

BEFORE ALLAN L. MCVEY, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

In the Matter of:

ESIS, INC.

Administrative Proceeding No. 24-IC-172080

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER ASSESSING PENALTY

FINDINGS OF FACT

1. Allan L. McVey is the Insurance Commissioner of the State of West Virginia (“Commissioner”) and is charged with enforcing the provisions of Chapter 33 of the West Virginia Code.
2. ESIS, Inc. (hereafter, “ESIS”), a Pennsylvania domiciled Third-Party Administrator (“TPA”), is licensed to act as a nonresident TPA in the State of West Virginia, pursuant to W. Va. Code § 33-46-14.
3. ESIS serves as a TPA for Starr Indemnity & Liability Insurance Company (“Starr”) and handles Workers’ Compensation claims on behalf of Starr. ESIS handled a claim filed by Mr. Sizemore, JCN 2024006626; claim number 1E01E015075433.
4. On March 5, 2024, in the aforementioned claim, ESIS issued a letter titled “Claim Decision - TTD Extension – Please Read Carefully” (“the TTD letter”).
5. The claimant in this case, Mr. Sizemore, is self-represented (“claimant Sizemore”).
6. The TTD letter informed claimant Sizemore that his temporary total disability benefits were extended until April 4th, 2024, but that his benefits would be subject to suspension after that date if the TPA did not receive “medical evidence of continued disability related to this claim after 4-4-24.”

7. In the TTD letter, ESIS informed claimant Sizemore that he could “protest this decision **within 30 days** from the date you receive[d] this letter.”
8. In the TTD letter, ESIS further directed claimant Sizemore to send a written protest to **the Office of Judges** and provided an address to send the written protest.
9. Finally, in the TTD letter, ESIS failed to include basic information, such as claimant Sizemore’s date of injury.
10. ESIS also serves as a TPA for Indemnity Insurance Company of North America and handles Workers’ Compensation claims on behalf of the company. ESIS handled a claim filed by Mr. Hixson (“claimant Hixson”), JCN 2024008342; claim number 1E01E01521036X.
11. On March 26, 2024, in the aforementioned claim, ESIS issued a letter titled “Claim Decision (Medical Authorization Decision) – Please Read Carefully” (“the authorization letter”).
12. The authorization letter informed claimant Hixson that a request for “total hip arthroplasty” made on claimant Hixson’s behalf had been denied as neither medically necessary nor reasonable require dot treat the compensable conditions of the claim.
13. The authorization letter informed claimant Hixson that he could protest “this decision **within sixty (60) days** from the date you receive[d] this letter” and directed him to send a written protest to **the Office of Judges**.
14. Finally, in the authorization letter, ESIS failed to include basic information, such as the Jurisdictional Claim Number (“JCN”).
15. W.Va. Code § 23-5-1 granted jurisdiction of workers’ compensation benefit disputes to the Offices of Judges.
16. In April of 2021, the West Virginia Legislature enacted Senate Bill 275, which divested the Office of Judges of jurisdiction over workers’ compensation claim benefit disputes, effective

June 30, 2022. The same bill assigned the Workers' Compensation Board of Review jurisdiction over workers' compensation claim disputes. The statutorily effective date of this assignment was July 1, 2022. *See* W.Va. Code § 23-5-8a; *see also* W.Va. Code § 23-5-8b.

17. Moreover, W.Va. Code § 23-5-1a(b)(1) provides a sixty (60) day time limitation to file an objection to a claim decision.

18. The letters sent from ESIS incorrectly informed the claimants of how and when to file an objection to the workers' compensation benefits decision.

CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over the subject matter and the parties to this proceeding pursuant to Chapter 23 and Chapter 33 of the West Virginia Code.

2. This proceeding is pursuant to and in accordance with W.Va. Code §§ 33-46-17(d) and 23-2C-17(c).

3. W.Va. Code § 23-2C-17(c) states, in part:

A private carrier or self-insured employer may enter into a contract to have its plan of insurance administered by a third-party administrator if the administrator is licensed with the Insurance Commissioner in accordance with article forty-six [§§ 33-46-1 et seq.], chapter thirty-three of this code. Notwithstanding any other provision of this code to the contrary, any third-party administrator who, directly or indirectly, underwrites or collects charges or premiums from, or adjusts or settles claims on residents of this state, in connection with workers' compensation coverage offered or provided by a private carrier or self-insured employer, is subject to the provisions of article forty-six, chapter thirty-three of this code to the same extent as those persons included in the definition set forth in subsection (a), section two of said article....

4. W.Va. Code § 33-46-17 grants the Commissioner authority to deny, suspend, or revoke a TPA's license and/or levy a civil penalty upon certain conditions.

5. W.Va. Code § 33-46-17(b) states, in pertinent part, “[t]he commissioner may deny, suspend or revoke the license of an administrator if the commissioner finds that the administrator . . . [h]as violated any lawful rule or order of the commissioner or any provision of the insurance laws of this state[.]”

6. Further, W.Va. Code § 33-46-17(d) states:

If the commissioner finds that one or more grounds exist for the suspension or revocation of a license issued under this article, in any case except where that action is not mandatory, the commissioner may, in lieu of suspension or revocation, **by order** require the administrator to pay to the state of West Virginia **a penalty in a sum not exceeding ten thousand dollars** and upon the failure of the administrator to pay the penalty within thirty days after notice of the penalty, the commissioner may revoke or suspend the license of the administrator. (emphasis added)

7. W.Va. Code § 23-5-1a(b)(1) states, in part,

[e]xcept with regard to interlocutory matters, upon making any decision, upon making or refusing to make any award, or upon making any modification or change with respect to former findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties to the claim of its action. **The notice shall state the time allowed for filing an objection to the finding.** The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final unless an objection to the decision is properly filed within **60 days after the receipt of such decision.** This time limitation is a condition of the right to litigate the finding or action and hence jurisdictional. **Any objection shall be filed with the Workers’ Compensation Board of Review,** as provided in §23-5-8a and §23-5-8b of this code, with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in §23-5-8a and §23-5-9a of this code....(emphasis added)

8. Here, the letter sent from ESIS to claimant Sizemore failed to meet the requirements of W.Va. Code § 23-5-1a(b)(1), because it provided only thirty (30) days to file an objection.

9. Further, ESIS instructed both claimants to file any objections with the Office of Judges, which is an organization that no longer exists.

10. ESIS's failure to notify the claimants of the correct time frame and venue to protest its decision may have resulted in denial of the claimants' right to due process.

11. The Commissioner finds that ESIS used methods or practices in the conduct of its business that were in clear violation of the West Virginia Code.

ORDER

It is accordingly ORDERED as follows:

1. It is ORDERED that ESIS will CEASE AND DESIST from failing to comply with the Statutes, Rules and Regulations of the State of West Virginia as set forth above.

2. Further, it is ORDERED that ESIS shall ensure compliance with the West Virginia Code and the Code of State Rules.


3. Further, it is ORDERED that ESIS review the West Virginia Insurance Bulletin No. 22-07 and ensure full compliance with this bulletin, including the basic information that must be included in all written workers' compensation decision letters.

4. Finally, it is ORDERED that ESIS shall pay an administrative penalty to the State of West Virginia in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) for noncompliance with the West Virginia Code as described herein. The payment of this administrative penalty is in lieu of any other regulatory penalty or remedy and is due within thirty days of receipt of this Order.

5. Upon the failure of ESIS to pay the penalty set forth above as required, the Commissioner may take other action against ESIS, pursuant to W.Va. Code §33-46-17, or otherwise available provisions.

6. Parties aggrieved by this order may file a written demand for a hearing, specifying “the grounds to be relied upon as basis for the relief to be requested at such hearing.” W.Va. code R. § 114-13-3.2. Upon receipt of a written demand for hearing, the Insurance Commissioner will review the demand to determine whether or not the demand should be granted, and a hearing should be set. A hearing, if granted, will be held at the Insurance Commissioner’s offices in Charleston, West Virginia. If the Commissioner determines that a hearing would serve no useful purpose or would require the Commissioner to exercise an authority in excess of that granted to him, then this office will, in accordance with W.Va. Code R. § 114-13-3.3, issue an order denying the request for a hearing. Such Order, if disagreed with, may be appealed to the West Virginia Intermediate Court of Appeals in accordance with W.Va. Code § 51-11-4.

ENTERED this 10th day of April 2024.


Allan L. McVey
CPCU, ARM, AAI, AAM, AIS
Insurance Commissioner
State of West Virginia