



RECOMMENDATION FOLLOWING AN APPLICATION FOR REVIEW OF THE INSURER'S WORK CAPACITY DECISION PURSUANT TO SECTION 44BB(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 1 July 2015. The decision informed the applicant that her weekly payments of compensation would be reduced to \$147.57 per week from 8 October 2015. The applicant sought internal review on 10 August 2015 and the Internal Review Decision was dated 9 September 2015. That decision confirmed the original work capacity decision.
2. The applicant applied to the Authority for Merit Review on 8 October 2015 and they delivered findings and recommendations dated 6 November 2015. The Authority made a finding that the applicant did meet the special requirements under Section 38(3) of the *Workers Compensation Act 1987* (1987 Act) and ongoing weekly payments were to be calculated using Section 38(7) of the 1987 Act.
3. The applicant then made application to this office dated 4 December 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
4. The applicant had previously sought procedural review of a work capacity decision dated 26 March 2013. The applicant was successful and the work capacity decision was set aside by an earlier recommendation of this office¹.
5. The facts and circumstances concerning the background of this claim are set out in the aforementioned recommendation and need not be repeated.

¹ Reported and numbered as 713



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).

Submissions by the applicant

7. Section 44BB(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 applied for a procedural review.
8. The applicant has made a submission that the Insurer has failed to advise that any document not already provided can be provided on request to the Insurer. I note that in this particular instance the Insurer has not terminated the applicant’s weekly payments and therefore the applicant’s case file will remain open and the applicant’s access to her file / documents remains ongoing.

Submissions by the Insurer

9. The Insurer has not provided submissions in response to this application.

The Decision

10. The relevant Guidelines were dated 4 October 2013 and came into effect on 11 October 2013.
11. Guideline 5.3.2 requires the Insurer to advise the date when the decision takes effect. Section 54(2)(a) of the 1987 Act requires at least three months and four working days notice be given if payments are being reduced or ceased. As a result the applicant was advised that her payments would be reduced from 8 October 2015. This is the required notice period.
12. The same Guideline requires the Insurer to explain the relevant entitlement periods. The Insurer informed the applicant that she has received 636 weeks of compensation payments and therefore any ongoing entitlement is subject to Section 38 of the 1987 Act.



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13. The Insurer noted in the work capacity decision that the applicant had returned to work and in accordance with Section 43(1)(c) the applicant was earning \$640.75 per week in suitable employment.
14. At page 2 of the work capacity decision the Insurer has shown the formula used to calculate the applicant's ongoing entitlement in accordance with Section 38 of the 1987 Act.
15. As the applicant remains in receipt of weekly payments of compensation the applicant's entitlement to medical and related treatment expenses has not changed and it is not incumbent upon the Insurer to provide any further information in this regard. However on this occasion the Insurer has correctly informed the applicant to continue to submit medical and related treatment expenses for pre-approval.
16. In this instance the applicant's payments have been reduced and not terminated. The decision of the Insurer has displayed an adequate consideration of the requirements of the Guidelines and legislation.

Finding

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

RECOMMENDATION

18. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
5 January 2016