

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 20 November 2014. The decision followed an earlier recommendation from this Office reported and numbered as "8014." The new decision by the Insurer advised the applicant that her weekly payments of compensation would cease on 26 February 2015. The applicant sought internal review of the decision and the Internal Review Decision was dated 12 January 2015. The Internal Review Decision confirmed the new work capacity decision.
2. The applicant then sought Merit Review from the Authority on 29 January 2015 and the Authority made a recommendation dated 18 February 2015 confirming the Insurer's work capacity decision. An application for procedural review of the Insurer's work capacity decision was received by this office on 17 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 circumstances set out in recommendation 8014, which need not be repeated here.

Submissions by the applicant

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's submissions concern the operation of the legislation and the existence

of an award entered by the Workers Compensation Commission (WCC) in 2008. She is of the view that her reduced wages in a lesser graded position should be complemented by a payment from the Insurer, in accordance with the award entered by the WCC. The basis for this argument appears to be that the applicant is unable to return to the “specific” job in the course of which she was injured.

Submissions by the Insurer

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

The Decision

7. The *WorkCover Work Capacity Guidelines* relevant to making this work capacity decision came into effect on 11 October 2013.
8. 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 notice period set out in paragraph 1 *supra* certainly complies with the legislation.
9. 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 18 November 2014 and that a work capacity decision was made two days later. She was advised of the work capacity decision by letter dated 20 November 2014. The Insurer has thereby complied with the Guidelines.
10. The insurer has referenced Section 59A(2) and (3) of the 1987 Act and informed the applicant that her entitlement to treatment expenses will cease 12 months after her 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.

11. Guideline 5.3.2 requires the insurer to explain the relevant entitlement periods. This was done. The applicant was further advised that her entitlements would be assessed pursuant to Section 38 of the 1987 Act. The various formulae used to calculate weekly entitlements were fully and clearly explained. The insurer has thereby complied with the Guideline.
12. The decision notice dated 20 November 2014 reflects a close consideration of the requirements of the Guidelines and legislation. The information given to the applicant was relevant, accurate and exhaustive. This is in sharp contrast to the first decision made by the Insurer which was the subject of recommendation 8014.
13. The submissions made by the applicant cannot be given any weight, since they concern issues which can only be examined in the course of Merit Review. This Office has no jurisdiction to look behind decisions made by the merit review service of the Authority.

Finding

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

Recommendation

15. The application for procedural review is dismissed.

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