



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 15 December 2015. The Decision was limited to the amount of compensation payable to the applicant for the period 25 December 2015 to 28 January 2016. The Insurer informed the applicant that his weekly payments would be \$232.38 per week. The applicant sought internal review by the Insurer. By letter dated 23 December 2015 the Insurer declined to perform an Internal Review stating that the letter of 14 December 2015 was not a Work Capacity Decision but was a response to the applicant's enquiry as to the amount of his payments over the Christmas period shutdown.
2. The applicant sought Merit Review from the Authority by way of application dated 19 January 2016. The Authority delivered a decision dated 16 February 2016 finding that the Authority did have jurisdiction to perform a merit review as the decision made by the Insurer dated 14 December 2015 was a Work Capacity Decision.
3. The Authority delivered its findings and recommendations on Merit Review dated 24 February 2016. The Authority made a recommendation that the applicant's entitlement to weekly payments for the period from 24 December 2015 to 28 January 2016 was \$629.70 pursuant to Section 36(2)(b) of the 1987 Act.
4. The applicant then made an application to this office for procedural review by way of application dated 2 March 2016. I am satisfied that the application has been made within time and in the proper form.



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5. On 22 October 2015 the applicant sustained an injury in the course of his employment as a pump operator / linesman. He has received weekly payments of compensation for incapacity as a result of that injury.
6. Section 44A of the *Workers Compensation Act 1987* (1987 Act) provides that a work capacity assessment must be conducted in accordance with the WorkCover Work Capacity Guidelines (Guidelines).

Submissions by the applicant

7. 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 applied for a procedural review.
8. The applicant has made 7 pages of submissions. However the submissions do not particularise the further relief sought by the applicant.

Submissions by the Insurer

9. The Insurer has made submissions by email dated 11 March 2016 in response to this application. The Insurer confirmed that it adjusted the weekly payments of compensation payable to the applicant in accordance with the Merit Review recommendations for the period 24 December 2015 to 28 January 2016.

Decision

10. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
11. The Work Capacity Decision by the Insurer was in response to the applicant making a query in respect of his entitlements between 24 December 2015 and 28 January 2016. It is noted that Merit Review increased the applicant’s entitlements for this period from \$232.38 per week to \$629.70 per week.
12. The Work Capacity Decision by the Insurer was not reducing or terminating the applicant’s weekly payments of compensation. The



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applicant's submissions relate to the Guidelines which require fair notice. Those submissions are not relevant in this instance.

13. The applicant has obtained appropriate relief from the Authority at Merit Review.

Finding

14. There are no procedural errors identifiable in the decision. The Insurer has complied with the Guidelines and relevant legislation given the nature of the Work Capacity Decision in this instance.

RECOMMENDATION

15. The application for procedural review is dismissed.

A handwritten signature in black ink that reads "Tracey Emanuel".

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
15 April 2016