October 26, 2023 |

Briefs

Submission to the WCB with respect to proposed amendments to Chronic Pain Policies: #C-22.20 and #C6-39.10

A pdf of the complete submission can be found here(314 KB).

Authority

The British Columbia Federation of Labour ("Federation," "BCFED") represents more than 500,000 members of our affiliated unions, from more than 1,100 locals working in every aspect of the BC economy. The Federation is recognized by the Workers' Compensation Board (the "Board," "WCB") and the government as a major stakeholder in advocating for the health and safety of all workers in BC and full compensation for injured workers.

This submission is a response to the WCB's Discussion Paper on proposed amendments to the Chronic Pain Policy ("CP Discussion Paper"), issued by the Policy, Regulation and Research Division ("PRRD"). This CP Discussion Paper proposes new amendments to the two Chronic Pain ("CP") policies: Policy #C-22.20 (for temporary CP) and Policy #C6-39.10 (for permanent CP).

We summarize our specific concerns with the proposed amendments in an Appendix. This submission is brief as we have set out these same concerns (supported by research) in our extensive

submissions to the PRRD in 2020 and 2023.

Our submission has been written in consultation with our affiliated unions and with the BCFED Workers' Compensation Advocacy Working Group.

Sussanne Skidmore

President

Background

The PRRD has been reviewing these CP policies for over for five years. In 2018, Paul Petrie's compensation policy review, *Restoring the Balance: A Worker-Centred Approach to Workers' Compensation Policy,* flagged the importance of this review. Given the terrible impact on injured workers, Petrie recommended that, as an interim measure, all necessary treatment required to maximize a worker's ability to return to work be conducted before a worker is referred for permanent disability benefits. (Recommendation #27)[1]

In 2018, the PRRD commissioned Dr. Owen Williamson, an international medical expert in chronic pain, to review current medical evidence and evaluate the Board's existing policies. In 2019, Dr. Williamson reported that the two CP policies were not consistent with the current scientific and medical understanding of CP.[2]

Dr. Williamson's assessment was based on the remarkable developments in the scientific understanding of CP over the last 10 years, including the World Health Organization's adoption of a new classification system for understanding and treating CP International Classification of Diseases (ICD-11).[3] These developments were flagged by Janet Patterson in her review *New Directions: WCB Review 2019* and she too, deferred to the PRRD's policy review.[4]

These same scientific developments led the federal government to establish the Canadian Pain Task Force ("CPTF") in 2019, with a mandate to research, consult and provide nation-wide guidance to improving the prevention and management of chronic pain. The CPTF's three reports (June 2019,

October 2020 and March 2021) provide an evidence-based blueprint for the prevention and treatment of CP and for cost-effective support for people living with CP.

The CPTF's key findings/recommendations can be summarized:

1. CP is a disease in its own right with different types and ranges of severity;
2. Multiple disciplinary clinics are the gold standard for CP treatment and management;
3. Best practices for effective CP treatment are patient-centred individual plans, chosen with evidence-based passive and active treatments; and
4. Individuals with CP need a long-term treatment and management plan and these plans may need accommodation.

The WCB's current CP Discussion Paper is the PRRD's third proposal on amending CP policy. While it includes some meaningful changes from earlier proposals, there is no change to the 2.5% Permanent Functional Impairment ("PFI") pension (with no assessment) and defers this rating review to "later." In total, the CP Discussion Paper fails to accept the CPTF's recommended approach or capture the main recommendations in Dr. Williamson's report. The task force created a pathway forward to ensure that workers with CP are properly assessed, treated and supported. We are genuinely concerned the CPFT recommendations are not reflected in the policy amendments also, and that once again, meaningful change to the CP pension is deferred.

The CPTF applied a Gender Based Analysis+ ("GBA+") analysis to their work on CP. One of the project goals was to ensure equitable approaches for populations disproportionately impacted by CP.

> The prevalence of chronic pain in Canada is not equitably distributed. Occurrence of disease, severity of illness, and barriers to care are higher in populations affected by social inequities, racism, poverty, violence, trauma, and other experiences of marginalization. Various intersecting forms of discrimination may also lead to compounded challenges in receiving care and outcomes. An equity-oriented and trauma and violence-informed approach will be essential to understand, prevent, and treat pain.[5]

The PRRD CP Discussion Paper does not mention the GBA+ was applied in developing the policy amendments. Therefore, we assume it was not considered in the development of the current proposed amendments. The BC worker population is diverse, and diversity equity and inclusion principles must be applied to all PRRD policy reviews.

The 2.5% rating schedule

One of the key findings of the CPTF was that CP encompasses a wide range of types and severity of CP conditions. In this proposal, the PRRD has chosen to ignore this science as well as the BCFED's recommendation regarding the fixed 2.5% of total disability rating for CP.

The BCFED opines the 2.5% limit is the "sticky bit," a worry from employers and the WCB about costs as articulated in the CP Discussion Paper.

The BCFED submits that because CP has a great range of severity, the compensation must reflect the potential range impairment from the condition, up to 100%. CP must be assessed based on impairment of functioning, utilizing a rating schedule in the Permanent Disability Evaluation Schedule ("PDES") as is done for every other condition in the PDES. The range of ratings in the schedule need to be based on findings of signs, symptoms and function developed in conjunction with subject matter experts.

We are adamantly opposed to the decision by the PRRD to conduct the current policy review for some of the temporary and permanent policies, separate from the review of the 2.5% rating. All CP policies must be considered together to have an effective approach to CP.

The BCFED remains committed to this important work but recommend the PRRD immediately form the expert panel and get on with the review of the rating.

We recommended two years ago the PPRD form an expert panel to make recommendations to change the rating schedule. The panel would include a medical expert, WCB staff, a worker representative and an employer representative.

We recommend the work of the expert panel be completed by the end of March 2024, followed immediately by a policy review of all CP policies together.

It is urgent that this work be completed given the pending implementation of Bill 41. We are concerned with the intersection of the duty to accommodate changes effective January 1, 2024, and the CP policy and rating schedule.

Recommendations

In addition to the recommendation to strike a new expert panel on the PFI rating schedule for CP, and consider all policy changes together, the BCFED recommends:

1. Adding definition of CP as a disease, and remove the restriction that it is not to be assessed as a psychological impairment;
2. Requiring Multi-Disciplinary Assessment (“MDA”) at pain clinics at both the temporary and permanent stages to provide treatment and management of CP;
3. Requiring MDA to create an individualized plan for long-term treatment and management of each worker’s CP;
4. Revising the PFI rating scale from 0-100% to reflect the possible range of disability and use the MDA plan to establish a rate for the worker;
5. Using the MDA plan to authorize the long-term treatment, management, return to work and accommodation for permanent CP; and
6. Using a GBA+ to ensure the policy reflects the needs of diverse populations of workers.

Conclusion

We are most concerned that if the changes proposed in CP Discussion Paper are accepted, without pausing to complete the PFI rating issue, the consequences for injured workers will be worse than the current policies, especially with the implementation of Bill 41.

Specifically:

1. Injured workers will continue to be stigmatized: The policy does not acknowledge CP is a disease with a range of severity and a need for long-term treatment and management. CP is treated as an undifferentiated “subjective” condition, with no assessable disability. Evidence of a disability is also restricted. Many injured workers with CP will continue to be marginalized, stigmatized and unaccommodated by the WCB;
2. The proposed policy strengthens the WCB’s approach not to assess, treat or manage long-term, and to refuse to assess or consider evidence of permanent disability;
3. The policy continues the “flat rate” 2.5%, which,

a. incentivizes the “one size fits all” dismissal of CP;
b. leaves the long-term consequences of permanent CP (need for treatment, disability management, fluctuations and accommodation) unaddressed and downloaded onto the injured worker. Unsupported workers with CP will have to rely on the public systems; and
c. under-compensates most workers with CP disability claims.

Appendix

Issues with the proposed policy amendments

Policy C3-22.20 Compensable Consequences-Pain and Chronic Pain: Temporary CP and Plateau

1. “Pain is not assessed as a psychological impairment.” This approach is contrary to the scientific definition of CP as biopsychosocial and to the findings of the CPTF on CP comorbidities.

> Pain impacts people’s ability to work, attend school, and participate in family and community life. Chronic pain often accompanies other physical and mental health conditions, from sickle cell disease, arthritis and diabetes to post-traumatic stress disorder, depression, and anxiety.[6]

A failure to assess CP as a psychological impairment could exclude many CP treatments and the acceptance of the Diagnostic and Statistical Manual of Mental Health Disorders (DSM) conditions associated with CP.

2. Early intervention is not patient centred. The proposed amendment to Section B, Early Intervention, does not mention any involvement or role for the attending physician or the worker in determining the treatment and referral to multidisciplinary services or the provision of return-to-work assistance.
3. Stabilization vs treatment. The WCB's plateau policy #34.54, in practice, assesses the condition without treatment. Most CP left untreated will not improve or get better. It is possible that most CP conditions will be rushed into permanent status soon after three months.

Policy C 6.39.10 Permanent Chronic Pain

1. MDA is removed.

   The current policy has an option to refer a worker to an MDA and consider the MDA evidence in an assessment for permanent CP. The proposed policy removes this option.

2. The "flat rate" of 2.5% PFI is maintained. There is no recognition or assessment of the range of severity in CP conditions.
3. New barrier to "specific chronic pain." The term "inconsistent "has been added and is explained as "generalized" or "greater than expected" but will mean something different to physicians and other medical providers.

[1] https://www.worksafebc.com/en/resources/law-policy/reports/restoring-balance-worker-centred-approach-workers-compensation-policy?lang=en

[2] https://bcfed.ca/sites/default/files/attachments/Williamson%20Chronic%20Pain%20Report.pdf

[3] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4450869/

[4] https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/labour/work_comp_review_2019_-_final_report.pdf

[5] https://www.canada.ca/en/health-canada/corporate/about-health-canada/public-engagement/external-advisory-bodies/canadian-pain-task-force/report-2021.html

[6] https://www.canada.ca/content/dam/hc-sc/documents/corporate/about-health-canada/public-engagement/external-advisory-bodies/canadian-pain-task-force/report-2021-rapport/report-rapport-2021-eng.pdf