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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 27 November 2015. The Decision advised the applicant that his weekly payments of compensation would cease on 4 March 2016. The applicant applied for internal review and the Internal Review Decision from the Insurer was dated 6 January 2016. That decision confirmed the Work Capacity Decision.
2. The applicant sought Merit Review from the Authority by way of application dated 5 February 2016. The Authority delivered its Findings and Recommendations dated 2 March 2016. The Authority made a finding that the applicant has a current work capacity and recommended that the Insurer is to determine the applicant's entitlement to weekly payments of compensation in accordance with Section 38 of the *Workers Compensation Act 1987* (1987 Act).
3. The applicant then applied to this office for procedural review by way of application dated 31 March 2016. I am satisfied that the application has been made within time and in the proper form.
4. 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



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5. 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.
6. The applicant has made submissions which I have reviewed.

Submissions by the Insurer

7. The Insurer has made submissions by email dated 1 April 2016 in response to this application. The Insurer confirmed that in accordance with the Merit Review recommendations dated 2 March 2016 a Work Capacity Decision was made dated 22 March 2016 advising the applicant his weekly payments of compensation will cease on 30 June 2016.
8. The Insurer then identified a procedural error in the Work Capacity Decision dated 22 March 2016 and another Work Capacity Decision was made dated 31 March 2016.

Decision

9. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
10. The Work Capacity Decision which is the subject of this procedural review has now been superseded by two further Work Capacity Decisions. The Insurer has advised that the applicant’s weekly payments of compensation have not ceased and he continues to receive \$794.96 per week in accordance with the notice provisions of the most recent Work Capacity Decision.
11. The subsequent Work Capacity decisions were made as a result of a recommendation from the Authority at Merit Review which is binding upon the Insurer.
12. Any procedural review of the Work Capacity Decision which is the subject of this application would be redundant as the applicant remains in receipt of weekly payments of compensation as the result of the notice provisions



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of a later Work Capacity Decision. There is no relief that can be obtained of which the applicant is not already in receipt.

13. It is available to the applicant, if he so wishes, to follow the review process in respect of the most recent Work Capacity Decision dated 31 March 2016.

Finding

14. There is no utility in performing a procedural review of this Work Capacity Decision as there is no more relief the applicant can obtain at this time as he remains in receipt of weekly payments of compensation.

RECOMMENDATION

15. The application for procedural review is dismissed.

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

Tracey Emanuel
Delegate of the Workers Compensation
Independent Review Officer
3 May 2016