Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

Arkansas Department of Human Services
Docket No. A-15-63
Decision No. 2664
October 28, 2015

DECISION

The Arkansas Department of Human Services (Arkansas), the State agency that administers the John H. Chafee Foster Care Independence Program (FCIP), appeals an April 13, 2015 final decision by the Administration for Children and Families (ACF) to assess a penalty of $15,468 for Arkansas' failure to meet the data file reporting requirements of the National Youth in Transition Database (NYTD) established in regulations developed by the Secretary of Health and Human Services (Secretary) to implement the FCIP. Arkansas filed its Notice of Appeal (NA) on April 24, 2015. The Board notified the parties that based on the amount of the penalty at issue and absent objection by the parties, the Board would apply the expedited procedures in 45 C.F.R. § 16.12, whereby the parties file simultaneous briefs and the Board schedules a telephone conference to hear each party's comments in response to the other party's submission. On June 5, 2015, before the deadline for simultaneous briefs (extended with agreement of the parties) had expired, ACF filed a Motion and Brief In Support of Summary Judgment Or, In the Alternative, Written Submission to the State's Appeal (Motion). Arkansas filed a response to the Motion but did not respond to the Board's subsequently issued Order to Show Cause (Order) why ACF's Motion should not be granted. For the reasons explained below, we grant ACF's Motion and uphold ACF's final determination of noncompliance and $15,468 penalty assessment.

Legal Background and ACF Determination

Congress enacted the FCIP to authorize the Secretary of Health and Human Services (Secretary) to approve State agency applications for grants to provide independent living services to youths in foster care aimed at helping them to transition from foster care to self-sufficiency. Social Security Act (Act) § 477(a),(b). Part 1356 of Title 45 of the Code of Federal Regulations sets forth the Secretary's regulations implementing the FCIP, including NYTD data reporting requirements the Secretary has identified as necessary to track a State agency's provision of independent living services to youths in foster care. 45 C.F.R. § 1356.80 et seq. Section 1356.83 contains the data file reporting

requirements, including deadlines for reporting, as well as the elements a state must meet during each reporting period. Section 1356.85 sets out the compliance standards for the states' data file submissions, including the standard in 45 C.F.R. § 1356.85(b)(1) that a data file submitted by the state must be 90% error free with respect to the designated data elements.

When a state does not timely submit a data file that complies with the standards in section 1356.85, ACF notifies the state and provides an opportunity to submit a corrected data file that meets the standards. 45 C.F.R. § 1356.85(e). If a State agency fails to submit by the specified deadline a corrected data file that meets the compliance standards, ACF makes a final determination of noncompliance and applies penalties as defined in section 1356.86. Act § 477(e)(2); 45 C.F.R. § 1356.85(e)(2). Noncompliance with the requirement in section 1356.85(b)(1) that a data file submitted by the state must be 90% error free with respect to designated data elements requires a penalty amounting to 1.25% of the program funds subject to penalty for each reporting period. 45 C.F.R. § 1356.86(b)(2).

ACF assessed the 1.25% penalty at issue here based on Arkansas' submission of case file data that did not meet the 90% error-free data requirement at 45 C.F.R. § 1356.85(b) for the period ending September 30, 2014. The specific data element for which ACF found the 90% error-free requirement not met is Data Element 35 – Date of outcome data collection – which is codified at 45 C.F.R. § 1356.83(g)(35) and prescribes the date on which the state administers the required NYTD survey to youth in the follow-up population transitioning out of foster care.[1]

Discussion

In its Motion and supporting brief, ACF asserts it is entitled to judgment as a matter of law based on Arkansas' failure to dispute ACF's determination that it did not comply with the 90% error-free rate for Data Element 35 and Arkansas' admission that it achieved an error-free rate of only 84.96%, which is below the required 90% error-free rate specified in the regulations. Motion at 2, 8. We agree.

[1] The regulation provides as follows:

> The date of outcome data collection is the latest date that the agency collected data from a youth for the elements described in paragraphs (g)(38) through (g)(58) of this section. Indicate the month, day and year of the outcomes data collection. If the youth is not in the baseline or follow-up population this element must be left blank.

Summary judgment is appropriate when the record shows there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. *E.g. Livingston Care Ctr.*, DAB No. 1871, at 5 (2003), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-25 (1986), *aff'd*, *Livingston Care Ctr. v. U.S. Dep't of Health & Human Servs.*, 388 F.3d 168, 172-73 (6th Cir. 2004). The party moving for summary judgment bears the initial burden of demonstrating that there are no genuine issues of material fact for trial and that it is entitled to judgment as a matter of law. *Id*. citing *Celotex*, 477 U.S. at 323. This burden may be discharged by showing that there is no evidence in the record to support a judgment for the non-moving party. *Id*. citing *Celotex* at 325. If a moving party carries its initial burden, the non-moving party must "come forward with 'specific facts showing that there is a genuine issue for trial.'" *Id*., citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). To defeat an adequately supported summary judgment motion, the non-moving party may not rely on the denials in its pleadings or briefs, but must furnish evidence of a dispute concerning a material fact – a fact that, if proven, would affect the outcome of the case under governing law. *Id*., citing *Matsushita* at 586 n.11; *Celotex*, 477 U.S. at 322 (moving party is entitled to summary judgment if the party opposing the motion "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial").

Neither Arkansas' Notice of Appeal nor its response to ACF's Motion raises any dispute about the material fact on which ACF based its noncompliance determination and penalty assessment – Arkansas' failure to achieve the 90% error-free rate with respect to Data Element 35 – or ACF's legal authority to find Arkansas out of compliance and assess a penalty for that failure. In fact, Arkansas concedes that its data submission rate for this element "was 84.96% which is less than the 90% requirement." NA at 1; Response at 1. Arkansas also does not dispute that the amount of the penalty assessed was the amount ACF was required to impose under section 1356.86(b)(2). Indeed, Arkansas states it "would accept the penalty had we not been working on obtaining the required elements." NA at 1.

Instead of disputing the legal basis for the penalty or the amount, Arkansas requests equitable relief from the penalty, asking the Board "to abate the assessment of [the] penalty" and "allow the state to use those funds more productively, not only in ways to garner participation in the survey, but to promote and provide even more support to those youth aging out of the system." Response at 1; *see also* NA at 1 (asking the Board to "rescind the penalty" for the same reasons). As grounds for equitable relief, Arkansas asserts that its past and present efforts "demonstrate the state's commitment to continuous quality improvement and the state continues to explore ways to improve timely

participation." *Id*. Arkansas also states that "[o]f the total 113 baseline clients, only 17 were submitted past the due date." Response at 1; *see also* NA at 1 (stating that "of the 113 total baseline clients, 100 were submitted and, of those, only 17 were submitted past the due date"). Arkansas also notes that it "achieved 100% compliance with all other elements."[2] NA at 1.

Arkansas filed a response to ACF's Motion that was substantially the same as its Notice of Appeal and did not dispute ACF's authority to impose the penalty, or the facts underlying that decision, or ACF's determination of the penalty amount. Instead, Arkansas reiterated its request for equitable relief from the penalty.

The Presiding Board Member issued the Order on August 28, 2015, and gave Arkansas 30 days to file a response. The Order stated that it was based on Arkansas' failure to challenge ACF's authority to impose the penalty for Arkansas' admitted noncompliance with the 90% error-free rate requirement or the amount of the penalty in either its Notice of Appeal or its response to ACF's Motion. With respect to Arkansas' request for equitable relief from the penalty, the Order reiterated the Board's consistent holding that it cannot provide equitable relief. Order at 2, citing *Bright Beginnings for Kittitas Cnty*., DAB No. 2623, at 6 (2015); *Municipality of Santa Isabel*, DAB No. 2230, at 11 (2009); *Bedford Stuyvesant Restoration Corp*., DAB No. 1404, at 20 (1993); *Cal. Dep't of Health Servs*. DAB No. 1670, at 7 (1998). The Order further stated that the regulations applicable here "direct ACF to assess the specified penalties for failure to submit data that meets the data standards, and the Board 'is bound by all applicable laws and regulations.'" Order at 2, citing 45 C.F.R. §§ 16.14, 1358.85(b), 1356.86(b). Arkansas did not respond to the Order, and more than the allotted 30 days have passed.

[2] ACF responded to Arkansas' statement that it "achieved 100% compliance with all other elements" by stating there is no substantial compliance standard in the statute or regulations and, therefore, that Arkansas' "substantial compliance argument does not provide a basis for reversing ACF's disallowance determination." Motion at 9. We do not share ACF's apparent reading of Arkansas' statement as an argument for a substantial compliance standard. As indicated above, we read the statement as proposing a ground for equitable relief from the penalty, not as an argument for reversing it on substantial compliance grounds. Arkansas' statement was not accompanied by any legal argument much less an argument – in either its Notice of Appeal or its response to ACF's Motion, when it had notice of ACF's response to its statement – that meeting the error-free requirement for data elements other than Data Element 35 constituted substantial compliance and precluded assessment of the penalty.

Conclusion

For the reasons stated above and in the Order, we enter summary judgment for ACF, upholding ACF's final determination of noncompliance and penalty assessment.

/s/
Constance B. Tobias

/s/
Susan S. Yim

/s/
Sheila Ann Hegy
Presiding Board Member