

# **Overview of the Occupational Disease and Survivor Benefits Program**

**October 25, 2008**

# Mandate

- To provide effective and compassionate delivery of specialized services to workers and their families with the most complex and serious work-related illnesses, injuries and fatalities.
- To provide timely compensation benefits
- To build on existing knowledge to continuously promote
  - prevention of illnesses
  - improvement of treatment outcomes.

# What do we Do?

- All occupational disease claims
- All work related fatalities
- Specialized services for seriously/terminally ill workers
- Bereavement counselling for dependents
- Special projects
- Occupational Chest Disease Program
- Management of systems, databases and records
- Program for Exposure Incident Reporting (PEIR)

# What is an Occupational Disease?

- A disease resulting from exposure to a substance relating to a particular industrial process, trade or occupation
- A disease peculiar to, or characteristic of a particular industrial process, trade or occupation
- A medical condition that in the opinion of the WSIB requires a worker to be removed either temporarily or permanently from exposure to a substance because the condition may be a precursor to an occupational disease
- A disease mentioned in Schedule III or IV

# What Can be Claimed?

- A worker can request a review for WSIB entitlement for any illness/disease believed to be causally related to any employment exposure [Section 15(7), WSIA]

# **Occupational Disease Handled in OD&SBP**

- Noise Induced Hearing Loss (NIHL)
- Silicosis
- Cancers
- Latex Sensitivity
- Neurotoxicity
- AIDS
- Hepatitis
- Needlestick Injuries
- Tuberculosis
- Scleroderma
- Hand Arm Vibration Syndrome (HAVS)
- Occupational Asthma
- Asbestosis
- Chronic Obstructive Pulmonary Disease (COPD)
- Any disease resulting from exposure to substance
- Cardiac Claims (Myocardial Infarctions)
- Dermatitis
- Infectious Diseases

# Types of Conditions

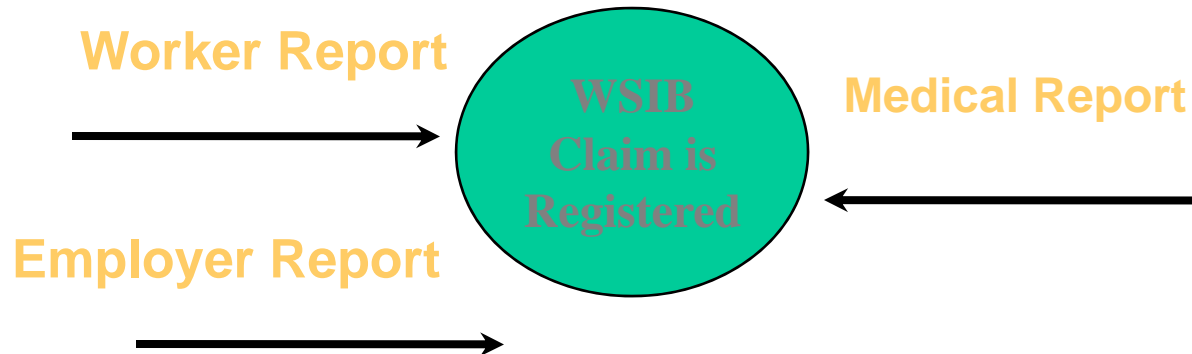
## Acute

- Immediate exposure - immediate symptoms or short latency
- *Example:* lung irritation from chlorine exposure, infectious conditions

## Chronic

- Long latency periods=delay between exposure and onset of symptoms
- *Example:* asbestosis, lung cancer

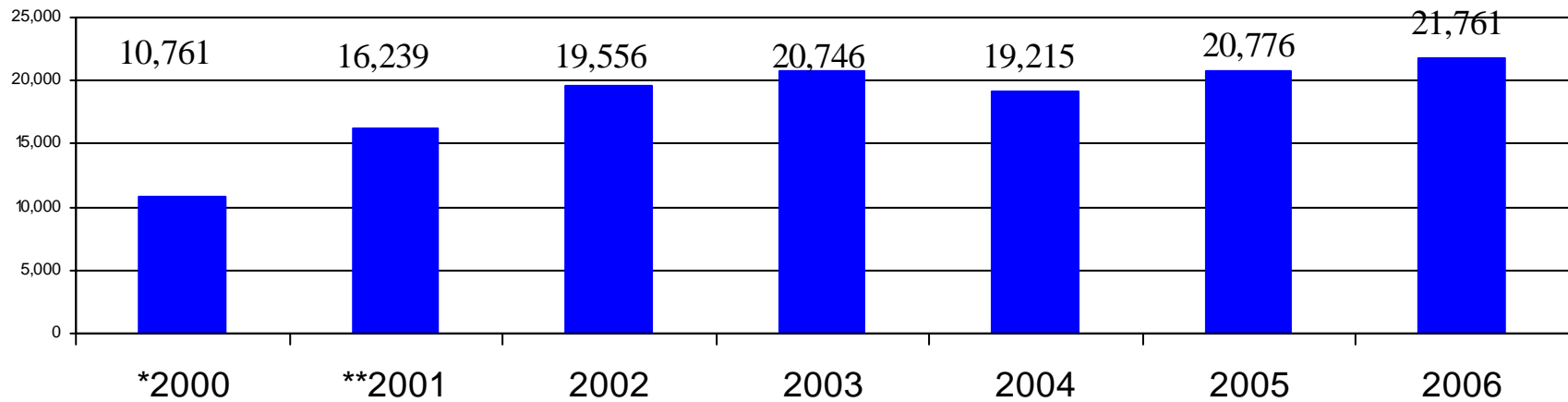
## Registering a Claim



Claim is assigned to Claims Adjudicator and Nurse Case Manager in the Occupational Disease and Survivor Benefits Program



# OCCUPATIONAL DISEASE & NIHL CLAIMS RECEIVED IN OD&SBP 2000 - December 31, 2006



\*NIHL  
centralized  
June /00

\*\*Dermatitis and  
infectious diseases  
centralized Jan/01

Source: OD&SBP Access database for  
Program Support Statistics

# **Status of Final ODAP Report**

## **Introduction**

- **Final ODAP report prepared for presentation to the Board of Directors (BoD) April 2005**
- **Draft protocol prepared – how WSIB intends to use legal principles and scientific evidence to schedule, develop policy and adjudicate OD claims**
- **Final report and protocol released April 29, 2005**
- **BoD approved implementation, effective June 9, 2005**

# **Benefits in Moving Forward...**

- **Use of legal principles will lead to greater consistency in adjudication**
- **Use of scientific evidence will lead to fair and balanced policy and schedules**
- **Formalizing these principles will help workers, employers, the WSIB and partners to develop a common understanding of how the WSIB develops policy and schedules, and adjudicates individual OD claims**

# **Development of Draft Protocol for Policy Development and Adjudication**

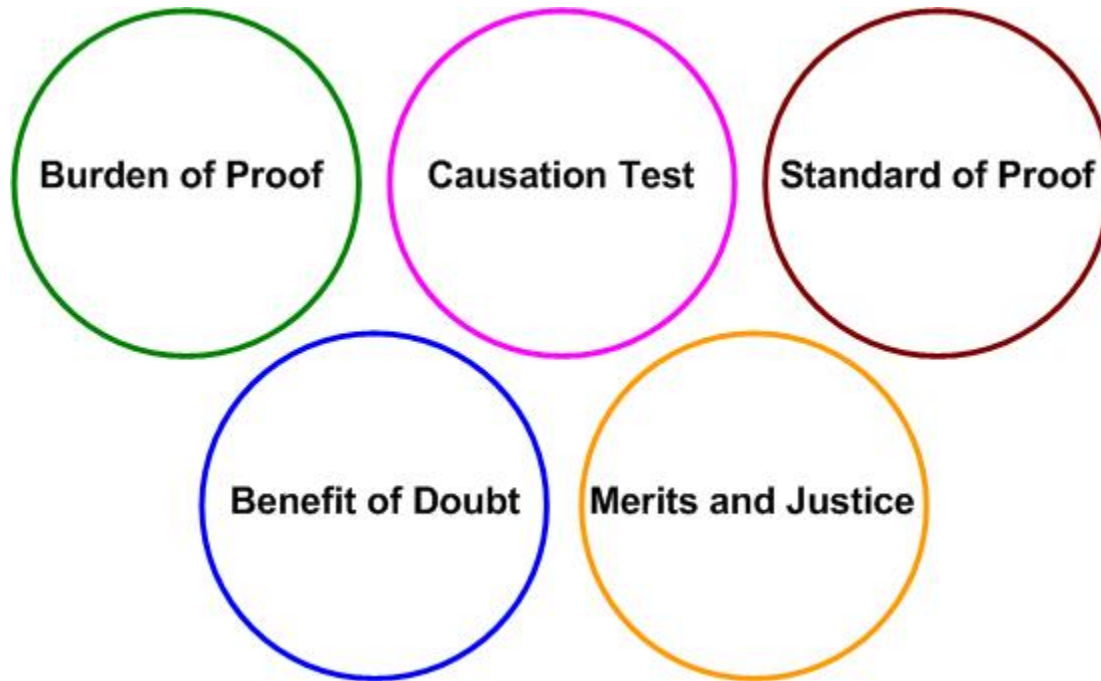
## **Purpose:**

- To operationalize principles of the ODAP Chair's Final Report
- To guide Occupational Disease & Survivor Benefit Program (OD&SBP) adjudication staff on a systematic approach to the application of legal principles and the review and weighing of all evidence in the adjudication of individual cases

# **Development of Draft Protocol...**

- **To guide Occupational Disease Policy & Research (ODPR) staff on a systematic approach to the reviewing and weighing of scientific evidence for scheduling and policy development**
- **To act as an interim guidance document until policies reflecting principles of the Final Report are in place**

# ODAP Legal Principles



# The Burden of Proof

- It is not up to the worker or employer to prove his or her case
- It is up to the claims adjudicator to assess the claim with the best available evidence
- The WSIB is an investigative body, as well as a decision-making one

# **The Causation Test: “Significant contribution”**

- Same meaning as “material contribution”
- Defined as:
  - “not trifling” so as to result in entitlement based on a tenuous or merely speculative workplace connection
  - “having or likely to have influence or effect: important, weighty”
- Cannot equate with a certain percentage
- Can have other non-work-related factors of greater magnitude than the work contribution
- Use of common sense: “a robust and pragmatic approach to the facts”



# The Standard of Proof

- Balance of probabilities, not the more stringent “beyond a reasonable doubt”
- “Is it more likely than not that the workplace exposures made a significant contribution to the development of the disease?”

# The Benefit of Doubt

- Section 119(2) of WSIA
- Operational Policy 11-01-13
- Only where the evidence either way is approximately equal
- Not where there is only supposition for and against entitlement

# **“Merits and Justice”**

- **Section 119(1) of WSIA**
- **Operational Policy 11-01-13**
- **Similar claims are adjudicated in a similar manner**
- **Each participant in the system is treated fairly**
- **The decision-making process is consistent, transparent and reliable**
- **Policy is only a general framework for decision-making. It cannot be followed mechanically at the expense of the individual circumstances of a claim**

**“OPERATIONALIZING”  
ODAP  
IN OD&SBP**

# Activities 2005

- Launched training to:
  - Develop a common understanding of how ODAP principles apply to the adjudicative approach
  - Reviewed application of ODAP principles to Occupational Disease claims
- Developed a Quality Assurance plan to assess the application of the ODAP principles
- Launched training on how to assess the appropriate resources when investigating an OD claim

# Activities in 2005

- Started to update the 12 existing Learning Modules and information matrices to reflect ODAP principles
- Multi-disciplinary advisory groups provided input and suggested changes for content of modules
- External consultant was used for editing the modules
- There were multiple levels of review and editing

# Activities in 2006

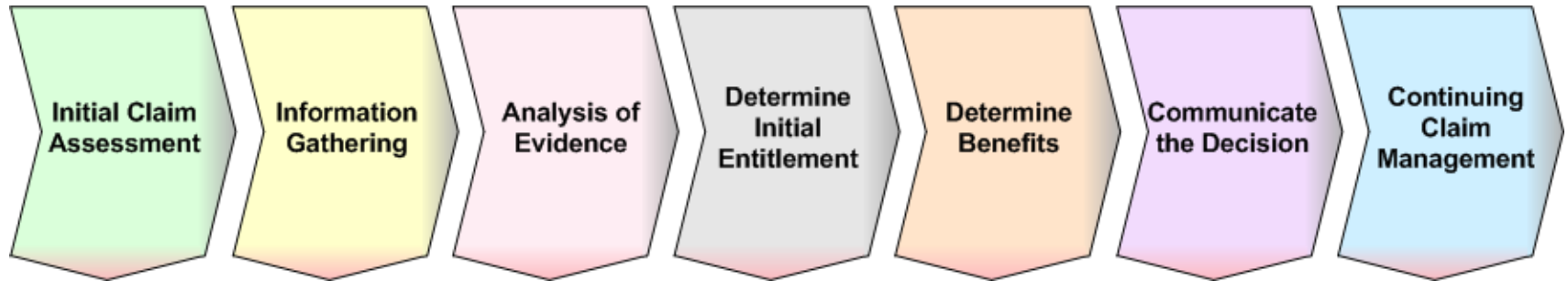
- Completed draft update of 12 Reference Modules and information matrices
- Reviewed all standard forms, letters, templates, etc. to ensure they reflect the ODAP principles
- Delivered an effective decision-writing training program
- Developed lesson plans and trained on the revised draft training modules

# 2007 Plans

- Consultation on new policies
- Finalization of draft training materials
- Training on revised policies
- Monitoring for changes in incoming caseloads, decision timeliness, number of appeals referrals, appeals reversal rates



# THE ADJUDICATION PROCESS: 7 STEPS





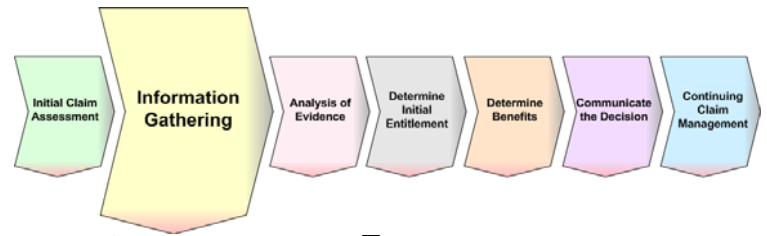
# The Adjudication Process

- The adjudication steps of ODAP claims will often be concurrent, not linear. Some steps can happen at the same time

# **Step 1 : Initial Claim Assessment**

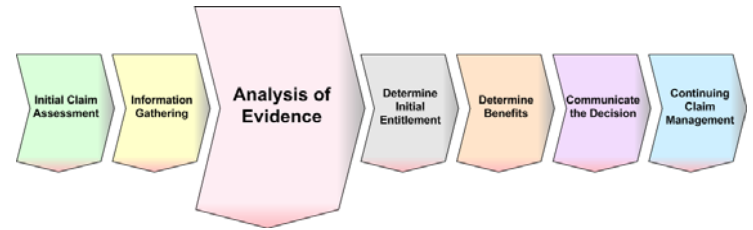
## **The Claims Adjudicator:**

- Will review initial reporting documents, make initial inquiries to confirm what is being claimed**
- Will choose the appropriate adjudicative approach**
- Will decide what information needs to be gathered and will engage additional assistance early in the process from the sector team (Occupational Medical Consultant, Occupational Hygienist, Nurse Case Manager), ODPR, the WSIB Reference Library and external resources as necessary to ensure best approach**



## **Step 2: Information Gathering**

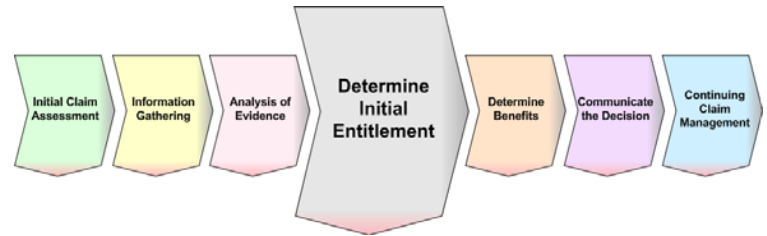
- Burden of proof applies
- Information gathered from workers, employers, co-workers for:
  - Employment and exposure history
  - Details of all current medical attention and treatment
  - Prior medical history relevant to condition claimed
  - Non-occupational factors known as potential causes of the disease
- Information gathering matrices for some diseases



## **Step 3: Analysis of Evidence**

The Claims Adjudicator:

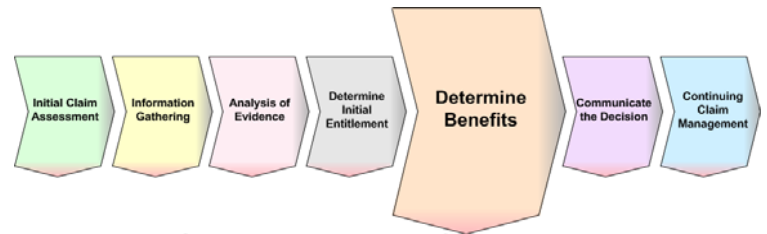
- Will do an adjudicative analysis of all evidence gathered
- Will confirm occupational exposures identified from the analysis
- Will gather opinions of the sector team and ODPR along with the facts of the claim form part of the overall evidence available to the adjudicator



## **Step 4: Determine Initial Entitlement**

The Claims Adjudicator:

- Always applies the Causation Test and Standard of Proof to their conclusion on the analysis of evidence (exceptions for Schedule 3 & 4)
- Determines when it is more likely than not that work significantly contributed to the medical condition
- May apply Benefit of Doubt if their conclusion on the analysis of evidence is approximately equal



## **Step 5: Determination of Benefits**

The Claims Adjudicator determines benefit entitlement:

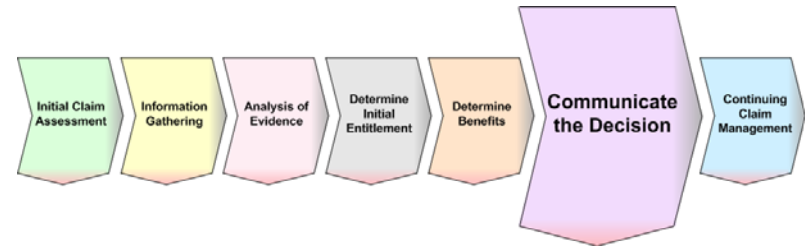
- Determine date of accident
- Loss of Earnings – LOE (Total Temporary (TT) / Future Economic Loss (FEL)
- Non-Economic Loss – NEL (Permanent Disability – PD)
- Early & Safe Return to Work (ESRTW)/Labour Market Re-entry (LMR)
- Survivor Benefits

# **Step 5: Determination of Benefits (continued)**

**The Claims Adjudicator may consult with the  
Occupational Medicine Consultant on:**

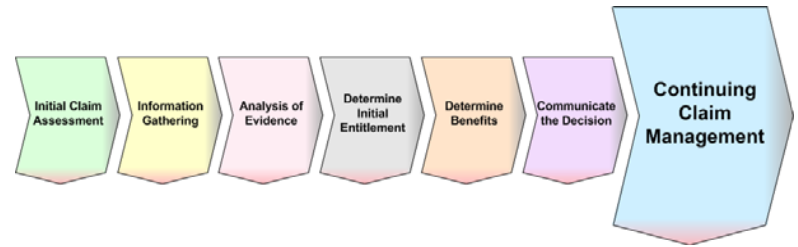
- Maximum medical recovery (MMR)**
- Permanent Impairment (PI)**





## **Step 6: Communication of the Decision**

- **The Claims Adjudicator is responsible for formally communicating entitlement decisions and articulating ODAP principles**
- **Letter templates, criteria paragraphs were revised and updated and are currently in use**



## **Step 7: Continuing Claim Management**

- The Claims Adjudicator monitors the claim for:
  - Benefits
  - Services (ESRTW & LMR)
  - Medical condition/treatment
- The Claims Adjudicator may seek OMC's clinical advice on:
  - Medical treatment
  - MMR
  - Evidence of permanent impairment

# **Step 7: Continuing Claim Management (continued)**

- **Advanced Practice Nurse Case Managers (APNCM) are also integral to this process**

# **Documents available on the WSIB website**

**([www.wsib.on.ca](http://www.wsib.on.ca))**

Refer to the Health Care Practitioners page for:

- **Background Memorandum on Occupational Disease Issues**
- **History of the Occupational Disease Advisory Panel**
- **Chair's Response to 2004 Public Consultation**
- **Final Report of the Chair of ODAP**
- **Final Report of the Chair: Executive Summary**
- **A Protocol for OD Policy Development & Claims Adjudication (Draft)**

**QUESTIONS???**