



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 is dismissed.

Introduction and background

1. On or about 8 December 2014 the applicant suffered injury to the lumbar spine in the course of his employment as a Delivery Driver. He was unable to return to work and his employment was terminated. The Insurer accepted liability and made weekly payments for all relevant periods.
2. The applicant seeks procedural review of a Work Capacity Decision made by the Insurer on 15 May 2018. The insurer informed the applicant that his payments of compensation would cease from 22 August 2018. The applicant's PIAWE was found to be \$771.50 per week. The insurer also found he had an ability to earn \$1,062.25 per week.
3. This decision was maintained following internal review, which occurred on 10 July 2018.
4. The applicant sought Merit Review from the Authority by way of application received 7 August 2018. On 12 October 2018 (some 66 days after receipt of the application) the Authority made the following findings:
 - The applicant is able to return to work in suitable employment as a Warehouse Administrator;
 - The applicant has current work capacity; and
 - The applicant is able to earn \$937.50 per week in that suitable employment.
5. The Authority chose to make no recommendations.



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6. An application was made to this Office for procedural review, received on 12 November 2018. I am satisfied that the application was made within time and in the correct form.

Submissions by the applicant

7. Section 44BB(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.”*

8. The applicant made short submissions as follows:

- He would like the work capacity decision reviewed;
- He believes there is ‘false information’ in the assessment made by the rehabilitation provider; and
- He would also like to ask for his ‘whole case’ to be reviewed.

9. Despite the applicant’s second submission, no copy of the impugned rehabilitation assessment was provided. While this might normally be thought unhelpful, the assessment is irrelevant for present purposes, since it goes to the merits of the case, not the insurer’s procedures in making the decision. This might also be a convenient time to note that procedural review conducted by this office does not and cannot involve a review of a worker’s ‘whole case.’ The merit review service of the Authority appears to have attempted to conduct a ‘whole case’ review, however inappropriately, in any event.

Submissions by the Insurer

10. The Insurer made no submissions in reply.

Decision

11. The Insurer advised the applicant on 24 April 2018 that it had made a preliminary work capacity decision which, if finalised, would result in an adverse outcome. The applicant was thus provided with fair notice of an impending decision. The work capacity decision was made finally on 15 May 2018, approximately three weeks after the fair notice. This is in accordance with the relevant Guidelines.



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12. The insurer advised the applicant of its PIAWE determination and the applicant's ability to earn in suitable employment. The latter was based in part on Certificates of Capacity provided by the applicant's own doctor, the two most recent being dated 2 March 2018 and 13 April 2018. It might be noted in passing that the most recent report from the treating specialist, dated 12 December 2017, had included the following observations: "At this stage I have not made any plans to see [the applicant] again but would be more than happy to, should that be necessary." There were no further consultations between 12 December 2017 and the date of the decision.
13. The three-month period of notice provided by the insurer was in accordance with section 54(2)(a).
14. The effect of the cessation of weekly payments on the applicant's entitlement to ongoing medical expenses was clearly explained.
15. For the reasons appearing in paragraphs 29-50 of the merit review, the applicant was found to have a slightly lesser earning capacity than found by the insurer. Despite this, the figure arrived at by the Authority (\$937.50) clearly exceeds the applicant's PIAWE of \$771.50. In the circumstances the outcome is the same for the applicant and he can have no ongoing entitlement to weekly payments.

Finding

16. The Insurer has not committed any procedural errors in the course of making the work capacity decision in this case. It follows that the decision was validly made.

RECOMMENDATION

17. The application is dismissed.



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A handwritten signature in blue ink, which appears to read "Wayne Cooper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
4 December 2018