

Policy and Research Division**2009 – 2011 Policy Priorities****Compensation and Occupational Disease Policy Workplan****1. Claims Management Solutions (“CMS”) Project – 2008/2009**

Aligned with WorkSafeBC’s strategic plan, the CMS project is designed to refocus core claims-related business to increase the efficiency of adjudication, improve delivery of claims services, and enhance systems and financial control. The aim of CMS is to facilitate improved timeliness of claims-handling and payments, and earlier identification of workers requiring return-to-work assistance.

Policy issues have been identified during the development of the CMS project which required policy guidance and policy development in order to ensure the effective implementation of the project. Currently the following two issues require review:

a) Forms Redesign

A Claims Front End project was undertaken to redesign claims-related forms in preparation for CMS implementation. Further to this review, various policy items in the *Rehabilitation Services & Claims Manual (“RS&CM”)* reference specific forms and require updating. This project involves updating the *RS&CM* so that the correct claims-related forms are referenced.

b) “Board Officer” and Other Similar Titles

The *RS&CM* currently references claims-related actions being carried out by board officers, case managers, claims adjudicators and other officers of the Board. In addition, the *RS&CM* contains many other outdated references to departments, government agencies and other titles which require updating. Work has already begun on this project, which involves a line by line revision of the *RS&CM*, including replacement of the various job titles with “the Board” to reflect the legislation and wording in other policy manuals.

2. Medical Assistance, Re-write of Chapter 10 of the RS&CM – 2008/2009

This project involves a review of the 87 policies contained in Chapter 10. The re-write of the Chapter 10 policies consists of putting the policies into the new format and addressing various issues that have been raised, such as:

- Other Health Care Providers – re-writing policy to reflect changes to health care services provided to workers, such as physiotherapy, acupuncture and massage therapy.
- The Prescription of Narcotics and Other Drugs of Addiction – review of the current policy to ensure that it reflects the latest medical and scientific information.
- Respite Care – guidance on the provision of respite care is required.
- Review of discretionary allowances and benefits provided to injured workers, such as:

- (i) those provided to seriously injured workers;
- (ii) those regarding travel expenses and subsistence, related to workers' receipt of health care; and
- (iii) those related to childcare and homemaker services.

Considerable work has been undertaken on this project and it is anticipated that draft proposed policies will be released for stakeholder consultation in the summer of 2009.

3. Variable Shift Workers – Policy Item #65.01 of the RS&CM – 2008/2009

Current policy does not specifically set out how to establish short-term average earnings for workers who are regularly employed on an on-call basis for more than one employer at differing wage rates, such as film workers. In these situations, an issue has arisen regarding whether it is more appropriate to establish average earnings with reference to earnings on the date of injury or whether earnings based on the three month period immediately preceding the worker's date of injury is more reflective of a worker's average earnings.

Consultation on this issue occurred during the summer of 2008. Based on stakeholder feedback, further work was undertaken and a revised discussion paper with draft policy was released for consultation on January 8, 2009 until February 2009.

4. Reopenings Over Three Years – Policy Item #70.20 of the RS&CM – 2008/2009

Section 32(1) of the *Workers Compensation Act* ("Act") provides that, where there is a recurrence of a temporary disability after a lapse of three years following the occurrence of the injury, WorkSafeBC may calculate the compensation as if the recurrence was the happening of the injury.

This project involves a review of policy item #70.20 to ensure it is consistent with the wording of section 32(1) of the *Act*. This project will also include a review of the application of the policy to persons with personal optional protection.

Work has begun on this project and it is scheduled to be referred to the Board of Directors for approval to consult in 2009.

5. Enhancement/Devaluation – 2008/2009

This policy project will involve a review of policy items #39.12 and #39.13 of the *RS&CM* to determine whether policy amendments are advisable to ensure consistency of application. In particular, consideration will be given to clarifying the approaches/methods to calculate devaluation and enhancement.

6. Aggravation of a Disease – Policy Item #26.55 of the RS&CM – 2008/2009

Policy item #26.55 provides guidance with respect to compensability for a disability resulting from an aggravation of a pre-existing disease by a work activity. A concern has been raised that the

policy is unclear as to whether certain diseases should be excluded, such that any worsening of the condition would not be considered compensable or whether there is a requirement for the pre-existing disease to be recognized as an “occupational disease” by WorkSafeBC. If it need not be recognized, additional guidance may be required as to when the aggravation is compensable.

7. Notification of Decisions – 2008/2009

Policy item #99.20 of the *RS&CM* sets out when WorkSafeBC is required to provide written notification of a decision. Written notification is currently provided where a decision is adverse to the worker or an employer has protested a decision to allow a claim. Where a claim is allowed and there is no protest from the employer, the policy provides that no written decision is required.

At issue is whether a decision has to be documented and/or communicated to the affected parties in some form before it can be considered to have been “made” for the purposes of the reconsideration and appeal provisions of the *Act*. A secondary issue is the distinction between the terms “reject” and “disallow”, which has created some confusion among officers and has led to incorrect coding of claims.

8. Disclosure on Review or Appeal – 2009

In administering the *Act*, the WCB collects and maintains information for the purposes of adjudicating and managing workers' claims. The policies beginning at policy item #99.00 of the *RS&CM* provide guidance on how information contained in claim files is to be disclosed. Current policy provides that full disclosure of a worker's claim file is available to either a worker or their employer once a review or appeal has been initiated.

At issue is whether the disclosure policies adequately balance the level of disclosure available to employers with a worker's right to privacy, especially in regards to sensitive medical information.

9. Chronic Pain – Policy Items #22.35 and #39.02 of the *RS&CM* – 2009

The policies with respect to chronic pain have been in effect since January 1, 2003. A review of these policies is proposed in order to evaluate their effectiveness and to improve consistency in the adjudication and management of chronic pain.

10. Duration of Permanent Disability Periodic Payments – Policy Item #41.00 of the *RS&CM* – 2009

This policy provides guidance on the evidence required to determine whether a worker would have continued to work past age 65. At issue is a review of the policy to determine whether the language contained in the policy and the evidence required to determine whether a worker would have worked past age 65 are appropriate.

11. Compensation for Bronchogenic Carcinoma (Lung Cancer) in Asbestos Exposed Workers – 2009

Schedule B item #4(a) provides a presumption of work causation in favour of a worker who has developed a primary site lung cancer which is associated with either asbestosis or bilateral diffuse pleural thickening, or fibrosis measuring a specified size.

At issue is whether these descriptions are current and supportable based on the most current medical science. Another issue is whether WorkSafeBC should consider the recognition of primary site lung cancers in workers who have had significant exposures to asbestos in British Columbia, but who do not display radiographic evidence of benign asbestos-related pleural or lung disease. This second issue has arisen out of recent studies and reports including the "Report by the Industrial Injuries Advisory Council" (United Kingdom) dated July 2005.

In October 2006, the Research Secretariat released a request for proposals for a systematic review of available literature on Bronchogenic Carcinoma (Lung Cancer) in Asbestos Exposed Workers. The results of this review will form the basis for a comprehensive analysis and development of WorkSafeBC policy options that could be applied in the adjudication of lung cancer claims.

The peer reviewed report was received in October 2008 and work has commenced to analyze the report and identify the issues that require policy development.

12. Carpal Tunnel/Cubital Tunnel Review – 2009

The Research Secretariat is funding a systematic review on the causal relationship between work-related activities and the development of upper limb nerve entrapment disorders such as carpal tunnel and/or cubital tunnel syndrome. It is anticipated that the systematic review will be completed in 2009. Following receipt of the review, policy review will be undertaken to determine what, if any, changes are required to policy items #27.32, *Carpal Tunnel Syndrome* and #27.33, *Other Peripheral Nerve Entrapments and Stenosing Tenovaginitis* of the *RS&CM*.

13. Experience Rating Exclusions for Subsequent Non-Compensable Incidents – 2009

Policy item #34.55, *Subsequent Non-Compensable Incidents*, was created as part of the policy project to review Chapter 3 in the *RS&CM*, Volume II, to replace policy item #22.14, *Treatment Unrelated to Injury*. It comes into effect on January 1, 2010. The new policy defines "subsequent non-compensable incident" and directs WorkSafeBC to estimate when a worker's disability resulting from a compensable injury (and therefore the worker's wage-loss benefits) would end, if he or she is disabled when a subsequent non-compensable incident occurs.

When the estimated date for terminating wage-loss benefits arrives, if the worker is still disabled, WorkSafeBC makes a new decision as to whether the disability, or increased disability, is due to the compensable injury or the subsequent non-compensable incident. If the disability is due to the compensable injury, WorkSafeBC may continue to pay wage-loss benefits, even if the reason for the continued disability from the compensable injury is that the subsequent non-compensable incident has delayed the worker's recovery.

At issue is whether an experience rating adjustment under section 42 of the *Act* should be given to employers whose workers' disability from a compensable injury is aggravated, or recovery is delayed, by a subsequent non-compensable incident.

14. Room & Board – Policy Item #68.22 of the *RS&CM* – 2009

At issue is a review of policy item #68.22 to ensure that it is consistent with section 96(5) of the *Act* which provides that the WCB may not reconsider a decision or order if more than 75 days have elapsed since the decision or order was made.

This policy provides guidance on when to include the dollar value of room and board in average earnings. Situations have arisen where the provision of room and board changes during the claim and after 75 days has elapsed from the date of the original wage loss decision. This is creating adjudicative problems as workers seek a reconsideration of the original wage loss decision.

15. Tinnitus – 2009

Policy item #31.00, *Hearing Loss*, of the *RS&CM* provides that tinnitus alone is not considered a condition for which a permanent disability award can be granted. However, tinnitus in combination with a permanent degree of hearing loss may have an impact on a worker's employability and affect the amount of the resulting award.

At issue is a review of the current medical and scientific literature related to this condition to determine whether the current policy is appropriate. The PRD has commissioned a review of the medical and scientific literature on this issue. The final report is expected to be received at the end of 2008.

16. Permanent Disability Evaluation Schedule ("PDES") – 2009/2010

At issue is the ongoing review of the percentages listed on the PDES to ensure that the PDES remains current with emerging medical and scientific knowledge. This issue is complex and will require considerable research and analysis including significant cross-jurisdictional analysis of schedules, methods of application and scientific bases. Included in this project will be a review of the Additional Factors Guidelines to ensure it is also medically current and clear enough to ensure consistency in application.

17. Average Earnings, Chapter 9 of the *RS&CM* – 2009/2010

This project is part of the overall plan to redevelop the *RS&CM*, Volume II on a chapter by chapter basis. This project will involve putting the policies into the new format, conducting a review of the Chapter 9 policies on average earnings as a whole and addressing various issues that have been raised, such as:

- Review of policy item #65.02, *Workers with Two Jobs*, to determine if clarification is required with respect to calculation of wage rates for persons with two jobs. In addition, a review of policy item #35.22, *Calculation of Earnings for Workers with Two Jobs*, is required to ensure that the two policies are consistent.
- Consideration of whether additional policy guidance is required with respect to calculation of long-term average earnings for workers with multiple employment where more than one of the average earnings exceptions appears to be applicable.

18. Skin Cancer – 2009/2010

Skin cancer is the most commonly diagnosed form of cancer. Schedule B item #4(g) provides a presumption of work causation in favour of a worker who has developed a primary site skin cancer where there is prolonged contact with coal tar products, arsenic or cutting oils or prolonged exposure to solar ultraviolet light.

At issue is whether this description is current and supportable based on the most current medical science. Another issue is whether the specific types of skin cancer should be set out in the Schedule. A review of the science will be undertaken as part of this project.

19. Osteoarthritis of the First Carpo-Metacarpal Joint in Physiotherapists – Policy Item #26.02 of the RS&CM – 2009

Policy item #26.02 addresses the recognition of an occupational disease under section 6(4.2) of the *Act* as a “disease that is peculiar to or characteristic of a particular process, trade or occupation”. To date, only one disease has been recognized in this manner – osteoarthritis of the first carpo-metacarpal joint in physiotherapists who perform deep friction massage.

Policy item #26.02 states that this recognition is limited to factual situations substantially the same as those applied to the worker in *Workers’ Compensation Reporter* (“*WCR*”) Decision No. 231, dated February 9, 1977. *WCR* Decision No. 231 is one of two remaining *WCR* Decisions that have yet to be retired from official policy status. The general reference in policy item #26.02 to *WCR* Decision No. 231 is problematic, as accessibility to old *WCR* Decisions is limited. The old *WCR* has not been published in over ten years, nor is it available electronically.

At issue is a review of the scientific and medical literature related to this condition to determine whether the current recognition is current and supportable. This project will also facilitate the retirement of *WCR* Decisions. A medical and scientific literature review was completed in mid-2007 and is currently being peer reviewed. Any policy development that flows from the report will be done in 2009.

20. Suspension of Benefits – 2009/2010

Sections 57(2) and 57.1(2) of the *Act* give WorkSafeBC the authority to reduce or suspend compensation to a worker in certain situations of worker noncompliance. Current policy does not provide sufficient guidance to determine whether the resumption of full benefits (after a suspension is lifted) includes retroactive entitlement to the benefits that were reduced or suspended. Policy is also silent with respect to the type or extent to which compensation is to be reduced or suspended.

21. Tendinosis – 2009/2010

Schedule B lists “Hand-wrist tendinitis, tenosynovitis (including deQuevain’s tenosynovitis)” and “Shoulder tendinitis” as occupational diseases. Policy item #27.12 of the *RS&CM* confirms that a claim made by a worker diagnosed with hand-wrist tendinitis/tenosynovitis or with shoulder tendinitis where no specific event or trauma, or series of events or traumas, has occurred, will be treated as a disease and will be adjudicated in accordance with the policies set out in Chapter 4 of the *RS&CM*. The policy item provides the guiding principles when interpreting Schedule B. As well, the policy details risk factors typically associated with these conditions to assist in determining whether it is biologically plausible that the hand-wrist tendinitis/tenosynovitis has resulted from the work activities.

It appears that there is a growing acceptance of the condition “tendinosis” in the medical community. As a result, WorkSafeBC is receiving an increasing number of medical reports where the diagnosis is tendinosis. An ‘itis’ condition is characterized by inflammation and typically will heal within 6 weeks. However, tendinosis is considered a chronic deterioration of the tendon and does not necessarily have the same risk factors or treatment protocols as tendinitis.

At issue is whether WorkSafeBC should recognize tendinosis as an occupational disease and whether policy should be developed to provide guidance on the risk factors and treatment protocols for tendinosis.

22. Multiple Sclerosis as a Compensable Consequence – 2009/2010

Policy item #22.31, *Multiple Sclerosis*, of the *RS&CM* includes the following statements, “While the cause of multiple sclerosis is unknown, there has been much medical literature on factors which may precipitate the onset of the disease in an already predisposed person. One of these factors is traumatic injury.”

This policy project will involve a review of the current medical and scientific literature with respect to whether multiple sclerosis may be precipitated by a traumatic injury.

23. Whole Body Vibration – Policy Item #26.50 of the *RS&CM* – 2010

Worker and Employer Services Division has requested policy direction regarding the possible relationship between occupational exposure to Whole Body Vibration (“WBV”) and back injuries/disorders. There are conflicting views in the medical literature as to whether there is a causal link between WBV and certain back disorders.

Policy item #26.50 provides that disability can occur due to the natural aging process. Where degeneration is a kind that affects the population at large due to multi-factoral causes, it is difficult for WorkSafeBC to measure or determine whether the occupation had any significant effect in advancing the pace of the degeneration compared with other occupations.

For a disability to be compensable, evidence must establish that the work activity brought about a disability that would probably not otherwise have occurred, or that the work activity significantly advanced the development of a disability that probably would not otherwise have occurred until later.

This project will involve a review of the scientific and medical literature on back disorders in workers exposed to whole body vibration. The results of this review will form the basis for a comprehensive analysis and development of policy options for stakeholder consultation. Any policy changes will be evaluated by examining Review Division and WCAT decisions and reviewing feedback from WCB and external stakeholders.

24. Compensation on the Death of a Worker, Survivor Benefits – 2010

A series of policies in Chapter 8 of the *RS&CM*, Volume II pertain to calculation and apportionment of compensation payable on the death of a worker. Concerns have been raised that the existing policies have resulted in unclear interpretation and/or application of sections 10 and 17 of the *Act*, including provisions pertaining to payment and apportionment of benefits to children. This policy project will involve a review of the current policies and consideration of options for revisions to the applicable policies to provide additional or clearer guidance.