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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.**
- b. Such weekly payments, if any, the applicant is receiving by virtue of the stay are to continue until receipt of this decision**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 17 March 2015. The decision informed the applicant his weekly payments of compensation would cease from 25 June 2015. The applicant sought internal review on 31 August 2015 and the Internal Review Decision was dated 30 September 2015. That decision confirmed the work capacity decision.
2. The applicant applied to the Authority for Merit Review on 21 October 2015 and they delivered findings and recommendations dated 12 November 2015. The Authority made a finding that the applicant did not satisfy the special provisions under Section 38(3) of the *Workers Compensation Act 1987* (1987 Act) to be entitled to ongoing weekly payments of compensation.
3. The applicant then made an application to this office dated 1 December 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
4. On 30 April 2001 the applicant suffered injury to his back as the result of a motor vehicle accident on a journey home from his pre-injury employment as a room attendant. The applicant returned to light duties with his pre-injury employer however his employment was terminated in 2002. At the time the work capacity decision was made the applicant



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was working between 20 and 25 hours per week as a packer. He was also in receipt of weekly payments of compensation.

5. Section 44A of the 1987 Act provides that a work capacity assessment must be conducted in accordance with the *WorkCover Work Capacity Guidelines* (Guidelines).

Submissions by the applicant

6. 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.
7. In addition to applying for a procedural review the applicant has made the following submissions:
 - *Weekly payments of compensation have been discontinued;*
 - *WorkCover Certificate – certifying 8 hours day / 5 days a week (back injury);*
 - *WorkCover Certificate – certifying 6 hours day / 5 days a week (right knee);*
 - *Unemployed due to contract of employment ceasing on 27 October 2015;*
 - *Need assistance as has no income.*
8. I am unable to review any discretion or judgment exercised by the Insurer in making decisions in respect of capacity to work or what constitutes suitable duties. I am also unable to have any consideration for the applicant’s personal circumstance. My review is limited to ensuring that the Insurer has followed proper procedures in making the work capacity decision.

Submissions by the Insurer



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9. The Insurer has not made any submissions in response to the application.

The Decision

10. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
11. In accordance with the Guidelines the Insurer has informed the applicant that a work capacity assessment commenced on 20 February 2015 and a work capacity decision was made on 17 March 2015. The applicant was advised of the decision by letter of the same date.
12. The Insurer noted that the applicant had current work capacity of 8 hours per day, 5 days per week in accordance with a certificate of capacity dated 10 February 2015 from the applicant's nominated treating doctor as well as a report from an independent medical consultant dated 10 July 2013.
13. At the time of the work capacity decision the applicant was performing duties as a packer. He was working between 20 to 25 hours per week. The applicant's nominated treating doctor provided a certificate of capacity approving these duties of a packer for 6 hours per day for 5 days per week.
14. In accordance with Section 43(1)(a) and (b) the Insurer determined that the applicant had the capacity to work 30 hours per week in the suitable employment of a packer.
15. The applicant was in receipt of weekly payments of compensation for 710 weeks and the Insurer correctly advised the applicant his ongoing entitlements were subject to Section 38 of the 1987 Act.
16. The Insurer determined that the applicant had the capacity to work 30 hours per week and was only working 20 to 25 hours per week at the time of the work capacity decision. The Insurer informed the applicant that he had not complied with the special requirements of Section 38(3)(c) and as a result he was not entitled to ongoing weekly payments



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of compensation. The Insurer provided an adequate explanation at page 5 of the decision.

17. In accordance with Guideline 5.3.2 the Insurer informed the applicant the decision would take effect from 25 June 2015 and has correctly referred to both Section 54(2)(a) of the 1987 Act and Section 76(1)(b) of the *Interpretations Act* 1987.
18. The same Guideline requires the Insurer state the impact the decision will have on the applicant's entitlement to medical and related treatment expenses. The Insurer has referred to Sections 59A(2) and (3) and provided an adequate explanation of the legislation in force at the time of making the decision.
19. The decision of the Insurer dated 17 March 2015 has displayed a careful consideration of the requirements of the Guidelines and legislation.

Finding

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

RECOMMENDATION

21. The application for procedural review is dismissed.
22. Such weekly payments, if any, the applicant is receiving by virtue of the stay are to continue until receipt of this decision

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