

**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 9 February 2015. The insurer advised the applicant that his weekly payments of compensation would cease on 15 May 2015. The applicant sought internal review on 3 March 2015 and the Internal Review Decision was dated 24 March 2015 confirming the cessation of the applicant's weekly compensation payments.
2. The applicant then sought Merit Review from the Authority. However the applicant did not make the application in the form approved by the Authority which was the "*Work capacity – application for merit review by the Authority*" form. Instead the applicant made an application using the "*Work capacity – application for internal review by insurer*" form.
3. By way of letter dated 19 May 2015 the Authority advised the applicant that as he had not made the application for merit review using the correct form "*the Authority does not have jurisdiction to conduct a review of the insurer's work capacity decision pursuant to Section 44(2) of the 1987 Act.*"
4. The applicant then made application for procedural review to this office on 27 May 2015. I am satisfied the applicant has made the application within time and using the correct form.

The Decision

5. Section 44 of the *Workers Compensation Act 1987* (the 1987 Act) regulates the review of work capacity decisions. Section 44(1)(c) stipulates that I can review the insurer's procedures in making the work capacity decision but not until **the dispute has been the subject of internal review by the insurer and merit review by the Authority.**
6. Section 44(1) of the 1987 states:
 - (1) *An injured worker may refer a work capacity decision of an insurer for review:*
 - (a) *by the insurer (an "internal review") in accordance with the WorkCover Guidelines within 30 days after an application for internal review is made by the worker, or*
 - (b) *by the Authority (as a merit review of the decision), but not until the dispute has been the subject of internal review by the insurer, or*
 - (c) ***to the Independent Review Officer (as a review only of the insurer's procedures in making the work capacity decision and not of any judgment or discretion exercised by the insurer in making the decision), but not until the dispute has been the subject of internal review by the insurer and merit review by the Authority.***
7. The Authority declined to review the work capacity decision as it did not have jurisdiction to conduct the review pursuant to Section 44(2) of the 1987 Act.
8. Therefore, as the Authority has not conducted a review of the decision I am unable to conduct a review as a result of section 44(1)(c) of the 1987 Act.

Finding



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9. Procedural review cannot occur as the preceding step required by Section 44(1)(c) (being that the work capacity decision must be subject of internal review by the insurer **AND** merit review by the Authority) has not been complied with.

Recommendation

10. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the WorkCover Independent Review Officer
26 June 2015