

FILED
AUG 21 2019 *AM*
Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:

MEDOVA HEALTHCARE FINANCIAL GROUP, LLC, a Kansas limited liability company; MIDLANDS CASUALTY INSURANCE COMPANY, INC., a Hawaii corporation; and DANIEL L. WHITNEY, an unlicensed individual,

Respondents.

Docket No. 18-3674-19

ORDER ON MOTION FOR RECONSIDERATION AND REQUEST FOR HEARING

PROCEDURAL BACKGROUND

On July 18, 2019, I, as the Director of the Idaho Department of Insurance (the “Department”), issued a Cease and Desist Order and Notice (the “C&D”) against Medova Healthcare Financial Group, LLC (“Medova”), Midlands Casualty Insurance Company, Inc. (“Midlands”), and Daniel L. Whitney (“Whitney”) (collectively, the “Respondents”).

Respondents had fourteen days from the date of service, or August 1, 2019, in which to file a motion for reconsideration or request a hearing. On August 1, 2019, Respondents filed a Motion for Reconsideration (the “Motion for Reconsideration”) with a statement that the Respondents would file a factual and legal supplement to the Motion for Reconsideration no later than August

15, 2019. The Department did not object to the Motion for Reconsideration. On August 16, 2019, the Respondents submitted a second filing captioned “Motion for Reconsideration and Request for Hearing,” (the “Supplement”). The Department filed a Memorandum in Opposition to Respondents’ Motion for Reconsideration on August 20, 2019 (the “Department Memorandum”).

DENIAL OF MOTION AND REQUEST FOR HEARING

1. The Supplement is untimely

The Motion for Reconsideration was filed on August 1, 2019, the last possible day to be considered timely, but lacked any legal or factual basis for reconsideration. Rather, it simply promised a supplemental filing that would contain “factual evidence and legal analysis” in support of the Motion for Reconsideration. The deadline for a motion for reconsideration was August 1, 2019. Counsel’s assurance that additional material would be forthcoming does not toll the deadline for submission of a motion for reconsideration. The Supplement – filed on August 16 – is untimely. Thus, Respondents’ motion for reconsideration consisted solely of the August 1, 2019 letter, and was devoid of any basis on which to reconsider. This alone is a sufficient basis for me to deny the Motion for Reconsideration. The Motion for Reconsideration is denied.

2. The request for hearing is untimely

Idaho Code § 41-232 provides that the director shall hold a hearing upon written demand for a hearing by a person aggrieved by an order of the director. Respondents’ August 1, 2019 Motion for Reconsideration did not request a hearing. Rather, the hearing request was in the Supplement, which was untimely. Because the Supplement was untimely, the hearing request is also untimely. Although Idaho Code § 41-232 does not contain a time limit for a hearing request, allowing parties to request hearings at any time would vitiate statutory deadlines, such as

Idaho Code § 67-5246, which sets the deadline for motions to reconsider. This would be an absurd result. Because Respondents' request for hearing was tied to the Motion for Reconsideration, it cannot be considered in a vacuum, and the deadline in Idaho Code § 67-5246 applies. Thus, the hearing request is denied.

In the interest of fairness and transparency, and to provide guidance going forward, however, I have considered both the Supplement and the Department Memorandum. Having reviewed these filings, I conclude that Respondents have not stated a basis for reconsideration of the C&D. In fact, as explained below, I find that the Supplement contains admissions of inappropriate activity and insufficient oversight, which support the ongoing need for the C&D. Accordingly, I deny the Motion for Reconsideration and the request for a hearing.

THE CEASE AND DESIST ORDER

The C&D concluded that: 1) Medova, Midlands, Whitney, and their affiliates are transacting business in the state of Idaho, as defined in Idaho Code § 41-112, 2) Medova and Whitney are acting as third party administrators without a license, in violation of Idaho Code §§ 41-911 and 41-912, and 3) Medova, Whitney, and their affiliates are transacting insurance and engaging in unlicensed and/or unregistered activity, requiring immediate action to prevent present and future damage and further abuse.

THE SUPPLEMENT

The Supplement contains unsupported legal arguments and unverified factual assertions and attachments. Also, it is unclear whether Respondents seek to have the C&D withdrawn with regard to all of the Respondents, as the Supplement focuses on the findings related to Medova, not the other Respondents. Nonetheless, despite these deficiencies, I have considered the Supplement, as discussed below.

1. Medova acting as a third party administrator

Under Idaho law, an “Administrator” (or “TPA”) means any person who directly or indirectly underwrites, collects charges or premiums from or adjusts or settles claims on Idaho residents in connection with life, annuity, or health insurance coverage offered or provided by an insurer, with certain exceptions not applicable here. Idaho Code § 41-901(1). The C&D found that Medova acted as a TPA between September 2017 and March 2019, for eighteen businesses, including seventeen businesses that purchased excess of loss aggregate insurance policies from Midlands.

Respondents argue that Medova was not administering health insurance plans covered by an “insurer” as defined under Idaho law. For purposes of the TPA statutory scheme, an “insurer” means a person undertaking to provide life, annuity or health coverage or self-funded coverage that is subject to regulation under title 41, Idaho Code. Idaho Code § 41-901(7). Respondents assert that Midlands’ plans are exempt from regulation under title 41 because, as single employer self-funded plans, they are governed by the Employee Retirement Income Security Act (“ERISA”), regulated by the US Department of Labor, not the Department. Respondents have not provided any proof that they are single employer self-funded plans. Such a determination is fact-specific and would require, at a minimum, plan documents. Respondents’ conclusory statements are not evidence. I decline to withdraw or alter the C&D on this basis.

Additionally, Respondents assert that stop loss coverage is not “life, annuity, or health coverage or self-funded coverage,” and therefore does not fall within the Department’s regulatory jurisdiction. I am not persuaded that this analysis is complete or accurate. Moreover, even if this is true, Medova was required to register with the Department under Idaho Code § 41-910, which it admits that it did not do.

2. Medova's Compliance Program

Medova next admits to several insufficient internal compliance practices. For instance, the quoting portal inadvertently listed Idaho as a state in which it was licensed. Also, in certain cases Medova staff "did not think about confirming state licensure...[.]" Medova has since taken corrective action, which I encourage. The fact remains, however, that the lack of robust compliance practices led to the issuance of the C&D. Medova's subsequent remedial steps do not alleviate my concerns about Medova's overall compliance with Idaho law, and are not a sufficient basis to withdraw the C&D.

3. Medova's relationship with Makina

The C&D found that Makina Benefits referred clients to insurance products offered through Medova. Medova states in its Supplement that it has terminated its relationship with Makina. The relationship with Makina, however, was not a basis for the C&D. Termination of this relationship, therefore, is not persuasive in reconsidering the C&D.

4. Medova's relationship with Midlands

Medova states that it has transferred its Midlands stop loss coverage policies to admitted carriers and is in the process of non-renewing Midlands policies and replacing them with ANICO policies. While this a positive step toward compliance, Respondents admit that Medova wrote policies without an Idaho certificate of authority. Writing these policies was one of the bases for the C&D.

CONCLUSION

Respondents' requests for reconsideration and a hearing are denied because the August 1, 2019 motion was unsupported and because the hearing request was untimely.

Taking Respondents' unverified factual statements as true, Respondents appear to have taken steps to address some of Medova's violations set forth in the C&D. On the other hand, however, Respondents argue that Medova is not subject to the Department's jurisdiction. This jurisdictional argument is based on unverified statements of fact and conclusory statements of law. Thus, even considering these untimely arguments, Respondents have not established sufficiently changed circumstances to justify withdrawal of the C&D at this time.

IT IS SO ORDERED.

DATED and EFFECTIVE this 20 day of August, 2019.

STATE OF IDAHO
DEPARTMENT OF INSURANCE



DEAN L. CAMERON
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 21st day of August, 2019, caused a true and correct copy of the foregoing ORDER ON MOTION FOR RECONSIDERATION AND REQUEST FOR HEARING to be served upon the following by the designated means:

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