



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 to his weekly payments at the rate applicable prior to 30 December 2014.**
- c. The payments are to be back-dated to 30 December 2014 in accordance with clause 30 Schedule 8 to the *Workers Compensation Regulation 2010*.**
- d. Such payments are to continue until the receipt of this recommendation.**

Introduction and background

1. The applicant seeks procedural review of a work capacity decision made by the Insurer on 23 September 2014. The insurer advised the applicant that his weekly payments of compensation would cease from 30 December 2014. The applicant sought internal review and the Internal Review Decision was dated 15 November 2014 and upheld the original decision.
2. The applicant then sought Merit Review from the Authority on 9 December 2015 and they delivered a decision dated 9 January 2015. The finding was that in accordance with Section 38 of the Workers Compensation Act 1987 (the 1987 Act) the applicant is not entitled to weekly payments of compensation.
3. The applicant then applied to this office for procedural review on 28 January 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
4. The applicant sustained injury to his left rib and chest on 1 August 1991 whilst in the course of his employment as a panel beater. The applicant has been able to obtain alternate employment and at the time of the

work capacity decision being made he was in receipt of weekly payments of compensation.

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 was dated 4 October 2013 and came into effect on 11 October 2013.

Submissions by the applicant

8. 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

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

The Decision

10. Guideline 5.3.2 requires the Insurer to advise the date of the work capacity assessment. The insurer has advised the applicant that the work capacity assessment commenced on 26 August 2014 and concluded on 23 September 2014. As a result of that assessment a work capacity decision was made. The applicant was informed of the work capacity decision by way of letter dated 23 September 2014. The Insurer has complied with the Guideline.
11. The same Guideline requires the Insurer to explain the relevant entitlement periods. The Insurer has informed the applicant that he has received 973.4 weeks’ worth of compensation payments. Therefore his ongoing entitlements would be assessed pursuant to Section 38 of the 1987 Act. The Insurer has explained the ‘*special requirements*’ of Section 38(3)(b) and (c) which must be fulfilled for the applicant to be

entitled to ongoing weekly payments. It was noted that the amount of \$155 per week referred to in Section 38(3)(b) of the 1987 Act had been indexed to \$173 per week at the time the work capacity decision was made.

12. The Insurer confirmed that the applicant was presently working 6 hours per week and earning \$123 per week as a light cleaner. The applicant had been performing these duties for the previous 5-6 years. The applicant's nominated treating doctor agrees that the applicant is fit to perform those duties.
13. The Insurer has referred to Section 38(3)(b) and has noted that as the applicant has received weekly payments for in excess of 130 weeks he must meet the requirements of that section which are that the applicant must be working not less than 15 hours per week and earning at least \$173 per week in order to qualify for ongoing payments of compensation. The Insurer has referenced the relevant legislation and explained the line of reasoning for the decision in accordance with Guideline 5.3.2.
14. As the Insurer intended to discontinue the applicant's weekly payments 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 of the *Interpretation Act* 1987. In this decision the Insurer has referenced and explained both sections of each piece of legislation. As a result the applicant was advised that his weekly payments would cease from 30 December 2014 which is the required notice period. The Insurer has complied with the legislation.
15. The Guideline also requires the insurer to advise the applicant of the impact the decision has on his entitlement to medical and related treatment expenses. The Insurer has referenced Section 59A(2) of the 1987 Act and advised the applicant that his entitlement to medical expenses will cease 12 months after his entitlement to weekly payments. The provisions of Section 59A(3) were also explained. The Insurer has complied with the Guideline.
16. In accordance with the Guideline the Insurer has informed the applicant that any documents or information that has not already been provided can be made available upon request to the Insurer.
17. The decision of the Insurer dated 23 September 2014 has displayed a careful consideration of the requirements of the Guidelines and the legislation.

Finding



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

The Stay

19. Clause 30 Schedule 8 to the Workers Compensation Regulation 2010 operates to stay the decision that is the subject of the review and prevents the taking of action by an insurer based on the decision while the decision is stayed.

20. The work capacity decision was dated 23 September 2014. The applicant applied for internal review within the 30 day requirement for the stay to operate immediately.

RECOMMENDATION

21. The application for procedural review is dismissed.

22. The applicant is to be reinstated to her weekly payments at the rate applicable prior to 30 December 2014.

23. The payments are to be back-dated to 30 December 2014 in accordance with clause 30 Schedule 8 to the *Workers Compensation Regulation 2010*.

24. Such payments are to continue until the date of the receipt of this recommendation.

Tracey Emanuel
Delegate of the WorkCover Independent Review Officer
2 March 2015