

**RECOMMENDATION FOLLOWING AN APPLICATION FOR REVIEW OF  
THE INSURER'S WORK CAPACITY DECISION PURSUANT TO SECTION  
44(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 dated 2 September 2013. The insurer advised the applicant that her weekly payments of compensation would cease. The applicant sought internal review of the decision and the Internal Review Decision was dated 14 January 2015.
2. The applicant then sought Merit Review from the Authority and they delivered a decision dated 5 March 2015 making a finding and recommendation that the applicant has an entitlement to weekly payments of compensation in accordance with Section 37(1) of the *Workers Compensation Act 1987* (the 1987 Act) in the sum of \$1,276.92 per week for the period 31 October 2013 to 26 December 2013.
3. The applicant then applied to this office for procedural review on 6 March 2015. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
4. In accordance with Section 44 of the 1987 Act the only document which I am to review is the work capacity decision dated 2 September 2013. Section 44(1)(c) provides that an injured worker may refer a work capacity decision from an insurer for review to the Independent Review Officer (as a review only of the insurer's procedures in making the work capacity decision and not of any judgment or discretion exercised by the insurer in making the decision), but not until the dispute has been subject to internal review by the insurer and merit review by the Authority.
5. In this particular instance the decision has been the subject of both internal review and merit review. However, subsequent to a merit



review outcome in favour of the applicant I was advised by the insurer that on 11 March 2015 the work capacity decision, which was the subject of this review, was *revoked* and weekly payments of compensation had commenced.

6. Therefore, the work capacity decision is no longer being relied upon by the insurer and as such no dispute exists between the parties in respect of that former work capacity decision.
7. In the absence of a subsisting work capacity decision, there can be no jurisdiction to conduct a procedural review.

#### **RECOMMENDATION**

8. The application for procedural review is dismissed.

Tracey Emanuel  
Delegate of the WorkCover Independent Review Officer  
13 April 2015