



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

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 18 June 2015. The decision informed the applicant that her weekly payments of compensation would cease from 25 September 2015. The applicant sought internal review and the Internal Review Decision was dated 11 August 2015. The Internal Review Decision purported to make a further work capacity decision and informed the applicant that her weekly payments of compensation would not cease until 17 November 2015.
2. The applicant applied to the Authority for Merit Review on 10 September 2015 and they delivered findings and recommendations dated 8 October 2015. The Authority made a finding that the applicant did meet the special requirements under Section 38(3) of the Workers Compensation Act 1987 (1987 Act) and ongoing compensation in accordance with Section 38(7) was calculated to be \$30.97 per week.
3. On 20 July 2000 the applicant suffered injury to her neck, back and right shoulder when she slipped down steps whilst carrying books in the course of her employment as a teacher. In or about 2013 the applicant returned to suitable employment and was performing these duties at the time of the work capacity decision.
4. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the *WorkCover Work Capacity Guidelines* (Guidelines).



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

Submissions by the applicant

5. 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.
6. In addition to requesting the procedural review the applicant has requested a review of the merit review recommendations and findings.
7. I am unable to review any discretion or judgment exercised by the Insurer in making decisions in respect of capacity to work. I am also unable to review the Internal Review Decision and recommendations and findings made by the Authority at Merit Review. My review is limited to ensuring that the Insurer has followed proper procedures in making the work capacity decision.

Submissions by the Insurer

8. The Insurer did not make any submissions in respect of this application.

The Decision

9. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
10. In accordance with Section 43(1)(a) of the 1987 Act the Insurer made a work capacity decision that the applicant had capacity to work 14 hours per week in accordance with the nominated treating doctor’s certificate of capacity dated 4 June 2015.
11. The next decision made by the Insurer was in accordance with Sections 32A and 43(1)(b) of the 1987 Act that the position of school teacher was suitable employment. The Insurer noted that the applicant had returned to these duties and was working to her capacity. The insurer has displayed an adequate comprehension of both the Guidelines and the legislation in making these decisions.



12. Guideline 5.3.2 requires the Insurer to explain the relevant entitlement periods. The Insurer informed the applicant that as she had received 394 weeks of compensation payments her ongoing entitlement was subject to the provisions of Section 38(3) of the 1987 Act. The Insurer explained the special provisions at page 3 of the decision although inadvertently citing Section 38(3)(b) as (a) and Section 38(3)(c) as (b). I do note that the Insurer did adequately explain the provisions despite incorrectly citing them. This was not sufficient to constitute an error.
13. The Insurer explained to the applicant that it was a requirement that she was working 15 hours per week to be entitled to ongoing weekly payments of compensation. The Insurer noted that the applicant was working to her capacity at 14 hours per week. Therefore, as a result of the legislation (Section 38(3)(b) of the 1987 Act) the applicant was not entitled to ongoing weekly payments of compensation. Based upon the set of circumstances put forth by the Insurer in the work capacity decision they had complied with the Guidelines and legislation in making this decision.
14. Guideline 5.3.2 requires the Insurer to advise the date when the decision takes effect. Section 54(2)(a) of the 1987 Act and Section 76(1)(b) of the *Interpretations Act 1987* requires at least three months and four working days notice be given if payments are being reduced or ceased. As a result the applicant was advised that her payments would cease from 25 September 2015. This is the required notice period with reference to the work capacity decision.
15. In respect of the impact this decision has on the applicant's entitlement to medical and related treatment expenses the Insurer has correctly referred to Sections 59A(2) and (3) of the 1987 Act and informed the applicant that her entitlement to medical and related treatment expenses would cease twelve months after her entitlement to weekly payments cease. The Insurer provided the applicant with the correct explanation of the legislation in force at the time of the decision.
16. The decision of the Insurer dated 18 June 2015 has displayed a careful consideration of the requirements of the Guidelines and legislation.

Finding



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

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

RECOMMENDATION

18. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
9 December 2015