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RECOMMENDATION FOLLOWING AN APPLICATION FOR REVIEW OF THE INSURER'S WORK CAPACITY DECISION PURSUANT TO SECTION 44BB(1)(c) OF THE *WORKERS COMPENSATION ACT 1987*.

SUMMARY:

- a. The application for procedural review is premature and cannot be accepted.**
- b. The applicant should seek Merit Review by the State Insurance Regulatory Authority.**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 22 July 2014. The decision informed the applicant that her weekly payments of compensation would cease on 29 October 2014.
2. The applicant sought Internal Review. There was a delay in the application being processed by the Insurer which may have been caused, at least in part, by a change of Insurer managing the applicant's claim.
3. The present Insurer concedes that it received the application for Internal Review from the applicant on 15 July 2015. By the time the Insurer acknowledged receipt on 22 September 2015 they were outside the time frames in which to perform an Internal Review.
4. The applicant then made an application to this office for procedural review by way of application dated 23 November 2015.

Decision

5. Section 44BB(1) of the *Workers Compensation Act 1987* (1987 Act) states that the worker may refer a work capacity decision of an insurer for review:



(c) to the Independent Review Officer (as a review only of the insurer's procedures in making the work capacity decision and not of any judgment or discretion exercised by the insurer in making the decision), but not until the dispute has been the subject of internal review by the insurer and merit review by the Authority.

6. In this matter there was no Internal Review performed by the Insurer and the applicant has not applied for Merit Review by the Authority.
7. Section 44BB(3)(b) states that an application for Merit Review may be made without an Internal Review by the Insurer if the Insurer has failed to conduct an Internal Review. This section would have allowed the applicant to apply for Merit Review by the Authority when she was informed by the Insurer that they were not going to perform an Internal Review.
8. In or about September 2015 there was contact between a claims officer from the Insurer and the applicant. The applicant submits that she was informed by the Insurer that as the insurance company was "out of time" to complete the Internal Review she could "apply to WIRO for a review."
9. The applicant's submission is not challenged by the Insurer. The Insurer has submitted in its Reply dated 26 November 2015 that "*the case manager was informed to contact [the applicant] to advise her that due to incomplete internal review decision and timeframes had exceeded 30 days from the day we received the Application, that [the applicant] was entitled to seek Merit Review by the Authority in accordance with 7.2.7 of the WorkCover Work Capacity Guidelines.*"
10. There is a discrepancy between what the applicant and Insurer have asserted. I do note the Insurer has not confirmed whether the applicant was actually contacted and what she was advised, nor have they specifically contradicted the applicant's version of events. What is known is that no information appears to have been reduced to writing and effectively communicated to the applicant.
11. There is no dispute that the applicant has not applied for Merit Review by the Authority. Therefore, pursuant to Section 44BB(1)(c) of the 1987



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Act I do not have jurisdiction to perform a procedural review of the Insurer's work capacity decision.

12. The applicant should request a Merit Review by the Authority. If the Authority accepts the application and performs a merit review the applicant will be able to make a further application to this Office for procedural review, if same is still required.

Finding

13. I have no jurisdiction to review the work capacity decision as the decision has not been the subject of merit review by the Authority in accordance with Section 44BB (1)(c) of the 1987 Act.

RECOMMENDATION

14. The application for procedural review is premature and cannot be accepted.
15. The applicant should seek Merit Review by the State Insurance Regulatory Authority.

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