

COMMISSION ON STATE MANDATES

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December 22, 2015

Ms. Elizabeth Pianca Deputy County Counsel Office of the County Counsel, County of Santa Clara 70 West Hedding Street, East Wing, Ninth Floor San Jose, CA 95110-1770	Ms. Jill Kanemasu State Controller's Office Accounting and Reporting 3301 C Street, Suite 700 Sacramento, CA 95816
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And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Domestic Violence Treatment Services, 07-9628101-I-01
Penal Code Sections 273.5(e), (f), (g), (h), and (i); 1000.93, 1000.94,
1000.95, and 1203.097; Statutes 1992, Chapters 183 and 184;
Statutes 1994, Chapter 28X; Statutes 1995, Chapter 641
Fiscal Years 1998-1999, 1999-2000, and 2000-2001
County of Santa Clara, Claimant

Dear Ms. Pianca and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **January 12, 2016**. You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, March 25, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about March 11, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM _
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

Penal Code Sections 273.5(e), (f), (g), (h), and (i); 1000.93, 1000.94, 1000.95, and 1203.097
Statutes 1992, Chapters 183 and 184; Statutes 1994, Chapter 28X; Statutes 1995, Chapter 641

Domestic Violence Treatment Services – Authorization and Case Management

Fiscal Years 1998-1999, 1999-2000, and 2000-2001

07-9628101-I-01

County of Santa Clara, Claimant

EXECUTIVE SUMMARY

Overview

This Incorrect Reduction Claim (IRC) addresses reductions made by the State Controller’s Office (Controller) to reimbursement claims of the County of Santa Clara (claimant) for fiscal years 1998-1999, 1999-2000, and 2000-2001 under the *Domestic Violence Treatment Services – Authorization and Case Management* program. The Controller originally reduced costs claimed by \$748,645 for the audit period based on claimant’s overstatement of productive hourly rates for its probation officers, unsupported or ineligible salaries and benefits claimed, overstated indirect costs claimed based on the claimant’s failure to calculate indirect costs using its revised countywide cost allocation plan, and the claimant’s failure to deduct offsetting fee revenue received from administering the batterer’s treatment program.

After the filing of this IRC, the Controller issued a revised audit report that reinstated some of the costs for unsupported salaries and benefits based on a review of supporting documentation provided by the claimant in the IRC. The revised final audit report increases allowable costs by \$100,881 and reduces costs claimed during the audit period by \$647,794. Although the claimant withdrew the challenge to the productive hourly rate issue from the IRC,¹ the remaining issues are in dispute. In addition, though this IRC was filed more than three years after the final audit report was issued, it was deemed complete based on a later-issued remittance advice submitted as a supplemental filing.

For the reasons discussed below, staff finds that this IRC was not timely filed and therefore the Commission has no jurisdiction to hear and decide this claim.

The Domestic Violence Treatment Program

On April 23, 1998, the Commission partially approved the *Domestic Violence Treatment Services– Authorization and Case Management* test claim. The test claim statutes provide that if

¹ See Claimant’s late comments submitted on August 4, 2015 (Exhibit D) and on August 28, 2015 (Exhibit E).

a defendant is convicted of a domestic violence crime and granted probation as part of sentencing, the defendant is required to successfully complete, as a condition of probation, a batterer's treatment program administered by county probation departments. The Commission partially approved the claim, finding that the following activities impose a reimbursable state-mandated program on counties:

- Administration and regulation of the batterers' treatment programs (Pen. Code, § 1203.097(c)(1), (c)(2), and (c)(5)), offset by the claimant's fee authority under Penal Code section 1203.097(c)(5)(B);
- Providing services for victims of domestic violence (Pen. Code, § 1203.097(b)(4));
- Assessing the future probability of the defendant committing murder. (Pen. Code, § 1203.097(b)(3)(I)).

Parameters and guidelines were adopted on November 30, 1998, which more specifically defined these activities and that require local agency claimants to specify the actual time devoted to each reimbursable activity by each employee, supported by documentation.

Procedural History

Claimant signed its 1998-1999 reimbursement claim on January 18, 2000,² its 1999-2000 reimbursement claim on January 11, 2001,³ its amended 1999-2000 reimbursement claim on October 25, 2001,⁴ and its 2000-2001 reimbursement claim on December 20, 2001.⁵ The Controller issued the Draft Audit Report on October 8, 2003⁶ and the claimant filed comments on it on December 12, 2003.⁷ The Controller issued the Final Audit Report on February 26, 2004.⁸ The claimant filed the IRC on August 15, 2007.⁹ On September 4, 2007, the claimant refiled the IRC to include the Controller's August 3, 2006 remittance advice.¹⁰ On September 7, 2007, Commission staff deemed the IRC complete. On October 30, 2009, the Controller issued the Revised Audit Report.¹¹ The Controller filed late comments on the IRC on July 3, 2015.¹²

² Exhibit A, IRC, pages 89-109.

³ Exhibit A, IRC, pages 110-116.

⁴ Exhibit A, IRC, pages 117-139.

⁵ Exhibit A, IRC, pages 140-183.

⁶ Exhibit A, IRC, page 26. The Draft Audit Report is not part of the record of this IRC.

⁷ Exhibit A, IRC, pages 41-48.

⁸ Exhibit A, IRC, pages 23-40.

⁹ Exhibit A, IRC.

¹⁰ Exhibit B. Cover Letter for Remittance Advice. The remittance advice is included in Exhibit A., IRC, page 336.

¹¹ Exhibit C, Controller's late comments on the IRC, pages 33-52.

¹² Exhibit C, Controller's late comments on the IRC. Note that pursuant to Government Code section 17553(d) "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a

The claimant filed rebuttal comments on August 4, 2015.¹³ Commission staff requested additional information on the IRC on August 18, 2015. The claimant responded to the request for additional information on August 28, 2015.¹⁴ Commission staff issued the Draft Proposed Decision on December 22, 2015.

Commission Responsibilities

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request that the incorrectly reduced costs be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁵ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."¹⁶

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.¹⁷

rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments have not delayed consideration of this item and so have been included in the analysis and proposed decision.

¹³ Exhibit D, Claimant's late rebuttal comments on the IRC.

¹⁴ Exhibit E, Claimant's response to the request for additional information.

¹⁵ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁶ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

¹⁷ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.¹⁸ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹⁹

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Whether the IRC was timely filed.	At the time pertinent to this IRC, section 1185(b) of the Commission’s regulations stated: “All incorrect reduction claims shall be filed with the commission no later than three (3) years following the date of the Office of State Controller’s remittance advice or other notice of adjustment notifying the claimant of a reduction.” And former section 1185(f)(4) required the claimant to submit with the IRC filing “[a] copy of the final state audit report or letter or remittance advice or other notice of adjustment...that explains the reason(s) for the reduction or disallowance.”	The IRC was not timely filed – The final audit report issued February 26, 2004 describes the adjustments and the Controller’s reasons for the adjustments. Although, this final audit report expressly invites the claimant to participate in an informal audit review process, and invites additional documentation, there is no evidence in the record that the claimant participated in this process. As a result, the final audit report provides the “last essential element to the cause of action” that began the running of the statute of limitations against the claimant. Since the IRC was filed on August 15, 2007, approximately six months after the three-year deadline to file an IRC, the IRC was not timely filed and the Commission has no jurisdiction to hear and decide this claim.

¹⁸ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹⁹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

Staff Analysis

A. The Commission Does Not Have Jurisdiction to Hear and Decide this Incorrect Reduction Claim.

The IRC was filed on August 15, 2007,²⁰ almost three and one-half years after the original audit report was issued on February 26, 2004.²¹ It was deemed complete, however, based on a later-issued remittance advice, a computer-generated document dated August 3, 2006, which was submitted as a supplemental filing.^{22,23}

Staff finds that the IRC was not timely filed and, thus, the Commission does not have jurisdiction to hear and decide this IRC.

Former section 1185(b) of the Commission's regulations, in effect when the final audit report was issued, required IRCs to be filed "no later than three (3) years following the date of the Office of State Controller's remittance advice or other notice of adjustment notifying the claimant of a reduction."²⁴ The statute of limitations for filing an IRC is currently in section 1185.1(c), which similarly provides that "[a]ll incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim."

The California Supreme Court has said, "Critical to applying a statute of limitations is determining the point when the limitations period begins to run."²⁵ Thus, in this case, the IRC filed August 15, 2007, would be timely if measured from the date of the August 3, 2006 remittance advice. However, if the statute of limitations is measured from the final audit report dated February 26, 2004, the August 15, 2007 IRC would be filed beyond the three-year limitation period and would not be timely. Thus, the threshold issue is when the right to file an IRC based on the Controller's reductions accrued, and consequently when the applicable period of limitation began to run against the claimant.

Generally, "a plaintiff must file suit within a designated period after the cause of action accrues."²⁶ The cause of action accrues, the Court said, "when [it] is complete with all of its

²⁰ Exhibit A, IRC, page 2.

²¹ Exhibit A, IRC, page 22-50.

²² Exhibit B. Cover Letter for Remittance Advice dated August 3, 2006, filed September 4, 2007. The remittance advice is included in Exhibit A, IRC, page 336.

²³ The completeness review performed by Commission staff is not a legal review. It is simply a non-legal review of the filing by administrative staff to determine if the elements required for the filing of an IRC have been met. (Cal. Code Regs, tit. 2, § 1185.2.)

²⁴ Former California Code of Regulations, title 3, section 1185(b) (Register 2003, No. 17).

²⁵ *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.

²⁶ *Ibid* [citing Code of Civil Procedure section 312].

elements.”²⁷ Put another way, the courts have held that “[a] cause of action accrues ‘upon the occurrence of the last element essential to the cause of action.’”²⁸

For IRCs, the “last element essential to the cause of action” which begins the running of the period of limitation pursuant to Government Code section 17558.5 and former section 1185 (now § 1185.1) of the Commission’s regulations, is a written notice to the claimant of the adjustment that explains the reason for the adjustment. This interpretation is consistent with previously adopted Commission decisions.²⁹

Here, the record shows that the Controller issued a draft audit report on October 8, 2003, which the claimant responded to on December 12, 2003, “agreeing with the audit results with the exception of Finding 1.”³⁰ The Controller made no changes to the adjustments or findings following receipt of the claimant’s comments, and issued a final audit report on February 26, 2004, stating that “[t]he fiscal impact of the findings reported in the draft report remains unchanged.”³¹ The final audit report identifies the amounts reduced for this program for costs claimed for fiscal years 1998-1999, 1999-2000, and 2000-2001, and contains three detailed findings made by the Controller that explain the reasons for the Controller’s reductions (Finding 1, unsupported salaries and benefits and related indirect costs; Finding 2, overstated indirect costs; and Finding 3, unreported reimbursements).³² There is no evidence that the claimant did not receive the final audit report. The IRC itself states that “[o]n February 26, 2004, the State Controller’s Office (“SCO”) issued its final audit report on the County of Santa Clara’s (“County’s”) claims for costs incurred based on the legislatively created Domestic Violence Treatment Services Program . . . for July 1, 1998 through June 30, 2001.”³³

The February 26, 2004 final audit report does include an express invitation for the claimant to participate in an additional informal audit review process, and invites the claimant to submit additional documentation to the Controller: “The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report.”³⁴ This language could support a finding that the final audit report did not, in fact, constitute the Controller’s final determination on the subject claims and thus did not provide the “last essential element to the cause of action” that would begin the running of the statute of

²⁷ *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

²⁸ *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

²⁹ See Commission on State Mandates, Decision, *Collective Bargaining*, 05-4425-I-11, adopted December 5, 2014, and Decision, *Handicapped and Disabled Students*, 05-4282-I-03 adopted September 25, 2015.

³⁰ Exhibit A, IRC, page 26 (final audit report).

³¹ Exhibit A, IRC, page 36 (final audit report).

³² Exhibit A, IRC, pages 30-38 (Finding 1), 38 (Finding 2), and 39 (Finding 3).

³³ Exhibit A, IRC, page 6.

³⁴ Exhibit A, IRC, page 22 (final audit report).

limitations.³⁵ There is no evidence in the record, however, that the claimant submitted a request for a review or otherwise participated in the additional review process for this audit within the 60-day time period offered by the Controller. Rather, the record shows that the claimant first responded to the Controller's February 26, 2004 final audit report with the filing of this IRC, which included additional documentation in support of its claim for the salaries and benefits reduced in Finding 1 that resulted in the Controller later reinstating some of the costs originally reduced.

Moreover, the August 3, 2006 remittance advice is a computer-generated document that provides no reason for the audit adjustments and, thus, does not provide the notice required by Government Code section 17558.5 to trigger the period of limitations. The remittance advice simply states that \$0 was due to the claimant for the "reimbursement of state mandated costs" and identifies "payment offsets" relating to adjustments made by the Controller to reimbursement claims filed by the claimant for several state-mandated programs, including the original \$748,645 reduction for the *Domestic Violence Treatment Services* claims at issue here. In any event, the right to file an IRC had already accrued and the limitation period began to run before the remittance advice was issued.

Therefore, based on the evidence in the record, the final audit report dated February 26, 2004, provides the "last essential element to the cause of action" that began the running of the period of limitations against the claimant. Thus, for the IRC to be timely, it had to be filed by February 26, 2007. Because the IRC was filed on August 15, 2007, it was not timely filed within the three-year period of limitations, so the Commission does not have jurisdiction to hear and decide this IRC.

Conclusion

Staff finds that the Commission has no jurisdiction to hear and decide this IRC because it was not filed within the applicable three-year period of limitations.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to deny the IRC, based on a lack of jurisdiction, and authorize staff to make any technical, non-substantive changes following the hearing.

³⁵ California Code of Regulations, title 2, section 1185 (Register 2003, No. 17). See also Adopted Decision, *Handicapped and Disabled Students*, 05-4282-I-03, where the Commission did find that a later remittance advice constituted the first notice of adjustment when the cover letter for the "final audit report" contained the same exact language as here *and* there was evidence in the record that the claimant did participate in the informal audit review process which resulted in the Controller to modifying the reductions and issuing a remittance advice based on the corrected reductions.

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

IN RE INCORRECT REDUCTION CLAIM
 ON:
 Penal Code Sections 273.5(e), (f), (g), (h), and
 (i); 1000.93, 1000.94, 1000.95, and 1203.097
 Statutes 1992, Chapters 183 and 184; Statutes
 1994, Chapter 28X; Statutes 1995, Chapter 641
 Fiscal Years 1998-1999, 1999-2000, and
 2000-2001
 County of Santa Clara, Claimant

Case No.: 07-9628101-I-01
*Domestic Violence Treatment Services –
 Authorization and Case Management*
 DECISION PURSUANT TO
 GOVERNMENT CODE SECTION 17500
 ET SEQ.; CALIFORNIA CODE OF
 REGULATIONS, TITLE 2, DIVISION 2,
 CHAPTER 2.5. ARTICLE 7
 (Adopted March 27, 2016)

DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on March 27, 2016. [Witness list will be included in the adopted decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] the IRC at the hearing by a vote of [vote count will be included in the adopted decision] as follows:

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller, Vice Chairperson	
Mark Hariri, Representative of the State Treasurer	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of the Findings

This IRC addresses reductions made by the State Controller’s Office (Controller) to reimbursement claims of the County of Santa Clara (claimant) for fiscal years 1998-1999, 1999-2000, and 2000-2001 under the *Domestic Violence Treatment Services – Authorization and Case*

Management program. The Controller reduced costs claimed based on claimant's overstatement of productive hourly rates for its probation officers, unsupported or ineligible salaries and benefits claimed, overstated indirect costs claimed based on the claimant's failure to calculate indirect costs using its revised countywide cost allocation plan, and the claimant's failure to deduct offsetting fee revenue received from administering the batterer's treatment program.

Based on the analysis herein, the Commission finds that it has no jurisdiction to hear and decide this IRC because the IRC was not timely filed.

COMMISSION FINDINGS

I. Chronology

- 01/18/2000 Claimant signed its reimbursement claim for fiscal year 1998-1999.³⁶
- 01/11/2001 Claimant signed its original reimbursement claim for fiscal year 1999-2000.³⁷
- 10/25/2001 Claimant signed its amended reimbursement claim for fiscal year 1999-2000.³⁸
- 12/20/2001 Claimant signed its reimbursement claim for fiscal year 2000-2001.³⁹
- 10/08/2003 Controller issued the Draft Audit Report.⁴⁰
- 12/12/2003 Claimant filed comments on the Draft Audit Report.⁴¹
- 02/26/2004 Controller issued the Final Audit Report.⁴²
- 08/15/2007 Claimant filed this IRC.⁴³
- 09/07/2007 Commission staff deemed the test claim filing complete.
- 10/30/2009 Controller issued the Revised Audit Report.⁴⁴
- 07/03/2015 Controller filed late comments on the IRC.⁴⁵

³⁶ Exhibit A, IRC, pages 89-109.

³⁷ Exhibit A, IRC, pages 110-116.

³⁸ Exhibit A, IRC, pages 117-139.

³⁹ Exhibit A, IRC, pages 140-183.

⁴⁰ Exhibit A, IRC, page 26. The Draft Audit Report is not part of the record of this IRC.

⁴¹ Exhibit A, IRC, pages 41-48.

⁴² Exhibit A, IRC, pages 23-40.

⁴³ Exhibit A, IRC.

⁴⁴ Exhibit C, Controller's late comments on the IRC, pages 33-52.

⁴⁵ Exhibit C, Controller's late comments on the IRC. Note that pursuant to Government Code section 17553(d) "the Controller shall have no more than 90 days after the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the Commission." However, in this instance, due to the backlog of IRCs, these late comments

- 08/04/2015 Claimant filed late rebuttal comments to the Controller's comments.⁴⁶
- 08/18/2015 Commission staff requested that claimant provide additional information on the IRC.
- 08/28/2015 Claimant responded to the request for additional information on the IRC.⁴⁷
- 12/22/2015 Commission staff issued the Draft Proposed Decision.

II. Background

A. Domestic Violence Treatment Services Program

On April 23, 1998, the Commission partially approved the *Domestic Violence Treatment Services– Authorization and Case Management* test claim. The test claim statutes provide that if a defendant is convicted of a domestic violence crime and granted probation as part of sentencing, the defendant is required to successfully complete the batterer's treatment program administered by county probation departments as a condition of probation.⁴⁸ The Commission determined that many activities pled in the test claim did not impose costs mandated by the state because the activities associated with the defendant's completion of a batterer's treatment program, which is now a condition of probation, changes the penalty for a crime within the meaning of Government Code section 17556(g).⁴⁹ However, the Commission partially approved

have not delayed consideration of this item and so have been included in the analysis and proposed decision.

⁴⁶ Exhibit D, Claimant's late rebuttal comments.

⁴⁷ Exhibit E, Claimant's response to request for additional information.

⁴⁸ See Commission on State Mandates, Statement of Decision on CSM 96-281-01, *Domestic Violence Treatment Services – Authorization and Case Management*. The test claim was filed on statutes enacted in 1992, 1994, and 1995. Before 1992, the Legislature established procedures for the diversion of persons arrested for misdemeanor domestic violence offenses prior to the determination of guilt or innocence. The diversion program created an alternative to criminal prosecution and conviction of the accused batterer. The accused was required to enroll in, and complete, a batterer's treatment program. The accused could avoid prosecution and conviction if the accused successfully completed the batterer's program. The 1992 and 1994 legislation required county probation departments to administer and regulate domestic violence batterer's treatment programs and perform other related case management duties for domestic violence divertees and their victims. The 1995 legislation eliminated the diversion program as a pretrial option for an accused batterer and transformed the batterer's treatment program into a condition of probation, if part of the punishment and sentencing following conviction included probation. (Commission on State Mandates, Decision 96-281-01, p. 4.)

⁴⁹ *Id.*, pages 7 and 8. The denied activities included the following: referring the defendant to an appropriate alternative batterer's program if the original program is unsuitable; monitoring the defendant's progress in the batterer's program, receiving and reviewing reports of violation, and reporting such findings to the court; requesting a hearing for further sentencing when the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with the condition of probation, or has engaged in criminal conduct; providing information obtained from the investigation of the defendant's history to the batterer's

the claim, finding that the following activities impose a reimbursable state-mandated program on counties:

- Administration and regulation of the batterers' treatment programs (Pen. Code, § 1203.097(c)(1), (c)(2), & (c)(5)), offset by the claimant's fee authority under Penal Code section 1203.097(c)(5)(B);
- Providing services for victims of domestic violence (Pen. Code, § 1203.097(b)(4));
- Assessing the future probability of the defendant committing murder. (Pen. Code, § 1203.097(b)(3)(I)).

The Commission adopted parameters and guidelines on November 30, 1998 that provide reimbursement for the following activities:

- A. Administration and regulation of batterer's treatment programs (Pen. Code, §§ 1203.097(c)(1), (c)(2) and (c)(5)) offset by the claimant's fee authority under Penal Code section 1203.097(c)(5)(B).
 1. Development of an approval and annual renewal process for batterers' programs, not previously claimed under former Penal Code sections 1000.93 and 1000.95. (One-time activity.)
 - a. Meeting and conferring with and soliciting input from criminal justice agencies and domestic violence victim advocacy programs.
 - b. Staff training regarding the administration and regulation of batterers' treatment programs. (One-time for each employee performing the mandated activity.)
 2. Processing of initial and annual renewal approvals for vendors, including:
 - a. Application review.
 - b. On-site evaluations.
 - c. Notification of application approval, denial, suspension or revocation.
- B. Victim Notification. (Pen. Code, § 1203.097 (b)(4).)
 1. The probation department shall attempt to:
 - a. Notify victims regarding the requirement for the defendant's participation in a batterer's program.
 - b. Notify victims regarding available victim resources.
 - c. Inform victims that attendance in any program does not guarantee that an abuser will not be violent.

treatment program upon request; investigating the defendant's history to determine the appropriate batterer treatment program, determining which community program would benefit the defendant, and reporting such findings to the court; assessing the defendant after the court orders the defendant to a batterer's program; and determining the amount, means, and manner of restitution the defendant must pay to the victim or battered women's shelter.

2. Staff training on the following activities:
 - a. Notify victims regarding the requirement for the defendant's participation in a batterer's program, and inform victims that attendance in any program does not guarantee that an abuser will not be violent. (One-time for each employee performing the mandated activities.)
 - b. Notify victims regarding available victim resources. (Once-a-year training for each employee performing the mandated activity.)
- C. Assessing the future probability of the defendant committing murder. (Pen. Code, § 1203.097(b)(3)(I).)
 1. Evaluation and selection of a homicidal risk assessment instrument.
 2. Purchasing or developing a homicidal risk assessment instrument.
 3. Training staff on the use of the homicidal risk assessment instrument.
 4. Evaluation of the defendant using the homicidal risk assessment instrument, interviews and investigation, to assess the future probability of the defendant committing murder.

In the event a local agency obtains a new homicidal risk assessment instrument, documentation substantiating the improved value of the new instrument is required to be provided with the claim.⁵⁰

Section V. of the parameters and guidelines allows reimbursement for employee salaries and benefits, to be claimed as follows:

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.⁵¹

Section V. also allows reimbursement for the cost of training an employee "to perform the mandated activities." The parameters and guidelines require the claimant to "identify the employee(s) by name and job classification," and "provide the title and subject of the training session, the date(s) attended and the location."⁵²

Section VI. of the parameters and guidelines, which addresses the required data to support the claim, states:

For audit purposes, all costs claimed shall be traceable to source documents (e.g. employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of

⁵⁰ Exhibit A, IRC, pages 69-70.

⁵¹ *Id.*, page 70.

⁵² *Id.*, page 71.

the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).⁵³

The parameters and guidelines were amended in January 2010 (eff. July 1, 2005) to add boilerplate language requiring claimants to keep contemporaneous source documents. Because the reimbursement claims at issue in this IRC were for costs incurred in fiscal years 1998-1999, 1999-2000, and 2000-2001, the parameters and guidelines applicable to this claim are those adopted on November 30, 1998.

B. The Controller's Audits and Summary of the Issues

The Controller issued a final audit report on February 26, 2004, reducing costs claimed by \$748,645.⁵⁴ The claimant filed this IRC on August 15, 2007, and based on additional documentation the claimant submitted with its IRC, the Controller issued a revised final audit report on October 30, 2009, to supersede the prior final audit report. The revised final audit report increases allowable costs by \$100,881 and reduces costs claimed during the audit period by \$647,794.⁵⁵ The Controller's final revised audit reductions and findings are explained below.

Finding One, Reduction of Costs Claimed for Salaries and Benefits

The Controller issued a final audit report on February 26, 2004, reducing salary and benefit costs claimed, and related indirect costs by \$705,080. The Controller found that the claimant incorrectly calculated its productive hourly rate and claimed employee costs that were unsupported or ineligible for reimbursement.⁵⁶

The claimant has withdrawn from its IRC the challenge to the Controller's reduction of costs based on the claimant's calculation of productive hourly rates.⁵⁷ However, the findings and reductions based on unsupported or ineligible salary and benefit costs claimed are still disputed. Finding 1 of the revised final audit report and comments filed by the Controller on the IRC summarize the reductions as follows:

- A. For administration and regulation of batterer's treatment programs, the county claimed salaries and benefits totaling \$90,949 (\$25,841 for FY 1998-1999, \$56,665 for FY 1999-

⁵³ *Id.*, pages 71-72.

⁵⁴ Exhibit A, IRC, pages 22-50.

⁵⁵ Exhibit C, Controller's late comments on IRC, pages 33-64. Although in the revised audit, finding 1 increased allowable costs claimed by \$104,417, the revised finding 2 (on indirect costs) decreased allowable costs by \$3,536, so the net increase in allowable costs from the original to the revised audit totals \$100,881. See Exhibit C, Controller's late comments on the IRC, pages 9, 11, and 14.

⁵⁶ Exhibit A, IRC, pages 22-50.

⁵⁷ Exhibit D, Claimant's late rebuttal comments on the IRC, page 4; Exhibit E, Claimant's response to additional information, page 1.

2000, and \$8,443 for FY 2000-2001) that were unsupported.⁵⁸ The Controller's reductions and revised findings are as follows:

1. The county estimated five hours per month for each of the 10 officers for fiscal year 1998-1999 (600 hours) and 11 officers for fiscal year 1999-2000 (660 hours) for providing resources over the telephone to victims. No documentation was provided to substantiate the activities performed and time spent on them.

Subsequently, the county conducted a time study in June 2003 and submitted it with the IRC to document the time spent providing resources over the telephone to victims. The time study showed the average time per case was 15 minutes. After reviewing the time study, the Controller accepted the 15-minute time standard, but rejected as unreasonable the application of the time standard to all cases in the Domestic Violence Unit during the year. Once the defendant is assigned to the probation department, the department sends letters notifying victims of available resources. Therefore, the Controller presumed that victim contacts with the department "would ensue" shortly after receiving the letters. The Controller applied the 15-minute time standard to new cases assigned during the year. The Controller allowed 324.25 hours of the 600 hours claimed for fiscal year 1998-1999 and 165 hours of the 660 hours claimed for fiscal year 1999-2000.⁵⁹

2. The county claimed 26 hours for fiscal year 1998-1999 and 30 hours for fiscal year 1999-2000 for its investigative unit to perform activities for the administration and regulation component, which was determined to be unallowable because no documentation was provided to substantiate the activities performed and time spent on the activities. In addition, the auditor's interviews of the investigative officers revealed this is not a function that this unit performs.

Moreover, the Controller determined that the county claimed these hours based on an "inadequate" time study conducted in May 1999. Thirty-one officers participated in the time study. Of the 31 officers recording time, only two officers indicated hours for the administrative component, totaling 2 hours and 15 minutes. The claimant then calculated the employee hours claimed by dividing the 2.25 hours by the 48 cases in the unit for the month of May 1999, which generated a time standard of 0.05 hours

⁵⁸ The revised audit report reinstated \$46,114 in salaries and benefits. Exhibit C, Controller's late comments on IRC, page 42.

⁵⁹ Exhibit C, Controller's late comments on IRC, pages 16 and 42 (revised final audit report). Page 22 of the Controller's comments show the amounts claimed and reinstated for this activity combined with 1.B.4. (speaking over the phone with victims): "The county overstated the hours of providing resources to victims via telephone contact by 1,270.5 hours for the audit period. The time study standard of 15 minutes applied to new cases in the unit only substantiated 649.50 hours, instead of the 1,920 hours claimed."

for the function. The time standard was multiplied by the total number of cases for each fiscal year to arrive at the claimed hours.⁶⁰

3. The county claimed 536 hours for fiscal year 1999-2000 and 224 hours for fiscal year 2000-2001 for staff training, for a total of 760 claimed training hours. The county provided course rosters and sign-in sheets to substantiate 456 hours claimed for training by the Probation Department's Certification Unit (232 hours claimed in fiscal year 1999-2000 and 224 hours claimed in fiscal year 2000-2001). The Controller originally reduced many of the hours claimed because Probation Department personnel stated that individuals attending the training did not perform activities related to the administration and regulation of the batterer's treatment program.

Based on the declaration provided with the IRC, the Controller revisited the issue and reviewed the course content of the training, determining that the course topics fell within the allowable training activities of the program's parameters and guidelines. Of the 57 probation officers receiving training, 11 were assigned to the Domestic Violence Treatment Services Program during the audit period, per the declaration of Rita Loncarich. The remaining probation officers were assigned to General Supervision and Investigation, which also handles domestic violence related charges. The Controller determined that 456 documented training hours (of 760 hours claimed) are allowable.⁶¹

4. The county claimed 102 hours for fiscal year 1999-2000 and 66 hours for fiscal year 2000-2001 for meeting and conferring with criminal justice agencies. County personnel stated that a different unit within the Probation Department claimed the additional hours and provided a memorandum by the department's supervisor, which included the number of hours and stated that department staff were at meetings. The Controller originally found that this documentation did not identify who attended such meetings.

The Controller revised this finding to reinstate all hours reduced after the IRC was filed because the management information reports submitted with the IRC substantiated all the claimed meeting hours. The revised audit reinstates claimed direct costs of \$6,936, and \$6,757 in related indirect costs.⁶²

⁶⁰ Exhibit C, Controller's late comments on IRC, pages 20, 22, and 43 (revised final audit report).

⁶¹ Exhibit C, Controller's late comments on IRC, pages 20, 22, and 43 (revised final audit report). The revised audit reinstated \$18,867 in allowable salaries and benefits and \$18,283 in related indirect costs.

⁶² Exhibit C, Controller's late comments on IRC, pages 20 and 43 (revised final audit report).

B. For victim notification, the county claimed salaries and benefits totaling \$136,569 (\$52,285 for FY 1998-1999, \$36,227 for FY 1999-2000, and \$48,057 for FY 2000-2001) that were unsupported or ineligible for the following reasons:⁶³

1. For fiscal years 1998-1999 and 1999-2000, the documentation provided by the county did not support the total number of letters sent to notify victims regarding the requirement for the defendant's participation in the batterer's program, to notify victims regarding available victim resources, and to inform victims that attendance in any program does not guarantee that an abuser will not be violent.⁶⁴

In comments on the draft audit report, the claimant stated it "concur[s] with this finding."⁶⁵ However, in the IRC, claimant requests the Commission to "reverse the audit findings" and reinstate all the Controller's audit reductions.⁶⁶

2. For the entire audit period, the county was unable to support all of the hours it claimed for the officers to make field contact with the victims. The county submitted field contact logs to support these hours; however, the total hours claimed did not reconcile to the hours in the field contact logs.

In comments on the IRC, the Controller stated that it allowed the hours validated by the declaration of Ms. Tong submitted with the IRC; i.e., one hour per field contact case supported with field contact logs, which totaled 131 hours for fiscal year 1998-1999, 343 hours for fiscal year 1999-2000, and 435 hours for fiscal year 2000-2001. The Controller determined that 909 cases were allowable for the audit period, which resulted in allowable costs totaling \$37,719 in salaries and benefits and \$36,588 in related indirect costs.⁶⁷

The Controller further states that the field contact issue primarily pertains to fiscal year 1998-1999, where the Controller disallowed 408 employee hours claimed. The Controller states:

From January through June 1999, the auditor validated 111 of the 240 cases reviewed. These 111 cases were allowed for reimbursement. The files were purged for the first half of the fiscal year, July through December. From the county's summary schedule for that period, 182 cases were listed for that time period. The auditor tested 72 cases (approximately 40%) and traced these costs to the county's system to review the field officer's field visit log comments. Out of 72 cases tested, only 8 were validated. This represents a pass rate of 11%, which was

⁶³ For victim notification, the original audit found salaries and benefits totaling \$143,277 (\$52,285 for FY 1998-1999, \$36,227 for FY 1999-2000, and \$48,057 for FY 2000-2001) that were unsupported or ineligible.

⁶⁴ Exhibit C, Controller's late comments on IRC, pages 17 and 43 (revised final audit report).

⁶⁵ Exhibit A, IRC, page 46.

⁶⁶ Exhibit A, IRC, pages 2 and 6-7.

⁶⁷ Exhibit C, Controller's late comments on IRC, page 20.

applied to the remaining 182 cases to yield an additional 20 cases. This methodology is a more valid approach to approximate valid purged cases

...⁶⁸

3. For the entire audit period, the county claimed costs for the time spent to prepare letters sent to victims for notification of the defendant's violation of probation, scheduled hearings, and status changes in cases. The Controller found that these activities are not reimbursable under the mandate.⁶⁹

In comments on the draft audit report, the claimant stated "we concur that this is not a reimbursable activity."⁷⁰ However, the IRC requests the Commission to "reverse the audit findings" and reinstate all the Controller's audit reductions.⁷¹

4. For fiscal year 2000-2001, the county claimed estimated hours spent talking with victims on the telephone. No documentation was provided to substantiate the activities performed or the time spent on such activities.

The claimant submitted additional time study documentation with its IRC. The Controller reviewed the time study and accepted the 15-minute time standard for new cases only. The Controller applied the hours to 641 new cases in the Domestic Violence Unit, resulting in 160.25 allowable hours for victim telephone contacts.⁷²

- C. For assessment of future probability of defendant committing murder, the county claimed salaries and benefits totaling \$75,050 (\$12,573 for FY 1998-1999, \$59,434 for FY 1999-2000, and \$3,043 for FY 2000-2001) that were unsupported. The county used a fiscal year 1998-1999 time study of 4.68 hours for each case to support time spent performing the activity in fiscal year 1999-2000. The county did not perform a time study during fiscal year 1999-2000; however it did perform a time study for 2000-2001, which resulted in 1.59 hours for each case, a decline from the previous time study. The county stated that the reduction was due to the learning curve and efficiency of probation officers performing mandate-related activities. The Controller calculated the costs for fiscal year 1999-2000 using the average of the fiscal year 1998-1999 and 2000-2001 time study results (3.14 hours per case).⁷³

Finding Two, Overstated Indirect Costs

In finding 2, the Controller reduced \$44,881 in costs claimed for overstated indirect cost rates for the audit period because the claimant revised its countywide cost allocation plan, but did not

⁶⁸ Exhibit C, Controller's late comments on IRC, pages 21-22 and 44 (revised final audit report).

⁶⁹ Exhibit C, Controller's late comments on IRC, pages 17 and 44 (revised final audit report).

⁷⁰ Exhibit A, IRC, page 47.

⁷¹ Exhibit A, IRC, pages 2 and 6-7.

⁷² Exhibit C, Controller's late comments on IRC, pages 21 and 44 (revised final audit report).

The revised audit report increased allowable salaries and benefits by \$6,708 and related indirect costs by \$6,323 for fiscal year 2000-2001.

⁷³ Exhibit C, Controller's late comments on the IRC, pages 21, 22, and 44.

apply the revised amounts when computing the indirect cost rate. The Controller recalculated indirect costs by multiplying the allowable salaries and benefits by the revised indirect cost rates.⁷⁴

Finding Three, Offsetting Fee Revenues

In finding 3 of the revised audit report, the Controller reduced costs claimed by \$2,250 for offsetting revenues that claimant received for processing vendor renewals for the batterer treatment programs.⁷⁵ In comments on the draft audit report, the claimant stated that it concurred with the audit finding.⁷⁶ However, the claimant's IRC requests a determination that all costs reduced by the Controller be reinstated.⁷⁷

III. Positions of the Parties

A. Santa Clara County

Claimant disputes the Controller's findings, and requests that the Commission direct the Controller to reinstate all costs reduced. The claimant argues that the costs claimed are supported by valid time studies, reports, declarations, and time logs.⁷⁸

After filing the IRC, the claimant withdrew the challenge to the Controller's reduction of costs based on the claimant's calculation of productive hourly rates.⁷⁹ The claimant continues to dispute all other reductions.

B. State Controller's Office

It is the Controller's position that the revised audit adjustments are correct and that this IRC should be denied. The Controller reinstated some of the costs claimed based on documentation submitted with the IRC.

IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9

⁷⁴ Exhibit A, IRC, page 38 (final audit report). Exhibit C, Controller's late comments on the IRC, page 51 (revised final audit report). As the Controller said in the revised audit report: "We recalculated the overstated indirect costs based on the revised amounts identified in Finding 1. Consequently, overstated indirect costs increased by \$3,536, from \$41,345 to \$44,881."

⁷⁵ Exhibit A, IRC, page 39.

⁷⁶ Exhibit A, IRC, page 48 (comments on the final audit report).

⁷⁷ Exhibit A, IRC, pages 2 and 6-7.

⁷⁸ Exhibit A, IRC, pages 11-15, 200-210, 212-213, 215-324, 326, 328-334.

⁷⁹ Exhibit D, Claimant's late rebuttal comments on the IRC, page 4; Exhibit E, Claimant's response to additional information, page 1.

of the Commission's regulations requires the Commission to send the statement of decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁸⁰ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."⁸¹

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁸² Under this standard, the courts have found that:

When reviewing the exercise of discretion, "[t]he scope of review is limited, out of deference to the agency's authority and presumed expertise: 'The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]'" ... "In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . ." [Citations.] When making that inquiry, the " "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." [Citation.]' "⁸³

The Commission must review the Controller's audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁸⁴ In addition, sections 1185.1(f)(3) and 1185.2(c) of the Commission's regulations require that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission's ultimate findings of fact must be supported by substantial evidence in the record.⁸⁵

⁸⁰ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁸¹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁸² *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

⁸³ *American Bd. of Cosmetic Surgery, Inc., supra*, 162 Cal.App.4th 534, 547-548.

⁸⁴ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁸⁵ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil

The Commission Does Not Have Jurisdiction to Hear and Decide this Incorrect Reduction Claim.

The IRC was filed on August 15, 2007,⁸⁶ almost three and one-half years after the final audit report was issued on February 26, 2004.⁸⁷ The IRC was deemed complete, however, based on a later-issued remittance advice, a computer-generated document dated August 3, 2006, which was submitted by the claimant as a supplemental filing.^{88, 89}

For the reasons below, the Commission finds that the IRC was not timely filed. Therefore, the Commission does not have jurisdiction to hear and decide this IRC.

Former section 1185(b) of the Commission's regulations, in effect when the final audit report was issued, required IRCs to be filed "no later than three (3) years following the date of the Office of State Controller's remittance advice or other notice of adjustment notifying the claimant of a reduction."⁹⁰ The statute of limitations for filing an IRC is currently in section 1185.1(c), which similarly provides that "[a]ll incorrect reduction claims shall be filed with the Commission no later than three years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment to a reimbursement claim."

The California Supreme Court has said, "Critical to applying a statute of limitations is determining the point when the limitations period begins to run."⁹¹ Thus, in this case, the IRC filed August 15, 2007, would be timely if measured from the date of the August 3, 2006 remittance advice. However, if the statute of limitations is measured from the final audit report dated February 26, 2004, the August 15, 2007 IRC would be filed beyond the three-year limitation period and would not be timely. Thus, the threshold issue is when the right to file an IRC based on the Controller's reductions accrued, and consequently when the applicable period of limitation began to run against the claimant.

Generally, "a plaintiff must file suit within a designated period after the cause of action accrues."⁹² The cause of action accrues, the Court said, "when [it] is complete with all of its

Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

⁸⁶ Exhibit A, IRC, page 2.

⁸⁷ Exhibit A, IRC, page 22-50.

⁸⁸ Exhibit B, filed September 4, 2007. The remittance advice is attached to the IRC (Exhibit A) at page 336.

⁸⁹ The completeness review performed by Commission staff is not a legal review. It is simply a check of the filing to determine if the elements required for the filing of an IRC have been met. (Cal. Code Regs, tit. 2, § 1185.2.)

⁹⁰ Former California Code of Regulations, title 3, section 1185(b) (Register 2003, No. 17).

⁹¹ *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.

⁹² *Ibid* [citing Code of Civil Procedure section 312].

elements.”⁹³ Put another way, the courts have held that “[a] cause of action accrues ‘upon the occurrence of the last element essential to the cause of action.’”⁹⁴

For IRCs, the “last element essential to the cause of action” which begins the running of the period of limitation pursuant to Government Code section 17558.5 and former section 1185 (now § 1185.1) of the Commission’s regulations, is a notice to the claimant of the adjustment that includes the reason for the adjustment. Government Code section 17558.5(c), the substance of which was also in effect at the time the audit report was issued, provides in pertinent part:

The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment...⁹⁵

Accordingly, the Commission’s regulations provide that incorrect reduction claims shall be filed not later than three years following the notice of adjustment, and that the filing must include a detailed narrative describing the alleged reductions and a copy of any “written notice of adjustment from the Office of the State Controller that explains the reason(s) for the reduction or disallowance.”⁹⁶ Therefore, the last essential element that begins the running of the period of limitation for filing an IRC is a written notice of adjustment issued by the Controller that explains the reason for the adjustment. This interpretation is consistent with previously adopted Commission decisions.⁹⁷

Here, the record shows that the Controller issued a draft audit report on October 8, 2003, which the claimant responded to on December 12, 2003, “agreeing with the audit results with the exception of Finding 1.”⁹⁸ The Controller made no changes to the adjustments or findings following receipt of the claimant’s comments, and issued a final audit report on February 26, 2004, stating that “[t]he fiscal impact of the findings reported in the draft report remains unchanged.”⁹⁹ The final audit report identifies the amounts reduced for this program for costs claimed for fiscal years 1998-1999, 1999-2000, and 2000-2001, and contains three detailed findings made by the Controller that explain the reasons for the Controller’s reductions (Finding

⁹³ *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

⁹⁴ *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133 [citing *Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176].

⁹⁵ See former Government Code section 17558.5(b) (Stats. 2002, ch. 1128, eff. Jan. 1, 2003).

⁹⁶ California Code of Regulations, title 2, section 1185.1(c) and (f)(4); See also, Former California Code of Regulations, title 2, section 1185(b) and (d)(3) (Register 99, No. 38).

⁹⁷ See Commission on State Mandates, Decision, *Collective Bargaining*, 05-4425-I-11, adopted December 5, 2014, and Decision, *Handicapped and Disabled Students*, 05-4282-I-03 adopted September 25, 2015.

⁹⁸ Exhibit A, IRC, page 26 (final audit report).

⁹⁹ Exhibit A, IRC, page 36 (final audit report).

1, unsupported salaries and benefits and related indirect costs; Finding 2, overstated indirect costs; and Finding 3, unreported reimbursements).¹⁰⁰ There is no evidence that the claimant did not receive the final audit report. The IRC itself states that “[o]n February 26, 2004, the State Controller’s Office (“SCO”) issued its final audit report on the County of Santa Clara’s (“County’s”) claims for costs incurred based on the legislatively created Domestic Violence Treatment Services Program . . . for July 1, 1998 through June 30, 2001.”¹⁰¹

The February 26, 2004 final audit report does include an express invitation for the claimant to participate in an additional informal audit review process, and invites the claimant to submit additional documentation to the Controller: “The auditee should submit, in writing, a request for a review and all information pertinent to the disputed issues within 60 days after receiving the final report.”¹⁰² This language could support a finding that the final audit report did not, in fact, constitute the Controller’s final determination on the subject claims and thus did not provide the “last essential element to the cause of action” that would begin the running of the statute of limitations.¹⁰³ There is no evidence in the record, however, that the claimant submitted a request for a review or otherwise participated in the additional review process for this audit within the 60-day time period offered by the Controller. Rather, the record shows that the claimant first responded to the Controller’s February 26, 2004 final audit report with the filing of this IRC, which included additional documentation in support of its claim for the salaries and benefits reduced in Finding 1 that resulted in the Controller later reinstating some of the costs originally reduced.¹⁰⁴

Moreover, the August 3, 2006 remittance advice is a computer-generated document that provides no reason for the audit adjustments and, thus, does not provide the notice required by Government Code section 17558.5 to trigger the period of limitations for filing an IRC. Instead, the remittance advice shows that \$0 was due to the claimant for the “reimbursement of state mandated costs” and identifies “payment offsets” relating to adjustments made by the Controller

¹⁰⁰ Exhibit A, IRC, pages 30-38 (Finding 1), 38 (Finding 2), and 39 (Finding 3).

¹⁰¹ Exhibit A, IRC, page 6.

¹⁰² Exhibit A, IRC, page 22 (final audit report).

¹⁰³ California Code of Regulations, title 2, section 1185 (Register 2003, No. 17). See also Adopted Decision, *Handicapped and Disabled Students*, 05-4282-I-03, where the Commission did find that a later remittance advice constituted the first notice of adjustment when the cover letter for the “final audit report” contained the same exact language as here *and* there was evidence in the record that the claimant did participate in the informal audit review process which resulted in the Controller to modifying the reductions and issuing a remittance advice based on the corrected reductions.

¹⁰⁴ The Commission’s ultimate findings of fact must be supported by substantial evidence in the record. Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record. See also, California Code of Regulations, title 2, section 1187.5, requiring that all oral or written representations of fact shall be under oath or affirmation.

to reimbursement claims filed by the claimant for several state-mandated programs, including the original \$748,645 reduction for the *Domestic Violence Treatment Services* claims at issue here. In any event, the right to file an IRC had already accrued and the limitation period began to run before the remittance advice was issued.

Therefore, based on the evidence in the record, the final audit report dated February 26, 2004, provides the “last essential element to the cause of action” that began the running of the period of limitations against the claimant. Thus, for the IRC to be timely, it had to be filed by February 26, 2007. Because the IRC was filed on August 15, 2007, it was not timely filed within the three-year period of limitations. Therefore, the Commission does not have jurisdiction to hear and decide this IRC.

V. Conclusion

Based on the foregoing, the Commission finds that it has no jurisdiction to hear and decide this IRC because the IRC was not filed within the applicable three-year period of limitations.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On December 22, 2015, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Domestic Violence Treatment Services, 07-9628101-I-01

Penal Code Sections 273.5(e), (f), (g), (h), and (i); 1000.93, 1000.94,

1000.95, and 1203.097; Statutes 1992, Chapters 183 and 184;

Statutes 1994, Chapter 28X; Statutes 1995, Chapter 641

Fiscal Years 1998-1999, 1999-2000, and 2000-2001

County of Santa Clara, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 22, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/9/15

Claim Number: 07-9628101-I-01

Matter: Domestic Violence Treatment Services

Claimant: County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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