Department of Health and Human Services
Maine People Living Safe, Healthy and Productive

Paul R. LePage, Governor  Ricker Hamilton, Commissioner

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**IN THE MATTER OF:**

AB Home Healthcare, Inc. )
c/o Jennifer Riggle, Esq. )
Bernstein, Shur, Sawyer & Nelson ) **FINAL DECISION**
P.O. Box 9729 )
Portland, ME 04104 )

This is the Department of Health and Human Services' Final Decision.

The Recommended Decision of Hearing Officer Bloom, mailed April 30, 2018 and the responses and exceptions filed on behalf of AB Home Healthcare have been reviewed.

I hereby adopt the findings of fact and I accept the Recommendation of the Hearing Officer that the Department was correct when it suspended payments to AB Home Healthcare, LLC based upon a determination that there is a credible allegation of fraud, absent a good cause exception.

DATED: June 4, 2018 SIGNED: Ricker Hamilton
RICKER HAMILTON, COMMISSIONER
DEPARTMENT OF HEALTH & HUMAN SERVICES

**YOU HAVE THE RIGHT TO JUDICIAL REVIEW UNDER THE MAINE RULES OF CIVIL PROCEDURE, RULE 80C. TO TAKE ADVANTAGE OF THIS RIGHT, A PETITION FOR REVIEW MUST BE FILED WITH THE APPROPRIATE SUPERIOR COURT WITHIN 30 DAYS OF THE RECEIPT OF THIS DECISION.**

**WITH SOME EXCEPTIONS, THE PARTY FILING AN APPEAL (80B OR 80C) OF A DECISION SHALL BE REQUIRED TO PAY THE COSTS TO THE DIVISION OF ADMINISTRATIVE HEARINGS FOR PROVIDING THE COURT WITH A CERTIFIED HEARING RECORD. THIS INCLUDES COSTS RELATED TO THE PROVISION OF A TRANSCRIPT OF THE HEARING RECORDING.**

cc: Ronald Schneider, Jr., Esq., Bernstein, Shur, Sawyer & Nelson
Thomas Bradley, AAG, Office of the Attorney General
Herb Downs, DHHS/Division of Audit
Valerie Hooper, DHHS/Program Integrity

Department of Health and Human Services
Maine People Living Safe, Healthy and Productive Lives

Paul R. LePage, Governor  Ricker Hamilton, Commissioner

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Ricker Hamilton, Commissioner
Department of Health and Human Services
221 State Street
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Augusta, ME 04333

Date Mailed: APR 30 2018

**In the Matter of: AB Home Healthcare, Inc.** Suspension of MaineCare Payments

## ADMINISTRATIVE HEARING RECOMMENDED DECISION

An administrative hearing in the above-captioned matter was held on March 12, 2018, before Hearing Officer Annalee Bloom, Esq., at Augusta, Maine. At the close of the day on March 12 counsel for AB Home Healthcare indicated that they intended to call at least one witness and admit some exhibits, therefore the hearing was scheduled to continue on March 19, 2018. However, counsel decided to not call any further witnesses and only a telephone conference was held on March 19. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner of the Maine Department of Health and Human Services. The hearing record was left open through March 26, 2018 to allow submission of written closing arguments.

Pursuant to an Order of Reference dated January 23, 2018 the issue presented *de novo* for hearing is,

> ***Was the department correct when it suspended payments to AB Home Healthcare, LLC, based upon a determination that there is a credible allegation of fraud, absent a good cause exception? See, HO-7.***

## APPEARING ON BEHALF OF THE APPELLANT

Ronald W. Schneider, Jr., Esq.
Jennifer S. Riggle, Esq.

## APPEARING ON BEHALF OF THE DEPARTMENT

Thomas C. Bradley, AAG
Valerie Hooper, Supervisor of Professional Claims Review, Integrity Unit
Cathy Register, Resource Coordinator, Children's Behavioral Health Services
Herb Downs, Director of Division of Audit

## ITEMS INTRODUCED INTO EVIDENCE

### Hearing Officer Exhibits

| | |
|---|---|
| HO-1 | Prehearing Memo submitted by Bernstein Shur |
| HO-2 | Pre-Hearing Memo submitted by State |
| HO-3 | Pre-Hearing Order dated February 21, 2018 |
| HO-4 | Correspondence between counsel and Hearings Office |
| HO-5 | Letter scheduling hearing for March 12, 2018 |
| HO-6 | Fair Hearing Report Form |
| HO-7 | Order of Reference dated January 23, 2018 |
| HO-8 | Correspondence between parties and Chief Administrative Hearing Officer Bivins |
| HO-9 | Letter dated January 23, 2018 from AAG |
| HO-10 | Letter dated January 17, 2018 from Bernstein Shur |
| HO-11 | Informal Review Decision dated December 12, 2017 |
| HO-12 | Letter dated November 29, 2017 from Bernstein Shur |
| HO-13 | Letter dated November 22, 2017 from Bernstein Shur to Herb Downs |
| HO-14 | Letter dated November 17, 2017 re: suspension of payments |
| HO-15 | Letter scheduling day 2 of hearing for March 19, 2018 |
| HO-16 | E-mails between counsel and Hearing Officer |
| HO-17 | Letter to counsel from Hearing Officer Bloom dated March 19, 2018 |

### AB Home Healthcare Exhibits(pre-numbered but only some were offered)

| | |
|---|---|
| AB-1. | MaineCare Benefits Manual Chapter I, Section 1.22 |
| AB-2. | MaineCare Benefits Manual Chapter I, Section 1.23 |
| AB-3. | Licenses and Authorizations<br>a. AB Home Health Care Mental Health Agency Licenses<br>b. AB Home Health Care Personal Care Services License<br>c. AB Home Health Care Home Health Care Services license<br>d. United Home Healthcare Services, LLC Home Health Care Services License |
| AB-5. | October 31, 2017 Request for Informal Review with Chart |
| AB-9. | Records-CONFIDENTIAL |
| AB-12. | Records-CONFIDENTIAL |
| AB-21. | Letter dated May 19, 2014 to AB Home Health Care from licensing |
| AB-22. | Letter dated July 27, 2015 to AB Home Health Care from licensing |
| AB-28. | calendars/timesheets |
| AB-29. | Pre-Hearing Memorandum |
| AB-30. | Post-Hearing Memorandum |

### DHHS Exhibits

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|---|---|
| DHHS-1. | Order of Reference |
| DHHS-2. | Fair Hearing Report Form dated January 17, 2018 |
| DHHS-3. | Suspension of Medicaid Payments Letter dated November 17, 2017 |

DHHS-4. Request for Expedited Informal Review of Payment Suspension dated November 22, 2017
DHHS-5. Supplemental Request for Expedited Informal Review of Payment Suspension dated November 29, 2017
DHHS-6. Final Informal Review Decision dated December 12, 2017
DHHS-7. Request for Expedited Administrative Hearing dated January 17, 2018
DHHS-8. MaineCare Benefits Manual Chapter I, Section 1, effective July
DHHS-9. 42 CFR Section 455.1 et seq.
DHHS-10. MaineCare Benefits Manual Chapter II, Section 19 effective September 1, 2010
DHHS-11. MaineCare Benefits Manual Chapter II, Section 96 effective September 1, 2010
DHHS-12. MaineCare Benefits Manual Chapter II, Section 28 effective September 28, 2010
DHHS-13. MaineCare Provider Agreement for United Home Healthcare Service, LLC signed by provider on March 21, 2011.
DHHS-14. MaineCare Provider Agreement for AB Home Healthcare, LLC signed by provider on March 28, 2011
DHHS-15. Letter from Medicaid Fraud Control Unit to Program Integrity dated October 27, 2017.
DHHS-16. Email from former employee of AB Home Healthcare regarding complaints
DHHS-17 Timesheets for
DHHS-18. Timesheets for
DHHS-19. Timesheet for
DHHS-20. Timesheet for
DHHS-21. Timesheet for
DHHS-22. Timesheet for
DHHS-23. Timesheet for
DHHS-24. Timesheet for
DHHS-25. Timesheet and claims data for
DHHS-26. Timesheet and claims data for
DHHS-27. Timesheet and claims data for
DHHS-28. Timesheet and claims data for
DHHS-29 Email string dated February 2016 from OMS and OCFS
DHHS-30. Email dated November 2017
DHHS-31. Pre-hearing memorandum
DHHS-32 Post-hearing memorandum

## RECOMMENDED FINDINGS OF FACT:

1. On March 3, 2011 AB Home Healthcare, LLC (through Abdulfatah Ali, CEO) signed a MaineCare/Medicaid Provider Agreement with the State of Maine. On March 10, 2014 the agency again signed a MaineCare/Medicaid Provider Agreement with the State of Maine.
2. AB Home Healthcare, LLC is a company licensed to provide certain services in Maine.
3. In 2015 Valerie Hooper, Supervisor of Professional Claims Review in the Integrity Unit of DHHS became involved in a pending investigation involving AB

Home Healthcare, LLC. Ms. Hooper became involved due to the retirement of Mike Bishop who was doing a review of AB Home Healthcare at the suggestion of the federal Office of the Inspector General.

4. In early 2014 the OIG (Office of Inspector General) requested that Mr. Bishop hold off on suspending any payments to AB Home Healthcare due to an active investigation.
5. When Ms. Hooper was assigned the case she reached out to the OIG and they confirmed that it was still an active investigatory case.
6. During the course of her involvement with AB Home Healthcare a number of things came to Ms. Hooper's attention that raised concern.
7. There was an active audit case/recoupment case regarding AB Home Healthcare.
8. [illegible] recipients.
9. Ms. Hooper received a report from a former employee(Director of Nursing) of AB Home Healthcare stating that she received a letter indicating that a complaint that the personnel at AB Home Healthcare were not qualified to do the job was substantiated. She also reported that when she worked there the company was fraudulently billing for services provided by individuals that no longer worked there.
10. Program Integrity reviewed a number of billing sheets that purportedly represented the hours and services provided to the clients. Some of the timesheets were not dated correctly. Many of the timesheets were filled out in a way that indicated all of the tasks being performed during each contact with the client (so many tasks that it would be impossible to perform them all in the time period indicated). Some of the timesheets contained overbilling,
11. The OIG informed Ms. Hooper that an employee of AB Home Healthcare (nurse) admitted falsifying information.
12. Ms. Hooper was notified by Beth Ketch(MaineCare) in February of 2016 of a number of concerns with regard to AB Home Healthcare. There were specific concerns with regard to AB Home Healthcare's website providing inaccurate information with regard to their services.
13. On October 27, 2017 the Department was contacted by William Savage, AAG from the Healthcare Crimes Unit indicating that Program Integrity could go forward with the payment suspension. The letter also indicated that the Healthcare Crimes Unit and the OIG were jointly involved in an investigation regarding credible allegations of billing fraud by AB Home Healthcare.
14. On November 17, 2017 the Department wrote to AB Home Healthcare and notified them that a suspension of MaineCare payments had gone into place on November 14, 2017.
15. On November 22, 2017 Attorney Riggle on behalf of AB Home Healthcare wrote to Herbert Downs requesting an Expedited Informal Review.
16. On December 12, 2017 Mr. Downs issued the Final Informal Review Decision upholding the suspension of MaineCare payments.
17. By letter dated January 17, 2018 AB Home Healthcare requested an appeal.

## RECOMMENDED DECISION:

The Hearing Officer recommends that the Commissioner find that the Department was correct when it suspended payments to AB Home Healthcare, LLC based upon a determination that there is a credible allegation of fraud, absent a good cause exception.

## REASONS FOR RECOMMENDATION:

On November 17, 2017, the Department informed AB Home Healthcare "AB" that the Department would be suspending all MaineCare payments to the agency. See, DHHS-3. AB Home Healthcare contested this determination. See, DHHS-4. On January 30, 2018, the Department issued a Final Informal Decision in which it affirmed the suspension of MaineCare payments. See, DHHS-6. According to the Department, it had the authority to suspend payments because there existed a 'credible allegation of fraud' against AB. The Department argued that pursuant to Chapter I, §1 of the MaineCare Benefits Manual, the Department was obligated to suspend MaineCare payments. According to that provision,

> ***Suspension of Payment Upon Credible Allegation of Fraud***
>
> ***The Department shall suspend payments to a provider upon a Credible Allegation of Fraud for which an investigation is pending under the MaineCare program or any Medicaid Program. A suspension of payments under this subsection is not a sanction under subsection 1.20. A Credible Allegation of Fraud is an allegation that the department has verified, from any source, which has one or more indicia of reliability and which allegation, facts and evidence have been carefully reviewed by the Department, on a case-by-case basis. The source of an allegation may be, but is not limited to, fraud hotline complaints, claims data mining or patterns identified through provider audits, civil false claims cases and law enforcement investigations. See 1.22-3(A).***

According to a Prehearing Memorandum submitted by the Department, the suspension of MaineCare payments to a provider is required by federal regulation upon the Department's receipt of a credible allegation of fraud when an investigation is pending. See, 42 CFR §455.23. According to the Department,

> ***"The federal regulation reflects a policy decision that payments should be held back when there exists a credible basis for an investigation of fraud by a Medicaid provider, as opposed to engaging in the typically problematic attempt to recover taxpayer dollars for fraud after payments have been made. 'By specifically encouraging States to withhold payments on a timely basis when there is a reliable evidence of fraud or willful misrepresentation, we are attempting to stop the payment of Medicaid funds at an early point so that more costly efforts of recouping monies already paid will not be necessary'. Citing 52 Fed. Reg. 48814 (December 28, 1987)." See, HO-2.(emphasis added by Department).***

A suspension is, by its nature, temporary, lasting until either a determination is made that there is insufficient evidence or legal proceedings are completed. See, 42 CFS §455.23(c); Chapter I, §1.20-3(D), MaineCare Benefits Manual. It is neither a recoupment nor a final refusal to pay.

The suspension of MaineCare payments does not require a determination that fraud has actually occurred.

Rather,

> ***"What is required is an allegation of fraud that has one or more "indicia of reliability." 42 C.F.R. § 455.2; MBM Chapter I, §1.22-3(A). Any reliable evidence suffices. "Reliable evidence" is any evidence that is trustworthy or worthy of confidence. In Interest of D.E.D., 304 N.W.2d 133, 137 (Wisc. Ct. App. 1981) (citing Black's Law Dictionary 1160 (5th Ed. 1979)). Unlike other legal standards such as "beyond a reasonable doubt," or the "preponderance of the evidence," "reliable evidence" refers to the quality of the evidence only – and not to the weight of the evidence." See, HO-2.***

Pursuant to the Letter of Suspension dated November 17, 2017, the Department presented three general allegations of possible fraud,

- ***Billing for services that were not provided***
- ***Documentation not supporting the services that were billed and paid***
- ***Multiple complaints received regarding Rehabilitative and Community Support Services as well as Personal Care Agency***

**Credible Allegations of Fraud**

In the notice of suspension of payments dated November 17, 2017 the Department indicates that the "general" allegations against AB are:
Billing for services that were not provided
Documentation not supporting the services that were billed and paid
Multiple complaints received regarding Rehabilitative and Community Support Services as well as Personal Care Agency services. See, DHHS-3. The Informal Review Decision dated December 12, 2017 was less specific and just indicated that the "Department determined that a credible allegation of fraud exists...". See, DHHS-6.

The bulk of the testimony presented by the Department was by Valerie Hooper, Supervisor of Professional Claims Review in the Program Integrity Unit. She testified to the various pieces of information that form the basis for the Department's claim of "credible allegations of fraud".

Ms. Hooper received an e-mail from Becky Longacre, former Director of Nursing at AB Home Healthcare. In her e-mail Ms. Longacre indicates that she is aware of 3 separate incidents of

fraudulent billing from when she worked at AB. She wrote that when she mentioned her concerns to the CEO that she was fired. See, DHHS-16.

Department Exhibits 17 through 28 are examples of billing time sheets that could be considered fraudulent or having indicia of fraud:

On Exhibit 17 there are two different dates indicated and all of the tasks are marked off on the back as if they were all provided in the hour of service indicated.

Exhibit 18 has a similar issue with all of the tasks being marked off. Ms. Hooper specifically noted that the sheets indicated that grocery shopping was done every day.

Exhibit 19 again had the same issue with all of the tasks being checked off. This billing sheet also had one hour time increments that were billed as 1.5 hours.

Exhibit 20 had the same issue with the tasks checked off on back. It also contains errors on the date (crossed out and rewritten).

Exhibit 21 also has all of the tasks checked off and has errors in the dates and portions crossed off.

Exhibit 22 contains dates that have been rewritten and areas checked off on the back where no tasks are indicated. The time reflected is 3.5 hours but is billed for 4 hours.

Exhibit 23 has a date that has been whited out and written over. Week two shows 9 hours with the client but MaineCare was billed 17.5 hours.

Exhibit 24 lists no time worked on Saturday and Sunday but there are tasks checked off for those days. The total hours is indicated as 23 when it is actually 22.

Exhibit 25 was billed out as an hour a day for 5 days but the time sheets indicate that the hours were worked over a 3 day period only.

Exhibit 26 reveals the billed units do not match the time sheet and there is an extra date included on the billing.

Exhibit 27 shows a total of 2 hours each day yet 5 hours a day were billed.

Exhibit 28 reveals the hours worked were 21 but were totaled as 25 and then billed as 29 hours.

AB presented no evidence to explain these billing patterns. The argument was made that they were just mistakes and that there was not a high enough error rate to be indicative of anything. However, Program Integrity is not tasked with actually finding fraud. There just has to be a credible "allegation" of fraud. MaineCare Benefits Manual 1.22-3(A). Exhibit 23 where MaineCare was billed 17.5 hours for 9 hours worked is likely enough to meet this rather low standard. Especially in light of the fact that AB provided no testimony to explain these

discrepancies. The Department had many time sheets that were properly relied on as being indicative of fraud.

In addition to the billing time sheet Ms. Hooper spoke with OIG on a few occasions. They told her it was an ongoing investigation and that they were very interested in her information. At some point Ms. Hooper learned that a nurse had confessed to OIG that she had falsified information while working at AB. OIG also voiced that there were services that weren't being provided but that had been billed for. Given that this information was received by the OIG (the chief investigatory unit) the Department legitimately gave weight to the evidence. Testimony, V. Hooper.

As indicated previously, no testimony was offered by AB to rebut or explain any of the above information.

In October 2017 the Healthcare Crimes Unit gave the go ahead to suspend payments. They continued to state that there was an ongoing investigation with credible allegations of fraud against AB. See, DHHS-15.

Upon hearing that it was likely that payments to AB were going to be suspended, Cathy Register contacted an agency that indicated they could take AB's clients. Testimony C. Register. Once the Department received the go ahead from the Health Care Crimes Unit they instituted the mandatory suspension pursuant to 42 CFR 455.23.

AB Home Healthcare appealed the suspension and requested an expedited Informal Review. The matter was considered at an Informal Review by Herb Downs, Director of Division of Audit. Mr. Downs issued his decision on December 12, 2017. Mr. Downs found "After a careful review of all the allegations, facts and evidence in its possession, the Department determined that a credible allegation of fraud exists ad that it complied with the process for imposing a suspension of payments. Therefore, the Department has decided it must retain the suspension of payments." See, HO-11. AB Home Healthcare then appealed that decision to an administrative hearing. While it appears from his testimony that Mr. Downs himself did not review all of the documents that had been collected he was aware that others in his office had. Mr. Downs testified that his instructions from the federal level are that if a claim is being investigated by law enforcement that is enough and is, in and of itself, an indication of fraud. The Hearing Officer believes this is a slippery slope. However, what is clear in this case, is that the Department had numerous pieces of evidence which formed the basis for a credible allegation of fraud, including the fact that federal law enforcement has an open investigation.

**Good Cause Exemption**

The Department argues that no good cause exemption applies to this case that would lead the Department to not suspend all MaineCare payments. AB disagrees, arguing that a good cause exemption is in evidence under Chapter I, §1.22(H).

**H. The Department may find that good cause exists to suspend payments only in part, or to convert a payment suspension previously imposed in whole to one only in part, when:**

1. **Member access to items or services would be jeopardized by a payment suspension in whole or in part because either the provider is the sole community physician or the sole source of essential specialized services in the community, or the provider services a large number of members within a HRSA-designated medically underserved area;**

2. **The Department determines, based upon the submission of written evidence by the provider that is the subject of the payment suspension, that the suspension should be imposed only in part;**

3. **The Credible Allegation of Fraud focuses solely and definitively on only a specific type of claim or arises from only a specific business unit of a provider, and the Department determines and documents in writing that a payment suspension in part would effectively ensure that potentially fraudulent claims were not continuing to be paid;**

4. **The relevant law enforcement entity declines to certify that a matter continues to be under investigation as required by 42 C.F.R. §455.23(d)(3) (2011); or**

5. **The Department determines that payment suspension only in part is in the best interests of the MaineCare program.**

The Hearing Officer recognizes that the rule permits the Department to find good cause to suspend MaineCare payments only in part if one of five circumstances exists. However, the Department argued that there was no evidence that any of them existed in this case. According to the Department, AB failed to provide any evidence or legal argument that any of the five circumstances existed. Under the MaineCare Benefits Manual good cause exists only under the following circumstances,

> ***Ch. I, Sec. 1.22-3(H)(1) applies when member access to items or services would be jeopardized by a payment suspension in whole or in part because either a provider is the sole community physician, or sole source of essential specialized services in the community, or the provider services a large number of members with a HRSA-designated medically underserved area.***

There was no evidence introduced or argument that this circumstance applied. AB is not a sole community physician. Additionally, there was no evidence that AB serves a large number of members in a HRSA-designated medically underserved area. Therefore, the Department did not err in finding that this circumstance did not apply.

***Ch. I, Sec. 1.22-3(H)(2) applies when written evidence supplied by the provider convinces the Department to only apply a partial payment suspension.***

AB, through counsel provided 2 letters at the Informal Review stage. See, DHHS-5. No additional documents were provided. The letters were simply arguments of counsel as to why there should only be a partial suspension. The Department did not err in finding that these letters did not provide sufficient "good cause".

***Ch. I, Sec. 1.22-3(H)(3) applies when the allegation of fraud focuses solely and definitively on a specific type of claim or arises from only a specific business unit of a provider, and the Department determines and documents in writing that a payment suspension in part would effectively ensure that potentially fraudulent claims were not continuing to be paid.***

The Department did not err in finding that there was no good cause under this provision. Ms. Hooper specifically testified that she was informed that the investigation was covering all areas of the business and that it would not be appropriate to only suspend in part. Testimony V. Hooper.

***Ch. I, Sec. 1.22-3(H)(4) applies when the relevant law enforcement entity declines to certify that a matter continues to be under investigation.***

The Department presented testimony and written documentation indicating that the matter was indeed still under investigation. AB presented no testimony to rebut that claim. Therefore, the Department did not err in finding that this circumstance did not apply.

***Ch. I, Sec. 1.22-3(H)(5) applies when the Department determines that a payment suspension only in part is in the best interests of the MaineCare program.***

Valerie Hooper from the Program Integrity Unit testified that the Department determined, in light of all of the credible allegations of fraud that the Department could not make this finding. See Testimony of Valerie Hooper. AB produced no evidence to compel a contrary finding nor did it present any argument that it would be in the best interests of the MaineCare program to impose a partial payment suspension. Therefore, the Department did not err in finding that this circumstance did not apply.

**AB's Constitutional Arguments:**

Among other arguments, AB has presented a number of constitutional arguments against the suspension of payments in this case. AB claims that the statute involved is "void for vagueness", violates "due process" and is unconstitutional on its face.

The Hearing Officer believes it is important to recognize that the relationship between AB Home Healthcare and MaineCare is contractual in nature. AB Home Healthcare signed at least two contracts that are relevant to the instant action. DHHS Exhibit 13 is the provider agreement between AB Home Healthcare and MaineCare dated March 28, 2011. The first paragraph of the provider agreement requires that as a condition of participation the provider agrees to "comply with the provisions of the Federal and State laws and regulations related to Medicaid, the provisions of the MaineCare Benefits Manual...". A similar provider agreement was signed on March 1, 2014. By signing these agreements AB Home Healthcare agreed to comply with the regulations. They now wish to argue that the regulations are unconstitutional.

AB argues that there was a due process violation as the payments were suspended and AB was notified after the fact. This is the process provided for by statute. AB has taken full advantage of the "due process" provided by having the Internal Review and this Administrative Appeal. There was not a "taking" but a suspension pending an investigation. The Eighth Circuit Court of Appeals addressed these issues in the case of **Clarinda Home Health v. Shalala**, 100 F.3d 526(1996). In *Clarinda*, the company sought injunctive relief from the suspension of Medicare benefits pending a fraud investigation. In *Clarinda* the court stated, "there has been no final determination of whether the payments will eventually be made to Clarinda. Instead, the payments have been only temporarily suspended during an ongoing fraud investigation. Upon the conclusion of the investigation, if it is determined that Clarinda did not commit any fraudulent acts; the withheld funds will be immediately dispersed to Clarinda. The withholding is nothing more than a temporary measure necessary to maintain the status quo while the necessary facts are gathered and evaluated." *Id.* At 530. Additionally, "the private interest that will be affected by a temporary withholding of Medicare payments is not as serious in nature as an exclusion from the Medicare program. Because *Clarinda* has less of an interest in having its claim resolved than a provider who had been suspended from the program entirely would have, we hold that it is not a violation of due process to temporarily withhold Medicare payments during an ongoing investigation for acts of fraud." *Id.* at 531. Although the *Clarinda* case pre-dates some of the statutory language that is at play in this case, the rationale and the facts are essentially the same. In Clarinda the Medicare provider filed to get injunctive relief from having their Medicare payments suspended. The Court decided that the temporary suspension of Medicare payments during the course of a fraud investigation was not a due process violation. The claim in AB's situation is the same.

In conclusion, the Hearing Officer respectfully recommends that the Commissioner find that the Department was correct when it suspended payments to AB Home Healthcare, LLC based upon a determination that there is a credible allegation of fraud, absent a good cause exception.

## MANUAL CITATIONS

- MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101 (2014).

## RIGHT TO FILE RESPONSES AND EXCEPTIONS

**THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE DIVISION OF ADMINISTRATIVE HEARINGS WITHIN FIFTEEN (15) CALENDAR DAYS OF THE DATE OF MAILING OF THIS RECOMMENDED DECISION.**

**A REASONABLE EXTENSION OF TIME TO FILE EXCEPTIONS AND RESPONSES MAY BE GRANTED BY THE CHIEF ADMINISTRATIVE HEARING OFFICER FOR GOOD CAUSE SHOWN OR IF ALL PARTIES ARE IN AGREEMENT. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE DIVISION OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. COPIES OF WRITTEN RESPONSES AND EXCEPTIONS MUST BE PROVIDED TO ALL PARTIES. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.**

## CONFIDENTIALITY

**THE INFORMATION CONTAINED IN THIS DECISION IS CONFIDENTIAL. *See* 42 U.S.C. § 1396a (a)(7); 22 M.R.S. § 42 (2); 22 M.R.S. § 1828 (1)(A); 42 C.F.R. § 431.304; 10-144 C.M.R. Ch. 101 (I), § 1.03-5. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.**

Dated: 4/26/2018

Annalee Bloom, Esq.
Administrative Hearing Officer

Cc: Thomas Bradley, AAG
Jennifer Riggle, Esq.
Ronald Schneider, Jr., Esq.