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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TO: Mary C. Mayhew, Commissioner
Department of Health and Human Services
221 State Street
11 State House Station
Augusta, ME 04333

DATE MAILED MAY 04 2015

In Re: Work First, Inc. - MaineCare Recoupment Action

RECOMMENDED DECISION

An administrative hearing was held on October 23, 2014 and February 26, 2015, at Farmington, Maine based on Work First, Inc.'s appeal of a MaineCare overpayment before Norma L. Meyer, Administrative Hearing Officer. The hearing record was left open until March 16, 2015, to allow for the submission of written closing arguments. These documents were received and have been made a part of this hearing record.

The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services.

FACTUAL BACKGROUND AND ISSUE PURSUANT TO ORDER OF REFERENCE:

On or about November 24, 2008, Work First, Inc. (hereafter "Work First"), a non-profit agency and a licensed MaineCare provider of waiver funded day habilitation services, submitted a cost report for the fiscal year 2007-2008. On November 25, 2013, the Division of Audit (hereafter "the Department") issued an Audit Report that found Work First had been overpaid in the amount of $48,239.00 for the period from 07/01/2007 to 06/30/2008. On December 2, 2013, Work First requested an Informal Review. On April 28, 2014, the Department issued a Final Informal Review Decision that upheld the Audit Report indicating that the Audit report had correctly applied the Principles of Reimbursement. On May 6, 2014, Work First requested a hearing on the Final Informal Review Decision.

Pursuant to an Order of Reference dated May 15, 2014, this matter was assigned by James D. Bivins, Esq., Chief Administrative Hearing Officer to the undersigned Hearing Officer to conduct an administrative hearing and to submit to the Commissioner written findings of fact and recommendations on the following issue:

> *Was the Department correct when for the fiscal period from July 1, 2007 through June 30, 2008, it found that Work First, Inc. owed an overpayment of $48,239.00.*[1] *See, Exhibit HO-2.*

[1] The Department stated that MaineCare had overpaid Work First $48,239.00. However, the Department indicated that Work First had actually been overpaid $32,779.00, and with the adjustment fee of $831.85; the Department would only seek to recover $33,610.85. The remaining debt amount is a MaineCare overpayment for day habilitation services that had been paid directly to Harris House for the services that Work First had provided to its MaineCare residents.

APPEARING ON BEHALF OF APPELLANT:

Linda LaRue-Keniston, Executive Director, Work First, Inc.
Robert Kerns, CPA, Austin Associates (02/26/2015 hearing)

APPEARING ON BEHALF OF THE DEPARTMENT:

Jane Gregory, AAG
David Hellmuth, Audit Program Manager, Program Integrity

ITEMS INTRODUCED INTO EVIDENCE

Hearing Officer Exhibits:

HO-1. Notice of Hearing dated 05/21/2014
HO-2. Order of Reference dated 05/14/2014
HO-3. Fair Hearing Report Form dated 05/13/2014
HO-4. Letter from Ms. LaRue-Keniston requesting a hearing dated 05/06/2014
HO-5. Final Informal Review Decision dated 04/28/2014
HO-6. Reschedule letter dated 08/06/2014
HO-7. Reschedule letter dated 11/13/2014
HO-8. Supplemental Decision of the Division of Audit dated 12/03/2014
HO-9. E-mail correspondence from Ms. LaRue-Keniston dated 12/03/2014
HO-10. Reschedule letter dated 12/11/2014
HO-11. Letter to Hearing Officer Meyer from Ms. LaRue-Keniston dated 02/12/2015

Department Exhibits:

D-1. Timeline & letter from Ms. LaRue-Keniston to AAG Jane Gregory dated 02/20/2015
D-2. Cover letter, notice of policy change, and MCBM[2], Chapter II, Section 24 dated 12/01/2005
D-3. Cover letter of notice of final rule, and MCBM, Chapter III, Section 50
D-4. Cover letter with notice of adopted rule, and MCBM, Chapter III, Section 50
D-5. Cost report for Day Habilitation Service for 07/01/2007 to 06/30/2008
D-6. Letter to State Auditor Trisha White from Ms. LaRue-Keniston dated 11/05/2013
D-7. Letter to Ms. LaRue-Keniston from Audit Program Manager David Hellmuth dated 11/03/2013
D-8. Audit Report Transmittal dated 11/25/2013
D-9. Letter to Dir. of Audit, Herb Downs from Ms. LaRue-Keniston dated 12/02/2013
D-10. Letter to Dir. of Audit Herb Downs from Ms. LaRue-Keniston dated 02/27/2014
D-11. Final Formal Review Decision dated 04/28/2014
D-12. Letter to Commissioner Mayhew from Ms. LaRue-Keniston dated 05/06/2014
D-13. Supplemental Decision of Division of Audit dated 12/03/2014
D-14. Work First's report of space and expense allocation as of 01/01/2008\
D-15. Work First's floor plan
D-16. Work First's employee's salaries from 01/01/2008 to 06/30/2008
D-17. Work First's approved budget for 07/01/2007 to 06/30/2008[3]
D-18. Independent Audit by Austin Associates for 07/01/2007 to 06/30/2008[4]

[2] MaineCare Benefits Manual
[3] The exhibit contained the names and MaineCare numbers, and because this is information is confidential; this exhibit has been sealed within the hearing record.

D-19. Cost Report for Day Habilitation Services for 01/01/2008 to 06/30/2008[5]
D-20. Cost Report for Day Habilitation Services for 07/01/2007 to 12/31/2007[6]
D-21. New cost report for 2007-2008
D-22. Staff records of activities for separate programs[7]
D-23. Work First's Profit & Loss report for 2008
D-24. Work First's Trial Balance
D-25. Work First's Financial Statement per year end dated 06/30/2008
D-26. Closing Arguments dated 03/16/2015

Work First Exhibits:

WF-1. MCBM, Chapter III, Section 5000, p2
WF-2. Calculation for building's square footage
WF-3. Administrative Hearing Decision dated 07/12/2011
WF-4. Closing arguments dated 03/16/2015

RECOMMENDED FINDINGS OF FACT:

1. Notice of these proceedings was given timely and adequately. Work First made a timely appeal.

2. The MaineCare program is administered by the Department of Health and Human Services (the "Department") and the rules applicable to this decision are found in the MaineCare Benefits Manual as it existed for the audit year of 2007-2008.

3. Work First is a non-profit agency and a licensed MaineCare provider of waiver funded day habilitation services in the Farmington, Maine area.

4. In 2007-2008, Work First provided MaineCare habilitation services to MaineCare recipients who were residents of the ICF-MR, Harris House. Pursuant to their agreement, Harris House paid Work First directly, and the Department reimbursed Harris House for these services.

5. Prior to January 1, 2008, day rehabilitation services for MaineCare recipients were billed under MCBM, Section 24. Under Section 24, the method of reimbursement for services was "cost settled." Under the "cost settled" method, providers are only reimbursed for the cost of providing the service. Therefore, a provider agency was not allowed to retain any profits.

6. Starting January 1, 2008, on advice from the Federal government, the Department began to phase out Section 24 services, and the Department repealed MCBM, Section 24 effective April 1, 2010.

7. Effective January 1, 2008, provider agencies billed MaineCare for day rehabilitation services for MaineCare recipients under either Section 21 [8]or Section 29[9] of the MCBM.

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[4] This exhibit contained the names of MaineCare members, and because this information is confidential; this exhibit has been sealed with the hearing record.
[5] This exhibit contained MaineCare numbers, and because this information is confidential; this exhibit has been sealed with the hearing record.
[6] This exhibit contained MaineCare numbers, and because this information is confidential; this exhibit has been sealed with the hearing record.
[7] This exhibit contained names of MaineCare members, and because this information is confidential; this exhibit has been sealed with the hearing record.

8. Pursuant to MCBM, Sections 21 & 29, day rehabilitation services are reimbursed using the "fee for services" method. The "fee for service" method means that there is an established fee for the service and if the service cost the provider less; the provider is entitled to retain any profits.

9. On November 24, 2008, Work First submitted a cost report to the Department for the 2007-2008 fiscal year. See, Exhibit D-5.

10. On November 5, 2013, Work First wrote to the Department requesting that it be allowed to submit two separate cost reports; one report for 07/01/2007 to 12/31/2008, and a second report for 01/01/2008 to 06/30/2008, because the cost report it had submitted did not reflect the new system started in January of 2008. See, Exhibit D-6.

11. On November 13, 2013, the Department denied Work First's request to submit two cost reports citing MCBM, Chapter III, Section 50, Principle #2010, which requires that provider agencies submit an annual cost report. See, Exhibit D-7.

12. On November 25, 2013, the Department issued an Audit Report Transmittal (hereafter "Audit Report") that found that Work First had been overpaid $48,239.00 for the period from 07/01/2007 to 06/30/2008. See, Exhibit D-8.

13. The Department's audit found that for fiscal period 07/01/2007 through 06/30/3008, Work First had been overpaid $32,779.00, with the remainder being an overpayment to Harris House. See, Exhibit D-26.

14. On December 2, 2013, Work First requested an Informal Review, and asked the Department to look at the budgets as two separate programs. See, Exhibit D-9.

15. On April 28, 2014, the Department issued a Final Informal Review Decision that upheld the Audit Report stating, "Per audit, it was determined that the Provider's cost report based on the full twelve months of service and audit's allocation of the expenses based on a percentage of revenue is the proper treatment of the Principles of Reimbursement." See, Exhibit D-11.

16. On May 6, 2014, Work First requested a hearing on the Final Informal Review Decision. See, Exhibit HO-4.

17. On or before July 28, 2014, Work First submitted additional records and met with the Department to determine if the matter could be settled.

18. On October 23, 2014, the hearing was continued so that the Department could review the additional information provided by Work First, conduct a site visit on November 18, 2018, and render an Audit report. See, Exhibit D-13.

19. On November 18, 2014, David Hellmuth, Audit Program Manager completed a site visit,

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[8] Section 21 rules provide waiver services pursuant to the rules for Home and Community Benefits for Members with Intellectual Disabilities or Autistic Disorder.

[9] Section 29 rules provide waiver services pursuant to the rules for Support Services for Adults with Intellectual Disabilities or Autistic Disorder.

interviewed Ms. LaRue-Keniston, and reviewed Work First's financial records. Mr. Hellmuth found discrepancies in the space allocation and the payroll costs. See, Exhibit 13.

20. On December 3, 2014, the Department issued a Supplemental Decision of Division of Audit (hereafter "Supplemental Decision"), which upheld the original Final Informal Review Decision. See, Exhibit D-13.

RECOMMENDED DECISION:

The Department was correct when it found that for the fiscal period July 1, 2007 through June 30, 2008, Work First, Inc. owed an overpayment $33,610.85, which represents the MaineCare funds for day habilitation services paid directly to Work First, Inc.

REASON FOR RECOMMENDATION:

It is undisputed that prior to January 1, 2008, day habilitation services for MaineCare recipients were billed under MCBM, Section 24. Pursuant to Section 24, day habilitation providers were only reimbursed for the cost of providing day habilitation services. This accounting method was referred to as the "cost settled" method, and utilizing this accounting method did not allow provider agencies to retain any profits.

Starting January 1, 2008, on advice from the Federal government, the Department began to phase out Section 24 services, and the Department repealed MCBM, Section 24 effective April 1, 2010. As of January 1, 2008, day habilitation services were to be reimbursed to providers pursuant to MCBM, Sections 21 and 29. Under Sections 21 & 29, a "fee for services" reimbursement method was to be used. The "fee for service" method allows for providers to retain a profit, if the cost of providing the service was less than the fee.

On November 24, 2008, Work First submitted a cost report for the fiscal year 2007-2008. See, Exhibit D-5. On November 5, 2013, Work First's Executive Director, Linda LaRue-Keniston sent a letter to the Department requesting that the Department disregard Work First's cost report for fiscal year 2007-2008. See, Exhibit D-6. She wrote, "It was completed in error because of a two contract year and because of a change of the financial manager. We clearly had two separate contracts with two separate budgets and the cost report did not reflect the new system started in Jan. 2008. ..." Id. On November 13, 2013, the Department denied Work First's request to submit two cost reports citing MCBM, Chapter III, Section 50, Principle #2010, which requires provider agencies to submit one annual cost report. See, Exhibit D-7.

In conducting its audit, the Department used the Principles of Reimbursement found at MCBM, Chapter III, Section 50. See, Exhibit D-11. On November 25, 2013, the Program Integrity Unit (PI), Division of Audit, Department of Health and Human Services completed an audit of Work First for the fiscal year July 1, 2007 to June 30, 2008, pursuant to the Section 50 rule, Principles 2010 and 2040.

MaineCare Benefits Manual, Chapter III, Section 50, Principle #2010 states:

2010 ***Cost Report Periods.*** *All long-term care facilities are required to submit annual cost reports as prescribed herein to the State of Maine, Department of Health and Human Services, Office of Audit, 11 State House Station, Augusta, Maine 04333-0011. Such cost reports shall be based on the fiscal year of the facility.*

MaineCare Benefits Manual, Chapter III, Section 50, Principle #2040 states

2040 ***Cost Reports***

2041 ***Forms.*** *The provider shall use the cost report forms provided or approved by the Department.*

2042 ***When to File.*** *The cost report and financial statements for each facility shall be filed not later than five (5) months after the fiscal year end of the provider. When a provider fails to file an acceptable cost report by the due date, the Department will send the provider a notice by certified mail, return receipt requested, advising the provider that all payments are suspended on receipt of the notice until an acceptable cost report is filed. Reimbursement will then be reinstated at the full rate from that time forward, but reimbursement for the suspension period shall be made at the deficiency rate of ninety percent (90%). An extension of time, waiving the deficiency rate, may be approved by the Department for good cause.*

On November 25, 2013, the Department issued an Audit Report that found that Work First had been overpaid $48,239.00 for the period from 07/01/2007 to 06/30/2008. See, Exhibit D-8. The Audit Report found the following (in relevant part):

- Work First had contracted with the Department of Health and Human Services to provide Day Habilitation services to clients who qualify under Title XIX of the MaineCare Program.

- The Provider had filed the cost report indicating there was no settlement due the State or the Provider. The audited cost settlement indicates an amount of $48,239 due the State.

- The audit results in a change of $48,239 in the settlement from what was submitted by the Provider per Schedule C. The change in settlement is due to the removal of Supported Employment revenue from the cost settled revenue, the allocation of expenses based on percentage of revenues on Schedule B, and adjustments to clients' wages and depreciation.

- Adjustments to allowable costs are detailed on Schedule B and B-1. Id.

On December 2, 2013, Work First requested an Informal Review, and asked the Department to look at the budgets as two separate programs. See, Exhibit D-9. In her request, Ms. LaRue-Keniston argued (in relevant part), "Because of the change in the delivery of services two (2) contracts were negotiated with the Regional Administrator of the then Bureau of Mental Retardation. The budgets were approved as two separate contracts because the delivery of services changed in January 2008. ... We began two (2) programs that were clearly separated from each other. Time studies and space allocation formulas were designed to keep the two programs operating separately. The staffing patterns were clearly identified and the individuals in the section 24 program were peeled off with specific staff, specific space, and specific income and expenses dedicated to this new program. We have all the evidence of this new program model available for review, including staff records of all activities. The budget was reviewed and approved by the Regional Administrator as required by principle 3020 of the Chapter 101 of the Maine Medical Assistance Manual Chapter 111 [sic] Section 24. ..." Id.

On April 28, 2014, the Department issued a Final Informal Review Decision that upheld the Audit report stating, "Per audit, it was determined that the Provider's cost report based on the full twelve months of services and audit's allocation of the expenses based on a percentage of revenue is the proper treatment of the Principles of Reimbursement." See, Exhibit D-11. On May 6, 2014, Work First requested a hearing

on the Final Informal Review Decision. See, Exhibit HO-4.

On July 28, 2014, Work First met with AAG Gregory and Audit Program Manager, David Hellmuth to determine if the matter could be settled. Ms. LaRue-Keniston presented a new cost report, and Work First requested that the Department do a site visit. On October 23, 2014, a hearing was convened, and the Department requested a continuance so that it could review the information Ms. LaRue-Keniston had presented. The parties agreed that Audit would review the additional documentation provided by Work First, conduct a site visit on November 18, 2018, and render a revised Audit report. See, Exhibit D-13.

On December 3, 2014, the Department issued a Supplemental Decision of Division of Audit After Reviewing Additional Documentation Presented on October 16, 2014, and Site Visit Conducted on November 18, 2014 based on its review of Work First's new evidence and the recent site visit. See, Exhibit D-13. The Supplemental Decision found the following:

1. The additional documentation does not support Work First's assertion that it created a separate program in January 1, 2008 for Section 21 services, so that all space, staffing, and costs were allocated to a separate cost center. This could not be verified at the site visit for the following reasons:

    a. The allocation percentages based on staffing hours used to allocate payroll and related payroll could not be verified.

    b. The allocation percentages based on square footage used to allocate building related costs could not be verified.

2. The additional documentation contained two cost reports submitted for the periods July 1, 2007 through December 31, 2007 and for January 1, 2008 through June 30, 2008. These two cost reports were insufficient for the following reasons:

    a. The MaineCare Benefits Manual, Chapter III, Section 50, Principle 2010, which is referenced in Section 24 Principles, requires that "All long-term care facilities are required to submit annual cost reports as prescribed herein to the State of Maine, Department of Human Services...Such cost reports shall be based on percentage of funding."

    b. In addition, Section 24 Principle 8030 states, "The total actual cost of the service shall be determined...and allocated to MaineCare based on percentage of funding.

Therefore, the Division of Audit makes no changes to its April 28, 2014 Final Informal Review Decision..." See, Exhibit D-13.

At the hearing, David Hellmuth testified that the Department had been unable to determine that Work First had two separate cost centers. He indicated that the Department had found that Work First had a single cost center, which meant that the revenue and costs for all the different MaineCare services were comingled. Mr. Hellmuth stated that this finding was based on Work First's 2008 Trial Balance, which showed a single column for costs and a single column for expenses. See, Exhibit D-26. He said that the 2008 Trial Balance did not separate out the three different services. Mr. Hellmuth also testified that he had visited Work First on November 18, 2014 and he interviewed Ms. LaRue-Keniston at the site and he found that the time studies did not tie back to the allocations claimed by Work First. Mr. Hellmuth reported that there were numerous discrepancies between the additional documentation and what Work First was claiming. He testified that he could not verify the accuracy of the methodology and numbers Work First was using. Mr. Hellmuth asserted that the MAAP agreements (Exhibit D-17) were not relevant because the

Department's audit must be based on MaineCare regulations, and not on the contracts. Also, Mr. Hellmuth said that the Department could not accept Work First's 2008 Profit and Loss statement because the report was for six months, and Section 50, Principle 2040 and Principle 2010 required one annual cost report.

Work First's accountant, Robert Kerns, CPA testified that Work First did have separate cost centers. He stated that within "Quickbooks" Work First used profit and loss by class for A-D programs in order to differentiate by program. He stated that for the first part of the year, 07/01/2007 to 12/31/2007, the B program only had Section 24 revenues. After January 1, 2008, the B program had Sections 21 & 29 revenues. Mr. Kerns stated that for the first six months of the year, everything was Section 24, but after January 1, 2008, B was for Section 21 and 29 services, and C was for section 24. Mr. Kerns said that he could understand why the Department was having a difficult time verifying two separate cost centers. He acknowledged that he did not see a report for 07/01/02007 to 12/31/2007.[10]

WABAN DECISION

Ms. LaRue-Keniston presented a copy of a Recommended Decision issued on July 12, 2011, and the Final Decision issued by the Commissioner on December 8, 2011. See, Exhibit WF-3. The Decision was based on an appeal by Waban Projects, Inc. (hereafter "Waban") of an audit decision regarding day habilitation services during the same time period when Section 24 services transitioned to Sections 21 & 29. Work First argued that the issues in the Waban case were similar to Work First's issues. This Hearing Officer informed Ms. LaRue-Keniston that Administrative Hearing Decisions are not precedent setting.

The Waban Decision referred to a memo issued by the MaineCare Program. It states (in relevant part) "For MaineCare Benefits Manual, Section 24 cost reporting, the Department will apply the following methodology for cost settlements:

> *Periods ending between December 30, 2007 and June 30, 2008 (transitional period):*
>
> *The cost report must report all revenues and expenses of the program. This will include section 21 and 29 revenues paid for providing the same service. Revenues for the fee-for-service MaineCare programs (section 21 and 29) will be backed out on Schedule B, Part I on a dollar-for–dollar basis (equal revenue and expenses). If the provider can submit cost allocations for Section 24 services based on a time study with a separate cost center(s), then cost settlement will be based on that data and not dollar-for-dollar as described above. The allocation of the expenses would need to be supported in their records and provide clear audit trail that allows verification of the accuracy of the allocations... See, Exhibit WF-3., p6.*

The Hearing Officer found that, "for the period from January 1, 2008 to July 31, 2008,[11] Waban Projects' was entitled to any profits from its provision of day habilitation services provided in accordance with Section 21 and 29." See, Exhibit WF-3, p10. The Hearing Officer stated, "Based on these conclusions, as well as above, the Hearing Officer recommends that the Commissioner remand this case to the Department to perform an audit of the period January 1, 2008 through July 31, 2008, that assigns Waban Projects' cost for provision of Section 21, Section 24, and Section 29 day habilitation services as a percentage of revenue it received for providing each of those services." Id. On December 8, 2011, the Commissioner issued a Final Decision. Id. It states (in relevant part), "I hereby adopt the finding of facts

[10] Mr. Kerns was not asked, nor did he explain what programs were listed under either A or D.

[11] The audit period stated in the Recommended Decision incorrectly stated that the audit period was for 01/01/2008 to 07/31/2008, and not from 01/01/08 to 06/30/2008. See, Exhibit WF-3, p10.

and accept the Recommendation of the Hearing Officer that the Department was not correct when it determined that for the operating period from 7/1/07 to 6/30/08 Life Works Day Habilitation[12] was overpaid $424,930.00 by MaineCare because the provider failed to offset MaineCare Sections 21 & 29 revenue dollar for dollar against expenses. I am remanding this case to the Department to perform an audit of the period 1/1/08 through 7/31/08 that assigns Waban Projects cost for provision of Section 21, Section 24, and Section 29 day habilitation services as a percentage it received in providing for each of those services." Id.

The Hearing Officer finds that Waban is similar to Work First's situation, as both agencies had been providing day habilitation services to MaineCare recipients under Section 24 from 07/01/2007 to 12/31/2007. Like Waban, for this time period, the Department used the cost settlement method for Section 24 services for Work First. After January 1, 2008, both Waban and Work First began providing day habilitation services under MaineCare Sections 21 & 29, which used the fee for service method. In the Waban case, the Department argued that it could not ascertain the amount of Waban's cost because it had not established separate cost centers for each of its programs. Ms. LaRue-Keniston asserted that the Department should able to determine Work First's costs because Work First had established separate cost centers.

The Department did not object to the admission of the Waban Decision. Mr. Hellmuth testified that he was familiar with the Waban Decision, and he asserted that the issue in Waban's appeal was different than Work First's issue because at that time, the Department had used a "dollar for dollar" method for Section 24 services.

The Hearing Officer finds that although similar to Waban, in Work First the Department was not using the dollar for dollar method in its audit. Moreover, the MaineCare memo stated that the "The allocation of the expenses would need to be supported in their records and provide clear audit trail that allows verification of the accuracy of the allocations... See, Exhibit WF-3., p6. The Department's audit found that Work First's records did not provide documentation that Work First had established separate cost centers.

CONTRACTS FOR MAINECARE SERVICES

Ms. LaRue-Keniston asserted that Work First had signed the contracts with the Department, and the Department had approved Work First's budgets for the twelve-month period. Therefore, this would establish that Work First had separate cost centers. See, Exhibit D-17. The Department disputed Ms. LaRue-Keniston' s assertion regarding the contracts and approved budgets. Mr. Hellmuth testified that the MAAP agreements, were not relevant as the audit was conducted based on MaineCare regulations.

At hearing and in her closing arguments, Ms. LaRue-Keniston stated (in relevant part), "Prior to January 1, 2008 section 21 and section 29 waiver services did not exist. Members served by Work First, Inc. before January 1, 2008 received day habilitation services through a contract agreement number MR2-08-300A with all services sharing all resources...These services and their rates were negotiated though the Bureau of Developmental Services (BDS) as required by MaineCare Benefits Manual, Chapter III Section 24 rule 5000 Fiscal Provisions page 2 as presented in evidence at the hearing. This rule clearly states services will be based on the service budget recommended to the DHHS manager limiting the maximum number of days, maximum amount of per individual and total limit on the annual reimbursable amount for the service. This rule also states that if any changes are made, a new budget shall be submitted. A new budget and rates were negotiated in Jan. 2008 with the DHHS representative because of the new Waiver

[12] This was the name of Waban's day habilitation program.

section 21 and Waiver section 29 that was created in Jan. 2008. Two separate contracts were negotiate and approved ceilings were established with the State representative. The new budget for January 2008 started a separate program just for section 24 individuals. The State representative, Pat Hall, approved this budget as presented in the evidence package by Work First, Inc. and the State. This new budget clearly broke out a new cost center that was labeled **C**. It was labeled within this approved, encumbered contract with DHHS agreement number MR2 08 301A stamped as the agreement with this new C cost center for section 24 separated. The original DHHS agreement Number MR208 300A was encumbered and approved for July 1, 2007 through Dec. 31, 2007. This agreed upon budget and rates were based on all services sharing all resources, space and time with one cost center labeled **B**. These budgets were required and used in all the State approved services for both State contracts and MaineCare rates... These budgets were the basis of all Maine Care limits both in days offered, rates and allowed cost. They were mandated and no service would have been allowed to be offered without this level of scrutiny from the State BDS/DHHS budget review..." See, Exhibit WF-4.

MCBM, Chapter III, Section 24, 5020 (effective 12/1/2005 and repealed 04/01/2010) states as follows:

> *"Per diem rates will be established when the provider submits a service budget to the Regional Manager, Adult Mental Retardation Services, Department of Health and Human Services. Adult Mental Retardation will, based on the service budget, recommend to the DHHS Manager a rate setting a per diem rate, a maximum number of billable days, a maximum annual amount per individual and the total annual reimbursement amount for the services..."* See, Exhibit D-2.

Ms. LaRue-Keniston's argument, as this Hearing Officer understands it, is that the two "contracts" identified as number MR2 08 300 and MR2 08 301A established that Work First had two cost centers. See, Exhibit D-17. As a provider of day habilitation services, the MCBM, Chapter III, Section 24.04-1, requires that providers of day habilitation sign an Adult Mental Retardation's Day Habilitation Program Services Agreement (hereafter "Agreement"), and reimbursement for these services is dependent on compliance with this agreement. However, the Agreement is a projection of what Work First estimated it would have for revenues and expenses, and it provided "pro-forma[13]" budgets.

Ms. LaRue-Keniston asserted the Agreements were relevant because they were the basis of all of the services billed to MaineCare. The Hearing Officer finds that the Agreements would have been relevant, if in fact, the Department had denied reimbursement for day habilitation services because Work First had not complied with its Agreement, i.e., billed for more days than MaineCare allowed or other violation of the Agreement. However, this is not the case.

Ms. LaRue-Keniston claims that the Agreements proved that Work First had two separate cost centers. As of January 1, 2008, Section 21 & Section 29 services replaced Section 24 for day habilitation services. When comparing Agreement MR2 08 300 for the period 07/01/2007 to 12/31/2007 and Agreement MR2 08 301A for 01/01/2008 to 06/30/2008, the Hearing Officer finds that Work First's pro-forma budgets identified day habilitation services as both revenue and an expense, but the MaineCare programs, 24, 21 and 29 were not identified, other than to state the funds were from MaineCare. See, Exhibit D-17.

The Hearing Officer does not find that the Agreements signed by Work First and the Bureau of Adult Mental Retardation established that Work First had two separate cost centers. The Hearing Officer

[13] A Latin term meaning "for the sake of form." In the investing world, it is used to describe a method of calculating financial results to emphasize either current or projected figures. See, http://financial-dictionary.thefreedictionary.com/pro+forma (accessed 04/24/15).

finds that Work First did sign Agreements with the Bureau of Adult Mental Retardation, and that the projected budgets summited had been approved. See, Exhibit D-17. However, the Agreements are not relevant to this appeal, and the Agreements did not establish proof that Work First had separate cost centers as had been asserted. Specifically, the Agreements were projections of, and they did not identify the source of the MaineCare revenue, and or the cost related to staff or space allocation for the separate MaineCare programs.

COST CENTERS

The Hearing Officer finds that for the period from July 1, 2007 through December 31, 2007, there was no dispute as to the audit findings. Work First billed for Section 24 day habilitation services, and the audit correctly applied the cost settled method. See, Exhibit D-8. There was no dispute that for Section 21 and 29 day habilitation services, Work First was entitled to a fee for service.

In regard to an audit for Sections 21 and 29, the MaineCare Benefits Manual, Chapter III, Section 21, 2000 and Section 29, 1900 it states:

> *The Department shall monitor provider's claims for reimbursement by randomly reviewing the claim for services and verifying hours actually provided by collecting documentation from providers. Documentation will be requested from providers that correspond to dates of service on claims submitted for reimbursement as follows:*
>
> *A. Payroll Records – Documentation showing the number of hours paid to an employee that covers the period of time for which the Direct Care hours are being requested.*
>
> *B. Staffing Schedules per facility – Documentation showing the hours and the name of the direct care staff scheduled to work at the facility.*
>
> *C. Member Records - Documentation that supports the service delivery of services that a member received.*

There was no dispute that when Work First submitted its annual cost report on November 24, 2008, it had failed to provide the Department with a cost report that showed the different cost centers for the three separate MaineCare programs; Sections 21, 24 & 29. See, Exhibit D-5. When the Department began its audit in the fall of 2013, Ms. LaRue-Keniston realized Work First's mistake. On November 5, 2013, she wrote the Department requesting that the cost report for 2007-2008 be disregarded, and that Work First be allowed to submit two separate cost reports; which the Department denied. See, Exhibit D-6. On November 25, 2013, the Department issued its Audit Report that found based on the cost settled method that MaineCare had overpaid Work First in the amount of $48,239.00 for the fiscal year 2007-2008. See, Exhibit D-8.

The Hearing Officer finds that the specific question for this hearing is whether Work First has been able to establish that from January 1, 2008 to June 30, 2008, it had established separate cost centers for the three MaineCare programs. In order to establish the separate cost centers, Mr. Hellmuth stated that Work First would need to provide documentation that for Sections 21, 24 & 29 services, the agency had separate allocated work space, separate allocated staff and costs. The October 23, 2014 hearing was continued at the request of the Department to allow the Department time to review the new information that Work First had provided prior to the hearing, to conduct another site visit, and to render a new audit report. At the October 2014 hearing, Mr. Hellmuth had stated that he would need to verify that there were separate cost

centers and that the new documentation Work First had provided tied into Work First's financial statements. On November 18, 2014, the Department completed a site visit. On December 3, 2014, the Department issued its Supplemental Decision. See, Exhibit D-13. The Supplemental Decision made no changes to the Final Informal Review dated April 28, 2014. Id. In its Supplemental Decision, the Department stated that it had been unable to verify that from January 1, 2008 through June 30, 2008, Work First had separate cost centers for the MaineCare programs. The Department indicated that it had also found a discrepancy in Work First's space allocation and a $6,000.00 discrepancy in the payroll costs. See, Exhibit D-26. Mr. Hellmuth testified that the Department had allocated costs for Section 21, 24 and 29 services based on the revenues Work First had received for each service. Mr. Hellmuth had indicated that the Department had arrived at the different revenues for each service based on the different procedure codes. He testified that because Work First had not established separate cost centers, all of the revenue and costs from all of the different MaineCare services were combined or comingled. The Department said that as evidence of the comingling, the Department referred to Work First's Trial Balance, which showed a single column for costs and a single column for expenses. See, Exhibit D-24.

Ms. LaRue-Keniston has consistently stated that as of January 1, 2008, Work First had established two separate cost centers. In Waban, the Hearing Officer recommended, and the Commissioner ordered the Department to perform an audit of the period 01/01/08 through 07/31/08. See, Exhibit WF-3. In Work First's case, this Hearing Officer finds that in all actuality, the Department already completed another audit on November 18, 2014, when it completed another site visit and reviewed Work First's new evidence, and issued its Supplemental Decision. See, Exhibit 13. The Department specifically looked for evidence that Work First had established separate cost centers, with separate allocation of space, staff and expenses, and examined whether their reports tied into their financial records. The December 3, 2014 Supplemental Decision found that Work First had failed to show documentation that would support Work First's claim. The Hearing Officer finds that during this appeal and review process, Ms. LaRue-Keniston has been afforded every opportunity to present evidence to support her claim that Work First had separate cost centers. Therefore, comprehensive second audit has already been completed.

In reviewing the many reports provided by Work First, this Hearing Officer was unable establish from these records a breakdown by program of the staffing costs, spacing allocation and other expenses per MaineCare program rules as required by the MaineCare Benefits Manual, Chapter III for Sections 21 and 29 services. Based on the evidence and based on the cost report submitted by Work First in November of 2008, the Department correctly applied the cost settlement audit method.

The Hearing Officer finds that based on the testimony and the evidence, Work First has failed to provide sufficient evidence to support its claim that it had separate cost centers as of January 1, 2008. The Department's Informal Review upheld the Department's November 25, 2013 was able to determine what Work First had received from MaineCare for the Sections 21, 24, and 29 day habilitation services based on the procedure codes billed by Work First. However, the Department was unable to establish for the period from January 1, 2008 to June 30, 2008, that Work First had separate cost centers that would have allowed the Department to apply the fee for service accounting method.

At the hearing and in closing arguments, Assistant Attorney General Jane Gregory explained that the audit had encompassed all of the MaineCare day habilitation services delivered by Work First, which included services that Work First had provided to the residents of Harris House. According to the Department, MaineCare had paid Harris House for these billed day habilitation services, and Harris House had paid Work First. The Department found that Work First, as the provider of the day habilitation services had been overpaid a total $48,239.00 for the fiscal year 2007-2008. The overpayment amount was comprised of $32,779.00 that was paid directly to Work First, and the balance was for services delivered by

Work First, but paid to Harris House. The Department recommended that the stated issue for this hearing be changed to correctly state the amount of the overpayment alleged to Work First. The Department stated that it would not seek to recover more than $33,610.85 from Work First. See, Exhibits D-1 and D-26.

The Hearing Officer understands the distinction that the Department is asking the Hearing Officer to make. However, the Hearing Officer disagrees with the Department's request. The Department's audit alleges that MaineCare had overpaid Work First $32,779.00. The Department also stated that it would not seek to recover more than $33,610.85 from Work First. This amount represents the $32,779.00 MaineCare overpayment, plus an adjustment cost of $831.85. See, Exhibit D-1. The Hearing Officer finds that the Order of Reference does not need to be amended because the Hearing Officer's Recommended Decision is only addressing the MaineCare overpayment that was paid directly to Work First, Inc. during the audit period.

The Hearing Officer recommends that the Commissioner find that Work First, Inc., was overpaid a total of $33,610.85 by MaineCare for the day habilitation services it had delivered to MaineCare recipients for the period from July 1, 2007 through June 30, 2008.

CITATIONS:

MCBM, Chapters II & III, Section 24 (effective 12/01/2005)
MCBM, Chapter III, Section 50 (effective 08/01/2007)
MCBM, Chapter III, Section 50 (effective 08/01/2003)

EXCEPTIONS AND RESPONSES:

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

Dated: May 1, 2015

Signed: Norma L. Meyer

Norma L. Meyer, J.D.
Administrative Hearing Officer

cc: Jane Gregory, AAG
Linda LaRue-Keniston, Executive Director, Work First, Inc.
David Hellmutt, Audit Program Manager