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NO. 26636

IN THE SUPREME COURT OF THE STATE OF HAWAII

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HAWAII MEDICAL SERVICE ASSOCIATION, Appellant-Appellant,

vs.

THE INSURANCE COMMISSIONER and the DIVISION OF INSURANCE  
of the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, STATE  
OF HAWAII; and RENNE CHAPMAN, AS PERSONAL REPRESENTATIVE FOR  
THE ESTATE OF GORDON CHAPMAN, (Deceased),  
Appellees-Appellees.

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APPEAL FROM THE FIRST CIRCUIT COURT  
(CIV. NO. 03-1-2235)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy JJ.)

Appellant-Appellant Hawaii Medical Service Association (HMSA) appeals from the June 9, 2004 final judgment of the Circuit Court of the First Circuit.<sup>1</sup> Among its points of error, HMSA contends that, in affirming the October 8, 2003 order of the Insurance Commissioner (Commissioner), the circuit court erred when it concluded that the external review procedure under Hawai'i Revised Statutes (HRS) § 432E-6 (Supp. 2000) is not preempted by the Employee Retirement Income Security Act of 1974 (ERISA), 19 U.S.C. §§ 1132(a) and 1144(a).

Upon carefully reviewing the record and the briefs submitted by the parties, and having given due consideration to the arguments advocated and the issues raised, we conclude that

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<sup>1</sup> The Honorable Eden Elizabeth Hifo presided over this matter.

there are insufficient facts in the record to draw a legal conclusion whether decedent Gordon Chapman's managed care plan, HMSA's Health Plan Hawai'i Plus Health Maintenance Organization (the Plan), was or was not covered, pursuant to 29 U.S.C. § 1002-1003 (2000),<sup>2</sup> by ERISA. See Hawaii Mgmt. Alliance Ass'n v. Ins. Comm'r [hereinafter, HMAA], 106 Hawai'i 21, 27, 100 P.3d 952, 958 (2004) (holding that a health plan is an employee benefit plan within the scope of ERISA if it is maintained by the participant's employer). Therefore, the case must be remanded to the Commissioner for further development of the factual record on that issue.

We also hold, however, that if the Plan was covered by ERISA, the Commissioner's October 8, 2003 order must be vacated and the case dismissed. In HMAA, we held that ERISA preempts Hawaii's external review law, HRS § 432E-6; as a result, HRS § 432E-6 does not apply to ERISA-covered plans. 106 Hawai'i at 34-35, 100 P.3d at 965-66. If the Plan was an ERISA-covered plan, then the Commissioner lacked jurisdiction to consider the

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<sup>2</sup> 29 U.S.C. § 1003(a) (2000) provides, inter alia, that the provisions of ERISA "shall apply to any employee benefit plan if it is established or maintained . . . by any employer engaged in commerce or in any industry or activity affecting commerce" and is not subject to any exemptions enumerated in 29 U.S.C. § 1003(b) (2000) (excluding, inter alia, governmental and church plans from ERISA coverage). 29 U.S.C. § 1002 (2000) in turn provides the definitions of "employee benefit plan," "employee," and other key terms used in section 1003.

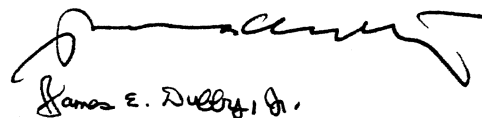
external review request and the circuit court lacked jurisdiction to affirm the Commissioner's order. Therefore,

IT IS HEREBY ORDERED that the circuit court's June 9, 2004 final judgment is vacated and this case is remanded to the circuit court with instructions for the circuit court to, in turn, temporarily remand this case back to the Commissioner for development of the factual record relevant to ERISA coverage, including: (1) the identity and nature of the entity that established and maintained the Plan (i.e. who purchased the coverage from HMSA); (2) whether Gordon Chapman was its employee; and (3) any other facts relevant under 29 U.S.C. § 1002-1003. If, after the Commissioner enters findings in this regard and the parties have briefed the issue, the circuit court makes the legal determination that the Plan was covered by ERISA, the circuit court is instructed to (a) vacate the Commissioner's October 8, 2003 order, and (b) enter an order dismissing the case for lack of subject matter jurisdiction.

DATED: Honolulu, Hawai'i, August 18, 2005.

On the briefs:

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for the Estate of Gordon  
Chapman (Deceased)

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the Department of Commerce  
and Consumer Affairs, State  
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