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PENNSYLVANIA TEST AUDIT PROGRAM **BULLETIN #116**

TEST AUDIT APPEAL DECISION

The result of an insurance carrier appeal to the PCRB Audit Committee is presented to the membership for their information.

The appeal centered on the allocation of payroll of one employee covered by a policy effective October 15, 2012. The PCRB's test audit had assigned this employee to Code 971, Commercial Buildings, while the carrier's audit, conducted on December 18, 2013, had assigned this employee to Code 953, Clerical Office Employees.

The carrier agreed that the PCRB's test audit was accurate, but maintained that the carrier had been provided with inaccurate information by the audit contact. Specifically, as was noted in subsequent correspondence, the informant had mistakenly provided the duties for one former employee with a name very similar to another worker who had been employed during the policy period being audited, instead of describing the duties performed by the latter employee. This mistaken identity had led directly to the misclassification of the employee in question.

The carrier referenced Test Audit Bulletins (TABs) 24 and 71, which had been brought to the carrier's attention by PCRB staff. Both of these TABs had sustained PCRB decisions to maintain differences in the face of conflicting or incomplete information. Nevertheless, the carrier felt that because its audit contained more information than the information cited in the situations described in the TABs, an exception should be made and the test audit results in this case should be rescinded. The carrier further questioned the precedent being set by the PCRB decision in this matter, since it had established a difference based on the fact that misinformation had been provided to, and accepted by, the carrier by an informant, rather than determining the classification that would have been applicable based on the information that had actually been provided to the carrier.

In response to the carrier's presentation, staff noted that the PCRB looked at the overall accuracy of carrier audits, including their billing of audits upon completion. If the information contained in a carrier audit was not correct, then the PCRB could not accept the audit as compatible or rescind the audit. It was noted that TAB 24 and TAB 71 illustrated situations similar to the case at hand, producing test audit differences which were ultimately sustained by the Committee upon appeal. Staff felt that each of those cases established a clear precedent for the handling of incomplete and/or incorrect information being provided to a carrier auditor, which was that such circumstances did not, and could not, justify the elimination of a test audit difference.

It was further noted that the employee listed on the carrier's 2012 audit was the former owner of the company, and that he had passed away in January 2012, ten months prior to the inception of the policy period subject to this test audit. The other employee in question was the former owner's grandson. A Committee member opined that it was hard to believe that the audit contact would mistake the owner (who had passed away in early 2012) for his grandson, especially almost two years after the owner's death. Staff then asked for a description of the carrier's practices regarding reviewing past audits, whether he grandson had been employed by the insured during policies addressed by prior audits, and if the immediately preceding audit had noted the former owner's passing. The carrier responded that the auditor who had performed the audit in question was no longer with the carrier, so they were not certain whether the prior audit had made reference to the former owner's passing or whether the auditor had reviewed the audit immediately preceding the test audited policy.

Staff then questioned what records had been reviewed, and whether the auditor would have, or should have, noted the dates of birth or social security numbers of two or more employees with the same first and last name listed on the employer's records. The carrier answered that, as far as they knew, the carrier auditor only saw one employee with the name in question listed in the employer's records, and that they had asked all the questions they reasonably could have asked in reference to this employee.

Staff questioned the carrier as to the difference between the situation under appeal and other, relatively frequent, situations in which information supplied to auditors was inaccurate due to faulty memory, misunderstanding and/or misrepresentation. The carrier acknowledged similarities between such instances and the matter at hand, but suggested that their auditor would likely have asked more questions if there had been any perceived need for additional clarification. In this case, the carrier felt that there was no perceived need for further clarification about a named employee and the employer's description of duties for that individual.

In executive session, the Committee noted that the carrier auditor had failed to demonstrate sufficient diligence in pursuing and clarifying the identity of the employee in question. A consensus developed that the carrier audit was acknowledged to have been incorrect, and that nothing had been presented that would support the elimination of the resulting test audit difference. In effect, the Committee concluded that since the PCRB test audit was correct, and the carrier agreed that the PCRB audit was correct, the application of a difference was required in the absence of extraordinary mitigating circumstances. In the opinion of the Committee, such extraordinary mitigating circumstances were not present in this case.

In conclusion, the Committee voted to deny the carrier's appeal and sustain the test audit difference. The motion was passed unanimously.