

NEW JERSEY
SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD
Trenton, NJ 08625

IN THE MATTER OF PENSION LIFE
INSURANCE COMPANY'S APPEAL OF THE
NEW JERSEY SMALL EMPLOYER HEALTH
BENEFITS PROGRAM BOARD'S
ASSESSMENT FOR CALENDAR YEAR 1996

ADMINISTRATIVE ORDER No. SEH 97-01

WHEREAS, the New Jersey Small Employer Health Benefits Program ("SEH") Board is authorized by the Small Employer Health Benefits Act of 1992, N.J.S.A. 17B:27A-17 et seq., and regulations promulgated thereunder, to administer the SEH Program, to assess members of the SEH Program for their proportionate share of administrative expenses, as determined by each carrier's net earned premium from small employer health benefits plans, and to take any legal actions necessary to recover assessments owed to the SEH Program;

WHEREAS, pursuant to N.J.A.C. 11:21-10.3, Pension Life Insurance Company (hereinafter "Pension") filed a Market Share Report ("Exhibit CC"), dated February 21, 1996, which reported net earned premium for "health benefits plans" for calendar year 1995 in the amount of \$6,752,330. The Exhibit CC was certified by Brian Alford, AVP and Actuary;

WHEREAS, pursuant to N.J.A.C. 11:21-2.3, on December 3, 1996 the SEH Board assessed Pension in the amount of \$5,214 (hereinafter referred to as the "1996 assessment"), which included: 1) a share of the actual administrative expenses of the SEH Program for fiscal year 1996 and projected expenses for fiscal year 1997 in the amount of \$4,916; and 2) \$298 for fiscal year 1995, based on a reconciliation of the actual administrative expenses for that year;

WHEREAS, on January 5, 1996, Governor Whitman signed P.L. 1995, c. 340, which, among other things, excluded "prescription only" policies from the definition of "health benefits plan;"

WHEREAS, by letter dated December 31, 1996, Pension appealed, but did not pay, the 1996 assessment on the grounds that the calendar year 1995 net earned premium Pension itself reported on Exhibit CC consisted entirely of premium from prescription drug plans which plans, Pension claimed, were "now exempt from the small employer health benefits program." Accordingly, Pension sought "exclusion" from the 1996 assessment;

WHEREAS, on February 24, 1997, Pension filed a 1996 Certification of Non-Member Status, seeking to establish non-member status on the grounds that it had no "net earned premium" to report for calendar year 1996 because "hospital confinement indemnity" and "prescription only" coverages were expressly excluded from the definition of "health benefits plan. The Board did not deny Pension's request for 1996 non-member status;"

WHEREAS, the SEH Board has considered Pension's appeal of the 1996 assessment. Based on the undisputed facts, the Board's conclusions are the following:

- 1) The Board finds that a contested case hearing is not required because Pension's letter appealing the 1996 assessment did not request a hearing or raise an issue of material fact that would have required an opportunity for a hearing under the Administrative Procedure Act;
- 2) In accordance with N.J.A.C. 11:21-2.10(a)(6), the SEH Board's fiscal year begins on July 1 and ends on June 30;
- 3) Assessment amounts are due and payable upon receipt and members shall be subject to an interest penalty on an assessment not paid within 45 days of the invoice, at a rate of 1.5 percent per month, accruing from the date of the invoice. N.J.A.C. 11:21-2.8(c). Carriers that dispute whether they are subject to assessment are required to make full payment of the assessment while the dispute is pending. N.J.A.C. 11:21-2.8(c);
- 4) Pension was a member of the SEH Program in calendar year 1994, because it reported net earned premium from "health benefits plans," as that term was defined under the law in 1994, in the amount of \$6,551,430. Accordingly, Pension is subject to reconciliation of that year's assessment, originally billed in 1995, under N.J.A.C. 11:21-2.8. Accordingly, the \$298 portion of the 1996 assessment which is attributable to the reconciliation of the 1994 assessment is due, with penalty interest calculated in accordance with N.J.A.C. 11:21-2.8(c), accruing from December 3, 1996, the date of the assessment invoice;
- 5) Pension was a member of the SEH Program in calendar year 1995, because it earned premium from "health benefits plans," as that term was defined under the law in 1995. Accordingly, Pension is subject to the 1996 assessment, which was based on 1995 net earned premium and includes a portion of the operating expenses for fiscal year 1996;
- 6) Pursuant to the authority granted by N.J.A.C. 11:21-2.8(b) to make an assessment to cover anticipated interim operating expenses, the Board included an assessment for estimated fiscal year 1997 operating expenses. The Board had not received notification that Pension would be a non-member of the SEH Program for calendar year 1996 at the time the assessment was

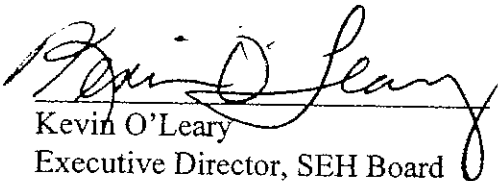
billed, since the 1996 non-member certification is not required to be filed until March 1, 1997, therefore, the assessment for fiscal year 1997 operating expenses was proper and should have been paid with penalty interest calculated in accordance with N.J.A.C. 11:21-2.8(c), accruing from December 3, 1996, the date of the assessment invoice;

- 7) Pension is a non-member of the SEH Program for calendar year 1996, pursuant to N.J.A.C. 11:21-8.3(a) because it submitted an appropriate certification and the Board has not disapproved the certification in writing. Accordingly, when the Board calculates and bills an assessment in calendar year 1997, the Board will reconcile the 1996 assessment and Pension's final assessment will be reduced by the amount attributable to anticipated fiscal year 1997 expenses, in accordance with N.J.A.C. 11:21-2.8, since Pension, as a non-member for calendar year 1996 is not liable for a share of those expenses.

NOW THEREFORE, pursuant to the authority granted to the Board by N.J.S.A. 17B:27A-17 et seq., and all powers expressed or implied therein, and the decision of the Board as expressed by approval of the issuance of this Administrative Order;

IT IS on this 19th day of February, 1997,

ORDERED that Pension's appeal of the calendar year 1996 assessment is denied. Pension is hereby directed to pay the assessment of \$5,214 plus penalty interest of \$487.20, reflecting six months of penalty interest, calculated at 1.5 percent per month through June 3, 1997, for a total amount due of \$5,701.20. If a refund is due to Pension when the assessment is billed in 1997, Pension will receive a refund at that time.


Kevin O'Leary
Executive Director, SEH Board

June 11, 1997
Date