



STATUTORY INSTRUMENTS.

S.I. No. 43 of 2012

SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND
CONTROL) (AMENDMENT) (NO. 2) (PARTIAL CAPACITY BENEFIT)
REGULATIONS 2012

(Prn. A12/0279)

SOCIAL WELFARE (CONSOLIDATED CLAIMS, PAYMENTS AND CONTROL) (AMENDMENT) (NO. 2) (PARTIAL CAPACITY BENEFIT) REGULATIONS 2012

I, JOAN BURTON, Minister for Social Protection, in exercise of the powers conferred on me by section 4 (adapted by the Social and Family Affairs (Alteration of Name of Department and Title of Minister) Order 2010 (S.I. No. 186 of 2010)), 46 (amended by section 12 of the Social Welfare and Pensions Act 2010 (No. 37 of 2010)), 46A, 46B, 46C and 46D (inserted by section 12 of the Social Welfare and Pensions Act 2010) and by section 118 (amended by section 16 of the Social Welfare and Pensions Act 2007 (No. 8 of 2007)) of the Social Welfare Consolidation Act 2005 (No. 26 of 2005), hereby make the following Regulations:

Citation and construction.

1. (1) These Regulations may be cited as the Social Welfare (Consolidated Claims, Payments and Control) (Amendment) (No. 2) (Partial Capacity Benefit) Regulations 2012.

(2) These Regulations and the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2012 shall be construed together as one and may be cited together as the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 to 2012.

Definition.

2. In these Regulations “Principal Regulations” means the Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (S.I. No. 142 of 2007).

Commencement.

3. These Regulations come into force on 13 February 2012.

Partial Capacity Benefit.

4. Part 2 of the Principal Regulations is amended by inserting the following Chapter after Chapter 1:

“CHAPTER 1A

Partial Capacity Benefit

Conditions for which person assessed as having a profound restriction on capacity for work.

28A. For the purposes of Chapter 8A of Part 2 of the Principal Act, a claimant shall be regarded as having a profound restriction on his or her

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 14th February, 2012.

capacity for work where, in the opinion of a medical assessor, having taken into account any or all of the following—

- (a) medical evidence furnished by a registered medical practitioner;
- (b) the claimant's own assessment of his or her capacity for work;
- (c) evidence-based medical protocols developed in accordance with a core set of functional classifications contained in the International Classification of Functioning, as formulated by the World Health Organisation; and
- (d) any other relevant material evidence,

the claimant is considered to have a residual capacity for work which is not more than a quarter of the norm in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work.

Conditions for which person assessed as having a mild restriction on capacity for work.

28B. For the purposes of Chapter 8A of Part 2 of the Principal Act, a claimant shall be regarded as having a mild restriction on his or her capacity for work where, in the opinion of a medical assessor, having taken into account any or all of the following—

- (a) medical evidence furnished by a registered medical practitioner;
- (b) the claimant's own assessment of his or her capacity for work;
- (c) evidence-based medical protocols developed in accordance with a core set of functional classifications contained in the International Classification of Functioning, as formulated by the World Health Organisation; and
- (d) any other relevant material evidence,

the claimant is considered to have a capacity for work which is not materially different to the capacity for work of a person of the same age who has no restriction on his or her capacity for work.

Reduced rates of partial capacity benefit.

28C. (1) Where a claimant would be entitled to partial capacity benefit but for the fact that he or she does not satisfy the requirement in section 46A(1)(b) that he or she is assessed by a medical assessor as having a profound restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work, he or she shall be entitled to partial capacity benefit where he or she is assessed by a medical assessor as having—

- (a) a severe restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work, or
- (b) a moderate restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work.

(2) For the purposes of this article, a claimant shall be regarded as having a severe restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work where, in the opinion of a medical assessor, having taken into account any or all of the following—

- (a) medical evidence furnished by a registered medical practitioner;
- (b) the claimant's own assessment of his or her capacity for work;
- (c) evidence-based medical protocols developed in accordance with a core set of functional classifications contained in the International Classification of Functioning, as formulated by the World Health Organisation; and
- (d) any other relevant material evidence,

the claimant is considered to have a residual capacity for work which is not more than a half of the norm in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work and where that restriction is not considered to be a profound restriction on his or her capacity for work.

(3) For the purposes of this article, a claimant shall be regarded as having a moderate restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work where, in the opinion of a medical assessor, having taken into account any or all of the following—

- (a) medical evidence furnished by a registered medical practitioner;
- (b) the claimant's own assessment of his or her capacity for work;
- (c) evidence-based medical protocols developed in accordance with a core set of functional classifications contained in the International Classification of Functioning, as formulated by the World Health Organisation; and
- (d) any other relevant material evidence,

the claimant is considered to have a residual capacity for work which is not more than four fifths of the norm in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for

work and where that restriction is not considered to be a profound or a severe restriction on his or her capacity for work.

(4) Where a claimant qualifies for partial capacity benefit under this article, benefit shall be paid in accordance with Schedule 7A.

Rate of partial capacity benefit payable where person requalifies for benefit.

28D. (1) In the case of a person to whom section 46A(1)(c)(ii) applies, not being a person to whom section 46C(3)(a)(ii) applies—

(a) where that person is re-assessed as having the same restriction on his or her capacity for work as had been assessed in relation to the period of entitlement to partial capacity benefit immediately before the date of exhaustion of the previous period of entitlement, partial capacity benefit shall be paid at the same rate as had been paid immediately before the exhaustion of that period of entitlement to benefit,

(b) where that person is re-assessed as having a different restriction on his or her capacity for work from that which had been assessed in relation to the period of entitlement to partial capacity benefit immediately before the date of exhaustion of the previous period of entitlement, partial capacity benefit shall be paid at the rate of benefit that would have been paid immediately before the exhaustion of the previous period of entitlement to benefit in accordance with—

(i) the revised restriction assessed on that person's capacity for work, and

(ii) that person's other circumstances.

(2) Notwithstanding sub-article (1)—

(a) any change in circumstances that would have resulted in a variation in the rate of illness benefit, invalidity pension or partial capacity benefit payable, if that person had continued receiving the said benefit or pension, or

(b) any general variation in the weekly rates of benefits, pensions, allowances or supplements under the Principal Act,

shall have similar effect in relation to the rate of partial capacity benefit payable in accordance with this article.

Partial capacity benefit where person deemed to satisfy qualifying conditions for invalidity pension in accordance with section 46C(3)(b).

28E. (1) The rate of partial capacity benefit shall be determined in accordance with this article in the case of a person who, having initially qualified for partial capacity benefit by virtue of section 46A(1)(c)(i)(I), subsequently continues to qualify for partial capacity benefit by virtue of

being deemed to satisfy the qualifying conditions for invalidity pension in accordance with section 46C(3)(b).

(2) The rate of partial capacity benefit payable in accordance with this article shall be the rate of invalidity pension that would have been appropriate to that person's circumstances at the time that person is deemed to have satisfied the qualifying conditions for invalidity pension, reduced, where appropriate, in accordance with article 28C.

(3) Notwithstanding sub-article (2)—

- (a) any subsequent change in circumstances that would have resulted in a variation in the rate of invalidity pension or partial capacity benefit payable, if that person had continued receiving the said benefit or pension, or
- (b) any general variation in the weekly rates of benefits, pensions, allowances or supplements under the Principal Act,

shall have similar effect in relation to the rate of partial capacity benefit payable in accordance with this article.

Reduced duration for partial capacity benefit in certain cases.

28F. Where a person qualifies for partial capacity benefit by virtue of article 28D, the maximum period for which that benefit shall be paid shall be—

- (a) 104 weeks in the case of a person assessed by a medical assessor as having a severe restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work, and
- (b) 52 weeks in the case of a person assessed by a medical assessor as having a moderate restriction on his or her capacity for work in relation to the capacity for work of a person of the same age who has no restriction on his or her capacity for work.

Disqualifications for partial capacity benefit.

28G. (1) A person shall be disqualified for receiving partial capacity benefit for such period not exceeding 9 weeks if he or she fails without good cause to—

- (a) attend for, or submit to, any medical or other examination in accordance with sub-article (2),
- (b) comply with any medical advice and instructions provided by a registered medical practitioner relating to his or her incapacity,
- (c) see an officer of the Minister and to answer any reasonable enquiries by any such officer relating to his or her claim for partial capacity benefit.

(2) An officer of the Minister may, on giving not less than 7 days notice in writing, require any person who claims or is entitled to partial capacity benefit to submit himself or herself to medical or other examination at such time and place as may be specified in the notice.

(3) Notice of the time and place of the examination referred to in sub-article (2) shall also be sent to the registered medical practitioner in attendance on the person required to submit himself or herself to such examination.”.

Disqualification for illness benefit and invalidity pension.

5. (1) Article 24 of the Principal Regulations is amended by substituting the following sub-articles for sub-article (3):

“(3) Notwithstanding section 46(1A), a person shall not be disqualified for receipt of illness benefit where that person, having become incapable of following his or her normal occupation and with the prior written permission of an officer of the Minister, undertakes a course of training for a specified period of time with a view to taking up some other occupation.

(3A) Notwithstanding section 46(1A), where a person has—

- (a) received the prior written permission of an officer of the Minister, and
- (b) is in receipt of illness benefit immediately before 13 February 2012 while also engaged in part-time work in the nature of rehabilitation or occupational therapy,

that person may continue to receive illness benefit for the unexpired portion of the period of time specified in that written permission which occurs on or after 13 February 2012, if that person continues, during the unexpired portion of such specified period, to satisfy the conditions for entitlement to illness benefit.”.

(2) Article 78 of the Principal Regulations is amended by—

- (a) deleting sub-article (2), and
- (b) substituting the following sub-articles for sub-article (3):

“(3) Notwithstanding section 118(3A), a person shall not be disqualified for receipt of invalidity pension where that person, with the prior written permission of an officer of the Minister, undertakes for a specified period of time the following types of work or training—

- (a) having become permanently incapable of following his or her usual occupation, a course of training with a view to taking up some other occupation, or

(b) light work for which no remuneration is or would ordinarily be payable.

(3A) Notwithstanding section 118(3A), where a person has—

(a) received the prior written permission of an officer of the Minister, and

(b) is in receipt of invalidity pension immediately before 13 February 2012 while also engaged in work in the nature of rehabilitation or occupational therapy,

that person may continue to receive invalidity pension for the unexpired portion of the period of time specified in that written permission which occurs on or after 13 February 2012, if that person continues, during the unexpired portion of such specified period, to satisfy the conditions for entitlement to invalidity pension.”.

Insertion of new Schedule.

6. The Principal Regulations are amended by inserting Schedule 7A, set out in the Schedule to these Regulations, after Schedule 7.

SCHEDULE

Article 28D

“SCHEDULE 7A

REDUCED RATES OF PARTIAL CAPACITY BENEFIT

Degree of restriction on claimant's capacity for work (1)	Weekly rate payable (2)
Profound restriction	Rate of partial capacity benefit payable in accordance with section 46B
Severe restriction	75% of the rate of partial capacity benefit payable in accordance with section 46B
Moderate restriction	50% of the rate of partial capacity benefit payable in accordance with section 46B
Mild restriction	No benefit paid

”.



GIVEN under my Official Seal,
9 February 2012.

JOAN BURTON,
Minister for Social Protection.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

Section 12 of the Social Welfare and Pensions Act 2010 provides for the introduction of a new Partial Capacity Benefit (PCB) scheme to provide an opportunity for people who have been assessed as having a restricted employment capacity to avail of employment opportunities, while continuing to receive an income support payment. Participation in the PCB scheme is voluntary and is open to people who are receiving Invalidity Pension or who have been receiving Illness Benefit for at least six months.

These Regulations, together with the Social Welfare and Pensions Act 2010 (Sections 12 and 13) (Commencement) Order 2012, will facilitate the introduction of the PCB scheme with effect from 13th February 2012. In particular, these Regulations specify the conditions for which a person will be assessed as having a profound, severe, moderate or mild restriction on his or her capacity for work. A person will be assessed as having—

- a profound restriction on his or her capacity for work if that person is assessed as having a capacity for work which is not more than a quarter of the norm for a person of the same age who has no restriction on his or her capacity for work. In this case, PCB will be paid at the full rate of the Invalidity Pension or Illness Benefit that had been paid to that person,
- a severe restriction on his or her capacity for work if that person is assessed as having a capacity for work which is greater than one quarter and less than one half of the norm for a person of the same age who has no restriction on his or her capacity for work. In this case, PCB will be paid at 75% of the rate of Invalidity Pension or Illness Benefit that had been paid to that person,
- a moderate restriction on his or her capacity for work if that person is assessed as having a capacity for work which is greater than one half and less than four fifths of the norm for a person of the same age who has no restriction on his or her capacity for work. In this case, PCB will be paid at 50% of the rate of Invalidity Pension or Illness Benefit that had been paid to that person,
- a mild restriction on his or her capacity for work if that person is assessed as having a capacity for work which is not materially different to the capacity for work of a person of the same age who has no restriction on his or her capacity for work. PCB will not be paid to a person who has a mild restriction in his or her capacity for work.

Partial Capacity Benefit is normally paid for a maximum period of 3 years in the case of a person assessed as having a profound restriction on his or her capacity for work. These Regulations provide for reduced durations of PCB where a person is assessed as having a severe or moderate restriction on their

capacity for work, i.e. 2 years for a person assessed with a severe restriction and 1 year in the case of a person assessed with a moderate restriction. However, it is possible for a person to requalify for a further period of entitlement to Partial Capacity Benefit if they continue to satisfy the underlying conditions for entitlement to PCB. These Regulations also specify the rate of PCB payable in such circumstances.

A person who qualifies for PCB having previously been on Illness Benefit and who exhausts entitlement to Illness Benefit during the period of entitlement to PCB can continue to be entitled to PCB by virtue of being deemed to satisfy the conditions for Invalidity Pension. These Regulations provide for the rate of PCB to be paid in such circumstances. In addition, these Regulations set out the circumstances in which a recipient of Partial Capacity Benefit will be disqualified for benefit, e.g. if they fail to attend an interview with an officer of the Minister or fail to answer reasonable enquiries relating to their claim for PCB.

The existing provisions enabling Illness Benefit and Invalidity Pension to continue to be paid where a person, having obtained prior approval from the Department of Social Protection, takes up employment for rehabilitative or therapeutic purposes are being discontinued for new cases in the light of the introduction of the Partial Capacity Benefit scheme.

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