

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

INDEMNITY INSURANCE COMPANY OF)
NORTH AMERICA,)
)
Petitioner,)
)
vs.) Case No. 08-1060RX
)
DEPARTMENT OF FINANCIAL)
SERVICES,)
)
Respondent.)
_____)

FINAL ORDER

This case is before the undersigned based upon Respondent's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed February 28, 2008. No hearing is necessary.

APPEARANCES

For Petitioner: Timothy L. Newhall, Esquire
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For Respondent: Jill Bennett, Esquire
Department of Financial Services
Division of Legal Services
200 East Gaines Street
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STATEMENT OF THE ISSUE

The issue is whether Section 11B(3) of the Florida Workers' Compensation Reimbursement Manual, 2004 Second Edition, is an invalid exercise of delegated legislative authority.

PRELIMINARY STATEMENT

On February 21, 2008, Petitioner filed a Petition for Formal Administrative Hearing with the Agency for Health Care Administration (AHCA). The petition requests a hearing on the determination issued by AHCA in a reimbursement dispute involving Petitioner under Section 440.13, Florida Statutes.^{1/} The petition also includes a "rule challenge" under Section 120.56, Florida Statutes, in which Petitioner alleges that Section 11B(3)^{2/} of the Florida Workers' Compensation Reimbursement Manual, 2004 Second Edition ("the 2004 Manual"), is an invalid exercise of delegated legislative authority.

The "affected agencies" identified in the petition are AHCA and the Department of Financial Services (Department). The Department is identified because it promulgated Florida Administrative Code Rule 69L-7.501, which according to the petition, incorporates by reference the 2004 Manual.

On February 27, 2008, AHCA referred the petition to the Division of Administrative Hearings (DOAH). The DOAH Clerk established two cases based upon the petition--DOAH Case No. 08-1058, which is the reimbursement dispute, and DOAH Case No. 08-1060RX, which is the rule challenge. AHCA is designated as the Respondent in the reimbursement dispute, and the Department is designated as the Respondent in the rule challenge.

On February 28, 2008, the Department filed a motion to dismiss the rule challenge for lack of subject matter jurisdiction because the 2004 Manual is no longer adopted by reference in Florida Administrative Code Rule 69L-7.501. Petitioner did not file a response to the motion within the time allowed by Florida Administrative Code Rule 28-106.204(1). No hearing is necessary to rule on the jurisdictional issue raised in the motion.

FINDINGS OF FACT

1. The 2004 Manual is no longer adopted by reference in Florida Administrative Code Rule 69L-7.501 or any other rule.

2. Florida Administrative Code Rule 69L-7.501(1) was amended, effective October 1, 2007, to incorporate the 2006 version of the Florida Workers' Compensation Reimbursement Manual. The amendment deleted the Rule's reference to the 2004 Manual.

3. AHCA applied the 2004 Manual in the reimbursement dispute involving Petitioner, which is pending as DOAH Case No. 08-1058.

CONCLUSIONS OF LAW

4. DOAH has jurisdiction to consider challenges to the validity of agency rules pursuant to Section 120.56, Florida Statutes.

5. DOAH does not have jurisdiction to consider challenges to rules that have been repealed or that otherwise are "no longer in existence." See Dept. of Revenue v. Sheraton Bal Harbour Ass'n, Ltd., 864 So. 2d 454 (Fla. 1st DCA 2003); Fla. Retail Federation v. Agency for Health Care Admin., Case No. 04-1828RX, 2004 Fla. Div. Adm. Hear. LEXIS 2018, at ¶ 22 (DOAH July 19, 2004) (concluding that "the general principle announced in Sheraton--that rules no longer in existence cannot be challenged--extends beyond Section 120.56 proceedings involving rules that have been formally repealed"), per curiam aff'd, 903 So. 2d 939 (Fla. 1st DCA 2005)(table); § 120.56(3)(a), Fla. Stat. ("A substantially affected person may seek an administrative determination of the invalidity of an existing rule at any time during the existence of the rule. (Emphasis supplied)).

6. DOAH does not have jurisdiction to consider Petitioner's rule challenge to Section 11B(3) of the 2004 Manual because the manual is no longer adopted as part of Florida Administrative Code Rule 69L-7.501 or any other rule and, therefore, is no longer in existence for purposes of challenge under Section 120.56, Florida Statutes. Accord FFVA Mutual v. Dept. of Financial Services, Case Nos. 08-0398RX and 08-0711RX (DOAH Mar. 4, 2008).

7. Moreover, to the extent that Petitioner is challenging AHCA's interpretation of the 2004 Manual or its application of the manual in the reimbursement dispute, those issues are beyond the scope of a rule challenge proceeding. See Fairfield Communities v. Fla. Land & Water Adj. Comm'n, 522 So. 2d 1012, 1014 (Fla. 1st DCA 1988)(explaining that the purpose of a rule challenge is "to determine the facial validity of [the challenged rules], not to determine their validity as applied to specific facts, or whether the agency has placed an erroneous construction on them").

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. The portion of the petition challenging the validity of the 2004 Manual is dismissed, and the file in DOAH Case No. 08-1060RX is closed.

2. The other aspects of the petition remain pending in DOAH Case No. 08-1058.

DONE AND ORDERED this 11th day of March, 2008, in
Tallahassee, Leon County, Florida.

S

T. KENT WETHERELL, II
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of March, 2008.

ENDNOTES

^{1/} All statutory references are to the 2007 version of the
Florida Statutes.

^{2/} According to the petition, Section 11B(3) of the 2004 Manual
states: "When charges for inpatient services at either an acute
care hospital or a trauma center exceed \$50,000.00, the
stop-loss method for reimbursement shall be used to reimburse
the hospital instead of the established per diem. Reimbursement
shall be at 75 percent of charges."

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of appeal with the Clerk of the Division of Administrative Hearings and a copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Appellate District where the party resides. The notice of appeal must be filed within 30 days of rendition of the order to be reviewed.