

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of the Audit Appeal of:

OAH No. 2014050640

WAYNE DURHAM,

Appellant,

v.

DEPARTMENT OF DEVELOPMENTAL  
SERVICES,

Respondent.

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REGIONAL CENTER OF ORANGE  
COUNTY,

Real Party in Interest.

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**PROPOSED DECISION**

Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), heard the above-captioned matter on November 12, 2014, at Santa Ana, California.

Appellant,<sup>1</sup> who is a conserved adult, was not present at hearing. John Feldon, Deputy Public Defender of the Orange County Public Defender (PD), who had been previously appointed to represent Appellant's interests in conservatorship proceedings,<sup>2</sup> represented Appellant.

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<sup>1</sup> Appellant's title is used, in lieu of his name, in order to protect his privacy.

<sup>2</sup> The Orange County Superior Court appointed the PD to represent Appellant in connection with a conservatorship matter. PD contends Sister, who purportedly served as Appellant's conservator, did not act with lawful authority when she made arrangements to change Appellant's consumer status with the Regional Center of Orange County. PD asserts Sister had no authority to change Appellant to a self-vendored status for the purpose of Appellant's own Supported Living Services (SLS). Additionally, PD contends the actions of Sister in spending and/or billing in Appellant's name were not lawfully authorized.

Matthew T. Pope, Attorney at Law, represented Sister in connection with Appellant's appeal against the Department of Developmental Services (DSS). Keith R. Dobyns, Attorney at Law, represented the real party in interest, RCOC. Paula Norden, Fair Hearing Manager, appeared at hearing as a representative of RCOC.

Oral and documentary evidence was received, and the record remained open to give PD an opportunity to submit a brief by December 5, 2014 regarding pertinent conservatorship issues. The parties had until December 19, 2014 to submit responsive pleadings. PD filed its brief on December 5, 2014, which is marked as Exhibit AA, and lodged accordingly. RCOC and Sister filed responsive briefs on December 19, 2014, marked as Exhibits 16 and L, respectively, and lodged accordingly. On December 19, 2014, the record was closed this matter was submitted.

### STATEMENT OF THE CASE

This proceeding arises out of an audit of Appellant conducted by RCOC to verify whether the supported living services authorized by RCOC were provided in accordance with Title 17 of the California Code of Regulations for the period of January 1, 2012 through December 31, 2012. In its final audit report, RCOC identified \$133,545.13 which were not supported and/or overbilled for the audit period, and sought to recover payment from Appellant. Appellant appealed to DDS, seeking an administrative review. DDS modified the audit finding and reduced the overpayment from \$133,545.13 to \$69,107.73. Appellant disagreed and sought a formal hearing. This proceeding ensued.

### FACTUAL FINDINGS

#### *The Parties and the Vendor Relationship*

1. Appellant is a 67-year-old man diagnosed with cerebral palsy and osteoporosis, and is entitled to receive services under the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.<sup>3</sup>

2. RCOC is a non-profit organization and a regional center organized to provide services and supports to developmentally disabled people pursuant to the Lanterman Act. Regional centers such as RCOC do not provide services directly, except in very rare circumstances. Instead, they use funds allocated to them by the state to pay third party vendors to provide the services. Thus, for example, if a consumer required occupational therapy, it would not be provided by an RCOC staff person, but would instead be provided

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<sup>3</sup> All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

by a therapist who was paid by RCOC. In some cases, a consumer's parent or family member can become qualified to provide a service or to arrange for others to provide a service as a vendor of a regional center.

3. Appellant and Sister are half-siblings. Sister did not learn of Appellant's existence until she and Appellant were adults. In 2008, Sister, who was a civil engineer with no prior professional budgeting or finance experience, believed she could meet Appellant's needs better. Accordingly, she arranged, as Appellant's conservator, for Appellant to become self-vendored regarding his supportive living services. In that regard, RCOC provided Sister with information, policies, and procedures concerning vendor duties, including general requirements for vendors under title 17 of the California Code of Regulations. On June 8, 2008, Sister signed an acknowledgement form recognizing her receipt of information, policies, and procedures provided by RCOC. The acknowledgement also stated that Sister understood she must maintain documentation in the event of an audit pursuant to title 17, CCR, sections 50601 through 50606.

4. Regulations promulgated by DDS govern much of the activity of a vendor, including a self-vendor such as Appellant, especially concerning payment and record keeping. While those regulations are covered in further detail in the Legal Conclusions, several pertinent regulations follow:

(a) Pursuant to title 17 of the California Code of Regulations, the vendor must retain records of services provided to consumers in detail sufficient to verify delivery of the services that are billed (17 Cal. Code of Regs. [CCR] § 54326, subd. (a)(3).)<sup>4</sup>

(b) The vendor must only bill for services actually provided and which have been authorized for the consumer. (CCR, § 54326, subd. (a)(10).)

(c) The records kept by a vendor must specify the date, actual service time, location, and nature of the services provided, and each unit of service provided pursuant to CCR section 50604, subdivision (d)(3)(A), (B), (C), and (E), as applicable. (CCR, § 54326, subd. (a)(3)(B).)

(d) The vendor must maintain complete service records to support all billing or invoicing for each consumer. Such records shall include, but not be limited to information identifying the consumer. Furthermore, all records shall be supported by source data. (CCR, § 50604, subd. (d), (e).)

(e) The vendor shall make available any books and records pertaining to the vendored service, including those of the management organization and disclosure information required in Section 54311, if applicable, for audit and inspection. (CCR, § 54326, subd. (a)(4).)

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<sup>4</sup> All citations to the CCR are to title 17 thereof.

5. On June 1, 2009, Appellant's self-vendored status was initiated. Sister served as Appellant's supported living coordinator, administrator, and as the representative payee. Sister was responsible for the hiring of staff, paying bills, maintaining the financial records, and coordinating activities concerning Appellant. In that regard, in 2009, Sister hired Gary and Adelaida Pida (the Pidas), who were a married couple, to provide caregiver services for Appellant. The Pidas resided with Appellant in his home.

6. RCOC authorized a 2012 budget for Appellant that varied slightly every month. Specifically, the budget allotted for three caregiver rates. One caregiver rate ranged from 449.50 to 508.50 hours per month at \$13.00 per hour, for a total of \$5,843.50 to \$6,610.50 per month. The second caregiver rate ranged from 55 to 71 hours per month at \$12.50 per hour, for a total of \$687.50 to \$887.50 per month. The third caregiver rate was set at 34 hours per month at \$9.70 per hour, for a total of \$329.80 per month.

7. The budget also allocated for wages for a program coordinator at 32 hours a month at \$25 per hour, for a total of \$800 per month. Additionally, the budget provided for benefits (e.g., sick time, vacation time, worker's compensation for caregivers and other paid staff) at a rate of 25 percent of the total of monthly caregiver and program coordinator wages. Also, the budget provided for administrative expenses at 12 percent of the total of monthly caregiver and program coordinator wages, and transportation charges at \$180 per month. Total monthly budgets authorized by RCOC for 2012 ranged from \$10,812.30 to \$11,774.04.

8. Sister, as Appellant's supported living coordinator, failed to pay the Pidas their full caregiver wages in accordance with the budget RCOC proscribed. Specifically, in 2012, Sister paid the Pidas, collectively, \$100 per day for caregiver services, for a maximum total of \$3,100 per month. In that regard, Sister maintained one collective payment receipt per month, signed either by Gary Pida or by Adelaida Pida or by both, that included the payment month, the payment per day, and the total amount paid for the month. Sister did not require the Pidas to sign daily sign-in and sign-out sheets noting the time each one began and ended their respective shifts.

9. In 2013, RCOC received a report from the Pidas that Sister, as Appellant's supported living coordinator, had not been paying them their full wages in accordance with RCOC's monthly budget for Appellant. Specifically, the Pidas reported that Sister paid them a total of only \$100 per day or approximately \$3,000 per month, although RCOC provided Sister significantly more money per month for the caregivers' services. Sister submitted monthly supported living billings and invoices to RCOC for the entire amount authorized by RCOC's budget, which resulted in RCOC paying Appellant/Sister accordingly.

10. On May 28, 2013, RCOC requested permission from DDS to conduct an audit of Appellant's records. DDS granted RCOC's request.

*RCOC Audit*

11. On May 28, 2013, RCOC sent a letter addressed to Sister requesting records. Specifically, the letter stated that Appellant, as a RCOC vendor, was required to maintain records in accordance with the requirements of title 17, section 50604, of the California Code of Regulations. In that regard, the letter stated that Sister, as Appellant's conservator and supported living services coordinator, was required to maintain such records for Appellant. RCOC requested Sister to provide, by June 14, 2013, the following records for the period of January 1, 2013 to March 13, 2013:

- A. Sign-in and sign-out logs for all staff;
- B. Canceled checks and receipts, if any, for payments to any staff, including Sister as the supported living coordinator;
- C. Bank statements for an account at Union Bank;
- D. W-2 forms filed in January 2013 for 2012 employee wages;
- E. Remittance of employee withholding for the quarter ending March 31, 2013; and
- F. Canceled checks for any benefits provided to staff.

12. In June 2013, while it waited to receive information from Sister, RCOC terminated Appellant's self-vendored status. On June 8, 2013, Sister wrote checks to Gary and Adelaida Pida, individually, for "back-wages" for the calendar years 2009, 2010, 2011, 2012, and January 1 through May 31, 2013. Specifically, Sister wrote a check to Gary Pida in the amount of \$54,626, and one to Adelaida Pida in the amount of \$54,337.12.

13. On June 11, 2013, Sister sent RCOC a response letter. Sister stated that the caregivers "refused" to sign sign-in and sign-out logs. Additionally, she stated all payments were distributed in cash. However, she did enclose Union Bank statements for the periods of December 29, 2012 to January 30, 2013, January 31, 2013 to February 27, 2013, and February 27, 2013 to March 28, 2013. Additionally, Sister enclosed W-2 forms for 2012 for Gary Pida reflecting \$43,382.64 in wages, Adelaida Pida reflecting \$43,382.64 in wages, and Sister reflecting \$9,336 in wages.

14. On June 17, 2013, RCOC sent Appellant a letter, via certified mail, requesting him to submit the following documentation for services provided and billed for the period of January 1, 2012 to December 31, 2012:

- A. Staff time sheets (sign-in and sign-out logs with start and stop times);
- B. Payroll records to support all service provided (cancelled checks and/or receipts for payments to all staff); and
- C. Supporting documentation for all other supported living expenses related to Appellant's budget.

15. On July 14, 2013, Sister wrote individual checks to the Pidas representing “tax refund” monies. Specifically, she wrote a check to Gary Pida in the amount of \$7,834.94, and one to Adelaida Pida in the amount of \$8,124.64.

16. Appellant failed to claim RCOC’s June 17, 2013 letter, so RCOC sent a duplicate letter on August 28, 2013. In response, Sister’s attorney sent RCOC a letter on September 26, 2013, in which she included a 2012 month-by-month accounting of caregiver costs, rent, transportation, coordinator costs, and administrator costs, administrator logs, calendars, mileage logs, caregiver salary payment receipts, and coordinator and administrator payment receipts. Sister did not provide copies of the cancelled checks representing payments she made to the Pidas on June 8, 2013 and July 14, 2013 for “back wages” and “tax refund” money, respectively. Additionally, Sister provided no sign-in or sign-out sheets for the caregivers or for her coordinator hours. Sister also provided no documentation concerning benefits paid or costs related to administrative expenses.

17. The payment receipts for the coordinator (Sister) and the administrator (Sister) were combined in one monthly receipt, and each one exceeded (approximately doubled) the budgeted amounts proscribed by RCOC. For example, in January 2012, the budgeted amount for coordinator and administrator services was \$800 and \$978.10, respectively, for a total of \$1,778.10. Sister’s combined payment receipt for January 2012 for coordinator and administrator services was \$3,625.96.

18. RCOC’s fiscal monitor, Benjamin Van Nguyen, reviewed the documentation submitted by Sister. Mr. Nguyen, who testified at hearing, has been RCOC’s fiscal monitor for nine years, and conducts 55 to 85 audits per year. Mr. Nguyen concluded the documents submitted by Sister did not comply with title 17, because they did not include any sign-in and sign-out forms, or start and stop times of the caregivers. Additionally, the documents setting forth coordinator/administrator payments did not include a separation of payments specifically related to Sister’s duties as a coordinator, and Sister’s duties as an administrator. Moreover, the documents setting forth coordinator/administrator payments exceeded the budgeted amounts proscribed by RCOC. Finally, while RCOC set a 25 percent budget for benefits, Sister’s documentation did not include information concerning benefits paid.

19. After reviewing all of the monthly budgets in 2012, and the documentation provided by Sister, Mr. Nguyen identified \$133,545.13 in money RCOC paid for supported living services for which Sister failed to show adequate service records or documentary support. In that regard, on October 29, 2013, Mr. Nguyen, sent Sister, via her attorney, a draft audit report which set forth his findings. Specifically, Mr. Nguyen noted Appellant/Sister did not maintain sign-in or sign-out logs for caregivers or coordinator hours. Additionally, Mr. Nguyen stated Appellant/Sister had not provided receipts for benefits and administrative expenses. Finally, Mr. Nguyen noted that the supporting payroll records submitted by Appellant/Sister did not support the services billed by Appellant/Sister, nor did they met regulatory requirements.

20. Mr. Nguyen stated in his draft audit that he applied only the hours worked that were substantiated by payroll records/registers and source documentation. For example, for January 2012, RCOC had approved a budget \$7,350.80 for 576.5 hours of caregiver services. The three caregiver rates for that month were: (1) 479.5 hours at \$13 an hour, for a total of \$6,233.50; (2) 63 hours at \$12.50 per hour, for a total of \$787.50, and (3) 34 hours at \$9.70 per hour, for a total of \$329.80. Sister provided only one cash receipt for January 2012, listing two caregivers (the Pidas), but signed by only one of the caregivers. The receipt reflected a payment of \$100 per day, for a total of \$3,100 for the month. Because only one caregiver signed the receipt, and Sister failed to submit sign-in and sign-out sheets, or otherwise substantiate the hours worked by the caregivers, RCOC disallowed the receipt.

21. Mr. Nguyen informed Appellant/Sister that RCOC would recover \$133,545.13 if they failed to provide, within 30 days, supplemental documentation that complied with title 17 requirements.

#### *Independent Audit*

22. On November 27, 2013, Sister's attorney sent Mr. Nguyen an independent auditor's report performed by Darren Smith, CPA. Mr. Smith, who testified at hearing, has been a certified public accountant for 16 years. As part of his independent audit, Mr. Smith "reviewed monthly budgets submitted to the RCOC for hours, cost per hour, total cost, and reasonable estimates." Additionally, Mr. Smith compared total monthly budget requests with the transaction history from RCOC for the audit period, and noted that Sister requested, through her billings, \$136,603.03 from RCOC during the audit period, and that RCOC paid \$133,545.13.

23. Mr. Smith found that of \$136,603.03 requested for reimbursement, \$88,533.60 related to primary caregiver costs. Mr. Smith stated in his report, "[b]ecause service was full-time in-home supported living care, the requested reimbursement amount was based on the net number of hours worked in a month (having subtracted hours of alternative activity or caregiver inactivity due to other complementary day-care or activity programs or unpaid absence)."

24. Of the \$88,533.60 of requested reimbursements for caregiver costs, Mr. Smith stated he "validated" \$86,765.28 through tracing of checks and cash payments to the bank account of the payer/conservator (Sister) for money paid to the caregivers (the Pidas). This included \$36,000 of immediate monthly caregiver payments, \$13,200 of "rent reduction" payments at a rate of \$1,100 per month as a result of the caregivers living in Appellant's home, and \$36,665.28 of "back-pay" paid to caregivers in June and July of 2013. Mr. Smith stated in his report that, by "mutual consent," the caregivers were paid only \$100 per day, and "requested that additional accrued reimbursements be paid at the completion of their caregiving period. In June and July 2013, at the termination of services, the caregivers received \$36,665.28 for these additional back payments for 2012."

25. At hearing, Mr. Smith admitted, in reference to “rent reduction,” he received verbal information from Sister, and did not base “rent reduction” on any documentary support. Additionally, Mr. Smith did not ask the Pidas whether they had agreed to any “rent reduction” arrangements. Similarly, Mr. Smith admitted he based his “back-pay” finding solely on information provided by Sister, and not from the Pidas. Specifically, Mr. Smith relied on two cancelled checks submitted to him by Sister dated June 8, 2013: one paid to Gary Pida in the amount of \$54,626, and one paid to Adelaida Pida in the amount of \$54,337.12. Mr. Smith stated the June 8, 2013 checks covered “back-wages” for the calendar years 2009, 2010, 2011, 2012, and January 1 through May 31, 2013. Additionally, Mr. Smith relied on two checks Sister wrote to the Pidas on July 14, 2013: one to Gary Pida in the amount of \$7,834.94, and one to Adelaida Pida in the amount of \$8,124.64, representing “tax refund” monies. Neither Mr. Smith nor Sister provided copies of these checks to RCOC, but they were admitted exhibits at hearing. Neither Gary Pida nor Adelaida Pida testified at hearing.

26. Mr. Smith concluded in his report that given the nature of the 24 hour in-home supported care services Appellant required, the completion of time cards or sign-in and sign-out logs were not applicable, as the signed receipts for the months and back-pay for the year appropriately reflected times of service.

27. Mr. Smith noted in his report that \$45,909.43 of the \$136,603.03 related to administrator, coordinator, and benefits costs. Specifically, of \$45,909.43, Mr. Smith found that \$44,485.89 was supported by receipts, which reflected the recipient’s name, the coordinator and administrator’s name, dates of services, and address, and included signatures of the recipients. Further, Mr. Smith noted the coordinator/administrator kept extensive logs both on a daily basis and in her month summary. Because there was only one coordinator/administrator, namely Sister, Mr. Smith concluded that it was not necessary for Sister to complete sign-in and sign-out logs. However, on cross-examination, Mr. Smith admitted that Appellant’s/Sister’s absence of sign-in and sign-out logs failed to comply with section 50604, subdivision (d)(3)(D), of title 17.

28. Mr. Smith noted in his report that \$2,160 of the \$136,603.03 related to travel costs, based on his review of travel logs showing \$1,093.97 performed by the coordinator, and \$1,200 in receipts paid to caregivers.

29. Mr. Smith concluded his report by opining that of the \$133,545.13 of funds Appellant/Sister received from RCOC for costs associated with supported living services for 2012, proper and reasonable support for \$134,834 existed. Mr. Smith further concluded that the support met the requirements of title 17, section 50604, subdivision (d)(3)(D). However, at hearing, Mr. Smith admitted he was not familiar with title 17, had not done any other audits referencing title 17, and did not fully apply title 17 requirements during his independent audit.

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30. Although Appellant/Sister proffered the testimony and the independent audit report of Mr. Smith, neither provided credible evidence, and, consequently, were afforded little weight. At hearing, Mr. Smith admitted, in reference to “rent reduction,” he received verbal information from Sister, and did not base “rent reduction” on any documentary support. Additionally, Mr. Smith did not ask the Pidas whether they had agreed to any “rent reduction” arrangements. Similarly, Mr. Smith admitted he based his “back-pay” finding solely on information provided by Sister, namely that Sister and the Pidas mutually agreed for her to withhold their money “to be paid at the completion of their caregiving period.” In addition, and of greater importance, Mr. Smith admitted that he was not familiar with title 17, had not done any other audits referencing title 17, and did not fully apply title 17 requirements during his independent audit. Mr. Smith further admitted upon cross-examination that Appellant/Sister failure to use or require sign-in and sign-out sheets, was, indeed, a violation of title 17 requirements.

31. Because Mr. Smith’s report included no supporting documentation, and because Mr. Smith did not fully apply title 17 requirements, Mr. Nguyen did not change RCOC’s draft audit report. Accordingly, on December 11, 2013, Mr. Nguyen sent Sister’s attorney his final report which included no change to the amount RCOC sought to recover from Appellant, namely \$133,545.13. Additionally, Mr. Nguyen advised that, if Appellant disagreed, Appellant/Sister could file with DDS a request for an administrative review and a Statement of Disputed Issues.

*Appellant’s/Sister’s Statement of Disputed Issues*

32. On December 17, 2013, Sister sent DDS a written request for an administrative review, which included Sister’s responses to RCOC’s criticisms and findings. Specifically, in response to RCOC’s claim that Appellant/Sister did not maintain sign-in and sign-out logs, Sister stated she was not required to maintain sign-in and sign-out logs, because the caregivers (the Pidas) and the coordinator (Sister) were retained as independent contractors.

33. In response to RCOC’s claim that Sister failed to maintain receipts for benefits and administrative expenses that met the requirements, Sister stated she maintained receipts that listed the recipient’s name and address, administrator’s name, and the dates of services, and were signed by the recipient.

34. In response to RCOC’s claim that Sister’s supporting payroll records she submitted neither supported the services billed nor complied with regulatory requirements, Sister stated that signed receipts were maintained for payment of all services rendered, and that all financial records reflected the nature and amounts of all services provided. Additionally, Sister stated the caregivers were live-in independent contractors who were hired as a team, worked as a team, managed their own shifts, and received full compensation for all services provided. As such, Sister contended one signature was acceptable by everyone and “seemed reasonable due to the situation.”

35. In response to RCOC's claim that \$133,545.13 in findings was not supported and/or overbilled for the audit period, Sister included a copy of the independent audit report prepared by Mr. Smith. Sister stated the report concluded that of the \$133,545.13 of funds received from RCOC for Appellant for supported living services, proper and reasonable support existed for \$134,834.71, and that requirements of title 17 were met. Sister also contended that because she provided documentation showing \$134,834.71 in supported living services, and RCOC paid only \$133,545.13 for these services, RCOC underpaid by \$1,289.58.

36. Sister requested consideration for her lack of experience with RCOC system requirements prior to managing Appellant's vendorization, and asserted she "was provided no guidance in how to comply."

*RCOC's Response to Statement of Disputed Issues*

37. In response to Appellant/Sister's statement of disputed issues, RCOC's controller, Marta Vasquez, submitted a letter to DDS on February 7, 2014. Ms. Vasquez, who testified at hearing, has been RCOC's controller for six years, and is Mr. Nguyen's supervisor.

38. In response to Sister's claim that the caregivers and coordinator were retained as independent contractors and thus precluded from signing sign-in and sign-out sheets, Ms. Vasquez stated that the caregivers and coordinator could not be considered independent contractors because Sister had submitted W-2 forms for them. Notwithstanding this, whether the caregivers were independent contractors or employees, Sister was required, pursuant to title 17, to maintain documentation to support the hours billed to RCOC. Ms. Vasquez contended the supported living services budget clearly stated the number of hours that RCOC had approved for funding, and Sister provided no records to support the hours approved by RCOC. Additionally, because RCOC was not funding 24[-]hour care, as the Department of Social Services had been providing Appellant with in-home support services, it was important for Sister to have sign-in and sign-out sheets to accurately record the supported living services funded by RCOC.

39. In response to Sister's claim that she had provided receipts for benefits and administrative expenses, Ms. Vasquez noted Sister submitted reports identified as coordinator, administration, and benefits logs, but the coordinator and administration log reports only showed the total number of service hours provided, and did not include start and stop times as required by title 17. Additionally, the benefits log reports did not identify any benefits paid as required by RCOC. Also, Ms. Vasquez noted the receipt amounts exceeded the amounts authorized in the approved monthly budgets.

40. In response to Sister's claim that her submitted financial records, including payroll records, supported the services billed and met regulatory requirements, Ms. Vasquez stated that while the budgets approved by RCOC indicated three caregiver rates for different shifts and tasks, Sister failed to provide sign-in and sign-out sheets to identify which hours

were being provided and funded, and failed to identify which caregiver worked the hours approved. Ms. Vasquez noted Sister only provided receipts with total amounts paid per month, some of which were signed by both caregivers, while others were signed by one caregiver. The receipts indicated that she paid \$100 per day to both caregivers, but they did not indicate how much each caregiver was paid or the hourly rate of pay. Ms. Vasquez stated that Sister paid the caregivers a total of \$3,000 every month, but billed RCOG the entire budgeted amount of more than \$6,000, and in some cases more than \$7,000, for caregiver services.

41. Additionally, Ms. Vasquez noted the 2012 W-2's forms for Gary Pida reflecting \$43,382.64 in wages, for Adelaida Pida reflecting \$43,382.64 in wages, and for Sister reflecting \$9,336 in wages, were inconsistent with the amount billed to RCOG. Specifically, when comparing the W-2's to the receipts provided by Sister, the amount paid to Sister as the coordinator exceeded the amount on the W-2 form for the same time period by more than \$34,000. Also, the combined totals on the W-2 forms for Gary and Adelaida Pida exceeded the amount on the signed receipts by more than \$51,000. In addition, Ms. Vasquez stated that the signed receipts for Sister for the audit period showed a combined amount with exceeded the authorized amount for the program coordinator by almost \$35,000. Ms. Vasquez asserted that given these factors, the documentation submitted by Sister was clearly inconsistent and unreliable.

42. In response to Sister's claim that the independent audit report prepared by Mr. Smith showed that Sister provided adequate support for the \$133,545.13 in findings, Ms. Vasquez noted that Mr. Smith did not state with specificity the documents he reviewed, but contended that they could not have been the records Sister submitted to RCOG, as such documents were full of inconsistencies. Additionally, Ms. Vasquez contended Mr. Smith failed to apply title 17 requirements, and appeared unfamiliar with applicable laws and regulations associated with regional center audits.

#### *DDS Letter of Findings*

43. On March 14, 2014, DDS issued its letter of findings. DDS found that Sister did not provide supporting documentation for services provided as required, but, instead, provided inconsistent documentation. Specifically, DDS noted that Sister provided signed receipts of payment from Gary and Adelaida Pida for a total of \$100 per day during the audit period (except for October, which included an additional payment of \$300), for a total of \$36,900, but did not document the hours or the type of service provided, or actual documentation of payments to Gary and Adelaida Pida. While Sister provided W-2's for Gary and Adelaida Pida that showed a total of \$86,766.28, Sister provided no documentation or signed receipts of payment to support the basis for the wages other than the \$36,900 noted above. Notwithstanding Sister's failure to provide comprehensive documentation, DDS concluded that "services (to some extent) were, in fact, provided to the vendor/consumer."

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44. DDS also noted that Sister provided signed receipts for program coordination that exceeded the budgeted amount. The budgeted amount was \$800 per month for a total of \$9,600 for the audit period, but she had submitted receipts for coordinator/administrator payments ranging between \$3464.72 and \$3,882.18 per month. Notwithstanding this, Sister provided her W-2 Sister which showed only \$9,336 in total wages.

45. DDS noted that Sister provided documentation for transportation costs in the amount of \$1,094.08. Regarding benefits and administrative expenses, DDS noted the approved budget allowed for benefits at 25 percent of wages paid, and administrative expenses at 12 percent of wages paid. Using the \$42,236 of receipted wages allowable within the budget, the total benefit amount was \$11,559, and the total administrative expense was \$5,548.32.

46. Given these numbers, DDS set forth the following calculation of costs for the audit period:

Caregivers' Wages (Gary and Adelaida Pida)	\$36,900.00
Program Coordinator (Sister)	\$ 9,366.00
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Total Wages	\$46,236.00
Benefits at 25 percent	\$11,559.00
Administration Expenses at 12 percent	\$ 5,548.32
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Total Wages/Benefits/Administration Exp.	\$63,343.32
Transportation Expenses	\$ 1,094.08
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Total Costs Allowed	\$64,437.40

47. Accordingly, DDS modified the audit finding:

Audit Overpayment Amount	\$133,545.13
Administrative Review Adjustment	\$ 64,437.40
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Modified Overpayment	\$ 69,107.73

48. DDS concluded that Appellant was required to repay RCOC \$69,107.73, and advised that its letter of findings would become final unless either party filed a request for a formal hearing within 30 days of the receipt of its letter of findings. Appellant filed a timely request for a formal hearing.

*Conservatorship*

49. Appellant presented no evidence showing that Sister, who served as Appellant's conservator, acted without lawful authority when she made arrangements to change Appellant's consumer status with RCOC to a self-vendored status, or to provide her

services as his coordinator and his administrator. Specifically, Appellant presented no documents, witnesses, or legal authority supporting his position. Moreover, Appellant presented no written objection to RCOC's audit findings or DDS's administrative review findings on the grounds that Sister acted without lawful authority when she made arrangements to change Appellant's consumer status with RCOC to a self-vendored status. Accordingly, any actions of Sister related to Appellant's supported living services shall be attributable to Appellant.

## LEGAL CONCLUSIONS

1. Jurisdiction was established in this matter pursuant to California Code of Regulations, title 17, section 50750, based on Factual Finding 48.

2. 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 . . . .

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

4. California Code of Regulations, title 17, section 58615, subdivisions (a) and (b), states:

(a) [Supported living services (SLS)] vendors shall maintain, and provide access to, records pursuant to all applicable requirements of Title 17, Sections 50603, 50604, and 50605.

(b) In addition to the requirements noted in (a), all SLS vendors shall maintain and provide access to all records relating to service design, service delivery, and employee service time records. These records shall include the following:

- (1) Time sheets;
- (2) Payroll records;
- (3) Accounting records;
- (4) Training records;
- (5) Service evaluations;
- (6) Internal grievance procedure records;
- (7) Historical data documenting the actual delivery of service to consumers for which the SLS vendor has claimed payment, including the:
  - (A) Identification of the vendor by unique identifier;
  - (B) Location of the service;
  - (C) Description of the service; and
  - (D) Inclusive dates of the service . . . .

5. California Code of Regulations, title 17, section 50606, subdivision (b), provides:

Audits shall be performed to accomplish any or all of the following objectives as applicable to the specific service provider:

- (1) Verification that the service provider's documentation submitted to the regional center as a basis for establishing a rate of payment by the Department is:
  - (A) Complete, including other sources of revenue related to the service program or provision of services to persons with developmental disabilities;
  - (B) Accurate; and
  - (C) Supported by the service providers' records and source documents.
- (2) Verification that the service billings/invoices submitted by the service provider to the regional center for payment are supported by the service providers' consumer attendance and service records.
- (3) Verification that the service providers' handling and accounting of the consumers' personal and incidental funds is in accordance with applicable regulations . . . .
- (4) Verification through analysis of payroll and consumer service records that staff-to-consumer ratios required by regulation, contract, or agreement are met . . . .

6. Here, Sister failed to demonstrate that she maintained proper records and documentation during the 2012 audit period, as required by title 17. Specifically, despite her June 8, 2008 acknowledgement of her receipt of information, policies, and procedures provided to her by RCOC, including the requirement that she maintain documents in compliance with title 17 in the event of an audit, Sister failed to maintain sign-in and sign-out logs for caregiver and coordinator hours as required by section 50604, subdivision (d)(3)(D), setting forth the date, the start and end times of service, and daily or hourly units of service provided. As such, documentation submitted by Sister is insufficient to support the services billed, particularly given the three different caregiver hours and rates provided by RCOC's monthly budgets for Appellant's supported living services. Additionally, she failed to provide receipts for benefits and administrative expenses, and did not provide adequate payroll records to support the services Sister billed to RCOC. Sister's failure to comply with regulatory requirements is attributable to Appellant.

7. Instead, the evidence showed that Sister engaged in highly questionable practices with respect to her management of funds paid by RCOC. Specifically, while RCOC's 2012 budget provided for monthly caregiver services ranging between a total of \$6,860.80 and \$7,827.80 per month, given its three caregiver rates, Sister paid the Pidas \$100

per day, collectively, for a maximum, on average, of \$3,100 per month. It was only after RCOC's initiation of the audit process on May 28, 2013 that Sister paid the Pidas "back wages" in excess of \$54,000 each. For the remainder of funds earmarked for the caregivers, Sister unilaterally determined the money was for rental payments, as Sister produced no written documents evidencing any agreement between Appellant and the Pidas concerning the withholding of income for rental purposes and proffered no testimony from Gary or Adelaida Pida to substantiate her claim. Additionally, Sister submitted 2012 W-2 forms for Gary and Adelaida Pida in the amount of \$43,382.64 and \$43,382.64 in wages, respectively, for a total of \$86,765.28, although she paid them only, on average, \$3,100 a month, collectively, for a total of \$37,200.

8. Similarly, Sister provided signed receipts for program coordination that exceeded the budgeted amount. The budgeted amount was \$800 per month for a total of \$9,600 for the audit period, but Sister had submitted receipts for coordinator/administrator payments ranging between \$3464.72 and \$3,882.18 per month. Notwithstanding this, Sister provided her W-2 Sister which showed only \$9,336 in total wages.

9. While DDS modified the finding in RCOC's final audit report from \$133,545.13 to \$64,437.40, the evidence showed that it, too, concluded that Appellant/Sister failed to comply with title 17 requirements. Additionally, DDS stated in its letter of findings that Sister did not provide supporting documentation for services provided as required, but, instead, provided inconsistent documentation. For this reason, RCOC objects to DDS's decision to reduce the final audit to \$64,437.40. Specifically, RCOC contends that DDS's decision to reduce the findings of the final audit report to \$64,437.40, based on inconsistent documents, conflicted with the essence of regional center auditing. In that regard, RCOC cited California Code of Regulations, title 17, section 50606, subdivision (b), which provides that the purpose of a regional center audit is to (1) verify that the service provider's documentation submitted to the regional center is "complete, accurate, and supported by the service provider's records and documents;" (2) verify that service billings and invoices submitted by the service provider are supported by the service provider's consumer attendance and consumer records; and (3) verify that the service provider's handling and accounting of the consumer's personal and incidental funds is in accordance with applicable regulations, including title 17 regulations. RCOC asserted that Sister's submission of inconsistent documents demonstrated that her records were not "complete, accurate, and supported by the service provider's records and documents," and were, consequently, unreliable. As such, RCOC has requested that DDS's finding be disregarded.

10. However, while DDS stated in its letter of findings that either party could appeal its decision by filing a request for a formal hearing within 30 days, RCOC did not file an appeal. Appellant did. While, as established above, Appellant's contention that he owes RCOC no money lacks merit, and notwithstanding his failure to present credible evidence to overturn DDS's finding, RCOC presented no authority sanctioning the overruling or disallowing of a decision it failed to appeal. As such, DDS's finding will not be disregarded.

11. Given the above, particularly Appellant's/Sister's failure to comply with title 17 requirements, coupled with Sister's highly questionable practices with respect to her management of funds paid by RCOC, DDS's letter of findings shall be upheld.

#### ORDER

1. The Letter of Findings issued by DDS regarding Appellant's supported living services is hereby upheld, and Appellant's appeal therefrom is denied.

2. RCOC may recover the sum of \$64,437.40 from Appellant through any means authorized by law.

February 17, 2015

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Carla L. Garrett  
Administrative Law Judge  
Office of Administrative Hearings