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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 his weekly payments at the rate applicable prior to 29 June 2015.**
- c. The payments are to be back-dated from 29 June 2015 in accordance with clause 30 Schedule 8 to 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 20 March 2015. The decision informed the applicant that his weekly payments of compensation would cease on 29 June 2015. The applicant sought internal review on 20 April 2015 and the Internal Review Decision was dated 20 May 2015. That decision confirmed the original work capacity decision.
2. The applicant applied to the Authority for Merit Review on 15 June 2015 and they delivered findings and recommendations dated 15 July 2015. The Authority made a finding that the applicant did not meet the special requirements under Section 38(3) of the *Workers Compensation Act 1987* ("the 1987 Act").
3. The applicant then made application to this office dated 17 August 2015.



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4. Section 44(3) of the 1987 Act states that the following provision applies to the review of a work capacity decision when the reviewer is the Authority or the Independent Review Officer:

*(a) an application for review must be made within 30 days after the worker receives notice in the form approved by the Authority of the insurer's decision on internal review of the decision (when the application is for review by the Authority) or the Authority's decision on a review (when the application is for review by the Independent Review Officer).*

5. The date of the decision from the Merit Review Service is 15 July 2015. The applicant's application for procedural review was electronically received by this office on 17 August 2015 which is 33 days after the date of the decision by the Authority.

6. The insurer has made the following submission:

*"Noting that Merit Review issued their findings on 15/7/2015, and this was delivered electronically to [the applicant's] representative, would his 30 day timeframe to lodge an application for WIRO review have ended on 14/8/2015? If this is correct, then the question is has [the applicant] and his representative met their obligations with respect to section 44(3)(a) of the 1987 Act?"*

7. We note that the applicant has had representation from the time of the internal review application with the insurer directing that decision to the applicant via email care of his representative.
8. Section 44(3)(a) of the 1987 Act is specific in that the worker must apply for review by the Independent Review Officer **within 30 days** after the worker receives notice. In this particular case it is submitted that the Merit Review Service findings were delivered electronically and in the absence of any submissions or evidence to the contrary this is accepted. It is the obligation of the applicant's representative to immediately notify the applicant of receipt of the decision.
9. The aforementioned section does not allow for discretion. The allowance of an additional four working days' notice having regard to



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Section 76(1)(b) of the *Interpretation Act* 1987 is not relevant given the decision was electronically delivered.

10. I have considered the insurer's submission and having reviewed Section 44 of the 1987 Act I am not satisfied that the applicant has applied for procedural review within the required timeframe.

### **Finding**

11. I have no jurisdiction to review the work capacity decision as the applicant's application for procedural review was not made within time.

### **The Stay**

12. Clause 30 Schedule 8 of the *Workers Compensation Regulation 2010* operates to stay the decision that is the subject of the review and prevents the taking of action by an insurer based on the decision while the decision is stayed.

13. Whilst there is no jurisdiction to review the work capacity decision the review process was still progressing and I was required to consider the submissions of the applicant and insurer. Therefore I consider that the applicant is entitled to the benefit of the stay up until the date of this decision.

### **RECOMMENDATION**

14. The application for procedural review is dismissed.

15. The applicant is to be reinstated to her weekly payments at the rate applicable prior to 29 June 2015.

16. The payments are to be back-dated from 29 June 2015 in accordance with clause 30 Schedule 8 to the *Workers Compensation Regulation 2010*.



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17. Such payments are to continue until the receipt of this recommendation.

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