



**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
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IN THE MATTER OF:

Andrea Norris)
)
) **FINAL DECISION**
)

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

The Recommended Decision of Hearing Officer Longanecker, mailed November 8, 2012 has been reviewed.

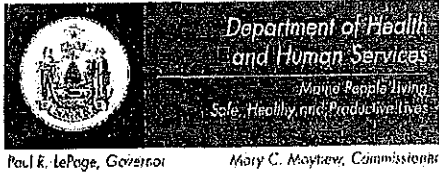
I hereby adopt the findings of fact and I accept the Recommendation of the Hearing Officer that the Department was not correct when it denied Andrea Norris' reinstatement into the MaineCare program.

DATED: 12/4/12 SIGNED: 
MARY C. MAYHEW, COMMISSIONER
DEPARTMENT OF HEALTH & HUMAN SERVICES

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

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

cc: Thomas Bradley, AAG, Office of the Attorney General
Carol Eisenberg, Esq., Richardson, Whitman, Large & Badger,
P.O. Box 9545, Portland, ME 04112-9545
Greg Nadeau, Audit Program Manager



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

DATE MAILED: NOV 08 2012

In Re: Andrea Norris
Denial of reinstatement to the MaineCare program

RECOMMENDED DECISION

An administrative hearing was held on August 6, 2012, at Portland, Maine in the case of Andrea Norris before Hearing Officer Tamra A. Longanecker. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services.

The record was left open for the parties to submit written closing arguments, which were received and made part of this record. The record closed on September 7, 2012.

FACTUAL BACKGROUND AND ISSUE:

On October 16, 2008, the Department of Health and Human Services, Division of Program Integrity ("the Department") notified Andrea Norris ("Claimant" or "Ms. Norris") in part:

As a result of the action taken by the Board of Nursing, in its Consent Agreement for Voluntary Surrender of License, we are terminating your participation in, and reimbursement from, all medical assistance programs administered by the Maine Department of Health and Human Services (Department), effective upon receipt of this letter. The exclusion is for an indefinite period and is effective from the date you receive this letter for such period as may later be determined by the Secretary of the United States Department of Health and Human Services under Section 1128 of the Social Security Act.

On December 2, 2011, the United States Department of Health and Human Services notified Ms. Norris that she had been reinstated as a provider of services covered under the title XVIII (Medicare) program. On December 7, 2011, Ms. Norris requested reinstatement as a MaineCare provider. On December 28, 2011, the Department denied Ms. Norris' request for reinstatement because she had been employed by St. Joseph's Nursing & Rehabilitation Center between June 9, 2011 and August 8, 2011 and by Northern Maine General's Mercy Home between October 25, 2011 and November 1, 2011. In its denial, the Department wrote, in part:

It is apparent that you have knowingly provided services to and received MaineCare reimbursement from two providers who are MaineCare participants while you were State and Federally excluded. Therefore, your reinstatement request is denied.

The Department's action is pursuant to the provisions of the MaineCare Benefits Manual Chapter I, Section 1.19-1 Grounds for Sanctioning and/or Recouping payments from Providers, Individuals, or Entities:

Y. Failure to abide by the provisions of 42 CFR 1000 et seq., pertaining to the exclusion of individuals and entities.

Following a request by Ms. Norris for an informal review of the denial dated December 28, 2011, the Department issued a Final Informal Review Decision on March 21, 2012. The Final Informal Review Decision upheld the denial for reinstatement.

On May 7, 2012, Ms. Norris, through her attorney, filed a request for an administrative hearing. Pursuant to an Order of Reference dated May 21, 2012, 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 denied Andrea Norris' reinstatement into the MaineCare program?

APPEARING ON BEHALF OF CLAIMANT:

Carol I. Eisenberg, Esq.
Andrea Norris

APPEARING ON BEHALF OF THE DEPARTMENT:

Thomas C. Bradley, AAG
Greg Nadeau, Audit Program Manager

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1: Notice of Hearing dated May 22, 2012.
- HO-2: Order of Reference dated May 21, 2012.
- HO-3: Fair Hearing Report Form dated May 14, 2012.
- HO-4: Letter from DHHS regarding exclusion from Mainecare dated October 16, 2008.
- HO-5: Letter from DHHS denying reinstatement to Mainecare dated December 28, 2011.
- HO-6: Final Informal Review Decision dated March 21, 2012.
- HO-7: Rescheduling letter dated June 5, 2012.

Department Exhibits:

- DHHS-1: Order of Reference.
- DHHS-2: State of Maine Board of Nursing Consent Agreement for voluntary Surrender of License, effective September 22, 2008.
- DHHS-3: MaineCare exclusion letter, dated October 16, 2008, effective December 22, 2008.
- DHHS-4: Federal exclusion notification, dated December 31, 2008, effective January 20, 2009.
- DHHS-5: State of Maine Board of Nursing Consent Agreement for License Reinstatement and Probation with Conditions, effective October 2, 2009.
- DHHS-6: Formal Request from Andrea Norris for removal from MaineCare exclusion status, dated December 7, 2011.
- DHHS-7: Federal reinstatement notification, effective December 2, 2011.
- DHHS-8: Department of Labor wage information for 2008-2011.
- DHHS-9: DHHS reinstatement denial letter, dated December 28, 2011.
- DHHS-10: DHHS employment termination letter addressed to Northern Maine General Mercy Home, dated December 28, 2011.
- DHHS-11: Correspondence from St. Joseph Nursing & Rehabilitation Center to Maine State Board of Nursing.
- DHHS-12: Response from Northern Maine General Mercy Home, dated January 5, 2012.
- DHHS-13: Informal Review request from Andrea Norris, dated January 6, 2012.
- DHHS-14: DHHS acknowledgement of receipt of Informal Review Request, dated January 11, 2012.
- DHHS-15: Additional documentation submitted by Andrea Norris for Informal Review, received on February 11, 2012.
- DHHS-16: Correspondence from Maine State Board of Nursing, received on March 7, 2012.
- DHHS-17: Office of Inspector General documentation including reinstatement application from Andrea Norris.
- DHHS-18: DHHS Final Informal Review Decision, dated March 21, 2012.
- DHHS-19: Administrative Hearing request dated May 7, 2012.

- DHHS-20: Administrative Hearing notification letter dated May 22, 2012, with attachments.
- DHHS-21: Rescheduling notice for hearing.
- DHHS-22: MaineCare Benefits Manual (MBM) Chapter I, Section 1 (effective December 12, 2007).

Other documents in the record:

Timeline.

Closing arguments of both parties.

RECOMMENDED FINDINGS OF FACT:

1. Andrea Norris has been a registered nurse since 1986. For the past twenty (20) years, she has lived in the Ft. Kent area. *See*, Norris testimony.
2. Andrea Norris worked as a registered nurse from 1986 until 2008. Nursing has been her only career. *See*, Norris testimony.
3. On January 17, 2008, Ms. Norris was terminated from her employment at Northern Maine Medical Center for Substance Abuse. *See*, exhibit DHHS-2.
4. On January 25, 2008, Ms. Norris voluntarily entered a substance abuse treatment program. *See*, exhibit DHHS-2.
5. Following an informal conference with the Board of Nursing, Ms. Norris signed a Consent Agreement For Voluntary Surrender of License ("Agreement") on September 16, 2008. *See*, exhibit DHHS-2.
6. Per the Agreement, Ms. Norris agreed that she "shall not work or volunteer in any capacity for a health care provider as defined by Title 24 M.R.S.A. §2502(2) or in any position holding herself out as a registered professional nurse or with the designation "RN," including in a veterinarian's office, while her nursing license is surrendered." *See*, exhibit DHHS-2.
7. On October 16, 2008, DHHS sent Ms. Norris a letter excluding her from MaineCare. Specifically, the letter stated, in part:

As a result of the action taken by the Board of Nursing, in its consent Agreement for Voluntary Surrender of License, we are terminating your participation in, and reimbursement from, all medical assistance programs administered by the Maine Department of Health and Human Services (Department), effective upon receipt of this letter. The exclusion is for an indefinite period and is effective from the date you receive this letter for such period as may later be determined by the Secretary of the United States Department of Health and Human Services under Section 1128 of the Social Security Act.

See, exhibit DHHS-3.

8. The letter from DHHS, dated October 16, 2008, was incorrect, in part. Specifically, DHHS had initiated exclusion prior to the federal government (US DHHS) excluding Ms. Norris; therefore, her reinstatement as a MaineCare provider by the State of Maine would be an independent decision made by the State of Maine and not dependent upon any action by the federal government. If the federal government had initiated exclusion first, then the State of Maine is obligated to reinstate when the federal government reinstates, but again, that is not the case here. Therefore, the reference in the letter to the duration of exclusion "*as may later be determined by the Secretary of the United States Department of Health and Human Services*" was an error. See, Nadeau testimony.
 9. Ms. Norris acknowledges that she received the October 16, 2008 letter. Although she believes that she would have opened the letter and read it, as was her general practice, she did not have any specific memory of the letter following October 2008. See, Norris testimony.
 10. In January 2009, the US DHHS placed Ms. Norris on its exclusion list. The exclusion letter was sent to the State of Maine DHHS, but a copy was never sent to Ms. Norris. See, exhibit DHHS-4.
 11. On October 29, 2009, Ms. Norris completed her substance abuse treatment. In his letter, her provider noted: "*Ms. Norris exhibited a high level of motivation through-out her treatment and was able to make healthy changes in her life with a renewed sense of honesty and investment in her recovery*". See, exhibit DHHS-15.
 12. On September 28, 2009, Ms. Norris signed a Consent Agreement for License Reinstatement And Probation With Conditions. As part of this agreement Ms. Norris' license was reinstated subject to the following, in part:
 - d. *Andrea S. Norris will notify the Board in writing within five business days after she obtains any nursing employment and/or an educational program in the field of nursing.*
 - e. *Andrea S. Norris will notify any and all of her nursing employers and faculty involved in any clinical studies of the terms of this Consent Agreement and provide them with a copy of it.*
- See, exhibit DHHS-5.
13. Between the fall of 2009 and the summer of 2011, Ms. Norris decided not to seek employment and to focus on taking care of herself before she tried to take care of others again. See, testimony of Norris.
 14. Between June 9, 2011 and August 8, 2011, Ms. Norris was employed by St. Joseph's Nursing and Rehabilitation Center. In compliance with the second consent agreement, Ms. Norris notified the Board of her employment and provided a copy of the agreement to her employer. See, Norris testimony.
 15. Between October 29, 2011 and November 1, 2011, Ms. Norris was employed by Northern Maine General's Mercy Home. She again notified the Board of this employment and provided a copy of the consent agreement to her employer. After conducting a background check, the employer learned of Ms. Norris' name on the exclusion lists which necessitated her termination. The employer provided the names of Mary Hendricks at DHHS and Joann Francis at US DHHS for her to contact regarding reinstatement. See, Norris testimony.

16. Although no longer employed at St. Joseph's and not required by any agreement, Ms. Norris took it upon herself to notify St. Joseph's of her presence on the list when she discovered this fact. *See*, Norris testimony.
17. Based on her conversations with both Mary Hendricks and Joann Francis, Ms. Norris believed that she had to seek reinstatement from the US DHHS first, which she did on November 25, 2011. In her request for reinstatement, Ms. Norris explained that she had inadvertently accepted employment while she was excluded. *See*, exhibits DHHS-6 and 17.
18. The US DHHS promptly reinstated Ms. Norris on December 7, 2011. *See*, exhibit DHHS-9.
19. On December 7, 2011, Ms. Norris requested reinstatement from Maine DHHS. *See*, exhibit DHHS-6.
19. On December 28, 2011, the Department denied Ms. Norris' request for reinstatement because she had been employed by St. Joseph's Nursing & Rehabilitation Center between June 9, 2011 and August 8, 2011 and by Northern Maine General's Mercy Home between October 25, 2011 and November 1, 2011. In its denial, the Department wrote, in part:

It is apparent that you have knowingly provided services to and received MaineCare reimbursement from two providers who are MaineCare participants while you were State and Federally excluded. Therefore, your reinstatement request is denied. (emphasis added)

The Department's action is pursuant to the provisions of the MaineCare Benefits Manual Chapter I, Section 1.19-1 Grounds for Sanctioning and/or Recouping payments from Providers, Individuals, or Entities:

Y. Failure to abide by the provisions of 42 CFR 1000 et seq., pertaining to the exclusion of individuals and entities.

20. In her January 6, 2012 request for an informal review of the denial, Ms. Norris wrote, in part:

The facts of my employment are correct, however, I was unaware I was on a list of excluded providers. At the time of my exclusion, I was notified via certified mail. I have a copy of the letter that was mailed to me at that time, yet I do not recall receiving it. I will admit, there were many personal issues I was struggling with at the time.

[...]

While I have worked briefly while excluded, I was unaware I was on that list. Once I became aware I was on the list, I have not worked in any capacity at any facility. In addition, once I became aware of my status, I took it upon myself to immediately notify St. Joseph's Nursing and Rehab Center (an employer from approximately 6/9/2011-8/8/2011) of my presence on this list.

See, exhibit DHHS-13.

21. On March 21, 2012, the Department issued its Final Informal Review Decision which denied Ms. Norris' request for reinstatement. *See*, exhibit DHHS-18.
22. On May 7, 2012, Ms. Norris requested an administrative hearing. *See*, exhibit DHHS-19.

RECOMMENDED DECISION:

The hearing officer respectfully recommends that the Commissioner find that the Department was not correct when it denied Andrea Norris' reinstatement into the MaineCare program and resolve this matter in favor of Ms. Norris.

REASON FOR RECOMMENDATION:

Again, the issue in this case is whether the Department was correct when it denied Ms. Norris' reinstatement into the MaineCare program.

In its denial notice, which was upheld by informal review, the Department explained its decision to deny as follows:

It is apparent that you have knowingly provided services to and received MaineCare reimbursement from two providers who are MaineCare participants while you were State and Federally excluded. Therefore, your reinstatement request is denied. (emphasis added)

The Department's action is pursuant to the provisions of the MaineCare Benefits Manual Chapter 1, Section 1.19-1 Grounds for Sanctioning and/or Recouping payments from Providers, Individuals, or Entities:

Y. Failure to abide by the provisions of 42 CFR 1000 et seq., pertaining to the exclusion of individuals and entities.

The underlying facts of this case are not in dispute.

The Department's argument

In its closing, the Department argues that its discretion whether to reinstate is broad. And, although the US DHHS reinstated Ms. Norris, the state must make its own decision because it was the first to exclude her. If the US DHHS had been the first to exclude, then Maine is obligated to reinstate upon the federal government's decision to reinstate, but that is not the case here.

The Department admits that its decision to deny reinstatement is based solely on Ms. Norris' employment during the exclusionary period and not on the underlying facts which led to the suspension of her license. Again, this employment is not in dispute.

In response to Ms. Norris' testimony regarding the meaning of the 2008 exclusion notice, the Department argues:

The intent of the notice of exclusion was clear that Ms. Norris' participation in MaineCare as an employee was prohibited. The notice concluded with, "if you have any questions, please contact Mary Hendricks at 287-4660." To the extent that Ms. Norris had any uncertainty or any questions about the meaning and import of the notice, she had a name and a phone number to contact by which her calling would have removed any uncertainty on her part. (See, Closing page 3).

In response to counsel's questions regarding the 2008 exclusion notice's reference to the US DHHS deciding the issue of reinstatement, the Department argues:

The statement is partly correct in that the federal authorities made the first decision in this instance whether to allow Ms. Norris to be reinstated. It was incomplete in not stating that Maine DHHS also makes an independent determination regarding reinstatement.

Irrespective of completeness, Ms. Norris was not harmed or prejudiced by the statement. She in fact obtained reinstatement from the federal authorities first, under recent instruction from the Program Integrity Unit. She then sought reinstatement from Program Integrity, pursuant again to its recent instruction.

To the extent the notice is subject to criticism, the criticisms are incidental. The fact remains that the Department satisfied its notice requirement such that a reasonable person would conclude that she was excluded from participating in MaineCare, or if questioning the scope of the matter, that further inquiry was warranted.

[...]

The Final Informal Review Decision cited MBM Chapter I's requirement of the provider's "willingness to obey MaineCare rules" as support. DHHS Exh. 18. Despite the absence of that cite in the letter communicating the original decision to not reinstate, Ms. Norris cannot claim to not have been informed that the basis of the Department's original denial of reinstatement was her violation of the exclusion. The original notice of denial explicitly referenced Ms. Norris' employment at St. Joseph's Nursing and Rehabilitation Center and Northern Maine General's Mercy Home. DHHS Exh. 9. In any case, the Department correctly cited Section 1.19-1 for its final review of its decision, and Ms. Norris has had adequate opportunity through the present appeal process to bring all facts to bear on the ultimate decision made by the Department.

[...]

Ms. Norris presented herself at hearing as not having intentionally violated the terms of her exclusion. However, the public interest at stake here is compliance with the MaineCare rules – and compliance with the exemptions imposed by the Department. Here, Ms. Norris' violations raise concerns about her future compliance with MaineCare rules, whether intentional or not. (emphasis added). (See, closing pages 4 and 5.)

Claimant's argument

In her closing, Norris argues that the Department's refusal to reinstate her is unreasonable and should be reversed for the following reasons:

1. The October 2008 notice of exclusion was insufficiently clear to constitute effective notice and it states that Norris' period of exclusion will be governed by the U.S. DHHS;
2. Norris did not knowingly provide services while excluded, nor did she violate any federal regulation cited, as claimed by DHHS in the December 2011 denial of her request for reinstatement;

3. Norris did not fail to demonstrate a willingness to obey MaineCare rules, as claimed by DHHS in the March 2012 denial after informal review, and all of the evidence available to DHHS supports a finding of willingness to obey MaineCare rules; and
4. DHHS has been unreasonable in that it has not provided Norris with any time frame for reinstatement or conditions under which she might be granted reinstatement.

With regard to the first issue involving clear notice, Ms. Norris argues that the 2008 exclusion letter was a "jumble of legalese" and even the Department testified that the second sentence of the letter was clearly wrong because it came from a template that did not apply to Ms. Norris' situation. Norris further argues:

[S]ince the letter links her exclusion to her license surrender, she possibly reasonably inferred that reinstatement would be similarly linked to the restoration of her license, perhaps reasonably leading her to discount or fail to perceive the separate significance of her exclusion, so that she did not retain the information when she returned to work almost three years later. DHHS could and should avoid this sort of confusing message by providing a clearer, more plainly worded notification. DHHS could also work with the Board of Nursing to ensure that licensees are prompted to seek reinstatement (or at least reminded of the exclusion) at the time a suspended license is restored. DHHS' actions should be designed to ease rather than inhibit a person's return to gainful employment.

..., the letter sent to Norris does say that her period of exclusion will be determined by the U.S. DHHS. Therefore, DHHS should be forced to comply with the terms of its own notice and reinstate Norris because the U.S. DHHS has done so. (See, closing pages 5 and 6).

With regard to the second issue, Ms. Norris argues that she did not knowingly provide services while excluded, nor did she violate any federal regulation cited, as claimed by DHHS in the December 2011 denial of her request for reinstatement. Ms. Norris credibly testified at hearing that she was unaware of her presence on the exclusion list until her second employer made her aware of this fact. In support of her testimony that she did not "knowingly" provide services while excluded she argues in closing:

Norris' openness about her Consent Agreement, license surrender and treatment for substance abuse lends credence to her recollections. She was completely open with both of her employers in 2011, and she provided them with copies of her Consent Agreement. It would be nonsensical to be open about that difficult personal history but hide her status on the exclusion list, particularly since reinstatement likely would have been as perfunctory for DHHS as it was for the U.S. DHHS if she had requested it prior to employment.

The letter denying reinstatement summarily states as the basis for denial, "It is apparent that you have knowingly provided services to and received MaineCare reimbursement from two providers who are MaineCare participants while you were State and Federally excluded. Therefore your request is denied." In fact, it is not and was not "apparent" that she provided services while knowing she was excluded. Nadeau testified that there was no investigation or determination that Norris knew she was excluded when she was employed in 2011, but that DHHS inferred such "knowledge" from the October 2008 signature on the receipt for the certified letter. The provision of a confusing and inaccurate letter 32 months prior is not a sufficient basis to infer knowledge, and Norris' uncontradicted testimony is that she did not have knowledge of her exclusion.

The letter denying reinstatement also states that DHHS' "action is pursuant to" the MaineCare Benefits Manual provision allowing sanctions for "[f]ailure to abide by the provision of 42 CFR 1000 et

seq., pertaining to the exclusion of individuals and entities." The letter does not, however, include any reference to any of the provision at 42 CFR 1000 et seq. that Norris failed to abide by. Incredibly, Nadeau testified that in fact neither he nor his staff indentified any regulation that Norris violated. He admitted that he signed the letter that kept Norris from earning a livelihood without personally verifying the accuracy of the basis cited for the denial of her request or even asking the staff writer if she had done so. [...]

Therefore both bases for denying reinstatement articulated in the December 2011 denial letter – "knowing" and violating a federal regulation – are invalid. Norris did not knowingly provide services while excluded, and Norris did not violate any regulation cited, so the denial of her reinstatement should be reversed.

The third issue concerns the Final Informal Review Decision in March 2012 which addresses Claimant's willingness to obey MaineCare rules. In short, Norris disagrees with the Department's conclusion and further argues:

Given the evidence of her willingness to comply with MaineCare rules expressed in Norris' January 2012 letter to DHHS and evidenced by her conduct since learning of her exclusion on November 1, 2011, and given the absence of any evidence that she was not willing to abide by MaineCare rules DHHS was not justified in affirming the denial of her request for reinstatement pursuant to Chapter 1, Section 1.19-3(A-1 f), as stated in its March 2012 Final Informal Review Decision. (See, closing pages 8 and 9)

The final issue presented by Ms. Norris addresses the unreasonableness of DHHS in not providing her any time frame for reinstatement or conditions under which she might be granted reinstatement. In short, she argues:

While Norris' first employer also did not realize her stats, her second employer did, and it made Norris aware of the problem. Norris approached U.S. DHHS for reinstatement, and it was promptly granted in spite of the inadvertent employment. DHHS, though, not only refused reinstatement, but did not offer any time frame or conditions for reinstatement. To the contrary, DHHS denies any such conditions can be set forth. In Nadeau's testimony, DHHS has taken the position that it has the right to perpetually deny Norris reinstatement on the basis of the brief inadvertent employment in 2011. Nadeau admitted, though, that a denial of reinstatement with no information about how or when the provider might seek reinstatement in the future is problematic. It is nonsensical that a license suspension for a serious offense such as substance abuse can be resolved in a year, while an exclusion for a brief, inadvertent employment while excluded is used as a basis for possible perpetual denial of reinstatement.

Norris is a registered nurse. It has been her only career and she has worked in this field for decades. Virtually every nursing job in her region is for a provider who participates in medical assistance programs, so even with a license, she is effectively barred from employment unless and until she can get removed from the DHHS exclusion list. To bar someone from earning a livelihood indefinitely, with no time frame or condition for reinstatement because of brief, inadvertent employment is an unreasonable position for DHHS to take. (See, closing pages 9 and 10).

Summary

In this case, the hearing officer is persuaded by Claimant's arguments and respectfully recommends that the Commissioner resolve this matter in favor of Ms. Norris. Again, the facts are not in dispute. Ms. Norris cannot change the fact that she was very briefly employed in 2011 while excluded. However, the evidence does not

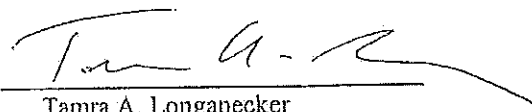
support that she "knowingly" accepted employment during an exclusionary period. She first surrendered her license in 2008. Since that time, she has done nothing but diligently comply with her treatment providers, the Board of Nursing and the two Consent Agreements. It is not logical to think that she would work so hard to regain her license and comply with the numerous conditions of her probation to only then lose her livelihood a second time because she did not seek reinstatement to the provider list. Since her employment is the only factor keeping her from being reinstated, clearly any request she would have made prior to June 2011 for reinstatement would have been granted by both the U.S. and Maine DHHS. In fact, the US DHHS granted reinstatement despite her employment during the time of exclusion.

The Department also raises a question with Ms. Norris' willingness to comply with MaineCare rules. As explained above, the record does not support that Ms. Norris is unwilling to comply with MaineCare rules.

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: 1/7/12

SIGNED: 
Tamra A. Longanecker
Administrative Hearing Officer
Division of Administrative Hearings

cc: Thomas Bradley, AAG, Office of the Attorney General
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Andrea Norris,
Greg Nadeau, Audit Program Manager