that
 - (a) equals 5% of the periodic payment, and
 - (b) is in addition to the periodic payment.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (3) The Board must provide each worker with an annual statement containing all relevant information about the funds accumulated by the Board for payment of the worker's retirement benefit.

Section 205:

- (1) A worker may apply to the Board to contribute to the amount set aside or to be set aside under section 204 an amount that is not less than 1% and not greater than 5% of each subsequent periodic payment made to the worker.
- (2) Subject to subsection (3), if a worker makes an application under this section, the Board must, as soon as practicable, deduct the amount of the worker's contribution from each subsequent periodic payment made to the worker and add this contribution to the amount set aside under section 204.
- (3) The deductions made by the Board under subsection (2) may not be varied, except in response to an application by the worker to stop the deductions.
- (4) A worker may
 - (a) only once make an application for deductions under subsection (2), and
 - (b) only once make an application to stop the deductions under subsection (3).
- (5) An application made under this section must be in a form acceptable to the Board.

POLICY

1. Amounts Set Aside by the Board

A worker who is in receipt of permanent total or permanent partial disability periodic payments is entitled to have an amount set aside by the Board toward the worker's retirement benefit.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

Commencing the effective date of permanent disability benefits, the Board will set aside an amount equal to 5% of a worker's permanent disability periodic payment. This amount is in addition to the permanent disability periodic payment. As well, the amount set aside is based on the worker's permanent disability periodic payment prior to any deductions for *Canada Pension Plan* disability benefits paid to the worker and any deductions made in accordance with section 120 of the *Act*.

The amounts set aside by the Board are deposited in a reserve in the Accident Fund.

However, if a worker's permanent disability benefits are totally or partially commuted, the future amounts to be set aside by the Board will also be totally or partially commuted. Please refer to policy items #45.00 to #45.61 **Item C6-45.00** in Chapter 6, Permanent Disability Benefits for additional information regarding the commutation of the future amounts to be set aside by the Board.

2. Voluntary Contributions

A worker may also contribute a portion of the worker's permanent disability periodic payments to the amount set aside by the Board.

As part of the notification of a worker's entitlement to permanent disability benefits, the Board will provide a worker with an application for voluntary contributions. A worker who wishes to contribute to the amount set aside by the Board is required to complete the application form indicating an amount that is not less than 1% and not greater than 5% of each subsequent permanent disability periodic payment made to the worker. The worker is required to return the completed application form to the Board.

Following receipt of a worker's application to contribute to the amount set aside by the Board, the Board will, as soon as practicable, deduct the indicated contribution amount from each subsequent periodic payment provided to the worker. The amount deducted is based on the worker's permanent disability periodic payment prior to any deductions for *Canada Pension Plan* disability benefits paid to the worker and any deductions made in accordance with section 120 of the *Act*.

The worker's contribution, along with the amounts set aside by the Board, are deposited in a reserve in the Accident Fund.

A worker's contribution amount may not be altered once started, except to cancel the contributions. A worker may only once make an application to the Board to stop the voluntary deductions. A request to stop the deductions must be provided to the Board

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

on a Board prescribed application form. The Board will stop the deductions effective the month following receipt of the application by the Board.

In addition, a worker's decision to stop voluntary contributions is final and cannot later be reversed.

3. Retroactive Permanent Disability Benefits

Subject to section 190, permanent disability benefits under sections 194, 195 and 196 of the *Act* may be granted retroactively to a worker. The Board will set aside an amount equivalent to 5% of the retroactive permanent disability benefit in a reserve in the Accident Fund.

If a worker has chosen to make voluntary contributions toward a retirement benefit, the Board will also deduct from the retroactive permanent disability benefit an amount equal to the worker's voluntary contributions. This amount will be set aside in a reserve in the Accident Fund.

Interest on the retroactive amounts will only be granted in accordance with policy item #50.00.

4. Annual Statement

Under section 204(3), the Board is required to provide a worker with an annual statement containing all relevant information about the amounts set aside by the Board for payment of the worker's retirement benefit. The Board will determine the types of information provided on the annual statement. The statement will include information regarding the status of the amounts set aside, any amounts contributed and any accumulated investment income.

5. Assignment or Attachment of Amounts Set Aside and Contributed

The amounts set aside by the Board and the worker's voluntary contributions are not subject to assignments, charges or attachments while these amounts are maintained in the retirement reserve. The retirement benefit is, however, subject to assignments, charges or attachments as set out in section 120 and policy items #48.00 to #48.50 only when the retirement benefit is payable.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

EFFECTIVE DATE:	June 30, 2002
AUTHORITY:	Sections 204 and 205 of the <i>Act</i> .
CROSS REFERENCES:	Chapter 6—, <i>Permanent Disability Benefits</i> , of the <i>Rehabilitation Services & Claims Manual</i> , Volume II.
HISTORY:	<p>January 1, 2021 – Housekeeping change made to cross-reference consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i>.</p> <p>April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i>, R.S.B.C. 2019, c. 1.</p> <p>Prior to June 30, 2002, permanent total disability compensation (section 194) and permanent partial disability compensation assessed under the loss of function method of permanent disability assessment (section 195) were payable for the lifetime of the worker. The duration of permanent partial disability compensation assessed under the projected loss of earnings method (section 196) was addressed in then policy item #40.20, Duration of Projected Loss of Earnings Pensions.</p>
APPLICATION:	<p>This policy applies to injuries occurring on or after June 30, 2002 and to a worker whose permanent disability first occurs on or after June 30, 2002. This policy also applies to recurrences occurring on or after June 30, 2002.</p>

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

RE: Retirement Benefits –
Payment of Retirement Benefits

ITEM: C18-116.10

BACKGROUND

1. Explanatory Notes

The *Act* defines “retirement benefit” as a lump sum payable under section 206.

This section stipulates the amount that a worker will receive as a retirement benefit following the conclusion of permanent disability periodic payments. The benefit will be provided when the worker reaches age 65, or on the date of the worker’s last monthly periodic payment, if after age 65.

Section 206 provides direction on the provision of the amounts set aside, and any contributions and accumulated investment income, to the worker’s designated beneficiary, or estate, if a worker dies before the retirement benefit is paid.

2. The Act

Section 1, in part:

“**retirement benefit**”, in relation to a worker, means the lump sum payable to the worker under section 206 [*payment of retirement benefit*];

...

Section 206:

- (1) Subject to subsection (3), on the date determined under subsection (2), a worker is entitled to receive a lump sum that equals the total of
 - (a) the amounts set aside for payment to the worker under section 204,
 - (b) the contributions, if any, made by the worker under section 205, and
 - (c) the accumulated investment income earned on those amounts and contributions.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

- (2) A worker's entitlement under subsection (1) is effective,
 - (a) subject to paragraph (b) of this subsection, on the date the worker reaches 65 years of age, or
 - (b) if the date of the last periodic payment to the worker is after the date the worker reaches 65 years of age, on the date of that last periodic payment.
- (3) Despite section 231(4) [*Board discretion respecting amount accrued to worker*], if a worker dies before receiving the worker's retirement benefit under subsection (1) of this section, the Board must, on the death of the worker, pay the lump sum to which the worker would have been entitled under that subsection to
 - (a) a beneficiary designated by the worker, or
 - (b) the worker's estate, if a beneficiary is not designated.

Subsection 230(2)(a):

- (2) The Board may, at the Board's discretion, do the following:
 - (a) commute all or part of
 - (i) the periodic payments due or payable to a worker or dependant, and
 - (ii) the future amounts that are to be set aside for payment of a retirement benefit,
- to one or more lump sum payments, to be applied as directed by the Board;

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

POLICY

1. Effective Date of Entitlement to a Retirement Benefit

The effective date of the retirement benefit will either be:

- the date the worker reaches 65 years of age; or
- the date of the last periodic payment to the worker, if that date is after the date the worker reaches 65 years of age, as determined by the Board.

2. Payment of Retirement Benefit

On the effective date of entitlement to a retirement benefit, a lump sum is provided to the worker equal to the following:

- the amounts set aside by the Board;
- the contributions, if any, made by the worker; and
- any accumulated investment income earned on those amounts and contributions.

A worker is guaranteed to receive the amounts set aside by the Board and any amounts the worker has contributed.

It is anticipated that investment income will be earned on the accumulated amount set aside by the Board and, if applicable, amounts contributed by the worker. However, in those cases where the accumulated investment return on the retirement reserve is negative, the loss will not be passed onto the worker.

3. Commutation of the Amounts Set Aside by the Board

If a worker is eligible for a commutation of the worker's permanent disability periodic payment, the *Act* provides that the future amounts to be set aside by the Board for payment of a retirement benefit will also be commuted.

Policy items #45.00 to #45.61 **Item C6-45.00** in Chapter 6, Permanent Disability Benefits, which **are is** used to determine a worker's eligibility for commutation of permanent disability benefits, **are is** also applied in the commutation of the amounts set aside by the Board.

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

4. Dormant Account

If the Board, at the time the retirement benefit is to be paid out as a lump sum, has no current address for a worker, and is otherwise unable to contact a worker, the reserve in the Accident Fund for the amounts set aside by the Board and the worker's contributions will be considered dormant. No further amounts will be set aside by the Board or contributed following the effective date of the retirement benefit.

5. Worker Dies Prior to Payment of Retirement Benefit

Upon the worker receiving notice from the Board of entitlement to have amounts set aside and contributed, the Board will request that the worker provide the name of the worker's designated beneficiary. A designated beneficiary is any person whom a worker designates to receive the funds deposited in the retirement reserve if the worker dies prior to receiving the retirement benefit. The Board will change the designated beneficiary, only following the receipt of a worker's written authorization.

If a worker dies prior to the payment of the retirement benefit, the Board will pay a lump sum to the designated beneficiary equal to the total of the amounts set aside by the Board, any voluntary contributions made by a worker, and any accumulated investment income earned on the amounts set aside and the contributions.

The designated beneficiary is guaranteed to receive at least the amounts set aside by the Board and any amounts the worker has contributed, and any accumulated investment income.

If a worker fails to designate a beneficiary, the lump sum outlined above will be paid to a worker's estate if the worker dies prior to receiving the retirement benefit.

EFFECTIVE DATE:

June 30, 2002

AUTHORITY:

Section 206 of the Act.

CROSS REFERENCES:

~~Policy item #45.00, Lump Sums and Commutations;~~

~~Policy item #45.10, Permanent Disability Periodic Payment Categories/Lump Sum Payments;~~

~~Policy item #45.20, Criteria for Allowing or Disallowing a Commutation;~~

~~Policy item #45.21, Death of Worker Prior to Payment under Category A in Policy Item #45.10;~~

~~Policy item #45.30, Types of Commutations Permitted;~~

~~Policy item #45.40, Purpose of Commutations;~~

~~Policy item #45.41, Paying Off Debts;~~

APPENDIX 1



REHABILITATION SERVICES & CLAIMS MANUAL

~~Policy item #45.42, *Investments*;~~
~~Policy item #45.43, *Starting a Business*;~~
~~Policy item #45.45, *Buying a Home*;~~
~~Policy item #45.50, *Decision-Making Procedures*;~~
~~Policy item #45.60, *Amount Paid on Commutations*;~~
~~Policy item #45.61, *Calculation of Lump-sum Payment or Commutation*;~~ **Item C6-45.00, *Lump Sums and Commutations*,** of the *Rehabilitation Services & Claims Manual*, Volume II.

HISTORY:

January 1, 2021 – Housekeeping changes made to cross-references consequential to reformatting and renumbering policies in Chapter 6, *Permanent Disability Benefits*.

October 21, 2020 – Housekeeping amendments to the *Act* portion of the Background section to reflect amendments to the *Act* by the *Workers Compensation Amendment Act, 2020* (Bill 23 of 2020), in effect August 14, 2020.

April 6, 2020 – Housekeeping changes consequential to implementing the *Workers Compensation Act*, R.S.B.C. 2019, c. 1.

APPLICATION:

This policy applies to injuries occurring on or after June 30, 2002 and to a worker whose permanent disability first occurs on or after June 30, 2002. This policy also applies to recurrences occurring on or after June 30, 2002.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

Permanent Disability Evaluation Schedule

I. Introduction

The Permanent Disability Evaluation Schedule (the “Schedule”) was developed by WorkSafeBC based on consideration of expert medical opinion, current medical/scientific literature and schedules from other jurisdictions and organizations, including but not limited to various editions of the American Medical Association *Guides to the Evaluation of Permanent Impairment* (the “AMA Guides”).

As per section 195(3) of the *Act*, the Schedule is used for guidance in the measurement of permanent partial disability under section 195 of the *Act*. The Schedule attributes a percentage of total disability to each of the specified disablements. For example, an amputation of the arm, middle, third of humerus, is indicated to be 65%. When that percentage rate is applied, it means that a worker will receive permanent disability benefits under section 195 based on 65% of 90% of average net earnings as determined by the *Act*.

The Schedule does not necessarily determine the final amount of the section 195(1) permanent disability benefits. The Board may take other factors into account. Thus, the Schedule provides a guideline or starting point for the measurement of disability, rather than a fixed result (see ~~policy item #39.10, *Permanent Disability Evaluation Schedule*~~ **Item C6-39.00, Section 195 Permanent Partial Disability Benefits**).

It is not possible to list every disability in the Schedule. However, the Schedule can be used for guidance if a disability is similar to one that is listed. If a disability is not covered in the Schedule, other information regarding disability assessment may be consulted, including expert medical opinion, current medical/scientific literature and schedules from other jurisdictions and organizations.

APPENDIX 1

REHABILITATION SERVICES & CLAIMS MANUAL, VOLUME II

Permanent Disability Evaluation Schedule

EFFECTIVE DATE:	September 1, 2020
AUTHORITY:	Sections 195(1) and 195(3) of the Act
CROSS REFERENCES:	Policy item #39.10, Permanent Disability Evaluation Schedule Item C6-39.00, Section 195 Permanent Partial Disability Benefits, of the Rehabilitation Services & Claims Manual, Volume II.
HISTORY:	January 1, 2021 – Housekeeping changes made to cross-references consequential to reformatting and renumbering policies in Chapter 6, Permanent Disability Benefits. September 1, 2020 – Policy amended to correct a cross-referencing error. April 6, 2020 – Housekeeping changes consequential to implementing the <i>Workers Compensation Act</i> , R.S.B.C. 2019, c. 1. December 1, 2019 – Set the rating for comminuted calcaneal fractures at 7%; clarified ratings for nerve root and peripheral nervous system conditions affecting part of the nerve's distribution; and made minor editorial changes. January 1, 2019 – Updated Vision and Loss of Strength. Revised a typographical error in Vestibular Disorders. May 1, 2017 – Added obturator nerve to section VIII. Peripheral Nervous System Conditions. Changed the percentages of disability for permanent tracheostomy, significant tracheal obstruction and minor tracheal obstruction; changed the range of motion rating threshold for the spine and limbs; and made minor consequential amendments including typographical errors and edits for clarification. January 1, 2015 – consolidated and incorporated policy items #31.90, #39.11, #39.12, #39.13, #39.20, #39.21, #39.30, #39.31, #39.32, #39.40, #39.41, #39.42, #39.43, and #39.44 of the <i>Rehabilitation Services & Claims Manual</i> , Vol II., and portions of the <i>Additional Factors Outline</i> . January 1, 2007 – policy changes to add item 81 Asthma and item 82 Contact Dermatitis to the Permanent Disability Evaluation Schedule. August 1, 2003 – substantial changes to the Permanent Disability Evaluation Schedule including changes to the percentage(s) of disability for partial amputation of the digits, spine and pronation/supination. Housekeeping changes. July 16, 2002 – housekeeping changes.
APPLICATION:	Applies to all decisions made on or after September 1, 2020.

APPENDIX 1



ASSESSMENT MANUAL

RE: Personal Optional Protection

ITEM: AP1-4-3

BACKGROUND

1. Explanatory Notes

Employers and unincorporated independent operators without workers are not automatically covered for compensation purposes. They may purchase optional coverage called Personal Optional Protection.

2. The Act

Section 1, in part:

“family member”, in relation to a worker, means the following:

- (a) a spouse, parent, grandparent, step-parent, child, grandchild, stepchild, sibling or half-sibling of the worker;
- (b) a person, whether related to the worker by blood or not, who stood in the place of a parent of the worker or to whom the worker stood in place of a parent;

...

Section 4(2):

The Board may direct that the compensation provisions apply on the terms specified in the Board's direction to

- (a) an independent operator who is neither an employer nor a worker as if the independent operator were a worker, or
- (b) an employer as if the employer were a worker.



ASSESSMENT MANUAL

POLICY

(a) Who can apply?

A proprietor or partners of a business that is not a limited company may apply for Personal Optional Protection.

Where a proprietor or partners who have Personal Optional Protection incorporate their business and are paid by the company, they become workers and Personal Optional Protection is no longer allowed.

Non-BC residents conducting business activities in British Columbia may apply for Personal Optional Protection subject to the same terms and conditions as a BC resident. Section 147 of the *Act* governs their coverage outside BC.

(b) Application for coverage

Only the individual seeking coverage, a member of the individual's immediate family, the individual's accountant or lawyer, or in the case of a partnership, a partner may make the application.

An applicant must complete and submit an application for optional coverage on the form provided by the Board. An incomplete or illegible application will not be accepted.

As a condition of coverage, and as a condition of maintaining or increasing coverage, an applicant is required to:

- comply with the terms and conditions of coverage established by the Board and provided with the application for coverage;
- provide all the required information and promptly advise the Board of any change that may affect coverage;
- comply with the obligations of a worker applying for and receiving benefits under the compensation provisions of the *Act*; and
- ensure that an existing or previous account is in good standing. An account is not in good standing if:
 - the account has a balance that has been outstanding over 30 days and is equal to or over the minimum determined by the Board;

APPENDIX 1



ASSESSMENT MANUAL

- a required remittance has not been received and the firm has been penalized, regardless of whether or not payment of the penalty has been received;
- an amount is outstanding under a legal action; or
- the account is being revived and a previous balance was written off.

Applications for Personal Optional Protection for individuals who have previously had an outstanding balance written off through a discharged bankruptcy, will be subject to terms and conditions imposed by the Board, including the prepayment of assessments.

If an application for Personal Optional Protection is not accepted, the applicant is advised that coverage cannot be extended until the account is in good standing or until a correctly complete and legible application has been received.

If an application for Personal Optional Protection is accepted, the applicant is notified and advised of the terms of coverage. The acceptance date is either the date the complete and legible application is received by the Board or the date indicated as the commencement date on the application for coverage if that date is later than the date the complete and legible application is received.

(c) Earnings covered

Coverage for a proprietor or partner should not be more than the individual's actual earnings.

The amount of monthly coverage may not be less than the minimum designated by the Board. If no specific amount is requested, coverage may be set at the minimum.

An individual may apply for coverage between the minimum and an amount established by the Board without providing verification of earnings to the Board.

An individual may apply for coverage over this established amount and up to the maximum but proof of earnings for the coverage requested will be required. The maximum corresponds to the annually adjusted maximum wage rate for compensation purposes. If proof of earnings is not submitted or is insufficient, the coverage will be reduced to the maximum amount of coverage permitted without proof of earnings, as established by the Board, and the individual advised accordingly.

If the applicant is receiving a monthly permanent disability benefits payment from the Board, the maximum amount of Personal Optional Protection that he or she can apply

APPENDIX 1



ASSESSMENT MANUAL

for is a monthly amount that, when added to the amount of the monthly award, equals the current maximum level of benefits payable under the *Act*.

(d) Payment of initial assessment premium

Effective January 1, 2004, all new registrants who request Personal Optional Protection coverage, all cancelled coverage holders who reapply to renew coverage, and all existing coverage holders whose accounts are not in good standing, are required to submit the assessment payment within 20 days of the acceptance date of coverage.

Where the initial assessment payment for coverage is not received within 20 days of the acceptance date, coverage is automatically cancelled.

Subsequent assessment payment periods are determined based on the annual assessment amount.

(e) Applicant conducts more than one type of activity

If an independent operator who does not have Personal Optional Protection is hired by an employer, there is no coverage for injuries occurring at work even if the injury occurs when the independent operator is doing something outside his or her normal range of duties at the employer's request.

If an individual is a proprietor of a firm and also an active principal of an incorporated company, that individual has compulsory coverage for activities in the business operations of the incorporated company, but must obtain Personal Optional Protection to obtain coverage for activities in the business operations of the proprietorship.

Coverage will be provided based on the main business undertaking of the business operations for which optional coverage is being purchased. If an individual's business operations fall under more than one classification, the Board will determine the main business undertaking and the appropriate classification.

(f) Cancellation of coverage

Unless Personal Optional Protection has been applied for and accepted for a specific period of time, it remains continuously in effect until a request for cancellation is received from the individual covered and receipt is acknowledged by the Board, or cancellation is made by the Board. Only the individual covered, a member of the individual's immediate family, the individual's accountant or lawyer, or in the case of a partnership, a partner, is authorized to cancel the coverage.

APPENDIX 1



ASSESSMENT MANUAL

Cancellation is subject to a one-month minimum charge per application. Where the minimum charge is necessary, the cancellation date is one calendar month after the date coverage took effect.

Personal Optional Protection may be cancelled by the Board without notice to the applicant when the individual receiving coverage fails to:

- pay the assessment and the payment is in excess of 10 days overdue;
- permit Board officers to inspect a work site or premises or records;
- comply with an order or direction issued by the Board under the *Act*; or,
- provide the required payroll information on which an assessment is calculated, necessitating a payroll estimate under section 245 of the *Act*.

Personal Optional Protection will also be cancelled by the Board when:

- (a) the applicant's status for which coverage was requested changes and therefore, the individual is no longer eligible for coverage; or
- (b) mail addressed to the employer or person with Personal Optional Protection is returned and an alternative address cannot be obtained.

When Personal Optional Protection is cancelled by the Board, the individual concerned is notified in writing if practicable. "If practicable" means that the Board will take reasonable steps to locate the individual in order to communicate the impending cancellation to him or her.

The effective date of cancellation is generally when the telephone or written request for cancellation is received in a Board office. A cancellation date will not generally be backdated. Backdating may be allowed if there is reason to believe that the Board was no longer liable for work-related injuries because the individual covered had become physically incapacitated, the assets used to carry on the business were no longer available or for certain legal reasons. Some circumstances under which backdating may be allowed are:

- *Death* – Cancellation is automatically backdated to the date of death.
- *Work Caused Injury* – Cancellation may be backdated to the date business ceased, not necessarily the date of injury.

APPENDIX 1



ASSESSMENT MANUAL

- *Sickness or Non-Work Caused Injury* – Cancellation may be backdated to the date the business ceased operating as a result of the sickness or injury, if it was a serious physical or mental disorder lasting 30 days or longer, and the owner supplies a doctor's confirmation of the sickness or injury in writing.
- *Jail, Institutionalization, Deportation, Military Service* – Cancellation may be backdated to the date of occurrence.
- *Sale of Business* – Cancellation may be backdated to the date of the bill of sale.
- *Sale of Equipment* – Cancellation may be backdated to the date the business ceased operating or the date the equipment is sold, whichever is later.
- *Change of Legal Status from Proprietorship, Partnership or Independent Operator to Incorporated Company* – Cancellation will be backdated to the date the firm began operating as an incorporated company.
- *Business Interruption Due to Fire, Flood or Other Disaster* – Cancellation may be backdated to the date the business ceased operating.
- *Seizure of Assets* – Cancellation may be backdated to the date the business ceased operating or the date the equipment was seized, whichever is later.
- *Bankruptcy* – Cancellation may be backdated to the date the firm was placed in bankruptcy.
- *Ceasing of Business Operations* – Where the request for cancellation is received on or before January 31st and the firm states that its business operations ceased in the previous year, cancellation may be made effective December 31st of the previous year.

Requests for backdating must be made in writing. A written decision will be provided to the applicant.

PRACTICE

The minimum outstanding balance for the purpose of part (b) of the policy and the minimum amount for which Personal Optional Protection may be obtained under part (c) of the policy are set out in Appendix "A" to this *Manual*.

APPENDIX 1



ASSESSMENT MANUAL

For more information on applying for Personal Optional Protection, including the application form, readers should consult <https://www.worksafebc.com/en/insurance/need-coverage/optional-coverage/personal-optional-protection> of the WorkSafeBC website.

For any other relevant PRACTICE information, readers should consult the Assessment Department's Practice Directives available on the WorkSafeBC website at www.worksafebc.com.

EFFECTIVE DATE:	January 1, 2015
AUTHORITY:	Section 4(2) of the Act.
CROSS REFERENCES:	<p>Item AP1-4-2, <i>Requesting a Variance from a General Exemption</i>;</p> <p>Item AP1-5/6/7-1, <i>Extending Application of the Act</i>;</p> <p>Item AP5-244-2, <i>Classification – Assignment</i>;</p> <p>Item AP5-245-2, <i>Assessable Payroll</i>, with respect to management/administration payroll;</p> <p>Item AP5-245-4, <i>Payroll Estimates</i>, of the <i>Assessment Manual</i>.</p> <p>Policy item #8.00, <i>Admission of Workers, Employers, and Independent Operators</i>;</p> <p>Item C3-18.00, <i>Personal Acts</i> (B. Acts for Personal Benefit of Principals of Business);</p> <p>Policy item #35.20, <i>Amount of Compensation for Temporary Partial Disability</i>;</p> <p>Policy item #37.10, <i>Commencement of</i> Item C6-37.00, <i>Permanent Total Disability Benefits Payments</i>;</p> <p>Policy item #48.40, <i>Overpayments/Money Owed to the Board</i>;</p> <p>Policy item #48.48, <i>Unpaid Assessments</i>;</p> <p>Policy item #65.02, <i>Worker with Two Jobs</i>;</p> <p>Policy item #67.20, <i>Personal Optional Protection</i>;</p> <p>Policy item #67.32, <i>Volunteer Firefighters</i>;</p> <p>Policy item #68.70, <i>Payments to Substitutes</i>;</p> <p>Policy item #69.10, <i>Deduction of Permanent Disability Periodic Payments from Wage-Loss Benefits</i>;</p> <p>Item C10-75.00, <i>Health Care Accounts – General</i>;</p> <p>Policy item #93.20, <i>Application for Compensation</i>;</p> <p>Policy item #93.23, <i>Adjudication Without an Application</i>;</p> <p>Policy item #94.15, <i>Penalties for Failure to Report</i>;</p> <p>Policy item #99.20, <i>Notification of Decisions</i>;</p> <p>Policy item #111.30, <i>Meaning of “Worker” and “Employer” Under Division 3 of Part 3 of the Act</i>, of the <i>Rehabilitation Services & Claims Manual</i>, Volume II.</p>
HISTORY:	<p>January 1, 2021 – Housekeeping change made to cross-reference consequential to reformatting and renumbering policies in Chapter 6, <i>Permanent Disability Benefits</i>.</p> <p>April 6, 2020 – Housekeeping changes consequential to implementing the Workers Compensation Act, R.S.B.C. 2019, c. 1.</p> <p>January 1, 2015 – The changes to part (c) of the policy section of this item and the minimum amount for which Personal Optional Protection</p>

APPENDIX 1



ASSESSMENT MANUAL

may be obtained under part (c) of the policy, listed in Appendix "A", were made effective.

January 1, 2013 – Consequential changes related to the consolidation of the classification policies were made effective.

January 1, 2004 – The changes to paragraphs (b) and (d) of the policy section of this item applied to all new Personal Optional Protection coverage registrants, all registrants who reapply for coverage, and all existing accounts that were not in good standing, on or after January 1, 2004. The changes to paragraphs (e) and (f) of the policy section of this item applied to all existing Personal Optional Protection accounts, all new Personal Optional Protection coverage registrants, and all registrants who reapplied for coverage, on or after January 1, 2004.

January 1, 2003 – This Item resulted from an editorial consolidation of the former *Assessment Policy Manual*, which was effective on January 1, 2003. The Policy in this Item continued the substantive requirements that existed before the consolidation, with any wording changes necessary to reflect legislative and other changes that had occurred.

Policies No. 20:50:10 to 20:50:60 of the *Assessment Manual* and Decision No. 116 of volume 2 of the *Workers' Compensation Reporter* were replaced, in part, by this Item.

APPLICATION:

~~This policy applies~~ **Applies** to all Personal Optional Protection coverage in effect on or after January 1, 2015.

APPENDIX 2

Item	Column 1 Policy	Column 2 Application
<i>Rehabilitation & Services Claims Manual, Volume II</i>		
1	C3-22.20, <i>Compensable Consequences – Pain and Chronic Pain</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021, respecting claims for injuries occurring on or after July 1, 2010.
2	C4-29.00, <i>Respiratory Diseases</i>	<p>Section A applies to all decisions, including appellate decisions, made on or after January 1, 2021, on claims where the worker was first disabled from earning full wages in accordance with section 6(1) of the <i>Workers Compensation Act</i>, R.S.B.C. 1996, c. 492 or section 136(1) of the <i>Act</i>, as applicable, on or after January 1, 2007.</p> <p>Sections B and C apply to all decisions, including appellate decisions, made on or after January 1, 2021.</p>
3	C4-31.00, <i>Hearing Loss</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
4	C4-32.00, <i>Other Matters</i>	<p>Section A applies to all decisions, including appellate decisions, made on or after January 1, 2021, respecting claims where the worker was first disabled from earning full wages in accordance with section 6(1) of the <i>Workers Compensation Act</i>, R.S.B.C. 1996, c. 492 or section 136 of the <i>Act</i>, on or after January 1, 2007.</p> <p>Sections B, C, and D apply to all decisions, including appellate decisions, made on or after January 1, 2021.</p>
5	#35.30, <i>Duration of Wage-Loss Benefits for Temporary Partial Disability Compensation</i>	Applies to all decisions made on or after January 1, 2021.
6	C6-36.00, <i>Permanent Disability Benefits – General</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
7	C6-36.10, <i>Canada Pension Plan Disability Benefits</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
8	C6-37.00, <i>Permanent Total Disability Benefits</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 2

Item	Column 1 Policy	Column 2 Application
9	C6-38.00, <i>Permanent Partial Disability Benefits</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
10	C6-39.00, <i>Section 195 Permanent Partial Disability Benefits</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
11	C6-39.10, <i>Chronic Pain</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021
12	C6-40.00, <i>Section 196 Permanent Partial Disability Benefits</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
13	C6-41.00, <i>Duration of Permanent Disability Periodic Payments</i>	Applies to all decisions made on or after January 1, 2021.
14	C6-42.00, <i>Payment of Permanent Disability Benefits</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
15	C6-43.00, <i>Disfigurement Compensation</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
16	C6-44.00, <i>Proportionate Entitlement</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
17	C6-45.00, <i>Lump Sums and Commutations</i>	Sections A, C, E, F, G, and H apply to all decisions, including appellate decisions, made on or after January 1, 2021. Sections B and D apply to all decisions, including appellate decisions, made on or after January 1, 2021, respecting applications for commutations made on or after March 1, 2007.
18	C6-46.00, <i>Reconsideration of Prescribed Compensation Claims under Section 203</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
19	C11-86.00, <i>Vocational Rehabilitation – Eligibility Criteria</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
20	C11-88.40, <i>Vocational Rehabilitation – Training-on-the-Job</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
21	C11-88.50, <i>Vocational Rehabilitation – Formal Training</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
22	C11-89.00, <i>Vocational Rehabilitation – Employability Assessments – Temporary Partial Disability and Permanent Partial Disability</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.

APPENDIX 2

Item	Column 1 Policy	Column 2 Application
23	C11-89.10, <i>Vocational Rehabilitation – Income Continuity</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
24	#96.30, <i>Permanent Disability Benefits Decision-Making Procedures</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.
25	#97.40, <i>Permanent Disability Benefits under Section 195</i>	Applies to all decisions, including appellate decisions, made on or after January 1, 2021.