



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 is dismissed.

Introduction and background

1. The applicant seeks procedural review of a Work Capacity Decision made by the Insurer on 21 June 2016. The Decision advised the applicant that her weekly payments of compensation would cease on 27 June 2016. The applicant requested an internal review on 23 June 2016.
2. On 19 July 2016 the Insurer issued a Notice under Section 74 of the *Workers Compensation Act 1987* (1987 Act) declining liability for the applicant's claim.
3. On 20 July 2016 the person at the Insurer performing the internal review of the Work Capacity Decision determined there was no "*jurisdiction to review the work capacity decision as a decision to dispute liability for weekly payments of compensation had since been issued and this is not a work capacity decision in accordance with Section 43(2)(a) of the Workers Compensation Act 1987.*"
4. The applicant then applied to this office for procedural review of the Work Capacity Decision by way of application dated 1 August 2016. I note that the applicant has not applied to the Authority for Merit Review.

Decision

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



Level 4, 1 Oxford Street, Darlinghurst NSW 2010
T: 13 9476
contact@wiro.nsw.gov.au
www.wiro.nsw.gov.au

(1) An injured worker may refer a work capacity decision of an insurer for review:

(a) by the insurer in accordance with the Workers Compensation Guidelines within 30 days after an application for internal review is made by the worker, or

(b) by the Authority (as a merit review of the decision), but not until the dispute has been the subject of internal review by the insurer, or

(c) 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 the subject of internal review by the insurer and merit review by the Authority.

7. The applicant cannot apply for a procedural review until after the dispute has been "the subject of" merit review by the Authority. The applicant has not completed this step in the review process.
8. In the present case the applicant has not complied with Section 44BB(1)(c) of the 1987 Act and she is in breach of the review process. Therefore a procedural review cannot be performed.

FINDING

9. WIRO does not have jurisdiction to undertake a procedural review of the Work Capacity Decision dated 21 June 2016.

RECOMMENDATION

10. The application is dismissed.

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

Tracey Emanuel
Delegate of the Workers Compensation Independent Review Officer
10 August 2016