Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Reginald Lourie Center for Infants & Young Children
Docket No. A-09-15
Decision No. 2262

DATE: July 27, 2009

DECISION

The Reginald S. Lourie Center for Infants & Young Children (Lourie Center) appeals two determinations of the Administration for Children and Families (ACF). ACF disallowed $90,259.07 in Early Head Start funds that Lourie Center drew down in January 2008 and denied payment for additional amounts of $61,344.80 and $87,930.70 for which Lourie Center sought to draw down funds. Lourie Center presented evidence to show that these amounts represent the federal share of expenditures from prior budget periods for which Lourie Center failed to request and draw down federal funds. ACF asserts that Lourie Center has already drawn down and expended all federal funds awarded for prior budget periods and that the remaining funds are allocable to the current budget period.

For the reasons discussed below, we reverse ACF's determinations requiring Lourie Center to repay $90,259.07 and denying payment of an additional $61,344.88 and $87,930.70. These particular actions are not warranted based on the record before us.

Legal Background

A nonprofit organization receiving an Early Head Start grant must meet grant administration requirements at 45 C.F.R. Part 74. 45 C.F.R. § 74.1. Such organizations may report their expenditures on a cash or accrual basis. 45 C.F.R. § 74.52. "Accrued expenditures" are --

> the charges incurred by the recipient during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subrecipients, and other payees; and, (3) other amounts becoming owed under programs for which no current services or performance is required.

45 C.F.R. § 74.2. Generally, grantees must submit a Financial Status Report (referred to as an SF-269) at least annually. 45 C.F.R. § 74.52. For reports prepared on an accrual basis, “outlays or expenditures” are –

> the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

45 C.F.R. § 74.2. Thus, reported expenditures do not necessarily equate with federal cash drawn down to cover those expenditures.

Payments of funds awarded to a grantee may be made to the grantee in advance or by way of reimbursement. Generally, the payments are made by electronic transfer, pursuant to a request from the grantee to “draw down” federal funds (that is, transfer funds from the U.S. Treasury to the grantee’s account). In general, a grantee is required to minimize the amount of time between drawdown of federal funds from the U.S. Treasury and actual disbursement of funds to cover allowable costs. 45 C.F.R. § 74.22. Grantees receiving HHS funds electronically use the Department’s Payment Management System to request funds.

Generally, grantees are required to submit a quarterly Federal Cash Transactions Report, called a PMS 272 or a PSC 272 (when submitted electronically through the Payment Management System). 45 C.F.R. § 74.52.

When funds are available only for a specified period, the grantee “may charge to the award only allowable costs resulting from obligations incurred during the funding period” and allowable pre-award costs. 45 C.F.R. § 74.28. “Obligations” mean “the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the [grantee] during the same or a future period." 45 C.F.R. § 74.2. Generally, a grantee must "liquidate all obligations incurred under the award not later than 90 calendar days after the end of the funding period" unless the awarding agency grants an extension. 45 C.F.R. § 74.71; see also § 74.2.

Case Background

Lourie Center was awarded Early Head Start funds beginning with its fiscal year (FY) 04 (8/01/03 through 7/31/04). Each award was assigned the number 03CH3341, with an additional number indicating the program year (01 through 06). The award amounts authorized for each budget period are set out in ACF Exhibit 2.

Lourie Center managed its own accounting for part of the budget period ending 7/31/06 (FY 06), but then became affiliated with Adventist HealthCare, Inc. (AHC), a not-for-profit, faith-based health care organization, which began to handle and oversee all of Lourie Center's financial transactions. LC Ex. 6, at ¶ 9. Lourie Center asserts, and ACF does not deny, that Lourie Center had drawn down $904,663.08 in federal funds for FY 06 before AHC began to oversee the transactions. The problem arose with cash transactions made after the affiliation.

Lourie Center submitted Financial Status Reports (SF-269s) for FY 06 and FY 07, indicating that Lourie Center had federal expenditures for each budget period equaling the amount awarded. While Lourie Center was reporting expenditures on an accrual basis, Lourie Center did not seek to draw down funds in advance of the time it disbursed funds to cover its expenditures. Instead, it sought reimbursement for its expenditures.

In January 2008, however, Lourie Center drew down $90,259.07 in federal funds that it said was to cover expenditures from FY 06. Lourie Center later sought to draw down an additional $61,344.80 it said was to cover FY 06 expenditures and $87,930.70 to cover FY 07 expenditures.

ACF determined that Lourie Center had to pay back the $90,259.07 and denied payment of the additional amounts. ACF originally took these actions on the basis that Lourie Center had not timely obligated any of the funds. ACF later asserted that the problem was that Lourie Center did not timely liquidate the obligations. After Lourie Center provided evidence that it had timely obligated the funds and liquidated the obligations, ACF abandoned these grounds.

ACF asserts instead that Lourie Center had already drawn down and expended all funds awarded for prior budget periods. For this new ground, ACF originally relied only on a one-page result of an inquiry to the Department's Payment Management System (ACF Exhibit 2), which it said showed that the total amount authorized for FY 06 and FY 07 was already disbursed to Lourie Center. After receiving Lourie Center's reply brief and additional documentation, the Board preliminarily determined that the unrebutted affidavits and documents submitted by Lourie Center appeared to support its position. The Board nevertheless provided ACF an additional opportunity to explain its position, with supporting documentation, and later extended the time ACF had to do so. ACF submitted its response on June 18, 2009.

Analysis

Ultimately, the issue before us is whether to uphold ACF's determinations requiring Lourie Center to repay the $90,259.07 Lourie Center drew down in January 2008 and denying payment of the additional $149,275.50. ACF does not here identify any specific reported expenditures as unallowable. Instead, ACF asserts that documents from the Payment Management System show that Lourie Center has already drawn down all of the federal funds it was authorized to spend for prior years and that all of the remaining authorized funds are FY 09 funds. We note at the outset that ACF does not specifically assert that Lourie Center has received more federal cash than the amount to which it is entitled, nor explain how Lourie Center can be required to pay back over $90,000 on the grounds ACF now asserts. Moreover, whether Lourie Center may receive additional amounts is determined not by how the Payment Management System allocates previous receipts but by whether the total amount Lourie Center has already received is less than its net disbursements to cover the federal share of allowable and allocable Early Head Start costs.

Below, we first discuss Lourie Center's evidence and why we conclude that it shows that Lourie Center did not previously request and receive federal funds to cover all of the amounts it disbursed for federal Early Head Start expenditures. We next discuss why ACF's evidence about Lourie Center's drawdowns does not support ACF's determinations, and why ACF's further reasons for not accepting Lourie Center's evidence have no merit.

Lourie Center’s evidence shows that it did not receive federal cash to cover all of its disbursements for Early Head Start expenditures.

With its initial brief, Lourie Center submitted an affidavit from the Certified Public Accountant who now serves as its Director of Accounting, Joseph Draetta, to support its position that it had not drawn down all available funds from its awards for the FY 06 and FY 07 budget periods. Mr. Draetta attests that a review of Lourie Center’s records revealed that Lourie Center recorded a total of $1,700,906.85 in allowable costs for FY 06, including $397,612.85 in in-kind expenditures. LC Ex. 7, at ¶ 8. The Financial Status Report (SF-269) for FY 06 reported these amounts, showing the federal share of costs for the period as $1,303,294, the amount awarded for the budget period. ACF Ex. 1, at 1. Mr. Draetta attests that review of Lourie Center’s financial records further reveals that, prior to January 2008, Lourie Center drew down only $1,151,690.13 against the FY 06 funding, leaving a balance of $151,603.87 to be drawn down against that award. LC Ex. 7, at ¶ 9. He further attests that analysis of the PSC 272s (Federal Cash Transaction Reports) for the period 7/01/06 to 9/30/06 “along with the Lourie Center’s P&E statements for those three months – reveals that the $151,603.87 that was never drawn down related to reimbursable costs that were incurred in July 2006 (at the conclusion of the FY 06 funding period).” Id. at ¶ 10.

Mr. Draetta’s first affidavit also explains Lourie Center’s basis for saying it should be able to draw an additional $87,930.70 in federal funds to cover allowable expenditures for FY 07. He attests that recorded allowable costs for FY 07 totaled $1,632,450, including $343,866 in in-kind expenditures. LC Ex. 7, ¶ 13. The SF-269 for FY 07 shows these figures, and identifies the federal share of costs as $1,288,584, the amount awarded for this period. ACF Ex. 1, at 2. Mr. Draetta further attests that Lourie Center drew down only $1,200,653 against the FY 07 funding, leaving a balance of $87,930.70 to be drawn down from available funds for allowable expenditures. LC Ex. 7, at ¶ 14.

Mr. Draetta also explains that Lourie Center discovered that it had not drawn down sufficient funds to reimburse itself for documented expenditures in the course of a Summer 2008 audit, which led him to undertake a review of Lourie Center’s financial records, the SF-269 and PSC 272 forms submitted by Lourie Center, and data contained in the Payment Management System.

To support its analysis, Lourie Center submitted a spreadsheet prepared by Mr. Draetta comparing expenditures for particular time periods with the cash drawdowns. LC Ex. 8. Lourie Center also submitted the PSC 272s for periods starting with AHC's takeover of the accounting functions, with notations regarding what cash requests were related to expenditures allocable to what budget year. LC Exs. 11, 13. Lourie Center also submitted an Early Head Start Consolidated Financial Statement for the Accounting Period 7/1/05 – 9/30/06 and Grant Period 8/1/05-7/31/06, which shows drawdowns to date (with a notation that this means as of 6/30/06) totaling $1,151,690.13, with $151,603.87 as the available funds and as the amount of the "Actual Outlay for the Quarter" under the heading "Old Grant." LC Ex. 12.

Thus, Lourie Center asks to retain the $90,259.07 it drew down in January 2008, as well as to receive an additional $61,344.80 for FY 2006, to reimburse it for the additional $151,603.87 in allowable expenditures ($90,259.07 + $61,344.80 = $151,603.87) for FY 06 for which it did not previously request federal funds. Lourie Center further asks to receive an additional $87,930.70 in funds to cover allowable expenditures in FY 07 for which it did not previously request funds.

ACF asks us to discount this information because the "accounting records" Lourie Center submitted as Exhibit 12 "do not reconcile with its Final SF-269 for the 8/1/2005-7/31/2006 and 8/1/2006-7/31/2007 Program Years" and the information on the SF-269 must be reconcilable to the information on the "final PSC 272 report." ACF Br. at 2. Exhibit 12 does not purport to be Lourie Center's accounting records, however. Instead, it is a financial statement for an accounting period that overlaps the two budget periods (Program Years). As Mr. Draetta's first affidavit indicated, the financial statement at Exhibit 12 can be reconciled to the SF-269 <u>for FY 06</u> if the $1,151,690.13 in drawdowns "to date" is added to the $151,603.87 identified as the outlays for the "Old Grant" in the relevant quarter since those amounts equal the $1,303,294 identified as the total federal share of the reported expenditures. ACF could not reasonably expect this financial statement for the accounting period ending 9/30/06 to reconcile to the final SF-269 <u>for FY 07</u>, since that year began only on 8/01/06. To the extent the financial statement addresses the "New Grant," it is consistent with the PSC 272 for the quarter ending 9/30/06 since it identifies total outlays for the quarter (for both the "Old Grant" and "New Grant") as $390,180.07, which is the amount given on the PSC 272 as the "net disbursements" by Lourie Center for that quarter. LC Ex. 11. While ACF refers to a “final PSC 272 report,” moreover, ACF did not submit any copy of such a report or indicate what that report says. With its reply brief, Lourie Center provided supplementary information to support its position.

First, Lourie Center provided an analysis (supported by the second affidavit of Mr. Draetta and other evidence) to show how documents from the Payment Management System are inconsistent with ACF’s suggestion that “current year funds” are segregated from funds from earlier periods in that system. Specifically, Lourie Center submitted a report from the Payment Management System from 1/09/07 that shows that Lourie Center had “net funds available” of $1,440,187.87, which is a sum in excess of the $1,288,584 awarded for FY 07. LC Ex. 15. Indeed, the excess is exactly the amount ($151,603.87) that Lourie Center’s financial statement for the period ending 9/30/06 identified as the amount of authorized FY 06 funds not yet drawn down to cover FY 06 expenditures. The Payment Management System document does not allocate the available funds among budget periods.

Second, Lourie Center provided all of its Requests for Payment that it submitted to the Payment Management System for the FY 07 budget period. LC Exs. 15-25. Mr. Draetta’s second affidavit provides an analysis, starting with the $1,440,187.87 in net available funds as of 1/09/07 (as shown on Exhibit 15), and subtracting the amounts from these drawdown requests, showing a net funds available balance of $239,534.57. LC Ex. 14, at ¶ 8. He explains that the total amount drawn against the $1,288,584 FY 07 funding period award was $1,200,653.30, which is consistent with Lourie Center’s previously submitted reconciliation at Exhibit 8. He further explains that the $239,534.57 balance after the FY 07 drawdowns represents the $151,603.87 in available funds from FY 06 that had not been drawn down at that time, plus the $87,930.70 in available funds from FY 07. LC Ex. 14, at ¶ 8.

ACF’s Exhibit 2 does not support ACF’s determinations.

ACF’s initial brief asserted that “Lourie Center’s 272 Reports for the [two years in question] indicate the Lourie Center spent the entirety of its grant awards.” ACF Br. at 2. According to ACF, a “review of Financial Assistance Awards, Financial Status Reports (SF-269) submitted by the Lourie Center (ACF Ex. 1), and documentation available in the Payment Management System (ACF Ex. 2), which contains the official records for cash disbursements to Head Start grantees, discloses that the Lourie

Center withdrew and expended all of the Federal funds awarded for each budget period with the exception of the current grant." ACF Br. at 3. ACF did not provide any analysis of the PSC 272 reports and other information Lourie Center submitted. With respect to "documentation available" in the Payment Management System, the only document ACF submitted is ACF Exhibit 2, a one-page summary of amounts authorized and disbursed under the Early Head Start awards.

There are several basic flaws with ACF's assertions and with its reliance on ACF Exhibit 2. First, to justify requiring Lourie Center to repay the $90,259.07 it drew down in January 2008, ACF would have to show that Lourie Center drew down that amount in excess of what it was entitled to draw down. Yet, even though the cash disbursements to Lourie Center shown in the Payment Management System would include the $90,259.07, ACF does not even assert that the system shows any receipt of excess funds.

Second, the fact that Lourie Center ultimately received sufficient federal funds to cover its disbursements for expenditures allocable to prior budget periods does not by itself support denial of the additional payments requested by Lourie Center. If the Payment Management System allocated to FY 06 and FY 07 receipts that Lourie Center had requested based on its disbursements for expenditures in later periods, then Lourie Center has not received sufficient federal funds to cover all of its reported disbursements for later periods. The denials are justified only if Lourie Center has received total federal funds sufficient to cover all of its allowable and allocable expenditures for FY 06 and FY 07 for which it had disbursed funds, as well as to cover all of its disbursements for allowable costs in later years.

In any event, Lourie Center's reply brief presented an analysis that shows how information from the Payment Management System showing "net funds available" on 7/18/08 can be reconciled with Lourie Center's position that it has funds available, even after drawing down the $90,259.07 in January 2008. The Payment Management System identified as funds available on 7/18/08 the amount $440,839.18. LC Ex. 27. After Lourie Center drew down $155,396.21 on 7/18/08 and $105,810.47 on 8/28/2008 (as shown on Exhibits 27 and 28), the net available balance was $179,632.50. This amount is also shown on the PSC 272 for the period ending 9/30/08 as the amount of cash owed to Lourie Center. Lourie Center reconciles this amount to its analysis by showing it corresponds to the $149,275.50 in expenditures incurred in FYs 06 and 07 ($61,344.80 + $87,930.70) for which Lourie Center had not yet drawn down funds by July 2008, and the amount remaining in the FY 08 award (consisting of $30,268.77 later drawn down on 10/02/08 and $88.23 never drawn down from the FY 08 award). LC Ex. 14, at ¶ 10, LC Ex. 30.

In its reply brief, Lourie Center also points to its previous analysis showing the amounts available in the Payment Management System at various points in time compared to its expenditures for particular periods and what that system showed at the time Lourie Center made its requests. In light of that documentation, Mr. Draetta posits that ACF's Exhibit 2 "seems to show the amount that has been charged/advanced on a rolling basis by which monies drawn-down are simply allocated to the 'oldest' grant monies that are available for draw-down." LC Ex. 14, at ¶ 11. Lourie Center points out that this would explain why, even though the amount drawn down included the $90,259.07 Lourie Center drew down in January 2008 based on FY 06 expenditures, the summary documentation shows the amount drawn down for FY 06 as equaling the amount awarded for that year. In other words, if ACF were correct in suggesting that Lourie Center had already drawn down all authorized amounts for FY 06 <u>before</u> January 2008 and that the system was identifying the amounts drawn down with expenditures for particular budget periods, then the summary should have identified an overpayment for FY 06, which it does not.

Lourie Center also points out that ACF fails to explain the significance of the $336,873.99 figure that is shown on ACF Exhibit 2 as the amount charged against the FY 09 award. Lourie Center provides an explanation that is consistent with its position. Based on its PSC 272 form for the quarter ending 12/31/08 and its subsequent requests for additional funds, as well as its analysis of other documents, Lourie Center shows that it had requested a total of $486,237.72 in federal funds based on disbursements for expenditures in FY 09, as of the date on ACF Exhibit 2; thus, the fact that the Payment Management System reported only $336,873.99 in drawdowns for FY 09 expenditures as of that date indicates that the Payment Management System charged some amounts that Lourie Center requested to cover FY 09 expenditures against prior period funds. LC Ex. 14, at ¶ 15.

The only document from the Payment Management System that ACF submitted in response to the Board's request supports Lourie Center, not ACF.

As noted above, Lourie Center's analysis indicates that the Payment Management System was applying drawdowns to grant awards for various budget periods in a way that did not necessarily track with particular expenditures based on which Lourie Center determined the amount of its drawdown requests. Yet, ACF presented no evidence from anyone responsible for that system (or any other information such as a system manual) that would call into question Lourie Center's analysis.

The only document that ACF submitted with its response that is relevant to any issues regarding the Payment Management System is the first two pages of ACF Exhibit 5, and the information on these pages is consistent with Lourie Center's analysis. These pages are a more detailed printout from the Payment Management System, dated 6/12/09, showing disbursements for Lourie Center's Early Head Start grants totaling $7,468,264.99. This compares with total authorizations of $7,934,955 for the six budget periods of the grant, including $1,307,458.00 for the period ending 7/31/09. ACF Ex. 2. Thus, as of 6/12/09, the difference between the total amount of Early Head Start funds Lourie Center was authorized to spend and the total amount disbursed to Lourie Center through the Payment Management System was $466,690.01 ($7,934,955.00 - $7,468,264.99).

ACF's reliance on ACF Exhibit 5 is misplaced. First, the total amount expended shown on this document includes the $90,259.07 drawn down on 1/28/08. ACF Ex. 5, at 1. Thus, even if all of the remaining $466,690.01 in authorized funds were allocable to FY 09, this document would not show that the $90,259.07 was not available from FY 06 funds at the time drawn down in January 2008.

Second, Lourie Center's evidence shows how to reconcile the $466,690.01 in total authorized funds that the exhibit shows had not been drawn down as of 06/12/09 with Lourie Center's position that it is entitled to retain the $90,259.07 and to draw down additional funds.

Lourie Center's previous submissions identified payments through 10/03/08 as relating to its requests for payment to cover expenditures from FY 08 or earlier periods. The remaining payments from the Payment Management System shown on ACF Exhibit 5 (starting with a payment made 10/16/08, which corresponds to

Lourie Center’s Exhibit 33) are amounts that Lourie Center drew down on the basis of disbursements to cover expenditures allocable to FY 09 and total $990,131.72. Subtracting this amount from the total amount authorized for FY 09 ($1,307,458) leaves only $317,326.28 in FY 09 funds authorized but not drawn down. This undercuts ACF’s position that all of the remaining $466,690.01 in funds authorized but not drawn down as of 6/12/09 are available only to reimburse Lourie Center for FY 09 expenditures.

Subtracting the $317,326.28 in remaining FY 09 funds from the $466,690.01 authorized but not drawn down as of 6/12/09 leaves $149,363.73 in funds not drawn down but remaining available. It is logical to conclude that this amount includes the $88.23 in unexpended funds from FY 08 previously identified by the Lourie Center, plus the amounts Lourie Center seeks to draw down in addition to the $90,259.07 it has already drawn down, namely $61,344.80 for FY 06 and $87,930.70 for FY 07. Those last two amounts total $149,275.50, and adding the $88.23 to that amount equals the $149,363.73.

ACF’s reliance on the affidavit of a Contract Fiscal Specialist is also misplaced.

In response to the Board’s request that ACF explain its position and provide relevant documentation, ACF included as Exhibit 6 an affidavit of a Contract Fiscal Specialist, Evan Kramer, who has been employed in that position for a year and six months and who has been the specialist for the Lourie Center since 2007.

Mr. Kramer attests that the “official record of withdrawals maintained by the Payment Management System corroborated by reports submitted by the Lourie Center to the Division of Payment Management System and ACF confirm that there are no unexpended funds available for any budget period with the exception of the currently active budget period [i.e., the budget period ending 7/31/09].” ACF Ex. 6, ¶ 13. Mr. Kramer indicates that, in reaching this conclusion, he was relying on the Financial Status Reports (SF-269s) and the Federal Cash Transaction Reports (PSC 272s) submitted by Lourie Center, which he says “disclose that all authorized funds were expended during the budget periods” ending 7/31/06 and 7/31/07 and that “[c]onsequently, there are no funds available.” Id. at ¶ 18. He also asserts that ACF’s “analysis of the complete history of withdraw[al]s for all budget periods confirm that information is correct that no funds were available” from the FY 06 and FY 07 budget periods. Id. at ¶ 20. Mr. Kramer also says that Lourie

Center's SF-269s contradict the second affidavit submitted by Mr. Draetta, the Certified Public Accountant, on behalf of Lourie Center.

Aside from the fact that Mr. Kramer provides no detail regarding ACF's "analysis" (despite the Board's directive that ACF explain its position), we have identified several additional problems with his conclusions.

First, a Financial Status Report submitted by a grantee such as Lourie Center that reports expenditures on an accrual basis may disclose whether a grantee has incurred expenditures up to the amount authorized, but it discloses nothing about whether the grantee has requested and received federal funds to cover those reported expenditures. As discussed above, a grantee is required to minimize the amount of time between drawdown of federal funds and actual disbursement of those funds to cover allowable costs. 45 C.F.R. § 74.22. Thus, for example, a grantee may record an accrued expenditure at the time it obligates funds by ordering supplies, but may not actually draw down funds to cover the costs until after it receives the supplies and has issued a check to pay the bill for the supplies.

In light of this, we also disagree that Lourie Center's SF-269s contradict the second affidavit by Mr. Draetta, the Certified Public Accountant. ACF points to no specific way in which the SF-269s are inconsistent with the affidavit, and the affidavit and supporting documentation explain how Lourie Center's expenditures compare to amounts drawn down to cover those expenditures.[1]

While Mr. Kramer says that he is relying on the PSC 272s submitted by Lourie Center, moreover, he does not provide any specific reference to any of the PSC 272s submitted by Lourie Center, or provide any additional PSC 272s or any analysis of what the PSC 272s as a whole show about the total amount drawn down. Nor does he provide any meaningful response to Lourie Center's analysis and documentation showing how information from

[1] As ACF has said, a grantee must liquidate obligations from a budget period within 90 days of the end of the budget period. Here, however, Lourie Center has submitted unrebutted evidence that it did so timely liquidate its obligations, but inadvertently covered some of those obligations with its own cash, rather than drawing down federal funds.

the Payment Management System supports its position. For example, Mr. Draetta attests:

> When the Center first sought to draw-down funds against the FY 2007 funding period award, the ACF Payment Management System . . . showed that the Center had “net funds available” in the amount of $1,440,187.87 – some $151,603.87 more than the $1,288,584 that had been awarded for the FY 2007 funding period; that additional amount represented, as reflected in my earlier affidavit, the available amount that had not been drawn-down from the FY 2006 funding period award.

LC Ex. 14, at ¶ 6. This statement is supported by Lourie Center Exhibit 15 (a request for payment of $395,189 from the Payment Management System with a due date of 01/09/07, showing in a box for “Net Funds Available” the figure $1,440,187.87); by ACF Exhibit 5 (showing that the total amount awarded for FY 2007 was $1,288,584); and by the financial statement at Lourie Center Exhibit 12 (showing a total of $151,803.87 in funds available from FY 06 as of 9/30/06). Also, the PSC 272 for the quarter ending 12/31/06 shows no receipts of federal funds in that quarter. LC Ex. 13, at 1. In response, Mr. Kramer states:

> Paragraph 6 of Mr. Draetta’s Second Affidavit may be correct in [that] Lourie Center had net funds available in the amount of $1,440,183.37. However, the net funds were associated with the budget period 03CH334105, in effect January 28, 2008, since all funds for previous budget periods had been expended.

ACF Ex. 6, at ¶ 19. This response is inconsistent with any reasonable reading of the records. As mentioned above, the $1,440,187.87 is shown as the authorized funds available in January 2007. One simply would not expect funds for the FY 08 budget period (8/01/07 to 7/31/08) to show up as available funds in the Payment Management System more than half a year before the start of the budget period. ACF provides no documentary support for such an extraordinary proposition. Moreover, the total award for FY 08 (award number 03CH334105), as shown on ACF Exhibit 2, is $1,307,458, so the $1,440,187.87 could not possibly have all been associated with FY 08, even if the award for that budget period were made early. Thus, it appears that Mr. Kramer is simply mistaken.

Even assuming that Mr. Kramer meant to refer to FY 07 instead of FY 08 (which is doubtful since he gave the award number for FY 08), his statement still is flawed since the total authorized amount for FY 07, as shown on ACF Exhibit 2, is $1,288,584. Thus, the $1,440,187.87 that the Payment Management System showed as available in January 2007 could not have all been "associated with" FY 07 either.
Mr. Kramer also states: "Grantees must utilize data from their PMS 272 reports which reconcile cash withdrawn from the Payment Management System to each budget period." ACF Ex. 6, at ¶ 21. ACF provides no legal citations or documentary support for this statement.

We note that the PSC 272 reports in the record each cover a quarter of the federal fiscal year, so a report may overlap the grantee's budget periods. For example, the PSC 272 at Lourie Center Exhibit 11 is for the quarter "07/01/2006 – 09/30/2006," which included part of the grantee's FY 06 budget period (which ended on 7/31/06) and part of the grantee's FY 07 budget period (which began on 8/01/06). The report form contains lines for cash on hand at the beginning of the reporting period, total receipts, total cash available, net disbursements, and cash on hand at the end of the period, interest income on the cash, and advances to subgrantees or subcontractors. Nothing on this report form indicates what cash receipts the grantee is attributing to what budget period. We recognize that, if Mr. Kramer intended to refer not just to the PSC 272 report form, but to the continuation sheets (PSC 272A-G) that may be required as part of the report, then the reports should allow the awarding agency "to obtain disbursement information for each agreement with recipients." 45 C.F.R. § 74.52(a)(ii). Mr. Kramer does not make this clear, however, and ACF did not submit any continuation sheets to support its assertions.

In any event, the key issue here is not whether the disbursement information reported for prior periods included all of the reported expenditures for those periods for which Lourie Center had disbursed funds. In fact, the reported disbursements for the prior periods should track with the reported expenditures if Lourie Center was timely liquidating its obligations, as ACF now concedes it was. The problem identified in the documents submitted by Lourie Center is that the amounts Lourie Center was requesting and receiving in federal funds did not correspond to all of the amounts disbursed for the prior periods.

Thus, even assuming that Lourie Center previously submitted PSC 272 reports based on which the Payment Management System reconciled Lourie Center’s cash receipts to its disbursements for FY 06 and FY 07, that alone does not support ACF’s determinations or provide a reason why we should ignore the evidence in the record, including the documentation from the Payment Management System submitted by ACF. That evidence shows that Lourie Center did not request and draw down funds in amounts that corresponded to all of its expenditures for those prior budget periods, that the available funds as of 6/12/09 exceed the difference between the amount authorized for FY 09 and the amount Lourie Center has drawn down based on FY 09 disbursements, and that the excess amount of available funds is equal to the $88.23 from FY 08 plus the $149,275.50 that Lourie Center seeks to draw down.

In sum, Mr. Kramer’s statements do not provide adequate support for the ACF determinations at issue here.[2]

ACF’s reasons for questioning Lourie Center’s assertions do not support the determinations appealed here.

ACF asserts in its response to the Board’s inquiry that it does not have confidence in Lourie Center’s documentation because ACF has questions about Lourie Center’s financial management that have led ACF to designate Lourie Center as a high risk grantee. In support of these assertions, ACF submits information from a monitoring review of Lourie Center’s Early Head Start program and ACF’s letter designating Lourie Center as a high risk grantee.

The report of the monitoring review, conducted in March 2008, does raise some questions about Lourie Center’s financial management. The review identified a deficiency in the reporting and documentation of third-party in-kind expenditures claimed as the non-federal share (specifically, whether Lourie Center had documentation to support the valuation of donated services), in the timeliness of submission of the SF-269 reports (for example, the Final SF-269 report due October 31, 2007 was not submitted until November 2, 2007), in the procedures for identifying and reporting administrative costs, and in the reporting of non-federal share and administrative costs to the governing body. ACF Ex. 3, at 3-5. The review also found that Lourie Center’s

[2] Since we find the affidavit inadequate on its face, we see no need to grant Lourie Center’s request for a hearing to permit it to cross-examine Mr. Kramer.

Executive Director could not find copies of Lourie Center's procedures for minimizing time between transfer and disbursement of funds and for ensuring the allowability and allocability of costs. Id. at 6-9. Although these findings may be a cause of some concern, ACF does not claim that it has made any finding that, as a result of the alleged deficiencies and noncompliance, Lourie Center failed to document sufficient in-kind expenditures to meet its non-federal share requirement or that Lourie Center otherwise charged unallowable costs to federal funds.

The letter that ACF submitted about designating Lourie Center as a high risk grantee indicates that ACF based this designation in large part on a misinterpretation of the meaning of Lourie Center's request to be able to draw down additional funds of $61,613.88 for FY 06 and $87,930.70 for FY 07. ACF Ex. 4, at 3. ACF's letter describes those amounts as "carryover balances" but, in fact, the request was made because Lourie Center discovered that it had expenditures equal to the amount awarded for each of those years, but had not drawn down federal funds to cover all of the expenditures. A carryover balance exists only if a grantee has not timely obligated all of the funds awarded.

ACF's letter also seems to fault Lourie Center for not "initially" reporting what ACF calls "a $10,588 unobligated balance within [Lourie Center's] PA26 CAN" for FY 07 related to a "$30,356 PA26 award." ACF Ex. 4, at 3. ACF apparently inferred there was an unobligated balance since the remarks section of the SF-269 initially submitted for FY 07 identifies only $19,768 as expenditures for training and technical assistance. LC Ex. 10. The revised final report, however, shows the full $30,356 as being spent for training and technical assistance. ACF Ex. 1, at 2. Inferring that Lourie Center had such an "unobligated balance" for FY 07 seems to be inconsistent with ACF's position here that Lourie Center has already drawn down and expended all of the federal funds awarded for FY 07. Moreover, both of Lourie Center's SF-269s for FY 07 did report that Lourie Center had expenditures equal to the full amount of funds awarded, so at most the reference to the $19,768 appears to have been a mistake in reporting how much of those expenditures were for training and technical assistance.

ACF also based its determination to designate Lourie Center as a high risk grantee on the 2008 monitoring review and on the audit (and accompanying Management Letter) for FY 06, which questioned some transactions with respect to Montrose School Cash Accounts and payroll expenditures. ACF does not allege, however, that any of the findings of the audit or monitoring review have resulted in ACF disallowing any specific costs or claimed non-federal share for FY 06 or FY 07 or that such disallowances would result in a reduction of the federal funds to which Lourie Center is entitled for those years below the reported amounts used in the analysis Lourie Center presented here.

The mere designation of Lourie Center as a high risk grantee based on general findings of management deficiencies is not equivalent to any finding that, in fact, the expenditures for which Lourie Center has drawn down or seeks to draw down funds were not allowable or that Lourie Center has already drawn down funds to cover all of its allowable costs. Moreover, as a result of the designation, Lourie Center may now receive additional funds only by way of reimbursement. Therefore, ACF may protect the federal fisc by ensuring, for example, that the amounts of any additional expenditures claimed for FY 09, when considered with the amounts Lourie Center has already received to reimburse it for disbursements it allocated to that period, do not exceed the amount authorized.

Finally, we note that much of the documentation on which Lourie Center relies is documentation from the Payment Management System showing when Lourie Center drew down particular amounts. ACF provides no reason why we should consider that documentation unreliable, nor does it seek to cross-examine Mr. Draetta or otherwise undercut his credibility.

Conclusion

For the reasons stated above, we reverse ACF's determinations requiring Lourie Center to repay $90,259.07 and denying payment of an additional $61,344.88 and $87,930.70.

/s/
Leslie A. Sussan

/s/
Constance B. Tobias

/s/
Judith A. Ballard
Presiding Board Member