

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. The applicant is to be reinstated her weekly payments at the rate applicable prior to 4 December 2014.**
- c. The payments are to be back-dated to 4 December 2014 in accordance with clause 30 of the *Workers Compensation Amendment (Existing Claims) Regulation 2014*.**
- d. Such payments are to continue until the receipt of this recommendation or until the recommendation of the Authority dated 20 November 2014 comes into effect, whichever is the earlier.**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 27 August 2014. The decision advised the applicant that her weekly payments of compensation would be reduced to \$14.10 per week from 4 December 2014. The applicant sought internal review of the decision and the Internal Review Decision (IRD) was dated 25 September 2014. The IRD increased the applicant's weekly payments of compensation to \$450.80 per week from 25 December 2014.
2. The applicant then sought Merit Review from the Authority on 22 October 2014 and they delivered a decision dated 20 November 2014. The Authority found that the applicant was entitled to weekly payments of compensation at the rate of \$460.72 per week.
3. The applicant then applied to this office for procedural review on 26 November 2014. I am satisfied that the applicant has made the application for Procedural Review in the proper form and within time.
4. The applicant previously sought procedural review of a work capacity decision dated 12 July 2013. The applicant was successful and the

work capacity decision was set aside by an earlier decision of this office¹.

5. The facts and the circumstances concerning the background of the claim are set out in the aforementioned recommendation and need not be repeated.

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 requested a procedural review and has made several submissions none of which are relevant to this review process.

Submissions by the Insurer

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

The Decision

8. The WorkCover Work Capacity Guidelines relevant to making this work capacity decision came into effect on 11 October 2013.
9. The insurer rectified the defect in the previous work capacity decision by ensuring that a fair notice telephone call was made with the applicant’s representative MR J.A. This telephone call was made on 28 July 2014 and the representative was advised by the insurer of their intention to make a work capacity decision in 21 days. The insurer has complied with the requirement of Guideline 5.2.
10. Guideline 2.3 requires that the Insurer’s decision should be “*timely, informed and evidence based.*”
11. The insurer informed the applicant that her work capacity assessment was completed on 27 August 2014 and she was advised of the work capacity decision by letter dated the same day. The Insurer has complied with the Guideline.

¹ Reported and numbers as 6414

12. 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 \$14.10 from 4 December 2014.
13. 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.
14. The IRD advises that the applicant's entitlement to weekly compensation will increase to \$460.72 from 25 December 2014. The correct notice period has been provided under Clause 21 of Schedule 8 of the *Workers Compensation Regulation 2010*.
15. As the initial work capacity decision only reduced the applicant's entitlement to weekly payments rather than ceasing them all together, the insurer is not under any obligation to advise the applicant in respect of any impact upon her medical expenses and treatment as that entitlement remains unaffected.
16. The decision of the Insurer dated 27 August 2014 has displayed a careful consideration of the requirements of the Guidelines and the legislation.

Finding

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

Recommendation

18. The application for procedural review is dismissed.
19. The applicant is to be reinstated her weekly payments at the rate applicable prior to 4 December 2014.
20. The payments are to be back-dated to 4 December 2014 in accordance with clause 30 of the *Workers Compensation Amendment (Existing Claims) Regulation 2014*.



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21. Such payments are to continue until the receipt of this recommendation or until the recommendation of the Authority dated 20 November 2014 comes into effect, whichever is the earlier.

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