

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

IN THE MATTER OF)	CASE NO. INS-2012-108
)	
CHERYL LANPHEAR,)	FINAL AGENCY DECISION
)	
Respondent.)	
)	
)	
)	

The Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), has reviewed the Hearing Examiner’s December 10, 2012, Proposed Findings of Fact, Conclusions of Law, and Order (Exhibit A) and December 12, 2012, Corrections to Proposed Findings of Fact, Conclusions of Law, and Order in this matter (Exhibit B). The Proposed Order notified the Respondent that she had 30 days to file exceptions to the Proposed Order and failure to respond within that time would constitute a waiver of her right to judicial review of this decision. No exceptions were filed by the Respondent. Therefore, the Commissioner finds good cause to enter the following:

ORDER

1. The Proposed Findings of Fact, Conclusions of Law, and Order (Exhibit A) and the Corrections to Proposed Findings of Fact, Conclusions of Law, and Order (Exhibit B) are adopted in their entirety as the Final Agency Decision in this matter and by this reference are made a part of this Final Agency Decision;

2. The Insure Montana Program properly requested repayment of the premium assistance subsidy payments of \$2,857.24 received by Cheryl Lanphear.

3. Since Cheryl Lanphear repaid the premium assistance subsidy payments of \$2,857.24 to the Insure Montana Program in May, 2012, no further payment is due from her.

SO ORDERED this 24th day of January, 2013.



MONICA J. LINDEEN
Commissioner of Securities and Insurance,
Montana State Auditor

CERTIFICATE OF SERVICE

I hereby certify the foregoing was served on the 24th day of January, 2013, to the following:

By Hand Delivery:

Jennifer Massman
Attorney
Office of the Commissioner of Securities and
Insurance, Montana State Auditor
840 Helena Avenue
Helena, MT 59601

By US mail, first-class postage paid:

Ms. Cheryl Lanphear
821 West Mendenhall
Bozeman, MT 59715



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BEFORE THE MONTANA STATE AUDITOR
AND COMMISSIONER OF INSURANCE AND SECURITIES
HELENA, MONTANA

IN THE MATTER OF:) Case No. INS-2012-108
)
CHERYL LANPHEAR,) HEARING EXAMINER'S
) PROPOSED
Petitioner.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND ORDER

Pursuant to mailed notice, on Wednesday, August 22, 2012, at the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), a contested case hearing was conducted by the undersigned Hearing Examiner in this matter. The hearing was conducted pursuant to the hearing and appeals provisions of the Montana Insurance Code (Mont. Code Ann. §§ 33-1-101, et seq.); the contested case provisions of the Montana Administrative Procedure Act (Mont. Code Ann. §§ 2-4-601, et seq.); and Montana's statutory, public participation in governmental operations notice and hearing provisions (Mont. Code Ann. §§ 2-3-101, et seq.).

At the contested case hearing, Jennifer Massman, Legal Counsel for the Commissioner of Securities and Insurance, Montana



1 State Auditor (Commissioner), represented the CSI. Respondent,
2 Cheryl Lanphear (Lanphear) appeared pro se via telephone.

3 Testimony was received on behalf of CSI from Jill Sark,
4 director of the Insure Montana Program. Lanphear presented
5 testimony on behalf of herself.

6 The following documentary Exhibits were received into
7 evidence via stipulation of the parties: Insure Montana 2009
8 Renewal Application of Merlin & Associates dated October 6, 2008,
9 (Exhibit 1); April 19, 2010, letter from Rosalie Melin of Big Sky
10 Insurance Associates, LLC, to Blue Cross Blue Shield of Montana
11 (Exhibit 2); Insure Montana Purchasing Pool Change Report Form of
12 Big Sky Insurance Associates, LLC, dated April 19, 2010,
13 (Exhibit 3); Insure Montana Employee Premium Assistance
14 Application signed by Cheryl Lanphear and dated April 19, 2010,
15 (Exhibit 4); BlueCross BlueShield Insure Montana 2011 Group
16 Health Benefits Plan Employer Election Form of Big Sky Insurance
17 Associates, LLC, dated November 2, 2010, (Exhibit 5); BlueCross
18 BlueShield Insure Montana 2012 Group Health Benefits Plan
19 Employer Election Form of Big Sky Insurance, LLC, dated
20 November 23, 2011, (Exhibit 6); March 23, 2012, letter from
21 Rosalie Melin of Big Sky Insurance Associates, LLC to CSI Auditor
22 James Oster, with enclosures consisting of: two CSI Insure
23 Montana Employee Assistance Opt-In Forms and a March 15, 2012,
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1 Letter from Stacy Lanphear to CSI Auditor James Oster
2 (Exhibit 7); April 3, 2012, letter from CSI Auditor James Oster
3 to Cheryl Lanphear (Exhibit 8); April 3, 2012, e-mail from Tom
4 Melin/Rosalie Melin to Jill Sark (Exhibit 9); April 19, 2012,
5 e-mail from Jill Sark to Tom/Rosalie Melin and an April 18, 2012,
6 e-mail from Tom Melin to Jill and James Sark (Exhibit 10);
7 April 19, 2012, e-mail from Jill Sark to Tom Melin and James
8 Oster and an April 19, 2012, e-mail from Tom Melin to Jill Sark
9 and James Oster (Exhibit 11); April 24, 2012, e-mail from Jill
10 Sark to Cheryl Lanphear, an April 23, 2012, e-mail from Cheryl
11 Lanphear to Jill Sark and Renee Little, and an April 20, 2012,
12 e-mail from Cheryl Lanphear to Jill Sark and Renee Little
13 (Exhibit 12); May 1, 2012, letter from Cheryl Lanphear to the
14 Montana CSI (Exhibit 13); May 1, 2012, Insure Montana Plan of
15 Operation (Exhibit 14); and Section 202-1 of the Insure Montana
16 Policy Manual regarding payments (Exhibit 15).

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18
19 The following documentary Exhibits also were received into
20 evidence via stipulation of the parties: April 3, 2012, letter
21 from James Oster to Cheryl Lanphear (Exhibit A); April 19, 2012,
22 e-mail to Jill Sark and Renee Little from Tom Melin, an April 19,
23 2012, e-mail from Jill Sark to Big Sky Insurance, James Oster,
24 and Renee Little, and an April 19, 2012, e-mail from Tom Melin to
25 Jill Sark and James Oster (Exhibit B); April 19, 2012, e-mail
26

1 from Tom Melin to Lanphear Insurance/Rosalie, an April 19, 2012,
2 e-mail from Jill Sark to James Oster and Renee Little, and an
3 April 18, 2012, e-mail from Tom Melin to Jill Sark and James
4 Oster (Exhibit C); April 18, 2012, letter from Insure Montana
5 Staff to Cheryl Lanphear (Exhibit F); CSI About Insure Montana
6 (Exhibit G); CSI Frequently Asked Questions (Exhibit H); CSI
7 Purchasing Pool - Premium Assistance program (Exhibit I); and CSI
8 Insure Montana Topic - Completing the Insure Montana Employee
9 annual online "Program Renewal" (Exhibit J).

11 In addition, in June, 2012, the parties entered into a
12 "Statement of Agreed Facts" consisting of ten (10) factual
13 statements.

14 From the testimonial and documentary evidence presented, the
15 Hearing Examiner makes the following proposed:

16 FINDINGS OF FACT

17 1. Jill Sark (Sark) has been the Director of the Insure
18 Montana Program (Insure Montana or Program) since 2007. (Tr. 3-
19 4.) Prior to 2007, Sark worked for the Montana Department of
20 Public Health and Human Services in the public assistance area
21 for 24 years, followed by eight years as the Food Stamp Director.
22 (Tr. 4-5.)

24 2. The Program was enacted by the 2005 Montana Legislature
25 with a January 1, 2006, beginning date. (Tr. 7.) The Program
26

1 consists of: (i) a tax credit program, and (ii) a Small Business
2 Health Insurance Purchasing Pool (Pool) program. (Tr. 5-6.)

3 3. The tax credit program of Insure Montana provides
4 refundable tax credits to businesses that provide group health
5 insurance for their employees. (Tr. 5.) The purpose of the tax
6 credit is to offset some of the costs a participating business
7 incurs in providing group health insurance to its employees.
8 (Tr. 5-6.)

9
10 4. The purchasing Pool program of Insure Montana provides
11 refundable tax credits to participant businesses that provide
12 group health insurance to its employees. (Tr. 6.) The purpose
13 of the Pool is to assist small businesses "maintain" group health
14 insurance, and also provide group insurance purchasing power.
15 (Id.) The Pool program is implemented by providing:

16 (i) a monthly Premium Incentive Payment to a
17 participant business that pays at least 50% of its
18 employee's premium, in order to offset that business's
19 cost by a percentage amount; and

20 (ii) a direct subsidy in the form of a Premium
21 Assistance Payment to an employee that pays a portion
22 of his/her monthly premium cost, which is based on the
23 amount of premium the employee pays out-of-pocket and
24 the employee's household in relation to a sliding scale
25 of the Federal Poverty Level (FPL).

26 (Tr. 6, 26; Exhs. 14 and 15.)

5. In summary, Insure Montana encourages employer
sponsored group health insurance by providing financial

1 incentives in the form of refundable tax credits to businesses
2 that provide group health insurance for their employees, or
3 Premium Incentive Payments (PIP) to businesses and Premium
4 Assistance Payments (PAP) to the employees when the employer
5 elects to participate in the purchasing Pool. (Tr. 5-7.)

6 6. The Pool has a Board of Directors (Board), four of
7 which are appointed by the Governor and three by the Commissioner
8 of Insurance (COI). (Tr. 7.) The Board exercises authority only
9 over the Pool aspect of the Program. (*Id.*) The Board develops
10 the Pool's Plan of Operation which includes each of the
11 respective calculation methodologies for the PIP and PAP. (Tr.
12 7, 9-10, 30; Exh. 14.)

13 7. As Director of the Program, Sark serves the Board, sets
14 policies, responds to legislative audits, and supervises staff,
15 including purchasing pool specialists, tax credit specialists,
16 business analysts, and auditors. (Tr. 3-4.)

17 8. Since inception of the Program, a participating
18 employer must pay at least fifty percent (50%) of the employee-
19 only premium amount of the plan that the business chooses to
20 offer to its employees in order to qualify for PIPs. (Tr. 30-32;
21 Exhs. 14, 15, and H.)

22 9. The PIP incentive payment to the business is based on
23 the employee premium. (Tr. 9.) If the employer (business) pays
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1 one-half of the employee-only premium, the business receives one-
2 half of its contribution (or one-quarter of the employee-only
3 premium) as a PIP. (*Id.*) As an example, if the premium amount
4 for an employee was \$500 per month, and the business owner paid
5 \$250 per month of that premium, the PIP incentive payment to the
6 business would be \$125. (Tr.9; Exhs. 14 (p. 5) and H.)

7
8 10. The PAP subsidy payment to the employee is based the
9 amount of the employee's out-of-pocket cost for the premium
10 multiplied by the percentage amount for which the employee is
11 eligible based on the employee's household income. (Tr. 10.)
12 Using comparative figures from the previous (PIP) example, if the
13 premium amount for an employee was \$500 per month and the
14 business was paying one-half of that premium, the employee's out-
15 of-pocket cost would be \$250. (*Id.*) If the employee's household
16 income qualified the employee for a 50% PAP payment, the premium
17 assistance subsidy would be \$125. (*Id.*)

18
19 11. Prior to April 2010, Melin & Associates Insurance
20 Agency (Melin & Associates) participated in the Program. (Stip.
21 Fact 1.)

22 12. In its initial application in 2006 for plan year 2007,
23 Melin & Associates indicated that the employer contributed 50% of
24 the employee-only premiums. (Tr. 13.) In renewal applications
25 submitted in 2007 and 2008 (*Id.*), Melin & Associates did not
26

1 change its employer contribution from 50% toward the employee-
2 only premium. ("Respondent's Review of Findings of Fact by
3 Jennifer Massman" re: proposed Finding of Fact 9.)

4 13. In its renewal application for health plan year 2009,
5 Melin & Associates indicated that it contributed 50% toward the
6 employee-only premium. (Tr. 14-15; Exh. 1.)

7 14. In April 2010, Melin & Associates notified Insure
8 Montana's staff that the business was reorganizing and changing
9 its name to Big Sky Insurance Associates, LLC (Big Sky Insurance)
10 and that three new employees, including Cheryl Lanphear
11 (Lanphear), would be added to its coverage with the Program.
12 (Stip. Fact. 2; Tr. 16; Exhs 2-3.) Lanphear received a June 1,
13 2010, effective date. (*Id.*)

14 15. The April 2010, letter regarding the reorganization of
15 the business and employee additions did not indicate that Big Sky
16 Insurance wanted to change the amount of the employer
17 contribution toward the employee-only premium from 50%. (Tr. 16;
18 Exh. 2.)

19 16. The Insure Montana Purchasing Pool Change Report Form
20 submitted by Big Sky Insurance to add Lanphear as a covered
21 employee also did not indicate a change from 50% in the employer
22 contribution toward the employee-only premium. (Tr. 16-17;
23 Exh. 3.)

1 17. Lanphear submitted an employee PAP application dated
2 April 19, 2010, to the Program, stating her household income
3 range for calculating the PAP subsidy payment, and her bank
4 account information for electronic funds transfer of the monthly
5 PAP subsidy payment to her personal account. (Tr. 17; Exh. 4.)
6 The PAP application indicates it is a mandatory form. (Exh. 4.)
7 On April 24, 2012, Sark expressed gratitude to Lanphear for
8 suggesting a question regarding out-of-pocket expenses be added
9 to the application form. (Tr. 27; Exh. 12.) Pursuant to this
10 suggestion, changes to the form were implemented in July 2012.
11
12 (Tr. 27.)

13 18. When a participating business seeks to add a new
14 employee to its coverage, the Program sends an estimate to the
15 business and the insurance producer (insurance agent). (Tr. 17-
16 18.) The estimate includes the amount of the PAP subsidy payment
17 the employee would receive based on the employee's reported
18 household income range, and also the amount that the employee
19 would be paying out-of-pocket for the coverage. (*Id.*) The out-
20 of-pocket amount can be estimated for coverage for the employee
21 only, the employee and spouse, or the employee and dependents.
22 (Tr. 18.) The business is expected to provide the estimate to
23 the employee so the employee can decide whether to purchase
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1 coverage for the employee-only or whether to purchase coverage
2 for other family members. (*Id.*)

3 19. The Big Sky Insurance owner who completed the Program's
4 application for adding Lanphear was Rosalie Melin (Melin). (Tr.
5 18-19; Exh. 3.) Melin also acted as the insurance agent. (Tr.
6 18-19, 65-66.)

7
8 20. The premium assistance subsidy payments made to
9 Lanphear through the Program were paid directly to her personal
10 checking account. (Stip. Fact 3.) The premium assistance
11 payments were initially 80% of Ms. Lanphear's portion of the
12 monthly premium and were subsequently recalculated at 70% of her
13 portion of the monthly premium. (*Id.*)

14 21. In November, 2010, Big Sky Insurance completed an
15 Insure Montana employer election form for the 2011 plan year.
16 (Tr. 19-20; Exh. 5.) Big Sky Insurance indicated that the
17 employer's contribution to premium would be 50% of the employee-
18 only premium and that Lanphear would participate in the coverage.
19 (*Id.*) The employer election form is signed by Melin as the group
20 leader for the business and as the insurance agent representing
21 the insurer. (*Id.*)

22
23 22. In October 2011, the Program's website was updated to
24 include a section on "Business Contribution" which explained what
25 the business contribution toward the employee premium needed to
26

1 be in order to qualify for the Program. (Tr. 45-46.) The
2 website included examples of different business contributions
3 toward premium and the resulting employee contributions toward
4 premium, e.g. if the business is contributing 50% of the
5 employee-only premium, then the other 50% must be contributed by
6 the employee; if the business is contributing 100% of the
7 employee-only premium, then the employee's contribution is zero.
8

9 (Id.)

10 23. Also in October 2011, Renee Little (Little), an Insure
11 Montana staff member, provided training to insurance agents
12 around Montana, including Melin, regarding the Program and the
13 business contribution examples on the web site. (Tr. 45-46.)

14 24. In November 2011, Big Sky Insurance completed an Insure
15 Montana employer election form for the 2012 plan year. (Tr. 20;
16 Exh. 6.) Big Sky Insurance indicated that the employer's
17 contribution to premium would be 50% of the employee-only premium
18 and that Lanphear would participate in the coverage. (Id.) The
19 employer election form is signed by Melin as the group leader for
20 the business, and as the insurance agent representing the
21 insurer. (Id.)

22
23 25. In March 2012, Insure Montana selected Big Sky
24 Insurance for an audit. (Stip. Fact 4.) The Insure Montana
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1 staff requested payroll records and copies of monthly group
2 health insurance bills. (*Id.*)

3 26. In a March 23, 2012, letter to Insure Montana Auditor,
4 James Oster, Melin of Big Sky Insurance explained that three
5 independent insurance agencies, including Melin & Associates
6 Insurance Agency and "Lanphear Agency" formed Big Sky Insurance.
7 (*Stip. Fact* 9; *Tr.* 21-23; *Exh.* 7.) The business has three
8 separate offices and the owners of Big Sky Insurance are covered
9 by the group health insurance policy and participate in the
10 Program. (*Id.*) Melin's letter also states that each independent
11 insurance agency in Big Sky Insurance "maintained its independent
12 status as far as the operation expenses of each office - rent,
13 power, phone systems, supplies, insurance, employee wages, etc."
14 (*Tr.* 21-22; *Exh.* 7.)

15
16 27. Enclosed with Melin's March 23, 2012, letter was a
17 March 15, 2012, letter from "Stacy" Lanphear to Insure Montana
18 auditor, James Oster. (*Tr.* 22-23; *Exh.* 7.) In her letter, Stacy
19 Lanphear indicated that the Lanphear Agency had previously paid
20 the insurance premiums for Stacy Lanphear and Cheryl Lanphear
21 (*Id.*; "Respondent's Review of Findings of Fact by Jennifer
22 Massman" re: proposed Finding of Fact 25), but going forward,
23 "Stacy and Cheryl [Lanphear] will each pay their portion
24 personally, which will be half the premium less the premium
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1 assistance, which will be sent from Insure Montana directly to
2 the business [Big Sky Insurance]" pursuant to the completed opt-
3 in form. (Id.)

4 28. The audit revealed that Lanphear's employer paid 100%
5 of the group health insurance premium for Lanphear from June
6 2010, through February 2012. (Stip. Fact 5; Tr. 22-23; Exh. 7.)

7
8 29. In an April 3, 2012, letter to Lanphear, the Program's
9 staff requested repayment of all premium assistance subsidy
10 payments made to Lanphear in the total amount of \$2,857.24. The
11 letter also stated that because her employer contributed 100% of
12 the monthly group health insurance premium for Lanphear, she was
13 not eligible to receive premium assistance subsidy payments under
14 the Program. (Stip. Fact 6; Tr. 23-24; Exhs. 8 and A.)

15 30. In an April 3, 2012, 1:05 p.m., e-mail to Sark, Melin
16 stated, "I must admit that with our own group, I failed to inform
17 Stacy and Cheryl Lanphear the [sic] need to have the employer pay
18 50% and the employee (them) pay 50%." (Exh. 9; Tr. 24, 66.)

19
20 31. In e-mails to Insure Montana, Melin asked why the PAP
21 overpayment to Lanphear had to be refunded to the Program instead
22 of the business (Lanphear Agency or Big Sky Insurance) that paid
23 the employee's portion of the premium. (Tr. 24; Exh. 9;
24 "Respondent's Review of Findings of Fact by Jennifer Massman" re:
25 proposed Finding of Fact 29.) She also asked whether it was
26

1 possible to retroactively apply the opt-in form (to pay the
2 employee's premium assistance subsidy to the business) to the
3 date that Lanphear began coverage. (Tr. 24-25, 27; Exhs. 10 and
4 12; "Respondent's Review of Findings of Fact by Jennifer Massman"
5 re: proposed Finding of Fact 29.)

6 32. Sark explained that the opt-in form was not effective
7 until after it was signed and could not be applied retroactively.
8 (Id.)

9
10 33. Even if the opt-in form had been signed by Lanphear,
11 when her coverage began in 2010, there would still be an
12 overpayment in her case. ("Respondent's Review of Findings of
13 Fact by Jennifer Massman" re: proposed Finding of Fact 31.) The
14 PAP subsidy payment is based on the employee's contribution
15 toward, or share of, the monthly premium. (Tr. 26.) The
16 employee's contribution is often withheld from the employee's
17 paycheck through a payroll deduction. (Tr. 18, 25, 35;
18 "Respondent's Review of Findings of Fact by Jennifer Massman" re:
19 proposed Finding of Fact 31.) The amount of the PAP subsidy
20 payment is a percentage of the employee's contribution based on
21 the employee's household income in relation to a sliding scale of
22 the Federal Poverty Level (FPL). (Tr. 6, 26; Exhs. 14-15.) In
23 Lanphear's case, despite qualifying for premium assistance
24 subsidies of 70% or 80% (Tr. 26), she was not eligible for any
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1 PAP subsidy payments because she made no personal contribution to
2 the monthly premium. (Tr. 26; Exh. 11; "Respondent's Review of
3 Findings of Fact by Jennifer Massman" re: proposed Finding of
4 Fact 31.)

5 34. For example, if the monthly premium for the employee
6 was \$500 and the employer paid the entire premium, the employer
7 would be eligible to receive a PIP of \$187.50 calculated as
8 follows: one-half of the minimum required employer contribution,
9 which would be \$125; and one-quarter of premium payments in
10 excess of the minimum required employer contribution, which would
11 be \$62.50. (Tr. 35-36.) The employee may qualify for PAP
12 subsidy payments of 80% of the employee's contribution, based on
13 the employee's household income; however, if the employee does
14 not pay any of the premium, the employee is not eligible to
15 receive any PAP (\$0 paid by the employee multiplied by .80 equals
16 \$0 in premium assistance subsidy). (Tr. 35-36; 57-58; Exhs. 11-
17 13 and 15; "Respondent's Review of Findings of Fact by Jennifer
18 Massman" re: proposed Finding of Fact 33.)

19 35. In March 2012, the Insure Montana staff began a
20 targeted income audit of Lanphear. (Tr. 40; Exh. F.) Based on
21 her verified household income, she could qualify for PAP payments
22 at the same percentage of her contribution to the monthly
23 premium. (Tr. at 40-41; Exh. F.)
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1 36. In a May 1, 2012, letter to the Office of the COI,
2 Lanphear requested a hearing. (Stip. Fact 7; Tr. 28; Exh. 13.)
3 She also sent a check for \$2,857.24 to repay the PAP subsidy
4 payments in full, but stated in her letter that she was paying it
5 under protest because she was requesting a hearing to contest the
6 repayment to the Program. (*Id.*)
7

8 37. Big Sky Insurance is registered with the Montana
9 Secretary of State's Office as a member managed Limited Liability
10 Company. (Stip. Fact. 8.) Lanphear has been a member of Big Sky
11 Insurance since 2002, and became a manager of Big Sky Insurance
12 in 2010. (*Id.*)

13 38. Lanphear is an officer and director of Lanphear Pratt,
14 Inc., an insurance agency in Bozeman, Montana, which is part of
15 Big Sky Insurance. (Stip. Fact 10.)
16

17 39. In cross-examination, Lanphear asked if her business
18 (Big Sky Insurance) could receive the extra 25% premium incentive
19 payment from Insurance Montana on the premium that it paid for
20 her coverage in excess of the minimum 50% contribution required
21 from June, 2010, through February 2012. (Tr. 54-55.) Sark
22 explained that the Program does not apply changes retroactively,
23 but only after the change is reported. (*Id.*) The reason for
24 this is that the Program is not allowed to retain or carry
25 forward any funds from year to year, but instead is required to
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1 return any excess funds to the Tobacco Tax Fund which funds the
2 Program. (Tr. 55-56.) As a result, the Program has limited
3 funds. (Tr. 55-56.) According to Sark, this is the same reason
4 underlying Insure Montana's internal policy that retroactive
5 changes are not made that cause an increase. (Tr. 55.)

6
7 40. Sark and Lanphear each testified that Melin was the
8 insurance agent responsible for getting the business and
9 employees enrolled in the Program. (Tr. 18-19; 65.) Lanphear
10 further testified to not being told by her agent (Melin) that a
11 personal, nonbusiness contribution would be required from
12 Lanphear. (Tr. 61, 66.) Melin admits that she failed to inform
13 Lanphear that as the employee she would have to pay 50% of the
14 premium. (Exh. 9; Tr. 24.) In addition to being licensed as a
15 property and casualty insurance agent, Melin also is licensed as
16 a health insurance agent. (Tr. 65-66.) Lanphear is not licensed
17 as a health insurance agent and testified to knowing nothing
18 about health insurance. (Exh. 13.)

19
20 41. The undersigned agrees with the contention of COI that
21 what exists here is not an error by the Program, but a failure of
22 the insurance agent processing Lanphear's enrollment. Melin
23 simply failed to communicate to Lanphear that she needed to pay
24 50%, or that she needed to have an employee out-of-pocket
25 contribution. As the applicant, Lanphear clearly relied upon her
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1 health insurance agent to provide the requisite enrollment
2 information and correctly process that information. In this case
3 it was the health insurance agent's failure to provide the
4 requisite information to Lanphear that created the problem
5 alleged in this matter, and not CSI. Based on the facts as
6 presented, it was this failure, and not an application linguistic
7 omission that directly caused and led to imposition of the refund
8 request.
9

10 From these foregoing findings of fact, the Hearing Examiner
11 makes the following proposed:

12 CONCLUSIONS OF LAW

13 1. The Commissioner of Securities and Insurance, Montana
14 State Auditor (Commissioner) has jurisdiction over this matter
15 pursuant to Mont. Code Ann. §§ 2-15-1903 and 33-1-311.

16 2. Mont. Code Ann. § 33-1-311, requires the Commissioner
17 to enforce the applicable provisions of the insurance laws of
18 this state. Under Mont. Code Ann. § 33-1-311(2), the
19 Commissioner has authority as may be reasonably implied by the
20 Insurance Code provisions.
21

22 3. The small business health insurance pool is funded by
23 Montana cigarette and tobacco product taxes, and codified as part
24 of the Montana Insurance Code administered by the Insurance
25 Department of the Montana State Auditor's office. Mont. Code
26 Ann. §§ 33-1-301, 33-22-2001 et seq., and 53-6-1201(3)(f).

1 4. The purpose of the small business health insurance pool
2 and the various credits is to make employer group health
3 insurance more affordable for employees and employers who work in
4 very small businesses. Mont. Code Ann. § 33-22-2005; Mont.
5 Admin. R. 6.6.5202.

6 5. The Board of Directors of the Small Business Health
7 Insurance Pool is responsible for establishing an operating plan
8 for operation of the purchasing pool, including the calculation
9 method for the Premium Incentive Payments (PIP) and the Premium
10 Assistance Payments (PAP). Mont. Code Ann. §§ 33-22-2003 and 33-
11 22-2004.

12 6. The PIP incentive payments to employers and the PAP
13 subsidy payments to employees must be paid pursuant to the plan
14 of operation implemented by the Board and any applicable
15 administrative rules. Mont. Code Ann. § 33-22-2007(3).
16

17 7. The Board of Directors adopted plan of operation
18 provides that the employer must pay 50% of the employee-only
19 premium amount for the plan selected. Generally, the premium
20 incentive payment to the employer is one-half of the employer's
21 contribution (or one-quarter of the employee-only premium) to the
22 monthly premium. (Plan of Operation, Exhibit 14.)
23

24 8. The premium assistance subsidy payment to the employee
25 is based on the amount of the employee's out-of-pocket cost for
26 the monthly premium multiplied by the percentage amount that the

1 employee is eligible for based on the employee's household
2 income. (Plan of Operation, Exhibit 14.)

3 9. From June 1, 2010, through February, 2012, Cheryl
4 Lanphear was not eligible to receive PAP subsidy payments because
5 she made no personal contribution to the monthly premium.
6 Therefore, despite qualifying for premium assistance subsidies of
7 70% or 80% based on her household income, Lanphear was not
8 eligible to receive premium assistance subsidy payments (\$0 paid
9 by Lanphear multiplied by .80 equals \$0 in premium assistance
10 subsidy). (Plan of Operation, Exhibit 14.)

12 From the foregoing Findings of Fact and Conclusions of Law,
13 the Hearing Examiner proposes to the Commissioner the following:

14 ORDER

15 1. The Insure Montana Program properly requested repayment
16 of the premium assistance subsidy payments of \$2,857.24 received
17 by Cheryl Lanphear.

18 2. Since Lanphear repaid the premium assistance subsidy
19 payments of \$2,857.24 to the Insure Montana Program in May, 2012,
20 no further payment is due from her.
21

22
23 NOTICE OF NECESSITY TO FILE EXCEPTIONS TO THESE PROPOSED
24 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
25 WITHIN 30 DAYS OF THE DATE OF THIS DECISION

26 Pursuant to the Montana Administrative
Procedures Act at Mont. Code Ann. § 2-4-621,
adversely affected parties in this case have

1 the opportunity to file written exceptions
2 with supporting briefs and to present an oral
3 argument to the Commissioner of Securities
4 and Insurance or her designee. If a party
5 does not file exceptions to the above
6 Proposed Findings of Fact, Conclusions of Law
7 and Order with the Commissioner of Securities
8 and Insurance, Office of the State Auditor,
9 at 840 Helena Avenue, Helena, MT 59601,
10 within 30 days of the date of this decision,
11 this will constitute a waiver of an adversely
12 affected party's right to judicial review of
13 this decision pursuant to Mont. Code Ann.
14 § 2-4-702. Exceptions must be filed in order
15 to exhaust all administrative remedies
16 available to any party who believes he/she is
17 aggrieved by this proposed decision.

18 Dated this 10th day of December, 2012.

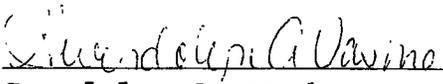
19 
20 _____
21 Michael J. Rieley, Hearing Examiner

22 CERTIFICATE OF SERVICE

23 I do hereby certify I served a copy of the foregoing Hearing
24 Examiner's Proposed Findings of Fact, Conclusions of Law, and
25 Order upon all parties of record on the 10th day of December,
26 2012, by mailing, faxing, e-mailing, or hand delivering a copy
thereof to:

Ms. Jennifer Massman
Special Assistant Attorney
General
State Auditor's Office
840 Helena Avenue
Helena, MT 59601

Ms. Cheryl Lanphear
821 West Mendenhall
Bozeman, MT 59715

27 
28 _____
29 Gwendolyn A. Vashro

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6 BEFORE THE MONTANA STATE AUDITOR
7 AND COMMISSIONER OF INSURANCE AND SECURITIES
8 HELENA, MONTANA

9 IN THE MATTER OF:) Case No. INS-2012-108
10)
11 CHERYL LANPHEAR,) RULE 60(a), M. R. CIV. P.
12) CORRECTIONS TO PROPOSED
13) FINDINGS OF FACT,
14) CONCLUSIONS OF LAW,
15) AND ORDER
16)

17 In accordance with Rule 60(a) of the Montana Rules of Civil
18 Procedure (M. R. Civ. P.), the undersigned Hearing Officer hereby
19 issues the following corrections to his Proposed Findings of
20 Fact, Conclusions of Law, and Order issued on, and dated
21 December 10, 2012 (new material is underlined and deleted
22 material is stricken):

23 1. The portion at lines 6-7 of page 3 is hereby corrected
24 to read as follows:

25 e-mail from Tom/Rosalie Melin to Jill Sark and James
26 Oster (Exhibit 10);

27 2. The portion at lines 1-4 of page 4 is hereby corrected
28 to read as follows:

1 from Tom/Rosalie Melin to Lanphear Insurance/Rosalie,
2 an April 19, 2012, e-mail from Jill Sark to Big Sky
3 Insurance/Rosalie, James Oster, and Renee Little, and
4 an April 18, 2012, e-mail from Tom/Rosalie Melin to
5 Jill Sark and James Oster (Exhibit C);

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3. Finding of Fact 3 at lines 3-9 of page 5 is hereby
corrected to read as follows:

3. The tax credit program of Insure Montana provides refundable tax credits to businesses that provide group health insurance for their employees. (Tr. 5.) The purpose of the tax credit is to offset some of the costs a participating business incurs in providing group health insurance to its employees and to assist small businesses maintain group health insurance. (Tr. 5-6.)

4. Finding of Fact 4 at lines 10-23 of page 5 is hereby corrected to read as follows:

4. The purchasing Pool program of Insure Montana provides premium incentive payments refundable tax credits to participant businesses that provide group health insurance to its employees and that did not have group health insurance in the past 24 months. (Tr. 6.) The purpose of the Pool is to assist small businesses and their employees afford "maintain" group health insurance, and also provide group insurance purchasing power. (Tr. 6-7 ~~Id.~~) The Pool program is implemented by providing:

(i) a monthly Premium Incentive Payment to a participant business that pays at least 50% of its employee's premium, in order to offset that business's cost by a percentage amount; and

(ii) a direct subsidy in the form of a Premium Assistance Payment to an employee that pays a portion of his/her monthly premium cost, which is based on the amount of premium the employee pays out-of-pocket and the employee's

1 household in relation to a sliding scale of the
2 Federal Poverty Level (FPL).

3 (Tr. 6, 26; Exhs. 14 and 15.)

4 Dated this 12th day of December, 2012.

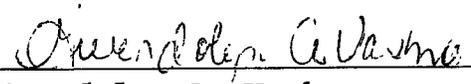
5 
6 Michael J. Rieley, Hearing Examiner

7
8 CERTIFICATE OF SERVICE

9 I do hereby certify I served a copy of the foregoing Hearing
10 Examiner's Rule 60(a), M. R. Civ. P. Corrections to Proposed
11 Findings of Fact, Conclusions of Law, and Order upon all parties
12 of record on the 12th day of December, 2012, by mailing, faxing,
13 e-mailing, or hand delivering a copy thereof to:

14 Ms. Jennifer Massman
15 Special Assistant Attorney
16 General
17 State Auditor's Office
18 840 Helena Avenue
19 Helena, MT 59601

Ms. Cheryl Lanphear
821 West Mendenhall
Bozeman, MT 59715

20 
21 Gwendolyn A. Vashro