

Janet T. Mills
Governor



Jeanne M. Lambrew, Ph.D.
Commissioner

Maine Department of Health and Human Services
Commissioner's Office
11 State House Station
109 Capitol Street
Augusta, Maine 04333-0011
Tel.: (207) 287-3707; Fax: (207) 287-3005
TTY: Dial 711 (Maine Relay)

IN THE MATTER OF:

Wayne Getchell)
d/b/a Getchell Foster Home) **FINAL DECISION**
)
)

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

The Recommended Decision of Hearing Officer Diebold, mailed June 29, 2020 and the responses and exceptions submitted on behalf of Getchell Foster Home and the Department 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 Wayne Getchell d/b/a Getchell Foster Home on a credible allegation of fraud.

DATED: 7-26-20 SIGNED: *Jeanne M. Lambrew*
JEANNE M. LAMBREW, Ph.D., 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: Ferdinand Slater, Esq., PO Box 1854, Ellsworth, ME 04605
Halliday Moncure, AAG
William Logan, OMS

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Commissioner



Maine Department of Health and Human Services
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TO: Jeanne M. Lambrew, Ph.D., Commissioner
Department of Health and Human Services
109 Capitol Street
11 State House Station
Augusta, ME 04333

DATE MAILED: JUN 29 2020

In Re: Getchell Foster Home

RECOMMENDED DECISION

On 5/13/2020 and 5/29/2020, Hearing Officer Thomas Diebold, Esq., held an administrative hearing telephonically in the case of Getchell Foster Home. The Commissioner of the Department of Health and Human Services ("the Department") conferred jurisdiction to the Hearing Officer by special appointment. The record closed on 6/5/2020.

FACTUAL BACKGROUND AND ISSUE:

Getchell Foster Home is an agency licensed by the Department to provide residential care services to disabled adults at _____, Maine. As of 9/12/2019, it is owned and operated solely by Wayne Getchell. By letter dated 1/14/2020, Wayne Getchell was notified by Program Integrity within the Department that all MaineCare payments were suspended based on the determination there was a credible allegation of fraud with no good cause exception. The general allegations of fraud asserted were:

- Billing for services not rendered
- Utilizing a client to provide services and take care of other clients
- Utilizing an excluded individual to provide services that are billed to MaineCare.

On 1/27/2020, Wayne Getchell requested an informal review as soon as possible. Mr. Getchell asserted that the impact on all six clients would be detrimental, and in particular to two clients who had resided with Getchell Foster Home for 28 years and 30 years respectively. Mr. Getchell also asserted he employed 11 staff members to care for these clients.

On 2/6/2020, the Department completed a Final Informal Review Decision. The decision cited the MaineCare Benefits Manual ("MBM"), Ch. I, Sec. 1, §1.20-1, and noted that "any issues not raised in the written request for an informal review are waived in subsequent appeal proceedings and the request for informal review may not be amended to add further issues." The Final Informal Review Decision upheld the prior decision that a credible allegation of fraud existed, and there was no good cause to not suspend payments. Appeal rights were provided to Mr. Getchell.

On 2/18/2020, through correspondence from Attorney Stephen Smith to Commissioner Lambrew, Mr. Getchell appealed the Final Informal Review Decision. Mr. Getchell asserted there was a due process violation and he requested three days for hearing.

Pursuant to an Order of Reference dated 2/21/2020, this matter was assigned by the 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:

(1) Was the Department correct when it suspended payments to Wayne Getchell d/b/a Getchell Foster Home based on a credible allegation of fraud?

On 2/21/2020, the Division of Administrative Hearings sent a notice for a case management conference for 2/27/2020. A schedule was determined during the case management conference for the identification of witnesses and exchange of exhibits and pre-hearing memorandum, with the Department submitting a pre-hearing memo by 3/2/2020, and a response from Mr. Getchell by 3/6/2020. The parties were additionally ordered to expunge personally identifiable information from exhibits and to refer to Maine Rule of Evidence 1006 regarding voluminous exhibits as a guide. By notice dated 2/21/2020, the Division of Administrative Hearings scheduled the matter for hearing on 3/11/2020.

The Department submitted a pre-hearing memo on 3/2/2020. On 3/5/2020, Attorney Smith provided Mr. Getchell's witness and exhibit list, and referenced exhibits provided by the Department.

On 3/9/2020, Attorney Smith moved to continue the hearing scheduled for 3/11/2020 and requested to withdraw as Mr. Getchell's attorney. The request to continue was granted conditionally upon affirmation from Mr. Getchell he was waived his request for expedited process. Because no affirmation was received, the matter went forward to hearing on 3/11/2020.

On 3/11/2020, Mr. Getchell appeared accompanied by new counsel, Ferdinand Slater, Esq. At Mr. Getchell's request and with the understanding that his request for an expedited process was waived, the hearing was continued to 5/13/2020. At hearing, various objections to proposed exhibits were heard and resolved, and the Department proceeded with questioning of its only witness, William Logan.

The hearing was not completed on 5/13/2020 and was continued to 5/29/2020 for Mr. Getchell to complete cross-examination of Mr. Logan and to present testimony from Mr. Getchell.

The record closed on 6/5/2020 for submission of closing statements by the parties.

APPEARING ON BEHALF OF APPELLANT:

Ferdinand Slater, Esq.
Wayne Getchell

APPEARING ON BEHALF OF AGENCY:

Halliday Moncure, Esq., AAG
William Logan, Esq., Acting Director of Office of MaineCare Policy

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1. Letter from Division of Administrative Hearings to Wayne Getchell scheduling case management conference dated 2/21/2020
- HO-2. Order of Reference by Chief Administrative Hearing Officer dated 2/21/2020
- HO-3. Fair Hearing Report Form prepared 2/20/2020
- HO-4. Letter from Stephen Smith Esq., on behalf of Wayne Getchell to Commissioner Lambrew dated 2/18/2020
- HO-5. Notice of Suspension of Medicaid Payments from Program Integrity to Wayne Getchell dated 1/14/2020
- HO-6. Request for Informal Review by Wayne Getchell dated 1/27/2020
- HO-7. Final Informal Review Decision dated 2/6/2020
- HO-8. Scheduling email dated 2/27/2020
- HO-9. Notice of hearing dated 2/27/2020
- HO-10. Pre-hearing order dated 2/27/2020
- HO-11. Pre-hearing memorandum from the Office of Attorney General dated 3/2/2020
- HO-12. Witness and Exhibit List for Wayne Getchell, from Stephen Smith, Esq., dated 3/5/2020
- HO-13. Letter enclosing Department's exhibits dated 3/4/2020
- HO-14. Email with letter of withdrawal and request for continuance from Stephen Smith, Esq.
- HO-15. Email to all parties re: request for continuance and enclosed letter dated 3/9/2020
- HO-16. Letter to all parties from Hearing Officer dated 3/9/2020
- HO-17. Email to all parties re: scheduling dated 3/10/2020
- HO-18. Entry of Appearance and Motion to Continue dated 3/10/2020
- HO-19. Pre-hearing order amendment dated 3/11/2020
- HO-20. Email to all parties re: scheduling dated 3/24/2020
- HO-21. Scheduling notice dated 3/31/2020
- HO-22. Pre-hearing memorandum filed by Ferdinand Slater, Esq., on behalf of Wayne Getchell dated 4/1/2020
- HO-23. Objections to exhibits filed by Ferdinand Slater, Esq., dated 5/6/2020
- HO-24. Response to objection by AAG Halliday Moncure, Esq., dated 5/7/2020 with supplemental exhibit 63 and list of stipulations
- HO-25. Objection to response to objection filed by Ferdinand Slater, Esq., dated 5/7/2020
- HO-26. Stipulations

Department Exhibits¹:

- D-1. MaineCare Provider Agreement (signed by provider 8/2/3/19) (DHHS 000001-13)
- D-2. Disclosure of Ownership and Control Interest Statement (8/23/19) (DHHS 000014-16)
- D-3. Disclosure of Ownership and Control Interest Statement (12/11/19)(DHHS 000017-19)
- D-4. Getchell Foster Homes License (eff. 11/2/17 – 11/1/19) (DHHS 000020-21)
- D-5. MaineCare Benefits Manual, Ch. I, Sec. 1 (eff. 11/2/17-11/1/19) (DHHS 000022-116)
- D-6. MaineCare Benefits Manual, Ch. II, Sec. 21 (eff. 12/24/17) (DHHS 000117-180)
- D-7. MaineCare Benefits Manual, Ch. III, Sec. 21 (eff. 7/20/19) (DHHS 000181-203)
- D-8. Settlement Agreement between DHHS and Rena Getchell (eff. 6/10/19) (DHHS 00204-232)
- D-9. July 18, 2019 DHHS letter to Wayne Getchell (DHHS 000233-234)
- D-10. July 16, 2019 Email fr. Danielle Bushman to William Logan (encl. PI Complaint) (DHHS 000235-237)
- D-11. Aug. 15, 2019 Email fr. William Logan to Catherine Richard (BROI) (DHHS 000238-239)
- D-12. Aug. 27, 2019 Email fr. William Logan to Catherine Richard (DHHS 000240-241)
- D-13. Dec. 30, 2019 Email fr. Susan Lauritano (OADS) to Jodi Ingraham et al (DHHS 000242)
- D-14. Dec. 30, 2019 Email fr. Jodi Ingraham to Susan Lauritano (DHHS 000243-244)
- D-15. Jan. 1, 2020 Email fr. Robbie Connor (DLC) to Susan Lauritano (DHHS 000245-246)
- D-16. Jan. 7, 2020 BROI letter to DHHS (DHHS 000247)
- D-17. Jan. 14, 2020 Email fr. Susan Lauritano to Catherine Richard et al. (DHHS 000248-251)
- D-18. Jan. 15, 2020 Email fr. Susan Lauritano to Catherine Richard et al. (encl. portion of Maine College of Direct Support Instructor's Guide – April 2016)(DHHS 000252-263)
- D-19. Jan. 17, 2020 Email fr. Catherine Richard to William Logan (DHHS 000264-272)
- D-20. MaineCare Service Authorization for (eff. [REDACTED]/19-[REDACTED]/20) (DHHS 000273-274)
- D-21. GFH MaineCare Claims for [REDACTED] 9-[REDACTED] 19 (DHHS 000275)
- D-22. GFH MaineCare Claims for [REDACTED] 19-[REDACTED] 19 (DHHS 000276)
- D-23. GFH MaineCare Claims for [REDACTED] 19-[REDACTED] 19 (DHHS 000277)
- D-24. GFH MaineCare Claims for [REDACTED] 19-[REDACTED] 19 (DHHS 000278)
- D-25. Maine Dept. of Labor Feb. 25, 2020 wage inquiry results for Rena Getchell for period 7/1/2019-12/31/2019 (DHHS 000279) – **not admitted**
- D-26. Certified Mail receipt for 7/18/19 DHHS letter (Exh. 9), signed by Wayne Getchell (DHHS 000280)
- D-27. USPS tracking July 26, 2019 delivery confirmation for 7/18/19 DHHS letter (Exh. 9)(DHHS 000281)
- D-28. MaineCare Provider Agreement (fully executed) (DHHS 000282-298)
- D-29. Summary of MaineCare Authorizations by Type / Facility for Members Residing at GFH (6/1/19-2/25/20) (DHHS 000299)
- D-30. MaineCare Service Authorization for (eff. [REDACTED] 20) (DHHS 000300-303)
- D-31. MaineCare Service Authorization for (eff. [REDACTED] 20) (DHHS 000304-307)

¹ Rulings on objections to proposed exhibits is placed within the front pocket of the binder with the Department's exhibits.

- D-32. MaineCare Service Authorization for (eff. [REDACTED] 19-[REDACTED] 20) (DHHS 000308-311)
- D-33. MaineCare Service Authorization for (eff. [REDACTED] 19-[REDACTED] 19; [REDACTED] 19-[REDACTED] 20) (DHHS 000312-318)
- D-34. MaineCare Service Authorization for (eff. [REDACTED] 19) (DHHS 000319-324)
- D-35. MaineCare Service Authorization for (eff. [REDACTED] 19-[REDACTED] 20) (DHHS 000325-326)
- D-36. MaineCare Service Authorization for (eff. [REDACTED] 19-[REDACTED] 20) (DHHS 000327-330)
- D-37. Feb. 21, 2020 Notice of Case Management Conf. with enclosures (DHHS 000331-344), including:
 - a. Pre-Hearing Order (DHHS 000333)
 - b. Order of Reference (DHHS 000334-335)
 - c. Fair Hearing Report Form (DHHS 000336)
 - d. Feb. 18, 2020 Wayne Getchell Request for Adm. Hearing (DHHS 000337-338)
 - e. Jan. 14, 2020 DHHS Suspension of Medicaid Payments (DHHS 000339-341)
 - f. Jan. 27, 2020 Wayne Getchell Request for Informal Review (DHHS 000342)
 - g. Feb. 6, 2020 DHHS Final Informal Review Decision (DHHS 000343-344)
- D-38. Feb. 26, 2020 letter from AAG H. Moncure to Stephen Smith, Esq. (without encl.) (DHHS 000345-347)
- D-39. Wayne Getchell Foster Home MaineCare Reimbursement for MaineCare Claims, 10/16/19-1/7/20 (DHHS 000348-350)
- D-40. Certified Copy of the Docket for *Nathaniel Hull v. Wayne Getchell* (eff. 3/2/2020 1:10 p.m.), Adv. Case No, 18-01012, Lead BK Case No. 16-10172 (The Getchell Agency), United States Bankruptcy Court for the District of Maine (DHHS 000351-354)
- D-41. *Nathaniel Hull v. Wayne Getchell* – Complaint (DHHS 000355-369)
- D-42. *Nathaniel Hull v. Wayne Getchell* – Answer (DHHS 000370-378)
- D-43. Mar. 3, 2020 Email fr. Katie Grotton to William Logan (encl. data from Maine Dept. of Labor regarding fourth quarter 2019 wages of all Getchell Foster Home Employees) (DHHS 000379-381)
- D-44. Feb. 27, 2020 Notice of Hearing (set for 3/11/2020) (DHHS 000382-383)
- D-45. Feb. 27, 2020 Pre-Hearing Order (DHHS 000384-385)
- D-46. Mar. 2, 2020 Pre-Hearing Memo (DHHS 000386-392)
- D-47. Dec. 14, 2017 Hull Ltr to A. Getchell w-Notice of Termination (DHHS 000393-395) - **withdrawn**
- D-48. Dec. 14, 2017 Hull Ltr to E. Greer w-Notice of Termination (DHHS 000396-398) - **withdrawn**
- D-49. Dec. 14, 2017 Hull Ltr to M. DiFrederico w-Notice of Termination (DHHS 000399-401) - **withdrawn**
- D-50. Dec. 14, 2017 Hull Ltr to R. Getchell w-Notice of Termination (DHHS 000402-404) - **withdrawn**
- D-51. Dec. 14, 2017 Hull Ltr to T. Getchell w-Notice of Termination (DHHS 000405-407) - **withdrawn**
- D-52. May 9, 2018 Order Finding Rena J. Getchell in Contempt (DHHS 000408-410)
- D-53. June 7, 2018 Complaint – Hull v. R. Getchell & M. DiFrederico (DHHS 000437-459)
- D-54. June 7, 2018 Complaint – Hull v. J. Greer, et al (DHHS 000437-459)
- D-55. June 27, 2018 Complaint – Harrington v. R. Getchell (DHHS 000437-459)
- D-56. July 24, 2018 Order on Contempt (R. Getchell) (DHHS 000492-496)

- D-57. Aug. 14, 2018 Order Granting Motion for Entry of Default Judgment in Harrington v. R. Getchell (Adv. Pro. No. 18-01003)(DHHS 000497-498)
- D-58. Feb. 11, 2020 – Complaint for Recovery of Personal Property v. WFGH (DHHS 000499-502) – **admitted as to good cause issue – parties consented to HO redaction**
- D-59. Mar. 4, 2019 Settlement Agreement and Mutual Release (DHHS 000503-511)
- D-60. Mar. 20, 2020 Ltr from A. Slater to and re: GFH (DHHS 000512-517) – **admitted as to good cause issue**
- D-61. Mar. 24, 2020 email response to A. Slater (DHHS 000518-519)
- D-62. Mar. 24, 2020 email to A. Slater (DHHS 000520-528)
- D-63. Jan. 7, 2020 BROI letter to DHHS (DHHS 000529-530)

Appellant Exhibits:

- A-1. 22 M.R.S.A. § 13
- A-2. 42 C.F.R. 455 (§§13 thru 23)
- A-3. 42 C.F.R. 455.23 revision
- A-4. CMS (Center for Program Integrity) Medicaid Suspension toolkit
- A-5. CMS-MIG Performance Standards For Referrals of Suspected Fraud From A Single State Agency to A Medicaid Fraud Control Unit
- A-6. 42 C.F.R. § 455.2
- A-7. *Anglez Behavioral Health Services v. Dept. of Health and Human Services*, 2020 ME 26
- A-8. *Michael Maietta v. Town of Scarborough*, 2004 ME 97
- A-9. *State of Maine v. John James*, 2002 ME 86

STIPULATIONS

General Background

1. Medicaid is a joint federal and state program that provides funding for individuals who are unable to afford medical care. *See* 42 U.S.C. §§ 1396 *et seq.* Medicaid is administered by individual states that choose to participate in the program; participating states must comply with the requirements of the Medicaid Act and its implementing regulations in order to receive federal financial participation (“FFP”) from the federal government. 42 U.S.C. § 1396a; 42 C.F.R. § 430.
2. The Maine Department of Health and Human Services (the “Department”) is the single state agency responsible for administering Maine’s Medicaid program, known as MaineCare, in compliance with federal and state statutes, and administrative policies. *See* 22 M.R.S. §§ 10, 12, 3173; MBM, Chapter 1, §1.02; 42 U.S.C. §§ 1396 *et seq.*; 42 C.F.R. § 431.10.
3. Maine’s Medicaid HealthCare Crimes Unit (“HCU”) is the state’s certified Medicaid law enforcement agency, established pursuant to 42 C.F.R. § 1007.5, which is independent of the Department. 42 C.F.R. § 1007.9(a). HCU is responsible for investigating and prosecuting violations of all applicable state laws pertaining to fraud in the administration of the Medicaid program, and other duties as set forth in 42 C.F.R. § 1007.11.

4. Wayne Getchell (d/b/a Getchell Foster Home, or “GFH”) is a MaineCare Provider pursuant to a MaineCare Provider Agreement with the Department (“MCPA”), Exh. 28 (DHHS 000282-298), and 10-144 C.M.R. Ch. 101 (the MaineCare Benefits Manual, or the “MBM”), et seq. *See, e.g.* MBM, Ch. 1, Sec. 1, Exh. 5 (DHHS 000022-116).
5. Wayne Getchell is the sole owner of the GFH. Exhs. 2-3 (DHHS 000014-19).
6. GFH provides residential and support services to adult individuals with physical, emotional and intellectual disabilities, pursuant to MBM Chs. II and III, Section 21, Home and Community Benefits for Members with Intellectual Disability or Autism Spectrum Disorder (“Section 21”). MBM, Chs. II and III, Section 21, Exhs. 6 and 7 (DHHS 0001117-203).
7. GFH is authorized to provide Section 21 services at two locations: (a) _____ and (b) _____ located in _____, Maine. MCPA, Exh. 28 (DHHS 000286).
8. GFH bills MaineCare using the National Provider Identification (“NPI”) number ending in the last four digits, 1209.
9. GFH currently provides Section 21 services to four MaineCare members who reside at the _____ location, and two MaineCare members who reside at the _____ location.
10. Wayne Getchell is married to Rena Getchell.

Background Regarding Payment Suspension to GFH

11. Rena Getchell was excluded from the Medicaid program pursuant to a Settlement Agreement with the Department, effective June 10, 2019 – June 9, 2025. Exh. 8 (DHHS 000204-208).
12. Wayne Getchell received notice of Rena Getchell’s exclusion from the Medicaid program. Exh. 9 (DHHS 000233-234) (July 18, 2019 Letter from the Department to Wayne Getchell, enclosing Settlement Agreement with Rena Getchell); Exhs. 26 and 27 (DHHS 000280-281) (Certified Mail receipts)
13. Following Rena Getchell’s exclusion from Medicaid, Wayne Getchell updated the GFH MaineCare Provider Agreement, the Disclosure of Ownership and Control Interest Statement, and the GFH license to remove Rena Getchell from any ownership or control of GFH. Exhs. 1-3 (DHHS 000001 – 19); Exh. 28 (DHHS 000282-298).
14. Michael Durham is a Detective with the HCU.
15. _____ Maine, is not an enrolled service location for GFH.

RECOMMENDED FINDINGS OF FACT:

1. Notice of these proceedings was given in a timely and adequate manner.
2. By letter dated 1/14/2020, the Department notified that MaineCare payments to Getchell Foster Home were suspended based on credible allegations of fraud.
3. Wayne Getchell ("Mr. Getchell"), d/b/a Getchell Foster Home, made a timely appeal by letter dated 1/27/2020.
4. The Department issued a Final Informal Review Decision on 2/6/2020.
5. Getchell Foster Home requested an administrative hearing on 2/18/2020.
6. Getchell Foster Home's appeal was presented at administrative hearings on 5/13/2020 and 5/29/2020.
7. Pursuant to a Settlement Agreement she signed on 7/9/2019, and which was fully executed on 7/17/2019, Ms. Getchell was excluded from MaineCare retroactively effective to 6/10/2019.
8. On 7/16/2019, a caseworker with Alliance Case Management reported that she spoke Rena Getchell regarding Getchell Foster Home billing issues and a concern about 3 clients. The caseworker terminated the call because she knew that Ms. Getchell was excluded under MaineCare.
9. Mr. Getchell knew or reasonably should have known that by the terms of the Settlement Agreement she signed on 7/9/2019, Ms. Getchell was excluded from MaineCare on 7/16/2019.
10. Pursuant to the Settlement Agreement Ms. Getchell was removed from an interest in Getchell Foster Home, and responsibility and ownership fell solely to Mr. Getchell.
11. The Department additionally notified Mr. Getchell by letter dated 7/18/2019, and received by Mr. Getchell on 7/26/2019, that Ms. Getchell was excluded from MaineCare.
12. On 8/15/2019, an anonymous caller spoke with William Logan, Esq., regarding her concern of fraud at Getchell Foster Home. The caller reported Ms. Getchell continued to work with clients, that she was present at Getchell Foster Home nearly every day, that she was paid in cash and that employees of Getchell Foster Home lost shift and lost income as a result of Ms. Getchell's involvement.
13. Ms. Getchell received cash in the amount of \$1,000.00 to \$2,000.00 every month from Mr. Getchell.

14. Ms. Getchell spent time every week with the clients of Getchell Foster Home, which Mr. Getchell described as volunteering and advocacy. There is no evidence that Ms. Getchell served as a Guardian or was appointed by a Guardian to advocate on behalf of any client, who are presumably unable to care for themselves.
15. On 8/27/2019, the same anonymous caller again contacted Mr. Logan. She reported that Ms. Getchell was working with a client in her home for half of the week. She also reported that Sweetser had brought their clients up to Ms. Getchell's house for an outing.
16. On 12/30/2019, Detective Michael Durham with the Maine Health Crimes Unit reported it received a tip that Ms. Getchell was operating a group home out of [REDACTED].
17. Ms. Getchell spent time with clients of Getchell Foster Home at [REDACTED] in [REDACTED] during 2019. One of these clients has initials "[REDACTED]" and another was "[REDACTED]".
18. [REDACTED] is not and has not been an approved service location.
19. The Department verified that Getchell Foster Home billed MaineCare for time clients spent at [REDACTED], including for clients "[REDACTED]" and "[REDACTED]".
20. This information was shared with Catherine Richard, an investigator with Boston Regional Office of Inspection ("BROI").
21. On 1/7/2020, the Department received a digitally signed letter on behalf of Special Agent Philip Coyne from BROI requesting that MaineCare payments to Getchell Foster Home be suspended due to credible allegations of fraud. The letter further requested that communication of the suspension be delayed one week to 1/14/2020.
22. On 1/14/2020, the Department sent a notice of suspension to Getchell Foster Home, advising of the MaineCare suspension due to credible allegations of fraud effective 1/7/2020.
23. The Department verified that one or more allegation of fraud was credible and supported by at least one indicia of reliability. These included verifying facts with indicia of reliability supporting the allegations that Ms. Getchell was assisting Getchell Foster Home in violation of the Settlement Agreement and that Getchell Foster Home billed services not provided at approved service locations.
24. The allegation that one client was used to assist other clients is present in the BROI referral of 1/7/2020 but is not otherwise verified.
25. Good cause not to suspend payments does not exist because a referring agency did not request a suspension, no other remedy was identified or even argued and the Department has not determined that suspension should be lifted.

RECOMMENDED DECISION:

This Hearing Officer recommends that the Commissioner find that the Department was correct when it determined there were credible allegations of fraud, supported by reliable indicators, and that good cause did not exist.

REASON FOR RECOMMENDATION:

I. Standard of Review & Applicable Statute/Regulations

Under Section 1.22-3 of the MBM, when the Department determines that it has received a "Credible Allegation of Fraud" against a MaineCare provider that is supported by one or more indicia of reliability, the Department must suspend MaineCare payments to that provide provider pending the outcome of the investigation. In relevant part, the regulations state:

1.22-3 Suspension of Payment Upon Credible Allegation of Fraud

- A. 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. (emphasis added)**
- B. The Department shall send notice to a provider of a suspension of payments within five (5) days after suspending payments unless the Department is requested in writing by a law enforcement agency to delay such notice. Such request shall temporarily withhold the sending of notice up to thirty (30) days after suspending payments. A request for delay may be renewed in writing up to twice, but in no event may the time for sending of notice exceed a total of ninety (90) days after payment suspension.
- C. The notice must include or address the following:
 1. State that payments are being suspended in accordance with the relevant federal and state provision.

2. Set forth the general allegations as to the nature of the suspension action. The notice need not disclose any specific information concerning an ongoing investigation.
3. State that the suspension is for a temporary period and cite the circumstances under which the suspension will be terminated.
4. Specify, when applicable, the type of MaineCare claims or business units as to which the suspension is effective.
5. Inform the provider of the right to timely submit written evidence for consideration by the Department in an informal review.
6. Set forth the administrative appeals process and corresponding citations to this Chapter.

MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101, ch. I, §1.22-03

The Department provided this notice with relevant components to Mr. Getchell by letter dated 1/14/2020. See Exhibit HO-5. The notice to Mr. Getchell advised him that the Office of MaineCare Services, Program Integrity, had determined that a credible allegation of fraud existed, and that payments under MaineCare to Getchell Foster Home were suspended. Id. Specifically, the notice stated that the general allegations were:

- Billing for services not rendered
- Utilizing a client to provide services and take care of other clients
- Utilizing an excluded individual to provide services that are billed to MaineCare.

Payments to Getchell Foster Home were suspended effective 1/7/2020. See Exhibit D-37. Mr. Getchell was provided information to request an informal review. He was further advised that he also could request an administrative hearing after a Final Informal Review Decision. Mr. Getchell submitted a request for a Final Informal Review Decision by letter dated 1/27/2020. The Department issued a Final Informal Review Decision on 2/6/2020, which upheld the suspension. Id.

Pursuant to the Order of Reference, this review must assess whether the Department was correct, “...when it suspended payments to Wayne Getchell d/b/a Getchell Foster Home based on a credible allegation of fraud?” While proof of actual fraud would certainly support a credible allegation, it is not the Department’s burden to prove the allegations. Instead, the Department must suspend MaineCare payments if it is simply aware of credible allegations of fraud supported by “one or more indicia of reliability”. And it is the Department’s burden to prove there was at least one indicia of reliability in support the allegation(s) of fraud upon which the suspension was based.

The regulations provide guidance as to how a credible allegation of fraud may be identified and understood. As noted above, they state:

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 MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101, ch. I, §1.22-03

When there is a sequence of actions occurring over different dates, it can be relevant to understand how a chronology may impact an analysis, or which dates should be part of an analysis. In this case, an issue emerged whether the relevant date to evaluate the sufficiency of the Department's case was as of 1/7/2020, the actual date the suspension started, or 1/14/2020, when the Department communicated the suspension to Getchell Foster Home in a decision letter, or 2/6/2020 when the Department issued the Final Informal Review Decision, which represents the administrative decision actually under appeal here. This Hearing Officer believes that for a suspension effective 1/7/2020, the Department's decision as of 1/7/2020 must be supported. However, information learned or confirmed after 1/7/2020 is also relevant if received prior to the 2/6/2020 Final Informal Review Decision and if that information remains relevant to allegations of actions by Getchell Foster Home prior to 1/7/2020. Accordingly, weight will also be given information learned or confirmed before 2/6/2020 which is relevant to allegations of conduct occurring before 1/7/2020.

In her communication to Mr. Getchell's attorney on 2/26/2020, the Department's attorney, AAG Moncure provided additional information regarding the allegations upon which payments were suspended. AAG Moncure stated the allegations included:

1. Two anonymous phone calls from an individual claiming to be a current employee of WGFH (Wayne Getchell Foster Home) who alleged that Rena Getchell was providing services to MaineCare members on behalf of WGFH, in violation of her exclusion from the Medicaid program;
2. Complaint from an independent case worker conveying her concern / belief that Rena Getchell was working for WGFH;
3. Communications with staff from other DHHS divisions relating to allegations that Rena Getchell was involved in the WGFH business;
4. Information from the federal Office of Inspector General (BROI) reflecting that Rena Getchell is providing services to MaineCare members on behalf of WGFH;
5. The BROI requested that DHHS suspend WGFH's MaineCare members based on credible allegations of fraud;
6. WGFH submitted claims for reimbursement for at least one individual who supposedly received services at WGFH, when they were not present at WGFH during one or more of the dates being billed, and they were actually residing

- with Rena Getchell, based on information from the BROI, the Office of Aging and Disability Services, and the Division of Licensing and Certification; and
7. Members allegedly receiving services at the unenrolled service locations.

See Exhibit D-38.

In support of these allegations at hearing, and as a vehicle by which it sought to demonstrate indicia of reliability verifying the allegations, the Department presented testimony from William Logan, Director of Compliance for the Office of MaineCare Services (“OMS”) and Acting Director of OMS. Through Mr. Logan’s testimony the Department also presented documentation regarding the allegations referenced above. Therefore, the information processed by the Department prior to the 1/14/2020 suspension, effective as of 1/7/2020, consisted of the following:

7/16/2019 – Complaint from Alliance Case Management

On 7/16/2019, an employee of Alliance Case Management reported that while discussing billing issues with Wayne Getchell, Rena Getchell had gotten on the telephone with her to complain, as described by the reporter, that “her husband can’t do this work for free and that these three girls need to be in a group home.” See Exhibit D-10. The employee of Alliance Case Management said she told Ms. Getchell she could not speak with her and hung up the phone.

The timing of this call is significant because on 7/9/2019 Rena Getchell signed a Settlement Agreement that was fully executed on 7/17/2019, and effective retroactive to 6/10/2019, which excluded Ms. Getchell from the MaineCare program for six years, or until 6/9/2025. See Exhibit 8. To ensure Mr. Getchell was aware of his responsibility as a MaineCare provider, Mr. Logan sent Mr. Getchell a letter on 7/18/2019 confirming Ms. Getchell was excluded. See Exhibit D-9. To the extent that Mr. Getchell is now suggesting he did not know of his wife’s suspension until 7/26/2019 when the notice of exclusion was sent, it would be surprising that a caseworker with a supporting agency has better information than Mr. Getchell that Ms. Getchell was excluded from MaineCare on 7/16/2019. See Exhibits D-9, 26 and 27. This suggestion is further undercut by the fact that Mr. Getchell acknowledged knowing Ms. Getchell’s ability to process MaineCare payments was in jeopardy since 2018. Test. of Wayne Getchell. Mr. Logan testified that Mr. Getchell was present and active throughout the proceedings against Ms. Getchell. Test. of William Logan. Mr. Getchell’s closing statement appears to accept that the relevant date of exclusion is in fact 6/10/2019.

The Hearing Officer finds that Mr. Getchell knew Ms. Getchell had signed the Settlement Agreement on 7/9/2019, and that she was an excluded individual retroactive to 6/10/2019 and therefore that she could not conduct MaineCare business for Getchell Foster Home. This agreement with incorporated exclusion was the culmination of a protracted administrative process, and it requires more credulity than this Hearing Officer is prepared to provide to believe Mr. Getchell was not aware that Ms. Getchell could not be involved in Getchell Foster Home business on 7/16/2019. Part of the resolution of Ms. Getchell’s issues included removing her as a part owner of Getchell Foster Home, and thus required Mr. Getchell’s knowledge and involvement.

An instruction to that "... her husband can't do this work for free and these three girls need to be in a group home" during a call about Getchell Foster Home billing is conducting MaineCare business contrary to the spirit and language of the agreement to which Ms. Getchell had put her signature mere days before. Her advocacy was not on behalf of clients, but on behalf of Mr. Getchell. While contracts are not enforceable until executed, once executed they are enforceable and they may, as here, have retroactively effective provisions that can be enforced. After her signature on 7/9/2019, and once fully executed, given the explicit contractual language that the effective date was 6/10/2019, the retroactive nature of the agreement is seemingly enforceable as to Ms. Getchell, who was presumptively aware of the terms of the agreement when she signed it.

Based on this Hearing Officer's belief Mr. Getchell knew at least as much about his wife's MaineCare exclusion as a case worker with an affiliated agency on 7/16/2019, this is a reliable indicator that Mr. Getchell permitted a MaineCare excluded individual to help him conduct Getchell Foster Home business in a discussion with an affiliated agency about MaineCare billing.

8/15/2019 – Anonymous Call

Following this complaint, Mr. Logan testified that on 8/15/2019 he received an anonymous call from an individual who identified themselves as an employee of the Getchell Foster Home and that she wanted to report fraud. Test. of William Logan. Mr. Logan documented his interaction with the anonymous caller in an email to Catherine Richard, an agent with the Office of Inspector General ("BROI") on 8/15/2019. See Exhibit D-12. Mr. Logan's email reflects that the caller identified themselves as a Getchell Foster Home employee who wanted to remain anonymous because she feared repercussions. The caller stated Ms. Getchell "takes the clients and works with them", which reduced the work available to her and other staff members. The caller further reported that Ms. Getchell was receiving payments in cash and that Mr. Logan's office "should check the payroll records." The caller stated that Ms. Getchell was there basically every day. Id.

Mr. Getchell testified that Ms. Getchell did not spend time with clients so that hours available to staff members were reduced, which would save operating expenses for Getchell Foster Home. Instead, Mr. Getchell testified that Ms. Getchell merely worked as a volunteer and an "advocate" at the request of clients, who had come to know her over the years. Test. of Wayne Getchell. There is no evidence that Ms. Getchell served as a Guardian or was appointed by a Guardian to advocate on behalf of any client, who are presumably unable to care for themselves.

Mr. Getchell further testified that he provided Ms. Getchell \$1,000.00 to \$2,000.00 in cash every month because he wanted to her to look nice, so she could do her hair and nails, and purchase clothing. Id. Mr. Getchell denied that any staff members had lost shift time due to Ms. Getchell's "volunteering" and "advocacy". Mr. Getchell's testimony is apparently meant to provide an innocuous explanation for the time Ms. Getchell spent with clients, and the cash she received monthly. Instead, this testimony confirms the core facts described by the anonymous caller to the Department before the payment suspension – that Ms. Getchell was spending

unexpected time with MaineCare clients and that she was receiving relatively large amounts of cash payments – at a rate that approaches a full time minimum wage in Maine.

But outside this explanation, the fundamental issue is whether the anonymous call is a source of an allegation that contains an indicia of reliability upon which the Department was required to act and suspend MaineCare payments in January 2019. This Hearing Officer finds that it is, particularly when placed in combination with similar allegations reaching the Department from different sources. “Hotline calls” are an express example of sources of allegations required under MaineCare rules, and while the list of possible sources is not exclusive, an anonymous call to the Director of MaineCare Compliance (Mr. Logan’s role at the time) is certainly equivalent to a hotline call.

Furthermore, this Hearing Officer further finds that Mr. Getchell’s testimony regarding Ms. Getchell’s involvement is not particularly credible. Initially Mr. Getchell suggested that he provided payments to Ms. Getchell for just a few months, but when questioned further acknowledged they went back to at least 2018. His responses were evasive, and his testimony was not forth-coming. There certainly is no reason to conclude that the anonymous caller was fraudulent or lying based on this testimony. In fact, Mr. Logan testified he attempted to convince the caller to identify themselves, and he was cognizant of the concern the caller could be a disgruntled caller in bad faith, or it could be what it purported to be – a concerned employee who believed they witnessed inappropriate conduct which they wanted to report. This call more resembles the latter based on its own presentation and as placed within the context of other allegations from other sources. Therefore, this call has indicia of reliability that serves to verify the credible allegations of fraud.

8/27/2019 – Anonymous Call

Mr. Logan testified that on 8/27/2019 he received another anonymous call from the same individual who had called on 8/15/2019. Mr. Logan again documented his call in an email to Ms. Richard with the BROI on that same day. See Exhibit D-12. Mr. Logan reported to Ms. Richard that the caller had stated Ms. Getchell was working with a client in her home “for ½ the week”, and that Sweetser “brought their clients up to Rena’s house for an outing.” Id.

Mr. Getchell asserted in response that there was nothing wrong with Ms. Getchell’s volunteering and advocacy, and that it was appropriate to have an outing under MaineCare rules. Mr. Getchell also asserted that the Department insufficiently probed whether this allegation was true. Establishing the truth of the allegations is not the Department’s burden; the call itself is a reliable indicator of fraud under the MaineCare regulations. Therefore, this Hearing Officer finds that it is reasonable for the Department to consider this anonymous report of Ms. Getchell’s involvement as credible support for the allegations.

12/30/2019 – Getchell Foster Home Use of

On 12/30/2019 at 12:15 p.m., Detective Michael Durham with the Health Crimes Unit of the Maine Office of Attorney General emailed an employee of Adult Protective Services (“APS”) about a tip he had received. See Exhibit D-18. Detective Durham reported in his email his

office had received a tip “that Rena Getchell is operating a group home out of her own personal residence, which is a waterfront home at [redacted]. It is reported that three clients were living with her....” Id. Detective Durham confirmed that Ms. Getchell was an excluded MaineCare provider.

The employee of APS, Janice Archer, responded that she was aware of this information. Id. Ms. Archer further stated that “Our observation is that Rena has been ‘behind’ the scenes all along with Wayne’s home. That is how they will get around Rena being excluded as a MaineCare provider. I am including PA Sue Lauritano on this as she may know more than I about the current status with the Getchells.” Id. This response from Ms. Archer was forwarded by Detective Durham to Catherine Richard with the BROI on 1/2/2020.

The information from Ms. Archer in her response to Detective Durham corresponds with information reported by Susan Lauritano, Program Administrator within Office of Aging & Disability Services, on 12/30/2019 at 10:34 a.m. See Exhibit D-13. Ms. Lauritano documented in her email that she had:

received a call from a CCM at UCP today who reports that they have done 2 unannounced home visits to the Getchell home in [redacted]. This is the 2nd time no one was there. They reached out to their client’s father, who is guardian and reports that the father said he should be home he knew of no other plans. The CCM called Wayne Getchell to ask and Wayne reports they are at the [redacted] and will be back after the first of the year. Id.

Ms. Lauritano sent her email on 12/30/2019 to other Department employees to understand whether the [redacted] was licensed and whether it mattered if it is not, and whether the change in location impacted billing in anyway. Fundamentally, Ms. Lauritano wanted to know if this issue “should be reported to program integrity.” Id.

Ms. Lauritano’s email to forwarded on 12/30/2019 to Robbie Connor, a Social Services Program Specialist I in the Maine Center for Disease Control and Prevention, Medical Facilities Licensing and Certification / Assisted Housing. Ms. Connor confirmed on 1/1/2020 the [redacted] was not licensed under Assisted Housing and then added “I do not know of any regulations that would prohibit Wayne Getchell and the residents from visiting the camp – similar to a provider taking a vacation with the residents.” See Exhibit D-15.

Mr. Logan testified that Ms. Connor was speculating incorrectly, that she did not have the knowledge or background or authority to speculate about MaineCare billing requirements, and that there were applicable MaineCare regulations which precluded billing per diem for any services at any location other than those specifically designated as service locations. MaineCare Benefits Manual, 10-144 C.M.R. Ch. II §21.02-4. The only locations approved for provider reimbursement are [redacted] both in [redacted] Maine. See Exhibit D-1; see also Stipulation 7. [redacted] is not an identified service location. See Stipulation 15

In the same email threads as originated with Ms. Lauritano, there is additional speculation and discussion about Mr. Getchell's son dating a client of Getchell Foster Home², and of a confrontation at Sweetser involving Mr. Getchell and his son. See Exhibit D-18. To the extent this information occurs after the decision to suspend MaineCare payment based on credible allegations of fraud as of 1/7/2020, this information does not appear relevant to the issues to be decided pursuant to the Order of Reference. The Hearing Officer notes Mr. Getchell testified he was not involved in any such dispute, and this reference involved another individual. The Department has not argued these events are relevant to its decision.

It is notable that on 1/13/2020 Ms. Richard with the BROI, in continuation of these internal email discussions, emailed Ms. Archer, and then Ms. Lauritano with questions about Getchell Foster Home licensing and what the basis of Ms. Archer's belief that Mr. Getchell owned the home. See Exhibit D-19. These communications reflect an ongoing investigation by BROI. The fact there was an ongoing investigation by a federal law enforcement agency eliminates any need by the Department to make an internal investigative referral. See also Exhibit D-11.

1/7/2020 – BROI Request to Suspend Payments

On 1/7/2020, Mr. Logan received a letter from Phillip Coyne, Special Agent in Charge for the BROI. See Exhibits D-16 and D-63. Agent Coyne advised Mr. Logan that the "Boston Regional Office of Investigation ("BROI") is requesting an immediate suspension of payment of Wayne H. Getchell (dba Getchell Foster Home ("GFH"))...."

Agent Coyne further stated that the BROI "believes GFH is engaged in a scheme to defraud MaineCare and that a payment suspension of MaineCare payments is appropriate and necessary to protect the integrity of the MaineCare program. Our office has received multiple complaints concerning GFH, and believe that a minimum, it appears there is a credible allegation of fraud. Specifically, a preliminary investigation revealed that GFH (among other things):

- May have been billing for services not rendered
- Had one of its clients provide services and take care of other clients of GFH; and
- Is concealing that an excluded individual (Rena Getchell ("Rena")) is providing services and is taking care of GFH clients (that it is then billing MaineCare for)."

See Exhibits 16 and 63.

Agent Coyne further requested that the Department delay notice of the payment suspension for one week from the date of the letter. Accordingly, the Department then notified Getchell Foster Home of the suspension on 1/14/2020, effective as of 1/7/2020. See Exhibit HO-5.

² While this issue is not considered as a basis for a credible allegation of fraud to support payment suspension, it nevertheless is a concern that cannot escape comment. Mr. Getchell testified this relationship was reported by Ms. Getchell to the Department and was ultimately approved several years ago. There is little evidence to assess this claim, but as the Department notes in its closing statement, there is documentation in the record which reflects that DSPs, like Travis Getchell, cannot have relationships with clients. See Exhibit D-18; see also 34-B M.R.S. § 5004. Further assessment seems appropriate.

To the extent there is a concern of a circular feedback loop, whereby the Department provides the BROI with tips and complaints, and then receives a request solely based on those same tips or complaints, that is resolved by the emergence of a new allegation not present in the information provided by the Department to Catherine Richard with the BROI – that Getchell Foster Home had one of its clients provide services and take care of other clients of GFH. Because this is a new allegation, it demonstrates that the BROI did in fact have its own investigation underway, with different sources of information.³ And the arrival of a new allegation from BROI to the Department is more grist for the mill of reliable indicators of fraud.

This communication alone is sufficient for the Department to act upon and suspend payments, but it is not the only information upon which the Department acted, as demonstrated above. It would be irresponsible for the Department not to act upon this notice from BROI, subject to assessment for a reliable indicator in support of at least one allegation.

It is necessary to address Mr. Getchell's concerns about the 1/7/2020 letter from BROI. Mr. Getchell's counsel, on 5/6/2020, one week before the scheduled hearing, provided a list of various objections. See Exhibit HO-13. Included within these objections was an objection to Exhibit D-16 on the basis that it is unsigned and thus "inherently unreliable." The unsigned signature block in Exhibit D-16 indicates it was submitted "For Phillip M. Coyne". Id. Upon receipt of this objection, the next day on 5/7/2020 AAG Moncure on behalf of the Department provided a digitally signed version reflecting a 1/7/2020 certified digital signature from Kerri Navarro, for Agent Coyne. This was accompanied by an explanation from the Department there had been a print error which did not print the digital signature but asserted that the signature was original to 1/7/2020. See Exhibit HO-24. Mr. Getchell's counsel quickly responded on 5/7/2020 that he "emphatically opposed and objected to the State introducing new exhibits as discovery was closed to all parties by your order March 11th." See Exhibit HO-25.

It is not surprising the intensity of Mr. Getchell's objection is proportionate to the significance of the BROI request that the Department suspend MaineCare payments based on the identified credible allegations of fraud. But the objection is not valid.

First, the admissibility standard for administrative hearings is governed by 7(A)(1) of the Administrative Hearing Regulations, 10-144 C.M.R. Ch.1, which states:

Generally, evidence shall be admitted if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

Signed or unsigned, the communication from BROI upon which the Department acted to suspend MaineCare payments to Getchell Foster Home is admissible under this standard.

Second, the proffered objection is that an unsigned letter from BROI is inherently unreliable and presumably should not have been acted upon by the Department or admitted here. That is not a

³ Notice of this investigation makes clear there was no obligation to separately report an investigation, because it was not the State's Medicaid agency investigation which lead to the initiation of the payment suspension. 42 C.F.R. §455.23(d).

reasonable proffer, and it is rejected by this Hearing Officer. The letter did not arrive out of the blue; it arose in sequence to a series of communications between Mr. Logan and the BROI. Test. of William Logan. It was an anticipated communication from a known source and therefore it is not unreliable.

Counsel for Mr. Getchell referred to *Heal v. Maine Employment SEC. Com'n*, 447 A.2d 1223 (1982). This case does stand for the proposition that certain documents may be sufficiently unreliable so as to not warrant admission in an administrative hearing context. In *Heal*, the documents in question were statements from the employer who was not represented and did not appear in the proceeding at all. The document here is different. It is a letter from the BROI with a signature block, and it was the basis of the Department's action, who was familiar with the actors involved and that an investigation of Getchell Foster Home was ongoing, and it is accompanied by an explanation and an authenticated copy with signature.

To the extent Mr. Getchell is arguing that only the 1/7/2020 letter without the digital signature can be evaluated, but it cannot be a reliable indicator of fraud because it is not signed, this Hearing Officer does not agree. Mr. Getchell is seemingly suggesting, without any basis, there is a conspiracy or fraud whereby a communication from BROI was spoofed by persons unknown and outside BROI to frame Getchell Foster Home. Mr. Getchell must claim this because he cannot concede this letter did come from BROI, since then it would be admissible even under his objection. Therefore, his objection is predicated on the notion someone else wrote it, that the Department should suspect that occurred and therefore that it is unreasonable to rely upon it as a credible allegation of fraud with indicia of reliability. This Hearing Office rejects that theory.

In addition, Mr. Getchell suggested he lacked the ability to question the signor of the 1/7/2020 BROI letter because he did not know who the individual was. But the typed signature block "for Special Agent Coyne" was visible all along, and Mr. Getchell's counsel wrote to Special Agent Coyne on 3/20/2020 to advocate that Agent Coyne "reconsider or rescind your request to immediately suspend payment to GFH." See Exhibit D-60. This seemingly establishes counsel for Mr. Getchell believed on 3/20/2020 that the 1/7/2020 letter was legitimate and sent by Agent Coyne or under his authority. Agent Coyne did not respond back that he did not send the letter or that it was not sent under his authority, which he certainly would if he suspected the letter was fraudulent, so counsel for Mr. Getchell himself has verified the letter's authenticity, and he did so in March.

Third, Mr. Logan testified that the letter he received on 1/7/2020 was digitally signed, and he has no idea why the digital signature did not print when the exhibits were compiled, but he had it available to provide immediately upon receipt of Mr. Getchell's objection. Test. of William Logan. Mr. Logan was fully credible and this Hearing Officer therefore finds that the signature was present when received as testified to by Mr. Logan. The signature itself is dated 1/7/2020 and it is clearly authentic. Digital signatures are increasingly the norm in communications these days, but they are not without obvious complications (as seen here).

Fourth, there was no bar to the Department providing additional information, including a response authenticating Exhibit D-16 in response to claims or objections raised by Mr. Getchell, and that is simply a mischaracterization of the 3/11/2020 order.

Finally, at hearing, Mr. Getchell's counsel continued his objection and suggested for the first time he had an expert standing by ready to testify it was impossible for an emailed pdf to not print a digital signature. Statement of Ferdinand Slater, Esq. This argument was made again in Mr. Slater's closing argument, "At hearing petitioner offered rebuttal testimony from a technical witness and proffered the witness would testify that there is no way a PDF on a computer, when printed, would print the document but not the digital signature block within the document." This Hearing Officer denied Mr. Getchell's counsel's request. A request for an expert witness had not been raised until the day of hearing, despite exchange of this communication to Mr. Getchell's prior counsel on 3/9/2020, over two months prior to the hearing, and despite an explanation and production of the signed version on 5/7/2020. Fundamentally, there is no valid indication of prejudice in the supplemental production of the correctly printed 1/7/2020 letter from BROI.

Upon review of the 1/7/2020 letter from BROI, the Department was able to identify facts with indicia of reliability that supported these allegations of fraud. Mr. Logan noted the referral was from a federal law enforcement agency with which he was familiar. A formal notice of allegations of fraud from a federal law enforcement agency such as BROI requesting a provider's suspension of payments is a significant matter. Mr. Logan also noted the allegations in the BROI referral corresponded with the anonymous calls he had received previously, the complaint which had been submitted, and from internal partners within the Department. Test. of William Logan. To the extent concerns were raised after suspension, they are of limited assistance to the Department's case. See Exhibit D-19. However, the record reflects these concerns were identified and shared prior to suspension and certainly before issuance of the Final Informal Review Decision on 2/6/2020. See Exhibits 13 and 14, for example.

Mr. Logan testified that upon receipt of this notice he also researched the billing records for a client with initials [redacted] to see if he could verify whether there was billing for services not rendered. These documents are Exhibits D-20 through D-24. Mr. Logan testified that upon receipt of the referral, he spoke with a Department representative to confirm if billing had been submitted for service locations other than those in approved addresses in [redacted]. He was told no. On 2/25/2020, Mr. Logan received a print-out of the billing information provided to him verbally earlier. This information showed that Getchell Foster Home received per diem reimbursements at 2 service locations. Therefore, information which showed individuals, including [redacted], were located elsewhere during those billing dates at identified service locations was evidence of billing for services not rendered. See Exhibits D-17 and D-29. These facts supported the allegations made.

The Department further asserted that a prolonged history of engagement with Ms. Getchell and the Getchell Agency, which ultimately resulted in Ms. Getchell's exclusion from MaineCare, served as context for assessing allegations as they flowed in from an anonymous reporter, a case worker and from the BROI. Because Ms. Getchell's involvement is a core part of the allegations against Getchell Foster Home, this Hearing Officer agrees. There clearly is a context which was relevant to the Department's assessment of information as it emerged – and it was reasonable for the Department to consider it. As Mr. Logan noted in his testimony, he was already aware that Ms. Getchell was excluded effective as of 6/10/2019, and he was deeply involved in the allegations and concerns the Department had in Ms. Getchell's role with the Getchell Agency

prior to her exclusion. The concerns which triggered those proceedings were described in Mr. Logan's letter to Ms. Getchell on 6/20/2018. See Exhibit D-8. Ms. Getchell also had a role with Getchell Foster Home, and her exclusion required her removal from this involvement. The continuing reports of her involvement from different sources suggested her exclusion was not being honored.

Mr. Logan testified that the Department did consider Ms. Getchell's prior management of the Getchell Agency and subsequent bankruptcy proceedings. In the course of bankruptcy proceeding, Ms. Getchell was removed from her role by the Trustee and was twice found in contempt by the Bankruptcy Court. Test. of William Logan; see Exhibits D-52 and D-56. Mr. Logan testified that Ms. Getchell's past pattern of non-compliance with judicial requirements was relevant to believing the basis of the allegations and accordingly supported the suspension. This Hearing Officer agrees because Ms. Getchell's role and obvious contempt for certain restrictions is an element of the allegations against Getchell Foster Home.

In addition, the Trustee brought an action against Mr. Getchell that he had received transfers from Ms. Getchell. See Exhibit D-41. Mr. Getchell denied the allegations, and there is no resolution of the proceedings apparent in the record. See Exhibit D-42. Accordingly, while Mr. Logan testified this was a factor in the suspension because he was aware of the allegations, they are not given weight by this Hearing Officer.

In its closing statement, the Department argues that Mr. Getchell's testimony is often not credible, particularly with regard to his testimony about the number of employees – whether 11 as he claimed on 1/27/2020 when filing an appeal, or 5 as reported by the Department of Labor upon further investigation by the Department – and those 4 of 5 were either children of the Getchell's or spouses of the Getchell's children. Mr. Getchell testified that Getchell Foster Home suddenly doubled its employee size after 1/1/2020 but then had to terminate these additional employees because Getchell Foster Home could not able to pay them. Mr. Getchell testified he was unable to name any of these employees. This Hearing Officer agrees that Mr. Getchell's testimony is not credible. It does reasonably lead one to wonder who is providing the services performed by the 11 employees reported by Mr. Getchell, but who seemingly never were actually employed.

Fundamentally, this Hearing Officer agrees with the Department that the evidence does at least suggest Ms. Getchell was involved in client care for which she was excluded, that she received cash compensation, and that Getchell Foster Home billed for services performed outside the approved service locations. As noted, proof is not required, but there are sufficient facts with ample indicia of reliability that support these allegations.

Good Cause To Rescind Payment Suspension Does Not Apply

Under §1.22 of the MaineCare Benefits Manual, good cause not to suspend payments applies as follows:

- G. The Department may find that good cause exists not to suspend payments, or not to continue a payment suspension, when:

1. Law enforcement officials specifically have requested that a payment suspension not be imposed because it may compromise or jeopardize an investigation;
2. Other available remedies implemented by the state more effectively or quickly protect Medicaid funds;
3. 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 removed;

In this case, the payment suspension resulted from the BROI request on 1/7/2020, which was in turn supported by and consistent with other information the Department possessed. In addition, no other remedies were identified or asserted by Mr. Getchell as an alternative, who simply asserted that the Department has not proven any aspect of any allegation. And it is equally clear that the Department has not determined that the suspension should be removed. Based on Mr. Getchell's testimony, there is ample reason for the Department to conclude there is no good cause not to suspend payments.

For all these reasons and based on a record replete with concerns about Getchell Foster Home, the Department acted appropriately when it suspended payments based on credible allegations of fraud.

VI. Conclusion.

For all of the reasons stated above, it is recommended that the Commissioner conclude that the Department was correct when it suspended MaineCare payments to Getchell Foster Home based on credible allegations of fraud. The Department was also correct when it determined there is no good cause to rescind or alter the payment suspension.

MANUAL CITATIONS:

MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101, ch. I, §1.22-03

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.

DATED: June 26, 2020

SIGNED: /s/ Thomas Diebold, Esq.
Thomas Diebold, Esq.
Administrative Hearing Officer
Office of Administrative Hearings

cc: Ferdinand Slater, Esq.
Halliday Moncure, Esq., AAG
William Logan, Acting Director OMS