

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MARION CIRCUIT COURT
CAUSE NO. 49C01-0811-MI-053358

JIM ATTERHOLT, as the Insurance)
Commissioner of the Department of Insurance)
of the State of Indiana,)
)
Petitioner,)
)
v.)
)
MEDICAL SAVINGS INSURANCE COMPANY,)
)
Respondent.)

FILED

32 DEC 01 2008

Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

ORDER OF REHABILITATION

On the 1st day of December, 2008, Jim Atterholt, as the Commissioner of the Department of Insurance of the State of Indiana (“Commissioner”), filed a Verified Petition For Rehabilitation (“Rehabilitation Petition”) as against Medical Savings Insurance Company. Having considered the Rehabilitation Petition in open Court and being fully advised, the Court finds that:

- a) Pursuant to Ind. Code 27-1-1-2, Jim Atterholt is the duly appointed Insurance Commissioner (“Commissioner”) of the Department of Insurance of the State of Indiana (“Department”).
- b) Medical Savings Insurance Company (“MSIC”) is an Indiana domestic stock life insurance company.
- c) MSIC is a wholly owned subsidiary of Medical Savings Investment, Inc. (“MSII”).
- d) This Court has both subject matter and personal jurisdiction under the laws of the State of Indiana, including but not limited to Ind. Code 27-9-1-3 and 27-9-2-2.

e) MSIC is currently in a financial condition that is hazardous to its insureds, creditors or the public.

f) It is necessary and appropriate that the Commissioner be appointed Rehabilitator of MSIC, including being bestowed with all powers and authority granted to a Rehabilitator under Ind. Code 27-9-3, and it is also appropriate that the Court issue certain injunctive relief to facilitate the Rehabilitator taking possession and control of the assets of MSIC and to protect against such assets be subject to waste or preferential claims of creditors while a Rehabilitation Order is pending against MSIC;

g) The Transition Plan as described in Section IV of the Rehabilitation Petition is in the best interests of MSIC's insureds, creditors and the public at large.

h) It is appropriate and in the best interests of MSIC's insureds, creditors and the public at large for the Court to provide certain instructions, consistent with Section V of the Rehabilitation Petition, regarding the Health Savings Accounts ("HSA's), including the HSA custodial account held and administered by MSIC;

i) It is necessary and appropriate for certain restrictions to be placed against the HSA accounts, as recommended in Section VI of the Rehabilitation Account, to promote an orderly process to convert the assets currently held in the HSA custodial account to cash, for the benefit of the HSA account holders, and to ensure the fair and equitable distributions of HSA account funds;

j) In order to preserve the assets of MSIC for the benefit of its insureds, creditors and the public, it is necessary and appropriate that an Order of Rehabilitation, including all relief appropriate in the premises, be immediately entered against MSIC and there is no reason to delay the entry of such Order as a final judgment; and

k) MSIC and MSII have received prior notice of this proceeding, have reviewed the Rehabilitation Petition and consent to the entry of this Order.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that:

1. The Commissioner (including his successors in office) is hereby appointed as the Rehabilitator of MSIC, pursuant to Ind. Code 27-9-3, and the Commissioner is bestowed with all authority and powers of a Rehabilitator as provided by such statutes, including but not limited to confirmation that the Rehabilitator:

- (1) has all the powers of the directors, officers, and managers of MSIC, whose authority shall be suspended, except as they are re-delegated by the Rehabilitator;
- (2) may direct, manage, hire and discharge employees subject to any contract rights they may have;
- (3) may deal with the property and business of the insurer; and
- (4) may prosecute any action that exists in behalf of the creditors, members, policyholders or shareholders of MSIC against any person or entity.

2. The Rehabilitator is hereby ordered to take possession and control of all of the property, assets, books, accounts, documents, claim files, computer databases and systems, HSA custodial account and all other assets and records of MSIC in whatever form and wherever located, including, but not limited to, evidence of debt, bank accounts, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment and all real property.

3. The Rehabilitator is ordered to take possession of the premises occupied by the insurer for transaction of its business and the Rehabilitator's control shall include, but not be limited to, the authority to inventory property and to image computers and other electronic devices.

4. The officers, managers, agents and employees of MSIC are hereby enjoined and prohibited from disposing of any of MSIC's property or authorizing distributions, withdrawals or transfers from HSA custodial accounts, from destruction, deletion or modification of its records, databases or computer files, in whatever form and wherever located, and from transaction of any its business, except with the written consent of the Rehabilitator. The officers, managers, agents and employees of MSIC are further enjoined from the commencement and prosecution of any actions, the obtaining of preferences, judgments, attachments, garnishments or liens against MSIC, or the making of any levy against MSIC or against its assets or any part thereof.

5. Pursuant to Ind. Code 27-9-1-5, the officers, managers, directors, trustees, owners, employees and agents of MSIC, and any other person who had authority over or were in charge of any segment of MSIC's affairs, shall cooperate with the Rehabilitator in carrying out this Order of Rehabilitation. The term "person" shall include any person who exercised control, directly or indirectly, over activities of MSIC through any holding company or other affiliate of the insurer or who otherwise had control over or was in possession of information relating to MSIC, such as through record keeping, computer systems operation or other consulting or contractual relationships. "To cooperate" shall include, but not be limited to, the following: (1) replying promptly in writing to any inquiry from the Rehabilitator requesting such a reply; and (2) to preserve and make available to the Rehabilitator all the books, accounts, documents, or other records, information or property of or pertaining to the insurer and in his or her possession, custody or control.

6. Any bank, savings and loan association, financial institution, brokerage firm or other person which has on deposit, or in its possession, custody or control, any funds, accounts or any other assets of MSIC or HSA custodial accounts, are hereby instructed that the Rehabilitator has immediate control over such funds, accounts and other assets. The Rehabilitator may change

the name of such accounts and other assets, withdraw them from such bank, savings and loan association, brokerage firm, financial institution, or other person having possession, custody or control of such assets, or take any lesser action necessary to carry out this Order of Rehabilitation.

7. The entry of this Order does not constitute an anticipatory breach of any contract of MSIC;

8. The Rehabilitator shall provide accountings to this Court at such intervals as the Court may specify;

9. The Rehabilitator is authorized to employ and fix the compensation of the Special Deputies, counsel, clerks and assistants of the Rehabilitator, who shall serve at the pleasure of the Rehabilitator, and to pay all compensation and expenses of taking possession of MSIC and other costs and expenses of the administration of this proceeding out of the funds or assets of MSIC;

10. All Courts before which any action or proceeding is now pending or is hereafter commenced, in which MSIC is a party or is obligated to defend a party, shall stay that action or proceeding for ninety (90) days from the entry of this Order of Rehabilitation to permit the Rehabilitator to determine if it is necessary and appropriate that a Petition for Liquidation be filed against MSIC or to otherwise obtain proper representation and prepare for further proceedings;

11. All persons are hereby enjoined from taking any of the following actions while the Rehabilitation proceeding is pending against MSIC, unless such actions are taken with the express consent of the Rehabilitator and approval of this Court:

- (a) The transfer of MSIC's property, except the transfer of such property to the control of the Rehabilitator to be administered under the general supervision of the Court;

- (b) Interference with the Rehabilitator or the Rehabilitation proceeding being administered by this Court;
- (c) Waste of MSIC's assets;
- (d) Dissipation and transfer of MSIC's bank accounts, except the transfer of such accounts to the control of the Rehabilitator to be administered under the general supervision of the Court;
- (e) The obtaining of preferences, judgments, attachments, garnishments, or liens against MSIC, its assets or its insureds;
- (f) The levying of execution against MSIC, its assets or its insureds;
- (g) The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of MSIC's assets;
- (h) The withholding from the Rehabilitator of books, accounts, documents, or other records relating to the business of MSIC; and/or
- (i) Any other action that might lessen the value of MSIC's assets or prejudice the rights of MSIC's insureds, creditors, or shareholders, or the administration of any proceeding under Ind. Code 27-9;

12. The Court approves in all respects the Transition Plan as recommended and described in Section IV of the Rehabilitation Petition and hereby authorizes and directs the Rehabilitator and Golden Rule Insurance Company to immediately implement that Transition Plan in accordance with the terms and conditions of the Transition Plan Agreement;

13. With respect to Section V of the Rehabilitation Petition, the Court issues the following instructions as to how the HSA accounts now being administered by MSIC, including the HSA custodial account established and maintained by MSIC, should be handled:

- A) The custodial account was established solely for the benefit and security of the HSA account holders and should continue to be treated on a trust or custodial basis and not as a general asset of the MSIC estate;
- B) The accrual of interest should continue for the benefit of the HSA account holders, subject to adjustment of rates under existing account terms, the restrictions set forth in paragraph 14 of this Order and the availability of investment earnings on the assets held in the custodial account;

- C) The individuals who have made deposits into their HSA accounts shall retain exclusive control and authority over the expenditures to be made from their accounts, subject only to the restrictions set forth in paragraph 14 of this Order; and
- D) The Rehabilitator should honor all request for payment of expenditures, withdrawals or transfers requested by the HSA account holders, up to the amount of funds held in their individual accounts and subject to the restrictions set forth in paragraph 14 of this Order.

14. With respect to Section VI of the Rehabilitation Petition, the Court establishes the following restrictions against the HSA accounts and orders and directs that the Rehabilitator adhere to the following procedures:

- (A) As of the entry of this Order of Rehabilitation, each HSA account holder shall be permitted to access up to, but not to exceed, thirty percent (30%) of the current value of his or her HSA account (which percentage is based upon the approximate value of liquid assets currently held in the HSA custodial account, compared to the total of all HSA account values as currently administered by MSIC);
- (B) On or before December 30, 2008 (and at least monthly thereafter), the Rehabilitator shall report to the Court regarding the ongoing process of converting the remaining assets in the HSA custodial account investment portfolio to cash and, based upon the liquid assets then held in the HSA custodial account, the Rehabilitator shall recommend to the Court whether HSA account holders should then be allowed increased access to their accounts;
- (C) If the Court, based upon the recommendation of the Rehabilitator, approves increasing the access to HSA accounts, the Rehabilitator shall notify all HSA account holders of the increased access as then permitted;
- (D) To the extent access to the HSA accounts is recommended by the Rehabilitator and is approved by the Court, consistent with Subparagraphs (A) and (B) above, the HSA account holders shall be authorized to direct expenditures to be made from their HSA accounts, to make withdrawals from their accounts and/or to transfer such funds to another qualified HSA trustee or custodian and the Rehabilitator shall process and disburse such expenditures, withdraws and/or transfers from the HSA custodial accounts (subject to the funds then available for access) at least every two weeks;
- (E) The Rehabilitator shall continue to calculate the accrual of interest on all HSA account balances which remain within MSIC, subject to adjustment of rates under existing account terms, the restrictions as stated in this

paragraph 14 and the availability of investment earnings on the assets held in the custodial account; and

- (F) When all assets in the HSA custodial account investment portfolio have been sold and converted into cash (or cash equivalents), the Rehabilitator shall make a final report to the Court indicating:
- (i) if full payment can be made on all the HSA accounts, (including accrued interest) and, if so, recommending a final distribution to or for the benefit of all HSA account holders (considering both the prior distributions made from the accounts since the Order of Rehabilitation was entered and the recommended final distribution) so that all account holders receive the full value of their HSA accounts; or
 - (ii) if a shortfall exists, identifying the amount of the shortfall and recommending a final pro-rata payment so that all HSA account holders (considering both prior distributions made from the accounts since the Order of Rehabilitation was entered and the recommended final distribution) receive an equal percentage of their HSA account values as existed as of the date the Order of Rehabilitation was entered.

15. The Court approves in all respects the Notice Recommendations as set forth in Section VII of the Rehabilitation Petition and specifically directs that the mailings and publication as set forth therein be provided;

16. The Court finds there is no just reason for delay and this Order of Rehabilitation is entered as a FINAL JUDGMENT in accordance with Rule 54(B) of the Indiana Rules of Trial Procedure; and

17. The Court retains jurisdiction to issue such further Orders as it may deem appropriate.

Dated: 12/01/08


JUDGE, Marion Circuit Court