

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Learning Systems Group DATE: April 12, 2007
Docket No. A-06-126
Control No. A-030682807
Decision No. 2077

DECISION

The Learning Systems Group (LSG) appealed a determination by the Administration for Children and Families (ACF) requiring LSG to repay \$84,343 in federal funds. LSG is a non-profit organization that had a cooperative agreement with ACF under the National Child Welfare Resource Centers program, with a project period from September 30, 1999 through September 29, 2004 and awards for each fiscal year. ACF's determination was based on an independent audit report that found that LSG had drawn down \$84,343 in federal funds awarded under the cooperative agreement for fiscal year (FY) 2002 that were in excess of LSG's allowable project expenditures for that year and that LSG had neither refunded that amount to the Federal Government nor used it to offset draw-downs for FY 2003.

LSG does not dispute the audit findings. Although LSG says that it did request permission to carry forward its unobligated fund balance from FY 2002 into FY 2003, ACF asserts (and LSG does not deny) that LSG never received approval to carry forward any funds from FY 2002 into FY 2003. Indeed, LSG acknowledges that it "did not follow proper procedures on requesting funds on the reference[d] grant and should have returned any excess funds to the Government within a timely basis." LSG Br. at 2 (unnumbered page). LSG apologizes for this "mistake" and says it wants to assure ACF that "**all of these funds** were fully utilized for appropriate expenditures to the benefit of the Child Welfare Resource Center program activities appropriately during the new fiscal year, and that ACF program staff knew how these funds were being expended." *Id.* (emphasis in original). LSG attributes this "mistake" to the "limitation of staff resources and the high workload of our program professionals." *Id.* LSG says that, although the draw-down should not have "happened until an approval was received from the agency," the finance staff made an error and requested the draw-down on September 30, 2002, the last

day of the fiscal year. LSG says it anticipated that the carryover request would be approved and that "our program staff relied on a conversation with ACF program staff." Id.

In support of its arguments, LSG submitted a copy of a letter, dated August 10, 2002 requesting "the use of remaining fiscal year 2002 funds . . . of \$24,342 to be carried-over and used in our fiscal year 2003 for the Child Welfare Resource Center." LSG Br., Att. 2 (unnumbered).^{*} LSG does not, however, specifically identify any ACF program staff who allegedly told LSG that the carryover request would be approved and/or knew how the funds were being expended, or proffer any evidence to support these allegations.

In support of its determination, ACF relies on the regulation at 45 C.F.R. § 74.28, which provides:

Where a funding period is specified, a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the HHS awarding agency pursuant to § 74.25(d)(1).

This regulation is part of the general administrative requirements in 45 C.F.R. Part 74, applicable to all HHS grants to non-profit organizations such as LSG. Oral approval to carry forward an unobligated balance of funds from one funding period to a subsequent period is not sufficient. Instead, this is considered a budget revision for which prior, written approval from an authorized official is required, unless the prior approval requirement has been waived. 45 C.F.R. § 74.25.

ACF does not deny here that LSG did submit a written request to carry forward at least part of the amount at issue here. ACF offers no explanation of why it did not act on that request, nor does it assert that it had reasons at the time for denying the request. This raises a question of whether, in light of its failure to timely respond to the carryover request, ACF should have at least considered whether to grant retroactive approval of the request. We have concluded, however, that such retroactive approval would not avail LSG here.

^{*} Apparently, despite this notice that LSG had an unobligated balance of \$24,343 in funds awarded for FY 2002, LSG received a grant modification on approximately September 15, 2003, for an additional \$60,000 and requested a cash draw of \$84,343 on September 30, 2002. ACF Ex. 1, at 19.

While LSG asserts that it spent the funds for appropriate expenditures in FY 2003, LSG provides no support for this assertion and the record indicates otherwise. The approved federal project budget for FY 2003 for the National Child Welfare Resource Center project was for a total of \$1,150,000, and LSG was to provide \$136,218 in non-federal share, for a total of \$1,286,218 in total project costs for the year. ACF Ex. 2. To properly account for the \$84,343 (if the unobligated fund balance were to be approved for carry forward into FY 2003), LSG would have to have incurred and paid additional allowable costs allocable to that year in that amount. Yet, the auditors reported total project expenditures for FY 2003 of only \$1,230,052. ACF Ex. 1, at 11. Thus, LSG would not in any event be authorized to retain the \$84,843 and must promptly refund that amount to the Federal Government. 45 C.F.R. § 74.71(d).

Finally, LSG's assertions that it has been working diligently to correct its problems (including by dismissing staff) and that it cannot afford to have any additional hardship placed on it simply do not provide a basis for reversing ACF's determination. We are bound by applicable laws and regulations. 45 C.F.R. § 16.14. Under those regulations, LSG is required to return federal funds that it has drawn down under a federal award and has not obligated in accordance with the terms of that award.

Conclusion

For the reasons stated above, we uphold ACF's determination that LSG must repay \$84,843 in federal funds.

_____/s/
Donald F. Garrett

_____/s/
Leslie A. Sussan

_____/s/
Judith A. Ballard
Presiding Board Member