THE STATE OF NEW HAMPSHIRE

INSURANCE DEPARTMENT

In re Petition of Margaret McCarthy

Docket No. INS 13-038-AP

OBJECTIONS BY ANTHEM BLUE CROSS AND BLUE SHIELD
TO PETITIONER'S OFFERS OF PROOF

In accordance with the directions of the Hearing Officer 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 objects to Petitioner McCarthy's Offers Of Proof regarding (1) whether Strafford County Primary Care Physician Terry Bennett, M.D. has privileges at Frisbie Memorial Hospital; and (2) whether Frisbie Memorial Hospital and its affiliated providers (collectively "Frisbie") have been participating providers with Assurant Health in 2013 and 2014.

1. Offer Of Proof Regarding Terry Bennett, M.D.

Anthem respectfully submits that the Petitioner's oral Offer Of Proof regarding Dr. Bennett is not credible and improperly seeks to admit evidence that is unreliable and irrelevant to the issues within the scope of this contested matter, as defined by the Hearing Officer's March 28, 2014 Order And Notice Of Hearing (INS 13-038-AR) and by the Hearing Officer's May 7, 2014 Order on Motion In Limine (INS 13-038-AP). Specifically, the Offer Of Proof is inherently contradictory and does not provide any reliable basis for the Hearing Officer to accept it as admissible evidence. At page 91 of the Hearing Transcript,

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Petitioner's counsel, Mr. Eggleton, states: "I would offer -- I would make the Offer Of Proof that Mr. Felgar could testify that the -- there's at least one provider in Rochester, **Terry Bennett**, that **has no privilege at Frisbie Memorial Hospital**. And I would like to make that part of the record." (Emphasis added.) Then, at page 92 of the Hearing Transcript, Mr. Eggleton adds: "**Mr. Bennett has no usable privilege** at Frisbie Memorial Hospital. Mr. Felgar would testify to that." (Emphasis added.) Still later in the Hearing, when the Hearing Officer gave direction to Petitioner's counsel to provide a written offer of proof "that Terry Bennett has no privileges at Frisbie Hospital" (see page 244 of the Hearing Transcript), Mr. Felgar, who was in the audience, inappropriately blurted out "excuse me ... that's not correct. He has no ..." When the Hearing Officer's advisor, Attorney Dolcino, and then the Hearing Officer himself, inquired as to whether Attorney Eggleton wanted to clarify the oral Offer Of Proof, Attorney Eggleton declined indicating that he needed to talk to his client (see pages 244-245 of the Hearing Transcript). As a result, the above confusing and inconsistent Offer remained as it was -- without any clarification that would have given the Staff Advocate and Anthem a fair opportunity to address the Offer on the Record.

Anthem submits that, on this Record, the Offer Of Proof lacks credibility because there were conflicting statements offered by Petitioner's counsel (first, that Dr. Bennett had no privileges and second, that he had no "useable" privileges). At no time was any evidence introduced to clarify what the qualifying term "usable" was meant to convey or to establish for what period of time Dr. Bennett's privileges were claimed to have been unusable. It is simply impossible for the Hearing Officer to interpret this Offer Of Proof in any meaningful

way, let alone to determine from it that Dr. Bennett was not a Frisbie affiliated PCP, from whom the Petitioner could have sought health care services in 2013 and 2014.

Further, even if the Hearing Officer were somehow to conclude that Dr. Bennett was not a participating provider with Frisbie, such evidence would not have any probative value because the evidence in the Record otherwise demonstrates Anthem's compliance with the geographic accessibility for PCPs, as there have been, and are, nine (9) PCP practices accepting new patients within fifteen (15) miles of Petitioner McCarthy's home in East Rochester. See NHID Exhibit H and Petitioner's Testimony at page 78 of the Hearing Transcript. Consequently, whether Dr. Bennett has privileges—usable or not---at Frisbie Memorial Hospital is completely irrelevant to the determination of the geographic accessibility of PCPs in Strafford County.

2. Offer Of Proof As To Individual Health Coverage Available To Petitioner McCarthy Through Assurant Health.

Interestingly, Petitioner McCarthy's counsel's Offer Of Proof regarding Assurant Health was made in attempted rebuttal of his own client's testimony, elicited on cross examination, that applying for individual health coverage with Assurant Health was in fact an available option that would have allowed Ms. McCarthy to continue with her current providers, namely Frisbie, and that she had made the choice not to do so. See Petitioner's Testimony at pages 82-84 of the Hearing Transcript. Specifically, as stated at page 91-94 of the Hearing Transcript, Mr. Eggleton represented to the Hearing Officer, after conferring with non-party Mr. Felgar, the Chief Executive Officer of Frisbie Memorial Hospital, that

Frisbie did not have a contract with Assurant Health in 2013 or 2014, and that therefore Assurant Health was not a coverage option for Ms. McCarthy during those years.

NHID Exhibits J and J1 as well as the testimony of Michael Wilkey, the NHID's Director of Compliance, directly refuted this Offer Of Proof based on counsel's representation of Mr. Felgar's intended testimony. This NHID evidence established that Frisbie Memorial Hospital and its affiliated providers do in fact participate with Assurant Health and that therefore one of the consumer choices that Petitioner McCarthy had was to secure individual health coverage through Assurant Health -- an option that would have permitted her to maintain access to health care services from Frisbie. See Mr. Wilkey's testimony at pages 192 and 219-222 of the Hearing Transcript. Of note, the only response to this NHID evidence that the Petitioner could muster was an unapologetic excuse -- that Mr. Felgar had been "mistaken" and did not realize that, although Frisbie has patients who are insured by First Health, he "didn't understand that Assurant Health was First Health." See Attorney Eggleton's "clarification" at page 194 of the Hearing Transcript.

Nonetheless, incredibly, even after this exchange clearly demonstrated that the original Offer Of Proof was without any credibility or merit, the Petitioner, through her counsel, refused to stipulate that in fact Assurant Health was an option for Ms. McCarthy to seek individual health coverage and keep her Frisbie providers. Specifically, although it was conceded that Assurant Health offered Ms. McCarthy the option of securing coverage that would permit her continued access to health services at Frisbie Memorial Hospital, the Petitioner inexplicably would not stipulate -- even after (1) NHID Exhibit J1 was introduced

as a full exhibit; (2) the Hearing Officer was shown screenshots on the NHID's laptop verifying that Frisbie and Ms. McCarthy's longtime PCP, Dr. Geller, were participating providers with Assurant; and (3) Mr. Wilkey testified at pages 219-221 that Frisbie and Dr. Geller participated with Assurant – that Assurant Health was an option for Ms. McCarthy to secure health coverage off the Exchange that would permit her to continue to see her Frisbie affiliated providers. In short, in direct contradiction to the representations of Petitioner's counsel and despite his unfounded refusal to stipulate to the facts as established by the evidence on this point, Assurant Health offered Petitioner McCarthy a viable coverage option off the Exchange that provided continued covered access to health care services through Frisbie.

Anthem respectfully submits that the Petitioner's Offer Of Proof is without credibility and has been demonstrated to be completely without merit by NHID Exhibits J and J1 as well as Mr. Wilkey's cited testimony. Under these clear circumstances, the Petitioner's Offer Of Proof should be soundly rejected and the Hearing Officer should make the finding that, in 2013 and 2014, Assurant Health offered an individual health plan -- off the Exchange – that, had Petitioner McCarthy made the consumer choice to purchase, would have enabled Ms. McCarthy to continue to access health care services from Frisbie affiliated providers throughout 2013 and 2014.[1]

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[1] To be sure, securing the available coverage from Assurant Health would have permitted Ms. McCarthy to maintain her relationships with Frisbie right up until (or beyond) January 1, 2015, the date that Harvard Pilgrim and Minuteman are expected to offer QPHs on the Exchange.

Wherefore, Anthem respectfully submits that the Petitioner's Offers Of Proof should be rejected.

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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