



Serious Injury Program Value-for-Money Audit Consultation – Phase 1

Stakeholder Submissions

September 16, 2022 to October 14, 2022

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October 2022

Workplace Safety & Insurance Board
Consultation Secretariat

Sent Via E-mail: Chris_Gurski@wsib.on.ca

Canadian Manufacturer's & Exporters (CME) appreciates the opportunity to respond to the Workplace Safety & Insurance Board's (WSIB) consultation regarding recommendations to its Serious Injury Program (SIP) and its collection of Independent Living Policies, which outline the requirements for accessing health care benefits and under the SIP.

The issue under consideration is Section 33 of the *Workplace Safety and Insurance Act, 1997*, (WSIA) which grants health care benefits to injured workers. The benefits granted are subject to the WSIB's discretion in that the extent of health care benefits are subject to what the WSIB considers necessary, appropriate and sufficient as a result of their injury. "Health care" is defined in s. 32 of the WSIA as follows:

- (a) professional services provided by a health care practitioner,
- (b) services provided by or at hospitals and health facilities,
- (c) drugs,
- (d) the services of an attendant,
- (e) modifications to a person's home and vehicle and other measures to facilitate independent living as in the Board's opinion are appropriate,
- (f) assistive devices and prostheses,
- (g) extraordinary transportation costs to obtain health care,
- (h) such measures to improve the quality of life of severely impaired workers as, in the Board's opinion, are appropriate.

For claims under the WSIA, based on the above definition of "health care", only (h) refers specifically to "severely impaired workers". This means that for benefits or services that fall under (h) the worker must be "severely impaired" to have entitlement (and it is up to the WSIB to define what "severely impaired" means). Conversely, for other types or health care benefits/services, such as Independent Living Devices, the legislation does not have such a requirement although such a requirement may be contained in WSIB policy.

A Value for Money Audit (VFMA) of the WSIB's SIP concluded that a review and refresh was required of the benefits related eligibility criteria and services provided for in the suite of Independent Living Policies to ensure they meet the needs of workers across the spectrum of service delivery, including seriously injured workers. The VFMA also recommended that the WSIB engage key stakeholders as part of the consultation.

CME supports the need to review the entitlement criteria for the benefits and services provided under the suite of Independent Living Policies to ensure that workers are being compensated, and to ensure that the program is meeting worker needs.

However, CME feels that the WSIB must ensure that any new policies developed, or policy amendments made, do not create inequities whereby some injured workers may not receive all the health care benefits and services that may be considered necessary, appropriate, and sufficient in their circumstances, while other injured workers may be eligible for benefits that may not be truly needed in their circumstances or not needed any longer. To achieve this objective, the Independent Living Policies must provide specific direction, and not be rooted in a subjective approach to determining benefit entitlement.

Rather than relying on an injured worker's level of permanent impairment/disability as the sole or primary criteria, CME supports adopting eligibility criteria for when an injured worker is "severely impaired" based on the medical (e.g., diagnosis) and functional definitions (e.g., ability to participate in day-to-day activities) and tools; this approach was identified as a leading practice in the value-for-money-audit of the WSIB's Serious Injury Program. We also suggest that:

- the WSIB consider adopting specific criteria for different types of injuries, where appropriate, to assist decision-makers in better aligning the benefits and services provided by the WSIB to the needs of individual injured workers; and
- if benefits such as the Independent Living Allowance and the Personal Care Allowance are to be offered on a temporary basis in some claims (e.g., certain acute care claims), this should be reflected in how the WSIB defines "severely impaired" for the purposes of these two benefit types to help ensure consistency.

Having clear eligibility criteria laid out in policies is key to guiding WSIB decisionmakers and ensuring consistency and equity in the system. In addition to the policies, the WSIB should have an Administrative Practice Document (or other public-facing guidelines) to help ensure that both workers and employers fully understand how such decisions are being made and what factors the WSIB generally considers.

CME supports the need to develop policy provision to provide Independent Living benefits on a short term or temporary basis. We believe that the Independent Living Allowance and the Personal Care Allowance should include mandatory periodic reviews, to be conducted at specific time intervals during the life of the claim, to ensure that entitlement to these benefits continues to be necessary, appropriate, and sufficient. This should be in addition to the existing provisions regarding reviewing entitlement to these two benefit types. We suggest that reviewing entitlement to these two allowances occur:

- 1) at scheduled dates, periodically during the life of the claim (note: if entitlement to these allowances is granted on a temporary basis, a more frequent review may be appropriate);
- 2) when the WSIB is notified of a material change that may impact entitlement to either of these allowances; and
- 3) upon request (from the worker, the worker's health care professional, or the employer) or at the WSIB's discretion.

CME believes that this periodic review will ensure that workers are being properly compensated while maintaining the integrity of the program where benefits extended may no longer be needed or may need to be changed.

In closing CME has always been supportive of a wage loss system which compensates injured workers fairly. We believe that the comprehensive recommendations we noted above will achieve fairness in compensating workers and ensuring that injured workers are being adequately compensated, and are not being overcompensated.

CME also strongly advocates that there be a Phase 2 to this consultation, and that this second phase include all employers. The reasons for this are twofold: employers are the sole funders of the workplace safety & insurance system and as such all benefit payments (enhanced or otherwise) impact employers' premium rates; and employers care about their injured workers and have a personal interest in ensuring they are being fairly and properly cared for when they have sustained injuries in their workplaces. Employers have the right to provide input on any new or enhanced SIP benefits being considered by the WSIB for implementation.

Thank you for the opportunity to provide the above comments.

Regards,

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October 14, 2022

WSIB's Consultation Secretariat
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Dear Consultation Secretariat,

The value for money audit – and this abbreviated consultation – is inadequate

The Board has the statutory obligation to evaluate proposed changes to ensure that the Act's purposes are achieved (WSIA s. 161(2)).

A value for money audit is not a substitute for this duty.

The value for money audit of the Board's serious injury program did not include consultation with a single injured worker. Nor did the auditors consult with workers' treating health care providers. Rather, the auditors [interviewed](#) WSIB staff and external service providers (whom the auditors framed as "stakeholders").¹

This current consultation – a consultation that may reshape its services to among the most vulnerable workers – is inadequate to meet the Board's statutory obligation. The Board has provided less than a month for stakeholders to provide submissions to the WSIB's Consultation Secretariat. It appears the Board is accepting only email submissions.

Many injured workers don't have reliable access to computers, the internet or email. Many don't read and write in English. Those with serious disabilities (the people who most need to respond) often need accommodations to participate meaningfully in consultations like this one.

The Board should conduct a real consultation – one that involves the workers who rely on its services. The Board should invite workers. It should offer the chance to provide submissions by live telephone or video-conference, or in person, or by mail or fax.

When the Board does this real consultation, it should re-write its description of the consultation background and questions. I placed the [VWSIB website about this consultation](#) into two readability calculators (see attached). It required **above a college level education** to understand. It was significantly harder to understand than the Harvard Law Review.

We can only assume that the WSIB doesn't want to hear what workers think. They have not bothered to explain the issues in plain language, so that workers can participate.

¹ Workplace Safety and Insurance Board – Value for Money Review – Serious Injury Program at Appendix C – Interviewees

Below we address a few of the main concerns we have heard from workers over the years. But, again, these submissions are not comprehensive and don't represent the views of injured workers themselves. IAVGO only just learned about the consultation. We have not had an opportunity to consult fully with our partners and with communities of workers. We would be happy to participate more fully once a real consultation happens.

The serious injury program is failing to serve workers

The value for money audit proves what workers have been saying for several years – the serious injury program is serving fewer workers, even as more workers are being injured. As the auditors observed, there was an 11.9% decrease in unique serious injury program claims despite a 19.5% increase in WSIB claims 2014-2018.² The auditors note this disparity but don't think about whether this decrease in service shows a failure in the efficiency and effectiveness of the Board's serious injury program. It does show such a failure.

The causes for the Board's failure are not hidden – the Board has changed its policies to reduce and deny NELs. This means that workers who used to get into the serious injuries program don't get in anymore. The Board has changed its policies to reduce NELs by subtracting out asymptomatic pre-existing conditions. And, the Board has been lowering NEL awards through its adjudicative practices. For example, it removed the medical assessments that used to ground the NEL determination process – rather than a comprehensive assessment by an independent doctor as contemplated by the WSIA (s. 47(3-8)), now the Board's own staff decide the amount of the NEL. These NEL assessments are often lower because they aren't as comprehensive as an actual medical report.

The Toronto Star highlighted this failure in 2016 in the attached article which states in part:

The Workplace Safety and Insurance Board program provides vital support for employees who are catastrophically hurt on the job, such as full-time care for those who have lost their independence, prosthetics and travel allowances for medical appointments. But the number of people admitted into it has plummeted 57 per cent since 2010 — down from 318 workers to 137 last year.

Critics say the plunge is related to the board's recent drive to cut workers' permanent impairment ratings by identifying pre-existing conditions and by often refusing to acknowledge long-term psychological problems. That means that fewer and fewer workers are deemed to be over 60 per cent impaired, the threshold needed to access the board's Serious Injury Program.

"It's very, very difficult to get anyone to 60 per cent. Even if you get 59.5 per cent, the board takes the position that you're not considered seriously disabled, which is ridiculous," said Airissa Gemma, a community legal worker with Industrial Accident Victims Group of Ontario (IAVGO).

...

² Workplace Safety and Insurance Board – Value for Money Review – Serious Injury Program at p. 37.

The Star also highlighted the case of Fernando Paul, 65, who was left incontinent and bound to a wheelchair after injuring his back in a workplace accident. But his impairment rating was reduced because the WSIB claimed he had degenerative disk disease in a different part of his spine, making him ineligible for the board's serious injury program. His wife must now care for him full time.

"She has to do everything for me. It's sad that we have to do this," he said.

"There's just simply been greater reluctance to recognize permanent impairments (at the board)," said Michael Green, a lawyer who has worked on behalf of injured workers for 30 years. Between 2012 and 2014, permanent injury awards dropped by 37 per cent, according to WSIB's own stakeholder reports.

"I'm pretty sure that people who have the objectively very serious physical impairments, people with quadriplegia and so on are still getting into the serious injury program. But they're narrowing everyone else," Green said.

This is Fernando Paul, a worker who was excluded from the Board's serious injury program because of the reduction of his NEL due to "pre-existing conditions", as pictured in the Toronto Star in 2016:



Fernando Paul, 65, now uses a wheelchair after injuring his back on the job. His impairment rating was reduced because the WSIB claimed he had degenerative disk disease in a different part of his spine, making him ineligible for the board's serious injury program. (ANDREW FRANCIS WALLACE / TORONTO STAR)

The serious injury program must include workers with multiple injuries

The value for money audit appears to suggest that the Board should re-define “severely impaired” or “serious injury” to something like a catastrophic injury program. The auditors suggest that “leading practices” don’t include aggregated scores or multiple conditions as severe impairments.³ Indeed, the auditors beg the question about the right threshold for the serious injury program by concluding – without any evidence or medical expertise – that “mild to moderate injuries that aggregate may not constitute severe impairment” (p. 29).

The idea that workers with multiple impairments are not seriously injured and should be excluded from serious injury program support is wrong because:

- The auditors either don’t know, or ignore, the fact that the Board already cuts NELs when a worker has multiple injuries. This is accomplished by the practice, set out in the AMA Guides, of “combining” impairments, by using a reduction formula, rather than adding impairments. This practice is designed to reduce any double-counting of restrictions where workers have multiple impairments. It means that workers already don’t get compensation for the full impact of their injuries. Now, the Board is relying on auditors who speculate that, even after this reduction leaves them with a NEL above 60%, they aren’t “really” severely disabled.
- Workers with multiple disabilities are often more vulnerable because disabilities have synergistic effects on their functioning. In the United States, judges have rejected the practice of “combining” disability ratings under the AMA Guides. Multiple disabilities often have a synergistic impact. In California, the Court of Appeals observed in *Kite v. Athens Administrators* (2013) 78 CCC 213 (writ denied) that injuries to both hips have a synergistic effect leaving a worker relatively more disabled than a worker who could compensate for a single injured hip.⁴
- In practice, excluding workers with multiple disabilities would exclude most workers who suffer work-related mental health disabilities. As the Board’s statistics reflect, it rejects the vast majority of claims for mental stress injuries (in 2021, it allowed 62 Schedule I claims for chronic mental stress and denied 925 claims, with a denial rate close to 90%). So, most workers with mental health injuries who have serious injury program support are those who have multiple disabilities – first a workplace physical injury and then a mental health injury as a result.

The threshold for the serious injury program should be lowered

The Board should maintain a designated threshold for automatic entry into the serious injury program, but it should be lowered significantly.

³ Workplace Safety and Insurance Board – Value for Money Review – Serious Injury Program at p. 29, 31.

⁴ “California: Combined Values Chart – Guide or Mandate?” at

<https://www.lexisnexis.com/legalnewsroom/workers-compensation/b/recent-cases-news-trends-developments/posts/california-combined-values-chart-guide-or-mandate>

The current 60% threshold is inadequate for many reasons including that:

- As described above, the Board has been finding policy and practice ways to arbitrarily lower NELs. As a result, it has artificially reduced the number of workers who get serious injury program support.
- The 60% threshold excludes most workers whose main or only injury is psychological. The [rating scale](#) for mental health injuries places someone with a “moderate” level of impairment – one that leaves them “homebound or even roombound at frequent intervals” – at a maximum 45% NEL.
- The 60% threshold makes no sense when one considers that a person with a complete immobility of the spine can get at most a 30% NEL.

There should be a path for entry into the serious injury program below the set threshold

While a threshold system for automatic entry into the serious injury program is efficient, and should be maintained, there should be a mechanism for workers below that threshold to qualify for the serious injury program where the evidence shows that they have a serious level of impairment.

The Board, in a real consultation process, should work with workers and other stakeholders (actual stakeholders, not WSIB managers) to develop the criteria for below-threshold admission.

We would suggest that the medical community also be involved in developing these additional criteria. The WSIA requires the Board to monitor developments “so that generally accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies in a way that is consistent with the purposes of this Act” (WSIA s. 161 (3)). “Health care” is broadly framed in the WSIA (s. 32) and workers are entitled to such health care as is “necessary, appropriate and sufficient” as a result of the injury (s. 33). It is becoming well-understood in medical literature and among leading medical communities that the social determinants of health play a critical role in health – the [Ontario Medical Association](#), for example, observes that social determinants of health account for between 30 and 55 per cent of health outcomes.⁵ Therefore, when considering the health care an injured worker needs, or the severity of their impairment for the purposes of serious injury program support, the Board should consider how the social determinants of health may affect their health and recovery, and provide additional supports as needed. For example, an injured worker who has precarious housing before injury, and now is struggling to deal with a serious back injury on top of that precariousness, may need additional services to recover.

⁵ <https://www.oma.org/uploadedfiles/oma/media/public/prescription-for-ontario-doctors-5-point-plan-for-better-health-care.pdf> at p. 8.

The Board's current policy suite creates confusion and results in denial of benefits to workers who need them

The Board should revise its policies to clarify that all injured workers, regardless of NEL quantum, are entitled to health care as “necessary, appropriate and sufficient” as a result of the injury (s. 33). The Board's current [Independent Living](#) policy suite wrongly seems to limit many health care services to injured workers unless they meet the “severely impaired” threshold.

As a result, workers are denied supports they need if they don't qualify for the serious injury program. These workers have been forced to appeal to the Workplace Safety and Insurance Appeals Tribunal for basic supports like a motorized scooter – see recently [Decision No. 294/22](#), 2022 ONWSIAT 363 (CanLII). In that case, the Vice-Chair observed that the Board had denied the worker a motorized scooter, despite evidence he needed it, solely because he wasn't a seriously injured worker with a 60% NEL. The Vice-Chair held that the worker was entitled to the scooter, despite having a 48% NEL, because it was necessary health care. He referenced a series of similar cases where workers were required to appeal to the Tribunal for health care entitlements because they weren't at a 60% NEL.

Offer to participate in a further consultation process

As discussed above, IAVGO is willing to participate in a further, real, consultation that involves workers meaningfully. The serious injury program is important to workers. They must have a say.

Yours truly,
IAVGO Community Legal Clinic



Per: Maryth Yachnin

Appendix “A”: About IAVGO

The Industrial Accident Victims’ Group of Ontario is a community legal aid clinic that has been funded as such for more than 40 years by Legal Aid Ontario.

IAVGO provides direct client services to disabled workers who have been injured on the job, and to the families of those who have been killed on the job. IAVGO’s clients are located throughout the province. Many of our clients live in rural and remote areas of Ontario.

Our clients include some of the most vulnerable workers in Ontario. Every one of our clients, with the exception of survivors of workers who have died, is a person with a disability or multiple disabilities. All are low-income, often living in poverty as a result of their inability to continue working.

Most of our clients also have at least one of the following characteristics:

- Racialized
- Live in rural and remote areas of the province
- Limited ability to read or write
- Little or no English language skills
- Low levels of education: usually high-school or below
- Mental health conditions including depression, post-traumatic stress disorder, or addiction
- No or limited Canadian immigration or citizenship status
- Little or no job security both before and after the accident
- Precarious housing or homelessness

IAVGO has a special expertise in representation of precariously employed workers, and providing public legal education about the impact of a changing economy on precariously employed workers. For many years, we have worked alongside migrant workers to improve their ability to equitably access compensation following workplace injuries

Readability Analyzer

Estimates the readability of a passage of text using the Flesch Reading Ease, Fog Scale Level, Flesch-Kincaid Grade Level, and other metrics.

Passage to Analyze:

Under the Workplace Safety and Insurance Act, 1997 (WSIA), the WSIB is required to have an external firm review the cost, efficiency, and effectiveness of one or more WSIB programs through a value-for-money audit (VFMA). The WSIB's Serious Injury Program (SIP) was the focus of a recent VFMA.

The SIP provides people who experience serious injuries at work with the specialized treatment, equipment, and services they need to enable functional recovery; support return to work where possible; facilitate independent living to the extent possible; and improve quality of life.

The main conclusion of the Serious Injury Program VFMA is that the program demonstrates value for money. To further improve the program's performance, recommendations were made across nine themes. The following observation (observation three) and recommendation (recommendation one) appear under theme 5.5, Policies, processes, and procedures: Observation summary: Specific policies have not been reviewed to determine if threshold criteria and benefits continue to match the needs of injured workers, and have not been updated to reflect changes in the needs of injured workers and/or workers' needs. Recommendation: Review and refresh benefits related eligibility criteria and services provided for in the suite of benefits policies to ensure they meet the needs of workers across the spectrum of service delivery, including seriously injured workers. As needed, engage key stakeholders as part of the consultation.

As identified in the VFMA, leading practice for eligibility criteria is to base severe impairment criteria on medical (e.g., diagnosis) and functional definitions (e.g., ability to participate in day-to-day activities) and tools, rather than solely or primarily a permanent impairment rating (whether through a single or multiple claims). Most Canadian workplace compensation boards consider the person's needs and reduced abilities resulting from their work-related injury or illness, rather than an impairment percentage, when determining entitlement to benefits and services similar to those provided for in the independent living policy suite. The boards that do identify an impairment percentage as part of their criteria will still consider providing benefits and services despite the permanent impairment percentage in some circumstances.

The VFMA and its recommendations present the opportunity to assess whether the current entitlement criteria result in people with serious work-related injuries being provided with the personalized benefits and services they need for improved recovery and return to work outcomes, to facilitate independent living, and to improve quality of life.

The VFMA identified the challenges that exist with the independent living policy suite; challenges that SIP staff have validated. The common challenge underlying the suite as a whole is the "severely impaired" threshold that forms part of the entitlement criteria for most of the benefits and services covered in the policy suite. Noting this, the policy review will occur in two phases: Phase one: The WSIB will seek information from stakeholders to support its analysis of the entitlement criteria for the benefits and services provided for in the independent living policy suite with a focus on the severely impaired threshold. Phase two: The WSIB will share its findings from phase one, and, if applicable, the refreshed entitlement criteria being recommended as a result. Revisions to improve the consistency and equity of benefits and services may also be proposed at this time. Background WSIB Serious Injury Program

The SIP is for people who experience a serious work-related injury (including those who are severely impaired as defined in the Operational Policy Manual).¹ The serious injury may result from a single incident, or a worsening of a prior impairment, or an accumulation of multiple impairments. Generally, this would be: a new catastrophic work-related injury (e.g., certain spinal cord injuries, major amputations, industrial blindness, extensive burns, moderate and severe brain injuries) with an anticipated non-economic loss (NEL) benefit of 60 per cent or greater, a new significant work-related injury that meets the criteria for acute care (e.g., certain bilateral fractures, bilateral hand burns, certain brain injuries), a 60 per cent NEL under one or more claims, a 60 per cent NEL equivalent after a composite rating which combines NEL and permanent disability (PD) benefits, or an injury prior to January 1, 1990, and a PD benefit of 100 per cent. Legislation

A person who experiences a work-related injury or illness is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury or illness and as determined by the WSIB. The WSIA (s.32) provides that health care means: professional services provided by a health care practitioner; services provided by or at hospitals and health facilities; (prescribed) drug; the services of an attendant; modifications to a person's

home and vehicle and other measures to facilitate independent living as in the Board's opinion are appropriate assistive devices and prostheses extraordinary transportation costs to obtain health care such measures to improve the quality of life of severely impaired workers as, in the Board's opinion, are appropriate.

Many of the aforementioned forms of health care are oriented toward recovery, to the extent possible, from the injury or illness itself (e.g., prescribed drugs) or minimizing the functional impact of the injury or illness (e.g., assistive devices and prostheses). These forms of health care are broadly available to all people with work-related injuries or illnesses, provided the WSIB finds they are necessary, appropriate and sufficient as a result of the injury or illness.

In addition to these more broadly available forms of health care, the WSIB has discretion to provide coverage for measures its finds are appropriate to: a) facilitate independent living and b) improve the quality of life for those with severe impairments. The WSIA does not define independent living, quality of life, severe impairment, or serious injury. Policy framework

The OPM includes a suite of policies that provide guidance about the benefits and services the WSIB has determined are appropriate to facilitate independent living and/or quality of life: the independent living policy suite.

These benefits and services are primarily available to injured people within the SIP. Most of these benefits and services require that the severely impaired threshold is met. However, not all injured or ill people in the program meet that threshold, particularly those in the acute care stream, and are therefore not eligible for many of these benefits and services.

Independent living policy suite Policy Entitlement criteria

17-06-02, Independent Living Allowance

Severely impaired

17-06-03, Independent Living Devices

Severely impaired + benefit/service specific criteria*

17-06-04, Guide and Support Dogs

Severely impaired + benefit/service specific criteria

17-06-05, Personal Care Allowance

Severely impaired + benefit/service specific criteria

17-06-06, Home Care

Benefit/service specific criteria

17-06-07, Vehicle Modifications

Benefit/service specific criteria

17-06-08, Home Modifications

Severely impaired + benefit/service specific criteria

* Details about the benefit/service specific criteria are available in Appendix one: Entitlement criteria for independent living policy suite Severely impaired entitlement threshold

Most of the benefits and services provided for in the independent living policy suite include the severely impaired threshold as part of the entitlement criteria. An injured person is considered severely impaired if their disabilities/impairments are: permanent and have been rated for either PD benefits totaling at least 100 per cent, or NEL benefits totaling at least 60 per cent, or likely to be permanent in the opinion of a WSIB medical consultant, and are likely to meet one of the criteria above.

The origins of the severely impaired threshold can be traced back to the pre-1989 Act², which provided for "such other treatment, services or attendance as may be necessary as a result of the injury for those rendered helpless through permanent total disability", which was interpreted as being a 100 per cent PD rating. The 100

per cent PD rating was thus established as the threshold for those benefits and services available to people with the most serious injuries.

The pre-1997 Act³ contained a similar provision to that in the pre-1989 Act, but identified people "rendered helpless through permanent total impairment". The WSIA references neither total disability nor total impairment. Rather, the WSIA provides for health care measures specific to injured people with severe impairments.

The use of the 60 per cent threshold for NEL ratings (versus 100 per cent for PD ratings) arises from the difference between permanent disability and permanent impairment. As outlined in the pre-1997 Act, "disability" means "the loss of earning capacity of the worker that results from an injury", while "impairment" means any "physical or functional abnormality or loss (including disfigurement) which results from an injury and any psychological damage arising from the abnormality or loss", and does not take into consideration the impact on ability to earn.

The basis for rating PDs is the Ontario Rating Schedule that estimates the impairment of earnings capacity in an average unskilled worker in more traditional jobs⁴. The basis for rating permanent impairments is the American Medical Association's Guides to the Evaluation of Permanent Impairment, Third Edition (Revised) (AMA Guides) that assesses "what is wrong with a body part or organ system and its functioning"⁵ as opposed to the impact of the impairment on employability. Of note, neither rating tool specifically measures the impact of the impairment on the person's ability to carry out their activities of daily living and other activities outside of employment. Very few medical conditions are assessed as 100 per cent under the AMA Guides. Requiring a 100 per cent NEL rating would result in people with injuries the same as or similar to those rated at 100 per cent PD not having access to the same benefits and services. To address this, the WSIB sought to identify a NEL threshold that was equivalent to 100 per cent PD. It was concluded that setting the threshold at 60 per cent NEL would result in similar benefits being available for similar groups of injured people under both the PD and NEL systems. Opportunity

The severely impaired threshold is a policy requirement for entitlement to certain health care benefits and services. While the threshold has been used as a way to identify which claims should be managed in the SIP, admittance into the program appropriately is not set out in policy. This is because the criteria for entitlement to the health care benefits and services set out in policy and the criteria for having a claim managed in the program are not necessarily the same.

In the past, admittance into the program was limited to those already rated or likely to be rated as meeting the severely impaired threshold. More specifically, catastrophic injuries, cumulative NELs/PDs, and worsening NELs/PDs were managed in SIP. The scope for admittance into the program has since expanded to include those with an injury meeting the criteria for acute care: those with a significant injury that temporarily requires specialized benefits and services similar to those required by an injured person who meets the severe impairment threshold.

People with injuries meeting the criteria for acute care often have immediate and significant needs given the impact of the work-related injury on their basic activities of daily living (ADLs). However, once maximum medical recovery is reached in these cases, the resulting permanent impairment does not usually meet the severely impaired threshold. The SIP temporarily manages these claims, immediately following the injury and up until the injured person reaches independence in their ADLs (typically up to nine months).

The benefits and services provided for in the independent living policy suite were not subject to a corresponding substantive review at that time, to take into consideration this change in scope for admittance into the program. Thus, while the SIP is able to leverage the benefit of the program's specialized and dedicated case management in these acute care claims, the severely impaired threshold limits the benefits and services available in these claims relative to others in the program. This, despite the fact that an injured person with an acute care claim actually may have similar or greater limitations and needs than others in the program, whether on a temporary or permanent basis.

As suggested in the VFMA, using the severely impaired threshold may be contributing to a misalignment between people's needs and the benefits and services to which they are entitled, as demonstrated by the two personas below.

Some injured people in the SIP are not considered for entitlement to benefits and services that could improve functional outcomes, return-to-work outcomes (where applicable), independent living and quality of life.

Evan sustains a traumatic injury at work, requiring a foot amputation. Evan has a spouse and young child, lives in a house on a large property, and is the sole driver and earner for the family. In the acute phase of the injury, Evan is unable to drive or help around the house or with child care. Evan's spouse is overwhelmed, adjusting to

the new reality brought on by the workplace accident, caring for their child, and keeping the household running, all without the ability to make use of their personal vehicle. Because Evan's anticipated permanent impairment rating is 28 per cent, much lower than the 60 per cent necessary to qualify for severe impairment benefits and services, Evan does not qualify for the independent living allowance (ILA). The ILA could help Even to cover expenses such as taxis, child care, and help around the house during the acute phase of recovery.

Some injured people in the SIP are considered for entitlement to benefits and services they need and to benefits and services they may not necessarily need.

Sam experiences a number of different work-related injuries over the years resulting in two different permanent impairments whose ratings total 65 per cent. Sam is widowed and lives alone in a condo. Sam now has some difficulties with activities of daily living due to the cumulative impact of the injuries. Following discharge from the hospital for the most recent injury, Sam receives a personal care allowance (PCA) and independent living devices (ILDs) to assist with the activities of daily living. While it is not yet clear whether Sam will require assistance additional to the PCA and ILDs to maintain their independent living and quality of life, Sam automatically qualifies for the independent living allowance (ILA) due to the 65 per cent permanent impairment rating. Sam is able to spend the ILA as they see fit to improve their independence and quality of life.

The VFMA and its recommendations present the opportunity to review the scope of benefits and services provided to people in the SIP and the associated entitlement criteria. In particular, to consider whether the current entitlement criteria result in people with serious injuries receiving the personalized benefits and services that: improve recovery and return to work outcomes facilitate independent living and improve quality of life by enabling participation in all aspects of life. Questions for stakeholders

Below are questions about entitlement criteria, as well as the timing and duration of entitlement. Responses to these questions will support the WSIB's review and analysis of entitlement to the benefits and services provided for in the independent living policy suite. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite? Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness? Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness? Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis? Immediately following a work-related injury or illness, treatment and recovery are the primary focus. At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered? At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered? Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change? Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are? Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries? Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries? How to respond

We invite interested stakeholders to respond to any of the questions to help support our review. All stakeholder feedback is valuable to us and we will consider it carefully.

Please submit your response to the WSIB's Consultation Secretariat. Written submissions will be accepted until Friday, October 14, 2022. We look forward to hearing from you.

Please note that all stakeholder submissions will be posted on this page following the consultation.

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We recommend focusing on the passage as a whole, rather than individual sentences when looking to improve readability. Be careful when iteratively tweaking a passage not to fall into the trap of writing for the formula. Writing to the formula could lead passages that contain shorter, choppy sentences that are actually more difficult to read despite receiving a better score.

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Fernando Paul, 65, now uses a wheelchair after injuring his back on the job. His impairment rating was reduced because the WSIB claimed he had degenerative disk disease in a different part of his spine, making him ineligible for the board's serious injury program. (ANDREW FRANCIS WALLACE / TORONTO STAR)



GTA

Fewer workers getting help for 'serious injuries,' statistics show

Critics blame systemic reduction in fair compensation, but WSIB says plunge due to drop in claims.

By Sara Mojtehdzadeh Work and Wealth reporter

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GTA

Fewer workers getting help for 'serious injuries,' statistics show

Critics blame systemic reduction in fair compensation, but WSIB says plunge due to drop in claims.

By **Sara Mojtehdzadeh** Work and Wealth reporter

 Sun., July 3, 2016 |  3 min. read

READ THE CONVERSATION

The number of workers accepted into a serious injury program that dramatically improves their access to medical care has been cut by more than half over the past five years, according to statistics requested by the Star — part of what critics call a systematic reduction in fair compensation for vulnerable Ontario workers.

The Workplace Safety and Insurance Board program provides vital support for employees who are catastrophically hurt on the job, such as full-time care for those who have lost their independence, prosthetics and travel allowances for medical appointments. But the number of people admitted into it has plummeted 57 per cent since 2010 — down from 318 workers to 137 last year.

Critics say the plunge is related to the board's recent drive to cut workers' permanent impairment ratings by identifying pre-existing conditions and by often refusing to acknowledge long-term psychological problems. That means that fewer and fewer workers are deemed to be over 60 per cent impaired, the threshold needed to access the board's Serious Injury Program.

"It's very, very difficult to get anyone to 60 per cent. Even if you get 59.5 per cent, the board takes the position that you're not considered seriously disabled, which is ridiculous," said Airissa Gemma, a community legal worker with Industrial Accident Victims Group of Ontario (IAVGO).

In response to questions from the Star, the WSIB attributed the decrease in the number of workers referred to its Serious Injury Program to an overall decrease in the number of claims filed at the board. In 2010, there were around 238,000 registered claims while in 2015 there were about 229,000, a 4 per cent decline. The board also said there has been a steady reduction in the number of workers with permanent impairments.

Ad : (0:13) ?

In an ongoing investigation into WSIB practices, the Star has previously reported on an apparent shift in culture in how it evaluates permanent impairments — legitimized, critics say, by a 2012 [report](#) written by a U.S.-based doctor now embroiled in legal trouble south of the border. A Hawaii-based lawsuit, in which claims have not been proven in court, alleges that doctor helped a private insurance company unfairly slash accident victims' medical benefits.

The Star also highlighted the case of Fernando Paul, 65, who was left incontinent and bound to a wheelchair after injuring his back in a workplace accident. But his impairment rating was reduced because the WSIB claimed he had degenerative disk disease in a different part of his spine, making him ineligible for the board's serious injury program. His wife must now care for him full time.

"She has to do everything for me. It's sad that we have to do this," he said.

"There's just simply been greater reluctance to recognize permanent impairments (at the board)," said Michael Green, a lawyer who has worked on behalf of injured workers for 30 years. Between 2012 and 2014, permanent injury awards dropped by 37 per cent, according to WSIB's own stakeholder reports.

"I'm pretty sure that people who have the objectively very serious physical impairments, people with quadriplegia and so on are still getting into the serious injury program. But they're narrowing everyone else," Green said.

In a statement to the Star, the WSIB said that in the vast majority of cases, workers were accepted into the serious injury program before they are assessed for permanent impairments. "Focusing on early medical intervention and active treatment can often restore the worker to their pre-injury level of function and contributes to fewer workers developing permanent impairments due to their injuries," the statement said.

"We're saying no, you're just reducing their awards due to 'pre-existing conditions,'" said John McKinnon of the Injured Workers Consultants. "It looks to us to be part of the general austerity program at the board over the last five years."

Gemma said she did not know why workers must be deemed as 60 per cent impaired to be eligible for the serious injury program, a figure she calls "arbitrary."

"Fifty-nine per cent is just as disabled as 60 per cent. . . I really don't understand the 60 number. Your guess is as good as mine," she told the Star.

As for the board's contention that fewer workers in the province are sustaining permanent injuries, Gemma says her organization has seen no evidence of it — her legal clinic is still overwhelmed by the number of injured workers seeking help.

"I'll be very simple. To me, that's a lie."

SHARE:

October 14, 2022

WSIB Consultation Secretariat
200 Front Street West
Toronto, Ontario M5V 3J1

Sent by email to: consultation_secretariat@wsib.on.ca

Dear Consultation Staff,

Re: Consultation on Serious Injury Program and Independent Living Policy Suite

Injured Workers Community Legal Clinic (IWC) is a legal aid clinic with a province-wide mandate. We have specialized in the area of workers' compensation since 1969. As a legal aid clinic, our services are provided at no charge to people with little or no income. In addition to legal advice and representation, our mandate includes community development, public legal education, and participation in law and policy reform.

We are pleased to provide input regarding the WSIB's Serious Injury Program (SIP) Value-for-Money Audit (VFMA) Review of the Independent Living policy suite. We would however note that the VFMA audit did not provide an opportunity for input from the injured worker community, and that the very short period given to provide feedback now is insufficient to adequately address these important issues.

- *We recommend that the WSIB and organizations which it hires should be diligent about providing adequate opportunities for consultation.*

Furthermore, we note with concern that the WSIB has increasingly used Value for Money Audits in order to review its programs. We do not believe this is an appropriate tool with which to assess a public social safety net. VFMA's inherently approach issues from a financial, cost savings, and efficiency perspective.

- *The WSIB's programs should be evaluated on the basis of justice, fairness, basic human rights, and whether the WSIB is fulfilling its legal obligations to injured workers.*

That being said, we are always interested in providing input to the WSIB in the hopes that its programs will be adjusted to ensure full justice for injured workers.

Independent Living Support is for All Injured Workers in Need

A very important preliminary point we would like to make is that almost all of the benefits outlined in the Independent Living Policy Suite, including support for independent living, necessary home or vehicle modifications, and other health care benefits such as support from a personal attendant or assistive devices, legally are and should continue to be available to all injured workers - not only those defined by the WSIB as “severely impaired.” The restriction on benefits to severely impaired workers, meaning those uniquely available to that subset of workers, only relates to the specific benefit for improving the quality of life mentioned in s. 32(h) of the *Workplace Safety and Insurance Act* (WSIA).

To be clear, we are referring to the fact that ss. 32 (a-g) and 33 of the WSIA outline what “health care benefits” are available to all injured workers:

- 32 In this Part,
“health care” means,
- (a) professional services provided by a health care practitioner,
 - (b) services provided by or at hospitals and health facilities,
 - (c) drugs,
 - (d) the services of an attendant,
 - (e) modifications to a person’s home and vehicle and other measures to facilitate independent living as in the Board’s opinion are appropriate,
 - (f) assistive devices and prostheses,
 - (g) extraordinary transportation costs to obtain health care,
 - (h) such measures to improve the quality of life of severely impaired workers as, in the Board’s opinion, are appropriate. 1997, c. 16, Sched. A, s. 32.

Entitlement to health care

33 (1) A worker who sustains an injury is entitled to such health care as may be necessary, appropriate and sufficient as a result of the injury and is entitled to make the initial choice of health professional for the purposes of this section.

As you can see, unlike section 32(h), Section 32(e), for example, is not restricted to “severely impaired workers”. It provides for “modifications to a person’s home and vehicle and other measures to facilitate independent living as in the Board’s opinion are appropriate”. This shows the original intention of the legislature to provide an independent living allowance more broadly than a quality of life allowance to those injured workers whose needs are appropriate for the allowance.

In practice, our clinic has seen the WSIB (and WSIAT) approve lots of requests for items covered by s.32 (a) to (g), such as home and vehicle modifications and scooters, for injured workers

below the SIP threshold. We have however also had the occasional experience of injured workers being denied assistive devices, for example, with the rationale that the injured worker is not part of the SIP. This is wrong, and the policies should be clarified to avoid injured workers having to fight through the appeal process to get the support and care to which they are legally entitled.

- *The Independent Living Policy Suite should explicitly reference the fact that any injured worker, not only those in the SIP, may be entitled to the service or benefit to which the policy relates, other than measures to improve quality of life, which falls exclusively within the scope of s. 32(h).*

We would note that the independent living allowance (ILA) is badly named if it is meant to apply to only those in the SIP, since, as you can see from s. 32(e), all injured workers are entitled to measures which facilitates independent living. While the ILA policy does list examples of items or services which relate to “quality of life” and are therefore uniquely available to those in the SIP (e.g. hobby equipment), the policy also gives examples of services/care which should not be uniquely available to those in the SIP because they are necessary for independent living (e.g. housekeeping, snow shovelling...).

Since the legislation does not restrict support related to independent living to serious injuries, one way to address this might be to pro-rate the ILA based on NEL rating up to the SIP threshold (so that those in the SIP always get the full ILA amount. In other words, if the SIP threshold was lowered to a more appropriate 40%, injured workers whose permanent impairment rating is between 10% and 39% could be given a partial independent living allowance that is linked to their percentage of impairment. The details of this and review of other options should of course be canvassed with the wider community through a real and substantive consultation.

In summary, we presume that benefits under s. 32 (a) to (g) will continue to be available to all injured workers on the basis of need, and that when this consultation refers to serious impaired workers and the serious injury program, we are only looking at “quality of life” benefits and access to specialized staff under s. 32 (h). We believe the existing policies should be amended to explicitly state this, in order to comply with the legislation.

Criteria for Admittance to the SIP

Our basic position is that there should be a hybrid approach to admittance into the SIP. Injured workers above a specified NEL (or PD) percentage should automatically qualify for the SIP. In addition, there should be discretionary admittance to injured workers below the specified

threshold based on need (with exact criteria to be established after further, more rigorous consultation).

An individualized assessment of each injured workers' needs and abilities would be consistent with the obligation to determine each case on the basis of the merits and justice and would enable the Board to recognize the individual circumstances of each injured worker. Two people may have the same disability rating but very different needs to support independent living. Two people may have the same needs but very different disability ratings. A 20% and a 70% disability may both leave the injured worker unable to shovel snow, paint his or her house, drive a car etc.

However, too much individualized assessment can be drain on administrative resources. Workers' compensation funds are directed away from injured workers. An individualized assessment system can only succeed if injured workers have confidence in the decision makers and the decision-making process. For a significant number of injured workers, that trust is not there. It is likely that many individualized assessments would be appealed, unless they gave the maximum to the injured worker. A decision-making system that costs more to operate than it pays out to injured workers would be wasteful. Injured workers have said that they want as much certainty, and as little discretion as possible, while still allowing for the merits and justice of the case.

A threshold type system, like the current SIP, is open, simple to apply, and provides certainty. That is why we advocate for the continued use of such a system. However, we recommend a hybrid approach with additional discretionary admittance to address the fact that relying solely on a threshold approach has unfairly left out many injured workers who deserve the additional care and benefit available through the SIP. Workers with relatively low NEL impairment ratings may be receiving full Future Economic Loss benefits or Loss of Earnings benefits because they are completely unable to work. These injured workers may merit admittance into the SIP and the full ILA amount, regardless of whether they meet the threshold percentage. And beyond those cases, there are also workers with disabilities such as repetitive strain injuries who have relatively low awards for NEL/PD but major difficulties with independent living. They may be unable to cook, or pick up their children or paint their apartments or do any more than drag themselves to work and then go home to rest. There must still be an opportunity to request an individualized assessment in some circumstances.

- *We recommend that discretionary criteria be developed with further, more rigorous consultation with the injured worker community and a review of what type of people/injuries should be captured within the program that might otherwise be missing using only the threshold approach.*

In terms of where the line should be drawn under the threshold system, we believe that 60% is too high.

- *We recommend that the threshold percentage be lowered after more thorough review and consultation.*

For example, under the AMA Guide currently in use, 30% represents the maximum award for an injury to the spine. It would be reasonable that a person with a permanent injury to the spine rated at the most extreme level recognized by the WSIB rating scale should be considered to have a serious injury. Another example is that the WSIB's policy for "Assessing Permanent Impairment Due to Mental and Behavioural Disorders" describes a person with a 40-45% psychological NEL as someone whose "everyday activities [are] restricted to such an extent that the worker may be homebound or even roombound at frequent intervals." These are but two examples of situations where workers should likely be classified as "seriously injured" but are excluded from the SIP as a result of the current threshold.

Cost & Amount of the ILA

We believe it is very beneficial for seriously injured workers to have a discretionary and reliable amount of money that they can use to improve their quality of life. Injured workers have told us time and time again how stressful it is to continually have to deal with the WSIB. One injured worker recently "joked" that they wish they could get a divorce from the WSIB, as a way of explaining their frustration at being stuck in a relationship with the WSIB which they no longer wanted. This experience of interactions with the WSIB negatively impacting injured workers' mental health has been validated in a recent study by the Institute for Work and Health entitled "The Association Between Case Manager Interactions and Serious Mental Illness Following a Physical Workplace Injury or Illness: A Cross-Sectional Analysis of Workers' Compensation Claimants in Ontario".

- *For this and other practical reasons, the ILA should continue to be a fixed, universal sum, but the WSIB ought to consider increasing the amount as it does not realistically reflect the cost of living/services/equipment it is meant to cover.*

While we fundamentally disagree with making decisions about workers compensation entitlements based on cost, we know that the cost of expanding any benefit will always be a consideration for the WSIB. We would therefore like to point out that relatively few permanent impairment awards are made and those awards are relatively low. WSIB statistics show that roughly 1 in 10 allowed claims receive a permanent impairment award. For example, there were 118,451 allowed claims in the year 2021. There were 15,508 NEL awards given that year. These are not the same cases but the proportion is evident.

And NEL awards have significantly decreased over the years. NEL payments peaked in 2008 at \$129.4 million, but by 2016, they dropped to \$40.1 million. After that the numbers increased slightly, and by 2021 NEL payments reached \$65.6 million. This lowering dollar figure almost certainly corresponds to significantly lower NEL percentages being awarded (which is very concerning and should be reviewed by the WSIB to ensure fairness and adequately meeting its legal obligations to compensate injured workers).

In other words, the number of 60% or greater NEL awards made by the Board is extremely limited. In other words very few injured workers qualify for the SIP. In fact, the VFMA noted that the serious injury program is serving fewer workers, even as more workers are being injured. As the auditors observed, there was an 11.9% decrease in unique serious injury program claims despite a 19.5% increase in WSIB claims 2014-2018.

Therefore, a system that expands entitlement to the full and SIP to permanent impairment/disability ratings above a reasonable threshold and allows additional discretionary admittance will introduce a much needed element of fairness and respect for injured workers dignity and independence without significant cost consequences for the Ontario WSIB.

It is also worth noting the fact that employers have recently received significant premium reductions/rebates. Any attempt to limit rather than expand entitlement to injured workers at this point in time would be grossly unfair considering the broader financial trends at the WSIB. The average premium rate per \$100 of insurable earning was \$2.59 in 2016 and declined to \$1.30 in 2022. This represents a 49.8% reduction in 6 years. Furthermore, approximately \$1.5 billion was refunded to employers this year. In short, employers have received billions of dollars in premium rate reductions and refunds, while injured workers have received no additional benefits or services. In no way should the WSIB be looking to impose further austerity on injured workers via cutbacks in essential programs and services such as the ILA and SIP. Rather, it should be looking to expand such entitlements.

Timing and Review of Benefit Availability

The effect of a workplace injury and an injured worker's legal entitlements under the WSIA start on the date of the workplace accident.

- *Therefore, benefits and services in the independent living policy suite should be considered from the date of accident.*

Injured workers should not have to wait until their injuries or needs are permanent in order to receive benefits and services to facilitate independent living. There is no time limit in WSIA on

health care and nothing that would require time to pass before benefits and services are provided.

There are many situations in which additional support immediately after a traumatic accident will be required on a short-term or temporary basis while the injured worker recovers.

- *In those instances where a person is projected to require assistance with independent living or additional healthcare on a temporary basis, or where it is unclear if those needs are permanent, it is appropriate to review a person's eligibility for such benefits. However, there should be no ongoing reviews of a person's entitlement to such benefits or eligibility to the SIP once they have been assessed for a NEL and their condition is deemed permanent.*

Just as there is a lock in date for loss of earnings benefits, there should be no review of eligibility or entitlement more than 72 months after the injury unless there is a deterioration of an injured worker's condition.

- *An injured worker who has deteriorated or suffered a new workplace accident should be reviewed for eligibility for further benefits and admittance into the SIP.*

We see no logical basis for limiting entitlement to single accidents. A person's needs would be the same whether they became a quadriplegic from one workplace accident or two.

Conclusion

In short, our recommendations can be summarized as follows:

- The Independent Living policy suite should explicitly reference the fact that any injured worker, not only those in the SIP, may be entitled to the service or benefit to which the policy relates, other than those relating to improved quality of life, which falls exclusively within the scope of s. 32(h). Entitlement to the the independent living allowance should be reviewed (with further consultation) to comply with the legislation, since support for independent living should not be limited to those with serious injuries.
- We recommend that the threshold percentage for admittance into the SIP be lowered, with the specific percentage being chosen after more thorough review and consultation.
- We recommend that additional discretionary criteria be developed after further, more rigorous consultation with the injured worker community and review of what type of people/injuries should be captured within the SIP that might otherwise be missing using only the threshold approach.

- Benefits and services in the independent living policy suite should be considered from the date of accident, and there should be no ongoing reviews of a person's entitlement to benefits under this suite of policies once they have been assessed for a NEL and their condition is deemed permanent, and certainly not after lock in, unless an injured worker suffers a deterioration or a new accident.
- The ILA should continue to be a fixed, universal sum, but the WSIB ought to consider increasing the amount.

In addition to our specific submissions, we endorse the submissions made by the Ontario Federation of Labour, the Office of the Worker Advisor, our legal clinic colleagues, and those of injured worker groups.

Thank you for considering our comments and recommendations. We hope to continue this conversation, in particular through a follow up consultation regarding the exact threshold and discretionary criteria for admittance into the SIP.

Sincerely,
INJURED WORKERS' COMMUNITY LEGAL CLINIC
Per:



Kathrin Furniss

Via email: consultation_secretariat@wsib.on.ca

October 14, 2022

WSIB's Consultation Secretariat
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Re: WSIB Serious Injury Program VFMA Consultation

We are responding to the Board's Serious Injury Program Value-for-Money Audit Consultation as outlined on the Board's [website](#). Please find below comment on each of the questions posed.

Questions for Stakeholders:

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?
 - A. *The severely impaired threshold removes much of the subjectivity from the decision-making process, which can be good. However, the Board does have the discretion to review a case on its own merit and make exceptions to the criterion, as per the consultation paper. Consequently, the threshold continues to be a suitable criterion.*
 2. Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?
 - A. *Yes, and it was likely meant to be that. In the event that it is not, the worker has the opportunity to provide the objective evidence to establish that it is not.*
 3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?
 - A. *Yes, it likely does in most cases. However, where the worker feels it does not, the decision maker has the discretion to review the case on its own merit and make exceptions to the criterion.*
 4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.
-

-
- A. *If more criteria are included, such as these, the decision making can be more precise and less subjective.*
5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?
- A. *Absolutely. Someone with a catastrophic injury may need significant assistance in the early stages of injury but no longer require it by maximum medical recovery (MMR). For instance, a stair lift or ramp may be required initially for a significant leg or hip injury but may no longer be required once MMR has been achieved.*
6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.
- a. At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?
- A. *Benefits and services to facilitate independent living should be considered at any point where the worker cannot manage independent living and does not have sufficient support and assistance at their own disposal. For instance, someone recovering from an injury that limits their mobility and they have no other person living in their household that can assist. Temporary benefits and assistance to facilitate independent living should always be considered.*
- b. At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?
- A. *Permanent entitlement to such benefits and services should only be considered once MMR has been determined and the evidence supports that such benefits and services continue to be necessary.*
7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?
- A. *All benefits and services should be provided as required and not provided immediately without assessment.*
8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?
- A. *If the Board provides what the injured worker needs to maximize recovery on a temporary basis, then their long-term needs should already be met. For instance, stair lift provided temporarily on the basis that it will be uninstalled and returned when no longer needed (this is done with motor vehicle insurance companies). If it is then determined that a service/benefit is required on a long-term basis then it's already there.*
9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?
-

A. *Likely no. Everyone's needs will not be the same. People who have no personal support likely will require more than those with personal support. Right now, the allowance is paid out in a lump sum and workers are not required to provide receipts to show how it is spent. If the WSIB had such receipts, it could see how the money is spent and whether it meets the individual's needs.*

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

A. *They likely allow for individualized review of the individual worker's need.*

Thank you for the opportunity to provide these comments. Should you have any questions, please feel free to reach out at any time.

Sincerely,



L.A. Liversidge



October 14, 2022

WSIB's Consultation Secretariat
Workplace Safety & Insurance Board
200 Front Street West
Toronto ON M5V 3J1

Delivered via email: consultation_secretariat@wsib.on.ca

Re: WSIB Serious Injury Program VFMA Consultation

As interested stakeholders, please find below comment on the ten questions outlined on the Board's [Serious Injury Program Value-for-Money Audit - Review of the Independent Living policy suite](#) website under the heading "Questions for Stakeholders".

Questions for Stakeholders:

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?

The severely impaired threshold removes much of the subjectivity from the decision-making process, which can be good. However, the Board does have the discretion to review a case on its own merit and make exceptions to the criterion, as per the consultation paper. Consequently, I think the threshold continues to be a suitable criterion.

2. Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?

Yes and I believe it was meant to be that. In the event that it is not, the worker has the opportunity to provide the objective evidence to establish that it is not.

3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?

Yes, I think it likely does in most cases. However, where the worker feels it does not, the decision maker has the discretion to review the case on its own merit and make exceptions to the criterion.

4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.

If more criteria are included, such as these, the decision making can be more precise and less subjective.

5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?

Absolutely. Someone with a catastrophic injury may need significant assistance in the early stages of injury but no longer require it by maximum medical recovery (MMR). For instance, a stair lift or ramp may be required initially for a significant leg or hip injury but may no longer be required once MMR has been achieved.

6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.
 - a. At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?

Benefits and services to facilitate independent living should be considered at any point where the worker cannot manage independent living and does not have sufficient support and assistance at their own disposal. For instance, someone recovering from an injury that limits their mobility and they have no other person living in their household that can assist. Temporary benefits and assistance to facilitate independent living should always be considered.

- b. At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?

Permanent entitlement to such benefits and services should only be considered once MMR has been determined and the evidence supports that such benefits and services continue to be necessary.

7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?

All benefits and services should be provided as required and not provided immediately without assessment.

8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?

If the Board provides what the injured worker needs to maximize recovery on a temporary basis then their long term needs should already be met. For instance, stair lift. Provided temporarily on the basis that it will be uninstalled and returned when no longer needed (this is done with motor vehicle insurance companies). If it is then determined that a service/benefit is required on a long-term basis then it's already there.

9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?



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Likely no. Everyone's needs will not be the same. People who have no personal support likely will require more than those with personal support. Right now, the allowance is paid out in a lump sum and workers are not required to provide receipts to show how it is spent. If the WSIB had such receipts it could see how the money is spent and whether it meets the individual's needs.

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

I believe so. They allow for individualized review of the individual worker's need.

Thank you for the opportunity to provide these comments. Should you have any questions, please feel free to reach out at any time.

Sincerely,

Jeff Spitzig
Managing Director

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October 6, 2022

WSIB Consultation Secretariat consultation_secretariat@wsib.on.ca

I am an injured worker advocate who has practised in this area of law for more than 30 years. In that time, I have served injured workers who met the definition of severely impaired as set out in the Independent Living Policy suite, and those that did not, despite having a serious injury.

I am pleased to be able to provide input in this policy consultation, attached below. I would be happy to answer any questions.

Yours truly,

Lois Cromarty

Lois Cromarty (NCLC)
Barrister and Solicitor
Executive Director

WSIB Serious Injury Program Value-for-Money Audit Review of the Independent Living policy suite Phase 1 Consultation, Fall 2022

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?

The threshold is not a suitable criterion for eligibility because:

- Many injured workers need the assistance that would be provided in the IL Policy suite BEFORE they are assessed for a permanent impairment.
- Many injured workers who have less than a 60% NEL are severely impaired in activities of daily living and need assistance, but are ineligible under this threshold.
- Injured workers with significant pre-existing conditions who suffer a compensable injury only get a NEL rating for the compensable injury alone, but in many cases, the compensable injury is the “last straw” that removes most/all of the injured worker’s ability to function.
- Some body parts (eg. shoulders) and systems attract small NEL percentages which do not reflect the extent of problems in activities of daily living that will be caused from that injury.

For example, a worker who lives alone suffers a severely broken leg and arm in a fall at work. The hospital releases the worker to return home with casts on the arm and leg, and on a great deal of narcotic pain medication. While it will be a long period requiring intensive rehabilitation over a period of 8-9 months, a full recovery is expected so no NEL will ever be assessed. However, in the interim, the severity of the injuries and the effects of the treatment mean that the worker has no means to cook, grocery shop, bathe, look after personal care, and experiences a safety risk due to the amount of medication. Under the current Policy, the worker would get no assistance for a personal support worker during the period of recovery.

Similarly, a worker with a 45% NEL for psychological disability and a 15% NEL for a shoulder injury (resulting in a NEL of 53%, using the Combined Values chart in the AMA Guide) would not be eligible for assistance under the threshold for severe impairment, despite the significant limits of functioning associated with the psychological rating under Policy 18-05-11 alone, even before any physical functional deficits are taken into account:

In the higher range of impairment, the worker displays a moderate anxiety state, definite deterioration in family adjustment, incipient breakdown of social integration, and longer episodes of depression. The worker tends to withdraw from the family, develops severe noise intolerance, and a significantly diminished stress tolerance. A phobic pattern or conversion reaction will surface with some bizarre behaviour, tendency to avoid anxiety-creating situations, with everyday activities restricted to such an extent that the worker may be homebound or even roombound at frequent intervals.

Consider a worker who had a long work history despite having non-work-related medical conditions (eg. developmental disability or a low back fusion) who then suffers a work-related injury that results in a small NEL award. That work-place injury may very well take away the worker's entire ability to care for themselves, because of the effect of the workplace injury on the amount of function that remained after taking into account the limitations from the pre-existing conditions. Under the current threshold, such a worker would get no assistance under the Policy, despite the fact that it was the workplace injury that took away the injured worker's ability to function.

Shoulder NELs are small, but often shoulder problems can render a worker totally unable to take part in activities of daily living. This worker would not receive services as the shoulder NELs are less than the threshold.

- 2. Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?** Certainly, a permanent impairment is a reliable indicator of the duration of benefits and services that a worker is likely to need, but a permanent impairment **rating** is not.

The WSIB's view that the inverse of a NEL percentage rating is equal to remaining capacity (eg. a 40% NEL means that the worker has 60% capacity remaining) is not

supported by the definition of the NEL nor by the direct instructions in the first chapter in the AMA Guide to the Evaluation of Permanent Impairment, 3rd Edition. As stipulated in the AMA Guide, the rating of “impairment” that results from the use of the AMA Guide reflects the alteration of health status assessed by medical means and NOT a rating of “disability”, which is the alteration in the individual’s capacity to meet personal, social or occupational demands.

The scope and duration of benefits and services needed must be determined on the basis of the effects of the compensable injury on that particular injured worker, and not on some arbitrary rating.

3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?

Of course, injured workers with 60% NELs or a 100% permanent disability awards are those with serious injuries. However, this does not mean that those injured workers who have crossed the threshold get the benefits and services to the degree needed. It is also a stressful process to have to continually ask the WSIB for, and wait for, approval for any number of items required to support a worker with a serious injury.

Further, some with serious injuries do not get any services because they do not meet the threshold that is currently in place. The criteria for home modification (17-06-08) are limited to those with the 60% NEL or 100% PD but there are many instances where a work-related disability would require home modification at a lesser degree of NEL. For instance, a worker with a leg amputation would get a 40% NEL (table 47, AMA Guides) but would not be eligible to have home modifications to install a ramp or chair lift.

The policy suite does not adequately address the needs of injured workers with psychological injuries. For instance, the Guide and Support Dog policy does not reference therapy dogs.

4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.

Certainly the information from the treating physicians and therapists as to what is required for their injured worker patient must be given paramount importance. A program of education would be required so that practitioners would be aware of what benefits and services are available.

Information about the particular circumstances of the injured worker must be considered as a whole, not just in reference to the compensable injury. The injury does not occur in a vacuum: it occurs to a person with a certain set of life, health and personal characteristics and any assessment must take all of this into account.

Identifying other criteria and measures to indicate whether someone would likely need a particular benefit would best be determined by consulting the injured worker community, the medical rehabilitation community and the disability community.

5. *Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?*

Yes, it would be beneficial in some cases to provide the benefits or services on a short – term or temporary basis. See the example in the answer to Q1 above.

6. *Immediately following a work-related injury or illness, treatment and recovery are the primary focus.*

a) *At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?*

Benefits and services to facilitate independent living should be considered from the date of accident, since the effect of the workplace injury starts on the date of accident. The injured worker should not have to wait to receive benefits and services to facilitate independent living.

The factors to consider are the injured worker's personal circumstances and the effect of the injury on that injured worker.

b) *At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?*

Quality of life should be considered from the date of accident. If services and benefits to improve quality of life are not provided until months down the road from the date of accident, this sentences the injured worker to months of unnecessary suffering.

Getting a retroactive monetary award back to the date of accident (as is contemplated in the policy suite) some months or years later cannot undo the hardship that the injured worker has endured in the meantime.

7. *Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?*

An injured worker is entitled to such health care as may be necessary, appropriate and required. There is no time limit in WSIA on health care and nothing that would require time to pass before benefits and services are provided.

What is required in each case will be different, and must be assessed immediately, and be specific to that particular injured worker.

8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?

If the injured worker needs a benefit or service, that benefit or service should be provided when the injured worker needs it, not months or years down the road.

There should be a regular review process built in, so that the current state of the injured worker's needs can be continually monitored and the appropriate level of services and benefits provided.

9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?

Flat rates may be appropriate as a minimum, but should not be used as a maximum. To do otherwise is to make the injured worker bear the costs of the injury. It is also not clear how the flat rate amounts were determined or what factors and costs were used to come to the flat rate amounts.

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

The entire policy suite should be reviewed with a view to the needs of injured workers with compensable psychological impairments.

The Policies address primarily physical needs as regards activities of daily living. For example, the Personal Care Allowance policy speaks of activities of daily living of eating, maintaining good personal hygiene, grooming, and being mobile, and do not address psychological aspects of daily living (eg. Memory, concentration, effects of medication etc). The Guide Dog policy does not reference therapy dogs.

Further, injured workers with serious injuries (both physical and psychological) should be allowed maintenance treatment and therapy on an ongoing basis, rather than only in the acute phase as is the case currently. The policy suite on independent living should address this gap.

**OWA Submissions Prepared for WSIB Consultation on
Serious Injury Program Value-for-Money Audit –
Review of the Independent Living policy suite**

**Prepared by Teresa A. Gianfelice, Central Client Services Unit
Approved by Margaret Townsend, Director (A)
Office of the Worker Adviser
October 14, 2022**

Introduction

These submissions are in response to the WSIB's consultation document entitled *Serious Injury Program Value-for-Money Audit - Review of the Independent Living policy Suite* recently posted on the WSIB's website (see [WSIB SIP Consultation](#)). For ease of reference, we will refer to this document as the "Consultation Document" in these submissions.

The Office of the Worker Adviser (OWA) welcomes the opportunity to provide some preliminary thoughts on WSIB's Serious Injury Program (SIP) Value-for-Money Audit Review of the Independent Living policy suite. SIP is a significant source of assistance for the most vulnerable group of injured workers, and it is important that they continue to have access to a dedicated unit that can handle their needs in a timely and sensitive manner. In our experience, most workers in the program report a positive experience, and we believe this is attributable to the expertise of the providers in the program.

This is a complex policy area that by its nature concerns the most severely injured and vulnerable workers. Due to time constraints, we are only able to provide a high-level overview of the many issues raised by the Consultation Document in these submissions. In the past, the WSIB made extensive use of public and stakeholder consultations when contemplating changes of this nature. In our view, the latter approach is a superior option for properly addressing these complex and specialized policy matters. OWA would welcome the opportunity to participate in such a process, including commenting on draft policies, in the future.

Entitlement for Health Care Benefits

In considering these issues, it is important to bear in mind the only health care benefits under the *Workplace Safety and Insurance Act, 1997* (WSIA) that require a serious injury are "measures to improve the quality of life of severely impaired workers" (WSIA, s. 32(h)).

All others health care benefits, including coverage for many of the things that covered by the Independent Living Allowance (ILA) (e.g., snow removal, personal attendant care, or assistive devices) could be paid for by the WSIB under ss. 32 (a) to (g) and 33 in all cases where they are considered necessary, appropriate and sufficient. We recommend that this be specified in the suite of independent living policies for clarity.

Consultation Questions

Below are our responses to the specific consultation questions contained in the Consultation Document.

1. *Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?*

Continuing to have a threshold based on impairment ratings is helpful for workers with an overwhelming impairment or combination of impairments. The threshold should be maintained as an automatic entry into the SIP for these workers who are clearly in need. However, the threshold as it currently stands, 60% non-economic loss (NEL) award or 100% permanent disability (PD) award, is too high and does not seem to be based on a clear rationale. We recommend lowering the threshold to a figure that is more reflective of how ratings are actually calculated by the WSIB.

For example, we note that the WSIB would rate total immobility of the spine, which is a very serious impairment, at 30% PD. Or consider, for example, someone with a psychological impairment that has been rated by the WSIB at around 40-45%. Such a person would fall in the upper range of the moderate impairment level and would, among other things, have their everyday activities restricted to such an extent that the worker may be homebound or even room bound at frequent intervals. Clearly, both such a workers would have a serious injury. Denying such workers the SIP's expertise and support is unwarranted and not in keeping with the remedial purposes of the WSIA.

2. *Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?*

As noted in our response to question 1, the current threshold certainly does not capture all workers that the WSIB rates as being seriously injured. Some of these workers may not meet the threshold, even if it is lowered. These workers should be granted entry into the SIP based on a specific set of criteria.

We recommend a hybrid system for entry into the SIP. Those who meet or are expected to meet the threshold would automatically be put into the program without further assessment. Those below the threshold could be admitted into the program based on specified criteria. The development of such criteria requires comprehensive and meaningful consultation with stakeholders and injured workers. We recommend that the WSIB undertakes such consultation prior to making any changes to the SIP.

3. *Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?*

As noted above, the current threshold excludes many injured workers who require the additional expertise and support provided by the SIP in order to ensure that they receive

all the services and benefits they need. For the workers it does capture, it generally provides a fair level of services and benefits. There are, however, some notable gaps. In particular, the policy suite does not adequately address the needs of injured workers with psychological injuries. The Guide and Support Dog policy, for example, does not reference therapy dogs, which are of assistance to persons with psychological injuries.

Moreover, the scope and duration of benefits and services provided must be based on the effects of the compensable injury, factoring in any pre-existing conditions, for a particular injured worker. If the compensable injury contributes to an exacerbation of any existing limitations, they must also be factored into the assessment of what the worker needs to allow them to live independently.

- 4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.*

Information and opinions from treating physicians and therapists are of paramount importance when determining entitlement. Treating practitioners are in the best position to understand their patients' needs and make recommendations. A comprehensive program would be needed to ensure that practitioners are aware of the benefits and services that are available.

The injured worker's circumstances must be considered as a whole, and not just in reference to the compensable injury. An injury does not occur in a vacuum: it happens to a person with a certain set of life, health and personal characteristics. Any assessment must take all of this into account.

Identifying other criteria and measures to indicate whether someone would likely need a particular benefit would best be determined by further consultation that includes the injured worker, medical rehabilitation, and disability communities.

- 5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?*

Yes, it would be beneficial in some cases to provide benefits or services on a short-term or temporary basis. For example, a worker may have an injury from which they are expected to make a full recovery (perhaps an arm and a leg immobilized for an

extended period) and require a significant amount of narcotic pain medication. Such a worker would not meet the threshold as there would most likely be no NEL at all. In the interim, however, the severity of the injuries and the effects of the treatment mean that the worker could not cook, grocery shop, bathe, or look after personal care. Prescribed medication could also prevent a worker from performing these types of activities safely.

6. *Immediately following a work-related injury or illness, treatment and recovery are the primary focus.*

a. *At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?*

Benefits and services to facilitate independent living should be considered from the date of accident, since the effect of the workplace injury starts on the date of accident. The injured worker should not have to wait to receive benefits and services to facilitate independent living. In this regard it is important to bear in mind that under s. 32(e) of the WSIA health care includes:

modifications to a person's home and vehicle **and other measures to facilitate independent living as in the Board's opinion are appropriate** (emphasis added).

b. *At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?*

Benefits and services to maintain a worker's quality of life should be considered from the date of accident. It is essential to a worker's health (including psychological health), and dignity that they receive services and benefits to improve quality of life when and as needed.

7. *Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?*

Once it has been determined that an injured worker qualifies for entry into the SIP, whether by meeting a numerical threshold or other criteria, and their condition has stabilized, benefits should be considered "locked-in" unless the worker experiences a deterioration or change in circumstances. Seriously injured workers need to know that they can rely on the supports they need.

Other workers, however, ought to have their circumstances reviewed periodically to determine if they might meet the non-numerical criteria or if their NEL is increased. For example, workers who have only been admitted to the SIP on a temporary basis or

those who are not yet in the SIP and suffer a deterioration or an additional injury/allowance to a different body part should have their needs reviewed.

8. *Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?*

An injured worker is entitled to such health care as may be necessary, appropriate and sufficient and these should be provided when it becomes necessary and appropriate. There is no waiting period in the WSIA for health care and nothing that would require time to pass before benefits and services are provided.

What is required in each case will be different. It must be assessed immediately, and be specific to the needs of the individual injured worker.

9. *Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?*

In our experience, it is very beneficial for seriously injured workers to have a discretionary and reliable amount of money they can use to improve their quality of life. In our view, seriously injured workers would benefit from an increase in this type of payment. At a minimum, the ILA should continue as it now stands, but the WSIB should consider increasing the amount.

10. *Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?*

The entire policy suite should be reviewed through a lens focused on the needs of injured workers with compensable psychological impairments.

In their current form, the policies primarily address the physical needs of injured workers with regard to activities of daily living. For example, the Personal Care Allowance policy addresses activities of daily living such as eating, maintaining good personal hygiene, grooming, and being mobile. It does not, however, address psychological aspects of daily living such as memory, concentration, effects of medication, etc. As noted earlier, the Guide Dog policy does not reference therapy dogs.

Further, injured workers with serious injuries (both physical and psychological) should be allowed maintenance treatment and therapy on an ongoing basis, rather than only in the acute phase, as is the case currently. The policy suite on independent living should address this gap. Prior to making any of these changes we recommend another, more thorough and fulsome consultation with stakeholders.

Conclusion

The Serious Injury Program provides important and necessary benefits and services to some of the most vulnerable injured workers in the system.

There are, however, several areas in which the WSIB's Independent Living policies can be improved. We have made a number of suggestions in these submissions to ensure that seriously injured workers receive these vital benefits and services when they are necessary and appropriate.

Nevertheless, there are aspects of these policies that require additional consultation with injured workers and other stakeholders. Several areas identified in the Consultation Document would require draft policies or other more complete and concrete proposals for a proper evaluation and response. Before such significant policy changes are made, there should be a comprehensive consultation based on specific proposals.

Thank you for considering our comments and recommendations.

Prepared by Teresa A. Gianfelice, Central Client Services Unit
Approved by Margaret Townsend, Director (A)
Office of the Worker Adviser
October 14, 2022

**Submission to the WSIB's consultation for the
Serious Injury Program (SIP) Value-for-Money Audit
Review of the Independent Living policy suite.**

Via email: consultation_secretariat@wsib.on.ca



Ontario Federation of Labour

October 2022

Submission to the WSIB's consultation for the Serious Injury Program (SIP) Value-for-Money Audit Review of the Independent Living policy suite.

Introduction/ Concerns

The Ontario Federation of Labour (OFL) is the central labour organization in the province of Ontario. The OFL represents 54 unions and speaks for more than a million workers from all regions of the province in the struggle for better working and living conditions.

With most unions in Ontario affiliated, membership includes nearly every job category and occupation. The OFL is Canada's largest provincial labour federation. The strength of the labour movement is built on solidarity and respect among workers.

We commit ourselves to the goals of worker democracy, social justice, equality, and peace. We are dedicated to making the lives of all workers and their families safe, secure, and healthy. We believe that every worker is entitled, without discrimination, to a job with decent wages and working conditions, union representation, free collective bargaining, a safe and healthy workplace, and the right to strike.

Organized labour, as the voice of working people, promotes their interests in the community and at national and international forums. We speak out forcefully for our affiliates and their members to employers, governments, and the public to ensure the rights of all workers are protected and expanded.

We are pleased to offer the following comments on the WSIB's consultation for the Serious Injury Program (SIP) Value-for-Money Audit Review of the Independent Living policy suite.

A just workers' compensation system is vital to the working people of Ontario. We think that the SIP provides a benefit to the most vulnerable injured workers and should be continued, but it needs revising. This submission provides our general perspective on the questions put by the WSIB regarding the SIP. Unfortunately, a two-week notice period is not sufficient time to provide the in-depth and meaningful analysis and feed back that this issue deserves. The approach being used in this "consultation" pays mere lip service to the concept.

Moreover, we are dismayed over the role of value for money audits in the compensation system. We have observed that, over time, value for money audits have taken on a larger role in guiding the WSIB's approach to procedures and service delivery. These audits are not geared to considering the needs of any injured workers and particularly those who are seriously injured and most vulnerable. In the past, the WSIB made extensive use of public and stakeholder consultations when contemplating changes of this nature. In our view, the latter approach is a superior option for properly addressing these complex and specialized policy matters and the only way to engage in real consultation.

Further, we note that under the *Workplace Safety and Insurance Act (WSIA)* the only health care that must be tied to a "serious" injury is that which aims to improve quality of life (see s. 32 (h) of the *WSIA*). All others, including coverage for many things that are covered by the Independent Living Allowance (ILA), such as snow removal, personal attendant care, or assistive devices, could be paid for by the Board under s. 32 (a) to (g) and 33 whenever they are **necessary, appropriate and sufficient**. We recommend that this is specified in the suite of independent living policies for clarity.

Below are our responses to the specific consultation questions that you have asked:

Questions and Answers

1. *Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?*

It is our position that continuing to have a threshold based on impairment ratings is helpful for workers with an overwhelming impairment or combination of impairments. The threshold should be maintained as an automatic entry into the SIP for these workers who are clearly in need. However, the threshold as it currently stands, 60% non-economic loss (NEL) award or 100% permanent disability (PD) award, is too high and is not based on a clear rationale. The current threshold should be lowered to a figure that is more reflective of how ratings are actually calculated by the Board. For example, we note that the Board would rate total immobility of the spine, which is a very serious impairment, at 30% PD. Or consider, for example, someone with a psychological impairment that has been rated at around 40-45% by the Board. Such a person would fall in the upper range of the moderate impairment level and would, among other things, have their everyday activities restricted to such an extent that the worker may be homebound or even room bound at frequent intervals. Clearly both such workers would have a serious injury. Denying such workers, the SIP's expertise and support is unwarranted and not in keeping with the *WSIA*.

2. *Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?*

As noted in our response to question 1, the current threshold certainly does not capture all workers that the WSIB rates as being seriously injured. In addition, there will be workers who do meet the threshold, even if it is lowered. These workers must be allowed the opportunity to benefit from the SIP's dedicated expertise. A good solution would be to grant them entry into the SIP based on a specific set of criteria. In other words, we are recommending a hybrid system for entry into the SIP. Those who meet or are expected to meet the threshold would automatically be put into the program without further assessment. But those below the threshold could be admitted into the program based on specified criteria. The development of such criteria requires further, more considered, broader consultation. We urge the Board to undertake such consultation **before** making any changes to the SIP.

3. *Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?*

As noted above, the current threshold does not capture many who require the additional expertise and support provided by the SIP in order to ensure that they receive all services and benefits they need. But, for the workers it does capture, it provides a fair level of services and benefits. There are some gaps. In particular, the policy suite does not adequately address the needs of injured workers with psychological injuries. For instance, the Guide and Support Dog policy does not reference therapy dogs.

Moreover, the scope and duration of benefits and services needed must be determined on the basis of the effects of the compensable injury, factoring in any pre-existing conditions, on that particular injured worker. Workers who were managing work and their activities of daily living prior to the compensable injury with a pre-existing condition often find that the compensable condition has an adverse effect on their ability to manage. But for the compensable condition they would be able to cope. Accordingly, there needs to be a global assessment of their needs, including any pre-existing conditions (or life circumstances for that matter).

4. *Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.*

Certainly, the information from the treating physicians and therapists as to what is required for their injured worker patient **must** be given paramount importance. A program of education would be required so that practitioners would be aware of what benefits and services are available.

Information about the particular circumstances of the injured worker must be considered as a whole, not just in reference to the compensable injury. The injury does not occur in a vacuum: it occurs to a person with a certain set of life, health and personal characteristics and any assessment must take all of this into account.

Identifying other criteria and measures to indicate whether someone would likely need a particular benefit would best be determined by consulting the injured worker community, the medical rehabilitation community and the disability community. Such a consultation should allow sufficient time for thoughtful contributions from the various stakeholders. Two weeks' notice is not even close to the amount of time required to give this important issue the reflection it deserves. Again, we urge the Board to undertake the necessary consultation **before** making any changes to the SIP.

5. *Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?*

Yes, it would be beneficial in some cases to provide the benefits or services on a short term or temporary basis. For example, a worker may have an injury from which they are expected to make a full recovery (perhaps an arm and a leg immobilized for an extended period) and require a significant amount of narcotic pain medication. Such a worker would not meet the threshold as there would be no NEL at all. In the interim, however, the severity of the injuries and the effects of the treatment mean that the worker cannot cook, grocery shop, bathe, or look after personal care, and experiences a safety risk due to the amount of medication.

6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.

a. At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?

Benefits and services to facilitate independent living should be considered from the date of accident, since the effect of the workplace injury starts on the date of accident. The injured worker should not have to wait to receive benefits and services to facilitate independent living. In this regard it is important to bear in mind that under s. 32(e) of the *WSIA* health care includes:

modifications to a person's home and vehicle **and other measures to facilitate independent living as in the Board's opinion are appropriate** (emphasis added).

b. At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?

Quality of life should be considered from the date of accident. It is essential to a worker's well-being and dignity that they receive the services and benefits to improve quality of life when and as needed.

7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?

Once it has been determined that an injured worker qualifies for entry into the SIP, either by meeting a numerical threshold or other criteria, and their condition has stabilized, benefits should be considered "locked-in" unless the worker experiences a deterioration or change in circumstances. Seriously injured workers need to know that they can rely on the supports they need. Other workers, however, ought to have their circumstances reviewed periodically to determine if they might meet the non-numerical criteria or if their NEL is increased. For example, workers who have only been admitted to the SIP on a temporary basis or who are not yet in the SIP and suffer a deterioration or an additional injury/ allowance to a different body part should have their needs reviewed.

8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/ likely are?

An injured worker is entitled to such health care as may be necessary, appropriate and required. There is no time limit in *WSIA* on health care and nothing that would require time to pass before benefits and services are provided.

What is required in each case will be different, and must be assessed immediately, and be specific to that particular injured worker.

9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?

It is very beneficial for seriously injured workers to have a discretionary and reliable amount of money that they can use to improve their quality of life. The ILA should continue at least as it now stands, but the Board ought to consider increasing the amount.

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

The entire policy suite should be reviewed with a view to the needs of injured workers with compensable psychological impairments.

The policies address primarily physical needs as regards activities of daily living. For example, the Personal Care Allowance policy speaks of activities of daily living of eating, maintaining good personal hygiene, grooming, and being mobile, and do not address psychological aspects of daily living (eg. Memory, concentration, effects of medication, etc.). The Guide Dog policy does not reference therapy dogs.

Further, injured workers with serious injuries (both physical and psychological) should be allowed maintenance treatment and therapy on an ongoing basis, rather than only in the acute phase as is the case currently. The policy suite on independent living should address this gap. Prior to making any of these changes we urge the Board to engage in a real consultation. One which provides an opportunity for a more thoughtful and fulsome discussion with stakeholders.

Conclusion

It is the OFL's position that, while the SIP provides some very useful benefits to seriously injured workers, there are many areas that need improvement. Before such a significant policy change, there should be a broad and fulsome consultation.

Thank you for considering our comments and recommendations.

Respectfully submitted by,

The Ontario Federation of Labour

Cope343

October 13, 2022

WSIB Consultation Secretariat

consultation_secretariat@wsib.on.ca

Please accept the following submission based on the lives of persons with lived experiences. The best outcomes for this audit would be that workers who have suffered permanent and serious injury from the workplace would have access to all the benefits and services that would provide them the best opportunity for recovery in each of their lives.

WSIB Serious Injury Program Value-for-Money Audit

Review of the Independent Living policy suite

Phase 1 Consultation, Fall 2022

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?

The threshold is not a suitable criterion for eligibility because:

Workers injured or ill need supports when they are first injured to ensure that they will achieve true maximum recovery and they need to be able to follow the recommended treatment plan of the treating health professional. It was more than one year later when I had a low back fusion from L4 to S1. During that time, I was unable to do anything but was forced back to work by the WCB. I advised them that I am going to have to go back to work, not because I was healed when the reality was I had such limited ability to do anything because of the constant pain but it was even stronger and sharper when doing things, but I had to go back to work because there was no more food in the freezer and there was no money as I was cut off benefits. While working then, I worked and went home at lunch and laid down and went back to work and then went home and laid down. It was excruciating. After some weeks, I called my adjudicator and told her that this was not me prior to my injury and she told me to go to the emergency, which I did. There I was told that I had to see a specialist because there was something wrong with my back. I was given 2 names and I went with a new one as I had already seen the one specialist. The first doctor I had seen told me that I wouldn't need surgery because I could bend over and touch my toes as I entered his office. That was his test. He never asked any questions at all. He didn't ask about

my flexibility; I grew up in the country and we grew to love yoga as it was the only show on tv at a certain time that we could watch tv and it was part of every day. I was then cut off benefits because I unknowingly changed doctors and did not receive them again until I entered the hospital in August of that year. My orthopaedic doctor later told me that I was fortunate that I wasn't paralyzed as my lower spine was so precarious that another "bump" could have paralyzed me.

The threshold of a 60% NEL is unrealistic as many are severely impaired in activities of daily living and need assistance but don't meet the threshold. I know an injured worker who suffered a brain trauma but also suffers neck and back issues as a result of the work injury and receives a 55% NEL. This worker was told by the WSIB that they would receive support post injury but this is not the case. Life is a jumble of chaos and pain and no support anywhere. How is this worker not in the serious injury program? Another worker is deemed 59.5% and receives no supports from the serious injury program? Does the WSIB think that this worker is miraculously able to perform all the duties responsible in their life at 59.5% but then at 60% they will receive support through the serious injury program? The reality is that many workers with serious and permanent injuries are stumbling through life, trying the best that they can but would ultimately achieve much better results and increase the quality of their lives with the supports needed throughout their journey. There is nothing dignifying the way they are treated now.

2. *Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?*

The permanent impairment or expected permanent impairment rating should be looked at as a guideline but it is totally unrealistic to hold everyone to the guideline as there are too many varying factors that will influence the outcome. When I was in the hospital post surgery for the 2-level fusion, I shared a room with a woman who had the same surgery but only 1 level. The nurses had questioned the surgeon why one was coping so much better than the other. He replied that it was because one had already decided before the surgery that things were going to be better. I had made that decision. He had advised me that there was a chance I would be paralyzed following the surgery. I looked him in the eye and told him that I was young and I would adapt to that. The degree of pain that I had been living with would be gone and that was a win for me. There is no life when you are trying to survive that kind of pain all the time.

There are many factors that can affect outcomes and they are all a piece of the puzzle. Each person is individual and there are no two exact replicas. We all have our own makeup and each injury has its own makeup. The impacts will never be exactly the same. The expectation that an injury to your shoulder will only affect your shoulder is totally unrealistic. Every part of our body is connected to another part by muscles, ligaments, nerves, etc and they can all be impacted by the injury. The compensation system must change the way they look at injuries if they truly want to make a difference for the outcomes and the lives post injury for workers.

The scope and duration of benefits and services needed must be determined on the basis of the effects of the compensable injury on that particular injured worker, and not on some arbitrary rating.

3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?

We hear over and over that they are always obstacles to get benefits even for those in this program. In the guidelines, there is an in-depth list of benefits that a worker in this program is entitled to but we are always being told that things just don't happen. It is always a difficult process to navigate these benefits. This should not be the case.

Workers with serious and permanent injuries who do not meet the threshold for this program still face the same challenges from their injuries and usually have to go through repeated denials and often the appeal process to get anywhere. This certainly doesn't improve the potential outcomes to live their best lives.

4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.

We think the directives of the treating health professionals who have a clear understanding of their patient must be listened to and followed. They are the ones who have the first-hand experience with the worker. It is also important that these healthcare professionals know what services are available that would benefit the worker. It is important that the compensation system look at the whole body when considering benefits as that is what the worker has to work with.

5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?

It would be very beneficial to provide any benefits or services on a temporary or short-term benefit and I think the time to do it is sooner when prescribed to maximize the benefit for the worker. Every worker wants to get back to their lives; they want the best outcomes. We need treatment when treatments are prescribed; not if and when they fit the compensation's criteria.

6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.

a) At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?

Benefits and services to facilitate independent living should be considered from the date of accident, since the effect of the workplace injury starts on the date of accident. The injured worker should not have to wait to receive benefits and services to facilitate independent living.

The factors to consider are the injured worker's personal circumstances and the effect of the injury on that injured worker.

b) At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?

Quality of life should be considered from the date of accident. If services and benefits to improve quality of life are not provided until months down the road from the date of accident, this sentences the injured worker to months of unnecessary suffering.

Getting a retroactive monetary award back to the date of accident (as is contemplated in the policy suite) some months or years later cannot undo the hardship that the injured worker has endured in the meantime. That only serves to permanently remove the best outcomes for recovery.

7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?

Any benefit and service that is prescribed or that could potentially promote best outcomes should be provided immediately and should be reassessed as the injured workers' needs change. An injured worker is entitled to such health care as may be necessary, appropriate and required. There is no time limit in WSIA on health care and nothing that would require time to pass before benefits and services are provided.

What is required in each case will be different, and must be assessed immediately, and be specific to that particular injured worker.

8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?

You have missed the timeline to achieve best outcomes for the injured worker if you wait until it is clear what the injured person's long-term needs are or likely are. There should be a regular review process built in, so that the current state of the injured worker's needs can be continually monitored and the appropriate level of services and benefits provided.

9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?

Flat rates may be appropriate as a minimum, but should not be used as a maximum. To do otherwise is to make the injured worker bear the costs of the injury. It is also not clear how the flat rate amounts were determined or what factors and costs were used to come to the flat rate amounts.

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

There must be ongoing reviews to ensure that the benefits and services are available to meet the varying needs of all the different injuries that we are seeing, including physical, psychological and occupational disease. The time to treat is when it is happening and requests are being made.

SCHEDULE 2 EMPLOYERS' GROUP

Via email Consultation_Secretariat@wsib.on.ca

October 31, 2022

Consultation Secretariat
WSIB
200 Front St. West
Toronto, Ontario M5V 3J1

Re: Serious Injury Value for Money Audit Review of Independent Living Policy Suite

On behalf of the Schedule 2 Employers' Group, thank you for the opportunity to provide feedback on the policy review of the suite of Independent Living policies. The Schedule 2 Employers' Group Executive has taken the opportunity to conduct an internal review, and we are pleased to provide our input.

We agree that the suite of policies, eligibility, and services warrant updating and should be the subject of ongoing review as part of the WSIB's regular policy review framework. We agree that a policy and guideline is required to determine entitlement to suite of benefits intended to mitigate the impact of a work-related injury, improve function, quality of life, and restore the preinjury earnings profile, in a fiscally responsible manner. It must be equitable and objectively based as a determinant for benefit entitlement.

The WSIB webpage describes Serious Injury Program (SIP) services, as follows:

Services for people with serious injuries

You've experienced a serious injury if your impairment is:

- permanent and you receive a non-economic-loss benefit of 60 per cent or more; or
- permanent and you receive permanent disability benefits totaling 100 per cent; or
- likely permanent in the opinion of a WSIB health care professional, and you receive a non-economic-loss benefit of 60 per cent or more or a 100 per cent permanent disability benefit.

If you experience a serious injury on the job, we'll provide you with a support team who will meet regularly to discuss your claim and to find the best outcomes for you.

According to the consultation paper, there is a department of designated staff that manages the claims of occupational disease and survivors which meet the severely impaired threshold.

Definitions

The use of several terms interchangeably regarding the nature of the injury *i.e.*, "serious", "significant", or "severe", along with the lack of a definition of a "serious injury" is problematic.

Program Eligibility

Access to the program at an acute stage or due to the chronic nature of a work-related injury/illness and the appropriate timing of the necessary assistance requires clarification and definition.

The WSIB's approach to applying a quantitative value, NEL 60% or greater, remains relevant but is also problematic. For example, an injured/ill person may have a 58% combined impairment yet not qualify for the program. Whereas another individual who is rated at 60% or more due to an amputation, using prosthetic devices, could be fully functional.

Functional impairment or loss does not necessarily equate to impact on quality of life. As such, each case should be assessed on its own merit, based on objective medical evidence, including receipts for expenses incurred.

Eliminate the independent living allowance and adopt an objective and validated approach to decision making to warrant the payment of living expenses up to a specified dollar amount limit, supported with receipts, much like the Canada Revenue Agency requires for disability credits.

Board staff must be trained in how to assess the information, including items purchased, and balance this with, for example, evidence-based Occupational Therapy or Social Work reporting.

Health Care

'Necessary, appropriate and sufficient' are the broad terms set out in the legislation. From a policy perspective, consideration should be given to instituting an evidence-based approach that follows fee guidelines similar to those set out by insurance companies with established limits and compliance with best practice and evidence that support function or improved quality of life, all in a fiscally responsible manner.

Costing and Multiple Claims

When there are multiple claims and employers, it is the WSIB's current practice to assign the costs of independent living allowance and personal care allowance to the last employer with the most recent claim resulting in a NEL Benefit award. In other words, the claim that results in a crossing the threshold of combined 60% award and entry into the serious injury program is the one charged full costs of any / all SIP benefits/services regardless of whether relevant to the specific area of injury.

This practice, which is not dictated by policy, is unjust and unfair to employers, notably Schedule 2 Employers who are self-insured, pay directly for claim costs, and do not have the benefit of S.I.E.F. cost relief.

For example, if a worker with a 40-50% NEL Benefit award sustains a new injury resulting in another 10-20% NEL Benefit award, the 60% eligibility threshold for serious injury would be met, with benefits flowing as a result. The new injury or functional impairment would not meet the serious injury threshold on its own, however when the NEL Benefits are combined, the 60% eligibility threshold is

reached, and it is the last employer that is assigned the costs of the SIP even though the most significant contributor to that threshold was the first or prior injury employer.

Further, there are situations where the injured person's function does not impact fitness to work or activities of daily living function, yet the injured person qualifies for SIP. This clearly was not, and should not be the intention of the program.

To assign the claim costs to the last employer, whether Schedule 1 or 2, is unjust and creates an unfair burden. A fair approach would be to assess the claim(s) to determine whether there is a functional impairment through assistive devices reducing the impact of the work-related injury/illness, and whether living expenses or a personal care allowance is warranted and supported through objective evidence and receipts. The benefits and services should be evaluated by the need based on each injury and charged accordingly. Similarly, benefits/services should not be allowed for non-compensable issues/conditions or preferences.

Policy Framework

Policy Documents 17-06-02 to 17-06-08 use the term 'severely impaired' rather than 'significant' or 'serious'.

Policy Document 17-06-02 Independent Living Allowance should be eliminated as a stand-alone document since it is not clearly defined and does not require proof of receipts.

Policy Document 17-06-03 Independent Living Devices should not require entitlement criteria since those items listed under ILA Devices would normally be expenses covered under health care s.33 of the Workplace Safety and Insurance Act (WSIA) i.e., items which are medically necessary and helps improve the function and quality of life. Assistive devices are already covered under Policy Document 17-06-07.

Policy Document 17-06-04 Guide and Support Dogs should be amended to include any support **animal** that is *recommended* by the health care professional and *validated* through independent objective assessment.

Response to Questions for Stakeholders

Below are questions regarding entitlement criteria, as well as the timing and duration of entitlement. Responses to these questions will support the WSIB's review and analysis of entitlement to the benefits and services provided for in the independent living policy suite.

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?

Severely impaired must be clearly defined to mean functional loss and impact to quality of life. It does not mean impact to activities of daily living, dependent on the characteristics of the injury and baseline function pre-accident.

For example, a music teacher who sustains hand/finger injuries and can no longer play instruments to demonstrate to their students has a much more significant impact to the quality of their working life versus an older worker with a back injury who claims unable to be go dancing or hiking (which they would be unlikely to engage in for other non-compensable reasons).

2. Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?

No. A 100% impairment in occupational disease claims does not necessarily mean that an injured person is not functional as they are able to access assistive medical devices and other expenses. In contrast to another injured person with a 50% NEL Benefit who may have greater impact to their function and activities of daily living. There must be objective and evidence-based criteria to determine entitlement for eligibility for the suite of services.

3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?

In most claims, yes, it is understood that accommodation is necessary and support services are required to enhance function and quality of life.

4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized testing or assessments.

Yes. There must be a process established for decision-making based on objective standardized, medical assessment or testing to validate function, impairment, and impact on quality of life or activities of daily living against pre-accident baseline of function.

5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?

Probably. In the acute short-term phase, initial and ongoing entitlement should be allowed based on an objectively supported medical assessment, the nature of the injury and review at regular intervals, such as number of weeks or months or maximum recovery and based on occupational disability recovery guidelines.

6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.
 - a. At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?

Program entry or services eligibility should be based on acute catastrophic and/or a likely chronic and/or permanent condition. If eligibility is not satisfied, then it would be considered under b) below.

- b. At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?

Initial and periodic reviews should be conducted and supported with objective findings. Entitlement reviews should be based on the co-operation of the injured person and their participation in medical and/or vocational rehabilitation programs.

7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?

Yes. See response to question #5.

8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?

See response to question #6. On a case-by-case basis.

9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?

No. It does not need to continue since s.33 of WSIA and policy document 17-06-01 and 17-06-07 already apply.

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align with the needs of those with severe/significant injuries?

Yes. The use of different terminology of impaired, severe, significant, or serious, is confusing and leads to inconsistent application and results.

Thank you, once again, for the opportunity to provide our feedback on the policy review of the suite of Independent Living policies. And please do not hesitate to contact the undersigned for any additional information.

Yours truly,



Laura Russell
Chair, Schedule 2 Employers Group

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?

No. There are multiple reasons why the threshold of severely impaired is not suitable. Non-Economic Loss (“NEL”) ratings look at impairment or functional loss, but not disability or the actual effect on the injured worker. The policies under the SIP, however, aim to assist the worker in recovery, and less often, in return to work. This results in a disconnect between the eligibility criteria for the services needed and the intent of the policies. There are issues with NEL ratings, as outlined in the following section.

2. Is someone’s permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?

The NEL rating system itself is problematic, as outlined in the Value For Money Audit Report (“VFMA” or “Report”). As noted on page 28 of the Report, the 3rd edition of the AMA Guide, used by the WSIB to rate permanent impairment (“PI”) and determine NEL entitlement, is outdated, not easily understood, and not specific to occupational injury.

No, a NEL rating is not indicative of a worker’s needs. I have a client with a significant lower extremity injury who has the maximum NEL rating for that body part in addition to a NEL for psychotraumatic disability. He is currently rated at 59%. His mobility is greatly impacted and he is a major fall risk, with multiple secondary injuries being incurred as a result of this. He had to move in with a family member who assists him with his Activities of Daily Living. He is unable to drive more than a few minutes. He cannot do his own groceries. He has to use assistive devices and wear a brace. He rarely leaves his home due to his limitations. He hasn’t worked in nearly 15 years. His limitations and resulting needs are significant, but the arbitrary use of a NEL rating prevents him from accessing the services and benefits he needs because his NEL is 1% below the threshold.

NEL ratings do not accurately capture the true limitations of an injured worker. A worker may have fair Range of Motion, lowering their NEL, despite having almost no use of the area of injury. A worker may have a high NEL but maintain independence or be able to return to work. It does not accurately reflect a worker’s ability to function.

3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?

For the reasons above, it does not.

4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit

or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.

All of these measures should be taken into account. If a worker lives alone, they may likely require more assistance than a worker who lives with family. If a worker lives in an accessible apartment or bungalow, they may be able to complete their ADLs independently, whereas a worker living in a two story home may not. Workers living in rural areas do not have the same supports available to them, which may mean they do not have an option to use public transit or cannot access preferred suppliers from WSIB for health care or devices required.

Some diagnoses or losses do not translate easily into the AMA Guide and are not reflected in the NEL. Two workers with the same diagnosis may have very different permanent impairments.

5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a shortterm or temporary basis?

There are multiple circumstances: after surgery, after a deterioration, to facilitate treatment, or following a serious injury for which MMR has not been reached.

6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.

1. At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?

Entitlement should be based on the recommendations of the treating health care providers ("HCP") who know the worker's condition best. If the HCP is recommending benefits or services to facilitate independent living, they should be considered. If the worker has not reached MMR or experiences a material change, entitlement should be reviewed as appropriate for their condition.

2. At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?

Entitlement should be based on the recommendations of the treating health care providers ("HCP") who know the worker's condition best. If the HCP is recommending benefits or services to improve quality of life, they should be considered. If the worker has not reached MMR or experiences a material change, entitlement should be reviewed as appropriate for their condition.

7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?

Benefits and services should be based on the HCP recommendations as soon as the need arises, and reassessed as appropriate.

8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?

Benefits and services should be made available as soon as the need is identified. Entitlement for most benefits and services can be reassessed and adjusted as appropriate, if the worker experiences a deterioration or improvement. If a worker experiences a significant injury with restrictions and it is unlikely this will resolve, it does not make sense to wait to make their homes or vehicles accessible until a NEL has been provided. This process can take years and the denial of benefits and services can contribute to the impairment experienced, particularly if the worker has to complete their ADLs in a manner which is unsafe, resulting in overcompensation, overuse, and risk of secondary accidents or injuries.

9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?

Universal benefit amounts do not take into account the actual needs or expenses of a worker. For example, a worker living in a rural area may not have access to the same services as a worker in an urban area, which could result in large discrepancies between costs. If universal benefit amounts remain in place, they need to be regularly reviewed and updated.

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

There are issues with the other criteria as they can be limiting in real world circumstances. For example, OPM 17-06-06 includes a criteria that the worker's needs cannot be met on an outpatient basis, however, the location of the worker's home may limit their outpatient options. It also requires the "home be suitable from a healthcare standpoint" but does not specify what this means. OPM 17-06-07 provides for modification of a worker's personal vehicle, however, it may be more appropriate for the worker's spouse to modify their vehicle if the worker is not able to drive but cannot access the vehicle as a passenger without modification.



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PLATFORM FOR CHANGE (2004)

As amended by the Thunder Bay & District
Injured Workers' Support Group

September 2021

JUSTICE FOR INJURED WORKERS

Injured workers need a compensation and rehabilitation system that recognizes the special difficulties they face as persons with disabilities in obtaining and maintaining suitable and sustainable employment. In Ontario, this compensation system will seek to assist injured workers with both social integration and the attaining of suitable employment. It will be a system that fully compensates and supports those workers who have suffered a workplace injury, illness or disease; assists such workers in returning to employment with dignity; and which aids in protecting all workers from injury or illness at work. We acknowledge that the injured workers with permanent lifelong disabilities will require an extra level of care and service. To that end the following document outlines how this result can be achieved. This document is premised on the principals put forth by Justice Sir William Meredith.

The Meredith Principles

Over one hundred years ago, Sir William Meredith tabled a report in the Ontario Legislature, establishing what would become known as the Meredith Principles. Like all workers compensation systems in all the provinces (except Quebec) in Canada, the Meredith Principles are the foundation of the WCB.

The Meredith principles rest on the Historic Compromise in which employers fund the compensation system and share the liability for injured workers. In return, injured workers receive benefits while they recover, and cannot sue their employers. The Historic Compromise gave both sides financial security which can be summed up as:

- Employers would be protected from lawsuits by injured workers and be able to calculate payments as a cost of doing business.
- Injured workers would receive prompt benefits for as long as the disability lasted in a non-adversarial system. More specifically the Meredith Principles are:

No Fault: No need to prove the accident was the employer's fault, no extra charge to the employer.

Non-adversarial: An inquiry system, based on benefit of the doubt that "seeks to compensate," and cannot be challenged in court. No blame.

Compensation for as long as disability lasts: Worker can depend on security of benefits based on lost wages and promptly paid. The injured worker was not to become a financial burden on their family or the community.

Employer pays: Employer pays the rates because the costs can be passed on to others (in prices of goods and services, and in wage negotiations). Meredith noted that workers cannot pass the cost on and pay in other ways, including some level of lost income despite the compensation.

Collective liability: Employers pay into single accident fund and do not suffer financial consequences from the cost of a specific accident.

Independent Public Agency: Set up to be a non-partisan organisation to administer claims and assessments. Meredith indicated the system was to provide "full justice" not "half-measures," to the injured worker. The early WCB had a motto: Justice and Humanity Speedily Rendered

JUSTICE FOR INJURED WORKERS

Ontario workers deserve a compensations system that fully compensates and supports those who have suffered a workplace injury or illness; assists such workers in returning to employment with dignity; and which aids in protecting all workers from injury or illness at work.

Justice for Injured Workers Means:

- 1. A Public, Responsive System Based on Collective Liability and Comprehensive Coverage**

- Our compensation system will be independent and publicly administered. Studies show that the privatised insurance company model is much more costly and much less effective than a public system.
- Collective liability is an important founding principle of the system, which will be protected. Schedule II will be eliminated and all employers will come under the collective liability system. Experience Rating will be eliminated as it undermines the principle of collective liability and produces incentives for employers to hide claims and to harm injured workers, having a negative impact on health and safety in the workplace.
- Our compensation system will be administered with the understanding that its primary purpose is to compensate and support injured workers. It will seek to do this. Perhaps under the old motto: Justice, Humanely and Speedily Rendered. In this context the name will revert from the Workplace Safety and Insurance Board (WSIB) to The Workers' Compensation Board (WCB). Furthermore WCB policy will function as a guideline for interpretation and implementation of legislation (not as rules). Entitlement outside of policy will be granted on the merits and justice of each case.
- The Workers Compensation Board of Directors will have strong representation from Labour and the Ontario Network of Injured Workers' Groups (ONIWG). The Board will be comprised of a total of nine members, four of which will be appointed by employers and four of which will be appointed by Labour, at least two of which will be injured workers appointed by the Ontario Network of Injured Workers Groups (ONIWG). There will also be a chair person appointed by the Government with the agreement of both the employer and labour groups.
- The public will be provided with regular opportunities to have input on the legislation, the policy, and the practice of the Board. This will happen in various ways including an annual public review by a legislative committee; a special public review of the Act every four years (as exists in other provinces); and an open-door policy to encourage those who develop and approve policy to have regular interaction with Labour and injured worker groups to ensure that the decision makers have a clear understanding of their needs and the impacts of policy.
- The Board will conduct and support regular and thorough research on the impacts of short and long term injuries and diseases including tracking long term outcomes for workers with a permanent disability and the WSIB/WCB's sufficiency in addressing them.
- All workers in Ontario will be covered by workers' compensation legislation.
- All work-related disabilities and illnesses will be covered, including occupational disease, repetitive strain injuries, workplace stress (including mental health and PTSD), and pain conditions resulting from workplace injury and illness. The Board will be pro-active in identifying and providing coverage for compensable conditions, especially in newly emerging industries and conditions of work.

- Survivors of workers who are killed by occupational injury or illness will be provided with support and benefits, which ensure that they are financially secure. Benefit payments will be applied retroactively to the date of the injury or illness.
- Non-dependent immediate family members of workers who have died from occupational injury or disease will be compensated.
- There will be full compensation coverage for secondary victims of occupational exposures to workplace substances; including people who are harmed by substances or exposures inadvertently brought home from the workplace by the originally harmed worker.
- Workers who must be re-assigned or quarantined or temporarily removed from work due to possible exposure to an occupational hazard or communicable disease such as SARS or Covid 19 , or any future communicable diseases, will be financially protected. The workers will have their wages protected with re-assignment and they will receive full workers compensation benefits if they need to be quarantined or there is no alternate suitable and available work.

2. Quality Adjudication

- The WCB/WSIB administration and the WCA/WSIA Tribunal will operate in an enquiry system.
- Adjudicators will thoroughly investigate all aspects of a claim to ensure entitlement is fairly adjudicated.
- Adjudicators will proactively seek and request the medical information necessary to adjudicate a claim. Adjudicators will automatically consider psychological or chronic pain entitlement where there is insufficient evidence to allow a claim on an organic basis.
- Ontario Human Rights Codes will apply in all cases and supersede the WCA/WSIA.
- Adjudicators will not request medical reports in long established claims except in the event that the injured worker's treating physician has reported a change in the medical condition of the injured worker.
- Injured workers should be able to navigate the system on their own; legal representation should not be needed. At the beginning of all claims, the Board will provide the injured worker with a simple but comprehensive written explanation of the system and how to navigate it as is provided in the Accessibility for Ontarians with Disabilities ACT (AODA). The material will emphasize that the Board is there to help and to provide information on how to get assistance both inside and outside of the system. The material will be available in multiple languages and alternative format if requested.

- Board decisions will be speedily rendered, with no undue delays once all medical information has been collected.
- High quality initial adjudication will be provided and adjudicators will be well paid in recognition of the importance of their work. The Board will endeavour to employ adjudicators who can directly communicate with claimants in their own language or form of communication and with an understanding of their culture.
- High quality adjudication will be achieved through (1) quality training of adjudicators and (2) more attentive service:
 - Adjudicators will receive training in legal and medical matters, including mental health issues. As half of permanently injured workers experience mental health effects of injury and disease, the Board will train adjudicators to recognize and respond in a supportive manner to the injured worker upon any signs of psychological problems.
 - Adjudicators will be taught empathy and respect. This may be achieved by including sessions with injured workers and their family members on a regular basis and having an advisory body permanently in place.
 - Training will provide adjudicators with the understanding that the purpose of the system is to provide compensation and support to injured workers in lieu of their right to sue employers as stated in its founding principles put forward by Sir William Meredith. Adjudicators will understand that their role is to seek to compensate and provide full benefits to the injured worker based on the merits and justice of the case.
 - Adjudicators must ultimately follow the Act.
 - More attentive service will be achieved by reducing caseloads for claims adjudicators, maintaining the same adjudicator throughout a claim (to the extent possible), and improved communications between injured workers and adjudicators. Communication will be improved in part by increasing opportunities for face to face meetings.
- Adjudicators who are properly trained will be able to provide a higher quality of adjudication and will reduce the number of appeals.
- The Act will provide that injured workers are covered financially during the period that the WCB is rendering a decision up to the final level of appeal.
- Adjudicators will accept the opinion of the treating physician/health care provider.
- The Board will include, with all its negative decisions, a full, multi-lingual and alternate format description of the appeal system and resources for assistance such as legal aid clinics, Office of the Workers Advisor (OWA), lawyers, and para-legals.

3. Full Compensation and Dignity

- The compensation system will fully compensate an injured worker for the impact of the injury or illness on their life within a system, which seeks to be simple, straightforward, and accessible, and which seeks to provide security and dignity to the person as long as the disability lasts.
- Wage-loss benefits will replace the full income lost due to the injured worker's injury or disease until it is determined if the injury or disease is permanent.
- A permanent pension based on level of physical and/or psychological impairment will be paid for life. If the actual wage loss is greater than the pension, a supplement will be paid.
- If there is a benefit plan with the pre-injury employer, the employer will continue coverage for the two years of the re-employment obligation. In any case, the WCB will provide and pay for an equivalent plan to an injured worker and their family, where there is a permanent disability except where they have employment, which provides better coverage.
- Compensation benefits will include payments, by the WCB, to CPP to maintain the retirement entitlement.
- The Act will establish a current updated minimum wage-loss benefit payable regardless of the pre-injury earnings.
- The current practice of deeming/determining an injured worker to have phantom wages will end and wage loss benefits will be based on the injured workers' actual wage loss.
- Severely injured, disabled or diseased workers will receive additional benefits and support allowances including updates and renovations that allow them to live in dignity.
- CPP disability benefits will not be deducted from an injured worker's compensation benefits.
- Benefits will be fully indexed to the cost-of-living.

4. Medicine that Heals

- Our compensation system will restore injured workers into the hands of their treating healthcare practitioners. It will allow them the choice of their practitioners and be open to alternative treatments.
- Injured workers will have the right to the same relationship to the healthcare system as all Canadians. Specifically they will be treated within the public, one-tiered, system under the direction of their main treating doctor.

- The Board will work with Ontario health care providers, their organisations and medical schools to improve education and awareness of workplace based injuries and illnesses.
- The Act will confirm that the worker has the right to choose their initial and subsequent health care providers. The guiding principle of the system will be to accept the opinion of the worker’s doctors and/or other health care providers, including the medical diagnosis, all aspects of the treatment plan and work capacity.
- During the period of recovery, the WCB will recognise and proactively accommodate the special needs of an injured worker in their home environment.
- Principles of Managed Care have no place in our public, no fault system. The compensation system and its medical professional staff and advisors, including Nurse Case Managers, will take care to avoid claims control and benefit control activities. They will not function as behind-the-scenes adjudicators.
- Workers will have the right to heal after injury without pressure from the Board or employer to return to work prematurely.
- The employer will not have the right to require the injured worker to undergo a medical examination.
- Maintenance physiotherapy and other long-term treatments including medications such as medical marijuana will be recognised and allowed as necessary ongoing components in many cases of permanent disability even where the worker has reached “maximum medical recovery”. Such ongoing treatment can both help to prevent a worsening of the condition and can help an injured worker cope with their disability.
- In the case of an injured worker experiencing a secondary disablement resulting from the original injury, the injured worker will be reassessed by their personal physician and the WCB/WSIB will accept the assessment provided by the injured worker’s physician.

5. Comprehensive Vocational and Social Rehabilitation

- Injured workers need a rehabilitation system that recognises the challenges and barriers they face as workers with varying and unique limitations in obtaining and maintaining employment. The system will include injured workers in the process with both social integration and obtaining employment, noting that the work must be suitable, meaningful, available and sustainable to the injured worker.
- Return to the pre-1990 WCB Vocational Rehabilitation Division; where the Worker’s Compensation Board rehabilitation philosophy was predicated on the concept that we see the injured worker settled in the community and employed at a job that is entirely suitable. Our goal is the appropriate job for the injured worker. It

is basic that we consider the whole injured worker and that we examine what the injured worker can do rather than what they cannot do. This type of evaluation enables the injured worker to ascend the social scale and prevent automatic assignment to a lower status and economic plane. Our belief is that rehabilitation is not complete without employment in a useful job for which the injured worker is suited.

- Rehabilitation will not be considered complete without a viable job. The WCB itself will set an example by hiring injured workers. The Board will recognize, though, that some injured workers are competitively unemployable. Competitively unemployable injured workers will receive full benefits and social rehabilitation services.
- The Board will take an active and in-depth role in facilitating return to work in cooperation with the treating physician. This means actively working with an injured worker to ensure that their accident employer takes all reasonable steps to accommodate the job and workplace environment to the injured worker's disability. The Human Rights Code will apply.
- When it is in the injured worker's best interests, the Board will provide the injured worker with retraining to return to a new job with the accident employer.
- Where work with the accident employer is not available or is not suitable, then the WCB/WSIB, in conjunction with the treating physician, will actively assist the injured worker in locating and settling in to work with a different local employer, usually after an individually designed training program. If geographical relocation is necessary for an injured worker to take a position, it must be approved by the injured worker and the injured worker's treating physician. If the relocation is not approved by the injured worker, then the injured worker will receive full benefits and social rehabilitation services until appropriate work is found.
- In facilitating return to work, the Board must take a hands-on approach to the plan, ensuring that the injured worker will receive the agreed upon support to ensure a safe and viable return.
- The Board will employ a holistic approach in facilitating return to work. This means going beyond the narrow approach of looking at whether the essential elements of a job are suitable and available. A holistic approach to suitable work might look at whether the work environment is safe, including whether it is free from co-worker or manager harassment or hostility. It also looks at whether the work is sustainable (i.e., that the injured worker will be able to continue in that position on a longer-term basis) and meaningful (i.e., that the work makes a substantive contribution to the employer's business).
- A holistic approach also looks at the injured worker as a whole person in developing a sustainable and suitable plan for return to work. This includes consideration of the injured workers personal characteristics. This includes considering mental health issues, and recognizing that pain may be a real barrier to return to work.

- Plans for accommodated work must be developed in close consultation with the injured worker and a support person of their choice. Any ergonomic assessment will be done with the injured worker present and involved.
- The Board will recognize that some injured workers will only be capable of returning to work on a part time basis due to the nature of their limitations. Injured workers who return to part time work will receive benefits to compensate them for their wage loss.
- When it is in the injured worker's best interests, the Board will assist the injured worker and the employer in providing accommodations that lead to a sustainable and meaningful job. For example, the Board might provide an injured worker with a specialized computer that would enable them to return to their pre-injury job. The computer would move with the injured worker, should they change jobs.
- Special care will be taken to ensure that the injured worker will not be placed in a job which could cause a worsening of the condition or a re-injury.
- Experience rating will not be used as an incentive tool for return to work compliance for employers since it produces adverse effects. Any incentive tool will be carefully developed to ensure that its' result is to achieve truly suitable work which is in a physically and socially acceptable environment and which is clearly long-term. The best incentive tool will be one controlled by the injured worker.
- Where there is a union, the employer and Board will work with the union if the union's input is relative to the position, including Joint Return to Work Committees. These Joint Committees will be properly resourced, trained and supported by active enforcement and involvement by the Board. The Joint Committee will have the authority to recommend modifications to the workplace as required to accommodate the injured worker.
- There will be a progressive discipline process and penalties for employers who refuse to re-employ injured workers and for those who withdraw employment offers; provide unsafe, unhealthy, or fraudulent return-to-work arrangements; harass injured workers; or terminate their employment later. There will be no time limit on these obligations.
- The Workers Compensation Act will include provisions to recognize that injured workers, as persons with disabilities, face lifelong disadvantages in obtaining and sustaining employment. All injured workers with a permanent disability will have a lifelong entitlement to return to work and rehabilitation services, including restoration of benefits in situations where finding work is not realistically possible, or for periods in which they are having difficulty finding new work and require support.
- Injured workers in accommodated jobs or with a permanent impairment rating of 10% or more will automatically be restored to full compensation and entitled to further rehabilitation services if they lose their employment for any reason except criminal offenses. This will recognize the fact that injured workers often face barriers to finding employment, even if they were able to return to regular work after their

injury.

- Quality publicly recognized and provincially accredited rehabilitation services will be provided. Rehabilitation and employment must be suitable for the injured worker, vocationally, socially, financially, physically, and psychologically, including the injured worker's primary treating physician's recommendations. Injured workers will have the right to partake in the design and approval of their rehabilitation plan. The Board will not impose the plan. The plan will be flexible to take into account the injured worker's circumstances and changes in those circumstances. A new plan can be developed if necessary.
- A rehabilitation plan when required will include support for new special circumstances.
- English as a Second Language programs will be made available to injured workers whose first language is not English. These programs will be high quality and of sufficient length to allow these workers to become proficient in English.
- Where rehabilitation includes attending school, injured workers will be part of the process to choose the appropriate school and except in special circumstances approved by the injured worker, the schools will be accredited public institutions.
- The Board will recognize volunteer work as a valid form of vocational or social rehabilitation for those who remain unemployed or as part of a vocational rehabilitation plan and will not be penalized by volunteering. For vocational rehabilitation, volunteer work can make a valuable contribution to training and allow a worker to gain job experience. If an injured worker seeks training that is later determined to be necessary, the WCB/WSIB must be responsible for all costs associated with it. Volunteer work can also have a social rehabilitation function for injured workers who are completely unemployable or otherwise unable to return to paid employment.
- Many injured workers would have been able to return to school or otherwise improve their circumstances had it not been for the compensable injury or illness. The system will recognise that injured workers face barriers in advancing through their careers and therefore the Board will support retraining to the injured worker's full potential.

6. Access to Justice

- At all levels of decision-making the Board and the appeal systems will operate on an enquiry basis. This is in contrast to an adversarial basis. Decision makers will be trained to seek and obtain all relevant information to help the injured workers establish their claim recognizing that it is often difficult for injured workers to overcome numerous barriers in obtaining it themselves.
- There will be no time limits for injured workers in filing a claim and in appeals.

- Employers will have the right to appeal only on injured workers issues where they have direct involvement: specifically, initial entitlement and return to work with the accident employer.
- There will be full disclosure to the injured worker of all documents, including medical, and information relating to their claim; including general correspondence between the employer and the Board.
- Employers will have restricted access to information about an injured worker. Information on an injured worker's claim will be provided only in active appeals on initial entitlement or return to work with that employer. Medical information will not be disclosed to the employer except that which is specific to a contested issue on which the employer has appeal rights.
- There will be full recognition and communication by the Board of the injured worker's right to free advice and representation, from a representative of their choice, their union if they have one, community legal clinics, the OWA or from Legal Aid Ontario certificate holders.
- Injured workers or their survivors will not need to use the services of fee-for-service consultants. There will be sufficient funding provided for all of the representation programmes from appropriate funding sources such as the Ministry of Labour and Legal Aid Ontario.
- Injured workers will have the right to an independent appeal of Board decisions. The Workers' Compensation Appeals Tribunal (currently called the Workplace Safety and Insurance Appeals Tribunal) will not be bound by WCB/WSIB policy.
- A tripartite appeal panel made up of a representative for the injured worker, the employer and a neutral chairperson will be available as a matter of course.
- Appointments to the Tribunal will be competent and qualified in Workers Compensation law and policy.
- Members of the Provincial Legislature, including their trained staff, will be among those who provide assistance, including representation at appeals.

7. Funded Arms Length Programmes

The legislation will ensure that sufficient funding will be provided to such arms length organisations as:

- The Office of the Worker Advisor (sufficient means the OWA has the ability to handle all injured workers' claims regardless of union affiliation within 30 days).
- The Ontario Network of Injured Workers Groups (ONIWG)

- Support systems such as the Occupational Health Clinics for Ontario Workers (OHCOW), the Workers Health and Safety Centre, and the Occupational Disability Response Team (Prevention Link)
- Community Legal Clinics and Legal Aid Certificates
- An Occupational Disease Standards Panel
- The Institute for Work and Health and other research initiatives.
- A Database agency which would, for example, maintain a disease/cancer database (including parental and occupational information for childhood cancers and birth defects) along with a tracking system for workers with hazardous exposures (along the lines of the mining master file.)

8. Proclamation of Special Days

- There will be official recognition of June 1st as “Injured Workers Day.”
- There will be official recognition of April 28th as the “International Day of Mourning for Persons Killed or Injured in the Workplace.” (under Bill C-223). There will be an official two minutes of silence and stop work in the workplace and provision will be made for workers’ representatives to attend ceremonies.
- There will be official recognition of February 28/29 as Repetitive Strain Injury Awareness Day.

9. Improving Workplace Health and Safety

(Since this document is attempting to focus on compensation, we have not attempted to be comprehensive in this section. For the purposes of this document we want to focus on H&S points which overlap with the compensation system)

- The workers’ compensation system will find an effective way of working with the Ministry of Labour, organized labour and injured workers’ groups to aid in providing safer workplaces.
- Incentive programs such as merit rating, if used, will be based on joint labour management safety audit inspections.
- Employer-based behavioural safety incentive programmes will be prohibited.
- The Ministry of Labour will impose and collect heavy fines and penalties on employers who violate health and safety laws, including criminal prosecutions for reckless disregard for human life. A 25% surcharge on fines will be made available to victims of workplace injury or disease and a 25% surcharge on fines will be made available to the Ontario Network of Injured Workers Groups (ONIWG).
- The Board and Ministry of Labour will ensure prompt investigation of the cause of all injuries and illnesses, including occupational diseases, and then verify that the employer has fixed or removed the hazard that caused it. The Form 7 will include a required section to ensure employer compliance by removing the hazard. A copy of

For example, a worker who lives alone suffers a severely broken leg and arm in a fall at work. The hospital releases the worker to return home with casts on the arm and leg, and on a great deal of narcotic pain medication. While it will be a long period requiring intensive rehabilitation over a period of 8-9 months, a full recovery is expected so no NEL will ever be assessed. However, in the interim, the severity of the injuries and the effects of the treatment mean that the worker has no means to cook, grocery shop, bathe, look after personal care, and experiences a safety risk due to the amount of medication. Under the current Policy, the worker would get no assistance for a personal support worker during the period of recovery.

Similarly, a worker with a 45% NEL for psychological disability and a 15% NEL for a shoulder injury (resulting in a NEL of 53%, using the Combined Values chart in the AMA Guide) would not be eligible for assistance under the threshold for severe impairment, despite the significant limits of functioning associated with the psychological rating under Policy 18-05-11 alone, even before any physical functional deficits are taken into account:

In the higher range of impairment, the worker displays a moderate anxiety state, definite deterioration in family adjustment, incipient breakdown of social integration, and longer episodes of depression. The worker tends to withdraw from the family, develops severe noise intolerance, and a significantly diminished stress tolerance. A phobic pattern or conversion reaction will surface with some bizarre behaviour, tendency to avoid anxiety-creating situations, with everyday activities restricted to such an extent that the worker may be homebound or even roombound at frequent intervals.

Consider a worker who had a long work history despite having non-work-related medical conditions (eg. developmental disability or a low back fusion) who then suffers a work-related injury that results in a small NEL award. That work-place injury may very well take away the worker's entire ability to care for themselves, because of the effect of the workplace injury on the amount of function that remained after taking into account the limitations from the pre-existing conditions. Under the current threshold, such a worker would get no assistance under the Policy, despite the fact that it was the workplace injury that took away the injured worker's ability to function.

Shoulder NELs are small, but often shoulder problems can render a worker totally unable to take part in activities of daily living. This worker would not receive services as the shoulder NELs are less than the threshold.

- 2. Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?** Certainly, a permanent impairment is a reliable indicator of the duration of benefits and services that a worker is likely to need, but a permanent impairment **rating** is not.

The WSIB's view that the inverse of a NEL percentage rating is equal to remaining capacity (eg. a 40% NEL means that the worker has 60% capacity remaining) is not

supported by the definition of the NEL nor by the direct instructions in the first chapter in the AMA Guide to the Evaluation of Permanent Impairment, 3rd Edition. As stipulated in the AMA Guide, the rating of “impairment” that results from the use of the AMA Guide reflects the alteration of health status assessed by medical means and NOT a rating of “disability”, which is the alteration in the individual’s capacity to meet personal, social or occupational demands.

The scope and duration of benefits and services needed must be determined on the basis of the effects of the compensable injury on that particular injured worker, and not on some arbitrary rating.

3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?

Of course, injured workers with 60% NELs or a 100% permanent disability awards are those with serious injuries. However, this does not mean that those injured workers who have crossed the threshold get the benefits and services to the degree needed. It is also a stressful process to have to continually ask the WSIB for, and wait for, approval for any number of items required to support a worker with a serious injury.

Further, some with serious injuries do not get any services because they do not meet the threshold that is currently in place. The criteria for home modification (17-06-08) are limited to those with the 60% NEL or 100% PD but there are many instances where a work-related disability would require home modification at a lesser degree of NEL. For instance, a worker with a leg amputation would get a 40% NEL (table 47, AMA Guides) but would not be eligible to have home modifications to install a ramp or chair lift.

The policy suite does not adequately address the needs of injured workers with psychological injuries. For instance, the Guide and Support Dog policy does not reference therapy dogs.

4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.

Certainly the information from the treating physicians and therapists as to what is required for their injured worker patient must be given paramount importance. A program of education would be required so that practitioners would be aware of what benefits and services are available.



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October 13, 2022

WSIB Consultation Secretariat
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Greetings,

Thank you for the opportunity to share some thoughts on this important consultation.

I lost my left arm in an industrial accident in 1978 and have been active ever since studying the workers compensation system and how it effects injured and disabled workers and how it can be improved.

I have seen the system from a variety standpoints. As an employer – owner operator of a small construction company for 10 years after my injury. As a peer helper with the Thunder Bay & District Injured Workers Support Group (TBDIWSG) since 1984. As the manager of vocational rehabilitation services with the Ontario March of Dimes in Thunder Bay. As a member of the Board of Directors of the Ontario Workers Compensation Board of Directors. As the co-lead on the 7-year community – university partnership – the Research Action Alliance on the Consequences of Work Injury. And presently as the chair of the Research Action Committee of the Ontario Network of Injured Workers Groups (ONIWG).

Over these many years, it has become clear that many injured workers with serious injuries resulting in a permanent impairment (that is they have a NEL or PD rating) continue to suffer the negative consequences of their injury or disease. This includes chronic unemployment, poverty, depression and other mental illnesses, ongoing pain, and family breakdown.

Research has consistently shown that nearly 50% of workers with a NEL or PD experience these negative consequences. Clearly our public system can do better.

The idea that only the most severely injured workers (those with a 60% NEL or 100% PD) need special help available through the serious injury programs is flawed.

We need a wholesale rethink of WSIB policy & practice to avoid many of these long-term negative consequences.

There are many barriers in the present policy & practice that workers face that impede a full or substantial recovery. These include:

- 1) The bias included in the AMA guides. A massive research project was undertaken by the Ontario WCB in 1990-1992 where 11,000 injured workers with a permanent disability/impairment were surveyed. One aspect of the research was to develop a new rating schedule to be used in the new wage loss system starting in 1990. The results clearly showed that both the old WCB schedule and the AMA guides did not reflect the lived experience of these workers with a disability.

By under rating the level of impairment/disability, the system ends up blaming many injured workers for their individual hardships. And as a result, programs and services that could mitigate these hardships are not made available to the workers that need help.

- 2) Having a super high threshold of a 60% NEL (or 100% PD) to be eligible for the serious injury program means that only 1 % of workers with a NEL will qualify – when thousands more need this help every year.

Making things worse is that there is a stigma attached to many workers who don't heal within the proscribed timelines or don't return to work quickly. I reference the recent research funded by the WSIB and done at the Institute for Work and Health. One article from the study titled **The Association Between Case Manager Interactions and Serious Mental Illness Following a Physical Workplace Injury or Illness:**

A Cross-Sectional Analysis of Workers' Compensation Claimants in Ontario (paper attached) found that over 15% of workers with a lost time claim developed a mental illness because of how they were treated by their case manager at the WSIB. Most of these workers will not even qualify for a NEL let alone get a 60% rating.

- 3) The present focus on reducing system costs and the initial return to work. This focus often ignores the actual circumstances of the injured worker which is contrary to good rehabilitation practices. The policy & practices at the WSIB seem to expect individual workers to conform to the “norm” established by policy – rather than addressing where the worker's recovery is in the present tense.

We encourage the WSIB to engage with us in a more concerted effort to reduce barriers to recovery and improve the health, wellness, employment, and financial security outcomes for injured and disabled workers. Such discussions could lead to re – building lives and communities that can benefit us all.

We will address some of the questions you posed but overall want to endorse the submission made by Lois Cromarty from the Northumberland Community Legal Clinic (submission attached).

We would be pleased to share more research findings and engage with you to explore options to make improvements to the lives of thousands of injured workers, their families, and communities.

Also attached is our Platform for Change document for a more fulsome analysis of our hopes for the future of the system.

Sincerely,

Steve Mantis
Treasurer
TBDIWSG
Chair
Research Action Committee
ONIWG

**WSIB Serious Injury Program Value-for-Money Audit
Review of the Independent Living policy suite
Phase 1 Consultation, Fall 2022**

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?

No. Research clearly shows that the present system does not acknowledge the lived experience of thousands of workers with a work acquired disability every year.

We suggest a 30% NEL (rather than the present 60% NEL) would trigger entitlements as a starting point. Policy should be generous in its direction to decision makers to address the needs of individuals regardless of the existence of a NEL rating.

2. Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?

No.

3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?

Some few workers receive some of the benefits and services they need but leave thousands of workers without support

4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.

We must question the value of "consistent and predictable decision-making". Is this more important than quality decision making that addresses the actual needs of actual people?

We think not.

5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?

Yes.

6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.

a) At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?

Benefits and services should be provided whenever they are needed.

For example, when my arm got torn off at work in 1978, I was a single man living alone. My treating doctor would not release me from hospital without having a support person in place. This was not offered or provided for by the WCB.

a) At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?

The sooner the better. The more support a worker receives in the early stages of recovery can be a key determining factor in long term outcomes.

7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?

Yes

8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?

No. See #6 (b) above.

9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?

No. The flat rate could be a minimum amount with discretion to determine individual circumstances.

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

The entire policy suite should be reviewed with a view to the needs of injured workers with compensable psychological impairments



The Association Between Case Manager Interactions and Serious Mental Illness Following a Physical Workplace Injury or Illness: A Cross-Sectional Analysis of Workers' Compensation Claimants in Ontario

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Abstract

Poor mental health is a common occurrence among workers recovering from a work-related injury or illness. The objective of this cross-sectional study was to estimate the association between adverse interactions with workers' compensation case managers and experiencing a serious mental illness 18-months following a workplace injury or illness. A cohort of 996 workers' compensation claimants in Ontario Canada were interviewed 18 months following a disabling work-related injury or illness. Perceptions of informational and interpersonal justice in case manager interactions were defined as the primary independent variables, and Kessler Psychological Distress (K6) scores greater than 12, indicative of a serious mental illness, was defined as the outcome. Multivariate modified Poisson models estimated the association between perceptions of adverse case manager interactions and a serious mental illness, following adjustment for sociodemographic and work characteristics and pre-injury mental health. The prevalence of serious mental illness at 18 months was 16.6%. Low perceptions of informational justice, reported by 14.4% of respondents, were associated with a 2.58 times higher risk of serious mental illness (95% CI 1.30–5.10). Moderate and low perceptions of interpersonal justice, reported by 44.1% and 9.2% of respondents respectively, were associated with a 2.01 and 3.57 times higher risk of serious mental illness (95% CI moderate: 1.18–3.44, 95% CI poor: 1.81–7.06). This study provides further support for the impact of poor interactions with claims case managers on mental health, highlighting the importance of open and fair communication with workers' compensation claimants in ensuring timely recovery and return-to-work.

Keywords Occupational injuries · Mental disorders · Workers' compensation

Introduction

Workers' compensation systems are designed to minimize the financial harms of experiencing a work-related injury or illness and facilitate recovery and return-to-work. Yet, prior research has shown that workers' compensation claimants

often have poorer health outcomes than those injured outside of work [1–4]. Claimants often report high levels of stress during the claims process and are more likely to develop long-term mental health problems, such as depression and post-traumatic stress disorder [5, 6]. In Ontario, as many as 50% of claimants have been found to experience depressive symptoms in the first year following a workplace musculoskeletal injury [7]. Further, mental health problems that emerge after a workplace injury or illness can persist for years afterwards, inhibiting long-term physical recovery and re-entry to the workforce [8–10].

In order to improve mental health outcomes among workers' compensation claimants, it is important to identify the modifiable elements of the workers' compensation process that may be contributing to poorer mental health. One factor that appears to be central to recovery and return-to-work

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following a workplace injury is communication between the claimant and important actors in the claim, including employers/work supervisors, colleagues and claims case managers [11]. Case managers, are responsible for adjudicating the claim and communicating with the claimant about benefit provisions, wage replacement and return-to-work planning. Poor experiences with case managers, including adversarial communication, as well as difficulty in accessing information, have been identified as a key source of stress and impediment to recovery among compensation claimants [12]. A recent study conducted in Victoria, Australia also found that poorer perceived fairness in communications with case managers was linked to poorer long-term mental health outcomes [13].

This relationship has not yet been substantiated in other jurisdictions or compensation systems. In addition, studies conducted to date have not included information on pre-injury/illness mental health, preventing an examination of whether case manager interactions are linked to new cases of mental illness, or an exacerbation of pre-existing mental health problems.

This study aims to examine the relationship between claimant perceptions of case manager interactions and experiencing a serious mental illness (defined as a mental, behavioural or emotional disorder resulting in serious functional impairment) 18 months following a physical workplace injury or illness [14]. It is hypothesised that there will be a higher prevalence of serious mental illness among those who reported poorer perceptions of case manager interactions.

Methods

Study Population and Recruitment

Workers' compensation claimants in Ontario, Canada who filed lost-time injury or illness claims between June 2019 and March 2020 were identified from administrative records held at the Workplace Safety and Insurance Board (WSIB) of Ontario, approximately 18 months following their initial injury/illness. The WSIB provides no-fault insurance coverage to Ontario workers for wage replacement, medical care and other costs related to injuries that occur at a workplace. Approximately two thirds of the Ontario workforce are covered for work-related injuries and illnesses by the WSIB, totaling 319,000 businesses across 16 industries, insuring 5.6 million workers [15]. In 2018, the WSIB registered 253,991 claims, and provided wage replacement or health care benefits to 194,614 workers.

Most claims are resolved within a short time period, with 86% of claimants returning to work within 3 months [15]. Therefore, in order to ensure there were a sufficient number of participants with longer and potentially more serious

injuries or complex claims in the sample, we aimed to recruit participants in approximately equal numbers from 3 sample groups: group 1 consisted of lost-time claimants with a claim duration of 5 days to 3 months, group 2 included those with a claim lasting 3 to 12 months, and group 3 included those with an active claim at 12 to 16 months following the initial date of injury or illness. Claimants with a physical injury or occupational disease, aged 18 or older, and who were able to conduct an interview in English or French were eligible for inclusion in the study sample. Claimants with a psychological injury claim, in the survivors' or serious injury programs (indicating a death, serious injury or permanent disability as a result of the work injury) or who had a traumatic head injury resulting in impaired communication were excluded.

In total 9,745 claimants were randomly selected from the eligible population from which the WSIB contacted 2,816 participants between June 2019 and February 2020, following a pre-specified monthly quota. Those who consented were subsequently contacted by the study team to determine eligibility and arrange a time for interview. Claimants who participated were compared to the original random sample on age, gender, industry, geographic location, benefit duration and employer size.

Data Collection

Interviewer-administered questionnaires were conducted 18 months following initial injury or illness. The questionnaire covered topics including return-to-work and labour market status, sources of income, function, recovery and measures of physical and mental health, interactions between the claimant and their case managers and healthcare providers, workplace accommodations provided, and sociodemographic and workplace characteristics.

Outcome Variable: Serious Mental Illness

The key outcome variable in this study was serious mental illness within the 18 months following a workplace injury or illness as measured using the Kessler 6-item (K6) scale [16]. This scale has been validated among a general population sample against the World Health Organization's Composite International Diagnostic Interview Short-Form (CIDI-SF) scales for anxiety and mood disorders [16, 17]. Respondents were presented with 6 symptoms (e.g., 'so depressed that nothing could cheer you up) and asked to indicate how often they experienced these symptoms within the past 4 weeks, with response options ranging from 0 or 'none of the time' to 4 or 'all of the time'. Scores were then summed, and a cutoff point of 13 was used to indicate a serious mental illness. This cutoff point has been found to have a sensitivity of 36% and a specificity of 96% in identifying serious mental illness in the general population [16]. Claimants who self-reported

a mental health diagnosis since the time of injury, but did not meet the criteria for a serious mental illness at the 18-month interview using the K6 scale were excluded to avoid potential misclassification, as these individuals may have had episodes of mental illness that had already resolved by the time of interview.

Independent Variables: Interpersonal and Informational Justice

Perceptions of fairness in case manager interactions were measured using 2 scales developed within a Canadian workers' compensation cohort [18]. Participants were asked to rate their communications with the agent to whom they most recently spoke regarding their claim. The first 2-item scale measured perceived fairness in manner of case manager interaction, including whether the case manager was polite and treated the respondent with dignity and respect. Each item was measured on a 5-point scale ranging from 1 or 'Strongly Agree' to 5 or 'Strongly Disagree'. The mean score across these items was calculated, representing a measure of case manager interpersonal justice. The second 5-item scale, measured using the same response options, included items concerning the information provided by the case manager, including whether the case manager provided the information they needed, and the openness and truthfulness of the case manager. The mean score across items within this scale represented informational justice. A mean score rather than a sum score was used to ensure that a 1-unit difference retained its original meaning on the response scale. All respondents who answered at least 1 question on each of the scales was included rather than deleting those with missing items within a scale, as recommended [19].

In total, 91 claimants reported that they were not assigned a case manager for their claim. These claims are likely short-term, straightforward claims that were filed electronically. In order to include this group, a categorical variable was created for each of the 2 scales, with 4 groups: those without a case manager, those with a mean score of less than 2 on the perceived fairness scale (indicating high perceived justice), those with a mean score of 2–3 (indicating moderate perceived justice), and those with a mean score of 4–5 (indicating low perceived justice). Previous work confirmed the factor structure applied in this analysis [13]. Internal consistency was high for both the informational ($\alpha = 0.93$) and interpersonal ($\alpha = 0.92$) justice scales in this sample. The correlation between the interpersonal and information justice scales was 0.86.

Other Covariates

Other covariates measured included age, self-reported gender, level of education, being born in Canada, length

of claim as indicated by sample group (5 days–3 months, 3–12 months and 12–16 months), union membership (yes/no), living with a partner (yes/no), self-reported diagnosed mood or anxiety disorder prior to injury/illness (yes/no), whether the claimant had an active disagreement with the WSIB about the status of their claim or benefits at the time of interview, and level of pain due to injury/illness at time of interview (10-point scale).

Analyses

Since claimants were sampled according to claim duration, those with longer claim durations were overrepresented and those with shorter claim durations were underrepresented relative to the underlying source population of WSIB claimants. To account for this, the models were weighted by the normalized inverse of the sampling fraction for each of the 3 sampling groups.

A modified Poisson model was used to measure the effect of perceived fairness in case manager interactions on mental health. Given the cross-sectional nature of the data, this model was chosen in place of a logistic regression in order to obtain a prevalence ratio rather than a prevalence odds ratio, the latter being an exaggerated estimate of effect when the outcome is not rare [20]. A modified Poisson model uses a sandwich estimator to avoid the overestimation of standard errors that typically occurs when using a count model with a binary outcome, and to account for clustering due to weighting [21, 22]. Separate models were run for interpersonal and informational justice to avoid multicollinearity between the two scales.

The 2 final weighted robust Poisson regression models were adjusted for age, gender, being born in Canada, claim group (as an indicator of length of claim as well as injury/illness severity and claim complexity), union membership, living with a partner, and pre-injury mental health disorder diagnosis. The possibility that the effect of case manager interactions on the likelihood of having a serious mental illness was different for those with a pre-injury/illness mental health diagnosis was explored through the inclusion of an interaction term in each model.

Due to the cross-sectional nature of the data, current pain and active disagreement with the WSIB could be conceptualized as either confounders or mediators in the relationship between case manager interactions and serious mental illness. That is, a current active disagreement may have been caused by poorer perceived fairness in interactions with the case manager or active disagreements may have caused poorer perceived fairness. Similarly, given the complex relationship between mental health and pain, greater pain may have had an adverse impact on mental health or poor mental health could have exacerbated pain. To explore this, additional models were run adjusting for pain and disagreement

with the WSIB, respectively, to examine the impact on effect estimates obtained from the 2 main models.

Results

Of the 2816 claimants with whom the WSIB established contact, 1674 (59.4%) agreed to share contact information to be interviewed and 1132 (40.1% of claimants reached by the WSIB, 87.8% of claimants successfully contacted and deemed eligible by the study team) participated. Among those who participated, 358 (31.6%) were in sample group 1, 1374 (33.0%) were in sample group 2 and 400 (35.3%) were in sample group 3. A participant flow diagram is available in Fig. 1. Minimal differences were observed between those who participated compared to the original eligible sample. Average benefit duration was slightly longer among those who participated compared to those who did not. However,

when examined within sample (claim duration) groups, this difference was not present (data available from authors upon request).

Of the 1132 participants, 62 (5.5%) were missing information on 1 or more of the covariates included in the analyses and were excluded. An additional 74 claimants (6.5%) self-reported a mental health diagnosis since the time of injury, but did not meet the criteria for a serious mental illness at the 18-month interview using the K6 scale, and were excluded. The overlap between K6-indicated serious mental illness and self-reported physician-diagnosed mental illness since the time of injury/illness is displayed in the supplementary materials. This left a final analytical sample of 996.

Characteristics of the sample are displayed in Table 1. In the unweighted sample, 56.5% were male, the average age was 47.4 (standard deviation 12.8), just over three quarters of respondents were born in Canada, and less than a quarter were not working at the time of interview. After weighting,

Fig. 1 Participant flow diagram

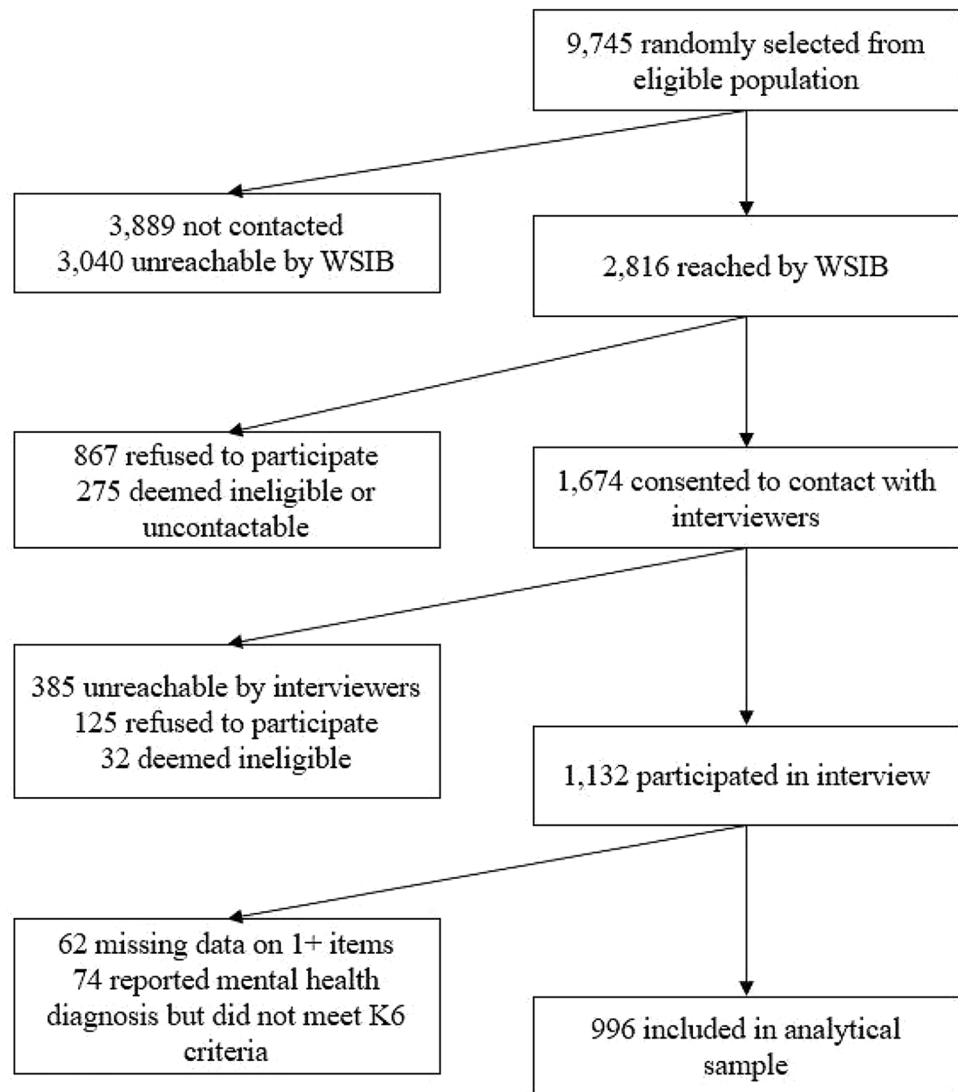


Table 1 Demographic, work and claim characteristics of the cohort

	Unweighted (n=996)	Weighted (n=996)
Gender [n %]		
Men	563 (56.5%)	536 (53.8%)
Women	433 (43.5%)	460 (46.2%)
Age [mean SD]	47.4 (12.8)	46.0 (13.2)
Born in Canada [n %]	771 (77.4%)	758 (76.1%)
Live with partner [n %]	656 (65.9%)	642 (65.5%)
Education [n %]		
Less than high school	301 (30.2%)	259 (26.0%)
Community college/trade school	379 (38.1%)	401 (40.3%)
Some university or above	316 (31.7%)	335 (33.7%)
Working status at time of interview [n %]		
Working with at-injury/illness employer	610 (61.2%)	624 (62.6%)
Working with a different employer	160 (16.1%)	181 (18.2%)
Not working	226 (22.7%)	191 (19.2%)
Union member [n %]	487 (48.9%)	507 (51.0%)
Wage replacement duration (weighting variable) [n %]		
5 days-3 months	314 (31.5%)	781 (78.5%)
3-12 months	334 (33.5%)	128 (12.9%)
12-16 Months	348 (34.9%)	87 (8.7%)
Pre-injury/illness mental health diagnosis [n %]	212 (21.3%)	227 (22.8%)
No contact with case manager [n %]	91 (9.1%)	135 (13.5%)
Case manager who I spoke to most recently...		
Interpersonal justice [n % agree or strongly agree]		
Treated me in a polite manner	758 (84.1%)	759 (88.3%)
Treated me with dignity and respect	723 (80.0%)	732 (85.0%)
Informational justice [n % agree or strongly agree]		
Provided me with the information I needed	630 (70.2%)	662 (77.0%)
Was open and truthful in their communications with me	686 (76.6%)	719 (84.3%)
Explained the process of returning to work carefully and completely	565 (63.9%)	588 (69.6%)
Regularly communicated useful information	522 (57.9%)	546 (63.6%)
Understood my individual needs	540 (60.0%)	582 (68.1%)

the sociodemographic characteristics of the sample did not meaningfully change. Agreement with items in each of the interpersonal and informational justice scales ranged from 57.9% (63.6% weighted) agreeing that their case manager regularly communicated useful information to 84.1% (88.3% weighted) agreeing that their case manager treated them in a polite manner.

With respect to the derived informational justice variable, 91 claimants (9.1% unweighted, 13.5% weighted) reported no case manager, 301 (30.0% unweighted, 34.9% weighted) had a mean score of < 2 indicating high perceptions of informational justice, 465 (46.4% unweighted, 42.9% weighted) had a mean score of 2-3 indicating moderate perceptions of informational justice and 139 (14.4% unweighted, 8.6% weighted) had a mean score of 4-5 indicating low perceptions of informational justice. On the interpersonal scale, 374 (37.6% unweighted, 42.7% weighted) had a mean score

of < 2, 439 (44.1% unweighted, 36.6% weighted) had a mean score of 2-3, and 92 (9.2% unweighted, 7.2% weighted) had a mean score of 4-5. In total, 165 (16.6% unweighted, 15.5% weighted) claimants met the K6 criteria for a serious mental illness at the time of interview. Among this group, 91 individuals (55%) reported accessing a physician or other professional for their mental health in the 30 days prior to interview, and 89 (54%) had received an active mental health diagnosis either pre (n = 24, 15%) or post- (n = 65, 39%) injury/illness.

Results from the weighted modified Poisson regression model are available in Table 2. Following adjustment for confounders, there were 2.58 (95% confidence interval [CI] 1.30-5.10) times more cases of serious mental illness among claimants with a mean score of 4-5 on the informational scale (indicating lower perceived justice) compared to those with a mean score of < 2. There were 1.15 (95% CI

Table 2 Weighted modified Poisson regression model effect estimates for the effect of case manager interactions on the likelihood of experiencing a serious mental illness at 18 months (higher score = lower perceived justice)

	Interpersonal justice		Informational justice	
	PR ^a	95% CI	PR ^a	95% CI
No case manager	0.92	0.36–2.36	0.68	0.27–1.74
Mean score < 2	1.00 (ref)		1.00 (ref)	
Mean score 2–3	2.01	1.18–3.44	1.15	0.69–1.94
Mean score 4–5	3.57	1.81–7.06	2.58	1.30–5.10

^aAdjusted for gender, age, education, immigrant status, sample group, union membership, live-in partner, pre-injury/illness mental health diagnosis

PR prevalence ratio

0.69–1.94) times more cases of serious mental illness among claimants with a mean score of 2–3 compared to those with a mean score < 2, although this result was not statistically significant. On the interpersonal scale, there were 3.57 (95% CI 1.81–7.06) times more cases of serious mental illness among those with a mean score of 4–5, and 2.01 (95% CI 1.18–3.44) times more cases among those with those with a mean score of 2–3 compared to those with a mean score of < 2. There was no difference in the prevalence of serious mental illness among those with no case manager compared to those with a score of < 2 on the interpersonal or informational justice scales. A pre-injury/illness mental health diagnosis was examined as a potential effect modifier of the effect of case manager interactions on the likelihood of experiencing a serious mental illness at 18-months. However, due to small sample sizes, results were inconclusive.

Secondary analyses adjusting for pain and active disagreement with the WSIB, individually and together, attenuated the association between interpersonal and informational justice and serious mental illness. The results from these analyses are available in the supplementary materials.

Discussion

Given the high prevalence of mental illness following physical workplace injuries, it is vital to understand how modifiable elements of the workers' compensation system may be contributing to poor mental health. This study highlighted one potential contributor to poor mental illness among claimants; poor perceived interactions with case managers. We found that workers' compensation claimants in Ontario, Canada who reported poorer interactions with their claim case manager had a higher prevalence of serious mental illness 18-months following their injury/illness.

This study builds on previous work conducted in Victoria, Australia, which similarly found that adverse case manager

interactions were linked to poorer subsequent mental health, by highlighting the presence of this relationship in a different workers' compensation system. In addition, by measuring and adjusting for a pre-injury/illness mental health diagnosis, this study is the first to establish a link between case manager communication and serious mental illness independent of poor pre-injury/illness mental health [13, 23].

This finding has potential implications for the handling of workers' compensation claims. Around 40% of claimants reported that they did not receive regular, useful information from their case manager, indicating a target area for improvement in the communication between case managers and claimants. Further, while a high proportion reported that their case manager treated them with politeness, dignity, and respect, serious mental illnesses were 3.6 times more common at 18 months post-injury/illness among those who did not. Therefore, both the quantity and quality of information provided, and the manner of interactions appear to be important.

Notably, overall perceptions of fairness in case manager interactions were poorer in this sample, compared to those reported among workers' compensation claimants in Victoria, Australia [13]. This could reflect the fact that respondents were asked about their interactions 18 months following their injury, suggesting that longer-term reflections are generally poorer, or it could reflect tangible differences between the two compensation systems.

Importantly, unlike factors such as disagreement with the outcome of a claim, case manager interactions are modifiable, for example through policies and training programs. Given the impact of mental illness on recovery and return-to-work for claimants, working to improve case manager-claimant interactions could be a good investment for workers' compensation systems.

Some of the strengths of this study include our ability to account for pre-injury mental health diagnoses, our use of a validated screening scale to measure mental illness rather than relying on self-reported diagnoses, our sample design to ensure that those with longer-term, more complex claims were represented, and our use of a modified Poisson model in order to avoid overestimation of effects when using an odds ratio.

However, there are also limitations. Given the interview was conducted at 18 months, mental illnesses that resolved prior to the interview may have been missed. This may explain why the prevalence of mental illness in this sample was lower than that found in prior studies of WSIB claimants [7]. In addition, due to the low sensitivity of the K6 screening scale (36%), some cases of serious mental illness within the sample may have been missed. As a result, this study likely only captures the most serious and persistent cases of mental illness and can speak less to the determinants of shorter-term or less severe mental illnesses. While

the participation rate among those eligible appears to be low (40.1%), an assessment revealed that the only meaningful difference between the study sample and the original random sample was a slightly longer length of benefit duration, an artefact of the sampling design of this study. This was accounted for by weighting the models by the inverse of the sampling fraction for each group defined by duration of wage replacement. Therefore, the study sample is considered to be representative of the claimant population.

Another limitation of this study is that it is cross-sectional, meaning both mental health and perceptions of fairness in case manager interactions are measured at the same time. Experiencing a mental illness may impact upon communication and social skills, and may cause strain in relationships, therefore there is a potential for reverse causality [24]. Yet, the measure of case manager interactions in this study was retrospective, for the majority of claimants in the weighted sample, their cases had closed and case manager interactions will have ceased over a year prior to the interview at which their mental health was assessed. Further, pre-injury/illness mental illness diagnoses were adjusted for in the analyses to account for the effect of pre-existing mental health problems on subsequent case manager interactions. There remains a possibility that experiencing a mental illness at the time of the interview may have flavored memories of case manager interactions. However, prior work conducted by the research team among a cohort of Australian workers' compensation claimants established that the exposure measure of perceived fairness in case manager interactions is distinct from the screening scale for mental illness using factor analysis, indicating these measures are capturing different concepts [13].

Further, while we believe we have captured the most important confounders of the relationship of interest, the cross-sectional nature of the data also means we lack information on certain pre-injury work characteristics that could influence the relationship between case manager interactions and subsequent mental health. Secondary analyses did reveal that adjusting for pain and disagreements with the WSIB, rather than treating them as mediators, attenuated the relationship between perceptions of fairness in the information provided by case managers and mental illness. However, due to the cross-sectional nature of the study, it is unclear whether these factors are acting as mediators or confounders of the relationship. This study also lacked power to examine the potential for pre-injury mental illness to be acting as an effect modifier of the observed relationship, therefore the observed associations may differ for those with versus without a pre-injury mental illness.

In conclusion, this study provides support to previous work on the negative impact of poor interactions with claims case managers on mental health following a workplace injury or illness. Future research using longitudinal designs

to ensure correct temporality in the measurement of case manager interactions, mental illness, and the confounders of this relationship, are required in order to further substantiate this finding. This work has important implications for the management of workers' compensation claims, both in Ontario as well as in other jurisdictions, highlighting the importance of informative, open, polite and fair communication with workers' compensation claimants in ensuring timely recovery and return-to-work.

Supplementary Information The online version contains supplementary material available at <https://doi.org/10.1007/s10926-021-09974-7>.

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Data Availability The datasets analyzed during the current study are not publicly available but are available from the corresponding author on reasonable request.

Declarations

Conflict of interest On behalf of all authors, the corresponding author states that there is no conflict of interest.

Ethical Standards This study was approved by the University of Toronto Health Sciences Research Ethics Board and have therefore been performed in accordance with the ethical standards laid down in the 1964 Declaration of Helsinki and its later amendments. All participants gave their informed consent prior to their inclusion in the study.

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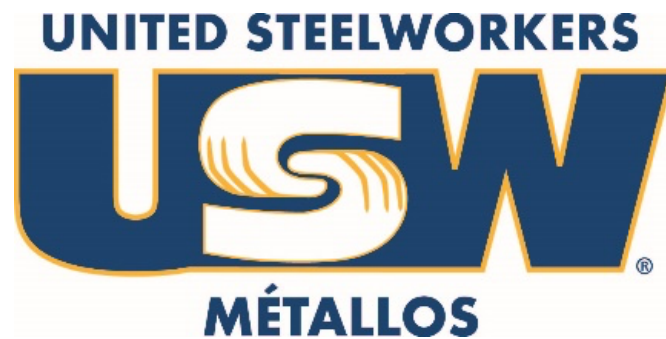
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10/14/2022

USW District 6 Submission Re.:

WSIB's SIP VFMA Consultation



Sylvia Boyce, USW D6 Health, Safety and
Environment Coordinator & Andy LaDouceur, USW
Local 2251 WSIB Committee

Introductory Remarks:

The United Steelworkers (USW) is the largest private sector union in both Canada and North America, representing approximately 1.2 million active and retired workers. USW District 6 is the largest of United Steelworkers' 13 districts with over 74, 000 members and approximately 50, 000 retirees located in Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island. Our union represents workers in every sector the Canadian economy.

It has been a long-standing practice in Ontario to consult the public regarding proposed legislative and regulatory changes, and we appreciate the opportunity to participate in this process. While the opportunity is appreciated, we have concerns regarding the inspiration for this consultation as well as the time limits and the limitations of the VFMA as well as the proposed questions for this consultation. In order to express these concerns, our submission will go beyond the scope of the questions posed by the WSIB.

Background:

On September 16, 2022, the WSIB announced this consultation and invited feedback to be submitted no later than October 14, 2022. The invitation to provide feedback within these four weeks was limited to questions posed regarding the VFMA recommendations. Ten questions were posed by the WSIB for the purpose of this consultation.

Submission:

Our submission will consist of three parts:

1. Preliminary issues,
2. Responses to consultation questions, and
3. Additional feedback.

Part I: Preliminary issues

As stated in our introductory remarks, we have issues with the VFMA's limitations as well as it being the inspiration for a consultation. To be clear, we don't expect the WSIB to simply ignore recommendations made in a VFMA report, but those recommendations shouldn't be a limitation on any consultation. The WSIB is required to have a VFMA conducted as prescribed by s. 168 of the WSIA, but there is nothing indicating that this audit would limit the scope of a consultation.

It is noted in the VFMA that the report is intended for internal use only¹, and the fact that Deloitte LLP noted that their “*review criteria and attributes which were validated and confirmed by WSIB*”² indicates that this amounts to an internal audit contracted to an outside agency. If this VFMA were anything more than an internal audit focused on cost, effectiveness, and efficiency of services provided by the SIP, then the auditors wouldn't need to stipulate the report is for internal purposes nor would they require WSIB's validation or confirmation to conduct the audit. The auditor has no experience with WSIB claim issues and that lack of knowledge shouldn't be used to limit a consultation to ten questions regarding their recommendations.

Additionally, this VFMA didn't include any input from injured workers, employers, or their representatives. Without this perspective, the report fails to provide a balanced view. While there is no requirement for input from any group in the WSIA for the VFMA, there is also no reason to have an unbalanced view by excluding stakeholders.

The link to the VFMA is appreciated as it allows those participating in the consultation to view the information considered by the WSIB when deciding to hold a consultation. However, the font of the report when printed on standard letter size paper (8 1/2" X 11") is not an appropriate size for the purpose of accessibility and presents a challenge to those without any visual impairments. WSIB should stipulate that any and all reports need to be in a format that complies with legislation regarding accessibility, and quite frankly, the WSIB shouldn't need to be advised of such a duty.

A four-week consultation period isn't sufficient to fully review the 136-page VFMA report to identify all issues within, nor is it sufficient to address all concerns with the SIP. Participants in these consultations don't necessarily have dedicated staff to formulate submissions, so more time is needed to take on such an additional workload that has the potential to impact the benefits of some of the most vulnerable workers. Simply put, more time should be afforded for consultations and the time allotted should take into account factors such as the amount of background information being provided, and the potential impact.

To summarize, VFMA's by their design have limitations and should never be used to restrict feedback in any consultation. Consultation periods need to consider factors such as potential impact and amount of information provided to allow for meaningful participation.

Part II: Responses to consultation questions

¹ See Information about Deloitte's services section of VFMA, last paragraph, second last sentence.

² See Executive Summary of VFMA, first paragraph, second last sentence.

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?

The severely impaired threshold was never a suitable criterion for benefits and services in the independent living policy suite. While the WSIA mentions severely impaired workers in s. 32, it doesn't stipulate that such an impairment needs to be permanent, nor does it provide an arbitrary number to determine that a worker is severely impaired. The current practice of requiring a 60% NEL or 100% PD has always been an arbitrary threshold that fails to consider the real merits and justice of each individual case as prescribed by s. 119 of the WSIA. This requirement is an example of the injustices that many injured workers experience in the compensation system.

Section 64 of the Legislation Act, 2006, stipulates that

“An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best insures the attainment of its objects.”³

The WSIA provides the WSIB with the authority to interpret the Act and write policies in that regard in s. 159(2)(a.1), but that doesn't relieve the Board of their statutory requirement to do so in a manner that is consistent with the rule of liberal interpretation prescribed by the Legislation Act, 2006. It is therefore noted that all WSIB policies are required to employ the rule of liberal interpretation and any that fail to do so require correction.

Consideration of individual circumstances (i.e., the merits and justice) of each case should be the only threshold to determine entitlement to any benefits or services in the independent living policy suite.

2. Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?

Similar to our answer in question 1, a permanent impairment rating is an arbitrary threshold that fails to consider the individual merits and justice of a claim. The effects of an injury don't need to be permanent to have an impact on someone's ability to fully function independently. For example, someone who has their leg in a cast as a result of a workplace injury might only be temporarily prevented from performing their usual tasks such as mowing the lawn with a push mower, but that doesn't mean that they should never be considered for temporary independent living benefits or services. Providing a remedy

³ Rule of liberal interpretation, s. 64 of the Legislation Act, 2006, <https://www.ontario.ca/laws/statute/06l21#BK74>

involves making a person whole, and anything that falls short of that isn't compliant with the intent of a remedial Act.

3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?

The short answer is no. An arbitrary threshold such as the severely impaired criterion only serves to deny benefits for the purpose of case management (i.e., controlling the number of open claims or open issues to be reviewed in a claim). All arbitrary thresholds fail to consider the individual merits and justice of a claim, and therefore only serve to provide insufficient reasons for the Board to fail to uphold one of their most important decision-making obligations prescribed by the WSIA. Quite frankly, the Board has been failing to uphold this decision-making obligation for far too long through their reliance on policy criteria and other WSIB documents that are either public or private (the latter should never be used).

4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized tests or assessments.

Fairness and providing justice should never be sacrificed for the sake of consistency and predictability in decision-making. Such focus only serves to substantiate our point that the Board is failing to consider individual merits and justice of each claim as prescribed by s. 119 of the WSIA. The answer to this question is found with the question, with the exception of standardized tests as they would only continue to serve as arbitrary thresholds. Additionally, policy criteria should only be used for an expedited process to allow a claim and every claim that doesn't meet those criteria must be decided on its individual merits and justice.

5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it

would be beneficial to provide any of these benefits or services on a short-term or temporary basis?

There are too many circumstances in which it would be beneficial to provide services on a short-term or temporary basis to list them all. One such example is provided in our answer to question 2. Justification for providing short-term or temporary independent living benefits and services can be found in s. 32 of the WSIA. Only s. 32 (h) mentions severely impaired workers and it is not a requirement to be severely impaired to be entitled to health care benefits for independent living as described in s. 32(e). Section 32(e) provides the Board some discretion as it states that the Board's opinion on appropriateness is a deciding factor for independent living benefits and services. However, as consistently noted in this submission, the Board must consider the individual merits and justice when making decisions.

6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.
 - a. At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?
 - b. At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?

Our answer to part a of this question has been provided in our answers to the previous questions. In response to part b, such consideration should take place immediately as there is no justification to delay providing a remedy to an injured worker. Arbitrary factors shouldn't be used to determine entitlement or delay benefits.

7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?

All health care benefits, including any independent living benefits and services, should be provided immediately and reviewed as necessary.

8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?

We see no justification in delaying justice as the adage states, justice delayed is justice denied. Providing benefits and services is part of providing justice to injured workers.

9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?

The flat rate provides for discretionary spending, which in turn contributes to an individual's independence, but the rates don't reflect the real costs for the services required. Rates should be based on information collected through service providers to ensure that the benefit amount is sufficient. To be clear, we are not suggesting a tendering of bids and collection of receipts process as part of this change. We are simply saying that the amount used for discretionary spending to provide independent living must be sufficient to meet the needs.

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

Please refer to our points regarding policy being used only as an expedited process, the need to consider the individual merits and justice, and not using arbitrary criteria to deny justice as well as any and all other applicable points made by other organizations such as the OFL, ONIWG, injured worker legal clinics, or other allies to injured workers.

Part III: Additional feedback

WSIB's SIP needs to tailor its response to each claim based on type of injury. For example, we are aware of a worker who suffered a critical injury and was placed in a medically induced coma the day of injury due to the trauma to his head/brain and the SIP sent a Form 6. The injured worker's spouse was worried about whether or not they'd live and didn't need the added stress of getting a form letter about the requirement to claim and consent considering the worker didn't have the capacity to do so. Even now, three months after the injury, that he is conscious he still can't remember any of the details of the accident. The Form 6 should have been sent much later and consideration of a modified

claim and consent document for those suffering memory loss following a serious injury should be part of the process to avoid stressing an injured worker about details they simply can't remember.

Another issue identified in that same claim was the employer's failure to pay for transportation to the hospital, and the Board's initial reaction to hide behind s. 38(1) without considering s. 38(2) of the WSIA prescribing that the WSIB can order the employer to pay. Once s. 38(2) was pointed out to the WSIB decision-maker, as well as the employer allowing the injured worker to pay for transportation could be viewed as a violation of s. 95.1(b) which is an offence prescribed in s. 155, then reimbursement was approved. This wasn't the first time this employer failed to pay for transportation to the hospital and there are likely other employers who haven't taken the necessary measures to ensure a worker is never billed for an ambulance required for a workplace injury. The WSIB ought to audit all employers to insure that they have accounts with local hospitals and/or clinics so that they are billed for transportation costs prescribed in s. 38 of the WSIA.

Summary:

The merits and justice of each individual claim must be considered which would eliminate any reliance on arbitrary criteria to deny benefits and/or services. Given that the WSIA is remedial, then the rule of liberal interpretation applies to it as well as WSIB's policies. A focus on fairness and providing justice is required and should never be sacrificed for the sake of consistency or predictability. We expect better from the WSIB, and clearly the WSIB needs to do better to provide real justice to injured workers.

Respectfully submitted on behalf of the USW District 6 by,

Sylvia Boyce and Andy LaDouceur



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14 October 2022

Via Electronic Mail

Serious Injury Program/Independent Living Policy Review Consultation
Workplace Safety and Insurance Board
200 Front Street West
Toronto Ontario
M5V 3J1

RE: Serious Injury Program/Independent Living Policy Review Consultation

To Whom It May Concern:

I am writing to provide submissions with respect to the above referenced consultation. By way of background, the Workers' Health and Safety Legal Clinic ("the Clinic") is a community legal clinic funded by Legal Aid Ontario. Our mandate is to provide legal advice and representation to non-unionized low wage workers in Ontario who face health and safety problems at work.

The Clinic also represents workers who are injured on the job with respect to their workers compensation claims, workers who have reprisal claims under the Ontario *Employment Standards Act, 2000*, workers who have been discriminated against because of the workers' compensation claim, and workers who have been wrongfully dismissed.

Question 1 – Is a Threshold Suitable for Considering Entitlement

I submit that a threshold is suitable for automatic entitlement to benefits and services. Once the threshold is reached, the worker should be able to access the range of services available.

A threshold should ease resources by not requiring an onerous need to review every entitlement on a case by case basis. To clarify, the threshold requirement should not be used to deny all entitlement without assessing the merits of the request. A threshold is not a means to abrogate potential access to the serious injury program benefits within compensation scheme.

Using the Non-Economic Loss ("NEL") award as a threshold leaves the worker excluded for potentially a long period of time. A NEL award is only granted after the worker reaches maximum medical recovery. As such, a worker not having received a NEL award is not able meet the threshold. It would be unfair to workers to be denied entitlements or have to wait until reaching maximum medical recovery.

By considering the threshold only as a question of automatic entitlement, the WSIB can direct resources to adjudicating cases under the threshold. There are a myriad of circumstances where

a worker may not have a high enough NEL award but requires additional support. Rather than closing the door completely on those injured workers, the WSIB can adjudicate entitlement on a case by case basis. Benefits and services should still be granted if they are necessary, appropriate, and sufficient.

Question 2 – Is a Permanent Impairment Rating a Reliable Indicator?

The short answer is yes it can be but only with change.

The current requirement of a NEL award of 60% or a 100% pension award is simply too high. Workers can have serious injuries with a lower NEL award. I note that the Psychotraumatic Disability Policy, 15-04-02, contemplates a NEL award between 30% to 50% for workers who may be homebound or potentially room bound. Similarly, workers with a serious back injury could have a NEL award of 30%.

Both those examples are serious enough that the worker would benefit from the Serious Injury Program. As well, a worker with both a psychological award of 30% and a back injury with a 30% NEL award results in a combined value NEL award of 51%. A worker with a serious back injury and psychological impairment would not have access to the benefits of the Serious Injury Program.

These examples demonstrate that seriously injured workers are wrongly being excluded from the program. Automatic entry should be considered once the NEL award reached 30%.

Question 3 – Does the threshold result in people with serious injuries receiving benefits?

The policy suite is insufficient to address the needs of workers who have serious injuries that do not reach the 60% NEL barrier.

I call the 60% NEL award a barrier because it is an impediment to helping all workers with serious injuries. The WSIB should relax access to the benefits and where entitlement is not automatic, adjudicate based on necessity, appropriateness, and sufficiency.

Question 4 – Identifying Entitlement Criteria

The creation of more criteria and more measures to limit entitlement does not support injured workers. More criteria acts as a barrier to deny entitlement that is needed.

If the worker's treating healthcare practitioner recommend assistance that is necessary, appropriate, and sufficient to help the worker, the WSIB should be satisfied with that information and follow the recommendation.

Question 5 – Are there circumstances where benefits can be provided in the short term?

It would be helpful to provide benefits in the short term where there has been a serious injury but full recovery is expected. Many workers can require assistance during their recovery period.

Question 6 – At what point should benefits for independent living or quality of life commence?

In answer to both questions under this heading, entitlement should commence from the date of accident. Immediate assistance should be the priority for injured workers. If the WSIB is willing to consider benefits in the short term, it would be necessary to provide aid as soon as possible.

Question 7 – Should Benefits be Reviewed?

Once the worker has been included in the program, the WSIB should not be re-adjudicating entry. Workers should not be perpetually on probation with the WSIB.

However, the WSIB should not be limiting entitlements to evaluation at the time of entry. When further requests are made those requests should be adjudicated based on necessity, appropriateness, and sufficiency.

Question 8 – Should the WSIB Wait to Provide Benefits?

If a healthcare practitioner recommends a benefit or service it should be provided immediately. The WSIB should focus on helping workers. Injured workers should be provided services as needed.

Question 9 – Do Universal Benefit Amounts Continue to be Appropriate?

It is important that injured workers have discretionary funds to improve their quality of life. However, these amounts should be minimum amounts and not maximums. Circumstances may arise where additional funds would be appropriate.

Question 10 – Do the Policy Criteria Allow for the Provision of Services and Benefits?

These policies should have been included in the Policy Agenda 2022 in order to be reviewed with this consultation.

The current policies focus on narrow circumstances. Independent living needs are required by workers with serious injuries of a physical or psychological nature. Needs such as ongoing therapy or maintenance treatments would be a first step in updating the policies to aid workers with serious injuries

Thank you in advance for your consideration of these submissions.

Yours truly,

John Bartolomeo

John Bartolomeo
Lawyer/Co-Director

From: [Eugene R Lefrancois](#)
To: [Consultation Secretariat](#); [Steve Mantis](#); [John McKinnon \(IWC\)](#); [Laurie Hardwick](#)
cutting the Serious Injury Program for people
Subject: Friday, October 14, 2022 12:06:34 AM
Date:

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October 14 2022

My name is Eugene Lefrancois and I was injured June 5 1985. My claim number is xxx. I have serious injuries that will never get any better and I am now being told by a nurse that the physio that I'm receiving will be finished in a few weeks. She also told me that I can appeal this decision. Do you know how long it takes to start and finish an appeal? I will probably be dead before it is heard. And for what? Money? Making quota? What is the reason?

I need maintenance physio and am being denied by the nurse. What doctor told her to do this? You all know the Meredith Principles or I hoe you do as this is the reason why your working with this corporation. It seems that you have strayed from these principles. Why..Money? Political reasons? Why?

Why do you even bother to do this so-called consultation when you already have a plan to cut services and benefits to the people who need it. Aren't the employers happy with \$Billions in rebates? Can you at least be honest and tell all workers who get seriously injured that they will receive some help for a limited time and then be cut off to depend on the social services our province has to offer.

The Meredith Principles are based on:

1. **1.NO FAULT COMPENSATION:** workers are paid benefits regardless of how the

injury occurred. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury.

2. **SECURITY OF BENEFITS:** a fund is established to guarantee funds exist to pay benefits to workers.
3. **COLLECTIVE LIABILITY:** all employers share liability for workplace injury insurance. The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
4. **INDEPENDENT ADMINISTRATION:** the organizations who administer workers' compensation insurance are separate from government.
5. **EXCLUSIVE JURISDICTION:** only workers' compensation organizations can provide workers' compensation insurance. All compensation claims are made directly to the compensation board. The board is the decision-maker and final authority for all claim.

1- Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite.

Who now makes medical decisions? Nurses with MD oversight? Nurses with no MD oversight? Adjudicators reliance on non treating MD's with a license? Adjudicators reliance on non treating MD's without a license? Is the WSIA being followed? Or WSIB policy being followed? How were these policies formulated? Where these policies formulated for financial reasons or for ease of people with serious traumatic injuries and diseases. Has mental health been addressed as a serious injury?

Why is there a threshold on severely impaired people? Each case is judged by the Workers Compensations Board on its own merit. But you place all severely injured people into the same category. What constitutes a severe injury? An arm that is amputated? Or an arm that is crushed but still attached? A broken back? Or a cracked back? Amputated leg? Or a leg that can't bear weight? How does one measure severe? The needs of an injured person will increase as the body ages. A once young strong body, along with an injury will break down faster than a person without a serious injury.

2- Is someones permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work related injury or illness?

Are these decisions based on cost? As I stated before most injuries can be predicted on the outcome years before it happens. Even after Maximum Medical Recovery is reached, a leg that can't bear weight well now, will certainly make the other leg and hip and back get worse

over time. An arm that is crushed, the other arm, hand shoulder, neck and ribs will get overused leading to other medical issues. A back that is broken or cracked may or may not heal by itself. Paralysis may result if crack opens up. Can the worker do daily activities like any other able-bodied person should be asked and acted upon. What is the hindered? What is the reason?

3- Does the severely permanent impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness

Why was the threshold put in place? How many other jurisdictions have thresholds in place to guide them? There is a financial limit that is in place now. This would have to change. Nurses and I hope under the direction of licensed doctors are limiting services. Services are being asked for and are being denied. Is “Go to appeal” the new work motto of the Serious Injury Program. How many people as of today are waiting for approval? How many crushed arms or legs that don’t work properly heal themselves? Why the threshold in the first place?

4- Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or services? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (IADLs), combination of diagnosis and function standardized tests or assessments.

I was tested for Alzheimer and dementia by mistake. So I did go through the test. Mutual time was made within days. We found out that I don’t have Alzheimer...but I a demented....The test was simple took about 15 minutes and it was through observation, with a few questions that told the nurse that I was Alzheimer. free. With these in-home visits, the workers can verify what the injured needs for services.

5- Many of the benefits and services in the independent and living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefit or services on a short term or temporary basis.

With proper testing and observation from qualified people, recommendations would be followed to intercept problems before they become chronic. The accident is what caused these issues. Some injuries and diseases cannot have a clear timeline to MMR. Since all people are different any benefit or service that will be provided has to be tailored to meet the needs of that individual.

6- Immediately following a work related injury or illness. Treatment and recovery are the primary focus.

a) At what point in a persons recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?

Changes to the human body and trauma to the psyche of anyone who has a serious workplace injury. Some people can endure more some people can't endure. The accident is the factor that changed these people. The time to help these people is right away, not after MMR, because MMR is not always achieved. With proper testing and observation from qualified people recommendations would be followed to intercept problems before they become chronic.

b) At what point in a persons recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?

Trying to get the person who is injured back to where they were before the injured or diseased is the key focus. These people need help now. Not after a 4 year appeal process. A lot of issues happen to a human body after receiving no benefits or services. Needless human suffering can be averted by proper testing and observation from qualified people, recommendations would be followed to intercept problems before they become chronic.

7- Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?

An injured worker is entitled to such health care as may be necessary, appropriate and required. There is no time limit in WSIA on health care and nothing that would require time to pass before benefits and services are provided.

proper testing and observation from qualified people, recommendations would be followed to intercept problems before they become chronic. All services have to be tailored to meet the needs of the person before chronic issues arise. Address the chronic issues and deal with them on a case by case. Not all people with leg or arm problems will get to MMR, and this has to be one foundation for how people will be treated.

8- Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?

If the injured worker needs a benefit or service, that benefit or service should be provided when the injured worker needs it, not months or years down the road.

There should be a regular review process built in, so that the current state of the injured worker's needs can be continually monitored and the appropriate level of services and benefits provided.

9-- Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?

All costs should be paid by the WSIB for benefits and services. Home care, health care, home maintenance auto maintenance should be borne by the WSIB. If the accident did not happen would these costs have been paid for?

10 Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align to the needs of those with severe/significant injuries?

The entire policy suite should be reviewed with a view to the needs of injured workers with compensable psychological impairments.

The Policies address primarily physical needs as regards activities of daily living. For example, the Personal Care Allowance policy speaks of activities of daily living of eating, maintaining good personal hygiene, grooming, and being mobile, and do not address psychological aspects of daily living (eg. Memory, concentration, effects of medication etc). The Guide Dog policy does not reference therapy dogs.

Further, injured workers with serious injuries (both physical and psychological) should be allowed maintenance treatment and therapy on an ongoing basis, rather than only in the acute phase as is the case currently. The policy suite on independent living should address this gap.