Please refer to the Board-Approved policy when referencing guidelines as they are intended to provide clarity and direction to ensure consistent administrative application of the policy.

General principles

The WCB is responsible for determining entitlement to WCB benefits on an accurate basis. When a worker or the worker's dependant is paid more than they are entitled to under the Act, the WCB will recover these overpayments. Overpayments less than $5 will not be recorded or recovered by the WCB.

Recording Overpayments:

All overpayments are recorded as a receivable by the WCB unless the amount is less than $5.00. In cases where the amount is less than $5.00 the amount is recorded as a benefit cost. Class E employers receive a credit for all overpayments recorded as a receivable. Self insured employers receive a credit to their costs only when/if the overpayment is recovered.

Recovery of overpayments

Administrative Errors

Administrative errors will be collected if the worker/dependant is notified of the error within 30 days of the overpayment. Administrative errors more than 30 days old will only be pursued if the error could or should have been obvious to the worker or dependant.

Administrative errors include any errors made in calculating the amount payable relating to the entitlement decision. This includes, but is not limited to, the following examples:

- incorrect information for wages such as rate of pay, hours worked, shift premium, vacation or overtime pay, earnings from prior years, dependant information, marital status, etc.
- incorrect use of available information provided by the worker or employer
- incorrect information provided by the employer
- available information was not collected or used when establishing the amount payable
- key stroke errors, etc.

Fraud, Deliberate Misrepresentation, Withholding Key Information
The WCB will actively pursue collection of all debts resulting from fraud, deliberate misrepresentation and delays in providing or withholding of key information by the worker/dependant.

Withholding information includes any information that may affect entitlement or the calculation of benefits owed to the worker or dependant. This includes, but is not limited to the following examples:

- return to work
- increases in hours or salary
- changes in job status
- new medical information that may change physical restrictions
- new info from income tax returns or other correspondence from CRA
- any info the worker should have recognized and reported to the WCB

If the debt is created because the survivor(s) or the estate did not notify the WCB of the worker's death, this is considered withholding information and the WCB will pursue recovery of the overpayment from the dependant(s) or estate.

Duplication of Benefits
Duplication of benefits occurs if while collecting WCB benefits the individual also receives payments from another income source for the same injury, such as:
- Employment insurance
- CPP disability
- Employer or personal disability insurance plans

Recovery methods

The WCB will work with the debtor to reach a mutually agreed to repayment plan. A variety of payment options are available to the debtor to repay the WCB for the overpayment.

Payments may be made in full or based on negotiated payment terms by:
- cheque mailed to 333 Broadway, Winnipeg, payable to the Workers Compensation Board of Manitoba
- cash (at a WCB office - Winnipeg, Brandon, Thompson)
- Visa or Mastercard
    - in person at the Winnipeg WCB office or
    - by contacting the WCB Collection Department 204-954-4978 or toll free 1-855-954-4321, extension 4978 or
- Debit card payments can be accepted in person at the Winnipeg WCB office.

Overpayments may be offset from any future benefit owed by the WCB to the debtor. The WCB may make full or partial recoveries from future benefit payments owed to the debtor. Recoveries will be made from the worker's existing claim and any future claims. In general a minimum recovery rate of 20% of the total benefit payable to the debtor, will be recovered toward the overpayment.

If an acceptable recovery plan cannot be agreed upon, the WCB will proceed to collect the overpayment using more advanced recovery methods, including:

- referral of the debt to an external collection agency and/or
- pursuit of legal action for example garnishment of earnings and/or bank accounts and/or judgments against property

Notice to worker of overpayments

Generally, when an overpayment has been made to a worker or dependant a WCB representative will contact them by phone or in person to advise them. The amount and reason for the overpayment will be explained along with a discussion on repayment terms. A letter confirming the overpayment, formalizing the discussion and outlining appeal rights will follow. The letter will outline that the WCB Collection Department will be in contact if repayment does not commence.

Decision not to proceed with recovery of overpayment

Overpayments resulting from an adjudicative or entitlement decision reversal will not be pursued. This includes decisions made at the:

- primary level, i.e. decisions made by staff within the claims benefit area
- Review Office or
- Appeal Commission.

This includes entitlement reversals at the primary level pertaining to incorrect application of a WCB policy.

All overpayments resulting from fraud, misrepresentation and delays in providing or withholding key information will be pursued. However, overpayments caused by other reasons may not be pursued, for example:

- The probable collection success is minimal and/or amount of the overpayment is not cost effective based on the collection methods available/required.

- The WCB will consider financial hardship of the debtor and may eliminate part or all of the debt on a permanent or temporary basis. Financial hardship may be a temporary condition and will be assessed annually at a minimum. Recovery action will continue

until the debtor has provided the documentation necessary for the WCB to confirm that financial hardship exists. Factors considered include, but are not limited to the debtor's:
  - employment status
  - earning capacity
  - current sources of income, including income assistance, employment insurance benefits, CPP, pension, investments, etc.
  - opportunities for re-employment, if not currently employed
  - medical restrictions, which may prevent the worker from increasing earning capacity
  - personal or vocation characteristics which may have an impact on earning capacity
  - the nature of current expenses, i.e. mortgage, vehicle payments, family support, childcare
  - assets, i.e. vehicles, property, home
  - statements available from a financial/credit counseling agency
  - declaration of bankruptcy where the WCB has been listed as a creditor, bankruptcy proceedings or discharge in personal bankruptcy

- If the debtor is deceased, collection activity may be discontinued based on individual circumstances. However, collection activity will continue if:
  - future benefits are owed to the debtor from the WCB and/or
  - an estate with sufficient funds exists for the debtor.

The WCB will not pursue collection of an overpayment if the WCB did not discover it within a three year period.

Overpayments not initially recovered

An overpayment may remain suspended for a period of time meaning the WCB is not currently taking active recovery action. The overpayment debt can remain as a receivable for up to six years and if circumstances change in the future the recovery process will be reinstated. Situations where this may occur include:

- the debtor becomes entitled to WCB benefits under the existing claim or a new claim
- the WCB becomes aware of new legal options not previously available
- the recovery is now cost effective
- evidence of fraud, misrepresentation or withholding of key information becomes apparent
- the conditions creating financial hardship no longer exist

Reconsideration and appeal of an overpayment

Collection activity will generally begin once the debtor has been notified of the overpayment. If the debtor requests a reconsideration or appeals the overpayment the WCB will suspend collection activity until a decision has been formalized.

Recovery action may be reinstated if the WCB has evidence that the primary purpose of the appeal is to delay the recovery process, for example:

- the debtor requests extensions on appeal hearing dates
- the debtor doesn't provide requested information by the deadline
- the basis for the appeal is not valid.