



**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
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Augusta, ME 04333

DATE MAILED: DEC 08 2014

In Re: York County Community Action Corp.
Final Informal Review Decision dated February 3, 2014

RECOMMENDED DECISION

An administrative hearing was held on August 21, 2014 at Sanford, Maine in the case of York County Community Action Corp. ("YCCA") before Hearing Officer Tamra A. Longanecker. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services ("the Department"). The hearing record was held open for the Department to review additional evidence and for the parties to submit closing arguments. The record closed on October 10, 2014.

CASE BACKGROUND AND ISSUE:

YCCA is a MaineCare transportation provider. The Department's Program Integrity Unit conducted an audit of YCCA to determine if the trips billed by YCCA complied with MaineCare rules for reimbursement. As a result of its audit, the Department issued five (5) Notices of Violation dated February 15, 2012, July 17, 2012, September 3, 2012, March 8, 2013 and July 22, 2013 and demanded recoupment in the total amount of \$27,512.42. The Notices of Violation involved trips made by eight (8) MaineCare members during the time period from November 1, 2006 through December 31, 2011.

YCCA requested an informal review of the five Notices. As a result of the informal review process, the Department issued a single Final Review Decision dated February 3, 2014. The Final Review Decision reduced the overpayment amount from \$27,512.42 to \$11,575.54 as follows:

I have reviewed the information and clarifications you submitted and have identified and removed those trips which were made to other MaineCare providers. I have also reviewed the results of the on-site clinic visits made by the auditor and have removed those trips which were related to group/individual therapy visits, laboratory visits, or medication management visits. I found several dates of service that were provided prior to the five (5) year record retention requirement, which is addressed in the MaineCare Benefits Manual, Chapter 1.03-3M, and removed those dates from the review. In addition to the above deductions, the overpayment made to member #7 was further reduced due to the payment made on a previous Notice of Violation, dated May 25, 2011. Finally, the on-site review performed by the auditor could not confirm the statements made by member #8 that she had attended the clinic.

Therefore, there is no change in the overpayment other than the reduction of those exceeding five (5) years.

YCCA requested an administrative hearing which was held on August 21, 2014. At that hearing, the Department learned that YCCA had records which had not been reviewed for members #5 and #6. The parties agreed to leave the record open to allow the Department an opportunity to review those records. As a result of that review, the Department notified YCCA that it had reduced the overpayment for member #5 from \$5,112.56 to \$544.60 and had reduced the overpayment for member #6 from \$1,603.44 to \$1,567.12, which thereby reduced the total overpayment from \$11,575.54 to \$6,971.26 during the relevant time period.

The hearing officer offered YCCA the opportunity to reconvene the hearing in order to present additional evidence and/or question the Department with regard to the new computation of the overpayment. YCCA declined.

The issue for this hearing; therefore, is whether the Department was correct when it found that YCCA was overpaid \$6,971.26 for trips which did not comply with the MaineCare rules for reimbursement.

APPEARING ON BEHALF OF CLAIMANT:

Barbara Crider, YCCA Executive Director
Connie Garber, YCCA Transportation Director

APPEARING ON BEHALF OF THE DEPARTMENT:

Thomas C. Bradley, AAG
Michael Bishop, Auditor II, Program Integrity

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

HO-1: Scheduling notices dated June 4, 2014 and April 24, 2014.
HO-2: Order of Reference dated April 16, 2014.
HO-3: Fair Hearing Report Form.
HO-4: Bradley letter dated May 29, 2014.

Department Exhibits:

DHHS-1: Order of Reference with Attachments.
DHHS-2: Fair Hearing Report Form.
DHHS-3a: Notice of Violation letter with Attachments, dated February 15, 2012.
DHHS-3b: Informal Review request letter without Attachments, dated March 29, 2012.
DHHS-4a: Notice of Violation letter with Attachments, dated July 17, 2012.
DHHS-4b: Informal Review request letter without Attachments, dated September 14, 2012.
DHHS-5a: Notice of Violation letter with Attachments, dated July 22, 2012.
DHHS-5b: Informal Review request letter without Attachments, dated October 30, 2012.
DHHS-6a: Notice of Violation letter with Attachments, dated September 3, 2012.
DHHS-6b: Informal Review request letter without Attachments, dated October 24, 2012.
DHHS-7a: Notice of Violation letter with Attachments, dated March 8, 2013.
DHHS-7b: Informal Review request letter without Attachments, dated May 14, 2013.

- DHHS-8: Final Informal Review Decision with Attachments dated February 3, 2014.
- DHHS-9: Administrative Hearing request letter dated March 24, 2014.
- DHHS-10: MaineCare Benefits Manual (MBM) Chapter I, dated December 12, 2007.
- DHHS-11: MaineCare Benefits Manual (MBM) Chapter I, dated January 11, 2010.
- DHHS-12: MaineCare Benefits Manual (MBM) Chapter I, dated February 13, 2011.
- DHHS-13: MBM Chapters II, Section 113, dated October 1, 1985.
- DHHS-14: MBM Chapter III, Section 113, dated September 1, 2007.
- DHHS-15: MBM Chapter III, Section 113, dated June 30, 2010.
- DHHS-16: MBM Chapter III, Section 113, dated September 23, 2010.
- DHHS-17: MaineCare/Medicaid Provider Agreement, dated October 6, 2009.
- DHHS-18: Department letter dated September 12, 2013.

Claimant Exhibits¹:

C-1 through C-3: (duplicative of DHHS exhibits 3a through 8, therefore it was unnecessary to include a second copy of those exhibits as Claimant exhibits).

- C-4: Member Summary/Timeline Spreadsheet.
- C-5: YCCAC MaineCare Member Processes.
- C-6: Memorandum to Volunteer Drivers re: Verification Notes.
- C-7: List of Covered Services.
- C-8: General Info for Writing Up Vouchers.
- C-9: Sample Volunteer Travel Voucher (with fictitious names).
- C-10: Instructions to Volunteer Drivers (with fictitious names).
- C-11: Instructions to Self-Transports.
- C-12: Sample Self-Transport Voucher.
- C-13: (not admitted in the record).
- C-14: Volunteer Handbook.
- C-15: "FY 2009 – 2012 MaineCare Summary".
- C-16: Fax cover sheet to Goodall ER with verification sheets attached.
- C-17: YCCA "MaineCare 'Friends & Family' Transportation Process".
- C-18: YCCA Transportation Reimbursement Policy (Friends & Family) dated April 27, 2009.
- C-19: Memo re: 7 day clinic clients dated June 3, 2011.

Other documents in the record:

- Longanecker letter dated August 22, 2014.
- YCCA letter dated September 12, 2014.
- Closing arguments by both parties.

RECOMMENDED FINDINGS OF FACT:

1. YCCA is a MaineCare provider of transportation services.

¹ YCCA brought boxes of documents to hearing which included the records supplied to the Department during the informal review process. Although not taken into the record at hearing, YCCA requested that the Commissioner reopen the record should she require further information. The Department also indicated that it had boxes of documents it could present if the Commissioner requested additional information.

2. Transportation providers such as YCCA, who are reimbursed for services by MaineCare, are required to enter into a MaineCare/Medicaid Provider Agreement. The terms of that agreement include:

D. Provider Reimbursement

1. Reimbursement. The Department will reimburse the Provider for MaineCare services provided to Members in accordance with the provisions of the MBM. Reimbursement is contingent on the Provider's, its agents' and employees' compliance with applicable Federal and State Medicaid laws and regulations, the MBM, and the terms and conditions of this Agreement, including but not limited to, the following requirements:

- (d) Payment Only for Medically Necessary Services Rendered. The Provider shall be reimbursed by the Department only for medically necessary care and services actually provided to, or in the case of certain facilities, reserved for an eligible Member under the provisions of this Agreement or the MBM.*
- (e) Billing Procedures. The Provider must submit bills in accordance with methods and procedures contained in the MBM and billing instructions issued by the Department. The Provider is expressly responsible for understanding and applying applicable regulations and requirements for proper billing. The Provider is also responsible for requesting instruction or training, available from the Department, if uncertain as to the application of these regulations and procedures.*

See, exhibit D-17 (page 7).

3. The transportation services at issue in this appeal are largely those provided by "family"² or those provided by "volunteer"³. YCCA also uses the term "self-transport" in reference to transportation provided by the friends and family program. *See, testimony of Garber.*

4. The Department's audit that resulted in the Notices of Violation at issue in this appeal was a specific review of MaineCare members attending a specific type of clinic for all nine (9) transportation providers audited, including YCCA, based on a six (6) month period of internal and public complaints of MaineCare members filing false claims. *See, Bishop testimony.*

5. MaineCare members request transportation services from, in this case, YCCA, and submit a claim for transportation costs. YCCA then pays the MaineCare member for the transportation costs, and in turn submits a claim to MaineCare. MaineCare then reimburses YCCA for the amount YCCA paid to the MaineCare member, or the "pass-through," plus a "base rate" to reimburse YCCA for arranging the transportation. *See, Bishop testimony.*

² Family includes the recipient, any member of the recipient's family, or any friend or neighbor who provides transportation services. *See, MCB Manual, Chapter II, Section 113.01-11.*

³ Volunteer means a person who contributes personal service to the community through the transportation provider's program but is not an employee of the transportation provider. Volunteers are recruited and designated as volunteer drivers by the transportation provider. A volunteer uses a vehicle other than the provider/agency's vehicle to transport Medicaid clients. *See, MCB Manual, Chapter II, Section 113.01-13.*

6. Michael Bishop has been an auditor since 1984 and has been with the Department for approximately six (6) years. Prior to his employment at DHHS, Mr. Bishop was employed by the federal government and was a supervisor for part of that time. *See*, Bishop testimony.

7. Mr. Bishop performed the audits for all the transportation providers. During the audit process, he examined actual treatment records provided by the clinic and also made a follow-up visit to the clinic to review additional treatment records. If Mr. Bishop did not find a treatment record for each specific date travel was reimbursed by the Department, then he found that an overpayment existed. *See*, Bishop testimony.

8. As a result of its audit, the Department issued five (5) Notices of Violation dated February 15, 2012, July 17, 2012, September 3, 2012, March 8, 2013 and July 22, 2013 and demanded recoupment from YCCA in the total amount of \$27,512.42. The Notices of Violation involved trips made by eight (8) MaineCare members during the time period from November 1, 2006 through December 31, 2011⁴. *See*, exhibits D-3a through D-7b.

9. YCCA requested an informal review of all five Notices of Violation. *See*, exhibits D-3a through D-7b.

10. The informal review process allowed YCCA the opportunity to submit additional evidence to the Department. The additional evidence included vouchers and verification notes kept by YCCA during the relevant time period. *See*, Bishop and Garber testimony.

11. If the additional evidence reflected that transportation was delivered to another provider (not the specific clinic at issue) where a MaineCare reimbursed service was given, the Department deducted costs associated with that trip from the total recoupment demand. Upon review, Mr. Bishop discovered that some trips were made to other providers on the dates in question and reduced the recoupment demand accordingly. *See*, Bishop testimony.

12. If the additional evidence had reflected that a member was transported to an appointment at the clinic, but for whatever reason, the medical provider was not available to deliver services (i.e. an emergency), the Department would have allowed the costs associated with that trip. Upon review, Mr. Bishop did not discover that to be the case for any of the eight MaineCare members named in the Notices of Sanction. Therefore, no reduction was made on that basis. *See*, Bishop testimony.

13. If the additional evidence had reflected that a third party payor (i.e. Medicare) had paid for the medically necessary service, but MaineCare had paid for the transportation on a specific date, the Department would have allowed the costs associated with that trip. Upon review, Mr. Bishop did not discover a third party payor for any of the eight MaineCare members named in the Notices of Sanction. Therefore, no reduction was made on that basis. *See*, Bishop testimony.

14. As a result of the informal review process, including the additional evidence provided by YCCA, the Department reduced the overpayment from \$27,512.42 to \$11,575.54. *See*, exhibit D-8.

11. On March 24, 2014, YCCA requested an administrative hearing. *See*, exhibit D-9.

12. An administrative hearing was held on August 21, 2014. *See*, exhibit HO-1.

13. At the administrative hearing, the parties agreed to leave the record open to allow the Department to review additional evidence regarding two (2) of the eight MaineCare members. *See*, Longanecker letter.

⁴ The time period was later shortened as a result of the informal review.

14. As a result of its post-hearing review of records, the Department further reduced its recoupment demand from \$11,575.54 to \$6,971.26.

15. YCCA was given the opportunity to reconvene the hearing in order to further cross-examine Mr. Bishop and/or submit additional evidence. YCCA declined.

RECOMMENDED DECISION:

The hearing officer respectfully recommends that the Commissioner find that the Department was correct when it determined that YCCA was overpaid \$6,971.26 for trips which did not comply with the MaineCare rules for reimbursement.

REASON FOR RECOMMENDATION:

A preponderance of the evidence presented in connection with this hearing reflects YCCA was overpaid \$6,971.26 for trips which did not comply with the MaineCare rules for reimbursement. There is no dispute that YCCA is a MaineCare provider of transportation services. As such, YCCA must comply with the MaineCare Benefits Manual and the terms of its provider agreement.

The MaineCare Benefits Manual, Chapter I Section 1.03-3(J) states that providers can only bill "for covered services and supplies delivered". The Manual further states that "covered services reimbursable by MaineCare must be medically necessary and described in the MaineCare Benefits Manual." (emphasis added) *See*, Manual Chapter 1, Section 1.06-1.

Transportation providers are further governed by the provisions of Chapter II, Section 113 of the Manual. Chapter 113.04-1 states, in part: "All full-service Medicaid transportation providers share the State's responsibility to assure necessary transportation of Medicaid recipients whose trips originate in their region to Medicaid covered services. " In cases where transportation is provided by family or volunteers, the Manual is also clear that such trips must be "prior arranged" by the transportation provider. *See*, Section 113.04-3 and 113.04-4.

The above provisions are mirrored in the terms of the provider agreement, which state in part: "The Provider shall be reimbursed by the Department only for medically necessary care and services actually provided to, or in the case of certain facilities, reserved for an eligible Member under the provisions of this Agreement or the MBM." (emphasis added). The agreement further states: "The Provider is expressly responsible for understanding and applying applicable regulations and requirements for proper billing. The Provider is also responsible for requesting instruction or training, available from the Department, if uncertain as to the application of these regulations and procedures. " *See*, exhibit D-17.

In this case, the Department conducted audits of all providers who delivered transportation services to MaineCare members to a specific type of clinic. The audits were initiated as a result of internal and external complaints of possible fraud by MaineCare members. YCCA was one of those transportation providers who delivered services for members to this specific clinic.

The Department's auditor, Mr. Bishop, initially conducted a review at his desk based on available records and then he traveled to the clinic. At the clinic he reviewed medical records for each MaineCare member and determined whether a MaineCare covered service was provided by that clinic on the same date that transportation cost was reimbursed. When he could not find a record of a service being delivered on a specific date, he found that reimbursement for transportation costs on that same date should not be allowed. At the

conclusion of his audit, Mr. Bishop found that YCCA should not have been reimbursed some transportation costs for eight MaineCare members. Again, the recoupment amounts Mr. Bishop included in the Notices of Sanction were for trips made to the clinic for which no record of any service provided on that same date was found. As described in the above Findings, the total initial amount of recoupment was reduced dramatically from \$27,512.42 to \$11,575.54 and then finally to \$6,971.26 following the administrative hearing.

In response to the Department's demand for recoupment, YCCA makes the following three broad arguments.

1. DHHS is seeking to impose requirements on provider that are not included in the MBM or the provider agreement.
2. Even if there was a requirement that medical services be provided to a MaineCare member on the same day of transport in order for reimbursement for transport to be allowed, verifying this by correlating MaineCare claims for clinical services with transport is arbitrary and non-conclusive.
3. Failing to reimburse a transportation provider for services it has delivered based on circumstances beyond its control and outside of its knowledge base is unreasonable and fundamentally unfair.
See, YCCA closing.

With regard to its first argument, YCCA states in part:

Section 113 requires two conditions to be met in order for a transportation provider to be reimbursed by MaineCare: the member transported is "a Medicaid recipient" on the day the transportation is provided, and the transport is "necessary". MBM Chapter I §1.15, referencing the federal regulations (42 CFR 431.53), defines "necessary" transportation as "non-emergency" transportation. The Department's position that a clinical service must be provided to a MaineCare member on the same day of transport in order for the transportation provider to be reimbursed is a requirement that appears nowhere in statute, rule, regulation, and is not contained in the provider agreement. (closing p.3)

In response to this argument, the Department states in part:

YCCA also takes the unsustainable position that all non-emergency transportation that it provides is categorically "necessary" and covered by MaineCare whether the transportation is for purpose of receiving a medically necessary service or not. YCCA Closing Argument at 3. However, the MaineCare rules are clear that "[a]ll covered services reimbursable by MaineCare must be medically necessary." MaineCare Benefits Manual Chapter I, §1.06-1 (Exh.10, at 22). YCCA contends that a reference to necessary transportation in the context of non-emergency transportation in §1.15 of Chapter I somehow trumps this threshold requirement, but such a reading would be more than strained, would render Chapter I internally inconsistent, and would breach this central tenet that these publicly funded services be medically necessary. (closing p. 6)

Upon review, the hearing officer agrees with the Department's argument above. The Manual (Chapter 1) and the provider agreement are clear that the provider shall only be reimbursed for services which are covered by MaineCare and are medically necessary, not just necessary.

With regard to its second argument, YCCA states in part:

The absence of a MaineCare claim for medical services is not conclusive evidence that a medical service was not provided.

Even if the Department is correct that under its existing rules, transportation is only reimbursable if provided on a day that a medical service is also actually provided- an assertion we dispute- a more reliable method of verifying compliance would be to require the transportation provider to provide proof of a corresponding medical visit. [...] A requirement that a transportation provider have documentation that a clinical service was provided on the day of transport appears nowhere. See, closing pages 5 and 6.

In response to this argument, the Department states in part:

However, as Mr. Bishop testified at hearing, he examined actual treatment records of the medical provider, not the medical provider's claims, so there can be no issue whether claims by a medical provider were accurate or complete. The actual records of the medical provider examined by Mr. Bishop categorically are an accurate indicator whether a covered service was provided to the member on any particular date. This distinction also negates York County Community Action's allegation that a service may have been delivered by the medical provider but simply not billed to MaineCare.

Upon review, the hearing officer agrees with the Department's position. Mr. Bishop was very clear and detailed in his testimony regarding the process he used to compare records from the medical provider with transportation dates. The record is also clear that Mr. Bishop reviewed, then re-reviewed records from the providers and YCCA in order to ensure that the overpayments were accurate.

With regard to its third argument, YCCA states in part:

Federal statute, and the associated regulations, prohibits clinical providers from disclosing information regarding treatment for substance abuse. (See 42 U.S.C. 290dd-2) The Health Insurance Affordability and Accountability Act ("HIPAA") imposes stringent restrictions on the disclosure by clinical providers of any personally identifiable health information. therefore, even if YCCAC wanted to independently verify a medical visit directly with the clinical provider, statues and regulation prohibit this verification.

It is important to be clear that MaineCare contracts with YCCAC to provide transportation. Once the transport is delivered, the cost of providing that service has been incurred. Put simply, not only does YCCAC not always know whether a medical visit was actually completed, it cannot know what a rider does after leaving its vehicle. To disallow reimbursement due to an eventuality that YCCAC can neither predict nor control is fundamentally unfair.

Retroactively disallowing a claim for reimbursement for transportation based on the assumption that a medical visit did not occur is not unlike disallowing a physician's claim for an office visit if the patient does not subsequently fill a prescription issued at the visit and bill MaineCare for the medication. (closing page 8).

In response, the Department states in part:

YCCA acknowledges the risk of overpayment by reciting its "alternative processes" to detect it. YCCA Closing argument at 7. Indeed, YCCA recognized the problem of unnecessary trips but claims it was prohibited by statute and regulations to verify that the trips were for covered services and even ended

the precautions it did have. The Department does not dictate how a provider must guard against misrepresentations and overpayments, yet had YCCA simply required from the MaineCare members an authorization for YCCA to verify services, it could have effectively guarded against overpayments, even with an intermittent effort. Instead, YCCA was willing to make payments without verification because it appears to have treated the money as a stream of tax dollars, and not as if it was its own.

Upon review, the hearing officer disagrees with YCCA's claim that the Department is disallowing reimbursement based on an "assumption" that a medical visit did not take place. Due to federal law, the Department was prohibited from providing the records it reviewed at the clinic to YCCA. However, Mr. Bishop credibly testified that he went to the clinic himself and reviewed those records personally. Again, Mr. Bishop is an auditor with over 30 years of experience in both the federal and state governments. YCCA did not attack his credibility at hearing. And the record is clear that Mr. Bishop was painstakingly meticulous in his review of member records. He gave YCCA every opportunity he possibly could to present evidence which would allow him to grant the transportation cost, even after this administrative hearing. Based on those factors, I find that the Department has not made any "assumptions" in the calculation of this overpayment and I further find that Mr. Bishop's testimony is enough to establish, by a preponderance of the evidence, that there is an absence of a medical record for the specific transportation dates contained in the final review decision.

YCCA makes a strong argument; however, that it cannot know what a person does after he/she leaves the vehicle. Why should YCCA be penalized for the wrongdoing of a MaineCare member? On the other hand, if YCCA had different practices in place to safeguard itself and MaineCare against such abuses (i.e. an authorization to verify services), then it may not have been faced with this overpayment.

Accordingly, the hearing officer recommends that the Commissioner uphold the Department's action in this case.

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 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: 12/5/14

Signed: 

Tamra A. Longanecker
Administrative Hearing Officer
Office of Administrative Hearings

cc: YCCA, c/o Connie Garber, Transportation Director, 6 Spruce Street, Sanford, ME 04073
Thomas C. Bradley, AAG, Office of the Attorney General, Augusta
Michael Bishop, Auditor II, Program Integrity, Augusta