Section Title: Finance, Assessments and Administration - *Payments*
Subject: Overpayment of Benefits
Effective Date: New overpayment decisions on or after May 1, 2017

A. POLICY PURPOSE

The *Workers Compensation Act* of Manitoba (the Act) provides that the Workers Compensation Board (WCB) may recover overpayments when an injured worker or worker's dependant has been paid more than they were entitled to under the Act. The WCB strives to prevent overpayments of benefits; however, the payment of benefits in as timely a manner as possible means that some overpayments will inevitably occur.

This policy establishes the framework for preventing, recovering and writing off overpayments, and outlines the effect of overpayments on an employer's assessment rates or WCB costs.

B. POLICY

I. Prevention of overpayments:

1. reasonable attempts to contact the worker and employer to verify wage information;
2. clear notification to injured workers that duplication of benefits, such as Long-Term Disability or Canada Pension Plan (CPP) disability benefits, will create an overpayment situation; and
3. notification to injured workers of other common situations that may create overpayments.

II. Recovery of overpayments:

All overpayments will be pursued for recovery when:

1. the overpayment is a result of an administrative error that the injured worker or worker's dependant is notified of within 30 days of it occurring. Administrative errors noted after 30 days will be pursued if the injured worker or /injured worker's dependant could or should have been aware of the error. These are not adjudicative or entitlement decision errors. These are errors made by the WCB in implementing a decision, i.e. adjustments made to earnings to correct clerical or mathematical errors;
2. there is evidence of fraud, deliberate misrepresentation, delays in providing or withholding of key information by the injured worker or worker's dependant affecting benefit entitlement; or
3. there is a duplication of benefits paid from another source for the same injury, for example Long Term Disability or CPP disability benefits.

Repayment methods may include a single payment or a series of regular payments from the injured worker or worker's dependant or deductions from ongoing or future WCB benefits.

III. Notice to injured worker or worker's dependant of overpayments:

When an overpayment is pursued for recovery, the WCB will:

1. contact the injured worker or worker's dependant to advise about the existence of the overpayment;

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2. confirm the overpayment details in writing; and
3. set up an acceptable recovery plan or progress to other recovery methods when it is considered necessary.

IV. Decision not to proceed with recovery of an overpayment:

The WCB will not pursue an overpayment when:

1. the overpayment is less than $50; or
2. the overpayment resulted from an adjudicative or entitlement decision reversal at the primary level, Review Office or Appeal Commission.

With the exception of those overpayments resulting from fraud, deliberate misrepresentation, withholding of key information by the worker or dependant or duplication of benefits paid from another source for the same injury, the WCB may decide not to pursue an overpayment when:

1. the receivable amount is not cost-effective to pursue;
2. recovery of the overpayment, in whole or in part, would create financial hardship for the injured worker or the worker's dependant;
3. the individual who received the overpayment has died without sufficient funds in the estate to cover the overpayment; or
4. the overpayment occurred more than three years prior to its discovery by the WCB.

The WCB will write off an overpayment when the decision not to pursue has been made.

V. Overpayments not initially recovered:

Overpayments that remain outstanding will remain as a receivable for up to six years, during which time recovery action may be reinstated if the circumstances contributing to non-recovery change.

For example, an overpayment may be pursued at a later time if:

1. evidence arises of fraud, deliberate misrepresentation or withholding of key information affecting benefit entitlement;
2. it becomes cost-effective to pursue recovery; or
3. the conditions creating financial hardship no longer exist.

VI. Reconsideration and appeal of an overpayment:

Decisions about the establishment, amount or requirement to pay back an overpayment are subject to reconsideration and appeal. Anytime a reconsideration or appeal is formally received and actively being pursued on an overpayment, recovery attempts will be suspended pending the outcome of the decision. Recovery action may be reinstated before the reconsideration or appeal decision is issued if the WCB has evidence that the primary purpose of the appeal is to defer the recovery process.

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VII. Effect on employers:

Class E:

For Class E employers, overpayments are removed from an employer's cost experience record. The cost of written-off overpayments is shared collectively by all Class E employers.

The credit to the employer's claim cost experience that arises from an overpayment will be processed in one of the following ways:

When the overpayment credit affects an employer's assessment rate for the upcoming rate-setting year(s), the revised claim costs experience is used to calculate the employer's assessment rate(s).

When the overpayment credit affects the claim costs experience used to calculate an employer's assessment rate in current and prior rate-setting years, the revised claim costs experience is used to determine the financial impact, if any, on assessment rates.

Individually Assessed Employers (Individually-Liable Employers as per the Act):

For individually assessed employers, overpayments are included as a claim cost for the applicable employer. Overpayment recoveries are credited to the claims cost of the applicable employer.

If an individually assessed employer has paid workers compensation benefits directly to the worker by means of salary continuance, and an overpayment occurs which the WCB would attempt to recover under this policy, the WCB may authorize the employer to attempt to recover the payment from the worker. The recovery process must conform with the principles and intent of this policy. The employer must report to the WCB the amounts that are recovered from the worker.

The WCB reserves the right to audit an individually assessed employer's recovery process to ensure compliance with this policy.

C. REFERENCES

The Workers Compensation Act, Sections 109.2 and 109.3

History:

1. Recovery of Overpayment Policy originated by Board Order 150/89 on November 20, 1989.
2. Board Order 150/89 re-written as Policy 35.40.50 for incorporation into the Policy Manual approved by Board Order 9/91 on June 19, 1991.
3. Moratorium placed on initiating collection of overpayments, except in cases of fraud, effective March 12, 1993.
4. Board Order 150/89 rescinded and Policy 35.40.50 replaced on September 2, 1993 by Board Order 30/93, effective retroactively for all overpayments for which collection was not yet underway on March 12, 1993. Former policy re-issued as 35.40.50.01 to indicate it ceases effect on March 11, 1993.
5. Policy 35.40.50 replaced by Board Order 22/95 effective for initial decisions on or after January 1, 1996. Former policies re-issued as 35.40.50.01 (effective Mar 12/93 - Dec 31/95) and 35.40.50.02 (effective Nov 20/89-Mar 11/93).
6. Policy 35.40.50 revised by Board Order 5/2000 effective April 1, 2000. The revised policy is applicable to both existing and new overpayments on a going-forward basis from the effective date of implementation. There will be no retroactive adjustments under this policy.

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7. Minor formatting and wording changes were made to the policy, June 27, 2012.
8. Policy 35.40.50 was amended by Board Order 4/16 on January 28, 2016, effective January 1, 2017. Subsequently, the policy was further amended by Board Order 43/16 on December 20, 2016 to change the effective date of the policy revisions to May 1, 2017. Changes made included improving policy's organization and clarity, enhancing stewardship by ensuring workers are paid the benefits they are entitled to and collecting overpayments in a fair, consistent and cost-effective manner. The April 19, 2017 revision further revised the policy to allow the WCB to proactively adjust future and post assessment rates when an overpayment exists. The former policy was re-issued as 35.40.50.01 for reference purposes.
9. Minor formatting changes made to the policy, January 2021.
10. In September 2022, policy revisions respond to a change in terminology that was introduced by amendments to the Act by *The Minor Amendments and Corrections Act* (MACA) 2022. The term "self-insured employer" was replaced with "individually assessed employer" wherever it occurs.
11. Policy 35.40.50, *Overpayment of Benefits* was amended by Board Order 31/23 on September 28, 2023, effective, January 1, 2024. Changes seek to clarify situations where employers are continuing to pay wages, aligning it with policy 22.30 *Agents of the WCB*. Changes were also made to align the policy with the new *Limitations Act.* The previous policy version was removed from the policy manual and archived.

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