
STATE OF UTAH

DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

PAN-AMERICAN LIFE INSURANCE COMPANY,

Respondent.

ORDER

Docket No. 2019-4098

Administrative Law Judge
Lisa Watts Baskin

This matter came before the undersigned on May 2, 2019, at 10:00 a.m. MDT and 11:00 a.m. CDT, for a Request for Review of the Notice of Agency Action and Order, dated February 27, 2019. Pan-American Life Insurance Company (hereafter "Respondent"), appeared by and through counsel, Mr. Paul Cordes. Ms. Helen Frohlich, Assistant Utah Attorney General, appeared for the Utah Insurance Department, hereafter ("Complainant"). The administrative hearing was held as a formal proceeding pursuant to the Amended Scheduling Order of April 4, 2019. Mr. Cordes appeared telephonically. The matter was recorded.

PROCEDURAL BACKGROUND

The forfeiture order in the amount of \$750.00 under review was issued pursuant to Utah Code §§ 31A-2-201, 63G-4-201 through 63G-4-203, and Utah Admin. Code R590-146-14, R590-146-22, and R590-220-11. Respondent filed a timely written hearing request to challenge the Complainant's forfeiture order issued on February 27, 2019. Pursuant to Utah Code § 63G-

4-202(3) and based upon Respondent's request for hearing, the proceeding was converted to a formal adjudicative proceeding.

Based on the foregoing, Complainant's exhibits and witness testimony, and on Respondent's exhibits and witness testimony, and for good cause, the undersigned makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent is an insurer domiciled in the State of Louisiana and authorized to do the business of insurance in the State of Utah, Utah Company Identification No. 1060.
2. Respondent is an insurer that markets Medicare Supplement Policies.
3. Respondent was required under Utah Admin. Code Rules R590-146-14 and R590-146-22 to electronically file its Annual Filing of Premium Rates, its Refund Calculation and Benchmark Ratio, and its Report of Multiple Policies on or before May 31, 2018, which Respondent failed to do.
4. On May 30, 2018, Respondent filed an incomplete report, identified as EXP REFUND FILING 2017, which lacked the Medigap Annual Filing of Premium Rates. On the same date, Complainant's Insurance Specialist, Ms. Julie Chytraus, notified Respondent of the missing report.
5. In the Note To Filer, Ms. Chytraus provided a *courtesy* 24-hour notice that corrections were required or the filing would be rejected.¹

¹ Complainant Ex. 1, Note To Filer, Created and Submitted By: Julie Chytraus on 05/30/2018 12:34 PM., UID 009. It read, "You have 24 hours to correct the following issues or the filing will be rejected: 1 – You are missing a report attachment. Pursuant to U.A.C. Rule R590-220-11 all reports must be attached, or the filing is considered incomplete. A statement in lieu of the required form is not acceptable."

6. On June 1, 2018, Ms. Chytraus notified Respondent of the disposition of the EXP REFUND FILING 2017, Tracking Number SADS – 131518004, stating the May 30, 2018 filing was “rejected.”²
7. On June 5, 2018, Respondent submitted the corrected and complete report, some six days after receiving the 24-hour warning.
8. On June 6, 2018, the report was received and accepted as a resubmission under a new SERFF Tracking number, SADS 131530001.³
9. The May 30, 2018 report filing status remained “rejected.”
10. Complainant’s forfeiture order for \$750.00 identified Respondent’s failure to timely comply with filing by May 31, 2018, and notified Respondent of the specific administrative rules that were violated.⁴

ANALYSIS

Respondent argued that Complainant has the discretion to waive the forfeiture or reduce the fine. Such discretion exists in the Commissioner and the designated undersigned, but it certainly does not exist for Complainant’s employees. Respondent stated several grounds upon which to waive or reduce the fine: Respondent was a first-time filer in May 2018; this was Respondent’s first instance of noncompliance; there is no continued injury such as lack of data;

² Complainant Ex. 1; SERFF Tracking # SADS-131518004, UID 007-008; Respondent Ex. 2, Correspondence Summary and Disposition. The Correspondence Summary provided the disposition status of “Rejected” with Filing Notes that identified the “24-Hour Notice: Corrections Required.” The Disposition Comment read: “The filing is rejected for failure to submit in accordance with Utah laws and rules. Rejected filings are not considered filed with the department. A filing will not be reopened for purposes of resubmission. In order to be in compliance, a new filing must be submitted. If you have any questions regarding this rejection, please contact Julie Chytraus at [phone number and email]. The filing is rejected for the following reasons(s): 1- No response to request for information or correction.” Redacted in part.

³ Respondent Ex. 3, Filing at a Glance.

⁴ Complainant Ex.1, Notice of Agency Action, Decl. of Brent Oscarson, ¶¶ 3 and 4, UID 004-005. See Utah Admin. Code Rule R590-146-14(B)(1)(a) through (c), R590-146-14)(C)(1)(b), and R590 -146-22(A).

Respondent is currently in compliance; and the forfeiture amount was disproportionate to the earned premium amount.⁵

Complainant argued the Respondent received adequate notice to cure the incomplete report filing. See Complainant Ex. 1, Respondent Ex. 2. Complainant also argued the rules governing such report filings are clear and should be applied with consistency. Finally, Complainant asserted the forfeiture amount is appropriate and should be upheld.

Respondent's inexperience with report filing offers no persuasive defense for its filing noncompliance. Such a preposterous argument is akin to asserting that a first-time licensed driver should be treated differently, when in violation of traffic laws and when duly warned in writing, than any other more experienced driver. Inconsistent application is not warranted with first-time filers as opposed to seasoned filers. Furthermore, Secure Administrative Solutions, Inc., the third party authorized to file on behalf of Respondent, arguably is not a first-time filer and certified its assent that a filing will be rejected if incomplete.⁶ Respondent's argument lacks credibility that there is no continuing injury simply because Complainant *now* has the data. Complainant testified about the administrative need for orderliness, the sheer scope of data received, and the response time required for actuaries to analyze the submitted data. Each of Complainant's procedural considerations is legitimate when addressing the injury that results from late filings. Respondent's assertion that it is currently in compliance with the May 31st annual filing requirement due to its resubmission on June 5, 2018, does not address the late filing of the original submission. Findings of Fact, ¶ 8, 9. Finally, Utah Code Subsection 31A-2-

⁵ The actual earned premium was identified to be \$2,979.00 rather than the alleged \$961.23. Respondent Ex. 1, Medicare Supplement Refund Calculation Form for Calendar Year Ending December 31, 2017.

⁶ Respondent Ex. 2, Utah Accident & Health Insurance Filing Certification. The third party's compliance assistant certified to the following: "I HEREBY CERTIFY that the above items have been reviewed, responses are correct, and this filing complies with Utah laws and rules. A filing will be rejected if an incomplete or false certification is submitted."

308(1)(b)(ii) sets a threshold of \$5,000 which may be forfeited for noncompliance with insurance statute or rule. The \$750.00 forfeiture is well below that ceiling.

Utah Admin. Code Rule R590-220-11. Additional Procedures for Medicare Supplement Filings. clearly provides standards for the annual filings. Rule R590-220-11(4)(a) states that “[r]eports are due May 31 each year.” Rule R590-220-11(4)(g) states that “[i]f all Medicare supplement reports are not submitted together as one filing, the filing is considered incomplete and will be rejected.” (Emphasis added). Notice of the consequence for untimely or incomplete filing could not be clearer. In fact, in numerous instances, written notice was amply provided, in rules, in direct correspondence from the Complainant, and on approved forms about how, when, and why report filings are to be completed. This futile exercise by Respondent was at best a waste of administrative, legal, and judicial resources.

CONCLUSIONS OF LAW

1. Respondent failed to electronically file its Annual Filing of Premium Rates, its Refund Calculation and Benchmark Ratio, and its Report of Multiple Policies on or before May 31, 2018.
2. In failing to electronically file its Annual Filing of Premium Rates on or before May 31, 2018, Respondent violated Utah Admin. Code Rule R590-146-14(C)(1)(b).
3. In failing to electronically file its Refund Calculation and Benchmark Ratio on or before May 31, 2018, Respondent violated Utah Admin. Code Rule R590-146-14(B)(1)(a) through (c).
4. In failing to electronically file its Report of Multiple Policies on or before May 31, 2018, Respondent violated Utah Admin. Code Rule R590-146-22(A).

5. Pursuant to Utah Code Subsection 31A-2-308(1)(b)(ii), the commissioner may impose an administrative forfeiture on an insurer of up to \$5,000.00 for each violation of the Utah Insurance Code.
6. Based on the facts and law set forth above, Respondent should forfeit \$750.00 to the Department within 30 days of this order.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and for good cause, the Administrative Law Judge hereby enters the following Order:

The Notice of Agency Action and Order, dated February 27, 2019, imposing a forfeiture in the amount of \$750.00, is AFFIRMED.

Respondent's request for waiver or reduction in the forfeiture amount is hereby DENIED.

DATED this 8th day of May, 2019.



LISA WATTS BASKIN
Administrative Law Judge
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114

JUDICIAL REVIEW

To appeal this Order, a party must file a petition for agency review within 30 days from the date of this Order. Petitions for agency review shall be filed in accordance with Utah Code § 63G-4-301 and filed with the commissioner in writing or electronically at uidadmincases@utah.gov. Failure to file a petition for agency review is a failure to exhaust administrative remedies and will result in the order becoming final.