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COMPENSATION PRACTICE AND QUALITY DEPARTMENT

PRACTICE DIRECTIVE # C1-1

EFFECTIVE DATES AND TRANSITION RULES

Amended: February 27, 2007
Effective Date: April 1, 2003

A. BACKGROUND

On June 30, 2002, the *Workers Compensation Act* (the "*Act*"), was amended by Bill 49, the *Workers Compensation Amendment Act, 2002.* As a result, the Panel of Administrators approved amendments to the Board's policies. The amendments change the rules for calculating compensation benefits. On October 16, 2002, further amendments were made to the transition rules outlined in Chapter 1 of the *Rehabilitation Services and Claims Manual* ("RSCM"), Vol. I and II. RSCM Policy item #1.03 was further amended on August 1, 2006 with retroactive application back to October 16, 2002.

For convenience, the law and policy as they read immediately before June 30, 2002, are called the "former provisions". The law and policy as they read after June 30, 2002, are called the "current provisions".

For the purposes of systems development, and consistency, an amendment to this directive was required. In particular, to section "J" below which details the necessary steps to be taken where compensation benefits are reinitiated.

B. PURPOSE

This Practice Directive reflects the amendments to Chapter 1 of the RSCM approved by the Panel on October 16, 2002.

This Directive provides guidance to Board officers in determining when to apply either the former provisions or the current provisions with respect to the transition situations outlined below.

There have been no policy amendments, but rather practice and systems amendments that necessitated an amendment to the practice directive.

C. EFFECTIVE DATE

This Directive is effective April 1, 2003. It replaces Practice Directive #38A, *Effective Dates and Transition Rules*, which was issued on October 16, 2002.

D. LAW

The government has declared June 30, 2002 as the transition date for the transition rules in the *Amendment Act, 2002*. Section 35.1(8) of the *Act* states that:

> *If a worker has, on or after the transition date, a recurrence of a disability that results from an injury that occurred before the transition date, the Board must determine compensation for the recurrence based on this Act, as amended by the Workers Compensation Amendment Act, 2002.*

E. POLICY

Chapters 1 of RSCM, Vol. I and II, provide the transitional guidelines:

- Where the former provisions apply, compensation payable will generally be based on 75% of gross average earnings, subject to minimum and maximum.
- Where the current provisions apply, compensation payable will generally be based on 90% of average net earnings, subject to minimum and maximum.[1]

F. TRANSITION PROVISIONS - NEW CLAIMS AND ACTIVE CLAIMS ON OR AFTER JUNE 30, 2002

1. Date of injury is before June 30, 2002 and claim has not yet been adjudicated as of June 30, 2002.

Where the date of injury (section 5 claims) is before June 30, 2002, and the claim has not yet been adjudicated as of June 30, 2002, possible temporary benefits will be paid under the former provisions except in those extremely rare cases where the first payment is judged to result from a recurrence of temporary disability.

2. Wage loss benefits commenced before June 30, 2002 and continue to be paid on an ongoing basis as of June 30, 2002.

Workers in receipt of ongoing wage loss benefits, which commenced before June 30, 2002, and which continue on past June 30, 2002, will continue to be paid in accordance with the former provisions.

Workers in receipt of ongoing wage loss equivalency benefits (vocational rehabilitation), which commenced before June 30, 2002, and which continue on past June 30, 2002, will continue to be paid in accordance with the former provisions.

3. Wage loss benefits commenced before June 30, 2002, were terminated (either before or after June 30, 2002), and are recommenced after June 30, 2002.

[1] See Practice Directives #32, *Net System of Compensation* and #33, *Average Earnings – Initial and Long-Term Wage Rates*

Where workers received wage loss benefits prior to the transition date, and become entitled to further wage loss after June 30, 2002, following a period with no wage loss entitlement, those benefits are paid according to the current provisions.

The decision to reopen the wage loss decision and pay further temporary benefits indicates there has been a recurrence of temporary disability. Section 35.1(8) of the *Act* provides that if a worker has a recurrence of disability, on or after June 30, 2002, the resulting compensation is adjudicated under the current provisions. RSCM Policy item #1.03, *Scope of Volumes I and II in Relation to Benefits for Injured Workers*, confirms that a recurrence includes claims reopened for an additional period of temporary disability.

Reopening the decision to terminate wage loss benefits because of a recurrence of temporary disability brings a claim under the current provisions, even when the worker has been receiving vocational rehabilitation benefits prior to the time of reopening. For example, the worker received wage loss equivalency benefits (based on former provisions) prior to the reopening for further wage loss benefits, the wage loss benefits are paid because of a recurrence of temporary disability and the current provisions apply.

4. Date of injury is on or after June 30, 2002 (section 5 of the *Act*).

Where the date of injury is on or after June 30, 2002, compensation will be based on the current provisions.

5. Date of disablement is on or after June 30, 2002 in the case of an occupational disease (section 6 of the *Act*).

In the case of an occupational disease, where the exposure or disease occurred before June 30, 2002, but the date of disablement is on or after June 30, 2002, compensation will be based on the current provisions.

G. TRANSITION PROVISIONS - APPELLATE RETURNS/NEW EVIDENCE RECEIVED ON OR AFTER JUNE 30, 2002

Where a decision is made, or new evidence is received, on or after June 30, 2002, relating to compensation benefits effective prior to June 30, 2002, the former provisions apply.

This means that notwithstanding the fact that a decision was made on or after June 30, 2002, the transition rules are determined by the effective date of the commencement of the entitlement. For example:

- On October 1, 2002, a Case Manager reviewed a consultation report which provided evidence that the worker had been disabled, or continued to be disabled, prior to June 30, 2002. If compensation were payable, it would be paid under the former provisions. This is regardless of the date of the consultation report or the date that the Case Manager made the decision.

H. TRANSITION PROVISIONS - REOPENINGS/RECURRENCES OF TEMPORARY AND PERMANENT DISABILITY ON OR AFTER JUNE 30, 2002

If the injury occurred before June 30, 2002, and the claim is reopened on or after June 30, 2002, due to a recurrence of disability that commenced on or after June 30, 2002, the current provisions apply.

As per RSCM Policy item #1.03, there are two situations in which the recurrence provisions apply to bring a claim with a date of injury prior to June 30, 2002 under the current provisions:

1) Recurrences of temporary disability, on or after June 30, 2002, where no permanent disability award has been provided in respect of the compensable injury or disease.

2) Recurrences of temporary disability, on or after June 30, 2002, where a permanent disability award has been provided in respect of the compensable injury or disease.

I. TRANSITION PROVISIONS - PERMANENT DISABILITY AWARDS

For an injury that occurred before June 30, 2002, where the first indication of permanent disability also occurs before June 30, 2002, the permanent disability award will be adjudicated under the former provisions. Any changes in the nature and degree of the permanent disability will also be adjudicated under the former provisions, even if those changes occur on or after June 30, 2002. Where the first indication of a permanent disability is on or after June 30, 2002, the award will be adjudicated under the current provisions, using the modified formula outlined in section 35.1(5) of the *Act* and RSCM Policy item #1.03.

J. ADJUSTING THE ORIGINAL WAGE RATE SET ON THE CLAIM

1. Date of Injury was Prior to June 30, 2002

Reopenings Within Three Years

Where the date of injury is prior to June 30, 2002, and the claim is reopened after June 30, 2002, but within three years of the date of injury, Board officers must use the gross average earnings previously established on the claim at the time of injury. For the purposes of “transitioning” those earnings, the following steps are applied:

1. Apply cost of living adjustments (“COLA”) to the gross average earnings (at the date of injury or date of disability for section 6 cases). If average earnings were above the statutory maximum, apply COLA to the maximum.

2. Once COLA is applied, earnings are capped at the maximum as of the reopening date.

3. Determine the allowable deductions for calculating average net earnings. The tax information to be used is the relevant tax provisions at the time of the reopening. Refer to the guidelines in Practice Directive #C9-3, *Net System of Compensation*.

4. Once the average net earnings are obtained, apply the 90% compensation factor. (Having regard to the statutory minimum and maximum as at the time of the reopening.)

5. Deduct applicable permanent disability awards ("pension deductions").

6. The final figure is the current wage rate for the purposes of reinitiating benefits.

If, prior to the reopening, less than 10 cumulative weeks of temporary disability benefits had been paid on the claim, the worker is entitled to compensation at the initial wage rate for the remainder of the initial payment period. If 10 or more cumulative weeks of temporary disability benefits had already been paid on the claim, the worker is NOT entitled to another initial payment period.

If the claim is reopened later within three years of the date of injury after a rate has been set according to the above rules, the rate would not be adjusted again: only the applicable cost of living adjustments would be applied.

Reopenings Over Three Years

Section 32 of the *Act* has not been amended. This section gives Board officers discretion to determine compensation benefits where a claim has been reopened more than three years after an injury, by reference to the worker's current earnings. In comparing the average earnings at the time of the injury with the average earnings at the time of the recurrence, RSCM Vol. I and II, Policy item #70.20, *Reopenings Over Three Years*, provides guidance regarding the rate that "…*would more nearly represent…a worker's loss of earnings suffered by reason of the recurrence*."

For the purposes of an accurate comparison, Board officers should compare the previous gross average earnings established on the claim plus applicable COLA, with the current gross average earnings. Only the current average earnings need to be "categorized" in accordance with the current provisions.

Board officers may then, having regard to Policy item #70.20, choose which gross average earnings would more nearly represent the worker's loss of earnings suffered by reason of the recurrence of the injury.

Where prior earnings are used and the date of injury was prior to June 30, 2002, the four steps outlined above must be applied. Where new earnings are chosen, see "K" below.

2. Date of Injury on or After June 30, 2002

Reopenings Within Three Years

Where the date of injury is on or after June 30, 2002, and the claim is reopened after June 30, 2002, but within three years of the date of injury, Board officers must apply the following steps:

1. Apply applicable COLA to the existing net 90% wage rate (prior to applicable pension deductions).
2. If no rate was previously established, use gross average earnings as of date of injury (capped at date of injury maximum) and determine a net 90% wage rate as of date of injury. Then apply applicable COLA to that net 90% rate.
3. Once COLA is applied, the new rate is capped at the net maximum as of the reopening date.
4. Deduct applicable permanent disability awards ("pension deductions").
5. The final figure is the current wage rate for the purposes of reinitiating benefits.

Reopenings Over Three Years

The same adjudicative guidelines in section J1 above should be used to determine whether new earnings would be used. If new earnings are not used, the above five steps should be followed. If new earnings are used, see section K below.

K. USING NEW EARNINGS - SECTION 32 (Regardless of Date of Injury)

Where **new earnings** are used, regardless of the date of injury, the following steps should be taken:

1. Use new gross average earnings (subject to current minimum and maximum).
2. COLA is not normally applicable.
3. Determine the allowable deductions for calculating average net earnings. The tax information to be used is the relevant tax provisions at the time of the reopening.
4. Once the average net earnings are obtained, apply the 90% compensation factor. (Having regard to the current statutory minimum and maximum.)
5. Deduct applicable permanent disability awards ("pension deductions").

6. The final figure is the current wage rate for the purposes of reinitiating benefits.

L. FURTHER GUIDELINES

If former gross average earnings are used and, prior to the reopening, less than 10 cumulative weeks of temporary disability benefits had been paid on the claim, the worker is entitled to compensation at the initial wage rate for the remainder of the initial payment period. A rate review is conducted after 10 cumulative weeks of temporary disability benefits have been paid.

If **former** gross average earnings are used and, prior to the reopening, 10 or more cumulative weeks of temporary disability benefits had already been paid on the claim, the worker is NOT entitled to another initial payment period.

If **current** gross average earnings are used, the worker IS entitled to a new initial payment period.

Section 32 requires a comparison of average earnings at the time of injury and at the time of the recurrence each time the claim is reopened after three years from the date of injury. As such, the process outlined above would again be applied.

M. TRANSITION RULES AND COST OF LIVING ALLOWANCES

As noted in Chapters 1 of RSCM Vol. I and Vol. II, "*Regardless of the date of injury or death, the current rules on indexing apply to compensation paid on or after June 30, 2002. In the case of fatalities, the current rules are the same as the former rules. Indexing of retroactive awards payable before June 30, 2002, will be based on the former rules*."