



**Department of Health
and Human Services**

*Maine People Living
Safe, Healthy and Productive Lives*

Paul R. LaPage, Governor

Mary C. Mayhew, Commissioner

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IN THE MATTER OF:

Angela McRae)
9 Sergeant Lane) **FINAL DECISION**
Brunswick, ME 04011)

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

The Recommended Decision of Hearing Officer Benedict, mailed February 19, 2014 and the responses and exceptions filed by Angela McRae 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 on March 12, 2013, it terminated Angela McRae, R.Ph., from her participation in, and reimbursement from all medical assistance programs administered by the Department.

DATED: 7/22/14 SIGNED: 
MARY C. MAYHEW, 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: Thomas Bradley, AAG, Office of the Attorney General
Herbert Downs, Director, Division of Audit



**Department of Health
and Human Services**

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Mary C. Mayhew
Commissioner
Department of Health and Human Services
11 State House Station
Augusta, ME 04333

FEB 19 2014

DATE MAILED

RE: Angela McRae, Pharmacist-Provider Exclusion from MaineCare

RECOMMENDED DECISION:

An administrative hearing was held on December 19, 2013 in Portland, Maine before Miranda Benedict, Esq., Hearing Officer. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services. The record was kept open until January 10, 2014 to afford the parties the opportunity to submit written closing arguments. Ms. McRae requested additional time to submit her closing argument. The hearing officer extended the deadline until January 24, 2014. The arguments were received and the record was closed.

CASE BACKGROUND AND ISSUE:

On March 14, 2013, Ms. McRae, a licensed pharmacist, was served a decision by the Department of Health and Human Services that terminated her participation in and reimbursement from, all medical assistance programs administered by the Department, specifically MaineCare. According to the letter, this decision was based upon an action taken by the Maine State Board of Pharmacy, contained in the Boards' Decision and Order dated January 5, 2012. Ms. McRae asked for an informal review of the Department's decision to terminate her from participation in MaineCare. On August 13, 2013, Ms. McRae received notice that the Department had upheld the termination in its informal review. Ms. McRae then requested an administrative hearing to appeal the informal review.

The Commissioner's Order of Reference, dated October 22, 2013, identifies the specific issues for consideration at this proceeding as follows:

Was the Department correct when on March 12, 2013, it terminated Angela McRae, R.Ph. from her participation in, and reimbursement from, all medical assistance programs administered by the Department?

APPEARING ON BEHALF OF THE DEPARTMENT:

Thomas Bradley, AAG
Herb Downs, Director of Audit, DHHS

APPEARING ON BEHALF OF THE APPELLANT:

Angela McRae

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits

- HO-1 Notice of Hearing dated October 30, 2013
- HO-2 Order of Reference dated October 22, 2013
- HO-3 Fair Hearing Report Form dated October 8, 2013
- HO-4 Final Informal review Decision dated August 7, 2013
- HO-5 Termination Letter dated March 12, 2013
- HO-6 Letter from hearing officer to parties dated December 20, 2013
- HO-7 Letter from hearing officer to parties dated January 10, 2014

Department Exhibits

- DHHS-1 Order of Reference dated October 22, 2013
- DHHS-2 State of Maine Board of Pharmacy Consent Agreement effective January 4, 2006
- DHHS-3 State of Maine Board of Pharmacy Second Consent Agreement effective October 5, 2006
- DHHS-4 State of Maine Board of Pharmacy Third Consent Agreement effective October 23, 2007
- DHHS-5 Fourth Consent Agreement dated March 10, 2009
- DHHS-6 Notice of Immediate Suspension dated September 22, 2009
- DHHS-7 Decision and Order dated November 9, 2009
- DHHS-8 Fifth Consent Agreement dated March 3, 2011
- DHHS-9 Consent Agreement dated March 3, 2011
- DHHS-10 Notice of Immediate Suspension dated November 3, 2011
- DHHS-11 Decision and Order dated January 12, 2012
- DHHS-12 Notice of Preliminary Denial dated November 5, 2012
- DHHS-13 Consent Agreement dated December 6, 2012
- DHHS-14 Acknowledgement of Receipt of Pharmacist License Renewal dated December 28, 2012
- DHHS-15 Print Out of Disciplinary Actions taken by Board of Pharmacy against Angela McRae
- DHHS-16 Termination Notice from DHHS dated February 19, 2013 (unable to serve)
- DHHS-17 Termination Notice from DHHS dated March 12, 2013
- DHHS-18 Request for Informal Review dated April 30, 2013
- DHHS-19 Acknowledgement of Request for Informal Review dated June 5, 2013
- DHHS-20 Letter from Ms. McRae to Department dated June 12, 2013
- DHHS-21 Informal Review dated August 7, 2013
- DHHS-22 Request for Administrative Hearing dated September 29, 2013
- DHHS-23 Duplicates of Hearing Officer Exhibits
- DHHS-24 Chapter I, Section I, MaineCare Benefits Manual
- DHHS-25 42 CFR Chapter V, Part 1002
- DHHS-26 Closing Argument

Appellant Exhibits

- McRae-1 Request for additional time to submit closing argument

RECOMMENDED FINDINGS OF FACT:

1. Ms. McRae was employed as a pharmacist in November 2005 at the Riverview Psychiatric Center in Augusta.
2. On or about November 3, 2005, The Pharmacy Board received a report that alleged that Ms. McRae illegally diverted a 100 count of Lonamin 30 mg capsules, a controlled substance.
3. The Board obtained a Maine Criminal History Report and a Maine Driver's History Report in regards to Ms. McRae.
4. The reports showed that between November 1994 and November 2002, Ms. McRae was convicted of eight crimes on seven separate occasions.
5. These crimes included two separate convictions for Assault, two separate convictions for OUI, two separate convictions for Disorderly Conduct, one conviction for Criminal Trespass, and one conviction for Operating Under Suspension.
6. Ms. McRae never disclosed these crimes on any of her license application renewals.
7. The Board suspended Ms. McRae's pharmacist license on December 5, 2005 as a result of the alleged diversion of a controlled substance and her failure to report her criminal convictions.
8. On January 4, 2006, The Board, the Attorney General's Office and Ms. McRae entered into a Consent Agreement, which reprimanded Ms. McRae for the violations mentioned above, immediately revoked her license and ordered her to pay a civil penalty of \$1,500.00.
9. On June 7, 2006, Ms. McRae petitioned the Board for reinstatement of her pharmacist license.
10. A second Consent Agreement was executed on October 5, 2006 which included conditions that Ms. McRae abstain from the use of illicit drugs and alcohol, and to undergo treatment and testing for substance abuse.
11. Ms. McRae petitioned the Board on April 7, 2007 to extinguish all conditions imposed by the second Consent Agreement.
12. On April 21, 2007, the Board offered Ms. McRae a third Consent Agreement which relaxed some of the conditions contained in the second Consent Decision.
13. Pursuant to a request from Ms. McRae, a fourth Consent Agreement was executed which modified the third Consent Decision.
14. One of the conditions in the fourth Consent Agreement was for Ms. McRae to abstain from drinking alcohol.
15. On or about August and September 2009, Ms. McRae admitted to the Board that she had, in one evening, consumed five glasses of wine at home.
16. The Board immediately suspended Ms. McRae's pharmacy license on September 22, 2009.
17. A Decision and Order was issued on November 9, 2009, which ruled that Ms. McRae's license would remain suspended until she received two consecutive screens negative for drugs or alcohol.
18. On March 3, 2011 a Consent Agreement was executed based upon an allegation that Ms. McRae created a false patient profile.
19. On November 3, 2011, Ms. McRae's license was suspended due to incompetence and unprofessional conduct, including the failure to check blood test results prior to dispensing a prescription for Clozapine.
20. On January 5, 2012 a Decision and Order was issued which suspended her license until March 1, 2012.

RECOMMENDED DECISION:

The hearing officer recommends that the Commissioner find that the Department was correct when on March 12, 2013, it terminated Angela McRae, R.Ph. from her participation in, and reimbursement from, all medical assistance programs administered by the Department.

REASON FOR RECOMMENDATION:

According to the Department, it has authority to terminate Ms. McRae from participation in the MaineCare program. This authority is separate from that of the Board of Pharmacy to suspend her license or require that she meet certain conditions to maintain her license. According to the Department, Ms. McRae has been a MaineCare provider, because she has worked as a pharmacist at institutions and businesses that dispense medications covered by MaineCare. The Department argues that DHHS has a,

“profound interest and responsibility independent of the Board of Pharmacy in assuring safe, dependable and honest services for MaineCare members. Beyond the Board of Pharmacy’s concerns, the Department’s responsibility include issues of costs, billing practices, and access to controlled substances for which MaineCare pays.” See DHHS-26.

Chapter I, Section 1.19, MaineCare Benefits Manual contains the grounds for sanctioning MaineCare providers. The Department alleges that the following criteria were met in the case of Ms. McRae,

- M. Violation of any laws, regulations or code of ethics governing the conduct of occupations or professions or regulated industries;***
- O. Failure to meet standards required by State or Federal law for participation (e.g. licensure or certification requirements);***
- R. Formal reprimand or censure by an association of the provider's peers for unethical practices;***

The Department argues that Ms. McRae has a long history of failing to abide by the rules and regulations governing her professional license, and she has been formally reprimanded more than once by the Pharmacy Board. See FOF. The Department determined that it could not be secure in Ms. McRae’s ability to provide services to MaineCare members due to this history.

Ms. McRae does admit that she failed to report her criminal offenses to the Board, but argued that many of her other transgressions were mischaracterized by the Board. She argued that she was pressured to sign the Consent Agreements, wherein she admits to the violations, because she wanted to keep her job. She also cited her compliance, for the most part, with the conditions placed upon her by the Board. She explains that she has worked hard in her recovery from alcoholism, and that she is ‘building a new life for herself’. She credits her enrollment in the Medical Professionals Health Program (MPHP), a monitoring and advocacy organization which works with medical professionals dealing with addiction. In evidence were letters from the director of MPHP, Lani Graham, MD, MPH, who reported that Ms. McRae has shown ‘meticulous attention to fulfilling the requirements of the program’, which Dr. Graham describes as ‘quite rigorous’ (including random drug tests). See DHHS-18.

In her closing argument, Ms. McRae asks that the hearing officer focus on the 'positive aspects' of this case. She writes,

“The Board of Pharmacy has concluded that I can practice pharmacy with strict stipulations and guidelines and I intend to do so. As you can see there are many checks and balances for my practice. Please focus on the human being rather than what is posted on black and white papers. I truly (sic) love what I do and I could do so much for the pharmacy community if given the proper chance. I have a good 20 years left to practice. Please let me do so. It will be enough of a hill to climb finding a hiring entity that will work with me. Please do not let this exclusion get in the way.” See McRae-2.

The hearing officer has determined that the Department was correct, and recommends to the Commissioner that she rule in favor of the Department.

Under the rules, there are factors that may be considered in imposing a sanction which include,

- a. Seriousness of the offense(s);***
- b. Extent of violation(s);***
- c. History of prior violation(s);***
- d. Prior imposition of sanction(s);***
- e. Prior provision of provider education;***
- f. Provider willingness to obey MaineCare rules;***
- g. Whether a lesser sanction will be sufficient to remedy the problem; and***
- h. Actions taken or recommended by peer review groups, other payors, or licensing boards. See Chapter 1, Section 1.19-3, MaineCare Benefits Manual.***

The hearing officer has determined that the seriousness of the offenses, the long history of violations, and the prior imposition of sanctions were correctly considered by the Department when it determined that Ms. McRae should be excluded from participation in MaineCare. Ms. McRae has entered into no less than six consent agreements with the Board of Pharmacy which were a direct result of her failure to abide by the rules and regulation of her profession. As a result of these consent agreements, she was reprimanded, ordered to pay fines, ordered to relinquish her license, and was obligated to submit to a variety of conditions. Ms. McRae argues that she was pressured into signing the consent agreements because she wanted to keep her job. However, as the Department points out, she affirmatively admitted to each and every specific allegation contained in those consent agreements. Furthermore there were no less than three Board of Pharmacy Decisions and Orders that made specific findings of fact, and conclusions of law, regarding the violations. Ms. McRae had an opportunity to appeal each of those Decisions and did not do so.

The hearing officer agrees with the Department's concluding statements,


"The Department correctly excluded Ms. McRae from MaineCare participation as a provider based upon her cumulative record. Ms. McRae spoke correct at the hearing when she state that this history is not a measure of her a person, but the Department must consider Ms. McRae's prolonged non-compliance with her professional, ethical requirements to be a measure by which to question Ms. McRae's trustworthiness to serve MaineCare members." See DHHS-26.

In conclusion, the hearing officer recommends that the Commissioner find that the Department was correct when on March 12, 2013, it terminated Angela McRae, R.Ph. from her participation in, and reimbursement from, all medical assistance programs administered by the Department. The Department has a duty to insure that MaineCare providers meet certain standards of practice. The Department has the authority, separate from that of the Pharmacy Board, to sanction those providers that fail to meet those standards of practice. The Department was correct when it determined that Ms. McRae violated laws regulations, and codes of ethics governing her profession. She failed to disclose her criminal convictions. She was found to have diverted a controlled substance. She created a false patient profile. She also failed to meet the standards for her license, including being found professionally incompetent. Lastly she has been reprimanded and sanctioned several times by the Pharmacy Board, and has failed to meet the conditions of at least one Consent Agreement.

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN TWENTY (20) 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 OFFICE 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.

THE INFORMATION CONTAINED IN THIS DECISION IS CONFIDENTIAL. See, e.g., 42 U.S.C. section 1396a(a)(7), 22 M.R.S.A. section 42(2) and section 1828(1)(A), 42 C.F.R. section 431.04, MaineCare Benefits Manual, Ch.1, sec. 1.03-4. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.

Dated: February 14, 2014

Signed: 
Miranda Benedict, Esq.
Administrative Hearing Officer

Cc: Angela McRae, 9 Sergeant Lane, Brunswick, ME 04011
AAG Thomas Bradley, 6 SHS, Augusta ME 04330