

Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Recovery Consultants
of Atlanta, Inc.
Docket No. A-10-24
Decision No. 2305

DATE: March 9, 2010

DECISION

Recovery Consultants of Atlanta, Inc. (RCA) appealed a determination by the Substance Abuse and Mental Health Services Administration (SAMHSA). Based on a fiscal review of the period October 2007 through March 2008 and a later review of documentation submitted by RCA, SAMHSA found that RCA had charged \$23,166 in unallowable costs to SAMHSA grants. SAMHSA also found that, although RCA had presented evidence that it had reclassified some of the disallowed costs to non-federal cost centers, RCA had not shown it had paid back the federal funds drawn down to cover those costs.

On appeal, RCA acknowledges that, because it was changing to a computerized bookkeeping system, it had made mistakes in charging some costs to the SAMHSA grants for the period January through March 2008 that should not have been charged to those grants. RCA argues, however, that an expenditure report it submitted for that period shows that, after it reclassified the expenditures mistakenly charged to the SAMHSA grants, its total expenditures for that period exceeded by about \$27,000 the amount of federal funds it drew down for that period and that these additional expenditures totaled more than the amount disallowed. RCA also raises several other arguments regarding the expenditures at issue and why RCA should not have to repay federal funds.

After providing each party an opportunity to submit argument and documentation to the Board, the Board held a telephone conference on February 25, 2010, to permit the parties to respond to each other's submissions and to questions asked by

the Board. See 45 C.F.R. § 16.12(c)(2) (expedited procedures for small-dollar cases). For the reasons explained below, we uphold the SAMHSA determination based on the record before us, including the recording of the February 25 conference.

Background

During the relevant time period, RCA received grant awards from SAMHSA for a Recovery Community Services Program (RCSP) and for a Targeted Capacity Expansion - HIV Treatment Services Program (TCE). RCA also received funds from United Way of Metropolitan Atlanta for its transitional housing program and funds from Peace on the Move (a non-profit organization that provides a faith-based treatment program) to cover certain utilities costs. RCA Ltr. of Jan. 15, 2010, Attachment (Att.) A, at 4th unnumbered page.

SAMHSA grants to non-profit organizations are subject to the uniform administrative requirements at 45 C.F.R. Part 74 and to the cost principles in Office of Management and Budget (OMB) Circular A-122, now codified at 2 C.F.R. Part 230. 45 C.F.R. §§ 74.1, 74.27; 42 C.F.R. § 54a.10. Among other things, costs charged to federal funds must meet the general criteria that they be adequately documented, reasonable, allocable, and allowable types of costs. 2 C.F.R. Part 230, Appendix (App.) A, ¶ A. A cost is "allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received." Id. at ¶ A.4.a. Appendix B to OMB Circular A-122 addresses the allowability of selected items of cost.

In April 2008, SAMHSA performed an on-site fiscal review of RCA's charges to its RCSP and TCE grants for the period October 2007 through March 2008. Based on its review, SAMHSA initially identified \$56,760 in costs charged to the SAMHSA grants that it found either were for unallowable types of costs or were not properly allocated to the SAMHSA grants. In its July 23, 2008 response to the review report, RCA challenged some of the findings, submitting documentation to SAMHSA to support some of the costs, explaining that the problem arose because it was in the process of transitioning to a new computerized bookkeeping system, and asserting that it had reclassified some of the costs to non-federal accounts and reallocated some joint costs between the two SAMHSA grants using new percentage allocations. RCA Ltr. of Jan. 11, 2010, Att. A. SAMHSA issued a final decision on November 4, 2009 (SAMHSA Decision Letter), in which it disallowed \$23,166 in costs charged to the SAMHSA grants and determined that RCA had to repay that amount of federal funds.

Attached to the SAMHSA Decision Letter was a detailed listing of the disallowed items. The letter and accompanying footnotes described the costs remaining at issue generally as follows:

- o **\$9,691** for costs that were not allocable to the SAMHSA grants and were reclassified to RCA's non-federal G&A (General and Administration) cost center and other programs, but for which SAMHSA asserts that RCA had drawn down federal funds from the HHS Payment Management System (PMS);
- o **\$6,125** for salaries and benefits, including \$5,395 for salaries and benefits of RCA employees who did not work on the grants and \$730 for salaries that were calculated based on annual amounts that exceeded the amounts in the approved grant budgets;
- o **\$5,648** for 100 percent of joint costs (costs that benefited multiple programs) for which SAMHSA found that 1) RCA did not demonstrate that such costs were prorated using a base that accurately measured the benefits provided to each grant or that the bases used were established in accordance with reasonable criteria that were supported by current data in accordance with federal requirements; and 2) RCA failed to allocate any of the costs to two other programs (Peace on the Move and United Way) that benefited;¹
- o **\$1,069** for costs that RCA agreed were incorrectly charged to the RCSP grant, but for which SAMHSA said that funds should be returned, including payments to Medox for supplies/brochures and payments for van insurance and van maintenance;
- o **\$633** for costs that were not allocable to the grants, specifically, a payment to American Express for CSAT Travel that RCA says it reclassified to the non-federal G&A account, but for which SAMHSA says funds must be returned.

¹ The Attachment to the SAMHSA Decision Letter shows that this total includes telephone charges that RCA allocated 50%/50% to TCE and RCSP; payments to Washington Mutual classified as "Office Rent" that RCA allocated 50%/50% to the TCE and RCSP grants; office supplies that RCA reallocated 40%/60% to the TCE and RCSP grants; utility charges that RCA allocated 50%/50% to the TCE and RCSP grants; and accounting and audit costs that RCA reallocated 68%/32% to the TCE and RCSP grants.

SAMHSA Decision Letter at 5. With respect to allocation of costs, the SAMHSA Decision Letter cited to the provision of OMB Circular A-122 at 2 C.F.R. Part 230, Appendix A, paragraph D.4. That provision addresses the direct allocation method used by some organizations, which "generally separate costs into three basic categories: general administration and general expenses, fundraising, and other direct functions (including projects performed under Federal awards)." The provision states:

Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

App. A, ¶ D.4.a. The provision goes on to state:

This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data.

App. A, ¶ D.4.b.

Analysis

Below, we first discuss the costs that SAMHSA disallowed as not allowable types of costs or not allocable to the SAMHSA grants and then the "joint" costs for which SAMHSA questioned the allocation methods. Finally, we address RCA's arguments about why it should not have to repay any federal funds.

1. RCA charged to its SAMHSA grants costs that were not allowable types of costs or were allocable to non-grant activities.

RCA's January 15, 2010 submission to the Board does not address any specific items of cost, but refers the Board to RCA's July 23, 2008 response to the fiscal review, arguing that SAMHSA's Decision Letter did not consider the July 2008 response and attached documentation. SAMHSA asserts that it did consider RCA's response and documentation before issuing its final decision.

Our review indicates that SAMHSA (which reduced the questioned amount from \$56,760 to \$23,166) did adequately consider RCA's July 2008 response to the fiscal review. That response is very

general. Although it discusses the allowability of a few types of costs that were apparently questioned by the reviewers (in particular, the costs of professional services for which SAMHSA questioned whether there was a conflict of interest), it does not appear that SAMHSA included those costs in the list of disallowed costs attached to the SAMHSA Decision Letter. Compare Att. A to RCA's Ltr. of Jan. 15, 2010, with SAMHSA Decision Ltr., Att. Thus, the Board asked RCA to clarify in the conference held by the Board whether RCA was claiming that some of the disallowed costs were allowable and, if so, which costs. Board Ltr. of Feb. 23, 2010.

During the conference, RCA did not argue that any specific cost that SAMHSA identified as an unallowable type of cost or as allocable to a non-grant activity was in fact allowable and allocable the SAMHSA grants. Instead, RCA referred to the charges at issue as "mistakes" or "incorrect" postings made by RCA as the result of its transition to a computerized accounting system. Thus, RCA now effectively concedes that they were not allowable charges, allocable to the SAMHSA grants.

2. RCA did not show that it used appropriate percentages to allocate joint costs.

RCA does continue to press its arguments with respect to allocation of joint costs, questioning why SAMHSA disallowed 100 percent of those costs. RCA's July 2008 response to the fiscal review was, however, inadequate to show the extent to which these costs benefited each of the SAMHSA grants. That response merely cited to an Attachment 3 to the response and stated:

RCA treats all costs as direct cost except general administration and general expenses. Joint costs are prorated individually as direct costs to each category and to each project using a base most appropriate to the particular cost being prorated. Direct costs are costs that can be identified specifically with a project and therefore are charges to that project. The new accounting system records these costs as they are incurred within the series of accounts assigned for that purpose and further distribution is not required.

RCA Ltr. of Jan. 15, 2010, Att. A, 2d page and 4th page. Attachment 3 merely showed how RCA was allocating costs in June 2008, outside of the review period.

Despite several requests from the Board that RCA explain what its bases were for allocating the joint costs at issue, RCA

provided no evidence or explanation that shows that the percentages used to allocate (or reallocate) costs between the RSCP and TCE grant projects were calculated using appropriate distribution bases determined using current data, as required.

During the conference, RCA suggested that it might be reasonable to allocate 45% of the costs to the RCSP grant and 55% to the TCE grant since the RCSP award was for \$350,000 and the TCE award was for \$400,000. This percentage allocation, however, is different from the allocation percentages actually used for the disallowed costs. (See note 1 above.) Moreover, the budgeted amount does not necessarily represent the relative benefit to each project from a specific type of cost, and RCA presented no evidence to show that the budgeted amount would be considered an appropriate distribution base for the specific types of cost at issue. Indeed, RCA effectively conceded during the conference that square footage is the usual distribution base for space-related costs, but acknowledged that it had no floor plan that would allow it to determine the square footage of its office space and how in fact that space was used during the relevant time period.

More important, the only justification RCA offers for not allocating any of the joint costs to its non-grant activities is that the contract it had with United Way did not include any amount for the type of operational costs at issue here (although it did apparently reimburse RCA for part of the Executive Director's salary). RCA concedes, moreover, that the joint costs at issue would have benefited its other activities, as well as its SAMHSA projects. Given that benefit, RCA could not reasonably allocate these costs solely to the SAMHSA grants.

3. RCA has not shown that its total allowable and allocable expenditures for its SAMHSA grants exceeded the federal revenue it received.

RCA's main argument on appeal is that SAMHSA wrongly assumed that federal funds were drawn down for each of the incorrect transaction postings. RCA says that its May 14, 2009 response to the fiscal review documented that RCA drew down "\$120,000 for the review period of 1/1/2008 - 3/31/2008" and that the "attached transaction detailed reports reflects the documented federal expenditures for the funds drawn down as well as additional federal expenditures that were not drawn down for the same period" (referring to Attachment B). Attachment B contains a statement of TCE Grant Revenues & Expenses for the period January through March 2008, a TCE/HIV Transaction Detail Report for that period, and a RCSP Transaction Detail Report for that

period (but no statement of Revenues & Expenses for the RCSP grant). The statement for the TCE grant shows total grant revenue of \$70,796.80 and total expense of \$91,337.31 (also shown on the detail report). The detail report for the RCSP grant shows total expense of \$64,427.59. The total expenses reported for the two grants for the three-month period is \$155,764.90.²

RCA provided no documentation from its PMS reports to substantiate its claim of the total amount drawn down. Attachment K to SAMHSA's submission to the Board confirms that the amounts drawn down from the PMS system **during** the period January through March 13 totaled only \$120,000. Attachment I to SAMSHA's submission shows, however, that the drawdowns were associated with transactions (checks or automatic withdrawals) that include the disallowed amounts.

During the conference in this case, moreover, SAMHSA presented good reasons why RCA's revised statement comparing revenues and expenditures did not provide a basis for concluding that RCA did not have to return federal funds of \$23,166.

First, SAMHSA points out (and RCA does not deny) that SAMHSA did not review all of the costs charged to SAMHSA grants in the review period, but only a small sample of charges, a high percentage of which were found to be unallowable. Thus, SAMHSA says, it is likely that the total expenditure figure on which RCA relies includes other unallowable costs of the same type as the disallowed costs. For example, SAMHSA points out that, in addition to the payments to Washington Mutual included in the disallowed amount, RCA made other payments to Washington Mutual during the review period. SAMHSA questioned those payments not only because they were joint costs, not properly allocated, but because they were in fact mortgage payments, not rent. Attachments F and G to SAMHSA's submission to the Board show that, although RCA classified the checks to Washington Mutual as

² RCA also asserted during the conference that its accounting system now shows that total expenditures for the two SAMHSA projects for the review period (October 2007 through March 2008) exceeded the \$305,000 in federal funds drawn down during that period. RCA provided no documentation to support this assertion. Even assuming it is true, however, it would not establish that total **allowable and allocable** expenditures for that period exceeded federal revenues, for the reasons discussed below.

"Office Rent," they were in fact payments for a home loan for property at 1904 Glenwood. During the conference, both parties indicated that RCA's former Executive Director had purchased this property after the original owner, to whom RCA had been paying rent, decided to sell it. Under OMB Circular A-122, RCA could properly charge only the costs of ownership (such as depreciation or a use allowance) for this property. 2 C.F.R. Part 230, App. B, ¶¶ 11, 43.

In the conference, RCA did not deny that these payments were not in fact rental payments. Also, RCA acknowledged that it had not been able to provide information on the ownership costs, even though SAMHSA had given it the opportunity to do so. RCA indicated that its former Executive Director said he had discussed how to charge these costs with SAMHSA's Financial Advisory Services Officer (FASO). The FASO, who participated in the conference, acknowledged discussing the issue with the former Executive Director, but the FASO indicated that he had referred the former Executive Director to the provision that precludes charging rent under a less-than-arms-length lease agreement. RCA did not dispute the FASO's statement about the conversation. In any event, the OMB Circular is clear that only the costs of ownership are allowable in such a situation, and, as discussed above, RCA still has not justified allocating the mortgage costs, as it did, solely between the RSCP and TCE grants.

SAMHSA also explained that it rejected RCA's assertion that its total allowable costs exceeded the amount drawn down by about \$27,000 because the revised expenditure report included some expenditures SAMHSA knew were unallowable, such as the salary of an RCA staff person who did not work on the SAMHSA grants, and because RCA still had not documented its bases for allocating joint costs. RCA did not deny that one of the identified staff members did not work on the SAMHSA grants and provided no documentation to show that the additional costs included in the revised expenditure report (but not included in the report originally provided to the reviewers) were in fact costs allowable and allocable to the SAMHSA grants in the amounts claimed.³

³ During the conference, RCA suggested that it would be willing to submit to SAMHSA whatever documentation might avoid or reduce the disallowance. SAMHSA did not entirely rule out considering additional documentation, although RCA has had ample opportunity to submit it previously. SAMHSA reasonably pointed
(Continued . . .)

We also note that RCA's argument relies primarily on comparing revised expenditures reported for the period January to March 2008 with the total amount of federal funds drawn down during that period. Attachment I shows, however, that RCA's drawdowns of federal cash in the period October 2007 through March 2008 sometimes exceeded its cash disbursements although RCA was required to base its drawdowns on the amount of its disbursements. See, e.g., 45 C.F.R. § 74.22. Moreover, during the conference, RCA suggested that some of the additional expenditures it later reported for the period January through March 2008 were likely incurred after March 13, 2008, when SAMHSA designated RCA as a high risk grantee that needed to request reimbursement from SAMHSA, rather than drawing down funds from the PMS. If some of the additional expenditures were covered by reimbursements made to RCA after March 31, 2008, then the \$120,000 drawn down **during** the three-month period ending on that date does not represent all of the revenues RCA received to cover expenditures incurred in that period. Given this possibility and the fact that some of RCA's drawdowns during the review period exceeded its cash disbursements, as shown on Attachment I, we have no assurance that the revenue amount on which RCA relies is accurate.

For these reasons, we agree with SAMHSA that RCA's comparison of its expenditures with the revenues received during that period does not provide adequate assurance that RCA had total allowable and allocable costs to justify the amounts of federal funds received to cover expenditures incurred in that period and does not provide a basis for reversing SAMHSA's determination that RCA must repay \$23,166 in federal funds.

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out, however, that it could not permit RCA to retain the federal funds at issue unless it had reviewed or audited **all** of the claimed expenditures and had adequate assurance that no federal funds were drawn down to cover costs that were not allowable and allocable to the SAMHSA awards. In any event, RCA agreed that the Board should proceed to decision based on the record before us.

4. RCA's other arguments do not provide a basis for reversing SAMHSA's decision.

Finally, RCA argues that it expended a lot of effort to correct the mistakes it made and that it does not have sufficient funds to repay the disallowed amount. SAMHSA acknowledges that RCA worked with SAMHSA to correct the problems with its accounting system, but reiterates that RCA drew down federal funds to cover the disallowed costs and that SAMHSA does not have adequate assurance that RCA had total allowable expenditures that would justify the drawdowns. SAMHSA also points out that, while RCA could seek to work out a repayment plan, inability to pay is not a reason for reversing a disallowance.

We agree with SAMHSA that these arguments do not provide a basis for us to reverse SAMHSA's decision. See, e.g., Arlington Community Action Program, Inc., DAB No. 2141, at 5 (2008). In accepting the SAMHSA grants, RCA accepted the terms and conditions of those awards. RCA may not avoid returning funds it cannot show were spent in accordance with those terms and conditions merely because repayment may be difficult and because it has made an effort to correct its mistakes.

Conclusion

For the reasons stated above, we uphold the disallowance in full.

_____/s/_____
Sheila A. Hegy

_____/s/_____
Constance B. Tobias

_____/s/_____
Judith A. Ballard
Presiding Board Member