



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 suffered psychological injury in the course of his employment as a House Coordinator in August 2015. The Insurer accepted liability and made weekly payments for all relevant periods. As part of a return to work plan the applicant returned to work on suitable duties with a different employer in October 2016.
2. The applicant seeks procedural review of a Work Capacity Decision made by the Insurer on 12 September 2016. The Decision informed the applicant that his payments of compensation would reduce to \$213.48 per week from 16 December 2016 under section 37(3) because he had a PIAWE of \$1,190.55 and an ability to earn \$738.96. This decision was maintained following internal review.
3. The applicant sought Merit Review from the Authority by way of application received 7 November 2016. The Authority found that the applicant: (i) has a current work capacity of 6 hours per day, 3 days per week; (ii) is unable to return to his pre-injury employment as a house coordinator with the pre-injury employer; (iii) is able to return to work in suitable employment as a house coordinator with a different employer or community liaison manager/officer; and (iv) is able to earn \$594.00 per week in suitable employment. The Authority went on to recommend that the Insurer calculate the amount of the applicant's weekly payments under section 37(2) in accordance with those findings.



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4. An application was made to this Office for procedural review received on 12 December 2016. I am satisfied that the application was made within time and in the correct form.

Submissions by the applicant

5. Section 44BB (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.”*
6. The applicant made no submissions, beyond seeking a review of the entire process.

Submissions by the Insurer

7. The Insurer provided a useful chronology setting out the sequence of events, from the fair notice call on 18 August 2016 until receipt of the merit review recommendation on 7 December 2016. Having contacted the applicant on 16 December 2016 to enquire as to whether or not there were any specific grounds upon which he sought to rely, the Insurer reports that the applicant advised he “wants a review of the entire procedural process.” Nothing was provided by the Insurer in response.

Decision

8. The Insurer contacted the applicant by telephone on 18 August 2016 and advised that a work capacity assessment was imminent, with the possibility of an adverse work capacity decision to follow. Since the ensuing decision was not made until 12 September 2016, more than three weeks after the phone call, the insurer has complied with the fair notice requirement to give at least two weeks notice.
9. At the time of the work capacity decision the applicant was not working and he had received 52 weeks of compensation payments. It follows that section 37 was the correct section under which to assess his weekly entitlements.



10. The insurer set out the relevant statutory provisions in the body of the decision.
11. The correct notice period of three months plus four days for postage was observed.
12. The medical and paramedical evidence relied upon (the latter including a report from a “treating psychologist”) was current and clearly set out.
13. Suitable employment was identified by the insurer and agreed to by the applicant’s own Nominated Treating Doctor. At the time the applicant was certified to work for 15 hours per week and it was only later that he commenced on 18 hours per week.
14. While the merit review service found that the applicant had a lower earning capacity than the Insurer had found, this was not due to any procedural breach by the Insurer. Rather, it was more likely a result of the changing circumstances which arose as the case progressed, which allowed the applicant to actually demonstrate both his capacity and his limitations in the workplace once he had resumed paid employment.
15. The insurer clearly explained the effect of section 43(1), section 59A(2) and (3) and the calculation of PIAWE.
16. Since the applicant is not in possession of an assessment of Whole Person Impairment in excess of 10% the insurer advised that he will continue to be able to claim pre-approved medical treatment for two years following 16 December 2016. This is in accordance with the legislation.

Finding

17. The Insurer has not committed any procedural errors in the course of making the work capacity decision in this case. It follows that the decision was validly made.

RECOMMENDATION

18. The application is dismissed.



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A handwritten signature in blue ink, which appears to read "Wayne Cooper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Wayne Cooper
Delegate of the Workers Compensation
Independent Review Officer
11 January 2017