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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 applications to both the Authority and this Office being out of time, WIRO does not have jurisdiction to undertake a procedural review of the Work Capacity Decision dated 28 October 2015.**
- b. The application is dismissed.**

Introduction and background

1. The applicant seeks procedural review of a Work Capacity Decision made by the Insurer on 28 October 2015. The Decision advised the applicant that the Insurer found that she did not have any work capacity and the Decision did not impact her weekly payments. The applicant applied to the Insurer for internal review and the Internal Review Decision was dated 29 December 2015. That decision confirmed the Work Capacity Decision and that the applicant was entitled to \$794.96 per week pursuant to Section 38(6) of the *Workers Compensation Act 1987* (1987 Act).
2. The applicant sought Merit Review from the Authority by way of application dated 11 February 2016. The Authority delivered its decision dated 16 February 2016 stating that the application for review was not made within 30 days after the applicant received notice in the form approved by the Authority of the Insurer's decision on internal review. Therefore, the application for merit review was not made in accordance with Section 44BB(3)(a) of the 1987 Act and the Authority does not have jurisdiction to undertake a review of the Work Capacity Decision.
3. The applicant then applied to this office for procedural review by way of application dated 3 May 2015 received 9 May 2015. I am *not* satisfied that the application has been made within time and in the proper form.



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Submissions by the applicant

4. 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.
5. The applicant has made a submission that she is seeking a review of the Decision because *“I disagree with the work capacity decision that has been made.”*
6. This application for review has been made despite the Insurer informing the applicant that they have made a decision that she has *no current work capacity* and she is entitled to weekly payments of compensation in the sum of \$794.96 per week.

Submissions by the Insurer

7. The Insurer has made submissions by email that as the Merit Review decision was dated 16 February 2016 the application for procedural review has been made out of time.

Decision

8. The relevant Guidelines are dated 4 October 2013 and came into effect on 11 October 2013.
9. Section 44BB(3)(a) of the 1987 Act states:

(3) The following provisions apply to the review of a work capacity decision when the reviewer is the Authority or the Independent Review Officer:

*(a) an application for review must be made **within 30 days after the worker receives notice in the form approved by the Authority of the insurer’s decision on internal review of the decision (when the application is for review by the Authority) or the Authority’s decision on a review***



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(when the application is for review by the Independent Review Officer)
(emphasis added).

10. The decision of the Authority was dated 16 February 2016. The applicant's application for procedural review was dated 3 May 2016. The application was not made within 30 days of receipt by the applicant of the decision of the Authority.
11. It is perhaps more accurate to say that there was no decision (or recommendation) by the Authority in any event, due to the want of jurisdiction caused by the limitation problem set out at paragraph 9 above. It follows as a necessary corollary that no valid application for procedural review could ensue, since it is a pre-condition to the jurisdiction of this Office that the Authority was capable of performing a merit review if it so chose to act. But here the Authority had no choice due to the strict wording of section 44BB(3)(a).
12. In the circumstances I do not have any power to perform a procedural review.

RECOMMENDATION

13. The applications to both the Authority and this Office being out of time, WIRO does not have jurisdiction to undertake a procedural review of the Work Capacity Decision dated 28 October 2015.
14. The application is dismissed.

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

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