

**Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division**

Touch of Love Ministries, Inc.
Docket No. A-11-35
Decision No. 2393
June 29, 2011

DECISION

Touch of Love Ministries, Inc. (TLM) appeals the December 3, 2010 decision of the Substance Abuse and Mental Health Services Administration (SAMHSA) disallowing \$23,680 in federal funds. The funds were paid to TLM pursuant to a SAMHSA Knowledge Dissemination Conference Grant in 2007. SAMHSA disallowed these funds on the ground that TLM failed to comply with applicable documentation and reporting requirements set forth in federal cost principles and uniform administrative requirements.

For the reasons discussed below, we uphold \$23,177.73 of this disallowance and reverse \$502.27 of the disallowance.

Background

SAMHSA awarded a grant of \$25,000 to TLM on September 13, 2005 to sponsor a Conference on Senior Substance Abuse (Conference). The project period was September 30, 2005 to September 29, 2006. The contact person for the grant was the pastor of Touch of Love Bible Church (Pastor) and the project director for the grant was Gearline Bryan (Project Director). SAMHSA Att. A. The treasurer for the Church (Treasurer) handled the fiscal requirements for the grant. Transcript of April 13, 2011 Board Informal Conference (Tr.) at 3, 25.

TLM did not hold the Conference by September 2006 and requested a no-cost extension of the grant for another year. SAMHSA Att. N. In 2007, SAMSHA extended the project period until September 29, 2007. SAMHSA Att. O. On September 28, 2007, TLM held the Conference in association with Laurel Regional Hospital in Laurel, Maryland. Appeal at 1-2; Tr. at 32; TLM 5/25/11 submission at D-2.

On December 3, 2010, SAMHSA issued a disallowance of \$23,680 stating that, as of October 26, 2009, it had not received the required financial and final progress reports from TLM for closing the grant or even any “information from the grantee showing that the grant-related activity (conference) had taken place.” TLM Att. 1 to Appeal. (In the course of the proceeding before the Board, SAMHSA conceded that this statement was incorrect insofar as the SAMHSA project officer for this grant had in fact attended

TLM's conference and received a final progress report as well as a binder with photographs and information about the conference. Tr. at 22; SAMHSA 5/19/11 submission at 3.)

TLM appealed the disallowance to the Board. TLM represented that it drew down \$25,000 in grant funds in September 2007 to pay for the Conference which was successfully conducted the same month. Appeal at 1-2. TLM stated that it retained \$23,680 in grant funds for its costs for the conference and refunded \$1,320 to SAMHSA. *Id.*

TLM represented further that it submitted all "required documents prior to the contract year end." *Id.* at 1. TLM asserted that once it learned that SAMHSA said that it did not have TLM's documentation, TLM tried to fax, scan and mail additional documents to SAMHSA. *Id.* at 1. TLM attached documentation to its appeal that appeared to support at least some of these representations.

The parties' representations were in a number of ways both internally and mutually inconsistent, the documents submitted by the parties did not suffice to resolve the issues, and both parties were proceeding without representation by counsel. Therefore, the Board found it necessary to actively develop the record in this case in order to reach a sound decision. That process involved asking SAMHSA to respond to the assertions TLM made in its appeal before the parties engaged in briefing, receiving briefing from the parties, conducting an informal conference, and allowing the parties to submit additional documentation and argument after the informal conference.

Legal Background

Non-profit organizations, such as TLM, that receive federal grants are subject to the uniform administrative requirements at 45 C.F.R. Part 74 and to the cost principles in Office of Management and Budget (OMB) Circular A-122, now codified at 2 C.F.R. Part 230. 45 C.F.R. §§ 74.1, 74.27.

Under the cost principles, a cost is allowable if, among other things, it is "reasonable for the performance of the award and . . . allocable thereto." 2 C.F.R. Part 230, ¶ A.2.a. OMB Circular A-122 explains that a cost is reasonable "if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs." *Id.* at ¶ A.3. It provides that a cost is allocable to a grant "in accordance with the relative benefits received." *Id.* at ¶ A.4.a.

Costs must also be "adequately documented." *Id.* at ¶ A.2.g. As to documentation, the regulations require a grantee to have in place a financial management system that provides "[r]ecords that identify adequately the source and application of federal funds"

as well as “[a]ccounting records, including cost accounting records, that are supported by source documentation.” 45 C.F.R. §§ 74.21(b)(2), (b)(7). Section 74.53 requires grantees to retain “financial records, supporting documents . . . and all other records pertinent to the award for a period of three years from the date of submission of the final expenditure report”

Grant awards set forth terms and conditions with which grantees must comply. Here the grant award and the revised grant award identified budget categories for allowable expenses (“Salaries and Wages” and “Equipment”) and described other requirements. SAMHSA Atts. A, N. For example, the grant award informed TLM that it was required to comply with not only Part 74 and OMB Circular A-122, but also with the HHS Grants Policy Statement (GPS). *Id.* at 1. The GPS provides, among other things, that grantees must maintain financial management systems that are adequate to account for the expenditures of grant funds and to ensure that such funds are handled responsibly. GPS at II-61. The grant award provided that “[a]cceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn . . . from the grant payment system.” *Id.*

In reviewing this disallowance, the Board is “bound by all applicable laws and regulations.” 45 C.F.R. § 16.14. Therefore, the Board must uphold a disallowance where it is authorized by law and the grantee has not disproved the factual basis for the disallowance. *Northwest Tennessee Economic Development Council*, DAB No. 2200 (2008); *Arlington Community Action Program, Inc.*, DAB No. 2141 (2008), *Bedford Stuyvesant Restoration Corp.*, DAB No. 1404 (1993); *Huron Potawatomi, Inc.*, DAB No. 1889, at 9 (2003); *Harambee Child Development Council, Inc.*, DAB No. 1697 (1999).

Finally, the Board has repeatedly held that, under the applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds. *Benaroya Research Institute*, DAB No. 2197 (2008) (citing cases). The Board has also held that “[b]eing able to account for the expenditure of federal funds is a central responsibility of any grantee,” and that “[o]nce a cost is questioned as lacking documentation, the grantee bears the burden to document, with records supported by source documentation, that the costs were actually incurred and represent allowable costs, allocable to the grant.” *Recovery Resource Center, Inc.*, DAB No. 2063, at 12-13 (2007); *see also Northstar Youth Services*, DAB No. 1844, at 5 (2003).

Analysis

SAMHSA disallowed these funds on the ground that TLM failed to comply with applicable federal documentation and reporting requirements. We uphold most of SAMHSA's disallowance of these funds because we find that, even though TLM

repeatedly states that it “submitted the required documents [and] responded to every request that was made to us within the required timeframe” (*see, e.g.*, TLM Appeal at 1), TLM did not produce evidence that supported this assertion or that documented compliance with federal requirements.

Below we discuss the relevant federal requirements and why TLM’s evidence is inadequate.

1. TLM failed to timely file required financial reporting documents.

Section 74.52 of 45 C.F.R. requires nonprofit grantees, such as TLM, to file financial reporting forms. The forms at issue here are the “Federal Cash Transaction Report” or PSC-272 and the “Financial Status Report” or SF-269. 45 C.F.R. § 74.52. The grant award also informed TLM of its obligation to file these forms at the close of the grant. SAMHSA Att. A, at 4-5. As discussed below, TLM failed to file either of these forms on a timely basis.

The budget and project periods for this grant ended September 29, 2007. SAMHSA Att. O. On September 10, 2007, SAMHSA wrote TLM to advise it about “Final Reports and Closeout” for this grant. SAMHSA Att. H. SAMHSA instructed TLM that, within 90 days of the final budget period, it was required to file a PSC-272; a SF-269; a “Final Progress Report”; a “Report of Equipment/Supplies”; and a “Report of Unused Supplies.” *Id.* SAMHSA instructed TLM to file the PSC-272 electronically and to mail the other reports to the “Division of Grants Management Attn: Closeout.”¹ *Id.* SAMHSA reminded TLM that the grant’s closeout did not affect certain responsibilities of grantees, including the duty to retain grant records in accordance with 45 C.F.R. § 74.53 or SAMHSA’s “right to . . . disallow . . . funds on the basis of a subsequent audit or other review.” *Id.* at 2.

While SAMHSA initially took the position that TLM had submitted nothing in response to this letter, it subsequently conceded that TLM had refunded the unused portion of the grant by check sent to the Division of Payment Management (Tr. at 26-27) and that the grant Project Officer had received from TLM a final progress report and a binder about the Conference (SAMHSA 5/19/11 submission at 3-4). While SAMHSA admits the report and binder were received by the federal agency, SAMHSA was not able to locate

¹ In light of our discussion of the SF269 and the PSC 272, it is not necessary for us to also consider whether TLM timely filed the required information about equipment and unused supplies. However, we note that TLM submitted a report on supplies and equipment dated November 15, 2007. TLM Appeal at “Financial Documents.”

them (*id.*), nor were they produced by TLM. SAMHSA continues to deny that it received the requested PSC-272 and a SF-269 in 2007. Tr. at 10.

The PSC-272 form is used to report on federal funds advanced to grantees. 45 C.F.R. § 74.52(a)(2). Under section 74.52(a)(2)(iii), TLM was required to file a PSC-272 at the end of the 2007 quarter in which it drew down the \$25,000 for this grant. SAMHSA asserted that TLM had not timely filed a PSC-272. SAMHSA 1/25/11 submission at 1. In its later submissions before the Board, TLM filed a PSC-272 dated October 4, 2007. TLM Att. A (2/28/11).² When questioned about whether TLM had previously provided this document to SAMSHA, the Treasurer stated that she had completed this PSC-272 on October 4, 2007 and printed it. Tr. at 14-15. She stated further that she had not sent SAMHSA either an electronic or hard copy of the document in 2007 or thereafter until she subsequently found it and submitted it during the course of this appeal. Tr. 14-15. This admission, absent contrary evidence, establishes that, prior to 2011, TLM did not submit to SAMHSA a PSC-272 reporting on its drawdown and disbursement of the grant funds.

The SF-269 form includes a one-page summary of net grant outlays, the recipient's share of the net outlays, the federal share of the net outlays, and program income.

Section 74.52(a)(iv) provides that grantees –

shall submit the SF-269 . . . (an original and two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports.

Extensions of reporting due dates may be approved by the HHS awarding agency upon request of the recipient.

See also 45 C.F.R. § 74.71 (closeout procedures requiring filing of financial and performance reports within 90 days of “the date of the completion of the award”).

The evidence in the record establishes that TLM did not timely file a SF-269 in December 2007 (i.e., 90 days after the September 2007 grant closeout). Moreover, TLM has failed to show that it filed a SF-269 even after SAMHSA personnel repeatedly contacted TLM in January, April and July of 2009 about its failure to file the required closeout documents. That evidence is as follows:

- In January, April, July and September 2009, SAMHSA personnel contacted the Pastor, the Treasurer and/or the Project Director about the fact that SAMHSA did

² Because TLM did not consistently sequentially mark its attachments, we refer in parentheses to the submission to which a particular attachment was attached.

not have closeout documents for this grant and asked TLM to submit the documents, including the SF-269. SAMHSA Atts. I-M. At the informal conference, the SAMHSA representative in this appeal stated that her Division of SAMHSA first received TLM's SF-269 as part of a group of documents that TLM supplied to it in October 2010. Tr. at 40.

- At the informal conference, the Treasurer stated that she believed the first (and apparently only) SF-269 she completed for the grant was a SF-269 dated September 16, 2009, a copy of which is attached to TLM's Appeal. Tr. at 42-44. The Treasurer's statement establishes, in the absence of any contrary evidence, that TLM did not file a SF-269 in 2007 when it was due or even in response to SAMHSA's January, April, and July 2009 requests.
- The record contains emails and notes of a SAMHSA closeout specialist (Ms. Goldsboro) documenting her attempts to obtain closeout documents from the Treasurer and Project Director in September 2009. *Id.* at L, M. The last entries are an email dated September 23, 2009 from the Treasurer telling Ms. Goldsboro that she would send documents "tonight" and Ms. Goldsboro's handwritten note reporting that email. *Id.* at L, M. However, TLM did not file any fax transmissions, emails, or mailing receipts that would show the Treasurer actually did transmit any documents to the closeout specialist as of or shortly after September 23, 2009, nor are there any notes by Ms. Goldsboro reflecting receipt of such documents. At the informal conference the SAMHSA representative stated that SAMSHA "unilaterally closed out the award in October of 2009," after not receiving the requested documents. Tr. at 10. SAMHSA represented in the disallowance letter that, as of October 26, 2009, the SF-269 had not been received. TLM Att. A (Appeal).
- In a letter dated April 15, 2010, the Treasurer represented to SAMHSA that TLM had submitted what it believed were the required documents in September 2009 to Ms. Goldsboro at SAMSHA. TLM did have a United States postal receipt for delivery of this letter. TLM Att. D (2/28/11).

Therefore, this evidence shows, at most, that the earliest TLM could have filed a SF-269 with SAMHSA was September 2009, almost two years after the end of the extended grant budget period.

Moreover, as the Treasurer acknowledged at the informal conference, the SF-269 dated September 2009 did not accurately report the financial transactions for the grant or correspond to the approved budget for the grant. Examples of such problems include the following:

- An amount of \$1,320 was reported as the “Total Program Income Realized,” when, in fact, this was the amount TLM returned to SAMHSA as unused federal funds. Tr. at 44-45.
- For “Unobligated balance of Federal funds,” TLM inexplicably entered \$1,008.38, which was presumably incorrect since TLM actually returned \$1,320 as unused federal funds. *Id.*; TLM Att. A (2/28/11).
- For “Third party (in-kind) contributions,” TLM entered \$2,145 but the Treasurer was unable at the informal conference to explain the basis for that amount. Tr. at 45-50. Subsequently, TLM submitted a spreadsheet reflecting that this amount was composed of donations, exhibitor’s fees, and advertising revenue. TLM Att. A (5/25/11). Therefore, this amount does not represent “in-kind” contributions but rather revenues that should have been recorded on the SF-269 as cash contributions or program income. Additionally, the Treasurer acknowledged that the SF-269 did not reflect the major in-kind contribution TLM received, which was the value of the conference space contributed by Laurel Regional Hospital. Tr. at 49.

Therefore, we find that TLM did not provide SAMHSA with a PSC- 272 until 2011 and that, while TLM may have provided SAMHSA with a SF-269 in 2009, two years after the Conference, the SF-269 provided did not accurately report relevant grant financial transactions.

With no accurate financial reports, SAMHSA could reasonably lack confidence that the grant funds were spent and accounted for properly.

2. TLM’s expenditures for consultants were not authorized by the budget approved by SAMHSA for this grant.

The grant budget contained in the notice of grant award is “the financial expression of the project or program as approved during the award process.” 45 C.F.R. § 74.25(a). Grantees are required to “report deviations from budget and program plans” and “request prior approvals for budget and program plan revisions.” 45 C.F.R. § 74.25(b). Agency approvals of budget revisions must be in writing. 45 C.F.R. § 74.25(k). SAMHSA disallowed TLM’s payments to consultants because the approved grant budget did not provide for hiring consultants, and SAMHSA did not approve of any modification of the budget prior TLM’s expending these funds. SAMHSA Att. B. Below, we discuss the evidence as to the approved grant budget and the disallowed consultant expenses.

TLM originally applied for \$50,000 in federal funds to sponsor this conference. TLM Att. R, at 1 (5/27/11). TLM proposed a budget (first budget) for the conference of

\$71,495, consisting of \$50,000 in federal funds, \$7,875 to be contributed by TLM in in-kind services, and \$13,620 in “program income” from registration and exhibit fees. *Id.* at 1, 19. The major cost items were salaries for the Project Director and a secretary (\$14,375), consultant services (\$6,000), and speakers’ fees (\$12,000). *Id.* at 19-20.

SAMHSA funded the grant proposal at the reduced level of \$25,000 in federal funds. SAMHSA Att. A. The 2005 Notice of Award (NOA) set forth an “Approved Budget” (second budget) providing only for \$22,000 in the category of “Salaries and Wages” and \$3,000 in the category of “Equipment.”³ *Id.* at 1. The budget listed no funds in the category of “Consultant Costs.” *Id.*

TLM submitted to the Board a copy of an undated third budget for the conference showing a federal contribution of \$25,000 but different line items than those in the first budget and the approved NOA “second budget.” TML Att. C (2/28/2011). The third budget stated that the Project Director would receive a salary (\$9,000) but budgeted zero for secretarial services, stating that those services would be “In-kind – Proj. Dir.” *Id.* The third budget identified other costs as “Consultant Services” (\$5,000) and “Speakers’ Fees” (\$4,000). TLM represents that the third budget was submitted to SAMHSA in conjunction with its no-cost extension request (filed in February 2007) and approved by SAMHSA (TLM 5/27/2001 submission at ¶ 6; Tr. at 33; SAMSHA Att. N) but provided no documentation of such submission or approval. SAMHSA denies that the third budget was submitted or approved. SAMHSA 5/19/2011 submission at 3. It points out that such budget revisions must be approved in writing and asserts that, if a revised budget had been approved, SAMHSA would have issued a revised NOA reflecting the shift of funds from salary to consultant costs. Tr. at 34-36. Moreover, in March 2007, SAMHSA issued a “Revised Notice of Grant Award” granting a no-cost extension and adopting a “fourth budget” identical to the one in the September 2005 NOA. SAMHSA Att. O. TLM offered no evidence that it contacted SAMHSA about the budget after receiving the 2007 NOA.

Based on this record, we find that the relevant budget is the budget set out in the March 2007 NOA, which like the September 2005 NOA, approved a budget limited to \$22,000 for salaries and \$3,000 for equipment. SAMHSA Att. O.

³ We note that the HHS Grants Policy Statement provides that grants for conferences cannot include costs for “equipment purchase.” GPS at II-97 (found at <http://dhhs.gov/asfr/ogapa/grantinformation/hhsgps107.pdf>). Moreover, TLM’s proposed grant budget did not request funds for equipment purchases. SAMHSA Att. R, at 19-20. In our later discussion of non-personnel costs, we therefore do not uphold the disallowance on the grounds put forward by SAMHSA that such expenditures were limited to equipment in the approved budget. SAMHSA 3/16/11 submission at App. 2. Instead, we accept that TLM could have reasonably understood the “equipment” line item in the NOA to encompass items such as supplies since supplies are an allowable cost under a conference grant (HHS GPS at II-96) and were included in TLM’s grant application budget (SAMHSA Att. R at 19-20).

The following expenditures for consultants claimed by TLM were thus not in accord with the September 2006 NOA budget categories of “Salaries and Wages” and “Equipment”:

- \$12,500 in consultant fees paid to Ms. Bryan for project director and secretarial services;
- \$7,400 paid for other consultant/speaker fees;
- \$2,280 paid for “Screening and Data Collection” services; and
- \$1,500 paid for “Professional Financial Management.”

We conclude that SAMHSA could disallow these consultant costs on the basis that they were not authorized by the approved grant budget.

In grant programs generally, retroactive approval may be granted for transactions that would have been approved had the grantee requested approval in advance. *Arizona Affiliated Tribes, Inc.*, DAB No. 1500 (1994); *New York State Dept. of Social Services*, DAB No. 1394, at 33 (1993); *Iowa Dept. of Human Services*, DAB No. 1340, at 5-6 (1992). TLM did not seek retroactive approval from SAMHSA prior to this litigation; and SAMHSA did not indicate any willingness to consider a retroactive approval of changes in the budget categories at this point. Tr. at 36. While the Board has, in other cases, reviewed whether an agency’s refusal to grant retroactive approval was an abuse of discretion, TLM has not made that argument here and, in any case, we need not reach it because the costs were not timely and accurately reported and, as discussed in the next section, are not adequately documented.

3. TLM failed to adequately document its costs.

Below we discuss the disallowed costs by category.

(a) Consultant costs

TLM claimed consultant costs for the following people or businesses: Ms. Bryan (\$12,500); Robinson & Associates, CPA (\$1,500); Vision Que (\$800); a photographer (\$850); Total Lifestyle Change (\$2,280); Cecelia Wisdom/CAW Consulting (\$1,500); and Jewell Whitmore (\$4,250).

OMB Circular A-122, Attachment B discusses “Selected Items of Cost” and provides that “professional services costs” (referred to here as consultant costs) “are allowable, subject to subparagraphs b and c when reasonable in relation to the services rendered” 2 C.F.R. Part 230, App. B, ¶ 37. It explains that the allowability of any particular

consultant cost is depends on a number of factors, including the “[a]dequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).” 2 C.F.R. Part 230, Att. B, ¶ 37.b.8. Moreover, any cost, consultant or otherwise, must be shown to be “reasonable for the performance of the award and . . . allocable thereto,” (2 C.F.R. Part 230, App. A, ¶ A.2.a) and “adequately documented” (*id.* at ¶ A.2.g). *See also* GPS at II-32 (consultant costs must both meet applicable cost principles for professional services costs and be appropriately documented).

TLM produced no written contracts for any of these services or descriptions, sworn or unsworn, about the terms of oral agreements with these consultants. The only documents that even arguably describe the services and the rate of compensation are the initial grant proposal and some of the consultants’ invoices. We do not infer from these documents that TLM had adequate agreements with consultants prior to their engaging in work.

Equally problematic is the fact that TLM submitted inadequate documentation of the time spent performing work for the grant and specific tasks any particular consultant undertook, and of the relationship of any such work to the purposes of the grant. Some documentation, such as a copies of consultants’ work product or sworn declarations from the consultants about their efforts, might have provided a basis for evaluating whether the consultants’ compensation was “reasonable in relation to the services rendered” and allocable to the grant. Instead, TLM simply made unsupported statements such as that it “reasonably believe[d]” a consultant spent a specific number of hours on the grant or that a consultant “performed the tasks that she was hired to do.” TLM 5/25/11 submission at 2.

Compounding TLM’s failure to submit documentation specific to each consultant is its failure to submit any detailed evidence about the Conference itself. Thus while the Pastor characterized the Conference as a “very successful event” (Tr. at 32), the record contains no agenda and no evidence about how many people attended; no information about who spoke at the conference (other than Vision Que) or what the speakers spoke about; and no written evaluation (which was required by the grant) or information about what any evaluation determined.

Below we discuss examples of TLM’s failure to adequately document specific consultant costs.

Gearline Bryan. In TLM’s original grant application budget and in the budget TLM represented that it submitted in conjunction with its request for a no-cost extension of the grant, Ms. Bryan, the grant Project Director, was explicitly budgeted as an employee, not a consultant. SAMHSA Att. R, at 19; TLM Att. D (2/28/11). Under the 2005 and 2007 NOAs, she also was budgeted as an employee of TLM. SAMHSA Atts. A, N. Instead, TLM paid Ms. Bryan a \$12,500 consultant fee for her services as Project Director and

Secretary. TLM represented that “as Project Director [Ms. Bryan] worked approximately 20 hours a week for approximately 20 weeks at an hourly rate of \$33.17” and was paid \$9,000 for these services. TLM 5/25/11 submission at 3. It also represented that Ms. Bryan “with the assistance of her daughter, Jihan Bryan, performed the secretarial duties and was paid the budgeted \$3,500” for these services. *Id.* TLM stated that “[w]e reasonably believe that [Ms. Bryan] worked more hours than her fixed fee that she was paid for” TLM 5/25/11 submission at 3.

We reject this claim. TLM’s conclusory and unsupported statements about Ms. Bryan’s services are inadequate to document the time she spent performing these services. Moreover, TLM’s failure to provide the Board with any meaningful information about the scope and nature of the Conference precludes us from evaluating whether the product resulting from Ms. Bryan’s alleged activities would tend to show that she performed the tasks called for in the initial grant proposal and as represented by TLM. Thus, the record provides no basis for determining whether this claim was “reasonable in relation to the services rendered” as required by 2 C.F.R. Part 230, App. B, ¶ 37.

Moreover, we note that the fact that the 2005 and 2007 NOA budgets required TLM to use salaried employees as opposed to consultants is significant because OMB Circular A-122 imposes specific documentation standards for salaried employees. These standards are designed to protect federal agencies’ ability to ensure that grant funds are properly charged and allocated. TLM represented to SAMHSA that Ms. Bryan’s services would be subject to these standards including records of “after-the-fact determination of the actual activity of each employee” (not merely budget estimates) in signed reports. OMB Circular A-122, Att. B, ¶ 8.m (Salaries and Wages). Ms. Bryan’s letter dated September 8, 2007, which she characterizes as an “invoice” for her work “for over 8 months” on the Conference, states only -- “I am requesting payment of \$4,500 with the balance due on September 28, 2007 in the amount of \$4,500. The total amount due is \$9,000 as reflected in the budget for this event.” TLM 5/25/11 submission at D-6. Plainly, Ms. Bryan provided no documentation of her “actual activity” but merely sought to receive the entire budgeted amount.

Ms. Bryan’s view, that the budget estimates in themselves constituted adequate documentation and justified payment, is also shown by her treatment of secretarial/administrative services under the budget. There are two letters associated with Ms. Bryan in the record related to this cost. In a letter dated September 26, 2007, Jihan Bryan, Ms. Bryan’s daughter (Tr. at 55-56), informed TLM that Jihan should be paid \$3,500 for “administrative services . . . rendered during the duration of the project period.” TLM Att. C (5/25/11). In a letter dated October 17, 2007, Ms. Bryan claimed that she herself should be paid “\$3,500 for secretarial services rendered on the grant” because, while the grant called for another employee of TLM to perform and be paid \$3,500 for the services, Ms. Bryan stated that she had performed them. TLM Att. D-6-1 (5/25/11). TLM represents that Ms. Bryan “with the assistance of her daughter, Jihan

Bryan, performed the secretarial duties and was paid the budgeted \$3,500.” TLM 5/25/11 submission at 3. This correspondence provides no documentation as to the actual secretarial services provided or the time spent by either Ms. Bryan or her daughter on providing them.

Jewell Whitmore. TLM paid Ms. Whitmore \$4,250 for services as the project coordinator for the grant. It stated that Ms. Whitmore “worked for approximately nine and a half weeks for a total of 180 hours at \$25 hour” and described the type of activities she performed. TLM 5/25/11 submission at 2. It concluded that “[w]e reasonably believe [she] performed the tasks she was hired to do.” TLM attached an “Invoice for Services” from Ms. Whitmore dated September 28, 2007 stating she was requesting payment of \$4,500 for “Consultant Services Rendered for Conference on Knowledge Dissemination on Prevention of Substance Abuse Among Seniors” TLM Att. D-2 (5/25/11).

We reject this claim. While TLM attached a description of the project coordinator’s responsibilities under the grant, TLM’s conclusory and unsupported statements about Ms. Whitmore’s services are inadequate to document that she performed those tasks or to show how much time she spent performing services for the grant.

Moreover, TLM’s failure to provide the Board with any meaningful information about the scope and nature of the Conference precludes us from evaluating whether the product resulting from Ms. Whitmore’s alleged activities would tend to show that she performed the tasks called for in the initial grant proposal and as represented by TLM. Thus, the record provides no basis for determining whether this claim was “reasonable in relation to the services rendered,” as required by 2 C.F.R. Part 230, App. B, ¶ 37.

Robinson & Associates, CPA (Robinson). TLM represents that it paid Robinson \$1,500 for “accounting and financial services, participating in planning and status meetings for the project” for a total of 50 hours at \$30 an hour. TLM 5/25/11 submission at 3. TLM refers to an invoice but did not submit one for Robinson.

We reject this claim. In the informal conference, the Treasurer discussed how she handled the accounting and financial services for this grant using accounting software that she operated (Tr. at 25, 45-50), and neither she nor the Pastor ever mentioned the involvement of a professional accountant. Moreover, TLM’s financial documents, such as accounting spreadsheets, refer to “Touch of Love Ministries, Inc.” and not Robinson. As for Robinson’s alleged participation in “status meetings” for the project, we see no evidence of such meetings, nor of any actual role played by Robinson in relation to the grant.

Vision Que, LLC. TLM paid Vision Que \$800 for its services. TLM asserts that Vision Que “was a presenter at the Conference.” *Id.* at 2. It represents that Vision Que was “an

excellent presenter and fees were based on a rate of \$100 per hour for an 8 hour period.” *Id.* at 3. The record contains an invoice from Vision Que describing its “Scope of Work” as “Involving the Community in Prevention for Seniors’ Presentation September 28, 2007.” *Id.* at D-5.

We reject this claim. Because TLM provided neither any documentation of TLM’s agreement with Vision Que nor any documentation related to the Conference itself, we cannot evaluate whether Vision Que contributed eight hours of service to the Conference. Specifically, we have no agenda for the Conference so we have no information about the length of Vision Que’s presentation, the number and qualifications of people from Vision Que who participated, or TLM’s expectations about preparation efforts required of Vision Que for its participation in the Conference.

Photographer Maurice G. Fitzgerald. TLM represented that it paid Mr. Fitzgerald \$850 for “photographic services for the entire day of the Conference” and “a photo album” and a “compact disk of the event.” *Id.* at 2. TLM submitted an invoice stating that Mr. Fitzgerald would “provide photographic services to Laurel Regional Hospital Health Fair on Sept. 28, 2007, from 8AM-3PM provide photographic coverage of event.” *Id.* at D-3. The invoice also obligated the Mr. Fitzgerald to “provide one color 4x6 photograph in a burgundy album within 5-7 days” and “one compact disk on day of event,” presumably a disk of photographs. The “Sold To” entry on the invoice is “Jerri Bryan Laurel Regional Hospital.” *Id.*

We reject this claim. TLM’s conference appears to have been part of a larger event, i.e., the Laurel Regional Hospital Health Fair. *Id.*; Tr. at 31-32. Although TLM argued before us that the health screenings and other activities provided by Laurel Regional Hospital should be considered in-kind contributions to the TLM conference (Tr. at 31-33), TLM failed to produce any documentation from the hospital or other records that would allow us to conclude that the entire health fair was designed to serve the grant purposes. We therefore conclude that services identified as provided for the hospital health fair cannot be assumed to be part of the grant-supported Conference. The invoice submitted by TLM indicates that the photographer was also photographing the Health Fair. Therefore, part of the benefit of the photographer cost was received by the hospital, and not all of the cost was allocable to the SAMHSA grant. OMB Circular A-122, Att. A, ¶¶ A.2.a; A.4. Since TLM submitted no evidence that would provide a basis for allocating any particular amount of this expense to the SAMHSA grant, we would disallow the entire amount on this basis, even if the budget had allowed payment for a contractor photographer for the conference. Furthermore, TLM did not present a single photograph from the Conference. TLM asserted that it submitted, and SAMHSA acknowledged having at one time received, a binder that included some photographs, but TLM was unable to produce any work product to document value received from the payment to the photographer.

Total Lifestyle Change. TLM represented that it paid \$2,280 to Total Lifestyle Change to provide “large medical displays” and “screening of participants, collection of screening data and reporting of the data collected.” TLM 5/25/11 submission at 2. TLM submitted an invoice reflecting \$500 for “Set-up and Breakdown” and \$1,280 for “Screening of Participants” at “\$16 per participant (80 minimum),” and \$500 for “Data Collection and Reporting.” The invoice records “Gearline C. Bryan” as the “Customer” and the “Health Fair – Laurel Regional Hospital – September 28, 2007” as the event. TLM D-4 (5/25/11).

We reject this claim. Again, these services appear to have been provided as a part of the hospital health fair and it is not possible to identify to what extent, if any, they were provided to Conference participants. TLM failed to explain what sort of screenings these were, how they were related to a substance abuse conference, what sort of “data” the consultant was gathering, the relationship of that data to the Conference, or how that data was used for the Conference.

Cecelia Wisdom/CAW Consulting. TLM alleged it paid Ms. Wisdom \$1,500 for “tasks performed per the submitted and approved grant proposal” for an evaluation of the Conference. TLM 5/25/11 submission. at 2. It attached information about Ms. Wisdom’s qualifications and invoices for her services. TLM Atts. D-1 – D-1-2 (5/25/11). TLM stated that it “reasonably believe[d] that [she] spent 45 to 50 hours on this project and her consultant fee of \$1,500 was justified.” TLM 5/25/11 submission at 2.

We reject this claim for the following reasons.

- Ms. Wisdom’s duties as described in the grant proposal (for which she was to be paid \$1,500) differed substantially from those described in the invoice that she submitted for the services that she purports to have actually performed. *Compare* SAMHSA Att. R at 18, 20 *with* TLM Att. D-1 (5/25/11). Unlike the invoice, which is dated 11 days before the conference, the grant proposal envisioned Ms. Wisdom’s participating from the beginning of the grant process and providing periodic services, such as, in “month 7,” an “interim progress report.” SAMHSA Att. R, at 18. TLM provided no basis for concluding that the services described in the invoice were of comparable value to those described in the grant proposal.
- TLM submitted nothing from Ms. Wisdom about the amount of time she spent performing the services listed in the invoice. While it represented it believed she spent “40 to 50” hours on the evaluation services, it provided no basis for that belief. Moreover, TLM submitted no documentation tending to show that Ms. Wisdom performed the tasks identified on the invoice, which included interviewing staff, identifying data sources, and reviewing records.

- Finally, TLM submitted none of the evaluation work product called for by the proposal and/or the invoice, such as Ms. Wisdom’s “evaluation strategy,” her evaluation materials, the evaluation survey, data from that survey, or the conference report or evaluation report that she contracted to write for TLM.

Therefore, this record provides no basis to find that Ms. Wisdom performed the tasks called for in the invoice, and, if she did, no basis to value the performance of those tasks.

(b) Other Miscellaneous Expenses

TLM contended that it incurred an additional \$1,348.52 in allowable federal costs in producing the Conference.⁴ TLM Att. B (5/25/11). As discussed below, we find that TLM documented the allowability of \$518.39 of these costs and reverse the disallowance by that amount.

Burgundy Press. TLM claimed \$397.22 for amounts paid to Burgundy Press. TLM submitted an invoice dated September 27, 2007 from Burgundy Press charging \$397.22 for 2 foam core posters and 75 brochures. TLM Att. B-2-1 (5/25/11). It represented that these items were for the conference. *Id.* at Att. B-2.

SAMSHA objected to this expense on the ground that TLM’s records indicate that TLM issued a check to Ms. Bryan “to cover the cost of . . . printing.” SAMHSA App. 2 (3/16/11).

We find that the Burgundy Press expense is adequately documented and reasonable. Signs and brochures are items that would ordinarily be necessary to sponsoring a conference and such items were identified as necessary in TLM original grant application. SAMHSA Att. R at 20. While the check TLM identified as paying for this cost was made to Ms. Bryan, the invoice bears a notation “Pd by Gerri” and a check number, indicating that TLM’s payment to Ms. Bryan was used to pay this invoice.

Documented Office Depot and CVS Expenses. TLM claimed \$400 for “an advance written to Gerri Bryan in the amount of \$400.00 for the purchase of stamps for mass mailings, paper and supplies needed for the Conference.” TLM Att. B-3 (5/25/11). It provided Office Depot and CVS receipts dated September 2007 and totaling \$121.17 for purchase of items such as stamps, pens, paper, and envelopes, but noted that \$16.12 of

⁴ We note that the expenses for the consultants considered above total \$23,680, which is the amount TLM retained from the grant and the amount SAMHSA disallowed. Appeal at 1; *id.* at Disallowance Letter. We consider these additional miscellaneous expenses because, if we find any amount from them to be allowable, the disallowance would be reduced by that amount.

this amount was not being charged to the grant. TLM Att. B-3-1 – B-3-2 (5/25/11). Except for a payment to Dottie’s Trophies which we discuss later, TLM conceded that it did not have receipts for the remainder of this amount. The receipts for the \$105.05 (\$121.17 - \$16.12) represent costs that are reasonable in kind and amount for supplies to prepare for and conduct a conference.

SAMHSA objected to this expense on the ground that part of it was not documented by receipts. SAMHSA at App. 2 (3/16/11).

We find that the portion of this expense (\$105.05) for which TLM has receipts is adequately documented and should be allowed.

Dottie’s Trophies. TLM claimed \$551.50 for amounts that it asserts it paid to Dottie’s Trophies for “three trophies and awards made to businesses & individuals for their work and support of the Conference.” TLM Att. B-1 (5/25/11). It attached invoices from Dottie’s Trophies reflecting charges that slightly exceed that amount. TLM Atts. B-1-1, B-1-2 (5/25/11). Again, TLM did not pay Dottie’s Trophies directly but advanced cash to Ms. Bryan for payment. TLM B-1 (5/25/11).

SAMHSA objects to this expense on the ground that such items are “not part of the approved budget and SAMSHA is unable to determine when, by whom or if these invoices were paid.” SAMHSA App. 2 (3/16/11).

We agree with SAMHSA that this cost’s relationship to the grant, its reasonableness, and its payment are all inadequately documented. Expenses for trophies and awards are not part of the approved budgets (SAMHSA Atts. A, N), nor did TLM include them in its proposed budgets for conferences costing \$50,000 (SAMHSA Att. R, at 19-20) or \$25,000 in federal funds (TLM Att. C (2/28/11)). Moreover, TLM provided no information about what sort of trophies and awards these were, specifically to whom they were awarded, and why such businesses and individuals merited this level of recognition, or how these awards benefited the purposes of the grant. Finally, we note that the purchaser on the invoice is identified as the “Laurel Hospital Partnership” rather than TLM, which again raises questions about whether this not inconsiderable expense was incurred, at least in part, for the Hospital’s Health Fair instead of the Conference.

The remainder of the costs represents amounts paid to Ms. Bryan to purchase “supplies needed for the Conference.” TLM Att. B-3 (5/25/11). We uphold the disallowance of these funds because TLM had no documentation of how Ms. Bryan spent them.

As explained above, we reverse the disallowance as to \$502.27 (i.e., \$397.22 + \$105.05) of costs for which TLM submitted adequate documentation.

4. The Board acted within its powers and responsibilities in developing the record in this case.

In its submission after the informal conference, SAMHSA expressed the following concern.

SAMHSA is concerned because, rather than conduct a *de novo* review of the information TLM submitted, the DAB inquired of TLM about the existence of other documentation and made suggestions about documentation TLM could provide to support the costs it charged to the SAMHSA grant during the informal hearing and May 5, 2011 Order. SAMHSA and the DAB cannot be sure that any additional documentation submitted by TLM existed prior to the DAB's questions and suggestions. Otherwise, why would TLM not have already submitted the information to SAMHSA and/or the DAB.

SAMHSA 5/19/11 submission at 5-6. SAMHSA went on to state that TLM had the burden of "documenting the existence and allowability of its expenditures of Federal Funds." *Id.* at 6.

SAMHSA is correct that TLM had the burden in this case. It is the Board's application of this burden that results here in our upholding a significant disallowance against a self-described small grantee that, SAMHSA does not now dispute, actually conducted the conference for which the grant was awarded. SAMHSA's statement, however, reflects a misunderstanding of the Board's role.

As our decisions have previously recognized, "the Board has considerable discretion to permit the parties to clarify or amend their positions as long as the opposing party has the opportunity to respond to any change." *New Hampshire Dept. of Health and Human Services*, DAB No. 1862, at 10-11 n.5 (2003) citing 45 C.F.R. §§ 16.1, 16.9, 16.13, 16.15, and 16.21; *Mississippi Dept. of Human Services*, DAB No. 1267 (1991); *West Central Wisconsin Community Action Agency*, DAB No. 861 (1987). Often this discretion benefits the federal party, as it did in *New Hampshire* where the agency "broadened the basis for the disallowance" in the course of the appeal (*New Hampshire* at 10) and, indeed, in this case, where SAMSHA also broadened its bases to include the adequacy of TLM's documentation of costs.

The Board's discretion is specifically recognized in 45 C.F.R. § 16.13, which describes the Board's "Powers and Responsibilities" and provides in pertinent part:

In addition to powers specified elsewhere in these procedures, Board members have the power to issue orders (including show cause orders); to examine witnesses; to take all steps necessary for the conduct of an orderly hearing; . . . to order or assist the parties to submit relevant information; to remand a case for

further action by the respondent; to waive or modify these procedures in a specific case with notice to the parties; . . . and to take any other action necessary to resolve disputes in accordance with the objectives of these procedures.

In this case, record development was needed and beneficial for several reasons. First, SAMHSA's representations repeatedly appeared internally inconsistent. For example, SAMHSA appeared to deny that TLM had drawn down the grant amount and returned the unused portion while at the same time disallowing \$23,680, an amount that reflected the drawdown and refund amounts claimed by TLM (SAMHSA 1/25/11 submission at 3, 6); SAMHSA appeared to be both denying and admitting in the same submission that TLM had held a conference (*id.*); SAMHSA first denied that TLM had submitted any documents about the conference prior to October 2010 (SAMHSA 1/25/11 submission) and then admitted that TLM had submitted progress-related documents but did not send closeout financial reports to the correct offices (Tr. at 27); and SAMHSA first argued that TLM's claims were not allowable because TLM failed to satisfy a federal match requirement (SAMHSA 1/25/11 submission at 2) and then took the position that there was no federal match requirement (SAMHSA 6/8/11 submission at 2). This pattern of shifting positions was confusing to the Board and to TLM. Second, once SAMHSA expanded the basis for this disallowance it was not clear that TLM understood SAMHSA's exact contentions as to why TLM's documentation was inadequate to satisfy TLM's burden under the cost principles. Finally, neither party was represented by counsel so the Board found that extra care was required to make sure the parties were presenting evidence that would tend to provide the Board with a full picture of what had transpired and a well-supported basis for a sound decision.

Finally, we recognize that allowing a grantee to submit documents to the Board that were not submitted to the agency before the appeal may raise a question of whether some documents were created only after the Board asked about them. Here, however, we see no grounds (and SAMSHA suggests none) to conclude that any of TLM's documents were fabricated. Rather, we find TLM's late submissions are the product of TLM's present staff being confused about SAMHSA's position and unfamiliar with the requirements of the cost principles and administrative proceedings. Indeed, the picture that emerges here is of a first-time grantee relying on a purportedly experienced third-party as Project Director, who then apparently failed to assist TLM in understanding the impact of the limited budget SAMHSA approved in the NOAs and the obligation to obtain and maintain proper documentation to satisfy the cost principles. In any case, the documentation supporting the few items which we have found to be allowable was first submitted to the Board with TLM's appeal letter. TLM Appeal at "Financial Documents." Thus, the later record development was in no way prejudiced SAMHSA.

Conclusion

For the reasons discussed above, we uphold \$23,177.73 of this disallowance and reverse \$502.27 of the disallowance.

_____/s/
Judith A. Ballard

_____/s/
Constance B. Tobias

_____/s/
Leslie A. Sussan
Presiding Board Member