

MARS Review Summary (see item 13 from 2019 minutes below for reference)

Jurisdiction	Mars-Is Reimbursement applicable?	<p>Review – as of May 1, 2021</p> <p>Yes – NFLD; NS; NB; PEI; MB; AB; BC; YK</p>
NFLD	yes	<p>We agree with the interpretation as discussed by Paula and Bill.</p> <p>Becky</p>
NS	yes	<p>Working on the premise that these are the most recent MARS Agreement and Guidelines, NS has the following response:</p> <p>Section 6.1 (k) of the 2019 Guidelines allows for an election and says that the “Administering” Board pays the costs.</p> <p>6.1(k) While on assignment pursuant to the MARS Agreement, personnel injured in a province or territory in which they are not resident are entitled to workers' compensation benefits in accordance with the applicable workers' compensation legislation. Injured personnel may have the right to claim compensation in their home jurisdiction or the jurisdiction in which they are injured. In such an event, they may make a claim to the workers' compensation agency of one or the other but not both. The costs of the claim will be paid by the workers' compensation agency administering the claim.</p> <p>Although personnel are covered by their home agency WCB, they are still required to abide by the WCB requirements within the jurisdiction of the assignment.</p> <p>Section 10 of the 2016 MARS agreement says that the “receiving” jurisdiction pays the claim. The receiving jurisdiction is the one that asked for the help.</p> <p>10.01 Upon request, any Party providing Resources pursuant to this Agreement shall be reimbursed by the Receiving party for the cost of payment of compensation and death benefits distributed to injured employees and the dependents or representatives of deceased employees in the event such employees sustain injury or are killed while rendering aid pursuant to this Agreement, and such payments shall be made in the manner and on the same terms as if the injury or death sustained were in the regular course of employment.</p> <p>So... is there an inconsistency <u>or</u> can these be read together?</p>

		<p>My thoughts:</p> <p>(1) Sections can be read together if you interpret the Guidelines to mean that the Board where the election is made pays the costs of the claim i.e. pays the worker and <u>then</u> under s. 10 of the MARS, if that is not the receiving Board, it can get the costs back from the Receiving Board who is ultimately liable for the claims costs.</p> <p>(2) Furthermore, the last section in the agreement stipulates that in case of a conflict between the agreement and implementation guideline, the agreement would prevail:</p> <p style="text-align: center;">19.01 In the case of a conflict between this Agreement and the Implementation Guidelines this Agreement shall prevail</p>
PEI	yes	PEI is in agreement with the same views as Bill and Paula.
NB	yes	NB is in agreement with AB, NS
QC		No response
ONT		This has been referred to our legal department for review
MAN	yes	<p>I agree with Paula and Bill.</p> <p>It makes sense that the MARS Guideline ss.6.1(k) stipulates "<i>The costs of the claim will be paid by the workers' compensation agency administering the claim.</i>" because only the WCB administering the claim can pay such compensation under its respective legislation. The MARS reimbursement process is separate and apart from the worker's election with a WCB (just like it is under the IJA - the IJA cannot give a worker a legal right of election for benefits with a WCB- the right of election can only be found in the respective legislation of the WCB the worker seeks to claim benefits with).</p> <p>The MARS reimbursement process is separate from the IJA reimbursement process. Under MARS, Jurisdiction B (the Receiving party) requests assistance from Jurisdiction A (the Lending party) before the Lending party sends its Resources. Accordingly, the Receiving party has a contractual obligation to reimburse under MARS s.10.01 "... <i>shall be reimbursed by the Receiving party for the cost of payment of compensation and death benefits distributed to injured workers ...</i>". There is also a common law duty to act in good faith and reimburse the Lending party if it asks for reimbursement of compensation and death benefits under MARS section 10.01. The Receiving party cannot attempt to rely on the principle of "a substantial connection of the employer" which was created for the IJA process as a shield to deny reimbursement under the MARS process.</p>

		<p>It is not logical to try to rely on the MARS Guideline being silent (not specifically stating there is a right of reimbursement after the claim has been administered/paid to the worker) because why else would the MARS agreement s.10.01 specifically list "compensation and death benefits"?</p> <p>Glenn N. Jones, Legal Counsel</p>
SASK		No response
AB	yes	<p>Hi Paula.</p> <p>I don't think that there is an inconsistency between the two provisions, at least as I understand them. One section talks about who pays the claim, that is the workers' compensation authority in the jurisdiction where the claim is filed. The other section talks about reimbursement of claim costs, which is to be by the "receiving jurisdiction". So the jurisdiction receiving the claim pays that claim and, if it isn't the receiving jurisdiction, is then entitled to be reimbursed for claim costs by the receiving jurisdiction.</p> <p>William P. Ostapek, Q.C.</p>
BC	yes	<p>I am in agreement with the others.</p> <p>This is from the IJ Cost Reimbursement Best Practices: Section 6.1 of the Implementation Guidelines includes the following information:</p> <p>Section 6.1 Personnel Information</p> <p><i>"While on assignment pursuant to the MARS Agreement, personnel injured in a province or territory in which they are not resident are entitled to workers' compensation benefits in accordance with the applicable workers' compensation legislation. Injured personnel may have the right to claim compensation in their home jurisdiction or the jurisdiction in which they are injured. In such event, they may make a claim to the workers' compensation agency of one or the other but not both. The costs of the claim will be paid by the workers' compensation agency administering the claim. Although personnel are covered by their home agency WCB, they are still required to abide by the WCB requirements with-in the assignment jurisdiction."</i></p> <p>*Although the MARS agreement contains basic IJA principals, it is silent on issues of reimbursement between jurisdictions.</p> <p>This is from the MARS Agreement:</p>

		<p>Section 10 of the 2016 MARS agreement says that the “receiving” jurisdiction pays the claim. The receiving jurisdiction is the one that asked for the help.</p> <p>10.01 Upon request, any Party providing Resources pursuant to this Agreement shall be reimbursed by the Receiving party for the cost of payment of compensation and death benefits distributed to injured employees and the dependents or representatives of deceased employees in the event such employees sustain injury or are killed while rendering aid pursuant to this Agreement, and such payments shall be made in the manner and on the same terms as if the injury or death sustained were in the regular course of employment.</p> <p>The IJ Cost Reimbursement Best Practice document talks about the cost which is clear. The jurisdiction that administers the claim (The jurisdiction where the worker elects) is responsible for the costs.</p> <p>The MARS agreement talks about reimbursement which is clear. The receiving party (Jurisdiction where the worker went to help and subsequently was injured in) is supposed to reimburse the lending party.</p>
YK	yes	In regards to question #1- reimbursement should be made by the receiving jurisdiction
NWT/NT		No response

See item 13 of 2019 minutes

Scenario	Question and answers
<p>Worker is a firefighter and resident of Jurisdiction A, paid by Jurisdiction A employer. Worker goes to Jurisdiction B to assist in fighting their fire (under MARS). Worker is injured in Jurisdiction B. Under MARS, worker can elect in either home jurisdiction (A) or jurisdiction of injury (B). Worker elects in Jurisdiction A. Jurisdiction A requests reimbursement from Jurisdiction B (province of injury) under the IJA. Jurisdiction B denies reimbursement indicating that the worker does not have a substantial connection of employment to their province based on their policies. Jurisdiction B also indicates that the employer (worker is paid by employer from Jurisdiction A) does not have an account nor required to, therefore reimbursement is not possible.</p> <p>MARS agreement</p>	<p>Is it appropriate for Jurisdiction B to deny reimbursement based on their policy of “no substantial connection to employment” in their jurisdiction? No, Jurisdiction B should not deny reimbursement based on there being “no substantial connection to employment” in their jurisdiction, as this is contrary to the intended purpose of the MARS agreement to share resources and recognize the right of workers to</p>

Nov 6, 2020 - Nova Scotia - I was looking at the MARS question in the 2019 agenda/minutes below which references the “Personnel Information of the Implementation Guidelines of the MARS Agreement ” and our uncertainty/lack of consensus as to what was intended by s. 6: “the costs of the claim will be paid by the worker’s compensation agency administering the claim”.

So I had a look at the MARS Agreement that I located online. On the assumption that I have the correct agreement (dated Sept 14, 1983) between the Gov’t of Canada, the Provinces and Canadian Interagency Forest Fire Centre, I draw your attention to **section 8.01**.

It says:

Any party providing Resources pursuant to this Agreement shall be reimbursed by the receiving Party, the cost of payment of compensation and death benefits distributed to the injured employees and the dependents or representatives of deceased employees in the event such employees sustain injuries or are killed while rendering aid pursuant to this Agreement, and such payments shall be made in the manner and on the same terms as if the injury or death sustained were in the regular course of employment.

My questions are:

1. Does anyone know if this is the correct Agreement or if there have been any amendments?
2. If it is the most recent agreement, does s. 8.01 answer the question that was raised at the 2019 meeting?

“10.01 Upon request, any Party providing Resources pursuant to this Agreement shall be reimbursed by the Receiving party for the cost of payment of compensation and death benefits distributed to injured employees and the dependents or representatives

elect in their home jurisdiction or the jurisdiction of injury.

- Does it matter that the employer paying the firefighter from Jurisdiction A does not have an account in Jurisdiction B? No, although Jurisdiction B does not have an account other jurisdictions have confirmed that they have established the account with their own provincial ministries who handle firefighters to eliminate this issue.
- Since Jurisdiction B denied reimbursement based on “having no substantial connection to employment” in their jurisdiction and having no valid account, are they then implying that the worker could not elect in their jurisdiction? If so, is this approach not in conflict with the MARS agreement? Yes, with Jurisdiction B denying reimbursement on having “no substantial connection to employment” and thus, having no valid account in their province, they are suggesting that the worker would not be able to elect in their home jurisdiction. Yes, this approach is in conflict with the MARS agreement which recognizes that workers should have the right of election with their home jurisdiction or the jurisdiction of injury.
- Is reimbursement applicable? **Pending. The appropriateness of reimbursement seemed to require further discussion with the designated**

of deceased employees in the event such employees sustain injury or are killed while rendering aid pursuant to this Agreement, and such payments shall be made in the manner and on the same terms as if the injury or death sustained were in the regular course of employment.”

November 13, 2020 - Response – NWT - The 2016 agreement was amended but the former 8.01 was retained in 2016 see the clause 10.01 remained as below. The newer amendments post 2016 MARS that was reviewed afterwards (I believe in 2018) addressed where an injured worker would make his or her claim. The amendment clarified that an injured worker on assignment out of province would make his or claim in the home jurisdiction.

“10.01 Upon request, any Party providing Resources pursuant to this Agreement shall be reimbursed by the Receiving party for the cost of payment of compensation and death benefits distributed to injured employees and the dependents or representatives of deceased employees in the event such employees sustain injury or are killed while rendering aid pursuant to this Agreement, and such payments shall be made in the manner and on the same terms as if the injury or death sustained were in the regular course of employment.”

I asked a colleague I worked with on this to forward the agreement – may get it next week. For now – 2016 is pretty much in tact.

members of each jurisdiction. There was a lot of discussion as to the intended meaning of Section 6.1 Personnel Information of the Implementation Guidelines of the MARS Agreement, which states in part: “The costs of the claim will be paid by the workers’ compensation agency administering the claim.” The majority of jurisdictions recognized that the MARS agreement was silent on issues of reimbursement and this portion simply identified who should be paying the injured worker and not, specific to which jurisdiction should remain with the costs of the claim. It seemed contrary to the intent of the rest of the agreement which was about “mutual sharing of resources.” As a result, it was agreed that all committee members would return to their jurisdictions and discuss specifically with the designated staff responsible and return with a response for their jurisdiction by July 30, 2019.