

WAC 296-14-4126 How does the department calculate the amount of overpayment charged to a claimant when a determination of "willful misrepresentation" has been made after initial claim adjudication?

(1) Overpayments are assessed in cases where there has been willful misrepresentation. The overpayment calculation in these claims includes all or part of wage replacement benefits and may include permanent partial disability benefits, vocational, medical benefits, and/or other medical aid fund benefits paid on the claim for the period as described below.

(a) The period of overpayment will begin with either the first date of willful misrepresentation or the first date of the repeated pattern of work or work-type activities.

(b) Medical benefits: Medical benefits paid on a claim may be included when a treating physician's opinion of the need for further treatment related to the claim, or his/her opinion of a condition's maximum medical improvement was changed by the willful misrepresentation. Only those medical services to which the worker would not have been otherwise entitled are included in the overpayment.

(c) Vocational benefits: Vocational benefits may be included when it is determined, because of the willful misrepresentation, that the vocational services would not have been provided but for the misrepresentation.

(d) Permanent partial disability benefits: Permanent partial disability benefits will be included when the worker's willful misrepresentation results in the receipt of permanent partial disability benefits to which the worker would not otherwise have been entitled.

(e) Other medical aid fund benefits: Other medical aid fund benefits may be included such as travel and lodging.

(f) Wage replacement benefits:

(i) The overpayment will include all of the wage replacement benefits resulting from willful misrepresentation when the worker has:

(A) Misrepresented his/her physical restrictions or engaged in a repeated pattern of work or work-type activities; and

(B) The worker would have been released by a physician to return to the job of injury had the repeated pattern of work or work-type activities been disclosed. In cases where a treating physician is unwilling or unable to render an opinion in this situation, the opinion of a consulting physician or independent medical examiner may be used; or

(C) In the case of total permanent disability benefits, the work or work-type activity is such that the imputed wages are equivalent to gainful employment; or

(D) In the case of survivor benefits, the willful misrepresentation was such that the beneficiary would not have been entitled to benefits were it not for the misrepresentation.

(ii) The overpayment will include all or part of the wage replacement benefits to which the worker would not otherwise have been entitled were it not for the repeated pattern of work or work-type activities when the worker has:

(A) Misrepresented his/her physical restrictions or has engaged in a repeated pattern of work or work-type activities; and

(B) The department would have determined that the worker returned to work; or

(C) A vocational counselor would have determined that the worker was employable in accordance with department rules.

(2) In cases, other than pension, when the wages or imputed wages are less than the total wage at the time of injury, the wage replace-

ment portion of the overpayment equals the wage replacement benefit paid less the entitled loss-of-earning power benefits. However, this reduction will cease either the date the department had evidence of or a physician would have determined the worker had reached maximum medical improvement (MMI) had the repeated pattern of work or work-type activity been disclosed. In cases where a treating physician is unwilling or unable to render an opinion in this situation, the opinion of a consulting physician or independent medical examiner may be used. From that date forward, the wage replacement portion of the overpayment includes all wage replacement benefits paid.

[Statutory Authority: RCW 51.04.010, 51.04.020, and 2004 c 243. WSR 04-20-024, § 296-14-4126, filed 9/28/04, effective 11/1/04.]