

**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 19 September 2014. The insurer advised the applicant that his weekly payments of compensation would cease. The applicant sought internal review of the decision and the Internal Review Decision was dated 17 October 2014. This decision increased the applicant's payments to \$79.57 per week.
2. The applicant then sought Merit Review from the Authority on 29 October 2014 and they delivered a recommendation dated 24 November 2014. This also resulted in an increase in the applicant's payments to \$94.32 per week.
3. The applicant then applied to this office for procedural review on 5 January 2015. I am not satisfied that the applicant has made the application for Procedural Review within time.

Submissions by the applicant

4. 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. His submissions include not earning enough money to support his family and pay his mortgage. He has also submitted that the decision to reduce his payments to \$92.00 per week is not "fair". These submissions are not relevant to procedural review. Despite making the application for procedural review more than 30 days after receipt of the merit review recommendation, the applicant makes no reference to unusual or mitigating circumstances.

Submissions by the Insurer

5. The Insurer has made a submission that the application for procedural review is outside the 30 day lodgement requirement and it cannot be reviewed by WIRO.

Consideration

6. Section 44(3)(a) is in the following terms:

(3) The following provisions apply 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)**

There is no provision in the section for a discretionary allowance which might enable an application to be made out of time in certain circumstances. The section is strictly worded and must be interpreted in the same way. It follows that since the current application was made more than 30 days after receipt by the applicant of the merit review recommendation, it is out of time and this office has no power to conduct a procedural review.

Finding

7. I find that the application for procedural review was made after the expiration of the time limit set out in section 44(3)(a) of the 1987 Act. The application for procedural review must be dismissed.

RECOMMENDATION

8. The application for procedural review is dismissed.



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04 February 2015