

2004/05/18-03

THE WORKERS' COMPENSATION BOARD OF BRITISH COLUMBIA

RESOLUTION OF THE BOARD OF DIRECTORS

Re: Adjudication of Hernia Claims

WHEREAS:

Pursuant to section 82 of the *Workers Compensation Act*, RSBC 1996, Chapter 492 and amendments thereto ("*Act*"), the Board of Directors must set and revise as necessary the policies of the Board of Directors, including policies respecting compensation, assessment, rehabilitation, and occupational health and safety;

AND WHEREAS:

Policy item #15.50, *Herniae*, of the *Rehabilitation Services Claims Manual* ("*RSCM*") provides that post-operative wage loss benefits will be limited to 42 days, subject to complications. The policy also provides principles to aid in the adjudication of inguinal hernia claims, but provides only limited guidance for non-inguinal hernia claims;

AND WHEREAS:

The Workers Compensation Board Evidence Based Group prepared an extensive report, examining the medical, policy and financial considerations for hernia claims ("*EBG Report*") and this report was reviewed by an External Reviewer with the British Columbia Medical Association;

AND WHEREAS:

The *EBG Report* sets out that the policy provision for post-operative wage loss benefits contained in policy item #15.50 of the *RSCM* is not in keeping with current medical science, and that general adjudicative principles should be extended for all types of hernia claims;

AND WHEREAS:

The External Reviewer has indicated that many of the adjudicative principles contained in policy item #15.50 of the *RSCM* are outdated and/or incorrect;

AND WHEREAS:

The Policy & Research Division has consulted with stakeholders on this issue.

THE BOARD OF DIRECTORS RESOLVES THAT:

1. Amendments to policy item #15.50 of Volume II of the *RSCM*, attached as Appendix A, are approved.
2. Amendments to policy item #15.50 of Volume I of the *RSCM*, attached as Appendix B, are approved.
3. This resolution is effective June 1, 2004 and applies to all decisions, including appellate decisions, made on or after that date.

DATED at Richmond, British Columbia, May 18, 2004.

By the Workers' Compensation Board

**DOUGLAS J. ENNS, CHAIR
BOARD OF DIRECTORS**

APPENDIX A
Rehabilitation Services & Claims Manual, Volume II

#15.50 Herniae

There are two main types of herniae, inguinal (groin) herniae, and non-inguinal herniae (e.g., femoral, incisional, and umbilical herniae).

On the basis of the Board's present understanding of the biologic characteristics of herniae, the following principles are followed **in the adjudication** to determine the acceptability of hernia claims. ~~It is, of course, essential that the claimed work causation circumstances should be reported to the employer as soon as is practicable.~~

- 1. There must be increased intra-abdominal pressure, or evidence of severe direct trauma, resulting from the work or employment preceding the appearance of the hernia. Symptoms will generally appear shortly after the incident.**
- 2. Given the preponderance of medical information indicating that herniae are multi-factorial in development, herniae will be considered an aggravation of a pre-existing condition, and surgery will be recognized as an attempt to correct the aggravation.**
- 3. There is usually no urgency to the hernia operation, except where there are threatening complications, such as a bowel obstruction or inability to reduce the hernia. In most cases, there is no need to stop working while awaiting surgery.**

Given the above, pre-operative wage loss will not normally be paid unless medical information is provided by the attending physician indicating the complication which restricts the worker's ability to continue working. Where an attending physician's report certifies that a worker is disabled pre-operatively, other objective evidence, such as a medical opinion, regarding the worker's condition may be sought to either verify or dispute the attending physician's opinion.

- 4. Where a worker suffers bilateral herniae, it is extremely unlikely that both will have resulted from the same incident. However, where a claim for one of those hernia is acceptable in accordance with the principles set out above, the Board will accept responsibility for both herniae if the evidence is such that it is not possible to determine which of the two herniae did result from the employment.**
- 5. Usual recovery times for hernia surgical repair are based on medical protocols and procedures adopted by the Board.**

1. Direct Inguinal Herniae

- (a) There must be increased intra-abdominal pressure or evidence of severe direct trauma resulting from the work or employment preceding the appearance of the hernia.
- (b) There should be no prior hernia at the site.
- (c) The age or general physical state of the worker should be such as to predispose to the formation of a direct hernia.
- (d) Pre-operative wage loss will not be allowed without adequate medical explanation of the reasons.
- (e) Post-operative wage loss will be limited to 42 calendar days unless there are complications which justify an extension of the convalescent period and which are adequately described by the attending physician. The Board may require a further examination.
- (f) The hernia will be considered to be an aggravation of a pre-existing condition and surgery will be recognized as an attempt to correct the aggravation.

2. Indirect Inguinal Herniae

- (a) There must be increased intra-abdominal pressure resulting from the work or employment preceding the appearance of the hernia. The hernia should follow this event within a reasonable time period, normally no more than 72 hours.
- (b) Where a worker suffers bilateral herniae, it is extremely unlikely that both will have resulted from the same incident. However, where a claim for one of those hernia is acceptable in accordance with the principles set out above, the Board will accept responsibility for both herniae if the evidence is such that it is not possible to determine which of the two herniae did result from the employment.
- (c) The hernia will be considered to be an aggravation of a pre-existing condition and surgery will be recognized as an attempt to correct the aggravation.
- (d) Pre-operative wage loss will not be allowed except under unusual circumstances which are fully detailed by the attending physician.

~~(e) — Post-operative wage loss will be limited to 42 calendar days except where there are complications which are fully explained by the attending physician. The Board may require a further examination.~~

~~In the case of inguinal herniae, sometimes the surgery must be done urgently because of certain threatening complications such as bowel obstruction or inability to reduce the hernia. Most often there is no urgency about the operation and seldom is there need to stop work while awaiting surgery. There is no medical evidence to suggest that work generally aggravates a hernia, makes the surgery more difficult or less successful, or increases the complications following surgery. Where a treating physician's report certifies to the Board that the worker is disabled pre-operatively, other objective evidence regarding the worker's condition will be sought to either verify or dispute the treating physician's opinion. Usually this would consist of a medical examination at the Board.~~

~~When the first document is received on a hernia claim, a letter is immediately sent to the worker which states in part:~~

~~“Please call (the Board) immediately if your doctor has told you to stay off work.”~~

~~If the document indicates that the worker is off work due to the hernia, the worker is also contacted by telephone by the Adjudicator to advise that the Board does not normally pay pre-operative wage loss on hernia claims. The adjudication of the claim is then accelerated. This could involve a telephone call to the employer to obtain the necessary information on which to base a decision.~~

~~Immediately following acceptance of the claim, if the worker is still off work, the file will be discussed with a Board Medical Advisor, who should examine the worker promptly if the question cannot be resolved by contacting the attending physician or surgical consultant. If the Board Medical Advisor confirms that the worker is not disabled, the worker is so advised at that time by the Adjudicator. This verbal decision is confirmed in writing. Wage-loss compensation will then only be paid up to the date of the examination, but will be reinstated as of the date of admission to hospital for surgery. The Board Medical Advisor may use discretion in such cases and decide to contact the treating physician to discuss the matter.~~

~~After surgery, the operative site usually heals without difficulty. Return to work in uncomplicated cases will be governed to some degree by the nature of the work to be done but is usually possible in four weeks. Some complications may delay this return to work.~~

3. ~~Femoral Herniae~~

~~These are unusual herniae and are generally not related to effort but may follow increased intra-abdominal pressure. Similar considerations will pertain as for inguinal herniae.~~

4. ~~Epigastric Herniae~~

~~These are not generally secondary to trauma or strain.~~

5. ~~Incisional Herniae~~

(a) ~~If the primary incision is not the result of a compensable condition, the claim should be considered as a new claim and there should be:~~

(i) ~~an incident causing severe direct trauma to the site of the incision or marked increase in intra-abdominal pressure;~~

(ii) ~~the appearance of a hernia shortly after the occurrence of the trauma or incident;~~

(iii) ~~the incident or trauma should be reported to the employer as soon as is practicable.~~

(b) ~~If the primary incision is the result of a compensable condition, the claim should be considered as part of the original claim unless there has been a significant new trauma. If there has been significant new trauma, a new claim should be established.~~

6. ~~Diaphragmatic and Hiatus Herniae~~

~~These herniae should only be considered for compensation purposes if:~~

(a) ~~there has been a severe crushing injury to chest or abdomen; or~~

(b) ~~there has been direct trauma to the diaphragm (gunshot wound, stab wound, etc.) at the site of the hernia.~~

7. Internal Herniae

~~These are not considered to be related to effort, strain or work and are not compensable.~~

8. Umbilical Herniae

~~These are clearly congenital herniae and are not related to stress, strain, work effort or trauma, except in most unusual circumstances.~~

9. Incarceration of Herniae

~~Incarceration of hernia contents may occur during effort in a worker with a prior hernia. The Board responsibility in this case is limited to relief of the incarceration, usually possible by manual manipulation. If manual manipulation is unsuccessful, however, surgery may be necessary and if it is necessary for relief of incarceration, it is a Board responsibility.~~

Effective Date: June 1, 2004

Cross Reference: Enhancement of Disability by Reason of Pre-existing Disease, Condition or Disability (policy item #114.40B) of the *Rehabilitation Services & Claims Manual*, Volume II.

Application: Applies to all decisions, including appellate decisions made on or after June 1, 2004.

APPENDIX B
Rehabilitation Services & Claims Manual, Volume I

#15.50 Herniae

For all decisions, including appellate decisions, made on or after June 1, 2004, please refer to policy item #15.50, *Herniae*, in Volume II of the *RSCM*.

On the basis of the Board's present understanding of the biologic characteristics of herniae, the following principles are followed to determine the acceptability of hernia claims. It is, of course, essential that the claimed work causation circumstances should be reported to the employer as soon as is practicable.

1. Direct Inguinal Herniae
 - (a) There must be increased intra-abdominal pressure or evidence of severe direct trauma resulting from the work or employment preceding the appearance of the hernia.
 - (b) There should be no prior hernia at the site.
 - (c) The age or general physical state of the worker should be such as to predispose to the formation of a direct hernia.
 - (d) Pre-operative wage loss will not be allowed without adequate medical explanation of the reasons.
 - (e) Post-operative wage loss will be limited to 42 calendar days unless there are complications which justify an extension of the convalescent period and which are adequately described by the attending physician. The Board may require a further examination.
 - (f) The hernia will be considered to be an aggravation of a pre-existing condition and surgery will be recognized as an attempt to correct the aggravation.

2. Indirect Inguinal Herniae
 - (a) There must be increased intra-abdominal pressure resulting from the work or employment preceding the appearance of the hernia. The hernia should follow this event within a reasonable time period, normally no more than 72 hours.
 - (b) Where a worker suffers bilateral herniae, it is extremely unlikely that both will have resulted from the same incident. However, where a claim for one of those hernia is acceptable in accordance with the principles set out above, the Board will accept responsibility for both herniae if the

evidence is such that it is not possible to determine which of the two herniae did result from the employment.

- (c) The hernia will be considered to be an aggravation of a pre-existing condition and surgery will be recognized as an attempt to correct the aggravation.
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In the case of inguinal herniae, sometimes the surgery must be done urgently because of certain threatening complications such as bowel obstruction or inability to reduce the hernia. Most often there is no urgency about the operation and seldom is there need to stop work while awaiting surgery. There is no medical evidence to suggest that work generally aggravates a hernia, makes the surgery more difficult or less successful, or increases the complications following surgery. Where a treating physician's report certifies to the Board that the worker is disabled pre-operatively, other objective evidence regarding the worker's condition will be sought to either verify or dispute the treating physician's opinion. Usually this would consist of a medical examination at the Board.

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consultant. If the Board Medical Advisor confirms that the worker is not disabled, the worker is so advised at that time by the Adjudicator. This verbal decision is confirmed in writing. Wage-loss compensation will then only be paid up to the date of the examination, but will be reinstated as of the date of admission to hospital for surgery. The Board Medical Advisor may use discretion in such cases and decide to contact the treating physician to discuss the matter.

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4. Epigastric Herniae

These are not generally secondary to trauma or strain.

5. Incisional Herniae

(a) If the primary incision is not the result of a compensable condition, the claim should be considered as a new claim and there should be:

- (i) an incident causing severe direct trauma to the site of the incision or marked increase in intra-abdominal pressure;
- (ii) the appearance of a hernia shortly after the occurrence of the trauma or incident;
- (iii) the incident or trauma should be reported to the employer as soon as is practicable.

(b) If the primary incision is the result of a compensable condition, the claim should be considered as part of the original claim unless there has been a significant new trauma. If there has been significant new trauma, a new claim should be established.

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