

MEMO

TO: All staff

FROM: Kate Lamb, Chief Corporate Services Officer
Brian Jarvis, Chief Operating Officer

DATE: December 15, 2017

SUBJECT: Pre-existing Conditions and Permanent Impairments

The Operational Policy Branch (OPB) and the Permanent Impairment Program (PIP) are jointly issuing a clarification to ensure a consistent approach when determining the degree of permanent impairment due to a work-related injury/disease, for all decisions since 2012.

To clarify, in all cases, a pre-existing condition must be contributing to the degree of permanent impairment in order to reduce the degree of permanent impairment for which a worker is entitled to a non-economic loss (NEL) benefit.

Noting the provisions of Policy [18-05-03, Determining the Degree of Permanent Impairment](#) that came into effect on November 1, 2014, and Policy [18-05-05, Effect of Pre-existing Impairment](#) that was effective up until that time, the considerations and approach for decisions made in each period are outlined below.

The WSIB will be reviewing NEL decisions made since 2012 where the degree of permanent impairment has been reduced due to a pre-existing condition, and adjusting the NEL decisions as appropriate to reflect the following clarification, based on the date of decision.

Decisions made on or after November 1, 2014

Policy [18-05-03, Determining the Degree of Permanent Impairment](#), provides that if a pre-existing condition is contributing to the degree of impairment to the same area of the body as the work-related permanent impairment, it is factored out of the determination. To establish that a pre-existing condition is contributing to the degree of permanent impairment, it must be determined that it would result in an impairment rating on its own.

Once this is determined, the policy provides that the amount of the reduction to the degree of work-related permanent impairment is determined by:

1. Rating the pre-existing condition according to the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 3rd edition (revised), (AMA Guides), or
2. Estimating the medical significance of the impairment caused by the pre-existing condition where the pre-existing condition is non-measurable but the evidence demonstrates that an impairment associated with the pre-existing condition existed.

Clarification

1. Pre-existing condition is an impairment on its own

To establish that a pre-existing condition is contributing to the degree of permanent impairment, it must be determined that it is also an impairment, as defined. This may be determined by:

- a) a greater than zero degree of impairment being determined when the pre-existing condition is rated according to the AMA Guides, or
- b) a greater than zero degree of impairment being determined when a pre-existing condition not listed in the AMA Guides is rated according to the prescribed criteria, or
- c) sufficient evidence demonstrating that the pre-existing condition was an impairment, although some of the particular information required to determine an impairment value according to the AMA Guides is not available, e.g. the range of motion measurements were not recorded.

2. Measurable Pre-existing Condition

A pre-existing condition is measurable when it has been previously measured, or, is readily measurable, i.e. the specific findings required to rate according to the AMA Guides are available.

a) *Condition listed – Rate According to the AMA Guides*

When rating a pre-existing condition according to the AMA Guides, all of the criteria for the impairment rating must be met prior to the work-related injury/disease in order to reduce the degree of permanent impairment by the value of that impairment rating.

When using Table 53, *Impairments Due to Specific Disorders of the Spine*, of the AMA Guides, if the criteria for a specific disorder include residual signs or symptoms, there must be evidence that the criteria were met prior to the work-related injury/disease in order to assign the impairment value in the AMA Guides to the pre-existing condition.

b) *Condition not listed – Prescribed Criteria*

Where the pre-existing condition is not specifically provided for in the AMA Guides, the prescribed criteria are the criteria for the body parts, systems, or functions listed in the AMA Guides that are the most analogous to the worker's condition.

- i. If the criteria include residual signs or symptoms, there must be evidence that the criteria were met prior to the work-related injury/disease in order to assign that degree of impairment to the pre-existing condition.
- ii. If there is evidence of other signs, symptoms, or degenerative findings that are not listed as criteria in the AMA Guides, or where the criteria in the AMA Guides indicate that there is no impairment rating associated with those other signs, symptoms, or degenerative findings, no additional degree of impairment should be added to the rating of the pre-existing condition to account for that evidence.

3. Non-measurable Pre-existing Condition

A pre-existing condition is non-measurable when it has not been previously rated (quantified) and cannot be rated according to the AMA Guides criteria for the pre-existing condition or the body part, system, or function most analogous to the pre-existing condition, as the specific clinical findings required to determine the degree of impairment are not available or were not recorded. However, the available evidence is sufficient to determine that the pre-existing condition was also a "physical or functional abnormality or loss,

including psychological damage arising from the abnormality or loss” at the time of the injury that would likely have resulted in a rating had it been rated.

A pre-existing condition that would likely not have resulted in an impairment rating on its own had it been rated at the time of injury is not considered a non-measurable pre-existing impairment, or a pre-existing impairment at all.

A non-measurable pre-existing condition does not need to have required health care or caused a disruption in employment in order to reduce the degree of permanent impairment. However, where a non-measurable pre-existing condition was asymptomatic prior to the work-related injury/disease, it should be considered to be a pre-existing impairment of a minor medical significance. Accordingly, the degree of permanent impairment should not be reduced on its account.

Decisions made from 2012 to October 31, 2014

Policy [18-05-05, Effect of Pre-existing Impairment](#), provides that if a worker has a pre-existing non-work-related impairment affecting the same area of the body as the work-related injury/disease, it is factored out of the degree of permanent impairment determination.

In these cases, the policy provides that the degree of permanent impairment caused by the pre-existing impairment is determined by either:

1. Rating the pre-existing impairment according to the AMA Guides, or
2. Estimating the medical significance of the pre-existing impairment based on the clinical evidence, where the available evidence does not allow for a rating according to the AMA Guides.

Clarification

1. Rate According to the AMA Guides

When rating a pre-existing impairment according to the AMA Guides, all of the criteria for the impairment rating must be met prior to the work-related injury/disease in order to reduce the degree of permanent impairment. In particular, when using Table 53, *Impairments Due to Specific Disorders of the Spine*, of the AMA Guides, if the criteria for a specific disorder include residual signs or symptoms, there must be evidence that the criteria were met prior to the work-related injury/disease.

2. Estimate of Medical Significance (Non-measurable)

Having regard for the WSIAT jurisprudence that has emerged, the degree of permanent impairment should only be reduced due to a non-measurable pre-existing condition if it is also a “pre-accident impairment” or “pre-accident disability”. As defined in Policy [15-02-04, Aggravation Basis](#) (previously 11-01-15), and Policy [14-05-03, Second Injury and Enhancement Fund \(SIEF\)](#), this means that the pre-existing condition produced periods of impairment prior to the work-related injury/disease requiring treatment and disrupting employment. Pre-existing non-work-related conditions that were asymptomatic prior to the work-related injury/disease will not be considered pre-existing impairments when determining the degree of work-related permanent impairment.

Please share this clarification memo with front line staff so that the application of the policies is consistent across all operating areas.



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Kate Lamb



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