

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

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| 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



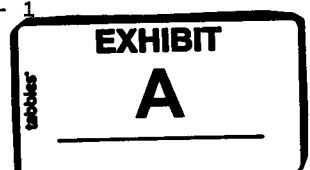
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BEFORE THE MONTANA STATE AUDITOR
AND COMMISSIONER OF INSURANCE AND SECURITIES
HELENA, MONTANA

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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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
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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
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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.)

27 5. In summary, Insure Montana encourages employer
28 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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