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**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.**
- b. The applicant is to be reinstated to her weekly payments at the rate applicable prior to 10 August 2015.**
- c. The payments are to be back-dated to 10 August 2015 in accordance with clause 30 Schedule 8 of the *Workers Compensation Regulation 2010*.**
- d. Such payments are to continue until the receipt of this recommendation.**

**Introduction and background**

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 1 May 2015. The insurer advised the applicant that her weekly payments of compensation would cease on 10 August 2015. The applicant sought internal review of the decision on 11 May 2015 and the Internal Review Decision was dated 9 June 2015. That decision confirmed the work capacity decision.
2. The applicant then sought Merit Review from the Authority on 16 June 2015 and they delivered recommendations dated 16 July 2015 finding that the applicant did not satisfy the special requirements in Section 38 of the *Workers Compensation Act 1987* (the 1987 Act) to be entitled to ongoing weekly payments of compensation.
3. The applicant applied to this office for procedural review by way of application dated 24 July 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.



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4. The above sequence of events was preceded in time by an earlier work capacity decision which was overturned by this office on procedural grounds.<sup>1</sup> In that earlier decision the insurer had failed to advise the applicant of the actual date of cessation of payments and had not fully explained the effect of section 59A. The subsequent decision dated 1 May 2015 does not suffer the same deficiencies.

### **Submissions by the applicant**

5. 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.

### **Submissions by the Insurer**

6. The Insurer did not make submissions in response to this application.

### **The Decision**

7. Pursuant to Guideline 5.3.2 the insurer has informed the applicant that a work capacity assessment commenced on 11 March 2015 and concluded on 1 May 2015. The applicant was advised of the work capacity decision arising out of that assessment by letter dated 1 May 2015. The Insurer has complied thereby with the Guideline.
8. The same Guideline 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 having regard to Section 76(1)(b) of the *Interpretation Act 1987*. In this decision the Insurer has referenced and explained both sections of each piece of legislation. As a result the applicant was advised that her payments would cease on 10 August 2015. This is in excess of the minimum notice period. The Insurer has thereby complied with the legislation and the Guidelines.

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<sup>1</sup> See WIRO recommendation 23714 (i.e. 237 of 2014).



9. Guideline 5.3.2 also requires the insurer to advise the applicant of the impact the decision has on her entitlement to medical and related treatment expenses. At page 12 of the decision the insurer informed the applicant that in accordance with Section 59A(2) of the 1987 Act her entitlement to medical and related treatment expenses will cease 12 months after her entitlement to weekly payments cease. The insurer specified the date the applicant's entitlement to medical expenses will cease as 10 August 2016. The insurer further advised that should the applicant again become entitled to weekly payments of compensation she may be entitled to payment of medical and related treatment expenses under Section 59A(3) of the 1987 Act, but only for as long as she is also entitled to receive weekly payments. This is correct.
10. There were no other errors to be rectified and the Insurer has properly addressed the issues previously identified in the course of procedural review.
11. The decision of the Insurer dated 1 May 2015 has displayed a careful consideration of the requirements of the Guidelines and the legislation.

### **Finding**

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

### **The Stay**

13. Clause 30 Schedule 8 of the *Workers Compensation Regulation 2010* operates to stay the work capacity decision the subject of the review and prevents the taking of action by an insurer based on the decision while the decision is stayed. Since payments were due to be stopped on 10 August 2015, the stay should operate from that date until receipt of this recommendation

### **RECOMMENDATION**

14. The application for procedural review is dismissed.



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15. The applicant is to be reinstated to her weekly payments at the rate applicable prior to 10 August 2015.
16. The payments are to be back-dated to 10 August 2015 in accordance with clause 30 Schedule 8 of the *Workers Compensation Regulation* 2010.
17. Such payments are to continue until the receipt of this recommendation.

Wayne Cooper  
Delegate of the Workers Compensation  
Independent Review Officer  
4 September 2015