Audit Report

West Michigan Community Mental Health System

October 1, 2001 – September 30, 2008

Office of Audit
Central Regional Office
June 2010

JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF COMMUNITY HEALTH
OFFICE OF AUDIT
400 S. PINE; LANSING, MI 48933

JANET OLSZEWSKI
DIRECTOR

June 11, 2010

Mr. Hal Madden, Chairperson
West Michigan Community Mental Health System
920 Diana Street
Ludington, Michigan 49431

Mr. Rich VandenHeuval, Executive Director
West Michigan Community Mental Health System
920 Diana Street
Ludington, Michigan 49431

Ms. Janet Olszewski, Director
Department of Community Health
Capitol View Building – 7th Floor
Lansing, Michigan 48913

Dear Mr. Madden, Mr. VandenHeuval and Ms. Olszewski:

This is the final report from the Michigan Department of Community Health (MDCH) audit of West Michigan Community Mental Health System's (WMCMHS) building rent expenditures for the period October 1, 2001 through September 30, 2008.

The final report contains the following: description of agency; funding methodology; purpose; objectives; scope and methodology; conclusions, findings and recommendations; summary of audit adjustments by fiscal year and funding source; impact of audit adjustments; and a corrective action plan. The corrective action plan includes WMCMHS's response to the Preliminary Analysis, and the Office of Audit's response to those comments.

MDCH will hold any cost recovery or request for appeal in abeyance pending resolution of ongoing legal actions relating to building rent. WMCMHS will be given the opportunity to dispute any items addressed in the audit that are not addressed or finally resolved in the pending appeal of the Mason County Circuit Court order relating to this matter according to the appeal process described in Attachment 9.3.2.1 of the MDCH contracts.

The adjustments presented in this final report are an adverse action as defined by MAC R 400.3401. If disputing an adverse action that is not addressed or finally resolved in the pending appeal of the Mason County Circuit Court order relating to this matter, the agency must submit a request for the Medicaid Provider Reviews and Hearings Process pursuant to MCL 400.1 et seq. and MAC R 400.3401, et seq. within 30 days of the conclusion of the current appeal.

Requests must identify the specific audit adjustment under dispute, explain the reasons for the disagreement, and state the dollar amounts involved, if any. The request must also include any substantive documentary evidence to support the position. Requests must specifically identify whether the agency is seeking a preliminary conference, a bureau conference or an administrative hearing. If the agency does not appeal this adverse action within 30 days of the conclusion of the current appeal, this letter will constitute MDCH's Final Determination Notice according to MAC R 400.3405, and MDCH will implement the audit adjustments.

A request for the Medicaid Provider Reviews and Hearings Process must be sent within 30 days of the conclusion of the current appeal to:

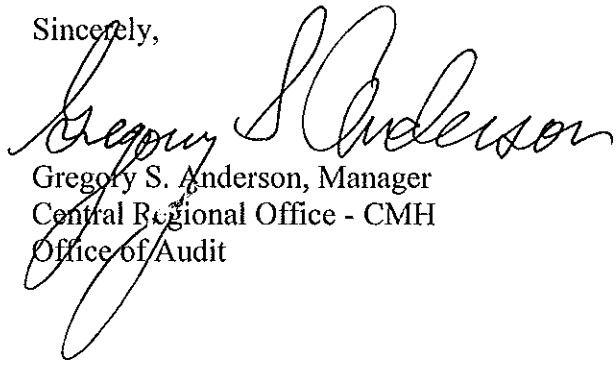
Administrative Tribunal & Appeals Division
Michigan Department of Community Health
1033 S. Washington
P.O. Box 30763
Lansing, Michigan 48909

For any audit finding and adjustment not in dispute, the agency must submit any resulting amounts due to MDCH within 30 days of the conclusion of the current appeal to:

Lisa Halverson, Manager
Revenue Operations Section
Bureau of Finance (Accounting Division)
Michigan Department of Community Health
P.O. Box 30437
Lansing, Michigan 48909

Thank you for the cooperation extended throughout this audit process.

Sincerely,



Gregory S. Anderson, Manager
Central Regional Office - CMH
Office of Audit

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DESCRIPTION OF AGENCY

The West Michigan Community Mental Health System (WMCMHS) was established in 1996 with the consolidation of the Mason County, Lake County, and Oceana County Community Mental Health Boards under the Urban Cooperation Act. WMCMHS became an authority under the provisions of the Michigan Mental Health Code in January 1998. Since 2003, WMCMHS has been an affiliate member of a Prepaid Inpatient Health Plan (PIHP), the Northwest CMH Affiliation (NWCMHA). WMCMHS operates under the provisions of Act 258 of 1974, the Mental Health Code, Sections 330.1001 – 330.2106 of the Michigan Compiled Laws.

WMCHMS provides recovery based care and offers screening services; emergency services; jail intervention, diversion and support services; Assertive Community Treatment (ACT); home based children's services; health clinic services; office based counseling; co-occurring services; infant mental health services; skills building groups; Peers in Life – Learning, Aspiring, Recovering, Supporting (PILLARS); community employment services; community integration and skills building; community support services; family support services; community youth / family enrichment program; MIChild Waiver; Adult Benefit Waiver (ABW); and Omnibus Budget Reconciliation Act (OBRA) services to consumers within Lake, Mason and Oceana Counties. Additionally, WMCMHS contracts with independent agencies for vocational/employment, residential care and inpatient services.

WMCMHS's administrative office is located in the city of Ludington. WMCMHS's board is comprised of 12 members who reside in Lake (2 members), Mason (5 members), and Oceana (5 members) counties, and are appointed by their respective county boards of commissioners to three-year terms.

FUNDING METHODOLOGY

During our audit period WMCMHS received reimbursement from several sources. For FYE 2002 WMCMHS contracted with MDCH under a Managed Specialty Supports and Services Contract (MSSSC). MDCH provided WMCMHS with both the State and Federal share of Medicaid funds as a capitated payment based on a Per Eligible Per Month (PEPM) methodology. MDCH also distributed the non-Medicaid full-year State General Funds (GF) based on a separate formula funding methodology included as an attachment to the contract.

Medicaid funding for services in Lake, Mason and Oceana Counties was provided initially (FYE 2002) through a direct contract between MDCH and WMCHMS, and subsequently (FYE 2003 through FYE 2008) through the WMCMHS affiliation with the NWCMHA. For FYE 2003 through FYE 2008 under the Medicaid Managed Specialty Supports and Services Contract (MMSSSC), MDCH provided funding to the NWCMHA with both the state and federal share of Medicaid funds as capitated payments based on a PEPM payment methodology. WMCMHS received Medicaid payments through the MMSSSC via its affiliation with the NWCMHA.

WMCMHS contracted with MDCH under a Managed Mental Health Supports and Services Contract (MMHSSC) for FYE 2003 through FYE 2008. This contract provided GF for mental health and developmental disability supports and services to individuals with serious mental illness, serious emotional disturbances or developmental disabilities as described in Section 208 of the Mental Health Code.

Other funding received separately outside of the MSSSC, MMSSSC, and MMHSSC from MDCH included special and/or designated funds, Children's Waiver funds, MIChild capitated funds, and Adult Benefits Waiver (ABW) capitated funds. The special and/or designated funds were provided under special contractual arrangements between WMCMHS and MDCH. The funding methodologies for these arrangements are specified in each agreement. Children's Waiver provides community living supports to children with challenging behavioral needs on a fee-for-services basis. MIChild is a non-Medicaid program designed to provide certain medical

and mental health services for uninsured children of Michigan working families. ABW provides health care benefits for Michigan's childless adult residents with incomes at or below 35% of the Federal Poverty Level. MDCH provided the funding for the MIChild and ABW programs by capitated payments based on a PEPM methodology for covered services.

At the end of each fiscal year, once actual costs are known, the cost of providing the Medicaid and GF services are compared to the interim payments made for those services. If WMCMHS was not able to provide the services within the capitation and formula funding payments, then each contract determines the funding responsibility for the contracting parties. The contracts include provisions for redirects and risk funding. If WMCMHS was able to provide the services at less cost than the amount paid through capitation and formula funding, then WMCMHS was able to keep some or all of the savings provided they were used for certain contractual services in future years. Each contract specified the amounts that could be carried forward for future use and the allowable uses for the amounts saved by WMCMHS.

Certain types of mental health expenditures require a match. This is referred to as local match dollars which must come from various WMCMHS funding sources.

PURPOSE AND OBJECTIVES

The purpose of the review was to determine whether the agency properly reported Lake County, Mason County, and Oceana County building rent expenditures in FYE 2002 through FYE 2008 in accordance with applicable regulations and contractual requirements; and to determine any necessary contract settlement adjustments resulting from the review of reported building rent expenditures.

Audit Objectives

1. To determine if the Lake County, Mason County and Oceana County building rent expenditures reported to MDCH (or to the NWCMHA and subsequently to MDCH) by WMCMHS from October 1, 2001 through September 30, 2008 were reasonable, allocable and otherwise allowable under contract terms and applicable regulations.
2. To determine any necessary contract settlement adjustments for October 1, 2001 through September 30, 2008 resulting from the review of reported Lake County, Mason County and Oceana County building rent expenditures.

SCOPE AND METHODOLOGY

We examined the WMCMHS records and activities for the period October 1, 2001 through September 30, 2008 as they related to building costs and rental payments for Lake County, Mason County, and Oceana County building space. We also examined the Lake County, Mason County and Oceana County records related to WMCMHS building cost and the respective rent charged from fiscal year end 1987 to fiscal year end 2008. We summarized and analyzed building costs and rent charged to determine if expenditures were properly supported and reported on the Financial Status Reports (FSR) in compliance with the contractual reporting requirements and applicable regulations.

Once the allowable costs were identified, we recomputed the contract settlement for each year based on a comparison of allowable costs to the authorizations and revenues paid. We identified any additional Medicaid Savings and General Fund Carryforward earned, reductions in risk share funding, and required lapses of funds to MDCH. We performed our audit procedures from November 2008 through February 2009.

CONCLUSIONS, FINDINGS AND RECOMMENDATIONS

Building Rent Reporting

Objective 1: To determine if the Lake County, Mason County, and Oceana County building rent expenditures reported to MDCH (or to the NWCMHA and subsequently to MDCH) by WMCMHS from October 1, 2001 through September 30, 2008 were reasonable, allocable and otherwise allowable under contract terms and applicable regulations.

Conclusion: WMCMHS overstated allowable Mason County and Oceana County building rent costs reported to MDCH (and to the NWCMHA and subsequently to MDCH) by $503,875 for October 1, 2001 through September 30, 2008. We identified overcharges for less-than-arms-length leases (Finding 1).

Finding

1. Overcharges for Less-Than-Arms-Length Leases

WMCMHS reported rent paid to Mason County and Oceana County for buildings under less-than-arms-length leases that exceeded underlying cost on the financial status reports (FSRs) for October 1, 2001 through September 30, 2006, which is not in compliance with Office of Management and Budget (OMB) Circular A-87.

The Mason County and Oceana County building rent expense reported by WMCMHS on their FSRs for FYE 2002 through FYE 2006 was the amount of rent paid to Mason County and Oceana County. The rental payments reported were not entirely allowable because the leases between Mason County and WMCMHS, and Oceana County and WMCMHS were less-than-arms-length and the rental payments exceeded underlying cost. According to the cost principles specified in WMCMHS's contracts, WMCMHS is required to report rental payments *limited to the actual building costs* when there is a less-than-arms-length lease transaction.

Cost Principles. WMCMHS's contracts specify that allowable costs are to be determined, in part, by the provisions in OMB Circular A-87. Allowable rental costs are described in Attachment B, section 38, of the Circular effective through June 8, 2004 as follows:

> *c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:*
> *(1) One party to the lease is able to control or substantially influence the actions of the other;*
> *(2) Both parties are parts of the same governmental unit; or*
> *(3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.*

A revised OMB Circular A-87 (published at 2 CFR Part 225) effective June 9, 2004 contained a similar provision in Appendix B, section 37:

> *c. Rental costs under "less-than-arm's-length" leases are allowable only up to the amount (as explained in section 37.b of this appendix) that would be allowed had title to the property vested in the governmental unit. For this purpose, a less-than-arm's-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between divisions of a governmental unit; governmental units under common control through common officers, directors, or members; and a governmental unit and a director, trustee, officer, or key employee of the governmental unit or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.*

The section 37 b. referred to above states, in part:

> *Rental costs...are allowable only up to the amount that would be allowed had the governmental unit continued to own the property. This amount would include expenses such as depreciation or use allowance, maintenance, taxes, and insurance…*

Less-Than-Arms-Length Leases. The leases between Mason County and WMCMHS, and Oceana County and WMCMHS were less-than-arms-length within the meaning of OMB Circular A-87. OMB Circular A-87 states that a less-than-arms-length lease exists when one party to the lease is able to control or substantially influence the actions of the other.

Because the leases between WMCMHS and Mason County, and WMCMHS and Oceana County are less-than-arms-length, Federal regulations incorporated into WMCMHS's contracts require that the amount of rent reported under those contracts be limited to the actual building costs. Our analysis of the Mason County and Oceana County costs for the building's depreciation, maintenance and operation during our audit period identified $503,875 less cost than the rent paid and reported by WMCMHS. Reported costs of $503,875 are unallowable.

Recommendation

We recommend that WMCMHS adopt policies and procedures to ensure that lease costs under less-than-arms-length lease transactions are reported in accordance with OMB Circular A-87 provisions.

CONTRACT SETTLEMENT ADJUSTMENTS

Objective 2: To determine any necessary contract settlement adjustments from October 1, 2001 through September 30, 2008 resulting from the review of reported Lake County, Mason County, and Oceana County building rent expenditures.

Conclusion: As a result of the review of reported Lake County, Mason County, and Oceana County building rent expenditures and the identification of $503,875 in unallowable expenditures for the period October 1, 2001 through September 30, 2006, WMCMHS owes MDCH $236,451 and the NWCMHA must recognize $177,498 in additional Medicaid Savings created as a result of the disallowed building costs.[1] Additionally, the NWCMHA must replenish their Medicaid Internal Service Fund (ISF) $89,926. A complete summary of the $503,875 audit adjustment by fiscal year and the resulting impact is provided on the following page.

[1] According to Section 7.7.2.1 of the Medicaid contract, "In the event that a final MDCH audit report creates new Medicaid savings, the PIHP will have a year to expend those funds according to Section 7.7.2.2."

Audit Adjustment by Fiscal Year and Funding Source

Fiscal Year	Total Adjustment	Medicaid	General Fund
01/02	$58,673	$34,619	$24,054
02/03	60,592	33,900	26,692
03/04	120,656	89,926	30,730
04/05	130,434	105,469 (1)	24,965
05/06	133,520	108,979	24,541
06/07	0	0	0
07/08	0	0	0
Totals	$503,875	$372,893	$130,982

(1) Redirected to G/F

Impact of Audit Adjustment

Fiscal Year	Total Adjustment	NWCMHA Medicaid Savings Increase	NWCMHA G/F Carry-Forward Change	NWCMHA Replenish Medicaid ISF	WMCMHS G/F Carry-Forward Change	WMCMHS Lapse To MDCH
01/02	$58,673	$34,619	$0	$0	$0	$24,054
02/03	60,592	33,900	0	0	21,066	5,626
03/04	120,656	0	89,926	0	4,332	26,398
04/05	130,434	0	(89,926)	89,926	(25,398)	155,832
05/06	133,520	108,979	0	0	0	24,541
06/07	0	0	0	0	0	0
07/08	0	0	0	0	0	0
Totals	$503,875	$177,498	$0	$89,926	$0	$236,451

Corrective Action Plan

Finding Number: 1

Page Reference: 5

Finding: WMCMHS reported rent paid to Mason County and Oceana County for buildings under less-than-arms-length leases that exceeded underlying cost on the financial status reports (FSRs) for October 1, 2001 through September 30, 2006, which is not in compliance with Office of Management and Budget (OMB) Circular A-87.

Recommendation: Adopt policies and procedures to ensure that lease costs under less-than-arms-length lease transactions are reported in accordance with OMB Circular A-87 provisions.

Comments: In light of the understanding that any cost recovery or request for appeal relating to the audit will be held in abeyance pending resolution of ongoing legal actions, West Michigan CMHS reserves the right to respond to the audit findings presented in this MDCH Audit Report for the period October 1, 2001 to September 30, 2008, on any items addressed in the audit report that are not addressed or finally resolved in the pending appeal of the Mason County Circuit Court order relating to this matter.

MDCH Response: MDCH agrees that any cost recovery or request for appeal will be held in abeyance pending resolution of ongoing legal actions relating to building rent, and WMCMHS will be given the opportunity to dispute any items addressed in the audit that are not addressed or finally resolved in the pending appeal of the Mason County Circuit Court order relating to this matter according to the appeal process described in Attachment 9.3.2.1 of the MDCH contracts.