

Administrative Practice Document

Weighing of Medical Evidence

Note: This is not a policy; it is a supplementary document to illustrate how the WSIB will administer the *Workplace Safety and Insurance Act, 1997*, (WSIA) and [Policy 11-01-02, Decision-Making](#) in practice. If there is a conflict between this Administrative Practice Document and the WSIA and/or WSIB policy, the decision maker will rely on the WSIA and/or WSIB policy, as the case may be.

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INTRODUCTION

Decision-makers at the Workplace Safety and Insurance Board (WSIB) must decide a worker's entitlement to benefits and services under the *Workplace Safety and Insurance Act* (WSIA). It must be established that the worker's injury resulted from an accident that arose out of and in the course of employment, or that the worker suffers from an occupational disease that occurred due to the nature of employment.

Decision-makers continuously collect information and weigh the evidence to make adjudicative decisions, including initial entitlement, throughout the life of the claim. While the specific information needed in a claim will vary based on the circumstances of the case, medical information about the worker's injury/disease, treatment and ongoing impairment is monitored and continuously evaluated.

Medical information may be received from a number of health care professionals. While the clinical findings are usually comparable, the interpretation of those findings among the health care professionals involved in the worker's case may vary. This can lead to a difference of opinion on diagnosis, prognosis, treatment, causation, and the worker's functional abilities or physical precautions. The challenge for the decision-maker is to take all of this information and weigh it appropriately.

As many of the decisions made at the WSIB are influenced by the way medical information is interpreted and weighed, this document focuses on the weighing of medical evidence in the decision-making process.

Decision-making

Decision-makers must gather all of the information that is available and relevant to a case in order to make entitlement and case management decisions. Wherever possible, information is gathered by telephone and medical reports are obtained from the health care professionals involved in the worker's case. All reasonable attempts must be made to obtain any missing information so that relevant information is available to the decision-maker throughout the adjudicative process.

As directed by legislation, a worker is entitled to WSIB benefits and services for a work-related injury or disease. Decision-makers are responsible for collecting the information needed to address and decide all issues that have a bearing on the worker's ongoing entitlement. Issues that may arise during the life of a claim that require an adjudicative decision include, but are not limited to:

KEY PRINCIPLES

- Adjudication is the process used to determine entitlement to benefits and services under the WSIA.
- A decision-maker is the person who makes decisions regarding entitlement.
- Decision-makers will gather relevant information and weigh evidence in order to make adjudicative decisions.
- Workers are entitled to receive benefits for injuries and diseases that result from accidents that arise out of and in the course of employment.
- Work-relatedness is established when determining initial entitlement. Decision-makers continue to evaluate the work-relatedness of a worker's ongoing impairment and treatment throughout the life of a claim.
- The WSIB makes its decisions based on the merits and justice of each case.
- When the evidence for and against an issue relating to a worker's claim are equal, the benefit of doubt is given to the worker.

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- a change in the diagnosis of the work-related injury/disease,
- new area of injury,
- secondary conditions,
- recurrence,
- disputes about job suitability, or
- treatment required.

Decisions relating to medical issues should be based primarily on the information and opinions received from the treating health care professional(s). These health care professionals include, but are not limited to, physicians, surgeons, physiotherapists, chiropractors and registered nurses (extended class). When medical information is submitted to the WSIB, the decision-maker must review it for completeness and clarity, within the context of the claim file. The decision-maker continuously assesses the medical information received to monitor the worker's recovery and ongoing work-related impairment.

Determining Relevancy of Evidence

Generally, the information and medical reports received in a worker's claim are about the work-related injury/disease starting from the date of injury. Occasionally, the WSIB receives information about the worker or the worker's medical condition(s) that are not directly related to the work-related injury/disease and impairment. The relevancy of such information is dependent on the issue under consideration by the decision-maker at the time.

There are also situations where decision-makers request pre-accident clinical records for adjudicative decisions. For example, pre-accident clinical records or chart notes are required when determining entitlement for

- psychotraumatic disability or chronic pain disability,
- ongoing impairment when a pre-existing condition affecting the same area of the body or system as the work-related injury/disease may be contributing to the worker's ongoing impairment.

A worker's privacy is a key priority at the WSIB and therefore decision-makers must determine the need to request any particular medical information as well the relevance of all information as it is received in a claim. Information is relevant to the claim when it has value in weighing the evidence to establish a matter of fact in a case, i.e. it has a bearing on the decision-making process. Where a document contains both relevant and non-relevant information, the non-relevant information is edited (blacked out) from the document.

Once the decision-maker determines the information has a bearing on decision-making, it is considered relevant. Relevancy does not speak to the weight that is given to that information in the decision-making process. All relevant information is considered and weighed in order to reach a decision. Information that is determined to be relevant to any decision in the claim is retained in the file records.

Health Care Programs

WSIB has established health care programs to provide workers with expedited access to specialized health care to support the worker's primary health care professional and WSIB decision-makers with respect to

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diagnosis, causation, and treatment recommendations. The objective of these programs is to provide quality care and assist the workers in their recovery from the work-related injury or disease. These programs include:

Programs of Care (POC) – Programs of Care are evidence-based health care delivery plans that describe treatment modalities shown to be effective for specific injuries and illnesses.

Low Back Expert Physician Examiner Services (LBEPE) – LBEPEs provide early and comprehensive low back assessments and recommendations to the worker, the worker's primary health care professional and the WSIB with respect to diagnosis, investigations, treatment and return to work. Direct contact with the treating health care professional is an important part of the service. The physicians providing this service are community-based family physicians who have completed a formal education program, developed and delivered specifically for this service by pre-eminent orthopedic specialists.

Regional Evaluation Centres (REC) – The REC physicians are medical experts in the field of musculoskeletal injuries. They perform a comprehensive medical assessment and contact the worker's primary health care professional to discuss the assessment findings, health recovery plan and the worker's capabilities to return to work. The work capacity liaison assists the worker to understand the implications of the REC physician's medical assessment for return to work planning.

Specialty Clinic Services – These services are especially designed to provide workers with more complex injuries and diseases quick access to health professionals with specialized knowledge and clinical expertise, for both assessment and treatment services. An integral aspect is the pharmacological review and screening of the worker's drug therapy, conducted by a pharmacist.

The above programs provide a worker with faster access to specialized and integrated health care that

Physician's Role

The CMA Policy called *The Treating Physician's Role in Helping Patients to Return to Work after an Illness or Injury*, available on the WSIB website, outlines the role of the physician including:

“The treating physician's role is to diagnose and treat the illness or injury, to advise and support the patient, to provide and communicate appropriate information to the patient and the employer, and to work closely with other involved health care professionals to facilitate the patient's safe and timely return to the most productive employment possible. Fulfilling this role requires the treating physician to understand the patient's roles in the family and the workplace. Furthermore, it requires the treating physician to recognize and support the employee-employer relationship and the primary importance of this relationship in the return to work. Finally, it requires the treating physician to have a good understanding of the potential roles of a return-to-work coordinator and of other health care professionals and employment personnel in assisting and promoting the return to work.”

Further clarification of the role of the physician in return to work is included in the same document.

“The CMA recognizes the importance of a patient returning to all possible functional activities relevant to his or her life as soon as possible after an injury or illness. Prolonged absence from one's normal roles, including absence from the workplace, is detrimental to a person's mental, physical and social well-being. The treating physician should therefore encourage a patient's return to function and work as soon as possible after an illness or injury, provided that a return to work does not endanger the patient, his or her co-workers or society. A safe and timely return to work benefits the patient/employee and his or her family by enhancing recovery and reducing disability.”

The role of other health care professionals, such as chiropractors and physiotherapists are similar. It is the role of the decision-maker to use the functional information provided to make decisions about the worker's ability to work.

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incorporates return to work planning and enhanced communication among participants, which may include the worker, employer, primary health care professional, and the WSIB. This ensures a common understanding of the recommendations, and enables the WSIB to provide the worker and employer with timely benefits and services.

Weighing of Medical Information

Medical information about the worker's injury or disease is integral to decision-making at the WSIB. Medical information relating to the worker's case may be received from a variety of health care professionals, including the services noted above.

Where there is a conflict in the medical information or opinions between the health care professionals, the decision-maker is expected to assess and weigh each report in order to reach a decision. The decision-maker may case conference with the nurse consultant who can explain pathology, or request a clinical opinion from a medical consultant (MC).

While decision-makers acquire medical knowledge as part of claims training and through exposure to claim files, this does not equate to the expertise of physicians. Therefore, the decision-maker may call on a MC to assist with

- issues of causation, mechanism of injury, pathology, or interpretation of medical information,
- clarification of the relationship between a diagnosis and the accident history, work environment or employment circumstances,
- the effects of pre-existing conditions or other non-work-related conditions on the work-related impairment.
- advice when there is a need for clarification of medical opinions on file. For example, the primary health care professional's treatment plan or list of functional abilities (or precautions) that may be different or contrary to the discharge recommendations from a Program of Care or REC.

Communication with Workers' Treating Health Care Professionals

When assessing the medical information on file, and prior to the weighing of medical evidence, decision-makers must ensure all available and relevant information is on file, particularly medical information from the worker's treating health care professional.

Decision-makers or nurse consultants will make reasonable attempts to contact the worker's treating health care professional to obtain additional or outstanding information when his/her recommendations or opinion

- do not provide supporting clinical findings, or
- differ from the recommendations or opinions of other health care professionals involved in the worker's case, or
- the treating health care professional has not provided an opinion or recommendation on the issue and a referral for a MC opinion is being considered.

Decision-makers or nurse consultants will advise the worker's treating health care professional when the worker is being referred for an assessment at one of the health care programs noted above, or the case is being referred for a MC opinion.

Where possible when a MC opinion is requested, the MC will discuss the case and his/her opinion with the worker's treating health care professional when their opinions differ.

When referring a file to an MC, the decision-maker must outline to the MC the facts of the case, such as the accepted accident history or mechanics of the work that may be responsible for the injury/disease or the

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accepted diagnosis. The decision-maker must also determine the issues he/she requires assistance with, and frame their questions to the MC in an objective and unbiased way.

The MC is responsible for reviewing the medical reports in order to provide an opinion in response to the questions posed. Any opinion offered by the MC should provide a full explanation and rationale based on the available clinical evidence. Entitlement decisions are beyond the scope of the MC.

It should be noted that the WSIB can provide timely access to assessment, and in some cases to treatment, via the various programs offered. These programs provide valuable services and information that can assist the decision-maker. Where there are conflicting opinions or conflicting medical information, the treating health care professional(s) may be contacted in order to reconcile those differences, where feasible. To do so, decision-makers may request the assistance of a MC for these conversations. In cases where conflicting medical information or opinions exist, decision-makers may seek an additional assessment by an external expert (including REC and Specialty Clinic programs).

The following is a list of some points the decision-maker may consider when weighing medical evidence and opinions:

- Did the health professional have all the relevant medical records, including diagnostic and radiological reports, available to review in order to obtain a complete “picture” of the worker’s condition, a full understanding of the worker’s relevant medical history, and the injury process involved?
- What is the timeliness of the medical examination in relation to the issue at hand?
- What is the degree of the health professional’s knowledge of the worker’s past and present medical history? How does this impact the weight of the medical opinion at issue?
- What is the extent of the health professional’s knowledge and understanding of the nature of the worker’s work or employment environment in relation to ongoing impairment?
- What is the expertise of those offering an opinion, relative to the issue? Is reference made to relevant medical literature to support the opinion and recommendations, where appropriate?
- Is the evidence/opinion provided based on an examination of the worker? Does it include the evaluation of the worker’s complaints and symptoms relative to the clinical findings?
- Is the opinion well explained and the conclusion logical? Are clinical findings provided? Do the clinical findings support the opinion?

The relative significance of the factors noted above is dependent on the issue under consideration by the decision-maker. Even after weighing the medical evidence, based on the considerations noted above, there may still be opposing opinions that the decision-maker determines to be of equal weight. In these cases, the equally-weighed medical opinions are assessed together with all other relevant and weighed evidence to make a decision.

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The “Benefit of Doubt” is an adjudicative principle outlined in s.119 (2) of the WSIA. This principle is employed only where the evidence for or against a particular result is approximately equal in weight, with the benefit of doubt given to the worker.

It is important to note that the benefit of doubt principle is not applied to the weighing of the medical evidence itself or to conflicting medical opinions of equal weight in order to give greater weight to the opinion that favours the worker. It is only used when the body of all of the evidence for and against a particular outcome is approximately equal in weight. Therefore, a benefit of doubt ruling is always made by the decision-maker, never the MC.

Communication of Decisions

All adjudicative decisions should be communicated verbally to the workplace parties, wherever possible, and then confirmed in writing. The decision letter should

- identify the issue decided,
- provide a summary of the facts of the case,
- provide the entitlement rules that apply to the issue (legislative and/or policy criteria, or standards),
- provide the rationale for the decision reached, explaining how the entitlement rules were or were not met,
- reference only evidence that is relevant to the decision, and
- include the timeframe for appealing the decision for all adverse decisions.

Every effort is made to communicate decisions in plain language to ensure the decision and reasons for the decision are fully understood by the worker and employer. The rationale should outline the evidence that was considered relevant to decision-making on the identified issue. Where the decision-maker must weigh conflicting or differing information/medical opinions, the decision letter should include an explanation of the decision-maker’s assessment of the relative weight of the evidence. The explanation should indicate whether the evidence/opinion was accepted or not, and the reasons the evidence/opinion was given more or less weight.

Conclusion

All decisions should be based on the information relevant to the issue being decided. Where medical information is relevant to the decision, the decision should be based on information received from the treating health care professionals of the worker as well as all other sources of medical information, such as the REC or Specialty Clinic programs.

Decisions should not be made in the absence of pertinent information – such as medical reports from all health care professionals and operative reports unless all reasonable attempts to get the missing documents have failed. Where there is differing or conflicting medical information/opinions, every effort should be made to reconcile those differences which may include telephone contact with the health care professional or obtaining the assistance of a medical consultant to do so. In some cases, a decision-maker may conclude that it is necessary to seek an additional external medical assessment.

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Ultimately, the decision-maker must make decisions having regard for the medical information on file and the opinions offered, including those of the health care professionals who have assessed and/or treated the worker and, in certain situations, a medical consultant.

Medical evidence should be assessed bearing in mind the points outlined earlier in this document, and then weighed. Evidence or opinions that are not accepted or are given less weight should always be identified and the reasons for the decision-maker's assessment of their relative weight should be explained.

Document History:

May 2017 - revised to enhance direction on communication with workers' treating health care professionals (page 5)

March 2015 – replaces Best Approaches Guide, Weighing of Medical Evidence, October 2005.

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