

Section	Policy
40	44.110.55

Section Title: Benefits Administration - *Other Entitlements*
Subject: Spousal or Common-Law Partner Options - Undue Hardship
Effective Date: January 1, 2000, for fatalities on or after that date.

A. POLICY PURPOSE

The Workers Compensation Act (the Act) provides an option, in certain circumstances, for the surviving spouse or common-law partner of a deceased worker to receive wage loss benefits to the age of 65, rather than the lump-sum payment.

The surviving spouse or common-law partner has this option when the WCB considers the death of the worker results in undue hardship for the spouse or common-law partner, and the spouse or common-law partner is either 50 years of age or older, or an invalid.

This policy describes how the WCB determines “undue hardship”.

This policy applies only to fatalities on or after January 1, 2000. For fatalities from January 1, 1992, to December 31, 1999, see WCB policy 44.110.55.01, *Spousal Options - Undue Hardship Cases*.

B. POLICY

- For the purpose of this policy, the WCB considers that the death of the worker results in undue hardship if the surviving spouse or common-law partner is an invalid. In the Act, an “invalid” is a person who is physically or mentally incapable of earning.
- To determine other cases of “undue hardship”, the WCB will first consider, through a vocational assessment, whether the spouse or common-law partner is likely to obtain employment or whether factors which affect employability (e.g., age, language, health, education, experience, transferable skills, work history, functional capacity) make this unlikely. If it is unlikely that the spouse or common-law partner is capable of finding and keeping employment, the WCB will consider this circumstance to result in undue hardship.
- If the spouse or common-law partner is considered capable of employment or is employed, the WCB will then consider whether, without the WCB monthly payment, there would be financial hardship (i.e., would there be financial hardship when WCB monthly payments end). The WCB will consider there is undue hardship if estimated post-fatality family net income is less than 75% of pre-fatality family net income. Family net income means family gross income less probable deductions for income tax, CPP and EI premiums.
- Pre-fatality family gross income will include:
 - the deceased worker’s pre-accident average earnings; and
 - the surviving spouse’s or common-law partner’s average earnings from employment (if any) at the time of the fatality.
- Post-fatality family gross income will include:
 - the surviving spouse’s or common-law partner’s average earnings from employment (if any) at the time of the fatality; and
 - the WCB lump-sum payment, but not the monthly payment; and
 - CPP survivor’s monthly pension payable to the surviving spouse or common-law partner for the surviving spouse or common-law partner and dependants, but not the lump-sum death benefit; and

- any other payments, including lump-sums, received as a result of the fatality (e.g., from the deceased worker's employer or private insurance).

Lump sums, including the WCB lump-sum payment above, will be converted to annual annuity amounts to age 65 for purposes of this calculation.

6. Post-fatality family gross income will not include the value of or income from assets of the family unit that existed prior to the fatality.
7. When the WCB determines that undue hardship applies, the surviving spouse or common-law partner may elect to forego the lump-sum and to receive instead the monthly payments until the age of 65. The spouse or common-law partner may choose either option. To assist in choosing, independent financial advice at WCB expense is available to the spouse or common-law partner (as provided under WCB policy 44.100.20, *Annuities*).
8. If the spouse or common-law partner selects the monthly payment option and dies prior to the age of 65, the monthly payment will cease as of the first day of the month following the date of death.
9. Spouses or common-law partners to whom undue hardship applies because they are invalids or unlikely to find and keep employment are not eligible for spousal rehabilitation. However, they continue to be eligible for lifestyle adjustment services (e.g., grief counselling). Spouses or common-law partners who are capable of employment and to whom undue hardship applies for financial reasons, will be offered the opportunity for further vocational rehabilitation services as provided under WCB policies 43.10.50, *Rehabilitation for Spouses or Common-law Partners of Deceased Workers* and 43.10.50.01, *Rehabilitation for Spouses or Common-law Partners of Deceased Workers*.

C. REFERENCES

The Workers Compensation Act, sections 28 to 35 [On or After January 1, 1992]

Related WCB Policies:

43.10.50, *Spousal Rehabilitation*
44.100.20, *Annuities*

History:

1. Policy 44.110.55, *Spousal Options – Undue Hardship Cases*, established by Board Order 35/92, effective January 1, 1992.
2. Policy revised to amend criteria for undue hardship. Approved by Board Order 13/00 on April 27, 2000. Revised policy effective January 1, 2000. Former policy re-issued as 44.110.55.01.
3. Updated July 1, 2005 – Bill 41 effective July 6, 2001, redefined "spouse" and added a separate definition of "common-law partner". The change in the policy adds the phrase "or common-law partner" after "spouse".
4. Minor formatting, wording, and grammatical changes were made to the policy June 27, 2012.
5. Minor formatting changes were made to the policy, August 2021.

D. GUIDELINES

1. All invalid spouses or common-law partners should be offered the option of taking either the lump-sum or monthly payments to age 65, as soon as it is certain that the spouse or common-law partner has decided to claim with the WCB.

2. For spouses or common-law partners 50 years of age or older who are not invalids, the WCB determines whether the undue hardship option applies based on financial hardship. To do this the WCB needs information on what family gross income was before the fatality and what it is likely to be after (see # 4 & 5 of the policy). Gathering the necessary financial information may have to be deferred until the spouse or common-law partner is emotionally ready to provide the information or until the WCB is able to gather the information by other less directly intrusive methods.

In most cases, calculation of post-fatality family income will require contact with the spouse, common-law partner or executor of the deceased worker's estate. The WCB may also consider other methods. For example, contacting CPP directly (through the information sharing agreement) to determine the amount of survivor benefits; contacting the accident employer to determine the amount of survivor benefits (if any) to which the spouse or common-law partner is entitled. Where the spouse or common-law partner is employed, the WCB may consider contacting the spouse's or common-law partner's employer directly (with the consent of the surviving spouse or common-law partner) to determine current employment income. In many cases, the WCB will have to contact the surviving spouse or common-law partner directly for this and other information (e.g., proceeds from private insurance) or for permission to contact a third party directly. How and when the information necessary to determine undue hardship is gathered will depend on the WCB's assessment of the individual circumstances of each case.

3. Once all the necessary financial information is obtained, the Finance Department will convert it as required (e.g., lump-sum amounts to monthly/annual equivalents) for use in the hardship calculation formula, apply the formula and provide the results to the Adjudicator/Case Manager.
4. Where the Adjudicator/Case Manager determines hardship applies, the spouse or common-law partner will be provided with information on the value of the two options.

The WCB will explain the other options the spouse or common-law partner will have if s/he chooses to receive the lump-sum (i.e., to convert the lump-sum to an annuity and, if the spouse or common-law partner is the sole dependant, to convert the wage loss payments to a lump-sum).

The WCB will also explain that the spouse or common-law partner (if under age 60) may also be eligible for spousal rehabilitation regardless of which option is chosen, subject to a vocational rehabilitation assessment to determine whether spousal rehabilitation is a viable option (as provided under WCB policy 44.10.50, *Spousal Rehabilitation*). The vocational rehabilitation assessment may also assist the spouse or common-law partner in choosing between the lump-sum and extended wage loss.

It will not always be financially advantageous for the spouse or common-law partner to select the extended wage loss option. For example, where the spouse or common-law partner is in her/his late 50's or the deceased worker was a low wage earner, the value of the lump-sum may be greater than the extended wage loss option. Even if the extended wage loss option has a higher value, the spouse or common-law partner may choose the lump-sum for personal reasons (certainty, repayment of debt, special plans, etc.).