



WSIB Claims Management Update

October 2014

Flash NEWSLETTER

WSIB Benefits Policy – Update – October 2014

During the last two years the WSIB has conducted stakeholder consultation with respect to the development of new and revised benefit policies. The process is now complete and the benefits policies are available on the WSIB website and will come into effect on November 1, 2014. The new and revised benefit policies address the following topics:

- Pre-existing Conditions – Document # 15-02-03
- Determining Permanent Impairment – Document 11-01-05
- Determining the Degree of Permanent Impairment – Document # 18-05-03
- NEL Redeterminations – Document # 18-05-09
- Aggravation Basis – Document # 15-02-04
- Recurrences – Document # 15-02-05
- Entitlement Following Temporary Work Disruptions – Document # 15-06-02
- Entitlement Following Permanent Work Disruptions – Document # 15-06-03

Pre-existing Conditions

The most important policy from an employer's perspective is the new policy dealing with Pre-existing Conditions. The WSIB has never had a written policy on pre-existing conditions until now. The policy provides that "entitlement for a work-related injury/disease will not be denied due to the existence of a pre-existing condition. Once initial entitlement is established, the decision-maker considers the impact, if any, of pre-existing conditions on the worker's ongoing impairment."

In the policy a "pre-existing condition" is defined as "any condition that existed prior to a work-related injury/disease and may include injuries, diseases, degenerative conditions and psychiatric conditions." The policy goes on to note that existence of the condition must be confirmed by pre-injury and post-injury clinical evidence. It will be important for the WSIB Case Managers to go after clinical reports to establish the state of the worker's pre-existing condition prior to a work-related accident/disease and the condition post-accident.

The WSIB will use the "significant contribution" test when determining if the worker has continuing entitlement to benefits. Generally benefits will continue to be awarded so long as the work-related injury/disease continues to significantly contribute to the worker's impairment.

Once the existence of a pre-existing condition is established the WSIB will determine on-going work-relatedness by “considering the relationship, if any, between the pre-existing condition, the work-related injury/disease, and the worker’s impairment, based on the clinical evidence.”

The policy provides that ongoing benefits will be stopped when the contribution from the pre-existing condition “overwhelms” the contribution from the work-related injury/disease. The policy wording is as follows:

“In some cases the clinical evidence may demonstrate that the significance of the pre-existing condition is so great it has overwhelmed the work-related injury/disease rendering it insignificant. When that occurs, the work-related injury/disease cannot be considered to be of sufficient significance in comparison to the pre-existing condition, for benefits to continue.”

In the policy a distinction is drawn between situations where the pre-existing condition is contributing to the ongoing impairment and where it is prolonging the recovery. This is not necessarily a simple and straight-forward distinction. The policy wording is as follows:

“In cases where the pre-existing condition is not contributing to the on-going impairment but is prolonging the recovery from the work-related injury/disease, benefits continue as long as the ongoing impairment is work-related, even if recovery takes longer due to the pre-existing condition.”

“Where the clinical evidence demonstrates that a pre-existing condition has been aggravated as a result of a work-related injury/disease, benefits continue until the worker recovers from the aggravation of the pre-existing condition.”

The WSIB policy provides for the option of obtaining a clinical opinion where the existing clinical evidence does not clearly demonstrate whether the ongoing impairment is work-related. The WSIB will use external physicians to conduct file reviews to provide that “clinical opinion.”

Other policies

The other policies listed at the start of the article are not new but are revisions to previous policies and in many cases the revisions are relatively minor. I should briefly like to highlight a few important points from a few of the revised policies.

In the policy entitled Determining Permanent Impairment there is an explicit wording that only the work-related injury/disease is to be determined when assessing permanent impairment not the combined work-related/non-work related impairment. The relevant policy wording is as follows:

“If the work-related injury/disease and a pre-existing condition or non-work related factor are both contributing to the degree of total impairment to the area, the impairment attributable to the work-related injury/disease is determined.”

In the policy entitled Determining the Degree of Permanent Impairment the decision-maker is directed to focus on only the work-related injury/disease in the affected area and not other non-work-related conditions. The relevant policy wording is as follows:

“...the decision maker

- Rates the area of the body affected by the work-related permanent impairment
- Disregards any pre-existing conditions affecting other areas of the body and

- Factors out pre-existing conditions and prior work-related permanent impairments affecting the same area of the body.”

The WSIB must be satisfied that evidence shows that the pre-existing condition, for the affected area, would on its own result in an impairment rating. Depending on the significance of the pre-existing condition then the WSIB may reduce the quantum of the NEL award by up to 50% in the case of “major” pre-existing condition.

In the policy entitled Aggravation Basis where a worker “has a pre-accident impairment and suffers a work-related injury/disease to the same body part or system, the WSIB considers entitlement to benefits on an aggravation basis.” In that situation entitlement is usually allowed for the acute episode only and benefits paid until the worker returns to the pre-accident state. This policy becomes more important in light of the new policy on pre-existing conditions. It remains to be seen though if it will be utilized on a regular basis by WSIB Eligibility Adjudicators and Case Managers in determining the extent of benefit entitlement in cases where there is clinical evidence of pre-existing conditions.

Pre-existing conditions are not necessarily the same as pre-existing impairments. Pre-existing impairment is defined under the policy as “a condition that has produced periods of impairment/disease requiring health care and has caused a disruption in employment (lost time and /or modified work).” A person may have a pre-existing condition but not required health care and not lost time from work and that would not be considered a pre-existing impairment and not be enough to limit the extent of WSIB benefits.

Overall though the creation of a policy on pre-existing conditions should be a step forward for employers and will hopefully cause WSIB decision-makers to pay closer attention to non-work related conditions when adjudicating the extent of benefit entitlement. If you have questions about the impact of the new WSIB benefit policies on specific claims please speak to your SBCI Claims Manager. Thank you