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115 Cleveland Ave SE
Tumwater, WA 98501

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

Tel: 360-352-2781 Fax: 360-352-2784

Facsimile Transmittal Sheet

Date: 12/9/10

Company: Insurance Commissioner's Office

To: Nicole Kelly Fax: 360-664-2782

From: Rose Gunderson

RE: OIC Case # 1041928 - Hearing Request

Total Pages: 5 (including cover page)

Notes/Comments:

I'm sending it again as I missed signing the letter.

December 9, 2010

Office of Insurance Commissioner
Attn: Nicole Kelly
P.O. Box 40255
Olympia, Washington 98504-0255

Re: OIC Case # 1041928

Dear Miss Kelly:

I, Rose Gundersen and Community Relations for Gundersen Dental Care, received the letter from Martha Cortes dated September 16, 2010 regarding OIC Case # 1041928. The letter stated that the Commissioner determined that Premera's position in this case is supported by the facts and law, and Premera complied with the applicable statutes. I am requesting a hearing to challenge this action of the Commissioner because the decision letter failed to explain how and why the decision was reached.

Without providing clear reasons supporting the decision, Gundersen Dental Care and George Chris Gundersen, were deprived of the due process right because the letter provided no basis as to how the decision was arrived. It is imperative that the Commissioner, as a regulatory agency, properly applied the statutes in the review of the contract and the facts related to the case. The only apparent conclusion that can be drawn based on the letter is that the decision was arbitrary and capricious. In summary, this hearing request questions whether the Commissioner has properly applied the following statutes properly as related to the Related Party Exclusion Clause¹ (Clause) in the George Chris Gundersen's health insurance contract:

1. RCW 48.30.300 requires that "benefits payable ... may not be restricted ... on the basis of the sex, marital status ..." The original complaint requested the Commissioner to review whether Premera actually violated this statute when applying the Clause. There is no evidence that the Commissioner performed this review to fulfill the agency's responsibility to ensure insurer's compliance with RCW 48.30.300.

Therefore, it is only proper for the Commissioner to review Premera's procedures applied in enforcing this exclusion clause to ensure that no discrimination based on gender or marital status exists when applied. Discrimination in applying the law may exist if only the "last name" of the provider and the patient was used to 'flag' violation of the clause because men do not usually change their last names like women who are married.

¹ The Related Party Exclusion Clause is #7 under the NON-COVERED SERVICES section of the Washington Education Association's Select Plan 5 (Contract), provided by Premera Blue Cross and effective from October 1, 2008 to September 30, 2009, *Services or supplies that you furnish to yourself or that are furnished to you by a provider who lives in your home or is related to you by blood, marriage or adoption. Examples of such providers are your spouse, parent or child.*

As part of this hearing request, I petition the Commissioner to subpoena Premera's standard procedures in enforcing the Clause, and the specific documents that identified Gunderson Dental Care provider's blood relationship with George Chris Gunderson, the patient.

Furthermore, Premera's non-response to Gunderson Dental Care's repeated (three times) to disclose the procedures or algorithm applied to detect the blood relationship in this case is evidence of bad faith. A reasonable reviewer would have requested Premera to honor the repeated request, especially when an employee said yes to this request during the Level II Appeal hearing. Yet, the Commissioner appeared to overlook this point under the "Other minor complaints" section on p.4 of the complaint document faxed on August 11, 2010.

2. RCW 48.44.020 (2)(a) requires the Commissioner to examine if contracts contain "any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the contract ..." Similar to the reasoning in #1, the letter did not explain why the Clause is reasonable and not ambiguous.

Premera provided three reasons² justifying the Clause, but the Commissioner's letter showed no evidence that the Commissioner actually reviewed their reasonableness. The discussions there involved no legal issues, and are rightly under the Commissioner's authority to review based on regulations and statutes.

I petition the hearing administrator to properly and thoroughly review the Clause as it relates to RCW 48.44.020 (2)(a) and possibly other sub-sections based on those three reasons Premera used to justify the Clause.

A copy of the letter from the Commissioner is attached.

An additional comment on the Commissioner's letter dated September 16, 2010 is the lack of information regarding the availability of the right to an administrative hearing per RCW 48.04.010. I find it to be a discrepancy of treatment that the Legislature requires insurers to inform all appeal process available to the insured, but the Commissioner is not required to inform citizens of the right to an administrative hearing. I hope informing citizens of their right is a priority of the Commissioner even though it is not required by law to do so.

Thank you for considering this petition for hearing.

Sincerely,



Rose Gunderson
Community Relations for Gunderson Dental Care

² The complaint document discusses Premera's three justification for the Clause on p.8-10.

MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON



Phone: (360) 725-7080
www.insurance.wa.gov

OFFICE OF
INSURANCE COMMISSIONER

September 16, 2010

Rose Gunderson
115 Cleveland Ave SE
Turnwater, WA 98501

RE: OIC Case # 1041928

Dear Ms. Gunderson,

Thank you for contacting the Washington State Office of Insurance Commissioner regarding your claim issues. As you are aware, we have contacted Premera Blue Cross on your behalf. A copy of their response is enclosed.

As you are aware, Premera Blue Cross states the claim from Dr. Gunderson was correctly denied and the refund request is appropriate. The basis of Premera's decision is the contract language set forth on pages 31-32 of the Washington Education Association (WEA) Select Plan 5 benefit booklet:

NON-COVERED SERVICES. Your plan does *not* cover any services or supplies furnished in connection with the following conditions, services or supplies: "7. Services or supplies that you furnish to yourself or that are furnished to you by a provider who lives in your home or is related to you by blood, marriage or adoption. ..."

According to Premera Blue Cross, the Level II Appeal panel decided to partially allow the request for payment limited to the claim for the Snore Guard device. If Mr. George Chris Gunderson wishes to request reimbursement for this device, he can do so by submitting a copy of the invoice.

In my review I found that, when Premera submitted this contract to our Office, our office did not disapprove the language in the contract. Furthermore, Premera's position is supported by the facts and law.

In this case, as stated above in further detail, we have reviewed the facts and applicable statutes and we have determined that the insurance company did comply with the applicable statutes.

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Mailing Address: P.O. Box 40256 • Olympia, WA 98504-0256
Street Address: 5000 Capitol Blvd. • Tumwater, WA 98501

Regarding your complaint materials, there seems to be a misunderstanding regarding the role of our office. The Office of the Insurance Commissioner ("OIC") is not a court of law. Instead, the OIC is a regulatory agency that assists consumers by reviewing insurance issues to make sure that insurance companies are complying with the applicable RCWs and WACs. As an administrative agency we do not have the authority to decide issues involving disputed questions of fact or law. The determination of such issues is reserved for the courts.

You may submit your suggestions for law changes to your representatives and legislature as they are the authorized entity that can change the Law.

If you would like to make a complaint about the how the IRO was handled? You may contact the Washington State Department of Health at 1-800-525-0127.

Thank you for bringing your concern to the Office of Insurance Commissioner. We regret we have been unable to help you obtain the results you sought. In situations like yours, the limits on our jurisdiction and powers are sometimes frustrating. Please let me know if you have any questions.

Sincerely,

Martha Cortes

Martha Cortes/Compliance Analyst
1-800-562-6900 - (Fax) 360-586-2018

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Martha Cortes

Martha Cortes/Compliance Analyst
1-800-562-6900 - (Fax) 360-586-2018

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