

**THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT**

FINAL ORDER on HEARING

**In Re: The Mental Health Center of Southern NH, dba CLM Center for Life
Management**

Docket No.: INS 17-006-AP

Pursuant to the provisions of INS 204.26(a)(4), the Proposed Decision and Order issued on **July 11, 2018** by **Hearing Officer Emily Doherty** is hereby **ACCEPTED** as a **FINAL DECISION** and Order, with the following **MODIFICATIONS**:

- 1. The Hearing Officer's determination of findings of facts as set forth under the heading "FACTS" in the Proposed Decision and Order, are ADOPTED.**
- 2. The Hearing Officer's decision to exercise discretion to extend the three year limitation period set forth in NCCI's Dispute Resolution Process Rule B-4 with respect to the 2011/2012 policy is NOT ADOPTED, and is REPLACED with a GRANT of AIM's Motion to Dismiss with respect to the 2011/2012 policy.**

NCCI New Hampshire Dispute Resolution Process Rule B-4 provides, in part, that "Policyholders seeking dispute resolution under this process must request dispute resolution services from NCCI within three (3) years of the expiration date of the policy in question. Any extension of time to file a request for review after three (3) years of the policy expiration will be granted at the sole discretion of the Board."

The Miscellaneous Rules were approved by the Department as part of the Operational Rules of the Workers Compensation Plan pursuant to RSA 404-C:13. *See* RSA 404-C:13. As this appeal involves an interpretation of NCCI Basic Manual rules, the Commissioner

has the same authority to interpret and apply New Hampshire Miscellaneous Rules as would the Board.

The Commissioner concludes that the plain meaning of Miscellaneous Rule B-4 requires that the policy holder must request dispute resolution services from NCCI within three (3) years of the policy's expiration date. The evidence established that CLM did not contact NCCI within three years of the expiration of the 2011/2012 policy as required by Rule. Based on the facts of this case, particularly the evidence that CLM was aware as early as June 2009 that the alternative classification code 8832 might apply, the Commissioner declines to exercise his discretion, pursuant to NCCI's Dispute Resolution Process Rule B-4, to extend the time to file a request for review beyond three (3) years of the expiration date of the 2011/2012 policy. The Commissioner therefore GRANTS AIM's Motion to Dismiss with regard to CLM's challenge to the classification code used in the 2011/2012 policy.

3. The Hearing Officer's determination that CLM was incorrectly classified for the 2012/2013 policy year, as set forth within the heading "ANALYSIS" in the Proposed Decision and Order is ADOPTED, with the following MODIFICATIONS to the Hearing Officer's analysis:

The Commissioner ADOPTS the Hearing Officer's determination that the change to the classification code 8832 code in the 2014 NCCI Report was a "correction" rather than a classification "change" within the plain meaning of NCCI Basic Manual Rule 1-F. The Commissioner further adopts the Hearing Officer's finding that CLM's operations did not change within the four (4) years prior to the NCCI 2014 Audit Report and that CLM was incorrectly classified for policy year 2012/2013. The Commissioner does not adopt the Hearing Officer's analysis to the extent it can be read as interpreting NCCI Basic Manual

Rule 1-F-2 as requiring a retroactive application of the classification code correction made in the 2013/2014 policy to earlier policies. The Commissioner modifies the Hearing Officer's analysis to clarify that the 2013/2014 classification code correction is not being retroactively applied to the 2012/2013 policy; rather, the Commissioner adopts the Hearing Officer's factual finding that use of classification code 8864 in the 2012/2013 policy was incorrect and must be corrected to classification code 8832.

4. The Hearing Officer's determination that AIM "re-audited" the 2011/2012 and 2012/2013 policies in November/December of 2015 thus triggering the application of NCCI Basic Manual Rule 1-F-2, as set forth under the heading "ANALYSIS" in the Proposed Decision and Order, is NOT ADOPTED and is REPLACED with the following determinations:

The Commissioner REJECTS the Hearings Officer's determination that the review conducted by AIM of the 2011/2012 & 2012/2013 policies at the request of CLM following the 2014 NCCI Audit Report qualifies as an "audit" under NCCI Basic Manual Rule 1-F-2. In rejecting the Hearing Officer's characterization of AIM's review as an "audit," the Commissioner notes that a finding by the Department that an insurer's voluntary review of prior years' policies would constitute an "audit" as that term is used in NCCI Basic Manual Rule 1-F-2, could likely discourage insurers from reviewing prior audits and thus discourage insurers and insureds from independently working out their disputes. Thus, the Commissioner concludes that no "audit" was conducted by AIM when it reviewed the 2011/2012 and 2012/2013 policies with the 8832 classification code.

5. The Hearing Officer's "CONCLUSION", as set forth under in the Proposed Decision and Order, is NOT ADOPTED, and REPLACED with the following modifications:

Based upon the evidence presented at the appeal hearing, and the arguments presented by the parties in their pleadings and at Oral Argument, the Commissioner finds that CLM did not file a timely request for dispute resolution services from NCCI within three (3) years of the expiration date of 2011/2012 policy, pursuant to New Hampshire Dispute Resolution Process Rule B-4, and no extension of time for filing is granted. AIM's Motion to Dismiss CLM's challenge to the classification code used in the 2011/2012 policy is, therefore, GRANTED.

With respect to the 2012/2013 policy, the Commissioner finds that CLM has met its burden of proving by a preponderance of the evidence that AIM's use of classification code 8864 as the governing basic classification code in CLM's 2012/2013 policy was incorrect and must be corrected to classification code 8832. AIM is obligated by NCCI Basic Manual Rule 1-F-2 to apply the 8832 classification code to the inception of the 2012/2013 policy. This ruling is supported by RSA 412:35, I, which requires the final premium an insurer charges an insured for a workers' compensation policy issued in New Hampshire to be based upon the "actual exposure that existed during the term of the policy coverage," as well as NCCI New Hampshire Miscellaneous Rule B-4 which provides a three year limitation period for an insured to seek correction of a classification code used in a policy.

AIM is ordered to correct the classification code used in the 2012/2013 policy and, in accordance with Basic Manual Rule 1-F-2, apply the corrected 8832 classification code to the inception of the 2012/2013 policy and make all other necessary related adjustments that the Basic Manual requires for the policy relative to making the classification code correction.

There are no further modifications to the Proposed Decision and Order, and the remainder of the Proposed Decision and Order is accepted without modification.

SO ORDERED.

9/4/18
Date



John Elias, Commissioner

This is the Final Action of the Department. Pursuant to Ins 204.26(e) you have the right to appeal by requesting a rehearing of this final action **within 30 days of the date of this Order is signed by the Commissioner**, in accordance with RSA 541. Your request for rehearing must specify all grounds to support rehearing by the Commissioner. The Commissioner will grant your request if in his opinion, there is good reason to reconsider his decision.