

APPEAL PANEL DECISION FORM

I. CLAIMANT AND CLAIM INFORMATION

Claimant Name	Last/Name of Business [REDACTED]	First [REDACTED]	Middle [REDACTED]
Claimant ID	[REDACTED]	Claim ID	[REDACTED]
Claim Type	Business Economic Loss		
Law Firm	[REDACTED]		

II. DECISION

Select the Compensation Amount set forth in either BP's Final Proposal or the Claimant's Final Proposal as the final outcome on the claim and check the appropriate box to signify your decision.

<input type="checkbox"/> BP's Final Proposal	Compensation Amount	\$35,464
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0
<input checked="" type="checkbox"/> Claimant's Final Proposal	Compensation Amount	\$55,443.28
	Risk Transfer Premium	.25
	Prior Payment Offset	\$0

III. PRIMARY BASIS FOR PANELIST DECISION

Please select the primary basis for your decision. You may also write a comment describing the basis for your decision.

- Error in documentation review.**
- Error in calculation.**
- Error in RTP multiplier.**
- Error in Prior Spill-Related Payment Amount.**
- No error.**

Comment *(optional)*:

The Claims Administrator awarded this Zone D dental service \$55,443.28, pre-RTP. BP appeals. The main thrust of BP's appeal is that the Claims Administrator erred in its Step 2 analysis by utilizing a Claimant Specific Factor. BP argues that the Claimant commenced operations in July of 2008 which was within the Benchmark Period. Thus, BP urges that the Claims Administrator failed to follow Policy 343 which resulted in an improper inflation of the award.

Policy 343 addresses situations in which a BEL Claimant begins business operations during the Benchmark Period:

The Claims Administrator interprets the Settlement Agreement as a whole such that the framework is most reasonably applied in the following manner: For the purposes of Step Two Compensation, for those Claimants who commenced operations during the optimal Benchmark Period, the Claimant will be limited to a General Adjustment Factor of 2%. No additional Claimant-Specific Factor will be applied to such claims.

As stated, BP contends that Policy 343 applies because the Claimant commenced its dental practice "during the Optimal Benchmark Period." Claimant, on the other hand, argues that there was no calculation error and that the Settlement Program was correct in not applying Policy 343. Claimant points out that it was formed and began dental practice in 2006 and has operated continuously through the present date. BP counters that prior to July of 2008, Claimant was an employer/contractor of the dental practice which it then purchased from the previous owner. Thus, BP's actual argument is that the Claimant commenced operations *as owner of the practice* during the Benchmark Period.

A *de novo* review of the record clearly shows that [REDACTED] provided dental services as far back as 2006. There is no evidence in the record that Claimant began operations in July of 2008 or at any other time during the optimal Benchmark Period. Although BP relies on Policy 343, there is nothing in this policy that differentiates between a Claimant's status, i.e., contractor versus owner. Stated another way, Policy 343 makes no provision for changes in a Claimant's business status during the Benchmark Period. Because BP's argument would require the interpretation of Policy 343 beyond the scope of its plain language, the appeal is denied.