

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

In the Appeal of the Audit involving:

THE HENRY HOME,

Appellant,

vs.

CENTRAL VALLEY REGIONAL CENTER,

Respondent.

OAH No. 2015041047

PROPOSED DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Fresno, California on June 25, 2015.

Allen Broslovsky, Attorney at Law, represented appellant, The Henry Home.

Matthew Bahr, Attorney at Law, represented Central Valley Regional Center (CVRC).

Oral and documentary evidence was received. CVRC's exhibits 1 through 11 were identified and admitted. The Henry Home's exhibits A through D were identified and admitted. Exhibit A was submitted at hearing and exhibits B through D were submitted by facsimile on June 26, 2015, as agreed to by the parties at hearing. Submission of this matter was deferred pending receipt of closing briefs. CVRC's Closing Brief and The Henry Home's Closing Brief were submitted on July 30, 2015, and marked respectively as exhibits 12 and E. The record was closed and the matter submitted for decision on July 30, 2015.

FACTUAL FINDINGS

1. The Henry Home was vendored with CVRC as a Level 3, staff-operated adult residential facility prior to closing in November 2014. CVRC conducted an audit to

determine whether The Henry Home was in compliance with the applicable W&I Code¹, California Code of Regulations, Title 17 (CCR Title 17), and Central Valley Regional Center vendor contract agreement, by verifying the vendor's accuracy and accountability in maintaining consumers' Personal and Incidentals (P&I) funds. The audit covered the period from January 1, 2013, through November 30, 2014. On January 8, 2015, CVRC issued its Final Audit Report.

2. By letter dated December 9, 2014, CVRC Fiscal Monitor Joe Hanna informed Jerry and Cheryl Henry, The Henry Home Administrators, that the audit was scheduled for 9:30 a.m. on December 23, 2014, at the facility. Mr. Hanna requested the following documents be available for the audit:

- P&I ledgers current and balanced for the period.
- Cash sheets with clients' signature/marks.
- Store receipts for purchases in chronological order.
- Written authorizations & Bank Statements reconciled with ledgers.
- Trips and vacations cost reports with supporting invoices.
- Surety bond for cash monies kept at the facility.

This letter also contained contact information for Mr. Hanna if the administrators "have any questions regarding this letter, or for rescheduling."

3. Mr. Hanna testified that at the time set for the audit he appeared at the facility. After knocking several times and receiving no response, he left his business card at the front door asking for the Henrys to contact him to schedule another appointment. Mr. Hanna also testified that he left several voicemails regarding audit scheduling which were never returned.

4. By letter dated January 8, 2015, CVRC issued its Final Audit Report. Mr. Hanna included the following:

After several attempts made by CVRC to contact you for the audit, it appears that you have cut all contacts with the Regional Center. There seems to be four pending issues that need to be accounted for prior to closing the chapter with CVRC, they are:

1. Luis received \$894.00 P&I monies during the six months in January – June 2013.
2. Kyle received two checks in September and October 2013 total [sic] \$2,000.00 from his Trust for vacation spending.

¹ California Welfare and Institutions Code.

3. All three clients (Luis, Kyle, and Andrew) received net wages of \$30,188.15 between them from Kings Rehab Center.
4. The facility owes \$212.20 to Luis for his November 2014 placement

CVRC acknowledges receipt [of] the sum of \$3,027.37 on 1/5/15 for Luis in the form of money orders, wages and tax refund checks. There remains a net amount of \$30,266.98 of the consumers' funds still unaccounted for. The Regional Center has a fiduciary responsibility as the consumers' legal Representative payee to report to at least two different agencies (DDS and CDL) for the whereabouts of these funds.

The letter also stated that "this is one more attempt to ask you to cooperate with CVRC by providing the consumers' ledger for verification and finalizing the closing chapter." Again, contact information was provided along with the request to "set up a date, place, and time at your convenience to take a look at the three ledgers, and to report the findings to the proper agencies before it is too late."

5. The audit findings concluded that "there is a question of whereabouts of \$30,266.98 of consumers' funds that are unaccounted for: Luis \$9,744.62 – Kyle \$9,156.31 – and Andrew \$11, 366.05."

6. The Henry Home appealed the CVRC Audit Report to the Department of Developmental Services (DDS), pursuant to CCR Title 17, section 50730 et seq., by filing a written request for an administrative review (Statement of Disputed Issues). CVRC filed a response to the Statement of Disputed Issues and a DDS Review Officer reviewed the matter and issued a Letter of Findings on February 26, 2015.

7. After reviewing the CVRC Final Audit Report, the Statement of Disputed Issues, and the Response to the Statement of Disputed Issues, the DDS Review Officer concluded:

The Audit findings number 1 and 2 were resolved based on the Statement of Disputed Issues submitted by The Henry Home². The findings below as enumerated in the Audit Report continue to be disputed:

Finding 3: Three consumers received net wages of \$30,188.15 between them from Kings Rehabilitation Center.

² Some P&I ledgers were provided to DDS and forwarded to CVRC. Based on this additional information, Audit Report findings number 1 and 2 were resolved.

Consumer #1 (Luis) received \$11,665.79 net wages, only \$1,753.10 was posted to the P&I ledger.

Consumer #2 (Kyle) received \$7,156.31 net wages, only \$281.66 was posted to the P&I ledger.

Consumer #3 (Andrew) received \$11,366.05 net wages, his P&I ledger could not be verified.

Finding 4: The Henry Home owes Consumer #1 \$212.50 for his November 2014 placement. This amount was a duplicate payment as Consumer #1 funded his subsequent placement in November 2014.

8. The DDS Review Officer determined that The Henry Home did not provide documentation or rationale related to Finding 3 that would result in a modification to the Final Audit Report. She also determined that The Henry Home does not dispute that the consumer paid the home, as alleged in Finding 4, nor did it provide documentation or rationale that would modify the audit finding that the duplicate payment should be refunded.

9. The audit was upheld and The Henry Home was required to submit the following to CVRC:

- \$9,912.69 for not posted earnings and \$212.20 for placement reimbursement for a total of \$10,124.89 to be placed into the trust account for Consumer #1.
- \$6874.65 for not posted earnings to be placed into the trust account for Consumer #2.
- \$11,366.05 for not posted earnings to be placed into the trust account for Consumer #3.

10. The Henry Home appealed the Letter of Findings to this forum pursuant to CCR Title 17, section 50750.

11. Cheryl Henry, Administrator, testified on behalf of The Henry Home. Ms. Henry testified that she did not provide the requested information to the CVRC Fiscal Monitor or the DDS Review Officer “because she was in dispute with the findings.”

Ms. Henry disputed the audit findings stating that the conclusions were in error and she had the records to prove her position. However, at no time did she provide complete records to either CVRC or the DDS Review Officer. She did not disagree with the findings based on the information provided but argued that they were incorrect based on information in her possession that was never provided.

12. At hearing, Ms. Henry produced a two-page letter, dated May 19, 2015, from Certified Public Accountant Mark A. Frantz purporting to show a discrepancy between The Henry Home ledgers and the audit findings. The letter was not persuasive as Mr. Frantz specifically stated, "I have not audited or reviewed the information [that he compiled on Schedule 1, page 2 of the letter] and do not provide any assurances." It was not evident what records he considered or whether he was in receipt of documents that were not provided to the CVRC Fiscal Monitor or DDS Review Officer in response to their requests for information.

13. Ms. Henry produced P&I ledgers, which contained information regarding the three consumers in question. It was agreed that she would provide the documents by facsimile at the close of hearing.

On June 26, 2015, Ms. Henry provided approximately 27 pages of ledgers concerning Luis, 12 pages concerning Kyle and 19 pages concerning Andrew.

14. Mr. Hanna testified that CVRC is responsible for recovering the funds in question. He explained that he would need time to complete an audit including the additional documentation received at hearing and any additional documentation provided by facsimile. He testified that he would be willing to audit the additional records and that the obligation of The Henry Home would be reduced accordingly.

15. Appellant had numerous opportunities to produce the required documentation and chose not to. At hearing, the administrators argued that they failed to provide documentation because they disputed the findings that the named funds were unaccounted for. However, the funds were unaccounted for precisely because the administrators failed to provide the requested records showing that the funds were, in fact, accounted for. The argument that records were not produced because there was a dispute was not persuasive.

Appellant also contends that they did not wish to work with or communicate with Mr. Hanna in seeking to resolve any financial issues, so information was provided to the DDS Chief Deputy Director. The Henry home contends that DDS could have asked for additional information.

16. Finally, appellant contends that a Decision in this matter should not be rendered unless a revised audit is undertaken by the Department of Developmental Services.

LEGAL CONCLUSIONS

1. Appellant has the burden of proof in this matter. Appellant was required to establish that the DDS Letter of Finding was erroneous, that appellant was not responsible to remit that amount to CVRC. The standard of proof is a preponderance of the evidence.

CCR Title 17, section 50758, subdivision (k) provides:

The Department or regional center shall present its findings and evidence first at the hearing. The Department or regional center has the burden of proof of demonstrating, by a preponderance of the evidence, that the findings were correctly made. Once the Department or regional center has presented such a prima facie case, the burden of proof shifts to the appellant to demonstrate, by a preponderance of the evidence, that appellant's position regarding disputed issues is correct.

2. CVRC met its burden by proving that its findings, and those outlined in the DDS Letter of Findings, were correctly made. At no time did appellant provide CVRC or DDS with complete records accounting for the consumer funds in question. Appellant did not meet its burden. The Henry Home did not provide documentation or rationale that disputed the audit findings.

In addition, CCR Title 17, section 50730, subdivision (f) provides in relevant part:

The appellant shall attach to the Statement of Disputed Issues all documents which he/she intends to introduce into evidence in support of stated contentions.

Appellant continually chose not to produce complete records and approximately fifty-eight additional pages of documents were provided at the close of hearing as set forth in Factual Finding 13. Appellant produced no authority for its position that DDS has a responsibility to request documentation or to conduct an independent audit.

The Final Audit Report is upheld and The Henry Home appeal is denied.

ORDER

The Henry Home is responsible for submitting to CVRC the sum set forth in the DDS Letter of Findings. However, CVRC Fiscal Monitor Joe Hanna agreed at hearing to conduct an audit of the additional documents provided at hearing and by facsimile on June 26, 2015. It was further agreed that any funds accounted for during this process would reduce the total amount required to be submitted to CVRC.

Within five days from receipt of this decision, Mr. Hanna and/or CVRC shall inform The Henry Home, by letter sent certified mail, of the timeframe for completion of the additional audit. Upon audit completion, CVRC will inform appellant of any reduction in the amount due and owing to be submitted to CVRC.

Appellant has waived the right to object to the auditor's final conclusions due to its failure to provide sufficient proof in a timely manner.

Dated: August 10, 2015

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings