

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

ANITA G FOX, DIRECTOR OF THE
MICHIGAN DEPARTMENT OF
INSURANCE AND FINANCIAL
SERVICES,

Case No. 20-452-CR

Hon. Joyce Draganchuk

Petitioner,

v.

MIDWESTERN DENTAL PLANS,
INC.,

Respondent.

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Michigan Department of Attorney
General
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ORDER

PLACING MIDWESTERN DENTAL PLANS, INC. INTO REHABILITATION,
APPROVING COMPENSATION OF SPECIAL DEPUTY REHABILITATORS, AND
PROVIDING INJUNCTIVE RELIEF

At a session of said Court
held in the Circuit Courtrooms
for the County of Ingham,
State of Michigan, on the

15th day of OCTOBER, 2020

PRESENT: HONORABLE JOYCE DRAGANCHUK
Circuit Court Judge

Petitioner, Anita G. Fox, Director of the Michigan Department of Insurance and Financial Services (“Director”), has filed a petition for an order authorizing her to rehabilitate Midwestern Dental Plans, Inc., approving the compensation of the Special Deputy Rehabilitators, and providing injunctive relief (the “Rehabilitation Petition”). The Court has reviewed the Rehabilitation Petition and the terms of this Order, and being otherwise fully informed of the circumstances hereby finds:

A. Midwestern Dental Plans, Inc. (“Midwestern”) is a Michigan for-profit company authorized to do business as an alternative health care financing and delivery system under Chapter 35 of the Michigan Insurance Code. It is a managed care entity limited to providing coverage for dental services.

B. Midwestern operates a system of alternative health care financing and delivery offered to individuals in exchange for a fixed payment. The system is organized so that dental health care providers and Midwestern are in some part at risk for the cost of services in a manner similar to a health maintenance organization (“HMO”) regulated under Chapter 35 of the Insurance Code, although Midwestern does not meet all the legal requirements applicable to HMOs. Consequently, Midwestern is regulated in the same manner as HMOs except to the extent that the Director finds that such regulation is inappropriate. MCL 500.3573.

C. Under Chapter 35 of the Insurance Code, HMOs are subject to: “[A]ll of the provisions of this act that apply to a domestic insurer authorized to issue a health insurance policy” unless “specifically excluded, or otherwise specifically provided for in this chapter.” MCL 500.3503. Chapter 35 does not exclude HMOs from proceedings under Chapter 81 of the Insurance Code, including a

rehabilitation proceeding. Moreover, Midwestern is regulated in the same manner as HMOs except to the extent that the Director finds such regulation to be inappropriate. MCL 500.3573. Because the Director has not determined that regulation under Chapter 81 is inappropriate for an alternative health care financing and delivery system, Midwestern remains subject to proceedings under Chapter 81 of the Insurance Code.

D. Under MCL 500.8102(a), an insurer that is or has been transacting insurance business in this state and against whom claims arising from that business may exist now or in the future is subject to proceedings under Chapter 81 of the Insurance Code, including a rehabilitation proceeding. Rehabilitation is further authorized for an insurer who has insureds resident in Michigan. MCL 500.8102(c). Midwestern satisfies both criteria and is therefore subject to rehabilitation or any other proceeding authorized by Chapter 81.

E. MCL 500.8112 authorizes the Director to petition the court for an order rehabilitating an insurer based on any one or more of thirteen enumerated grounds. These grounds include:

- (a) The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.

* * *

- (g) Without first obtaining the commissioner's written consent, the insurer has transferred, or attempted to transfer, in a manner contrary to law, substantially its entire property or business . . .

* * *

- (m) [The insurer i]s found, after examination, to be in a condition so that it could not presently meet the requirements for incorporation and authorization.

F. This Court finds that the rehabilitation of Midwestern is appropriate under MCL 500.8112(a), (g), and (m) because Midwestern's condition is such that it is unable to provide its contractual dental coverages and services to its members for the following reasons: (1) Midwestern has communicated to DIFS that its sole provider is insolvent and closed its offices on May 30, 2020; (2) Midwestern notified its policyholders that it will no longer fulfill its contractual obligation under the policies it issued and requested policyholders move their members effective June 1, 2020, and; (3) Midwestern had a sole provider but that sole provider's offices are no longer open and Midwestern members are unable to receive the dental services afforded under the policies issued by Midwestern.

G. Midwestern is in such condition that further transaction of business would be hazardous financially to its policyholders, creditors, or the public, and Midwestern is in a condition that it could not presently meet the requirements for incorporation and authorization.

H. As defined by MCL 500.8103(b) and as used in this Order, a "Creditor" is a person having a claim against Midwestern, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

I. Under MCL 500.8105(1), the Court is authorized to enter this Order including terms that the Court considers necessary and proper to prevent:

- Interference with the Rehabilitator or with the rehabilitation proceedings;

- The institution or further prosecution of any actions or proceedings against Midwestern, its assets, its policyholders, or its members;
- The obtaining of preferences, judgments, attachments, garnishments, or liens against Midwestern, its assets, its policyholders, or its members;
- The levying of execution against Midwestern, its assets, its policyholders, or its members;
- The withholding from the Rehabilitator of books, accounts, documents, or other records relating to Midwestern's business;
- Any other threatened or contemplated action that might lessen the value of Midwestern's assets or prejudice the rights of its policyholders, members, creditors, or the administration of this rehabilitation proceeding.

J. All Creditor claims against Midwestern are within the exclusive jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court.

K. MCL 500.8114(2), in conjunction with MCL 500.8121(1)(m), authorizes the Rehabilitator to, among other things: "[P]rosecute an action that may exist on behalf of creditors, members, policyholders, or shareholders of the insurer against an officer of the insurer or another person."

L. Immediate action placing Midwestern into rehabilitation is necessary to protect the interests of Midwestern's policyholders, members, creditors, and the public.

THEREFORE, IT IS HEREBY ORDERED that:

1. Pursuant to MCL 500.8112 and MCL 500.8113, the Director's Rehabilitation Petition is GRANTED, Midwestern is placed into Rehabilitation, and the Director is authorized to rehabilitate Midwestern pursuant to Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159.

2. Pursuant to MCL 500.8113(1), the Director is appointed Rehabilitator of Midwestern, and is further authorized to appoint one or more Special Deputy Rehabilitator(s) pursuant to MCL 500.8114(1). Hereafter, the Director is referred to as the Rehabilitator.

3. The Rehabilitator shall take immediate possession of all the assets of Midwestern and administer those assets under the Court's general supervision.

4. Pursuant to MCL 500.8113(1), this Order shall by operation of law vest legal title to all assets, accounts, and moneys of Midwestern in the Rehabilitator. The filing or recording of this Order with the Clerk of the Circuit Court or the Register of Deeds for the county in which the statutory home office, principal place of business, or resident agent of Midwestern is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that Register of Deeds would have imparted.

5. Pursuant to MCL 500.8115(1) and paragraph 22(a) of this Order, all actions or proceedings in which Midwestern is a plaintiff that are pending as of the date this Order is entered are automatically STAYED for ninety (90) days and such additional time as is necessary for the Rehabilitator to obtain proper representation and prepare for further proceedings. Pursuant to paragraph 22(a) of this Order, the

institution or continuation of any actions or proceedings in which Midwestern is a defendant, or is obligated to defend another party, is PROHIBITED AND ENJOINED until such time as this Court enters an order lifting the injunction or the Rehabilitator agrees that the matter may proceed.

6. Without being specifically set forth in this Order, the Rehabilitator shall have all the following authority:

- (a) All the powers contained in MCL 500.8114 and 500.8115;
- (b) All applicable powers contained in Chapter 81 of the Insurance Code, MCL 500.8101 – 500.8159; and
- (c) Such additional powers as the Court shall grant from time to time upon petition of the Rehabilitator.

7. Upon entry of this Order, all powers of the current directors, officers, and managers of Midwestern are suspended in their entirety, and the Rehabilitator shall have and exercise the full and complete power of such directors, officers, and managers. In her sole discretion, the Rehabilitator may redelegate, in writing, some or all of her authority to a former director, officer, or manager of Midwestern. The Rehabilitator in her sole discretion may immediately cease payments to any or all directors, officers, and managers of Midwestern.

8. Among her plenary powers provided by law, the Rehabilitator shall have full power and authority to direct and manage Midwestern, to hire and discharge Midwestern employees subject to any contract rights they may have, and to deal in totality with the property and business of Midwestern. Subject to any contractual rights and applicable law, upon entry of this Order all employment contracts of

Midwestern's officers, managers, and employees are terminated. Notwithstanding the termination of their employment contracts, the officers, managers, and employees of Midwestern shall remain employed as at-will employees until such time as they are notified by the Rehabilitator or Special Deputy Rehabilitator(s) that they have been discharged. Within their sole discretion, the Rehabilitator and Special Deputy Rehabilitator(s) may re-contract with any officers, managers, or employees of Midwestern whose employment contracts are terminated pursuant to this paragraph 8 upon terms agreeable to the parties.

9. Any director, manager, officer, employee, or agent of Midwestern and any other person shall, at the Rehabilitator's or Special Deputy Rehabilitators' direction, vacate any building, office, or other premises of Midwestern.

10. Pursuant to MCL 500.8114(2) and (4), the Rehabilitator may take such action as she considers necessary or appropriate to reform or revitalize Midwestern and is empowered to pursue all avenues of reorganization, consolidation, conversion, merger, or other transformation of Midwestern to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of health care services.

11. Pursuant to MCL 500.8114(4), if the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of Midwestern is appropriate, she shall prepare a plan to effect those changes and shall apply to the Court for approval of such plan.

12. Pursuant to MCL 500.8116(1), if the Rehabilitator believes that further attempts to rehabilitate Midwestern would be futile or would substantially increase

the risk of loss to creditors, policyholders, or the public, she may petition the Court for an order of liquidation.

13. Pursuant to MCL 500.8116(2), the Rehabilitator may petition the Court at any time for an order terminating the rehabilitation of Midwestern.

14. Except as provided in this paragraph 14, the Rehabilitator shall not pay any Creditor claims for goods or services provided prior to the date of this Order until further order of the Court. In order to ensure the continuity of health care services to Midwestern's members, and to minimize disruptions to Midwestern's business operations, the Rehabilitator shall pay: (a) all Creditor claims for health care services provided to Midwestern's members prior to the date of this Order according to normal claims processing procedures; and (b) all Creditor claims for wages of Midwestern's officers, managers, and employees that were earned but unpaid as of the date of this Order. This provision requiring payment of earned but unpaid pre-Rehabilitation wages does not apply to, and the Rehabilitator shall not pay, any severance or other non-wage payments otherwise due to a Midwestern officer, manager, or employee upon the termination of his or her employment contract entered into prior to the date of this Order.

15. The Rehabilitator shall pay Creditor claims for goods or services provided on or after the date of this Order as they become due in the ordinary course of business.

16. The Rehabilitator shall pay any other normal administrative expenses incurred on or after the date of this Order that are necessary for the continued

operation and/or rehabilitation of Midwestern as they become due in the ordinary course of business.

17. Pursuant to MCL 500.8113(3), entry of this Order shall not constitute an anticipatory breach of any contracts or relationships between Midwestern and any other persons or entities. Except for employment contracts terminated under paragraph 8 of this Order, and pursuant to MCL 500.8105(1)(k), during the pendency of this rehabilitation, all persons or entities other than Midwestern policyholders and members having contractual or other relationships with Midwestern as of the date of this Order are hereby ENJOINED AND RESTRAINED from terminating or attempting to terminate such contracts or relationships on the basis of the entry of this Order or Midwestern's financial condition. Notwithstanding the foregoing, the Rehabilitator shall review the necessity of any contracts subject to this paragraph 17 during the pendency of this rehabilitation and, upon determining that any such contract is unnecessary to Midwestern's rehabilitation, shall petition the Court to withdraw the injunctive relief provided herein and/or for termination of the contract.

18. Pursuant to MCL 500.8106, all officers, managers, directors, trustees, owners, employees, agents, parents, subsidiaries, and affiliates of Midwestern, or any other persons or entities having authority over or in charge of any segment of the affairs of Midwestern, shall fully cooperate with the Rehabilitator and the Special Deputy Rehabilitators that she appoints. Among other things, "full cooperation" requires:

- (a) Prompt replies to any inquiry by the Rehabilitator, including a written reply when requested.
- (b) Providing the Rehabilitator with immediate, full, and complete possession, control, access to, and use of all books, accounts, documents, and other records, information or property of or pertaining to Midwestern in his, her, or its possession, custody, or control as may be necessary to enable the Rehabilitator and Special Deputy Rehabilitators to operate the business and to maintain the continuity of health care services being provided to all members.
- (c) Providing the Rehabilitator with full and complete access and control of all assets, documents, data, computer systems, security systems, buildings, leaseholds, and property of or pertaining to Midwestern.
- (d) Providing the Rehabilitator with full and complete access to all legal opinions, memoranda, letters, documents, information, correspondence, legal advice, and any other attorney-client privileged and/or attorney work product materials relating to Midwestern or the operation of Midwestern and its business, provided to or from in-house or outside counsel by or to Midwestern, its officers, managers, directors, trustees, owners, employees, agents, consultants, accountants, parents, subsidiaries, or affiliates.
- (e) Not obstructing or interfering with the Rehabilitator or Special Deputy Rehabilitators in the conduct of this rehabilitation proceeding.

19. As provided by MCL 500.8106(4), any failure to cooperate with the Rehabilitator or Special Deputy Rehabilitators, obstruction or interference with the Rehabilitator or Special Deputy Rehabilitators in the conduct of this rehabilitation proceeding, or violation of any order of the Director validly entered under Chapter 81 of the Insurance Code, may result in:

- (a) A sentence requiring the payment of a fine not exceeding \$10,000.00, or imprisonment for a term of not more than one year, or both; and
- (b) After a hearing, the imposition by the Director of a civil penalty not to exceed \$10,000.00, or the revocation or suspension of any insurance licenses issued by the Director, or both. MCL 500.8106(4).

20. Any person or entity with possession, custody or control of assets, documents, data, accounts, moneys, books, records, information, or property of or pertaining to Midwestern, shall *immediately*:

- (a) Provide the Rehabilitator with notice that such assets, documents, data, accounts, moneys, books, records, information, or property are in his, her, or its possession, custody or control, together with a description of the assets, documents, data, accounts, books, records, information, or property in his, her, or its possession, custody or control.
- (b) Tender possession, custody, and control of such assets, documents, data, accounts, moneys, books, records, information, or property to the Rehabilitator.
- (c) Take all necessary steps to safeguard, preserve, and retain the assets, documents, data, accounts, moneys, books, records, information, or property.

21. Pursuant to MCL 500.8105(1)(g) and (k), and MCL 500.3529(3), all non-contracted and contracted medical care providers are hereby enjoined and restrained from pursuing collection against, obtaining judgments against, and/or balance billing of Midwestern's policyholders, enrollees, or members for health care goods provided or services rendered prior to the date of this Order. All non-contracted and contracted health care providers that provided such goods or rendered such services prior to the date of this Order shall seek payment solely from Midwestern as a Midwestern Creditor, as defined in this Order and MCL 500.8103(b). The foregoing prohibition does not apply to any applicable co-payments, deductibles, cost sharing, or fees for health care goods or services that are not covered by and remain the policyholder's, enrollee's, or member's responsibility under his or her Midwestern insurance policy.

22. Pursuant to MCL 500.8105(1) and MCL 500.8114(2), and except as otherwise provided in this Order, all Creditors of Midwestern are *enjoined from*:

- (a) The institution or continued prosecution of any actions or proceedings to determine, enforce, collect, or assert any claims against Midwestern, its assets, policyholders, enrollees, members, officers, directors, or employees;
- (b) The institution or continued prosecution of any actions or proceedings to determine, enforce, collect, or assert any claims against the Rehabilitator or Special Deputy Rehabilitators, their agents, attorneys, employees, or representatives, or the State of Michigan and its officers, agencies, or departments for claims or causes of action arising out of or relating to Midwestern or any proceedings under Chapter 81;
- (c) Obtaining preferences, judgments, attachments, garnishments, or liens against Midwestern, its assets, policyholders, enrollees, members, officers, directors, or employees;
- (d) Levying of execution against Midwestern, its assets, policyholders, enrollees, members, officers, directors, or employees; and
- (e) Threatening or taking any other action that may lessen the value of Midwestern's assets or prejudice the rights of Midwestern's creditors as a whole, its policyholders, enrollees, or members, or the administration of this rehabilitation proceeding.

23. Any person who violates an injunction issued in this matter shall be liable to the Rehabilitator, the policyholder or member, or both, for the reasonable costs and attorney fees incurred in enforcing the injunction or any court orders related thereto and any reasonably foreseeable damages.

24. All Creditor claims against Midwestern are within the exclusive jurisdiction of this Court and will be determined, resolved, paid, and/or discharged, in whole or in part, according to the terms and conditions approved by the Court.

25. Any and all claims by Creditors against Midwestern must be raised or asserted within the rehabilitation proceedings before this Court and are subject to this Court's orders regarding the submission and determination of claims.

26. At the appropriate time, the Rehabilitator shall develop a method for the submission, evaluation, and resolution of any unpaid Creditor claims for goods and services provided prior to the date of this Order to Midwestern and/or its policyholders, enrollees, or members.

27. Pursuant to MCL 500.8114(1), the Rehabilitator appoints James Gerber, the Director of Receiverships at DIFS, as Special Deputy Rehabilitator for Midwestern. The Rehabilitator further appoints Thomas Mitchell as a Special Deputy Rehabilitator, who shall report to Mr. Gerber. Mr. Gerber and Mr. Mitchell shall serve at the pleasure of the Rehabilitator, who reserves the right to appoint other Special Deputy Rehabilitator(s) to replace and/or serve with them in the future as the need arises. Subject to the supervision and direction of the Rehabilitator and this Court (and with respect to Mr. Mitchell, subject also to the supervision and direction of Mr. Gerber), Mr. Gerber and Mr. Mitchell shall have all the powers and responsibilities of the Rehabilitator granted under MCL 500.8114.

28. Pursuant to MCL 500.8114(1), the Rehabilitator has fixed the compensation of Mr. Gerber and Mr. Mitchell as follows, which this Court approves: Mr. Gerber and Mr. Mitchell shall be compensated as salaried employees of DIFS and shall not receive any additional salary in their capacity as Special Deputy Rehabilitators for Midwestern. However, Mr. Gerber's and Mr. Mitchell's expenses for travel, lodging, meals, and other expenses incurred in connection with their

appointment as Special Deputy Rehabilitators shall be paid out of the funds or assets of Midwestern as normal administrative expenses pursuant to paragraph 16 of this Order. Mr. Gerber and Mr. Mitchell will separately invoice and submit these expenses, which shall be reimbursed subject to State of Michigan reimbursement rates. If the Rehabilitator so elects in the future, she may allocate to Midwestern the pro rata portion of Mr. Gerber's and Mr. Mitchell's salary and benefits, at the rate of \$92.36 an hour (Mr. Gerber) and \$73.89 an hour (Mr. Mitchell), respectively, attributable to the performance of their duties as Special Deputy Rehabilitators, which compensation shall be paid out of the funds or assets of Midwestern pursuant to MCL 500.8114(1). In the event that Midwestern does not possess sufficient cash or liquid assets to pay Mr. Gerber's and Mr. Mitchell's expenses, or their salary and benefits if the Rehabilitator makes the allocation election permitted by this paragraph, the Rehabilitator may advance the necessary funds, which shall be repaid out of the first available money of Midwestern pursuant to MCL 500.8114(1).

29. If Midwestern remains in rehabilitation, the Rehabilitator and Special Deputy Rehabilitators shall make an initial accounting to the Court of Midwestern's financial condition and progress towards rehabilitation on or before February 15, 2021. Thereafter, the Rehabilitator and Special Deputy Rehabilitators shall make a similar accounting to the Court each succeeding one-year period from the date of this Order during which Midwestern remains in rehabilitation.

30. None of the provisions contained in this Order shall be construed to limit the Rehabilitator's authority to conduct receivership proceedings in accordance with the powers granted to her under Chapter 81.

31. The Court reserves jurisdiction to amend this Order or issue such further orders as it deems just, necessary, and appropriate.

This Order does not resolve the last pending claim and does not close this case.

A handwritten signature in blue ink, appearing to read "Joseph Pragamchuk", is written over a horizontal line.

Ingham County
Circuit Court Judge

P-39417