

Administrative Practice Document

Loss of Earnings (LOE) Benefit Reviews

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 Policies [18-03-02, Payment and Reviewing LOE Benefits \(Prior to Final Review\)](#) and [18-03-06, Final LOE Benefit Review](#) 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

Section 43 of the Workplace Safety and Insurance Act, 1997 (WSIA) directs that a worker who has a loss of earnings, as a result of a work-related injury/disease, is entitled to loss of earnings (LOE) payments beginning when the loss of earnings begin, and continue until the earliest of

- (a) the day on which the worker's loss of earnings ceases;
- (b) the day on which the worker reaches 65 years of age;
- (c) two years after the date of injury, for workers who are 63 years of age or older on the date of injury;
- (d) the day on which the worker is no longer impaired as a result of the injury.

Once initial entitlement for a work-related injury/disease is established, decision-makers must also determine the worker's eligibility for LOE benefits and the level of benefits payable. Where the worker is receiving LOE benefits, the ongoing assessment and monitoring of the case includes review of continuing LOE benefit payments. At any review, the LOE benefit payment amount may be confirmed, adjusted, or discontinued based on changes in the circumstances of the case.

The review of LOE benefit payments is outlined in s.44 of the WSIA. The legislative provisions for LOE benefit reviews include

- when a material change in circumstances occurs,
- annual reviews up to 72 months after the date of the worker's injury, and
- a final review at 72 months after the date of the worker's injury.

The WSIA also has provisions which outline the circumstances where the 72-month final LOE benefit payment review may be deferred, and the exceptions that allow review of LOE benefit payments after the 72-month final LOE review.

LOE benefit payments may be reviewed at any time up to 72 months after the date of the worker's injury, as appropriate. LOE benefit reviews are guided by the WSIA and Policies [18-03-02, Payment and Reviewing LOE Benefits \(Prior to Final Review\)](#), and [18-03-06, Final LOE Benefit Review](#), combined

KEY PRINCIPLES

- 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 throughout the life of a claim.
- To receive LOE benefits, workers must co-operate in approved health care measures and/or return to work activities/plan.
- Decision-makers will make quality decisions that ensure fair compensation is provided to workers, reduce the impact of injuries on workers, and improve workers' employment opportunities/prospects and earning ability/capacity.
- At the appropriate time, the need for medical assessment will be considered to improve recovery and return-to-work prospects (e.g. referrals to Regional Evaluation Centres or Specialty Clinics).
- The individual circumstances of a case will be examined to determine if work opportunities are realistic.
- Workers will be given reasonable advance notice of a change in benefit level and the reason for the change.

NOTE:

For the purposes of this document, "return to work" or "RTW" is used when referring to any aspect of work reintegration (as noted in the policies) from RTW activities with the employer to a work transition plan for RTW in the general labour market.

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with sound case management principles and procedural fairness. This document outlines the approach and considerations for conducting a review of LOE benefit payments.

Factors Affecting LOE Benefit Payments

As directed by the WSIA, a worker who has a loss of earnings resulting from the work-related injury/disease is entitled to LOE benefit payments. The amount of the LOE benefit payment is determined based on the circumstances of the case, and is intended to compensate the worker for the actual loss of earnings as a result of the work-related injury/disease.

As decision-makers assess and monitor new information about the worker's ongoing work-related impairment, and functional abilities, they continuously review the worker's entitlement to LOE benefits and the amount of the LOE benefits payable in relation to the worker's recovery and RTW.

In addition to the age factors outlined in s.43 of the WSIA, factors that may affect the worker's ongoing entitlement to LOE benefits and/or the level of benefits payable include changes in the worker's:

- **health care/recovery status** – while the worker continues to be impaired and have a loss of earnings as a result of the work-related injury/disease, the worker's entitlement to LOE benefits generally continues. LOE benefit entitlement ends when clinical evidence indicates the worker is no longer impaired as a result of the work-related injury/disease.
- **post-injury earnings** – where the worker is able to, or becomes able to, work despite the ongoing work-related impairment, the worker's post-injury earnings are considered to determine the level of LOE benefits payable. LOE benefit payments cease when the worker fully restores, or is able to restore, the (escalated) pre-injury earnings.
- **availability for, or cooperation in, health care or RTW activities or plan** – non-cooperation by the worker may result in the reduction or suspension of the LOE benefit payments, depending on the specific facts of the case. See Policy [22-01-03, Workers' Co-operation Obligations](#).

Material Change in Circumstances

A material change in circumstances is any change that affects a worker's entitlement to benefits and services under the WSIA. Workers are personally responsible for reporting a material change to the WSIB and the report must be made within 10 calendar days of when the change occurs.

Decision-makers review the material change information to determine if and how the worker's entitlement to benefits and services is affected and advises the worker accordingly.

Adjustments to benefits and services due to a material change are effective the date the change occurred and may result in a recoverable benefit-related debt.

See Policy [22-01-02, Material in Circumstances – Worker](#) for more details.

Post-injury Earnings

CPP Disability Benefits

Canada Pension Plan (CPP) or Quebec Pension Plan (QPP) disability benefits received for the work-related injury/disease are considered post-injury earnings when considering LOE benefit payments. See Policy [18-01-13, Calculating CPP/QPP Offsets from FEL/LOE Benefits](#) for more details.

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- **other material changes** - See Policy [22-01-02, Material Change in Circumstances - Worker](#) and [15-06-08, Adjusting Benefits Due to Post-accident, Non-work-related Change in Circumstances](#).

The ongoing reviews of the worker's entitlement to LOE benefits are guided by s.43 of the WSIA and Policy [18-03-02, Payment and Reviewing LOE Benefits \(Prior to Final Review\)](#). Where the worker does not fully recover from the work-related injury/disease, decision-makers will generally continue to review and monitor the case and the LOE benefit payments until all health care measures and RTW activities/plan are completed. At that time, the worker may be entitled to continuing LOE benefit payments if he/she continues to have an impairment and a loss of earnings as a result of the work-related injury/disease.

While LOE benefit payments continue, they are reviewed annually or when a material change is reported, until the final LOE review.

Annual LOE Reviews

In order to conduct the annual review of the LOE benefit payments, updated information on the worker's work-related impairment, employment and earnings status is required.

A discussion with the worker is required to

- obtain an update on the worker's medical condition and determine if a current medical assessment is required
- clarify and address any issues
- obtain the worker's input, any new evidence, and/or submissions
- request up-dated earnings information (a questionnaire requesting tax and earnings information may be sent to the worker to validate earnings).

When conducting the annual LOE benefit payment review, decision-makers continue to be guided by Policy [18-03-02, Payment and Reviewing LOE Benefits \(Prior to Final Review\)](#). In determining the worker's LOE benefit payment entitlement, decision-makers review and assess the updated information on the worker's employment status, earnings, and work-related impairment.

At any time, decision-makers may arrange additional health care assessments and/or RTW services if the facts of the case suggest these additional services may help improve the worker's recovery and RTW prospects. Where necessary, the decision-maker may request input from a medical consultant.

Exception to Annual & Final LOE Reviews

Workers who were 55 years of age or older when the WSIB determined they were entitled to LOE benefits may qualify for the "no review" option when the worker

- Has reached maximum medical recovery, and has completed a work transition plan, OR
- Requires a RTW Plan of vocational skills training, and chooses the 12-month self-directed RTW Plan option.

See Policy [18-03-04, LOE Benefits for Workers 55 Years of Age or Older](#) for details.

The "no review" or the combined "self-directed/no review" option, once chosen, is irrevocable, and the LOE benefit is paid until age 65 without any further reviews.

When the "no review" option is chosen and the LOE benefit payable is 10% or less of the worker's full LOE benefit rate, the LOE benefit is automatically commuted (paid in one lump sum) unless the worker chooses to receive ongoing bi-weekly payments. The decision to continue bi-weekly payments is also irrevocable.

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For the annual review of LOE benefits, decision-makers consider the following:

- What are the worker's functional abilities and capacity for work?
- Is the worker employed?
- Does the employment align with the worker's work ability/capacity and identified SO?
- Is the SO still available in the local labour market?
- What are the worker's current earnings, or current labour market earnings for the identified SO?
- Is the worker underemployed with respect to hours of work and/or wages?
- Has the worker received RTW services to identify a suitable occupation (SO), with the injury employer or in the labour market?
- Other relevant material changes, per Policy [22-01-02, Material Change in Circumstances - Worker](#)
- Are there other post-accident changes to consider?

Material Change in Earnings

An increase or decrease in post-injury earnings (including CPP/QPP disability benefits) will not always result in an adjustment of the LOE benefit payment. Decision-makers compare the net average earnings (NAE) from the updated earnings with the NAE of the earnings used to pay the LOE benefit. The LOE benefit amount will generally be adjusted if the difference is 10% or greater.

Note: Where a SO is identified with the injury employer or in the labour market, the worker is considered capable of full-time employment in that SO. Part-time employment may be considered when medical and functional abilities information clearly demonstrates a capacity for permanent part-time work only. In such cases, the earnings used to determine the LOE benefit payable would reflect this reduced work ability/capacity.

On completion of the annual LOE benefit review, the decision-maker may confirm, adjust, or discontinue the LOE benefit payments depending on the facts of the case. In all cases, the decision-maker will discuss the outcome of the review with the worker by telephone (where possible) and then confirm the decision in writing.

When the LOE benefit is to be reduced

Where the review indicates a reduction in the LOE benefit payable, verbal notice is given (if possible), along with information about available representation, such as the Office of the Worker Adviser which provides services to non-unionized workers. Changes in LOE benefits are generally effective one week from the date of the decision letter. The effective date of the change in benefits may be extended up to four weeks from the date of the letter, but no later than the end of the 72 month period, if special circumstances exist, such as

- the length of time on benefits,
- an earlier decision on employability,
- the length of time since the WSIB's last communication with the worker.

Note: The change in the LOE benefit payable may be made retroactive to the effective date of the change, if the worker failed to report a material change in circumstances that affects his/her entitlement to WSIB benefits. For example, LOE benefits may be reduced retroactive to the date the worker received a wage increase, or the date of the notice of CPP/QPP disability benefit entitlement. This may result in a recoverable benefit-related debt, see [18-01-04, Recovery of Benefit-Related Debts](#).

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72 Month Final LOE Reviews

The WSIA directs the LOE benefit payment must be reviewed before the end of the 72nd month post-injury, and that the benefit is then payable up to the date the worker reaches age 65 without further review. (Information about exceptions in the WSIA is provided later in this document.)

The final LOE benefit review process is generally initiated by the 67th month after the date of injury to allow time for the required information to be received and reviewed before the end of the 72 month period. Decision-makers have the discretion to begin the process earlier when additional time may be needed to gather and analyze the information.

At the 67th month after the injury, written notification of the upcoming final LOE review is sent to the worker. This notification outlines the information needed for the final LOE review and advises the worker of

- the importance of submitting the requested declaration and information promptly to prevent a disruption in the LOE benefit payments, and
- the requirement that the final LOE benefit review must be completed by the end of the 72nd month after the injury.

If the worker fails to respond after one follow-up, the LOE benefit is suspended at 70 months post-injury. The WSIB sends the worker a final follow-up letter at 71 months post-injury. The LOE benefit is not restored until a full review occurs. If the final review does not occur by the 72nd month post-injury, the LOE benefit cannot be restored retroactively.

The principles, approach and considerations provided earlier in this document are also applicable for the review of LOE benefit payments at 72 months. Decision-makers are guided by Policy [18-03-06, Final LOE Benefit Review](#). The LOE benefits payable, as determined at the final review at 72 months, are payable to the date the worker reaches age 65. The LOE benefit payment cannot be reviewed, unless the one of the exceptions outlined below applies.

As it is important that workers understand the final LOE benefit review decision, all 72-month decisions are discussed with the worker (where possible), and also communicated in writing regardless of whether the benefits payable are confirmed, reduced, or discontinued.

Commutation of LOE Benefit

When the Final LOE benefit review is completed, and the LOE benefit payable is 10% or less of the worker's full LOE benefit rate, the LOE benefit is automatically commuted (paid in one lump sum) unless the worker chooses to receive ongoing bi-weekly payments. The decision to receive bi-weekly payments is irrevocable.

See Policy [18-03-05, Commutations](#) for more details.

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Deferrals - 72 Month Final LOE Review

As noted earlier, the WSIA includes exceptions to the requirement to conduct the final review of the LOE benefit payment at 72 months. The final LOE review may be deferred if, at the time the 72-month period is reached, the worker is co-operating in:

- health care measures WSIB considers appropriate, or
- RTW activities with the injury employer, or
- a RTW plan for re-entry into the labour market.

When the final LOE benefit review is deferred, the worker is advised that the final LOE review is deferred and the reason. Decision-makers will continue to review and monitor the case and the LOE benefits payable, until the health care measures, RTW activities, or RTW plan are completed.

The final LOE review must be done when the health care measures and RTW activities with the injury employer are completed, and may occur any time within the 24 months after the 72-month period expired.

If the RTW activities with the injury employer do not result in identification of a suitable occupation, the worker may be provided with a RTW assessment and possibly a RTW plan. In these cases, the final LOE review must be completed within 30 days after the completion of a RTW plan.

In cases where the worker is participating in a RTW plan for the purposes of re-entry in the labour market at the 72 months, a final LOE review must be completed within 30 days after the RTW Plan is finished.

Exceptions: LOE Reviews after the Final Review

When the final LOE benefit review is completed, either at the end of the 72-month period or after a deferred final review described above, a further review of the LOE benefit payment can be conducted only if the worker

- failed to report a material change that occurred prior to the final review of the LOE benefit payments, or
- suffers a significant deterioration in his/her work-related condition.

Where the worker failed to report a material change that occurred prior to the final LOE review, the LOE benefit payments are adjusted retroactively to the date the material change occurred. If appropriate, the final LOE review decision is reconsidered having regard for the material change in circumstances to re-determine the LOE benefits payable as of the original final review date.

Health Care Measures

Health care measures mean a medical rehabilitation (MR) program which is any course of medical or paramedical treatment or care for a work-related injury. The purpose of an MR program is to bring the worker to a state of maximum medical recovery, so that the worker may return to suitable and available employment.

A worker is considered to be in a MR program if any of the following situations occur, but is not limited to:

- receiving active treatment due to a recurrence of the work-related injury/illness
- attending a WSIB-arranged specialist consultation, or
- having a prosthesis repaired or replaced.

Generally, the continued use of prescription medication and/or receipt of maintenance physiotherapy or chiropractic treatment are not considered to be a MR program.

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A significant deterioration refers to a marked degree of deterioration in the work-related impairment that is demonstrated by a measurable change in clinical findings. A significant deterioration after the final LOE review may include a new area of entitlement (in addition to the existing permanent work-related impairment), and may be temporary or permanent. To determine if a significant deterioration has occurred, decision-makers are guided by [15-02-05, Recurrences](#).

When a significant deterioration is established, the LOE benefit payment may be adjusted from the date of the significant deterioration as supported by medical evidence and based on the resulting loss of earnings. Decision-makers will continue to monitor and assess the clinical evidence about the work-related impairment and initiate health care measures or RTW services to assist in the worker's recovery and RTW, as appropriate. The LOE benefit payments may also be reviewed, and adjusted as appropriate, throughout the duration of the significant deterioration.

A new "final" LOE benefit review must again be conducted but timing of the review is dependent on the level of the worker's recovery from the significant deterioration. The new "final" review should normally take place

- when a significant temporary deterioration ends, or
- when the decision-maker determines an initial determination of a permanent impairment or a non-economic loss (NEL) redetermination is not required, or
- within 24 months from the NEL processing date if an initial determination of a permanent impairment results in a NEL benefit, or a NEL redetermination results in an increased NEL benefit.

Where a worker receives a new NEL benefit or an increased NEL benefit following a significant deterioration, the 24-month period for the final LOE review may be extended if the worker is co-operating in a RTW plan that is not completed by the end of the 24-month period. The review must be completed within 30 days of the completion of the RTW plan.

For LOE benefit reviews throughout the period of a significant deterioration and at the new "final" review, the principles, approach and considerations noted earlier in this document continue to apply and decision-makers are guided by the previously cited policies, as appropriate and applicable.

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.

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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.

Relative to decisions on LOE benefit reviews, a decision letter must be sent when the LOE benefit payment is being adjusted or discontinued and any time a final LOE benefit review is completed, even if the LOE benefit payment is confirmed. The rationale for the decision should outline the accepted areas of injury/disease, level of impairment, suitable occupation, and the earnings used to determine the LOE benefit payable. Where the worker is employed and the worker's actual earnings were not used to calculate the LOE benefit payable, the letter should provide an explanation on why those earnings were not used. Similarly, if there is conflicting medical information on the worker's impairment and functional abilities, the decision-maker should outline the weight given to the medical evidence and the reasons for how it was weighed.

Conclusion

Workers are entitled to receive LOE benefit payments if they experience a loss of earnings as a result of the work-related injury/disease. LOE benefit payments are based on a comparison of the pre-injury earnings and the post-injury earnings, but the specific circumstances of each case will determine whether LOE benefits are payable, the level of LOE benefits payable, and the period of time for which benefits are paid.

Review of the LOE benefit payments is a component of the decision-maker's ongoing monitoring and assessing of the worker's RTW and recovery following a work-related injury/disease. A worker's entitlement to LOE benefits continues as long as the worker has an ongoing impairment and a loss of earnings as a result of the work-related injury/disease and may be reviewed as outlined in s.44 of the WSIA.

The principles, approach and considerations indicated in this document apply any time a review of LOE benefit payments is conducted. The factors to be considered will vary based on the circumstances of the case and the timing of the review, relative to the date of injury, as guided by Policies [18-03-02, Payment and Reviewing LOE Benefits \(Prior to Final Review\)](#), and [18-03-06, Final LOE Benefit Review](#). Decision-makers will make quality decisions to ensure workers receive LOE benefit payments that fairly compensate them for the loss of earnings resulting from their work-related injury/disease, as guided by the WSIA and relevant policies.

Document History:

March 2015 – replaces the document titled “Loss of Earnings Reviews: Practice Guidelines”, dated December 1, 2010

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