Department of Health and Human Services

DEPARTMENTAL APPEALS BOARD

Appellate Division

SUBJECT: Recovery Resource Center, Inc.
Docket No. A-08-81
Decision No. 2227

DATE: February 5, 2009

DECISION

On April 9, 2008, Recovery Resource Center, Inc. (RRC), an Illinois non-profit corporation, appealed a decision by the Substance Abuse and Mental Health Services Administration (SAMHSA) to disallow RRC’s expenditure of $89,681 of federal grant funds. SAMHSA based its disallowance decision on findings that RRC had failed to account for or justify its expenditure of those funds.

In this proceeding, RRC had the burden to show that it properly accounted for and documented its expenditure of federal grant funds. For reasons discussed below, we conclude that RRC did not carry this burden of proof. Thus, we sustain the disallowance in full.[1]

Case Background

Under the Recovery Community Services Program (RCSP),[2] SAMHSA, an agency within the Department of Health and Human Services (HHS), provides financial support to public and private non-profit organizations that provide “peer-driven” addiction recovery services. See 69 Fed. Reg. 13,563 (March 23, 2004).

In April 2003, SAMHSA awarded a four-year, $1.3 million RCSP grant to RRC for the development and operation of an addiction recovery support project in Oak Park, Illinois. RRC Ex. 1.

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[1] The record of this appeal includes: RRC’s initial brief (RRC Br.) with 28 attached exhibits; and SAMHSA’s response brief (Response Br.) with 19 attached exhibits.

[2] The RCSP is authorized by section 509 of the Public Health Service Act, 42 U.S.C. § 290bb-2.

Under the terms of this grant, federal funds were to be released to RRC incrementally in annual installments of $325,000. Id.

SAMHSA funded the first three years of RRC's addiction recovery project. SAMHSA Exs. 6-7. It is undisputed that during this three-year period – April 30, 2003 through April 29, 2006 – RRC received and spent all available grant funds, which totaled $975,000. See RRC Ex. 25 (payment management system data showing "advances" of federal funds totaling $975,000); RRC Ex. 12 (August 2006 "Financial Status Report" showing grant-related outlays exceeding $975,000).

In April 2006, after receiving reports of fiscal mismanagement, lax corporate governance, and other problems, SAMHSA denied grant funding for the fourth and final year of RRC's project. RRC Ex. 4. SAMHSA's decision to deny "continuation" funding for year four of the project (May 2006 through April 2007) was the subject of a prior appeal filed by RRC in May 2006. See Recovery Resource Center, Inc., DAB No. 2063 (2007).

In June 2006, while RRC's prior appeal was pending, the HHS Office of Inspector General (OIG) commenced an audit to determine whether the $975,000 in federal funds received by RRC for the first three years of the project had been expended in compliance with federal regulations, grant terms and conditions, applicable Office of Management and Budget circulars, and agency grant policy. See RRC Ex. 10; SAMHSA Ex. 8, at 7.

On or about July 25, 2006, the OIG suspended its audit at RRC's request.[3] SAMHSA Ex. 8, at 4; RRC Ex. 10.

RRC asserts that on July 31, 2006, it e-mailed to SAMHSA what it calls "revised accounting records" of its grant expenditures. RRC Br. at 5. RRC asserts that the records it allegedly e-mailed to SAMHSA included profit-and-loss statements and balance sheets

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[3] The OIG described the circumstances of the suspension as follows: "On July 25, 2006, the grantee's executive director advised us that since the grantee was not receiving funds from SAMHSA, it could no longer operate as an organization and she would no longer cooperate with the audit." SAMHSA Ex. 8, at 4. A July 25, 2006 letter from RRC to the OIG confirms that RRC asked the OIG to suspend the audit so that it could "reassess" its situation in light of the fact that it was not receiving federal funds to cover ongoing expenses. RRC Ex. 10.

for the first three years of the grant as well as a "Detailed General Ledger (92 pages) for the life of the grant." Id. The OIG did not review these particular records, having recently suspended its audit.[4] SAMHSA Ex. 8, at 9.

We note that RRC did not submit for the record of this appeal the "revised accounting records" it claimed to have e-mailed to SAMHSA on July 31, 2006, although, as we indicate below, it appears that SAMHSA received and reviewed some or all of those records before issuing the disallowance.

On September 28, 2006, the OIG presented SAMHSA with a report of its audit findings.[5] SAMHSA Ex. 8. That report indicated that although the OIG had been unable to perform all necessary audit procedures, "sufficient evidence" had been obtained to support the report's findings.[6] Id. at 4, 7.

Among other things, the OIG found that RRC had failed to account for its use or expenditure of $75,593 in grant funds. SAMHSA Ex. 8, at 9. That finding was based on a determination by auditors that RRC had received $975,000 in grant funds for the first three years of its project but had recorded only $899,407 of

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[4] Regarding the revised accounting records allegedly submitted to SAMHSA, the OIG stated: "Subsequent to our audit work and the date the executive director [of RRC] prevented us from continuing our fieldwork [July 25, 2006], she informed us that the grantee's records had been adjusted to included unrecorded transactions of incurred cost. We did not examine the adjustments." SAMHSA Ex. 8, at 10.

[5] Department of Health and Human Services, Office of Inspector General, *Review of Grant Expenditures on the Substance Abuse and Mental Health Services Administration's Grant Number #1 H79 TI14678 Awarded to Recovery Resource Center*, A-05-06-00052 (September 2006).

[6] In explaining the limitations on its audit work, the OIG stated: "We had only limited information to conduct the audit because the executive director [of RRC] blocked our access to the facility, claimed to have stored records offsite, and no longer employed key staff." SAMHSA Ex. 8, at 7.

expenditures in its accounting records for that period.[7] Id. (section entitled "Draw Downs In Excess of Incurred Costs Recorded in the Accounting Records").

The OIG separately found that RRC had failed to justify grant fund expenditures totaling $14,088. SAMHSA Ex. 8, at 10 (section entitled "Unsupported Costs"). According to the OIG's report, these unjustified expenditures fell into three categories: (1) payments to RRC's executive director, Cynthia Cameron, for "organization costs"; (2) cell phone payments and stipends; and (3) payments to Yellow Brick Road, a separate organization owned and operated by Ms. Cameron, for furniture. Id.

On January 31, 2007, the Board issued its decision in the prior appeal. Recovery Resource Center, Inc., DAB No. 2063. In that decision, the Board upheld SAMHSA's denial of continuation funding for the fourth year of RRC's project, concluding that RRC had materially failed to comply with the terms and conditions of its RCSP grant. Id.[8] In support of that conclusion, the Board found that RRC had made unallowable expenditures and that its financial management and corporate governance were weak, lax, or ineffective. Id. at 9-20. We also found that RRC's weak financial management was manifested in its inability to produce accurate and reliable accounting records. Id. at 12-13.

On April 12, 2007, SAMHSA sent RRC a copy of the OIG's September 2006 audit report along with a letter asking RRC to respond to the findings that it had failed to (1) account for its expenditure of $75,593 in RCSP grant funds and (2) justify its expenditure of other grant funds totaling $14,088. SAMHSA Ex. 9. (The total amount implicated by these findings is $89,681.) SAMHSA asked RRC to provide "detailed supporting documentation" for those expenditures or else return $89,681 to HHS. Id.

On June 4, 2007, SAMHSA wrote again to RRC, indicating that it had received no reply to its April 12 letter seeking a response to the OIG's audit findings. SAMHSA Ex. 10. The June 4 letter stated that SAMHSA would issue a decision concerning the OIG's audit findings if RRC did not respond. Id.

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[7] The difference between $975,000 and $899,407 is $75,593.

[8] The Board later denied RRC's motion for reconsideration of its January 31, 2007 decision. DAB Ruling 2007-2.

On August 8, 2007, SAMHSA issued a written decision disallowing RRC's expenditure of $89,681 of RCSP grant funds. SAMHSA Ex. 11. SAMHSA subsequently withdrew this decision after RRC complained that it had not received SAMHSA's April 12 and June 4 letters. See SAMHSA Exs. 11-12.

On August 31, 2007, RRC sent SAMHSA a written response to the OIG audit report.[9] SAMHSA Ex. 12. Finding the response unsatisfactory, SAMHSA reissued its disallowance decision on September 13, 2007. SAMHSA Ex. 13. RRC then asked SAMHSA to reconsider, urging a review of the "revised accounting records" that RRC asserted it e-mailed to SAMHSA on July 31, 2006. See SAMHSA Ex. 14; RRC Ex. 16. The record indicates that SAMHSA located certain of these records in its e-mail folders, see RRC Ex. 16, and the parties agree that RRC sent hard copies of them to SAMHSA on October 4, 2007.

On November 9, 2007, SAMHSA asked RRC to specify the "revisions" contained in the accounting records submitted on October 4 and to state why the revisions were necessary. RRC Ex. 17. SAMHSA gave RRC until November 30, 2007 to respond. Id.

On December 3, 2007, RRC's executive director, Cynthia Cameron, sent SAMHSA a letter stating that she was "not at liberty" to identify the accounting revisions and suggested that SAMHSA had already "accepted" the revisions as valid or appropriate. RRC Ex. 18. Ms. Cameron also complained that SAMHSA had "abruptly" and illegitimately withdrawn funding for year four of the grant without first giving RRC a hearing. Id. In addition, Ms. Cameron asserted that SAMHSA's denial of continuation funding had deprived her of resources to respond to the OIG audit and had forced her to use personal funds to cover some audit-related expenses. Id.

On March 10, 2008, SAMHSA issued a "Final Decision Letter" (FDL) disallowing $89,681 of RRC's grant fund expenditures. SAMHSA Ex. 16. The bases for the disallowance were the previously mentioned OIG findings. The FDL indicates that SAMHSA reviewed the documentation submitted by RRC in opposition to the OIG's findings, including the so-called "revised accounting records," but concluded that RRC had failed to show that the expenditures

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[9] RRC's August 31, 2007 response included a profit-and-loss statement for year three of the grant and other business records. SAMHSA Ex. 12.

in question were adequately documented or justified.

After RRC filed its notice of appeal of the disallowance, the parties submitted briefs with attached exhibits. RRC attached 28 exhibits to its brief. Some of those exhibits contain accounting and other business records but none that we can identify as being the "revised accounting records" allegedly e-mailed to SAMHSA on July 31, 2006 or submitted (hard copy) to SAMHSA on October 4, 2007.

After the initial round of briefing in this proceeding, RRC sought permission to submit additional accounting records which, it said, "address the bulk of the concerns . . . delineated in" the March 10, 2008 FDL. See September 11, 2008 Motion. The Board gave RRC until December 12, 2008 to submit the additional accounting records specified in its motion.

On December 12, 2008, RRC informed the Board that it would not submit any additional accounting records. Consequently, the documentary evidence submitted by RRC in this appeal consists of the 28 numbered exhibits attached to its brief.

Legal Background

The regulations at 45 C.F.R. Part 74 govern HHS awards of federal financial assistance to various types of entities, including non-profit organizations (like RRC). See 45 C.F.R. § 74.1. In turn, these regulations provide that non-profit federal grant recipients must comply with Office of Management and Budget (OMB) Circular A-122, *Cost Principles for Non-Profit Organizations*. 45 C.F.R. §§ 74.27(a).

OMB Circular A-122 establishes "cost principles" that are used to determine whether, or to what extent, a non-profit organization's costs or expenditures may be charged to a federal "award," such as a grant or cost reimbursement contract. Home Education Livelihood Program, Inc., DAB No. 1598, at 5-6 (1996). In 2005, OMB codified OMB Circular A-122 in the Code of Federal Regulations. 70 Fed. Reg. 51,927 (Aug. 31, 2005). We cite to those regulations, which are found in 2 C.F.R. Part 230, when referring to relevant cost principles.[10]

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[10] OMB Circular A-122 was last revised on May 10, 2004. 69 Fed. Reg. 25,970 (May 10, 2004). Prior to 2004, the most recent (continued...)

In order for a cost or expense to be “allowable” – that is, chargeable to a federal grant or other award – the cost or expense must be “adequately documented” and “reasonable for the performance of the award and . . . allocable thereto[.]” 2 C.F.R. Part 230, Appendix A, ¶ A.2.a., A.2.g.

Discussion

The Board has repeatedly held that a grantee bears the burden of documenting the existence and allowability of its expenditures of federal funds. Benaroya Research Institute, DAB No. 2197 (2008) (citing cases). We have also held that “[b]eing able to account for the expenditure of federal funds is a central responsibility of any grantee,” and that “[o]nce a cost is questioned as lacking documentation, 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.” Recovery Resource Center, Inc., DAB No. 2063, at 12-13 (2007); Northstar Youth Services, DAB No. 1844, at 5 (2003); see also 45 C.F.R. §§ 74.21(b)(2), (7) (requiring grantees to 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.”).

As discussed, SAMHSA based the disallowance on findings that RRC had failed to (1) account for its expenditure of $75,593 in RCSP grant funds and (2) justify its expenditure of other RCSP grant funds totaling $14,088. In accordance with our prior holdings, we must determine whether RRC carried its burden of documenting the allowability of the disallowed expenditures.

A. Unaccounted for expenditures

We first consider SAMHSA’s finding that RRC failed to account for its receipt and presumed expenditure of $75,593 in RCSP grant

[10](...continued)
substantive revision to the circular became effective on June 1, 1998. Vermont Slauson Economic Development Corp., DAB No. 1955, at 4 n.2 (2004); 63 Fed. Reg. 29,794 (June 1, 1998). The provisions of the circular that are relevant to this case have remained unchanged since at least June 1998. Our citations are to the most recent version of the circular.

funds. Claiming that expenditure of these funds was in fact "documented," RRC points to two pages from its "General Ledger as of April 29, 2006." RRC Br. at 12-13. These pages, which constitute RRC Exhibit 20, list various expenditures that total in excess of $75,593. RRC Ex. 20.

As a preliminary matter, we are unable to determine whether the expenditures shown in RRC Exhibit 20 are expenditures <u>in addition to</u> those reflected in the accounting records reviewed by the OIG. As noted, for the first three years of the grant, the OIG found a gap between RRC's "draw downs" (receipt) of $975,000 in grant funds and the $899,407 of "incurred costs" (expenditures) recorded in its accounting records. If the expenditures in RRC Exhibit 20 were part of the $899,407 in expenditures identified by the OIG in calculating the gap between "draw downs" and "incurred costs," then RRC Exhibit 20 could not be regarded as evidence that fills the expenditure gap identified by the OIG. However, because SAMHSA does not raise this issue, we assume for discussion purposes (but make no finding) that the expenditures shown in Exhibit 20 are expenditures in addition to those reflected in the relevant OIG finding. Even with this assumption, we conclude that RRC did not meet its burden of proof.

An expenditure must be "adequately documented." 2 C.F.R. Part 230, Appendix A, ¶ A(2)(g). Accounting records, such as entries in a general ledger, are insufficient evidence of an expenditure. <u>The Kickapoo Tribe of Oklahoma</u>, DAB No. 1496 (1994). Accounting records must be supported by "source documentation," such as a paid bill or invoice, cancelled checks, and other direct evidence of the transaction. <u>Id.</u>; 45 C.F.R. §§ 74.21(b)(7). Even if an expenditure is adequately documented, it is not allowable unless it is also "reasonable for the performance of" the grantee's project and "allocable thereto." 2 C.F.R. Part 230, Appendix A, ¶ 2.a.

SAMHSA concedes that RRC has produced source documentation for the following expenditures shown in RRC Exhibit 20:

- Check 1282 for $5,849.66 dated April 25, 2005 (to purchase two laptop computers with three-year service contracts);

- Check 1287 for $4,449.96 dated April 26, 2005 (to purchase computers with three to five-year service contracts);

- Check 1285 for $509.89 dated April 27, 2005 (to purchase a video game console and accessories);

- Check 1288 for $1,579.97 dated April 28, 2005 (to purchase computers and accessories and a five-year service contract);

- June 7, 2005 debit card purchase of $660.97 (to purchase a $630 cell phone/PDA and charger); and

- Check 1303 for $320.65 dated June 22, 2005 (to purchase computer accessories).

Response Br. at 12-13 (citing SAMHSA Ex. 17, at 1-35). However, we find no evidence in the record that these expenditures, which total $13,371.10, were necessary or reasonable costs of running RRC's addiction recovery project. Thus, we must conclude that these expenditures are unallowable.

As for the other alleged expenditures shown in RRC Exhibit 20, RRC produced no source documentation verifying that they were made, nor did it try to show that the expenditures, if made, were made for allowable purposes. Thus, we must conclude that those expenditures are unallowable as well.

As noted, RRC asserts that it submitted "revised accounting records" to SAMHSA by e-mail on July 31, 2006, and that these documents included "profit and loss" statements, balance sheets, and a detailed general ledger for each of the three years that its grant was funded. RRC Br. at 5. According to RRC, the revised accounting records show no gap between the amount of federal funds received and the amount of grant funds spent. See April 9, 2008 Notice of Appeal, at 2. RRC suggests that if the OIG had reviewed these records, it would have found no gap between "draw downs" and "incurred costs" and left SAMHSA no basis to disallow $75,593 of expenditures. Id.

That contention is purely speculative, and without merit, because RRC does not allege or demonstrate that the revised accounting records it alleges it e-mailed to SAMHSA on July 31, 2006 (and later resubmitted) are part of the record of this case.[11] But even if RRC had produced those documents, they would not have sufficed to meet its burden of proof absent evidence of their reliability. This is because the OIG found that RRC "did not have an adequate financial management system" and "lacked effective internal controls to accurately identify grant expenditures." SAMHSA Ex. 8, at 9. At a minimum, that finding suggests that any accounting records or financial statements generated by RRC, including "revisions" to those documents, are reasonably regarded as unreliable. Furthermore, the documents in question, as RRC described them (see RRC Br. at 5), are mere accounting records or financial statements, not "source documentation." As indicated, a grantee must produce source documentation in order to prove the occurrence and allowability of a disallowed expenditure. The Kickapoo Tribe of Oklahoma. In short, RRC needed to do more than proffer revised (and unaudited) accounting records in order to meet its burden of proof in this appeal.

For these reasons, we uphold the portion of SAMHSA's March 10, 2008 decision that disallowed RRC's expenditure of $75,593 in RCSP grant funds.

B. "Unsupported costs"

We turn now to the $14,088 in expenditures that the OIG identified as "unsupported" costs. SAMHSA Ex. 8, at 10. As indicated, these fell into three categories: (1) payments to RRC's executive director, Cynthia Cameron, for "organization costs"; (2) cell phone payments and stipends; and (3) payments to Yellow Brick Road for furniture. We address each category in turn.

[11] In its September 11, 2008 motion, RRC sought permission to submit the "revised accounting records" it allegedly e-mailed to SAMHSA on July 31, 2006. We granted the motion. However, RRC never submitted these records, despite several extensions of time. As we indicated in our September 25, 2008 letter to the parties, RRC – not SAMHSA – had the burden to produce any documents that supported its case. RRC had ample opportunity to submit the "revised accounting records" in this proceeding, and it does not claim that those records were out of its control or possession.

1. *Organization costs*

OMB Circular A-122 states in relevant part:

> *Organization costs.* Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are <u>unallowable except with prior approval of the awarding agency</u>.

2 C.F.R. Part 230, Appendix B, ¶ 31 (emphasis added). Mirroring this provision, the terms and conditions of RRC's grant state that an awarding agency's "prior approval" for organization costs must be in writing. SAMHSA Ex. 1, at 3 (¶ 12 of RRC's Notice of Grant Award).

The OIG identified the following RRC expenditures (totaling $7,356) as organization costs:

- $4,856 in direct payments to RRC's executive director; and
- $2,500 in "retroactive rent payments" to Yellow Brick Road, a separate entity "owned and operated" by RRC's executive director, Cynthia Cameron.

SAMHSA Ex. 8, at 10. The OIG found that these expenditures were unallowable because RRC had failed to obtain SAMHSA's prior written approval for them, as required by OMB Circular A-122's provision governing organization costs. <u>Id</u>. We see no basis to overturn that finding.

Regarding the $4,856 in direct payments to RRC's executive director, which RRC does not deny are "organization costs," RRC asserts that "it *was* <u>told by David Howell</u>, whom the Center certainly thought was SAMHSA, <u>within the first week of the grant period</u> that ALL costs associated with this preparation of the grant were reimbursable." RRC Br. at 14 (emphasis added). That assertion is not evidence of prior written approval by a SAMHSA employee. At best, it is an allegation of verbal approval by a person who may or may not be a SAMHSA employee. SAMHSA asserts that David Howell was (at the relevant time) employed by HHS's Division of Payment Management, not SAMHSA, and RRC has made no allegation or showing to the contrary. SAMHSA Ex. 16, at 4. In short, RRC has failed to provide evidence of SAMHSA's prior written approval of the payments to RRC's executive director. For that reason, we must uphold their disallowance.

RRC does not deny that the retroactive rent payments also are organization costs. If they are, then they must be deemed unallowable because there is no evidence that SAMHSA gave them prior written approval.[12]

Even if the rent payments were organization costs, we would still find them to be unallowable. Inasmuch as the rent payments relate to an alleged lease between two legally distinct organizations (RRC and Yellow Brick Road) controlled by the same individual (Cynthia Cameron), the following provision of OMB Circular A-122 applies:

> <u>Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization</u>. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. <u>Such leases include</u>, but are not limited to <u>*those between*</u> (i) divisions of an organization; (ii) <u>organizations under common control through common</u>

[12] In its prior Board appeal, RRC alleged that the retroactive rent payments were not organization costs but expenditures for office space leased from Yellow Brick Road during the first five months of the grant (May through September 2003). DAB No. 2063, at 15. In our decision on the prior appeal, we questioned whether RRC had correctly identified the payments made for that purpose. <u>Id</u>. We also commented on the fact that RRC had not produced a rental agreement between Yellow Brick Road and RRC, noting that the only evidence of such an agreement was a letter from Ms. Cameron to RRC requesting rent reimbursement, a letter written more than 18 months after the purported rental period. <u>Id</u>. In the present appeal, RRC failed again to produce a lease or other documentary evidence of its rental agreement with Yellow Brick Road. RRC also failed to produce any credible evidence that the rental period post-dated the start of RRC's project in May 2003.

> <u>officers, directors, or members</u>; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

2 C.F.R. Part 230, Appendix B, ¶ 43 (emphasis added). By all appearances, RRC's purported lease with Yellow Brick Road was a less-than-arms-length transaction because it involved "organizations [RRC and Yellow Brick Road] under common control through common officers, directors, or members [Cynthia Cameron]." As such, the amount that RRC could expend for rent under the lease was limited to the costs of owning the leased property, had RRC owned the property. Although RRC asserts that the $2,500 rent expenditure was "reasonable and understandable," it has produced no evidence by which we could determine the portion of that expenditure, if any, that is allowable under the applicable cost principle.

For these reasons, we uphold the portion of the disallowance relating to organization costs, regardless of whether all of these costs were properly characterized as such.

2. *Cell phone usage and stipend payments*

The OIG found that $4,734 in expenditures by RRC for cell phone usage and stipends were unallowable. SAMHSA Ex. 8, at 10. We find no evidence contradicting that finding.

In an August 23, 2007 letter, RRC's executive director stated that she and RRC's director of operations received cell phone stipends because they "utilized their personal cell phones for RRC business." SAMHSA Ex 12, at 2. In addition, a September 26, 2007 letter from RRC to SAMHSA (attached to the notice of appeal) contains an admission that the cell phones for which the stipends were issued were for "personal use." In light of its admission that its phones were used for both grant-related and personal business, RRC needed to produce evidence that documented the extent to which cell phone expenditures served grant-related purposes.

In its appeal brief, RRC expressed an intent to produce such evidence:

> At this time, the Center has requested from the cell phone company all statements that cover the period of the charges. For the second key staff [presumably the director of operations], a letter will be sent to request the statements as the Center cannot get them without her consent. The cell phone stipend covered the cell phones utilized by key personnel and the "Hook-Up" committee, the peer leadership group that was the foundation of the philosophical and mandated goal, concept and true spirit of RCSP. This group led the Center. The cost is retro-actively charging the grant $75 per month for each phone (2 phones) for approximately 30 months of the grant and we were funded for 36 months. The Center will submit the statements during the appeal if permissible.

RRC Br. at 14-15. RRC also asserted that its executive director initially refrained from charging RRC for cell phone usage and related costs because of "a genuine interest in the new organization keeping as much funding for itself as possible," and that the "<u>true reason for the charge was to lower the carry-over of [a] Year 2 [unobligated balance of grant funds]</u> because Year 1 was to be carried to Year 3 and not Year 2." RRC Br. at 21 (emphasis added).

Despite its stated intent to produce phone records and other evidence, RRC did not do so. Simply put, the record does not show that any portion of the disallowed cell phone expenditures were "reasonable for the performance of" RRC's RCSP project. Furthermore, avoiding an unobligated balance for a particular budget period is not a legitimate grant objective and thus does not justify those expenditures. Accordingly, we uphold the portion of the disallowance relating to cell phone usage and stipends.

3. *Furniture costs*

The OIG found that expenditures of $1,998 for furniture were unallowable. SAMHSA Ex. 8, at 10. RRC now claims that these expenditures were actually for laptop computers. RRC Br. at 15; <u>see also</u> 9/26/07 letter from RRC to Dan Spears (attached to Notice of Appeal). RRC supplied no documentary evidence to support that assertion, however. Nor did RRC explain how or why the expenditures, whatever their purpose, were "reasonable for the performance of" its RCSP project. We thus affirm the disallowance of these expenditures.

C. Miscellaneous issues

RRC has raised various other issues that provide no basis for modifying or overturning the disallowance.

1. *Hearing rights*

RRC complains that SAMHSA did not give it a hearing before issuing its disallowance decision. RRC Br. at 9. However, we can find no statute or regulation which required SAMHSA to hold a hearing prior to issuing a disallowance.

RRC suggests that such a hearing right can be found in 45 C.F.R. Part 92 (specifically, section 92.43(b)). See RRC Br. at 9. However, the Part 92 regulations do not apply to RRC's grant. Part 92 applies only to grants to government entities, and RRC is not a government entity. RRC also points to the hearing provision in 42 C.F.R. § 402.5, see RRC Br. at 12, but this regulation applies only to civil money penalty assessments and exclusions, not to disallowances.

RRC's avenue of redress is a proceeding before the Board, which provides an independent and impartial review of disallowance disputes. 45 C.F.R. Part 16, Appendix A, ¶ C(a)(1). In a Board proceeding, a grantee has ample opportunity to present evidence and argument supporting its position. See id. §§ 16.8-16.11; Departmental Appeals Board, *Appellate Division Practice Manual* (http://www.hhs.gov/dab/appellate/manual.html#33). RRC did not request an evidentiary hearing before the Board and does not otherwise contend that it lacked sufficient opportunity to make its case in this proceeding.[13]

2. *OIG audit issues*

RRC asserts that SAMHSA improperly relied on the OIG audit report

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[13] In a proceeding under 45 C.F.R. Part 16, like this one, the Board will grant a hearing "if it finds there are complex issues or material facts in dispute the resolution of which would be significantly aided by a hearing, or if [it] determines that its decisionmaking otherwise would be enhanced by oral presentations and arguments in an adversary evidentiary hearing." 45 C.F.R. § 16.11(a).

because the OIG suspended the audit. RRC Br. at 6. As a result of the suspension, says RRC, the OIG never reviewed certain "revised accounting records" that, according to RRC, refute the findings supporting the disallowance. Id. RRC also asserts that SAMHSA could and should have provided funding during June and July 2006 in order to help it wind down operations and facilitate cooperation with the audit. Id. at 6-12.

We disagree that SAMHSA improperly relied on the OIG's findings. First of all, to the extent that RRC tries to fault the OIG for suspending the audit, we reiterate that the available evidence indicates that the audit was suspended at RRC's request. RRC Ex. 10. Furthermore, the OIG report indicates that the RRC did not fully cooperate with the audit (see infra footnote 6), and RRC has offered no evidence to rebut this.

In any event, the fact that the audit was suspended is immaterial because the audit report states that the OIG obtained sufficient information to support the findings contained in the report, and because RRC has failed to provide evidence that causes us to doubt the validity of those findings.

In addition, as discussed earlier (infra page 10), RRC failed to produce the "revised accounting records" on which it relies — records that, as RRC described them, would not suffice to meet its burden of proof. Finally, SAMHSA was under no legal obligation to provide funding to RRC during June and July 2006; as we concluded in our decision on RRC's prior appeal, SAMHSA was justified in denying additional funding after April 2006.

3. *Timeliness of the FDL*

RRC questions the "timeliness" of the March 10, 2008 notice of disallowance, asserting that SAMHSA issued it more than 18 months after its alleged receipt (in July 2006) of the "revised accounting records." RRC Br. at 11. However, RRC cites no statute, regulation, or policy prescribing a deadline for issuing a disallowance, nor has it alleged or proved any unfair prejudice stemming from the 18-month gap. Moreover, we note that SAMHSA wrote to RRC in April 2007 seeking a response to the September 2006 OIG audit findings. SAMHSA Ex. 9. Although RRC claimed that it never received SAMHSA's April 2007 letter, the letter is some evidence that SAMHSA was not unreasonably dilatory. Moreover, the delay arguably benefitted RRC. As the chronology in the "Case Background" section of this decision indicates, SAMHSA twice — in August 2007 and again in October 2007 — withdrew disallowance decisions at RRC's request in order to give RRC additional time to resolve or respond to issues raised by the OIG audit report.

4. *Carryover of funds*

RRC devotes several pages of its brief to an argument that SAMHSA wrongfully refused to authorize "carryover" of unobligated (unspent) grant funds from one budget period to another. RRC Br. at 16-23. This argument is irrelevant. The OIG found — and the available evidence shows — that RRC drew down $975,000 of the federal grants funds awarded for the first three years of its RCSP project. The issues raised by the disallowance are whether RRC accounted for and properly spent $89,681 of those funds. Whether or not those funds were carried over (or should have been carried over) from one budget period to the other does not change the fact that RRC spent them. RRC had the burden to show that they were spent for allowable purposes but has failed to meet that burden.

5. *Reasonableness of SAMHSA's actions*

RRC suggests that SAMHSA's decision to issue the disallowance is arbitrary and capricious, asserting that the disallowance would have been unnecessary had SAMHSA adequately monitored the grant. RRC Br. at 23. This contention is meritless because the grantee is responsible for ensuring that federal grant funds are properly spent. Rapid City Indian Services Council, Inc., DAB No. 835, at 7 (1987).

Conclusion

For the reasons discussed, we sustain the March 10, 2008 decision by SAMHSA to disallow $89,681 of expenditures by RRC under its RCSP grant.

/s/

Leslie A. Sussan

/s/

Constance B. Tobias

/s/

Sheila Ann Hegy
Presiding Board Member