

**Operational
Policy**

Section

Independent Living and Quality of Life

Subject

Personal Care Attendants and Allowance

Policy

Workers who require assistance with their activities of daily living due to a work-related injury or illness may be entitled to a personal care attendant. Where the worker has a serious work-related injury or illness, they may be entitled to a personal care allowance to hire their own personal care attendant(s).

Purpose

The purpose of this policy is to outline the criteria for entitlement to personal care attendants and/or a personal care allowance to hire personal care attendants, how the level of care required is determined, the responsibilities of a worker who hires their own personal care attendant, and when the level of entitlement may be reviewed.

Guidelines

This policy must be read in conjunction with 17-06-01, Independent living and quality of life measures - Overview and definitions.

Definitions

Activities of daily living (ADLs) are basic activities that are performed by individuals on a daily basis for self-care. Examples include, but are not limited to, ambulating (e.g., walking), mobility (e.g., transferring from bed to chair and back), feeding, dressing, personal hygiene (e.g., bathing, grooming, toileting), and taking medication.

A **serious injury** means a work-related injury that results in significant/severe functional limitations that impact a worker's ability to live independently such that they require assistance or other appropriate measures:

- for six months or more, or
- permanently.

A **serious illness** generally means a work-related illness that results in significant/severe functional limitations that impact a worker's ability to live independently such that they require assistance or other appropriate measures, that:

- the worker is unlikely to recover from, and/or
- is a progressive life-limiting illness.

See 17-06-01, Independent living and quality of life measures - Overview and definitions for other definitions.

General

A personal care attendant hired through an agency may be authorized when a worker requires assistance or supervision to complete their activities of daily living as a result of a

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work-related injury or illness. The WSIB pays the agency providing the personal care attendant directly.

A personal care allowance may be authorized to allow a seriously injured or ill worker to hire a non-agency attendant such as a family member or friend. There are five levels of care, each with a corresponding allowance amount commensurate with the level of care required by the worker. The WSIB pays the personal care allowance to the worker who is responsible for hiring one or more non-agency attendants. A seriously injured or ill worker may be entitled to an agency care attendant in addition to a personal care allowance to hire their own attendant to provide the care needed.

Entitlement criteria**Initial entitlement assessment**

A home visit will be conducted to assess the personal care needs, if any, required by the worker to complete their activities of daily living. Information is also gathered regarding any special medical requirements.

The WSIB determines the worker's specific needs resulting from the work-related injury or illness using the WSIB-approved Activities of Daily Living Scale form. One of the five levels of care will be assigned to the worker, according to their score on the form.

Personal care attendant

Entitlement to a personal care attendant will be approved where the following two criteria are both met:

- the clinical evidence supports that the worker requires assistance or supervision to complete their activities of daily living on a temporary or permanent basis as a result of the work-related injury or illness, and
- the claim file information supports that a personal care attendant is necessary, appropriate, and sufficient to assist or supervise the worker in carrying out their activities of daily living on a temporary or permanent basis.

If a worker with a temporary need for personal care experiences a material change such that the need for personal care services becomes permanent, entitlement for a personal care allowance may be considered based on the criteria outlined below.

Personal care allowance

Entitlement to a personal care allowance may be considered where the worker meets the criteria for entitlement to a personal care attendant outlined above, and one of the following criteria are met:

- the worker has a work-related serious injury or serious illness
- the worker requires temporary personal care while undergoing treatment for a work-related serious illness, or

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- the worker does not live within geographic proximity of a personal care agency's service area as determined by the agency.

In choosing a non-agency attendant, the worker should ensure the attendant has received adequate training to provide the necessary care. The WSIB does not cover any costs associated with such training. Where a worker requires highly specialized care, the WSIB may require evidence of the attendant hired having received sufficient training before issuing the personal care allowance.

Levels of personal care

The initial entitlement assessment using the Activities of Daily Living Scale form as outlined above will determine which level of personal care is necessary, appropriate, and sufficient for the worker to complete their activities of daily living. The worker's overall score on the form will determine which level of care the worker is entitled to receive (see Appendix).

The five levels of personal care are:

Level 1: The person requires minimal assistance (once daily) or requires reminders or supervision to complete most of their activities of daily living.

Level 2: The person requires some assistance (twice daily) to complete most of their activities of daily living.

Level 3: The person requires intermittent assistance (three or more times daily) to complete most of their activities of daily living.

Level 4: The person requires significant assistance (every few hours) to complete most of their activities of daily living.

Level 5: The person requires total assistance (hourly) to complete most of their activities of daily living.

A seriously injured or ill worker may be entitled to an agency care attendant in addition to a personal care allowance to hire their own attendant to provide the care needed. In these cases, the care provided by the agency attendant is not included in the determination of the level of care covered by the allowance.

Transitional claims

Workers already receiving a personal care allowance as of [TBD] will continue to receive the total monthly allowance they were receiving as of [TBD], indexed annually.

Date of entitlement and payment

Entitlement to a personal care attendant and/or the personal care allowance starts from the date the worker begins to need the services of an attendant to complete their activities of daily living due to the work-related injury or illness, and the criteria outlined above are met.

Agency attendants

The rates for agency attendants are paid directly to the agency. The WSIB will pay an agency for care provided by an agency attendant prior to the date an entitlement decision is made up to the date of entitlement, based on the actual costs of the care provided.

Non-agency attendants

The personal care allowance is paid each month to the worker directly or to the worker through their power of attorney unless the worker or their power of attorney requests that the attendant be paid directly. In no cases shall a worker's power of attorney also be hired as the worker's attendant.

Payment for non-agency attendants is based on the WSIB monthly rates for each of the five levels of care. These rates are reviewed annually and may be adjusted to reflect changes in the cost of living and any other factors that have a direct impact on the rates. For up-to-date rates for the five levels of the personal care allowance, see 18-01-05, Table of Rates.

Generally, the WSIB also pays the personal care allowance rates to workers living outside of Canada. The WSIB adjusts these rates only if it is demonstrated that the amount properly and reasonably charged in the worker's community is significantly higher than the Ontario rate.

The WSIB will pay the worker for the personal care provided by a non-agency attendant prior to the date an entitlement decision is made up to the date of entitlement, based on the lesser of:

- the actual costs incurred for the care provided, or
- the amount associated with the level of care needed.

Hiring non-agency attendants

Workers who meet the criteria for the personal care allowance may hire one or more attendants to provide the assistance they require. An attendant could be a health care professional such as a nurse or personal support worker, or a spouse, family member, or friend.

According to the *Employment Standards Act*, all attendants are entitled to at least 11 consecutive hours free from performing work in each day. In addition, attendants are entitled to at least 24 consecutive hours free from work each week, or at least 48 hours free from work in every period of two consecutive work weeks. The *Employment Standards Act* also

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requires employers to pay an attendant overtime pay, or to provide paid time off work, for each hour that is worked over 44 hours in a work week.

The WSIB pays flat monthly rates corresponding with one of five levels of care, as outlined above, regardless of the numbers of hours the attendant works per week and/or whether the attendant is entitled to overtime pay. Therefore, the worker must hire an adequate complement of staff to meet their care needs in all situations (e.g., in cases where the worker requires more than 44 hours of care per week, or if an attendant goes on vacation, becomes ill or requires unplanned leave).

Continuation during hospitalization

For workers admitted to a hospital, the personal care allowance may continue for up to two months during the hospitalization. Hospitalization for more than two months is considered a material change in circumstances, and must be reported to the WSIB (see 22-01-02, Material Change in Circumstances - Worker). Failure to report a material change in circumstances could result in a benefit-related debt (see 18-01-04, Recovery of Benefit-Related Debts).

Continuation during attendant's annual paid break

Workers receiving the personal care allowance are required to provide their attendant(s) with up to two weeks of paid vacation once per year under the *Employment Standards Act*. The WSIB will continue to provide the personal care allowance during this two-week period to allow the worker to pay the attendant during their vacation.

With advanced notice from the worker, the WSIB will also cover the cost of an agency attendant while the worker's usual attendant is on vacation.

Registration as employer

A worker who receives a personal care allowance to hire an attendant(s) is considered the employer of the attendant(s). Employers have legal responsibilities under the provincial *Employment Standards Act*, *Workplace Safety and Insurance Act*, and the *Occupational Health and Safety Act*, as well as the federal *Income Tax Act*, *Canada Pension Plan Act* and *Employment Insurance Act*. Workers who employ a personal care attendant(s) are responsible for meeting the applicable provincial and federal statutory requirements of employers. Workers who receive a personal care attendant through an agency only and who do not receive the personal care allowance do not have these additional legal responsibilities.

A worker employing their own personal care attendant for any number of hours per week must register as required with the federal and provincial governments and make the appropriate remittances (i.e., CPP, EI, income tax). The WSIB reimburses the worker for the employer portion of these remittances.

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WSIB coverage is mandatory for all personal care attendants employed by an injured or ill worker for more than 24 hours per week under this policy. A worker employing their own attendant, including a family member, for more than 24 hours per week is automatically registered with the WSIB as an employer. The associated costs are paid for by the WSIB.

NOTE

Agency attendants are considered employees of the agency regardless of the number of hours they spend with a worker.

Bookkeeping fee

The WSIB reimburses a worker for bookkeeping costs to hire a professional to manage the worker's payroll and assist the worker in meeting their obligations as an employer, up to an annual maximum, if:

- the costs are related to the worker's role as an employer of their own personal care attendant(s), and
- the worker submits receipts.

The maximum bookkeeping fee is reviewed annually (for the current fee, see 18-01-05, Table of Rates) and may be adjusted due to the cost of living and any other factors that have a direct impact on such expenses.

Material change

A worker must advise the WSIB of any material change, e.g., a change in medical status, which may affect entitlement to the personal care allowance. Failure to report a change within 10 days of its occurrence may result in a benefit-related debt (see 18-01-04, Recovery of Benefit-related Debts, and 22-01-02, Material Change in Circumstances - Worker).

Reviews

Upon notice of a material change, the WSIB determines if a review is required to:

- assess ongoing entitlement to the personal care allowance, and/or
- evaluate the level of the monthly personal care needs.

Reviews may also be conducted if requested by the worker, the worker's health care professional, employer, or at the full discretion of the WSIB (e.g., periodically, as part of a random review, or where the WSIB receives information indicating the worker's condition has changed).

In most cases, a home visit will be conducted, and a new WSIB-approved Activities of Daily Living Scale form will be completed to determine what adjustments, if any, need to be made to the personal care allowance. Once the review is completed, the level of personal care may be changed, or discontinued.

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The WSIB only changes the personal care allowance if there is a change in the worker's need for assistance with their activities of daily living that results in a move of at least one level of care. If the personal care allowance is changed as a result of a review, the change becomes effective the month following the date of the WSIB review.

Claims prior to January 1, 1998

In claims with an accident date prior to January 1, 1998, a worker must have a permanent total disability or permanent total impairment to be eligible for a personal care attendant.

A worker will be considered to have a permanent total disability (in claims prior to January 2, 1990) or a permanent total impairment (in claims on or after January 2, 1990) if their disability or impairment meets the definition of a serious injury or serious illness in 17-06-01, Independent living and quality of life measures - Overview and definitions and is permanent.

In these circumstances, the worker may be entitled to a personal care attendant or allowance if the other criteria in this policy are met and:

- they have not previously had a personal care needs assessment, or
- they have experienced a significant deterioration since a personal care needs assessment was last carried out.

Application date

This policy applies to all decisions made on or after TBD, for entitlement periods on or after TBD, for all accidents.

Document History

This document replaces 17-06-05 dated August 1, 2007.

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17-06-05 dated October 12, 2004
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17-06-05 dated April 6, 2001
17-06-05 dated May 23, 2000
17-06-05 dated June 15, 1999
06-01-07 dated July 1989.

References**Legislative Authority**

Workplace Safety and Insurance Act, 1997, as amended
Sections 32, 33

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Workers' Compensation Act, R.S.O. 1990, as amended
Section 50

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