



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:

AngleZ Behavioral Health Services)
c/o Jay P. McCloskey, Esq.)
McCloskey, Mina & Cunniff, LLC) **FINAL DECISION**
12 City Center)
Portland, ME 04101)

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

The Recommended Decision of Hearing Officer Stoodley, mailed February 24, 2014 and the responses and exceptions filed on behalf of AngleZ 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 AngleZ Behavioral Health Services based on a credible allegation of fraud.

DATED: 4/24/14 SIGNED: *Samuel Adolphsen*
SAMUEL ADOLPHSEN, DEPUTY COMMISSIONER
OF FINANCE
DEPARTMENT OF HEALTH & HUMAN SERVICES
(pursuant to Commissioner Mayhew's letter of 4/4/14)

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

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

cc: Thomas Bradley, AAG, Office of the Attorney General
Herbert Downs, Division of Audit
Annalee Morris-Polley, Administrator, AngleZ Behavioral Health Services,
578 Church Hill Road, Augusta, ME 04330



**Department of Health
and Human Services**

*Maine People Living
Safe, Healthy and Productive Lives*

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

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FEB 24 2014

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

DATE MAILED: _____

ADMINISTRATIVE HEARING RECOMMENDATION

An administrative hearing was held on 1/17/14 in the case of the AngleZ Behavioral Health Services, at Augusta, Maine, before Ronald S. Stoodley, Hearing Officer. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services (DHHS).

CASE BACKGROUND AND ISSUE:

AngleZ Behavioral Health Services ("AngleZ") is an agency licensed by DHHS to provide mental health services. AngleZ became a MaineCare provider in February 2013 and has been providing mental health services for MaineCare-eligible persons since then.

DHHS received an allegation of fraud against AngleZ. DHHS considered the allegation and determined that the allegation constituted a "Credible Allegation of Fraud." On 9/25/13, DHHS sent a notice to AngleZ stating that it was suspending MaineCare payments to AngleZ because of the Credible Allegation of Fraud. The notice did not describe the specifics of the Credible Allegation of Fraud, but stated:

The general allegations are: Billing for inappropriate services.

On 9/26/13, Charles Dingman, Esq., on behalf of AngleZ, requested an Informal Review. DHHS conducted an Informal Review. On 10/11/13, DHHS issued a Final Informal Review Decision affirming its suspension of MaineCare payments to AngleZ because of the Credible Allegation of Fraud. On 12/6/13, Jay McCloskey, Esq., on behalf of AngleZ, appealed the Final Informal Review Decision dated 10/11/13, resulting in this hearing.

The Order of Reference dated 12/12/13 stated the issue at this hearing:

- (1) Was the Department correct when it suspended payments to AngleZ Behavioral Health Services based on a credible allegation of fraud?

Prior to the hearing, a prehearing telephone conference took place on 12/31/13. At this conference, the parties agreed to postpone the hearing which had been scheduled for January 7 and 8, 2014. In addition, the parties agreed that by 1/10/14 they would provide pre-hearing memorandums, copies of exhibits, and witness lists; and, if a party was planning to object to the testimony of a witness, that party was to state the reasons for objection. On 1/10/14, both sides

submitted prehearing memorandums, exhibits and witness lists. In addition, Mr. McCloskey submitted a supplemental prehearing memorandum dated 1/13/14 that the hearing officer accepted into the record over the objection of Mr. Bradley.

In his prehearing filings, Mr. McCloskey identified a number of witnesses he planned to call. Mr. McCloskey provided a brief description of their expected testimony. Mr. Bradley objected to several of the witnesses identified by Mr. McCloskey. Mr. Bradley described why he felt the witnesses' testimony would not be relevant to the specific issue to be addressed at hearing. Regarding four of the witnesses (Kathy Coutu, Keith Wilson, Gary Bell, and Marc Fecteau), the hearing officer agreed with Mr. Bradley's objection. The hearing officer decided that these witnesses' testimony would not be relevant to the specific issue to be addressed at hearing. The hearing officer explained his decision with regard to the four witnesses by letter dated 1/16/14. The hearing officer held in abeyance, until the hearing, his decision about the other witnesses being objected to by Mr. Bradley.

At hearing, Mr. McCloskey again described the expected testimony of the four witnesses discussed in the preceding paragraph. In addition, Mr. McCloskey described the expected testimony of four other witnesses he proposed to call (Bob Giroux, Mike Shea, Jennifer Raymond, and Annalee Morris-Polley). Mr. Bradley objected to the testimony of these four other witnesses on the grounds that their testimony would not be relevant to the specific issue at this hearing. The hearing officer agreed with Mr. Bradley's objection. The hearing officer reiterated his exclusion of the four witnesses discussed in the preceding paragraph. The hearing officer decided that the four other witnesses' testimony would not be relevant to the specific issue at this hearing and the hearing officer excluded the testimony of these four witnesses.

Following the hearing on 1/17/14, the hearing record remained open until 1/31/14 in order to allow the parties to submit closing arguments. Both sides submitted closing arguments. The hearing record was closed on 1/31/14.

APPEARING ON BEHALF OF ANGLEZ BEHAVIORAL HEALTH SERVICES:

Jay McCloskey, Esq.
Annalee K. Morris-Polley, R.N., President and CEO, AngleZ Behavioral Services

APPEARING ON BEHALF OF AGENCY:

Thomas Bradley, AAG
Herbert Downs, Director, Division of Audit

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer exhibits:

- HO-1. Notices dated 12/17/13 and 1/8/14 scheduling and rescheduling hearing
- HO-2. Order of Reference dated 12/12/13
- HO-3. Letter dated 1/2/14 to the parties from the hearing officer
- HO-4. Pre-hearing Memorandum dated 1/10/14, Thomas Bradley
- HO-5. Pre-hearing Memorandum dated 1/10/14, Jay McCloskey
- HO-6. Supplemental pre-hearing memorandum dated 1/13/14, Jay McCloskey
- HO-7. E-mails dated 1/13/14 regarding the supplemental pre-hearing memorandum dated 1/13/14
- HO-8. Letter dated 1/14/14 from Thomas Bradley regarding witnesses

- HO-9. E-mails dated 1/15/14 regarding witnesses
- HO-10. E-mail dated 1/16/14 from the hearing officer regarding witnesses
- HO-11. E-mails dated 1/16/14 regarding witnesses
- HO-12. E-mail dated 1/16/14 from the hearing officer forwarding letter dated 1/16/14
- HO-13. Letter dated 1/16/14 to the parties from the hearing officer regarding witnesses

Department exhibits:

- DHHS-1. Letter dated 9/6/13 to Herbert Downs from Susan Waddell with attached Declaration of Catherine Richard
- DHHS-2. Notice, "Suspension of Medicaid Payments," dated 9/25/13
- DHHS-3. Expedited Review Request dated 9/26/13, with attachments
- DHHS-4. Expedited Review Request dated 10/2/13, with supplemental information
- DHHS-5. Letter dated 10/2/13 acknowledging request for expedited informal review
- DHHS-6. Final Informal Review Decision dated 10/11/13
- DHHS-7. Letter dated 12/6/13, Appeal of the Final Informal Review Decision, with attachments
- DHHS-8. Fair Hearing Report dated 12/10/13
- DHHS-9. Order of Reference dated 12/12/13
- DHHS-10. MaineCare Benefits Manual, Chapter I
- DHHS-11. 42 CFR §447.90
- DHHS-12. 42 CFR Part 455
- DHHS-13. MaineCare/Medicaid Provider Agreement, dated 2/15/13

AngleZ Behavioral Health Services exhibits:

- AngleZ- 1 Letter dated 9/6/13 to Herbert Downs from Susan Waddell with attached Declaration of Catherine Richard
- AngleZ- 2 Notice, "Suspension of Medicaid Payments" dated 9/25/13
- AngleZ- 3 Letter dated 10/2/13 acknowledging request for expedited informal review
- AngleZ- 4 Final Informal Review Decision dated 10/11/13
- AngleZ- 5 42 CFR Part 455
- AngleZ- 6 Application for Mental Health Agency License

Other items in the record:

- A. Letter dated 1/21/14 to the parties from the hearing officer
- B. Closing arguments from Thomas Bradley, AAG, dated 1/31/14
- C. Closing arguments from Jay McCloskey, Esq., dated 1/31/14

FINDINGS OF FACT:

1. On 9/13/13, DHHS received the letter dated 9/6/13 addressed to Herbert Downs from Susan Waddell with the attached Declaration of Catherine Richard. (Exhibit DHHS-1).
2. Susan Waddell and Catherine Richard are employed by the Federal Department of Health and Human Services, Office of Inspector General, Office of Investigations ("OI"). Ms. Waddell's title at the OI is "Special Agent in Charge." Ms. Richard's title at the OI is "Special Agent."

3. Susan Waddell's letter dated 9/6/13 contains the statement, "we believe that the declaration outlines credible allegations of fraud and information that we continue to gather indicates that AngleZ is still billing MaineCare for misrepresented services and services not rendered."
4. Catherine Richard's Declaration contains the statements, "I believe that AngleZ 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," and, "at a minimum, it appears that there is a credible allegation of fraud, and OI is recommending that the immediate payment suspension of this supplier be implemented to prevent further loss to the MaineCare program."
5. Catherine Richard's Declaration contains a number of statements.

In paragraph 5, Ms. Richard stated that AngleZ may be recruiting staff and clients from a competing mental health agency and that AngleZ was owned by a former part owner of a mental health agency being investigated by OI.

In paragraph 6, Ms. Richard stated that a site visit was made by DHHS licensing staff and that the licensing staff found lack of documentation, including a specific example seen by Ms. Richard.

In paragraph 7, Ms. Richard stated there were "other discrepancies discovered by Licensing" including the employment of a case worker who was also a case manager (paragraph 7a), billing for individuals who are 80 plus years old (paragraph 7b), four files with the same comprehensive assessment with only the date changed (paragraph 7c), an assessment that might have been copied (paragraph 7d), and a patient file with a comprehensive assessment with identical information as a comprehensive assessment from eight months earlier (paragraph 7e).

In paragraph 8, Ms. Richard stated that an AngleZ client was sitting in front of a television with two AngleZ workers and they appeared to be playing something, and that another AngleZ client was present, too.

6. The OI is investigating AngleZ for possible fraud. The OI investigation of AngleZ began in June 2013.
7. Prior to 9/6/13, Herbert Downs was aware that OI had begun its investigation into AngleZ for possible fraud.
8. Catherine Richard is involved with the investigation by the OI into possible fraud at AngleZ.
9. Prior to 9/6/13, Herbert Downs was aware that Catherine Richard was involved with the investigation by the OI into possible fraud at AngleZ.
10. In early 2013, the OI began an investigation into allegations of possible fraud at another agency, which is called Umbrella Mental Health Services ("Umbrella"). The allegations of possible fraud against Umbrella involve billing for inappropriate services, billing for services not provided, and billing for services not documented or not insufficiently documented.

11. Prior to 9/6/13, Herbert Downs was aware that the OI had begun conducting an investigation of Umbrella commencing in early 2013 (commencing in January, February or March 2013). Mr. Downs was aware that the allegations of fraud against Umbrella involved billing for inappropriate services, billing for services not provided, and billing for services that were not documented or not sufficiently documented.
12. Catherine Richard had been, and perhaps still is, involved with an investigation by the OI into possible fraud at Umbrella.
13. Prior to 9/6/13, Herbert Downs was aware that Catherine Richard had been, and perhaps still was, involved with an investigation by the OI into possible fraud at Umbrella.
14. Annalee Morris-Polley, R.N., is the President and CEO of AngleZ. Ms. Morris-Polley was a part owner of Umbrella until she left Umbrella in about October of 2012 and formed AngleZ.
15. Prior to 9/6/13, Herbert Downs was aware that Annalee Morris-Polley, R.N., was the President and CEO of AngleZ and that Annalee Morris-Polley, R.N., had been part owner of Umbrella until she left Umbrella in about October of 2012 and formed AngleZ.
16. Around the time AngleZ was forming, a number of staff that had been employed by Umbrella left that employment and began employment at AngleZ.
17. Prior to 9/6/13, Herbert Downs was aware that a number of staff that had been employed by Umbrella had left that employment and had begun employment at AngleZ.
18. The DHHS licensing office generally had concerns about AngleZ due to its connection with Umbrella.
19. Prior to 9/6/13, Herbert Downs knew that the DHHS licensing office generally had concerns about AngleZ due to its connection with Umbrella.
20. AngleZ intended to, or had, employed Dr. John Fine as its "medical director." In the past, there had been difficulties between DHHS and Dr. Fine, having to do with questions about his billing practices when Dr. Fine worked with other agencies and his billing for contracted services at Riverview Psychiatric Center.
21. Prior to 9/6/13, Herbert Downs was aware that AngleZ intended to, or had, employed Dr. John Fine as its "medical director." Mr. Downs knew that there had been difficulties between DHHS and Dr. Fine, having to do with questions about his billing practices when Dr. Fine worked with other agencies and his billing for contracted services at Riverview Psychiatric Center.
22. Prior to 9/6/13, Herbert Downs was aware of the OI fraud investigations of Umbrella and AngleZ though his position as Director of Audit for the Department of Health and Human Services.
23. Prior to 9/6/13, Herbert Downs knew Susan Waddell. Mr. Downs knew Ms. Waddell was Catherine Richard's supervisor.
24. Prior to 9/6/13, Herbert Downs had been in contact with Catherine Richard several times regarding the investigations of Umbrella and AngleZ, and was aware of the similarities between the two investigations.

25. Prior to 9/6/13, Herbert Downs had a “working relationship” with Catherine Richard and the OI.
26. Prior to 9/6/13, Herbert Downs had confidence in both Catherine Richard and the OI.
27. Based on his knowledge of the OI investigations of AngleZ and Umbrella, and his knowing of and having confidence in the OI and the OI investigators, and his knowing something of Dr. Fine’s activities, Herbert Downs did not investigate further or seek out any additional information regarding any of the allegations listed in Catherine Richard’s Declaration before concluding that he had received a Credible Allegation of Fraud against AngleZ.

RECOMMENDED DECISION:

The hearing officer recommends that the Commissioner affirm the DHHS action and find that the Department was correct when it suspended payments to AngleZ Behavioral Health Services based on a credible allegation of fraud.

REASONS FOR RECOMMENDATION:

The rules governing payments for MaineCare services are contained in Chapter I of the *MaineCare Benefits Manual*.

Under these rules at Section 1.20-3, A, when DHHS determines that it has received a “Credible Allegation of Fraud” against a MaineCare provider and there is a pending investigation against that MaineCare provider, DHHS must suspend MaineCare payments to that provider pending the outcome of the investigation.

In his closing, Mr. Bradley argued that DHHS had developed all the evidence necessary to prove “Credible Allegation of Fraud” against AngleZ, and had, therefore, appropriately suspended MaineCare payments to AngleZ.

In his closing, Mr. McCloskey argued that DHHS had not developed the evidence necessary to prove “Credible Allegation of Fraud” against AngleZ, and had, therefore, not appropriately suspended MaineCare payments to AngleZ.

Mr. McCloskey’s arguments addressed three areas: (1) this hearing had violated AngleZ’s right to a fair hearing, (2) that Ms. Richard’s Declaration did not have sufficient indicia of reliability to constitute a Credible Allegation of Fraud, and (3) that DHHS failed to review the allegations, facts, and evidence and to act judiciously as required by the regulations, and that, therefore, the finding of “Credible Allegation of Fraud” against AngleZ was incorrect.

Regarding violation of AngleZ’s right to a fair hearing, Mr. McCloskey’s closing cited the hearing officer’s not allowing the testimony of Kathy Coutu, Annalee Morris-Polley, Keith Wilson, and Marc Fecteau. In addition, although not cited in his closing, Mr. McCloskey had sought the testimony of other witnesses, and the hearing officer had excluded their testimony. These other witnesses were Gary Bell, Bob Giroux, Mike Shea, and Jennifer Raymond.

Mr. McCloskey had wanted Ms. Coutu, a DHHS employee, to testify about how she had not checked any of AngleZ billing records or claims or files, for the purpose of showing that AngleZ had not engaged in false or fraudulent billing. Mr. McCloskey also wanted Ms. Coutu to testify

about updating comprehensive assessments rather than doing new comprehensive assessments, for the purpose of showing that such updates were permissible under the regulations.

Mr. McCloskey had wanted Mr. Wilson, a DHHS employee, to testify about his telling AngleZ to copy another agency's comprehensive assessments onto AngleZ stationary, for the purpose of showing that there was nothing fraudulent or impermissible in using another agency's comprehensive assessments and to show that this activity had no connection to billing.

Mr. McCloskey had wanted Mr. Bell, a DHHS employee, to testify about his involvement in a billing situation in which it had appeared to DHHS that AngleZ had overbilled for a service, but when the billing records were looked at carefully, there was no overbilling and DHHS had apologized to AngleZ.

Mr. McCloskey had wanted Mr. Giroux, an employee of AngleZ, to testify about Mr. Wilson's telling him to retype assessments onto AngleZ stationary, to testify about recruitment from Umbrella, and to testify about his not working for both agencies at same time, for the purpose of showing that these activities were permissible under the regulations.

Mr. McCloskey had wanted Mr. Shea, an employee of AngleZ who had previously worked for Umbrella, to testify about how he separated his billing hours as a worker from his billing hours as a manager, for the purpose of showing that his holding both positions and billing in both positions were within the regulations.

Mr. McCloskey had wanted Ms. Raymond, an employee of AngleZ, to testify that she re-typed the comprehensive assessments onto AngleZ stationary under the direction of Mr. Giroux and Mr. Wilson, for the purpose of showing that this activity was permissible under the regulations.

Mr. McCloskey had wanted Ms. Morris-Polley, President and CEO of AngleZ and previous part-owner of Umbrella, to testify about her background and experience, her familiarity with MaineCare rules and regulations, her recruitment of staff, and her perception of what occurred at the site visit. Mr. McCloskey also wanted Ms. Morris-Polley to testify about how the comprehensive assessments were generated and how they were not connected to billing. Mr. McCloskey also wanted Ms. Morris-Polley to testify that AngleZ's billing records had not been examined by the OI or DHHS. Mr. McCloskey also wanted Ms. Morris-Polley to testify about DHHS billing mistakes, in particular an instance when DHHS thought AngleZ had incorrectly billed for clinician therapy but that DHHS had made an error and that DHHS apologized for its error. Mr. McCloskey also wanted Ms. Morris-Polley to testify about the other accusations in Ms. Richard's Declaration to show that the allegations were explainable and were not indicative of fraud. Mr. McCloskey also wanted Ms. Morris-Polley to testify that Licensing does not involve itself with billing. Mr. McCloskey also wanted Ms. Morris-Polley to testify about her meeting with Ms. Richard on 9/18/13, and how she answered all of Ms. Richard's questions, and that Ms. Richard had told her that she [Ms. Morris-Polley] was totally believable and that she [Ms. Richard] did not need to talk to her anymore.

Mr. McCloskey had wanted Mr. Fecteau, a former employee of DHHS, to testify as an expert on the interaction between MaineCare regulations and Federal regulations, to give his opinion as to the State's obligations to satisfy the verification and review requirements related to "Credible Allegation of Fraud," and to testify that he would not have just accepted Ms. Richard's Declaration as constituting a Credible Allegation of Fraud, but rather he would have gone beyond that and carefully looked at files and at billings to determine if there were indicia of reliability. Mr. McCloskey indicated that Mr. Fecteau had 32 years of experience in the area of fraud detection and investigation, that he had been trained by the U.S. Department of Justice on

the Credible Allegation of Fraud regulations, that he had conducted hundreds, or maybe thousands of MaineCare fraud investigations, that he is a certified fraud investigator, and that he knows how to determine fraud. Mr. McCloskey indicated that Mr. Fecteau would explain that it is necessary to connect an allegation of fraud to billing in order to have indicia of reliability and that he would explain about the difference between intentional fraud and inadvertent error, and that he would explain that it is necessary to examine many billings to see if there are repetitive problems to determine whether there is fraud or error, and that he would explain that the Licensing office does not examine billings but, rather, examines other issues.

Mr. Bradley argued that none of the testimony of any of these witnesses would be relevant to the issue at this hearing. Mr. Bradley argued that the issue at this hearing was whether DHHS was correct when it determined on 9/25/13 that there was a "Credible Allegation of Fraud" against AngleZ (and that DHHS had, therefore, appropriately suspended MaineCare payments to AngleZ due to the Credible Allegation of Fraud). Mr. Bradley argued the issue was whether DHHS had a sufficient basis for making its determination of "Credible Allegation of Fraud" at the time it made its determination, and that the issue was not whether fraud actually occurred.

The hearing officer concluded that the issue at this hearing was not whether AngleZ had actually committed fraud or whether there was a high probability that AngleZ had committed fraud, but, rather, the issue is limited to determining whether DHHS properly handled the information it received and correctly determined that the information it received constituted a "Credible Allegation of Fraud," as defined under the regulations, against AngleZ. The hearing officer concluded that the testimony that Mr. McCloskey wished to obtain from all but one of the witnesses in question was testimony that related to the degree of probability that fraud had actually occurred connected to each of the individual allegations listed in Ms. Richard's Declaration. The hearing officer concluded that the proposed testimony of these witnesses did not directly bear on the issue of DHHS's determination on 9/25/13 of "Credible Allegation of Fraud," as defined under the regulations, against AngleZ, after receiving Ms. Richard's Declaration and considering her Declaration in light of the other information it had in its possession at that time.

Regarding the remaining witness, who is Mr. Fecteau, the hearing officer concluded that Mr. Fecteau's testimony, despite his years of experience in the area of fraud detection and investigation, and his experience in interpreting Federal and State Medicaid regulations, would not be helpful in resolving the issues at this hearing. Both sides were to be given, and have been given, the opportunity to argue their positions on the meaning of the relevant regulations. It is the responsibility of the hearing officer to interpret the regulations that are applicable here and render his recommendation to the Commissioner based on that understanding of the regulations, after considering all the evidence and argument in the matter.

Therefore, the hearing officer did not accept Mr. McCloskey's argument that this hearing had violated AngleZ's right to a fair hearing by virtue of the hearing officer's exclusion of the testimony AngleZ's witnesses and the exclusion of the issues about which Mr. McCloskey wished them to testify.

Mr. McCloskey's other two arguments were that Ms. Richard's Declaration did not have sufficient indicia of reliability to constitute a Credible Allegation of Fraud, and that DHHS failed to review the allegations, facts, and evidence and to act judiciously as required by the regulations.

The description of what is meant by “Credible Allegation of Fraud” is at Section 1.20-3, 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 1.19. 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.

Thus, under this regulation, DHHS must receive an allegation from any source against a provider, the allegation must allege fraud against the provider, DHHS must verify the allegation, DHHS must find that the allegation has some reliability (“one or more indicia of reliability”), and DHHS must carefully review on a case-by-case basis the allegation, facts, and evidence. In addition, there must be an investigation into possible fraud pending against the provider. If these requirements are met, there is a “Credible Allegation of Fraud.” If there is a Credible Allegation of Fraud against a provider, DHHS must suspend MaineCare payments to that provider (except in certain circumstances that are not applicable to this case). Proof that the provider actually committed fraud is not necessary to prove “Credible Allegation of Fraud.”

DHHS received an allegation against a provider, which is contained in Ms. Waddell’s letter dated 9/6/13 and Ms. Richard’s Declaration. The allegation alleges fraud against AngleZ. Mr. Downs verified the allegation by virtue of his prior knowledge of the persons who made the allegation, and his prior knowledge of those persons’ employment, and his prior knowledge that those persons’ were in a position to know about the circumstances about which the allegations were being made. Mr. Downs reviewed the allegations, facts, and evidence in relation to his own knowledge of AngleZ’s circumstances and found that his own knowledge was consistent with the allegations. Mr. Downs’s review of the matter was on a case-by-case basis. That is, Mr. Downs did not review the allegation against AngleZ under some kind of a non-case-by-case procedure, such as, perhaps, a procedure based on a group of providers of similar services. Mr. Downs did not apply any type of statistical analysis to determine the credibility of the allegation against AngleZ. AngleZ, only, was the focus of Mr. Downs’s review of the allegation. Mr. Downs determined that the allegation had one or more indicia of reliability.

AngleZ did not present evidence to dispute the facts that are relevant to this case. AngleZ did not present any evidence or argument to show that Ms. Richard was not the person identified by DHHS, or that Ms. Richard’s training and experience were not as described in her Declaration, or that Ms. Richard did not hold the position she described in her Declaration, or that the OI is not part of the Office of Inspector General, or that one of the functions of the OI is to investigate fraud, or that the OI was investigating possible fraud at AngleZ and at Umbrella.

AngleZ did not present any evidence to show that the events and circumstances about which Mr. Downs testified were not as he described in his testimony (such as, Ms. Morris-Polley’s prior and current positions, the connections between Umbrella and AngleZ, and the hiring of Dr. Fine). AngleZ did not present any evidence to show that Mr. Downs’s knowledge about the OI’s involvement with investigations of fraud in general or the OI’s investigations into possible fraud at Umbrella and AngleZ in particular was not as he described in his testimony. AngleZ did not present any evidence to show that Mr. Downs’s relationships with Ms. Waddell and Ms. Richard were not as he described in his testimony. AngleZ did not in any way impugn the testimony of Mr. Downs.

The hearing officer finds Mr. Downs to be a credible and reliable witness. The hearing officer accepts Mr. Downs's testimony, as his testimony relates to the facts relevant to the resolution of this case.

Based on the evidence in the hearing record, the hearing officer reached the following conclusions. DHHS received an allegation, of fraud, from a source, against a provider (the allegation of fraud against AngleZ contained in the letter dated 9/6/13 from Ms. Waddell, with attached Declaration of Ms. Richard). DHHS verified the allegation (Mr. Downs's verification based on his prior knowledge of Ms. Waddell, Ms. Richard, their employment, and the role of the OI). DHHS found that the allegation had one or more indicia of reliability (Mr. Downs's finding that the allegations were consistent with his prior knowledge about the circumstances related to AngleZ, Umbrella, and the OI investigations). DHHS carefully reviewed on a case-by-case basis the allegation, facts, and evidence (Mr. Downs's review of the allegation in relation to his prior knowledge of the facts related to AngleZ, Umbrella, and the OI investigations, and considering the evidence and facts as they related to AngleZ). There was an investigation pending against the provider (the on-going investigation into possible fraud at AngleZ by the OI).

Specifically with regard to Mr. McCloskey's other two arguments (that Ms. Richard's Declaration did not have sufficient indicia of reliability to constitute a Credible Allegation of Fraud, and that DHHS failed to review the allegations, facts, and evidence and to act judiciously as required by the regulations), the hearing officer does not accept these arguments. As discussed above, the hearing officer found that the evidence in the hearing record shows that Ms. Richard's Declaration had indicia of reliability and that DHHS adequately reviewed the allegations, facts, and evidence and acted judiciously as required by the regulations in finding Credible Allegation of Fraud against AngleZ.

The hearing officer concluded that the Department had met all the requirements under the regulations to establish a "Credible Allegation of Fraud" against AngleZ. The hearing officer concluded, therefore, that Department must suspend MaineCare payments to AngleZ.

Accordingly, the hearing officer recommended that the Commissioner affirm the DHHS action and find that the Department was correct when it suspended payments to AngleZ Behavioral Health Services based on a credible allegation of fraud.

MANUAL CITATIONS:

MaineCare Benefits Manual, Chapter I

DATED: February 21, 2014

SIGNED: 

Ronald S. Stoodley
Hearing Officer

RIGHT TO FILE RESPONSES OR EXCEPTIONS:

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE DIVISION OF ADMINISTRATIVE HEARINGS WITHIN 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.

cc: Jay McCloskey, Esq.
Annalee K. Morris-Polley, R.N., Administrator, AngleZ Behavioral Health Services
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