



**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 31 March 2015. The decision informed the applicant that her weekly payments of compensation would cease on 8 July 2015. The applicant sought internal review on 21 April 2015 and the Internal Review Decision was dated 14 May 2015. That decision confirmed the original work capacity decision.
2. The applicant applied to the Authority for Merit Review on 5 June 2015 and they delivered findings and recommendations dated 8 July 2015. The Authority made a finding that the applicant satisfied the special requirement for continuation of weekly payments and pursuant to Section 38 of the Workers Compensation Act 1987 (the 1987 Act) the applicant is entitled to compensation payments at the rate of \$788.32 per week.
3. The applicant then made application to this office dated 7 August 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 29 August 2014. 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 2115



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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 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 applied for a procedural review.
8. The applicant has made a submission that she is entitled to the amount of weekly compensation calculated in the Recommendations and Findings of the WorkCover NSW Merit Review Service from 1 January 2013.
9. The submission made by the applicant is not relevant to procedural review.

Submissions by the Insurer

10. The Insurer has provided submissions dated 12 August 2015 in response to the application. The insurer submitted that the submission by the applicant is not relevant to procedural review. It is also submitted by the insurer it has paid the applicant the appropriate amounts of weekly compensation throughout the relevant periods.
11. The insurer completed a further work capacity decision dated 22 July 2015 in accordance with the Recommendations and Findings of WorkCover NSW Merit Review Service of 8 July 2015. The applicant has not requested an internal review or merit review of that decision.

The Decision



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12. The applicant is seeking a review of a work capacity decision dated 31 March 2015. This decision has been replaced by a subsequent work capacity decision dated 22 July 2015. That work capacity decision was that the applicant is entitled to ongoing weekly payments of compensation at the rate of \$788.32 per week. The applicant has not requested a review of this most recent work capacity decision.
13. As stated above at paragraph 9 the applicant's submission in respect of a procedural review of the work capacity decision dated 31 March 2015 is not relevant. The insurer has submitted that the applicant has been paid weekly payments of compensation at the appropriate rates for the relevant periods. This issue is not one which can be addressed at procedural review.
14. The insurer submitted that the present status of the applicant's claim is that she is in receipt of an *ongoing entitlement* of \$788.32 per week which is the same as the rate payable prior to the decision of 31 March 2015.

RECOMMENDATION

15. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
8 September 2015