



**Department of Health
and Human Services**

*Maine People Living
Safe, Healthy and Productive Lives*

Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services
Financial Services - Audit
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Appeal Decision

January 31, 2013

George Hill, Chief Executive Officer
Family Planning Association of Maine, Inc.
P.O. Box 587
Augusta, Maine 04332-0587

Re: Family Planning Association of Maine, Inc. FY 2010

Dear Mr. Hill:

We are in receipt of your letter dated October 29, 2012 in which you appeal the Department Report of Family Planning Association of Maine, Inc. for the fiscal year ended June 30, 2010 dated August 31, 2012.

Your agency is appealing Finding 2 and the balance due to the Department in the amount of \$36,016. Below are the agency's and Division of Audit's (Division) positions specific to the areas of dispute.

1. Agency Position Finding 2:

You state that for agreement CDC-10-047 the amount of program income-fees included on the SAO includes both program income from fees paid by individual subsidized clients (not available for cost sharing), as well as program income from 3rd party insurance (considered available for cost sharing). Therefore your agency did correctly prepare the ASF with regard to the adjustment of client fees – program. Your agency also disputes the finding related to subrecipient awards. You state that the MAAP rule in effect for this contract allows for a budget to actual variance in the subcontract category. The actual variance is within the permitted amount included in MAAP. Also, consistent with budget revision guidelines, the Association was within its authority to use agreement funds throughout the funded project for allowable expenses. Therefore you maintain that the final submitted ASF was correct in all regards and no funds are due the State.

Division of Audit Position:

We agree with your position regarding program income-fees. However, we disagree with your position regarding the subcontracts and variances to the budget. The MAAP rule that you cite pertains to when a budget revision is required and that rule states that when you *exceed* the budgeted amount by ten percent or \$1,000 whichever is greater, you are required to request a budget revision. In this instance your agency did not exceed the budgeted amount; you underspent one of the subcontracts by \$36,016 of State funds. When this happens, you are required to return the unspent funds to the Department.

As a result of the Appeal we have rewritten finding # 2 as follows: The agency did not follow the cost sharing methodology as reflected in the pro-forma. MAAP §.04,B, 3(d) states that "When developing a budget and cost sharing methodology for an agreement, the Department and Community Agency shall consider the restrictions on use of funds imposed by all revenue sources listed in the program budget." In the budget, \$2,189,512 of the funds were designated as subrecipient awards; of that amount, \$2,147,572 was awarded to the subrecipients. We have made an adjustment on Exhibit A-1; line 5G to eliminate the actual revenues and expenses for Subcontracts. The effect of the subcontract adjustment is a balance due to the Department in the amount of \$36,016. In the future, we recommend the agency follow the cost sharing methodology illustrated in the Pro-Forma ASF.

The amount due to the Department in the amount of \$36,016 has not changed.

Department Appeals, Resolutions and Sanctions:

Upon receipt of this appeal decision your agency has sixty (60) days to accept or continue your appeal. To continue at step b you must submit a written request to James D. Bivens, Director, Office of Administrative Hearings, Marquardt Building, 11 State House Station, Augusta, Maine 04333, identifying which decision(s) from the Appeal Decision you wish to continue to appeal. For complete appeal rights see *Notice of Appeal Rights of Community Agencies*.

If your Agency accepts this appeal decision, please make prompt payment of any balances due.

Please send your check for \$36,016, payable to the Treasurer, State of Maine, to Mary Garate, Accounting Technician, DHHS Service Center, Department of Administrative and Financial Services, 221 State Street, 11 State House Station, Augusta, Maine 04333.

If you have any questions, please do not hesitate to contact Anthony Madden, Audit Manager at 287-2834. Thank you.

Sincerely,



Herbert F. Downs
Director

cc:

Patricia Wall, DPS, DHHS
DHHS Receivables, DHHS Service Center, DAFS
Gibson, LeClair, CPA

NOTICE OF APPEAL RIGHTS OF COMMUNITY AGENCIES

MAAP SECTION .04 C. as amended December 7, 2006.

I. Appeals Procedures

Step a - Director of Audit

A Community Agency may appeal, in writing, the findings of an IPA audit or a Department examination within sixty (60) days after receiving the report from the Department. The appeal letter must identify the issues being appealed and include the specific supporting documentation. It must be addressed to the Director of the Office of Audit.

The Director or the Director's designee will initiate a review of the audit appeal and will, as needed, consult with program management responsible for the affected agreements, Agreement Administrators, and other applicable and appropriate staff. If, upon initial review, the Director, and any other parties involved, agree with the position of the Community Agency, the Director may proceed to issue a decision.

If the appeal is not resolved after the initial review, the Director or the Director's designee will convene an informal review meeting. The informal review meeting will involve the Office of Audit, the Community Agency, program management responsible for the affected agreements, Agreement Administrators, and other applicable and appropriate staff.

The Director or the Director's designee will issue a written decision on the appeal and the full basis of the decision to the Community Agency no later than sixty (60) days following the receipt of the appeal letter, unless both parties agree to a timed extension. The letter may be co-signed by other DHHS staff as applicable.

Step b - Office of Administrative Hearings

If the Community Agency wishes to proceed further in its appeal, it may appeal to the Office of Administrative Hearings within sixty (60) days of receiving the decision from the Director of the Office of Audit. The issue(s) on appeal will be limited to what was raised at the Step a appeal. The hearing will be a de novo Order of Reference appeal hearing. The Hearing Officer will issue a Recommended Decision with the Commissioner issuing a Final Decision.

Step c - Judicial appeal

The Commissioner's decision is the final Department appeals action. Any further appeal is to the Maine Superior Court pursuant to Maine Rules of Civil Procedure, Rule 80C and 5 M.R.S.A. §11001.