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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.**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 24 July 2013. The decision informed the applicant that his weekly payments of compensation would be cease on 1 November 2013. The applicant sought internal review on 5 August 2013 and the Internal Review Decision was dated 4 September 2013. That decision confirmed the original work capacity decision.
2. The applicant applied to the Authority for Merit Review and they delivered findings and recommendations dated 12 June 2014. The Authority made a finding that the applicant satisfied the special requirements under Section 38(3) of the *Workers Compensation Act 1987* ("the 1987 Act") and he was entitled to ongoing compensation payments in the sum of \$59.95 per week.
3. The applicant then made application to this office dated 25 August 2015.
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).



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5. The date of the decision from the Merit Review Service is 12 June 2014. The applicant's application for procedural review was received by this office on 25 August 2015 which is over 14 months after the date of the decision by the Authority.
6. The insurer has made a submission that the application for procedural review is "out of time". The applicant has not made any submissions in respect of the application being made over 14 months after the decision from merit review.
7. 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.
8. The aforementioned section does not allow for discretion.

Finding

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

RECOMMENDATION

10. The application for procedural review is dismissed.

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