

Practice Directive 16

Section 39(1)(e) – Relief of Costs

Date: August 4, 1998

Background

Section 39(1)(e) requires the Board to “provide and maintain a reserve for payment of that portion of the disability enhanced by reason of a pre-existing disease, condition or disability. Rehabilitation Services & Claims Manual item #114.40 and Workers’ Compensation Reporter 271 (issued March 14, 1978) contain policy direction on the application of Section 39(1)(e).

Reporter Decision 271 required that Section 39(1)(e) be considered and the employer advised on all claims where wage loss exceeded 13 weeks (or where a pension was awarded). In fact, employers were rarely notified of the Board’s consideration.

In 1995, the Senior Executive Committee decided that commencing January 1, 1994, staff would issue a Section 39(1)(e) decision on all claims where wage loss benefits exceed 13 weeks in duration. In addition, the Committee established a “Historical Relief of Costs Project” to deal with the application of the section on claims where compensation costs were incurred and concluded between March 15, 1978, the effective date of Decision 271, and December 31, 1993. The project dealt primarily with requests from employers or their representatives.

An April 23, 1998 Resolution of the Administrators relates to the following four issues:

1. Application of Section 39(1)(e) to the remainder of the “historical” claims
2. Application of Section 39(1)(e) to “pre-1978” claims
3. Application of Section 39(1)(e) to “same employer” situations
4. Payment of interest on refunds granted pursuant to Section 39(1)(e)

1. Application of Section 39(1)(e) to the remainder of the “historical” claims

The Panel directed the administration to provide notice to those employers who, according to the Board’s records, had claims to which Section 39(1)(e) could be applied to result in a financial benefit to the employer.

The Assessment Department identified all employers to whom the section could be applied to result in a financial benefit and a Notice was mailed to those

employers in the middle of June. **The Notice advises the employers that the final date for requesting relief of costs on the “historical” claims (those between March 15, 1978 and December 31, 1993 inclusive) is October 15, 1998. A reminder to these employers will be sent in mid-August, 1998 and requests after October 15, 1998 on these cases will not be accepted.**

The “Historical Relief of Costs Project” will administer receipt of applications, resultant consideration and decisions on these cases. Regular line staff will continue to issue Section 39(1)(e) decisions on post 1993 claims with pensions or more than 13 weeks of wage loss benefits.

2. Application of Section 39(1)(e) to “pre-1978 claims”

The Panel resolved that the historical project not extend to claims where wage loss compensation concluded prior to March 15, 1978 and/or where pensions were awarded prior to March 15, 1978. This resolution confirms current practice. Line staff should continue to reject such requests on the basis that they are unreasonably delayed.

3. Application of Section 39(1)(e) to “same employer” situations

On December 7, 1995 the Panel of Administrators issued an interim policy stating that Section 39(1)(e) relief of costs will not be granted to an employer where the pre-existing disease, condition or disability was caused by a compensable injury or disease with the same employer.

The Panel’s April 23, 1998 Resolution changes that interim policy and Section 39(1)(e) relief of costs can now be granted to an employer where the pre-existing disease, condition or disability was caused by a compensable injury or disease with the same employer.

This change in policy is effective in same employer situations where the **date of injury or disease** for which relief is sought is on or after July 1, 1998.

4. Payment of interest on refunds granted pursuant to Section 39(1)(e)

The Panel resolved that interest will be paid from the date of application for relief of costs at the same interest rate as under #50.00 of the Rehabilitation Services and Claims Manual. The Assessment Department administers this payment and there is no change from current practice.