

Section Title: Finance, Assessments and Administration- Payments
Subject: Overpayments of Benefits
Effective Date: April 1, 2000 - April 30, 2017

POLICY PURPOSE

The Workers Compensation Act provides that the Workers Compensation Board (WCB) may recover overpayments of compensation benefits to claimants. Once an overpayment has been identified, this debt may be recovered from current or future compensation payments. The purpose of this policy is to describe the principles that the Board of Directors has established to guide the WCB in its recovery of overpayments to claimants. The principles attempt to strike a fair balance between the WCB's fiscal responsibilities and the interests of injured workers. The WCB strives to prevent overpayments of benefits; however, the payment of benefits in as timely a manner as possible means that some overpayments will inevitably occur.

A. POLICY TERMINOLOGY

These terms form an integral part of this policy. See Appendix 'A' attached.

B. POLICY

Prevention

1. The WCB will implement reasonable measures to prevent overpayments.

Recording Overpayments

2. All overpayments will be recorded as receivable by the WCB unless the amount is less than \$5.00. In those cases, the amount will be recorded as a benefit cost.

Overpayment Recovery Criteria

3. All overpayments receivable will be pursued for recovery, unless:
 - (i.) they resulted from an adjudicative reversal or a reconsideration decision by the WCB, or from a decision of the Appeal Commission; or
 - (ii.) they resulted from either an administrative error by the WCB, or the receipt of incorrect information from an employer that affected eligibility or the amount payable. The exception to this provision is that the overpayment will be pursued if the WCB considers that the error or incorrect information was so material or obvious that the worker should have recognized it and reported it to the WCB; or
 - (iii.) new information relevant to entitlement was known to the worker and was not provided to the WCB, but it resulted in an overpayment of less than \$50; or

- (iv.) the amount receivable is not cost-effective to pursue; or
 - (v.) recovery of the overpayment, in whole or in part, would create financial hardship for the worker or the worker's dependants; or
 - (vi.) the worker has died, unless it is clear that the estate has sufficient funds available to repay the overpayment; or
 - (vii.) the overpayment occurred more than three years prior to its discovery by the WCB.
4. Despite the provisions in Part 3, overpayments will be pursued for recovery where the following circumstances apply:
- (i.) there was fraud, deliberate misrepresentation or withholding of key information affecting benefits entitlement; or
 - (ii.) the overpayment represents a duplication of benefits paid from another source for the same injury, for example Long Term Disability or CPP Disability benefits.

Overpayments Not Pursued for Recovery

5. Overpayments not pursued for recovery, as described in Part 3, will remain overpayments receivable for up to six years (except for 3(i), 3(iii), 3(vi) and 3(vii), which will be written-off immediately). During that time, recovery action may be initiated if the circumstances contributing to non-recovery change, for example:
- (i.) if the conditions creating financial hardship no longer exist; or
 - (ii.) if it is later discovered that the worker was aware of the administrative error or incorrect information which led to the overpayment, and the WCB considers the overpayment to be material; or
 - (iii.) if it later becomes cost-effective to pursue recovery.
6. If no recovery action has been initiated within six years after establishment of the overpayment, it will be written-off as described in Part 12.

Recovery of Overpayments

7. Where an overpayment is being pursued for recovery, the WCB will:
- (i.) advise the worker about the existence of the overpayment in a manner that is appropriate to the circumstances, including consideration of the amount and reasons for the overpayment and its likely effect on the worker. Initial advice will usually be by telephone or through in-person contact;
 - (ii.) confirm the overpayment in writing, including the amount, a description of how the overpayment occurred, the general approach proposed for its recovery, and the reconsideration and appeal rights available to the worker. The accident employer will be provided notice of the overpayment;

- (iii.) contact the worker to establish a recovery plan that balances the WCB's need to recover the overpayment with consideration of the worker's ability to repay it;
 - (iv.) use progressively stronger recovery methods if a suitable recovery plan is not adhered to or cannot be successfully negotiated. The WCB may employ a variety of legal steps to collect overpayments where it considers it necessary.
8. Repayment methods may include a single payment or a series of regular payments by the worker, or deductions from ongoing or future WCB benefits.

Reconsideration and Appeal

9. Decisions about the establishment, amount or requirement to pay back an overpayment are subject to reconsideration and/or appeal. If a request for reconsideration or appeal is received within 30 days of the written notification of overpayment, recovery action will be suspended until the reconsideration or appeal decision is issued.
10. Recovery action may be reinstated before the reconsideration or appeal decision is issued if the WCB has evidence that the primary purpose of the appeal is to defer the recovery process.
11. If the request for reconsideration or appeal is received more than 30 days after written notification of overpayment, recovery action will continue throughout the reconsideration or appeal processes.

Write-off of Overpayments

12. Unrecovered overpayments will usually be written-off either immediately, or six years after being established, or three years after the date of the most recent recovery. Exceptions to this approach include:
- (i.) overpayments arising from fraud, deliberate misrepresentation or withholding of key information,
 - (ii.) overpayments arising from a duplication of benefits paid from another source.

These overpayments will not be written-off until the WCB determines there is no longer a reasonable probability of any further cost-effective recovery.

Effect of Overpayments on Employers

13. For the general body of employers (Class "E"), overpayments are removed from an employer's cost experience record, regardless of the eventual disposition of the overpayment. The cost of written-off unrecovered overpayments is shared collectively by all employers in Class "E".
14. For self-insured employers (all classes except Class "E"), overpayments are included as a claims cost for the applicable employer. Overpayment recoveries are credited to the claims cost of the applicable employer.

15. If a self-insured employer has paid workers compensation benefits directly to the worker by means of salary continuance, and an overpayment occurs which the WCB would attempt to recover under this policy, the WCB may authorize the employer to attempt to recover the payment from the worker. The recovery process must conform with the principles and intent of this policy. The employer must report to the WCB the amounts that are recovered from the worker.
16. The WCB reserves the right to audit a self-insured employer's recovery process to ensure compliance with this policy.
17. A worker of a self-insured employer has the same rights of reconsideration and appeal as any other worker under this policy.

C. REFERENCES

The Workers Compensation Act, sections 109.2 and 109.3

History:

1. Recovery of Overpayment Policy originated by Board Order No. 150/89 on November 20, 1989.
2. Board Order 150/89 re-written as Policy 35.40.50 for incorporation into the Policy Manual approved by Board Order No. 9/91 on June 19, 1991.
3. Moratorium placed on initiating collection of overpayments, except in cases of fraud, effective March 12, 1993.
4. Board Order 150/89 rescinded and Policy 35.40.50 replaced on September 2, 1993, by Board Order 30/93, effective retroactively for all overpayments for which collection was not yet underway on March 12, 1993. Former policy re-issued as 35.40.50.01 to indicate it ceases effect on March 11, 1993.
5. Policy 35.40.50 replaced by Board Order 22/95 effective for initial decisions on or after January 1, 1996. Former policies re-issued as 35.40.50.01 (effective Mar 12/93 - Dec 31/95) and 35.40.50.02 (effective Nov 20/89-Mar 11/93).
6. Policy 35.40.50 revised by Board Order 5/2000 effective April 1, 2000. The revised policy is applicable to both existing and new overpayments on a going-forward basis from the effective date of implementation. There will be no retroactive adjustments under this policy.
7. Minor formatting and wording changes were made to the policy, June 27, 2012.
8. Policy 35.40.50 was amended by Board Order 4/16 on January 26, 2016, effective January 1, 2017. Subsequently, the policy was further amended by Board Order 43/16 on December 20, 2016 to change the effective date of the policy revisions to May 1, 2017. Changes made included improving policy's organization and clarity, enhancing stewardship by ensuring workers are paid the benefits they are entitled to and collecting overpayments in a fair, consistent and cost effective manner. The April 19, 2017 revision further revised the policy to allow the WCB to proactively adjust future and post assessment rates when an overpayment exists. The former policy was re-issued as 35.40.50.01 for reference purposes.

Appendix A

POLICY TERMINOLOGY

Administrative error by the WCB may include:

- ◇ incorrect use of available data to determine eligibility or calculate payment,
- ◇ failure to obtain relevant information before making a decision to pay,
- ◇ unreasonable delays in acting upon available information.

Incorrect information from an employer would include any information that was integral to decisions about eligibility or amount to be paid, for example:

- ◇ normal wages, rates of pay, shift patterns, previous year's earnings, vacation pay accrued or paid out, overtime paid (or unpaid), worker's dependency status,
- ◇ circumstances describing the accident, injury, job status requirements, alternate work available, etc.

Errors, incorrect information or new information that the worker should have recognized and reported will normally require judgements about materiality, the worker's understanding of WCB rules and policies, and the worker's ability to communicate effectively with his/her employer, healthcare provider, and WCB service provider(s). Materiality cannot be precisely defined, since it will depend on the context and effect of the error or information on a case-by-case basis.

Information which may be more certain in terms of worker responsibility to recognize and report may include:

- ◇ return to employment, in any form,
- ◇ increased earnings from employment,
- ◇ receipt of new medical information reducing or removing previous physical restrictions,
- ◇ new information arising from income tax returns and correspondence from Canada Revenue Agency.

Duplication of benefits from another source for the same injury may include payments from sources such as:

- ◇ employment insurance,
- ◇ CPP disability benefits,
- ◇ employer or personal disability insurance plans.

The key concept to be considered is the WCB's goal to avoid layering workers compensation benefits on top of other benefits to create a situation where the worker is receiving cumulative benefits greater than the amount of the financial loss incurred as a result of the compensable injury.

Financial hardship is a concept that is considered in a number of WCB policies. In this policy, assessment of potential financial hardships with respect to repayment of overpayments may consider a number of factors such as:

- ◇ the worker's employment status,
- ◇ whether the worker/worker's family currently has a regular income stream,
- ◇ the amount of post-injury income compared with pre-injury income,
- ◇ opportunities for re-employment, if not currently employed,
- ◇ any medical restrictions, which may prevent the worker from increasing income earnings,
- ◇ personal and vocational characteristics which may have an impact on earning capacity,
- ◇ the effect that regular repayments would have on family income (i.e., would they reduce income by 20% or more?),
- ◇ any other benefits (e.g., lump sums) that the worker may have recently received,
- ◇ the recency (or not) of the overpaid amount (i.e., is the overpaid amount likely spent already?),
- ◇ the nature of current expenses,
- ◇ available statements from a financial/credit counseling agency,
- ◇ declaration of bankruptcy, bankruptcy proceedings or discharge in personal bankruptcy.

Financial hardship may be a variable condition. If it is determined to exist at the time of evaluation for repayment options, it will be noted for periodic future re-evaluation if there are reasonable prospects that it could change in the future.

ADMINISTRATIVE GUIDELINES

Prevention

The determination of “reasonable measures to prevent overpayments” is a management responsibility within the scope of WCB responsibility to establish eligibility and pay benefits on an accurate basis. Various internal control and quality assurance procedures should be designed by management with this objective in mind.

“Paying benefits in a timely manner” is also subject to definition by management as to what is considered “timely”. Timeliness will depend, to a certain extent, on claim complexity; management should establish standards that describe these timeliness goals.

Criteria for Recovery (or non-recovery) of Overpayments.

“Overpayments not cost-effective to pursue” will require a comparison of the amount of the overpayment with the costs of the probable collection method. Use of collection agencies or legal methods may only be cost-effective if a substantial amount is to be recovered. The probability of collection of all or part of the total overpayment should also be considered.

“Fraud, deliberate misrepresentation or withholding of key information” should be assessed in consultation with a case manager and/or the WCB special investigations advisor(s).

Recovery of Overpayments

“Advise worker of overpayment in an appropriate manner.”

- ◇ initial contact with the worker should come from the person who made the decision that created the overpayment. This person should be in a position to explain the reason for the overpayment in a complete manner. To become knowledgeable about the overpayment, this person may need to discuss the case with other team members before contacting the worker.
- ◇ the initial contact should provide as much information as possible, i.e., the circumstances that gave rise to the overpayment, the amount involved (estimated if not yet exactly known), the fact that repayment is expected and repayment terms will be negotiable, the fact that a letter confirming this discussion will follow shortly,
- ◇ the method used to initially advise the worker, (in person or by telephone) should reflect sensitivity to the probable impact of this information on the worker. Consideration should be given to amount, recency of the factor(s) creating the overpayment and the worker’s current health and employment status,
- ◇ the worker should be advised that a letter will follow covering all of the information now being provided orally, as well as explaining the worker’s appeal rights.

“Confirm the overpayment in writing”

- ◇ the letter should be issued by the same individual who discussed the overpayment with the worker,

- ◇ the letter should be issued within one week of that conversation in almost every case,
- ◇ the letter should advise of what will next occur - i.e. identify that a collection officer will be contacting the worker to negotiate or confirm agreed-to repayment terms. The collection officer should receive a copy of the letter sent to the worker,

“Contact the worker to establish a recovery plan”

- ◇ the collection officer should contact the worker after receiving a copy of the letter from its issuer. If any aspect of the letter is unclear, or if there is any indication of potential dispute and/or appeal, the overpayment should be discussed with the case manager before contacting the worker,
- ◇ the method of contact should reflect any potential sensitivity identified about the overpayment or the worker’s circumstances. Normally, a telephone call followed by a confirming letter will be appropriate, but, in some cases, personal contact may be preferable. Only in the most straightforward and low-value cases would a letter be appropriate without having first had a conversation with the worker,
- ◇ the collection officer should be sufficiently familiar with the claim that any questions about the overpayment can be listened to (for referral to the case manager) with an ability to understand the worker’s questions. The collection officer should also be aware of any information about the worker that may be relevant to the worker’s willingness or ability to pay.

“Progressively stronger recovery methods” should be tempered with an awareness of any sensitivities to be observed, WCB corporate values, and the principles described throughout the Overpayments Policy.

Reconsideration or Appeal

“Recovery action may be re-instated if the WCB has evidence that the primary purpose of appeal is to defer recovery”

- ◇ the collection officer should confer with the case manager to assess whether this condition exists,
- ◇ the basis for the appeal, as stated, will probably provide an indicator as to whether there are reasons for appeal more substantial than “not wanting to pay.”