



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. It is noted that the applicant's weekly payments of compensation continue to be paid in accordance with additional notice given in the Internal Review Decision dated 23 September 2014.**
- c. Such payments are to continue until the Authority's merit review findings and recommendations dated 6 November 2014 are given effect by the Insurer.**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 11 August 2014. The decision advised the applicant that his weekly payments of compensation would cease from 15 November 2014. The applicant sought internal review of the decision and the Internal Review Decision (IRD) was dated 23 September 2014. The IRD maintained the original decision however, the IRD informed the applicant that his weekly payments of compensation would cease 31 December 2014.
2. The applicant then sought Merit Review from the Authority on 9 October 2014 and they delivered a decision dated 6 November 2014. The Authority found that the applicant was entitled to weekly payments of compensation at the rate of \$178.32 per week. The applicant then applied to this office for procedural review on 18 November 2014.
3. I am satisfied that the applicant has made the application for Procedural Review in the proper form and within time.
4. The applicant suffered injury to his left knee in the course of his employment as a teacher on 6 March 1997. The applicant underwent various surgeries to repair the left tibial plateau fracture as well as resection of a giant cell tumour of the upper tibia. The applicant

returned to employment on light duties however he suffered a recurrence of the giant cell tumour and further surgery was performed. The applicant then returned to work as a part time teacher. After further periods of surgical treatment the applicant was medically retired in or about February 2005. Since that time the applicant has been self-employed giving guitar lessons / tutoring 16 hours per week.

5. The applicant was in receipt of weekly payments immediately before 1 October 2012. Accordingly Clause 8 of Part 19H of Schedule 6 to the *Workers Compensation Act 1987* (the 1987 Act) required the Insurer to conduct a work capacity assessment.
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).
7. The relevant version of the Guidelines came into effect on 11 October 2013. That publication stated that the Guidelines provide instructions and guidance to Insurers regarding the appropriate and consistent application of work capacity assessments and decisions.
8. Once the Insurer has conducted a first assessment then the Insurer is required to make a work capacity decision. Where that decision involves a reduction in the weekly benefits payable to the injured worker then the Insurer is required to give proper notice to the worker (Section 54(2)(a) of the 1987 Act).

Submissions by the applicant

9. 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 requested a procedural review.

Submissions by the Insurer

10. The Insurer has not made submissions in response to this application.

The Decision

11. Guideline 5.3.2 requires the insurer to state the impact the decision has on the applicant's entitlement to weekly payments. In this decision the applicant has been advised that his weekly entitlements have been reduced to nil initially from 15 November 2014. The IRD extends the notice period to 31 December 2014.
12. Section 54(2)(a) of the 1987 Act requires at least three months and four working days' notice be given if payments are being reduced or ceased having regard to Section 76(1)(b) of the *Interpretation Act 1987*. In this decision the insurer has referenced both sections of each piece of legislation. The Insurer has complied with the Guidelines and legislation.
13. The same Guideline also requires the insurer to advise the applicant of the impact the decision has on his entitlement to medical and related treatment expenses. In this decision the insurer has referenced and explained Section 59A(2) and (3). The applicant was advised that payment of his pre-approved reasonable and necessary medical and related treatment expenses would cease 12 months after the cessation of his entitlement to weekly payments. It was also explained that the applicant may again become entitled to payment of medical expenses by virtue of Section 59A(3) of the 1987 Act. The insurer has complied with the Guideline.
14. Guideline 2.3 requires that the Insurer's decision should be *"timely, informed and evidence based."*
15. The insurer advised the applicant that his work capacity assessment was completed on 8 August 2014 and he was advised of the work capacity decision by letter dated 11 August 2014. The Insurer has complied with the Guideline.
16. Guideline 5.3.2 requires the Insurer to explain the relevant entitlement periods and legislation. The insurer informed the applicant that as he had received 448 weeks of weekly payments his entitlements would be assessed pursuant to Section 38 of the 1987 Act. The insurer explained Section 38(3) in detail and noted the prescribed amount had been indexed to \$173 per week. The insurer has complied with the Guideline.
17. The insurer explained the "transitional rate" and how the applicant's pre-injury average weekly earnings were calculated and that the amount

was specified by legislation. The insurer also explained Section 38 and the algorithm used to calculate the applicant's ongoing entitlement.

18. The decision of the Insurer dated 11 August 2014 has displayed a careful consideration of the requirements of the Guidelines and the legislation.

Finding

19. There are no procedural errors identifiable in the decision. The insurer has complied with the Guidelines and relevant legislation. The application for procedural review is dismissed.

RECOMMENDATION

20. The application for procedural review is dismissed.

21. It is noted that the applicant's weekly payments of compensation continue to be paid in accordance with additional notice given in the Internal Review Decision dated 23 September 2014.

22. Such payments are to continue until the Authority's merit review findings and recommendations dated 6 November 2014 are given effect by the Insurer.

Tracey Emanuel
Delegate of the WorkCover Independent Review Officer
22 December 2014