

POLICY NUMBER: POL-27

Chapter:
CLAIMS

Subject:
OVERPAYMENTS TO WORKERS

Effective Date:
November 15, 1994

Last Update:
February 13, 2013

REFERENCE:

Workers Compensation Act R.S.P.E.I. 1988, Cap. W-7.1, Sections 6, 16, 40(5)(d).
Workers Compensation Board Policy, POL-41, Collateral Benefits.
Workers Compensation Board Policy, POL-80, Fraud Prevention & Investigation.

DEFINITION:

In this policy:

“Collateral benefit” means:

(i) any periodic benefit the worker is entitled to receive under the Canada Pension Plan, the Quebec Pension Plan, the Employment Insurance Act (Canada); and (ii) any benefit the worker is entitled to receive as a result of the accident that is provided wholly or partially at the expense of the employer.

“Cost Relief” means a reduction in or removal of claim costs, from an employer’s account, that are used for purposes of establishing an employer’s assessment rate.

“Overpayment” means any payment of benefits which is paid by the Workers Compensation Board that exceeds the payee’s entitlement pursuant to the *Workers Compensation Act*, regulations, or policy.

“Set-off” means the amount payable to a payee which is set aside, by the Workers Compensation Board, as payment against a debt owed to the Workers Compensation Board.

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POLICY:

1. The Workers Compensation Board makes every effort to prevent overpayments to workers.
2. In the event that an overpayment occurs, the Workers Compensation Board will establish a reasonable repayment plan, taking into account the financial circumstances of the worker.
3. The Workers Compensation Board will notify the worker in writing in the event of an overpayment.
4. The Workers Compensation Board will not charge interest on overpayments that are made to workers.

Repayment Action Pursued

5. The Workers Compensation Board will pursue full repayment of an overpayment to a worker which results from any of the following situations:

Employment Earnings And Collateral Benefits

A worker is in receipt of earnings from employment and Workers Compensation benefits for the same period of time. Duplication may occur when a worker or employer gives incorrect return to work information or a worker fails to report a material change in earnings, collateral benefits pursuant to the Workers Compensation Board policy, POL-41, "Collateral Benefits", or relevant earnings from any other source as defined in the Workers Compensation Board policy "POL-86, "Wage Loss Benefits".

If an overpayment is created as a result of duplication of employment earnings or failure to report a material change in earnings, collateral benefits, or income from any other source, the overpayment will be calculated retroactively.

Lump Sum Retroactive Payment Of Canada Pension Plan Disability Benefits

A worker who is in receipt of wage loss benefits from the Workers Compensation Board receives a lump sum retroactive payment of Canada Pension Plan Disability benefits and

fails to reimburse the Workers Compensation Board pursuant to the Workers Compensation Board policy, POL-41, "Collateral Benefits".

Abuse Or Fraud

The Workers Compensation Board determines that a worker obtained benefits through abuse or fraud pursuant to the Workers Compensation Board policy, POL-80, "Fraud Prevention & Investigation".

Administrative Error

An administrative error where the worker could have reasonably been aware of the error. An administrative error may result from miscalculation, mathematical errors, or inaccurate data entry.

Repayment Action Not Pursued

6. The Workers Compensation Board will not pursue repayment of an overpayment to a worker which results from any of the following situations:

Entitlement Decision Overturned By Reconsideration Or Appeal

A previous entitlement decision has been overturned due to a reconsideration or appeal decision.

Administrative Error

An administrative error where the worker could not have reasonably been aware of the error. An administrative error may result from miscalculation, mathematical errors, or inaccurate data entry.

Immediately upon detection, an administrative error will be corrected. Benefits paid to the worker following detection of an administrative error will reflect the correction.

Six Year Notification

The Workers Compensation Board has not notified the worker in writing or taken any steps/action to recover the overpayment within 6 years of the date the Workers Compensation Board became aware of the overpayment.

Repayment Plans

7. The Workers Compensation Board will make every effort to establish a repayment plan that is mutually agreeable to the worker and the Workers Compensation Board. However, if a repayment plan cannot be established within 30 days of the initial communication of the overpayment, the Workers Compensation Board will develop a repayment plan to recover the overpayment.

Repayment Plan - Lump Sum Retroactive Payment Of Canada Pension Plan Disability Benefits

If a worker withholds any portion of a lump sum retroactive payment of Canada Pension Plan Disability benefits owed to the Workers Compensation Board pursuant to the Workers Compensation Board policy, POL-41, "Collateral Benefits", the repayment plan will include immediate payment through set-off at 100% from a permanent medical impairment award, immediate diversion of wage loss benefits, immediate diversion of expense reimbursement, or some combination until the amount owing has been recovered.

If there is not an outstanding permanent impairment award, wage loss benefit, or expense reimbursement due to the worker, the Workers Compensation Board will develop a repayment plan as outlined in the section "Repayment Plan – All Other Worker Overpayment Recoveries."

Repayment Plan – All Other Worker Overpayment Recoveries

The Workers Compensation Board will discuss repayment options with the worker. If agreement on a repayment plan cannot be reached with the worker within thirty (30) days of initial communication of the overpayment, the Workers Compensation Board will establish repayment terms, develop a repayment plan, and communicate the repayment plan in writing to the worker.

Generally, the target date for full repayment should not extend beyond 36 months. However, the Workers Compensation Board will consider factors such as financial hardship in the determination of the length of the repayment plan.

8. The repayment plan may include the following repayment options:

Set-off Against Established Benefits

The Workers Compensation Board may recover an overpayment to a worker through set-off from a permanent medical impairment award, diversion of wage loss benefits, diversion of expense reimbursement, or some combination of benefits which have been established when the repayment plan is being developed.

With the exception of withholding a lump sum Canada Pension Plan Disability benefit, if set-off against established benefits is used as part of the repayment plan, the amount of set-off at any one time will not exceed 50% of the worker's wage loss benefits. However, a worker may elect to have more than 50% deducted from wage loss benefits.

Direct Payment Repayment When Wage Loss Benefits Have Ended

If an overpayment cannot be recovered because entitlement to benefits has ended, the repayment plan will require either immediate payment in full by the worker or periodic payment based on a pre-defined repayment schedule.

Recovery Of Overpayment Through Collection Agency

9. If a worker fails to meet the obligations outlined in the repayment plan, the Workers Compensation Board may refer the outstanding overpayment to an external collection agency for collection.

Fees associated with the services of the external collection agency will be budgeted within the Client Services Admin budget.

Prior to referring the overpayment to an external collection agency, the Workers Compensation Board will advise the worker in writing.

Recovery Of Overpayment Through Court Action

10. If a worker fails to meet the obligations outlined in the repayment plan, the Workers Compensation Board may bring an action against the worker for the outstanding overpayment.
11. If a worker fails to meet the obligations outlined in the repayment plan and the Workers Compensation Board determines that no action will be brought against the worker for the outstanding overpayment, the Workers Compensation Board will inform the worker

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in writing that the overpayment is considered an outstanding debt and the Workers Compensation Board will satisfy the debt prior to the payment of any future compensation payments to the worker.

Personal Bankruptcy

12. When a worker claims personal bankruptcy, the overpayment due and owing to the Workers Compensation Board is a provable overpayment. As the holder of an overpayment provable in bankruptcy, the Workers Compensation Board has the same rights and obligations as the worker's other unsecured creditors with provable claims.

Repayment plans already established will continue during personal bankruptcy and payments will be deducted from benefits.

Deceased Workers

13. Upon the death of a worker, if an overpayment exists, the Workers Compensation Board will not pursue recovery of that overpayment.

If an overpayment is created, beyond the calendar month of the worker's death, because the deceased worker's dependant(s) or estate did not notify the Workers Compensation Board of the worker's death, the Workers Compensation Board may pursue recovery of that overpayment.

Cost Relief To Employer

14. Once an overpayment is established, the Workers Compensation Board will assign cost relief to the employer in the amount of the overpayment.

HISTORY:

February 13, 2013 - The policy was reviewed as a result of the 60 month policy review process. No substantive changes were made to the policy during this review.

November 29, 2007 - Amended to change the reference to "fraud" to "deliberate misrepresentation" and added a new #11.

May 24, 2007 - Amended to update the guidelines of overpayment repayment.

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October 20, 2003 - Amended to ensure the definition “Overpayment” and “Set-off” are consistent with those used in other Workers Compensation Board policies.

February 20, 2003 - Amended to include cost relief for employers as a result of an overpayment being established.

June 27, 2002 - Amended to clarify situations where overpayments may occur and to eliminate subjective references to a determination of financial hardship for write off of an overpayment.

April 4, 2002 - Changed name to “Overpayments to Workers” and changed the use of the term “claimants” to “workers”.

July 19, 2001 - Revised “Overpayments to Workers” policy. Changed name to “Overpayments to Claimants”.

Board of Directors Approval Date: November 15, 1994