THE STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In re Petition of Margaret McCarthy

Docket No. INS 13-038-AP

SUBMISSION BY INTERVENING PARTY ANTHEM BLUE CROSS AND BLUE SHIELD REGARDING PURPOSE OF ITS HEARING EXHIBITS

Pursuant to the Hearing Officer's directions at the end of the May 14, 2014 adjudicative hearing in this contested matter, the undersigned Intervening Party, Anthem Blue Cross and Blue Shield ("Anthem"), hereby makes the following submission regarding the description of each of its exhibits, including the source, author, and facts intended to be proven thereby:

1. **Anthem Exhibit 1** is the Affidavit of Robert J. Noonan, Vice President, Provider Engagement and Contracting for Anthem. The Affidavit, which was signed by Mr. Noonan on December 10, 2013, was first submitted in support of the December 11, 2013 Supplemental Brief by Anthem Blue Cross and Blue Shield Re Aggrievement. (Docket No. INS 13-038 AR).

Anthem Exhibit 1 was introduced as a full exhibit at the May 14, 2014 Hearing because it establishes two important facts:

First, the Affidavit attests to the fact that Anthem had no obligation to contract with Frisbie Memorial Hospital and its affiliated providers (collectively "Frisbie") in connection

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with its Pathway Network, which supports a finding by the Hearing Officer that he cannot order Anthem to add Frisbie to the Pathway Network -- which is the only redress sought in the Petition.

Second, the Affidavit attests to the fact that Anthem made the decision not to contract with Frisbie in connection with its Pathway Network well before the New Hampshire Insurance Department ("NHID") issued its July 31, 2013 recommendation to the Federal Government that Anthem's plans be certified as qualified health plans for offering on the Exchange ("Department Decision"), which supports a finding by the Hearing Officer that any injury alleged by the Petitioner necessarily would have been the result of Anthem's prior decision not to contract with Frisbie, not the Department Decision.

2. **Anthem Exhibit 2** is Petitioner McCarthy's April 15, 2014 Affidavit, which attests to the fact that, no later than mid-September 2013[1], the Petitioner knew that Anthem's narrow network -- i.e., its Pathway Network -- would not include Frisbie. This admission, together with her further admission at the May 14, 2014 Hearing that she was concerned at that same time because, if she were to purchase health insurance on the Exchange, she would have to switch her physicians[2], unequivocally establish that, by mid-September 2013, Ms. McCarthy was fully aware of not only the Department Decision, but that, if she exercised her

[1]In fact, at the May 14, 2014 Hearing, the Petitioner testified that she was aware of the Pathway Network and the exclusion of Frisbie through media reports in early September 2013, not mid-September. See Petitioner's Testimony at page 48 of the Hearing Transcript.

[2] See the Petitioner's testimony at page 50 of the Hearing Transcript.

consumer choice to purchase health insurance on the Exchange[3], she would have to give up covered access to her Frisbie affiliated providers.[4] Consequently, Anthem Exhibit 2 -- both by itself and in conjunction with the Petitioner's own testimony at the Hearing -- strongly supports a finding by the Hearing Officer that her Petition was untimely under RSA400-A:17. Anthem Exhibit 2 -- alone and in conjunction with the Petitioner's Hearing testimony -- also supports a finding by the Hearing Officer that Ms. McCarthy was well aware that Anthem's decision not to include Frisbie in its Pathway Network would limit her access to providers -- including Frisbie -- if she chose to buy health coverage on the Exchange. Throughout 2013 and 2014, Ms. McCarthy had coverage options both on and off the Exchange, and the consumer choices she has made were at most affected by Anthem's decision not to include Frisbie in Pathway Network, not by the Department Decision.[5]

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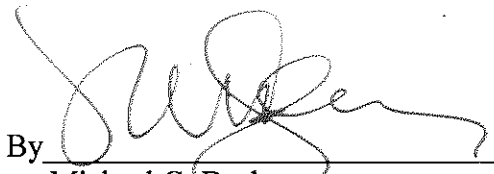
[3]Although both Anthem Exhibit 2 and the Petitioner's Hearing testimony go on to state that, in telephone conversations with Anthem Customer Service on or about September 16, 2013, the Petitioner learned the Pathway Network did not impact her current Anthem Health Coverage as of that time, that evidence does not alter in any way the fact that, in Petitioner's Affidavit (Anthem Exhibit 2) and in her cited Hearing testimony above, she admits that, by early or mid-September 2013, she was aware of the Department Decision and its consequence that, if she pursued individual health coverage on the Exchange, she would have to switch providers.

[4]These arguments are all set forth in Anthem's prior submissions in Docket No. INS 13-038-AR, of which the Hearing Officer took official notice at the Hearing.

[5]It is also telling that, in Anthem Exhibit 2, Petitioner McCarthy remains silent with regard to her other admitted coverage options: (1) renewing early her current Anthem Health Coverage, and (2) purchasing coverage off the Exchange through Assurant Health. Clearly, the Petitioner has not established any injury in fact caused by the Department Decision.

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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