

No. 88940-6

SUPREME COURT
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
Jun 13, 2014, 12:17 pm
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O.S.T., by and through his parents, G.T. and E.S.; and L.H., by and
through his parents, M.S. and K.H., each on his own behalf and on behalf
of all similarly situated individuals,

Respondents /Plaintiffs,

v.

REGENCE BLUESHIELD,

Appellant / Defendant.

APPELLANT REGENCE BLUESHIELD'S
STATEMENT OF ADDITIONAL AUTHORITIES

Timothy J. Parker, WSBA No. 8797
Jason W. Anderson, WSBA No. 30512
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Attorneys for Regence BlueShield

Under RAP 10.8, Appellant Regence BlueShield submits the following additional authorities.

1. On the issue of whether a court defers to interpretations of provisions of the insurance code, title 48 RCW, by the Washington Office of Insurance Commissioner (OIC), Appellant cites the following authorities:

- *Chicago Title Ins. Co. v. Wash. State Office of Ins. Comm'r*, 178 Wn.2d 120, 133, 309 P.3d 372 (2013) (affirming OIC's determination that title insurer was responsible for insurance code violations committed by its agent);
- *Regence BlueShield v. State, Office of Ins. Comm'r*, 131 Wn. App. 639, 649, 128 P.3d 640 (2006) (deferring to OIC interpretation of statutory mandate in approving/disapproving health insurance contract filed pursuant to RCW 48.44.020):

[W]e accord great weight to the interpretation by a reviewing agency with expertise in the area, so long as its interpretation does not conflict with legislative intent.

2. On the issue of whether a court, in deferring to an agency's interpretation of a statute, may rely upon an interpretation applied by the agency prior to the trial court's decision, even if not formally adopted by rule making, Appellant cites the following authorities:

- *Stevens v. Brink's Home Security, Inc.*, 162 Wn.2d 42, 54, 169 P.3d 473 (2007) (Madsen, J., concurring):

An agency policy can be useful in determining the meaning of statutory terms. ... They need not be promulgated with

the formality of rule making but must represent a uniformly applied interpretation. *See generally Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 815, 828 P.2d 549 (1992).

- *North Cent. Wash. Respiratory Care Svcs., Inc. v. State, Dep't of Revenue*, 165 Wn. App. 616, 630-31, 637, 268 P.3d 972 (2011) (on review of the summary judgment dismissal of tax refund claims, deferring to the Department of Revenue's interpretations contained in non-binding advisory bulletins);

- *Westberry v. Interstate Distributor Co.*, 164 Wn. App. 196, 208, 263 P.3d 1251 (2011) (on review of the summary judgment dismissal of a class action seeking overtime pay, deferring to the Department of Labor and Industries' approval of the defendant employer's compensation system as in compliance with the Minimum Wage Act);

- *Coronado v. Orona*, 137 Wn. App. 308, 315-16, 153 P.3d 217 (2007) (on review of the summary judgment dismissal of a landscaper's breach of contract action on the basis that a landscaper must register as a contractor, deferring to the Department of Labor and Industries' interpretation that landscapers must register as evidenced by its application form for contractor registration and an advisory bulletin);

3. On the issue of whether the OIC actively reviews and approves health plan forms submitted by health carriers under RCW 48.44.020, Appellant cites the following authorities (copies attached):

APPELLANT REGENCE BLUESHIELD'S
STATEMENT OF ADDITIONAL
AUTHORITIES - 2

- OIC website—*Rates and Forms*;

Rates and forms reviews and approves the insurance products carriers and insurers market to consumers, making sure policies meet the legal requirements of state laws and regulations.

<http://www.insurance.wa.gov/about-oic/what-we-do/regulate-insurance-industries/about-rates-forms/> (last visited June 13, 2014) (Attachment A).

- OIC press release—*Kreidler approves 31 new plans for Washington's new health exchange* (August 1, 2013).

<http://www.insurance.wa.gov/about-oic/news-media/news-releases/2013/8-1a-2013.html> (last visited June 13, 2014) (Attachment B).

- OIC announcement—*OIC is hiring analyst to review health plan filings* (May 9, 2014):

We are hiring a Functional Program Analyst 3 in our Tumwater office to review health insurance policy forms to ensure they comply with state and federal laws and requirements. This position plays an important role in making sure health plans meet Affordable Care Act (ACA) and other requirements and working closely with the insurance companies that file their plans with our office each year.

<http://wainsurance.blogspot.com/2014/05/oic-is-hiring-analyst-to-review-health.html> (last visited June 13, 2014) (Attachment C).

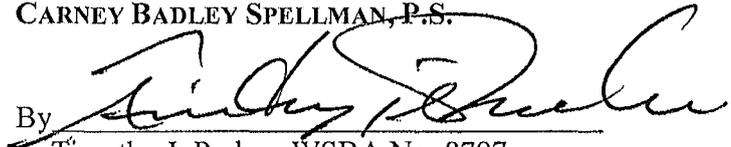
4. On the issue of justiciability and whether Respondent L.H. was diagnosed only with medical conditions and not any mental disorder,

and whether L.H.'s claims submitted to Regence listed only medical diagnoses, Appellant cites the clerk's papers at 697-98, 849, and 929-30.

Respectfully submitted this 13th day of June, 2014.

CARNEY BADLEY SPELLMAN, P.S.

By



Timothy J. Parker, WSBA No. 8797

Jason W. Anderson, WSBA No. 30512

Attorneys for Regence BlueShield

CERTIFICATE OF SERVICE

I, Christine Williams, certify that I am over the age of 18 years and competent to be a witness herein. On June 13, 2014, I served in the manner indicated a true and correct copy of the foregoing document on counsel of record as follows:

Attorneys for Plaintiff

Eleanor Hamburger / Richard E. Spoonemore

Sirianni Youtz Spoonemore

999 Third Avenue, Suite 3650

Seattle, WA 98104

Fax: 206-223-0246

Email: ehamburger@sylaw.com

rspoonemore@sylaw.com

VIA legal messenger

I DECLARE UNDER PENALTY OF PERJURY
OF THE LAWS OF THE STATE OF WASHINGTON
THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 13th day of June, 2014.



Christine Williams, Legal Assistant

ATTACHMENT A

Rates and forms

Rates and forms reviews and approves the insurance products carriers and insurers market to consumers, making sure policies meet the legal requirements of state laws and regulations. We also review rate filings to make sure the premiums insurers charge for the provided coverage is appropriate, and doesn't discriminate. We serve the more than 1,300 insurance companies authorized to transact insurance business in Washington state.

Updated 03/27/2014

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ATTACHMENT B

News release

Mike Kreidler
Washington state Insurance Commissioner

Contact Public Affairs: 360-725-7055

08/01/2013

Kreidler approves 31 new plans for Washington's new health exchange

OLYMPIA, Wash. -- Insurance Commissioner Mike Kreidler has approved the individual health plans and rates of four health insurance companies to sell in Washington's new health insurance Exchange, the Washington Healthplanfinder, starting Oct. 1, 2013. In most counties, people will have a choice of two dozen plans.

The approved rates are 1.8 percent lower than what the companies originally requested, resulting in a savings of more than \$10 million.

"We're now one step closer to giving Washington consumers access to affordable health insurance," said Insurance Commissioner Mike Kreidler. "Many of the companies will look the same, but they're going to sell all new plans with much better benefits."

The following list includes the approved companies and the counties where they intend to sell:

| **Bridgespan** -- King, Kitsap, Pierce, Skagit, Snohomish, Thurston, and Spokane

| **Group Health Cooperative** -- Benton, Columbia, Franklin, Island, King, Kitsap, Kittitas, Lewis, Mason, Pierce, San Juan, Skagit, Snohomish, Spokane, Thurston, Walla Walla, Whatcom, Whitman, and Yakima

| **Lifewise** -- All 39 counties

| **Premera Blue Cross** -- All counties except Clark

Three of these insurers -- Group Health Cooperative, Lifewise and Premera -- now also have approved individual plans for sale outside of the Exchange. Seven additional insurers (Asuris, Regence Blueshield, Regence Blueshield of

Oregon, Group Health Options, Kaiser Foundation Health Plan of the Northwest, Time and Moda) have filed individual health plans for sale outside of the Exchange. Kreidler has until the end of September to approve these plans and their rates.

The board of the Washington Health Benefit Exchange will now review the approved Exchange plans to determine if they meet their Qualified Health Plan standards. A final announcement is expected at the Aug. 21 board meeting.

All of the approved plans include the 10 essential health benefits such as prescription drug coverage and maternity coverage. Also, annual out-of-pocket costs including deductibles and copays are capped at \$6,350 for an individual and \$12,700 for a family.

How much someone pays will depend on their age, where they live, whether or not they smoke, and which plan they select. Premium and cost-sharing subsidies are available for plans sold through the Washington Healthplanfinder, depending on your income.

Only Kaiser applied to sell small employer plans inside the Exchange and only in Clark and Cowlitz counties. The Exchange has granted Kreidler an extension to Aug. 6 to complete his review.

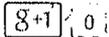
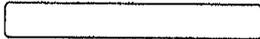
Nine insurance companies originally filed individual health plans for sale in the Exchange. Those not approved include: Moda Health Plan, Inc., Kaiser Foundation Health Plan of the Northwest, Community Health Plan of Washington, Coordinated Care Company and Molina Healthcare of Washington, Inc.

"Unfortunately not all of the insurers who applied were approved," said Kreidler. "Several of them struggled to guarantee access to certain providers and hospitals. It's our duty to make sure that if you buy a health plan, you can actually see the doctor or hospital that provides the service you need. This was a challenge for some of the insurers new to the commercial market. We're committed to working with these companies to help them get ready for 2015. Getting to this point has been challenging, but the end result will be worth it. For too long, people have struggled to find affordable coverage. If they have insurance, they've continued to pay more, yet seen their benefits dwindle. The new plans for sale starting this October provide meaningful coverage and will give people peace of mind and financial security."

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Release No. 13-20

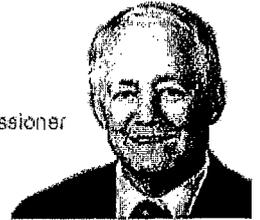
ATTACHMENT C

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Washington State Office of the INSURANCE COMMISSIONER UPDATES

Consumer help and news from Washington's insurance regulator

Mike Kreidler
Insurance Commissioner

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Friday, May 9, 2014

OIC is hiring analyst to review health plan filings

We are hiring a Functional Program Analyst 3 in our Tumwater office to review health insurance policy forms to ensure they comply with state and federal laws and requirements. This position plays an important role in making sure health plans meet Affordable Care Act (ACA) and other requirements and working closely with the insurance companies that file their plans with our office each year. This position works with other health policy analysts in the agency and our legal division.

This position works in our Rates and Forms division and reports to the [Health and Disability Manager](#), which we are also hiring.

We are looking for candidates who have a bachelor's degree and at least two years' experience in government regulation, insurance, insurance code, or experience with the ACA. We will start reviewing applications on May 19.

Read more about the position or apply at careers.wa.gov.

Posted by Kara K at 2:32 PM

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About our blog

This is the official blog of the [Washington state Insurance Commissioner's office](#).

Got a question? Contact us at WAinsuranceblog@oic.wa.gov. You can also find us on [Twitter](#), [Facebook](#) and [Instagram](#).

If you have an insurance complaint or question--and live in Washington state--call our consumer advocates at 1-800-562-6900.

If you need help but live elsewhere, please contact your state's insurance department. [Here's a map](#) with contact info.

Lastly, the legal stuff: Mentioning a company or product on this blog ≠ endorsement. But you knew that.

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To: Williams, Christine
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-----Original Message-----

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Dear Clerk:

Attached for filing is Appellant Regence BlueShield's Statement of Additional Authorities.

Case Name: O.S.T. v. Regence Blueshield

Cause No.: 88940-6

Filing Attorney:

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Thank you.

[Description: Carney Badley Spellman, P.S.]<<http://www.carneylaw.com/>>

Christine Williams, Legal Assistant to Timothy J. Parker
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