

APPENDIX A15

COURT APPROVED PROTOCOL

SPECIAL DISTRIBUTION BENEFIT ELECTION FOR ALIVE PERMANENTLY DISABLED DEPENDANTS

REVISED AUGUST 2024

This protocol applies to requests by claimants for the Special Distribution Benefit extending the duration of loss of services payments as provided for by the 2017 Allocation Implementation Orders.¹

1. This protocol applies to totally and permanently disabled Approved Dependants and Approved Late Claim Dependants who are alive and who receive or have received compensation for loss of the deceased HCV Infected Person's services in the home who request the Special Distribution Benefit extending loss of services payments beyond the actuarially calculated notional life expectancy of the deceased HCV Infected Person upon whom they were dependent.
2. In order for the claimant to be eligible for the Special Distribution Benefit extending loss of services payments the Administrator must be satisfied on the balance of probabilities that the Approved Dependant or Approved Late Claim Dependant is totally and permanently disabled as defined in paragraph 3 of this protocol and that his/her total and permanent disability satisfies the additional requirements of paragraph 4 of this protocol.
3. For the purpose of this protocol, totally and permanently disabled means:
 - (a) a substantial mental or physical impairment that is long-term and of indefinite duration or is likely to result in death; and
 - (b) for claimants who are under the age of 65 at the time of their request, the mental or physical impairment must regularly prevent the claimant from doing any type of substantially gainful work; or
 - (c) for claimants who are age 65 or older at the time of their request, the mental or physical impairment must significantly restrict the claimant's ability to perform daily living activities.

¹ Quebec judgment dated November 29, 2017, para. 12, Ontario order dated December 12, 2017, para. 6, and British Columbia order dated December 19, 2017, par. 6

4. For the purposes of this protocol:
 - (a) the claimant's treating physician must certify that the claimant is totally and permanently disabled;
 - (b) the claimant's treating physician must also certify the cause of the claimant's total and permanent disability;
 - (c) the cause of the claimant's total and permanent disability must not be related to the claimant's age; and
 - (d) the cause of the claimant's total and permanent disability must predate the deceased HCV Infected Person's actuarially calculated notional life expectancy.
5. The burden to prove eligibility is on the claimant. The Administrator shall assist the claimant by advising what types of evidence would be useful in meeting the burden of proof in accordance with this protocol.
6. In addition to the certification of the claimant's treating physician, examples of the evidence the Administrator may require to determine whether the claimant is eligible include the following:
 - (a) the medical and clinical records from any or all hospitalizations and treating physicians for the claimant for such time frame as the Administrator considers relevant;
 - (b) an affidavit of the claimant; and
 - (c) an interview or affidavit of any person the Administrator believes may have knowledge about the impairment, its duration or the restrictions it imposes on the claimant.
7. If the Administrator is not satisfied that the evidence and information provided to support the claimant's request is sufficiently complete in all of the circumstances of the particular case to permit it to make a decision, the Administrator shall perform the following additional investigations:
 - (a) obtain such additional information and records as the Administrator in its complete discretion considers necessary to inform its decision; and

- (b) request a medical opinion and/or a medical examination from an independent medical expert of the Administrator's choice on any medical issues that the Administrator believes will assist in making its decision.
- 8. The Administrator shall weigh the totality of evidence and information obtained, including the evidence and information obtained from the additional investigations required by this protocol, and determine whether the claimant meets the eligibility criteria on a balance of probabilities.
- 9. If the Administrator determines that:
 - (a) the claimant does not meet the eligibility requirements set out in paragraph 2 of this protocol based on the evidence and information obtained; or
 - (b) the evidence and information obtained is not sufficiently complete in all of the circumstances of the particular case to permit it to make a decision after having undertaken all of the steps required by this protocol;it shall deny the claimant's request to extend loss of services payments.
- 10. Where the Administrator denies a claimant's request to extend benefits under paragraph 9 of this protocol, the Administrator shall advise the claimant of his/her right to appeal the decision to a Referee or Arbitrator.
- 11. Once the Administrator has determined the Approved Dependant or Approved Late Claim Dependant has established he/she is totally and permanently disabled under this protocol, the Special Distribution Benefit extending loss of services payments shall be payable for the remainder of his/her lifetime so long as the Administrator is satisfied that he/she remains totally and permanently disabled in accordance with the provisions of this protocol.
- 12. The Administrator shall on the third anniversary of the extension of the loss of services benefit and on each subsequent third anniversary of such continued extension require medical proof of ongoing total and permanent disability as it considers reasonable in all of the circumstances of the particular case. In the event the medical evidence does not support ongoing total and permanent disability or medical evidence is not delivered within 60 days after the Administrator has advised the claimant that the benefit will be discontinued if the requested medical proof is not forthcoming, the Administrator shall discontinue the extended loss of services benefits payments.

13. Where the Administrator discontinues the extension of loss of services benefits under paragraph 12 of this protocol, the Administrator shall advise the claimant of his/her right to appeal the decision to a Referee or Arbitrator. If loss of services benefits are discontinued because the claimant failed to deliver medical evidence within 60 days as set out in paragraph 12, the Administrator shall also advise the claimant that he/she is permitted to apply for the reinstatement of those benefits by providing medical proof of ongoing total and permanent disability.
14. Payments to be made pursuant to this protocol shall be retroactive to the month immediately following the actuarially calculated notional date of death of the HCV Infected Person except where payments are to be made following a successful application to reinstate loss of services benefits that were discontinued pursuant to paragraph 12.
15. A claimant's total and permanent disability must be certified by his or her treating physician in the first instance. Once the Administrator has determined a claimant is totally and permanent disabled, such medical proof of ongoing total and permanent disability as may be required from time to time may be provided by either the claimant's treating physician or by a nurse practitioner or other similar healthcare professional licensed to provide such services in the claimant's jurisdiction who is involved in the claimant's ongoing medical treatment.
16. The Administrator shall pay a reasonable amount on account of fees for a treating physician, nurse practitioner or other licensed healthcare professional to complete any forms and/or for hospital or other medical records that are required to support a claim for this Special Distribution Benefit. In assessing a reasonable amount for fees, the Administrator shall have regard to the British Columbia Medical Association Schedule of Revised Fees for Uninsured Services effective April 1, 2022, after indexing to present day dollars.