

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

Depression and Bipolar Support Alliance
Docket No. A-12-5
Decision No. 2444
March 12, 2012

DECISION

The Depression and Bipolar Support Alliance (DBSA) appeals a portion of the determination of the Substance Abuse and Mental Health Services Administration (SAMHSA) disallowing \$173,797 in costs claimed under a grant during the budget year September 30, 2007 through September 29, 2008. DBSA challenges only the disallowance of \$41,541 in salary and fringe benefits paid to its Project Director and its web administrator. SAMHSA determined that DBSA failed to obtain prior written approval to substitute another Project Director for the Project Director named in the approved grant application and failed to adequately document the claimed costs consistent with the requirements in the regulations. For the reasons discussed below, we sustain the disallowance.

Applicable law

The regulations at 45 C.F.R. Part 74 govern awards of federal financial assistance by the Department of Health and Human Services (HHS) to various entities including non-profit organizations like DBSA. *See* 45 C.F.R. § 74.1. Part 74 provides that non-profit recipients of federal grants must comply with Office of Management and Budget (OMB) Circular A-122, Cost Principles for Non-Profit Organizations, codified at 2 C.F.R. Part 230. 45 C.F.R. § 74.27(a). Additionally, grant awards set forth terms and conditions with which grantees must comply. The Notice of Grant Award in this case informed DBSA that it was required to comply with Part 74 and also the HHS Grants Policy Statement (GPS). SAMHSA Ex. 4, at 3.

The cost principles require that a grantee's costs be “adequately documented.” 2 C.F.R. Part 230, App. A, ¶ A.2.g. The regulations also require, among other things, that a grantee have a financial management system that provides “[r]ecords that identify adequately the source and application of federal funds” as well as “[a]ccounting records, including cost accounting records, that are supported by source documentation.” 45 C.F.R. § 74.21(b)(2), (b)(7). Grantees also are responsible for maintaining documentation “to account for the receipt, obligation and expenditure of [grant] funds.” 45 C.F.R. § 74.22(i)(1). A grantee’s payrolls must be supported by personnel activity

reports signed by the individual employee or by a responsible supervisory official having first-hand knowledge of the activities performed by the employee. 2 C.F.R. Part 230, App. B, ¶¶ 8.m.(1)-(2).

The Board has repeatedly held that, under the applicable regulations and cost principles, a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds. *Benaroya Research Institute*, DAB No. 2197, at 3 (2008) (citing cases). The Board has also held that “[b]eing able to account for the expenditure of federal funds is a central responsibility of any grantee.” *Recovery Resource Center, Inc.*, DAB No. 2063, at 12-13 (2007). “Once a cost is questioned as lacking documentation,” the Board has further held, “the grantee bears the burden to document, with records supported by source documentation, that the costs were actually incurred and represent allowable costs, allocable to the grant.” *Northstar Youth Services*, DAB No. 1884, at 5 (2003).

Regarding the requirement to obtain prior written approval for certain changes to an approved grant project, including a change of the designated grant Project Director, the regulations at Part 74 state:

(c) For nonconstruction awards, recipients shall obtain prior approvals from the HHS awarding agency for one or more of the following program or budget related reasons.

* * * *

(2) Change in the project director or principal investigator or other key persons specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

* * * *

(k) All approvals granted in keeping with the provisions of this section shall not be valid unless they are in writing, and signed by at least one of the following HHS officials:

(1) The Head of the HHS Operating or Staff Division that made the award or subordinate official with proper delegated authority from the Head, including the Head of the Regional Office of the HHS Operating or Staff Division that made the award; or

(2) The responsible Grants Officer of the HHS Operating or Staff Division that made the award or an individual duly authorized by the Grants Officer.

The “Standard Terms of Award” in the Notice of Grant Award for DBSA’s grant included the following requirements for written prior approval for (among other actions) replacement of the program or project director:

12. Actions that require prior approval must be submitted in writing to the Grants Management Officer (GMO), SAMHSA. The request must bear the signature of an authorized business official of the grantee organization as well as the project director. Approval of the request may only be granted by the GMO and will be in writing. No other written or oral approval should be accepted and will not be binding on SAMHSA.

13. Any replacement of, or substantial reduction in the effort of the Program Director (PD) or other key staff of the grantee or any of the sub-recipients requires the written prior approval of the Grants Management Officer. The GMO must approve the selection of the PD or other key personnel, if the individual being nominated for the position had not been named in the approved application, or if a replacement is needed should the incumbent step down or be unable to execute the position's responsibilities. A resume for the individual(s) being nominated must be included with the request. Key staff (or key staff positions, if staff has not been selected) is listed below:

Project Director

SAMSHA Ex. 4, at 4.¹

The Notice of Grant Award identified by name the GMO, as well as the Grants Management Specialist (GMS) and the Grants Project Officer (GPO).² *Id.* at 1, 6.

Other relevant authority is identified where appropriate in the analysis below.

¹ The GPS states that “PD” means “Program Director/Project Director,” and provides the same definition for those terms and for “Principal Investigator.” GPS at A-2, I-6.

² The GMO is “the official responsible for the business management and other non-programmatic aspects of an award,” including “administering and closing out grants” and is “the only official authorized to obligate” the HHS awarding agency “to the expenditure of Federal funds or to change the funding, duration, or other terms and conditions of an award.” GPS at I-5. The GMS is “assigned responsibility for the day-to-day management of a portfolio” of grants and “performs many of the activities described above on behalf of the GMO and usually is the primary point of contact for the recipient when dealing with grant-related issues.” *Id.* The GPO is “responsible for the programmatic, scientific, and/or technical aspects of assigned applications and grants” and is responsible for “post-award monitoring of project/program performance, including review of progress reports and making site visits; and other activities complementary to those of the GMO.” *Id.*

Background

On August 21, 2007, SAMHSA awarded DBSA a three-year grant to establish and operate a “technical assistance center” (TAC) to provide assistance to mental health consumer organizations. SAMHSA Ex. 4 (Notice of Grant Award). DBSA had applied for the grant pursuant to a Request for Applications for grants for TACs to “provide technical assistance to consumers in States where consumer organization and leadership are underdeveloped” and to “provide technical assistance to State mental health systems serving adults with serious mental illnesses, to support consumer organizations, service providers, and the general public.” SAMHSA Exs. 28, at 3 (Request for Applications); 2 (application). SAMSHA awarded DBSA a grant award totaling \$339,640 for the first budget year of the grant, September 30, 2007 through September 29, 2008. SAMHSA Ex. 4, at 1-2.

In its approved grant application dated January 30, 2007, DBSA identified as the “PD” (Program Director or Project Director) its Director of Training, to whom we refer as M.M. SAMHSA Ex. 2, at 1, 5. M.M.’s position was one of five positions DBSA proposed to charge to grant funds in varying proportions based on the “level of effort” devoted to the grant project. *Id.* DBSA stated that M.M. would devote 50% of his effort to the grant project and proposed to charge to grant funds \$52,900 for M.M.’s services during the first year, consisting of \$35,000 in salary (based on his \$70,000 annual salary and a 50% “level of effort”) and \$17,900 in fringe benefits (based on a fringe benefit rate of .5114). *Id.* The Notice of Grant Award dated August 21, 2007 identified M.M. as Project Director. SAMHSA Ex. 4, at 1.

DBSA hired P.A. as its Executive Vice-President on May 1, 2007, effective July 30, 2007, at an annual salary of \$125,000. SAMHSA Ex. 3, at 1. Executive Vice-President was not one of the five grant positions that DBSA proposed in the grant application to charge to grant funds. SAMHSA Ex. 2, at 1, 5. On December 20, 2007, nearly eight months after he was hired, P.A. wrote to the GMS stating that the GPO had informed him “of some important changes that I needed to make you aware of” regarding the grant project, namely that DBSA’s CEO/President “has asked me [P.A.] to be the Project Director, for this TAC . . . I would appreciate you letting me know if there are any other steps that we must take to include this change to our grant.” SAMHSA Ex. 5, at 1. SAMHSA did not respond to this letter and did not provide written approval for the substitution of the project director during the first budget year.

In letters dated March 14 and June 27, 2008, a SAMHSA Financial Advisory Services Officer (FASO) requested that DBSA provide certain information needed to perform a financial capability review. SAMHSA Exs. 6, 8. The letters cautioned that failure to provide the requested information in a timely manner could result in DBSA being

designated a high-risk grantee, and restrictions being placed on DBSA's ability to draw down grant funds. *Id.* DBSA did not respond to either request although it subsequently stated, in a letter dated September 19, 2008, that it had not received either letter requesting information. SAMHSA Ex. 15.

Payment disbursement records based on Federal Cash Transaction Reports DBSA filed quarterly show that, as of June 30, 2008, nine months into the budget year, DBSA had spent its entire first-year award of \$339,640. SAMHSA Exs. 22 (Payment Management Systems Inquiry Report); 27, at ¶¶ 17-20 (FASO Decl.). On July 30, 2008, the GPO informed DBSA by email that SAMHSA was "very dissatisfied by the quality and quantity of work" under the grant and "must make a decision as to whether SAMHSA/CMHS [Center for Mental Health Services] will fund the DBSA TAC for year-02 or terminate the grant." SAMHSA Ex. 9, at 1 (emphasis in original). The GPO also stated in that email that P.A. "needs to limit his involvement to 5% of his time." *Id.*

On August 6, 2008, SAMHSA issued a revised Notice of Grant Award for the first budget year showing that DBSA had been designated as a high-risk grantee. SAMHSA Ex. 12. In a letter dated August 13, 2008, P.A. informed the GPO that he had been the Program Director "since the start of the grant." SAMHSA Ex. 13, at 2. On August 30, 2008 SAMHSA issued a Notice of Grant Award for the second budget year (September 30, 2008 – September 29, 2009) designating P.A. as "Program Director" and awarding grant funds totaling \$332,600.³ SAMHSA Ex. 14, at 1, 6.

On April 1, 2009, the FASO informed DBSA that she and the GPO would perform an on-site visit on April 13 through 15, 2009. SAMHSA Ex. 17. The letter stated that DBSA's accounting and personnel policies and procedures were not adequate to administer federal awards, and that supporting documentation DBSA provided in February 2009 was not adequate to support DBSA's claimed expenditures. *Id.* The FASO requested that DBSA have documentation available for review during the visit, including documentation for DBSA's cash drawdowns, and documentation for costs charged to the grant from April 1, 2008 through September 29, 2008, such as payroll records, timesheets, vouchers, invoices, expense reports, billing statements, receipts and cancelled checks. *Id.*; SAMHSA Ex. 27, at 6 ¶ 24.

³ SAMHSA's approval of P.A. as Program Director for the second budget year does not affect the disallowance at issue here, which concerns only costs claimed against the first budget year. *See, e.g., Strategic Community Services, Inc.*, DAB No. 2333, at 10-11 (2010) (grantee's failure to obtain required prior approval to hire project director as consultant instead of employee as specified in grant was ground to disallow his compensation during budget year at issue, notwithstanding SAMHSA's granting approval for subsequent year).

The FASO and the GPO conducted the site visit on April 13 through 15, 2009. In her declaration, the FASO states that during the site visit, DBSA “failed to supply adequate financial records and supporting documentation” and “was not able to provide me any documents to support the salary costs that it was charging to the grant.” SAMHSA Ex. 27, at 6 ¶¶ 25, 26. At the end of April 2009, the FASO received “payroll documents from the grantee, which included a filled-in spreadsheet for the pay period from February 2 through 15, 2008, general payroll invoices from . . . DBSA’s payroll company, and some time sheets for several employees, who included [P.A.] and [N.H.],” but she “found that none of these documents were sufficient to document the salary and fringe benefit costs charged to the grant.” *Id.* at ¶¶ 27, 28.

On August 24, 2009, SAMHSA issued a second revised Notice of Grant Award that extended the second budget period of the grant for two months, through November 29, 2009, but which also provided that the overall project period would end at that point, instead of extending through September 29, 2010, as provided in the original Notice of Grant Award. SAMHSA Exs. 19, at 1; 4, at 1.

On September 9, 2011, SAMHSA issued the instant disallowance of \$173,797, out of DBSA’s total award of \$339,640 for the first budget year.⁴ SAMHSA Ex. 26. During the appeal, DBSA confirmed that it is challenging only \$41,541 of the \$173,797 disallowance, consisting of salary and fringe benefits of \$40,563 for P.A. and \$978 for N.H., its web administrator.⁵ SAMHSA Ex. 1; DBSA Br. at 1-2; DBSA Att. 3. For the reasons discussed below, these claimed costs are unallowable because DBSA did not obtain the required prior written approval to substitute P.A. as the Project Director, and because DBSA did not adequately document the salary and fringe benefits paid to either individual. Our decision is based on the parties’ briefs and appeal files. DBSA requested and was granted an extension of time to submit a reply brief but subsequently informed the Board that it would not do so.

⁴ SAMHSA determined to allow only \$467 in costs during the first budget year. SAMHSA Ex. 27, at 7-8 ¶¶ 34, 37. The remaining \$165,376 that SAMHSA determined was unallowable (\$339,640 - \$467 - \$173,797) was not addressed in SAMHSA’s disallowance determination dated September 9, 2011 and is not before us in this appeal. SAMHSA by letter dated September 8, 2011 asked DBSA to return the \$165,376, noting that DBSA had indicated that it did not dispute that those costs were not allowable. SAMHSA Ex. 25. The record does not indicate whether DBSA returned the \$165,376.

⁵ The portion of the disallowance amount addressed in SAMHSA’s September 9, 2011 disallowance determination that DBSA does not dispute consists of \$132,256 in costs that SAMHSA determined were not identified, adequately documented, or properly authorized. Since DBSA does not dispute the disallowance of that amount, we summarily affirm the disallowance of \$132,256 without further discussion.

Analysis

- I. The costs for P.A. are not allowable charges to federal funds because DBSA did not obtain prior written approval to substitute him for the approved Project Director, as required by the applicable regulations and the specific grant terms and conditions.

It is not disputed that SAMHSA did not approve, in writing, the substitution of P.A. for M.M. as the Project Director for the first budget year, as required by the specific grant terms and conditions and 45 C.F.R. § 74.25(c)(2). SAMHSA Ex. 4, at 4. DBSA additionally does not dispute SAMHSA's position that DBSA, in order to obtain such approval, "would likely have [had] to either obtain SAMHSA's prior written approval to reduce the Project Director's level of effort by more than 25% in accordance with [45 C.F.R.] § 74.25(c)(3), or obtain prior written approval for additional federal funding in accordance with [45 C.F.R.] § 74.25(c)(4)." SAMSHA Br. at 18-19. In support, SAMHSA states, and DBSA again does not dispute, that the substitution of P.A. for M.M. as Project Director, if approved, would have increased the costs to the grant of the Project Director's position by \$37,812.50 based on the differences in the salaries paid to M.M. and P.A. (\$70,000 and \$125,000, respectively), the "0.4514" fringe benefit rate reported for P.A. (versus 0.5114 proposed for M.M.), and the same 50% level of effort proposed in the grant application. SAMHSA Br. at 18-19; SAMHSA Ex. 2, at 5; DBSA Att. 3.

In light of DBSA's failure to obtain written prior approval as required by the regulations and the grant terms and conditions, SAMHSA was authorized to disallow costs related to P.A.'s compensation to the grant awarded for the first budget year. *See* 2 C.F.R. Part 230, App. A, ¶ A.2.b (to be allowable, costs must "[c]onform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items"); GPS at II-56 ("Failure to make a timely request and obtain required . . . prior approval from the GMO may result in the disallowance of costs, termination of the award, or other enforcement action"); *see also* 45 C.F.R. § 74.62(a)(2) (if a grant recipient "materially fails to comply with the terms and conditions of an award . . . the HHS awarding agency may . . . [d]isallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance").

DBSA states that P.A.'s "ongoing communication with SAMHSA staff and visits to and communications with various states connected to the grant demonstrate his clear understanding that he was functioning in th[e] capacity [of Project Director]." DBSA Br. at 2. The issue, however, is not what P.A.'s understanding was, but whether DBSA was complying with grant terms and conditions, which required prior written approval for any change of the Project Director. To the extent that DBSA is arguing that SAMSHA also

had this understanding and was estopped for that reason from disallowing the costs of P.A.'s compensation incurred without the required prior approval, such argument must fail. As the Board has consistently observed, estoppel against the government, if available at all, is presumably unavailable absent "affirmative misconduct," which has not been alleged here. *See, e.g., Northwest Tennessee Economic Development Council*, DAB No. 2200, at 6 (2008) (citations omitted). Even if the GMS was aware of and failed to object to P.A.'s serving as Project Director, that does not rise to the level of affirmative misconduct. Also, it is not disputed that DBSA's December 20, 2007 letter did not meet the terms for requesting prior approval specified in the grant terms and conditions, as it was not directed to the GMO and was not signed by M.M., the approved Project Director. SAMHSA Exs. 4, at 4; 5. DBSA could not reasonably construe the absence of a response to this letter as approval for the substitution of the Project Director. Moreover, the GPO's instruction, in her email of July 30, 2008, that P.A. limit his involvement in the grant to five percent of his time should have dispelled any impression DBSA may have had that SAMHSA had tacitly approved his substitution as Project Director, since the Project Director, under the approved grant application, was to allocate 50% of his time to the grant project.

II. DBSA has not adequately documented personal services costs for P.A. and N.H. that it charged to the grant during the first budget year.

In addition to not obtaining written prior approval to substitute the Project Director, DBSA has not adequately documented the salary and fringe benefits disallowed for P.A. and N.H. during the first budget year. DBSA initially submitted payroll documentation for P.A. and N.H. at the end of April 2009, following the site visit from April 13 to 15, 2009, during which DBSA had "failed to supply adequate financial records and supporting documentation" and "was not able to provide . . . any documents to support the salary costs that it was charging to the grant." SAMHSA Ex. 27, at 6 ¶¶ 25, 26. DBSA submitted 26 biweekly timesheets for P.A. for the period September 29, 2007 through October 10, 2008, and eight for N.H., the web administrator, for the period March 29 through September 26, 2008. SAMHSA Ex. 18, at 1, 3-37. DBSA also submitted payroll invoices from DBSA's payroll company reflecting payments to DBSA staff for the period September 29, 2007 through October 10, 2008, and a spreadsheet titled "Calculation of DBSA Salaries" for the first budget year and covering the period February 2 through 29, 2008. *Id.* at 2, 38-116.

The FASO informed DBSA by letter dated May 4, 2010 that the costs of salaries claimed for the first budget year were unallowable because the timesheets were not signed by either the employees or the supervisors (and because, in the case of some salary payments, they were made to employees who had not been approved to work on the grant). SAMHSA Ex. 20, at 8-10; SAMHSA Ex. 27, at 6 ¶¶ 27-28; *see* 2 C.F.R. Part 230, App. B, ¶¶ 8.m.(1)-(2).

With its brief in this appeal submitted December 8, 2011, DBSA provided 21 biweekly timesheets for P.A., covering two-week pay periods ending October 12, 2007 through October 10, 2008 (no timesheets were submitted for six pay periods). DBSA Att. 4. DBSA claims that these timesheets document \$40,563.15 in salary and fringe benefits for P.A., based on 436 hours at an hourly rate of \$64.10 and a fringe rate of 0.4514. DBSA Att. 3. Nineteen timesheets bear signatures in the spaces designated for employee and supervisor, and one is missing the supervisor's signature.⁶ DBSA Att. 4. None of the signatures is dated. *Id.* For N.H., DBSA submitted eleven biweekly timesheets from pay periods ending February 29 through September 12, 2008, each bearing signatures in the spaces designated for employee and supervisor. DBSA Att. 5. DBSA claims that these timesheets document \$978.33 in salary and fringe benefits for N.H., based on an hourly rate of \$20.51 and a fringe rate of 0.4565. DBSA Att. 3. Again, none of the signatures is dated.

We agree with SAMHSA that the timesheets DBSA submitted to try to document salary and fringe benefits for P.A. and N.H., both in April 2009 (after the on-site review) and on appeal, are not sufficient to meet its burden to document the existence and allowability of its claimed charges to grant funds. Significantly, DBSA has offered no explanation for why the timesheets it submitted during the appeal are signed, while the timesheets it originally submitted to SAMHSA in April 2009 are not signed by either the employee or the supervisor, as required by the regulatory cost principles. 2 C.F.R. Part 230, App. B, ¶¶ 8.m(1)-(2) (personnel activity reports must be "signed by the individual employee, or by a responsible supervisory official having first-hand knowledge of the activities performed by the employee"). The absence of signatures on the timesheets submitted in April 2009 is especially troubling since the "source documentation" requirements in section 74.21(b)(7) and section 74.21(b)(2) require grantees to maintain contemporaneous documentation of their costs charged to federal grant funds. *See American Association of Suicidology*, DAB No. 2108, at 8-9 n.6 (2007) (citing 45 C.F.R. § 74.21(b) in support of the finding that grantee "should have been able to produce contemporaneous documentation" for charges for bookkeeping services); *Arlington Community Action Program, Inc.*, DAB No. 2141, at 6 (2008) (grantee's argument that it lacked sufficient resources to assess the accuracy or correctness of the disallowance findings "cannot excuse its failure to have maintained contemporaneous documentation, as required by 45 C.F.R. §§ 74.21(b)(2), (b)(7)").

The Board "is generally reluctant to find that non-contemporaneous documentation of personnel [costs] meets applicable record keeping requirements, holding that such documentation must be closely scrutinized." *Suitland Family and Life Development Corporation*, DAB No. 2326, at 10 (2010) and *Philadelphia Parent Child Center, Inc.*,

⁶ In calculating P.A.'s hours, DBSA omitted 15 hours shown on the timesheet for the pay period ending September 29, 2008, which does not bear a supervisor's signature. DBSA Att. 4.

DAB No. 2297, at 6 (2009). During the appeal in *Suitland Family and Life Development Corporation*, the grantee produced logs showing its receipt of personal services, which bore undated signatures and made no representations about when the information on the logs was recorded. The Board stated that “[g]iven these factors and [the grantee’s] delay in producing the logs, we find [the grantee] has failed to show that the logs were completed contemporaneously with the services that they purport to document.” DAB No. 2326, at 10. DBSA’s failure to explain why it did not produce the signed timesheets earlier, or even to represent that the signatures were contemporaneous, notwithstanding having stated in a letter of April 22, 2011 that it had conducted a “thorough exploration” and an “exhaustive” search for documents supporting its expenditures of grant funds, strongly suggest that the timesheets were not signed at or near the time that payment was made for the services they purport to reflect and, therefore, are not reliable documentation. SAMHSA Ex. 24, at 2. We also question how any person signing as supervisor could claim personal knowledge of how P.A. or N.H. spent their time in 2008 if the supervisor did not sign the timesheets within a short period of time after the periods they allegedly cover.

The record raises other questions about the reliability of the documentation of DBSA’s claim for the personal services costs in question here:

- After SAMHSA informed DBSA by letter dated May 4, 2010 that the timesheets DBSA had submitted for P.A. and N.H. were not signed by either the employees or their supervisors, DBSA by letter dated July 15, 2010 submitted information indicating that it was claiming costs for three employees including N.H. and M.M., but not for P.A. SAMHSA Ex. 21, at 6. DBSA reported \$43,651.57 in salary and fringe benefits for M.M., and no costs for P.A., notwithstanding DBSA’s reports that P.A. had taken over as Project Director since the beginning of the grant. SAMHSA Exs. 21, at 6; 13, at 1-2 (Aug. 13, 2008 letter from P.A. stating that P.A. has been Program Director “since the start of the grant”); 24, at 2 (Apr. 22, 2011 letter stating that P.A. “was identified as the new project director by the beginning of the grant period”). On appeal, however, DBSA submitted documentation of P.A.’s time, but none for M.M. DBSA had not explained these shifts in its representations of who was working on the grant as Project Director.
- In the case of the timesheets for P.A. submitted during this appeal, the supervisor’s signature is illegible on all but one of the 19 timesheets bearing a signature. The illegible signatures appear to be of two or possibly three different individuals, although this is not clear, and DBSA has not identified the supervisors who purportedly signed P.A.’s timesheets.

- While the two sets of timesheets appear to contain the same information and use the same format (those submitted in April 2009 appear to be copies reduced in scale), there is an inconsistency in how hours are recorded on some timesheets for the same pay periods. Although both sets of timesheets report P.A.'s and N.H.'s time on the grant next to the account name "TA Center," some timesheets also include the account number "605," while others for the same individual for the same time periods do not. DBSA has not addressed this inconsistency.
- As SAMHSA points out, DBSA's different submissions reveal inconsistent use of the account codes that DBSA employed to record staff time to its various activities, included the grant project. SAMHSA Br. at 14, 20-21. DBSA initially claimed costs for P.A. in April 2009 by submitting timesheets that record his time using the project code "605." SAMHSA Ex. 18. With its letter of July 15, 2010, however, DBSA submitted cost reports that claimed costs for M.M. under code "600," described in DBSA's signed timesheets as "Special Projects," but in the July 15, 2010 submission did not claim costs for P.A. also recorded under code 600. SAMHSA Ex, 21, at 7-8; DBSA Att. 4. On appeal, DBSA again claims time for P.A. under the project code 600. DBSA Att. 4. Similarly, timesheets for N.H. that DBSA submitted in April 2009 use project code "404," "Website," while the July 15, 2010 submission uses the "600" project code for N.H.'s time, and records submitted during the appeal in December 2011 use project code "431." SAMHSA Exs. 18, at 32-37; 21, at 8; DBSA Att. 5. We agree with SAMHSA that the fact that DBSA "has claimed different hours worked under different project codes by different people to attempt to substantiate its Project Director salary and fringe benefit costs indicates that none of this documentation should be trusted without further explanation and support," as does DBSA's having cited "three different sets of hours under three different project codes as the basis for documenting [N.H.'s] activities on the grant." SAMHSA Br. at 21-22.
- As SAMHSA also points out, DBSA calculated its claim for P.A.'s and N.H.'s activities based on hourly wage rates that appear to exceed their annual salaries shown in the grant application. SAMHSA Br. at 14, n.8, 9. SAMHSA determined that the \$64.10 hourly rate reported for P.A. yields an annual salary of \$133,328, based on a 40-hour work week for 52 weeks per year, versus his annual salary of \$125,000 reported in the grant application, and that the \$20.51 hourly rate reported for N.H. would yield an annual salary of \$42,660.80, versus his annual salary of \$40,000. *Id.* citing SAMHSA Exs. 2, at 5; 3, at 1. As to the 0.4514 fringe benefit rate claimed for P.A., the FASO stated in her declaration that "[a] comparison to the payroll register percentage charged for medical insurance and for 401K's indicates that the fringe benefit calculations relied upon by DBSA may be somewhat off." SAMHSA Ex. 27, at 9 ¶ 42. DBSA did not address these discrepancies in the appeal.

Absent any explanation for the discrepancies in DBSA's documentation, and any explanation of why signed timesheets were not produced until over two and a half years after DBSA submitted signed timesheets, there is no credible basis for us to infer or conclude that DBSA satisfied its burden of documenting that the salary and fringe benefit costs for P.A. and N.H. were allowable charges to its federal SAMHSA grant. In this respect, we note that DBSA has had ample opportunity during the appeal to address questions raised by its documentation and assertions but has failed to do so. Indeed, DBSA requested and received an extension of time to submit a reply to SAMHSA's brief raising numerous questions about the documentation DBSA submitted in support of its claim for personnel costs for P.A. and N.H., but, at the end of the extension period, DBSA chose not to submit a reply brief.

III. DBSA's equitable arguments provide no basis for the Board to reverse the disallowance.

DBSA asks that costs for P.A.'s compensation be allowed because he was functioning as Project Director and "attended initial meetings regarding technology and the TA Centers, and he attended Alternatives 2007 because of his position as project director." DBSA Br. at 2. DBSA states that "work [was] done by DBSA to build and sustain a technical assistance center: meetings were scheduled and attended, a website was developed, a toll-free number was established and staffed. These aspects of the project did take person-power . . . that . . . was largely that of [P.A.]." DBSA email Feb. 17, 2012. DBSA also states that "[n]one of the principal people involved with Grant No. SM057994 are at DBSA anymore," that it "has been through a great deal of staff transition over the past several years, and such organizational change seems to have caused numerous issues with DBSA's ability to document expenses associated with SAMHSA Grant No. SM057994." DBSA Br. at 1. DBSA also asks that the disallowance be reversed to lessen the financial impact on its organization. *Id.* at 2. DBSA states that "[w]e have been implementing better systems and controls based on the lessons we have learned" and "take very seriously the issues raised by SAMHSA" and that "we have worked hard to understand these issues so that DBSA does not face similar ones in the future." DBSA email Feb. 17, 2012.

None of these points constitutes grounds on which the Board may reverse any portion of the disallowance. The Board is bound by applicable laws and regulations and has no authority to waive a disallowance based on equitable principles. 45 C.F.R. § 16.14; *see Arlington Community Action Program, Inc.* at 5, citing *Bedford Stuyvesant Restoration Corp.*, DAB No. 1404, at 20 (1993) (the Board is "empowered to resolve legal and factual disputes" and "cannot provide equitable relief"); *Juniata County Child Care and Development Services, Inc.*, DAB No. 2089, at 5 (2007) ("the burden or financial hardship which repayment might cause the grantee is not relevant to our consideration of whether grant costs are allowable."). In accepting the SAMHSA grant, DBSA accepted the terms and conditions of the award as well as the documentation requirements in the

applicable regulations, and it may not avoid returning funds it cannot show were spent in accordance with the grant terms and conditions of the award and the regulations merely because repayment may be difficult or because it believes that it has made progress towards accomplishing grant objectives which it admittedly failed to document. This would be true even if some of the personnel costs were potentially allowable. *Vermont Slauson Economic Development Corp.*, DAB No. 1955, at 9 (2004) (“While it is reasonable to assume that [the grantee] did incur personnel costs in furtherance of this project, 45 C.F.R. § 74.21(b)(2) requires those costs to be documented.”). Here, none of the \$40,563 in personal services costs DBSA seeks for P.A is potentially allowable because, in addition to not providing appropriate documentation of those costs, DBSA did not obtain prior approval to incur them.

Conclusion

For the reasons discussed above, we sustain the disallowance of \$173,797 that DBSA claimed under its TAC grant during the budget year September 30, 2007 through September 29, 2008.

/s/

Judith A. Ballard

/s/

Stephen M. Godek

/s/

Sheila Ann Hegy
Presiding Board Member