



Paul R. LePage, Governor

Mary C. Mayhew, Commissioner

Department of Health and Human Services
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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: **JUL 24 2015**

In Re: Shaw House—Appeal of MAAP Audit for fiscal years ended June 30, 2009 and June 30, 2010

RECOMMENDED DECISION

A *de novo* administrative hearing was held on June 4, 2015, at Bangor, Maine in the case of Shaw House before Hearing Officer Michael L. LeBlanc. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services. The hearing record was left open until June 26, 2015 to receive the parties' closing arguments and until July 3, 2015 to receive the parties' rebuttal arguments.

FACTUAL BACKGROUND AND ISSUE:

On or about July 31, 2013, the Department of Health and Human Services, Division of Audit (the "Department") issued its Examination Report Transmittal of its settlement of Shaw House's Agreement CBH-09-4106 and Agreement CBH-10-4106 for fiscal years ended June 30, 2009 and June 30, 2010. That Examination Report Transmittal found: 1) That with respect to Agreement CBH-09-4106, Shaw House owed the Department \$73,828.00; 2) That with respect to Agreement CBH-10-4106, Shaw House owed the Department \$46,430.00; 3) That the Department concurred with the Independent Public Accountant's ("IPA") finding 2010-1 for invoices and time sheets not having authorized approvals; and 4) That the Department concurred with the IPA's Finding 2010-2 for late filing of the MAAP audit. See Department's Exhibit 4.

On or about September 20, 2013, Shaw House appealed the Department's July 31, 2013 Examination Report Transmittal with respect to the first two (2) findings above, requesting that the Department allow it to use a combined settlement, offsetting a surplus in one service area with a deficit in another service area as the Department did in a 2011 agreement with the Department. See Department's Exhibit 5.

In an Appeal Decision dated April 28, 2014, the Department reiterated its position with respect to the Shaw House owing the Department \$73,828.00 and \$46,430.00. See Department's Exhibit 6.

On or about June 16, 2014, the Department filed the instant appeal, again requesting that the Department allow it to use a combined settlement, offsetting a surplus in one service area with a

deficit in another service area as the Department did in a 2011 agreement with the Department. See Department's Exhibit 7.

Pursuant to an Order of Reference dated July 22, 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 it determined that for the fiscal years ended June 30, 2009 and 2010, Shaw House did not follow the cost sharing and matching methodology described in the subject Agreement documents and as reflected in the pro forma Agreement Settlement Form included in the agreement documents, thereby owing the department a balance due of \$120,258?” See Exhibit HO-3.

Shaw House disagrees with the issue language in the Order of Reference. The Department disagrees with Shaw House. This is discussed below.

APPEARING ON BEHALF OF APPELLANT:

Charles F. Dingman, Esq.
Katrina Clearwater, Esq.
Sally Tardiff, Executive Director, Shaw House
Rachel Jackson-Hodsdon, Financial Consultant for Shaw House
Mark Chellis, CPA

APPEARING ON BEHALF OF AGENCY:

Jane Gregory, AAG
Anthony Madden, Audit Manager, Division of Audit

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1. Letter, dated 3/17/15, to Attorneys Gregory and Dingman from Hearing Officer LeBlanc
- HO-2. Notice of Hearing dated 7/23/14
- HO-3. Order of Reference dated 7/22/14
- HO-4. Hearing Report dated 7/14/14
- HO-5. Letter, dated 7/2/14, to Sally Tardiff from James D. Bivins, Esq.
- HO-6. Letter, dated 9/16/14, to Hearing Officer Pickering from Attorney Dingman
- HO-7. E-mails dated 9/16/14 & 9/17/14
- HO-8. E-mails dated 9/16/14 & 9/18/14
- HO-9. Rescheduling notice dated 9/25/14
- HO-10. E-mails dated 11/7/14
- HO-11. Rescheduling notice dated 11/19/14
- HO-12. E-mails dated 1/5/15 & 1/6/15
- HO-13. Rescheduling notice dated 2/18/15

- HO-14. Letter, dated 2/24/15, to Attorneys Gregory and Dingman from Hearing Officer LeBlanc
- HO-15. E-mails dated 2/24/15 & 2/27/15
- HO-16. E-mails dated 2/24/15, 2/27/15 & 3/4/15
- HO-17. Letter, dated 3/10/15, to Attorneys Gregory and Dingman from Hearing Officer LeBlanc
- HO-18. E-mails dated 2/24/15, 2/27/15, 3/4/15 & 3/10/15
- HO-19. E-mails dated 5/16/15, 5/18/15 & 5/19/15
- HO-20. E-mails dated 5/28/15 & 5/29/15
- HO-21. E-mails dated 6/12/15
- HO-22. E-mail, dated 6/12/15, to Attorneys Gregory and Dingman from Hearing Officer LeBlanc
- HO-23. E-mail, dated 6/11/15, to Chief Administrative Hearing Officer James D. Bivins, Esq. from Attorney Dingman (requesting amendment to Order of Reference issue language)
- HO-24. E-mail, dated 6/17/15, to Chief Administrative Hearing Officer Bivins from Attorney Gregory (opposing an amendment to Order of Reference issue language)
- HO-25. E-mail, dated 6/18/15, to Chief Administrative Hearing Officer Bivins from Attorney Dingman
- HO-26. Letter, dated 6/18/15, to Attorneys Dingman and Gregory from Chief Administrative Hearing Officer Bivins
- HO-27. Department's closing arguments
- HO-28. Shaw House's closing arguments
- HO-29. Department's rebuttal arguments
- HO-30. Shaw House's rebuttal arguments

Department Exhibits:

1. *Maine Uniform Accounting and Auditing Practices for Community Agencies*, 10-144 CMR Chapter 30, Effective December 16, 2006
2. Shaw House Agreement No: CBH-09-4106 for the period July 1, 2008 to June 30, 2009 (2009 Contract)
3. Shaw House Agreement No: CBH-10-4106 for the period July 1, 2009 to June 30, 2010 (2010 Contract) and November 20, 2009 Department Notice of Disencumbrance to Shaw House
4. July 31, 2013 DHHS Examination Report Transmittal for the fiscal years ended June 30, 2009 and 2010
5. September 20, 2013 Shaw House appeal letter, appealing the July 31, 2013 Examination Report Transmittal, with two pages of attachments
6. April 28, 2014 DHHS Appeal Decision for Shaw House for FY 2009-2010
7. June 16, 2014 Shaw House appeal letter, appealing the April 28, 2014 DHHS Appeal Decision, with 22 pages of attachments
8. 2009 Contract, DHHS Work Papers, with cover sheet entitled "SSA Index"
 1. Index
 - 1.1 Review Program
 - 1.2 Reviewer's Notes
 - 1.3 Examination notes
 - 1.4 SSA Checklist
 - 1.5 Desk review (if applicable)
 2. Corporate Register

3. Financial Statements, A-133; MAAP/FFRs [Final Financial; Report]
4. Warehouse Payments
5. -BLANK-
6. Department approval letters, pertinent correspondence, etc.
7. -BLANK-
8. Auditor's supporting work papers (to be indexed by auditor)
9. 2010 Contract, DHHS Work Papers, with cover sheet entitled "SSA Index"
 1. Index
 - 1.1 Review Program
 - 1.2 Reviewer's notes
 - 1.3 Examination Notes
 - 1.4 SSA Checklist
 - 1.5 Desk Reviews (if applicable)
 2. Corporate Register
 3. Financial Statements; A-133; MAAP/FFRs
 4. Warehouse payments
 5. -BLANK-
 6. Department approval letters, pertinent correspondence, etc.
 7. -BLANK-
 8. Auditor's supporting work papers (to be indexed by auditor)
10. November 20, 2009 Order Curtailing Allotments Pursuant to title 5 M.R.S.A. Section 1688; Memo, dated 11/20/2009, to all Departments from Betty M. Lamoreau, with sample template

Appellant Exhibits:

- A. E-mail, dated 11/27/13 & 10/6/13, to and from Sally Tardiff and Thomas Constantine
- B. Examination Report Transmittal dated 2/24/14

RECOMMENDED FINDINGS OF FACT:

1. Notice of these proceedings was given in a timely and adequate manner. Shaw House made a timely appeal.
2. Shaw House is a nonprofit entity that provides services to youths who are homeless or are at risk of becoming homeless.
3. Shaw House is the only homeless youth program serving the five (5) northeast counties of Maine.
4. Shaw House offers a continuum of services through five (5) programs: Day Program, Streetlight Outreach, Rapid Response, Residential (Mason House), and Transitional Living. Only four (4) of these programs are at issue in this appeal: Day Program, Streetlight Outreach, Rapid Response, and Mason House.
5. The Streetlight Outreach Program seeks to provide homeless youth with survival skills and basic needs assessment, and encourages the homeless youths to access Shaw House's shelter.
6. The other three (3) programs integrate with the Streetlight Outreach Program by providing homeless youths with someplace to stay at night, food, basic needs assistance, clothing, access to showers and laundry, and case management.

7. Shaw House makes an effort toward reintegrating the youth with that youth's family, with Mason House providing long-term housing if reintegration is unwarranted or unsuccessful.
8. Shaw House receives assistance in the form of State monies with some Federal monies through Purchase of Service Contracts with the Department of Health and Human Services.
9. The fiscal years at issue are fiscal year ended June 30, 2009 and fiscal year ended June 30, 2010.
10. The contracts at issue in the instant appeal are Agreement CBH-09-4106 (the "2009 Contract") and Agreement CBH-10-4106 (the "2010 Contract"). Both contracts are governed by *Maine Uniform Accounting and Auditing Practices for Community Agencies* ("MAAP Rules") effective December 16, 2006.
11. Both contracts are settled by the cost sharing method. With the cost sharing method, any deficits belong to Shaw House and any surpluses must be returned to the Department.
12. Each contract contains a pro forma that Shaw House and the Department are required to use in settling each contract.
13. The 2009 Contract provided \$223,000.00 for services to homeless youths through the four (4) programs at issue, with \$188,500.00 for the Day Program, the Streetlight Outreach Program, and the Rapid Response Program; and \$34,500.00 for Mason House.
14. The 2009 contract provides for two (2) settlements, with the Day Program, the Streetlight Outreach Program, and the Rapid Response Program combined in a settlement and the Mason House in a separate settlement.
15. The 2010 contract initially provided \$223,000.00 for services to homeless youths through the four (4) programs at issue, with \$45,000.00 for the Day Program, \$68,000.00 for the Streetlight Outreach Program, \$75,500.00 for the Rapid Response Program, and \$34,500.00 for Mason House. However, based on Executive Order (05FY10/11) the funding was reduced by \$10,852.00. The entire reduction was applied to the Day Program, reducing it to \$34,148.00.
16. The 2010 contract provides for four (4) separate settlements, one (1) each for the Day Program, the Streetlight Outreach Program, the Rapid Response Program, and Mason House.
17. Shaw House submitted contract documentation for the 2009 and 2010 contracts to the Department for the Department's audit. In each submission, Shaw House submitted pro formas with combined settlement figures.
18. In its Examination Report Transmittal, the Department found with respect to the 2009 Contract that of the \$188,500.00 allotted for the Day Program, the Streetlight Outreach Program, and the Rapid Response Program, Shaw House was actually paid \$187,367.00, and that allowable expenses totaled \$113,539.00, leaving a surplus of \$73,828.00 due to the Department. For Mason Place, the \$34,500.00 allotted was actual paid, and allowable expenses totaled \$307,066.00, leaving a deficit of \$272,566.00. Shaw House does not dispute the Department made these determinations in accordance with the 2009 Contract.

19. In its Examination Report Transmittal, the Department found with respect to the 2010 Contract that it actually paid the \$34,148.00 allotted (after the \$10,852.00 disencumbrance) for the Day Program and allowable expenses were \$134,603.00, leaving a deficit of \$100,455.00. For the Outreach Program, the \$68,000.00 allotted was actually paid and allowable expenses were \$164,958.00, leaving a deficit of \$96,958.00. For the Rapid Response Program, the \$75,000.00 allotted was actually paid and allowable expenses were \$63,570.00, leaving a surplus of \$11,930.00 due to the Department. For Mason Place, the \$34,500.00 allotted was actually paid and allowable expense was \$0.00, leaving a surplus of \$34,500.00 due to the Department. Shaw House does not dispute the Department made these determinations in accordance with the 2010 Contract.
20. On or about September 20, 2013, Shaw House appealed the Department's July 31, 2013 Examination Report Transmittal with respect to the findings that it owed the Department \$73,828.00 for the 2009 Contract and \$46,430.00 for the 2010 Contract. The basis of Shaw House's appeal was, "Shaw house is requesting that these Agreements be settled using a combined settlement, and is providing supporting documentation indicating that the Agreement CFS-11-8304, which replaced the former VBH-4106 Agreement to provide homeless youth services, was settled on a combined basis."
21. On or about April 28, 2014, the Department issued an Appeal Decision which reiterated its position with respect to Shaw House owing the Department \$73,828.00 and \$46,430.00. In response to Shaw House's request to settle Agreements CBH-09-4106 and CBH-10-4106 using combined settlements, the Department stated, "You state that the Division of Audit settled the agreements as was indicated in the agreement pro formas but are requesting these agreements to be settled using a combined settlement. You have given documentation that a 2011 agreement with the Department allowed you to offset a surplus in one service area with a deficit in another service are. We disagree with your position. The Division cannot change the method of settlement which was agreed upon in the contract, three years after the agreements have terminated."
22. On or about June 16, 2014, Shaw House requested an administrative hearing, stating in relevant part, "We have received notification from Department of Health and Human Services informing us that our appeal regarding the closeout of Agreements CBH-09-4106 and CBH-10-4106 has not been approved. The Division of Audit disagrees with our position regarding these grants, which is that Shaw House should be allowed to settle these agreements using a combined settlement, and upholds that there is a balance of \$120,258 due to the Department. Shaw House disagrees with the position of the Division of Audit and has provided documentation indicating that in 2011 the Department Shaw House to offset a surplus in one service area with a deficit in another service area... This is a written request notifying you that we disagree with the Department on the above decision and wish to continue to appeal."
23. The Department does not dispute that, if the 2009 and 2010 contracts were settled on a combined basis as Shaw House has requested, Shaw House would not owe the Department anything.
24. The Department does not dispute that on or about December 9, 2011, the Department's Office of Child and Family Services allowed the contract for Shaw House's fiscal year ended

June 30, 2011 to be settled on a combined basis, thereby reducing a payment owed to the Department to \$0.00.

RECOMMENDED DECISION:

The Department was correct when it determined that for the fiscal years ended June 30, 2009 and 2010, Shaw House did not follow the cost sharing and matching methodology described in the subject Agreement documents and as reflected in the pro forma Agreement Settlement Form included in the agreement documents. For the reasons stated below, the Hearing Officer is unable to recommend whether Shaw House owes the Department any money.

REASON FOR RECOMMENDATION:

Shaw House is a nonprofit entity that provides services to youth who are homeless or are at risk of becoming homeless. See Testimony of Sally Tardiff ("Ms. Tardiff"). Shaw House is the only homeless youth program serving the five (5) northeast counties of Maine. *Id.* Shaw House offers a continuum of services through five (5) programs: Day Program, Streetlight Outreach, Rapid Response, Residential (Mason House), and Transitional Living. Only four (4) of these programs are at issue in this appeal: Day Program, Streetlight Outreach, Rapid Response, and Mason House. See Department Exhibits 2, 3 & 4. The Streetlight Outreach Program seeks to provide homeless youth with survival skills and basic needs assessment, and encourages the homeless youths to access Shaw House's shelter. See Testimony of Ms. Tardiff. The other three (3) programs integrate with the Streetlight Outreach Program by providing homeless youths with someplace to stay at night, food, basic needs assistance, clothing, access to showers and laundry, and case management. *Id.* An effort toward reintegrating the youth with that youth's family is made, with Mason House providing long-term housing if reintegration is unwarranted or unsuccessful. *Id.*

Shaw House receives assistance in the form of State monies with some Federal monies through Purchase of Service Contracts with the Department of Health and Human Services. See Testimony of Anthony Madden ("Mr. Madden"). The fiscal years at issue are fiscal year ended June 30, 2009 and fiscal year ended June 30, 2010. *Id.* The contracts at issue in the instant appeal are Agreement CBH-09-4106 (the "2009 Contract") and Agreement CBH-10-4106 (the "2010 Contract"). *Id.* See also Department Exhibits 2, 3, 4, 8 & 9. Both contracts are governed by *Maine Uniform Accounting and Auditing Practices for Community Agencies* ("MAAP Rules") effective December 16, 2006. See Department Exhibit 1. Both contracts are settled by the cost sharing method. See Testimony of Mr. Madden. With the cost sharing method, any deficits belong to Shaw House and any surpluses must be returned to the Department. *Id.* Each contract contains a pro forma that Shaw House and the Department are required to use in settling each contract. See Department Exhibits 2 and 3.

The 2009 Contract provided \$223,000.00 for services to homeless youths through the four (4) above-mentioned programs, with \$188,500.00 for the Day Program, the Streetlight Outreach Program, and the Rapid Response Program; and \$34,500.00 for Mason House. See Department Exhibit 2, Riders F-1. The 2009 contract provides for two (2) settlements, with the Day Program, the Streetlight Outreach Program, and the Rapid Response Program combined in a settlement and the Mason House in a separate settlement. *Id.*

The 2010 contract initially provided \$223,000.00 for services to homeless youths through the four (4) above-mentioned programs, with \$45,000.00 for the Day Program, \$68,000.00 for the

Streetlight Outreach Program, \$75,500.00 for the Rapid Response Program, and \$34,500.00 for Mason House. See Department Exhibit 3, Riders F-1. The 2010 contract provides for four (4) separate settlements, one (1) each for the Day Program, the Streetlight Outreach Program, the Rapid Response Program, and Mason House. *Id.* However, based on Executive Order (05FY10/11) the funding was reduced by \$10,852.00. See Testimony of Mr. Madden and Department Exhibit 3. The entire reduction was applied to the Day Program. See Department Exhibit 4, Exh B.

Shaw House submitted contract documentation for the 2009 and 2010 contracts to the Department for the Department's audit. See Department Exhibits 8 & 9, respectively. In each submission, Shaw House submitted combined settlement figures. *Id.*

In its Examination Report Transmittal, the Department found with respect to the 2009 Contract that of the \$188,500.00 allotted for the Day Program, the Streetlight Outreach Program, and the Rapid Response Program, Shaw House was actually paid \$187,367.00, and that allowable expenses totaled \$113,539.00, leaving a surplus of \$73,828.00 due to the Department. See Department Exhibit 4, Exh A. For Mason Place, the \$34,500.00 allotted was actual paid, and allowable expenses totaled \$307,066.00, leaving a deficit of \$272,566.00. *Id.* Shaw House does not dispute the Department made these determinations in accordance with the 2009 Contract.

In its Examination Report Transmittal, the Department found with respect to the 2010 Contract that it actually paid the \$34,148.00 allotted (after the \$10,852.00 disencumbrance) for the Day Program and allowable expenses were \$134,603.00, leaving a deficit of \$100,455.00. See Department Exhibit 4, Exh B. For the Outreach Program, the \$68,000.00 allotted was actually paid and allowable expenses were \$164,958.00, leaving a deficit of \$96,958.00. *Id.* For the Rapid Response Program, the \$75,000.00 allotted was actually paid and allowable expenses were \$63,570.00, leaving a surplus of \$11,930.00 due to the Department. *Id.* For Mason Place, the \$34,500.00 allotted was actually paid and allowable expense was \$0.00, leaving a surplus of \$34,500.00 due to the Department. *Id.* Shaw House does not dispute the Department made these determinations in accordance with the 2010 Contract.

On or about July 31, 2013, the Department of Health and Human Services, Division of Audit (the "Department") issued its Examination Report Transmittal of its settlement of Shaw House's Agreement CBH-09-4106 and Agreement CBH-10-4106 for fiscal years ended June 30, 2009 and June 30, 2010. That Examination Report Transmittal found: 1) That with respect to Agreement CBH-09-4106, Shaw House owed the Department \$73,828.00; 2) That with respect to Agreement CBH-10-4106, Shaw House owed the Department \$46,430.00; 3) That the Department concurred with the Institute of Public Accountants ("IPA") finding 2010-1 for invoices and time sheets not having authorized approvals; and 4) That the Department concurred with the IPA Finding 2010-2 for late filing of the MAAP audit. See Department Exhibit 4. In finding that Shaw House owed the Department a total of \$120,258.00, the Department settled Agreement CBH-09-4106 with two (2) pro formas, with the Day Program, the Streetlight Outreach Program, and the Rapid Response Program combined in a pro forma and the Mason House in a pro forma; the Department settled Agreement CBH-10-4106 with four (4) separate pro formas, one (1) each for the Day Program, the Streetlight Outreach Program, and the Rapid Response Program. *Id.*

On or about September 20, 2013, Shaw House appealed the Department's July 31, 2013 Examination Report Transmittal with respect to the findings that it owed the Department

\$73,828.00 for the 2009 Contract and \$46,430.00 for the 2010 Contract. See Department Exhibit 5. The basis of Shaw House's appeal was, "Shaw house is requesting that these Agreements be settled using a combined settlement, and is providing supporting documentation indicating that the Agreement CFS-11-8304, which replaced the former VBH-4106 Agreement to provide homeless youth services, was settled on a combined basis." *Id.*

On or about April 28, 2014, the Department issued an Appeal Decision which reiterated its position with respect to Shaw House owing the Department \$73,828.00 and \$46,430.00. See Department Exhibit 6. In response to Shaw House's request to settle Agreements CBH-09-4106 and CBH-10-4106 using combined settlements, the Department stated, "You state that the Division of Audit settled the agreements as was indicated in the agreement pro formas but are requesting these agreements to be settled using a combined settlement. You have given documentation that a 2011 agreement with the Department allowed you to offset a surplus in one service area with a deficit in another service are. We disagree with your position. The Division cannot change the method of settlement which was agreed upon in the contract, three years after the agreements have terminated." *Id.*

On or about June 16, 2014, Shaw House requested an administrative hearing, stating in relevant part, "We have received notification from Department of Health and Human Services informing us that our appeal regarding the closeout of Agreements CBJ-09-4106 and CBH-10-4106 has not been approved. The Division of Audit disagrees with our position regarding these grants, which is that Shaw House should be allowed to settle these agreements using a combined settlement, and upholds that there is a balance of \$120,258 due to the Department. Shaw House disagrees with the position of the Division of Audit and has provided documentation indicating that in 2011 the Department Shaw House to offset a surplus in one service area with a deficit in another service area... This is a written request notifying you that we disagree with the Department on the above decision and wish to continue to appeal." See Department Exhibit 7.

The Department does not dispute that, if the 2009 and 2010 contracts were settled on a combined basis as Shaw House has requested, Shaw House would not owe the Department anything. The Department does not dispute that on or about December 9, 2011, the Department's Office of Child and Family Services allowed the contract for Shaw House's fiscal year ended June 30, 2011 to be settled on a combined basis, thereby reducing a payment owed to the Department to \$0.00. See Department Exhibit 5.

The Department does not dispute that the sole issue at this hearing is whether Shaw House's request to settle the 2009 Contract and the 2010 Contract on combined bases should have been granted.

Hearing Officer: And again my understanding of the issue coming in is that the Shaw House believes that this should have been settled in such a way that balances should have offset-

AAG Gregory: Exactly.

Hearing Officer: and the Department disagrees with that.

Attorney Dingman: Correct. See Recording, 29:56 to 30:12.

"The community agency may request a budget revision at any time." See MAAP Rules, Section .04 (B) (2). See also Testimony of Mr. Madden.

The Department, i.e. the Division of Audit represents that it does not make any decisions on requests for a budget revision, i.e. a contract revision. It further argues that such a request must be prior approved and that Shaw House has not produced any evidence that it had prior approval. Finally, it argues that the issue of whether the Department was correct in not approving Shaw House's request for a combined settlement is not included in the Order of Reference issue as stated in the Background and Issue section above.

The Hearing Officer accepts that the Division of Audit does not make decisions regarding contract revision requests. The question of prior approval is problematic.

AAG Gregory: And to your knowledge is there, is there any approval of the Department to revise the 2009, 2010 contracts?

Mr. Madden: No there isn't.

AAG Gregory: Thank you.

Hearing Officer: What part of this massive Department would have made the approval, the Office of Child and Family Services?

Mr. Madden: Um could be. Probably through contract management, Division of Contract Management. They manage all of the contracts the Department has.

Hearing Officer: Okay.

Mr. Madden: They probably would have gone through a Program Administrator which in turn would have gone to the program Child and Family Services to get that approval-

Hearing Officer: Was that processed then?

Mr. Madden: Was it done?

Hearing Officer: Yes.

Mr. Madden: Um, I think and the time-

Hearing Officer: The basis of my question, you answered a previous question that no approval had been given.

Mr. Madden: Right.

Hearing Officer: So, my, my question is were the, were the, was the part of the Department that would have been authorized to give such an approval contacted about an approval or-

Mr. Madden: I don't believe-

Hearing Officer: or is it they didn't give it because they had no knowledge of it?

Mr. Madden: I don't believe it was done during the agreement period, but since then I believe it's been done more than once.

Hearing Officer: Okay. Thank you. See Recording, at 57:33.

Additionally, during Attorney Dingman's cross-examination, Mr. Madden testified that Division of Audit Director Herbert Downs contacted someone about settling the contracts as one and the request was denied, but that he did not know by whom. See Testimony of Mr. Madden.

Shaw House brought up the issue of the Order of Reference issue at the end of the taking of evidence at the hearing. As the parties could not agree on any amendment to the Order of Reference issue, the parties raised the issue before Chief Administrative Hearing Officer James

D. Bivins, Esq., who ultimately denied Shaw House's request to amend the Order of Reference issue. See Exhibit HO-26. The denial was based in large part on, "[P]ursuant to the MAAP regulations, only issues which were appealed in the appeal letter can be heard in the administrative hearing. I agree with Ms. Gregory that the Order of Reference issue clearly articulates the Shaw House's appeal issues as stated in its September 20, 2013 appeal letter." *Id.*

Based on all of the above findings, the Hearing Officer urges the Commissioner to conclude, as the Hearing Officer concludes, that Shaw House raised the issue of settling the contracts as one at every stage of this appeal and therefore preserved that issue for the Commissioner's ultimate final decision. Additionally, restating the above, the Department agreed this was the issue.

Hearing Officer: And again my understanding of the issue coming in is that the Shaw House believes that this should have been settled in such a way that balances should have offset-

AAG Gregory: Exactly.

Hearing Officer: and the Department disagrees with that.

Attorney Dingman: Correct. See Recording, 29:56 to 30:12.

Based on the fact that there is no dispute that the Department settled the 2009 and 2010 contracts in conformity with those contracts, the decision recommended by the Department that the Department was correct when it determined that for the fiscal years ended June 30, 2009 and 2010, Shaw House did not follow the cost sharing and matching methodology described in the subject Agreement documents and as reflected in the pro forma Agreement Settlement Form included in the agreement documents, thereby owing the department a balance due of \$120,258 has merit. However, this does not address the issue raised by Shaw House in this appeal. As stated above, addressing that issue is problematic. It is clear that Shaw House raised the issue. It is clear that the Division of Audit answered the issue by stating, "The Division cannot change the method of settlement which was agreed upon in the contract, three years after the agreements have terminated." See Department Exhibit 6. However, Mr. Madden testified that the Division of Audit does not have the authority to change the method of settlement. Therefore, the lapse of time between the agreement termination and the request is irrelevant. Besides, the Division of Audit agrees that the request can be made at any time. The evidence of record does not rise to a preponderance to find that the appropriate part of the Department of Health and Human Services was notified of Shaw House's request or, if so, what the response was. Most importantly, the MAAP Rules do not contain any guidance to determine whether the Department is correct to grant or deny a request to amend the Agreements. Therefore, the Hearing Officer concludes that it is discretionary. As such, it is within the Commissioner's discretion.

If the Commissioner determines Shaw House's request to settle each Agreement as a combined settlement should have been granted, then the Hearing Officer recommends the Commissioner conclude that Shaw House does not owe the Department any money.

If the commissioner concludes that Shaw House's request to settle each Agreement as a combined settlement should have been denied, then the Hearing Officer recommends the Commissioner conclude that Shaw House owes the Department \$120,258.

MANUAL CITATIONS:

Maine Uniform Accounting and Auditing Practices for Community Agencies, 10-144 CMR
Chapter 30, Effective December 16, 2006

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.

THE INFORMATION CONTAINED IN THIS DECISION IS CONFIDENTIAL. *See, e.g.*, 42 U.S.C. section 1396a(a)(7), 22 M.R.S.A. section 42(2) and section 1828(1)(A), 42 C.F.R. section 431.304, MaineCare Benefits Manual, Ch.1, sec. 1.03-5. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.

DATED: July 24, 2015

SIGNED: Michael L. LeBlanc
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Administrative Hearing Officer
Division of Administrative Hearings

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