



FILED

2013 AUG 22 A 10:40

600 University Street, Suite 3600
Seattle, Washington 98101
main 206.624.3900
fax 206.386.7500
www.stoel.com

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer
Direct (206) 386-7647
gshong@stoel.com

August 22, 2013

Via Email

Ms. Kelly Cairns
Administrative Assistant to
The Honorable Patricia D. Petersen
Office of the Insurance Commissioner
Post Office Box 40255
Olympia, WA 98504-0255

Re: In the Matter of Coordinated Care Corporation; Docket No. D 13-0232

Dear Ms. Cairns:

Enclosed for filing in the above-referenced matter is Coordinated Care Corporation's Response to OIC Staff's Motion to Determine Order and Burden of Proof.

By copy of this letter, I am emailing a pdf copy of the above-referenced document to OIC Staff's attorney, Charles D. Brown and also sending a copy of the same by U.S. Mail.

Sincerely,

A handwritten signature in black ink, appearing to read "Gloria S. Hong".

Gloria S. Hong

Enclosure

cc: Barbara Nay
AnnaLisa Gellermann
Andrea Philhower

2013 AUG 22 A 10:40

Hearings Unit, DIC
Patricia D. Petersen
Chief Hearing Officer

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

In the Matter of:

COORDINATED CARE CORPORATION,
An Authorized Health Maintenance
Organization.

Docket No. 13-0232

**RESPONSE TO OIC STAFF'S
MOTION TO DETERMINE
ORDER AND BURDEN OF
PROOF**

I. INTRODUCTION

Coordinated Care Corporation ("Coordinated Care") agrees that it has the burden of proof in this case. As noted by the OIC staff, Coordinated Care should therefore be permitted to present its case-in-chief first. See Motion on Burden of Proof, 3.

However, Coordinated Care disagrees with the OIC staff's proposed standard of review to the extent the OIC staff argues that the abuse of discretion standard applies. Nothing in the Administrative Procedure Act ("APA")¹ or related case law provides that an Administrative Law Judge ("ALJ"), or any court, shall apply an abuse of discretion standard when examining the propriety of an agency's action or decision. Coordinated Care agrees that an error of law standard applies with respect to the legal issues before the ALJ, such as statutory or regulatory interpretation.

¹ The APA sets forth the procedures that administrative agencies must provide in adjudicative proceedings. 24 Wash. Prac., Environmental Law And Practice § 25.19 (2d ed.).

1 202-203, 286 P.3d 417 (2012); *Verizon Nw., Inc. v. Emp't. Sec. Dep't.*, 164 Wn.2d 909, 915, 194
2 P.3d 255 (2008).³ The error of law standard allows the reviewing body to substitute its view of
3 the law for that of the agency, or the Insurance Commissioner here. *Bi-Mor, Inc.*, 171 Wn.App.
4 at 202-203. In that sense, it is more akin to a *de novo* standard than an abuse of discretion
5 standard. While the reviewing body may give deference to the OIC's interpretation of the
6 statute or regulation where it is shown that the OIC has specialized expertise, the reviewing body
7 is "not bound by an agency's interpretation of a statute." *City of Redmond v. Cent. Puget Sound*
8 *Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998); *see also Retail Store*
9 *Employees Union, Local 1001 Chartered by Retail Clerks Int'l Ass'n, AFL-CIO v. Wash.*
10 *Surveying & Rating Bureau*, 87 Wn.2d 887, 902-903, 558 P.2d 215 (1976) (giving no special
11 weight to Insurance Commissioner's ad hoc interpretation of statutory provisions asserted for
12 first time in litigation).

13 There are limitations to the deference given to an agency's interpretation of a law. *Bi-*
14 *Mor, Inc.*, 171 Wn.App. at 202-203. First, deference is not required where the meaning of the
15 statute or rule is plain and unambiguous on its face. *See id.* at 202. In those circumstances, the
16 judge should give effect to the plain meaning. *Id.* A statute or regulation is not ambiguous
17 simply because different interpretations are conceivable. *Id.* Even when the statute is
18 ambiguous, the judge should examine the rules of statutory construction, legislative history, and
19 relevant case law to resolve the ambiguity. *Id.* at 203; *see also Bailey v. Allstate Ins. Co.*, 73
20 Wn.App. 442, 445-447, 869 P.2d 1110 (1994) (not relying solely on OIC's statutory
21 interpretation but also applying other principals of statutory construction to interpret statute).
22 Moreover, statutes and regulations should not be construed in such a way that leads to unlikely,
23 absurd, or strained results. *Id.* at 203.

24 _____
25 ³ In at least one case, the reviewing body applied a *de novo* standard in reviewing an
26 agency decision in an adjudicative proceeding. *See Sherman v. State*, 128 Wn.2d 164, 905 P.2d
355 (1995) (review body in adjudicative hearing applied *de novo* standard in reviewing decision
by University of Washington to terminate medical resident due to concerns with narcotics use).

RESPONSE TO MOTION RE BURDEN OF PROOF - 3

1 Second, "deference to an agency is inappropriate where the agency's interpretation
2 conflicts with a statutory mandate." *Id.* at 202 (citing *Dep't of Labor & Indus. v. Granger*, 159
3 Wn.2d 752, 764, 153 P.3d 839 (2007)). Regulatory terms within the context of the regulatory
4 and statutory scheme must be read as a whole, not in isolation. *Id.* at 203. The ALJ should
5 ensure that the regulation is interpreted in a manner that is consistent with the statute's
6 underlying policy. *Id.*

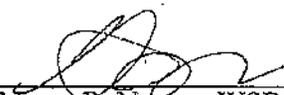
7 Therefore, the appropriate standard for interpreting statutes and regulations is error of
8 law. See *Bi-Mor, Inc.*, 171 Wn.App. at 202-203.

9 III. CONCLUSION

10 For the foregoing reasons, the ALJ should make factual findings in accordance with
11 RCW 34.05.461 and without any special deference to the factual determinations made by the
12 OIC staff with regard to Coordinated Care's actions or filings. Additionally, in interpreting
13 statutes and regulations, the ALJ should apply the error of law standard of review and only give
14 deference to the OIC staff when permitted under the law.

15 DATED: August 22, 2013.

16 STOEL RIVES, LLP

17 By: 

18 Maren R. Norton, WSBA No. 3
19 Gloria S. Hong, WSBA No. 36723
20 600 University Street, Suite 3600
Seattle, WA 98101
Telephone: 206.624.0900
Fax: 206.386.7500
21 Email: mrnorton@stoel.com
gshong@stoel.com

22 Attorneys for Coordinated Care
23 Corporation.
24
25
26

RESPONSE TO MOTION RE BURDEN OF PROOF - 4