Department of Health and Human Services
DEPARTMENTAL APPEALS BOARD
Appellate Division

North Carolina Coalition Against Domestic Violence, Inc.
Docket No. A-17-46
Decision No. 2851
February 14, 2018

DECISION

North Carolina Coalition Against Domestic Violence, Inc. (NCCADV) appeals a January 4, 2017 determination by the Administration for Children and Families (ACF) disallowing $14,442 in salary and benefits costs that NCCADV charged to a Family Violence Prevention and Services grant. ACF based its determination on the single audit of NCCADV's January 1 through December 31, 2012 financial statements, which found that the costs were not part of the grant's approved operating budget. ACF instructed NCCADV to repay the disallowed amount to the Department of Health and Human Services (HHS) from non-federal funds.

NCCADV concedes that the questioned salary and fringe benefit costs were not allowable, but asserts that it already implemented corrective action for the error. Specifically, NCCADV states, it discovered the error during the grant period. It therefore "reduc[ed] later draw downs for [the] grant," and "adjusted the financial records to remove these costs from the grant and the annual cost report total." Notice of Appeal; NCCADV Brief (Br.). Consequently, NCCADV asserts, the total funds it received under the grant equal its allowable costs for the grant period.

For the reasons discussed below, we sustain the disallowance and conclude that NCCADV should present its repayment claim to the appropriate HHS officials as part of the claims collection process under 45 C.F.R. Part 30.

Background

The Family Violence Prevention and Services Act, 42 U.S.C. §§ 10401-10420, authorizes the Secretary of HHS to award federal funds to private, nonprofit state domestic violence coalitions to conduct activities to prevent domestic violence. *Id.* § 10404; *see also* 77 Fed. Reg. 14,393 (Mar. 9, 2012) (Notice of Funding Opportunity). NCCADV received Family Violence Prevention and Services funding under Grant No. 1301NCSDVC. ACF Ex. 1, at 1.

Under the Single Audit Act, 31 U.S.C. §§ 7501-7506, a non-federal entity whose expenditures of federal grant funds exceed a specified threshold must undergo an annual financial and compliance audit of its programs. 31 U.S.C. § 7502(a)(1)(A); 2 C.F.R. §§ 200.100, 200.501. The single audit report for NCCADV's financial statements for 2012 found that for the grant period October 1, 2012, to September 30, 2013, NCCADV charged expenses on its monthly cost reports that were not part of the approved operating budget. ACF Ex. 2, at 37. Specifically:

> During the audit process, the client brought to the auditor's attention that salaries and benefits totaling $4,891 were reported on the October – December 2012 monthly cost reports that were not part of the approved budget. The auditor then compared the year-to-date amounts included on the December 2012 cost report to the approved budget and found the report was not in compliance with questioned costs totaling $14,442.

Id. The auditor determined that the questioned costs "may be disallowed." *Id.*

On review of the audit report, ACF disallowed the $14,442 questioned costs pursuant to 45 C.F.R. § 74.21(b)(3).[1] ACF Ex. 1, at 3. That regulation provides that an award recipient's financial management systems must provide for "[e]ffective control over and accountability for all funds, property and other assets," and that recipients "shall adequately safeguard all such assets and assure they are used solely for authorized purposes." In its decision letter, ACF instructed NCCADV to repay the disallowed amount by mailing a check, from non-federal funds, to HHS. ACF Ex. 1, at 8.

NCCADV's Appeal

In its appeal to the Board, NCCADV states, "At the time of the draw down in question [its] records mistakenly counted some expenses related to a different project." Notice of Appeal. NCCADV thus acknowledges that it "included salary and benefits expenses on its cost report in late 2012 that were not part of the approved operating budget during the 2012-13 grant year." Br. NCCADV contends, however, "As the grant was ongoing at the time that this mistake was recognized (July/August 2013)," it fixed the error by reducing "future cost reports to reflect the removal of the disallowed costs from the grant." *Id.*

[1] ACF cited to the regulations in Part 74 of Title 45 of the Code of Federal Regulations in effect during the grant period at issue. Effective December 26, 2014, Part 74 of Title 45 was superseded by the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards" published in 45 C.F.R. Part 75. *See* 79 Fed. Reg. 75,872, 75,875-76 (Dec. 19, 2014). We cite to the Part 74 regulations in effect during the grant period unless noted otherwise.

NCCADV says that "[i]nstead of mailing a check for the disallowed amount to the government and simultaneously requesting funds for as yet unreimbursed allowable costs, it seemed expedient and clearer to simply reduce the later reimbursement request." *Id.* In addition, NCCADV says, the auditor subsequently found that NCCADV had adequately implemented corrective action on the 2012 finding. Notice of Appeal. NCCADV also provided the Board with a copy of its final cost report for the grant period to support its arguments. NCCADV Ex. 1. Finally, NCCADV contends that if it were "to repay the $14,442 disallowed costs at this time, this would equate to a second payment for the costs, and the allowable costs on the grant would remain unpaid by the government." Br.

Discussion

As is evident from its appeal, NCCADV does not contest the merits of ACF's determination that it charged $14,442 in unallowable salary and benefits costs to its Family Violence Prevention and Services grant for the October 1, 2012 to September 30, 2013 grant period. NCCADV has thus identified no basis for us to reverse ACF's determination to disallow those costs. *See* 45 C.F.R. § 74.2 (defining "disallowed costs" as "those charges to an award that the HHS awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award").

ACF's disallowance established a debt owed by NCCADV to the federal government. 45 C.F.R. § 30.2 (defining "debt" as "an amount of funds or other property determined by an appropriate official of the Federal Government to be owed to the United States from any person, organization, or entity," and to include "amounts owed pursuant to . . . audit disallowance determinations"). The Board previously has explained that, in general, "the validity of a disallowance, and questions relating to repayment of the resulting debt, are distinct issues." *Teaching § Mentoring Communities, Inc.*, DAB No. 2790, at 6 (2017) (grantee's argument that it used risk management fund surplus to pay allowable program costs was not a challenge to the validity of the disallowance but a request that the Board find it reduced the debt established by the disallowance through means other than a cash repayment); *Md. Dep't of Human Res.*, DAB No. 358, at 6 (1982) (noting that "[i]f the substantive basis for [the] disallowance is valid, then the [non-federal party] must repay the funds[,]" and "[t]he question is merely what method should be used"). Here, NCCADV's appeal shows that it is not challenging the merits of the disallowance; rather, NCCADV asks us to find that it has already paid its debt by unilaterally offsetting the amount it owed the federal government by an equal amount of funds awarded to but not drawn down by NCCADV for the same grant period.

We decline to make that finding. It is well settled that "a disallowance based on the unallowable expenditures of federal funds must result in the reduction of the amount of federal funds used by a grantee." *Project Bravo, Inc.*, DAB No. 925, at 4 (1987). Under the applicable regulations, the awarding agency may demand repayment of disallowed costs in cash, as ACF did here, and then use other collection methods, including "administrative offset against other requests for reimbursements," if the debt is not repaid "within a reasonable period." 45 C.F.R. § 74.73.[2] Consistent with the regulations, the Board has held that the "general rule" is that a grantee must repay a disallowance-based debt in cash (from non-federal sources), or by documenting that it incurred and paid with its own funds allowable, allocable costs that were not previously charged to federal funds, but could have been so charged. *See, e.g., Seminole Nation of Okla.*, DAB No. 1385, at 5 (1993); *Project Bravo, Inc.* at 4.[3] Although the Board has noted that in "some circumstances, it may be appropriate to offset a debt owed by a grantee to the grantor agency by an amount of funds due to the grantee from the same agency," *Huron Potawatomi, Inc.*, DAB No. 1889, at 5 (2003), the discretion to determine a grantee's repayment method "lies completely with" the grantor agency. *Action Inc.*, DAB No. 1400, at 4 (1993).

Furthermore, "once the Board concludes that there is a valid debt," as we do here, "the Federal Claims Collection Act regulations at 45 C.F.R. Part 30 provide a separate process for the Secretary [or the Secretary's designee] to determine how the debt should be repaid." *United Me. Families*, DAB No. 1707, at 1, 5 (1999) (rejecting a request by a grantee that the grantor agency "accept a subrogation of [the grantee's] rights to compensation under [the grantee's] insurance policy in lieu of immediate payment of [a disallowance-based] debt"); *White Mountain Apache Tribe*, DAB No. 1787, at 5 (2001) (quoting *United Me. Families'* holding that 45 C.F.R. Part 30 establishes a "separate process" to resolve disputes about how a debt should be repaid and rejecting a request to waive accumulated interest on the debt). The Board has additionally explained that "the

[2] "Administrative offset" involves a grantor agency's affirmative withholding of federal funds payable to a grantee under an existing award to satisfy a debt. *Teaching & Mentoring Communities* at 12; 45 C.F.R. § 30.2 (defining "administrative offset" to mean "withholding funds payable by the United States to . . . a person to satisfy a debt"). In this case, NCCADV does not claim, nor is there any evidence showing, that ACF affirmatively withheld federal funds to satisfy the debt owed as a result of NCCADV's unallowable salary and benefits expenditures.

[3] The Board has long recognized that a grantee may reduce a disallowance by documenting that it incurred unclaimed allowable costs that it paid for with its own funds; in effect, a grantee "may substitute, for unallowable costs, allowable costs for which it did not claim federal funding." *Cent. Piedmont Action Council, Inc.*, DAB No. 1916, at 7 (2004), citing *Campesinos Unidos, Inc.*, DAB No. 1546 (1995) and *Seminole Nation of Okla.*, DAB No. 1385, at 5. NCCADV's appeal does not involve such a claim, however.

Secretary's decisions under 45 C.F.R. Part 30 are not subject to Board review." *Mich. Dep't of Cmty. Health*, DAB No. 2225, at 16 (2009) (rejecting the state's request to instruct federal agency "to consider available options for deferral or reduction of the disallowance in light of the State's severe economic distress").

Lastly, we note that even if we had the authority to resolve the parties' post-disallowance payment dispute, the final cost report, accounting records, and the 2013 single audit report that NCCADV provided in support of NCCADV's appeal would not establish that it paid the debt it owed in connection with the unallowable salary and benefits charges to the grant. Absent confirmation from ACF of the amount of funds that NCCADV in fact drew down for the grant and documentation to support the allowability of the costs that NCCADV reported, we could not conclude that "the total funds received . . . equal the allowable costs incurred . . . during the grant period," as NCCADV asserts. Notice of Appeal. Moreover, the summary statement in the 2013 single audit report that NCCADV "contacted the funding agency and made appropriate adjustments to remaining cost reports within the grant period," ACF Ex. 3, at 37, is scant evidence that the grantee in fact repaid the federal government the $14,442 it owed in connection with the disallowance.

Conclusion

We sustain ACF's January 4, 2017 disallowance and decline to rule on NCCADV's claim that it has repaid the resulting debt.

/s/
Christopher S. Randolph

/s/
Constance B. Tobias

/s/
Susan S. Yim
Presiding Board Member