

Adjudicative Advice

FEL Benefit And Additional Wage Loss Relating to Health Care Appointments

Introduction

The WSIB sometimes receives requests from workers for reimbursement of wage loss to attend health care appointments. This document provides advice for dealing with such requests when workers are in receipt of a future economic loss (FEL) benefit.

Scenarios

1. The situations in which a worker may incur a wage loss to attend a medical appointment, after receipt of a FEL benefit are outlined below:

- a) A worker in receipt of a FEL benefit, who is working and is not compensated by the employer for the lost time.
- b) A worker in receipt of sustainability FEL benefit, who is working and is not compensated by the employer for the lost time.

2. The following are situations in which a worker receiving a FEL benefit would not be incurring wage loss to attend a medical appointment:

- a) A worker in receipt of 100% FEL benefit
- b) A worker who is in receipt of a FEL benefit but is not working
- c) A worker in receipt of a FEL benefit and a supplement, the combined benefit total is 90

percent of the worker's pre-injury net average earnings

- d) A worker in receipt of a sustainability FEL benefit and a supplement, the combined benefit total is 90 percent of the worker's pre-injury net average earnings
- e) A worker in receipt of a s.43(8) FEL benefit (equivalent to the Old Age Supplement), as one of the criteria for receipt is not having returned to work.

Recommended Direction

Various provisions of the *Workers' Compensation Act* (WCA) and the *Workplace Safety and Insurance Act* (WSIA) were reviewed to determine whether payment of a wage loss for medical appointments associated with a work-related injury/disease could be authorized once a FEL benefit has been processed.

It would appear that neither the WSIA, nor the WCA authorize a wage loss payment for medical appointments to workers who are in receipt of a FEL benefit. As there is no legislative authority to allow payment of a wage loss in these cases, it is recommended that the requests for entitlement in these scenarios not be authorized.

Notice: This document is intended to assist WSIB decision-makers in reaching consistent decisions in similar fact situations and to supplement applicable WSIB policies and guidelines as set out in the Operational Policy Manual (OPM). This document is **not a policy** and in the event of a conflict between this document and an OPM policy or guideline, the decision-maker will rely on the latter.

Supporting Review of the Legislative Authority

1. The specific wording of s.37 of WCA prevents the payment of temporary total disability benefits to a worker once a FEL benefit has been processed. This section provides in part: “the worker is entitled to compensation so long as temporary total disability continues or until the worker begins receiving payments under s.43.”
2. Section 107(4) of the WSIA (formerly s.43 (9) of the WCA) allows a provision of a supplement to a worker’s FEL benefit if the worker is co-operating in a WSIB authorized medical rehabilitation program. The medical rehabilitation program must have been undertaken to bring the worker to a state of maximum medical recovery (MMR). The supplement is added to the FEL benefit to total 90 percent of the worker’s pre-injury net average earnings. Periodic medical appointments do not constitute a medical rehabilitation program to justify the payment of a supplement. The WSIB’s policies on “Supplement for Programs and LMR Plans Before and After 24 Months” and “Supplement Following Significant Deterioration” are set out in *Operational Policy Manual* (OPM) Documents 18-04-11 and 18-04-12, respectively.
3. Section 50 of the WCA authorizes the WSIB to pay for health care associated with a work-related injury or disease. Under this section, the WSIB reimburses the cost of appointments, consultations or treatments but not any resultant wage loss incurred by a worker. Wage loss for health care appointments, consultations or treatments is compensable under s.37 of the WCA. The WSIB’s policy on “Wage Loss for Health Care Appointment” is set out in OPM Document 17-01-05.
4. Section 47 of the WSIA (formerly s.42 of the WCA) sets out the WSIB’s requirement to assess a worker who has suffered a permanent impairment as a result of a work-related injury or disease. Because of this legislative requirement, the loss of earnings resulting from Non Economic Loss (NEL) appointments are considered administrative expenses and are compensated under s.74 of the WCA. The WSIB’s policy on “Wage Loss for NEL Assessment” is set out in OPM Document 18-05-10.
5. Health Care appointments with the worker’s own physician are at the worker’s and doctor’s discretion and cannot be rationalized as an administrative expense and are, therefore, not eligible for payment under s.74 of the WCA.

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