Department of Health and Human Services
Maine People Living Safe, Healthy and Productive Lives

Paul R. LePage, Governor Mary C. Mayhew, Commissioner

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IN THE MATTER OF:

Back to Basics Behavioral Health Services, Inc.)
Gary Grover, CEO) **FINAL DECISION**
44 Depot Road)
Lebanon, ME 04027)

This is the Department of Health and Human Services' Final Decision.

The Recommended Decision of Hearing Officer Strickland, mailed October 9, 2012 and the responses and exceptions filed by the parties have been reviewed.

I hereby adopt the findings of fact and I accept the Recommendation of the Hearing Officer that the Department was correct when it determined that Back to Basics Behavioral Health Services, Inc., is not a "fee for service" provider and as a result, was overpaid $16,775.00 for the period 3/1/07 to 12/31/07.

DATED: 2/11/13 SIGNED: _____
MARY C. MAYHEW, COMMISSIONER
DEPARTMENT OF HEALTH & HUMAN SERVICES

YOU HAVE THE RIGHT TO JUDICIAL REVIEW UNDER THE MAINE RULES OF CIVIL PROCEDURE, RULE 80C. TO TAKE ADVANTAGE OF THIS RIGHT, A PETITION FOR REVIEW MUST BE FILED WITH THE APPROPRIATE SUPERIOR COURT WITHIN 30 DAYS OF THE RECEIPT OF THIS DECISION.

WITH SOME EXCEPTIONS, THE PARTY FILING AN APPEAL (80B OR 80C) OF A DECISION SHALL BE REQUIRED TO PAY THE COSTS TO THE DIVISION OF ADMINISTRATIVE HEARINGS FOR PROVIDING THE COURT WITH A CERTIFIED HEARING RECORD. THIS INCLUDES COSTS RELATED TO THE PROVISION OF A TRANSCRIPT OF THE HEARING RECORDING.

cc: Jane Gregory, AAG, Office of the Attorney General
Herbert Downs, Director, Division of Audit

Department of Health and Human Services
Maine People Living Safe, Healthy and Productive Lives
Paul R. LePage, Governor Mary C. Mayhew, Commissioner

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DATE OF MAILING: OCT 09 2012

Mary C. Mayhew, Commissioner
Department of Health and Human Services
11 SHS, 221 State Street
Augusta, ME 04333

RE: Back to Basics Behavioral Health Services, Inc.

ADMINISTRATIVE HEARING RECOMMENDATION

An administrative hearing in the above-referenced matter was held on August 13, 2012, before Hearing Officer Jeffrey P. Strickland at Sanford, Maine. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Maine Department of Health and Human Services. The hearing record was left open through September 4, 2012, for written closing arguments.

CASE BACKGROUND AND ISSUE:

Back to Basics Behavioral Health Services, Inc. (Claimant) is a Day Habilitation Provider providing (MaineCare Benefits Manual) Section 24 Day Habilitation Services for Persons with Mental Retardation, which services are funded through the Maine Department of Health and Human Services (Respondent). A March 28, 2011, audit report issued by the Department's Division of Audit concluded that Claimant had been overpaid $16,775.00 for the fiscal period from March 1, 2007, through December 31, 2007. Claimant subsequently requested an informal review, which resulted in Respondent's initial determination being upheld on February 7, 2012.

The Commissioner's Order of Reference, dated June 18, 2012, identifies the issue for consideration at this proceeding as follows: *"Was the Department correct when for fiscal period from March 1, 2007, through December 31, 2007, it determined that Back to Basics Behavioral Health Services, Inc., was not a "fee for service" provider and as a result, was overpaid $16,775?"*

APPEARING ON BEHALF OF THE CLAIMANT:

Gary Grover, CEO, Back to Basics Behavioral Health Services, Inc.
Sen. Ronald Collins
Rep. Joan Nass
Rep. Beth O'Connor

APPEARING ON BEHALF OF THE RESPONDENT:

Jane Gregory, Assistant Attorney General
David Hellmuth, Program Audit Manager

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer exhibit(s):

HO-1: The following items, collectively:
- Scheduling letter dated July 20, 2012.
- Order of Reference dated June 18, 2012.
- Fair Hearing Report Form dated April 11, 2012.
- Appeal letter (e-mail) dated April 6, 2012.
- Informal Review decision dated February 7, 2012.

Claimant exhibit(s):

C-1: Handout (conversion of hourly rate to per diem rates) dated May 30, 2002.

Respondent exhibit(s):

D-1: Letter from Mike Parker to Gary Grover dated October 24, 2012.

D-2: "Provider/Supplier Agreement" dated November 14, 2006.

D-3: "Agreement to Purchase Services" dated January 15, 2007.

D-4: Letter from John Dauteuil to Gary Grover dated December 13, 2006.

D-5: Letter from Lisa Wilson to Gary Grover dated November 15, 2006.

D-6: 10-144 C.M.R. Ch. 101, Chapters II, Section 24 and Chapter III, Section 24.

D-7: 10-144 C.M.R. Ch. 101, Chapter III, Section 50 (effective August 1, 2003).

D-8: 10-144 C.M.R. Ch. 101, Chapter III, Section 50 (effective September 1, 2007).

D-9: "Report for the Period From: 1/1/2007 to 12/31/2007."

D-10: "Report of Day Habilitation Audit for the Period March 1, 2007, through December 31, 2007."

D-11: Letter from Kevin Wells, General Counsel, to Gary Grover dated November 21, 2011.

D-12: Informal review request (e-mail) dated December 4, 2011.

D-13: Informal review request (letter) dated December 7, 2011.

D-14: Informal review decision dated February 7, 2012.

FINDING(S) OF FACT:

1. Claimant is a Day Habilitation Provider providing (MaineCare Benefits Manual) Section 24 Day Habilitation Services for Persons with Mental Retardation. See, exhibits D-1 and D-4.

2. On December 14, 2006, Respondent entered into an agreement with Claimant whereby Respondent agreed to pay Claimant "for services provided in accordance with the applicable fee schedule or other provisions concerning fees contained in the [MaineCare Benefits Manual] or Addendum One" and "based on the applicable fee schedule, [MaineCare Benefits Manual], Addendum One, or other Department regulations." See, exhibit D-2, at paragraphs 2 and 18.

3. Per the December 14, 2006, Provider/Supplier Agreement, Claimant and Respondent further agreed, "For cost-reimbursed providers, any cost finding methods that customarily allocate other costs for these services shall be excluded at the time of audit and will not be included at time of any future cost settlement." See, exhibit D-2, at paragraph 18.

4. On December 21, 2006, Claimant entered into an agreement with Respondent whereby, for the period January 15, 2007, through January 15, 2008, Respondent agreed to pay Claimant for the provision of children's behavioral health services, with respect to which Claimant agreed "to be bound by the rules, regulations, standards, guidelines and principles of the Department of Health and Human Services and MaineCare, as they presently exist and as they may be amended, with regard to administration and settlement of this Agreement." See, exhibit D-3, at sections I and II.

5. On June 5, 2008, Respondent received Claimant's Cost Report for Day Habilitation Services for the period January 1, 2007, through December 31, 2007, on the basis of which Respondent, per the reimbursement audit process mandated per 10-144 C.M.R. Ch. 101, Chapters II and III, Section 24, and Chapter III, Section 50, determined that Claimant had been overpaid MaineCare funds totaling $16,775.00 for the period March 1, 2007, through December 31, 2007; this determination was communicated to Claimant on March 28, 2011. See, exhibits D-6, D-7, D-8, D-9, and D-10, and testimony of David Hellmuth.

6. On December 4, 2011, and December 7, 2011, Claimant requested an informal review of the March 28, 2011, Audit Report Transmittal, contending to the effect that Respondent had erred in applying a "cost settled" vs. "fee for service" reimbursement methodology in determining that Claimant had been overpaid $16,775.00 in MaineCare funds for the period March 1, 2007, through December 31, 2007; Claimant did not otherwise dispute Respondent's computation as to the amount of the overpayment in question. See, exhibits D-12 and D-13.

CONCLUSION(S):

1. Respondent properly determined reimbursement of MaineCare funds to Claimant on the basis of a "cost settled" vs. "fee for service" reimbursement methodology, in compliance with the terms of its agreement with Claimant and applicable MaineCare regulations.

2. The amount of MaineCare funds determined to have been overpaid by Respondent to Claimant ($16,775.00), per Respondent's Audit Report Transmittal for the period March 1, 2007, through December 31, 2007, is not otherwise subject to review at this point by virtue of the fact that Claimant did not raise further issues relative to Respondent's computation of that overpayment amount in connection with the informal review process.

RECOMMENDED DECISION:

The Hearing Officer recommends that the Commissioner AFFIRM Respondent's determination that Back to Basics Behavioral Health Services, Inc., is not a "fee for service" provider and as a result, was overpaid $16,775.00 for the period March 1, 2007, through December 31, 2007.

REASON FOR RECOMMENDATION:

Claimant is a Day Habilitation Provider providing services to MaineCare members that are reimbursed by Respondent pursuant to 10-144 C.M.R. Ch. 101 (MaineCare Benefits Manual). The issue in this case concerns the reimbursement methodology employed by Respondent in determining, per Respondent's Audit Report Transmittal dated March 28, 2011, that Claimant had been overpaid a total of $16,775.00 in MaineCare funds for services provided during the period March 1, 2007, through December 31, 2007.

The evidence in this case shows that Claimant entered into an agreement with Respondent in 2006 to provide Day Habilitation Services for Persons with Mental Retardation under Chapter II, Section 24 of the MaineCare Benefits Manual. The terms of that agreement provided that Claimant would provide such services, and Respondent would reimburse Claimant for such services, according to applicable Department regulations. *See*, FINDINGS 2, 3, and 4 relative to specific language indicating the parties' written agreement to the latter effect.

The applicable regulations in this case are Chapters II and III, Section 24[1] and Chapter III, Section 50, of the MaineCare Benefits Manual. The regulations in question provide that a "cost settled" methodology is to be employed in reimbursing Day Habilitation Providers for services to MaineCare members under Section 24. This means, essentially, that the Department pays interim payments to these providers for services rendered to MaineCare members, which payments are subject to later adjustment in connection with periodic audits. The provider submits annual cost reports that are reviewed by the Department, following which an underpayment or overpayment ("final fiscal

[1] Absorbed into 10-144 C.M.R. Ch. 101, Chapters II and III, Section 28 effective September 28, 2010..

settlement"), as appropriate, is calculated in each case based on allowable costs and paid to or collected from the provider by the Department. *See*, 10-144 C.M.R. Ch. 101, Chapter II, Section 24.09, 10-144 C.M.R. Ch. 101, Chapter III, Section 24, Subsections 5000 and 8000, and Chapter III, Section 50.

Claimant's primary contention on appeal is that the Department erred in treating it as a "cost settled," as opposed to a "fee for service," provider. Claimant argues that it followed the billing instructions for Day Habilitation Providers outlined in Section 24, and that the rule in question at no point states that these services are "cost settled." On review, however, Chapter III, Section 24, Subsection 8010 of the MaineCare Benefits Manual reads as follows: *Each day habilitation service provider will be subject to an audit after submission of its final fiscal report. The audit will be conducted to determine the accuracy of the financial information that was submitted by the provider and to calculate any overpayment or underpayment.*

While the actual term "cost settled" may not be used in the relevant language of the regulation, the intent of the regulation is clear in that, following submission of cost reports by providers as per Subsection 5040, the Department will conduct an audit and determine whether an overpayment or underpayment has occurred. Subsection 5030 further provides that the requirements of Chapter II, Section 24.05 and "Principles of Reimbursement for Intermediate Care Facilities for the Mentally Retarded, Principles 1000-4000" (i.e. Chapter III, Section 50 of the MaineCare Benefits Manual), are applicable relative to this process.

Claimant further points out that, per Subsection 6010, "There is no ceiling on day habilitation services for individuals under the age of twenty-one (21) years." The language in question pertains to the maximum allowable annual reimbursement for these services of $26,250.00 per member per year, as per Chapter II, Section 24.06, and Chapter III, Section 24, Subsection 6010. Claimant argues to the effect that this language renders the "cost settlement" process mandated by Chapter III, Section 24, Subsection 8010 inapplicable in the case of services provided to MaineCare members that are under twenty-one years of age.

On review, Claimant's argument to the above effect has no basis in the applicable regulations and is thus found to be without merit. The language in question simply provides for a maximum annual reimbursement for members 21 years of age and over. There is no reasonable construction of the regulation that gives this language the effect of negating the audit process mandated by Chapter III, Section 24, Subsection 8010, as to members under the age of 21 years. With respect to the amount of the overpayment determined, no evidence was presented to show that the ceiling of $26,250.00 per member per year was a factor in Respondent's determination of an overpayment of $16,775.00 for the period in question. In any event, with respect to this issue, Claimant is precluded at this point from disputing the amount of the overpayment on the basis of factors other than Respondent's decision to employ the "cost settlement" process, where such other issues were not raised in connection with Claimant's request for an informal review prior to this proceeding. *See*, 10-144 C.M.R. Ch. 101, Chapter I, Section 1.21-1.

Finally, Claimant points out that "Rider B" of the agreement (exhibit D-3) signed by Claimant on December 21, 2006, contains the following language: "The Department will pay the Provider as follows: Fee for Service Agreements..." Based on this language, and additional language to the effect that Respondent will pay Claimant "at the rates approved by the Department of Health & Human Services," Claimant argues to the effect that Respondent is contractually obligated to reimburse it on a "fee for service" as opposed to a "cost settled" basis.

On review, no merit is found to the above contention. The contractual language in question cannot reasonably be construed to mean that Claimant would not be subject to the audit process mandated by Chapter III, Section 24, Subsection 8010 of the MaineCare Benefits Manual, contrary to other contractual language which clearly indicates that the parties agreed to be bound by applicable Department regulations with regard to administration and settlement of said agreement. *See,* FINDINGS 2, 3, and 4 relative to specific language memorializing the parties' written agreement to the latter effect.

Admittedly, the language in question, read without reference to other applicable language in the contract, holds a certain amount of potential for confusion on this issue. However, the rider in question states, at Paragraph 1, "AGREEMENT AMOUNT: $0.00 MaineCare Seed Only." Paragraph 2 states, in pertinent part, *The Department will provide required State matching funds (seed payments) so the Provider, Back to Basics Behavioral Health Services, may access MaineCare reimbursements at the rates approved by the Department of Health & Human Services, for approved services to eligible children under Chapter II of the MaineCare Benefits Manual; and per the Performance specifications outlined in Rider A of this Agreement. Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.*

Read together, the applicable contractual language does not reasonably evidence intent on the part of Respondent to reimburse Claimant for services rendered on a "fee for service" vs. a "cost settled" basis or otherwise to exempt Claimant from the audit process required for Day Habilitation Providers under Chapter III, Section 24, Subsection 8010 of the MaineCare Benefits Manual. Again, the rider in question reflects an agreement amount of $0.00 relative to reimbursement on a "fee for service" basis, and contains further language indicating that this portion of the agreement pertains only to the use of State matching funds in reimbursing Claimant. Otherwise, there is no language in this rider evidencing intent to negate in any way the parties' agreement, as reflected elsewhere in the contract, to be bound by applicable Department regulations in administering and settling the agreement.

SUMMARY:

Claimant is a Day Habilitation Provider providing services to MaineCare members in accordance with Chapter II, Section 24 of the MaineCare Benefits Manual. On December 21, 2006, Claimant entered into an agreement with Respondent whereby, for the period January 15, 2007, through January 15, 2008, Respondent agreed to pay Claimant for the provision of children's behavioral health services under this Section. In doing so, Claimant and Respondent agreed to be bound by

applicable regulations of the Department of Health and Human Services with regard to the administration and settlement of said agreement.

Chapter III, Section 24, Subsections 5000, 7000, and 8000 of the MaineCare Benefits Manual mandates an audit process whereby Day Habilitation Providers are required to submit annual cost reports which are then subject to a "final fiscal settlement" on the basis of reimbursement principles reflected elsewhere in the MaineCare Benefits Manual. The evidence shows that Respondent conducted an audit of Claimant for March 1, 2007, through December 31, 2007, for which an overpayment in the amount of $16,775.00 was determined.

Claimant subsequently requested an informal review of the latter determination, contending to the effect that Respondent was contractually obligated to reimburse Claimant as a "fee for service" provider and therefore erred in subjecting Claimant to the audit/final fiscal settlement process required by MaineCare regulations for Day Habilitation Providers. Respondent's informal review resulted in a decision to uphold the $16,775.00 overpayment determined for the period in question.

On review, no merit is found to Claimant's argument regarding Respondent's contractual obligation to reimburse Claimant on a "fee for service" basis. The evidence in this case clearly supports that Claimant and Respondent expressly agreed to be bound by applicable MaineCare regulations with regard to their mutual obligations under the agreement in question, and no exception to that agreement is evidenced in the contractual language relative to the final fiscal settlement process required by Chapter III, Section 24, Subsection 8000 of the MaineCare Benefits Manual. Respondent's interpretation of Subsection 6010 to the effect that the requirements of Subsection 8000 are negated in the case of services provided to MaineCare members less than 21 years of age is likewise without basis in the applicable regulation.

In light of the above, the Hearing Officer recommends that the Commissioner find that Respondent was correct in determining that Claimant was overpaid $16,775.00 for the period March 1, 2007, through December 31, 2007, and resolve this matter in favor of Respondent.

CITATIONS:

10-144 C.M.R. Ch. 101 (MaineCare Benefits Manual), Chapter I, Section 1.
10-144 C.M.R. Ch. 101 (MaineCare Benefits Manual), Chapter II, Section 24.
10-144 C.M.R. Ch. 101 (MaineCare Benefits Manual), Chapter III, Section 24.
10-144 C.M.R. Ch. 101 (MaineCare Benefits Manual), Chapter III, Section 50.

RIGHT TO FILE RESPONSES AND EXCEPTIONS:

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN TWENTY (20)

CALENDAR DAYS OF THE DATE OF MAILING OF THIS RECOMMENDED DECISION. A REASONABLE EXTENSION OF TIME TO FILE EXCEPTIONS AND RESPONSES MAY BE GRANTED BY THE CHIEF ADMINISTRATIVE HEARING OFFICER FOR GOOD CAUSE SHOWN OR IF ALL PARTIES ARE IN AGREEMENT. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE OFFICE OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER. COPIES OF WRITTEN EXCEPTIONS AND RESPONSES MUST BE PROVIDED TO ALL PARTIES.

DATED: 10-9-12 SIGNED: _____

Jeffrey P. Strickland, Esq.
Hearing Officer

cc: Herbert Downs, Division of Audit
Jane Gregory, AAG, Office of the Attorney General, 6 State House Station, Augusta, ME 04333
Gary Grover, CEO, Back to Basics Behavioral Health Services, Inc., 44 Depot Road, Lebanon, ME 04027