

BENEFIT-RELATED DEBTS / OVERPAYMENTS

The information in this Fact Sheet applies to Benefit-Related Debts created **on or after May 1, 1998**. For Benefit-Related Debts created in prior periods, different rules may apply.

What Is a Benefit-Related Debt?

A benefit-related debt is any payment made by the Workplace Safety and Insurance Board (WSIB) that exceeds the amount to which a person is entitled. Benefit-related debts were previously called “overpayments”. Both terms refer to the same thing.

When Will WSIB Pursue Recovery of a Benefit-Related Debt?

WSIB will pursue full recovery of a benefit-related debt in the following situations:

- WSIB has paid benefits for a time period for which you also received earnings from employment.
- You experience a “material change in circumstances” that affects your entitlement to benefits or services from WSIB. See OWA Fact Sheet 7 called “Material Change in Circumstances”.
- You have provided false or misleading statements or other information to WSIB in an attempt to obtain payments unlawfully.
- A debt results from an administrative error and you knew or reasonably should have known that the payment exceeded the amount of benefits you were entitled to receive.

When Will WSIB Not Pursue Recovery of a Benefit-Related Debt?

WSIB will not pursue recovery of a benefit-related debt in the following situations:

- Where the debt results from WSIB changing a previous decision on reconsideration or appeal. This may be due to the original decision not being consistent with legislation or approved policy, or because new evidence changes the decision.
- A debt results from an administrative error and you could not have reasonably been aware of the error. Errors may include:
 - miscalculation and mathematical errors
 - authorizing and issuing duplicate payments
 - inaccurate data entry
- WSIB has not notified you in writing of the debt within **three years** of the date the debt is considered due and owing. This “three-year rule” does not apply if the debt results from failure to notify WSIB of a material change in circumstances, or from fraud or false or misleading statements.
- If you can show WSIB that recovery of the debt will result in financial hardship, WSIB may eliminate all or part of the debt. This policy regarding financial hardship does not apply if the debt results from failure to notify WSIB of a material change in circumstances, or from fraud or false or misleading statements.

How Can You Prove Financial Hardship?

WSIB may exercise its discretion to reduce or eliminate a benefit-related debt in cases of **severe, long-term** financial hardship where the failure to reduce or eliminate a debt will compromise a person’s ability to maintain the necessities of life; for example, food, shelter, or transportation to work.

Factors that WSIB will consider include the following:

- employment status, employment security, earning capacity
- clinical restrictions, which may prevent you from increasing employment earnings
- opportunities for re-employment, if you are not currently employed
- personal and vocational characteristics (e.g., your level of education)
- assets (e.g., automobile, property, home)
- current source of income (e.g., welfare, Employment Insurance Benefits, WSIB benefits, CPP benefits, pensions, rental property income, investments)
- current expenses (e.g., rent, mortgage payments, car payments, family support, child care)
- available statements from a financial/credit counselling agency, and
- whether you have declared bankruptcy, are in the course of bankruptcy proceedings, or have had a discharge in personal bankruptcy

How Will WSIB Recover a Benefit-Related Debt?

If you receive future benefits from WSIB, such as future economic loss payments, non-economic loss payments or loss of earnings benefits, then WSIB will deduct at least 20% of the amount from such payments. If there is evidence that an increased deduction will not interfere with your ability to maintain ongoing expenses such as food, mortgage or housing, and insurance premiums, the deduction may be increased up to a maximum of 100%.

WSIB will fully recover debts through deduction from lump sum payments, unless doing so would threaten your ability to maintain your residence, perform work or maintain a livelihood.

WSIB may start a court action to recover the debt.

Can You Negotiate a Payment Plan?

Yes. Whether or not you expect to receive future payments from WSIB, you may negotiate repayment arrangements. If you are not expecting future payments from WSIB, it is anticipated that payment of the benefit-related debt will be made out of your personal funds.

Can You Appeal a Decision Regarding a Benefit-Related Debt?

For debts resulting from payments made **on or after January 1, 1997**, you **do not have a right** to appeal the WSIB decision to an Appeals Resolution Officer (ARO) nor to the Workplace Safety and Insurance Appeals Tribunal (WSIAT).

However, if you believe that the WSIB decision regarding the creation of a benefit-related debt; the amount of the debt; or the way it will be recovered; is incorrect, you may ask for a reconsideration from the person who made the decision.

IMPORTANT INFORMATION

There are time limits for appealing WSIB decisions. If you wish to appeal a decision, contact a qualified representative as soon as possible. For more information on time limits, see OWA Fact Sheets 24 and 25 called "Appealing to WSIB" and "Appealing to WSIAT".

This Fact Sheet contains general information only. It is not a legal document. To see what the law says, you should look at the Workplace Safety and Insurance Act and WSIB policies. If you require help and do not have a union to assist you, contact the Office of the Worker Adviser:

- Our toll free telephone number is 1-800-435-8980 (English) or 1-800-661-6365 (French)
- or visit our website at: <http://www.owa.gov.on.ca>

Cette feuille-info est aussi disponible en français

