

BEFORE THE  
DEPARTMENT OF DEVELOPMENTAL SERVICES  
STATE OF CALIFORNIA

In the Appeal of the Audit Involving:

GEBORAH GOLDBERGER,

Appellant,

vs.

WESTSIDE REGIONAL CENTER,

Respondent.

OAH No. 2012110951

**PROPOSED DECISION**

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter on July 22, 2013, in Los Angeles, California.

Barry M. Fink, Attorney at Law, represented Geborah Goldberger (Appellant).

Judith A. Enright, Attorney at Law, represented Westside Regional Center (WRC or Service Agency or Respondent).

The matter was submitted for decision on July 22, 2013.

**FACTUAL FINDINGS**

1. Appellant is the mother of two sons who are clients of Respondent, and who receive regional center supports and services. Appellant applied for, and was approved, to serve as a parent-vendor for in-home respite services for her sons. Appellant has been a parent vendor since 2003.

2. On August 3, 2004, Appellant and her husband attended a Parent Voucher Orientation Meeting offered by Service Agency. The purpose of the orientation was to explain to parents a new system that the regional center implemented regarding parent vendorization, due to changes in the tax laws. The orientation addressed tax issues and parent requirements, and the goal was to ensure that parents understood their responsibilities as vendors. WRC educated parents that they were taking on responsibilities as an employer, and they had to follow federal and state tax laws, as well as other laws.

3. Mary Lou Weise-Stusser (Stusser), WRC Director of Community Services, testified at the hearing. Stusser is responsible for the vendorization process at WRC. Stusser was involved in the orientation. She attended most of the orientation sessions, although she could not recall if she had attended on August 3, 2004. Stusser's testimony established that WRC's practice was to have parents sign in at the start of the orientation, and that the program would not begin until all participants had recorded their name. Appellant's name is indicated on the sign-in sheet. (Ex. 9). Thus, by virtue of the fact that Appellant's name appears on the sign-in sheet, it is reasonable to infer that she attended the orientation. Appellant does not dispute that she attended, but she disputes the orientation's content.

4. Stusser's testimony established that the 2004 orientation covered the same material at each session. Part of the program included a Power Point Presentation, which was shown at every orientation. (Ex. 9.) The presentation informed parents that as the vendor they are considered the employer. (*Id.* at p.277.) As such, the parents are responsible for both state and federal taxes, for maintaining tax and payment records for five years minimum, for liability insurance and worker's compensation. (*Id.* at 280.) Notably, the presentation also informed parents that the worker must not reside with the consumer unless approved by an exception. (*Id.* at 281.) Parents were instructed not to pay cash to their worker. (*Id.* at 285.)

5. In January 2009, Appellant hired Nigel Davis (Davis) to provide respite care to her sons. At first Davis lived separately from Appellant, but eventually he became a boarder in Appellant's home. Appellant and Davis came to an agreement that Appellant would provide Davis with room and board and related living expenses, in exchange for live-in, full-time care for Appellant's developmentally disabled sons. As established by Stusser's testimony, this arrangement was not approved by WRC and violated the rules promulgated at the orientation. Stusser also noted that Appellant's practice of submitting inaccurate parent vendor timecards was not in compliance with the Lanterman Act. For example, Appellant signed timecards which indicated that providers other than Davis performed services, yet Appellant did not accurately reflect which provider worked during the claimed hours. (Ex. 12.)

6. In December 2010, Service Agency informed Appellant that it would conduct a billing and staffing audit for the period from July 1, 2009 through June 30, 2010. The stated reason for the audit was "to verify the vendor has records to document the service hours billed to WRC for respite/day care services in compliance with Title 17 California Code of Regulations, Sections 50602, 50604, 54326 and 54355 and the Vendor Application Guidelines." The audit engagement letter requested that Appellant provide copies of payments or other source documents which show payments issued to their worker.

7. Nicanor Adolfo (Adolfo), WRC Fiscal Monitor, testified at the hearing. Adolfo conducted Appellant's audit. In its draft audit report dated February 10, 2011, Service Agency concluded that Appellant had not provided documentation to establish that payments for respite services were supported. It informed Appellant that \$7,526.12 in

reimbursement payments made during the audit period could potentially be disallowed. Appellant was afforded the opportunity to submit documentation if she disagreed with the audit results.

8. On March 30, 2011, Appellant provided the following documentation: copies of cancelled checks to Davis and other individuals, as well as copies of cancelled checks made out to “cash”; copies of bank statements for six months within the audit period; various receipts from department stores, restaurants and grocery stores; and a handwritten chart indicating dollar amounts for the audit period with columns for room and board, restaurant, housekeeping, clothing and shoes, supplies, medicine, cell phone and wireless internet access, transportation and laundry, amount received from WRC, amount paid, and the difference between the two. Appellant created the chart for the purposes of the audit; she did not keep contemporaneous records with the service that her worker performed. Appellant also submitted documents which were not relevant to the audit period and thus were not considered.

9. Service Agency issued its final audit report on June 21, 2011. It made three specific findings and recommendations. In Finding number 1, Service Agency disallowed payments made to five individual workers, because it could not verify if these payments were for services provided to her sons. In Finding number 2, Service Agency disallowed the amount claimed by Appellant paid to Davis, in the amount of \$22,392.60, because it could not verify the payments made to Davis. In Finding number 3, Service Agency disallowed payment of \$4,257.67 to Appellant because she did not provide sufficient records to document fully the service units billed to and paid by WRC during the audit period. The recommendations included that Appellant should reimburse WRC in the amount of \$33,015.02, which represents the service units billed to and paid by WRC during the audit period that the vendor did not support with payment records. Service agency also recommended that Appellant maintain certain records to comply with vendor guidelines and applicable law. Finally, Service Agency recommended that Appellant consult with a bookkeeper or certified public accountant to determine if she should report the worker’s payroll taxes and wages to the Internal Revenue Service (IRS).

10. Appellant sought administrative review of the audit findings by letter dated August 8, 2011. She explained that her sons have particularly demanding needs and she had difficulty securing competent workers. In 2009, she was pleased to find Davis, who was willing to work nights at their home. She further stated

Because Mr. Davis spent nights with us as well as many odd days and weekends he had his own room, and all his meals with us. He began to mentor our other autistic son and use an hour or so a day to guide him in needed socialization. Nigel Davis agreed to exchange room and board and all living expenses for his caregiver work, with additional monthly pocket money.

When we ate out as a family or went to a movie we paid for Nigel, when he needed eye-glasses and doctor appointments we paid. We bought him shoes

and clothes, toothpaste and soap, and let him use our car. He took our son to dental, doctor and psychiatry appointments, religious services, and on entertainment outings. We arranged for relief for him by hiring other respite workers a few hours a month or when he visited his family overnight. We treated him as a member of the family and tried to make it worth his while to stay on. We were afraid to loose [sic] him.

It goes without saying that many of the things we paid for were not documented because life just isn't that organized, and also because we had no idea Regional wanted us to write him checks and then take the money back. . .

(Ex. 4 pgs. 95-96.) Appellant also claimed that she was “either under-informed or not informed at all” of the requirements of being a parent vendor. Appellant’s testimony at the hearing reiterated these contentions. She maintained that she had never heard of the parent-vendor requirements prior to receiving the audit letter and that no one from the regional center told her that a bartering system was not permitted.

11. On September 14, 2011, WRC issued a response to Appellant’s statement. It found no merit to Appellant’s contention that she was not properly informed of the parent-vendor requirements, given her attendance at the orientation on August 3, 2004. With regard to Appellant’s explanation of exchanging room and board for respite care, WRC maintained that Appellant should have provided records, such as actual invoices issued to the worker each month. In addition, Appellant should have issued proper tax documents to the worker and to the IRS.

12. On October 26, 2012, Margaret Lamb, Review Officer, Department of Developmental Services, denied the administrative appeal and upheld the audit findings, with the following modification: it increased the overpayment amount from \$33,015.12 to \$33,219.36. This modification was based on a review of the timecards submitted by Appellant, which did not substantiate the full amount of the checks paid to Davis during the months of July and August 2009. This hearing followed.

## LEGAL CONCLUSIONS

1. Title 17, California Code of Regulations<sup>1</sup>, section 54326 contains general requirements for vendors and regional centers. In pertinent part, the regulation provides:

“(a) All vendors shall:

...

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<sup>1</sup> All further references are to Title 17 of the California Code of Regulations.

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

(A) Such records shall be maintained for a minimum of five years ...;

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

Appellant failed to maintain records of services provided to her sons in accordance with the requirements of section 54326(a). She created a monthly summary sheet submitted and provided cancelled checks; however those documents contain insufficient detail. The sheet does not have the specific times or location(s) the services were provided. In addition, with respect to in-home service, the parent voucher timecards (Ex. 12) do not accurately reflect the service provider; they list one provider regardless of whether that provider performed all of the indicated hours.

2. Regulatory provisions pertaining to service provider accountability contain related accounting and substantiation requirements. Thus, section 50604(a) requires: “Service providers shall maintain financial records which consistently use a single method of accounting. These financial records shall clearly reflect the nature and amounts of all costs and all income...” Section 50604(e) requires “All service providers’ records shall be supported by source documentation.” With the exception of random receipts, cancelled checks and some bank statements, Appellant did not have any source documents to substantiate service delivery.

3. Appellant has failed to support her claim for reimbursement for \$33,219.36, by reason of factual finding numbers 1 through 12 and legal conclusion numbers 1 and 2.

4. Appellant argues that the Service Agency did not inform her of the record-keeping and other vendor requirements. However, she admits attending the orientation set forth in factual finding numbers 2 through 4, which informed her of her obligations. The presentation materials repeatedly refer to parents as employers and emphasize the importance of recordkeeping, including maintaining accurate timesheets. Therefore, blame for Appellant’s failure to maintain the necessary documentation may not be shifted to Service Agency.

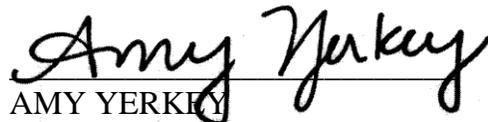
5. The audit findings are sustained, by reason of factual finding numbers 1 through 12 and legal conclusion numbers 1 through 4.

7. Appellant shall reimburse Service Agency and the Department for the \$33, 219.36 overpayment identified in the audit.

ORDER

1. The Appeal is denied.
2. Appellant shall reimburse Westside Regional Center for the \$33,219.36 overpayment identified in the audit.

Dated: September 19, 2013

  
AMY YERKEY  
Administrative Law Judge  
Office of Administrative Hearings