



October 13, 2016

Mr. Kyle Sand  
County of San Diego  
Office of County Counsel  
1600 Pacific Highway, Room 355  
San Diego, CA 92101

Ms. Lisa Macchione  
County of San Diego,  
Office of County Counsel  
1600 Pacific Highway, Room 355  
San Diego, CA 92101

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

Re: **Proposed Decision on Appeal of Executive Director Decision**  
*Appeal of Executive Director Decision, 15-AEDD-01*  
County of San Diego, Appellant

Dear Mr. Sand and Ms. Macchione:

The Proposed Decision for the above-captioned matter is enclosed for your review.

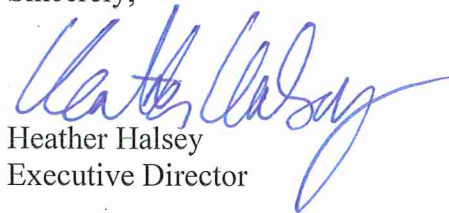
### **Hearing**

This matter is set for hearing on **Friday, October 28, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. 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.

### **Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,



Heather Halsey  
Executive Director

**ITEM 2**  
**PROPOSED DECISION**  
**APPEAL OF EXECUTIVE DIRECTOR DECISION**

Executive director dismissal of incorrect reduction claim for lack of jurisdiction based on determination that the filing was untimely and, therefore, incomplete.

*Appeal of Executive Director Decision*

15-AEDD-01

County of San Diego, Appellant

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**EXECUTIVE SUMMARY**

This is an appeal of the executive director's decision (AEDD) that the County of San Diego's (appellant's) incorrect reduction claim (IRC) filing was untimely and, therefore, incomplete. Section 1181.1(c) of the Commission on State Mandates' (Commission's) regulations allows any real party in interest to appeal to the Commission for review of the actions and decisions of the executive director. The Commission shall determine whether to uphold the executive director's decision by a majority vote of the members present at the hearing. The Commission's decision shall be final and not subject to reconsideration. Within ten days of the Commission's decision, the executive director shall notify the appellant in writing of the decision.

This item was originally heard by the Commission at its March 25, 2016 hearing, and resulted in a tie vote and no action by the Commission.<sup>1</sup> The Commission members agreed to continue the item to the May hearing, when there would be seven members to break the tie.<sup>2</sup> At the May 26, 2016 hearing, the Commission continued the item to the July 22, 2016 hearing because five members were present, but there was not an affirmative vote from a majority of the existing membership of the Commission to take action on this item.<sup>3</sup> On July 21, 2016, the claimant filed a request for postponement to the September hearing, which was granted for good cause. The item was heard at the September 23, 2016 hearing, but no action was taken by the Commission.<sup>4</sup> No changes have been made to the proposed decision, except to update the chronology.

**Background**

The underlying facts are not in dispute. On February 6, 2012, the Controller issued a draft audit report on appellant's fiscal year 2006-2007 through 2008-2009 reimbursement claims for the

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<sup>1</sup> California Code of Regulations, title 2, section 1181.8(b), which requires that all actions of the Commission, except as specified, "shall require the affirmative vote of at least a majority of the existing membership of the Commission." Section 1181.1(c) provides that in case of a tie vote, the Commission may re-hear the claim at a later hearing.

<sup>2</sup> Exhibit C, Excerpt of Transcript for Item 2, March 25, 2016 hearing, page 39.

<sup>3</sup> Exhibit D, Excerpt of Transcript for Item 2, May 26, 2016 hearing, pages 14, 30-31.

<sup>4</sup> Exhibit E, Excerpt of Transcript for Item 2, September 23, 2016 hearing, pages 12-31.

consolidated *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services* program, which contains four audit findings.<sup>5</sup> Appellant received the draft audit report on February 7, 2012.<sup>6</sup> Appellant submitted its response to the draft audit report on February 29, 2012.<sup>7</sup> The response states that “[t]here are four Findings in the above-referenced Draft Report and the County disputes Finding 2 – Overstated Residential Placement Costs.”<sup>8</sup> On March 7, 2012, the Controller issued a final audit report.<sup>9</sup> With a letter dated December 18, 2012, the Controller issued a revised final audit report, which “supersedes our previous report dated March 7, 2012.”<sup>10</sup> As explained by the Controller and the appellant, the revised audit report recalculated offsetting revenues from the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year 2008-2009 (in Finding 4) and had no fiscal effect on allowable total program costs for that fiscal year.<sup>11</sup> No other revisions to the Controller’s findings were made.

On December 10, 2015, the Commission received an IRC filing from the appellant relating to an audit conducted by the Controller on appellant’s fiscal year 2006-2007 through 2008-2009 reimbursement claims for the consolidated *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services* program challenging the Controller’s reduction under Finding 2.<sup>12</sup> On December 18, 2015, the executive director issued a notice of untimely filed IRC.<sup>13</sup>

On December 28, 2015, appellant filed this appeal of the executive director’s decision, contending that the IRC was timely filed based on the Controller’s revised final audit

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<sup>5</sup> Exhibit A, Appeal of Executive Director Decision, page 25 (Controller’s Revised Final Audit Report, page 4).

<sup>6</sup> Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego’s response to draft audit report, dated February 29, 2012).

<sup>7</sup> Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego’s response to draft audit report, dated February 29, 2012).

<sup>8</sup> Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego’s response to draft audit report, dated February 29, 2012).

<sup>9</sup> Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller’s Revised Final Audit Report, page 1).

<sup>10</sup> Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller’s Revised Final Audit Report, page 1). The summary in the revised final audit report is dated December 20, 2012, however. (Exhibit A, Appeal of Executive Director Decision, page 25.) The discrepancy in the dates is not material to the issue in this appeal.

<sup>11</sup> Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller’s Revised Final Audit Report, page 1); see also, page 3, where appellant states that “[t]he Revised Final Audit Report contained contains [sic] recalculated Revenues for Early and Periodic Screening, Diagnosis and Treatment reimbursements for fiscal year 2008-2009.”

<sup>12</sup> Exhibit A, Appeal of Executive Director Decision, page 3.

<sup>13</sup> Exhibit A, Appeal of Executive Director Decision, pages 13-16.

report dated December 18, 2012, and requests that the Commission direct the executive director to deem the IRC timely and complete.<sup>14</sup>

On January 21, 2016, staff issued the draft proposed decision on this appeal.<sup>15</sup> No comments on the draft proposed decision were filed.

### **Staff Analysis**

Staff finds that the executive director's determination that appellant's IRC filing was untimely and, therefore, incomplete is correct as a matter of law.

A reimbursement claim for actual costs filed by a local agency is subject to the initiation of an audit by the Controller within the time periods specified in Government Code section 17558.5. Government Code section 17558.5(c) requires the Controller to notify the claimant 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 . . . , and the reason for the adjustment."<sup>16</sup> Government Code sections 17551 and 17558.7 then allow a claimant to file an IRC with the Commission if the Controller reduces a claim for reimbursement.

In 2012, when the final audit report and revised final audit report were issued, section 1185(c) of the Commission's regulations, required IRCs to be filed "no later than three (3) years following the date of the Office of State Controller's final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction."<sup>17</sup> Today, section 1185.1(c) contains substantially the same language. An IRC is deemed incomplete by Commission staff and returned by the executive director if it is not timely filed.<sup>18</sup>

Appellant argues that the Commission's regulations do not require the running of the limitation period from when a claimant *first* receives notice and does not authorize the executive director to disregard a superseding revised final audit report based on a determination that it had "no fiscal effect." Appellant's interpretation of the Commission's regulation is not consistent with the law.

The goal of any underlying limitation statute or regulation is to require diligent prosecution of known claims so that the parties have the necessary finality and predictability for resolution while evidence remains reasonably available and fresh.<sup>19</sup> The general rule of interpretation, supported by a long line of cases, holds that a statute of limitations attaches when a cause of action arises; when the action can be maintained.<sup>20</sup> The cause of action accrues, the Court said,

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<sup>14</sup> Exhibit A, Appeal of Executive Director Decision.

<sup>15</sup> Exhibit B, Draft Proposed Decision.

<sup>16</sup> Government Code section 17558.5(c).

<sup>17</sup> California Code of Regulations, title 3, section 1185(c) (Register 2010, No. 44).

<sup>18</sup> California Code of Regulations, title 2, sections 1181.2(e), 1185.2.

<sup>19</sup> *Addison v. State of California* (1978) 21 Cal.3d 313, 317; *Jordach Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 761.

<sup>20</sup> See, e.g., *Osborn v. Hopkins* (1911) 160 Cal. 501, 506; *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430.

“when [it] is complete with all of its elements.”<sup>21</sup> 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.’”<sup>22</sup>

Under the statutory mandates scheme, an IRC can be maintained and filed with the Commission to challenge the Controller’s findings pursuant to Government Code sections 17551 and 17558.7, as soon as the Controller issues a notice reducing a claim for reimbursement which specifies the reason for adjustment in accordance with Government Code section 17558.5. The Commission’s regulations give local government claimants three years following the notice of adjustment required by Government Code section 17558.5 to file an IRC with the Commission, which 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.”<sup>23</sup>

Here, appellant admits that the Controller issued a final audit report on March 7, 2012, which reduced costs claimed for fiscal years fiscal year 2006-2007 through 2008-2009 under Finding 2 for overstated residential placement costs. Appellant was first made aware of the Controller’s proposed Finding 2 when it received the Controller’s draft audit report on February 7, 2012, and provided a detailed legal response disputing the finding on February 29, 2012. Although the March 7, 2012 final audit report is not in the record for this appeal, the Controller’s revised audit report issued December 18, 2012, states that only Finding 4 was revised to reflect offsetting revenues as follows:

This revised final report supersedes our previous report dated March 7, 2012. Subsequent to the issuance of our final report, the California Department of Mental Health finalized its Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year (FY) 2008-09. We recalculated EPSDT revenues for FY 2008-09 and revised Finding 4 to reflect the actual funding percentages based on the final settlement. The revision has no fiscal effect on allowable total program costs for FY 2008-09.<sup>24</sup>

The other findings remained as they were without change. Thus, appellant had sufficient information to file its IRC on Finding 2 upon receipt of the March 7, 2012 final audit report.

Appellant argues, however, that the applicable period of limitation should instead attach to the *last* notice of adjustment in the record (the revised final audit report issued December 18, 2012) since the Controller stated that the revised final audit report “supersedes” the March 7, 2012 audit report. There is no support in law for the appellant’s position. As discussed above, statutes of limitation attach when a claim can be maintained and is “complete with all its elements.”<sup>25</sup>

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

<sup>22</sup> *Seelenfreund v. Terminix of Northern California, Inc.* (1978) 84 Cal.App.3d 133.

<sup>23</sup> California Code of Regulations, title 2, section 1185.1(c) and (f)(4); See also, Former California Code of Regulations, title 2, section 1185(c) and (d)(4) (Register 2010, No. 44).

<sup>24</sup> Exhibit A, Appeal of Executive Director Decision, page 19; see also page 25.

<sup>25</sup> *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797 [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

Government Code sections 17551 and 17558.7 allow a claimant to file an IRC as soon as the Controller issues a notice reducing a claim for reimbursement and specifies the reason for adjustment in accordance with Government Code section 17558.5. Although the courts have carved out some exceptions to the statute of limitations, and have delayed or tolled the accrual of a cause of action when a plaintiff is justifiably unaware of facts essential to a claim or when latent additional injuries later become manifest,<sup>26</sup> those exceptions are limited and do not apply when a plaintiff has sufficient facts to be on notice or constructive notice that a wrong has occurred and that he or she has been injured.<sup>27</sup> The courts do not toll the statute of limitation even in cases where the full extent of the claim, or its legal significance, or even the identity of a defendant, are not yet known at the time the cause of action accrues.<sup>28</sup> Here, there is no question that the earliest notice (the final audit report issued March 7, 2012) provided sufficient information to initiate an IRC. And there is no evidence in the record that the appellant suffered any additional reductions with respect to the disputed finding or that any fact essential to appellant's challenge of audit finding 2 was not manifested until the issuance of the revised audit report.<sup>29</sup>

In addition, and as explained in the proposed decision, the executive director's determination and notice of untimely filing is consistent with recent Commission decisions in *Collective Bargaining IRC* (05-4424-I-11, adopted December 5, 2014) and *Handicapped and Disabled Students IRC* (05-4282I-03, adopted September 25, 2015).

Accordingly, the period of limitation began accruing against the appellant in this case with the March 7, 2012 final audit report, and the later revised final audit report does not toll or suspend the operation of the period of limitation. Thus, the December 10, 2015 filing was beyond the three-year period of limitation and is not timely.

## **Conclusion**

Staff recommends that the Commission uphold the executive director's decision to reject the appellant's IRC filing as untimely and incomplete, and authorize staff to make any technical, non-substantive changes following the hearing.

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<sup>26</sup> *Royal Thrift and Loan Co. v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 43; *Pooshs, supra*, (2011) 51 Cal.4th 788, 792 and 802.

<sup>27</sup> *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110; *Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 780; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534; *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804.

<sup>28</sup> *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566; *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321.

<sup>29</sup> See *Royal Thrift and Loan Co. v. County Escrow, Inc., supra*, 123 Cal.App.4th 24, 43; *Pooshs, supra*, (2011) 51 Cal.4th 788, 792 and 802.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

**IN RE APPEAL OF EXECUTIVE  
 DIRECTOR DECISION:**

Executive director dismissal of incorrect reduction claim for lack of jurisdiction based on determination that the filing was untimely and, therefore, incomplete.

County of San Diego, Appellant

Case No.: 15-AEDD-01

*Appeal of Executive Director Decision*

**DECISION PURSUANT TO  
 GOVERNMENT CODE SECTION  
 17500 ET SEQ.; CALIFORNIA CODE OF  
 REGULATIONS, TITLE 2, DIVISION 2,  
 CHAPTER 2.5, ARTICLE 7**

*(Adopted October 28, 2016)*

**DECISION**

The Commission on State Mandates (Commission) heard this appeal of executive director decision (AEDD) during regularly scheduled hearings on March 25, 2016, September 23, 2016, and October 28, 2016 and decided this appeal at the October 28, 2016 hearing.<sup>30</sup> [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. Specifically, California Code of Regulations, Title 2, section 1181.1(c) provides that a real party in interest to a matter may appeal to the Commission for review of actions and decisions of the executive director on that matter.

The Commission [granted/denied] the appeal and [adopted/modified] the proposed decision by a vote of [vote count will be included in the adopted decision] as follows:

<b>Member</b>	<b>Vote</b>
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
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	

<sup>30</sup> At the May 26, 2016 hearing, the Commission continued this item on its own motion pursuant to Title 2, California Code of Regulations, section 1187.9(c)(1).

## COMMISSION FINDINGS

### I. Chronology

- 02/06/2012 The State Controller's Office (Controller) issued the draft audit report.
- 02/07/2012 County of San Diego (appellant) received the draft audit report.
- 02/29/2012 Appellant submitted comments on the draft audit report.
- 03/07/2012 Controller issued the final audit report.
- 12/18/2012 Controller issued the revised final audit report.
- 12/10/2015 Appellant filed the incorrect reduction claim (IRC).
- 12/18/2015 Commission's executive director issued a notice of untimely IRC, and rejected the filing as incomplete for lack of jurisdiction.
- 12/28/2015 Appellant filed appeal of the executive director's notice of untimely filed IRC.<sup>31</sup>
- 01/21/2016 Commission staff issued the Draft Proposed Decision.<sup>32</sup>
- 03/25/2016 This matter was heard by the Commission, and resulted in a tie vote and no action by the Commission.<sup>33</sup>
- 05/26/2016 This matter was continued and no action was taken by the Commission.<sup>34</sup>
- 07/21/2016 Claimant filed a request for postponement of hearing.
- 07/21/2016 The executive director granted claimant's request for good cause and scheduled the hearing for September 23, 2016.
- 09/23/2016 This matter was heard by the Commission, but no action was taken by the Commission.<sup>35</sup>

### II. Background

The underlying facts are not in dispute. On February 6, 2012, the Controller issued the draft audit report on appellant's fiscal year 2006-2007 through 2008-2009 reimbursement claims for the consolidated *Handicapped and Disabled Students, Handicapped and Disabled Students II, and Seriously Emotionally Disturbed (SED) Pupils: Out of State Mental Health Services*

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<sup>31</sup> Exhibit A, Appeal of Executive Director Decision.

<sup>32</sup> Exhibit B, Draft Proposed Decision.

<sup>33</sup> Exhibit C, Excerpt of Transcript for Item 2, March 25, 2016 hearing, page 39. (Cal. Code Regs., tit. 2, § 1181.8.)

<sup>34</sup> Exhibit D, Excerpt of Transcript for Item 2, May 26, 2016 hearing, pages 14, 30-31. (Cal. Code Regs., tit. 2, § 1187.9.)

<sup>35</sup> Exhibit E, Excerpt of Transcript for Item 2, September 23, 2016 hearing, pages 12-31. (Cal. Code Regs., tit. 2, § 1181.8.)



program, which contain four audit findings.<sup>36</sup> Appellant received the draft audit report on February 7, 2012.<sup>37</sup> Appellant submitted its response to the draft audit report on February 29, 2012.<sup>38</sup> The response states that “[t]here are four Findings in the above-referenced Draft Report and the County disputes Finding 2 – Overstated Residential Placement Costs.”<sup>39</sup> On March 7, 2012, the Controller issued the final audit report.<sup>40</sup> With a letter dated December 18, 2012, the Controller issued the revised final audit report, which “supersedes our previous report dated March 7, 2012.”<sup>41</sup> As explained by the Controller and the appellant, the revised audit report recalculated offsetting revenues from the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year 2008-2009 (in Finding 4 of the Audit Report) and had no fiscal effect on allowable total program costs for that fiscal year.

Subsequent to the issuance of our final report, the California Department of Mental Health finalized its Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year (FY) 2008-2009. We recalculated EPSDT revenues for FY 2008-2009 and revised Finding 4 [understated offsetting reimbursements] to reflect actual funding percentages based on the final settlement. The revision has no fiscal effect on allowable total program costs for FY 2008-2009.<sup>42</sup>

No other revisions to the Controller’s findings were made.

The appellant filed the IRC on December 10, 2015.<sup>43</sup> On December 18, 2015, the executive director issued a notice of untimely filed IRC, which states in relevant part as follows:

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<sup>36</sup> Exhibit A, Appeal of Executive Director Decision, page 25 (Controller’s Revised Final Audit Report, page 4).

<sup>37</sup> Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego’s response to draft audit report, dated February 29, 2012).

<sup>38</sup> Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego’s response to draft audit report, dated February 29, 2012).

<sup>39</sup> Exhibit A, Appeal of Executive Director Decision, page 42 (County of San Diego’s response to draft audit report, dated February 29, 2012).

<sup>40</sup> Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller’s Revised Final Audit Report, page 1).

<sup>41</sup> Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller’s Revised Final Audit Report, page 1. The summary in the revised final audit report is dated December 20, 2012, however. (Exhibit A, Appeal of Executive Director Decision, page 25.) The discrepancy in the dates is not material to the issue in this appeal.

<sup>42</sup> Exhibit A, Appeal of Executive Director Decision, page 19 (Cover letter for the Controller’s Revised Final Audit Report, page 1); see also, page 3, where appellant states that “[t]he Revised Final Audit Report contained contains [sic] recalculated Revenues for Early and Periodic Screening, Diagnosis and Treatment reimbursements for fiscal year 2008-2009.”

<sup>43</sup> Exhibit A, Appeal of Executive Director Decision, page 3.

Commission staff has reviewed this filing and determined that it is not timely filed. Section 1185.1(c), of the Commission’s regulations states: “all 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 incorrect reduction claim was filed with the Commission more than three years following the State Controller’s Final Audit Report, dated March 7, 2012. Although the filing includes a letter dated December 18, 2012, from the State Controller, indicating that the Revised Audit Report superseded the previous report and included a recalculation of offsetting revenue for fiscal year 2008-2009, the revision had no fiscal effect on the reductions made for fiscal year 2008-2009 and it appears that no further reductions were made by the revised audit.

The California Supreme Court has said, “Critical to applying a statute of limitations is determining the point when the limitations period begins to run.” Generally, “a plaintiff must file suit within a designated period after the cause of action accrues.” The cause of action accrues, the Court said, “when [it] is complete with all of its elements.” 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.’” 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 section 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.

Here, the State Controller’s Final Audit Report, dated March 7, 2012, provided claimant written notice of the adjustment and reasons for the adjustment, triggering the three-year limitation to file an IRC. Therefore, the IRC would have to have been filed on or before March 9, 2015 to be timely filed. A later revised audit which incorporates the prior audit findings and makes no new reductions does not trigger a new period of limitation for those earlier reductions.<sup>44</sup>

On December 28, 2015, appellant filed this appeal of the executive director’s decision.<sup>45</sup> On January 21, 2016, staff issued the draft proposed decision on this appeal.<sup>46</sup> No comments on the draft proposed decision were filed.

### **III. Appellant’s Position**

Appellant contends that the IRC was timely filed based on the Controller’s revised final audit report dated December 18, 2012, and requests that the Commission direct the executive director

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<sup>44</sup> Exhibit A, Appeal of Executive Director Decision, pages 14-15.

<sup>45</sup> Exhibit A, Appeal of Executive Director Decision.

<sup>46</sup> Exhibit B, Draft Proposed Decision.

to deem the IRC timely and complete. The appellant supports its appeal with the following allegations:

- Although the Controller issued a final audit report on March 7, 2012, that audit report was superseded and made void by the Controller’s issuance of the December 18, 2012 revised final audit report. The December 18, 2012 revised final audit report was the Controller’s final determination of the matter and is the report that triggers the running of the statute of limitations in section 1185.1(c) of the Commission’s regulations.<sup>47</sup>
- Section 1185.1 requires the filing of an IRC three years following the date of the final audit report. The statute of limitations in the regulation does not say that the filing period runs from the earliest report, letter, or notice that has a fiscal effect. Thus, the regulation does not authorize the executive director to disregard a superseding revised final audit report based on a determination that it had “no fiscal effect.”<sup>48</sup>
- Reliance on general tort statute of limitations cases is misapplied when the Commission’s own regulations set forth a more specific period for filing an IRC.<sup>49</sup>
- Prior Commission decisions do not support the executive director’s decision.<sup>50</sup>
- Both the County and the Controller appear to have relied on the date of the revised final audit. The Controller’s website indicates that the date of their report is actually “12/20/12.” “Therefore, December 2012 is the operative date of the ‘final report’ for purposes of Section 1185.1.”<sup>51</sup>

#### **IV. The Commission Denies the Appeal and Upholds the Executive Director’s Decision**

As described below, the executive director’s determination that appellant’s IRC filing was untimely and, therefore, incomplete is correct as a matter of law.

A reimbursement claim filed by a local agency is subject to the initiation of an audit by the Controller within the time periods specified in Government Code section 17558.5. Government Code section 17558.5(c) requires the Controller to notify the claimant 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 . . . , and the reason for the adjustment.”<sup>52</sup> Government Code sections 17551 and 17558.7 then allow a claimant to file an IRC with the Commission if the Controller reduces a claim for reimbursement.

In 2012, when the final audit report and revised final audit report were issued in this case, section 1185(c) of the Commission’s regulations required IRCs to be filed “no later than three (3) years following the date of the Office of State Controller’s final state audit report, letter, remittance

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<sup>47</sup> Exhibit A, Appeal of Executive Director Decision, page 4.

<sup>48</sup> Exhibit A, Appeal of Executive Director Decision, pages 4-5.

<sup>49</sup> Exhibit A, Appeal of Executive Director Decision, pages 5-6.

<sup>50</sup> Exhibit A, Appeal of Executive Director Decision, pages 6-9.

<sup>51</sup> Exhibit A, Appeal of Executive Director Decision, page 9.

<sup>52</sup> Government Code section 17558.5(c).

advice, or other written notice of adjustment notifying the claimant of a reduction.”<sup>53</sup> Currently, section 1185.1(c) 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.” An IRC is deemed incomplete by Commission staff and returned by the executive director if it is not timely filed.<sup>54</sup>

Appellant argues that the Commission’s regulations do not require the running of the limitation period from when a claimant *first* receives notice and does not authorize the executive director to disregard a superseding revised final audit report based on a determination that it had “no fiscal effect.” To support this argument, the appellant cites a 2011 decision adopted by the Commission on an IRC for the *Handicapped and Disabled Students* program (05-4282-I-02 and 09-4282-1-04, adopted July 28, 2011), where the Commission stated that “section 1185 of the Commission’s regulations does not require the running of the time period from when a claimant first receives notice; but simply states that the time runs from either the remittance advice *or* other notice of adjustment.”<sup>55</sup> This prior decision was not challenged and, thus, remains the final binding decision for that matter.<sup>56</sup>

However, the Commission’s prior decision is not precedential and does not comport with more recent interpretations by the Commission of the statute of limitations for IRCs. The law is clear that administrative agencies “may overrule prior decisions or practices and may initiate new policy or law through adjudication.”<sup>57</sup> Therefore, the Commission is free to depart from its reasoning in a prior decision so long as the decision that so departs, is correct as a matter of law and not arbitrary, capricious, or without evidentiary support.

As explained below, appellant’s interpretation of the Commission’s regulation is not consistent with the law. The statute of limitations in this case began to accrue with the March 7, 2012 final audit report, which appellant admits was received. Thus, an IRC filed December 10, 2015, more than three years later, is not timely. The Commission, therefore, does not have jurisdiction to hear and decide the merits of appellant’s IRC submittal and should uphold the executive director’s decision.

1. The period of limitation applicable to an IRC begins to run at the time an IRC can be filed under the Government Code, and none of the exceptions or special rules for a delayed accrual apply.

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<sup>53</sup> California Code of Regulations, title 3, section 1185(c) (Register 2010, No. 44).

<sup>54</sup> California Code of Regulations, title 2, sections 1181.2(e), 1185.2.

<sup>55</sup> Exhibit A, Appeal of Executive Director Decision, page 66, 75.

<sup>56</sup> *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1201.

<sup>57</sup> *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 776; 72 Ops.Cal.Atty.Gen. 173, 178, Fn. 2 (“We do not question the power of an administrative agency to reconsider a prior decision for the purpose of determining whether that decision should be overruled in a subsequent case. It is long settled that due process permits substantial deviation by administrative agencies from the principle of stare decisis.”).

The goal of any underlying limitation statute or regulation is to require diligent prosecution of known claims so that the parties have the necessary finality and predictability for resolution while evidence remains reasonably available and fresh.<sup>58</sup> The California Supreme Court has described statutes of limitations as follows:

A statute of limitations strikes a balance among conflicting interests. If it is unfair to bar a plaintiff from recovering on a meritorious claim, it is also unfair to require a defendant to defend against possibly false allegations concerning long-forgotten events, when important evidence may no longer be available. Thus, statutes of limitations are not mere technical defenses, allowing wrongdoers to avoid accountability. Rather, they mark the point where, in the judgment of the legislature, the equities tip in favor of the defendant (who may be innocent of wrongdoing) and against the plaintiff (who failed to take prompt action): “[T]he period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones.”<sup>59</sup>

The general rule, supported by a long line of cases, holds that a statute of limitations attaches when a cause of action arises; when the action can be maintained.<sup>60</sup> Generally, the Court noted, “a plaintiff must file suit within a designated period after the cause of action accrues.”<sup>61</sup> The cause of action accrues, the Court said, “when [it] is complete with all of its elements.”<sup>62</sup> 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.’”<sup>63</sup>

For IRCs, the “last element essential to the cause of action” which begins the running of the period of limitation pursuant to 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, as required by Government Code section 17558.5. 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

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<sup>58</sup> *Addison v. State of California* (1978) 21 Cal.3d 313, 317; *Jordach Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 761.

<sup>59</sup> *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.

<sup>60</sup> See, e.g., *Osborn v. Hopkins* (1911) 160 Cal. 501, 506 [“[F]or it is elementary law that the statute of limitations begins to run upon the accrual of the right of action, that is, when a suit may be maintained, and not until that time.”]; *Dillon v. Board of Pension Commissioners* (1941) 18 Cal.2d 427, 430 [“A cause of action accrues when a suit may be maintained thereon, and the statute of limitations therefore begins to run at that time.”].

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid* [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

<sup>63</sup> *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].

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...<sup>64</sup>

Under the statutory scheme, an IRC can be maintained and filed with the Commission to challenge the Controller's findings pursuant to Government Code sections 17551 and 17558.7, as soon as the Controller issues a notice reducing a claim for reimbursement which specifies the reason for adjustment in accordance with Government Code section 17558.5. The Commission's regulations give local government claimants three years following the notice of adjustment required by Government Code section 17558.5 to file an IRC with the Commission, which 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," or otherwise be barred from such action.<sup>65</sup>

Here, appellant admits that the Controller issued a final audit report on March 7, 2012, which reduced costs claimed for fiscal years fiscal year 2006-2007 through 2008-2009 under Finding 2 for overstated residential placement costs. Appellant was first made aware of the Controller's Finding 2 when it received the Controller's draft audit report on February 7, 2012, and provided a detailed legal response disputing the finding on February 29, 2012. Although the March 7, 2012 final audit report is not in the record for this appeal, the Controller's revised audit report issued December 18, 2012, states that only Finding 4 was revised to reflect offsetting revenues as follows:

This revised final report supersedes our previous report dated March 7, 2012. Subsequent to the issuance of our final report, the California Department of Mental Health finalized its Early and Periodic Screening, Diagnosis and Treatment (EPSDT) reimbursements for fiscal year (FY) 2008-09. We recalculated EPSDT revenues for FY 2008-09 and revised Finding 4 to reflect the actual funding percentages based on the final settlement. The revision has no fiscal effect on allowable total program costs for FY 2008-09.<sup>66</sup>

The other findings remained unchanged. Thus, appellant had sufficient information to file an IRC upon receipt of the March 7, 2012 final audit report.

Appellant argues, however, that the applicable period of limitation should instead attach to the *last* notice of adjustment in the record (the revised final audit report issued December 18, 2012) since the Controller stated that the revised final audit report "supersedes" the March 7, 2012 audit report. There is no support in law for the appellant's position. As discussed above, statutes of limitation attach when a claim can be maintained and is "complete with all its elements."<sup>67</sup>

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<sup>64</sup> See Government Code section 17558.5(c) (last amended by Stats. 2004, ch. 890).

<sup>65</sup> California Code of Regulations, title 2, section 1185.1(c) and (f)(4); See also, Former California Code of Regulations, title 2, section 1185(c) and (d)(4) (Register 2010, No. 44).

<sup>66</sup> Exhibit A, Appeal of Executive Director Decision, page 19; see also page 25.

<sup>67</sup> *Poosh v. Phillip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797 [quoting *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397].

Government Code sections 17551 and 17558.7 allow a claimant to file an IRC as soon as the Controller issues a notice reducing a claim for reimbursement and specifies the reason for adjustment in accordance with Government Code section 17558.5. Although the courts have carved out some exceptions to the statute of limitations, and have delayed or tolled the accrual of a cause of action when a plaintiff is justifiably unaware of facts essential to a claim or when latent additional injuries later become manifest,<sup>68</sup> those exceptions are limited and do not apply when a plaintiff has sufficient facts to be on notice or constructive notice that a wrong has occurred and that he or she has been injured.<sup>69</sup> The courts do not toll a statute of limitation because the full extent of the claim, or its legal significance, or even the identity of a defendant, is not yet known at the time the cause of action accrues.<sup>70</sup> Here, there is no question that the earliest notice (the final audit report issued March 7, 2012) provided sufficient information to initiate an IRC. Nor is there any evidence in the record that the appellant suffered any additional reductions with respect to the disputed finding or that any fact essential to appellant's challenge of audit finding 2 was not manifested until the issuance of the revised audit report.<sup>71</sup>

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<sup>68</sup> *Royal Thrift and Loan Co. v. County Escrow, Inc.* (2004) 123 Cal.App.4th 24, 43 [“Generally, statutes of limitation are triggered on the date of injury, and the plaintiff’s ignorance of the injury does not toll the statute... [However,] California courts have long applied the delayed discovery rule to claims involving *difficult-to detect injuries or the breach of fiduciary relationship.*” (Emphasis added.); *Pooshs, supra*, (2011) 51 Cal.4th 788, 802, where the court held that for statute of limitations purposes, a later physical injury caused by the same conduct “can, in some circumstances, be considered ‘qualitatively different’.” The court limited its holding to latent disease cases, and did not decide whether the same rule applied in other contexts. (*Id.*, at page 792.)

<sup>69</sup> *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110 [belief that a cause of action for injury from DES could not be maintained against multiple manufacturers when exact identity of defendant was unknown did not toll the statute]; *Goldrich v. Natural Y Surgical Specialties, Inc.* (1994) 25 Cal.App.4th 772, 780 [belief that patient’s body, and not medical devices implanted in it, was to blame for injuries did not toll the statute]; *Campanelli v. Allstate Life Insurance Co.* (9th Cir. 2003) 322 F.3d 1086, 1094 [Fraudulent engineering reports concealing the extent of damage did not toll the statute of limitations, nor provide equitable estoppel defense to the statute of limitations]; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 534 [Absentee landlord’s belated discovery of that his homeowner’s policy might cover damage caused by subsidence was not sufficient reason to toll the statute]. See also *McGee v. Weinberg* (1979) 97 Cal.App.3d 798, 804 [“It is the occurrence of some ... cognizable event rather than knowledge of its legal significance that starts the running of the statute of limitations.”].

<sup>70</sup> *Scafidi v. Western Loan & Building Co.* (1946) 72 Cal.App.2d 550, 566 [“Our courts have repeatedly affirmed that mere ignorance, not induced by fraud, of the existence of the facts constituting a cause of action on the part of a plaintiff does not prevent the running of the statute of limitations.”]. See also, *Baker v. Beech Aircraft Corp.* (1974) 39 Cal.App.3d 315, 321 [“The general rule is that the applicable statute...begins to run when the cause of action accrues even though the plaintiff is ignorant of the cause of action or of the identity of the wrongdoer.”].

<sup>71</sup> See *Royal Thrift and Loan Co. v. County Escrow, Inc., supra*, 123 Cal.App.4th 24, 43; *Pooshs, supra*, (2011) 51 Cal.4th 788, 792 and 802.

Accordingly, the period of limitation began accruing against the appellant in this case with the March 7, 2012 final audit report, and the later revised final audit report does not toll or suspend the operation of the period of limitation. Thus, the December 10, 2015 filing was filed beyond the three-year period of limitation and is not timely.

2. Recent Commission decisions support the Executive Director's determination and notice of untimely filing.

Despite arguments by the appellant to the contrary, the executive director's decision is consistent with recent decisions of the Commission in *Collective Bargaining* IRC (05-4424-I-11, adopted December 5, 2014)<sup>72</sup> and *Handicapped and Disabled Students* IRC (05-4282I-03, adopted September 25, 2015).<sup>73</sup>

In the *Collective Bargaining* IRC, the Commission fully analyzed the period of limitation for filing IRCs, consistent with the analysis above. The Commission found that the Commission's regulation follows the courts' general rule for statutes of limitations; i.e., that the period of limitation to file an IRC begins to run when the IRC can be filed; that is, when the claimant receives notice of an adjustment, which includes the reason for the adjustment.<sup>74</sup>

Appellant argues, however, that the Commission's decision in *Collective Bargaining* does not factually apply here since the regulation in effect at the time of that IRC (Register 1999, No. 38), stated only that "All incorrect reduction claims shall be submitted to the commission no later than three (3) years following the date of the State Controller's *remittance advice* notifying the claimant of a reduction."<sup>75</sup> Appellant's interpretation is wrong. It is correct that the regulation governing the period of limitation for filing IRCs has been amended over time. Each amendment, however, has been made only to clarify the type of written documents the Controller can issue to provide notice to the claimant of an adjustment and the reason for the adjustment. The amendments do not change the requirement that the limitation period begins to accrue when the claimant can file an IRC pursuant to Government Code sections 17551 and 17558.7. For example, in 2003, the Commission amended title 2, section 1185, to provide "All incorrect reduction claims shall be ~~submitted to~~ 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."<sup>76</sup> In 2007, the regulation was amended as follows: "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 final state audit report, letter, remittance advice, or other written notice of adjustment notifying the claimant of a reduction."<sup>77</sup> In 2014, the period of limitation was added to section 1185.1(c), with minor non-substantive amendments as follows: "All 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,

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<sup>72</sup> Exhibit A, Appeal of Executive Director Decision, pages 77, et al.

<sup>73</sup> Exhibit A, Appeal of Executive Director Decision, pages 108, et al.

<sup>74</sup> Exhibit A, Appeal of Executive Director Decision, pages 85-86, 95-99.

<sup>75</sup> Exhibit A, Appeal of Executive Director Decision, page 8.

<sup>76</sup> Register 2003, No. 17.

<sup>77</sup> Register 2007, No. 19.



letter, remittance advice, or other written notice of adjustment to a reimbursement claim.”<sup>78</sup> These amendments do not change the requirement that the limitation period begins to accrue when the claimant can file an IRC following written notice by the Controller (either through a final audit report, letter, remittance advice, or other written notice) of the adjustment and the reason for the adjustment as required by Government Code section 17558.5.

Appellant also asserts that the Commission’s decision in *Handicapped and Disabled Students IRC (05-4282I-03)*, which found that an earlier audit was not the Controller’s final determination of the claim because it contained an express invitation for the claimant to participate in further dispute resolution, applies in this case. The Commission’s findings on the issue in *Handicapped and Disabled* stated the following:

However, here, as the claimant points out, the final audit report issued December 26, 2002 contains an express invitation for the claimant to participate in further dispute resolution: “The SCO has established an informal audit review process to resolve a dispute of facts.” The letter further 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.” [Citation omitted.] Accordingly, the claimant submitted its response to the final audit report on February 20, 2003, along with additional documentation and argument. [Citation omitted.] Therefore, although the audit report issued on December 26, 2002, identifies the claim components adjusted, the amounts, and the reasons for adjustment, and constitutes “other notice of adjustment notifying the claimant of a reduction,” the language inviting further informal dispute resolution supports the finding that the audit report did not constitute the Controller’s *final* determination on the subject claims. [Citation omitted.]

Based on the evidence in the record, the remittance advice letters could be interpreted as “the last essential element,” and the audit report could be interpreted as not truly final based on the plain language of the cover letter. Based on statements in the record, both the claimant and the Controller relied on the April 28, 2003 remittance advice letters, which provide the Controller’s final determination on the audit and the first notice of an adjustment to the claimant following the informal audit review of the final audit report. Thus, based on the April 28, 2003 date of the remittance advice letter, an IRC filed by April 28, 2006 is timely.<sup>79</sup>

There is no evidence in the record here that the Controller invited the appellant to participate in further informal dispute resolution after issuing the March 7, 2012 *final* audit report or otherwise called into question the finality of that final audit report. The Controller simply issued a revised final audit report to reflect the correct offsetting EPSDT reimbursement for fiscal year 2008-2009, and did not change its adjustment in Finding 2. The record does not show any

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<sup>78</sup> Register 2014, No. 21.

<sup>79</sup> Exhibit A, Appeal of Executive Director Decision, pages 120-121.

further informal discussions between the parties regarding Finding 2 following the March 7, 2012 final audit report.

Thus, the executive director's decision and notice in this case is consistent with these prior Commission decisions.

**V. Conclusion**

Based on the foregoing, the Commission upholds the executive director's decision to reject the appellant's IRC filing as untimely and incomplete.

**DECLARATION OF SERVICE BY EMAIL**

I, the undersigned, declare as follows:

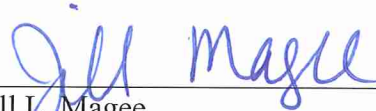
I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On October 13, 2016, I served the:

**Proposed Decision on Appeal of Executive Director Decision**  
*Appeal of Executive Director Decision, 15-AEDD-01*  
County of San Diego, Appellant

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 October 13, 2016 at Sacramento, California.



\_\_\_\_\_  
Jill L. Magee  
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**Matter:** Appeal of Executive Director Decision

**Claimant:** County of San Diego

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