Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump
Making government work better

Official Audit Report – July 17, 2013

The May Institute, Inc.
Administration of Limited Unit Rate Service Agreements

For the period July 1, 2008 through June 30, 2011

State House Room 230 ■ Boston, MA 02133 ■ auditor@sao.state.ma.us ■ www.mass.gov/auditor

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

On April 3, 2013, the Office of the State Auditor (OSA) issued an audit report (No. 2012-0234-3C) on the Department of Developmental Services' (DDS's) administration of its Limited Unit Rate Service Agreements (LUSAs). LUSAs are a form of a master contract agreement that can be used by DDS to purchase services from a preapproved contractor on an intermittent, limited-time basis for clients who are not already covered through an existing contract. Our overall audit of DDS's administration of LUSAs included a review of $16.6 million in LUSA funding provided to 15 human-service contractors during fiscal years 2009 through 2011. Those transactions were a subset of the approximately $62.2 million in total DDS LUSA expenditures for the three-fiscal-year period covered by our audit. The primary focus of our overall audit was to examine transactions processed during the accounts-payable period[1] at the end of each fiscal year, which disproportionately involved over half of all LUSA funding. As part of this audit, OSA engaged each of the 15 contractors, including the May Institute, Inc. (May), for on-site testing. May received approximately $1,044,795 of the above-stated $62.2 million in total DDS LUSA payments. Approximately $525,158 (50.3%) of the payments to May was processed during the accounts-payable periods for fiscal years 2009 through 2011. The overall audit of DDS was conducted as part of OSA's ongoing efforts to audit human-service contracting activity by state agencies and to promote accountability, transparency, and cost effectiveness in state contracting.

This supplemental report presents the results of our testing specific to May's accounts-payable-period LUSA transactions and should be read in the context of our overall report on DDS's administration of LUSA agreements. That report presents our system-wide audit, which determined that, although LUSA funding is supposed to be used for intermittent unanticipated services to clients as needed, DDS is not properly administering these contracts. Instead DDS Regional and Area Office staff have used LUSA contracts to provide additional year-end funding to some DDS human-service contractors for various purposes, many of which are not consistent with the intended use of these funds and resulted in unnecessary and excessive compensation to contractors. That report also documents other significant administrative problems, including improper retroactive

[1] The Commonwealth's fiscal year is divided into 13 accounting periods: one for each calendar month of the fiscal year ending June 30, and a thirteenth period known as the accounts-payable period. During the accounts-payable period, payments are processed for services provided during the fiscal year but not submitted and approved for payment before the June 30 fiscal year-end date. Accounts-payable-period processing generally continues through the end of August each year.

service authorization; irregularities in pricing, encumbering, and accounting for LUSA funding; and documentation at numerous contractors that was often inaccurate, misleading, missing, or otherwise deficient. DDS's practice of improperly administering and using LUSAs has led to the problems with the administration and use of these funds at various DDS contractors, such as May.

Highlight of Testing Results Specific to the May Institute, Inc.

We found problems with all $525,158 of May's accounts-payable-period LUSA transactions, including inadequate documentation to substantiate that LUSA services were properly authorized, inadequate documentation to support LUSA billings, and LUSA contract funding not being used for its intended purposes, as follows:

- For $317,428 in payments to May of $400,533 subject to DDS service authorization requirements, DDS and May retroactively processed the authorization, in violation of DDS requirements.
- We found additional documentation problems for all of the above $400,533 in LUSA payments to May, including $35,631 in payments for which required service authorization documentation was absent, as well as $6,729 for which it was undated. In addition to the service authorization documentation deficiencies, these problems also included missing or inadequate documentation of client service delivery. The lack of adequate documentation violated provisions of the Commonwealth Terms and Conditions for Human and Social Services, and as a result, there was insufficient evidence to show that these LUSA payments had been properly authorized and accounted for; that they were not duplicative or excessive; and that the contractor had actually provided the LUSA services billed.
- Contrary to DDS contract requirements, DDS and May improperly used $3,226 in LUSA funding during our audit period to purchase non-service items such as furniture and appliances rather than LUSA-related services.
- DDS used additional LUSA funding to pay May $121,400 for transactions that should have been processed through non-LUSA contracts; this resulted in a variety of procurement, service utilization, and accounting problems. These transactions included $29,802 identified as Personal Support Services (PSS) paid as a matter of administrative convenience for year-end reconciliation payments involving PSS provided through regular contract programs, as well as $91,598 identified by DDS as Transitional Services that should have been competitively procured but were not. As a result of documentation deficiencies and ambiguities for these payments, there was no assurance that the transactions involved were for appropriate LUSA purposes or that the nature of the payments had been accurately reported in DDS accounting records.

Recommendations of the State Auditor

OSA's overall audit report on DDS's administration of LUSA contracts recommended that responsible oversight agencies, including the state's Operational Services Division and the Office of the State Comptroller, review the issues detailed in the report and take whatever actions they deem appropriate to address those issues, including strengthening their oversight over these DDS transactions. The payments to May are covered by that recommendation. In accordance with the recommendations of the overall report and the testing results specific to May, May should implement appropriate control measures to ensure that all LUSA services are performed, documented, billed, and accounted for in compliance with applicable requirements.

OVERVIEW OF AGENCY

The May Institute, Inc. (May), whose administrative offices are located in Randolph, Massachusetts, was incorporated on April 5, 1955 as a nonprofit corporation serving children with autism and other disabilities. The organization (including affiliates) operates nearly 200 service locations across the country, including southeastern Massachusetts, metropolitan Boston, and western Massachusetts.

According to its publications, May fosters an environment providing educational and rehabilitative services for individuals, as well as families of individuals, with autism, developmental disabilities, neurological and behavioral disorders, and mental illness while implementing the organization's core values: fairness, diversity, accountability, and results. May's programs span a wide spectrum of special education and other service types, including specialized services based on applied behavior analysis (ABA).

May is one of the Department of Developmental Services' (DDS's) nonprofit contractors primarily serving eastern Massachusetts. May annually receives over $31.8 million in contract payments from DDS. Revenues and support from other state agencies and public and private sources raise total revenues for May and its affiliated entities to approximately $108.7 million per year. DDS's Limited Unit Rate Service Agreement (LUSA) contract payments to May, including the accounts-payable-period transactions covered by our testing for fiscal years 2009 through 2011, were as follows:

Fiscal Year 2009 through 2011 LUSA Funding

Fiscal Year	Total LUSA Payments for Fiscal Year	LUSA Payments Processed During Accounts-Payable Period	Accounts-Payable-Period Percent of Annual Total
2009	$ 578,102	$ 220,347	38.1%
2010	232,822	147,209	63.2%
2011	233,871	157,602	67.4%
	$ 1,044,795	$ 525,158	50.3%

SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor (OSA) conducted an audit of the Department of Developmental Services' (DDS's) administration of Limited Unit Rate Service Agreement (LUSA) contracts for the period July 1, 2008 through June 30, 2011 (No. 2012-0234-3C). The scope of that audit included an assessment of the process and related internal controls DDS has established over its administration of LUSA contracts and the use of LUSA funding at 15 selected DDS contractors, together accounting for approximately $16.6 million (26.7%) of the $62.2 million in LUSA payments for the three-fiscal-year period covered by our audit. Based on our analysis of data contained in the Massachusetts Management Accounting and Reporting System, we determined that during our audit period, 12% of all LUSA payments, which are supposed to be provided on an as-needed basis, had been processed during the last month of the fiscal year and that an additional 51% of all LUSA payments had been processed during the Commonwealth's accounts-payable period. This expenditure pattern for LUSA services was in marked contrast to the pattern for DDS's non-LUSA contractor payments, for which fewer than 4% were processed during the accounts-payable period and fewer than 5% were processed during the last month of the fiscal year. Based on this analysis and the results of prior audits that identified issues with LUSA transactions, we concluded that LUSA payments processed late in the year, particularly during the accounts-payable period, might pose disproportionately high risks of improper use or other irregularities. The May Institute, Inc. (May) was one of the 15 contractors selected for on-site testing as part of the overall DDS audit. May accounted for approximately $1,044,795 in LUSA payments for the three-fiscal-year period. Approximately $525,158 of the May LUSA payments was processed during the Commonwealth's accounts-payable periods.

The procedures completed at May were performed as part of the overall DDS audit, which was conducted in accordance with generally accepted government auditing standards. Our overall objectives for the DDS audit were to:

- Obtain information required to assess the system of internal controls DDS has established over its administration of LUSA contract funding.
- Determine whether LUSA funding is being used as intended and in compliance with applicable laws, regulations, policies, and procedures by conducting audit testing of a

judgmental sample of DDS human-service contractors that received significant LUSA funding.

Our audit testing at DDS and selected contractors, such as May, produced evidence that certain data involving the classification of DDS LUSA expenditures did not reliably represent the actual agreement between DDS and contractors regarding the true purpose and use of the state funding. We provide a complete description of our data reliability and methodology in our overall DDS audit report, No. 2012-0234-3C.

We selected May for on-site testing, focusing on accounts-payable-period transactions; conducted interviews with management and staff; reviewed prior audit reports where available; and reviewed applicable laws and regulations. We also obtained and reviewed policies and procedures, accounting records, and supporting source documents and performed tests of these records and transactions, where necessary. We performed testing on all identified accounts-payable-period LUSA transactions, so our findings do not involve the use of projections based on samples. At the conclusion of field work, we met with May managers to discuss testing results pertaining to May. We also solicited May information and input regarding DDS system-wide LUSA issues for use in the overall LUSA audit project.

TESTING RESULTS

1. QUESTIONABLE USE OF $525,158 IN LUSA FUNDS

Our testing identified a number of problems with the granting, receipt, and use of Limited Unit Rate Service Agreement (LUSA) funds that the Department of Developmental Services (DDS) provided to the May Institute, Inc. (May). These included DDS and May retroactively processing service authorization approval for LUSA transactions, contrary to DDS requirements; May maintaining insufficient authorization, invoicing, and service delivery documentation for $400,533 in transactions; DDS improperly using $3,226 of LUSA funding to pay May for non-service items; and DDS improperly using $121,400 of LUSA funding to pay May for transactions that should instead have been processed through other payment mechanisms. In many instances, the same transaction was associated with multiple problems. As a result, these amounts partially overlap, with a net unduplicated total amount of $525,158.

LUSA contractual agreements are designed to be relatively flexible in order to address client service needs. DDS's Purchase of Service Manual states that LUSA contracts are "for purchasing intermittent, as-needed services for developmentally disabled individuals needing limited time placements." The LUSA's purpose is to provide a contract that can be accessed at any time during its multiyear term to pay for unexpected services for clients authorized by DDS where, because of special circumstances, services have not been included within the scope of an existing state-funded program contract. DDS has established separate categories for LUSA agreements (residential, day, work, and support service), and LUSA services may only be provided within the scope of the categories for which a contractor has been approved.

DDS requires that in order to obtain funding to pay for LUSA services, DDS managers and contractors such as May complete an Authorization for Services process before services begin. The process uses an Authorization for Services Form (ASF) signed by a DDS manager, typically an Area Director, to establish the specific type of service, service date ranges, appropriation source, and amount of LUSA funding that will reimburse the contractor for services provided to the client.[2]

[2] Certain exceptions to this authorization requirement involve DDS's use of LUSA funds for transactions that should instead have been processed through other payment mechanisms as described in Section d. of this finding. DDS has not uniformly required use of ASF forms for those transactions.

In addition to obtaining ASF approval, contractors must maintain service delivery and related documentation as required by Section 7 of the Commonwealth Terms and Conditions for Human and Social Services, which specifies that:

> *The Contractor shall maintain records, books, files and other data as required by 808 CMR 1.00 and as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract.*

It is essential that, in addition to authorization, invoice, and accompanying summary service delivery reports, contractors maintain documentation sufficient to verify that invoiced services were actually delivered and to establish that the services rendered were not within the scope of activity already covered and reimbursed by regular, non-LUSA, program contracts. Documentation of compliance with the activity and reimbursement restriction is of particular concern, since DDS's regular non-LUSA contracts have typically been established using payment rates that have been increased by as much as 17.6% to ensure that contractors are appropriately reimbursed for full program costs where programs are underutilized for legitimate reasons such as unanticipated vacancies or client hospitalizations. As explained by applicable Operational Services Division (OSD) policy:[3]

> *The inclusion of a utilization factor in unit rate contracts may result in a situation where a specific contractor is serving consumers at a higher utilization level than negotiated or anticipated and thus reaches the maximum obligation of the contract (or "bills out") before the end of the contract period. In this case, the contractor is required to provide services up to the total capacity purchased by the contract . . . for the remainder of the contract period with no additional funding. The application of a utilization factor does not result in the contractor delivering "free" services; rather, in these cases, a contractor has merely been fully reimbursed for the costs associated with the program in a shorter period of time than the full contract duration . . . .*

As a result, if a LUSA agreement is erroneously used to pay for services that have already been effectively reimbursed through a regular contract, the contractor may improperly receive excessive or duplicative reimbursement of program costs.

The subsections below describe the May-related issues identified as part of testing procedures performed.

[3] OSD Procurement Policies and Procedures, "How to Draft a Request for Response" (issued November 1, 2005, revised August 13, 2007).

a. Retroactive Authorization of LUSA Services Totaling $317,428

Despite the above-described ASF processing requirement established by DDS, of $400,533 in accounts-payable-period LUSA payments to May that were subject to service authorization requirements, $317,428 had been paid for services that DDS and May had retroactively authorized, in violation of the requirements. Retroactive authorizations had been processed in each year of the testing period as follows.

Retroactive Authorization Amounts

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Total
Retroactive Authorization	$65,867	$106,301	$145,260	$317,428

As described in the next section, these amounts exclude payments totaling $42,360 for which documentation available at May was not sufficient to determine whether authorization had been properly processed in a timely manner.

b. Inadequate Documentation Related to $400,533 in LUSA Service Authorizations and Payments

We found additional documentation problems for all of the above $400,533 in accounts-payable-period LUSA payments to May. These problems included ASF documentation deficiencies and missing or inadequate documentation of client service delivery. The lack of adequate documentation violated the previously quoted provisions of the Commonwealth Terms and Conditions for Human and Social Services, and as a result, there was insufficient evidence to show that these LUSA payments had been properly authorized and accounted for; that they were not duplicative or excessive; and that the contractor had actually provided the LUSA services billed.

Documentation inadequacies were identified for each year of the testing period, as follows:

Service Authorization and Documentation Deficiencies

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Total
Major Documentation Deficiencies	$100,554	$142,377	$157,602	$400,533

ASF documentation was absent for $35,631 and undated for $6,729 in payments. Even when ASF documentation was present, it was not always possible to determine when, or even whether, the service authorization process had been completed for individual clients and the agreed-upon terms of service. For example, an ASF might be present but not signed, or documentation might not identify the type of service to be provided, or the number of units and authorized price.

Required documentation of actual service delivery was also absent or so ambiguous as to be questionable. Examples of the type of documentation that should be maintained include contemporaneously prepared daily program attendance sheets signed by employees present at the program site and time/service documentation records for one-on-one services to individual clients. However, May typically retained only copies of invoices and Service Delivery Reports, which are monthly calendars listing individual clients and the days or hours for which they were being billed. Those documents are prepared by administrative support personnel who themselves lack the personal knowledge necessary to attest to the accuracy of the billing submissions, and the billing documents are therefore insufficient for compliance-assurance purposes. Contemporaneously prepared service delivery documentation necessary to verify the accuracy of May's invoices and service delivery reports was not made available for testing. Documentation both in May's year-end financial report filings with OSD[4] and in May's records was also not sufficient to adequately correlate to service delivery information, DDS LUSA payments, and service delivery costs to the organization's operational programs as needed to ensure that payments were outside the scope of regular DDS contracts and did not result in excessive or duplicative reimbursement. Because these deficiencies were so extensive, it was not possible to perform the analysis and testing required to reasonably estimate the extent to which the compensation DDS provided to May was excessive.

c. Improper Transactions, Totaling $3,226, for Non-Service-Item Reimbursements

LUSA agreements are supposed to be used to provide direct services to clients, rather than to directly reimburse contractors for non-service items such as capitalized expenditures, furniture, equipment, or employee overtime costs. Pursuant to rules and regulations established by OSD and the Office of the State Comptroller (OSC), contractors providing human services to state agencies are, with limited exceptions, reimbursed only for providing units of service such as a

[4] Uniform Financial Statements and Independent Auditor's Reports, also known as UFRs.

day of residential service programing to a client. In accordance with the OSD and OSC requirement, DDS LUSA contracting policies specify that LUSA funds are to be used to pay contractors for delivered units of service. Non-service items may not be purchased through the LUSA contracting mechanism, since the purchase of these items would not be consistent with the specified purpose of LUSA funding.

Despite these restrictions, we found that DDS and May improperly used $3,266 in LUSA funding during fiscal year 2009 to purchase non-service items such as non-capitalized furniture and appliances. These purchases included two mattresses, a vacuum with accessory bags, one York loveseat, and two York chairs.

d. Inappropriate Use of LUSA Funds Totaling $121,400 to Pay for Personal Support and Other Service Transactions and Inadequate Documentation of These Services

During our testing period, DDS used LUSA funding to pay May $121,400 for transactions that should have been processed through non-LUSA contracts; this resulted in a variety of procurement, service utilization, and accounting problems. These transactions included $29,802 identified by DDS as Personal Support Services (PSS) and $91,598 identified as Transitional Services.

Specifically, we found that DDS used $29,802 in LUSA funding to make year-end reconciliation payments to May for PSS provided through regular residential contract programs. PSS cover preauthorized staffing hours needed to provide MassHealth- (Medicaid-) eligible DDS clients with instrumental activities of daily living (IADL) assistance that has been contracted for through regular DDS human-service-program contracts. Because authorized service levels are routinely underutilized, only approximately 88% of the authorized PSS reimbursement is incorporated into each contractor's regular program contract. As a matter of administrative processing convenience, DDS has used LUSA payments for the purpose of making supplemental year-end reconciliation payments to contractors for any amounts determined to be owed where actual utilization is claimed to exceed 88%. Those payments were made through LUSAs even though the terms of LUSA agreements do not provide for the reconciliation process. DDS policies governing the use of LUSAs and DDS policy and contract language instead provide for the use of amendments to regular DDS contracts to address such situations.

DDS should have processed the payments to May through other, non-LUSA, means such as year-end amendments to May's regular non-LUSA contracts.

DDS accounting records identified $91,598 in LUSA payments as being for institutional-to-community-living Transitional Services, part of a special DDS initiative that was mandated by a legal settlement agreement resulting from a federal lawsuit. As detailed in our full report on DDS's administration of LUSA agreements, the Transitional Service transactions with May were part of a larger set of transactions that apparently should have been competitively procured and reimbursed through regular contracts rather than through LUSAs.

The table below breaks out these transactions with May by category and fiscal year.

Inappropriate LUSA PSS and Transitional Service Transactions

	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Total
Personal Support Services	$ 24,970	$4,832	$0	$ 29,802
Transitional Services	91,598	0	0	91,598
Total	$ 116,568	$4,832	$0	$ 121,400

In addition to the inappropriate DDS use of LUSA payment mechanisms, other issues existed for all of these transactions. Despite the above-quoted contracting terms and conditions, May did not maintain adequate documentation (e.g., service-specific detailed time sheets) that any of the $121,400 in PSS and Transitional Services provided on a supplemental one-on-one employee-to-client basis had actually been delivered. Also, for $874 of the payments identified by DDS as being for PSS, May had not identified the services as PSS and May documentation indicated that the services may have been for other non-PSS one-on-one support service activity. For an additional $268 of the payments identified by DDS as being for PSS, May did not provide any documentation; this made it impossible to verify the type of services delivered. As a result of these documentation deficiencies and ambiguities, there was no assurance that the transactions were for appropriate LUSA purposes or that the nature of the payments had been accurately reported in DDS accounting records.

Recommendations

OSA's overall audit report on DDS's administration of LUSA contracts recommended that responsible oversight agencies, including OSD and OSC, review the issues detailed in the report and take whatever actions they deem appropriate to address those issues, including strengthening their oversight over these DDS transactions. The payments to May are covered by that recommendation. In accordance with the recommendations of the overall report and the testing results specific to May, May should implement appropriate control measures to ensure that all LUSA services are performed, documented, billed, and accounted for in compliance with applicable requirements.

May's Response

a. *Retroactive Authorization of LUSA Services*

During the course of the year, we find that the needs of some individuals change. These changes can result from increased behavioral as well as physical health issues. These changes can apply to both residential and day services placements. We make every effort to continue to support our individuals within the context of the funding available in our service contracts.

In some instances we seek additional support from the Department to provide additional staffing resources; often centered on safety. In most instances our requests are person specific. The May Institute has consistently followed the instructions provided by the Department in securing and documenting these additional funds.

A secondary cause for the need of additional funding is related to new individuals entering our programs. During the course of the audit, there were several LUSA documents which specifically supported new placements. These new individuals often required more staffing support than the existing staffing pattern. In these cases, the Department authorized additional staff support through the LUSA document. A similar situation occurs with individuals in the "Turning-22" category. Often as these individuals transition from a special needs school into one of our Day Habilitation Centers, additional staff support is required to bridge the transitional period.

Customarily, the department provides the authorized funding through a LUSA, often retroactively. However, The May Institute consistently communicated its service needs to department officials as the needs were identified – well in advance of the formal issuance of Service Authorization. For its own administrative purposes the Department routinely authorized LUSAs retroactively.

b. Inadequate Documentation Related to LUSA Service Authorizations and Payments

In respect to documentation of services, The May Institute consistently demonstrated that LUSA authorizations had been secured. The documents were often issued retroactively and were missing key data elements which should have been included by the Department. However, these LUSAs were specific as to service to be provided and at hourly rates identified in The May Institute's Standard Contract with the Commonwealth for Intermittent Support Services . . . .

The May Institute has historically documented service delivery through medication administration logs, communication logs completed each shift, behavior data reports and ISP program data sheets. These documents as well as staffing pattern schedules were made available to the field auditors.

DDS licenses our programs every two years. DDS QUEST has been consistently satisfied that our records comply with QUEST's criteria. The Department's Purchase of Service manual discusses LUSAs but provides no specific guidelines for service documentation.

While documentation was not provided in a "medical record" format which may have been more specific as to service provision and would have more closely adhered to the auditor's expectations, it met Department requirements.

c. Improper Transactions for Non-Service Item Reimbursements

In fiscal 2009 $3,225 was authorized to purchase replacement bedding which had been damaged by the residents in one of our homes. Use of LUSA funds for this purpose was incorrect.

d. Personal Support and Other Service Transactions

In compiling payment documentation for the field audit, we found that $121,400 in transactions had been processed through PSS and Transitional Services funds. The May Institute does not control the funding accounts used by the Department when it internally processes LUSAs within EIM and MMARS.

Summary

The May Institute has developed a corrective action plan in response to this audit report. We note that there has been a dramatic decline in the departments' use of LUSA funds to provide supplemental support for individuals' staffing needs. We have instituted internal documents designed to more clearly document the provision of additional staff supports beyond the standard program staffing pattern for both residential and day services.