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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 16 January 2015. The decision informed the applicant that his weekly payments of compensation would commence in the sum of \$1,217.90 per week for the first 13 weeks after which time it will reduce to \$1,025.60 per week.
2. The applicant applied for a review of the calculation of his pre-injury average weekly earnings (PIAWE) calculation which the Insurer assessed at \$1,282.00 per week. The Insurer performed a review on 22 May 2015 maintaining its position.
3. The applicant applied to the Authority for Merit Review on 23 June 2015 and they delivered findings and recommendations dated 18 August 2015. The Authority made a finding that the applicant's weekly payments of compensation must be calculated using the PIAWE of \$1,856.42 per week.
4. The applicant then made application to this office dated 15 September 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
5. On 29 December 2014 the applicant sustained injury to his neck, back and shoulder whilst in his employment as a horse trainer. The Insurer accepted liability.
6. Section 44A of the *Workers Compensation Act 1987* (the 1987 Act) provides that a work capacity assessment must be conducted in accordance with the *WorkCover Work Capacity Guidelines* (Guidelines).



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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 stated “*I would like to seek a review of the insurer’s procedures to gain a greater understanding of how their decision was reached and what evidence was relied upon.*”
9. In accordance with Section 44(1)(c) I am only in a position to review the procedures undertaken by the Insurer in making the work capacity decision. I am not in a position to review any discretion used by the Insurer in how they came to their decision.

Submissions by the Insurer

10. The Insurer has not made any submissions in respect of this application other than they have provided the applicant with all material which they relied upon in calculating the applicant’s PIAWE.

The Decision

11. The relevant Guidelines were dated 4 October 2013 and came into effect on 11 October 2013.
12. The decision which the applicant has requested be reviewed is the initial letter from the Insurer accepting liability for the applicant’s claim.
13. The Insurer initially denied that this letter was a work capacity decision. The Insurer accepted liability for the claim and were paying the applicant at the rate of a worker deemed to have no capacity under the 1987 Act.
14. Section 43 of the 1987 Act describes the circumstances in which an insurer makes a work capacity decision. Any decision about a worker’s current work capacity and a decision about the amount of an injured



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worker's pre-injury average weekly earnings or current weekly earnings is a work capacity decision.

15. For the purposes of this procedural review I am satisfied that the letter dated 16 January 2015 from the Insurer is a work capacity decision. I note that this letter has been the subject of a merit review for the purposes of Section 44 of the 1987 Act.
16. In accordance with Guideline 5.3.2 the insurer has correctly advised the applicant that he is entitled to pre-approved ongoing medical and related treatment expenses which are reasonable and necessary to treat his injury. The insurer has also notified the applicant that he will be provided with rehabilitation services.
17. As I am in a position where I can only review the work capacity decision, I am not in a position to review any internal review by the Insurer nor the subsequent correspondence entered into between the applicant and the Insurer.
18. For the purposes of this procedural review the decision of the Insurer dated 16 January 2015 has displayed a careful consideration of the requirements of the Guidelines and legislation.
19. It is noted that the Merit Review Service has completed a Merit Review of the work capacity decision and in particular the Insurer's calculation of the applicant's PIAWE. They made a finding and recommendation that the amount to be used as the applicant's PIAWE when calculating his entitlement to weekly payments of compensation is \$1,856.42 per week. This amount is to be indexed under Division 6A of Part 3 of the 1987 Act. It is noted that the Insurer is obligated to implement the recommendations and findings of the Merit Review Service.

Finding

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

RECOMMENDATION



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21. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
19 October 2015