



WORKER'S COMPENSATION DIVISION

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Ins. 220

August 1, 1987

To: All Insurance Carriers and Self-Insured Employers

From: Chris M. Faulhaber, Jr., Administrator
Worker's Compensation Division

Handwritten signature: Chris M. Faulhaber

Subject: Social Security Reverse Offset Section 102.44(5) Effective July 1, 1980

Note: This letter replaces the letter dated June 5, 1984

We are revising our procedures and methods of computing the social security reverse offset to reflect changes in the Social Security Administration's application of offset provisions.

The redetermined 80 percent of ACE is effective the first of the year redetermination takes place rather than the following year as previously advised. Also, the transfer of a wage earner from disability to retirement benefits has been changed to age 65 for those persons whose date of entitlement to disability benefits occurred after August of 1981. We are now figuring the reverse offset credit retroactively in all cases.

Over the next few months the Department will review all current reverse offset cases and will send you revised worksheets if this is necessary.

A. Definitions

1. Date of entitlement: The month and year that Social Security DIB benefits begin. The Social Security Administration (SSA) has a five-month waiting period after the date of onset and starts payments on the first day of the next month.

SSA pays a complete calendar month from the first day, inclusive through the last day, inclusive. For example, a date of entitlement of 10/83 means that benefits begin on October 1, 1983. The check for 10/83 covers October 1, 1983 through October 31, 1983.

2. Date of onset: The date that Social Security begins its five-month waiting period. This date is not necessarily the same as the date of injury under Chapter 102.
3. Date of termination: The month and year that DIB benefits end. Benefits continue through the last day of the month. For example, a date of termination of 3/84 indicates that benefits end on March 31, 1984. This date is not necessarily the same as the return-to-work date under Chapter 102.
4. Disability insurance benefits (DIB): Benefits paid by Social Security to an injured worker. When the worker reaches the normal retirement age, these benefits are replaced by retirement benefits. The reverse offset ends at this time because Chapter 102.44(5) provides an offset against disability benefits only.
5. District office (DO): A local Social Security office that handles claims for people living in a particular area. See list below. The DO completes the "Request for Social Security Information."
6. Eighty percent of average current earnings (ACE): The figure established by the Social Security Administration based on the worker's annual wages as reported to them. This figure cannot be computed by the insurer or by the Department. The combination of Worker's Compensation payment and DIB benefit cannot be greater than this figure, unless the WC payment by itself is greater than this figure (102.44(5)(a)).
7. Monthly Benefit Amount (MBA): The amount that Social Security pays to the injured worker. This figure excludes any cost-of-living increases (102.44(5)(b)) and any payments to dependents (102.44(5)(f)). The amount actually paid to the injured worker may be different than the figure used to compute a reverse offset.
8. Offset: The reduction that the Social Security Administration took before July 1, 1980. See reverse offset. The only Worker's Compensation payments that SSA continues to offset are lump sum compromise orders dated before July 1, 1980. SSA bases its offset on the prorated lump sums. For orders after July 1, 1980, see paragraph H.
9. Reverse offset: The reduction that Wisconsin insurers and self-insured employers can take on or after July 1, 1980.
10. Wage Earner (W/E): The disabled worker.

B. Eligibility

Before you can take any reverse offset, the following conditions must exist.

1. The worker must be receiving Social Security DIB.
2. The worker must be under age 62 on the date that the payment accrues for dates of entitlement prior to September 1, 1981 and age 65 for dates of entitlement since September 1, 1981.
3. The worker's date of injury must be on or after January 1, 1966.
4. The benefits being offset must have accrued since July 1, 1980.

Provided these conditions are met, you can take a reverse offset according to the procedures below. Before you begin a reverse offset, send completed copies of the "Request for Social Security Information" (WKC-6156) and the "Social Security Reverse Offset Worksheet" (WKC-6119) (see below) to the Department for approval (102.44(5)(d)). Our approval will be in the form of a current worksheet showing the total benefits due to date. Adjustments in underpayments or overpayments can be made from this total.

You cannot take a reverse offset if the worker is being paid:

1. Vocational rehabilitation.
2. 66.191 benefits.
3. 40.65 benefits.
4. Any other benefit that is not paid under Chapter 102.

C. "Request for Social Security Information" (WKC-6156)

Print this form for your own use, but do not change the wording in any way. Social Security will respond only to this specific request. Social Security cannot release any information to you unless this form is signed by the worker. If the worker refuses to sign, you can reduce benefits by 75 percent (102.44(5)(c)).

When you send the form to the worker for signature, you should also send a letter explaining why you need it and emphasizing the consequences, that is, the reduction in benefits for failure to sign and return it. You should also request the address of the SSA district office processing the claim. If the form has not been signed after 30 days, and you reduce benefits, notify us when this is done. As soon as the form is signed, you must restore all benefits that were withheld.

D. Instructions for "Request" Form

Note: These instructions are printed on the back of the form.

Insurance Carrier or
Self-Insured Employer:

1. Enter claimant's social security number and injury date.
2. Enter claimant's name.
3. Enter claimant's address.
4. Enter your name and mailing address.

Send this form to the claimant.

Claimant:

5. Enter the date you sign the form.
6. Sign your name. Do not print.
7. Enter your social security number if it is different from the number in line 1.

Claimant - Important:

Return this form to the address in line 4 within 30 days. If you do not sign this form, your insurance carrier or employer can reduce your benefits by 75 percent. When you sign, any benefits that were withheld will be paid to you.

Insurance Carrier or
Self-Insured Employer:

Send the signed form to the SSA district office that handles this claimant.

Social Security
Administration:

See TN 11 2-83 DI00203.050.
If any of the information below is not available, forward this form to Baltimore. The insurance carrier needs all of this information except line 12 to compute a reverse offset.

8. Enter the current status. If this claim is currently being reviewed but payments were made in the past, please fill out lines 8 through 11 and enter the termination date in line 12.
9. Enter 80 percent of ACE.
10. Enter the MBA.
11. Enter the month and year of entitlement.
12. Enter only if benefits are ending.
13. Enter the name and telephone number of someone who can be reached if the insurance carrier has questions.

Send the completed form to the address in line 4.

Insurance Carrier or
Self-Insured Employer:

Fill out a "Social Security Reverse Offset Worksheet." If you find that you can take an offset, send copies of the "Request" and the "Worksheet" to the Worker's Compensation Division, P.O. Box 7901, Madison, Wisconsin 53707.

E. Computing Reverse Offset

When Social Security returns the "Request" form, check the information on the following lines prior to computing the reverse offset using the "Worker's Compensation Reverse Offset Worksheet."

8. "What is the status of this disability claim?"

- a. "Approved": Take a reverse offset if one is due.
- b. "Denied" or "No Claim filed": Do not take a reverse offset.
- c. "Pending": Resubmit the request to Social Security in 90 days. Do not reduce your payment while a claim is pending.

9. "80 Percent of Monthly Average Current Earnings (ACE)."

Social Security provides the monthly ACE and has already reduced it to 80 percent. Do not reduce the ACE any further.

10. "Disability MBA for W/E at initial entitlement."

Social Security provides the monthly MBA and has excluded any cost-of-living payments or payments to dependents.

11. "Month of entitlement."

The reverse offset will begin on the first day of this month or July 1, 1980, whichever is later. Both dates are inclusive. See also paragraph I.

12. "Month of last disability check if terminated."

The reverse offset will end on the last day of this month. If the reason for termination is the change from disability to retirement benefits, the reverse offset ends on the 62nd or 65th birthday, whichever is applicable for the date of entitlement.

13. "Signature of SSA representative, date, telephone number."

If you have questions about the information provided by Social Security, contact this representative. If you have questions about computing a reverse offset, contact the Department (608/266-1340) and ask for a correspondent.

F. Instructions for "Worksheet" (WKC-6119)

Note: These instructions are printed on the lower half of the "Worksheet."

Attach copy of the "Request for Social Security Information."

Line 1: Enter 80 percent of ACE from the "Request for Social Security Information." Do not reduce the ACE to 80 percent; the figure has already been reduced.

Line 2: Enter the index based on the entitlement date and redetermination chart.

Line 3: Multiply line 1 by line 2 to find the redetermined ACE. Multiply the monthly amount by 12/52nds to find the weekly amount. If indexing is not required, use same figure as in line 1.

Line 4: Enter the WC otherwise due. This rate may be for TTD, escalated TTD, TPD, PTD, or PPD. Vocational Rehabilitation is not offset.

Line 5: Enter the top limit. This amount will be the higher of line 3 (redetermined ACE) or the WC rate otherwise payable from line 4.

Line 6: Enter the initial MBA from the "Request for Social Security Information." Multiply the MBA by 12/52nds to find the weekly amount.

Line 7: Subtract line 6 from line 5 to find the weekly balance to employe. This amount is the total amount the insurance carrier is obligated to pay. If this line is greater than line 4, then no offset can be taken.

Line 8: Enter the entitlement date.

Line 9: Enter the effective date of this computation. This date is the first date that the insurance carrier can take this offset.

See examples of completed worksheets in paragraph I below.

G. Redetermining Average Current Earnings (ACE)

1. Introduction.

The Social Security Administration redetermines the ACE two years after the year of entitlement and every third year thereafter for each worker who is receiving DIB. The redetermination takes the form of an index. The index reflects the increase in wages for the country as a whole based on the average income reported to the Social Security Administration. The increase is therefore not predictable.

The new ACE is effective on January 1 of the year of the redetermination.

The effect of the index will usually be an increased payment to the injured worker from SSA and a corresponding decrease in the amount saved by the insurer or self-insured employer.

For example, if the date of entitlement is 2/77, the first redetermination will be in 1980, effective January 1, 1980, the next will be effective January 1, 1983, and so forth.

If a person's entitlement to social security ends and he or she later becomes entitled to benefits again, redeterminations are from the most current date of entitlement.

A new worksheet must be prepared whenever the ACE is redetermined as well as anytime the injured worker's WC weekly benefit amount changes.

2. Computing the redetermined ACE.

- a. Enter the original 80 percent of ACE on line 1 of the "Worksheet."
- b. From the attached chart, find the index ratio in Column 3 based on the date of entitlement. Enter the index on line 2.
- c. Multiply line 1 by line 2 to find line 3, the redetermined ACE.
- d. Complete the worksheet in the same manner as the previous example. Line 6 will not change. In some cases this redetermination will not cause an actual change to the amount due to the worker if the Worker's Compensation rate (line 4) is still greater than line 3.

H. Disputed Cases and Settlements

1. **Compromises:** Any compromise after July 1, 1980 is also a compromise of any reverse offset. We assume you have already considered any potential reverse offset in your compromise figures and will award the full compromised amount. Do not take any further reduction.
2. **Stipulations:** Include any Social Security information when submitted. If we have previously issued a stipulation award, send us the information when it becomes available. Benefits will be figured retroactively to the date of entitlement instead of just on future payments as was done previously.
3. **Interlocutory orders:** As with stipulations, the reverse offset can be taken when the information is available.

4. Final orders: As with other orders, the reverse offset can be taken retroactively when information is available. We consider the credit given for the social security payments being made as a result of the reverse offset payment in compliance with the order.
5. Present value calculations: Since the ACE is redetermined periodically, the future WC payment rate is unknown so it is impossible to make an accurate present value calculation. If a party asks us for the present value, we compute a range using the present value of the full rate as the upper limit and the present value of the current reverse offset payment amount as the low limit. The actual present value will be somewhere between these figures and must be negotiated for our approval.

I. Examples of Effects of Reverse Offset on Various Programs

Note: In all cases, your weekly payment and the initial weekly MBA must at least be equal to the WC weekly benefit that would have been payable if no reverse offset were taken.

1. Temporary total disability (TTD): Most offsets will begin on TTD. Pay TTD at the full rate until the date of entitlement and then pay at the reduced rate. Report these payments separately on the WC-13.
2. Escalated temporary total disability: If the employe returns to work and then has a renewed period of TTD starting more than two years after the date of injury, a new worksheet will have to be prepared to see if the upper limit has changed because of the increase in payments provided per 102.43(7).
3. Temporary partial disability (TPD): If the weekly TPD rate is higher than the limit, take an offset for that week only. When the TPD rate varies from week to week, a separate reverse offset calculation must also be made weekly.
4. Permanent partial disability (PPD): If the weekly PPD rate is higher than the weekly balance shown on line 7 of the "worksheet," take a reverse offset for that week and reduce the total PPD accordingly. Do not reduce the total weeks due for PPD, but reduce the weekly rate instead. You must accrue PPD to the day to determine the correct rates. PPD is due for any day that TTD, TPD, or Vocational Rehabilitation is not paid.
5. Permanent total disability (PTD): Review these cases for ACE indexing.

6. Supplemental benefits: The Work Injury Supplemental Benefit Fund will first take any reverse offset that is due on benefits being paid per 102.44(1). Any remaining reverse offset will be taken by the insurer or self-insured employer. When you request reimbursement at the end of the year, we will reduce your reimbursement by the amount of any offset.

7. Attorney fees: When an attorney makes a recovery for a client and is entitled to a fee, the 20 percent is paid on the amount you pay as the weekly balance to the employe but is in addition to it rather than withheld from it. Prior to November 28, 1981 when 102.44(5)(a) was amended, the fees were paid out of the weekly balance. If the attorney fee will extend over a period during which redeterminations will be made, the total fee cannot be computed or advanced as it will be changing as the injured worker's redetermined benefits increase. If the total payment to the injured worker and the attorney exceed the total Worker's Compensation benefit payable, the reverse offset should not be taken. You will also have to pay the claimant's legal costs out of any reverse offset savings.

CMF:WCD280

Attachments