

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 on 9 December 2014. The decision advised the applicant that his weekly payments of compensation would continue until 16 March 2015, with no further payments from 17 March 2015 onwards. The applicant sought internal review of the decision and the Internal Review Decision was dated 23 January 2015. The Internal Review Decision confirmed the initial work capacity decision however it extended the notice period to 4 May 2015, with payments to be made up until 3 May 2015, nil thereafter.
2. The applicant then sought Merit Review from the Authority on 29 January 2015 and the Authority made a recommendation dated 5 March 2015 confirming the original work capacity decision. An application for procedural review of the Insurer's work capacity decision was received by this office on 8 March 2015.
3. I am satisfied that the applicant has made the application for procedural review in the proper form and within time.
4. The applicant sustained injury in the course of his employment on 8 May 2014. Liability to make weekly payments was accepted by the Insurer.
5. Given the date of injury, the applicant was not an "existing recipient" as at 1 October 2012.
6. He currently works three days per week.

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’s submissions are based on issues either (i) already dealt with by the Authority in the course of merit review (such as whether or not the correct approach to the calculation of pre-injury average weekly earnings was applied), (ii) concerning the conduct of the employer (not following the ‘Dignity and Respect in the Workplace’ charter, failing to supply suitable duties when requested, and failing to resolve a bullying and harassment complaint), or (iii) going to the general conduct of the Insurer in managing the claim (not advising that he could be paid 95% of PIAWE if he returned to work and not communicating properly in the course of managing the claim), rather than issues relevant to the procedures adopted by the Insurer in the course of making the work capacity decision.

Submissions by the Insurer

8. The Insurer has not made submissions in response to this application.

The Decision

9. The *WorkCover Work Capacity Guidelines* relevant to making this work capacity decision came into effect on 11 October 2013.
10. Section 54(2)(a) of the 1987 Act requires at least three months and four working days’ notice be given if payments are being reduced or ceased having regard to Section 76(1)(b) of the *Interpretation Act* 1987. In this decision the insurer has referenced both sections of each piece of legislation and the two notice periods set out in paragraph 1 *supra* certainly comply with the legislation.
11. Guideline 2.3 states that the Insurer’s decision should be “*timely, informed and evidence based.*” Guideline 5.3.2 requires the insurer to advise the applicant of the date of the work capacity assessment. The insurer informed the applicant that a work capacity assessment was conducted on 8 December 2014 and that a work capacity decision was made the next day. He was advised of the work capacity decision by

letter dated 9 December 2014. The Insurer has thereby complied with the Guidelines.

12. The insurer has referenced Section 59A(2) and (3) of the 1987 Act and informed the applicant that his entitlement to treatment expenses will cease 12 months after his entitlement to weekly payments of compensation ceases. The insurer also explained how the applicant may become re-entitled to medical treatment expenses by virtue of Section 59A(3). The insurer has thereby complied with the Guideline and the legislation.
13. Guideline 5.3.2 requires the insurer to explain the relevant entitlement periods. This was done. The applicant was further advised that his entitlements would be assessed pursuant to Section 37 of the 1987 Act. The insurer has complied with the Guideline.
14. The decision notice dated 9 December 2014 reflects a close consideration of the requirements of the Guidelines and legislation. The information given to the applicant was relevant, accurate and compendious.

Finding

15. There are no procedural errors identifiable in the decision. The insurer has complied with the Guidelines and relevant legislation. The application for procedural review must accordingly be dismissed.

Recommendation

16. The application for procedural review is dismissed.

Wayne Cooper
Delegate of the WorkCover Independent Review Officer
15 April 2015