

NEW JERSEY
INDIVIDUAL HEALTH COVERAGE PROGRAM

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ADMINISTRATIVE ORDER NO. 99-04

APPELLATE DIV. DKT. A-4020-98T1

OAL DKT NO. IHC 2864-97

AGENCY DKT. NO. 96-21

IN THE MATTER OF THE)
INDIVIDUAL HEALTH COVERAGE)
PROGRAM BOARD'S ADJUSTMENT)
OF BLUE CROSS AND BLUE SHIELD)
OF NEW JERSEY'S REQUESTS FOR)
REIMBURSEMENT OF LOSSES FOR)
CALENDAR YEARS 1993 AND)
1994)

FINAL DECISION

On November 4, 1998, the Honorable Bruce R. Campbell, A.L.J. issued the Initial Decision in this matter. On February 9, 1999 the Individual Health Coverage Program Board ("IHC Board") issued its final decision in this case. By letter dated March 25, 1999, Blue Cross and Blue Shield of New Jersey* ("Horizon") filed a timely Notice of Appeal in the Appellate Division of the Superior Court of New Jersey. On July 9, 1999 the IHC Board filed the Statement of Items with the Appellate Division. On August 3, 1999 Horizon filed a Motion to Settle and Supplement the Record in this case with the IHC Board. On August 13, 1999 counsel for the IHC Board filed its reply to the Motion to Settle and Supplement the Record.

Horizon argues that Exhibit W to Horizon's exceptions to ALJ Campbell's Initial Decision was admitted into evidence, marked as P-125, was erroneously omitted from the IHC

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of the IHC Board of May 11, 1999 should be included in the record.

For the reasons stated below, the IHC Board GRANTS Horizon's motion in part and DENIES the motion in part.

Horizon's contention that Exhibit W, marked as P-125 in the Office of Administrative Law ("OAL") proceeding below, was admitted into evidence in that proceeding is not contested by the IHC Board. See IHC Board's August 13, 1999 Letter Brief at 6. As such, Exhibit W, marked as P-125, should be included on the Statement of Items as part of the record before the Appellate Division.

However, Horizon's contention that the May 5, 1999 Legal Committee minutes and May 11, 1999 Executive Session minutes be included in the record is a contested issue. Horizon argues that the minutes of the two meetings should be included because they demonstrate that "the IHC Board is treating inconsistently carriers that have omitted items from the Exhibit K, when those items are later supported as losses by a D & T audit." See Horizon's Letter Brief at p. 6. The minutes of the meetings indicate that the IHC Board discussed the application of another insurance carrier to amend its Exhibit K. The application was granted by the IHC Board. Horizon argues that the IHC Board, in granting the carriers request, and denying Horizon's request, is arbitrarily applying policies and standards to similar requests for Exhibit K amendments.

It is apparent from the papers submitted in this matter that Horizon and Traveler's requests were not similar. Although both carriers made requests to amend Exhibit K's, Horizon did so only after knowingly and voluntarily submitting a waiver of its right to receive full reimbursement of losses in 1993 and 1994. Travelers did not execute such a waiver.

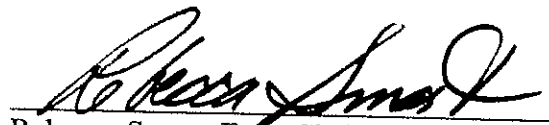
Furthermore, the minutes of the May 1999 Legal Committee Meeting and May 1999 Executive Session Meeting clearly are not part of the record on appeal as that term is defined by the court rules. The "record on appeal" is defined as:

all papers on file in the court or courts or agencies below, with all entries as to matters made on the records of such courts and agencies, the stenographic transcript or statement of the proceedings therein, and all papers filed with or entries made on the records of the appellate court.

[R. 2:5-4(a).]

The final decision from which Horizon is appealing was issued on February 9, 1999, almost three months before the two meetings at issue took place. The minutes of the meetings were not before the agency when it made its final decision and thus, are not properly part of the record on appeal from that decision.

Based on the foregoing, the IHC Board GRANTS Horizon's Motion to Settle the Record to include Exhibit W, marked as P-125, on the Statement of Items. However, the IHC Board also concludes that Horizon's Motion to Supplement the Record to include the minutes of the May 5, 1999 IHC Board Legal Committee Meeting and May 11, 1999 IHC Board Executive Session Meeting is DENIED.


Rebecca Smart, Esq., Chair
Individual Health Coverage Program Board

Date: October ~~12~~ 13, 1999

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