

# SCHEDULE 2 EMPLOYERS' GROUP

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Via email [Consultation\\_Secretariat@wsib.on.ca](mailto:Consultation_Secretariat@wsib.on.ca)

October 31, 2022

Consultation Secretariat  
WSIB  
200 Front St. West  
Toronto, Ontario M5V 3J1

## **Re: Serious Injury Value for Money Audit Review of Independent Living Policy Suite**

On behalf of the Schedule 2 Employers' Group, thank you for the opportunity to provide feedback on the policy review of the suite of Independent Living policies. The Schedule 2 Employers' Group Executive has taken the opportunity to conduct an internal review, and we are pleased to provide our input.

We agree that the suite of policies, eligibility, and services warrant updating and should be the subject of ongoing review as part of the WSIB's regular policy review framework. We agree that a policy and guideline is required to determine entitlement to suite of benefits intended to mitigate the impact of a work-related injury, improve function, quality of life, and restore the preinjury earnings profile, in a fiscally responsible manner. It must be equitable and objectively based as a determinant for benefit entitlement.

The WSIB webpage describes Serious Injury Program (SIP) services, as follows:

### **Services for people with serious injuries**

You've experienced a serious injury if your impairment is:

- permanent and you receive a non-economic-loss benefit of 60 per cent or more; or
- permanent and you receive permanent disability benefits totaling 100 per cent; or
- likely permanent in the opinion of a WSIB health care professional, and you receive a non-economic-loss benefit of 60 per cent or more or a 100 per cent permanent disability benefit.

If you experience a serious injury on the job, we'll provide you with a support team who will meet regularly to discuss your claim and to find the best outcomes for you.

According to the consultation paper, there is a department of designated staff that manages the claims of occupational disease and survivors which meet the severely impaired threshold.

### Definitions

The use of several terms interchangeably regarding the nature of the injury *i.e.*, "serious", "significant", or "severe", along with the lack of a definition of a "serious injury" is problematic.

### Program Eligibility

Access to the program at an acute stage or due to the chronic nature of a work-related injury/illness and the appropriate timing of the necessary assistance requires clarification and definition.

The WSIB's approach to applying a quantitative value, NEL 60% or greater, remains relevant but is also problematic. For example, an injured/ill person may have a 58% combined impairment yet not qualify for the program. Whereas another individual who is rated at 60% or more due to an amputation, using prosthetic devices, could be fully functional.

Functional impairment or loss does not necessarily equate to impact on quality of life. As such, each case should be assessed on its own merit, based on objective medical evidence, including receipts for expenses incurred.

Eliminate the independent living allowance and adopt an objective and validated approach to decision making to warrant the payment of living expenses up to a specified dollar amount limit, supported with receipts, much like the Canada Revenue Agency requires for disability credits.

Board staff must be trained in how to assess the information, including items purchased, and balance this with, for example, evidence-based Occupational Therapy or Social Work reporting.

### Health Care

'Necessary, appropriate and sufficient' are the broad terms set out in the legislation. From a policy perspective, consideration should be given to instituting an evidence-based approach that follows fee guidelines similar to those set out by insurance companies with established limits and compliance with best practice and evidence that support function or improved quality of life, all in a fiscally responsible manner.

### Costing and Multiple Claims

When there are multiple claims and employers, it is the WSIB's current practice to assign the costs of independent living allowance and personal care allowance to the last employer with the most recent claim resulting in a NEL Benefit award. In other words, the claim that results in a crossing the threshold of combined 60% award and entry into the serious injury program is the one charged full costs of any / all SIP benefits/services regardless of whether relevant to the specific area of injury.

This practice, which is not dictated by policy, is unjust and unfair to employers, notably Schedule 2 Employers who are self-insured, pay directly for claim costs, and do not have the benefit of S.I.E.F. cost relief.

For example, if a worker with a 40-50% NEL Benefit award sustains a new injury resulting in another 10-20% NEL Benefit award, the 60% eligibility threshold for serious injury would be met, with benefits flowing as a result. The new injury or functional impairment would not meet the serious injury threshold on its own, however when the NEL Benefits are combined, the 60% eligibility threshold is

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reached, and it is the last employer that is assigned the costs of the SIP even though the most significant contributor to that threshold was the first or prior injury employer.

Further, there are situations where the injured person's function does not impact fitness to work or activities of daily living function, yet the injured person qualifies for SIP. This clearly was not, and should not be the intention of the program.

To assign the claim costs to the last employer, whether Schedule 1 or 2, is unjust and creates an unfair burden. A fair approach would be to assess the claim(s) to determine whether there is a functional impairment through assistive devices reducing the impact of the work-related injury/illness, and whether living expenses or a personal care allowance is warranted and supported through objective evidence and receipts. The benefits and services should be evaluated by the need based on each injury and charged accordingly. Similarly, benefits/services should not be allowed for non-compensable issues/conditions or preferences.

### Policy Framework

Policy Documents 17-06-02 to 17-06-08 use the term 'severely impaired' rather than 'significant' or 'serious'.

Policy Document 17-06-02 Independent Living Allowance should be eliminated as a stand-alone document since it is not clearly defined and does not require proof of receipts.

Policy Document 17-06-03 Independent Living Devices should not require entitlement criteria since those items listed under ILA Devices would normally be expenses covered under health care s.33 of the Workplace Safety and Insurance Act (WSIA) i.e., items which are medically necessary and helps improve the function and quality of life. Assistive devices are already covered under Policy Document 17-06-07.

Policy Document 17-06-04 Guide and Support Dogs should be amended to include any support **animal** that is recommended by the health care professional and validated through independent objective assessment.

### Response to Questions for Stakeholders

Below are questions regarding entitlement criteria, as well as the timing and duration of entitlement. Responses to these questions will support the WSIB's review and analysis of entitlement to the benefits and services provided for in the independent living policy suite.

1. Does the severely impaired threshold continue to be a suitable criterion for considering entitlement to the benefits and services in the independent living policy suite?

**Severely impaired must be clearly defined to mean functional loss and impact to quality of life. It does not mean impact to activities of daily living, dependent on the characteristics of the injury and baseline function pre-accident.**

**For example, a music teacher who sustains hand/finger injuries and can no longer play instruments to demonstrate to their students has a much more significant impact to the quality of their working life versus an older worker with a back injury who claims unable to be go dancing or hiking (which they would be unlikely to engage in for other non-compensable reasons).**

2. Is someone's permanent impairment rating or expected permanent impairment rating a reliable indicator of the scope and duration of the benefits and services they are likely to need as a result of the work-related injury or illness?

**No. A 100% impairment in occupational disease claims does not necessarily mean that an injured person is not functional as they are able to access assistive medical devices and other expenses. In contrast to another injured person with a 50% NEL Benefit who may have greater impact to their function and activities of daily living. There must be objective and evidence-based criteria to determine entitlement for eligibility for the suite of services.**

3. Does the severely impaired threshold result in people with serious injuries receiving the benefits and services they need as a result of the work-related injury or illness?

**In most claims, yes, it is understood that accommodation is necessary and support services are required to enhance function and quality of life.**

4. Identifying entitlement criteria for benefits and services supports consistent and predictable decision-making. Aside from the NEL and PD rating, are there other criteria or measures that would better indicate whether someone might need a particular benefit or service? For example, lack of independence with activities of daily living (ADLs), independence with instrumental activities of daily living (I-ADLs), combination of diagnosis and function, standardized testing or assessments.

**Yes. There must be a process established for decision-making based on objective standardized, medical assessment or testing to validate function, impairment, and impact on quality of life or activities of daily living against pre-accident baseline of function.**

5. Many of the benefits and services in the independent living policy suite contemplate long-term, permanent needs. Are there circumstances in which it would be beneficial to provide any of these benefits or services on a short-term or temporary basis?

**Probably. In the acute short-term phase, initial and ongoing entitlement should be allowed based on an objectively supported medical assessment, the nature of the injury and review at regular intervals, such as number of weeks or months or maximum recovery and based on occupational disability recovery guidelines.**

6. Immediately following a work-related injury or illness, treatment and recovery are the primary focus.
  - a. At what point in a person's recovery should benefits and services to facilitate independent living be considered? Are there specific factors or indicators that should be considered?

**Program entry or services eligibility should be based on acute catastrophic and/or a likely chronic and/or permanent condition. If eligibility is not satisfied, then it would be considered under b) below.**

- b. At what point in a person's recovery should benefits and services to improve quality of life be considered? Are there specific factors or indicators that should be considered?

**Initial and periodic reviews should be conducted and supported with objective findings. Entitlement reviews should be based on the co-operation of the injured person and their participation in medical and/or vocational rehabilitation programs.**

7. Are there benefits and services that should be provided immediately and reviewed as the injured person's needs change?

**Yes. See response to question #5.**

8. Are there benefits and services that should be provided only once it is clear what the injured person's long-term needs are/likely are?

**See response to question #6. On a case-by-case basis.**

9. Do universal benefit amounts (e.g., flat rate for the independent living allowance) continue to be appropriate for meeting the needs of people with serious injuries?

**No. It does not need to continue since s.33 of WSIA and policy document 17-06-01 and 17-06-07 already apply.**

10. Aside from the severely impaired threshold, do the other entitlement criteria in each of the individual policies in the independent living policy suite allow for the provision of benefits and services that align with the needs of those with severe/significant injuries?

**Yes. The use of different terminology of impaired, severe, significant, or serious, is confusing and leads to inconsistent application and results.**

Thank you, once again, for the opportunity to provide our feedback on the policy review of the suite of Independent Living policies. And please do not hesitate to contact the undersigned for any additional information.

Yours truly,



Laura Russell  
Chair, Schedule 2 Employers Group