



State of Maine  
Department of 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 Human Services  
221 State Street  
11 State House Station  
Augusta, ME 04333

In Re: Gilbert Manor Sanction

### **RECOMMENDED DECISION**

On or about April 8, 2003, the Department of Human Services, Bureau of Medical Services, Surveillance and Utilization Review Unit (the "Department") notified Gilbert Manor that it had been overpaid \$18,957.72 in MaineCare payments during the period January 1, 2001 through December 31, 2002. The Department demanded repayment of the asserted overpayment. After receiving an unfavorable Informal Review Decision on the claim, Gilbert manor appealed for an administrative hearing. Pursuant to an Order of Reference dated March 16, 2004, this matter was assigned by James D. Bivins, Esq., Chief Administrative Hearing Officer to the undersigned Hearing Officer to conduct an administrative hearing and to submit to the Commissioner written findings of fact and recommendations on the following issue:

Was the Department correct when it determined that for the time period 1/1/01 through 12/31/02, there was a total overpayment to Medical Care Development/Gilbert Manor by the MaineCare program in the amount of \$18,957.72 due to ordering of incontinent products, including gloves, that were not medically necessary?

An administrative hearing was scheduled for May 17, 2004, at Augusta, ME. On or about May 7, 2004, the parties notified the Hearing Officer that a settlement had been reached in the amount of \$11,077.54, which Gilbert Manor had paid. The settlement offer from the Department, dated April 21, 2004, and the acceptance by Gilbert Manor, dated May 3, 2004, is attached and incorporated by reference.

#### **RECOMMENDED DECISION:**

It is recommended that the Commissioner affirm the settlement reached by the parties in the amount of \$11,077.54, as the resolution of the appeal.

**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: 6/3/04**

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

Michael L. LeBlanc  
Hearing Officer

cc: Edward W. Miles, FHFMA, Chief Financial Officer, Medical Care Development, 11 Parkwood Drive, Augusta, ME 04330  
Christopher Mann, AAG, Office of the Attorney General  
Kelly Proctor, Bureau of Medical Services  
Ellie White, Bureau of Medical Services  
James Lewis, Bureau of Medical Services

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State of Maine  
DEPARTMENT OF HUMAN SERVICES  
Augusta, Maine 04333

April 21, 2004

Edward W. Miles, FHFMA  
Medical Care Development  
11 Parkwood Drive  
Augusta, ME 04330

RECEIVED  
APR 23 2004  
MCD FINANCE DEPT.

RE: Gilbert Manor Settlement Proposal

Dear Mr. Miles:

Please accept this letter as SUR's response to your settlement proposal letter dated April 2, 2004. As a compromise to settle this matter in lieu of informal review, SUR is willing to accept a reduction of \$3,231.64 from the original recoupment amount of \$14,309.18.

First, I would like to bring your attention to a calculation error in your submission. In your figures for Resident H, for the date of service 11/7/2001, your attachment shows an amount of \$993.16. The correct amount should have been \$99.16. This error reduces the total amount for Resident H by \$894.00, from \$4,369.11 to \$3,475.11.

SUR reviewed your request of a 50% reduction due to the high volume of incontinence products ordered on behalf of Resident H. The additional information submitted for this resident only refers to 'pull-ups per H's request'. A member's request for incontinence supplies does not make it medically necessary. Therefore, SUR is unable to accept the 50% reduction proposal of \$1,737.56 (see calculation error above). However, other documentation was reviewed, and a reduction of \$480.34 was applied.

On Resident F, SUR was able to reduce the recoupment amount by \$27.00, allowing an extra order of gloves. A Physician's Order dated 1/29/02 can only substantiate orders placed after that date. Prevention of accidents is not considered to be a medical necessity.

After thoughtful consideration, the recoupment amounts for Resident C, G, and J have been waived.

Here is a summary of the settlement review:

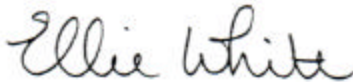
Resident	Previous Reduction Amount	New Reduction Amount
C	\$857.22	\$857.22
F	\$655.08	\$27.00
G	\$573.61	\$573.61
H	\$1737.56*	\$480.34
J	\$1,293.47	\$1,293.47
<b>Total:</b>	<b>\$5,116.94</b>	<b>\$3,231.64</b>

\*adjusted amount (proposed amount was \$2,184.56 due to a calculation error)

If you accept the new recoupment amount of \$11,077.54, please respond to SUR no later than May 3, 2004. If we do not receive a response by May 3, 2004, this compromise to settle offer will be rescinded.

If you have any questions regarding this letter, please contact me at 287-9277. Thank you for your cooperation.

Sincerely,



Ellie White, Health Care Analyst  
Surveillance and Utilization Review

Cc: Marc Fecteau, Manager, Surveillance and Utilization Review