THE STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In re Petition of Margaret McCarthy

Docket No. INS 13-038-AP

OPPOSITION BY INTERVENING PARTY ANTHEM BLUE CROSS AND BLUE SHIELD TO PETITIONER'S IMPROPER ATTEMPT TO CHALLENGE THE HEARING OFFICER'S MARCH 28, 2014 ORDER AND NOTICE OF HEARING AND HIS MAY 13, 2014 ORDER ON MOTION IN LIMINE DISGUISED AS AN OBJECTION REGARDING BURDEN OF PROOF

In accordance with the directions of the Hearing Officer at the end of the May 14, 2014 adjudicative hearing ("Hearing") and with the Hearing Officer's May 28, 2014 Order on Motion To Extend Post Hearing Filing Deadline, the undersigned Intervening Party, Anthem Blue Cross and Blue Shield ("Anthem"), hereby submits this opposition to Petitioner McCarthy's May 28, 2014 filing entitled "Petitioner Margaret McCarthy's Objection Regarding Burden of Proof ("Petitioner's Filing"). This so called objection should be overruled for the following reasons:

First, by its own terms, the Petitioner's Filing is a thinly veiled attempt to force the Hearing Officer to revisit his prior March 28, 2014 Order and Notice Of Hearing ("3/28/14 Order") and his May 13, 2014 Order on Motion In Limine ("5/13/14 Order") (collectively herein "Hearing Officer's Orders"), *not* an objection to the burden of proof and the

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corresponding order of proceedings at the Hearing.[1] Specifically, although the very first sentence of the Petitioner's Filing refers only generically of "the Commissioner's decision ... to narrowly define Ms. McCarthy's Burden of Proof ...", the Petitioner thereafter essentially admits in Paragraphs 1 and 2 on page 1-2 that the ruling she now actually attempts to challenge is the 3/28/14 Order. However, if Ms. McCarthy wanted to challenge the fact that the 3/28/14 Order erroneously failed to grant her standing to pursue all aspects of her Petition, she had the right to seek a re-hearing--and thereafter an appeal to the Supreme Court--under RSA 541-3. Having failed to avail herself of those opportunities to seek redress, she simply cannot be heard now to seek relief from that Order -- even under the clever, but easily recognized, guise that she is objecting to the Hearing Officer's burden of proof ruling.

Second, the Petitioner's Filing is <u>not</u> what was represented would be filed on behalf of the Petitioner regarding the burden of proof. Early in the Hearing, Petitioner McCarthy's counsel stated that he had "prepared an objection to the burden of proof" that he could at that moment read into the Record or if preferred, he would submit the writing to the Hearing Officer after the Hearing. See Mr. Eggleton's statements at pages 13-14 of the Hearing Transcript. The only reasonable interpretation of what Petitioner's counsel was representing to the Hearing Officer and other counsel was that he was challenging the order of the

[1] It is important to note that, prior to the start of the evidence at the Hearing, all counsel had been clearly advised by the Hearing Officer at the May 8, 2014 Pre-Hearing Conference and again during his preliminary remarks at the outset of the Hearing that the Petitioner would have the burden of proof and put her case on first at the Hearing. See the Hearing Officer's statements on the recording of the Pre-Hearing Conference and at page 9 of the Hearing Transcript.

proceedings, as declared by the Hearing Officer at the May 8, 2014 Pre-Hearing Conference, and in particular, that he objected to the fact that Ms. McCarthy, not the NHID, had the burden of proof and would have to put her case on first at the Hearing, under INS 204.05 Burden and Standard of Proof. In fact, however, despite its misleading title, the Petitioner's Filing does not make any mention of INS 204.05[2] and, on its face, is not a challenge to the Hearing Officer's determination of the burden and/or standard of proof applicable to the Hearing.

The Petitioner's counsel's failure to fairly apprise the Hearing Officer and counsel of his true intention was significant and prejudicial because the type of arguments made in the Petitioner's Filing – meritless though they are – should have been raised before the NHID and Anthem spent the significant time and expense on the full evidentiary Hearing.[3] Instead, at this late stage, the parties are faced with a new, but unjustified, claim for "a new adjudicative hearing." See Paragraph 12 at page 8 of the Petitioner's Filing.

Third, any assertion that, by stating that he was "objecting to the burden of proof," Petitioner's counsel really meant to convey that he intended to challenge the Hearing Officer Orders would be simply disingenuous. Specifically, Attorney Eggleton's remarks notifying the Hearing Officer and counsel of his objection to the burden of proof were made separate

[2]During his opening remarks, the Hearing Officer had advised the parties and their counsel that the Hearing was governed by INS 200. See the Hearing Officer's statements at page 9 of the Hearing Transcript. In fact, INS 204.05 governs which party has the initial burden of proof at a hearing and it defines what the burden is.

[3]It is indisputable that the Petitioner's Filing is not what Ms. McCarthy's counsel represented he was ready to read into the Record because it contains references to events that occurred after Mr. Eggleton stated on the Record that he was prepared to read his objection to the burden of proof. See, e.g. Paragraphs 7a-7c of the Petitioner's Filing.

and apart from -- and without any mention of -- the Hearing Officer's Orders. Clearly, based on the colloquy at pages 13-14 of the Hearing Transcript, the expectation was that, instead of reading the written objection into the Record, Attorney Eggleton would simply file the same after the Hearing[4] -- presumably arguing that the NHID should have had the initial burden to put on a prima facie case supporting the Department Decision in advance of the Petitioner assuming the burden of persuasion on her claims.[5] The Petitioner's Filing does not constitute the filing contemplated when, in lieu of taking the time to have the objection read into the Record, the Hearing Officer authorized a post-hearing filing and this so-called Objection should be overruled on that basis alone.

To be sure, the fact that the Petitioner's Filing was misrepresented is driven home by the fact that the scope of admissible evidence, which is really the subject of the Petitioner's Filing, only came up at the Hearing *after* the Hearing Officer had addressed the burden of proof. *Only after* the Hearing Officer permitted Petitioner's counsel to submit his written objection to the burden of proof post-hearing, did Mr. Eggleton separately turn to advise the Hearing Officer that there was disagreement among the parties over the admissibility of the Petitioner's proposed exhibits. Specifically, after the burden of proof discussion finished, Mr. Eggleton moved on and stated to the Hearing Officer:

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[4]Since this issue arose at the very beginning of the Hearing -- when the Hearing Officer was understandably uncertain how long the proceedings would go -- it was clear that he decided to accept the Petitioner's invitation to submit his written objection without reading it into the Record at least in part to keep matters moving.

[5]At the Hearing, Anthem was fully prepared to respond to any such preliminary objection to the order of proceedings, the burden and/or the standard of proof under the circumstances of this contested matter and INS 204.05.

> And then I think all the parties had some discussions yesterday by electronic mail about the relevance of certain exhibits that the Petitioner wants to put into evidence, based on your Motion in Limine. If it makes sense to the parties, perhaps we could go through our proposed exhibits and just decide whether or not they are admissible, in the first instance, to get that out of the way, and then I would put my client on the stand.

See Mr. Eggleton's statements at page 14 of the Hearing Transcript. These remarks unquestionably demonstrate that the Petitioner's counsel understood and appreciated that the burden of proof is separate and distinct from the scope of admissible evidence, and they make it clear that the Petitioner's Filing is nothing more than a belated and transparent attempt to challenge the Hearing Officer's Orders poorly cast as an objection to the burden of proof. As discussed herein, however, any attacks on the Hearing Officer's Orders were required to be made before the Hearing commenced and therefore, this creative, but inappropriate, effort to have the Hearing Officer revisit those earlier Orders should be rejected.

Fourth, the 3/28/14 Order stands as the clear delineation of the Petitioner's very limited standing for purposes of the Hearing. Importantly, the Petitioner did not file a motion for re-hearing pursuant to RSA 541:3 within 30 days of that Order and, in fact, she never made any attempt to seek reconsideration of the scope of that Order. The 3/28/14 Order is the law of this contested case and, as such, all of the Petitioner's arguments in Petitioner's Filing challenging or attempting to maneuver around that Order, including the very narrow and limited scope of the Petitioner's standing, should be rejected.

Fifth, the NHID's May 6, 2014 Motion In Limine To Limit Evidence was clearly and appropriately focused on seeking an pre-hearing order[6] narrowing the scope of evidence that would be admissible based on the limited standing granted by the 3/28/14 Order. Unsurprisingly, the Motion In Limine did not speak at all to the separate subject of the burden of proof and the Petitioner's May 7, 2014 Objection to the Motion In Limine likewise made no mention of, let alone proffered any argument related to, the burden of proof applicable to the Hearing. The Petitioner's only argument was that Ms. McCarthy should not be limited in the type and breadth of evidence she wished to submit concerning alleged deficiencies in Anthem's Pathway Network. Likewise, at the May 8, 2014 Pre-Hearing Conference, during which the Hearing Officer heard extended oral argument by all counsel, Petitioner McCarthy's counsel remained silent as to any connection between the appropriate burden of proof and the scope of evidence issue raised in the Motion In Limine.[7] Further, at no time prior to the start of the May 14, 2014 Hearing, did the Petitioner file any further written objection to the Motion In Limine nor did she file any motion pursuant to INS 204.06

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[6] To be sure, having the burden of proof and the scope of admissible evidence clarified in advance of the Hearing would serve to promote the fair, accurate and efficient resolution of the issues; to provide the parties with reasonable guidance on how to prepare for the Hearing; and to minimize the time and expense incurred by the parties in preparation for the Hearing. The Petitioner's failure to raise the arguments set forth in her Petitioner's Filing in a timely fashion runs counter to these important goals.

[7] In his April 30, 2014 Ruling On Timeliness Of Petitioner McCarthy's Petition For Hearing Pursuant To RSA 400-A:17, the Commissioner reminded all counsel that "while administrative hearings are not conducted with the same formality as court proceedings, the rules at INS 200 are provided to ensure a fair resolution of matters and to avoid unnecessary delay or cost. Due regard should be paid to these standards throughout the remainder of this proceeding." Based on the history of these proceedings and the Commissioner's above reminder Order, the Petitioner clearly was aware that she had the right and the opportunity to file a motion(s) directed at the Order on Motion In Limine in advance of the Hearing.

seeking additional time to file further objections to it.[8] Finally, in response to the Hearing Officer's 5/13/14 Order granting the Motion In Limine, the Petitioner failed to file any motion seeking reconsideration under INS 204.06; seeking a follow-up pre-hearing conference under INS 204.13; seeking a re-hearing on that Order pursuant to RSA 541:3; and/or seeking a continuance of the Hearing under INS 204.12.[9] Having failed to file any further objections to the Motion In Limine between the time of oral argument at the May 8, 2014 Pre-Hearing Conference and the Hearing Officer's 5/13/14 Order; and having further failed to file any motion directed at the Order itself, the Petitioner waived any further challenges to the 5/13/14 Order once the Hearing began and this so-called Objection should be overruled.

In fact, it is clear that, having failed to seek re-hearing on the 3/28/14 Order and having failed similarly to seek re-hearing on the 5/13/14 Order, the Petitioner's Filing is

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[8]At the Pre-Hearing Conference, Anthem orally joined in the Motion In Limine and made several arguments in rebuttal to the Petitioner's Objection to the Motion In Limine. Like the other parties, Anthem did not link in any way the burden of proof under INS 204.5 and the issues raised by the Motion In Limine and/or Petitioner McCarthy's objection thereto -- because there is none.

[9]To be sure, any claim that the Petitioner did not have a reasonable opportunity to file one or more of these motions is dispelled by the fact that the Hearing Officer's 5/13/14 Order granting the Motion In Limine was e-mailed to all counsel, including Petitioner's counsel, at 1:31 p.m. that day and later that same afternoon, Petitioner's counsel found time to e-mail with the NHID and counsel about the arrangements for the transcription of the Hearing (Anthem submits that the Hearing Officer can take official notice of Attorney Eggleton's e-mail to Ms. Prescott, Attorney Dulcino and Anthem's counsel at 2:09 p.m. that day) and further found time to e-mail to the NHID and counsel an exhibit, which was later marked Petitioner's Exhibit 13 for identification only at the Hearing (Anthem submits that the Hearing Officer can take official notice of Attorney Eggleton's e-mail regarding the previously undisclosed exhibit at 7:17 p.m. that evening). It is also of note that the Hearing Officer has been generous with the Petitioner's requests for additional time (as well as with her late filings) throughout these proceedings (Docket Nos. INS 13-038-AR and INS 13-038-AP), and any reasonable oral or written motion filed in good faith under INS 200 likely would have granted to ensure the fair, accurate and efficient resolution of the issues. INS 204.02; INS 204.06 and INS 204.12.

reduced to an impermissible attempt to boot strap those foreclosed arguments disguised as an objection to the burden of proof. On its face, any requested relief sought in the Petitioner's Filing should be denied.

Sixth, contrary to Paragraph 3 of the Petitioner's Filing, Ms. McCarthy had not "established standing." All the Commissioner found from her Petition and her subsequent filings in Docket INS 13-038-AR was that, if the grounds set forth in the Petition were established, she would be aggrieved. RSA 400-A:17. In fact, the Commissioner's December 11, 2013 Order finding that Ms. McCarthy did not have any standing was affirmed in all respects by the 3/28/14 Order with the exception that the Commissioner found Ms. McCarthy, as an individual consumer, to have limited standing to "demonstrate that Anthem's network can only be adequate within the meaning of applicable network adequacy standards if it includes Frisbie." See the 3/28/14 Order at page 6 of 8. In short, she was not found to have standing for any purpose other than to try to establish that, having forgone the opportunity to apply for coverage and a subsidy on the Exchange allegedly because Pathway does not include Frisbie, she herself suffered injury in fact because Pathway was inadequate in Strafford County at the time of the Department Decision.

Seventh, contrary to Paragraphs 3, 7 and 8 of the Petitioner's Filing, the Petitioner was not prevented from offering evidence at the Hearing regarding the NHID's alleged failure to require Anthem to adhere to network adequacy standards, as it pertained to Ms. McCarthy and Strafford County. In fact, other than providing her own brief testimony, the Petitioner did very little, if anything, to establish an injury in fact or any inadequacies in

Anthem's Pathway Network in Strafford County. For example, at no time in this contested matter, did Ms. McCarthy seek to subpoena any documents or witnesses to testify or attempt to elicit testimony from any other witnesses, including Mr. Feldvebal, Frisbie Memorial Hospital's Chief Executive Officer, who was present throughout the Hearing.

Further on this point, the Petitioner's assertions in Paragraphs 7 and 8 that the Hearing Officer through evidentiary rulings prevented her from adequately presenting her case is simply false. A careful review of the Hearing Transcript demonstrates that there were a mere 18 objections interposed by counsel for the NHID and Anthem, only two of which were sustained by the Hearing Officer. In response to the vast majority of these objections, Petitioner's counsel rephrased his objectionable question or decided to move on before and without any ruling on the objection by the Hearing Officer.[10] Neither of the Hearing Officer's two rulings sustaining objections materially impacted the Petitioner's opportunity to put on her evidence. Specifically, at page 156 of the Hearing Transcript, the Hearing Officer sustained the objection by Anthem's counsel to Mr. Eggleton's question based on the assertion that the question mischaracterized the witness's prior testimony. The Petitioner should not be heard to complain about this ruling for three reasons: first, Attorney Eggleton did not provide the Hearing Officer any explanation as to why his question was not a mischaracterization; second, a comparison of Mr. Eggleton's question with Mr. Feldvebal's

[10]See objections by Anthem's counsel at pages 54, 112, 152, 153(2), 158(2), 160, 162-63, 168-69 and 227; and objections by NHID's counsel at pages 163 and 168-69.

testimony demonstrates that the question did in fact mischaracterize his prior testimony;[11] and third, even after the objection was sustained, Petitioner's counsel was able to continue to explore the same subject without objection (see pages 156-157 of the Hearing Transcript). The second ruling sustaining an objection is likewise of no moment to the outcome of the Hearing. At page 231, the Petitioner's counsel asked the NHID's witness, Mr. Wilkey, whether he had requested Anthem to produce any studies done regarding its current broad network as opposed to the Pathway Network. The ruling was well founded based on: (1) the multiple objections stated by counsel for the NHID and Anthem[12]; and (2) INS 203.01, which authorizes the Hearing Officer to exclude, among other things, "unduly repetitious evidence." The question at issue sought repetitious evidence because, previously in the Hearing, Mr. Feldvebal had testified that the NHID did not look at wait time information (see testimony at page 137 of the Hearing Transcript) and Mr. Wilkey had testified that the NHID did not look at wait time data because it was not considered information of value at that time (see testimony at page 230 of the Hearing Transcript).

Eighth, the decisions cited by Petitioner McCarthy are not supportive of her arguments and the passages she referenced from those decisions are taken out of context and/or otherwise do not stand for the proposition they are being cited for. In short, Petitioner

[11]At page 111, Mr. Feldvebal described a bargaining chip of Anthem while Petitioner's counsel's question at issue on page 156 incorrectly characterized that prior testimony as having discussed a bargaining chip of Wentworth Douglas Hospital.

[12]The NHID argued that the question had no proper foundation; sought irrelevant information; and would require expert testimony. Anthem joined in those objections and added that there was no foundation in Exhibit F and the Network adequacy standards for the type of inquiry being made of Mr. Wilkey by the question at issue.

McCarthy has failed to cite any decision where a petitioner was allowed to introduce evidence beyond the scope of the issue, on which it had been determined that the petitioner established aggrievement. Consequently, the cases that the Petitioner relies on in the Petitioner's Filing do not support her position that she should be permitted to put on evidence relating to counties other than Strafford County, as it would be beyond and outside the scope of the issue upon which Ms. McCarthy was found to have standing in the 3/28/14 Order and it would be beyond and outside the scope of evidence determined to be permitted in the 5/13/14 Order.

With regard to her citation to Sierra Club v. Morton, Secretary of the Interior, 405 U.S. 727 (1972), the Petitioner's Filing fails to mention that the Supreme Court determined that the plaintiff in that case did not have standing. In Sierra Club, the plaintiff brought suit under the Administrative Procedure Act seeking an injunction to restrain federal officials from approving the construction of a ski resort on a section of the Sequoia National Forest. The plaintiff did not allege that the challenged development affected the Club or its members, but instead proceeded on the theory that its claim was a "public" action involving questions as to the use of natural resources and that its longstanding concern with and expertise in such matters gave it standing as a representative of the public. The Supreme Court rejected this argument and held that, because the plaintiff did not assert any individualized harm to itself or its members, it lacked standing.

In discussing the plaintiff's public action theory, the Sierra Club Court referenced two decisions involving appeals from the FCC, Scripps-Howard Radio v. FCC, 316 U.S. 4 and

FCC v. Sanders Bros. Radio Station, 309 U.S. 470, stating: "Taken together, Sanders and Scripps-Howard thus establish a dual proposition: the fact of economic injury is what gives a person standing to seek judicial review under the statute [§ 402(b)(2) of the Communications Act of 1934], but once review is properly invoked, that person may argue the public interest in support of his claim that the agency has failed to comply with its statutory mandate." Sierra Club, supra, 405 U.S. at 737. Petitioner McCarthy improperly relies on this statement from the Sierra Club decision in an attempt to support her argument that she should be permitted to argue that Anthem's network is inadequate in counties other than Strafford County. Her effort, however, is to no avail because this statement from the Sierra Club decision is only dicta and it does not support the plaintiff's argument because it merely stands for the proposition that, once a petitioner has established aggrievement, he or she may argue the public's interest concerning the specific issue, on which the petitioner was found to have been aggrieved. See also Id. at 740 n. 15 ("The test of injury in fact goes only to the question of standing to obtain judicial review. Once this standing is established, the party may assert the interests of the general public in support of his claim for equitable relief."). Importantly, a finding of aggrievement does not allow a petitioner to then broaden the scope of the issue under the guise of public interest. The Sierra Club decision in fact reaffirms the importance of demonstrating personal aggrievement:

> The requirement that a party seeking review must allege facts showing that he is himself adversely affected ... serve[s] as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome. That goal

> would be undermined were we to construe the APA to authorize judicial review at the behest of organizations or individuals who seek to do no more than vindicate their own value preferences though the judicial process.

Id. at 740.

Petitioner McCarthy's reliance on United States v. Students Challenging Regulatory Agency Procedures, 412 U.S. 669 (1973) is also misplaced. In this decision, the appellee environmental group challenged the Interstate Commerce Commission's ("ICC") decision to not suspend a 2.5 percent surcharge on all railroad freight rates, including recyclable goods. The ICC moved to dismiss the claim on the ground that the environmental group failed to allege sufficient facts to demonstrate standing. In opposition, the environmental group argued that its members suffered economic, recreational and aesthetic harm directly as a result of the adverse environmental impact of the railroad freight structure, that each of its members was caused to pay more for finished products, that each of its members use the forests, rivers, mountains, and other natural resources of the Washington, D. C., area and at their legal residences for camping, hiking, fishing, and other purposes, had been adversely affected by increased freight rates. The Supreme Court upheld the District Court's denial of the motion to dismiss.

The passage from this decision cited by Petitioner McCarthy is a portion of the Supreme Court's discussion distinguishing the Sierra Club decision on the ground that the Sierra Club failed to allege "injury in fact". The Supreme Court also reasoned that "injury in fact" is not limited to economic harm "[n]or ... could the fact that many persons shared the

same injury be sufficient reason to disqualify from seeking review of an agency's action any person who had in fact suffered injury." Students Challenging Regulatory Agency Procedures, supra, 412 U.S. at 686. The issue that the Supreme Court addressed in this decision related only to whether the appellee environmental group sufficiently alleged that it had standing to pursue its claim. This decision does not address what arguments can be made, or the scope of evidence that can be offered, by a petitioner once a determination of standing has been made.

Petitioner McCarthy also misstates the holding of Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). In Lujan, the Supreme Court in fact held that the appellee environmental group -- which attempted to contest an agency decision regarding protection of endangered species -- stated merely speculative, nonconcrete injuries and did not demonstrate an imminent injury. The Footnote cited to by Petitioner McCarthy is dicta and merely states that the imminency requirement may not apply in case where a statute creates a procedural right (such as with abutting property owners).

Finally, although Petitioner McCarthy claims that the case of Massachusetts v. EPA, 549 U.S. 497 (2007) is relevant because Massachusetts was able to introduce evidence during trial that was not limited only to the effects of greenhouse gases within its territorial limits, in fact, the Supreme Court did not address the issue of the proper scope of relevant evidence following a determination of standing. Rather, the Supreme Court only addressed the threshold issue of whether the petitioners had standing to assert their claims. Specifically, in this case, a group of States, including Massachusetts, as well as local governments and

private organizations, petitioned the Supreme Court for certification on the ground that the EPA abdicated its responsibility under the Clean Air Act by failing to regulate greenhouse gases. Before reaching the merits of this claim, the Supreme Court addressed the issue of Article III standing – whether the petition set forth a "case and controversy" sufficient to satisfy constitutional requirements for federal court jurisdiction. As "[o]nly one of the petitioners needs to have standing to permit us to consider the petition for review," the Supreme Court chose to focus on "the special position and interest of Massachusetts" instead of the several other States that participated in the petition. Id. at 518. The Supreme Court also noted, in determining standing, that "[i]t is of considerable relevance that the party seeking review here is a sovereign State and not ... a private individual." Id. Specifically, the court noted that Massachusetts owns a great deal of the territory alleged to be affected, that it would face many difficulties – such as preemption – in attempting to exercise its police powers to reduce in-state motor vehicle emissions, and its desire to protect the health and welfare of its citizens. Having decided to focus on Massachusetts, the Supreme Court determined that the "EPA's steadfast refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both 'actual' and 'imminent.'" Id. at 521.

What was determined by the court in Massachusetts v. EPA, supra, was that the petitioners set forth a "case and controversy" sufficient to confer standing under Article III of the Constitution. This decision cannot be read to support Petitioner McCarthy's position, as it contains no discussion regarding the proper scope of relevant evidence.

Finally, the Petitioner's assertion in Paragraph 12 of the Petitioner's Filing that "she is entitled to a new adjudicative Hearing" is without factual or legal support, and would be fundamentally unfair and prejudicial to the NHID and Anthem, which have invested considerable time and expense in preparing for and defending against the claims asserted at the adjudicative Hearing. The Petitioner was provided every opportunity to present whatever evidence she wished to put on or, in the alternative, to offer testimony and other evidence to preserve her claims. There is no legitimate basis for any further adjudicative proceedings on the issues permitted to be contested under the 3/28/14 Order.

Wherefore, for all the foregoing reasons, Anthem opposes Petitioner McCarthy's purported Objection Regarding Burden of Proof and respectfully submits that it should be overruled.

Dated: June 4, 2014

By_____

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CERTIFICATION

This is to certify that a copy of the foregoing was emailed, sent via facsimile and/or mailed, postage prepaid, on the above-written date, to:

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