

BEFORE JAMES A. DODRILL, INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA

DAVID TABB on behalf of **NADINE TABB**,

Complainant,

ADMINISTRATIVE PROCEEDING NO. 20-FP-02028

v.

HIGHMARK WEST VIRGINIA,

Respondent.

ORDER DENYING MOTION TO RECONSIDER
OR MOTION FOR REHEARING

This matter came before the Insurance Commissioner of West Virginia (hereinafter “Commissioner”) on Complainant David Tabb’s (hereinafter “Complainant”) Motion To Reconsider filed on or about July 29, 2021, pursuant to *W.Va. Code* §33-2-13 and *W.Va. Code R* §114-13-6.12. The Commissioner considers Complainant’s Motion to be a rehearing request.

On July 20, 2021, the Commissioner entered a Final Order in this matter adopting the Recommended Decision of the Hearing Examiner dated June 24, 2021. The Complainant has requested a rehearing and submitted alleged errors in his Motion.

FINDINGS OF FACT

1. The parties to this matter were before the Hearing Examiner on January 27, 2021, for a contested hearing regarding allegations of unfair claims settlement practices committed by Highmark West Virginia (hereinafter “Respondent”) in the handling of Complainant’s wife’s, Nadine Tabb, insurance claim regarding injuries she suffered as the result of a motor vehicle accident on May 17, 2019.

2. On or about May 6, 2020, Complainant filed his first-party consumer complaint with the Commissioner alleging unfair claims settlement practices on behalf of Respondent.

3. On December 12, 2020, a Notice of Hearing was sent to the parties advising the parties that a hearing would be held upon the written consumer complaint of Complainant.

4. A lengthy hearing in this matter was held on January 27, 2021, during which both parties presented their case and submitted exhibits, and Complainant was permitted to make several lengthy statements.

5. After both parties submitted post-hearing briefs, the Hearing Examiner submitted his Recommended Decision to the Commissioner on June 24, 2021. The Hearing Examiner found the Complainant failed to prove the Respondent violated the insurance laws of West Virginia and that the Respondent had not committed any unfair claims settlement practices violations. On July 20, 2021, the Commissioner entered a Final Order adopting the Recommended Decision.

6. On or about July 29, 2021, Complainant filed his "Motion To Reconsider." In his Motion, Complainant alleges several errors in the Recommended Decision. Complainant seeks as his remedy the "striking of the Recommended Decision and rule in Complainant's favor, and/or remanding the case to an independent tribunal."

7. On or about August 20, 2021, Respondent submitted a response to Complainant's Motion.

8. The Commissioner has reviewed and considered all pleadings of the parties, as well as all applicable statutes and case law in reaching his decision in this matter.

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 of the order.”

3. Complainant alleges that the Hearing Examiner made an unclear statement about referencing an exhibit. However, the hearing transcript does not support Complainant’s allegations regarding the exhibits.

4. Complainant also alleges he was not permitted to cross examine Respondent’s counsel. Pursuant to Rule 3.7 of the West Virginia Rules of Professional Conduct, an attorney cannot act as an advocate where it is likely for the attorney to be called as a witness, except in very limited exceptions. None of those exceptions apply. As the Notice of Hearing explains, Complainant had the opportunity to subpoena witnesses and could have issued a subpoena to Respondent’s counsel. As none were requested, Respondent’s counsel appeared at the hearing as Respondent’s counsel, not as a witness, and, therefore, she was not subject to any examination by the Complainant.

5. Complainant further alleges that Respondent’s Medicare lien was not perfected. Pursuant to 42 USC 1395y, Medicare liens are statutory in nature, and nothing further is necessary to perfect such a lien.

6. Complainant further alleges that Respondent’s counsel is not licensed to practice law by the West Virginia State Bar. Respondent’s counsel provided to Complainant her West Virginia State Bar number. A simple search of the West Virginia State Bar’s website reveals that

Respondent's counsel is, in fact, licensed to practice law in West Virginia. The Complainant has provided no credible evidence to support his allegation that Respondent's counsel is unlicensed.

7. Complainant further alleges issues that were already raised at the hearing and were the basis of his first-party consumer complaint. Complainant seeks to relitigate the same issues raised in the hearing after he was already provided a full opportunity to litigate those issues at that time.

8. There is no authority for the Commissioner to grant a reconsideration sought by Complainant.

9. *W.Va. Code* § 33-2-13 and *W.Va. Code R* §114-13-6.12 give the Commissioner discretion in deciding whether a rehearing is necessary. For the reasons and authority aforesaid, granting and conducting a rehearing in this matter would serve no useful purpose.

It is therefore **ORDERED** that the Complainant's request for a rehearing is **DENIED**. Pursuant to *W.Va. Code* §33-2-14, the Complainant may if he so chooses, appeal this Order to the Circuit Court of Kanawha County within 30 days of his receipt hereof.

ENTERED this 10th day of September, 2021.



JAMES A. DODRILL
Insurance Commissioner