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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 is dismissed.

Introduction and background

1. The applicant suffered a psychological injury on or about 22 January 2015 in the course of her employment as a Manager/Community Development Officer. The insurer accepted liability and made weekly payments for all relevant periods. The applicant has not returned to work.
2. The insurer gave notice to the applicant of a work capacity decision on 29 September 2017. The insurer found that the applicant had capacity to work for 18 hours per week (4.5 hours per day for 4 days per week) in the "suitable employment" of "Administration Officer" earning \$450 per week. The applicant's PIAWE was calculated to be \$1,287.04.
3. Since the applicant was already in that period following the second entitlement period (i.e., she had received in excess of 130 weekly payments), there was no ongoing entitlement to weekly payments, which were to be ceased on 6 January 2018 due to the operation of section 38(3).
4. The Insurer came to the same conclusion following internal review, with the only variation being a slight change to PIAWE from \$1,287.04 to \$1,290.00.
5. The applicant sought Merit Review from the Authority by application received on 21 December 2017. The Authority made findings and recommendations dated 29 January 2018 in the following terms:
 - The role of Administrative Assistant constitutes suitable employment for the applicant;



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- The applicant has current work capacity;
 - The applicant does not satisfy the special requirements for continuation of weekly payments after the second entitlement period; and
 - The applicant has no entitlement to weekly payments of compensation in accordance with section 38 of the Act.
6. An application to this office for procedural review was received on 05 February 2018. I am satisfied that the application has been made within time and in the proper form.

Submissions by the applicant

7. 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 provided the following submission:
- Internal and merit review of my work capacity has now been completed. The outcome resulting in payments to cease after 130 weeks as per section 38 etc. I wish review of procedure and available information evidence used in original decision and internal review etc as I believe not all available information was used in both cases.
8. Despite the assertion that not all available information was used by the insurer, no evidence was given of information which was available and not used, nor was any allegedly unused information or evidence identified by the applicant.

Submissions by the Insurer

9. The Insurer responded in the following terms:
- On 8 September 2017, [the applicant] was contacted by [the Insurer] for a fair notice call to advise that a Work Capacity Assessment was commencing on her claim and the likely decision would result in a cessation of weekly compensation payments in accordance with section 38(3). This was supported with a fair notice letter of the same date.



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- A Work Capacity Decision was made by [the insurer] on 29 September 2017 ceasing [the applicant's] weekly benefit entitlement under section 38(3) of the WCA 1987 for the following reasons:
 - [the applicant] has not been assessed as indefinitely incapable of undertaking further additional employment or work that would increase her current weekly earnings.
 - [the applicant] has not returned to work for a period of not less than 15 hours per week and is not in receipt of current weekly earnings of at least \$185.00 per week as required by section 82B of the WCA 1987.
- The insurer determined that based on all the available functional, vocational and medical information, the role of Administration Assistant / Officer is a suitable employment option for [the applicant] in accordance with s32A of the Workers Compensation Act 1987 and that she can work 18 hours per week in this employment option earning \$450.00 gross per week as outlined in the work capacity decision and internal review determination.
- On 23 November 2017, the outcome of internal review was communicated to [the applicant] via post, email and phone. The internal review decision was the same as the original work capacity decision made by [the insurer], determining that [the applicant] has the capacity to work 18 hours (4.5rs day, 4 days) per week in the role of Administration Assistant / Officer, earning \$450.00 gross per week. As per the original work capacity decision, [the applicant] did not satisfy the requirements for continuation of weekly payments after 130 weeks pursuant to section 38 of the WCA 1987.
- [The insurer] considered the following reports when completing both the original work capacity decision and the internal review determination:-
 - All certificates of capacity
 - Dr E P Injury Management Consultant report 10/3/16
 - Vocational Assessment report dated 29/5/17
 - Labour Market Research report dated 24/11/16



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- Dr S approval vocational options 5/6/17
 - Transferable skills analysis dated 2/6/17
 - Worktrial return to work plan 30/9/16
 - Worktrial feedback 9 November 16
 - AHRR 5 Psychological plan 23/11/16
 - Job logs completed by [the applicant] week ending 27/10/17
 - TAFE enrolment summary
 - [Insurer] work capacity decision 29/9/17
 - Closure report vocational rehabilitation dated 24/11/16
 - Closure report 27/9/17
- The Findings and Recommendations of the Merit Review Authority were communicated to [the applicant] on 29 January 2018. The Authority determined the following:
 - The role of Administrative Assistant constitutes suitable employment for [the applicant].
 - [The applicant] has current work capacity
 - [The applicant] does not satisfy the special requirements for continuation of weekly payments after the second entitlement period (after 130 weeks) pursuant to section 38 of the Workers Compensation Act 1987 (the 1987 Act)
 - [The insurer] confirms that 157 weeks of weekly benefit entitlement have been paid to [the applicant] up to and including 30 January 2018.

10. The submissions by the Insurer are largely historical, but it is likely that they answer the applicant's concerns. Most critically, the insurer notes that all Certificates of Capacity (COC) sent in by the applicant were considered. In the course of the insurer's decisions, COCs given by the applicant's Nominated Treating Doctor were quoted, most relevantly a COC from the NTD dated 25 September 2017 which said that the applicant could work for 18 hours per week "with no restrictions."

Decision



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11. In the notice dated 29 September 2017 the Insurer advised that a work capacity assessment was completed on 28 September 2017.
12. The insurer set out the relevant parts of section 43 and referenced the *Guidelines*, where required.
13. Entitlement periods were correctly explained. The applicant had received 140 weekly payments as at the date of the original work capacity decision. The insurer was therefore correct to apply section 38(3).
14. The medical evidence was current, including a Certificate of Capacity from the applicant's Nominated Treating Doctor dated 25 September 2017. In that report the NTD confirmed approval for the applicant to work for 18 hours per week.
15. The Insurer noted that the applicant had successfully completed a work trial in the role of an Administration Assistant.
16. Section 59A was correctly explained. The applicant was advised that pre-approved hospital, medical and related treatment expenses would be payable for a maximum of two years following the cessation of weekly payments on 6 January 2018.
17. The Insurer calculated the applicant's PIAWE in accordance with the findings of an earlier merit review.
18. Section 38(3) was both clearly explained and correctly applied.

Finding

19. The decision by the Insurer dated 29 September 2017 was made in accordance with the stringent requirements set out in the legislation and the *Guidelines* and was therefore validly made.

RECOMMENDATION

20. The application is dismissed.



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

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
05 March 2018