

## *Income Replacement and Rehabilitation Benefit Memorandum*

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People injured in motor vehicle accidents are entitled to various statutory benefits under the *Insurance Act*. These benefits are provided from either their insurance company, if they have motor vehicle insurance, or from someone else's insurance company, if they do not have motor vehicle insurance. The benefits available are divided into two categories. They are as follows:

1. Income Replacement Benefits which are to replace a portion of the income an injured party loses as a result of the injuries sustained in the motor vehicle accident in question; and
2. Medical and Rehabilitation Benefits which are necessary to assist an individual injured in a motor vehicle accident to recover from their injuries.

This Memorandum summarizes what you are entitled to under the Statutory Accident Benefits Schedule of the *Insurance Act*.

### **INCOME REPLACEMENT BENEFITS (Part II, ss. 4-11)**

The first level of entitlement is for the first 104 weeks, with payment beginning 7 days after the date of the accident (s. 5(2)(a)). There are two-104 week periods. The first is the entitlement period: the impairment must commence within 104 weeks following the accident (s. 4.1). The second is the payment period, which is 104 weeks from the commencement of the impairment.

#### **A. Entitlement**

Entitlement for the first period is based on a "substantial inability to perform the essential tasks of one's own employment" (s. 5).

Entitlement for the second period (post-104 weeks) is "a complete inability to engage in any employment, for which her or she is reasonably suited by education, training or experience"(s. 5(2)(b)).

Entitlement is predicated upon impairment being suffered. Impairment is defined in s. 2 of the Regulation:

"a loss or abnormality of a psychological, physiological or anatomical structure or function".

Elsewhere in the legislation, particularly in the definition of catastrophic impairment, an additional criterion is available – that of "behavioral disorder". This is a form of behavioral or psychological abnormality. We will discuss this with you further if you qualify for such benefits.

Entitlement to income replacement benefits exists if you were:

- (a) employed on the date of the accident; or
- (b) not employed but either worked 26 or the 52 weeks before the accident or was on UIC at the time of the accident, was over 16 or excused from attending school, and unable to perform the job you spent the most time at; or
- (c) entitled to start work within one year under a legitimate written contract of employment that was made before the accident.

**B. Quantum**

The amount of the benefit is 80% of net weekly income for the first 104 weeks. Thereafter, it is the greater of 80% of net and \$185.00. The maximum benefit is \$400.00. It is based on either the last 4 or 52 weeks preceding the date of the accident. If you were self-employed, it is the last 52 weeks or the last fiscal year completed before the accident.

You should be aware of the issue of collateral benefits. These consist of sources of income which pay you for a portion of your lost wages while you are unable to work (disability insurance, employer wage continuation plans) because of the injuries you sustained in the motor vehicle accident. These will be deducted from any amount your insurance company owes you based on the above. In essence, you can't get double indemnity for lost wages. If there is entitlement to such income, but not actual receipt, they are not deducted (s. 7(2)(b)). EI payments are not deducted. WSIB payments that would be paid except for the fact that the insured has elected to start an action are not deducted. Net income is determined according to either the Income Tax Acts of Canada and Ontario, or the Guide, at the option of the insurer. Only payments received as a result of the accident are deductible.

**C. Duration**

The post-104 week benefit is payable for life with an adjustment on a graduated basis at age 65. If the accident happened after you turned 65 but you were working at that date, it will be paid on a reduced basis for up to 208 weeks.

**NON-EARNER BENEFITS (Part III, s. 12)**

**A. Entitlement**

This applies to you if you were not working on the date of the accident. It is payable if there is a complete inability to carry on a normal life. The test changes at 104 weeks.

**B. Quantum**

This benefit is \$185.00 per week. Collateral benefits received in respect of injuries sustained in the accident are deducted.

**C. Duration**

It is not payable during the first 26 weeks of disability nor before the insured turns 16.

## **FUTURE CARE, REHABILITATION BENEFITS AND THE CATASTROPHIC INJURY**

The scheme of the regulation is relatively straightforward. They are as follows:

### **A. Definitions**

(a) *Health Care Expenses:*

Defined in the Act (s. 15) to be all goods and services for which payment is provided by the medical, rehabilitation and attendant care benefits provided for in the SABS.

(b) *Catastrophic impairment:*

Defined in the regulations in s. 2:

(a) Paraplegia or quadriplegia;

(b) Amputation or other impairment causing the total and permanent loss of use of both arms or legs;

(c) Amputation or other impairment causing the total and permanent loss of use of both an arm and a leg;

(d) Total loss of vision in both eyes;

(e) Brain impairment that results, in respect of an accident,

- i. More than six months after the accident, results in a score of 2 or 3 on the Glasgow Outcome Scale.....;
- ii. A score of less than 9 on that Scale taken a reasonable time after the accident.

(f) Subject to ss (2) or (3), any impairment or combination of impairments that, in accordance with the AMA Guides to the Evaluation of Permanent Impairment....results in 55% or more impairment of the whole person; or

(g) Subject to ss (2) or (3) any impairment that, in accordance with the AMA Guides to the Evaluation of Permanent Impairment...results in a Class 4 or 5 impairment due to mental or behavioral disorder.

### **B. Outline of the Benefit Scheme**

There are three categories of main benefits and some incidentals. These are medical, rehabilitation, attendant care benefits, and additional pecuniary losses for which there is compensation on a no-fault basis.

The section provides as follows:

A. *Medical Benefit* (Part IV, s.14)

s.14 (1) The insurer shall pay.....a medical benefit.

- (2) The medical benefit shall pay for all reasonable and necessary expenses incurred by or on behalf of the insured person as a result of the accident for,
  - (a) medical, surgical, dental, optometric, hospital, nursing, ambulance, audiometric and speech language pathology services;
  - (b) chiropractic, psychological, occupational therapy and physiotherapy services;
  - (c) medication;
  - (d) prescription eye wear;
  - (e) dentures and other dental devices;
  - (f) hearing aids, wheelchairs or other mobility devices;
  - (g) transportation expenses.....; and
  - (h) other goods and services of a medical nature that the insured person requires.

B. *Rehabilitation Benefit* (Part IV, s.15)

- s. 15
- (1) The insurer shall pay.....a rehabilitation benefit.
  - (2) The rehabilitation benefit shall pay for reasonable and necessary measures undertaken by an insured person to reduce or eliminate the effects of any disability resulting from the impairment or to facilitate the insured person's reintegration into his or her family, the rest of society and the labour market.
  - (3) Measures to reintegrate an insured person into the labour market include measures that are reasonable and necessary to enable the person to,
    - (a) engage in employment that is as similar as possible to employment in which he or she engaged before the accident; or
    - (b) lead as normal a work life as possible.
  - (4) In determining whether a measure is reasonable and necessary for the purpose of subsection (3), the insurer shall consider the insured person's personal and vocational characteristics.
  - (5) The rehabilitation benefit shall pay for all reasonable and necessary expenses incurred by or on behalf of the insured person as a result of the accident for a purpose referred to in subsection (2) for,
    - (a) family counseling;
    - (b) social rehabilitation counseling;
    - (c) financial counseling;

- (d) employment counseling;
- (e) vocational assessments;
- (f) vocational or academic training;
- (g) workplace modifications and workplace devices, including communication aids, to accommodate the needs of the insured person;
- (h) home modifications and home devices, including communications aids, to accommodate the needs of the insured person, or the purchase of a new home if it is more reasonable to purchase a new home to accommodate the needs of the insured person than to renovate the insured person's existing home;
- (i) vehicle modifications to accommodate the needs of the insured person, or the purchase of a new vehicle if it is more reasonable to purchase a new vehicle to accommodate the needs of the insured person than to modify an existing vehicle;
- (j) transportation for the insured person to and from counseling sessions, training sessions and assessments, including transportation for an aide or attendant; and
- (k) other goods and services that the insured person requires, except services provided by a case manager.

B.1 You may also qualify for services under the Pre-Approved Framework Guideline set out in the SABS. This Guideline is described in our initial Letter to you. This determination will be made once your family physician diagnosis' your injury. A WAD (Wiplash Associated Disorder) Level I or II qualifies for treatment under this Guideline. You are thereafter entitled to specific treatment set out in the Guideline. Further information about the Guideline is attached to our initial letter to you.

C. *Personal and Vocational Characteristics*

"Personal and vocational characteristics" include,

- (a) employment history;
  - (b) education and training;
  - (c) vocational aptitudes;
  - (d) vocational skills;
  - (e) physical abilities;
  - (f) cognitive abilities; and
  - (g) language abilities.
- D. *Attendant Care Benefit*

- s.16 (1) The insurer shall pay an insured person who sustains an impairment as a result of an accident an attendant care benefit.
- (2) The attendant care Benefit shall pay for all reasonable and necessary expenses incurred by or on behalf of the insured person as a result of the accident for,
- (a) services provided by an aide or attendant; or
  - (b) services provided by a long-term care facility, including a nursing home, home for the aged or chronic care hospital.
- (3) Subsection (2) does not apply to expenses for which payment may be obtained under clause 14 (2) (9), 15 (5) (k) or 24 (1) (C).
- (4) The monthly amount payable by the attendant care benefit shall be determined in accordance with Form 1.
- (5) The amount of the attendant care benefit payable in respect of an insured person shall not exceed,
- (a) \$3,000.00 per month, in the case of an insured person who did not sustain a catastrophic impairment as a result of the accident; or
  - (b) \$6,000.00 per month, in the case of an insured person who sustained a catastrophic impairment as a result of the accident.

**C. Duration of benefits**

Health care expense benefits are available in a non-catastrophic case for ten years or up to age 25 if the insured is under age 15 on the date of the accident. Catastrophic benefits are available for life.

**D. Quantum of benefits**

There is an overall limit of \$100,000.00 for medical and rehabilitation benefits. Attendant care is limited to 104 weeks and \$72,000.00.

**CAREGIVER BENEFITS**

**A. Entitlement**

These benefits are available if you reside with a person in need of care, and you were that person's primary caregiver. It is a "substantial inability" test to qualify for such benefits.

There is no definition of a person in need of care. Therefore, children over the age of 16, elderly parents, and others who you were providing care to at the time of the accident are to be considered for the purposes of the section.

**B. Quantum**

The level of benefit is \$250.00 for the first dependant and \$50.00 per week for each additional person in need of care.

### **C. Duration**

The benefit continues for 104 weeks and then stops.

### **CATASTROPHIC IMPAIRMENT**

In the catastrophic case, the quantum of rehabilitation benefits is limited to \$1,000,000.00 for attendant care and an additional one million dollars for medical and rehabilitation expenses combined. In the case of a catastrophic impairment, there is a mandatory requirement for the appointment of a case manager under s. 17.

### **THE TREATMENT PLAN**

One of the single most important changes to the Statutory Accident Benefits Schedule is the requirement that a treatment plan be developed by you at the time that your application is made. Section 38 of the Regulation requires the application for medical or rehabilitation benefits to include a treatment plan.

#### **A. Who pays for the plan; Who controls its preparation?**

The treatment plan itself will be paid for by the Statutory Accident Benefit carrier. It is your obligation to ensure that a treatment plan is completed. You get to choose who prepares it. It is important to have such a plan completed as soon as possible. Please call us before you send it to your insurance company.

The treatment plan will hopefully be prepared by a rehabilitation consultant who is skilled in the treatment and rehabilitation of the type of injury sustained by you. It may be done by a family doctor or other health care provider.

#### **B. How will the treatment plans work?**

Plan development focuses attention of all care givers on the goals of the treatment being offered. The recommendations in such plans may change over time. There will be emergent medical and rehabilitative problems, and difficult problems that will take a few weeks or months for development of a sensible plan. A treatment plan must be responsive to healing, new conditions and changing diagnosis.

It is advantageous for you to provide your own treatment plan, right from the beginning. The words of the regulation require you to submit a plan with your application for benefits. We can challenge any denial by your insurance company for any treatment set out in a treatment plan. Please call us if such a denial should occur.

Please read this memo several times. It is important that you understand your entitlements. If you have any questions please ask us.

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