



PRELIMINARY COST IMPACT ANALYSIS

ANALYSIS OF CONNECTICUT SUPREME COURT DECISION IN *GARDNER V. DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES*

Issued on March 18, 2025

The Connecticut Supreme Court (“court”) decision in *Gardner v. Department of Mental Health and Addiction Services (Gardner)*, issued on March 18, 2025, held that an administrative law judge (ALJ) with the Workers Compensation Commission has the discretion to award ongoing temporary partial disability¹ (TPD) benefits, up to the statutory maximum of 520 weeks, to a claimant who has reached maximum medical improvement (MMI) and is therefore eligible to receive permanent partial disability (PPD) benefits, in lieu of converting the benefits to permanent partial disability. While NCCI is unable to determine the precise magnitude of impact, NCCI anticipates the decision will lead to upward pressure, potentially resulting in a significant increase² in overall Workers Compensation (WC) system costs in Connecticut.

To demonstrate the potential impacts the *Gardner* decision could have on WC system costs in Connecticut, NCCI has compiled several illustrative scenarios. These impacts would depend, in large part, on several factors:

- The frequency with which the ALJs in the state award ongoing TPD benefits at MMI
- The number of additional weeks of TPD benefits that are awarded
- The extent to which PPD benefits are still awarded in such cases, and whether PPD benefits would be reduced or otherwise impacted by the amount of extended TPD
- Behavioral changes by claimants and other participants in the system

The analysis of this court decision is prospective only. However, the *Gardner* decision may also impact existing claims that are open or eligible for reopening. Therefore, an unfunded liability may exist due to the potential for retroactive implications related to additional costs for such claims that were not contemplated in the premiums charged for policies written prior to this court decision.

This analysis was completed in an expedited manner and is considered preliminary. NCCI may supplement this document with a complete and final analysis of the court decision at a later date. It is possible that the estimated impact of the final analysis will differ materially from what is provided in this document. Note that the absence of an update to the preliminary analysis does not signify that this is NCCI’s final assessment of the cost impact of the court decision.

¹ Also referred to as partial incapacity benefits.

² Significant is defined in this context to be an impact on overall system costs of greater than +5.0%.



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Summary of the *Gardner* Decision

Currently in Connecticut, weekly TPD benefits are equal to 75% of the difference between the injured worker's pre-injury and post-injury average weekly wage (AWW) after such wages are reduced by federal or state taxes. However, in some cases³, the injured worker shall be paid his or her full weekly compensation subject to the maximum⁴ up to 520 weeks. Injured workers who qualify for PPD receive an impairment rating once MMI is reached. Weekly PPD benefits are equal to 75% of the AWW reduced by federal or state taxes, paid according to a schedule, as shown in § 31-308(b).

The *Gardner* decision, issued on March 18, 2025, held that § 31-308(b) of the Connecticut Workers Compensation Act, "...gives an administrative law judge the discretion to award a claimant, after he or she reaches maximum medical improvement, ongoing temporary incapacity benefits under § 31-308(a) in lieu of permanent partial disability benefits under § 31-308(b), up to the statutory maximum of 520 weeks."

Actuarial Analysis of the Impact of the *Gardner* Decision

As a result of the *Gardner* decision, the ALJ has the discretion to award ongoing TPD benefits, extending for up to 520 weeks, and is not required to convert the award to PPD benefits once an injured worker has reached MMI. However, it is unknown how often such a request would be made to extend TPD benefits after MMI, how often an ALJ would extend TPD benefits in such cases, or how many additional weeks of TPD benefits would be awarded.

Using historical claims from Accident Years 2020 and 2021 in Connecticut, NCCI quantified the impact to such claims if their existing TPD benefits continued for varying amounts of time beyond MMI in lieu of their existing PPD award. Based on this analysis, NCCI is providing the following illustrative scenarios which demonstrate the potential impacts the *Gardner* decision may have on overall WC system costs in Connecticut. The impacts in these scenarios are based on varying the number of weeks the ALJ could extend TPD benefits, as well as the frequency with which an ALJ may award additional benefits. For the purposes of this analysis, NCCI assumed no change in benefits in instances where the overall PPD benefit was greater than the benefit of extending TPD benefits.

The figures in Table 1 are illustrative examples of impacts where claimants are awarded extended TPD benefits under various scenarios and/or timeframes. These estimates assume that PPD benefits would be replaced by extended TPD benefits in most instances but does not consider the frequency of such benefits being requested and/or awarded.

³ Including: i.) a physician certifies the employee is unable to perform his work but is able to perform other work; ii.) the employee is ready and willing to perform other work in the same locality, and iii.) no work is available.

⁴ 100% of the State Average Weekly Wage. Effective October 1, 2024, the maximum is \$1654.



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Table 1 – Illustrative Scenarios with Varying Number of Additional Weeks Awarded

Additional Weeks Awarded:	(1) Maximum 520 Weeks	(2) 260 Weeks	(3) Weeks Equal to PPD Duration⁵
(A) Impact on TPD/PPD Costs ⁶	+265%	+94%	+60%
(B) TPD/PPD Share of Indemnity Costs ⁷		26%	
(C) Impact on Indemnity Costs = (A) x (B)	+70%	+25%	+16%
(D) Indemnity Share of Overall Costs ⁸		59%	
(E) Impact on Overall WC System Costs = (C) x (D)	+41%	+15%	+9%

The figures in Table 2 are illustrative impacts varying the frequency of awarded extended TPD benefits, applied to the estimated impacts in Table 1.

Table 2 – Varying Rate of Frequency Additional Weeks Are Awarded – Overall Impacts⁹

Frequency	(1) Maximum 520 Weeks	(3) Additional 260 Weeks	(5) Additional # of Weeks Equal to PPD Duration⁵⁵
10%	+4%	+1%	+1%
25%	+10%	+4%	+2%
50%	+21%	+7%	+5%
75%	+31%	+11%	+7%
90%	+37%	+13%	+8%

As illustrated in the tables above, the overall increase on WC system costs as a result of the *Gardner* decision largely depends on both the number of weeks of additional benefits awarded, as well as the frequency with which an ALJ awards additional benefits. For example, in the case of a partial loss of use of the arm¹⁰, where the employee has a 20% impairment rating, that employee would currently be entitled to receive scheduled PPD benefits of 42 weeks (=208 weeks x 20%) after reaching MMI. Under the

⁵ This scenario assumes that an ALJ would award the same number of weeks of TPD benefits that the injured worker would have received under the PPD schedule in § 31-308(b).

⁶ Based on NCCI Indemnity Data Call data for Accident Years 2020 and 2021.

⁷ The number of claims with both a TPD and PPD component based on NCCI Indemnity Data Call data for Accident Years 2020 and 2021.

⁸ Based on unlimited developed, on-leveled, and trended Financial Call data underlying the NCCI experience filing for Connecticut, effective January 1, 2025.

⁹ The overall impacts in this table are equal to the overall impacts shown in Table 1 (E) multiplied by the rate of frequency an ALJ may award additional weeks of benefits.

¹⁰ According to the schedule in § 31-308(b), the total loss of use of the arm is entitled to 208 weeks of PPD benefits.



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Gardner decision, if the employee reached MMI after 100 weeks, the ALJ may award an extension of TPD benefits in lieu of PPD benefits for up to a total of 420 additional weeks ($=520 - 100$). In this specific example, the *Gardner* decision could increase the total duration of benefits paid by up to 378 weeks ($=420 - 42$). The overall impacts would be case-specific and depend on the injured worker's wage loss pre- and post-injury. An injured employee that returns to work at less than their pre-injury wage (for example, at a light duty position) or an injured employee that is unable to return to previous employment may be more likely to receive an extension of TPD benefits at a higher rate of frequency than an injured worker that is able to return to work close to their pre-injury wage.

NCCI is unclear as to whether an injured worker who is awarded ongoing TPD benefits by an ALJ would still be entitled to PPD benefits under the schedule set forth in § 31-308(b) after the award of TPD benefits concludes. **To the extent that an ALJ awards PPD benefits after the conclusion of TPD benefits, the overall impacts listed in the above illustrative scenarios could be up to 5% higher on overall WC system costs.¹¹**

Other Considerations

- The possible scenarios in this analysis demonstrate the potential estimated direct impacts the additional weeks of TPD benefits could have on overall system costs. However, studies¹² indicate that significant benefit increases are typically accompanied by changes in claimant behavior, known as utilization, often resulting in increased claim filings and an increase in the associated indemnity benefits. To the extent that the *Gardner* decision results in an increase in the impact of utilization for injured employees (e.g., if claimants with only a PPD component are incentivized to seek "light duty" rather than returning to work at their pre-injury wage), the actual impacts on overall WC system costs in Connecticut may be greater.
- It is unclear whether settlement activity would be impacted by the *Gardner* decision. To the extent that claimants and/or carriers are incentivized to settle claims earlier on in the claims handling process or that such settlements would be higher to include for the potential of additional weeks of TPD benefits that the injured worker could be awarded, the overall impacts included in this analysis could differ materially.

¹¹ If PPD benefits are awarded in addition to TPD benefits, but reduced by the amount of extended TPD benefits already received, this impact may be lower

¹² For example: Robert Moss, Ashley Pistole, and Bruce Ritter. "Impact on Utilization From an Increase in Workers Compensation Indemnity Benefits" (National Council on Compensation Insurance, 2009). This study focused on temporary total disability benefits and found that for each \$1.00 of direct benefit increase, there is an added \$0.54 average cost due to increased benefit utilization.



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- Currently in Connecticut, an ALJ may award discretionary wage loss benefits for injuries resulting in PPD per §31-308a. However, these discretionary benefits are only “after such payments provided by said section 31-308 have been paid for the period set forth in said section”. It is unclear if the *Gardner* decision would impact the way that these discretionary benefits are awarded.
- As a result of the *Gardner* decision, there exists the potential for increased loss adjustment expenses and other frictional costs to the system if the decision results in an increase in appeals, hearings, litigation, and attorney involvement. Such costs could result in additional upward pressure on system costs in Connecticut.

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