

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

S.A.G.E. Communications Services  
Docket No. A-12-98  
Decision No. 2481  
October 3, 2012

**DECISION**

S.A.G.E. Communications Services, Inc. (S.A.G.E.), a non-profit organization located in Macon, Georgia, appealed the May 29, 2012 decision of the Administration for Children and Families (ACF). ACF disallowed \$22,941 for rent, van lease, and health insurance payments charged to S.A.G.E.'s Community-Based Abstinence Education (CBAE) program grant for the 2009 fiscal year (FY). ACF based the disallowance on the FY 2009 single audit report finding that the costs were prepayments of expenditures that extended beyond the budget period and on the regulation at 45 C.F.R. § 74.28, which provides that "a recipient may charge to the award only allowable costs resulting from obligations incurred during the funding period" and any authorized pre-award costs.

For the reasons explained below, we uphold the disallowance.

**Legal Background**

CBAE grants are authorized under section 1110 of the Social Security Act (Act).<sup>1</sup> On January 25, 2006, ACF issued an announcement that it was "accepting applications to provide support to public and private entities for the development and implementation" of the CBAE program. ACF Ex. 2 at 1, 38. ACF "invite[d] applications for five-year project periods . . . ." *Id.* at 14. ACF stated that awards to non-governmental grantees would be subject to the requirements in 45 C.F.R. Part 74. *Id.* at 37.

The regulations at 45 C.F.R. Part 74 incorporate the uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other non-profit organizations and commercial organizations, established under Office of Management

---

<sup>1</sup> The current version of the Social Security Act can be found at [http://www.socialsecurity.gov/OP\\_Home/ssact/ssact.htm](http://www.socialsecurity.gov/OP_Home/ssact/ssact.htm). Each section of the Act on that website contains a reference to the corresponding United States Code chapter and section. Also, a cross-reference table for the Act and the United States Code can be found at 42 U.S.C.A. Ch. 7, Disp Table.

and Budget (OMB) Circular A-110. 59 Fed. Reg. 43,760 (1994). In addition, section 74.26(a) provides that non-profit grantees are subject to the audit requirements in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). Under those provisions, non-federal entities that expend \$500,000 or more in a year in federal awards must have a single, comprehensive financial and compliance audit of their programs for that year. 31 U.S.C. § 7502(a)(1)(A); 68 Fed. Reg. 38,401 (June 27, 2003) (revising the threshold amount from \$300,000 to \$500,000).

Part 74 further provides that non-profit recipients of federal grants must comply with 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). Relevant provisions in Appendix A of Part 230 include paragraph A.2.a. (allowable cost must “[b]e reasonable for the performance of the award and be allocable thereto”); paragraph A.3 (cost is reasonable if “it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs”); paragraph A.4.a (cost is allocable to an award “in accordance with the relative benefits received”); and paragraph A.4.b (any “cost allocable to a particular award . . . may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.”).

Costs must also be “adequately documented.” *Id.* at ¶ A.2.g. Specifically, a grantee must have in place 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). Section 74.53 requires grantees to retain “[f]inancial records, supporting documents . . . and all other records pertinent to an award . . . for a period of three years from the date of submission of the final expenditure report . . . .”

Grant awards set forth terms and conditions with which grantees must comply. In this case, the grant award (discussed in more detail below) informed S.A.G.E. that it was required to comply with not only Part 74, but also with the HHS Grants Policy Statement (GPS). ACF Ex. 7. The GPS provides, among other things, that grantees must 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-59-60.<sup>2</sup>

---

<sup>2</sup> The GPS is available at <http://www.hhs.gov/asfr/ogapa/grantinformation/hhsgps107.pdf>.

## Factual Background

On September 21, 2006, ACF awarded a CBAE grant to S.A.G.E. to fund the first year of a five-year (September 30, 2006 through September 29, 2011) project.<sup>3</sup> ACF Exs. 3-4. ACF thereafter granted to S.A.G.E. non-competing annual awards for the subsequent years of the project. ACF Exs. 5-8. Each award specified the budget period and the approved budget for that period. For the FY 2009 award, the budget period was September 30, 2008, through September 29, 2009. ACF Ex. 7. The total approved budget for FY 2009 was \$350,194. *Id.*

On January 13, 2011, the independent auditor that reviewed S.A.G.E.'s financial statements for FYs 2009 and 2010 issued a single audit report on S.A.G.E.'s compliance with applicable federal program requirements, including OMB Circular A-133. ACF Ex. 1, at 13. The auditor found, in pertinent part, that S.A.G.E. "did not comply with requirements regarding the period of availability of federal funds that are applicable to its [CBAE] grant." *Id.* The auditor noted that "OMB Circular A-133 requires that, for compliance with the Period of Availability of Federal Funds, a grant recipient may charge to the award only costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the federal awarding agency." *Id.* at 20.

The auditor found that S.A.G.E. had charged to the FY 2009 award and was reimbursed for the following: \$11,340 for prepaid rent for nine months beyond the budget year end of September 30, 2009; \$5,544 for prepayment on a van lease for the months of January 2010 through October 2010; and prepayment for health insurance for the period from July 2009 to June 2010, \$6,057 of which was allocable to the period beyond September 30, 2009. ACF Ex. 9, at 3. Because these costs did not result from obligations incurred during the funding period ending September 30, 2009, the auditor concluded, the expenditures "were not in compliance with federal guidelines." ACF Ex. 1, at 20.

On May 29, 2012, ACF issued a determination notifying S.A.G.E. that ACF was disallowing the \$22,941 identified in the FY 2009 audit report relating to the prepaid expenditures. As the basis for the disallowance, ACF stated that S.A.G.E. had failed to adhere to section 74.28 of the regulations.

S.A.G.E. timely appealed ACF's determination to the Board, contending that the disallowed costs "were current obligations of S.A.G.E." and that the lease "was a continuing obligation . . . not severable based upon a funding/budget period or the recipient's fiscal year." Notice of Appeal at 1.

---

<sup>3</sup> After Congress ended the CBAE appropriation in 2010, the project period was revised to end on September 29, 2010. ACF Br. at 4, n.1.

## The Board Proceedings

Because the amount in dispute is less than \$25,000, the Board, without objection by the parties, applied the expedited appeals procedures at 42 C.F.R. § 16.12. After the parties submitted their written arguments, the Board scheduled a telephone conference pursuant to the expedited procedures. In the notice to the parties of the telephone conference, the Board noted the regulatory definitions of “obligation” and “funding period.” The Board also pointed out the provision at section 74.28 limiting charges to an award of only allowable costs resulting from obligations incurred during the funding period. The Board stated in its notice that at the telephone conference --

S.A.G.E. should be prepared to address what in the record shows that it had incurred a “current obligation” for the period when Federal funding was available for obligation under the award at issue, number 90AE0173/3 (ACF Ex. 7).

S.A.G.E. should also be prepared to address whether the disallowed costs were reasonable and necessary costs allocable to the award within the meaning of the cost principles at 2 C.F.R. Part 230.

August 21, 2012 Notice of Telephone Conference.

Both parties thereafter waived their rights to an informal telephone conference, however. The parties also stipulated that the Board may proceed to a decision in the case based solely upon the parties’ prior written submissions.

## Analysis

S.A.G.E. states on appeal that the \$22,941 disallowance relates to “a prepayment for rent of \$11,340; a payment for health insurance of \$6,050.10; and a payment for the lease on a van of \$5,543.90.” Notice of Appeal. S.A.G.E. contends that “[a]ll three items were current obligations” and “continuing expenses.” *Id.*; August 10, 2012 submission. In addition, S.A.G.E. states that its lease “was not only a current obligation, but was a continuing obligation . . . not severable based upon a funding/budget period or the recipient’s fiscal year.” Notice of Appeal. S.A.G.E. states that its “grant was not completed until September 2010.” August 10, 2012 submission. Sage further argues that “[t]here is nothing in 2 CFR 230, Cost Principles for Non-Profits, that indicates that an advance payment is not an allowable cost.” Notice of Appeal. Moreover, S.A.G.E. states that it “requested an opinion from the auditor on the prepayment of the rent and it was advised that it was acceptable.” *Id.*

S.A.G.E.’s arguments do not provide a basis for reversing the disallowance. Section 74.28 provides that when grant funds are available for a specified period, the grantee “may charge to the award only allowable costs resulting from obligations incurred during the funding period” and any authorized pre-award costs. The regulations define “funding

period” to mean “the period of time when Federal funding is available for obligation by the recipient,” and “obligations” to 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.

In this case, S.A.G.E.’s CBAE grant for FY 2009 specified a funding period of September 30, 2008 through September 29, 2009. Thus, while S.A.G.E.’s multi-year CBAE project period had not ended, the regulations limited S.A.G.E. from charging to the FY 2009 award any costs resulting from obligations incurred after September 29, 2009. While S.A.G.E. argued that the disallowed costs represented “current obligations,” S.A.G.E. failed to produce any documentation or to explain what in the record showed that it had incurred “current obligations” for the disallowed rent, health insurance and van lease payments or how those payments could be considered a necessary and reasonable cost of operating a CBAE program during FY 2009.

Moreover, the cost principles at 2 C.F.R. Part 230 specifically limit use of funding under an award to reasonable costs allocable to that award. As noted, Appendix A, paragraph A.2.a. states that to be allowable, a cost must be “reasonable for the performance of the award and be allocable thereto.” Under paragraphs A.4.a-b, a cost is allocable to an award “in accordance with the relative benefits received,” and any “cost allocable to a particular award . . . may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.” The Board previously has held that the “term ‘benefit,’ as used in connection with the concept of allocability, derives from accounting principles that the costs must relate not only to cost objectives, but to funding periods as well.” *Delta Foundation, Inc.*, DAB No. 1710, at 37 (1999). Therefore, expenditures for benefits that accrue beyond a grant period necessarily are not allocable to the grant. *Id.*, citing *Bedford Stuyvesant Restoration Corporation*, DAB No. 1404, at 15 (1993); see also *Arlington Community Action Program, Inc.*, DAB No. 2141, at 2 (2008) (and cases cited therein) (expenditures incurred outside an award funding period “necessarily are not allocable to the grant” and are “subject to disallowance.”).

S.A.G.E. has provided no documentation to rebut the audit report findings or otherwise demonstrate that the disallowed rent, van lease, and health insurance payments were reasonable and allocable to the FY 2009 award. Indeed, the record shows that S.A.G.E. previously concurred in the audit report finding, stating, “As an organization, we were unaware that prepaid expenses should not extend beyond the program period. We thought that as long as it did not extend beyond the project period, these expenditures were allowable.” ACF Ex. 1 (Corrective Action Plan, at 2).

In reviewing ACF’s disallowance, the Board is “bound by all applicable laws and regulations.” 45 C.F.R. § 16.14. Therefore, the Board must uphold a disallowance where it is authorized by law and the grantee has not disproved the factual basis for the

disallowance. *Northwest Tennessee Economic Development Council*, DAB No. 2200 (2008); *Arlington Community Action Program, Inc.*; *Bedford Stuyvesant Restoration Corp.* In addition, 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. *See, e.g., Touch of Love Ministries*, DAB No. 2393 (2011), *citing Benaroya Research Institute*, DAB No. 2197 (2008). In this case, the regulations governing non-profit grantees plainly support ACF's disallowance, and S.A.G.E. has not disproved the factual basis for the disallowance with any documentation to show that the payments represented expenses allocable to the FY 2009 budget year.

### **Conclusion**

For the reasons stated in the above analysis, we sustain the disallowance in full.

\_\_\_\_\_  
/s/  
Stephen M. Godek

\_\_\_\_\_  
/s/  
Leslie A. Sussan

\_\_\_\_\_  
/s/  
Judith A. Ballard  
Presiding Board Member