

Unrevised APR benefits because her Claim submission was untimely and no permissible basis exists for an extension of time. In issuing the Final Determination in this matter, the Claims Administrator adhered to the plain language of the Settlement Agreement and did not abuse his discretion.¹

1. The Date of the Final Determination that is the Subject of this Appeal.

Appellant has noted an appeal from the Claims Administrator's August 6, 2003 Final Determination in this matter.

2. The Provisions of the Settlement Agreement and/or CAPs that are the Subject of this Appeal.

- a. Settlement Agreement § 3.3 provides that APRs who have not undergone an APRS may receive Unrevised APR benefits in the amount of \$1000.
- b. Settlement Agreement § 4.1(a) provides that "[e]ach Class member claiming benefits under Section 3.3(a) must submit a claim form for payment of benefits out of the Unrevised Affected Product Recipient Fund ("a 'Unrevised Affected Product Recipient Fund Benefits Claim Form' or 'Blue Form'), attached hereto as Exhibit B, on or before the date that is one hundred twenty (120) days after Trial Court Approval.")
- c. Settlement Agreement § 4.6(a) states that "if the Class Member submits a Claim Form within the time periods set forth in this Article 4, such submission will be

¹ Appellant's Notice of Appeal reads, in its entirety, "Appellant, Debbie L. Baker, timely submits her Notice of Appeal of Final Determination rendered by the Claims Administrator on August 6, 2003. See Settlement Agreement Section 4.6(f)." Since the Notice of Appeal contains no narrative statement of how the Final Determination is alleged to be in error, *see* CAP 30, Paragraph 3(c), the Claims Administrator has made the inference from the exhibits that Appellant submitted that she has abandoned her APRS Claim and her appeal is limited to the denial of her Unrevised APR benefit. *See* Appellant's Exhibit 14 (July 23, 2003 letter) ("Upon receipt of the additional evidence, it was determined that a Blue Form was appropriate regarding Ms. Baker's treatment and claims.") This concession is reasonable in light of the absence of any evidence that Appellant underwent an APRS. Nevertheless, Appellant's counsel, Mr. John Schwambeck, has advised counsel by telephone that Appellant does not concede this much but no submission by Appellant points to any evidence that Appellant underwent an APRS.

considered timely notwithstanding deficiencies that may exist in the Claim Form.”

- d. Settlement Agreement § 4.6(d) provides that Class Members may supplement their Claim with additional documentation or information as late as 45 days after their Preliminary Determination.
- e. Claims Administrator Procedure 29 articulates the circumstances that give rise to a permissible extension of time for the submission of Claim Forms, as well as those circumstances upon which an extension may not be based.
- f. Claims Administrator Procedure 30 prescribes the process for appealing, and the standard of review, for appeals of the Claims Administrator’s Final Determinations.

3. The Factual Findings of the Claims Administrator Regarding this Appeal

The Claims Administrator made the following factual findings in this matter. Those findings are based on the Exhibits noted below and attached to this Claims Administrator’s Response to Notice of Appeal.

- a. Appellant submitted a Blue Form seeking Unrevised APR benefits on June 4, 2003, approximately nine months after the deadline for submitting a Claim for Unrevised APR benefits. *See* Exhibit A (“Blue Form and Postmark”).
- b. Appellant proffered that the reason for the late submission was “[A]dditional medical evidence was provided by the healthcare facility regarding Ms. Baker’s revision surgery after the original deadline for submission of claim forms.” Exhibit B (“July 23, 2003 Letter from Appellant’s Counsel”).

c. On August 6, 2003 the Office of the Claims Administrator issued a Final Determination denying Appellant's Claim because it was not filed before the deadline. See Exhibit C ("Final Determination")

4. **Narrative Explanation of Why the Claims Administrator's Final Determination Should be Affirmed.**

Appellant has argued that the reason for her late submission is that she received supplemental information from her health care provider indicating that she had not undergone an APRS and, instead, was eligible only for Unrevised APR benefits. Appellant proffers no evidence why she could not have submitted an Unrevised APR Claim Form before the applicable deadline.

The Special Master has previously considered circumstances such as these and determined that the Claims Administrator did not abuse his discretion in denying Claimants Unrevised APR benefits. *See* Special Master Opinions *Kress* (May 25, 2003)(late submission because awaiting medical records not excused because § 4.6(a) permits incomplete submission); *Lusn* (late submission of Unrevised APR Claim, because Claimant believed that APRS was imminent, not excused). Appellant could have, if she had desired to make a Claim for Unrevised APR benefits, made a timely Claim submission for those benefits. She proffers no explanation that she could not. Any award of Unrevised APR benefits would not have barred Appellant from a subsequent award of APRS benefits; rather the Unrevised APR award would have been offset against any APRS award. *See* Settlement Agreement § 3.6(a)(providing for offset of Unrevised APR award against subsequent APRS award).

Because Appellant did not timely submit a Claim for Unrevised APR benefits, and did not prove that the late submission was excused pursuant to CAP 29, the Claims Administrator did not abuse his discretion in denying Appellant's Claim.

5. Certificate Required by CAP 30

This Claims Administrator's Response to Notice of Appeal is true and accurate to the best of the Claims Administrator's information and belief.

CERTIFICATE OF SERVICE

I certify that on October 6, 2003 I did cause to be electronically filed a copy of the foregoing Claims Administrator's Response to Notice of Appeal. Notice of this filing will be sent to all Parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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