

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Matter of:

SOUTHLAND TRANSIT, INC.,

Appellant,

and

NORTH LOS ANGELES COUNTY  
REGIONAL CENTER,

Respondent.

OAH Case No. 2014090130

**PROPOSED DECISION**

This matter came on regularly for hearing before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, on June 1, 2 and 3, 2015, in Los Angeles, California.

Michael Houske, Attorney at Law, represented Southland Transit, Inc. (Appellant).

Todd Croutch, Attorney at Law, represented North Los Angeles County Regional Center (Regional Center or Respondent).

Respondent conducted an audit to verify that Appellant's records supported the payments received for the provision of transportation attendant services. Respondent believed that Appellant had been paid to provide attendants for consumers it transported and sought substantiating documents. Appellant was unable to provide evidence satisfactory to Respondent, and Regional Center issued an audit report concluding that it had overpaid for the services and seeking reimbursement. Appellant maintains that it charged Respondent for transporting attendants provided by another agency, charges it asserts it was authorized to bill. The amount in dispute is \$14,180.70.

Oral and documentary evidence, and evidence by oral stipulation on the record, was received at the hearing. The record was left open for submission of written closing argument.

On June 10, 2015, Appellant filed a Motion to Exclude Evidence (Motion), seeking to exclude Regional center Exhibits L, M and N for lack of foundation, or in the alternative, to

permit the cross-examination of Regional Center witness Kim Rolfes (Rolfes), the person who testified about the documents in question. On July 6, 2015, Regional Center filed its opposition to the Motion. In Regional Center's view, an adequate foundation was laid and Appellant had the opportunity to cross-examine Rolfes at the hearing. Additional argument was received from the parties on July 15, 2015 (Southland Transit Inc.'s Reply to NLACRC's Opposition to Motion to Exclude Evidence) and on July 17, 2015 (Respondent North Los Angeles Regional Center's Surreply to Southland Transit Inc.'s Reply to Opposition to Exclude Evidence.) The Motion is denied as untimely, given that the evidentiary portion of the hearing concluded on June 3, 2015, and that Appellant had the opportunity to raise its objections on that date or to request the further examination of Rolfes.

Initial closing argument was received on July 24, 2015 (Appellant Southland Transit Inc.'s Closing Argument) and on July 27, 2015 (North Los Angeles County Regional Center's Final Hearing Brief). Reply closing argument was received on August 7, 2015 (Appellant Southland Transit Inc.'s Reply to NLACRC's Final Hearing Brief and North Los Angeles County's Reply Brief to Southland Transit Inc.'s Closing Argument Brief).

The matter was submitted for decision on August 7, 2015.

## FACTUAL FINDINGS

### *Parties*

1. Respondent is a regional center created pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), Welfare and Institutions Code<sup>1</sup> section 4500 et seq., to provide services to developmentally disabled consumers.

2. Appellant provides transportation services to Regional Center consumers. It has been doing so at least since 2002.

3. Respondent uses the services of R & D Transportation Services (R & D), a transportation broker, to coordinate and facilitate the provision of services to its consumers. In this regard, R & D prepares driver manifests to inform Appellant of the names and locations of consumers requiring services, has contacts with consumers and their families, resolves complaints or operational problems which may impact safety, quality and/or cost effectiveness, and reviews the qualifications of drivers employed by Appellant.

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

*Contract for Services*

4. a. The Agreement for Transportation Services Between North Los Angeles County Regional Center and Southland Transit, Inc. for Services in the Antelope Valley (Contract) for the period of November 2, 2010 through October 31, 2013, contains the following pertinent terms and provisions. (Exh. B, at p. 1.)<sup>2</sup>

b. The cover page of the Contract, which has the names of the parties and other pertinent identifying information, contains the following text: “SERVICE CODE: 875 – TRANSPORTATION COMPANY.” (*Ibid.*)

c. Section 3 of the Contract contains the following pertinent definitions:

“3.2 ‘**Attendant**’ or ‘**Aide**’ is a person assigned by [Regional Center] to a route or a site for the purpose of assisting and monitoring consumers receiving [Appellant’s] Transportation Services.”

[¶] . . . [¶]

“3.11 ‘**Transportation Services**’ means [Appellant]’s conveyance of consumers, including boarding and exiting the vehicle.

“3.12 ‘**Vehicle Service Hours**’ (which will be calculated on a ‘live’ time basis) is defined as the time from the point of the first consumer pick-up to the last consumer drop-off on any given portion of [Appellant]’s daily route assignment. . . .

“3.13 ‘**Attendant Service Hours**’ will be measured by the authorized Vehicle Service Hours for the route on which the Attendant is assigned and present. (Exh. B, at pp. 5-6; emphasis in original.)

d. Section 5 contains the “Scope of Work” provisions of the Contract. Section 5.1 states: “[Appellant] shall, at the times and locations specified by the [Regional Center], furnish vehicles, drivers and Attendants, administrative and support staff, special equipment as specified herein, facilities and other equipment and supplies as required, to provide safe, reliable and efficient Transportation Services to program sites designated by the [Regional Center] for authorized consumers who reside in the [Regional Center]’s service area.” (Exh. B, at p. 8.)

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<sup>2</sup> Another contract for services covers a portion of the audit period, the one in effect for the period of November 1, 2007 to October 31, 2010. However, except for the payment rates set forth in Attachment 1, the pertinent terms of the 2007-2010 agreement are identical or substantially the same as those in the Contract.

e. Section 11 of the Contract is entitled “Compensation and Fiscal Provisions.” Section 11.1.1 states: “In consideration for [Appellant]’s provision of services described in this Agreement, the [Regional Center] agrees to pay [Appellant] in accordance with the units of service and rates identified on the Payment Agreement. Notwithstanding the foregoing, [Appellant]’s right to payment is subject to any required review and approval of this Agreement by the [Department] in accordance with Title 17.” (Exh. B, at p. 23.) Under Contract section 11.3.1, vehicle service hours are based on the time a vehicle is in service, regardless of the number of consumers being transported. (Exh. B, at p. 25.) Pursuant to section 11.3.2, subdivision (a), “Attendant Service Hours are measured by the authorized Vehicle Service Hours for the route on which the Attendant is assigned and present.” (*Ibid.*)

f. The Payment Agreement referred to in section 11.1.1 provides for rates of \$58.25 per Vehicle Service Hour and \$15.05 per Attendant Service Hour for the contract period.

g. In Section 12 of the Contract (Monitoring, Inspections and Audit Provisions), the parties agreed to be bound by the provisions of the Title 17 of the California Code of Regulations (CCR) pertaining to service provider accountability, including those that govern the records that are to be maintained for fiscal audits.

#### *Services and Billing*

5. During the period of July 1, 2009 to January 31, 2013, Appellant provided transportation services to Regional Center consumers pursuant to the Contract.

6. Some of the consumers transported by Appellant were accompanied by attendants or aides, which were typically provided by Antelope Valley Foundation for Developmentally Disabled, commonly known as “Daystar.”

7. The parties stipulated that during the period of July 1, 2009, through January 31, 2013, Appellant did not provide aides or attendants to consumers to whom Appellant provided transportation services.

8. The parties further stipulated that Appellant transported the aides or attendants provided by Daystar for consumers being transported by Appellant.

9. Joleen Judd (Judd) was the only witness with firsthand knowledge about the process of transportation of Regional Center clients and about the billing by Appellant for the transportation services. During the period of February 2009 to February 2010, she worked as the project manager responsible for administering the Contract on behalf of Appellant. R & D, as the broker, prepared documents referred to by Appellant as “driver manifests” or “route sheets,” which informed Appellant about the identity of the consumer to be transported, the

identity of the attendant, if any, who would accompany the consumer, the points of transportation, and the times of passenger pick up and drop off. There were typically two routes in the morning, known as A and B, and two in the afternoon, C and D. The driver manifests were frequently updated, and were critical documents that Appellant used to perform its obligations under the contract with Regional Center.

10. Judd testified that she was instructed to bill for transporting the attendants and that she did so. Judd testified that if there were attendants on the buses she billed eight hours per service day as “attendant hours.” Judd believed the eight hours was an average agreed to by Regional Center. Although she could not name the Regional Center agent who had agreed to the average, Judd believed the average was an accurate reflection of the actual time attendants were on the buses each day.

11. Judd identified several invoices, which, in pertinent part, referred to “Attendant Hours” billed to Regional Center. Thus, in July 2009, Appellant billed 176 attendant hours at a rate of \$14.62 for a total of \$2,573.12. Invoices for October 2009, January 2010, March 2010, April 2010, July 2010, November 2011, and February 2012 sought payment for 176, 160, 176, 168, 168, 152, and 160 attendant hours, respectively, at the rate of 14.62 (2009) or 15.04 (2010, 2011, and 2012) per hour.

12. Scott Transue (Transue), Appellant’s Vice President and Chief Operating Officer since March 2012, testified at the hearing on behalf of Appellant. As more fully set forth below in connection with the audit process, Transue testified that initially he was not aware of the actual services provided by Appellant to Regional Center or about the billing practices. He assumed that attendants were provided, as Regional Center suggested, and attempted to comply with information requests. After the audit was finalized and an appeal filed with the Department, Transue realized that Appellant had not in fact provided attendants to consumers it transported but that it billed Regional Center for transporting the aides provided by Daystar.

### *The Audit*

13. a. Respondent conducted an audit of Appellant’s business to seek documents to support requests for payment for transportation attendant services during the audit period of July 1, 2002, to January 31, 2013. As set forth in the Draft Audit Report, Regional Center auditors requested “[r]ecords, such as the name of the workers, payroll records, bus routes, and any other records that demonstrated [*sic*] that [Appellant] hired and paid staff to provide transportation attendant services during the audit period.” (Exh. D, at p. 2.)

b. Regional Center did not receive the requested records, and it concluded, in Finding number 1 of the October 3, 2013 Draft Audit Report: “The service provider did not provide any of the records requested by [Regional Center]. Therefore, due to the absence of records, [Regional Center] was unable to verify[:] 1) that the service provider hired and paid

workers to provide transportation attendant services to consumers; and 2) the accuracy of service hours billed to [Regional Center].” (Exh. D, at p. 3.)

c. Regional Center made the following recommendation (number 1): “Due to the absence of records, [Regional Center] determined that no payment was due to [Appellant] for transportation attendant services billed to [Regional Center] during the period of July 1, 2002 through January 31, 2013. However, [Regional Center] also determined that a payment was due to [Appellant] for under billing of its fuel costs by \$87,921.33. The overpayment of \$292,464.74 for attendant services was reduced by the additional fuel payment due to [Appellant] in the amount of \$87,921.33, as such [Regional Center] determined that [Appellant] was overpaid by \$204,543.42, as referenced in Exhibit A.” (*Ibid.*)

14. Transue provided Appellant’s Response to Draft Audit Report on December 6, 2013. Appellant objected to the number of years in the audit period and to Regional Center’s effort to collect money already spent by Appellant paying attendants. Transue noted that Appellant provided the services requested by R & D. Transue stated that Appellant provided attendants from July 1, 2002 through April 30, 2012, and that attendants were not provided from May 1, 2012 through January 31, 2013, due to a mistake.

15. On March 17, 2014, Regional Center issued its Final Audit Report, addressing Appellant’s responses and upholding Finding number 1 and Recommendation number 1 in the Draft Audit.

16. On April 16, 2014, on behalf of Appellant, Transue filed a “Statement of Disputed Issues, 50730 Request for Administrative Review” with the Department of Developmental Services (Department). Appellant argued that it was allowed to bill under the contract between the parties for providing attendants, and that it had done so before May 1, 2012. Appellant conceded that attendants had not been provided from May 1, 2012 through the end of the audit period, and attributed continued billing for the services to a mistake by new management and miscommunication between managers. Appellant calculated that the overbilled amount was \$21,944.55, and agreed to pay it back. However, Appellant maintained that the audit period was too long, that it was prejudiced by not having records going back to 2002, and that it would be unfair to require reimbursement for the entire 11 years. Appellant reiterated that it followed the directives of Regional Center and R & D in providing the services requested.

17. In its Response to Draft Audit Report and in its Statement of Disputed Issues, 50730 Request for Administrative Review, Appellant did not provide documents responsive to Respondent’s request for documents, set forth in factual finding number 13a, or documents to support its hearing assertion that it billed for transporting aides furnished by other providers to accompany the consumers.

18. On July 25, 2014, Margaret Lamb, Department Review Officer, issued a Letter of Findings pursuant to CCR, title 17, section 50732. In part, the Letter of Findings states:

“13. Although [Appellant] invoiced [Regional Center] for attendant services during the period of May 1, 2012 through January 31, 2013, they admit that attendant services were not provided during this period of time.

“14. Based upon the statement by [R & D] that [Appellant] had not been providing attendant services, and the statement by [Appellant] that they had not provided attendant services from May 1, 2012 through January 31, 2013, yet invoiced [Regional Center] for these services, it was prudent for [Regional Center] to audit [Appellant] for the entire period for which they were billed for attendant services.

“Based on all information reviewed, the Department finds that [Appellant] did not provide substantial arguments or documentation that would result in a modification to the audit findings. Therefore, [Appellant] is to reimburse [Regional Center] \$292,464.75 in overbilling for attendant services, less \$89,921.33 in under-billing for fuel payment due [Appellant] during the audit period.

#### **Summary**

“The audit finding is upheld. [Appellant] is to reimburse [Regional Center] \$204,543.42. Pursuant to the [CCR], 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. [¶] . . . [¶].” (Exh. I, at p. 4); emphasis in original.)

19. The Department’s Letter of Findings contains an error regarding the amount of fuel underbilling. As quoted above, in factual finding number 18, from paragraph 14 of the “Administrative Review and Decision” section of the Letter of Findings, the document describes the underbilled amount as “\$89,921.33.” However, in the “Audit Findings and Recommendations” section of the Letter of Findings, the underbilled amount is listed as “\$87,921.33” and the overpayment is listed as “\$204,543.42.” In the “Summary” section of the Letter of Findings, set forth in factual findings number 18, the Department directs Appellant to reimburse Regional Center the sum of “\$204,543.42,” which does not account for the additional required reduction if “\$89,921.33” constituted a revised amount. Moreover, the Letter of Findings does not contain any calculation adjustment or other explanation for increasing the underbilled amount from \$87,921.33 to \$89,921.33. Accordingly, the correct amount of the underbilling is \$87,921.33.

20. Appellant filed a timely appeal, and the matter was thereafter assigned to the Office of Administrative Hearings for review.

21. On January 2, 2015, the matter came before Office of Administrative Hearings Administrative Law Judge Amy Yerkey. Judge Yerkey ruled that CCR, title 17, section 50606, subdivision (a)(2), limited the audit period to three years from the time the audit commenced. Judge Yerkey limited the audit period to the period of July 1, 2009, the start of the 2009-2010 fiscal year, to January 31, 2013, the end of the audit period selected by Regional Center for the audit.

22. As calculated from Exhibit A to the Final Audit (Exh. F, at p. 12), the overpayment for the period of July 1, 2009, to January 31, 2013, is \$102,102.03. Subtracting the \$87,921.33 underbilled fuel sum yields a net overpayment of \$14,180.70.

### *Concluding Finding*

23. Except as set forth in this Proposed Decision, all other arguments and contentions by the parties are deemed surplusage or lacking in merit.

## LEGAL CONCLUSIONS

1. Section 4648.1, subdivision (a), authorizes the Department and regional centers to monitor and audit services and supports purchased for regional center consumers. Service providers are required to cooperate with such audits, which requirement includes making records available for inspection. (§ 4648.1, subd. (b).)

2. Service providers are required to comply with the provisions of section 4648.1, with laws and regulations governing their service program and the provision of services and supports to people with developmental disabilities, and with contractual provisions governing such services. (§ 4648.1, subd. (c).)

3. Section 4648.1, subdivision (e), authorizes recovery of funds paid to a provider. It provides:

“A regional center or the department may recover from the provider funds paid for services when the department or the regional center determines that either of the following has occurred:

“(1) The services were not provided in accordance with the regional center’s contract of authorization with the provider, or with applicable state laws and regulations.

“(2) The rate paid is based on inaccurate data submitted by the provider on a cost statement.

“Any funds so recovered shall be submitted to the department.”

4. The Department has promulgated regulations to implement the monitoring and auditing provisions of the Lanterman Act. CCR, title 17, section 50606, subdivision (a), authorizes provider audits “to the extent that regional centers determine that it is necessary.” Subdivision (b) provides:

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

[¶ ... ¶]

“(2) Verification that 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.

[¶ ... ¶]

“(5) Verification of compliance with other provisions of applicable statutes, regulations, contracts, or agreements governing the service program and/or the provision of services to persons with developmental disabilities.”

5. CCR, title 17, section 50604, subdivision (d), requires service providers to “[m]aintain 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. . . .”

6. Section 4648.1 and its implementing regulations, including CCR, title 17, section 50606, thus authorize Respondent to audit Appellant’s records to verify that the invoices submitted for payment are supported by Appellant’s records and to verify compliance with applicable statutes, regulations, and contractual obligations, as set forth in legal conclusion numbers 1 through 5.

7. The regulations containing the applicable procedures for fiscal audit appeals are found in CCR, title 17, section 50700 et seq. In this fiscal audit appeal proceeding, Regional Center has the burden of proof of demonstrating, by a preponderance of the evidence, that the audit findings, as upheld in the Letter of Findings, were correctly made. Once Regional Center has presented such prima facie case, the burden of proof shifts to Appellant to demonstrate, by a preponderance of the evidence, that Appellant’s position regarding the disputed issues is correct. (CCR, tit. 17, § 50758, subd. (k).)

8. Regional Center has met its burden with respect to audit finding number 1, as Appellant did not provide any of the records requested by Regional Center and, due to the absence of the records, Regional Center was unable to verify that Appellant hired or paid workers to provide transportation attendant services to consumers or to verify the accuracy of the service hours billed to Regional Center, by reason of factual finding numbers 13 through 17. While Appellant provided invoices at the hearing in support of its assertion that it billed for transporting aides assigned to the consumers, it did not provide such records to Regional Center auditors, and Regional Center, therefore, was unable to verify that the attendant hours billed by Appellant were to transport the aides accompanying the consumers.

9. However, the actual amount of overpayment contained in Finding number 1 must be adjusted to take into account the limitations period contained in CCR, title 17, 50606, subdivision (a)(2). As set forth in factual finding numbers 21 and 22, for the applicable period of July 1, 2009, to January 31, 2013, the overpayment is \$102,102.03; subtracting the underbilled fuel sum of \$87,921.33 yields a net overpayment of \$14,180.70.

10. Appellant agrees that it did not provide attendants to Regional Center consumers, but argues that it billed for transporting attendants, hired by another entity, who provided services to consumers being transported, and that such billing was authorized by the Contract. It relies on the Payment Agreement incorporated in section 11.1.1 of the Contract, which provides for the rate of pay for attendant services. Appellant argues that the rate of pay would not be set forth in the Contract unless it could bill for transportation of the aides accompanying the consumers.

Appellant's argument is unpersuasive because the attendant rate of pay is part of the contract in the event that Appellant actually provides the attendants. Thus, as set forth in section 5.1 of the Contract, "[Appellant] shall, at the times and locations specified by the [Regional Center], furnish vehicles, drivers and Attendants, . . . as required, to provide safe, reliable and efficient Transportation Services to program sites designated by the [Regional Center] for authorized consumers who reside in the [Regional Center]'s service area." (Exh. B, at p. 8.) Since Regional Center did not actually request or direct Appellant to provide attendants for its consumers, and since Appellant did not provide attendants, section 11.1.1 of the Contract does not support Appellant's argument.

11. The Contract does not expressly provide for payment to Appellant for the transportation of attendants or aides provided by others, and such a requirement will not be read into the Contract. Moreover, payment for the transportation of aides is contrary to the method of payment actually agreed upon. Under section 11.3.1 of the Contract, Appellant was to be paid on the basis of vehicle service hours, regardless of the number of consumers in the vehicle. Since attendants were in Appellant's vehicles only to provide assistance to the consumers, their presence did not require additional vehicles or drivers, and the same unit of payment, vehicle service hours, should apply regardless of the additional passengers.

ORDER

1. The Appeal is denied, and the findings in the audit, as upheld in the Letter of Findings, are upheld consistent with the foregoing factual findings and legal conclusions.
2. Appellant shall reimburse the Regional Center the sum of \$14,180.70.

Dated: \_\_\_\_\_

Samuel D. Reyes  
Administrative Law Judge  
Office of Administrative Hearings