When one corporation exercised virtually complete authority and influence over a second corporation, controlled the assets of the second corporation, as well as the policy and daily operations through the appointment of the medical director, the second corporation is a subsidiary of the first under the definition in WAC 296-15-023. ...In re Group Health Permanente, P.C., BIIA Dec., 98 20064 (2000)
IN RE: GROUP HEALTH PERMANENTE P C ) DOCKET NO. 98 20064

FIRM NO. 944,637-00 ) DECISION AND ORDER

APPEARANCES:

Employer, Group Health Permanente P C, by
Keehn Arvidson, per
Gary D. Keehn

Department of Labor and Industries, by
The Office of the Attorney General, per
Frederick S. Staatz, Assistant

This is an appeal filed by Group Health Permanente P C (hereinafter GHP), on November 3, 1998, from a letter of the Department of Labor and Industries dated September 9, 1998, which the Department stated could constitute an order and that denied GHP’s request to include GHP under Group Health Cooperative’s (hereinafter GHC) self-insurance certification. REVERSED AND REMANDED.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely Petition for Review filed by GHP of a Proposed Decision and Order issued on February 1, 2000, in which the order of the Department dated September 9, 1998, was affirmed.

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed and the rulings are affirmed.

The corporation, GHC, provides prepaid health care to a large number of subscribers in Washington State. From the advent of self-insurance in Washington, GHC has been a self-insurer.

Because of the planned and subsequent accomplishment of an affiliation between GHC and the Kaiser Foundation Health Plan, GHC initiated the separate corporation, GHP. GHP is a professional service corporation whose corporate shareholders are physicians, physicians’
assistants, certified nurse midwives, and other professional health care providers. GHP was
granted corporate status by the state and the professionals began providing health care as
shareholders on or about December 31, 1997. Under the law, such a corporation must have all of
its shares of stock owned by the professionals.

A contract, in the form of a medical services agreement, was concluded between GHC and
GHP to become effective January 1, 1998. The contract provides the basis of the relationship
between the two corporate entities. On page 6, the contract provides that GHP will not contract
with anyone else to provide health care without the prior written consent of GHC. On page 7, the
contract states that GHP and GHC are separate corporate entities. On page 8, GHP is required to
make certain that all of its doctors meet the GHC credential requirements. On page 11, GHP
authorizes GHC to bill for services and make payment to GHP for services rendered. On page 18,
the contract states that GHC will pay GHP on a semi-monthly basis. See Exhibit No. 2.

GHC and GHP applied to the Department of Labor and Industries to allow GHP to be
self-insured for purposes of workers' compensation under the self-insurance certificate granted to
GHC. GHP maintained that under the controlling regulations it was a "subsidiary" of GHC and,
therefore, entitled to the self-insured status within GHC's certificate. WAC 296-15-023.

The Department denied the application. GHP appealed to the Board. The issue before the
Board is whether GHP is a subsidiary of GHC under the definition of subsidiary within the
regulations promulgated by the Department.

The appeal is decided on the interpretation of the following words: "A subsidiary is defined,
for the purpose of this rule, as an entity which is fifty percent owned and/or has its interest
controlled by another single firm." This is the second sentence of subsection (1) of WAC 296-15-
023. The first sentence of that subsection requires that all subsidiaries or divisions doing business
in the state of Washington shall be included in the self-insurance certification of a firm. The latter
term is defined as the parent corporation or entity.

Clearly, under general corporation law, the term "subsidiary" has but one meaning, that is, a
corporate entity, which has all or a controlling portion of its common stock (voting stock) owned by
another corporate entity. GHP does not qualify, within that definition, as a subsidiary of GHC. The
Department alleges it has attempted to safeguard the interests of the state of Washington and
presumably the state’s workers by defining the word subsidiary as used in the regulation to be
consistent with the classic definition. Such a definition prohibits GHP from qualifying for
self-insured status within GHC’s certificate. We find the classic definition is not the exclusive
definition based on the wording of the regulation.

The Department is concerned that corporate entities will spin off divisions or subsidiaries that
have high risk factors for their employees so that those entities will be covered under the State
Fund and not be a burden to the self-insurer. The Department also claims its intention by drafting
the language of subsection 023 was to prevent one business entity from insuring another business
entity without there being the subsidiary status as defined by the subsection.

The testimony elicited from Department employees indicates the Department has interpreted
the meaning of subsection 023 to require stock ownership. Larry Wilkinson, supervisor of the
certification services unit of self-insurance for the Department of Labor and Industries, testified for
the Department that controlling interest is defined as financial ownership.

The subsection provides as follows:

(1) The certification of a firm will include all of its subsidiaries or divisions doing
business in the state of Washington. A subsidiary is defined, for the purposes
of this rule, as an entity which is fifty percent owned and/or has its interest
controlled by another single firm.

(2) One certificate will be issued to an approved self-insurer, including
all subsidiaries or divisions. The entities will be considered as one employer
for all purposes of Title 51 RCW.
The disjunctive final phrase of the second sentence of subsection 023 defines "subsidiary" as that entity which has its interest controlled by another single firm. The first part of that disjunctive phrase defines a subsidiary as an entity that is fifty percent owned by another single firm. The Department, had it so desired, could have stated in the second part of the phrase that fifty percent ownership was not required, but only that ownership which would control the destiny of the business entity would be required. Instead, the Department chose to use the word "interest." "Interest" is not necessarily defined as ownership. According to the dictionary, it may be a title or legal share, but it can also be a right. It can be something in which an entity has a share of ownership or control. It is something because of which an entity has the power of influencing another entity. It is the effective controlling of an enterprise. *Webster's Third New International Unabridged Dictionary* (1986).

Our industrial appeals judge correctly determined that GHP is not a subsidiary of GHC in the classic sense. However, the judge arrived at that decision and the decision that GHP did not qualify under the second portion of the final phrase of section 023 by reading it in conjunction with section 022. Part of section 022 reads "[f]or the purposes of this rule, a parent firm is defined as one which owns fifty percent, and/or has a controlling interest in, another firm which shall be considered to be its subsidiary." As the judge correctly points out, the words "controlling interest" and "interest controlled" are two different things. These different phrases give rise to inconsistent definitions of parent and subsidiary in the two sections. The judge, then, in an attempt to achieve the objective of reconciling the difference by reading the two subsections together and giving effect to each of them, read the two as complementary rather than in conflict with each other. *See Waste Management of Seattle, Inc. v. The Utilities and Transportation Commissions*, 123 Wn.2d 621 (1994); *In re Eaton*, 110 Wn.2d 892 (1988); *Tommy P. v. Board of County Commissioners*, 97 Wn.2d 385 (1982).

A controlling interest in an entity is defined as the ownership of a sufficient number of shares of the corporation to control the policy of that corporation. *Webster's II New Collegiate Dictionary*, 246 (1995). The definition of "interest controlled" is totally different from the definition of controlling interest. Interest, as noted above, is only a claim or right in something and control is the exercise of authority or influence over something or someone.

The judge stated that the only way the regulatory scheme would constitute a unified whole is to use the same definition of the words in question in both subsections. He, therefore, concluded that GHP could not be a subsidiary within the definition of section 023.

We come to a different conclusion from that of our judge. Both sections 022 and 023 have the specific words "for the purpose of this rule" as a part of the definitions used in each. Section 022 is a rule and section 023 is a different rule. Each rule has a different purpose. It does not strain the definition in one to give a different meaning to what amount to different words in the other. As stated before, "controlling interest" is not the same as "interest controlled." In section 023 the intent of the rule is to make certain that one self-insured employer is required to keep all of its subsidiaries or those business entities over which it has control within one self-insurance
certificate. As is pointed out by the Supreme Court, sitting en banc in Manor v. Nestle Food Company, 131 Wn.2d 439 (1997), the intention of section 023 is:

[R]ational approach to the problem of self-insured businesses spinning a risky portion of their enterprise off to state fund coverage, and ensuring that corporate parents bear complete responsibility for the coverage of the workers of the parent and any of its subsidiaries. The rule is designed to ensure, with the changes in status of employers through merger, consolidation, combination, and otherwise, employees will not have to guess who their employer is for purposes of the IIA, and employees will receive the statutorily-mandated coverage.

Manor, at 454-455.

The purpose of section 022 is to define the level of security if companies are to be insured separately. It applies when a subsidiary alone is applying for a self-insurance certificate. It requires a parent to be the guarantor of the subsidiary's financial responsibilities under the Act. It contains one way in which to define a parent corporation. Section 023, on the other hand, requires that a parent entity applying for self-insurance status must include all of its subsidiaries, as well as those business entities over which it has control.

GHC exercises virtually complete authority and influence over GHP. GHP must have the approval of GHC to do business. GHC controls the assets of the two corporations and the policy and daily operations of GHP through control of the appointment of the medical director of GHP. GHC is the only entity that provides revenue to GHP. Nothing could be more controlling of the future of GHP as a corporate entity than being forced to look to GHC as its only source of revenue.

We find that GHP is a subsidiary of GHC under the definition of that word in WAC 296-15-023. As such, GHP should be granted the right to be a self-insurer under GHC's certificate.

After consideration of the Proposed Decision and Order and the Petition for Review filed thereof, and a careful review of the entire record before us, we make the following:
FINDINGS OF FACT

1. On November 12, 1997, Group Health Permanente P C, a corporate employer, requested that the Department of Labor and Industries include Group Health Permanente P C under Group Health Cooperative’s self-insurance certification. The Department denied this request by letter dated December 24, 1997.

Group Health Permanente P C protested the December 24, 1997 letter on January 27, 1998. On September 9, 1998, the Department issued a letter denying the request for inclusion and stated that the letter should be considered an appealable order. Group Health Permanente P C appealed this letter to the Board of Industrial Insurance Appeals on November 3, 1998. On December 1, 1998, December 11, 1998, and December 22, 1998, the Board issued orders extending the time to act on the appeal. On February 2, 1999, the Board issued an order granting the appeal, assigning it Docket No. 98 20064, and ordering that further proceedings be held.

2. Group Health Cooperative is a corporation that provides prepaid health care to residents of Washington in service areas where it is licensed to do so. It has been a self-insured employer for purposes of industrial insurance benefits since the inception of the self-insurance program in Washington.

3. In 1996, Group Health Cooperative began discussions with Kaiser Foundation Health Plan about affiliating the two organizations. To further this, plan healthcare professionals, including physicians, physicians’ assistants, certified midwives, and a few other categories of professional medical providers resigned from Group Health Cooperative as of December 31, 1997. These professionals then became shareholders in Group Health Permanente P C, a professional services corporation.

4. Group Health Cooperative provides all the facilities, services, support staff, almost all the patients and income for Group Health Permanente P C. Group Health Permanente P C agrees not to provide medical services to any other provider without the express permission of Group Health Cooperative. All shareholders of Group Health Permanente P C must be licensed and granted privileges by Group Health Cooperative to practice in Group Health Cooperative facilities. If such shareholder’s certification is denied, that person must surrender his or her share and resign from Group Health Permanente P C. Group Health Cooperative provides all Group Health Permanente P C shareholders with their malpractice insurance.
5. The two corporations entered into a medical services agreement effective January 1, 1998. The agreement provided that Group Health Permanente P C would not contract with any other entity to provide health care, that all Group Health Permanente P C doctors would meet the Group Health Cooperative credential requirements, that Group Health Cooperative would bill for services and make payment to Group Health Permanente P C for services rendered, that Group Health Cooperative would pay Group Health Permanente P C on a semi-monthly basis, and that Group Health Permanente P C would only name a medical director with the consent of Group Health Cooperative.

6. All shares of stock in Group Health Permanente P C are owned by the professional medical caregivers employed by Group Health Permanente P C.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and the subject matter of this appeal.

2. Pursuant to the definitions contained in WAC 296-15-023, Group Health Permanente P C is a subsidiary of Group Health Cooperative and should be included under Group Health Cooperative's self-insurance certification.

3. The Department letter of September 9, 1998, is incorrect and is reversed. The cause is remanded to the Department with directions to allow Group Health Permanente P C to be self-insured under the self-insurance certificate of Group Health Cooperative.

It is so ORDERED.

Dated this 26th day of June, 2000.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/ THOMAS E. EGAN Chairperson

/s/ FRANK E. FENNERTY, JR. Member

/s/ JUDITH E. SCHURKE Member