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Department of Insurance
State of Idaho

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BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of the application for Home State
Third Party Administrator License of:

BENEFITS EXCHANGE NORTHWEST,
LLC,

Applicant

Docket No. 18-3096-15

**HEARING OFFICER'S FINDINGS
OF FACT, CONCLUSIONS OF LAW
AND PRELIMINARY ORDER**

This matter came before the Hearing Officer on a evidentiary hearing on December 3, 2015 at 1:00 p.m. Richard B. Burleigh, Deputy Attorney General, appeared on behalf of the Department of Insurance. Mark Fisher appeared on behalf of Benefits Exchange Northwest, LLC.

FINDINGS OF FACT

I.

1. An application for an Idaho Home State Third Party Administrator License was submitted on behalf of Benefits Exchange Northwest, LLC and received by the Department of Insurance on July 16, 2015. Department of Insurance Exhibit 2.
2. The application included among other required materials financial statements/ reports of the applicant. Department of Insurance Exhibit 3.

3. Following receipt of the application the Department undertook a review of the contents of the submitted application and supporting materials filed in connection with the application. Department of Insurance Exhibit 2.

4. As a result of this review the Department examiner concluded that the submitted financial statements indicated that the company had a negative net worth and negative net income. *Id.*

5. The examiner then issued a recommendation to her supervisor, the Chief Deputy Examiner, that the application be denied. This was based upon the provisions of Idaho Code §41-911 which require that an applicant demonstrate with the submitted financial statements that the applicant has a positive net worth. *Id.*

6. The Chief Deputy Examiner concurred with the review recommendation and the decision to deny the application.

7. A denial letter, dated September 24, 2015 was sent to Benefits Exchange Northwest, LLC indicating that the application was denied pursuant to Chapter 9, Title 41 Idaho Code in that the applicant's financial statements revealed a negative net worth and therefore failed to meet the requirements of §41-911(1)(d). Department of Insurance Exhibit 4.

8. Mr. Fisher on behalf of Benefits Exchange Northwest, LLC in correspondence dated September 12, 2015 requested a hearing on the issue of the denial and further asked that the Department grant a variance from the requirements of §41-911 to allow issuance of the license. Department of Insurance Exhibit 5.

CONCLUSIONS OF LAW

1. Pursuant to Idaho Code §§41-911 and 41-915 the Department of Insurance has the authority to deny an applicant's request for a Home State Third Party Administrator license.
2. Evidence was presented by the Department through the testimony of Examiner Financial Analyst Kelsey M. Patterson, that in the examination of the application and supporting materials, it was determined that Benefits Exchange Northwest, LLC did not have a positive net worth. This was based upon the review of the financial statements provided by the applicant
3. This determination was confirmed by the Chief Deputy Examiner, Ms. Hermoliva Abejar.
4. The accuracy and contents of the submitted financial statements of Benefits Exchange Northwest, LLC were not disputed at the hearing on this matter.
5. In response to the denial by the Department the applicant sent correspondence and further financial information. Department of Insurance Exhibit 5. As noted by testimony presented at hearing, Mr. Fisher on behalf of Benefits Exchange Northwest, LLC submitted information regarding a second company operated by Mr. Fisher that of Advanced Benefits, Inc. Mr. Fisher described how Advanced Benefits, Inc. provided funding for certain operational expenses of Benefits Exchange Northwest, LLC. Mr. Fischer argued that as a result, the Department should take into account when considering the application of Benefits Exchange Northwest, LLC the impact of this funding on the balance sheet of the applicant and the effect of these attributable shared expenses. This was noted as part of the reason that the balance sheet of the applicant illustrated a

negative cash flow. Mr. Fisher by this explanation requested that the department consider not just the financial statements of the designated applicant Benefits Exchange Northwest, LLC, but also those funding aspects and financial information of Advanced Benefits, Inc..

6. Testimony of Department representatives concerning Department procedures along with that of the provisions of Idaho Code §41-911 reveal that consideration of the application and the financial status of the applicant in this manner is not allowed. Under Idaho Code §41-911 the license application review is limited to that information of the designated applicant, in this circumstance Benefits Exchange Northwest, LLC.

7. Mr. Fisher has further requested a variance from this statutory requirement under the circumstances presented. No error can be found in the rejection by the Department of this request.

8. The record establishes that Mr. Fisher did not produce to the Department financial statements for the applicant Benefits Exchange Northwest, LLC which would provide sufficient information to establish a positive rather than negative net worth as required under Idaho Code §41-911.

9. The Hearing Officer would note that in the documentation provided by the Department in both Exhibit 2, the Application Review Recommendation and in Exhibit 4, the Denial letter issued to Benefits Exchange Northwest, LLC, the referenced Idaho Code Section is listed as Section “41-911(1)(d).” This reference would appear to be erroneous as the applicable code provision should instead be listed as Idaho Code Section “41-911(2)(d)” (emphasis added). This notational defect does not, however, rise to the level of a substantive or procedural deficiency such that the ultimate determination to deny the

application should be overturned. The designation of the particular subsection of Idaho Code Section 41-911 does not impact the authority of the Department to deny the application. Additionally, at hearing no issue was raised by the applicant concerning the sufficiency of the denial notification or this code subsection designation.

10. Based upon the evidence submitted it is apparent that the applicant failed to satisfy the prerequisite required under Idaho Code §41-911 of a showing of a positive net worth. This constitutes a sufficient basis for the denial of the issuance of a license to Benefits Exchange Northwest, LLC.

11. During the hearing on this matter Mr. Fisher requested that the Department, for purposes of confidentiality redact and/or place under seal certain information contained in the application materials submitted to the Department.

12. The Department had no objection to this request and agreed to the entry of a protective order limiting public access to information contained in the application.

13. Based upon this agreement the Hearing Officer as part of the Preliminary Order in this matter directs that the Department shall place under seal Department of Insurance Exhibit 3.

PRELIMINARY ORDER

Based upon the foregoing, it is hereby Ordered that the denial by the Department of Insurance of a Home State Third Party Administrator license for Benefits Exchange Northwest, LLC is upheld and affirmed.

It is further ordered that the Department of Insurance Exhibit 3 shall be kept under seal and not comprise part of the public record of this matter subject to an appropriate court order requiring release of this information.

IT IS SO ORDERED.

NOTIFICATION OF RIGHTS

This is a preliminary order of the Hearing Officer. It can and will become final without further action of the Department of Insurance unless any party petitions for reconsideration before the Hearing Officer or appeals to the Director for the Department of Insurance (or the designee of the Director). Any party may file a motion for reconsideration of this preliminary order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See Idaho Code §67-5243(3).*

Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration of this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration of this preliminary order, any party may in writing appeal or take exception to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the Director of the Department of Insurance (or the designee of the Director.) Otherwise, this preliminary order will become a final order of the Department of Insurance.

If any party appeals or takes exception to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the Department of Insurance. Written briefs in support of or taking exception to the preliminary order shall be filed with the Director of the Department of Insurance (or the designee of the Director). The Director may review the preliminary order on his own motion.

If the Director of the Department of Insurance (or his designee) grants a petition to review the preliminary order, the Director (or his designee) will allow all parties an opportunity to file briefs in support of or taking exception to the preliminary order and may schedule oral argument in the matter before issuing a final order. The Director (or his designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties for good cause shown. The Director (or his designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (1) the hearing was held, (2) the final agency action was taken, (3) the party seeking review of the order resides, or operates its principal place of business in Idaho, or (4) the real property or personal property that was the subject of the Department's action is located.

This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

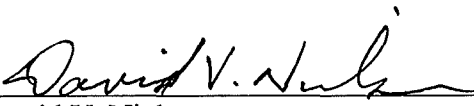
DATED this 8th day of December, 2015.

By: David V. Nielsen
David V. Nielsen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of December, 2015, I served a true and correct copy of the foregoing by delivering the same to each of the following party, by the method indicated below, addressed as follows:

Richard Burleigh Deputy Attorney General Idaho Department of Insurance 700 W. State Street P.O. Box 83720 Boise, ID 83720-0043	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile
Benefits Exchange Northwest, LLC Mark Fisher 1299 W. Riverstone Drive, Suite 201 Coeur d'Alene, ID 83814	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Hand-Delivered <input type="checkbox"/> Overnight mail <input type="checkbox"/> Facsimile



David V. Nielsen