

**Operational  
Policy**

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Section  
Non-Economic Loss (NEL) (Accidents from 1990)

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Subject  
**NEL Redeterminations**

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## Policy

The WSIB may consider a worker's request for a redetermination of his/her existing non-economic loss (NEL) benefit provided that

- the worker's degree of permanent impairment was previously determined to be **greater than zero**
- 12 months have passed since the worker's last NEL decision
- the work-related condition has deteriorated significantly and permanently since the last NEL determination, and
- the deterioration is work-related.

If a condition other than the work-related injury/disease is contributing to the degree of impairment to the area, the degree of impairment caused by the work-related injury/disease is determined.

## Principles

Workers are entitled to compensation for permanent impairments resulting from work-related injuries/diseases.

## Purpose

The purpose of this policy is to set out when a NEL benefit may be redetermined, and how it is redetermined.

## Guidelines

### Redetermination of NEL or pre-1990 permanent disability

If a worker requests a NEL redetermination and has a NEL benefit and a pre-1990 permanent disability benefit for the same body part, system, or function, the decision-maker must identify which condition has worsened and, therefore, which benefit should be reviewed. To make this determination, the decision-maker reviews the health care information on file and may request additional health care information or consult WSIB clinical staff as necessary.

### NEL greater than zero percent

The worker's degree of permanent impairment must have been previously determined to be greater than zero.

If a worker received a zero NEL rating after January 1, 1998, no redetermination is allowed. This would preclude a review of future economic loss (FEL) or loss of earnings (LOE) benefits after their respective final review period (60 months post-initial determination for FEL, or 72 months post-injury for LOE).

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However, a worker may qualify for an initial NEL determination in the case of a recurrence, see 15-02-05, Recurrences, or post-final benefit review in certain circumstances, see 18-05-03, Determining the Degree of Permanent Impairment.

**12-month restriction**

A redetermination may be considered if 12 months have passed from the date of the last NEL decision. The last NEL decision may be

- the initial NEL decision, or
- a decision following a redetermination, or
- a decision on appeal, if the decision was based on a new NEL determination.

If the last NEL decision was a redetermination of a NEL benefit for more than one body part, system, or function, the 12-month restriction applies regardless of whether the redetermination addressed **all or only some** of the body parts, systems, or functions covered by the NEL benefit.

**Waiving the 12-month restriction**

In those cases where a worker's permanent impairment deteriorates rapidly following a NEL determination because of serious illness, or if the worker dies, the WSIB waives the 12-month restriction on redeterminations.

**Significant deterioration**

A significant deterioration refers to a marked degree of deterioration in the work-related impairment that is demonstrated by a measurable change in the clinical findings.

The most recent clinical findings for the body part, system, or function for which a NEL redetermination is being requested are compared with the clinical condition of the body part, system, or function at the time of the last NEL determination to evaluate whether there is evidence of a significant deterioration.

See 18-04-20, Final FEL Benefit Review, 18-03-06, Final LOE Benefit Review for further details regarding the factors considered to determine if there has been a significant deterioration in the work-related impairment.

Workers who experience a significant deterioration in their condition may be entitled to additional benefits, see 18-04-14, Reviewing FEL Benefits (Prior to Final Review), and 18-03-02, Payment and Reviewing LOE Benefits (Prior to Final Review).

**Work-related**

Once a significant deterioration is confirmed, decision-makers must confirm that it is work-related by considering whether

- there has been a recurrence, see 15-02-05, Recurrences

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- a new accident (work-related or not) has occurred, or
- a pre-existing condition or other non-work-related factor has caused or contributed to the deterioration, see 15-02-03, Pre-existing Conditions and 15-06-08, Adjusting Benefits Due to Post-accident, Non-work-related Change in Circumstances.

Where a new accident, pre-existing condition or other non-work-related factor is found to have caused the deterioration, there is no entitlement to a NEL redetermination.

**Permanent worsening date**

After the criteria for a NEL redetermination are met, the permanent worsening date (PWD) must be determined. The PWD is the date the deterioration in the worker's condition stabilized and/or no further significant improvement is likely. Increases in the NEL benefit are payable from the PWD.

**Reviewing the degree of permanent impairment**

When the worker reaches the PWD, the WSIB redetermines the degree of permanent impairment by considering the health care information available in the claim file and the guidelines outlined in 18-05-03, Determining the Degree of Permanent Impairment with necessary modifications.

Pre-existing conditions or post-accident non-work-related factors that contribute to the degree of impairment to the area of injury/disease at the time of redetermination may be factored out, even if they were not factored out at the time of the initial determination, using the same criteria outlined in 18-05-03, Determining the Degree of Permanent Impairment.

Non-work-related factors that occur after the initial determination is made, and that contribute to the degree of impairment to the area injury/disease, are also considered at the time of redetermination using the same criteria outlined in 18-05-03, Determining the Degree of Permanent Impairment.

**Recalculations****No increase in degree of impairment**

If the NEL redetermination does not result in an increase to the degree of permanent impairment, there is no entitlement to an increase in the NEL benefit.

**Improvement in degree of impairment**

If the NEL redetermination reveals an improvement in the degree of permanent impairment, the existing NEL benefit is not reduced, however, the improvement is considered a material change in circumstances that may affect entitlement to other benefits and services, see 22-01-02, Material Change in Circumstances – Worker.

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The NEL benefit may be reduced and a recoverable overpayment created where fraud and/or false or misleading statement(s) or representation exist in connection with the initial NEL determination.

## **Increases in degree of impairment**

### **Single impairment**

The WSIB calculates the new NEL benefit by multiplying the worker's original base amount (indexed to the PWD) by the percentage increase. See 18-05-04, Calculating NEL Benefits, 18-01-02, Benefit Dollar Amounts - Accidents from 1998, and 18-01-03, Benefit Dollar Amounts - Accidents before 1998.

### **Multiple impairments**

A NEL benefit may be redetermined for more than one impairment resulting from the same accident. In these cases, the WSIB rates each body part/system and determines the percentage of total permanent impairment of the whole person according to the prescribed rating schedule. The new rating minus the initial rating gives the percentage increase.

## **Redeterminations post-final benefit review**

If a worker experiences a significant deterioration in his/her work-related condition more than

- 60 months post-initial FEL determination, or
- 72 months post-injury in the case of LOE,

that results in a NEL redetermination and increased NEL benefit, the FEL or LOE benefit may also be reviewed. The FEL/LOE benefit review period continues for a period of up to 24 months from the date the NEL benefit is processed. If the redetermination does not result in an increase to the NEL benefit, the review ends as of the date of the redetermination, see 18-04-20, Final FEL Benefit Review and 18-03-06, Final LOE Benefit Review.

## **New areas of entitlement to a permanent impairment**

For the purposes of determining significant deteriorations that occur after the final benefit review (FEL or LOE) the WSIB will also consider the recognition of new areas of entitlement to a permanent impairment (in addition to areas of impairment where a NEL benefit has already been determined) to establish a redetermination. A new area of entitlement to a permanent impairment is one in which a permanent impairment was not identified before the expiration of the final review period. This combined rating is considered a redetermination for the purposes of significant deteriorations that occur after the final benefit review.

For cases where there is no prior NEL benefit determination and a new area of entitlement to a permanent impairment is identified after the final benefit review period has expired, the worker may qualify for an initial NEL determination, see 18-05-03, Determining the Degree of Permanent Impairment.

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**Payment options**

NEL benefits may be paid monthly or as a lump sum depending on whether the benefit is under or over the threshold, and in some cases, on the payment option selected by the worker.

**Monthly NEL benefit and annual indexing**

On January 1 every year, the WSIB indexes ongoing monthly NEL benefits by applying the indexing factor to the amount payable, see 18-01-14, Annual Indexing.

**NEL threshold**

The NEL benefit threshold is set annually. The NEL threshold for each worker is based on the year the worker reaches MMR. For a complete list of the NEL benefit threshold amounts to date, see 18-01-02, Benefit Dollar Amounts - Accidents from 1998 and 18-01-03, Benefit Dollar Amount - Accidents before 1998.

NEL Amount	Previous NEL paid as a lump sum	Previous NEL paid monthly
NEL benefit increase at or under threshold	NEL increase automatically paid as a lump sum	NEL increase automatically paid as a lump sum and ongoing monthly NEL benefit continues unaffected
NEL benefit increase over the threshold	NEL increase automatically paid as a lump sum after 30 days unless the worker elects to have the increase paid as a monthly benefit	NEL increase automatically paid as a lump sum after 30 days and the ongoing monthly benefit continues unaffected, unless the worker elects to have the NEL monthly benefit increased

**Election**

Workers who are eligible to elect a monthly NEL benefit payable for life have 30 days from the date of the decision letter to make the election. This election is irrevocable. This time frame applies to both initial NEL benefit determination decisions and NEL benefit redetermination decisions.

**Exceptions**

If the worker is entitled to make a payment election but is mentally or physically unable to do so, the individuals identified in 15-01-07, Guardians for Workers/Survivors can make the election on behalf of the worker, but they must do so within the allowed time.

A seriously ill worker, through a power of attorney, may appoint an individual(s) to act on his/her behalf. An individual(s) duly appointed in this manner can make the payment election for the worker, but must do so within the time allowed.

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**Payment in cases of death**

If the worker dies before the NEL increase is paid, the WSIB pays the benefit as a lump sum to the estate. If the NEL increase is already being paid as a monthly benefit or the worker has elected to receive the NEL increase as a monthly payment, the WSIB pays the worker's estate the monthly payments up to the 1st of the month after the worker's date of death.

**Application date**

This policy applies to all decisions made for entitlement periods on or after January 1, 2018, for accidents on or after January 2, 1990.

**Policy review schedule**

This policy will be reviewed within one year of the application date.

**Document history**

This document replaces 18-05-09 dated November 3, 2014.

This document was previously published as:

18-05-09, dated October 1, 2011

18-05-09, dated July 18, 2008

18-05-09 dated August 1, 2007

18-05-09, dated October 12, 2004

18-05-09, dated December 24, 2003.

**References****Legislative authority**

*Workplace Safety and Insurance Act, 1997*, as amended  
Sections 44, 46, 47, 49, 52, 58, 59, 106, 107, 111

*O.Reg. 175/98*

Section 18

*Workers' Compensation Act, R.S.O. 1990*, as amended

Section 42

*R.R.O. 1990, Reg. 1102*

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