

## POLICY 16.35

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

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

**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.

Policy author: Mary Shatto, 360-902-4473  
For technical questions: State Fund Claims Training, 360-902-4576  
Self-Insurance Claims Training, 360-902-6839