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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 dismissed.**

Introduction and background

1. The applicant seeks procedural review of a Work Capacity Decision made by the Insurer on 30 September 2015. The Decision informed the applicant that her weekly payments of compensation would cease on 6 January 2016. The applicant sought internal review by the Insurer on 7 October 2015. The Internal Review Decision was dated 4 November 2015 and confirmed the original Work Capacity Decision.
2. The applicant sought Merit Review from the Authority by way of application received 1 December 2015. The Authority delivered its Findings and Recommendations dated 12 January 2016. The Authority made a finding that the applicant has no current work capacity. The Authority made a recommendation that the applicant was entitled to \$633.94 per week under Section 37(1) of the *Workers Compensation Act 1987* (1987 Act).
3. In accordance the Recommendations from the Authority the Insurer sent an "*Outcome of Merit Review by the Authority*" letter to the applicant dated 4 February 2016. That letter informed the applicant that she had an ongoing entitlement to weekly payments of compensation in the sum of \$633.94 per week. The Insurer was also going to provide a period of vocational assistance to the applicant.
4. The applicant then made an application to this office for procedural review dated 3 February 2016. I am satisfied that the application has been made within time and in the proper form.



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5. The applicant suffered injury to her cervical spine with bilateral arm pain on 28 July 2014 during the course of her employment as a sterilisation technician. At the time of the Work Capacity Decision the applicant was not working and was in receipt of weekly payments of compensation.
6. 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

7. 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.
8. The applicant has made lengthy submissions that she is seeking a *“review”* of her carpal tunnel injury. The present Work Capacity Decision has not been made in respect of that injury. Therefore the applicant’s submissions are not relevant to this procedural review.

Submissions by the Insurer

9. The Insurer has made submissions dated 10 February 2016 in response to this application. The Insurer noted that as a result of the Merit Review by the Authority the applicant is in receipt of ongoing weekly payments of compensation.
10. Furthermore, this Work Capacity Decision is in respect of injury to the applicant’s cervical spine with bilateral arm pain. The applicant’s claim for carpal tunnel injury has been declined and was not the subject of this decision.

Decision

11. The Authority made recommendations and findings that the applicant has no current capacity for work and is entitled to ongoing payments of



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weekly compensation pursuant to Section 37(1) of the 1987 Act in the sum of \$633.94 per week.

12. I note that the Insurer informed the applicant of the decision by the Authority by way of letter dated 4 February 2016. That letter confirmed that the applicant was in receipt of ongoing payments of weekly compensation in accordance with the Authority's recommendation.
13. The injury for which the applicant is seeking review is a carpal tunnel injury. The date of this injury was 29 November 2013. The Insurer has declined liability for this claim by way of *Section 74* Notice dated 9 November 2015.
14. The applicant's application for procedural review relates to an injury which is not the subject of this Work Capacity Decision. If the applicant wishes to seek a review of the liability decision in respect of her carpal tunnel injury this is the incorrect forum. The Section 74 Notice from the Insurer should explain the process that the applicant can follow for review of that decision.

Finding

15. I am unable to perform the review requested by the applicant as it is not relevant to this Work Capacity Decision.

RECOMMENDATION

16. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
10 March 2016