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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 23 September 2015. The decision informed the applicant that he was entitled to weekly payments of compensation. The figure of \$1,256.04 per week was determined to be the applicant's pre-injury average weekly earnings (PIAWE) and was used in calculating his weekly compensation entitlements.
2. The applicant sought Internal Review and then Merit Review from the Authority. The issue in dispute was the calculation of the applicant's PIAWE. The Merit Review decision was dated 2 December 2015. The Authority calculated the applicant's PIAWE to be \$1,504.28 per week.
3. The applicant then made an application to this office for procedural review by way of application dated 8 December 2015. I am satisfied that the application has been made within time and in the proper form.
4. On 27 June 2014 the applicant suffered injury to his back in the course of his employment as a bricklayer. At the time the work capacity decision was made the applicant was in receipt of weekly payments of compensation from the Insurer.
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



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6. The applicant has made the following submission:

"I am seeking a review of the procedure of working out my P.I.A.W.E by [named insurer]. The difference when they worked out my P.I.A.W.E. is \$224.75 per week in their favour. It seems that the wrong calculations have resulted in my weekly payments being short payed (sic) since I was injured."

7. I cannot review any discretion or judgment exercised by the insurer when they are making a decision in respect of the merits of the calculation of a worker's PIAWE. I can only review the procedures undertaken by the Insurer in making the actual work capacity decision.

Submissions by the Insurer

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

Decision

9. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
10. The work capacity decision by the Insurer has informed the applicant that he is entitled to weekly payments of compensation. The basis for the change in the calculation of the applicant's weekly payments of compensation is a change in the method of calculation of the applicant's PIAWE.
11. I do note that the findings and recommendations by the Authority at Merit Review increased the applicant's PIAWE as calculated by the Insurer from \$1,256.04 per week to \$1,504.28 per week. The Insurer must accept the calculation made by the Authority in order to calculate the applicant's weekly payments. The Authority's calculation was an increase of \$248.24 per week on the calculation made by the Insurer. This was in excess of the amount by which the applicant submitted his PIAWE should be increased.



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12. As stated above I am unable to review any discretion or judgment exercised by the Insurer when they are making a decision in respect of the merits of the calculation of a worker's PIAWE.
13. I am able to review the procedures undertaken by the Insurer in making the work capacity decision. The work capacity decision informed the applicant that he would remain in receipt of weekly payments of compensation. The Insurer has complied with Guideline 5.3.2 by informing the applicant of the relevant entitlement periods and noting that the applicant had received 59 weeks of compensation payments. Therefore his ongoing weekly payments were subject to Section 37(3) of the *Workers Compensation Act 1987* (1987 Act).
14. As the applicant's weekly payments are continuing he remains entitled to medical and related treatment expenses. As such it is not incumbent upon the Insurer to advise the applicant in respect of same.
15. In accordance with Guideline 5.3.2 the Insurer has advised the applicant when the decision will take effect. As the decision reduced the applicant's weekly payments the Insurer provided the applicant with three months and four working days notice in accordance with Section 54(2)(a) of the 1987 Act and Section 76(1)(b) of the *Interpretations Act 1987*. The applicant was advised that his payments would be reduced from 3 January 2016. This is the correct notice period.
16. In this instance the applicant's payments have not been terminated. The decision of the Insurer has displayed an adequate consideration of the requirements of the Guidelines and legislation.

Finding

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

RECOMMENDATION



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18. The application for procedural review is dismissed.

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
8 January 2016