

DEPARTMENT OF DEVELOPMENTAL SERVICES'
AUDIT OF
VISIONARY LIFESTYLES LLC

Program:

Supported Living Services – ZS0899

July 24, 2019

Audit Period: January 1, 2015, through December 31, 2015

Audit Section

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VISIONARY LIFESTYLES LLC

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EXECUTIVE SUMMARY

The Department of Developmental Services (DDS) has audited Visionary Lifestyles LLC (VL). The audit was performed upon the Supported Living Services (SLS) for the period of January 1, 2015, through December 31, 2015.

The audit disclosed the following issue of non-compliance:

Finding 1: Supported Living Services – Unsupported Billings

The review of VL's SLS program, Vendor Number ZS0899, revealed that VL had a total of \$103,694 of unsupported billings for direct-care services and \$950 of unsupported billings for mileage to San Andreas Regional Center (SARC).

The total of unsupported billings identified in this audit amounts to \$104,644 and is due back to DDS. A detailed discussion of the finding is contained in the Finding and Recommendation section of this report.

BACKGROUND

DDS is responsible, under the Lanterman Developmental Disabilities Services Act, for ensuring that persons with developmental disabilities receive the services and supports they need to lead more independent, productive and normal lives. DDS contracts with 21 private, nonprofit regional centers that provide fixed points of contact in the community for serving eligible individuals with developmental disabilities and their families in California. In order for regional centers to fulfill their objectives, they secure services and supports from qualified service providers and/or contractors. Pursuant to the Welfare and Institutions (W&I) Code, Section 4648.1, DDS has the authority to audit those service providers and/or contractors that provide services and supports to persons with developmental disabilities.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The audit was conducted to determine whether VL's SLS program was compliant with the W&I Code, California Code of Regulations (CCR), Title 17, and the regional center's contracts with VL for the period of January 1, 2015, through December 31, 2015.

Scope

The audit was conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS) issued by the Comptroller General of the United States. The auditors did not review the financial statements of VL, nor was this audit intended to express an opinion on the financial statements. The auditors limited the review of VL's internal controls to gain an understanding of the transaction flow and invoice preparation process, as necessary, to develop appropriate auditing procedures. The audit scope was limited to planning and performing audit procedures necessary to obtain reasonable assurance that VL complied with W&I Code and CCR, Title 17. Also, any complaints that DDS' Audit Section was aware of regarding non-compliance with laws and regulations were reviewed and addressed during the course of the audit.

The audit scope was determined by reviewing the program provided to SARC that utilized VL's services during the audit period. VL provided one type of service, which DDS audited. By analyzing the information received from the vendor and an internal control questionnaire, it was determined that a sampled period of one full year would be sufficient to fulfill the audit objectives.

Supported Living Services

During the audit period, VL operated one SLS program. The audit included the review of VL's SLS program, Vendor Number ZS0899, Service Code (SC) 896 and testing was done for the sampled period of January 1, 2015, through December 31, 2015.

Methodology

The following methodology was used by DDS to ensure the audit objectives were met. The methodology was designed to obtain reasonable assurance that the evidence provided was sufficient and appropriate to support the finding and recommendation in relation to the audit objectives. The procedures performed included, but were not limited to, the following:

- Reviewed vendor files for contract, rate letter, program design, purchase of service (POS) authorizations and correspondence pertinent to the review.
- Interviewed regional center staff for vendor background information and to obtain insight into the vendor's operations.
- Interviewed vendor staff and management to gain an understanding of its accounting procedures and processes for regional center billing.
- Obtained and reviewed the vendor's internal control questionnaire.
- Reviewed vendor's payroll records to determine if the vendor had sufficient and appropriate evidence to support the direct care services billed to the regional center.

CONCLUSION

Based upon an item identified in the Finding and Recommendation section, VL had a finding of non-compliance with the requirements of CCR, Title 17 and Federal and State tax regulations.

VIEWS OF RESPONSIBLE OFFICIALS

DDS issued a draft audit report on November 28, 2016. The finding in the report was discussed at the exit telephone conference with VL on December 13, 2016. During the exit telephone conference, VL stated that the hours of its employees whose income was reported by Form 1099-MISC, should have been included in the computation of provided hours for direct-care services.

Subsequent to the exit telephone conference on January 10, 2017, VL provided a written response stating it disagreed with the finding in the draft audit report and provided documentation to support additional hours of service and mileage billed.

RESTRICTED USE

This report is solely for the information and use of DDS, Department of Health Care Services, SARC and VL. This restriction is not intended to limit distribution of this report, which is a matter of public record.

FINDING AND RECOMMENDATION

Finding 1: Supported Living Services – Unsupported Billings

The review of VL’s SLS program, Vendor Number ZS0899, for the sampled period of January 1, 2015, through December 31, 2015, revealed that VL had unsupported billings for services billed to SARC. Unsupported billings occurred due to a lack of appropriate documentation to support the units of service billed to SARC.

The review of VL’s payroll documentation revealed that the units of service paid to its employees for providing direct-care service to consumers did not substantiate the units of service billed to SARC. VL was not able to provide appropriate supporting documentation for 7,377 hours of services billed. The lack of documentation resulted in unsupported billings for direct-care to SARC in the amount of \$103,694.

Also, VL was not able to provide appropriate supporting documentation for 2,964 miles billed to SARC. The lack of documentation resulted in unsupported billings for mileage to SARC in the amount of \$950. The total unsupported billings in the amount of \$104,644 is due back to DDS. (See Attachment A)

W&I Code, Section 4648.1(e)(1) states:

- “(e) A regional center or the department may recover from the provider funds paid for services when the department or the regional center determines that either of the following has occurred:
 - (1) The services were not provided in accordance with the regional center’s contract or authorization with the provider, or with applicable state laws or regulations.”

CCR, Title 17, Section 54326(a)(3) and (10) states:

- “(a) All vendors shall: ...
 - (3) Maintain records of services provided to consumers in sufficient detail to verify deliver of the units of service billed: ...
 - (10) Bill only for services which are actually provided to consumers and which have been authorized by the referring regional center.

CCR, Title 17, Section 50604(d) and (e) states:

- “(d) All service providers shall maintain complete service records to support all billing/invoicing for each regional center consumer in the program....
- (e) All service providers’ records shall be supported by source documentation.”

Recommendation:

VL must reimburse to DDS \$104,644 for the unsupported billings. In addition, VL should develop and implement policies and procedures to ensure that proper documentation is maintained to support the amounts billed to SARC.

VL’s Response:

In its response dated January 10, 2017, VL disagreed with the finding in the draft audit report and provided its employees’ timesheets to refute the finding. During the exit teleconference held on December 13, 2016, VL also stated that it had employees whose income was reported on a Form 1099-MISC. VL further stated it felt that such employees’ hours should have been included in computing the hours of service provided.

See Attachment B for the full text of VL’s response, Attachment C for DDS’ evaluation of VL’s response and Attachment D for the Summary of Unsupported Billings Adjustments.

ATTACHMENT A

VISIONARY LIFESTYLES, LLC

To request a copy of the attachments for this audit report, please contact the DDS Audit Section at (916) 654-3695.

RESPONSE TO AUDIT FINDING

VISIONARY LIFESTYLES, LLC

To request a copy of the vendor's response to the audit findings, please contact the DDS Audit Section at (916) 654-3695.

THE DEPARTMENT OF DEVELOPMENTAL SERVICES' EVALUATION OF VISIONARY LIFESTYLES LLC'S RESPONSE

DDS evaluated Visionary Lifestyles LLC's (VL) written response to the draft audit report and determined that VL disagreed with Finding 1. Below is a summary of the vendor's response as well as DDS' evaluation of the vendor's response.

Finding 1: Supported Living Services – Unsupported Billings

Excerpt of VL's response:

VL stated: "Shortly after the Exit Conference, VL began an extensive internal review, where the agency examined all direct staff employee time sheets for the 2015 year. Each individual time sheet (signed and initialed by every VL employee) was cross-checked with hours billed as evidence that substantiates and supports that VL services were performed as claimed. These documents also validate VL's supported billing units (the specific number of hours billed in the 2015 year) and disputes the amount of units that the DDS audit claimed were unaccounted for under PAHA, PAHA2, SLP, SLP2 and mileage...."

All copies of these time sheets are now enclosed in this report of VL's Statement of Disputed Issues."

VL had initially provided its ADP payroll records and copies of Forms 1099-MISC but the latter were not used in the audit because upon reviewing the documents, DDS had noted that most of the employees' names appeared on both the ADP payroll records and the Forms 1099-MISC. DDS used the employees' payroll for auditing the number of hours provided and billed. DDS took this approach because Form 1099-MISC is typically used for non-employee-related work (Independent Contractor).

During the exit conference, VL confirmed that the Forms 1099-MISC were for its own employees who had opted not to have their payroll deductions processed by VL.

DDS auditors informed VL that employers are required to withhold Federal and State payroll taxes from employees' wages. Failure to do so is considered tax evasion.

Per the Labor Commissioner Active Underground Economy Strike Force, "businesses operating in the underground economy avoid payment of payroll and sales taxes by not reporting activities or by paying for goods and services in cash. Such businesses frequently are unlicensed and also cut corners by violating labor laws requiring payment of minimum wage, paying in cash without proper records or withholding of taxes, or not having workers' compensation insurance. These actions not only cost the state tax revenues, but competitively undercut employers who obey the law."

The Internal Revenue Service (IRS) defines an independent contractor as someone who is self-employed. The earnings of an independent contractor are subject to Self-Employment Tax. The IRS further defines an employee as someone whose work is controlled by an employer. Such employees' earnings are subject to FICA (Social Security tax and Medicare), State Disability Insurance and Income Tax withholding. By incorrectly classifying employees as independent contractors, VL had not withheld the required Federal and State taxes.

Some regulations guiding this audit are quoted below:

U.S. Code, Title 26, Section 3402 - Income Tax Collected at Source, states:

“(a) Requirement of withholding

(1) In general

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall --

(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

(B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.”

California Unemployment Insurance Code (CUIC) Section 13020 (a) (1) states:

“Every employer who pays wages to a resident employee for services performed either within or without this state, or to a nonresident employee for services performed in this state, shall deduct and withhold from those wages, except as provided in subdivision (c) and Sections 13025 and 13026, for each payroll period, a tax computed in that manner as to produce, so far as practicable, with due regard to the credits for personal exemptions allowable under Section 17054 of the Revenue and Taxation Code, a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code resulting from the inclusion in the gross income of the employee of the wages which were subject to withholding.”

CUIC Sections 2110.3, 2110.5 and 2110.7 state:

“2110.3 Any employing unit, including any individual member of a partnership employing unit, any officer of a corporate or association employing unit, any manager or managing member of a limited liability company, or any other person having charge of the affairs of a corporate, association, or limited liability company employing unit, that knowingly undertakes or agrees to pay without deduction from remuneration paid to its workers the amount of any contributions to the Disability Fund required of the workers under this division and that willfully fails or is willfully financially unable to pay the amount to the department on the date on which the contributions become delinquent is in violation of this chapter.

2110.5 Any employing unit, including any individual member of a partnership employing unit, any officer of a corporate or association employing unit, any manager or managing member of a limited liability company, or any other person having charge of the affairs of a corporate, association, or limited liability company employing unit, that willfully fails to withhold in trust the deductions required by this division from remuneration paid to its workers, except where such employing unit undertakes or agrees to pay without deduction from the wages of its workers the amount of worker contributions required of its workers under this division, is in violation of this chapter.

2110.7 Any employing unit, including any individual member of a partnership employing unit, any officer of a corporate or association employing unit, any manager or managing member of a limited liability company, or any other person having charge of the affairs of a corporate, association, or limited liability company employing unit, that knowingly undertakes or agrees to pay without deduction from remuneration paid to its workers the amount of any contributions to the Disability Fund required of such workers under this division and that willfully fails to hold in trust the amount of worker contributions required of such workers under this division is in violation of this chapter.”

DDS has reviewed the employees' timesheets, Forms 1099-MISC and ADP payroll records and has used these to compute units of service provided. This review has resulted in DDS allowing VL an additional 9,977 hours and 5,568 miles of service. Due to this, the unsupported hours and miles identified in the draft report have been reduced to 7,377 hours and 2,964 miles. This has resulted in the reduction of the draft report finding of \$255,056 to \$104,644 which is reflected in the final report. (See Attachment D.) The

review also revealed that VL may have evaded payroll taxes by misclassifying its employees as independent contractors.

Conclusion:

Based on the evaluation of VL's response and review of additional documents, DDS has reduced the number of unsupported hours and miles to 7,377 hours and 2,964 miles. This has in turn reduced the finding amount to \$104,644.

The issue regarding possible tax evasion was not in the draft report and has no monetary repayment amount. However, it will be referred to the appropriate agency for further review.

ATTACHMENT D

VISIONARY LIFESTYLES, LLC

To request a copy of the attachments for this audit report, please contact the DDS Audit Section at (916) 654-3695.