

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Partnership for Youth
and Community Empowerment
Docket No. A-10-1
Decision No. 2306

DATE: March 17, 2010

DECISION

Partnership for Youth and Community Empowerment (PYCE) appeals the September 17, 2009 decision of the Substance Abuse and Mental Health Services Administration (SAMHSA) denying PYCE's application for a non-competing continuation award to fund the second year (September 30, 2009 - September 29, 2010) of PYCE's Sober Truth on Preventing Underage Drinking Act (STOP Act) project. SAMHSA denied the second-year award on the basis that PYCE failed to comply with the terms and conditions of its previous award and failed to achieve project objectives. SAMHSA also determined that it would withhold all future continuation awards for PYCE's STOP Act project. In addition, SAMHSA ordered PYCE to repay \$16,757 in disallowed expenditures relating to PYCE's first-year award.

For the reasons discussed below, we sustain SAMHSA's decision. The record shows that PYCE failed to comply with financial and program management requirements of its first-year STOP Act award. These failures were material and justified SAMHSA's denial of continuation funding. Further, PYCE does not dispute that it charged \$16,757 in unallowable costs to the grant but instead requests that the disallowance be reduced by taking into account volunteer time donated to the grant project. However, a reduction of the disallowance amount based on the value of donated volunteer services is prohibited under the applicable cost principles.

Legal Background

SAMHSA awards STOP Act grants to nonprofit entities to develop and carry out school and community-based programs to prevent alcohol consumption by individuals who are under the legal drinking age. 42 U.S.C. § 290bb-25b(a).

Nonprofit organizations such as PYCE that receive STOP Act grants must comply with the administrative requirements at 45 C.F.R. Part 74. 45 C.F.R. § 74.1(a); SAMHSA Ex. 3, at 3. Those requirements include standards for financial management systems at section 74.21. Section 74.27(a) provides that whether a cost incurred by a nonprofit grantee is "allowable" (that is, whether the cost may be charged to the award) is determined by the cost principles set forth in OMB Circular A-122, which is codified at 2 C.F.R. Part 230. Under the 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, App. A, ¶ A.2.a. A cost also must be "adequately documented" to be allowed. 2 C.F.R. Part 230, App. A, ¶ A.2.g.

Under the terms of its award, PYCE also was required to comply with the requirements in the HHS Grants Policy Statement (GPS).¹ SAMHSA Ex. 3, at 3. The GPS requires, among other things, that grantees 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 GPS further states that an HHS operating division may deny a non-competing continuation award within the current competitive segment for the following reasons: 1) "[a]dequate federal funds are not available to support the project"; 2) a "recipient failed to show satisfactory progress in achieving the objectives of the project"; 3) a "recipient failed to meet the terms and conditions of a previous award"; or 4) "continued funding would not be in the best interests of the federal government." GPS at II-93.

The GPS and 45 C.F.R. Part 16 provide that if a non-competing continuation award is denied because the recipient failed to comply with the terms and conditions of a previous award, the recipient may appeal the denial to the Departmental Appeals

¹ The current version of the GPS was issued January 1, 2007 and is available at http://www.hhs.gov/grantsnet/docs/HHSGPS_107.doc.

Board. Id.; 45 C.F.R. Part 16, App. A, ¶ C.(a)(3); see also 45 C.F.R. 74.90 (final decisions in disputes).

Factual Background²

In Request for Applications No. SP-08-004 (RFA), SAMHSA announced that it was accepting applications for fiscal year 2008 STOP Act grants with estimated award amounts of up to \$50,000 per year. RFA at 3-4. The RFA stated that SAMHSA was "allowing applicants to submit proposals for 3 additional budget years for planning purposes and for technical assistance in sustainability activities." Id. at 7-8. However, annual continuation awards after the first year were not guaranteed. Id. at 7. Rather, grantees would be required to submit non-competing applications for continuation funding for each additional year. Whether SAMHSA would award continuation funding would "depend on the availability of funds, grantee progress in meeting project goals and objectives, timely submission of required data and reports, and compliance with all terms and conditions of the award." Id.

In April 2008, PYCE applied to SAMHSA for a STOP Act grant to fund the first year of a four-year project to prevent and reduce alcohol use by South Burlington, Vermont youth. SAMHSA Ex. 1. PYCE's proposed budget showed estimated funding for the first year to be \$76,650, consisting of \$49,550 in federal funds and \$26,700 in State funds.³ Id. SAMHSA subsequently notified PYCE

² The background is drawn from the record in this case, which includes: PYCE's October 10, 2009 request for review (PYCE Br.) and attachments; SAMHSA's Response Brief (SAMHSA Br.); and SAMHSA exhibits 1-47. At the Board's request, SAMHSA also submitted copies of: Request for Applications No. SP-08-004 (RFA); PYCE's April 2008 grant application; PYCE's grant award notices; and the parties' e-mails and written correspondence, arranged in chronological order. PYCE is represented pro se and did not submit a reply brief. In January 2010 the Board mailed to PYCE, at its address of record, a letter requesting PYCE to provide an e-mail address and/or a fax number to facilitate future correspondence. This letter was returned to the Board unopened. The only other contact information provided by PYCE was a telephone number, which, as of the date of this decision, is not in service.

³ At least one of the amounts shown appears to be in error because the sum of \$49,550 and \$26,700 is \$76,250.

that the federal funding available for the first year would be limited to \$32,321. SAMHSA Ex. 35, at 1; SAMHSA Br. at 2. SAMHSA advised PYCE that if it wished to apply for the reduced award, it should submit a revised proposed budget. SAMHSA Br. at 2. PYCE submitted a "Revised STOP Grant Budget" dated September 5, 2008. SAMHSA Ex. 2. The one-page document allocated a total of \$32,321 among various expenditure categories, including \$25,300 for PYCE's Executive Director's salary and fringe benefits. Id.

On September 10, 2008, SAMHSA issued a notice of award (NOA) granting PYCE \$32,321 for the first budget year (September 30, 2008 - September 29, 2009) of PYCE's STOP Act project. SAMHSA Ex. 3. The NOA stated that the award was "based on the application submitted to, and as approved by, SAMHSA," subject to the regulations at 45 C.F.R. Part 74 and the GPS, and governed by the specific terms and conditions of the notice itself. Id. at 3. The NOA also set forth "[r]ecommended future year total cost support" for the project of \$49,550 for each of the three subsequent years, noting that future support was "subject to the availability of funds and satisfactory progress of the project." Id. at 2. PYCE accepted the award when it began to draw down grant funds in October 2008. See SAMHSA Ex. 3, at 1; SAMHSA Br. at 3.

In January 2009, PYCE's Executive Director, Dennis McBee, notified SAMHSA by e-mail that PYCE had not been awarded two other grants that it had expected to receive and that PYCE's financial status was "pretty bleak." SAMHSA Ex. 4. On February 5, 2009, Mr. McBee notified SAMHSA that PYCE's "funding issues" had "reached a crisis point." SAMHSA Ex. 5. Mr. McBee stated that PYCE had not been awarded "the state mentor grant that was [PYCE's] last hope for bridge funding until [its] next grant cycle" and that its "public and private pleas [had] not been successful." Id. Mr. McBee further stated that he had received his last paycheck from PYCE on January 30th, and that he would "be working with the Board to shut down operations beginning [the following] week." SAMHSA Ex. 5. On February 10, 2009, a SAMHSA grants management specialist, Eddie Whitehurst, advised Mr. McBee by e-mail that Mr. Whitehurst had been trying to reach Mr. McBee by phone and that the two needed "to speak . . . about how to relinquish the grant." SAMHSA Ex. 6.

In e-mails and telephone calls over the following weeks, however, Mr. McBee and PYCE Board President, Diane Parsia, reported to SAMHSA that PYCE continued to carry out some of its project activities while seeking funding from alternative sources. See SAMHSA Exs. 7; 9; 10. On February 23, 2009, Mr.

McBee stated in an e-mail to SAMHSA that he "ha[d] a plan worked out that allow[ed] for the implementation process to continue to operate until completion of year 1" SAMHSA Ex. 10. At the same time, he reported, PYCE had "fallen behind schedule" due to the weather. Id. PYCE later advised SAMHSA that Mr. McBee began to claim unemployment benefits in February. See SAMHSA Exs. 24; 27.

At SAMHSA's request, PYCE provided SAMHSA with a summary of PYCE's "Budget to Actual" grant expenditures on March 2, 2009. SAMHSA Ex. 12. The report showed that PYCE had used all but \$474 of its STOP Act funds for expenditures beginning in September 2008 and continuing through February 2009, and that the remaining funds had been used for March expenditures. SAMHSA Ex. 12. PYCE also provided SAMHSA with a "Chronological Overview" of the difficulties it had encountered in obtaining expected funding from other sources; a summary of PYCE's "progress to date [and] revised plan" of project activities (which proposed to reduce, delay and/or eliminate several originally planned and approved activities); and a summary of PYCE's plan to continue operations. SAMHSA Ex. 13.

On March 9, 2009, SAMHSA and PYCE representatives participated in a conference call during which PYCE indicated that it had exhausted all of its STOP Act funds. See SAMHSA Exs. 15; 18, at 1; 21; 35, at 2; SAMHSA Br. at 4.

On March 10, 2009, SAMHSA issued a revised NOA to PYCE, which stated that PYCE had "been placed on high risk status;" that PYCE had "expended all funds in four months which were intended for a 12[-]month period;" and that grantees must meet the standards and requirements at 45 C.F.R. Part 74. SAMHSA Ex. 16, at 3. The revised NOA stated that the award funds would be restricted "pending adequate resolution of significant internal control weaknesses and/or accounting system deficiencies," and that "[e]vidence of adequate corrective action [was] required for removal of the restriction." Id.

In a March 20, 2009 e-mail to Mr. McBee and Ms. Parsia, SAMHSA Project Officer, Dan Fletcher, directed PYCE to submit additional information that SAMHSA had requested during the March 9 conference call. SAMHSA Ex. 18, at 1. The requested documentation included a month-to-month "accounting of all programmatic activities, tasks, actions, products, and other such specifics that have been accomplished" Id. Mr. Fletcher added that PYCE had, in effect, misspent its award funds and that failure to resolve the issues raised by PYCE's

actions "may lead to repayment to the government of all funds or amounts determined to have been mis-spent." Id. at 1-2.

A series of correspondence between the parties ensued, wherein SAMHSA asked PYCE for additional financial and programmatic documentation, and PYCE provided SAMHSA with revised summaries of its award expenditures, a review of its grant implementation plan, and piecemeal updates of the organization's ongoing activities and fundraising plans. See SAMHSA Exs. 19-24; 26; 27; 29; 33. Ms. Parsia represented that it was "the intention of the coalition to raise funds to continue the STOP grant work, and therefore replac[e] any funds overspent on insurance and payroll." SAMHSA Ex. 20, at 1. She acknowledged that PYCE "went over budget on insurance and other items due to no other funds to cover these expenses." SAMHSA Ex. 23. In PYCE's final revision of "Budget to Actual" grant expenditures, submitted in May 2009, PYCE set forth an "over budget analysis" that showed PYCE spent \$16,757.67 in award funds in excess of approved costs. SAMHSA Ex. 33.

On June 9, 2009, SAMHSA issued a letter to PYCE stating that, based on the documents submitted by PYCE, SAMHSA had determined that PYCE had overspent \$16,757 in STOP Act funds. SAMHSA Ex. 35, at 1, 4. Specifically, SAMHSA stated, PYCE "spent 12 months of salary expenses in 4 months, had charged unallowable expenses for the month of September 2008, and [had charged] other expenses not approved in the original budget." Id. at 2. SAMHSA further stated that it had been "difficult to determine the amount of work performed during the 4[-]month period." Id. SAMHSA noted that "the documentation of the time spent by the Executive Director basically provides an outline of time spent on work plan activities." Id. at 3. Furthermore, there was "no qualitative description or discussion of the results of this work." Id. "In reviewing this matter, weighing the circumstances and assessing the programmatic documentation presented," SAMHSA continued, "we have attempted to be fair and as flexible as possible in computing the work done to date on this grant." Id. SAMHSA then stated that the "Project Officer recommends [PYCE] be credited for completing approximately 50% of the activities in the grant application work plan, and the Executive Director be credited with having worked on the grant from October 2008 through January 2009." Id. Accordingly, SAMHSA directed PYCE to repay SAMHSA \$16,757 and to submit to SAMHSA by June 26, 2009: 1) a repayment plan; 2) a prioritized plan to restart and continue implementing 2008 grant activities; and 3) PYCE's application for a continuation award to fund the second budget year. Id. at 4.

Ms. Parsia thereafter submitted PYCE's application for the continuation award, but failed to include a detailed budget with justification for the continuation funding. SAMHSA Ex. 41. PYCE additionally provided SAMHSA a single-page document titled "PYCE STOP Payment Plan," which stated: 1) "By July 10 a check from fundraising proceeds of Unrestricted funds, from Hannaford and other donors. Amount not determined as yet;" 2) "Then monthly payments until paid in full. Two fundraiser[s] in July, proceeds to pay off STOP debt;" 3) "August, City Funds 6,000.00 towards payment;" and 4) "Once I have an idea of what the coalition has raised, 98% of the funds all go towards STOP debt." E-mails & written correspondence, attachment to June 26, 2009 e-mail from Diane Parsia to Eddie Whitehurst.

On August 21, 2009, SAMHSA conducted a site visit of PYCE. See SAMHSA Exs. 44, at 1; 47, at 2 (¶6). Based on the visit, SAMHSA's project officer concluded that PYCE did not have a functioning, actively engaged Board of Directors; had no staff other than Ms. Parsia; "had no funds on hand, or funding sources other than the STOP Act grant, and the organization was paying for all expenses with a credit card"; and "had essentially ceased to function." SAMHSA Ex. 47, at 3-4 (¶¶ 7,8).

On September 17, 2009, SAMHSA issued a decision denying PYCE's application for continued funding for the second year of the project, withholding all future non-competing continuation awards for the remainder of the project period, and demanding the repayment of \$16,757 for disallowed costs relating to the first-year award. SAMHSA Ex. 44. SAMHSA stated that its decision was based on PYCE's lack of compliance with terms and conditions of the first-year award and failure to achieve STOP project objectives. Id. at 1. The decision noted that SAMHSA had advised PYCE of the disallowance on June 9, 2009 and that PYCE had submitted a repayment plan on June 26, 2009. "To date," SAMHSA stated, "PYCE has not made any payments on this debt." Id. SAMHSA added that although its staff "worked with PYCE toward achieving project goals and fiscal compliance, PYCE failed to demonstrate satisfactory programmatic progress and failed to resolve fiscal compliance issues." Id. Finally, SAMHSA advised PYCE that the letter was a "final decision" under 45 C.F.R. Part 16 and section 74.90, and that PYCE could appeal the decision to the Departmental Appeals Board. Id. at 2.

By letter dated October 10, 2009, PYCE appealed SAMHSA's September 17, 2009 decision to the Departmental Appeals Board.

Analysis

A. We reject SAMHSA's argument for dismissal.

As a threshold matter, SAMHSA argues that the Board should dismiss PYCE's appeal. SAMHSA Br. at 8. SAMHSA now contends that it based its September 17, 2009 decision to deny PYCE's application for continuation funding on two separate grounds: 1) PYCE failed to comply with the terms and conditions of its prior award; and 2) PYCE failed to achieve project objectives. Id. SAMHSA argues that PYCE's failure to achieve STOP project objectives was alone sufficient to support the agency's decision. Id. Because a denial of an application for continuation funding based on a grantee's failure to achieve project objectives is a matter committed to the awarding agency's discretion and not subject to Board review, SAMHSA contends, "the Board should dismiss PYCE's appeal without reviewing the factual basis for SAMHSA's" action. Id., citing GPS at II-93; 45 C.F.R. Part 16, App. A, ¶ C.(a)(3); Vance-Warren Comprehensive Health Plan, Inc., DAB No. 2180, at 2-3 (2008). SAMHSA nevertheless goes on to explain that "[i]n any event, both of [its] findings are reasonable and supported by the evidence and, therefore, should be upheld." SAMHSA Br. at 8.

SAMHSA's argument for dismissal contradicts information and instructions that SAMHSA itself gave PYCE in the September 17, 2009 decision notice. SAMHSA stated in the first paragraph of the notice that its decision to deny continuation funding "was based on [PYCE's] failure to achieve STOP project objectives and lack of compliance with terms and conditions of [the] previous STOP Award." SAMHSA Ex. 44, at 1. The notice then provided: "**PYCE may appeal SAMHSA's decision**, as described below." Id. (emphasis added). In the fourth paragraph of the notice, SAMHSA stated that "[b]ecause PYCE has not complied with the terms and conditions of [the first-year] grant award . . . SAMHSA has denied PYCE's request for continuation funding for this grant award" Id. at 2. SAMHSA then stated that the notice was "SAMHSA's final decision" and would "serve as the final decision" of HHS, pursuant to 45 C.F.R. Part 16 and section 74.90. Id. In the last section of the notice, SAMHSA provided detailed instructions for PYCE to follow "should PYCE choose to appeal this decision." Id.

The plain language of SAMHSA's September 17, 2009 notice thus provided that PYCE was entitled to appeal the agency's decision to the Board. SAMHSA's brief neither acknowledges this language nor explains why the agency now takes an inconsistent position

before us. Further, by combining the two bases for the denial in the same sentence, and later mentioning only PYCE's failure to meet its award's terms and conditions as justification for the agency's action, SAMHSA's notice indicates that PYCE's failure to meet project objectives was not a separate and independent ground on which SAMHSA's decision was based. Rather, the notice implies that PYCE's failure to meet project objectives was merely incident to its violation of terms and conditions of the first-year award. Indeed, SAMHSA later states in its brief that it was "PYCE's failure to control its expenditures," as required under the terms and conditions of its grant, that "profoundly disrupt[ed] . . . the organization's ability to achieve its grant objectives." SAMHSA Br. at 10-11.

As reflected in SAMHSA's brief, the Board previously has acknowledged that, pursuant to the GPS and applicable regulations, it lacks the authority to review a pre-award decision to deny continuation funding that is not based on the grantee's failure to meet the terms and conditions of a previous award. See, e.g., Vance-Warren at 2-3. However, where "most of the reasons given . . . amount to allegations that [the grantee] failed to comply with grant terms and conditions," as in this case, the Board has long accepted jurisdiction over the grantee's appeal. Recovery Resource Center, Inc., DAB No. 2063, at 9 (2007); see also Youth Network Council of Chicago, DAB No. 1150 (1990); Sangre de Cristo Community Mental Health Services, Inc., DAB No. 570 (1984). Moreover, while failure to "show satisfactory **progress** in achieving the objectives of the project" is a ground on which an awarding agency may base a decision to deny continuation funding, a grantee's failure to actually achieve project objectives is not. GPS at II-93 (emphasis added).

Finally, SAMHSA's September 17, 2009 notice provided not only that PYCE was entitled to appeal SAMHSA's decision to deny continuation funding, but also that PYCE was entitled to appeal SAMHSA's disallowance of PYCE's first-year expenditures. Specifically, the notice stated that PYCE could appeal SAMHSA's "final decision, as detailed in this letter[,] " which included the finding that "PYCE is required to repay the amount of \$16,757 in disallowed expenses, to SAMHSA by Sept[ember] 30, 2009." SAMHSA Ex. 44, at 2. SAMHSA's notice further provided that the disallowance "need not be repaid pending the outcome of the appeal[,] " though, if "unsuccessful in an appeal, [PYCE] must also pay the interest accrued from the date of the Grants Management Officer decision to the date of repayment." Id. In its request for Board review, PYCE appeals the disallowance, seeking a reduction of the amount owed based on volunteer time

donated to the project. SAMHSA provides a substantive response to this argument at the end of its brief, arguing that PYCE did not provide adequate evidence or a legally sufficient basis for reducing the disallowance amount. SAMHSA Br. at 13-14. Nowhere in its brief, however, does SAMHSA reconcile its argument for dismissal with its implicit recognition of PYCE's right to appeal the disallowance pursuant to the instructions in the notice and the regulations at 45 C.F.R. Part 16 and section 74.90.⁴

Because the GPS and regulations provide for Board review of a final disallowance determination, as well as a denial of continuation funding based on a grantee's failure to comply with terms and conditions of a previous award, and in light of the language used in SAMHSA's September 17, 2009 decision notice, we conclude that PYCE's appeal is properly before us. GPS at II-93; 45 C.F.R. Part 16, App. A, ¶ C.(a)(3). Accordingly, we reject SAMHSA's argument that we should dismiss this matter, and we address below the merits of PYCE's appeal.

B. We sustain SAMHSA's denial of continuation funding for PYCE's STOP Act project.

1. PYCE materially failed to comply with terms and conditions of its September 30, 2008 - September 29, 2009 STOP Act award.

As noted above, SAMHSA awarded PYCE's first-year STOP Act grant (for the September 30, 2008 - September 29, 2009 budget period) based on the application PYCE submitted to SAMHSA, including PYCE's revised budget. SAMHSA Ex. 3, at 3. PYCE's approved application included a detailed action plan and timeline of activities and projected milestones scheduled to take place throughout the grant period. SAMHSA Ex. 1, at 18-24. As further noted, the terms and conditions of PYCE's award incorporated by reference the regulations at 45 C.F.R. Part 74, the cost principles set forth in OMB Circular A-122, and the GPS. SAMHSA Ex. 3, at 3.

⁴ Although SAMHSA's June 9, 2009 notice first advised PYCE of the disallowance amount, it was not a final decision by SAMHSA setting forth appeal rights. See SAMHSA Ex. 35. SAMHSA does not argue that PYCE was required to file an appeal of that notice in order to contest the disallowance determination.

Particularly significant in this case, section 74.21(b) of the regulations states that a grantee's financial management systems must provide for, among other things, "[e]ffective control over and accountability for all funds, property and other assets" and "[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities." 45 C.F.R.

§ 74.21(b)(2)-(3). Section 74.21(b)(3) further provides that grantees must "adequately safeguard all such assets and assure they are used solely for authorized purposes." Similarly, the GPS required PYCE "to ensure that federal funds [were] handled in a responsible manner." GPS at II-59. Consistent with the regulations and the GPS, the NOA stated that PYCE was responsible for exercising "prudent stewardship" over grant funds and ensuring "that all costs [were] allowable, allocable and reasonable." SAMHSA Ex. 3, at 4 (¶ 15).

Applying these requirements to the record evidence, we conclude that PYCE materially failed to comply with terms and conditions of its first-year award. First, the evidence establishes, and PYCE does not deny, that PYCE used at least \$4,989.66⁵ of its first-year STOP Act funds to pay for personnel and insurance costs incurred in the month prior to the beginning of the grant budget period. SAMHSA Ex. 33, at 2. Under the applicable regulations, where a funding period of a grant is specified, the grantee "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 section 74.25(d)(1)." 45 C.F.R. § 74.28. The Board previously has held that expenditures incurred outside an award funding period "necessarily are not allocable to the grant" and are "subject to disallowance." Arlington Community Action Program, Inc., DAB No. 2141, at 2 (2008) (and cases cited therein). In this case, SAMHSA did not approve PYCE's use of STOP Act funds for any pre-award costs. Accordingly, we conclude, PYCE's use of at least 15% of its first-year grant funds for pre-award personnel and insurance costs demonstrates that PYCE failed to ensure that award funds were used solely for authorized and

⁵ PYCE provided to SAMHSA three different reports of its first-year award expenditures, with varying amounts charged to the grant for expenses in the month preceding the first budget year (September 2008). See SAMHSA Exs. 12, at 2; 23, at 2; 33, at 2. The final summary PYCE submitted showed \$4,989.66 of the award funds were used for the prior-month expenses. SAMHSA Ex. 33, at 2.

allowable purposes, as required under the terms and conditions of the award.

Second, the record establishes, and PYCE does not dispute, that-

- PYCE's approved budget allocated \$25,300 of the STOP Act funds for the Executive Director's **annual** salary and fringe benefits. SAMHSA Ex. 2. By the end of January 2009, PYCE had used \$20,083 of the award funds for the Executive Director's salary and fringe benefits. SAMHSA Ex. 33, at 2. At that time, due to PYCE's other expenditures, there were neither additional STOP Act funds nor any other funds available to pay the Executive Director's salary and benefits for the remainder of the budget year. SAMHSA Exs. 5, 33.
- By the beginning of March 2009, PYCE had exhausted all of its award funds, had no cash reserves, and had performed no more than half of the activities in the grant application work plan. See SAMHSA Exs. 16, at 3; 18; 35.

As reflected in correspondence between the parties, PYCE told SAMHSA that the organization's financial "crisis" and its exhaustion of award funds (as well as all other resources) less than midway through the project period resulted from the "crashing economy" and the unexpected rejection of several other grant applications by entities that had previously awarded funds to PYCE. See SAMHSA Exs. 4; 5; 10; 13; 19; 23. These events do not excuse PYCE's failure to safeguard its award funds.

According to PYCE's own chronology of events, by December 2008, PYCE knew that all but one of its other grant proposals had been rejected. SAMHSA Ex. 13, at 3. PYCE later wrote that it did not relinquish the STOP grant at that point because "it still seemed feasible" to use the last pending and anticipated award as a "bridge until spring [when its] staff and Board [would make] new fund raising plans." Id.; see also SAMHSA Ex. 5. By early January, however, PYCE was advised that the outstanding grant proposal had been rejected. See SAMHSA Exs. 4; 13, at 3.

Thus aware of its precarious financial status and uncertain future, PYCE nevertheless depleted its STOP Act funds during the winter of 2008-2009, using award funds in part to pay for costs that, by PYCE's own admission, exceeded its approved budget because the organization had "no other funds to cover these expenses." SAMHSA Ex. 23. Based on this evidence, we conclude that PYCE violated the requirements of its award "to exercise prudent stewardship" over grant funds and to maintain "[e]ffective control over and accountability for all funds,

property and other assets." Cf. Vance-Warren at 13-14 (holding that a grantee's draw-down of 60% of an annual award by the end of the first quarter of the grant period, insufficient cash margins, and late payments to employees and vendors evidenced failure to maintain "[e]ffective control over and accountability" of federal funds under section 74.21(b)).

We further conclude that PYCE failed to comply with the requirements of its award that it maintain "financial management systems" that provided for "[r]ecords that identify adequately the source and application of funds for HHS-sponsored activities," and "[a]ccounting records . . . that are supported by source documentation," consistent with the applicable cost principles. 45 C.F.R. §§ 74.21(b)(2), 74.21(b)(7), 74.27(a). Specifically, PYCE failed to maintain the documentation for personnel costs required under OMB Circular A-122. Under the circular, the "distribution of salaries and wages to awards must be supported by personnel activity reports" that, among other things: (1) "reflect an after-the-fact determination of the actual activity of each employee"; (2) "account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization"; (3) are "signed by the individual employee, or by a responsible supervisory official [and indicate] that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports"; and (4) are "prepared at least monthly" and "coincide with one or more pay periods." 2 C.F.R. Part 230, App. B, ¶¶ 8.b., 8.m. Such records ensure that salary expenses are properly charged to an award, accurately reflecting the amount of employee time worked in support of the federally-sponsored project.

Notably, more than half of PYCE's STOP Act funds were budgeted, and ultimately used, to pay the salary and fringe benefits of its former Executive Director. See SAMHSA Exs. 2; 33. On SAMHSA's initial request for the Executive Director's timesheets, however, PYCE provided records only for the September-November 2008 period, and the documentation submitted did not show the number of hours the Executive Director dedicated to STOP Act project activities. SAMHSA Ex. 24. When directly asked for the required records, Mr. McBee later responded that PYCE had "never been told in any contractual discussions with SAMHSA that professional level staff . . . would be expected to keep time reports showing the detail [SAMHSA was] requesting" SAMHSA Ex. 25, at 2. Ultimately, according to SAMHSA's June 9, 2009 letter to PYCE, "it was difficult to determine the amount of work performed

during the 4-month period," and the "documentation of the time spent by the Executive Director . . . basically provide[d] an outline of time spent on work plan activities . . ." SAMHSA Ex. 35, at 2-3. Thus, the record shows that PYCE did not keep sufficiently detailed personnel activity reports to support the personnel costs it charged to the STOP Act project, as required under OMB Circular A-122 and section 74.21 of the regulations. Accordingly, we conclude that PYCE failed to keep the type of records required under the terms and conditions of its award to support more than half of its grant expenditures.

2. PYCE is not entitled to additional time to correct its financial management and programmatic deficiencies.

On appeal to the Board, PYCE does not deny that it failed to comply with terms and conditions of its first-year award. Nevertheless, PYCE requests "more time to correct any deficiencies" and the opportunity to "work on a new plan." PYCE Br. at 1. To support its request, PYCE states that it has cooperated with SAMHSA's requests for information to date and is "working on [its] financial issues." *Id.* In addition, PYCE avers that through the work of volunteers, it is continuing to move forward with program initiatives and is "still in the process of raising funds." *Id.* PYCE also asks the Board to recognize that PYCE's former Executive Director "was struggling with chronic health problems" in February 2009 and left PYCE shortly thereafter. *Id.* The organization was then "faced with only a few short months to comply with SAMHSA requests, while essentially restructuring." *Id.* Further, PYCE encloses with its request a "chronological record of STOP grant initiatives" as well as documentation relating to the organization's ongoing activities. *Id.*

PYCE provides no basis for the Board to reverse SAMHSA's decision to deny PYCE's application for continued STOP Act funding. As the Board has previously held in other cases governed by the same regulations that apply here, while a grantor agency may, "as a matter of policy or prudence," provide a grantee an opportunity to remedy deficiencies prior to denying an application for continuation funding, nothing in the applicable regulations requires a grantor agency to do so. Vance-Warren at 16, citing Renaissance III, DAB No. 2034 (2006).

In any event, the record demonstrates that SAMHSA gave PYCE more than ample opportunity to correct its fiscal and programmatic deficiencies before denying PYCE's application for continued funding in its September 17, 2009 notice. When, in February and

early March 2009, SAMHSA discovered PYCE had depleted its award funds, SAMHSA did not terminate PYCE's grant. Instead, SAMHSA placed PYCE on "high risk status" and requested additional information and updates of the grantee's status. See SAMHSA Exs. 16; 18; 21; 26; 28; 31-32. After reviewing and assessing the information provided, SAMHSA advised PYCE in a discussion at the end of April, in subsequent e-mails, and in the July 9, 2009 notice, that in order to move forward with its STOP Act project, PYCE would be required to take several corrective actions. See SAMHSA Exs. 28; 35. In particular, SAMHSA advised PYCE that it should submit to SAMHSA a repayment plan for the disallowed expenditures (identifying the source of income and when payments would be received); a revised budget; board minutes relevant to the proposed changes and showing "approval for continuing to implement this grant"; "a prioritized plan to restart and continue implementing 2008 grant activities; and a continuation application for the project's second budget year." Id.

PYCE began to provide the requested information, including "pieces" of its continuation grant application, in May. See SAMHSA Exs. 29; 30; 31; 34. As reflected in June 25 and July 14 e-mails from SAMHSA, however, PYCE did not submit a repayment plan until late June 2009, and the plan it did provide was "vague and [did] not have clear dates for repayment." SAMHSA Ex. 36, at 2. Further, PYCE's application for continued funding included a budget "with no justification" and in several places listed Mr. McBee as the Executive Director, though he no longer worked for PYCE. Id.

SAMHSA's project officer, Dan Fletcher, then scheduled an August 21, 2009 site visit of PYCE to confirm, among other things, "that PYCE had the ability to repay the \$16,757" in misspent federal funds and "to gain some confidence in the community's willingness to reinvest in PYCE and in PYCE's ability to achieve the objectives of its grant award." SAMHSA Ex. 47, at 2 (¶ 4). In preparation for the site visit, Mr. Fletcher provided PYCE in mid-July with a proposed agenda and a detailed explanation of the information that he intended to review during the visit. See SAMHSA Exs. 37; 47. Consistent with the proposed agenda, Mr. Fletcher asked PYCE to have present during the visit PYCE's staff and board members, "key community leaders," and other individuals interested in PYCE's project, such as city officials, police, school officials, and faith leaders. SAMHSA Exs. 37, 38.

According to Mr. Fletcher's sworn statement describing the site visit, however, "[o]nly two people participated in the meeting on behalf of PYCE - Ms. Parsia and a former member of PYCE's

Board of Directors who was considering rejoining the Board." SAMHSA Ex. 47, at 2-3 (¶ 6). The only other individual present was a Vermont Department of Health consultant. Id. Further, Mr. Fletcher stated:

Within just a few minutes after the meeting began, it became clear to me that: (a) PYCE did not have a functioning Board of Directors, or at least a Board of Directors that was actively engaged in the affairs of the organization . . . ; (b) PYCE did not have any staff beyond Ms. Parsia, who had been volunteering her time for the grantee; (c) PYCE had no funds on hand, or other funding sources other than the STOP Act grant, and the organization was paying for all expenses with a credit card; (d) although Ms. Parsia had been telling us that PYCE was going to repay \$6,000 of the \$16,757 disallowance with funds obtained from the City of South Burlington, she had not told the City Manager that she would be using the money obtained from the city to repay the debt. . . .

Id. at 3-4 (¶ 7). According to Mr. Fletcher, when he "discussed these findings with Ms. Parsia, she agreed with [his] observations." Id. at 4 (¶ 8). Based on the site visit, Mr. Fletcher "did not gain any confidence that PYCE would be able to repay the misspent funds or to achieve the objectives of its grant within the foreseeable future." Id. at 4-5 (¶ 10).

The record thus demonstrates that over a six-month period, SAMHSA staff worked with PYCE towards resolving the grantee's fiscal and programmatic deficiencies. In repeated communications, SAMHSA staff provided clear guidance to PYCE as to the actions PYCE was required to take in order to return to fiscal compliance. PYCE, however, failed to timely and sufficiently complete those corrective actions. As reflected in SAMHSA's site visit findings, by the end of the period PYCE remained insolvent, ungoverned, understaffed and without a viable plan to implement its STOP Act project. SAMHSA Ex. 44. Under the circumstances, SAMHSA's decision to deny PYCE's application for continued funding was well-founded.

Further, PYCE's contentions that its "programs still exist," that it has new coalition and board members, and that it is "still in the process of raising funds," are irrelevant. PYCE Br. at 1-2. Having determined that PYCE materially failed to comply with the terms and conditions of its award, SAMHSA acted within its legal authority to deny PYCE's application for continuation funding. See Vance-Warren at 16 (holding that

actions the grantee took to improve its program after an agency's determination to deny continued funding are irrelevant because the Board's inquiry is limited to determining whether the grantee failed to comply with the terms of a previous award). In any event, PYCE has presented no evidence that its continued activities have resulted in meaningful corrective action. For example, PYCE's claims that it has "new coalition members that are committed to fundraising" and that it is "expecting funding from two grants [it] applied for in November" provide no assurance of the organization's future solvency or its ability to repay SAMHSA for the previously misspent funds.

Based on the discussion above, we conclude that PYCE is not entitled to additional time to correct its financial management and programmatic deficiencies.

C. We sustain the disallowance of \$16,757 relating to PYCE's first-year award.

Finally, PYCE appeals SAMHSA's disallowance relating to PYCE's first-year award. PYCE does not deny that it had \$16,757 in unallowable expenditures for the year. However, PYCE asks the Board to "re-consider some of the \$12,026.00 overage [the amount of disallowed costs relating to the Executive Director's salary] by crediting the in-kind, donated hours of staff that continued working on the STOP grant initiatives for an agreeable reasonable amount." PYCE Br. at 1; SAMHSA Ex. 28. PYCE states that it is "prepared to provide . . . any further documentation needed." PYCE Br. at 1.

PYCE has provided no basis for a reduction of its disallowed expenditures. Even if PYCE had provided the Board with sufficient documentation to determine the value of volunteer work donated to the organization (which it did not), reducing the disallowance amount by crediting to the grant the value of volunteer hours is not permissible under the applicable cost principles. OMB Circular A-122 explicitly provides that the value of "donated or volunteer services . . . is not reimbursable either as a direct or indirect cost" (although such services may be used to meet cost sharing or matching requirements in some situations not relevant here). OMB Circular A-122, App. B, ¶ 12.b(1)). Consequently, the value of such time may not be used to offset the amount of the grantee's unallowable expenditures and thereby reduce the disallowance. See Gila River Indian Community, DAB No. 264 (1982) (because in-kind contributions did not reduce the amount of federal funds used by the grantee, they could not be used to offset a disallowance); Project Bravo, Inc., DAB No. 925 (1987) (where a

grantee financed unallowable expenditures with federal funds it was required to reimburse the Agency with cash from non-federal sources and could not use the value of in-kind contributions, including extra efforts of some employees, to reduce the debt; the contributions simply increased the resources available to the grantee's program).

Accordingly, we reject PYCE's request to reduce the disallowance relating to its first-year award.

Conclusion

For the reasons discussed above, we sustain SAMHSA's decision to deny PYCE's application for a non-competing continuation award to fund the second year of PYCE's STOP Act project. We further sustain SAMHSA's determination that PYCE must repay \$16,757 in disallowed expenditures relating to PYCE's first-year award.

_____/s/_____
Judith A. Ballard

_____/s/_____
Constance B. Tobias

_____/s/_____
Stephen M. Godek
Presiding Board Member