Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

RESULTS OF REVIEW

MARYLAND DISABILITY LAW CENTER BALTIMORE, MARYLAND

JUNE GIBBS BROWN
Inspector General

MARCH 1997
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MAR 20 1997

Our Reference: Common Identification Number A-03-97-00515

Elizabeth Jones, Director
Maryland Disability Law Center
The Albert Building, Suite 204
1800 North Charles Street
Baltimore, Maryland 21201

Dear Ms. Jones:

This report provides you with the results of our review of the Maryland Disability Law Center (MDLC). The objectives of our review were to evaluate the MDLC's financial management practices and examine fiscal records and expenditures. Our review was conducted to determine the strength of the MDLC's system of internal controls in light of weaknesses identified in reviews at other Protection and Advocacy programs.

Our review disclosed that:

- Program income ($764,382) was not being reported or not being reported correctly on the MDLC's financial status reports submitted to the Administration on Developmental Disabilities (ADD) for Fiscal Years (FY)[1] 1995 and 1996;

- Three cost transfers, totaling $65,616 were made at the end of FY 1996 to shift costs from non-Federal grants to the ADD and Center for Mental Health Services (CMHS) grants;

- $380 in unallowable costs relating to local meals were charged to the ADD and CMHS grants; and

- The MDLC needs to update its administrative policies and procedures manuals.

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[1] The MDLC's FY covers the period from July 1 through June 30.

We are recommending that the MDLC:

- Determine the share of program income attributable to the Federal programs for FY 1995 and 1996 and submit revised financial status reports to the appropriate Federal awarding agencies;

- Refund $65,616 ($29,570 ADD and $36,046 CMHS) in unsupported cost transfers and institute policies and procedures that ensure that any future cost transfers are made in accordance with Federal regulations;

- Refund $380 ($288 ADD and $92 CMHS) in unallowable costs associated with local meals; and

- Update its policies and procedures, particularly those related to travel and time and attendance, and ensure that its employees are aware of them.

By letter dated February 20, 1997, (Appendix), the MDLC responded to our draft audit report. The MDLC generally agreed with our recommendations and proposed actions that would implement our recommendations. The MDLC also proposed to provide additional supporting documentation to support costs that were questioned.

INTRODUCTION

BACKGROUND

The MDLC, a not-for-profit organization, is designated as the official State of Maryland agency responsible for protecting the rights of disabled children and adults and providing legal representation for these individuals. The MDLC's mission is to ensure that people with disabilities are afforded the full rights and entitlements accorded them by the Constitution and State and Federal law. Among these rights are self-determination, to be free from harm, to be provided with due process, to develop physically, emotionally, and intellectually, and to be included in community life with the opportunities and choices that implies.

During FY 1996 the MDLC received $666,888 in Federal funds from three sources.

- $220,752 from the Department of Health and Human Services (HHS), Administration for Children and Families, Administration on Developmental Disabilities. The ADD funds the Protection and Advocacy for Persons with

Developmental Disabilities (PADD) program. The PADD was created by the Developmental Disabilities Assistance and Bill of Rights Act of 1975. Grantees are required to pursue legal, administrative, and other appropriate remedies to protect and advocate for the rights of individuals with disabilities under all applicable Federal and State laws.

- $254,606 from HHS, Public Health Service, Center for Mental Health Services. The CMHS funds the Protection and Advocacy for Individuals with Mental Illness (PAIMI) program which was established in 1986. Grantees are mandated to protect and advocate the rights of individuals with mental illness and investigate reports of abuse and neglect in facilities that care for these individuals.
- $191,530 from the Department of Education's Rehabilitation Services Administration (RSA). The RSA funds the Protection and Advocacy for Individuals Rights (PAIR) program which was established under the Rehabilitation Act of 1993. The program was established to protect and advocate for the legal and human rights of persons with disabilities.

The MDLC also received $1,237,412 in grants and contracts from other sources.

- $126,416 from the Maryland Technology Assistance Program. The MDLC uses this funding to provide statewide legal representation to school-aged children who need assistive technology. Assistive technology can be "low tech" (a pencil grip) or "high tech" (a sophisticated computer).

- $376,465 from the Maryland Legal Services Corporation (IOLTA - Interest on Legal Trust Accounts). Interest on legal trust accounts are allocated to a fund for legal representation for low-income people. The MDLC receives an annual grant from this fund. The MDLC uses this funding for statewide individual casework and impact litigation.

- $625,436 from a State Mental Health Facilities contract. The contract stems from a lawsuit brought by the University of Maryland Law School and the Bazelon Center for Mental Health Law to address the needs of indigent residents of State psychiatric hospitals for legal representation. The MDLC responds to requests from hospital residents when they believe their civil rights have been violated within the hospital, when they wish to refuse medication, or when they need assistance with other legal matters including benefits/entitlements.

- $76,690 from a State Developmental Disability Facilities contract. The MDLC provides legal representation for the client at each admission hearing; reviews the records and annual plan of each resident; and attends up to 25 percent of the annual reviews.

- $32,405 from a Health Management Associates contract. The MDLC provided legal assistance to individuals who were denied Social Security benefits. The MDLC was reimbursed on a per case basis and no longer has a contract with Health Management Associates.

SCOPE OF REVIEW

Our review was conducted in accordance with generally accepted government auditing standards. The objectives of our review were to evaluate the MDLC's financial management practices and examine fiscal records and expenditures. To accomplish our objectives we:

- obtained an understanding of how the MDLC accounting system functioned;
- obtained an understanding of how program income is earned and used; determined the amount of program income earned for FY 1995 and 1996; and determined how the program income is being reported;
- identified all credit cards maintained by the MDLC and reviewed all charges made on the credit card for FY 1995 and 1996 for allowability, allocability, and reasonableness;
- reviewed various financial reports including the financial status reports, audited financial statements, and general ledger;
- judgmentally selected a sample of transactions to ensure that the MDLC's system of internal controls permitted only allowable, allocable, and reasonable costs to be charged to its Federal grants;
- judgmentally selected a sample of travel transactions and determined if the charges were: (1) in accordance with approved policies; (2) grant related and not of a personal nature; (3) allowable and allocable to the grant; and (4) properly accounted for; and
- reviewed time and attendance policies and determined if procedures are being followed to ensure that time and attendance is correctly maintained.

We performed our review during December 1996 at the office of the MDLC in Baltimore, Maryland.

RESULTS OF REVIEW

The MDLC's financial management practices were generally sufficient to ensure that expenditures charged to the ADD and CMHS grants were allowable, allocable, and reasonable. The MDLC, however, did not report program income correctly in its FY 1995 and 1996 financial status report, made unsupported cost transfers at the end of FY 1996, and had unallowable costs relating to local meals. In addition, the MDLC's policies and procedures need to be updated.

PROGRAM INCOME

The MDLC has not been reporting program income correctly on the financial status reports submitted to ADD for FY 1995 and 1996. Program income is earned by the MDLC in the form of attorney fees. Attorney fees are earned either on cases brought on behalf of individuals or as a result of a class action lawsuit. It is the MDLC's policy to petition the court for attorney fees whenever permissible. The MDLC, however, does not recover attorney fees from the client share of any judgement. Attorney fees that the MDLC earns are used to fund litigation of any other cases that the MDLC is pursuing. During our review, we did not become aware of any instance of program income being used other than to expand services to its programs.

The 45 Code of Federal Regulations (CFR) §74.42 states that program income is to be used in accordance with one or a combination of the following alternatives:

1.) Deduction alternative -- the income is used for allowable costs of the project or program.

2.) Cost sharing or matching alternative -- the income is used for allowable costs of the project or program, with the costs borne by the income counting toward satisfying a cost sharing or matching requirement.

3.) Additional cost alternative -- the income is used for costs which are in addition to the allowable costs of the project or program but which further the objective of the Federal statute under which the grant was made.

The deduction alternative may always be used and must be used if neither of the other two alternatives is permitted by the terms of the grant. The other alternatives may only be used if expressly permitted by the terms of the grant.

The terms and conditions of the PADD grant indicate that program income should be used in accordance with the deduction alternative, additional cost alternative, or a combination of both. The terms and conditions additionally state that all program income must be reported on the financial status report and must be used to further the overall objectives of the Protection and Advocacy program.

In FY 1996, the MDLC received $215,390 in attorney fees. The MDLC identified $213,000 of these fees as having been partially earned with PADD funds. The PADD share of this program income was not reported on the financial status reports submitted to ADD during FY 1996.

In FY 1995, the MDLC received $548,992 in attorney fees. The MDLC identified $130,100 of these fees as having been earned with PADD funds. In its financial status reports to ADD for FY 1995, only $86,656 was reported. Based on the MDLC method of reporting the attorney fees when used rather than when received, the fees may have been received prior to FY 1995. Included in the FY 1995 attorney fees received by the MDLC was a $390,000 award earned as a result of a case against the Montgomery County Public Schools which was attributed entirely to the Maryland Legal Services Corporation grant. We noted, by reviewing the documentation submitted to the court to receive the attorney fees and the timesheets of individuals who worked on the case, that some portion of the award was earned with Federal funds.

The problems relating to the reporting of program income appeared to have been caused by a misunderstanding of the requirements of reporting program income. This has led to Federal awarding agencies not being provided with accurate information.

COST TRANSFERS

The MDLC transferred costs totaling $65,616 to Federal grants ($29,570 ADD and $36,046 CMHS) at the end of FY 1996. Documentation, other than the amounts of the transfers, supporting these transfers was not provided.

The PHS Grant Policy Statement Chapter 7-18 states that cost transfers must be supported by documentation that contains a full explanation of how the error occurred and a certification of the correctness of the new charge by a responsible financial or administrative official of the recipient organization. The Grant Policy Statement also states that transfers of costs from one budget period to the next solely to cover cost overruns are not allowable.

The cost transfers made by the MDLC were:

- ➔ $15,220 from the ADD grant to cover overspending in the State Developmental Disability Facilities contract;
- ➔ $14,350 from the ADD grant to cover overspending in the Maryland Legal Services Corporation grant; and
- ➔ $36,046 from the CMHS grant to cover overspending in the State Mental Health Facilities contract.

In discussing these cost transfers with officials of the MDLC, we were informed that the Director had discussed sharing costs among its grants with National Association of Protection and Advocacy Systems (NAPAS) officials. These NAPAS officials indicated that it was permissible to charge costs among the different grants, as long as the clients served fell under the terms of the grant. The MDLC, however, could not provide supporting documentation for these cost transfers. In the future, the MDLC should also contact ADD and/or CMHS for policy guidance that may impact on programmatic or fiscal issues.

UNALLOWABLE COSTS

We are questioning $380 of costs charged for meal expenses while employees were not in an overnight travel status. The questioned costs included:

Local Meals Identified From Review of Travel Vouchers Charged to ADD Grant	$156
Local Meals Charged on American Express[2]	
Direct Charge to CMHS grant	43
Direct Charge to ADD grant	69
ADD Share of $534 in Indirect Charges	63
CMHS Share of $534 in Indirect Charges	49
Total Unallowable Local Meals	$380

The MDLC has established travel policies that employees are to follow while in travel status. The travel policies state that meals will not be reimbursed for any in-state travel that does not require an overnight stay. Several employees of the MDLC either were reimbursed for or used the MDLC's American Express card to charge meals which took place while they were not in an overnight travel status.

POLICIES AND PROCEDURE MANUALS NEED TO BE UPDATED

The MDLC maintains time and attendance records through the use of a "Time Allocation Report" kept by each employee. This report covers a 2-week period and is signed by the employee and approved by the supervisor. Time spent by the employee working on each program is accounted for.

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[2] The MDLC no longer has an American Express account. Not having a corporate credit card has not affected the operation of the program, according to the Director.

The system is adequately maintained and reflects the actual hours the employee spends on each program. The MDLC, however, has not documented the procedures in a written personnel policies manual. To maintain good internal controls, these procedures should be documented in a written policy manual.

In addition, there were instances where the MDLC's travel policies were not updated to reflect changes. These dealt specifically with the rate at which mileage is being reimbursed and reimbursement for mileage for going to the office on weekends. We are not questioning any costs associated with the reimbursement rate or the practice but, as mentioned above, to maintain sound internal controls, policies and procedures should be adequately documented.

In our discussions with the Director concerning policies and procedures, she confirmed that the MDLC policies and procedures need to be updated and plans on doing this.

CONCLUSIONS AND RECOMMENDATIONS

The MDLC's financial management practices were generally sufficient to ensure that expenditures charged to the ADD and CMHS grants were allowable, allocable, and reasonable. We did, however, note several areas where policies or procedures should be changed or improved. Specifically:

- Program income for FY 1995 and 1996 either was not reported or reported incorrectly;
- Cost transfers totaling $65,616 made at the end of FY 1996 were not supported;
- $308 in unallowable costs were charged to the ADD and CMHS grants; and
- Policies and procedures manuals need to be updated and adequately documented.

We, therefore, recommend that the MDLC:

1. Determine the share of program income attributable to the Federal programs for FY 1995 and 1996 and submit revised financial status reports to the appropriate Federal agencies;

2. Refund $65,616 ($29,570 ADD and $36,046 CMHS) in unsupported cost transfers and institute policies and procedures that ensure that any future cost transfers are made in accordance with Federal regulations;

3. Refund $380 ($288 ADD and $92 CMHS) in unallowable costs associated with local meals; and

4. Update its policies and procedures, particularly those related to travel and time and attendance, and ensure that employees are aware of them.

MDLC Response and Office of Audit Services Comments

By letter dated February 20, 1997, (Appendix), the MDLC responded to our draft audit report. The MDLC generally agreed with our recommendations to submit revised financial reports to recognize the unreported program income. The MDLC also agreed to refund the $380 in unallowable costs associated with local meals, and to update its policies and procedures , particularly those related to travel and time and attendance, and ensure that employees are aware of them.

The MDLC agreed that the cost transfers questioned in the report were unsupported but believed that the amounts were not truly cost transfers and the costs were properly charged to Federal contracts. These amounts in question represent costs that were charged to Federal contracts after the comparable state grants were fully expended and the services provided were expressly included in MDLC's PAIMI and PADD mandates. The MDLC proposes to itemize the expenses so that the proper supporting documentation is available.

Since support was not provided for the cost transfers, our position is unchanged. If support is subsequently found, it should be provided to the HHS resolution official for his determination.

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Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HHS/OIG Office of Audit Services reports issued to the Department's grantees and contractors are made available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act, which the Department chooses to exercise. (See Section 5.71 of the Department's Public Information Regulation, dated August 1974, as revised.)

To facilitate identification, please refer to Common Identification Number A-03-97-00515 in all correspondence relating to this report.

Sincerely yours,

Thomas J. Robertson
Regional Inspector General
for Audit Services

Direct Reply to HHS Action Official

Joseph E. Cook
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MDLC MARYLAND DISABILITY LAW CENTER

February 20, 1997

Thomas J. Robertson
Regional Inspector General for Audit Services
Department of Health & Human Services
PO Box 13716, Mail Stop 9
Philadelphia, PA 19101

Dear Mr. Robertson:

I am writing to submit our response to the draft report, dated January 30, 1997, outlining the results of your office's review of the Maryland Disability Law Center (MDLC). Mr. Maiorano has been very helpful in explaining the purpose and process of the audit as well as the findings discussed in the draft report. I will be contacting him directly to set up a time for an exit conference with members of MDLC's Board of Directors.

Our response to the findings is as follows:

1. Unallowable Travel Expenses:

We agree to refund the $380.00 in travel-related expenses, as recommended.

2. Policies and Procedures:

We reconfirm that our policies and procedures will be updated.

3. Program Income:

We are willing to submit revised financial status reports to the appropriate federal awarding agencies regarding the $764,382 in program income.

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4. Cost Transfers:

The amounts at issue are not truly "cost transfers" but rather are costs properly charged to the federal contracts and directly related to our federal mandates for ADD and CMHS funding. State contracts also cover costs named in the program areas; however, after we spent the full amount of the state grants, we turned to the federal contracts to fund this activity. Specifically, the $65,616 includes work on the following:

a) $36,046 to provide legal representation to individuals confined to State psychiatric hospitals. Such representation is expressly included in the mandate of the PAIMI program funded by CMHS.

b) $15,220 to provide legal representation to the residents of one state residential institution. This representation is encompassed within our PADD mandate/funding.

c) $14,350 to provide legal advocacy to individuals with a developmental disability. This work is encompassed within our ADD grant.

However, MDLC understands your concern that it did not document such costs to federal officials. We propose to itemize the expenses involved on an item by item basis so that proper supporting documentation is available. We ask that you revise the audit findings and recommendations accordingly.

I would be pleased to answer any questions you have in reviewing this response and look forward to further discussion at the exit interview with Mr. Maiorano and members of MDLC's Board of Directors.

Yours truly,

Elizabeth Jones

Elizabeth Jones
Executive Director