



Department of Health
and Human Services

Maine People Living
Safe, Healthy and Productive Lives

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services
Commissioner's Office
221 State Street
11 State House Station
Augusta, Maine 04333-0011
Tel.: (207) 287-3707; Fax (207) 287-3005
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IN THE MATTER OF:

Classic Dentures of Maine)
Joseph Kingston) **FINAL DECISION**
61 Hersey Avenue)
Bangor, ME 04401)

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

The Recommended Decision of Hearing Officer Pickering, mailed June 29, 2015 and the responses and exceptions filed by Classic Dentures have been reviewed.

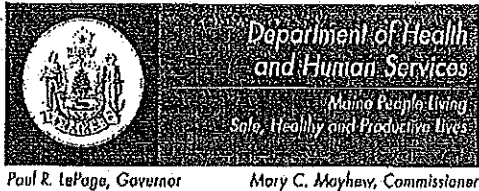
I hereby adopt the findings of fact and I accept the Recommendation of the Hearing Officer that the Department was correct when it determined after a random sample review of 100 MaineCare members that Joseph Kingston, Classic Dentures of Maine, for service dates of 3/1/10 through 5/31/14, submitted and was paid for, claims that exceeded limits, billed and was paid for services not allowed with other procedures billed; submitted duplicate billing, which was paid for; and failed to maintain and retain complete and accurate records that supported services billed. The Department was not correct when it determined that the recoupment amount owed to the Department was \$37,479.30. The recoupment amount owed to the Department is \$33,656.41.

DATED: 8/28/15 SIGNED: Mary C. Mayhew
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
Janie Turner, DHHS/Program Integrity



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

DATE MAILED: **JUN 29 2015**

In Re: Classic Dentures of Maine—Joseph Kingston, LD—Appeal of Final Informal Review
dated January 20, 2015

RECOMMENDED DECISION

On June 3, 2015, Hearing Officer Joseph Pickering, Esq. held a *de novo* administrative hearing at Bangor, Maine in the case of Classic Dentures of Maine—Joseph Kingston, LD. By special appointment, the Commissioner of the Department of Health and Human Services conferred jurisdiction to the Hearing Officer. The Hearing Officer left the record open until June 24, 2015 for the parties to submit written arguments, which both parties did.

FACTUAL BACKGROUND AND ISSUE:

On or about July 28, 2014, the Department of Health and Human Services, Division of Audit, Program Integrity (the "Department") notified Joseph Kingston that based upon improper billing and inadequate records it sought a recoupment of \$87,451.70 for MaineCare claims paid between March 1, 2010 and May 31, 2014. In response, Dr. Kingston provided additional information and comments. On or about January 20, 2015, the Department notified Joseph Kingston that it was reducing the recoupment amount to \$37,479.30 for MaineCare claims paid between March 1, 2010 and May 31, 2014.

On or about March 17, 2015, Dr. Kingston appealed. Pursuant to an Order of Reference dated April 6, 2015, this matter was assigned by James D. Bivins, Esq., Chief Administrative Hearing Officer to the undersigned Hearing Officer to conduct an administrative hearing and to submit to the Commissioner written findings of fact and recommendations on the following issue:

Was the Department correct when it determined after a random sample review of 100 MaineCare members that Joseph Kingston, Classic Dentures of Maine, for service dates of March 1, 2010 through May 31, 2014, submitted and was paid for, claims that exceeded limits, billed and was paid for services not allowed with other procedures billed; submitted duplicate billing, which was paid for; and failed to maintain and retain complete and accurate records that supported services billed; with the resulting recoupment amount being owed to the department in the amount of \$37,479.30?

APPEARING ON BEHALF OF APPELLANT:

Joseph Kingston, LD
Challie Kingston

APPEARING ON BEHALF OF AGENCY:

Thomas Bradley, AAG
Janie Turner
Lisa Allocco
Greg Nadeau

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1. Notice of Hearing dated 04/08/2015
- HO-2. Order of Reference dated 04/06/2015
- HO-3. Fair Hearing Report dated 03/30/2015
- HO-4. Letter of Joseph Kingston dated 03/17/2015
- HO-5. DHHS letter dated 01/20/2015 without attachment
- HO-6. DHHS letter dated 07/28/2014 without attachment
- HO-7. Letter of Joseph Pickering, Esq. dated 06/04/2015

Department Exhibits:

- D-1. Order of Reference dated 04/06/2015
- D-2. Notice of Violation Letter dated 07/28/2014 with attachment
- D-3. Letter from Provider dated 09/09/2014
- D-4. Letter from Provider dated 10/12/2014
- D-5. Letter from Provider dated 10/12/2014 with lab slips
- D-6. MaineCare Benefits Manual, Chapter I—Effective date 01/11/2010
- D-7. MaineCare Benefits Manual, Chapter I—Effective date 11/16/2010
- D-8. MaineCare Benefits Manual, Chapter I—Effective date 02/13/2011
- D-9. MaineCare Benefits Manual, Chapter I—Effective date 03/26/2013
- D-10. MaineCare Benefits Manual, Chapter I—Effective date 06/30/2013
- D-11. MaineCare Benefits Manual, Chapter I—Effective date 01/01/2014
- D-12. MaineCare Benefits Manual, Chapter II, Section 25—Effective date 01/01/2010
- D-13. MaineCare Benefits Manual, Chapter II, Section 25—Effective date 08/09/2010
- D-14. MaineCare Benefits Manual, Chapter II, Section 25—Effective date 07/01/2014
- D-15. MaineCare Benefits Manual, Chapter III, Section 25—Effective date 01/01/2010
- D-16. MaineCare Benefits Manual, Chapter III, Section 25—Effective date 08/09/2010
- D-17. MaineCare Benefits Manual, Chapter III, Section 25—Effective date 07/01/2014
- D-18. Blank
- D-18A. Dental Billing Instructions—Effective Date: 08/2009
- D-18B. Dental Billing Instructions—Effective Date: 08/13/2010
- D-18C. Dental Billing Instructions—Effective Date: 10/18/2010
- D-18D. Dental Billing Instructions—Effective Date: 05/16/2012
- D-18E. Dental Billing Instructions—Effective Date: 02/21/2014
- D-18F. Dental Billing Instructions—Effective Date: 06/03/2014

- D-18G. Dental Claim Form Instructions
- D-19. Final Informal Review Decision Letter dated 01/20/2015 with attachment
- D-20. Record of Member: with related spreadsheet excerpt
- D-21. Record of Member: with related spreadsheet excerpt
- D-22. Record of Member: with related spreadsheet excerpt
- D-23. Record of Member: with related spreadsheet excerpt
- D-24. Record of Member: with related spreadsheet excerpt
- D-25. Record of Member with related spreadsheet
- D-26. Record of Member: with related spreadsheet
- D-27. Record of Member: with related spreadsheet
- D-28. Record of Member: with related spreadsheet.
- D-29. Record of Member: with related spreadsheet
- D-30. Record of Member: with related spreadsheet
- D-31. Request for Administrative Hearing dated 03/17/2015
- D-32. MaineCare/Medicaid Provider Agreement dated 02/11/2010
- D-33. Letter of Thomas Bradley, AAG dated 06/05/2015
- D-34. Department's Brief

Appellant Exhibits:

- A-1. Letter of Classic Dentures dated 04/02/2014 with DHHS letter dated 03/12/2014
- A-2. Letter of Joseph Kingston dated 07/07/2014
- A-3. DHHS letter dated 10/01/2014
- A-4. Letter of Joseph Kingston dated 02/27/2015 with records
- A-5. Letter of Joseph Kingston dated 02/26/2015
- A-6. Classic Dentures of Maine's Brief

RECOMMENDED FINDINGS OF FACT:

1. Notice of these proceedings was given in a timely and adequate manner. Joseph Kingston made a timely appeal.
2. Joseph Kingston, LD, PhD is the owner of Classic Dentures of Maine.
3. On February 11, 2010, Classic Dentures of Maine was approved as a MaineCare provider for denture services.
4. Joseph Kingston agreed to follow MaineCare billing policies.
5. In July 2014, the Department started an audit of Classic Dentures of Maine for MaineCare claims paid between March 1, 2010 and May 31, 2014.
6. The audit consisted of a true random sample of 100 MaineCare claims paid between March 1, 2010 and May 31, 2014.
7. During the audit period, the Department paid Classic Dentures of Maine a total of \$249,862.00 for its MaineCare claims.
8. For the random sample, the Department paid Classic Dentures of Maine a total of \$40,452.00 for MaineCare claims.

9. During the audit period, Classic Dentures of Maine submitted and was paid for claims that exceeded limits.
10. During the audit period, Classic Dentures of Maine billed and was paid for services not allowed with other procedures billed.
11. During the audit period, Classic Dentures of Maine submitted duplicate billing, which was paid for by the Department.
12. During the audit period, Classic Dentures of Maine failed to maintain and retain complete and accurate records that supported services billed.
13. For the Final Informal Review, the Department found that a total of \$5,935.00 should be recouped.
14. The Final Informal Review was accurate with the exception of claims regarding
15. The claim for _____ should have been allowed resulting in reduction in the amount of recoupment by \$26.00.
16. Dr. Kingston did not double bill for _____. The claim for _____ should have been allowed resulting in reduction in the amount of recoupment by \$57.00.
17. Dr. Kingston did maintain proper supporting records for _____. The claim for _____ should have been allowed resulting in reduction in the amount of recoupment by \$400.00.
18. The recoupment amount for the random sample should be \$5,452.00.

RECOMMENDED DECISION:

The Department was correct when it determined after a random sample review of 100 MaineCare members that Joseph Kingston, Classic Dentures of Maine, for service dates of March 1, 2010 through May 31, 2014, submitted and was paid for, claims that exceeded limits, billed and was paid for services not allowed with other procedures billed; submitted duplicate billing, which was paid for; and failed to maintain and retain complete and accurate records that supported services billed. The Department was not correct when it determined that the recoupment amount owed to the Department was \$37,479.30. The recoupment amount owed to the Department is \$33,656.41.

REASON FOR RECOMMENDATION:

Dr. Kingston argued that the audit process itself was faulty and he had objections to specific findings by the Department. The Hearing Officer will first address the issues with the audit process.

MaineCare Benefits Manual, Chapter I, Section 1.18 states:

The Program Integrity Unit, Division of Audit and/or the Department's Authorized Agent are responsible for surveillance and referral activities that may include, but are not limited to: ...

C. an extrapolation from a random sampling of claims submitted by a provider and paid by MaineCare ...

The Department and its professional advisors regard the maintenance of adequate clinical and other required financial and product-related records as essential for the delivery of quality care. In addition, providers should be aware that comprehensive records, including but not limited to: treatment/service plans, progress notes, product and/or service order forms, invoices, and documentation of delivery of services and/or products provided are key documents for post-payment reviews. In the absence of proper and comprehensive records, no payment will be made and/or payments previously made may be recouped.

Janie Turner testified. Ms. Turner conducted the audit of Classic Dentures of Maine. She testified that she performed the audit personally and directly supervised Patty Davignon, who was briefly involved in the audit process.

Ms. Turner testified that the Department initially became involved due to a complaint. As a result of the complaint, the Department requested records regarding fifteen members. The Department did not make any findings regarding the complaint. Ms. Turner testified that while reviewing the fifteen files she had concerns that there might be some billing issues regarding house calls and broken teeth. As a result of these concerns, Ms. Turner decided to do a random sample of 100 member files from Classic Dentures of Maine.

Dr. Kingston disputed whether the sample was random. Ms. Turner was extensively asked about the random nature of the sample. She testified that she used an Excel computer program to select on a random basis 100 members from all of Dr. Kingston's MaineCare clients during the audit period. She denied that the original fifteen members were excluded from the sample pool.

Dr. Kingston believed that the Department had excluded the original fifteen members from the pool. He also believed that the Department had selected certain factors for the random sample. He believed that the Department had selected files looking for house calls and broken teeth. Dr. Kingston based this belief on conversations that he had had with Patty Davignon and Ms. Turner. Dr. Kingston could not recall the exact specifics of the conversations. He testified that Ms. Davignon and Ms. Turner stated that they had not been able to glean the information that they were looking for and wanted to pull more files to look for issues with house calls and broken teeth.

Other than the conversations with the Department, Dr. Kingston did not present any evidence that the sample was not random. The Hearing Officer finds that the sample was random. Although the conversations could be construed as excluding the original fifteen files, the conversations are also consistent with Ms. Turner's testimony. Based upon the review of the original fifteen files, the Department decided it needed to review additional files. Even if the chosen random sample had included the original fifteen files, there would have been an additional eighty-five files. Ms. Turner testified that the Department wanted to look at issues regarding house calls and broken teeth. It does not necessarily follow that the Department then set up a factor search that would pull files regarding house calls and broken teeth. Given Ms.

Turner's clear testimony that she requested a true random sample, the Hearing Officer concludes that a random sample was taken.

Dr. Kingston was also very interested in the original complaint and sought information regarding the original complaint. The Hearing Officer determined that the issues regarding the original complaint were not relevant to the hearing regarding the audit. The Department did not issue any findings regarding the original complaint. The Department did not take any action regarding the original complaint. Although the Hearing Officer understands why Dr. Kingston would like to know the details of the complaint, the details of the complaint do not help the Hearing Officer determine the audit issues.

For the Final Informal Review, the Department determined an error rate of 15%. The Department found that a total of \$5,935.00 should be recouped. For the random sample, a total of \$40,452.00 had been paid by MaineCare. $\$5,935.00 \div \$40,452.00 = 0.146$. The Department rounded up to 15%. The total amount of MaineCare claims paid during the audit period was \$249,862.00. $\$249,862.00 \times 0.15 = \$37,479.30$. See Exhibit D19.

Dr. Kingston argued against using an error rate from the random sample. He argued that the overpayment should be limited to the amount of claims actually proven in the random sample. In determining the amount of a recoupment, MaineCare Benefits Manual, Chapter I, Section 19-4(C) states, "C. The method of computing such dollar value may be from: 1. extrapolation from a systematic random sampling of records, 2. a calculation from a selective sample of records, or 3. a total review of all records."

The MaineCare Benefits Manual clearly allows an extrapolation from a random sample. The Hearing Officer does not believe it is reasonable to require the Department to perform a total review of all records. The total amount of MaineCare claims during the audit period is \$249,862.00, which is over six times the amount of claims for the random sample. The Hearing Officer has found that the audit sample was not a selective sample but rather a random sample. Given the authority to use an extrapolation from a random sample and the Hearing Officer's finding that the sample is a true random sample, the Hearing Officer concludes it is appropriate to use an extrapolation from the audit sample to determine the recoupment amount.

Dr. Kingston testified that in general he did not dispute the accuracy of the audit sample. Dr. Kingston testified that with a few exceptions he thought the audit sample was accurate. Dr. Kingston made this point while testifying that he thought the recoupment should be limited to the amounts proven in the audit sample and not for the purposes of determining an error rate. As noted above, the Hearing Officer has rejected Dr. Kingston's argument that the audit sample should not be used for an error rate. In general, the Hearing Officer finds that the audit sample was accurate. The Hearing Officer will address Dr. Kingston's specific objections further below.

Although Dr. Kingston testified that in general he did not dispute the accuracy of the audit sample, he did make some general objections or complaints. The MaineCare Benefits Manual limits billing for adjustment, relining, or rebasing dentures to once after six months and then once every three years from the date of delivery. See MaineCare Benefits Manual, Chapter II, Section 25.03. Dr. Kingston argued that these limitations were not in the best interests of the patient. To the extent that Dr. Kingston claims that the best interests of the patient should warrant additional billing, the Hearing Officer rejects this argument. The language of the MaineCare Benefits Manual is clear.

Dr. Kingston billed for adjustments when he did a reline or a rebase. See Exhibits D24 and D25. The Department did not allow for the billing for the adjustment. Ms. Turner testified that she consulted with the Department's dental director regarding the propriety of billing for an adjustment when doing a reline or rebase. Ms. Turner stated that the dental director stated that an adjustment was a necessary part of a reline or rebase so it should not be billed separately.

Dr. Kingston noted that the dental director's opinion is not part of the MaineCare Benefits Manual and therefore is not valid. Dr. Kingston himself testified that an adjustment is part of the process of doing a relining or a rebasing. Given Dr. Kingston's testimony and the opinion of the dental director, the Hearing Officer concludes that an adjustment is part of the process of doing a relining or a rebasing and should not be billed separately.

In his argument, Dr. Kingston made much of the fact that the initial error rate was 35%, which was later reduced to 15% in the Final Informal Review. The Hearing Officer notes that Dr. Kingston is much at fault for the initial error rate. Ms. Turner testified that when the Department started the audit process, the Department requested Dr. Kingston to send all of his medical records for the audited files. Dr. Kingston did not send all of the records. He testified that he did not send in the lab slips until he requested an informal review. See also Exhibit D5. Ms. Turner testified that after the Department received the lab slips the Department adjusted the error rate downward. If Dr. Kingston had sent in all of the medical records when he was initially asked, it is unlikely that the initial error rate would have been so high.

Dr. Kingston did dispute some of the Department's finding in the Informal Review. At the hearing, the Department stipulated that the claim described in Exhibit D27 should have been allowed. Exhibit D27 sought an overpayment for \$26.00 for an adjustment. The audit error amount should be reduced by \$26.00.

In Exhibit D26, Dr. Kingston charged for a repair of a broken denture on two occasions for the same patient. The patient was [REDACTED]. The Department allowed for one charge and sought recoupment for the second charge claiming it was a double billing. See Exhibit D26.

Dr. Kingston testified that he did two separate repairs. He testified that he did a repair for a lower denture and then did a repair for an upper denture. Dr. Kingston testified that the symbol "L" means lower denture and "U" means upper denture. Dr. Kingston had submitted two claims. The first claim stated the service was provided on [REDACTED]. The second claim stated the service was provided on [REDACTED] 2012. The Department allowed the claim for [REDACTED] 2012 as the medical records supported a repair on [REDACTED] 2012. See Exhibit D26. The records did not support a repair for [REDACTED]/2012. The Department argued that Dr. Kingston did not bill for the second repair.

Under the column of TCN, the claims have a string of numbers. The first claim, which has a date of service of [REDACTED] 2012, has the number [REDACTED] in the TCN column. Ms. Turner testified that the number refers to the date that the claim was submitted. "12" refers to the year—2012. She testified that the [REDACTED] refers to the day of the year on which the claim was submitted. The second claim, which has a date of service of [REDACTED], has the number [REDACTED] in the TCN column. See Exhibit D26. The Department confirmed that the claim with the number [REDACTED] would have been received on [REDACTED], 2012. See Exhibit D33. Based upon reviewing the TCN column, the Hearing Officer concludes the second claim, the [REDACTED] 2012 claim, was submitted four days after the first claim, the [REDACTED] 012 claim.

The medical records supporting the claims show that on [REDACTED] 2012 Dr. Kingston repaired the lower denture. On [REDACTED] 2012, Dr. Kingston dropped off the repaired upper denture. See Exhibit D26.

The Hearing Officer concludes that the most likely scenario is that Dr. Kingston repaired the lower denture on [REDACTED] 2012. This repair was billed on [REDACTED] 2012, which was the [REDACTED] day of the year. Dr. Kingston then repaired the upper denture on [REDACTED] 2012. This repair was billed on [REDACTED] 2012, the [REDACTED] day of the year. When the second repair was billed, it is likely that the date of service was incorrectly inputted. Instead of [REDACTED] 2012" being inputted, "[REDACTED] 2012" was mistakenly inputted. The [REDACTED] was accidentally dropped from the date of service. The Hearing Officer does not believe that there was a double bill. The Hearing Officer concludes that the [REDACTED] was accidentally left out of the date of service. The Hearing Officer finds that second service should be allowed. The amount of the recoupment was \$57.00. See Exhibit D26.

Dr. Kingston also disputed the denial of his services for [REDACTED]. In the Final Informal Review, the Department denied the claim for [REDACTED] for the following reason, "No additional documentation submitted. No tooth numbers listed on claim as required. Finding upheld." See Exhibit D19. Ms. Turner testified that Department upheld the denial on the basis of no tooth numbers being identified in the medical records. Ms. Turner testified that the claims did in fact have the tooth numbers listed and that she had made a "cut and paste" error. The claims clearly had the tooth numbers listed as the tooth numbers are noted in the Final Informal Review. See Exhibit D19.

Ms. Turner testified that Dr. Kingston did not send in the lab slip showing the tooth numbers for [REDACTED]. Ms. Turner testified that she double checked the file and no lab slip for [REDACTED] was submitted.

Dr. Kingston testified that he did send in the lab slip for [REDACTED] when he sent in the lab slips. Dr. Kingston submitted a copy of the lab slip. The lab slip provided by Dr. Kingston shows the tooth numbers. See Exhibit A4.

The letter from Dr. Kingston to the Department about the lab slips does reference the lab slips for [REDACTED]. See Exhibit D4. It is certainly possible that Dr. Kingston neglected to include the lab slips when he sent them in. It is also possible that the Department accidentally misplaced the lab slips. Since this a de novo review, the issue is not critical. The lab slips were submitted at the hearing and entered without any objection by the Department. In its argument, the Department did raise some question about the validity of the lab slips. The Hearing Officer finds Dr. Kingston to be credible on this point. The Hearing Officer finds that the lab slips in Exhibit A4 are the lab slips for [REDACTED]. Since the lab slips do identify the tooth numbers, the Hearing Officer finds that this claim should have been allowed. This recoupment was for \$400.00 (\$50.00 per tooth for eight teeth).

As noted above, the Department found that a total of \$5,935.00 should be recouped from the audit sample. The Department agreed that the recoupment from the audit sample should be reduced by \$26.00. As noted above, the Hearing Officer has found that the recoupment should be reduced by \$57.00 for the claim for [REDACTED]. As noted above, the Hearing Officer has found that the recoupment should be reduced by \$400.00 for the claims for [REDACTED]. \$5,935.00 minus \$26.00 minus \$57.00 minus \$400.00 equals \$5,452.00. For the random sample, a total of \$40,452.00 had been paid by MaineCare. \$5,452.00 divided by \$40,452.00 equals

13.47%. The total amount of MaineCare claims paid during the audit period was \$249,862.00. \$249,862.00 times 0.1347 equals \$33,656.41.

For all of the above reasons, the undersigned Hearing Officer recommends that the Commissioner find that the Department was correct when it determined after a random sample review of 100 MaineCare members that Joseph Kingston, Classic Dentures of Maine, for service dates of March 1, 2010 through May 31, 2014, submitted and was paid for, claims that exceeded limits, billed and was paid for services not allowed with other procedures billed; submitted duplicate billing, which was paid for; and failed to maintain and retain complete and accurate records that supported services billed. The Hearing Officer recommends that the Commissioner find that the Department was not correct when it determined the resulting recoupment amount being owed to the Department in the amount of \$37,479.30. The Hearing Officer recommends that the Commissioner finds that the recoupment amount owed to the Department is \$33,656.41.

MANUAL CITATIONS:

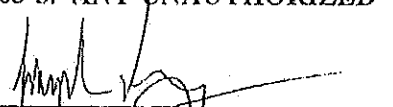
MaineCare Benefits Manual, Chapter I
MaineCare Benefits Manual, Chapter II

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 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 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.

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 431.304, MaineCare Benefits Manual, Ch.1, sec. 1.03-5. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.

DATED: June 26, 2015

SIGNED: _____


Joseph M. Pickering, Esq.
Administrative Hearing Officer
Division of Administrative Hearings

cc: Joseph Kingston, 61 Hersey Ave., Bangor, ME 04401
Thomas Bradley, AAG, Office of the Attorney General
Jane Turner, Program Integrity



STATE OF MAINE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF ADMINISTRATIVE HEARINGS
11 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0011

JOHN ELIAS BALDACCI
GOVERNOR

JOHN R. NICHOLAS
COMMISSIONER

TO: John R. Nicholas, Commissioner
Department of Health and Human Services
221 State Street
11 State House Station
Augusta, ME 04333

In Re: Gentiva Health Services--Disputed Overpayments to Gentiva Health Services

RECOMMENDED DECISION

An administrative hearing was held on May 11, 2005, at Lewiston, Maine in the case of Gentiva Health Services before Michael L. LeBlanc, Administrative Hearing Officer. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services.

CASE BACKGROUND AND ISSUE:

On or about May 14, 2004, the Department of Health and Human Services, Bureau of Medical Services, Surveillance and Utilization Review Unit¹ (the "Department") notified Gentiva Health Services that it intended to sanction Gentiva Health Services by recouping an alleged overpayment of MaineCare benefits in the amount of \$173,534.76. Gentiva Health Services appealed. Pursuant to an Order of Reference dated January 31, 2005, this matter was assigned by James D. Bivins, Esq., Chief Administrative Hearing Officer to the undersigned Hearing Officer to conduct an administrative hearing and to submit to the Commissioner written findings of fact and recommendations on the following issue:

Was the Department correct when it determined Gentiva Health Services received excess payments for care and services provided under the MaineCare Program and sanctioned them in the amount of \$173,534.76? See, Exhibit HO-3.

APPEARING ON BEHALF OF APPELLANT:

John N. Camperlengo, Esq.
Susanne Cahill, Esq.
Ruth Patzer
Monica Hullinger

APPEARING ON BEHALF OF AGENCY:

Christopher Mann, AAG
Nancy Holt

¹ Now known as Program Integrity.

Carole Kus, RN
Jenny Longley

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1. Rescheduling Notice dated 3/29/05
- HO-2. Notice of Hearing dated 2/3/05
- HO-3. Order of Reference dated 1/31/05
- HO-4. Acknowledgment of Request for Hearing dated 10/25/04
- HO-5. Request for Hearing dated 10/14/04
- HO-6. Hearing Report dated 1/24/05

Department Exhibits:

- DHHS-1. Provider Agreement with ██████; DHS ██████-Gentiva Home Health Care License
- DHHS-2. Recoupment Letter to Gentiva Health Services
- DHHS-3. Chapters II and III, Section 96, Private Duty Nursing & Personal Care Services, Maine Medical Assistance Manual; Chapter I, Section 1, General Administrative Policies & Procedures: Section 1.03 – Provider Participation, Section 1.16 – Surveillance, Section 1.19 – Sanctions
- DHHS-4. Gentiva Health Services – Request for Informal Review
- DHHS-5. DHHS Informal Review Acknowledgment
- DHHS-6. DHHS Informal Review Decision
- DHHS-7. Samples of Skilled Nursing Reports/Employee Time Records from Gentiva Health Services, Employee Name: ! ↓
- DHHS-8. Medical Eligibility Determination dated 2/16/01
- DHHS-9. Medical Eligibility Determination dated 5/4/02
- DHHS-10. Medical Eligibility Determination dated 5/6/03
- DHHS-11. Medical Eligibility Determination dated 4/23/04

RECOMMENDED FINDINGS OF FACT:

1. Notice of these proceedings was given timely and adequately. Gentiva Health Services made timely appeal.
2. Gentiva Health Services provided Private Duty Nursing Services, within the meaning of MaineCare Benefits Manual, Chapter II, Section 96,² to ██████ during the period ██████ 2001 through ██████ 2004, which is the period at issue.
3. During the period at issue, ██████ was a qualified recipient of Private Duty Nursing and Personal Care Services through the MaineCare Program.

² “Private Duty Nursing Services” are those services which are provided by a registered nurse and/or a licensed practical nurse, in accordance with the Board of Nursing Regulations, under the direction of the client’s physician, to a client in his or her place of residence or outside the client’s residence, when required life activities take the client outside his or her residence (school, preschool, daycare, medical appointments, etc.). ... See, MaineCare Benefits Manual §96.01-3.

4. The private duty nursing services were provided by [REDACTED], a registered nurse who was employed by Gentiva Health Services during the period at issue. It is undisputed that the services provided were required by [REDACTED], that they were authorized, and that [REDACTED] actually provided the services billed to MaineCare.
5. [REDACTED] is [REDACTED] grandmother.
6. During the period at issue, the Department reimbursed Gentiva Health Services a total of \$173,534.76 for private duty nursing services provided to [REDACTED] by [REDACTED].
7. The Department has reimbursed to the Federal Medicaid Program approximately two-thirds of the \$173,534.76.

RECOMMENDED DECISION:

The Department **was correct** when it determined Gentiva Health Services received excess payments for care and services provided under the MaineCare Program and sanctioned them in the amount of \$173,534.76.

REASON FOR RECOMMENDATION:

Because the registered nurse who provided the private duty nursing services to [REDACTED] during the period at issue, [REDACTED] is [REDACTED] grandmother, those services are not MaineCare reimbursable through the Private Duty Nursing and Personal Care Services Program.

The following services are not reimbursable under this Section:

D. Nursing services when provided by the recipient's husband or wife, natural or adoptive parent, child, or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent or grandchild, spouse of grandparent or grandchild or any person sharing a common abode as part of a single family unit. See, MaineCare Benefits Manual §96.05(D). Underlining added.

Gentiva Health Services' argued that §96.05(D) should be interpreted as not applying to the services provided by [REDACTED] because [REDACTED] provided private duty nursing services and §96.05(D) applies to nursing services. This argument is rejected. Nursing services are interpreted to mean 'services which are provided by a registered nurse and/or a licensed practical nurse, in accordance with the Board of Nursing Regulations, under the direction of the client's physician, to a client.' When nursing services are provided in the client's home, as is the case here, they meet MaineCare's definition of private duty nursing services. Furthermore, since MaineCare Benefits Manual §96: Private Duty Nursing and Personal Care Services does not contain a definition for the term, "nursing services" that differentiates it from its definition of "private duty nursing services," those terms must be interpreted as meaning one and the same.

Gentiva Health Services argues that it understood that the Department had waived the policy prohibiting reimbursement for nursing services provided to [REDACTED] by [REDACTED] grandmother. The only evidence provided by Gentiva Health Services to support this understanding is that Ruth Patzer testified that her clinical manager, Gail Lyons told her that she received the information

from Jenny Longley, a Data Control Specialist for the Department during the period at issue. Ms. Longley denies ever providing that advice to anyone. Nor was she authorized by the Department to provide such advice or make such decisions. Although hearsay can be admitted into an administrative hearing record, testimony that, 'This person told that person who told me,' is not "the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs."³ Therefore, the testimony is not credited, leaving no evidence supporting Gentiva Health Services' argument that the Department waived its policy.

Gentiva Health Services also argues that it is unfair for the Department to recoup the \$173,534.76 as an overpayment because, "The State got what it paid for in this case." This is not entirely accurate. The Medicaid Program is jointly funded by State and Federal dollars under Title XIX of the Social Security Act. In Maine the program is known as MaineCare, and must conform to certain Federal regulations to be eligible for Federal matching funds. That is why the Department was required to reimburse the Federal Medicaid Program for the approximate two-thirds of the \$173,534.76 that the Department was not authorized to receive because it was paid out for services not authorized by the MaineCare Program. Succinctly put, the Department paid \$173,534.76 for services that should have only cost the State of Maine approximately \$57,844.92 had Gentiva Health Services not violated MaineCare policy in the provision of those services. Gentiva Health Services is required by MaineCare Benefits Manual Chapter I §1.03(Q) to comply with the requirements of the MaineCare Benefits Manual. It did not do so in billing MaineCare for services provided to [REDACTED] pursuant to §96 that were provided by [REDACTED] grandmother. MaineCare Benefits Manual, Chapter I §1.19 provides for the Department to recoup any overpayments made to a provider. It is fair for the Department to recoup such overpayment.

For all the reasons stated above, it is recommended that the Commissioner affirm the Department's Recoupment Notice dated May 14, 2004.

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS WITHIN TWENTY (20) DAYS OF RECEIPT OF THIS RECOMMENDED DECISION. THIS TIME FRAME MAY BE ADJUSTED BY AGREEMENT OF THE PARTIES. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE OFFICE OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.

Dated: June 6, 2005

Signed: _____
Michael L. LeBlanc
Administrative Hearing Officer
Office of Administrative Hearings

³ See, 5 M.R.S.A. §9057(2).

cc: John N. Camperlengo, Esq., Assistant Vice-President, Gentiva Health Services, 3
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