

NEW JERSEY
INDIVIDUAL HEALTH COVERAGE PROGRAM

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OAL Dkt No. IHC 2328-98
Agency Dkt No. A.O. 97-02

IN THE MATTER OF REQUEST BY
CIGNA HEALTHCARE OF NEW JERSEY,
INC., ALONG WITH AFFILIATED
CARRIERS CIGNA HEALTHCARE OF FINAL DECISION
NORTHERN NEW JERSEY, INC.,
INSURANCE COMPANY OF NORTH
AMERICA, AND LIFE INSURANCE
COMPANY OF NORTH AMERICA, FOR
EXEMPTION FROM ASSESSMENT FOR
1996 REIMBURSABLE LOSSES

We have reviewed the Initial Decision of Administrative Law Judge ("ALJ") Joseph Fidler dated June 14, 2002, and mailed to the parties on June 20, 2002, as well as the written exceptions and the reply thereto filed on behalf of petitioner and respondent respectively. Upon review of the entire record, we conclude that the ALJ's Initial Decision should be adopted in its entirety.

This matter arises out of the Individual Health Coverage Program Board's ("IHC" or "the Board" or "Respondent") denial of CIGNA Healthcare of New Jersey, Inc., and affiliated carriers CIGNA Healthcare of Northern New Jersey, Inc., Insurance Company of North America, and Life Insurance of North America's ("CIGNA" or "Petitioner") request for an exemption from assessment for the 1996 reimbursable program losses incurred by carriers issuing individual health benefits plans. The denial, set forth in Administrative Order No. 97-02, issued July 15, 1997, was based upon the Board's determination that CIGNA failed to make a good-faith marketing effort in 1996 to enroll the minimum number of non-group persons allocated to it by the Board, pursuant to N.J.A.C. 11:20-9.5 and 9.6.

CIGNA requested a hearing on August 27, 1997 and the matter was transmitted to the office of Administrative Law ("OAL") as a contested case on February 23, 1998, for a hearing on the following three issues:

1. The nature and extent of CIGNA's marketing efforts, as reflected in the Good-Faith Marketing Report that it submitted on June 30, 1997, as supplemented on July 9, 1997, September 4, 1997, September 9, 1997, November 5, 1997, and January 14, 1998;
2. Whether those efforts could reasonably have been expected to result in the enrollment of CIGNA of the minimum enrollment share that the IHC Board established for CIGNA to meet in order

to be eligible for an exemption from the 1996 loss assessment; and

3. Whether those efforts constitute good-faith marketing, as set forth in N.J.A.C. 11:20-9.6. [Initial Decision at 2.]

The ALJ thoroughly considered all of the facts and evidence in the record and decided that in 1996 CIGNA did not conduct a marketing campaign aimed at individual consumers of health benefits plans. Specifically, ALJ Fidler held that,

There is no reason to doubt that CIGNA earnestly pursued its marketing strategy. However, the plain difficulty with CIGNA'[s] position is the lack of an evidentiary link between its undisputed efforts to achieve brand awareness and the assertion that those marketing efforts were actually in direct support of sales of standard health benefits plans in New Jersey. As implemented in 1996, CIGNA's marketing efforts were not directed in any measurable way toward purchasers of standard individual health benefit plans in New Jersey. Thus, I **CONCLUDE** that those efforts could not reasonably have been expected to result in enrollment of CIGNA's minimum enrollment share. Because CIGNA's 1996 marketing efforts cannot reasonably be deemed a significant marketing campaign in direct support of sales of standard health benefits plans, CIGNA did not comply with the good-faith marketing requirement as set forth in *N.J.A.C. 11:20-9.6(c)*.

[Initial Decision at 28-29].

The Petitioner submitted exceptions to the Initial Decision on July 12, 2002, and respondent replied on August

16, 2002. Petitioner reasserted arguments that had previously been before ALJ Fidler and were addressed in the Initial Decision.

We concur with the ALJ's well-supported findings of fact and conclusions of law that CIGNA's efforts could not reasonably have been expected to result in enrollment of CIGNA's minimum enrollment share. N.J.A.C. 11:20-9.6(c) provides that a carrier must demonstrate the following:

1. Undertaken a significant media advertising or other advertising or other marketing campaign, in proportion to its minimum enrollment share, in direct support of sales of standard individual health benefits plans in New Jersey; or

2. Undertaken significant efforts, in proportion to its minimum enrollment share, to educate licensed insurance producers about its standard individual health benefits plans in New Jersey and offered to pay competitive commission schedules for sales of such plans and competitive rates. [N.J.A.C. 11:20-9.6 (c)1 and 2.]

Specifically, CIGNA's 1996 marketing efforts did not comply with the good-faith marketing requirements established at N.J.A.C. 11:20-9.6(c) because CIGNA made no marketing efforts in direct support of sales of standard health benefits plans. Moreover, CIGNA failed to undertake efforts to educate its producers about its standard health benefits plans in New Jersey.

In addition, petitioner's exceptions argue that its constitutional equal protection rights were violated in that CIGNA and Prudential Insurance Company were treated in a disparate manner by the Board and that its efforts should have been compared to those of Prudential. Although CIGNA's arguments are outside the scope of the issues transmitted to OAL, we will briefly address them here. As set forth above, the criteria to determine whether a carrier has pursued good-faith marketing efforts is found at N.J.A.C. 11:20-9.6(c). The ALJ properly analyzed whether CIGNA's efforts complied with the regulatory standards. It was therefore unnecessary for the ALJ to consider the evidence related to Prudential's marketing methods. In fact, it would be improper to measure a carrier's good-faith efforts against those of another carrier. In addition, even if the comparison had been made, the extensive record compiled during the course of this hearing contradicts CIGNA's assertion that the carriers had similar marketing campaigns and, therefore, would only serve to underscore the IHC Board's denial of CIGNA's requested exemption.

While Prudential's advertising campaign directly focused on standard individual health benefits plans in New Jersey, CIGNA's marketing campaign focused on "brand awareness" and was not directed toward marketing the standard health benefits

plans to individual consumers in New Jersey. Furthermore, the fact that CIGNA and Prudential achieved similar enrollment results is of no consequence. The purpose of the good-faith marketing report is to provide carriers who have not achieved 50% of their target enrollment of standard individual health benefits plans with an opportunity to prove that they made a good-faith effort to do so, despite their results. In the Matter of Individual Health Coverage Program, 302 N.J. Super. 360 (App. Div. 1997); N.J.S.A. 17B:27A-12; N.J.A.C. 11:20-9.5 and 9.6. Therefore, CIGNA's failure to achieve 50% of its target enrollment required the submission of a good-faith marketing report to the Board in order to explain why it should still receive a pro rata exemption from its annual assessment.

Furthermore, based on the evidence submitted regarding Prudential's marketing campaign and advertising efforts, it is clear that CIGNA's equal protection rights were not violated.

The essence of the Equal Protection Clause under the Fourteenth Amendment of the Federal Constitution ... is that persons situated alike shall be treated alike. Both the state and federal guarantees seek to insure equality of right by forbidding arbitrary discrimination between persons similarly situated. [ADA Financial Services Corp. v. State, 174 N.J. Super. 337, 347 (App. Div. 1979).]

The IHC Board has not arbitrarily discriminated against CIGNA because the marketing strategies set the two carriers apart. Prudential targeted their advertising efforts toward individual consumers of standard health benefits plans in New Jersey, but CIGNA did not. As a result, CIGNA's equal protection rights were not violated in any manner by the IHC Board.

Finally, Petitioner also argued against the validity of the good-faith marketing regulation, N.J.A.C. 11:20-9.6. Petitioner's argument has been rejected by the New Jersey Superior Court, Appellate Division, which recently held that "the 'good-faith marketing' regulation is valid." In the Matter of the New Jersey Individual Health Coverage Program's Readoption of N.J.A.C. 11:20-1 et. seq., 353 N.J. Super. 494,498 (App. Div. 2002) (petition for certification to New Jersey Supreme Court pending).

For all of the reasons set forth above, and because the ALJ's holding in the Initial Decision reflected an application of the appropriate regulatory standard provided in N.J.A.C. 11:20- 9.6, as well as a thorough review of the extensive record, the Initial Decision is adopted as the Individual Health Coverage Program Board's Final Decision.

Mary McClure, Chairwoman
Individual Health Coverage Program