FILED

2011 SEP -2 P 3: 21

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of ABILITY INSURANCE COMPANY, An Authorized Insurer and Respondent	Docket Nos. 11-0088 and 11-0089 MOTION TO SUPPLEMENT THE RECORD – CERTIFICATION OF DR. MIHALI

The OIC moves to supplement the record with the attached true and correct copy of an August 24, 2011 certification of Dr. Mihali.

At the hearing, various witnesses testified about the insured's condition, and a March 21, 2011 letter by Dr. Mihali (*see* OIC's Exhibit 4) was admitted into evidence, all without objection from Ability Insurance Company ("Company"). But the Company's Donald Lawler subsequently testified that, in his view, this letter, combined with all of this other testimony and evidence, still did not, in his view, show whether the insured had either a "cognitive impairment" or a "loss of functional capacity" under the standards for reinstatement that he believed apply under WAC 284-54-253. Mr. Lawler testified that he felt more was needed – a "certification" by a licensed health care practitioner that met the requirements of "HIPPA" and other federal tax laws (standards which are more stringent than the ones set forth under Chapter 54 of Title 284 WAC), and suggested that these federal laws require that a more strict standard for "cognitive impairment" and "loss of functional capacity" must be met to qualify for reinstatement under WAC 284-54-253.

While OIC staff disagrees with Mr. Lawler's legal conclusions and opinions, and believes the Company has incorrectly required a more stringent standard for reinstatement than the law requires, the attached certification of Dr. Mihali should meet even the more stringent standards Mr. Lawler incorrectly believes should be applied here.

Under the Administrative Procedures Act, evidence may be offered when "necessary for full disclosure of all relevant facts and issues." RCW 34.05.449(2). Here, the full facts show that the insured met both the correct standards for reinstatement under Washington law that should have been applied by the Company, as well as the incorrectly imposed, more stringent standards that the Company incorrectly believes should apply. For there to be "full disclosure of all relevant facts," and to rebut Mr. Lawler's testimony and any argument that the insured did not have a "cognitive impairment" or a "loss of functional capacity" so as to qualify for reinstatement under WAC 284-54-253, Dr. Mihali's certification should be admitted. Accordingly, OIC staff moves to admit into evidence the attached certification as a further exhibit in this matter.

DATED this 2nd day of September, 2011.

OFFICE OF INSURANCE COMMISSIONER

By: _____
Alan Michael Singer
Staff Attorney
Legal Affairs Division

In re ABILITY INSURANCE COMPANY, Nos. 11-0088 and 11-0089

MOTION TO SUPPLEMENT THE RECORD – CERTIFICATION OF DR. MIHALI

ATTACHMENT:

TRUE AND CORRECT COPY OF AUGUST 24, 2011 CERTIFICATION OF DR. MIHALI

CERTIFICATION OF CHRONICALLY ILL INDIVIDUAL UNDER INTERNAL REVENUE CODE §7702B

The undersigned certifies that he is a licensed health care practitioner as defined in IRC §7702B(c)(4) (that is a physician (as defined in §1861(r) of the Social Security Act), a registered professional nurse, or a licensed social worker).

Gladys E. White has been a patient of mine since 1983. I hereby certify that Gladys E. White is a chronically ill individual, and has been a chronically ill individual since at least 2008, because she meets one of the following two tests:

Activities of Daily Living Test. She is unable to perform at least two of activities of daily living (ADLs), eating, toileting, transferring, bathing, dressing, and continence, without substantial assistance from another individual and has been unable to perform such ADLs without such assistance for a period of time since at least 2008 due to a loss of functional capacity. I understand that (1) "Substantial assistance" means hands-on assistance and standby assistance; (2) "Hands-on assistance" means the physical assistance of another person without which the individual would be unable to perform the ADL; (3) "Standby assistance" means the presence of another person within arm's reach of the individual that is necessary to prevent, by physical intervention, injury to the individual while the individual is performing the ADL (such as being ready to catch the individual if the individual falls while getting into or out of the bathtub or shower as part of bathing, or being ready to remove food from the individual's throat if the individual chokes while eating).

Cognitive Impairment Test. She requires substantial supervision to protect herself from threats to health and safety due to severe cognitive impairment. I understand that (1) "Severe cognitive impairment" means a loss or deterioration in intellectual capacity that is (a) comparable to (and includes) Alzheimer's disease and similar forms of irreversible dementia, and (b) measured by clinical evidence and standardized tests that reliably measure impairment in the individual's (i) short-term or long-term memory, (ii) orientation as to people, places, or time, and (iii) deductive or abstract reasoning, and that (2) "Substantial supervision" means continual supervision (which may include cuing by verbal prompting, gestures, or other demonstrations) by another person that is necessary to protect the severely cognitively impaired individual from threats to her health or safety (such as may result from wandering).

Alexander K [illegible]
Signature

24 August 2011
Date

MD
Title