



Maine Department of Health and Human Services

Commissioner's Office

11 State House Station

221 State Street

Augusta, Maine 04333-0011

PAUL R. LEPAGE
GOVERNOR

BETHANY L. HAMM
ACTING COMMISSIONER

IN THE MATTER OF:

Guardiantrac LLC)	
c/o Christopher Taylor)	FINAL DECISION
215 Broadus Street)	
Sturgis, MI 49091)	

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

The Recommended Decision of Hearing Officer Benedict, mailed July 20, 2018, and the responses and exceptions submitted on behalf of Guardiantrac, LLC have been reviewed.

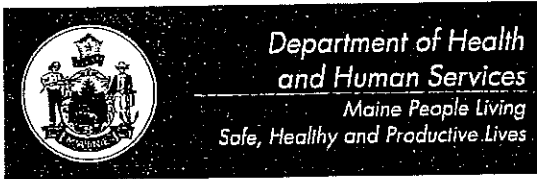
I hereby adopt the findings of fact and I accept the Recommendation of the Hearing Officer that the Department was correct when for the review period of 2015 through 2016, Program Integrity determined that Guardiantrac, LLC owes the Department \$2,801.87 in recoupment for overpayments resulting from claims based on falsified timeslips.

DATED: 8/28/18 SIGNED: Bethany Hamm
 BETHANY HAMM, ACTING 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: Thomas Bradley, AAG, Office of the Attorney General



Paul R. LePage, Governor

Ricker Hamilton, Commissioner

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Ricker Hamilton,
Commissioner
Department of Health and Human Services
11 State House Station • 221 State Street
Augusta, ME 04333

Date Mailed: **JUL 20 2018**

In the Matter of: Guardiantrac LLC

ADMINISTRATIVE HEARING RECOMMENDED DECISION

An administrative hearing in the above-captioned matter was held on June 11, 2018, before Hearing Officer Miranda Benedict, Esq., at Augusta, Maine. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner of the Maine Department of Health and Human Services. The hearing was originally scheduled to be held on September 28, 2017. The Department requested a reschedule. There was no objection. The hearing was then scheduled to be held on January 8, 2018. Again the Department requested a reschedule. There was no objection. The hearing was then rescheduled to be held on April 9, 2018. The Department asked for an additional reschedule in hopes of resolving the matter without the need for an administrative hearing. The hearing record was left open until July 2, 2018 to allow submission of written closing arguments.

Pursuant to an Order of Reference dated July 11, 2017, the issues presented *de novo* for hearing,

“Was the department (sic) correct when for the review period of ~~4/2015~~/2015 through ~~6/2016~~/2016, Program Integrity determined that Guardiantrac LLC owes the department (sic) \$2,801.87 in recoupment for overpayments resulting from claims based on falsified timeslips?” See, HO-2

APPEARING ON BEHALF OF THE APPELLANT

Christopher Taylor (phone), Director of Quality and Compliance, GTI

APPEARING ON BEHALF OF THE DEPARTMENT

Thomas Bradley, AAG
Katherine Wadley, Comprehensive Health Planner

ITEMS INTRODUCED INTO EVIDENCE

Hearing Officer Exhibits

HO-1 Scheduling Notices
HO-2 Order of Reference dated July 11, 2017
HO-3 Fair Hearing Report Form dated July 5, 2017

- HO-4 Request for hearing
- HO-5 Final Informal Review dated April 12, 2017
- HO-6 Notice of Violation dated December 29, 2016
- HO-7 Letter to parties dated June 12, 2018

Department Exhibits

- DHHS-1 Order of Reference
- DHHS-2 Notice of violation dated December 29, 2016 with attachment
- DHHS-3 Letter, request for Informal Review dated January 26, 2017
- DHHS-4 Final Informal Review Decision dated April 12, 2017
- DHHS-5 Letter request for Administrative Hearing dated June 14, 2017
- DHHS-6 Letter dated [REDACTED], 2016
- DHHS-7 Letter to [REDACTED], 2016
- DHHS-8 Contact Note in regards to [REDACTED], Alpha One dated [REDACTED], 2016
- DHHS-9 Contact Note in regards to [REDACTED], Alpha One dated [REDACTED], 2016
- DHHS-10 Incident Report for [REDACTED] from GuardianTrac dated [REDACTED], 2016
- DHHS-11 Incident Report for [REDACTED] from GuardianTrac dated [REDACTED], 2016
- DHHS-12 Timesheet submitted on behalf of [REDACTED]
- DHHS-13 Timesheet submitted on behalf of [REDACTED]
- DHHS-14 Provider Agreement signed June 18, 2015
- DHHS-15 Provider Enrollment Attestation Confirmation printout dated August 21, 2017 signed May 19, 2015
- DHHS-16 MaineCare Benefits Manual, Chapter I, Section 1 (effective April 16, 2016)
- DHHS-17 MaineCare Benefits Manual, Chapter II, Section 12 (effective May 24, 2010)
- DHHS-18 MaineCare Benefits Manual, Chapter III, Section 12 (effective May 24, 2010)
- DHHS-19 Closing Argument

Appellant Exhibits

- GuardianTrac-1 Closing Argument

RECOMMENDED DECISION

The hearing officer recommends that the Commissioner find that the Department was correct when for the review period of [REDACTED] 2015 through [REDACTED] 2016, Program Integrity determined that Guardiantrac LLC owes the Department \$2,801.87 in recoupment for overpayments resulting from claims based on falsified timeslips.

RECOMMENDED FINDINGS OF FACT

1. GuardianTrac LLC, doing business as GT Independence, is a MaineCare provider with an NPI of 1710176151.
2. At all times material to this dispute, GuardianTrac participated in MaineCare through an executed Provider Agreement. Dept. Exh. 14.
3. Through its provider agreement, GuardianTrac agreed to abide by the MBM. Dept. Exh. 14 at A(1).

4. Through its provider agreement, GuardianTrac was authorized to be paid by the Department for services actually provided to MaineCare members. Dept. Exh. 14 at D(1) and D(1)(d).
5. Through its provider agreement, GuardianTrac was obligated to report to the Department and refund to the Department any overpayment or payment to which it was not entitled. Dept. Exh. 14 at D(3)(a).
6. GuardianTrac could properly bill MaineCare only for covered services actually delivered. Dept. Exh. 16 at section 1.03-3(J).
7. The Department seeks recoupment of \$2,801.87 from GuardianTrac that the Department paid GuardianTrac for consumer-directed attendant services that GuardianTrac billed MaineCare under MBM Chapter II, section 12, and Chapter III, section 12. Dept. Exh. 2, 4, 17 and 18.
8. GuardianTrac timely appealed the Department's Final Informal Review Decision affirming the recoupment of the \$2,801.87 to an administrative hearing. Dept. Exh. 4 and 5.
9. GuardianTrac was the fiscal intermediary regarding the claims at issue, as that term is used in MBM Chapter II, section 12, and in Chapter II, section 19. Dept. Exh. 17 at section 12.02-17; testimony of Katherine Wadley.
10. For section 12 services, the personal services specialist (PSS) is an employee of the MaineCare member. Alpha One acted as the care coordinator in regard to the members involved in the claims at issue here. Dept. Exh. 17; testimony of Katherine Wadley.
11. GuardianTrac discovered in March of 2016 that a PSS employed by two MaineCare members, [REDACTED] and [REDACTED], did not provide the section 12 services represented by his timesheets within the period of [REDACTED], 2015 through [REDACTED] 2016, and that the MaineCare members' signatures appeared to have been forged by the PSS. GuardianTrac provided the payment to the PSS for services based on the timesheets. Testimony of Katherine Wadley; Dept. Exh. 6-12.
12. GuardianTrac became aware of the forgery issue when it received timesheets from a second PSS for services to the same MaineCare members for the same time periods. Upon learning of the duplicate billings, GuardianTrac discussed in writing the need to recover the payments that had been made to the first PSS to turn in timesheets for those time periods. Dept. Exh. 10 and 11; testimony of Katherine Wadley.
13. GuardianTrac paid upon timesheets submitted directly by the PSS's, as well as from the MaineCare members. GuardianTrac did not submit the timesheets to Alpha One. Testimony of Christopher Taylor.
14. GuardianTrac has not refunded the Department's payment of \$2,801.87 for services that were not actually delivered to MaineCare members.

STANDARD OF REVIEW

The hearing officer reviews the Department's claim for recoupment against an approved MaineCare services provider *de novo*. DHHS Administrative Hearing Regulations, 10-144 C.M.R. Ch. 1, § VII (C)(1); Provider Appeals, MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.21-1 (A). The Department bears the burden to persuade the Hearing Officer that, based on a preponderance of the evidence, it was correct in establishing a claim

for repayment or recoupment against an approved provider of MaineCare services. 10-144 C.M.R. Ch. 1, § VII (B)(1), (2).

LEGAL FRAMEWORK

The Department administers the MaineCare program, which is designed to provide “medical or remedial care and services for medically indigent persons,” pursuant to federal Medicaid law. 22 M.R.S. § 3173. See also 42 U.S.C. §§ 1396a, *et seq.* To effectuate this, the Department is authorized to “enter into contracts with health care servicing entities for the provision, financing, management and oversight of the delivery of health care services in order to carry out these programs.” *Id.* Enrolled providers are authorized to bill the Department for MaineCare-covered services pursuant to the terms of its Provider Agreement, Departmental regulations, and federal Medicaid law. “Provider Participation,” MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.03. See also 42 C.F.R. § 431.107 (b) (state Medicaid payments only allowable pursuant to a provider agreement reflecting certain documentation requirements); 42 U.S.C. § 1396a (a)(27). Enrolled providers also “must ... [c]omply with requirements of applicable Federal and State law, and with the provisions of this Manual.” 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.03-3 (Q). Enrolled providers are also required to maintain records sufficient to “fully and accurately document the nature, scope and details of the health care and/or related services or products provided to each individual MaineCare member.” 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.03-3 (M). “The Division of Audit or duly Authorized Agents appointed by the Department have the authority to monitor payments to any MaineCare provider by an audit or post-payment review.” 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.16. Pursuant to federal law, the Department is also authorized to “safeguard against excessive payments, unnecessary or inappropriate utilization of care and services, and assessing the quality of such services available under MaineCare.” 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.17. See also 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.18; 22 M.R.S. § 42 (7); 42 U.S.C. § 1396a (a)(27); 42 C.F.R. § 431.960. This includes the imposition of “sanctions and/or recoup(ment of) identified overpayments against a provider, individual, or entity,” for any of 25 specific reasons for which it may including:

- Presenting or causing to be presented for payment any false or fraudulent claim for services or merchandise;
- Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled;
- Failing to retain or disclose or make available to the Department or its Authorized Agent contemporaneous records of services provided to MaineCare members and related records of payments;
- Breaching the terms of the MaineCare Provider Agreement, and/or the Requirements of Section 1.03-3 for provider participation;
- Failure to meet standards required by State and Federal law for participation (e.g. licensure or certification requirements). ...

REASONS FOR RECOMMENDATION

According to the Department, the issue in this case is a purely contractual one,

“The Department’s claim for recoupment of \$2,801.87 from GuardianTrac rests on two basic facts: GuardianTrac was the provider that the Department paid for the services that were not delivered; and GuardianTrac contracted through a Provider Agreement to be paid only for services that were actually delivered.

The basis for the Department’s recoupment from GuardianTrac is purely contractual and rule-based. GuardianTrac contracted with the Department through a Provider Agreement to comply with MaineCare rules. By the terms of MBM Chapter I, GuardianTrac could not properly bill for services not delivered. By the express terms of the Provider Agreement, GuardianTrac was not entitled to be paid for services not actually delivered.” See, DHHS-19.

According to GT, it was not overpaid therefore, the Department is not correct that GT is subject to the recoupment.

According to GT’s closing argument,

“GT is a Fiscal Intermediary (“FI”) contracted with the Department to provide Financial Management Services to MaineCare members. The MBM, Chapter 19, Section 19.01-14 defines a fiscal intermediary:

Fiscal Intermediary is a provider of Financial Management Services on behalf of members utilizing Attendants through the Participant-Directed Option. The Fiscal Intermediary’s responsibilities include, but are not limited to, preparing payroll and withholding taxes, making payments for Attendant services and ensuring compliance with State and Federal tax and labor regulations and the requirements under this Section. The Fiscal Intermediary acts as an agent of the employer (i.e., the member or the member’s Representative) in accordance with Federal Internal Revenue Service codes and procedures. (Emphasis Added).

One of the principal duties of an FI is to ensure payroll is paid to the members’ (or their representatives’) employees when a completed timesheet is received. The hours from the timesheets are used to submit claims for gross wages and employer taxes that GT pays to federal and state agencies on behalf of the employer. The total amount of the claims submitted to MaineCare by GT are pass-through payments that go to pay the members’ employees and to pay employer costs on behalf of the members. GT’s fees to perform this service are billed separately on a monthly basis.

The MBM in Chapter 1, Section 1.12-2 defines an overpayment as: “[a]n overpayment from MaineCare may indicate that a provider has submitted bills

and/or received payment to which he or she is not properly entitled (See Ex. 16).” The claims in question were not overpayments to GT according to this definition; rather, an overpayment was made but it was made to the fraudulent provider in question. The payments made by MaineCare to GT were pass-through payments that were only in GT’s possession temporarily and were solely to pay the members’ employment costs. Since this was a pass-through payment there was no entitlement that GT received and was benefitted by that it could return in the form of a recoupment.” See, GTI-1.

Further GT argues that it followed its contractual obligations in this instance and should not be penalized for fraud perpetrated by a PSS not employed by GT. In addition, GT argues that it is not an expert on forgeries and is not required to be so by its contract with DHHS. GT argues that it is the PSS in question, who should be compelled to repay his ill-gotten gains.

The Department did respond to GTI’s argument that it is unfair to seek repayment since GTI did not perpetuate fraud,

“GuardianTrac appears to take the position that it is unfair to require it to refund the Department because GuardianTrac did not commit the fraud and itself was defrauded by the attendant whom GuardianTrac paid.

The Department makes two responses to GuardianTrac’s argument.

First, without conceding any unfairness to GuardianTrac, the terms of an enforceable contract displace any claim of unfairness that GuardianTrac can make. “... [T]he terms of an enforceable agreement normally displace any claim of unjust enrichment...” Restatement (Third) of Restitution and Unjust Enrichment, § 2(c), at 17 (2011). Here, the Department has not even been unjustly enriched – the Department did not receive the services to MaineCare members for which it paid, and no other benefit accrued – but even if the Department had received some benefit, the contractual terms would govern.

Second, between the Department and GuardianTrac, it is GuardianTrac that is in the least equitable position. GuardianTrac was the only entity that possessed the means to guard against the fraud, and the facts establish that it failed to do so in several respects.

GuardianTrac accepted the signed timesheets from the provider of the services himself, not requiring them to come from the MaineCare member despite the requirement that the member sign the timesheets. The process is equivalent to a company allowing employees to turn in their timesheets or travel reimbursement forms without passing hands through a manager. If that process doesn’t invite abuse, it at least permits it.

Neither did GuardianTrac involve the coordinator of care, Alpha One, in any review of timesheets. By the testimony of Mr. Taylor, there was no apparent

means of testing the timesheets to address this type of fraud prior to payment being made.

Of the three principals involved in the payment and coordination of attendant services to these MaineCare members, GuardianTrac was the only principal which had the means to guard against the fraud." See, DHHS-19.

The hearing officer agrees with the Department that the issue is a purely contractual one. According to the rules governing MaineCare, as well as the provider contract, GTI can only bill MaineCare for covered services actually delivered. See Chapter I, §1.03-3(J), MaineCare Benefits Manual. See also, DHHS-14, at D(1) and D(1)(d). In this case, the Department seeks recoupment of payments for services that were not provided to the members.

In conclusion, the hearing officer recommends that the Commissioner find that the Department was correct when for the review period of [REDACTED] 2015 through [REDACTED] 2016, Program Integrity determined that Guardiantrac LLC owes the Department \$2,801.87 in recoupment for overpayments resulting from claims based on falsified timeslips.

MANUAL CITATIONS

- DHHS Administrative Hearing Regulations, 10-144 C.M.R. Ch. 1, § VII (2014)
- MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101 (2014).

RIGHT TO FILE RESPONSES AND EXCEPTIONS

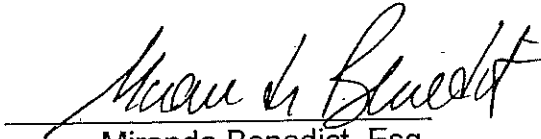
THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE DIVISION OF ADMINISTRATIVE HEARINGS WITHIN FIFTEEN (15) CALENDAR DAYS OF THE DATE OF MAILING OF THIS RECOMMENDED DECISION.

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 DIVISION OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. COPIES OF WRITTEN RESPONSES AND EXCEPTIONS MUST BE PROVIDED TO ALL PARTIES. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.

CONFIDENTIALITY

THE INFORMATION CONTAINED IN THIS DECISION IS CONFIDENTIAL. See 42 U.S.C. § 1396a (a)(7); 22 M.R.S. § 42 (2); 22 M.R.S. § 1828 (1)(A); 42 C.F.R. § 431.304; 10-144 C.M.R. Ch. 101 (I), § 1.03-5. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.

Dated: July 20, 2018


Miranda Benedict, Esq.
Hearing Officer

cc: Thomas Bradley, AAG, Office of the Attorney General, Augusta, ME
Christopher Taylor, Guardiantrac, LLC, 215 Broadus Street, Sturgis, MI 49091