



State Insurance Regulatory Authority

Workers Compensation
Merit Review Service

FINDINGS AND RECOMMENDATIONS ON MERIT REVIEW BY THE AUTHORITY

Worker:

Insurer: **Date of Review:**

Date of Injury:

Claim Number:

Our Reference:

FINDINGS ON REVIEW

1. The following are findings made by the State Insurance Regulatory Authority (the Authority) on review.
2. The Worker has a present inability arising from an injury such that she is unable to return to work in her pre-injury employment.
3. The Worker has current work capacity.
4. The vocational options of receptionist and information officer are suitable employment in relation to the Worker.
5. The Worker's entitlement to weekly payments of compensation falls after the second entitlement period under section 38 of the *Workers Compensation Act 1987* (the 1987 Act).
6. The Worker does not meet the special requirements for continuation of weekly payments of compensation after the second entitlement period (after week 130) in accordance with section 38(3) of the 1987 Act.

RECOMMENDATIONS BASED ON FINDINGS

7. Pursuant to section 44BB(3)(e) of the 1987 Act, the Authority may make binding recommendations to an Insurer based on the findings of its review.
8. The Authority does not make any recommendations to the Insurer for the reasons below.

BACKGROUND

9. The Worker sustained an injury to her lower back at work whilst lifting a box. The Worker underwent a right L5/S1 discectomy and posterolateral spinal fusion. She ceased work with the pre-injury employer and has undertaken some work with other employers. The Worker is not working.
10. The Worker is 48 years of age.

11. The Insurer made a work capacity decision, ceasing the Worker's entitlement to weekly payments of compensation under section 38 of the 1987 Act.
12. The Insurer undertook an internal review in this matter and made a decision, confirming its earlier decision.
13. The application for merit review was received by the Authority. The application has been made within 30 days after the Worker received notice of the internal review, as is required under section 44BB(3)(a) of the 1987 Act. The application has been lodged in the form approved by the Authority.

LEGISLATION

14. The legislative framework governing work capacity decisions and reviews is contained in the:
 - *Workers Compensation Act 1987* (the 1987 Act);
 - *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act), and
 - *Workers Compensation Regulation 2016* (the Regulation).
15. Section 43 of the 1987 Act describes a "work capacity decision".
16. Section 44BB of the 1987 Act provides for merit review of a work capacity decision of the Insurer, by the Authority.

DOCUMENTS CONSIDERED

17. The documents I have considered are those listed in, and attached to, the application and the Insurer's reply and any further information received from the parties.
18. I am satisfied that both parties have had the opportunity to respond to the other party's submissions and that the information provided has been exchanged between the parties.

SUBMISSIONS

19. In the application for merit review, the Worker submits:
 - Her whole person impairment (WPI) assessment is not current. No review has been conducted post-spinal fusion and graft in February 2015.
 - A change in her WPI will change the category for entitlement to weekly compensation.
 - Capacity for work is 12 hours per week. 15 hours was for a trial only and has been adjusted to 12 hours by her doctor to reflect medical capacity.
20. In reply, the Insurer submits:
 - The Worker was compensated for 11% WPI in 2009 following an assessment of an AMS. It was noted that the Worker was a candidate for surgery at the time of assessment, however, she did not undertake surgery until February 2015. The Worker underwent a right L5/S1 decompression laminectomy and foraminotomy on 10 February 2015 under the care of an orthopaedic and spinal surgeon. The Insurer concurs that there has been no further assessment of WPI following surgery. The Insurer understands the Worker has instructed solicitors to prepare a claim for further impairment, however, this has not yet been received.

- In the absence of any further claim for permanent impairment the Insurer has determined the Worker to have 11% WPI in line with her most recent assessment for the purposes of the work capacity decision.
- At the time of the work capacity decision and the internal review decision, the Worker was certified with work for 15 hours per week. The Insurer understands that the Worker has since downgraded to 12 hours per week in her certificate of capacity, a near month following the internal review decision.
- The NTD was requested to clarify the clinical reasoning for this change in capacity, however, no response has been received to date. At this stage, there appears to be no incident, other than the application of a work capacity decision, to warrant this certification. The Insurer will continue to seek clinical reasoning for this change.
 - The Insurer notes the NTD indicated on her previous certificate “increase in hours above 15 hrs per week on a trial basis only as per injury treatment plan”. The Insurer considers that the certification confirms that the Worker has capacity for 15 hours per week and any additional hours above that would be considered a trial only. This is consistent with the WorkCover certificates of capacity.

REASONS

Nature of merit review

21. This matter involves a merit review of the work capacity decision of an insurer in accordance with section 44BB(1)(b) of the 1987 Act. The review is not a review of an insurer’s procedures in making the work capacity decision and/or internal review decision. The review requires that I consider all of the information before me substantively on its merits and make findings and recommendations that, in light of the information before me, are most correct and preferable.
22. Based on the above submissions, I am of the view that the Worker has sought a review of the following work capacity decisions:
 - (a) a decision about her current work capacity (section 43(1)(a)),
 - (b) a decision about what constitutes suitable employment (section 43(1)(b)),
 - (c) a decision about whether a worker is, as a result of injury, unable without substantial risk of further injury to engage in employment of a certain kind because of the nature of that employment, and
 - (d) any other decision of an insurer that affects the Worker’s entitlement to weekly payments of compensation, including a decision to suspend, discontinue or reduce the amount of the weekly payments of compensation payable to the Worker on the basis of any decision referred to in paragraphs (a)–(e) (section 43(1)(f)).

Current work capacity and suitable employment

23. The Worker sustained injury to her lumbar spine. In February 2015, she underwent surgery at the hands of the orthopaedic and spinal surgeon.
24. The issue for me is how the injury impacts upon the Worker’s capacity for employment.
25. Section 32A of the 1987 Act defines “current work capacity” as:

current work capacity, in relation to a worker, means a present inability arising from an injury such that the worker is not able to return to his or her pre-injury employment but is able to return to work in suitable employment

26. “No current work capacity” is defined in section 32A of the 1987 Act as:

no current work capacity, in relation to a worker, means a present inability arising from an injury such that the worker is not able to return to work, either in the worker’s pre-injury employment or in suitable employment

27. In undertaking this review, I will consider the information before me and assess if, and to what extent, the Worker has “current work capacity” or “no current work capacity” as defined and set out above.

Certificates of capacity

28. Before me are a number of WorkCover NSW – certificates of capacity issued by the Worker’s NTD. The NTD has also provided a report.

29. The most recent certificate of capacity has certified the Worker with capacity for some type of employment for 12 hours per week with the following recommendations on tolerances:

Lifting/carrying capacity	Floor to waist (4 kg occasionally), max 10kg lifting, no twisting
Sitting tolerance	Constantly if regular breaks are available
Standing tolerance	Frequently
Pushing/pulling ability	Pushing (10kg) and pulling (9kg) of mobile structures such as wheelchairs, wheeled beds etc acceptable
Bending/twisting/squatting ability	Avoid repetitive
Driving ability	60 minutes as tolerated
Other	Requires flexible breaks dependant on pain. OK to make up working hours as a respite relief when available
Comments	Increase in hours above 15hrs per week on a trial basis only as per injury treatment plan – not trialled. Will return to 12 hours per week which has been the trialled work tolerance limited. Cert 3 in aged care recommended

30. The certificates of capacity are in the same terms. The NTD certified the Worker with capacity for some type of employment for 15 hours per week with the same recommendations on tolerance as above. In the “Comments” section, The NTD has stated: “increase in hours above 15hrs per week on a trial basis only as per injury treatment plan. Cert 3 in aged care recommended”.

31. In her report, The NTD has stated:

“In July 2016, the Worker undertook a trial in the work place in a volunteer role assisting clients attending a day respite centre. She attended this for 12 hours per week. This caused a flare of her back and leg pain but the Worker focused on containing this to a manageable level during the work trial. She really was at the limit of the management level of exacerbation of pain during this trial.

At the same time that the work trial came to an end, the Worker’s certified work hours were increased to 15 hours per week in the attempt to maximise her job finding opportunities, and also to accommodate the attendance at the aged care certificate 3 course if it were to be approved. There was no further work trial available to actually trial her tolerability of 15 hours in the

workplace and the increase to 15 hours was well labelled on the certificate as a trial only because at that time I was concerned that it would not be successful based on the degree of tolerability shown during the 12 hour per week work trial. As she has remained out of the work place since that time, a trial of increased hours has not yet occurred. Based on the trial of 12 hours per week that did occur, it is reasonable that 12 hours per week remains the current work capacity ...”

Medical and functional reports

32. The orthopaedic and spinal surgeon, provided a report. He did not comment on the Worker’s capacity for employment but stated he had no objection to her undertaking an aged care certificate. He hoped that injections would relieve her right leg symptoms.
33. A spinal surgeon provided a report. In that report he notes that the Worker still has leg symptoms following surgery and that she needs to continue with flexibility based exercise and managing her symptoms as best she can. He did not comment on her capacity for some type of employment.
34. The orthopaedic and spinal surgeon also provided an earlier report. In that report he stated that the Worker should indefinitely avoid activities involving any lifting over 7 kg, excessive bending and excessive twisting. He also opined that she would be able to attend an aged care course and would ultimately be able to assist residents with their activities of daily living. She would not be able to operate hoists, make beds or do any cleaning. She would be able to do the documentation part of the job as well as assisting with feeding and supervision of showering and hygiene.
35. A consultant provided a functional assessment. She was of the opinion that the Worker could return to work 8 hours per day, 5 days per week working at a light level. A light level is defined as exerting up to 9 kg of force occasionally, and/or up to 4.5 kg of force frequently.
36. She found the Worker to be able to perform the following physical demands:
 - Sitting – constantly
 - Standing – frequently
 - Walking – constantly
 - Kneeling – frequently
 - Stairs – frequently
 - Work bent over stooping – frequently

The Worker demonstrated the following safe maximum lifting tolerances:

- Floor to waist – 4 kg occasionally
- Waist to eye level – 5 kg occasionally
- Bilateral carrying – 8 kg occasionally
- Pushing – 10 kg occasionally
- Pulling – 9 kg occasionally

Discussion and findings

37. After considering the medical information, I accept the certification the NTD in her most recent certificate of capacity. The NTD has been reviewing the Worker for a considerable period of time and has referred her to orthopaedic specialists for review and surgery. The NTD has been involved in consultation with those specialists and with the rehabilitation providers. She has continued to review the Worker through the period of her work trial. She has given a detailed explanation as to why the Worker’s certificate of capacity was increased to 15 hours for a trial and reduced following a report of exacerbation of symptoms. She has also stated that part of the reason for the increased hours had been with a view of attempting to maximise job finding opportunities and for the Worker to attend a course in aged care. I accept the NTD has downgraded the Worker to 12 hours per week as she “was concerned that it would not be

successful based on the degree of tolerability shown during the 12 hours per week work trial”.

38. I note that neither orthopaedic specialist commented on the Worker’s current ability to work but both noted that the Worker continues to have symptoms. The orthopaedic and spinal surgeon believed the Worker would be able to undertake certain duties at some point in the future but with reduced tolerances in regards to lifting and undertaking certain duties.
39. Although the functional assessment stated the Worker could return to work 8 hours per day, 5 days per week, I prefer the opinion of the nominated treating specialist based on the length of time she has been reviewing the Worker, together with her referral of the Worker to specialists and her management of the Worker’s continuing symptoms. Further, the NTD assessed the Worker through the work trial and has continued to assess her symptoms following from that trial. The NTD has been certifying the same recommendations on tolerances in all the certificates of capacity before me. Further, they are supported by the comments of the orthopaedic and spinal surgeon.
40. I find the Worker has capacity for some type of employment 12 hours per week with the tolerances stated in the certificate of capacity.

Suitable employment

41. There is no issue before the Authority that the Worker is unable to return to work in her pre-injury employment. In the absence of any dispute on this point being referred to the Authority for review, I accept that the Worker is unable to return to work in her pre-injury employment.
42. In order to determine whether the Worker has current work capacity, I am required to consider whether the Worker is able to return to work in “suitable employment”. Suitable employment is defined in section 32A of the 1987 Act as:

Suitable employment, in relation to a worker, means employment in work for which the worker is currently suited:

(a) having regard to:

- (i) the nature of the worker’s incapacity and the details provided in medical information including, but not limited to, any certificate of capacity supplied by the worker (under section 44B), and
- (ii) the worker’s age, education, skills and work experience, and
- (iii) any plan or document prepared as part of the return to work planning process, including an injury management plan under Chapter 3 of the 1998 Act, and
- (iv) any occupational rehabilitation services that are being, or have been, provided to or for the worker, and
- (v) such other matters as the Workers Compensation Guidelines may specify, and

(b) regardless of:

- (i) whether the work or the employment is available, and
- (ii) whether the work or the employment is of a type or nature that is generally available in the employment market, and
- (iii) the nature of the worker’s pre-injury employment, and
- (iv) the worker’s place of residence.

43. A vocational assessor provided a closure report. In that report, the vocational assessor notes that the Worker was provided with a course on Microsoft Word and Microsoft Excel, improving her computer skills. She was assisted in job seeking education and provided with job seeking assistance. The Worker participated in a work trial as a Carer which commenced at 2 days / 4 hours and worked up to 12 hours per week.
44. A rehabilitation provider provided a vocational assessment report. The rehabilitation provider recorded that the Worker left school after Year 10. The Worker's work history was as an administrative assistant/support worker (the Worker has ceased that employment since the time of the report), data entry operator, sales assistant, sales assistant/assistant manager.
45. The rehabilitation provider identified the positions of administrative assistant/general clerk, general receptionist, sales assistant (light), customer service administrator, call centre operator, welfare worker and data entry operator.
46. The vocational assessor provided a more recent labour market research assessment report. In that report, the positions of general clerk, sales assistant, receptionist, welfare worker, aged care worker, data entry operator, information officer and call centre operator were identified as suitable vocations for the Worker.

Welfare worker

47. I note from the report that most occupations in this field required a level of skill commensurate with a bachelor degree or higher qualification. The employer contacts either required appropriate qualifications or an ability to undertake counselling.
48. As the Worker does not have the required qualifications or experience, I find that the position of welfare worker is not suitable employment for the Worker as defined in section 32A of the 1987 Act.

Aged care worker

49. I note from the report that the duties include assisting clients with their mobility, performing housekeeping tasks such as vacuuming and cleaning, doing shopping and errands. The employer contacts each noted that lifting of 8 to 10 kg was required which is outside the recommendations on tolerances for the Worker. Further, the employer contacts state that Certificates III or IV in Aged Care were also required. The Worker does not have those certificates.
50. Given the Worker does not have the required certificates or training, and would be required to lift beyond her tolerances I find the position of aged care worker is not suitable employment as defined by section 32A of the 1987 Act.

Information officer

51. The position is described as answering inquiries about goods and services; responding to inquiries about problems and providing advice; recording inquiries; referring complex inquiries to team leaders; accessing and operating computer network systems and communication systems and issuing forms, information kits and brochures.
52. According to the injury treatment fax sheet forwarded to the NTD, the position is described as sedentary requiring a worker to constantly sit, occasionally to frequently stand and walk about the office, lifting/carrying/twisting/bending/squatting/ crouching is not a significant component of the position but the position requires repetitive arm and hand movements.

53. Having reviewed the Worker's work history and experience working in customer service roles, administrative work and in data entry, and performing the work trial as a carer I accept that the Worker has the necessary skill and work experience for this position. Further, the Worker has been given additional computer skills training. There is nothing in the information before me which indicates that age is a barrier to the Worker securing this employment.
54. The vocational assessor made 3 employer contacts regarding advertised positions. The first contact noted the position was sedentary and the worker was required to constantly sit at a workstation. However, the other 2 positions noted that the worker often sat at a workstation with the ability to change position and take breaks when needed and carried out a number of tasks within the office. Lifting/carrying/stretching/twisting/bending/squatting were not significant components of the position. The NTD has given a qualified approval for the position but noted that the Worker cannot constantly sit.
55. In my view the position is within the Worker's functional tolerances. The information before me states that the position would allow her to sit, change posture and take breaks when needed which indicates that the Worker would be able to engage in the employment without a substantial risk of further injury due to the nature of the employment.
56. I note that each of the employers advised that the position could be filled on the basis of someone working limited hours.
57. Having regard to the nature of the Worker's incapacity, and noting the balance of the matters in section 32A of the 1987 Act, I am satisfied that the role of information officer is suitable employment for the Worker as defined in section 32A of the 1987 Act.

General clerk

58. The position is described as preparing, sorting and filing information; dealing with mail; photocopying and faxing documents; preparing routine reports; recording issue of equipment to staff; receiving letters and telephone messages; transcribing information; customer service and sometimes reception duties.
59. Having reviewed the Worker's work history and experience working in customer service roles, administrative work and in data entry, together with performing the work trial and undertaking computer training, I accept that the Worker has the necessary skill and work experience for this position.
60. The employer contacts noted that the position required frequent sitting with occasional standing. The NTD commented in relation to this position "Unable to sit constantly. Required to mobilise regularly". I am not satisfied that this position is within the Worker's functional tolerance in relation to sitting as I do not believe the Worker would be able to take breaks as required as none of the employer contacts indicated that this would be available to the Worker.
61. I find that the position of general clerk is not suitable employment as defined in Section 32A having regard to the nature of the Worker's incapacity.

Data entry worker

62. The position is described as entering data and codes required to process information; retrieving and updating information; taking records; transcribing information; taking notes of proceedings and reading portions of transcripts; preparing reports and sorting outgoing material.
63. I note that the Worker has worked as a data entry operator and some of her duties included data entry work. I accept that the Worker has the necessary skill, education and work experience to undertake the position. Further, there are no age related considerations for the position.

64. The position is noted to require constant sitting and the NTD has indicated that the Worker is not able to sit constantly to undertake the position. Although there is an indication in the labour market analysis that the Worker would be able to change position, the tasks involved in the job require sitting at computers and entering information or preparing reports. There are no tasks suggestive of a worker being away from the computer. After considering the essential tasks of the role and noting that each element of the role requires the worker to be seated, I am not persuaded that the Worker would be able to “take flexible breaks as required by pain” as stated in the NTD’s certificate of capacity and accepted by me.
65. I find that the position of data entry operator is not suitable employment as defined in Section 32A having regard to the nature of the Worker’s incapacity.

Sales assistant

66. The position is described as determining customer requirements and advising on products; demonstrating and explaining to customers the establishment’s goods and services; selling aged care and mobility aids; accepting payment for goods and services; assisting with management of stock together with stacking and displaying goods.
67. The physical requirements states that the worker is required to frequently stand at sales counters, lifts and packs items, bends, squats or crouches to demonstrate items or to stock shelves. The NTD has stated that bending, squatting and crouching needs to be at a minimum and the Worker would need to be able to mobilise.
68. The employer contacts state a worker is required to frequently stand and walk short distances with the occasional opportunity to sit.
69. The Worker has experience as a sales assistant with two previous employers and I accept that she has the necessary skill, education and work experience to undertake the role. I accept there are no age considerations for the position.
70. However, the Worker still has back and leg symptoms and her work trial resulted in an exacerbation of those symptoms. The Worker needs to be able to mobilise and take flexible breaks. Further, I do not believe that squatting and bending to pack shelves and demonstrate goods is within the Worker’s functional tolerances. I am not persuaded the position is suitable employment for the Worker as defined in section 32A taking into consideration her inability as a result of injury.
71. I find that the position of sales assistant is not suitable employment as defined in Section 32A having regard to the nature of the Worker’s incapacity.

Receptionist

72. The position is described as greeting and welcoming visitors; arranging and recording details of appointments; answering enquiries and providing information on goods and services; answering and transferring telephone calls; receiving and resolving complaints from customers; receiving and distributing correspondence; maintaining the reception area; advising on and making reservations and may perform clerical tasks.
73. The employer contacts stated that although there was frequent sitting, workers are able to change position and stand and walk around the office or showroom. Lifting is a minimal component and is light in nature. Bending, twisting and squatting are not significant components of the position. The employer contacts have indicated that the position is available to workers on limited hours of work on a part-time basis.
74. The Worker has customer service experience and undertook some receptionist duties in her role. She also has computer skills which have been improved with the computer training provided by the Insurer. I accept that the Worker has the skill, education and work experience to undertake the role. Further, there are no age considerations relevant to the position.
75. The NTD has approved the position with the qualification of the Worker being unable to

constantly sit and must be able to mobilise. I accept that the position does require sitting, but that the receptionist is also able to stand and move around the reception area and the office. In my view the position is within the Worker's tolerances and as a receptionist is able to sit or stand and move around the office to mobilise indicates that the Worker would be able to engage in the employment without substantial risk of further injury due to the nature of the employment.

76. I find that the position of receptionist is suitable employment for the Worker as defined by section 32A of the 1987 Act.

Entitlement periods for ongoing weekly payments

77. The following provisions of the 1987 Act provide the basis for determination and calculation of a worker's weekly payments entitlement:
- a. Weekly payments in the first 13 weeks are to be determined in accordance with section 36 of the 1987 Act (the first entitlement period);
 - b. Weekly payments in weeks 14–130 are to be determined in accordance with section 37 of the 1987 Act (the second entitlement period); and
 - c. Weekly payments after the second entitlement period (after week 130) are to be determined in accordance with subsections 38(6) or (7), but only if the special requirements for continuation of weekly payments after the second entitlement period are met in accordance with section 38 of the 1987 Act.
78. The Insurer's reply stated that the Worker has received 364 weeks of weekly payments of compensation up to the time of filing the reply. This has not been disputed by the Worker.
79. I accept the Insurer's statement that the Worker's entitlement to weekly payments of compensation currently falls after the second entitlement period and is to be calculated in accordance with section 38 of the 1987 Act.

Special requirements for continuation of weekly payments after second entitlement period (after week 130)

80. Section 38 of the 1987 Act provides that an entitlement to weekly payments after the second entitlement period is only available if special requirements are met as follows:
- (2) *A worker who is assessed by the Insurer as having no current work capacity and likely to continue indefinitely to have no current work capacity is entitled to compensation after the second entitlement period.*
 - (3) *A worker (other than a worker with high needs) who is assessed by the insurer as having current work capacity is entitled to compensation after the second entitlement period only if:*
 - (a) *the worker has applied to the insurer in writing (in the form approved by the Authority) no earlier than 52 weeks before the end of the second entitlement period for continuation of weekly payments after the second entitlement period, and*
 - (b) *the worker has returned to work (whether in self-employment or other employment) for a period of not less than 15 hours per week and is in receipt of current weekly earnings (or current weekly earnings together with a deductible amount) of at least \$155 per week, and*

- (c) *the worker is assessed by the insurer as being, and as likely to continue indefinitely to be, incapable of undertaking further additional employment or work that would increase the worker's current weekly earnings.*
- (3A) *A worker with high needs who is assessed by the insurer as having current work capacity is entitled to compensation after the second entitlement period only if the worker has applied to the insurer in writing (in the form approved by the Authority) no earlier than 52 weeks before the end of the second entitlement period for continuation of weekly payments after the second entitlement period.*
81. A “worker with high needs” is defined in section 32A of the 1987 Act must be met, as follows:
- worker with high needs** means a worker whose injury has resulted in permanent impairment and:
- (a) *the degree of permanent impairment has been assessed for the purposes of Division 4 to be more than 20%, or*
- (b) *an assessment of the degree of permanent impairment is pending and has not been made because an approved medical specialist has declined to make the assessment on the basis that maximum medical improvement has not been reached and the degree of permanent impairment is not fully ascertainable, or*
- (c) *the insurer is satisfied that the degree of permanent impairment is likely to be more than 20%*
- and includes a worker with the highest needs*
82. To satisfy the requirements of being a “worker with high needs” as set out in section 32A, at least one of the sub-sections (a), (b) or (c) of the definition must be met by the worker.
83. The Insurer notes in its work capacity decision, the internal review and its reply, that the Worker has been assessed as having 11% whole person impairment. The Worker has submitted that following surgery she would have a higher assessment. However, there is no information before me that the Worker has been assessed for the purposes of Division 4 to have a degree of permanent impairment of more than 20 per cent.
84. I am not satisfied that sub-section (a) of the definition is met.
85. In relation to sub-section (b) of the definition, there is no information before me that there is an assessment of whole person impairment pending which has not been made because an Approved Medical Specialist has declined to make such an assessment on the basis that the Worker's condition has not reached maximum medical improvement, or the degree of permanent impairment is not fully ascertainable.
86. I am not satisfied that sub-section (b) of the definition is met.
87. Finally, the Insurer is not satisfied that the degree of permanent impairment is likely to be more than 20 per cent.
88. Accordingly, I am not satisfied, on the information before me, that the Worker is “a worker with high needs” pursuant to section 32A of the 1987 Act, as she does not meet the criteria in the definition. Therefore, the requirements of section 38(3) of the 1987 Act apply in this matter.
89. With respect to sub-section 38(3)(a), this section does not apply to an existing recipient of weekly payments of compensation for the purposes of clause 16 schedule 8 of the Regulation.
90. With respect to sub-section 38(3)(b), I am informed that the Worker is not currently working.
91. Accordingly, I am not satisfied that the Worker has returned to work (whether in self-employment or other employment), for a period of not less than 15 hours per week nor is she in receipt of current weekly earnings (or current weekly earnings together with a deductible amount) of at least \$183.00 per week (as currently indexed). She therefore does not meet the requirements of sub-section 38(3)(b) of the 1987 Act.
92. The Worker therefore is not entitled to weekly payments of compensation under section 38 of the 1987 Act.

93. Given that the outcome of my review does not differ from the outcome of the Insurer's internal review decision, it is not necessary that I make any recommendations to the Insurer.

Merit Review Service
Delegate of the State Insurance Regulatory Authority