

## Earning Capacity Decisions – Statutory Benefits

Throughout the life of your claim, we are required to continually review your capacity to earn in employment as required under the Motor Accident Injuries Act 2017 ('the Act'). The State Insurance Regulatory Authority (SIRA) has developed guidelines to help inform Insurers how to conduct these reviews on your earning capacity.

This fact sheet will help you understand:

- What we mean by the phrase "earning capacity"
- What information we use to determine your earning capacity
- Why we need to make a decision, and
- What impact the decision may have on your claim.

When making an earning capacity decision on your claim, we will ensure that we abide by the following principals:

- Ensuring our processes are fair and transparent
- Communicate with you in a way which is informative and easy to understand
- Promptly address any errors
- Adhere to our obligations under the legislation

### What is an earning capacity decision and how does it affect me?

As you undergo treatment and recover from your injuries, we will continuously review your ability to work which will help us to determine your earning capacity. This review on your earning capacity may affect your weekly benefit payments.

The phrase 'earning capacity' means the weekly amount that you are able to earn in your pre-accident employment for the first 78 weeks following your accident. After 78 weeks, your earning capacity is the weekly amount you would be able to earn in any employment reasonably available to you in the open labour market.

We assess your **earning capacity** by considering information such as:

- The nature of your injuries and how you are recovering,
- Your needs for treatment and rehabilitation including, whether that treatment and rehabilitation will enhance your capacity to earn or any time you have off work to attend treatment which will improve your recovery,
- Your fitness and capacity to return to work as recommended by your General Practitioner (GP) and/or Treatment Providers, and
- Any earnings you receive in any type of employment following the motor accident.

#### ***Take a look at the below example to understand how we may determine earning capacity:***

John was injured in a motor accident, after lodging his claim, he provided information to confirm that prior to the accident he worked in an office-based role for 30 hours earning \$900.00 gross per week, which means \$30.00 per hour. After the accident, his GP issued a Certificate of Capacity which confirmed he was only fit to work his usual duties for 20 hours per week due to his injury from the accident.



In this case, an earning capacity decision is issued to John in writing stating that his earning capacity is 20 hours per week which means that he has the ability to earn \$600.00 per week (\$30.00 x 20 hours).

A decision was issued to John which states that all future weekly benefit payments will be made to him less the \$600.00 per week he has the capacity to earn.

*(Please refer to our Weekly Income Benefits – Statutory Benefits fact sheet for further information on how weekly benefits are calculated)*

Sometimes, we may not have the information we need to accurately assess your capacity to earn after the accident. If this is the case, we may arrange for you to attend a Functional and/or Vocational Capacity Assessment. This will be done by a Rehabilitation Consultant who is qualified to assess your function and vocational capacity. If we decide to arrange these assessments, we will contact you to explain the process and answer any questions you may have.

### **How will I know if a decision has been made on my claim?**

Generally, we will review your earning capacity every time you provide us with a new Certificate of Capacity or Certificate of Fitness from your GP. Throughout your claim, we will also request medical reports from your GP or Treating Providers as this helps us better understand your earning capacity.

Prior to making a decision, we will contact you to inform you that we are reviewing your earning capacity. We then will give you time to provide us with any information you think might help us complete this assessment. Once we finalise our decision, we will call you to discuss and provide you with a letter which will detail how the decision was made and provide copies of any information we considered.

An earning capacity decision may cause your weekly benefit payments to not change at all, stop completely, increase to a higher amount or decrease to a lower amount. This all depends on the information we have received.

When you receive our letter, we recommend that you read it thoroughly to ensure you understand:

- What this means for your claim
- How this will impact your weekly benefits
- The reasons the decision was made
- The information we relied upon to make our decision
- The date the decision will come into effect
- Your options for review if you do not agree with our decision

If you have further information you would like us to consider, please provide this to us and we will review our decision. If you believe we have made an error, please discuss this with us so we can review our decision.

### **How much notice will I have if my weekly benefits are reduced?**

We understand that an earning capacity decision may have an effect to you and your family. For this reason, we will make sure we provide you with a notice period. The notice period we give you depends on how long it has been since your accident as required under the Act.

You will receive the following notice period of:

- Two weeks' if it has been 14 weeks or less since your motor accident, or



- Four weeks' if it has been greater than 14 weeks, but less than 78 weeks since your motor accident, or
- Eight weeks' notice if it has been greater than 78 weeks since your motor accident.

### **What if I don't agree with the earning capacity decision?**

If you don't agree with a decision made around your earning capacity, you can seek a review from the Internal Dispute Resolutions team. Please contact your Claims Advisor to obtain their contact details or refer to the attached Internal Review fact sheet.

Alternatively, should you be dissatisfied with our standard of service, you may make a complaint. Please contact your Claims Advisor to obtain their contact details or refer to the attached Complaints fact sheet.

### **What if there are some changes in my employment circumstances after the motor accident?**

Let your Claims Advisor know as soon as possible. You should advise your Claims Advisor if you return to work, start new employment or if there are any changes to your earnings resulting in you earning more or less money.

You can call your Claims Advisor or send them an email to notify them of the change.

### **What if I am no longer employed as a result of my motor accident?**

If your injuries from the motor accident mean you can no longer return to your pre-accident role, we will support you in your recovery and help you find new employment in line with your earning capacity.

We will assess your earning capacity in these circumstances by:

- Reviewing information from your GP in relation to your capacity for work
- Assessing your pre-accident employment history to determine alternative employment which is reasonably available to you.

