

**State of New Hampshire**

**Insurance Department**

**In Re: Petition of Margaret McCarthy**

**Docket No. Ins. 13-038-AP**

**ORDER on MOTION to DISMISS**

On May 7, 2014, Intervenor Anthem Blue Cross and Blue Shield (Anthem) filed a Motion to Dismiss the Petition of Margaret McCarthy (Motion). The Petitioner Margaret McCarthy (Petitioner) filed an objection to the Motion on that same day. Arguments on the Motion were conducted at a prehearing conference on May 8, 2014. The Department did not file any pleading concerning the Motion.

Anthem's Motion raises two legal arguments in favor of dismissal: first that the Petition was untimely under RSA 400-A:17 and second, that the Petitioner has failed to show she was aggrieved by an act of the Commissioner. While both issues have been extensively argued in previous pleadings, Anthem indicated at the prehearing conference that because these arguments were presented in pleadings submitted in Docket No. Ins 13-038-AR rather than the instant administrative proceeding, the Motion was in part, required to raise and preserve these arguments for appeal. In addition, Anthem has presented a new legal argument related to timeliness for consideration.

I will not rehash the prior arguments concerning the Petitioner's standing and affirm my prior ruling on this issue. See Orders dated 12/11/13, 1/17/14, and 3/28/14 and the pleadings related to those Orders.

As to the new legal arguments related to timeliness of the Petition, Anthem contends that RSA 400-A:17 should be read as a statute of repose rather than a statute of limitation. Thus Anthem asserts that in enacting RSA 400-A:17, the legislature decided to extinguish the consumer's right of appeal even before the consumer knows or should know that the right exists. Anthem argues that had the legislature intended to condition the 30-day appeal limitation on knowledge by a consumer of both an act of the Commissioner and knowledge that such act has or will potentially result in injury to the consumer, the legislature could have included such language as indicated in other statutory provisions such as RSA 508:4, where such language is included in paragraph I but not in paragraph II.

It is true that if the language in RSA 400-A:17 were plain and unambiguous, it would not be appropriate to look beyond it for further indication of legislative intent, or to “add language that the legislature did not see fit to include.” In re Liquidation of Home Ins. Co., 157 N.H. 543, 553 (2008). However, the provisions of RSA 400-A:17 are not unambiguous, and in my April 30, 2014, Ruling on Timeliness, I determined it was necessary to reconcile the provisions of RSA 400-A:17,II(b) and RSA 400-A:17,III. On balance, I conclude that an interpretation of RSA 400-A:17 that would create a 30-day statute of repose in order to prevent stale claims by consumers is unreasonably harsh and illogical. Principles of statutory construction do not require interpretation of law leading to an absurd result. Marceau v. Concord Heritage Life Ins. Co., 149 N.H. 216, 220 (2003).

For these reasons, I deny Anthem’s Motion.

The Petitioner requests attorney’s fees and costs because she has had to respond to legal arguments that have been presented and decided previously. I find however, that Anthem’s filing was not made in bad faith and presented new arguments for consideration. Further, the Petitioner cites no authority to support award of attorney fees and costs in the context of an administrative proceeding, nor is there any provision in Ins 200 that would support the award of attorney fees and costs. Therefore, I do not find that the Petitioner is entitled to this relief.

It is SO ORDERED.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Dated: 5-13-14

  
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Roger A. Sevigny, Commissioner