

**BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA**

**In the Matter of the Appeal of the Audit  
Involving:**

**OAH No. 2012110850**

**SALLY M.,**

**Appellant,**

**vs.**

**NORTH LOS ANGELES COUNTY  
REGIONAL CENTER,**

**Respondent.**

**PROPOSED DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on June 21, 2013, in Van Nuys, California. Sally M.<sup>1</sup> (Appellant) appeared and represented herself. North Los Angeles County Regional Center (Respondent or NLACRC) was represented by Stella Dorian.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on June 21, 2013.

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<sup>1</sup> Initials are used in lieu of Appellant's and her son's last name, a regional center client, in order to protect their privacy.

## ISSUE<sup>2</sup>

The parties agreed that the issue to be decided is as follows:

Did Appellant have insufficient records to substantiate the payment by NLACRC for respite and day care services for the audit period?

### FACTUAL FINDINGS

#### *Procedural Background*

1. This appeal arises from a parent voucher audit conducted by NLACRC, the findings of which were reviewed and upheld by the Department of Developmental Services (DDS). Following the audit, NLACRC determined that Appellant failed to comply with California Code of Regulations by failing to “maintain records in sufficient detail” to demonstrate that the hours billed to the NLACRC for respite and day care services were actually delivered. (NLACRC’s Position Statement, Exhibit 2.) Based on that determination, NLACRC maintained that Appellant should reimburse NLACRC \$12,837.30, which represents the amount Appellant received from NLACRC for day care and respite services which NLACRC asserted were not supported by Appellant’s records. (Exhibit 2.)

2. Appellant is the single mother of a 20-year-old NLACRC client, John M., diagnosed with cerebral palsy and mental retardation. (Exhibit 8; Testimony of Sally M.)

3(a). On July 13, 2007, Appellant applied to be vendored for in home respite and day care services. On that date, she signed Vendor Application, Form DS 1890, which contained the following pre-printed statements:

1. I agree to select, assign, monitor and pay competent individuals over age 18 to provide non-medical in-home respite and/or day care services for my family member who is a regional center client.

2. I understand that I may not pay myself to provide any day care and/or respite services (Title 17, Section 54355.)

[¶] . . . [¶]

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<sup>2</sup> The parties agreed that the conclusion regarding this issue would decide the ultimate issue: Should Appellant be required to reimburse North Los Angeles County Regional Center the amount determined in the audit (\$1,537.50 paid for respite services and \$11,299.80 paid for daycare services - \$12,837.30 total)?

4. I agree to claim reimbursement from the regional center only for services actually delivered. I will keep records of services for a minimum of three years, including the dates of service, number of hours and times worked each day and the amounts paid to worker(s) (Title 17, Section 50605(a)).

5. I agree to bill the regional center Accounting Department by the 6<sup>th</sup> of the month for the services used the previous month (on NLACRC's billing form). I understand that submitting a bill that is late or not complete will result in my check being delayed.

[¶] . . . [¶]

7. I understand the regional center has the right to audit or verify any information submitted in reference to my claim for reimbursement for services, including contacting the service provider in accordance with (Title 17, Section 50603 and 50606) [*sic*]. I understand billing for services which were not provided may result in the regional center pursuing recovery of overpayment.

8. I understand that workers paid by me may be considered household employees and that I may need to pay State and Federal employment taxes out of my reimbursement from regional center. I have been given IRS publication 926 and have been advised to seek professional tax advice concerning this potential responsibility.

(Exhibits 11 and A.)

3(b). On the same date she signed the Vendor Application, Appellant also completed and signed two documents entitled "Family Reimbursement: Provider Information and Rate Form," one pertaining to Family Voucher Day Care and the other pertaining to Family Voucher In-Home Respite. On both, she listed Elizabeth Montanes as the service provider and listed her address and Social Security number, but did not list any phone number. (Exhibits 11 and A.)

4(a). Appellant received letters from NLACRC, dated August 13, 2007, informing her that she had been "added to the list of people who may receive reimbursement" for "respite service - family member reimbursement" and "day care services – family reimbursement." (Exhibits 11 and A.)

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4(b). The letter pertaining to respite service also stated:

Our Accounting Dept., will send “IN-HOME RESPITE SERVICE – FAMILY MEMBER/MONTHLY BILLING FORM.” In order to receive reimbursement for services for a given month, you must submit a signed “IN-HOME RESPITE SERVICE – FAMILY MEMBER/MONTHLY BILLING FORM,” providing us with the name, address, phone and Social Security number of person(s) you have selected to provide the in-home respite service. . . .

[Y]ou will start receiving “PROVIDER OF CARE CLAIM” invoices from us in **4 to 6 weeks**. Attach the completed “IN-HOME RESPITE MONTHLY BILLING FORM” to your completed “PROVIDER OF CARE CLAIM” invoice and send to **ACCOUNTING DEPARTMENT** . . . (Emphasis in original.)

(Exhibits 11 and A.)

4(c). The letter pertaining to day care services also stated:

Our Accounting Dept., will send “Family Day Care Reimbursement Monthly Billing Form.” You must submit this form signed in order to receive reimbursement for services for a given month. Please the name, address, phone and Social Security number of person(s) you selected to provide services . . .

[¶] . . . [¶]

[Y]ou will start receiving “**Provider of Care Claim**” invoices **from us in 4 to 6 weeks**. Please attach your “Family Day Care Reimbursement Monthly Billing Form” to completed “Provider of Care Claim” invoice and send to **ACCOUNTING DEPARTMENT** . . . (Emphasis in original.)

(Exhibits 11 and A.)

5(a). On August 29, 2007, Appellant signed a form entitled “FAMILY VOUCHER [*sic*] ORIENTATION” Participant Confirmation. The form contained the certification, “By signing below you acknowledge your participation in this orientation and have received the Family Voucher Information Packet.” (Exhibit 13.)

5(b). By signing the confirmation, Appellant acknowledged receipt of a packet consisting of more than 70 pages. This included blank copies of the Vendor Application and Family Reimbursement Provider Information and Rate Form; a Frequently Asked Questions Information Sheet; a blank Respite Services Billing Form; Direct Deposit Application; Internal Revenue Service publication and form; Employment Development Department form and instructions; copies of California Code of Regulations, title 17, sections 50603, 50604, 50605, 50606, 54355 and 54310, a sample employee application, a Social Security verification form, and a copy (30 pages long) of the orientation presentation. (Exhibit 13.)

5(c). In the documents from the orientation presentation, several “slides” addressed the need to keep records.

(1) One slide stated, in part:

Records need to document hours provided by the worker.  
Original, signed time cards to record days and times worked by the worker.

(2) Another slide stated, in part:

Records needed to document wages paid to the worker.  
Payroll registers or other records to document how the worker’s wages were calculated

(3) Another slide stated, in part:

Records needed to document payment of wages to the worker.  
Cancelled checks, money orders, cashiers [*sic*] checks issued to the worker. Bank Statements.

(4) Another later slide stated, in part:

How to Complete the Respite Services Billing Form-DS 1811.  
Form used in lieu of the vendor submitting canceled checks and bank statements each month with their invoices.

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(5) The orientation materials contained a slide with the notifications:

Vendors Must be in compliance with all “Family Voucher” Title 17 requirements.

All vendors are subject to audit by NLACRC.

Vendors are required to reimburse NLACRC if your records do not support either the hours billed or wages paid to the worker.

(Exhibit 13).

6(a). On the Respite Services Billing Form provided with the orientation materials, the document requires the vendor to fill out the date of service, the location of the respite services the name of respite worker, the start time and end time of the services rendered on that date, the number of hours worked and the amount billed. If a respite worker, rather than an agency or facility, is used, the respite worker is required to complete the Respite Worker’s Certification on the back of the form. That certification required the listing of the respite worker’s name, phone number, Social Security number, and address, as well as a signature under the certification, “I certify I gave respite services to the consumer listed on this form at the address, dates and times shown. I understand if I give information that is untrue, I may be fined or go to jail.” (Exhibit 13.)

6(b). On the back of the Respite Services Billing Form is a section entitled “Vendored Family Member’s Certification,” which must be signed by the vendor, and contains seven enumerated certifications including:

(1) My family member received all of the respite service hours reported on this form. I understand that I can only bill for the respite services actually given to my family member by a Respite Worker, agency or facility. I cannot provide the respite service myself. The consumer can receive the service at a relative’s home.

(2) I must keep printed copies of all respite service records for 5 years. The records must include all of the following:

- Dates of service
- Address where the services were provided
- Name/s of the Respite Worker/s, agency or facility

- Proof of payment (like canceled checks, **signed cash receipts**, money orders, cashiers [*sic*] checks, payroll or bank statements, etc.)<sup>3</sup>]

(3) if I used a Respite Worker – not an agency or facility – I must also keep records of each worker’s:

- Date of birth
- Address
- Social Security number
- Phone number

(4) Any authorized county, state or federal agency can audit me and I agree to show the information and records listed above to the auditor.

(5) I did not choose my Respite Worker/s based on race, religion, color, national or ethnic origin, sex, age, or physical or mental disability. The Respite Worker/s I chose were at least 18 years old. I made sure they had the skills, training, or education to provide the respite services. I also made sure they were trained to take care of any special supports or needs listed in the consumer’s IPP or IFSP.

(6) The government may consider me the Respite Worker/s’ employer. I may be responsible for withholding federal, state, and local taxes from the Respite Worker/s’ wages and for paying and reporting the Respite Worker/s’ payroll taxes and wages to the IRS and the Employment Development Department (EDD). I may also have to provide Workers Compensation for the worker/s I hire. If I do not know how to do this, it is my responsibility to contact a tax consultant, IRS or EDD or a Workers’ Compensation carrier for more information. I declare under penalty of perjury, that the above information and the information on page 1 are true and correct. I also declare that I am the only person who employed, supervised, and assigned duties to the Respite Worker/s listed on this form. I have read and followed all respite service program requirements and terms and conditions listed above.

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<sup>3</sup> This statement in the Respite Services Billing Form sample provided in the orientation materials is different from the Respite Services Billing Forms later signed by Appellant. (See Finding 8(c), below.)

(7) All information on this form is correct and complete. I understand if I give information that is untrue, I may be fined or go to jail. (Emphasis added.)

(Exhibit 13.)

7(a). On September 13, 2011, Appellant signed another Vendor Application, Form DS 1890, for day care services. The form contained virtually identical statements as those set forth in the 2007 Vendor Application, except that paragraph 4 required the vendor to keep records of services for a minimum of five years, instead of three. (Exhibit 11.)

7(b). On the same date she signed the 2011 Vendor Application, Appellant also completed and signed a document entitled “Family Reimbursement: Provider Information and Rate Form,” pertaining to Family Voucher Day Care. On that form, she listed Lupe Perez as the service provider and listed her address, phone number and Social Security number. (Exhibit 11.)

7(c). Appellant received letters from NLACRC, dated September 14, 2011, informing her that she had been “added to the list of people who may receive reimbursement” for “day care services – family reimbursement.” (Exhibit 11.) The letter contained virtually identical statements to those in the August 13, 2007 letter (see Finding 4(c), above).

8(a). For several years, Appellant submitted claims for reimbursement for respite service and day care services. NLACRC paid all claims.

8(b). Appellant kept cash receipts to document the amounts she paid. She did not have any canceled checks or bank statements to corroborate the amounts paid.

8(c)(1). In order to obtain reimbursement each month, Appellant completed a Respite Services Billing Form and a Provider of Care Claim Form. The Respite Services Billing Forms Appellant signed in 2011 contained certifications similar to those in the sample Respite Services Billing Form provided with vendor orientation materials, except, unlike the orientation form, the 2011 form, paragraph 2 did not list “signed cash receipts” as one of the types of documents constituting “proof of payment.” (See Finding 6(b).) Instead, the document read:

Proof of payment (like canceled checks, money orders, cashiers [sic] checks, payroll records/documents or bank statements, etc.)  
If I provide receipts for cash payment I must also provide  
payroll records/documents and/or bank statements.

(Exhibit 11.)

8(c)(2). The evidence did not establish whether the Respite Services Billing Forms Appellant signed from 2007 through 2010 and submitted to NLACRC for reimbursement were similar to the form contained in the 2007 orientation materials (allowing “signed cash receipts” as a “proof of payment”) or whether they were similar to the Respite Services Billing Forms she signed in 2011 (requiring payroll records and/or bank statements). It was also not established that NLACRC attempted to ensure that Appellant was made aware of this change to the form and the proof of payment requirement.

8(d). On the reverse side of each Provider of Care Claim Form was a Certification Statement as follows:

1. The Provider agrees and shall certify under penalty of perjury that all claims for services provided to regional center consumers have been provided to the consumers by the Provider.

[¶] . . . [¶]

3. The Provider shall also certify that all information submitted to the regional center is accurate and complete.

[¶] . . . [¶]

5. Provider agrees to keep for a minimum period of five years from the date of service a printed representation of all records which are necessary to disclose fully the extent of services furnished to the consumers. . . .

(Exhibit 11.)

8(e). On the Respite Services Billing Form, Appellant filled out the dates of service, the names of the respite workers, the start and end times, and the hours worked. She also had the Respite Workers fill out all of the required information for the Respite Worker’s Certification and had them sign the certification. (See Finding 6(a) and 6(b), above.)

*The Audit and the Appeal*

9(a). In a letter dated October 3, 2011, NLACRC sent Appellant written notification, informing her that, in accordance with California Code of Regulations, title 17, section 50606, subdivisions (3) and (4), NLACRC would be:

conducting a parent voucher audit . . . to verify that the vendor has records to document the service hours billed to NLACRC for day

care and respite services in compliance with Title 17 Section 54326 (a)(3A)(3B)(4) & 6, Section 54355 (g)(1)(A)(2), (4)(B) and the Vendor Application Guidelines.

(Exhibit 3.)

9(b). The audit notification letter informed Appellant of the scope of the audit (April 2011 through August 2011) and specified which documents Appellant should have available for verification during the audit, including: copies of cancelled checks, money orders or cashiers' checks issued to the day care/respite workers; copies of signed time cards; payroll check registers; bank statements; Employment Development Department DE6 form; and/or IRS Schedule H. (Exhibit 3.)

10(a). On December 5, 2011, NLACRC sent Appellant a cover letter and a Draft Audit Report regarding the audit. The cover letter to the Draft Audit Report noted that the audit was conducted in accordance with California Code of Regulations, title 17, section 50606, subdivision (a), and was intended "to verify that the vendor's records support the service billings / invoices submitted to [NLACRC] for reimbursement and that the vendor hired and paid workers to provide day care and respite services to the consumer in compliance with Title 17 and the Vendor Application. (Exhibit 4.)

10(b). The December 5, 2011 cover letter noted:

NLACRC requested a variety of records from the vendor. However, the vendor did not provide adequate payment records to support the day care and respite hours billed to NLACRC. Therefore, based on the audit, NLACRC determined that the vendor should reimburse NLACRC \$12,837.30. This represents the amount the vendor did not adequately support with records for the respite and day care services billed to NALCARC for the period April 2011 through August 2011.

(Exhibit 4.)

10(c). The Findings of the Draft Audit Report included the following:

**Finding No. 1**

The vendor provided generic receipts to support cash payments to the day care and respite workers. According to the vendor's payment records, the vendor pays the workers on a weekly basis. Based on the vendor's payment records, the vendor reported to have paid the worker Ana Amaya in cash amounting to \$3,045.00 and \$12,285.00 in cash to Lopez Perez for day care and respite

services provided to consumer J.M. during the period April 2011 through August 2011. . .

[¶] . . . [¶]

Note: Based on the generic receipts, NLACRC determined that the vendor pays the worker at a weekly rate of \$735.00 or \$105/day. Therefore, of the total amount paid of \$735 from 3/26/11-4/1/11, NLACRC assumed that worker A. Amaya was paid \$105 for services on April 1, 2011, and of the total amount paid of \$735.00 from 8/27/11-9/2/11, L. Perez was paid \$525.00 from 8/27-8/31/11.

NLACRC noted that the generic receipts provided by the vendor did not indicate any of the following information regarding how the cash payments were determined for the worker:

- The hourly rate paid by the vendor to the worker
- The number of hours that the worker provided during the pay period
- The number of days worked by the worker during the pay period
- The amount of payroll taxes withheld from the worker's check payment
- Records demonstrating how the cash payments were calculated for the worker.

Furthermore, the generic receipts provided by the vendor did not demonstrate that actual cash payments were made to the worker because the vendor did not provide any corroborating information to support the amount of cash wages reported on generic receipts. The vendor did not provide any documents, such as cancelled checks, money orders, payroll registers, tax records, or bank statements to corroborate the wage information reported on the generic receipts. According to the "Respite Services Billing Form" submitted by the vendor each month, the vendor certified each month that "I must keep printed copies of all respite service [records] for 5 years. The records must include the following, proof of payment (like cancelled checks, money orders, cashier's checks, payroll records/documents or bank statements, etc.) [I]f I provide receipts for cash payment, I must also provide payroll records/documents and/or bank statements." The vendor should have been able to produce some records, such as bank statements or employer tax records, to support the cash payments made to the worker during the

audit period. Therefore, NLACRC was not able to use the generic [cash receipts] to verify the service hours provided by the worker or to verify the amount of wages paid to the worker by the vendor.

Therefore, due to insufficient records, NLACRC was unable to verify [:] 1) that the vendor hired and paid the worker to provide respite services for the consumer; 2) the accuracy of the service hours billed to NLACRC; and 3) the actual amount paid to the worker for respite services during the period April 2011 through August 2011.

(Exhibit 4.)

10(d). The Draft Audit Report contained a section entitled “Recommendations,” which noted the following:

NLACRC determined that the vendor was overpaid in the amount of \$1,537.50 for respite services and \$11,299.80 for day care services. These represent the amount the vendor did not adequately support with payment records for the respite and day care services billed to NLACRC during the period April 2011 through August 2011. Therefore, NLACRC recommends that the vendor reimburse the total amount of \$12,837.30.

(Exhibit 4.)

10(e). The cover letter accompanying the Draft Audit Report informed Appellant that if she disagreed with the Draft Audit Report, she had 30 days from receipt of the report to respond to the audit findings.

11. In a letter dated December 7, Appellant responded to the Audit Draft Report. Her response included the following:

I am enclosing herewith a copy of my bank statements, this is a copy of my SAVINGS account and I highlighted the withdrawals for every month

I would like to explain to you that this account (a savings) it allows me only three withdrawals a month (please note – as an example – that on April 29th I was charged for extra withdrawals Fee and my balance went below the limit) and because I am on a limited budget . . . I try to control and balance my withdrawals/budget as well.

As an example too, on April 1st I transferred the amount of \$4,355 to my checking account this amount was to pay my mortgage of \$2[, ]155.00 PLUS the CNA \$1[, ]470 (735x2) and on the 15th I only transferred \$1,200 to add on the amount I needed to pay the CNA for the other 2 weeks.

I hope that this is enough evidence for the required four months.

(Exhibit 5.)

12(a). On December 14, 2011, NLACRC sent Appellant the Final Audit Report, which was virtually identical to the Draft Audit Report. (Exhibit 6.)

12(b). The cover letter sent with the Final Audit Report informed Appellant of her right to file a Statement of Disputed Issues with DDS.

13(a). On December 19, 2011, DDS received Appellant's request for an administrative review. Thereafter, Appellant filed a Statement of Disputed Issues.

13(b). The Statement of Disputed Issued alleged, in part:

After Eight years [NLACRC] is asking me to pay over \$12,000, yes TWELVE THOUSAND DOLLARS!!!!!! Which I clearly cannot afford. I am not guilty . . .

[¶] . . . [¶]

[The regional center] didn't require a certain way so why are they complaining today?? And after 8 years??? I did keep a record and a receipt book . . .

[¶] . . . [¶]

[E]ver since that orientation meeting 8 years ago . . . my case worker – NEVER ONCE asked to see my records. . . . [S]he neither advised me to keep record nor did she ever put it in writing at the IPP. Please note that my case worker is my only connection to the Regional Center and it's her responsibility to make sure that everything is in order.

[¶] . . . [¶]

I was never required from the Regional Center to keep a certain kind of records for their satisfaction. So I selected my own,

please see attached (1) copy of the annual IPP, (2) receipt book and (3) Bank Statements for payment. (Emphasis in original.)

(Exhibit 8.)

13(c). One of the Individual Program Plans (IPPs) enclosed with Appellant's Statement of Disputed Issues was a July 7, 2011 IPP, which noted that: (1) Appellant was eligible to receive 30 hours per month of respite services; (2) Appellant received up to 10 hours per day of day care services Monday through Sunday, since her work schedule varied; (3) John M. received Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), consisting of 217 hours per month of home health aide services, used eight hours per day, five days per week, Monday through Friday; (4) Guadalupe Perez provided all of the respite, daycare and EPSDT hours; and (5) John M. "is an active student at Miller Career and Transition Center . . . [and] participates in all activities in class." (Exhibit 8.) In the IPP, one of the plans was to have Appellant submit a schedule of how day care, respite care and EPSDT hours were used on a weekly basis. Another stated plan was for Appellant "as a parent vendor to continue submitting billing forms on a timely manner for day care and respite care services and to maintain accurate and up to date billing and payment documents." (Exhibit 8.)

14(a). On April 4, 2012 letter, NLACRC sent to DDS copies of the Final Audit Report, the Draft Audit Report, the audit engagement letter, the Vendor Applications, the 2007 NLACRC letter informing Appellant of her approved vendorization, Appellant's December 7, 2011 response to the Draft Audit Report, NLACRC's Family Vendor Orientation Packet, and the Family Voucher Orientation Participation Confirmation. (Exhibit 9.)

14(b). In the April 4, 2012 letter, NLACRC responded to Appellant's assertions in her Statement of Disputed Issues as follows:

According to Title 17, Section 50604(d), "All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program." Additionally, Title 17, Section 50604(d)(3) states that the vendor shall keep "a detailed record of services provided each consumer maintained in units of service." Therefore,, . . . the vendor should have been maintaining records that demonstrated she had hired and paid the workers as reported on the Respite Services Billing Form (Form DS 1811). Additionally, the vendor should have maintained sufficient records to support the hours billed to NLACRC for reimbursement, however, the vendor did not maintain records in sufficient detail to demonstrate the hours billed to the NLACRC were actually delivered.

Furthermore, Title 17, Section 54326 (3)(B) states, “All vendors’ records must specify for each consumer, the date, actual service time, location, nature of services and units of services provided pursuant to Section 50604(d)(3)(E), as applicable. For goods and/or services purchased utilizing a voucher, the name of the actual provider of the goods and/or services shall also be maintained pursuant to Section 50604 (d)(3)(D).” Also, Title 17, Section 50604 (e) states “All service providers’ records shall be supported by source documentation.” Finally, Title 17, Section 54326(a)(3) states “All vendors shall maintain records of services provided to consumers in sufficient detail to verify delivery of the units of service billed.”

Therefore, since the vendor did not provide any additional documentation or payment records with the Statement of Disputed Issues to DDS to demonstrate that she paid the workers listed on the Respite Services Billing Form (Form DS 1811), and given that the NLACRC was unable to verify units of services delivered, the funds disbursed to the vendor during the audit period constitute an overpayment. As such, NLACRC continues to recommend that the vendor reimburse NLACRC \$12,837.30. This represents the reimbursement amount the vendor received from NLACRC for day care and respite services that were not supported by the vendor’s payment records.

(Exhibit 9.)

15. On September 21, 2012, DDS sent to Appellant a Letter of Findings, following an administrative review of Appellant’s appeal of the Final Audit Report. The Letter of Findings stated:

The department has reviewed the documentation submitted. It is clear that you have not maintained the documentation necessary to substantiate the billings to, and payment from, NLACRC.

In addition, the review of the IPPs identifies a number of issues and clarifications:

- A requirement to maintain accurate and up to date billing and payment documents;
- A requirement to submit (to NLACRC) a schedule on your day care, respite and EPSDT hours are used on a daily basis;

- The fact that the same provider was being utilized for all of the above services;  
and
- The fact that your son is an active student at Miller Career and Transition Center.

A review of the billing documents submitted to NLACRC shows the same provider for respite and day care. Hours noted on the forms are identical for all months with respite provided for 10 hours per day (11-9) on the first through third day of the month. These hours are questionable as they do not account for the EPSDT service, nor the time that your son is at school. They are also inconsistent with you potential work hours.

Therefore, the Department finds that you have not submitted documentation nor compelling arguments that would result in a modification of the findings and recommendations of the audit.

The findings and the recommendations of the audit are upheld.

[DDS] finds that you must reimburse NLACRC \$1,537.50 for respite services and \$11,299.80 for day care services, for a total of \$12,837.30. Pursuant to the California Code of Regulations, Title 17, Section 50750, this Letter of Findings shall be final unless either party files a request for a formal hearing within 30 days of the receipt of this Letter of Findings.

(Exhibit 10.)

16. Appellant requested a formal hearing. (Exhibit 1.)

### *The Hearing*

17(a). At the hearing of this appeal, Appellant reiterated the assertions made in her Statement of Disputed Issues, as set forth in Factual Finding 13, above.

17(b). Appellant testified that she believed that the Respite Services Billing Form was the only record she needed to keep since it was the form provided to her by NLACRC. She noted that the Respite Services Billing Forms set forth the dates of service, the names of respite workers, and the start times and end times of the services rendered. The form also had the care providers' certifications. This belief was not unreasonable, given the detail that is required on the Respite Services Billing Form and the fact that a page of the vendor orientation materials refers to the Respite



## LEGAL CONCLUSIONS

1. Cause does not exist to sustain the recommendation in the Final Audit Report, issued December 14, 2011, and the Letter of Findings issued September 21, 2012, directing Appellant to reimburse NLACRC in the amount of \$12,837.30. (Factual Findings 1 through 18; Legal Conclusions 2 through 7.)

### *Regional Center Responsibilities:*

2. California Code of Regulations, title 17, section 54355, subdivision (a), authorizes a regional center to offer vouchers to family members to allow them to procure their own day care and respite. California Code of Regulations, title 17, section 54355, subdivision (b), provides:

The regional center shall provide prospective voucher recipients with information to assist them in determining liabilities they may incur by participating in a voucher program. Information provided shall include, but need not be limited to:

(1) Identification of the following areas of potential impact:

(A) Impact of vouchers on Supplemental Security Income (SSI) and/or other benefits;

(B) Voucher recipient's status as an employer and employer responsibilities

(C) Impact of vouchers on personal taxes;

(D) Potential increase in insurance needs;

(E) Voucher recipient's responsibility for worker's compensation;

(F) Voucher recipient's responsibility to withhold and pay the appropriate Federal, State and local taxes; and

(2) Identification of the appropriate agency(ies), including the Internal Revenue Service and the Employment Development Department, which the voucher recipient may contact to obtain information and/or technical assistance regarding the areas of potential impact specified in (1)(A) through (F) above.

(3) The requirement to maintain records for at least 5 years, pursuant to Section 50604(d)(3)(A) through (E), as applicable.

(4) The requirement to submit to the regional center on form DS 1811, Respite Services Billing Form (8/04) data as specified in (A) through (O) below with the billings/invoices for the billing period:

[¶] . . . [¶]

(5) The requirement of the vendored family member to sign . . . and date Form DS 1811 (8/04), which includes a certification that the information provided on the form is true and correct, and the person signing the form . . . read and followed all respite service program requirements and the terms and conditions pursuant to Title 17, Sections 50604(a), 50604(d), 54326(a)(10), 54355 (b)(1) through (3), 54355(g)(4)(B), 54355(g)(4)(C)1, and 54355(g)(4)(C)2.

3. California Code of Regulations, title 17, section 50608 requires:

When a regional center enters into a contract with a service provider, the contract shall include, but not be limited to, the following provisions specifying the duties and responsibilities of the service provider.

[¶] . . . [¶]

(b) A contract provision requiring the service provider to maintain books, records, documents and other evidence pertaining to all income, expenses, and services relating to and/or affecting the performance of the contract. . . .

(c) A contract provision requiring the service provider to maintain service records to support all billings/invoicing as specified in Section 50604 (d)(1) through (3)(F), as applicable.

*Vendor Responsibilities:*

4. California Code of Regulations, title 17, section 54326, subdivision (a), requires that vendors shall:

[¶] . . . [¶]

(3) Maintain records of services provided to consumers in sufficient detail to verify the delivery of the units of service billed:

(A) Such records shall be maintained for a minimum of five years from the date of final payment for the State fiscal year in which services were rendered or until audit findings have been resolved, whichever is longer. . . .

(B) Records must include for each consumer the information specified in Section 50604 (d)(3)(A), (B), (C), (D), (E), or (F), as applicable.

[¶] . . . [¶]

(4) Make available any books and records pertaining to the vendored service . . . for audit, inspection . . .

[¶] . . . [¶]

5. California Code of Regulations, title 17, section 50604, subdivision (d), states:

All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program. . . . Service records used to support service providers' billing/invoicing shall include, but not be limited to:

[¶] . . . [¶]

(3) A record of services provided to each consumer. The record shall include:

[¶] . . . [¶]

(D) For all other services, the date, the start and end times of service provided to the consumer, street address where service was provided, and daily or hourly units of service provided.

(E) For goods and/or services purchased utilizing a voucher or Participant-Directed Services, as described in California Code of Regulations, Title 17, Section 58884(a)(1), in addition to the information specified above, the name of the actual provider of the goods and/or services. For services provided by an individual selected by the consumer or family member, the date of birth, social security number (or a copy of any document accepted by the federal government which establishes identity and employment eligibility which has been compared to the original by the vendored family member and declared under

penalty of perjury to be a true and correct copy), address, and telephone number of the individual who actually provided the service must also be maintained.

[¶] . . . [¶]

(e) All service providers' records shall be supported by source documentation.

(f) Nothing specified in this section shall be construed as superseding other record maintenance requirements set forth in statute or regulation.

*NLACRC's Failure to Adequately Inform Appellant of Her Record-keeping Responsibilities*

6(a). Appellant argued that she was not informed of her record-keeping obligations by NLACRC, specifically that she was never informed that generic cash receipts would not be acceptable. Indeed, the Vendor Application stated only that the vendor “will keep records of services for a minimum of three years, including the dates of service, number of hours and times worked each day and the amounts paid to worker(s),” but does not specify the types of records the vendor must maintain. Additionally, there was nothing in the August 13, 2007 and September 14, 2011 vendor approval letters indicating that documents must be utilized other than the Provider of Care Claim Form, the “In-Home Respite Monthly Billing Form,” and “Family Day Care Reimbursement Monthly Billing Form.” Furthermore, although the orientation materials did mention canceled checks, and bank statements as “records needed to document payment of wages to the worker,” a later portion of the orientation materials noted that the Respite Services Billing Form was a form “used in lieu of the vendor submitting canceled checks and bank statements each month with their invoices.” (Exhibit 13.) Moreover, the sample Respite Services Billing Form used in the orientation materials noted that “proof of payment” included “signed cash receipts” (Exhibit 13), and it is unclear when that form was changed to the 2011 form which required, “[if vendors] provide receipts for cash payment [they] must also provide payroll records/documents and/or bank statements.” (Exhibit 11.) It was not established that NLACRC attempted to ensure that Appellant was made aware of this change.

6(b). The language of California Code of Regulations, title 17, sections 54355 and 50608 indicates that the Legislature intended to keep those who contract with the regional centers informed of their record keeping duties and their other applicable duties under specified statutes and regulations. This informative approach allows the parties to enter into contracts fully informed of their obligations, particularly in contractual relationships where one party may be less familiar with the laws and regulations imposing specific obligations.

6(c). Pursuant to California Code of Regulations, title 17, section 54355, NLACRC had the obligation to provide Appellant “with information to assist [her] in determining liabilities [she] may incur by participating in a voucher program,” which included the potential requirement for reimbursement following a vendor audit. Additionally, pursuant to California Code of Regulations, title 17, section 50608, in the contract with Appellant, NLACRC had the duty to specifically notify Appellant of her record keeping responsibilities, particularly her duty to maintain records specified in California Code of Regulations, title 17, section 50604, subdivision (d)(1) through (3)(F). This information was not provided to Appellant, at the time she submitted her Vendor Application or in the August 13, 2007 and September 14, 2011 vendor approval letters. Although there was mention of record-keeping responsibility in the orientation materials, as set forth above, the information provided was ambiguous. Therefore, NLACRC did not provide adequate information to Appellant regarding her record-keeping responsibilities.

#### *Appellant’s Failure to Comply with Regulations*

7(a). Although Appellant did not maintain records in the manner specified in California Code of Regulations, title 17, sections 50604, subdivision (e), as stated above, she was not sufficiently made aware of any specific record keeping requirements since those specific record-keeping requirements were not included in the Vendor Application or in the August 13, 2007 and September 14, 2011 vendor approval letters. Appellant kept records of the provided respite services on the Respite Services Billing Forms that she submitted, which included the name and phone number of the persons providing the respite care, the dates and start/end times of the services, and the number of hours actually worked. She also kept generic cash receipts of the amounts paid to the care providers.

7(b). The Vendor Application indicated that NLACRC “has the right to audit or verify any information submitted in reference to [a] claim for reimbursement for services, including contacting the service provider.” However any audit/verification appears to be intended to detect fraudulent billing for services not actually provided, since the next sentence states, “I understand billing for services which were not provided may result in the regional center pursuing recovery of overpayment.” In this case, there was no evidence or argument that Appellant fraudulently submitted claims for reimbursement or that the services were not provided. Although the DDS Letter of Findings noted that Appellant did not account for specific hours of EPSDT services or John’s class attendance, there was no evidence to establish that EPSDT services or class attendance occurred during the times when day care and respite services were certified as being provided. Consequently, there was no evidence that that day care and respite were not delivered as certified by Appellant. Appellant testified, and NLACRC did not contradict, that she obtained reimbursement only for the amounts she paid for respite and day care services actually delivered. To require Appellant to repay NLACRC \$12,837.30 would act to penalize her for NLACRC’s failure to fully

inform her of her record keeping obligations and would not promote the apparent intent of the documentation requirements: to uncover fraud and to ensure proper delivery of services.

**ORDER**

The appeal of Sally M. is sustained. The Final Audit Report issued December 14, 2011, and the Letter of Findings issued September 21, 2012, directing Appellant to reimburse NLACRC \$12,837.30, are overruled.

DATED: July 12, 2013

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JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings