

**Operational
Policy**Section
GeneralSubject
Recovery of Benefit-Related Debts

Policy

The WSIB **pursues** full recovery of a benefit-related debt resulting from

- duplication of employment earnings and benefits under the insurance plan
- failure to report material change in circumstances
- fraud, and/or false or misleading statement(s) or representation, in connection with a claim for benefits or an attempt to obtain payment for goods or services provided to the WSIB
- administrative error when the debtor was aware or should reasonably have been aware of the error.

The WSIB **does not pursue** recovery of a benefit-related debt if

- the debt is a result of a previous entitlement decision overturned due to a reconsideration or appeal*
- the debt is a result of an administrative error and the debtor could not have reasonably been aware of the error
- the debtor is not notified of the debt within 3 years of the date the debt is considered due and owing to the WSIB*
- the WSIB determines that recovery action will result in severe, long-term financial hardship.

* Does not apply to circumstances of fraud, and/or false or misleading statement(s) or representation, in connection with a claim for benefits or an attempt to obtain payment for goods or services provided to the WSIB, or failure to report material change in circumstances.

Guidelines

Definitions

Benefit-related debt – A benefit-related debt (from here on, debt) is any payment the WSIB made to

- a worker (including an individual with optional insurance)
- a survivor
- a dependant
- an employer (e.g., a Schedule 1 employer who has paid a worker advances on benefits under the insurance plan)
- an agency, or
- any other person that receives monies that exceed entitlement under the insurance plan.

Date due and owing to the WSIB – The date the payment was made that should not have been made is considered the date from which the debt is due and owing to the WSIB.

Written notification

In all cases of debt the WSIB notifies the debtor, verbally (if possible) and in writing.

Recovery action pursued

The WSIB pursues recovery in the following 4 situations.

1) Duplication of earnings and benefits

This situation occurs when a worker is in receipt of earnings from employment and benefits for the same time period.

Duplication may occur when a worker deliberately gives incorrect return to work information, or fails to report material change (e.g., a post-accident wage increase), but may also occur unintentionally. For example, if benefits are paid in advance, a debt may result if a worker returns to work sooner than originally expected.

If a debt is created as a result of duplication of employment earnings and benefits, the debt is calculated retroactively from the date the individual was not entitled to the benefits.

2) Material change in circumstances

A "material change in circumstances" is any change which affects an individual's entitlement to benefits and services under the insurance plan.

A person who is receiving benefits, or who may be entitled to receive benefits under the insurance plan, must notify the WSIB of a material change in circumstances within 10 days after the change occurs.

Any change in entitlement resulting from the material change is effective from the date the material change occurred. If a debt results from the changed entitlement, the amount is calculated and considered due and owing retroactive to the date of the material change.

Failing to inform the WSIB about a material change in circumstances is presumed to be intentional or deliberate unless the individual can demonstrate having no knowledge of the change. (See 22-01-02, Material Change in Circumstances - Workers; 18-03-03, Reviewing LOE Benefits (Prior to Final Review), 18-03-06, Final LOE Benefit Review; 22-01-05, Offences and Penalties - General.)

3) Fraud and/or false or misleading statement(s) or representation

Any information or action which, in the WSIB's opinion, constitutes a willful attempt to obtain benefits, payments, or services to which an individual is not entitled, is considered fraud or misrepresentation. This includes, but is not limited to, providing false earnings, fitness to work information, or misleading/forged accident or other reports.

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If the WSIB determines that an individual

- has attempted to obtain benefits
- has received benefits
- is receiving benefits
- obtained or attempted to obtain payment for goods or services, whether or not the WSIB received the goods or services

by providing false or misleading statement(s) or representation, the debt is calculated retroactively to the date the individual was not entitled to the benefits.

Repayment does not affect the WSIB's decision whether or not to proceed with criminal charges for fraud or a provincial offence, see Section 22, Compliance.

4) Debtor aware of administrative error

The WSIB pursues recovery action when a debt results from an administrative error and the debtor knew or reasonably should have known that the payment exceeded entitlement.

Administrative errors include systems, human, and mathematical errors or miscalculations.

Recovery action not pursued

The WSIB does not pursue recovery in the following 4 situations.

1) Previous decision overturned

The WSIB may change a previous decision on reconsideration or appeal if it is apparent that the original decision is not consistent with legislation or approved policy, or new evidence changes the decision.

The WSIB does not pursue debts resulting from reversed or amended decisions unless there is evidence of fraud, and/or false or misleading statement(s) or representation, in connection with a claim for benefits or an attempt to obtain payment for goods or services provided to the WSIB, or failure to report material change.

2) Debtor not aware of administrative error

A debt may result from

- miscalculation and mathematical errors
- authorizing and issuing duplicate payments
- inaccurate data entry.

Debts resulting from administrative error will not be pursued if the debtor could not have reasonably been aware of the error. If an error is discovered, any future payments in the claim will be calculated using the corrected rate.

3) Three-year rule

To pursue recovery, the WSIB must notify the debtor in writing of the debt within 3 years of the date the debt is considered due and owing **unless** the debt results from fraud, and/or false or misleading statement(s) or representation, in connection with a claim for benefits or an attempt to obtain payment for goods or services provided to the WSIB, or failure to notify the WSIB of material change in circumstances.

4) Financial hardship

If a debt exists, but the debtor has provided the WSIB with sufficient documentation for the WSIB to determine that recovery action will result in financial hardship, the WSIB may eliminate the debt in whole or in part unless the debt results from fraud, and/or false or misleading statement(s) or representation, in connection with a claim for benefits or an attempt to obtain payment for goods or services provided to the WSIB.

Temporary financial hardship

Temporary inability to repay a debt does not constitute financial hardship. These situations are addressed by flexible recovery methods.

Severe, long-term financial hardship

In cases of severe, long-term financial hardship, the WSIB may exercise its discretion to reduce or eliminate the debt, if failure to do so compromises the debtor's ability to maintain the necessities of life, e.g., food, shelter, or transportation to work.

The WSIB will pursue recovery action until the debtor has provided the documentation necessary and the WSIB has made a determination regarding long-term financial hardship.

Factors considered when determining severe, long-term financial hardship include, but are not limited to, the debtor's

- employment status
- employment security
- clinical restrictions, which may prevent the debtor from increasing employment earnings
- opportunities for re-employment, if not currently employed
- earning capacity
- personal and vocational characteristics, e.g., the debtor's level of education may have an impact on earning capacity
- assets, e.g., automobile, property, home
- current source of income, e.g., welfare, Employment Insurance benefits, WSIB benefits, CPP/QPP benefits, pensions, rental property income, investments
- current expenses, e.g., rent, mortgage payments, car payments, family support, child care
- available statements from a financial/credit counselling agency, and
- whether the debtor has declared bankruptcy, is in the course of bankruptcy proceedings, or has had a discharge in personal bankruptcy.

Recovery methods

Voluntary repayment plan

The WSIB generally prefers to negotiate repayment arrangements with a debtor. Full or phased repayment can be made through personal funds, or through deductions from WSIB benefits, payments, and rebates.

Offset from future payments

The *Workers' Compensation Act/Workplace Safety and Insurance Act* (the Act) gives the WSIB the power to offset a debt through deductions from any money payable to the debtor by the WSIB. Therefore, the WSIB can offset a debt from a worker's benefit payments, or in the case of an employer debt, by withholding funds from an experience rating rebate.

Recovery from periodic payments

For the purposes of this policy, periodic payments include temporary total disability benefits, temporary partial disability benefits, loss of earnings benefits, non-economic loss benefits (if paid monthly), future economic loss benefits, payments for loss of retirement income, health care expense reimbursement, and any other payments made to the debtor.

Periodic payments do not include attendant's allowance because this benefit is only paid when workers are unable to care for themselves due to the severity of their impairments.

Upon notifying debtors at their last known address, the WSIB deducts at least 20% of benefits from periodic payments.

If there is evidence that an increased deduction will not interfere with the debtor's ability to maintain ongoing monthly expenses such as food, mortgage/housing expenses, and insurance premiums, the deduction may be increased up to a maximum of 100%.

The WSIB considers requests to decrease the percentage of any deductions by applying the factors used in determining severe, long-term financial hardship (see above).

Deduction from lump sum payments

Full recovery of debts through deduction from lump sum payments is pursued unless doing so would threaten the debtor's ability to maintain his/her residence or perform work/maintain a livelihood.

The WSIB cannot initiate a commutation to recover a debt. However, if a commutation is being processed, the WSIB can recover any debt that is due and owing from the lump sum payment, unless doing so would threaten the debtor's ability to maintain his/her residence or perform work/maintain livelihood. For information on commutations, see 18-03-05, Commutations.

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Where appropriate in the WSIB's view, proceedings may be initiated to recover the debt through the courts.

The WSIB may continue to pursue a court action, even if a recovery agreement is achieved. To increase the likelihood of repayment, the agreement may be written into a "consent judgement", which the debtor must agree to in order for the WSIB to agree to the recovery plan.

Pursuant to the *Courts of Justice Act*, interest may be charged if the WSIB initiates court action.

Debtors are notified of the WSIB's intention to claim interest when they are advised of the court action.

Certificates

The WSIB will make every reasonable effort to recover the debt directly from the worker or the employer. However, if a person does not pay amounts owing under the Act when they become due, the WSIB may issue a certificate stating that the person is in default under the Act and setting out the amount owed and the person to whom it is owed.

Personal bankruptcy

When a debtor claims personal bankruptcy, the debt due and owing to the WSIB is a provable debt.

As the holder of a debt provable in bankruptcy, the WSIB has the same rights and obligations as the debtor's other unsecured creditors with provable claims.

Debt recovery action is not pursued during bankruptcy proceedings.

Recovery from estate or survivors' benefits**Deceased workers**

As a general rule, the WSIB does not pursue recovery of a debt that results from any periodic payment made in the calendar month of the worker's death.

If a debt is created because the survivor(s) or the estate do not notify the WSIB of the worker's death, the WSIB does not consider reducing or eliminating the debt based on financial hardship. These situations are handled in conjunction with the WSIB's policies on Material Change in Circumstances, and Offences and Penalties, see Section 22.

Recovery from estate

The WSIB may pursue recovery from a debtor's estate.

Recovery from survivors' benefits

With the consent of the survivor(s), the WSIB attempts to recover money owed by a deceased debtor by establishing an automatic deduction plan from any benefits the individual(s) may be entitled to under the Act. If the financial situation of the survivor(s) relies on the monthly benefits, the WSIB attempts to negotiate a repayment plan.

Unable to recover

If it is not presently feasible to recover a debt, it is recorded on file so that recovery can be pursued through any future entitlement in any claim, future employer rebates, or from any other money payable to the debtor by the WSIB.

Credit to employer's account

Whether or not the WSIB pursues debt recovery, the benefit costs are removed from the employer's experience account, provided the employer did not contribute to the original decision by providing incorrect information and/or failing to provide requested information.

Objection/appeal rights**Entitlement decisions**

Debtors have the right to appeal any entitlement decision both internally to the Appeals Branch, and externally to the Workplace Safety and Insurance Appeals Tribunal.

Exception

There is no right to internal appeal if the entitlement decision is made by decision-makers in Regulatory Services, see 22-01-07, Offences and Penalties - Worker.

Debt decisions

As a result of changes in the *Workers' Compensation Act* effective December 14, 1995 (the date of royal assent of Bill 15), debtors' objection/appeal rights concerning

- the determination that a debt exists
- the amount of a debt, or
- any issues related to debt recovery,

differ according to the date of the payment that is subsequently determined to be a debt due and owing to the WSIB.

For debts resulting from payments made

- **before December 14, 1995**, debtors have the right to appeal debt decisions both internally (Appeals Branch) and externally (Appeals Tribunal)
- **on or after December 14, 1995 through December 31, 1996**, inclusive, debtors may only appeal debt decisions internally (Appeals Branch)
- **on or after January 1, 1997**, debtors do not have any internal or external appeal rights.

Suspension of recovery during objection/appeal

For objections/appeals resulting from payments made

- on or before December 31, 1996, WSIB debt recovery action is suspended throughout the objection/appeal process
- on or after January 1, 1997, WSIB debt recovery action is not suspended throughout the objection/appeal process.

Application date

This policy applies to all benefit-related debts created on or after May 1, 1998, for all accidents.

Document history

This document replaces 18-01-04 dated October 12, 2004.

This document was previously published as:

18-01-04 dated June 15, 1999.

05-01-09 dated December 2, 1996.

References

Legislative authority

Workplace Safety and Insurance Act, 1997, as amended
Sections 23(1), 23(2), 23(3), 44, 121, 138(1), 138(2), 139,
147(1), 147(2), 149, 107

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 21.1(1), 21.1(2), 66(1), 66(2), 101,
130.1(1), 130.1(2), 130.1(3)

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