

## **4123-18-21 Wage loss payments to injured workers who complete rehabilitation plans.**

(A) For purposes of this rule:

- (1) "Successful return to work" as a result of an approved vocational rehabilitation plan means that the injured worker has obtained employment within sixty days of closure of the injured worker's approved comprehensive vocational rehabilitation plan or job retention plan and the employment:
  - (a) Is within the physical and/or psychiatric limitations caused by the impairments resulting from the allowed conditions in the claim in which the injured worker completed the comprehensive vocational rehabilitation plan or job retention plan, as documented by the injured worker's physician of record; and
  - (b) Is reasonable in comparison with the return to work goals of the comprehensive vocational rehabilitation plan or job retention plan completed by the injured worker.
- (2) "Suitable employment" and "comparably paying work" shall have the same meaning as in rule 4125-1-01 of the Administrative Code.

(B) In claims with a date of injury on or after August 22, 1986, the bureau shall make living maintenance wage loss payments to injured workers who complete an approved comprehensive vocational rehabilitation plan or job retention plan, successfully return to work, and experience a wage loss while employed.

- (1) The wage loss must be as a consequence of the physical and/or psychiatric limitations caused by the impairments resulting from the allowed conditions in the claim as documented by the injured worker's physician of record on form MEDCO-14 or equivalent.
- (2) Injured workers requesting living maintenance wage loss payments shall be required to submit an application for living maintenance wage loss (on form RH-18 or equivalent) and medical documentation of the physical and/or psychiatric limitations as referenced in paragraph (A)(1) of this rule.
  - (a) An injured worker must have successfully returned to work as defined in paragraph (A)(1) of this rule to submit an initial application for living maintenance wage loss payments.
  - (b) Subsequent applications for living maintenance wage loss payments must be submitted by the injured worker before the specified end date of the restrictions provided by the injured worker's physician of record or every six months, whichever occurs first.
- (3) Injured workers requesting living maintenance wage loss payments shall not voluntarily limit their income by choosing to work fewer hours or at wages below reasonable expectations, if more appropriate jobs are reasonably available within their labor market. If the injured worker voluntarily limits his or her income by choosing to work fewer hours or by accepting a job which does not constitute suitable employment which is comparably paying work, the injured worker's living maintenance wage loss benefits shall be calculated as sixty-six and two-thirds per cent of the difference between the greater of the injured worker's full weekly wage or average weekly wage on the claim for which the injured worker underwent a rehabilitation plan and the weekly wage the injured worker would have earned had the injured worker not voluntarily limited his or her income.
  - (a) In determining whether an injured worker has voluntarily limited his or her income, the bureau may review all relevant factors set forth in rule 4125-1-01 of the Administrative Code in determining whether the injured worker has returned to suitable employment which is comparably paying work.

- (b) An injured worker who wishes to change jobs after the initial receipt of living maintenance wage loss payments must notify the bureau. The bureau shall review the criteria set forth in paragraph (A)(3)(a) of this rule to ensure that the job the injured worker wishes to change to constitutes suitable employment which is comparably paying work.
- (4) In the event the injured worker accepts employment that is below the reasonable expectations of the return to work goals of the vocational rehabilitation plan, or if the injured worker can reasonably be expected to obtain different employment for which earnings are more comparable to those prior to the injury, the injured worker may be required to make a good faith effort to search for suitable employment which is comparably paying work. In determining whether a good faith effort to search for suitable employment is required, the bureau shall consider factors such as the goals of the vocational rehabilitation plan, the labor market, the skills and work history of the injured worker, and any other factors that would assist in determining whether a good faith job search should be required.
- (5) To receive living maintenance wage loss payments under this rule after approval of these benefits by the bureau, an injured worker must provide proof of earnings at least every four weeks, or on a quarterly basis if the injured worker has a substantial variation in income, in the form of pay stubs, payroll reports from the injured worker's current employer, or a wage statement on form RH-94(A) or equivalent.
- (6) Living maintenance wage loss payments shall be charged to the surplus fund established by section 4123.34 of the Revised Code.
- (C) The bureau shall be responsible for calculating living maintenance wage loss payment amounts based upon the information submitted by the injured worker pursuant to paragraph (B)(4) of this rule. Payments shall be sixty-six and two-thirds per cent of the difference between the greater of the injured worker's full weekly wage or average weekly wage on the claim for which the injured worker underwent a rehabilitation plan and the weekly wage received while employed up to a maximum per week equal to the statewide average weekly wage.
- (D) Payments may continue for up to a maximum of two hundred weeks but shall be reduced by the corresponding number of weeks in which an injured worker receives payments pursuant to division (B) of section 4123.56 of the Revised Code.
- (E) Facts supporting a decision concerning the eligibility or non-eligibility of an injured worker for living maintenance wage loss shall be documented in the bureau's decision. Appeals of living maintenance wage loss eligibility determinations shall be filed with the bureau within fourteen days of receipt of the bureau's determination.

Effective: 1/9/15

Prior Effective Dates: 8/22/86 (Emer.), 11/17/86 (Emer.), 1/10/87, 2/3/92, 1/1/01, 11/5/09