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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 8 September 2015. The decision informed the applicant that her weekly payments of compensation would cease from 15 December 2015, but would continue until that date at the current rate of \$788.32 per week.
2. The applicant requested internal review, received by the insurer on 12 October 2015 and the Internal Review Decision was dated 12 November 2015. That decision confirmed the original decision.
3. The applicant sought Merit Review received by the Authority on 11 December 2015. The Authority delivered recommendations and findings dated 12 January 2016. The Authority made a finding that the applicant has no current work capacity and is likely to continue to have no current work capacity indefinitely. Accordingly the applicant remains entitled to receive weekly payments after the second entitlement period in the sum of \$794.96 per week.
4. Despite having succeeded at Merit Review, the applicant then made an application to this Office for procedural review by way of application dated 11 February 2016. I am satisfied that the application has been made within time and in the proper form.
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. Section 44BB(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.
7. The applicant has made only two submissions, neither of which are relevant to procedural review:
 - First, the applicant says she is unsure of the date of her “final payment.” She is unsure of what to do when the insurer ceases payments and “all pain and psychological relief methods are exhausted;” and
 - Secondly, the applicant complains of ongoing pain.

Submissions by the Insurer

8. The Insurer has made submissions dated 16 February 2016 in response to the application. The Insurer has submitted that:
 - The Insurer has provided correspondence to the applicant in relation to her ongoing entitlements and was advised to speak to her case manager; and
 - The insurer notes that no procedural issues are raised in the application.

Decision

9. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
10. The Guideline require the insurer to give fair notice to: give the worker “fair notice” of an imminent work capacity assessment and decision; advise the worker of the effect the decision will have on the ongoing rights and entitlements of the worker; and give the worker an opportunity to make submissions and provide updated evidence prior to a final decision being made. In this case the Guidelines were thus fully complied with by the insurer.



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11. The 1987 Act requires notice to be given under section 54(2)(a) of three months prior to any reduction or cessation of weekly payments. Both that section and section 76(1)(b) of the *Interpretation Act* 1987 (postal service) were complied with by the Insurer.
12. I accept the submissions of the Insurer. It is appropriate that the case manager explain the ongoing entitlements to the applicant, and there are no procedural anomalies raised by the applicant. Given that the applicant has achieved a better outcome after merit review (her weekly payments will now be higher than they were prior to the work capacity decision) it is surprising that an application to this Office was made.

Finding

13. Under the legislation the Insurer can make an assessment of the applicant's work capacity and then a decision about that work capacity, but they must comply with the legislation, the Regulation and the Guidelines in order to produce a procedurally correct result. In the current instance there are no breaches of the legislation and the Guidelines which are to be treated as delegated legislation. Accordingly the Work Capacity Decision must be found to have been validly made.

RECOMMENDATION

14. The application for procedural review is dismissed.

A handwritten signature in blue ink, appearing to read "Wayne Cooper".

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
5 April 2016