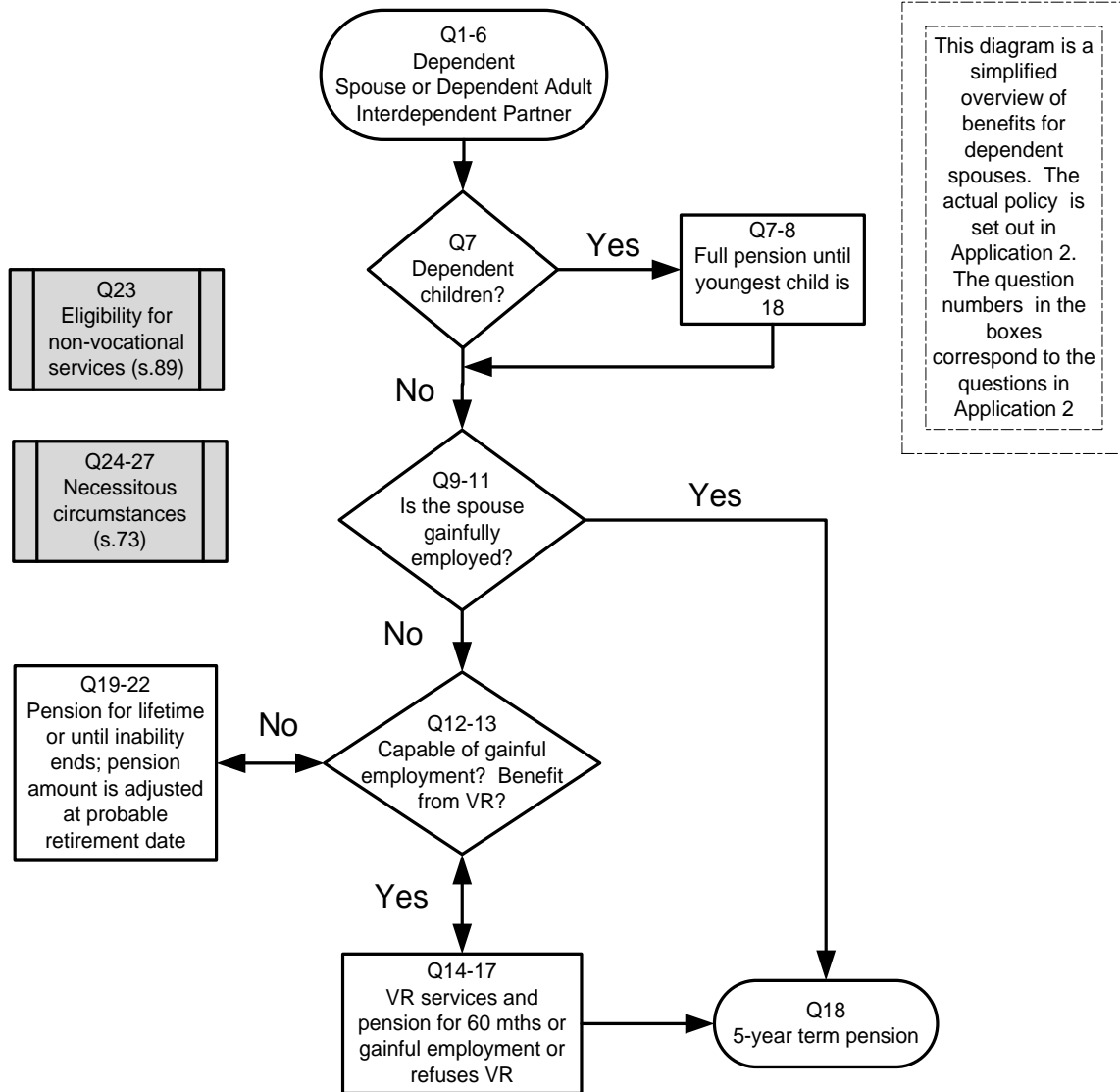


Alberta WCB Policies & Information

Chapter: BENEFITS Subject: FATALITIES

Authorization: BoD Resolution 2014/04/15 Date: May 27, 2014

APPLICATION 2 – ACCIDENTS ON OR AFTER JANUARY 1, 1982 – DEPENDENT SPOUSES AND DEPENDENT ADULT INTERDEPENDENT PARTNERS



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1. *What is the purpose of the benefit structure for dependent spouses and dependent adult interdependent partners?*

The benefit structure for dependent spouses and dependent adult interdependent partners has three main purposes:

- 1) provide financial support to the worker’s dependent spouse or dependent adult interdependent partner and dependent children until the children are 18 years old (see Questions 7 and 8)
- 2) help the dependent spouse or dependent adult interdependent partner become gainfully employed by providing vocational services and financial support during the vocational training period (see Questions 9-18)
- 3) provide ongoing financial support to spouses or adult interdependent partners who are not capable of becoming gainfully employed (see Questions 19-22)

2. *Who is a dependent spouse?*

A dependent spouse for workers’ compensation purposes is usually the worker’s legal spouse at the time of death. For claims with a date of accident on or before May 31, 2003 the worker’s common-law spouse may be considered a dependent spouse.

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3. Who is a common-law spouse?

This policy question applies to all claims with dates of accident on or before May 31, 2003.

A common-law spouse must have cohabited with the worker for:

- a) at least 5 years immediately before the worker’s death, or
- b) at least 2 years immediately before the worker’s death, if there is a child of the common-law relationship

There can be only one dependent spouse. If the worker has a common-law spouse and a legal spouse who are both dependent on the worker, the legal spouse is considered the dependent spouse for workers’ compensation. If the legal spouse is *not* a dependent spouse, the worker’s common-law spouse is the dependent spouse.

4. Who is a dependent adult interdependent partner?

This policy question applies to all claims with dates of accident on or after June 1, 2003.

For workers’ compensation purposes a person is the dependent adult interdependent partner of another if:

- a) the person has lived with the other person in a relationship of interdependence
 - i. for a continuous period of not less than three years, or
 - ii. of some permanence, if there is a child of the relationship by birth or adoption, or

b) the person has entered into an adult interdependent partner agreement with the other person.

Persons who are related to each other by blood or adoption may only become adult interdependent partners of each other by entering into an adult interdependent

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Dependent adult interdependent partner (continued)

partner agreement as provided for in the *Adult Interdependent Relationships Act and Regulation*.

There can be only one dependent spouse or partner. If at the time of the worker’s death there is both a spouse and an adult interdependent partner of the worker, then if the spouse is a dependent spouse, the spouse is entitled to the worker’s compensation benefits that are payable. If the spouse is not a dependent spouse, the worker’s adult interdependent partner is entitled to the said benefits.

5. What is a relationship of interdependence?

A “relationship of interdependence” means a relationship outside marriage in which any two persons

- i. share one another’s lives,
- ii. are emotionally committed to one another, and
- iii. function as an economic and domestic unit.

The *Adult Interdependent Relationship Act* provides for a number of circumstances, all of which must be taken into account, when determining whether two persons function as an economic and domestic unit. Please refer to the Glossary for a definition of these circumstances.

6. Who determines if the worker had a dependent adult interdependent partner on the date of accident?

It is the responsibility of WCB to determine if the worker was in a relationship of interdependence with an adult interdependent partner on the date of accident.

Section 3 of the *Adult Interdependent Relationship Act* outlines the conditions that must be met for one person to be considered the adult interdependent partner of another person.

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7. *What if the worker had dependent children as well as a dependent spouse or dependent adult interdependent partner?*

If the worker’s dependent children live with the dependent spouse or dependent adult interdependent partner, WCB pays the dependent spouse or dependent adult interdependent partner a full pension until the youngest dependent child reaches age 18.

After the youngest child reaches age 18, the intent of the legislation is to help the dependent spouse or dependent adult interdependent partner become gainfully employed (see Question 9). The process and benefits are explained in the following questions. With only minor exceptions, they are the same as the process and benefits for spouses or adult interdependent partners who had no dependent children when the worker died. Any exceptions are explained in the specific question.

See Application 3 for benefit information for dependent children who do not live with a dependent spouse or dependent adult interdependent partner.

8. *What is a full pension?*

A full pension is the pension the worker would have received if the work accident had resulted in permanent total disability instead of death.

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9. *What is gainful employment?*

“Gainful employment” is a proportion of the worker’s full pension. To be considered gainfully employed, the dependent spouse or dependent adult interdependent partner must have net employment earnings that equal or exceed:

- a) 75% of the worker’s full pension, or
- b) the minimum pension for permanent total disability (see Appendix F)

whichever is more.

The dependent spouse or dependent adult interdependent partner’s net employment earnings are calculated in accordance with the Act and regulations.

10. *When does WCB review whether the dependent spouse or dependent adult interdependent partner is gainfully employed?*

WCB reviews whether the dependent spouse or dependent adult interdependent partner is gainfully employed:

- at the time of the worker’s death, if there are no dependent children, or
- when the youngest dependent child reaches the age of 18

WCB may re-review the dependent spouse or dependent adult interdependent partner’s status as needed, at any time while the dependent spouse or dependent adult interdependent partner is still receiving benefits.

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11. *What if the dependent spouse or dependent adult interdependent partner is gainfully employed?*

If the dependent spouse or dependent adult interdependent partner is gainfully employed, WCB pays the dependent spouse or dependent adult interdependent partner a 5-year reducing term pension (see Question 18).

If there were no dependent children at the time of the worker’s death, the 5-year term pension starts at the beginning of the month following the worker’s death.

If there were dependent children, the dependent spouse or dependent adult interdependent partner’s full pension ends in the month the youngest dependent child reaches 18. The 5-year term pension starts at the beginning of the following month.

As the dependent spouse or dependent adult interdependent partner is considered gainfully employed, he or she is not eligible for additional benefits after the 5-year term pension. The only exception is if the dependent spouse or dependent adult interdependent partner is later in necessitous circumstances because of illness (see Questions 24 - 27).

12. *What if the dependent spouse or dependent adult interdependent partner is not gainfully employed?*

If the dependent spouse or dependent adult interdependent partner is not gainfully employed, WCB must consider whether the dependent spouse or dependent adult interdependent partner is capable of becoming gainfully employed or benefiting from vocational services (see Question 13).

If the dependent spouse or dependent adult interdependent partner is considered capable of becoming gainfully employed, WCB may offer vocational services to help the dependent spouse or dependent adult

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*Not gainfully employed
(continued)*

interdependent partner achieve gainful employment (see Questions 14-17).

If the dependent spouse or dependent adult interdependent partner is considered to be an invalid or incapable of benefiting from vocational services or becoming gainfully employed, WCB pays the dependent spouse or dependent adult interdependent partner a pension under s.70(12) of the Act (see Questions 19-22).

13. What does WCB consider when determining whether a dependent spouse or dependent adult interdependent partner is an invalid or incapable of benefiting from vocational services or becoming gainfully employed?

WCB considers all relevant factors, including:

- age
- medical condition
- education
- employment history
- skills
- employment opportunities where the dependent spouse or dependent adult interdependent partner lives
- worker’s earnings
- cost of vocational services

14. What benefits does a dependent spouse or dependent adult interdependent partner receive during vocational training?

If the dependent spouse or dependent adult interdependent partner accepts WCB’s offer of vocational services, the dependent spouse or dependent adult interdependent partner is entitled to a full pension (see Question 8) until the earlier of the following:

- the dependent spouse or dependent adult interdependent partner becomes gainfully employed, or

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Benefits during vocational training (continued)

- the end of 60 months following the month the worker died or the youngest dependent child reached 18, whichever is applicable

The dependent spouse or dependent adult interdependent partner is then paid a 5-year reducing term pension (see Question 18). The term pension starts at the beginning of the month following:

- the date the dependent spouse or dependent adult interdependent partner became gainfully employed, or
- the end of the 60-month period,

whichever is earlier.

15. *What if a dependent spouse or dependent adult interdependent partner neglects or refuses to accept vocational services?*

If WCB offers vocational services and a dependent spouse or dependent adult interdependent partner neglects or refuses the services at any point during the 60-month period referred to in Question 10, the dependent spouse or dependent adult interdependent partner’s full pension ends. It is replaced with a 5-year reducing term pension (see Question 18).

The effective date of the 5-year term pension is directed by the legislation and depends on whether there were dependent children at the time of the worker’s death:

- if there were dependent children, the dependent spouse or dependent adult interdependent partner’s 5-year term pension starts at the beginning of the month following the date that the dependent spouse or dependent adult interdependent partner neglected or refused vocational services [s.70(5)]

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Neglects or refuses to accept vocational services (continued)

- if there were no dependent children at the time of the worker’s death, the dependent spouse or dependent adult interdependent partner’s 5-year term pension starts at the beginning of the month following the month the worker died. Any pension benefits already paid to the dependent spouse or dependent adult interdependent partner are deducted from the 5-year term pension [s.70(7)].

16. What is considered ‘neglecting or refusing to accept vocational services’?

A dependent spouse or dependent adult interdependent partner is considered to have neglected or refused to accept vocational services if, for example, the dependent spouse or dependent adult interdependent partner:

- refuses to participate in developing a vocational plan, or
- has poor attendance or withdraws from scheduled training courses without good reason, or
- after completing the training, does not make reasonable efforts to obtain gainful employment

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17. *What if a dependent spouse or dependent adult interdependent partner's status changes after beginning vocational services?*

The dependent spouse or dependent adult interdependent partner's medical condition and ability to become gainfully employed may be reconsidered at any point before the spouse or adult interdependent partner becomes eligible for the 5-year reducing term pension.

If the dependent spouse or dependent adult interdependent partner's status has changed and the dependent spouse or dependent adult interdependent partner is now an invalid or is considered incapable of becoming gainfully employed, vocational services are suspended or terminated. The dependent spouse or dependent adult interdependent partner may be eligible for a pension under s.70(12) of the Act (see Questions 19-22).

18. *What is the 5-year reducing term pension?*

The 5-year reducing term pension is equal to 3 years of full pension benefits, paid as follows:

- full pension for the first 12-month period
- 80% of the full pension for the 2nd 12-month period
- 60% of the full pension for the 3rd 12-month period
- 40% of the full pension for the 4th 12-month period
- 20% of the full pension for the 5th 12-month period

The pension may be paid as a lump sum, at the beginning of the 5-year period, when requested by the dependent spouse or adult interdependent partner. The lump sum criteria set out in Policy 04-04, Part II, Application 7 do not apply to the 5-year term pension.

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19. *What benefits are paid to a dependent spouse or dependent adult interdependent partner who is an invalid or incapable of substantially benefiting from vocational services or becoming gainfully employed?*

These dependent spouses or dependent adult interdependent partners are paid a pension under s.70(12) of the Act.

The pension amount is based on the worker’s full pension (see Question 8). Usually, the initial pension is 100% of the worker’s full pension and will not be more than that amount or less than the minimum pension for permanent total disability (see Appendix F).

This initial pension is paid until the dependent spouse or dependent adult interdependent partner’s status changes (see Question 22) or until the retirement adjustment (see Question 20), whichever comes first.

20. *What is the retirement adjustment and how is it calculated?*

At retirement, the impact on earnings loss is reduced as the worker’s wages would normally have been replaced by pension/retirement income. Consequently, the s.70(12) pension is adjusted to reflect this. The formula used estimates the probable loss of retirement pension income resulting from lost opportunity to contribute to a retirement pension plan.

The retirement adjustment is made when:

- the worker would have reached retirement age, or
- the dependent spouse or dependent adult interdependent partner reaches age 65, or
- the dependent spouse or adult interdependent partner has received the initial pension for 24 months,

whichever is later.

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Retirement adjustment calculation (continued)

The formula used to adjust the pension is similar to the retirement age adjustment for Economic Loss Payments (Policy 04-04, *Permanent Disability*, Part II, Application 3, Question 12). It is, however, based on a combination of the worker and spouse or adult interdependent partner's compensation history, as follows:

1. The dependent spouse or dependent adult interdependent partner's age is used to ensure that the pension will not be adjusted until the dependent spouse or dependent adult interdependent partner has reached the usual qualification age for other retirement benefits such as federal Old Age Security benefits.
2. The formula used to adjust the pension is:
 - a) the dependent spouse or dependent adult interdependent partner's Average Annual Compensation
multiplied by
 - b) the number of years of the worker's compensable earnings loss (to a maximum of 35 years) X 2%.

The result is the annual amount for the adjusted pension.

3. Average Annual Compensation is based on the dependent spouse or dependent adult interdependent partner's s.70(12) pension payments for the five-year period ending with the month in which the trigger for the retirement adjustment (see above) occurs. If the pension has been in effect for less than five years, the annual average is calculated using the actual period

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Retirement adjustment calculation (continued)

the payment was in effect.

- 4. The number of years of the worker’s compensable earnings loss is:
 - a) *if the worker died immediately following the accident* – the number of years from the date of the worker’s death to when the worker would have reached retirement age, or 2 years, whichever is greater
 - b) *if the work accident disabled the worker for some time before death* – the number of years from the date the worker was laid off or had an earnings loss until the date the worker would have reached retirement age, or 2 years, whichever is greater

Using the worker’s age results in a more accurate reflection of the period of reduced pension contributions caused by the work accident.

- 5. The worker’s retirement age is considered age 65 unless there is sufficient and satisfactory evidence to indicate the worker would have continued to work past age 65. Evidence may include such things as the normal retirement age in the worker’s occupation, agreements reached with the worker’s employer before the worker’s accident, or the age of the worker’s dependent children (see also Policy 04-04, Part II, Application 3, Question 10).
- 6. The maximum adjusted pension is 70% of the dependent spouse or dependent adult interdependent partner’s Average Annual Compensation.

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Retirement adjustment calculation (continued)

7. The adjusted pension is paid for the remainder of the dependent spouse or dependent adult interdependent partner’s lifetime.

21. *What if the dependent spouse or dependent adult interdependent partner is not gainfully employed but has some employment earnings?*

Spouses or dependent adult interdependent partners may have some employment earnings and still be considered incapable of gainful employment. WCB considers whether it is likely that the dependent spouse or dependent adult interdependent partner will ever have sufficient earnings to meet the definition of gainful employment (see Question 9). If not, the dependent spouse or dependent adult interdependent partner is eligible for a pension under s.70(12).

WCB does not deduct these earnings or any other income from the pension payable under s.70(12).

22. *What if the dependent spouse or dependent adult interdependent partner’s status changes?*

The pension under s.70(12) applies only while the dependent spouse or dependent adult interdependent partner is an invalid or is unable to substantially benefit from vocational services or become gainfully employed.

The dependent spouse or dependent adult interdependent partner’s status can be reviewed at any time. If the dependent spouse or dependent adult interdependent partner’s status changes, the s.70(12) pension may end and WCB may consider the dependent spouse or dependent adult interdependent partner’s eligibility for vocational services (see Questions 14-17) and a 5-year reducing term pension (see Question 18).

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23. *What other benefits may dependent spouses or dependent adult interdependent partners be eligible for?*

Section 89(2) of the Act provides that dependent spouses and dependent adult interdependent partners are “entitled to receive the same benefits and services as would have been available to the worker under subsection (1) had the worker lived.” Section 89(1) of the Act authorizes vocational services benefits (see Questions 12 – 17) and other rehabilitation services that WCB considers necessary to lessen or eliminate any handicap resulting from a worker’s injury.

WCB provides several benefits under s.89(1) to assist seriously and severely injured workers. These benefits include psychological services, home maintenance allowances, housekeeping allowances, and home and vehicle modifications. When determining a dependent spouse or dependent adult interdependent partner’s eligibility for any of these benefits, **all** of the following criteria must be met:

- The need for a specific benefit must result from the worker’s death. For example, a dependent spouse may need assistance with home maintenance because the worker is no longer there to do those tasks. On the other hand, a dependent spouse who needs home modifications to accommodate his or her wheelchair would have needed those modifications regardless of the worker’s death, and would therefore not be eligible for that benefit under s.89.
- The dependent spouse or adult interdependent partner must meet the same eligibility criteria as would an injured worker for a specific benefit. For example, to be eligible for a Level 1 Home Maintenance Allowance, the spouse or adult interdependent partner must have a permanent impairment that prevents him

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*Other benefits under s.89
(continued)*

or her from performing the maintenance tasks. As is the case with injured workers, WCB would first consider whether the spouse or adult interdependent partner could perform the tasks independently with the help of training and/or assistive aids or devices.

- The need for the benefit must arise while the spouse or adult interdependent partner is also eligible for pension benefits under s.70 of the Act. Provided that is the case, WCB will continue the benefit for as long as the spouse or adult interdependent partner continues to meet the eligibility criteria for the benefit, even if the spouse or adult interdependent partner ceases to be eligible for continuing benefits under s.70 due to conclusion of the 5-year reducing term pension. Spouses and adult interdependent partners are not eligible for s.89 benefits if the need arises after conclusion of the 5-year reducing term pension.

24. *What if the dependent spouse or dependent adult interdependent partner is in necessitous circumstances because of illness?*

If, at any time, a dependent spouse or dependent adult interdependent partner is in necessitous circumstances because of illness, WCB may pay any additional amount it considers appropriate (s.73 of the Act).

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25 *What is meant by “necessitous circumstances”?*

WCB uses a similar definition to that generally applied by the courts when determining whether an individual is in necessitous circumstances. For WCB’s purposes it means that the person is unable to afford basic necessities such as food, clothing, shelter, and additional things necessary for the maintenance of an individual left without support. A person is not in necessitous circumstances simply because of an inability to maintain a particular lifestyle that the person is accustomed to.

26 *When will WCB consider paying benefits under s.73?*

WCB must first determine whether the conditions of s.73 are met:

- Confirmation is required that the spouse or adult interdependent partner is, in fact, in necessitous circumstances. This will usually require a review of the person’s finances and expenditures, and
- If the spouse or adult interdependent partner is in necessitous circumstances, WCB must also confirm that the circumstances are due to illness.

Once the above determination is made, WCB will consider each case on its own merits and determine benefits on a case-by-case basis. As any benefit paid under s.73 is over and above usual entitlements under the Act, WCB will also consider the individual’s eligibility for non-WCB services. The provisions of s.73 are not intended to substitute WCB funding for services already available in the community.

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27 *For how long will WCB pay benefits under s.73?*

There is no specific time limit for s.73 benefits paid to spouses or adult interdependent partners. WCB will periodically review the claim and will end benefits if the spouse or adult interdependent partner no longer meets the criteria of s.73 (that is, he or she recovers from the illness that caused the necessitous circumstances OR, although still suffering from the illness, is no longer in necessitous circumstances).

28. *When is this policy application effective?*

This policy application (Application 2 – Accidents On or After January 1, 1982 – Dependent Spouses and Dependent Adult Interdependent Partners) is effective July 1, 2014, and applies to all decisions made on or after that date, except when noted otherwise in a specific policy section(s).

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