

BEFORE THE
DEPARTMENT OF DEVELOPMENTAL SERVICES
STATE OF CALIFORNIA

In the Appeal of the Audit involving:

A.J. GUEST HOME,

Appellant,

vs.

VALLEY MOUNTAIN REGIONAL
CENTER,

Respondent.

OAH No. 2014070343

PROPOSED DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Stockton, California on October 3, 2014.

Appellant, A.J. Guest Home, was represented by Concepcion Soares, Administrator.

Valley Mountain Regional Center (VMRC) was represented By Anthony Hill, Assistant Director of Case Management.

Oral and documentary evidence was received, the matter was submitted and the record closed on September 22, 2014.

FACTUAL FINDINGS

1. A.J. Guest Home is vendored with VMRC as a Level 2, staff-operated adult residential facility. VMRC conducted an audit “to determine whether A.J. Guest Home is in compliance with the applicable W&I Code¹, California Code of Regulations, Title 17 (Title 17), and Valley Mountain Regional Center vendor contract agreement, by verifying the

¹ California Welfare and Institutions Code.

vendor's accuracy and accountability in maintaining staffing, billing and P & I procedures." The audit covered the period from July 1, 2013 through September 30, 2013. On February 11, 2014, VMRC issued its Preliminary Audit Report, which became final on March 11, 2014.

2. The audit findings concluded as follows:

For the audit period of July 1, 2013 through September 30, 2013, A.J. Guest Home could not provide documentation to support the presence of staff/employees. The original scope of the audit had to be expanded to insure accuracy with this audit. The audit was expanded to include the two fiscal years prior to the audit period. Billing invoices, payroll records including quarterly payroll tax returns were reviewed and compared. A.J. Guest Home is a level 2S residential facility that is required to provide 168 hours per week for the first six consumers.

3. The results of the audit disclosed the following issue of noncompliance:

For the period of July 1, 2013 through September 30, 2013, A.J. Guest Home is paid at a staff-operated rate, staff-operated is defined as 'Staff Operated' means that the facility is not the residence of the licensee or a member of the corporate board of directors, and the licensee employs personnel to provide direct care to consumers. However, upon review of all supporting documentation provided by the vendor, it is apparent that A.J. Guest Home is an owner-operated facility.

4. The audit found that there was no record of A.J. Guest Home employing staff from April 2012 through September 2013. It was therefore determined that A.J. Guest Home should have been designated owner-operated during this time and paid at the owner-operated rate. The resulting overpayment was determined to be \$11,975.94 and the audit recommendation is that A.J. Guest home reimburse VMRC in that amount.

5. A.J. Guest Home appealed the VMRC Audit Report to the Department of Developmental Services (DDS), pursuant to California Code of Regulations (CCR), title 17, section 50730 et seq., by filing a written request for an administrative review (Statement of Disputed Issues). VMRC filed a response to the Statement of Disputed Issues and the matter was reviewed by a DDS Review Officer, who issued a Letter of Findings.

Based on that review, the Letter of Findings concluded that the "Department finds no basis for modification of the audit . . . A.J. Guest Home did not submit documentation or substantial arguments that would result in a modification to this finding; therefore the audit finding is upheld." The Review Officer noted that the Statement of Disputed Issues did not

dispute the audit finding but only made “an appeal based on the problems related to finding staff and funding issues.”

The audit finding was upheld and A.J. Guest Home was required to reimburse VMRC for the overpayment of \$11,975.94.

6. A.J. Guest Home appealed the Letter of Findings to this forum pursuant to CCR, title 17, section 50750.

7. Concepcion Soares, Administrator, testified on behalf of A.J. Guest Home. Ms. Soares explained that in January 2012 the home served four consumers. On January 9, 2012, a home invasion occurred and staff was shot. Two consumers left the home. That incident was followed by a burglary at the home on January 17, 2012. The home was damaged and personal property and money was taken.

Ms. Soares attempted to hire staff but had difficulty finding anyone willing to work in the home after the home invasion, shooting and subsequent burglary. Due to the reduction in the number of consumer’s, she attempted to hire a part-time staff because she could not afford to hire full time live-in staff. She testified that she “tried to work with the help of my family just to continue” while she looked for another location.

Ms. Soares did not dispute the audit findings but sought consideration for her circumstances. She believed she had no choice when she could not retain staff.

8. Melissa Stiles, VMRC Senior Accountant, and Claudia Reed, VMRC Chief Financial Officer, participated in the audit of A.J. Guest Home. They testified that there was no record of staff being employed between April 1, 2012 and September 30, 2013, however the home was funded at the staff-operated rate.

Ms. Stiles testified that DDS designates care home rates, which can change over time. The rates for owner-operated rates are different than those for staff-operated facilities. She presented the accounting of her audit finding outlining the difference in rates for the time period in question. After accounting for rate changes, the total overpayment to A.J. Guest Home was determined to be \$11,975.94.

9. Ms. Reed testified that VMRC is responsible for recovering the overpayment to A.J. Guest Home. She suggested that an “offset of current payments is probably the best approach.” She also explained that VMRC staff was sympathetic to the difficulties Ms. Soares and A.J. Guest Home have endured. However, the regional center is only authorized to fund at the vendor rates established by DDS. A.J. Guest Home operated as owner-operated from April 2012 through September 2012 while being funded as staff-operated. VMRC is obligated to collect the overpayment of \$11,975.94.

LEGAL CONCLUSIONS

1. CCR, title 17, section 54342, subdivision (C)(69) provides:

Residential Facility Serving Adults—Staff Operated—Service Code 915. A regional center shall classify a vendor as a staff-operated residential facility serving adults if:

- (A) The facility serves adults;
- (B) The vendor possesses a valid community care facility license as required by Health and Safety Code, Sections 1500 through 1569.87; and
- (C) The facility is not the residence of the licensee or a member of the corporate board (board of directors) and the licensee employs personnel to provide direct care and training to individuals.

2. CCR, title 17, section 50705 provides in part:

(b) When the overpayment is due and owing, it shall be recovered by any of the following methods:

- (1) Lump sum payment;
- (2) Offset against current payments due;
- (3) A repayment agreement of not more than five years duration from the date the agreement is made;
- (4) Any other method of recovery available to and deemed appropriate by the Director.

(c) If offset is used as a method of recovery, it shall continue until one of the following occurs:

- (1) The overpayment is recovered;
- (2) The Department and/or the regional center enters into a repayment agreement which satisfies such overpayment;

[¶]...[¶]

3. Appellant has the burden of proof in this matter. Appellant was required to establish that VMRC's Final Audit Report dated March 11, 2014, was erroneous, that VMRC did not overpay appellant in the amount of \$11,975.94, and appellant was not responsible to remit that amount to VMRC. The standard of proof is a preponderance of the evidence.

Appellant did not meet that burden. The Final Audit Report is sustained and the A.J. Guest Home appeal is denied.

ORDER

The A.J. Guest Home shall reimburse VMRC for overpayment received in the amount of \$11,975.94.

Dated: October 27, 2014

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings