

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

Pennsylvania Department of Public Welfare
Docket No. A-11-11
Request for Reconsideration of Decision No. 2332
Ruling No. 2011-1
October 29, 2010

RULING ON REQUEST FOR RECONSIDERATION

The Pennsylvania Department of Public Welfare (Pennsylvania) timely requested reconsideration of the Board's decision in *Pennsylvania Dept. of Public Welfare*, DAB No. 2332 (2010). In that decision, the Board upheld a determination by the Administration for Children and Families (ACF) disallowing Pennsylvania's claim for \$3,135,166 in federal funds under the Child Care and Development Fund (CCDF) program for federal fiscal year (FFY) 04.

The Board held that Pennsylvania had improperly expended certain CCDF discretionary funds. Those funds were subject to a restriction in appropriations law making them available only for purposes of improving the quality of infant and toddler care (referred to as the "I/T earmark"). State accounting records showed that the restricted funds were coded to several contracts. Pennsylvania submitted no evidence that expenditures under those contracts qualified for I/T earmark funds. Pennsylvania did submit evidence regarding other, substitute expenditures Pennsylvania said qualified for the earmark -- either expenditures for rate increases for child care subsidies for infant and toddler care or expenditures for quality grants to child care providers. The Board held that, despite multiple opportunities, Pennsylvania had not submitted adequate documentation for either set of substitute expenditures. The Board also concluded that Pennsylvania had not shown that it had not already claimed other federal funds on the basis of the substitute expenditures. In other words, the Board agreed with ACF that permitting Pennsylvania to retain the I/T earmark funds on the basis of the substitute expenditures could result in duplicate payments of federal funds for the same expenditures.

Under the applicable regulations, the Board may reconsider its own decision "where a party promptly alleges a clear error of fact or law." 45 C.F.R. § 16.13. For the most part, Pennsylvania's request for reconsideration simply restates arguments it made before and the Board rejected or asserts facts unsupported by

any record citation. Such arguments do not meet the standard for reconsideration. A few of the arguments could be viewed as alleging error in the Board's decision, so we address them below. We conclude, however, that those arguments have no merit and deny the request for reconsideration.

The decision contains no error of law regarding the nature of the I/T earmark or the issues raised.

Pennsylvania argues that the Board's decision "appears to be grounded in a fundamental misapprehension" regarding the CCDF. RR at 1. First, Pennsylvania suggests that the Board did not understand that the I/T earmark is not a separate grant of funds, but is "a portion of the discretionary CCDF funds appropriation that states are required to reserve for a particular purpose, *i.e.*, 'activities that improve the quality of infant and toddler care.'" RR at 3. The decision, however, accurately described the appropriations restriction as one "that 'earmarks' part of the Discretionary Fund to ensure it will be used for improving the quality of care for infants and toddlers." DAB No. 2332, at 2. Pennsylvania points to no language in the Board's decision to support its argument that the Board misunderstood the nature of the I/T earmark.

In a related argument, Pennsylvania suggests that the Board erred in examining the question of duplicate payments. Pennsylvania argues that the disallowed funds are not part of a "matching" program and that the CCDF scheme does not entail "reimbursement" of expenditures. RR at 3. According to Pennsylvania, "a state is entitled to a set amount of federal discretionary CCDF block grant funds; the earmark simply requires that a specified portion of these federal funds be used for improving the quality of care for infants and toddlers." *Id.* Pennsylvania concludes, therefore, that the only issue in connection with the I/T earmark is whether the state has spent a small part of the federal grant funds awarded for child-care assistance to improve the quality of care for infants and toddlers. The possibility of duplicate payments was timely raised by ACF, however, and properly addressed by the Board. Contrary to what Pennsylvania argues, the fact that a set amount of discretionary CCDF funds is available to a state does not mean that the state is automatically entitled to those funds. As the Board's decision discusses, a state is not entitled to discretionary funds under the CCDF program unless it timely obligates those funds for child care expenditures (meeting applicable restrictions on the use of the funds) and timely liquidates those obligations. Pennsylvania points to no legal error in the Board's discussion of program requirements. Nor does Pennsylvania cite to any provision in the CCDF program or any other federal program that would allow Pennsylvania to base more than one claim for federal funds on the same expenditures.

The decision contains no error of fact regarding the possibility of duplicate payments.

The Board's decision concluded that there was the possibility of duplicate payments for the same expenditures because Pennsylvania had **failed to provide any evidence** about what funding source was designated as paying for the actual rate increases for subsidies for infants and toddler care. DAB No. 2332, at 18-20. Pennsylvania's request for reconsideration nonetheless asserts that the Board's decision "reflects a mistaken belief that [Pennsylvania's] designation of some of the federal CCDF dollars it used to pay rate increases to satisfy an infant/toddler (I/T) earmark raised a serious risk that Pennsylvania would receive duplicate reimbursement for the expenditures." *Id.* "In fact," Pennsylvania asserts, "these expenditures were made using federal CCDF block grant funds, and there is no reason to think that these expenditures provided the basis for a claim from some other federal program." *Id.* This argument misstates the Board's conclusion since the Board made no finding about the source of the funds used to pay for the rate increases.

In any event, Pennsylvania's request for reconsideration does not point to any evidence in the record about **what** funding source was used to pay for the increases, much less any evidence to support its assertion that CCDF block grant funds were used. Pennsylvania cites to ACF Exhibit 17, at 21, which is the part of Form 696 showing CCDF "Cumulative Fiscal Year Totals" for 2004, and asserts that the rate increases would have been claimed on line 1(g) as expenditures for "direct services." RR at 5 n.7. This exhibit provides absolutely no information, however, about what expenditures are included in the reported totals, and line 1(g) reports expenditures not only for the CCDF Discretionary Fund, but also for the CCDF Mandatory Fund and other funds. As the Board decision points out, Mandatory Funds are available for child care assistance for families eligible for Temporary Assistance to Needy Families (TANF). Pennsylvania cites to its prior assertion that TANF is administered by a state agency different from DPW, which administers the CCDF. RR at 5. But Pennsylvania still does not explain how that would have prevented it from reporting the rate increases for child care subsidies for TANF-eligible families as Mandatory expenditures. Similarly, Pennsylvania says that the Board was speculating that some rate increase expenditures could have been claimed under the Social Services Block Grant (SSBG) program, but admits that it used SSBG funds to pay for some child care subsidies. RR at 4.

Thus, the Board had no "mistaken belief" about the funding or about why duplicate payments were an issue that Pennsylvania had not adequately addressed.

The decision contains no error regarding statutory restrictions.

In its decision, the Board noted that permitting Pennsylvania to substitute expenditures different from the ones originally claimed might allow Pennsylvania

to circumvent statutory restrictions, such as the requirement that states spend four percent of the CCDF funds (not including the I/T earmark) to improve the quality of child care. DAB No. 2332, at 2. Pennsylvania suggests this was error because the “rate increases were not used to satisfy the separate 4% quality expenditure earmark” and that, instead, Pennsylvania “designated expenditures it made through its quality grant program to satisfy this earmark.” RR at 6 n.8. Pennsylvania points out that the 4% quality expenditures appear on line 1(b) of Form 696, the expenditure report for CCDF funds. Pennsylvania points to no evidence in the record, however, supporting its assertion that no expenditures for the rate increases were reported on that line.

Any error regarding who determined the source of funding for child care subsidies is harmless.

The Board’s decision also noted that Pennsylvania’s failure to identify I/T earmark funds as the source for part of the rate increases in the budgets for the contractors who received the rate increases (called “CCISs”) meant the CCISs would not know not to charge the increases for infants and toddlers to other funds. Pennsylvania asserts in its reconsideration request that the CCISs are DPW contractors and “DPW controlled the coding and the use of CCDF funds for rate increases,” without the CCISs knowing “where or how the funds were recorded in DPW’s accounting system.” RR at 6-7. This clarification by Pennsylvania, however, simply confirms that it should have been able to submit information from its accounting system about how it coded the amounts paid to the CCISs for the actual rate increases for child care subsidies to infants and toddlers. It does not show any error in the Board’s ultimate conclusion that Pennsylvania provided no satisfactory assurance that allowing Pennsylvania to retain the funds at issue here on the basis of rate increase expenditures would not result in duplicate payments for those expenditures.

Accordingly, we deny the reconsideration request.

_____/s/
Leslie A. Sussan

_____/s/
Constance B. Tobias

_____/s/
Judith A. Ballard
Presiding Board Member