

**RECOMMENDATION FOLLOWING AN APPLICATION FOR REVIEW OF
THE INSURER'S WORK CAPACITY DECISION PURSUANT TO SECTION
44(1)(c) OF THE *WORKERS COMPENSATION ACT 1987*.**

SUMMARY:

a. The application for procedural review is dismissed.

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 30 September 2014. The insurer advised the applicant that his weekly payments of compensation would cease on 13 January 2015. The applicant sought internal review of the decision on 15 February 2015 and the Internal Review Decision dated 3 March 2015 confirmed the original work capacity decision.
2. The applicant then sought Merit Review from the Authority on 24 March 2015 and they delivered a recommendation dated 4 May 2015 finding that pursuant to Section 38(3) of the *Workers Compensation Act 1987* (the 1987 Act) the applicant was not entitled to weekly payments of compensation.
3. The applicant applied to this office for procedural review by way of application dated 12 May 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
4. On 8 February 2012 the applicant suffered traumatic brain injury in the course of his employment as a carpenter. He left his employment and started working in his own name, but later reduced his hours of working due to the intervening event of a family member requiring care, which the applicant now provides.

5. The work capacity decision states that the applicant was an existing recipient of weekly payments of compensation immediately before 1 October 2012 and this issue is not disputed.
6. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the *WorkCover Work Capacity Guidelines* (Guidelines).
7. The relevant version of the Guidelines came into effect on 11 October 2013.

Submissions by the applicant

8. Section 44(1)(c) of the 1987 Act states that this review is “*only of the insurer’s procedures in making the work capacity decision and not of any judgment or discretion exercised by the insurer.*” The applicant has requested a procedural review.
9. The applicant makes the following two pleas:
 - Due to personal commitments as a family carer he cannot work more than 20-25 hours per week, despite being certified as capable of working 35-40 hours per week.
 - If the decision of the Insurer could be amended to allow ongoing payments, this would be “appreciated.”
10. As stated above Section 44(1)(c) of the 1987 Act only allows me to review the procedure followed by the insurer in making the work capacity decision. The applicant’s submissions above are not relevant to procedural review.

Submissions by the Insurer

11. The Insurer has made submissions in response to this application as follows:



- Given that his medical certification for work capacity is for 35-40 hours per week, then while it is unfortunate that his family situation requires him to work fewer hours than he could otherwise do, the capacity of the applicant to perform work has in no way diminished and the Act requires an assessment of his work capacity, not his family situation.
- The applicant does not meet the requirements of section 38(3).

The Decision

12. The decision of the Insurer dated 30 September 2014 has displayed a careful consideration of the requirements of the Guidelines and the legislation. The worker was provided with a full and accurate description of the entitlement periods, the operation of section 38, the calculation of PIAWE, the applicability and operation of section 59A(2) and (3) and was given appropriate notice under section 54(2)(a).

Finding

13. There are no procedural errors identifiable in the decision. The insurer has complied with the Guidelines and relevant legislation.

RECOMMENDATION

14. The application for procedural review is dismissed.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
25 June 2015