

**Alberta WCB  
Policies &  
Information**

Chapter:

**BENEFITS**

Subject:

**FATALITIES**

Authorization:

Date:

**BoD Resolution 2019/08/20**

**June 25, 2019**

**APPLICATION 3: ACCIDENTS ON OR AFTER SEPTEMBER 1, 2018 – DEPENDENT CHILDREN AND OTHER DEPENDANTS**

**1. *Who are considered dependent children under the WCA?***

Definitions of “child” and “dependent child” are in s.1 of the *WCA*. In addition to the worker’s own children, “child” includes a grandchild, the child of a spouse by a former marriage, and any other child to whom the worker stood *in loco parentis* (in the place of a parent).

A dependent child means a child who, at the time of the worker’s death, was under the age of 18 or was between the ages of 18 to 25 and enrolled at an educational institution approved by WCB (see below).

A dependent child’s dependency ends on reaching age 18 if the child is no longer in school. Dependency is extended up to age 25 if the child is registered in and attending a secondary school; or a university, college, technical institute or other post-secondary learning institution as defined in the *Post-Secondary Learning Act*; or any other post-secondary institution approved by the Board.

**2. *What benefits are dependent children eligible for?***

When the dependent children live with the worker’s dependent spouse or dependent adult interdependent partner, the pension paid to the dependent spouse or dependent adult interdependent partner is for the benefit of the dependent spouse or dependent adult interdependent partner and dependent children. Dependent children are not eligible for additional benefits unless they are in necessitous circumstances because of illness (see Questions 12-15).

When dependent children are not living with a dependent spouse or dependent adult interdependent partner, the dependent children are eligible for benefits that are paid specifically for their care and maintenance. Questions 3-15 explain the benefits available.

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**3. *What if a worker dies and leaves dependent children but no dependent spouse or dependent adult interdependent partner?***

If a worker dies due to a compensable accident and:

- leaves dependent children but no dependent spouse or dependent adult interdependent partner, or
- leaves a dependent spouse or a dependent adult interdependent partner and dependent children, but the dependent spouse or the dependent adult interdependent partner later dies,

the full pension payable under s.70(1) of the *WCA* is divided equally according to the number of dependent children and paid separately for each child.

If the portion for each of the dependent children is less than the amount that would be paid to a dependent child under s.71 of the *WCA*, WCB may pay an additional amount under s.72. In these circumstances, the combined total of a child's portion of the full pension and the s.72 payment will not exceed the amount paid to a dependent child under s.71.

In addition, if the worker did not leave a dependent spouse, any fatality lump sum payable under s.70.1 will be divided equally amongst the children who are dependent at the time of the worker's death.

If a dependent child is under age 18, the child's portion of the full pension and any other monetary compensation are paid in trust to the Public Trustee or the person who holds letters of guardianship for the estate of the dependent child, for the maintenance and education of the child.

Payments to dependent children age 18 or older are paid directly to the child.

See Questions 4-9 for additional information.

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**4. *What happens when dependent children who were under age 18 at the time of the worker's death reach age 18?***

When a dependent child reaches age 18, any funds remaining in the child's trust are the child's property.

As each child reaches age 18, he or she becomes eligible for a proportionate part of the five-year term pension payable under s.70(8), beginning in the month following the child's 18<sup>th</sup> birthday and ending at the end of the month in which the child reaches age 23.

If the child is registered in and attending a secondary school or post-secondary school approved by the Board (see Question 1 of this policy application) during any part of the five-year period, pension payments will continue after age 23 for the same length of time that the child attended school. The child is also eligible for a proportionate share of the full pension while attending school for any period between the child's 23<sup>rd</sup> and 25<sup>th</sup> birthdays.

In all cases, the child ceases to be eligible for a pension at the end of the month in which the child reaches age 30.

**5. *What if the dependent child was over age 18 at the time of the worker's death?***

Children over age 18 and under age 25 at the time of the worker's death are dependent if they are registered in and attending a secondary school; or a university, college, technical institute or other post-secondary learning institution as defined in the *Post-Secondary Learning Act*; or any other post-secondary institution approved by the Board.

The above requirement is met if, at the time of the worker's death, the child is registered in a program at an approved school that will start within the next 12 months, or if there is independent evidence that the child was intending to register for such a program.

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***Dependent child over age 18 at the time of the worker's death (continued)***

If the child does not meet the above criteria at the time of the worker's death, the child is not a dependent child and is not eligible for fatality benefits, even if the child does return to school at a later date.

When the child meets the criteria (is a dependant), the child is entitled to a proportionate part of the full pension while under age 25 and registered in and attending school, and a proportionate part of the five-year term pension.

The five-year term pension begins immediately, and continues for 60 months. After 60 months, the pension is extended by the length of time that the child attended school during those five years. If the five-year term ends after the child's 25<sup>th</sup> birthday, any time that the child was in school after reaching age 25 is excluded when calculating the length of the extension.

**6. *What if the child is going to school part-time?***

Registration and attendance at an approved school does not have to be full time in order to meet the criteria. Part-time students may also be considered dependent. However, registration and attendance must be more than casual (for example, registering in and attending one class a semester is unlikely to meet the criteria unless there are special circumstances, such as medical reasons, that prevent the child from doing more).

**7. *What if there are breaks in the child's attendance at school?***

Breaks in attendance while the child is in receipt of the five-year term pension do not affect the child's eligibility for the five-year term pension. However, breaks may affect the duration of the benefit extension when the five-year term ends as the length of the extension is based on the cumulative time period that the child was registered in and attending an approved school during that five-year period.

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*Breaks in child’s attendance at school (continued)*

The usual breaks in a school year, such as summer vacation periods, are not considered breaks in attendance. If a child is enrolled in a full or part-time program for the whole academic year, the regular breaks in the academic year are included when calculating the time period the child attended school.

If the dependent child is in an apprenticeship program, the periods of technical training at an approved technical training provider are considered the period of attendance at school; the on-the-job training with an employer is not included.

**8. *How do the pension benefits apply in different circumstances?***

The following are examples of how the extended benefits may apply. These are simplified examples of some of the more common situations, using limited detail. When adjudicating claims, each case must be decided on its own merits.

Mary and her three siblings (John, David, and Jane) are dependent children. Their father died in a work accident, and did not leave a dependent spouse.

1. Mary, the eldest, was 19 when their father died. Mary had finished high school and was in her first year at university. The university she was enrolled in was in another city, so she was not living at home at the time. Mary was already over age 18 but, as she was attending an approved post-secondary school at the time of her father’s death, Mary is considered a dependent child.

Mary is eligible for a proportionate part of the full pension. Her portion of the five-year term starts immediately following her father’s death, and is paid for 60 months.

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Mary completes the first year of her university program but decides to take a year off before returning for the second year. After the year's break, she returns to school and completes the remaining three years of the program before the end of the five-year term pension. Mary is 24 when the term pension ends.

During the five-year term, Mary attended school for four months (completing her first year of studies) and an additional three years following her one-year break. Mary is eligible for a pension extension of three years and four months following the end of the five-year term. In total, (five-year term and extension), Mary received benefits for 8 years and 4 months.

2. John was 12 when his father died. John reached age 18 during his last year of high school. He enrolled in university immediately following high school, and continued at university for the next eight years, in undergraduate and post-graduate programs. John reached age 25 during his seventh year of university studies.

When John reached age 18, the funds remaining in his trust fund were paid to him by the trustee. Starting in the month following his 18<sup>th</sup> birthday, WCB paid John a proportionate part of the five-year term pension until the month of John's 23<sup>rd</sup> birthday. As John was still attending university, he was eligible for continuing pension payments until his 25<sup>th</sup> birthday.

Starting in the month following his 25<sup>th</sup> birthday, WCB will pay John the extended pension benefits he accumulated for the periods of time he was attending

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*Examples (continued)*

school during the 5-year term pension (from age 18 to 23). As John was in school during the entire five years, WCB will pay John for an additional five years (age 25 to 30). John’s eligibility for the extended pension is not affected when he completes his education at age 27.

During the entire period, John received his proportionate share of the full pension for the 6 years until he reached age 18; for 7 years while attending school from age 18 to 25; and the 5 year term pension, for a total of 18 years.

3. David was 10 when his father died. WCB paid David’s share of the full pension to his trustee until he reached age 18. At age 18, the trustee paid the funds remaining in the trust account to David, and WCB started paying David his five-year term pension.

David finished high school just before his 18<sup>th</sup> birthday and did not want to pursue post-secondary education, so he did not register in and attend any school while receiving his five-year term pension. When he reached age 23, his pension benefits ended at the end of that month.

Six months after his 23<sup>rd</sup> birthday, David decided to go back to school for a 2-year technical program that would lead to better job opportunities. As David was under age 25, he was still considered a dependant while attending school, so WCB reinstated his pension until he reached age 25. Although there were six months remaining until David would graduate, his eligibility for benefits ended at age 25. David was not eligible for an extension of those benefits because he did not attend school for any period while receiving the five-year term pension (from age 18 to his 23<sup>rd</sup>

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*Examples (continued)*

birthday).

During the entire period, David received his proportionate share of the full pension for the 8 years until he reached age 18; for 18 months while attending school between the ages of 23 to 25; and the 5 year term pension; for a total of 14½ years.

- 4. Jane was 8 when her father died. WCB paid Jane’s share of the full pension to her trustee until she reached age 18. At age 18, the trustee paid the funds remaining in the trust account to Jane, and WCB started paying Jane her five-year term pension.

Jane was in her last year of high school with 5 months remaining in the school year when she reached age 18. Jane wanted to train as a cook. She completed the remaining 5 months of high school, and then looked for an employer who would employ her as an apprentice cook. After 4 months, Jane found a sponsor employer and enrolled in the three-year apprenticeship program. The apprenticeship program requirements include eight weeks of technical training each year of the program.

Jane was 22 when she completed her three-year apprenticeship. Her five-year term pension continued until she reached age 23. As she had attended school during the five-year period, her pension was extended for an additional 11 months (5 months to complete high school, and three 8-week periods of technical training during her apprenticeship). In total, Jane received benefits for 15 years and 11 months (10 years to age 18; 11 months while in school; and the five-year term pension).

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**9. *If there is more than one dependent child and one of the children is no longer eligible for benefits, are benefits for the remaining child(ren) affected?***

While there are dependent children, the total pension benefits (under age 18, five-year term, and benefits for periods attending school from age 18 up to age 25) paid for any period are equal to the full pension. Each child eligible for benefits in a particular time period receives a proportionate share of the full pension. The proportion paid to each child will change when the number of eligible children changes.

Most commonly, adjustments occur when a formerly dependent child reaches the end of his or her eligibility for any pension payment. When this occurs, the full pension is reallocated amongst the remaining dependent children, effective the first of the month following the date the child's eligibility ended.

It is possible that a formerly dependent child may return to dependency status and again be eligible for a portion of the full pension for a period of time. This is most likely to happen if, after the child's pension has ended but the child is still under age 25, the child registers in and attends an approved school (see example 3 in Question 8).

As an illustration, the full pension allocation for the four dependent children described in the examples in Question 8, would be as follows:

- At the time of the worker's death, there are four dependent children, so each child would be allocated one quarter of the full pension.
- Mary's (example 1) eligibility ends first, 8 years and 4 months after the worker's death. On the first of the following month, the full pension is reallocated so that each of the three remaining dependent children receives one third of the full pension.

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*Benefit reallocation when  
change in number of  
dependent children  
(continued)*

- When David (example 3) reaches age 23, his eligibility ends. The full pension is reallocated so that the two remaining dependent children receive one half of the full pension.
- Six months following David’s 23<sup>rd</sup> birthday, he enters a two-year technical program and is once again eligible for a portion of the full pension. The full pension is reallocated, so that David and the other two remaining children each receive one third of the full pension.
- David’s eligibility ends on his 25<sup>th</sup> birthday. The pension is again reallocated so that the remaining two dependent children receive one half of the full pension.
- Jane’s (example 4) eligibility ends shortly afterwards and, as the only remaining eligible dependent, John (example 2) receives the full pension for the remaining period of his eligibility.

If a dependent child dies, and there are surviving dependent children, the full pension is reallocated and divided equally amongst the remaining dependent children, beginning in the month following the child’s death.

If a dependent child dies before reaching age 18, any money in the child’s trust fund at the time of the death is part of the child’s estate.

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**10. *What if there is a dependent spouse or dependent adult interdependent partner, and there are dependent children who do not live with the dependent spouse or the dependent adult interdependent partner?***

Dependent children not living with the dependent spouse or partner **at the time of the worker’s death** may be paid compensation in addition to compensation paid to the spouse/partner. See Addendum B at the end of this policy for the maximum amount payable. Payment will continue until the child is no longer considered to be dependent (age 18 if not registered in and attending an approved school, or up to age 25 if the child is registered in and attending an approved school – see Questions 1, 6, and 7).

Dependent children living with the worker and spouse/partner **before the worker’s death but not with the spouse/partner afterward** may receive some or all of a spouse’s or partner’s s.70 pension. The pension is apportioned at the discretion of WCB. Unless WCB has grounds to deviate, the apportionment is:

- if there is a spouse/partner and a child, two-thirds to the spouse/partner and one-third to the child
- if there is a spouse/partner and more than one child, one-half to the spouse/partner and one-half among the eligible children in equal shares

If there are dependent children, some living with the spouse/partner and some not, the apportionment is normally one-half to the spouse/partner and one half among the eligible children in equal shares. The shares of children living with the spouse/partner are normally paid to the spouse/partner.

Compensation paid to eligible children under age 18 who are not living with a dependent spouse/partner is paid in trust to the Public Trustee or the person who holds letters of guardianship for the estate of the dependent child.

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**11. *What other payments may WCB make to dependent children?***

WCB may pay additional amounts to dependent children for their maintenance and support in the following circumstances:

- there is no dependent spouse or dependent adult interdependent partner,
- the surviving spouse or adult interdependent partner subsequently dies, or
- the surviving spouse or adult interdependent partner is confined to an institution, prison, or correctional institution.

Compensation for dependent children under age 18 is paid in trust to the Public Trustee or the person who holds letters of guardianship for the estate of the dependent child.

The maximum amounts are set out in Addendum B at the end of this policy.

**12. *What if a dependent child is in necessitous circumstances because of illness?***

If a dependent child is in necessitous circumstances because of illness, WCB may pay any additional amount it considers appropriate (s.73 of the *WCA*).

Note: See Application 2, Questions 24-27 for information regarding dependent spouses or adult interdependent partners in necessitous circumstances.

**13. *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.

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*Necessitous circumstances  
(continued)*

A person is not in necessitous circumstances simply because of an inability to maintain a particular lifestyle that the person is accustomed to.

**14. *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 dependent child is, in fact, in necessitous circumstances. This will usually require a review of the finances and expenditures of the child and/or the child’s family, and
- If the dependent child 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 *WCA*, WCB will also consider the child’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.

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

A dependent child’s eligibility for benefits under s.73 will end when the child:

- recovers from the illness, or
- although still suffering from the illness, is no longer in necessitous circumstances, or
- is no longer considered a dependent child (see Question 1),

whichever is first.

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*Duration of benefits under s.73 (continued)*

WCB will periodically review the claim to determine whether the child’s circumstances have changed.

**16. *When does WCB pay compensation to other dependants?***

Compensation to other dependants is payable only if there is no dependent spouse or dependent adult interdependent partner or dependent children.

WCB pays the dependant compensation in an amount it considers reasonable, proportionate to the monetary loss caused by the worker’s death.

**17. *Who is considered an “other dependant”?***

To be considered an “other dependant”, the person must be a family member as defined in s.1(1)(q) of the *WCA* (excluding a dependent spouse, dependent adult interdependent partner, and dependent children) who:

- a) was wholly or partially dependent on the worker’s earnings when the worker died, or
- b) would have been dependent on the worker’s earnings if not for the worker’s death or disability due to the accident.

A person is considered partially dependent only when he or she is partially dependent on contributions from the worker for the ordinary necessities of life, such as food, shelter and clothing.

**18. *When is this policy application effective?***

This policy application (Application 3 – Accidents On or After September 1, 2018 – Dependent Children and Other Dependants) is effective September 1, 2018, and applies to all claims with dates of accident on or after that date, except when noted otherwise in a specific policy section(s).

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