

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

DONNA JOHNSON

Complainant,

ADMINISTRATIVE PROCEEDING NO. 21-IC-02022

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Respondent.

ORDER DENYING MOTION FOR REHEARING

This matter came before the West Virginia Offices of the Insurance Commissioner (hereinafter "OIC") on Complainant Donna Johnson's (hereinafter "Complainant") Motion for a Hearing filed on or about February March 5, 2022, pursuant to W.Va. Code §33-2-13 and W.Va. Code R §114-13-6.12.

FINDINGS OF FACT

1. On or about December 8, 2021, Complainant filed a first-party administrative complaint against State Farm Mutual Automobile Insurance Company (hereinafter, "Respondent") with the OIC regarding the change in policyholder from Complainant to her son.

2. On or about September 17, 2021, Complainant requested by telephone that Respondent change her automobile policy from her name to the name of her son. A replacement vehicle and other policy changes were requested by Complainant. Complainant was not listed on the policy.

3. Respondent did not change the name of the billing to Complainant as that change was not requested. Respondent did not require the billing and policyholder to be the same individual.

4. Complainant is listed on the policy as “Accountholder.” She is not otherwise listed on the policy.

5. On or about November 23, 2021, Complainant called Respondent wanting to discuss the automobile policy that had been changed from her name to her son. Respondent would not discuss the policy with Complainant as she was not listed on the policy.

6. Respondent stated Complainant’s son could call Respondent and give permission to speak to Complainant. Complainant’s son did not call Respondent.

7. On or about February 28, 2022, the OIC sent Complainant a “no violations letter,” stating that there were any violations of the insurance laws or regulations of the State of West Virginia in the handling of Complainant’s claim.

8. On or about March 5, 2022, Complainant requested a hearing with the OIC regarding the merits of her first-party administrative complaint against Complainant.

CONCLUSIONS OF LAW

1. W.Va. Code §33-2-13 states, in pertinent part, “[t]he commissioner may call and hold hearings for any purpose deemed necessary by him for the performance of his duties.” Additionally, W.Va. Code §33-2-13 further states, “[i]n the discretion of the commissioner a

rehearing may be granted to any party to a hearing upon written request filed with the commissioner within thirty days of the mailing of such order.”

2. W.Va. Code R §114-13-6.12 states “[i]n the discretion of the commissioner, a rehearing may be granted to any party to a hearing upon written request filed with the commissioner within thirty days (30) of entry.

3. Regarding first-party complaints, the WVOIC does not have the general authority to adjudicate the merits of an underlying claim involving a good faith dispute over liability or value. The authority of the WVOIC is limited by statute.

4. A disagreement regarding liability or value for an underlying claim does not alone signal an unfair claims settlement practice. “So long as the insurer acts in good faith, the insurer is not held to standards of omniscience or perfection; it has leeway to use and should consistently employ its honest business judgment.” *Jackson v. State Farm Mut. Auto. Ins. Co.*, 215 W.Va. 634, 600 SE2d 346 (2004), quoting *Peckham v. Continental Cas. Ins. Co.*, 895 F2d 830, 835 (1st Cir. 1990). Respondent simply must show that its investigation was done in good faith given its own knowledge at the time of the relevant facts and claim concerning the underlying claim. See *Jackson supra*, at 642, quoting *Bolden v. O’Connor Café of Worchester, Inc.*, 50 Mass App. Ct. 56, 734 N.E.2d 726 (2000).

Further, W.Va. Code R. § 114-13-3.3 states:

3.3 Hearing on written demand ~ When the commissioner is presented with a demand for a hearing as described in subsections 3.1 and 3.2 of this section, he or she shall conduct a hearing within forty-five (45) days of receipt by him or her of such written demand, unless postponed to a later date by mutual agreement. However, if the commissioner shall determine that the hearing demanded:

a. Would involve an exercise of authority in excess of that available to him or her under the law b. Would serve no useful purpose; the commissioner shall, within forty-five (45) days of receipt of such demand, enter an order refusing to grant the hearing as requested, incorporating therein his or her reasons for such refusal. Appeal may be taken from such order as provided in W.Va. Code §33-2-14.

5. Respondent conducted a reasonable investigation and determined Complainant was not the policyholder, and was not permitted to obtain information about the policy information. The OIC is limited to reviewing whether Respondent committed an unfair claims settlement practice. No unfair claims settlement practices were found in Respondent's handling of Complainant's complaint.

6. W.Va. Code §33-2-13 and W.Va. R §114-1-3.3 give the Commissioner discretion in deciding whether a hearing would serve a useful purpose. Holding a hearing in this matter would involve an exercise of authority in excess of that available to the OIC under the law in that it would be asking the OIC to adjudicate a good faith liability dispute regarding the Complainant's underlying claim. The OIC properly closed this matter pursuant to W.Va. Code § 33-1 1-4a(g), and a hearing on the matter would serve no useful purpose.

7. Wherefore, a hearing in this matter would serve no useful purpose and would involve an exercise of authority in excess of that available to it under the law.

ORDER

It is therefore **ORDERED** that the Complainant's request for a hearing is **DENIED**. Pursuant to W.Va. Code §33-2-14, the Complainant has the right to appeal this Order of the

Insurance Commissioner to the Circuit Court of Kanawha County within 30 days of receipt.

ENTERED this the 25th day of March, 2022.


ALLAN L. MCVEY