



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

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.**
- b. Such weekly payments as the applicant is receiving by virtue of the stay are to continue until receipt of this decision.**

Introduction and background

1. The Insurer made a work capacity decision dated 31 July 2015 which informed the applicant that her weekly payments of compensation would cease on 9 November 2015. The applicant sought internal review and that decision confirmed the work capacity decision.
2. The applicant applied to the Authority for Merit Review on 15 October 2015 and they delivered findings and recommendations dated 13 November 2015. The Authority made a finding that the applicant did not satisfy the special provisions under Section 38 of the *Workers Compensation Act 1987* (1987 Act) in order to be entitled to ongoing weekly payments of compensation.
3. The applicant then made application to this office dated 9 December 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
4. The applicant had contracted right-sided De Quervain's tenosynovitis in the course of her employment entering computer data in early to mid 2000. Following surgical intervention and considerable further treatment the applicant resumed full hours of work, on restricted duties. Having changed employers the applicant eventually deteriorated and was rendered totally incapacitated for work for various periods from 2002 to 2009. She returned to paid employment, albeit on reduced hours, in



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

2011. The Insurer continued to make weekly payments of compensation and the applicant was an existing recipient immediately prior to 1 October 2012.

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

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.*”
7. The applicant has applied for a procedural review in rather general terms, thus:

“I would like WIRO to perform a review of all the procedures undertaken by the Insurer in making my work capacity decision.”

Submissions by the Insurer

8. The Insurer made the following submissions in reply:

[The Insurer] has followed the necessary procedures in accordance with the WorkCover certificate of capacity as follows:

- 5.2 Fair notice provisions

On 25 June 2015, [the Insurer] contacted [the applicant] to advise her that a work capacity assessment was being conducted.

On 8 July 2015, [the Insurer] again contacted [the applicant] to advise her that a work capacity assessment was being conducted, that the likely outcome will be a cessation of weekly payments, that the decision will not come into effect immediately and will be provided with a notice of 3 months plus 4 days for postage, and for the applicant to provide copies of any correspondence she would like us to consider.

The fair notice letter was posted to [the applicant] on 11 December 2015.

- 5.3 Notification of a work capacity decision



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

On 31 July 2015, [the Insurer] contacted [the applicant] to communicate the outcome of the decision and its consequences. [The applicant] was advised that the vocational option of Travel Consultant was considered suitable employment with the ability to earn \$961.00 per week. It was also confirmed that her weekly compensation entitlements were going to cease on 9 November 2015.

The work capacity decision notice was sent to the [applicant] on 31 July 2015 via post and email.

5.3.2 Requirements of a work capacity decision notice

[The Insurer] made a work capacity decision that [the applicant] can work 38 hours per week in suitable employment as a Travel Consultant with the ability to earn \$961.00 per week in accordance with *section 32A of the Workers Compensation Act 1987*. This is based on the certificate of capacity by nominated treating doctor, Dr AL.

[The Insurer] confirmed that the decision will be effective on 9 November 2015 in accordance with *section 54(2)(a) and section 54(4) of the Workers Compensation Act 1987*. This is inclusive of the postage allowance required by *section 76(1)(b) of the Interpretations Act 1987*.

[The Insurer] also confirmed that entitlement to reasonable and necessary medical expenses is in accordance with *section 59A(2) of the Workers Compensation Act 1987*, that medical entitlements and related expenses will continue for a further 12 months from the effective date. This information is correct as the decision was made on 31 July 2015 which is prior to the 2015 Legislation Amendments.

The Decision

9. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
10. In the work capacity decision which is the subject of this review the Insurer has displayed an adequate comprehension of the Guidelines and legislation. The “fair notice” provisions were followed, in accordance with the submissions of the Insurer *supra*.
11. The Insurer informed the applicant that she had received 662 weekly compensation payments and her ongoing entitlement would be subject to the provisions of Section 38(3) of the 1987 Act. Those special provisions were adequately explained by the Insurer on page 3 of the decision.



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

12. At page 6 of the work capacity decision the Insurer provided the applicant with a clear line of reasoning as to why she is not entitled to continuing weekly payments of compensation.
13. The Insurer has informed the applicant the decision will take effect from 9 November 2015 and has correctly referred to both Section 54(2)(a) of the 1987 Act and Section 76(1)(b) of the *Interpretations Act* 1987.
14. Likewise the Insurer has correctly referred to Sections 59A(2) and (3) of the 1987 Act and informed the applicant that her entitlement to pre-approved medical and related treatment expenses would cease twelve months after any entitlement to weekly payments ceased. The Insurer provided the applicant with the correct explanation of the legislation in force at the time of the decision.
15. The decision of the Insurer dated 29 July 2015 has displayed a careful consideration of the requirements of the Guidelines and legislation.
16. Since the applicant was an existing recipient of weekly payments immediately prior to 1 October 2012 the transitional rate was correctly applied by the insurer. This issue was resolved in the course of Merit Review in any event.

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. Such weekly payments as the applicant is receiving by virtue of the stay are to continue until receipt of this decision.



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

A handwritten signature in blue ink, which appears to read "Wayne Cooper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
13 January 2016