

**Operational
Policy**

Section

Future Economic Loss (FEL) (Accidents from 1990-1997)

Subject

Final FEL Benefit Review

Policy

The WSIB shall not review the future economic loss (FEL) payments more than 60 months post-initial FEL determination, unless:

- before the 60-month post-initial FEL determination period expires, the worker fails to notify the WSIB of a change in circumstances or engages in fraud or misrepresentation in connection with their claim for benefits under the insurance plan, ~~or~~
- the worker was provided with a return-to-work (RTW) plan (with training), and the plan is not completed when the 60-month post-initial FEL determination period expires, ~~or~~
- after the 60-month post-initial FEL determination period expires, the worker suffers a significant deterioration in their condition that:
 - results in a redetermination of the degree of permanent impairment
 - results in an initial determination of a permanent impairment
 - is likely, in the WSIB's opinion to result in a redetermination of the degree of permanent impairment, or
- after the 60-month post-initial FEL determination, the worker suffers a significant temporary deterioration in their condition that is related to the injury.

Purpose

The purpose of this policy is to outline when the final FEL benefit review is conducted and how exceptional cases are addressed.

Guidelines

Except where noted, the final FEL benefit review must occur before the end of the 60-month post-initial FEL determination. In preparation for the final review, the WSIB initiates a review at 55 months post-initial FEL determination by requesting that the worker provide information relating to their:

- earnings/income including Canada Pension Plan/Quebec Pension Plan disability benefits paid because of the work-related injury/disease, [see-refer to 18-01-13, Calculating CPP/QPP Offsets from FEL/LOE Benefits](#)
- employment status, and
- health (clinical) status.

If the worker fails to respond after one follow-up, the FEL benefit is suspended at 58-months post-initial FEL determination. The FEL benefit is not restored until a full review occurs. At that time, the FEL benefit may be paid retroactively to the point when it was suspended. If the final review does not occur by the 60-month post-initial FEL determination, the FEL benefit cannot be restored retroactively ~~(unless the WSIB is satisfied the failure to respond was not willful and intentional)~~. Rather, it is paid from the date the review is conducted.

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Final FEL Benefit Review**Post-injury earnings at final review****Actual employment earnings from suitable occupation identified job**

If a worker is employed in a suitable occupation (SO) identified job, the WSIB uses the worker's actual employment earnings to pay the FEL benefit, even if the earnings are not consistent with the most recent labour market wage information for the SO. The only exception would be in cases where the worker is voluntarily under-employed, [see-refer to 18-04-14, Reviewing FEL Benefits \(Prior to Final Review\)](#).

Actual employment earnings from job not identified in the SO

If the worker has co-operated in a RTW plan (with training) and returns to work in a job not identified in the SO, the WSIB uses actual employment earnings if the WSIB is satisfied that the earnings:

- come reasonably close to the SO-identified earnings, and
- represent the same or similar future potential earnings.

For more information regarding RTW plans, [see-refer to 19-02-10, RTW Assessments and Plans](#).

When final review occurs before the worker returns to employment

If the final review occurs before the worker finds a job, the WSIB uses the available wage information for the identified SO as of the completion date for the RTW plan (with training). If the WSIB originally used:

- entry-level wages to determine the post-injury earnings, updated entry-level wages are used to pay the FEL benefit. This generally occurs if the plan was designed to provide the worker with new skills or if the worker would have entered a new field, or
- mid-range wages to determine the post-injury earnings, updated mid-range wages are used. This generally occurs if the plan was designed to improve a worker's existing or transferable job skills, [see-refer to 19-02-10, RTW Assessments and Plans](#).

Exception: adjusting earnings to that of an experienced worker

The WSIB uses updated wage information and the amount an experienced worker would earn in the identified SO if the worker:

- has never returned to work despite being able to do so and has chosen not to co-operate in their RTW activities, assessment, plan etc., or
- returned to work, but is voluntarily under-employed.

Where a worker has co-operated and is not working at the time of the final review, the FEL benefit will not be calculated based on 'experienced worker earnings', but will be paid based on SO-identified earnings.

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The earnings of an experienced worker should reflect the level of earnings most likely achieved by those workers in the SO that had a full experience doing the job (e.g., had several years of experience in the job).

In selecting earnings to reflect those of an experienced worker, the WSIB considers factors such as:

- the age of the worker (movement into the high-end wages may take many years)
- level of education and training provided by a RTW plan
- the nature of the job (e.g., in some jobs, few workers are able to earn the high-end wages), and
- any other information that may identify wage levels (job rate).

Exceptional cases - 60-month post-initial FEL determination

Effective July 1, 2007, there are two exceptions that affect a final review:

1. a deferral of the final review if the worker is involved in a RTW plan (with training) and the plan is not completed at the time of the final review, or
2. the provision of additional reviews due to a significant deterioration in the work-related injury/disease.

Co-operating in RTW - 60-month post-initial FEL determination

If a worker is co-operating in a RTW plan (with training) that is not completed by the 60th month post-initial FEL determination, the WSIB may defer the final review. In these cases, the final review must occur within 30 calendar days of the plan completion (i.e., by the 31st day post-plan completion). If the worker is not working at that point, [see-refer to](#) "When final review occurs before the worker returns to employment" ~~above~~.

Significant deterioration after 60-month post-initial FEL determination

The WSIB may review the FEL benefit after the 60-month post-initial FEL determination if the worker suffers a significant deterioration in their work-related condition. When a worker sustains a secondary condition after 60 months post-initial FEL determination that is causally related to the work-related condition, this may also be considered a significant deterioration of the work-related condition for which FEL benefits may be reviewed after 60 months post-initial FEL determination, [see-refer to](#) 15-05-01, Resulting from Work-Related Disability/Impairment.

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

To determine if there is evidence of a significant deterioration, the WSIB considers factors such as:

- the need for further active clinical/health care intervention to improve the worker's condition (e.g., surgery)

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- establishment of objective clinical evidence to support a significant deterioration
- evidence of increased clinical precautions or whether functional abilities have changed (e.g., evidence of an increase in restricted activities may support a finding of significant temporary deterioration), or
- job change impacts.

While a worker may take an occasional day off from work, this is generally not indicative of a significant deterioration.

For additional information, [see-refer to 15-02-05, Recurrences](#).

Temporary deterioration

Where the information supports the worker has a significant temporary deterioration, FEL benefits may be reviewed from the start of the deterioration until the worker recovers from the significant temporary deterioration as supported by objective clinical evidence, [see-refer to "Further review of the FEL benefit" -below](#).

Likely permanent impairment or redetermination

At the time a significant temporary deterioration is accepted, [\(see-refer to "Significant deterioration after 60-month post-initial FEL determination" -above\)](#), it may not be apparent that the worker requires a permanent impairment review. The WSIB continually monitors and assesses the health care information to decide if an initial determination or redetermination of the worker's permanent impairment should be arranged, [see-refer to 11-01-05, Determining Permanent Impairment and 18-05-09, NEL Redeterminations](#).

If an initial determination or redetermination of the worker's permanent impairment is likely required, payments can be reviewed up to the point that this takes place. Based on the result of the initial determination or redetermination, the review period may be extended further, [see-refer to "Further review of the FEL benefit" -below](#).

However, whenever the WSIB determines that an initial determination or redetermination is not required, the review period ends. The WSIB must complete this review and fully notify the worker of ongoing wage loss entitlement within five business days from the date it is decided that an initial determination or redetermination is not required.

If at any point it is determined that the worker no longer has an impairment, the FEL benefit is terminated the following day. If a worker undergoes an initial determination that results in a zero percent non-economic loss (NEL) rating, FEL benefits continue until the worker is notified in writing and are paid to the end of the month in which the zero percent NEL decision is rendered, [see-refer to 18-04-14, Reviewing FEL Benefits \(Prior to Final Review\)](#).

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Final FEL Benefit Review**Eligibility despite a zero percent NEL rating**

A “zero percent NEL rating” means that prior to the final review, a worker does not have a permanent impairment and therefore is not entitled to a NEL benefit. Such a worker cannot request a redetermination of ~~his or her~~their zero percent NEL benefit.

However, where a worker, previously assessed at a zero percent NEL rating, suffers a significant deterioration following the final review, that worker may be eligible for a review of FEL benefits. If the significant deterioration is temporary, the review period ends when the worker recovers. If it is eventually determined that the worker may likely have a permanent impairment, the WSIB may conduct a new permanent impairment determination.

Further review of the FEL benefit

Although the FEL benefit may be recalculated at the outset when the worker has suffered a significant deterioration, the WSIB must conduct a further review of the “locked in” benefit, and if warranted, recalculate the benefit before that review opportunity ceases. This review should normally take place:

- when a significant temporary deterioration ends
- whenever the WSIB determines that a NEL determination or redetermination of the worker’s permanent impairment is not required, or
- 24 months from the NEL processing date if the NEL determination or redetermination confirms a significant deterioration of the permanent impairment resulting in a NEL or an increased NEL benefit, based on the facts of the case.

Extension of the 24-month period following determination/redetermination of permanent impairment

The 24-month review period can be extended if the WSIB awards an initial NEL benefit or conducts a redetermination resulting in a NEL increase, and the worker is co-operating in a RTW plan (with training) that is not completed by the end of the 24-month period. The WSIB has 30 days from the completion of the plan to conduct a review of the LOE benefit.

FEL supplements - 60-month post-initial FEL determination

After the 60-month post-initial FEL determination, a worker receiving a FEL benefit (including a FEL sustainability benefit) may be entitled to a FEL supplement if they:

- are participating in a RTW plan (with training) and the plan is not completed when the 60th month review point is reached, or
- experience a significant deterioration in their clinical condition, and they co-operate and participate in a medical rehabilitation (MR) program.

An MR program is any course of medical or paramedical treatment or care for a work-related injury. The purpose of an MR program is to bring the worker to a state of maximum medical recovery so that the worker may return to suitable and available employment.

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Generally, an MR program does not simply consist of the continued use of prescription medication and/or maintenance physiotherapy or chiropractic treatments. A worker is considered to be in an MR program if any of the following situations occur, but is not limited to:

- receiving active treatment due to a recurrence of the work-related injury/disease
- attending a WSIB arranged specialist consultation, and/or
- having a prosthesis repaired or replaced.

For more information regarding the payment of supplements where the worker is participating in a RTW plan (with training) or an MR program, [see-refer to 18-04-11, Supplements for Programs and Return-to-Work Activities Before and After 24 Months](#); or where the worker experiences a significant deterioration, [see-refer to 18-04-12, Supplement Following Significant Deterioration](#).

Increase/decrease in post-injury earnings

In cases where the WSIB conducts a further review of the FEL benefit after the final review, the benefit may be confirmed, varied, or discontinued to take into account any increases or decreases in post-injury earnings.

If there is a significant change in the post-injury [NAEnet average earnings](#), usually 10 per cent or greater, it is considered “material” and the WSIB recalculates the FEL benefit accordingly, [see-refer to 18-04-14, Reviewing FEL Benefits \(Prior to Final Review\) and 22-01-02, Material Change in Circumstances - Worker](#).

Requirement to report material change in circumstances

The worker is responsible for reporting any material change in circumstances that occurs prior to 60 months. When there is a material change in circumstances prior to 60 months, whether reported on time or not, the WSIB may review and adjust the LOE benefit retroactive to the date of the change.

When the WSIB reviews the FEL benefit after 60 months, the worker is responsible for reporting any material change in circumstances. Where there is a material change in circumstances, whether reported on time or not, the WSIB may review and adjust the payments for any time during the review period. Multiple reviews may be conducted during the review period, if warranted, [see-refer to 22-01-02, Material Change in Circumstances - Worker](#).

Annual indexing

On January 1, every year, the WSIB indexes ongoing FEL benefits, including locked-in FEL benefits, by applying the indexing factor to the amount payable, [see-refer to 18-01-14, Annual Indexing](#).

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Application date

This policy applies to all decisions made [on or after December 5, 2024](#) for entitlement periods on or after March 1, 2021, for accidents from January 2, 1990 to December 31, 1997.

Policy review schedule

~~This policy will be reviewed in 2023.~~

Document history

This document replaces 18-04-20 dated ~~January 2, 2018~~ [April 9, 2021](#).

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[18-04-20 dated January 2, 2018](#)

18-04-20 dated January 2, 2015

18-04-20 dated February 15, 2013

18-04-20 dated July 15, 2011

18-04-20 dated July 3, 2007.

References

Legislative authority

Workplace Safety and Insurance Act, 1997, ~~as amended~~
Sections 102, 106, 107, 107.1, 108

Workers' Compensation Act, 1990, ~~as amended~~
~~Sections 22.1, 42, 43~~

Minute Approval

~~Administrative~~

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