



State of Maine  
Department of Health and Human Services  
Office of Administrative Hearings  
11 State House Station  
Augusta, Maine  
04333-0011

John Elias Baldacci  
Governor

John R. Nicholas  
Commissioner

TO: John R. Nicholas, Commissioner  
Department of Health and Human Services  
221 State Street  
11 State House Station  
Augusta, ME 04333

In Re: Fryeburg Health and Residential Center – Sanction of \$7.78 per day for the period 7/1/03 through 9/30/03

### **RECOMMENDED DECISION**

An administrative hearing was held on September 13, 2004, at Lewiston, Maine in the case of Fryeburg Health and Residential Center before Debby Willis, Esq., Hearing Officer. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services.

#### **CASE BACKGROUND AND ISSUE:**

The Department's Bureau of Medical Services, Division of Quality Improvement conducted a Minimum Data Set (MDS) assessment of Fryeburg Health and Residential Center April 7, 2003. The assessment found 50% of the records reviewed were in error. The Department imposed the sanction as specified in the MaineCare Benefits Manual, Chapter III, Section 67, Paragraph 41.23.4. A 10% decrease in the total direct care cost component will be imposed when the nursing facility assessment review results in a case mix error rate of 45% or greater. There is no dispute between the parties that the records had an error rate of 50%. Fryeburg Health and Residential Center (the Appellant) believes the sanction is overly punitive and places an undue hardship on the financial stability of the facility.

This hearing was convened to review the above determination. The Commissioner's order of reference, dated March 30, 2004, identifies the specific issue for consideration at this proceeding as follows:

*“Was the Department correct when it imposed a sanction of \$7.78 per day on Fryeburg Health & Residential Center for the period July 1, 2003 through September 30, 2003?”*

#### **APPEARING ON BEHALF OF APPELLANT:**

James H. Dutton, Administrator

#### **APPEARING ON BEHALF OF AGENCY:**

William Perfetto  
Carole Kus, RN, Assistant Director, Quality Assurance, Bureau of Medical Services (by telephone)

## ITEMS INTRODUCED INTO EVIDENCE:

### Hearing Officer Exhibits:

HO-1. All of the following items collectively:

- Scheduling letters dated April 1, May 14 and July 15, 2004.
- Order of Reference dated March 30, 2004.
- Fair Hearing Report Form dated February 11, 2004.
- Letter from Chief Hearing Officer James D. Bivins, Esq. dated November 12, 2003.
- Letter from James H. Dutton requesting a review dated November 4, 2003.
- Letter from Debra Couture, Public Service Manager, Bureau of Medical Services dated May 7, 2004.

### Department Exhibits:

DHS-1. Letter from James H. Lewis, Assistant Director, Bureau of Medical Services dated October 14, 2003.

DHS-2. Letter from Chris Zukas-Lessard, Acting Director, Bureau of Medical Services dated September 10, 2003.

### Appellant Exhibits:

A-1. Notes for Appeals Hearing with DHS September 13, 2004.

## RECOMMENDED FINDINGS OF FACT:

1. Notice of these proceedings was given timely and adequately. Fryeburg Health and Residential Care Center made timely appeal.
2. The Department conducted a quarterly review of the Appellant's resident classification on April 7, 2003. Errors were found in 50% of the records reviewed. Appellant had 51 residents, including 37 MaineCare patients. Ten records were reviewed. Errors were found in 5 records. There is no dispute between the parties regarding this fact.
3. MaineCare rules require a sanction shall be applied to the allowable case mix adjusted direct care cost component for the subsequent quarter for all MaineCare residents at the facility, for which the following assessment review error rates are determined. Such sanctions shall be a percentage of the total direct care rate after application of the case mix adjustments and upper limit. A 10% decrease in the total direct care cost component will be imposed when the nursing facility assessment review results in an error rate of 45% or greater.
4. The Department's Computation of Interim Prospective Rate indicates the adjusted result for direct care costs submitted by the Appellant was \$77.75. The after case mix corrections rate for direct care costs was \$76.74. The sanction imposed for the subsequent quarter was \$7.78 (10% of \$77.75). The Appellant testified the total sanction was \$21,447.36.

## RECOMMENDED DECISION:

The Hearing Officer recommends the Commissioner **AFFIRM** the sanction imposed.

## **REASON FOR RECOMMENDATION:**

The MaineCare Benefits Manual, Chapter III, Section 67, Principles for Reimbursement for Nursing Facilities provide for periodic assessment review of a nursing facilities' direct care cost component. The basis for reimbursement to a nursing facility within the direct care cost component is a resident classification system that groups residents into classes according to their assessed conditions and the resources required to care for them. Resident assessments are conducted with the Resident Assessment Instrument (RAI) a tool approved by the Department to provide a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. The RAI is comprised of the Minimum Data Set (MDS) currently specified by the Department of Health and Human Services, Centers for Medicare and Medicaid Services and the Resident Assessment Protocols (RAP's). The MDS provides the basis for resident classification into one of 45 case mix classification groups. The nursing facility submits the MDS to the Department.

The Department may select a nursing facility for assessment review for a number of reasons. The reason for the assessment review of the Appellant was not provided. The Appellant had 51 residents, 37 of them MaineCare patients. The assessment review was of 10 residents' records. Errors were found in 5 records, for an error rate of 50%. There is no dispute between the parties regarding this fact.

MaineCare Benefits Manual, Chapter III, Section 67, Paragraph 41.23.4 requires that a sanction shall be imposed against a nursing facility if the error rate is 34% or greater. The sanction is a decrease in the total direct care costs component. There appears to be no sanction if the error rate is less than 34%. The sanction is 2% when the error rate is 34% but less than 37%, 5% when the error rate is 37% but less than 41%, 7% when the error rate is 41% but less than 45% and 10% when the error rate is great than 45%. The Appellant's error rate was 54% therefore a 10% sanction was imposed.

The Appellant's adjusted result for direct care costs submitted was \$77.75. The after case-mix corrections rate for direct care costs was \$76.74. The sanction imposed for the subsequent quarter was \$7.78 (10% of \$77.75). The Appellant testified the total sanction was \$21,447.36. The Appellant would have been paid \$447,638.40 but instead received \$426,191.04. There is no dispute between the parties regarding this fact.

The Appellant's disagreement is with the severity of the sanction. The Appellant testified that one error had no effect, three errors decreased the case mix score and one error increased the case mix score. Had the error not been detected, the Appellant would have been overpaid \$3,199.68. The Appellant finds the sanction of \$21,447.36 to be punitive and caused an undue hardship on the facilities financial stability. I note the Appellant's objection to the financial severity of the sanction. However, the MaineCare rules do not provide a mechanism for weighing the amount of the possible overpayment against the amount of the sanction. MaineCare rules mandate that a 10% sanction shall be applied when the error rate is greater than 45%.

Accordingly, the hearing officer recommends that the Commissioner uphold the sanction.

**THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS WITHIN TWENTY (20) DAYS OF RECEIPT OF THIS RECOMMENDED DECISION. THIS TIME FRAME MAY BE ADJUSTED BY AGREEMENT OF THE PARTIES. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE OFFICE OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME**

**04333-0011. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.**

**Dated: October 26, 2004**

**Signed: \_\_\_\_\_**

Debby Willis, Esq.  
Hearing Officer

cc: James H. Dutton, Administrator, Fryeburg Health and Residential Care Center, PO Box 127,  
Fryeburg, Maine 04037  
Margaret Semple, AAG, Department of the Attorney General  
Debra Couture, Public Service Manager, BMS  
Carole Kus, Assistant Director, BMS  
Carol Bean, BMS  
James Lewis, Assistant Manager, BMS