

POLICY 16.35

Section: Aggravation and Reopening **Effective:** 12-1-08

Title: Policy 16.35 - Paying Provisional Time-Loss (TL) or Loss of Earning Power (LEP) Benefits on Pending Reopening Requests **Cancels:** Policy 16.35 dated 9-1-98

See Also: RCW [51.28.040](#) (change in compensation)
RCW [51.32.160](#) (aggravation)
RCW [51.32.210](#) (prompt action)
RCW [51.32.190](#) (Self-Insurance, prompt action)
RCW [51.32.240](#) (erroneous payments)
WAC [296-14-400](#) (reopenings for benefits)
WAC [296-15-470](#) (Self-Insurance reopenings)
WAC [296-20-097](#) (reopenings)
Policy [5.81](#) (paying loss of earning power)
Policy [5.91](#) (voluntary retirement)
Policy [16.20](#) (criteria for reopening)
Policy [16.31](#) (90-day limit)
Policy [16.40](#) (over-seven reopenings)
WCA Manual, [Chapter 10](#) (reopenings)
Self-Insurance WCA Manual, Chapter G (aggravation)

Approved by: _____
Brenda Heilman for the Insurance Services Policy Council

This policy applies when the department or self-insured employer receives a written application to reopen a claim within seven years (or ten years for claims for loss of vision or function of the eyes) of the first final closure or medically documented reopening denial.

1. The adjudicator must determine if provisional TL or LEP benefits are due on pending reopening decisions.

Provisional TL or LEP benefits are due if **all** of the following apply:

- The attending provider indicates the worker's inability to work is due to an accepted medical condition on the claim;
- Measurable, objective findings support the worker's inability to work; **and**
- The worker is contending benefits.

Provisional time-loss benefits are not paid if the worker is:

- Working. (The worker may be eligible for provisional LEP benefits.)
- Voluntarily retired.
- Receiving TL benefits under another claim.
- Off work due to an unaccepted condition.
- Kept on salary by any employer.
- Requesting reopening on a claim closed over seven (ten) years.

2. When written application to reopen a claim is received, the adjudicator must pay provisional TL or LEP benefits within 14 days of the date of contention and certification.

3. The adjudicator must not pay provisional TL or LEP benefits for dates before the reopening application was received.

NOTE: If the date of disability is after the date the reopening application was received, the adjudicator pays provisional TL or LEP benefits from the date of disability.

4. When the worker returns to work or is released for work before the reopening determination is made, State Fund adjudicators must issue interlocutory orders terminating TL or LEP benefits.

5. State Fund adjudicators must issue a separate determinative reopening order.

State Fund adjudicators must not reopen the claim with language on a payment order. A separate determinative reopening order must be issued.

Exception:

5a. The adjudicator may issue one ministerial order if the Board of Industrial Insurance Appeals or higher court orders reopening of the claim and payment of TL or LEP benefits.

6. State Fund adjudicators must assess an overpayment if provisional TL or LEP benefits were paid and the reopening request is denied.

The adjudicator issues one determinative order that denies the reopening and assesses an overpayment.

The self-insurance adjudicator issues an overpayment only if requested by the self-insured employer.